

APPEAL TRANSCRIPT

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IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

CASE NO.: 2018-426-CF

STATE OF FLORIDA

versus

JURY TRIAL

KEITH JOHN JOHANSEN,

Defendant.

_____ /

TRANSCRIPT OF PROCEEDINGS

PAGES 375 THROUGH 647

DATE TAKEN: October 27, 2021

TIME: 8:48 a.m. - 4:43 p.m.

PLACE: The Flagler County Courthouse
1769 E. Moody Boulevard, Building 1
Bunnell, Florida 32110

BEFORE: The Honorable Christopher A. France
Circuit Judge

This cause came on to be heard at the time and place
aforesaid, when and where the following proceedings were

stenographically reported by:

Andrea Gorman, RPR
Court Reporters, Seventh Judicial Circuit
Kim C. Hammond Justice Center
Bunnell, FL (386) 313-4572

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State's Exhibit No. 18

436

APPEAL TRANSCRIPT**P R O C E E D I N G S**

1
2 (The following proceedings were resumed on
3 October 27, 2021, at 8:48 a.m. with appearances as
4 previously noted:)

5 THE BAILIFF: All rise. Circuit court is now in
6 session, The Honorable Christopher France presiding.

7 THE COURT: Thank you-all. Please be seated.
8 Show us back in session.

9 Are both parties ready to proceed?

10 MS. DUNTON: We are.

11 MR. WOOD: We are, Your Honor.

12 THE COURT: You can send in the jury.

13 MS. DUNTON: Your Honor, do you want the witness
14 back on the stand?

15 THE COURT: Sure, she can come on up.

16 Thank you.

17 THE BAILIFF: Jurors entering the courtroom.

18 (The jury entered the courtroom at 9:10 a.m.,
19 after which the following proceedings were had:)

20 THE BAILIFF: Jurors are present.

21 THE COURT: All right. Everybody be seated. Be
22 comfortable. Thank you-all for your courtesy towards
23 the jury.

24 Ladies and gentlemen of the jury, did anything
25 occur during our recess, as far as being exposed to

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1 any reporting, any information whatsoever, or any of
2 the other matters that I instructed you not to do?

3 JURY PANEL: (No audible response.)

4 THE COURT: Okay. Thank you so much. Thank you
5 for your patience this morning. All the parties
6 appeared promptly at a quarter until 9:00. We had
7 some logistical issues to work through and we're in
8 session and now we're ready to proceed. Okay? But
9 thank you for your patience and being so prompt this
10 morning.

11 The witness was previously placed under oath,
12 remains under oath, and we're still in Ms. Dunton's
13 examination.

14 MS. DUNTON: Thank you, Your Honor.

15 **NICOLE QUINTIERI**

16 was recalled as a witness and, having previously been duly
17 sworn, testified as follows:

18 **DIRECT EXAMINATION** (cont'd)

19 BY MS. DUNTON:

20 Q Good morning, ma'am. If you would, just for the
21 record, state your name again.

22 A Good morning. My name is Nicole Quintieri. And
23 for documentation purposes, during this investigation, it
24 was Nicole Thomas.

25 Q Okay. And, Ms. Quintieri, we left off yesterday

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1 with an interview that you and Sergeant Hristakopoulos did
2 with the defendant.

3 Sometime after you two got done speaking with him
4 on that date, on April 7th, was he allowed to speak with
5 his parents in that same room?

6 A Yes, he was.

7 Q Okay. And was that interaction recorded, as
8 well?

9 A Yes, in the same manner, audio and video.

10 MS. DUNTON: And, Your Honor, I believe that's
11 already been admitted as part of State's 17 composite.

12 So at this time I would like to publish.

13 MR. WOOD: And, Judge, I would ask the Court,
14 again, to give 2.2 regarding this recording.

15 THE COURT: 2.2?

16 MR. WOOD: Yes.

17 MS. DUNTON: Yes, Your Honor.

18 THE COURT: Members of the jury, you're about to
19 view and listen to a video and audio recording. The
20 Court instructs you that the recording has been edited
21 to eliminate irrelevant portions that would not add to
22 your understanding of the case. The fact that the
23 recording has been edited should not concern you in
24 any way and must not impact the way you view and
25 listen and consider this evidence.

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1 MS. DUNTON: Thank you.

2 THE COURT: Thank you.

3 (An audio/video recording was published in open
4 court. This transcript should not be considered a
5 verbatim record of those proceedings due to inaudibles
6 and inability to distinguish between speakers. It
7 should be noted that the best evidence of the actual
8 content of the digital recording is the digital
9 recording itself.)

10 "KEITH JOHANSEN: Jesus. This is bullshit. It's
11 not justice. I didn't do nothing, man..

12 Shit, man. Ridiculous. I thought justice would
13 be more innocent. Crazy. Incredible. Justice for
14 the innocent. It's traumatic enough, man.

15 Hello, guys. I didn't do anything.

16 GARY JOHANSEN: I didn't say you did, but you've
17 got to be prepared for them to try to do that. There
18 was two shots -- the main thing they think is because
19 there was two shots fired.

20 KEITH JOHANSEN: Well, I don't -- I don't -- I
21 don't --

22 GARY JOHANSEN: I'm not saying you did or didn't.
23 I don't know.

24 KEITH JOHANSEN: I don't -- I was in the shower.

25 GARY JOHANSEN: Well, that's kind of suspicious,

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1 too. If you had residue on your hands.

2 KEITH JOHANSEN: (Indiscernible.) Fine. Good.

3 I didn't do it.

4 GARY JOHANSEN: What did you say to them?

5 KEITH JOHANSEN: Huh?

6 GARY JOHANSEN: What did you say to them?

7 KEITH JOHANSEN: They just asked questions --
8 questions and --

9 GARY JOHANSEN: The same thing over and over?

10 KEITH JOHANSEN: Sometimes, but stuff that I
11 couldn't answer, man. Like when something like that
12 happens, you don't know exactly how many inches or --

13 GARY JOHANSEN: I understand.

14 KEITH JOHANSEN: Come on, man. You know what I
15 mean? (Indiscernible.)

16 GARY JOHANSEN: Where did she shoot herself at?

17 KEITH JOHANSEN: I don't know.

18 GARY JOHANSEN: Okay. That might be -- maybe
19 that might be suspicious, too, where the wounds are.
20 They won't tell anybody.

21 KEITH JOHANSEN: I don't know.

22 GARY JOHANSEN: Because the body is still there.
23 They haven't removed the body yet.

24 KEITH JOHANSEN: That is sick.

25 GARY JOHANSEN: They have to get the search

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1 warrant before they can do it, and the examiner hasn't
2 been there either.

3 KEITH JOHANSEN: So they're dropping the ball?

4 GARY JOHANSEN: Well, I don't know if that's
5 true. That's normal procedure.

6 KEITH JOHANSEN: I mean (indiscernible).

7 GARY JOHANSEN: I know. That's fine.

8 KEITH JOHANSEN: They're fucking with me.

9 GARY JOHANSEN: I know.

10 What about R.?

11 KEITH JOHANSEN: R.'s in the other room.

12 GARY JOHANSEN: Are they going to let him go?

13 KEITH JOHANSEN: I don't know. I don't know.

14 But they're trying to pin it all on me.

15 GARY JOHANSEN: What are they saying to you?

16 KEITH JOHANSEN: Well, look, this is suspicious.

17 That is --

18 GARY JOHANSEN: Well, you've got to understand --

19 KEITH JOHANSEN: Asking questions I don't know.

20 GARY JOHANSEN: Two shots, two. You just got out
21 of the shower. You could have washed all that stuff
22 off. Okay? No witnesses.

23 KEITH JOHANSEN: I had to get the soap off.

24 GARY JOHANSEN: I know. Well, that's neither
25 here nor there. You were wet. No witnesses.

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1 While I'm sitting here, you might as well talk
2 about it now. It doesn't matter --

3 KEITH JOHANSEN: I already told them.

4 GARY JOHANSEN: You already told them?

5 KEITH JOHANSEN: Yeah.

6 GARY JOHANSEN: Oh.

7 KEITH JOHANSEN: Look, I'm honest.

8 GARY JOHANSEN: Okay.

9 KEITH JOHANSEN: (Indiscernible.) There were
10 guns.

11 GARY JOHANSEN: What about the guns?

12 KEITH JOHANSEN: (Indiscernible.)

13 GARY JOHANSEN: I know, but that's --

14 KEITH JOHANSEN: That's -- no, it's just me.

15 GARY JOHANSEN: Well, he said that you'll
16 probably get a Class III felony for the over
17 20-some-odd grams of (indiscernible). Then he says
18 the two -- you know, because she was saying, Well,
19 what about (indiscernible). He said, I don't give a
20 goddamn about the residue. Just do what I told you to
21 do.

22 Well, you know, my suggestion, I know this is
23 early and everything, but we're right here talking, we
24 might as well get it out. You know, you may have to
25 get somebody for -- for just some counselling, for you

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1 and R., both.

2 KEITH JOHANSEN: I know.

3 GARY JOHANSEN: Like yesterday. Okay?

4 KEITH JOHANSEN: I know.

5 GARY JOHANSEN: Because this has got to be
6 horrible for you.

7 KEITH JOHANSEN: I can't --

8 GARY JOHANSEN: Were you trying (indiscernible).

9 KEITH JOHANSEN: Man, you're slipping all over
10 the place. I just got out of the shower. Right?
11 When you look over and you see her take her last
12 breath and her eyes roll back, Dad. And then haven't
13 I been through enough and they're trying to pin this
14 shit on me?

15 GARY JOHANSEN: I don't know if they're trying to
16 pin anything on you, but they -- you know, they do
17 have to do their job, Keith. They have to cover all
18 the bases.

19 KEITH JOHANSEN: I understand. But, Dad, I've
20 been through enough.

21 GARY JOHANSEN: I know. You being here all this
22 time is ridiculous.

23 KEITH JOHANSEN: I've been through enough.

24 GARY JOHANSEN: Did they tell you that you had a
25 chance to leave whenever you wanted to? Did they ever

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1 tell you that?

2 KEITH JOHANSEN: Yeah. I was trying to co --
3 cooperate.

4 GARY JOHANSEN: All right. But did they tell you
5 you could leave whenever you wanted to? I'm just
6 asking (indiscernible).

7 KEITH JOHANSEN: (Indiscernible.)

8 GARY JOHANSEN: They know that there's drugs in
9 there. That's why they don't want you to leave.

10 KEITH JOHANSEN: It's just fucking weed.

11 GARY JOHANSEN: It doesn't matter. There was
12 drugs. That's why they don't want you to leave
13 because they know they're going to have to come and
14 arrest you again anyway.

15 KEITH JOHANSEN: Well, I will at least have the
16 time with my family.

17 GARY JOHANSEN: You can be with your family for a
18 while and then, you know, since you know they're going
19 to do it, just -- arrangements are already made. And
20 you can just tell me about (indiscernible).

21 KEITH JOHANSEN: Dad, it's not (indiscernible).

22 GARY JOHANSEN: I know. I know, Keith.

23 Tomorrow you can go in and you can say, I know
24 that, you know, you found that stuff. I'm turning
25 myself in. Because it's better to do it that way then

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1 to have them come haul your ass away in handcuffs.

2 Don't you agree with me? Be the man. Okay?

3 KEITH JOHANSEN: And that way I can get all my
4 money out of my bank account.

5 GARY JOHANSEN: You can do that immediately.

6 KEITH JOHANSEN: My card's in the home -- in my
7 car.

8 GARY JOHANSEN: Well, we can't get in there until
9 they remove all that tape. But you can go to Michelle
10 and Michelle can get it.

11 Do you got your ID with you?

12 KEITH JOHANSEN: I had it.

13 GARY JOHANSEN: They got to give you all that
14 shit.

15 KEITH JOHANSEN: I don't even have my cell.

16 GARY JOHANSEN: Well, I know. Well, I called a
17 long time ago and I said, I want to talk to my son
18 now.

19 KEITH JOHANSEN: I mean, this is what -- this is
20 what you get for being honest?

21 GARY JOHANSEN: Well, I understand, but you have
22 to understand, too, they're doing their job. Okay?

23 KEITH JOHANSEN: I know.

24 GARY JOHANSEN: They want to make sure -- they
25 haven't charged you with anything. Obviously they --

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1 it -- they probably know this was a suicide. Okay?

2 KEITH JOHANSEN: It wasn't a suicide. She killed
3 herself.

4 GARY JOHANSEN: Well, why would she kill herself?
5 Keith, if you knew that (indiscernible).

6 KEITH JOHANSEN: (Indiscernible) the cops.
7 (Indiscernible.)

8 GARY JOHANSEN: (Indiscernible.)

9 KEITH JOHANSEN: I got to get out of here.
10 That's the last thing I said to her.

11 GARY JOHANSEN: People snap, Keith.

12 KEITH JOHANSEN: I think she was trying to --

13 GARY JOHANSEN: (Indiscernible.)

14 KEITH JOHANSEN: -- make up the bed. Because --

15 GARY JOHANSEN: Why did she have a gun in the
16 first place?

17 KEITH JOHANSEN: My weapons were in the bed, in
18 the side, so she took them out to move them. She used
19 to do that all the time.

20 GARY JOHANSEN: Why would there be two shots?
21 That's what doesn't make sense.

22 KEITH JOHANSEN: It hit the floor.

23 GARY JOHANSEN: Why would -- those guns don't
24 just go off by hitting the floor, Keith.

25 KEITH JOHANSEN: I don't know.

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1 GARY JOHANSEN: I know you don't know. But they
2 don't go off by hitting the floor. You have expensive
3 guns, they wouldn't do that.

4 KEITH JOHANSEN: No. Only one of them has a
5 safety.

6 GARY JOHANSEN: It doesn't matter. You have to
7 have a trigger, and it would have to be a hair trigger
8 to do that.

9 KEITH JOHANSEN: One of them does.

10 GARY JOHANSEN: Which one was used?

11 KEITH JOHANSEN: I don't know.

12 GARY JOHANSEN: Okay. All right.

13 KEITH JOHANSEN: I mean, Dad, (indiscernible).

14 GARY JOHANSEN: (Indiscernible) it depends on
15 where she was shot.

16 KEITH JOHANSEN: I don't know.

17 GARY JOHANSEN: Nobody knows. (Indiscernible.)

18 KEITH JOHANSEN: Go ahead and get Mom.

19 GARY JOHANSEN: You know, well, they asked me
20 about your security system --

21 KEITH JOHANSEN: I (indiscernible).

22 GARY JOHANSEN: -- and I said, you know
23 something, I don't even know why he's got it. And
24 your mom said -- because they interrogated me. They
25 questioned me and your mom separate.

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1 KEITH JOHANSEN: Sure.

2 GARY JOHANSEN: But we could hear each other --

3 KEITH JOHANSEN: Sure.

4 GARY JOHANSEN: -- outside the car. We was in
5 front of your house for over three hours waiting for
6 them to talk to us. I told everybody else to leave
7 and we stayed there. And I said -- but I made Brady
8 leave right away. I said, Brady, I said, you do not
9 need to be here when they bring the body out. I says,
10 We don't want to be here.

11 KEITH JOHANSEN: I don't want to do that.

12 GARY JOHANSEN: Nobody does.

13 KEITH JOHANSEN: I can't ever go back to the
14 house again, man.

15 GARY JOHANSEN: You're going to have to. You're
16 going to have to. You may not be able to live there,
17 but you're going to have to go back because you've got
18 to get your stuff.

19 KEITH JOHANSEN: I can't live there.

20 GARY JOHANSEN: I know you can't. I don't blame
21 you. But you've got to (indiscernible).

22 KEITH JOHANSEN: (Indiscernible.)

23 GARY JOHANSEN: Well, nobody does, Keith. But
24 that's why you need to get help to help you deal and
25 to learn how to deal with this. I can't help you

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1 there. We will support you, but I can't advise you,
2 because I don't know. I've never been through this.

3 KEITH JOHANSEN: I have enough to do
4 (indiscernible).

5 GARY JOHANSEN: Well, they haven't charged you
6 with anything. Obviously they're not charging you
7 with murder or anything.

8 KEITH JOHANSEN: I don't know what they're going
9 to do.

10 GARY JOHANSEN: I know you don't. But --

11 KEITH JOHANSEN: (Indiscernible.)

12 GARY JOHANSEN: They're bringing it up. And
13 freakin' asshole from FlaglerLive, he's not even a
14 real reporter, was there.

15 KEITH JOHANSEN: (Indiscernible) private.

16 GARY JOHANSEN: No, it's not private. It's
17 public record. But he was there and he was talking to
18 the neighbors and blah, blah, blah.

19 KEITH JOHANSEN: You know what they said?

20 GARY JOHANSEN: You know, that R. was just
21 starting to play with the neighbor across the street
22 and they were having -- they were having a party
23 across the street.

24 KEITH JOHANSEN: I know. We were invited.

25 GARY JOHANSEN: And the guy down the street was

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1 there next door to them, the couple were in the park.

2 KEITH JOHANSEN: Uh-huh.

3 GARY JOHANSEN: That there was a bunch of people
4 there in trucks and they were taking -- and I said,
5 You know what guys?

6 (Knock on door.)

7 GARY JOHANSEN: Yes, sir?

8 UNIDENTIFIED SPEAKER: Could I talk to you
9 outside real quick?

10 GARY JOHANSEN: Yeah.

11 KEITH JOHANSEN: Ridiculous.

12 (Gary Johansen leaves the room.)

13 (Gary Johansen enters the room.)

14 GARY JOHANSEN: All right. They just told me
15 basically that you were told where she was shot.

16 KEITH JOHANSEN: No.

17 GARY JOHANSEN: She was shot in the chest and in
18 the shoulder. In this area.

19 KEITH JOHANSEN: Okay.

20 GARY JOHANSEN: That's -- one of them went
21 completely through the body.

22 KEITH JOHANSEN: Okay.

23 GARY JOHANSEN: So I'm told. And he said that's
24 what's very suspicious.

25 KEITH JOHANSEN: Not if she was (indiscernible.)

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1 GARY JOHANSEN: Well, I don't know. I have no
2 idea if there was two guns involved. Well, he
3 mentioned something about two guns, but I did not --
4 you know, and I said, Is it feasible? He says not
5 really.

6 KEITH JOHANSEN: (Indiscernible.)

7 GARY JOHANSEN: Well, I mean, crazier things
8 happen, but he says that -- that you are a person of
9 interest. But you already know that.

10 KEITH JOHANSEN: Yeah.

11 GARY JOHANSEN: But you're not going to be
12 charged with (indiscernible).

13 KEITH JOHANSEN: Why can't I fucking leave?

14 GARY JOHANSEN: I just asked him. I said, Can he
15 leave? No.

16 We have to go through the crime scene first. And
17 I says, I'm going to, you know, go get your mom. We
18 are going to be able to go see R. Okay?

19 KEITH JOHANSEN: Okay.

20 GARY JOHANSEN: He does -- like I said, dah, dah,
21 dah, dah.

22 KEITH JOHANSEN: They're trying to keep it --

23 GARY JOHANSEN: Okay. They're trying to keep him
24 occupied and so on. So he's somewhat prepared. So we
25 just need to know should we tell him? I think we can

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1 probably do it a little easier than you can right now,
2 Keith. We can -- we can put (indiscernible) in there.
3 The same with your sister, your mommy is in heaven.

4 KEITH JOHANSEN: I didn't do it, Dad.

5 GARY JOHANSEN: I didn't say you did.

6 KEITH JOHANSEN: Well, you're acting like I did.

7 GARY JOHANSEN: It's suspicious. She was shot
8 once in the chest, once in the shoulder. That's very
9 suspicious. You've got to understand that. I'm not
10 saying you did or didn't. I wasn't there.

11 KEITH JOHANSEN: I didn't see it. I was in the
12 shower.

13 GARY JOHANSEN: That doesn't mean anything.
14 Was she laying on her stomach, on her back?

15 KEITH JOHANSEN: She was on her back by the bed.

16 GARY JOHANSEN: You just chose not to see it?

17 KEITH JOHANSEN: Well, all I seen was a little
18 spot of blood, not like a big pool.

19 GARY JOHANSEN: Well, when you get shot like
20 that, you don't have any pooling unless it hits the
21 heart or an artery.

22 KEITH JOHANSEN: Okay.

23 GARY JOHANSEN: He said once in the shoulder and
24 once in the chest, wherever. He said in this area.

25 KEITH JOHANSEN: Okay.

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1 GARY JOHANSEN: So we got that information. And
2 she tried to -- you tried to go over blah, blah, blah,
3 which I understand. And you understand, too. I'm
4 asking you one more time. Are you going to release
5 him? If you don't release him, are you going to
6 charge him? If he says we have to wait blah, blah,
7 blah, that's bullshit. They don't have to wait. They
8 either need to charge you or let you go, period.

9 KEITH JOHANSEN: This is what you get for being
10 honest.

11 GARY JOHANSEN: You're either being honest -- I'm
12 not saying you are or not. I'm sure you are. But you
13 still have to understand there's a death involved.

14 KEITH JOHANSEN: I know.

15 GARY JOHANSEN: And there's gunshots and there's
16 two of them and it's supposedly a suicide. Is it an
17 accident? Is it a suicide?

18 KEITH JOHANSEN: I don't know.

19 GARY JOHANSEN: Was -- did she shoot herself and
20 then drop the gun and the gun go off?

21 KEITH JOHANSEN: That's --

22 GARY JOHANSEN: All these different things,
23 that's what they're trying to figure out, too. They
24 will know once they do the autopsy, which they will
25 have to do. They do the autopsy and then they'll

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1 know. If they even find the other bullet. Because
2 they were standing out by the back window. That was
3 your -- that was your room. Right?

4 KEITH JOHANSEN: Yeah. It was to the back.

5 GARY JOHANSEN: Because maybe the bullet went
6 through the wall.

7 KEITH JOHANSEN: I don't know.

8 GARY JOHANSEN: Because he was standing there.
9 (Indiscernible) standing outside.

10 KEITH JOHANSEN: I don't know.

11 GARY JOHANSEN: So maybe one shot went out.
12 That's where it went. But the other one's in
13 (indiscernible), the one that's in her cavity was the
14 one in the chest.

15 KEITH JOHANSEN: The thing I wish is I wouldn't
16 have taken that shower.

17 GARY JOHANSEN: Well, that --

18 KEITH JOHANSEN: (Indiscernible.)

19 GARY JOHANSEN: (Indiscernible.) You don't know,
20 Keith. People snap. She's been very depressed.

21 KEITH JOHANSEN: I know.

22 GARY JOHANSEN: Yeah, she has. She's been
23 (indiscernible).

24 GARY JOHANSEN: (Indiscernible) to your mom or
25 sister.

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1 KEITH JOHANSEN: Yeah, see, this is stuff I don't
2 know.

3 GARY JOHANSEN: She talked to your mom and told
4 your mom that I -- I'm not a good person.

5 KEITH JOHANSEN: But why?

6 GARY JOHANSEN: When did her baby die? When? A
7 year ago? When?

8 KEITH JOHANSEN: Three years ago.

9 GARY JOHANSEN: What time? Is it --

10 KEITH JOHANSEN: Close to that.

11 GARY JOHANSEN: -- close to the anniversary?

12 KEITH JOHANSEN: She -- she had said something, I
13 don't know, a week-and-a-half ago. She said
14 something, you know, Man, I miss her, you know.

15 GARY JOHANSEN: She wasn't on drugs.

16 KEITH JOHANSEN: I was always there for her. You
17 know that, Dad.

18 GARY JOHANSEN: She wasn't on her medication,
19 bipolar.

20 KEITH JOHANSEN: She stopped. I don't know if it
21 was bipolar or she said it was for her anxiety.

22 GARY JOHANSEN: Well, whatever. She was taking
23 certain drugs for that and she quit?

24 KEITH JOHANSEN: Sure. And she was fine.

25 GARY JOHANSEN: But she wasn't fine.

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1 KEITH JOHANSEN: Well, why didn't she let me know
2 that?

3 GARY JOHANSEN: Keith, sometimes you blow up.

4 KEITH JOHANSEN: Why wouldn't she say, Hey, I
5 need to go to the doctor?

6 GARY JOHANSEN: I understand.

7 KEITH JOHANSEN: Okay.

8 GARY JOHANSEN: I understand. You know, you
9 sometimes -- sometimes you're a little difficult, too.
10 She's -- she could have been afraid to say anything to
11 you because you might blow up.

12 KEITH JOHANSEN: No. She (indiscernible).

13 GARY JOHANSEN: I'm just throwing it out there.
14 Okay?

15 KEITH JOHANSEN: Okay. She was just about to get
16 that one thing out of her arm so we could have a kid.

17 GARY JOHANSEN: Keith, I can't tell you. I don't
18 know. If we knew what makes people snap...

19 KEITH JOHANSEN: I don't think it was something
20 that she would do, Dad.

21 GARY JOHANSEN: That doesn't mean anything.

22 KEITH JOHANSEN: Especially with R. in the next
23 room.

24 GARY JOHANSEN: Well, we were just talking about
25 that, too. You know, they say, well, you know, blah,

APPEAL TRANSCRIPT

1 blah, blah, you know, people put suicide notes for
2 years and years and all of a sudden they do it and
3 they say, well, you better get the other person
4 because he killed her or him, or whatever. Her
5 family.

6 KEITH JOHANSEN: Her family's already blamed me.

7 GARY JOHANSEN: Well, of course. But they
8 don't -- nobody knows anything at this point.

9 KEITH JOHANSEN: I don't even know what the hell
10 happened.

11 GARY JOHANSEN: I don't know, Keith. I wasn't
12 there.

13 KEITH JOHANSEN: All I know is what I seen.

14 GARY JOHANSEN: I wasn't there. But they weren't
15 there. The only one that was there, was you.

16 KEITH JOHANSEN: And R.

17 GARY JOHANSEN: No. No, no, no. The only one
18 that was really there was you in the bathroom, her in
19 the bedroom, and God. That's the only three people
20 that were in there.

21 KEITH JOHANSEN: (Indiscernible.)

22 GARY JOHANSEN: No, she's with God. She was a
23 believer.

24 KEITH JOHANSEN: Sure.

25 GARY JOHANSEN: So we know where she's at.

APPEAL TRANSCRIPT

1 KEITH JOHANSEN: Sure.

2 GARY JOHANSEN: I feel comfortable that way.

3 I -- I don't want to see her gone, but I feel
4 comfortable that she's in the right place. And that's
5 the way to tell R. He can understand that.

6 KEITH JOHANSEN: Okay. I can't believe the cops
7 said he needs to know. It's hard.

8 GARY JOHANSEN: It is hard. That's why -- let us
9 do it, because you're not in any condition to do that.
10 You need to be strong. You won't be strong with him,
11 Keith.

12 KEITH JOHANSEN: I know that.

13 GARY JOHANSEN: I know you will break up and it
14 will just make him feel worse. Okay? And I know you
15 want to be the man, the father. But right now is not
16 the time to do that.

17 KEITH JOHANSEN: I think the best person in my
18 life is (indiscernible).

19 GARY JOHANSEN: I'm sorry.

20 KEITH JOHANSEN: How is there a God?

21 GARY JOHANSEN: Of course there's a God.
22 Accidents happen. People snap. And they do
23 unrational things. If they get murdered or kill
24 somebody or kill themselves or accidents. You know,
25 God cannot intercede earth.

APPEAL TRANSCRIPT

1 KEITH JOHANSEN: Why would he take her?

2 GARY JOHANSEN: He didn't. You know he didn't.
3 Satan. Satan absolutely.

4 KEITH JOHANSEN: Or is this just a freakin'
5 accident?

6 GARY JOHANSEN: It could have been. I don't
7 know. We won't know for a while.

8 KEITH JOHANSEN: I mean, before (indiscernible).
9 (Indiscernible.)

10 GARY JOHANSEN: All but two. They found two.
11 When this is all over, I'm taking all your guns.
12 I'm going to take them, though.

13 KEITH JOHANSEN: You can sell them.

14 GARY JOHANSEN: Whatever.

15 KEITH JOHANSEN: I'm not suicidal or nothing.

16 GARY JOHANSEN: I didn't say that. But shit
17 happens, you know, but people don't kill people -- or
18 guns don't kill people, people do.

19 KEITH JOHANSEN: Yeah.

20 GARY JOHANSEN: Unless it's an accident like
21 that. Then it's complete -- it's a freakish accident.

22 KEITH JOHANSEN: Uh-huh.

23 GARY JOHANSEN: Okay? But, you know, and I'm
24 saying this -- I'm not blaming you, Keith, listen to
25 me. Listen to me. You didn't do it. I'm just

APPEAL TRANSCRIPT

1 saying, I believe you didn't, but --

2 KEITH JOHANSEN: I didn't.

3 GARY JOHANSEN: -- but if you did, own up to it.

4 KEITH JOHANSEN: I would have by now, you know.

5 GARY JOHANSEN: I'm just telling you, if you did
6 it, own up to it. It will be better for you.

7 KEITH JOHANSEN: I didn't do it.

8 GARY JOHANSEN: Okay. I believe you.

9 KEITH JOHANSEN: If I did, I would. I have been
10 honest up to this point.

11 GARY JOHANSEN: I understand. I understand. I'm
12 not trying to blame you, Keith.

13 KEITH JOHANSEN: I know.

14 GARY JOHANSEN: I'm talking to you man-to-man
15 because this is the time to do it.

16 KEITH JOHANSEN: Sure. But I'm not going to admit
17 to something that I did not do.

18 GARY JOHANSEN: Okay. I believe you.

19 KEITH JOHANSEN: It's bad enough that I have all
20 this tragedy in my life right now. I don't know which
21 way to go.

22 GARY JOHANSEN: Neither do we. We're --

23 KEITH JOHANSEN: I don't believe (indiscernible)
24 anymore.

25 GARY JOHANSEN: I know. You -- you are, too.

APPEAL TRANSCRIPT

1 Your mom's (indiscernible). Everybody's crying their
2 eyes out. They saying, How come you're not letting
3 him out? I can't.

4 KEITH JOHANSEN: I don't have time to. And not
5 only that, I'm numb. I have no emotion. Any emotion.
6 Why would she want to -- it just don't make sense.

7 GARY JOHANSEN: I don't know. It never does,
8 Keith.

9 KEITH JOHANSEN: It just don't make sense.

10 GARY JOHANSEN: It doesn't make sense.

11 KEITH JOHANSEN: That's the only sense I can make
12 of it.

13 GARY JOHANSEN: She was very depressed.

14 KEITH JOHANSEN: But she didn't let me know that.

15 GARY JOHANSEN: Well, you know, she did other
16 people.

17 KEITH JOHANSEN: I'll be honest with you. Why
18 wouldn't she talk to me?

19 GARY JOHANSEN: (Indiscernible) trusted you,
20 Keith. Or she just wanted to talk to a girl, like
21 Mom, maybe. You know, maybe. I don't know. But she
22 was kind of reaching out because your mom said that
23 she gave -- she told her when -- when -- the counselor
24 that was free -- and that was in the middle of last
25 week and she said, Okay. I will call her. But your

APPEAL TRANSCRIPT

1 mom didn't -- was going to text it to her. She didn't
2 for some reason.

3 KEITH JOHANSEN: Okay.

4 GARY JOHANSEN: Your mom said, Well, maybe if I
5 did that, or maybe this, or maybe if you didn't take a
6 shower, or maybe if you didn't have guns, maybe if you
7 didn't have that, maybe if she -- you know, maybe if
8 she was in the other room, maybe if I would have been
9 in the same room, if I didn't take a shower. Maybe's
10 don't mean anything. (Indiscernible.)

11 KEITH JOHANSEN: Yeah.

12 GARY JOHANSEN: I know it's a crappy analogy, but
13 think about it.

14 KEITH JOHANSEN: (Indiscernible.)

15 GARY JOHANSEN: I know you are (indiscernible).
16 I understand that.

17 KEITH JOHANSEN: I just can't process it. That's
18 it.

19 GARY JOHANSEN: Nobody can.

20 KEITH JOHANSEN: I can't.

21 GARY JOHANSEN: All right. Well, I'm going to go
22 get your mom and we're going to go talk to R.

23 KEITH JOHANSEN: How is he going to...

24 GARY JOHANSEN: I don't know. But let us take
25 care of that first.

APPEAL TRANSCRIPT

1 KEITH JOHANSEN: Okay.

2 GARY JOHANSEN: And then we'll come in and we'll
3 let know what he has to say, because you need to know
4 that, too.

5 KEITH JOHANSEN: Okay.

6 GARY JOHANSEN: I'm going to let you go.
7 (Indiscernible.) We're going to be able to talk to R.
8 and we'll tell him the news. Okay?

9 KEITH JOHANSEN: (Indiscernible.)

10 GARY JOHANSEN: Listen to me. Okay? Nobody does
11 and they're not telling anybody anything. She was
12 shot in the chest and the shoulder. That's all they
13 told me.

14 KEITH JOHANSEN: (Indiscernible) straight up.

15 GARY JOHANSEN: I know, Keith. They're going to
16 come get us so we can break the news to R. We know
17 how we're going to do it.

18 KEITH JOHANSEN: It's going to be hard.

19 GARY JOHANSEN: It is going to be hard, but we
20 have to be strong. And we can --

21 KEITH JOHANSEN: Then what?

22 GARY JOHANSEN: They won't tell me. They didn't
23 tell me. (Indiscernible) the investigation's
24 complete. Because of the drugs, probably.

25 KEITH JOHANSEN: It's just fucking weed.

APPEAL TRANSCRIPT

1 GARY JOHANSEN: I don't care. You already told
2 them.

3 KEITH JOHANSEN: Yeah. I told them. Who cares?

4 GARY JOHANSEN: It doesn't matter. They found
5 it.

6 KEITH JOHANSEN: It's two shots. That's why.

7 GARY JOHANSEN: They said it was two guns.

8 KEITH JOHANSEN: I kept them both in the side of
9 my bed. They fit in there perfectly. So if she --
10 she was cleaning or anything...

11 LAURIE JOHANSEN: How would she clean and get
12 hit?

13 KEITH JOHANSEN: Because they're on the side of
14 the bed.

15 GARY JOHANSEN: One doesn't have a safety.

16 LAURIE JOHANSEN: You don't have a safety.

17 GARY JOHANSEN: It could happen. And Keith
18 understands, it does look suspicious because of that.

19 KEITH JOHANSEN: A shot here and here?

20 GARY JOHANSEN: Well, here and in the chest.

21 KEITH JOHANSEN: But I didn't...

22 GARY JOHANSEN: And the one went through her
23 body. That's probably what the cops are -- I told you
24 that's probably what that was. One of them went
25 completely through the body and the other one's

APPEAL TRANSCRIPT

1 lodged, and it's probably the one in her chest. I
2 mean, they didn't say exactly where.

3 LAURIE JOHANSEN: Can you be in the shower?

4 GARY JOHANSEN: Might be in the shower. I mean,
5 we already discussed that.

6 KEITH JOHANSEN: Come on, man.

7 LAURIE JOHANSEN: Well, you would never hurt
8 anybody.

9 KEITH JOHANSEN: I know.

10 LAURIE JOHANSEN: You have never even hit
11 anybody.

12 KEITH JOHANSEN: I know.

13 GARY JOHANSEN: Well, they're going to come get
14 your mom and I. (Indiscernible), you know, but I
15 don't know what to do.

16 KEITH JOHANSEN: I already told them everything I
17 know.

18 GARY JOHANSEN: Well, don't say anything else.
19 They can't talk to you anymore unless you offer
20 information. They can't talk to you.

