

1 Ladies and gentlemen, we're going to go ahead now
2 and take our lunch break. We'll take our break for lunch
3 until about 2:00.

4 During the lunch you are reminded that you're not to
5 discuss the case or anything relating to the case with each
6 other or with anyone else. You're not to read, watch, listen
7 to any reports of or commentaries on the case, any person or
8 subject matter relating to the case by any medium of
9 information. Don't do any independent research on any subject
10 connected with the trial, and please don't form or express an
11 opinion on the trial.

12 Why don't we just make it 1:55 which will give you
13 basically an hour for lunch. All right. One hour, 1:55.

14 (Jury recessed at 12:50 p.m.)

15 THE COURT: All right. Go to lunch.

16 MR. WRIGHT: Yep.

17 (Off-record colloquy.)

18 THE COURT: I mean, some of the witnesses, I don't
19 know, they may have knowledge of some of those things, but I'm
20 hopeful that maybe, you know, you can get, you know --

21 MR. STAUDAHER: We're almost through all of those
22 types of witnesses.

23 THE COURT: You have to, you know -- whatever they
24 know that's new or directly related to, you know, the issue of
25 the needles, the propofol. Obviously, if the defense opens

1 the door, then, you know, you've got to go back in. But, you
2 know, we -- a few juror issues coming up. The jury was told
3 six weeks or maybe eight weeks.

4 And, you know, I don't know -- you know, we have
5 very long trial days in here. You know, we're not taking a
6 lot of breaks. You know, Janie can tell you the actual trial
7 time we've spent. It's long days. And so, you know, I don't
8 know how to speed this up anymore. The issues Mr. Wright
9 keeps raising. Now, you know, I wanted to go until 5:30 or
10 6:00 today. We've got the juror with the back issue, so we've
11 got to break at 4:20.

12 So, you know, State, I'm not telling you how to put
13 on your case at all, but, you know, a lot of this is
14 cumulative and relating to -- you know, and I get it. You're
15 setting the stage. That's important. The, you know, kind of
16 method of operation of the clinic. But I'm just asking you to
17 -- I'm not giving you direction. I'm not telling you what to
18 do. I'm just asking that you be mindful going forward.
19 That's all I'm asking.

20 (Court recessed at 12:53 p.m., until 1:54 p.m.)

21 (Outside the presence of the jury.)

22 THE COURT: Is everyone ready? The jurors are all
23 back.

24 Are they all ready?

25 THE MARSHAL: Yeah.

1 THE COURT: Everyone ready?
2 MS. WECKERLY: Yes.
3 THE COURT: All right. Kenny, bring them in.
4 (In the presence of the jury.)
5 THE COURT: All right. Court is now back in
6 session.
7 And State may call its next witness.
8 MS. WECKERLY: Ann Marie Lobiondo.
9 ANN MARIE LOBIONDO, STATE'S WITNESS, SWORN
10 THE CLERK: Please be seated. Please state and
11 spell your first and last name for the record.
12 THE WITNESS: Ann Marie Lobiondo; A-N-N M-A-R-I-E
13 L-O-B-I-O-N-D-O.
14 THE COURT: Thank you.
15 Ms. Weckerly, you may proceed.
16 DIRECT EXAMINATION
17 BY MS. WECKERLY:
18 Q Ms. Lobiondo, how are you trained?
19 A I am a master prepared nurse, and I'm trained
20 -- I'm sorry. I'm very nervous.
21 Q You're a nurse?
22 A Yeah, I was an RN with a bachelor degree
23 first, and I worked in critical care and various critical care
24 and trauma scenarios. And then I went back to school for a
25 master's degree. And first I was a nurse practitioner. I

1 received a master's degree in that, and then I went back to
2 school -- work for a while in that area, and then I went back
3 to school and became a nurse anesthetist, which is a master's
4 program.

5 Q So you are a CRNA?

6 A Uh-huh.

7 Q Is that yes?

8 A Yes.

9 Q Okay. And we're recording in here, so you
10 can't say uh-huh or huh-uh. You have to say yes or no. Okay?

11 A Yes.

12 Q Great. Where did you -- where do you go to
13 school to be a CRNA? A I went to the State
14 University of New York Downstate Medical Center.

15 Q And did you work in New York as a CRNA before
16 coming out to Las Vegas?

17 A Yes, I worked at New York University Medical
18 Center in New York. I also worked at several other hospitals
19 in -- in New York.

20 Q Okay. At some point you come to Las Vegas?

21 A Yes.

22 Q Do you remember what year that was?

23 A I believe it was 1994.

24 Q Okay. And when you came to Las Vegas, did you
25 work as a CRNA? A Yes.

1 Q And where was that?

2 A I worked at Southwest Medical Center -- I
3 mean, Southwest Medical Associates. And I worked -- do you
4 want every -- all the places that I worked?

5 Q Well, I just need to -- I just am asking,
6 actually, the places you worked in Las Vegas prior to working
7 at the endoscopy center.

8 A I also worked for a group of orthopedic
9 surgeons doing anesthesia for various orthopedic and spine
10 surgeries at North Vista Hospital, which was Lake Mead
11 Hospital at that time. I worked with several pain management
12 anesthesiologists. I worked in various surgery centers with
13 the pain management group. I worked for a plastic surgeon in
14 Las Vegas.

15 Q So you have a pretty extensive background
16 working as a CRNA?

17 A Yes.

18 Q At some point did you work for Dr. Desai at
19 the Endoscopy Center of Southern Nevada?

20 A Yes.

21 Q Do you recall when it was that you first
22 started?

23 A I started in 2000, September of 2000.

24 Q And was there a point when you left and then
25 you came back again?

1 A I left in 2004, and I came back again, I
2 believe, the end of 2005.

3 Q And did you leave again after that?

4 A I left again, and I came back again in 2006,
5 and I worked until the end of May of 2007.

6 Q Okay. So your -- your last month, I mean,
7 there was off and on times, but your absolute last month of
8 working there where you didn't return again was May of 2007?

9 A Yes.

10 Q And then the -- the first stint is 2000 to
11 2004, and then maybe from 2005 to 2006, somewhere in there?

12 A Yes.

13 Q When -- when you very first started working in
14 that 2000 to 2004 time period, how many procedure rooms were
15 operating?

16 A We only had one procedure room.

17 Q Were you the only CRNA at that time?

18 A I was the only CRNA at first, and then another
19 CRNA joined, I believe it was in 2002 or 2003.

20 Q Okay. And then at some point after that do
21 you -- I mean, 2004 is when you leave; correct?

22 A Yes.

23 Q And then you come back approximately when?

24 A I don't remember exactly when. I think I came
25 back in 2005. I had to leave for personal reasons, and then I

1 came back again in 2006.

2 Q When you -- when you come back, do you
3 remember if there were two procedure rooms?

4 A When I came back in 2005/2006 there were two
5 procedure rooms. We had actually moved to another, you know,
6 facility next door.

7 Q And when you come back were there other CRNAs
8 working?

9 A Yes.

10 Q Who -- who were they?

11 A Keith Mathahs, Ron Lakeman, Linda Hubbard.

12 Q When you --

13 A And I think also --

14 Q I'm sorry?

15 A I can't remember if --

16 Q You remember those three?

17 A Yeah.

18 Q Now, when you come back were you like in the
19 schedule regular, like a regular employee, or did you have a
20 modified schedule or how would you --

21 A I was never really a regular employee. When I
22 came back I was a per diem employee, which means I worked
23 anywhere from two to sometimes five days per week, depending
24 on the schedule and where they needed me. And I would come in
25 later in the day and work usually until the end of the day.

1 Q And per diem would mean that you're paid by
2 the day or how were you --

3 A By the hour.

4 Q By the hour. Okay. And so you would maybe be
5 called in for a couple hours and then leave?

6 A Usually it was, you know, the rest of the day.
7 I would come in maybe at 11:00 and then work until the rest of
8 the day.

9 Q Now, when you -- when you first started
10 working for Dr. Desai back in 2000, what drugs were used to
11 sedate patients for their procedures?

12 A We used -- at that time we used Demerol and
13 versed or midazolam.

14 Q At some point did the sedation medication
15 changed?

16 A Yes, and we started to use propofol.

17 Q Do you recall approximately when that was?

18 A I can't recall the exact dates that we started
19 that.

20 Q Okay. When you first started using the
21 propofol, do you remember what size the vials were or anything
22 like that?

23 A They were 20 cc vials at that time.

24 Q At some point did that change?

25 A I don't remember when, but when I -- when I

1 came back and worked in the -- the new facility with two
2 rooms, we -- I think even at first we had 20 cc vials. At
3 some point they -- we had both 50 and 20 cc vials.

4 Q Okay. So at -- in the later parts of your
5 employment your recollection is there were 20s and 50s?

6 A Yes, but I don't remember the exact date.

7 Q Okay. And when you used a 50 cc vial, did you
8 use that on -- on multiple patients?

9 A If we -- if -- I preferred the 20s, but if we
10 used a 50 cc vial the way I would do it would be to draw up
11 five separate syringes of 10 ccs each and each one --

12 Q And that's --

13 A -- on each individual patient.

14 Q And that's an aseptic method based on your
15 training; correct?

16 A Yes, it's the way that you can use a 50 cc
17 vial on -- if you have to use -- it's too much for one
18 patient, so that's the way that you can use it on more
19 patients.

20 Q And did you -- did you ever use a vial of
21 propofol that had been opened and partially used by another
22 CRNA?

23 A No, I -- if -- unless it was -- were me using
24 it, I would not use something that someone else gave me.

25 Q Were you ever offered vials of propofol that

1 had been used or opened by another CRNA?

2 A I can't remember. If I -- if I were, I don't
3 think I would have used them.

4 Q Okay. Did you -- did you ever cover for a
5 CRNA during a break?

6 A Of course.

7 Q And how -- I mean, how -- would you bring in
8 your own propofol, or would you use the propofol in the room?
9 Describe what would happen in that situation.

10 A I would use my own propofol.

11 Q And how -- I mean, how would it get in there
12 if -- if you weren't already in that room and you were
13 covering someone for a break.

14 A We used to have bottles in the room that were
15 new.

16 Q Would you ever come in to cover someone and
17 see open bottles left in the room?

18 A I may have.

19 Q Okay. Do you recall giving testimony at a
20 Grand Jury proceeding?

21 A Yes.

22 MS. WECKERLY: And this is -- is it you?

23 MR. WRIGHT: Pardon?

24 MS. WECKERLY: Is it Ms. Stanish or --

25 MR. WRIGHT: It is I.

1 MS. WECKERLY: Okay.

2 MS. STANISH: It's my day off today.

3 MS. WECKERLY: Hold on one sec. This is page 46.

4 MR. WRIGHT: Thank you.

5 MS. WECKERLY: At the bottom of page 46.

6 May I approach?

7 THE COURT: Uh-huh.

8 BY MS. WECKERLY:

9 Q Ms. Lobiondo, I just want you to -- you can
10 read as much as you want, but I'm kind of focused on the very
11 bottom of page 46. If you could just read through that.

12 A Okay.

13 Q Okay. Does that refresh your recollection
14 regarding whether there were ever open bottles of propofol
15 left in a room?

16 A Yes, that -- that's all that says. There were
17 open bottles there.

18 Q Okay. And -- and they would have -- they were
19 left in the room, but you, I think, indicated that you
20 wouldn't use one that you hadn't opened.

21 A Yes.

22 Q So if there were other bottles, you'd open a
23 new fresh bottle?

24 A Yes, or one that I knew the integrity of.

25 Q Okay. And -- and why is that? Why would you

1 use that practice?

2 A That's something you always learn in
3 anesthesia from the beginning in any -- you know, unless you
4 know, unless that's your drug, you don't know where else it's
5 been or who else has used it.

6 Q And when you were working at the --

7 A And how.

8 Q When you were working at the clinic, did other
9 CRNAs offer you opened, partially used bottles of propofol?

10 A As I said, I -- I think that it could have
11 happened, but I wouldn't have used it.

12 Q Okay.

13 MS. WECKERLY: And this is, Counsel, the top of page
14 47.

15 BY MS. WECKERLY:

16 Q This is the Grand Jury testimony.

17 A Okay.

18 Q And does that refresh your recollection as to
19 what you told the Grand Jury about if that ever did occur?

20 A Yes.

21 Q It did occur?

22 A Yes, and I said I didn't -- did not use it.

23 Q That you wouldn't use it. And that's because
24 of your training in nursing school and your own method of
25 practice?

1 A That's the way I practice. That's the way --

2 Q Now --

3 A -- I think we all do.

4 Q -- when -- if you went into a room on a break
5 and there were drawn up syringes of propofol --

6 MR. WRIGHT: Can I -- I'm sorry.

7 MR. SANTACROCE: My Grand Jury transcript doesn't
8 match what she's reading.

9 THE COURT: That's -- I think Mr. Wright's doesn't
10 match, either.

11 MR. WRIGHT: Look on page 46.

12 (Pause in the proceedings.)

13 MR. SANTACROCE: Why is there two different
14 transcripts? Can we approach?

15 THE COURT: There shouldn't be.

16 MR. STAUDAHER: There isn't.

17 THE COURT: I think it's probably the way they block
18 it out to make tiny little pages as opposed to --

19 (Off-record bench conference.)

20 THE COURT: Apparently there were two different
21 sessions before the Grand Jury and that's the -- it's not that
22 anybody's transcript is incorrect or there were changes made
23 to the transcript. It's just that there are two different
24 ones.

25 All right. Ms. Weckerly, you can proceed. And

1 then, you know, if there's anything that you need to use the
2 transcript for, just save it until that's --

3 MS. WECKERLY: I'll just come back. I'll come back
4 to that.

5 THE COURT: -- until that's back.

6 BY MS. WECKERLY:

7 Q Ms. Lobiondo, when -- when you were working at
8 the clinic in the last sort of segment of your employment
9 there, explain to us how CRNAs would cover for each other for
10 breaks. Like were you the third CRNA that would come in
11 typically, or what would you see?

12 A I mean, it -- it varied every day.

13 Q Okay. Well --

14 A I'm not sure --

15 Q -- describe the various --

16 A -- what you're asking.

17 Q -- you know, ways that breaks would be
18 covered.

19 A One person would go on a break or leave, and
20 the other person would take over the next patient. I'm not
21 sure exactly what you're asking.

22 Q Well, did the CRNAs ever like take a break
23 other than a lunch break?

24 A Not very many, but I'm not sure what you're
25 asking.

1 Q Just that. Would they ever take a break other
2 than a lunch break?

3 A I guess so.

4 Q In those instances would another CRNA cover
5 that procedure room?

6 A Yes.

7 Q Okay. And in the case of a lunch break, was
8 it the same thing that someone would cover the room while the
9 person was on the break?

10 A Yes, of course.

11 Q Okay. Now, during the course of your
12 employment at the center, do you ever remember an idea being
13 advanced to use saline with propofol?

14 A Yes.

15 Q And approximately when -- when was that in
16 your employment?

17 A I don't recall. I know that it was when I was
18 there when they had two rooms after 2004.

19 Q Okay. And you left in May of 2007?

20 A Yes, but I can say it was probably towards the
21 end of my employment when I remember that.

22 Q Okay. But obviously not after May 2007
23 because you were part of that idea?

24 A Yes.

25 Q Did you actually try that when that idea was

1 proposed?

2 A No, I never would use those syringes.

3 Q When you were -- when you were working at the
4 clinic, what type of syringes or what size or volume of
5 syringe did you use for administering propofol?

6 A 10 ccs.

7 Q Did you ever use anything other than a -- than
8 a 10 cc syringe?

9 A I don't remember.

10 Q Okay. Is your only recollection of a 10 cc,
11 or do you think you could have used another one?

12 A My only recollection is a 10 cc.

13 Q And during the course of your employment
14 there, did you ever reuse a syringe?

15 A No.

16 Q Even on the same patient?

17 A If -- if it's the same patient and you gave 5
18 ccs of what you had in the syringe and you wanted to use the
19 other five, you could use the same syringe. That hasn't been
20 used on anyone else.

21 Q Right. All within one syringe; correct?

22 A Yes, or if -- if you had a bottle that was
23 open for that patient and you were going to use that bottle
24 only on that patient, then, yes, you could still use the same
25 syringe.

1 Q Did you ever re-access a vial of medication
2 with a syringe you had used on a patient, and then use that
3 vial on somebody else?

4 A No.

5 Q Why wouldn't you do something like that?

6 A Because there's a possibility of
7 contamination.

8 Q And where did you -- where did you learn that?

9 A Nursing 101.

10 Q Okay. Is that pretty basic?

11 A Yes.

12 Q Now, when you were working at the clinic, were
13 you -- did you have to fill out a form or a document to
14 calculate or to document your anesthesia time for a procedure?

15 A Are you speaking about an anesthesia record?

16 Q Yes.

17 A Yes.

18 Q And how did you fill out the form? How did
19 you calculate your start time and your end time?

20 A The way I always do it since I've done
21 anesthesia.

22 Q What is that?

23 A When I see a patient, when we take a patient
24 into the room, that's your anesthesia start time.

25 Q And by into the room, you mean the procedure

1 room?

2 A Yes.

3 Q And what -- what is the end time?

4 A The end time is when you bring the patient to
5 the recovery room.

6 Q Okay. Now, during the time that you worked at
7 the clinic, did you ever have any conversations with Dr. Desai
8 about anesthesia time?

9 A I'm not sure what you mean exactly.

10 Q Did he ever make any comments to you about
11 anesthesia time?

12 A At one point I heard -- you know, I heard
13 people saying --

14 Q Not -- not -- just specifically about Dr.
15 Desai.

16 A Yes.

17 Q Okay. When in your employment was that?

18 A Probably towards the end of my employment when
19 I --

20 Q Sometime in 2007?

21 A Yes.

22 Q Okay. And would you have been at the clinic
23 when the comment was made?

24 A Yes.

25 Q And what -- what did he say?

1 A He mentioned to make the time 31 minutes.
2 Q Okay. Did you know why he wanted that? Did
3 he say why?
4 A No.
5 Q Besides him telling you to make the time 31
6 minutes, did he ever say anything else to you?
7 A No.
8 Q Did you ever hear him say anything about 31
9 minutes or anesthesia time to anybody else?
10 A I -- I don't recall.
11 Q Okay. You gave an interview to the -- well, I
12 guess to a federal -- a U.S. Attorney and also the police were
13 present. Do you recall that?
14 A Yeah, there were about five people in the room
15 asking me questions all at once.
16 Q Okay. And do you recall any comments you made
17 about Dr. Desai yelling something about the 31 minutes?
18 A Yes.
19 Q Okay.
20 MS. WECKERLY: And, Counsel, this is the second one
21 on page 1.
22 MR. WRIGHT: Yes.
23 MS. WECKERLY: Okay. May I approach, Your Honor?
24 THE COURT: Yes.
25 BY MS. WECKERLY:

1 Q Now, just at the top here. If you want to
2 read more, that's fine. Does that refresh your recollection?

3 A Okay. Well, I didn't say the word yelling.

4 Q Right.

5 A Someone else said that. Okay. Yes.

6 Q Okay. And so in this instance that I just
7 showed you, is that the conversation that Dr. Desai had with
8 you, or is that a different conversation that you heard?

9 A I would hear him say don't forget 31 minutes.

10 Q Okay. And when he was saying that, was that
11 something you heard him say like -- like one time or more than
12 one time?

13 A Probably more than one time.

14 Q And just for the time frame, are we -- is this
15 still that same time frame towards the end of your employment?

16 A Yes.

17 Q And when he was saying it, was it -- where --
18 where was he located, or where were you? Was it in the
19 procedure rooms or in a meeting or how would you describe the
20 location?

21 A Maybe in the hallway.

22 Q And who was he -- who was he talking to as far
23 as you could tell?

24 A Well, if he was talking to me or -- then he
25 was speaking to me at that time.

1 Q Did you ever see or hear him say that to
2 anybody else besides yourself?

3 A I -- I think so. I mean, I can only speak for
4 what I heard from -- I can't really speak about other people
5 and what --

6 Q Okay.

7 A -- they heard and --

8 THE COURT: Yeah, and we don't want you to. I mean,
9 only what you yourself observed, not what somebody may have
10 told you that they think they heard or saw, okay.

11 BY MS. WECKERLY:

12 Q Okay. And how did he say it when he said it
13 to you?

14 A Remember 31 minutes.

15 Q Okay. And did he say that to you one time or
16 more than one time?

17 A More than one time.

18 Q More than one time. And this is all in the
19 last part of your employment?

20 A Yes.

21 Q And you -- were you aware of what that was
22 pertaining to, why -- you know, what the 31 minutes was
23 supposed to be?

24 A Yes.

25 Q What was it pertaining to?

1 A To billing time.

2 MS. WECKERLY: Court's indulgence.

3 THE COURT: Uh-huh.

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

5 THE COURT: All right. And I believe we're going to

6 conclude with her testimony today, correct, and go into the

7 other witness?

8 MR. WRIGHT: Correct.

9 THE COURT: Okay. Ma'am, you're excused at this

10 point, but you will have to come back for cross-examination,

11 all right, but we're going to interrupt your testimony. So

12 don't discuss your testimony with anyone else. Do you

13 understand that?

14 THE WITNESS: Yes.

15 THE COURT: Okay. Thank you.

16 THE WITNESS: So I'm to wait here?

17 THE COURT: No, I think --

18 Mr. Staudaher, the next witness will take the rest

19 of the day, you think?

20 MR. STAUDAHER: I think that that's a fairly good

21 estimate.

22 THE COURT: Okay. You're free to leave, and then

23 Ms. Weckerly or Mr. Staudaher will contact you to tell you

24 when you need to come back.

25 THE WITNESS: Okay.

1 THE COURT: All right. And, again, do not discuss
2 your testimony with anyone else during the evening break.

3 THE WITNESS: Okay.

4 THE COURT: Okay. Thank you.

5 And, ladies and gentlemen, as I've told you in the
6 past, the order in which the testimony comes in doesn't
7 matter. You have to keep an open mind until you hear
8 everything. Because we interrupted this witness, obviously,
9 you know, you need to be mindful of that. And so the State
10 will now call their next witness.

11 MS. WECKERLY: It's Tonya Rushing.

12 THE COURT: Okay.

13 MS. WECKERLY: She's out there. I checked.

14 THE COURT: Ma'am, just follow the bailiff right up
15 here by me, up those couple of stairs. And then please remain
16 standing facing this lady right there who will administer the
17 oath to you.

18 TONYA RUSHING, STATE'S WITNESS, SWORN

19 THE CLERK: Thank you. Please be seated. And
20 please state and spell your first and last name for the
21 record.

22 THE WITNESS: Tonya Rushing; T-O-N-Y-A, Rushing,
23 R-U-S-H-I-N-G.

24 DIRECT EXAMINATION

25 BY MR. STAUDAHER:

1 Q Ms. Rushing, I'm going to take you back in time
2 a little bit to 2007/2008. Were you an employee or did you
3 work in any capacity at the Endoscopy Center of Southern
4 Nevada?

5 A Yes, I did.

6 Q And what was your -- what was your job at that
7 time?

8 A Practice manager COO.

9 Q Tell us the kinds of things you did in that
10 regard.

11 A I assisted with day to day operations with the
12 gastro center, a lot of public relations work, meeting
13 physicians, referring physicians, following Dr. Desai's orders
14 as far as making sure patient schedules are scheduled
15 appropriately, assisting Dr. Herrero with the physician staff
16 and so forth and making sure that all facilities were staffed.

17 Q As far as your work, were you isolated to one
18 specific location or were you kind of over in different
19 places?

20 A I was mainly at the Shadow Lane office. Each
21 office had an office manager which I would work with. And
22 then the endoscopies had nurse managers and directors of
23 nurses and so forth.

24 Q Before I go any further, I -- there's a couple
25 of things I want to -- I want to lay out. Have you ever been

1 offered immunity by the State in this particular case?

2 A No, sir.

3 Q Have you been offered immunity by the federal
4 authorities in this particular case?

5 A They gave me limited immunity.

6 Q For what purpose?

7 A Basically so I could come and testify and
8 assist with the case.

9 Q And is -- what is your understanding of what
10 that means in this particular instance?

11 A Limited immunity basically means that I can
12 come and testify and give the information that I have, but
13 anything that I testify may be used against me.

14 Q Do you have -- are you facing any kind of
15 charges in this particular instance?

16 A I am. I'm facing federal indictment.

17 Q So you're under indictment?

18 A Yes, sir.

19 Q And is that related to the activities of the
20 clinic?

21 A Yes.

22 Q And who is involved with -- with you in that
23 indictment?

24 A Dr. Desai and myself.

25 MR. WRIGHT: Can we approach the bench?

1 THE COURT: Sure.

2 (Off-record bench conference.)

3 THE COURT: Ladies and gentlemen, we're going to
4 take another quick break. Ironically, I actually do need a
5 break and I think these ladies might, as well.

6 During the break you are reminded that you're not to
7 discuss the case or anything relating to the case with each
8 other or with anyone else. You're not to read, watch, listen
9 to any reports of or commentaries on the case, any person or
10 subject matter relating to the case by any medium of
11 information. Don't do any independent research, and please
12 don't form or express an opinion on the trial.

13 You know already, but notepads in your chairs and
14 follow the bailiff through the rear door.

15 (Jury recessed at 2:34 p.m.)

16 THE COURT: And, ma'am, on this brief break I must
17 instruct you not to discuss your testimony with anyone else.
18 All right? And you're free to exit through the double doors.
19 You can leave your material there if you don't want to lug it
20 back and forth. That's up to you. Lug it if you want, or
21 keep it up there.

22 All right.

23 MS. WECKERLY: Ms. Rushing, I think you have to wait
24 outside.

25 THE COURT: Ms. Rushing, yeah, you need to wait in

1 the hallway or -- yeah.

2 (Ms. Rushing exits the courtroom at 2:34 p.m.)

3 MR. WRIGHT: Your Honor --

4 THE COURT: Mr. Wright, you had approached the bench
5 with your objection and ask that we take an immediate recess.

6 MR. WRIGHT: Yeah, I --

7 THE COURT: And the Court obviously complied with
8 that request. And so now, out of the presence of the jury, go
9 ahead.

10 MR. WRIGHT: I can't even -- I was in total shock.
11 I mean, I -- I'm not even sure what she said other than she
12 was under federal indictment, I think as it related to this
13 case, this investigation. I -- I can't even -- I don't even
14 remember what said. But then she said Dr. indictments -- Dr.
15 Desai is under indictment in the federal case. And I had no
16 idea this was going to come out.

17 I mean, I wasn't going to ask her a word about her
18 federal indictment or anything. That -- this does me no good,
19 her being under indictment. And obviously I'm flabbergasted
20 because now the jury knows Dr. Desai is under indictment for
21 federal offenses related to his conduct.

22 I have made at various times big things of examining
23 witnesses. Someone accused him of bribing on loans and
24 things. Carrera -- I don't want to misstate which doctor it
25 was because they all run together, but I made a various thing

1 about witnesses making false accusations against Dr. Desai,
2 and -- and then say anything come of it? And now it's left
3 for the jury to think these issues of him like making loans to
4 various doctors, and I wouldn't even bring their names out.
5 And now we learn he's under federal indictment as we sit in
6 this courtroom.

7 So my motion is for a mistrial. I don't know how to
8 unring the bell. It is absolutely prejudicial and absolutely
9 inadmissible. I mean, you can't ask -- you can't bring out in
10 any case is he presently being charged with other crimes. I
11 just say -- I just --

12 THE COURT: Yeah, I mean --

13 MR. WRIGHT: I am shocked.

14 THE COURT: -- clearly it's inadmissible. I don't
15 remember exactly how it came out. I think -- does anyone
16 remember?

17 Janie, queue it up?

18 THE RECORDER: I have a note that says have you ever
19 been offered immunity by the State, have feds offered you
20 immunity, you're under indictment related to activities to the
21 clinic, and then there was the objection.

22 THE COURT: Yeah, but --

23 THE RECORDER: I think her answer --

24 THE COURT: -- she said Dr. Desai. Yeah.

25 MR. SANTACROCE: Yeah, she did.

1 THE COURT: I don't remember.

2 MR. SANTACROCE: It was in response to a question
3 from Staudaher.

4 THE COURT: What was the question, Mr. Santacroce?

5 MR. SANTACROCE: Are you under indictment federally.

6 THE COURT: And then she said yes, and Dr. Desai.

7 MR. SANTACROCE: And I believe he asked her who
8 with.

9 THE COURT: That's what I think the question was.
10 That's what I heard. It's important what the question was.

11 MR. WRIGHT: I agree.

12 THE COURT: Whether or not --

13 MR. WRIGHT: I don't remember.

14 THE COURT: -- it was she --

15 MR. WRIGHT: I was like, whoa.

16 THE COURT: -- whether she blurted it out or whether
17 the question was and who with. Because if she blurted it out,
18 then, you know, the prosecution can't be faulted. But if they
19 said and who with, I mean, to me that's just like asking are
20 there other state charges or anything else.

21 Now, I will say this. I don't -- my impression was
22 that somehow this has already come out. There has been talk
23 about the federal investigation and other things, so my
24 impression was somehow we already knew. It's hard for me,
25 obviously, to separate what I know independently, but my

1 impression was somehow we already knew that -- certainly we
2 knew there was a federal investigation.

3 That's been discussed and that evidence is in front
4 of the jury through many witnesses about the fact the FBI was
5 involved, there's been talk about the U.S. Attorney with some
6 of the witnesses, so that's out there and everybody knew it.
7 What I'm not sure is if someone has already said, and I know
8 it wasn't you, Mr. Wright or Ms. Stanish, if somehow it hasn't
9 already come out that there are federal -- there are separate
10 federal charges in connection with this case and this whole
11 investigation.

12 That was kind of, I don't know, an impression, but
13 it could just be an erroneous impression based on the fact
14 that there has been so much talk already about the FBI aspect,
15 the U.S. Attorney has gotten involved in the discussions of
16 immunity. There was talk, well, the State offered you or the
17 U.S. Attorney offered you immunity. So there's the impression
18 out there that there is some other case, maybe a federal case.
19 I think that that impression is out there based kind of on
20 that. That's the impression. But, no, this is the first time
21 anybody said Dr. Desai is under federal indictment.

22 Janie, will you queue that up, please.

23 MR. SANTACROCE: For the record, I join Mr. Wright's
24 motion.

25 THE COURT: I mean, obviously, if it was federal

1 indictment and, you know, he's charged here, let's say, with
2 what he's charged with and then the federal indictment was
3 something totally unrelated, drug trafficking, bank robbery,
4 something like that, clearly there would be no choice at that
5 point but to grant a mistrial.

6 The only sort of thing possibly saving this is the
7 fact that it's the exact same conduct that is at issue here
8 that has also been charged federally. It's not new conduct.
9 It's not different conduct. It's the same conduct. And
10 basically the feds are in the same position that we were in
11 prior to starting this trial. There has been a probable cause
12 determination and there is -- there is a trial set.

13 So in that way it's not as prejudicial to me as if,
14 oh, he's pending -- you know, there's, you know, pornography
15 charges against him or bank robbery or federal firearms
16 charges or some unrelated kind of a thing, it's the same
17 thing. So there has been -- you know, in that way there has
18 been sort of no additional findings or conduct or anything
19 like that.

