

Allen Trial 1 Transcripts, 2010

1. April 22, 2010: Telephone Pre-Trial
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1 April 22, 2010: Telephone Pre-Trial

REPORTER'S RECORD

VOLUME 2 OF ___ VOLUMES

TRIAL COURT CAUSE NO. 1670694

THE STATE OF TEXAS) IN THE COUNTY CRIMINAL
)
)
VS.) COURT AT LAW NO. 14
)
)
DAVID PERRY ALLEN) HARRIS COUNTY, TEXAS

HEARING ON DEFENDANT'S RIGHTS
(BY PHONE)

On the 22nd day of April, 2010, the
following proceedings came on to be heard in the
above-entitled and numbered Cause before the Honorable
Michael R. Fields, Judge Presiding, held in Houston,
Harris County, Texas.

Proceedings reported by computerized
machine shorthand.

ORIGINAL

A P P E A R A N C E S

Ms. Stacey Mathews
Asst. District Attorney
SBOT NO. 24042778
1201 Franklin, 5th Fl.
Houston, Tx. 77002
PH: (713) 755-8327
ATTORNEY FOR THE STATE

-AND-

Mr. David Perry Allen
SBOT NO. XXXXXXXXXX
2111 Trinity Manor Lane
Richmond, Tx. 77469
PH: (713) 859-7831
ACTING AS PRO-SE COUNSEL

1 (Open Court, State present, Defendant on
2 Telephone, no jury.)

3 THE COURT: Mr. Allen, I'm gonna have
4 the Court Reporter transcribe what we're saying -- uh
5 -- and I'll tell you why in just a minute. I just
6 wanted to let you know that that's gonna happen; okay?

7 THE DEFENDANT: Okay.

8 THE COURT: All right. Thanks.

9 We're on the Record in the matter styled
10 The State of Texas versus David Perry Allen.

11 Hey, Mr. Allen, I want to tell you
12 what's going on with your case. I know you're
13 probably wondering why my Coordinator called you.

14 Uh, and I recognize your voice; I know
15 that it's you.

16 Uh, The State of Texas has requested a
17 jury trial in your case. I know that you want a Court
18 trial, but they have the right to request a jury
19 trial. They wanted to talk with you about your case,
20 but they are concerned that you were not adequately
21 informed of your Right to Counsel. We spoke about
22 this at great length the other day, so I'm just gonna
23 do it again, over the phone and on the Record, so that
24 there's a Record made of it.

25 Do you -- do you mind that?

1 THE DEFENDANT: No, sir, not at all.

2 THE COURT: All right. Now, you were
3 instructed that you have the right to an attorney;
4 were you not?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you said that you wanted
7 to waive your right to Counsel; did you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Now you know that you
10 -- uh -- you have the right to an attorney. If
11 you're indigent, you can be appointed a lawyer; and,
12 in fact, I told you I'd appoint you a free lawyer
13 right then; isn't that right?

14 THE DEFENDANT: Well, you said that
15 yeah, I could, and I -- I -- I, you know, said that I
16 wasn't indigent.

17 THE COURT: That's right. I can still
18 appoint you a lawyer. That doesn't matter. I mean,
19 if you want a lawyer, even if you're not indigent, I
20 can do it. Uh, do you want a lawyer?

21 THE DEFENDANT: Well, I just -- I want
22 to do the right thing. Uh, I've actually talked to
23 several. Uh -- uh -- Woodfill and Pressler -- uh --
24 contacted me, but I guess they were busy or
25 something.

1 Uh, I -- I -- you know, I wouldn't mind
2 -- uh -- uh -- having -- because I don't want to
3 embarrass you, Judge. Uh, I don't want to -- uh --
4 you know, I -- I want to follow the format.

5 THE COURT: No, no, no, no. You're not
6 gonna embarrass me, and I can always appoint someone
7 to sit second chair with you. Don't worry about
8 that. You know, that -- that's not a concern of mine
9 at all.

10 My concern is that if you want a lawyer,
11 that you have a lawyer; and that if you don't want a
12 lawyer, that you have the right to represent
13 yourself.

14 THE DEFENDANT: Well, when, you say,
15 "second chair," is that -- that will be someone just
16 to advise me when to shut up, and when to sit down,
17 and --

18 THE COURT: Yep. Exactly. They
19 wouldn't say anything; they wouldn't tell you what to
20 do; you could handle your case exactly how you want;
21 but they would sit there and if you needed pointers on
22 protocol, they'll give those to you. And I do that in
23 every pro-se case where a person tries the case
24 themselves, so you woulda' had one sitting here
25 anyway.

1 THE DEFENDANT: Okay.

2 THE COURT: Uh, but if that's the way
3 you want to go about it, we can do that too.

4 THE DEFENDANT: I think that that's --
5 that's -- that sounds good.

6 THE COURT: Okay.

7 Uh, how old are you? Do you mind my
8 asking?

9 THE DEFENDANT: No, sir. Fifty-five.

10 THE COURT: All right. And do you have
11 a college degree?

12 THE DEFENDANT: Yes, sir, I do.

13 THE COURT: Okay. Uh --

14 THE DEFENDANT: I'm -- I'm a civil
15 engineer by profession. Actually, I'm a contracts
16 manager for a large -- Main Construction Company.
17 I've worked here in Houston now for this company since
18 '01.

19 THE COURT: Oh, okay. Great.

20 You know if -- if you did have a lawyer
21 appointed, you would have 10 days after the
22 appointment of the lawyer before proceeding to trial.
23 You understand that?

24 THE DEFENDANT: Uh, I -- I think we're
25 gonna go there, Your Honor -- uh -- so --

1 THE COURT: No, I just have to tell you
2 that. I -- that's one of the rights that I have to
3 tell you of. Do you understand that right?

4 THE DEFENDANT: Right. I'm -- I'm ready
5 for Thursday. I -- uh --

6 THE COURT: Okay. Well, we will pick a
7 jury. The State wants a jury trial. We will pick a
8 jury on Thursday, and we'll get your case tried next
9 Thursday.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Thank you,
12 Mr. Allen.

13 THE DEFENANT: Thank -- thank you, Judge
14 Fields.

15 THE COURT: Take care, sir. Bye-bye

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1 THE STATE OF TEXAS)

2)

3 COUNTY OF HARRIS)

4

5 I, Phyllis Thibodeaux, Deputy Official Court
 6 Reporter in and for the County Criminal Court at Law
 7 No. 14 of Harris County, State of Texas, do hereby
 8 certify that the above and foregoing contains a true
 9 and correct transcription of all portions of evidence
 and other proceedings requested in writing by Counsel
 for the parties to be included in this volume of the
 Reporter's Record, in the above-styled and numbered
 Cause, all of which occurred in Open Court or in
 Chambers and were reported by me.

10 I further certify that this Reporter's
 11 Record of the proceedings truly and correctly reflects
 12 the exhibits, if any, admitted by the respective
 parties.

13 I further certify that the total cost for
 14 the preparation of this Reporter's Record is _____
 and has been paid by Mr. David Perry Allen.

15 WITNESS MY OFFICIAL HAND this the 1st day of
 16 June, 2010.

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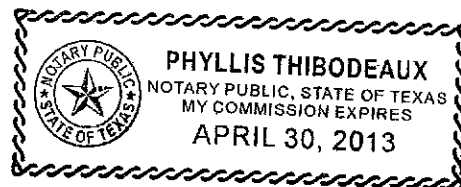
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Phyllis Thibodeaux

PHYLLIS THIBODEAUX, Texas CSR No. 916
 Expiration Date: December 31, 2010
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2 April 29, 2010: Pretrial Tallit

REPORTER'S RECORD
VOLUME 1 OF 2 VOLUMES
TRIAL COURT CAUSE NO. 1670694

STATE OF TEXAS) IN THE COUNTY CRIMINAL
VS.) COURT AT LAW NO. 14
DAVID PERRY ALLEN) HARRIS COUNTY, T E X A S

PRETRIAL

On the 29th day of April, 2010, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Michael R. Fields, judge presiding, held in Houston, Harris County, Texas;

Proceedings reported by machine shorthand.

A P P E A R A N C E S

Stacey Matthews	David P. Allen
SBOT No. 24042778	2111 Trinity Manor Lane
Joshua Reiss	Richmond, Texas 77469
SBOT No. 24053738	713-859-7831
ASSISTANT DISTRICT ATTORNEYS	PRO SE DEFENDANT
HARRIS COUNTY	
1201 Franklin	
Houston, Texas 77002	
ATTORNEYS FOR STATE OF TEXAS	

ALSO PRESENT: Brian Storts, Attorney
Dan Kamin, Attorney

ORIGINAL

1 THE COURT: We are on the record once again in
2 Cause No. 1670694 styled the State of Texas versus David Perry
3 Allen. This is a case that was previously set for court trial.
4 The State of Texas has requested a jury trial, and we have
5 ordered a jury panel.

6 I had previously asked Mr. Kamin to sit second
7 with Mr. Allen. Mr. Allen wishes to represent himself on this
8 case, and he is obviously welcomed to do so. Mr. Allen has
9 indicated that he and Mr. Kamin aren't necessarily hitting it
10 off very well.

11 And for that reason, Mr. Kamin, I appreciate
12 you volunteering; but you are excused, sir. I will find
13 someone else to assist Mr. Allen with the trial of this case.
14 Thank you so much for your help.

15 MR. KAMIN: Thank you.

16 THE COURT: You're welcome. And that's your
17 desire, is it not, Mr. Allen, as well?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. I have here Mr. Brian
20 Storts, who is a lawyer here in Harris County. I think that he
21 may be more to your liking. I hope that he will be. I've
22 informed Mr. Storts that he is to sit second with you, that
23 this is your case to try. You can use him as much or as little
24 as you wish. He will give you all of the advice and counsel
25 you ask for.

1 If you would like to have a few moments to
2 speak with Mr. Storts, you're welcomed to do that. Once again,
3 you'll be representing yourself pro se. Mr. Storts will help
4 you out. If you would like for Mr. Storts to represent you, he
5 can; and you would then be entitled to ten more days to prepare
6 for trial if you would like those ten days. What is your
7 choice, sir?

8 THE DEFENDANT: Thank you, Your Honor. First,
9 Mr. Kamin, I certainly appreciate his -- I appreciate -- as we
10 discussed before, I would be very much appreciated if I had an
11 attorney sitting next to me with the understanding that he's
12 not to embarrass the Court and myself as much as you can.

13 MR. STORTS: Absolutely.

14 THE DEFENDANT: But that everything that is
15 said, well, I'll take responsibility for and present the case.
16 That would be fine with me, Your Honor.

17 THE COURT: All right. Thank you, then.
18 We'll proceed today.

19 MS. MATTHEWS: Judge, can I put something on
20 the record please?

21 THE COURT: Absolutely.

22 MS. MATTHEWS: I just want to put on the
23 record that the State has provided to Mr. Allen all pretrial
24 discovery, that we contacted him. We've had two phone
25 conversations with Mr. Allen. And on last Friday, which was

1 the 23rd, we provided Mr. Allen with some Brady notice and we
2 provided him with his statement.

3 We provided him also with access to our file
4 with all the photos we were going to use. We've provided him
5 with a YouTube video we intend to offer. We also provided
6 him -- I spoke with him on the phone and discussed witnesses
7 with him; and I also myself, Kate Dolan, called and spoke with
8 him on Monday of this week or Tuesday of this week, Tuesday
9 morning, I'm sorry, Tuesday morning.

10 We spoke with him and offered -- asked him if
11 he would like to come in again and discuss this with us. We
12 offered him a pretrial diversion, and we asked him to please
13 just get back with us if he was considering that.

14 Our terms of the pretrial diversion we are
15 only asking for would be a certain distance -- to stay a
16 certain distance from the location, not that he can't be out
17 there. That's all it is, just to stay and to protest correctly
18 and not trespass.

19 THE COURT: Mr. Allen, is your recollection of
20 the events the same as Ms. Matthews?

21 THE DEFENDANT: Pretty much, yes, sir. They
22 have been very, very -- I think it was Tuesday afternoon when
23 you-all called.

24 MS. MATTHEWS: Yes. I couldn't remember all
25 the dates.

1 THE DEFENDANT: But, yes, sir, it's pretty
2 accurate.

3 THE COURT: I had mentioned previously that
4 the State may be interested in offering a pretrial diversion.
5 At which point I was soundly rebuked and rebuffed by Ms. Dolan.
6 I'm glad to see that the State modified its position on that.

7 A pretrial intervention, sir, is a unique and
8 rare creature. You would not have to enter a plea of guilty or
9 no contest. You wouldn't have to admit any guilt or liability
10 or wrongdoing. It would simply be a contract between yourself
11 and the State of Texas wherein you agree to stay a certain
12 number of feet away from this clinic. Is that something that
13 you're interested in?

14 THE DEFENDANT: Your Honor, I thank the
15 District Attorney for their reasonableness but as -- I guess
16 speaking for the Defense, that would be indicative that the
17 Class B misdemeanor trespass had occurred. So I believe
18 that -- that the Court and the jury will see clearly that no
19 trespass has been committed.

20 THE COURT: Okay.

21 THE DEFENDANT: So I'll be more comfortable
22 just going ahead with that, sir.

23 MR. STORTS: Would you like to talk to me
24 about it at all?

25 THE DEFENDANT: No, thank you.

1 MR. STORTS: Okay.

2 THE COURT: Well, thank you, Mr. Allen. It
3 seems as though you have a firm grasp on what it is you'd like
4 to do. Mr. Reiss is also here representing the State of Texas.
5 Mr. Reiss.

6 MR. REISS: Good morning, Your Honor. She's
7 asked me to sit in with her today because I was so successful
8 earlier in the week before His Honor.

9 Joshua Reiss for the State, R-e-i-s-s, Bar
10 Card No. 24053738. I'd ask, Your Honor, that His Honor
11 admonish Mr. Allen at this point. Just based upon my
12 observations in the courtroom this morning, if he's going to
13 act as his own attorney he's going to be expected to act as an
14 officer of the court. That would include having to control, if
15 you will, his people who have come to watch the trial.

16 I have this morning observed in the courtroom
17 people associated with Mr. Allen, one of whom is wearing a
18 shirt that says: Abortion, America's Hidden Holocaust. I
19 would ask that -- I've seen individuals with statues this
20 morning depicting, I believe, a baby being born.

21 I would ask that Mr. Allen tell the people who
22 have come with him to watch the trial that there are to be no
23 placards. There are to be no T-shirts. There are to be no
24 statues of anything depicting the issues here involving
25 reproductive rights, that they are to behave themselves, if you

1 will, and to control their emotions during the trial.

2 Your Honor would expect of us that, the State,
3 if there was a victim. I would ask that Mr. Allen be held to
4 that same standard.

5 THE COURT: I would not expect that of the
6 State. I would take on that responsibility myself and the
7 deputies that are employed in this court would see to that
8 responsibility.

9 Mr. Allen, you are in no way responsible for
10 the actions of anyone who comes to witness this trial. I do
11 hold you responsible, however, for your actions. Anyone who
12 acts out, if you will, in a way that is disrespectful to the
13 Court, the Court will see to that.

14 I believe that the placards and the T-shirts
15 and the statues are a matter of free speech and that if a
16 person wishes to wear a T-shirt in this courtroom -- so long as
17 it does not interfere with the trial of this case -- that is
18 permissible.

19 With respect to the statues, statues and
20 placards, I would prefer that those remain outside in that they
21 may be disruptive or distracting to the jury. If there is
22 anyone outside with a placard or a statue, I believe that we
23 should ask them and inform them where we have our jury set up
24 and let them know that if those statues or placards in any way
25 interfere with the jury or come into their line of sight such

1 that that may prejudice the jury against either the State or
2 the Defense, that the Court will take that seriously, may
3 possibly hold them in contempt of court, and will take
4 appropriate action at that time.

5 So with that, sir, yes, sir.

6 THE DEFENDANT: Your Honor, thank you. And I
7 appreciate the district attorney's concerns. Just one
8 correction for the record that these are not my people. I've
9 invited or encouraged no one to be here today. These are
10 people that know me and know of what's happened. Your Honor,
11 certainly I did not invite anyone or encourage anyone to be
12 here at all.

13 THE COURT: I don't believe that you had; and
14 if you had, it wouldn't matter to me. That's your right to do
15 so. It's their right to be here, and it's their prerogative to
16 demonstrate as is appropriate under the law. And that's what
17 our American system is about, and I appreciate them doing that
18 if that's what they feel is proper.

19 That having been said, appropriate judicial
20 decorum will be observed at the risk of a contempt citation.

21 MR. REISS: And I would just add one more
22 thing, for the record, Your Honor; and I think I know how Your
23 Honor is going to rule on this, however. I would like the
24 record to reflect that Mr. Allen is right now wearing a tallit;
25 and that's spelled t-a-l-i-s, I think, or t-a-l-l-i-s. It's

1 been a long time since grammar school.

2 However, that is a -- that is an important
3 Jewish symbol that men and now women wear after they have had
4 either their Bar or Bat Mitzvah. It is typically not worn
5 outside of the synagogue in the manner in which Mr. Allen is
6 wearing it right now. And, for the record, he is wearing it
7 over both of his shoulders and around his neck.

8 Typically, individuals who are typically very
9 devout who are Hasidic or Orthodox Jews will, indeed, wear a
10 tallit at all times. However, they wear it underneath their
11 clothing, not on top of their clothing and certainly not in a
12 courtroom.

13 It is the State's belief that Mr. Allen is
14 wearing this, with all due respect, sir, as a costume; and I
15 would ask that it is done for purposes of gaining sympathy with
16 the jury. If he wants to wear a tallit, I certainly have the
17 utmost respect for him and his wishes to do so; but I would
18 just simply ask that it be done in the customary manner, which
19 is that you put it underneath your clothing.

20 THE COURT: Mr. Allen.

21 MR. REISS: He also, for the record, Your
22 Honor, is not wearing a yarmulke, which a devout Jew would
23 typically wear if they are very devout because an Orthodox or
24 Hasidic Jew would wear a yarmulke at all times if they are
25 going outside, not necessarily so for reform Jews such as

1 myself. Sometimes conservative Jews do.

2 But typically if someone is very devout and
3 they are wearing a yarmulke, it leads me to believe that they
4 are either Orthodox and Hasidic and are particularly devout.
5 And his lack of a yarmulke in this case coupled with the
6 presence of a tallit suggests to me that this is more of a
7 costume and to gain sympathy with the jury rather than any
8 proper religious symbolism. And with that, I'll let it rest.

9 THE COURT: Mr. Allen.

10 THE DEFENDANT: Thank you, Your Honor. With
11 all due regard to my Jewish colleague, I also claim Judaic
12 foundation. And while we've mentioned some Rabbinical teaching
13 and rules, the wearing of the tallit is actually very common.
14 There are some gentlemen who've joined us today. They are with
15 me. They go around the city sounding the shofar in the tallit.

16 To us, a yarmulke is not biblical. It's a
17 traditional thing. The tallit represents a covering, a
18 tabernacle covering of God's word. And it is biblical in
19 Leviticus or in the Torah that man will wear the word of God,
20 represented by the Tzit Tzit on the tallit, that they will wear
21 that from the four corners of their garment.

22 And I take great pride in my right to obey my
23 faith. I respect everyone's faith but in my faith certainly
24 not to offend, certainly not as a costume. I do plead to the
25 Court that I be allowed to be covered with what I believe to be

1 use of the word of God.

2 MR. REISS: Are you Jewish?

3 THE DEFENDANT: I'm from the tribe of Judah.
4 I'm rooted into the tribe of Judah.

5 MR. REISS: Well, Your Honor, earlier this
6 week I brought you a Garrity doctrine issue; and today I've
7 brought you a Rabbinical issue. So it's been a full week.

8 THE COURT: It has, indeed. And with that,
9 Gentlemen, thank you so much. I will refrain from commenting
10 on the tallit. However, you are free to wear whatever
11 religious garb you wish in this courtroom. Thank you, sir.

12 MR. REISS: Thank you, Your Honor.

13 THE COURT: Off the record.

14 (RECESS)

15 MR. KAMIN: Good morning, Your Honor. I'm Dan
16 Kamin.

17 THE COURT: Good morning.

18 MR. KAMIN: Attorney licensed to practice law
19 in the state of Texas. I'm here to make a bystander objection
20 to the Court's ruling relative to the wearing of certain
21 religious garb.

22 I would imagine that you were still in law
23 school when the now District Attorney, who was a district
24 judge, refused to allow someone who was not Jewish to wear a
25 yarmulke during their testimony. She made him take it off.

1 THE COURT: I recall that.

2 MR. KAMIN: It was a costume. This gentleman
3 is not Jewish. He cannot prove that he is Jewish in any
4 manner, and I consider it an anti-Semitic slur for him to wear
5 this. It's not like in the motion picture industry.

6 THE COURT: For the record, you are Semitic.

7 MR. KAMIN: I am Jewish, yes. In the motion
8 picture industry, you can call yourself whatever you want and
9 there is no one that can say No, you're not. If Stacey wanted
10 to say she's a producer, oh, my God, she's a producer. I don't
11 see any difference.

12 I have all the respect in the world for your
13 intellect, for your demeanor, for the way you treat people in
14 this court. I would ask you to seriously reconsider this. If
15 this gentleman came in here and woke up one morning and decided
16 he was a Catholic priest and that he's going to wear the garb
17 of a Catholic priest, would that be your ruling?

18 If he woke up one morning and decided "Gee, I
19 like the garb of a Greek Orthodox priest, I think I will wear
20 that and try the case as a Greek Orthodox priest," I see no
21 difference.

22 And when I say it's an anti-Semitic slur,
23 anything anti-Semitic is a slur. I would not want this jury to
24 see the Hebrew on this man and somehow interpret it that he's
25 Jewish or that he's anti-Jewish or that he can pretend to be

1 Jewish when he's not.

2 This is no different than if he walked in here
3 as a Greek Orthodox priest and he wasn't. It's no different if
4 he walked in here as a Catholic priest and he wasn't. It's as
5 serious as that. It's not an "Oh, well."

6 And I have to tell you that I am a big
7 proponent of free speech. As a student in Boston in the
8 Sixties, I protested a lot and I value free speech.

9 Your Honor, with all due respect this is not a
10 free speech matter.

11 MR. REISS: Your Honor, if I may just for the
12 record, Mr. Kamin -- again, Joshua Reiss for the State.

13 Mr. Kamin approached me, advised me that he
14 wanted to get this on the record. I told him that he's an
15 officer of the Court, he's free to do whatever he'd want to do
16 if Your Honor was willing to entertain putting it on the
17 record.

18 Again, I renew my request. The State's
19 request was made that the Defendant, who is pro se in this
20 case, remove the tallit even though he's perfectly free outside
21 of this courtroom to wear it if he wants. It is the State's
22 view that it is done in a manner to engender sympathy with the
23 jury. It's not probative of anything under 403. It is likely
24 to inflame some passions; and I think you're seeing that on
25 display right now, Your Honor.

1 And with all due respect, I would again renew
2 our request and if it is -- if the request is denied, I'm going
3 to just object on the record in order to sustain it, in order
4 to -- for the record.

5 THE COURT: I understand. Just to make the
6 record aware, I've been a member of the State's Commission on
7 Judicial Conduct for the past six and a half years. One of the
8 Cannons prohibits a Court from restricting a person in the
9 religious garb that they wear and so --

10 MR. KAMIN: Even if they are not of that
11 religion?

12 THE COURT: Yes.

13 MR. KAMIN: Is that right?

14 THE COURT: Yes. And, so, from the standpoint
15 of the Cannons on Judicial Conduct, I don't believe that I
16 could restrict Mr. Allen's right to wear the tallit. I am
17 sensitive -- I am sensitive to your issue. I understand it.
18 I'm also a Baptist minister. I do understand the religious
19 context.

20 I don't think that Mr. Allen means offense;
21 and I do think at this time, Mr. Kamin, I need to apologize to
22 you. I did not -- I did not know when I appointed you to --
23 and I asked you to assist him that you were Jewish. I didn't
24 know that that would be offensive to you.

25 MR. KAMIN: On the record, Your Honor, it

1 doesn't matter.

2 THE COURT: Okay.

3 MR. KAMIN: It didn't matter. I would still
4 have been his advocate --

5 THE COURT: Sure.

6 MR. KAMIN: -- because I am an officer of the
7 court.

8 THE COURT: And you would have been --

9 MR. KAMIN: I am charged with that
10 responsibility. I would not have neglected my duties at all.

11 THE COURT: And I'm not suggesting that at
12 all, but you are also human. And I didn't know your religious
13 persuasion when I appointed you and I didn't ask and I suppose
14 that I should have.

15 MR. KAMIN: It was irrelevant to me.

16 THE COURT: Right. And it was to me at the
17 time and I apologize for any offense that may have been
18 given --

19 MR. KAMIN: There was no offense.

20 THE COURT: -- or that you may have taken.

21 MR. KAMIN: I didn't take offense.

22 THE COURT: But I will say this: I don't
23 think that I have the ability to restrict Mr. Allen's right to
24 wear the tallit. It becomes a First Amendment issue, both from
25 the speech standpoint and the religion standpoint. And, so,

1 Mr. Reiss, Mr. Kamin, I respect your objections.

2 I have -- and I'll let the record know I've
3 spoken with -- since I've left the bench -- at least one to two
4 other ministers and some people of the Jewish faith just to get
5 a sense of where I am so I'll make the right ruling on this.
6 And I think that I am; and, so, my ruling will stand.

7 Thank you, gentlemen. If there is anything
8 else you would like --

9 MR. REISS: Just very briefly, Your Honor, --

10 THE COURT: Yes.

11 MR. REISS: -- for purposes just of getting
12 this on the record. There is in the first row -- again, with
13 respect to your -- I understand Your Honor's ruling with regard
14 to the First Amendment.

15 There is a gentleman in the first row in the
16 middle. He looks about 19 or 20. He's seated behind
17 Mr. Bennett.

18 Mr. Bennett, you're a little older than 20 as
19 am I.

20 He is wearing a T-shirt that says: Abortion,
21 the Hidden Holocaust. He is obviously free to wear that shirt.
22 I would simply ask if he's going to sit in this courtroom
23 during the trial and during voir dire that at least he turn the
24 T-shirt around.

25 THE COURT: I will not order that. I believe

1 that it is his First Amendment right to wear that T-shirt
2 irrespective of how it is viewed by others. I think that it is
3 his right to do that, even in this place.

4 MR. REISS: Just for the record, I'm going to
5 object to the Court's ruling and my rationale is I believe it
6 has the potential to -- it's not probative of anything and
7 inflame the jury. So with all due respect to Your Honor's
8 rulings, I want my objection on the record.

9 THE COURT: Your objection is so noted. Thank
10 you, gentlemen.

11 MR. REISS: Thank you, Your Honor.

12 MR. KAMIN: Thank you, Your Honor.

13 THE COURT: Thank you.

14 (RECESS)

15 THE COURT: We are on the record again in the
16 matter styled the State of Texas versus David Perry Allen. The
17 Court has tendered to the State and Defense the Court's
18 proposed motions, the jury charge, the Court's proposed jury
19 charges in the event that there is testimony by the Defendant,
20 in the event that there is not.

21 Mr. Allen, the jury charge is the law that
22 will govern the jury's deliberations in this case. It lays out
23 what they are to consider in a trial of this nature. It is all
24 the law that they will get. I will not be able to give them
25 any additional instructions once they have been read.

1 The jury charge -- there are two charges that
2 have been presented to you and Mr. Storts. One contemplates
3 that you will testify in your own behalf. One contemplates
4 that you will not testify in your own behalf and gives
5 instructions to the jury how it is that they are supposed to
6 view that circumstance.

7 And the way that they are supposed to view it
8 is not at all. If you choose not to testify, it should not be
9 held against you. It should not be considered in the jury room
10 or used for any purpose whatsoever. If you do testify,
11 obviously your testimony will be given as much credence and
12 credibility as any other witness who would testify in this
13 case.

14 You will have an opportunity at the conclusion
15 of the State's evidence and your evidence, should you choose to
16 put any on, to object to the Court's Charge or suggest any
17 additions or deletions that may need to occur.