21 LAURIE JOHANSEN: You're in shock.

22 GARY JOHANSEN: We all are.

23 LAURIE JOHANSEN: Did they offer you anything to
24 eat or drink?

25 KEITH JOHANSEN: I'm too upset to eat. I mean...

APPEAL TRANSCRIPT

1 GARY JOHANSEN: (Indiscernible) as honest as you
2 can.

3 KEITH JOHANSEN: It's hard for me. And then they
4 try to pinch hit.

5 GARY JOHANSEN: Well, they're not even trying to
6 (indiscernible).

7 LAURIE JOHANSEN: That's why you keep your mouth
8 shut.

9 KEITH JOHANSEN: Well, that's what I'm saying.

10 LAURIE JOHANSEN: They can take everything out of
11 context.

12 KEITH JOHANSEN: Sure. I told them everything I
13 know, from what I remember. I can't remember
14 everything, Mom.

15 LAURIE JOHANSEN: Well, she must have just gotten
16 up.

17 GARY JOHANSEN: Tell her what you told me.

18 KEITH JOHANSEN: About the shower?

19 GARY JOHANSEN: Yeah.

20 KEITH JOHANSEN: Okay. She -- she woke me up and
21 was, like, Okay. I'm going to make some breakfast,
22 you know, and all that, you know. And I was, Okay.
23 I'm going to go take a shower.

24 When I took a shower, the little curt -- curtain
25 things (indiscernible), because she's so damn short,

APPEAL TRANSCRIPT

1 so I was doing that. And all of a sudden she -- I
2 heard boom. That's (indiscernible). Go away. And
3 then about -- I don't know a little long after, pop,
4 pop.

5 LAURIE JOHANSEN: It doesn't make sense.

6 GARY JOHANSEN: Did you jump out immediately when
7 you heard the pops? What did you (indiscernible).

8 KEITH JOHANSEN: It was pop, pop. The first one
9 I thought (indiscernible). You know what I mean? And
10 then after I heard the second one, I was, like,
11 something is wrong, man. You know what I mean?

12 And I ran out there. Hey, slid on the floor and
13 everything. Hey. And I got on the phone --

14 GARY JOHANSEN: You saw her laying there?

15 KEITH JOHANSEN: Yeah. Well, I saw her laying
16 there, yes. I was, kind of, Oh, no. I got on the
17 phone, immediately called 911. Okay? And then I
18 (indiscernible) whatnot. The only thing I don't
19 remember was (indiscernible) my clothes or not, but I
20 just -- I got boxers, man. And then I went to the
21 door.

22 I said, Please help her. Please help her.

23 And they rushed me outside, that's when I called
24 you. It was like...

25 LAURIE JOHANSEN: You called me at 10:52.

APPEAL TRANSCRIPT

1 KEITH JOHANSEN: Yeah. It was, like, what the
2 hell? I mean, the accident, one go off and then she
3 dropped the bullets and -- you know what I mean?

4 LAURIE JOHANSEN: Was she moving them? Was she
5 cleaning?

6 KEITH JOHANSEN: That's what I --

7 GARY JOHANSEN: What they're going to be looking
8 for are powder burns.

9 KEITH JOHANSEN: Go ahead. Go ahead.

10 GARY JOHANSEN: No, not on just you, but on her.
11 How close was the weapon. What angle did it have to
12 be. They're going to do a thorough investigation.

13 KEITH JOHANSEN: Sure.

14 GARY JOHANSEN: What angle did the gun hit this
15 way? What angle did the projectile go?

16 KEITH JOHANSEN: Uh-huh.

17 GARY JOHANSEN: What angle did it enter the body?

18 KEITH JOHANSEN: Sure.

19 GARY JOHANSEN: If it entered from down here,
20 then that's not good for you.

21 KEITH JOHANSEN: Well (indiscernible).

22 GARY JOHANSEN: If it hit like this and she was
23 standing or whatever else, the angle would be this
24 way.

25 LAURIE JOHANSEN: You should never have loaded

APPEAL TRANSCRIPT

1 guns in the house.

2 GARY JOHANSEN: Well, not without a safety
3 anyway. (Indiscernible.)

4 KEITH JOHANSEN: They asked what do you wish for
5 justice for your wife? And I looked at them.
6 Justice? Justice? I was like, Better gun control. I
7 mean --

8 GARY JOHANSEN: That has nothing to do with it.

9 KEITH JOHANSEN: I mean, you know what I mean?
10 Justice?

11 GARY JOHANSEN: They were trying to get you to
12 say -- if you would have said something, like, Oh, you
13 know, (indiscernible), then they've got probable
14 cause.

15 LAURIE JOHANSEN: You and Brandi were good.

16 KEITH JOHANSEN: She told me the other day,
17 right, is that she had been talking to people online
18 sexually. I let it go, because everybody has a past.
19 You know what I mean?

20 LAURIE JOHANSEN: Yeah.

21 KEITH JOHANSEN: And it was months ago. I was
22 like, okay --

23 GARY JOHANSEN: Is that why you took her phone
24 away?

25 KEITH JOHANSEN: I didn't take her phone away.

APPEAL TRANSCRIPT

1 LAURIE JOHANSEN: She was --

2 KEITH JOHANSEN: She broke her phone.

3 LAURIE JOHANSEN: Oh, she didn't tell me she
4 broke her phone.

5 KEITH JOHANSEN: Yeah. And then we had to get
6 new ones. But the new ones that I got weren't
7 compatible, so I had to get new ones after that. And
8 then (indiscernible).

9 GARY JOHANSEN: Okay. Continue on.

10 KEITH JOHANSEN: But that's about it, you know.
11 And I -- I let it go. I let it go, because --

12 GARY JOHANSEN: Did you tell the police this?

13 KEITH JOHANSEN: Yes.

14 Mom, I -- like I told her, Everything's going to
15 be all right. Just stop that. You know what I mean?
16 And she -- she, right there, went through all of the
17 accounts, all of that. We were fine last night. We
18 had a friend come over.

19 GARY JOHANSEN: She was (indiscernible). Is that
20 okay?

21 LAURIE JOHANSEN: Yeah.

22 (Talking simultaneously.)

23 GARY JOHANSEN: Why would she be doing these
24 sexual things unless there was, you know, something
25 was lacking?

APPEAL TRANSCRIPT

1 KEITH JOHANSEN: (Indiscernible.)

2 GARY JOHANSEN: Well, that's why I asked. I
3 mean...

4 KEITH JOHANSEN: She said that she hadn't gotten
5 with him and she -- she was (indiscernible).

6 GARY JOHANSEN: Okay. So she had a porn
7 addiction?

8 KEITH JOHANSEN: Something like that, I guess,
9 you know. She -- I was, like, what am I supposed to
10 do? I said, Thank you. That's very noble.

11 After that, smiling, happy. I mean, last night
12 we had a friend over. Maybe that's what she was
13 talking about when she (indiscernible).

14 LAURIE JOHANSEN: Yeah, that's what she...

15 KEITH JOHANSEN: Like I dealt with whatever, you
16 know. You know, it was, like, I'm not going to, you
17 know, flip out on a person who's treating me
18 (indiscernible). I mean, come on, man.

19 LAURIE JOHANSEN: It looks like you guys got over
20 it and you were fine. Everybody fights.

21 KEITH JOHANSEN: It was not a fight, it was
22 really an argument. (Indiscernible.) You know what I
23 mean?

24 GARY JOHANSEN: You did call her nasty names and
25 stuff like that.

APPEAL TRANSCRIPT

1 LAURIE JOHANSEN: Yeah. (Indiscernible) worse
2 case sometimes. That's normal, though.

3 GARY JOHANSEN: Not really. That's your way of
4 doing it, I guess.

5 KEITH JOHANSEN: We weren't like at each other's
6 throat all the time or nothing like that, man. It was
7 just once in a great while we had an argument. And we
8 let it the hell go.

9 LAURIE JOHANSEN: Why don't you call
10 (indiscernible)? Because I really believe
11 (indiscernible).

12 GARY JOHANSEN: Well, if they do, they do. We're
13 not saying anything. You are not talking about
14 anymore of this stuff. All right?

15 KEITH JOHANSEN: (Indiscernible.)

16 LAURIE JOHANSEN: Yeah, because that's what she
17 told me. And I said you're innocent until proven
18 guilty.

19 KEITH JOHANSEN: I -- I told you what I knew.
20 (Indiscernible.) I did, though.

21 GARY JOHANSEN: Don't say anything to them.
22 Don't talk to us anymore, either, because they're
23 probably (indiscernible).

24 KEITH JOHANSEN: (Indiscernible) talk to them.

25 GARY JOHANSEN: Well, you could have -- you could

APPEAL TRANSCRIPT

1 have just pleaded the Fifth -- the Fifth Amendment and
2 say, I want a lawyer. As soon as you said, I want a
3 lawyer, they have to stop talking to you.

4 KEITH JOHANSEN: Well, I was being an honest
5 person, you know.

6 GARY JOHANSEN: Sometimes that kicks you in the
7 ass. Because they're looking -- they're looking to
8 blame something on something.

9 I'm not saying that they're trying to frame you
10 or anything, I'm not saying that at all.

11 KEITH JOHANSEN: Sure.

12 GARY JOHANSEN: But they're trying to do their
13 job. Okay?

14 KEITH JOHANSEN: Sure.

15 GARY JOHANSEN: Maybe sometimes they use some
16 unethical tactics, but they're just doing their job.

17 KEITH JOHANSEN: Sure.

18 GARY JOHANSEN: Okay? And you admit that it is
19 kind of fishy, where she was shot at.

20 LAURIE JOHANSEN: But you know, I know
21 (indiscernible).

22 GARY JOHANSEN: But it does seem suspicious.
23 Even you said that.

24 KEITH JOHANSEN: Okay.

25 GARY JOHANSEN: But don't say anymore. That's

APPEAL TRANSCRIPT

1 it.

2 KEITH JOHANSEN: Not if she's suicidal, like I
3 said.

4 GARY JOHANSEN: Okay. So there's nothing more we
5 can do. We'll go talk with R.

6 LAURIE JOHANSEN: (Indiscernible.) She's praying
7 for you guys.

8 GARY JOHANSEN: We will talk to R. and we will
9 tell him what's happening.

10 LAURIE JOHANSEN: Not the whole thing, but they
11 know enough.

12 GARY JOHANSEN: They know that there was a
13 suicide shooting, that's all they know.

14 KEITH JOHANSEN: Well, they keep on telling me
15 that I'm going to see R.

16 GARY JOHANSEN: Well, maybe they will after we
17 talk to them. You know? Maybe they will after we
18 talk to him.

19 KEITH JOHANSEN: I'm the closest thing that boy
20 has.

21 GARY JOHANSEN: I know. I know. But, like I
22 said, we talked about this. And Keith agrees that
23 he's really not in any condition to break the news to
24 him.

25 KEITH JOHANSEN: I'd like to do it as a family.

APPEAL TRANSCRIPT

1 GARY JOHANSEN: Well, maybe they'll let us do
2 that. I'll ask them.

3 KEITH JOHANSEN: You know what I mean?

4 GARY JOHANSEN: I'll ask them.

5 (Gary Johansen exited the room.)

6 LAURIE JOHANSEN: (Indiscernible.) Don't say
7 anything.

8 You don't say nothing ever again. Talk to
9 yourself. Okay? In your head. They won't let us
10 talk.

11 (Gary Johansen entered the room.)

12 GARY JOHANSEN: I can go talk to him, but we
13 can't tell him what's going on. DCF has to be there
14 when we do it and they're not here.

15 (Cell phone ringing.)

16 LAURIE JOHANSEN: Hello?

17 GARY JOHANSEN: Just so you know, we've got to go
18 in the other room.

19 LAURIE JOHANSEN: I can't tell you right now.
20 I'll talk to you in a minute. All right? Bye.

21 GARY JOHANSEN: They are going to let us spend
22 some time with him, but I can't tell him anything. I
23 promised that I would not say anything.

24 LAURIE JOHANSEN: (Indiscernible.)

25 GARY JOHANSEN: Huh?

APPEAL TRANSCRIPT

1 LAURIE JOHANSEN: (Indiscernible.)

2 GARY JOHANSEN: Huh?

3 KEITH JOHANSEN: (Indiscernible.)

4 GARY JOHANSEN: We'll spend time with him. Okay?
5 All right?

6 KEITH JOHANSEN: All right. Thank you for
7 helping me out there.

8 (Gary and Laurie Johansen exit the room.)

9 UNIDENTIFIED SPEAKER: You want to smoke a
10 cigarette?

11 KEITH JOHANSEN: Yes, please.

12 UNIDENTIFIED SPEAKER: Okay. Your parents are in
13 with your stepson. Okay?

14 Listen, nothing crazy. Okay? All right?

15 KEITH JOHANSEN: It's not happening.

16 UNIDENTIFIED SPEAKER: Okay.

17 (Keith Johansen exited the room.)

18 (Keith Johansen entered the room.)

19 KEITH JOHANSEN: Okay. Were you able to see him?

20 LAURIE JOHANSEN: Uh-huh.

21 KEITH JOHANSEN: (Indiscernible.)

22 LAURIE JOHANSEN: Yeah, we told him.

23 KEITH JOHANSEN: My God.

24 GARY JOHANSEN: R. told us that (indiscernible).

25 LAURIE JOHANSEN: They're picking him up.

APPEAL TRANSCRIPT

1 GARY JOHANSEN: No one else has even tried to
2 come see him.

3 LAURIE JOHANSEN: Nobody told him. Nobody told
4 him. He just said that.

5 KEITH JOHANSEN: Jesus.

6 GARY JOHANSEN: Nobody told him. And he told the
7 counselor just now, My mommy passed away.

8 KEITH JOHANSEN: He's heard something.

9 LAURIE JOHANSEN: No.

10 GARY JOHANSEN: Be very careful.

11 KEITH JOHANSEN: How did he know?

12 LAURIE JOHANSEN: I don't know. Maybe because of
13 the shots (indiscernible). He's worried about you.

14 GARY JOHANSEN: He is worried about you.

15 KEITH JOHANSEN: I know he is.

16 GARY JOHANSEN: And I says, Well, don't worry
17 about Daddy, he's fine.

18 Are you going to take Daddy home?

19 I says, Well, maybe we will. I said, They're
20 talking to him. They have to talk to you, because,
21 you know -- he said because -- is he going to go home?
22 He says --

23 KEITH JOHANSEN: Is he okay?

24 GARY JOHANSEN: Yeah, he told us. And he says
25 that -- what was it he said about -- oh, about a game.

Court Reporters, Seventh Judicial Circuit

APPEAL TRANSCRIPT

1 I said, Well, we can't get your game.

2 KEITH JOHANSEN: Oh, man.

3 GARY JOHANSEN: He says, Is that because of the
4 yellow tape around the house?

5 LAURIE JOHANSEN: So he knows.

6 KEITH JOHANSEN: He knows.

7 GARY JOHANSEN: So he's the one that -- she just
8 came out and told us that he told her that, Mommy has
9 passed away.

10 KEITH JOHANSEN: How did he know?

11 GARY JOHANSEN: I don't know. They don't know,
12 Keith. Somebody -- I think he's smart enough and he's
13 seen it on TV --

14 LAURIE JOHANSEN: You aren't -- he can't see you.
15 He's at the police station, yes.

16 KEITH JOHANSEN: He watches shows all the time.

17 LAURIE JOHANSEN: Yes. He probably put it
18 together.

19 GARY JOHANSEN: He just put it all together.
20 He's not -- he's a smart little guy and he's taking it
21 very well, if he really understands.

22 KEITH JOHANSEN: I don't think he does, you know.

23 GARY JOHANSEN: Maybe, maybe not. But he's --
24 he's worried about you.

25 KEITH JOHANSEN: I know.

Court Reporters, Seventh Judicial Circuit

APPEAL TRANSCRIPT

1 LAURIE JOHANSEN: But he's not (indiscernible).

2 KEITH JOHANSEN: Yeah.

3 GARY JOHANSEN: Are you going to take Daddy home?

4 He says, Are you going to -- when are you going to
5 take my Daddy home?

6 I said, Well, he might have to stay for a little
7 while.

8 Because he had asked me questions. And, you
9 know, and he says, Well, they were even asking me
10 questions. They asked me three times, he said, three
11 times the same questions.

12 LAURIE JOHANSEN: So that's fine. He's not
13 scared. He's fine.

14 GARY JOHANSEN: He's taking it like a gem right
15 now. But he's doing -- he's doing good so far. Don't
16 worry about him.

17 KEITH JOHANSEN: Well, I am, though.

18 GARY JOHANSEN: Well, I know.

19 LAURIE JOHANSEN: Don't worry about him. He's
20 going to have a sleepover, they said, at his Daddy's
21 and --

22 GARY JOHANSEN: He wanted to -- he says, Well,
23 Daddy said that C.'s going to come and we're going to
24 have -- spend the night.

25 I said, Well, that's not going to happen.

APPEAL TRANSCRIPT

1 Well, why not?

2 Well, because you know Brea. She made plans and
3 didn't tell anybody.

4 KEITH JOHANSEN: Who's got C.?

5 GARY JOHANSEN: Nobody.

6 KEITH JOHANSEN: Because I told Brea -- Brea went
7 and walked over and said, C. said she loves you.

8 GARY JOHANSEN: C.?

9 KEITH JOHANSEN: When I was at the house, like,
10 when all the investigations that were going on.

11 LAURIE JOHANSEN: Well, maybe Brea called.
12 Because I told Brea.

13 KEITH JOHANSEN: Yeah. What did he say?

14 LAURIE JOHANSEN: She said I (indiscernible).

15 I said (indiscernible).

16 KEITH JOHANSEN: Did (indiscernible) say anything
17 to her?

18 GARY JOHANSEN: We had no idea what was going on.
19 She called Brea right after you left. And we went
20 over and sat there for three hours (indiscernible).

21 KEITH JOHANSEN: Because of the fact
22 (indiscernible).

23 GARY JOHANSEN: We sat there for over three
24 hours. They said just don't -- don't say anything to
25 us.

APPEAL TRANSCRIPT

1 LAURIE JOHANSEN: No more.

2 GARY JOHANSEN: Yeah, no more. Just -- you're
3 just going to have to --

4 LAURIE JOHANSEN: Lay your head on the table and
5 go to sleep.

6 GARY JOHANSEN: You have to sit there and relax.

7 KEITH JOHANSEN: (Indiscernible.)

8 GARY JOHANSEN: I know, but you're going to have
9 to relax. You're going to have to be strong.

10 Write down your thoughts. Tell the truth and
11 (indiscernible).

12 KEITH JOHANSEN: You know there ain't nothing
13 (indiscernible.)

14 GARY JOHANSEN: Well, you tell them you want
15 something to eat. They have to feed you.

16 KEITH JOHANSEN: I can't hardly even think.

17 GARY JOHANSEN: Well, they gave -- he was all
18 excited. (Indiscernible) you know what he did? The
19 little -- what was it -- the little tiger thing maybe?

20 KEITH JOHANSEN: Yeah, he likes -- the little
21 Lego tiger thing?

22 GARY JOHANSEN: He was all excited with that.
23 (Indiscernible.) He was fine. When I opened the door
24 to the room, he ran over and grabbed me and gave me a
25 big hug, and gave Grandma a hug. And he goes,

APPEAL TRANSCRIPT

1 Grandma. Grandma.

2 KEITH JOHANSEN: He wants to see me.

3 GARY JOHANSEN: I know he does, but it's just
4 they won't let him.

5 KEITH JOHANSEN: Why?

6 GARY JOHANSEN: I don't know.

7 KEITH JOHANSEN: (Indiscernible.)

8 GARY JOHANSEN: Maybe.

9 You know, it would upset him -- you seeing him,
10 because you're going to break down when you see him.

11 KEITH JOHANSEN: I'm sure that will upset him.

12 GARY JOHANSEN: I understand that.

13 KEITH JOHANSEN: I know, but how everybody's
14 thinking is...

15 GARY JOHANSEN: It's a process, Keith. It's a
16 process.

17 Well, you know, think of it this way. If it was
18 the other way around. Okay?

19 KEITH JOHANSEN: Yeah.

20 GARY JOHANSEN: And it happened to you. Okay?
21 How do you think that -- if you were the
22 (indiscernible) --

23 KEITH JOHANSEN: Sure.

24 GARY JOHANSEN: But I just want you to think.
25 You would think, Well, gosh, something happened.

APPEAL TRANSCRIPT

1 Maybe the other person did it. That is a topic that
2 comes in your mind. And how it looks, just by
3 everything, that's --

4 KEITH JOHANSEN: Yeah.

5 GARY JOHANSEN: -- they may not even know the
6 facts we know.

7 KEITH JOHANSEN: Yeah.

8 GARY JOHANSEN: Because we've been here. They
9 have not.

10 LAURIE JOHANSEN: It could have been an accident.
11 Maybe she was moving it.

12 KEITH JOHANSEN: That's the very first thing I
13 thought.

14 GARY JOHANSEN: Forensics will tell, Keith.

15 LAURIE JOHANSEN: Just why would she
16 (indiscernible)? That doesn't make sense.

17 KEITH JOHANSEN: Well, because she was
18 (indiscernible). That makes sense.

19 LAURIE JOHANSEN: How -- you're getting them out
20 of the drawers for R.?

21 KEITH JOHANSEN: No. It wasn't in the drawer.
22 It was in the side of the bed. The side of the bed
23 like this.

24 LAURIE JOHANSEN: Were they both together?

25 KEITH JOHANSEN: They were both -- yeah, they

APPEAL TRANSCRIPT

1 were both on one side.

2 LAURIE JOHANSEN: Well, that would make sense.

3 GARY JOHANSEN: Forensics will tell. They'll get
4 all they want. I don't know anything about that
5 stuff. But I will tell you that the angle of whatever
6 that struck, will determine if it was this way or this
7 way.

8 KEITH JOHANSEN: Sure.

9 GARY JOHANSEN: If they felt it would be this
10 way --

11 KEITH JOHANSEN: I'm sure of that. That's fine.

12 GARY JOHANSEN: You didn't touch anything in
13 there, did you?

14 KEITH JOHANSEN: Not that I'm aware of.

15 GARY JOHANSEN: You didn't touch the guns or
16 anything, did you?

17 KEITH JOHANSEN: I mean, last night.

18 Well, last night, I brought them into the room.

19 GARY JOHANSEN: Your fingerprints are going to be
20 on there because they're yours, of course.

21 KEITH JOHANSEN: Yeah.

22 GARY JOHANSEN: (Indiscernible) the residue.

23 KEITH JOHANSEN: No.

24 GARY JOHANSEN: But then you took a shower.

25 KEITH JOHANSEN: But I didn't have time to use

APPEAL TRANSCRIPT

1 the soap.

2 GARY JOHANSEN: It doesn't matter. Anyway,
3 (indiscernible).

4 KEITH JOHANSEN: Why would she wait until I took
5 a shower if it was a suicide?

6 LAURIE JOHANSEN: I think it was an accident, to
7 be quite honest.

8 KEITH JOHANSEN: Me, too.

9 LAURIE JOHANSEN: If she said she was going to
10 make breakfast, you know.

11 KEITH JOHANSEN: Yeah.

12 GARY JOHANSEN: You know, Keith --

13 KEITH JOHANSEN: The only thing I told her, I got
14 to get out of here.

15 GARY JOHANSEN: Did she take that wrong?

16 KEITH JOHANSEN: Maybe.

17 GARY JOHANSEN: People snap, Keith.

18 LAURIE JOHANSEN: Maybe she was just doing stuff
19 that she -- like you said, she tripped and fell. That
20 could be possible. Because she said (indiscernible).

21 GARY JOHANSEN: I don't know, Keith. All I know
22 is the forensics are going to tell.

23 KEITH JOHANSEN: (Indiscernible.)

24 GARY JOHANSEN: If you weren't there, you don't
25 know.

APPEAL TRANSCRIPT

1 KEITH JOHANSEN: Exactly. I'm trying to wrap my
2 brain around it.

3 GARY JOHANSEN: They're doing -- they're just
4 doing their job, Keith.

5 KEITH JOHANSEN: Yes.

6 GARY JOHANSEN: Look, it does look suspicious.

7 KEITH JOHANSEN: Sure.

8 GARY JOHANSEN: You even admitted that.

9 KEITH JOHANSEN: Sure.
10 But I'm not -- Brandi didn't do it.

11 GARY JOHANSEN: Well, you don't have any choice
12 about that. If they accuse you, they accuse you. You
13 have no choice. Just keep your mouth shut. Keep your
14 mouth shut and stay in good spirits.

15 KEITH JOHANSEN: It's hard, Dad.

16 GARY JOHANSEN: I know it's hard.

17 KEITH JOHANSEN: Especially when you have to do
18 it alone.

19 GARY JOHANSEN: And you're tired.

20 KEITH JOHANSEN: I've been here all day.

21 GARY JOHANSEN: You're fatigued and they're going
22 to try to break you down.

23 Just don't say another word. That's all I have
24 to say. By the time that they get done -- they're
25 keeping you here -- here's what I'm thinking. And you

APPEAL TRANSCRIPT

1 think the same thing. They're keeping you here until
2 they get the search warrant and they search everything
3 and they find --

4 KEITH JOHANSEN: I know.

5 GARY JOHANSEN: That doesn't matter.

6 KEITH JOHANSEN: (Indiscernible.)

7 GARY JOHANSEN: That's so they can charge you.

8 KEITH JOHANSEN: (Indiscernible.)

9 (Talking simultaneously.)

10 GARY JOHANSEN: They're going to have to find it.
11 Everything you told them is just hearsay. Once they
12 have the physical evidence, they'll arrest you.

13 KEITH JOHANSEN: So be it.

14 GARY JOHANSEN: Well, so what they're doing is
15 they're just trying -- saying, you know what, let him
16 (indiscernible). They probably -- they might be
17 afraid you're going to run.

18 KEITH JOHANSEN: What the hell for?

19 GARY JOHANSEN: Well, that's just the way --
20 they're suspicious.

21 LAURIE JOHANSEN: We need to get a Power of
22 Attorney or something and be able to get money out of
23 your account.

24 KEITH JOHANSEN: Yes, definitely.

25 LAURIE JOHANSEN: But how are we going to do that

APPEAL TRANSCRIPT

1 if they have your cards?

2 KEITH JOHANSEN: My card is in my -- it's in the
3 car. (Indiscernible) and my cell phone.

4 GARY JOHANSEN: Well, you tell them that we want
5 to -- see if they'll give you the keys.

6 KEITH JOHANSEN: It's my car. It's in my name.

7 GARY JOHANSEN: No, no.

8 KEITH JOHANSEN: It's in the trunk.

9 GARY JOHANSEN: Oh, in the middle console.

10 LAURIE JOHANSEN: If you give us a Power of
11 Attorney, we can get you a lawyer right now.

12 KEITH JOHANSEN: Yeah. Yeah.

13 GARY JOHANSEN: Well, they'll figure that out.

14 KEITH JOHANSEN: (Indiscernible.)

15 GARY JOHANSEN: Don't worry about that. Don't
16 worry about that.

17 LAURIE JOHANSEN: Keith, don't even --

18 GARY JOHANSEN: Don't worry about that.

19 KEITH JOHANSEN: I know, but...

20 GARY JOHANSEN: You know something, don't -- your
21 concern right now is you.

22 KEITH JOHANSEN: Both. It's my family.

23 GARY JOHANSEN: I know that, Keith. But you
24 can't do anything if you're in here.

25 KEITH JOHANSEN: I know.

APPEAL TRANSCRIPT

1 GARY JOHANSEN: So keep your spirits. Okay?
2 Pray. All right? Continue to do that.

3 LAURIE JOHANSEN: Tell them, I need a Power of
4 Attorney so my mom can pay my lawyer.

5 GARY JOHANSEN: Well, your lawyer can do that.
6 Your lawyer will tell them. Because, you know, even
7 if they do find it, they can't -- I don't think they
8 can get into your bank account. They might be able
9 to, but I don't think --

10 LAURIE JOHANSEN: Because you can prove it was
11 legit.

12 GARY JOHANSEN: Yeah. (Indiscernible.) If they
13 let you go -- they might let you go tomorrow. Who
14 knows.

15 KEITH JOHANSEN: I don't know.

16 GARY JOHANSEN: But you know you're going to be
17 charged. You know that for a fact.

18 KEITH JOHANSEN: (Indiscernible.)

19 GARY JOHANSEN: Well, you can't do it without
20 money. You can't bail yourself out.

21 LAURIE JOHANSEN: (Indiscernible.)

22 KEITH JOHANSEN: I'm sure Michelle will find a
23 way.

24 GARY JOHANSEN: We'll figure it out somehow.
25 But, you know, until then, you just -- you're going to

APPEAL TRANSCRIPT

1 have to --

2 LAURIE JOHANSEN: Lay down on the floor, if
3 nothing else.

4 GARY JOHANSEN: Just say, Listen, can I go home?
5 What's going on here? (Indiscernible.)

6 KEITH JOHANSEN: The door's not locked. I ain't
7 going anywhere.

8 LAURIE JOHANSEN: I would just go lay on the
9 floor.

10 GARY JOHANSEN: Tell them you're hungry. They
11 got to feed you.

12 KEITH JOHANSEN: I mean, I don't even know if I
13 have one --

14 GARY JOHANSEN: Everybody's capable of snapping.

15 KEITH JOHANSEN: Sure.

16 GARY JOHANSEN: That quick.

17 KEITH JOHANSEN: Come on.

18 GARY JOHANSEN: Again, (indiscernible).

19 LAURIE JOHANSEN: (Indiscernible.)

20 GARY JOHANSEN: (Indiscernible.) I wouldn't
21 think so.

22 KEITH JOHANSEN: Who the hell does that?

23 GARY JOHANSEN: People do.

24 KEITH JOHANSEN: Yeah, I gotcha.

25 GARY JOHANSEN: You know, but your -- just your

APPEAL TRANSCRIPT

1 demeanor shows that.

2 KEITH JOHANSEN: I wished I (indiscernible).

3 GARY JOHANSEN: They're doing their job, Keith.
4 They do it that way. They're doing their job to make
5 sure that all the Ts are crossed and the Is are
6 dotted.

7 KEITH JOHANSEN: Sure. Nine hours?

8 LAURIE JOHANSEN: It's a weekend.

9 GARY JOHANSEN: Number one, it is a weekend.
10 And, number two, they're waiting for (indiscernible)."

11 (End of video recording.)

12 BY MS. DUNTON:

13 Q Investigator Quintieri, after that night, the
14 7th, I believe it may have gone into the early morning
15 hours of the 8th, was Mr. Johansen allowed to go home after
16 that night?

17 A Yes, he was.

18 Q So he was not arrested on the 8th?

19 A He was not.

20 Q For anything?

21 A For nothing.

22 Q After that date, had your agency applied for a
23 search warrant to obtain information from us, a
24 surveillance company, Arlo?

25 A Yes, we did.

APPEAL TRANSCRIPT

1 Q Okay. And that was taking some time. Is that
2 right?

3 A Yes, it was.

4 Q Okay. Did it -- was there a time where you
5 reapproached Mr. Johansen, you know, outside of the
6 sheriff's office to speak with him?

7 A Yes. It was about 16 or 17 days after the
8 incident, at his mother's home on her front porch.

9 Q Okay. And what was the purpose of you going to
10 chat with him at that time?

11 A Well, there was two reasons for that. In our
12 interview, he indicated that he was going to provide the
13 user name and password for the video surveillance system.
14 He was unable to do that. And since Arlo was taking a
15 significant amount of time, with that being potentially a
16 pertinent thing for our investigation, we wanted to
17 reapproach him and see if he had gotten that information.

18 And also, you know, in homicide investigations
19 where the spouse is next of kin, we usually have
20 communication to see if they have anymore updates, case
21 information, leads and we had not heard from him.

22 Q Okay. And when you approached him on this date,
23 was he able to give you anymore helpful information about
24 Arlo?

25 A No, he was not.

APPEAL TRANSCRIPT

1 Q Okay. Did he give you -- talk to you about any
2 other leads or theories? What happened with that?

3 A He did. He said he thought that maybe a neighbor
4 killed her.

5 Q Okay. And what was your response to that?

6 A Um, I explained to him, based on the evidence
7 that we had at the crime scene, based on his statement, the
8 front door was locked when first responders got there.
9 There was a sliding glass door on the back side of the
10 house that actually had a wooden dowel in it to keep the
11 door from being able to be forced open.

12 There was an exterior door that went from the
13 left side of the home into the garage, it was chain locked
14 from the inside. And then the garage door itself was
15 actually locked with a chain and a croquet mallet, so that
16 the door could not come up.

17 So there was no evidence of any forced entry and
18 all the entryways were completely secure.

19 Q And so when he -- he suggested that to you in
20 response to, you know, do you have any other information or
21 updates about the case, that's when he suggested you should
22 look into this particular neighbor?

23 A That's correct.

24 Q Okay. Sometime -- we're going to kind of jump
25 forward.

APPEAL TRANSCRIPT

1 Sometime during the pendency of this case, were
2 you -- did you have an opportunity to review some jail
3 calls of Mr. Johansen?

4 A Yes, I did.

5 Q And were a few of those prepared for court
6 purposes, again with redactions, for court here today?

7 A Yes, they were.

8 Q All right.

9 MS. DUNTON: Your Honor, at this time State would
10 move in State's -- I believe it's P, Madam Clerk?

11 THE CLERK: 18.

12 MS. DUNTON: P as 18.

13 Your Honor, we also -- it also comes with a
14 Business Records Certification from the records
15 custodian with the Flagler County Jail.

16 THE COURT: Any objection?

17 MR. WOOD: No objection.

18 2.2 needs to be read.

19 THE COURT: So received.

20 (State's Exhibit No. 18 was admitted into
21 evidence.)

22 THE COURT: Members of the jury, you are about to
23 listen to an audio recording. The Court instructs you
24 that the recording has been edited to eliminate
25 irrelevant portions that would not add to your

APPEAL TRANSCRIPT

1 understanding of the case. The fact that the
2 recording has been edited should not concern you in
3 any way and must not impact the way you listen to and
4 consider this evidence.

5 **(An audio recording was published in open court.
6 This transcript should not be considered a verbatim
7 record of those proceedings due to inaudibles and
8 inability to distinguish between speakers. It should
9 be noted that the best evidence of the actual content
10 of the digital recording is the digital recording
11 itself.)**

12 "UNIDENTIFIED SPEAKER: This call will be
13 recorded and subject to monitoring at any time.
14 Please enter your personal ID number followed by the
15 pound sign.

16 The PIN you entered is 62945672. One moment.
17 One moment.

18 For a collect call, press 1. To place a debit
19 call, press -- please dial 0, plus the area code and
20 number.

21 Hello. This is a collect call from Keith
22 Johansen, an inmate at Flagler County Jail, with
23 telephone service provided by Peacock Communications.

24 (Speaking in Spanish.)

25 The current balance for your account is 18.49.

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APPEAL TRANSCRIPT

1 Stay on the phone after this call for payment options.

2 To receive information about new affordable
3 rates, press 2. To accept this call, press 3 now.

4 For all future calls, press --

5 This call will be recorded and subject to
6 monitoring at any time. You may begin speaking now.

7 KEITH JOHANSEN: Hello.

8 GARY JOHANSEN: Hello.

9 KEITH JOHANSEN: Hi.

10 GARY JOHANSEN: How are you doing?

11 KEITH JOHANSEN: (Indiscernible.)

12 GARY JOHANSEN: How are you?

13 KEITH JOHANSEN: Not good.

14 GARY JOHANSEN: They have video. They've got
15 evidence, Keith.

16 KEITH JOHANSEN: What?

17 GARY JOHANSEN: Video.

18 KEITH JOHANSEN: Of what?

19 GARY JOHANSEN: I'm not going to say this on the
20 phone.

21 KEITH JOHANSEN: Okay. All right. I mean...

22 GARY JOHANSEN: All I can -- all I can say,
23 Keith, is be honest.

24 KEITH JOHANSEN: I am. I didn't do it.

25 GARY JOHANSEN: The more honest you are the

APPEAL TRANSCRIPT

1 better off it will be for you. If you -- if you did
2 this, Keith -- you say you didn't, I believe you --
3 but if you did do this, Keith, you need to own up to
4 it for your mental health and for you so you can get
5 through this. Okay?

