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CR-1509104

CASE NO. 2015-OC-337

FILED

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NICHOLE BALDWIN
WHITE PINE COUNTY CLERK

BY DM
DEPUTY

THE CITY OF ELY
Plaintiff

vs.

CYNTHIA THROM
Defendant

_____ \

MISDEMEANOR TRIAL AND SENTENCING
August 20, 2015

PAGE 2 OF 2

1 Q. When you were meeting with her did she give you a general
2 description of what transpired and why she was talking to you?

3 A. Yeah, but she described it more of a – she wasn't sure what she
4 should do type of thing.

5 Q. You said you had an interaction with her later on that day as well.

6 A. Yes sir.

7 Q. You said you went down town?

8 A. Yes sir, there was a, later on she actually called and we didn't get
9 to go over there until a little later because we were in the middle of doing
10 stuff, some other stuff.

11 Q. Other stuff I assume you mean in Law Enforcement?

12 A. Yes. It was a busy night. So, we responded for a call for service
13 down there, her office on Aultman street.

14 Q. What was the purpose, the nature of the call you had received.

15 A. I believe it was assault of battery or something like that, I couldn't
16 tell how it was given to us.

17 Q. So, you responded to her office downtown, do you remember the
18 address?

19 A. No, but I would say the seven hundred block of Aultman street.

20 Q. Is that within the City of Ely?

21 A. Yes sir.

22 Q. When you reported down there, were you by yourself?

1 A. No sir.

2 Q. Who was with you?

3 A. I took Sgt. Robinson was with me.

4 Q. Why did you take Sgt. Robinson?

5 A. Because she is my supervisor, and she is a female and I thought I
6 would probably need somebody else if there was something to it that could
7 take some pictures, or – she –she – Sgt. Robinson is good at speaking with
8 females typically.

9 Q. So, when you met with Miss Lopez at her office sometime that
10 evening, can you describe what her behavior was at that point?

11 A. She wasn't talking as fast, she was still probably agitated, but I
12 wouldn't say she was distraught or emotional or anything like that.

13 Q. What did she inform you transpired that was a basis for the call?
14 Or did she?

15 A. She did. There was some sort of disagreement over insurance,
16 and how they were going about doing their jobs and I'm sorry, I don't
17 remember her name.

18 Q. Miss Thom.

19 A. Miss Thom had put her finger, grabbed her by the arms, I believe
20 is what she said, and then put her finger into like this, so she.

21 Q. Okay you are now saying put her finger into her like this, you had
22 your index finger pointed away from your body?

1 A. She hadn't indicated that she had poked her, but just that she was
2 using her finger when she talked to her, and kind of intimidated her I guess.

3 Q. When you were meeting with her in her office, did she indicate
4 where the incident allegedly occurred?

5 A. She did, but I don't recall what she said right now.

6 Q. Do you recall writing a statement in regards to this call for service,
7 a report?

8 A. Yes.

9 Q. Will looking at the report refresh your recollection?

10 A. Sure.

11 MR. ODGERS: May I approach with a copy of the C.A.D.
12 incident report which Mr. Brown has has (unintelligible words) one and two.

13 Q. Take a moment, review it , when you have refreshed your
14 recollection let me know.

15 A. Okay.

16 Q. You've had an opportunity to re-read your C.A.D. incident report
17 is that correct?

18 A. Yes sir.

19 Q. Has it refreshed your recollection as to where the incident
20 allegedly occurred?

21 A. Yes sir.

22 Q. And where was that?

1 A. The library.

2 Q. Where is that located?

3 A. White Pine County.

4 Q. Within the City of Ely?

5 A. Yes sir.

6 Q. Did Miss Lopez in your interactions with her that evening show
7 you any type of injuries she has alleged to have sustained?

8 A. I didn't get any injuries, I looked at her arms, I don't recall seeing
9 any injuries on her arms. I don't think I notated that but, Sgt. Robinson
10 then went behind a curtain, or toward the back of the building and
11 photographed what Miss Cooper stated, her injuries were.

12 Q. Miss Lopez?

13 A. Lopez I'm sorry.

14 Q. Have you seen the photographs that were taken?

15 A. No sir.

16 Q. Was that the extent of your interactions with this incident?

17 A. We issued a citation. I think we wrote a citation on her behalf,
18 Miss Lopez's behalf. She stated that she was pretty emphatic that she
19 wanted a citation issued.

20 Q. So she filed a citizens complaint for battery?

21 A. Yes sir.

22 Q. Did you serve it?

1 A. Somebody else did.

2 Q. On June Fourth Two Thousand Fifteen, did you conduct an
3 investigation?

4 A. I'm sorry.

5 Q. On June Fourth Two Thousand Fifteen, did you conduct an
6 investigation? Did you do talk to anybody?

7 A. Is that the same day?

8 Q. The next morning.

9 A. No. I think that day I was off. Somebody must have followed up.

10 MR. ODGERS. May I approach again with this C.A.D. report?

11 THE COURT: You may.

12 Q. Second paragraph. Have you had a chance to reflect your
13 recollection?

14 Having reviewed your C.A.D. report did you, did it refresh your
15 recollection as to whether or not you spoke to anybody else.

16 A. It does, but I don't remember going to talk to anybody the next day
17 about it.

18 There is no number on that report, but people add follow up as they
19 go. I know they did some follow up, I don't remember talking to her the
20 next day, but if she says I did, it's possible.

21 Q. Since June Third, have you done a number of other stops?
22 Traffic stops, investigations?

1 A. Yes. A few, I was off for a couple months, but I've done a few.

2 Q. Is it fair to say the information on your C.A.D report is the most
3 accurate recollection of what transpired?

4 A. Yes sir.

5 Q. When the C.A.D. report is generated is that generally based on
6 entry of information by specific individuals whether it was yourself or
7 somebody else?

8 A. Yes sir.

9 Q. The fact that all of the narrative or almost all of the narrative is
10 under four twenty one which is your badge number correct?

11 A. Um Mm (Yes)

12 Q. That it would reflect that you were the author of that correct?

13 A. Yes sir.

14 Q. You don't have a specific recollection today of having spoke to
15 Miss Austin or Miss Ricci regarding this incident?

16 A. I do remember talking to Miss Ricci. We got a statement from her,
17 verbal statement anyway. I really don't remember talking to anybody else
18 about it except Miss Lopez.

19 MR. ODGERS: Nothing further Your Honor.

20 THE COURT: Mr. Brown?

21 MR. BROWN: Thank you, Your Honor,

22 Q. Do you know who unit four eighteen is?

1 A. Yes sir.

2 Q. Is that Jeremiah Peterson?

3 A. No. It would be Deputy Watterson.

4 Q. Is it possible that- well, let me ask you another question first. Is it
5 possible for somebody to make an entry in the C.A. D. system without
6 including their unit number at the beginning of the entry?

7 A. It happens sometimes. Yes.

8 Q. Is it possible somebody other than yourself followed up on this
9 investigation the next day and made an entry without entering their unit
10 number.

11 A. It's possible.

12 Q. You don't remember the next day meeting with Virginia Austin
13 and discussing this case with her?

14 A. I don't remember specifically having a conversation with Miss
15 Austin but like I said we were – if I could explain, the situation. I believe it
16 was a busy day, if I was working that day, but right on the heels of that I
17 was off for a period of two months. I don't think I was around when
18 whatever the results of all this came about. I wasn't involved in the
19 briefings, or anything else because I was just off.

20 Q. So you're not even sure that you were working that day?

21 A. I'm not I would have to look.

22 MR. ODGERS: That day meaning?

1 MR. BROWN: June Fourth, the day after this incident. You
2 were working, and did have contact with Miss Lopez on the Third?

3 A. Can you tell me what the time was that we went to talk to Miss
4 Lopez?

5 Q. That is a question I have for you, whether or not you recall what
6 time you were dispatched to meet with Miss Lopez?

7 A. It was at night, I believe it was, we were working night shift.

8 Q. So, if you don't know the time is there anything that would refresh
9 your recollection?

10 A. My report.

11 MR. BROWN: May I approach the witness Your Honor?

12 THE COURT: You may.

13 MR. BROWN: I'm going to show you the C.A.D. incident report
14 pages one and two.

15 MR. ODGERS: Do you want mine?

16 MR. BROWN: Sure thanks.

17 MR. ODGERS: May I approach?

18 THE COURT: You may.

19 MR. ODGERS: That way you don't have to –

20 MR. BROWN: Does that have both pages?

21 MR. ODGERS: Yep. Front and back.

1 Q. What time were you dispatched to meet with Miss Lopez? Well,
2 I'm sorry. Go ahead and look at it and return the document to Mr. Odgers.

3 Q. What time were you dispatched to meet with Miss Lopez?

4 A. It says eleven seventeen.

5 Q. Is that in the day or night?

6 A. That was at night.

7 Q. Do you recall seeing what time, withdraw that – Do you – well, I'm
8 sorry. I'm going to ask him to look at the second portion of that second
9 page. I'm going to be asking a question about who added Miss Throm,
10 Miss Austin, Miss Ricci to the report. Can you – I'm sorry to do that but can
11 you give it back to Mr. Odgers now?

12 A. Those three names? You just want who added those three
13 people to the report?

14 Q. Yeah. And then give the report back to Mr. Odgers. Does that
15 help refresh your recollection about whether or not you talked to Miss
16 Austin?

17 A. No. It just shows who added them to the report.

18 Q. If you had interviewed her would you have added her to the
19 report?

20 A. Probably.

21 Q. Who added her to the report?

22 A. It says Deputy Peterson.

23 Q. Is that true with Miss Ricci also?

1 A. Yes.

2 Q. Again, if you had interviewed Miss Ricci wouldn't you have added
3 her to the report?

4 A. Not necessarily. As the report is typed, I mean if you talked to
5 somebody, you can add their name to the report. Typically if it is your
6 incident and you are doing all the typing, like I started it so I would have
7 probably added the people I would have dealt with, it's usually how it
8 works. If he did follow up he would probably add who he talked to. I don't
9 remember if I added Miss Ricci, I know I spoke to Miss Ricci at some point.

10 MR. BROWN: That's all I have Your Honor.

11 THE COURT: Mr. Odgers.

12 MR. ODGERS: Nothing further, Your Honor.

13 THE COURT: Nothing further? Very good. Do you want
14 to hold him?

15 MR. ODGERS: No. He can be released.

16 THE COURT: Very good. Thank you Officer.

17 DEPUTY MONROE: Yes sir.

18 THE COURT: Do you have another witness you want to
19 call?

20 MR. ODGERS: I do Your Honor, we're going to call Miss
21 Lopez.

22 THE COURT: Officer? Will you have Miss Lopez come
23 in?

1 Please have a seat right here. Remember you are under oath.
2 Give us your true and correct name and where you live.

3 MISS LOPEZ: My name is Elizabeth Nancy Lopez, I go by
4 Betsy. My home residence is Two Six Eight Zero Mineral Drive, Ely
5 Nevada Eight nine three zero one.

6 THE COURT: Thank you. You may proceed.

7 CITY'S WITNESS ELIZABETH LOPEZ TESTIFIES

8 Q. Good morning Miss Lopez. How are you?

9 A. I am good. How are you?

10 Q. I'm wonderful. Miss Lopez on June Third, Two Thousand Fifteen,
11 were you living in White Pine County?

12 A. Yes.

13 Q. Did something happen that day that brings you to court today?

14 A. Yes.

15 Q. What transpired that day that brings you to Court?

16 A. There was open enrolment for White Pine County that day,
17 therefore different vendors were there regarding health insurance, and
18 there was a disagreement that led to Cindy Throm putting her hands on me
19 in an aggressive manor.

20 Q. Can you identify Miss Throm? Can you point her out and identify
21 a piece of clothing she is wearing?

22 A. Miss Throm is wearing a blue dress, right there at that table.

1 MR. ODGERS: May the record reflect she has identified the
2 Defendant.

3 THE COURT: Reflected.

4 MR. ODGERS: Thank you.

5 Q. Alright, so lets start at the beginning of the day. What transpired,
6 how did the day begin?

7 A. I believe the open enrolment started about Ten o'clock. For the 1st
8 several years there has been animosity so I do feel like that day the
9 animosity had been building regarding Miss Kathy, myself and Miss
10 Virginia.

11 Q. In what way was the animosity. What was the basis for your
12 belief that there was animosity?

13 A. This current open enrolment was very supervised by Miss Throm,
14 where in the last four and a half years and fifty other companies, two of
15 which are other Counties that I do business with, I don't – I'm not
16 supervised by another vendor.

17 Q. Can you describe in general terms the, how you felt the morning
18 was as far as the interaction between you and other individuals that were in
19 the room? The vendor individuals.

20 A. It was very tense, I did try to stay on the other side of the room
21 regarding my Aflac things. There was no other employees in the room
22 other than Miss Kathy at the time, so I did start texting different employees
23 saying please come down to the library numerous vendors are here to talk
24 insurance to try to get everything started. The first individual was Miss
25 Nichole Baldwin that did come to sit down with me.

1 Q. As the day progressed were there discussions regarding any
2 particular issues that were causing continued animosity that day?

3 A. Yes. There was an issue with whether paper work between Aflac
4 and Aflac Group was correct? And while I was sitting with Miss Nichole
5 discussing her policy, and claims, Miss Cindy did abruptly come into our
6 conversation.

7 Q. Were there any discussions about an alleged fraud investigation?

8 A. There was later that day.

9 Q. When you say, later that day, what do you mean?

10 A. I would say approximately four fifteen later that day.

11 Q. So, let's go to that –

12 MR. ODGERS: May I approach Your Honor?

13 THE COURT: You may.

14 Q. I am going to hand you a marker if you would go to the easel.
15 Even though we all understand this is not going to be to scale, can you
16 draw as best you can the layout of the library where the meeting was
17 occurring?

18 A. The layout of the library? Yes.

19 Q. Where the meeting was occurring.

20 A. So, I would say here is the front regarding the mural. This would
21 be the door to the outside, so this is the door to the entrance to the library.

