

1 Q You were there 2 1/2 weeks. The whole time you
2 were there, were you still feeling the nauseous and the unable
3 to keep --

4 A The nauseous, the not being able to hold food
5 down. After three days being admitted in the hospital I
6 turned yellow. My eyes were yellow. The urine was, you know,
7 dark. And after several different blood tests they still
8 didn't find out what was wrong with me. I went through
9 ultrasounds. I went -- I think I went through an MRI. They
10 were doing the all abdomen to see what was wrong.

11 Because my blood wasn't really saying what was wrong
12 with me, but the liver enzymes were just high, because they're
13 supposed to be really low. Then two weeks after being in the
14 hospital they decided to do a liver biopsy to -- and that's
15 when they found out that I had hepatitis C.

16 Q And who was the one that finally tells you that?

17 A That was horrible. The health district.

18 Q And do you even know how they knew before you?
19 Do you know that now?

20 A No. I don't. I'm supposedly -- sorry.

21 Q It's all right.

22 THE COURT: Just take your time. Let us know if you
23 need a break.

24 THE WITNESS: It was a horrible day. Do you
25 understand? When a person has a contagious disease, the

1 hospital is supposed to contact the health district
2 immediately. The health district called me and told me I had
3 hepatitis C.

4 The doctor didn't even have the results. The head
5 nurse didn't have the results. I had to hear it from my
6 health district and I didn't [unintelligible] the doctor. My
7 poor mother, she was so upset and I didn't -- they had to call
8 her. She was at work. Sorry.

9 MS. WECKERLY: Are you okay? We can wait a second.

10 THE WITNESS: Go ahead.

11 BY MS. WECKERLY:

12 Q Okay. When you found out and you got that call
13 from the health district, you were still in the hospital?

14 A Yes, I was.

15 Q Okay. And so no doctor had even talked to you
16 at that point?

17 A No.

18 Q So you get this call. Does some doctor ever
19 come and explain what their findings were to you?

20 A No. I didn't find out from the doctor until the
21 next morning. And when the health district calls you, they
22 ask you questions that are disgusting. Because I've always
23 been a clean person, so when you get that call and they ask
24 you, you know, do you have any tattoos, do you have any
25 piercings, have you been out of the country, how many sex

1 partners do you have, do you --

2 MR. WRIGHT: Foundation objection, or hearsay
3 objection.

4 THE COURT: Overruled.

5 THE WITNESS: You don't understand. It made me feel
6 like I was a dirty person and [unintelligible] a clean person.
7 But I'm sorry, you guys. We're off track. Go ahead.

8 BY MS. WECKERLY:

9 Q That's okay. So you get that call and it's the
10 next morning, correct --

11 A Yes.

12 Q -- that a doctor tells you you're positive for
13 hepatitis C?

14 A Yes.

15 Q Now, after you get that information, obviously
16 it's very upsetting and I'm not trying to minimize that.

17 A No. It's okay.

18 Q Do you go see your regular doctor sometime after
19 that?

20 A In the hospital I had a gastroenterologist, a
21 Dr. Manuel, and I was referred to go and see him because he
22 was overseeing my care on that part.

23 Q So there's a Dr. Manuel or Manwell [phonetic]
24 at --

25 A Manuel, yeah.

1 Q -- at Spring Valley Hospital who is assigned to
2 your case?

3 A Yes.

4 Q And do you -- you have contact with that doctor?

5 A Yes. The doctor had contact with me for like
6 four days prior, before my diagnosis.

7 Q Okay. And do you ever go see your general
8 practitioner or your family doctor, Dr. Son Bui, after --

9 A Bui.

10 Q -- after being released from the hospital?

11 A Yeah. Yeah. I told him what happened to me,
12 so.

13 Q Let me just ask you this: What happens in
14 between Dr. Manuel talking to you and you being released from
15 the hospital? Is there any discussion about your health or
16 any further testing they need to do or anything like that?

17 A Dr. Manuel wanted me to get more blood results
18 done and see him back in like a week and a half.

19 Q And so you have to give more blood?

20 A Yes.

21 Q And then at some point are you released?

22 A Yes.

23 Q And then after that is when you go see your
24 regular doctor?

25 A Yes.

1 Q Dr. Bui?

2 A Yes.

3 Q And when you go and see him, are you still kind
4 of wondering how you could have this diagnosis?

5 A Yeah. I was devastated, because I had --
6 because of my right side pain, and there's so many organs on
7 the right side he didn't know what was wrong with me. So
8 prior to that, four months, five months prior to that we did a
9 big hepatic panel, and which included the hepatitis C virus,
10 and it came out negative.

11 Q So you knew you were negative then?

12 A Yes.

13 Q Okay. And so you go and see him though, after
14 your release from the hospital. Do you have any idea how --
15 at that point in time how you had contracted the hepatitis C?

16 A No. The only conclusion, and I'm saying
17 conclusion with [unintelligible], is because when you research
18 of what I found out with hepatitis C is a blood transmitted
19 disease which can only be transmitted through a needle. And
20 so if you go back of where I've been for needles, I mean, it
21 was --

22 Q It was the two procedures?

23 A It was the two procedures.

24 Q Does your doctor though, back then refer you
25 back to the endoscopy clinic?

1 A Yes. He told me that since --

2 MR. WRIGHT: Objection. Hearsay.

3 THE COURT: Overruled.

4 BY MS. WECKERLY:

5 Q Did you go back -- did you go back to the
6 endoscopy clinic after you were released from the hospital and
7 after you saw Dr. Bui?

8 A Yes.

9 THE COURT: And is that because Dr. Bui told you or
10 recommended --

11 THE WITNESS: Told me to follow through --

12 THE COURT: Okay. Go on, Ms. --

13 THE WITNESS: -- with him.

14 THE COURT: -- Weckerly.

15 BY MS. WECKERLY:

16 Q So you go back and who do you have an
17 appointment with back at the Endoscopy Center of Southern
18 Nevada?

19 A Dr. Manuel.

20 Q And when you meet with him, what does he say?

21 A He looked -- when he looked at my blood work, he
22 said it looked like that I was clearing myself up of hepatitis
23 C, and I've never heard of anybody clearing themselves up of
24 hepatitis C. And then I said, "So how do you think I got it?"
25 And he says, "We don't have any clue how you got it."

1 MR. WRIGHT: I'm going to object to hearsay, Your
2 Honor.

3 MS. WECKERLY: Let me -- okay.

4 THE COURT: You may be getting into hearsay, so.

5 MS. WECKERLY: I'll ask a different question.

6 THE WITNESS: Okay.

7 BY MS. WECKERLY:

8 Q At some point when you go back to the Endoscopy
9 Center, you said you meet with Dr. Manuel?

10 A Yes.

11 Q And he was the person that was treating you at
12 Spring Valley Hospital as well, correct?

13 A Yes.

14 Q And so did you know when you see him at the
15 hospital that he's actually part of the clinic, the endoscopy
16 clinic?

17 A I knew at the time when he gave me his card.

18 Q Okay. Do you ever talk to Dr. Desai after
19 you're released from the hospital?

20 A After Dr. Manuel told me that I was going to
21 clear myself up --

22 MR. WRIGHT: Objection.

23 THE WITNESS: -- of hepatitis C --

24 THE COURT: All right. I think you just need to
25 answer the question. And the last question from Ms. Weckerly

1 was: Did you after that see Dr. Desai at any point again?

2 THE WITNESS: Oh, yes.

3 BY MS. WECKERLY:

4 Q Was that the same day? Was that the same day
5 that you saw Dr. Manuel?

6 A No.

7 Q Different day?

8 A Different day.

9 Q Okay. So you go back there again and is that
10 appointment to discuss your situation with Dr. Desai?

11 A Yes.

12 Q And I assume you go to your appointment?

13 A Yes.

14 Q And is this in the medical offices rather than
15 the procedure area?

16 A Yes.

17 Q You meet with Dr. Desai?

18 A Yes.

19 Q And what is the discussion about your situation?
20 What does he say?

21 A He said that my viral signs were going down and
22 that the hepatitis C looked like it was clearing itself up,
23 and that I was in an acute stage.

24 Q That you were or were not in an acute stage?

25 A That I'm in an acute stage.

1 Q So yes, acute?

2 A Yes, acute.

3 Q Okay.

4 A When I -- I freaked out in his office,
5 because --

6 Q Okay. And I think I know what freaked out
7 means, but describe what that -- describe what you mean by
8 that.

9 A Hysterically crying, wondering how I got this,
10 where it came from.

11 Q What does he do?

12 A And he said that he was -- he would get his
13 boss, Dr. Carrol, to come in and explain to me better on my
14 situation with my blood work. And Dr. Carrol didn't do any
15 better, so I was still hysterically crying.

16 Q Okay. And so as you're -- as you're there
17 crying and upset, he says he's going to go get his boss --

18 A Boss, Dr. Carrol.

19 Q -- Dr. Carrol, to come talk to you?

20 A Yeah. They --

21 Q Does he leave the room?

22 A He leaves the room, yeah, because just --

23 Q So were you by yourself?

24 A Yeah. Dr. Desai guaranteed me that my hepatitis
25 C would go away and so did Dr. Desai [sic], they both did,

1 because of the viral signs.

2 Q Let me just ask you a couple of clarification
3 questions, okay?

4 A Okay.

5 Q He says he's going to go get his boss, Dr.
6 Carrol, and he leaves the room; is that right?

7 A Yes.

8 Q And so you're there by yourself, I assume still
9 pretty upset?

10 A Crying, called my mother.

11 Q Okay. Does Dr. Desai return?

12 A Yes.

13 Q And is he with someone at this point?

14 A Dr. Carrol.

15 Q And you know who Dr. Carrol is now?

16 A Yes.

17 Q And actually, he did your other --

18 A Procedure.

19 Q -- your second procedure.

20 When they're both back with you, does Dr. Desai say
21 anything else?

22 A No. He leaves the room.

23 Q Okay. So he leaves and it's just you and Dr.
24 Carrol?

25 A Yes.

1 Q And Dr. Carrol has discussions with you about --

2 A About the same discussion, which is I was in the
3 acute stage, it was looking like I was going to clear myself
4 up, guaranteed me that it was going to go away, and then --

5 MR. WRIGHT: Object to the hearsay, Your Honor.

6 THE WITNESS: -- I -- I asked --

7 THE COURT: Excuse me. I'll see counsel up here.

8 (Off-record bench conference.)

9 BY MS. WECKERLY:

10 Q We left off, and I don't want you to tell me the
11 exact conversation, but you have a further conversation with
12 Dr. Carrol; is that fair?

13 A Yes.

14 Q After Desai leaves. And is it fair to say that
15 you were still upset --

16 A Yes.

17 Q -- even after that conversation?

18 At some point you leave the clinic, correct?

19 A Yes.

20 Q After -- after that, or in this whole chain of
21 events, were you ever contacted by the health district to give
22 a blood sample?

23 A Yes.

24 Q And did you go down there and give a sample?

25 A I already had blood at the Quest Diagnostics.

1 Q At Quest. So you said they could use that
2 blood?

3 A And the CDC went ahead and took the vial.

4 Q Okay. So they got the blood from there?

5 A Yes.

6 Q During this time period, did you -- and I want
7 to kind of move back to the very beginning when you check in
8 for your procedure --

9 A Okay.

10 Q -- the very first one. You said you had
11 insurance?

12 A Yes.

13 Q Do you remember who your insurer was?

14 A Health Plan Nevada.

15 Q Health Plan of Nevada, you said that. And let
16 me just show you one document, if I could.

17 MS. WECKERLY: May I approach, Your Honor?

18 THE COURT: You may.

19 BY MS. WECKERLY:

20 Q Ms. Hutchison, I'm showing you some documents --
21 can I come up with you, is that okay?

22 A Yeah.

23 Q Okay. This is State's Exhibit 61. Is it all
24 right if I move that?

25 A Yeah. That's not mine. Go ahead.

1 Q Looking at this first page, I just want to ask
2 if you've ever seen this document. And if you have, you have.
3 If you haven't, it's no big deal.

4 A No.

5 Q You don't recognize that?

6 A Hm-mm.

7 Q Do you recognize -- probably not this one either
8 then, correct?

9 A No.

10 Yes. That's --

11 Q Have you seen this one?

12 A Yeah. I get that through the mail.

13 Q Okay. And this has Health Plan of Nevada
14 written on the top left there, correct?

15 A Yes.

16 Q And this would have been your address back then?

17 A It's my current address.

18 Q Okay. And right here we see a date.

19 A Yes.

20 Q Can you read that?

21 A Mm-hmm.

22 Q What does it say?

23 A 9/21.

24 Q And can you read that? Your eyes are better
25 than mine if you can.

1 A Is that anus? Am I saying that right?
2 Q I think it's annus.
3 A Okay.
4 Q And let's look at the next page. It's the
5 same -- have you seen that?
6 A Yeah. Upper gastro something. Oh, on 9/28.
7 Q So that's the second procedure, right?
8 A Yes.
9 Q Okay. Let me put those on the overhead. Maybe
10 we can get them bigger.
11 Can you see on your screen there -- I'm going to move
12 it closer, but okay. So this is you, correct?
13 A Yes.
14 Q And then up here is your -- that's your
15 insurance company?
16 A Yes.
17 Q And this is actually your explanation of
18 benefits; is that right?
19 A Yes.
20 Q And it says 9/21/07, correct?
21 A Oh, yes.
22 Q And this is the procedure, correct?
23 A Yes.
24 Q And it says \$560?
25 A Yes.

1 Q And what's this name right here?

2 A Ron Lakeman.

3 Q So it's for his bill, correct?

4 A Yes.

5 Q And the second --

6 MR. SANTACROCE: I'm going to object to that, and ask
7 that that be stricken. There's no foundation as to know if
8 that's his bill or not.

9 THE COURT: Well, that's what it purports to be.

10 MS. WECKERLY: Okay. It appears --

11 MR. SANTACROCE: His name appears on it.

12 MS. WECKERLY: And it's an anesthesia bill.

13 THE COURT: All right. Overruled.

14 MS. WECKERLY: Correct? Here's the second --

15 MR. SANTACROCE: What's the ruling?

16 THE COURT: I said it's overruled. Go on.

17 BY MS. WECKERLY:

18 Q Okay. This is the second page I showed you; is
19 that fair?

20 A Yes.

21 Q And there's your name again and this is your
22 insurance?

23 A Yes.

24 Q And then this is also your explanation of
25 benefits?

1 A Yes.

2 Q And oops. This is the date of your second
3 procedure, the 28th?

4 A Yes.

5 Q And that's your upper endoscopy or procedure?

6 A Yes.

7 Q \$560?

8 A Yes.

9 Q And there's a different name here for the
10 provider, correct?

11 A Yes.

12 Q And it's Linda Hubbard; is that right?

13 A Yes.

14 Q Same fees though, and all that.

15 MS. WECKERLY: May I have the Court's indulgence for
16 just one second?

17 THE COURT: Sure.

18 (Pause in proceedings)

19 BY MS. WECKERLY:

20 Q Ms. Hutchison, can I just back up. On the date
21 of your first procedure on the 21st, the date of the
22 colonoscopy, are you with me?

23 A Yes. I'm listening.

24 Q Okay. And you said that -- you described going
25 into the preop area with the nurse where she's unwrapping

1 everything.

2 A Yes.

3 Q And you saw, you said, the needle and the
4 alcohol, everything taken out of new packages?

5 A Yes.

6 Q And you said that your PICC line, as you
7 describe it --

8 A Yes.

9 Q -- was flushed.

10 A Yes.

11 Q Did you see what that was flushed with?

12 A A needle.

13 Q Okay. Did that --

14 A So she has to go into the bottle with the needle
15 to get the saline out.

16 Q And the bottle, was that -- did you see that
17 opened as well?

18 A Yes.

19 Q And so that was opened from a new container as
20 well?

21 MR. SANTACROCE: Objection. Leading.

22 THE COURT: It is a little leading.

23 BY MS. WECKERLY:

24 Q Okay. How would you describe it?

25 A It was a bottle about that big [indicating] and

1 it had a top on it and it pops off.

2 Q And you heard the pop?

3 A Yes.

4 Q Thank you.

5 THE COURT: Pass the witness?

6 MS. WECKERLY: Yes. Sorry.

7 THE COURT: All right. Mr. Wright.

8 MR. WRIGHT: May we approach the bench?

9 THE COURT: Sure.

10 (Off-record bench conference.)

11 THE COURT: All right. Ladies and gentlemen, we're
12 going to go ahead and take our evening recess at this point
13 then.

14 And ma'am, unfortunately, you do have to then come
15 back tomorrow.

16 THE WITNESS: What time do I need to be here?

17 THE COURT: Counsel, approach again.

18 It would be probably the earlier the better for you,
19 I'm assuming?

20 THE WITNESS: Yeah.

21 (Off-record bench conference.)

22 THE COURT: Ladies and gentlemen, we're going to go
23 ahead and take our evening recess at this point. We'll
24 reconvene tomorrow morning at 9:00 a.m.

25 Before I excuse you for the evening recess, I must

1 remind you that you're not to discuss this case or anything
2 relating to the case with each other or with anyone else.
3 You're not to read, watch or listen to any reports of on
4 this -- reports or commentaries on this case, any person or
5 subject matter relating to the case by any medium of
6 information. You're not to do any independent research on any
7 subject connected with the trial, and you're not to form or
8 express an opinion on the case.

9 If you would all please leave your notepads in your
10 chairs, and follow the bailiff through the rear door.

11 (Jurors recessed at 4:24 p.m.)

12 THE COURT: And ma'am, during the evening recess,
13 please don't discuss your testimony with anybody else who may
14 be a -- any other witnesses in the case, all right?

15 THE WITNESS: All right.

16 THE COURT: Thank you.

17 And she's excused. Is she free to leave?

18 MS. WECKERLY: Yes, until tomorrow.

19 MR. STAUDAHER: I was going to have a conversation to
20 tell her attorney --

21 THE COURT: That's fine. That's why I'm asking. So
22 you want her to hang around so you can --

23 MR. STAUDAHER: Not her, just her attorney.

24 THE COURT: Oh, okay.

25 MR. STAUDAHER: Just to explain kind of what's going

1 on, or maybe the Court can do that.

2 THE COURT: Do you have any questions, Ms. Killebrew?

3 MS. KILLEBREW: I suppose she's to return at 9:00
4 a.m. in the morning?

5 THE COURT: Yes. She has to return at 9:00. Just so
6 you know, one of the jurors has her kid in Safe Key across
7 town, and so we had to let her leave early. Mr. Wright has --
8 has to have some special accommodations for his client, and so
9 he needed a break. And we would have gone late, so I
10 apologize that you have to come back tomorrow.

11 THE WITNESS: It's okay.

12 THE COURT: My preference would have been to stay
13 just late and finish you today, but, you know, with Safe Key,
14 if you're not there right away, they call.

15 THE WITNESS: They call --

16 THE COURT: Right. And so we have to let the juror
17 go because we don't want, you know, Child Haven getting called
18 in on that. So I apologize.

19 In terms of interviewing the other juror, Mr. Wright,
20 my assessment was you had complained yesterday that you
21 weren't getting enough time between the close of the evening
22 session and the beginning of the morning session to confer
23 with your client.

24 So that's why I'm breaking now, as opposed to tying
25 up another, you know, 20 minutes with questioning that person,

1 to give you enough time to confer with your client so that we
2 can get started right at 9:00 a.m. tomorrow, and then let the
3 witness leave as, you know, early as possible. So that's why
4 I thought it was better -- I'm trying to accommodate you -- to
5 do it that way.

6 MR. WRIGHT: Thank you.

7 THE COURT: Because otherwise we'd be in the same
8 boat, ending after 5:00 and starting, you know, wanting to
9 start at 9:00, so.

10 All right. Well, that's everything. I don't think
11 there was anything we had to put on the record or anything
12 like that. Okay. Thank you, ma'am. You're excused.

13 (Court recessed for the evening at 4:27 p.m.)
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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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1 that -- I don't know if he just wants the Court to admonish --
2 be here to put it on the record, his objection and why, and
3 then have the Court maybe admonish Ms. Aspinwall before she
4 testifies. I don't know if he wants to be here for that,
5 but...

6 MR. HAM: Well, I would prefer to have -- to do it
7 all at once, but I'm --

8 THE COURT: Okay.

9 MR. HAM: -- obviously sensitive to the issues that
10 are going on here, so.

11 THE COURT: Okay. Here's the deal, Mr. Ham. You
12 know, I would feel more comfortable if you were here, but if
13 you just want to note your objection and have me speak with
14 her without you being here, I can do that of course.

15 MR. HAM: I'd rather not, Judge --

16 THE COURT: Right. And I appreciate that.

17 MR. HAM: -- if we can avoid that.

18 THE COURT: Number two, if she --

19 MR. HAM: I'm hoping they walk through the door as
20 we're talking.

21 THE COURT: -- shows up today, we can do this on our
22 next break or after we recess for the evening.

23 MR. HAM: Okay. And if not, it's okay with you, Your
24 Honor, if we do this tomorrow morning before she testifies?

25 THE COURT: Absolutely. That's absolutely fine.

1 MR. HAM: Thank you, Judge. I appreciate it.

2 THE COURT: All right. Thank you.

3 All right. Everyone ready?

4 Would you tell Kenny to bring them in.

5 (Pause in proceeding.)

6 MR. HAM: Judge, my clients are here. Is it too
7 late? Should we do it tomorrow?

8 THE COURT: You know what. He's just getting the --

9 MR. HAM: We should do it tomorrow.

10 THE COURT: Sorry.

11 MR. HAM: Thank you.

12 (Jurors reconvene at 2:35 p.m.)

13 THE COURT: Court is now back in session. The record
14 should reflect the presence of the State through the deputy
15 district attorneys, the presence of the defendants and their
16 counsel, the officers of the court, and the ladies and
17 gentlemen of the jury. And the State may call its next
18 witness.

19 MS. WECKERLY: The next witness is Sharrieff Ziyad.

20 THE COURT: All right.

21 SHARRIEFF ZIYAD, STATE'S WITNESS, SWORN

22 THE COURT: Thank you, sir. Have a seat.

23 THE CLERK: Please state and spell your first and
24 last name for the record.

25 THE WITNESS: S-h-a-r-r-i-e-f-f, Sharrieff.

1 Z-i-y-a-d, Ziyad.

2 MS. WECKERLY: May I proceed?

3 THE COURT: You may, Ms. Weckerly.

4 DIRECT EXAMINATION

5 BY MS. WECKERLY:

6 Q Mr. Ziyad, I'd like to direct your attention
7 back to July of 2007. During that period, were you living in
8 Las Vegas?

9 A Yes, I was.

10 Q And could you keep your voice up, or maybe pull
11 that microphone a little bit closer.

12 THE COURT: See that black box. Yeah, if you'd pull
13 that closer and maybe scoot in a tiny bit. That's good.

14 MS. WECKERLY: Thank you.

15 BY MS. WECKERLY:

16 Q During that time period, did you know or -- did
17 you know whether or not you had over your lifetime contracted
18 hepatitis C?

19 A Yes, I did.

20 Q And were you under the care of a doctor in Las
21 Vegas because you had that infectious disease?

22 A Yes, I was.

23 Q And do you recall the name of the doctor that
24 was treating you in Las Vegas for that?

25 A Dr. -- Dr. Donald over in the medical center.

1 Yeah.

2 Q Okay. And did you also have a primary care
3 doctor treating you, you know, just for other medical stuff?

4 A Well, they sent me to certain doctors. Dr. Hess
5 [phonetic], primary care.

6 Q Dr. Hess?

7 A Yes.

8 Q At some point did a doctor refer you to have a
9 colonoscopy done?

10 A Yes. The Las Vegas Liver Clinic.

11 Q I'm sorry?

12 A Las Vegas Liver Clinic.

13 Q They referred you?

14 A Yes.

15 Q And that was in sometime before July of 2007?

16 A Exactly.

17 Q And did you have an appointment with any doctor
18 prior to you actually having the colonoscopy done, the
19 procedure itself?

20 A Did I have a -- did I see a doctor prior to
21 having it?

22 Q At the Endoscopy Center. I asked a bad
23 question.

24 Did you have an appointment at the Endoscopy Center
25 before you actually had the colonoscopy done?

1 A Yes. I had an appointment.

2 Q Who was that with?

3 A Dr. Desai.

4 Q And when you met with Dr. Desai, did you meet
5 with him in his -- like a medical office?

6 A Yes.

7 Q And was it at that time that you discussed the
8 procedure that you were going to have being a colonoscopy or
9 an endoscopy?

10 A Yes.

11 Q And at the time you met with Dr. Desai, did you
12 disclose to him that you were positive for hepatitis C?

13 A Yes, I did.

14 Q Was it -- was it part of, you know, the
15 discussion that you had with him as a physician and
16 incorporating into your discussion about your medical care?

17 A Exactly.

18 Q You ultimately had a procedure scheduled at
19 Dr. Desai's clinic on July the 25th of 2007?

20 A Yes.

21 Q Sir, do you recall what time of day your
22 procedure was?

23 A It was in the morning.

24 Q And I know it's a while ago, but do you remember
25 if it was in the late morning or early morning?

1 A Early morning. I was the first patient.

2 Q You were the first patient of the day?

3 A Yes.

4 Q When you went into the clinic and as the first
5 patient of the day, was it crowded, or was it pretty empty
6 when you got there?

7 A It was pretty empty.

8 Q And what was the first thing you did? Did you
9 go up to a receptionist or check in?

10 A Yes. And you fill out paperwork, and told me my
11 insurance wasn't going to pay for the anesthesia, that I had
12 to pay \$100 before they could do the procedure.

13 Q That's what the receptionist told you?

14 A Yes.

15 Q So you had to pay \$100 out of your pocket right
16 then for anesthesia?

17 A Yes.

18 Q Do you recall if you paid that in cash?

19 A Yes, I did.

20 Q Okay. At the time, sir, did you have -- you
21 mentioned that your -- that there was like an issue with your
22 insurance, whether or not it was going to cover it.

23 A That's what they said. The insurance
24 automatically had covered it.

25 Q Okay.

1 A Blue Cross Blue Shield, they covered it all.
2 Q So you had Blue Cross Blue Shield insurance?
3 A Yes.
4 Q But the clinic told you you'd still have to pay
5 \$100 for the anesthesia?
6 A Yes.
7 Q Did you fill out other paperwork checking in,
8 that sort of thing?
9 A Exactly.
10 Q Do you recall if on any of that paperwork that
11 you filled out that morning, whether or not you had indicated
12 that you had hepatitis C?
13 A Yes. He knew this.
14 Q Okay.
15 A It all in the paperwork. When they sent me to
16 him, it's in that paperwork.
17 Q I'm going to show you a document. Okay, sir.
18 One second.
19 A No problem.
20 (Pause in proceedings)
21 MS. WECKERLY: May I approach the witness, Your
22 Honor?
23 THE COURT: [No audible response.]
24 MS. WECKERLY: May I approach the witness?
25 THE COURT: Yes. I'm sorry.

1 MS. WECKERLY: That's okay.

2 BY MS. WECKERLY:

3 Q Sir, I need to show you a document, and this is
4 for the record in State's Proposed Exhibit 1, and it's a copy
5 obviously. But this looks like a document that you filled out
6 that morning; is that correct?

7 A Exactly.

8 Q Okay. And sir, if you look on that document, it
9 actually has your signature on the bottom --

10 A Right.

11 Q -- is that right?

12 A That's right.

13 Q And on the document it asks you to indicate
14 whether you have certain conditions, and you underlined on
15 there hepatitis?

16 A Right.

17 Q And then you circled yes?

18 A Yes.

19 Q Okay. So you filled that out on the morning
20 before your procedure?

21 A Exactly.

22 MS. WECKERLY: May I publish this, Your Honor?

23 THE COURT: You may.

24 BY MS. WECKERLY:

25 Q And sir, can you see on the screen in front of

1 you right there?

2 A Yes, I can.

3 Q This is the document I just showed you, correct?

4 A Right.

5 Q And right here it says, "Hepatitis," correct?

6 A Right.

7 Q And you circled yes?

8 A Exactly.

9 Q And on the bottom is where you signed, correct?

10 A Exactly.

11 Q So that was disclosed not only at your prior

12 appointment with Dr. Desai, but also the morning of your

13 actual procedure?

14 A Right.

15 Q Now, when you -- you said you checked in and you

16 indicated what kind of insurance you had and that you also had

17 to pay \$100, correct?

18 A Right. They already knew what kind of insurance

19 I had.

20 Q Okay.

21 A I filled out a form before we even got this far.

22 Q More forms?

23 A Yes.

24 Q After you checked in, did you have to wait a

25 little bit, or did you get called right back?

1 A Well, they told me to sit over in the waiting
2 area there for a minute.

3 Q And then did someone eventually call you back?

4 A Yes, they did.

5 Q When you got called back, do you remember what
6 kind of room you were in?

7 A It was like a little hospital with beds in it,
8 you know, down the hall, bed here, bed there.

9 Q And did you lay on a bed?

10 A Yes, I did.

11 Q Were you -- prior to doing that, did you have to
12 change your clothes or get out of your clothes and get into a
13 gown?

14 A Yes.

15 Q Do you remember if anyone put a needle, an IV or
16 a heplock kind of thing in your arm?

17 A Yes. He put that in my arm.

18 Q Do you remember who put that in your arm?

19 A Another doctor.

20 Q Not Dr. Desai?

21 A No.

22 Q Do you -- did this other doctor that put that in
23 your arm, was it male or female?

24 A He was a male.

25 Q And was that person present during your actual

1 procedure?