6 Like I said, Keith, if you did this, tell them,
7 and do it now.

8 KEITH JOHANSEN: I didn't do anything. Why would
9 I?

10 GARY JOHANSEN: I don't know, Keith. All I know
11 is they have evidence.

12 KEITH JOHANSEN: I didn't do this, Dad.

13 GARY JOHANSEN: I'm not saying you did or didn't.
14 I wasn't there. I believe what you're telling me.

15 KEITH JOHANSEN: I mean, not to my mind.

16 GARY JOHANSEN: I believe it -- huh?

17 KEITH JOHANSEN: Not to my mind, I didn't do
18 this.

19 GARY JOHANSEN: Well, you better start searching
20 your mind."

21 (End of audio recording.)

22 MS. DUNTON: And, for the record, that was a call
23 on April 28th.

24 The next call to publish April 30th, 2018.

25 (Playing audio recording.)

APPEAL TRANSCRIPT

1 "LAURIE JOHANSEN: We may be able to see R.,
2 because Pat was over here today and she said, It's
3 horrible, I know what it's like. You're going through
4 twice as much as they are and I'm going to ask --
5 we're going to talk together and I think R. needs to
6 see you guys.

7 KEITH JOHANSEN: What if it was him?

8 LAURIE JOHANSEN: I don't know, Keith. But, you
9 know, he's a little boy.

10 KEITH JOHANSEN: I know. I know. Well
11 (indiscernible).

12 LAURIE JOHANSEN: (Indiscernible)."

13 (End of video recording.)

14 BY MS. DUNTON:

15 Q Investigator Quintieri, I know that was a quick
16 call. What was of evidentiary value in that call between
17 the defendant and his mother, what they said?

18 A So they -- they were talking about his stepson.
19 And Mr. Johansen says, Well what if he did it? And
20 obviously the mother's response was, He's six.

21 Q Right.

22 MS. DUNTON: Your Honor, that's all the questions
23 the State has for this witness at this time.

24 THE COURT: Okay. Cross?

CROSS-EXAMINATION

25
Court Reporters, Seventh Judicial Circuit

APPEAL TRANSCRIPT

1 BY MR. WOOD:

2 Q Good morning.

3 A Good morning.

4 Q I have a few follow-up questions to ask you.

5 You had mentioned that you were involved in the
6 process of getting the video records, getting a search
7 warrant for Arlo records. And you said that -- you
8 mentioned that they were -- it was taking an inordinate --
9 an inordinate amount of time.

10 It's true it took about 20 days to get the videos
11 in response from Arlo?

12 A Yes, sir.

13 Q I -- can I assume that there was, throughout that
14 period of time, attempts to have a quicker response from
15 Arlo?

16 A Yes.

17 Q Okay. And was that by yourself or by other
18 people from the sheriff's office?

19 A There were myself and Sergeant Hristakopoulos.

20 Q Okay. And just for clarity, were those attempts
21 by way of phone or by email or both or --

22 A Both.

23 Q -- texting or whatever?

24 A Phone and email.

25 Q Okay. And as a matter of fact, there was a time

APPEAL TRANSCRIPT

1 when Arlo rejected the first search warrant and asked for a
2 new one. Is that correct?

3 A That's correct.

4 Q Okay. And do you recall that the first
5 attempt -- or the first search warrant that was sent to
6 them, that the requested time frame for video records was
7 March 28th through April the 7th of 2018?

8 A Yes.

9 Q Okay. And so eventually you -- you did get on
10 the -- was it about the 28th that you got the records, end
11 of April?

12 A It was the 27th.

13 Q 27th?

14 A Yes, sir.

15 Q All right. Now, coincidentally, that was the day
16 that Mr. Johansen was arrested in the case?

17 A That's correct.

18 Q Okay. So the first call the jury just heard
19 would have been the day after his arrest?

20 A Yes.

21 Q Okay. Now, let me go back to the 7th of -- of
22 April of 2018. Mr. Johansen goes to the sheriff's office,
23 and is it your understanding or recollection that
24 Mr. Johansen first arrived at the sheriff's office around
25 12:46 p.m.?

APPEAL TRANSCRIPT

1 A Yes, sir.

2 Q Okay. And he did not leave the sheriff's office
3 until around 1:00 the morning of April the 8th?

4 A That is correct.

5 Q So approximately about 12 hours?

6 A Yes, sir.

7 Q Okay. And as you said earlier, when he did leave
8 on -- around 1:00 on the 8th, he was not under arrest at
9 that time?

10 A He was not.

11 Q Okay. But there was a time during the 12-hour
12 period of time when he was told he could not leave.
13 Correct?

14 A That's correct.

15 Q All right. And do you remember about when that
16 was?

17 A I don't recall the time for that.

18 Q Okay. All right. Do you know if that would have
19 been towards the beginning of his time there, towards the
20 end, somewhere in the middle?

21 A That would have been closer to the end. Because
22 our interviews were already done. He had already spoken to
23 his parents several different times, so that was definitely
24 way later in the day.

25 Q Would it have been yourself that told him he

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1 couldn't leave or someone else, to your knowledge?

2 A I don't recall.

3 Q Okay.

4 MR. WOOD: All right. Thank you very much.
5 That's all I have.

6 THE COURT: Any redirect?

7 MS. DUNTON: No, Your Honor.

8 THE COURT: May this witness be excused?

9 MS. DUNTON: She's to remain under.

10 THE COURT: Okay. Detective, you're still under
11 the rule of sequestration, so make sure you don't
12 speak about any of the goings on in court and about
13 your testimony except with the attorneys, of course.

14 THE WITNESS: Yes, sir. Thank you.

15 (Witness stepped down.)

16 (Witness exited the courtroom.)

17 MR. LEWIS: Judge, can we take the morning break
18 now before our next witness?

19 THE COURT: Yes, that sounds like a good idea.

20 Ladies and gentlemen of the jury, we're going to
21 break for probably about ten or 15 minutes. And as
22 usual, I'll ask you again or instruct you not to do
23 any research, not to discuss the facts of the case or
24 not to discuss any of the testimony you've heard.

25 All right. Thank you-all.

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1 (The jury exited the courtroom at 10:21 a.m.,
2 after which the following proceedings were had:)

3 THE COURT: All right. Let the record reflect
4 the courtroom is secure. The jurors left for the
5 morning recess.

6 And are there any matters to take up before we go
7 into recess?

8 MR. LEWIS: No, sir.

9 THE COURT: All right. With that, feel free to
10 eat the banana and use the facilities and come back
11 right about 10:30, 10:35.

12 MR. LEWIS: Thank you, sir.

13 (Court recessed at 10:22 a.m. and reconvened at
14 10:36 a.m., after which the following proceedings were
15 had:)

16 THE COURT: Are the parties ready for the jury?

17 MR. LEWIS: Yes, thank you.

18 THE COURT: Are you all set, Madam Court
19 Reporter?

20 THE COURT REPORTER: Yes.

21 MR. LEWIS: Oh, I don't need that just yet,
22 Judge, but I'll let you know. Okay?

23 Thank you, sir.

24 THE COURT: Sure.

25 MR. LEWIS: It's already in evidence.

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1 THE BAILIFF: Jurors entering the courtroom.

2 (The jury entered the courtroom at 10:37 a.m.,
3 after which the following proceedings were had:)

4 THE BAILIFF: Jurors present.

5 THE COURT: All right. Everybody may be seated.
6 Thank you-all for your courtesy to the jury.

7 Madam State Attorney, call your next witness.

8 MR. LEWIS: Yes, Judge.

9 The State will call Laura Draga.

10 (Pause in proceedings.)

11 (Witness entered the courtroom.)

12 THE CLERK: Can you raise your right hand?

13 Do you swear or affirm the testimony you're about
14 to give is the truth, the whole truth, and nothing but
15 the truth, so help you God?

16 THE WITNESS: I do.

17 THE COURT: You may inquire.

18 MR. LEWIS: Thank you, Judge.

19 **LAURA DRAGA**

20 was called as a witness and, having first been duly sworn,
21 testified as follows:

22 **DIRECT EXAMINATION**

23 BY MR. LEWIS:

24 Q And I'll just ask you if you could speak loudly
25 into the microphone.

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1 Good morning, ma'am.

2 A Good morning.

3 Q Could you please introduce yourself to the jury
4 and spell your last name?

5 A My name is Laura Draga. The last name is spelled
6 D-r-a-g-a.

7 Q Can you tell us where you work, ma'am?

8 A I work for the crime laboratory in Jacksonville,
9 Florida for the Florida Department of Law Enforcement.

10 Q What do you do in the crime laboratory?

11 A My title is a senior crime laboratory analyst,
12 and my duties are the examination of firearms for function,
13 and the examination of fired ammunition components to
14 determine whether or not bullets or cartridge cases were
15 fired in a single firearm or whether they were fired in a
16 particular firearm submitted to the laboratory.

17 Q Can you tell us a little bit about your
18 background, you know, your education and maybe some of your
19 training to become a crime lab analyst?

20 A So I have a Bachelor of Science in chemistry and
21 in biology. And particular to the area of firearms
22 identification, I underwent an 18-month training program
23 under the supervision of an experienced analyst at FDLE.
24 And at the completion of that training program, I was
25 certified to do independent casework in the area of

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1 firearms analysis.

2 Q Annually do you go through proficiency testing to
3 ensure that you know what you're doing?

4 A Yes, I do.

5 Q Let me ask you through -- how long have you been
6 in the firearms section, specifically analyzing firearms
7 and/or fired components to each other?

8 A So I completed that 18-month training program in
9 early 2008, and I've been doing the work ever since.

10 Q Roughly over that 13-year time frame, can you
11 estimate how many examinations, to include firearms,
12 firearm components and comparing casings and fired
13 projectiles to firearms that you've done, approximately.

14 A So firearms is around -- well, over 1300.
15 Cartridge cases, somewhere in the range of 16- or 18,000.
16 And bullets, you know, 3- to 5,000.

17 Q So well over 20,000 items of evidence you've
18 compared or analyzed over your career?

19 A Yes.

20 Q Have you had an opportunity to testify as an
21 expert in the comparison of these items in court before?

22 A Yes, I have.

23 Q And how many times have you done that, ma'am?

24 A Over 130 times.

25 Q Were you assigned, back in 2018, any items to

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1 analyze and to compare from a Flagler County case, and
2 specifically your case number 20180402173?

3 A Yes, I was.

4 Q And what were you initially -- how do you receive
5 those items? How do they come to you? Do you go and pick
6 them up from Flagler? Do they bring them to you? How does
7 that work?

8 A So the way that our laboratory works is that all
9 evidence has to be submitted into the evidence section.
10 And there's particular people who are assigned to work
11 there. And they accept the items of evidence, check to
12 make sure that everything is sealed at that time, make sure
13 that all of the requests are assigned properly in the
14 database. As they take those evidence items in, they're
15 assigned an FDLE item number. And all of that goes under a
16 FDLE laboratory number. Those items are then placed in the
17 vault. And once the file is ready to be assigned, then the
18 person who is assigned, in this case me, goes down to the
19 evidence section to retrieve those items of evidence.

20 Q Do you recall about when you got these items of
21 evidence to begin your analysis?

22 A Around April of 2018.

23 Q Obviously this happened April 7th, 2018. I
24 assume it was after the date of the murder.

25 A The items of evidence were submitted to the

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1 laboratory on the 19th of April, and I started my
2 examination after that.

3 Q Let's talk about -- first of all, you talked
4 about you -- you kind of do a comparison of different items
5 of what we call a cartridge to determine if that's been
6 fired from a specific gun.

7 I'm going to put up an exhibit. I want you just
8 to view -- do you mind stepping down to talk to the jury?

9 MR. LEWIS: Judge, may I have the witness step
10 down?

11 THE COURT: You may.

12 MR. LEWIS: Can we switch to the podium, Judge?

13 THE COURT: (Complies.)

14 BY MR. LEWIS:

15 Q And I'm just going to show you, for demonstrative
16 purposes only, you know, what is marked as State's 1.

17 Can I have you step over there? And you've got
18 to talk really loud because we don't have a microphone.

19 A Sure.

20 Q So can you explain to the jury what we're looking
21 at here and explain to them the different parts of a bullet
22 that would be needed to know for this testimony?

23 A Okay. So on the screen, we have our three
24 cross-sections of different cartridges. And a cartridge is
25 a single unit of ammunition which has four main components.

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1 One is the bullet, so sometimes people will call it a
2 projectile or slug, in layman's terms, but I'm going to
3 refer to anything that looks like this as a bullet.

4 And then this portion here is the cartridge case.
5 And the cartridge case contains all of the other items.

6 Then we have the gunpowder or propellant, which
7 is located inside the cartridge case behind the projectile.
8 And then here, although it's difficult to see, this is
9 actually a separate unit. And this is a primer cup. So
10 the primer cup contains a small amount of explosives; so
11 when the cartridge is fired, the firearm -- you have to
12 have a blow from the rear, from the firing pin. When the
13 explosive, which is above here -- actually, you know,
14 really covering the whole thing -- but the explosive that's
15 here will be crushed between the anvil and the primer cup
16 from the force of the firing pin, and then that small
17 explosion will actually make, like, a gunpowder, which will
18 burn under its own oxygen source. And then the bullet will
19 continue to move out of the cartridge case.

20 So, again, the bullet, cartridge case, gunpowder,
21 which would be -- would be firing and then the primer cup.

22 Q So let's talk specifically in our examination,
23 which you did in this case, you -- you would compare the
24 bullet -- you can compare the bullet to the actual firearm?

25 A So as a matter of fact, I compare bullets to

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1 bullets. So when comparing items to attempt to determine
2 whether or not that firearm was used, then I would test
3 fire that firearm, collect the bullets from that test fire
4 and then compare my test fire to an item of evidence. And,
5 likewise, with the cartridge case, I don't compare the
6 cartridge cases directly to the gun. I need to compare the
7 cartridge cases to test fires or tasks from that gun.

8 Q Understand. But the two components that we're
9 going to work with here, so the jury understands, is the
10 bullet and then -- and then the cartridge case. And I know
11 in specific terms you're not comparing the bullet or the
12 cartridge case to the gun, but circumspectly, you're
13 basically making that comparison by a sample that you have
14 a known sample that you get from the gun of the case of the
15 cartridge case and a known sample of the bullet and then
16 you compare those to the actual ones that you have as -- as
17 pieces of evidence.

18 Does that make sense?

19 A Yes. And, again, the primer cup is contained
20 within the cartridge case. So after firing, it stays
21 there. So any marks which are left on the primer and any
22 marks which are left on the case can be compared.

23 Q And just if we can elaborate on that. So I'd
24 like to have you -- can you step up here, ma'am?

25 A (Complies.)

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1 Q I'm going to show you what is in evidence as
2 State's -- just for purposes of -- let's see -- this is
3 State's 9.

4 MR. LEWIS: Judge, may I have her step up here
5 with me for a moment?

6 THE COURT: You may.

7 MR. LEWIS: Thank you, sir.

8 BY MR. LEWIS:

9 Q Just if we can for the jury, I know we don't have
10 a good picture of it, but what would this be right here?

11 A So this item and the item to the left are both
12 fired cartridge cases.

13 Q And I just want to illustrate. We'll get
14 specifically to our case, but you were talking that the --
15 basically the firing pin would hit the back of the
16 cartridge case.

17 Can you explain what you meant by that? Would it
18 leave marks there?

19 A Yes.

20 So there is writing here, which is the head stamp
21 and that's there pre-firing, that's to indicate the
22 manufacturer or the marketer of the ammunition. It also
23 contains information about the caliber.

24 And then the small silver portion that you can
25 see within the more yellow or grass-colored portion is the

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1 primer cup. And then you can actually see the firing pin
2 impression there as a small indentation.

3 There's also breech face marks. So the firing
4 pin is a portion that comes forward and strikes the
5 cartridge. The breech face of the firearm is the portion
6 that supports the cartridge during firing, so it doesn't
7 come back out of the chamber. Because you have forward
8 pressure on the bullet, it needs something to resist the
9 rearward pressure on the cartridge case. So as that
10 cartridge case comes back slightly in the chamber, then
11 it's going to be marked by the breech face. But as I said,
12 there's a firing compression, which you can see, and then
13 there are breech face marks, which would be more difficult
14 to see with the naked eye.

15 Q And I can have you sit back down.

16 Just so we understand, obviously most the time
17 when you do your examination, you use microscopes or
18 basically side-by-side microscopes, where you actually lay
19 one item next to each other. And then you have an ability
20 to closely examine them next to each other?

21 A Yes.

22 So during comparison, we can observe some class
23 characteristics without the use of a microscope. But when
24 we're actually comparing one cartridge case to another,
25 we're looking for individual characteristics. So it's a

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1 pattern of markings that are left on the cartridge case or
2 the bullet by the firearm that fired it.

3 And the -- the equipment that we use is called a
4 comparison microscope, and it has two separate stages or
5 places where we can place the item of evidence while we're
6 comparing it, and then two separate sets of optics of
7 lenses. And then those separate sets of optics are
8 connected by an optical bridge, so that we can view both of
9 those items of evidence in the same field of view at the
10 same time.

11 Q Let's talk about specifically what we received in
12 this case. And I want to start with FDLE Item No. 3, which
13 is also Flagler County Agency No. 827.4.

14 May I approach the witness, Judge?

15 THE COURT: You may.

16 BY MR. LEWIS:

17 Q I'm going to approach and show you what is in
18 evidence as State's 7, we were just -- can you just look at
19 this and see if you can recognize which -- if this is Item
20 No. 3? And then if we can explain what all these items are
21 to the jury.

22 A So this is Item No. 4, which is cartridges.

23 Q Sorry.

24 A But this is -- this is also Item No. 4, which
25 I'll talk about that in a minute.

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1 But this is FDLE Item No. 3. And then these are
2 cartridge cases, cartridges and bullets, which have either
3 been fired in the firearm or cycled through the firearm.

4 Q Now, this -- this kind of gun, what kind of gun
5 is this that's Item No. 3?

6 A So Item No. 3 is a 9mm Ruger caliber
7 semiautomatic pistol. A semiautomatic pistol means that
8 this firearm will expel a projectile each time that the
9 trigger is pulled and then released. You must release the
10 trigger between each shot for somebody using this pistol,
11 as long as there is a cartridge in the chamber to begin
12 with and as long as there is ammunition in the magazine.
13 The manufacturer is Canik, which is a Turkish manufacturer,
14 and I believe it's a PT9 SFX model.

15 Q This kind of firearm, when you pull the trigger
16 and the bullet goes -- let me rephrase that.

17 If you have a gun and I pull the trigger and it's
18 loaded with a cartridge, can you tell the jury what happens
19 with the bullet and then what happens with the casing --
20 we'll just separate those two out -- where they would go?

21 A Sure. So assuming, again, that we are already
22 starting with the cartridge in the chamber, once you pull
23 the trigger, the firing pin is released and it strikes the
24 primer. Again, the primer explodes, igniting the
25 gunpowder. The bullet is pushed down the barrel, out the

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1 barrel and towards the target. Some of the energy of that
2 firing is used to extract and eject that cartridge case.
3 So what that means is that the slide moves to the rear, the
4 extractor, which is a small hook --

5 Q Can you -- not to -- I know you know all this
6 stuff and I know it, but for them, if you could just
7 describe what -- what the slide is and extractor, if you
8 don't mind?

9 A Okay. So -- so here's the barrel and then this
10 is the muzzle end where the bullet would leave. This
11 portion is the slide, and that is the portion that is going
12 to move to the rear. The extractor is located here. And
13 then the chamber is just the most rearward portion of the
14 barrel where the cartridge rests prior to being fired. So
15 as the slide moves to the rear, this small hook hangs onto
16 that cartridge case after it is fired and pulls it out.
17 And at a certain point during that retraction, the
18 cartridge case is going to strike the ejector, which is a
19 small post. And as it strikes that ejector, it's going to
20 rotate around the cartridge case and be flung out of the
21 firearm through the ejection port.

22 Q So in lay terms, like, if I pull the trigger, the
23 bullet should go out the barrel, if it operates correctly,
24 and then the -- the actual casing should fly out the side.
25 I know that's -- it's a little more complicated than that,

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1 but it should just shoot out the side?

2 A Yes.

3 Q Okay. This specific gun, did you receive this
4 gun to do some analysis to see if it compared to any
5 projectiles? We'll start with projectiles first.

6 A Yes.

7 Q And I know you explained before to the jury how
8 you do your analysis, but if you can just explain a little
9 bit more about what you did to get a sample of a specific
10 projectile or bullet that you were able to compare to the
11 bullet we have?

12 A So this firearm, there was an initial examination
13 done to check for defects in the firearm, make sure that
14 nothing appears to be broken or malfunctioning. Because,
15 obviously, if I'm going to test fire it, I want to make
16 sure that I'm safe. And following that initial examination
17 and finding no major defects or malfunctions, I selected
18 laboratory ammunition initially. And so we have a -- we
19 have a supply of ammunition in our laboratory, which is
20 intended for use during casework, in which we can use to
21 test fire firearms that we receive. And so initially that
22 was the ammunition that I used.

23 I loaded cartridges into the magazine, which is
24 this portion here. Some people may know the magazine as a
25 clip. But, again, I would refer to this as a magazine.

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1 And the firearm was taken into our laboratory range where
2 we have a water tank and the firearm was aimed into the
3 water tank so that the bullets would be slow downed by that
4 water. They arrive relatively undamaged at the other end
5 and can be used for comparison. And then the cartridge
6 cases were collected after they were ejected from the
7 firearm.

8 Q So you -- you got two samples there that you
9 could use. You got the bullet that you could use to
10 compare to another bullet. But you also got cartridge
11 cases that you could use to compare to other cartridge
12 cases?

13 A Yes.

14 Q Okay. Let's start with the bullets in this case.

15 Well, if you could, just describe to the jury
16 what -- what these extra items are right here.

17 A So -- as I said, this is all laboratory
18 ammunition that was selected. This bullet and this
19 cartridge case were from a submitted cartridge that was
20 submitted in FDLE Item 4 or Agency Item 827.5. And that
21 was done because I did not have ammunition that was
22 sufficiently similar to this cartridge. In other words, I
23 didn't have something which appeared to be of the same
24 exact material or same exact design.

25 So when we have bullets in cartridge cases, the

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1 best samples are usually ammunition that are very similar
2 to what was used in the initial case. Because differences
3 in material or differences in pressure can affect the
4 quality and quantity of the marks that will be left. So
5 this is an additional test fire. And then these are
6 cartridges that were more or less just visually examined
7 just to make a record of the type of head stamp that was
8 there, type of bullet that was there, and just to get a
9 general description of what it is.

10 Q So -- and we've connected that up with the crime
11 scene tech, that that was the ammunition that was
12 originally with the gun when it was found.

13 Let's talk about what you -- what you -- when a
14 bullet is shot out of a barrel of a gun, can you just
15 explain to the jury, like, what happens as the bullet is
16 going through the barrel that causes it to allow you to be
17 able to identify it to other bullets that may have been
18 fired from that gun?

19 A So the markings that we use for comparison are
20 called rifling engravings. Rifling is a set of helical
21 grooves which is either encrust or cut in the inside of a
22 barrel. And what those grooves do is that is -- as the
23 bullet travels down the barrel, it causes the bullet to
24 spin. And so as much as a spinning football will travel
25 straighter and farther, so is true for a bullet. So this

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1 rifling, again, in part, spin to the bullet and the bullet
2 will travel truer to the target verses something that is
3 tumbling in flight.

4 What that means for us, though, is that as the
5 bullet is engaging with that rifling and moving against the
6 inside surface of that barrel, the barrel is going to leave
7 striated marks on the bullet. And the microscopic
8 imperfections in the surface on the inside of the barrel,
9 will leave a different pattern on bullets that are
10 traveled -- that have traveled through it, versus bullets
11 that have traveled through the barrel of another firearm,
12 even one of the same make and model.

13 Q So -- just so we're clear, so the jury
14 understands.

15 If you and I both go and purchase the same sort
16 of Glock 9mm, it came from the same factory, everything,
17 there still is imperfections in each one of those barrels
18 that would allow you, if it was a good sample, to be able
19 to distinguish which firearm it was fired from?

20 A Yes.

21 Q Okay. In this case, you already talked about it,
22 you did a test fire. Did you compare the test fire from
23 Item No. 3?

24 And I'm going to show you State's 9. Did you
25 compare the bullet from 3, the test-fired bullet, to what

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1 would be FDLE's 12?

2 A Yes, I did.

3 Q And can you tell us what you -- what you saw
4 about it and whether or not you were able to make a match?

5 A So State's Exhibit 9, FDLE Item 12, is actually
6 three separate pieces. One is the majority of a portion of
7 a bullet. And then the other two pieces are separate
8 pieces of jacket fragments. And so each of those pieces
9 was compared microscopically with my test fires. In other
10 words, bullets that I know where they came from because I
11 fired them from that gun. And based on that comparison, my
12 determination or opinion is that all three of those pieces
13 display a sufficient correspondence of those patterns to
14 say that they were fired from that gun.

15 Q And so -- just so we're clear. Your examination
16 compared -- if you don't mind holding that, ma'am.

17 So your examination compared this gun to State's
18 9, FDLE 12, and you -- you determined in your opinion that
19 it was a match?

20 A Yes.

21 Q Okay. Now, let's talk -- thank you, ma'am.

22 Let's talk a little bit more about those three
23 fragments. I know you're not a fracturer. Is that the
24 word?

25 A Fracture match.

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1 Q Fracture match expert, but, in your opinion, in
2 just looking at those three fragments together, was there
3 any correspondence or something that you could see that
4 looked like -- to a layperson -- that they looked like they
5 may be from the same one bullet?

6 A So -- and, again, qualifying that. I can't --
7 because I'm not an expert in fracture match, I really can't
8 give an opinion that they were part of the same item at one
9 point. What I can tell you is that if you look at the
10 entirety of the surface of what would be there for a bullet
11 and you think about, okay, I have this piece, and then I
12 would need to have this piece, and I would need to have
13 this piece, then there shouldn't be any overlap of the
14 markings that are left on this piece or this piece.

15 So in other words, like, I shouldn't have this
16 because that would mean that was part of two different
17 bullets.

18 So if we look at the edges where it's torn away,
19 the contour of those edges more or less look similar, and
20 there is no overlap of the markings as you go around what
21 would be -- what would have been the surface of an entire
22 bullet. So I can't say that it was one bullet, but it
23 certainly could have been one bullet based on -- there's no
24 overlap. And if you look at the torn edges, they look
25 familiar.

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1 Q And they all have markings as they would have
2 come from State's 7 and then FDLE No. 3?

3 A Correct. So -- in other words, each comparison
4 is based on rifling engravings on each of the individual
5 items and not collectively.

6 So tests were compared with -- I call them A, B
7 and C. Tests were compared with A, that was identified.
8 Tests were compared with B, that was identified. And tests
9 were compared with C, and that was identified, using
10 different parts of the test bullets.

11 Q Let's go back to, now, State's 7 again. And in
12 State's 7, the next step was you had received -- let me
13 give you the exact numbers -- it would have been FDLE No. 5
14 and No. 6. Those were two cartridge cases. Is that
15 correct?

16 A Yes.

17 Q And your next job -- not job, but the next part
18 of your examination was to try to compare those cartridge
19 cases to a known standard cartridge case from this Canik
20 gun. Is that correct?

21 A Yes.

22 Q Did you -- once again, you -- you had that known
23 because you had previously shot the bullet into the water
24 tank?

25 A Water tank.

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1 Q And then once that happened, obviously, you
2 watched the casing get expelled from the gun?

3 A Yes.

4 Q Did you collect that casing for comparison?

5 A Yes.

6 Q When you compared that casing that you knew came
7 from this Canik gun to -- do you mind holding this -- to
8 what would have been FDLE No. 5 and No. 6, were you able to
9 make a comparison as to whether or not those went to this
10 gun?

11 A Yes.

12 Q And -- okay. So take this down from you.

13 Can you explain to the jury how you made the
14 comparison that No. 5 and No. 6 match up to the Canik gun?

15 A So much as we're looking at the striations on
16 bullets, we can look at -- with cartridge cases, either an
17 impressed pattern or a striated pattern. It just depends
18 on what marks are left. In this case, the comparison was
19 based on primarily the firing pin mark. In other words, as
20 the firing pin comes forward, it leaves that indentation
21 and there's a pattern of marks within that impression. And
22 it is correspondence of that pattern of marks within the
23 firing pin mark that I used in this case.

24 And, again, based on a correspondence of that
25 pattern, it's my opinion that these two cartridge cases

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1 were fired in the submitted Canik pistol, FDLE Item 3.

2 Q And just so we're clear, just like before, even
3 if myself and -- you and I both had the same Glock gun,
4 there's still some individual characteristics in the firing
5 pins that would be able to delineate between the two guns,
6 and that -- that's how you can make that match?

7 A Yes.

8 Q Okay.

9 Thank you, ma'am.

10 When a -- when a bullet is shot and it travels,
11 if that bullet hits wood, metal, concrete, can that change
12 the trajectory of the bullet?

13 A Yes.

14 Q Have you, yourself, fired ammunition multiple
15 times and maybe even at targets or other items and you've
16 seen the change in trajectory from them?

17 A Yes.

18 Q Now, on the -- I want to show you State's 7
19 again, which is the Canik FDLE No. 3. Can you describe any
20 sort of safety mechanisms that are built into this gun or
21 what kind of safety features it may have?

22 A So this firearm has two main safeties. The first
23 is a trigger safety and the second is a firing pin block.
24 The way that the trigger safety works is that the majority
25 of the trigger cannot move until the trigger safety is

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1 depressed. And the trigger safety's actually located on
2 the trigger. So I know that sounds kind of
3 counterintuitive, but there's -- there's actually two
4 separate pieces that are moving there. And the larger of
5 the two pieces -- the one that actually connects with all
6 of the -- the firing mechanism -- cannot move until that
7 trigger safety is depressed.

8 Likewise, the trigger bar, which is connected to
9 the trigger, has a small projection on it, which presses
10 the firing pin block up and out of the way. So the firing
11 pin cannot move forward until the trigger is depressed and
12 until the trigger bar interacts with the firing pin block.

13 So, in other words, the firing pin cannot reach
14 the cartridge unless and until the trigger is depressed.
15 So it's designed to be safer to carry, in other words, or
16 to prevent firing really, unless and until you pull the
17 trigger.

18 Q So, you know, if I just drop the gun on the
19 floor, those safety mechanisms should prevent it from
20 firing off. Is that correct?

21 A Yeah. In other words, if -- if you were -- you
22 would have to override both of those safeties or have both
23 of those safeties get struck at the same time in order for
24 the firing pin to reach it at any point in time, including
25 when it's dropped.

APPEAL TRANSCRIPT

1 Q I'm going to show you what is 6-DD, ma'am. And I
2 want you to just take a look at that item.

3 Did you originally have an opportunity, also, to
4 examine -- this would have been FDLE Item No. 1, Agency
5 827.2, a 9mm Beretta Px4 Storm model?

6 A Yes.

7 Q Okay. And I'm showing you a photograph of how
8 that was found at the scene by the law enforcement. If I
9 can show you right here, do you see the cartridge case or
10 the cartridge itself right here?

11 A Yeah. You can see the cartridge case or what
12 appears to be a cartridge case.

13 Q Can you explain to the jury what -- what's going
14 on there, as best as you can?

15 A Um --

16 Q Not how it happened, but what's happening there?

17 A Yeah. So -- so what that appears to be is that
18 you have the extractor engaged with the rim of the
19 cartridge case. The cartridge should feed forward along
20 with the magazine, because there's a recoil spring which
21 pushes that slide forward. And obviously I can't testify
22 to how this got that way. But, I mean, assuming that we're
23 not supporting that slide in some way, then it appears that
24 the cartridge is wedged at the back of the chamber.

25 So the way that this usually happens is that

APPEAL TRANSCRIPT

1 either on the way in, we're not feeding at the appropriate
2 angle or there's something about the cartridge case that is
3 catching at the back of the chamber, and so it -- it lodges
4 forward and gets stuck. Or we didn't complete extraction
5 and ejection. You don't have to fire every cartridge once
6 it's in the chamber. You can actually pull the live
7 cartridge back out again by manually cycling the slide. So
8 if -- if it was on the way in, then it fed forward and got
9 stuck. If it was on the way out, then, you know,
10 extraction and ejection wasn't complete and then as the
11 slide moved forward again, it -- it got struck again. It
12 wouldn't have been at the right angle to feed again.

13 Q Ultimately, though, this is Flagler County Item
14 827.2. And then the -- the -- this cartridge case, and
15 then 12 other ammunition or cartridge cases, were they all
16 sent to you to look at and do an examination of?

17 A So, um, I -- I don't know obviously -- or I don't
18 have any -- any knowledge of the providence of the scene,
19 but I did receive 13 9mm Ruger caliber cartridges submitted
20 as FDLE Item 2.

21 Q Let's talk about that. Obviously we've connected
22 it up with the crime scene, so just -- let's talk about
23 those items.

24 Were you asked to review those 13 cartridge cases
25 and see --

APPEAL TRANSCRIPT

1 A Cartridges.

2 Q Cartridges, I'm sorry. Cartridges.

3 Were you asked to look at those to see if any of
4 them looked like they had been fired? Meaning that --
5 could this -- well, let's see. Did you look at all 13 of
6 those cartridge cases to see whether or not there was any
7 indication that they had been fired, meaning the fire pin
8 hit them and propelled them forward?

9 A So it wasn't necessarily a specific request, but
10 it is something that I'll be looking for during taking my
11 notes and documentation. So in this case, there was no
12 indication of a firing pin impression, indicating that
13 either they had been attempted to be fired or that somehow
14 the firing pin hadn't come in contact. So there wasn't any
15 firing pin impressions on any of the 13.

16 Q Yes, ma'am. And -- and this is -- right here was
17 previously established as being 827.3.

18 And I guess this is your FDLE 2. That being the
19 fact of that, if this was a complete cartridge case, would
20 you agree that that wouldn't have got into that position by
21 the gun being fired, that it actually got -- it couldn't
22 have because the firing pin didn't, you know, interact with
23 the back of any of those 13 cartridge cases that you looked
24 at?

25 A So, yeah. This particular cartridge case was not

APPEAL TRANSCRIPT

1 fired -- or this particular cartridge was not fired,
2 because there's no firing pin impression. Again, assuming
3 that that's one of the 13.

4 Q Yes, ma'am. And --

5 A But, again, like you -- if you're not firing the
6 cartridge, then you're not igniting the gunpowder and you
7 don't have that expansion of gas and you don't have any
8 energy from that to move the slide in any way.

9 Q Understand.

10 A So the slide isn't going to move just by having a
11 cartridge in the chamber and not firing it.

12 Q And just -- I just want to -- so the jury
13 understands it and explain it, that this cartridge case did
14 not get in that jammed position by someone pulling the
15 trigger and -- and a -- and starting the process of a
16 bullet going through the -- through the front of the barrel
17 and then the cartridge case being ejected?

18 A Yeah. Assuming that this is a cartridge, then,
19 no.

20 Q Yes, ma'am. And obviously we've connected it up
21 and you looked at 13 cartridges that came with -- when you
22 received 820 -- I'm sorry, FDLE No. 1, did it coordinate
23 with FDLE No. 2 in any way? Like were you able to connect
24 up that those were two items that were connected?

25 A The only indication that I have from that was

APPEAL TRANSCRIPT

1 from our case tracking form, which is essentially an
2 inventory of items that were submitted and the different
3 requests. So it's listed as 9mm cartridges from Beretta
4 handgun in the item description.