22 Q. If you would mark that as a door?

1 A. Library room entrance.

2 Q. And you marked another set to the right side there, no to the right
3 side. That was the entrance from the outside?

4 A. That was the outside entrance. So this was the door to maybe
5 Miss, - the people that do the direction for the library as well as the
6 computers.

7 Q. Were there tables in the room?

8 A. There were tables in the room. There was an L shaped table as
9 well as there was a table at the front of the room and possibly a circular
10 table.

11 Q. Were there any other tables in the room?

12 A. There were no other tables in the room other than these three
13 tables.

14 Q. The table that is to the far right, that you have an F next to?
15 That's correct, that one right there. Behind that table is there a mural?

16 A. There is a mural.

17 Q. Through out the day everybody was counting milling around going
18 from one table to the next correct?

19 A. Yes.

20 Q. Depending on the needs of the employees.

21 A. Yes.

22 Q. As the day progressed was there an incident with you and Miss
23 Throm specifically?

1 A. Yes.

2 Q. Stop. When that incident occurred – I want you to take the red
3 pen. Thank you. I'd like you to mark with a square the general area in
4 which that incident occurred. Now, within that square can you orient
5 where Miss Throm was standing?

6 A. Facing this way.

7 Q. Okay can you put a "T" next to that? Where were you standing?

8 A. Um, next to the table. I did turn around to face that way, so "B" for
9 Betsy?

10 A. Alright, so you have circles with arrows pointing toward each
11 other, is that the direction that you were facing – the individuals were
12 facing?

13 A. Yes.

14 Q. Can you identify where Miss Austin was standing?

15 A. Miss Austin was standing here facing in as well.

16 Q. Will you put an "A" next to that? Was, who else was in the room
17 besides the three of you?

18 A. Miss Kathy Ricci.

19 Q. Can you do a circle with the way she was facing? And then put
20 an "R". Now, obviously during the interaction you did not have a ruler but
21 can you estimate how close everybody was standing.

22 A. It was within inches about a foot from everybody was very close to
23 my body.

1 MR. ODGERS: Go ahead and have a seat. Thank you.

2 Q. How did the verbal altercation at the end of the day at the library
3 begin?

4 A. It actually began on the L shaped table possibly just prior to sitting
5 down. I think originally it started about the differences between Aflac and
6 Aflac group, and then it began more heated and they said the reason they
7 were mad was because there was a prior fraud investigation.

8 Q. When you say they who are you referring to?

9 A. Miss Cindy, Miss Kathy, and Virginia.

10 Q. So, the three ladies were telling you about this alleged fraud?

11 A. Yes. And they said that Miss Lori Carson was also upset with
12 me.

13 Q. Over this alleged fraud investigation?

14 A. Yes. However, she was not there.

15 Q. The individuals when they were discussing this with you, can you
16 describe the tenure and demeanor of Miss Ricci?

17 A. Miss Ricci was less aggressive, however very irritated and
18 animated, she said that she was interrogated regarding this fraud
19 investigation and how upset she was. Everybody had their turn in
20 expressing how upset they were as well as they all three expressed how
21 upset Miss Lori Carson was also.

22 Q. What did Miss Austin say to you specifically about the fraud
23 investigation?

1 A. Well, she was saying maybe that's why they are so mad. Miss
2 Virginia was although, I could tell she was irritated, she was able to control
3 her mannerisms.

4 Q. What was Miss Throm's behavior like?

5 A. Definitely the opposite of Miss Virginia. She was very animated
6 and very vocal, very aggressive. When you're at the L shaped table, Miss
7 Virginia was across, however at the end of the table was Miss Cindy, so
8 she was reaching across the table with her hands and face, but not as if me
9 to you literally the corner. There is not that much space, while she was in
10 an animated aggressive state.

11 Q. At some point did all four leave the L shaped table to that red
12 square where you identified on the document?

13 A. Yes.

14 Q. How did that transpire?

15 A. Miss Cindy was yelling and I felt was being demeaning, then
16 anything I said in turn Miss Ricci would say not necessarily her words were
17 you're being rude, but you need to stop. I was not yelling and I was talking
18 slower and calmer. Miss Cindy was animated so I was surprised that I was
19 the one being disciplined. I was realizing, that "A" this conversation should
20 have been done before open enrolment, and "B" whit the excitement we
21 weren't getting anywhere so I gathered the information I had on that table
22 and I turned because the rest of my information was on the very end of the
23 L table on the other side.

24 Q. What happened next?

1 A. As I stood up and gathered my things and turned around all three
2 ladies also stood up and gathered their things then came around to the
3 front of the table.

4 Q. At some point a confrontation occurred within the red box?

5 A. Yes.

6 Q. Can you describe for the Court what transpired in that
7 confrontation?

8 A. Again yelling about this fraud investigation that was prior. They
9 directed that I was the reason for this fraud investigation because I made a
10 police report or I had told the police. I had never made a police report
11 regarding any of this, however, I did go to the ethics committee and I saw
12 the NRS. 281 A. and B. It kind of looks like what had happened previously
13 was correct.

14 Q. I'll go back to my question. What transpired to cause the
15 altercation?

16 A. What transpired was they were very angry and they thought I was
17 the reason for this prior fraud investigation.

18 Q. Describe, at this point had you already turned around and the
19 women were in the position you identified in that red box?

20 A. Yes.

21 Q. Your estimation was they were about a foot away from you on all
22 three sides?

23 A. Very close.

1 Q. Can you describe Miss Austin's demeanor right before the
2 incident? As you all were right there, describe how Miss Austin was
3 behaving?

4 A. Although she was aggressive she was less aggressive than Cindy
5 and I did feel although she was – she was trying to hold herself in, in being
6 contained. I felt like she was trying to calm Miss Cindy down at that point.

7 Q. Miss Ricci? What was her demeanor or behavior like?

8 A. She was aggressive and angry and was mentioning Lori Carson
9 and how Lori Carson didn't commit this Fraud.

10 Q. What was Miss Throm's conduct and behavior?

11 A. Very crazy, her eyes were very big, very animated, very forward in
12 your face, very animated with her talking in her face, very intimidating, very
13 loud.

14 Q. When she was in your face, and her hands were very animated.
15 What were you feeling?

16 A. I was feeling like I wanted to get out of there, but there was a table
17 behind me, so I just stood there and I was just trying to wait.

18 Q. Were you afraid?

19 A. I was very afraid. I wanted to get a way, but I knew there was that
20 table and I couldn't' and I didn't want to push them out of the way.

21 Q. What were you afraid of?

22 A. I was afraid she was going to hit me, and then when she obviously
23 did grab me, she was shaking me to the point that my hair was flying, and I

1 was scared she was maybe going to through me on the table. There were
2 people around I didn't know what was going on. I was in total shock.

3 Q. With the three women surrounding you, did you feel like you had
4 any type of escape?

5 A. I did not feel like I had any type of escape I have never felt like
6 this before, but I felt like it was a gang situation. I know we're not talking
7 about it right now but this been an issue that had been building and I felt
8 very much like this was a gang situation. These three ladies were very
9 angry at me in showing up.

10 Q. At some point did Miss Throm touch you?

11 A. Yes she did.

12 Q. Right before she touched you what was her demeanor and
13 behavior?

14 A. Yelling, animated, aggressive.

15 Q. We've received testimony that Miss Throm attempted to touch
16 you, grab you, whatever by the wrists in an effort to calm you down. Is that
17 your recollection of what transpired?

18 A. Absolutely not. I pride myself at being a lot calmer than I wanted
19 to be, because believe me with the accusations I was getting I wanted to
20 speak above her because what she wasn't saying was true. I was
21 wondering we were paying HR when I'm having to report to a vendor. I
22 was upset but I was not yelling, I was not – my voice was not raised.

23 Q. Were your hands animated as you were speaking?

1 A. I am a very animated person, so I could see probably my hands
2 were animated, yes.

3 Q. Do you have a specific recollection of her hands being animated?

4 A. At the time that she was physically going to touch me, I believe my
5 hands were at least this or lower.

6 Q. You say this or lower, what do you mean?

7 A. Well, they were not higher than my chest. They were probably
8 lower than my navel.

9 Q. So your hands were low?

10 A. Yea, they were low, because I was not speaking at the time
11 because they were three were yelling at me how Lori was mad and this
12 isn't true and they were all investigated, no one ever investigated me. I
13 said no one ever asked me any questions regarding this in the past. I don't
14 know how much of an investigation they are actually was.

15 Q. Talk about the grabbing. What transpired?

16 A. As we were standing there I remember her last words were what
17 are you thinking? She just grabbed me by the upper extremities, and dug
18 in her thumbs and fingers. My hair was down. At first it was maybe less,
19 but then it turned into my hair was flying about and I thought for sure
20 because everybody was so close. I thought for sure Kathy was going to
21 put her arms on top of Cindy's arms to get her off of me. So, the last piece
22 of hair, the hair was all over, the last piece of hair was flying, I was trying to
23 look for Kathy and Kathy was looking at Cindy with this look of like what is
24 going on. So, then I thought then for sure Cin – or Miss Virginia I thought
25 for sure, I thought this is so crazy. For sure Miss Virginia is going to put her

1 hands on and nobody did so at that point she did stop and then turn around
2 and leave.

3 Q. After she left, who left with her?

4 A. She gathered her stuff and left Miss Virginia said, I'm sorry, she
5 gets excited or something, she's just upset about the past information.
6 Then Miss Virginia maybe helped gather the rest of the stuff and left behind
7 her, out of the library.

8 Q. Did somebody stay with you

9 A. Somebody was still there at the library with me.

10 Q. Who was that?

11 A. Kathy Ricci.

12 Q. Did you have a discussion with Miss Ricci regarding the incident?

13 A. I did.

14 Q. Can you tell the Court about that discussion?

15 A. I told her how what was happening wasn't right. Miss Kathy said
16 that what she did wasn't right but she didn't say what- it was my
17 interpretation that Miss Kathy said her putting her hands on you wasn't
18 right. She was again just explaining that Lori didn't do this fraud, and I
19 began to cry I was crying because it was so emotional and unexpected.

20 Q. Did Miss Ricci make any statements to you while you were
21 standing there regarding – oh, I apologize, we need to go back to the
22 incident.

23 When Miss Throm grabbed you, touched you , whatever, did you respond.

1 A. I did not respond, I stood still.

2 Q. Did you say anything?

3 A. I did not say anything until she was walking away I said, don't
4 touch me like that again and I would never touch you like that.

5 Q. Did you and Miss Ricci talk about that discussion or those
6 comments?

7 A. We did, however all Miss Ricci said was that she shouldn't have
8 done that. Miss Ricci and I's conversation was how prior Miss Ricci and
9 maybe had gone to lunch and had a cordial relationship up until a few
10 years ago when there was an entirely different issue going on. So, ever
11 since then it was not been so good. I did mention to her that there is this
12 possible money situation going on and they are all going to lunch and I can
13 see this because it is next to my office. So, I had a conversation to her
14 about going to lunch with different of the vendors and different possible
15 family members of these vendors.

16 Q. How long did you and Miss Ricci meet after the incident?

17 A. This ended about five or five o' five. It maybe had to be five
18 fifteen and we talked to ten minutes or so. I hadn't eaten all day, so about
19 by five thirty I believe I ran to the gas station. I believe I made several
20 phone calls to my mother, to my boss, to Miss Nichole, and to an attorney
21 during that time. We had a six o'clock appointment here at the Sheriff's
22 office regarding the open enrollment.

23 Q. When you arrived at the public safety building for open enrolment,
24 can you describe how you were feeling?

1 A. I was very scared, I was very sad, I was in shock, I was wondering
2 how this was going to affect my life. I told my boss the truth, however he is
3 new and he doesn't know me or this is a small town. I was crying in the
4 car, I was waiting in the car until everybody went in because I didn't want to
5 stand in the parking lot as everybody was getting their stuff. So, I was
6 trying to stay on the phone until everybody went in. Then once I did go in,
7 Miss Cindy did actually open the door for me, and she was very very nice.
8 In the past four and a half years that I have known Miss Cindy she has
9 never been that nice to me before.

10 I have opened doors for her and she has not said thank you, maybe
11 growl or said different things. I was very shocked to see that all of a
12 sudden I was being treated very nicely.

13 Q. Did something happened while you were at the public safety
14 building?

15 A. Prior to the meeting, I was walking into the bathroom, and Cindy
16 handed me a card.

17 MR. ODGERS: Your Honor, may I approach with – we need to
18 mark it – City's exhibit number eleven?

19 Q. I'm going to hand you exposed exhibit number eleven. Before
20 you show it to the Court, can you identify what it is?

21 A. This is what Cindy handed me as I was going to the restroom. In
22 the public safety building about six o' five P.M. June Third.

23 Q. Did you have an opportunity to review it?

24 A. I did. I went inside the bathroom stall and read it.

25 Q. What did you understand this card to be?

1 A. I understood this card to be that she realized that our next
2 appointment was at the Police station after she just grabbed me and put
3 her hands on me. So, she was trying to butter me up, and say sorry so
4 hopefully I would not turn in a police report regarding this.

5 Q. Do you recognize the signature on the card?

6 A. To tell you truth, I am sure I do have copies at the office of Miss
7 Cindy's signature, however I am not necessarily aware of her specific
8 handwriting.

9 Q. I'll ask the question again. Are you familiar with the signature on
10 that card?

11 A. No.

12 Q. This is the card that Miss Throm gave you?

13 A. She handed it me herself.

14 Q. Did she say anything when she handed you the card?

15 A. Maybe, I'm sorry about the disagreement, let's make peace, or
16 something of a nice nature.

17 Q. Something facilitory?

18 A. Yes.

19 MR. ODGERS: *Move to admit number eleven.*

20 THE COURT: *Granted.*

21 Q. Once you were done with using the restroom, reading the card,
22 did you go to your open enrolment here at the public safety building?

1 A. I did. I stuck the card in my clothes and went to the end of the
2 meeting. It was in the Officers squad room, so at the long table I did put
3 my stuff and the very end of the long table.

4 Q. What was the tone and tenure like at that meeting?

5 A. Nobody necessarily made eye contact, it was definitely light
6 heartily joking around. I felt the three were whispering about different
7 things, but I couldn't hear specifically what was being said.

