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STATE OF MICHIGAN

IN THE 70th JUDICIAL DISTRICT COURT FOR SAGINAW COUNTY

THE PEOPLE OF THE STATE OF MICHIGAN,

vs.

District No. 23-106-FY

EUGENE WARREN THERRIEN,

Circuit No. 23-00292-FH

Defendant /

PRELIMINARY EXAMINATION

BEFORE THE HONORABLE M. RANDALL JURRENS, DISTRICT COURT JUDGE

SAGINAW, MICHIGAN - Tuesday, April 4, 2023

APPEARANCES:

For the People:

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For the Defendant:

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<u>WITNESSES: DEFENSE</u>
None

<u>EXHIBITS:</u>	<u>IDENTIFIED:</u>	<u>RECEIVED:</u>
DX#1 - Video	34	--

1                   Saginaw, Michigan  
2                   Tuesday, April 4, 2023 - 2:03 p.m.,  
3                   THE COURT: Eugene Therrien, 23-106-FY.  
4                   MR. VAN NORMAN: Your Honor, Good afternoon. For  
5                   the record Dan Van Norman for the People.  
6                   MR. HEAD: Good afternoon, Your Honor. Shawn Head  
7                   appearing on behalf of Eugene Therrien who is with me to my  
8                   left.  
9                   THE COURT: This is set for an exam this afternoon.  
10                  MR. HEAD: It is.  
11                  THE COURT: Any preliminary matters?  
12                  MR. VAN NORMAN: We're obtaining our first and  
13                  only witness, Your Honor.  
14                  THE COURT: Okay. Mr. Head, any preliminary  
15                  matters? Any preliminary matters?  
16                  MR. HEAD: No, Your Honor.  
17                  MR. VAN NORMAN: People call Amy Woodruff, Your  
18                  Honor.  
19                  THE COURT: Come forward, ma'am. Raise your right  
20                  hand.  
21                  Do you swear the testimony you're about to give  
22                  will be the truth, the whole truth, and nothing but the  
23                  truth, so help you, God?  
24                  MS. WOODRUFF: Yes.  
25                  THE COURT: Have a seat, please.

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AMY WOODRUFF

(At 2:04 p.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. VAN NORMAN:

Q Ms. Woodruff, good afternoon. Your full name for the record, please?

A Amy Sue Woodruff.

Q Okay. Ms. Woodruff, do you know somebody by the name of Eugene Warren Therrien?

A Yes.

Q And how is it that you know Mr. Therrien?

A We dated for 10 and a half years and lived together.

Q Okay. Do the two of you have any children in common?

A Yes.

Q The person you know as Mr. Therrien is he present in the courtroom?

A Yes.

Q Would you indicate for the Court and for the record where he's seated and what he's wearing?

A He's seated over there and I think he's wearing a suit.

MR. VAN NORMAN: Your Honor, may the record reflect identification of the Defendant?

THE COURT: I'm going to guess it's the person furthest away in the suit?

1 THE WITNESS: Yes.

2 THE COURT: Yes.

3 MR. VAN NORMAN: Thank you.

4 BY MR. VAN NORMAN:

5 Q You said you did live together?

6 A Yes.

7 Q And I want to direct your attention to January 7th of this  
8 year. Were you living together at that time?

9 A Yes.

10 Q And where did you reside?

11 A 3105 North River Road, Saginaw, Michigan.

12 Q Okay. We can agree that's in Saginaw County, Michigan, can't  
13 we?

14 A Yes.

15 Q Okay. I want to direct your attention on that date to the  
16 late morning hours. Did you have occasion to be present at  
17 the house you lived in?

18 A Yes.

19 Q Was Mr. Therrien present?

20 A Yes.

21 Q And did there come a time if ever when the two of you had a  
22 discussion that turned into an argument?

23 A Yes.

24 Q And what was the topic of that, the discussion, what was the  
25 topic of that discussion that evolved or devolved into an

1 argument?

2 A It was actually Austin, Gene's son had gotten up late that  
3 morning. And he was upset that he got up at 8:30 in the  
4 morning and he had - was yelling at him. And then at some  
5 point it turned into me going in the room and, he had said to  
6 me, Now it's your turn, Austin, go get ready; and then he  
7 started yelling at me. There really wasn't a discussion. It  
8 was him yelling at me. Me staying on the opposite side of  
9 the wall while he yelled at me about things.

10 Q Okay. And what if anything was he yelling - you say yelling  
11 at you about things. What was he yelling at you about?

12 A Just I am a horrible person. I've ruined our kids. I am  
13 worthless. He would be a lot farther in life if he would've  
14 never met me. Just things like that.

15 Q Did he, did he call you any specific names or use any  
16 profanity when he did this?

17 A Yeah.

18 MR. HEAD: Objection, relevance.

19 MR. VAN NORMAN: I'll move on, Your Honor.

20 BY MR. VAN NORMAN:

21 Q Did there come a time if ever when, when the discussion or  
22 argument became physical?

23 A Yes.

24 Q And who initiated that physicality?

25 A He did.

1 Q Would you tell the court what happened?

2 A He was standing in the living room and he was yelling and  
3 throwing. Like he had picked up a giant gnome and threw it  
4 across at the Christmas tree and he was throwing things  
5 around. And he had smashed the Christmas tree and broken  
6 ornaments around the house. And he was screaming at me and I  
7 was trying to stay away from him. We ended up --

8 MR. HEAD: Objection, nonresponsive.

9 MR. VAN NORMAN: Your Honor, it's my question. I  
10 think I'm the one that determines what response it is or  
11 isn't. Thank you.

12 THE COURT: I think he gets to make the objection.  
13 How is it unresponsive if he asked her what he was doing?

14 MR. HEAD: I thought it was - the question was, was  
15 there any physical interaction.

16 MR. VAN NORMAN: No, I did ask the court to tell -  
17 - or I did ask the witness to tell the court what happened  
18 after that.

19 THE COURT: Go ahead.

20 MR. VAN NORMAN: Thank you.

21 BY MR. VAN NORMAN:

22 Q Ma'am, continue, please.

23 A So he was, it ended up in the living room and he - my mom had  
24 called and I had a hoodie on and my cellphone was in my  
25 pocket, so I slid it out to look to turn the off button

1 because he was yelling and I didn't want to answer during  
2 that. And he seen my cellphone and he charged at my, for my  
3 cellphone and he grabbed it and I was like this with him.  
4 And then I let go and he took it and he grabbed it like this  
5 and he started smashing it over his knee.

6 Q Let me stop you there. He took the cellphone from you?

7 A Yes.

8 Q Did you give him permission to take it?

9 A No.

10 Q Did you voluntarily surrender the phone?

11 A No.

12 Q And you indicated there was at least a call in progress,  
13 correct?

14 A My mom was calling me, but I had turned it - I had silenced  
15 it.

16 Q Okay. And after the phone was taken what happened?

17 A He took it and he smashed it over his knee and then he took  
18 it, and he threw it into the kitchen and it hit the kitchen  
19 floor. And then he --

20 Q Let me stop you there. Did you - did there come a time when  
21 you were able to get to the phone?

22 A No. It was - I was in the living room. We had a really big  
23 house, it's a 6400 square foot home.

24 Q Was the phone damaged in any way once you did observe it?

25 A Yes.



1 Q Okay. Was it workable?

2 A Yes.

3 Q Okay. Continue please.

4 A So he was then in the living room and he started coming at me

5 again and I had slippers on without backs, and I went to step

6 back and I couldn't get, like I stumbled. So then he come at

7 me and he grabbed me around the throat.

8 Q Okay. When you say he grabbed you, did he place hands on

9 your throat?

10 A Yes. And he grabbed me by the throat and he was screaming at

11 me to get the fuck out of his house, get out of here you

12 cunt, whore, bitch, all sorts of things.

13 Q Let me stop you there. When you say his house, it was where

14 the two of you resided, correct?

15 A Yes.

16 Q Thank you. Continue please.

17 A So then he picked me up and threw me to the ground and got me

18 in a chokehold where he had this arm on the front of my

19 throat and this arm on the back of me and he was --

20 Q Let me stop you there. Just for the record the first, this

21 arm was your right arm?

22 A Yeah, right.

23 Q And the second one was your left?

24 A Yes.

25 Q Okay.

1 A And he was on top of me, laying on top of me and I couldn't  
2 move. And I was like -- and he was screaming in my face: Get  
3 the fuck out of my life. Get out of here. And I was telling  
4 -- I was screaming for him to please don't kill me, please  
5 don't kill me, please don't kill me.

