

1 PLAINTIFF: Ms. Duncan

2 WITNESS: Mr. Garner

3 DEFENSE COUNSEL 1: Ms. Murray

4 DEFENSE COUNSEL 2: Mr. Baker

5

6 WARM UP

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DIRECT EXAMINATION

8 Q. BY MS. DUNCAN: Mr. Garner, before we took the  
9 break we were discussing when you arrived at the bar on  
10 that day in July. Do you remember that? /

11 A. Yes, I do.

12 Q. I just had some more questions for you in that  
13 regard.

14 What was the purpose in meeting my client that day?

15 A. Well, / we were just getting together to catch  
16 up on old times, you know. We hadn't seen each other in  
17 a while.

18 Q. You testified previously that / you had gone to  
19 high school together; is that correct?

20 A. Yes. That's right.

21 Q. And how many years ago was that, approximately?

22 A. Well, we graduated in / 1976. I had only seen  
23 him maybe once or twice since then at reunion type of  
24 events.

25 Q. Okay. When was the previous time before / the  
26 day in question that you had seen Michael Nelson?

1           A.     Well, I would guess that it would be about a  
2 year before that.

3           MS. MURRAY:  Let me / just clarify something for the  
4 record.  We don't want you to guess.  It doesn't need to  
5 be an exact date, but we don't want you / to guess.

6           THE WITNESS:  I completely understand.  I would say I  
7 visited him about a year before that.

8           Q.     BY MS. DUNCAN:  Do you remember the event or the  
9 reason that \*/ you had seen each other that time?

10          A.     Yes.  It was a birthday party for a mutual  
11 friend.

12          Q.     Okay.  Was that also someone who you had /  
13 attended high school with?

14          A.     Yes.  That's right.  Someone had arranged a  
15 surprise birthday party.

16          Q.     Getting back to the event that we are talking  
17 about today.  / Do you remember what time you got to the  
18 bar that afternoon?

19          A.     I got to the restaurant probably about 4:30.  We  
20 were supposed to / meet a little bit before 5:00 because  
21 we were also going to try to maybe go see some friends  
22 later.

23          Q.     You mean later that same / evening?

24          A.     Yes.

25          Q.     When you arrived did you see Michael Nelson  
26 anywhere in the bar?

1           A.    No.  I arrived before he did.  I just waited in  
2 the / lobby area for him to finally get there.

3           Q.    Do you remember approximately what time you saw  
4 my client arrive?

5           A.    I think I had been there / for maybe 15 minutes  
6 before he came in.

7           MS. DUNCAN:  Counsel, I would like to mark this  
8 diagram as my next exhibit.

9           MR. BAKER:  Why don't you describe it / for the  
10 record and then we can have it identified.

11          MS. DUNCAN:  I will ask the witness if he recognizes  
12 it.

13          MR. BAKER:  Let's mark it as Exhibit 14.

14                               \*\*END OF WARM UP\*\*

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1 EXAM

2 Q. BY MS. DUNCAN: Mr. Garner, do you recognize  
3 what this color photograph depicts?

4 A. Yes. It is the patio area of the restaurant  
5 where I met Mike that afternoon. /

6 Q. Do you see this area here on the photo?

7 A. Yes, I do.

8 Q. Would you please use this marker and indicate an  
9 X where you were / when you initially saw my client that  
10 evening.

11 A. I was sitting on this bench right here out in  
12 the front of the patio area. I / had gone in and checked  
13 the reservation. He wasn't there yet. I just remained  
14 out in front there and waited for Michael to get there.  
15 /

16 Q. Had you arranged a meeting time with Michael  
17 Nelson that afternoon?

18 A. He left me a message earlier and said he would  
19 probably be there before / 5:00. I went at 4:30 because  
20 I came directly from the gym.

21 Q. What did you say your plans were for the  
22 evening?

23 A. We were / actually just going to get together  
24 and have some dinner before we went to our friend's  
25 apartment.

26 Q. And had you already made arrangements to meet /

1 with that other friend, or --

2 A. Very loose arrangements. I mean, it wasn't like  
3 a party or anything like before. We were just trying to  
4 catch \*/ up and see who was still living in the  
5 neighborhood and that type of thing. We were going to go  
6 see Paul Sanders after dinner / that night.