20 I mean, the State went to the, you know, probable
21 cause determination in front of the Grand Jury. Assuming that
22 was done, you know, federally. They went to a probable cause
23 determination in front of a Federal Grand --

24 Is that what happened, Mr. Staudaher?

25 MR. STAUDAHER: Yes.

1 THE COURT: -- in front of a Federal Grand Jury and
2 so, I mean, it's kind of the same -- the same thing. Like I
3 said, clearly if it was some other charge --

4 MR. WRIGHT: Well, what am I --

5 THE COURT: -- you know, firearms, something --

6 MR. WRIGHT: What are we supposed to do now,
7 introduce the federal indictment and explain it's the same
8 thing?

9 THE COURT: And say it's the same thing.

10 MR. WRIGHT: And now a Federal Grand Jury, and now
11 it has the imprimatur of the United States Attorney has seen
12 fit to prosecute for the false billing case? I don't see any
13 way to make this innocuous. This -- not to my knowledge,
14 nothing has come out by which you could imply or infer that he
15 is being prosecuted anywhere else for any other offense. I've
16 been meticulous in my questionings to make sure I don't wander
17 into the -- to the wrong area.

18 And the fact that there is a multi-jurisdictional
19 investigation, the interviews were being done by Postal,
20 Homeland Security, FBI, BLC, CDC. And just because of a
21 multi-jurisdictional investigation, we're supposed to think,
22 well, they already infer he's already indicted by the feds? I
23 don't get it.

24 THE COURT: Well, I didn't say they're supposed to
25 infer he's already been indicted. All I said was, you know,

1 that was kind of an impression I had, but I have other
2 knowledge also. But there has been talk about the U.S.
3 Attorney and the FBI and talk about immunity through the U.S.
4 Attorney and all of that. So why are people getting immunity
5 from the U.S. Attorney unless there was thought in the U.S.
6 Attorney's office of them also prosecuting.

7 MR. WRIGHT: No.

8 THE COURT: I mean, I think that --

9 MR. WRIGHT: No, because statutorily you can't even
10 get it unless the feds approve of it, if you read the actual
11 NRS on it, you have to have confirmed that there is a
12 potential federal violation.

13 THE COURT: Okay.

14 MR. WRIGHT: So the federal immunity isn't -- isn't
15 anything remarkable.

16 THE COURT: Well, they don't know that.

17 (Pause in the proceedings.)

18 THE COURT: -- a lot of talk in the trial about the
19 U.S. Attorney and the FBI and, you know, federal authorities
20 and so forth.

21 MR. SANTACROCE: Your Honor, it puts me in a
22 quandary in a sense that now do I have to cross-examine her
23 and say, well, Mr. Lakeman is not on trial with you federally,
24 is he?

25 THE COURT: Right. He's not under federal

1 indictment.

2 MR. SANTACROCE: It creates the impression, and now
3 I have to reinforce the federal indictment.

4 THE COURT: Well, we're going to play it back to see
5 what the question was, and then we'll hear from the State with
6 their position.

7 THE RECORDER: He needs to come down because it
8 won't play.

9 THE COURT: Well, can we maybe -- I was -- when I
10 said to the jury that I needed a break, I wasn't being
11 insincere, so let's all of us take a couple of minutes and
12 then we'll play that back. And then we'll hear argument from
13 the State as well as any suggestions the State may have, and
14 then we'll go from there.

15 MR. WRIGHT: Thank you.

16 (Court recessed at 2:45 p.m., until 2:52 p.m.)

17 (Testimony of Tonya Rushing played back.)

18 MR. WRIGHT: Well, it was intentionally elicited
19 that Dr. Desai is under indictment in the federal case. So, I
20 mean, she didn't blurt it out. I don't know how to make it
21 innocuous. It's -- the damage is overwhelming. I mean, I'm
22 -- I'm flabbergasted over it. I mean, if this was a drug case
23 and a witness is cooperating and they're -- the witness and
24 the defendant are both under indictment in a different case, I
25 wasn't even going to ask her about federal immunity, her

1 indictment, or anything. I mean, our hands are like tied.

2 I'm not going to bring out she's under indictment as
3 if she'd done something wrong, and so all of that was foregone
4 by me. And then out comes she's under indictment, and it'll
5 be clear what it's for. Billing fraud. I mean, I think,
6 because that's all she's really going to know about. She
7 doesn't really know about the propofol and syringe reuse, so
8 now we have that Dr. Desai is under indictment by the federal
9 government, which is inadmissible and there's no -- and
10 there's no way to -- it didn't pop out of the witness's mouth.

11 MR. STAUDAHER: I can't disagree with a large
12 portion of that, obviously. It was an inartful question. In
13 the sense that it was even asked in the -- or those questions
14 were even gone into in the first place, it was because we had
15 gone through those things with literally every witness that
16 got on the witness stand with regard to, you know, the
17 immunity and who had been involved and it was with the federal
18 authorities and with the state authorities and so forth, and
19 that was the reason to go down the line of questioning.

20 And it was -- it was clearly, you know, in
21 retrospect, not -- not the thing to do, at least with that
22 witness. However, I would say that I believe that the Court
23 could issue a curative instruction, and that it can be
24 certainly crafted in whatever way that counsel wishes, but
25 that would be the State's position as to issue some sort of

1 curative instruction at this point as opposed to other
2 remedies.

3 THE COURT: I feel like weeping uncontrollably. I
4 mean, here -- as I said, look, you know, clearly if they were
5 unrelated charges --

6 MR. STAUDAHER: Oh, Your Honor, there -- there was
7 one last thing that I neglected to mention. There -- there
8 was, at least it was my understanding and including Mr.
9 Mathahs, that he was given immunity on billing fraud issues
10 with the federal authorities for his testimony. That came out
11 and has been present in this case, as well.

12 So, I mean, that -- it was specific as to what the
13 issue was and that he was given immunity by the feds on that
14 issue despite the fact that he was charged in this case on
15 that. So, I mean, I believe that there was some evidence that
16 came out in the case to some degree. It didn't obviously
17 direct tie in Desai directly, but it was related to his
18 activities at the clinic with Desai.

19 So I think there has been some evidence in the case
20 that this came out in that regard. And that if you match that
21 up with the -- or combine that with the issue of how much the
22 issue of immunity and federal entanglement in this particular
23 case for -- for their investigations, I don't think it's as
24 damaging as -- as what counsel is implying, especially if the
25 Court was to issue a curative instruction.

1 THE COURT: I don't know what -- I mean, here's the
2 thing. Like I said, clearly, if it was other charges
3 unrelated, you'd have to declare a mistrial. There's no
4 question. We're all on the same page here. You know, it
5 shouldn't have been asked, and I'm troubled that -- you know,
6 everything was fine. She's yes, yes, yes, and then -- and I
7 wrote it down. And who is involved with you in that
8 indictment? Dr. Desai. I mean, there's only one other
9 possible answer.

10 You know, I don't think Mr. Staudaher was
11 deliberately trying to cause a mistrial or deliberately trying
12 to commit misconduct. I think it was probably you just didn't
13 -- I don't know. I mean, just weren't thinking, I guess. I
14 don't -- I kind of -- I guess just weren't thinking. I mean,
15 I guess that's -- and the totality, you know, I don't know,
16 how damaging is it?

17 MR. WRIGHT: I mean, there -- I -- I did bring out
18 all -- the inference I was bringing out of witnesses making
19 unfounded accusations against my client, the other doctors and
20 things, and then say did anything come of that or anything?

21 THE COURT: No, I know.

22 MS. WECKERLY: And now they know, oh, right, nothing
23 came of that. He's just, as we sit here, he's under federal
24 indictment.

25 THE COURT: Well, nothing came of any of the other

1 stuff. The -- I mean, nothing came of the threats or anything
2 else. The only thing is the same exact thing that he's being
3 charged with here, only with the Medicare/Medicaid spin. And
4 they're -- I mean, I am sorry. I have an impression that that
5 was talked about, this spin that it's Medicare, because isn't
6 that the focus of the indictment --

7 MR. WRIGHT: No.

8 THE COURT: -- federally, that there is some kind of
9 involving federal monies that it's billing fraud involving
10 federal monies, or is it the exact same charges as what we
11 have here?

12 MR. WRIGHT: No, it's a -- it's a federal billing
13 fraud case.

14 THE COURT: Yeah, but isn't it concerning Medicare
15 funds --

16 MR. WRIGHT: No, all of it.

17 THE COURT: -- and that -- it's private insurers?

18 MR. WRIGHT: No, all of it.

19 MS. STANISH: They have --

20 MR. WRIGHT: No, all of it.

21 MS. STANISH: Yeah.

22 MR. WRIGHT: In fact, it was -- I mean, leave it to
23 the State and the feds. The recall count and the federal
24 count were the same thing. Leave it to them to both indict
25 for the same thing. Hell with the double jeopardy clause and

1 everything else. And hell with the --

2 THE COURT: Well, they are separate jurisdictions.

3 I mean --

4 MR. WRIGHT: Well, why do you think they
5 orchestrated it so that he gets tried here first as opposed to
6 the feds? Because there's a state statute that prevents this
7 if the feds go first.

8 THE COURT: Well, honestly --

9 MR. WRIGHT: Don't act like it was --

10 THE COURT: -- Mr. Wright --

11 MR. WRIGHT: -- just some innocent little -- oh,
12 golly, two jurisdictions happen to prosecute --

13 THE COURT: That wasn't the --

14 MR. WRIGHT: -- at the same time.

15 THE COURT: -- spin that I thought of. I mean, I
16 think --

17 MR. WRIGHT: I don't know how --

18 THE COURT: I -- I spun it a whole new way which
19 wasn't a particularly flat -- I mean, I just think that more
20 cases go forward in state court. The Clark County District
21 Attorney's office prosecutes a lot more cases than the U.S.
22 Attorneys. There's way more of a case load over here, a lot
23 more cases -- many, many more cases get to trial.

24 So let me just tell you when I read it, but maybe
25 we're all looking at this egocentrically. That was kind of, I

1 thought, oh, of course, the State, you know, is going to -- is
2 going to go first because there's just -- there's more trials
3 that happen in this building than over in the, you know, Lloyd
4 George Building. It's just the reality of it. And that was
5 kind of how I looked at it.

6 Now, maybe there was the motivation, but that's not
7 how -- what I thought. I mean, just candidly, you know, it
8 takes them longer to try anybody. The State gets every -- you
9 know, goes forward usually far ahead of the -- of the federal
10 government. There was more cases over here, they don't take
11 as long on them, it's a -- it's a different, you know, it's
12 just a different way of practicing here in state court than it
13 is over in federal court.

14 And so that's kind of how I looked at. I may have
15 been wrong. Like I said, I think we all kind of look at
16 things egocentrically, and I'm looking at it, oh, state court,
17 our huge workload over here, and -- and like that. So you may
18 be right, but that wasn't -- that wasn't my --

19 MR. WRIGHT: Okay.

20 THE COURT: -- initial impression.

21 MR. WRIGHT: I understand.

22 THE COURT: But I don't know. We're both
23 speculating.

24 MR. WRIGHT: The -- just to me, even if she had said
25 I am indicted for billing fraud and so is Dr. Desai. I mean,

1 assuming she had said that, I'm in the same boat and
2 predicament. It just so happens in the public's perception,
3 is my belief, that they put greater credence in the FBI and
4 the federal government having determined they're going to
5 prosecute the matter. It bolsters the case the fact that the
6 feds have indicted him for the billing fraud.

7 I mean, it doesn't just mean, oh, there's probable
8 cause again and so they're doing it. I mean, people happen to
9 look rightfully or wrongfully that if the feds are going after
10 something, there's something important there. So I -- I don't
11 see that it's diminished if it would -- what the offense is.
12 It's just the fact that he's under indictment for another
13 crime.

14 MR. SANTACROCE: And, Your Honor, as far as my
15 perspective is, if the Court doesn't declare a mistrial, I
16 should be allowed to cross-examine her on the fact that Mr.
17 Lakeman is not indicted for billing fraud in the federal case.
18 I mean, it cuts both ways. If she's indicted --

19 THE COURT: Well, no, because --

20 MR. SANTACROCE: --for billing fraud --

21 THE COURT: -- you wouldn't have been able to do
22 that anyway. And by saying me and Dr. Desai, it's clear that
23 Mr. Lakeman isn't indicted --

24 MR. SANTACROCE: I don't think it's clear.

25 THE COURT: -- so I don't think that creates an

1 opportunity where none existed before.

2 MR. SANTACROCE: I don't think it's that clear. The
3 inference is that they don't know. And the inference is that
4 my client is sitting here with Dr. Desai in this case.

5 MS. WECKERLY: Your Honor, I --

6 THE COURT: Ms. Weckerly?

7 MS. WECKERLY: This is not verbatim, but I do have
8 in my notes that -- that Mathahs talked about the federal
9 case. Certainly my notes are not verbatim. I'd like to look
10 at a transcript of --

11 THE COURT: I'd like to --

12 MS. WECKERLY: -- his testimony. Sorry.

13 THE COURT: I'm sorry. I mean, that -- I'm just
14 telling you my impression was that it has -- somehow there has
15 been talk about it, and I can't remember where. I mean, this
16 is our, what, sixth week of testimony, our eighth week of
17 trial. So I don't really -- you know, I was left with that
18 impression like it was -- it was kind of evident.

19 MS. WECKERLY: Well, and I -- I think that there was
20 a -- if I'm remembering correctly, even with Nancy Sampson
21 there was a reference to a federal, you know, investigation.
22 I get that it's not the same thing. I mean, I'd mostly like
23 to see what -- what Mathahs said and --

24 MR. WRIGHT: He was a --

25 MS. WECKERLY: I mean, we have to leave a little

1 early anyway.

2 THE COURT: What I was going to suggest is --

3 MR. WRIGHT: It was a joint task force. I mean, I
4 was going to go into this with Labus. I mean, there was -- he
5 was on it. I mean, it was a Homeland Security.

6 You're a federal agent or something on this, aren't
7 you? Aren't you in the club?

8 MS. WECKERLY: He's local.

9 MR. WRIGHT: No, I thought in his task force. And
10 so there's no question that feds were in this investigation,
11 CDC, BLC, NSH, the FBI. Postal was in -- sitting in these
12 interviews. When she says, the prior witness, Lobiondo, says
13 there were five, yeah, there were five different -- the
14 attorney general of the State of Nevada -- not the, I mean
15 office. They were all there. That -- it was a joint massive
16 investigation. That doesn't in any way infer, therefore, Dr.
17 Desai is under federal indictment. I just don't even see the
18 connect.

19 THE COURT: I just said the impression was, you
20 know, there was -- there was a lot of talk about it. You
21 know, I don't have a perfect recollection. Like I said,
22 clearly, if this was other unrelated charges, I mean, we
23 wouldn't even be talking about it. You know, obviously, I
24 want to avoid granting a mistrial if there's any way to avoid
25 it.

1 I mean, as I said, this is our eighth week of test
2 -- I'm sorry. This is our eighth week of trial, sixth week of
3 testimony. I know that that is irrelevant if there is a bell
4 that can't be unrung. I understand that and I don't want to
5 in any way suggest that the Court's going to do anything to
6 step on Mr. Lakeman's rights or Dr. Desai's rights. That's
7 not my intention. But, obviously, you know, if you can cure
8 this in some way, that would be what the Court wants to do.

9 You know, it's not a case where we've started in one
10 day and, again, you know, that doesn't -- you know, whether
11 it's a year-long trial, that has nothing to do with if, you
12 know, somebody's rights were violated. You know, that's
13 tantamount to everyone else. I get that. And I don't mean to
14 suggest in any way that I'm not being -- being mindful of
15 that.

16 But if, you know -- I mean, at the end of the day,
17 you know, what's -- what's the prejudice here? Is this
18 something that they kind of knew about anyway or -- or is this
19 something -- I think where Ms. Weckerly, where you were going,
20 was to suggest adjourning for the day.

21 MS. WECKERLY: Yes.

22 THE COURT: And reviewing and giving both sides an
23 opportunity to do whatever additional argument or whatever
24 they want to do, and trying to see what exactly Mr. Mathahs
25 had said, and what's been said so far on this issue, if there

1 were federal charges or whatnot. Because, like I -- and
2 review the Mathahs -- we don't have a transcript. We do. We
3 do have a transcript. Wonderful.

4 MR. WRIGHT: No, he wasn't indicted.

5 MS. STANISH: He wasn't indicted.

6 THE COURT: No, I know, but wasn't there a
7 possibility that he could be indicted or --

8 MR. WRIGHT: No.

9 MR. SANTACROCE: He gave a proffer.

10 MS. WECKERLY: He gave a proffer, but, I mean, my
11 notes, which I know are just notes, says that -- says like
12 billing fraud, talked to the feds, billing fraud, and that he
13 gave a proffer. I don't know everything else he said at that
14 point in time in his testimony. That's what I'm saying I'd
15 like to look at, what he said at that point.

16 THE COURT: I'd like to look at it, too, because I'm
17 not saying, you know, like I said, I -- you know, if we have
18 to declare a mistrial, we have to declare a mistrial. That's
19 how it is. But I don't want to do that rashly, and then later
20 look back and say, oh, wait a minute, this was said, you know,
21 two weeks ago or three weeks ago or, you know, this was
22 mentioned in opening statement and they all knew. You know,
23 something that has been out there on the -- out on the floor,
24 on the table, or however you want to put it. So that's all
25 I'm saying.

1 I don't want to do this rashly. I want to do it in
2 a considered way, evaluate everything, consider the options,
3 consider where we are in terms of what's come out before the
4 jury. And that's -- I think Ms. Weckerly, that's her
5 suggestion. They would like to do that. The State would like
6 to have that opportunity. I'm going to give it to them.

7 MR. WRIGHT: I agree.

8 THE COURT: And the defense, I'm sure, you know --

9 MR. WRIGHT: I want to research it.

10 THE COURT: -- wants to research. Yeah. I mean,
11 research the issue. I would like both sides to please
12 research the issue. You don't need to do any briefing, but,
13 you know, basically find what cases you can. If there is
14 anything that is helpful to your point of view, bring them to
15 me in the morning. Exchange them with the other side. And
16 then we'll be back, you know, for argument.

17 And, you know, obviously, the more information that
18 you -- both sides can give the Court, the better. So, you
19 know, if anyone thinks of anything else where you think it
20 might -- something might have been mentioned or it might have
21 come out, then I would ask you to please let the other side
22 know, let the Court know, let my law clerk know. Sharry is
23 out today, so don't let her know, but let Keith Barlow, my law
24 clerk, know, or Janie, someone, so we can find that and I can
25 look at that, as well.

1 So I think probably what we should do for the day is
2 bring the jury back in and I'll explain to them that due to
3 some recent events or scheduling issues, we're going to have
4 to take our evening recess and have them come back at 10:00
5 a.m.. and lawyers back at 9:00.

6 MS. WECKERLY: Okay. Thank you.

7 THE COURT: Again, if anyone, Ms. Weckerly, Mr.
8 Staudaher, both sides, review your notes. If, as you review
9 your notes of the testimony, you find something that you think
10 is important one way or the other, please let Janie know so we
11 can get a draft or we can replay it here together to refresh
12 our memory as to what that was. But if -- even if we don't
13 have a transcript, if you tell her, she can at least maybe get
14 that queued up and find it so when we come back at 9:00
15 tomorrow and we need to listen to something, she can have that
16 all available so we can do that.

17 (In the presence of the jury.)

18 THE COURT: All right. Court is now back in
19 session.

20 Ladies and gentlemen, due to some unforeseen
21 scheduling issues, we're going to have to take our evening
22 recess at this point. We were going to be, you know, leaving
23 a little bit early anyway due to someone had a doctor
24 appointment on the jury, so we're going to end about an hour
25 earlier than we were originally going to end. We will

1 reconvene tomorrow morning at 10:00 a.m.

2 During the evening recess I must remind you that
3 you're not to discuss this case or anything relating to the
4 case with each other or with anyone else. You are not to
5 read, watch, or listen to any reports of or commentaries
6 relating to this case, any person or subject matter relating
7 to the case. Do not do any independent research by way of the
8 internet or any other medium, and please do not form or
9 express an opinion on the trial.

10 And, Kenny, may I see you at the bench, please.

11 (Off-record bench conference.)

12 THE COURT: All right. Ladies and gentlemen, I
13 don't remember if I said it, 10:00 a.m. tomorrow. Notepads in
14 your chairs and please follow Kenny through the rear door.

15 (Jury recessed at 3:15 p.m.)

16 THE COURT: Before everyone leaves, I'd like, I
17 mean, the State to be thinking about a possible curative
18 instruction. One, something --

19 Is that shut? Okay.

20 -- that occurs to me is something like, you know,
21 you are instructed that you are not to consider the fact that,
22 you know, Dr. Desai is under indictment, which he might say or
23 that's based on the same investigation that was conducted by
24 Metro in this case, and the same evidence presented in the
25 federal case or something like that to say basically there's

1 nothing different, it's no new evidence, it's no different
2 investigation.

3 Or, you know, something like it is the same
4 investigation that you've heard about in this case conducted
5 through the joint task force of the Metro and the FBI. There
6 is no additional evidence or something like that, and it's
7 based on the same probable cause determination or similar
8 probable cause determination underlying the indictment in this
9 case or something like that to show, hey, there's nothing new
10 here, there's nothing different, you know, or whatever. I
11 mean, it's just a suggestion off the top of my head, but --

12 MR. SANTACROCE: I'd like something in there about
13 Mr. Lakeman.

14 THE COURT: And -- all right. And that Mr. --

15 MR. SANTACROCE: That he's not indicted. He's not
16 indicted federally and they shouldn't infer anything from what
17 this witness said that he is. I mean, you know, the inference
18 is out there. There's a federal indictment with Dr. Desai.
19 My guy is married to Dr. Desai in every way, in the newspaper,
20 in the media, and all the stories. It's always Dr. Desai and
21 Ronald Lakeman. Dr. Desai and Ronald Lakeman. They're --
22 they're joined at the hip.

23 THE COURT: Well, it's kind of beneficial for you,
24 Mr. Santacroce, because then to the extent there's a negative
25 inference to Dr. Desai, there's a positive spin to Mr.

1 Lakeman, that, oh, the U.S. Attorney didn't think there was
2 enough evidence against Mr. Lakeman, so they didn't indict
3 him.

4 Anyway, to me that's the big issue, the idea that
5 there's somehow different evidence or better evidence or
6 something more credible that's before the Federal Grand Jury.
7 I mean, so that's really what we want to nip in the bud, that
8 it's all the same stuff. There's no new stuff over on the
9 federal side. It's the same stuff they're hearing in this
10 case.

11 So that's just something I just thought of off the
12 top of my head, but I want you folks to use that or be
13 thinking of what you would propose as a curative instruction.
14 I would ask -- the defense is obviously welcome to do that, as
15 well. But I understand the defense's position is there is no
16 curative instruction. So, you know, that would be -- that
17 would be my request for what I'd like everyone to do going
18 forward. And then we'll all reconvene at 9:00 a.m.

19 MR. WRIGHT: The cure is worse than the malady.

20 THE COURT: Well, I understand you don't want the
21 curative instruction to say the fact that Dr. Desai has been
22 indicted for numerous charges. But, I mean, you know, you can
23 say that -- that there's only been one investigation in
24 connection with this case that was conducted as the -- you
25 know, by Metro and the FBI and the joint task force, and that

1 there's no, you know -- all of the evidence gleaned during
2 that or -- you know, that -- that's kind of the idea, that
3 it's all one thing. It's not -- it's not different things.

4 All right. I want everyone back here at 9:00. And
5 you have the responsibility to -- to find things, switch them,
6 and call Keith, my law clerk.

7 (Court recessed for the evening at 3:20 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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Aurora, Colorado**


KIMBERLY LAWSON

KARR Reporting, Inc.

1 involving propofol administration, and you answered no;
2 correct?

3 A Correct.

4 Q And that's true?

5 A Yes, it is.

6 Q They asked you if snares were ever reused.

7 A Correct.

8 Q Snares are another device used in a procedure;
9 correct?

10 A Correct.

11 Q And you told them that snares were never
12 reused; correct?

13 A Correct.

14 Q And that's true during the entire time you
15 were there?

16 A Correct.

17 Q They asked you about CRNA anesthesia times and
18 asked if you thought those times were ever exaggerated. And
19 you said no because they were true professionals; correct?

20 A Correct.

21 Q Okay. And that's a true answer and that's
22 what you believe; correct?

23 A No.

24 Q Okay. So did you say this, what I just
25 represented you?

1 A If -- I must have, yes.

2 Q Okay. And so you're saying now that they were
3 exaggerated?

4 A They were.

5 Q Okay. Do you know why you told the police in
6 May that they were not?

7 A I don't.

8 Q Do you recall telling the police that you did
9 not look at the anesthesia log of a CRNA other than to get the
10 amount of propofol used?

11 A Can you repeat that one more time for me?

12 Q The -- does the nurse anesthetist keep a
13 propofol sheet? Pardon me, an anesthesia sheet.

14 A You mean like of bottles used?

15 Q No.

16 A Or -- or during the procedure?

17 Q The procedure. During the procedure does the
18 nurse anesthetist fill out an anesthesia sheet?

19 A They do.

20 Q Okay. I'm asking you about that anesthesia
21 sheet --

22 A Okay.

23 Q -- and the use you would make of it as the
24 nurse in the procedure room, okay.

25 A Okay.

1 Q Did you state that the CRNA prepares that
2 anesthesia sheet and I didn't look at it other than for the
3 total propofol?
4 A Correct.
5 Q Okay. Is that true?
6 A That's true.
7 Q Okay. And for the total propofol, you want to
8 know the amount given and the individual dosage units; is that
9 correct?
10 A No, I -- the only thing I needed to know was
11 the end amount used.
12 Q Okay. End amount. And then you were going --
13 you would enter that into your nurse's charts --
14 A Correct.
15 Q -- for that procedure; is that correct?
16 A Yes.
17 Q For the start time, you being the nurse in the
18 procedure room is where I am now, start time you would take
19 off of the strip and put onto the nursing chart?
20 A Correct.
21 Q Okay. And are we talking about the rhythm
22 strip --
23 A The rhythm strip, correct.
24 Q -- of the EKG starting?
25 A Correct.

1 Q Okay. And that start would be the first blood
2 pressure reading?

3 A Yes.

4 Q Okay. You were asked what the most accurate
5 time for the procedure from beginning to end, and you said the
6 strip off of the blood pressure monitor, the rhythm strip;
7 correct?

8 A Correct.

9 Q Because that is on throughout the procedure?

10 A Correct.

11 Q You were asked if you ever saw a physician
12 start a procedure before the anesthesia was effective, okay.

13 A Okay.

14 Q You said, yes, sporadically. Propofol is an
15 interesting drug. One person can be sedated with a 120 and
16 another might take 220 milliliters?

17 A Milligrams.

18 Q Milligrams. I get these mixed up. I just use
19 a number. You said not every time you give this does it, ten
20 seconds later, are they asleep; is that correct?

21 A That's correct.

22 Q You were asked how often that happened at the
23 clinic, and you said maybe five times in the whole time I was
24 there, okay.

25 A Okay.

1 Q You were asked who, and the answer was Dr.
2 Desai as starting before the patient was fully sedated;
3 correct?

4 MR. STAUDAHER: Your Honor, are there questions, or
5 is he just going to read the transcript in? Because I don't
6 have a problem with us just admitting the transcript if that's
7 what we need to do.

8 THE COURT: It's fine for right now. Just --
9 BY MR. WRIGHT:

10 Q Is that correct?

11 A That's correct.

12 Q Okay. That's what you told them?

13 A Correct.

14 Q Okay. You were asked if you thought that was
15 because he, meaning Dr. Desai, was in a hurry. And did you
16 answer I don't know, he wouldn't be looking at the patient, he
17 would look at the monitor and start? The patient would rise
18 up --

19 MR. STAUDAHER: Your Honor, I'm going to object to
20 this. Again, he can --

21 THE COURT: I'll see counsel --

22 MR. STAUDAHER: -- ask the question --

23 THE COURT: I'll see counsel up here.

24 (Off-record bench conference.)

25 THE COURT: Is everybody okay without a break? Does

1 anyone need a break? No? Okay.

2 BY MR. WRIGHT:

3 Q And did you say patient -- the patient would
4 rise up and say hey, and then it would stop? Do you recall
5 that?

6 A Okay. You know, that was five years ago. I
7 don't recall word for word of anything I said.

8 Q Okay. Look at page 31. I have the wrong
9 page. It's page 32, the bottom portion. You can read on as
10 much as you'd like.

11 A Okay.

12 Q Am I stating it accurately?

13 A You were.

14 Q Okay. And is -- is that correct what you are
15 saying?

16 A Yes.

17 Q Okay. Did you state I think he, meaning Dr.
18 Desai, just calculated it was long enough, and lo and behold
19 the guy needed 15 seconds rather than 10, and the colonoscopy
20 had started?

21 A Sure.

22 Q When questioned about those five times
23 involving Dr. Desai, did you state I don't think it was
24 purposeful, it was just a robotic kind of behavior, lights
25 were out, he's looking at the monitor, and he starts the

1 procedure?

2 A I did state that, yes.

3 Q Okay. And is that correct?

4 A Partly.

5 Q Do you recall being asked about Dr. Desai's
6 quickness on colonoscopies?

7 A I do.

8 Q And do you recall saying that it was 50/50
9 whether Dr. Desai came out faster than he went in?

10 A That's sounds like something I would have
11 stated, yes.

12 Q Okay. Is that accurate?

13 A Yes.

14 Q Okay. Do you recall questions were asked
15 about him pulling the scope, colonoscope -- what do you call
16 that thing?

17 A Colonoscope.

18 Q Colonoscope out quickly, and you answered he
19 didn't just pull the scope out when he got to the end of the
20 colon. What everyone complained about was when he was in the
21 last six inches and he pulled it out quickly. When you pull
22 it out quickly, it gets messy.

23 A Yes, it does.

24 Q Is that accurate?

25 A Yes.

1 Q So it was talking about the last -- the end,
2 the last six inches of the scope coming out; correct?

3 A Correct.

4 Q Do you recall being asked about the number of
5 procedures, number of patients being processed, treated at the
6 clinic?

7 A In this interview here?

8 Q Yes.

9 A I was asked that in every interview, so, yeah,
10 I recall that.

11 Q Do you recall that you didn't like 60
12 procedures in a day because of the customer service aspect?

13 A Yes.

14 Q Is that true?

15 A That's true.

16 Q Did you state that the procedure itself wasn't
17 an issue. It's not like they were doing shortcuts with the
18 procedures. They were not doing that. It was the customer
19 service that annoyed me. Is that correct?

20 A Partly, yeah. But, yeah, that's correct.

21 Q What do you mean partly?

22 A Well, I mean, you know, having time to reflect
23 this, as I -- as I progressed in these interviews and I had
24 more time to think about all of this, you know, certain
25 aspects of these procedures started to come to mind and some

1 of my views have changed.

2 Q Okay. And it has changed as you progress in
3 the interviews and learn more about what other people have
4 said?

5 A No, no one -- they never -- I don't know what
6 anyone else said.

7 Q Okay.

8 A I never talked to one person.

9 Q So what -- what is the partly on that answer?
10 I mean, because you were interviewed by the police and said
11 there were no shortcuts, you just know 70 people are
12 scheduled. You knew there were going to be 40 miserable
13 people; right?

14 A Right.

15 Q Okay. That part of it is correct?

16 A Correct.

17 Q Okay. But there were going to be people that
18 had to wait too long, and that's the customer service aspect?

19 A Correct.

20 Q And now you're saying upon reflection you
21 think they, physicians and employees, were taking shortcuts?

22 A I think -- I think a five minute colonoscopy
23 is -- you're required to take shortcuts.

24 Q Okay. And this is upon reflection after your
25 interviews?

1 A Correct.

2 Q You were asked did you notice any unsafe
3 practices. You told the police no; correct?

4 A Correct.

5 Q Was that true?

6 A Yes.

7 Q Okay. Did Brian Labus promise you
8 confidentiality?

9 A I requested confidentiality, but he didn't --
10 and he did state that it would be a confidential conversation,
11 yes.