18 The State has filed what's called a motion in
19 limine. It is a motion to preclude you from going into certain
20 areas of questioning with the witnesses without first
21 approaching the bench, which means the Court, to determine
22 whether or not those questions are relevant.

23 So what they are asking in this motion in
24 limine is that you not even broach the subject, the subjects
25 included in this motion until you first approach the Court to

1 determine whether or not it is relevant or material to the case
2 that you address those issues.

3 I'm going to go through this motion and rule
4 on the State's request at this time. If you have any
5 objections to the Court's rulings, please feel free to lodge
6 them now. The first thing that the State requests in its
7 motion in limine is that you do not make any mention of the
8 fact that they filed a motion in limine. That's customarily
9 granted, and I'm going to grant that in this case.

10 The second thing that they have asked is that
11 you not make mention of any reference to or suggestion of the
12 legality or constitutionality of abortion itself. This
13 includes any mention of the statistics and data surrounding the
14 abortion debate in addition to any discussion of hypothetical
15 stories or specific instances concerning abortion. That will
16 be denied.

17 Any reference to or suggestion of any witness'
18 personal opinions about the issue of abortion, including any
19 witness' past history with abortion and/or their reasons for
20 supporting or opposing abortion. That will be granted.
21 However, you are entitled to ask those things to the venire
22 during voir dire.

23 And the venire is the group of 20 people who
24 will be sitting here in the pews or benches that we have open.
25 You can ask them their opinions about this issue and about

1 their opinions about engaging in civil discourse or criminal
2 trespass to launch their opposition to that issue. I believe
3 that that's relevant and material at that stage; but as to the
4 witnesses, doesn't matter is the Court's opinion.

5 THE DEFENDANT: Your Honor --

6 THE COURT: Yes, sir.

7 THE DEFENDANT: -- may I ask one question
8 about the most recent limine?

9 THE COURT: Yes.

10 THE DEFENDANT: I certainly am going to be
11 civil, and there is not going to be any gruesome discussion or
12 this really isn't about abortion itself although the reason
13 that we have this tension in the air does, I think, stem from
14 those that are causing the district attorney to do their job on
15 this morning.

16 There are -- in presenting the facts, the
17 Defense, there will be need for testimony of my own regarding
18 the subject of abortion that is directly relevant to the facts
19 of March the 18th. So my understanding is that that motion
20 will not deny me the opportunity to tell that part of my story.

21 THE COURT: Not at all. And now that you've
22 said that beforehand, I'm not saying how I will rule in advance
23 on objections as to relevance; but you'll be allowed to go into
24 that material without first approaching the bench. And if the
25 State wants to object to relevance at that time, they can do

1 so.

2 MS. MATTHEWS: Can the State respond to the
3 comments --

4 THE COURT: Yes.

5 MS. MATTHEWS: -- for clarification from the
6 Defense? First of all, the State just wants to put on the
7 record that this is a criminal trespass. This is not an issue
8 of abortion. This is not a State's statement on abortion,
9 period. This is about a criminal trespass.

10 There is no one pushing the case. This is
11 brought by the State of Texas. There is no one -- no other
12 side or other party, want to make that very clear.

13 Secondly, Your Honor, our third motion in
14 limine directly addresses the fact that the State anticipates
15 the Defendant is going to testify to why he is a protestor and
16 why -- going for jury nullification and that it's okay that
17 he's gone onto a property that is private with fences and told
18 twice to leave, blowing a shofar, very seriously alarming the
19 workers inside, based on the fact that 37 years ago his
20 girlfriend had an abortion.

21 And we believe that that is not appropriate or
22 relevant to this case of a criminal trespass for the jury to
23 hear.

24 MR. ALLEN: Your Honor, it's directly
25 pertinent to the events of that day, the legitimacy of -- the

1 very unique set of circumstances that existed only at that one
2 moment and there is no reason to repeat. But the circumstances
3 of that day -- the Defense will explain -- that there was, in
4 fact, no Class B misdemeanor trespass.

5 THE COURT: Well, as I've said, I'm not going
6 to rule in advance on the relevancy issue. I'm going to allow
7 the State to object whenever they feel something irrelevant is
8 coming up, at which point I'll rule. And I may rule for you.
9 I may rule against you, but I'll rule. So we'll see where we
10 go at that time.

11 MS. MATTHEWS: Judge, for point of
12 clarification, he's been told that he can discuss these
13 personal issues without approaching you first. And the State
14 just asks that before he gets into his personal experiences
15 with abortion a number of years ago -- that that is not
16 relevant to whether he was on someone else's property, that
17 once he's given notice to depart, that's all we have to prove.
18 We're just asking that before he get into that with the jury
19 that we approach on that issue so you can make your decision
20 then.

21 THE COURT: Because Mr. Allen is pro se, I'm
22 not giving him or attempting to give him any more leeway than I
23 would a person who had chosen to hire counsel; but I'm going to
24 allow him to question himself, if you will, however he wishes.

25 With respect to other witnesses, if he were

1 asking another witness, not going to happen. This is his own
2 testimony. He has an absolute right to testify; and if he
3 wants to do that, then I'm going to have to cause you to
4 object. As opposed to -- as opposed to stifling his speech
5 before he engages in it, I'm just going to have to ask you to
6 object.

7 MS. MATTHEWS: My concern, Judge, is I don't
8 think he's going to do this in question and answer format;
9 therefore, he's going to give a narrative, I'm imagining, of
10 why he was doing his behavior. He is trying to justify his
11 illegal behavior, and I'm afraid that that's going to come out
12 in a narrative format in which case the State doesn't have the
13 opportunity to object.

14 THE COURT: Oh, you will; and, yes, he is.
15 But you can talk all over him and object to whatever he has to
16 say, and then I'll rule at that time.

17 And you know, Mr. Allen, that whenever someone
18 stands up to make an objection you should stop speaking so that
19 they can make their objection and then I can make my ruling.

20 THE DEFENDANT: Yes, Your Honor.

21 MR. REISS: I'm sorry, Your Honor. One point
22 of clarification with regard to voir dire. I'll be conducting
23 the voir dire; and it was my intent to ask a question not of
24 the venire panel's individual views with regard to the matter
25 of reproductive rights, which is how I'm going to frame the

1 question, but just simply how strongly held an opinion do they
2 have one way or the other.

3 And I want to make sure under Your Honor's
4 ruling that I will be okay to do that. I think I will.

5 THE COURT: I think you will too.

6 MR. REISS: Okay. I don't want to run afoul
7 of anything. The way I understand your ruling, I'm okay there.

8 THE COURT: Right. In terms of you guys
9 discussing the legality or the constitutionality, any of that,
10 I think it's relevant. I think you'd want to know. It's going
11 to necessarily come out that this incident occurred at an
12 abortion clinic. That's coming out. So you guys are going to
13 need to talk about that with the jury.

14 MR. REISS: I didn't want to run afoul of Your
15 Honor.

16 THE COURT: Not at all. And you guys know --
17 at least you know -- I leave voir dire pretty much wide open
18 for you to do what you think you need to do. And I do that
19 with respect to the time requirement --

20 MR. REISS: Yes, Your Honor.

21 THE COURT: -- which is why I ask that you
22 guys not take advantage of the Court. I will give you the time
23 you need, but please don't take any more time than that.

24 MR. REISS: Your Honor, I anticipate about 45
25 minutes.

1 THE COURT: Forty-five minutes to an hour is
2 fine. Just remember we've got a jury who -- they haven't eaten
3 so -- okay, guys.

4 MR. STORTS: Now, if I may, I'd like to put
5 something on the record. I'm Brian Storts. You've asked me to
6 sit with Mr. Allen this morning. We had an opportunity to
7 visit only this morning. I have had significant conversations
8 with him inside and outside the courtroom this morning. We
9 have discussed all of the options in this case. We've
10 discussed the potential for the pretrial diversion.

11 Mr. Allen is a strong-minded and strong faith
12 man. He is prepared to go forward on his own and has asked me
13 some specific questions. And I've given him guidance on those,
14 and he has let me know that he will have some specific
15 questions along through the trial. I will give him guidance as
16 he asks along the way.

17 He has absolutely chosen not to take any
18 additional time for us to prepare as a team and to become more
19 deeply informed as it relates to the specific facts. I'm
20 comfortable with that relationship, knowing that Mr. Allen is
21 also comfortable with it. Just want to make sure that we
22 recognize on the record the limited participation that I may
23 have today.

24 THE COURT: Right. And let me say for the
25 record as well, I approached Mr. Storts yesterday about -- not

1 yesterday, day before yesterday, I believe it was.

2 MR. STORTS: Yesterday, Judge.

3 THE COURT: Yesterday, about coming to assist
4 you, Mr. Allen. Mr. Storts is someone that I've known for
5 nearly 20 years and is a top-notch lawyer and someone that I do
6 consider a friend, not to the extent that it's going to inure
7 to your benefit or detriment one way or another.

8 But I asked him to come and help you out. He
9 is not on our court-appointed attorney list, and we'll have to
10 do something to see if he can get paid. The reason that I
11 asked him specifically is not because he's my friend but
12 because I know his patience and demeanor and his ability to
13 handle very difficult cases. And this is what we would
14 consider a difficult case, misdemeanor court. It involves
15 difficult, technical, legal issues.

16 Mr. Storts is well-versed in those issues and
17 understands, I believe, some of the background issues as well
18 by virtue of his other full-time employment as a fire fighter.
19 I think he's dealt with this issue a great deal.

20 THE DEFENDANT: Thank you, Your Honor, if I
21 may. I was assuring Brian that he has no responsibility with
22 the outcome of this case whatever it is, whatever the jury
23 decides in your courtroom. And I just want to express my
24 appreciation that he's next to me but just reiterate that I
25 believe that what's going to be said will be said and Brian

1 will serve as my armor barrier, there to keep me from
2 embarrassing this Court. And whatever happens, it is not his
3 responsibility; so I just share that with the Court.

4 THE COURT: And I've known him for years and
5 know that he will shirk responsibility. That will never make
6 it to the appeals court. Thank you, everyone.

7 MR. STORTS: Thank you, Judge.

8 THE COURT: We'll start here in just a few
9 moments.

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(PRETRIAL PROCEEDINGS CONCLUDED)

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1 THE STATE OF TEXAS)
2 COUNTY OF HARRIS)
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4

5 I, Clarisia R. Ramirez, Deputy Court Reporter in and for
6 the County Criminal Court at Law No. 14 of Harris County, State
7 of Texas, do hereby certify that the above and foregoing
8 contains a true and correct transcription of all portions of
9 evidence and other proceedings requested in writing by counsel
10 for the parties to be included in this volume of the Reporter's
11 Record, in the above-styled and numbered cause, all of which
12 occurred in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record of the
14 proceedings truly and correctly reflects the exhibits, if any,
15 admitted by the respective parties.

16 WITNESS MY OFFICIAL HAND this the 13th day of June, 2010.
17
18

19
20 
21 Clarisia R. Ramirez, Texas CSR 3862
Expiration Date: 12/31/2010

22 Business Address:
23 900 Somerset Drive
24 Alvin, Texas
25 281-772-8732

Clarisia R. Ramirez
Deputy Court Reporter

3 April 29, 2010: Prosecution

REPORTER'S RECORD
VOLUME 2 OF 2 VOLUMES
TRIAL COURT CAUSE NO. 1670694

STATE OF TEXAS) IN THE COUNTY CRIMINAL
VS.) COURT AT LAW NO. 14
DAVID PERRY ALLEN) HARRIS COUNTY, T E X A S

GUILT/INNOCENCE

On the 29th day of April, 2010, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Michael R. Fields, judge presiding, held in Houston, Harris County, Texas;

Proceedings reported by machine shorthand.

A P P E A R A N C E S

Stacey Matthews	David P. Allen
SBOT No. 24042778	2111 Trinity Manor Lane
Joshua Reiss	Richmond, Texas 77469
SBOT No. 24053738	713-859-7831
ASSISTANT DISTRICT ATTORNEYS	PRO SE DEFENDANT
HARRIS COUNTY	
1201 Franklin	
Houston, Texas 77002	
ATTORNEYS FOR STATE OF TEXAS	

ALSO PRESENT: Brian Storts, Attorney

ORIGINAL

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1 (OPEN COURT, DEFENDANT PRESENT, NO JURY)

2 THE DEFENDANT: I would like special
3 permission to bring my shofar and just have it here in the
4 courtroom.

5 MR. STORTS: Its potential for evidence or not
6 potential for evidence, I don't know; but he would like to have
7 it. It was confiscated at the security checkpoint downstairs.
8 He has the ticket for it, and he didn't know the process by
9 which to ask to have it brought up.

10 THE COURT: Would you call security and tell
11 them to bring the shofar up please?

12 THE BAILIFF: Yes, sir.

13 THE COURT: Thank you.

14 MR. STORTS: Thank you, Judge.

15 THE DEFENDANT: Thank you, Your Honor.

16 THE COURT: You're welcome. Why would they
17 confiscate that?

18 MR. REISS: It's a weapon.

19 MS. MATTHEWS: Anything that can be used --

20 MR. REISS: It's a weapon.

21 MS. MATTHEWS: -- is considered a weapon, I
22 think.

23 THE DEFENDANT: It's a large --

24 THE COURT: Oh, it's a large one.

25 MS. MATTHEWS: It's very large.

1 MR. REISS: It's a large ram's horn.

2 THE COURT: Okay.

3 MS. MATTHEWS: One, we just want to invoke the
4 Rule because I don't think we did that before we broke.

5 THE COURT: All witnesses in the David Perry
6 Allen case, please stand and raise your right hand to be sworn.

7 MR. REISS: I'll get them, Your Honor.

8 MS. MATTHEWS: We have some outside.

9 (Sotto voice discussion between Defendant and Mr. Storts)

10 THE DEFENDANT: Are you-all willing to
11 testify, Steven, Jonathan, Jordan, Mary, Wendy, Lloyd? If you
12 guys don't stand up and volunteer --

13 THE COURT: Anyone who is sworn in will not be
14 able to remain in the courtroom.

15 THE DEFENDANT: Oh, no, then, I have no
16 witnesses then, Your Honor.

17 THE COURT: All right. I just want you to
18 know. You can handpick a few if you want but if you --

19 THE DEFENDANT: I appreciate that. I don't
20 think I need any witnesses. Thank you, sir.

21 THE COURT: Folks, if you will, raise your
22 right hand to be sworn.

23 (Witnesses were sworn by the Court)

24 MS. MATTHEWS: Judge, the only other thing
25 that we wanted to put on the record was when I spoke with

1 Mr. Allen the first time I called and talked with him, he was
2 asking me some questions about the charge and he made reference
3 to the police report, the offense report.

4 So -- and he has a copy of that. I just want
5 it on the record that the State did not provide that for him.
6 We don't have the authority to give that information. It's
7 work product of the Houston Police Department.

8 We do that with attorneys that have signed a
9 specific confidentiality agreement because there is personal
10 identifying information in there. I just want it on the record
11 that I don't know where the police report came from. I did not
12 ask Mr. Allen that question. I just want it on the record that
13 we did not provide that copy as part of our discovery.

14 THE DEFENDANT: I don't know what she's
15 talking about. I got a CD.

16 MS. MATTHEWS: The police report. Remember,
17 we were talking about the police report?

18 THE DEFENDANT: I think I got that. It's got
19 the three --

20 THE COURT: Do you have a copy of the police
21 report? Have you seen a copy of the police report?

22 THE DEFENDANT: Your Honor, I got so much
23 stuff.

24 MS. MATTHEWS: The only reason we're bringing
25 it up is not about him having it. It's just that we wanted it

1 to be clear because it's our office policy and there are
2 people's personal home addresses and phone numbers are in there
3 that are witnesses.

4 (Sotto voice discussion between Defendant and Mr. Storts)

5 THE DEFENDANT: You can have it back if I can
6 find it.

7 THE COURT: That is noted on the record. Did
8 you have anything else that you wanted to put on the record?

9 MS. MATTHEWS: I think that's all, Judge.

10 THE COURT: We're off the record.

11 (DISCUSSION OFF THE RECORD)

12 THE COURT: Yes, sir.

13 MR. REISS: Your Honor, I just want the record
14 to reflect it's 2:32 in the afternoon. I just asked Mr. Allen
15 if he had a copy of the offense report; and he has, in fact,
16 handed me a copy of an offense report. However, it is a
17 different offense report for the offense on March 18, 2010. I
18 have no idea what this is in relation to or quite frankly how
19 Mr. Allen -- is it the same incident number?

20 MS. MATTHEWS: It's the same.

21 THE COURT: Maybe the public service report
22 provided by the Houston Police Department.

23 MR. REISS: I think that may have been it,
24 Judge. That's it. He does not have a full and complete
25 offense report. So what the State is going to do right now,

1 for purposes of the record, is we're going to go in the back;
2 and we're going to redact a version of the offense report.
3 We'll bring the jury in; and while they are there, I will
4 physically hand Mr. Allen a copy of the redacted offense report
5 if that is okay with the Court.

6 THE COURT: That's fine. Why don't you guys
7 shoot a copy real quick, and then we'll get cranking.

8 MR. REISS: Okay. Thank you, Your Honor.

9 THE BAILIFF: All rise for the jury please.

10 (OPEN COURT, DEFENDANT AND JURY PRESENT)

11 THE COURT: Thank you, everyone. You may be
12 seated. Good afternoon, ladies and gentlemen. I hope that you
13 enjoyed lunch.

14 At this stage of the trial, it is the
15 obligation of the State to read to the Defendant the formal
16 charges pending against him. Obviously Mr. Allen is aware of
17 the charges pending against him. This is just one of the
18 formal processes of the court. Ms. Matthews or Mr. Reiss.

19 MS. MATTHEWS: Yes, Judge. Thank you. In the
20 name and by authority of the state of Texas, comes now the
21 undersigned assistant district attorney of Harris County,
22 Texas, on behalf of the State of Texas and presents in and to
23 the County Criminal Court at Law No. 14 of Harris County,
24 Texas, that in Harris County, Texas, David Perry Allen,
25 hereafter styled the Defendant, heretofore on or about March

1 18th, 2010, did then and there unlawfully, intentionally, and
2 knowingly enter and remain on the property of another --
3 namely, Lisbonne Michel -- without the effective consent of
4 Lisbonne Michel, after having received notice to depart and
5 failed to do so, against the peace and dignity of the State.

6 THE COURT: To which the Defendant has
7 previously pled not guilty. Thank you, Ms. Matthews. Thank
8 you, Mr. Allen. At this stage of the trial, ladies and
9 gentlemen, the lawyers for the State or Mr. Allen may make a
10 brief opening statement. This is not evidence. It's merely a
11 roadmap to let you know where they believe the evidence should
12 take you throughout the course of the trial.

13 The State of Texas has the privilege of
14 opening first in that they have the burden of proof. They may,
15 however, waive that privilege. Ms. Matthews.

16 MS. MATTHEWS: Yes, Your Honor. Thank you.

17 THE COURT: Thank you, ma'am. The time is
18 14:38.

19 MS. MATTHEWS: May it please the Court.

20 THE COURT: Yes, ma'am.

21 MS. MATTHEWS: Good afternoon, ladies and
22 gentlemen. On March 18th, 2010, David Allen crossed a line.
23 That's what this case is about. The State believes the
24 evidence is going to show that you're going to hear through
25 witnesses and various different evidence that Mr. Allen was a

1 regular or is a regular protestor. He exercises his absolute
2 constitutional right to free speech and right to protest on a
3 fairly regular basis.

4 He does this at a Planned Parenthood location
5 on Fannin, and he does it at a current construction site of a
6 Planned Parenthood location on the Gulf Freeway. On March 18th
7 of this year, the Defendant, however, stepped beyond his
8 constitutional right to free speech; and he committed a
9 criminal offense.

10 And it's not just -- it isn't more than just a
11 Class B trespass. That's what it is. It's a Class B criminal
12 trespass. And the State's going to show -- lay out its case
13 and show you these elements. And these are the things that
14 you're going to see that we have to prove. This is the case.

15 That David Allen Perry on March 18th, 2010,
16 unlawfully, intentionally, and knowingly entered and remained
17 on the property of another -- namely, Lisbonne Michel --
18 without that person's consent, having received notice to
19 depart. That's what -- that's it. That's the case.

20 We anticipate the witnesses you're going to
21 hear from are going to tell you that that day started out like
22 most other Thursdays, with protestors out on the sidewalks.
23 And you're going to hear from the construction foreman who saw
24 Mr. Allen and had been out there before but saw him at this
25 point on the actual property, no longer where they were

1 supposed to be protesting, and that he stopped -- he was
2 driving in his -- it was around lunch time. He's driving in
3 his truck.

4 And he stopped and told him to leave, that he
5 was on private property, and that Mr. Allen continued to walk
6 down the street, down the pathway. You're going to hear from
7 one of the people that does security out there, Lisbonne
8 Michel. And that's why she's listed in the complaint -- who
9 approached him and also said: You're on private property. You
10 need to leave.

11 And he brushed past her and went further and
12 then went into the building. And then you're going to hear
13 from some workers that were in the building. It was close to
14 lunchtime, and there were several workers still there. And
15 you're going to hear from several of them that are going to
16 tell that they saw or heard Mr. Allen come into the building
17 and that he began to sound his shofar and they didn't know what
18 was going on and they were scared.

19 You're going to hear about why they have
20 security. You're going to hear about why they were frightened.
21 And at the end of the day, this doesn't come down to a
22 referendum of what your beliefs are. At the end of the day,
23 the State is going to have shown you that the basic facts are
24 Mr. Allen trespassed on a property that he wasn't supposed to
25 be at. There is no more to the story. And we believe that you

1 will come back with a verdict of guilty. Thank you.

2 THE COURT: Thank you, Ms. Matthews.

3 Mr. Allen.

4 THE DEFENDANT: Thank you, Your Honor. Ladies
5 and gentlemen of the jury, you are really a part of something a
6 little bit bigger than a Class B misdemeanor trespass. There
7 are some questions here of legitimacy, questions of
8 qualification, and question of ownership that you will see
9 during the course of the events here.

10 So I guess -- I guess I'm going to -- you're
11 going to hear some things, and I just know that there really is
12 a truth here of whether or not a Class B misdemeanor trespass
13 has occurred. And I'm confident that when you hear the whole
14 story that you'll understand. And I just -- I thank you, and I
15 thank you for your time for being here.

16 That's all I have, Your Honor.

17 THE COURT: Thank you Mr. Allen. Ladies and
18 gentlemen, the witnesses -- as many of them as are here, are
19 there any additional witnesses in the courtroom? Thank you --
20 have been previously sworn and placed under what we call the
21 Rule, meaning that they can't remain in the courtroom while
22 another witness is testifying nor can they discuss their
23 testimony with one another during the pendency of the case.

24 So you're not going to see witnesses sitting
25 in the courtroom and standing up and being sworn, but all of

1 the witnesses that come in and testify have been sworn before
2 you came into the courtroom. Thank you.

3 Call your first witness.

4 MS. MATTHEWS: The State calls Officer Peters.

5 THE COURT: Thank you, sir. Please have a
6 seat in the witness chair. This witness has been previously
7 sworn.

8 Would you speak directly into the microphone,
9 sir? Keep your voice up. Attempt not to speak over the
10 lawyers as they are asking questions, and they will attempt not
11 the speak over you as you're giving answers.

12 Would you state your full name for the record
13 and spell your last name for the benefit of the court reporter?

14 THE WITNESS: Officer Kenneth W. Peters,
15 P-e-t-e-r-s.

16 THE COURT: Thank you, Mr. Peters. Please
17 proceed. The time is 2:45.

18 MS. MATTHEWS: Thank you, Your Honor.

19 KENNETH W. PETERS
20 was called as a witness and, having been duly sworn, testified
21 upon his oath as follows:

22 DIRECT EXAMINATION

23 BY MS. MATTHEWS:

24 Q. Good afternoon, officer. How are you?

25 A. I'm fine. How are you?

1 Q. I'm good. Thank you. You introduced or told your
2 name to the jury. But could you just introduce yourself and
3 tell them where you work?

4 A. Yes. I'm Officer Peters, Houston Police Department.
5 I work in the burglary and theft division. I've been over
6 there for about three years now.

7 Q. And what does the burglary and theft division
8 primarily deal with?

9 A. Burglary and theft division primarily deals with
10 burglaries or trespass or theft, anything dealing with some
11 kind of property crime.

12 Q. And when you say "property crime," kind of tell the
13 jury what you mean by "property crime."

14 A. Property crime is basically some of those things
15 that are stolen from you, you know, somebody break in your
16 house and take Playstation III or something to that nature or
17 maybe a theft where somebody walks up and steals your wallet
18 out of your purse.

19 Or, also, we're talking about criminal trespass
20 where, you know, you're entering on somebody's property that
21 wasn't lawful to enter.

22 Q. And, Officer Peters, on March 24th of 2010, did you
23 get involved in a case that involved a criminal trespass?

24 A. Yes, ma'am, I did.

25 Q. And how did you get involved in that case?

1 A. I got assigned the case through my sergeant, and he
2 told me that it was a criminal trespass case and he wanted it
3 investigated.

4 Q. So when cases come into your office, are they always
5 dealt with right the day that they occur?

6 A. No, usually takes a couple of days before we start
7 dealing with that particular report or that particular crime.

8 Q. So what do you mean by that, that particular -- why
9 does it take longer?

10 A. Well, because what happens is the officers that you
11 see on the street in the police cars, they are dispatched out
12 to that location to settle whatever problems that they have.
13 And, so, what they will do is generate a report on it; and as
14 they generate the initial investigation, then we'll follow up
15 on the investigation to gather more evidence or to gather
16 statements or whatever the case may need.

17 Q. So they refer that initial report on to you.

18 A. Yes, ma'am.

19 Q. That's how you got this case.

20 A. Yes, ma'am.

21 Q. And, so, you were not -- were you the officer that,
22 then, actually went out to the scene on March 18th when the
23 police were called?

24 A. No, ma'am.

25 Q. When the case was assigned to you, what was the

1 first thing you did?

2 A. Once the case is assigned, the first thing I did
3 was, quite naturally, I did a location check to figure out
4 what's going on to kind of get an idea before I started talking
5 to complainants of what's -- talking to witnesses or even
6 talking to defendants or suspects.

7 So the very first thing after doing that was I
8 contacted the person that was listed, which was the
9 Complainant, and spoke to her and asked her about the case.

10 Q. Okay. So by location check you mean you found out
11 where the incident occurred.

12 A. Exactly.

13 Q. And then in this case -- have you had a chance to
14 review your report in this case?

15 A. Yes, ma'am.

16 Q. And in this case did you then contact the
17 Complainant?

18 A. Yes, ma'am.

19 Q. And do you remember her name?

20 A. Her name was -- I think it's Michel. M-i-c-h-e-l
21 was the last name.

22 Q. And on property crimes that involve trespass, how
23 does the complainant -- what does that mean? Explain to the
24 jury what we mean by a complainant.

25 A. Complainant means -- basically that's the person who

1 is the -- what we call the complaining witness, meaning that I
2 have a complaint against a particular person or particular
3 thing. That's the complainant. So this particular complainant
4 was calling about somebody trespassing on the property.

5 Q. And when you determine if somebody is rightfully a
6 complainant, per se, how do you determine if they have even a
7 right to call you out when it's a criminal trespass case?

8 A. I'm sorry. Say that again.

9 Q. How do you determine that a person that calls you
10 out has the right to that property?

11 A. Well, that's basically determined on who's in charge
12 of the property at that time. Some cases it could be a
13 manager. Some cases it could be a property owner. Some cases
14 it could be a district manager. But if they have their
15 rightful -- they have their rightful legal right to be there.

16 Q. Thank you, sir. And, so, you spoke with the
17 complainant. And what did you learn after speaking with her?

18 A. Well, after I spoke with her, I learned that -- what
19 she told me was that the Defendant came onto the property,
20 pushed her out of the way, and went into the building and blew
21 a ram's horn.

22 Q. Okay. And did you -- did she identify this person
23 to you, tell you who this person was?

24 A. What she told me is that the guy -- when the guy
25 left, she asked -- I guess he gave her the name of David

1 because she filed a report and she told me that the only thing
2 the man said was his name was David and he had gotten in the
3 car and left.

4 Q. And when he got in the car, did she get a license
5 plate number from the car?

6 A. Yes. I believe it was she who got the license plate
7 number. I don't remember which witness got it, but I think it
8 was her.