2 A I don't know. He was the one that said he was
3 going to put me out.

4 Q Okay. So this was the actual person who gave
5 you the anesthesia?

6 A No. He told me -- he was the actual person that
7 gave me the anesthesia, but he told me he was going to put me
8 out. But I told him, "How are you going to put me out and
9 where's my records? You don't have no records. Where's my
10 records?"

11 Q Okay. Let me back up just a little bit to make
12 sure I understand. Okay. You check in, and then you go
13 straight back to the procedure room?

14 A Exactly.

15 Q Okay. So you're never in what we would call
16 like a preop area with a nurse?

17 A Yes. I explained to you about the insurance and
18 she telling me I'm paying \$100 and all this. I paid her.

19 Q Okay.

20 A They asked me who -- is there anybody here going
21 to take me back home; yes, they're there, so it's okay. Well,
22 you step in the room. I step in the room. They gave me the
23 gown, change, I changed. Okay. Get up on the bed, I got up
24 on the bed. He explained to me what that particular doctor
25 was going to do. He put the needle in my arm, tape it and

1 whatever, and so.

2 Q The doctor that explained to you what he was
3 going to do and put the needle in your arm --

4 A Right.

5 Q -- that's the same -- let me ask you this: What
6 kind of questions did that doctor ask you?

7 A He didn't ask me nothing. He asked me does it
8 feel warm. I said, Yeah, it's, you know.

9 UNKNOWN SPEAKER: I'm sorry. I didn't hear that,
10 Your Honor.

11 THE COURT: Sir, can you say that again?

12 THE WITNESS: He asked me how does it feel, does it
13 feel warm. I said, It feels okay. He said, Is it okay? I
14 said, Yeah, it's okay.

15 BY MS. WECKERLY:

16 Q Did he ask you any questions about whether or
17 not you had eaten, or if you were allergic to any medications,
18 anything like that?

19 A Not that I can remember.

20 Q Okay. Anything else about your health history
21 did he ask?

22 A He asked me -- he asked me did I take all the,
23 you know, stuff that you're supposed to take where you clean
24 out. I told him yes, you know. He says, So you're ready to
25 go? Yes, I'm ready to go.

1 Q Okay. And so and then he's the same person that
2 injects you; is that right?

3 A This is different from putting the needle in,
4 right?

5 Q Well, that's my question. Is the person that
6 put the needle in the same person who put you to sleep?

7 A Yes.

8 Q The same exact person?

9 A Right. But he wasn't putting me to sleep,
10 because I told him he don't have no records. How are you --
11 what are you putting me to sleep for when you don't -- you
12 don't have no records. And then when he said, Well, your
13 records will be here in a minute, and Dr. Desai stepped up and
14 he said, Your record's coming.

15 Q Okay. So the anesthetist was going to
16 administer -- put you to sleep or give you medication before
17 your records were there?

18 A Exactly.

19 Q And you obviously were concerned about that?

20 A Right.

21 Q And then you see, you indicated Dr. Desai. Do
22 you actually see him in the courtroom?

23 A Yeah. He's sitting right there [indicating].

24 MS. WECKERLY: May the record reflect the witness has
25 identified Dr. Desai.

1 THE COURT: It will.

2 BY MS. WECKERLY:

3 Q So Dr. Desai actually comes in the room before
4 you're under medication?

5 A Exactly. Right. Right.

6 Q And what did he say when he walked in?

7 A He told him go on and put me out.

8 Q Okay. And do your records ever get to the
9 procedure room?

10 A Yes, they did. As soon as he -- I was almost
11 going out, they hand him the records.

12 Q Okay. They hand Dr. Desai the records?

13 A I was getting drowsy and I see them -- saw them
14 hand him the records.

15 Q Okay. Before you actually went out or went
16 under, who was in that room?

17 A Him, the doctor. I think the nurses left. The
18 doctor and him, they were there. I don't remember nothing
19 else.

20 Q The doctor that was going to put you out and
21 Dr. Desai?

22 A Yes. The doctor that put that thing in me and
23 Dr. Desai told him to go on and put me out.

24 Q Okay. And then I assume you're out during your
25 procedure?

1 A Yeah. I'm pretty sure I was.

2 Q What's the first thing you remember after?

3 A Well, I remember somebody telling me, You can
4 finish recovering in the waiting room, and I thought I was
5 able to walk to the waiting room. And I get up and I'm
6 stumbling, about to fall on my head and everything, and they
7 grabbed me and helped me keep my balance. I wasn't back all
8 the way yet.

9 They sat me outside and I sat there, and I was trying
10 to come to myself, you know. And pretty soon the person who
11 was supposed to take me home came and I was still drowsy, and
12 I cleared up out there, you know. I didn't understand that
13 one.

14 Q Let me ask you a couple more questions. Okay.
15 Sir, when you first -- when you were first awake a little bit,
16 were you in the -- that procedure room or a different room?

17 A I was in that room where they put me out at.

18 Q The procedure room?

19 A Yes. That's where they did everything at.

20 Q Okay. And then did someone actually help you
21 get up off that bed?

22 A Yeah. I couldn't get all the way up. I was
23 still drowsy and I was --

24 Q Okay. You're still under the anesthesia --

25 A Exactly. Right. Right. Under the anesthesia.

1 Q And where did that person take you?

2 A Out the door into the waiting room, where people
3 are waiting to talk to that girl that you talk to about the
4 insurance and make the plans for the procedure and all that.
5 It's a waiting area outside behind there.

6 Q Okay. So like a room with chairs?

7 A Exactly.

8 Q And if I'm understanding you, you still felt
9 like you were under the anesthesia?

10 A Ain't no felt nothing. I almost falling down
11 stumbling.

12 Q Okay. You couldn't walk?

13 A They just picked me up and sat me in the chair.

14 Q And how -- and you had to sit there awhile
15 before you were oriented?

16 A Yes, ma'am.

17 Q Okay. And while you were sitting there, did
18 Dr. Desai ever come out and say, look, here's what I found?

19 A Mm-hmm.

20 Q Did he ever come out and say, you know, are you
21 feeling all right?

22 A No. That was over with.

23 Q Did you ever see him again?

24 A Yes, I did.

25 Q That day?

1 A No.

2 Q Okay. How about the guy that put you under with
3 the -- that put in the needle and gave you the anesthesia, did
4 that person come out and say, how are you doing, are you --

5 A No. I don't remember nobody coming out.

6 Q Okay. So no one came out?

7 A No.

8 Q Did anyone at all discuss your results or what
9 they found?

10 A Not that I can remember, no. My wife took me,
11 put me in the car and took me home.

12 Q So your wife was there?

13 A Yes.

14 Q And so after, I assume, you were able to walk
15 she takes you home?

16 A Right.

17 Q And you said that you had -- you saw Dr. Desai
18 after that at sort of a follow-up appointment?

19 A Exactly. Right.

20 Q Do you remember how long after your procedure
21 that follow-up appointment was?

22 A A week to two weeks.

23 Q A week or two weeks?

24 A Right.

25 Q At some point, well, several months after that,

1 were you ever contacted by the health district?

2 A Yes, I was.

3 Q And did they ask or request that you come down
4 and give a sample of your blood?

5 A Yes, all of that.

6 Q I'm sorry?

7 A Yes.

8 Q Did you do that?

9 A I did what they told me to do.

10 Q Okay. You did what they asked. And did you
11 also get contacted by the Las Vegas Metropolitan Police
12 Department?

13 A Yes, I did.

14 Q And did you interview with them?

15 A Right.

16 (Pause in proceedings)

17 BY MS. WECKERLY:

18 Q And sir, just so that the record's clear, did
19 you have an upper endoscopy or a colonoscopy? Do you
20 remember?

21 A They went down my throat.

22 Q So an endoscopy?

23 A Right.

24 MS. WECKERLY: May I approach the witness, Your
25 Honor?

1 THE COURT: You may.
2 BY MS. WECKERLY:
3 Q Sir, I'm showing you what's been marked, this is
4 State's Proposed Exhibit 59, and I just want to ask you if you
5 recognize some documents, and if you'd just let me know. Have
6 you ever seen that one?
7 A Yes, I have.
8 Q Okay. Is that about your medical procedure? It
9 has your name on it.
10 A Yes, it is.
11 Q Okay. And that was -- it says it's a health
12 insurance claim form?
13 A Right.
14 Q Okay. And can you read this?
15 A 7/25/07.
16 Q And what is the -- what is that for?
17 A The numbers?
18 Q That's the date, right?
19 A This is the date.
20 Q Yeah. 7/25/07. And is there an amount there?
21 A \$550.
22 Q \$550. And what's the name right here?
23 A Lakeman, Ron.
24 Q Ron Lakeman?
25 A Right.

1 Q And what's -- what does it say right here?

2 A Endoscopy Center of Southern Nevada.

3 Q Okay. And so that's a claim form for insurance,
4 an anesthesia charge for Ronald Lakeman on 7/25/07 for you,
5 right, for your treatment?

6 A I don't know.

7 Q Is your name on the top?

8 MR. SANTACROCE: What was that answer?

9 THE WITNESS: Yeah, my name is on there.

10 MS. WECKERLY: He said his name's on the top.

11 THE WITNESS: Yeah. That's my name.

12 MS. WECKERLY: Let me ask you --

13 THE WITNESS: How would I know about that though?

14 BY MS. WECKERLY:

15 Q Well, have you seen that, this form?

16 A I'm pretty sure I have, ma'am.

17 Q Okay. So it's probably the -- and this is your
18 insurance, right? There's your name.

19 A [Inaudible.]

20 Q Okay. That's all right. Have you seen this one
21 at all?

22 A [No audible response.]

23 Q Okay. Do you know what -- what is that?

24 A That's anesthesia.

25 Q That's the anesthesia charge for your procedure?

1 A Right.

2 Q Okay. And it was \$560; is that what that says?

3 A That's what it says.

4 Q And then there's -- there's a portion that

5 was --

6 A [Inaudible.]

7 Q -- 206?

8 A \$6.82.

9 Q How about this form, have you seen that?

10 A Yeah, I've seen that.

11 Q Was that submitted to you?

12 A [Inaudible.]

13 Q I'm sorry?

14 A I probably still have it in my notes.

15 Q You probably still have this bill?

16 A Mm-hmm.

17 Q Okay.

18 A Can I ask you a question?

19 Q I am. I'm just going to put up the document.

20 Can you see that on your screen, sir?

21 A Yes, I can.

22 Q Okay. And I'm pointing to the very top there.

23 There's your name, correct?

24 A Right. Right.

25 Q And it says that this is a -- on the very top it

1 says, "Health insurance claim form" --

2 A Right.

3 Q -- is that correct?

4 A Exactly.

5 Q Okay. And if I would just move the document a

6 little bit, the date 7/25/07, is that correct?

7 A Yes, ma'am.

8 Q And moving the document, that says \$560?

9 A Right.

10 Q And the name here --

11 A Ron Lakeman.

12 Q -- Ron Lakeman.

13 And the Endoscopy Center, correct?

14 A Right.

15 Q And the second document I showed you, let's

16 start from left to right. That's your name, correct?

17 A Right. Birthday.

18 Q And that's your birth date. And there's a date

19 of service, correct?

20 A Right.

21 Q 7/25/07?

22 A That's right.

23 Q And it has like a description of a health issue?

24 A Right.

25 Q Is that why you got the upper endoscopy?

1 A Right. Well, the liver clinic sent me to him.
2 They -- I was hurting in my stomach.

3 Q Okay. Then it says, "Anesthesia," right?

4 A Right. Twenty-four.

5 Q Okay. And then just moving along, it says,
6 \$560?

7 A Right.

8 Q And then it looks like a 206.82 --

9 A Right. 206, 82.

10 Q -- paid, correct?

11 A That's what it says.

12 Q This one, I think, is -- can you read that one,
13 sir, or is it --

14 A Yes.

15 Q -- too small?

16 A I can see it.

17 Q Okay. There's your name again, correct?

18 A Right.

19 THE COURT: May I see counsel at the bench for a
20 moment.

21 (Off-record bench conference.)

22 THE COURT: All right. Ms. Weckerly, go on.

23 BY MS. WECKERLY:

24 Q The -- sir, this is my last question. These
25 three pieces of paper I showed you, you all -- you recognize

1 all three as being associated with your insurance payment on
2 this procedure?

3 A Right.

4 Q Thank you, sir.

5 MS. WECKERLY: The Court's indulgence.

6 I'll pass the witness, Your Honor.

7 THE COURT: All right. Thank you. Cross, who would
8 like to go first?

9 CROSS-EXAMINATION

10 BY MR. WRIGHT:

11 Q Hello, sir. My name's Richard Wright. I
12 represent Dr. Desai. On your -- the day of your procedure at
13 the clinic, July 25, 2007, the \$100 payment, I want to ask you
14 about that, okay?

15 A No problem.

16 Q Did you -- you stated it was for anesthesia or
17 something?

18 A That's what the lady told me.

19 Q Okay. Do you have a copay with --

20 A We turn it in to the clerk up there in the
21 courthouse. You told me to bring it, turn it in to the clerk.
22 I did that in 2007, when we first started this thing.

23 Q Okay.

24 A They started it, you know. I don't know nothing
25 about it, but anyway.

1 Q Did you get the \$100 back?

2 A No, I didn't.

3 Q Okay. Do you recall when you were interviewed
4 by the metropolitan police department?

5 A Yes, I do.

6 Q Okay. Do you recall them asking and you said
7 you got the \$100 back?

8 A No. I didn't tell him that.

9 Q Okay. Let me -- could it have been a copay for
10 your insurance?

11 A A copay for my insurance?

12 Q Yes.

13 A The copay was only \$20. She told me I had to
14 pay \$100 before they could do anything with me about
15 anesthesia, because the insurance don't pay for the
16 anesthesia, but Blue Cross already paid for it.

17 MR. WRIGHT: Okay. May I approach the witness?

18 THE COURT: You may.

19 BY MR. WRIGHT:

20 Q What I have here, sir --

21 A Okay.

22 Q Is a transcript of your interview with the
23 police department.

24 A Right.

25 Q Okay. What I'm doing is I'm going through page

1 7 of the interview. And RW, that's Detective Whitely. SZ is
2 yourself.

3 A Right.

4 Q Would you read this bottom part of page 7 and
5 the top part of page 8? Read that to yourself and then I'll
6 question you about it.

7 A I don't know where that -- how that got in
8 there. I don't know.

9 Q Okay.

10 A How it got in there, I remember talking to him
11 and I remember the whole interview. They didn't pay me no
12 \$100 back.

13 Q Okay.

14 A Now, if you want to talk to my wife, you can
15 talk to her. She was standing right there.

16 Q And --

17 A I mean, really, the \$100 don't even matter. It
18 doesn't even matter at this point it's been so long. I did --
19 they didn't give me no \$100.

20 THE COURT: Sir, there's water there too, in that
21 pitcher, if your throat's getting dry.

22 THE WITNESS: Thank you, ma'am.

23 It don't even matter at this point.

24 BY MR. WRIGHT:

25 Q Okay. I understand. But the -- it states --

1 what you're telling me is it states that in your police
2 interview, but that isn't correct?

3 A No, it's not correct, sir.

4 Q Okay. And do you believe you told the police
5 that, or they simply got it wrong?

6 A While I was talking he was supposed to have
7 gotten every word I said. I don't know how that happened.

8 Q Okay.

9 A But like I say, I'm not really worrying about it
10 because I know that it's not proper.

11 Q Now, is it because -- I'm back to your procedure
12 on the 25th now, okay?

13 A All right.

14 Q And do you recall going to what we call the
15 recovery room out of the procedure room before you're walked
16 into the waiting room to meet your wife?

17 A No.

18 Q Okay. And so if you went into the recovery room
19 and your records show that, you simply were still asleep and
20 don't remember it, correct?

21 A Probably so.

22 Q Okay. And so your first recollection is when
23 you were being walked into the waiting room?

24 A Exactly.

25 Q Okay. And when you returned, you were then

1 scheduled a further appointment, correct?

2 A Yes, I was, I think.

3 Q After your endoscopy, your upper procedure --

4 A Okay.

5 Q -- right?

6 A Right.

7 Q And that endoscopy, you had been sent there
8 because of a diagnosis looking at a lymph node or something?

9 A Lymph node, right.

10 Q Okay. And so you had the endoscopy and then you
11 had an appointment to return in a couple weeks?

12 A Right.

13 Q Okay. And you did return?

14 A I did.

15 Q Okay. And who did you see when you returned?

16 A I think I saw Dr. Desai.

17 Q Okay. Do you recall -- do you recall meeting a
18 physician --

19 A No, I didn't. I saw somebody else.

20 Q Okay.

21 A It was a lady.

22 Q Okay. A physician's assistant?

23 A Exactly. Right.

24 Q Okay.

25 A She gave me some medicine, a prescription for

1 some medicine, and told me that I would be all right.

2 Q Okay.

3 A Whether you believe it or not or whoever believe
4 it or not, my stomach was tore up inside and it hurt for
5 months behind that. And I never did understand it. They told
6 me to go back to the Liver Clinic, and then he referred me to
7 a doctor, a gastrologist, you know, up there. I forgot that
8 doctor's name.

9 Q Okay. Do you recall seeing -- on the day you
10 went back, do you recall that the diagnosis was gastritis?
11 Does that ring a bell?

12 A It sounds pretty familiar.

13 Q Okay. And do you recall that aside from the
14 young lady, a physician's assistant, that you saw a Dr.
15 Carrol? Does that ring a bell?

16 A I don't know whether it was Dr. Carrol or not,
17 but --

18 Q Do you recall seeing a doctor at the same time
19 with the young lady?

20 A Yes.

21 Q Okay. But you don't -- and do you recall that
22 that -- you don't remember that doctor's name?

23 A I don't. I know she was a -- I don't remember
24 the doctor's name.

25 Q Okay. Do you -- fair enough. Thank you, sir.

1 A Welcome, sir.

2 THE COURT: Mr. Santacroce, any questions?

3 MR. SANTACROCE: Yes, thank you.

4 CROSS-EXAMINATION

5 BY MR. SANTACROCE:

6 Q Good afternoon, Mr. Ziyad. How are you?

7 A Pretty good. And yourself, sir?

8 Q Great, thank you. You testified that you
9 arrived at the clinic at about 7:00 a.m.; is that correct?

10 A Somewhere in there.

11 Q Prior to going to the clinic for your procedure,
12 you had met with Dr. Desai on a different day; is that
13 correct?

14 A Yes. What are you saying, the day that I had
15 the procedure?

16 Q Before that did you meet with Dr. Desai?

17 A Yes, I did. Right.

18 Q And you gave Dr. Desai sort of a history of your
19 medical background, correct?

20 A Right.

21 Q And you told Dr. Desai at that time that you had
22 hepatitis C?

23 A Yes, sir.

24 Q You also told Dr. Desai at that time that you
25 had cirrhosis of the liver?

1 A Yes. He knew.

2 Q You also told Dr. Desai at that time that you
3 had, quote, a loss of memory; is that correct?

4 A Exactly.

5 Q And you had a loss of concentration?

6 A Right.

7 Q And did you tell him anything else about any
8 other problems that you might have had?

9 A No. Not dealing with him, no.

10 Q Okay. Then you, after that interview or
11 sometime later, you went back to the clinic and had the
12 procedure done, correct?

13 A Right.

14 Q And you arrived at about 7:00 a.m.; is that
15 correct?

16 A Somewhere in that order.

17 Q And they -- a nurse took you from the waiting
18 room -- strike that.

19 You filled out some insurance papers first, correct?

20 A Paid the \$100.

21 Q Paid your \$100. And then a nurse came back and
22 took you into a procedure room?

23 A And put me on the first bed. I never will
24 forget.

25 Q So you went from filling out insurance papers

1 right into a procedure room and no stops in between?

2 A She told me to put the gown on, so I had to go
3 in the facility and change, you know.

4 Q And the person that told you that was a female?

5 A I'm pretty sure it was, sir. I can't really
6 say, because I dealt with men and women at that moment, so.

7 Q So you're not clear as to whether it was a
8 female or a male?

9 A No. Somebody told me to put the dress on, put
10 this gown on, this white gown.

11 Q Okay.

12 A I went in and changed.

13 Q Then after you put the gown on, what happened?

14 A They told me, come on into that room and lay up
15 on this first bed, or the first patient, lay up on the bed,
16 and that's what I did.

17 Q Did they walk you into the procedure room, or
18 did they wheel you on a bed?

19 A I was on -- no, I walked in the procedure room.

20 Q In the gown?

21 A In the gown.

22 Q On top of the bed?

23 A And got on the bed.

24 Q Who was in the room?

25 A Doctor.

1 Q Dr. Desai?

2 A No.

3 Q Who doctor?

4 A I don't know the doctor's name. I guess it was
5 his assistant.

6 Q How many people were in the room?

7 A At that particular time, him and a nurse.

8 Q When you say him, who do you mean by him?

9 A His doctor who was putting a needle in my arm.

10 Q Okay.

11 A And the nurse, she was waiting for him to tell
12 her what to do.

13 Q Was it a female nurse?

14 A I'm pretty sure it was a female nurse. There
15 wasn't but one lady and a man in the room that I can remember.
16 There were beds in there, but I don't remember whether anybody
17 was in them or not.

18 Q Was it dark in that room?

19 A No, it wasn't dark.

20 Q Did the nurse ask you any questions?

21 A No, she didn't --

22 Q The female nurse, did she --

23 A No, not that I can remember.

24 Q Did the male that was in the room at the time
25 ask you any questions?

1 A He told me he was going to put the needle in my
2 arm and asked me how it feel, was it warm. I told him that
3 was okay.

4 Q Did they hook up any kind of blood pressure --
5 A Yes, did.

6 Q -- device on you?
7 A Whatever they supposed to do they did.

8 Q Well, I don't know what they did to you and what
9 they were supposed to do. That's why I'm asking you. So bear
10 with me, if you would, please.

11 A No problem.

12 Q Thank you. They put a blood pressure thing,
13 cuff on you?

14 A Blood pressure cup?

15 Q Did they put any kind of equipment on you to
16 measure your heart rate?

17 A Oh, yeah, they did all that. Yeah.

18 Q They did all that?

19 A Yes, sir.

20 Q And there was a bunch of machines in the room
21 that you were hooked up to; is that correct?

22 A An IV and stuff like that.

23 Q Oh, you had an IV?

24 A Yeah.

25 Q A bag that was hanging --

1 A Right.

2 Q -- into your arm?

3 A Yeah.

4 Q Okay. And then this other male person told you
5 that they were going to put you to sleep?

6 A Yeah. He told me he was going to put me to
7 sleep.

8 Q And Dr. Desai wasn't in the room at that time
9 when he told you he was going to put you to sleep?

10 A No.

11 Q But at some point before you went to sleep, Dr.
12 Desai came in the room?

13 A Exactly.

14 Q And then you were put to sleep?

15 A After Dr. Desai told him to put me to sleep.

16 Q So you told Dr. Desai to put you to sleep, they
17 put you to sleep?

18 A Right. Because I told him, you don't have no
19 records, where's my records, because I wasn't, you know, I
20 started to get up. What are you putting me out for, you don't
21 have no records on me and how do you know what you're doing
22 to me.

23 Q I understand.

24 A Okay.

25 Q So you tell Dr. Desai -- or Dr. Desai comes in,

1 you tell him to put you to sleep, they put you to sleep --

2 A No, I didn't tell him to put me to sleep. He
3 told me he was -- told the guy to go and put me to sleep, the
4 doctor, those doctors, told him go ahead and put him to sleep.

5 Q Okay. So the doctor told the other guy in the
6 room to put you to sleep?

7 A Right.

8 Q And you went to sleep?

9 A And I went to sleep.

10 Q And you had your procedure?

11 A And I had my procedure.

12 Q So you got some anesthesia, right?

13 A If that's what you call it. I went out.

14 Q But you weren't given a bill for anesthesia that
15 you didn't get, right? I just want to make sure you got --
16 you went to sleep.

17 A I went to sleep.

18 Q Good. And when you woke up, where did you wake
19 up?

20 A On the table.

21 Q In the same place?

22 A That I can remember, yes.

23 Q Okay. And then what happened after that?

24 A It might be a little slight recovery room they
25 put me in. I don't remember. All I remember is somebody

1 bring -- telling me, come on, you can finish recovering out
2 here in the visit -- in the area where people sit, you know,
3 to take care of whatever they're going to do.

4 Q And you don't remember how long you were in the
5 procedure room, correct?

6 A No. I'm supposed to be coming back to life. I
7 don't know.

8 Q And I think you made it.

9 A All I know is I'm stumbling out -- I'm stumbling
10 out going into the room to wait for whoever was going to take
11 me home. I'm not back yet, so how -- I can't remember all
12 that.

13 Q I know.

14 A I'm drowsy.

15 Q I've been through the same thing. I understand.
16 I got to ask the question.

17 A I understand, sir. Yes, sir.

18 Q Okay. So you don't remember?

19 A No.

20 Q And you don't remember how long you were in the
21 recovery room?

22 A No, I don't.

23 Q And you don't remember how long you were in
24 there from the beginning to the end?

25 A No, I really don't.

1 Q Thank you very much. I appreciate it.

2 A Yes, sir.

3 MR. SANTACROCE: No further questions.

4 THE COURT: Redirect.

5 MS. WECKERLY: Just one question.

6 REDIRECT EXAMINATION

7 BY MS. WECKERLY:

8 Q And I'm referring to the voluntary statement on
9 page 10. Just one more question, sir.

10 A No problem.

11 Q Do you remember if the police asked you if the
12 anesthesiologist was the person that put the IV or heplock in
13 your arm, the needle? Do you remember discussing that in your
14 interview?

15 A He might have asked me that, but --

16 Q If I showed you that, would that help refresh
17 your recollection?

18 A It might help. It might help.

19 Q Okay. And again, it's page 10, Counsel.
20 I'm just going to come up here, okay?

21 A No problem.

22 Q And that's Detective Whitely, right, and that's
23 you?

24 A Right. Detective Whitely.

25 Q And he says, "Was it the guy that put you to

1 sleep that put the IV in there, or somebody else?"

2 A Yeah. That was him. It was him.

3 Q But can you --

4 A It was him. I remembered like it happened.

5 Q I believe you, but can you just read your answer
6 for me there, sir?

7 A "Yeah. Yeah, it was him. It was him because I
8 remember him taking it down."

9 Q Okay. Thank you very much, sir.

10 A It'll all come back.

11 THE COURT: I have a couple of juror questions up
12 here. Now, you said that you changed from your street
13 clothing into the gown; is that right?

14 THE WITNESS: Yes, ma'am.

15 THE COURT: And that was before you went into the
16 procedure room?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: And then do you recall when you changed
19 back into your street clothing and out of the gown?

20 THE WITNESS: I don't remember that.

21 THE COURT: Okay. Was that before and when you found
22 yourself in the waiting room, were you wearing the gown or
23 were you wearing your street clothes?

24 THE WITNESS: I was wearing my street clothes.

25 THE COURT: But you don't remember changing?

1 THE WITNESS: I don't even remember changing.

2 THE COURT: And then another juror wants to know when
3 you were taken, I guess, back to the room with the chairs, you
4 said you stumbled. Do you remember testifying about that?

5 THE WITNESS: Right. Yes.

6 THE COURT: Okay. Do you recall when you stumbled if
7 you fell to the ground?

8 THE WITNESS: Yes, I did.

9 THE COURT: Okay. Did you cut yourself or were you
10 bleeding, you know, in any way when you fell?

11 THE WITNESS: No, I didn't bleed. I just fell on my
12 face and, you know, stumbling across my shoes.

13 THE COURT: Okay. And then someone helped you up?

14 THE WITNESS: Yeah. My wife was there then and the
15 lady to help me sit up, and sitting in the chair and I was
16 still drowsy.

17 THE COURT: And do you remember putting your shoes on
18 prior to that time?

19 THE WITNESS: No, I don't, ma'am.

20 THE COURT: Okay. State, any follow up from that?

21 MS. WECKERLY: No, Your Honor. Thank you.

22 THE COURT: Defense, any follow up?

23 MR. WRIGHT: No.

24 MR. SANTACROCE: No, Your Honor.

25 THE COURT: Any additional juror questions for this

1 witness? Okay. The bailiff will retrieve the juror
2 questions. I'll see counsel up here.

3 (Off-record bench conference.)

4 THE COURT: All right. A juror had a question, and
5 Ms. Weckerly, perhaps you can help with an exhibit.

6 MS. WECKERLY: Yes. And Your Honor, for the record,
7 it's Exhibit 59.

8 THE COURT: Okay.

9 MS. WECKERLY: Sir, can you read that name that I'm
10 pointing to on this insurance record again, please?

11 THE WITNESS: Ron Lakeman.

12 MS. WECKERLY: Ron Lakeman. And that was on the
13 anesthesia bill that I showed you earlier for your insurance?

14 THE WITNESS: I think so, wasn't it?

15 MS. WECKERLY: Okay. Thank you, sir.

16 THE COURT: Any follow up based on that question?

17 MR. WRIGHT: No.

18 MR. SANTACROCE: No, Your Honor.

19 THE COURT: Any additional juror questions?

20 Sir --

21 THE WITNESS: Yes, ma'am.

22 THE COURT: -- thank you for your testimony. Please
23 don't discuss your testimony with anybody else who may be a
24 witness in this case.

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Thank you, sir, and you are excused.