5 Q Okay. And we've already seen 6-TT. Can you see
6 that right there, ma'am?

7 A Yes.

8 Q Okay. So 6-TT, that corresponds with FDLE No. 1
9 and No. 2. We've connected that up with the prior folks.
10 Can you look at -- with the crime scene -- can you look at
11 TT and these -- first off, these 12 -- the 12 cartridge
12 cases or ammunition, do those all look like they have not
13 been fired?

14 A Those have not been fired.

15 Q Okay. And then looking at SS, which is that same
16 firearm we were looking at before and this one cartridge
17 case, does that look like that's an unfired cartridge case?

18 A That single item --

19 Q The single, yes, ma'am.

20 A It still has the bullet. Again, assuming that
21 it's the same one that I looked at, it's not fired.

22 MR. LEWIS: May I have just a moment, Judge?

23 THE COURT: You may.

24 BY MR. LEWIS:

25 Q And just so -- you explained it, but I just want

APPEAL TRANSCRIPT

1 to be clear. In FDLE No. 3, which is State's 7, this Canik
2 firearm that the two casings came out of and the bullet
3 that you were able to match up to this gun, I know we can
4 all see on TV, but if I pull the trigger one time and I
5 hold it, would that allow two bullets to come out?

6 A No.

7 Q What has to occur in order for a second bullet to
8 come out of the gun?

9 A So semiautomatic pistols, by definition, have
10 some form of a disconnecter. And the disconnecter means
11 that the firing mechanism is caught until you release the
12 trigger. And so when you release the trigger, now all of
13 the normal parts of the firing mechanism are reengaged
14 and -- and ready to fire. But each shot requires a
15 separate pull and release, and pull and release, and pull
16 and release of the trigger.

17 Q So it's not possible, in your expertise, that I
18 pull this trigger once on this gun and two bullets fly out
19 the front?

20 A Not with this firearm.

21 Q Thank you, ma'am.

22 MR. LEWIS: Thank you, Judge.

23 No further questions.

24 THE COURT: Cross?

25 MR. WOOD: Briefly.

APPEAL TRANSCRIPT**CROSS-EXAMINATION**

1

2 BY MR. WOOD:

3 Q Good morning.

4 A Good morning.

5 Q I'm going to follow up on some questions of my
6 own.7 Did you at some point receive or review an
8 analysis, what would be your Item No. 25, Agency Exhibit
9 No. 827.77, which was represented as one fired bullet?

10 A Yes.

11 Q Okay. And can you tell the jury what kind of
12 bullet that was?13 A So the bullet is a very lightweight polymer green
14 bullet. A lot of people would call it a rubber bullet.
15 But it's some form of a polymer or plastic.16 Q Okay. And is it your understanding from the
17 records you received, the receipts you received, that that
18 was a bullet that was recovered from the decedent in this
19 case?20 A Based on the packaging and the case tracking
21 form, yes.22 Q Okay. Now, can a -- can a green -- well, can a
23 rubber bullet, whatever color it may be, be fired from a
24 9mm cartridge?

25 A Yes.

APPEAL TRANSCRIPT

1 Q Okay. And were you able to determine from your
2 analysis -- at some point you did compare and do an
3 analysis on that rubber bullet, the green rubber bullet, to
4 one of the cartridge cases that you received in this case,
5 did you not?

6 A So I -- I think what you're asking me is did I
7 compare the submitted bullet to a test fire from the Canik?

8 Q Yes.

9 A Yes, I did compare the bullet to a test fire.
10 And, again, it was a later test fire and a later submission
11 using submitted ammunition, but not one of the ones that
12 was on the board previously shown.

13 Q Okay.

14 A And that submitted ammunition was of a similar
15 type which was from a different exhibit. So, again,
16 because I -- I compare -- because I compare bullet to
17 bullet and because the material will dictate the quality
18 and quantity of marks, I selected another cartridge from a
19 different exhibit that was also submitted that had a rubber
20 bullet and so I compared my test fire to that bullet.

21 Q Okay. Were you able to conclusively determine if
22 that was fired -- that bullet was fired from the Canik?

23 A No. There was not sufficient correspondence of
24 the individual characteristics or the striations that were
25 left on that rubber bullet to say conclusively that it was

APPEAL TRANSCRIPT

1 fired from that firearm.

2 Q Just out of curiosity, what is the -- if you
3 would call it a trigger-pull weight -- what's the
4 trigger-pull weight -- maybe I'm not using the right -- or
5 poundage to depress a trigger on the Canik?

6 A So I did not determine that in this case.

7 Q All right. And what I'm referring to, just for
8 educating the jury, what I'm talking about is how hard or
9 how easy or hard it is to -- or how much force is needed to
10 depress the trigger in a Canik. Have I basically stated
11 that correctly?

12 A Right. So a trigger pull is the amount of force
13 required to release the firing mechanism. We used to do
14 that determination based on our (indiscernible) weights;
15 however, because of some requirements of our accreditation,
16 we've moved to a different measuring system. And that
17 system, which is called, I think, the trigger scan, is done
18 in a different laboratory at FDLE, because it's not a
19 request that is done routinely. It's only done at the
20 request of the agency.

21 So, I mean, I can say that I didn't notice any
22 issues with this firearm at the time that I fired it, that
23 it was excessively heavy or excessively light, but I didn't
24 actually make a determination as to the actual amount of
25 force required for this firearm to fire.

APPEAL TRANSCRIPT

1 Q Now, Mr. Lewis did ask you, sort of at the
2 beginning of your testimony, about the process. And
3 focusing on the Canik for a moment. And I don't know if
4 I'm saying that right Canik or Canik, but the -- the 9mm.
5 You described the process of once the bullet is fired, it
6 goes through the barrel, the casing then gets ejected from
7 the -- from the gun. Is that correct?

8 A That's the way that it's designed to work, yeah.

9 Q Okay. And would the -- the ejection of the spent
10 bullet casing, goes to the left or the right from that gun?

11 A So, again, I didn't make any notation at the
12 time; however, the Canik has an extractor on the right-hand
13 side and an ejector on the left-hand side. It's designed
14 to eject more or less generally to the right.

15 Q Okay.

16 MR. WOOD: All right. I don't have anything
17 else.

18 Thank you very much.

19 THE COURT: Any redirect?

20 MR. LEWIS: Just real quickly, Judge.

REDIRECT EXAMINATION

21
22 BY MR. LEWIS:

23 Q We'll call it the rubber bullet. Did you have
24 difficulty comparing those because the surface of the
25 rubber bullet, as it goes through the barrel of the gun,

APPEAL TRANSCRIPT

1 doesn't really make enough good markings for you to compare
2 from one to the other?

3 MR. WOOD: Objection, leading.

4 A In -- in short, yes.

5 THE COURT: Sustained.

6 BY MR. LEWIS:

7 Q So can you explain to the jury why there might
8 have been some difficulty in comparing the rubber green
9 bullet to the test fire, I guess, green bullet you had?

10 A So to understand that, you have to think about
11 pressure and how bullets behave inside of the barrel. So
12 with, you know, very, very old guns, you would load it from
13 the muzzle. Right? Everybody's probably seen in movies
14 where you load it down -- you know, you drop the bullet
15 down the barrel and you ram it down to the end. Well,
16 those bullets had to be smaller than bore diameter,
17 otherwise you'd never get it back to the other end.

18 Modern ammunition is, generally speaking, of a
19 slightly larger diameter or it's designed in such a way
20 that the base of the bullet with pressure behind it will
21 flare out a little bit and so you'll have this backward
22 pressure which is more or less deforming the bullet at the
23 base and forces it out into that rifling. Part of that
24 that you have to understand is that a bullet has mass and
25 given that it has mass and it's at rest within the firearm,

APPEAL TRANSCRIPT

1 it has inertia, so there's a resistance to movement. And
2 so that's -- it's being pushed and it's being accelerated.

3 When you have a rubber bullet, number one, the
4 material is more plastic. So with -- with metal, you have
5 plastic and elastic deformation. Plastic means that when
6 you deform it, it more or less stays there versus elastic.
7 Elastic deformation means that you deform it and then it
8 kind of pops back. So with plastic, you don't have the
9 same kind of, quote, unquote, "plastic deformation" that as
10 the plastic is deformed, it actually reacts more
11 elastically. But those markings are not really taken up by
12 that plastic like they are the gilding metal of a jacket.
13 The gilding metal, sorry, is just a form of brass. It's
14 the portion that the outer part of the bullet is made of.

15 So we're kind of working with two issues here.
16 One is that the plastic bullet is much lighter weight, so
17 there's less resistance to accelerating that bullet. And
18 then the other is that the material itself doesn't behave
19 the same way inside the barrel. So my tests were not very
20 well marked with respect to the rifling engravings. And
21 the evidence bullet was also not very well marked. Given
22 that both items were not very well marked, it's -- I didn't
23 see any correspondence of those patterns simply because
24 there wasn't much of a pattern to compare.

25 MR. LEWIS: Thank you, ma'am.

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1 No further questions.

2 THE COURT: May this witness be excused?

3 MR. LEWIS: Yes, sir.

4 Thank you, Judge.

5 THE COURT: Thank you very much, ma'am.

6 THE WITNESS: Thank you, Your Honor.

7 (Witness excused.)

8 (Witness exited the courtroom.)

9 THE COURT: Call your next witness.

10 MS. DUNTON: State recalls

11 Investigator Quintieri.

12 (Pause in proceedings.)

13 (Witness entered the courtroom.)

14 THE COURT: The witness has been previously
15 placed under oath.

16 You can take the stand.

17 **NICOLE QUINTIERI**

18 was recalled as a witness and, having previously been duly
19 sworn, testified as follows:

20 **REDIRECT EXAMINATION**

21 BY MS. DUNTON:

22 Q Good morning, again, Ms. Quintieri.

23 A Good morning.

24 Q I'm going to, again, back us up to -- prior to
25 the defendant's arrest. Okay?

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APPEAL TRANSCRIPT

1 A Okay.

2 Q You eventually received a package from Arlo.

3 Correct?

4 A Yes, we did, via FedEx.

5 Q Okay. So prior to that -- and what date did that
6 occur?

7 A That was April 27th in the morning hours.

8 Q Okay. So via FedEx on April 27th?

9 A Yes.

10 Q Okay. And between that time, you know, obviously
11 you talked to him on the 7th to the 8th, you mentioned
12 another time, he'd had some other interactions with the
13 sheriff's office about these videos specifically. Is that
14 right?

15 A Yes.

16 Q Arlo. Okay.

17 And was the sheriff's office trying to get access
18 to that account via Mr. Johansen?

19 A Yes, we were.

20 Q Okay. And what were you guys asking him to do
21 and to provide?

22 A To provide a user name and password.

23 The program itself can be accessed via an app
24 with a user name and password.

25 Q Okay. Did he ever provide that information

APPEAL TRANSCRIPT

1 successfully?

2 A No, he did not.

3 Q Okay. So your agency had no idea of the content
4 of these videos until you received them from Arlo?

5 A That's correct.

6 Q And when you received that package from the Arlo
7 Corporation, did you have an opportunity to review the
8 videos in their entirety?

9 A Yes, I did.

10 Q And what dates did Arlo provide video from? And
11 if you can go by date and how many files came for each
12 date?

13 A So we had April 3rd, 2018, where there were two
14 video clips; April 4th, 2018, where there was one video
15 clip; and then April 5th, 2018, where there were 85 video
16 clips; none from April 6th, 2018, and then April 7th, 2018,
17 there was 154 video clips.

18 Q Okay. Did you review two discs of selected video
19 clips from April 5th and from April 7th that were prepared
20 for court today?

21 A Yes, I did.

22 MS. DUNTON: Just so the record is clear, Your
23 Honor, may I approach?

24 THE COURT: You may.

25

APPEAL TRANSCRIPT

1 BY MS. DUNTON:

2 Q Ms. Quintieri, I'm just going to show you what's
3 already been introduced into evidence, through Mr. Busse,
4 as State's 14 and 15. But take a look at these and let me
5 know if you recognize them as something you reviewed.

6 A Yes, ma'am, they are.

7 Q Okay. And other than, again, some redactions or
8 modifications made for court, are these accurate video
9 clips of what you received from the Arlo Corporation?

10 A Yes, they are.

11 Q Now, when you received information from Arlo, did
12 it tell you how to determine a date and time from these
13 files?

14 A Yes, it did. So the actual file name itself,
15 though it doesn't look like it, is the date and time for
16 the videos. We actually had to upload the file name into
17 what we termed as either an epic or epoch time converter,
18 and the file name itself would provide the actual date and
19 time in Eastern Standard Time.

20 Q Okay.

21 MS. DUNTON: And, Your Honor, permission to
22 publish a series of videos?

23 And for the record, I'm going to start with
24 State's, 14, which is going to be a series of video
25 clips from April 5th, 2018.

APPEAL TRANSCRIPT

1 BY MS. DUNTON:

2 Q And, Investigator Quintieri, I'm going to ask
3 you --

4 MS. DUNTON: And if it's okay, Your Honor.

5 BY MS. DUNTON:

6 Q I know you have some notes there about the file
7 names in order to testify to the jury the date and time.

8 Is that correct?

9 A Yes.

10 Q Okay. So if you have to look down at your notes.

11 MS. DUNTON: Does she have permission to do so,
12 Your Honor?

13 THE COURT: To refresh her recollection?

14 MS. DUNTON: Yes.

15 THE COURT: Yes.

16 MR. WOOD: And, Judge, before these are
17 published, again, we'd ask that the instruction be
18 read.

19 THE COURT: Members of the jury, you are about to
20 view and listen to an audio and video recording. The
21 Court instructs you that the recording has been edited
22 to eliminate irrelevant portions that would not add to
23 your understanding of the case. The fact that the
24 recording has been edited should not concern you in
25 any way and must not impact the way you view and

APPEAL TRANSCRIPT

1 listen and consider this evidence.

2 MS. DUNTON: Thank you, Your Honor.

3 BY MS. DUNTON:

4 Q And, Investigator Quintieri, before we show the
5 videos, in your review of the videos in their entirety, can
6 you explain what evidentiary value the videos on the 5th
7 provided, just in context to the fight or argument that's
8 going on in those videos?

9 A Yes. So on April 5th, the videos depict that the
10 defendant and the victim engage in mutual masturbation on
11 multiple occasions. And while they are engaging in those
12 acts, it appears that the defendant is actively on a laptop
13 computer in the middle of the bed. And as these acts are
14 going on, the defendant is threatening to kill the victim
15 on multiple occasions, threatening to beat her, threatening
16 to have someone else kill her, and it pretty much continues
17 for a series of about five hours.

18 Q Okay. And so obviously we have only selected
19 some for court. You're talking about the entirety of those
20 85 files that's going on --

21 A Yes.

22 Q -- for those five-plus hours?

23 And what is the substance of that fight from the
24 defendant's (indiscernible)? Can you tell us?

25 A So it appears that the fight stemmed from -- so

APPEAL TRANSCRIPT

1 the mutual masturbation goes a little bit further. It
2 appears that the defendant and the victim would often
3 masturbate on the Internet and upload videos onto the
4 Internet of either her just masturbating by herself, um --
5 but for some reason, the defendant became angry at one
6 point, um, either because the victim uploaded videos
7 without his knowledge or was masturbating while he was not
8 home or aware that she was doing it.

9 Q And it's going to become relevant in one of these
10 videos that we'll discuss, but during some of the
11 masturbation that you viewed, both for court purposes and
12 videos that are not being published here today, were sex
13 toys sometimes used by Ms. Celenza?

14 A Yes, they were.

15 Q Okay. With that being said, Ms. Quintieri, I'm
16 going to publish the video that ends -- I'm going to use
17 the last four digits for the Court -- 0561.

18 What -- again, these are all on April 5th. What
19 time does this video begin?

20 A It begins at 5:34:10 p.m.

21 Q Okay.

22 **(An audio/video recording was published in open**
23 **court. This transcript should not be considered a**
24 **verbatim record of those proceedings due to inaudibles**
25 **and inability to distinguish between speakers. It**

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1 **should be noted that the best evidence of the actual**
2 **content of the digital recording is the digital**
3 **recording itself.)**

4 "MR. JOHANSEN: I can't even fuckin' get enough
5 courage to play with my cock because you
6 (indiscernible) so bad. Thanks.

7 "MS. CELENZA: Really? Because (indiscernible)
8 one right after the other.

9 MR. JOHANSEN: Last time, I'll tell you that.
10 How fuckin' stupid you are. Yeah, me, too.
11 Amazing.

12 MS. CELENZA: Yeah.

13 MR. JOHANSEN: So I'm going to go -- go to sleep
14 and hopefully I don't (indiscernible).

15 MS. CELENZA: Why?

16 MR. JOHANSEN: (Indiscernible.)

17 MS. CELENZA: Do you want me to, like, go out
18 with my mom or fucking go somewhere so you can be
19 alone?

20 MR. JOHANSEN: I want you to go to the bar, do
21 your thing, leave me the fuck alone. I can't deal
22 with (indiscernible).

23 MS. CELENZA: Like that's -- that's what you
24 want? You want me to leave to just go to a bar?
25 Yeah.

APPEAL TRANSCRIPT

1 MR. JOHANSEN: Huh?

2 (Indiscernible.)

3 MS. CELENZA: Oh --

4 MR. JOHANSEN: Oh, but you'll do it.

5 (Indiscernible) on my side (indiscernible).

6 MS. CELENZA: Yeah, on -- on your side, yeah,
7 it's on your side because we do it together. But you
8 put me on there by myself.

9 MR. JOHANSEN: (Indiscernible.) This is just
10 ridiculous. Fucking (indiscernible).

11 MS. CELENZA: What the fuck?

12 MR. JOHANSEN: (Indiscernible) not that big.
13 It's not. I'm not going to allow you to hurt me no
14 more. (Indiscernible.) I can't have it. I'm
15 sticking up for myself and saying fuck you. The
16 (indiscernible) up. That's it. Maybe (indiscernible)
17 maybe. I'll never come back. Maybe I'll die. I
18 don't care right now. It's not my concern. It makes
19 me sick. I don't know how many hundreds of -- right
20 next to me. You fucking sick cunt.

21 MS. CELENZA: Hundreds of times? Like really?

22 MR. JOHANSEN: Two years. Right next to me. You
23 sick bitch.

24 Now it's my turn. I will never be good to a girl
25 ever again. If I'm ever with another girl ever again.

APPEAL TRANSCRIPT

1 MS. CELENZA: You haven't.

2 MR. JOHANSEN: Be faithful, yeah, that's the
3 problem. Too fucking lenient (indiscernible).

4 MS. CELENZA: I haven't -- oh, because I'm not
5 working?

6 KEITH JOHANSEN: No.

7 MS. CELENZA: Like that's -- that's bullshit.

8 MR. JOHANSEN: Bitch, you're dreaming about
9 somebody else, man.

10 MS. CELENZA: I --

11 MR. JOHANSEN: Fuck.

12 MS. CELENZA: I am dreaming about somebody else?
13 Who am I dreaming about?

14 MR. JOHANSEN: (Indiscernible) five -- five
15 so-called girls are all older and --

16 MS. CELENZA: Oh, it's in the paper. The paper,
17 they have locals you can call. That's what I was
18 trying to tell you.

19 MR. JOHANSEN: (Indiscernible) name on the list.

20 MS. CELENZA: Personals. Go for it.

21 MR. JOHANSEN: No. (Indiscernible.)

22 MS. CELENZA: Go for it.

23 MR. JOHANSEN: What I'm going to do
24 (indiscernible) period. You lost that privilege. So
25 you might as well (indiscernible). I'm serious. Like

APPEAL TRANSCRIPT

1 you don't know how serious this is. You're acting
2 like (indiscernible).

3 MS. CELENZA: I'm not acting like --

4 MR. JOHANSEN: How --

5 MS. CELENZA: How am I acting like
6 (indiscernible).

7 MR. JOHANSEN: You think it's okay to do?
8 Obviously. You like doing it.

9 MS. CELENZA: Obviously this time and the time
10 before that --

11 MR. JOHANSEN: Obviously --

12 MS. CELENZA: -- and the time before that. I
13 haven't done anything. Then -- no, no, no, no -- you
14 complimented -- you were, like, you're doing a good --

15 MR. JOHANSEN: (Indiscernible) you are hiding it.

16 MS. CELENZA: No, that's (indiscernible) --"

17 (End of video recording.)

18 MS. DUNTON: Your Honor, do you have a volume
19 control up there, too?

20 THE COURT: Do you want to turn it up?

21 MS. DUNTON: Just a little bit, yeah.

22 BY MS. DUNTON:

23 Q And so, Ms. Quintieri, that video you said was at
24 5:34, that was sort of the beginning of this five-hour
25 period that happened to be captured on video. Is that

APPEAL TRANSCRIPT

1 right?

2 A That's correct.

3 Q Okay. And so we're going to -- the next video is
4 going to end in 5816. What time do we pick up for the next
5 video?

6 A This is 8:34:45 in the p.m.

7 Q Okay. Similar arguments and things going on
8 between 5:30 and 8:30, was that constant, based on your
9 review of the videos?

10 MR. WOOD: Objection, Your Honor. It's the best
11 received rule, it's not in evidence, she can't
12 comment on what may or may not be in other videos.

13 THE COURT: Sustained.

14 BY MS. DUNTON:

15 Q And, Investigator Quintieri, obviously, for the
16 record, you've reviewed this video. It's being censored
17 for purposes of court. But what is going on in this video,
18 if you can describe it?

19 A The victim is actively masturbating. And then
20 towards the end of the video, the defendant is also
21 masturbating.

22 MS. DUNTON: Your Honor, are you able to turn it
23 up a little?

24 THE COURT: I am.

25 (Playing video recording.)

APPEAL TRANSCRIPT

1 "MR. JOHANSEN: (Indiscernible.) You're going to
2 cry just cause you (indiscernible). (Indiscernible)
3 fucking -- all you do is lie and you don't stop. You
4 want me to ask permission? Bitch, I know that's what
5 you do when I'm gone, too. Tell you to masturbate in
6 that tub and I'll fuckin' kill (indiscernible).

7 MS. CELENZA: I did masturbate in the tub.

8 MR. JOHANSEN: Oh, you mean in the bed watching
9 porn?

10 MS. CELENZA: What are you talking about?

11 MR. JOHANSEN: Just some slut (indiscernible) --

12 MS. CELENZA: No, I did not --

13 MR. JOHANSEN: -- or fucking cock boy.

14 MS. CELENZA: No, I did not -- I did it when you
15 were gone so you could see everything. I really
16 didn't.

17 MR. JOHANSEN: Every time off in the mornings
18 when I go to my job?

19 MS. CELENZA: I would be masturbating in the
20 shower.

21 MR. JOHANSEN: Get your thoughts straight. You
22 are masturbating --

23 MS. CELENZA: (Indiscernible.)

24 MR. JOHANSEN: -- in front of other people.

25 MS. CELENZA: No.

APPEAL TRANSCRIPT

1 MR. JOHANSEN: Bitch, you need to go to the
2 bathroom and do whatever you do, but it -- at least
3 you don't lie to yourself.

4 MS. CELENZA: It wasn't all the time.

5 MR. JOHANSEN: No, just fucking when you wake up,
6 you did that.

7 MS. CELENZA: (Indiscernible.)

8 MR. JOHANSEN: (Indiscernible.)

9 MS. CELENZA: No.

10 MR. JOHANSEN: Right next to me still. I see.

11 MS. CELENZA: No, I wouldn't.

12 MR. JOHANSEN: You wouldn't tell. No.

13 (Indiscernible.) You shouldn't have wished for this.

14 (Indiscernible.) I'll teach you to fuck with me.

15 (Indiscernible) you didn't hear what the fuck I
16 said. Come on. (Indiscernible) you did it with
17 (indiscernible.) You really have no reason why. It
18 was always there. You just didn't like it. Not
19 anymore. To hell with it. There you go. Let me see.
20 Boy, (indiscernible) on this?

21 MS. CELENZA: What?

22 MR. JOHANSEN: (Indiscernible.) You gave up
23 everything for it. (Indiscernible.) Come on.

24 Seriously, dude, you know what? I will leave, you
25 know. (Indiscernible), you know, and then come punch

APPEAL TRANSCRIPT

1 you in the fucking mouth. You deserve it. I'm going
2 to do shit you fucking know I can do. I'm telling you
3 about that ahead of time. I'm not a liar.

4 Fuck, at least somebody else will be happy.
5 (Indiscernible) piece of shit, fucking piece of shit
6 on there. Humiliate me. You're bad. (Indiscernible
7 suck his cock. A dream come true.

8 You already surprised?

9 MS. CELENZA: No.

10 MR. JOHANSEN: (Indiscernible.)

11 MS. CELENZA: Yes, it was.

12 MR. JOHANSEN: You did it on purpose.

13 MS. CELENZA: No. Well --"

14 (End of video recording.)

15 BY MS. DUNTON:

16 Q Investigator Quintieri, what time does the next
17 video ending in 8852 begin?

18 A It is 9:29:28 in the p.m.

19 (Playing video recording.)

20 "MR. JOHANSEN: (Indiscernible) you lying bitch.

21 MS. CELENZA: No.

22 KEITH JOHANSEN: (Indiscernible) porn with some
23 guy.

24 MS. CELENZA: No.

25 KEITH JOHANSEN: Whatever. I hope you fucking

APPEAL TRANSCRIPT

1 choke every time you fucking do it. Every time your
2 fucking heart -- your fucking heart swells. Get out
3 my guns. (Indiscernible.) Tell them you're
4 (indiscernible.) What did you do with that? As a
5 matter of fact, go fuck somebody right now. Might as
6 well. The Internet (indiscernible). Really, I had
7 some people fuck me over like this, (indiscernible)
8 this is the worst I've ever seen you. Guys told me
9 this. Womanizer pricks don't do this. You knew what
10 you were doing to fuck me up. And consequences of --
11 gave it up. Wrong choice.

12 MS. CELENZA: I answered --

13 MR. JOHANSEN: Oh, you forgot (indiscernible).

14 MS. CELENZA: I answered and I --

15 MR. JOHANSEN: (Indiscernible.) It was your
16 drugs.

17 MS. CELENZA: No. I answered and told you and --

18 MR. JOHANSEN: Every time I ask what you're doing
19 when I talk to you, you don't tell me shit and then
20 lie. I'm going to punch you in the mouth every time.
21 If you don't like it, you can get the fuck out of my
22 house. I'll even give it to you. I have to get away
23 from you or I'm going to kill you. I build you a life
24 and you fucked me over. Good luck with karma."

25 (End of video recording.)

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APPEAL TRANSCRIPT

1 BY MS. DUNTON:

2 Q Investigator Quintieri, what time does the next
3 video ending in 7156 begin?

4 A It is 9:43:07 in the p.m.

5 (Playing video recording.)

6 "MS. CELENZA: No, and --

7 MR. JOHANSEN: And -- and what? There's no
8 reason besides you're a whore.

9 MS. CELENZA: No, I told you.

10 MR. JOHANSEN: I'm talking for two fucking years,
11 bitch, you didn't tell me shit. I'm going to fucking
12 rip this on the side of your head. Beat the fuck out
13 of you. Call the cops on myself. Just so I never
14 have to see you again. Fucking whatever the fuck you
15 want. Because the paper there is going to tell my
16 side, too.

17 Go ahead call the cops. (Indiscernible), please.
18 Please get rid of me, so I can fucking end you. I
19 can't listen to that (indiscernible)."

20 (End of video recording.)

21 BY MS. DUNTON:

22 Q Investigator Quintieri, what time does the next
23 video begin, file number ending in 3661?

24 A It is 9:45:03 in the p.m.

25 (Playing video recording.)

APPEAL TRANSCRIPT

1 "MR. JOHANSEN: I'm fucked, too, because I
2 allowed you just that. So, yeah, wonder why I'm not
3 around? You can only blame yourself if you're fucking
4 cheating. I'll kill you both. Especially in my
5 house, and I will find out, I'll put a tracker on your
6 ass. I cannot trust you, dude. I'd trust an inmate
7 before I trust you. I trust a fucking (indiscernible)
8 before I trust you right now.

9 Because you told me that I can, you lied to me
10 10,000 times, you made a pact. I'll tell you. I'll
11 tell you. I'll tell you.

12 You've got (indiscernible) proof of it. That
13 (indiscernible) -- anyway, you never did that for me
14 and I proved (indiscernible). You know, maybe that
15 might smooth some shit out. And still the
16 motherfucker never says anything else about it again
17 (indiscernible), me.

18 I ain't stupid. So, yeah, you deserve to be
19 alone, dude."

20 (End of video recording.)

21 BY MS. DUNTON:

22 Q What is the time file ending 2154?

23 A It is 9:49:12 in the p.m.

24 (Playing video recording.)

25 "MR. JOHANSEN: Glad you like my phones, my

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APPEAL TRANSCRIPT

1 Internet, my bed, my trust, (indiscernible). Calls to
2 do some fucking (indiscernible) fucking asshole. I
3 should just (indiscernible) so I would have fucking
4 caught you in the act. Get the fuck out of
5 (indiscernible). Save you a lot of time.

6 Are you afraid, Brandi?

7 MS. CELENZA: No.

8 MR. JOHANSEN: Are you afraid? Are you afraid
9 yet? Because you're going to be. Get your fucking
10 fingers off."

11 (End of video recording.)

12 BY MS. DUNTON:

13 Q What is the time for the file ending in 3770?

14 A It is 10:04:53 in the p.m.

15 (Playing video recording.)

16 "MR. JOHANSEN: I'm going to murder your ass.

17 Anybody (indiscernible).

18 MS. CELENZA: Looking. I have not

19 (indiscernible) anything.

20 MR. JOHANSEN: Bitch, (indiscernible).

21 MS. CELENZA: Why?

22 MR. JOHANSEN: Because you're a fucking whore.

23 Being a smart ass, doing it next to me. Fucking

24 bitch.

25 How would you feel? You'd (indiscernible)

APPEAL TRANSCRIPT

1 because you would do the same thing. (Indiscernible.)

2 Call your mom and friends to come and get you.

3 (Indiscernible.) You don't care about me.

4 MS. CELENZA: I do care.

5 MR. JOHANSEN: In what way? Yeah, you like me as
6 a --

7 MS. CELENZA: No.

8 MR. JOHANSEN: -- father figure. You don't give
9 a fuck about me.

10 MS. CELENZA: Yes, I do. I'm not trying to turn
11 this into a (indiscernible).

12 MR. JOHANSEN: Hey, explain this one. How? How
13 does that say, Oh, I care about you. I love you. I'm
14 going to go fucking around behind your back because,
15 hey, you're a fucking chump. Fucking (indiscernible)
16 in that fucking pussy because it's not worth nothing
17 now. Not in my eyes. My eyes (indiscernible) fucking
18 cheaters multiple times. And only a stupid, fucking,
19 cheating, scum bag son-of-a-bitch would
20 (indiscernible) in that same state.

21 You fucked with the wrong person, dude. You
22 thought I was crazy. You just (indiscernible). I
23 can't go back to (indiscernible). I would rather kill
24 you than go back to jail. I'll get out
25 (indiscernible). You are the one that fucking -- it's

APPEAL TRANSCRIPT

1 in the paper. You already know what a fucking whore
2 you are, so drag your ass off. Get out. Obviously
3 you don't know what is good when it hits you in the
4 fucking face. I hope you leave and go to his house,
5 too. I know, Brandi. I know what I saw, Brandi, that
6 day.

7 MS. CELENZA: Yeah, and you don't recall --

8 MR. JOHANSEN: (Indiscernible) right next to me.
9 It's on a fucking goddamn camera.

10 MS. CELENZA: Really? Is it? Is it now? I have
11 that video because (indiscernible).

12 MR. JOHANSEN: (Indiscernible) don't have access
13 to nothing no more.

14 MS. CELENZA: (Indiscernible) I had the videos.

15 MR. JOHANSEN: Lock everything up that's
16 electronic because you're a cheating ho. You're
17 wonking crazy. (Indiscernible) popular fucking
18 (indiscernible). What's your ultimate defense?

19 MS. CELENZA: I was done.

20 MR. JOHANSEN: (Indiscernible) shit like this,
21 you should have stayed the fuck away from me, man. I
22 don't know who you fucking think I am or I was.

23 Dude, you fucked up, man. Like bad. It's only a
24 matter of time before you cheat on me
25 (indiscernible)."

APPEAL TRANSCRIPT

1 (End of video recording.)

2 BY MS. DUNTON:

3 Q Investigator Quintieri, what is the time stamp on
4 the video ending in 6352?

5 A It is 10:24:46 in the p.m.

6 (Playing video recording.)

7 "MR. JOHANSEN: "Lying (indiscernible). Good
8 luck with that. She threatened to kill herself and
9 spend the rest of your days in an institution. Shit,
10 I can put you there tomorrow. (Indiscernible.) Go
11 out. Do you want to check in? I suggest you leave.
12 You're just crazy (indiscernible). Fucking nuts. And
13 (indiscernible) getting out of here. You can push a
14 person to either beat or kill you because you're a
15 whore.

16 What the fuck, man. I don't see how you can do
17 this shit to me, man. We could have everything.

18 Come on cops (indiscernible) some of them. Do
19 fucking something. (Indiscernible) you're not with
20 the cops, you're a cheating whore. (Indiscernible.)
21 You don't give a fuck about me, man.

22 MS. CELENZA: Where -- okay. Who -- who do you
23 want me -- to pick me up at 10:30?

24 MR. JOHANSEN: Actually never come back.
25 (Indiscernible.) I don't want to see you again, ever.

APPEAL TRANSCRIPT

1 You can have all my shit. If that's what makes you
2 fucking become a fucking, lying, cheating fucking
3 slut, I will never touch you again, ever. So you
4 might as well just fucking get a life. Do yourself a
5 favor. Stop hurting me.

6 Here's the bonus. You're fucking lucky I didn't
7 beat the shit out of you. (Indiscernible.) Awesome.
8 I want to just hurt you and (indiscernible). This is
9 not your first time. When you couldn't do it,
10 (indiscernible) go with him. You should get what you
11 deserve. (Indiscernible) deserves a fucking asshole.
12 Fucking non-shooting motherfuckers.

13 I suggest you use it. You know what? I'm going
14 to leave it here, maybe one day you will. You don't
15 give a fuck if I did. You drove me to fucking think
16 about it, man. Call the cops."

17 (End of audio recording.)

18 BY MS. DUNTON:

19 Q And, Investigator Quinteri, what's the time
20 beginning with the file ending in 7738?

21 A It is 10:29:07 in the p.m.

22 (Playing audio recording.)

23 "MR. JOHANSEN: (Indiscernible) you know,
24 everything. This makes me so upset. I'm going to
25 live -- leave everything I worked for.

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APPEAL TRANSCRIPT

1 (Indiscernible) so I don't fucking go to jail. Hurt
2 you or have somebody else to hurt you. Because God
3 knows you deserve it.

4 I hope that was worth your fucking life, bitch.
5 And mine. You have ruined everything I've worked for
6 all my life.

7 (Indiscernible.)"

8 (End of video recording.)

9 BY MS. DUNTON:

10 Q Investigator Quintieri, what was the object that
11 Mr. Johansen threw at her in that video?

12 A It was a large sex toy.

13 Q What is the time of the last video on the 5th,
14 ending in 1157?

15 A It is 10:32:01 on the p.m.

16 (Playing video recording.)

17 "MR. JOHANSEN: (Indiscernible) I trusted you. I
18 have more homies than you even know. (Indiscernible)
19 you better stay strapped all the time.

20 (Indiscernible.) He knows a lot of people. Three
21 people that spread it around. You will be fucked so
22 much that you'll have to leave. (Indiscernible) I
23 refuse. (Indiscernible) in the house, good riddance.