9 Q. So you spoke to multiple witnesses, then, out at the
10 scene?

11 A. Correct.

12 Q. And did other witnesses corroborate her story?

13 A. Yes, ma'am.

14 Q. And, so, then, what did you do once you had spoken
15 to the witnesses and gathered that information and gotten the
16 license plate?

17 A. Well, once I did that, since I still didn't know who
18 the person was, I contacted the registered owner of the car and
19 they gave me -- I think it's Weeks Marine is the company. And
20 they told me they'd call me back, and then Mr. Allen called me
21 back and told me that he was driving the car.

22 Q. And, so, then, did you -- as part of that
23 discussion, did you discuss the case with Mr. Allen?

24 A. I discussed parts of the case.

25 Q. And during your conversation was that over the

1 phone? Was that in person? How did you have that
2 conversation?

3 A. That was over the phone.

4 Q. And did you record this conversation?

5 A. Yes, ma'am, I did.

6 MS. MATTHEWS: Your Honor, may I approach?

7 THE COURT: Yes, ma'am. And both sides can
8 approach freely. You don't need to now, sir; but you don't
9 have to ask to use the courtroom. In here you can use it
10 freely.

11 MS. MATTHEWS: Thank you, Judge.

12 Q. (By Ms. Matthews) I'm showing you what's been marked
13 as State's Exhibit 27. Go ahead and take it out of there. Do
14 you recognize that?

15 A. Yes, ma'am, I do.

16 Q. And what is that?

17 A. This is the recording. I put the recording on CD,
18 and I labeled it with the case number along with the person's
19 name so I know who it is and that way give me indication of
20 what we talked about.

21 Q. And have you listened to this recording?

22 A. Yes, ma'am.

23 Q. And has this -- was this prepared on a recording
24 device that's capable of making an audio recording?

25 A. Yes, ma'am.

1 Q. And do you know how to work that device?

2 A. Yes, ma'am.

3 Q. And is this recording, then, an accurate copy of the
4 conversation that you recorded?

5 A. Yes, ma'am.

6 Q. And has this been altered in any way?

7 A. No, ma'am.

8 MS. MATTHEWS: Judge, at this time State
9 offers State's Exhibit 27, tenders to opposing counsel.

10 THE DEFENDANT: Objection, Your Honor.

11 THE COURT: Your objection, sir?

12 THE DEFENDANT: It's okay if they do that; but
13 in the course of the interview, nothing was said about, you
14 know, "This might be used against you." It was just questions,
15 and I answered. Is that proper?

16 You're welcome to play it and listen to it but
17 I just -- if there is a protocol point, is it something that
18 should be admissible without me having been advised that it
19 might be presented in a court of law?

20 THE COURT: Approach the bench.

21 (THE FOLLOWING PROCEEDINGS OCCURRED AT THE BENCH:)

22 MS. MATTHEWS: Judge, this wasn't a custodial
23 interrogation. It wasn't a statement. It was just an
24 interview, this recording.

25 THE COURT: Anything else?

1 MR. STORTS: (Inaudible)

2 COURT REPORTER: Into the microphone, please.

3 I can't hear.

4 MR. STORTS: Issue is whether it was custodial
5 or not, and it's a statement against interest.

6 MS. MATTHEWS: And, Judge --

7 MR. REISS: Counsel, he's supposed to making
8 objections.

9 THE COURT: He can help him out.

10 THE DEFENDANT: Disregard.

11 THE COURT: Okay. I'll admit it.

12 MS. MATTHEWS: Thank you, Your Honor.

13 (THE FOLLOWING PROCEEDINGS OCCURRED IN OPEN COURT:)

14 THE COURT: State's 27 is admitted.

15 MS. MATTHEWS: May we publish to the jury?

16 THE COURT: Yes, ma'am.

17 (State's Exhibit 27 played)

18 Q. (By Ms. Matthews) So, Officer Peters, during your
19 conversation were you able to determine that the -- that you
20 were speaking with David Perry Allen?

21 A. Had the indication that it was David Perry Allen
22 because the information he gave me and along with doing a check
23 on him.

24 Q. And the incident -- I'm not sure I asked you this
25 earlier -- where you were called out to the scene, that was at

1 the Planned Parenthood construction on the Gulf Freeway.

2 A. Yes, ma'am.

3 Q. And is that in Harris County, Texas?

4 A. Yes, ma'am.

5 MS. MATTHEWS: Pass the witness, Your Honor.

6 THE COURT: Mr. Allen.

7 THE DEFENDANT: Your Honor, I have no
8 questions. Thank you, Mr. Peters.

9 THE COURT: Thank you, Mr. Peters. You are
10 excused. Officer Peters. Excuse me.

11 THE WITNESS: Will you need me anymore today?

12 THE COURT: I don't think so. Does either
13 side wish to hold Mr. Peters for questioning later?

14 MS. MATTHEWS: No, Your Honor.

15 THE COURT: Thank you, sir. You are excused.

16 THE WITNESS: Thank you.

17 THE COURT: Call your next witness please.

18 MS. MATTHEWS: The State calls Ernest
19 Villarreal.

20 THE COURT: Thank you, sir. If you will,
21 speak directly into the microphone. Keep your voice up.
22 Attempt not to speak over the lawyers as they are asking
23 questions. They will try not to speak over you as you're
24 giving answers.

25 Would you state your full name for the record

1 and spell your last name for the benefit of the court reporter?

2 THE WITNESS: My name is Ernesto Ramon
3 Villarreal. My name is Ernesto Ramon Villarreal. Last name
4 spelled V-i-l-l-a-r-r-e-a-l.

5 THE COURT: Please proceed.

6 MS. MATTHEWS: Thank you, Your Honor.

7 ERNESTO RAMON VILLARREAL

8 was called as a witness and, having been duly sworn, testified
9 upon his oath as follows:

10 DIRECT EXAMINATION

11 BY MS. MATTHEWS:

12 Q. Good afternoon, Mr. Villarreal. How are you today?

13 A. Fine. Thank you.

14 Q. And, Mr. Villarreal, the jury has your name now; but
15 why don't you just tell them a little bit about yourself.

16 Where do you work?

17 A. I work for Meyerson Builders.

18 Q. Okay. Speak up loudly like the Judge told you and
19 slowly.

20 A. I work for Meyerson Builders. I'm the general
21 superintendent and project manager and safety director for
22 Meyerson.

23 Q. What is a general safety manager and project
24 manager?

25 A. Basically I deal with the architects, the owners,

1 engineers, to help construct a building. I also handle all the
2 safety regulations from OSHA from state requirements. And I
3 also am a superintendent. I coordinate all my subcontractors
4 in order to do different tasks on the job site.

5 Q. So you kind of oversee the project.

6 A. Yes.

7 Q. And how long have you been doing this work?

8 A. Forty years.

9 Q. And currently -- so, in your line of work, are you
10 assigned to different projects and different jobs?

11 A. Yes.

12 Q. And currently where are you assigned by your
13 company?

14 A. Currently I'm the superintendent and project manager
15 in the position I'm in.

16 Q. Okay. And where -- and what is the project you-all
17 are working on now?

18 A. The Prevention Park.

19 Q. Say that one more time.

20 A. Prevention Park.

21 Q. Okay. And were you -- where were you assigned on
22 March 18th?

23 A. As superintendent and project manager.

24 Q. And on March 18th of 2010, were you working -- where
25 is the location of this park?

1 A. It is at 4600 Gulf Freeway.

2 Q. And is that in Harris County, Texas?

3 A. It sure is.

4 Q. Mr. Villarreal, I'm going to show you what has
5 previously been marked as State's Exhibits 1 through 16. I'm
6 going to have you take a look at them. What is State's Exhibit
7 1?

8 A. It is actually the job site where I'm currently
9 working.

10 Q. And is it a map?

11 A. Yes.

12 Q. And can you just look at State's Exhibits 2 through
13 16 and tell me if you recognize those?

14 A. Yes, I do.

15 Q. And are you -- are these -- what are these photos
16 of?

17 A. This photo is of the --

18 Q. Not specifically but as a group, what are --

19 A. It's the overall project.

20 Q. And do these pictures fairly and accurately depict
21 what the project looked like on the day of March 18th?

22 A. Yes, they do.

23 MS. MATTHEWS: At this time, Your Honor, State
24 offers State's Exhibit 1 through 16 and tenders to Defendant.

25 THE COURT: Are there any objections,

1 Mr. Allen?

2 THE DEFENDANT: No objections, Your Honor.

3 THE COURT: Without objection State's 1

4 through 16 are admitted.

5 Q. (By Mr. Matthews) Mr. Villarreal, I'm showing you
6 what has been admitted as State's Exhibit 2. What is this a
7 photo of?

8 A. It's a photo of the service road on the back side of
9 our property.

10 Q. And what is State's Exhibit 3?

11 A. It is also the fence line and service road on the
12 back side of our property.

13 Q. How about 4?

14 A. Four is the parking lot where we had truck trailers
15 and other products stored at one time.

16 Q. Is this -- does this property have a gate up?

17 A. Yes, it does.

18 Q. And does the gate run the entire perimeter of the
19 property?

20 A. The fence does.

21 Q. Oh, I'm sorry, the fence.

22 A. Yes, fence does.

23 Q. What kind of a fence is it?

24 A. It's a wrought iron fence.

25 Q. And it goes around the entire property.

1 A. It's actually on the inside of the property.

2 Q. And in looking at State's Exhibit 2, we don't
3 unfortunately have a system we can show to the jury besides
4 holding it up. So I'm going to hold it up, and I'm going to
5 ask you to point to where you were on March 18th at the time of
6 this incident. Where were you in this photograph?

7 A. Actually I would be -- it would be better to show
8 off this one.

9 Q. Okay. Sure, on State's Exhibit 4.

10 A. I was basically --

11 THE COURT: You can have the witness stand if
12 you want.

13 MS. MATTHEWS: Sure. Thank you, Judge. You
14 want to step down and show it to them?

15 THE COURT: Just keep your voice up, sir.

16 A. Basically we had a job trailer right here in this
17 area; and I was right here right against the property line, the
18 fence line.

19 Q. So you were right in this area right here.

20 A. Yes.

21 Q. And where did you at that time see the Defendant,
22 Mr. Allen?

23 A. He was on this service road, which is inside the
24 property line.

25 Q. Okay. Where is the property line in this picture

1 for --

2 A. The property line is this hedge row across the back
3 side here along the main service road of the highway.

4 Q. And, so, you said you saw the Defendant walking
5 where?

6 A. He was right here walking, going north on that road.

7 Q. And if he was going north, what was he walking
8 toward?

9 A. He was walking toward the back parking area, which
10 is our relief parking for this project.

11 Q. Okay. And at that time -- and, then, in this
12 photograph, in State's Exhibit 2, is that -- or Exhibit 3, are
13 those closer up, closer up photo of that area?

14 A. Yes, it is.

15 Q. Can you point to, on State's Exhibit 2 --

16 A. He was coming from this side here walking north and
17 then on the other picture --

18 Q. State's Exhibit 3.

19 A. Yes. He came across and down around the back side
20 of this, and this purple container is where our job trailer
21 used to be.

22 Q. You can have a seat. Thank you, sir.

23 So, for clarity for purposes of the jury, these
24 photographs were taken after March 18th.

25 A. Correct.

1 Q. And does the job site change from day-to-day out
2 there?

3 A. Yes.

4 Q. It's construction.

5 A. Yes.

6 Q. And, so, on State's Exhibit 3, you'd indicated that
7 where there is a purple trash dumpster now that's where your --

8 A. Job trailer was located.

9 Q. Job trailer. And, so, when you saw the Defendant
10 that day, where -- what were you doing?

11 A. Actually I was walking out of my job trailer going
12 to go grab lunch; and I saw him walking down the service road,
13 our service road. And I kindly said, "You're trespassing."

14 Q. So when you saw him, was he doing anything at that
15 time or just walking?

16 A. No. He was just walking.

17 Q. And, so, you approached him and said something to
18 him.

19 A. Yes. I told him that he was on private property and
20 he's trespassing.

21 Q. Okay. And did he respond to you in any way?

22 A. Not at first.

23 Q. And, so, then -- what do you mean "not at first"?

24 A. Because he just looked at me. And then I said to
25 him, "Sir, you're trespassing. You're on private property."

1 You need to leave."

2 And he said, "God bless you"; and I said, "He
3 has."

4 Q. Okay. So you actually told him to leave a second
5 time.

6 A. Correct.

7 Q. Did he leave?

8 A. Yes.

9 Q. Where did he go?

10 A. He went to the relief parking across the back and
11 then eventually out to the front of our property -- project all
12 on the main road.

13 Q. Okay. So, when he left the area where you were, he
14 continued walking around the property.

15 A. Correct.

16 Q. What did you do at that time?

17 A. Basically I got in my truck. I went to our security
18 shack, our trailer; and I told the security guard. I said,
19 "This fellow was trespassing across the property. Just keep an
20 eye out for him."

21 And she said, "Okay." And I left.

22 Q. So is there -- is a part of a construction site or a
23 construction job, are there protocols or procedures in place
24 for when things happen like someone comes onto your property?

25 A. Yes.

1 Q. And what is -- for your site what is the procedure
2 if you see somebody where they are not supposed to be?

3 A. Normally what we did is told them that they are
4 trespassing and if they didn't move, we said, you know, "You
5 need to get off the property. You're trespassing." Gave them
6 at least two warnings.

7 And if someone came onto the site, actually
8 physically tried to get onto the site, our protocol is to leave
9 them alone, warn them, and tell them that we've called H.P.D.

10 Q. And why do you leave them alone?

11 A. Because we don't know what they might do. Our
12 reaction is not to be confrontational. If they are going to do
13 something, don't egg it on, basically.

14 Q. So it's kind of a safety measure.

15 A. Exactly.

16 Q. So sometimes people will be on the property and you
17 warn them and then they leave.

18 A. That's correct.

19 Q. Is it common for somebody to actually come, then,
20 even further onto the property?

21 A. No.

22 Q. And do you -- the person that you saw that day,
23 which is David Perry or David Allen, did you recognize or see
24 him in the courtroom today?

25 A. Yes.

1 Q. And can you point him out by an article of clothing?

2 A. He's the Defendant right there.

3 Q. And tell me -- point out something he's wearing.

4 A. The shawl around his --

5 Q. The shawl?

6 A. Yeah.

7 MS. MATTHEWS: Your Honor, please let the
8 record reflect that the witness has identified the Defendant.

9 THE COURT: The record will so reflect.

10 Q. (By Ms. Matthews) So, Mr. Villarreal, what kinds of
11 things are going on at the job site with construction? Is it a
12 safe place or dangerous place?

13 A. It's -- from my standpoint it's a dangerous place,
14 and I try to make it as safe as possible. I always have to
15 make sure that each employee or subcontractor, when they are on
16 our job site, have protection.

17 One of the things we require is a hard hat,
18 safety glasses, steel-toe boots. And that's the first sign,
19 when we don't see someone having those articles on, that they
20 are not part of our job site or they may be a visitor. We just
21 need to identify them.

22 Q. And if workers are distracted, does that put them at
23 risk?

24 A. Yes, it does.

25 Q. How so?

1 A. In a lot of different ways.

2 THE DEFENDANT: Objection, Your Honor. Is
3 this relevant to the charge?

4 THE COURT: Sustained.

5 THE DEFENDANT: Thank you.

6 MS. MATTHEWS: Pass the witness, Judge.

7 THE COURT: Mr. Allen.

8 THE DEFENDANT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. ALLEN:

11 Q. Good afternoon, Mr. Villarreal --

12 A. Good afternoon.

13 Q. -- my construction brethren. I wish we had met
14 under different circumstances. Maybe one day down the road
15 we'll build something together. I need to ask just a couple of
16 questions.

17 A. Sure.

18 Q. You mention that the site is called Prevention Park.

19 A. That's correct.

20 Q. I'm a little confused. I thought there is an
21 organization calls itself Parenthood. Is that -- I've heard it
22 said -- I've heard it said that they own the property.
23 Personally I believe that it's going to be something other than
24 what's planned there.

25 But that property that you're working on that

1 you're responsible for, you called it Prevention Park. What is
2 that? What is the relationship between that and Parenthood?

3 MS. MATTHEWS: Objection, Your Honor,
4 relevance.

5 THE COURT: Sustained.

6 THE DEFENDANT: The ownership of the property,
7 Your Honor, the ownership of the scene. I guess I'm wondering
8 whose property has been violated.

9 THE COURT: I'll allow you a little latitude.

10 THE DEFENDANT: Thank you, Your Honor. It's a
11 key question.

12 Q. (By Mr. Allen) So your contract is actually with
13 Prevention Park, the construction contract?

14 A. Yes.

15 Q. You have a prime contract with them.

16 A. Yes.

17 Q. So you're not a subcontractor. You're a general.

18 A. That's correct.

19 Q. You're overall. That time, that day, one thing I
20 noticed is that the outside looked really good. It's a little
21 far back in your memory, I'm sure. But the landscapers were
22 working that day, and the outside of the place had been all
23 cleaned up. It looked much better than it had, starting to
24 look like a new facility.

25 One thing they did was they took down a lot of

1 junk around the outside of the fence. I noticed from the
2 photographs that the outside of that wrought iron fence is
3 clear of any signs or the yellow tape. I guess all that had
4 just been cleaned up.

5 A. I would say most of it, but there were still signs
6 posted for trespassing.

7 Q. Very good. Thank you. I noticed on one of the
8 pictures the sign, it's very obvious, was actually on the
9 gates, on the swinging gates.

10 A. I don't think we have any swinging gates that I know
11 of.

12 Q. Well, the sliding gate. May I see the photographs?
13 This sign on Exhibit 9, the sign, is this -- how is this
14 oriented to the main road that goes across the main entrance?

15 A. Well, initially it was on the side; and we put it on
16 this side going in because we had more traffic coming through.

17 Q. So someone walking into the construction site would
18 have walked -- they wouldn't have seen it face on. They would
19 have seen it from the side.

20 A. At that point in time, it would have been facing out
21 to the street and the same --

22 Q. Which point in time?

23 A. And the same no trespassing signs that are here.

24 Q. There we go. Okay. Yeah. Now, see, here is the
25 entrance gate here and the sign is swung to the side.

1 A. Yes. But what is that sign doing? Where is it
2 facing?

3 Q. We have a little no trespassing sign facing outward.
4 Now, this is the first real no trespassing sign I've seen of
5 all these photographs. Now, you say these pictures were taken
6 after the 18th?

7 A. Yes.

8 Q. After the 18th. And this alleged incident took
9 place on the 18th so this picture -- this when was this -- this
10 looks like a new piece of wood here. It's a little wooden
11 stake you buy at Home Depot and put that sign on there. Was
12 that put up on -- was that put up on after --

13 A. Actually --

14 Q. Do you have a clear recollection of when that sign
15 was put up?

16 A. Yes. That sign was put up, I would say, after the
17 fact.

18 Q. After the fact.

19 A. However, however, on other parts of the signs, on
20 other parts --

21 THE COURT: One second.

22 MR. STORTS: Objection, Judge.

23 MS. MATTHEWS: Objection, Your Honor. He's
24 standby counsel.

25 THE DEFENDANT: That was my only question.

1 THE COURT: Wait. Wait. Wait. You can use
2 him as much or as little as necessary; and if Mr. Allen doesn't
3 know enough to object, then I'm not going to stifle his ability
4 to have adequate representation. I'll sustain the objection.

5 THE DEFENDANT: Thank you, Your Honor. Just a
6 couple more quick questions here.

7 Q. (By Mr. Allen) Prevention Park, that's an
8 interesting name. I guess I would ask -- I'm not going to ask
9 you to answer the question. I guess the question that comes to
10 my mind, what it is that's being prevented. It's called
11 parenthood but yet -- anyway. All right.

12 We haven't ascertained the owner. The contract
13 is with Prevention Park, I understand.

14 A. Correct.

15 Q. The fourth corner -- you mentioned the corners of
16 the building. The corner where you saw the horn being sounded,
17 that was outside the fence, correct?

18 A. No, sir -- yes, outside of the wrought iron fence.

19 Q. Outside the perimeter wrought iron fence. You have
20 a rectangular wrought iron fence around the project site.

21 A. It was outside of the wrought iron fence, but it was
22 within the property line.

23 Q. I understand but -- I understand, but it was outside
24 the wrought iron fence is my point. And outside, I notice in
25 the photographs, there weren't any signs around there. They

1 had all been cleaned up.

2 A. Not all of them.

3 Q. Okay. All right. When you hollered at me -- when
4 you hollered at the alleged perpetrator, did you say anything
5 other than "You're on private property"?

6 A. No. I told him that they were -- you were on
7 private property and that you were trespassing.

8 Q. Okay. The gate. I notice in the photographs that
9 the main gate is open. Is it always open?

10 A. Not always. It's open during the time of lunch
11 break, which was at that point in time, open.

12 Q. Now, I notice in the photographs the front doors
13 into the building are open.

14 A. That's correct.

15 Q. Thank you. I thank you, Mr. Villarreal. Wait a
16 minute.

17 The area outside of the gate, again, do you do
18 anything in the course of the day to prevent people from
19 walking around the perimeter of the fence?

20 A. No. Normally we have -- I myself personally walk
21 the fence, make sure nothing has been cut, taken away, removed.
22 It's part of my safety program to make sure that no one --

23 THE DEFENDANT: Your Honor, I think I got my
24 answer; and I'm satisfied with the answer that I received.

25 Q. In the course of our interaction, did you advise me

1 of your position of authority on that job site?

2 A. Yes. I said -- I told you you were trespassing.
3 It's our construction site. You looked at me. You walked a
4 little bit further. I said, "Sir, you need to get off the
5 property. You're trespassing."

6 And you said, "God bless you."

7 I said, "He has."

8 Q. And I understand that. That's fine. But my
9 question: Did you identify yourself as a superintendent, as
10 someone in authority on the project site, "yes" or "no"?

11 A. No, I didn't.

12 Q. Thank you.

13 THE DEFENDANT: Your Honor, that's all I have.

14 THE COURT: Thank you. Any further questions.

15 MS. MATTHEWS: Very brief redirect, Your
16 Honor.

17 THE COURT: Yes, ma'am.

18 REDIRECT EXAMINATION

19 BY MS. MATTHEWS:

20 Q. Mr. Villarreal, the Defendant pointed out to you
21 that you-all are in the same industry.

22 A. Correct.

23 Q. So as a contractor there are some things about that
24 industry that are going to be specialized knowledge to you,
25 correct?

1 A. Correct.

2 Q. And the rest of us may not know but a contractor is
3 going to know them, correct?

4 A. Correct.

5 Q. So as a contractor specifically, do you typically
6 know what a construction site is?

7 A. Yes.

8 Q. And are those open to the public?

9 A. No.

10 Q. Why not?

11 A. For their safety.

12 Q. So --

13 THE DEFENDANT: Objection, Your Honor. Is
14 this relevant to the charge?

15 MS. MATTHEWS: Your Honor, he mentioned that
16 they shared the same line of work; and I'd like to get out what
17 the Defendant's knowledge was. He opened the door about
18 notice, Your Honor.

19 THE COURT: I'll sustain the objection if the
20 intent is to impart knowledge to the Defendant through the
21 witness' knowledge.

22 MS. MATTHEWS: Your Honor, he's the general
23 contractor and he had -- I'm trying to get out that he had the
24 authority and what someone would know.

25 THE COURT: Well, now, that you can go into.

1 Please. Thank you.

2 Q. (By Ms. Matthews) So, Mr. Villarreal, as a
3 contractor are you familiar with the term -- and it's kind of a
4 legal term or a term of art, perhaps, in your business --
5 called a greater right of possession?

6 A. Yes.

7 Q. Can you tell the jury what that means?

8 A. That basically means as a general contractor I have
9 the entire property. It doesn't belong to anyone but me. And
10 until I turn that property over to the client, whomever they
11 be, at that point in time it's no longer under my possession.
12 It is theirs.

13 Q. So possession doesn't mean ownership, correct?

14 A. Correct.

15 Q. And, so, when you -- as part of your -- the property
16 being in your possession, are you able to delegate that
17 authority to your employees?

18 A. Yes.

19 Q. So in other words, could your workers also have
20 possession of that property or greater right of possession than
21 the general public?

22 A. Yes.

23 Q. And they would, therefore, have the authority to
24 tell someone to leave.

25 A. Correct.

1 Q. And you could delegate that authority to a security
2 guard that's on the property.

3 A. Correct.

4 MS. MATTHEWS: Pass the witness.

5 THE COURT: Thank you. Anything further?

6 THE DEFENDANT: No, Your Honor.

7 MR. STORTS: One moment please, Judge.

8 THE COURT: Yes, sir.

9 RECROSS-EXAMINATION

10 BY MR. ALLEN:

11 Q. Mr. Villarreal, we're wanting some confirmation of
12 your authority on that project site such as a signed contract
13 that demonstrates your position and authority on that.

14 A. Yes, sir. When we signed the contract to rebuild,
15 renovate, reconstruct the building, we took possession of that
16 property at that point. That gives us our authority.

17 Q. And that contract is available?

18 A. No, sir. It's not available.

19 Q. So -- well, it exists somewhere.

20 A. Yes, it does.

21 Q. But we don't have it here.

22 A. No, sir.

23 THE DEFENDANT: Your Honor, thank you. That's
24 all I have. Thank you, Mr. Villarreal.

25 MS. MATTHEWS: Nothing further, Your Honor.

1 THE COURT: Thank you, sir. You are excused.
2 Call your next witness please.

3 MS. MATTHEWS: The State calls Lisbonne
4 Michel.

5 THE COURT: Let's take a brief break before we
6 take this witness.

7 THE BAILIFF: All rise for the jury please.

8 (OPEN COURT, DEFENDANT PRESENT, JURY OUT)

9 THE COURT: Thank you, everyone. You may be
10 seated if you wish. We're on the record. In an effort to
11 ensure that Mr. Allen has his Sixth Amendment rights protected,
12 I'm going to let Mr. Storts break in at any time. If he needs
13 to object, I'm going to let him object. If he needs to ask a
14 question, I'll let him ask a question. I want to ensure that
15 his Sixth Amendment rights are adequately protected.

16 MS. MATTHEWS: I understand, Judge. I just
17 want to clarify for the record that I objected because it's my
18 understanding that standby counsel is, indeed, standby counsel
19 and they are to be silent unless asked a specific question.

20 And, again, he waived his Sixth Amendment
21 right to counsel and said he wanted to represent himself. You
22 personally offered him a lawyer. So I feel like his Sixth
23 Amendment rights are very intact.

24 And maybe I misunderstand what a standby
25 counsel is, but that's what I believed the Rule was.

1 THE COURT: No, no. I think your
2 understanding is accurate.

3 MS. MATTHEWS: I won't object again, Judge.

4 THE COURT: I appreciate it.

5 MR. STORTS: For clarification, Judge, just my
6 understanding is that I am, to the extent asked and have been
7 generally asked to help guide Mr. Allen, there are times when
8 he may speak quicker than I can give him a little bit of
9 guidance or in the event that he is apart from me that I may
10 need to speak up.

11 Apart from that I'm trying to operate
12 through -- not operate. I'm trying to guide Mr. Allen in his
13 operations here to the best of my ability as quietly as I can.
14 But there certainly are instances where I would need to speak
15 up.

16 THE COURT: And I understand exactly what
17 you're doing. I think you're doing a fine job, given the
18 circumstances. Mr. Allen, I think you're doing a fine job.
19 The State, I think you're doing a fine job as well.

20 But the Court's concern is protection of the
21 record. And, so, I'm going to ensure that there are no Sixth
22 Amendment challenges that can be raised as a result of an
23 inability of Mr. Storts to jump in whenever he feels it
24 necessary to do so. So, with that, let's all just take a quick
25 break and come on back and get started again.

1 (Recess)

2 (OPEN COURT, DEFENDANT AND JURY PRESENT)

3 THE COURT: Thank you, everyone. You may be
4 seated if you wish.

5 Ma'am, would you state your full name for the
6 record and spell your last name for the benefit of the court
7 reporter?