7 Q. So Paul wasn't meeting you two for dinner?

8 A. No. Michael had talked to Paul earlier in the  
9 week and said that we were / going to be in the area and  
10 might stop by.

11 Q. And by Michael, you mean the plaintiff, Michael  
12 Nelson?

13 A. Yes, that's correct.

14 MS. MURRAY: Excuse me for / interrupting. May I see  
15 the exhibit that you previously marked?

16 MS. DUNCAN: Certainly. This is Exhibit 14, the  
17 diagram of the patio.

18 MS. MURRAY: I wanted to see the / photographs that  
19 were marked this morning. Do you have those?

20 MR. BAKER: Counsel, I actually have them.

21 MS. MURRAY: When you identified this as a diagram,  
22 you were talking / about the photograph?

23 MS. DUNCAN: Correct. I am sorry. It's a  
24 photograph. I wanted simply to have the witness explain  
25 to us where he was seated when / my client arrived.

26 MR. BAKER: The record should reflect that the

1 witness has marked Exhibit 14 with an X.

2 MS. MURRAY: All right. Thank you.

3 MS. DUNCAN: I have nothing further / for right now.

4 MR. BAKER: Counsel, you can go first if you want.

5 MS. MURRAY: Sure. Thank you.

6 MS. DUNCAN: Defense counsel will have some questions  
7 for you also.

8 THE WITNESS: Okay. That's \*/ fine.

9 CROSS-EXAMINATION

10 Q. BY MS. MURRAY: Mr. Garner, I represent David  
11 Mitchell, one of the defendants in this lawsuit.

12 A. All right.

13 Q. I have some questions for you about your  
14 observations / that evening. If you don't understand  
15 what I am asking, just ask me to repeat it or explain it  
16 and I will be happy to / do that for you.

17 A. Okay. No problem.

18 Q. You were questioned about when you first noticed  
19 my client approach your table on the patio. Do you /  
20 recall that?

21 A. Certainly.

22 Q. Please describe to us what you were doing when  
23 you first observed Mr. Mitchell.

24 A. Mike and I were just sitting out there / on the  
25 patio enjoying dinner when your client just came up and  
26 started a fight.

1 Q. Had you already ordered your dinner when you  
2 first observed / Mr. Mitchell approach your table?

3 A. Yes. Actually, we were almost finished.

4 Q. What did you order that evening?

5 MS. DUNCAN: I object. Why is that relevant?

6 MS. MURRAY: Well, let / me rephrase the question.

7 MS. DUNCAN: All right.

8 Q. BY MS. MURRAY: Had you ordered some alcohol  
9 with your meal that evening?

10 A. No. I don't drink. I just had some hot / tea  
11 or maybe just water. I don't know.

12 Q. But no alcohol that night?

13 A. No. I don't really drink.

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1 START TYPING

2 Q. BY MS. MURRAY: Did Mr. Nelson order something  
3 to drink? \*/

4 A. I'm sure he did. He ordered a beer when he  
5 first got there.

6 Q. Were you seated right away after he arrived?

7 A. No. We remained in / the bar until our table  
8 was ready.

9 Q. How long would you estimate that was?

10 A. Probably about 20 minutes.

11 Q. Do you remember if your friend was / finished  
12 with his beer before you were seated at your table?

13 A. I don't remember him carrying a bottle to the  
14 table. I don't remember.

15 Q. Do / you remember him ordering a drink when you  
16 were seated at your table?

17 A. The waitress brought him a beer, but I don't  
18 remember him ordering / it.

19 Q. Well, would you agree with me that he must have  
20 ordered another beer or she wouldn't have brought him  
21 one?

22 MS. DUNCAN: Objection. Calls for speculation. /

23 MR. BAKER: I join in that objection. Also, there is  
24 no foundation.

25 Q. BY MS. MURRAY: Mr. Garner, how did you know  
26 that there was going to be a fight when / my client



1 approached your table?

2 A. I didn't know that there was going to be a  
3 fight.

4 Q. I thought you testified earlier that you knew  
5 something / was going down when you observed my client  
6 heading your way.

7 MR. BAKER: Objection. Misstates the testimony.

8 THE WITNESS: I just could see that he appeared to be  
9 upset. \*/

10 Q. BY MS. MURRAY: You didn't understand why he was  
11 angry?

12 A. Not really. I mean, I could understand he  
13 possibly may have been upset at what he thought Mike /  
14 had said to him.