6 I'm sorry, I forgot though - when he grabbed me the  
7 first time I had screamed for somebody to call 911. And it  
8 was actually I believe I said: Austin, call 911. Because I  
9 knew he was upstairs. And I knew something bad was going to  
10 happen.

11 Q Okay. You indicated that he had taken you by the neck, that  
12 at some point he was on top of you. You were on the floor at  
13 that time?

14 A Mm-hmm.

15 Q And he had his arms up against your throat?

16 A Mm-hmm. And he was holding me like this. And he was  
17 screaming in my face. And it was about like the fifth time  
18 that I was like please don't kill me. And then he like just  
19 his whole body was just like..., and then he got up.

20 Q Let me stop you there. You said that several times before  
21 he --

22 A Yes

23 Q Okay. Continue please.

24 A And then he got up and he was like, he screamed upstairs to  
25 Austin: Austin, we need to get out of here before I do

1 something worse. He picked up the couch and he flipped it  
2 back over like nothing was the matter. And he grabbed my  
3 coffee cup that had spilled all over the floor because I was  
4 holding that when he came for my cellphone, and he carried it  
5 out to the sink like nothing was the matter.

6 Q Besides getting on top of you and after taking your throat  
7 and besides the placing of his arms up against your throat  
8 while you were pinned to the floor, did he strike any other  
9 blows, did he hit you with...?

10 A Well he had hit me in the face when he was like coming at me.  
11 Like he had, when he grabbed me by the throat there was like  
12 an altercation where I was like trying to stop it, like I  
13 didn't just stand there and let it happen. I was like trying  
14 to get away. And when he did that he had hit me in the face.  
15 I had my eyes closed. And then ended up on the floor.

16 Q As a result of being struck in the face were you injured at  
17 all?

18 A There was a red mark.

19 Q Okay. Ms. Woodruff, I don't have any further questions for  
20 you at this point. I'm sure counsel does.

21 MR. HEAD: I've got plenty.

22 THE COURT: Mr. Head.

23 CROSS-EXAMINATION

24 BY MR. HEAD:

25 Q Hi, Ms. Woodruff.

1 A Hi.

2 Q We know each other, don't we?

3 A Mm-hmm.

4 Q I've known you for about 10 years?

5 A Mm-hmm.

6 Q I'll try not to be overly casual because we've known each  
7 other for a long time.

8 Prior to January 7th Mr. Therrien had asked you to have been  
9 moving out - to move out of the home, right, multiple times?

10 MR. VAN NORMAN: Objection as to relevance, Your  
11 Honor. We're talking about an event that happened on the  
12 7th. If there was an eviction proceeding and a notice to  
13 quit or something like that I might withdraw the objection.  
14 But whatever happened prior to the 7th has nothing to do with  
15 any of that.

16 MR. HEAD: Your Honor, it's just as relevant to the  
17 background related to topic of the argument, because this  
18 goes directly to the topic of the argument.

19 MR. VAN NORMAN: And I think I've moved on from  
20 that in like one question, Your Honor.

21 MR. HEAD: I asked one question.

22 THE COURT: So you're asking that on the day of the  
23 argument or some other day?

24 MR. HEAD: Both.

25 THE COURT: Well let's start with one. What were

1           you asking?

2                   MR. HEAD: The first argument was prior to that  
3           incident he's been asking for some time for you to move out.

4                   THE COURT: So how is that relevant to the assault?

5                   MR. HEAD: I'll get there. It goes to the topic of  
6           the argument, Your Honor.

7                   THE COURT: Okay. Let's say they have an argument,  
8           what does that got to do with the assault?

9                   MR. HEAD: I can, I can move on. Your Honor, can  
10          take it or leave it, but the, you know the question has been  
11          asked.

12                   THE COURT: I had an objection so I'll trying to  
13          deal with it.

14                   MR. HEAD: Okay.

15 BY MR. HEAD:

16 Q          All right. That day on January 7th he asked you to leave,  
17          correct?

18 A          Yeah, he told me to get out several times.

19 Q          Several times. But that wasn't the first time, right?

20 A          Every time he gets mad and throws things and yells and  
21          screams, yes.

22 Q          Okay. Are you on any medications that would affect your  
23          testimony today?

24 A          No.

25 Q          All right. Did you review any recordings or written

1 documents prior to testifying today?

2 A No.

3 Q No. You didn't review any body-cam footage?

4 A I have not seen any body-cam footage.

5 Q All right. What about the recordings that you took? You  
6 did take recordings on January 7th, right?

7 A Yes.

8 Q Did you review those prior to testifying today?

9 A No.

10 Q All right. Were you aware there was body-cam footage with  
11 your interaction with the police on that day?

12 A I assume there would be because police usually wear them.

13 Q Okay.

14 THE COURT: Are you telling us that you have video  
15 camera footage of the incident?

16 MR. HEAD: No. No.

17 THE WITNESS: I have video of, of - it was in my  
18 hoodie pocket that was - I recorded after he assaulted me and  
19 he was breaking things and throwing things around the house.

20 THE COURT: The question had to do with video.

21 THE WITNESS: It was a video recording.

22 THE COURT: In your pocket?

23 THE WITNESS: Yeah - well it comes out, there is  
24 video and in my pocket, voice and video on it.

25 THE COURT: Two different things. That's why I'm

1 asking that question.

2 MR. HEAD: There was no video of the alleged  
3 assault, Your Honor, if that was your question.

4 THE COURT: My question is to her.

5 MR. HEAD: I apologize.

6 THE COURT: Do you have any video footage of this  
7 incident? Video that I can see.

8 THE WITNESS: There is a video, yeah. You can see  
9 him spitting at me and walking down the hall and slammed the  
10 door and come back in. It was -

11 THE COURT: Somebody says that the camera is in the  
12 pocket. It may be running, but that doesn't produce video.

13 THE WITNESS: I had, yes, I had the camera in my  
14 pocket. I pulled it out and aimed it at him in video, that  
15 part of it, yes.

16 THE COURT: Okay. That helps. Thank you. Go  
17 ahead.

18 MR. HEAD: Thank, Your Honor.

19 BY MR. HEAD:

20 Q So we've established the fact that there was an argument that  
21 started between you and Eugene on the morning of January 7th?

22 A It didn't start between Gene and I. It started between  
23 Austin and Gene.

24 Q Okay. At some point after that you and Gene had been  
25 arguing, right, on that morning?

1 A We weren't arguing. He was yelling at me.

2 Q Okay. And he actually grabbed your phone from the

3 entertainment center while you were sitting on the couch?

4 A No.

5 Q That's not what happened?

6 A That is not what happened. It was in my hoodie pocket.

7 Q So if other witnesses said that that's what happened they'd

8 be lying?

9 A They would be lying.

10 Q Okay. So when he had the phone in his hand you actually went

11 to grab it from him, right?

12 A He grabbed it out of my hoodie pocket that was in my hand, he

13 grabbed it from my hood, in my hand, took it out of my

14 pocket. I tried to hold onto it and he ripped it out of my

15 hand.

16 Q And then you went to grab it from him, right?

17 A Yes.

18 Q And that's when --

19 A No, I had -- he -- I still had it in my hand. I didn't try

20 to take it back from him. Once he took it and I could no

21 longer have possession of it I didn't go after it. I'm not

22 an idiot. He's a lot bigger than me.

23 Q Okay. So it's your testimony -- you remember you're under

24 oath, right?

25 A Yes, I do.



1 Q All right. And your testimony here today is that you did  
2 not try to wrestle the phone away from him?  
3 A I did not.  
4 Q So whether witnesses said that they'd be lying?  
5 A There was nobody in the room when that happened.  
6 Q Okay. So there was nobody in the room when you were  
7 struggling over a phone?  
8 A Not over the phone, no.  
9 Q Okay. At some point -- I'm sorry -- you did talk to the  
10 police on January 7th, right?  
11 A Yes.  
12 Q And actually you called, you called 911 that day too?  
13 A Yes.  
14 Q All right. You called 911 after Gene left, right?  
15 A Yes.  
16 Q All right, we'll get back to that. But you had a conversation  
17 with the police?  
18 A Yes.  
19 Q And you told the police that he punched you, right?  
20 A Yes.  
21 Q All right. Now you just said he's a large man, right?  
22 A Mm-hmm.  
23 Q 6 foot 4; 240, right?  
24 A No verbal response.  
25 Q He's significantly larger than you are?

