

1 PLAINTIFF: Mr. Penn

2 WITNESS:

3 COURT:

4 DEFENDANT: Mr. Swan

5

6 WARM UP

7 Q. BY MR. PENN: So now, as you are sitting here in  
8 court four years later, do you remember anyone actually  
9 getting a bloody nose?

10 A. No, sir.

11 Q. And you / don't remember Karen getting a bloody  
12 nose?

13 A. No.

14 Q. Do you remember anyone ever getting hit in the  
15 head by a bottle?

16 A. No.

17 Q. While they were / in the living room, right  
18 before this stabbing, are you 100 percent sure Susan had a  
19 bottle and was swinging it at Linda?

20 MR. SWAN: Objection. / Relevance.

21 THE COURT: Overruled.

22 MR. SWAN: Thank you.

23 THE COURT: You can answer that if you have an answer.

24 THE WITNESS: Can you ask me the question again?

25 Q. BY MR. PENN: Are you certain that you / saw  
26 Karen swinging a bottle?

1 A. Yes.

2 Q. And did you ever tell police officers that?

3 MR. SWAN: Objection. Asked and answered.

4 THE COURT: Overruled.

5 MR. PENN: I will just move on, your / Honor.

6 THE COURT: Next question, please.

7 Q. BY MR. PENN: Now, after the stabbing started did  
8 you see -- sorry. I should clarify first.

9 When you initially observed the stabbing, Susan was /  
10 already on the ground and Linda was on top of her?

11 A. Yes.

12 Q. Did you see what happened directly before that?  
13 Do you know how Susan / got on the ground?

14 A. Because they pushed each other. They were  
15 fighting. She was really trying to stab her. She fell  
16 over.

17 Q. And so just \*/ prior to Linda stabbing her, you  
18 see Susan go from the living room area into the kitchen?

19 A. Yes, sir.

20 Q. And did you see at this / point Susan make any  
21 punching movements toward Linda?

22 A. No, sir. But Linda was attempting to stick up  
23 for herself.

24 MR. PENN: Your Honor, I am going to / ask the latter  
25 part of that be stricken. The answer is nonresponsive.

26 THE COURT: Overruled. That answer remains.

1 Q. BY MR. PENN: So my question is just a yes or no  
2 / at this point. I am asking if you saw Susan do any type  
3 of physical movements toward Linda when she was in the  
4 kitchen.

5 A. No. /

6 Q. And did you see any type of bottle in Susan's  
7 hands at this point as if she is going toward the kitchen  
8 where Linda is? /

9 A. No.

10 Q. Did you see Susan put the bottle down that you  
11 said she had in her hand earlier?

12 A. No, I didn't.

13 Q. Do you know where / the bottle went?

14 A. No.

15 Q. You told detectives you were actually sitting on  
16 the couch during the entire time. Do you remember that?

17 A. Yes.

18 Q. And now / your testimony is a little different  
19 here in court?

20 MR. SWAN: Objection. Argumentative.

21 THE COURT: Overruled.

22 You can answer that.

23 THE WITNESS: I told you I was sitting on the couch,  
24 \*/ but I got up. When I was getting interviewed by the  
25 detectives, I didn't give any specific answers because  
26 they weren't asking good questions. I / had been awake

1 all night. I already told you everything. I did not want  
2 to be interviewed.

3 Q. BY MR. PENN: So when you were speaking with  
4 officers did / you still feel a little high from the  
5 methamphetamine you had smoked earlier?

6 A. Yeah. I was probably not in the right state of  
7 mind.

8 Q. And / do you remember telling officers that Linda  
9 and her friend actually cleaned up the mess and put the  
10 towels away that they had used to / clean up the mess?

11 A. No.

12 Q. Would it refresh your recollection to look at  
13 testimony or a transcript on that?

14 A. Sure.

15 THE COURT: Counsel, is it testimony or / just a prior  
16 statement?

17 MR. PENN: Just a transcript. I apologize.

18 THE COURT: All right.

19 MR. PENN: This is a prior statement.

20 THE COURT: This lawyer is going to ask you to read /  
21 something. Please read it to yourself. When you are  
22 done, let us know, and perhaps he will ask you another  
23 question. Do you understand?

24 THE WITNESS: Okay. /

25 THE COURT: Just take your time to read it through.  
26 You can just look up so we know you are finished reading,

1 okay?