12 Q Okay. I'm talking about that first -- when
13 you call -- Maggie asked you to call; correct?

14 A Correct.

15 Q And Maggie told you Brian was expecting your
16 call?

17 A I don't recall if she said she's expecting it.

18 Q Okay.

19 A She called me saying would you mind calling --
20 would you mind calling him.

21 Q Okay. And so you requested anonymity?

22 A I did.

23 Q And you were promised anonymity?

24 A I was.

25 Q Okay. And then you found out he just breached

1 his representation and turned it over to Metro; correct?

2 A Something to that effect, yes.

3 Q Okay. Well, is that -- do you see it
4 differently?

5 A I don't know if he turned it over to Metro or
6 if Metro interviewed him, but --

7 Q Okay. And you have stated several times in
8 your interviews that pretty much after July 1, 2006, when your
9 wife died, your memory is a mess; is that correct?

10 A It is, yeah.

11 Q And you viewed yourself as unstable?

12 A Correct.

13 Q And unreliable?

14 A Correct.

15 Q And you told police in the interview you
16 couldn't remember what you knew or didn't know until you read
17 what Brian Labus said in a report.

18 A Okay.

19 Q Is that right?

20 A I -- I imagine it is, yes.

21 Q You say for awhile there, you know, I'm
22 getting things from so many angles I was losing track of what
23 I really knew and didn't know.

24 A Okay.

25 Q You were getting so many angles from where if

1 you aren't talking to anyone?

2 A Just my own thought processes.

3 Q Okay.

4 A Talking with my lawyer.

5 Q Were you also --

6 A The questions from Metro. You know, I mean, I
7 would -- you know, they were using the typical you ask me
8 three -- you know, the same question three different ways.

9 Q Remember saying at one point I just really had
10 myself convinced that I didn't know what was true anymore
11 until I read the interview with Brian Labus and what he told?

12 A Okay.

13 Q What are you -- what are you talking about
14 reading and reviewing?

15 A His statement.

16 Q Okay. Until I read Brian's statement, then I
17 realized everything I've been saying all along is true.

18 A Correct.

19 Q But really you have no independent
20 recollection of all of that. It's just confirmed through
21 reading things in the newspaper?

22 A No, it's just -- you know, again, as time goes
23 by and you -- and you reflect on things, things start to
24 solidify. I mean, the -- what -- what I was referring to
25 there was my comment about the syringes.

1 Q Okay. And -- and you would read everything in
2 the newspaper; correct?

3 A That's not correct, no.

4 Q Did you read the newspapers about the
5 investigation?

6 A No, not really.

7 Q Okay. Do you recall telling the FBI --

8 MR. WRIGHT: Page 8.

9 BY MR. WRIGHT:

10 Q -- Chaffee has read the local newspapers and
11 knows that the hepatitis C outbreak generated at the ECSN is
12 being blamed on reuse of needles and syringes.

13 A Okay.

14 Q He advised that needles and syringes were not
15 reused.

16 A Okay.

17 Q Vials were reused, but it is common in
18 healthcare to reuse the vials even though marked as single use
19 only.

20 A Okay.

21 Q Okay? So were -- were you reading the
22 newspapers?

23 A I must have read it on that occasion. I mean,
24 you know, it was -- it was front -- it was front page, you
25 know, news for quite awhile there. So it was pretty common

1 knowledge that this was a big national event.

2 Q Right. And this was your chance to make a
3 difference and get your dignity back; correct?

4 A Sure.

5 Q Now, aside from your immunity, did the State
6 forgive prosecution --

7 MR. STAUDAHER: Objection. State has not given
8 immunity to Mr. Chaffee.

9 THE COURT: It was already testified to.

10 MR. STAUDAHER: Well, I believe he was talking
11 about --

12 THE COURT: It's his under --

13 MR. STAUDAHER: -- a proffer that --

14 THE COURT: It's his understanding that's relevant
15 and the jury will consider it as the witness's understanding.

16 So, Mr. --

17 BY MR. WRIGHT:

18 Q Do you think you don't have immunity?

19 A To be honest with you, I thought that was
20 federal immunity. I didn't know it was state.

21 Q Okay.

22 A Because that -- the proffer was given to me in
23 a federal attorney's office.

24 Q Okay.

25 A And so I thought that was -- I thought that

1 was on federal -- I thought that was federal immunity, not
2 state.

3 Q Okay. December 15, 2008, it's your
4 understanding that we're conducting this interview under a
5 proffer agreement with the District Attorney's office;
6 correct?

7 A Okay.

8 Q And you believe you have immunity as we sit
9 here?

10 A I do.

11 Q And you believe you also received a dismissal
12 of a criminal case against you?

13 A No.

14 Q No?

15 A No.

16 Q Okay. You -- you were arrested in 2010.

17 MR. STAUDAHER: Objection, Your Honor.

18 THE COURT: Yeah, I'll see counsel up here.

19 (Off-record bench conference.)

20 THE COURT: Ladies and gentlemen, we're just going
21 to take a quick recess. And during -- I needed a recess --
22 during this recess -- whether you folks do or not.

23 We're going to just take a brief recess. And, of
24 course, during the recess you're reminded you're not to
25 discuss the case or anything relating to the case with each

1 other or with anyone else. You're not to read, watch, listen
2 to any reports of or commentaries on the case, person, or
3 subject matter relating to the case by any medium of
4 information. Don't do any independent research, and please
5 don't form or express an opinion on the trial. Notepads in
6 your chairs, and follow the bailiff through the rear door.

7 (Jury recessed at 11:23 a.m.)

8 THE COURT: Mr. Chaffee, during the break you are
9 admonished you are not to discuss your testimony with anyone
10 else.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Do you understand that, sir?

13 THE WITNESS: I do.

14 MR. WRIGHT: Or read the paper.

15 THE COURT: Yes, and you're -- or read the paper.
16 That was not part of the earlier admonition. And you're free,
17 sir, to also exit through the double doors.

18 We're going to take a couple of minutes. If you
19 folks need a couple of minutes, take it, and then we'll come
20 back and we can put the conference that occurred at the bench
21 on the record.

22 (Court recessed at 11:24 a.m., until 11:30 a.m.)

23 (Outside the presence of the jury.)

24 THE COURT: All right. We're on the record.

25 Do we need to wait for Ms. Stanish? No? Okay.

1 Basically the State had objected to the line of
2 questioning regarding the 2010 arrest, which as I understand
3 it was possession of a meth pipe and dangerous drugs without a
4 prescription.

5 And then what was the outcome of that case, Mr.
6 Staudaher?

7 MR. STAUDAHER: Actually, we have provided that. I
8 believe the -- one of them was -- I believe the prescription
9 drug one was dismissed and --

10 THE COURT: Dismissed out of screening?

11 MS. WECKERLY: It doesn't show the date.

12 THE COURT: Probably they never got a chem on it
13 and --

14 MS. WECKERLY: I think he showed a script, but --
15 the way it looks to me, but I don't know that.

16 THE COURT: Okay.

17 MR. STAUDAHER: So there's no -- at this point --

18 THE COURT: And what happened with the meth pipe,
19 which is only a misdemeanor, in my view, to begin with?

20 MR. STAUDAHER: And Mr. Whitely is going to go out
21 and get the --

22 THE COURT: Okay.

23 MR. STAUDAHER: -- actual information, but to our --
24 the best of our recollection the case didn't go anywhere.

25 MR. WRIGHT: Well, why -- I mean, I am also going to

1 ask him about his methamphetamine use and its effect on his
2 testimony.

3 THE COURT: Or his memory.

4 MR. WRIGHT: Right.

5 THE COURT: Here's the thing.

6 MR. WRIGHT: I mean, there's a good faith basis for
7 that. He had a meth lab in his house and then he's arrested
8 with --

9 THE COURT: I don't think he had a meth lab. Didn't
10 he have -- just they were ordering the stuff for --

11 MR. WRIGHT: No.

12 THE COURT: -- a meth lab?

13 MR. WRIGHT: It was a meth lab. In fact, he said,
14 yeah, I guess I should have been suspicious when I saw all
15 those gas cans and tubes in the vagrant's room.

16 THE COURT: All right.

17 MR. WRIGHT: And then he's arrested with -- the lady
18 and he are arrested in 2010. She's high on meth and there's
19 the meth pipe sitting there.

20 THE COURT: All right. Mr. Staudaher, Ms. Weckerly,
21 when you approached the bench you indicated as officers of the
22 court that Mr. Chaffee had received no benefit on his case,
23 the 2010 cases, in exchange for his testimony or cooperation;
24 is that correct?

25 MR. STAUDAHER: That is absolutely correct.

1 MS. WECKERLY: That's correct.

2 MR. STAUDAHER: We had even no knowledge of the
3 extent of whatever he had as far as those individual cases
4 were concerned.

5 THE COURT: Okay. And then Mr. Chaffee, for the
6 record, never approached you to ask for a benefit or help of
7 any kind?

8 MR. STAUDAHER: No. As a matter of fact, the first
9 contact that I ever had with Mr. Chaffee was in pretrialing
10 him for this case. We attempted to have him come before the
11 Grand Jury. We had communication with his attorney Jason
12 Weiner. Jason Weiner, at least at that instance when he would
13 have been coming before the Grand Jury, had lost contact,
14 couldn't contact, I guess, for some reason, and he never came
15 before the Grand Jury. I never talked to him. So --

16 THE COURT: Okay.

17 MR. STAUDAHER: -- there was nothing, no indication
18 of a benefit given to him and him coming to us or doing
19 anything like that.

20 THE COURT: Okay. If there was no benefit and no
21 attempt to gain a benefit, then I don't see what the relevancy
22 is other than to further sully his character.

23 MR. WRIGHT: The relevance --

24 THE COURT: I think you've done a good of this far.
25 But I don't see what the relevance. If they stand there as

1 officers of the court and tell me that there was no benefit,
2 and it seems to me they're learning about all of this as we're
3 all learning about the facts and circumstances surrounding the
4 dismissal and whatnot. So to me, I don't see the relevance of
5 it.

6 You know, yes, if there was some motivation or he
7 had even approached them for a deal or something like that,
8 then I would say, yes, I think that it is relevant. But there
9 was no talk even, as I understand it, with these prosecutors
10 about, you know, his case.

11 And just to make it clear for the record, no
12 prosecutor like a team prosecutor ever approached you to say
13 do you want to give this guy a deal or anything like that,
14 nobody else in your office in other words; is that true?

15 MR. STAUDAHER: That's true.

16 THE COURT: Ms. Weckerly?

17 MS. WECKERLY: That's true.

18 THE COURT: Right. So, I mean, I just don't see the
19 relevance of it.

20 MR. WRIGHT: It's relevant. I accept their
21 representations. What matters --

22 THE COURT: Well, you didn't at the bench.

23 MR. WRIGHT: -- is whether Jason Weiner told him you
24 need to keep on the State's good side or these cases can be
25 refiled. It matters all the time. Informants -- witnesses

1 continue to cooperate knowing they have cases and it's going
2 to inure to their benefit. And the only way I can examine any
3 witness about them is his motive, his knowing he got arrested
4 and it was with the meth pipe. And then he knows by
5 continuing to cooperate, the probability is he's going to get
6 favorable treatment because he's a State's witness.

7 THE COURT: Well, okay.

8 MR. WRIGHT: That's proper cross.

9 THE COURT: I think you can say did you at any time
10 believe you needed to continue cooperating --

11 MR. WRIGHT: In order to get rid of your pending
12 case.

13 THE COURT: -- you know, with the District
14 Attorney's office, and if he says no, that's consistent with
15 the fact he never called them. And Mr. Weiner, his lawyer,
16 never called them to say ---

17 MR. WRIGHT: I don't know that.

18 THE COURT: Well, if they tell me they never -- he
19 never --

20 MR. WRIGHT: No. You saying I know Mr. Weiner
21 didn't call them.

22 THE COURT: Well, that's why I said --

23 MR. WRIGHT: I don't know that Weiner didn't say to
24 the DA this guy is a witness in your case.

25 THE COURT: Well, typically --

1 MR. WRIGHT: I don't know that.

2 THE COURT: That's why I asked them did a track
3 deputy approach them to say, hey, I got this guy on a case on
4 the team, do you care what I do with him? Typically, I'm
5 assuming, that's --

6 MR. WRIGHT: They would have nothing to do with
7 this. They would have nothing to do with the dismissal of his
8 case.

9 THE COURT: Well, the track --

10 MR. WRIGHT: I tell --

11 THE COURT: -- deputy isn't just --

12 MR. WRIGHT: I tell deputies on cases, hey, this guy
13 is a witness in an upcoming case.

14 THE COURT: And typically I'm assuming, unless it's
15 a really piddly case, which this one kind of is, but they're
16 going to approach Mr. Staudaher, the police officer, and say,
17 hey, do you care what we do with this guy? Do you care? Is
18 he really an important witness?

19 That's -- I mean, I know whenever people approach
20 the bench and the defense attorney says, oh, he's working with
21 Metro or he's a witness in a case, and it's usually a team
22 deputy down here and it's an MVU case or something like that,
23 the team deputy typically will say, well, I don't know if
24 that's true or not, this is an MVU case or this is a special
25 victims unit case. And then I tell them, okay, you need to

1 check with Metro or you need to check with, you know, the team
2 that's doing the case and see if this is all true.

3 Because, typically, the track deputies will say, oh,
4 I don't know anything about this, you know, I'm just a track
5 deputy. So I would assume that if there is this big promise
6 and all of that, somebody would have approached these
7 prosecutors and said is Mr. Chaffee a witness for you, do you
8 care what we do with this case? And they're telling you that
9 never happened.

10 Correct?

11 MR. STAUDAHER: That's correct.

12 MS. WECKERLY: Correct.

13 MR. WRIGHT: And I don't dispute that. I'm saying
14 his motivation to curry favor. I'm caught. I've got two
15 felony counts pending against me. I remained in custody. I
16 had to get Good Fellow Bail Bonds to bail me out. And then is
17 it -- I can't ask him did you think by continuing to be
18 cooperative this may inure to your benefit and the case will
19 go away?

20 If you don't think defendants, witnesses are
21 motivated to do that, you just spent too long the DA's office
22 and weren't out in private practice. I'm telling you, this is
23 fertile ground.

24 THE COURT: Mr. Staudaher?

25 MR. STAUDAHER: I still -- I mean, the interviews

1 that he's talking about all took place before any of this
2 stuff is happening. The one single case that could have been
3 potentially an issue, the one he's referring to now, nobody
4 ever approached us, did anything about it. We had no
5 involvement in it and it got denied.

6 Now, there's not even a plea deal where it could be
7 shown that he got it kicked down to something else and maybe
8 that there was potentially any negotiation. If the case gets
9 denied or gets dismissed, usually if that's because of someone
10 being a witness, there is some communication with the people
11 who he is a witness for as --

12 THE COURT: Okay.

13 MR. STAUDAHER: -- the Court articulated.

14 THE COURT: Here's the deal. All right. I mean, I
15 think you can say, you know, did you have contact with law
16 enforcement in 2010 and you thought you had to cooperate.

17 MR. WRIGHT: No, but --

18 THE COURT: And if he says no, then I think you're
19 done. Because otherwise, I just don't see the relevance of it
20 other than to further sully his character.

21 MR. WRIGHT: Did you -- no, but it isn't did you
22 have contact with law enforcement. The question is with a
23 felony case pending did you think it would inure to your
24 benefit on how you continued to cooperate and testify. It
25 doesn't matter if he talked to no one --

1 THE COURT: Although --

2 MR. WRIGHT: -- about it.

3 THE COURT: Okay. Let's --

4 MR. WRIGHT: I'm entitled to explore his motivation
5 to curry favor because he has a felony case pending.

6 THE COURT: He doesn't have a felony -- okay. And
7 had he maybe testified in 2010, then that would be relevant.
8 This is, what, 2013.

9 MR. WRIGHT: Same --

10 THE COURT: So, I mean, it's not hanging over his
11 head. If it was still pending, then I would say, okay, sure.

12 MR. WRIGHT: Okay.

13 THE COURT: Does the State want to say anything
14 about this?

15 MS. WECKERLY: I mean, right. It's just -- we have
16 no leverage on him. He -- it's done. It's over.

17 THE COURT: I mean, it's done. He's testifying in
18 2013. There's no cases hanging over his head. There's -- you
19 know, I don't know off the top of my head what the statute of
20 limitations is.

21 MR. STAUDAHER: On these charges, I mean, he's --

22 THE COURT: I don't know what it is. What is it?

23 MR. STAUDAHER: Well, the theft charges are four
24 years. The -- the other charges are three years.

25 THE COURT: Well, the misdemeanor is one year.

1 MR. STAUDAHER: Oh, you're talking about that --
2 that case?
3 THE COURT: Yes.
4 MR. STAUDAHER: Oh, yeah. Yes. I thought --
5 THE COURT: I mean, what's --
6 MR. STAUDAHER: -- you meant these cases.
7 THE COURT: -- the drug charges? What's the statute
8 of limitations on the drug charges?
9 MR. STAUDAHER: It would be three years.
10 THE COURT: It's probably already run. I mean, so
11 it's not hanging over his head now. He didn't testify --
12 MR. WRIGHT: Nope, it hasn't run yet.
13 MS. STANISH: No, it hasn't.
14 THE COURT: Oh, it hasn't?
15 MR. WRIGHT: No.
16 THE COURT: I mean, I think you can say, you know,
17 is there anything --
18 MR. WRIGHT: Oh, yes, it has.
19 THE COURT: It has. So, I mean, there's nothing
20 hanging over --
21 MR. WRIGHT: 4/16/10.
22 THE COURT: -- his head. He didn't testify in 2010
23 when it was hanging over his head. He gave his statement in
24 2008. So I don't see the relevance of these charges to any
25 statement he made in the past.

1 MR. WRIGHT: Five years federally, I was just
2 reminded.
3 THE COURT: For dangerous drugs without a
4 prescription?
5 MR. WRIGHT: For meth.
6 MS. STANISH: Meth.
7 THE COURT: Oh, you're talking about the meth lab
8 again? You already asked him that.
9 MR. WRIGHT: No, his meth. He was smoking meth. He
10 picks up a meth head. They're in the car.
11 THE COURT: I thought it was a pipe and --
12 MR. STAUDAHER: No.
13 MS. WECKERLY: No.
14 MR. STAUDAHER: That's not right.
15 THE COURT: -- it's a --
16 MR. WRIGHT: No.
17 THE COURT: -- paraphernalia.
18 MR. WRIGHT: He just happens to say he's known the
19 girl for a year and a half, and then says I just met her.
20 MS. WECKERLY: She's -- she's the one with the
21 drug --
22 MR. STAUDAHER: With the meth pipe.
23 MS. WECKERLY: -- paraphernalia.
24 MR. WRIGHT: In his car.
25 MR. STAUDAHER: And he's the one with --

1 MS. WECKERLY: And he's the one with --
2 MR. STAUDAHER: -- the prescription drugs.
3 MS. WECKERLY: -- the prescription.
4 THE COURT: Okay. First of all --
5 MR. WRIGHT: Okay. Well, I'm just going to ask
6 about his circumstances of meth use. I won't say --
7 THE COURT: Okay.
8 MR. WRIGHT: -- he was arrested.
9 THE COURT: And just to complete the record, the
10 reason I find it to be irrelevant is because it wasn't hanging
11 over his head when he made the statements to police that we've
12 talked about. It's not hanging over his head now here in 2013
13 when he's testifying at trial. Not hanging over his head by
14 the State. He didn't contact them, attempt to resolve the
15 matter for his testimony, no one else contacted them, not him,
16 not his lawyer.
17 Right, Detective Whitely? You weren't contacted,
18 hey, can you help me out? Did anybody at Metro call you and
19 say, hey, this guy a witness in your case or anything like
20 that?
21 MR. WHITELEY: No, ma'am. This is even a separate --
22 this is Boulder City, so --
23 THE COURT: So, I mean, to me it's not relevant.
24 But you can get into his meth use, if he was using meth. If
25 he says no he didn't, then, you know, you've already brought

1 out the vagrant and the equipment in the bedroom and the
2 ordering of that, so --
3 MR. WRIGHT: Okay. But --
4 THE COURT: Bring them in.
5 MR. WRIGHT: But if he says, no, I didn't, I just
6 don't have to leave it at that.
7 MR. STAUDAHER: Well, yeah, you've got to have --
8 MR. WRIGHT: I do not.
9 MR. STAUDAHER: -- some basis.
10 MR. WRIGHT: I can say --
11 MR. STAUDAHER: If anything --
12 MR. WRIGHT: -- okay, explain why you -- why
13 you're --
14 MR. STAUDAHER: He was never charged with meth --
15 MR. WRIGHT: -- with a lady who's smoking meth.
16 MR. STAUDAHER: Okay. But it doesn't --
17 THE COURT: Well, you can --
18 MR. STAUDAHER: -- mean that he's using it.
19 THE COURT: -- ask him that, and then if he says I
20 was giving --
21 MR. WRIGHT: Okay. He can --
22 THE COURT: -- her a ride or she went --
23 MR. WRIGHT: -- explain it.
24 THE COURT: -- to my church and I didn't know what
25 she was doing --

1 MR. WRIGHT: Whatever his --

2 THE COURT: -- then you're done.

3 MR. WRIGHT: Correct. But, I mean, I just don't
4 say, use meth? No. Okay, thank you.

5 THE COURT: All right. That's it.

6 MR. WRIGHT: Meth lab in the house.

7 THE COURT: Again, I think we've made an adequate
8 record on this point. I don't find that the dates are
9 contemporaneous with anything to indicate a motivation here.
10 So I don't --

11 MR. WRIGHT: Okay.

12 THE COURT: -- I don't think there's any motive, any
13 suggestion that would have influenced his testimony here three
14 years later.

15 Oh, Mr. Staudaher, would you bring Mr. Chaffee back
16 in for me, please.

17 Sir, come on back up here and have a seat.

18 (In the presence of the jury.)

19 THE COURT: All right. Court is now back in
20 session.

21 And, Mr. Wright, you may resume your
22 cross-examination of the witness.

23 BY MR. WRIGHT:

24 Q Mr. Chaffee, do you use methamphetamine?

25 A I do not.

1 Q You ever smoke it?

2 A No.

3 Q Any other controlled substance?

4 A Only by prescription.

5 Q Do you abuse prescription drugs?

6 A No.

7 Q When you testified on direct examination on

8 Friday about times in the procedure room when you're the

9 nurse, you would take a blank rhythm strip and fill it out?

10 A There was times that we would do that, yes.

11 Q Okay. We? Would you?

12 A I would, yes.

13 Q Okay. And so if I'm understanding right, this

14 -- this is the rhythm strip, blood pressure, EKG, all of the

15 equipment that was hooked up on the patient to monitor the

16 patient throughout the procedure; correct?

17 A Correct.

18 Q And you're stating that there were times where

19 you would just take a blank one and fill it out?

20 A If the procedure went too quick and we didn't

21 have time to generate a legitimate strip, we would fabricate

22 one, yes.

23 Q Okay. When you say we, is that you, or are

24 you including others as helped you do it?

25 A Myself.

1 Q Okay. And so you told the police about that;
2 correct?

3 A Correct.

4 Q Okay. And so these -- these would be then
5 stapled into the chart, the patient chart; correct?

6 A Correct.

7 Q Because there were EKG strips stapled onto
8 these patient charts we have seen.

9 A Correct.

10 Q Okay. And did -- did the police ever show you
11 any patient charts or take you to look at them to locate these
12 handwritten rhythm strips --

13 A No.

14 Q -- that you contend were stapled on?

15 A No.

16 Q Now, one final question. Did you explain to
17 the FBI that Mr. -- Mr. Krueger told you or explained to you
18 to make sure all of the anesthesia time was captured?

19 A Correct.

20 Q Is that correct?

21 A Correct.

22 Q And -- and do you stated that when you were
23 first hired, anesthesia billing was explained to you by
24 Jeffrey Krueger; correct?

25 A Correct.

1 Q And is that correct?

2 A That's correct.

3 Q And that Krueger advised that all of the time
4 associated with anesthesia should be captured; correct?

5 A Correct.

6 Q And you stated that the anesthesia times, as
7 explained by Mr. Krueger, were counted when patients were in
8 the recovery room; correct?

9 A Correct.

10 Q There was no CNA -- CRNA monitoring or
11 attending to the patients, but due to the proximity of the
12 recovery room and the procedure rooms, the CRNAs were right
13 there; correct?

14 A Correct.

15 Q The CRNAs could quickly reach patients if
16 there was a problem, so all of this was counted within the
17 anesthesia time; correct?

18 A Correct.

19 Q Thank you.

20 MR. WRIGHT: No further questions.

21 THE COURT: All right. Thank you.

22 Mr. Santacroce, are you ready to proceed?

23 MR. SANTACROCE: Yes, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. SANTACROCE:

1 Q Good morning, Mr. Chaffee. How are you?
2 A Good morning. Good, thank you.
3 Q I represent Ronald Lakeman. You know Mr.
4 Lakeman. You testified that you knew him both professionally
5 and socially; is that correct?
6 A Correct.
7 Q And when your wife passed away he reached out
8 to you?
9 A He did.
10 Q Took you to dinner, you guys went to dinner?
11 A Correct.
12 Q We'll get into that a little bit later. I
13 want to first start out by asking you about your testimony
14 that you changed today and the testimony you gave on Friday,
15 okay.
16 A Okay.
17 Q On Friday, as I understand it, you testified
18 that you witnessed Mr. Lakeman reusing needle and syringes on
19 multiple patients.
20 A Correct.
21 Q That wasn't true?
22 A That was not my intention.
23 Q But it wasn't true; correct?
24 A Oh, no, it was not true. No.
25 Q The fact of the matter is you never witnessed

1 Mr. Lakeman reuse needles and syringes on multiple patients;
2 correct?

3 A Correct.

4 Q And I believe that you came to this
5 realization, realizing you had testified wrongly, by reading
6 some newspaper accounts as to statements that were attributed
7 to you; correct?

8 A Correct.

9 Q And you also reviewed some of your prior
10 testimony that you had given to Metro and the FBI, perhaps,
11 and you realized that --

12 A No, I -- I -- I knew my statements, my prior
13 statements --

14 Q Were inconsistent?

15 A -- were inconsistent with my Friday statement,
16 yes.

17 Q Prior to testifying on Friday, did you have
18 any interviews with the District Attorney's office?

19 A Like --

20 Q Like a pretrial interview where they went over
21 certain things with you?

22 A No.

23 Q Okay.

24 A Oh, well, yes.

25 Q Where was that done?

1 A That -- down the street in --
2 Q The Clark building?
3 A The Clark building, yes.
4 Q And when was that done?
5 A Maybe two weeks ago.
6 Q In that interview did you tell the District
7 Attorney's office that Mr. Lakeman had never reused syringes
8 or needles on multiple patients?
9 A No.
10 Q Was that question ever asked of you by them at
11 that pretrial interview?
12 A That question was asked of me, yes.
13 Q And how did you answer them when they asked
14 you in the pretrial interview?
15 A That I saw him accessing vials of propofol,
16 but had no -- no knowledge of if they were being reused or
17 not.
18 Q So you told the District Attorney's office at
19 the pretrial interview that you had no knowledge of Mr.
20 Lakeman reusing needles and syringes on multiple patients?
21 A Yes.
22 Q I want to talk to you about the time you were
23 employed at the endoscopy center. And I believe you left in
24 April of 2007; is that correct?
25 A Correct.

1 Q You testified here on Friday, I believe, that
2 you were terminated; is that also correct?

3 A Correct.

4 Q Do you remember telling the FBI that you had
5 resigned?

6 A I asked -- I asked Tonya Rushing if I could
7 resign in lieu of termination, and she said yes. But as far
8 as I understand it, she never granted me that, so it was a
9 termination.

10 Q Okay. So when you testified in front of the
11 FBI, when you said that you had resigned, that was incorrect?

12 A I thought that was to be true at the time.

13 Q Okay. And that termination has already been
14 discussed by Mr. Wright, so I'm not really going to get into
15 that. After you left in April of 2007, you testified that you
16 never returned to the clinic, is that true?

17 A That's true.

18 Q So you have no knowledge as to what occurred
19 at the clinic on July 25, 2007; correct?

20 A Correct.

21 Q And you have no knowledge of what occurred at
22 the clinic on September 21, 2007; correct?

23 A Correct.

24 Q Now, at the time that you were employed at the
25 clinic, you were employed as an RN?

1 A I was.

2 Q And you worked at various aspects of the
3 clinic. You worked in pre-opinion, procedure room, and
4 discharge?

5 A Correct.

6 Q And then in the pre-op area you talked about
7 saline -- or actually heplocks being administered, and you did
8 that; right?

9 A Correct.

10 Q And you testified that it wasn't your practice
11 to flush the heplocks with saline.

12 A Correct.

13 Q But that's not true for all of the RNs, is it?

14 A No.

15 Q In fact, you are aware that saline bottles
16 were used on multiple patients to flush heplocks; correct?

17 A Correct.

18 Q And, in fact, you have a very strong opinion
19 as to how the infection was transmitted at one time, and you
20 believe that was from the saline being flushed through the
21 heplocks; isn't that correct?

22 A I thought that was a possibility.

23 Q And, in fact, you told Metro that it was one
24 nurse who you believe did that; isn't that correct?

25 A That is correct.

1 Q As part of your duties and as a nurse, were
2 you aware of how propofol was checked out in the morning by
3 the CRNAs?

4 A There was a little sign out log --

5 Q And --

6 A -- I believe.

7 Q I'm sorry?

8 A I believe there was a sign out log, yeah. So
9 they would like -- if they took a flat of propofol, they would
10 sign for a flat of propofol.

11 Q I don't want you to testify as to what you
12 believe or what you assumed or what you speculated. I only
13 want to know what you saw.

14 A There was a log and they would initial log
15 off, yes.

16 Q And they would take the flat of propofol;
17 correct?

18 A Yes.

19 Q And they would divide that between the two
20 CRNAs, or they would each take a flat?

21 A That I don't recall.

22 Q But you knew or at least you testified to
23 Metro that they had a flat in each procedure room; correct?

24 A Correct.

25 Q And you also told Metro that those propofol

1 bottles stayed in those rooms; isn't that correct?

2 A That's correct.

3 Q And you also told Metro that, and I believe
4 this is contrary to your testimony on Friday, where you said
5 that you saw Mr. Lakeman taking half filled bottles of
6 propofol back and forth. You never saw that, did you?

7 A You know, I -- I do believe I have seen him do
8 that, yes.

9 Q Okay. You're sure about that?

10 A I am.

11 Q I'd ask you to take a look at your Metro
12 statement to refresh your recollection of the statement given
13 on May 28, 2008. I'd ask you to take a look at pages 16 and
14 17 of that interview, and tell me if what you testified to
15 just now is correct. Do you have that with you?

16 A I don't know if this is -- I don't know if
17 this is the one or not. What's --

18 Q May 28th.

19 A I don't see a date on this.

20 Q Oh, it's down here.

21 A Okay.

22 Q Look at page 16 and 17.

23 A Okay.

24 Q Did you ever tell the Metropolitan Police
25 Department that you saw Ronald Lakeman taking unused portions

1 of propofol from room to room?

2 A Not him specifically, no.

3 Q In fact, you were asked did you ever see
4 propofol go from room to room, and you said only in the
5 possession of the person that popped the bottle open; correct?

