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SPRINGDALE CITY COUNCIL  
 ACTING AS THE EMPLOYEE APPEAL BOARD  
 FOR THE PURPOSE OF HEARING AN APPEAL  
 FROM SHANE LOWERY

SPRINGDALE TOWN HALL  
 118 LION BOULEVARD  
 SPRINGDALE, UTAH

OCTOBER 6, 2016

Reported by Russel D. Morgan

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1 PROCEEDINGS  
 2 MAYOR SMITH: Today is October 6, Thursday, 2016.  
 3 It is 12:01. We are at the Springdale Town Hall for the  
 4 purpose of a hearing on an appeal of Shane Lowery pursuant  
 5 to the policy manual. Present is the town council.  
 6 MR. CHAMBERS: Mark Chambers.  
 7 MS. ZUMPFT: Lisa Zumpft.  
 8 MAYOR SMITH: Mayor Smith.  
 9 MR. PLAYER: Adrian Player.  
 10 MR. ALLTUCKER: Mike Alltucker.  
 11 MAYOR SMITH: Rick is here. Greg is here. Darci  
 12 is here. And Dawn is here also. And we have a court  
 13 reporter also taking minutes.  
 14 MR. HARDMAN: And we should indicate as well that  
 15 Mr. Shane Lowery is here.  
 16 MAYOR SMITH: Mr. Shane Lowery is here and several  
 17 people in the audience. Okay.  
 18 MR. HARDMAN: Thank you, Mayor. As the Mayor  
 19 indicated, we are all gathered here today because the town  
 20 manager, Mr. Wixom, determined that a few weeks ago there  
 21 was justification to terminate Mr. Shane Lowery's  
 22 employment. And, as a consequence of that action, Mr.  
 23 Lowery appealed that termination initially to an  
 24 intermediate appellate body discussed in the town personnel  
 25 policy that was comprised of three town employees and two

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1 members of the council. And that intermediate appellate  
 2 body upheld Mr. Wixom's decision to terminate Mr. Lowery.  
 3 And, thereafter, Mr. Lowery requested a final employee  
 4 appeal board hearing before the town council as contemplated  
 5 by the town's personnel policy.  
 6 There have been some recent changes in the Utah  
 7 State Code as we have discovered that indicate that should  
 8 the town council decide to uphold Mr. Wixom's decision to  
 9 terminate Mr. Lowery, that Mr. Lowery does have a right  
 10 under state code to appeal that decision to the Utah Court  
 11 of Appeals. And that was explained to him in a letter that  
 12 we'll reference here in a moment as one of our exhibits.  
 13 And so, procedurally, what I think would be  
 14 beneficial for everyone participating in the proceedings  
 15 today is for me, first, to make kind of a general  
 16 explanation as to the stages of the proceedings. And then  
 17 we will identify by number all of the exhibits. And we'll  
 18 ask for the town's representative, Mr. Wixom, and Mr. Lowery  
 19 to acknowledge that the copies of the exhibits that they  
 20 each have, you know, have the indicated number of pages.  
 21 And then once that's accomplished we'll proceed with the  
 22 presentation of the evidence.  
 23 So, as I believe the members of the town council  
 24 know and understand, the town council sits today in a  
 25 quasi-judicial capacity, which means that the town council

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1 will be acting sort of like a judge in a civil trial. And  
 2 different than regular town council meetings where, and  
 3 public hearings, at those regular town council meetings  
 4 where members of the public are invited to come forward and  
 5 speak in support of or in opposition to a particular matter  
 6 before the town council for which a public hearing has been  
 7 scheduled, like maybe a zone change or some sort of a  
 8 development in an application or something of that nature.  
 9 These proceedings will function more like a trial so that  
 10 only the town's witnesses and only Mr. Lowery, his  
 11 witnesses, will be invited to come forward and testify.  
 12 And so, I don't know if there are any persons who  
 13 are here observing the proceedings merely out of interest or  
 14 because they have been asked to be a witness, but that's  
 15 something, that's an important distinction from public  
 16 hearings that otherwise occur as a part of the regular town  
 17 council meetings. So, this, as I have indicated, is not a  
 18 regular town council meeting. It's a different kind of a  
 19 meeting. And both the town's personnel policy, and more  
 20 particularly, state code, Utah, the Utah State Code and the  
 21 cases that annotate the code talk about and require a  
 22 certain level of procedure.  
 23 So, after we mark the exhibits, then the way the  
 24 proceedings will go, in effect, the town bears the burden of  
 25 proof or the burden of persuasion. So, the town, and I

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1 understand the town's primary witness will be Mr. Wixom. I  
2 don't know whether he intends to call others as witnesses,  
3 but he will present whatever evidence he would, has prepared  
4 in support of his decision to terminate Mr. Lowery.