8 Q. Once the meeting was completed what happened next?

9 A. I definitely wanted to be the last person. I didn't walk to walk near
10 these ladies, and I didn't want to be putting myself in my car parked right
11 next to these ladies. I tried to wait, it was my plan to actually stop one on
12 the Officers while I was there to do a police report. However, that day was
13 graduation, as well as the circus was in town. I went directly from here, to
14 graduation, parked my vehicle started walking towards a squad car, I found
15 an officer and I said I see your busy I know this is graduation I have a very
16 big issue I need to talk to you and I so I left him with a short message
17 saying I would get back with him later that evening. I didn't want any of this
18 in front of my kids.

19 Q. Do you recall which officer you approached?

20 A. It was David Monroe.

21 Q. At some point did you meet with law enforcement that day?

22 A. I did. It was actually probably eleven thirty at night or so when they
23 did come to my office. Unfortunately this incident happened around five, I
24 called my boss, he said he would come here the next day. I was thinking
25 great, I need to clean my office, so I went to clean my office, and I thought

1 that would be good time for the police to come that way the children weren't
2 around. So they came to my office.

3 Q. When they were – you said they – who appeared at your office?

4 A. Penny Robinson, as well as David Monroe.

5 Q. When Penny Robinson and David Monroe were at the office, did
6 you describe for them what had transpired?

7 A. I did. I did feel really intimidated regarding Penny. Because I had
8 employed her daughter in –law who ended up not having very good work
9 ethic and that ended not well. I was not wanting, it was hard for me to open
10 up around Penny. So, I didn't go into the details on necessarily why there
11 was an incident, but I did say there was an incident and it was talking about
12 maybe insurance prior to the incident at the library.

13 Q. Were photographs taken that night?

14 A. Photographs were taken that night.

15 Q. Do you recall who took the photographs?

16 A. Penny took the photographs.

17 Q. Do you recall where the photographs were taken?

18 A. The photographs were taken in the bathroom at my office.

19 Q. Do you recall why they were done in the bathroom at your office?

20 A. The shirt that I was wearing was a long sleeve shirt and so, I took
21 it off, to be able to see where the marks were.

22 Q. Prior to that point, had you seen marks on your arms?

1 A. Directly from seeing Mr. Monroe, I went straight to the circus to be
2 with my kids, then I took them home, and then I went to Nichole's house to
3 look because I hadn't seen them before. Maybe I might have peeked at
4 one of them, but the clothes that I was wearing, I did go to Nichole's house
5 and go in her bedroom and take off her shirt for her to look.

6 Q. I'm going to show you a series of photographs to see if you can
7 identify them please.

8 MR. ODGERS: May I approach Your Honor?

9 THE COURT: You may.

10 Q. This would be one through four.

11 MR. ODGERS: May I approach Your Honor?

12 THE COURT: You may.

13 Q. Miss Lopez I am handing you what has been marked for
14 identification purpose. Defense proposed exhibits one through four. What
15 I'd like to do is I'd like to start with exhibit one have you identify the
16 contents of the photograph, who took the photograph and then we'll go
17 from there.

18 A. It is Penny Robinson who took the photograph that is my
19 bathroom in my office. Am I suppose to show it or just look at it?

20 Q. Does it accurately reflect how you appeared the night of June
21 Third Two Thousand Fifteen, at your office?

22 A. Well, in the picture it kind of looks like I'm smiling. I was obviously
23 crying earlier and it was eleven thirty at night. I was trying to clean to meet
24 my boss for the first time because of this incident, so –

1 Q. Does it accurately reflect how you looked when the photograph
2 was taken?

3 MR. ODGERS: Move to admit reflect exhibit number one.

4 THE COURT: Granted.

5 MR. ODGERS: You can hand that one to the court.

6 Q. Can you identify exhibit two?

7 A. Yes.

8 Q. What is exhibit two?

9 A. Exhibit two is this part of my arm where, it would have been the
10 thumb print, however these first set of pictures are prior to the bruises
11 setting in. In this one, you can kind of see, you can see a scrape where the
12 material had scraped. The second set of pictures will show bruises, this is
13 just showing red marks.

14 Q. Does it accurately reflect the condition of your arm , your left arm
15 – your right arm pardon me, on the night of June Third, Two Thousand
16 Fifteen?

17 A. Yes.

18 MR. ODGERS: Move to admit exhibit number two?

19 THE COURT: Granted.

20 Q. Will you show the Court exactly where the bruising scrapes, or
21 red marks and scrapes that you are referring to are in exhibit number two?

22 You have to show the Court. The Judge.

23 A. Oh, Sorry. that area right there.

1 MR. BROWN: Your Honor, now can I see?

2 MR. ODGERS: Now can you show Mr. Brown?

3 MR. BROWN: Where were you pointing? Okay.

4 MR. ODGERS: Now, you can hand that to the Court.

5 Q. Now, can you identify what it is exposed exhibit three?

6 A. Yes. It is another red mark from the other arm.

7 Q. Which arm?

8 A. This arm would have been my left arm.

9 Q. Does it accurately reflect the condition of your arm on the night of
10 June Third, Two Thousand Fifteen?

11 A. It does.

12 MR. ODGERS: Move to admit exhibit number three.

13 THE COURT: Granted.

14 Q. I don't know if you can do it, but can you hold it in such a way
15 that you can show Mr. Brown and the Court the mark that you are
16 referencing?

17 THE COURT: Okay.

18 MR. ODGERS: Hand that to the Judge.

19 Q. Can you look at proposed exhibit four? Identify what that picture
20 is?

21 A. This maybe you can see it a little clearer.

1 Q. Miss Lopez? Miss Lopez? Put it down in your lap, would you
2 identify what the picture is?

3 A. The picture is my left arm.

4 Q. Does it accurately reflect the condition of your left arm when the
5 photograph was taken on the night of June Third, Two Thousand Fifteen?

6 A. Yes.

7 MR. ODGERS: Move to admit number four.

8 Q. Now, can you identify the injury you indicated on that photograph?

9 A. That would have been the thumbprint.

10 Q. You said you went to Nichole Baldwin's house that night?

11 A. I did go to her house?

12 Q. Why did you go to Miss Baldwin's house?

13 A. Because, she is my friend and I had a very traumatic event that
14 day.

15 Q. Did you go to her house before or after the photographs were
16 taken that evening?

17 A. Before.

18 Q. Did you show Miss Baldwin the bruising?

19 A. Yes I took off my shirt. At the time there wasn't bruising but there
20 were red marks that she could see.

21 Q. At some point, you came back down to the public safety building
22 and had more photographs taken?

1 A. Yes.

2 Q. Do you recall what day that was?

3 A. It would not have been the fourth, it would have been the fifth of
4 June?

5 Q. Do you recall which officer you saw that day?

6 A. It was Dale Watterson.

7 MR. ODGERS: Would the Court hand her exhibits five through
8 ten please?

9 Q. These have already been admitted. Can you identify who is in
10 exhibit five?

11 A. That is myself in exhibit five.

12 Q. Is that a true and accurate representation of the way you looked
13 on June Fifth?

14 A. Yes.

15 Q. Can you move to exhibit six?

16 A. Yes.

17 Q. Can you identify bruising, and or red marks, and or other things
18 that were a direct result of the interactions on June Third with Miss Throm?

19 A. Yes.

20 Q. I need you to be able to show both the Court and Mr. Brown what
21 you are referencing.

1 A. There is a scratch right there, and there is the bruise and this
2 would be my right arm.

3 Q. Would you move to exhibit number seven? Can you identify
4 what is in the photograph?

5 A. This is the same arm, maybe a clearer picture with a different type
6 of lighting, you can see the bruise a little more in that picture.

7 Q. Can you show Mr. Brown – no, no –hold it back like you were.
8 Show Mr. Brown and the Court where the bruise and the red marks are that
9 you are referencing.

10 A. So, there is the bruise and the red mark.

11 Q. Will you now move to exhibit eight? Can you identify what that is
12 a picture of?

13 A. Yes. This bruise –

14 Q. No, No. Which arm?

15 A. This is picture of my , this is my left arm.

16 Q. What does it depict?

17 A. It depicts a bruise.

18 Q. Can you identify that bruising to the Court and to Mr. Brown?
19 How did you get that bruise?

20 A. Both of these bruises that we are looking at would have been the
21 thumb, from the shaking.

22 Q. Can you go to exhibit number nine?

1 A. Number nine. Yes.

2 Q. What is this a picture of?

3 A. This is a picture of the back of my arm.

4 Q. Which arm?

5 A. I am not quite sure, this looks like it would have been this arm, so
6 my left arm.

7 Q. There is three circles. Three marks that appear to be circles, or
8 circular types. What, obviously that didn't occur during the incident,
9 correct?

10 A. Yes that did not occur.

11 Q. How did those circles end up on your arm?

12 A. I believe it was the fourth, the evening of the fourth, Miss Nichole
13 Baldwin came to my house and I didn't realize there was any bruising on
14 the back, I thought it was what I had seen. Apparently she could see, so
15 she did start circling them. Maybe one was a little fainter, that is why there
16 is not four, but there was, it was obvious. So, she circled them.

17 Q. Those are marks caused by whom? Not the black marks but the
18 bruising?

19 A. Miss Cindy Throm.

20 Q. Would you then go to exhibit ten? Can you identify what is in that
21 photograph?

22 A. That would have been the other arm on this side.

23 Q. Your right arm –

1 A. So, she is left handed, or right handed, so it makes sense that
2 there would be bruising on the , if you were in front of me, that's why this
3 one maybe has less bruising.

4 MR. BROWN: I'm going to object Your Honor, she is making
5 arguments as to – it's speculation on her part.

6 THE COURT: Sustained.

7 Q. I am going to go back to my question. Can you identify what is in
8 exhibit number ten.

9 A. It is my arm.

10 Q. Which arm?

11 A. It is my left, or my right arm.

12 Q. What area of your right arm?

13 A. It would be the back side of my right arm.

14 Q. The are generally where the tricept would be?

15 A. Yes.

16 Q. What does it depict?

17 A. Less of a bruising than of this arm, however, Nichole did circle
18 several bruises.

19 Q. There is no circles on that.

20 A. Actually, that is, I think those are circles. I had taken a shower,
21 and that's why these aren't drawn to the way normally, she had come on

1 the fourth and done this, and then I had showered and gone the fifth to take
2 pictures.

3 Q. Can you describe to the Court, and show to Mr. Brown and the
4 Court the injuries that are identified in exhibit ten.

5 A. You can see there is dark patches there, dark patches there.

6 Q. Can you hand all of those back to the Judge?

7 Prior to the incident June Third Two Thousand Fifteen, did you have
8 any of these marks or bruises on your arms?

9 A. No.

10 Q. What caused these marks and bruises on your arms?

11 A. Miss Cindy at the library.

12 Q. Miss Cindy at the library doing what?

13 A. Grabbing me, with both of her hands, squishing, and shaking me
14 profusely to the point my hair flew about.

15 Q. Did you have a meeting with Virginia Austin on the morning of
16 August fourth?

17 A. They were both there, she came and got candy and I said have
18 more because you're skinny.

19 Q. Did you have a discussion with Miss Austin regarding this
20 incident?

21 A. On the fourth? Oh, on the fourth? Okay. Sorry. Yes. My boss did
22 come. Miss Virginia said, how I was lying, and she didn't touch me at all.
23 Then she said maybe she touched her wrist. I was glad my boss was at

1 least there because at first she said she didn't touch me, then she said she
2 said the wrist. I guess all three of us had different stories.

3 Q. Regardless whether the wrist or the arm was touch, when the
4 touching occurred, can you describe Miss Throm's conduct and behavior.

5 A. Her conduct and behavior was out of control to the point that I felt
6 Miss Virginia was trying to defuse her.

7 Q. The touching whether on the wrist or the arm by Miss Throm was
8 it done, in your opinion with any force?

9 A. Very much force.

10 Q. How much do you weigh?

11 A. I weight one hundred twenty pounds.

12 Q. How tall are you?

13 A. Five six.

14 Q. When Miss Throm put her hands on you, do you believe that she
15 put her hands on you with force?

16 A. I do.

17 Q. Did you give Miss Throm permission to put her hands on you?

18 A. No. Afterwards I said please don't touch me like that, I would
19 never touch you.

20 MR. ODGERS: Pass the witness.

21 THE COURT: Mr. Brown.

22 Q. Miss Lopez were you just winking at somebody?

1 A. Winking?

2 Q. Before that last question. There was a little pause, I saw you look
3 over and wink.

4 A. My dad is sitting right there. I don't believe I was winking. I have
5 two sties in my eye actually.

6 Q. The answer is no that is okay.

7 THE COURT: Mr. Brown. It's twenty five after twelve, do
8 you think we should break for lunch?

9 MR. BROWN: That's fine Your Honor, if we do, I would ask the
10 Court to give an admonition to all the witnesses, that they are not to
11 discuss their testimonies with any one other than the attorney's. I'm fine
12 with taking a break if that is what you would like to do.

13 THE COURT: Mr. Odgers?

14 MR. ODGERS: I agree with Mr. Brown. The admonition needs
15 to occur. I don't have any opposition to it.

16 THE COURT: I can see, we are not anywhere near being
17 done.

18 MR. ODGERS: This is my last witness.

19 THE COURT: This is your last, and then Mr. Brown
20 has his.

21 MR. BROWN: I don't know Your Honor, I may, I think I do need
22 to recall my witness. I think it would be short but,

23 THE COURT: Would you like to continue?

1 MR. BROWN: It's up to the Court, I'm fine either way.

2 THE COURT: Mr. Odgers, how do you feel?

3 MR. ODGERS: I can do this all day long, Your Honor.

4 THE COURT: I just as soon see you get finished. You
5 may continue.

6 MR. ODGERS: Before you start, I do need to admit this into
7 evidence by me and Miss Lopez to sign.

8 THE COURT: Will you please get a pen and go up and
9 sign it.

10 MR. ODGERS: My apologizes the. Will you sign it in the lower
11 right hand corner, and if the clerk would mark it as the next exhibit in order?