8 THE WITNESS: It's Lisbonne Michel,
9 M-i-c-h-e-l.

10 THE COURT: Thank you, ma'am. Please proceed.

11 MS. MATTHEWS: Okay.

12 LISBONNE MICHEL

13 was called as a witness and, having been duly sworn, testified
14 upon her oath as follows:

15 DIRECT EXAMINATION

16 BY MS. MATTHEWS:

17 Q. Okay. Ms. Michel, I'm going to ask you to kind of
18 lean forward and talk into the microphone, okay, so the jury
19 can hear you?

20 A. Yes, ma'am.

21 Q. And, Ms. Michel, are you nervous to be here?

22 A. Yes, ma'am.

23 Q. That's okay. Just make sure you keep your voice up
24 and you speak slowly so the jury can hear you. Okay?

25 A. Okay.

1 Q. You've already given us your name. Where do you
2 work?

3 A. I work at Planned Parenthood as a security guard.

4 Q. And what do you wear when you go to work?

5 A. I wear jeans and a boot and a white T-shirt that
6 says "Planned Parenthood Security Team."

7 Q. Okay. And do you have that T-shirt on today?

8 A. Yes, ma'am.

9 Q. Do you want to -- will you unzip your coat so we can
10 just see?

11 And what are your duties as part of the
12 security team?

13 A. We sign in people in and out. We take phone calls.
14 If any issue that we not allowed to -- we're not allowed to,
15 you know, like because security, we just call Ms. Larisa.

16 Q. So who is the head of security out there? What's
17 her name?

18 A. The manager of the company I work for?

19 Q. You said Ms. Larisa.

20 A. Ms. Larisa Lindsay.

21 Q. And you report to her.

22 A. Yes, ma'am.

23 Q. And, so, you're not a police officer.

24 A. No, ma'am.

25 Q. And, so, what you're doing is making sure that

1 people are coming on and off the property that are supposed to.

2 A. Yes, ma'am.

3 Q. And direct you back to March 18th of 2010, this
4 year, were you working that day?

5 A. Yes, ma'am.

6 Q. And about the lunch hour, about 11:30ish, do you
7 recall where you were?

8 A. I was in my shack.

9 Q. Okay. And I'm going to show you some photographs,
10 and I know you've looked at these before. These have been
11 already admitted into evidence.

12 MS. MATTHEWS: Judge, may the witness step
13 down?

14 THE COURT: Yes, ma'am. Just please keep your
15 voice up.

16 Q. (By Ms. Matthews) I'm going to have you look --
17 stand here in front of the jury and face them. And I'm showing
18 you right now what's marked as State's Exhibit 7. Okay? And
19 just explain to the jury what they are seeing in this
20 photograph.

21 A. This is the front gate. This is the parking lot.
22 This is where all the trailer -- the security shack used to be
23 at.

24 Q. So when you have been working at the property, has
25 it changed in the course of time somewhat?

1 A. No.

2 Q. I mean in terms of has there been different fixtures
3 that have come in and the building been built at different
4 stages.

5 A. Yes.

6 Q. Okay. So, originally there was -- was there
7 something here that you said behind -- sort of behind this
8 area?

9 A. Yeah, the shack.

10 Q. A shack.

11 A. A security shack.

12 Q. So -- and is that the area where people had to pass
13 by when they came in?

14 A. Yes.

15 Q. And someone was in that shack. It was like a guard
16 gate kind of thing.

17 A. Yes, ma'am.

18 Q. And you signed them in and out.

19 A. Yes, ma'am.

20 Q. Okay. And that's on this photograph. On State's
21 Exhibit 6, is this another photograph of that?

22 A. Yes.

23 Q. Okay. And this right here, this gate, how is that
24 operated?

25 A. Behind this part right here and that's the entrance

1 that people working like this just stopping here and we sign
2 them in and after that we just --

3 THE COURT: Try to keep your voice up just a
4 little bit more, ma'am.

5 Q. Speak up a little bit more, a little more clearly.
6 That's okay. So they come in here and you would sign them
7 in --

8 A. Sign them in and they will park their car and they
9 just go into the building. And this is where the building at.

10 Q. And, then, in this photograph, which is State's
11 Exhibit 8, is that -- is this the same area?

12 A. Yes, ma'am, yeah.

13 Q. And finally in State's Exhibit 5, is this sort of an
14 overview of that area?

15 A. Yes.

16 Q. Can you point on here where that guard gate was at
17 the time?

18 A. Right here.

19 Q. And, so, where is the entrance area?

20 A. This is the entrance.

21 Q. Okay.

22 A. This is the parking lot.

23 Q. Okay. Now, on March 18th you were in this area
24 right here.

25 A. Yes, ma'am.

1 Q. And did you come into contact with a man that you
2 see in the courtroom today?

3 A. Yes, ma'am.

4 Q. Will you identify him by an article of clothing?

5 A. Yes. He's wearing a purple shirt with a scarf.

6 Q. Okay.

7 MS. MATTHEWS: Your Honor, please let the
8 record reflect that the witness has identified the Defendant.

9 THE COURT: The record will so reflect.

10 MS. MATTHEWS: Thank you.

11 Q. (By Ms. Matthews) And, so, when you -- where were
12 you? You were in the guard shack?

13 A. Yes.

14 Q. And where was he when you saw him?

15 A. I saw him -- he was, like, on the sidewalk talking
16 to a group of people outside.

17 Q. Okay. And the group of people outside, were they
18 protestors?

19 A. Yes.

20 Q. And then where did he go from there?

21 A. From there, well, he was talking to them. After
22 awhile he just, like, start walking to come into the property.
23 So I just went out, go outside right away to stop him because
24 Mr. Ernest told me that --

25 COURT REPORTER: I'm sorry. I can't hear.

1 Q. That's fine. I'm going to put her back on the
2 stand. Okay? I'm going to get you back on the stand so they
3 can hear through the microphone.

4 So when you saw the Defendant walking onto the
5 property, you said that you came out of your guard shack. And
6 what did you do?

7 A. I approached him, and I told him that to leave the
8 property. This is a private property. He cannot be here.
9 This is a Planned Parenthood. He cannot be here.

10 Q. Okay. So you told him it was private property and
11 he could not be there.

12 A. Yes, ma'am.

13 Q. You had said that Mr. Ernest -- is that Ernest
14 Villarreal --

15 A. Yes.

16 Q. -- had spoken with you.

17 A. Yes, ma'am.

18 Q. And had he notified you that to be aware?

19 A. Yes.

20 Q. Okay. And, so, when you saw this person, you asked
21 him to leave.

22 A. Yes, ma'am.

23 Q. Okay. What did he do?

24 A. He just brushed by me and just kept walking inside
25 the building.

1 Q. Brushed by you?

2 A. Yeah.

3 Q. And continued to walk into the building.

4 A. Yes, ma'am.

5 Q. Okay. What did you do at that point?

6 A. So I went out. I mean, I tried to stop him. He
7 didn't stop. So I just went back to the trailer and told -- I
8 mean, call Ms. Larisa to tell her the situation.

9 Q. Okay. So you reported it to your boss.

10 A. Yes, ma'am.

11 Q. And in part of your job, is it -- it's your
12 procedure that you then notify your manager, correct?

13 A. Yes, ma'am.

14 Q. Do you -- you don't follow them into the building
15 and try to physically stop them.

16 A. No, not at all, ma'am.

17 MS. MATTHEWS: Pass the witness, Your Honor.

18 THE COURT: Thank you, ma'am. Mr. Allen.

19 CROSS-EXAMINATION

20 BY MR. ALLEN:

21 Q. Ms. Michel, good afternoon.

22 A. Good afternoon, sir.

23 Q. Your supervisor is Ms. Lindsay?

24 A. Yes, sir.

25 Q. Larisa Lindsay. So your employment is through -- is

1 it through the construction company or through Ms. Lindsay?

2 MS. MATTHEWS: Objection, relevance, Your
3 Honor.

4 THE COURT: What's the relevance, sir?

5 THE DEFENDANT: Authority.

6 THE COURT: Overruled.

7 Q. (By Mr. Allen) So your -- so your employment is
8 through who?

9 A. What is it, sir?

10 Q. Your employment, your employer, the one who writes
11 your paycheck, who is that?

12 A. Pentecost Investigation.

13 Q. I'm sorry.

14 A. A company called Pentecost Investigation.

15 Q. I see. So it's a security company.

16 A. Yes, sir.

17 Q. I see. Your security company, is it employed by the
18 general contractor or by Parenthood or do you know?

19 A. I really don't know.

20 Q. Very good. It's not Prevention Park or something.

21 Ms. Michel, would you say you're a dedicated employee?

22 MS. MATTHEWS: Objection, Your Honor,
23 relevance.

24 THE COURT: Sustained.

25 THE DEFENDANT: Well, reason for my question

1 is just to -- from the sounds of the record, it sounds like
2 Ms. Michel did everything in her power and she did it
3 correctly.

4 Q. (By Mr. Allen) And, so, I can't -- I just commend
5 the forthrightness in your zeal for your job. And I thank you
6 for that? We actually believe that this is going to be a
7 birthing center; and I want to just invite you later on down
8 the road when this thing becomes what it's going to be that you
9 come and share that zeal, that dedication with the birthing
10 center that's going to be there. That's all. Thank you.

11 Wait. Your work hours are generally from when
12 to when?

13 A. 6:00 a.m. to 2:00 p.m. Monday through Friday.

14 Q. And are you welcome -- do you enter the property at
15 any other time?

16 A. No, sir.

17 Q. You would have no reason to enter the property at
18 any other time other than working hours.

19 A. No, sir.

20 Q. Okay. If the gates were locked, it's after-hours,
21 it's dark, would you have authority to go into the property?

22 A. Can you repeat that again?

23 Q. Well, if everything was closed down for the night,
24 it was the middle of the night, would you be free to go into
25 the property?

1 A. No, sir.

2 Q. Thank you very much, Ms. Michel. Thank you.

3 THE COURT: Thank you, sir.

4 MS. MATTHEWS: No further questions, Your
5 Honor.

6 THE COURT: Thank you, ma'am. You are
7 excused. Call your next witness please.

8 MS. MATTHEWS: The State calls Larisa Lindsay.

9 THE COURT: Larisa Lindsay please. Good
10 afternoon, ma'am. This witness has been previously sworn.
11 Would you please have a seat in the witness chair? Speak
12 directly into the microphone. Keep your voice up, and attempt
13 not to speak over the lawyers as they are asking questions.
14 They will attempt not to speak over you as you're giving
15 answers.

16 Would you state your full name for the record,
17 and spell your last name for the benefit of the court reporter.

18 THE WITNESS: Larisa Ann Lindsay,
19 L-i-n-d-s-a-y.

20 THE COURT: Thank you, Ms. Lindsay. Please
21 proceed.

22 MS. MATTHEWS: Thank you, Your Honor.
23
24
25

1 LARISA ANN LINDSAY

2 was called as a witness and, having been duly sworn, testified
3 upon her oath as follows:

4 DIRECT EXAMINATION

5 BY MS. MATTHEWS:

6 Q. Ms. Lindsay, you've already given your name to the
7 jury. But what -- go ahead and speak with them. What is it
8 you do? What is your title?

9 A. I'm the security manager for Planned Parenthood.

10 Q. And in your role as a manager, what sorts of things
11 do you do?

12 A. I oversee our security guards, whether it be the
13 deputies or private security. I issue access cards, monitor
14 fire alarms, monitor opposition activity, things along those
15 lines.

16 Q. Okay. And, so, is part of your job you train people
17 in security somewhat?

18 A. Yes. All of our staff go through annual training
19 with security, whether it be for domestic violence cases,
20 making sure that staff are safe or, you know, how to evacuate
21 the building if there is a bomb threat, how to use fire
22 escapes, things that are related to safety procedures, life
23 safety systems within our buildings.

24 Q. And your -- the people that are on property that are
25 providing security services, what sort of uniform -- what do

1 they wear?

2 A. Out at our job site at Prevention Park, they wear a
3 T-shirt that says Planned Parenthood Security Team. It's a
4 uniform that they wear that sort of separates them from our
5 regular trades that are working that look like work shirts with
6 patches so that they look a little bit different. If I'm
7 seeing them across the distance, I can notate that that's a
8 security person and not just a regular tradesman.

9 Q. And while your security team is out there, do they
10 have the authority to ask people to leave?

11 A. Yes, they do.

12 Q. And do they have the authority to keep people from
13 coming onto the property?

14 A. That's one of their jobs, yes.

15 Q. And on March 18th of 2010, were you at work that
16 day?

17 A. I was both at our Fannin location and at Prevention
18 Park.

19 Q. And just let the jury know: Do you have an office
20 somewhere? Are you -- what is your --

21 A. I actually office at 3601 Fannin, but I'm out at our
22 construction site often.

23 Q. And that day was a Thursday?

24 A. Yes, it was.

25 Q. And were you -- what were you doing out there that

1 morning?

2 A. There was a regular protest that goes on every
3 Thursday at lunch; and, so, I was out there monitoring that
4 just to make sure that everything was okay and --

5 Q. And is it common that you have protestors out there?

6 A. Oh, on a regular basis.

7 Q. And you know some of these people by name?

8 A. Yes, I do.

9 Q. And do most of them usually follow the rules?

10 A. They do; and, so, we have very few problems.
11 Sometimes they may not know the rules if they are brand new,
12 have never been out there.

13 Q. And on March 18th of 2010, did you come into contact
14 with or did you see that day the Defendant, Mr. Allen?

15 A. I did just as he was driving up and I was getting
16 ready to leave.

17 Q. And can you point him out by an article of clothing?

18 A. He's in a lavender shirt sitting at the desk.

19 MS. MATTHEWS: Your Honor, please let the
20 record reflect the witness has identified the Defendant.

21 THE COURT: The record will so reflect.

22 Q. (By Ms. Matthews) And have you seen -- had you seen
23 Mr. Allen before?

24 A. Yes, at both locations, both at Fannin and
25 Prevention Park.

1 Q. And, so, would you consider him somewhat of a
2 regular out there?

3 A. Yes.

4 Q. And, so, does he typically stay off your property?

5 A. He always had previously.

6 Q. So you said you saw him that day. Where were you?

7 A. I was actually in my car. It had been a pretty
8 quiet protest. I was leaving a little bit early. When I do
9 leave, I drive down to the end of the street just to see what
10 protests are still going on down at the end, making sure things
11 are calm, quiet, and then head back out the other direction.
12 And, so, I passed him just as he was driving up and I was
13 leaving.

14 Q. And after you left, then, how did you get sort of
15 re-involved in the situation?

16 A. I was on my way back to Fannin; and I got a phone
17 call from Liz, the security guard, telling me that there was
18 someone who came on the property. She told me who it was and
19 asked me what she wanted me to have her do.

20 Q. And what did you instruct her to do?

21 A. I asked her to call 911, which is not typical for
22 most protestors; but I did in this instance.

23 Q. And why is that not typical?

24 A. If someone goes in the building, it's much more of a
25 threat to us and much more of a risk and concern to us. And

1 since he was going in the building, it was a concern. If
2 someone just comes onto the property but outside the gate, I'm
3 not as concerned.

4 Q. And, so, it's not your routine policy to call the
5 police.

6 A. No. There is many, many times that I don't.

7 Q. And in this instance what about him going into the
8 building alarmed you?

9 A. The building has been designated a risk of domestic
10 terrorism. We've had a lot of concerns that damage would be
11 done to the building. At our Fannin building we had someone
12 who had driven a van into our front doors, have caused violence
13 against other -- both family planning and abortion providers.
14 And it was just a concern that we had for this building, so we
15 were just concerned.

16 Q. You were being cautious.

17 A. I was just being very cautious.

18 Q. And at this particular location, had you received
19 threats?

20 A. Yes, we had.

21 Q. And, so, do you take those threats seriously?

22 A. Yes. The recent threats that were in January were
23 reported to both the F.B.I. and Houston police department.

24 Q. So on that day you were following through with
25 procedure of -- for safety for your employees.

1 A. Yes.

2 Q. Ms. Lindsay, I'm showing you what has been marked as
3 State's Exhibit 26. Do you know what this is?

4 A. I believe it's a video that was filmed at our Fannin
5 location by myself in February.

6 Q. And do you -- what does this video depict?

7 A. The gentleman who is blowing a shofar, ram's horn,
8 at the corner of our Fannin location.

9 Q. And is that gentleman Mr. Allen, who is in the
10 courtroom today?

11 A. Yes.

12 Q. And did you provide that video to our office?

13 A. I did. I had originally tried to e mail it. It was
14 too big of a file, so I uploaded it.

15 MS. MATTHEWS: At this time, Your Honor, State
16 offers State's Exhibit 26 and tenders to Defense.

17 (Sotto voice discussion between Defendant and Mr. Storts)

18 THE COURT: Without objection?

19 THE DEFENDANT: Your Honor, no objection.
20 That's fine.

21 THE COURT: Without objection State's 26 is
22 admitted.

23 MS. MATTHEWS: Your Honor, may we publish to
24 the jury?

25 THE COURT: Yes, ma'am.

1 MS. MATTHEWS: Thank you.

2 (State's Exhibit 26 played)

3 Q. After you received the phone call from Liz and you
4 came back, did you have an opportunity to meet with the
5 employees and the people that you worked with at the
6 construction site?

7 A. I did. My cell phone immediately started ringing
8 with the supervisors for the various trades asking me what the
9 was going on, wanting to know what's happened. The guys were
10 afraid. They were calling their bosses.

11 So, yes, I talked to them as well as the
12 security guard and actually got back there before the police
13 arrived.

14 Q. And what was the general -- was relayed to you the
15 general feeling among the supervisors and their employees?

16 A. They were afraid. They didn't -- those that were
17 working on the upper floors were saying that they heard this,
18 they didn't know what was going on. We didn't have the fire
19 alarm installed yet or any type of warning system; and, so,
20 they didn't know if it was a warning to get out of the building
21 that they have been hearing at our regular meetings to be very
22 careful of security as we get closer to move-in and closer to
23 completion.

24 And they didn't know if that was a warning to
25 come out of the building, that something had happened. They

1 had no idea and were just terrified.

2 MS. MATTHEWS: Pass the witness.

3 THE COURT: Mr. Allen.

4 CROSS-EXAMINATION

5 BY MR. ALLEN:

6 Q. Good afternoon, Ms. Lindsay. Thank you for being
7 here. I'm interested in the video clip. I didn't actually get
8 a CD. The Prosecution actually notified me that there was a
9 You Tube link. And looking at the information on the posting,
10 it's Larisa Lindsay. I presume that's you.

11 A. Yes.

12 Q. So you posted that on You Tube.

13 A. Yes.

14 Q. It said it was recorded on February 20th, 2010. Is
15 that about right?

16 A. Yes.

17 Q. So that was prior to the alleged event over at
18 Prevention Park.

19 A. Yes, and at a different location.

20 Q. It was at the 3601 Fannin --

21 A. Correct.

22 Q. -- location. And what is at 3601 Fannin?

23 A. It's our current Planned Parenthood location.

24 Q. Current. Is it going away?

25 A. Yes.

1 Q. I think that was my understanding. It's going to go
2 away; and the new Prevention Park, that will be the
3 headquarters; is that correct?

4 A. That's correct.

5 Q. Okay. Thank you. Now, it's not currently the
6 headquarters. When is that transition going to take place?

7 A. 3601 Fannin is currently our headquarters. We are
8 actually split between two buildings right now because we've
9 outgrown ourselves in that location.

10 Q. So your headquarters is in two different buildings.

11 A. Right.

12 Q. I guess my question is: When will headquarters be
13 transferred to Prevention Park?

14 A. When we move.

15 Q. We're not sure when that is yet.

16 A. In a week or so.

17 Q. Okay. So in the very near future.

18 A. Very, very near.

19 Q. Thank you. I'm interested in -- back in the video
20 here. The jury, if they'd like to see it, they can go on You
21 Tube and put in Shofar guy. That's where it is. It was
22 exactly one minute long. It was preceded by the speaking.

23 It's interesting. When I've addressed the
24 volunteers or the people at 3601, what's been my message, what
25 words do I speak?

1 A. It varies. Often it's "Why are you killing God's
2 children?" "You're going to" --

3 THE DEFENDANT: Objection, Your Honor.

4 A. You asked me.

5 THE COURT: Just one moment. Yes, sir.

6 THE DEFENDANT: Oh, my goodness. That's --
7 it's not true. What I've told Lindsay and everyone else is
8 that they are loved.

9 MS. MATTHEWS: Objection, Your Honor. He
10 can't testify.

11 THE COURT: At this stage, sir, you cannot
12 testify. Do you have a legal objection to the testimony?

13 THE DEFENDANT: I guess not, if she wants to
14 say it.

15 MR. STORTS: One moment, Judge.

16 MS. MATTHEWS: Your Honor, may the witness
17 have a chance to finish answering the question?

18 THE COURT: Well, let's hear what's coming
19 next.

20 Q. (By Mr. Allen) Ms. Lindsay, the words on this video
21 I've transcribed and you can verify this on You Tube. But
22 it's: Freedom, Lord, to live. Freedom, Lord, to love.
23 Freedom, Lord, to walk in the light of your purpose.

24 Do you agree that that's what was on that
25 video?

1 A. Yes.

2 Q. "Yes" or "no"?

3 A. Yes.

4 Q. Do you acknowledge, again, that this video was
5 filmed in February, roughly a month before the alleged incident
6 at Prevention Park?

7 A. Yes.

8 Q. This is before. I believe this is the general
9 message. I don't know of any other. There is a light. There
10 is a truth that's shining. And, Ms. Lindsay, I guess you need
11 to just answer one way or the other. Is this not the message
12 that I share whenever I'm at any of the locations?

13 A. People are often frightened by the loudness. The
14 police have been called numerous times after your
15 horn-blowing --

16 Q. Okay.

17 A. -- by Adkins Antiques across the street.

18 THE DEFENDANT: Objection, Your Honor. This
19 isn't in response to my question. It's nonresponsive.

20 THE COURT: Sustained.

21 THE DEFENDANT: And, Your Honor, I'm --

22 Q. (By Mr. Allen) Ms. Lindsay, I just thank you.
23 You're a very special person, and you just really are. And I
24 thank you for being here.

25 THE DEFENDANT: That's all I have, Your Honor.

1 THE COURT: Ms. Matthews.

2 MS. MATTHEWS: No further questions, Your
3 Honor.

4 THE COURT: Thank you, Ms. Lindsay. You are
5 excused, ma'am. Call your next witness please.

6 MR. REISS: Your Honor, the State would call
7 Bryan Henriquez.

8 THE COURT: Bryan Henriquez, please. This
9 witness has not been sworn. Sir, would you raise your right
10 hand to be sworn.

11 (Witness sworn by the Court)

12 THE COURT: Please have a seat in the witness
13 chair, sir. The Rule has been invoked. What that means is
14 that you may not remain in the courtroom while another witness
15 is testifying nor may you discuss your testimony with any of
16 the other witnesses. You may discuss your testimony with the
17 lawyers for either side if you so choose.

18 With that admonition, sir, would you speak
19 directly into the microphone. Keep your voice up. Attempt not
20 to speak over the lawyers, and they will attempt not to speak
21 over you.

22 Would you state your full name for the record
23 and spell your last name for the benefit of the court reporter.

24 THE WITNESS: Bryan Henriquez,
25 H-e-n-r-i-q-u-e-z.

1 THE COURT: Thank you, Mr. Henriquez. Please
2 proceed.

3 MR. REISS: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 BRYAN HENRIQUEZ

6 was called as a witness and, having been duly sworn, testified
7 upon his oath as follows:

8 DIRECT EXAMINATION

9 BY MR. REISS:

10 Q. Good afternoon, Mr. Henriquez.

11 A. How are you doing?

12 Q. I'm doing fine. Do me a favor. Just scoot up a
13 little bit. Get closer to the microphone so everyone can hear
14 you. Terrific. Mr. Henriquez, you've just introduced yourself
15 to the Court, a little bit about you. How old are you, sir?

16 A. 23.

17 Q. Where do you work?

18 A. I work in -- as an electrician for Alpha Electric.

19 Q. All right. How long have you been an electrician
20 for?

21 A. Four years.

22 Q. I saw you coming in in workboots. Are you at a work
23 site today?

24 A. Yes, sir.

25 Q. Where is that work site?

1 A. 4600 Gulfgate Freeway.

2 Q. And what is that?

3 A. It's a Planned Parenthood building.

4 Q. All right. That's in Harris County, Texas, sir?

5 A. Yes, Harris County.

6 Q. Were you working at that site on March 18, 2010?

7 A. Yes, sir.

8 Q. I want to talk to you about some events that
9 happened that day. Okay? All right. Were you -- well, what
10 were you doing at the work site that day?

11 A. That day, well, I was in the scissor lift all day
12 putting lights in the high ceiling.

13 Q. I'm sorry, sir. You were on the what all day?

14 A. Scissor lift.

15 Q. The lift.

16 A. Yes, sir.

17 Q. Thank you, sir.

18 A. All day putting lights in the high ceiling, the
19 first floor. And that was it. That was all I was doing all
20 day.

21 Q. Okay. So you had occasion to stand by the lift.
22 You were standing by the lift. And were you elevated when you
23 were standing there by the lift?

24 A. Yeah. I was about, like, 20 feet in the air.

25 Q. And did you look down and see something unusual?

1 A. Yes, sir.

2 Q. Can you please tell the ladies and gentlemen of the
3 jury what it is you saw?

4 Q. Well, I was on the lift; and I was about to move.
5 So every time I'm about to move, I have to look around my lift,
6 see nobody is around there. It's part of safety.

7 And I looked towards the door; and I see a man
8 walking in with a horn, trumpet, whatever. And then he was
9 coming in. And then, well, I seen this guy before on the
10 corner by the gate, blowing his horn. Like, he's there
11 sometimes Tuesdays or Wednesdays. And I saw him.

12 And then I was, like, what's this guy doing
13 coming inside the building? So, like, we've been receiving
14 threats.

15 Q. Mr. Henriquez, let's take this one step at a time.
16 Okay? All right. So he was -- so the person you saw, do you
17 see that person in the courtroom today?

18 A. Yes, sir.

19 Q. All right. Can you please point to him and identify
20 him by an article of clothing that he's wearing?

21 A. Over there wearing purple with a white scarf on his
22 neck.

23 MR. REISS: Your Honor, may the record reflect
24 that the witness has properly identified the Defendant?

25 THE COURT: The record will so reflect.

1 MR. REISS: Thank you, Your Honor.

2 Q. (By Mr. Reiss) Okay. Now, you mention you saw him
3 carrying a horn. At that time did you know what it was?

4 A. Not really, man. First of all, I thought it was
5 like a gun or something coming in.

6 Q. Okay. Let's talk about that. What made you --

7 THE DEFENDANT: Objection, Your Honor. I
8 don't see what relevance -- excuse me. Objection. I don't see
9 what relevance this has to do with a Class B misdemeanor
10 trespass, sir.

11 THE COURT: How is this relevant?

12 MR. REISS: It's his state of mind, Your
13 Honor; and it gets to that he was scared. And it is inherently
14 all about a trespass. He's on site of a construction site
15 where this witness will testify and the jury has heard evidence
16 that there had been bomb threats. And it's a trespass, and
17 it's a serious crime because of the danger that can be
18 committed at a work site.

19 THE COURT: I'll sustain the objection.

20 MR. REISS: Thank you, Your Honor.

21 Q. (By Mr. Reiss) But you didn't know what it was at
22 that time.

23 A. No, sir.

24 Q. All right. And when you saw him, what did you do?

25 A. When I saw him, I just got on my knees. I got on my

1 knees. I ducked down and I saw -- because the lift has a gate,
2 like, gates around it. And I saw him standing in the middle of
3 the building.

4 THE DEFENDANT: Objection, Your Honor, same
5 objection, relevance to the charge at hand.

6 MR. REISS: Your Honor, I simply asked him
7 what did he do.

8 THE COURT: I understand. I'll sustain the
9 objection.

10 Q. (By Mr. Reiss) How long did he stay?

11 A. He stayed at least about 50 seconds to a minute in
12 there.

13 Q. What did you do? Who did you talk to?

14 A. I didn't talk to nobody. In that moment?

15 Q. Yeah. After he was done, what did you do?

16 A. Oh, after he was done?

17 Q. Yeah.

18 A. I just got down from my lift, and then I saw my boss
19 in the front of the door by the door. And he was asking me and
20 then -- what was going on because he heard a loud noise.