24 MS. CELENZA: (Indiscernible.)

25 MR. JOHANSEN: I gave up everything on a chance

APPEAL TRANSCRIPT

1 somebody's fucking lied, cheats and fucking does this
2 and that. Go be with a girl you stupid fucking cunt.
3 Stop fucking with me. Go fucking die. Go be with a
4 girl. Get the fuck out of my life. Gave you too many
5 goddamn chances, man, too many.

6 Show the cops these videos. I don't give a fuck.
7 I'd rather be in prison, obviously. Stupid
8 motherfucker don't know what you've got. You're
9 fucking with my life. Who cares? Fuck me. I
10 (indiscernible). Yeah, (indiscernible) kick your
11 ass."

12 (End of video recording.)

13 BY MS. DUNTON:

14 Q Investigator Quintieri, was that the last video
15 supplied by Arlo on the 5th?

16 A Yes, it was.

17 MS. DUNTON: Your Honor, would this be a good
18 time for a break? Lunch?

19 THE COURT: It would be.

20 MS. DUNTON: Okay.

21 THE COURT: Ladies and gentlemen of the jury,
22 we're now going to break for our noon recess. I'm
23 going to let you go and ask you to be back about 1:20.
24 Okay? If you can convene down where -- in the same
25 room you've been meeting with, we'll bring you right

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1 on up, get you in the room up -- up here, and we'll
2 be -- should be ready to go right at 1:30.

3 We'll -- as always, we'll remain in session now
4 and continue with any -- any matters that need to be
5 taken up in the meantime so you-all don't have to wait
6 around for that.

7 In the meantime, while you're out on lunch break,
8 please remember my instructions and admonitions as far
9 as doing any research on the case, allowing anybody to
10 comment about the case in any matter to you, and also
11 admonitions against discussing the case or the
12 evidence that you've heard with yourselves yet.

13 As I've stated before, and as you're tired of
14 hearing, we will do that later after you have received
15 proper instructions and go into the jury room to
16 deliberate. All right?

17 Thank you very much.

18 (The jury exited the courtroom at 12:13 p.m.,
19 after which the following proceedings were had:)

20 THE COURT: Mr. Lewis, is the door secure? The
21 other door.

22 MS. DUNTON: This one.

23 MR. LEWIS: Yes, sir, it is.

24 THE COURT: Let the record reflect that the jury
25 has excused the courtroom for our noon recess and the

APPEAL TRANSCRIPT

1 courtroom is secure.

2 And, once again, you're still on the stand during
3 a break, so you're still under the rule of
4 sequestration, and I'll instruct you not to talk about
5 your testimony with either party, which is normally
6 allowable. All right?

7 THE WITNESS: Thank you.

8 THE COURT: Any further matters to take up before
9 we go to lunch?

10 MR. WOOD: No, Your Honor.

11 MS. DUNTON: No, Your Honor.

12 THE COURT: We'll reconvene at 1:20, and look to
13 start directly thereafter.

14 (Court recessed at 12:15 p.m. and reconvened at
15 1:23 a.m., after which the following proceedings were
16 had:)

17 THE BAILIFF: All rise.

18 THE COURT: Thank you, ladies and gentlemen,
19 please be seated. Be comfortable.

20 All set, Madam Court Reporter?

21 THE COURT REPORTER: Yes.

22 THE COURT: We're back in session. The jury is
23 being brought up to the jury room here on this floor
24 from downstairs. They've all assembled.

25 Is there anything to take up before we bring the

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1 jury back?

2 MR. WOOD: There is, Judge. If I can come
3 sidebar for a second.

4 THE COURT: Absolutely.
5 On the record or off the record?

6 MR. WOOD: On the record.

7 THE COURT: On the record.

8 (The following proceedings were held at the bench
9 out of the hearing of the jury:)

10 MR. WOOD: I just want to make sure that the
11 record is clear on this in the -- we discussed it
12 previously. In the February Second Supplemental
13 Motion that I filed, forget the specifics of the
14 objections, and the -- on the video, which is at
15 10:04, there was a mention by Mr. Johansen about
16 referencing killing her and I don't want to go back to
17 jail, that objection was specified in my motion.

18 THE COURT: Uh-huh, correct.

19 MR. WOOD: I'm still concerned about the State
20 arguing the last part of that because it does, as I
21 stated in the motion, indicate to the jury that he has
22 a prior record. He doesn't have any prior record that
23 would qualify for impeachment purposes here today and
24 we anticipate Mr. Johansen testifying, and of course
25 we're going to be closing arguments, so although we

APPEAL TRANSCRIPT

1 have preserved, I think, the objection --

2 THE COURT: Certainly.

3 MR. WOOD: -- I still don't want it to be a
4 feature of other aspects about this case because of
5 that concern.

6 THE COURT: Okay.

7 Ms. Dunton?

8 MS. DUNTON: He made a similar threat a couple
9 times about "I'd rather kill you than go to jail," and
10 then one time he did say the word "back to jail."
11 It's in there because it's inextricably intertwined
12 directly with a threat. But I'm not going to feature
13 or mention the word "back" again.

14 He says a similar threat throughout and doesn't
15 say the word "back." He just says, "I would rather
16 kill you than go to jail."

17 I'm not going to highlight it.

18 THE COURT: Okay.

19 MR. WOOD: So objection overruled?

20 THE COURT: Correct.

21 MR. WOOD: All right. Thank you.

22 THE COURT: Yes, sir.

23 MS. DUNTON: Can Investigator Quintieri come back
24 on the stand, Your Honor?

25 THE COURT: Yes, ma'am.

APPEAL TRANSCRIPT

1 (Pause in proceedings.)

2 (Witness entered the courtroom.)

3 THE COURT: For the record, the witness remains
4 under oath.

5 Parties ready for the jury?

6 MS. DUNTON: Yes, Your Honor.

7 MR. WOOD: Yes, Your Honor.

8 THE BAILIFF: Jurors entering the courtroom.

9 (The jury entered the courtroom at 1:28 p.m.,
10 after which the following proceedings were had:)

11 THE BAILIFF: Jurors present.

12 THE COURT: All right. Everybody be seated, be
13 comfortable.

14 Ladies and gentlemen of the jury, did anything
15 occur to any one of you during our recess with regard
16 to the admonitions and the requests I made of you, as
17 far as any research, anybody approach you, any
18 deliberations or conversations about the evidence?

19 JURY PANEL: (No audible response.)

20 THE COURT: All right. Thank you-all very much.
21 Ms. Dunton?

22 MS. DUNTON: Thank you.

23 BY MS. DUNTON:

24 Q Investigator Quintieri, I'm going to direct your
25 attention to the video files from April 7, 2018.

APPEAL TRANSCRIPT

1 A Yes.

2 Q And, for the record, I'm going to be publishing
3 State's 15 into evidence.

4 The first file from that date ends in numbers
5 4563. Can you tell the jury what time that was on
6 April 7th?

7 A Yes, it's 10:01:24 in the a.m.

8 (Playing video recording.)

9 (End of video recording.)

10 BY MS. DUNTON:

11 Q And the next clip ending in 3893?

12 A It is 10:10:03 in the a.m.

13 (Playing video recording.)

14 "MS. CELENZA: (Indiscernible.)

15 R.: No.

16 MS. CELENZA: No. You done?

17 R.: Yes.

18 MS. CELENZA: Okay.

19 R.: (Indiscernible.)

20 MS. CELENZA: (Indiscernible.)"

21 (End of video recording.)

22 BY MS. DUNTON:

23 Q And the next clip ends in 8403. What time does
24 that one begin?

25 A It is 10:18:58 in the a.m.

APPEAL TRANSCRIPT

1 (Playing video recording.)

2 "R.: I love you.

3 MS. CELENZA: I love you.

4 R.: No, I do."

5 (End of video recording.)

6 BY MS. DUNTON:

7 Q And the next file name ends 4717. What time does
8 that begin?

9 A It is 10:20:34 in the a.m.

10 (Playing video recording.)

11 "MS. CELENZA: There's a card in the door.

12 UNIDENTIFIED SPEAKER: My name is Charles and
13 this is my friend Gloria.

14 Are your parents home?

15 MS. CELENZA: I'm the parent.

16 UNIDENTIFIED SPEAKER: You're so young. Right?

17 UNIDENTIFIED SPEAKER: Yeah.

18 UNIDENTIFIED SPEAKER: We're (indiscernible).

19 MS. CELENZA: Some people are, some people
20 aren't.

21 UNIDENTIFIED SPEAKER: (Indiscernible)

22 generosity. (Indiscernible) talk about this one.

23 What is your name?

24 MS. CELENZA: My name's Brandi.

25 UNIDENTIFIED SPEAKER: Brady?

APPEAL TRANSCRIPT

1 MS. CELENZA: Brandi.

2 UNIDENTIFIED SPEAKER: Oh, Brandi. My name's
3 Charles.

4 UNIDENTIFIED SPEAKER: Hi, Brandi.

5 UNIDENTIFIED SPEAKER: Honestly you look like
6 you're 14 or 15.

7 MS. CELENZA: I'm 29.

8 UNIDENTIFIED SPEAKER: Wow. You look like you're
9 14 or 15. (Indiscernible.)

10 MS. CELENZA: All right. You guys have a great
11 day.

12 UNIDENTIFIED SPEAKER: You too, Brandi. It's
13 nice meeting you.

14 UNIDENTIFIED SPEAKER: It's nice meeting you. We
15 thought we would stop by.

16 MS. CELENZA: Yeah. Thank you. Bye-bye.

17 UNIDENTIFIED SPEAKER: You have a good day."

18 (End of video recording.)

19 BY MS. DUNTON:

20 Q That was at 10:20.

21 The next one ending in 4447, what's the time?

22 A 10:33:04 in the a.m.

23 (Playing video recording.)

24 (End of video recording.)

25

APPEAL TRANSCRIPT

1 BY MS. DUNTON:

2 Q The next file ends in 0727. What time does this
3 file begin?

4 A It is 10:34:30 in the a.m.

5 Q Is this the last video clip before the 911 call?

6 A Yes, it is.

7 (Playing video recording.)

8 (End of video recording.)

9 BY MS. DUNTON:

10 Q The next video clip ends in number 7357. What
11 time is this?

12 A It is 10:37:57 in the a.m.

13 (Playing video recording.)

14 "MR. JOHANSEN: ...shots. My wife's shot. I was
15 in the shower and I heard some gunshots, and I think
16 that my wife accidentally shot herself."

17 (End of video recording.)

18 BY MS. DUNTON:

19 Q The file ending in 3307?

20 A 10:38:23 in the a.m.

21 (Playing video recording.)

22 "MR. JOHANSEN: I don't know. I can't see it."

23 (End of video recording.)

24 BY MS. DUNTON:

25 Q File ending in 9470?

APPEAL TRANSCRIPT

1 A 10:39:59 in the a.m.

2 (Playing video recording.)

3 "MR. JOHANSEN: She's hurt. I don't see blood.

4 She's hurt."

5 (End of video recording.)

6 BY MS. DUNTON:

7 Q And the file ending in 1575?

8 A 10:43:21 in the a.m.

9 (Playing video recording.)

10 "MR. JOHANSEN: Yes, sir. Yes, sir. Yeah, I

11 appreciate it. Thank you. Bye.

12 I was taking a shower.

13 UNIDENTIFIED SPEAKER: Okay."

14 (End of video recording.)

15 BY MS. DUNTON:

16 Q Investigator Quintieri, during the entirety of

17 Mr. Johansen's presence at the sheriff's office on the

18 night of the 7th and into the 8th, over 12 hours, did he

19 ever mention to you anything about self-defense?

20 A No, he did not.

21 Q Did he ever mention to you that he had done

22 anything, as far as shooting Brandi Celenza?

23 A No, he did not.

24 Q In the 20 days from the night of the homicide

25 until his arrest, in all your contacts with him, did he

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1 ever mention self-defense?

2 A No, he did not.

3 Q He didn't ever mention handling the gun in any
4 way, any sort of shooting on his part of Ms. Celenza?

5 A No, he did not.

6 MS. DUNTON: Your Honor, I don't have any further
7 questions.

8 THE COURT: Cross?

9 **REXCROSS-EXAMINATION**

10 BY MR. WOOD:

11 Q Let me ask you a question about the last video at
12 10:34, where we see Ms. Celenza in -- by the front door and
13 then she kneels or squats down, rather, to -- to the left.
14 That's the -- where she's at, that's the safes inside the
15 house. Is that correct?

16 A That's correct.

17 Q All right. And those are the safes that
18 contained firearms and ammunition. Correct?

19 A That's correct.

20 MR. WOOD: Okay. All right.

21 Thank you.

22 THE COURT: May this witness be excused?

23 MS. DUNTON: Just one moment, Your Honor?

24 THE COURT: Go ahead.

25 **REDIRECT EXAMINATION**

APPEAL TRANSCRIPT

1 BY MS. DUNTON:

2 Q Did all of those safes contain firearms and
3 ammunition?

4 A Yes.

5 Q Okay. Did they contain other things in addition
6 to firearms and ammunition?

7 A Yes, they did.

8 Q Okay. And what does Ms. Celenza have in her hand
9 as she walks away from that safe?

10 A It's her cell phone.

11 MS. DUNTON: No further questions.

12 MR. WOOD: No further questions.

13 THE COURT: May this witness be excused or remain
14 under the rule?

15 MS. DUNTON: She can be excused.

16 THE COURT: Thank you much.

17 (Witness excused.)

18 (Witness exited the courtroom.)

19 THE COURT: Call your next witness.

20 MS. DUNTON: Your Honor, at this time the State
21 rests.

22 THE COURT: Okay. Mr. Wood?

23 MR. WOOD: Judge, I have a motion to make out of
24 the presence of the jury.

25 THE COURT: Okay. Ladies and gentlemen of the

APPEAL TRANSCRIPT

1 jury, the State has rested. There are matters we need
2 to take up outside of your presence, so we'll put you
3 in recess. It shouldn't be too, too long. But please
4 feel free to use the facilities, freshen up on your
5 refreshments, and we'll be back with you as soon as
6 we're able.

7 And I'll repeat my admonition to you. Please
8 don't begin discussing the case or the evidence you've
9 heard.

10 Thank you-all.

11 THE BAILIFF: You can leave your tablet.

12 Thank you.

13 (The jury exited the courtroom at 1:43 p.m.,
14 after which the following proceedings were had:)

15 THE COURT: Okay. The jury's been removed from
16 the courtroom. The courtroom is secure.

17 Mr. Wood?

18 MR. WOOD: Yes, Judge.

19 At this time the Defense would tender to the
20 Court a Motion for Judgment of Acquittal as to the
21 singular charge in the indictment of first-degree
22 murder. It is our position that the State, even in
23 the light most favorable to the State, has not
24 produced any evidence that would support the charge or
25 allow it to go to the jury for their decision in this

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1 case.

2 The jury did see videos from the 5th of April,
3 that certainly had some statements in it. But as we
4 now know from -- from the overall context of the
5 sequence of events, there were no videos produced on
6 April the 6th, and certainly what videos were produced
7 on April the 7th, show absolutely no animosity or
8 arguments or threats or problems between Mr. Johansen
9 and Ms. Celenza.

10 And, unfortunately, in that sense, there were
11 videos from the dining room table inside the house
12 that did show the two individuals and also R. making
13 movements, speaking in the home. But from what has
14 been produced from the State from that day, there is
15 no issues of arguments or threats of violence, as far
16 as the video is concerned and as far as the evidence
17 is concerned for that day, the couple were getting
18 along just fine. So that's -- that's our main issue
19 with it, Judge. There is certainly no evidence of
20 premeditation for Mr. Johansen to have committed the
21 act in question.

22 It's interesting, although it's not evidence in
23 the State's own opening statement, Ms. Dunton
24 referenced something happening in the bedroom. Of
25 course there's no video from the incident itself, so

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1 the jury is left to guess and the Court respectively
2 is left to guess from this point, at the conclusion of
3 the State's case, what happened inside the -- the
4 bedroom. Certainly Mr. Johansen never confessed or
5 admitted to intentionally, with premeditation, killing
6 Ms. Johansen. Thus far, what has been produced is his
7 statements to the police and others that this was
8 either an accident or self-induced on Ms. Celenza's
9 part. So based on all the evidence, Judge, we would
10 ask the Court to grant Defense's Motion for Judgment
11 of Acquittal.

12 THE COURT: Mr. Lewis?

13 MR. LEWIS: Judge, obviously the Court's aware of
14 what's called circumstantial evidence. And certainly
15 the circumstances of this homicide clearly indicate
16 that the defendant was the one who committed it. That
17 he was the one who killed Brandi. And furthermore, we
18 have the evidence from two days earlier showing his
19 premeditation or his -- enough reflection to make that
20 decision.

21 I know Mr. Wood wants it to relate only till the
22 7th. That's clearly not the standard that the Court
23 needs to rely on or that the case law has set out over
24 hundreds of years. There's multiple cases that talk
25 about eight months, six months, five weeks, multiple,

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1 multiple days before. We have just two days before.

2 He doesn't threaten her just once, Judge. He
3 threatens her no less than six times on that night of
4 the 5th, that he's going to kill her, that he's going
5 to end her. That he's going to make her life hell,
6 and that she's not going to wake up in the morning.

7 Judge, we think that there's more than enough
8 evidence. And, you know, certainly I know Mr. Wood
9 would like to infer that the jury can't make a
10 decision on this, but certainly it's for the jury to
11 look at all the circumstances.

12 The State has eliminated that anybody else was in
13 the house. The house was locked down. There's no --
14 anybody else on videotape anywhere. And the child has
15 been eliminated, or the State believes that we have
16 eliminated the child as being involved with the
17 shooting.

18 We think there's more than enough evidence, in
19 the light most favorable to the State, to go to a
20 jury, and allow a reasonable jury to make the
21 decision.

22 MR. WOOD: And, Judge, my final comment on that.

23 THE COURT: Go ahead.

24 MR. WOOD: Is that -- to the evidence produced
25 for April the 7th, which, again, shows no issues,

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1 arguments, threats between the two. Whatever was said
2 and done on April the 5th has clearly been mitigated
3 and -- and observed that there were no issues of
4 violence or threats between the two on the 7th of
5 April.

6 THE COURT: In applying the arguments made by
7 counsel, in the light most favorable to the State, I
8 will deny the motion.

9 MR. WOOD: Thank you, Judge.

10 Just off the record. I don't need the court
11 reporter.

12 THE COURT: We're off the record. We're in
13 recess.

14 (Discussion at the bench out of the hearing of
15 the court reporter.)

16 (Bench conference concluded, after which the
17 following proceedings were had:)

18 MR. WOOD: Judge, we're ready to go.

19 THE COURT: Okay. Is the State ready for the
20 jury?

21 MR. WOOD: Judge, although it's not exactly the
22 time we usually would do in the course of the
23 chronology of a trial, for the record, and certainly
24 the Court can inquire about this as you normally
25 would.

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1 THE COURT: Absolutely.

2 MR. WOOD: I have had the opportunity -- many
3 opportunities to speak with my client, Mr. Johansen,
4 about his right to not testify and remain silent and
5 that if he chose to do so, which is certainly his
6 right, the jury would be given an instruction that
7 would say that the fact that he chose not to take the
8 witness stand could not be considered in any way in
9 assessing the case and could not hold that against
10 Mr. Johansen.

11 However, he does have the right to testify, as
12 well. And the rules are that if he does testify, that
13 he's -- evidentially he's treated as any other
14 witness, subject to direct examination,
15 cross-examination, all of which would be under oath.

16 In discussing those two options with Mr. Johansen
17 and confirming, even so today, it's Mr. Johansen's
18 desire to take the stand and become a witness in this
19 case.

20 THE COURT: Okay. Mr. Johansen, is that what you
21 want to do?

22 THE WITNESS: That's correct, Your Honor.

23 THE COURT: Okay. And this case has been pending
24 for -- for some time. Have you discussed -- and
25 please don't comment about any -- the substance of any

APPEAL TRANSCRIPT

1 discussions, but do you feel you've had adequate time
2 to talk with your attorney, Mr. Wood, concerning the
3 potential benefits and potential pitfalls of
4 testifying?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And do you understand that your
7 attorney strategically controls just about everything
8 in the trial, what witnesses to call, what witnesses
9 not to call. But it's your absolute constitutional
10 right to remain silent and also to assert your right
11 to testify?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. And with that understood, you
14 wish to assert your right to testify on your own
15 behalf during this proceeding?

16 THE DEFENDANT: That's correct, Your Honor.

17 THE COURT: Okay. All right. Thank you.

18 MR. WOOD: Thank you, Judge.

19 THE COURT: Okay. Send in the jury.

20 THE BAILIFF: Jurors entering the courtroom.

21 (The jury entered the courtroom at 1:58 p.m.,
22 after which the following proceedings were had:)

23 THE BAILIFF: Jurors present.

24 THE COURT: All right. The jurors returned. The
25 courtroom is secure. Please everybody be seated.

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APPEAL TRANSCRIPT

1 Mr. Wood?

2 MR. WOOD: Yes, Judge. At this time we would
3 call Dawn Eagleson.

4 THE COURT: Okay.

5 MR. WOOD: May they check, Judge?

6 THE COURT: Yes, please.

7 (Pause in proceedings.)

8 (Witness entered the courtroom.)

9 THE CLERK: Would you raise your right hand?

10 Do you swear or affirm the testimony you're about
11 to give is the truth, the whole truth, and nothing but
12 the truth, so help you God?

13 THE WITNESS: Yes.

14 THE COURT: You may inquire.

15 MR. WOOD: Thank you, Your Honor.

16 **DAWN EAGLESON**

17 was called as a witness and, having first been duly sworn,
18 testified as follows:

19 **DIRECT EXAMINATION**

20 BY MR. WOOD:

21 Q Ms. Eagleson, would you state your full name for
22 the record, please?

23 A Dawn Lindsay Eagleson.

24 Q All right. And, Ms. Eagleson, where do you live?

25 A 28 Felter Lane.

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1 Q All right. And roughly how long have you lived
2 there?

3 A About 21 years.

4 Q Okay. And who else do you live there with?

5 A My son, my daughter and my husband.

6 Q Okay. And your husband's name?

7 A James Hall.

8 Q Okay. And, Ms. Eagleson, I'll just go ahead and
9 get this out of the way. Have you ever been previously
10 convicted of a felony before?

11 A Yes.

12 Q And how many times?

13 A Four times.

14 Q Okay. And, Ms. Eagleson, do you know or did you
15 know Brandi Celenza?

16 A I -- I didn't know-her-know-her.

17 Q Okay. Do you -- do you -- well, did you ever
18 have contact with her for any reason back in, say, April of
19 2018?

20 A Yes.

21 Q Okay. And what basically was the nature of that
22 contact?

23 A Her son and my daughter, we used to walk to the
24 bus stop.

25 Q Okay. And is that how you would see Ms. Celenza?

APPEAL TRANSCRIPT

1 A Yes.

2 Q Okay. All right. And was that for some, you
3 know, period of time?

4 A Maybe a month.

5 Q Okay. All right. Now, was Ms. Celenza and
6 Mr. Johansen a neighbor of yours in that area?

7 A Yes.

8 Q All right. So you live on Felter Lane. Did
9 Mr. Johansen and Ms. Celenza live on that same street?

10 A Yes, across the way, a couple houses down.

11 Q A couple houses down?

12 A Uh-huh.

13 Q Same side as yours or the opposite?

14 A Opposite.

15 Q Okay. All right. I'm going to refer you back to
16 April the 6th of 2018, do you recall having contact with
17 Brandi Celenza and Keith Johansen on that day?

18 A Yes.

19 Q All right. And could you tell the jury what the
20 nature of -- or how that contact came about?

21 A She -- she brought Keith over to introduce him to
22 my husband, and they stayed for about 15, 20 minutes.

23 Q Okay.

24 A And that was it.

25 Q All right. And was that -- so that was the first

APPEAL TRANSCRIPT

1 time you had met Mr. Johansen?

2 A Yes. I mean, I've seen him at the bus stop
3 before, but just waved.

4 Q Okay. And do you see Mr. Johansen in the
5 courtroom here today?

6 A I do.

7 Q All right. And can you point him out and
8 describe what he's wearing, please?

9 A He's wearing a blue jacket.

10 Q All right. Can you point to him, please?

11 A And he's right over there (indicating).

12 MR. WOOD: May the record reflect she's
13 identified the defendant?

14 THE COURT: The record will so reflect.

15 BY MR. WOOD:

16 Q All right. And so the -- you said that he came
17 over to your house on Felter Lane?

18 A Yes.

19 Q Okay. And hung out for, you say, what, about 15
20 minutes?

21 A I don't know, about 15, 20 minutes.

22 Q Okay. And what did you guys do during that
23 period of time?

24 A Well, him and my husband, they smoked a blunt
25 together.

APPEAL TRANSCRIPT

1 Q Okay. So smoked some marijuana?

2 A Yes.

3 Q Okay. I don't know if the jury would know what a
4 blunt is, so...

5 A Okay. Sorry.

6 Q Is that in, like, cigarette or cigar form?

7 A Cigar.

8 Q Okay. And how was -- and Brandi was there during
9 that period of time?

10 A Yes.

11 Q And from your observations of Mr. Johansen and
12 Ms. Celenza, did they appear to get along?

13 A Yeah, to my knowledge.

14 Q Okay. All right. No threats or arguments or
15 issues, negative issues you saw between them?

16 A Not that I seen, no.

17 Q Okay. And then at some point they -- they left
18 after, I think you said, about 20 minutes?

19 A Yeah.

20 Q Okay. All right. And the next day, did you find
21 out about the shooting incident?

22 A Yeah. My son had texted me and said there was a
23 bunch of police down at their house.

24 Q All right. So definitely the last time you saw
25 Mr. Johansen and Ms. Celenza was the day before the -- the

APPEAL TRANSCRIPT

1 incident?

2 A Yes.

3 Q Okay. All right.

4 MR. WOOD: I don't have anything else.

5 THE COURT: Okay. Cross?

6 MR. LEWIS: Thank you, Judge.

7 **CROSS-EXAMINATION**

8 BY MR. LEWIS:

9 Q Hi, ma'am, how are you doing?

10 A Good.

11 Q Good. Would it be a fair statement to say that
12 Brandi wasn't hallucinating that night when you saw her?

13 A No.

14 Q She wasn't acting crazy?

15 A No.

16 Q She wasn't making any threats?

17 A No.

18 Q She wasn't being violent toward anybody?

19 A No.

20 MR. LEWIS: Thank you, ma'am. I appreciate it.

21 MR. WOOD: One last follow-up on redirect, then.

22 THE COURT: Okay.

23 **REDIRECT EXAMINATION**

24 BY MR. WOOD:

25 Q Did you ever see her use methamphetamine in your

APPEAL TRANSCRIPT

1 presence that day?

2 A Did I see her?

3 Q Use meth that day.

4 A No.

5 Q Okay.

6 MR. WOOD: Thank you. Nothing further.

7 THE COURT: All right. May this witness be
8 excused?

9 MR. WOOD: Yes, sir.

10 THE COURT: All right.

11 (Witness excused.)

12 (Witness exited the courtroom.)

13 MR. WOOD: Our next witness will be appearing by
14 Zoom. That would be Joanna Salmons.

15 THE COURT: Okay. Are you ready to proceed?

16 MR. WOOD: All right. Ms. Salmons, can you hear
17 me? You're on mute on your side.

18 THE WITNESS: Sorry about that.

19 MR. WOOD: That's all right. That's all right.
20 May I proceed, Your Honor?

21 THE COURT: Yes, sir.

22 Ms. Salmons, this is Judge France. Can you hear
23 me okay?

24 THE WITNESS: Yes, I can hear you.

25 THE COURT: Okay. We're going to have Madam

APPEAL TRANSCRIPT

1 Clerk place you under oath.

2 Madam Clerk?

3 THE CLERK: Can you raise your right hand?

4 Do you swear or affirm the testimony you're about
5 to give is the truth, the whole truth, and nothing but
6 the truth, so help you God?

7 THE WITNESS: Yes.

8 **JOANNA SALMONS**

9 was called as a witness and, having first been duly sworn,
10 testified as follows:

11 **DIRECT EXAMINATION**

12 BY MR. WOOD:

13 Q And, Ms. Salmons, do you have your ID or your
14 driver's license with you?

15 A Yes, I do.

16 Q And if you could get it close to the camera, so
17 Madam Clerk may be able to see it.

18 THE CLERK: I can see it.

19 Thank you.

20 BY MR. WOOD:

21 Q All right. Thank you, Ms. Salmons.

22 All right. Ms. Salmons, let me -- if you would,
23 where do you currently reside?

24 A I have currently been staying with my boyfriend
25 at 3366 Cook Road in Loganville, Georgia.

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APPEAL TRANSCRIPT

1 Q Did there come a time before moving to Georgia
2 that you lived in Palm Coast?

3 A Yes.

4 Q All right. And when did you move -- roughly when
5 did you move to Georgia?

6 A I want to say somewhere around last year, around
7 the 28th, I want to say, in August.

8 Q Okay. And, Ms. Salmons, back in April of 2018,
9 did you live in Palm Coast?

10 A Yes.

11 Q All right. And did you -- during that period of
12 time, did you know Brandi Celenza?

13 A I did, yes.

14 Q All right. And how -- how did you know her?

15 A She -- she and I worked together. And then from
16 there, we became friends.

17 Q Okay. And where did you work together at?

18 A Dunkin' Donuts that was located on Old Kings
19 Road.

20 Q Very good. All right. And how long had you
21 known her prior to April the 7th of -- or April the 6th of
22 2018?

23 A I want to say three years, almost four.

24 Q Okay. All right. And did you know Mr. Johansen
25 during that period of time?

APPEAL TRANSCRIPT

1 A Yes.

2 Q Okay. And did you know --

3 A I met him my first time going over to Brandi's
4 house, a couple months after officially meeting her at
5 work.

6 Q I got you. When you say "going over to her
7 house," would that be the house on Felter Lane in
8 Palm Coast?

9 A No, it was off of Palm Harbor, I want to say.

10 Q Okay. I want to refer you to --

11 A Right up Coral Reef.

12 Q Oh, okay. So I'm going to refer you back to
13 April the 6th of 2018.

14 A Okay.

15 Q Do you recall going -- or having any contact with
16 Brandi Celenza and Mr. Johansen on that evening?

17 A The day that I went there?

18 Q Pardon me?

19 A I said the day that I went there?

20 Q This would be the day before the shooting
21 incident.

22 A Um, I think there are messages between me and
23 Brandi, not 100 percent sure.

24 Q Did you, on that day, go over to the house?

25 A The day before the incident? Yes.

APPEAL TRANSCRIPT

1 Q Okay. And what was the reason for going over to
2 the house?

3 A We were going to just smoke and hang out and
4 watch a movie.

5 Q Okay. Can I assume when you say "smoke," you're
6 talking about smoking marijuana?

7 A Yes, sir.

8 Q Okay. And was it in the evening time or some
9 other time?

10 A Yes, it was in the evening time.

11 Q Okay. And do you know roughly about what time it
12 would have been?

13 A I got there around 5:00 and ended up leaving
14 around 8:30, almost 9:00 that night.

15 Q All right. And during the period of time that
16 you were over there, what -- what did you guys do besides
17 smoking pot?

18 A We just sat around and watched a movie. They
19 were trying to get R. to go to bed.

20 Q Okay.

21 A So he was off in his room, so we were just
22 sitting on the couch.

23 Q Okay. And was -- and would that couch have been
24 in the living room?

25 A Yes.

APPEAL TRANSCRIPT

1 Q Okay. And during this period of time, where
2 was -- where was Mr. Johansen?

3 A He was sitting on the -- like, up against the
4 wall on the far end of the couch.

5 Q Okay. And was he there pretty much in that area
6 of the house pretty much while you were there?

7 A Yeah.

8 Q Okay. Was he also smoking the pot with you guys?

9 A He smoked a little bit, but he ended up falling
10 asleep.

11 Q And when he fell asleep, where was that at?

12 A Right on the couch.

13 Q Okay.

14 A He had claimed he had a really bad headache.

15 Q Okay. And that was obviously before -- he fell
16 asleep before you left?

17 A Yes.

18 Q Okay. And do you remember if you -- I know it's
19 been three years ago. Do you remember if you stayed for
20 any period of time after he fell asleep on the couch, "he,"
21 being Mr. Johansen?

22 A Well, he was on the couch sleeping before I left.

23 Q Okay. All right. And when -- when you left,
24 was -- was Brandi still up?

25 A Yeah, she was still awake.

APPEAL TRANSCRIPT

1 Q Okay. All right. And during the period of time
2 that you were there, in your observations, the interactions
3 between Keith and Brandi, did they appear to be getting
4 along?

5 A It seemed fairly normal, yeah. They didn't seem
6 like they were arguing or anything.

7 Q Okay. No threats or arguments?

8 A No.

9 Q Or anything of violence at all that you observed?

10 A No. Yeah, they kept that pretty private.

11 Q Okay. And -- and so there were no issues of
12 threats or violence even after you left that you observed
13 or heard?

14 A No.

15 Q Okay. All right. And during the period of time
16 that you were there during those, I guess, four hours or
17 so, did you -- was there any other type of drug that you
18 saw Brandi consume?

19 A No.

20 Q Okay. All right.

21 MR. WOOD: Let me just check my notes real quick,
22 but I think that's it.

23 That is it. That's all I have.

24 THE COURT: Okay. Cross?

25 MS. DUNTON: Thank you.

APPEAL TRANSCRIPT**CROSS-EXAMINATION**

1

2 BY MS. DUNTON:

3 Q Can you see me, Ms. Salmons?

4 A I cannot see you, I'm sorry, but I can hear you.

5 Q Okay. Ms. Salmons, you said that you knew Brandi
6 for about three to four years. Is that correct?

7 A Yes.

8 Q Okay. And how would you -- you characterized
9 your relationship as friends, not just co-workers. Is that
10 right?11 A I actually considered her one of my closer
12 friends because I opened up to her about stuff that was
13 personally affecting me on an emotional level. Because I
14 had lost my mom and I didn't really talk to anybody about
15 it, but I, like, opened up to her about it and she was
16 helping me, like, work through it and explaining, like,
17 what could, like, be when I would be feeling and, like,
18 talk me through it.

19 Q Okay.

20 A And stuff like intellectual conversation, of,
21 like, how I was feeling and then what, like, I could do to
22 help what I was feeling kind of thing.

23 Q Okay. And it sounds like you were close friends.

24 If you had to average, like, how many times a
25 week would you guys hang out outside of work when you were

APPEAL TRANSCRIPT

1 co-workers and then just in general? How often did you see
2 Brandi?

3 A At first, when we first met when she lived right
4 around the corner from me, it was frequent. But when she
5 moved, it became -- it, like, dwindled to, like, one or two
6 times a week.

7 Q Okay. And she had just moved a month or so
8 before her death. Isn't that about right?

9 A Yes.

10 Q So you saw her quite often.

11 And you guys smoked marijuana together. Right?

12 A Yes.

13 Q Is that something you did continuously off and on
14 over those four years?

15 A Yes.

16 Q Okay. That night, the last night you saw her
17 before she died, you guys were hanging out. And you said
18 you smoked marijuana. Correct?

19 A Yes.

20 Q Okay. Was she acting irrational, crazy or
21 violent towards you?

22 A No, she seemed tired and relaxed.

23 Q Okay. Is that how she usually seemed after
24 smoking marijuana?

25 A Yeah. Typically, like -- typically, like, when

APPEAL TRANSCRIPT

1 we hung out, like, somewhere else, it would be different.
2 Like, it would be, like, more energy, like, during the
3 daytime.