6 A Correct.

7 Q You were asked how many times did you see it?
8 You answered, I couldn't tell; correct?

9 A Correct.

10 Q You were asked do you remember any specific
11 instances. You said no; correct?

12 A Correct.

13 Q You were asked can you give us any names, any
14 names pop up in your head? And you said no; correct?

15 A Correct, because they all did it.

16 Q They all did it?

17 A They all did it, yeah.

18 Q Didn't you say in that same statement that you
19 don't -- you don't know because for the most part all you can
20 picture is white lab coats?

21 A Right, which is what the CRNAs wore.

22 Q And so now contrary to what you just said in
23 your Metro statement where you didn't see the propofol bottles
24 go from room to room --

25 A That's not true. In my statement -- I did

1 state in my statement here that I saw them going from room
2 to --

3 Q Okay.

4 A -- room to room.

5 Q And you were asked can you cite any specific
6 instances, and you said no; correct?

7 A Correct.

8 Q You were asked for names of people that did
9 it. You said I can't give you any names; correct?

10 A Correct.

11 Q You were familiar with the CRNAs that you
12 worked with at the time; correct?

13 A Correct.

14 Q And if you said that they all did it, why
15 didn't you spout out their names? Lakeman, Mathahs, Hubbard,
16 Lobiondo. Why didn't you say that?

17 A Because, I don't know, I didn't want to get
18 anyone in trouble, I guess. I don't know.

19 Q The fact is you don't know, do you?

20 A I do know.

21 Q And they were all people in lab coats;
22 correct?

23 A Correct.

24 Q You were asked if the CRNAs switched rooms
25 during the day. And do you remember what you answered?

1 A I don't.

2 Q Well, what did you answer on Friday?

3 A They do switch rooms, yes.

4 Q When?

5 A During lunch.

6 Q Any other times?

7 A None that I can recall.

8 Q Then why would they be carrying propofol
9 bottles around with them if they stayed in one room all day
10 except for lunch?

11 MR. STAUDAHER: Objection. Speculation, Your Honor.

12 THE WITNESS: I -- I don't know.

13 BY MR. SANTACROCE:

14 Q If you know.

15 THE COURT: Well, he says he doesn't know.

16 THE WITNESS: I don't -- I don't know.

17 BY MR. SANTACROCE:

18 Q So it's your testimony that the CRNAs would
19 stay in the same room they started in until the end of the day
20 except for lunch breaks, is that your testimony?

21 A No.

22 Q Okay. What is your testimony?

23 A I mean, they -- you know, one may start in
24 Room A and finish in Room B. You know, it's not like they're
25 -- they go to Room A and then -- and then stay in Room A for

1 the entire eight hours. I mean, they may end up in Room B at
2 the end of the -- at the end of the day.

3 Q Do you remember what you told the Metropolitan
4 Police Department?

5 A I don't.

6 Q Take a look at page 12 of your statement from
7 May 28th.

8 A Okay.

9 Q Do you remember you told them that for the
10 most part they kind of tried to keep it that way, that is to
11 stay in one room all day. You said they were flexible.
12 Generally, whatever room you started in is where you would
13 work. You said frequently they would change for lunch breaks
14 relieving the other person; correct?

15 A Correct.

16 Q But generally they would end up in the same
17 room where they started; is that correct?

18 A No, I did not say generally they would end up
19 in the same room.

20 Q Look on page 13?

21 MR. STAUDAHER: Actually, Your Honor, if he could
22 answer the question and read the transcript to him, the
23 question accurately, so that he doesn't add his commentary
24 into it.

25 THE COURT: Yeah, if you're going to --

1 BY MR. SANTACROCE:

2 Q Look at page 13.

3 THE COURT: If you're going to read from the
4 transcript, read it verbatim.

5 MR. SANTACROCE: I will.

6 MR. STAUDAHER: And I would like him to go back and
7 read that one so it's clear because he wanted to answer the
8 question.

9 MR. SANTACROCE: Well, you can redirect him on it,
10 okay?

11 BY MR. SANTACROCE:

12 Q Page 13.

13 A Okay.

14 THE COURT: Tell us what -- well --

15 BY MR. SANTACROCE:

16 Q The question was, and usually the standard
17 practice was once you started in one room, that's where you
18 would end up for the rest of the day? Your answer, for the
19 most part, yes.

20 A Okay. Read --

21 Q Correct?

22 A Correct. Usually and for the most part.

23 Q Okay. And the most part was for the lunch
24 breaks; correct?

25 A It varied.

1 Q Give me some other instances.

2 A I really can't give you instances, but I mean,
3 I -- I -- in my mind's eye, I know that a CRNA would end up in
4 -- in the room they did not start in.

5 Q But you can't give me any instances as to who,
6 when, where?

7 A No.

8 Q Tell me about the procedure room itself as far
9 as what you were concerned with in the procedure room.

10 A In the -- I was concerned with, of course, my
11 paperwork. I was concerned with the -- the vital sign
12 machine, make sure that it was capturing some -- some vitals,
13 and I would be watching the screen to see where we were in the
14 -- you know, in the colon or in the esophagus.

15 Q When you were asked questions in the -- about
16 the CRNAs in the procedure room, do you remember telling
17 Metropolitan Police Department on page 16, really, no, what I
18 can tell you is this, I was too busy to really pay attention
19 to what somebody else was doing because I had to keep my own
20 head above water? Detective, right. Your answer, I mean,
21 between all the charting I had to do, the labs I had to do,
22 the wheeling the patients in and out of the room, I had to do
23 when I was in the room, it was too much for me to do.
24 Detective, monitor? Your answer, monitor a CRNA that had 30
25 years of experience. Correct?

1 A Correct. Absolutely.

2 Q Then you said later on in that answer that the
3 procedure started, the lights went out, I'm in the back of the
4 room, you know, and I'm looking at the monitors, you know, and
5 I'm not paying attention to the CRNAs. Is that accurate?

6 A That's accurate.

7 Q Mr. Wright asked you about times on the -- for
8 the procedures, and you said that the most accurate time would
9 be the monitor times, blood pressure and all of that; is that
10 correct?

11 A The -- the start time on the strip, yes.

12 Q Okay. And that start time was recorded by the
13 machine itself?

14 A Correct.

15 Q And you testified that at times you would fill
16 out a strip in your own writing; is that correct?

17 A Correct.

18 Q Is that the only times the strips were not
19 accurate, when you -- when someone wrote them by hand?

20 A To the best of my knowledge, yes.

21 Q All the other times on those strips would be
22 accurate according to your knowledge?

23 A Yes.

24 Q So if you found some handwritten strips we
25 should be leery of that?

1 A Correct.

2 Q Okay. You gave two interviews to the
3 Metropolitan Police Department; correct?

4 A Correct.

5 Q One in May and one in December of 2007?

6 A I don't know if it was '07 or '08.

7 Q Let me check. '08, 2008.

8 A Correct.

9 Q Do you remember what you told in the second
10 interview regarding the use of propofol?

11 A I don't.

12 Q You were asked if they, the CRNAs, come in and
13 break the other one for lunch would they use their setup or
14 would they bring their setup in. Do you remember what you
15 said?

16 A No.

17 Q Take a look at page 54 of your second
18 interview.

19 A I don't have that.

20 Q Let me show it to you. Tell me when you're
21 done reading that.

22 A Okay.

23 Q You testified that they would use the setup
24 that was already in that room; correct?

25 A Correct.

1 Q Now, I want you to tell me about this
2 conversation you allegedly had with Mr. Lakeman regarding
3 PacifiCare. Can you recount that?

4 A What do you mean this conversation?

5 Q Well, I believe you testified, and it's my
6 recollection, that you had a conversation with Mr. Lakeman
7 where they scheduled the patients and you had two PacifiCare
8 patients back to back, and you had a conversation with him
9 regarding billing PacifiCare patients.

10 A I didn't have a conversation with him. I was
11 present as the -- the scheduling was being discussed.

12 Q So you're telling me that you didn't directly
13 have a conversation with Mr. Lakeman about the PacifiCare
14 billing?

15 A See -- hold on a second. Let me -- let me
16 think about this before I answer. There were conversations
17 about the PacifiCare billing, yes.

18 Q With Mr. Lakeman?

19 A Yes.

20 Q Do you remember telling the Metropolitan
21 Police Department that you overheard a conversation?

22 A Well, that's the one I'm talking about at the
23 desk.

24 Q So you weren't a participant in that
25 conversation. You overheard Mr. Lakeman talking to someone

1 else?

2 A He was talking to another CRNA. All three of
3 us were standing right there together.

4 Q Okay. Who was the other CRNA?

5 A I believe it was Keith Mathahs.

6 Q And what do you recall about that
7 conversation?

8 A He had done two PacifiCare patients back to
9 back and he couldn't do a third because he -- you're going to
10 have to do the third one. I can't make the times work.

11 Q And that's what you heard him tell Keith
12 Mathahs?

13 A Something to that effect, yes. I mean, we're
14 talking, you know, almost eight years ago, so --

15 Q And what -- what year did this occur? In
16 2002, '03, '04, '05, '06?

17 A I know it would have happened in 2006, 2007.

18 Q You also testified to another conversation you
19 had with Mr. Lakeman at dinner time where he said allegedly if
20 shit hits the fan he wasn't going to cover for Dr. Desai.

21 A Correct.

22 Q And where was this conversation?

23 A It was at a restaurant in the -- I think in
24 the Red Rock Casino.

25 Q And when was this conversation?

1 A It would have been sometime around late 2006.

2 Q Late 2006?

3 A Correct.

4 Q And what did you interpret that to mean?

5 A That the billing practice, that he wasn't

6 going to cover him on the billing practices.

7 Q Okay. And this was in 2006?

8 A Correct.

9 Q So there was no issue, there was no hepatitis
10 C outbreak, there was no criminal investigation, there was no
11 CDC involvement, there was no Southern Nevada Health District
12 involvement at this time?

13 A Correct.

14 Q Correct?

15 A Correct.

16 Q All that came much later.

17 A Correct.

18 Q And yet he had this conversation with you.

19 Was it elicited from you, or did he just say it?

20 A We were just commiserating about work.

21 Q And he said if the shit hits the fan he wasn't
22 going to cover for Dr. Desai?

23 A Correct.

24 Q Even though this had predated by quite a bit
25 of time any of the investigation, the hep outbreak, any of

1 that; right?

2 A Yes.

3 Q With regard to the conversation you had about
4 PacifiCare, do you remember telling the federal investigators
5 in your proffer that you weren't a participant in the
6 conversation, but you only overheard the conversation?

7 A Yes.

8 Q Do you remember telling the feds that the
9 CRNAs, with regard to payment, it didn't matter what they
10 billed because they were salaried employees? Do you remember
11 telling the feds that?

12 A Not really, but I imagine I may have said
13 that.

14 Q I'm going to show you your federal proffer,
15 page 7. Ask you to take a look at this paragraph.

16 A Okay.

17 Q Is that what you told the feds?

18 A It is.

19 Q So you specifically said, I believe, that it
20 didn't matter if they saw 1 or 500 patients; correct?

21 A Correct.

22 Q The got the same amount of money?

23 A That's what I believed, yeah.

24 Q It was a common practice in the nursing
25 profession to reuse multi -- a multiple vial on multiple

1 patients; correct?

2 A Correct.

3 Q And that's even if it was labeled single-use?

4 A Correct.

5 Q And you did that practice yourself?

6 A Yes, I do.

7 Q You testified that you saw bite blocks reused;
8 is that correct?

9 A Correct.

10 Q And how many times did you see that occur?

11 A Daily.

12 Q Were they cleaned?

13 A They were cleaned and then processed, yes.

14 Q How about biopsy forceps, did you ever see
15 those being reused?

16 A I did.

17 Q How much? How many times?

18 A Daily.

19 Q Were those cleaned?

20 A They were cleaned, yes.

21 Q How about the 60 cc syringes?

22 A Same.

23 Q What are those used for?

24 A Flushing the scopes.

25 Q And you saw those reused?

1 A I did.

2 Q How often?

3 A Daily.

4 Q You talked about the -- what you believe the
5 CRNAs -- when you believe the CRNAs' responsibility ended, and
6 I believe you said they were still responsible for the
7 patients in the recovery room; is that correct?

8 A Correct.

9 Q So if you have -- if a nurse in the recovery
10 already had a problem, they would call the CRNA; correct?

11 A Correct.

12 Q And, in fact, you believe that was part of the
13 billing process for anesthesia time?

14 A That's what I was instructed, yes.

15 Q That's what you believed?

16 A I had no reason to disbelieve.

17 Q Well, you actually saw some of the CRNAs come
18 out to the recovery room; right?

19 A Sure.

20 Q You saw Mr. Lakeman come out to the recovery
21 room and talk to patients, didn't you?

22 A I did.

23 Q I think that's all I have. Thank you, sir.

24 THE COURT: Counsel approach.

25 (Off-record bench conference.)

1 THE COURT: All right. Get started, Mr. Staudaher.
2 Everybody okay?

3 REDIRECT EXAMINATION

4 BY MR. STAUDAHER:

5 Q I'd like to start with where we left off with
6 Mr. Santacroce. If there was a patient in the recovery room
7 that required -- what, I mean, were you there when a patient
8 ever needed a CRNA to come out and deal with some issue?

9 A Yes.

10 Q Okay. Would that ever be the -- if that CRNA
11 that had just finished that patient was actually working on
12 another patient doing a procedure, would that be the same
13 person that would come out and have to deal with a patient?

14 A No.

15 Q Who would deal with them?

16 A Either another CRNA or maybe one of the docs.

17 Q Okay. So the CRNA that did the procedure
18 wouldn't be available to do that follow up if they needed to?

19 MR. SANTACROCE: I'm going to object as to
20 foundation. He's making it sound like it always happened that
21 way. There's been no foundation as to when he saw it.

22 THE COURT: Well, overruled.

23 So, I mean, did you ever see that occur where there
24 is a problem and a CRNA is called for and the CRNA is actually
25 in the middle of a procedure or beginning or whatever, you

1 know, they've started with another patient?

2 THE WITNESS: Nothing that comes to mind, no.

3 THE COURT: Move on, Mr. Staudaher.

4 BY MR. STAUDAHER:

5 Q You said you saw Mr. Lakeman come out to the
6 recovery area.

7 A I have.

8 Q Is that a regular occurrence?

9 A Yeah, they would -- they would kind of rotate
10 out there, you know, in between cases. While we were getting
11 the room set up they would come out and -- to see how the
12 patients were doing.

13 Q So on one of these days that you were
14 complaining about 75-plus patients or whatever, would that
15 happen on those days?

16 A Not as frequently, no.

17 Q Now, you were asked some questions
18 specifically. I think you were -- do you have your federal
19 proffer up there?

20 A I don't, no. I --

21 Q I can bring it --

22 A -- just have the first interview.

23 Q -- to you if you need it. Mr. Santacroce was
24 asking you some questions about page 7 of the proffer.

25 MR. STAUDAHER: May I approach, Your Honor?

1 THE COURT: Sure. You may move freely, Mr.
2 Staudaher.

3 MR. STAUDAHER: Thank you.

4 BY MR. STAUDAHER:

5 Q The first paragraph, in there where it's
6 talking about PacifiCare --

7 THE COURT: Keep your voice up.

8 BY MR. STAUDAHER:

9 Q -- do you see that?

10 A I do.

11 Q Now, you had mentioned a couple of points
12 where you said -- I guess when you were asked about the
13 conversations with PacifiCare, you said that there was one at
14 the sort of the scheduling desk --

15 A Right.

16 Q -- that Mr. Lakeman made some comments about.
17 And others where that was discussed?

18 A Yeah, the --

19 Q There's some specifics in this particular
20 paragraph --

21 A There were -- there were some --

22 MR. SANTACROCE: Objection. Leading, you know.

23 THE COURT: I'm sorry. I was conferring with the
24 bailiff on an important matter and I didn't hear the question.
25 So state the question again.

1 BY MR. STAUDAHER:

2 Q Were there other questions, because there's
3 some specifics in that paragraph --

4 THE COURT: Okay. Well, don't -- don't, you know --

5 MR. STAUDAHER: That's fine.

6 THE COURT: -- editorialize or explain the reasons
7 for your questions. Just as the question and then if he needs
8 clarification or something like that, the witness can say, you
9 know, I don't understand, I don't know what you mean. So just
10 state the question. We don't need to have a whole
11 justification for the question.

12 BY MR. STAUDAHER:

13 Q Were there others beside that conversation
14 regarding the scheduling?

15 A There were some conversations in a room, in a
16 -- in a procedure room, yes.

17 Q Okay. Tell us about those.

18 A When the PacifiCare thing first started
19 happening, they were -- they were really having trouble
20 getting all the time straightened out because of them -- them
21 having to do these --

22 MR. WRIGHT: Objection to --

23 THE COURT: Foundation?

24 MR. WRIGHT: -- foundation.

25 THE COURT: Yeah. I mean, how do you know all this,

1 what you're --

2 THE WITNESS: Well, because --

3 THE COURT: -- just saying? I mean, you say they
4 were having trouble and when this started. How did you become
5 aware that this --

6 THE WITNESS: Because they would verbalize -- the
7 CRNA would verbalize their frustrations.

8 THE COURT: Like right there in the procedure --

9 THE WITNESS: Right there in --

10 THE COURT: -- room?

11 THE WITNESS: -- the procedure room. Yes, ma'am.

12 THE COURT: Okay.

13 BY MR. STAUDAHER:

14 Q Go ahead.

15 A So they were -- so they were having trouble
16 getting, you know, these 30 minute -- these 30-plus minute
17 blocks of time. And so they would verbalize their frustration
18 about I can't make this work. I just -- I just did one
19 PacifiCare, now I'm doing another one, and -- and I can't get
20 -- you know, they were having trouble getting --

21 MR. SANTACROCE: I would object as to who he's
22 referring to.

23 THE COURT: Yeah, I was just going to --

24 THE WITNESS: Well, that's --

25 THE COURT: Yeah, that's sustained. Well, I mean,

1 you say which CRNA and what -- you know, if you saw a CRNA say
2 this or overhead it, then if -- as you near as you can
3 remember, like when did this happen and who -- who said, you
4 know -- who do you recall saying these things?

5 THE WITNESS: I recall -- I recall Ron Lakeman
6 saying it. I recall -- I recall several of the nurse
7 anesthetists saying it. It was a -- it was a pretty common
8 grudge that they had.

9 THE COURT: And then they're saying it in the
10 procedure room? Is the doctor just, you know --

11 THE WITNESS: No --

12 THE COURT: -- going about --

13 THE WITNESS: -- the doctor -- no, the doctor
14 wouldn't --

15 THE COURT: -- ignoring them or --

16 THE WITNESS: -- be in the room. No, the doctor
17 wouldn't be in the room. It would be -- it would be that
18 little -- that little block of time that we would have between
19 the end of the procedure and the start of a new procedure
20 where they were finishing up their paperwork and they were
21 trying to get their time straight on their -- on their
22 documentation.

23 THE COURT: Go on, Mr. Staudaher.

24 BY MR. STAUDAHER:

25 Q Now, you said that you had two different

1 interviews with the police?

2 A I believe so, yes.

3 Q And one with the federal authorities?

4 A Correct.

5 Q And in your first interview with the police,
6 was there any proffer agreement in that one to the best of
7 your --

8 A No.

9 Q -- knowledge? Okay. So that one you didn't
10 have a proffer, but the rest -- the other two you did?

11 A Correct.

12 Q And the proffer, what did that mean to you
13 when you came in and gave that information to the police and
14 to the FBI?

15 A It meant that if I -- if I tell the truth and
16 I stay with the truth, then I'm not going to face any type of
17 criminal liability.

18 Q Okay. So the first one you don't have that,
19 and that's the one that we've been asking questions about, or
20 at least counsel has?

21 A Correct.

22 Q Now, in the federal proffer you were obligated
23 to tell the truth as a part of that, were you not?

24 A I was.

25 Q Did I understand you correctly that as time

1 when on you said you had time to reflect and things, so I
2 think your words were solidified at some point?

3 A Correct.

4 Q Is it fair to say that you have more detail in
5 -- in some of the subsequent statements than you did in that
6 first one?

7 A Absolutely.

8 Q Specifically related to the issue of syringe
9 reuse that you've -- you've sort of corrected the record
10 today; correct?

11 A Correct.

12 Q With regard to that, and I'm talking about
13 syringe and needle reuse within a single patient.

14 A Okay.

15 Q Ronald Lakeman, okay.

16 A All right.

17 Q I want you to read this whole page of the
18 proffer, page 8, especially the last --

19 MR. SANTACROCE: What page?

20 MR. STAUDAHER: Page 8.

21 THE COURT: Page 8.

22 BY MR. STAUDAHER:

23 Q And especially the last paragraph of that.

24 THE COURT: Are you talking about the FBI proffer?

25 MR. STAUDAHER: Yes.

1 THE WITNESS: Okay.

2 BY MR. STAUDAHER:

3 Q Okay. So two different things that I want to
4 ask you about. First, syringe reuse and needle reuse within
5 the same patient, and then between patients.

6 A Okay.

7 Q Did that refresh your memory on that issue?

8 A It did, yeah.

9 Q Okay. So tell us about that.

10 A On -- I really can't describe how many times,
11 but, I mean, I -- I have seen Ron Lakeman with a -- with a --
12 with a needle and syringe in his hand, re-access a bottle of
13 propofol to -- to dispense it to the patient.

14 THE COURT: Do you know if it was a clean needle and
15 syringe or the same needle and syringe that had just been
16 used?

17 THE WITNESS: You know --

18 THE COURT: Sorry. I didn't mean to step on --

19 MR. STAUDAHER: That's fine.

20 THE COURT: I'm assuming that would be where you'd
21 go with that.

22 THE WITNESS: I mean, from the statement I made
23 there, it was --

24 THE COURT: Well, no, we want to know what -- what
25 your testimony is today.

1 MR. STAUDAHER: Correct.

2 THE COURT: Go on, Mr. Staudaher. I apologize
3 for --

4 MR. STAUDAHER: That's fine.

5 BY MR. STAUDAHER:

6 Q At least in the proffer did you say Ronald
7 Lakeman you saw reuse needles and syringes, same patient?

8 A Yes.

9 Q Never saw the between patients, though?

10 A No.

11 Q Now, you were asked a question by Mr.
12 Santacroce. Remember when you read page 16 and 17 -- do you
13 have -- which statement do you have up there?

14 A Just number one.

15 Q First one? If you go to page 16 and 17. And
16 this was about -- did you ever tell the police in the first
17 interview that you saw open bottles of propofol going from
18 room to room? Do you remember that?

19 A I do.

20 Q Okay. In the bottom part of that, the last
21 about four lines, you actually say that, do you not?

22 A Yes.

23 Q It says did you ever see the bottles of -- or
24 vials of propofol go room to room? That was the question.

25 MR. SANTACROCE: I'm sorry. What page are you on?

1 MR. STAUDAHER: 16, bottom, fourth line.

2 BY MR. STAUDAHER:

3 Q Your answer, only if it was in the possession
4 of the person that popped the -- the bottle open.

5 A Correct.

6 Q Okay. Then we go to the next page. I just
7 want to read this -- this one answer here.

8 MR. STAUDAHER: Well, you objected to me not reading
9 the whole thing. Why don't you read the next two sentences?

10 THE COURT: Well --

11 MR. SANTACROCE: You read the whole thing so it's
12 not -- it's not out of context this time.

13 BY MR. STAUDAHER:

14 Q On page 17, the top --

15 THE COURT: Let's be mindful --

16 MR. SANTACROCE: I would move to strike that.

17 THE COURT: Okay. Both -- again, both of you
18 there's no need for the editorial comments. Just ask the
19 questions.

20 And, Mr. Santacroce, you can just make an objection
21 without, you know, saying, oh, it's not fair that he does it
22 if I didn't do it or, you know -- my words, not yours.

23 BY MR. STAUDAHER:

24 Q Page 17, top, question, do you remember any
25 specific instances or any? Your answer, no, I mean, I know --

1 no, I couldn't give you any real specifics. I mean, I just
2 know that generally it might happen around lunch when there's
3 one CRNA and what they would do sometimes is they would, you
4 know, bring a patient into each room, start prepping a patient
5 in this room while he's working on this case. When the case
6 is fully completed and then they would go over and do other
7 cases, and if they did that, then, you know, he might keep a
8 bottle -- a bottle in his hand. But I couldn't give any
9 specifics other than a general -- other than that
10 generalization.

11 A Correct.

12 Q Okay. You mentioned this conversation at the
13 Red Rock dinner. Did you discuss anything else about the
14 clinic at that dinner with Mr. Lakeman?

15 A No, just -- just generally, you know, the --
16 the unhappiness and the PacifiCare thing.

17 Q Okay. And that shit hits the fan comment was
18 about anesthesia billing; is that right?

19 A Correct.

20 MR. STAUDAHER: Court's indulgence, Your Honor. I'm
21 almost done with that.

22 BY MR. STAUDAHER:

23 Q Now, let me go back to a couple things that
24 Mr. Wright said. You said in answer to a question on cross
25 that you believe the five minute colonoscopy required one to

1 take shortcuts. Are those your -- your words?

2 A Correct.

3 Q Did you, in your proffer or your -- your
4 federal proffer, your statements at all, indicate what
5 concerns you had with regard to the speed, why that was a
6 problem?

7 A I believe so, yes.

8 Q To the best of your recollection can you tell
9 us what those were?

10 A Perforations, general patient discomfort. You
11 know, when you -- when you pull the scope out too quick and
12 you're not getting the air out that you've pumped into the
13 colon, then -- then the patient has that air left in their
14 abdomen and they're -- it's pretty uncomfortable. So it was
15 patient discomfort, perforations, things like that.

16 Q And when you were -- the question about Brian
17 Labus, what you told him, this whole thing -- you told him
18 about the 60 cc syringes and the like, I think; correct?

19 A Correct.

20 Q You were asked specifically if Brian Labus --
21 that you told Brian Labus that you witnessed the reuse of
22 needles and syringes.

23 A Correct.

24 Q Okay. Now, did he ask you to break that down?
25 I mean, within a patient or between patients, anything like

1 that?

2 A No.

3 Q Do you recall him even asking you that
4 question?

5 A He did.

6 Q Okay. And when you answered the question,
7 what were you answering? Was it both or one of those two
8 things?

9 A It was -- the general sense I got, I believe,
10 is he was asking if it was between patients.

11 Q So when you answered the question you thought
12 you were answering between patients?

13 A That it -- yeah, if they were being reused
14 from patient to patient, yeah.

15 Q You were asked some questions about, you know,
16 this is when you called -- you actually called the Health
17 District based on, I think, Maggie Murphy?

18 A I did.

19 Q When you called them there were some questions
20 about you felt this was an opportunity to get your dignity
21 back, to -- to make a difference. What did you mean by that?

22 A Just, you know, I -- I knew -- I knew the
23 conditions that we were working in were substandard. And I
24 felt like being able to verbalize some of those issues with
25 the Health Department, you know, to get that off my chest was

1 beneficial.

2 Q Beneficial for you or beneficial --

3 A For me. --

4 Q -- for whom?

5 A For me.

6 Q Okay. Did you think it would help the Health
7 District?

8 A Well, yeah, absolutely. I mean, that's why I
9 called.

10 Q Now, did you have an vendetta or anything
11 against the clinic, Desai, Lakeman, anybody?

12 A None. No.

13 Q Okay. I mean, clearly things didn't go well
14 with the end of your time working there.

15 A It didn't.

16 Q Did you ever do anything to go back to the
17 clinic to sabotage the clinic in any way?

18 A No.

19 Q Other than the call to the Health District --
20 and your -- was your agenda in that call in any way to hurt
21 the clinic?

22 A No, it was -- it was to assist the
23 investigation on where this transmission may have come from.

24 MR. STAUDAHER: Pass the witness, Your Honor.

25 THE COURT: Mr. Wright.

RECROSS-EXAMINATION

BY MR. WRIGHT:

Q When I asked you those questions, you say you just called because it was the investigation about where the transmission had come from. I thought you said you didn't know about the hepatitis C transmission when you called Brian Labus.

A You know what, I didn't.

Q Okay.

A I just -- I just added that because, you know,
it's in my head right now, so --

Q You just add things when the prosecutor asks you questions because he's the one that controls the immunity?

A No, that's not true.

MR. STAUDAHER: Objection, Your Honor. And I said he doesn't have immunity.

BY MR. WRIGHT:

Q Do you have immunity?

A I have immunity, but that's not --

Q Explain that to Mr. Staudaher. How did you get it?

A What do you mean how did I get it?

Q He signed the letter, or a deputy district attorney signed the letter you have --

A Okay.

1 Q -- correct?

2 A What's your question?

3 Q You do have immunity; correct?

4 A I have immunity, yes.

5 Q Okay. Now --

6 A And because I'm getting a little flustered
7 right now doesn't mean that I'm -- I'm sitting on the stand
8 lying.

9 Q Okay. You want to do all you can to help with
10 this case; correct?

11 A I wish I had nothing to do with this case.

12 Q What?

13 A I -- nothing.

14 THE COURT: He said I wish --

15 MR. WRIGHT: I didn't hear you.

16 THE COURT: -- I had nothing to do with this case.

17 BY MR. WRIGHT:

18 Q You want to do --

19 THE COURT: Is that what you said, sir?

20 THE WITNESS: I did, yes.

21 THE COURT: Did I hear that correctly?

22 THE WITNESS: I did. Yes, ma'am.

23 BY MR. WRIGHT:

24 Q You want to assist this case as much as you
25 can; correct?

1 MR. STAUDAHER: Objection. Mischaracterizes his
2 prior statement.

3 THE COURT: Well, overruled. It's cross.

4 THE WITNESS: Yes.

5 BY MR. WRIGHT:

6 Q I mean, that's what you said when you were
7 interviewed; correct?

8 A Sure. I mean, you know, to be open and honest
9 as much as I can --

10 Q Okay.

11 A -- and assist the investigation, of course.

12 Q Did you say the only loyalty I have is to
13 myself. I -- you know, I've been dealing with this now for so
14 long it's -- I don't sleep at night. It's crazy.

15 A Yes.

16 Q Okay. You don't sleep -- you weren't sleeping
17 at night over these statements?

18 A No, I got a -- I got a bleeding ulcer from
19 this --

20 Q Okay.

21 A -- which required hospitalization.

22 Q Did you say --

23 A So, yes, this is --

24 Q And did you say, I -- I -- I know in talking
25 with Jason I'm here to assist this case as much as I can?

1 A Sure.

2 Q Okay. And who is Jason you were talking to
3 about --

4 A Jason --

5 Q -- assisting this case as much as you can?

6 A Jason Weiner, my -- my attorney.

7 Q Okay. So your job is, as you understood it,
8 is to assist this case as much as you can; correct?

9 A To assist the investigation.

10 Q Okay. To assist the investigation and the
11 prosecutors in exchange for your immunity; correct?

12 A That's -- no.

13 MR. WRIGHT: No further questions.

14 THE COURT: Mr. Santacroce?

15 RECROSS-EXAMINATION

16 BY MR. SANTACROCE:

17 Q Mr. Chaffee, you were shown this proffer
18 letter from the feds, page 8, or the District Attorney,
19 talking about reusing needles. This is to refresh your
20 recollection.

21 A Okay.

22 Q You said that you saw Mr. Lakeman do this,
23 that is reusing needles on the same patient, but you never saw
24 anyone else do it; correct?

25 A Correct.

1 Q And then the District Attorney asked you about
2 your December 15, 2008, interview to Metro where he said
3 things were a little bit clearer because you had been thinking
4 about these events; correct?