5 After each of those witnesses gives their remarks  
6 in favor of the town's position, it's your right, Mr.  
7 Lowery, if you want to cross-examine those witnesses, either  
8 yourself, or if you have a representative that, an attorney  
9 or a non-attorney representative that you would like to  
10 cross-examine them. And by that I mean you can ask  
11 questions, you know, Well, what about this issue or whatnot?  
12 And you have that right after each of the town's witnesses  
13 to do that.

14 Once the town basically presents its case as Mr.  
15 Wixom has prepared it, then you'll have an opportunity to  
16 present whatever you have prepared through your witnesses  
17 and your documents and your direct testimony that you would  
18 like the town council to consider. And should Mr. Wixom  
19 have any, you know, cross-examination questions or rebuttal  
20 points that he wants to make, he would also have an  
21 opportunity to, you know, ask you questions or your  
22 witnesses about particular things.

23 Throughout the town's presentation of the evidence  
24 and your presentation of the evidence, the town council  
25 members may ask questions if they need to have witnesses

1 in private. Once the town council feels like it has  
2 sufficiently deliberated about all the evidence that's been  
3 presented here today, then the public part of the meeting  
4 will be called back to order and everyone will be invited to  
5 come back into the proceedings. And if the town council  
6 feels like it has had adequate time to deliberate, then it  
7 will take, then it must conduct a vote by secret ballot  
8 according to state code where each member of the town,  
9 without identifying who he or she is, will vote to uphold  
10 Mr. Wixom's decision or to overturn it.

11 And then once those votes are marked, they will be  
12 collected by Darci Carlson, the town clerk, and she will  
13 certify that she's received one from all five of the -- and  
14 this will be done in a very public way. So, none of us will  
15 be able to see how they are marking the ballot, but we'll  
16 all be able to see that all five of them are marking their  
17 ballots and presenting them to the town clerk. And then  
18 once she certifies the five ballots, then they'll be given  
19 to the Mayor who will announce a decision.

20 State law and the town's personnel policy do give  
21 the town council the opportunity, if it feels like further  
22 deliberations are needed, to not to decide the matter today,  
23 but to take up to 15 days if it feels that it's necessary to  
24 do so and maybe schedule another meeting for deliberations  
25 or whatnot. But, again, if were to do that or to make that

1 clarify particular points of their testimony or, you know,  
2 if they have follow-up questions or things of that nature.  
3 So, sitting in a quasi-judicial capacity as in effect the  
4 judge of the proceedings, the town council has the latitude  
5 to do that so that each member of the town council makes  
6 certain that he or she, you know, has received all of  
7 whatever information each of them feels is important related  
8 to that particular witness' testimony.

9 Once the presentation of the evidence portion of  
10 the hearing is concluded, then the members of the town  
11 council and I will excuse all the rest of you to wait in  
12 another room or outside or whatnot while the town council  
13 conducts its deliberations, again, much like a judge in a  
14 civil or criminal trial or a quasi-judicial body by state  
15 law has the right to deliberate in private, meaning to talk  
16 about the evidence, how a particular witness' testimony  
17 impressed them or gave them concerns or whatnot. And those  
18 deliberations by the town council are done privately. That  
19 portion of the proceedings is not transcribed. And that's  
20 to encourage the town council, again, sitting in a  
21 quasi-judicial capacity, to be able to speak, you know,  
22 candidly to each other about how particular items of  
23 evidence impacted them and how they see the particular  
24 issues.

25 However, the town council will not make a decision

1 election, then another public meeting would be reconvened  
2 for that vote to take place.

3 It's certainly the council's decision, but, you  
4 know, I think it would probably be advisable to try and  
5 resolve things here today and to spend the amount of time  
6 necessary to do so.

7 The evidence that the town council should consider  
8 in resolving this appeal is the information that's presented  
9 here today. So, it really isn't, the town council shouldn't  
10 conduct investigations outside of the proceeding. And so,  
11 that's why it's important for both sides, the town for Mr.  
12 Wixom and Mr. Lowery to make sure that whatever you want to  
13 have presented that you do so today.