21 And then I told him "Well, it's that guy that
22 stands over there on the corner blowing his horn." And then he
23 goes "Who let him in?" So -- and then he walked outside.

24 THE DEFENDANT: Objection, Your Honor,
25 relevancy to the charge.

1 THE COURT: Overruled.

2 THE DEFENDANT: It's narrative.

3 THE COURT: Sustained to narrative.

4 Q. (By Mr. Reiss) You had seen him before.

5 A. Yes, sir.

6 Q. You had seen him outside the property before.

7 A. Yes, sir.

8 Q. You had never seen him inside the property before.

9 A. No, sir.

10 Q. But he was clearly inside the property.

11 A. That day, yes.

12 Q. All right. And you didn't know what the horn was.

13 A. No, sir.

14 Q. You thought it could have been a gun.

15 THE DEFENDANT: Objection, Your Honor.

16 THE COURT: Sustained.

17 THE DEFENDANT: Thank you.

18 Q. (By Mr. Reiss) You were scared.

19 A. Yes, sir, feared for my life.

20 MR. REISS: Pass the witness, Your Honor.

21 THE COURT: Mr. Allen.

22 CROSS-EXAMINATION

23 BY MR. ALLEN:

24 Q. Mr. Henriquez, good afternoon. In the earlier
25 evidence which you were not here to hear, a video -- or, I'm

1 sorry, a recording of the investigating officer, Officer
2 Peters, was played.

3 MR. REISS: Objection. The Rule has been
4 invoked. He is testifying as to a statement.

5 THE COURT: Sustained. You can't tell a
6 witness what happened during the testimony of another witness.

7 Q. (By Mr. Allen) Mr. Henriquez, you'd said that
8 earlier you'd seen me prior to that day, Tuesdays and
9 Wednesdays or Tuesdays and Thursdays, on a fairly regular
10 basis.

11 A. Tuesdays, Thursdays.

12 Q. What was I doing on those occasions when you saw me?

13 A. Well, the whole time you were blowing a horn.

14 Q. Blowing a horn. Was that horn similar, the one you
15 saw on those occasions, to the one that I was carrying -- the
16 one that was carried into the clinic that day?

17 A. Well, I didn't see that.

18 Q. You said it was the same person blowing in the
19 street that came in and blew inside. Okay. Thank you.

20 A. In that moment I didn't know what you had in your
21 hand.

22 Q. I believe you said in the beginning of the testimony
23 that it was a horn or a trumpet or something.

24 A. Before.

25 Q. Now, going on from there, how is it prefaced, the

1 blowing of the horn in the building? Were there any words
2 spoken prior to the sounding of the horn?

3 A. Well, you went in there, start blowing the horn.

4 Q. But before, before the horn was blown in the
5 building, were there any words spoken by the trumpet player?

6 Isn't it true that the man who blew the horn
7 said something prior to blowing the horn?

8 A. No.

9 Q. Okay. Isn't it true that the man blowing the horn
10 then said something after blowing the horn?

11 A. Well, I didn't heard. I didn't heard you say
12 nothing, but I heard you mumble your lips when you were walking
13 out. You turned around. There was some people here by the
14 wall and you say something but I don't --

15 Q. Did you hear me say something? Did you hear
16 something said to the effect of: Gentlemen, I know you just
17 earn a living. I just want you to know that you're loved? Did
18 you hear something to that effect?

19 A. No.

20 MR. REISS: This is kind of an odd objection
21 but objection to hearsay. Counsel is testifying, and it's
22 weird because he's the Defendant at the same time.

23 THE COURT: Well, it was couched in the form
24 of a proper question. I'll overrule your objection.

25 Did you hear that, sir, if that was said?

1 THE WITNESS: No, sir.

2 Q. (By Mr. Allen) Mr. Henriquez, thank you this
3 afternoon. This is an odd situation. I thank you for doing
4 your best and being here. Thank you.

5 THE COURT: Thank you, Mr. Henriquez. Any
6 further questions from the State?

7 MR. REISS: No, Your Honor.

8 THE COURT: You are excused, sir. Thank you.
9 Call your next witness please.

10 MR. REISS: J.D. Taylor.

11 THE COURT: Taylor or Young?

12 MS. MATTHEWS: Judge, I apologize. I need to
13 correct that. I typed your list. It's Taylor, not Young.

14 THE COURT: Sir, would you please raise your
15 right hand to be sworn? Are there any other witnesses for the
16 State in the hallway?

17 MS. MATTHEWS: There is one more. Actually,
18 Judge, there are two more.

19 THE COURT: Ma'am, gentlemen, good afternoon.
20 Would you raise your right hands to be sworn.

21 (Witnesses sworn by the Court)

22 THE COURT: The Rule has been invoked. What
23 that means is that you may not remain in the courtroom while
24 another witness is testifying nor may you discuss your
25 testimony with any of the other witnesses for this case. You

1 may discuss your testimony with the lawyers for either side if
2 you so choose.

3 With that admonition, sir, ma'am, would you
4 please wait in the witness waiting room until you hear your
5 name called to testify.

6 Sir, would you please have a seat in the
7 witness chair. Please speak directly into the microphone and
8 keep your voice up. Attempt not to speak over the lawyers as
9 they are asking questions, and they will attempt not to speak
10 over you as you're giving answers.

11 Would you state your full name for the record
12 and spell your last name for the benefit of the court reporter
13 please.

14 THE WITNESS: Jeffrey Dale Taylor,
15 T-a-y-l-o-r.

16 THE COURT: Thank you, Mr. Taylor. Please
17 proceed, Mr. Reiss.

18 JEFFREY DALE TAYLOR
19 was called as a witness and, having been duly sworn, testified
20 upon his oath as follows:

21 DIRECT EXAMINATION

22 By Mr. Reiss:

23 Q. Good afternoon, Mr. Taylor. Thanks for coming.
24 Mr. Taylor, what do you do for a living, sir?

25 A. I'm an electrician.

1 Q. For whom do you work?

2 A. I work for Alpha Electric.

3 Q. How old are you, sir?

4 A. I'm 49 years old.

5 Q. And how long have you been an electrician?

6 A. A little over 30 years.

7 Q. Have you worked as an electrician at the Planned
8 Parenthood work site on the Gulf Freeway?

9 A. Yes, sir.

10 Q. That's in Harris County, Texas, isn't it, sir?

11 A. Yes, sir.

12 Q. Were you on the work site on March 18, 2010?

13 A. Yes, sir, I was.

14 Q. Did anything -- did you hear anything unusual that
15 day?

16 A. Yes. We had a disturbance and a horn blowing in the
17 lobby area of the building.

18 Q. Let's talk about that. With regard to the horn
19 blowing, what did you hear?

20 A. I was in the wall just to the east of that
21 particular room, and I heard the horn blow. It blew a couple
22 of times and at that point I called -- I'm the general foreman
23 out there in charge of all the electricians.

24 So not understanding or realizing what was
25 going on, we knew there was someone in the building that was

1 not supposed to be there. So what we did, we have a program
2 where I call and alert --

3 Q. Let me stop you right there. Narrative question.
4 When something like that happens, what is the program supposed
5 to be?

6 A. We have two assembly points. What I do is half of
7 the men that report to me at one assembly point and the other
8 half of the men report to the other foreman at another assembly
9 point.

10 THE DEFENDANT: Objection, Your Honor. This
11 is irrelevant to the charge, narrative.

12 THE COURT: Sustained.

13 Q. (By Mr. Reiss) What did you do after you heard the
14 horn blow?

15 A. I verified that all of my men were safe and that
16 they were outside the building. We evacuated the building.

17 Q. Did that delay work?

18 A. Yes. It's imperative that we know where our people
19 are.

20 THE DEFENDANT: Objection, Your Honor. This
21 is irrelevant to the charge.

22 THE COURT: Sustained.

23 Q. (By Mr. Reiss) Did you talk to your employees
24 afterward?

25 A. Yes.

1 THE DEFENDANT: Objection, Your Honor. I
2 don't see the relevance to the charge, again, and hearsay.

3 THE COURT: Sustained to hearsay.

4 Q. (By Mr. Reiss) Could that horn have been blown --
5 how long did you hear the horn blow for?

6 THE DEFENDANT: Objection, irrelevancy.

7 THE COURT: Overruled.

8 A. I would say over 30 seconds. It was several times.
9 The exact time I couldn't say, but it was between 30 seconds to
10 45 seconds.

11 Q. (By Mr. Reiss) And you didn't know what it was.

12 A. I knew that it was the guy because he stood out on
13 the street and blew the horn too so we knew --

14 THE DEFENDANT: Objection, nonresponsive.

15 THE COURT: Sustained.

16 MR. REISS: Pass the witness.

17 THE COURT: Any questions for this witness,
18 Mr. Allen?

19 CROSS-EXAMINATION

20 BY MR. ALLEN:

21 Q. Mr. Taylor, good afternoon.

22 A. Hello.

23 Q. You were working in the building when this incident
24 occurred?

25 A. Yes.

1 Q. Did you hear the horn outside the building first?

2 A. I had heard the horn outside the building before.
3 That particular day I did not hear the horn outside. I can't
4 say that it was blown or not blown outside the building that
5 day.

6 Q. It's been reported there were words said before the
7 sounding of the horn and after the sounding of the horn. Did
8 you hear the words, or did you just hear the horn?

9 A. No. There was a commotion out there, and some words
10 said. Exactly what they were, I could not hear from where I
11 was.

12 Q. Mr. Taylor, thank you.

13 A. Thank you.

14 THE COURT: May this witness be excused?

15 MR. REISS: Yes, he may, Your Honor.

16 THE COURT: Thank you, sir. You're excused.
17 Approach the bench.

18 (THE FOLLOWING PROCEEDINGS OCCURRED AT THE BENCH:)

19 THE COURT: Do these witnesses have
20 anything -- these next two have anything different to say than
21 what the last several have said?

22 MS. MATTHEWS: The next witness actually heard
23 the security guard tell him to leave.

24 THE COURT: Okay.

25 MS. MATTHEWS: And the one after that

1 actually -- and I'm glad we're at the bench because she is one
2 of the protestors that was out there. We talked to her. She
3 saw him enter the building. She is here. She has brought a
4 video with her which we have not seen and did not know existed
5 until she came.

6 THE COURT: I guess we better take a --

7 MS. MATTHEWS: So --

8 THE COURT: -- few minutes before she comes
9 up --

10 MS. MATTHEWS: Correct.

11 THE COURT: -- to review the video.

12 MS. MATTHEWS: We could do one more very quick
13 witness.

14 THE COURT: We'll break after this next
15 witness and have her come on tomorrow after everyone has an
16 opportunity to view the video.

17 MS. MATTHEWS: She has an appointment
18 tomorrow. That's the only problem.

19 THE COURT: You might want to take her up
20 first, then.

21 MR. STORTS: We don't know what the video is
22 about.

23 THE COURT: Let's excuse the jury and take a
24 look at the video.

25 (THE FOLLOWING PROCEEDINGS OCCURRED IN OPEN COURT:)

1 THE COURT: Ladies and gentlemen, if you will
2 give us just a few moments, we need to do some work outside of
3 your presence.

4 THE BAILIFF: All rise for the jury please.

5 (OPEN COURT, DEFENDANT PRESENT, JURY OUT)

6 THE COURT: Thank you, everyone. You may be
7 seated if you wish. Will there be any objections to the tape?

8 THE DEFENDANT: No, Your Honor, no objection.

9 MR. STORTS: Mr. Allen is definitive in his
10 decision that he has no objection, Judge.

11 THE COURT: All right.

12 MR. STORTS: We had a bit of a conversation
13 confirming that. He is adamant that he has no objection.

14 THE COURT: Okay.

15 MR. REISS: Your Honor, if we may have one
16 moment, please.

17 MR. STORTS: And for clarification, he has no
18 objection to the audio or to the video.

19 THE COURT: You have no objection to either
20 component of the tape, sir, the audio or the video?

21 THE DEFENDANT: Yes, Your Honor, audio, video,
22 yes, sir, yes. No objection.

23 MS. MATTHEWS: And, then, I guess the next
24 question is: Do you just want to stipulate to that and not
25 call the witness, or does he want to have a chance to question

1 the witness?

2 I'm just trying -- if you want her on the
3 stand, we will call her. If you don't want her on the stand,
4 you just want to put the video in, that's up to Mr. Allen if he
5 wants to question her. It's Christine Melchor.

6 THE DEFENDANT: If I understand this
7 correctly, this morning after I declined to have a preventative
8 disposition, then you-all went to Mrs. Christine and subpoenaed
9 her.

10 MS. MATTHEWS: We had talked to her yesterday.

11 THE DEFENDANT: But the decision to subpoena
12 her was made after.

13 MS. MATTHEWS: No. We told her yesterday we'd
14 be subpoenaing her, but it was after-hours. We couldn't get
15 the subpoena to her.

16 THE DEFENDANT: That was in process before
17 this morning?

18 MS. MATTHEWS: We spoke to you, told you we
19 needed -- we had not heard from you regarding the pretrial
20 intervention -- and also per my e mail that we would be moving
21 forward to trial. That's our responsibility.

22 THE DEFENDANT: If I understand your answer,
23 then, the decision to go ahead and complete the subpoena
24 process and have Ms. Christine come in was made this morning
25 sometime.

1 MS. MATTHEWS: No, sir.

2 THE DEFENDANT: Final decision.

3 MS. MATTHEWS: No, sir. I filed the subpoena
4 with the court yesterday -- last night. I filed the subpoena
5 with the court yesterday for her. She was not physically
6 served until this morning because we had her served at her
7 business as opposed to her home, and it was after 5:00.

8 THE DEFENDANT: Okay. My concern is for Ms.
9 Christine. If you-all don't need her on the stand --

10 MS. MATTHEWS: That is our concern as well,
11 not trying to put her -- she's the executive director of the
12 Coalition for Life.

13 MR. REISS: Mr. Allen, here is the issue:
14 Will you simply stipulate that we can enter this evidence
15 without a sponsoring witness?

16 THE COURT: Remember that you're talking to a
17 non-attorney defendant; so, if you would, explain the terms.

18 MR. REISS: My apologies. Sir, normally we
19 would have to call the person whose computer or who filmed the
20 video to authenticate that this, in fact, occurred on this
21 particular day.

22 If you are willing to basically agree that we
23 don't need to call her -- and it's called stipulation -- we
24 will stipulate that this tape transpired on March 18, 2010, and
25 that that's you in the video, we don't need to call

1 Ms. Christine.

2 (Sotto voice discussion between Defendant and Mr. Storts)

3 THE DEFENDANT: No. I would say it would be
4 unnecessary to -- okay, yes. I will stipulate.

5 MR. STORTS: If I can speak out loud.
6 Ultimately it's your decision, which we just talked about, that
7 you want the tape to be entered.

8 THE DEFENDANT: Yes.

9 MR. STORTS: Then you would absolve the State
10 from their requirement to lay a predicate and confirm the
11 details of that and allow it to come in. There are ways that
12 we can fight that getting in in its entirety.

13 You, based on the idea that you would like
14 that video to be in, could stipulate with the State of that
15 video without requiring them to call their witness that can
16 authenticate it.

17 THE DEFENDANT: Right. That's fine.

18 THE COURT: So the State will offer the tape
19 in front of the jury, and the Defendant will not object. Is
20 that my understanding?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. REISS: I guess that will be State's
24 Exhibit number --

25 MS. MATTHEWS: It will be State's Exhibit

1 number twenty --

2 THE COURT: Eight, I believe.

3 MR. REISS: 28.

4 MS. MATTHEWS: Thank you, Judge. And then,
5 Judge, I believe that the State will rest.

6 THE COURT: All right. Well, then, I don't
7 think there is any further reason for any more witnesses, I
8 guess.

9 MS. MATTHEWS: We had one other witness that I
10 think we can probably not call. Judge, we'll go ahead and that
11 way, just to move things along, we can let --

12 THE COURT: Don't want you to feel rushed to
13 move anything along but if we don't -- if it's cumulative --

14 MS. MATTHEWS: Correct. That's what I'm
15 saying. I think in order to move things along we maybe don't
16 need that final witness.

17 THE COURT: All right. Let's bring in the
18 jury, then.

19 THE BAILIFF: All rise for the jury please.

20 (OPEN COURT, DEFENDANT AND JURY PRESENT)

21 THE COURT: Thank you, everyone. You may be
22 seated. Ms. Matthews, do you have anything further?

23 MS. MATTHEWS: Yes, Your Honor. The State
24 would like to publish to the jury what has been admitted as
25 State's Exhibit 28.

1 THE COURT: It hasn't been admitted yet.

2 Would you like to offer State's --

3 MS. MATTHEWS: I'm sorry, Judge -- which the
4 State is offering State's Exhibit 28, which is a videotape that
5 was taken and provided to the State by Christine Melchor, the
6 executive director for the Coalition for Life. And she brought
7 the tape to us. It was taken on March 18th, 2010; and we'd
8 like to offer that exhibit at this time.

9 THE COURT: Mr. Allen, do you have any
10 objections, sir?

11 THE DEFENDANT: No objection, Your Honor.

12 THE COURT: Without objection State's 28 is
13 admitted.

14 MS. MATTHEWS: May we publish to the jury?

15 THE COURT: Yes, ma'am, please.

16 (State's Exhibit 28 played)

17 THE COURT: Anything further from the State?

18 MS. MATTHEWS: The State of Texas rests.

19 THE COURT: Ladies, gentlemen, the State,
20 having rested, I'm going to break for the evening. We'll bring
21 you back tomorrow at which time I believe we'll be able to
22 conclude the case. I just want to make sure that each side has
23 a chance to adequately prepare before we start-up tomorrow
24 morning.

25 Deputy Hatches will give you your

1 instructions, and I will see you here tomorrow. Please don't
2 do any internet research. Don't do any talking with friends or
3 family members about the case. Just wait until you've had all
4 of the evidence presented to you before you do any
5 deliberations or have any discussions about the case.

6 Thank you, folks. We'll see you tomorrow
7 morning.

8 THE BAILIFF: All rise for the jury please.

9 (OPEN COURT, DEFENDANT PRESENT, JURY OUT)

10 THE COURT: We're in recess until tomorrow
11 morning at 9:00 a.m. I'll see everyone here at 9:00 a.m.
12 Thank you, folks.

13

14 (TRIAL RECESSED UNTIL APRIL 30, 2010)

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1 THE STATE OF TEXAS)
2 COUNTY OF HARRIS)
3

4 I, Clarisia R. Ramirez, Deputy Court Reporter in and for
5 the County Criminal Court at Law No. 14 of Harris County, State
6 of Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of all portions of
8 evidence and other proceedings requested in writing by counsel
9 for the parties to be included in this volume of the Reporter's
10 Record, in the above-styled and numbered cause, all of which
11 occurred in open court or in chambers and were reported by me.

12 I further certify that this Reporter's Record of the
13 proceedings truly and correctly reflects the exhibits, if any,
14 admitted by the respective parties.

15 I further certify that the total cost for the preparation
16 of this Reporter's Record is \$ 578.⁰⁰ and was paid by David
17 Allen.

18 WITNESS MY OFFICIAL HAND this the 13th day of June, 2010.

19
20 

21 Clarisia R. Ramirez, Texas CSR 3862
Expiration Date: 12/31/2010

22 Business Address:
23 900 Somerset Drive
24 Alvin, Texas 77511
25 281-772-8732

Clarisia R. Ramirez
Deputy Court Reporter

4 April 29, 2010: Defense and Shofar Sounds

TRIAL COURT CAUSE NO. 1670694

THE STATE OF TEXAS	* IN THE COUNTY CRIMINAL
	*
vs.	* COURT OF LAW NO. 14
	*
DAVID PERRY ALLEN	* HARRIS COUNTY, TEXAS

PROCEEDINGS PURSUANT TO JURY TRIAL
(Continued)
APRIL 30, 2010

BE IT REMEMBERED that upon this, the 30th day of April 2010, the above-numbered cause came on to be heard before The Honorable Michael R. Fields, Judge Presiding in the County Criminal Court at Law No. 14 in Houston, Harris County, Texas, and the following proceedings were had in machine shorthand in open court as follows:

Walter N. Johnson, CTR
Deputy Official Court Reporter
County Criminal Court of Law No. 14
Harris County, Texas

ORIGINAL

APPEARANCES

Mr. Josh Reiss
SBN: 24053738
and
Ms. Stacy Matthews
SBN: 24042778

FOR THE STATE OF TEXAS

Mr. David Perry Allen
Pro Se
and
Mr. Brian E. Storts
Standby Court-appointed Counsel
SBN: 00785066

FOR THE DEFENDANT, DAVID PERRY ALLEN

*Walter N. Johnson, CSR
Deputy Official Court Reporter
County Criminal Court of Law No. 14
Harris County, Texas*

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DAVID PERRY ALLEN

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*Walter N. Johnson, CSR
Deputy Official Court Reporter
County Criminal Court of Law No. 14
Harris County, Texas*

1 PROCEEDINGS

2 (April 30, 2010)

3 (Jury out:)

4 THE DEFENDANT: Good morning, Your
5 Honor.

6 The Defense wishes motion for
7 instructed verdict in this case of not guilty.

8 The reason for the motion is that the
9 Prosecution has charged me with a specific allegation: that
10 entry was made on this property without consent.

11 The State has not proved that it was
12 Ms. Michel's property, as alleged in the Complaint; that
13 Michel was the owner. It is alleged in the Complaint that
14 she is the authority of the property, the owner of the
15 property, as alleged; secondly, that entry was made
16 without the consent of the owner, whoever that is.

17 MR. STORTS: Specifically, Your Honor,
18 the Complaint reads "...the property of another; namely,
19 Lisbonne Michel."

20 The State has wholly failed to establish
21 that it is the property of Lisbonne Michel.

22 THE COURT: Does the State have a
23 response?

24 MS. MATTHEWS: Your Honor, in every
25 criminal trespass case the State alleges "...the property of

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1 another." Possession is not ownership; possession is
2 whoever has a greater right of - - whoever has a greater
3 right to possession of the property.

4 The State clearly established that, at
5 the time, the person who actually had true possession of
6 that property was Ernest Villareal; Ernest Villareal
7 delegates authority, as the superintendent of his job to the
8 security company, so, clearly, he - - or as he stated in his
9 testimony, he could give that which he did any of his
10 employees, have that right, any of the people that he has
11 delegated his authority to. All the subcontractors have
12 that right. It's not an ownership right.

13 THE COURT: Is this a publicly or
14 privately funded facility?

15 MR. REISS: Your Honor, I do not
16 believe - - well, I don't know the answer to that. You're
17 asking a question with regards to the funding of Planned
18 Parenthood, in general. I don't know the answer to that;
19 but, then, there's an issue as to the funding of Planned
20 Parenthood, the Houston Chapter, as some sub; I don't
21 know.

22 But, respectfully, Your Honor, I'm not
23 really sure whether it's a public place or private place
24 much matters. There clearly is - - this is a construction
25 zone. He's an engineer. He brought that up himself in his

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1 own cross. He brought it up in his own cross that he is
2 familiar with construction zones. The evidence shows that
3 he was given notice that he was trespassing. Ms. Michel
4 clearly said she was the security guard and she told him,
5 "Don't go there."

6 She also showed the jury that T-shirt
7 that she was wearing that clearly said "PLANNED
8 PARENTHOOD: SECURITY" on it.

9 Also, on the video she is seen going
10 over to him to tell him to stop.

11 The audio on the tape, to which the
12 Defendant stipulated, also said we told him not to go
13 there.

14 So whether it's public or private I don't
15 think much matters. What's clear, Your Honor, is that he
16 didn't have permission to go there; and, certainly, it's
17 enough evidence to survive a directed verdict and get it to
18 a jury.

19 THE DEFENDANT: Your Honor, if I
20 may?

21 THE COURT: Yes.

22 THE DEFENDANT: Mr. Villareal did
23 not have a contract. We have not seen it. We do not
24 know who it was with.

25 Also, the State alleges that the security

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1 was through a subcontractor.

2 My understanding from Mr. Villareal is
3 that he was not a subcontractor; and if I understand from
4 Ms. Lindsey, she's the Director of Security, and that's who
5 Ms. Michel reported to, so I'm confused, as I've been from
6 the beginning, Your Honor, and - -

7 MS. MATTHEWS: Judge, every day in
8 this court we try people for criminal trespass cases. As a
9 matter of fact, we had one yesterday. You took the plea on
10 it. It was a construction site of a residential facility that's
11 unsold. I don't know who the owner is.

12 MR. STORTS: Judge, we're on this
13 case today.

14 THE COURT: One at a time.

15 MS. MATTHEWS: This happens every
16 day.

17 This person went on the property. He
18 was given notice by the construction person that he
19 couldn't be there.

20 Every single day the courts hear these
21 matters. The person doesn't have to be the owner; it's
22 anyone who has the authority, whether it's a security
23 guard, whether it's the property manager. It's not the
24 owner that has to have that authority.

25 THE COURT: That argument falls on

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1 its face. The ownership falls on its face with me.

2 The issue, as I see it, is depending on
3 the facility and whether or not it is a publicly funded
4 facility or a privately funded facility.

5 If it's privately funded, then the issue
6 of ownership falls on its face.

7 If it's publicly funded, there are some
8 other considerations that the Court has to take into
9 account, because the Defendant can bring up for the first
10 time on appeal a due-process argument; and so as to make
11 sure that that's not an issue that has to be addressed
12 later, let's resolve it now.

13 I'll direct your attention to 209S.W.3d.,
14 296.

15 Let me know how, and if at all, the
16 Anthony v. State case plays into this decision; whether
17 there is a curable due-process protection, if it is a publicly
18 funded facility. I don't know but I do know that this issue
19 can be brought up for the first time on appeal.

20 MR. REISS: I'm sorry; 209S.W.2d.?

21 THE COURT: S.W.3d., 296,
22 Anthony v. State.

23 MR. REISS: Is that the Opinion cite?

24 THE COURT: I'll give you the key
25 numbers: 110, 268, 92. If it flies - - it may very well not.

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1 Let's litigate that issue at this point
2 and key number 386, as well.

3 MR. REISS: Your Honor, may the State
4 have - -

5 THE COURT: We will readdress it at
6 the time that the Defense rests its case in chief, so you'll
7 have some time to research that issue.

8 MR. REISS: I'm sorry; the name of the
9 case was styled what?

10 THE COURT: Anthony v. State.

11 We'll let the Defense go ahead and put
12 on its case.

13 If that case bears any relevance here,
14 then I can readdress the issue at the conclusion of his
15 case.

16 If it does not, then, we will have the
17 evidence to put on and we can track forward with the
18 charge to the jury.

19 Thank you.

20 Please bring in the jury.

21 I'm not denying your motion, sir; I'm
22 withholding judgment at this time.

23 THE DEFENDANT: Thank you, Your
24 Honor.

25 THE COURT: Thank you, sir.

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1 (Jury in:)
2 THE COURT: The State having rested,
3 Mr. Allen, would you call your first witness, please.
4 THE DEFENDANT: Your Honor, the
5 Defense would call myself.
6 Sir, if you'll take the witness chair.
7 Mr. Allen, you have standby counsel.
8 Would you prefer to do this in a question-and-answer form
9 or would you prefer to do it in the narrative?
10 THE DEFENDANT: In the narrative.
11 THE COURT: All right, sir. Please
12 proceed.
13 This witness has been previously
14 sworn.
15 Have you been sworn, sir?
16 MR. REISS: Judge, I don't think he
17 has.
18 THE COURT: Would you stand and
19 raise your right hand to be sworn.
20 THE CLERK: Do you solemnly
21 swear that in the cause now on trial, you will tell the
22 truth, the whole truth, and nothing but the truth, so help
23 you God?
24 THE DEFENDANT: Yes.
25 THE COURT: Please proceed, sir.

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1 DAVID PERRY ALLEN,
2 having been duly sworn, testified in the narrative in his
3 own behalf as follows:

4 DIRECT EXAMINATION

5 BY THE DEFENDANT:

6 Q My name is David Allen.

7 I'm going to present this morning the reasons
8 that the allegation of the Class B misdemeanor trespass is
9 not supported.