5 A Correct.

6 Q And do you remember what you told the
7 Metropolitan Police Department about reusing needles at that
8 time?

9 A No, I don't.

10 Q I'm going to show you page 39. I want you to
11 read from here to here.

12 A Okay.

13 Q You were asked by detectives about reusing
14 needles, needles exchange; correct?

15 A Correct.

16 Q Okay. You said I never saw needles being
17 exchanged. Never saw. If I did I'd tell you. I have a
18 proffer letter. I have immunity. I would sit here and I'd
19 tell you. Am I going to lie about it to get you guys off my
20 back? No. Detective, okay, so when you say needle being
21 exchanged, you're talking about the process of using more than
22 one needle for one syringe? You say, correct. He says,
23 that's what that means? And you say, and I never -- I never
24 saw that happen. You didn't say you saw Ron Lakeman and no
25 one else did you?

1 A No.

2 Q You said I never saw it happen.

3 A Correct.

4 Q Because you had a proffer agreement.

5 MR. STAUDAHER: Objection. Argumentative.

6 BY MR. SANTACROCE:

7 Q You had immunity.

8 THE COURT: Overruled.

9 BY MR. SANTACROCE:

10 Q Correct?

11 A Correct.

12 Q And under those conditions of proffer and
13 immunity, you said you weren't going to lie and you never saw
14 it happen.

15 A That is correct.

16 MR. SANTACROCE: That's all I have.

17 THE COURT: Mr. Staudaher, any re-redirect based
18 solely on the recross?

19 MR. STAUDAHER: No, Your Honor.

20 THE COURT: Any juror questions for this witness?

21 All right. Sir, there are no further questions. Do
22 not discuss your testimony with anyone else who may be called
23 as a witness in this matter.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: And you are excused at this time.

1 THE WITNESS: I do.

2 THE COURT: Okay. The reason we brought you back in
3 is apparently Ms. Weckerly, Mr. Chaffee, had tried to contact
4 you and indicated there was an issue or something with your
5 testimony; is that correct?

6 THE WITNESS: On Friday. Correct.

7 THE COURT: Okay. And then Ms. Weckerly, you know,
8 knows that she can't talk to a witness in the middle of his
9 testimony, so she did the correct thing by saying that she
10 can't talk to you about it. So we called you in to find out
11 is what is the issue or what were you trying to tell Ms.
12 Weckerly about?

13 THE WITNESS: Well, and if -- if what I read in the
14 paper matches my testimony, I stated on Friday that I
15 witnessed Ron Lakeman reusing needles and syringes. I've
16 never witnessed that. I've witnessed him accessing vials, but
17 I was never aware that he was reusing needles and syringes.

18 THE COURT: Okay. And you're talking about the
19 article in the RJ by Mr. German?

20 THE WITNESS: Correct.

21 THE COURT: Okay. Ms. Weckerly, any questions on
22 that?

23 MS. WECKERLY: He's Mr. Staudaheer's witness.

24 THE COURT: Oh, I'm sorry.

25 MS. WECKERLY: But I don't think -- I mean, I don't

1 know.

2 MR. STAUDAHER: Not related to that issue.

3 THE COURT: Okay. Anything from the defense?

4 So basically you went home and read it on -- read
5 the paper, read the internet, and you saw the article and you
6 were concerned that that was inconsistent --

7 THE WITNESS: Correct.

8 THE COURT: -- with what you understand your
9 testimony to be?

10 THE WITNESS: Correct.

11 THE COURT: Okay. Thank you for bring that to
12 everyone's attention. Thank you.

13 MR. WRIGHT: Have you been reading the news articles
14 all along?

15 THE WITNESS: No, I haven't.

16 MR. WRIGHT: Okay. Why did you go home and read the
17 article?

18 THE WITNESS: Because I knew I would be in it. I
19 figured I'd be in it.

20 THE COURT: The same reason I read the RJ articles
21 every day.

22 MR. WRIGHT: Okay. And in the article -- I didn't
23 read the article. In the article it says you testified what?

24 THE WITNESS: That -- that Rod Chaffee witnessed Ron
25 Lakeman reusing needles and syringes or something to that

1 effect.

2 MR. WRIGHT: Okay. And you're saying you did not
3 testify to that?

4 THE WITNESS: No, on Friday I did testify to that,
5 but that is not consistent with my previous statements. My
6 previous --

7 MR. WRIGHT: Okay.

8 THE WITNESS: -- statements are --

9 MR. WRIGHT: Okay. So the news story is correct,
10 correctly states your testimony?

11 THE WITNESS: Correct.

12 MR. WRIGHT: Okay. And what you're doing -- saying
13 is I want to change my testimony?

14 THE WITNESS: Correct.

15 MR. WRIGHT: Because?

16 THE WITNESS: Because I answered yes to the question
17 when I should have answered no to the question.

18 THE COURT: So let me make sure I understand. So
19 the true -- I mean, obviously, all we want is the truth. So
20 the truth is that you -- I mean, what is the truth, that you
21 did witness him reusing the needles and syringes or you never
22 witnessed him?

23 THE WITNESS: I -- I saw him re-accessing, you know,
24 the single-dose vials.

25 THE COURT: Right.

1 THE WITNESS: So I saw him accessing those vials
2 when they were opened. I was never aware that he was reusing
3 needles and syringes.

4 THE COURT: Okay. Anything else?
5 Anything, Mr. Santacroce?

6 MR. SANTACROCE: I'm going to make a motion --

7 THE COURT: All right. Sir --

8 MR. SANTACROCE: -- his presence.

9 THE COURT: -- thank you. I am going to ask you,
10 because we all need a break here, too, I am going to excuse
11 you and make you --

12 THE WITNESS: Okay.

13 THE COURT: Sorry I made you walk --

14 THE WITNESS: No, that's fine.

15 THE COURT: -- all the way --

16 MR. STAUDAHER: Your Honor?

17 THE COURT: -- up here.

18 THE WITNESS: Thank you, ma'am.

19 MR. STAUDAHER: Do we want to ask about the
20 statement issue --

21 THE COURT: Oh, yes.

22 MR. STAUDAHER: -- again just to --

23 THE COURT: I'm sorry.

24 MR. STAUDAHER: -- make sure.

25 THE COURT: I thought we had covered that.

1 MR. STAUDAHER: I just want --

2 THE COURT: But you can ask.

3 MR. STAUDAHER: -- to make sure.

4 Mr. Chaffee, the issue of -- you know, I think Mr.
5 Wright, when he was starting to ask you some questions about a
6 statement that you had supposedly made or written or produced
7 to the detectives or at least -- or something during one of
8 your interviews, do you remember that?

9 THE WITNESS: I do.

10 MR. STAUDAHER: At least reading that portion of it.
11 Do you know what statement that was that -- or what it was you
12 would have --

13 THE WITNESS: I don't --

14 MR. STAUDAHER: -- possibly written?

15 THE WITNESS: I don't recall at all.

16 MR. STAUDAHER: Now, there was some issue with
17 something you had given to your attorney at some point;
18 correct?

19 THE WITNESS: Correct. But that was well after that
20 statement was given.

21 MR. STAUDAHER: Okay. So it would not have been
22 that item?

23 THE WITNESS: No. No, sir.

24 MR. STAUDAHER: Now, you know that you gave two
25 statements to the police and one to the FBI; correct?

1 THE WITNESS: Correct.

2 MR. STAUDAHER: Is it possible you were referring to
3 one of those exchanges?

4 THE WITNESS: It must have been because, to be
5 honest, I really don't recall what statement I was referring
6 to.

7 MR. STAUDAHER: Now, in both of the ones that were
8 taped that transcripts were done, there was no profanity per
9 se in that with the exception of the reference to the prior
10 statement? And that's what -- I guess that's what the issue
11 is, is the -- if there were some profanity used before the FBI
12 or some other entity, that did -- none of this -- none of that
13 appeared in those -- those three records with the exception of
14 your reference to it.

15 THE WITNESS: Okay.

16 MR. STAUDAHER: Does that spark your memory as to
17 what that might have been about?

18 THE WITNESS: It doesn't.

19 MR. STAUDAHER: Do you remember actually going to
20 Detective Hancock or Detective Whitely or any Metro person and
21 handing them a statement that you had written or prepared?

22 THE WITNESS: I never -- I never wrote a statement.
23 All my statements were verbal.

24 THE COURT: Okay. Who was your first attorney when
25 you first went to the police or were first --

1 THE WITNESS: Jason Weiner.
2 THE COURT: Jason Weiner?
3 THE WITNESS: Yes, ma'am.
4 THE COURT: Okay. Do you -- did you ever -- like
5 did he ever have a list of questions for you to fill out or
6 did you ever go to his office and he asked you questions like
7 interrogatories or anything like that for --
8 THE WITNESS: There were some --
9 THE COURT: -- for you to answer?
10 THE WITNESS: There were some of that, yes, ma'am.
11 THE COURT: There was. Okay.
12 THE WITNESS: Yeah.
13 THE COURT: And do you know if that -- those
14 questions were in connection with one of the civil cases or if
15 it had something to do with the criminal investigation? Do
16 you remember?
17 THE WITNESS: It would have been with the criminal
18 investigation because I have a civil attorney, as well.
19 THE COURT: Okay. So Mr. Weiner was your criminal
20 attorney?
21 THE WITNESS: Correct.
22 THE COURT: And then who was your civil attorney?
23 THE WITNESS: I -- I -- I have it in my phone --
24 THE COURT: Okay.
25 THE WITNESS: -- if you want me to look.

1 THE COURT: And were you sued in connection with all
2 of this?

3 THE WITNESS: I was, yes.

4 THE COURT: Okay. And was that your like
5 malpractice carrier gave you a civil lawyer, is that how that
6 happened?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Okay. And did you ever with him meet
9 and complete, you know, what's called interrogatories or
10 anything like that where there's a list of questions and, you
11 know, sometimes they send them to you at home and you're
12 supposed to fill them out and then you go meet with the
13 lawyer? That never happened?

14 THE WITNESS: Not with her, no, ma'am.

15 THE COURT: Okay. So the only thing where you
16 answered some questions was with Mr. Weimer?

17 THE WITNESS: Weiner.

18 THE COURT: Weiner. I'm sorry. And then do you
19 know if Mr. Weiner ever turned over your answers to those
20 questions to anybody like the police or the civil lawyers in
21 the other cases or anything like that?

22 THE WITNESS: I do not know.

23 THE COURT: You don't know. Okay.

24 Does anyone have any follow up based on those last
25 questions from the Court?

1 MR. WRIGHT: Yes. Your attorney at your first
2 interview was James Miller.

3 THE WITNESS: James Miller?

4 MR. WRIGHT: Yes. Do you know who James Miller is?

5 THE WITNESS: I do not.

6 MR. WRIGHT: Okay. Mr. Weiner --

7 THE WITNESS: Unless -- unless he was somebody that
8 Jason Weiner had -- had stand, you know, in for him.

9 MR. WRIGHT: No, Jason Weiner was your attorney at
10 the FBI interview and with what we call the second Metro
11 interview --

12 THE WITNESS: -- Okay.

13 MR. WRIGHT: -- okay. But James M. Miller was your
14 lawyer at the first interview, and that interview took place
15 at the law offices of Hall, Prangle, and Schoonveld. Do you
16 recall that?

17 THE WITNESS: I recall having a meeting in a -- in a
18 -- in a lawyer's, you know, office, but I don't recall who was
19 there. I always thought it was Jason Weiner that was with me.

20 THE COURT: FYI, according to the attorney listing,
21 the only Jim Miller works at the DA's office.

22 MR. WRIGHT: No, it's James M. Miller. I think it's
23 a different Jim.

24 THE COURT: No, no, I'm not -- he could have been a
25 paralegal or something. Or are you familiar with Mr. --

1 MR. WRIGHT: No, it's an attorney, Bar Number --
2 THE COURT: Oh, okay.
3 MR. WRIGHT: This is --
4 THE COURT: Okay.
5 MR. WRIGHT: The interview I'm talking about is --
6 THE COURT: You don't know who this Mr. Miller --
7 MR. WRIGHT: -- May 28th --
8 THE COURT: -- fellow is?
9 MR. WRIGHT: -- 2008.
10 THE WITNESS: No, ma'am.
11 THE COURT: Okay. No recollection if he worked at
12 that law office or anything like that?
13 THE WITNESS: No, he's not -- I don't believe he's
14 one of the partners. I --
15 THE COURT: Okay.
16 THE WITNESS: I don't recall, to be honest --
17 THE COURT: Okay. That's fine --
18 THE WITNESS: -- but I don't think he is.
19 THE COURT: -- if you don't remember.
20 MS. STANISH: Judge, the interview was in 2008, so
21 the directory probably could have not had him in it.
22 MR. STAUDAHER: He's got a bar number, too.
23 THE COURT: Okay.
24 MR. WRIGHT: Did you give a statement --
25 THE COURT: What if -- unless he's retired.

1 MR. WRIGHT: -- or interview with -- with James M.
2 Miller?

3 THE WITNESS: No. Well, you mean, was he present
4 during one of those --

5 MR. WRIGHT: Yes, he is your lawyer at your first --

6 THE WITNESS: Sir, I don't -- I don't recall that
7 name.

8 MR. WRIGHT: Okay. In that first interview or in
9 your interviews you talk about reading the statement of Brian
10 Labus; correct?

11 THE WITNESS: Correct.

12 MR. WRIGHT: Okay. What statement of Brian Labus
13 did you read?

14 THE WITNESS: I stated that on Friday. It was a --
15 it was a typewritten statement where it was -- it was B.L. for
16 Brian Labus, it was initials, and then it was some -- some
17 other initials from an interviewing detective, I imagine. And
18 it was -- like I said, it was a poorly -- poorly typed out,
19 you know, interview. It was not a well formatted type
20 document --

21 MR. WRIGHT: Okay.

22 THE WITNESS: -- that Metro would -- would create.

23 MR. WRIGHT: And who gave -- who gave that to you?

24 THE WITNESS: I got that through Jason Weiner.

25 MR. WRIGHT: Okay. And is it that document that

1 tells you what Brian Labus claims you told him?

2 THE WITNESS: Correct.

3 MR. WRIGHT: Okay. And it's in that document that
4 Brian Labus says you told him that you witnessed reuse of
5 needles and syringes and -- correct?

6 THE WITNESS: No.

7 MR. WRIGHT: Okay. Brian Labus doesn't say that?

8 THE WITNESS: No, Brian Labus says that, but I never
9 said that to Brian Labus.

10 MR. WRIGHT: Okay. So that's how you know what
11 Brian Labus was claiming you said?

12 THE WITNESS: Correct.

13 MR. WRIGHT: Okay. No further questions.

14 THE COURT: I'm sorry?

15 MR. WRIGHT: I'm complete.

16 THE COURT: You're done?

17 Anything, Mr. Santacroce?

18 MR. SANTACROCE: No, Your Honor.

19 THE COURT: All right. Sir, thank you. I do need
20 to ask you to step back to the -- oh, let me clear this up for
21 us. Do you have -- before I let you leave, do you have the
22 card of your civil lawyer in your wallet?

23 THE WITNESS: I don't have the card, but I --

24 THE COURT: But you have the name? Can you just
25 tell us who that is? That may get to the bottom of --

1 THE WITNESS: It's Kim Johnson.

2 THE COURT: Okay. She's your civil lawyer?

3 THE WITNESS: She is.

4 THE COURT: Oh. Okay. Do you know what law firm
5 she works at?

6 THE WITNESS: Not off the top of my head anymore,
7 no.

8 THE COURT: Okay. All right. Thanks.

9 THE WITNESS: But I have her phone -- do you want
10 her phone number?

11 THE COURT: No, that's okay.

12 THE WITNESS: Okay.

13 THE COURT: We can look her up through the State Bar
14 of Nevada.

15 (Outside the presence of Rod Chaffee.)

16 THE COURT: In any event, just to -- I thought I
17 could -- Jim Miller, James M. Miller works at Hall Prangle,
18 which does civil work. So that's why I thought maybe Kim
19 Johnson worked with this James Miller. So we'll see what we
20 can find out through the Bar. That might -- might or might
21 not clarify something. If anyone needs to use the restroom,
22 please do it now and then we'll bring the jury in.

23 MR. SANTACROCE: Your Honor, I want to make a motion
24 on this witness.

25 THE COURT: Oh, yes. Okay.

1 MR. SANTACROCE: I'm going to move to strike his
2 entire testimony. I'm going to move for a mistrial. The fact
3 that he had changed his testimony saying that needles and
4 syringes, he never witnessed Mr. Lakeman do it when he
5 testified on Friday that he did. It was such a damaging piece
6 of evidence, the jury went home with that evidence for the
7 weekend, they mulled that over.

8 It was such damaging evidence that it made it to the
9 newspaper and said witness provides damaging testimony. You
10 yourself, when I made my bail motion, said that one of the
11 things we consider is the likelihood of conviction and you
12 said now we're starting to see the evidence against Mr.
13 Lakeman.

14 THE COURT: I did say that.

15 MR. SANTACROCE: There's the evidence right there
16 against Mr. Lakeman is one witness. This Mr. Chaffee, this
17 nut job who comes in here and he went home, he read his
18 statement because he says here, well, my answer wasn't
19 consistent with my previous statements. Absolutely none of
20 his answers are. I'm moving for a mistrial or in the very
21 least strike his entire testimony.

22 MR. WRIGHT: I join.

23 THE COURT: State?

24 MR. STAUDAHER: First of all the characterization of
25 a witness as a nut job, I think, is unprofessional and

1 unreasonable by the defense counsel to even say such a thing
2 in court. Secondly, this witness came in and tried to correct
3 what he believed was an error in his testimony. That is
4 reasonable for anybody to do, and anybody has a right to do
5 that. They can impeach him, they can cross-examine him, they
6 can do whatever they want to do with him, but it's not -- his
7 testimony is not wholly inconsistent as counsel has said with
8 his prior statements and so forth to the police.

9 So with regard to that, the jury can certainly weigh
10 his evidence in light of the things that get brought out on --
11 on cross-examination, as well as direct examination when they,
12 the triers of fact, can determine for themselves whether or
13 not to believe a portion, any portion, all or none of his
14 testimony. So we don't believe there's any basis whatsoever
15 that counsel has alluded to that indicates this witness's
16 testimony should be stricken.

17 MR. SANTACROCE: You know, Your Honor, he sits up
18 here and says my conduct is unprofessional. He put this
19 witness on. He solicited perjured testimony. He knew that
20 the statements --

21 MR. STAUDAHER: I object to --

22 MR. SANTACROCE: -- the prior statements --

23 MR. STAUDAHER: -- the fact --

24 MR. SANTACROCE: -- Your Honor, were inconsistent
25 and he let that go before the jury for the whole weekend. And

1 that evidence is so damaging and prejudicial to Mr. Lakeman
2 that there is no remedy outside of a mistrial.

3 MR. STAUDAHER: And secondly I -- I take umbrage at
4 the fact that anybody would indicate that I or any from the
5 prosecution side has suborn perjury in this case. The issue
6 with this witness, and I don't know that that even came out in
7 the words that he said, if that's an accurate representation.
8 We'd have to look at the transcript to see so. But he said he
9 saw access to a vial. He said he did not know if it was the
10 same syringe.

11 THE COURT: Here's what I remember from his
12 testimony, and my memory may be faulty. I remember his
13 testimony as being inconsistent because first he said, no, he
14 never saw -- never saw reuse of needles and syringes, couldn't
15 see what was going on essentially. My words, not his. Then
16 he said, oh, yes, he was -- he did see them reusing the
17 needles and the syringes, which I was kind of surprised when
18 he said that, that's why I remember it, because that was
19 inconsistent with what he had previously testified to. So he
20 testified to both things as I remember on Friday.

21 Look, I don't think -- I mean, I don't think it
22 gives, you know, rise to the level of a mistrial. I don't --
23 you know, there was other -- there were other things in his
24 testimony which, you know, may or may not, depending on the
25 weight to be given that the jury may consider that are

1 appropriately before the jury. So I'm not going to strike his
2 testimony in its entirety. The fact that he's read the paper
3 and now realizes, oh, my testimony is wrong or he realizes his
4 testimony is wrong and he's going to be testifying
5 inconsistently I think can be brought out.

6 And I think at the end of the day the jury is going
7 to be left knowing he never saw him reusing the needles and --
8 he never saw Mr. Lakeman reusing the needles and the syringes.
9 At the end of the day that's going to come out, and it's going
10 to come out, oh, you know, he's all over the board.

11 I would -- just on a bigger theme here of cumulative
12 evidence, I wondered this last night as I was failing to
13 sleep, wondering how we can speed this along. You know, he is
14 -- I didn't really get quite the point of Mr. Chaffee's
15 testimony because it's so cumulative of everything else that
16 we've heard. And the only things that were probative, a) now
17 he retracts, and b) was the statement of Dr. Desai yelling at
18 everybody hurry through, Dr. Carrera, and all of that, which
19 nobody knew about until he blurts it out on the stand.

20 So on a kind of broader theme, you know, let's be
21 mindful not -- again, I understand, you know, State is
22 worried, you know, mindful of beyond a reasonable doubt, wants
23 to present everything they have, and I understand that, and I
24 -- and I have not, nor do I want to get in the way of the
25 State's case. And that is not my intention. But just, you

1 know, to be mindful because, you know, really was Mr. -- was
2 Mr. Chaffee more -- you know, did he really add anything for
3 all of the issues that Mr. Chaffee has created?

4 MR. SANTACROCE: Well, he added a lot of prejudice
5 to my client.

6 THE COURT: Well, now, but he said that was all
7 wrong and that wasn't in his statement, which is what I'm
8 saying.

9 MR. SANTACROCE: Okay.

10 THE COURT: So we have to --

11 MR. SANTACROCE: I wasn't privy to your admonishment
12 to him. I don't know how you admonished him when we left.

13 THE COURT: Just now?

14 MR. SANTACROCE: No, when we left on Friday. Did
15 you admonish him not to look at newspapers or --

16 THE COURT: No, I don't admonish the witnesses of
17 that.

18 MR. SANTACROCE: Okay.

19 THE COURT: My standard admonishment of it is if
20 it's in the middle of the testimony I tell them not to discuss
21 their testimony with anyone else. If it's at the end of their
22 testimony, I tell them don't discuss it with anyone who may be
23 a witness. So I told him no one else, and I told him a couple
24 of times because we took -- I think we took a break. So that
25 was -- that's what I always say, but I don't admonish them

1 about the media because --

2 MR. SANTACROCE: Can either I or Mr. Wright
3 cross-examination him as to the fact that he read the paper --

4 THE COURT: Of course.

5 MR. WRIGHT: Sure.

6 MR. SANTACROCE: -- and changed his story?

7 THE COURT: Sure. Sure. Of course. Absolutely.
8 And, again, the only thing you can't do is -- is create some
9 kind of inference that that was inappropriate for him to read
10 the paper because that's not the admonishment I give the
11 witnesses.

12 MR. SANTACROCE: That's why I inquired of that.

13 THE COURT: Okay. Other than that, certainly.
14 Okay.

15 MR. SANTACROCE: Okay.

16 THE COURT: If anyone needs to use the restroom,
17 let's do that and then get -- get started.

18 (Court recessed at 10:06 a.m., until 10:10 a.m.)

19 (Outside the presence of the jury.)

20 THE COURT: All right. Kenny, bring them in.

21 Just to let the lawyers know, Ms. Setco [phonetic]
22 hurt her back on the weekend and has to go to the chiropractor
23 at 4:45, so we'll try to break at like 4:20.

24 Who is in the lineup for today?

25 MS. WECKERLY: Mr. Chaffee, Ann Lobiondo, and Tonya

1 Rushing.

2 THE COURT: Okay. And Ann Lobiondo was another
3 CRNA?

4 MS. WECKERLY: Yeah. She's here, so we're ready
5 whenever.

6 THE COURT: What's she going to say?

7 MS. WECKERLY: She has statements from Dr. Desai
8 about billing 31 minutes.

9 THE COURT: Okay. Good.

10 Mr. Staudaher, would you get Mr. Chaffee, please.

11 MR. STAUDAHER: Yes.

12 (In the presence of the jury.)

13 THE COURT: All right. Court is now back in
14 session. The record should reflect the presence of the State
15 through the Deputy District Attorneys, the presence of the
16 defendants and their counsel, the officers of the court, and
17 the ladies and gentlemen of the jury.

18 And, Mr. Chaffee, you are still under oath. Do you
19 understand that, sir?

20 THE WITNESS: I do, ma'am, yes.

21 THE COURT: All right. Mr. Wright, you may resume
22 your cross-examination.

23 ROD CHAFFEE, STATE'S WITNESS, PREVIOUSLY SWORN

24 CROSS-EXAMINATION (Continued)

25 BY MR. WRIGHT:

1 Q Mr. Chaffee, did you have any testimony you
2 wish to correct from last week?

3 A I do.

4 Q And what is that testimony? What did you say
5 last week?

6 A I answered yes to a question.

7 Q Okay. And what was the question?

8 A Have you witnessed Ron Lakeman reusing needles
9 and syringes?

10 Q Okay. And the question was asked by Mr.
11 Staudaher on Friday?

12 A Correct.

13 Q And you answered yes?

14 A Yes.

15 Q And then afterwards what causes you to now
16 want to correct that for the jury?

17 A I read the paper and I realized after going
18 over my testimony what the question was and how I answered it
19 and how it was not consistent with my prior statements.

20 Q Okay. And the -- you went home Friday, read
21 the paper Saturday, is that fair? Online or --

22 THE COURT: Or did you read it online?

23 THE WITNESS: No, I -- I read the paper. I believe
24 it was on Saturday, yes.

25 BY MR. WRIGHT:

1 Q Okay. The paper that comes to the door?

2 A Correct.

3 Q Okay. And in the paper that comes to the
4 door, it related your testimony stating that you witnessed Ron
5 Lakeman reuse needles and syringes?

6 A Correct.

7 Q Okay. And then when did you realize that that
8 statement was inconsistent with your prior interviews with the
9 police?

10 A At that moment. I -- I didn't really realize
11 I answered that question the way I did until after I got home
12 and got a chance to go over my testimony.

13 Q Okay. What do you mean a chance to go over
14 your testimony?

15 A You know, a moment to go home and be away from
16 the court and to go over the testimony that I had -- I had
17 given on Friday.

18 Q Okay. Just reflection?

19 A Reflection. Correct.

20 Q Okay. I mean, you didn't go home and like
21 reread your statement?

22 A No, I reflected. Correct.

23 Q Okay. You reflected, read the paper, and then
24 thought, gosh, I've said something that's incorrect?

25 A Correct.

1 Q Okay. And so your -- your true recollection
2 as you sit here now regards what on what you observed with Mr.
3 Lakeman on use of propofol and/or needles or syringes?

4 A I witnessed Ron Lakeman accessing open bottles
5 of propofol with a needle and syringe, and that's -- that's as
6 far as I can take it.

7 Q Okay. So the -- and you're -- you're talking
8 about propofol vials that were being -- you knew they were
9 being multi-used --

10 A Correct.

11 Q -- correct?

12 A Correct.

13 Q By that meaning used on different patients
14 until empty, throw them away?

15 A Correct.

16 Q You were aware of that?

17 A Absolutely.

18 Q That was the practice in the clinic; is that
19 correct?

20 A Correct.

21 Q Okay. And then what you're saying is on --
22 you witnessed Ron Lakeman anesthetizing a patient; correct?

23 A Correct.

24 Q And you saw him drawing propofol; correct?

25 A Correct.

1 Q And injecting a patient with a needle and
2 syringe?

3 A Correct.

4 Q And are you saying you saw him re -- re-dose
5 the patient, in other words give more propofol?

6 A Certainly.

7 Q Okay. And you're saying he used a needle and
8 syringe, but you don't know if he was using -- reusing same
9 needle and syringe?

10 A Correct.

11 Q And that's because you did not pay attention?

12 A Exactly.

13 Q Okay. You're doing your own job. This would
14 have been at a time when you were a nurse working in the
15 procedure room?

16 A Correct.

17 Q Okay. Now, any other clarifications come to
18 mind on your testimony?

19 A No, sir.

20 Q Okay. So I want to go back to you started
21 work, I believe, you testified in 2003 at the clinic on Shadow
22 Lane?

23 A Correct.

24 Q Okay. And did you know -- did you know Mr.
25 Krueger already?

1 A I did not.

2 Q Okay. And so you went, applied for a job as a
3 nurse?

4 A Correct.

5 Q And were interviewed, you testified, by Tonya
6 Rushing and Jeff Krueger?

7 A Correct.

8 Q And what was Jeff Krueger?

9 A He was the charge nurse.

10 Q Okay. You were hired?

11 A Correct.

12 Q And you testified that you worked initially in
13 the recovery -- what we've called the recovery room, and you
14 were calling patients the next day after their procedure to
15 see how they're doing. Is that --

16 A No.

17 Q Okay. I got that wrong.

18 A I was working at the -- at the desk in which
19 we called patients the next day. The recovery area is the
20 recovery area where they would come out of the rooms and
21 recover from the propofol.

22 Q Okay. I misunderstood. So you just started
23 at the desk doing follow up with the previous day's patients?

24 A Correct.

25 Q Calling and saying how do you -- how are you

1 doing, any problems type thing?

2 A Correct.

3 Q Okay. At that time were you taking any
4 patient satisfaction surveys?

5 A Those were -- I believe were mailed.

6 Q Okay. You -- you weren't on the phone at that
7 time?

8 A Correct.

9 Q Okay. And then you went to procedure room?

10 A Yes.

11 Q Okay. And then ultimately from procedure room
12 you -- you last worked in the pre-op area; is that correct?

13 A Correct.

14 Q And then you were terminated in approximately
15 April 2007 --

16 A Correct.

17 Q -- correct? And you stated that was because
18 of something you said to an employee regarding a bomb; is that
19 correct?

20 A Correct.

21 Q And had you -- you had already had other
22 disciplinary problems at the clinic; correct?

23 A Nothing that was -- I had behavioral issues,
24 but I had no disciplinary actions taken against me.

25 Q Okay. The behavioral issues you spoke about

1 was after your wife died?

2 A Correct.

3 Q And you indicated that was July 1, 2006?

4 A Correct.

5 Q And so that -- thereafter July 1, 2006, up
6 until your discharge, you talked about your emotional problems
7 over the events, leaving the facility, uncontrollable crying?

8 A Correct.

9 Q Okay. That's the behavioral issues you're
10 talking about?

11 A Right.

12 Q Okay. Were you disciplined for talking
13 inappropriately to employees?

14 A Oh, yes, I was.

15 Q Okay. What -- what's that about?

16 A There was an employee that kept giving me a
17 back rub all the time and I -- I would consistently ask her to
18 stop doing that. And she -- she continued to give me
19 backrubs. And so one day I asked her if she wanted to see my
20 penis, and she said yes. So I showed her a picture of me
21 flipping the bird, giving the middle finger. And I told her
22 now stop rubbing my back, I don't want anything to do with
23 you. And she reported it that I showed her an inappropriate
24 picture.

25 Q Okay. And do you know when that was in the

1 time frame?

2 A I don't. I don't recall.

3 Q Do you -- do you recall being admonished for
4 telling inappropriate stories because you had told fellow
5 employees you brought a vagrant into your home that you shared
6 with your wife and child to try to rehabilitate the vagrant?

7 A No.

8 Q Do you recall telling employees that contrary
9 to your -- your goal of rehabilitation, the vagrant used your
10 computer to online order components to build a meth lab in
11 your house?