12 Clerk: Number fourteen.

13 THE COURT: You may continue Mr. Brown.

14 MR. BROWN: Thank you, Your Honor.

15 Q. I want to go back to earlier in the day on June Third. You said
16 that you opened up around, I think you said around ten a.m., and you said
17 something that the animosity had been building for several years. Did you
18 feel that you had animosity towards Miss Thom?

19 A. No.

20 Q. There was no animosity on your part?

21 A. No.

22 Q. Just Miss Thom?

1 A. I feel like several different ladies as well as Miss Throm.

2 Q. Kathy Ricci?

3 A. I feel like yes.

4 Q. Virginia Austin?

5 A. Yes, Virginia.

6 Q. Going into that day, you kind of thought they were all against you?

7 A. I did.

8 Q. Then at some point later that morning, you had mentioned that
9 later that morning you were kind of upset you were being supervised by
10 Miss Throm?

11 A. Yes.

12 Q. How was she supervising you?

13 A. My first client of the day was actually Miss Nichole. Nichole and I
14 were discussing what claims she had, and Miss Throm came, originally
15 cordially, then started being very aggressive. It started to look as if she
16 was trying to make me look bad in front of customers. Nichole and I were
17 sitting somewhat close, Miss Throm came in between us with this piece of
18 paper in my face and pointing at it. I was mortified. I was very
19 embarrassed. I did later tell her that I would never come up to her when
20 she was speaking with a client. Especially about information that should
21 have been spoken about prior.

22 Q. So, you were upset about that?

1 A. I tried to stay away from her because I could see that maybe she
2 gets excited at some things.

3 Q. You were mortified. Right? That's what you testifies to.

4 A. Yes.

5 Q. She had interrupted you talking to your client, and your friend.
6 You didn't like that.

7 A. I thought it was very rude and unprofessional yes.

8 Q. Everything was tense after that correct?

9 A. Everything has been tense for the last two years. Not necessarily
10 that was not a changing point of any part of anything being tense.

11 Q. In your statement that you gave to police, you said that she was
12 aggressive and agitated and yelling and I was embarrassed of her tone and
13 matter. This must have been about noon. This was the discussion about
14 what you're talking about is what you just previously testified. You're
15 talking about Miss Throm supervising you, is the way you put it, in front of a
16 client.

17 A. Coming up, standing over us, after words she sat behind and
18 made different faces. She was making different faces with her mouth, with
19 her eyebrow's, in a different staring manor. Trying to be intimidating,
20 continuing eye contact.

21 Q. So, eye contact with you is intimidating?

22 A. Well, what do you think would be inappropriate –

23 Q. Mam, you don't ask the questions, you answer them.

1 A. I think it was intimidating because it was for longer than maybe
2 you look at someone for several seconds.

3
4 Q. Were you looking back at Miss Throm?

5 A. I trying to ignore her because I was still trying to make sure that
6 Miss Nichole had been claiming all of the things that she needed to for her
7 insurance.

8 Q. While you were trying to ignore you, you were observing her facial
9 mannerisms and her eye contact with you?

10 A. You could see because she was right behind her, so out of the
11 corner of your eye although you are focused. Yes. You can tell when
12 someone is staring at you – it was a closer distance, she was not on the
13 other side of the room at that point.

14 Q. This was all about differences you had in the way the insurance
15 products were being offered correct?

16 A. I had some issues with one company maybe verses the other
17 regarding specific benefits that dealt with Ely issues.

18 Q. Was there , at this point was there a discussion about some kind
19 of insurance fraud?

20 A. Not earlier in the morning, not I believe until Four fifteen or four
21 twenty, four thirty.

22 Q. This insurance fraud you're talking about, what has alleged to
23 have happened?

1 A. These are not my words these are words from Elizabeth
2 Francess.

3 Q. Elizabeth Francess is the one that claimed there was an
4 insurance fraud not you?

5 A. Yes. In Two thousand thirteen it probably would have been in May
6 or June of two thousand thirteen that I did have this conversation with Miss
7 Elizabeth.

8 Q. I'm sorry, you can't tell us what she said. Let me ask you, do you
9 know if anybody was ever convicted of any kind of insurance fraud?

10 A. I don't believe there was any type of investigation, because no
11 one investigated me, I don't believe there was.

12 Q. Why would anybody investigate you?

13 A. Because I know you are an attorney, so you're probably aware of
14 NRS. 281 A, and B.

15 Q. I'm afraid I don't, I'm not.

16 A. In March or April of two thousand thirteen, and these are not my
17 words these are Miss Cindy's. Miss Cindy stated to me, that you will split
18 me in , or I will kick you out, and I can do because my cousin is Lori
19 Carson. She said that she would put in Colonial, and Colonial would split
20 her in, if I did not split her in.

21 Q. Wow, did that upset you?

22 A. It did upset me.

23 Q. The next part of the discussion that was going on around four
24 fifteen?

1 A. Yes. They said that I made a police report, or maybe I didn't
2 make a police report. They said due to the Sheriff had heard he went into
3 Miss Elizabeth's office and Miss Elizabeth called me into my office and said
4 it was over a fraud investigation. She said she -

5 Q. She called you in for fraud investigation?

6 A. She called me into to talk about the Sheriff being in her office and
7 said that she was sending this fraud investigation up to the D.A. would
8 actually would have been you, Mr. Brown.

9 Q. Would it surprise you to know I don't know anything about a fraud
10 investigation?

11 A. Well, Elizabeth Frances said that the Sheriff was in her office in
12 two thousand thirteen and so she said she wanted her name, nothing to do
13 with any type of fraud investigation. So, she sent it straight to the D.A. at
14 that time it was not the current D.A.

15 Q. Was Elizabeth Frances upset with you?

16 A. She was. She actually said that this is not true. She pulled out her
17 calendar, actually she pulled her contract with the County and there was
18 several pages in a specific part that says were supplemental is taking a cut
19 or not. Whether major medical is taking a cut from supplemental. So, I
20 saw it with my own eyes, I stood up and I was sitting down, I stood up, she
21 turned her computer so I could see it, it said straight in that contract no cut
22 was to be taken.

23 Q. Miss Throm gets a cut out of your contracts correct?

24 A. Yes.

25 Q. You're not happy about that either are you?

1 A. Not particularly because the way it normally works is if you get me
2 in, I will split you in, but we have been in the County since nineteen seventy
3 two, and I believe Miss Throm has been there maybe the last eight or nine
4 years.

5 Q. You say seventy two, you don't mean your self personally?

6 A. I mean Aflac. No, obviously not.

7 Q. Another broker prior to you?

8 A. So, in that instance, no one would split, no one would split, Aflac
9 would not split in another company or vendor because of that. However
10 she then called my bosses bosses boss and said if that you do not split us
11 in White Pine County we are going to take of Nye County, and there is
12 other business that she does in Vegas that I'm not aware of. I was told
13 that she mentioned them and was threatening my bosses bosses boss to
14 take all of that away and replace it with Colonial if I didn't cut her in on this.

15 Q. That made you mad didn't it?

16 A. It did. It's so funny because it actually went from a thirty percent
17 split to a shut your mouth and don't say anything and we'll only take twenty
18 percent.

19 Q. Let me go to about four fifteen, and you're all in the library and
20 you're getting ready to leave correct?

21 A. Yes. I believe it was suppose to be the end unless we had any
22 conversation.

23 Q. You, referred to Virginia Austin, and Kathy Ricci, and Cindy
24 Throm as a gang. You felt like you were being (unintelligible word) a gang?

1 A. So during –

2 Q. Is that what you said?

3 A. During that square box, yes. I felt like it was very much a gang
4 situation. Especially since this whole money maybe we're cousins, maybe
5 we're not for the last two years you've been giving me money. Yea, I did
6 feel like it was a gang situation. I was very scared.

7 Q. They were all mad at you?

8 A. They were all mad at me. Over an apparent investigation that
9 never happened.

10 Q. Right, it also made Elizabeth Frances mad?

11 A. Elizabeth Frances, I was told I was taken off the County, doing
12 their insurance because I said and this is not true and it is very serious.
13 So, they said they Cindy did not touch me, so Cindy can continue to be the
14 broker but Betsy is lying about this and you can't lie about serious
15 situations so I was told by Mr. Kevin Keris, my director that I was removed
16 because of that.

17 Q. Not because of other issues with the way you were handling the
18 insurance for the County?

19 A. No.

20 Q. There were no other issues that you have with the County, other
21 than this issue with Miss Throm, is that what you're telling us?

22 A. Actually, so there were other issues, two years ago,-

23 Q. Okay. That's all I asked. One of those is the issue that you have
24 with Elizabeth Frances, is that right?

1 A. So, specifically –

2 Q. It's a yes or no, is that correct?

3 A. Well, what issue with Elizabeth Frances?

4 Q. That you just told us that Elizabeth Frances was mad at you
5 because of this investigation?

6 A. So, that would have been June Third.

7 Q. Did that have thing to do with this?

8 A. That would have been, oh sorry, that would have been June
9 Fourth.

10 Q. The question is did that have anything to do with the anger that
11 was going on?

12 A. No, because she was not aware of any of this. Maybe I'm
13 confused of the question but, I don't think Miss Elizabeth knew until the
14 next day.

15 Q. That's fine, I'll move on. You said at the time that this incident
16 took place, I'm talking about when you were getting ready to leave, and you
17 say that Cindy Throm shook you, that Miss Throm was very upset. Right?

18 A. Yes.

19 Q. But, you pride yourself on being calm at all times?

20 A. I was trying to be as calm as possible although I wanted to
21 possibly yell and scream, and speak loudly I did not. I am very glad
22 because now in this situation I did not touch her back, when that happened,
23 I could have, my boss said I should have and I did not do anything.

1 Q. Prior to that you were calm, you did not raise your voice, didn't
2 wave your arms?

3 A. No, I did not raise my voice. No. Well, at the L shaped table yes, I
4 started getting agitated because Miss Cindy was across the desk in my
5 face.

6 Q. When you say Miss Cindy are you referring to Miss Throm?

7 A. Miss Throm. I'll address her as Miss Throm. Miss Throm was
8 across the table and anytime I would say something Miss Kathy would
9 lecture me, however I was not the one being demeaning, accusatory, or
10 aggressive, in a leaning or a finger fashion.

11 Q. At that time at the table, you were raising your voice, and you
12 were upset?

13 A. I started to raise my voice at the time we were seated.

14 Q. Then you were surrounded by three these gang members, as you
15 testified, and your reaction was to just remain calm, not say anything, and
16 keep your arms down to your side?

17 A. In a work situation, I felt like I had no other option. If it was say
18 maybe, and I don't really drink, but if it was at the bar, I'm sure it would
19 have gone down differently. I'm sure that if maybe Miss Throm didn't have
20 her assistant, if I had my assistant, maybe it would have turned out
21 differently.

22 Q. You would fight?

23 A. Would you –

24 Q. That's fine, did you say excuse me ladies, I'm leaving?

1 A. That's when I stood up at the table, I said this is obviously not
2 working –

3 Q. I'm talking about later when you were surrounded. Did you, what
4 did you do to resolve that situation, did you say I'm sorry, you people are
5 upsetting my, I'm going?

6 A. I was waiting for it to end, it was like, they were all yelling the same
7 thing.

8 Q. All three of them were yelling at you?

9 A. They were all saying Lori's mad, this is why, this fraud
10 investigation, here we are all being questioned about it.

11 Q. That was two years prior right?

12 A. Yes.

13 Q. That wasn't now.

14 A. No.

15 Q. That wasn't on this day, that was two years prior.

16 A. Yep.

17 Q. There was no investigation, Right?

18 A. I was never investigated, so I can't say that was an investigation
19 or not. I was never investigated.

20 Q. They were all upset about this non investigation?

21 A. They did say they were investigated, that's why they were angry
22 at me.

1 Q. They were investigated for your behavior?

2 A. I think it's though two eighty one, so NRS -

3 Q. I'm asking were they investigate because of your behavior? I'm
4 not asking you to quote statues.

5 A. Not my behavior, no.

6 Q. They three of you were standing a foot away from you , they four
7 of you, the three of them have you surrounded, and they are less than a
8 foot away from you. It's your testimony that Cindy Throm grabs you, both
9 arms, shakes you side to side?

10 A. Not side to side, front to back.

11 Q. Front to back, how many times?

12 A. To the point that my hair was flying about, to the point that my
13 neck, at first, I don't know how many times. For say seven seconds.

14 Q. Seven seconds -

15 A. As fast as you can to someone one hundred twenty pounds.

16 Q. When she is shaking you, she didn't hit Virginia or Kathy right?

17 A. No, because her arms weren't like this, her arms were down.

18 Q. You looked to Kathy for help?

19 A. I looked to Kathy for help.

20 Q. One of the three gang members that were there accosting you,
21 you looked to her for help. Even though she was upset with you and she is
22 part of this gang that was after you? Suddenly you thought she was going
23 to help you?

1 A. She is the County employee, isn't that her job, to maybe diffuse
2 any type of situation that may be, not maybe let it continue to the point that
3 we back people up into a table.

4 Q. That's correct, that's her job to diffuse the situation.

5 A. That's why I looked to Kathy.

6 Q. If she testified that this didn't happen, she is a liar?, is that right?

7 MR. ODGERS: Objection. Argumentative.

8 THE COURT: Sustained.

9 A. This happened and I -

10 MR. BROWN: Objection. Hold on. There is no question mam

11 Q. You looked to Virginia for help?

12 A. I did look to Virginia for help.

13 Q. She was upset with you?

14 A. She was upset.

15 Q. She was one of these gang members that ganged up on you.
16 You looked to her for help anyway right?

17 A. Because, I could see that she was trying to diffuse Cindy.

18 Q. Which is it, was she a gang member who was accosting, you and
19 keeping you pinned in? Or was she trying to diffuse the situation?

20 A. It definitely was both. She was aggressive yet, she was able to
21 act classy. I actually told her multiple times during this situation, thank you
22 for acting classy Virginia, although we are not getting along, or although

1 we're not agreeing, thank you Miss Cindy, or Miss Virginia for acting classy.
2 So, yes she was aggressive, and she was angry, but definitely Miss Cindy
3 was acting more so. It was the end of the day and I thing that she was
4 trying to diffuse Miss Cindy.