10 I will, first of all, commend the Prosecution - -

11 MR. REISS: I'm going to object, Your
12 Honor, to how he's going to present that this isn't a
13 trespass. It's got to be relevant to the events of that day,
14 so I'd ask Your Honor to direct him toward a narrative of
15 what happened that day.

16 MR. STORTS: Judge, if we may
17 respond, again, we're a part - - Mr. Allen has, in his mind,
18 the formulation of what his story is; and although it's
19 couched in that, that's an expression of his state of mind
20 at the moment.

21 I'm certain, after having talked to him,
22 that his narrative will be related to the specific facts of the
23 incident on the 18th.

24 THE COURT: Please stick to the facts
25 of the incident.

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Harris County, Texas*

1 THE DEFENDANT: Thank you, Your
2 Honor.

3 THE COURT: Thank you, Mr. Reiss.

4 MR. REISS: Thank you, Your Honor.

5 Q (By Mr. Allen) The allegation is one of trespass.
6 There are instances where entry is made into a property
7 that would not be prosecuted as trespass. There are three
8 that I want to discuss.

9 I'll need some latitude to express the facts of
10 how this case directs each of these three areas.

11 First of all is the legitimate purpose.

12 If you have a property and there is an
13 emergency and uniformed police or firemen, emergency
14 medical technicians need to enter, they have every right to
15 go in and do their job.

16 MR. REISS: Again, Your Honor, I'm
17 going to - -

18 THE DEFENDANT: That's the first - -
19 the first area of trespass.

20 THE COURT: Hold it.

21 MR. REISS: Excuse me, Mr. Allen.
22 Your Honor?

23 THE COURT: Yes, sir?

24 MR. REISS: Again, I'm going to
25 object.

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1 THE COURT: Sustained.

2 MR. REISS: Thank you, Your Honor.

3 THE COURT: If you'll just tell us what
4 happened that day with respect to you and your situation.
5 You can say all of this later in closing argument; but for
6 right now, we need you to focus on what happened that
7 day.

8 Q (By Mr. Allen) Well, that day the Prosecution
9 has done a wonderful job of videos and maps and charts
10 and their evidence and it was well-done accommodation
11 through our competent attorneys.

12 Again, I'm appreciative of what they do.

13 In this case what they have illustrated is that I
14 walked onto a property and sounded a shofar and
15 departed.

16 And I have no other comment other than to
17 confirm that, yes, indeed, that was David Allen walking on
18 that property blowing that shofar.

19 MR. STORTS: I have latitude in the
20 courtroom, but I ask permission nonetheless.

21 THE COURT: Yes.

22 (Discussion off the record between
23 Defendant and counsel.)

24 Q (By Mr. Allen) As you'll see - - I'm sorry for the
25 tension here - - I apologize for a lack of legal acumen.

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1 What happened that morning was that I came
2 with a legitimate purpose and unique qualifications for
3 that particular moment on that particular day and that
4 particular place, so that's - - I mean that's what happened.

5 That property does not - - it's not been
6 established who owns it.

7 I firmly believe that that property is - -

8 MR. REISS: Objection; improper,
9 narrative, and argument.

10 THE COURT: Overruled.

11 Q (By Mr. Allen) And that's what I will present.
12 I will present you evidence for each of those three areas:
13 that there was a legitimate purpose to the entry of the
14 property; that there was a unique qualification, as you'll
15 see, that I'm blessed with; and, thirdly, I think - - I think it
16 will be clear that the owner of that property was - - it was
17 not offended by what happened.

18 THE COURT: Do you have anything
19 further, sir?

20 THE DEFENDANT: I have evidence to
21 present on each of those three areas and I at some point
22 will need to go through that with the - - with the - - with
23 the jury. Now is the appropriate time?

24 THE COURT: Yes, sir.

25 THE DEFENDANT: If I may stand?

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1 THE COURT: Yes, sir.

2 Q (By Mr. Allen) In the presentation by the State,
3 there was a YouTube video presented of me standing on
4 the corners of Planned Parenthood and blowing the shofar.

5 I have taken the liberty of transcribing the
6 words that were said in that video that are very instructive
7 to the Defense of what's been alleged.

8 I need the proper procedure for - -

9 MR. REISS: Just give it to me.

10 THE DEFENDANT: Would it be proper
11 for me to give a copy to the jurors?

12 MR. REISS: No, Your Honor.

13 THE COURT: Once he has reviewed it,
14 if he has no objection, then, at that point, the deputy can
15 publish it to the jury.

16 If you have additional copies, then you
17 can present those copies to the jury.

18 MR. REISS: Your Honor, I have no
19 objection. I guess we need to mark this as a - -

20 Do you need a sticker?

21 THE DEFENDANT: Your Honor, this is
22 Defense Exhibit 1, and I ask permission to publish it to the
23 jury.

24 THE COURT: Admitted.

25 Are there copies?

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1 If the State does not object, then the
2 copies can be substituted for the original for the jury so
3 that each juror can have a copy.

4 MR. REISS: That's fine, Your Honor.

5 THE COURT: Deputy, if you'll take
6 those and hand them to the jury.

7 MR. REISS: Should they technically be
8 marked as Defendant's Exhibits 1-A through - -?

9 THE COURT: Let's just call them
10 demonstrative.

11 MR. REISS: That's fine, Your Honor;
12 thank you.

13 THE COURT: Yes, sir.

14 Let the record reflect that each of the
15 jurors have now received a copy of what purports to be the
16 word spoken in the YouTube video that was admitted by
17 the State.

18 Please proceed.

19 Q (By Mr. Allen) These are taken directly from
20 Ms. Lindsey's postings on YouTube, evidently recorded on
21 February the 10th of 2010 - - 2010, which I believe to be
22 accurate.

23 Of course, that was more than one month prior
24 to the alleged incident at the prevention building there.

25 What was said in that video was what has been

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1 said on all my visits there; and that is that there be
2 freedom; that there just be freedom; freedom, Lord, to live;
3 freedom, Lord, to love; the freedom, Lord, to walk in the
4 light of your purpose. That's a message. It doesn't matter
5 which side of the issue you're on; it's just a message that
6 everybody may want to hear. It's a message that I believe
7 in my faith that everybody is entitled to hear, have the
8 freedom to hear, and so freedom to live, freedom to love,
9 freedom to walk in the light of your Creator's purpose.

10 And the rest of it is a prayer pretty much taken
11 from the Lord's Prayer.

12 The purpose of my visits - - I'm not sure about
13 everybody else; but the purpose of my visits, as you'll see
14 from subsequent illustration here, is simply to share this
15 message and to do it in love and in a peaceful way.

16 The purpose of the incident was legitimate.
17 The purpose was just as legitimate as anyone else who
18 would go in there and to help.

19 Before the trumpet was sounded, there was a
20 warning: "Gentlemen, don't be alarmed," and then the
21 shofar was sounded.

22 Then, after that, the message to the men was,
23 "Men, I know you're here making a living. Just know you
24 are loved and you are precious to the Creator." That was a
25 gentle sound.

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1 That's the events of the day.

2 And then you saw from the video that I
3 departed with a blessing.

4 The purpose of entering that property at that
5 moment on that day - - that was - - that was the purpose,
6 and I believe it to be legitimate.

7 Now, Your Honor, I would ask for stickers.

8 I'm going to go on now and talk about unique
9 qualifications.

10 I'm going to list Defense Exhibit 2?

11 MR. REISS: Yes.

12 THE DEFENDANT: Motion for the
13 Court to allow this to be entered as evidence.

14 MR. STORTS: You need to show it to
15 the State.

16 MR. REISS: Mr. Allen, may see a
17 copy, please? Thank you very much.

18 THE DEFENDANT: This is essential - -

19 MR. REISS: Mr. Allen, give me a
20 moment, if you don't mind, to look at it; I'd appreciate it,
21 sir.

22 Your Honor, I'm going to object to the
23 introduction of what I anticipate will be labeled
24 Defendant's Exhibit No. 2 on relevancy grounds.

25 May I approach, Your Honor, and show

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1 you?

2 THE COURT: Yes, sir.

3 MR. REISS: Thank you, sir.

4 THE COURT: Let's take the jury out.

5 (Jury out:)

6 THE DEFENDANT: Your Honor, the
7 District Attorney has gone to extraordinary length to
8 request a jury and to present evidence; and at this point
9 it's essential to the Defense to have opportunity, in the
10 best way that the Defense knows how, to explain to this
11 jury the special legitimacy - - or, I'm sorry, the unique
12 qualifications that apply to this particular defendant, the
13 legitimate purpose of this particular defendant in this
14 situation, and then to talk about the actual ownership of
15 the property. And that's what I need to present and I ask
16 you for your continued patience.

17 THE COURT: How is this part of
18 information, in your opinion - - Mr. Allen, how does it
19 relate to the events of March the 18th?

20 THE DEFENDANT: Well, it illustrates
21 the character and the purpose, the message, the message
22 that's always - - that's been consistent throughout my
23 walk, so would lend an understanding to the jury of the
24 legitimate purpose and unique qualifications for me being
25 there that day, at that moment.

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1 THE COURT: State, your position is
2 what?

3 MR. REISS: Your Honor, it's simply
4 not relevant to the acts that went on that day. I mean if
5 there were photographs of the worksite that day and
6 maybe the absence of some sort of trespassing notice; but
7 these are all dealing with - - the first page, for the record,
8 is from the Knoxville, Tennessee Sentinel, from something
9 during the Clinton Administration. There's a photo of a
10 creative leaf blowing in Jackson Square. I don't know
11 what state that's in. There's a reference to - - well, first of
12 all, it's somebody - - I don't know who it is; but the fact
13 that somebody, unknown person - - but the fact that
14 unknown person - - and I'm assuming from this that
15 unknown person is Mr. Allen. At some point in time, at an
16 unknown date, creatively carved the word "JESUS."

17 MR. STORTS: No, "JESUS LOVES
18 YOU."

19 MR. REISS: Even more so. It certainly
20 took a great deal of time and is certainly a reflection of his
21 deep conviction and faith, which the State has the utmost
22 respect for.

23 However, it really isn't relevant to
24 anything here.

25 THE COURT: I tend to agree, Mr.

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1 Allen. I know that you want to present your case and I'm
2 trying to balance this along to give you as much as you
3 would like to present without going too far. Some of these
4 clippings are from 1994 and 2007. They're not relevant to
5 March the 18th, 2010, so I'm not going to allow those - - if
6 you have anything that's closer to time that's relevant
7 to - -

8 MR. REISS: Your Honor, I'll give Mr.
9 Allen this: I'll help him out in this regard, with what is, I
10 guess, the second-to-last page of Defense Exhibit No. 1.
11 There's a photocopy of something called "Restoration
12 Chapel" and there's a picture on the left-hand side and
13 there's a man wearing a tullus.

14 Mr. Allen, is that you?

15 THE DEFENDANT: Yes, sir.

16 MR. REISS: Judge, I won't object to
17 that.

18 THE COURT: I will allow that.

19 MR. STORTS: This is currant as of
20 April 2010.

21 MR. REISS: Judge, that's fine. The
22 leaves from somewhere in Tennessee in 1996 I just don't
23 really think have any probative value; but these last two
24 pages, that's fine.

25 THE DEFENDANT: Your Honor, this is

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1 prefaced by the testimony of mine that has been
2 suppressed for a number of years and now just begun to
3 share about my own abortion that I elected back in 1973,
4 and I believe that's absolutely essentially to understand - -

5 THE COURT: This is an area that you
6 had filed a Motion in Limine on?

7 MS. MATTHEWS: Yes, Judge.

8 THE COURT: I granted that.

9 In 1973 you were a party to an
10 abortion procedure?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: That's shaped, I trust,
13 your feelings on this issue.

14 MR. STORTS: And his current state of
15 mind, Judge.

16 THE DEFENDANT: Well, but it's more
17 than that.

18 Recently, it came out when I joined this
19 here not a couple months ago and began to sound. And I
20 realize that this sound - - this sound of love is the sound of
21 my son Samuel, and so what I realize is that that day that
22 really was a call for love and victory but was also the voice
23 of the son of mine. He's been given the voice that I took
24 away from him.

25 MR. REISS: Judge, if I may respond,

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1 look, Mr. Allen is clearly a man of very, very, very deep
2 faiths, and I respect him for that. He clearly, at some point
3 in time, here, in the last couple of years, has enjoyed a
4 religious awakening that has deeply moved him and
5 shaped the future scope of his life.

6 At the risk of a pun - - and it's not
7 meant that way - - it's very evident that Mr. Allen kind of
8 wears his faith on his sleeve, so to speak; it's okay. It's
9 unusual for someone to be walking around the city of
10 Houston blowing a shofar and wearing a tullus in the
11 manner that Mr. Allen is doing, so I really don't think it's
12 the jury - - it's very clear that something has moved him;
13 but the fact that he - - and the jury has also heard
14 testimony that he participated in numerous of these vigils
15 before. They know how he feels about the issue of
16 reproductive rights; no mistaking it. I really don't see how
17 at this point the fact that in 1973, he was the party to an
18 abortion and that somehow, the shofar is the sound of his
19 son, is really probative and relevant to this case.

20 THE COURT: So your objection?

21 MR. REISS: Relevance.

22 THE COURT: Sustained.

23 You can always argue those things in
24 your closing argument, if you'd like to talk about those
25 things, subject to the State's objection then. I'm pretty

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1 lenient with respect to what I allow in closing arguments.

2 But in terms of the evidentiary value,
3 let's try to keep it to March 18th, okay?

4 MR. REISS: Thank you very much,
5 Your Honor.

6 THE COURT: Thank you.

7 These two pages will be admitted as
8 Defendant's Exhibit 2.

9 MR. REISS: I think for the record
10 those were Pages 7 and 8 of the packet. I know that they
11 were physically the last two pages of the packet.

12 MR. STORTS: Mr. Bennett is doing
13 some electronic research on the tax returns of Planned
14 Parenthood at this particular time with respect to public
15 grant money.

16 MR. REISS: I'm sorry; I didn't hear
17 that.

18 MR. STORTS: Mr. Bennett is doing
19 some electronic research related to the funding of this
20 particular site regarding public money.

21 MR. REISS: We will get to a witness
22 who will testify as to the funding. There is no public
23 funding at this time at all.

24 THE COURT: Mr. Allen, we're going to
25 bring the jury back in and give you the opportunity to

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1 present Defense 2 to the jury and any other testimony that
2 you feel is relevant at that time, okay?

3 THE DEFENDANT: Thank you, Your
4 Honor.

5 (Jury in:)

6 THE COURT: Please proceed.

7 MR. STORTS: Your Honor, the
8 Defense would ask that Exhibit 2 be entered into the
9 record and that copies be provided to the jury.

10 THE COURT: Yes, sir.

11 Are there any objections?

12 MR. REISS: No objections, Your
13 Honor.

14 THE COURT: Without objection,
15 Defendant's Exhibit 2 is admitted.

16 Deputy, if you would, please.

17 THE DEFENDANT: I ask you to focus
18 specifically on the events of March 18th; and so on March
19 18th, acting as a minister, if you will, of my - - of my faith,
20 of my understanding - - I have not been to divinity school
21 and not a - - but I am a very active minister.

22 What you have before you is a church
23 that I happen to be working with now and that elected - - I
24 didn't even know it was there until I visited them a week
25 or so ago. They would use a previous service where they

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1 ministered with the shofar.

2 You will see the pictures there on the
3 left-hand side, a man in a - - that's me holding the shofar.
4 So that was a minister in a church setting with this
5 church.

6 On the final page is a picture of my
7 truck. As it sits this day, it sits on the corner of Eldridge
8 and Beechnut, where I've been asked by the owner of the
9 property to please use the property and conduct a revival
10 there. That was a miracle in itself; but this construction
11 has been operational now for three years and walk after
12 Ike and went all around the city of Houston and just
13 having some exciting times. There's a chair there, a
14 Baptist - - but that's my - - my ministry, but that message
15 on the side of that truck was chosen by my son who at the
16 time was about six.

17 I couldn't figure out who I - - so that's
18 my message. That's the message of my ministry, and it's
19 on that truck; sits out there at - - at Beechnut - - at
20 Beechnut and Eldridge.

21 In May there will be a gathering and
22 some exciting things going on on the 22nd; is the opening,
23 if y'all are in that neck of the woods.

24 So what this does is explain the unique
25 qualifications of ministry that I've just been given - - not

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1 been to school to learn and don't have anything other than
2 a bachelor of science in civic engineering, but I am a
3 minister and I go out in my faith. In my book it says to go
4 and baptize; and that's what I do: I go and I baptize and
5 that's what I was doing on March the 18th. I was going
6 with a message of love. That's the only message that's
7 ever been shouted out or shared in either of these
8 vocations that are in question now, so I thank you for that.

9 Finally, in - - the question of ownership
10 of that property - - this morning I was talking again in the
11 city and I walked back over to that granite - - or I guess
12 it's marble - - arch - -

13 MR. REISS: Again, Your Honor, I'm
14 going to object at this point in time with reference to what
15 he did this morning.

16 THE COURT: Sustained.

17 MR. REISS: Thank you, Your Honor.

18 Q (By Mr. Allen) The question of ownership of
19 the property is very serious and there's a lot of people in
20 this courtroom that believe very strongly in - - by the way,
21 there's no right or wrong. I mean there's no side of this
22 issue that - - what matters is that my faith - - my Creator
23 loves everybody equally and it doesn't matter which side
24 of this issue you are on; you are loved, and I'm here to
25 testify because I've been touched by it, and you'll hear

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1 about it later. But God loves everybody. There's nobody
2 that has any difference in standing before the Mighty
3 Creator because of which side you happen to be on today.
4 I knew which side I was on a while back and what side I'm
5 on now; and nobody calls me any names, that I know of. I
6 am - - but even though I know I am but - - I also know by
7 my faith that I'm forgiven. There are a lot of people in this
8 courtroom or this panel touched by the subject at hand.
9 Again, no judgments, because I'd have to start off by
10 myself.

11 To be honest, I'm dancing - -

12 MR. REISS: Your Honor, I'm going to
13 object and ask that the Defendant and counsel focus his
14 narrative on the date in question.

15 THE DEFENDANT: Very well.

16 Thank you, Your Honor.

17 Q (By Mr. Allen) What I would like to present or
18 enter in is Exhibit 3 to the part of the Defense, is an email,
19 unsolicited email.

20 MR. REISS: Before you tell people
21 what it is, can I - -

22 THE DEFENDANT: I'm sorry.

23 MR. REISS: Your Honor, may the
24 record reflect the document has been tendered to me, the
25 document I'm looking at?

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1 THE COURT: The record will so
2 reflect.

3 MR. REISS: May I have a moment to
4 look at it?

5 THE COURT: Yes, sir.

6 MR. REISS: Your Honor, I'm going to
7 object to Defendant's Exhibit 3 on the grounds of
8 relevance and hearsay.

9 THE COURT: I'll sustain as to hearsay.

10 MR. REISS: Thank you, Your Honor.

11 Q (By Mr. Allen) On March the 18th of 2010, it
12 was my understanding that what is being built - - I guess
13 we really need to - - I need to focus at some point the
14 structure, the construction site and what is being planned,
15 what is being intended, so that we understand the scene
16 of the alleged crime.

17 You've seen pictures that have been presented.
18 And I want to complete now the - - on March the 18th my
19 understanding, my faith and my declarative statements
20 would be no, this is, in fact - - would be a birthing center,
21 a place where young women could be helped with their
22 babies and people would come to this, and Ms. Michel
23 would be a part of this and Ms. Lindsey; would be a
24 birthing center, where young women could come have
25 help raising or perhaps people yearning to adopt would

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1 have a place to come and facilitate their need, their love for
2 a child. That's what this is going to be. This is going to
3 be a birthing center and it's going to be a wonderful thing
4 for Houston. It's going to be a thing of permanence for
5 Houston. It's even seated - - it wasn't put in Rice Village
6 or River Oaks; it was put in a minority neighborhood, next
7 to university campuses, and that's where it's sited. And I
8 would say that that's where it needs to be. That's a
9 wonderful place for a birthing center for people to have
10 access to; and in my mind, I can't call these witnesses
11 because, rule number one, you waive - - there are people
12 here that know my heart and what we've been declaring
13 and that this is not planned - - and I'm going to believe it
14 today: that what this facility is going to be - - it hasn't
15 opened yet. It's not anything yet. All it is is a
16 construction site. It's the largest facility of its kind,
17 depending on who you listen to, in quite a large area, so
18 it's going to be a - - Houston is going to be famous for this
19 type of facility versus having the largest of another type of
20 facility. That's my faith, that's what I understand it to be.

21 So on March 18th that was declared days
22 prior and days after - - that was declared and that's what I
23 believe and believed on that date.

24 Now, if I may just touch again on the facility
25 itself, from the website of - -

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1 MR. REISS: Okay, Mr. Allen. Again - -

2 MR. STORTS: This is not going to be
3 entered as evidence.

4 MR. REISS: You can't talk about a
5 document that's not in evidence.

6 THE DEFENDANT: Your Honor, these
7 are - -

8 MR. REISS: I'm going to mark this as
9 Mr. Allen's No. 4.

10 If I may have a moment to look at it,
11 Your Honor?

12 Thank you.

13 Your Honor, the State has no objection
14 to Defendant's Exhibit 4; however, I would ask that
15 instead of demonstratives, that this copy actually be the
16 one tendered to the jury. It appears to contain the
17 markings of Mr. Allen's handwriting on it and I think they
18 are instructed - -

19 THE COURT: Defense 4 is admitted.
20 May I see Defense 4, please?

21 MR. REISS: Yes, Your Honor.

22 THE COURT: You're offering that
23 exhibit, sir?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: To present it to the jury?

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1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: May I see it, please?

3 Do you have the same markups on the
4 others?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: They're all marked up
7 exactly the same?

8 THE DEFENDANT: Yes, they are.

9 The copies are marked up the same
10 way.

11 MR. REISS: I was not aware that
12 there were photocopies made.

13 THE COURT: I know it's your desire to
14 give guidance to Mr. Allen, Mr. Reiss; but just state your
15 objection, and the Court will give whatever guidance is
16 necessary.

17 MR. REISS: No objection, Your Honor.

18 THE COURT: Thank you.

19 MR. REISS: Thank you, Your Honor.

20 THE COURT: Deputy, if you would
21 give the copies to the jury, please.

22 THE DEFENDANT: Actually, that
23 won't be necessary. I'll just talk to it a little bit.

24 The point I was - -

25 THE COURT: No; I'm instructing

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1 Deputy what I want him to do.

2 THE DEFENDANT: Thank you, Your
3 Honor.

4 THE COURT: We'll hand those copies
5 to the jury.

6 You can keep the original, sir.

7 Please?

8 Q (By Mr. Allen) Again, this building is not yet
9 anything other than a construction site. This building sits
10 over on Highway 45 and Cullen Avenue, on the East End,
11 centered in four minority neighborhoods.

12 The point of this exhibit is simply to illustrate
13 what the building is as it existed on March the 18th.

14 Now, you'll notice in this photograph - - I'm
15 sorry; in the artist's rendering of the building, this is no
16 black wrought iron fence around the facility. And it would
17 appear that the Texas flag, the American flag flies out
18 front. The other two flags - - one looks like a black flag
19 and one looks like a dark green flag. I'm not sure what
20 that is, so this building - - if you look on the third floor, the
21 third floor will have something called an ambulatory
22 surgical center. And that's something where the heart of
23 - - what this building is for is just the heart of the building.
24 It's a bigger facility and it's far double - - more than
25 double what's available now, so whatever is being

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1 accomplished now will more than double.

2 Again, I think, as the Prosecution pointed out,
3 this trial is not about the particular subject that's staring
4 at us from the corner over here. This trial is about
5 whether or not a Class B misdemeanor trespass occurred
6 on March the 18th and this is the facility - - this
7 construction site was what was the subject of that day.

8 Do we have the exhibits?

9 If you recall, Mr. Villareal acknowledged that
10 the landscaping crew has just cleaned up around the
11 outside.

12 In my review of these photos, I find no signs
13 whatsoever.

14 He did say one little no-trespassing sign that
15 was out front had just been put out. It was after March
16 the 18th.

17 What I was trying to say was that the one sign
18 that - - here we go: This is the one photograph that shows
19 any no-trespassing sign. This was put up after the 18th.
20 This is the other one. Again, the gate is open, from where
21 I entered, over here. I might have seen it on the way out,
22 but I certainly didn't stop to read it.

23 On that day it was nothing more than a
24 construction site. It was a matter of opinion and fate of
25 what that construction site entailed, what it was going to

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1 be used for, what its purpose was.

2 My understanding of my faith was that it was
3 going to be a birthing center, a place where young women
4 come for birthing assistance, and so at the time this is not
5 a clinic. We still haven't determined who owned it. If it's
6 a prevention or if it's a Parenthood or Preventive
7 Parenthood or whatever it is, it is a construction site. And
8 Mr. Villareal has not demonstrated that he had any
9 authority, any more than I did, on there. There's no
10 contract. We don't even know who the contract was with.
11 The security guard - - I'm not sure now whether she works
12 for the Planned Parenthood or for the construction
13 company or for a security agency. I don't know; I'm
14 confused.

15 So, again, the owner of the property is what
16 was being addressed. And that's my third and final point
17 as far as presenting evidence of that day.

18 It was my understanding of that day that this
19 was going to be a birthing center.

20 My understanding today is: That's what it's
21 going to be, my hope; may not be everybody's hope; but I
22 understand, please, that this was my hope and my faith.

23 And, with that - -

24 (Discussion off the record between
25 Defendant and counsel.)

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1 Q (By Mr. Allen) Normally, I would be asked
2 three questions here; but if I may, I've explained through
3 the State's evidence here that there was no signage out
4 there for me to see; and, in fact, I saw no signs. I saw no
5 no-trespassing signs that day, so whatever defense that
6 offers.

7 Secondly, the gate was wide open and the
8 doors were open to the facility and there was a straight - -
9 I wasn't sneaking in the back or going and digging a
10 tunnel or anything. It was open right into the facility.

11 And when Mr. Villareal hollered at me, he
12 simply said, "You're on private property. You're going to
13 be arrested." I didn't know who he was. I didn't know
14 what his authority was. But to be quite honest, in my
15 mind, I'm thinking at the time, "Why? Why in my city? I
16 love this city. We're supposed to be building it forever.
17 Why are we building this?" If you want something that's
18 forever - - and when he said that - - something clicked that
19 day, driving to - - driving to the construction site,
20 something in my - - something said to me: Go inside the
21 building. And I said no, no. I mean something - - and I
22 said no; that's just me; that's just me. And I got there and
23 got out of the car and I normally would stand by, just in
24 the street. The ways I could make it over there during my
25 lunch hour - - slip over and slip back - - kind of far away

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1 and just encourage the folks there.

2 But on that day I'll go in - - but I'll go around
3 the four corners, so I went around the four corners, and
4 that was going to be it. But when Mr. Villareal hollered at
5 me, I said, "Who are you? What are you doing here? What
6 are you doing in my city and how dare you tell me that I'm
7 going to be arrested?" You know?

8 So I guess I - - I thought of all those questions
9 and I went in and did what I did.

10 I would add - - I've told the Defense - - the
11 Prosecution this on a couple of times when they've offered
12 to settle out of court.

13 MR. REISS: Objection, Your Honor.

14 THE COURT: Sustained.

15 MR. REISS: Your Honor, I would
16 please ask the Court to please instruct the jury to
17 disregard the comment that Mr. Allen has just made.

18 THE COURT: Please disregard that
19 last comment.

20 THE DEFENDANT: What I said was - -

21 MR. REISS: I'm going to object.

22 MR. STORTS: He hasn't said anything
23 for him to object to.

24 MR. REISS: I think we all know where
25 it's going.

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1 THE DEFENDANT: I'm sorry, Your
2 Honor; I'm listening.

3 The point is that what happened
4 happened on a particular day. It happened on a particular
5 hour of a particular day and there's no reason for it to be
6 repeated. There's no - - the sound of God's love, which is
7 what that was: a sound of Heaven bringing that sound
8 down. I wish I could blow the horn right here for you.
9 The purpose of blowing it that day was a specific time that
10 it needed to be done and done at that time. It was not a
11 clinic. It was not anything other than a construction site
12 on that day; and, certainly, there is no justification for
13 someone walking into any other type of known facility and
14 doing that. That would be a problem, and I'm a hundred-
15 percent in agreement with that.