2 THE WITNESS: I am finished now. \*/

3 \*\*END OF WARM UP\*\*

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1 EXAM

2 MR. PENN: Should I mark this as an exhibit?

3 MR. SWAN: I would object to its admission.

4 THE COURT: You're only trying to refresh the  
5 witness's recollection. No need to mark / it.

6 Q. BY MR. PENN: I would like you to review number  
7 14 all the way down into the next page. Just take a  
8 moment to review that and / let me know when you are done.

9 A. Okay. I didn't actually say those exact words.  
10 They asked me and I said it was probably in / the  
11 dumpster. That's not really saying that I witnessed them  
12 clean up or put the towels in the dumpster. That's just  
13 me assuming.

14 Q. Okay. So / when they asked you about cleaning up  
15 the mess, you do remember telling the officers you  
16 believed it was Linda and her friend?

17 A. No, I / don't. I didn't explain that to them.

18 Q. Do you remember stating that the people put  
19 everything in the trash?

20 A. No.

21 Q. So you don't recall saying / something like that  
22 to the police officer?

23 A. I don't recall it because it didn't happen.

24 Q. When you were talking to Linda, after you got  
25 back / from the gas station, do you remember talking to  
26 her about who was cleaning up?

1 A. No.

2 Q. Did you ask her in particular about who washed \*/  
3 the knife?

4 A. No.

5 Q. Do you remember notifying the officers you  
6 believed the knife was washed?

7 A. No. Can I see where I said that?

8 Q. Absolutely.

9 MR. SWAN: I / object as to lack of foundation, your  
10 Honor.

11 THE COURT: At this point there is no failure of  
12 recollection. We will move forward and see where we / go.

13 MR. PENN: I can ask a question.

14 THE COURT: Next question, please.

15 Q. BY MR. PENN: Do you remember anything regarding  
16 who washed the knife off?

17 A. No.

18 Q. And I am just trying / to find that exact portion  
19 in the transcript that you asked me about.

20 A. Okay.

21 THE COURT: Once again, this lawyer is going to ask  
22 you to read / something. Read it to yourself and tell us  
23 when you are done.

24 THE WITNESS: Okay.

25 Q. BY MR. PENN: If you can look at this particular  
26 portion all the way to / there, please. Just let me know

1 when you are finished.

2 A. Yeah, but I said in the beginning I didn't know  
3 what happened to the knife. /

4 Q. And I am asking you in particular --

5 A. I am assuming they cleaned it up. That's  
6 probably what I meant.

7 Q. Well, do you remember the detectives / asking if  
8 you observed Linda pick up the knife?

9 A. I didn't tell them anything about Linda. I  
10 wasn't going to really tell the police anything. \*/

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1 START TYPING

2 Q. MR. PENN: Do you remember being asked about  
3 cleaning the knife?

4 A. That didn't happen.

5 Q. Do you recall that statement to the police?

6 A. No.

7 Q. Does reading this refresh / your recollection as  
8 to that?

9 A. No, sir.

10 Q. You said on cross that Linda told you not to talk  
11 to anyone about the stabbing?

12 A. Yes, sir. /

13 Q. And what were her words?

14 A. We weren't going to tell them about it. We  
15 weren't going to say anything.

16 Q. You discussed that together?

17 A. We were / talking about it. I wasn't going to  
18 say anything to the cops. It just wasn't my place to even  
19 do that. Nobody else is saying / anything. Why then  
20 should I have to?

21 Q. Again, you felt like you didn't want to rat her  
22 out?

23 A. That's right.

24 Q. That's what you actually told / police; is that  
25 right?

26 A. No.

1 MR. SWAN: Objection. Never mind. That's fine.

2 THE COURT: Okay. The objection is withdrawn. The  
3 answer remains.

4 Q. BY MR. PENN: And when you told officers that you  
5 / think Linda punched Susan, what were you meaning by  
6 that?

7 MR. SWAN: Objection. Assumes facts not in evidence.

8 THE COURT: As phrased, it does. Sustained.  
9 Try again.

10 Q. BY MR. PENN: Do you / recall telling officers  
11 that you think Linda punched Susan and that caused the  
12 bloody nose?