5 Q. But, Virginia, one of these gang members that you were afraid of,
6 was diffusing the situation?

7 A. More so than Kathy who's supposed to get paid to do it.

8 Q. After this incident at the library, you had another enrolment
9 session at the public safety building? This building we are in right here
10 today?

11 A. Yes sir.

12 Q. When you arrived here at the public safety building, Cindy Throm
13 opened the door for you, correct?

14 A. Um Mm (yes). When I came inside.

15 Q. Did you walk in the door?

16 A. I did walk in the door.

17 Q. Weren't you afraid of her, didn't you run away, and say Oh my
18 God, it's the woman that attacked me.

19 A. I thought that, I actually think that Miss Throm is a very smart lady.
20 I think that she realized that –

21 Q. That's not the question. The question is you, were you afraid to
22 come into the door, when she was opening it for you?

23 A. Not at that point, because I could tell that she was –

1 Q. That's fine. You weren't afraid.

2 A. She was trying to diffuse the situation, and didn't want me to come
3 here and tell all the police what happened.

4 Q. She gave you a card right?

5 A. She did give me a card.

6 Q. The card says, except my apology for our disagreement today.
7 Right? It doesn't say for shaking you, it says for the disagreement, is that
8 correct?

9 A. That's correct.

10 Q. It says that she has the best interest of White Pine County
11 employees in mind, correct?

12 A. It says that yes.

13 Q. It says I hope we can move forward and work together for our
14 mutual client White Pine County.

15 A. Yes it does say that.

16 Q. Is that your hopes also?

17 A. After being shaken and for years being –

18 Q. So, was it your hopes to move forward and work for your client?

19 A. To work for the clients, yes. I live in White Pine County and I want
20 nothing but the best for White Pine County and the employees because
21 these people are my neighbors and my family.

22 Q. That is the sentiment that was expressed in this card, right?

1 A. Yes.

2 Q. Thank you. I want to go back just a second to before you came to
3 the public safety building, you stayed at the library with Kathy Ricci, right?

4 A. Yes, I did.

5 Q. She is one of the people, one of the gang members that had
6 surrounded you, and wouldn't help you.

7 A. Yes.

8 Q. Weren't you concerned about being in the library alone with her?

9 A. I don't think that Miss Kathy would put her hands on me.

10 Q. So, you weren't concerned about her at that point?

11 A. Not at that point.

12 Q. Even though you referred to her as a gang member?

13 A. I didn't call her a gang member, I think I referred to it as a gang
14 situation. Like when there is multiple people on an attack against one
15 person.

16 Q. You had another enrolment session, her at the public safety
17 building. Were you aware that this is where the Sheriff's office is located.

18 A. I am aware.

19 Q. You didn't try to contact the Sheriff's Deputy while you were here
20 did you?

21 A. Miss Cindy was talking to Dave Monroe when I had come in the
22 door – or I was on my phone for a minute. I believe maybe Miss Virginia

1 and Miss Kathy was talking to him. Then, there wasn't anyone else here.
2 That was my intention, to while I was here after the enrollment, after
3 everyone left, be able to sit down with an Officer. However, it was
4 graduation as well as the Circus.

5 Q. You wanted to go to the Circus?

6 A. I went straight from here to Graduation.

7 Q. I thought you said something about going to the Circus.

8 A. I did go to the Circus afterwards, I have two small kids. I forgot
9 that was the day for the Circus, and my husband was already there. So,
10 my husband didn't even know all this. He was already at the Circus with
11 the kids.

12 Q. After this attack, you appear at the Sheriff's Office, and instead of
13 making a report, you went to Graduation, then after Graduation you went
14 to the Circus.

15 A. I did not go to Graduation to attend Graduation. I went to
16 Graduation, I saw the first police vehicle, I saw the first Officer and I walked
17 over that Officer, and told him I needed to make a police report.

18 Q. Were you aware that there is a dispatcher right here, outside of
19 this door, outside of this room that can contact an Office?

20 A. They could. They definitely could have but everybody was at
21 Graduation, so it would be a while.

22 Q. How did you know everybody was at Graduation?

23 A. That's what they said because we came for open enrolment and
24 nobody was here, because everybody was at Graduation.

1 Q. That was more important, than reporting this incident?

2 MR. ODGERS: Objection, Your Honor. This characterizes her
3 testimony, badgering, argumentative, shall I go on.?

4 MR. BROWN: I have a right to test her testimony Your Honor.

5 MR. ODGERS: Test her testimony is correct, but you insinuate
6 that it was more important for her to go to graduation than it was to report.
7 Miss interprets and misstates all the testimony she has had. He has asked
8 this question three times.

9 MR. BROWN: I have not. I can ask the question and she can
10 answer it.

11 THE COURT: Can you ask that question in a different
12 way?

13 MR. BROWN: Sure, Your Honor.

14 Q. When you left here, you went to Graduation correct?

15 A. I went to the high school because that's were all the police officers
16 were supervising Graduation.

17 Q. Police officers were supervising Graduation?

18 A. So, we don't have security companies in town that are private.

19 Q. You reported it at the time?

20 A. I did not make a written statement, I told Dave Monroe, there were
21 people walking by so it was a choppy conversation, but I did get to tell him
22 that it was very needed. I needed to do this. He said I am really busy right,
23 obviously it's graduation. We do not want people drinking or whatever they

1 do on Graduation, So, I said okay, it's the Circus, my husband is already at
2 the Circus with kids, I am going to put the kids down to sleep. I said my
3 boss is now coming to town. I will be at my office tonight cleaning and so
4 that would be a good time so the kids aren't involved. That's what
5 happened at the end of the evening, I was cleaning, and the police did
6 come to the office.

7 Q. Six hours after this incident?

8 A. Yes. Five and a half hours.

9 Q. After the Circus you went to Nichole Baldwin's house?

10 A. After the Circus I went home and put my kids to bed, and then
11 Nichole lives on the way to my office. I stopped at her house to, I hadn't
12 looked at myself yet.

13 Q. So, you went to her house to look at yourself, before you called
14 the Sheriff's office correct?

15 MR. ODGERS: Objection. Misstates the testimony Your
16 Honor. She has already testified, Mr. Brown is well aware of it. She
17 notified Dave Monroe that she needed to talk to them. Dave said they were
18 busy. That is consistent with his testimony, there was no subsequent call.

19 MR. BROWN: That is not what I am asking her about.

20 MR. ODGERS: That is what he just said Your Honor.

21 MR. BROWN: What I asked her was did she go to Nichole'
22 house to look at herself before she called this into the Sheriff's office?

23 MR. ODGERS: Again.

24 MIS LOPEZ. So, no because I already told them.

1 MR. BROWN: (Laughter) Good one.

2 MR. ODGERS: This misstates the testimony Your Honor.

3 Mr. Brown is well aware, he sat in here essentially while Mr. Monroe
4 testified that he was approached by her. He sat here essentially listening
5 while Miss Lopez has said three times now, that she approached Dave and
6 said come get me later. There was no testimony about any phone call. Mr.
7 Brown is trying to say now, you did all this before you made the phone call
8 to law enforcement. So, he is trying create a situation that didn't exist and
9 the facts don't support it.

10 THE COURT: I'm going to sustain that.

11 MR. BROWN: Thank you, Your Honor.

12 Q. Miss Lopez you testified that you spoke to Dave Monroe that night
13 correct? At Graduation.

14 A Yes.

15 Q. Did you make a formal report at that time?

16 A. I actually never made a formal report until the next day. They
17 never even took a written statement when they came to take pictures, so I
18 made a written statement, I turned it in on the Fifth, the day that Dale
19 Watterson, took bruises.

20 Q. So, is it your testimony that you never called the Sheriff's office
21 that night?

22 A. I did call the Sheriff's office that night?

23 Q. When did you call the Sheriff's office?

1 A. I had been at my office for maybe an hour, and I went to, I just
2 saw that it was getting later, and so I called the Sheriff's office and they
3 said they would send somebody out and about thirty minutes later, they did.
4 So, I probably called the Sheriff's office about ten thirty that night.

5 Q. Would you be surprised if it was after eleven o'clock?

6 A. It might have been eleven o'clock. I was trying to clean.

7 Q. Eleven fifteen?

8 A. It might have been, my boss has never met me, and he hasn't
9 been to my office, so I was definitely going to be a at my office and try to
10 clean to give the best impression to my boss, since unfortunately this is his
11 first impression of me.

12 Q. So before you called the Sheriff's office that night, you went and
13 talked to Dave Monroe at graduation, you went to the Circus, you went
14 home and put your kids to bed, you went to Nichole's house, you went back
15 to your office and was cleaning up for your boss?

16 A. Um mm (yes).

17 Q. You did all those things before you called to formally report this to
18 the Sheriff's Office?

19 A. Well Dave said that he was going to come that night. He said just
20 sometime maybe after ten, that he would swing by.

21 Q. Well why did you call the Sheriff's office if he was going to come
22 by anyway?

23 A. Because he didn't come by and I was beginning to finish my
24 cleaning and getting tired.

1 MR. BROWN: I'd ask you to look at exhibit ten Your Honor.

2 THE COURT: There you go.

3 MR. BROWN: Thank you. Your Honor.

4 Q. Mam, I'm going to direct your attention to just above the center of
5 that picture and there is a line going across your arm correct?

6 A. Um Mm (yes).

7 Q. Is that, it was my understand, is that your testimony that that was
8 a line that was drawn on your arm?

9 A. Um Mm (yes).

10 Q. It was drawn on your arm by Nichole Baldwin, on late of the night
11 on the third is that correct?

12 A. No. it would have been the next day the fourth. She had come to
13 my house, and said, girl we need to draw these so we can take pictures.
14 Because she wanted to take pictures additional to what pictures had been
15 taken here. I don't think we had ever taken additional pictures, but that was
16 the plan. Just the lighting a lot of them, it was hard to see. Obviously I
17 wasn't going to have two black eyes. It wasn't my whole arm wouldn't be
18 bruised.

19 Q. So you were doing that to highlight the injures that you claimed
20 you had?

21 A. Yes sir.

22 Q. Isn't the reason that we are going through all of this that you are
23 angry with Cindy Throm, and you are hoping that this would cost her her
24 contract with the County?

1 A. Why would anyone think that? I don't appreciate obviously getting
2 my, being put on, and I don't work with people that are going to treat other
3 people like that. Now, I have no interest, since apparently the victim was
4 fired from the County. So, I have no interest now.

5 Q. The victim was fired from the County?

6 A. So, the victim, as in I was the one that was bruised.

7 Q. This is a good way to get back at her because –

8 MR. ODGERS: Objection. Argumentative.

9 THE COURT: Sustained.

10 MR. BROWN: Nothing further, Your Honor.

11 THE COURT: Anything Mr. Odgers?

12 MR. ODGERS: Just a little bit.

13 Q. When were you released from your contract with the County?

14 A. I believe it was the fourth. The very next day after this incident?

15 Q. That was after you had already signed a citizen complaint for the
16 battery?

17 A. It was after I signed it.

18 Q. Any impact to your contract was null or void was never part of this
19 discussion is that correct?

20 A. Yes.

21 Q. You heard Mr. Brown refer to the term gang member a number of
22 times right?

1 A. I did.

2 Q. Who started that phrase?

3 A. I meant at a gang situation.

4 Q. I'm going to get to the gang situation. I'm asking you who –

5 A. I used the word gang.

6 Q. I asked who used the term gang member? You or Mr. Brown?

7 A. I did not use the term gang member, it was probably was Mr.
8 Brown that said member.

9 Q. Now, when you said gang situation, what did you mean?

10 A. I would explain a gang situation to be maybe multiple people with
11 one agenda against one or more people where there is less and possibility
12 of a threat one way or another.

13 Q. So, did you feel ganged up on?

14 A. Very much so.

15 Q. Is that what you meant by gang situation?

16 A. Gang situation. Ganged up on.

17 Q. Not as in gang member, as in there they are the Crypt's or the
18 Bloods?

19 A. Drug dealer, no.

20 Q. Gun toting, tattoo wearing, illegal people like Mr. Brown was trying
21 to reference right?

22 MR. BROWN: Objection.

1 THE COURT: Sustained.

2 Q. When you reported to Dave Monroe, the incident, what was your
3 intent on?

4 A. My intent was I, my intent was to do it here, however nobody was
5 here since we have a low police and apparently there was two activities.
6 My intent was just to as soon as possible tell somebody. Even if it wasn't
7 written, like I said. I found a police officer vehicle. I found the first police
8 office. I just told them, like I said, they were busy at the time. I said, I can
9 make a report later. I just felt immediately after the meeting, and everyone
10 was out of the parking lot, I needed to do something about that.

11 Q. The meeting here at the public safety building. Mr. Brown was
12 asking questions about why didn't you report it at that point in time. What
13 was the reason you were here at the public safety building?

14 A. To do insurance.

15 Q. You were doing your job?

16 A. I was doing my job. The only police officer was Miss Penny and
17 she was actually doing work at the time. So, I might have been able to say
18 it to her, but she was feeling out paper work regarding them. I was actually
19 dealing with Jackie Miller and Bill Miller. So by the time, I was done with
20 them Miss Penny had already left to Graduation, so I couldn't.

21 Q. So, as soon as you were done here, you made a beeline to where
22 you knew law enforcement was?

23 A. Yeah, Yeah absolute. Yes sir.

24 Q. Then the subsequent phone call at approximately eleven fifteen
25 p.m. that was because Mr. Monroe had not shown up by that point?