16 I would finally just note that had I
17 walked in any other construction site in Houston, I might
18 have gotten hollered at; but there's something more here:
19 a faith matter. That's what it is. It's a matter of - - of
20 faith that because of the issue - - because of the tension in
21 our country that that has created something more
22 powerful to me and much bigger than any of us here. It's
23 nationwide. It's everywhere.

24 So, therefore, I had to be silenced;
25 therefore, something special has to be done for this

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1 Class B misdemeanor trespass charge.

2 Unfortunately, this Class B
3 misdemeanor charge has so many holes in it and so many
4 facts that they tell us that for very good reason there was
5 no - - there was no trespass. This was something that - -
6 what was done and whatever it was, it was not a Class B
7 misdemeanor trespass.

8 That's all I have.

9 (Discussion off the record between
10 Defendant and counsel.)

11 THE DEFENDANT: Your Honor, it's
12 been suggested, and I concur, that I ask, for demonstrative
13 purpose, to sound the shofar.

14 It's been alleged by the Prosecution
15 that it is an alarming sound and you - - but I would
16 suggest that it's a wonderful sound. It's a sound of
17 Heaven's sound of love; and I would ask, for
18 demonstrative purposes, if that would be acceptable to the
19 Court: to sound the shofar similar in the courtroom as it
20 was sounded that day.

21 MR. REISS: I'll go Mr. Allen one
22 further: I'll allow him to enter it as Defendant's No. 5.

23 MR. STORTS: I direct my client not to
24 enter it as Defendant's Exhibit No. 5 unless it's agreed
25 that a photocopy reproduction could actually be entered

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1 and the shofar be returned to Mr. Allen.

2 MR. REISS: It's central to this case,
3 Your Honor. I think the jury needs to be able to touch and
4 feel it. Let him enter it. I have no objection if he wants to
5 enter it as Defendant's Exhibit No. 5.

6 MR. STORTS: It's my position - -

7 THE COURT: Do you have an objection
8 to him sounding the shofar?

9 MR. REISS: I have an objection to him
10 sounding the shofar. I have no objection to sounding the
11 shofar if he enters it as Defendant's Exhibit 5.

12 MR. STORTS: In all respect, Your
13 Honor, I think the State is trying to set him up to take it
14 away from him.

15 THE COURT: Well, I'll allow the
16 picture of the shofar to be substituted for the shofar itself.

17 But if the State has no objection to
18 them sounding the shofar - -

19 MR. REISS: The State would say go
20 for it.

21 THE DEFENDANT: Thank you, Your
22 Honor.

23 Thank you, Mr. District Attorney.

24 The preparation to sound the shofar is
25 generally - - have a brief explanation: that in the Good

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1 Book, which I, in my faith, depend on, sound of the shofar
2 is heard throughout the Bible. It's heard at the Walls of
3 Jericho when God's people are being denied entry into
4 what God promised. We bring the spiritual sound. It was
5 sounded by Gideon in 300 before the armies of Israel and
6 in the Book of Revelation - - actually, the testimony - - it
7 talks about the day we hear the trumpet of God. That's
8 my faith.

9 I'm thankful. I'm thankful that we have
10 a nation, a system that allows this sound to be brought in
11 in this situation and shared.

12 And so I submit this sound to the
13 Court, with the appreciation of you all.

14 (Defendant demonstrates.)

15 Q (By Mr. Allen) Now, after the sounding of the
16 shofar, there's a moment of pause. Everybody deals with
17 that sound in a special, unique way. That sound is the
18 sound of love, a wonderful truth that we have, that we are
19 each individually and completely loved, no matter what; no
20 matter where we've been, we're completely loved. And
21 this world, in this nation, in this hour, needs to hear that
22 message. They need to know that message: No matter
23 what, we are loved; no matter how things are
24 economically, politically, morally, whatever; no matter
25 what, we are loved. It doesn't matter where we are, we

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1 are loved.

2 Thank you. Thank you. Thank you for
3 allowing me to show that.

4 THE COURT: If you'll have a seat on
5 the witness chair, the State has the opportunity to cross.

6 We'll take a brief recess and see if
7 there's any business that we need to finish up.

8 (Jury out:)

9 (Long pause.)

10 (Jury in:)

11 THE COURT: We are back on the
12 record.

13 It is the State's opportunity now, ladies
14 and gentlemen, to cross-examine Mr. Allen.

15 Mr. Reiss, do you have any questions
16 of this witness?

17 MR. REISS: I do, Your Honor. May I
18 proceed?

19 THE COURT: Yes, sir, please proceed.

20 MR. REISS: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. REISS:

23 Q Mr. Allen, I'm going to ask you a few questions
24 here, okay?

25 A Yes.

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1 Q You heard my voir dire. I'm from New York.
2 Sometimes I talk funny. If I do and you don't understand,
3 just stop me, all right? I'm going to ask you all these
4 questions. They are either going to be yes or no, okay?

5 A Yes.

6 Q You were born on August 2nd, 1954?

7 A Yes.

8 Q I need you to speak up. I know you didn't have
9 any problem projecting.

10 You have four children, Mr. Allen?

11 A No.

12 Q How many children do you have?

13 A Seven.

14 Q We're back to yes and no.

15 You are college-educated?

16 A Yes.

17 Q You are a professional engineer?

18 A Yes.

19 Q Safe to say you're an educated person?

20 A Yes.

21 Q You don't have to be shy about that; you're an
22 educated person, right?

23 A Yes.

24 Q You can read and write the English language?

25 A Yes.

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1 Q You understand technical information?

2 A Yes.

3 Q In your capacity as an engineer, you're no
4 stranger to construction sites?

5 A Yes.

6 Q You've been on construction sites many, many
7 times before?

8 A Yes.

9 Q Over 50, probably, right?

10 A Yes.

11 Q Maybe even over a hundred times, right?

12 A Yes.

13 Q Throughout your career?

14 A Uh-huh.

15 Q Over a hundred times?

16 A Yes.

17 Q Construction sites can sometimes be very
18 dangerous places, can't they?

19 A Yes.

20 Q There are things like nails on the floor, right?

21 THE DEFENDANT: Objection, Your
22 Honor; irrelevant.

23 THE COURT: Sustained.

24 Q (By Mr. Reiss) Trespassers aren't welcome on
25 construction sites; isn't that true?

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1 A Yes.

2 Q Let's talk about you a little bit.

3 You're wearing a tullus.

4 A Yes.

5 Q A tullus is an important ritual to the Jewish
6 faith, is it not?

7 A Yes.

8 Q It's typically given to young men and young
9 women who have had their Bar or Bat Mitzvah, isn't that
10 true?

11 A Yes.

12 Q At the age of 13?

13 A In that tradition, yes.

14 Q You're not Jewish, are you, sir?

15 A Oh, yes, I am.

16 Q You're Jewish?

17 A Absolutely.

18 Q And if you're Jewish, then, when is the shofar
19 typically blown?

20 A Well, in that tradition - -

21 THE DEFENDANT: Objection;
22 irrelevant.

23 THE COURT: Sustained.

24 Q (By Mr. Reiss) Back to the questions: When do
25 you personally blow the shofar?

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1 THE DEFENDANT: Objection;
2 irrelevant.

3 THE COURT: I'll let him go into it, sir,
4 because there was a demonstration of the shofar and this
5 talk about when the shofar is blown.

6 Q (By Mr. Reiss) When do you blow it?

7 A Oh, all the time. I get called all over the city to
8 churches and events like at a funeral. I haven't done any
9 weddings yet, but a lot of the guys have. And in our
10 tradition it's a joyful sound that people are discovering all
11 over the world: people picking up shofars and sounding
12 them just because of the sound. It's a phenomenon that's
13 out of this world.

14 Q That's why you blew it outside the courthouse
15 yesterday morning, isn't that right?

16 A And all the other times I've blown it outside the
17 courthouse, yes, sir.

18 Q Back to yes and no, okay?

19 You've attended vigils at Planned Parenthood
20 on Fannin before, haven't you?

21 A Vigils?

22 Q How many times have you been out to the
23 Planned Parenthood on Fannin?

24 MR. STORTS: Mr. Allen objects.

25 THE DEFENDANT: And I do, too.

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1 THE COURT: Sustained.

2 MR. REISS: I can't ask him how many
3 times he's been to the Fannin location?

4 THE COURT: No, sir.

5 MR. REISS: But it goes to his mens
6 rea about what he knew about demonstrations.

7 THE COURT: I'll sustain the objection.

8 Q (By Mr. Reiss) You're no stranger to Planned
9 Parenthood facilities, are you?

10 MR. STORTS: Objection; asked and
11 answered and objected to and sustained.

12 THE COURT: Overruled.

13 Q (By Mr. Reiss) You are no stranger to the
14 Planned Parenthood facility, are you, sir?

15 A I'm a newbie. It's a brand-new thing I've
16 become involved in lately because of this new facility.
17 That's the only thing that drew me into it; but I probably
18 should have been before, but, no, I am new to the
19 movement itself.

20 Q Is it your testimony that you were never at the
21 Planned Parenthood on Fannin?

22 A We've got a YouTube video.

23 Q We sure do, so that was you in front of that
24 building on Fannin, wasn't it?

25 A Yes.

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1 Q So you had been to the Planned Parenthood
2 facility on Fannin before, hadn't you?

3 THE DEFENDANT: Objection, Your
4 Honor. That's an accomplished fact. Is it relevant?

5 THE COURT: How is that relevant?

6 MR. REISS: It goes to his mens rea:
7 that he knew how to behave at a demonstration, Your
8 Honor.

9 THE COURT: Is the issue of
10 demonstration or - -

11 MR. REISS: The issue is crossing the
12 line, and he never crossed the line at the Planned
13 Parenthood on Fannin.

14 THE COURT: You may go ahead and
15 get into that.

16 Q (By Mr. Reiss) Did you ever cross the line at
17 the Planned Parenthood facility on Fannin?

18 A To be honest, I don't know what "the line" is.

19 Q Have you ever trespassed there?

20 A I don't know what the line is there.

21 Q Did you ever go to the Planned Parenthood on
22 Fannin and blow the shofar?

23 A Just outside the fence.

24 Q But you never physically went inside that
25 fence?

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1 A Correct.

2 MR. REISS: May I approach the
3 witness, please?

4 THE COURT: Yes, sir.

5 Q (By Mr. Reiss) I'm showing what you've
6 introduced as Defendant's Exhibit No. 3.

7 Can I please ask you to read aloud the question
8 that - - right there. What is that question?

9 THE DEFENDANT: Your Honor,
10 objection; relevancy.

11 THE COURT: Overruled.

12 Q (By Mr. Reiss) Can I ask you to please read
13 aloud that question right there?

14 A "Why do you need a new building?"

15 Q Can I please ask you, then, to read Number 3 in
16 its entirety?

17 A "This is a Planned Parenthood document from
18 the Planned Parenthood website."

19 Q It is, indeed, and it's also an exhibit that I
20 believe you introduced into evidence. Can I please ask
21 you - -

22 A I want to make sure I didn't write it. This is
23 Planned Parenthood writing. It needs to be taken in
24 context.

25 Q It's also your exhibit, isn't it?

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1 A Yes, sir.

2 Q Can you please read aloud - -

3 A "The other reasons are" - -

4 Q Just Number 3.

5 A "3., Security: We'll have a secure parking area
6 for our clients, volunteers, and staff."

7 Q Continue, please.

8 A "This will greatly ease clients' ability to enter
9 our facility without harassment from protesters."

10 Q The day that this occurred was March 18th,
11 2010, isn't that correct?

12 A Yes.

13 Q It was at the construction site over on the Gulf
14 Freeway, right?

15 A Yes.

16 Q That's located in Harris County, Texas, isn't it?

17 A Yes.

18 Q It was an active construction site at that time,
19 wasn't it?

20 A Yes.

21 Q And the security officer was Lisbonne Michel?

22 A Yes.

23 Q You didn't have a right to go into that building
24 that day, did you, sir?

25 A (No response.)

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1 Q That's a yes or no.

2 A Yes and no.

3 Q Did you have a legal right to go into that
4 building that day?

5 MR. STORTS: Objection, Your Honor.
6 There's not a predicate that's been laid with this particular
7 witness to establish whether he's capable of a statement
8 of what's legal and what's not legal.

9 THE COURT: Invades the province of
10 the Court and the jury; sustained. The jury will make that
11 determination.

12 Rephrase your question.

13 MR. REISS: Thank you, Your Honor.

14 Q (By Mr. Reiss) In your capacity as a
15 professional engineer, would you feel free to just walk up
16 to any construction site and go on the property and blow
17 the shofar?

18 MR. STORTS: Objection; calls for
19 speculation, Judge.

20 THE COURT: Sustained.

21 Q (By Mr. Reiss) Are you aware of other
22 hospitals in Harris County under construction?

23 MR. STORTS: Objection, relevancy.

24 THE COURT: Sustained.

25 Q (By Mr. Reiss) At the Planned Parenthood

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1 facility that you went to that day, there was fencing
2 around the facility, wasn't there?

3 A Yes.

4 Q And you walked around that facility, didn't you?

5 A Yes.

6 Q You walked around - - in fact, I think you
7 testified that you walked around the four corners of it,
8 didn't you?

9 A Yes.

10 Q You made mention in your direct testimony
11 about the Battle of Jericho, did you not?

12 A Yes.

13 Q In the Book of Joshua, didn't the troops encircle
14 around the place for six days without the shofar being
15 blown?

16 A That's a little bit off.

17 Q How many days was it?

18 A They marched six days, blowing the shofar. It
19 was the seventh day that the people shouted and the
20 shofar sounded.

21 Q But the shofar helped break down the walls of
22 Jericho, didn't it?

23 A In that case it was the physical walls, yes.

24 Q The physical walls came a-tumbling down - -
25 didn't they - - as the song says?

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1 A That's what the Good Book says.

2 Q You wanted those walls to come down?

3 A Oh, no, not the physical walls, no, sir. Those
4 walls are going to be used for something shortly. We
5 don't want to damage those walls, no, sir.

6 Q You just don't want stuff to go on inside it?

7 A I want lots of stuff to go on inside it, yes, sir.

8 Q I think you'd agree with me that a security
9 officer has a greater right to possession of a construction
10 site than another person would?

11 A Yes.

12 Q Lisbonne Michel is the security officer, isn't
13 she?

14 A That's what I've been told, yes.

15 Q You have no reason to disbelieve her testimony,
16 do you?

17 A (No response.)

18 Q She said she was a good person.

19 A Well, at the time I had no reason to know she
20 was a security guard. She was hollering at me, and I - -

21 Q She was hollering at you?

22 A Yes.

23 Q In fact, people told you not to go on the
24 property; isn't that - -

25 A Yes.

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1 Q In fact, you, on the way over, said to yourself, if
2 I recall your testimony correctly, properly - - you said to
3 yourself, No, no, no? Didn't you say that?

4 A During the drive it struck me whether to go in
5 or not.

6 Q And you thought to yourself no, initially, right?

7 A I thought it was probably - - that's probably
8 just me thinking, yeah.

9 Q So you probably thought to yourself on the way
10 over, No, I shouldn't be doing that? That's a yes or no.

11 MR. STORTS: Object; that assumes
12 facts not in evidence.

13 THE COURT: Overruled.

14 MR. REISS: Your Honor, it's his
15 testimony.

16 THE COURT: I've ruled, gentlemen,
17 but thank you so much for - -

18 Please proceed.

19 THE DEFENDANT: Would you please
20 repeat the question.

21 Q (By Mr. Reiss) You said to yourself, No, no,
22 no?

23 When you went onto the site, you did what
24 needed to be done?

25 A Well - -

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1 Q Isn't that what you told the police officer? You
2 did what needed to be done?

3 A Yes; that's what's in Officer Peters' tape, yes.

4 Q Just to clarify, this case isn't about abortion,
5 is it?

6 THE DEFENDANT: Objection, Your
7 Honor. I think the District Attorney has asserted that it's
8 not. I've not raised the issue. I believe it probably is that
9 if I had gone on any other construction site in the city, we
10 wouldn't have every DA in the vicinity in here; but this is a
11 unique experience, and I think it was a unique incident
12 and it is a unique issue behind it: that - - but I've not
13 raised that and I don't intend to raise it and I told the jury
14 pool it doesn't matter which side of the issue we're on.
15 That's not why I didn't - - I wasn't attacking one - - any - -
16 anyone. I simply was - - was praising - - you know that
17 this facility is going to be a place of love and life and light.

18 MR. REISS: I guess objection, Your
19 Honor; narrative.

20 THE COURT: Sustained.

21 MR. REISS: I'd like to think the DAs
22 are here because of my good humor.

23 Q (By Mr. Reiss) This case is about a criminal
24 trespass, isn't it, sir?

25 A Class B misdemeanor trespass.

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1 Q That's what it's about, right?

2 A Yes.

3 Q That's the issue before the jury, isn't it?

4 A Yes.

5 Q On this day in question, you went into that
6 Planned Parenthood facility, didn't you?

7 A I don't know whose facility it was.

8 Q Was it Prevention or was it Planned Parenthood
9 Prevention or Prevention Planning? Was it a federation?

10 A We don't know it was. Still, we don't know.
11 The evidence of who it is - - I'm sorry; excuse me.

12 MR. REISS: Objection.

13 THE COURT: Sustained.

14 THE DEFENDANT: I apologize.

15 Q (By Mr. Reiss) You went into a construction
16 site, didn't you?

17 A Yes, sir.

18 Q You didn't have permission to go there, did
19 you?

20 A No specific direction to go, no.

21 MR. REISS: I pass the witness.

22 THE COURT: Do you have any further
23 questions for yourself or would you like to - -

24 THE DEFENDANT: I would like to have
25 Mr. Storts.

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1 (Discussion off the record between
2 Defendant and counsel.)

3 THE DEFENDANT: Your Honor, may I
4 redirect myself to address some technical issues of
5 previous testimony?

6 THE COURT: That's fine.

7 REDIRECT EXAMINATION

8 BY THE DEFENDANT:

9 Q That day, in the course of construction project,
10 you get kind of complete and then you clean up. You clean
11 up and demobilization. That's kind of where they were at.
12 And that day they had cleaned up around the fence; and
13 by the prosecutor's evidence, you can see there were no
14 signs around that - - around that building. I had been
15 under the understanding - - I wasn't allowed to enter; but
16 there's something, an email, that declared - -

17 MR. REISS: I'm going to object.

18 THE DEFENDANT: I'm sorry. I'm
19 sorry. I didn't understand.

20 THE COURT: What's your objection?

21 MR. REISS: There was a reference to
22 a document not in evidence.

23 THE COURT: Please don't refer to
24 anything that's not in evidence.

25 THE DEFENDANT: Thank you. Thank

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1 you, Your Honor.

2 My understanding on that day, March
3 18th, was that Planned Parenthood was in deep trouble
4 and had lost their funding and - -

5 MR. REISS: Objection. This is, I
6 believe, going to the substance of the document not in
7 evidence.

8 MR. STORTS: Judge?

9 THE COURT: What?

10 MR. STORTS: To respond, that's a
11 statement of his beliefs at that time.

12 THE COURT: I'm going to overrule the
13 objection.

14 Go ahead, sir.

15 Q (By Mr. Allen) We've had a lot of people
16 declaring that there's going to be life and birthing going on
17 in that place. And in our faith system we - - we declare
18 things and believe them. Maybe they don't happen. I pray
19 for people to get better. I pray for my mother to get better,
20 and it doesn't always work; or we pray, believing; so that
21 day, at that moment, it was my belief that that property,
22 the ownership was not where it's being contended,
23 wherever that is, whoever says owns it; I didn't know
24 that.

25 When Mr. Villareal hollered at me, I didn't know

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1 who he was and it wasn't exactly the way he put it; he
2 just hollered at me. And I said, "Well, God bless you,
3 whoever you are," and I continued on around. And the
4 ladies that were praying directing me not to go in - - they
5 weren't part of Planned Parenthood; they were just - - in
6 my estimation, they were - - they were a little reticent.
7 Out of their love for me, their concern for me, they - - they
8 thought it best not to go in; but they weren't, you know - -
9 so - - so what - - but what they said? Not go in? So far no
10 one says - - Ms. - - Michel, Ms. Michel, that day, burst out
11 of a trailer. I believe she had a jacket on. I didn't see any
12 T-shirt that said "SECURITY" and I didn't see any signs.

13 And that sign, for instance, in your picture - -
14 that sign was put up after I got there. I don't know why
15 y'all put that into evidence with a sign that was put up
16 after the event. The only sign that was there that was off
17 to this side - - and I walk by it this way and the gates were
18 open and the door was open, and so there was no
19 authority telling me not to go. There was no authority of
20 ownership. There was no signage, and I believed this
21 facility was going to be something different. And it
22 needed some love and it needed some sound in there. And
23 I said, "Okay, here I am and here's this horn," and the
24 horn was sounded in there. It was a warning before the
25 sounding to make sure I didn't see anybody to lift either - -

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1 I'm sorry; but - - I don't think there's 20 feet - - I think it's
2 a one-story building. It's only a 10-foot ceiling in there.

3 But, anyway, I - - I said, "Gentlemen" - - and I
4 said, "I don't want to alarm you. We're going to sound
5 this horn." So they all stood. They all stopped what they
6 were doing and they stood there, and I sounded the horn
7 gently.

8 I said, "Thank you, gentlemen; I know you're
9 earning a living here, and just know that God loves you.
10 Each one of you is precious."

11 And then I left; and as you saw in the video, I
12 waved good-bye to the ladies and said, "God bless you."

13 Now, technically, I guess you can argue that
14 that's trespass, misdemeanor trespass; but under the
15 circumstances of that day, at that moment, naw, no, I
16 don't think it was.

17 THE DEFENDANT: Excuse me, Your
18 Honor.

19 (Discussion off the record between
20 Defendant and counsel.)

21 Q (By Mr. Allen) The evidence that was entered,
22 the YouTube video, really showed my message, and that
23 was the only message I ever carried over there.

24 Ms. Lindsey had lots of footage of me. And
25 every time I was telling her how much God loves her, I

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1 was telling her how much of a precious of a child she is.
2 She's got some hurt. She's got some hurt and she needs
3 some healing, and I didn't preach to her like that but I just
4 told her she was loved.

5 Now, that footage didn't get put on YouTube;
6 but okay, so you saw my message; you heard my
7 message. You are loved. Oh, I'm sorry; the message was
8 let love - - let love be, let love live and walk in the light of
9 the love.

10 Now, I guess that's a pretty grievous thing to
11 say in this day and age, but that's what I say, and people
12 like to hear it and people come to hear it and a lot of
13 people were encouraged.

14 That was the message of that day. That was in
15 February and that was exactly the message of the day on
16 March 18th.

17 And in closing, I'll just - - I'll just say that,
18 again, to reiterate, if you want to look at things
19 technically, that on March the 18th, there was nothing in
20 my mind that told me I should not go into that building
21 through those doors, through those open gates, and sound
22 the shofar; so, anyway, that - - God bless you all and God
23 bless this Court.

24 And that's all I have for the moment.

25 THE COURT: Thank you, sir.

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1 Anything further?
2 MR. REISS: No, Your Honor.
3 THE COURT: Thank you, sir.
4 Would you please have a seat with
5 your attorney.
6 THE DEFENDANT: Yes, Your Honor.
7 THE COURT: Yes.
8 Call your next witness, sir.
9 THE DEFENDANT: The Defense rests,
10 Your Honor.
11 THE COURT: Both sides rest and
12 close?
13 MR. REISS: Yes, Your Honor.
14 THE COURT: Thank you, ladies and
15 gentlemen. We're going to excuse you for a moment and
16 then we'll have you back in the courtroom shortly.
17 (Jury out:)
18 THE COURT: We're back on the
19 record.
20 I'll think of the motion of the Defendant
21 while we've got the jury out.
22 I've presented both sides a copy of the
23 mistake-of-fact charge.
24 What does the evidence show that
25 Lisbonne Michel said to - -

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1 MS. MATTHEWS: Judge, she testified
2 that she went up to the Defendant and told him, "Stop!
3 You need to leave; you're trespassing on private property.
4 You need to leave." That was her testimony.

5 MR. STORTS: Judge, we'd ask to
6 have that read back because I don't recall the testimony
7 being the same.

8 THE COURT: I don't think Walter can
9 read back testimony written by another reporter.

10 We don't have a readback ability right
11 now. Our court reporter, for the record, had a family
12 emergency and needed to leave. She does not have her
13 computer notes here. Walter is a paper writer, like Phyllis.
14 He could read from his notes physically, but he didn't take
15 that portion of the testimony.

16 So the reason I was asking was so that
17 I could fashion the mistake of fact that I think has been
18 established.

19 MR. REISS: State has no problem
20 with the mistake-of-fact charge, Your Honor.

21 THE COURT: In my language Lisbonne
22 Michel had the authority to deny entrance into the facility.
23 It either raises an issue of fact as to whether or not her
24 "SECURITY" exposed - - the video will speak for itself and
25 will show whether or not the T-shirt was exposed.

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1 Another witness testified that it was by
2 way of the T-shirt that this security personnel identified,
3 and so that's an issue that the jury will have to figure out:
4 as to whether or not it was - -

5 MR. STORTS: For clarification on the
6 instruction, Your Honor, we would ask that that language
7 be included: that she effectively articulated or expressed
8 her thought to exclude him.

9 THE COURT: The way it's going to be
10 written, it is, "Now, therefore, if you find and believe from
11 the evidence beyond a reasonable doubt that the
12 Defendant committed the acts as alleged in the
13 information and you further find, or have a reasonable
14 doubt thereof, that the Defendant, through mistake,
15 formed a reasonable belief about a matter of fact, to wit:
16 that Lisbonne Michel did not have the authority to deny
17 him entrance into the facility, which mistake and belief
18 negated the kind of culpability required for the commission
19 of the offense, you will acquit the Defendant of the offense
20 charged in the information and say, by your verdict, not
21 guilty."

22 MR. REISS: Your Honor, if I may, I'm
23 not really sure that that's what he just testified to. I think
24 that what he just testified to was that they had cleaned
25 out a construction site and that, therefore, he made entry

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1 and that the gates were open. I don't think mistake of fact
2 really had anything to do with Lisbonne Michel. At least,
3 that was his testimony. I think his testimony was he kind
4 of thought, from what was going on at the construction
5 site - -

6 MR. STORTS: If we can add, Judge - -

7 MS. MATTHEWS: I was going to add
8 to that that he also said he formed - - he saw a man, he
9 never knew what authority he had. He never said anything
10 about the security guard.

11 MR. STORTS: In addition to
12 everything being cleaned up, which led to his belief, he
13 articulated that Ms. Michel had a jacket on and that he
14 didn't know what her authority was or who she was; that
15 she came out of a trailer, and he didn't know what she
16 was all about.

17 MR. REISS: I guess that it's really that
18 he formed a reasonable belief about a matter of fact, to
19 wit: that Lisbonne Michel did not have authority to exclude
20 him from the property; that - - I forget his first name, but
21 that Mr. Villareal was not associated with the construction
22 site and - - and that the - -

23 THE COURT: Well, Lisbonne Michel is
24 the only relevant player because hers is the name listed in
25 the Complaint.

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1 MS. MATTHEWS: Well, Judge, in the
2 Complaint that notice was given that he was told to leave
3 by her.

4 THE COURT: So Villareal doesn't
5 really matter; it goes to Lisbonne Michel?

6 MR. STORTS: We agree, Judge, if you
7 wanted to add that he believed on that day, at that time,
8 that the property was open, consistent with the State's
9 desires that we add that, that that absolutely has been a
10 part of Mr. Allen's testimony of his mistake in fact.

11 THE COURT: I'm just trying to be as
12 generous as I possibly can and I think I've done that with
13 respect to this issue. I think, especially in a case where a
14 person is representing himself, it is the Court's obligation
15 to ensure that fundamental justice is done. I think that
16 that's going to occur with this mistake-of-fact charge. I
17 don't want to go too far one way or the other. I think this
18 is just right.