2 And the State may call its next witness.

3 MS. WECKERLY: Dr. Son Bui.

4 SON BUI, STATE'S WITNESS, SWORN

5 THE CLERK: Please state and spell your first and
6 last name for the record.

7 THE WITNESS: My name is Son Bui. First name is Son,
8 S-o-n. The last name is Bui, B-u-i.

9 THE COURT: All right. Thank you. Ms. Weckerly.

10 DIRECT EXAMINATION

11 BY MS. WECKERLY:

12 Q Doctor, can you briefly describe your
13 educational background?

14 A Yes. I graduated in 1996 from Chicago
15 Osteopathic Medicine in Chicago. I did residency in
16 University of Illinois --

17 THE COURT: You can't hear.

18 Yeah, you have a really soft voice.

19 THE WITNESS: Oh.

20 THE COURT: See that box right there, that's the
21 microphone, so can you try to speak a little bit louder.

22 Ladies and gentlemen, if you still can't hear him,
23 just give the signal and we'll make him hold the handheld
24 mike.

25

1 BY MS. WECKERLY:

2 Q Let's try that again.

3 A I graduated from Chicago Osteopathic Medicine
4 in 1996. I did three years of residency in Chicago also,
5 University of Illinois, Chicago, and then I went and came out
6 to Las Vegas 1999.

7 Q And what -- oh, go ahead.

8 A And I graduated as family practice.

9 Q And so in 1999 is when you started practicing in
10 Las Vegas?

11 A Yes.

12 Q And sometime after that did you become the
13 doctor to a lady named Stacy Hutchison?

14 A Yes.

15 Q Do you remember what year it was she became your
16 patient?

17 A It's pretty far back, but the farthest note I
18 have is 2005.

19 Q 2005?

20 A Yes.

21 Q And how old was she then, or how old is she now?

22 A She's 43 now. So she's probably around 30,
23 30-something years old at the time.

24 Q And when Ms. Hutchison came to see you, you were
25 just her regular family doctor?

1 A Yes.

2 Q Did she -- when she first started seeing you,
3 did she have any particular health issues that you were
4 concerned about, or was she relatively healthy?

5 A She was relatively healthy. She came in for a
6 basic, you know, urgent care, sore throat, UTI, and then
7 developed high blood pressure.

8 Q Okay. In your -- in your treatment of Ms.
9 Hutchison, did you ever run blood tests on her?

10 A Yes. We ran blood tests at least annually.

11 Q At least annually. Would those blood tests have
12 detected or indicated possible hepatitis C infection?

13 A We ran a -- that panel a couple times.

14 Q And did she ever get a positive reading before
15 September 21st of 2007?

16 A No.

17 Q So you ran blood tests on her and that was never
18 a positive reading that you saw?

19 A Correct.

20 Q At some point did you refer her for a procedure
21 at the Endoscopy Center of Southern Nevada?

22 A Yes. I referred to GI, which is gastrology, but
23 I never referred her to -- to do the procedure. I just
24 referred her for --

25 Q For an appointment?

1 A -- for her symptoms. Yes.

2 Q Okay. And so what was her health issue that
3 made you do that referral?

4 A I did skim over the notes. I didn't go through
5 it thoroughly, but from my recollection it was because she was
6 having some right upper quadrant discomfort.

7 Q Right upper --

8 MR. WRIGHT: I couldn't hear that.

9 THE WITNESS: Right upper abdominal pain, discomfort.

10 MS. WECKERLY: Did you hear it that time?

11 MR. WRIGHT: Yes.

12 BY MS. WECKERLY:

13 Q Okay. And so you referred her to just go to a
14 specialist --

15 A Yes.

16 Q -- in gastroenterology?

17 A Yes.

18 Q And did you refer to a specific place, or did
19 you -- does someone else in your office do that? How does
20 that referral work?

21 A We just -- I just -- you know, I just say please
22 refer to gastrology, but I really do not write the names on
23 the referral.

24 Q Okay. So you're never sure where they're going
25 to go for the follow-up?

1 A Yes. It's usually based upon insurance.

2 Q Okay. Was she -- well, to your knowledge at
3 this point where we are now today, do you know that she in
4 fact went for a colonoscopy and an endoscopic procedure at the
5 Endoscopy Center of Southern Nevada?

6 A Yes. She had both procedures done.

7 Q She had both?

8 A Yes.

9 Q One of those procedures was on September 21,
10 2007?

11 A Yes.

12 Q Did you see Ms. Hutchison after that date at
13 all?

14 A Not until after she was hospitalized.

15 Q And did you become -- were you notified that she
16 went to the hospital?

17 A I don't remember if I was notified until after
18 the fact. I don't remember that.

19 Q But at some point you became aware she was
20 hospitalized?

21 A Oh, yes.

22 Q And as her primary care doctor, would you have
23 been apprised of what the situation was or what her problem
24 was that caused the hospitalization?

25 A I was surprised.

1 Q But did you know what the problem was though,
2 what the --

3 A Yes. She came in and told me.

4 Q Okay. So you saw her at some point after that?

5 A Yes.

6 Q And what were her symptoms?

7 A It wasn't really her symptoms that she was
8 having. It was more she was just in shock.

9 Q Okay. She was upset?

10 A Yes. She was upset, yeah.

11 Q And have you -- have you since seen her medical
12 records indicating that she's positive for hepatitis C?

13 A Yes, she was positive. Yes.

14 Q And in the time you saw her after the procedure,
15 were you her treating doctor for some time after that?

16 A Yes. Up until recently, when she moved to
17 Oregon.

18 Q So she stayed with you for a while, but now
19 she's since moved?

20 A Yes.

21 Q In your more recent treatment of her, were you
22 the doctor that treated her for the hepatitis C, or would she
23 have gone to a different doctor?

24 A I referred to another gastrologist.

25 Q Who specializes in that type of treatment?

1 A Yes.

2 Q Now, you indicated that prior to her procedure
3 on September 21, you had run blood tests on her that would
4 have detected or maybe been positive for hepatitis C or would
5 indicate that, correct?

6 A Yes.

7 Q What was the most -- what was the latest test
8 you ran in relation to September 21st of '07?

9 A Let me take a look at the labs.

10 Q Okay.

11 A It was the May 16, 2007.

12 Q And so her blood was actually tested on that
13 date and she was negative for hepatitis C?

14 A Yes.

15 Q Were any tests run on her by you after that,
16 that maybe measured any kind of like liver impairment or any
17 trouble with her liver that would possibly be related to
18 hepatitis C, or was that the latest blood test that you
19 actually ran for her?

20 A Before -- that was the latest before she went to
21 the hospital.

22 MS. WECKERLY: Okay. May I approach the witness,
23 Your Honor?

24 THE COURT: You may.

25 MS. WECKERLY: Sir, I am showing you -- this is

1 State's Proposed Exhibit 6.

2 THE WITNESS: Yes.

3 BY MS. WECKERLY:

4 Q And it has a date of May the 16th, and this is
5 for Ms. Hutchison, correct?

6 A Yes.

7 Q And this would have been the test that indicated
8 that she was negative on that date?

9 A Yes.

10 Q Can you show me where that -- whoops.

11 A The hepatitis C right here, anti hep C antibody.

12 Q Okay. And it shows her as negative?

13 A Yes.

14 Q I'm just going to put that on the overhead here.
15 Sir, this is the document I just showed you, correct?

16 A Yes.

17 Q And where I'm pointing right here indicates this
18 was the indicator of whether or not she was positive or
19 negative for hepatitis C, and it says negative?

20 A Yes.

21 Q And this is the date received, it's May 16th,
22 and the date recorded is May 17th of '07?

23 A Yes.

24 Q Thank you, sir.

25 MS. WECKERLY: I'll pass the witness, Your Honor.

1 THE COURT: All right. Thank you. Cross.

2 CROSS-EXAMINATION

3 BY MS. STANISH:

4 Q Good afternoon.

5 A Hi.

6 Q Why did you run the hep C panel on Ms.
7 Hutchison?

8 A The reason why I ran the hep C panel is because
9 she was having some -- I diagnosed her with right upper
10 quadrant -- right upper abdominal pain.

11 THE COURT: Is that where your liver is?

12 THE WITNESS: Yes.

13 MS. STANISH: Good question.

14 BY MS. STANISH:

15 Q Where is your liver [indicating]?

16 A Yes, that's correct. Right below the ribs on
17 the right side.

18 Q When did you say you stopped treating Ms.
19 Hutchison?

20 A January of 2013.

21 Q And you saw her -- she went to the hospital,
22 correct?

23 A Yes.

24 Q And did you receive those hospital records?

25 A Yes. When I saw her I requested the records.

1 Q And do you recall how soon after she was
2 hospitalized you next physically saw her?

3 A Weeks later.

4 Q Okay. And as -- was she -- do you know if she
5 was taking medication for the hepatitis C?

6 A I do not recall that.

7 Q Your records would indicate what medication she
8 was taking, wouldn't they?

9 A Yes. My record would indicate that, but also
10 the hospital record would indicate that too, as a discharge.

11 Q Well, maybe I -- it's a bad question. Let me --
12 let me set the stage. What I'm trying to get at, sir, is I'm
13 trying to understand after she was hospitalized what kind of
14 treatment did she receive.

15 A Oh, okay. Well, the treatment would have come
16 from the gastrologist.

17 Q Do you know if she took medication?

18 A I think she did.

19 Q And do you know for how long she took that
20 medication?

21 A I do not recall that.

22 Q Was it the -- do you know what the medication
23 was?

24 A No, I don't remember.

25 Q And would you have written that in your files,

1 identified what the medication your patient was on?

2 A The nurses usually write that down, but we
3 usually rely on the gastrologist referral -- consulting sheet
4 to come back.

5 Q And you've been treating her for up until '09 --
6 oh, gosh, this year --

7 A Yes.

8 Q -- January of 2013?

9 And is -- I don't know if I'm using the right term,
10 but help me out if you can. In your more recent treatment of
11 her, is she showing symptoms of hepatitis C?

12 A The most recent treatment was more for upper
13 respiratory infection.

14 Q I'm sorry?

15 A Upper respiratory infection.

16 Q Was that something to do with hepatitis C, or
17 just --

18 A It's more for upper respiratory infection.

19 Q So not connected to hepatitis C?

20 A I do not believe so.

21 Q How often did you see her after her
22 hospitalization?

23 A I probably see her every several months.

24 Q Once a year, twice a year?

25 A Probably every two to four months.

1 Q And why are your -- why are you seeing her that
2 often?

3 A Maybe primarily because her anxiety.

4 Q Okay. So she was upset, as you said earlier, so
5 it dealt more with anxiety?

6 A Yes. Anxiety and the complication of the
7 treatment that she had from the blood tests.

8 Q Do you know how long the treatment lasted?

9 A I don't remember.

10 Q If this all occurred in 2008, do you know how
11 long treatment usually lasts for hepatitis genotype 1a?

12 A Six to 12 months.

13 Q Okay. And so let's talk about after that period
14 of time occurred.

15 A Okay.

16 Q Okay. Had the hepatitis C been brought under
17 control, do you know?

18 A I saw the recent lab, that there was not
19 detected.

20 Q And you would do blood work on her occasionally?

21 A I would do blood tests, but usually just more
22 for sugar, kidneys, liver, cholesterol. Because I would do
23 bloods in my realm of specialty, and I wouldn't want to
24 overlap what the gastrologist does.

25 Q Fair enough. So you were doing the liver

1 functioning tests?

2 A It would include. It would include in the
3 complete metabolic profile.

4 Q So the blood tests -- oh, by the way, did you --
5 did the -- was it a GI that was treating her for the hepatitis
6 C, or a liver specialist?

7 A A gastrologist.

8 Q Okay. And did the gastrologist keep you
9 apprised of what her condition was by sending you consults
10 and --

11 A Yes.

12 Q -- paperwork?

13 And you reviewed those?

14 A Yes.

15 Q And after she had finished the regimen with the
16 medication, the blood tests showed that she was cleared for
17 hepatitis C? Is that the -- I don't know if that's the right
18 word.

19 A Yes. From what I remember, there was a test
20 that came back that it was not detectable.

21 Q Did you have to participate in any civil
22 litigation in this related to Ms. Hutchison?

23 A I did a deposition.

24 Q Did anybody -- when was the first time you were
25 contacted by law enforcement?

1 A Law enforcement?

2 Q Yeah. And by that I mean metropolitan police,
3 the district attorney's office, anyone who wears a badge or
4 has one tucked away.

5 A To my recollection, this is my first time --
6 really, this is my -- kind of like the first -- I don't
7 remember ever talking to a DA.

8 Q All right. Have you ever discussed Ms.
9 Hutchison's case with anybody from the Southern Nevada Health
10 District?

11 A Not that I remember.

12 Q Have you ever discussed her case with anybody
13 from the CDC, the Center for Disease Control, the feds?

14 A No.

15 MS. STANISH: The Court's indulgence.

16 THE COURT: That's fine.

17 MS. STANISH: Nothing further.

18 THE COURT: Mr. Santacroce.

19 MR. SANTACROCE: I have no questions for the doctor.
20 Thank you.

21 THE COURT: Redirect?

22 MS. WECKERLY: No redirect, Your Honor. Thank you.

23 THE COURT: Juror questions. Any juror questions?

24 All right. Doctor, thank you for your testimony. You are
25 excused at this time.

1 THE WITNESS: Thank you.

2 THE COURT: State, you may call your next witness.

3 MS. WECKERLY: The next witness is Stacy Hutchison.

4 THE COURT: Is everybody okay without a break on the
5 jury? Okay.

6 STACY HUTCHISON, STATE'S WITNESS, SWORN

7 THE CLERK: Please state your first and last name for
8 the record.

9 THE WITNESS: Stacy Hutchison.

10 THE CLERK: And can you spell that, please.

11 THE WITNESS: First and last?

12 THE COURT: Both, please.

13 THE WITNESS: S-t-a-c-y, H-u-t-c-h-i-s-o-n.

14 THE COURT: All right. Thank you. Ms. Weckerly.

15 DIRECT EXAMINATION

16 BY MS. WECKERLY:

17 Q Ms. Hutchison, I'd like to talk to you about
18 events in 2007. At that time, were you living in Las Vegas?

19 A Yes.

20 Q And was your doctor the man who just left the
21 courtroom?

22 A Yes.

23 Q Dr. Bui?

24 A Yes.

25 Q During, I guess, the early part of 2007, at some

1 point did you go to him with some issue with maybe some pain
2 in your abdominal area?

3 A Yes.

4 Q And based on that, did he suggest that you have
5 a referral with a specialist in gastroenterology?

6 A Yes.

7 Q Do you remember going to an appointment, or
8 going to like a medical appointment with a specialist?

9 A Yes.

10 Q Where did that take place?

11 A That took place, the facility off of Tenaya.

12 Q Okay.

13 A And I saw Lisa Franks at that time.

14 Q And so you had a medical office meeting with
15 Lisa Franks?

16 A Yes.

17 Q And based on that meeting, were some tests
18 ordered for you, or procedures?

19 A Yes.

20 Q And what were those procedures?

21 A She suggested to have an upper GI and a lower GI
22 done.

23 Q And that's an endoscopy and a colonoscopy?

24 A Yes. Sorry.

25 Q That's okay. Both procedures?

1 A Yes.

2 Q And that was sometime before September 21st of
3 2007, correct? Because you have the procedure on -- one of
4 the procedures on that date.

5 A Yes.

6 Q And do you remember where it was that you
7 actually had these procedures done, where like the street or
8 what the place was called?

9 A On Shadow Lane.

10 Q Is it the Endoscopy Center of Southern Nevada?

11 A Yeah. My husband drove me.

12 Q Okay. And so he probably knows the exact
13 address, right?

14 A Yes.

15 Q So you had an appointment scheduled for one of
16 the procedures on September 21st of 2007, correct?

17 A Yes.

18 Q And you actually have a second procedure a week
19 later; is that right --

20 A Yes.

21 Q -- at the same place?

22 Do you remember having to drink any fluid or do any
23 kind of what's called prep for your procedure?

24 A Yes.

25 Q And what was that, if you recall, like, or what

1 did it seem like?

2 A It was stuff I had to pick up from the pharmacy
3 and add water to it and drink it 20 hours -- 24 hours before
4 having the procedure done.

5 Q And could you eat before the procedure?

6 A No.

7 Q So you're kind of -- by the time you get there,
8 you're --

9 A Hungry.

10 Q -- hungry and probably uncomfortable; is that
11 fair?

12 A Hungry and thirsty, but not uncomfortable.

13 Q When you arrived on September 21, what procedure
14 were you going to have that day?

15 A A colonoscopy.

16 Q And do you remember if your appointment was in
17 the morning, in the afternoon? Do you have any idea what time
18 it was?

19 A It was in the morning.

20 Q First thing, or later morning, if you recall?

21 A It was probably around 8:00 o'clock in the
22 morning.

23 Q That you arrived?

24 A Yeah.

25 Q And so your husband and you go to the clinic; is

1 that right?

2 A Yes.

3 Q And he's driving?

4 A Yes.

5 Q And when you get to the clinic and you walk in,

6 I assume you're in sort of a waiting room check-in area?

7 A Yes.

8 Q What did that -- what did that look like to you;

9 was it crowded, not crowded?

10 A Once I arrived to the facility, you go in to do
11 a check-in, which is -- and you do your copay right there, and
12 we sat down and it was very full. He probably had like 40, 50
13 patients in there.

14 Q So 40 or 50 patients are in the waiting room?

15 A Patients sitting, yeah. I don't know if they
16 were patients. I don't know if they were waiting for their,
17 you know, the people that were in procedures. I didn't strike
18 a conversation with anybody.

19 Q Okay. And you said you check in and you pay a
20 copayment?

21 A Yes.

22 Q What -- what type of insurance did you have?

23 A Health Plan of Nevada.

24 Q HPN. And did you have to pay a copay that
25 morning?

1 A Yes.

2 Q And do you remember how much it was? Or if you
3 don't, that's okay.

4 A I can't recall. It's five years ago, so.

5 Q But you paid something, but you also probably
6 had to show your insurance card or proof of insurance,
7 something like that?

8 A Yes, I did.

9 Q So after you check in, do you sit back down with
10 your husband for a little bit?

11 A Yes.

12 Q And that's when you kind of observe this 40 or
13 50 people in the waiting area?

14 A Yes.

15 Q Did someone eventually call you into another
16 room to change into a gown?

17 A It took about an hour and a half before they
18 called me back there.

19 Q So you had to wait a little bit?

20 A Yes.

21 Q And then who -- who was it that called you, or
22 what did the person look like that called you into the next
23 area?

24 A It was a female. I'm assuming a nurse called me
25 back and took me over to the changing room.

1 Q And did they have dressing rooms where you get
2 out of your regular clothes and into a gown so they can do the
3 procedure?

4 A Yes.

5 Q After you changed your clothing, what did you do
6 with it? Did you give it to your husband, or do you remember?

7 A No. They give you a bag, and then she escorted
8 me over to another area where there were two other people
9 sitting. And I sat in an empty chair where they were putting
10 in the PICC line, or what -- I don't know what they call it.

11 Q Is it like a needle that goes in your arm?

12 A Yeah.

13 Q Accessing a vein?

14 A Yeah, for the anesthesia.

15 Q Okay. And you said there were two other people
16 there?

17 A There were two other people sitting. There was
18 three chairs.

19 Q So three patients?

20 A Two -- so it was three chairs, two patients, and
21 I sat in the empty chair.

22 Q Okay. And at that location, did someone put in
23 your -- you called it a PICC line or an IV, something like
24 that?

25 A Mm-hmm. Yes. Sorry.

1 Q Yes?

2 And do you remember that person at all, a woman, man,
3 anything like that?

4 A I can't recall.

5 Q Okay. How about this. After the person put
6 that in your arm, do you remember anything about those
7 circumstances? Like did you watch the person put it in, or
8 are you someone that --

9 A Oh, no. I watch everything.

10 Q You watched every --

11 A Yes.

12 Q So what did you see?

13 A Once -- the person has a tray that has all their
14 medical stuff on it, so when they -- I have to say she or he.

15 Q Okay. Well, or you could say nurse.

16 A Okay. Nurse. When the nurse came over, I
17 watched them tear open the thing and swab my hand and put the
18 PICC line in and then put a Band-Aid over it, and then popped
19 open the saline top and rubbed it with alcohol and then rubbed
20 my top with alcohol, and she told me that they had to flush it
21 to make sure that the vein was good, so then that way the
22 anesthesia can get inside the vein.

23 Q And you watched all that?

24 A Yes. It was done in front of my face.

25 Q Okay. And did you see all that packaging being

1 unwrapped?

2 A Oh, yeah. Everything was ripped open. The
3 person was wearing gloves and everything, so yeah.

4 Q So all parts of it were opened in front of you?

5 A Yes.

6 Q And obviously you're not someone who gets weak
7 seeing a needle go in them.

8 A No. Hm-mm.

9 Q And you said she flushed it, or the nurse
10 flushed it?

11 A The nurse, yes.

12 Q Did you know what that fluid looked like at all?

13 A It was clear.

14 Q It was clear. And after that, did you stay in
15 that chair or did you move into another area?

16 A Once the, I guess, an open bed came open,
17 somebody came and escorted me over to an open bed, and that's
18 where I put my clothing underneath in a bag, and they laid me
19 on the bed and told me to wait, that we'd be -- that I would
20 be rolled into the procedure room.

21 Q Okay. So the next stop is the procedure room;
22 is that right?

23 A Yes.

24 Q And you're laying on a bed that sounds like it
25 rolls?

1 A Yes.

2 Q And your stuff, your clothes are underneath you
3 sort of?

4 A Mm-hmm.

5 Q Is that yes?

6 A Yes. Sorry about that.

7 Q That's okay. Do you remember anything about the
8 procedure room, like who was in there or what it looked like,
9 anything like that?

10 A They -- the nurse rolled me in and there was
11 one, one person. So when I rolled in, and so I was on my
12 side, on my right side. So I was leaning laying. So I had
13 one person here [indicating] and another person here
14 [indicating], and then the operating equipment here
15 [indicating], and then the -- Dr. Desai came in and introduced
16 everybody. I don't remember everybody's name.

17 And he explained about, you know, the tube and the
18 monitor. And then the guy behind my head said that he was
19 going to put some white milky stuff in me with the vial, the
20 anesthesia inside me, so and all's -- I'll feel a warm tingly
21 sensation and I'll fall asleep, and before I know it, you
22 know, I'll be done.

23 Q Now, the guy that said he was going to put the
24 white milky anesthesia in you --

25 A Yeah.

1 Q -- did that person ever come out and talk to you
2 when you were sitting in those three chairs with the two other
3 patients getting your IV or PICC line put in?

4 A No.

5 Q Did that person ever come out and say, you know,
6 hey, do you have any allergic reactions to medication, have
7 you ever had a bad reaction to being put under anesthesia,
8 anything like that?

9 A No.

10 Q So the first time you talk to that person is
11 when --

12 A I was rolled into the procedure room.

13 Q And they -- and that person, you said it was a
14 he?

15 A Yes.

16 Q He says, I'm going to put you under, it may feel
17 tingly?

18 A Yes.

19 Q Okay. And prior to him doing that, you said
20 Dr. Desai comes in?

21 A Yes.

22 Q And I mean, do you recognize Dr. Desai?

23 A Yes.

24 Q Do you see him here?

25 A Yes, I do.

1 Q Can you point to him and describe what he's
2 wearing today?

3 A [Indicating.] He's the gentleman with the
4 salt -- salt and pepper hair, glasses.

5 MS. WECKERLY: May the record reflect --

6 THE COURT: What color shirt?

7 THE WITNESS: Oh, teal.

8 THE COURT: It will reflect identification.

9 MS. WECKERLY: Of Dr. Desai.

10 THE COURT: Yes.

11 BY MS. WECKERLY:

12 Q So Dr. Desai kind of tells you who everybody is
13 in the room?

14 A Yes.

15 Q And then the anesthetist says they're going to
16 inject you, or he's going to inject you with the milky vial --

17 A Yes.

18 Q And I assume sometime after that you lose
19 consciousness or you fall asleep?

20 A Oh, yeah, immediately.

21 Q Okay. And did you remember -- I mean, have I
22 left out anything you might have remembered, or is that pretty
23 much before you fall asleep have we covered it?

24 A No. I don't --

25 Q You don't remember anything else?

1 A No. I just fell asleep, so.

2 Q Okay. What's the first thing you're aware of
3 after the procedure, like where were you?

4 A I was back into what's like a makeshift room
5 with curtains. So I woke up and the PICC line, their IV was
6 out of my hand. So I went ahead, got dressed and walked out
7 the door.

8 Q Okay. Because your clothes are underneath you,
9 right?

10 A Yeah.

11 Q So was anyone -- was there a nurse there saying,
12 hey, are you all right?

13 A No. No. No. So no, I -- I didn't know I was
14 supposed to stay. So what happened was me and my fiance at
15 the time walked out the door, and all the sudden a male nurse,
16 as soon as I got almost into the car, said, Wait, Ms.
17 Hutchison, you can't leave. You have to come back and get
18 checked out. And I didn't -- I mean, I didn't know. So he
19 brought me back in.

20 Q So let me just back up a little bit. You're in
21 a -- when you wake up, you're in a different room than the
22 procedure room; is that fair?

23 A Yes.

24 Q And did you see other people or...

25 A No. It was like a makeshift room with just

1 curtains around it.

2 Q So there was just a curtain around your little
3 area?

4 A Yes.

5 Q And so you were able to get dressed kind of in
6 there by yourself?

7 A Yes.

8 Q And then there was no nurse talking to you at
9 that time, correct?

10 A No.

11 Q Did the anesthesia person come out and say are
12 you all right, how are you feeling, anything like that?

13 A No.

14 Q How about Dr. Desai?

15 A No.

16 Q Then you leave and I assume that your
17 fiance/husband --

18 A Mm-hmm.

19 Q Is that a yes?

20 A Yes.

21 Q And you guys started heading out because you
22 think you're all done, right?

23 A Yes.

24 Q And you said you almost got to your car and what
25 happened?

1 A And then a male nurse chased me out and he said,
2 "Ms. Hutchison, you can't leave yet. You need to be checked
3 out."

4 Q Okay. So what happens?

5 A So I go -- we go back in. My fiance sits in the
6 waiting room. And we go to -- he sits me down with the lady
7 who checks you out. And the lady who checks you out just goes
8 through don't eat this, don't eat that, you know, you might be
9 nauseous, make sure I have a ride home.

10 Q Okay.

11 A And they also rescheduled me a follow-up
12 appointment.

13 Q So they tell you like have a light diet or
14 something the rest of the day?

15 A Yes.

16 Q And did she tell you what the findings were of
17 your procedure at all?

18 A No. She just said that they -- that they would
19 tell me my findings at my follow-up visit.

20 Q Okay. And just to be clear, you don't see the
21 anesthesia person or Dr. Desai at all that day?

22 A Yes.

23 Q I mean other than in the procedure room, right?

24 A Yes.

25 Q Okay. So you get to leave after that, right?

1 A Yes.

2 Q Okay. So you leave. And did you have your next
3 procedure done before the follow-up appointment?

4 A Yes.

5 Q Okay. And how long -- what was the next date
6 for the procedure, which would be the upper endoscopy, right?

7 A It would have been one week.

8 Q Okay. So the 28th?

9 A Okay.

10 Q Is that right?

11 A Yes.

12 Q If the first one was on the 21st?

13 A Yes.

14 Q Was -- do you recall what time of day that
15 appointment was?

16 A In the morning.

17 Q Same -- was it the same procedure that you went
18 through that you just described for the 21st, where you go in
19 and --

20 A Yes.

21 Q -- do your copay and sit?

22 A Yes.

23 Q Were there as many people there on the 28th?

24 A Yes, there were.

25 Q Was it the same kind of long wait that you

1 experienced before?

2 A Yes.

3 Q Was it pretty much the same procedure in the
4 what I would call like the preop area, where the nurse --

5 A Yes.

6 Q -- puts in the what did you call it, a PICC
7 line?

8 A PICC line.

9 Q Okay. Did you see the packaging again on that
10 date, or do you recall?

11 A Yes.

12 Q Okay. And then you go in for the procedure
13 again?

14 A Yes.

15 Q Same doctor?

16 A Different doctor.

17 Q Different doctor for the 28th?

18 A Yes. It was Dr. Carrol.

19 Q And do you remember, was there anything that you
20 remember about that procedure on the 28th that's like of note,
21 or was it -- you know, did it go pretty smoothly, same thing,
22 where the anesthetist puts you under and that [inaudible]?

23 A Yes.

24 Q On the 28th, did the anesthesia person come and
25 talk to you in the preop area where you got your PICC line?

1 A No.

2 Q Did the anesthesia person interview you at all
3 about being sedated or whether you had eaten or anything like
4 that?

5 A I can't recall.

6 Q Okay. That's all right. And then I assume you
7 go under again?

8 A Yes.

9 Q And this time do you wake up in the recovery
10 room?

11 A Yes.

12 Q But you kind of know --

13 A I have to stay.

14 Q -- you can't just leave, right?

15 A Yes.

16 Q Is anyone with you when you wake up on the 28th?

17 A No.

18 Q Still no nurse?

19 A No.

20 Q Did Dr. Carrol come talk to you?

21 A No.

22 Q How about the anesthesia person?

23 A No.

24 Q No one -- no one in the procedure room comes and
25 talks?

1 A No.

2 Q But there is a -- did you check out with anyone
3 on the 28th?

4 A I poked my head out to see if I can get somebody
5 to check me out.

6 Q Okay. So you had to kind of flag someone down?

7 A Yes.

8 Q Did that person check you out or --

9 A Yeah. They escorted -- yes, they escorted me to
10 the changing room. I changed and saw the check-out nurse.

11 Q And then I assume you leave again?

12 A Yes.

13 Q Sometime after that, did you start experiencing
14 some health problems?

15 A I experienced health problems about three weeks
16 after.

17 Q Okay. And can you describe for the members of
18 the jury what you were feeling like, what it felt like those
19 weeks later?