1 A. He had not.

2 Q. Did he explain why he hadn't shown up?

3 A. No. I'm sure they were busy. I know that-

4 MR. BROWN: Objection Your Honor. Speculation.

5 THE COURT: Sustained.

6 Q. You do know that they were busy?

7 A. I don't know they were busy I just know police officer's are busy.

8 Q. Just in general terms?

9 A. Yeah. It was a Thursday night so maybe Friday night, Thursday
10 night party. I don't know.

11 Q. Why did you file a citizens complaint for battery?

12 A. Because you can't put your hands on other people. If you are
13 going to do this and get away with it, you're going to do it again. Really,
14 that was the cherry on the top. I would have kept my whole mouth shut
15 about this whole percentage and all that. That's why I really came, because
16 I was going to shut up but, until you put your hands on me-

17 Q. As far as verbal altercation goes, that's where it would have
18 stopped.

19 A. If it would have stopped verbally, that's where I would have
20 stopped. We would have continued for the next several years probably
21 doing this split that may or may not be illegal due to the N.R.S.

22 Q. But because she placed her hands on you, without your
23 permission, that was -

1 A. That—I'm scared, I have kids. I have a building downtown I don't
2 want bricks thrown at my building. I don't know what people –

3 MR. BROWN: Objection. Your Honor.

4 MR. ODGERS: She has the ability to testify about her
5 motivation. That is what exactly that I asked the question.

6 THE COURT: Overruled.

7 MR. ODGERS: What was the motivating factor.

8 A. I have a business. I am trying to keep a good reputation because
9 it's a small town.

10 MR. ODGERS: Nothing further, Your Honor.

11 THE COURT: Did you have anything else Mr. Brown?

12 MR. BROWN: No. Your Honor.

13 THE COURT: If nothing else.

14 MR. ODGERS: She can be released, Your Honor.

15 THE COURT: She can be released?

16 MR. ODGERS: Yes.

17 THE COURT: Okay. Thank you. You may be released.
18 You may leave.

19 You don't have any other?

20 MR. ODGERS: I have nothing. We'll rest at this point.

21 THE COURT: Mr. Brown?

1 MR. BROWN: Your Honor. I need a couple minutes, my client
2 and I need to confer. I think everyone needs a restroom break.

3 THE COURT: Okay. We'll take a five minute break. Go
4 ahead.

5 MR. BROWN: Thank you, Your Honor.

6 (Court takes a break at 1:06 P.M.)

7 (Court convenes at 1:17 P.M.)

8 THE COURT: This is case number two zero one five
9 dash three three seven. Cynthia Throm is present in Court and so the Mr.
10 Brown and Mr. Odgers.

11 After a brief recess are we ready to resume Mr. Brown?

12 MR. BROWN: Yes, Your Honor. The Defense would call Kathy
13 Ricci.

14 THE COURT: Okay. Have a seat right there. Remember
15 you are under oath.

16 You may proceed.

17 WITNESS KATHY RICCI TESTIFIES

18 Q. Miss Ricci, you testified earlier today correct?

19 A. Yes.

20 Q. You are still under oath, you should be reminded. I want to ask
21 you a couple more questions about the incident that took place late in the
22 afternoon. I think you drew a diagram as you were all leaving the library.

1 At that time, do you recall what the disagreement was between Miss Throm
2 and Miss Lopez?

3 A. There was several things in the conversation. How the benefits
4 were being presented to the employees. What also came up in the
5 conversation was that the Sheriff's office had to look into rumors and that's
6 about Cindy taking kickbacks, excuse me Lori taking kickbacks from Cindy.

7 Q. When you say Lori, who are you talking about?

8 A. I'm sorry, Lori Carson.

9 Q. Did you ever say anything about Lori Carson in that meeting?

10 A. No.

11 Q. Did you say that Lori Carson would be upset?

12 A. No.

13 Q. Did you make any comments about being interrogated by law
14 enforcement?

15 A. No.

16 Q. Do you know if Betsy Lopez has a contract to provide insurance
17 services for the County?

18 A. Through Aflac. She was our representative. Do you know if she
19 still is?

20 A. No she is not.

21 Q. Do you know why that is?

22 A. Kevin, is her boss, had taken off the County's-

1 Q. Do you personally, I'm not going to ask you what somebody said,
2 do you personally know why that was?

3 A. No.

4 Q. Do you know if there were any complaints about Miss Lopez from
5 county employees?

6 A. I have gotten a few complaints about the service.

7 Q. Did you pass those on?

8 A. Yes.

9 MR. BROWN: That's all I have Your Honor.

10 THE COURT: Mr. Odgers?

11 Q. To your knowledge when did Mr. Kevin, whatever his last name
12 is, take Miss Lopez off of the County rolls. Whatever the correct
13 terminology is, a vendor?

14 A. I am not certain what date he took her off?

15 Q. Was it before or after June third two thousand fifteen?

16 A. It was after June third.

17 Q. Did you participate in any discussions at all with Kevin, whatever
18 his last name is, regarding this incident?

19 A. No. Not this incident.

20 Q. Are you aware of who may have had a discussion with Kevin
21 regarding this incident?

22 A. No.

1 Q. Mr. Brown asked you about the Sheriff's office needing to look
2 into rumors that Lori Carson was taking kickbacks from Cindy Thom. Do
3 you remember that?

4 MR. BROWN: I'm going to object Your Honor. He is misstating
5 the question. The question that she answered is whether or not she was
6 interrogated by law enforcement about a fraud investigation.

7 MR. ODGERS: Excuse me. There was- she made the
8 statement that the Sheriff's office had to look into rumors regarding Lori
9 Carson taking kickbacks from Cindy Thom. Do you remember making that
10 statement, just a minute ago?

11 A. Yes.

12 Q. Who made that statement that the Sheriff's had to look into
13 kickbacks?

14 A. I heard it a while ago.

15 Q. On June third. That was the question that Mr. Brown had posed
16 to you. What were the issues, you brought that up as an issue. I'm asking
17 who made the statement on June third about he Sheriff's office, since it
18 wasn't you?

19 A. I'm not certain. I don't know. It was brought up. I do not know
20 who brought the statement up.

21 Q. Possibly Miss Thom?

22 A. I don't know.

23 Q. Possibly Virginia Austin?

24 A. I don't know. But, it was brought up.

1 Q. During the discussion about the Sheriff's office looking into
2 rumors, Did Miss Throm indicate that she had been investigated or spoken
3 to by the Sheriff's office?

4 A. I couldn't tell you for sure. I don't remember. Like I said, there
5 was a lot of stuff being said. I don't remember.

6 Q. Do you recall that Miss Austin indicated that she likewise had to
7 respond to the Sheriff's Office regarding the alleged kickbacks.

8 A. I don't remember that.

9 Q. You just recall a comment being made, you are unsure of who
10 made it, but it wasn't you?

11 A. I'm not certain if I said it. I just don't remember.

12 Q. Miss Carson is one of your supervisors right?

13 A. Yes.

14 Q. As the county commissioner?

15 A. Yes.

16 Q. Have you and Miss Caron had discussions regarding this alleged
17 investigation?

18 A. Yes.

19 Q. So you are personally aware of some alleged investigation
20 regarding kickbacks?

21 A. Could you?

1 Q. Do you have personal knowledge of an investigation by White
2 Pine County Sheriffs office involving some alleged kickbacks?

3 A. I just know of it's hearsay that that's what was happening.

4 Q. What was happening?

5 A. That some people had to be questioned on a rumor that was said.
6 That something that was said.

7 Q. So if for example Miss Carson informed you, that she had to have
8 a communication with law enforcement regarding this alleged rumor?

9 A. Yes.

10 Q. So that is personal knowledge. Correct?

11 A. Yes.

12 MR. BROWN: I'm going to object. That's hearsay.

13 Q. Did Miss Throm indicate the same thing?

14 MR. BROWN: Object. It's hearsay. It's all hearsay.

15 MR. ODGERS: No. It's party dependant. So, it's not hearsay.

16 MR. BROWN: I'd like to have the prior answer stricken then

17 MR. ODGERS: Your Honor, she didn't answer what was said.
18 She can have an understanding based upon a conversation and draw an
19 opinion based on that, that is not hearsay.

20 THE COURT: Overruled.

1 Q. Did Miss Throm give you the same indication that she had been
2 interviewed or interrogated by law enforcement regarding the alleged
3 kickbacks?

4 A. Yes.

5 Q. Has Miss Austin made the same type of indication to you?

6 A. Not that I recall.

7 Q. But you do recall specifically Miss Austin- or Miss Throm and Miss
8 Carson?

9 A. Yes.

10 Q. Did law enforcement ever come and talk to you about it?

11 A. No.

12 Q. To your knowledge was Miss Throm upset or angry over having
13 been interrogated by law enforcement regarding this alleged kickback?

14 A. It's not something she was happy about.

15 Q. You're avoiding the question.

16 A. I'm not sure what you want.

17 Q. Was she upset?

18 MR. BROWN: Speculation Your Honor.

19 MR. ODGERS: It's not speculation. She has been able to
20 describe Miss Throm's behavior, she works with her, she's got daily – or
21 maybe not daily, interaction with her. She interacts with her, she's the

1 primary provider. She can give an opinion as to whether or not she was
2 upset.

3 THE COURT: Did you have an objection to that? I'm
4 going to overrule that. You go ahead and answer the question.

5 A. Yeah. She was upset.

6 Q. Was she upset about that on June Third Two thousand fifteen?

7 A. No. Again, there was a lot of stuff that was going on that was said,
8 that was upsetting. I was upset about a couple of things that were said. I
9 couldn't really tell you if she was specifically upset about that, there was a
10 lot of stuff going on.

11 Q. That was at least one of the issues she was upset about?

12 A. I think it was an indication of – I mean it was part of a
13 conversation.

14 Q. A very heated and loud conversation.

15 A. A loud conversation. Yes.

16 Q. You indicated that were prior complaints about Miss Lopez?

17 A. From employees. Yes.

18 Q. Did you notify Miss Lopez about those complaints?

19 A. Yes.

20 Q. Did she address them?

21 A. I'd hope she did.

22 Q. To your knowledge did she?

1 A. I couldn't tell you for sure.

2 Q. If they weren't address, is it your role of H.R. to maybe found out
3 from the individuals whether or not their problem was resolved?

4 A. They would come back to me if it wasn't resolved.

5 Q. So did any of those people come back to you?

6 A. I had one come back a couple of times.

7 Q. Can you resolve all complaints? Can you make everybody happy
8 all the time?

9 A. No.

10 Q. So simply because somebody made a complaint doesn't mean it
11 was a valid issue? Is that correct?

12 A. I have to handle every issue as a valid issue.

13 Q. I understand that, but you can't make everybody happy all the time
14 right?

15 A. That's correct.

16 Q. So, if you can't resolve a grievance by an employee with the
17 contractor, it doesn't necessarily mean that it was a valid grievance, it could
18 have been a perception, it could have been any number of things correct?
19 It could be a personality conflict right?

20 A. Yes.

21 Q. Because you can't make everybody happy all of the time.

22 A. That's right.

1 MR ODGERS: Nothing further Your Honor.

2 THE COURT: Mr. Brown?

3 MR. BROWN: Briefly Your Honor.

4 Q. It could have also been valid complaints, correct?

5 A. Correct.

6 MR. BROWN: That's all I have Your Honor.

7 THE COURT: Thank you. Do you want to hold her?

8 MR. BROWN: She can be released Your Honor.

9 THE COURT: You can go back to work. Thank you.

10 MR. ODGERS: Thank you, Miss Ricci.

11 MR. BROWN: Your Honor. Miss Throm is going to testify.

12 THE COURT: Very good. Will you please stand and
13 raise your right hand?

14 THE CLERK: Do you solemnly swear that the testimony you
15 are about to give with be the truth, the whole truth, and nothing but the truth
16 so help you God?

17 MISS THROM: I do.

18 THE COURT: Will you please take a seat up here.
19 Thank you.

20 Give me your true and correct name and were you live?

21 MISS THROM: Cynthia Ann Throm. Seventy three forty seven
22 Rany road Las Vegas Nevada, eight nine one three nine.

1 DEFENDANT TESTIFIES.

2 Q. Mam please state your name and spell your last name?

3 A. Cynthia Ann Throm. T-h-r-o-m as in Mary.

4 Q. You're the Defendant in this case. Correct?

5 A. Yes.

6 Q. You've been here listening to the testimony today?

7 A. Yes.

8 Q. What do you do for a living?

9 A. (unintelligible word) Broker.

10 Q. Where do you work?

11 A. Employers benefits design.

12 Q. Who is the principle of that organization?

13 A. I am.

14 Q. How long have you worked there?

15 A. Twenty four years.

16 Q. Where were you on June Third of this year?

17 A. I was here in White Pine County.

18 Q. What were you doing here in White Pine County?

19 A. Having open enrolment meetings?

20 Q. Did anybody assist you with the open enrolment meetings?

1 A. Virginia Austin.

2 Q. Who else was present representing the County or any other
3 insurance companies at these open enrolment meetings?

4 A. Kathy Ricci was there representing the H.R. department from
5 White Pine County. Betsy Lopez was there representing Aflac.

6 Q. How do you know Betsy Lopez?

7 A. She is the Aflac representative involved with White Pine County.

8 Q. Now, earlier or late morning or early afternoon did you and Miss
9 Lopez have a disagreement?

10 A. Yes we did.

11 Q. What was the disagreement about?

12 A. It had to do with the manor with which she was explaining benefits
13 that were going to be offered to Aflac to the employee. She was meeting
14 with an employee.

15 Q. Do you know who that employee was?

16 A. I don't recall her name.

17 Q. Did you see her in the courtroom today?

18 A. Yes, I did.

19 Q. What did you do as a result of your disagreement with the way
20 she was handling things?

21 A. I had overheard the conversation, and it was the opposite of a
22 meeting that we had – a kind of telephone conference –

1 Q. I'm sorry to interrupt you but you said, a telephone conference we
2 had, who had that telephone conference?

3 A. Myself, Betsy, and the State director.

4 Q. When you say the State director?

5 A. Of Aflac. The State director of Aflac.

6 Q. You had a telephone conversation?

7 A. Right. We had had multiple, there had been multiple discussions
8 up preparing for the open enrolment in advance of this, and so I would say
9 approximately a week to two weeks prior to the actual open enrolment, we
10 had a conference call to determine that best course of what benefits
11 should be offered to the employees.

12 Q. What was your opinion about the way Miss Lopez was handling
13 that?

14 A. She did the exact opposite of what she said she was going to do
15 in the phone conversation that we'd had with Dan Himee.