14 So, one thing I neglected to mention, during the  
15 presentation of the evidence part where the town goes, then  
16 when Mr. Lowery goes, it's, if necessary, you could do, Mr.  
17 Wixom could make a rebuttal to what Mr. Lowery said, and you  
18 could make a surrebuttal. So, basically, you could go back  
19 and forth one more time if either of you felt that was  
20 necessary to do so.

21 So, that's basically the stages of the  
22 proceedings. Does anybody have any questions at this point?  
23 Okay. Then the next thing we will do is mark the exhibits,  
24 as I have indicated, identifying by their number, and then  
25 for those with multiple pages indicate how many pages they

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1 have.

2 And then kind of the next procedural step

3 thereafter as a part of the presentation of the evidence,

4 it's important for -- in order for the town council to be

5 sitting as the final appeal authority board to have

6 jurisdiction to do so, the intermediate appellate process

7 needs to have occurred in a particular timely fashion. And

8 so, some of the exhibits will indicate that Mr. -- you know,

9 with following each negative employment action, Mr. Lowery

10 timely and properly made a request to proceed to the next

11 level.

12 So, as we are going, right after we mark the

13 exhibits, we'll just briefly indicate through exhibit

14 numbers such-and-such how that timing is set forth under the

15 town's code and state code was followed thereby giving the

16 town council, you know, jurisdiction to be here today. So,

17 let's go ahead and begin with the exhibits.

18 Exhibit No. 1 is a document in the top left-hand

19 corner entitled Fax Laboratory Report, from Quest

20 Diagnostics. And it has in the top portion of the page it

21 has indicated a log-in date of August 18th, 2016. This is a

22 one-page exhibit. Does your copy have one page, Mr. Wixom?

23 MR. WIXOM: Yes.

24 MR. HARDMAN: And, Mr. Lowery, does your copy have

25 one page?

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1 MR. SHANE LOWERY: Yes, sir.

2 MR. HARDMAN: Exhibit No. 2 is another Fax

3 Laboratory Report from Quest Diagnostics with a log-in date

4 of August 24, 2016. And Exhibit 2 has the total of three

5 pages. Does your copy have three pages, Mr. Wixom?

6 MR. WIXOM: Yes.

7 MR. HARDMAN: And, Mr. Lowery, does your copy have

8 three pages?

9 MR. SHANE LOWERY: Yes, sir.

10 MR. HARDMAN: Exhibit No. 3 is the Springdale

11 Department of Public Safety Detailed Incident Report in the

12 top left-hand corner with a date of August the 19th, 2016.

13 And the report includes some photographs, some maps and some

14 other information and has a total of 13 pages. Does your

15 copy of Exhibit 3 have 13 pages, Mr. Wixom?

16 MR. WIXOM: Yes.

17 MR. HARDMAN: And, Mr. Lowery, does your copy have

18 13 pages?

19 MR. SHANE LOWERY: I am assuming it does, but I

20 don't have the pages numbered.

21 MR. HARDMAN: Why don't you take a moment to count

22 them. We want to make sure that you have copies of

23 everything.

24 MR. SHANE LOWERY: Yes, sir.

25 MR. HARDMAN: Okay. Exhibit No. 4 is a computer

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1 printout of some, looks to be scholarly articles about

2 secondhand exposure to marijuana or cannabis smoke. And

3 Exhibit No. 4 has a total of 14 pages. Does your copy of

4 Exhibit 4 have 14 pages, Mr. Wixom?

5 MR. WIXOM: Yes.

6 MR. HARDMAN: And does your copy of Exhibit 4 have

7 14 pages, Mr. Lowery?

8 MR. SHANE LOWERY: Yes, sir.

9 MR. HARDMAN: Okay. Exhibit No. 5 is a one-page

10 exhibit. It's a letter dated August 23, 2016, addressed to

11 Mr. Shane Lowery. Is that your copy of Exhibit 5, Mr.

12 Wixom?

13 MR. WIXOM: Yes, sir.

14 MR. HARDMAN: And, Mr. Lowery?

15 MR. SHANE LOWERY: Yes, sir.

16 MR. HARDMAN: Exhibit No. 6 is a, is also a letter

17 dated August 26th, 2016, addressed to Mr. Shane Lowery. And

18 it is a two-page exhibit. Does your copy of Exhibit 6 have

19 two pages, Mr. Wixom?

20 MR. WIXOM: Yes.

21 MR. HARDMAN: And, Mr. Lowery?

22 MR. SHANE LOWERY: Yes, sir.

23 MR. HARDMAN: Exhibit No. 7 is a one-page exhibit

24 with a date received stamp of August 31, 2016. And it's a

25 handwritten note from Mr. Lowery to the town clerk. Is that

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1 what you have as Exhibit 7, Mr. Wixom?