20 A It felt like flu-like symptoms. I wasn't
21 holding down food. At about two weeks I started dropping a
22 lot of weight. And I always say that heavy people don't drop
23 weight that fast, and I went to the UMC Quick Care. And I --
24 they said I had a bladder infection.

25 But two days after my emergency room -- another

1 emergency, but there was the UMC Quick Care place that I went
2 to, I couldn't hold down water two days later, so I felt there
3 was something wrong so I went to the emergency room.

4 Q And what hospital did you go to for the
5 emergency room?

6 A Spring Valley Hospital.

7 Q Which is still in that same area, down where you
8 got the endoscopy, or --

9 A No. Spring Valley Hospital is located on
10 Rainbow and Hacienda.

11 Q Okay. So you go there and do they admit you?

12 A After they drew some blood from me, they saw
13 that my liver enzymes were like through the roof.

14 Q Your liver enzymes?

15 A Enzymes, yes.

16 Q Okay. And based on that, that reading or that
17 test finding, they admit you to the hospital?

18 A Yes.

19 Q And while you're at the hospital, do you now
20 what's wrong with you initially?

21 A No.

22 Q Is someone coming to explain, hey, here's what
23 we found, anything like that?

24 A No. I was in the hospital for a total of 2 1/2
25 weeks.

1 was diagnosed with hepatitis C?

2 A I believe I see her back somewhere between every
3 six to eight months. Do you want me to see how many times
4 I've seen her?

5 Q I don't need the exact figure, but that's
6 helpful. You see her twice a year, is that what I understand?

7 A Correct.

8 Q Okay. And you're not treating her for anything
9 related to the hepatitis C?

10 A No.

11 MS. STANISH: The Court's indulgence, please.

12 THE COURT: That's fine.

13 (Pause in proceedings)

14 MS. STANISH: No further questions, Your Honor.
15 Thank you.

16 THE COURT: All right. Mr. Santacroce, any cross?

17 MR. SANTACROCE: I have no questions for
18 Dr. Casalman.

19 THE COURT: Any redirect?

20 MS. WECKERLY: No, Your Honor.

21 THE COURT: Any juror questions for this witness? No
22 juror questions.

23 All right. Doctor, thank you for your testimony.
24 You are excused at this time.

25 And the State may call its next witness.

1 MS. WECKERLY: Thank you. The State calls
2 Dr. Antuna.

3 (Pause in proceedings)

4 FULGENCIO ANTUNA, STATE'S WITNESS, SWORN

5 THE CLERK: And would you please state and spell your
6 name.

7 THE WITNESS: My name is Fulgencio Antuna,
8 F-u-l-g-e-n-c-i-o. Last name is Antuna, A-n-t-u-n-a.

9 THE COURT: All right. Thank you. Ms. Weckerly.

10 DIRECT EXAMINATION

11 BY MS. WECKERLY:

12 Q Good morning, Doctor. Can you describe for the
13 members of the jury what your educational background is
14 briefly?

15 A Yes. I hold a doctor of medicine degree from
16 Universidad Central Del Este in the Dominican Republic. I did
17 a year of pathology in 1982 at Monmouth Medical Center,
18 [unintelligible] affiliate. And then I did my internship at
19 St. Vincent's in Staten Island, New York, and two years of
20 internal medicine at the University of Nevada, School of
21 Medicine.

22 Q And your --

23 A Completed in 1986.

24 Q Thank you. And you've been practicing medicine
25 in Las Vegas since then?

1 A 1986.

2 Q In your practice, do you have a patient by the
3 name of Sonia Orellana-Rivera?

4 A Yes, I do.

5 Q How long have you been her doctor approximately?

6 A Approximately probably eight, seven, eight, nine
7 years.

8 Q Is she in fact still your patient?

9 A Yes, she is.

10 Q Do you treat her husband too?

11 A I treat her husband, yes.

12 Q Back in 2007, you were obviously Ms. Orellana
13 Rivera's doctor?

14 A Yes, ma'am.

15 Q During that time period, did you refer her for a
16 colonoscopy?

17 A Yes, I did.

18 Q Do you recall when it was that you made the
19 referral, just approximately?

20 A I believe it was around September of 2007.

21 Q And could that be when she had gotten the
22 procedure, in September of 2007?

23 A I don't recollect that, ma'am.

24 Q Okay. And can you give us the approximate age
25 of Ms. Rivera? Do you know her age?

1 A She was born in 1970.

2 Q So to your knowledge, at this point in time you
3 know she went to get a colonoscopy?

4 A Yes.

5 Q And that was at the Endoscopy Center of Southern
6 Nevada?

7 A I believe it was.

8 Q Was that a practice area -- would you normally
9 refer people to them, your patients?

10 A I refer patients to different
11 gastroenterologists in town.

12 Q Is part of that dependent on their insurance or
13 who might be able to see them sooner?

14 A Not at all. It's part of just being sure that
15 you work with three or four groups of people that are
16 competent and comfortable with what they're doing.

17 Q Okay. And Ms. Rivera went to -- but you know
18 now Ms. Rivera went to the Endoscopy Center?

19 A Yes, ma'am.

20 Q Prior to her going to the Endoscopy Center, had
21 you ever ordered any blood work on her?

22 A Yes. Routine blood work.

23 Q And in that routine blood work, did you ever see
24 anything that caused you any concern about her health, or did
25 she appear to be pretty healthy?

1 A She does have a hypothyroid condition which I
2 was treating her for. So her thyroid level was monitored
3 about every four months.

4 Q Did you ever see any symptoms prior to her going
5 for the colonoscopy that would make you concerned that she
6 might have contracted hepatitis C?

7 A Not that I can recall.

8 Q And if you saw symptoms like that, I assume you
9 would have ordered further testing as her doctor?

10 A I would have.

11 Q And were you aware of any risk factors that she
12 might have had that would make that kind of test advisable in
13 her case?

14 A Not to my recollection. She was married.

15 Q After she got her colonoscopy done, did she ever
16 contact you about her health or problems she was having?

17 A We were contacted first by the Clark County
18 Health Department, and then she came in afterwards.

19 Q Okay. And when you were contacted by the health
20 department, was it about her?

21 A No, ma'am. It was a massive fax blast to
22 probably all physicians in Clark County.

23 Q And it was about a possible hepatitis outbreak?

24 A Yes, ma'am.

25 Q And you saw Ms. Orellana Rivera after that?

1 A Yes.

2 Q After you got the notification?

3 A Yes.

4 Q And when you met with her on that date, what was
5 the reason for that visit?

6 A All patients were to be screened from any -- any
7 endoscopy center. That's what I chose to do.

8 Q Okay. And she underwent that screening?

9 A Yes, ma'am.

10 Q And what were the findings with her on the
11 screening?

12 A She was, I believe, positive for hepatitis C.

13 Q And has -- has she ever had complications with
14 that or has -- I mean, what has her treatment been in -- with
15 regard to that, I guess?

16 A She has times and periods of being tired and
17 fatigued, and she was being seen and treated by Dr. Hykel
18 [phonetic], who is a gastroenterologist in town.

19 Q And is that a -- a gastroenterologist, is that a
20 specialization that people with hepatitis C typically go to
21 for treatment?

22 A Yes, and there is also subspecialists called
23 hepatologists.

24 Q And does she see a hepatologist too, or just
25 Dr. Hykel?

1 A To my knowledge, just Dr. Hykel.

2 Q Okay. And then you still see her for her other
3 medical needs?

4 A Yes, I do.

5 Q Thank you, sir.

6 MS. WECKERLY: I'll pass the witness, Your Honor.

7 THE COURT: All right. Thank you. Cross.

8 CROSS-EXAMINATION

9 BY MS. STANISH:

10 Q Good morning, Dr. Antuna.

11 A Good morning.

12 Q How are you?

13 A Well.

14 Q Let me just start with the decision to have
15 Ms. Orellana come back to your office. That was in response
16 to a fax blast, as you say, from the health district, correct?

17 A I believe it was.

18 Q And can you -- do you know when about you had
19 Ms. Orellana come into your office?

20 A I don't recollect the exact date, ma'am.

21 Q Do you recall when you visited with her whether
22 she was exhibiting any physical symptoms?

23 A I don't recall right now.

24 Q Did you review your medical records prior to
25 this testimony?

1 A Yes.

2 Q And how long ago did you do that?

3 A Probably about a week or two ago.

4 Q Did you provide it, those medical records to the
5 district attorney or metropolitan police?

6 A No. They provided me some records.

7 Q You didn't give them your records?

8 A No, ma'am.

9 Q All right. And while we're on the subject,
10 did -- the health district sends a fax to you and it sounded
11 like it went out to other doctors.

12 A I think so.

13 Q And you were directed to screen any patients
14 that were referred to the gastro clinic; is that correct?

15 A Yes.

16 Q After you did that, did anyone from the health
17 district contact you?

18 A I contacted them. It's a physician's duty to
19 notify the epidemiology department of any state or county
20 local system to have any kind of viral or communicable
21 diseases.

22 Q Well, let me back up. When you had her come in,
23 did your office draw the blood, or did you send her to a lab?

24 A The office drew the blood, but it's sent to
25 Quest Laboratories.

1 Q And does Quest notify the health district, do
2 you know?

3 A They should, but I don't know their bylaws and
4 regulations. I know physicians are supposed to, any
5 communicable disease.

6 Q So you contacted the health district?

7 A Certainly.

8 Q Did -- were -- did you talk to anyone in
9 particular that you can recall?

10 A No, ma'am. It's a form you fill out, and that's
11 sent to the department of epidemiology.

12 Q So you fill out a written form and send it in?

13 A Yes. Yes.

14 Q And in response to that, did you have any
15 contact from anybody in the health district, CDC or any health
16 organization?

17 A Not to my knowledge.

18 Q And were you interviewed by anybody from the Las
19 Vegas Police Department?

20 A No, ma'am.

21 Q And so am I correct in assuming the only persons
22 you've had contact with were the district attorneys who asked
23 you to be here to testify as you have today?

24 A Yes, ma'am.

25 Q And how long have you treated Ms. Orellana, from

1 what year to present?

2 A Including approximately 2005 until present.

3 Q And are you since 2007, when you had the blood
4 test done, have you treated her for any symptoms related to
5 the hepatitis C virus?

6 A I only treated her for hypothyroidism, or
7 underactive thyroid.

8 MS. STANISH: The Court's indulgence. Thank you.
9 Nothing further, Your Honor.

10 THE COURT: Mr. Santacroce, any cross?

11 MR. SANTACROCE: I don't have any questions for the
12 doctor.

13 THE COURT: All right. Redirect?

14 MS. WECKERLY: No redirect, Your Honor.

15 THE COURT: Any juror questions for this witness?
16 All right. I see no juror questions. Doctor, thank you for
17 your testimony. You are excused at this time.

18 THE WITNESS: Thank you, Your Honor.

19 MS. WECKERLY: May we approach?

20 MR. STAUDAHER: May we approach?

21 THE COURT: You may.

22 (Off-record bench conference.)

23 THE COURT: Ladies and gentlemen, apparently that
24 was -- those were the only witnesses scheduled for this
25 morning, so we're going to go ahead and take an early lunch

1 today, and we'll be in recess for the lunch break until 12:45.

2 Before I excuse you for the lunch break, I must
3 admonish you again that you're not to discuss anything
4 relating to the case with each other or with anyone else. You
5 are not to read, watch or listen to any reports of or
6 commentaries on this case, any person or subject matter
7 relating to the case by any medium of information. Do not do
8 any independent research by way of the Internet or any other
9 medium, and please do not form or express an opinion on the
10 trial.

11 If you would please all place your notepads in your
12 chairs and follow Officer Hocks through the rear door, we'll
13 see everyone back here at 12:45.

14 (Jurors recessed at 11:15 a.m.)

15 THE COURT: All right. We'll be in recess
16 until 12:45. Hopefully the State can get a witness here by
17 then, any witness. Anybody.

18 MR. STAUDAHER: Anyone that's available. We'll try
19 to get somebody.

20 THE COURT: And just on scheduling, may I just
21 comment, we did get a late start yesterday because of the
22 issue that came up with the juror that we had to address. But
23 Mr. Santacroce and Mr. Wright were right on the money in their
24 estimates of how long their opening statements would be. So
25 they didn't go long or anything. Just a comment.

1 MR. STAUDAHER: No, that's true. It's not -- it's
2 just that we're -- to coordinate --

3 THE COURT: Right. I know. You didn't want doctors
4 sitting out in the hall again, you know, I get it. You were
5 lucky you got them back here.

6 MS. WECKERLY: Well, and we also conferred with
7 defense counsel on who we could have in the morning and get
8 done. So this is what we have.

9 MS. STANISH: But I understood there was a change of
10 witnesses. Some couldn't make it.

11 THE COURT: Well, they -- you know, the juror may
12 be -- the jury may be happy to get a longer lunch. I think
13 Mr. Wright is happy --

14 MR. WRIGHT: I'm happy.

15 THE COURT: -- that he gets a longer lunch and more
16 of a break with Dr. Desai to discuss some of the testimony
17 this morning. So it works out fine. Mr. Santacroce's
18 probably hungry. He's been complaining we don't, you know,
19 take enough breaks. So we'll see everybody back at 12:45.

20 (Court recessed at 11:17 a.m. until 12:47 p.m.)

21 (Outside the presence of the jury.)

22 MS. WECKERLY: Not on behalf of the State.

23 THE COURT: Okay. And we don't have to do any of the
24 waivers or anything?

25 MS. WECKERLY: Well, I don't think we do on our next

1 witness.

2 THE COURT: And that'll be at least an hour?

3 MS. WECKERLY: No.

4 THE COURT: Okay. Because I don't want to -- I don't
5 want to break less than an hour. Unless they may not be here
6 yet either. Do we have anybody that's here now?

7 MR. STAUDAHER: They're supposed to be at 12:45 until
8 1:00.

9 THE COURT: Yeah. As soon as the first comes --

10 MR. STAUDAHER: The first person shows up, whoever
11 he is?

12 THE COURT: -- we'll put him on.

13 MR. STAUDAHER: Okay.

14 THE COURT: Who's supposed to be here at 12:45?

15 MR. STAUDAHER: Well, it was supposed to be Ziyad
16 Sharrieff.

17 (Pause in proceedings)

18 MR. STAUDAHER: We do have one witness, but that's
19 Patty Aspinwall, who is the -- one that they're -- they were
20 trying to get their file for her, so.

21 MS. STANISH: She was added to the list today --

22 MR. STAUDAHER: Yes.

23 MS. STANISH: -- so we didn't come with the file.

24 THE COURT: So you're not ready for her, in other
25 words.

1 MS. STANISH: Well, we called -- I called my office
2 and we're trying to get her file over here.

3 MR. STAUDAHER: And then we should, in just a couple
4 of minutes, five minutes, we are supposed to have some of the
5 witnesses arriving, so I believe we can get going.

6 (Pause in proceeding.)

7 THE COURT: We're still waiting on a witness?

8 MR. STAUDAHER: Yes, Your Honor.

9 (Pause in proceeding.)

10 THE COURT: Anybody here yet? All right. They're
11 here.

12 MR. STAUDAHER: We can do Kenneth Rubino.

13 THE COURT: And we don't need to do anything ahead of
14 time?

15 MR. STAUDAHER: No, not with Rubino.

16 THE COURT: Okay. Kenny, bring the jury in. We're
17 ready to start.

18 (Pause in proceedings)

19 (Jurors reconvene at 1:05 p.m.)

20 THE COURT: Court is now back in session. The record
21 should reflect the presence of the State through the deputy
22 district attorneys, the presence of the defendants and their
23 counsel, the officers of the court, and the ladies and
24 gentlemen of the jury. And the State may call its next
25 witness.

1 MR. STAUDAHER: The State calls Kenneth Rubino to the
2 stand.

3 KENNETH RUBINO, STATE'S WITNESS, SWORN

4 THE CLERK: Please state and spell your name.

5 THE WITNESS: My name is Kenneth Rubino,
6 K-e-n-n-e-t-h, R-u-b-i-n-o.

7 THE COURT: Thank you. Mr. Staudaher.

8 MR. STAUDAHER: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. STAUDAHER:

11 Q Mr. Rubino, I'm going to take you back in time a
12 little bit to actually the year 2007, when you went to the
13 endoscopy clinic of Southern Nevada. Do you recall that?

14 A Yes, I do.

15 Q Let's even go back further in time. Prior to
16 that date, had you ever been diagnosed with an infectious
17 disease known as hepatitis C?

18 A Yes. In the year 2000 I was diagnosed with
19 hepatitis C. My doctor at the time was a doctor by the name
20 of Bromlin [phonetic]. It was some routine blood work and it
21 came up that I had hepatitis C.

22 Q So Dr. Bromlin was your doctor?

23 A Initially, yes.

24 Q So you say initially. Did that change at some
25 point?

1 A Yes, it did. He then referred me to Dr. Lazeery
2 [phonetic], who worked at the endoscopy clinic at that time,
3 to discuss treatments and et cetera.

4 Q When you say endoscopy clinic, are we talking
5 about the same one I just mentioned, the Endoscopy Center of
6 Southern Nevada?

7 A That is correct.

8 Q Is that located over on 700 Shadow Lane?

9 A That is correct.

10 Q Here in Clark County, Nevada?

11 A That is correct.

12 Q The doctor that was there -- and it was V, it
13 started with a V, Vizari [phonetic]?

14 A Yes.

15 Q That doctor, did he continue to treat you after
16 that?

17 A He treated and then he moved his practice, from
18 what I understand, to California. He then referred me to
19 Dr. Clifford Carrol, the same -- who works also out of that
20 same clinic.

21 Q So Dr. Carrol became your physician?

22 A That is correct.

23 Q Now, when you say that he's your doctor, is he
24 just your primary care doctor, or is he dealing specifically
25 with this issue of the hepatitis C?

1 A No. He's specifically dealing with the
2 hepatitis C.

3 Q Did you have another doctor that was a primary
4 care doctor in addition to that?

5 A Yes. Dr. Panikkar [phonetic] is my primary care
6 doctor.

7 Q So the interaction that you have with Dr. Carrol
8 is strictly for that issue, the hepatitis C?

9 A That is correct.

10 Q Any question -- and I know this sounds silly,
11 but I just want to make sure for the record. Any question
12 that Dr. Carrol at the Endoscopy Center of Southern Nevada
13 knew that you had hepatitis C?

14 A Absolutely.

15 Q Were you treated actually for that condition at
16 that facility?

17 A We discussed options for treatment. I had,
18 under Dr. Vizari, had a treatment, and I was considered a
19 non-responder to that treatment. My visits with Dr. Carrol,
20 we used to -- we'd go for blood work first, and then I would
21 make an appointment to see him and we would -- I would ask him
22 if there's any new treatments for the hepatitis C.

23 He -- on several occasions we discussed what the --
24 if I were to try that same treatment again, what the quality
25 of life would be and what the chances of it actually making it

1 go away, and so I decided not to. But we often discussed it
2 at our -- at my appointments with him.

3 Q So and we're going to get to this down the road.
4 I may ask you this question again as we get to different
5 stages. But at least at that point and clearly, you're not
6 trying to hide the fact that you had that particular illness;
7 is that correct?

8 A No. That's what I was --

9 Q And you were being treated by a doctor for that
10 specific condition?

11 A That's correct.

12 Q Now, when you are treating with Dr. Carroll, at
13 some point do you end up getting referred or having at least a
14 plan to have a colonoscopy done?

15 A Dr. Carroll had asked me when was the last time I
16 had a colonoscopy, and I think it was several years prior to
17 that. And he said, "Well, you're due. I think you should. I
18 would recommend that you have one." So that's what got the
19 ball rolling with the colonoscopy.

20 Q You get referred to actually the same clinic to
21 have it done. I mean, I assume you were going to the medicine
22 side and then the Endoscopy Center is a procedure side?

23 A Correct.

24 Q So you're over on the medicine side with Dr.
25 Carroll and you get referred to the procedure side to have the

1 procedure actually done?

2 A That is correct.

3 Q You mentioned -- before we get to that, you
4 mentioned the word "nonresponder."

5 A Yes.

6 Q Can you tell us in your -- as best as you know,
7 what that means?

8 A It was a combination therapy of pills and
9 injections. I forgot what the medicine was called.

10 Q Did you ever take interferon?

11 A Interferon, that was the -- that was the
12 medicine. And it did not -- it did not do anything to -- to
13 the hepatitis C to make it get better or go away.

14 Q Now, for you, I understand that various -- when
15 you took -- underwent that therapy, the pills and the
16 interferon, did they indicate to you that people respond to
17 that in different ways, that it affects people in different
18 ways?

19 A Yes. It was like having the flu, the feeling of
20 having the flu when you're on that medication, when I took the
21 injections and the pills. The injections, I believe, were
22 three times a week, if my memory serves me, and the pills, I
23 believe, were daily. But it did make you feel like you had
24 the flu. It was a very uncomfortable feeling.

25 Q And how long did that go on?

1 A Approximately six months.

2 Q So the treatment of both the multiple, the
3 three -- was it three injections per week, did you say?

4 A Correct.

5 Q And the pills every day, how many pills were you
6 taking?

7 A I don't recall exactly. I want to say two, but
8 I'm not completely sure.

9 Q So the pills were every day --

10 A Correct.

11 Q -- the injections three times a week, and that
12 went on for six months?

13 A Correct.

14 Q So this feeling of having -- was it -- if you
15 class -- have you ever had the flu before?

16 A Yes, I have.

17 Q In the scheme of things, you knowing what the
18 normal flu feels like, was this less intense, more intense;
19 where did it fall in the spectrum?

20 A It was as intense, I would say, as having the
21 flu. It was --

22 Q So you felt like you had the flu for six months
23 during this treatment?

24 A Yes. Correct.

25 Q You get to the end of the six month period of

1 treatment and you don't respond?

2 A More blood work was taken and there were no
3 signs of improvement.

4 Q So at that point, that had happened in the past
5 though, before you were referred for the colonoscopy?

6 A That's correct. That is when I was seeing
7 Dr. Vizari.

8 Q Now, you get referred by Carrol to have the
9 colonoscopy done. I understand -- do you remember the date
10 that this occurred?

11 A The date that we planned the colonoscopy? It
12 was my prior visit to see him, and --

13 Q Actually, I meant the date that it actually
14 occurred, the procedure itself.

15 A Yeah. It was in September, but if I can refer
16 to my notes, I have it written down. I'm not --

17 Q Please do. Anything you need to refresh your
18 memory, if that will help you, go ahead and look at it.

19 MS. STANISH: Your Honor, may we look at those notes
20 for a moment?

21 THE COURT: All right. Just to see what he's
22 looking at.

23 MS. STANISH: Yes, please.

24 THE COURT: That's fine. You can approach.

25 MS. STANISH: Thank you. Not that I don't understand

1 the need to refresh memory. I just want to see what you got
2 there.

3 THE COURT: Sir, the defense attorneys are just going
4 to kind of take a peek there --

5 THE WITNESS: Sure.

6 THE COURT: -- over your shoulder, just so they can
7 see what you're looking at.

8 THE WITNESS: It's the grand jury testimony.

9 THE COURT: Okay. So you're just looking, for the
10 record, at your grand jury testimony --

11 THE WITNESS: That's correct.

12 THE COURT: -- to refresh your memory?

13 THE WITNESS: Yeah.

14 THE COURT: Okay.

15 THE WITNESS: All right. I was looking for that
16 date.

17 MS. STANISH: Do you have any other notes here?

18 THE WITNESS: These are invoices. This is a copy of
19 something that I just kept in that folder.

20 MS. STANISH: Sure.

21 THE WITNESS: And this was a voluntary statement I'd
22 given to Dr. Bob Whitely.

23 MS. STANISH: All righty. Thank you.

24 BY MR. STAUDAHER:

25 Q Did that refresh your memory?

1 A Yes, it did, and I lost the page. September
2 21st of 2007.

3 Q So on that date you're scheduled to have a
4 procedure done. About what time do you arrive at the clinic
5 in the morning?

6 A It was early. It was approximately 7:00
7 o'clock, between 7:00, maybe 7:15.

8 Q So when you arrived there, were there many
9 patients there at that point? That's the first part of the
10 day.

11 A No. There were very few.

12 Q Are you with anybody when you go to the clinic?

13 A My wife came with me.

14 Q What happens to you once you get inside?

15 A We go to the desk outside and start filling out
16 some paperwork. We -- my wife had filled the paperwork out
17 for me, she usually does. And we go back to the front desk
18 receptionist person, and they just said, Sit down and wait a
19 little bit and we'll call you back to get the procedure
20 started.

21 Q What was your -- did you have insurance at the
22 time?

23 A Yes, I did.

24 Q What was the insurance carrier that you had?

25 A Blue Cross Blue Shield.

1 Q Were there any copays or anything that you had
2 to pay to go and have the procedure done that day, if you
3 recall?

4 A Yeah. On the invoice, I have two invoices from
5 there. The Endoscopy Center showed a copay of \$100, and the
6 anesthesia showed a copay of 61.28.

7 Q So that's what you had to pay right then that
8 day, a copay?

9 A Yes.

10 Q Okay. So you fill out the paperwork, you pay
11 your copay, then you go sit down?

12 A Correct.

13 Q What happens next?

14 A Shortly we were called to come to the back to
15 get ready for the procedure.

16 Q Now, prior to being called back, when you filled
17 out that paperwork, did you see -- did you fill out anything
18 that indicated that again, that you had hepatitis C, anything
19 like that at that point?

20 A I don't remember if it was specifically asked on
21 that form.

22 Q Later on, do you mention that or talk to
23 somebody else about that later on?

24 A When I was discussing, when the nurse back there
25 was preparing me, she asked several questions, am I allergic

1 to anything. She took, I believe, my blood pressure. I did
2 tell her that I had hepatitis C.

3 Q So even on that day, not just that Carrol knew,
4 but the staff that you were working with, you informed them
5 that you were hepatitis C positive?

6 A Yes.

7 Q When you told that to the nurse, I mean, did she
8 make any kind of a reaction or did -- was it just something
9 that she kind of noted?

10 A None that I -- none that I could recognize. I
11 didn't see any kind of reaction.

12 Q She didn't say, oh, my God, or anything like
13 that?

14 A I tell everyone for every medical procedure that
15 I go to that I have hep C. I...

16 Q Let me ask you, what is the reason why you
17 disclose this to healthcare professionals when you go in?

18 A I don't want anybody contracting it from me. If
19 it's a procedure -- I mean, even my dentist, you know, if
20 there's blood involved, whether it be a blood test, blood work
21 where they can contract it, I want them to know that so that
22 they take the necessary precautions.

23 Q So is it fair to say that that's something that
24 you go out of your way to make sure everybody knows so they
25 don't --

1 A Yes, I do.

2 Q -- so they don't get injured?

3 A Yes, I do, absolutely.

4 Q Now back to where you were in front of the
5 nurse. You've gone -- you've been taken back. Does your wife
6 accompany you at this point, or are you --

7 A Yes. My wife was back there with me.

8 Q So you changed into some other kind of attire?

9 A Yes. They gave me a gown. There was a bathroom
10 type room where I would change in, got into the gown, and gave
11 my clothes, I believe I just put them in a bag and gave them
12 to my wife when I got out. Came back out to the room where I
13 was being prepped with the gown on.

14 Q Now, this nurse that you talked to, male or
15 female?

16 A Female.

17 Q Was she the only person you talked to before you
18 actually went back to the procedure room?

19 A The anesthesiologist came in for a brief period,
20 asked me if I was allergic to anything, spent maybe a minute
21 or two with me, had a few questions.

22 Q Did you mention to him that you were also hep C,
23 since he was the anesthesia person?

24 A Not a hundred percent sure, but I -- I would
25 tend to think I tell everybody that's involved with any kind

1 of medical procedures that --

2 Q Is that your custom and practice --

3 A Yeah.

4 Q -- to do that with everybody you deal with --

5 A Yes.

6 Q -- in the medical side of things?

7 A Yes.

8 Q And we know you did it for sure on that morning
9 back in that prep room area.

10 A Yes, I did.

11 Q So once he comes out and talks to you for this
12 brief time, is he just asking you general questions about your
13 health again, or what?

14 A Yes. No, they were just general questions.

15 Q And did he fill out anything as he was talking
16 to you, write any kind of things down, any notations, anything
17 like that?

18 A I don't recall. I know the nurse was taking
19 some sort of notes, and I don't recall if he had the clipboard
20 also. I don't remember that he did.

21 Q At some point does he -- I mean, does he stay
22 with you, does he leave, what happens?

23 A He leaves and he says, In a little while we're
24 going to call you back there and we'll get started.

25 Q So what did you do then?

1 A Just waited in the room. They put an IV in to,
2 I guess that's where they hook you up to the anesthesia when
3 you get in the room. So they put an IV in --

4 Q Where did they put that --

5 A -- the nurse did.

6 Q Where did they put that in?

7 A I believe it was in the forearm.

8 Q So you're mentioning kind of on the -- for the
9 record, on kind of the top of your arm --

10 A Yeah. I'm pretty sure that's where it went.

11 Q -- midway down?

12 A Yeah.

13 Q And the arm you're referring to is your left
14 arm?

15 A That's correct.

16 Q The device that they used to poke into the vein,
17 was that something that was left in place, or did they just
18 stick you in the vein?