16 Q. When that happened what did you do?

17 A. I got up and went over and interrupted and said, I don't
18 understand this isn't what we said we were going to do. That was, I did
19 interrupt their conversation. Then, Betsy went on to say that basically did I
20 see this and she handed me the piece of paper that had been referenced
21 earlier in the conversations. I took the piece of paper from her and I was
22 looking at the paper, and she had made some writings on it, so we
23 basically were debating whether, what was the right thing to do for the Ely
24 employees. She felt she knew best.

1 Q. Did you agree with her?

2 A. No. I thought we should stick to what we had agreed we were
3 going to do for the open enrolment.

4 Q. So, you had that disagreement. What happened as a result of
5 that disagreement?

6 A. We basically ended our conversation and I walked away as she
7 continued to work with the employee. I needed to leave to go over to a
8 meeting that was being held with Elizabeth Frances, needed me regarding
9 me, we were having with somebody that does the payment structure
10 because we were implementing a new H.S.A plan and we had to discuss
11 some documents that needed to be done. So, I went left the library and
12 went over to the courthouse.

13 Q. How were you, what was your demeanor at the time? How did
14 you deal with that point?

15 MR. ODGERS: I'm going to object. Only from the standpoint at
16 what time?

17 MR. BROWN: At the time after this disagreement about how
18 the insurance was being presented.

19 A. I was frustrated.

20 Q. Were there other issues at that time that you were frustrated with
21 or dealing with?

22 A. No.

23 Q. Were you able to tell what Betsy's demeanor was at that time
24 when you left?

1 A. She was upset. I certainly should have not had interrupted them.
2 I understood why she was upset.

3 Q. At some point did you return to the library?

4 A. Yes.

5 Q. Do you have any idea about when that was?

6 A. You know, to be honest. I don't.

7 Q. That's fine. Were you there, what time did you end up wrapping
8 up at the library that day?

9 A. We were finishing up a little after four.

10 Q. From the time of that first incident, where you had interrupted
11 Miss Lopez when she was talking to a client, to that point when you
12 decided to start wrapping up around four. Had anything else taken place?

13 A. No.

14 Q. What took place at that time?

15 A. My recall might not be perfect here, but the conversation came up
16 from Betsy about how she didn't appreciate interrupting her. How
17 unprofessional I was. I agreed that that was not the right time or the place
18 but, that I was adamant that we were all suppose to be on the same page
19 here.

20 She got very upset and said, I had no business telling her what to do.
21 I said we had a conversation with the State director, and she said, he
22 doesn't live here, he doesn't know what's best. I do. Then, she started
23 moving her arms around and she started pointing to Kathy and she said,
24 you're H.R. why I am I talking to you, you're H.R. and so she was pretty

1 adamant with these arms going and then she pointed over to the blank wall
2 and said, you know, the commissioners, the commissioners should decide.
3 Then she went back and said, you're H.R. you're a nobody I shouldn't
4 have to talk to you. You don't have anything to do with this. It kind of
5 escalated, and talked some more. Then, she said in fact ever since you've
6 been involved, Kathy doesn't treat me the same. That's when the
7 conversation turned regarding the investigation because I said it's not
8 because I'm involved, it's because of the actions that came about after.

9 We introduced these group products a couple of years ago. I said,
10 that' caused everybody to be a little bit upset. She said she didn't know
11 anything about it. She goes, so you've been talking about me. I said, no,
12 we haven't been talking about you. I said, you're aware this happened. No,
13 I'm not. I said you were on the phone conversation with Elizabeth Frances.
14 I was on the phone conversation and so was Dan Himee two years ago, so
15 you're aware that this happened. She said no I'm not. You guys have just
16 been talking about me. Then she went on to say that I look at her mean in
17 commissioner meetings that – then she goes, don't look at me. So, then I
18 tried to turn away. Then she came back again, going, - you know, you –
19 you know, she kept pointing to Kathy. You're H.R. what are you going to
20 do?

21 We just had this animated conversation going back and forth about
22 what should be done and what should offered and how it should be
23 presented and so, but at the end we were just going back and forth
24 regarding prim- basically Virginia had said this is unprofessional guys, and I
25 said yes it is. I started to walk away and then she said, you're so
26 unprofessional. She was going back to me again, so I came back going
27 you're right. We should stop this.

1 As the conversation went at that point, we were all standing.

2 Q. So was the conversation mainly about this investigation?

3 A. No. it was mainly about the benefits, who should decide what
4 benefits should be offered, and how they should be presented.

5 Q. Were you upset about this investigation?

6 A. The investigation was old. No, I wasn't particularly upset about it.
7 It had been annoying at the time, but it really wasn't an investigation full
8 blown. I got a phone call from Elizabeth Frances more than two years ago
9 about when it came up. It came up that I was told they were going to have
10 to investigate. That's basically all that I was told. I was not investigated
11 per say, Lori Carson had to be interviewed with by someone, I don't know
12 who. I am aware of this because Lori Carson told me that.

13 Q. On June Third at about four o'clock when all of this was going on,
14 did you tell Betsy that Lori Carson was going to be upset?

15 A. No. I basically only mentioned that because that was one of the
16 factors that started some of the friction that was involved.

17 Q. Her testimony about the physical event that took place at that
18 time. Why don't you describe for the Court what took place?

19 A. When we were at the- I don't know how many minutes this
20 argument lasted because when you are in the heat of an argument, back
21 and forth. Betsy was loud. I was loud. We were going back and forth.
22 Virginia was telling us we needed to stop. I agreed, we needed to stop.
23 The last time Betsy was pointing her fingers and going like that again, I just
24 walked over and put my hands up and I said, we need to stop. We're not
25 going to resolve this here. We need to stop.

1 Q. Did you touch her?

2 A. Yes.

3 Q. Where did you touch her?

4 A. On the outsides of her – her hands were facing mine because her
5 hands were up and around and I was just kind of pulling them, I was just
6 kind of going that direction. I just kind of had them on the outside. That's
7 when I said, we need to stop. She pulled back and she said, don't touch
8 me. I don't touch you. I said, you're right, I'm sorry. It will never happen
9 again. I turned around I picked up the rest of our stuff. We went out the
10 door.

11 Q. Did you grab her upper arms at all at any time?

12 A. No.

13 Q. Did you shake her?

14 A. No, sir.

15 Q. Did you touch her in a violent manner?

16 A. No sir.

17 Q. Forceful?

18 A. No.

19 Q. At any time did you try to get anyone to remove Miss Lopez from
20 her contract with White Pine County?

21 A. No.

22 Q. Did you later that night, present Miss Lopez with an apology card?

1 A. Yes I did.

2 Q. Why did you do that?

3 A. Because I was upset with myself. I should not have lost my
4 patience. I should have not interrupted her in front of a client, that was very
5 rude and unprofessional. I should have not done that. We shouldn't have
6 been yelling in front of the client, Kathy Ricci, in the library. That was not
7 professional on my part. I've been in business a long time, I take a lot of
8 pride in doing things the right way. I was wrong. So, I apologized because
9 I felt like we needed to get past this, and work together and move forward.

10 Q. At the public safety building later that night. Do you recall when
11 Betsy, when Miss Lopez arrived?

12 A. Yes.

13 Q. What did you do when she arrived?

14 A. I saw her coming, she had, I believe one or two boxes that she
15 was caring, I walked over and opened the door for her.

16 Q. What was her reaction?

17 A. She just walked through.

18 MR. BROWN: Just a moment, Your Honor. I'll pass the
19 Witness, Your Honor.

20 THE COURT: Mr. Odgers?

21 MR. ODGERS: Thank you.

22 Q. She walked through just like a professional would walk through
23 the door right?

1 A. Yes sir.

2 Q. She didn't say anything negative to you or anything of that nature
3 right?

4 A. No.

5 Q. She said thank you for opening the door?

6 A. I don't believe so.

7 Q. Your card that you gave her, do you want the Court to believe the
8 only reason that you gave her that card was because your performance,
9 that you lost your patience, and your performance that day was less than
10 professional. Is that what you want the Court to believe?

11 A. Yes sir.

12 Q. It has nothing to do with the fact that you put your hands on Miss
13 Lopez?

14 A. No.

15 Q. You testified a moment ago, that when Miss Lopez was animated
16 with her hands, you walked towards her and put your hands up to stop her
17 from swinging her hands. Do you remember saying that? You grabbed
18 them by the outside of her arms correct?

19 MR. BROWN: I'm going to object, Your Honor. She didn't say
20 she grabbed her hands.

21 THE COURT: Sustained.

1 Q. I believe your testimony was you walked over, she put her hands
2 up, you put her hands on the outside of her hands, correct? To stop her
3 from flailing or whatever.

4 A. I didn't walk up towards her so I may have said it out of order of
5 direction. We were both at that point, standing in front of each other. I had
6 turned around and come back, she was talking her arms were moving.

7 Q. You were on your way out, you chose to come back to her?

8 A. I was on my out, yet I had just turned around,

9 Q. To walk away from the situation?

10 A. I was going to go back, she started to say something, I turned
11 around and her arms were everywhere. I was in front of her, I put my
12 hands up around the outside of her hands and said, we need to stop. We
13 have another meeting.

14 Q. When you reached up and grabbed her hands, put your hands up,
15 however terminology you wish to use. Did Miss Lopez give you permission
16 to touch her?

17 A. No, she did not.

18 Q. You had the opportunity and you were in fact walking away, but
19 you chose to turn around, whatever terminology you want to use. You had
20 the opportunity at that point to continue going the direction you were going,
21 but instead you came back into the conversation, and you took willful action
22 in reaching out to touch her correct? It was willful, it wasn't accidental?
23 You didn't accidentally turn around and hit her. You willfully, you forced
24 your arms up in the air, you forced your hands to grab her and whatever

1 term you want to use to stop her hands form flailing, You did that all on
2 purpose?

3 A. Yes.

4 Q. You did it all without permission?

5 A. Yes.

6 Q. You did it while you were in the heat of the discussion by your
7 own terminology. This is what you said. In the heat of the argument, and
8 both of you were loud. Correct?

9 A. I wasn't loud. When I said, we need to stop. I had previously
10 been loud.

11 MR. ODGERS: Nothing further, Your Honor.

12 MR. BROWN: Nothing further, Your Honor.

13 THE COURT: Thank you. You may take your seat back
14 over here.

15 Do you have any other witnesses you want to bring back in?

16 MR. BROWN: Defense rests, Your Honor.

17 THE COURT: And you? you rest?

18 MR. ODGERS: I've already rested Your Honor.

19 THE COURT: Okay. Do you want to give closing?

20 MR. ODGERS: Absolutely Your Honor.

21 N.R.S. 200.481 section one defines battery as any willful and
22 unlawful use of force or violence upon a person of another. It's the willful

1 use of force. How do we get where your defenses, you have self defense,
2 there's been no evidence of self defense. You have accident, I turn around
3 and hit somebody by mistake. I through a baseball, somebody walks in the
4 middle of me and somebody playing catch. I through the baseball, I
5 intended to through the baseball but I didn't intend to hit the person,
6 somebody walks in between. Those are all accidents.

7 Miss Throm testimony, you just herd. She was involved in a headed
8 discussion. She turned to walk away, Miss Lopez said something, she
9 turned back around. She reached up willfully and grabbed her by the
10 hands. That's force. It's willful force, it wasn't an accident.

11 There is no excuse for another person to unlawfully, there is not
12 lawful reason, she wasn't trying to protect Miss Lopez from having a
13 seizure or anything else of that nature. So, you only have lawful or
14 unlawful touches. Lawful touching with permission. Unlawful touching is
15 everything else. Accident's excluded.

16 What are the elements, willful, she testified she willfully raised her
17 arms, she willfully reached out, she willfully grabbed her. The pictures and
18 the rest of that are just evidence. There doesn't have to actually be any
19 injury for a battery to have occurred. That's not a requirement of the law.
20 Plain and simple.

21 The Court's determination simply was whether or not the touching
22 was lawful. We've already established Miss Lopez is a person of another.
23 There has been no evidence to the contrary. We've established by Miss
24 Throm's own testimony that she willfully without lawful reason reached out
25 and grabbed Miss Lopez. Based on that Your Honor, the City's job of
26 proving beyond a reasonable doubt that a battery occurred, is met under

1 the definition of N.R.S. 200.481. We ask you to find Miss Throm guilty of
2 Battery.

3 THE COURT: Thank you. Mr. Brown?

4 MR. BROWN: Thank you, Your Honor. I'm going to have to
5 disagree with the City Attorney on a few points here. He read to you the
6 statute correctly, willful, unlawful use of force or violence, and he preceded
7 to argue that there is lawful touching and unlawful touching. That's not in
8 the statute, you have to go what's in the statute, not something somebody
9 makes up. Lawful, and unlawful touching. That's not the law. The law is
10 willful, unlawful use of force or violence.

11 How did the City try to prove that? First, they had Dale Watterson
12 come in and show you these photographs. I think on some of these
13 photographs he admitted that it, you know, wasn't really bruising, it looked
14 like a scratch. In particular he talked about exhibit number ten. Then later
15 we had testimony from Miss Lopez herself, that what he thought was a
16 scratch, and I was prepared to argue, if that's a scratch, it's not the scratch
17 you get from a fingernail.

18 She came in and told you that's a line that they drew on her arm. The
19 rest of these, Your Honor, I guess the Court can make the determination
20 whether or not, there is a bruise or not, or a red mark. We know that the
21 very first photographs were taken six hours later, after this incident. The
22 other photographs were taken a couple days later. There is even circles
23 drawn to highlight where these bruises are.

24 *It's kind of in interesting that Mr. Odgers says, we don't have to prove*
25 *any injury. It sounds like to me, Your Honor, that he is conceding, there is*
26 *no bruises here. It's up to the Court, you can make that determination.*

1 MR. ODGERS: Objection. Misstates my argument.

2 MR. BROWN: I'll leave it to the Court to determine whether you
3 see bruises there. The Officer didn't testify that he saw bruising. Again, I'll
4 leave it to the Court.