13 A. No.

14 Q. Do you have any recollection that Linda punched  
15 Susan \*/ at any time that night?

16 A. No, sir.

17 Q. Would it assist you to review an earlier  
18 transcript? Do you just not remember it?

19 A. No, I do / not remember.

20 Q. And when you were speaking to police officers,  
21 although you said you felt like you were still a little  
22 under the influence of / meth, you believed you were being  
23 truthful to them; is that correct?

24 A. Definitely.

25 Q. Your statement to police officers back then, is  
26 it fair to say / that things were fresher in your mind?

1 A. Yeah.

2 Q. And when you saw Linda stab Susan in the face --  
3 well, do you remember testifying to that / yesterday?

4 A. Yes.

5 Q. What was Susan doing as that's happening?

6 A. Laying on the ground.

7 Q. Was she doing anything with her body?

8 A. Trying to get Linda away. /

9 Q. Can you describe what Susan was doing to try to  
10 get her away?

11 A. Just pushing her away.

12 Q. Was she using her hands?

13 A. Yes, sir.

14 Q. Both / hands?

15 A. Yes, sir.

16 Q. You didn't see any weapon in either of her hands?

17 A. No.

18 Q. And did you see Linda place her hands on any  
19 particular / part of Susan's body?

20 A. What do you mean?

21 Q. Perhaps the shoulders or the arms?

22 A. Whose hands are you asking me about?

23 Q. Susan placing her hands \*/ on Linda when she is  
24 being stabbed and Linda is on top of her.

25 A. No.

26 Q. You said she was pushing her off, though?

1 A. After she / had gotten stabbed, yeah.

2 Q. And that happens after the first stab?

3 A. I don't remember.

4 Q. To be clear, what you remember is Linda stabbing  
5 multiple times / and Susan using both her hands to try to  
6 push Linda away?

7 A. Absolutely.

8 Q. And then Karen entering the altercation and  
9 trying to pull or push / Linda away?

10 A. Yes.

11 Q. And that's when Karen got hit in the head with a  
12 bottle by the other woman at the party?

13 A. You mean in / the kitchen?

14 Q. Yes.

15 A. No.

16 Q. Where did that happen?

17 A. I don't remember. That was way before the knife  
18 came out. That was before anything happened in / the  
19 kitchen.

20 Q. Okay. You reviewed the transcript yesterday. We  
21 went through it, and you reviewed the statement and  
22 testified that Karen got hit with the / bottle; correct?

23 A. I didn't say in the kitchen, though.

24 Q. Well, would it help you to refresh your  
25 recollection because you don't remember anymore?

26 A. The bottles / were in the living room, not in the

1 kitchen.

2 Q. In your own mind, when did Karen get hit in her  
3 head by the bottle?

4 A. Probably \*/ in the living room.

5 Q. Are you just guessing when you answer that way?

6 A. No, sir. I already testified that the bottles  
7 all happened in the / living room. There are no bottles  
8 being swung in the kitchen.

9 Q. I am just trying to clarify. You don't need to  
10 get upset, okay?

11 A. I / am not upset.

12 MR. SWAN: Objection.

13 THE COURT: Folks, don't instruct the witnesses. Just  
14 ask questions.

15 Go ahead.

16 MR. PENN: Okay. Thank you.

17 THE COURT: Next question.

18 Q. BY MR. PENN: When did Karen get hit in / the  
19 head with a bottle?

20 A. That's in the living room.

21 Q. I understand that. When was that actually  
22 happening?

23 A. When they are all fighting. I can't / really  
24 speculate on the exact time. It all happened so quickly.

25 Q. You previously testified there are four people  
26 with the bottles. There is the blonde / woman you don't

1 know, Karen, Susan, and the defendant, right?

2 A. It was just Linda, Karen, and Susan. And then  
3 the other woman came in and started / fighting, but that  
4 was just for one second.

5 Q. Did it eventually become an altercation that was  
6 two against two?

7 A. No. It was two against one.

8 Q. So / then the blonde woman enters, and, in that  
9 one second, she hit Karen in the head with a bottle?

10 A. Yes.

11 Q. At this point, is it \*/ just Linda and Susan  
12 fighting until Karen comes in, attempting to pull Linda  
13 away from her?