1 A Yes.

2 Q You'd agree?

3 A Yes.

4 Q If he punched you it would leave a mark, wouldn't it?

5 A It did.

6 MR. VAN NORMAN: Calls for speculation, Your

7 Honor.

8 THE COURT: You've already had her testify it would

9 leave a mark.

10 THE WITNESS: It did, there's photos of it.

11 BY MR. HEAD:

12 Q Okay. There's photos that you took after you called 911,

13 right?

14 A No, before I called 911.

15 Q Okay. All right. But before the police arrived?

16 A It was right when I picked my phone up off the kitchen floor.

17 Q Okay.

18 A Because that - he wasn't done throwing things and breaking

19 things yet.

20 Q Okay.

21 A He was still in the house, he had not left.

22 Q All right. So you said you had a red mark on your face and

23 then and that was before the police arrived?

24 A Yes.

25 Q And then you took a photo of it?

1 A And I still had the mark on my face actually when Carrie and  
2 Julie came.

3 Q Okay. And you know there are several witnesses that saw you  
4 the very next day, the day of, right?

5 A Yeah. You came to the house.

6 Q And you didn't have any mark on your face the next day after  
7 the incident, did you?

8 A No.

9 Q No bruising?

10 A No.

11 Q No abrasions?

12 A No.

13 Q No cuts?

14 A No.

15 Q No swelling?

16 A No.

17 Q Let's get back. I believe your testimony earlier today was  
18 that he came up and he grabbed you, right?

19 A He did.

20 Q And did he grab you - and he grabbed you by the throat?

21 A Yes.

22 Q Which hand did he use?

23 A Like this.

24 Q Both hands?

25 A Yes.

1 Q So he grabbed you with both hands around your neck?

2 A Yes. I was trying to back away from him and tripped on my  
3 slipper and he grabbed me like that. And I was trying to get  
4 away from him but I couldn't. And then he ended up - like it  
5 was a really fast motion of somehow he had me by the throat,  
6 flung me, my eyes were closed, got me in this position to the  
7 ground.

8 Q There were no marks on your neck, right?

9 A Yes, there was actually.

10 Q There were?

11 A Yeah, there was a red mark right here.

12 Q So when the police arrived do you remember that was all  
13 recorded, right? There was body camera footage of your  
14 interaction with the police?

15 A Yes.

16 Q Do you remember telling the police that you don't have any  
17 marks on your neck?

18 A I went like this and he looked at my neck. And I don't  
19 believe there - there was a red mark but it was not like a  
20 red, red mark where you could see it during that time. When  
21 Carrie and Julie came, she sat down next to me and she looked  
22 at my neck and she said there is a mark there. Because I  
23 told her that I didn't think there was, but there was.

24 Q And you didn't take any photographs of that though, did you?

25 A I just took a picture like this and you could see the red

1 mark on my face.

2 Q So as you sit here it's your testimony that he hit you on  
3 your right cheek, your right cheek?

4 A I believe it was this cheek.

5 Q And then you're pointing to your right cheek? There's going  
6 to be a transcript here.

7 A Yes.

8 Q Okay. So you're pointing at your right cheek?

9 A I believe so. I don't remember.

10 Q So now you don't remember?

11 A I don't remember exactly which, no, I don't. This was four  
12 months ago. I, I just know that I got hit. And I really  
13 believe it's this side but I don't want to testify that it  
14 was if I'm wrong. I, there's picture proof of which side it  
15 was.

16 Q Sounds like you're not very sure. Is that, is that accurate?

17 A I'm not very sure of that question, yes.

18 Q Okay. Do you think you would've been more sure on the day of  
19 the incident when you had a conversation with the police  
20 officer?

21 A Yes.

22 Q So are you -- so if you have any variation or distinction  
23 between your testimony here under oath and your conversation  
24 with the police officer which do you think would be true?

25 A With the police officer.

1 Q Okay. So what you're telling us today might not be true  
2 because of your memory is not accurate?

3 A That's not - no. That's not what I'm saying at all.

4 MR. VAN NORMAN: Your Honor, this has been asked  
5 and answered in about four different ways. The point has  
6 been made.

7 THE COURT: Mr. Head.

8 MR. HEAD: I'll move on.

9 BY MR. HEAD:

10 Q So you testified that after he grabbed you by the neck he  
11 then threw you to the ground, is that, is that what I recall?

12 A Yes.

13 Q Okay. And then your testimony, he put his arms around you on  
14 top of your neck?

15 A He had one, like he grabbed me by the neck, there was like  
16 this struggle and that's when he hit me. And in that time  
17 when he got me like this and threw me to the floor when he  
18 had me like this.

19 Q All right. Time out. So your testimony here is he picked  
20 you up by your head, was putting his arms around your neck?

21 A He had me like - it was - no, it was his whole - he threw me  
22 to the body with him on top of me. Like he went like that,  
23 got down on the floor. I'll show you. He had me like this,  
24 he went like this, threw me to the floor like this and then  
25 got on top of me like this. And then he screamed in my face:

1           Get the fuck out of my life you bitch, fuck, cunt, whore.  
2           That is what he did.

3                   MR. VAN NORMAN:    Your Honor, the record should  
4           reflect that she was laying face down indicating to counsel  
5           what the Defendant was doing to her.  And then her arms were  
6           crossed --

7                   THE WITNESS:    Like this.

8                   MR. VAN NORMAN:    -- as if she was in the position  
9           of the Defendant.

10                  THE COURT:   Did you understand that?

11                  THE WITNESS:    My head was in between his arms.

12  BY MR. HEAD:

13  Q           Your head was in between his arms?

14  A           Yes.

15  Q           Okay.  So he had his left arm behind your neck?

16  A           Yes.

17  Q           And his right arm in front of your neck?

18  A           And this arm on top of my throat, yes.

19  Q           All right.  That's a very vivid picture you paint here  
20           today.  I can see it.

21  A           So can I.

22  Q           Did he fall with his weight on top of you then?

23  A           He feel with his weight to his knee then he laid on top of  
24           me.

25  Q           And but you could still yell out and call out, correct?

1 A Yes.

2 Q So you didn't lose any, any ability to talk?

3 A I did not. It made it harder to talk. I was - first I was  
4 able to yell for help and then or to don't kill me and then  
5 it was, don't kill me, don't kill me. And like my breath was  
6 getting lose. And then he let up.

7 Q Do you remember talking to Officer Chad Sulkowi, right, that  
8 day?

9 A Yeah, I think that was his name.

10 Q All right. And do you remember him, do you remember telling  
11 him, I don't even know how I fell?

12 A I remember that when we were talking I was very like, this  
13 whole incident just happened and I was having a hard time  
14 just with everything. So I don't know exactly what I said.

15 Q All right. Did you lie to the police?

16 A No.

17 Q So everything you told them was true?

18 A Yes.

19 Q Everything you're testifying here today is true?

20 A Yes.

21 Q When you spoke to the police you didn't leave any important  
22 information out?

23 A No.

24 Q And you testified you called 911 after Mr. Therrien left,  
25 correct?



1 A Yes.

2 Q All right. So let's talk about what happened after the  
3 alleged incident. So at some point you got off the ground,  
4 right?

5 A Yes.

6 Q And your testimony earlier is that if I recall correctly Gene  
7 kind of went and wouldn't let go and then stood up, right?

8 A Yes.

9 Q And then you stood up?

10 A I ran to the kitchen and I grabbed my phone.

11 Q And a cup of coffee, right?

12 A No. The coffee I had in my hand when he ripped the phone out  
13 of my hand.

14 Q Oh, you didn't go grab a cup of coffee after you got up?

15 A No.

16 Q Okay. There was a period of time after you got up before  
17 Gene left with his son, correct?

18 A Yes.

19 Q And that period of time was more than 20 minutes, right?

20 A No.

21 Q Austin was ready to go?

22 A Austin came sobbing down the stairs apologizing to Gene, and  
23 screaming, I'm sorry, I'm sorry, I'm sorry. Gene grabbed him  
24 and threw him out the door. It happened, there is a  
25 timestamp from when my mom called to whenever I called 911 on

1 my phone that will show how long that is.

2 Q And it wasn't longer than 20 minutes?

3 A No.

4 Q So if there's testimony from individuals that were there they  
5 would be lying?

6 A Yes.

7 Q Okay. Well let me ask you this. Because you testified you  
8 recorded some interaction between you and Gene after you guys  
9 got up off the ground, right?