12 A After my house was raided, yes.

13 Q Okay. Let me back up. I'm talking about what
14 -- do you recall being disciplined for --

15 A No, I was never disciplined for any of that.

16 Q Okay. Do you recall telling the employees
17 that the police reportedly arrested you and the vagrant?

18 A Okay.

19 Q And you were let go once the vagrant explained
20 that it was his meth lab in your bedroom?

21 A Not my bedroom, no.

22 Q Okay.

23 A In my home.

24 Q In your home?

25 A In his bedroom.

1 Q Do you recall that the center employees were
2 alarmed by the story and Tonya met with you and said don't
3 have inappropriate conversations in the workplace?

4 A That never happened, no.

5 Q That never happened?

6 A No.

7 Q Did Jeff Krueger talk to you about it?

8 A No.

9 Q And Tonya Harding [sic] didn't?

10 A No.

11 Q Okay. But the never happened is the incident
12 or the discipline at the workplace?

13 A The discipline.

14 Q When -- when you were terminated, is -- is the
15 employee that you made the bomb threat to, do you recall who
16 that was?

17 A I do not.

18 Q Janine Drury?

19 A Sounds familiar, yes.

20 Q Okay. And did you tell her you were in a kill
21 mode?

22 A I may have.

23 Q Okay. Did you tell her that you had been to
24 the recent gun show and had -- and were angry because you
25 bought a gun but the police wouldn't give it to you until a

1 background check was completed?

2 A No.

3 Q No that never happened, or no you didn't say
4 that?

5 A I did not say that.

6 Q Okay. Did that happen?

7 A If I didn't say it, it didn't happen.

8 Q No. Did you go to the gun show and buy a gun?

9 A During that period of time, I don't -- no.
10 The only -- the only gun I bought from a gun show was during
11 the time that my wife was still alive.

12 Q Okay. Did you stated you purchased a new gun
13 at the most recent gun show and were upset because you could
14 not take possession of the gun upon purchase and the state
15 wanted to check your background?

16 A No.

17 Q You never said that?

18 A I don't recall ever saying that, no.

19 Q Okay. And the person that you showed your
20 cell phone pictures to, is that Kathy Grindell?

21 A That was Kathy, correct.

22 Q And did she complain about sexual harassment?

23 A Apparently she did.

24 Q And did you threaten another employee named
25 Josh Cavett?

1 A No.

2 Q Okay. Do you know who Josh Cavett is?

3 A I do know who Josh is.

4 Q Okay. And is this at the same time of the

5 kill mode bomb threat?

6 A No, this was during the same time that I was

7 being accused of having inappropriate pictures and --

8 Q Okay.

9 A -- and he was showing inappropriate pictures,

10 and I complained that there was a double standard.

11 Q Okay. What was -- what -- who is Josh Cavett?

12 A He was a tech, I believe.

13 Q Okay. And he was showing you inappropriate

14 pictures?

15 A Not me. He was doing it to other female

16 employees and they were complaining about it.

17 Q Okay. And so you threatened him?

18 A I never threatened anybody.

19 Q Okay. Did you -- did you understand that he

20 had made a complaint that you had threatened him?

21 A No.

22 Q Okay. Do you understand anything, any

23 disciplinary action involving Josh Cavett?

24 A No.

25 Q Now, when you made the bomb threat, that was

1 on April 20th, your last day of work; is that correct? Do you
2 recall that?

3 A Yes.

4 Q 2007.

5 A I don't -- I don't recall the actual day, but
6 I remember that was my last day of employment, yes.

7 Q Okay.

8 A I was called and asked not to return to work.

9 Q Okay. And you were taken out in handcuffs;
10 correct?

11 A Correct.

12 Q By the Metropolitan Police Department?

13 A Correct.

14 Q Okay. And when they came, how -- how did you
15 get arrested?

16 A I was asked by Jeff Krueger to come to a
17 little antechamber between two offices, and there was a Metro
18 officer waiting there for me.

19 Q Okay. And at that point you were arrested and
20 taken to jail?

21 A Correct.

22 Q Okay. And you resent Jeff Krueger over that;
23 correct?

24 A No.

25 Q You stated that he --

1 A I mean, I -- I didn't appreciate being
2 blindsided, but I didn't resent anybody.

3 Q Okay. Did you call him a bully?

4 A He's always been a bully, yes.

5 Q Okay. What else have you called him?

6 MR. STAUDAHER: Objection. Relevance, Your Honor --

7 THE WITNESS: Yeah, I mean --

8 MR. STAUDAHER: -- as to what other names he may
9 have called Jeff Krueger.

10 THE COURT: Only if it was in the workplace or to
11 Mr. --

12 BY MR. WRIGHT:

13 Q Was it within the workplace?

14 A Yes, but, I mean, I call him a lot of names.
15 He was an asshole, he was a bully, he was a jerk, he was
16 overbearing, he was arrogant. I called him all of those
17 names.

18 Q Okay. And this is during -- this was before
19 your termination; correct?

20 A Correct.

21 Q Okay. And so obviously from your
22 characterization, you don't like Mr. Krueger.

23 A I don't like his behavior.

24 Q Okay.

25 A I have nothing personally against Mr. Krueger.

1 I didn't like the way he was a charge nurse. I don't like the
2 way he managed his subordinate stuff.

3 Q Okay. Well, when you were interviewed by the
4 FBI do you recall telling them that he is a person that could
5 not be trusted and he would lie to law enforcement?

6 A I may have said that.

7 Q Okay. And why did you say that?

8 A Because I believe that he was very loyal to
9 Dr. Desai.

10 Q Okay. And he was loyal to Dr. Desai and so
11 that irritates you; correct?

12 A It doesn't irritate me. It's just something I
13 thought the FBI should know.

14 Q Okay. Now, after you were terminated, you
15 never went back to the clinic?

16 A I did not.

17 Q Okay. And so then your next involvement with
18 the clinic was when the investigation commenced by the Health
19 District --

20 A Correct.

21 Q -- is that correct?

22 A Correct.

23 Q Okay. And you at that time, and this would be
24 -- when did you become aware of the investigation? Let me put
25 it that way.

1 A When I got a phone call from one of the
2 employees.

3 Q Okay. And which employee was that?

4 A Maggie Murphy.

5 Q Okay. And you learned there was -- did you
6 learn there was an investigation involving transmission of
7 hepatitis C at the clinic?

8 A No, I was told that there was an investigation
9 about practices at the clinic.

10 Q Okay. And then when -- when did you call the
11 Health District?

12 A The day after I got the phone call from Maggie
13 Murphy.

14 Q Okay. And at that time was the investigation
15 public yet?

16 A No.

17 Q Okay. So it's still in the time of the
18 investigation, but no press conference?

19 A Correct.

20 Q And who did you call at the Health District?

21 A Brian Labus.

22 Q And how did you know Brian Labus was the chief
23 epidemiologist investigator?

24 A I was given his name and number by Maggie
25 Murphy.

1 Q Okay. So you call -- do you remember what day
2 it was you called him?

3 A No, I do not recall at all.

4 Q Okay. And you called Brian Labus because why?

5 A Because Maggie mentioned that, you know, I was
6 -- that there was problems in the procedure room and that --
7 that I was a procedure room nurse, you know, the longest and
8 she thought I might have some insight.

9 Q Okay. Did you view this as a chance to get
10 your dignity back?

11 A Somewhat, yes.

12 Q Okay. Do you recall saying that?

13 A Now that you say that, yes, I recall saying
14 that.

15 Q Okay. And get your dignity back because this
16 was your chance to set the record straight because you had
17 been terminated for what you call a bullshit terroristic
18 threat thing?

19 A No. If I had a problem with my termination, I
20 would have went to the labor board. I never -- I never had a
21 problem with my termination.

22 Q Okay.

23 A It was a -- they terminated me, but it was
24 time for me to go. It was a mutual -- a mutual thing. I was
25 happy to be gone.

1 Q Did you call it a bullshit terroristic threat
2 thing?
3 A I may have, yeah.
4 Q And so this was your chance to get your
5 dignity back; correct?
6 A Correct.
7 Q And this is my chance to make a difference;
8 correct?
9 A Correct.
10 Q Okay. So you call Brian Labus and what did
11 you tell Brian Labus?
12 A I told him about the reuse of the 60 cc
13 syringes.
14 Q Okay. I'm going to stop you on each one.
15 A Okay.
16 Q Okay? You call him and tell him -- well, did
17 you tell him who you were?
18 A I did.
19 Q Okay. A former employee; correct?
20 A Correct.
21 Q And did you tell him you had been fired and
22 why?
23 A No.
24 Q Okay. And you told him about the reuse of 60
25 cc syringes; correct?

1 A Correct.

2 Q 60 cc syringes is a big syringe used to flush
3 the scope, the colonoscopy scope during the procedure, the
4 colonoscopy, if like the lens gets cloudy or it's dirty or
5 something?

6 A Correct.

7 Q And when you worked there, those 60 cc
8 syringes were being used on more than one patient to flush the
9 scope; is that correct?

10 A Correct.

11 Q Okay. And so what else -- that's -- what else
12 did you tell Brian Labus?

13 A I mentioned biopsy forceps.

14 Q Okay. Biopsy forceps, an instrument used
15 during the procedure?

16 A Correct.

17 Q Okay. And when you worked there, were -- were
18 biopsy forceps being reclaimed, sterilized, reused?

19 A Yes, they were.

20 Q Okay. During what time frame?

21 A From my -- from my initial employment up until
22 probably 2005 sometime.

23 Q Okay. And so from when you started until 2005
24 there was a practice of the cleaning biopsy forceps,
25 sterilizing them in the Medivator, and reusing them?

1 A Correct.

2 Q Is that correct?

3 A Yes, it is.

4 Q And they would be reused how many times?

5 A Three times.

6 Q Okay. And then did that practice come to a
7 stop?

8 A I believe so, yes.

9 Q Okay. And did that practice come to a stop
10 when new scopes -- do you recall new scopes --

11 A I do.

12 Q -- a new supplier of scopes?

13 A I do.

14 Q Okay. And what -- what happened which ended
15 the practice, if you recall?

16 A Repeat the question.

17 Q What happened which ended the practice of
18 reusing biopsy forceps, if you recall?

19 A The -- the salesman was told about the reuse
20 of the biopsy forceps and he put an end to it.

21 Q Okay. That would be the salesman of what?

22 A Of the scopes, so either the Fuji or Olympus,
23 I forget --

24 Q Okay.

25 A -- which was -- which was what.

1 Q So these scopes like cost -- I mean, these are
2 expensive, the scopes we're talking, like \$30,000 or
3 something.

4 A Something.

5 Q Okay. And so the -- the salesman, whether it
6 was Fuji or Olympus, the changeover of new scopes is when it
7 stopped --

8 A Yes.

9 Q -- is that correct?

10 A As best to my knowledge, yes.

11 Q Okay. So you told Brian Labus about the
12 biopsy forceps and the 60 cc syringes. What else did you tell
13 him?

14 A That when scopes were hanging after being
15 cleaned through the Medivator we would see residue, you know,
16 dark brown residue dripping out the tips of the scopes.

17 Q Okay. And what else?

18 A That's all I really recall.

19 Q Okay. And you understand that Brian Labus
20 contends you told him additional things; correct?

21 A Correct.

22 Q Are you aware of that?

23 A I am.

24 Q Okay. Are you aware that Brian Labus says you
25 told him that you witnessed reuse of needles and syringes?

1 A I am aware of that.

2 Q Okay. You are aware that Brian Labus contends
3 that; correct?

4 A That he what?

5 Q Contends that.

6 A Okay. And I dispute that.

7 Q Okay. Because did -- did you tell him that?

8 A I did not.

9 Q If -- if Brian Labus says that you told him
10 that Desai ordered the reuse of needles and syringes, that's a
11 lie; correct? A Correct.

12 Q You did not say that?

13 A I did not.

14 Q And it never happened; correct?

15 A What never happened?

16 Q Dr. Desai ordering you and others to reuse
17 needles and syringes.

18 MR. STAUDAHNER: Speculation, Your Honor.

19 THE COURT: Well, that he knows of.

20 THE WITNESS: Yeah, I -- I can't answer that. I
21 don't know.

22 BY MR. WRIGHT:

23 Q Okay. Well, you didn't -- you never saw it?

24 A Never saw it.

25 Q Never heard of it --

1 A Never --

2 Q -- correct?

3 A Correct.

4 Q And did not tell Brian Labus that?

5 A Correct.

6 Q And if Brian Labus said that this order to
7 reuse syringes and needles, you complained about it to Dr.
8 Carrol, Tonya Rushing, and Jeff Krueger.

9 A I complained about the reuse of 60 cc
10 syringes, not reuse of needles and syringes.

11 Q Okay. So if -- if Brian Labus says the reuse
12 of needles and syringes for propofol -- propofol injections,
13 that you complained to Dr. Carrol, Tonya Rushing, and Jeff
14 Krueger about Dr. Desai ordering the reuse, that would be
15 false; correct?

16 A He would be mistaken.

17 Q Okay.

18 A We were talking about two different things.

19 Q Okay. Well, you didn't say that, and Brian
20 Labus may have misunderstood you?

21 A That's -- yes.

22 Q Okay. The -- you did tell him about reuse of
23 60 cc syringes?

24 A Correct.

25 Q Okay. And did you go talk to Dr. Carrol,

1 Tonya Rushing, and Jeff Krueger about the reuse of the 60 cc
2 syringes?

3 A Yes.

4 Q Okay. Did you also -- can you think of
5 anything else you told Brian Labus?

6 A I think I mentioned bite blocks, the reuse of
7 bite blocks.

8 Q Okay. And bite blocks were being reused;
9 correct?

10 A Correct.

11 Q And they were being cleaned, put in the
12 Medivator, and used an additional time; is that correct?

13 A Correct.

14 Q Anything else you told Brian Labus?

15 A No. You know, I never told Brian Labus. He
16 asked me questions and I responded, you know. So he would ask
17 me things about what his investigation unfolded, and then he
18 would ask me questions and I would answer them.

19 Q Okay.

20 A I never volunteered anything.

21 Q Now, you were -- who did you next talk to
22 about the investigation?

23 A It would have to be Metro.

24 Q Okay. And did -- did Brian Labus, when you
25 called him -- or did Maggie Murphy give you like his cell

1 number or something?

2 A Something like that, yeah.

3 Q Okay.

4 A I don't know if it was office number or cell
5 number.

6 Q Okay. But you called him directly?

7 A I did.

8 Q Phone call?

9 A Correct.

10 Q Have any meeting with him?

11 A Never.

12 Q Okay. Ever provide him a written statement or
13 anything?

14 A Never.

15 Q Okay. Did you ever see a written statement of
16 Brian Labus contending what you told him?

17 A Well, yeah, that's the statement I was -- I've
18 talked about that I -- that I've read.

19 Q Okay. So you read a statement of Brian Labus
20 regarding a conversation with you?

21 A Not a statement, no. I've read a copy of a
22 telephone interphone from Brian Labus with a Metro detective,
23 I imagine.

24 Q Okay. And that telephone interview by a Metro
25 detective with Brian Labus, the subject of it, of the

1 interview, was your phone conversation with Brian Labus;
2 correct?

3 A Some of it was, yes.

4 Q Okay. And who provided you that Metro
5 transcript?

6 A My lawyer.

7 Q Okay. And that lawyer would be who?

8 A Jason Weiner.

9 Q Okay. And do you know when he gave that to
10 you? You don't have it; correct?

11 A I moved during this time period, and a lot of
12 my stuff is in storage. So I may have it, but it's in
13 storage.

14 Q Okay. And do you recall did he give you that,
15 Jason Weiner give you that in preparation for your interview
16 with the police?

17 A I believe so, yes.

18 Q Okay. Now, other than Brian Labus, did you
19 talk to any other investigators --

20 A Never.

21 Q -- other than Metro police first interview?

22 A Never. Well, I believe in one of the -- I
23 believe in one of the interviews there was other agencies
24 there --

25 Q Okay.

1 A -- that were -- that were witness to my
2 testimony.

3 Q Okay. Now, your first interview was on May
4 28, 2008. Have you seen a transcript of that interview?

5 A I believe so.

6 Q And you received immunity; correct?

7 A Correct.

8 Q And you received a letter that says that;
9 correct?

10 A Correct.

11 Q And that letter requires that you maintain the
12 same testimony as you give in the interview or the immunity is
13 off; correct?

14 A Correct.

15 Q Now, you're -- that -- have you reviewed your
16 transcripts of your interviews?

17 A I've reviewed one transcript, so I have not
18 reviewed all three, no.

19 Q Okay. What -- just chronologically we have
20 interview by Metro. That's -- that's what I call it. We call
21 it the Metro interview --

22 A Okay.

23 Q -- May 28, 2008. And then you were
24 interviewed by the FBI; correct?

25 A Correct.

1 Q And then an interview by Metro on December 15,
2 2008. Does that sound correct?

3 A Yes.

4 Q Now, when you were interviewed the first time,
5 May 28, 2008, that was with your attorney James M. Miller;
6 correct?

7 A I don't recall a James Miller, but I'll take
8 your word for it.

9 Q Have you ever heard of James Miller?

10 A Not until today, I don't believe.

11 Q Let me show you --

12 MR. WRIGHT: Can I approach the witness --

13 THE COURT: Sure.

14 MR. WRIGHT: -- with his transcript?

15 BY MR. WRIGHT:

16 Q Look at the first page or two. Read it to
17 yourself --

18 A Okay.

19 Q -- and see if that refreshes your
20 recollection.

21 A It does not.

22 Q It does not? Do you recall being at that --

23 A I recall being in a private law office. The
24 only -- the only lawyer that I ever recall being involved with
25 this was Jason Weiner.

1 Q Okay. Well, Mr. Weiner was present on
2 September 22nd when you were interviewed by the FBI, and then
3 again in December when you were interviewed again by Metro.
4 Do you recall anything about who represented you at your first
5 interview?

6 A I didn't -- apparently I do not.

7 Q Okay. Now, do you recall being asked at that
8 first interview about heplocks, insertion of heplocks, and
9 saline flush and how that takes place?

10 A I've been asked about that before, yeah. I
11 don't know if it was in the first one, but I do recall those
12 questions, yes.

13 Q Okay. And is that saline flush of the heplock
14 after insertion?

15 A Yeah.

16 Q Does that take place in the pre-op room?

17 A It does.

18 Q Okay. Did you ever do that?

19 A On occasion.

20 Q Okay. And would you just briefly describe to
21 the jury your procedure?

22 A My procedure was I would -- I would explain to
23 the -- to the patient what I was about to do. I would gather
24 my equipment, put on gloves, cleanse the site, usually using a
25 20 gauge needle I would access a vein either in the hand or in

1 the bend of the arm. Once I got a good blood flow I would --
2 I would pinch off the flow and I would cap the -- I would cap
3 the -- what's called the angiocath. I would -- I would cap it
4 and then tape it.

5 Q Okay. And then you would flush it with
6 saline?

7 A Not always, no.

8 Q Okay.

9 A I flushed infrequently.

10 Q Pardon?

11 A I flushed infrequently.

12 Q Okay. You infrequently did a saline flush of
13 the hepllock or the IV after you inserted it; correct?

14 A Correct.

15 Q And the law enforcement was questioning you
16 about your saline flush practices, and you told them you
17 infrequently do it; correct?

18 A I believe that's what I would have said
19 because that's the truth.

20 Q Okay. Now, the asked you about the size of
21 propofol vials and when the clinic went from 20s to 50s. Do
22 you recall that?

23 A I do.

24 Q Okay. And when you began 20s exclusively were
25 being used?

1 A Correct.

2 Q And at some time while you worked there, 50s,
3 big ones, were added; correct?

4 A Correct.

5 Q And thereafter 20s and 50s were available?

6 A I don't -- I don't recall 20s and 50s --

7 Q Okay.

8 A -- being available at the same time.

9 Q Okay. So you -- your belief was it was 20s,
10 then exclusively 50s?

11 A It may be 20s and 50s together. I don't
12 recall that because, you know, propofol wasn't my area of
13 expertise. But what I remember is 20s and then 50s.

14 Q Okay. And then they -- they asked you why the
15 change from 20s to 50s, and you told them I have no idea why;
16 correct?

17 A Correct.

18 Q And that's correct?

19 A Yes, it is.

20 Q Okay. They asked you if the propofol was used
21 on multiple patients, and you said, yes, every day; correct?

22 A Correct.

23 Q And that was true?

24 A True.

25 Q They asked you if there was reuse of syringes

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Clerk of Supreme Court

DIPAK KANTILAL DESAI,)	CASE NO. 64591
)	
Appellant,)	
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
_____)	

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1 what is it that he's seeing and perceiving that indicates
2 anger to him?

3 That's all Mr. Wright is asking for really and he's
4 allowed to do that without just, you know, this amorphous kind
5 of -- this is a criminal trial. Without some kind of
6 amorphous, oh, he was angry, he was in a lather. What does
7 that mean? You've got to pin these people down. What did you
8 see? When did you see it? That's it and he's entitled to get
9 that information out there because how can he evaluate, you
10 know, how can he cross-examine as -- and who was there?
11 Because maybe other witnesses didn't see this purported
12 lather.

13 So, you know, that's what a foundation is. He's
14 entitled to get it, and he's entitled frankly not to have to
15 ask for it on each and every question. So you jumped -- you
16 know, we can sit here and we can play the record, but what I
17 hear is you jumping from was there an issue to what was the
18 issue? As -- and no attempt to tell us how he knows it, when
19 he became aware of the issue, how the issue was manifested or
20 anything like that.

21 And, you know, like I said, the way you asked your
22 question, I don't know, is that an issue that he was made
23 aware of because, you know, the nurses talk about it? Because
24 they say, oh, wow, Desai, he really hates that Carrera guy
25 because he's so slow.

1 I mean, if that's how he knew, then obviously that's
2 hearsay and it can't come in. But if, you know, Desai says,
3 you know, at the water cooler, God, Carrera's so slow or, you
4 know, he's -- he's yelling through one room to the other, hey,
5 Carrera hurry up, we're waiting in here. Then obviously he
6 can testify about that. So you need to, you know, lay a
7 foundation. And I -- you know, Ms. Weckerly doesn't seem to
8 have the same problem jumping. So, you know, you know how to
9 do it. That's what he means, that's what -- is that what
10 you're looking for, Mr. Wright?

11 MR. WRIGHT: Yes, Your Honor.

12 THE COURT: Then -- then let's, you know -- so we
13 don't have to stop every five minutes, basis of knowledge,
14 that's it. What's the basis of his knowledge? What do you --
15 what do you need, Mr. Santacroce?

16 MR. SANTACROCE: I'd like a ruling from the Court as
17 to whether Mr. Chaffee opened the door as to the circumstances
18 of the murder of his wife?

19 THE COURT: I believe he did.

20 MR. SANTACROCE: I believe he did, too. Thank you.

21 THE COURT: That was for two --

22 MR. STAUDAHER: By saying -- by saying a homicide?

23 THE COURT: Yes. Because -- well, I don't think Mr.
24 Chaffee was thinking the death, technically the death of -- of
25 a person at the hands of another --

1 MR. STAUDAHER: Is a homicide.

2 THE COURT: -- is a homicide. That's what I'm
3 saying. I don't think he was thinking that.

4 MR. STAUDAHER: And that's all he said.

5 THE COURT: He could have, you know, you did it
6 correctly. You asked the question correctly. You said was --
7 you know, something about your wife and then he just
8 gratuitously says it was a homicide.

9 MR. STAUDAHER: It is a homicide, it's death at the
10 hands of another. You've given the definition.

11 THE COURT: Well, how do we know. If she had herself
12 choked and put the asphyxiation device on, then maybe it
13 isn't. Is that what the coroner ruled?

14 MR. STAUDAHER: Asphyxiation device was the person
15 she was having the affair with. The reason he got --

16 THE COURT: I don't know that. All I knew it was
17 some kind of auto asphyxiation. I don't whether it's a
18 device, a hand, you know, a rope, a necktie, whatever.

19 MR. SANTACROCE: You specifically said that if he
20 elicited sympathy --

21 THE COURT: I did.

22 MR. SANTACROCE: -- from the jury he would open the
23 door. He did that.

24 MR. STAUDAHER: Homicide is not what happened --

25 MR. SANTACROCE: He went on to tell about he was a

1 victim and, you know --

2 MR. STAUDAHER: A victim?

3 MR. SANTACROCE: -- all this poor me.

4 MR. STAUDAHER: He didn't say anything about being a
5 victim.

6 THE COURT: He didn't do that, Mr. Santacroce.

7 MR. SANTACROCE: He said he was a victim.

8 THE COURT: I heard it was a homicide. He
9 gratuitously said it was a homicide --

10 MR. STAUDAHER: Which it -- yes.

11 THE COURT: -- after Mr. Staudaher properly asked the
12 question that did his wife pass away or die or I don't
13 remember the wording. But Mr. Staudaher asked the correct
14 question and he -- he just gratuitously says, oh, it was a
15 homicide.

16 MR. SANTACROCE: And he opened the door. Is that
17 your ruling?

18 MR. STAUDAHER: How does -- how does that open the
19 door? He didn't say a homicide and it was unjustly done and
20 the person didn't get punished, which is what we discussed.
21 That's not -- that's not what came out at all.

22 MR. SANTACROCE: It is what came out.

23 MR. STAUDAHER: The fact that his wife died at the
24 hands of another is completely the only thing that came out
25 from his mouth.

1 MR. SANTACROCE: The way he --

2 MR. STAUDAHER: He didn't say -- he didn't follow up
3 with it and clarify it or qualify it or do anything. He said
4 that was what happened and he was a mess afterward.

5 MR. WRIGHT: Why was it brought out?

6 MR. SANTACROCE: Your ruling as I recall --

7 MR. WRIGHT: Why was it brought out?

8 MR. STAUDAHER: Peggy Tagle testified to it. She
9 testified that he was -- that's why he was terminated.

10 THE COURT: Because that's why he was crying all the
11 time according to Nurse Tagle. I'm sorry, Tagle.

12 MR. STAUDAHER: I think that's the way it's
13 pronounced.

14 MR. SANTACROCE: He said it himself and that
15 specifically elicits sympathy from the jury. I'm tore up, I'm
16 crying all the time. Yeah, okay, poor me. This jury feels
17 sorry for the guy. You specifically said in your ruling at
18 the bench, if he elicits sympathy from the jury he opens the
19 door.

20 MR. STAUDAHER: No, that's not what the ruling was.

21 THE COURT: Well, then you need to -- well, I'll tell
22 you what the ruling was. I mean, basically what was -- why
23 did he have to blurt out it was a homicide? You asked the
24 question correctly. There was no -- I mean, first of all, we
25 all as lawyers understand what a homicide means. I think most

1 -- most people think homicide/murder, she was murdered.

2 MS. WECKERLY: Can I just add, if he says that she --
3 the person got probation, to me -- I mean, I don't know the
4 guy's name, but that suggests there was something criminal.
5 So, I mean, I don't get why that's --

6 THE COURT: So he was prosecuted criminally?

7 MS. WECKERLY: Right. So, I mean, that doesn't mean
8 a dismissal.

9 MR. WRIGHT: I don't know.

10 MS. WECKERLY: I mean, that doesn't mean it was a --

11 THE COURT: Was he -- was he prosecuted?

12 MS. WECKERLY: Well, we can run it. I haven't run
13 it.

14 THE COURT: What did he get, like a voluntary or
15 something?

16 MS. WECKERLY: I -- I don't -- I don't know. I don't
17 want to talk to the witness but --

18 THE COURT: I'm assuming he had an involuntary maybe?

19 MS. WECKERLY: I'm guessing it was dealt, but I just
20 -- I - what I'm saying is, I don't get why that opens the door
21 to the circumstances of the ancillary crime.

22 THE COURT: Well, I know -- yeah, I mean, I'm just a
23 little dismayed that he had to blurt that out because really
24 Mr. Staudaheer asked the question in such a way, called for a
25 yes or no -- a yes or no answer and then he just has to add,

1 oh, it was a homicide.

2 MR. SANTACROCE: I'm just concerned, and we talked
3 about this at the bench, in eliciting sympathy because of that
4 incident, now the jury's looking at him as a sympathetic
5 witness and we have a right -- we have a right to
6 cross-examine him on that.

7 MR. STAUDAHER: When -- it was Jane Drury who was up
8 here testifying about issues related to Mr. Chaffee and she
9 was saying that part of the issue that he thought -- she was
10 -- he was inappropriate with because he was crying all the
11 time and it had to do with the death of his wife and all of
12 that. He was talking to patients about that. All of that
13 stuff came out on cross-examination with her. And so I think
14 it's fair to -- to bring out the fact that he, in fact, had an
15 issue with his wife's death, as most people would I think if
16 they cared about their wife at all. Regardless of whatever
17 their predilections were. And the fact that --

18 THE COURT: No, it's --

19 MR. STAUDAHER: -- he says a homicide when it, in
20 fact, is caused by someone else, which is clearly the
21 definition of a homicide, then I don't see that that is --
22 opens the door to this -- what I would term irrelevant
23 information coming in, which is meant -- and for no other
24 purpose then to smear that witness. That's the only purpose
25 they're trying to get it in for. There's no bias issue there,

1 he didn't come forward and say anything isn't right.

2 THE COURT: All right. Well, if -- if -- okay, if,
3 as you tell me, the fellow was prosecuted for involuntary,
4 voluntary something like that, then I think his testimony
5 would be consistent with that. I didn't understand the
6 circumstances. I thought she had a more active, if you will,
7 role in her demise and that no one was prosecuted. So --

8 MR. WRIGHT: We -- we don't know.

9 MS. WECKERLY: Just to be sure -- just to be --

10 THE COURT: -- as I understand it the boyfriend's
11 choking her --

12 MS. WECKERLY: -- right.

13 THE COURT: -- and that's what ultimately kills her.

14 MS. WECKERLY: But, I mean, that's my understanding,
15 that there was some deal. But just to be sure, is it -- can
16 we have the Court's permission to have Detective Whitely get
17 the name and run the disposition?

18 THE COURT: Sure. I mean, if that's it then I -- I
19 agree with -- with the State. It was consistent with that, it
20 wasn't untrue. So in that way I don't think it opens the
21 door. I misunderstood that. I thought --

22 MR. WRIGHT: He lies about the circumstances Your
23 Honor. He took --

24 THE COURT: Well, if the guy's prosecuted for
25 something --

1 MR. WRIGHT: -- he -- I don't know which story's the
2 truth. He told the FBI the guy was prosecuted and got
3 probation and is mad about it. He said in the -- a different
4 interview, "[indiscernible] was murdered by a neighbor, though
5 no charges were ever filed after a night of drinking and
6 consensual sex."

7 MS. WECKERLY: Who reports that?

8 MR. WRIGHT: An interview with a lawyer.

9 THE COURT: Well, if he's telling different stories
10 to the police and the FBI, then that's a separate issue and
11 you can get into that. That's another issue than the issue
12 we're talking about here with the circumstances of the, you
13 know, boyfriend and the -- what's it called, auto asphyxiation
14 or autoeroticism or whatever they call it. That's different
15 then, Mr. Wright. That's a different issue.

16 In terms of, you know, it's a homicide. If the guy
17 was prosecuted for anything, involuntary, voluntary,
18 second-degree, whatever, then I think he's being truthful, it
19 doesn't open the door. And that -- then that's, you know,
20 fine. Now if he says something more about it, you know, in a
21 way to elicit sympathy, then Mr. Santacroce, I would agree
22 that goes to -- that would open the door. At this point, no.
23 Now, in terms of inconsistent statements, he's telling law
24 enforcement. That's another issue. You can ask about that,
25 yes.