2 MR. WIXOM: Yes.

3 MR. HARDMAN: And, Mr. Lowery, is that what you

4 have as Exhibit 7?

5 MR. SHANE LOWERY: Yes, sir.

6 MR. HARDMAN: Exhibit No. 8 is a letter from the

7 town of Springdale to Mr. Lowery dated August 31, 2016.

8 It's a two-page exhibit, second page of which is an

9 acknowledgment form signed by Mr. Lowery. Is that what you

10 show as Exhibit No. 8, Mr. Wixom?

11 MR. WIXOM: Yes.

12 MR. HARDMAN: And, Mr. Lowery?

13 MR. SHANE LOWERY: Yes, sir.

14 MR. HARDMAN: Exhibit No. 9 is a one-page exhibit.

15 It's also a letter to Mr. Lowery dated September the 13th,

16 2016. Is that what you show as Exhibit No. 9, Mr. Wixom?

17 MR. WIXOM: Yes.

18 MR. HARDMAN: And, Mr. Lowery?

19 MR. SHANE LOWERY: Yes, it does.

20 MR. HARDMAN: Exhibit No. 10 is a handwritten note

21 from Mr. Lowery to the Springdale Town Clerk with a date

22 received stamp of September the 19th, 2016. Is that your

23 copy of Exhibit 10, Mr. Wixom?

24 MR. WIXOM: Yes.

25 MR. HARDMAN: Mr. Lowery?

3 (Pages 9 to 12)

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1 MR. SHANE LOWERY: Yes.

2 MR. HARDMAN: Exhibit No. 11 is a letter from the

3 Town of Springdale to Mr. Lowery dated September 19, 2016.

4 It is a two-page exhibit. The second page of which is a

5 receipt acknowledgment signed by Karla Lowery. Is that your

6 copy of Exhibit 11, Mr. Wixom?

7 MR. WIXOM: Yes.

8 MR. HARDMAN: And Mr. Lowery?

9 MR. SHANE LOWERY: Yes, sir.

10 MR. HARDMAN: Exhibit No. 12 is a letter that I

11 authored to Mr. Lowery explaining the proceedings giving him

12 an overview of the final employee appeal board hearing, his

13 notice of that. And the total exhibit contains six pages.

14 In addition to my letter, which is the first three pages,

15 there is also a copy of Utah Code Chapter 10, or excuse me,

16 Title 10 Chapter 3 Section 1106, which is the state code

17 provision applying to discharge, suspension without pay or

18 involuntary transfer, actions of municipal employees who

19 have a protected property interest in continued employment.

20 And this statute also sets forth the appeal

21 process both before the municipality and the Utah Court of

22 Appeals as the final appellate body. And then the last page

23 of Exhibit 12 is Mr. Lowery's signed acknowledgment agreeing

24 to the procedures and acknowledging receipt of the notice

25 for this proceeding or hearing today. Is that what you show

1 when an employer receives a report of a dilute specimen.

2 And then there is also a print-off from the Daily Mail.com

3 about secondhand marijuana smoke. And that appears to be a

4 28-page article for which only four pages have been

5 submitted as evidence. And so, the total exhibit or total

6 pages for Exhibit 15 are six. Is that what you show as

7 Exhibit 15, Mr. Wixom?

8 MR. WIXOM: Yes.

9 MR. HARDMAN: And, Mr. Lowery?

10 MR. SHANE LOWERY: Yes, sir.

11 MR. WIXOM: How do we add additional exhibits if

12 we need to?

13 MR. HARDMAN: We should mark them at this time and

14 add them.

15 MR. WIXOM: So, we need to make copies of this

16 section of the town policy manual, Section D, which is the

17 Alcohol and Drug Free Workplace Policies and Procedures that

18 I would like to submit as an exhibit. And a copy of Section

19 A under Chapter 3 of the town policy manual under

20 disciplinary action that I would like to submit as an

21 exhibit.

22 MR. HARDMAN: Okay. So, let's go off the record

23 for a minute while those two exhibits are photocopied and

24 copies are distributed.

25 (Whereupon, a brief recess was taken.)

1 as Exhibit 12, Mr. Wixom?

2 MR. WIXOM: Yes.

3 MR. HARDMAN: And, Mr. Lowery?

4 MR. SHANE LOWERY: Yes, sir.

5 MR. HARDMAN: Exhibit 13 is a copy of the public

6 notice for this town council meeting where the town council

7 is sitting as the employee appeal board. It's a one-page

8 exhibit. Is that what you show as Exhibit 13, Mr. Wixom?