10 A Yep. From that recording on, from the first time of the  
11 recording to when he walks out the door and spits at me is  
12 how long it took for him to leave.

13 Q So your testimony earlier is that you were afraid he was  
14 going to kill you, that's what you said to him?

15 A Yes, I was afraid he was going to kill me.

16 Q Okay. But you said - and I'm sorry, you said you had a 6400  
17 square foot house?

18 A Yes.

19 Q That's a really big house.

20 A Yes.

21 Q There's a lot of rooms in that house, right?

22 A Yes.

23 Q A lot of rooms you could've gone to.

24 A I was trying to and he kept following me.

25 Q He kept following you?

1 A He kept following me.

2 Q How many rooms do you have on the first floor?

3 A Well they're all shut off. There's only - when he would come  
4 at me the only thing I could do is run around the stairs and  
5 stay on the opposite side from him. If I got in a room where  
6 he was at he could get me.

7 Q So when you -- at some point you started recording on your  
8 phone?

9 A Yes. I was on the opposite side of the wall when I started  
10 recording.

11 Q And you said --

12 A Until I heard him go after Austin and then I went towards him  
13 because I wasn't going to let him hurt Austin.

14 Q Okay. And you were making statements to him, weren't you as  
15 you were recording?

16 A Yes.

17 Q And you were saying things about....

18 A He started yelling at me some nonsense.

19 Q I didn't ask you a question. Let me finish my question and  
20 you can answer the question. Okay?

21 A Okay.

22 Q You were swearing at him, right?

23 A I did say shit I believe.

24 Q Oh, you don't, you don't remember saying get your fucking  
25 hands off of me when he was clear, obviously not even close

1 to you?

2 A No. When he started coming at me I said, don't you fucking  
3 touch me, I believe.

4 Q Okay. You haven't watched those videos in a while, have you?

5 A I have not.

6 Q Okay.

7 A I try not to think about this actually.

8 Q All right. And your memory can change, right?

9 A No.

10 Q Oh, okay.

11 A I can forget things though.

12 Q You can forget things?

13 A Yes.

14 Q Okay. Do you think you forgot some things?

15 A I may have forgot exactly what I said in the video.

16 Q Okay. And you may have forgotten what you told the police?

17 A No. I know what I told the police.

18 Q But you told the police that I don't know how I fell, right?

19 A I guess I don't remember saying that.

20 Q Okay. So there -- you don't remember what you told the  
21 police, right?

22 A I guess not.

23 Q Okay. The fact is you didn't go to another room, you didn't  
24 go another area of the house?

25 A I did. I did. I left the living room and I went to the

1 kitchen. He was standing in, by his office area, by the  
2 stairs, yelled at Austin to get ready to leave. I was in the  
3 kitchen by the kitchen couch and when I started recording you  
4 could hear him --

5 Q And there's a door right there to the outside, right, right  
6 next to where you're standing?

7 A No. There is no. Where I was standing my daughter was in  
8 the bedroom hiding because she came out and watched  
9 everything happen.

10 Q Your bedroom is not in your kitchen?

11 A No. She was in the bedroom. He was at the front door. I am  
12 not going to leave my house without my daughter. I'm not  
13 going to leave her. He's in a raging fit. I didn't want to  
14 leave either of the kids there.

15 Q But you didn't go to another, another room other than the  
16 kitchen, you didn't go outside when there's a door right next  
17 to you, right?

18 A No, I did not.

19 Q And you didn't go to the basement, correct?

20 A There was no way to get to the basement.

21 Q He's in his office. You didn't go to the bedroom and shut  
22 the door.

23 A He wasn't in the office. He was standing at the stairway by  
24 his office. He was by the front door.

25 Q And you didn't go in your bedroom. You could've gotten there

1 from two different entrances to your bedroom, right?

2 A No, I couldn't. Our bedroom door is right here. He's right

3 here. I was staying visibly out of his sight.

4 Q Isn't there another entryway to your bedroom?

5 A His office.

6 Q And isn't there another entryway to your bedroom next to the

7 couch?

8 A Through, there's no way for me to get it to it. There's a

9 sunroom back over that way.

10 Q So if you're standing - there's a sunroom to your left.

11 You're pointing to your left.

12 A But I don't even know if - I wouldn't even know if the door

13 was locked or unlocked to go into there.

14 Q You didn't try to go to your bedroom, did you?

15 A Obviously you have never been in a situation like that

16 because you wouldn't try to figure out, where do I go. You

17 just want to get, make sure your kid is safe.

18 Q While you're cussing out Gene and recording it?

19 A While I'm cussing him out?

20 Q Yes.

21 A He was yelling at me.

22 MR. VAN NORMAN: Your Honor, this is getting

23 argumentative and beyond the scope, beyond relevance.

24 THE COURT: Mr. Head, any response?

25 MR. HEAD: I'll move on.

1 BY MR. HEAD:

2 Q When you called 911 did you tell the operator the truth?

3 A Yes.

4 Q You didn't tell the operator that he punched you though, did  
5 he - did you?

6 A I didn't tell them - I just told them I was assaulted I  
7 believe.

8 Q Actually you told them you were kicked, do you remember that?

9 A I never said anything about being kicked.

10 Q You didn't?

11 A I don't believe so.

12 Q Okay. I'm going to show you just a snapshot of one of the  
13 videos that you took. Okay?

14 A Okay.

15 MR. VAN NORMAN: Your Honor, unless he's admitting  
16 it as an exhibit and/or his laptop as an exhibit I don't....

17 MR. HEAD: I have a disc and the People produced  
18 it, Your Honor.

19 MR. VAN NORMAN: That's fine. But he wants to, he  
20 wants to show things that I presume he's going to try and  
21 admit it as an exhibit off his computer. That's fine. But  
22 I'm lost as to --

23 MR. HEAD: Why don't you give me a second, Dan,  
24 Your Honor. Can I approach?

25 MR. VAN NORMAN: I'm given him a half an hour.

1 THE COURT: Well I guess that depends. If you're  
2 going to show her - are you going to want something marked so  
3 it becomes part of the record?

4 MR. HEAD: I may and I can produce it. The People  
5 produced it. I can just make a copy of it and produce it to  
6 the Court. It's a one minute, 3 second video. I'm not going  
7 to play the video. I'm going to produce a snapshot from the  
8 video. Do you object to that?

9 THE COURT: So is it just to - you're not offering  
10 it into evidence for me to see?

11 MR. HEAD: Yeah, I might. I want to show it to her  
12 first and then I might offer that snapshot, just this one as  
13 an exhibit.

14 THE COURT: Well again -

15 THE WITNESS: Well my whole video is there.

16 THE COURT: Just wait. Wait. It perhaps depends.  
17 If you're offering to - if you want show, to show to her to  
18 refresh her memory for instance, that's fine. Again if you  
19 want to enter it as an exhibit for me to see and consider I  
20 think we have to go a different route.

21 MR. HEAD: I can show -- I do want to probably  
22 admit it as an exhibit, Your Honor.

23 THE COURT: Okay. So which, if you're going to  
24 show it to her now what are we doing? Which one?

25 MR. HEAD: I would like to show it to her and then



1 admit, then offer it as an exhibit.

2 THE COURT: Okay. And do - are we going to mark it  
3 then and have a disc, how are we going to do this?

4 MR. HEAD: I can email it to the court right now.  
5 It's a 1 minute video. I'm really just asking for a  
6 screenshot. I can take the screenshot and email it to the  
7 court.

8 THE COURT: Is this the disc that you have, Mr. Van  
9 Norman?

10 MR. VAN NORMAN: Yes, it is, Your Honor.

11 THE COURT: I just want to make sure for future  
12 reference, I mean frankly Mr. Head I normally get a, it's old  
13 school, but we normally get a disc, that somehow gets marked  
14 -

15 MR. HEAD: Computers don't even come with those  
16 anymore, Your Honor.

17 THE COURT: I'm just letting you know I usually  
18 don't have somebody offer their laptop. One step at a time.  
19 Show it to her and see what we can accomplish.