19 With respect to the other issue that the
20 Court raised, which was the issue of public versus private
21 property, the Court has listened to both Mr. Allen and
22 counsel for the State outside of the presence of the jury - -
23 and off the record - - so as to clarify what it is that the law
24 says and what it is that should be a determination in this
25 case, where the State has cited a case, 135S.W.3d., 330,

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1 which is a case that deals with trespass on university
2 grounds, and that if there's a clear statement that a person
3 cannot enter into public property - - public property can be
4 trespassed upon. We don't reach that issue here because
5 there's nothing to indicate that that Planned Parenthood
6 facility is a public place in the sense that it is a place
7 within, like, a public/part-public domain. It's not that. It's
8 a private facility. That's the Court's finding, based on the
9 evidence that's in the record to date. I don't believe that
10 the Defendant's due-process rights were in any way
11 infringed on, in that this is a private facility. I know that
12 Mr. Storts produced some tax records that show - - for
13 purposes of the record, you can include those, Mr. Storts
14 - - that Planned Parenthood is publicly funded, with the
15 Court's understanding that these are donations from the
16 public; and that while once the facility is up and running,
17 there may be some Government funds that are also
18 contributed, they are not necessarily what run this facility.
19 They just assist in the conduct of whatever procedures
20 take place in this place.

21 So, with that, we'll get the mistake-of-
22 fact charge typed up.

23 Any other requests regarding the
24 charge?

25 (Defendant's Exhibit 6 marked for

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1 identification.)

2 MR. STORTS: I've marked the 2008
3 tax return for Planned Parenthood.

4 THE COURT: Any other additional
5 requests for the charge?

6 MS. MATTHEWS: No.

7 THE COURT: Anything else that you
8 guys want to put on the record or in the record before we
9 put this charge together finally and bring the jury back?

10 Put all the case law in the record.

11 MS. MATTHEWS: Judge, the State is
12 tendering to the Court Spingola v. State, S-p-i-n-g-o-l-a,
13 135S.W.3d., 330; Griffin v. State, G-r-i-f-f-i-n. It's a Texas
14 - - it's a record Opinion at Page 47; Campbell v. State,
15 C-a-m-p-b-e-l-l, 626S.W.3rd., 91; Reed v. State, R-e-e-d,
16 762S.W.2d., 640; and Otwell v. State, O-t-w-e-l-l,
17 850S.W.2d., 815.

18 THE COURT: How many minutes per
19 side do y'all feel you need to argue your respective cases?

20 MR. REISS: Ten.

21 THE COURT: Ten?

22 MR. STORTS: Mr. Allen has asserted
23 that he would need about five or ten minutes.

24 MR. REISS: That's a midterm point.

25 THE COURT: Sure.

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1 I'll give you as much time as you need.
2 If you say "ten minutes," I'm going to
3 keep you at ten.

4 MR. REISS: That's fine.

5 THE COURT: Okay.

6 MR. REISS: Judge, Ms. Matthews and
7 I have spoken. Why don't we call it 12 minutes? I'm not
8 saying anything about either side's ability to keep it to ten
9 minutes; we'll work on that. I'll say sure, no problem.

10 Brevity is the soul of wit.

11 THE COURT: I've added the defense of
12 - - I'm inserting the mistake-of-fact charge here and I'll
13 work it in as I need in a logical way.

14 (Pause.)

15 THE COURT: So we've agreed 15
16 minutes per side?

17 MR. REISS: Yes, sir, that's correct,
18 Judge.

19 MR. STORTS: That's correct, Judge.

20 THE COURT: There are no objections
21 to the charge as it stands?

22 MR. STORTS: There are none. As you
23 described it to us verbally, that's fine.

24 MR. REISS: That's fine.

25 THE COURT: I will let the record

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1 reflect I was doing it myself, so I'm happy that I have just
2 one, the good charge.

3 Okay, let's bring in the jury, and we
4 will argue the case.

5 Both sides have rested and closed in
6 front of the jury.

7 Walter, you don't need to take the
8 charge.

9 (Jury in:)

10 THE COURT: Thank you. Everyone
11 please be seated.

12 Ladies and gentlemen, both sides
13 having rested and closed, it is now the obligation of the
14 Court to read to you the charge of the Court. This is the
15 law that will govern your deliberations in this case.

16 Once I finish reading the charge, the
17 lawyers have requested, and I've granted, 15 minutes per
18 side for them to argue their respective cases. They may
19 give you some of that time back but they have the 15
20 minutes, if they need to use it.

21 (Court's charge read.)

22 THE COURT: The State of Texas gets
23 to argue their case first.

24 Once again, ladies and gentlemen,
25 closing argument is not evidence; it is merely a summation

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1 of what they believe the evidence has shown you.

2 The State has the right to open but
3 they may, however, waive that.

4 Ms. Matthews, would you like a
5 warning?

6 MS. MATTHEWS: Please, at five
7 minutes.

8 Ladies and gentlemen, I told you
9 yesterday, at the very beginning of this case, this was
10 about a criminal trespass.

11 You've heard a lot of information over
12 the last day and a half; but at the end of the day, it's
13 exactly what I told you it was: a criminal trespass.

14 You're going to retire here in just a
15 little while back to the jury room. You're going to elect a
16 foreperson. This is the instrument that's going to guide
17 you. What this is is the jury charge. It's the law. This is
18 the law. All of the elements that we talked about in voir
19 dire, that we talked about in opening and that the Judge
20 just read to you - - this is the case.

21 I took an oath to uphold the law and to
22 seek justice. When y'all got in that jury box, you raised a
23 hand and you took an oath and you told us in voir dire that
24 you were going to do the very same thing; that this wasn't
25 about a personal issue; this wasn't about anything other

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1 than a criminal trespass; and you were going to follow the
2 law.

3 I want to talk to you a little bit about
4 what the Judge read. This is something called mistake of
5 fact.

6 Basically, what that means is that the
7 Defendant wants you to believe that he was mistaken; that
8 he didn't know if he was supposed to go in there that day.
9 He didn't realize that.

10 Now, come on. We know he told you
11 he's a civil engineer. He told you he's been to over a
12 hundred construction sites. He's told you he knows
13 they're not open to the public. He told you that there are
14 safety risks. He told you that he was driving up and knew
15 he shouldn't go in.

16 The standard for this is a reasonable
17 belief. You're going to read that in the law. That means:
18 What would another person, an ordinary, prudent person,
19 in the same situation, think? So a person that's an
20 ordinary, prudent, reasonable person in the same
21 situation. That would be any of those other protesters
22 that were outside filming, and you heard what they
23 thought. They said, "Don't go there," because they know
24 and he knows.

25 Ladies and gentlemen, make no

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1 mistake: This is not about anybody telling you that he is
2 not entitled to his beliefs.' I have personal beliefs that I
3 have to follow the law, and so does Mr. Allen.

4 Mr. Allen wants you to feel a bit of
5 sympathy for him; and, you know, it's understandable if
6 you do, but that doesn't make it okay for him to break the
7 law. That's not about the issues that are surrounding the
8 debate, the tension, as he called it. It's not about if Mr.
9 Allen is a good, nice person. It's not about if he's
10 sympathetic; not about where you fall on any of the issues
11 that have been brought up in this case.

12 It's about the law applied to all of us.
13 The minute it doesn't, the minute it's okay for us, for the
14 jury, to say, "He seems like a nice guy; he only means love
15 and good" - - the minute we do that, we've all crossed
16 that line with Mr. Allen.

17 You need to think about the people that
18 testified, the workers that were in that facility that day
19 that heard that horn and how scared they were.

20 Mr. Allen thinks he was just there for
21 love, and maybe he was; but it's not okay to go onto
22 someone's private property when they have told you not to
23 and it's not okay to go in and blow your shofar. You heard
24 it; it's loud. If you don't know what that sound is and you
25 heard about threats and you've been warned and you're a

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1 23-year-old, up high on a scaffolding, doing your job,
2 that's not fair.

3 If you tell Mr. Allen, "Well, you're a
4 good guy, so we're going to let you walk away," then
5 you've just joined him in crossing that line.

6 THE COURT: Mr. Allen, you have the
7 privilege of arguing your case now, if you wish.

8 The time is 3:15.

9 THE DEFENDANT: Thank you, Your
10 Honor. Whew. Thank you, Your Honor.

11 We said when you were being selected
12 that you probably already know what you got yourself
13 into; and this is certainly, I think, an unusual - - an
14 unusual case.

15 I didn't convert anybody to
16 Presbyterianism, did I? Good.

17 Let's straighten that out, in case I had.
18 I've been advised to talk the technical issues. Despite all
19 the efforts, it appears pretty clear that the State - - first of
20 all, I appreciate these guys for putting up with us people
21 at their worst all day long in this court building and just
22 every day; get beat up, so I appreciate the professionalism
23 and enthusiasm of the Prosecution, of the DA, all these
24 young attorneys. I really appreciate you guys keeping our
25 city safe.

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1 But in this case I have to say that the
2 burden of proof - - which is the State's, I believe I heard - -
3 has not been met. They have not proved beyond a
4 reasonable doubt - - there are all kinds of inconsistencies
5 and problems in the case and there are enough
6 technically - - I guess I need to go through the technical
7 part of this first and then I'm going to get into - - first of
8 all, the pathway into the building was wide open. The
9 signage was all down. I don't know why they tried to put
10 that sign up late there, but the signage issue - - there was
11 nothing that day. Maybe something had changed that
12 when the gate was open and the doors were open. That
13 was a condition that existed in the lunch hour on March
14 the 18th of 2010. There was no uniform.

15 There was a video shot by Ms.
16 Christine Melcher, I think, that was shown of the scene of
17 the crime of me walking into the building and walking, not
18 remaining, but walking back out again.

19 The allegations or the assertions of - - I
20 believe it was Ms. Lindsey - - was that the way authority
21 was shown was by a T-shirt that has "SECURITY" on it.

22 If you'll have a moment, if it's
23 necessary, go back and look at that video. I believe - - I
24 don't know if she had a dark jacket on or what, but there
25 was no T-shirt that had "SECURITY" on it. Y'all have that

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1 evidence. They ran out and got that at the last minute, by
2 subpoena - - so it must be an important situation. No
3 uniform. There was never anyone that said, "I am a
4 superintendent. I am in charge of this property, and you
5 are not to be here." Lisbonne was using some profanity
6 but never identified who she was or what her position of
7 authority was. She was kind of let go.

8 The whole time of walking in and
9 walking out - - I don't know; I guess if you all time it, I
10 believe it was shorter than everyone said it was. Very,
11 very brief, very brief. There was no remaining on the
12 property.

13 Okay, now, that said, I would prefer
14 that the facts of the case to be looked at would involve the
15 legitimately of why I entered and sounded the horn. What
16 was the purpose? What was the legitimate purpose?

17 The purpose was given on the YouTube
18 video: to deliver a message. That was the purpose.

19 I would submit that it was a legitimate
20 purpose. It was a legitimate message that, oh, so badly
21 needed to be heard. Again, it was a message of love.
22 Uniquely qualified - - several years ago, I cashed out a
23 retirement account and bought a truck and a tent. We've
24 been using it to minister after Hurricane Ike. We went and
25 walked around with the Red Cross; worked in Galveston,

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1 down to baptizing people down there.

2 But the message on the side of the
3 truck is, "You are loved." And so my experience in being a
4 minister - - that I was uniquely qualified to go in and
5 minister in a place that sorely needs ministering.

6 The question of ownership: They have
7 not shown yet - - there was a contract that Mr. Villareal
8 mentioned. We still don't have that contract. We still
9 don't know who the owner is. I mean we generally know
10 what entity - - it is an ethereal entity. It's a federation in
11 this country; comes under a worldwide federation. It's
12 hard to know who and what - - these are public donations;
13 and they get - - they don't know what they're doing, but
14 it's a very unusual situation.

15 Back to the tension: There is a tension
16 in this courtroom. There was whenever our Creator
17 granted rights that all men are created equal and that
18 we're created with inalienable rights to life and liberty and
19 pursuit of happiness. We are given those rights.

20 We'll use slavery as a gross example.
21 According to court rulings and laws, it was enshrined until
22 enough tension came about and someone said, "This isn't
23 right." I don't know; we need to go back and reinstitute
24 those laws.

25 After that, something else took over.

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1 It's called discrimination. You've got codified into law and
2 court rulings about it and this same group of people
3 continued to be treated differently and suppressed in their
4 rights to life, liberty, and happiness. This was great.
5 There were lawyers that codified it and told us it was
6 okay.

7 Whenever you have a tension between
8 what the Creator says it is and you take away the rights of
9 a group of people and say they are less, then you are going
10 to have tension.

11 You can look at the death camps in
12 Nazi Germany, whatever you want to look at.

13 When one group is subjected, you
14 don't have any rights, because others say, "We're bigger
15 and stronger than you are." You have tension. So there's
16 tension today.

17 Again, I'm not condemning one side or
18 the other. Both sides are guilty of violence and extreme
19 statements and everything, and that's not the issue here.

20 But in the civil rights examples that got
21 to a point of tension, that people right here in this city,
22 some young men and women said this isn't right, and
23 we're going to go ahead and sit at this lunch counter. And
24 they did it right in Houston, Texas, and sat down at that
25 lunch counter and got arrested and fingerprinted and

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1 photographed and booked and processed; and the
2 Prosecutors did their job, you know, and prosecuted them,
3 but it didn't last long. It couldn't.

4 Today, there's not anybody I know that
5 says we need to go back and do that again. That's over
6 with. We've come a long way. We've got a ways to go,
7 because we're human.

8 But, anyway, so the tension is here. I
9 didn't put it here. It's not my fault. The crime here is not
10 trespass for 45 seconds. The crime here is that this horn
11 was sounded. That's the real crime. That's the real
12 interest. That's why I can't be found not guilty (sic).
13 There's going to be too much reservations if you don't find
14 me guilty. Again, I didn't do that, but this sound needs to
15 be heard. I've got the shofar in the courtroom. Guys just
16 came; I didn't invite them; they just came because this is
17 important to them. I'm just so happy that the sound is
18 here. I'm so happy that my joy in sharing the good news
19 and my joy in sharing what my faith is now - - I have a
20 new way of putting it out there, and it was a joyful thing.
21 You just don't know how joyful it is.

22 Now, finally, I just want to thank - - I
23 want to thank the city of Houston. This is a wonderful
24 city. This is a special city. I've lived here for almost ten
25 years now. I'm not going anywhere because every tribe

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1 and tongue is represented here. I love this city; and
2 whenever it was built, I want it built forever. Let us think
3 that we built it forever, so I'm here to help build this city;
4 and I've been doing my job, paying my taxes. And I don't
5 know who's trespassing here. I suspect somebody else is
6 trespassing here, doing something that the city of Houston
7 isn't benefitted by. There's a degree of guilt.

8 There's a memorial in Chattanooga,
9 Tennessee to the unborn. I'm going to put my - -

10 MR. REISS: At this point I'm going to
11 object as improper argument.

12 THE COURT: Overruled.

13 THE DEFENDANT: That's it, so we're
14 not going to solve that issue today. There's enough
15 technical stuff wrong with this case that you are going to
16 throw it out. You're going to be under a lot of pressure to
17 find me guilty but I believe that there's going to be a
18 not-guilty today and I want to thank you in advance. If
19 it's not your verdict, that's okay, because the guys at the
20 lunch counter - - they didn't always - - so that's okay. I
21 leave it up to you; and you have my endorsement,
22 whichever way you find.

23 But I believe that a not-guilty verdict
24 today will say very loudly - - it will get out, and people are
25 going to hear it. If we have a guilty verdict, it's going to

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1 be, "Man, we got him," whoever it is that's prosecuting
2 these, it's not these folks. There's something bigger than
3 a Class B misdemeanor trespass at discussion today, so a
4 guilty verdict will tell the world that, yeah, they've still got
5 control. They're going to - - and our right to demonstrate,
6 by the way, was hard won. There were a lot of people
7 who served a lot of time in jail to win the right to stand
8 out on the sidewalk and say no.

9 Now, to close, a not-guilty verdict, I
10 believe, says - - just says you can say it technically or you
11 can say it politically or however it gets said: No, we are
12 not afraid. We are not going to compromise. We are not
13 going to sign any kind of a deal. We're going to go out
14 and take our lumps or see the light or whatever it says, so
15 I just want to say God bless the city of Houston and God
16 bless our court system. God bless Judge Fields and Court
17 14 and God bless the Prosecution and all the good work
18 they do. God bless the Defense. God bless everybody in
19 this courtroom. We've all seen something special.

20 I just thank - - I just thank everyone
21 here for being a part of this day and a part of tomorrow.

22 And I rest my case.

23 Thank you.

24 THE COURT: Thank you, Mr. Allen.

25 Mr. Reiss?

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1 MR. REISS: Thank you, Your Honor.

2 I want to go through three things with
3 you: What did you hear? Why are you here? And where
4 do you go from here?

5 What did you hear? You heard a case.
6 Ms. Matthews and put on everything. You told me in voir
7 dire you expect there to be a thorough investigation by the
8 police and the kind of evidence you'd want to hear in a
9 criminal trespass. That's what you told me.

10 You told me you would want to hear
11 from witnesses. We've got it.

12 You would want to hear an audio
13 statement from the Defendant. You got it.

14 Even better, if the statement came with
15 a confession, you got it.

16 Video would be good. You got it.

17 He confessed. He confessed. He even
18 told you on the stand this is not about abortion. This is
19 about criminal trespass. This is what this is about.

20 You told me on voir dire you recognized
21 the distinction - - that there's no distinction between
22 someone's private home where there's a trespass or if it's
23 a corporation; didn't matter. Y'all told me that. You told
24 me that you understood that trespassing in an
25 environment will create tension. People will get upset.

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1 They can worry about themselves, their well-being. We
2 gave you that, true. I gave you a scenario on voir dire.
3 The scenario was that someone really felt in their heart of
4 hearts that this is the most important issue facing our
5 society and our country and please listen to me, and you
6 all said it didn't matter.

7 It involves unborn children. Y'all said it
8 didn't matter. Everything you expected us to bring was
9 brought; we brought you.

10 So why are you here?

11 You're here because the Constitution of
12 the United States gives Mr. Allen the right to a jury. It
13 gives him a right to a trial. He wanted his trial.

14 Now, look, Mr. Allen seems like a very,
15 very nice guy. And in some strange way now, our paths
16 have intersected here. He came down to Houston ten
17 years ago. I came to Houston ten years ago if you exclude
18 my period of time in college. We both came here at some
19 point in time, both planning on staying. We both love the
20 city, both love the community.

21 He came here, these last two days,
22 because, make no mistake, something very special
23 happened to Mr. Allen a couple of years ago. He had a
24 religious awakening. God bless him for it. I am glad that
25 he has found meaning in his life. Not everyone has. He

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1 has. Good for him. I'm happy for him. So is Ms.
2 Matthews. So is the State of Texas. So is the DA's Office.
3 It doesn't matter.

4 But the reason he wanted his trial - -
5 Mr. Allen does not speak with - - he's not crazy. He's
6 smart. He's an educated engineer, who is a professional
7 protester. He knew the rules of engagement. He circled
8 that facility. He was waiting to go in. He knew what he
9 was doing. He knew what he was doing. Even on the
10 drive over - - in his company car, by the way - - he said to
11 himself, No, no, no. He knew it was wrong. He knew it
12 was wrong. He knew he was going to cross that line and
13 he was circling because he was looking for his opportunity
14 to bring those walls to come a-tumblin' down.

15 With all due respect, Mr. Allen, as well
16 - - and it's hard for me on this part, folks. If you couldn't
17 tell Mr. Allen in order to spread his message was mistaken
18 and adopted some of the most important and precious
19 ritualistic elements of the Jewish - - of the Jewish faith,
20 on Rosh Hashanah that it is the cantor's job to blow the
21 shofar. Only the cantor. As a little kid in Hebrew school,
22 we couldn't wait till Rosh Hashanah because we actually
23 got to go see the shofar blown. It is obviously so special
24 that it only comes out once a year. I think he blows it
25 everywhere. Everywhere. Why?

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1 Because this is calling attention to
2 himself, okay? This is his stage. You are his audience. He
3 has his views on reproductive rights. I don't care what
4 they are. Ms. Matthews doesn't care what they are. The
5 District Attorney's Office doesn't care what they are, okay?

6 I asked you on voir dire - - I don't care
7 what they are; everyone has an opinion, okay? It is the
8 proverbial third rail of electoral politics and cocktail
9 conversation everywhere, okay? You don't go there,
10 because everyone has got an opinion; it doesn't matter.
11 And y'all told me that in voir dire: that it didn't matter. A
12 trespass is a trespass.

13 Where do you go from here? Where
14 you go from here is back in the jury room and look at the
15 charge. The law is straightforward. Everything we told
16 me on voir dire you said you understood.

17 Lisbonne Michel had a greater right to
18 possession at that property. She's a security guard.
19 We've got the video of him standing there by the security
20 guard gate, gates all around it. He had to be told, "Don't
21 go in there." He goes in, anyway. You see him telling - -
22 she's a little-bitty thing. You saw her. She couldn't harm
23 a fly. She said something to him that he chose to ignore.
24 He went right in to an active construction site, where he
25 told you, based on his training and experience as a

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1 professional engineer and having been to a hundred
2 construction sites, you just don't.

3 Where you're going now is the jury
4 room. You have the charge. Read through it, okay? It's
5 an important case. It is, okay? It's important to him; it's
6 important to the State of Texas; but just consider this as
7 you go back there, folks. Y'all told me you don't get a free
8 pass based upon your beliefs.

9 I ask you to remember that because
10 here's what a not-guilty message is going to send to him;
11 and he entered it into a Defense exhibit. I think it's No. 3
12 or 4. It's a Q & A by Planned Parenthood. They talked
13 about reproductive rights. They talked about other things,
14 too: the human papillomavirus, Pap smears, HIV. It's only
15 a small part of what they do there. If you give him a
16 not-guilty, you know where he's going right after this?
17 He's going right back there. He's going to blow that
18 shofar again and he's going to go there on Monday and
19 he's going to go there on Tuesday and Wednesday and
20 Thursday and Friday, and people are going to follow him
21 because he got a free pass today.

22 It's a hard case. On the law it's easy.
23 It's easy on the law.

24 In terms of these other attendant
25 issues, it's harder; I'll admit. It's harder. He's a nice guy;

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1 but there's a bigger issue here - - okay - - than whether
2 he's a nice guy or not. It's upholding the law and the
3 private property rights that also exist in the Constitution of
4 the United States alongside the right of freedom of
5 expression and freedom of speech and the right to lawful
6 assembly.

7 Mr. Allen, in his closing, talked about
8 the lunch counter sit-ins here in Houston, okay? I will
9 leave it to the judgment of history as to whether the fight
10 over reproductive rights takes on the level of importance
11 that the civil rights movement did in the 1960s, okay? But
12 just remember this: Dr. King's letters from the Birmingham
13 jail were written from jail. Rightly or wrongly, whether he
14 realized it or not, Mr. Allen chose to engage in civil
15 disobedience; and when you do that, you understand the
16 risks involved. He made a choice. The choice he made
17 was to call attention to himself and his cause was to break
18 the law.

19 THE COURT: You have two minutes.

20 MR. REISS: Thank you, Your Honor.

21 So what I'm asking you today is to take
22 all the time you need. When you do I'm confident you're
23 going to return a verdict of guilty.

24 And I want to thank you all for your
25 time and attention that you have spent over the last two

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1 days here on this unique, special, important case, dealing
2 with the right of a private property owner to protect the
3 property.

4 Thank you all.

5 THE COURT: Thank you, Mr. Reiss.

6 Ladies and gentlemen, please retire to
7 the jury room until you have reached a unanimous verdict.

8 (Jury deliberates; jury out:)

9 THE COURT: We have a verdict, ladies
10 and gentlemen. Whatever your feelings with respect to
11 the verdict, whatever it might be, I would caution you not
12 to engage in any outbursts. While I may not hold you in
13 contempt and put you in jail, I certainly wouldn't be happy
14 about it, so I would ask that you do not do it.

15 Let's bring in the jury.

16 (Jury in:)

17 THE COURT: Madam Foreman, would
18 you pass the jury charge to the deputy, please.

19 Madam Foreman, Mr. Allen, would you
20 stand, please.

21 Will you read the verdict to the
22 Defendant, please, ma'am. Please stand.

23 THE FOREMAN: "We, the jury, find the
24 Defendant guilty."

25 THE COURT: At this time, ladies and

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1 gentlemen, I'm going to poll the jury, meaning that I will
2 ask each and every one of the verdict.

3 I'll start with you, ma'am - -
4 - - and end with you, Madam Foreman.
5 Is this your verdict?

6 A JUROR: Yes.

7 THE COURT: And yours, ma'am?

8 A JUROR: Yes.

9 THE COURT: And yours, ma'am?

10 A JUROR: Yes.

11 THE COURT: And yours?

12 A JUROR: Yes.

13 THE COURT: And yours?

14 A JUROR: Yes.

15 THE COURT: And yours, Madam

16 Foreman?

17 THE FOREMAN: Yes, sir.

18 THE COURT: Thank you, ladies and
19 gentlemen. Your participation is concluded.

20 As I stated before, punishment is
21 Tuesday Court; so with that, if you'll retire to the jury
22 room, we'll give you your phones back with no extra
23 minutes added. We'll get you out of here today. Thank
24 you very much for your jury service.

25 We will address the issue of

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1 punishment as soon as I get back from talking with the
2 jury; but talk, see if you can come up with anything that
3 matches up with what I am thinking.

4 (Pause.)

5 THE COURT: Let's go on the record.
6 The jury having found you guilty, sir,
7 do you have anything further to say on the issue of
8 punishment?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Does the State have
11 anything further to say?

12 MR. REISS: No, Your Honor.

13 THE COURT: There being nothing
14 further to say, it is the order of this Court, then, sir, that
15 you serve 30 days in the Harris County Jail.

16 That will be probated for a period of six
17 months.

18 I have to assess some jail time in order
19 to probate the sentence, so six months' probation, no fine,
20 no court costs. They'll run concurrently. There will be no
21 supervisory fees at all.

22 You will have to get an identification
23 badge. I think that's \$12.50. If it isn't, then I would set
24 the fee at \$12.50.

25 There will be no community service.

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1 There will be no drug or alcohol evaluation, no random
2 urinalyses.

3 I will be your probation officer, sir, so
4 you won't have to go to the probation department; you
5 just come to the court, to me, and we'll talk every now and
6 again.

7 The one condition that I will have is
8 that you remain 15 feet from the entrance of any Planned
9 Parenthood facility.

10 With respect to your right to blow the
11 shofar, you can do that if that's what you choose to do,
12 sir.

13 With respect to your ability to pray
14 quietly or loudly, I say pray on.

15 But in terms of speaking directly with
16 the people from the facility, don't do that during the
17 pendency of this probation.

18 Any other issue I need to address?

19 Well, then, that's it. Thank you, sir.

20 THE DEFENDANT: Thank you, Your
21 Honor.

22 MR. STORTS: Just for housekeeping
23 purposes, we haven't actually turned in an application for
24 probation; we can backtrack and do that, if it please the
25 Court.

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1 THE COURT: You can; I don't know
2 that you necessarily need to do so. I can always give him
3 shock probation at any time, so there we are.

4 I terminate probation early, which I
5 most likely will do in this case.

6 MR. STORTS: Mr. Allen will stay in
7 the court and talk to the probation person.

8 Is there an issue of traveling?

9 THE COURT: He can travel anywhere
10 he wants, since I'm the probation officer. He'll travel
11 anywhere where he can't make a meeting. I'm not going
12 to worry about it.

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Walter N. Johnson, CSR
Deputy Official Court Reporter
County Criminal Court of Law No. 14
Harris County, Texas

THE STATE OF TEXAS:

COUNTY OF HARRIS:

I, WALTER N. JOHNSON, Deputy Official Court Reporter in and for the County Criminal Court No. 14, do hereby certify that the foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing or orally to be included in this volume in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

WITNESS MY OFFICIAL HAND this, the 3rd day of June, 2010.

Walter N. Johnson, CSR

WALTER N. JOHNSON, Texas CSR #551

Certification Expires 12-31-10

Deputy Official Court Reporter

County Criminal Court No. 14

Harris County, Texas

Houston, Texas 77002

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