9 MR. WIXOM: Yes.

10 MR. HARDMAN: And, Mr. Lowery?

11 MR. SHANE LOWERY: Yes, sir.

12 MR. HARDMAN: Exhibit No. 14, has a total of eight

13 pages. And it is a series of letters, some of which are

14 handwritten, others which are typewritten, and still others

15 which were sent via email. Basically, letters of support or

16 character reference type letters that Mr. Lowery has

17 submitted as an exhibit to these proceedings.

18 Mr. Wixom, does your copy of Exhibit 4 have eight

19 pages?

20 MR. WIXOM: Yes.

21 MR. HARDMAN: And, Mr. Lowery?

22 MR. SHANE LOWERY: Yes.

23 MR. HARDMAN: Then, the final exhibit, No. 15, is

24 a computer print-off of some information from the Utah

25 Department of Transportation. Article about what happens

1 MR. HARDMAN: We are back on the record after a

2 short break to make photocopies of two additional exhibits.

3 Marked as Exhibit 16 is Section D from the town's personnel

4 policies and procedures manual, originally approved

5 April 23, 2004 and revised as of August 12, 2005. And,

6 again, Exhibit 16 is Section D, the Alcohol and Drug Free

7 Workplace Policies and Procedures. And that's an excerpt

8 from the policy, is a total of ten pages. Does your copy of

9 Exhibit 16 have ten pages, Mr. Wixom?

10 MR. WIXOM: Yes.

11 MR. HARDMAN: And, Mr. Lowery, does your copy of

12 Exhibit 16 have ten pages?

13 MR. SHANE LOWERY: Yes, sir.

14 MR. HARDMAN: Exhibit 17 is also an excerpt from

15 the town's personnel policies and procedures manual. This

16 is under Chapter 3, Management, Section A, Disciplinary

17 action. And Exhibit 17 has a total of six pages. Your copy

18 of Exhibit 17 have six pages, Mr. Wixom?

19 MR. WIXOM: Yes.

20 MR. HARDMAN: Likewise for you, Mr. Lowery?

21 MR. SHANE LOWERY: Yes.

22 MR. HARDMAN: So, all together then we have 17

23 documentary exhibits. As I mentioned, in order for the town

24 council to have jurisdiction to hear and decide this final

25 appeal, we briefly want to make a record of the timeliness

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1 of each level of, well, the initial disciplinary action and  
2 the intermediate appeal. And then the request for this  
3 final appeal. So, state code and the town's personnel  
4 policy initially allowed the -- well, the town's personnel  
5 policy allows the town manager to conduct an investigation  
6 into any allegation that forms grounds for disciplinary  
7 action. And when the town manager decides to undertake that  
8 investigation, the town policy requires that the employee,  
9 if it's a serious enough action or issue, that the employee  
10 be given notice of that investigation and placed or  
11 immediately suspended and with pay.

12 And so, Exhibit 5 is a copy of Mr. Wixom's letter  
13 to Mr. Lowery effectuating that process and policy of the  
14 town personnel policy.

15 And then Exhibit No. 6 is a summary of Mr. Wixom's  
16 investigation and sets forth the basis or bases with  
17 reference to particular sections of the town's personnel  
18 policy for Mr. Wixom's decision to terminate Mr. Lowery's  
19 full time employment with the Town of Springdale.

20 Following that action of termination, then, as I  
21 indicated, Mr. Lowery had ten days within which to request  
22 an intermediate appeal. And Exhibit 7 is a handwritten note  
23 that was submitted within ten days, just four or five days  
24 following his receipt of the termination notice on August --  
25 or termination notice was dated August 26, 2016, and his

1 appeal. And the letter discusses the date when the final  
2 appeal may occur. And the second page of Exhibit No. 11 is  
3 the acknowledgment from Karla Lowery.

4 Is that your wife?

5 MR. SHANE LOWERY: Yes, sir.

6 MR. HARDMAN: Mr. Lowery's wife, that the town's  
7 letter dated September 19th, 2016 was received by Mr. Lowery  
8 and indicated when this final appeal board hearing was  
9 scheduled before the town council. Thereafter, as I  
10 understand, Mr. Lowery contacted the town and indicated that  
11 he would like more time to prepare for the final hearing.  
12 And in an effort to accommodate that request, the town  
13 decided to schedule this final appeal board for today,  
14 October the 6th, 2016.