20 MR. HEAD: Thank you, Your Honor. May I approach?

21 THE COURT: Yes.

22 MR. HEAD: Thank you.

23 BY MR. HEAD:

24 Q Ms. Woodruff, would you agree that this is the beginning of  
25 one of the videos you took?

1 A Yes.

2 Q And you would agree that that shows your entire face?

3 A That is the red mark right there.

4 Q Do you see a red mark right there?

5 A Yes.

6 Q Do you see a difference in color between your left cheek and  
7 your right cheek?

8 A Yes.

9 Q Do you wear glasses?

10 A I do, but not for up close.

11 Q Are you wearing glasses right now?

12 A No, but I am up close and I don't wear them for up close.

13 Q All right. And do you see red mark right there?

14 A Not on that one. Yep, that's the angle and the lighting I  
15 see a quick.... You have to catch the exact track to see it  
16 because the lighting - that's not - you can't see it there.  
17 But once you start going over it you can see it. It was  
18 right there.

19 MR. HEAD: Your Honor, I can show you and then I'll  
20 email the court --

21 THE WITNESS: That's not the --

22 THE COURT: I'm not looking. That's not the  
23 exhibit.

24 MR. HEAD: May I move to admit - I would like to  
25 move to admit this as Defense Number 1.

1 THE WITNESS: That's not the snapshot that you  
2 showed me though. You showed me --

3 MR. HEAD: I move to admit the first 5 seconds of  
4 the video. Will you admit the first 1 second of the video?

5 THE WITNESS: Why don't you just show it all.

6 THE COURT: Mr. Van Norman.

7 MR. VAN NORMAN: May I ask some voir dire?

8 THE COURT: Yes.

9 MR. VAN NORMAN: I guess since it's been offered.

10 VOIR DIRE EXAMINATION

11 BY MR. VAN NORMAN:

12 Q Ms. Woodruff, does what's been shown to you accurately  
13 reflect the photos or the videos that were taken on that day?

14 A Kind of the lighting for that is not great because I was in  
15 front of the window and I was....

16 Q So it's different lighting?

17 A Yes.

18 Q And that lighting is not the lighting that was present for  
19 when the video was taken, originally taken?

20 A Well that's the original video.

21 Q Okay. But it's on his computer, correct?

22 A Yes.

23 Q Subject to whatever that computer may or may not do?

24 A Yes.

25 MR. VAN NORMAN: The People object, Your Honor.

1 THE COURT: The basis for the objection?

2 MR. VAN NORMAN: It's not an accurate  
3 representation of the original.

4 MR. HEAD: Your Honor, we -- I'm sorry, may I  
5 respond?

6 THE COURT: Yes.

7 MR. HEAD: We can easily resolve that, I'll email  
8 it to the court, the court can play it on any computer it  
9 chooses. I see five of them.

10 THE WITNESS: I have the original on my phone  
11 that's over there.

12 MR. HEAD: There's that too. That's the best  
13 evidence.

14 THE COURT: Where do you want me to go?

15 MR. HEAD: It's a digital file. Your Honor, you  
16 can choose which of these multiple screens you would prefer  
17 to look at. I'm looking to admit the first 1 second.

18 THE COURT: So on that issue, are you willing to  
19 have 1 second admitted or do you want the whole thing  
20 admitted?

21 MR. VAN NORMAN: I'll go with 1 second.

22 THE COURT: Okay. Show me what you got.

23 MR. HEAD: Thank, Your Honor.

24 THE COURT: I just to confirm, Mr. Van Norman, this  
25 is a disc you have?

1 MR. VAN NORMAN: It is.

2 THE COURT: Either disc or digital recording,  
3 whatever.

4 MR. VAN NORMAN: But it's not, that is now on his  
5 - it is now situated on his laptop subject to whatever may or  
6 may not have been done by him or by the instrument itself.

7 MR. HEAD: Would you prefer to use yours?

8 MR. VAN NORMAN: No.

9 THE COURT: Can you represent to us that you  
10 haven't modified it somehow?

11 MR. HEAD: I have not modified the file in any way.  
12 I have not changed any color settings or screen settings in  
13 any way in months if not years. There's been no attempt to  
14 manipulate or doctor the coloring --

15 THE COURT: So you're going to show me what's  
16 essentially a screenshot of a longer video to show that she  
17 doesn't have a red mark? That's the purpose of all this,  
18 right?

19 MR. HEAD: Correct, Your Honor.

20 THE COURT: Show it to me.

21 (At 2:41 p.m., court reviews screenshot)

22 MR. HEAD: Thank you.

23 CROSS-EXAMINATION (CONTINUED)

24 BY MR. HEAD:

25 Q Was that video taken before or after you took a photo of your

1 face?

2 A The videos were after I took the photos before.

3 Q I'm sorry?

4 A I took the photos first and then I --

5 Q You took the photos first.

6 A -- took the video.

7 Q You took the photos first while Gene was chasing you around  
8 the kitchen?

9 A He was - no. He was at the - I grabbed my phone, he was at  
10 the stairs blocking where the doorway was. He screamed for  
11 Austin to get his stuff down and he was standing there and I  
12 snapped the picture like in between the living room kitchen  
13 area, and then I walked into the kitchen by the couch and  
14 then looked at my phone and figured out, oh, wow I can get to  
15 the video, and I put video on and I stuck it in my hoodie.

16 Q I'm sorry. But you took - I missed the part where you took a  
17 photo?

18 A I took the photo - how did you miss that? I said --

19 Q I didn't hear you.

20 A -- I walked - I picked up my phone off of the kitchen floor,  
21 I walked over to the carpet area to see where he was going,  
22 he was standing in front of the door office area yelling up  
23 the stairs to Austin, I took a picture of my face, then I  
24 went over into the kitchen, put the video on, stuck it in  
25 that way and walked this way.

1 Q Okay. When you spoke to the police and you were describing  
2 your interaction and going to the ground, you actually told  
3 the responding officer that you thought Gene loosened up  
4 because he didn't want to hurt you, right?

5 A No. I said I thought he loosened up because he made me  
6 realized what he was doing.

7 Q What does that mean?

8 A Like I don't even know if he was like, like he just went into  
9 a fit of rage. It was like, like he - I didn't know what he  
10 was going to do because it was like he was just this mad man  
11 coming at me. And like he was screaming and then all of a  
12 sudden like he snapped back and realized, oh, shit. Because  
13 then when he got up he walked over to Austin and he said, we  
14 need to get out of here before I do something worse, so.

15 Q Okay. So I mean his size versus your size. Don't you think  
16 that if he actually tried to hurt you he could've?

17 MR. VAN NORMAN: Calls for speculation, Your  
18 Honor. And the fact that this is the first time I've heard  
19 in 40 years that his size or the disparity in size is a  
20 justification or a defense to something.

21 THE COURT: Mr. Head.

22 MR. HEAD: It goes to credibility. It's not a  
23 justification or a defense. It goes to the credibility of  
24 what she's testified to.

25 THE COURT: The question was because he is bigger

1 he could hurt you. I think it was --

2 MR. HEAD: Yes.

3 THE COURT: -- more readily. I don't see how  
4 that's relevant.

5 MR. HEAD: It's relevant to the elements of the  
6 charged offense, Your Honor. It's actually one of the three.

7 THE COURT: How big the Defendant is?

8 MR. HEAD: No, Your Honor. The ability to cause  
9 injury. That is a necessary element is the second of three.  
10 So the ability to cause injury is absolutely relevant. It's  
11 one of the elements of the charged offense.

12 THE COURT: Your question was, he could have  
13 injured you if he wanted to, to that effect.

14 MR. HEAD: I don't believe that was my question. I  
15 can reask it.

16 THE COURT: Please.

17 BY MR. HEAD:

18 Q He certainly had the ability to injure you, correct?

19 A Yeah.

20 Q But you left that encounter without any medical treatment,  
21 right?

22 A Yes. But he's also --

23 Q And you left that encounter without any, any request for an  
24 ambulance, right?

25 A Right. Right.



1 Q And you didn't have any bruising the next day?

2 A No.

3 Q So if he actually intended to physically harm you he  
4 would've.

5 A He did physically harm me. He assaulted me.

6 Q That's not what I asked. Do you not understand my question?

7 A You didn't ask a question. You said if he wanted to assault  
8 me he would've.

9 Q Okay. Maybe you didn't hear me.

10 MR. VAN NORMAN: Your Honor, I'm going to lodge an  
11 objection as to eliciting any testimony from her about his  
12 intention. And counsel as I'm sure aware, and as the court's  
13 aware, actual injury is not necessarily, not a necessary  
14 element for assault GBH or even AWIM for that matter.