4 You know what I mean?

5 Q Right. Like doing fun things, things like that.
6 Right?

7 A Yeah.

8 Q Okay.

9 A But it was, like, more towards the end of the
10 evening, we were relaxing.

11 You know what I mean?

12 Q Gotcha.

13 And so was she tired, as well, when you left the
14 house? Was she getting ready to go to bed?

15 A Yes.

16 Q Okay. All right. And during those years, you
17 never did any other drugs with her. Is that right?

18 A No.

19 Q Okay. All right.

20 MS. DUNTON: I don't have any other questions,
21 Your Honor.

22 THE COURT: Any redirect?

23 MR. WOOD: No, Your Honor.

24 THE COURT: All right. May this witness be
25 excused?

APPEAL TRANSCRIPT

1 MR. WOOD: Yes, Your Honor.

2 THE COURT: All right.

3 MR. WOOD: Thank you, Ms. Salmons.

4 You can log off now.

5 (Witness excused.)

6 MR. WOOD: Judge, our next witness is -- may I
7 proceed?

8 THE COURT: You may.

9 MR. WOOD: Okay. It would be Keith Johansen.

10 THE CLERK: Can you raise your right hand?

11 Do you swear or affirm the testimony you're about
12 to give is the truth, the whole truth, and nothing but
13 the truth, so help you God?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: All right. You may inquire.

16 MR. WOOD: May I proceed, Your Honor?

17 THE COURT: You may.

18 MR. WOOD: Thank you.

19 **KEITH JOHN JOHANSEN**

20 was called as a witness and, having first been duly sworn,
21 testified as follows:

22 **DIRECT EXAMINATION**

23 BY MR. WOOD:

24 Q Would you state your full name for the record,
25 Mr. Johansen?

Court Reporters, Seventh Judicial Circuit

APPEAL TRANSCRIPT

1 A My name is Mr. Keith John Allen Johansen.

2 THE COURT: And, Mr. Johansen, make sure you
3 speak directly in the microphone. And speak a little
4 bit louder than you think you need to.

5 A I'm Keith John Allen Johansen.

6 MR. WOOD: And, Judge, if it's permissible from
7 the Court and if it would be more comfortable for you,
8 Mr. Johansen, may he remove his mask?

9 THE COURT: He may.

10 BY MR. WOOD:

11 Q I want to make sure everybody hears you correctly
12 and succinctly.

13 And how old are you, Mr. Johansen?

14 A I am 39.

15 Q Okay. And, Mr. Johansen, just for background
16 purposes and some other information, as well, you at one
17 time lived at 23 Felter Lane?

18 A Correct.

19 Q Okay. In Palm Coast?

20 A Yes, sir.

21 Q All right. And roughly how long did you live
22 there?

23 A I don't know. Like a month or two.

24 Q Okay. And did you -- were you buying the place?
25 Did you rent?

APPEAL TRANSCRIPT

1 A I rented.

2 Q Okay. And during the time that you were there,
3 who else lived with you?

4 A My wife Brandi and her son R.

5 Q Okay. And how old was R. during that period of
6 time?

7 A Six or seven.

8 Q Okay. And you saw some videos of yourself
9 calling him son. Was -- you're not his biological father.
10 Correct?

11 A No, sir.

12 Q Okay. Did you often refer to him as son?

13 A He referred to me as Daddy because he wanted to.
14 So, yeah, I would refer to him as my son. Correct.

15 Q Okay. And when did you and Brandi get married?

16 A About a year or two before that.

17 Q Okay. Before you moved to the Felter Lane place?

18 A Correct.

19 Q Okay. Where did you get married at?

20 A Actually it was just one between my family at --
21 I think it was at Princess Place.

22 Q At what?

23 A At Princess Place on Hominy Branch.

24 Q Okay. And did you live together with Brandi
25 before getting married?

APPEAL TRANSCRIPT

1 A Yes.

2 Q All right. For roughly how long a period of
3 time?

4 A I'm not quite sure.

5 Q Okay. All right. Did you live at another
6 location with Brandi before moving to the Felter Lane
7 address?

8 A Yes, sir.

9 Q Do you recall what that address was?

10 A 1 Crystal Way.

11 Q Okay. Was that a place you were renting, as
12 well?

13 A Correct.

14 Q Okay. So during the time that you were living at
15 Feltner -- Felter, were either of you working?

16 A No.

17 Q All right. And so how were you able to get by
18 financially?

19 A I had a settlement.

20 Q Okay. And what was -- briefly what was the basis
21 for the settlement?

22 A I hurt my back. I was a roofer.

23 Q All right. And so this was -- this was, what, an
24 insurance settlement or something?

25 A Yeah, more -- yeah, yeah, more or less.

APPEAL TRANSCRIPT

1 Q Okay. All right. And -- okay. So when you were
2 at the Felter Avenue -- or Lane place, let me ask you, did
3 you have guns located at that address?

4 A Yes, sir.

5 Q Okay. And do you recall what type of guns you
6 had?

7 A Okay. I had a 9mm Beretta, a 9mm Ruger, a 9mm
8 Canik, a Winchester 1800 marine shotgun and a
9 Springfield -- I think it's the XD .45 caliber, and as well
10 as a Springfield AR.

11 Q Okay. And did you have any safes in the house?

12 A Yes, sir.

13 Q And where were those safes located?

14 A Right behind the front door.

15 Q Okay. And how many safes did you have?

16 A Three.

17 Q Okay. And what -- what was the purpose of having
18 three safes as opposed to one?

19 A Long guns and ammunition, and then smaller
20 weapons.

21 Q Okay. So for the larger safe, what did you keep
22 in that?

23 A Um, mostly the long guns and some of the ammo. I
24 had an ammo can that had to go in there.

25 Q Okay. And then the -- what weapons or ammunition

APPEAL TRANSCRIPT

1 or both did you keep in the other two safes?

2 A Um, so then it would get smaller. And I'd
3 keep -- start with the 9mm, and the other black one. Um,
4 and then I kept most of the handguns in the small one that
5 was near the ground and it was gray colored.

6 Q Okay. And on -- in August, particularly August
7 the 7th of 2018, where did you -- where were you keeping
8 the Canik 9mm?

9 A I'm sorry. You said August.

10 Q April the 7th.

11 A Oh, on April, okay.

12 Where was I keeping the Canik? It was in a box
13 right by the bed on this side. It was in a box and there
14 was a laptop in it, I believe.

15 Q Okay. And where -- where was the box at?

16 A The box was at the foot -- foot of our bed.
17 Because we just moved, so we had a lot of boxes, you know,
18 and stuff.

19 Q Okay. And -- all right. And was it -- and we'll
20 get into the actual shooting incident here shortly. But
21 was it -- the Canik in a box or was it outside the box?

22 A It was -- it was by itself in the box. It wasn't
23 in a box or a case or nothing like that.

24 Q Okay. Was there a holster to that?

25 A Yes, there was.

APPEAL TRANSCRIPT

1 Q And where did you keep the holster?

2 A Usually right under my bed, because I didn't
3 really use it.

4 Q Okay. All right. And -- okay. And then did --
5 where did you keep the Beretta?

6 A The Beretta, usually on the nightstand. But
7 usually I had it in my car. Um, but there was an incident
8 with one of my neighbors going around my house and stuff,
9 so I moved it from the car into the bedroom on the
10 nightstand on my side, which would have been the right
11 side.

12 Q Okay. And -- well, just so -- we got into this a
13 little bit yesterday.

14 So when you describe the right side, if you're
15 standing at the foot of the bed and looking at the bed,
16 your side of the bed would be the right?

17 A Correct.

18 Q Okay. And just as another point of reference, is
19 that the same side of the bed that Brandi was found on?

20 A Correct, sir.

21 Q Okay. All right. And the -- the Beretta, was
22 it -- you say it was on the nightstand. Was that also on
23 the right side of the bed?

24 A Yes.

25 Q Okay. And was that kept loose or was that kept

APPEAL TRANSCRIPT

1 in a box?

2 A Loose.

3 Q Okay. All right. And there was -- and then was
4 there another gun that was inside the bedroom at that time?

5 A Yes, sir, it was the Springfield XD, um, and it
6 was in a box to the right of the nightstand.

7 Q Okay. And this, again, is on April the 7th?

8 A Correct.

9 Q All right. Now, did you -- did Brandi ever have
10 her own gun?

11 A Yes, she did, but she didn't like it that much --
12 it was the Ruger -- because it hurt her hand when she fired
13 it. So basically I took over possession of that and she
14 pretty much would use the Beretta most.

15 Q Okay. And so when -- where was the Ruger kept?

16 A Um, that was usually kept, um, inside the safe.

17 Q Okay. All right. And was there ever an occasion
18 where you and Brandi would practice firing -- excuse me --
19 practice firing the guns?

20 A Yes, sir.

21 Q And where would you go for that?

22 A Usually Flagler Estates.

23 Q Any -- was there any particular place that you
24 would go to?

25 A By Kirchherr. You go all the way down and

APPEAL TRANSCRIPT

1 there's a makeshift -- like a makeshift place there.

2 Q When you would go there to practice, I don't know
3 if it was -- was it target practice or was it just
4 practicing firing the guns?

5 A A little bit of both.

6 Q Okay. When you went to practice with the guns,
7 did -- was there specific guns that you would practice with
8 or --

9 A All of them.

10 Q Okay. And so roughly how many times -- well, let
11 me ask it a different way.

12 For how long a period of time before April the
13 7th, had Brandi had practice firing a gun?

14 A About three, maybe three-and-a-half years. Me
15 and her would do it off and on.

16 Q Okay. And -- okay. So did she know how to
17 handle the gun properly?

18 A Yes, sir.

19 Q Okay. And did she -- you may have just mentioned
20 this. Did she previously have experience firing the
21 Beretta?

22 A Yes.

23 Q Okay. Now, did you have -- at that time, on
24 April the 7th, did you have any what some refer to as less
25 lethal bullets or rubber bullets?

APPEAL TRANSCRIPT

1 A Yes, sir.

2 Q Okay. And what was the reason for having rubber
3 bullets?

4 A Well, there was two reasons. One was so no one
5 would get hurt. You know what I mean? Because there are
6 times when stuff is misfired. There are situations like
7 that. Brandi has misfired twice. That's one of the
8 reasons why I had got that. One went through my couch and
9 one went through the roof in my last place. And the other
10 reason is I didn't want to hurt nobody. I wanted to deter
11 them. That was another reason. Usually I had three in a
12 mag.

13 Q Okay. In the Canik, did you ever keep or load
14 rubber bullets in it?

15 A Yes, sir.

16 Q Okay. And how about the Beretta? Did you -- on
17 April the 7th, were there -- to your knowledge, were there
18 any rubber bullets in that gun?

19 A No, sir. I would rarely keep rubber bullets in
20 that because it was a vehicle weapon.

21 Q Okay. And how about your other firearms?

22 A Every one of them.

23 Q Okay. And in the safes, did you store any rubber
24 bullets?

25 A Yes.

APPEAL TRANSCRIPT

1 Q Okay. And were they of the caliber -- these
2 rubber bullets -- for the other guns that you described?

3 A Correct.

4 Q Okay. Now, the rubber bullets that you had, were
5 they in any particular color?

6 A Some were green, some were red.

7 Q And how did you get these rubber bullets?

8 A Online.

9 Q Okay.

10 A I looked them up, less lethal ammunition and
11 stuff like that.

12 Q Okay. So you would order it online basically?

13 A Correct.

14 Q All right. And they would be delivered to your
15 house?

16 A Yeah. Usually by, like, I -- I think it was UPS
17 or FedEx, one of those two, yeah.

18 Q Okay. All right. And over how long -- how long
19 have you had rubber bullets?

20 A I'd say about two years.

21 Q And did there ever come a time when you, like,
22 ordered more and replaced the stock that you had?

23 A Yes, sir.

24 Q Okay. All right. When you went target
25 practicing or practicing with the guns, did you ever use

APPEAL TRANSCRIPT

1 rubber bullets during those occasions?

2 A No, sir. Me and Brandi would take them out and
3 then use, you know, the -- probably target ammo or, you
4 know, or whole ball ammo.

5 Q Okay. Was there any -- the red or the green,
6 were they designed, to your knowledge, for any -- if it was
7 a red bullet, was it designed for -- a rubber bullet, was
8 it designed for any particular use as opposed to a green
9 bullet?

10 A The only difference with that one is it had an
11 eye irritant in it.

12 Q Which one?

13 A The red one.

14 Q Okay. Did you keep -- well, let me strike that.

15 So on -- on April the 7th, do you know if the --
16 referring to the Beretta, do you know if that was on the
17 nightstand?

18 A That's the last place I seen it. Correct.

19 Q Okay. All right. Now, let me -- excuse me, one
20 second. Sorry.

21 Let me go back to the days leading up to April
22 the 7th. During that period of time prior to April the
23 7th, had Brandi been consuming any methamphetamine?

24 A Yes, sir.

25 Q All right. And can you tell me, again, going

APPEAL TRANSCRIPT

1 backwards from April the 7th, when would that time frame
2 have basically begun?

3 A Um, probably she consumed it ten to 12 days in a
4 row.

5 Q Okay. Okay. So was -- it was -- was it every
6 day, as far as what you saw?

7 A Correct.

8 Q Okay.

9 A Well, all but the last two. Um, I stopped
10 smoking because I didn't feel well and she did the last
11 gram or so, so...

12 Q Okay. So for the benefit of educating the jury a
13 little bit, when you started this ten- or 12-day period --
14 well, over that ten- or 12-day period, did you also consume
15 meth?

16 A Correct.

17 Q Okay. Were you smoking meth when -- or using
18 meth when she was using meth, too?

19 A Um, not all the time, no.

20 Q But there were some times when you did?

21 A Correct.

22 Q Okay. And what was the way in which either of
23 you consumed the -- the meth? How was it consumed?

24 A We smoked it.

25 Q Okay. And from -- what type of device did you

APPEAL TRANSCRIPT

1 smoke it from?

2 A Um, glass pipes.

3 Q All right. And a glass pipe, more than one glass
4 pipe.

5 A We had a few of them.

6 Q Okay. And on April the 7th, by the time the
7 police -- well, on April 7th, where were those glass pipes
8 at?

9 A Um, I'm not sure.

10 Q Okay.

11 A Probably nightstand.

12 Q In the bedroom?

13 A Yeah.

14 Q Would that have been on top or inside the
15 nightstand?

16 A That, I don't remember.

17 Q Okay. And would -- is that where you generally
18 would keep your smoking pipes?

19 A Correct.

20 Q Okay. Now, during that same ten- or 12-day
21 period, did you and Brandi also consume marijuana?

22 A Yes, sir.

23 Q All right. And how did you consume the
24 marijuana?

25 A Smoking it.

APPEAL TRANSCRIPT

1 Q Okay. And was it from a device or rolling it or
2 how was it --

3 A All the above.

4 Q All the above. Okay. All right.

5 Now, again, focusing on the meth, when the ten-
6 or 12-day period started, do you remember how much
7 methamphetamine you had at the beginning of that phase?

8 A We got about an eight-ball, which is 3.5 grams.

9 Q Okay. And when -- focusing on Brandi, when you
10 observed her smoking -- smoking the meth, and as you
11 already said from the glass pipe, could you tell how much
12 she was consuming at each time she smoked it?

13 A That is very hard to determine because it turns
14 to liquid after you put a torch to it, so it's very hard to
15 determine the amount each time that you intake. So I am
16 not sure.

17 Q Okay. From your observations, in a given day,
18 how many times during that ten- or 12-day period did you
19 see Ms. Celenza consuming the meth?

20 A Well, we would both -- when we both did it, it
21 would be all day.

22 Q Okay. Like how many times a day?

23 A I mean, we'd take little one-hour breaks here and
24 there, but, you know, it was quite frequent.

25 Q Okay. So more than five, less than five?

APPEAL TRANSCRIPT

1 A More than five.

2 Q Less than ten?

3 A More than ten.

4 Q More than ten. Okay. And that would be, on
5 average, more than ten times?

6 A Right.

7 Q Okay. Again, still -- was it -- let me just ask
8 it this way. Every time the meth was consumed, was it by
9 smoking?

10 A Correct.

11 Q Okay. Okay. And then do you know if it would
12 have been, on average, between ten and 15, 15 and 20? Can
13 you give me any additional count?

14 A That's hard to determine since we stay up 24
15 hours a day. So, you know, 15, sometimes 20. I mean it
16 depended on the day.

17 Q Okay. During that ten- to 12-day period, did
18 Brandi sleep at all?

19 A No, sir.

20 Q Okay. She was awake the entire time?

21 A To my knowledge, yes, sir.

22 Q Okay. Were you also awake during that period of
23 time?

24 A I had fell asleep, um, some of wee morning hours
25 on the 6th, and then later on the 6th that night.

APPEAL TRANSCRIPT

1 Q Okay. But the days prior to that for, like,
2 whatever, ten days or nine days, you were pretty much up,
3 too?

4 A Well, the day before, too. Um, so it would have
5 been -- no -- no, it's the 6th, even though we were -- you
6 know, like in the wee -- like early morning.

7 Q Okay. Now, on the marijuana side of your drug
8 use, were you, on average, smoking more marijuana than you
9 were meth?

10 A Um, no. Because of how strong the meth effects
11 are, you wouldn't need to smoke as much, so I smoked less.

12 Q Okay. Okay. And the last time you saw
13 Ms. Celenza consuming marijuana would have been when?

14 A Um, probably before Joanna came over.

15 Q Okay. And then --

16 A So between the time we went to the neighbor --
17 between that time I seen her smoke a couple times and then
18 not when Joanna was there.

19 Q Okay. Did you -- okay. So how about the -- did
20 you see Brandi consume -- when was the last time you saw
21 Brandi consume meth?

22 A Um, see, the last time I physically seen her?

23 Q Uh-huh.

24 A Um, was the night of the 6th.

25 Q Okay. Was that before or after Joanna left or

APPEAL TRANSCRIPT

1 got there?

2 A I had woke up to go to the bathroom and, you
3 know, and it smelled like it. And she had the pipe, so,
4 you know...

5 Q Okay. Would this have been after Ms. Salmons
6 left?

7 A Correct.

8 Q All right. And -- so let's get into what
9 happened on the morning of the 7th. Tell me -- start us
10 off with you waking up and then kind of go from there.

11 A Okay, sir. Well, I woke up and I went to the
12 living room to retrieve my pants because I was thinking
13 about taking a shower. Then I pretty much was in the
14 bathroom. I took off my pants, getting ready to step into
15 the shower, and I heard her say, Boo, which is the nickname
16 that she uses for me. So I go out there and she had a
17 weapon in her hand. She said that I was not her husband
18 and I was plastic. And I had walked over to her, trying to
19 disarm her, and -- well, I grabbed my gun. The one that
20 was in the box. Okay?

21 Q The Canik?

22 A Yes, correct. Then I started walking towards her
23 trying to, you know, say, Hey, man, you know, and trying to
24 bark orders and for her to drop it and to disarm her. And
25 then she would not do so, so I got closer. And I tried to

APPEAL TRANSCRIPT

1 grab it from her and she lifted it up and the round went
2 out of my gun on her. Um, then she cocked and swung, as
3 I'm retreating, and another round I pulled off because she
4 was pointing a loaded weapon at me.

5 Q So how many times did you fire the Canik?

6 A Twice, sir.

7 Q Twice. Okay. And where -- where were you at and
8 where was she at when the first shot went off?

9 A We were almost face-to-face, because I was trying
10 to reach down and get it.

11 Q So using the bed as a reference, where were you
12 at in reference to the -- where were the two of you at in
13 reference to the bed?

14 A Well, what I would say, there's a space. There's
15 a gap between our bed and the wall, and there's a dresser
16 right over here. So we were -- man, I wish I had a diagram
17 and I would show you. But -- so here's the nightstand.
18 She -- she was right here and I was right here
19 (indicating).

20 Q Okay. So in terms of, like, that microphone
21 that's in front of you now --

22 A Okay.

23 Q -- closer or further away from where the mic is?

24 A Probably -- probably a little closer. If not,
25 you know, about right here, maybe. You know, it was

APPEAL TRANSCRIPT

1 relatively close.

2 Q All right. And I don't know if I asked you this
3 earlier. Did you know if there was, like, rubber bullets
4 in the Canik at that time?

5 A Yes, sir.

6 Q Okay. So let me kind of break that down a little
7 bit more for the jury.

8 So you -- when you got up that morning, how was
9 Brandi acting at that time?

10 A Um, a little jittery, you know, at times. Um, I
11 didn't really see her much. Um, the only time I really
12 seen her is when I went out to get my pants.

13 Q Okay. And where did you go out to?

14 A To the living room.

15 Q Okay. Is that the time that we saw on the video
16 earlier?

17 A Correct, sir.

18 Q And any particular reason why you grabbed your
19 pants?

20 A Why I grabbed my pants?

21 Q Yes.

22 A Because I was going to take a shower.

23 Q Okay. In other words, those were the pants you
24 were intending to wear?

25 A Yeah, and they were relatively clean.

APPEAL TRANSCRIPT

1 Q Okay. And so then you go -- after you grab your
2 pants or your jeans --

3 A Right.

4 Q -- where do you go from there?

5 A Straight into the shower area.

6 Q Okay. Now, did you actually get wet? Did you
7 enter into the shower?

8 A I turned on the water and I stepped in, and
9 that's when I heard her say, Boo. And then I went to go
10 and see what she needed.

11 Q Okay. And then -- I mean, she says, Boo. What
12 does that mean to you?

13 A It's a pet name that we have, you know.

14 Q Okay. I mean, did that, you know, raise any
15 issues for you? Did you have any concerns?

16 A A little bit. How she said it was like, Boo.
17 You know, like something was urgent.

18 Q Okay. And then when you come out of the -- and
19 by the way, was it -- the jury has seen pictures and
20 diagrams, et cetera. The bathroom that you refer to where
21 you were going to take a shower, is that the bathroom
22 that's right off the master bedroom?

23 A Correct, sir.

24 Q Okay. So you come out of the master bedroom.
25 Where do you see Brandi at?

APPEAL TRANSCRIPT

1 A She is right by my side of the bed by the
2 nightstand, right in front of it.

3 Q Okay. Same side as -- you sleep on the right
4 side?

5 A Um, it depends. Sometimes I sleep on the left,
6 depending on my back issues.

7 Q But is she on the right-hand side of the bed?

8 A Correct.

9 Q Okay. And in terms of her positioning and,
10 again, using the bed as a reference, when you see her with
11 the gun, is she closer to the head of the bed, the foot of
12 the bed, in between? Where is she at?

13 A Um, she's more closer to my dresser there.

14 Q Okay.

15 A Um, but not as -- quite as far as that, so I'd
16 say mid.

17 Q Okay. And so you're -- was it then at that point
18 that you get your Canik?

19 A Correct.

20 Q Okay. And then you go in what direction?

21 A Towards her.

22 Q Okay. Do you -- does that mean that you, then,
23 go to the right side of the bed?

24 A Um, I walk from the box this way, and then you
25 have to turn left. From -- from my perspective, it was

APPEAL TRANSCRIPT

1 left to go to her.

2 Q Okay. And then were you saying anything to her
3 as you're approaching her?

4 A Yes, I was barking her orders. Like stop, you
5 know. Put it down, you know. Stuff of that nature.

6 Q Did she do that?

7 A No. She was looking right past me, it seemed.

8 Q Could you tell what type of gun that she had on
9 her?

10 A Yes. I knew that it was -- I knew it was the
11 Beretta.

12 Q Okay. And did you know whether or not there were
13 any, as you had said before, were there any -- to your
14 knowledge, was there any rubber bullets in the Beretta at
15 that time?

16 A No, we never kept them in the Beretta.

17 Q Okay. So when you -- do you remember what the
18 last thing you said to her was?

19 A Um, stop -- stop and put the gun down.

20 Q Okay. And when she -- you mentioned a -- what
21 you described as a swinging motion with her arm. Is
22 that --

23 A Correct. I heard a cocking noise and she swung
24 like this. And when she did that, I was going away from
25 her and that's when it -- it fired.

APPEAL TRANSCRIPT

1 Q Okay. And do you know if she -- recall her
2 saying anything after the first shot?

3 A She didn't say one word.

4 Q And why did you fire the gun at her?

5 A Um, to begin with?

6 Q Yes.

7 A Because she hit me with the gun on the side, so I
8 was trying to go off of her. And I kind of went like this
9 and it got her.

10 Q Did you have any concerns for your life or your
11 safety?

12 A Sure, 100 percent.

13 Q Okay. Is that why you fired the gun to begin
14 with?

15 A Um, yeah, I would say so. Yeah.

16 Q Okay. And did -- and then how far apart was the
17 second shot, in terms of time?

18 A Just mere seconds. I mean, it was quick.

19 Q Like pow-pow?

20 A Pop. Pop.

21 Q Okay.

22 A So I had a little bit of time to run away a
23 little bit. Probably got within 6 or 7 feet from her.

24 Q Okay. Now -- and then where did you go after you
25 fired the second shot?

APPEAL TRANSCRIPT

1 A Where did I go?

2 Q Yes. Where physically -- you're still in the
3 bedroom --

4 A Right.

5 Q -- at the time of the second shot there. When --
6 what did you do next? Let me ask it that way.

7 A What did I do next? I was just kind of stunned,
8 you know. And I went -- because I seen her fall on the
9 second shot. And I looked over and called -- called her
10 name. She was nonresponsive. Um, then I went and called
11 911.

12 Q Okay. So where -- where Brandi was seen in the
13 videos and the photographs from the scene, is -- when you
14 were calling out to her, is that where she ended up laying
15 or falling?

16 A Correct.

17 Q Okay. And the two guns, the Canik and the
18 Beretta, did you -- did you see how they got on the floor
19 or anything?

20 A Um, yes. I had moved -- after I called her name,
21 I had moved one of them to the side with my right foot
22 to -- to -- to one side and sat down -- you know, and sat
23 down the other gun.

24 Q Okay.

25 A And then I went to call 911. It was just a

APPEAL TRANSCRIPT

1 matter of seconds that took.

2 Q And so which -- of the two guns, which did you
3 move first?

4 A Which did I move first?

5 Q Yes.

6 A I moved the Beretta away from her, then I set
7 down my gun.

8 Q Your Canik?

9 A Correct.

10 Q Okay. And then you called 911. So where was
11 your -- from -- I don't know if you have a house phone or
12 not, but where did you -- where did you -- did you call on
13 a cell phone?

14 A Yes, sir.

15 Q Okay. And -- now, the jury saw a video with you
16 calling 911 from inside the house.

17 A Right.

18 Q Do you recall at some point during that time
19 frame holding something, carrying something?

20 A Like what are you referencing?

21 Q While you were on the phone, did you have any
22 possession of any paraphernalia or drugs?

23 A Yes. Yes, sir.

24 Q What was it that you had?

25 A I grabbed a thing of marijuana just out of habit.

APPEAL TRANSCRIPT

1 Q Okay. And where did you grab the marijuana from?

2 A In the living room.

3 Q Okay. Where was it at in the living room?

4 A Um, I would like to say on the table or the
5 floor.

6 Q Okay. Was it loose? Was it in a bag? Was it
7 in --

8 A It was in a plastic container.

9 Q Okay. And were there any, like, pipes or
10 paraphernalia or anything like that that you grabbed at the
11 same time?

12 A Not in that -- no.

13 Q All right. Now, we also saw, the jury saw,
14 videos where -- you know, when Rescue and the police
15 arrived. And you talking to them, you know, with Brandi
16 still there.

17 A Right.

18 Q Did -- did you ever tell the first responders,
19 we'll call them, about what had actually happened?

20 A No, I never told them what had actually happened.

21 Q And was there a reason for that?

22 A Yes. I didn't want to talk about the meth use
23 and/or our -- our problems, you know, and stuff like that,
24 really.

25 They had asked me some other questions, you know,

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1 like, you know, Were you guys made at each other, this and
2 that, later on. Um, and I was unrepresented at the time,
3 um, so I really didn't want to say anything. I was scared.
4 I was confused, you know.

5 Q Okay. And so then later on, you end up going
6 to -- to the Flagler County Sheriff's Office?

7 A Right.

8 Q And the jury saw some video and audio of
9 conversations you had with Detective Hristakopoulos --

10 A Right.

11 Q -- and Detective Quintieri or Thomas.

12 Did you ever tell them about the -- what actually
13 happened with regard to the self-defense?

14 A No, sir.

15 Q Okay. And was there -- the same reason or a
16 different reason for not talking?

17 A Pretty much the same. They were drilling me.
18 I -- I wasn't under oath. Um, you know -- you know, and I
19 really didn't want to tell them, you know, and tarnish my
20 wife's name. That's -- that's a lot of the reason. Um,
21 and I was unrepresented, you know.

22 Q Okay. So did there come -- during that period of
23 time when you are there at the station, at the Flagler
24 County Sheriff's Office station, when you were told that
25 you could not leave?

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1 A Yes, there was.

2 Q Okay. And how long, roughly, were you there at
3 the sheriff's office on that occasion?

4 A I was there a long time, 12, 13 hours, a very
5 long time.

6 Q Eventually you -- you did leave, though.
7 Correct?

8 A Yes. Eventually they let me go at, like, one or
9 two in the morning.

10 Q Okay. And there was part of that time, as you
11 saw in the videos this morning, where there's discussions
12 with your parents?

13 A Correct.

14 Q And for the record, that was your parents in the
15 video?

16 A Yes, sir.

17 Q Okay. And -- and, again, the same question.
18 You -- you didn't tell them about the -- about the
19 self-defense, about shooting in self-defense Ms. Celenza.
20 What was -- or about the meth use. Was there any reason
21 for that?

22 A Yes. I didn't want them to know about the meth
23 use. Um, that was, you know, something that we kept under
24 wraps, you know. And I didn't want to really tarnish her
25 name. She just had died and I didn't want it to, you know,

APPEAL TRANSCRIPT

1 affect the way people seen her. You know what I'm saying?
2 And I was very emotional. And I knew that they were
3 recording and I didn't have representation.

4 Q Okay. You knew they were recording in the room
5 that you were in?

6 A Right.

7 Q Okay. Okay. Now, you had some -- during -- in
8 April of 2018, you had some camera systems in your house?

9 A Correct.

10 Q Okay. On Felter Lane?

11 A Yes, sir.

12 Q Okay. And did you install them, like -- I know
13 you had only been there, I think you said, for a couple
14 months. Did you install them right away or...

15 A Um, probably a couple weeks after we moved in --

16 Q Uh-huh.

17 A -- um, I had got the cameras. Because this weird
18 neighbor was going through my yard and stuff like that, so
19 I thought that I needed them to protect the outside of my
20 home.

21 Q Okay. And -- so did you set up cameras inside or
22 outside your house?

23 A Um, for the most part, they were outside. Um,
24 the ones that were inside were just there because either
25 the battery wouldn't charge or they just got charged.

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1 Q Okay. So with the -- the type of system that you
2 had, was it -- was it wired where it had continuous
3 electricity to it?

4 A No. No, it was wireless.

5 Q Wireless. So was it, like, rechargeable
6 batteries or how did --

7 A Correct.

8 Q Okay. And so in order for them to work, would
9 you occasionally have to recharge the battery?

10 A Yeah. It was a pain, because you would have to
11 take them down from where they are and then recharge them
12 inside in an outlet. We used an Android-looking charger.

13 Q Okay. Now, at some point did you -- well, before
14 I go there.

15 Was any part of the equipment that you did have
16 for the house Arlo equipment?

17 A Yes. I had two of them. I had two of the base
18 stations, I guess you would call it, or a router or
19 whatever you would call them.

20 Um, one of them was from my old house and it
21 wouldn't hold all ten cameras, so I had to upgrade to the
22 other one so -- so it would hold them all.

23 Q Okay. And so were the cameras, like, Netgear and
24 then the base was Arlo?

25 A Um, no. The -- the cameras were Arlo and the

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1 base was Netgear.

2 Q I gotcha. So -- and was it your understanding
3 that -- or what was your understanding about whether the
4 cameras would record activity either in or out of the
5 house?

6 A Well, I really didn't, like, understand them, you
7 know. I really was new to it. You know what I'm saying?
8 So they said that they are -- they're motion activated, um,
9 but they didn't say how long or continuous or anything like
10 that.

11 Q Okay. And did there come a time when you moved
12 or placed a camera inside the bedroom?

13 A Yes.

14 Q All right. And what was the reason for that?

15 A Because Brandi wanted to record some sexual
16 activity between me and her.

17 Q Okay. And going backwards from April the 7th,
18 how long before that day was that camera put into the
19 bedroom?

20 A Um, probably on the 5th.

21 Q Okay. So the same day of the recordings that we
22 saw?

23 A I believe so. I'm not positive, though, but I
24 believe so.

25 Q Okay. Now, at the -- the -- the last clip from

APPEAL TRANSCRIPT

1 the -- purportedly from the 5th, shows that the camera
2 appeared to have been moved. Where was it moved to?

3 A I moved it back into where we had it at first,
4 and that is right in my computer -- by my computer, which
5 is in the front room by the couch and coffee table, right
6 adjacent to that.

7 Q Okay. So we saw from the 7th, some recordings.
8 Was that where you put the camera at the end of the --

9 A No, sir.

10 Q Okay. So it was at some other location. Did it,
11 at some point in time, get moved to the -- to the area that
12 we see on the 7th?

13 A That same camera?

14 Q Yes.

15 A No, sir.

16 Q Okay. All right. And where did the camera that
17 was on the dining room table, where did that come from, or
18 had that already been there?

19 A Um, what it was is I had a bunch of them that we
20 just got -- you know, I had just remaintenanced them and
21 got them all, like, really them charged and stuff. And I
22 put them in a bowl that was on the dining room table. And
23 I put one on the outside of that and that must have
24 recorded everything.

25 Q Okay. Okay. So going to the -- to the 5th, you

APPEAL TRANSCRIPT

1 saw -- the jury saw videos from that -- those discussions
2 you had with Brandi.

3 A Right.

4 Q What were you -- what were you mad about at that
5 time?

6 A Um, some infidelity, you know. And we were -- we
7 were on meth, too, so it kind of raised the -- the
8 aggravation, I would say.

9 Q Okay. When you said the things you did, did you
10 have any real intentions of harming or killing Brandi?

11 A Absolutely not.

12 Q Okay. Now, when -- when the last clip that we
13 saw from the 5th occurred, did you go back into the bedroom
14 after that camera was moved or did you sleep somewhere
15 else, or where did you go?

16 A I did go back in the bedroom for a minute to grab
17 my keys because I was going to leave. But then I just went
18 in the living room and that was that.

19 Q Crashed on the couch.

20 A Correct.

21 Q Okay. And was that through the remainder of the
22 night?

23 A I believe so, yes.

24 Q Okay. Now, we heard testimony from Ms. Eagleson,
25 Dawn Eagleson. Did you know her as a neighbor?

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1 A I had just met her. And I mean just, that day.

2 Q Okay. And you heard her testimony, that Brandi
3 introduced you to her husband.

4 A Yeah.

5 Q Is that basically what happened?

6 A Yeah.

7 Q Okay. And was that over at her place, the
8 Eagleson's place.

9 A Correct.

10 Q Okay. And did you hang out for some period of
11 time there?

12 A Yeah. I'd say 20 minutes to an hour, somewhere
13 in between there.

14 Q Okay. And there was some mention about marijuana
15 being consumed. Did that happen?

16 A Yes, it did, sir.

17 Q And between who and who?

18 A Between me and her husband and Brandi. And I
19 don't know if Dawn did or not. I'm not sure.

20 Q Okay. Were you and Brandi getting along during
21 that period of time?

22 A Yeah.

23 Q Okay.

24 A She was even sit -- sitting on my lap while we
25 were there. And we had mentioned renewing our vows, as

APPEAL TRANSCRIPT

1 well.

2 Q Okay. And was that during the daylight or dark?

3 A It was during the day.

4 Q Okay. Now -- and then the jury heard testimony
5 from Joanna Salmons, did you know her before the 6th of
6 April?

7 A Oh, yeah.

8 Q All right. And how did you know her?

9 A Well, originally it was from Brandi. But I've
10 known her for years ever since Brandi moved in with me,
11 maybe even before that.