15 And so, on September the 22nd, a couple days  
16 after, or within a day or two after Mr. Lowery made that  
17 request, I drafted the letter, that's the first three pages  
18 of Exhibit 12, and submitted that to Mr. Lowery. And the  
19 letter summarizes what the town personnel policy and state  
20 code provisions require and, more particularly, what the  
21 state code provisions require in the way of process and  
22 timing for a final administrative employment hearing,  
23 administrative meaning before the municipality, and proposed  
24 the date of October 6, 2016 at 11:30 a.m. And that letter  
25 also provided Mr. Lowery with a copy of the statute, the

1 request for intermediate appeal was delivered to the town on  
2 August 36.

3 Exhibit 8 is acknowledgment for having received  
4 Mr. Lowery's request for an appeal, an intermediate appeal  
5 before the appeals board comprised of town employees and two  
6 members of the town council. And this Exhibit 8, likewise,  
7 indicates when that intermediate appeal will be scheduled.  
8 And then the second page of Exhibit 8, as indicated  
9 previously when marking the exhibit, is Mr. Lowery's  
10 acknowledgment that he received that. And that the date of  
11 the proceeding for the intermediate appeal of when that  
12 would occur on September the 19th, 2016.

13 Then within the requisite time period following  
14 the intermediate appeal, the town gave notice to Mr. Lowery  
15 on September the 13th, within the record of five days, so  
16 only three or five days later, gave him notice that the  
17 intermediate appeal or the decision of the intermediate town  
18 board was to uphold the town manager's decision to terminate  
19 Mr. Lowery. That notice was hand delivered to Mr. Lowery.  
20 And he acknowledged receipt of it through Exhibit 10, two  
21 days later, on September 15th, 2016 and then, likewise,  
22 requested a final appeal.

23 And then the town's letter of September 19th,  
24 2016, which is Exhibit 11, indicates that the town had  
25 received, timely received Mr. Lowery's request for a final

1 state statute that governs these proceedings.

2 And then the last page of which, of this exhibit,  
3 is Mr. Lowery's agreement to the terms and procedures for  
4 this proceeding as outlined in the state code.

5 So, it's my legal opinion, Mayor, that Mr. Lowery  
6 has timely requested each stage or requested to appeal this  
7 through a success of administrative phases, and that  
8 pursuant to the parties, the town's and Mr. Lowery's  
9 agreement to meet here today at this time and place, and  
10 these proceedings as organized that his appeal is proper or  
11 is timely and that the town council has jurisdiction to hear  
12 this matter. So, it would be appropriate for you to so find  
13 or declare on the record if you feel likewise. Then we can  
14 go forward with the presentation of the evidence.

15 MAYOR SMITH: I find that Mr. Lowery's met timely  
16 requests pursuant to the procedures and this body has  
17 authority to hear his appeal. With that --

18 MR. HARDMAN: Oh, I should mention as well, this  
19 is kind of an important point as well. With regard to  
20 Exhibit 12 and the instructions for this proceeding, state  
21 code gives an employee in Mr. Lowery's situation the option  
22 of having this final appeal board hearing conducted in  
23 private or in public. And he elected, as acknowledged in  
24 Exhibit 12, to make this a public proceeding and, therefore,  
25 the town in recognition of that request published a public

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1 notice of these proceedings. And that notice indicated that  
 2 members of the public would be welcome to attend.  
 3 And, again, that public notice we have marked as  
 4 Exhibit No. 13. And so, that's the reason that this  
 5 proceeding is public as opposed to private, which it could  
 6 have been. Mr. Lowery made the request for it to be public.  
 7 So, that's an important thing to include in a record, and  
 8 his acknowledgment of Exhibit, that part of Exhibit 12  
 9 recognizes that.  
 10 MAYOR SMITH: Then are we ready to start hearing?  
 11 MR. HARDMAN: Yes.  
 12 MAYOR SMITH: Okay. Mr. Wixom.  
 13 MR. WIXOM: So, what I would like to do, members  
 14 of the council, is to go through this in a timeline fashion,  
 15 looking at the various exhibits and also discussing my  
 16 various conversations and interactions with Mr. Lowery.  
 17 On the 17th, as shown in Exhibit 3, there was an  
 18 accident on Paradise Road involving Shane and his vehicle.  
 19 On page E of Exhibit 3, this form was completed by Officer  
 20 Ray of the Springdale Police Department. Under the Officer  
 21 Activity Observations, Officer Ray describes the accident.  
 22 That Shane stated he was traveling north on Paradise Road  
 23 when a large vehicle was trying to pass him heading south.  
 24 We understand that was a garbage truck. Shane stated he  
 25 moved to the shoulder of the roadway and his vehicle went