15 THE COURT: Mr. Head.

16 MR. HEAD: Intent is. And lack of evidence of any  
17 intent is certainly relevant.

18 THE COURT: Sometimes we do but we don't always get  
19 the benefit of the Defendant saying you know I'm here because  
20 it was my intention to great bodily harm to you at this  
21 moment. It doesn't always happen that way. You don't get  
22 that clear expression of intent. You can ask her the  
23 question if you want.

24 MR. HEAD: Thank, Your Honor.

25 BY MR. HEAD:

1 Q Don't you believe that if he actually intended to cause great  
2 harm to you he could have?

3 A If he didn't want to cause great --

4 MR. VAN NORMAN: Hold up. Hold up, please. Same  
5 -- her belief as to his intent, while perhaps fascinating  
6 isn't relevant. His intent and what he desired to do and his  
7 actions in furthering that intent are a question of fact for  
8 a jury.

9 THE COURT: Mr. Head, you've already elicited from  
10 her that he had the ability to cause her injury. Beyond that  
11 what more do I need?

12 MR. HEAD: Well that's only one of the three  
13 elements for the crime, Your Honor, the crime charged.

14 THE COURT: On that part of it, the one that you're  
15 focusing on, since you've already drawn out of her that he  
16 had the ability to commit that element.

17 MR. HEAD: There was only one other adult in the  
18 room, Your Honor, and that's Ms. Woodruff.

19 THE COURT: There's only one adult in the room?

20 MR. HEAD: There was only one other adult in the  
21 room at that incident.

22 THE COURT: Okay.

23 THE WITNESS: And one eight year old child.

24 MR. HEAD: And that's Amy Woodruff. So her  
25 observations and her interpretation of those observations

1           certainly go to the germane issue of the ability and the  
2           intent to cause great bodily harm.

3                   THE COURT: And she's testified that he had the  
4           ability. She's testified as to intent. She thought he was  
5           going to kill her. So we can dwell on this all you'd like  
6           but it seems to be we're kicking a dead horse.

7                   MR. HEAD: I'll move on.

8 BY MR. HEAD:

9 Q       During the interval of time after you both got off the ground  
10       and before Mr. Therrien left you did have a back and forth  
11       exchange conversation, right?

12 A       Yes.

13 Q       Between you and Mr. Therrien?

14 A       Mm-hmm.

15 Q       And during that conversation you told him, you threatened  
16       that you were going to take his kids away, right?

17 A       No, I did not.

18 Q       You didn't?

19 A       No.

20 Q       You weren't trying to antagonize him with your conversation?

21 A       No.

22 Q       You weren't cussing at him during your conversation?

23 A       No. I cussed at him in the video, yeah, but.

24 Q       The video you recorded?

25 A       Yes.

1 Q So you recorded an interaction where you're cussing at Mr.  
2 Therrien?

3 A Yeah, I believe I said the F word or something along that.  
4 And I said shit. I know I did that.

5 Q And you weren't trying to antagonize him?

6 A No. He just beat me up. Was I supposed to be happy?

7 Q Were you afraid?

8 A Yes, I was afraid.

9 Q So both are true, you were antagonizing him and you're  
10 afraid?

11 A Except I live with him and I know how his explosions go.  
12 This happens; he freaks out, breaks things.

13 Q You know how to push his buttons, right?

14 MR. VAN NORMAN: Your Honor, this is --

15 THE WITNESS: Pushing somebody's buttons does not  
16 even give a right to for them to put their hands on anybody.

17 MR. VAN NORMAN: Ms. Woodruff, hold on. This is  
18 getting argumentative.

19 THE COURT: Okay. Ma'am, there's an objection.  
20 Everybody stop. Just so everyone understands rules. If the  
21 attorneys don't, listen up. Ma'am, when there's an objection  
22 everything stops.

23 THE WITNESS: Okay. I'm sorry.

24 THE COURT: I hear from the attorneys, I make a  
25 ruling if I need to. Let's just follow the rules. Mr. Head,

1 I appreciate your desire to try the case today. Let's move  
2 on.

3 MR. HEAD: Thank, Your Honor.

4 BY MR. HEAD:

5 Q You filed a custody law suit four days after the incident,  
6 didn't you?

7 A I don't know when it was I called --

8 MR. VAN NORMAN: Your Honor, this is completely  
9 irrelevant and inappropriate.

10 MR. HEAD: It goes to credibility and motivation,  
11 Your Honor. And *People v Yost* requires the court to assess  
12 credibility of the witnesses at the preliminary examination.

13 THE WITNESS: My daughter was a witness.

14 THE COURT: Ma'am.

15 MR. VAN NORMAN: Hold up.

16 THE COURT: Just, ma'am.

17 THE WITNESS: Sorry.

18 THE COURT: So now we're going after the incident.

19 MR. HEAD: Almost immediately.

20 THE COURT: After the incident.

21 MR. HEAD: Yes.

22 MR. VAN NORMAN: Four days is not almost  
23 immediately with all due respect, Your Honor.

24 THE COURT: I really.... So apparently there are  
25 children involved. My impression so far is there's not a

1 marriage but there's children involved. You're suggesting to  
2 me now there's a custody battle. I'm not inclined to go down  
3 that road very far. I already sense the level of alienation  
4 between the parties predating the incident. What happens  
5 after the fact is less relevant to me.

6 MR. HEAD: Okay. Fair enough. Your Honor, can I  
7 just have a couple minutes?

8 THE COURT: Yes.

9 MR. HEAD: Thank you.

10 BY MR. HEAD:

11 Q All right. After the -- after you guys both got up off the  
12 ground, you grabbed your phone and were able to take a  
13 picture and some videos, right?

14 A Mm-hmm.

15 Q Why didn't you call 911?

16 A Because he was in the house and if he heard me call 911 he  
17 would've come after me.

18 Q Okay.

19 MR. HEAD: I don't have any other questions.

20 THE COURT: Mr. Van Norman.

21 MR. VAN NORMAN: I have no redirect, Your Honor.  
22 Thank you.

23 THE COURT: Thank you, ma'am. You're excused.

24 (At 2:53 p.m., witness excused)

25 MR. VAN NORMAN: No further proofs, Your Honor.

1 THE COURT: Mr. Head, any proofs today?

2 MR. HEAD: We do not, Your Honor. Other than that  
3 that one second video I can, I can submit that to the Court.

4 THE COURT: No testimony

5 MR. HEAD: Correct.

6 THE COURT: Mr. Van Norman.

7 MR. VAN NORMAN: Your Honor, the People would move  
8 to bind over on the original charge of assault with intent to  
9 commit great bodily harm.

10 I think the testimony has shown despite with  
11 lengthy cross-examination on a number of topics that  
12 something happened on January 7th of this year in Saginaw  
13 County, specifically two parties that were living together  
14 got in an argument.

15 As a result of that argument this Defendant who by  
16 his counsel's own questioning has demonstrated to be  
17 substantially larger and heavier than his victim, took that  
18 victim by the neck and at some point caused her to fall, put  
19 him - his full self on top of her and used his arms to in  
20 effect apply pressure to the neck.

21 Now I'm not, I'm not here to talk about  
22 strangulation because that's, there's not the necessary cut  
23 off of breathing. But great bodily harm is a different  
24 story.

25 In addition to that, Your Honor, this man who again

1 by his counsel's own questioning is substantially larger and  
2 heavier than this victim, punches her in the face at least,  
3 at least once, maybe twice and then it goes from there.

4 Now there's a lot of discussion about cussing and  
5 swearing and that sort of thing. Interesting I suppose if  
6 somebody that was 6 foot 4, and 240 hit me, I might not say  
7 the nicest things either. Certainly somebody in his victim's  
8 situation is very understandably inclined to use language  
9 that counsel takes issue with now.

10 Your Honor, addition - in addition to the original  
11 charge the People move to add a count of interference with  
12 communications device pursuant to MCL 750.540(5)(a).

13 Specifically the testimony of the Defendant's  
14 victim is that while she had a cellphone in her hand, he  
15 decided to try and take it from her, succeeded in taking it  
16 from her, and threw it into another room.

17 In other words, in the way I read the elements of  
18 that crime one of the options available or one of the options  
19 under is that the defendant prevented, obstructed, or delayed  
20 her ability to make the call on..., and then it lists a number  
21 of possible devices, any other electronic device, I would  
22 submit it's a cellular telephone.

23 So I think that count is appropriate to be added to  
24 this. I would ask the Court to bind over as charged with the  
25 misdemeanors to trail. Thank you.