19 A No. It was left -- it was taped on. It was --
20 the needle was inserted and then it was taped on and, I guess,
21 I don't know what that particular thing is called, but it's
22 a -- it's where they put the IV in when you get into the
23 surgical room.

24 Q Have you ever heard the term heplock, or heparin
25 lock?

1 A I've heard it from you when we discussed, you
2 know -- so that's the first time I heard of a heplock --

3 Q You know it was something that you --

4 A -- it being referred to as a heplock.

5 Q Okay. But it was -- but if I say the word
6 heplock, you're -- that's what I'm referring to and you -- so
7 you know that we're on the same thing.

8 A Okay. Yes.

9 Q Okay. So even though you don't know the name of
10 it, it was some device that they used to poke a needle into
11 and do whatever; is that right?

12 A That is correct.

13 Q So you have that inserted, and who put that in?

14 A The nurse did.

15 Q And you say nurse. Is it the female nurse, not
16 the anesthesia person?

17 A That is correct.

18 Q Female nurse puts this in. Now, did you watch
19 her do this? Were you paying attention to it?

20 A I never look directly at them when they're
21 putting it in, and then once it's in, I turned my head and
22 looked.

23 Q Okay. So you turn your head after it's stuck
24 in. I know how that is.

25 A Yeah.

1 Q But once you turn back and look at it, did you
2 ever see that person pick up a syringe of anything and put it
3 in there and inject it with anything?

4 A No, I did not.

5 Q So they put it in, tape it down and that's about
6 it?

7 A That is correct.

8 Q So you go then from there where?

9 A The next would be into the, I guess you call it
10 the operating room where the procedure was done.

11 Q And when you went in the room, do you remember
12 who was in that room when you got in there?

13 A Dr. Carrol was in there, the anesthesiologist,
14 and I don't know if it was one or two other assistant type
15 people that were in there.

16 Q So the same person, the anesthesia person that
17 came out and talked to you is the same person that was in the
18 room when you went back, or was it --

19 A That is correct. Yes.

20 Q -- a different one?

21 Same person?

22 A Same person.

23 Q So you get back into the room. Do you remember
24 how they positioned you, where you were, that kind of thing?

25 A Laying on a table. Dr. Carrol says, Are you

1 ready? I said, Yep, let's fire away.

2 Q Did the anesthesia person say anything to you
3 after you got in the room?

4 A Other than he was letting me know when he was
5 going to -- when he inserted the -- when he started to insert
6 the anesthesia, I think he told me to count back from ten, and
7 I think I got to seven before I guess I passed out.

8 Q Did you see him put that syringe or needle or
9 whatever it was into there to give you the anesthesia?

10 A Yes.

11 Q Okay. Before that happened, before he actually
12 put the syringe in with the medicine to put you to sleep and
13 had you count, at any time prior to that, did anybody stick
14 that what I'm calling the heplock, the device on that IV thing
15 that you were talking about, did anybody stick that with
16 anything and inject you with anything?

17 A No.

18 Q So the first time that gets accessed and
19 injected with anything is the anesthesia person back in the
20 anesthesia room right before you go to sleep?

21 A That is correct.

22 Q Now, I assume you went to sleep; is that fair?

23 A Yeah.

24 Q When you wake up, because obviously you're here
25 today, you woke up, right?

1 A [No audible response.]

2 Q When you wake up, where are you?

3 A In a recovery room. In a recovery room. It
4 must have been a separate room. Groggy. Then I remember
5 being wheeled back out to the initial room that I -- when I
6 came in to get prepped in, and that's where my wife and we
7 waited a little while for me to shake the grogginess so we can
8 get over the anesthesia.

9 Q Were you still on a table, on a bed?

10 A No. I was on a bed.

11 Q So when you wake up you're on a bed in a room
12 near the place you had the procedure done?

13 A [No audible response.]

14 Q Your wife comes out?

15 A Yes.

16 Q And she's with you?

17 A Correct.

18 Q Was there anybody else taking care of you at
19 that time, or kind of watching over you?

20 A I believe the nurse. Dr. Carrol did stop by
21 afterwards and spent a couple minutes, told me that he found a
22 polyp, a polyp or two, and he snipped them. He was going to
23 send them to a laboratory for testing, that everything went
24 well and that was about it.

25 Q Now, the nurse that you're talking about that

1 was, and I'm going to call it in the recovery area because
2 it's the last place you went after the procedure, correct?

3 A Yes.

4 Q In the recovery area, the nurse that came out
5 and dealt with you there that kind of was with your wife, was
6 that the same nurse that you had dealt with in the preop area
7 before you went back to the room?

8 A Yes, it was the same person.

9 Q So the same person before and the same person
10 after?

11 A Yes.

12 Q The anesthesia person that you mentioned that
13 did the procedure on you in the procedure room, did that
14 person ever come out during the time you were there and talk
15 to you, do anything?

16 A No, not after the initial contact prior to the
17 procedure.

18 Q So saw him before and obviously in the room, but
19 not afterward?

20 A Correct.

21 Q Did you at any time see that person again before
22 you left the facility that day?

23 A No.

24 Q After Dr. Carrol stops by and tells you about
25 the polyp, how long are you in the facility before you leave?

1 A A relatively short time. I didn't have too much
2 of a conception of time. I was woozy.

3 Q To the best of your estimate. Okay. If you
4 know.

5 A I want to say maybe 40 minutes, 45 minutes or
6 so. I was discussing that with my wife and she, you know,
7 just from a time frame, we must have gotten home by about
8 10:00 o'clock, 9:30, 10:00 o'clock, so I couldn't have been
9 there, back that long. I was still pretty woozy when I left,
10 then the drive home, so. The initial question was how long
11 was I in the recovery?

12 Q Yes. After you got -- when you woke up about
13 how long, to the best of your recollection, if you can answer
14 that.

15 A I want to say about a half an hour to 45
16 minutes.

17 Q So it took awhile for you to wake up and get
18 stable?

19 A Yeah. Yeah, be able to stand up and walk.

20 Q Now, after you left the facility that day -- I
21 mean, you're here today, correct?

22 A Yes.

23 Q How -- did anybody contact you about any problem
24 that may have arisen related to your endoscopy that you did,
25 and whether it was a professional entity, meaning police or

1 the health district or anybody, did anybody contact you after
2 that?

3 A Yes, later on. And again, I don't have that
4 time frame.

5 Q That's fine. But did somebody contact you and
6 talk to you about what had happened at the clinic that day?

7 A Yes. I did do an interview with Metro --

8 Q With the police?

9 A -- in April. I have it dated as April 22, 2008.

10 Q Okay. Now I want to step over to the insurance.
11 I know we touched on that just a moment ago, but I want to ask
12 you a few questions about your insurance. We talked about the
13 copays. But did you, in the course of -- I mean, with this
14 insurance company, because this was Blue Cross, correct?

15 A Correct.

16 Q Was it Anthem Blue Cross?

17 A It says here Blue Cross Blue Shield of Georgia.
18 It's through my --

19 Q So you have some actual records up there
20 related to --

21 A Yes. These are the documents, the copies of the
22 documents that they send to you. It's called an explanation
23 of benefits.

24 MR. STAUDAHNER: May I approach, Your Honor?

25 THE COURT: You may.

1 MR. STAUDAHER: And this has been previously shown to
2 counsel.

3 BY MR. STAUDAHER:

4 Q I want to show you a portion of State's Proposed
5 59, and ask you to look at a couple of things to see if these
6 are -- I know these are a smaller version of that and I'll
7 blow them up in a minute. But does this look familiar to you
8 or not?

9 A Health insurance [inaudible].

10 Q You may not have seen this one?

11 A No, I did not see that.

12 Q Okay. The next portion you may or may not have
13 seen -- I'm just trying to find out what you actually have or
14 have seen. Does this look familiar to you, where it says
15 anesthesia and billing charges and things like that?

16 A No.

17 Q What about the next page, which would be 487?

18 And these are all marked GJ Desai, and then a number.

19 What about the next one, which is 488?

20 A No.

21 Q 489?

22 A No.

23 Q 490?

24 A No.

25 Q And 91?

1 A No.

2 Q Now, when we get to this form here, which is
3 actually 492, do you see it has your name here?

4 A Correct.

5 Q And at least the -- it looks like there's a
6 person, a provider by the name of Keith Mathahs. Do you see
7 that?

8 A Yes, I do.

9 Q Okay. The date of service is 9/21 of 2007?

10 A Yes.

11 Q And does this appear to be an insurance form
12 that you would have received at one point related to your
13 endoscopy procedure?

14 A Yes, it does.

15 Q Okay. And I think that's the only one we have
16 for you. But you have a couple of others as well with you
17 that show things like [inaudible].

18 A These are explanation of benefits from Blue
19 Cross Blue Shield.

20 Q Indications that you actually had a procedure
21 and the insurance company paid on that procedure?

22 A I'm sorry. I didn't hear.

23 Q Is your -- the paperwork, the things that you
24 received, is there an indication that your insurance company
25 was billed, charged and paid for that procedure?

1 A Yes.

2 Q According to your records, do you know what the
3 charges were for the procedures? And I believe there were a
4 couple different charges. There may be -- you may see a
5 facility charge, a doctor charge and an anesthesia charge. Do
6 you see those?

7 A Yes, I do. Amount charged, provider amount
8 allowed, and then provider responsibility, and then
9 co-insurance and copay.

10 Q Did you have any other insurance beside the Blue
11 Cross Blue Shield?

12 A No, I did not.

13 Q So what did they pay on the facility charge?

14 A The amount allowed on the -- I think this is the
15 anesthesiology one. Yes, it is. The amount allowed was
16 \$306.40.

17 Q What was charged?

18 A The amount charged was \$560.

19 MR. STAUDAHER: Your Honor, I'm going to move for
20 admission of State's Proposed 59 of the page specifically that
21 he referenced, which was 492.

22 MS. STANISH: No objection.

23 THE COURT: All right. So you're just moving for the
24 one page, or the whole --

25 MR. STAUDAHER: That's correct. This is going to

1 come in through another witness, but I wanted to publish this
2 particular page.

3 THE COURT: Okay. All right.

4 MR. STAUDAHER: I didn't hear from Mr. Santacroce.

5 MR. SANTACROCE: I have no objection.

6 THE COURT: All right. You may publish that page.

7 MR. STAUDAHER: Thank you, Your Honor.

8 THE CLERK: Is that page 142?

9 MR. STAUDAHER: This is 192.

10 THE CLERK: Oh, I'm sorry.

11 (State's Exhibit 59, page 492 admitted.)

12 BY MR. STAUDAHER:

13 Q So on this record, do you see up here that it
14 says Anthem Blue Cross Blue Shield, up here in the --

15 A Yeah.

16 Q What you're going to look at is --

17 THE COURT: And you can look on your monitor, sir,
18 right there, if that's easier for you.

19 THE WITNESS: Oh.

20 MR. STAUDAHER: And if for some reason you want to
21 write on this, you just take your fingernail and draw on it,
22 and you can just tap it down to make it go away.

23 THE WITNESS: Okay.

24 BY MR. STAUDAHER:

25 Q Okay. Now, as far as this one here, and I'm

1 referring -- I'm going to zoom in on this a bit so that we can
2 move around on the documents. Do you see the first part up in
3 the upper right-hand corner, it says, "Anthem Blue Cross Blue
4 Shield"?

5 A Yes.

6 Q And it's -- it says, "Attention billing," and
7 it's talking about over here Keith Mathahs. Do you see that?

8 A Yes.

9 Q 700 Shadow Lane?

10 A Correct.

11 Q And then over here, your name?

12 A Yes.

13 Q And then the actual date of service, which is
14 right here?

15 A Correct.

16 Q And then the charges which mirror the charges
17 you just referred to, we go along this whole line here. And
18 let me zoom in on that one more time. Maybe twice more.
19 Start over here where it says, "Date of service, 9/21 of
20 2007."

21 A Yes.

22 Q Now, there's a procedure code here that says
23 810. Do you see that?

24 A Yeah. I see that.

25 Q If we move across, it says, "Total charges,

1 \$560"?

2 A That is correct.

3 Q Amount allowed, \$306.

4 A Correct.

5 Q And if we move across, keep going, there's a
6 portion here that said, "Other insurance." You didn't have
7 any, you said.

8 A That is correct.

9 Q And then it says the provider's liability,
10 this 253.60, do you see that?

11 A Yes.

12 Q Do you know what that is? Was that something
13 that you ended up having to pay or not, or do you recall?

14 A I do not recall.

15 Q Okay. And then it says, "Subscriber's
16 liability," which would have been you, it would have been \$41
17 and --

18 A And 61, is that?

19 Q Forty-one -- actually it says, I think, 61.28,
20 when I look at this.

21 A Yes. Yes.

22 Q Okay. If we -- sorry. It's a little bit
23 whitening out there. I'll try and get that so it doesn't do it.
24 This says approved payment amount is 245.12. Do you see that
25 for that particular line?

1 A Right.

2 Q Okay. So in this particular case, the amount
3 allowed for the charges was 306, back here.

4 A Yes.

5 Q And that corresponds with the paperwork that you
6 have?

7 A Yes, it does.

8 Q Do you remember if you got a secondary bill from
9 the Endoscopy Center?

10 A I don't believe I did.

11 Q So your insurance paid it and you don't know
12 that you paid any additional beyond your copay; is that fair?

13 A That is correct, yeah.

14 Q Now, almost done with you. One last thing. I
15 want to go back to the issue of you were talking to your
16 healthcare providers in advance, giving them notice that you
17 are a hepatitis C positive patient. I think you told us that
18 that was because you didn't want anybody to get infected.

19 A Yes.

20 Q Did you subsequently learn, in the process of
21 coming in before the police or testifying before the grand
22 jury, that certain persons were actually infected in this
23 case, and that you were attributed to be the source patient
24 for that, those infections?

25 A Did -- when did I --

1 Q No, no. Let me -- a bad question.

2 A I'm sorry.

3 Q Did you become aware at some point that certain
4 persons had become infected with the hepatitis C virus, and
5 you were the person that was, at least the records --

6 MR. WRIGHT: Can we approach the bench?

7 THE COURT: Yes, sir.

8 BY MR. STAUDAHER:

9 Q -- in indication showed was a hepatitis -- was
10 the source patient?

11 A Yes.

12 THE COURT: Mr. Staudaher, wait a minute.
13 Mr. Wright's making an objection.

14 (Off-record bench conference.)

15 MR. STAUDAHER: I'm going to rephrase the question.

16 THE COURT: All right.

17 BY MR. STAUDAHER:

18 Q After -- after you got involved with the police,
19 and did the health district also get involved with you at some
20 point?

21 A Yes.

22 Q Were you required to go down and give a blood
23 sample to the -- or not required, but did you -- did they ask
24 you to come down and give a blood sample?

25 A Yes, they did.

1 Q So you provided that --

2 A Yes, I did.

3 Q -- for the investigation in this case. And I'm
4 not talking about just the police investigation. I'm talking
5 about the health district investigation.

6 A Yes, I did.

7 Q So you -- and tell me, if you would, how that
8 was and where did you go down to have this done, who did it.

9 A I believe it was on Shadow Lane too, the
10 headquarters for the health district, in the -- went down
11 there, got -- had the blood work done. That was it.

12 Q So you actually went to the health district
13 and --

14 A Yeah, I went there --

15 Q -- had blood drawn?

16 A -- to them, and then --

17 Q And you knew that that's what -- that what we're
18 here for is what that was about?

19 A Yes.

20 MR. STAUDAHNER: I have nothing further.

21 THE COURT: All right. Thank you. Cross.

22 Mr. Santacroce.

23 CROSS-EXAMINATION

24 BY MR. SANTACROCE:

25 Q Good afternoon, Mr. Rubino.

1 A Good afternoon.

2 Q Mr. Rubino, on September 21st of 2007, you went
3 to the Endoscopy Center for a colonoscopy; is that correct?

4 A That is correct.

5 Q What time did you arrive at the clinic?

6 A Approximately between 7:00 and 7:30.

7 Q And after you had filled out the paperwork that
8 you had to fill out, you waited until a nurse came back and
9 got you; is that correct?

10 A That is correct.

11 Q And the nurse comes back to get you and it's a
12 female nurse, correct?

13 A That's correct.

14 Q And where did she take you?

15 A To an area to get me prepared for the
16 colonoscopy.

17 Q And can you describe that area? How many beds
18 were in that area?

19 A I couldn't tell you off the top of my head.
20 Maybe two or three.

21 Q There was more than one, correct?

22 A Yeah.

23 Q Were you the only person in that area, or were
24 there others?

25 A I believe I was the only one at that time.

1 Q Did others come in while you had been there?

2 A Not that I noticed. They could have, but I
3 wasn't -- I was more worried about what was going to go on
4 with me than the activity around me.

5 Q Were there any curtains separating the beds?

6 A There were curtains, yes.

7 Q Was your curtain closed?

8 A Not all the time.

9 Q Now, tell me what this female nurse does in that
10 particular room.

11 A She had some paperwork for me to -- she was
12 filling out some paperwork, asking me some questions. She
13 took blood pressure, temperature, and she also put the, as was
14 referred to as the heplock, inserted that. Pretty much that's
15 what she did.

16 Q And isn't it true that she started an IV on you?

17 A She started an IV?

18 Q Yeah.

19 A She inserted the heplock and it was taped up.
20 There was nothing else that was hooked up to.

21 Q Do you know what an IV is?

22 A Something that you take intravenously.

23 Q So something that's connected to something and
24 fluid drips in --

25 A Correct.

1 Q -- is that your understanding of an IV?
2 A Correct.
3 Q And when you use that term, IV, that's what
4 you're referring to?
5 A [No audible response.]
6 Q Is that a yes?
7 A Yes.
8 Q Have you discussed your testimony with anybody
9 prior to coming here today?
10 A Other than my wife, no.
11 Q Do you remember giving an interview to the
12 metropolitan police department regarding this case?
13 A Yes.
14 Q Do you remember telling them -- and I believe
15 you have a copy of it; isn't that correct?
16 A Yes.
17 Q If you look at the page, the top of page 7, do
18 you have that?
19 A Yes, I do.
20 Q Those initials next to that, KR, is that you,
21 Kenneth Rubino?
22 A There's nothing on this that's initialed. Oh,
23 those initials. Yes. I'm sorry.
24 Q Okay. It says -- this is your answer to
25 question --

1 MR. STAUDAHER: Objection, Your Honor. That's not
2 the appropriate way to handle these kinds of questions.

3 THE COURT: All right. That's sustained.

4 BY MR. SANTACROCE:

5 Q Do you want to take a look at that, Mr. -- did
6 you ever tell the metropolitan police department that they
7 give you an IV?

8 A I don't remember specifically, unless I was
9 referring to the heplock being inserted.

10 Q You didn't say heplock there, did you?

11 A I'm not familiar -- I wasn't familiar with that
12 term. I just considered anything stuck in my arm as an IV.

13 Q Well, you just told me what you considered as an
14 IV about a minute ago. That included something, a bag with
15 fluid dripping into the needle; isn't that what you told me a
16 few minutes ago?

17 A Yes.

18 Q And further down there, did you ever tell
19 metropolitan police department that you were sitting in a bed
20 with an IV?

21 A Is that still -- oh, it's on page 7, you said?

22 Q The bottom of that paragraph.

23 A Okay. What I was referring to when I was using
24 the term IV in this instance was the fact that they -- the --
25 what is now known to me as a heplock, not a bag with anything

1 dripping or anything like that into it. But I just --

2 Q So it's your testimony that your idea of an IV
3 was different when you gave this statement to --

4 MR. STAUDAHER: Objection, Your Honor. He's
5 explained what he meant. That's argumentative at this point.

6 THE COURT: Well, no. He can ask the question.

7 BY MR. SANTACROCE:

8 Q Was your understanding of an IV different when
9 you gave that statement to the metropolitan police department
10 as it is today that you just described?

11 A Yes, it is.

12 Q Now, you testified that -- your words, I
13 believe, as I recollect, was that an anesthesiologist came
14 into the room and asked you some questions?

15 A That's correct.

16 Q And you described that person as a male
17 individual?

18 A That's correct.

19 Q Different than the person that had started the
20 IV, or heplock or however you want to describe it today?

21 A Yes. He was introduced as the anesthesiologist.

22 Q And that anesthesiologist was not this gentleman
23 right here, was it?

24 Stand up, please.

25 A To be honest with you, I would not remember his

1 face.

2 Q Okay. Well, Mr. Staudaher went over the records
3 with you, and that record indicated that your, quote,
4 anesthesiologist was a person by the name of Keith Mathahs.
5 Would you have any reason to doubt that was correct?

6 A No. I have no reason to doubt it.

7 Q And do you remember -- well, clearly you
8 remember who your doctor was. It was Clifford Carrol,
9 correct?

10 A That is correct.

11 Q And Clifford Carrol performed the procedure on
12 you on September 21st of 2007; isn't that correct?

13 A Yes, he did.

14 Q Now, after you left the procedure room -- well,
15 strike that.

16 I believe you testified that when you were given the
17 anesthesia, they told you to count back from ten to one, and
18 you got to seven. So about three seconds and you were out,
19 correct?

20 A That is correct.

21 Q And when you woke up, you woke up on a bed in a
22 recovery room, or in the procedure room?

23 A I believe it was on a bed in the recovery room.

24 Q But it was a different room than the procedure
25 had been performed in, correct?

1 A Yes.

2 Q And it was a different room where the IV or
3 heplock had been started, correct?

4 A Yes.

5 Q And how long were you in that room?

6 A A relatively short period of time that I can
7 remember. Again, I was woozy from the anesthesia, so I
8 couldn't give you a definitive amount of minutes, whether it
9 be 10, 15, 5. I'm not really sure how long I spent in there
10 until I was wheeled out. It might have -- my perception of
11 time just coming out of anesthesia is a little hazy.

12 Q So you can't tell me if it was 15 minutes or an
13 hour or a half-hour?

14 A Well, it wouldn't -- it definitely wasn't an
15 hour or a half an hour, because it wasn't in the -- the whole
16 procedure from soup to nuts didn't take that long.

17 Q Do you remember in that same interview with the
18 metropolitan police department that you told the investigator
19 that you couldn't tell if it was 15 minutes or if it was an
20 hour or a half an hour? Do you remember telling the
21 investigator that?

22 A If I would be able to see what page you're
23 looking at, I can verify that or not.

24 Q Try page 7.

25 A Yeah. I couldn't tell you if it was 15 minutes

1 or an hour or a half an hour. I just remember being in there
2 for a little while.

3 Q So today, as you sit here today some 5 1/2 years
4 later, is it your testimony that it only -- you were only in
5 there for a few minutes?

6 MR. STAUDAHER: Objection. Asked and answered, Your
7 Honor.

8 THE COURT: Overruled. He can answer the question.

9 THE WITNESS: My testimony was in there, yeah, that I
10 was in there for a relatively short period of time.

11 BY MR. SANTACROCE:

12 Q I want to just go back to the -- backtrack a
13 little bit, and I apologize for this, but in the room, the
14 prep room where you received the heparin or IV, you said you
15 had turned your head away when it was put in?

16 A When the initial put the needle in, yes, until
17 the pinch is done.

18 MR. SANTACROCE: I have no further questions. Thank
19 you.

20 THE COURT: Thank you. Ms. Stanish.

21 CROSS-EXAMINATION

22 BY MS. STANISH:

23 Q Good afternoon, Mr. Rubino.

24 A Afternoon.

25 Q I just want to -- I always do that. This

1 thing's tricky.

2 I just want to first start by clarifying a few
3 timelines with you, okay?

4 A Okay.

5 Q I understand that you were first diagnosed with
6 hepatitis C back in the year 2000.

7 A That is correct.

8 Q And was it around that time that you tried that
9 medicine regimen that Mr. Staudaher discussed with you?

10 A I believe it was several years later, maybe two
11 or three years later that I --

12 Q That's what I was going to ask you to clarify.

13 A Yeah.

14 Q Several years is two or three years; is that
15 what you're saying?

16 A Yeah.

17 Q So around the year 2000, 2003 perhaps you tried
18 this medicine regimen and it didn't work for you?

19 A Correct. And all those medical records of --
20 that were in my medical -- my folder that Dr. Vizari gave to
21 Dr. Carrol when I transferred, he transferred me as a patient,
22 so to speak. So those dates would be exactly in there about
23 when that --

24 Q I'm not going to fuss with you on dates.

25 A Okay.

1 Q I'm with you. Time frame. What I wanted to
2 understand is after you had that regimen of trying the
3 medication, you decided you didn't want to try further
4 medicine regimens; is that correct?

5 A Correct. Unless there was a new, a new
6 medicine, a new more improved version of that medicine that
7 would give me an opportunity to fight this disease.

8 Q And are you -- by the way, are you fighting this
9 disease with alternative medicine technique?

10 A The only -- I use an herb called milk thistle,
11 and that's the only thing that I take for the hepatitis C
12 right now.

13 Q And as well --

14 A I do have a new doctor that I'm seeing, and he's
15 saying that there's a possibility of something down the road
16 exciting going on with that, so.

17 Q That was actually going to be my next question,
18 sir. After you stopped seeing Dr. Carrol, who did you go to
19 for your GI care?

20 A My internal medical doctor, Dr. Panikkar, had
21 referred me to a doctor that I saw once and he left town. He
22 moved his practice. So for a while I hadn't seen anybody.
23 And then she then referred me to the doctor that I'm using
24 now.

25 Q And who is that?

1 A Dr. Nemec.

2 Q And it's your understanding that there's new
3 medication that's going to become available to you?

4 A Next year.

5 Q And you had -- so you saw Dr. Carrol from the
6 year about 2002, '3 --

7 A Maybe, '3, '4.

8 Q -- up to 2007, when you had --

9 A Whenever Dr. Vizari left and then up to 2007, up
10 until the time I had the colonoscopy.

11 Q And you were seeing him on a periodic basis for
12 the hepatitis C monitoring; is that correct?

13 A That is correct.

14 Q And only one time did you have a colonoscopy,
15 and that was on that September 21, 2007 day that we were
16 discussing, right?

17 A That is correct.

18 Q Never had a colonoscopy before?

19 A I did have a colonoscopy before. I don't
20 remember -- I've had many medical procedures. I've had
21 several lithotripsies. I did have a colonoscopy before. This
22 was the second time, but I think it was either three or four
23 years prior that I had the first -- I don't remember which
24 doctor I did it with.

25 Q That's okay. That's all right. I just wanted

1 to understand how familiar you may have been with the
2 colonoscopy procedure, because it -- and so let me move now to
3 your contact with law enforcement in this case. We've already
4 discussed that a bit.

5 The -- after you had your colonoscopy, the first
6 contact was with Las Vegas Metropolitan Police, or was it with
7 someone from the health district?

8 A The health district had contacted me. And I'm
9 not sure which came first, the health district and/or the
10 detective that called me.

11 Q Maybe just to help you with the time frame, as
12 you pointed out, the date of your interview with Detective
13 Whitely was April 22, 2008, correct?

14 A That is correct.

15 Q And do you -- I thought I understood you to
16 say --

17 A I would say that the health department contacted
18 me before that.

19 Q Are you -- do you know, or you're not sure?

20 A I'm not -- I'm not a hundred percent sure.

21 Q Well, would this help you? Because I thought I
22 understood you to say, sir, that you had to get blood -- give
23 blood, or give a sample of blood to the health district?

24 A That's correct.

25 Q All right. And so when you were contacted by

1 the health district, did they send you a letter or phone you?

2 A I believe they -- it was a telephone call. I
3 don't remember receiving any correspondence in the mail. I
4 believe it was a telephone call, and I'm -- if I had to put a
5 percentage on, I'd say I'm 90 percent sure it was prior to my
6 interview with Las Vegas Metro.

7 Q And did you actually go to the health district
8 facility that's located on Shadow Lane, or very close there?

9 A Yes, I did.

10 Q And when you went there, did you just go see a
11 lab tech who drew blood from you?

12 A Yes, I did.

13 Q Did you speak with anybody there, give them --
14 were you interviewed? Did someone try to get information from
15 you?

16 A I don't remember the dialogue verbatim, but I
17 said the reason why I was there was because I do have hep C,
18 I'd been diagnosed with hep C, and -- and that's the reason.

19 Q To get tested. But was there -- were you
20 directed to come in and speak to anybody in particular there?

21 A No. I was not interviewed there.

22 Q So you just went to get the test there?

23 A Yes.

24 Q Some lab person stuck you again with a needle
25 and drew blood?

1 A Yes.

2 Q And did you only have -- did you only have to go
3 to the health district one time, or did you have to go another
4 time?

5 A It was just one time.

6 Q In preparation for -- well, let me ask you this:
7 When the police officer visited with you -- well, how did your
8 interview come about on April 22, 2008? Do you remember?
9 Were you called? Did someone come knocking on your door?

10 A It was a phone call from the detective, and he
11 said that he would like to interview me on the record to --
12 with regard to the colonoscopy and the hepatitis C, that whole
13 deal.