15 MS. DUNCAN: Excuse me. I move to strike the last  
16 part of that answer. It is not relevant what this  
17 witness might have / thought.

18 MR. BAKER: Join.

19 Q. BY MS. MURRAY: Mr. Garner, did you overhear any  
20 conversation between your friend and my client before the  
21 altercation occurred?

22 A. Yes, I did. I heard a / little bit.

23 Q. Do you recall who spoke first?

24 A. Yes. Mike was commenting that the guy's  
25 motorcycle was too loud.

26 Q. Now, you said that he commented. / Who was he

1 commenting to, do you know?

2 A. Mike was talking to me while we were sitting on  
3 the patio eating dinner. He said that / the motorcycle  
4 was too loud.

5 Q. What did you observe Mr. Mitchell to be  
6 physically doing when Mr. Nelson made that comment?

7 A. Well, I just saw / him park the bike and get off  
8 of it. I wasn't really paying attention to him, but I  
9 knew there was a motorcycle there.

10 Q. Your / earlier testimony was that Mr. Mitchell  
11 just got off his bike and went over and struck Mr. Nelson  
12 for no reason; is that correct?

13 A. Well, \*/ I didn't see a reason for him to hit  
14 Mike like that.

15 Q. Was Mr. Nelson angry for some reason that  
16 evening?

17 MS. DUNCAN: Objection. Calls for speculation. /

18 Q. BY MS. MURRAY: Well, how would you describe Mr.  
19 Nelson's demeanor that evening when he met you for  
20 dinner?

21 A. Perfectly fine. He got there shortly after I  
22 did. / We ordered a very nice dinner. We were just  
23 chatting and getting caught up on old times.

24 Q. Did you at any time notice a change / in his  
25 demeanor?

26 A. Yes, I did.

1 Q. When did you notice that change?

2 A. When your client was revving the engine on his  
3 motorcycle for no reason. /

4 Q. What was it that made you eventually notice --

5 A. We were just trying to have a conversation and  
6 it was too loud.

7 Q. What was the first / conversation that you  
8 overheard between my client and your friend?

9 A. Mike was commenting that the motorcycle was too  
10 loud and that the guy maybe should / just back off a bit.

11 Q. Did he direct his comments to Mr. Mitchell?

12 A. No. He was talking to me, but your guy started  
13 walking over / to us.

14 Q. Did you have any conversation with Mr. Mitchell?

15 A. No. He just came over and asked Mike what his  
16 problem was.

17 Q. Did Mike respond \*/ to him?

18 A. Mike just said the bike was loud.

19 Q. Was he angry or yelling when he said that?

20 MS. DUNCAN: Objection. Calls for speculation.

21 Q. BY MS. MURRAY: What was Mike's / demeanor when  
22 my client approached him?

23 A. Mike was just talking to me. He didn't really  
24 even look at the guy. He just said that the / motorcycle  
25 was loud.

26 Q. Did you hear any profanity from either of the

1 two men at any time during their conversation?

2 A. Well, I wouldn't really call / it a  
3 conversation. Mike was just talking and the other guy  
4 got mad.

5 Q. In Mike's comments did you hear any profanity?

6 A. Not that I recall. /

7 Q. Would it refresh your memory if you read a  
8 police report that was taken that evening?

9 A. I don't believe so.

10 MS. MURRAY: Nothing further at this time. /

11 CROSS-EXAMINATION

12 Q. BY MR. BAKER: Mr. Garner, I represent the  
13 restaurant where this altercation happened. I have a  
14 couple questions for you.

15 A. That's fine.

16 Q. You have previously testified that when / you  
17 saw the exchange between the plaintiff and the defendant,  
18 you were very shocked. Is that how you would describe  
19 it?

20 A. Correct.

21 Q. Why were you / shocked?

22 A. Well, I couldn't imagine that it would go that  
23 far.

24 Q. What do you mean by that exactly?

25 A. Mike is a nice guy. He isn't \*/ the type of  
26 person who gets in fights when he goes out.

1 MS. MURRAY: Objection. Nonresponsive.

2 MS. DUNCAN: I think it is responsive.

3 Q. BY MR. BAKER: Now, you were asked about  
4 profanity / that might have been used in this  
5 altercation. Did you hear either of the two men involved  
6 using profanity?