12 Q Okay. Had she, prior to April the 6th of 2018,
13 come over and hung out at the house at Felter?

14 A Um, yes, a few times. Yes.

15 Q Okay. And the address before, did she come and
16 hang over there?

17 A All the time.

18 Q Okay. And so Ms. Salmons was there for, I think
19 she said, like, about four hours. Do you recall that?

20 A Yeah, I'd say roughly that. Maybe a little more.

21 Q Okay. And just hanging out? What did you guys
22 do?

23 A Yeah, we hung out. They were in the back on them
24 hammocks for a while. I rolled them their own little, you
25 know, it looked like a joint, and they were back there

APPEAL TRANSCRIPT

1 hanging out. And then they were inside. We watched a
2 movie, we smoked, you know, stuff of that nature.

3 Q Okay. And did you -- when they came inside, did
4 you smoke with them?

5 A Um, yeah, but not as much as they did.

6 Q Okay. And do you -- Ms. Salmons mentioned about
7 you, I guess, crashing on the couch. Do you remember that
8 happening at all?

9 A Yes. Yes, sir.

10 Q Okay. So did you ever see Ms. Salmons leave,
11 then, before your crashing?

12 A No, sir.

13 Q Okay. So you're there on the couch, you're
14 crashing, Ms. Salmons had been over there for a while.
15 You -- well, during the time before you crashed, were you
16 and Brandi getting along good?

17 A Yeah.

18 Q Okay. No threats, no arguments, no issues
19 between you?

20 A No, sir, we had let that go that day.

21 Q And then so do you -- after crashing on the
22 couch, do you remember at some point, like, waking up or
23 anything like that?

24 A Yeah, I woke up to -- to go take a pee.

25 Q Okay. And did you then go back into the -- did

APPEAL TRANSCRIPT

1 you go in the bedroom after you woke up, or do you
2 remember?

3 A I can't recall where, but I went back to sleep.

4 Q Okay. All right. Now, you mentioned -- the jury
5 heard some jail calls about mentioning R.

6 Do you remember that conversation at all?

7 A Not really.

8 Q Okay. Did you ever intend for R. to be -- well,
9 did you ever bring up the subject any further after that,
10 anything like that?

11 A No.

12 Q Okay. With your mom, I mean?

13 A With my mom?

14 Q Yes.

15 A I'm not -- I can't recall.

16 Q Okay. The jury heard a jail call that -- with
17 your father --

18 A Right.

19 Q -- from the -- April the 28th. Would that have
20 been the day after you got arrested?

21 A Correct.

22 Q Okay. And they heard -- the jury heard, you say
23 something to the effect that, To the best of my
24 recollection, I didn't do this.

25 What did you mean by that?

APPEAL TRANSCRIPT

1 A I meant I didn't murder nobody. That's what they
2 were charging me with. And I didn't murder anybody.

3 Q Okay.

4 A That's what I mean when I say I didn't do it, I'm
5 referring to the charge that they're charging me with.

6 Q Okay. Okay. So you're not -- were you
7 insinuating you had some sort of memory lapse or some
8 problems remembering or forgetting what happened? You're
9 denying what happened?

10 A Well, they had been asking me pretty excessive
11 and I just didn't want to answer no more questions.

12 Q Okay. All right.

13 MR. WOOD: Just one second, Your Honor.

14 (Pause in proceedings.)

15 BY MR. WOOD:

16 Q I do want to kind of go back a little bit to --
17 to be a little personal.

18 Before, you know, like the 5th of April, were
19 there times when you and Brandi would do things online or
20 exhibit online?

21 A Um, sometimes.

22 Q Okay. And without getting specific, would these
23 be sexual things?

24 A Correct.

25 Q Okay. And for roughly how long a period of time

APPEAL TRANSCRIPT

1 was that?

2 A I don't know, a couple months, maybe.

3 Q Okay. Was that -- was that while you were there
4 at Felter?

5 A Huh?

6 Q Was that while you were there at Felter, living
7 at Felter?

8 A What do you mean?

9 Q Living at the house on 23 Felter Lane, is that
10 where the online activity was happening?

11 A Yes, sir.

12 Q Okay. And would that be through the use of your,
13 like, computer or...

14 A Some on the computer, um, some on the phone.

15 Q Okay. All right. Now, Mr. Johansen, you
16 certainly have testified here today about what happened.
17 Do you admit that you didn't tell the police or the EMT or
18 your parents the truth when you told them about seeing
19 Brandi out in...

20 A Yes, sir.

21 Q Okay. And was that for the reasons you've
22 previously stated?

23 A Yes, 100 percent.

24 Q Okay. Is the testimony you've given here today
25 that you -- about the sequence of events in the bedroom and

APPEAL TRANSCRIPT

1 your use of the Canik for self-defense, is that what really
2 happened?

3 A Yes, that is 100 percent accurate.

4 Q Okay. All right.

5 MR. WOOD: I don't have any other questions at
6 this time.

7 I tender the witness.

8 THE WITNESS: Thank you.

9 THE COURT: Cross?

10 MS. DUNTON: Your Honor, do you want me to start
11 or do you want to take a break? I'm just looking at
12 the time.

13 THE COURT: We can take our afternoon break at
14 this time. It's 3:10, it's closing in on that hour.

15 Ladies and gentlemen of the jury, we're going to
16 place you in recess. Once again, please don't discuss
17 the testimony you've heard in court yet, and we'll
18 resume, probably, in about ten to 15 minutes. Okay?

19 Thank you.

20 (The jury exited the courtroom at 3:11 p.m.,
21 after which the following proceedings were had:)

22 THE BAILIFF: Jury's out, Judge.

23 THE COURT: All right. Let the record reflect
24 the courtroom is secure, the jury has been placed on
25 break and we'll be in recess for ten minutes.

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1 (Court recessed at 3:11 p.m. and reconvened at
2 3:24 p.m., after which the following proceedings were
3 had:)

4 THE COURT: You-all be seated. Be comfortable.
5 Thank you.

6 Are you-all ready for the jury?

7 THE BAILIFF: Let's wait for Officer Sheridan.

8 THE COURT: Mr. Johansen, you can return to the
9 stand, please.

10 Thank you.

11 Are both sides ready for the jury at this time?

12 MS. DUNTON: Yes, Your Honor.

13 MR. WOOD: Yes, Your Honor.

14 THE COURT: All right. Send in the jury.

15 THE BAILIFF: Jurors entering the courtroom.

16 (The jury entered the courtroom at 3:26 p.m.,
17 after which the following proceedings were had:)

18 THE BAILIFF: Jurors present.

19 THE COURT: Everybody be seated. Be comfortable.

20 Let the record reflect that the jurors are secure
21 in the jury panel.

22 Cross?

23 MS. DUNTON: Thank you, Your Honor.

CROSS-EXAMINATION

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1 BY MS. DUNTON:

2 Q Mr. Johansen, I want to start with the reasons
3 why you didn't tell law enforcement, emergency rescue
4 personnel, the detectives or your parents the truth. Okay?

5 A Okay.

6 Q And the first reason why was you were worried
7 about your meth use. Is that right?

8 A About telling people about our meth use.

9 Q Okay. So not even about getting arrested. You
10 were just worried about --

11 A Well, I was worried about that, too. Yes.

12 Q Did you have meth in the house?

13 A Um, I wasn't sure. Brandi had the last gram of
14 it, so we could have.

15 Q Okay. But, generally, you were just worried
16 about use. You didn't want your parents to know that you
17 used meth?

18 A That's one of the reasons.

19 Q And the second reason was that you didn't want to
20 air out the problems in your marriage. Correct?

21 A That's another one.

22 Q Right. You listed that as a reason. Right?

23 A Correct.

24 Q Okay. But, in fact, in the interview with the
25 detectives, you told the defectives about the problems in

APPEAL TRANSCRIPT

1 your marriage when you were asked. Correct?

2 A Correct. I didn't go to the extent, though.

3 Q Okay. And you told them about her cheating,
4 though. Correct?

5 A Yes.

6 Q Okay. And one of the other reasons you gave is
7 that you didn't want to tarnish Ms. Celenza's name?

8 A Correct.

9 Q Okay. By meth use?

10 A Meth use and the infidelity.

11 Q And the sex stuff?

12 A Right.

13 Q Even though in the video, on the 5th, you told
14 her, I can't wait until this is on the front page of the
15 paper so they see my story?

16 A I don't recall.

17 Q You don't remember saying anything about all this
18 being aired out in the newspapers?

19 A I don't recall.

20 Q After you threatened her life?

21 A Yet again, I don't recall.

22 Q So I want to go through that statement with you.

23 A Okay.

24 Q And determine exactly what you were lying about.

25 In the statement, you told the detectives that

APPEAL TRANSCRIPT

1 Ms. Brandi Celenza was everything you wanted her to be. Is
2 that right?

3 A Correct.

4 Q So that was a lie. Correct?

5 A No, ma'am.

6 Q No?

7 A No, ma'am.

8 Q I thought she was a bitch and a whore -- and
9 excuse me for saying the C word -- a cunt.

10 A You have to understand, that was just one fight.
11 I mean, we didn't have many fights at all. So, yeah, she
12 was --

13 Q But you didn't mean any of that?

14 A No, I didn't mean anything of it.

15 Q Okay. She was everything you wanted her to be
16 and your marriage was great?

17 A Um, for the most part, yeah.

18 Q Okay. So those weren't lies?

19 A No, they weren't lies.

20 Q Okay. You told the detectives you made her quit
21 her job. Was that true or a lie?

22 A Um, I didn't make her. But I strongly
23 recommended it.

24 Q So that was a lie.

25 You told the detective that the biggest issue you

APPEAL TRANSCRIPT

1 had in your marriage, that she would laugh at stupid
2 things. That was clearly a lie. Correct?

3 A Um, kind of, yeah.

4 Q The fact that she would laugh at stupid things is
5 less important than infidelity. You would agree with that.
6 Correct?

7 A Yeah.

8 Q Okay. You told the detectives that you would
9 have arguments. It was nothing crazy and nothing violent.
10 That was a lie. Correct?

11 A Um, I never got violent.

12 Q No?

13 A I said violent things, yes.

14 Q Okay.

15 A But I never got violent.

16 Q Brandishing a firearm, telling somebody to kill
17 themselves with it, that's not violent in nature?

18 A See, that was taken out of context. I never
19 said, Kill yourself with it. I said, You do it. As being
20 to put it in the safe, which you heard me take the weapon
21 to and you heard me punch in the numbers right afterward.

22 Q Okay. So when you threw it down on the bed, you
23 were telling her to put it in the safe?

24 A Pretty much.

25 Q Okay. So you guys were doing great. You were

APPEAL TRANSCRIPT

1 just bickering here and there. Neither of you were
2 aggressive during arguments. That was a lie. Correct?

3 A Correct.

4 Q All right. Because you were pretty aggressive on
5 those videos.

6 A Right.

7 Q You told the detectives you didn't care about
8 this online thing. Big whoopee?

9 A Well, at the time, we had got over it.

10 Q So on the 7th, two days later, you were over all
11 of that that we saw on the 5th?

12 A Correct. We were over it on the 6th.

13 Q You just woke up and all of that was nothing?

14 A We talked that morning and we both let it go.

15 Q You told the detectives, again, you didn't care,
16 that she was noble and that she was honest for telling you.
17 That was a lie?

18 A After I got to, you know, reflect on it, you know
19 what I mean? She did tell me, and that was a noble thing.

20 Like I said, we got over it. You know, we both
21 got over it.

22 Q You agree you didn't treat her with respect, like
23 she was noble on the 5th?

24 A Correct.

25 Q When did she tell you all this happened?

APPEAL TRANSCRIPT

1 A Um, either the 4th or the 5th, one of the two.

2 Q You had a little argument, that's what you told
3 Detective Quintieri, a little argument?

4 A Right.

5 Q Five, six, how many hours was it?

6 A I -- I can't recall.

7 Q Longer than what we saw on the video?

8 A I can't recall.

9 Q "I'm the kind of person that will suck it up,
10 cheating, infidelity, and let it go."

11 Is that what happened when she told you it was no
12 big deal?

13 A Right afterward, the day after, that's what
14 happened.

15 Q Okay. You told the detectives that on the
16 morning of the 7th, when she woke up that morning, that she
17 came into the shower. She peeked around the shower curtain
18 and, like, joked with you back and forth. Correct?

19 A That's what I told them and that was a lie, yes.

20 Q That was a lie. You told the detectives that you
21 keep your guns on the side of the bed, between the mattress
22 and the bed frame. That was a lie.

23 A Some of them -- I usually did keep them there, so
24 that wasn't a complete lie.

25 Q But you knew they were interested in the morning

APPEAL TRANSCRIPT

1 of the 7th. And where were your guns?

2 A They didn't specify.

3 Q You didn't know that they were asking you about,
4 right before the murder, where the guns were?

5 A I thought they were asking in general.

6 Q You didn't think it was important to tell them
7 where they were on the morning of the 7th, when you're
8 trying to explain why your wife is shot dead in your home?

9 A They didn't ask me that specific question.

10 Q Okay. When you told the detectives you were
11 sliding around on the ground and you couldn't get to her.
12 That was a lie.

13 A Well, I was a little bit -- bit wet. But that
14 was a lie, yes.

15 Q Okay. You didn't try to get to her.

16 A Um, I got to her.

17 Q You got to her?

18 A Enough to see that she wasn't breathing, to call,
19 you know, the proper authorities.

20 Q Right. But you never tried to help your wife.

21 A I don't know CPR. I'm not trained in stuff like
22 that.

23 Q What about when the dispatcher's telling you what
24 to do and trying to give you instructions? You never
25 touched her. You never applied pressure. That's true.

APPEAL TRANSCRIPT

1 Correct?

2 A That's true. I didn't know where the wounds
3 were.

4 Q You told the dispatcher you saw blood spots.
5 Correct?

6 A Right.

7 Q When he asked you to apply pressure, you said, I
8 don't want to touch her. I don't want to get near her.

9 Correct?

10 A Correct. I didn't want to hurt her, you know.

11 Q And so, again, you told the detectives you didn't
12 see a wound, you didn't see where she was shot. That
13 wasn't true.

14 A Um, I didn't see no bullet holes. I just saw a
15 little bit of blood.

16 Q But you knew you shot her, twice.

17 A Correct.

18 Q So you lied.

19 A Well, I didn't see a bullet hole, so...

20 Q You saw blood?

21 A Correct.

22 Q And you knew you shot her?

23 A Correct.

24 Q And when they asked you where do you think she
25 was shot, you lied and said, I don't know.

APPEAL TRANSCRIPT

1 A I didn't really know.

2 Q And when you told the detectives that, you know,
3 she was trying to make our bed and she grabbed them and
4 dropped them --

5 A That was a lie.

6 Q -- that was all lies. Correct?

7 You told them you didn't know if she was shot
8 once or twice. That was a lie.

9 A Correct.

10 Q You told them you didn't know for sure if she was
11 shot, you were just assuming. That was a lie.

12 A Correct.

13 Q When you told them you really didn't know what
14 happened, that was a lie.

15 A Correct.

16 Q When you told them, "I got no reason to lie to
17 you guys," that was a lie.

18 A Correct.

19 Q And you told them you weren't going to make stuff
20 up. That was a lie.

21 A Right.

22 Q You made stuff up for probably 12 hours that day.
23 Correct?

24 A Um, give or take.

25 Q You told the defectives that day that you went to

APPEAL TRANSCRIPT

1 sleep in your jeans, that you went into the shower and left
2 your jeans in the shower. That was a lie.

3 A Correct.

4 Q Because now you've seen the videos.

5 A Well, I knew that to begin with.

6 Q Okay. So you were -- you were lying at the time?

7 A I told you I lied to them.

8 Q Your hair was wet. That was a lie.

9 A Probably.

10 Q You told the detectives that you two have never
11 talked about killing each other or suicide. That was a
12 lie.

13 A We didn't have a discussion about, you know, I'm
14 going to kill you, you're going to kill me, no.

15 Q You didn't tell her on the 5th, probably half a
16 dozen times, you were going to kill her?

17 A Well, I did, yes.

18 Q So when you told the detectives you never talked
19 about killing her, that was a lie.

20 A Not talking about it, I mean -- there's a
21 difference between saying something and talking about it.

22 Q There's a difference between saying something and
23 talking about it?

24 A Correct.

25 Q Okay. You told the detectives that you didn't

APPEAL TRANSCRIPT

1 have any video cameras in your bedroom. That was a lie.

2 A Yeah.

3 Q You knew that there had been one in there at some
4 point. Correct?

5 A A few days before, yeah.

6 Q Okay. And you told the rest -- you told them the
7 rest of them do not work and they're offline. That's not
8 correct.

9 A Most of them -- most of them were. I mean, maybe
10 three or four out of ten.

11 Q But three or four out of ten worked?

12 A Correct.

13 Q That would have been helpful to know on
14 April 7th. Correct?

15 A Correct.

16 Q As would have been getting into the Arlo account.
17 Correct?

18 A Yeah.

19 Q Correct. But you never provided that information
20 to law enforcement.

21 A I didn't know that information.

22 Q No? Who knew it?

23 A Brandi.

24 Q You told the detectives you and Brandi had the
25 passwords to Arlo.

APPEAL TRANSCRIPT

1 A Well, I had the app, but Brandi switched
2 everything over when we got the new system.

3 Q And after all that time you spent with the
4 detectives, Nicole -- Detective Quintieri now and
5 Sergeant Hristakopoulos, do you remember the time that
6 Detective Quintieri told you, Is there any chance, any
7 chance, Keith, that this is not what happened? And she
8 gave you an opportunity to give more information. Do you
9 remember that?

10 A Right.

11 Q And you said no. Absolutely not. This is what
12 happened.

13 A I wasn't represented.

14 Q You weren't represented?

15 A Correct.

16 Q Do you need a lawyer present to tell you to tell
17 the truth?

18 A Um, to any testimony, I think you should have a
19 lawyer present. Correct.

20 Q That wasn't my question.

21 A Um, what was the question? Rephrase it.

22 Q To tell the truth, do you need a lawyer to sit
23 next to you to tell the truth?

24 A No.

25 Q Okay. And when Investigator Quintieri inquired

APPEAL TRANSCRIPT

1 several times, I believe at least twice, she made it known,
2 you know, a lot of times people won't talk ill about
3 somebody who's dead.

4 A Correct.

5 Q She put that out there and not to worry about
6 that. You didn't take that as your opportunity to tell
7 what actually happened?

8 A No, ma'am.

9 Q Because you were lying.

10 A I guess.

11 Q You were lying three to four minutes after she
12 was shot when you called 911. Correct?

13 A Um, correct.

14 Q All right. What's the first thing you said when
15 those law enforcement officers came to the door? Do you
16 remember that?

17 A The first thing I said is, I think she shot
18 yourself.

19 Q No. The first thing you said was, I was in the
20 shower.

21 A Oh, well...

22 Q So you knew then, you were leading with that?

23 A Right.

24 Q That was your excuse. It was accidental.
25 Correct?

APPEAL TRANSCRIPT

1 A It definitely was accidental.

2 Q Because you don't want to tarnish Brandi's name.

3 Correct?

4 A That's what I said.

5 Q And you didn't want anybody to know that you-all
6 had used meth. That was your biggest concern?

7 A Correct.

8 Q There was someone dead in your home, your wife.
9 You had to have known law enforcement would look at you.

10 Correct?

11 A Um, I -- correct.

12 Q They had you at the sheriff's office for 12
13 hours?

14 A Right.

15 Q It's accidental, it's suicide or it's homicide.
16 You understood that as the options. Correct?

17 A Right.

18 Q But you were worried about meth use, and that's
19 why you decided not to come forward with your story?

20 A Um, well, it wasn't just meth use.

21 Q Meth use and reputation and your problems versus
22 murder. This was more important?

23 A I didn't want to say anything without
24 representation, like I told you.

25 Q You talked for a real long time. Correct?

APPEAL TRANSCRIPT

1 A Correct.

2 Q And you remember Investigator -- Thomas at the
3 time -- Quintieri telling you at the very beginning, You
4 know you don't have to talk to us. Do you remember that?

5 A Right.

6 Q And you remember even before that happened -- I
7 believe it was on the video when Sergeant Hristakopoulos
8 kept coming in the room -- you were saying, Can I write a
9 statement?

10 A No. I asked if I needed to write a statement.

11 Q Right. And then they came in and asked you if it
12 was okay to talk. And you were, like, absolutely, fire
13 away. Right?

14 A Right.

15 Q And they told you, You do not have to talk to us.

16 A Correct.

17 Q And you talked to them.

18 A Correct.

19 Q Okay. And chose to lie.

20 A Correct.

21 Q Okay. I want to start back with your testimony
22 here today, Mr. Johansen. You talked about all the guns in
23 your house. Correct?

24 A Right.

25 Q All right. And the gun that was originally

APPEAL TRANSCRIPT

1 Brandi's gun, okay, that is the Luger. Is that correct?

2 A Ruger.

3 Q Ruger?

4 A Correct.

5 Q Okay. And the Ruger is the one with, like, a
6 purple band with a white band around it?

7 A Correct. I believe so, yeah. A purple grip
8 thing, yeah.

9 Q Purple grip. And that's the one seen on the 5th,
10 that you get out of the left side of the bed by her --

11 A Right.

12 Q -- and remove it to go what?

13 A To put it in the safe.

14 Q Okay. You -- so you guys are fighting and
15 arguing and you take her gun and you lock it in the safe?

16 A Sure.

17 Q Do you remember which safe it was in?

18 A Um, it was in -- I think the little black one.
19 I'm not sure. They both had the number key pads.

20 Q Not the gray one on the bottom, but the one above
21 it. Correct?

22 A Possibly.

23 Q And earlier you testified that she didn't really
24 like that gun. Right? She liked the Beretta?

25 A Yeah.

APPEAL TRANSCRIPT

1 Q Okay. Which was the gun that she had the
2 misfires in your house?

3 A Um, that was actually my .45 caliber, the XD.

4 Q The Springfield that was to the right of the bed
5 on the day of the homicide?

6 A Correct.

7 Q And so she, what, accidental discharges just
8 playing with the guns in the house?

9 A Well, she took it -- she, like, took it out of my
10 couch and (indicating), and then shot the couch. Um, one
11 was when she was moving it in the bedroom at my old house
12 and she went like this (indicating), and it shot the roof.

13 Q Okay. And that was with your Springfield?

14 A Correct.

15 Q Okay. But the guns -- of all the guns in the
16 home that she liked to use or handle the most, it was your
17 Beretta. Correct?

18 A Yeah.

19 Q Okay. And knowing this and knowing your wife
20 apparently has had two accidental discharges --

21 A Right.

22 Q -- you kept no rubber bullets in that gun?

23 A Um, because it was a car gun.

24 Q What does that mean?

25 A Um, I kept it with me when I was in the vehicles.

APPEAL TRANSCRIPT

1 Q Right. For protection?

2 A Correct.

3 Q Right. So you wouldn't want to have less lethal
4 gun -- bullets in a gun for protection. Correct?

5 A Um, no, I wouldn't say that.

6 Q Well, you either do or you don't. You kept a gun
7 in your car with regular bullets --

8 A For protection.

9 Q -- for protection. Correct?

10 A Right.

11 Q Okay. But you testified earlier that you put
12 rubber bullets in all the guns in your house because you
13 wouldn't want to kill or hurt an intruder. Is that
14 correct?

15 A An intruder or anybody. That is correct.

16 Q Okay. If they break into your car, you will kill
17 them, but not in your house?

18 A Not necessarily saying that. I mean, there's
19 road rages, a lot of issues that you might need real
20 bullets in.

21 Q Right. And so you're okay using real bullets in
22 that situation. But if someone breaks into your home, your
23 castle with your wife and your child, you're going to make
24 sure you use less than lethal?

25 A Well, there was only a few in every mag.

APPEAL TRANSCRIPT

1 Q Okay. So now your testimony is today, that on
2 the day of the homicide in the morning, the Canik was
3 where?

4 A In the box.

5 Q Which box?

6 A To the -- when you walk -- well, if you're
7 looking at the bed, straightforward, it was to the left and
8 it had the laptop in it.

9 Q Okay. A big box or the Canik box?

10 A No, it's a big box.

11 Q Okay. So you kept a gun in there?

12 A Right.

13 Q There was a lot of junk in that box. Correct?

14 A Right.

15 Q Okay. And your testimony is that the Beretta was
16 on the nightstand?

17 A Correct.

18 Q Okay. And you keep the holster under your bed?

19 A Yeah. I didn't really use it.

20 Q The Canik wasn't in the Canik holster?

21 A No.

22 Q It was just conveniently right next to it in the
23 murder scene?

24 A No, it wasn't right next to it.

25 Q Okay. And the .45 Springfield was not in a safe,

APPEAL TRANSCRIPT

1 so there's actually three in the room. It was out --
2 sticking out of the top of a box. Correct?

3 A Yes, an RCA box.

4 Q Okay. And so that morning -- actually, I'm going
5 to start before that morning. In the days leading up to
6 the 7th, you testified on direct about your meth usage.
7 Right?

8 A Correct.

9 Q All right. You testified that you had bought an
10 eight-ball. Is that what you said?

11 A Correct.

12 Q Which is 3.5 grams?

13 A That is correct.

14 Q And that you and Brandi used it continuously for
15 10 to 12 days.

16 A Not me for the ten to 12. It was more, like, ten
17 or me and then she used it afterwards.

18 Q Okay. What day did you stop?

19 A Um, I would say the week -- morning, maybe, of
20 the 6th.

21 Q So the night -- the night of the 5th, that we see
22 on video?

23 A We were both using.

24 Q Okay. When we see you on video with -- smoking
25 with pipes, that's meth?

APPEAL TRANSCRIPT

1 A Right.

2 Q Okay. And so you use it that night. You use it
3 into the wee hours of the 6th. Is that what you're saying?

4 A I used it that night and to -- yeah, like, after
5 12.

6 Q Okay. Where did you use it?

7 A Sometimes in the bedroom. Sometimes in the
8 living room.

9 Q Okay. And so that was the last night you used
10 it. So then you wake up on the 6th and everything is good.
11 Right?

12 A Well, we had talked that morning, um, and we
13 pretty much got over it, you know. She said she was sorry
14 I said I was sorry, and we pretty much tried to put it
15 behind us.

16 Q Okay. And on the 6th you saw Ms. Eagleson at her
17 house. Correct?

18 A Yes.

19 Q You saw Ms. Salmons that night?

20 A Uh-huh.

21 Q Is that a yes?

22 A Yes.

23 Q You both smoked marijuana off and on during the
24 day. Correct?

25 A Correct.

APPEAL TRANSCRIPT

1 Q All right. When did she do meth?

2 A Um, the last time I seen her do it, um, was -- I
3 assumed -- because I had woke up to take a pee and I
4 assumed that because it smelt like it and she had a pipe in
5 her hand, that she was smoking.

6 Q Okay. So on the night of the 6th, after
7 Ms. Salmons leaves, you go to sleep where?

8 A I go to sleep on the couch.

9 Q Okay. You wake up?

10 A Correct.

11 Q What time?

12 A I am not sure.

13 Q You have no clue, time frame?

14 A Not really. I just woke up to take a pee. I
15 don't really look at the time every time I do that.

16 Q So sometime in the night --

17 A Right.

18 Q -- you wake up to go to the bathroom.

19 You didn't see her, you just smelled meth?

20 A Smelt and seen it in her hand. I mean --

21 Q Was she in the bathroom?

22 A -- one would assume.

23 Was she in the bathroom? I'm not sure. Maybe.

24 Maybe.

25 Q Okay. So was she smoking meth in the living

APPEAL TRANSCRIPT

1 room, in the bathroom or the bedroom?

2 A Um, I woke up and -- on the way to the bathroom,
3 so it might have been in the living room/dining room area.

4 Q Okay. And so that was the last time you saw her
5 doing it?

6 A Correct.

7 Q Okay. And when was the last time you guys did
8 marijuana? Was that when Salmons was there?

9 A Um, yeah, the last time I did. I'm not sure
10 about her.

11 Q Okay. You didn't see her do anything that
12 morning. Correct? The morning of the 7th?

13 A No. I woke up and pretty much got my pants and
14 then went into the shower area.

15 Q Okay. It was your testimony earlier that the two
16 of you did not sleep for ten to 12 days?

17 A Correct.

18 Q Ten to 12 days?

19 A Correct.

20 Q But yet you went over to a neighbor's house, hung
21 out --

22 A Uh-huh.

23 Q -- interacted, watched movies?

24 A Well, I had got sleep by then.

25 Q When did you get sleep?

APPEAL TRANSCRIPT

1 A The night before, the 6th.

2 Q The night of the 5th, going into the 6th?

3 A A little bit into the morning.

4 Q And so let's go to the morning of the 7th.

5 A Okay.

6 Q You testified that you woke up that morning and
7 you went to get your pants, which is a -- different than
8 what you told the detectives. Correct?

9 A Right.

10 Q That you went and you were getting ready to
11 shower. Is that right?

12 A Correct.

13 Q And I'm a little confused. You said you turned
14 on the shower and stepped in and then you heard her say,
15 Boo?

16 A Yes.

17 Q Okay. So she never peeked in the shower?

18 A No.

19 Q She wasn't bubbly and happy? There was no
20 playfulness that you told the detectives?

21 A No, nothing like that. That was a lie, too.

22 Q That was a lie.

23 So you just hear her say, Boo, and so you go to
24 see what's going on?

25 A Correct.

APPEAL TRANSCRIPT

1 Q Okay. And what do you see?

2 A I see her with the 9mm saying -- saying that I'm
3 not her husband and that I was plastic.

4 Q Where was she standing?

5 A She was standing a little bit from the
6 nightstand.

7 Q Okay. Between the front and the end of the bed,
8 somewhere in the middle?

9 A Well, a little bit closer to the nightstand than
10 in the middle.

11 Q Okay. So she was closer to the wall behind her
12 than to you?

13 A Um, yeah.

14 Q Okay. From the head of the bed to the middle of
15 the bed. Is that fair? Somewhere in there?

16 A Within that range at first, yeah.

17 Q Okay. So she's standing there. What is she --
18 what is she doing with the gun?

19 A She has it like this (indicating).

20 Q Okay.

21 A And she's looking at me, but it's like she was
22 looking through me.

23 Q Okay. And then you testified that you heard --
24 what did you do?

25 A What do you mean?

APPEAL TRANSCRIPT

1 Q What did you do when you saw her with the gun?

2 A Well, I went towards her trying to, you know,
3 bark commands, Hey, put it down. Put it down.

4 And I got almost right to her. And she went like
5 this with the gun (indicating), so I went off her and it
6 popped.

7 Q When did you get the gun then?

8 A Oh, I got it on the way there.

9 Q Okay. So you see her with a gun.

10 A It was right by -- it was right by where I was --
11 stand -- stand -- standing outside the -- the shower.

12 Q Okay.

13 A It was right outside that, in a box.

14 Q Okay. And so you get right up on her with your
15 gun now --

16 A Right.

17 Q -- or with a gun?

18 A Right.

19 Q Okay. She swings at you, like to hit you with
20 it?

21 A Um --

22 Q Earlier you testified she touched you.

23 A Not on the first time. Not on the first time.

24 The first time she went like this (indicating),
25 and I pushed off her and the gun went off. And then when

APPEAL TRANSCRIPT

1 she was swinging, I was getting away from her, that's when
2 I let -- you know, that's when I let off a round.

3 Q Okay. She was within an arm's length, then of
4 you the first time. You said you pushed off of her?

5 A Yes.

6 Q Okay. Did you try to push her down?

7 A I was trying to get the gun.

8 Q You were trying -- did you try to grab her arm?

9 A Yes.

10 Q Okay. She's like 90 pounds soaking wet. You
11 couldn't get the gun?

12 A Um, I wasn't going to -- I wasn't going to try to
13 push her down.

14 Q You just said I pushed off of her.

15 A I pushed off of her.

16 Q You didn't want to push her down?

17 A Exactly.

18 Q You wanted to shoot her?

19 A No, not at all.

20 Q But you shot her instead of pushing her down?

21 A I mean, I don't think I could have pushed her
22 down. She was right by the nightstand.

23 Q So instead of grabbing her arm, grabbing the gun,
24 you shot her?

25 A I pushed off of her to flee, and it shot, yes.

APPEAL TRANSCRIPT

1 Q Okay. So that was an involuntary shot. Is that
2 what you're saying?

3 A Right.

4 Q Okay. Up against her body?

5 A Right.

6 Q You were that close to her?

7 A Correct.

8 Q But you couldn't do anything else to take this
9 gun from her?

10 A I tried.

11 Q What did you try?

12 A I tried to grab it and she just...

13 Q Now she -- now she's got the gun behind her?

14 A I mean, she went like this the first time, you
15 know. And then I pushed off and it went off. And then she
16 swung it some way, this way (indicating), and I heard it
17 cock first and she swung it. And that's when I fired, when
18 it was back on me.

19 Q Okay. When you pushed off her, she didn't fall?

20 A No.

21 Q Okay. So she doesn't fall. She doesn't fall
22 after you hit her the first time with a shot?

23 A No. She just went like -- like this
24 (indicating).

25 Q Okay. She doesn't say anything?

APPEAL TRANSCRIPT

1 A Not a word.

2 Q Doesn't scream out in pain?

3 A Not one word. Not one sound. Nothing.

4 Q Okay. But she does what? She swings at you now?

5 A No. She cocks it and swings the gun towards me,
6 so she's kind of like this (indicating).

7 Q Okay. And earlier you said she did this while
8 you were running away?

9 A While I was getting away. I wasn't running, but
10 I was trying to get away.

11 Q How were you trying to get away?

12 A I was trying to get away like this (indicating).
13 Running this way towards the closet door.

14 Q Okay. But you shot her again?

15 A Correct.

16 Q Okay. And did she fall that time?

17 A Yes, she did.

18 Q And when she fell that time, you went over and
19 moved the gun with your foot?

20 A Correct. Moved it like this (indicating) with my
21 foot, over to the right side of me.

22 Q Set the other one down?

23 A Right. And then went and called 911.

24 Q Why did you set the Canik at her feet?

25 A I set it down to where about I was standing.

APPEAL TRANSCRIPT

1 Q Why did you do that instead of getting it away
2 from her?

3 A I put it right next -- they were just like it
4 should -- you know, like right --

5 Q She was still breathing. Right?

6 A Um, at that time, yes.

7 Q Okay. So you didn't think it would be safer for
8 you to remove the guns from that situation? She's still
9 breathing.

10 A That's why I moved it away. She dropped the gun,
11 that's why I moved it away from her.

12 Q Okay. It wasn't because you were trying to make
13 this look like an accident?

14 A Not at all.

15 Q You didn't stage that scene?

16 A No.

17 Q Okay. That's just where you put them down?

18 A Correct.

19 Q That was just convenient for your story?

20 A If you say so.

21 Q So you called 911. Correct?

22 A Correct.

23 Q And the first thing you tell them, again, is that
24 you're in the shower?

25 A Correct.

APPEAL TRANSCRIPT

1 Q You don't ask for help?

2 A Well, I told them, Help her, please. Help her,
3 please. I mean...

4 Q Eventually. But that's not the first thing you
5 said.

6 A I guess not.

7 Q You wanted them to know you were in the shower.

8 A Listen, I was panicked. I was scared. I mean,
9 come on.

10 Q You were panicked. You were scared. Your wife's
11 dying in the bedroom?

12 A Right.

13 Q But one of your other first thoughts was to go
14 get your marijuana and clean it up.

15 A No. I took it in the room. I didn't hide it or
16 nothing.

17 Q Why did you touch it, then, if you're not trying
18 to hide it?

19 A Out of habit from being in that room.

20 Q Out of habit? It's a habit of yours when your
21 wife's shot in your bedroom, you move all your drugs?

22 A Not saying -- not saying that. You're twisting
23 my words.

24 Q No, I'm not. You said it was a habit.

25 A It was a habit to grab the marijuana.

APPEAL TRANSCRIPT

1 Q When what?

2 A Any time I went into that room.

3 Q Okay. So any time you went in the living room,
4 you would grab your marijuana and take it to another room?

5 A Correct.

6 Q So the part where you're looking, after you open
7 the door to check your living room for drugs, that had
8 nothing to do with the cops coming in?