1 You can see in the center of the page there that the  
 2 confirmed test level is 15 nanograms per milliliter. And  
 3 the sample that was provided by Mr. Lowery was 30 nanograms  
 4 per milliliter.  
 5 We learned -- well, once we got this, like I said,  
 6 this happened on the 17th. I was made aware on the 23rd,  
 7 morning of Tuesday the 23rd, that we had received the report  
 8 back from the urinalysis, that it was positive.  
 9 At that point in time, Shane was on vacation. It  
 10 was my understanding he was away from work hunting. Had a  
 11 conversation with police chief and with Dawn Brecke, the  
 12 town treasurer, and Jack Martin, Mr. Lowery's supervisor  
 13 about Shane's, where he was, you know, what his  
 14 circumstances were at that point in time. I was informed  
 15 that he was taking vacation to hunt, or to be hunting.  
 16 I directed Zac Martin to send a message to Mr.  
 17 Lowery to say we, I need to visit with him, not tell him,  
 18 you know, anything what it was about, but just that he  
 19 needed to get in contact with me. I talked to him roughly  
 20 about 12:30 that afternoon via phone call. I told him that  
 21 we had received a positive drug test from the report from  
 22 this urinalysis. At that point in time, Mr. Lowery  
 23 referenced that he had attended a concert in Las Vegas, and  
 24 this must have been a secondhand exposure to marijuana smoke  
 25 from that concert.

1 into the ditch. The other vehicle was not involved in the  
 2 accident. Looking back on pages K, L and M, the  
 3 photographs --  
 4 MR. HARDMAN: I think their exhibits are all  
 5 numerically marked.  
 6 MR. WIXOM: Yeah, 11, 12, 13?  
 7 MAYOR SMITH: Yeah.  
 8 MR. WIXOM: Eleven, 12 and 13 of that exhibit, you  
 9 can see the damage to the town's vehicle on the right side  
 10 of the vehicle resulting from that accident.  
 11 Moving to Exhibit 16, which is the drug and  
 12 alcohol testing, Section 2D of the employee personnel policy  
 13 manuals, on page 4 of that exhibit, number subparagraph  
 14 (5)(a), and then subparagraph (2), of Section A, it talks  
 15 about post-accident investigation. It says, Circumstance of  
 16 which an employee causes or materially contributes to the  
 17 cause of an accident involving property damage, personal  
 18 injury or death, a drug/alcohol test shall be given as part  
 19 of that accident investigation.  
 20 So, responding to that section of the policy  
 21 manual, Shane was directed to the Work-Med facility in St.  
 22 George to complete a urinalysis. That is reflected in  
 23 Exhibit No. 1. The collection date and time shows that it  
 24 is the 17th of August, 1:18 p.m. The result, as you can see  
 25 on that exhibit, was a positive drug test for marijuana.

1 MR. PLAYER: Did he say what day the concert was?  
 2 MR. WIXOM: Concert was on the 13th of August.  
 3 MR. PLAYER: A Saturday.  
 4 MR. WIXOM: A Saturday. So, four days before the  
 5 urinalysis was completed. At a later phone call, like I  
 6 said, I was in lunch when I received this first phone call,  
 7 spoke briefly with Mr. Lowery. Came back to the office,  
 8 again, consulted with Miss Brecke, who is the treasurer and  
 9 human resources manager for the town, wrote the letter dated  
 10 August 23rd, informing Mr. Lowery that he was suspended with  
 11 pay effective that day, and as part of that ordering him to  
 12 undergo a second drug screen.  
 13 When I talked to him on the phone, so this was, I  
 14 would guess, about 1:30 or so, and I told him that he was,  
 15 that he needed to go and take a second test, that that's  
 16 what I was going to require, that he couldn't use his  
 17 vehicle, and Mr. Martin would come down and collect him and  
 18 take him to Work-Med, and that he needed to turn the keys of  
 19 his vehicle to Zac Martin, supervisor.  
 20 I did not go into details with Mr. Lowery at that  
 21 point, my purpose in ordering a second test, being several  
 22 days, so this was the 23rd, so nearly a week after the first  
 23 test, which was four days past, the claim of an accidental  
 24 exposure. My purpose was to not only verify, see what the  
 25 levels of the drug in his system were, did they decline, did