14 Q And --

15 A It wasn't his words exactly. Those are my
16 words.

17 Q Sure. That's okay. And that conversation was
18 tape recorded?

19 A Not at my end.

20 Q Oh, no, not you. But you have a transcript
21 that -- in front of you there, right?

22 A Yes.

23 Q Okay. So did Detective Whitely tape record the
24 conversation?

25 A Yes.

1 Q It wasn't like wearing anything secret. He just
2 had a tape recorder right there, correct?

3 A Correct.

4 Q And before he started the tape recording, was
5 there any discussion about the case or what occurred at the
6 clinic?

7 A No. He just said, "I'm going to ask you some
8 questions, and answer them as -- answer them honestly and to
9 the best of your recollection, and I'm going to record this."

10 Q All right. And after that interview -- and I'm
11 going to come back to this a little bit later. But after that
12 interview, do you remember whether or not you spoke to Metro
13 again?

14 A I don't remember if I had any other dialogue
15 with them with regard to that. As far as my memory serves me,
16 no.

17 Q All right. Were you ever interviewed -- other
18 than what you've described for us going to the health
19 district, were you ever interviewed by anyone from the
20 Southern Nevada Health District?

21 A No.

22 Q Were you ever interviewed by someone from CDC,
23 the Centers for Disease Control?

24 A No, I was not.

25 Q Never?

1 A No.

2 Q Now, you testified in front of the grand jury,
3 correct?

4 A Correct.

5 Q And that was on March 11, 2010, correct?

6 A Now I have to verify that, the dates.

7 Q Sure.

8 A I don't see the date on here.

9 MS. STANISH: Here. May I approach, Your Honor, just
10 to move it along?

11 THE COURT: You may.

12 MS. STANISH: [Indicating.]

13 THE WITNESS: Okay. Yes, that is correct.

14 BY MS. STANISH:

15 Q Before you went into the grand jury room and
16 gave your testimony, did you do anything to prepare for your
17 testimony?

18 A Other than mentally go over everything that
19 happened in my mind, no.

20 Q Did you speak to a prosecutor or to detectives
21 before going into the grand jury?

22 A Other than them explaining to me what the
23 procedure is, that was the conversation, this is what happens
24 in a grand jury, I ask you questions, you answer them honestly
25 and...

1 Q Did you review -- did they review with you your
2 medical records before you went in to the grand jury?

3 A I don't have any recollection of going over
4 anything like that prior to.

5 Q Now, let me just go back and hit a few more
6 points on the procedure day, if you'd go back to me -- to
7 September 21st of '07. I understand it that the times are not
8 clear to you, and am I right to say your -- do you have
9 difficulty remembering dates and time like most human beings?

10 A Yes, I do.

11 Q And you basically -- is it a fair statement that
12 when you first interviewed with Metro, there was a great focus
13 on trying to establish when you got to the clinic and when you
14 left?

15 A Yes.

16 Q And did you eventually figure it out with the
17 assistance of your wife that you probably left the clinic at
18 about what time?

19 A I'm thinking it was approximately 9:30, 10:00.

20 Q And you are -- you're taken to the prep room and
21 a nurse interviews you, correct?

22 A Yes.

23 Q And then a -- the anesthesiologist, or what I'm
24 going to refer to as a CRNA, interviews you?

25 A Yes.

1 Q And there was -- do you remember how long the
2 anesthesiologist, the CRNA spoke with you?

3 A It was fairly brief. It was maybe five minutes.

4 Q Would you -- do you have your grand jury
5 testimony in front of you there?

6 A Yes, I do.

7 Q Do you see how -- the little numbers at the top?
8 Would you just take a look at, find --

9 MS. STANISH: How about I approach, Your Honor,
10 just to --

11 THE COURT: Mm-hmm.

12 MS. STANISH: May I? Thank you.

13 BY MS. STANISH:

14 Q Just so we're reading off the same page. It's
15 105, right there, 109. I'm going to refer to these numbers.
16 Okay?

17 A 109 and 110.

18 Q And if you would, just read to yourself this
19 portion [indicating]. I'm refreshing your memory.

20 A Okay.

21 Q And after reading that, sir, is the -- do you
22 recall your answer was that the -- or do you now recall that
23 you spoke with the CRNA, the anesthesiologist from five to ten
24 minutes?

25 A Yes.

1 Q And just to clarify for me, this insertion of
2 what now is known as the heplock, when did you learn that
3 term, heplock?

4 A Upon speaking to the district attorney's office.

5 Q Okay. When did you speak with the district
6 attorney about the term heplock?

7 A It was several weeks ago.

8 Q All right. In preparation for your testimony
9 today?

10 A That is correct.

11 Q All right.

12 A I don't remember the exact date.

13 Q Okay. Several weeks ago. And I'll come back to
14 that in a moment. When you were in the grand jury, at that
15 time did you know the term heplock? Was it explained to you
16 then?

17 A I believe he used the term heplock. He used the
18 term heplock and asked me a question. And my response is,
19 They left part of a needle -- again, I wasn't --

20 Q And if I could draw your attention to page 110,
21 right around line 4 or 5, if you would just read that to
22 yourself, please.

23 A Okay.

24 Q And then just to move this along, if you would
25 read to yourself the -- well, let me ask you this: They put

1 the heplock in and it looks like sometimes you refer to it as
2 an IV.

3 A Yes.

4 Q And when Mr. Staudaher is asking you questions,
5 he refers to it as what?

6 A As a heplock now, once he explained to me what
7 he meant and we understood that we were talking about the same
8 thing.

9 Q All right. Fair enough. And the nurse, the
10 female nurse puts in the heplock, correct?

11 A That is correct.

12 Q You don't look. You don't want to see it.

13 A I don't look when she insert -- the initial
14 insertion, but once she does, I'm fine.

15 Q And what is your recollection of what happened
16 once that heplock was inserted?

17 A It was taped so that it wouldn't move. That's
18 it.

19 Q Did you watch her put the tape on?

20 A Yeah.

21 Q And did -- was it flushed? Do you know what I
22 mean by that term?

23 A Was anything inserted into it, no.

24 Q Now, and you're certain of that as you sit here
25 now?

1 A Yes.

2 Q Take a look, if you would, please, on page 110.
3 Begin -- read to yourself beginning at line 23, and then read
4 down to line 25, which goes over to the next page.

5 A Okay.

6 Q And perhaps read the rest of page 111 to
7 yourself.

8 A Okay.

9 Q Is it a fair statement that when you were asked
10 these questions about what happened to the heplock, IV,
11 whatever we're going to call it, your response was that you
12 don't recall that anything was done with the heplock?

13 A Okay. That's the way it's stated on the papers,
14 so and I might have said -- I must have said that if that's
15 the way it's stated.

16 Q Well, in this --

17 A Not that I have -- I have no recollection of
18 anything like that.

19 Q Sure. I understand. That's why I'm having you
20 refresh your memory with the transcript. This testimony
21 occurred on March 11, 2010, correct?

22 A Correct.

23 Q And so this was pretty long after you had the
24 procedure on September 21, 2007; fair statement?

25 A Yes.

1 Q Fair statement that it was also pretty long
2 after you had your initial interview with the detective in
3 April of 2008?

4 A Yes.

5 Q And now you -- when you interviewed a few weeks
6 ago to prepare for your testimony, was there more discussion
7 about this heplock and having it flushed?

8 A Yes, there was.

9 Q Okay. I'm almost done. Bear with me. I just
10 want to check through these things.

11 I know you were woozy and still a little tired on
12 your way out of the clinic and it was a long time ago. But do
13 you recall going out of the clinic into the waiting room area?
14 If you recall.

15 A Not specifically, but I don't remember what the
16 exit pattern was there.

17 Q Did you have a choice as to what clinic you went
18 to? Or, you know, you went to Dr. Carrol. Did you go there
19 by choice? Did you have a choice of doctors with Blue Cross?

20 A I trusted Dr. Carrol in many --

21 Q Why is that?

22 A He had been easy to relate to and talk to about
23 the hepatitis and about treatments. When he suggested a
24 colonoscopy, you know, he said, You haven't had one in a
25 couple of years. I agreed. I didn't -- I didn't think or ask

1 if there were any other options or any other places to go to.
2 I just went with what I know.

3 Q And did -- am I to understand that Dr. Carroll
4 did in fact speak to you after your colonoscopy was done?

5 A Yes.

6 Q And he told you that he discovered a couple of
7 polyps?

8 A Yeah, that he snipped them --

9 Q He snipped them.

10 A -- and he sent them off and he thinks everything
11 will be fine. And I did have a follow-up visit with him
12 several weeks later, once the lab results came back in.

13 MS. STANISH: The Court's indulgence. Thank you.

14 (Pause in proceedings)

15 MS. STANISH: Nothing further. Thank you, sir.

16 THE COURT: Thank you. Redirect.

17 MR. STAUDAHER: Just a couple.

18 REDIRECT EXAMINATION

19 BY MR. STAUDAHER:

20 Q You just heard the whole discourse, you've read
21 some stuff up there about the statement about the injection of
22 anything after that, your term, IV was put in --

23 A That's correct.

24 Q -- remember that?

25 A Yeah.

1 Q And I went through the whole thing. I said,
2 Did -- when we got to the procedure room, you said that's the
3 first time you remember anybody ever sticking anything into it
4 and pushing any fluid into you; is that correct?

5 A That is correct.

6 Q So before that, even though you used, I don't
7 recall, you know, that ever happening, I mean, is it just that
8 you don't remember anything like that, any of the events, or
9 that the first time anybody ever put anything into your IV
10 site was when you were going to go to sleep?

11 A That is correct. There was nothing put into the
12 IV site other than when I got into the procedure room.

13 Q And the last question you were asked, you said
14 you trusted Dr. Carrol.

15 A Yes.

16 Q And he was your doctor and you believed in him?

17 A Yes.

18 Q You relied on him?

19 A Yes, I did.

20 Q Thank you.

21 MR. STAUDAHER: Nothing further.

22 THE COURT: Any recross?

23 RE CROSS-EXAMINATION

24 BY MR. SANTACROCE:

25 Q Mr. Rubino, despite your testimony here today,

1 despite your testimony or your interview with metropolitan
2 police department, your sworn testimony at the grand jury, is
3 your testimony today under oath that nothing was inserted into
4 that heplock prior to going into the -- the procedure room,
5 correct?

6 A Yes, it is.

7 Q Is that your testimony?

8 A Yes, it is, sir.

9 MR. SANTACROCE: Nothing further.

10 THE COURT: Mr. -- I'm sorry. Ms. Stanish.

11 MS. STANISH: Nothing further, Your Honor.

12 THE COURT: Anything else from the State?

13 MR. STAUDAHER: No, Your Honor.

14 THE COURT: Do we have any juror questions for this
15 witness? All right. Sir, thank you for your testimony.
16 Please don't discuss your testimony with anyone else who may
17 be called as a witness in this case.

18 THE WITNESS: Okay.

19 THE COURT: All right. Thank you, sir, and you are
20 excused.

21 All right. Ladies and gentlemen, I think we're going
22 to go ahead and take a brief recess for approximately ten
23 minutes.

24 Before I excuse you for the brief recess, I must
25 again admonish you that you're not to discuss the case or

1 anything relating to the case with each other or with anyone
2 else. You're not to read, watch or listen to any reports of
3 or commentaries on this case, any person or subject matter
4 relating to the case. You're not to do any independent
5 research by way of the Internet or any other medium, and you
6 are not to form or express an opinion on the case.

7 Once again, if you'd all please place your notepads
8 in your chairs and follow the bailiff through the rear door.

9 (Court recessed at 2:16 p.m. until 2:26 p.m.)

10 (Outside the presence of the jury.)

11 THE COURT: All right. We'll go on the record with
12 Ms. Killebrew's client. And who do we have?

13 MS. KILLEBREW: Good morning [sic], Your Honor. Nia
14 Killebrew, 4553. Stacy Hutchison.

15 THE COURT: All right. And my understanding is
16 Ms. Hutchison, in connection with one or more of the civil
17 cases, has signed a confidentiality agreement; is that
18 correct, wherein she agreed that she would not disclose a
19 settlement or the terms of the settlement?

20 MS. KILLEBREW: Correct. With all defendants, Your
21 Honor, an executed settlement.

22 THE COURT: Okay. Basically, Ms. Hutchison, the
23 State had asked that, you know, if you testify and I allow
24 these questions, that I direct you to answer them
25 notwithstanding any private agreement you may have entered

1 into in connection with your civil suit. Do you understand
2 that?

3 MS. HUTCHISON: [No audible response.]

4 MS. KILLEBREW: Do you understand? Do you need me to
5 repeat it?

6 THE COURT: Do you understand that?

7 MS. HUTCHISON: [No audible response.]

8 THE COURT: Basically, you -- the idea being you
9 can't enter in a civil suit and say you're not going to
10 testify to something if in connection with this criminal
11 prosecution you're asked a question, and this Court deems that
12 it's relevant and the subject for fair questioning by the
13 defense in their cross-examination. Do you understand?

14 MS. HUTCHISON: So I do have to answer that question?

15 THE COURT: You do have to answer.

16 MS. HUTCHISON: Okay.

17 THE COURT: You know, subject to the rules of
18 relevancy and things like that. And basically what I -- you
19 know, it just concerns though, your particular part of the
20 case. They can't get into, you know, what the lawyers made or
21 other people that were plaintiffs in the matter, related
22 matters or anything like that. Okay. Do you have any
23 questions for me?

24 MS. KILLEBREW: Just so it's clear for the record,
25 Your Honor, your order is as directed specifically to

1 Ms. Hutchison that she is to testify pursuant to your order
2 and direction of the Court, subject to of course, counsel's
3 objection given the confidentiality provisions, to disclose
4 the net amount of the settlement she received, not the gross
5 amounts, nor the global amount received in settlement?

6 THE COURT: Correct. Definitely not the global
7 amount and what the lawyers made or the costs or anything like
8 that, she doesn't need to get into that. The global amount is
9 completely irrelevant, so there can't be any questioning about
10 that. Just your own personal involvement, not the involvement
11 of other plaintiffs or anything like that.

12 I don't know if she was joined with plaintiffs or,
13 you know, whatever. But other people are not at all relevant.
14 So, you know, if there were to be a question relating to that
15 and there was an objection, the Court would sustain it.

16 MS. KILLEBREW: For -- I don't know if it serves the
17 expediency of the court, Your Honor, there is several of my
18 other clients that are anticipated to testify.

19 THE COURT: Okay.

20 MS. KILLEBREW: Do you want to address this as each
21 client comes so you can admonish them individually --

22 THE COURT: Exactly.

23 MS. KILLEBREW: -- is that preferred?

24 Okay. Very good.

25 THE COURT: And I think this is your only client

1 that's anticipated to testify today; is that correct?

2 MS. KILLEBREW: Today, correct.

3 THE COURT: Okay.

4 MS. KILLEBREW: But there are others in the future, I
5 believe.

6 THE COURT: And if you, you know, if it's easier for
7 you, however you want to schedule it, if you just want to be
8 here one time with all of your clients, we can do it that way.

9 MS. KILLEBREW: Okay.

10 THE COURT: Whatever's more convenient. Okay.

11 MR. WRIGHT: And if they all know, so we don't have
12 to probe the net number for any and all litigation they were
13 involved in.

14 MS. KILLEBREW: I've already undertaken to -- to
15 refresh their recollection on this.

16 MR. WRIGHT: Okay. Thank you.

17 THE COURT: And Ms. Killebrew, did I cover that to
18 your satisfaction?

19 MS. KILLEBREW: Yes, I believe, as long as the record
20 reflects my objection on behalf of the settlement agreements
21 entered into with the defendants, and that the Court has
22 specifically directed Ms. Hutchison in this case to testify
23 and disclose the net amounts of her settlement, I believe the
24 record is clear in that regard.

25 THE COURT: Okay. Right. Basically, I don't think

1 that you can limit an accused's right to cross-examine you by
2 virtue of the fact that you may have entered into a settlement
3 agreement with someone else.

4 MS. KILLEBREW: We just want to cooperate with the
5 Court, at the same time minimize any exposure --

6 THE COURT: Right. I know. Minimize any --

7 MS. KILLEBREW: -- under our contractual obligations.

8 THE COURT: -- repercussions. And you don't want the
9 other side to somehow use that as a way of reneging on the
10 agreement or breaching the agreement.

11 MS. KILLEBREW: Thank you. I appreciate your
12 understanding.

13 THE COURT: All right. Thank you. And obviously
14 this Court was not involved in terms of making any
15 determinations that the civil settlement agreements would
16 preclude testimony and questioning in relation to this matter;
17 meaning that was never brought, you know. It should have been
18 anticipated possibly by both sides.

19 MS. KILLEBREW: Well, Your Honor, just for the
20 record, there was a good faith determination of the
21 settlement --

22 THE COURT: Right. That's different.

23 MS. KILLEBREW: -- and approval of the settlement
24 agreements in connection with that by another judge obviously,
25 and we respect your order. Just want it to be clear for the

1 record.

2 THE COURT: Right. And that was though, in
3 connection with the civil case?

4 MS. KILLEBREW: Correct. Yes.

5 THE COURT: All right. Thank you.

6 MS. KILLEBREW: Thank you.

7 THE COURT: All right. The next up is Mr. Ham.
8 Where is your client?

9 MR. HAM: Yes, Your Honor. My client was informed
10 right before we agreed to do this that they weren't going to
11 be needed until tomorrow, so they've --

12 THE COURT: Oh, okay.

13 MR. HAM: They are on their way back up here though,
14 and should be here momentarily.

15 THE COURT: Are they going to be testifying today?

16 MR. HAM: I believe they were told to come back
17 tomorrow morning, so.

18 THE COURT: Okay.

19 MR. STAUDAHER: Based on the way things are going
20 right now, we don't know that -- we don't feel we can get to
21 that client, so we don't want to have them waiting around.

22 THE COURT: That's fine. We can do it at any time.
23 The only issue is obviously we have to do it prior to the time
24 that a person testifies.

25 MR. STAUDAHER: Mr. Ham though was, I believe, hoping

IN THE SUPREME COURT OF THE STATE OF NEVADA

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| DIPAK KANTILAL DESAI, |) | CASE NO. 64591 |
| |) | |
| Appellant, |) | |
| |) | |
| vs. |) | |
| |) | |
| THE STATE OF NEVADA, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

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1 A That is correct.

2 Q It's surgery, correct?

3 A Yes. It's a procedure.

4 Q And going back to the referral to the endo
5 center, you've said you sent him there for a screening
6 colonoscopy. Was there a particular reason why you thought he
7 needed to have a colonoscopy?

8 THE COURT: I see. Kenny.

9 Keep going, Ms. Stanish.

10 Ladies and gentlemen, we're going to try to go past,
11 a little bit past 5:00 today to finish up with this witness.
12 Is there anyone who has child care responsibilities? Is that
13 the note? Okay.

14 MS. STANISH: I'm almost done with my cross, Your
15 Honor.

16 THE COURT: What time do you have to pick your
17 daughter up?

18 JUROR NO. 4: I have to be there by 6:00.

19 THE COURT: I'm sorry. By 6:00?

20 JUROR NO. 4: Yes.

21 THE COURT: And where is she located?

22 JUROR NO. 4: She's at Greenspun, which is in
23 Henderson.

24 THE COURT: Okay. And you're obviously parked across
25 the street, correct?

1 JUROR NO. 4: Yes.

2 THE COURT: So what's the latest that you can leave?

3 JUROR NO. 4: Cutting it close, now, yes.

4 THE COURT: We did promise them that we would
5 typically be leaving by 5:00.

6 MS. STANISH: Sure, absolutely.

7 THE COURT: And so and the bailiff sometimes asks
8 ahead of time, but I know I asked him and I know he didn't.
9 So I'm sorry, Doctor, you are going to have to come back
10 tomorrow.

11 Ladies and gentlemen, I'm going to go ahead then and
12 excuse you and dismiss you until 9:30 a.m. tomorrow morning,
13 when we'll get started again.

14 Before I release you for today though, I must
15 admonish you that you're not to discuss the case or anything
16 relating to the case with each other or with anyone else.
17 You're not to read, watch or listen to any reports of or
18 commentaries on the case, any person or subject matter
19 relating to the case by any medium of information. Don't do
20 any independent research, and please don't form or express an
21 opinion on the trial.

22 If you would all please place your notepads in your
23 chairs and follow the bailiff through the rear door, we'll see
24 you at 9:30 tomorrow.

25 (Jurors recessed at 5:01 p.m.)

1 THE COURT: Sorry, Doctor, but they do have to --
2 with Safe Key they have to pick up by a certain time or they
3 call Child Haven or something, so.

4 State, in the future, if we think that there will be
5 an issue with trying to go long or you have experts or
6 something, let us know ahead of time, because then the bailiff
7 can ask them in a break. Sometimes they can make alternate
8 arrangements, but Safe Key is pretty strict on the time. A
9 lot of these daycares are pretty strict on the time. So just
10 make sure we know ahead of time so that we can at least give
11 them an opportunity. And I did tell them that we're typically
12 going to be ending at 5:00, so.

13 Sorry, Doctor, you have to come back. All right.
14 You're excused. I don't know if they want you to hang around
15 to talk, but that's up to the State.

16 Mr. Staudaher, heads up. Will you be calling the
17 other physicians first thing tomorrow, or you don't know yet?

18 MR. STAUDAHER: Pam has gone out to talk to them, so
19 I don't know when they'll be able to come back, but we'll
20 rework our schedule.

21 THE COURT: All right.

22 MR. STAUDAHER: I know one of them had a -- I don't
23 think was able to come back for tomorrow because of a full day
24 of patients.

25 THE COURT: Okay. Mr. Wright, do you want to be

1 heard at this point on the issue regarding the victims
2 describing their symptoms, or...

3 MR. WRIGHT: No. I'll object when it comes up. I do
4 object to any interview taking place of the witness while he's
5 on the stand testifying, but I mean --

6 THE COURT: I'm sorry. I don't understand.

7 MR. WRIGHT: I don't want the State interviewing him
8 before he finishes his examination.

9 THE COURT: Oh.

10 MR. STAUDAHER: Are you talking about this witness?

11 THE COURT: You're talking about this witness.

12 MR. WRIGHT: Yeah.

13 MR. STAUDAHER: No, I'm not.

14 THE COURT: All I meant is they might talk to him
15 about scheduling or something else, and they're obviously fine
16 to --

17 MR. WRIGHT: I wasn't suggesting they were. I was
18 just unclear.

19 MR. STAUDAHER: That's fine.

20 THE COURT: Okay. To do that. That's all I meant,
21 that he had to hang around if the State wanted him to, but I
22 was fine excusing him, so. So there's nothing else that we
23 need to discuss today; is that correct?

24 MR. WRIGHT: I do -- I'm going to make a record
25 tomorrow on the lack of accommodations for my client. I am

1 going to go back and --

2 THE COURT: Well, first of all, you didn't request an
3 accommodation after the witness, Mr. Washington, or the
4 witness, Mrs. Washington.

5 MR. WRIGHT: That's correct.

6 THE COURT: Okay.

7 MR. WRIGHT: What I have requested is they cannot
8 take -- we were going to have shorter days and we have had
9 9:00 to 5:00. Okay. And he is too exhausted. He cannot even
10 consult with me. When we get back I'll make my record, you
11 can say he's malingering or whatever. But the things I asked
12 for and thought we were going to get have not occurred, and he
13 is too tired. He slept on the couch during lunch.

14 THE COURT: Okay. My understanding or my impression
15 was the way we have left it was that there were certain
16 witnesses that were ones where you would really need to confer
17 with your client about those witnesses, and we would kind of
18 play it by ear in terms of taking breaks and things like that.

19 So, you know, maybe you and I had a misunderstanding,
20 but my impression was that -- I mean, I guess you have an
21 ongoing objection, and that's noted on the record, that you
22 wanted early days, and I said no --

23 MR. WRIGHT: I went through the list on it.

24 THE COURT: -- we're generally not going to have
25 early days. And then other than that, in terms of breaks or

1 specific witnesses, I thought that we would deal with those as
2 they came up, meaning you would alert the Court. So maybe we
3 had a misunderstanding.

4 Of course, you have an ongoing objection that you
5 wanted short days, and I said I wasn't going to issue a
6 blanket order that we were going to have short days. I said
7 that we were going to be handling it on a day-by-day basis
8 according to who was testifying.

9 So you did at the bench note that you would object to
10 going late today to accommodate the doctors that the State had
11 indicated were in the hallway. And as it happened, we didn't
12 go late today, meaning past 5:00, because the juror had a
13 conflict, so.

14 MR. WRIGHT: I guess we did mis-communicate, because
15 the record I thought I made was I was requesting time at the
16 end of direct, on certain witnesses I would ask for it and
17 these witnesses I did not need. But I need to consult with
18 him when I return to my office about today's entire events,
19 plus what we are doing tomorrow.

20 And that's why I said I wanted -- and I gave you the
21 precise hours that I thought I needed, and I understand you
22 said no. But I thought you said we were going to accommodate
23 in some fashion, and I'm just saying it has not happened. And
24 I'll go back, talk with him and figure out what he --

25 THE COURT: Well, first of all, this is the first --

1 MR. WRIGHT: -- about today, and then prepare for
2 tomorrow.

3 THE COURT: I'm sorry that we're speaking over each
4 other. This is our first day of testimony. So the only thing
5 that happened this morning was your opening statement, which
6 I'm assuming you didn't need to consult with him about.

7 MR. WRIGHT: Correct.

8 THE COURT: Then we had Mr. Santacroce's opening
9 statement, which I'm assuming you didn't have to consult with
10 him about. So the only thing that's happened today is Mr. and
11 Mrs. Washington, and they've both been excused, but you didn't
12 ask for a break to consult with your client about either one
13 of those.

14 Now we have Dr. Patel, who has begun his testimony
15 and, you know, certainly in terms of what he's testified about
16 going forward as it affects your cross or whatever, you, you
17 know, he's too tired to consult with you today. You have
18 the --

19 MR. WRIGHT: He doesn't have the abilities. I can't
20 make him go 18 hours a day. Okay.

21 THE COURT: Right. And so --

22 MR. WRIGHT: And so it isn't he's simply too tired.
23 It is getting it out of him because of his injuries, whatever
24 they are, and it isn't that I can keep doing it with him into
25 late at night, what happened today. That's why I asked for

1 the shortened procedures, so I could consult with my client
2 and utilize him, learn what it was today as I did with the
3 jury duty, and I'm just making the record that that -- I don't
4 see that happening.

5 THE COURT: Okay. Well --

6 MR. WRIGHT: I'm not going to be able to do it and be
7 ready at 9:30 in the morning.

8 THE COURT: Okay. Well, all I'm saying, this is our
9 first day of testimony. So, you know, to me, I guess what
10 you're asking is for what with respect to testimony, because
11 this is our first day of testimony. We only had --

12 Janie, what time did we start the testimony with
13 Mr. Washington?

14 And I understand you're looking at it in the
15 aggregate. We got here to start at 9:00, and then we had the
16 openings. But all I'm saying is, well, okay, set the openings
17 aside in terms of what you need to talk to him about, because
18 you don't need to talk to him about that. So now we have a
19 few hours of testimony and it's our first day of testimony.
20 So, you know --

21 MR. WRIGHT: I'll shortcut it. Because of his
22 deficiencies, I won't talk to him about the openings we had
23 today and what he thought about it.

24 THE COURT: Well, I don't why that that's relevant --

25 MR. WRIGHT: Okay. It's not.

1 THE COURT: -- to your defense.

2 MR. WRIGHT: I won't consult with him.

3 THE COURT: That's all I'm asking.

4 Well, what do you need to -- I mean, I'm asking, and
5 it may -- and I don't mean to be flippant, but why do you need
6 to consult with him about something that's already occurred,
7 meaning your openings? You know, those were --

8 MR. WRIGHT: Mine I don't particularly.

9 Mr. Santacroce's I do. I didn't --

10 THE COURT: Okay. That's -- that's germane, or
11 that's a good point that you do, and so --

12 MR. WRIGHT: And I do it when?

13 THE COURT: Well, you know, you've indicated that
14 Dr. Desai is better in the morning.

15 MR. WRIGHT: Right. And so I get him here at 6:00,
16 let's say I talk to him tonight about tomorrow's witnesses,
17 and I'll have him in my office at what, 6:00? All I'm
18 stressing and I understand the record and I'm not just saying
19 I want an ongoing objection, I am trying to get the ongoing
20 accommodations as issues come up.

21 THE COURT: Okay. Well, as issues come up then, I
22 think what you need to do is say, okay, I need this amount of
23 time, or I need, you know, to break earlier today or start
24 later --

25 MR. WRIGHT: That's what I need.

1 THE COURT: -- on the next day. And we're starting
2 at 9:30. But, you know, to me a normal time start of business
3 is 8:00 a.m. And if Dr. Desai is a morning person, you know,
4 to me to be at the office by 7:00 a.m. is not, you know,
5 unreasonable, but certainly 8:00 a.m.

6 I mean, the justice courts here start at 7:30, and I
7 think 8:00 a.m. is a normal time, you know. That's when, you
8 know, some courts start. I know at the DA's office the
9 official start time, I always tried to be there by 8:00 a.m.
10 So all I'm saying is I don't think it's unreasonable to
11 suggest that Dr. Desai be to your office by 8:00 a.m. to
12 begin, you know, discussing and preparation.