7 A. Not really profanity. I mean, I / guess it is a  
8 matter of personal opinion on what that is.

9 Q. Do you recall being interviewed at the scene the  
10 night that this happened? /

11 A. Yes, I do.

12 Q. Do you know approximately what time that was?

13 A. It was after Mike had been taken to the hospital  
14 in the ambulance. I / was waiting to speak with the  
15 officer.

16 Q. Did you accompany your friend to the hospital in  
17 the ambulance?

18 A. I wanted to. The police said that / I needed to  
19 remain at the restaurant and speak to them before I could  
20 go to the hospital.

21 Q. So you were interviewed at the scene; / is that  
22 correct?

23 A. Yes.

24 Q. Is that the only interview that you gave to the  
25 police?

26 A. I think so. I don't remember any other one.

1 Q. If / I told you that there is a recording of an  
2 interview at the hospital, would that refresh your  
3 recollection?

4 A. At the hospital?

5 Q. Yes.

6 A. Oh, that's \*/ right. I did speak to a guy at  
7 the hospital. I didn't know that he was a police  
8 officer, though.

9 Q. He wasn't wearing a traditional / police  
10 uniform?

11 A. No. He was just in regular clothes. I assumed  
12 he was from the bar.

13 Q. Did he represent himself as being from the bar?/

14 A. Not that I recall.

15 Q. Do you remember a name that might have been  
16 given to you?

17 A. No, I don't.

18 Q. And did you testify earlier that / you actually  
19 saw the defendant make physical contact with the  
20 plaintiff?

21 A. I don't know who the defendant is and who the  
22 plaintiff is, but I / saw Mr. Mitchell take a good swing  
23 at my friend. He punched Michael hard. He went down  
24 immediately. It happened quickly.

25 Q. Did you observe your / client -- I am sorry.

26 Your friend -- did you see him make physical contact

1 with the person who hit him?

2 A. You mean did he hit him / back or something  
3 crazy like that?

4 Q. Correct. Did you observe him make contact using  
5 any part of his body?

6 A. Absolutely not. The other gentleman came / over  
7 and punched Michael. He was down for the count. He  
8 immediately was knocked out.

9 MR. BAKER: Nothing further. Thank you.

10 REDIRECT EXAMINATION

11 Q. BY MS. DUNCAN: Mr. Garner, when your friend \*/  
12 was knocked down, was he unconscious?

13 MS. MURRAY: Objection. Lack of foundation.

14 MS. DUNCAN: I can rephrase the question.

15 MS. MURRAY: Thank you.

16 Q. BY MS. DUNCAN: You saw Mike get punched; is  
17 that correct? /

18 A. Yes.

19 Q. You described previously that it was like  
20 watching somebody collapse or fall over; is that right?

21 A. That's correct.

22 Q. How close were you when Mike / hit the pavement?

23 A. It happened so quickly. We were just sitting  
24 there eating dinner. The next thing I knew, he was flat  
25 on the ground. /

26 Q. And did you hear any conversation between the

1 two men before that occurred?

2 A. Not really, just Mike saying that the guy's  
3 motorcycle was really too / loud. He didn't know who the  
4 guy was trying to impress.

5 Q. Now, is that something that Mr. Nelson said, or  
6 is that something that you / are only assuming?

7 A. I believe that was the tenor of the comment. I  
8 mean, there is no reason for all the noise. It is like /  
9 somebody is trying to impress somebody.

10 Q. Did Mike ask Mr. Mitchell who he was trying to  
11 impress?

12 A. No. He didn't really talk to him at / all.

13 Q. So you didn't actually hear any conversation  
14 regarding that?

15 A. Not at all. Are you asking me if Mike deserved  
16 to be hit?

17 MS. MURRAY: Objection. Sir, \*/ unfortunately, you  
18 aren't allowed to ask the questions today. This is  
19 merely a legal process whereby all of us ask you  
20 questions regarding what your / observations were.

21 THE WITNESS: I understand.

22 MR. BAKER: If I may add something.

23 This is a very casual setting, and it could perhaps  
24 seem like it is an informal / conversation. But we do  
25 have certain rules of law that we have to abide by, and  
26 you don't get to ask questions.