14 A. Yes, sir.

15 Q. Okay. And the blonde woman, do you / know where  
16 she went during this time period?

17 A. No, sir.

18 Q. So she could have been anywhere in the kitchen?

19 MR. SWAN: Objection. Calls for speculation.

20 THE COURT: As phrased, / it does. Sustained.

21 Q. BY MR. PENN: Is it that you don't remember where  
22 this woman went?

23 A. It was all happening so quickly. I can't keep  
24 track of everybody. / I don't remember where she went.

25 Q. Okay.

26 A. How can I keep track of 15 people that were there

1 out of the whole party? I can't / keep track of where  
2 each person was during each event.

3 Q. I understand that. I am trying to figure out  
4 what you actually remember seeing. Do / you remember ever  
5 seeing the blonde woman after the stabbing?

6 A. No. Because we all got up and tried to stop the  
7 fight.

8 Q. Were you and Mike's / brother trying to stop the  
9 fight?

10 A. Yes. We all were helping.

11 Q. How many other people?

12 A. Like, four other people.

13 Q. And, to be clear, you / said you don't remember  
14 any of their names, correct?

15 A. No.

16 Q. Because you didn't know very many people there?

17 A. Correct.

18 Q. Did it appear that Linda had lost \*/ control  
19 during the time she was just stabbing over and over?

20 A. No.

21 Q. Did she seem to know exactly what she was doing?

22 MR. SWAN: Objection. Calls for / speculation.

23 THE COURT: Sustained.

24 Q. BY MR. PENN: Did she appear to be very  
25 intoxicated at the point she is stabbing Susan on the  
26 ground?

1 A. Yes.

2 Q. And did she seem angry? /

3 A. Yes.

4 Q. And was the defendant yelling just prior to the  
5 stabbing?

6 A. Yes, sir.

7 Q. Did you see her try to scratch Linda with some  
8 type of / weapon or a bottle? Did you see anything like  
9 that?

10 A. No.

11 Q. Now, did you see any injuries on Linda after the  
12 stabbing happened?

13 A. Yes.

14 Q. And / what did you observe?

15 A. She had a couple scratches.

16 Q. Did she show you those injuries?

17 A. Yes.

18 Q. Is this before the police were dispatched?

19 A. Correct.

20 Q. Did / she explain how she ultimately received  
21 those scratches?

22 A. No.

23 Q. Do you know whether she had the scratches prior  
24 to this altercation? You hadn't really seen / her;  
25 correct?

26 A. I could tell they were fresh.



1 Q. How could you tell?

2 A. You get several scratches, and that's fresh.

3 Q. If it will assist you, I / would like to show a  
4 couple other photos, and then you can explain what you are  
5 referring to.

6 A. Okay.

7 Q. All right. In looking at these \*/ and referring  
8 to scratches, what are you referring to that you said  
9 appeared fresh?

10 THE COURT: You may want to get closer to the diagram  
11 and take / a look at those photographs.

12 THE WITNESS: These around her neck.

13 Q. BY MR. PENN: Are you referring to this top  
14 photograph here?

15 A. Her feet were injured also.

16 Q. She didn't tell / you she had just gotten those  
17 injuries. Were you just looking at them and assuming they  
18 were fresh?