13 MR. WRIGHT: Okay. Because I have nothing else to
14 do.

15 THE COURT: And 7:00 a.m. is -- well, 7:00 a.m. isn't
16 that --

17 MR. WRIGHT: Everything is ready, all the files are
18 ready, everything I'm going to do when I learn out of a couple
19 hundred witnesses, you just think that's all magically ready.
20 Have you defended a case like this --

21 THE COURT: Well --

22 MR. WRIGHT: -- or prosecuted one like this? This
23 is -- requires a great deal of lawyer work aside from the
24 consultation work with my client. And I just think you're
25 taking a cavalier approach to what I am going through in

1 trying to defend it with him in his condition.

2 THE COURT: Well, first of all, I don't mean to take
3 a cavalier approach. Secondly, no, I have never defended a
4 case, nor have I prosecuted an eight-week case, but I
5 certainly have prosecuted complex fraud cases. And some of
6 this -- you know, you've had months to get ready.

7 So some of this should have been things that were
8 prepared ahead of time in terms of your approaches to
9 witnesses, what, you know, you thought you'd like to cover and
10 things like that. These are not things that are coming up
11 spur of the moment.

12 Now, I understand, you know, what Mr. Santacroce, I
13 don't know how much you talked ahead of time with him or what
14 you knew he was going to say in his opening statement, how
15 much cooperation there was there. So some of that may have
16 been new and surprising. But all I'm saying is in terms of,
17 you know, it's not like each day is a surprise and there, oh,
18 who is this witness and what are they going to say and that's
19 all new and news.

20 So I don't mean to be cavalier. All I'm saying is I
21 think a lot of this is anticipated and could have been
22 prepared ahead of time in the months leading up to this trial,
23 and could have been discussed with Dr. Desai ahead of time.
24 Now, in terms of things that are different or new that occur
25 each day, I understand that may be something that you need to

1 brief him on, you know.

2 But all I'm saying is I don't know how unforeseen any
3 of this is really going to be to where it's something that you
4 need to do on a day-by-day basis. So I certainly didn't mean
5 to suggest I was being cavalier or I was minimizing the time
6 you spend on this case. All I'm saying is a lot of this is
7 stuff everybody's known about for a long time and you've had a
8 long time to -- I know we disagree on that.

9 But the Court gave you, I believe, nine additional
10 months to get ready for this for the first date I had when the
11 case was transferred into this department. I believe it was
12 nine months. And there was an additional time given before
13 that from the time Judge Mosley had it. And actually, there
14 was a first set, so that's some months. I don't remember how
15 many months.

16 And then there was a second setting, and that was, I
17 believe, nine months. And then before that there was time and
18 continuances in front of Judge Mosley. So that's all I'm
19 saying, that, you know, I'm not looking at this as, oh, it's
20 all new information that you have to share and have Dr. Desai
21 digest and discuss with him. All I'm saying is I think that
22 there -- a lot of this could have been done --

23 MR. WRIGHT: The testimony in the courtroom he's
24 supposed to have heard before?

25 THE COURT: No. I'm not suggesting the testimony,

1 but I'm suggesting the substance of the testimony --

2 MR. WRIGHT: No, he hasn't heard the substance of the
3 testimony.

4 THE COURT: Well --

5 MR. WRIGHT: He hasn't heard the substance of
6 Mr. Washington's, nor have I heard the substance of it. I
7 haven't heard -- I thought I had the wrong file. I'm
8 thinking, is this the guy with the heart attack and every -- I
9 mean, with all of these medical problems. I'm thinking I've
10 got the wrong file. That's why I'm saying, Are you sure you
11 didn't have this, that, this and everything else.

12 Nor did I anticipate or expect the testimony of
13 Dr. Patel. And I don't know any way where I would have known
14 that. I have a file on Washington. I have a file on all my
15 witnesses like that. And that's the problem. I got 200 of
16 these things. And so on a given day I'm getting ready for 14
17 of them to haul over here in boxes.

18 And then I'm going to sit with him and explain what
19 we're doing tomorrow, and then tonight I'm going to go back
20 and talk about what happened here. And that's why someone
21 with diminished capacity is given additional time, so that
22 they can consult and participate in their own defense. I'm
23 not just supposed to jump in as a surrogate and handle it for
24 him.

25 THE COURT: State, anything on this issue of timing

1 and what should or should not have been anticipated?

2 MS. WECKERLY: No. I mean, we did tell him what
3 witnesses we were going to be calling and we intended, you
4 know, to continue to do that.

5 THE COURT: Continue to do that.

6 MS. WECKERLY: In terms of timing, I mean, I think
7 some of the issues with the jurors that we've had have been
8 unforeseen or unexpected and have sort of delayed our actual
9 start in the mornings.

10 THE COURT: You know, basically, I'm going to direct
11 the State to continue to tell you ahead of time who --

12 MR. WRIGHT: They have.

13 THE COURT: -- who the witnesses are. The only --
14 you know, maybe you and I mis-communicated and we can deal
15 with this on a case-by-case basis. But all I was saying,
16 Mr. Wright, is, you know, you say these accommodations -- this
17 is the first day. This is the first day that we've heard the
18 testimony.

19 And so perhaps I should have asked you to approach
20 the bench and asked what time you wanted to start, and I
21 didn't do that. And maybe in the future we can -- the Court
22 will do that. That's not a big thing for me to do. Whether
23 or not I start when you ask me to, I can't promise that. But
24 certainly that's what we can do going forward.

25 Like I said, I believed that as you needed to take a

1 break between the testimony you would request that. That
2 wasn't done and you said, okay, you didn't intend to. But
3 we've only had like 2 1/2 hours of testimony here today. So,
4 you know, to me, to say, oh, these accommodations aren't being
5 made, you know, really, as I just said, you know, the morning
6 and yesterday was all the opening statements.

7 We're only on the testimony for this afternoon, for
8 the later part of the afternoon. So just, I guess, be
9 mindful, Mr. Wright, of what I expect, which is when you feel
10 like you need more time or something like that, then, you
11 know, approach the bench and ask for it.

12 MR. WRIGHT: Yes, Your Honor.

13 THE COURT: You know, because I'm not a mind reader
14 and I don't know what -- I mean, I have a general sense that
15 percipient witnesses who had contact with Dr. Desai, that
16 those are witnesses you may need more time on. Beyond that,
17 you know, I'm not necessarily going to know where you need
18 more time and where you don't need more time.

19 So what I'm saying is it's your obligation to at
20 least ask for it, and then the Court will make a determination
21 whether or not you're given that time or accommodation or what
22 have you, or whether you're not.

23 MR. STAUDAHER: Your Honor, one issue related to
24 that, and it comes to obviously we're going to continue to try
25 and give them a heads up on who we're calling, and that really

1 depends in large part on scheduling and schedules of those
2 witnesses.

3 However, we don't want to be in a situation like we
4 were today, where we have doctors that are waiting out -- and
5 believe me, they're not happy at all about clearing their
6 patients and then having to be back either. I don't know when
7 they plan to be back. But we have some that are saying
8 basically, I'm done, call my lawyer kind of thing. And
9 that's, you know, we don't want to be in a situation like
10 that.

11 So if we get a list over that we think we're going
12 through this witness, this witness, this witness or whatever,
13 and the defense anticipates that there's going to be extensive
14 cross-examination, or that these witnesses are going to be
15 particularly long and that's an unrealistic, you know, lineup,
16 then we need to know that too, so that we don't have people
17 sitting there that are going to have to come back day after
18 day.

19 THE COURT: I mean, just a couple of things. You
20 know, don't put the witnesses -- I understand today you had
21 the -- you know, we started a little bit late because of some
22 issues with the jury, or a juror, you know. But just be
23 mindful that, you know, Mr. Wright doesn't even want to go to
24 5:00 o'clock. So we're going to try to end at 5:00 o'clock.
25 Be mindful, now we've identified a juror who has child care

1 issues where she has to pick her kids up in Green Valley at
2 6:00.

3 So what I'm saying is don't schedule the day so
4 heavily with witnesses that you're going to have problems
5 getting back here, that we're going to be running up on this
6 every day, number one. And number two, when you have
7 witnesses -- I understand today every witness was a problem.
8 But when you have witnesses like physicians, you know, try to
9 pull them up earlier in the day so we don't run into this.

10 And I understand the Washingtons, you had to get them
11 done because of their issues with, I guess, medical procedures
12 or whatever, tests. So, you know, just in the future, call
13 the -- I mean, just summarily, let's call the doctors first.

14 MS. WECKERLY: Yeah. I mean, part of it is we're
15 dealing with they want to come at a certain time because
16 that's when it's easier for them in their patient load. So I
17 mean, we're juggling a lot of things.

18 THE COURT: No, I understand. Doctors can be
19 difficult as witnesses and they're not here as experts, and so
20 they're less accommodating.

21 MS. WECKERLY: But I'll confer with Ms. Stanish,
22 Mr. Wright and Mr. Santacroce and try to get a reasonable
23 estimate on who we can get on.

24 THE COURT: Okay. And then, you know, if the doctors
25 are essential and they give you a problem about coming back,

1 then you can raise that issue with the Court and make whatever
2 requests you think are appropriate, and then we'll deal with
3 that at that time.

4 So anything else we need to discuss for today?

5 MR. WRIGHT: No, Your Honor.

6 MR. SANTACROCE: No, Your Honor.

7 THE COURT: All right. We'll see you all back here
8 at 9:30.

9 (Court recessed for the evening at 5:23 p.m.)

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

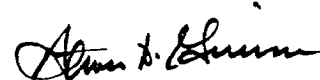
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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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|------------------------------|---|----------------------|
| THE STATE OF NEVADA, |) | |
| |) | |
| Plaintiff, |) | CASE NO. C265107-1,2 |
| |) | CASE NO. C283381-1,2 |
| vs. |) | DEPT NO. XXI |
| |) | |
| DIPAK KANTILAL DESAI, RONALD |) | |
| E. LAKEMAN, |) | |
| |) | |
| Defendants. |) | TRANSCRIPT OF |
| |) | PROCEEDING |

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 10

WEDNESDAY, MAY 8, 2013

APPEARANCES:

| | |
|------------------------|--|
| FOR THE STATE: | MICHAEL V. STAUDAHER, ESQ. PAMELA WECKERLY, ESQ. Chief Deputy District Attorneys |
| FOR DEFENDANT DESAI: | RICHARD A. WRIGHT, ESQ. |
| FOR DEFENDANT LAKEMAN: | MARGARET M. STANISH, ESQ. FREDERICK A. SANTACROCE, ESQ. |
| Also Present: | NIA KILLEBREW, ESQ. |

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1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 8, 2012, 9:53 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: Where is -- we're waiting on Ms. Stanish,
5 and --

6 (Pause in proceedings)

7 THE COURT: Just for those of you with cameras,
8 you're welcome to stay in the courtroom, but we are going to
9 have -- and this includes the still media. We are going to
10 have a brief hearing out of the presence of -- the general
11 presence of the jury that concerns a juror. It is not to be
12 filmed or photographed in any way. Again, it's a public
13 forum. You can sit here and take notes or whatever, but
14 you're not to film.

15 (Mr. Staudaher enters the courtroom.)

16 THE COURT: I just told them they could stay, but
17 they can't film this or record it with audio recording.

18 (Pause in proceeding.)

19 THE COURT: All right. To place on the record when
20 everyone's ready. All right. As the attorneys know and we've
21 discussed and has been placed on the record previously, there
22 have been a number of issues with the service of Juror No. 3,
23 Ms. Robinson, including claims of hardship. She was advised
24 that, you know, the Court would see if we could come up with a
25 solution so that she could still serve, and hope that her

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1 employer, if contacted, would be able to come up with a
2 solution so that she could continue to serve as a juror.

3 She was strictly admonished that she was not to
4 discuss anything relating to her claims of hardship and
5 possible excusal with the other members of the jury, obviously
6 for fear that might encourage other jurors who decided they
7 weren't that eager to serve after all to make new claims
8 relating to hardship and whatnot.

9 Additionally, obviously the jury has been repeatedly
10 admonished to not discuss the case or anything relating to the
11 case --

12 Oh, I'm sorry. You need to go back. Just wait in
13 the hallway, please.

14 -- with each other or with anyone else. Yesterday,
15 after the jury was dismissed and before I came home -- or
16 before I left for home, my bailiff informed me that he had
17 been privately contacted in the hallway by another juror,
18 Juror No. 17, and told that -- that Juror No. 3 had been
19 griping and complaining in the jury room regarding her
20 hardships and other burdens and serving as a juror.

21 And additionally, she had discussed the questioning
22 relating to Mr. Washington and had criticized Mr. Wright for
23 asking -- specifically criticized Mr. Wright, not using
24 Mr. Wright's name, but said and she couldn't believe that they
25 had asked that poor man to try to add those figures up.

1 Obviously this conduct would violate two admonitions
2 on the part of the Court, and I shared that with the
3 attorneys. I shared that with the attorneys who were still
4 here last night. Mr. Santacroce had already left. And I
5 shared that in chambers. We were able to catch all the other
6 attorneys before they left for the day.

7 And then, Mr. Santacroce, when you got here and the
8 others were here, I shared that with you in chambers as well
9 prior to the coming in this morning; is that correct?

10 MR. SANTACROCE: Yes, Your Honor.

11 MR. STAUDAHER: Yes, Your Honor.

12 THE COURT: All right. And my understanding is that
13 based -- both sides accept this as juror misconduct and are
14 concerned about it. Is that correct, Mr. Staudaher?

15 MR. STAUDAHER: Yes, it is, Your Honor.

16 THE COURT: And anything else?

17 MR. STAUDAHER: I'm sorry.

18 (Pause in proceedings)

19 MR. STAUDAHER: Yes, Your Honor. There's -- the only
20 issue is that the only concern that the State had was
21 regarding the first admonition of the judge -- that the Court
22 had made, which was the financial one that was a direct order
23 to her. The other one we thought was less problematic, but we
24 agree that that is technically something that the juror should
25 not engage in.

1 THE COURT: You mean the second admonition?

2 MR. STAUDAHER: Yes, the second admonition.

3 THE COURT: And the first admonition you are
4 concerned about?

5 MR. STAUDAHER: Right. The financial one. The issue
6 where you directly told her not to discuss that, and that is
7 exactly what she went back and did, so.

8 THE COURT: Right. Almost within a few hours of the
9 admonition that had been given by the Court. So it's not like
10 there were a few days in between the admonition and the time
11 the admonition was violated.

12 Mr. Santacroce, did you want to say something?

13 MR. SANTACROCE: Yes. I'm concerned about both
14 admonitions. I think they're equally serious. I'm concerned
15 about her discussing the evidence of the case with other
16 jurors when that's strictly prohibited at this juncture in the
17 trial. I have requested that each of the jurors be polled or
18 questioned as to what they heard, when they heard it, what
19 effect it had, and I think that it's cause for concern at this
20 point.

21 THE COURT: All right. Mr. Wright and Ms. Stanish.

22 MR. WRIGHT: I agree with Mr. Santacroce, agree she
23 should be excused as you were doing it.

24 THE COURT: And Mr. Santacroce, I believe you're also
25 requesting she be excused?

1 MR. SANTACROCE: Yes.

2 THE COURT: And is that the State's request as well?

3 MR. STAUDAHER: Yes, Your Honor.

4 THE COURT: All right. All parties are in agreement
5 that this juror be excused and that she be excused this
6 morning; is that true?

7 MR. STAUDAHER: Yes.

8 MR. WRIGHT: Yes.

9 THE COURT: All right. With respect -- obviously the
10 Court's very concerned that this juror, I think deliberately,
11 violated two orders from the Court about what to do and
12 committed misconduct. With respect to that tarnishing or
13 tainting the other members of the jury, the Court is less
14 concerned in terms of any taint on the, you know, fairness
15 with respect to their consideration of the evidence or
16 anything like that.

17 First of all, she did not comment on anything that
18 she had learned outside of the courtroom. She didn't do any
19 independent research or bring in any news articles or anything
20 of that nature. Secondly, she didn't comment on the evidence
21 per se, although she shouldn't have been commenting on the
22 questions or anything relating to that. But certainly her
23 comment would have been appropriate or would have been
24 something she could have made in the deliberation itself.

25 Had she waited until they were all deliberating and

1 wanted to say that about the question to Mr. Washington, that
2 would have been perfectly fine. So I think in view of that,
3 I'm not concerned that she somehow tainted the jurors in that
4 regard. You know, certainly we'll keep it open. Whether we
5 need to question them all or not, I don't think we need to do
6 that at this point for the reasons that I just said.

7 What I am going to do, based on the request of both
8 sides as well as the Court's grave concerns about what she's
9 done and what she may continue to do in the future, I think,
10 that's even more concerning to this Court, I am going to
11 excuse her this morning. Her conduct is sanctionable. I'm
12 not going to -- you know, I'll leave that open.

13 I am going to remind the jurors before we take our
14 break, whenever our first break is, I am going to remind them
15 of their duty of course, not to commit misconduct, of their
16 duty to inform the Court if they observe other jurors
17 committing misconduct.

18 And I'm going to remind them of why they're not to
19 discuss the evidence and try to explain to them the point of
20 them not getting in little groups and discussing anything that
21 goes on during the trial. And I think hopefully that will,
22 you know, address any future problems or anything like that.

23 All right. Anything else? I'm going to go ahead and
24 bring -- have the bailiff --

25 MR. STAUDAHER: No, Your Honor.

1 MR. WRIGHT: No.

2 THE COURT: Do I need to throw a ball at the door or
3 something? I don't know. Would you stick your head --

4 MR. STAUDAHER: Oh, I can --

5 THE COURT: She's going to go out into the hallway.
6 No, no. It's okay. The court clerk is going to do it.

7 (Juror No. 3 enters the courtroom.)

8 THE COURT: Ms. Robinson, as you know, we spoke
9 yesterday and you expressed concerns with hardship. And I
10 think the Court was pretty sympathetic to that and indicated
11 that we hoped that a solution could be found where you could
12 accommodate the interests of your employer through doing your
13 work, some of the HOA meetings at night and on the weekends,
14 and that they would continue to pay your salary and you could
15 serve. Unfortunately, your employer has indicated that that's
16 not a possibility.

17 However, what's more concerning to the Court today is
18 the fact that you were clearly admonished by me not to discuss
19 your financial hardship or anything relating to that in any
20 way back in the jury deliberation room with the other members
21 of the jury. You were also told as a part of the larger group
22 and admonished repeatedly that you were not to discuss this
23 case or anything relating to the case with each other or with
24 anyone else.

25 And it's come to the Court's attention that you did

1 in fact discuss and complain about the fact that you had to
2 serve and you were concerned about paying your bills and your
3 car payments or what have you, and that that was done in front
4 of the other jurors and with the other jurors after the
5 Court's admonition. And I'm giving you an opportunity to
6 speak to that at this time.

7 JUROR NO. 3: I think everybody in that room, to be
8 honest, but everybody is kind of on the same stress level.
9 Even prior to us being chosen as jurors, when we were sitting
10 out there being, you know, waiting to be interviewed, that was
11 one of the big, big concerns with everybody downstairs in jury
12 services.

13 I mean, there's a couple people that I've seen from
14 the very beginning, and everyone is kind of really to each
15 other, hey, you know, the situation, what's going on --

16 THE COURT: Well, first of all, that may be true, but
17 the bottom line is the report was about you, number one. And
18 number two, you are the person that we -- that I admonished in
19 here. So I'm not interested in what other people -- you think
20 other people are feeling or other people may be stressed out.
21 I mean, you know, it sounds to me like you admit that that did
22 happen.

23 JUROR NO. 3: I'm sure it did. I'm beyond to the
24 point where I'm like really stressed out. I don't know what
25 to do. I can't think.

1 So I may have said something not realizing that
2 others may have heard me. I was on the phone yesterday, in
3 the little hallway before you go into the actual room, with my
4 husband just kind of letting him know I don't know what's
5 taking place right now. So I don't know if that was heard or
6 not, but I'm not going to sit here and say, no, I didn't say
7 it. But I may have.

8 THE COURT: Okay. The Court also has information and
9 I received information that you were discussing the case, and
10 that you specifically mentioned that you couldn't -- you
11 didn't like or you couldn't believe that they were asking
12 Mr. Washington to calculate or add up those numbers.

13 JUROR NO. 3: No.

14 THE COURT: So you're saying that never happened, you
15 never said that?

16 JUROR NO. 3: No.

17 THE COURT: All right. And if other jurors were to
18 say they overheard you saying that, that would not be true?

19 JUROR NO. 3: I don't recall -- I don't -- once we
20 had that done yesterday, nothing that was discussed in here
21 was discussed in there. Everybody went in there, got back on
22 their phones and their iPads.

23 THE COURT: Well, and again, that includes something
24 you may have said on your phone or something like that.

25 JUROR NO. 3: I didn't talk on the phone yesterday.

1 I was checking work emails from my phone, so I don't --

2 THE COURT: I thought you were talking to your
3 husband in the hallway.

4 JUROR NO. 3: No. I was before we came out here and
5 after we had met with Mr. Washington. Whatever was discussed
6 here, it wasn't brought out like that in there.

7 THE COURT: Okay. So you're saying you never said
8 anything about Mr. Washington, or you --

9 JUROR NO. 3: No.

10 THE COURT: -- never complained about the questions,
11 or you never made a comment about any of the questions?

12 JUROR NO. 3: [Inaudible.]

13 THE COURT: I'm sorry?

14 JUROR NO. 3: No.

15 THE COURT: Okay. I'm going to go ahead and dismiss
16 you, but it's important that you understand --

17 JUROR NO. 3: I do.

18 THE COURT: -- that basically violating the Court's
19 orders constitutes juror misconduct. And I'm sorry that
20 you're stressed out, and I thought I made it pretty plain that
21 we, you know, you would be excused if it turned out to be a
22 true financial hardship.

23 So in my view there's absolutely no excuse for your
24 conduct. Once you knew that and that was explained to you, to
25 now say, oh, you were so stressed out and the other jurors

1 were so stressed out that you felt you could violate a court
2 order. This is a very serious matter. You know, it's a great
3 deal of time and expense for the court.

4 It's a great deal of time and expense for the State
5 and the prosecutor's office and their investigators, and it's
6 been a great deal of time and expense for the defense team
7 over there. So, you know, for you to cavalierly think that
8 comments don't matter and that if you're stressed out you can
9 violate the Court's order is simply not the case.

10 I mean, I'm sure this is stressful for everyone,
11 including the people who are sitting here on trial. And so
12 it's important that you understand that your conduct is
13 subject to sanctions. And that can include, I think, a hefty
14 financial sanction of \$500. Now, you know, you were stressed
15 out about money before. I'm not saying I'm going to impose
16 that. But I'm saying that I could impose that.

17 And in extreme cases of juror misconduct, jail time,
18 the Clark County Detention Center is an option. So, you know,
19 I'm sorry. You know, I appreciate that you were stressed out.
20 We tried to be very sympathetic to you. You had an
21 opportunity to fill out the questionnaire. You know, we
22 talked to you here and it seemed like you had a flexible job.

23 We talked to you again and told you that we were
24 sympathetic to your needs and we'd try to work around them. I
25 thought it was pretty clear that you would be excused if you

1 couldn't work around them. So I'm sorry. I feel absolutely
2 no sympathy for the fact that you violated this Court's order,
3 this Court's direct and clear and explicit order by speaking
4 about something that you were not supposed to speak about in
5 the presence of the other jurors.

6 Now, you know, we are hopefully going to get to the
7 bottom of this, whether it was to your husband or who heard
8 what and what have you. At this point in time I am going to
9 dismiss you. You are free to leave. I need you to check out
10 back through jury services.

11 And frankly, you know, had you not done that, had you
12 not committed that misconduct, you would have just been
13 excused on a hardship ground. So you've taken this places it
14 did not need to go frankly.

15 JUROR NO. 3: I do apologize, and I don't -- I didn't
16 do whatever I did intentionally. I think I just kind of spoke
17 of it just with the way I was feeling. So I do apologize for
18 everybody that's been affected.

19 I don't want you to think that, you know, I was like
20 sitting here thinking like, you know, whatever, they're not
21 going to do anything about it, because you did tell me clearly
22 yesterday that you were going to be speaking to my job. So I
23 don't want you to think that I intentionally did the things
24 that I did. I just -- I'm going through so much right now
25 that I can't even --

1 THE COURT: Right. And we -- we were dismissing you.
2 What I'm concerned about is again, you know, I think the Court
3 was sympathetic. I think that, you know, we told you we would
4 try to see if something could be worked out. You know,
5 obviously in the presence of all the attorneys this was all
6 done.

7 And, you know, you were told directly do not do this.
8 And, you know, for whatever -- you know, again, we're going to
9 get to the bottom of this, but it appears that it was done
10 anyway. And, you know, with respect to the comment on the
11 questioning of Mr. Washington, you say it didn't happen. You
12 say you didn't say those things. We're going to try to get to
13 the bottom of it, because these admonitions are very serious.

14 And, you know, like I said, you know, this isn't a
15 game. This isn't a joke. This is a very serious proceeding
16 and everyone's put a tremendous amount of time and expense
17 into this. And if we get to the end of the day and we don't
18 have enough jurors, it starts all over. And, you know, that's
19 a huge burden for the State, the prosecutor's office, to the
20 court and jury services, and for the defense team over there.

21 So, you know, this is very serious and, you know, it
22 didn't have to -- it didn't have to go down this road with
23 those comments being made in violation of the Court's order.
24 It could have gone another way and you still would have been
25 excused, so.

1 JUROR NO. 3: I do, I do apologize.

2 THE COURT: That's all I'm saying. You are
3 dismissed. You know, I don't believe you have any reason to
4 have any contact with any of the other jurors, but you are of
5 course admonished that you're not to discuss with them or
6 anyone affiliated with them in any way the reason that you've
7 been dismissed. You are not to discuss with the jurors or
8 anyone affiliated with them the discussion that you and I have
9 had in here today. Do you understand that?

10 JUROR NO. 3: I do understand.

11 THE COURT: That is a court order. And so if we
12 learn somehow, and believe me, we tend to learn things, that
13 you have somehow violated that court order, then you will be
14 subject to sanctions and I may not feel as generous next time
15 as I do today. And I'm sorry for your hardship.

16 Like I said, you know, it was one thing after
17 another, and each hurdle that came up we tried to work with
18 you. You know, the doctor situation, we said, okay, well,
19 we'll start late if you need to go to the doctor, or we'll
20 break early if you need to go to the doctor, just keep the
21 bailiff informed.

22 The other situation, you know, we said, okay, well,
23 if you need to be at an HOA meeting in Green Valley, we'll
24 break early, just let us know. So I think the Court really
25 tried to accommodate you and it seems to me it was just one

1 thing after another. Oh, you're not going to get dismissed
2 for this, what about this. Oh, you're not going to get
3 dismissed for that, what about this, you're not going to get
4 dismissed.

5 So, you know, eventually, like I said, after the
6 situation with your employer we would have dismissed you
7 anyway. It didn't need to come -- it didn't need to come to
8 this, this issue of your misconduct. I'm sorry that it did.

9 You know, maybe -- you're young and maybe you just
10 didn't appreciate how serious this whole proceeding is and how
11 serious we take the admonitions that we give to the jurors,
12 and how important it is that the jurors follow those
13 admonitions. If you ever are called as a juror and selected
14 in the future, I hope that you'll be mindful of that.

15 JUROR NO. 3: I certainly will be.

16 THE COURT: All right. Thank you.

17 JUROR NO. 3: Thank you.

18 THE COURT: And just check out through jury services.
19 The bailiff's just going to lead you out.

20 JUROR NO. 3: Thank you.

21 (Juror No. 3 dismissed, exits the courtroom.)

22 THE COURT: Well, I think if we want to, we can
23 engage in further inquiry later in the day. It's not
24 something we need to do right now. It would be my preference
25 to just get started. If anyone needs just two or three

1 minutes to take a break --

2 MR. WRIGHT: When we start, you're going to
3 re-admonish the panel?

4 THE COURT: Yes. Yes. I'm going to re-admonish them
5 at that time.

6 MR. WRIGHT: Okay. Thank you.

7 (Court recessed at 10:14 a.m. until 10:18 a.m.)

8 (Outside the presence of the jury.)

9 THE COURT: All right. Kenny, would you get them.

10 (Pause in proceeding.)

11 (Jurors reconvene at 10:20 a.m.)

12 THE COURT: Court is now back in session. The record
13 should reflect the presence of the State through the deputy
14 district attorneys, the presence of the defendants and their
15 counsel, the officers of the court, and the ladies and
16 gentlemen of the jury.

17 Good morning, ladies and gentlemen. You will notice
18 a missing chair in the jury box. I just want to remind all of
19 you that juror misconduct is a very serious offense, and it is
20 punishable by sanctions, including a financial sanction and in
21 extreme cases incarceration in the Clark County Detention
22 Center. Again, in extreme cases.

23 I also want to remind all of you that it is your
24 duty, if you become aware of the misconduct of another juror,
25 to inform the Court, and you would inform the Court by

1 informing our bailiff, Officer Hocks. And finally, I just
2 want to take a moment to speak about the admonition that I
3 give all of you at the break. And I know, you know, it kind
4 of is like wah-wah, wah-wah, like the voice of the teacher in
5 the Peanuts cartoon and probably people stop listening to it.

6 But when I say do not discuss this case or anything
7 relating to the case with each other or with anyone else,
8 that's a serious prohibition. And you may think, well, why
9 can't I talk about it even with a couple of the other jurors.
10 And sometimes, you know, jurors form little groups, maybe they
11 go to lunch together or whatever.