1 THE COURT: If I could before I allow you to  
2 respond. 750.540, and you mentioned (5)(a) which is just the  
3 penalty provision.

4 MR. HEAD: I'm sorry, Your Honor. I can't hear  
5 you. I apologize.

6 THE COURT: He referenced 750.540(5)(a), now (5)(a)  
7 is the penalty provision, so I'm trying to focus in on what  
8 part of the substance of the charge.

9 MR. VAN NORMAN: One moment, Your Honor. I'm  
10 sorry I read the -- I was giving the Court the PACC code. It  
11 is, yeah, 540 sub (5)(a), its --

12 THE COURT: It's the penalty provision.

13 MR. VAN NORMAN: Oh, the --

14 THE COURT: I'm, I'm looking for the substance of  
15 the charge that makes taking the phone that mom was calling  
16 to and breaking it, crushing it and throwing in the kitchen.  
17 Where does that fall in the statute?

18 MR. VAN NORMAN: Oh. Counsel, approach, Your  
19 Honor?

20 THE COURT: Yes.

21 (At 2:57 p.m. to 2:58 p.m., conference at the  
22 bench)

23 MR. VAN NORMAN: Thank you for the clarification,  
24 Your Honor. The statute as I understand it lists a number of  
25 options. There's the cut, break, disconnect, et cetera, but

1 among them is - then we have read, copy messages, that's not  
2 applicable, make unauthorized use of, that's not applicable.  
3 But the last option is, prevent, obstruct, or delay by any  
4 means the sending, conveyance or delivery of any authorized  
5 communication, by or through, and then the options after that  
6 deal with the device. And the device in this instance would  
7 be an electronic medium of communication to-wit a cellular  
8 telephone.

9 His taking that phone from her, attempting to break  
10 it, and throwing it across the room certainly prevented,  
11 obstructed, and delayed the sending, conveyance, or delivery  
12 of an authorize communication.

13 It was sometime before she could get to the phone  
14 to call 911. It was sometime before she could get to the  
15 phone to do anything. And whatever she intended to do or  
16 didn't intend to do was delayed as the direct result of an  
17 action by the Defendant.

18 THE COURT: So it's not, just for my clarity, you  
19 want to charge not because mom was calling and she didn't  
20 answer, and their struggle ensued, but after the fact when he  
21 took the phone from her?

22 MR. VAN NORMAN: Well the fact that, the fact that  
23 there was an ongoing call is an additional.

24 THE COURT: So I'm trying to get you to tell me how  
25 you want to charge it.

1 MR. VAN NORMAN: I think I can charge both, Your  
2 Honor, but certainly the inter - the incoming call that she  
3 was attempting to do something with that he decided was not  
4 permissible in his world and then again took the phone from  
5 her after a struggle, or during it, struggling to take the  
6 phone from her.

7 MR. HEAD: Your Honor, I'd object. The argument  
8 does not conform with what the testimony was, at all. It's a  
9 very creative interpretation that's adding facts not in  
10 evidence.

11 MR. VAN NORMAN: Respectfully disagree, Your  
12 Honor. You heard, you heard the victim's testimony. As she  
13 had the phone as the call was coming in, as she took the  
14 phone from her hoodie pocket he decided he didn't want her to  
15 have it, he attempted to grab it from her, there was a  
16 struggle, he succeeded in grabbing it from her, he then  
17 attempted to break it and then threw it into another room.  
18 So, yes, he did interfere with the call. Call it creative  
19 you want to, it's there and it's in the evidence. I don't  
20 care how creative he thinks it is. I think the evidence bears  
21 it out.

22 THE COURT: So if I can back up for a second. You  
23 want to charge under subparagraph (4), right?

24 MR. VAN NORMAN: I don't have the same text the  
25 Court does. But I'll take the Court's --

1 THE COURT: Well that's what you were essentially  
2 quoting.

3 MR. VAN NORMAN: Right.

4 THE COURT: A person shall not willfully and  
5 maliciously prevent, obstruct, or delay by any means the  
6 sending or delivery. That subparagraph.

7 MR. VAN NORMAN: Correct.

8 THE COURT: Any further argument then?

9 MR. VAN NORMAN: No, Your Honor.

10 THE COURT: Mr. Head.

11 MR. HEAD: Thank you, Your Honor. With respect the  
12 motion to add the second felony charge for interfering with a  
13 communication device, Your Honor, the testimony was that Ms.  
14 Woodruff saw that her mom called, she pulled out the phone  
15 from her hoodie pocket and cancelled the call, and then went  
16 to put it back in her pocket. At that point there was no  
17 ongoing call. At that point Eugene grabbed his phone, he  
18 pays for it, he bought it. He pays the -- he pays the line.

19 THE COURT: Wait a second.

20 MR. HEAD: And then he tossed his phone --

21 THE COURT: Stop. Stop. Stop. We just got done  
22 saying we can't use facts not in evidence.

23 MR. HEAD: I apologize. You're right, Your Honor.  
24 He grabbed a phone.

25 THE COURT: The phone that was in her pocket.

1 MR. HEAD: Correct.

2 THE COURT: Okay. Go ahead.

3 MR. HEAD: And then, and then he did but there was  
4 no ongoing call, that she had already cancelled the call.  
5 She - the next time she did actually go to retrieve her phone  
6 she didn't make a call to 911, she decided to instead make  
7 recordings of her, her boyfriend.

8 So there was no interference with any  
9 communication. There was no attempted interference with any  
10 communication. She pulled out her phone, she cancelled a  
11 call. And it's not against the law to then, to toss a phone  
12 aside. She was not trying to make any communication at that  
13 time. He was not interfering with any attempt to make any  
14 communication, text message, phone call or otherwise.

15 Her next attempt to use the phone was not to make a  
16 communication, it was to record. So there was no  
17 interference with the communication that she voluntarily  
18 cancelled before he even went to touch her phone or his  
19 phone, whoever's phone.

20 So, Your Honor, it simply doesn't meet the elements  
21 of attempting to willfully, maliciously, prevent, obstruct or  
22 delay the sending, conveyance, or delivery of a  
23 communication. That's not what happened. That's not what  
24 the testimony was.

25 The testimony was that the call was cancelled and

1 it was only then that the phone was grabbed. That is not an  
2 interference with the sending of a communication. That does  
3 not comply with the statute, MCL 750.54 -(sic) subsection (4)  
4 which is what the People have cited to.

5 With respect to the rest of the charges, Your  
6 Honor. The elements of the charged felony offense of assault  
7 with intent to do great bodily harm less than murder, the  
8 People have to prove three elements. They have to show  
9 probable cause for the existence of these three elements:

10 First, that the defendant actually tried to  
11 physically injure the complainant. It's not enough to touch  
12 or simple assault, but must actually try to physically  
13 injure.

14 Second, the government has to show that at the time  
15 of the assault the defendant had the ability to cause an  
16 injury or at least that she believed that he did. We'll  
17 concede on that issue.

18 And, third, the government has to show that the  
19 defendant actually intended to cause great bodily harm. And  
20 while actual injury is not necessary, if there was an injury  
21 or not, that can be considered into evidence in deciding  
22 whether the defendant actually intended to cause great bodily  
23 harm.

24 Now here there's no evidence that he actually tried  
25 to cause physical injury. And it is important to look at the

1 actual reality and the facts and circumstances that occurred  
2 on that day. And it's readily apparent that the size  
3 differential is important. Had he actually tried he could  
4 have and would have injured. It is not enough for a simple  
5 assault. That's not what's charged. They have to show more.  
6 They have to show actual evidence of an attempt, where the  
7 defendant tried to physically injure. They have not shown  
8 that today.

9 And finally the last element is that the defendant  
10 intended to cause great bodily harm. And in that the court  
11 can consider the fact that there was no injury. And if there  
12 were an injury that could also be considered to discern and  
13 decide that element.

14 Here it's very important that there was no injury.  
15 Because that is evidence that there was no intent to cause  
16 great bodily harm. And that's also consistent with the  
17 testimony from Ms. Woodruff where she says that he, he all of  
18 a sudden stopped, maybe he realized what he was doing and he  
19 got up. There's no evidence that he actually intended to  
20 injure, much less intended to cause, not only injure, but  
21 cause great bodily harm. There's simply no evidence of those  
22 two elements that are necessary to bind over on the charged  
23 offense.