1 MR. SANTACROCE: He can be -- he can be impeached on
2 that?

3 THE COURT: Right. But in terms of just it's a
4 homicide, as I said, if he's prosecuted for something relating
5 to that I, you know, clearly it's a homicide. I wasn't really
6 sure on the circumstances from what we discussed at the bench
7 what happened. I was thinking that --

8 MR. WRIGHT: And I don't know which is the truth.

9 THE COURT: -- if the guy wasn't prosecuted and, you
10 know --

11 MS. WECKERLY: We're checking. We're getting the
12 name and we'll check the disposition.

13 THE COURT: Bring them in. Oh, yeah, bring them in.

14 (Pause in proceedings)

15 THE COURT: Mr. Staudaher, would you please get your
16 witness?

17 MR. STAUDAHER: Yes, Your Honor.

18 (Jury reconvened at 5:08 p.m.)

19 THE COURT: Sir, just come on up and have a seat.

20 All right. Court's now back in session.

21 Mr. Staudaher, you may resume your direct
22 examination.

23 BY MR. STAUDAHER:

24 Q Did you ever -- was there ever -- ever a time
25 that you worked with Dr. Desai and Dr. Carrera at the same

1 time?

2 A Yes.

3 Q And -- and I -- where was this at, at the Shadow
4 Lane facility?

5 A At the Shadow Lane facility, yes.

6 Q And during the time that you were working there,
7 were there multiple times when that would occur?

8 A Yes.

9 Q In the instances where that did happen, were you
10 able to observe what took place during the time that they were
11 both working?

12 A Yes.

13 Q Were you able to hear what was said by Dr.
14 Desai, if anything, during those times?

15 A Yes.

16 Q Was Doctor -- did you on your -- and I'm talking
17 about your observations here, in those situations where both
18 of them were working at the facility at a single time, what
19 kinds of things did you see happen?

20 A Dr. Desai would become frustrated with Dr.
21 Carrera.

22 Q Do you know why?

23 A Dr. Carrera was too slow.

24 Q When that happened, how did Dr. Desai react?

25 And when you say frustrated, what do you mean?

1 A He would verbally lash out at Dr. Carrera, at
2 staff.

3 Q So not just Dr. Carrera but other staff, you?

4 A Yes.

5 Q What kinds of things would he -- would he do? I
6 mean, did you observe him act -- his actions at all?

7 A Yes. He would, you know, he would just start
8 berating people, you know. When --

9 MR. WRIGHT: Start what?

10 MS. STANISH: Berating.

11 MR. WRIGHT: Berating? I didn't hear it.

12 THE COURT: He would do what? Separate people?

13 THE WITNESS: Berating people.

14 THE COURT: Oh, berate people.

15 A He would berate people. He would -- he would
16 yell at the staff that were -- were moving too slow, were not
17 fast enough, get them in, get them out, you know. Get them
18 out, get them out, get them out, you know, like if we had our
19 -- a patient in the room that was done, especially if it was
20 Dr. -- one of Dr. Carrera's, he would yell get him out, get
21 him out, you know, get him out of the room so we can get
22 another one in there.

23 BY MR. STAUDAHNER:

24 Q The 30 minute issue, did you ever hear Dr. Desai
25 discuss that at all?

1 A No.

2 Q Did you ever see him do anything related to that
3 on charts or anything else?

4 A No.

5 MR. STAUDAHER: Pass the witness, Your Honor.

6 THE COURT: All right. Thank you. Who would like to
7 start?

8 CROSS-EXAMINATION

9 BY MR. WRIGHT:

10 Q Mr. Chaffee, my name's Richard Wright. I
11 represent Dr. Desai.

12 A Okay.

13 Q How many statements have you given to the police
14 or law enforcement?

15 A To law enforcement?

16 Q Yeah, to law enforcement -- I'm just not
17 distinguishing between FBI, police, whoever.

18 A I believe it was two in -- I believe it was
19 twice, in group -- like in two groups of two or -- really, I
20 can't -- I don't recall. I think it was two -- two statements
21 I gave to law enforcement.

22 Q Okay. Did you give one to the FBI?

23 A I did.

24 Q Did you -- how many did you give to the
25 Metropolitan Police Department?

1 A I believe one.

2 Q Okay. Were -- weren't you interviewed twice?

3 A Well, I -- I was interviewed by -- by Metro and
4 then I was interviewed by the FBI and several other agencies
5 together.

6 Q And then by Metro again?

7 A I believe Metro may have been there, I don't
8 recall.

9 Q Okay. Did you receive immunity?

10 A I did.

11 Q Okay. When did you receive immunity?

12 A From the very beginning of all of this. I don't
13 recall what date, that was years ago.

14 Q Okay. Did you -- when you talked with Brian
15 Labus at the health district, did you have immunity?

16 A I did not.

17 Q Okay. And when did you talk to Brian Labus?

18 A I spoke to him on the telephone one time.

19 Q Okay. Okay. And did -- do you -- what -- what
20 brought that about?

21 A I was called by one of the nurses at the
22 endoscopy center after the -- after the health district was in
23 the clinic checking them out. She called me and said, would
24 you speak with Brian Labus. She gave me his phone number and
25 I called him.

1 Q Okay. And did he interview you?

2 A By telephone.

3 Q Okay. And did you see a statement of Brian
4 Labus as to what he claims you said?

5 A I did see a statement about that -- of him, yes.

6 Q Okay. Do you have that?

7 A I do not.

8 Q Where did you get it?

9 A I saw that early on with one of my lawyers. I
10 -- I did receive it, but I don't -- I don't have it with me,
11 no. And I subsequently -- I moved and I packed all my stuff
12 away and it's in -- it's in storage.

13 Q Okay. I saw in your police department
14 interview, one of your interviews, that you were talking about
15 Brian Labus's statement that you read of your statement to
16 him, correct?

17 A Correct. Okay.

18 Q Is that what we're talking about?

19 A If that's what you're talking about.

20 Q I'm -- you're the one who saw it, I didn't.
21 I've never seen it.

22 A I saw a -- I saw a typed Metropolitan -- Metro
23 report of an interview with Brian Labus of statements that he
24 made towards me.

25 Q Okay.

1 MR. WRIGHT: Can we approach the bench?

2 THE COURT: Sure. Well, let me make -- is this a
3 statement of Brian Labus to Metro talking about you?

4 THE WITNESS: Yes, ma'am.

5 THE COURT: That's what you're talking about. Well,
6 I don't know, what are you -- I -- I haven't see any -- I
7 don't see anything so --

8 THE WITNESS: I --

9 THE COURT: Or did you see a statement that -- or
10 something Brian Labus prepared?

11 THE WITNESS: If it's -- if it -- if I'm correct,
12 what -- what Mr. Wright's speaking of is a statement that I
13 saw from Brian Labus to Metro. I don't know what he's asking
14 me.

15 THE COURT: Okay.

16 THE WITNESS: He's going to have to reask the
17 question. I don't know what he's talking about.

18 (Off-record bench conference.)

19 BY MR. WRIGHT:

20 Q Do you know what Brian Labus said you told him
21 in the phone call?

22 A I'm familiar with some statements, yes. I can't
23 speak to all of it, no.

24 Q Okay. Did you see a written statement of what
25 Brian Labus says you told him?

1 A I did.

2 Q Okay. And what was that written statement? You
3 believe it was a Metropolitan Police Department report?

4 A I do.

5 Q Okay. Of what Brian Labus says you told him in
6 the phone call, correct?

7 A Correct.

8 MR. WRIGHT: Can we approach?

9 THE COURT: Oh, sure.

10 (Off-record bench conference.)

11 BY MR. WRIGHT:

12 Q Were you -- in your interviews were you truthful
13 with the police?

14 A I was.

15 Q Okay. As I would -- all three of them you never
16 lied about anything, correct?

17 A Not to the best of my knowledge, no.

18 Q Okay.

19 A I mean, that was seven years ago so --

20 Q And to show you a page from your --

21 MR. STAUDAHER: Is there -- is there a question? I
22 mean, he's just going to go up and show him his statement?

23 MR. WRIGHT: Yes. What I'm going to ask him -- I'll
24 just read it to you.

25 MR. STAUDAHER: Just ask him.

1 MR. WRIGHT: On page 22.

2 MR. STAUDAHER: Of which?

3 MR. WRIGHT: December Metro number 2 is what I call
4 it, December 2008.

5 BY MR. WRIGHT:

6 Q "For a while there, you know, I'm getting things
7 from so many angles that I was losing track of what I really
8 knew and didn't know. It wasn't until I read Brian's
9 statement that I realized that everything I've been saying all
10 along is true." Now is that that -- is Brian's statement what
11 you're talking about there?

12 A I suppose so, yes.

13 Q Okay. I mean, am I reading that right?

14 A Yes.

15 Q You were saying you were mixed up as to things
16 and didn't know truth from falsehood, but then you read
17 Brian's statement; is that right?

18 A No. That had -- that was -- that was about a
19 specific thing that Brian Labus was saying.

20 Q Okay. What -- what's -- is the statement you
21 read of Brian Labus you're talking about there, what statement
22 do you have of Brian Labus that you had read to prepare for
23 your testimony?

24 A For this testimony?

25 Q No, for your interview with the police.

1 A All I remember was my lawyer presenting me with
2 a -- with a crudely typed document that had Brian Labus's
3 initials and a Metro detective -- or another person's initials
4 asking questions. I don't recall what it was. My lawyer
5 presented it to me and I reviewed it.

6 Q Okay. And your lawyer presented something to
7 you to see what someone else had said before you were to be
8 interviewed by law enforcement, correct?

9 A It sounds reasonable, yes.

10 Q And that's the state -- and that statement is
11 what Brian Labus was saying you had told him on the phone
12 call, correct?

13 A Correct.

14 Q Okay. And do you know where that came from,
15 other from your lawyer?

16 A I do not.

17 Q Do you believe it looked like a Metro
18 transcript?

19 A It was -- it did not look like a Metro
20 transcript, it was crudely typed. It was not -- it was not
21 the neat formatted transcripts I've seen from Metro before.
22 This was crudely typed.

23 Q Okay. Now did you turn in to them a written
24 statement at any time? Do you write a statement for them?

25 A I did not.

1 Q Same interview, page 21. This is LH, Levi --
2 Detective Levi Hancock. I'm going off some notes from Brian
3 Labus. "I know you prepared the statement that you gave us
4 previously, so I'm going to jump around and ask you
5 questions." What statement did you prepare and give them
6 previously?

7 A I don't recall.

8 Q You don't recall or do you --

9 A I don't recall. I --

10 Q Okay. Do you -- do you know if you did?

11 A I -- I -- no, I don't. I don't -- I don't
12 recall ever writing a statement.

13 Q Okay, or giving one, another --

14 A I gave a lot of statements. I --

15 Q Okay. And the -- in your -- in the same
16 statement, page 36, I'm quoting you to the officers. "And as
17 I said in my statement, there was a lot of profanity involved
18 in that. Why are you using so much of my fucking supplies?
19 You think I'm -- you know, this place, I'm -- is made of
20 fucking money?" You were relating to -- you were saying as I
21 said in my statement, correct?

22 A Correct.

23 Q What statement?

24 A I -- I don't recall.

25 Q Well, I don't have any statement of yours that

1 has this profanity that you were claiming is in your prior
2 statement.

3 A I -- I'm at a loss to tell you what statement
4 I'm talking about.

5 Q Okay. Those are your words. Can you -- just so
6 you understand what I'm talking about. You are C and you're
7 being interviewed.

8 A I -- I -- I agree that, you know, that's my
9 initials and I'm stating something about a statement, but I
10 don't recall. I never wrote out a statement and I don't know
11 what statement I'm referring to there.

12 Q Well, they seem to understand what you were
13 talking about, correct?

14 MR. STAUDAHER: Objection, speculation.

15 THE COURT: Sustained.

16 MR. WRIGHT: Well, the detective --

17 THE COURT: I mean, you ask it --

18 BY MR. WRIGHT:

19 Q Well, the detective in the beginning said we
20 have your statement, right?

21 MR. STAUDAHER: Still speculation, Your Honor.

22 THE COURT: Well, if it was said. Was that said?

23 THE WITNESS: That was said, yes, ma'am.

24 MR. WRIGHT: But it just -- that's the first one I
25 read, "Brian, I'm going to jump around. I know you prepared

1 the statement that you gave us." That's the detective.

2 THE COURT: I know, and he's saying --

3 MR. WRIGHT: And then he talks about the same
4 statement. I want it produced.

5 THE COURT: All right. Perhaps we should -- this
6 brings us to the time we'd agreed to end our day. Ladies and
7 gentlemen, we're going to take our evening recess. We'll
8 reconvene Monday morning at 9:30.

9 Just so you know, when we do some of these later
10 starts it doesn't mean we're all sitting around reading gossip
11 magazines. There are other hearings and things that the Court
12 and the Court's staff is working on during those times.

13 So during the weekend recess, you're reminded you're
14 not to discuss the case or anything relating to the case with
15 each other or with anyone else. You're not to read, watch or
16 listen to any reports of or commentaries on the case, person
17 or subject matter relating to the case. Do not do any
18 independent research by way of the internet or any other
19 medium. And please do not form or express an opinion on the
20 trial. If you would all please place your notepads in your
21 chairs and follow the bailiff through the rear door. We'll
22 see you back here at 9:30 Monday.

23 (Jury recessed at 5:28 p.m.)

24 THE COURT: Mr. Chaffee?

25 THE WITNESS: Yes, ma'am.

1 THE COURT: During -- I'm about to excuse you for the
2 day.

3 THE WITNESS: Okay.

4 THE COURT: During the weekend recess, don't discuss
5 your testimony with anyone else. Do you understand that?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Okay. All right. Is Mr. Chaffee free to
8 go? Free to go?

9 MR. STAUDAHER: Yes, Your Honor.

10 THE COURT: All right. Now you need to be back,
11 we're going to start up with the jury at 9:30, so I'd like you
12 here by 9:15.

13 THE WITNESS: Yes, ma'am.

14 THE COURT: Okay.

15 THE WITNESS: Okay.

16 THE COURT: 9:15 Monday unless the District
17 Attorney's Office gives you any other direction. All right.
18 He's free to leave?

19 MR. STAUDAHER: Yes, Your Honor.

20 MS. WECKERLY: He is.

21 THE COURT: All right. And Mr. Wright, I got you out
22 of here by 5:30.

23 MR. WRIGHT: Thank you very much.

24 THE COURT: All right. On the statement issue, I
25 don't know what that is. I guess Detective can get with Ms.

1 Stanish if you need to leave to figure out what -- what it is
2 they're talking about and if there is something out there that
3 wasn't produced, we need to get that to the defense team.

4 MR. WHITELEY: I'll find it, ma'am. It's kind of hard
5 to do because it's so --

6 THE COURT: As soon as possible.

7 MR. WRIGHT: I want to object to that last testimony
8 where he attributed statements, words out of my client's
9 mouth, get him out, get him out. That was -- that is a
10 statement of my client in an argument with her -- Carrera.
11 Okay? And we stood right here and I was bellyaching about it
12 and saying I don't know what it is.

13 Of course I didn't, because it's not in any
14 statements and they debriefed him and they got a statement of
15 my client -- words and this is happening again and again. I
16 get no notice of it and the first I hear of it is here in the
17 courtroom. And I know who knew it, Mr. Staudaher.

18 MR. STAUDAHER: I yesterday -- I yesterday --

19 MR. WRIGHT: And you stood right here and said there
20 was no statement and then he testifies to it.

21 MR. STAUDAHER: I said -- did he testify to a
22 statement? He said that he was berating. Now that's not a
23 statement.

24 MR. WRIGHT: I wrote it down. We're moving too slow,
25 get them out, get them out, get them out.

1 MR. STAUDAHER: Okay. He didn't say those particular
2 words, but here's the -- here's the issue. We sent over
3 yesterday, to the best of my recollection, every statement
4 that he made during the interview. Now we're -- we're not
5 required under the discovery statutes to even do that. It's a
6 written or recorded statement. That's during a pre-trial
7 conference. We tried to -- we're trying to be as honest and
8 open with them as we can and on a daily basis we are providing
9 them with information regarding upcoming witnesses and things
10 that they have said, which is beyond what we are required to
11 do under the rules.

12 So to that extent, even if there is one that is
13 missed, I don't think that there is any animosity, any -- any
14 ill will, any sort of trying to hide the ball here. We're
15 doing what we believe we are obligated to do and beyond in
16 this case.

17 THE COURT: I think that's, you know, true. Mr.
18 Staudaher, did you know that he was going to say he said, you
19 know, get him out of here, move them along or whatever --

20 MR. STAUDAHER: No. He said exactly what I said
21 in --

22 THE COURT: And Ms. Weckerly, were you present in
23 that pretrial conference?

24 MS. WECKERLY: I was present in the pretrial. He
25 didn't say it in the pretrial, but I mean, before he -- I mean

1 on the break, I mean it was obvious there might have been
2 something said if we went into that area. I mean --

3 THE COURT: Right.

4 MS. WECKERLY: -- I think -- and we all knew --

5 THE COURT: And he was -- I mean it's kind of a catch
6 22 at that point because he's told not to discuss his
7 testimony with anyone at the break, so we can't send them in
8 there to talk about his testimony. So look, I mean, they are
9 -- I think they have been trying to be compliant. They are
10 doing more than they're required to do, keeping the defense
11 notified of who's coming up when and new information.

12 So, you know, as to that I think that's new
13 information, that's going to happen. Witnesses are going to
14 say things that isn't in any of their prior statements. It
15 happens all the time. So I can't find on that instant that
16 Mr. Staudaher acted inappropriately.

17 MR. WRIGHT: Okay.

18 THE COURT: I mean, I think they've been trying to be
19 compliant with respect to that. I think they've been
20 cooperative in terms of turning over, disclosing, notifying
21 the defense of changes in the witness lineup. I think they've
22 been doing that and I think they've been very -- very good
23 about doing that actually, from what I can tell.

24 So I can't find that there's any kind of evidence of
25 misconduct or anything like that. And like I said, it happens

1 all the time. How often do witnesses say things and it never
2 is in any statement, they never told anybody before and now
3 all of a sudden there's something that they're saying for the
4 first time. I mean that happens.

5 MR. WRIGHT: Okay.

6 THE COURT: You know, we can't -- we can't --

7 MR. WRIGHT: I understand. He didn't say it.

8 THE COURT: -- anticipate everything.

9 MR. WRIGHT: But I thought what was being said here
10 was that a statement of my client, the defendant, if they hear
11 it, unless it's written or recorded, they have no obligation
12 to produce it. That's exactly what I heard.

13 THE COURT: What they're saying is that they've been
14 going beyond the requirement of a written or recorded --

15 MS. WECKERLY: We have.

16 MR. STAUDAHER: Exactly.

17 THE COURT: -- statement to provide if they hear a
18 statement in their pretrial conferences to then say, okay,
19 defense, he said that Desai has said this and it's not in a
20 written or recorded statement, it's just they learned it in
21 their pretrial conferences and they've been doing that.

22 MR. STAUDAHER: And part of that -- yes, and that's
23 exactly right. And part of that is the reason the statute is
24 written as it is, is because we go through a pretrial
25 conference and I missed one of them. I sent him an e-mail

1 yesterday and Mr. -- and your clerk actually -- or your JEA's
2 been copied --

3 THE COURT: Right.

4 MR. STAUDAHER: -- on all of these.

5 THE COURT: Who's actually gone today and yesterday,
6 so.

7 MR. STAUDAHER: Well, and it listed every single
8 statement, including those we discussed at the bench, the
9 issue of the potential Bruton issue that I raised at the bench
10 to put everybody on notice of a statement that could be
11 implied in some way to relate to a -- a conversation with the
12 -- the -- one of -- a codefendant in a particular case. I
13 didn't think so, but I raised it anyway out of an abundance of
14 caution. When we list in order, bullet -- bullet point by
15 bullet point, that is not required in any case that we do
16 that. We're doing that because we're trying to be fair and
17 reasonable on this. And that's the --

18 THE COURT: And I --

19 MR. STAUDAHER: -- problem is when we do that, then
20 we're -- then we're dinged for not being as absolutely
21 complete as possible. We did the best we can or we do the
22 best we can with the information we have.

23 THE COURT: I agree with Mr. Staudaher on this. I
24 mean, I have to say they -- they have been very compliant,
25 they've been doing more than they're required to do. You

1 know, we can't fault the prosecutors for not asking every
2 conceivable question in a pretrial conference and eliciting
3 every shred of potential information. That's not their
4 requirement in a pretrial conference. You know, if we had
5 them do that, then there'd be the allegation, oh, they're
6 rehearsing the witnesses too much, you know, whatever.

7 So, you know, that's not their obligation. Sometimes
8 things come up and they're unforeseen. As I said, I think the
9 prosecutors, both of them, have been really trying to, you
10 know, give everybody a heads up and -- and have been very
11 cooperative in that regard. So I can't, you know, I can't say
12 that they've done anything wrong here and --

13 MR. WRIGHT: I agree with the Court's assessment of
14 your --

15 THE COURT: Things come up.

16 MR. WRIGHT: -- of their -- I -- I agree with all
17 that they have been doing. I thought -- we may just have
18 different views of the law. I thought at any time a statement
19 of my client is learned by them, a statement of the defendant,
20 I have -- I -- I receive it and I don't -- and it doesn't have
21 to be as -- when they learn about it, I receive it. And it
22 seemed to me -- I'm just -- maybe I'm skeptical, but it seemed
23 to me when this thing, was there an issue between Carrera, all
24 of a sudden I hear something I've never heard about before
25 because it's not in any of the statements. And so then

1 obviously, it comes out, well, it's just going to be that he
2 -- he -- Dr. Desai was very upset and in a lather. Well, to
3 me -- and I'm saying, how? What was said? Who said what?
4 You couldn't know what they're in a lather about or anything
5 unless words were said. And it just didn't seem plausible to
6 me that --

7 THE COURT: I believe Mr. --

8 MR. WRIGHT: -- you would go through a pretrial --

9 MR. STAUDAHER: I've got my notes right here. Does
10 he want to see them?

11 THE COURT: -- I believe, okay. Mr. Staudaher --

12 MR. STAUDAHER: It says right here, Desai contrast
13 between Carrera and Desai. Lag would send Desai into a
14 lather. He would hammer staff.

15 THE COURT: Can I speak?

16 MR. STAUDAHER: Now, I'm showing my notes --

17 THE MARSHAL: Guys, everybody. Let the Judge talk.

18 THE COURT: Okay. I was going to say I believe Mr.
19 Staudaher and I'll tell you why. Because if you listen to the
20 way Mr. Staudaher intended to ask the questions and then was
21 told no, you need to lay a foundation. If you listen to the
22 way -- we went over it before, he was going to ask the
23 questions. He never asked the question what did you hear.
24 That's why he never elicited the information in the pretrial.
25 It's completely consistent with what's occurred in Court here,

1 so I believe him. I think that is what happened because he
2 asked a question because we told him to ask it.

3 So it makes perfect sense to me that he didn't think
4 to ask the question or didn't want to ask the question or
5 whatever, because he didn't ask it. It's my question. So
6 that's -- I mean, it's my question in response to Mr. Wright's
7 objections. It was -- when I say my question, it was me
8 telling him you need to lay a better foundation. So his --
9 you don't need to show your notes and all that stuff.

10 MR. WRIGHT: I looked at them and I accept his
11 explanation --

12 THE COURT: Okay.

13 MR. WRIGHT: -- Your Honor.

14 THE COURT: I'm -- I'm saying I don't know why we're
15 all fighting. I'm saying I believe you, it's consistent. Mr.
16 Wright has said you've been compliant, he thought there was
17 something else. I think now that we've flushed it out, there
18 wasn't, and so there's no issue here.

19 MR. STAUDAHNER: Well, there is one issue and that's
20 the -- from this point forward we are under almost a super
21 obligation now that it goes way beyond the statutory
22 requirements for us in this case or any other case. And now
23 we're actually having to have issues on well, was it really
24 there, we're talking to co-counsel to make sure the statement
25 was there, I'm showing notes of what's going on as to whether

1 or not it occurred --

2 THE COURT: Well, that's you doing all that --

3 MR. STAUDAHER: But that's where we're at because --

4 THE COURT: -- Mr. Staudaher.

5 MR. STAUDAHER: -- the implication is there that
6 we're hiding the ball. Even when we send over e-mails listing
7 everything that the person said, to the best of our knowledge,
8 we're even paranoid enough about this that we get together and
9 say, okay, was there anything else that he said that you wrote
10 down that I didn't write down. If we miss something that's --
11 that's not the issue here as far as the statutory requirements
12 are concerned. We're trying to go over and above them and now
13 that's becoming a standard by which we operate in a case.

14 THE COURT: Well, first of all, it's not the
15 standard. And second of all, you're not being penalized --
16 I'm not intending to penalize you or sanction you for doing
17 more than you're required to do. So I don't see what the -- I
18 mean -- what the issue is at -- at this point. If you learn
19 of something, disclose it, you know, as you did. You did that
20 last time you were here and I said, okay, that's good, you
21 know. Do that again or whatever. I don't remember exactly
22 what was said here, so I don't really see an issue at this
23 point going forward.

24 I mean, I think you've -- as I -- I mean, I don't
25 know how many times I have to say the same thing, but I think

1 you've been really endeavoring, really striving and doing a
2 good job of trying to keep the defense informed. And you've
3 done more than you're required to do, so that's where we are.

4 MR. SANTACROCE: What time Monday?

5 MS. WECKERLY: I missed our start time, sorry.

6 THE COURT: Nine for us to address Mr. Santacroce's
7 motions.

8 MR. SANTACROCE: Sure, blame it on me.

9 THE COURT: And 9:30 for the jury. So nine for all
10 of -- all of us.

11 MS. WECKERLY: Okay.

12 (Court recessed for the weekend at 5:40 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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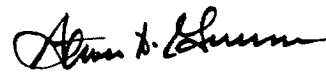

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TRAN



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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 32

MONDAY, JUNE 10, 2013

APPEARANCES:

FOR THE STATE:	MICHAEL V. STAUDAHER, ESQ. PAMELA WECKERLY, ESQ. Chief Deputy District Attorneys
FOR DEFENDANT DESAI:	RICHARD A. WRIGHT, ESQ.
	MARGARET M. STANISH, ESQ.
FOR DEFENDANT LAKEMAN:	FREDERICK A. SANTACROCE, ESQ.

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I N D E X

WITNESSES FOR THE STATE:

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1 LAS VEGAS, NEVADA, MONDAY, JUNE 10, 2013, 9:09 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: We are now on the record out of the
5 presence of the jury.

6 And, Mr. Santacroce, you may make your first motion.

7 MR. SANTACROCE: It's a bail motion, Your Honor. As
8 I told you the other day, Mr. Lakeman has two bails posted,
9 one for the murder charge, one for the other counts. The
10 murder charge doesn't -- bail doesn't expire until August.
11 The other charges the bail expires this week on that. I'm
12 just going to ask you to exonerate the portion of that -- the
13 bail. I've talked to the bail company. They won't write a
14 partial bail. He'd have to pay the whole year's premium for
15 that bail.

16 THE COURT: Which is what?

17 MR. SANTACROCE: It's a \$50,000 bail.

18 THE COURT: And what's the premium?

19 MR. SANTACROCE: \$7,500.

20 THE COURT: Okay. And as I understand the bail was
21 set by Judge Miley on the murder charge at \$50,000; is that
22 correct?

23 MR. SANTACROCE: Correct.

24 THE COURT: So he's paid \$7,500 towards that bail.
25 That's -- that'll be good.

1 MR. SANTACROCE: Yes. You know, he's -- you see him
2 here --

3 THE COURT: Through the end of the trial.

4 MR. SANTACROCE: -- every day.

5 THE COURT: I'm sorry?

6 MR. SANTACROCE: I said you've seen him here every
7 day. He's always early. He's not taking off.

8 THE COURT: No, he is very -- I mean, he's always
9 here on time. He's -- that is true, and I've even commented
10 that that's the case. So he has to re-up the \$7,500 for the
11 other \$50,000 bail; is that correct?

12 MR. SANTACROCE: Yes.

13 THE COURT: State?

14 MR. STAUDAHER: Well, I mean, we -- he did have the
15 benefit of a very significant bail reduction early on in this
16 case. He's down to now combined \$100,000 bail on a murder
17 charge, as well as all of the other charges. We would oppose
18 it, but we will submit it to the Court's discretion.

19 THE COURT: I'll think about it further, but
20 honestly, I mean, yes, it's true Mr. Lakeman has always been
21 here, he's always been on time, but he has had the bail
22 hanging over his head. We're now in the middle of the trial,
23 and I think, you know, some of the more compelling, if you
24 will, evidence towards Mr. Lakeman directly I think is just
25 maybe now coming out.

1 You know, as you know, Mr. Santacroce, one of the
2 things we look at is the, you know, likelihood of conviction
3 and the, you know, likely punishment and all of those things.
4 So that would be my reluctance to --

5 MR. SANTACROCE: [Inaudible].

6 THE COURT: -- to reduce the bail. Well, it's to
7 guarantee that they show up.

8 MR. SANTACROCE: Right.

9 THE COURT: And as I said, I did acknowledge, you
10 know, Mr. Lakeman, he's never been a problem with showing up.
11 He's always early; he's always early after the breaks. I can
12 see that and I agree with you completely on those points. Let
13 me think about it. When does he have to re-up his bond?

14 MR. SANTACROCE: I think by the end of the week.

15 THE COURT: Okay.

16 MR. SANTACROCE: The other issue, too, is that, you
17 know, in bail consideration does he pose a risk to society,
18 danger to society.

19 THE COURT: Yeah, I don't think he poses a danger to
20 society whatsoever. Obviously, whatever danger he posed was
21 as a direct function of his work as a nurse.

22 MR. SANTACROCE: Right.

23 THE COURT: And he's not working as a regular nurse
24 or a nurse anesthetist at this point.

25 MR. SANTACROCE: Correct.

1 THE COURT: He doesn't have any -- I don't have a
2 scope, but -- or his NCIC, but he doesn't have any other --

3 MR. SANTACROCE: He's never been in trouble in his
4 whole life. This is a first incident.

5 THE COURT: Okay. Let me -- let me consider it
6 further.

7 MR. SANTACROCE: Thank you.

8 THE COURT: All right. The next issue was the juror
9 Pomykal. I've got those. We can discuss that more fully, but
10 I can give you the transcripts for you folks to look at if
11 you'd like. No?

12 MS. WECKERLY: Yes.

13 MS. STANISH: Yes.

14 THE COURT: Mr. Santacroce doesn't want his.

15 MR. STAUDAHER: I can get it.

16 MR. SANTACROCE: I was going to get it if you were
17 handing them out. But I just -- you know, I think it was just
18 an issue of how she answered the one question I asked her
19 about --

20 THE COURT: Yeah. And just for the ease of the
21 lawyers -- also, you know --

22 MR. STAUDAHER: Do want me to just --

23 THE COURT: Yeah, would you, please?

24 The other issue, of course, was her health which
25 Kenny has been monitoring. That's another reason she could be

1 excused, if her health becomes more of an issue.

2 She did complain of, what, numbness and --

3 THE MARSHAL: Numbness and cramping.

4 THE COURT: -- and cramping. So you're going to see
5 how she's doing today; correct?

6 THE MARSHAL: Yes.

7 THE COURT: And we'll see where we are then. And
8 just for your -- the ease of the attorneys, I think the
9 relevant part starts at about pages 19 and 20. So we can move
10 on to that at a subsequent time.