9 A No. I was looking for my shoes.

10 Q Okay. So you weren't worried about getting
11 charged with marijuana? You weren't worried about getting
12 charged with meth?

13 A I mean, a little bit. But that wasn't the first
14 thought in my mind.

15 Q So when you're running around in your living room
16 cleaning up your drugs, because it's a habit, and you say,
17 Please help her, you don't mean that?

18 A I wouldn't say that.

19 Q That was a lie.

20 A No. Of course, I wanted them to help her.

21 Q You weren't trying to help her.

22 A I wasn't trained. I didn't know what to do.

23 Q They were trying to give you instructions.

24 A Hold the wound. I couldn't see that much of a
25 wound.

APPEAL TRANSCRIPT

1 Q Okay. Mr. Johansen, you saw the video of you and
2 your parents at the sheriff's office. Correct?

3 A Correct.

4 Q And, again, hours, upon hours, upon hours of
5 lying to them. Correct?

6 A Yeah. There are hours upon hours. I just wanted
7 to go home.

8 Q And you knew you were being recorded. Correct?

9 A Correct.

10 Q Your parents were giving you all kinds of
11 scenarios.

12 A Right.

13 Q Suicide, accident.

14 A Right.

15 Q Maybe something was wrong with her. Maybe you
16 snapped.

17 A Right.

18 Q People snap. Right?

19 A That's what he said, yeah.

20 Q Do you remember your dad offering that up?

21 A Yeah.

22 Q People snap?

23 A Right.

24 Q Okay. You could have snapped. She could have
25 snapped. Right? He's trying to get something from you.

APPEAL TRANSCRIPT

1 Do you remember that?

2 A That's what he was saying.

3 Q Right. And you're coming here today to tell them
4 essentially that Brandi snapped and wasn't being herself,
5 so you had to act in self-defense. But you didn't tell him
6 that then?

7 A Right.

8 Q Because you didn't want to tarnish her name?

9 A That's some of it, yes.

10 Q Okay. You testified earlier the Arlo cameras,
11 most of them, were outside the home. Some were inside the
12 home. Is that right?

13 A That's correct.

14 Q Did you testify earlier that the camera was
15 placed in the bedroom to record sex between you and Brandi?

16 A Um, that's one of the things I said, yeah.

17 Q Okay. And she did that or you did that?

18 A Kind of a both decision.

19 Q Okay. You guys did this stuff mutually.

20 Correct?

21 A Right.

22 Q You actually approved of it mutually?

23 A Once in a while, yes.

24 Q Right. What you had a problem with was when you
25 caught her doing things without your knowledge. Correct?

APPEAL TRANSCRIPT

1 A Talking to other people, stuff like that, yeah.

2 Q Okay. Talking to other people, masturbating
3 without you there. Correct?

4 A For the most part.

5 Q Correct? Yes or no?

6 A Yes. Yes, ma'am.

7 Q You had a problem with it to the fact that you
8 were threatening her life when she didn't tell you when she
9 masturbated when you weren't there?

10 A I guess so.

11 Q It's yes or no.

12 A Yes, ma'am.

13 Q Okay. I recall one time you at least said, I
14 know you're doing it in the shower without me. You better
15 tell me, bitch.

16 A Talking about her doing videos, yeah.

17 Q Videos, masturbating, things like that?

18 A Correct.

19 Q All right. It was okay if you were involved, but
20 if you didn't know about it, that's when you had the
21 problem?

22 A I could say sometimes, yeah.

23 Q Right. And when you threw the sex toy at her and
24 said, I hope this was worth your life, bitch, that's
25 because she would masturbate when you weren't there?

APPEAL TRANSCRIPT

1 A I'm not talking about life, like -- like you're
2 dying. I'm talking about the life we built together.

3 Q I hope this was worth your fucking life, bitch.

4 A Yeah, because I was thinking about, you know,
5 ending the relationship.

6 Q Okay. And killing her --

7 A No.

8 Q -- because you said that half a dozen times.

9 A I wasn't really meaning any of that.

10 Q You didn't mean that you wanted to kill her?

11 A Correct.

12 Q You just told her that to scare her?

13 A I guess it was just arguing. I mean, I was
14 heavily influenced with methamphetamine at the time.

15 Q You knew what was going on?

16 A That's your opinion.

17 Q It's a question. Did you know what was going on?

18 A What do you mean?

19 Q You were smoking meth. But you were aware. You
20 knew what was going on. You were forming conscious
21 thoughts and arguments. Correct?

22 A Vaguely, but yes.

23 Q Even to the point where you removed the camera
24 from the room in this heated argument?

25 A Correct.

APPEAL TRANSCRIPT

1 Q And at the very end of that clip, when you
2 removed the camera and you're in the living room, you're
3 talking about how you're going to beat her ass.

4 A I don't recall if it said that or not.

5 Q So you had enough thought to remove the camera
6 because clearly your argument is getting out of hand.
7 Correct?

8 A That's not why I moved it.

9 Q Why did you move it?

10 A I moved it because we were done. Obviously
11 nothing was going to be recorded in a sexual way.

12 Q So through all of that, you thought that you guys
13 still might have sex, which is why the camera was still up?

14 A I never said we were going to have sex. I said I
15 removed it because we weren't going to.

16 Q But you didn't remove it at 5:30 or 6:30 or 7:30
17 or 8:30 or 9:30.

18 A Right.

19 Q So all that time you still thought you guys were
20 going to have sex?

21 A Or do something.

22 Q Because that wasn't a big fight?

23 A I mean, it was, but it wasn't.

24 Q I just want to be clear. When you said, I need
25 to get away from you or I will kill you, you didn't mean

APPEAL TRANSCRIPT

1 that?

2 A No.

3 Q When you said, Call 911, bitch, and get me out of
4 here. You ain't waking up, you didn't mean that?

5 A Of course not. They're just empty threats.

6 Q Empty threats.

7 You admit that you told her she better stay
8 strapped?

9 A I believe something like that was said.

10 Q When you said, You better have your homies -- or
11 I'm going to have my homie, you better stay strapped --

12 A Something like that.

13 Q And what does that mean?

14 A Huh?

15 Q That means she should have a gun on her.

16 Correct?

17 A I guess.

18 Q Yes or no?

19 A Yes.

20 Q You told her, correct, that she should call the
21 cops and get rid of you, so you don't kill her?

22 A Yeah. These are just all things that I said out
23 of, you know, spur of the moment.

24 Q You said, You can have all my guns because I'm
25 going to do something bad with them. Correct?

APPEAL TRANSCRIPT

1 A No, I said you can have them, the guns, because
2 you can have them.

3 Q Not because you're going to do something bad with
4 them?

5 A I don't believe so.

6 Q And you asked her several times if she was
7 afraid. Correct?

8 A Um, once or twice on the video, it seemed that
9 way, yes.

10 Q Right. And in one of those videos you even said
11 shit was going to go down tomorrow?

12 A I don't believe so. I didn't hear that.

13 Q Okay. Mr. Johansen, when you talked to your
14 parents at length at the sheriff's office, you tell them
15 multiple times that you're an honest person. Correct?

16 A For -- for the most part, in normal situations,
17 yes.

18 Q Well, I'm not asking if you are. I'm asking if
19 you told your parents multiple times you were honest with
20 the detectives and that you're honest?

21 A Sure. Yes.

22 Q And that you told the detectives the truth?

23 A That's what I told them, yes.

24 Q And that was a lie.

25 A Correct. I'm not saying anything I told law

APPEAL TRANSCRIPT

1 enforcement or my parents that it wasn't a lie.

2 Q Right. You're asking these jurors to believe
3 what you're saying today is true, when you've been lying
4 for over three years. Correct?

5 A I wouldn't say over three years. I mean, I've
6 told a few lawyers the exact truth.

7 Q You lied for 12 hours at the sheriff's office?

8 A Correct.

9 Q For 20 days before you were arrested?

10 A Um, I wouldn't say lying. I just didn't say
11 nothing.

12 Q Right. To the people that were investigating
13 what happened to your wife, that could have looked in to a
14 self-defense claim and could have analyzed that with the
15 evidence they had at the time.

16 A Right. But I had no -- no -- you know, I was
17 talking to lawyers and stuff, and they just told me to keep
18 my mouth shut.

19 Q And when you talked to your parents on the jail
20 calls in the days after you were arrested, you suggested
21 that a neighbor did it and someone broke in and could have
22 killed Brandi. That was still a lie.

23 A Correct.

24 Q And you had 20 days with your parents out of
25 custody without law enforcement there. Correct?

APPEAL TRANSCRIPT

1 A Correct.

2 Q So you didn't tell them in that time with no law
3 enforcement around?

4 A We really didn't talk about it like you think we
5 did.

6 Q Your wife's dead, but you don't talk about it?

7 A I mean, we tried to, you know, get through it a
8 little bit and we were so busy with lawyers and this and
9 that, we really didn't have the time to talk about
10 anything.

11 Q And on that call that I just mentioned, your dad
12 told you that, Keith, if you did this --

13 A Right.

14 Q -- if you did this, if you did something, they
15 have evidence, they have videos --

16 A Right.

17 Q -- you need to say something.

18 A Right.

19 Q And you told him, I didn't do anything?

20 A Yeah. I didn't murder nobody.

21 Q That's what you mean by "I didn't do anything"?

22 A Well, I didn't do it -- I didn't do anything,
23 however you phrase it.

24 Q You did do it. You just feel you have a defense.
25 Correct?

APPEAL TRANSCRIPT

1 A No. I didn't murder nobody. And that's what I
2 was charged with. That's what I was referencing to.

3 Q Murdering someone, shooting someone.

4 A Murder is way different than self-defense
5 shooting.

6 Q You are charged with murder. But people wanted
7 to know how Brandi got shot.

8 A Right.

9 Q And so when they're saying if you did this, if
10 you shot her, if there's a reason, anything, tell them.

11 A I didn't get the context --

12 Q You lied.

13 A I didn't get that as the context, though, of the
14 question.

15 Q Okay. And then later when you talked to your mom
16 on the phone, you actually suggest that R. could have done
17 this. Correct?

18 A I -- I guess.

19 Q You suggested that or not? You heard the phone
20 call.

21 A Um, I think I did.

22 Q And she said to you, Keith, that's a little boy.

23 A Right.

24 Q Clearly indicating don't go there, Keith. R.
25 didn't do this. Correct?

APPEAL TRANSCRIPT

1 A You'd have to ask her.

2 Q Mr. Johansen, since you've been arrested in this
3 case and pending trial, you've had access to, as you
4 mentioned, several lawyers and all of your discovery and
5 the evidence in the case. Correct?

6 A Right. Right.

7 Q Correct. And the whole time, both the day of and
8 in the days early in the jail, not only has law enforcement
9 told you the situation doesn't make sense, but your parents
10 are telling you --

11 A Right.

12 Q -- your story doesn't make sense.

13 A Right.

14 Q So you're here now today to tell a story that
15 matches the evidence and ask them to believe that now
16 you're telling the truth?

17 A That's because I am.

18 Q That's because you are?

19 A Correct.

20 Q Even though you're a liar.

21 A That's your opinion.

22 Q You lied for 12 hours to law enforcement.

23 A I told you I did.

24 Q For 20 days.

25 A If that's what you say.

APPEAL TRANSCRIPT

1 Q And today you're telling the truth?

2 A Correct.

3 MS. DUNTON: No further questions.

4 THE COURT: Redirect?

5 MR. WOOD: Briefly, Your Honor.

6 **REDIRECT EXAMINATION**

7 BY MR. WOOD:

8 Q Keith, Ms. Dunton asked you about some questions
9 about the period of time that you and Brandi were using
10 meth before --

11 A Right.

12 Q -- the 7th, and about your testimony of -- of her
13 not having sleep during that period of time.

14 A Correct.

15 Q And actually for a period of time you not having
16 sleep.

17 A Yes.

18 Q Has -- has there been times in the past when you
19 and Brandi stayed up for days because of using meth?

20 A Some -- yeah, yeah. In some cases, yes.

21 Q All right. And would those be -- would those
22 have been for about the same length of time or different
23 times?

24 A Sometimes five, sometimes ten, sometimes more.

25 Q Staying up straight without sleep?

APPEAL TRANSCRIPT

1 A Right.

2 Q And all because of the use of the meth?

3 A Correct.

4 Q Okay. When you were talking to the police, were
5 you scared at the time?

6 A Oh, yeah, definitely.

7 Q Have you -- morning of the 7th, or even the 6th
8 of April of 2018, did you -- let's focus on the 7th, the
9 day of the shooting. Did you have any plans that morning
10 when you got up to shoot and kill your wife?

11 A Definitely not.

12 Q Had you been planning at any time prior to that
13 occasion, on any time, to kill your wife that day?

14 A No, sir. No.

15 Q Okay.

16 MR. WOOD: I have no further questions.

17 Thank you.

18 THE COURT: Okay.

19 Do you have any follow-up?

20 MS. DUNTON: No, Your Honor.

21 THE COURT: Thank you.

22 You may return to your seat.

23 THE DEFENDANT: Thank you.

24 (Defendant excused.)

25 MR. WOOD: Judge, may we approach on a scheduling

APPEAL TRANSCRIPT

1 issue?

2 THE COURT: Yes, scheduling? Sidebar.

3 (Discussion at the bench out of the hearing of
4 the court reporter.)

5 (Bench conference concluded, after which the
6 following proceedings were had:)

7 THE COURT: All right. Ladies and gentlemen of
8 the jury, we've reached a good recess point for this
9 evening. We can start other testimony, but then it
10 would take us too long and we'd have to get back to
11 where we left off in the morning, so it's just a
12 regular, natural place to conclude our work for today.

13 I'm going to release you. And, again, please be
14 back at a quarter until 9:00. Again, please feel free
15 to bring anything that makes you comfortable. We'll
16 have coffee in the break room. So if you want to
17 bring your own cup with a lid on it to bring in the
18 courtroom, feel free to do that.

19 And I'll remind you, again, please do no
20 research, allow anybody to talk to you about this
21 case, make yourself aware of any coverage of this case
22 at all, both on the Internet, on cable TV and then in
23 print. And also please don't be -- at any time
24 discuss any of the testimony you've heard, the
25 evidence you've witnessed with each other or with

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1 anybody outside of the jury at all. Okay?

2 Again, we're nearing that point and the case will
3 be yours right on schedule. And we will not be going
4 beyond Friday. We do know that from our scheduling
5 conference that we just had. And maybe even you may
6 receive the case tomorrow. Okay?

7 All right. Thank you-all so much.

8 (The jury exited the courtroom at 4:10 p.m.,
9 after which the following proceedings were had:)

10 THE COURT: All right. Let the record reflect
11 that the jury is secure from the courtroom. And we
12 will remain in session and then conduct our charge
13 conference.

14 MR. LEWIS: Judge, do you want me to put on the
15 screen the jury instructions?

16 THE COURT: If you'd like. I have the copy you
17 gave me.

18 MR. LEWIS: Okay.

19 THE COURT: My intention was to read the
20 instructions prior to argument, closing arguments.

21 MR. LEWIS: Yes, sir.

22 THE COURT: And I would read all the way down
23 to -- stopping -- Submitting the Case to the Jury, if
24 that's acceptable.

25 Are both sides ready to proceed?

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APPEAL TRANSCRIPT

1 MR. WOOD: Yes.

2 THE COURT: We have -- they're not paginated, or
3 at least my copy isn't, but we have the first page
4 that goes down to Justifiable Homicide.

5 MR. WOOD: There are no issues there, Judge.

6 THE COURT: Okay. State, any proposed
7 corrections or modifications of what was presented?

8 MR. LEWIS: I don't think, so, Judge. I'm just
9 bringing it up, just sending Ms. Dunton a copy.

10 Let me just look real fast.

11 THE COURT: Tell me when you're ready.

12 MR. LEWIS: No, we're okay, Judge.

13 THE COURT: Okay. The section entitled Excusable
14 Homicide.

15 MR. WOOD: No objection, Judge.

16 THE COURT: Okay.

17 MR. LEWIS: No objection, Judge.

18 THE COURT: Okay. And the next entitled First-
19 Degree Premeditated Murder. And leading us down to
20 the section of the instruction, Give only if there is
21 evidence that the defendant acted in the heat of
22 passion.

23 MR. LEWIS: We'd ask that to come out, Judge. I
24 don't think that -- I mean, he's claiming
25 self-defense, not like in a heat of passion.

APPEAL TRANSCRIPT

1 THE COURT: Okay.

2 MR. WOOD: Well, there's kind of a mix on that,
3 Judge. His testimony on that, he -- the emphasis on
4 the self-defense was on the second shot in his
5 testimony. I would ask that that highlighted portion
6 that goes -- that -- because I do think there's
7 evidence on the record that he acted in the heat of
8 passion on legal adequate provocation. I would ask
9 that that whole section that has been highlighted and
10 goes to the top third of the next page, that that be
11 included.

12 MR. LEWIS: Judge, all of those do not apply in
13 any way. I'm not sure how you can claim self-defense
14 and then claim it's heat of passion. And when you
15 read the instructions, there's a reasonable amount of
16 time for a reasonable person to cool off. Blind and
17 unreasoning fury?

18 MR. WOOD: Ultimately it would be up to the jury
19 to decide what actually happened here. And I think
20 they -- the only way to do that is to give the full
21 instruction.

22 MR. LEWIS: I'm not sure how you give an
23 instruction, Judge, when there's not going to be any
24 argument from the Defense attorney to establish any of
25 the elements of it, unless the Defense is going to

APPEAL TRANSCRIPT

1 argue that if you don't believe it was self-defense,
2 and you believe there was a fight back there, then it
3 was a sudden provocation. But I'm not sure there's
4 any evidence to support that.

5 THE COURT: I find that instruction does not
6 apply to the evidence and there's a lack of evidence
7 of these. And it is "and". A, B, C, D and E are
8 "and's", meaning they all must exist. I do not find
9 that -- the first paragraph does not conflict with the
10 self-defense instruction. But then when you go after
11 that, the evidence does not support that instruction.

12 MR. WOOD: I would object on the record.

13 THE COURT: Objection is noted. And the State
14 can look at that later tonight, reconsider that.

15 Lesser Included Crimes?

16 MR. WOOD: Yes, they are all standard.

17 Second-Degree Murder.

18 THE COURT: And do we have -- we've got the
19 Possession of Firearm following each count, each
20 lesser?

21 MR. LEWIS: Each lesser.

22 THE COURT: Yeah.

23 MR. LEWIS: It only follows -- so second-degree
24 murder is a little bit different than manslaughter,
25 Judge, it looks like.

APPEAL TRANSCRIPT

1 THE COURT: Got it.

2 MR. LEWIS: Normally you could probably just say
3 it was previously defined.

4 THE COURT: Yeah.

5 MR. LEWIS: But we did put -- just as long as
6 Mr. Wood is okay with it, at the end of second-degree
7 murder, it says, "The definition of firearm has
8 previously been defined for you."

9 Are you okay with that, Mr. Wood?

10 MR. WOOD: Yeah, that's fine.

11 THE COURT: Okay. That's what I was referring
12 to.

13 Okay. Manslaughter?

14 MR. WOOD: It's standard.

15 THE COURT: Yeah.

16 Okay. The Justifiable Use of Deadly Force?

17 MR. LEWIS: I started going through that a little
18 bit today to edit it. It's very confusing. But I'll
19 let Mr. Wood, like, let us know what he thinks in
20 reference to some of it.

21 THE COURT: Okay.

22 MR. WOOD: Actually let me go back to this
23 Possession of a Firearm Discharge Causing Death.

24 MR. LEWIS: The Second-Degree Murder, Mr. Wood?

25 MR. WOOD: The portion that's after the

APPEAL TRANSCRIPT

1 Second-Degree Murder. Because it deals with what's on
2 the verdict form, too.

3 THE COURT: Correct.

4 MR. LEWIS: Yes, sir.

5 MR. WOOD: I'm not sure why we have -- again,
6 we'll get to the verdict form. Why do we have the --
7 on the second page, above the Manslaughter definition,
8 why do we have that paragraph that he carried,
9 displayed, used -- threatened to use a firearm?

10 I know that 10-20-Life obviously possession of a
11 firearm is -- you know, you get ten years for that. I
12 understand that. Of course we're dealing with an
13 interrogatory. But why do we need to have this
14 additional paragraph in?

15 MR. LEWIS: Because -- because he's charged with
16 775.0871 and 2, and those are two different statutes,
17 they have two different really proof elements to them.
18 One is the 10-20-Life. The second one is the level
19 enhancement for actually carrying, displaying a
20 firearm during the course of the event. So they
21 actually have to make a finding for each one of those
22 because they're different statutes.

23 MR. WOOD: It's still a life -- the first PBL,
24 either way...

25 MR. LEWIS: Well, it would make it a life felony.

APPEAL TRANSCRIPT

1 So if he's convicted of second-degree murder with a
2 firearm, it's a life felony as compared to a PBL.

3 MR. WOOD: Okay. Let me look at that again
4 tonight, Judge.

5 THE COURT: Okay. That works.

6 MR. WOOD: I'm not saying Mr. Lewis is wrong.
7 I'll double check.

8 MR. LEWIS: And check the standard jury
9 instructions. There's a different jury instruction
10 for both of them. Each of them have their own...

11 MR. WOOD: It's 775...

12 MR. LEWIS: 0871, and 775.0872.

13 MR. WOOD: Okay. I'm sorry. So Manslaughter's
14 good.

15 Possession of a Firearm, that's fine. And then
16 we get into the --

17 THE COURT: And I don't mind reading the
18 definition of firearm, it's just -- the back of all of
19 them, if you wish, but I always wondered why we did
20 that.

21 MR. LEWIS: I think what Mr. Wood was talking
22 about, though, is we have a section that says --

23 THE COURT: I understand that.

24 MR. LEWIS: Okay.

25 THE COURT: I was moving beyond that.

APPEAL TRANSCRIPT

1 I'm down to Justifiable Use of Deadly Force
2 again.

3 MR. LEWIS: So I took out paragraph 1, 2. Those
4 are kind of just instructions to the Court. And then
5 I just started with paragraph 3.

6 THE COURT: Okay.

7 MR. WOOD: I'm sorry, are you talking about --

8 MR. LEWIS: I took out paragraph -- it might be
9 easier --

10 Judge, may I plug into this one, maybe, to follow
11 along?

12 THE COURT: You may.

13 MR. LEWIS: I'll come over there.

14 So I'm -- can you see these, Mr. Wood? They're
15 next to each other.

16 MR. WOOD: Yes.

17 MR. LEWIS: So I -- the one I just highlighted in
18 yellow, those two on the right-hand side, I -- I took
19 those out. And the left-hand side, that's where it
20 just starts with the -- the third paragraph.

21 "It is a defense to the crime of first-degree
22 murder, including lesser..."

23 MR. WOOD: Right. That's fine. Because that's
24 just instructional.

25 MR. LEWIS: Yes.

APPEAL TRANSCRIPT

1 THE COURT: Uh-huh.

2 MR. LEWIS: And then I -- I left in the next one.

3 "The use of deadly force is justifiable if Keith
4 Johansen reasonably believed that the force was
5 necessary to prevent imminent death or great bodily
6 harm to himself while resisting:

7 Another's attempt to murder him..."

8 And I just didn't know if you wanted anything
9 else in there.

10 "Or any attempt to commit..."

11 MR. WOOD: I would add aggravated battery in
12 that, which would mean that we would need to have a
13 definition of aggravated battery.

14 MR. LEWIS: And I don't think the third one
15 you -- you need in there, but I just wanted to leave
16 that there until you made that decision, Mr. Wood.

17 And it says, "Any attempt to commit upon or in a
18 dwelling house in which he was present..."

19 Usually that's reserved. That's like the Castle
20 Doctrine for people, if someone's breaking in.

21 Did you see where I'm talking, Gary? Because it
22 seems like it would just be a repeat of No. 2.

23 MR. WOOD: Yeah, that's fine.

24 MR. LEWIS: Okay. Then I'm going to take out the
25 next paragraph. We know -- we'll add in -- do you

APPEAL TRANSCRIPT

1 want the Aggravated Battery right here, Judge, or are
2 you going to give it after the instruction?

3 THE COURT: Probably makes more sense right
4 there.

5 MR. LEWIS: And then I'll just put in there that
6 you've previously defined what First-Degree Murder
7 is -- or Murder is.

8 THE COURT: Uh-huh.

9 MR. LEWIS: Okay. We'll take this paragraph out.
10 Is that okay, Gary? Do you see that one?

11 MR. WOOD: Yeah, that's fine.

12 MR. LEWIS: Okay. Then I started with, "Keith
13 Johansen was justified in using deadly force if he
14 reasonably believed that such force was necessary to
15 prevent imminent death or great bodily harm to himself
16 or the imminent commission of --" the forcible felony
17 listed.

18 So I assume that would just be...

19 MR. WOOD: Aggravated battery?

20 MR. LEWIS: Right. I'll just put -- commission
21 of applicable forcible felony -- I'm just going to
22 put -- can I just put Murder and/or Aggravated
23 Battery?

24 Are you okay with that, Mr. Wood?

25 MR. WOOD: Yes. Yes.

APPEAL TRANSCRIPT

1 MR. LEWIS: "If he was otherwise not engaged in
2 criminal activity and was in a place he had a right to
3 be, then he had no duty to retreat..."

4 The next paragraph, I think, is applicable.

5 "If he was in a dwelling in which he had a right
6 to be, he had no duty to retreat and had the right to
7 stand his ground and use force, including deadly
8 force, if he reasonably believed that such conduct was
9 necessary to prevent imminent death or great bodily
10 harm to himself or the imminent commission of..."

11 We'll just put Murder and/or Aggravated Battery
12 again?

13 MR. WOOD: Yes.

14 MR. LEWIS: And, Judge, if there's anything we're
15 doing that you think is wrong, just feel free to tell
16 us.

17 THE COURT: I'll keep that in mind.

18 MR. LEWIS: Um...

19 MR. WOOD: Well, I had in red when you get the --
20 the paragraph on that same page, give the paragraph
21 below when there's evidence the defendant was engaged
22 in criminal activity. I had it -- I red-lined all
23 that in order for it to be taken out. There's no
24 issue about the use of -- in his defense, that he was
25 engaged in criminal activity when he was using, so...

APPEAL TRANSCRIPT

1 MR. LEWIS: That's fine. I don't disagree.

2 THE COURT: Up top, Mr. Lewis, Aggravated.

3 Thank you.

4 MR. LEWIS: That's funny how if you just switch
5 those.

6 So you're saying, Mr. Wood, you want me to take
7 out this paragraph here?

8 MR. WOOD: I'm going to look over your shoulder.
9 In fact, I'll look on the screen actually.

10 MR. LEWIS: Yeah, whatever's easier.

11 So this paragraph right here is the one you're
12 talking about?

13 I don't think so. This -- I think -- I think I
14 took out the one you're talking about. I think this
15 is the next applicable paragraph here.

16 MR. WOOD: Okay. Let me look at it.

17 MR. LEWIS: I can't read that, but it looks like
18 I probably -- yeah, I mean, I went to the next one.
19 Let's see. Yeah, I took the criminal activity out.

20 MR. WOOD: Yeah.

21 MR. LEWIS: So the next one is -- I took out that
22 resisting law enforcement.

23 THE COURT: Okay.

24 MR. LEWIS: This was the next one I thought was
25 applicable. And you tell me if you think it is.

APPEAL TRANSCRIPT

1 Where it says, "In deciding whether he was justified
2 in the use of deadly force, you must consider the
3 circumstances..."

4 MR. WOOD: Yes. I had that highlighted,
5 actually.

6 THE COURT: Yes.

7 MR. LEWIS: Okay.

8 MR. WOOD: Then I took out the Presumption of
9 Fear For Unlawful Enforceable Entry into a Dwelling.

10 MR. LEWIS: Okay.

11 THE COURT: Yeah.

12 MR. WOOD: And actually all through the next
13 page.

14 MR. LEWIS: Okay. So Aggressor?

15 MR. WOOD: Yeah.

16 And then, you know, of course taking out the
17 definitions of dwelling, that wouldn't apply.

18 MR. LEWIS: Right.

19 Jenny, are you good with that right here?

20 MS. DUNTON: Where are you?

21 MR. LEWIS: Where it says, "However the use or
22 threatened use of deadly force is not justified if you
23 find the defendant used force or the threat of force
24 to initially provoke or force against themselves,
25 unless the force..."

APPEAL TRANSCRIPT

1 So that's just generally when that person's the
2 aggressor?

3 MS. DUNTON: Yes.

4 THE COURT: Correct.

5 MR. LEWIS: Okay.

6 MR. WOOD: And then there's a series of ones
7 after that, it's actually individualized paragraphs,
8 prior threats, specific act of the victim known to the
9 defendant, reputation, a paragraph on that, and the
10 physical abilities. I had all that blocked to be
11 deleted.

12 MR. LEWIS: I left the physical abilities in
13 there because I believe -- obviously I think that's an
14 issue in this case, is his size versus her size. I
15 think that would be relevant. I mean...

16 MR. WOOD: Well, you can keep it in. I'm not
17 sure -- a gun is a great equalizer.

18 MR. LEWIS: Well, I'm sure we can make different
19 arguments that might, you know -- sure. Well, we'd
20 like to leave it in. We think it's relevant for our
21 argument.

22 And then the last two paragraphs, do you see
23 those, Gary? Are you good with those? Obviously they
24 need to stay in there because they're standard.

25 MR. WOOD: Yes.

APPEAL TRANSCRIPT

1 MR. LEWIS: Okay. Yes, this one and that one.

2 MR. WOOD: Yeah.

3 MR. LEWIS: Okay. Perfect.

4 THE COURT: Okay. And now we're down to the
5 Reasonable Doubt standard?

6 MR. WOOD: Yes.

7 THE COURT: Weighing the Evidence?

8 MR. LEWIS: So Weighing the Evidence, I think we
9 leave -- let's see. I don't think No. 7's applicable
10 or No. -- we can leave 6 in there.

11 Do you agree with No. 7 coming out, Mr. Wood?

12 MR. WOOD: Yeah, that's fine.

13 MR. LEWIS: I don't think No. 7 is very
14 applicable.

15 Are you good with the rest of it, Mr. Wood, on
16 that page?

17 MR. WOOD: So you're talking about just leaving
18 out 7?

19 MR. LEWIS: Yeah, 7, because I don't think there
20 was any -- you know, provided, you know, no one
21 testifies with (indiscernible).

22 MR. WOOD: Okay. And I guess we'll know tomorrow
23 whether No. 6 will be in?

24 MR. LEWIS: Well, I think --

25 THE COURT REPORTER: I didn't hear you, Mr. Wood.

APPEAL TRANSCRIPT

1 What did you say?

2 MR. WOOD: Oh, I'm sorry.

3 THE COURT: No. 6.

4 MR. WOOD: You know, you block sound, like a row
5 of egg cartons. It just keeps everything from me.

6 MR. LEWIS: That's the first time I've ever heard
7 someone say that about me. Usually they tell me I
8 turn and they can't see me.

9 MR. WOOD: All right. So what I was saying is --

10 MR. LEWIS: No. 6, I think that that's going to
11 be applicable, because have they been offered or
12 received any money. And Dr. Buffington receives lots
13 of money from the Defense team across the state of
14 Florida.

15 MR. WOOD: I was referring to Mr. Lynch, but
16 that's fine.

17 MR. LEWIS: No, I know. That's why I took out
18 No. 7 -- oh, yeah, No. 6, but, yeah.

19 THE COURT: It's No. 6.

20 MR. LEWIS: Yeah, No. 6. I don't anticipate
21 Mr. Lynch testifying.

22 MR. WOOD: Okay. Okay. So then we're good on
23 that.

24 THE COURT: Expert Witness definitely applies.

25 MR. LEWIS: I'm going to take out Defendant Not

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1 Testifying.

2 THE COURT: Mr. Wood? Defendant Not Testifying?

3 MR. WOOD: Yes, sir.

4 MR. LEWIS: And I'm leaving in the Defendant's
5 Statements, Mr. Wood.

6 MR. WOOD: Yes.

7 MR. LEWIS: Okay. And then it rolls right into
8 Rules for Deliberation. And then I just -- it goes
9 into Cautionary Instruction.

10 Do you have anything with that, Mr. Wood? I
11 think it's just a standard.

12 MR. WOOD: I know you've probably -- beginning on
13 the last page about the exhibits, I -- I seem to
14 recollect that these guns would not go back to the
15 jury room?

16 THE COURT: Correct.

17 MR. LEWIS: I would -- yes, I think we can --

18 THE COURT: We have live ammo placed in evidence
19 and guns.

20 MR. LEWIS: Can we put "These exhibits will be
21 sent into the jury room with you when you begin to
22 deliberate except for certain..." however you want to
23 phrase that?

24 MR. WOOD: Yeah. You might want to include,
25 maybe, the videos.

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1 MR. LEWIS: Right. The videos don't need to go
2 back.

3 "...except for certain tangible evidence and
4 videos." And then we can put, "If you wish to see
5 these exhibits, please say something in writing."

6 Is that fair?

7 THE COURT: (No audible response.)

8 MR. LEWIS: Does that sound good, Mr. Wood,
9 "tangible"? I can't think of anything better.

10 MR. WOOD: That's fine.

11 THE COURT: Certain tangible -- "If you wish to
12 see any exhibits that you have not been provided,
13 please request that in writing."

14 MR. LEWIS: Do we want to bring up the verdict
15 form now?

16 THE COURT: We can.

17 MR. WOOD: Yes, I did see that.

18 THE COURT: And that's separate from the
19 instructions. Mine's stapled together. But I want
20 one -- obviously I want the jury provided with the
21 instructions and they can take them back, but only one
22 verdict form.

23 MR. LEWIS: Oh, of course. You'll have a verdict
24 form. We'll give Mr. Wood one and ourselves, but
25 obviously there's just your copy for the jury.

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1 THE COURT: And, Madam Clerk, I'm going to hand
2 that to you as soon as I'm able.

3 THE CLERK: Okay.

4 MR. WOOD: And, Judge, I did get a copy of the --
5 it was the draft of the jury instructions and the
6 draft of the verdict form. The only thing, again,
7 I'll check this tonight, because it's parallel with
8 the issue that, you know, the interrogatory, which is
9 the last one there under Second-Degree Murder, carried
10 or used a firearm. I just want to double check my --
11 the research on the statutes to see if there's
12 anything I need to worry about.

13 MR. LEWIS: Sure.

14 THE COURT: Okay.

15 MR. WOOD: But I did advise Mr. Johansen that the
16 Second-Degree Murder and Manslaughter lesser and the
17 instructions for them is mandatory in a first-degree
18 murder case, and we would not be requesting any other
19 lessers.

20 THE COURT: Okay. The -- I believe that
21 concludes our charge conference.

22 MR. LEWIS: Yes, sir, I believe so.

23 THE COURT: All right. Anything further for this
24 evening?

25 MR. LEWIS: Nothing from the State, Judge.

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1 MR. WOOD: Nothing from the Defense, Judge.

2 THE COURT: All right. We'll be in recess.

3 Should we come back at 8:30?

4 MR. WOOD: That's a good idea.

5 MR. LEWIS: That's a good idea, yes, sir.

6 THE COURT: Okay. 8:30. All right. Thank
7 you-all.

8 (Court was recessed at 4:43 p.m. on October 27th,
9 2021, to be resumed at 8:30 a.m. on October 28th,
10 2021.)

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