12 The reason we don't want you talking to anyone,
13 including even other jurors about it is because that
14 undermines the deliberation process. And one of the most
15 important aspects of the jury system is the deliberation
16 process. And the idea is that if you form little groups and
17 pre-discuss the evidence and start to form opinions, that
18 excludes other members of the jury.

19 And then when you get in the back, after the case is
20 entirely over, there have been discussions that not all of the
21 jurors have been privy to and have been involved with. And so
22 number one, we want you to keep an open mind until you've
23 heard everything in the case. And during jury selection, I
24 believe all of you promised that you would do that.

25 And number two, a very important part of the process

1 is the idea that we bring together the collective wisdom of
2 the community, people from all walks of life who are selected
3 as jurors. And the idea is we want everyone's insight and
4 everyone's input in the deliberation process. And if we get
5 groups of jurors kind of branching off and talking about the
6 evidence, just their little group, that undermines that part
7 of the process and then you don't have the full participation.

8 So, you know, I know sometimes at the breaks I give
9 the admonition and people are thinking, well, you know, it's
10 been two hours, I've got to run to the restroom or whatever.
11 But I just want you to be mindful and think about that that is
12 important and why that is such an important admonition that I
13 do give, and to just be mindful that you do need to wait until
14 the end and you do need to make sure that everybody is
15 involved in your discussions of the evidence.

16 Because that's what the process is all about. It's
17 about everybody discussing it together, everyone giving their
18 opinions, not people getting into groups and, you know,
19 preforming opinions and things like that.

20 So that's all I wanted to begin the day with. And I
21 believe we're -- is Dr. Patel here to resume his testimony?

22 MR. STAUDAHER: I saw him outside, Your Honor, so he
23 should be here.

24 THE COURT: All right. Dr. Patel will be recalled to
25 resume his testimony.

1 SHAILESH PATEL, STATE'S WITNESS, PREVIOUSLY SWORN

2 THE COURT: You are still under oath. Do you
3 understand that?

4 THE WITNESS: Yes.

5 THE COURT: Thank you, sir.

6 And Ms. Stanish, you may question Dr. Patel.

7 MS. STANISH: Thank you, Your Honor.

8 CROSS-EXAMINATION (Continued)

9 BY MS. STANISH:

10 Q Good morning, Dr. Patel.

11 A Good morning.

12 Q Welcome back. Sir, I only had a few more
13 questions to ask you, but just to kind of backtrack to catch
14 up from where I left off yesterday, as I recall, you had
15 testified that in November of 2007, Mr. Washington tested
16 positive for hep C, correct?

17 A [No audible response.]

18 Q And an antibody for hep B?

19 A That is correct.

20 Q And as I understood your testimony, and please
21 correct me if I misstate anything, that suggests to you that
22 at some time in the past, prior to 2007, he did indeed have
23 hep B; is that correct?

24 A Yes.

25 Q And I think I left off, you had described the

1 risk factors associated with hepatitis B, and is it a fair
2 statement to say that the risk factors for hepatitis B are the
3 same for hepatitis C?

4 A Yes.

5 Q And could you summarize for us again those risk
6 factors?

7 A Risk factors that involve the exposure to body
8 fluids from somebody who has infection. So it could be blood
9 transfusion in the past, if you had surgery, if you had high
10 risk behavior like intravenous drug abuse, or you had multiple
11 partners for your sexual activity. And tattoos, if you
12 have -- you know, if you went to a tattoo parlor and if you
13 get tattoos on your body.

14 Q And you had also described for us some surgery
15 that Mr. Washington underwent in 2005 that involved putting a
16 stent in, up an artery to clear a blockage in the heart; is
17 that correct? Am I describing that right?

18 A Yeah. He has cardiac catheterization and he had
19 angioplasty. That means opening up the heart artery and
20 putting a stent there. I'm not sure about the date, about
21 2005.

22 Q And I think where we actually left off, at least
23 according to my notes, is that we were discussing fatty liver,
24 and you were educating us on what a fatty liver is. And just
25 to go back to some time frames, prior to 2007, had you noticed

1 that Mr. Washington had some -- a fatty liver?

2 A No.

3 Q Okay. I must have misunderstood you then. All
4 right. At what point did you detect that he had a fatty
5 liver?

6 A I -- in December of 2007, I made a referral to
7 gastro center. I did not make a referral to gastro center,
8 but I made a referral to our GI, gastroenterology department,
9 and they went ahead and sent it to gastro center and their
10 specialist requested that we should have a CAT scan. So it
11 was ordered by our gastroenterology department coordinator,
12 and that CAT scan shows that he has mild fatty infiltration.

13 Q All right. And maybe that's -- that refreshes
14 my poor memory. Does hepatitis B affect the liver?

15 A Yes.

16 Q And does that -- can you tell us what kinds of
17 things hepatitis B can do to a liver?

18 A Hepatitis means inflammation of liver, and if
19 it's hepatitis B, it means it's because of the B virus, you
20 know, and it's infecting or affecting the liver. And
21 hepatitis itself means inflammation of the liver. And
22 subsequently, if you get over with it and then you may have
23 some inflammation left in your liver or you may not have any
24 inflammation, and depending upon how the body responds.

25 Q And maybe you covered this already, but you

1 didn't personally decide what gastro center Mr. Washington
2 would be referred to; is that correct?

3 A No. As I said earlier that I work for the
4 primary care, and there is a medicine department who is a
5 specialty department in VA. And anytime I need a consult or I
6 need a specialist, I make a referral to our gastroenterology
7 consult electronically. And there is a coordinator, since we
8 didn't have any gastroenterology specialist in the VA, they
9 are the one who decide where to send this patient to. So I
10 had nothing to do who to send.

11 Q Understood. And as a -- in your experience at
12 this time frame in 2007, was it your experience that the VA
13 would commonly refer patients to the gastro center of Southern
14 Nevada for consults?

15 A Yes. Gastroenterology consults, yeah. That was
16 done by the medicine department.

17 Q Correct. I understand.

18 MS. STANISH: The Court's indulgence.

19 THE COURT: That's fine.

20 MS. STANISH: I have nothing further. Thank you.
21 Thank you, Doctor.

22 THE COURT: All right. Thank you. Mr. Santacroce.

23 MR. SANTACROCE: I don't have any questions for
24 Dr. Patel.

25 THE COURT: All right. Mr. Staudaher.

1 MR. STAUDAHER: Yes. I have just a couple of
2 follow-up. And Jane, if you would please turn on the doc cam.

3 May I approach, Your Honor?

4 THE COURT: You may.

5 REDIRECT EXAMINATION

6 BY MR. STAUDAHER:

7 Q Doctor, showing you what has been previously
8 marked as State's Proposed Exhibit 3, and I know you've seen
9 it before, but I want you to look through it again and just
10 see what those are.

11 A I see two medical record, one related to Mr.
12 Michael Washington. It's a VA medical record. The dates are
13 November 29, which was -- the first one is of a nurse's note,
14 and second one is my colleague's, Dr. Nita Kaul's progress
15 note that is November 29. And --

16 Q Of 2000?

17 A 2007. And then I had done a telephone call to
18 Mr. Washington on November 30, 2007.

19 Q So some lab work as well?

20 A Yes.

21 Q Okay. Are these copies of records that you have
22 that you've seen before, part of your medical record for
23 Mr. Washington?

24 A Yes.

25 MR. STAUDAHER: Your Honor, at this time I'd move for

1 admission of State's Proposed 3.

2 THE COURT: Any objection to three?

3 MS. STANISH: No, Your Honor.

4 MR. SANTACROCE: No.

5 THE COURT: All right. Three is admitted.

6 (State's Exhibit 3 admitted.)

7 MR. STAUDAHER: May I publish, Your Honor?

8 THE COURT: You may.

9 MR. STAUDAHER: Specifically, and these are
10 Bates-numbered documents, for counsel and for the record, I'm
11 referring to a DA Endoscopy Number 2021.

12 BY MR. STAUDAHER:

13 Q I'm going to ask you a couple of things. You
14 had already previously testified about some of the lab results
15 that were liver function tests and the like. Do you recall
16 that?

17 A Yes.

18 Q Okay. And one thing I wanted before I ask you
19 that, I want to ask you something that Ms. Stanish said, that
20 this cardiac catheterization that was done on Mr. Washington
21 in the past, I think you said 2005; is that right?

22 A Cardiac catheterization was done on May 31, 2007
23 too. He had several --

24 Q 2007?

25 A Yeah. He had several cardiac catheterization,

1 you know.

2 Q So he had a couple of them in the past?

3 A Yes.

4 Q Now, those, she referred to them as a surgery.

5 Is this something where somebody goes in and gets cut open and
6 ends up in the hospital for days, or what?

7 A No. You had a small cut in your right groin and
8 they pass the catheter, you know.

9 Q And you go home the same day, right, typically?

10 A Most of the time.

11 Q So something where they put a large sort of
12 device inside your blood vessel, go up and do the
13 catheterization, then they take it out?

14 A That is correct.

15 Q And then you're done?

16 A Yes.

17 Q Okay. As far as the results though, here of
18 this report, I want to zoom in on this a little bit and ask
19 you a couple of questions.

20 MR. STAUDAHNER: For the record, we're looking at the
21 middle portion of the exhibit, Your Honor.

22 BY MR. STAUDAHNER:

23 Q The area that I've got listed here currently,
24 ferritin protein, albumin, AST, ALT and the like, do you see
25 all those?

1 A Yes.

2 Q Now, if I move -- I'll move it over, but I want
3 to -- I want you to look at specifically, tell me which ones
4 of those, if any, are liver function tests or liver function
5 sort of hallmark tests that you would look at to see if
6 somebody had a problem with their liver.

7 And just so you know, this screen, you can actually
8 write on it. Take your finger and you can just draw on it
9 like that.

10 A Okay.

11 Q And then if you need to clear it for some
12 reason, you just tap it down there in the corner. Can you
13 point out for us, if you would, the actual liver function
14 tests? Just with your fingernail, just draw on the screen.

15 A It starts with the protein albumin.

16 Q So I'll help you out here. What you've marked
17 is this one here; is that correct?

18 A Yes.

19 Q Albumin?

20 A Protein, albumin, alkaline phosphatase, AST,
21 ALT, LDH, total bilirubin, direct bilirubin, and GGT we call
22 it, gamma -- GGT.

23 Q What is this one at the top that's the ferrin --
24 or ferritin one?

25 A Ferritin is a blood test that is mainly looked

1 for -- it's mainly used for anemia blood tests, you know, that
2 is like an iron binding protein.

3 Q Is that associated with the liver at all?

4 A It is associated with liver.

5 Q So this entire group of tests is referred to --
6 are they referred to as liver function tests?

7 A That is correct.

8 Q So if I'm -- and I'm going to move across now so
9 we can see -- well, actually, let's look at them before we get
10 to the normal values. But I notice that there are H's all
11 along these tests here; is that correct?

12 A That is correct.

13 Q What does that H indicate?

14 A That means they are elevated as compared to the
15 normal.

16 Q If we look at specifically the AST, ALT and the
17 gamma GTP, did those look to be significantly elevated?

18 A They are.

19 Q Okay. And if you move across to the normal
20 range -- and again, let's just go ahead and clear that if we
21 can, so that we don't [inaudible].

22 It looks as though the normal ranges for each of
23 those items that we talked about, the AST and so forth, and
24 we're talking about 5 to 37, I think it is, for the AST, and
25 the ALT is 5 to 40. We've got numbers in the 6 to 500 range.

1 A That is correct.

2 Q Is that considered very elevated?

3 A Yes. That's very elevated.

4 Q And even this one down here, this gamma GTP is
5 7,773, and over here it says the normal range is 7 to 51; is
6 that fair?

7 A Yes.

8 Q Now, when you saw him back in the office
9 immediately follow -- I know the date on this, it appears to
10 be the visit was on 11/30.

11 A It's -- this note is my documentation of primary
12 care telephone notes, so I made the telephone call. It's not
13 a visit with me in person.

14 Q Fair enough. So when he came back to see you,
15 did you have these results at least at that point?

16 A I saw him in December and I had those results,
17 yes.

18 Q In December you had the results.

19 A Yes.

20 Q Okay. So around the time that you see him near
21 the time of this test, you didn't have the results that you
22 sent him out for the test; is that correct? Do I need to zoom
23 out?

24 A What I'm saying is that on November 30, 2007, I
25 saw those abnormal result and I made a telephone call to

1 Mr. Washington.

2 Q And also on this test are the different items
3 we've been talking about with regard to the hepatitis tests;
4 is that correct?

5 A That is correct.

6 Q Now, if I understand you correctly, you
7 indicated that the hepatitis B surface antigen antibody and
8 the hepatitis B core antibody, although being reactive,
9 indicated that it was a prior infection, it wasn't active at
10 the time; is that right?

11 A That is correct.

12 Q The only active infection that he had where
13 there was a virus present doing things in his system was the
14 hepatitis C virus, according to this record?

15 A From these three tests, you know, all I can say,
16 that he had previous B infection and he's positive for
17 hepatitis C antibody on November 27, 2007.

18 Q Current [inaudible]?

19 A Yeah.

20 Q So a prior hepatitis B infection and a current
21 hepatitis C infection?

22 A I can't say that based on this result only.

23 Q Oh, you can't?

24 A Yeah.

25 Q So do you correlate the findings that you have

1 there with the clinical sort of presentation of the patient to
2 make your diagnosis, or to make a determination as to whether
3 somebody's infected or not infected, that kind of thing?

4 A What I -- I think if you go farther, I mean, I
5 have made that what kind of diagnosis I made. I said because
6 of his high enzyme elevation and I made the diagnosis of acute
7 hepatitis, you know. I didn't make any other diagnosis.

8 Q Okay. Let me go to that. Let's see. It's
9 exhibit -- it's the same exhibit, Bates No. 2022. And the
10 things you were just mentioning -- let me zoom out for that so
11 you have the entirety of the record up there. If you need
12 more, just let me know. Is this what you're talking about,
13 where it says, Acute hepatitis, hepatic jaundice, high total
14 and direct elevated alkaline P4, or PO4, but double --

15 A Phosphatase, yeah.

16 Q -- double --

17 A But, you know, it's a spelling mistake. It's a
18 doubt has an obstruction.

19 Q Oh, okay. Doubt an obstruction, that would be
20 something you would be concerned about possibly --

21 A And questionable viral etiology.

22 Q So it had to be sent out to confirm whether
23 there was an active virus and what it was?

24 A I have a plan there that I made referral to GI
25 clinic referral.

1 Q So at least clinically presenting with the lab
2 results that you have in this at the end of November,
3 December, when he's physically in front of you, when you see
4 him he's got jaundice you're talking about. So that's the
5 yellowing of the skin or eyes or something?

6 A At November 30, 2007, this is from a telephone
7 call I made. He saw me in December 7, 6 or 7 of 2007. So he
8 was not physically in front of me.

9 Q But when you say hepatic jaundice on the 30th of
10 November, you must have seen him before that though?

11 A That is based on the diagnostics. It's based on
12 the lab value that's a liver function test.

13 Q Okay. When you saw him eventually in person,
14 did he have that finding?

15 A Yes.

16 Q Okay. So at this point you know he's got active
17 hepatitis and he's got at least reactions to hepatitis B and
18 C, but you don't know what's active and what's not active?

19 A Yes.

20 Q So that's why you do the referral for the viral
21 study, to have somebody say, okay, he's got this one or he's
22 got that one or both?

23 A Yes. I made referral and I rely on GI clinic
24 and infectious disease clinic.

25 MR. STAUDAHER: I have nothing further, Your Honor.

1 THE COURT: All right. Thank you. Any recross?

2 MS. STANISH: No, Your Honor.

3 THE COURT: Mr. Santacroce?

4 MR. SANTACROCE: No, Your Honor.

5 THE COURT: Any questions from the jury for this
6 witness? All right. I see no juror questions.

7 Doctor, thank you for your testimony. You are
8 excused at this time.

9 THE WITNESS: Thank you.

10 THE COURT: And the State may call its next witness.

11 MS. WECKERLY: The next witness, Your Honor, is
12 Dr. Casalman.

13 STEPHANIE CASALMAN, STATE'S WITNESS, SWORN

14 THE CLERK: And would you please state and spell your
15 name.

16 THE WITNESS: Dr. Stephanie Casalman,
17 S-t-e-p-h-a-n-i-e, C-a-s-a-l-m-a-n.

18 THE COURT: Thank you. Ms. Weckerly.

19 DIRECT EXAMINATION

20 BY MS. WECKERLY:

21 Q Good morning, Doctor. Can you tell the members
22 of the jury a little bit about your educational background?

23 A Sure. I went to undergraduate school at
24 University of California at San Diego, and then I went to
25 medical school at Touro University in San Francisco. And I

1 did most of my residency in Las Vegas.

2 Q And when did you come to Las Vegas?

3 A 1999, for part of my med school is my --

4 Q And when did you start practicing here on your
5 own?

6 A 2004.

7 Q And what area of medicine do you specialize in?

8 A Family medicine.

9 Q And are you your own separate practice?

10 A No.

11 Q You're with a group?

12 A I'm employed, yes.

13 Q And that was since 2004 at the same place?

14 A Correct.

15 Q During your -- well, are you one of the doctors
16 or have you been a doctor of a lady by the name of Gwendolyn
17 Martin?

18 A Yes.

19 Q She's a patient of yours?

20 A She was a patient, yes.

21 Q She was. When did you first start seeing Ms.
22 Martin?

23 A Her first visit was November 4th of 2005.

24 Q And when she first came to you in November of
25 2005, was there -- was it just for a checkup, or was there

1 some sort of health issue?

2 A Just to get established, I believe.

3 Q And do you remember her age at that point?

4 A At that point she was 57. I can look it up if
5 you want me to.

6 Q Yeah. If you have her record there and that
7 would refresh your recollection.

8 A I do. She was, sorry, 58 years old.

9 Q Okay. So she -- in 2005, she comes to you just
10 to sort of start seeing a doctor and she's 58?

11 A Correct.

12 Q And did you order any kind of tests on her first
13 visit, or did you do any kind of evaluation of her health?

14 A I did order blood work.

15 Q And that blood work that you ordered, what would
16 it screen for?

17 A I tested her for diabetes. I tested her general
18 liver and kidney profiles, electrolyte screenings. I checked
19 her for anemia, a thyroid test and a cholesterol profile.

20 Q And did any of those results cause you concern
21 as a doctor in 2005?

22 A Not at -- no.

23 Q If -- you're familiar with hepatitis C?

24 A Yes.

25 Q Is one of the indicators or possible indicators

1 of hepatitis C, would that show on any of the tests that you
2 administered in 2005 on her?

3 A It might.

4 Q Would it maybe affect liver function?

5 A It maybe would affect liver function.

6 Q But not necessarily; is that fair?

7 A [No audible response.]

8 Q Okay. After that initial testing, did you
9 continue to see Ms. Martin for a period of time?

10 A Yes.

11 Q During that time period, were there any problems
12 that developed in her health that you were aware of?

13 A Let me -- can I take a look here?

14 Q Sure, if that will refresh your recollection.

15 A She came in complaining of hip pain one time.
16 She was sick another time.

17 Q Okay. Were you ever confronted with any kind of
18 symptoms that you in your training would be consistent or
19 possibly indicative of someone suffering from hepatitis C?

20 A No.

21 Q At some point did you refer her for an
22 endoscopic or colonoscopy procedure?

23 A Yes.

24 Q What was the reason that you made that referral
25 for her?

1 A She had been complaining of constipation for a
2 number of months, and it had been over 10 years since her last
3 colonoscopy.

4 Q And so when you made the referral, was it for
5 both procedures, a colonoscopy and an endo --

6 A I just made the referral to see the
7 gastroenterologist.

8 Q Okay. And when you make the referral, do you
9 refer to particular locations, or what was your practice at
10 that time?

11 A I mean, usually we refer to whoever's covered on
12 the health plan, whoever's close to our office or their house,
13 and then also just by what the -- who the practice was
14 referring to.

15 Q And at that time did you refer to the Endoscopy
16 Center of Southern Nevada?

17 A My office did refer it over there, yes.

18 Q And so you made that referral, and did you ever
19 become aware of her having gone and gotten those procedures?

20 A Well, I'm not sure. I did get some reports from
21 them, but I'm not sure at what time I got the reports.

22 Q Okay. But I mean, you have them now, so you
23 know if she went?

24 A Yes.

25 Q Sometime after that referral, did you have any

1 contact with her, you know, in later months about health
2 problems that she was having?

3 A Yes, I did.

4 Q And do you recall the date that you were
5 contacted by either her or her husband about some health
6 issues she was having?

7 A She had come in to see -- well, I had to do the
8 referral twice, and then she came in to see me after the
9 second time on November 6th of 2007.

10 Q And on November the 6th of 2007, did she
11 actually come into your office?

12 A Yes.

13 Q And so you saw her visually obviously?

14 A Yes.

15 Q What was the problem on that date?

16 A That date she was complaining of nausea,
17 vomiting and being very weak and fatigued.

18 Q And based on your observations, did you -- did
19 you order any further testing, or did you make an evaluation
20 of her?

21 A I did. I ordered blood work and an x-ray of her
22 abdomen.

23 Q And did you get the results from that?

24 A I got the results of the x-ray, which were
25 negative. Later on I got the results of the blood work.

1 Q And what did the blood work indicate?

2 A The blood work at that -- do you mind if I look?

3 Q Go ahead.

4 A The blood work at that point in time indicated

5 that she -- her liver function tests were elevated.

6 Q And I'm not a doctor, so is it extremely

7 elevated or mildly elevated, or how would you classify it?

8 A I mean, I'm not a gastroenterologist. I would

9 say it's mild, mild to extreme. It's kind of hard to say.

10 Q Enough to where you noticed it and that required

11 like further testing or further investigation?

12 A By the time I received the blood work, I had

13 already sent her to the hospital.

14 Q Okay. So you get those a little bit later?

15 A Yes.

16 Q So she comes on the 6th, and then tell me how it

17 is that you become aware that she goes to the hospital.

18 A On November 9, 2007, her husband called the

19 office and stated that her -- she was turning yellow, so my

20 office told her to go directly to the emergency room.

21 Q And yellow would be an indication of being

22 jaundiced?

23 A It could be, yes.

24 Q So you tell Ms. Martin's husband to take her to

25 the hospital?

1 A Yes.

2 Q And as her primary care doctor, does the
3 hospital send you reports about her being admitted to the
4 hospital?

5 A Yes.

6 Q And did you get any subsequent reports about a
7 diagnosis or her blood work?

8 A I got her hospital records, yes.

9 Q And in those records, did it have any indication
10 of what her -- what her problem was?

11 A By looking at the discharge summary from that
12 day, it said that she had -- do you want me to list the
13 diagnosis they wrote down here?

14 Q Sure.

15 A It said, Transfer diagnosis, painless jaundice,
16 hepatitis improving, rule out hepatitis C viral infection.
17 They were pending the final confirmation.

18 Q And was there actually a final confirmation
19 done?

20 A I actually never got that.

21 Q Okay. Do you know whether or not she went to
22 the health department and got tested?

23 A I don't know.

24 MS. WECKERLY: Okay.

25 (Pause in proceedings)

1 MS. WECKERLY: May I approach the witness, Your
2 Honor?

3 THE COURT: You may.

4 BY MS. WECKERLY:

5 Q Dr. Casalman, I just want to ask you to look at
6 what's been marked as State's Proposed Exhibit 10, and ask you
7 if you've ever seen these documents.

8 A Can I look in here?

9 Q Sure.

10 A Because they might be in here. This is a
11 different -- yes, it's in the record here.

12 Q Okay. And is your record the same as mine? Is
13 it dated 11/9/07?

14 A Yes.

15 Q Okay. And I'm wondering if you can flip with me
16 to this last page here.

17 A Yes.

18 Q And it says there's an assessment.

19 A Oh, that would be -- I think it was -- this one.

20 Q And the assessment on Number 1, what is that?

21 A It says, Acute hepatitis.

22 Q Okay. Is that a diagnosis for Ms. Martin?

23 A Yes.

24 Q Okay. So that was the diagnosis made at the
25 hospital?

1 A Yes.

2 MS. WECKERLY: And if I could just put that on --
3 well, the State moves to admit 10.

4 MR. WRIGHT: No objection.

5 THE COURT: Any objection to 10?

6 MS. STANISH: No, Your Honor.

7 THE COURT: All right. Ten is admitted.

8 (State's Exhibit 10 admitted.)

9 THE COURT: You may publish.

10 BY MS. WECKERLY:

11 Q And Dr. Casalman, I'm just pointing -- do you
12 see where I'm pointing here, that diagnosis of acute
13 hepatitis?

14 A Yes.

15 Q And that was the diagnosis for, and I'm just
16 going to show the beginning of her record, of Gwendolyn Martin
17 on November the 9th of '07.

18 A I mean, her -- she was admitted on the 9th.
19 This looks to be dictated on the 11th, yes.

20 Q Okay. So a couple days later, and it was from
21 MountainView medical center?

22 A Yes.

23 Q Okay. So she was ultimately diagnosed with
24 acute hepatitis at some point?

25 A Yes.

1 Q Were you also the referring doctor for a lady by
2 the name of Patty Aspinwall?

3 A Yes, I was.

4 Q And when did you first see Ms. Aspinwall?

5 A Her first visit with me was August 8th of 2007.

6 Q And the purpose for her coming to see you on
7 August the 8th was just to establish a primary care doctor, or
8 did she have a problem?

9 A She was establishing primary care doctor and
10 having some breast tenderness, it looks like.

11 Q And when you first saw Ms. Aspinwall, can you
12 tell me how old she was?

13 A Fifty-four years old.

14 Q And during the -- during your care of
15 Ms. Aspinwall -- actually, you're still her doctor; is that
16 correct?

17 A Yes, I am.

18 Q At some point did you refer her for a
19 colonoscopy?

20 A I did the referral on her first visit.

21 Q And the reason for that?

22 A She needed some kind of colon cancer screening,
23 being over 50 years old.

24 Q So it was kind of a prevention -- or a just
25 checking to make sure you're okay thing?

1 A Correct.

2 Q And again, your group referred to the Endoscopy
3 Center of Southern Nevada?

4 A Yes.

5 Q And her records that you have, I'm sure, now
6 indicate that she went for the procedure?

7 A Yes.

8 Q Sometime after September the 21st of 2007, did
9 Ms. Aspinwall come see you again with any health related
10 issues?

11 A She did.

12 Q Do you remember what date it was, or can you
13 look and tell us what date it was that she saw you?

14 A She came in to see me on November 13th of 2007.

15 Q Okay. And when she saw you in -- you said
16 November 13?

17 A Yes.

18 Q Of '07, what was her problem on that date?

19 A She was complaining of a decreased appetite,
20 nausea, and feeling very itchy all over, and also she noticed
21 that her urine was dark.

22 Q And based on that presentment, what was your
23 assessment?

24 A Well, I noticed she was icteric and jaundiced,
25 so I sent her to the emergency room.

1 Q What does icteric mean?

2 A Meaning yellowing of the eyes.

3 Q Okay. And jaundice of the skin?

4 A Yellowing of the skin.

5 Q Okay. So you sent her to the emergency room as
6 well?

7 A Yes.

8 Q Do you know what hospital she went to?

9 A I believe she went to MountainView, but I don't
10 have those records.

11 Q Okay. Were you informed of any tests that were
12 run on her at the hospital?

13 A No.

14 Q Did you -- were you ever as her doctor apprised
15 of a diagnosis made of her back at that time period?

16 A I believe I only knew about it when she came
17 back in to see me.

18 Q So you weren't given any records at that time?

19 A No, I wasn't.

20 Q Are you aware now of whether or not Ms.
21 Aspinwall is positive for hepatitis C?

22 A Yes.

23 Q Prior to her going for the colonoscopy, did you
24 have any blood work done on her that would have indicated the
25 presence of hepatitis C?

1 A No.

2 Q Did you assess any risk factors that she might
3 have had that would make you order such a test?

4 A I didn't have any reason to order the test at
5 the time.

6 Q But now as you're -- now you're still treating
7 her as a doctor, you're aware that she is positive for that?

8 A Yes.

9 MS. WECKERLY: I'll pass the witness, Your Honor.

10 THE COURT: All right. Cross.

11 CROSS-EXAMINATION

12 BY MS. STANISH:

13 Q Good morning.

14 A Good morning.

15 Q How are you?

16 A Okay.

17 Q I just have a few questions for you. Let me
18 begin with Ms. Martin. What's that?

19 When did you see her last?

20 A Her last visit was the November 6, 2007 visit.

21 Q And prior to that you had seen her for how many
22 years?

23 A Since 2005.

24 Q So 2005 to November '7, when you referred her
25 for the -- to the hospital?

1 A Yes.

2 Q Do you know why you didn't see her afterwards?
3 Do you have any idea?

4 A I don't know why.

5 Q Were you later involved in giving depositions in
6 civil litigation with respect to Ms. Martin?

7 A Yes.

8 Q And is that also the case with respect to
9 Ms. Aspinwall?

10 A Yes.

11 Q Now, you continue to treat Ms. Aspinwall,
12 correct?

13 A Yes.

14 Q And are you -- I wasn't quite clear. It didn't
15 sound like you had received information from her hospital stay
16 when you directed her to go to the ER.

17 A That's correct.

18 Q And is she being treated by a liver specialist
19 or a GI doctor, do you know?

20 A She's currently seeing a gastroenterologist.

21 Q And does your treatment of her, are you treating
22 her for any other medical conditions that relate to the
23 hepatitis C?

24 A Not -- no.

25 Q How often have you seen Ms. Aspinwall since she