19 A. Yeah, I saw them.

20 Q. Okay. You don't / have any training in  
21 determining how fresh an injury is; is that correct?

22 A. No.

23 Q. And you had not examined her neck prior to the  
24 altercation / happening; correct?

25 A. No.

26 Q. Or her feet, for that matter?

1 A. I know she didn't have those injuries before.

2 Q. Well, you didn't look at her neck very / closely;  
3 right?

4 MR. SWAN: Objection. Leading. Argumentative.

5 THE COURT: Overruled. You can answer that, if you  
6 have an answer.

7 THE WITNESS: Would you repeat the question?

8 Q. BY MR. PENN: Did you look at her / neck closely  
9 before this altercation happened?

10 A. No.

11 Q. At some point, you noticed there was broken glass  
12 on the floor of the kitchen?

13 A. Yes, sir.

14 Q. When / did you first notice that?

15 A. After the fight.

16 Q. Thank you. I appreciate your time.

17 A. No problem.

18 THE COURT: All right. Do you have recross?

19 MR. SWAN: Yes, your Honor. \*/

20 RECCROSS-EXAMINATION

21 Q. BY MR. SWAN: I would like to show you a couple  
22 photographs, okay?

23 A. All right.

24 Q. And they are marked as 13 and 14 for  
25 identification, okay?

26 A. All right. /

1 Q. The first one you see is labeled at the bottom.  
2 Do you see the woman in that photograph?

3 A. Yes.

4 Q. Do you recognize her?

5 A. Yes.

6 Q. Is / that Karen?

7 A. Yes.

8 Q. Does it appear to fairly represent her size and  
9 how big she was on that evening in 2012?

10 A. Yes.

11 Q. In / looking at the second photograph, do you  
12 also recognize the woman in that photograph?

13 A. Absolutely.

14 Q. Does it appear to be someone that you know or  
15 that / you knew in the past?

16 A. It does.

17 Q. Who is that?

18 A. Susan.

19 Q. Even though this is only a photograph of her arm  
20 and upper torso, does this / appear to be what she looked  
21 like that evening?

22 A. Correct.

23 Q. Now, earlier you were shown many documents to try  
24 to help refresh your recollection. Have / you reviewed  
25 those documents prior to today?

26 A. Yes.

1 Q. When you read through them, were you doing that  
2 at the same time that you listened to / the audio?

3 A. Correct.

4 Q. Were you looking to see whether that transcript  
5 was accurate or not?

6 A. I don't understand that.

7 Q. Did you go through and match \*/ up those words  
8 with the audio recording?

9 A. I don't recall.

10 Q. Did you ever make any marks or any corrections  
11 that needed to be made on / that transcript?

12 A. I did not.

13 Q. Can you tell us whether the transcript pages you  
14 reviewed earlier this morning are accurate or not?

15 A. No. I don't / know if they are accurate.

16 Q. Now, a couple times this morning, I have heard  
17 you testify that things happened really fast. Is that a  
18 fair / statement?

19 A. Yes.

20 Q. We are generally talking about a time period  
21 between 1:00 a.m. and about 2:30 a.m.; is that correct?

22 A. Yes, sir. /

23 Q. But the time period of the assault between three  
24 people or a fight between three people in the living room  
25 that moved into the kitchen / that results in a knife  
26 being used, that happened very quickly?

1 A. Yes.

2 Q. In a matter of seconds?

3 A. Yes.

4 Q. You are trying to get off the / couch and get to  
5 see what's happening during that time; correct?

6 A. Yes.

7 Q. Can you tell us how Susan actually got into the  
8 kitchen?

9 A. Not really. / I don't remember how exactly, but  
10 they were both in the kitchen.

11 Q. Okay. So do you remember who went into the  
12 kitchen first and who \*/ followed?

13 A. No. I don't know if somebody followed somebody  
14 else.

15 Q. And is that because you just didn't get a good  
16 view or because of the / time that's passed and that you  
17 don't have a good recollection?

18 A. Because of time passing.

19 MR. SWAN: I don't have anything else, your Honor.  
20 Thank you.

21 THE COURT: Any final / redirect?

22 MR. PENN: Yes, your Honor. Just one question.

23 THE COURT: Okay.

24 FURTHER REDIRECT EXAMINATION

25 Q. BY MR. PENN: All right. Susan and Linda were in  
26 the kitchen together. Did you see whether Susan was

1 closer / to the wall or maybe the island?

2 A. I don't know.

3 Q. I can show you a picture, if it is easier.

4 A. Closer to the wall.

5 Q. Before / you saw them on the ground, did you see  
6 Linda standing and blocking Susan in the kitchen?

7 A. I can't recall.

8 Q. Do you recall reporting that / to police  
9 officers?

10 A. I don't believe I said that.

11 Q. You don't recall saying that one way or the  
12 other?

13 A. No.

14 MR. PENN: No further questions.

15 THE COURT: Mr. Swan, anything. /

16 MR. SWAN: Nothing, your Honor.

17 THE COURT: Okay. We have previously heard this  
18 witness came from out of state.

19 MR. PENN: That's correct.

20 THE COURT: I suspect the witness would like / to  
21 return home after we finish.

22 MR. PENN: I believe so.

23 THE WITNESS: I have a flight tonight.

24 THE COURT: Okay. Thank you for being here with us  
25 today. Travel safely. \*/

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***\*\*\*EACH EXAM VARIES. THE ACTUAL TEST GIVEN MAY BE  
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