11 The next issue was the testimony of Ms. Sampson.
12 And, Mr. Wright, you had made a motion for your testimony to
13 be stricken in its entirety. The Court isn't inclined to
14 strike her testimony. I mean, there was a lot of relevant
15 testimony, a lot of perfectly good foundations laid, the
16 charts, and everything else. The only -- so I'm not inclined
17 to strike the totality of her testimony because, again, a lot
18 of it was relevant, a lot of the charts were fine. Do you
19 have a motion or do you wish to make a motion as to striking a
20 portion of her testimony?

21 MR. WRIGHT: Yes. She's -- she's called presumably
22 as an expert. I mean, that's the only way I could classify
23 her, meaning she has expertise from having looked at
24 everything to give an opinion, whether it's a lay opinion or
25 an expert opinion. Other than that, she would have nothing.

1 She wasn't a percipient witness, so, I mean, she's like an
2 expert.

3 And then she wandered off into this -- in her
4 testimony, this number of propofol vials and the number of
5 syringes that should have been used, but weren't used, in 2006
6 and 2007. But here's what they should have done if they were
7 following a hyper -- if they were following a procedure even
8 CDC wouldn't recognize, which would be every single dose is a
9 new syringe.

10 Even CDC would recognize one syringe, two 50 doses
11 is okay. She didn't. Each of those doses is a syringe. Then
12 she kind of changed and went to a different calculation, then
13 she came back around to the same calculation to come up with
14 her formula by which she's going to multiply two point
15 something, 2.4 I think --

16 THE COURT: I thought, then, the end -- I agree -- I
17 don't mean just to -- I agree with you. The calculation that
18 the number of required syringes based on the doses was clearly
19 wrong. As I said, you know, she's not competent, a, to make
20 that dose. And after hearing from every single medical and
21 scientific witness in the case, we know that that's not true.
22 You can have, you know, two injections from a single syringe
23 containing 100 ml, so we know she's incorrect in that.

24 And so any conclusion based on that, I would agree,
25 would have to be stricken. But the calculation she did, I

1 thought was based on the number of patients and the number of
2 syringes ordered and the ratio of patients to syringes ordered
3 or something like that, that that was that 2.54 or 2.64. So I
4 think that was the number she came up with.

5 MR. WRIGHT: Okay.

6 THE COURT: That's how -- is that right, State? I
7 mean, it's your witness.

8 MR. STAUDAHER: Yeah, I mean, I don't have any issue
9 with the -- with what counsel said with regard to the doses
10 and things like that. I mean, that's --

11 THE COURT: Yeah. I mean, we can craft some kind of
12 an instruction telling the jury to disregard her testimony
13 regarding how many syringes would be needed per dose, that
14 that calls for a medical conclusion which would need to be
15 given by a medical or a nursing expert or something to that
16 effect.

17 MR. STAUDAHER: The State has no issue with that --

18 THE COURT: Okay.

19 MR. STAUDAHER: -- Your Honor.

20 MR. WRIGHT: And as far as her testimony, I have no
21 further comment about it. Regarding the exhibits, the graphs,
22 there were four of them --

23 THE COURT: Right, the --

24 MR. WRIGHT: I don't have the numbers in front of
25 me.

1 THE COURT: Right.

2 MR. WRIGHT: But that's what -- that's what I really
3 have the problem with and am moving to correct and/or strike
4 from evidence and/or leave them as --

5 THE COURT: Demonstrative.

6 MR. WRIGHT: -- non-evidence demonstrative. Because
7 if they're admitted under the summary witness Rule 1006 in the
8 federal system, then they're admitted as the actual evidence.

9 THE COURT: Right.

10 MR. WRIGHT: And the -- I -- I truly think they're
11 demonstrative. You only use 1006 -- I mean, every --
12 everything that's on there she has testified to, meaning the
13 total number of patients, total number of syringes ordered,
14 total number of propofol vials ordered, total number of bite
15 blocks ordered. All of that is already in evidence through
16 her testimony. So then the question becomes do you then
17 introduce an exhibit to summarize her testimony and make that
18 the evidence? And that -- that's what's improper, especially
19 when it is misleading on the portions -- I'm only talking
20 about the three dealing with annual. The -- the --

21 THE COURT: Right.

22 MR. WRIGHT: The July 25 --

23 THE COURT: You're fine with that, the patients to
24 the vials of propofol?

25 MR. WRIGHT: Right. That's just an absolute

1 calculation of those two dates.

2 THE COURT: So you're fine with that. That's
3 Exhibit 153.

4 MR. WRIGHT: Correct.

5 THE COURT: Okay.

6 MR. WRIGHT: On the other three --

7 THE COURT: Which is the patients to syringes, and I
8 said that should be syringes ordered because it's kind of
9 misleading, and then propofol vials, that should be propofol
10 vials ordered. And then the upper endoscopies compared to
11 bite blocks -- actually, they did this one correctly, to bite
12 blocks ordered.

13 MR. WRIGHT: Right. And -- but my problem is the
14 first two columns, which talk about those ordered for a
15 facility --

16 THE COURT: Because of the --

17 MR. WRIGHT: -- are misleading because they switch
18 -- they share supplies. And -- and so it -- it has -- and
19 it's -- it's giving a false impression that -- that like
20 Shadow used so many and Burnham used so many. And if they
21 want to use that for demonstrative purposes, I don't have a
22 problem with it. But making it evidence, I don't -- I don't
23 understand.

24 I could create some charts here for the Court. I
25 could create some charts on the CRNA practices using the

1 testimony we've had and leave Mathahs out of it, and just put
2 up a chart on CRNAs. And it will all have been in evidence.
3 And then say I want to admit this because this is a summary
4 under 1006 and it's my view of the case.

5 I don't get that into evidence. I mean, that --
6 that's all this is. I mean, this is argument by graph that
7 they want into evidence to go into the jury room and that
8 being the evidence itself. I just think it's -- it's
9 prejudicial, it's misleading, and it's an improper use of
10 1006. So I move to strike it in its entirety.

11 THE COURT: Does the State want to respond?

12 I mean, I'd just say I think on the misleading
13 because of the two locations -- I said this already and then
14 it was testified to by the witness. I mean, I said it out of
15 the presence of the jury to be clear and then the witness said
16 it in front of the jury in her testimony, but the total shows,
17 I think, both locations and accounts for the movement back and
18 forth.

19 MR. STAUDAHER: Correct.

20 THE COURT: And I think if you put order, that
21 relieves the confusion. The only issue is whether or not a
22 summary type graph like this is admissible as substantive
23 evidence, or whether you're required to use it as
24 demonstrative evidence in your argument or through the
25 witness's testimony, which you did already, using it as

1 demonstrative evidence.

2 MR. STAUDAHER: And in this case we believe it is
3 not only an accurate summary -- this isn't something we're
4 just summarizing testimony that's before. This -- this is
5 actually physical documents and -- and tabulated numbers and
6 records that have gone into the production of those. The
7 actual graphs themselves are just a reproduction or a summary
8 of that, which I think is completely valid. There's no
9 analysis that she went into. She took straight numbers off
10 the records.

11 Now, the second part of this is that counsel met
12 with Ms. Sampson and went over the records which comprised the
13 supporting information that went into those themselves and had
14 ample time to look into that. It was agreed to by all counsel
15 that the supporting information that went into those charts
16 would not go back to the jury because there was other things
17 in it.

18 So to that extent, it was stipulated that that would
19 be -- that those were reasonable representations of the
20 summary of the information that was contained that was not
21 going to go back to the jury. If it doesn't go back
22 substantively as a summary of that information, then that
23 undermines the issue of the summary information, of the stuff
24 that was already agreed to that would not go back to the jury.

25 So they've got to have one or the other or both.

1 And we think that in this case they could have both, but we
2 stipulated and agreed that we would not give them the
3 underlying data with respect to the propofol vials and -- and
4 the syringes and so forth, the medical supplies analysis in a
5 sense that we were arguing about earlier. So it's summary
6 information.

7 It's -- and the last questions I asked of the
8 witness where did you do any analysis or is this just straight
9 numbers on a chart. And if we change the things that the
10 Court has issues with, I think it's not misleading. Certainly
11 the totals compensate for any issue of materials going back
12 and forth. And so I think that that is reasonable and valid
13 and should come in substantively.

14 THE COURT: All right. Well, I think it's --

15 MR. WRIGHT: May I respond?

16 THE COURT: Sure.

17 MR. WRIGHT: It -- it is in her testimony. Most
18 1006 witnesses don't use a chart. I mean, in a tax case you
19 look at all the records and then the agent gets on the stand
20 and testifies --

21 THE COURT: And says this is --

22 MR. WRIGHT: -- to it. It is --

23 THE COURT: -- what was --

24 MR. WRIGHT: -- in substantively. Every number on
25 there is in evidence substantively for the -- for the truth of

1 the matter. And -- and the chart adds nothing to getting it
2 into evidence. So it -- it is already in. And it's solely a
3 question of why do I get to use a summary chart, which is my
4 argument and theory of the case, as evidence to put into
5 evidence. I can make charts like that.

6 THE COURT: Yeah, but you're talking about
7 summarizing testimony as opposed to the summary of records.
8 If you have records that your expert is going to -- financial
9 records and other things that they were going to summarize,
10 for example, you know, money going into the CRNA account,
11 bonuses paid to the nurse anesthetists or, you know, whatever
12 and you had an accountant person come in, I would say, okay,
13 well, that's a summary of the bank records, which is different
14 from just a summary of, you know, Nurse A said this, Nurse B
15 said that. I mean, this is a summary of records that are too
16 cumbersome for the jury to review themselves. So, I mean --

17 MR. WRIGHT: She testified to them. I mean, it is
18 in substantively. She has given everything that's on those
19 charts. A summary witness testified I looked at all the bank
20 accounts and here is what I found and -- and the totals are
21 this, the deposits are that.

22 THE COURT: Yeah, but they're --

23 MR. WRIGHT: And then --

24 THE COURT: -- allowed to prepare a written format
25 deposits.

1 MR. WRIGHT: A report? And you think the report
2 becomes admissible?

3 THE COURT: No, I'm not admitting her report. We've
4 already been over that.

5 MR. WRIGHT: Okay. Well, why is this -- this
6 summary substantively admissible when she has already
7 testified to it?

8 THE COURT: Well --

9 MR. STAUDAHER: I mean, right now they can't go back
10 and look at all those records because we've stipulated to them
11 and -- and that's the whole purpose of having that is because
12 you have a summary of records that are too voluminous, as the
13 Court said, for the jury to pour over every document to look
14 at. There's not been an issue to my knowledge where they say
15 that her calculation on the totaling of the number of syringes
16 ordered for the year was wrong.

17 THE COURT: You're not -- right. They're not saying
18 her calculation is wrong. They're saying that, a) it's an
19 irrelevant calculation because it doesn't account for
20 preexisting inventory, and b) it doesn't account for both
21 locations. But I think it does account for all three
22 locations, actually, one the one as the Rainbow location.
23 And, you know, the jury was told this was an exhibit. So some
24 people may not have written it down when they would have if
25 they knew it wasn't going to be an exhibit.

1 You know, again, I don't think the location issue --
2 I think that that's reflected in the total. I think she
3 testified it's reflected in the total. And common sense would
4 tell you it's reflected in the total. I think as long as you
5 say syringes ordered, propofol vials ordered, and it says
6 already bite blocks ordered, you know, and have a note not
7 accounting for existing inventory, then I think that that
8 takes away any confusion or misleading problems of potentially
9 misleading the jury.

10 I mean, I think you brought that out thoroughly on
11 cross-examination, but I think if you want that added to the
12 charts, then I think that that's fine and then that reflects,
13 again, that it doesn't account for existing inventory and
14 that --

15 MR. WRIGHT: Well, are the first two columns going
16 to be gone?

17 THE COURT: No, because, again, I think Shadow,
18 Burnham in total. So people can -- you know, first of all,
19 whether -- look. Either one, there's -- I mean, this is the
20 one you look at, but this accounts for movement back and
21 forth. I mean, I think that that's all it was required to do.

22 And I -- she testified that, well, the total would
23 account for the movement back and forth because I don't know
24 if we actually know what the movement was back and forth, but
25 that that would account for that. Now, if you would like, Mr.

1 Wright, I'll reserve ruling, but that's my inclination.

2 MR. WRIGHT: Okay. It sure --

3 THE COURT: If you would --

4 MR. WRIGHT: It sure seems --

5 THE COURT: Yes?

6 MR. WRIGHT: It sure seems like demonstrative
7 evidence to me. I mean, I -- that's all I --

8 THE COURT: As opposed to summary evidence?

9 MR. WRIGHT: Correct. I mean, it's demonstrative.
10 I could make ten charts summarizing her testimony and the
11 records she saw. I could go into the banking and things just
12 using my theory of the case. And so, what, just because it
13 came out of the records and it's a summary of what she said
14 and it puts my spin on it, then it becomes admissible as
15 substantive evidence? I just don't comprehend this.

16 THE COURT: All right.

17 MR. STAUDAHER: The State actually has no problem
18 with him taking -- if he actually uses the numbers and the
19 actual records of coming up with any kind of summary chart of
20 the material that's in -- sort of in evidence, but not going
21 back to the jury because the jury has got to have something.
22 They just can't have the testimony. They've got to be able to
23 look at the evidence themselves, and that's why we have the
24 charts so we don't have to look at box after box after box.

25 THE COURT: Finally -- the jury is maybe here so

1 we'll get started.

2 But finally, Mr. Wright, on the issue of where she
3 went beyond the parameters that she should have, meaning vial
4 equals dosage, like I said, if you would like me to give an
5 instruction to the jury telling them to disregard that portion
6 of her testimony, I will give that instruction.

7 So if that's what you would like, I would ask that
8 you craft such an instruction, run it by the State, and if I
9 don't agree with it or there is opposition, then I'll write my
10 own. But Mr. Staudaher is agreeable to that. So do you want
11 me to do it or are you requesting it or do you want to take a
12 stab at writing it yourself, or what would you like to have
13 happen with respect to that? Nothing or --

14 MR. WRIGHT: I'd ask the jury be instructed to
15 disregard it at the beginning of our session today.

16 THE COURT: I'm sorry?

17 MR. WRIGHT: That the jury be instructed to
18 disregard her testimony about her syringe calculations on what
19 should have -- however we want to characterize it.

20 THE COURT: Well, that's why I'm asking if you want
21 to take a stab at writing it because it's just -- it's not
22 syringes ordered. It's dosage equals necessary syringes
23 which, like I said, I would say that's medical evidence and
24 that's beyond -- you know, that's something a physician or a
25 nurse would have to say and it's wrong. Something like that.

1 MR. STAUDAHER: Yeah, what -- what the Court just
2 said is fine with the State.

3 THE COURT: Okay.

4 MR. STAUDAHER: You know, there is one issue and --
5 oh, I'm sorry.

6 MR. WRIGHT: I just wanted to respond. He -- he
7 said I can craft some charts out of the records, but he
8 doesn't want them going to the jury.

9 MR. STAUDAHER: No, I didn't say that. That was
10 part of what we talked about, which was -- and the whole
11 purpose of their meeting with Ms. Sampson because they were
12 concerned about extra things in those records so that they
13 wouldn't go back to the jury. That was the reason she came
14 over here was to go through that information. The fact that
15 -- if he wants to take actual numbers out of those records and
16 things like that like Ms. Sampson did, I don't think that
17 there's a problem with it as long as we see them and can look
18 at them to see if they're accurate.

19 MR. WRIGHT: And then -- then they're put into
20 evidence.

21 MR. STAUDAHER: Well, they're already in evidence as
22 far as a Court's exhibit.

23 MR. WRIGHT: No --

24 MR. STAUDAHER: They're not going --

25 MR. WRIGHT: -- as a chart.

1 MR. STAUDAHER: Yes, if it's an accurate rendition.
2 If you have somebody come in and say that they did that,
3 that's fine.

4 MR. WRIGHT: I don't have to have someone come in to
5 say that they did that.

6 MR. STAUDAHER: Well, you do too because that's the
7 person who is on the stand needs to testify they did it
8 accurately. We can't have you get on the witness stand.

9 THE COURT: We're waiting for two jurors. And on an
10 unrelated juror issue, may I see counsel in the back.

11 MR. STAUDAHER: And before -- well, maybe we can
12 just address that.

13 THE COURT: And --

14 MR. WRIGHT: We need to address something --

15 THE COURT: Oh, okay.

16 MR. WRIGHT: -- before --

17 THE COURT: We'll do the legal on the record, and
18 then I just want to advise in chambers of a new issue.

19 MR. WRIGHT: Did you have something else?

20 MR. STAUDAHER: I did.

21 THE COURT: Okay. So --

22 MR. STAUDAHER: Not related to --

23 THE COURT: -- any legal matters --

24 MR. STAUDAHER: -- this issue.

25 THE COURT: -- or anything we have to do on the

1 record before the jury, let's do that right now.

2 MR. STAUDAHER: It doesn't have to be on the record.

3 MR. WRIGHT: Oh, okay.

4 MR. STAUDAHER: We can just do it all in the --

5 MR. WRIGHT: This -- this is on Rod --

6 THE COURT: Mr. Chaffee?

7 MR. WRIGHT: -- Chaffee. I think Mr. Staudaher
8 knows better than I the statement of Rod Chaffee that is --
9 that he references in his interview with Metro, when he says,
10 just so I'm clear on it, he says -- police officer Levi --

11 MR. WHITELY: Hancock.

12 MR. WRIGHT: -- Hancock says I know you prepared the
13 statement that you gave us previously. And that's -- that's
14 what I was questioning about, wanting that statement of his.

15 THE COURT: And then when we left Friday, Detective
16 Watly -- Whitely --

17 MR. WHITELY: Whitely. Yes, ma'am.

18 THE COURT: -- Whitely said that he would look for
19 it to see whatever there was.

20 MR. WRIGHT: And as I understand it, there -- there
21 was a statement --

22 MR. STAUDAHER: So I -- I was --

23 MR. WRIGHT: Oh, okay.

24 MR. STAUDAHER: -- I was just parroting part of what
25 I heard --

1 MR. WRIGHT: Okay.

2 MR. STAUDAHER: -- from him, so --

3 THE COURT: Okay. Well, let's get hear from --

4 MR. WRIGHT: I thought there was something about
5 it's privileged, his lawyer wrote it.

6 MR. WHITELEY: Yes, there was --- there was two
7 statements that we're talking about that we did. There was
8 one back, I think, in May, and then one later, and that's the
9 one that Mr. Wright is referring to. And in that one Levi
10 kind of refers to a previous statement, which I believe is to
11 be the one back in May.

12 THE COURT: Was that an oral statement or a written
13 statement?

14 MR. WHITELEY: It was a recorded statement.

15 THE COURT: Oh.

16 MR. WHITELEY: And then there is another statement
17 that was made between Mr. Chaffee and his previous attorney.
18 He's got Kim Johnson right now. There was a previous attorney
19 before that. He had made a statement at the request of his
20 attorney.

21 THE COURT: To who?

22 MR. WHITELEY: To the attorney, and then the attorney
23 released that as part of civil discovery.

24 THE COURT: Okay. Released what? Did the attorney
25 like write it out, or did the attorneys, you know, tape the

1 statement or --

2 MR. WHITELEY: I'm not sure how he released it. It
3 just got released in civil discovery.

4 THE COURT: And did you -- did Metro get that ever?

5 MR. WHITELEY: No.

6 THE COURT: Okay. So Metro doesn't have this
7 whatever attorney thing is?

8 MR. WHITELEY: And that was litigated as
9 attorney-client privilege, which according to Kim Johnson, his
10 current attorney, said they had won several times.

11 THE COURT: Because -- I'm laughing, Mr. Wright,
12 because it's not privileged once it's turned over --

13 MR. WRIGHT: Right.

14 THE COURT: -- to other lawyers, so --

15 MR. WHITELEY: Well, Mr. Chaffee didn't agree for
16 that --

17 THE COURT: There have been --

18 MR. WHITELEY: -- to be turned over.

19 THE COURT: -- some -- well, perhaps if he didn't
20 agree or something like that, but once it's been, you know --
21 there are some, let me just say, curious rulings. If that was
22 the universal ruling by Judges Israel, Silver, and Walsh, then
23 I would say, okay, maybe there is something there because
24 those have been the three trials that went forward, I believe,
25 on the pharmaceuticals, and there was one trial, I think, with

1 Judge Wiese that went forward on the HMO and maybe one in
2 front of Judge Williams.

3 So if all five of those judges said, oh, yes, this
4 is privileged, then I would be inclined to say, okay, there's
5 something here that I'm not aware of and it's probably
6 privileged. If one or two of those five said it was
7 privileged and the others didn't or only one or two it was
8 litigated in front of, then I'm inclined to say, you know,
9 maybe there might be -- you know, there may be an issue, but I
10 might not agree with it. But if all five of the civil judges
11 said that, then that may be something. But, you know, at this
12 point you don't know and I don't know.

13 Here's the other thing. With respect to the first
14 taped statement with Metro, has that been turned over to the
15 defense?

16 MR. WRIGHT: Yes, it's a transcript. It's not a
17 statement. And let -- and let me read what the --

18 THE COURT: It's an interview.

19 MR. WRIGHT: -- officer says. I know you prepared
20 the statement that you gave us previously. Now -- now, how do
21 you turn that into a transcript of an oral interview which he
22 doesn't have? I mean, this is the detective. I know you
23 prepared the statement that you gave us previously. And then
24 the -- the witness Mr. Chaffee says, and as I said in my
25 statement, there was a lot of profanity involved in there, why

1 using so much of my fucking supplies.

2 Well, there's nothing like that in the prior oral
3 interview. I mean, he's talking about a statement he turned
4 over. And if it's the lawyer's statement that was given to
5 Detective Hancock, I want it. I want both the lawyer's
6 statement and I want whatever statement this was because he
7 has read both, and I have the right to it.

8 THE COURT: I agree. If there was a statement, you
9 should get it.

10 Detective, did --

11 MR. WHITELEY: I asked --

12 THE COURT: -- were you at the interview?

13 MR. WHITELEY: I was at the interview, yes, ma'am.

14 THE COURT: Okay. When Detective Hancock is talking
15 about that statement, did you know what he was talking about?

16 MR. WHITELEY: I called him and asked him. He
17 doesn't --

18 THE COURT: No, no, I mean back when the interview
19 happened.

20 MR. WHITELEY: No, I don't know what he was talking
21 about in the interview.

22 THE COURT: Okay.

23 MR. WHITELEY: I don't know if that was a misprint in
24 words or if that's exactly what he meant.

25 THE COURT: Okay. So what did you do going forward

1 when you left here on Friday?

2 MR. WHITELEY: So I contacted Detective Hancock and I
3 asked him if he knew anything about that statement that was
4 made or if we had a statement that I'm not aware of. He said
5 he wasn't aware of it. He said he'd look it over, but he
6 didn't think that there was any additional statements.

7 I contacted Kim Johnson, I asked her was there any
8 additional statements that your client made that we're not
9 aware of or we don't have, and she said other than the one
10 that we talked about with the ten questions or whatever from
11 his prior attorney, there was no other statements. The -- and
12 then that would be it.

13 Oh, there was the Brian Labus statement, which was
14 what he made with Brian Labus. There was notes that was
15 turned over to the defense on that, which he could have been
16 referring to that. I don't know.

17 THE COURT: Well, it's obvious from the statement
18 that Detective Hancock and Mr. Chaffee seem to be on the same
19 page about this prior statement. So while you may not have
20 known what they were talking about, it's obvious to me from
21 the content that Detective Hancock knows and, you know, it
22 seems like they're understanding one another about some prior
23 statement.

24 MR. WHITELEY: Well, the two different statements
25 that Mr. Wright is talking about was in two different sections

1 of the report. There was the one where he talked about the
2 prepared previous statement. That was in the first part. And
3 then there was the part that talked about the -- the -- the
4 fact that he was -- there was profanity used or whatever and
5 that was later on down in the report. And that's when Levi
6 agreed.

7 THE COURT: So you're saying that --
8 Is Detective Hancock ever going to be a witness here
9 or --

10 MR. STAUDAHER: We hadn't --

11 MS. WECKERLY: He might be, but --

12 MR. STAUDAHER: I mean, we --

13 THE COURT: Okay. Well, he can --

14 MR. STAUDAHER: I mean, he's available.

15 THE COURT: -- come in and he -- right.

16 MR. STAUDAHER: He's just --

17 MS. WECKERLY: Yeah.

18 THE COURT: He's available at any time. I mean,
19 poor Detective Whitely is here kind of holding the bag and
20 Detective Hancock is really the one, it sounds like, that
21 maybe has more knowledge on this. In terms of --

22 Let me ask you this, Detective. Did you -- I mean,
23 I'm assuming you have a file for each witness or do you --

24 MR. WHITELEY: Yes, ma'am.

25 THE COURT: Is it organized that way?

1 MR. WHITELEY: Yes, ma'am. I double checked.

2 THE COURT: Did you go and check the file to see if
3 there's anything else in it?

4 MR. WHITELEY: Yes, ma'am, it's just the two
5 statements that we had from those days.

6 THE COURT: Nothing else? No written statement or
7 anything, no letter from a lawyer, nothing?

8 MR. WHITELEY: Well, there's a 302. I could double
9 check. I'll go back and double check right now, but I didn't
10 see anything that --

11 THE COURT: Okay. Why don't you just bring the file
12 or bring everything that's in the file if you don't --

13 MS. WECKERLY: It might be electronic, but --

14 THE COURT: Oh, okay. If it's electronic then --
15 and I don't know how --

16 MR. WRIGHT: And I'm still assuming it's a different
17 statement than the lawyer's statement that Mr. Chaffee read.
18 I mean, I -- I still want both. I mean, I don't accept this
19 it's privileged when it's a statement or a recollection of his
20 facts that he reads and then -- I don't get it.

21 THE COURT: Yeah, I mean, it's possible, too, that
22 what happened was -- well, he's not actually -- I don't know.

23 MR. WRIGHT: I think it's the same -- I think we're
24 talking about the same statement. It was a different lawyer
25 the first time.

1 THE COURT: Who was the lawyer --
2 MR. WRIGHT: The first interview.
3 THE COURT: -- the first time?
4 MR. WHITELEY: I don't remember the name of the
5 lawyer off the top of my head. I can get that for you. Kim
6 Johnson was the current attorney that he has right now. I
7 don't recall the name.
8 THE COURT: Because Kim Johnson may not even have
9 this statement and can --
10 MR. WHITELEY: She does.
11 THE COURT: Oh, she does?
12 MR. WHITELEY: Yes.
13 MR. WRIGHT: It was a -- it was a -- he first had a
14 first lawyer for first interview.
15 MR. WHITELEY: Right. And I think that was --
16 MR. WRIGHT: And -- and my -- I mean, this is just
17 instinct to me, intuition. I think the first lawyer made that
18 statement available, and then the second lawyer has asserted
19 privilege and won't turn it over. I mean, that's just my
20 intuition on the thing. I think we're talking about one
21 written statement.
22 MR. STAUDAHER: We -- we don't have whatever it is,
23 whether it's that or something else.
24 THE COURT: And I believe the DAs don't have it. I
25 just want someone at Metro --

1 MR. WHITELEY: I don't believe we --
2 THE COURT: -- to check and --
3 MR. WHITELEY: -- have it, either. I can double --
4 THE COURT: -- make sure it's --
5 MR. WHITELEY: -- check, though.
6 THE COURT: -- not in the file.
7 MR. WHITELEY: Yes, ma'am.
8 THE COURT: If you come back and you tell me you
9 looked in the file and it's not in the file, then I believe
10 you.
11 MR. WHITELEY: And I'll contact Kim Johnson. I'll
12 see if she'd be willing to give us a copy for
13 [indecipherable].
14 THE COURT: All right. Anything -- we'll deal with
15 this juror issue at another break. Let's -- if anyone --
16 MR. STAUDAHER: Before the witness comes in, we have
17 not talked to the witness, but apparently when Ms. Weckerly
18 walked out to --
19 THE COURT: Just now I saw he was like hovering in
20 the vestibule --
21 MR. STAUDAHER: Yes.
22 THE COURT: -- and you went to tell him --
23 MS. WECKERLY: That he has some issue --
24 THE COURT: -- he can't come in or something.
25 MS. WECKERLY: Right. He -- and I don't know if

1 it's with regard to this statement or whatever, but he said he
2 had an issue with his testimony. And I just said I can't talk
3 to you and -- but I don't know if maybe everyone, you know,
4 defense counsel wants to go see with Mr. Staudaher what the
5 issue is because it may shed some light on this stuff.

6 MR. SANTACROCE: Put it on record.

7 MR. WRIGHT: Put him on the stand.

8 THE COURT: Okay. That's fine.

9 MS. WECKERLY: Or whatever.

10 THE COURT: That's fine. I mean, just -- that'll be
11 in front of the jury. And then there was one final matter.

12 Detective, I believe you were sent on several sort
13 of errands to see what happened with the guy that killed the
14 wife, and there was one other I don't remember. I think that
15 was the only one.

16 MR. WHITELEY: That was the only one.

17 THE COURT: That was the only one.

18 MR. WHITELEY: There was the issue with the drugs and
19 stuff like that.

20 THE COURT: Oh, right. That was the other one.

21 MR. WHITELEY: I produced that. We've got that and
22 we go that settled.

23 THE COURT: Right. We got that straightened away.
24 But there was --

25 MR. WHITELEY: But the latest one was the issue with

1 the wife, and we pulled those records and there was a charge.
2 The defendant which was the, I guess, boyfriend or whatever,
3 he pled guilty to willful wanton disregard with substantial
4 bodily harm or death. And he was --

5 MS. WECKERLY: He got probation.

6 MR. WHITELEY: He got probation.

7 THE COURT: Okay. So that's consistent with what he
8 was saying. I don't think that opens the door to impeachment
9 that it was a homicide because he was charged criminally and
10 actually convicted of causing her death. So I don't find that
11 his statement that it was homicide, while gratuitous, I don't
12 find that that was untrue in any way, and I don't think that
13 that opens the door to any kind of impeachment about the facts
14 of the circumstances which I think are more -- far more
15 prejudicial than probative and somewhat distracting.

16 So if anyone needs to use the facilities, let's do
17 that now, and then come back and go with the jury.

18 MR. SANTACROCE: Are we going to do his outside the
19 presence of the jury to see what his problem was?

20 THE COURT: Oh, I thought you wanted to do it in
21 front of the jury.

22 MR. WRIGHT: No.

23 THE COURT: Oh, okay.

24 MR. WRIGHT: No.

25 THE COURT: Kenny, go get him.

1 I misunderstood.

2 MR. WRIGHT: Sorry.

3 THE COURT: I thought you were saying let's just put
4 him up in front of the jury. And that's -- that's why I said
5 okay, you know, proceed at your own risk.

6 MR. STAUDAHER: And, Your Honor, if he's going to be
7 outside the presence, we could just even ask him about this
8 statement issue.

9 THE COURT: Well, they want it on the record.

10 MR. STAUDAHER: Well, it would be on the record, but
11 it would be outside the presence of the jury.

12 THE COURT: Right. Right now.

13 MR. STAUDAHER: Okay.

14 THE COURT: That's what we're going to do. Oh, I
15 see what you're saying.

16 MR. STAUDAHER: We can ask --

17 THE COURT: Right.

18 MR. STAUDAHER: -- him, as well.

19 THE COURT: Remember, he didn't remember, though.
20 We asked him about the statement and he didn't remember.

21 (In the presence of Rod Chaffee)

22 Come on back up here because you're going to have to
23 come up back to the witness stand anyway, Mr. Chaffee. Just
24 have a seat. And, of course, Mr. Chaffee, you understand that
25 you're still under oath.