1 THE WITNESS: I am sorry. / I am just trying to  
2 figure out what you are trying to ask me about or what  
3 you are trying to do.

4 MS. MURRAY: There is no / secret motive, sir. We are  
5 just asking questions so we can prepare our respective  
6 cases.

7 Q. BY MS. DUNCAN: Mr. Garner, one last area I have  
8 for you is / dealing with when you got to the hospital.  
9 Did you have any conversation with any of the medical  
10 staff there when you arrived at the / hospital?

11 A. No. They wouldn't talk to me because I am not  
12 related to Mike.

13 MS. DUNCAN: Nothing further. Thank you.

14 MS. MURRAY: If I may follow up on that. /

15 MR. BAKER: That's fine.

16 RE-CROSS-EXAMINATION

17 Q. BY MS. MURRAY: Did you make any phone calls to  
18 anyone to alert them that Mr. Nelson was at the hospital?

19 A. I tried to do that, \*/ but I couldn't remember  
20 the number.

21 Q. Who did you try to contact?

22 A. Mike's wife. I was trying to remember their  
23 home telephone number, but all / I could remember was his  
24 cell phone number.

25 Q. Did you eventually get ahold of her at any time?

26 A. No. Unfortunately, I didn't.

1 Q. And the medical / personnel at the hospital, did  
2 they ever give you an update on your friend's condition?

3 A. No, they did not.

4 Q. Did you make inquiries, though?

5 A. Yes. / I did.

6 Q. And do you remember who you asked?

7 A. I just spoke to the nurses who were there. They  
8 told me that the doctor would / have to talk to me. And  
9 then when the doctor came in to see Mike, they told me I  
10 had to wait outside. So I / didn't speak to the doctor.

11 Q. Are we talking about in the emergency room, or  
12 is this when he was admitted?

13 A. Just in the emergency room. /

14 MS. MURRAY: Nothing further. May we allow Mr.  
15 Garner to leave?

16 MR. BAKER: I don't have anything further. Thank you,  
17 Mr. Garner, for making yourself available.

18 THE WITNESS: No problem.

19 MR. BAKER: We / appreciate your coming back today to  
20 finish this up.

21 THE WITNESS: It is not a problem.

22 MS. DUNCAN: I do have just one question.

23 MS. MURRAY: He almost made it out. \*/

24 REDIRECT EXAMINATION

25 Q. BY MS. DUNCAN: Mr. Garner, have you spoken to  
26 my client since the night that this happened?

1           A.    No.  I tried to see him in the hospital, but he  
2 / declined my visits.

3           Q.    So you haven't spoken to him about your  
4 testimony?

5           A.    No.

6           MS. MURRAY:  Perhaps the record should reflect that  
7 both Mr. Nelson and Mr. Mitchell / are present for  
8 today's depo.

9           MR. BAKER:  So stipulated.

10          MS. DUNCAN:  Yes.  I will stipulate to that.

11          MS. MURRAY:  Thank you.

12          Q.    BY MS. DUNCAN:  Did you try to ascertain why he  
13 didn't want to / see you?

14          A.    I talked to his wife.  She just said he wasn't  
15 himself since this whole thing happened and that I  
16 shouldn't take it personally. /

17          MS. MURRAY:  Objection.  That would be hearsay.

18          MS. DUNCAN:  Nothing further.

19          MR. BAKER:  Thank you.  Nothing further.

20          MS. MURRAY:  Thank you again, Mr. Garner, for coming  
21 back to finish up your testimony today. / We all  
22 appreciate your time.  You may be excused.

23          THE WITNESS:  Thank you.  So do I need to come back  
24 again?

25          MS. DUNCAN:  No.  Thank you.

26          MS. MURRAY:  As we discussed / with you the other

1 day, you will receive the transcript for your review.  
2 You will be contacted if we have any other questions for  
3 you. /

4 MR. BAKER: Can we go off the record? Is there  
5 anything else that we need to put on the record today?

6 MS. DUNCAN: We need to discuss the exhibits.\* /

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10 ***\*\*\*EACH EXAM VARIES. THE ACTUAL TEST GIVEN MAY BE***  
11 ***SLIGHTLY DIFFERENT\*\*\****  
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