5 Did Miss Throm, act in an unprofessional manor? She told you she
6 did. She told you she was unprofessional. She told you Miss Lopez was
7 unprofessional. That's not a crime. You had two professional people here,
8 neither one were acting like professionals. They were arguing. Miss
9 Throm shouldn't have gone and interrupted Miss Lopez. That made Miss
10 Lopez mad. She sat there and said oh no, I was calm, and it was fine. She
11 told you I didn't like being supervised.

12 She even threw out something about splitting commissions. She's
13 upset about that. She admitted she was upset about that. Yet, she is
14 going to testify that she was calm and polite, and she was surrounded by
15 these three women. I think she used the word gang. They can argue that's
16 not why they used the word gang, but I think they used the word gang to try
17 and indicate a gang member.

18 She stood there with her hands to her side, and was pleasant and
19 calm, and Cindy Throm was yelling at her. Kathy Ricci was yelling at her.
20 Virginia Austin was yelling at her. That's her version of what happened.
21 You heard from Kathy Ricci that's not what happened. You heard from
22 Virginia Austin that's not what happened. You heard from Cindy Throm
23 that's not what happened. What you heard from those three people is that
24 Betsy was upset and flailing her arms around also.

25 If they were going to lie for Miss Throm, they would have said Miss
26 Throm never did anything. But, they didn't. They were truthful. They said

1 that Miss Throm was also heated, and yelling, just like Miss Lopez. That
2 her arms were waiving around, just like Miss Lopez. What happened was
3 Miss Throm did turn to walk away. It's true, she came back, she came
4 back because Betsy, Miss Lopez wouldn't let it go. She kept –

5 SOMEONE IN AUDIENCE.

6 You don't know that –

7 MR. ODGERS: Hey.

8 MR. BROWN: Just like here, she can't let things go. She's got
9 to break in, and she prides herself on being calm. That's not how she's
10 acting now, that's not how she was acting that day, Your Honor. That's
11 what all the witnesses testified to. She said, she reported it immediately
12 but the law enforcement was too busy. She talked to Dave Monroe but he
13 was at the Graduation, so he was busy. He didn't have time to take a
14 battery report?

15 If law enforcement thought that someone was battered, they would
16 take a report, Your Honor.

17 MR. ODGERS: Objection. Speculation. It's contrary to the
18 evidence.

19 MR. BROWN: It's argument. It is not contrary to the evidence. It's
20 argument, and I can make that argument. As to the disagreement I that I
21 have with Mr. Odgers, I told you one was the use of the statute, and him
22 suddenly changing it to willful, unlawful use of force or violence, to unlawful
23 touching. There is no such thing as unlawful touching in the criminal law.
24 You can't find it in a statue anywhere. The statute says willful, unlawful
25 force or violence.

1 That's the first disagreement, the other disagreement I have is he
2 kept saying that Cindy Throm grabbed Betsy Lopez. There was no
3 testimony by anyone other than Betsy Lopez that's what happened. You
4 had consistent testimony from Virginia Austin, Kathy Ricci, and Cindy
5 Throm that she put her hands up to calm her down. Not, that she grabbed
6 her. These might like slight differences, but that's not what happened. It
7 wasn't a grab. Miss Throm never said that, she tried to calm her down, and
8 put her hands on her. That might be touching, but unlawful touching is not
9 a crime. It might be unprofessional. But the statute says willful, unlawful,
10 use of force or violence. Kathy Ricci testified it wasn't force or violence.
11 Virginia Austin testified it wasn't force of violence. Cindy Throm testified, it
12 wasn't force of violence. It wasn't that it was this. That is not force or
13 violence, Your Honor.

14 This card was brought up. If you read the card, the card says, the
15 statement was made, the question was asked. You want the Court to
16 believe that you were just apologizing for this disagreement you had earlier
17 today. She said, yeah that's what I want the Court to believe. That's
18 because that's what the card says. It doesn't say I'm sorry I grabbed you
19 and shook you. It says I'm sorry we had a disagreement. That's what the
20 apology was about, Your Honor. That's what she testified to, that's what
21 the card says. Nothing about this incident later in the day.

22 Your Honor, there was no use of force, there was no use of violence,
23 there was no criminal intent here. There was a disagreement between two
24 people. I can't even say it got out of hand. Because there was no force or
25 violence. There was no criminal intent. There was no crime here Your
26 Honor. You should find Miss Throm not guilty.

27 THE COURT: Thank you. Mr. Odgers?

1 MR. ODGERS: Thank you, Your Honor. Apparently Mr. Brown and I
2 were at two different trials. If the Court will recall Miss Austin, walked over
3 to me and asked me to stand up so that she could demonstrate to the
4 Court the action taken by Miss Throm. If the Court will recall, she walked
5 up me, she said put your hands up like this. I put my hands up in front of
6 me about shoulder height. She then indicated Miss Throm's hands came
7 up and took hold of the wrist of Miss Lopez.

8 MR. BROWN: Objection, Your Honor. That wasn't the
9 testimony.

10 MR. ODGERS: It's argument at this point Mr. Brown got to
11 ramble on, so at this point, it's my opportunity to rebut what he proposes is
12 what the evidence shows.

13 THE COURT: Go ahead.

14 MR. ODGERS: Miss Austin walked up and demonstrated that,
15 on her own volition. Demonstrated what transpired. Force, however slight,
16 is all that is required. It does not require an injury. Mr. Brown didn't argue
17 against that because he knows that is the state of the law. It' unlawful use
18 of force. However slight, or violence. The or doesn't require both. It
19 means one or the other. Contrary to what Mr. Brown is trying to convince
20 the court.

21 MR. BROWN: Objection. I didn't say that.

22 THE COURT: Overruled.

23 MR. ODGERS: The unlawful use of force however slight. The
24 willfulness is pretty simple Your Honor. It wasn't an accident. She willfully
25 reached up, she willfully put her hands over Miss Betsy's hands. Grabbed

1 her, according to Miss Ricci, she touched her. According to Miss Austin,
2 she grabbed her.

3 MR. BROWN; Objection. She didn't use the word grab,

4 MR. ODGERS: She grabbed her. It's force however slight. It
5 was not invited. This was not a boxing match. Where both parties agreed
6 to beat the hell out of each other. This was at best, an unprofessional
7 situation that got out of hand by Miss Throm reaching out and using force,
8 however slight, against the body of Miss Lopez. She did that by touching,
9 grabbing, whatever, terminology you want to use. You heard all four
10 witnesses testify.

11 Remember, the law is simply this. The unlawful, willful, use of force
12 however slight upon the person of another. That's the standard. That's
13 why the City has proven beyond a reasonable doubt, that the injury, that
14 the battery occurred. It occurred because there was a willful act by Miss
15 Throm, against Betsy Lopez when she willfully brought up her arms,
16 willfully grabbed, touched, used force however slight to stop Miss Lopez.

17 That is the definition of a battery. Mr. Brown and I can argue till the
18 day is long. Two different lawyers can have two different opinions on what
19 the facts show. That's why you get paid the big bucks as a Judge. You
20 have to decide whether or not, it was an willful, unlawful use of force
21 against Miss Lopez by Miss Throm based on all the evidence that has been
22 presented before you today. Now as to the apology, this apology is
23 evidence of guilt. It's evidence of guilt because it occurred right after the
24 incident, which she admitted that she had unlawful contact with and use
25 force with Miss Lopez.

26 MR. BROWN: Objection. There is no such admission.

1 Misstating the evidence.

2 THE COURT: Just a minute Mr. Brown.

3 MR. ODGERS: This apology includes all of the all of the
4 behaviors that Miss Throm did. This is the evidence of guilt.

5 Mr. Brown should be very aware of this. The law imputes this is a
6 general intent. Intent is imputed by the actions. This is not a specific intent
7 crime. This is a general intent crime. She just generally needed to intend
8 to cause the willful action, that was unlawful. She admitted that she did it.
9 She willfully brought her hands up. She willfully, touched, grabbed, pulled,
10 whatever terminology you want to use from the four different people that
11 testified. She used unlawful force.

12 This is evidence of her guilt. City's exhibit number eleven.

13 THE COURT: Your Honor, there is not opportunity for
14 him at this point.

15 MR. BROWN: I'd like to be heard on my objection.

16 MR. ODGERS: It doesn't matter, the process is simple. I do
17 my opening, he gets to make his closing argument, I get to do the
18 rebottle.

19 That's the normal process.

20 MR. BROWN: That's the process, Your Honor. When I
21 objected to him misstating the evidence, and he continued to do that, which
22 is prosecutorial misconduct, I didn't have the opportunity to respond, so I'd
23 like to respond now. He said, all four witnesses said that Miss Throm
24 grabbed Miss Lopez, and that is not the testimony.

1 THE COURT: I know what the testimony was. Have a
2 seat.

3 MR. BROWN: Thank you. Your Honor if I would ask the Court
4 look at that card and see what it really says as opposed what Mr. Odgers
5 says it says.

6 THE COURT: Please stand. After to listening to all the
7 witnesses and their testimony, and see what they had to say, and the
8 witnesses here on this case. The only thing I can say, and I'm bring it right
9 down to it level ground. Level ground is N.R.S which states you cannot
10 even touch them. I don't care whether you beat them up, kick them, or
11 whatever the case might be. You do not touch anybody.

12 Obviously here, she did touch her. The Court is going to find her
13 guilty of the charges. Mr. Odgers do you have any recommendations?

14 MR. ODGERS: I do, Your Honor. The City is going to request
15 a five hundred dollar fine plus assessments, there is no restitution. I'm
16 going to ask the Court to issue a six month jail sentence to stay out of
17 trouble that will be suspended. Stay out of trouble for the period of one
18 year no other negative law enforcement, other than minor traffic, at the end
19 of that year the matter can be closed.

20 THE COURT: Mr. Brown?

21 MR. BROWN: Thank you, Your Honor. Your Honor, I was in
22 here two days ago representing an individual who had been a bar fight, and
23 the City recommended a one hundred fifty dollar fine. Now for this, I can't
24 imagine a battery being more slight than this case. I'm not going to, I may
25 disagree with the Court's ruling, what the Court has ruled and I have to
26 except that. That it was a touching. Touching someone, five hundred

1 dollars, and six month suspended sentence. Your Honor, that is so out of
2 line. When we have somebody who gets into an actual fight with
3 somebody and pays one hundred fifty dollar fine. Your Honor, in this case I
4 think a warning or maybe a hundred dollar fine, but certainly doesn't rise to
5 that level to require a suspended sentence and I five hundred dollar fine.
6 That's just way out of line, Your Honor. At worst it was a touch.

7 THE COURT: Thank you. Anything else Mr. Odgers?

8 MR. ODGERS: Other than the fact that I take exception to Mr. Brown
9 bringing up a case that was negotiated for another one of his clients in a
10 completely different set of situation.

11 THE COURT: I agree.

12 MR. ODGERS: I'll remain with my recommendation.

13 THE COURT: I can appreciate your recommendation,
14 Mr. Odgers. I'm going to take into consideration here that we are talking
15 about professional people. Professional people. We are not talking about
16 a knock down blow and hitting somebody from behind or whatnot. Here
17 are a couple of people who got into an argument and literally just a touch is
18 a cause of a battery which is really ridiculous. That's the law, she filed a
19 complaint, and we went forward with, and we are going to end that way
20 with a – I am not going to go with a five hundred dollar fine. I'm going to go
21 with a hundred dollar fine there will be no jail time suspension and nothing
22 else, just a hundred dollar fine that's it, plus assessments.

23 COURT CLERK: A hundred dollar fine has a seventy eight
24 administrative fee, ten dollar facility fee, seven dollar special court fee for a
25 total of one hundred ninety five dollars.

1 THE COURT: Can you pay that today?

2 MISS THROM: I can pay it with a credit card, or a check but
3 you don't take those. I don't have a hundred ninety five dollars cash on
4 me.

5 THE COURT: Can you go to the bank and get cash from
6 a bank?

7 MISS THROM: My bank is not here, but I can send the money-

8 THE COURT: Can you send the money to your attorney?

9 MISS THROM: Yes, or to the Court, whichever one you would
10 like.

11 UNKNOWN VOICE: Judge can I have two seconds to count
12 the money?

13 MISS THROM: That's my husband. I have a hundred.

14 MR. ODGERS: I have no doubt that her check would be good,
15 if you wanted to except her check.

16 THE COURT: We don't except checks.

17 COURT CLERK: We don't but we could make an exception for
18 her.

19 UNKNOWN VOICE: I have one hundred fifty cash.

20 MR. ODGERS: Miss Throm is in the community a lot Your
21 Honor, I don't think that she is going to bounce a check to the Court.

22 THE COURT: We don't want to take your dinner money.

1 MISS THROM: I can write you a check this very minute, and
2 it's perfectly good, you're welcome to call the bank.

3 THE COURT: Alright, that will be fine. After court I want
4 you to get together with the clerk out here and write her a check for the
5 total amount.

6 MISS THROM: Absolutely, Yes sir.

7 THE COURT: Anything else?

8 MR. ODGERS: The admonishment on the right to appeal Your
9 Honor.

10 THE COURT: Yes, you have ten days from the day of my
11 decision to appeal if you feel you want to.

12 Nothing else?

13 MR. ODGERS: Nothing at this time Your Honor.

14 MR. BROWN: No, Your Honor.

15 THE COURT: Thank you. We'll go ahead and recess
16 now.

17 (Court in recess at 2:13 P.M.)

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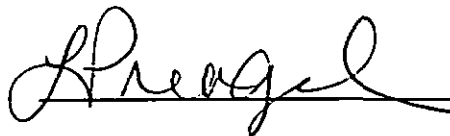
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STATE OF NEVADA }

} SS.

CITY OF ELY }

I, LINNEA PRENGEL, duly sworn Court Transcriptionist for the Ely Municipal Court of the State of Nevada, in and for the County of White Pine, State of Nevada, do hereby certify that the testimony given in the above-entitled matter heard in Ely, White Pine County, Nevada; and the sound recorded proceedings thereof were transcribed; and, that the foregoing pages contain a full, true and correct transcription of the sound recording taken as aforesaid; and, a full, true and correct transcription of all proceedings had and testimony given to the best of my ability.



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