24 So the People have not met their burden. And the  
25 Court should deny the bind over on both of the requested

1           felony charges.

2                   THE COURT:   Mr. Van Norman.

3                   MR. VAN NORMAN:   Respectfully disagree.  You have  
4           a similar - ignoring his discussion was the Defendant's  
5           initial act when he approached his victim and as you heard  
6           rather emotionally, very emotionally and rather graphically,  
7           put both of his hands around her neck.  Now whether he  
8           succeeded in strangling her or whatever or not, there's an  
9           act there.

10                   We can see her -- Counsel conceded after proving it  
11           the disparity in size, subsequently after taking her by the  
12           neck he puts her to the ground and lays on top of her or gets  
13           on top of her and has both of his arms situated so that they  
14           are applying pressure to the neck.

15                   As Counsel has conceded, actual injury isn't  
16           necessary.  But what we have here are at least two acts, make  
17           it three or four because we have the punches to the face,  
18           punch or punches to the face that left red marks or not,  
19           depending on which computer you look at.

20                   But we have a number of acts by this Defendant that  
21           certainly had the ability given what's acknowledged already,  
22           as his disparity in size to cause injury, what his intent was  
23           whether he snapped out of something, or whether he intended  
24           to do it and changed his mind or whether he intended and  
25           failed, that's a question for the jury, Your Honor.



1 Respectfully I think bind over is appropriate on both the  
2 original charge and the other one. Thank you.

3 THE COURT: So to the Defendant is charged is Count  
4 1 with Assault with Intent to do Great Bodily Harm less than  
5 Murder or by Strangulation, and the complaint on its face  
6 alleges that the Defendant did make an assault upon Amy Sue  
7 Woodruff by strangulation or suffocation.

8 The statute MCL 750.84 indicates that: A person who  
9 does either of the following is guilty of a felony, et  
10 cetera.

11 So paragraph (a): Assaults another person with  
12 intent to do great bodily harm, less than murder. And (b),  
13 separately: Assaults another person by strangulation or  
14 suffocation. Two distinct aspects of the crime.

15 Under the statute in subparagraph (2):  
16 ...strangulation or suffocation intentionally impeding normal  
17 breathing or circulation of the blood by applying pressure to  
18 the throat or neck, or by blocking the nose or mouth of  
19 another person.

20 So you can look the case down either path, but as  
21 charged is it by strangulation or suffocation.

22 The purpose of today's hearing is to determine  
23 whether or not there's probable cause to believe the  
24 defendant committed the felony offense as charged.

25 And I should then bring in also the Interference of

1 Electronic Communication Device in violation of MCL  
2 750.540(4). Which as counsel has read, indicates that: A  
3 persona shall not willfully and maliciously prevent,  
4 obstruct, or delay by any means the sending, conveyance, or  
5 delivery of an authorized communication, by or through a  
6 number of different types of electronic devices.

7 In any event, we need to determine whether there's  
8 probable cause today not proof beyond a reasonable doubt. As  
9 counsel knows probable cause is a fairly modest standard  
10 signifying evidence sufficient to cause a person of ordinary  
11 prudence and caution to conscientiously entertain the  
12 reasonable belief of the accused guilt.

13 Probable cause may be established by direct  
14 evidence, testimony, or documents, or exhibits or by  
15 circumstantial evidence and reasonable inferences arising  
16 from the evidence.

17 As to the electronic communication device. Counsel  
18 makes a compelling argument, counsel meaning Mr. Head, makes  
19 a compelling argument, depending on what the facts are. And  
20 while you were making arguments, going back through my notes.  
21 And these are just notes, so it's not the transcript. But  
22 I've got she didn't disconnect, she silenced her phone.  
23 That's perhaps a different twist than mom called, I cancelled  
24 it, I'm now in - no one is trying to come in, I'm not trying  
25 to go out, the phone is just dormant in my pocket. If she

1 silenced the phone and as she testified the Defendant took  
2 the phone, smashed it over his knee, and threw it into the  
3 kitchen then I think there's probable cause to believe that  
4 750.540 has been violated.

5 As to the assault, again as charged, I don't think  
6 I even need to wade into who is bigger than who, how red was  
7 the red mark. All of those factual intensive questions, but  
8 whether or not she was strangled or suffocated, which as I  
9 read the definition she said not on one occasion but on two  
10 occasions he had throttled her. She was having a hard time  
11 speaking. Her voice was becoming softer and softer. She  
12 didn't black out. But we're going down that path. I think  
13 there's certainly probable cause to believe that he committed  
14 that offense also.

15 So he'll be bound over to Circuit Court on the two  
16 felonies, both as charged and as amended, plus the two  
17 misdemeanors that will follow.

18 While we're here I want to review bond and make  
19 sure there's no problems there. I know he's still on GPS.

20 MR. HEAD: Yes, Your Honor. We'd like to address  
21 bond.

22 THE COURT: Let me first find out. Mr. Van Norman,  
23 are you aware of any problems with bond?

24 MR. VAN NORMAN: I've not been made - I've not  
25 been made aware of any problems. I've not been made any

1 aware of any problems with bond since, I know it was - I  
2 think it was amended once relative to some scheduling.

3 THE COURT: Right. Mr. Head.

4 MR. HEAD: Thank, Your Honor. Mr. Therrien has now  
5 been bond with a tether for almost 3 months, next week it  
6 will be 3 months. There's been no issues, no violations, no  
7 alleged violations.

8 Mr. Therrien regularly works with the public. He  
9 owns a roofing and siding, and window company. He regularly  
10 has to climb ladders. He just had to climb one yesterday in  
11 front of a customer. There's absolutely no need for him to  
12 be wearing a tether. Both individuals are represented by  
13 counsel in civil proceedings. There are no allegations or  
14 problems in that regard. Mr. Therrien has no desire to have  
15 any contact with Ms. Woodruff at all, except with counsel as  
16 he has for the last three months.

17 It's not in Ms. Woodruff's interest for his  
18 business to be interrupted by having to wear a tether and the  
19 stigma that comes from it when working with the public. It  
20 could interfere with his business relationships, and his  
21 ability to do business.

22 THE COURT: So your argument is that she's  
23 financially advantaged to have the tether taken off?

24 MR. HEAD: She is. Absolutely, Your Honor. She  
25 absolutely is. But, but regardless of that fact there's no

1 violations, there's no need to continue it. He has no  
2 intention or desire to try to speak with her. The only  
3 reason to continue it at this point would be punitive. And  
4 that's not what the condition is for, Your Honor. So we'd  
5 ask for it to be removed.

6 THE COURT: Mr. Van Norman.

7 MR. VAN NORMAN: Your Honor, I'm advised that the  
8 Defendant's employment primarily consists of employment from  
9 his home. So either that's, the tether certainly doesn't  
10 interfere with his ability to do that.

11 The other thing that I heard is that somehow, and  
12 keeping in mind this is the first four days of April, that  
13 somehow in the last few days, maybe the end of March or the  
14 end of winter, that he had it on his leg and was on a ladder  
15 and there was a customer there. Now if a customer is looking  
16 up his leg in March on a jobsite I submit there's bigger  
17 problems here that the presence of the tether has nothing to  
18 do with whatsoever.

19 MR. HEAD: Maybe it's just me. When I have a  
20 roofer at my house I'm outside with him. Yesterday when it's  
21 in the 60 or upper 50's in Michigan. Maybe that's just me.  
22 But it did actually interfere with his ability to do business  
23 yesterday and that's a fact.

24 THE COURT: So part of me responds, Mr. Head,  
25 there's been no problems because the tether is working. What

1 I've heard today is very unsettling. I live in a different  
2 world. People don't treat each other the way I've heard  
3 today, much less people who are married or live together for  
4 a long time, have children together. This doesn't happen in  
5 my world. People don't talk the way I've heard people talk  
6 today, not in private, not ever.

7 So with due respect I'm going to deny the request.  
8 Thank you.

9 MR. VAN NORMAN: Thank you, Your Honor.

10  
11 (At 3:17 p.m., proceeding concluded)

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1 STATE OF MICHIGAN )  
2 COUNTY OF SAGINAW )  
3  
4

5 I certify that this transcript, consisting of 63 pages, is a  
6 complete, true, and correct transcript, of the Preliminary  
7 Examination proceedings and testimony taken in this case, Eugene  
8 Warren Therrien, District Court Case Number 23-106-FY on Tuesday.  
9 April 4, 2023.  
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18 Dated: April 25, 2023  
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