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1 they remain the same, did they go up, but to gauge Mr.  
 2 Lowery's reaction to a second drug test.  
 3 When I was on the phone with him, he essentially  
 4 said to me, stuff stays in your system 30 days. You know  
 5 it's going to be there. I don't know why I have to do this,  
 6 which I said, regardless, I want you to do it.  
 7 He said that he was at that point smoking chicken  
 8 for dinner and that what did he want me to do about that.  
 9 And I told him Zac was on his way, be there in about a half  
 10 hour, and that he should accompany Mr. Martin. So, that  
 11 test was done. That's the second, that's Exhibit No. 2,  
 12 which was collected on 8/23. And that came back, the result  
 13 of that was a diluted specimen.  
 14 We have -- my understanding of a diluted sample is  
 15 when a person ingests a sufficient amount of fluid or an  
 16 excess amount of fluid into their system it's possible to  
 17 dilute the next urine sample to a point where drug testing  
 18 doesn't, it doesn't meet the requirements in an acceptable  
 19 range to conduct a drug screen. You can see that reflected  
 20 in the results on Exhibit 2. And they had a range sample.  
 21 There are a couple of the urine specimen validity testing  
 22 criteria that are out of range.  
 23 I viewed this diluted sample as an effort to  
 24 mislead or falsify the test. On Friday the 23rd, so,  
 25 following that test, again, I consulted with Mr. Martin and

1 already pointed out previously in this policy, it says that  
 2 disciplinary action shall be, appropriate disciplinary  
 3 action shall be implemented up to and including termination.  
 4 If an employee refuses to provide a sample for drug and  
 5 alcohol testing in accordance with the provision of this  
 6 policy, then the result shall be immediate termination of  
 7 employment from the Town of Springdale.  
 8 As I said, I viewed the diluted test as an effort  
 9 to mislead and falsify, and not being in -- just as it says,  
 10 if an employee refuses to provide a sample in accordance  
 11 with the business policy, I don't believe a diluted sample  
 12 is in conformance with this policy. And the result is  
 13 immediate termination of employment.  
 14 When, on Friday the 26th of August, Zac Martin and  
 15 I met with Shane to go over the letter referenced in  
 16 Exhibit 6, which is a termination of employment, we  
 17 discussed, or I discussed with Mr. Lowery this second  
 18 diluted sample. At the same time, Mr. Lowery said, well, I  
 19 have been drinking a lot of cranberry juice because of a  
 20 kidney issue, or some sort of medical problem with his  
 21 kidneys that required him to drink a lot of cranberry juice.  
 22 That was the first time that he had, prior to any of the  
 23 sampling, mentioned anything about the need for excess  
 24 fluids in his body.  
 25 Following, as has been pointed out here in the

1 Miss Brecke, and made the decision at that point that based  
 2 on the first test being positive -- so, let me go back to  
 3 Exhibit No. 16, which is the drug and alcohol workplace  
 4 policies -- again, in that same section referenced before  
 5 the five day to post-accident investigation. The second  
 6 half of that paragraph states, The presence of drugs,  
 7 alcohol or other metabolites discovered in a drug alcohol  
 8 test or a refusal to submit to a drug/alcohol test shall  
 9 result in the appropriate disciplinary up to, including  
 10 termination."  
 11 That "shall" in that line is a directive  
 12 statement. There is not a "may" that says you can decide  
 13 whether or not to impose disciplinary action. It's a  
 14 directive that the town manager shall, at that point, that  
 15 appropriate disciplinary action up to and including  
 16 termination shall be the result of a positive drug test,  
 17 which we can see in Exhibit 1 that that occurred.  
 18 Regardless of the circumstances on how it  
 19 occurred, we have a positive test. And we have a policy  
 20 that says we shall impose disciplinary action up to  
 21 including termination.  
 22 So, further back in that same Exhibit No. 16, I  
 23 have page H, page 8, under 6A, discipline, employee testing  
 24 positive for drugs or alcohol may be disciplined in  
 25 accordance with provisions of this policy, which we have

1 hearing, we held an intermediate appeal hearing. During  
 2 that hearing, the discussion of a diluted urine sample came  
 3 up. The response from Mr. Lowery was, well, I work outside.  
 4 And it's hot. And I have to stay hydrated, so I drink lots  
 5 of water and lots of Gatorade. There was no discussion at  
 6 that point about cranberry juice or kidney issues or any  
 7 sort of other things that might require him to ingest excess  
 8 amounts of fluid.  
 9 MS. ZUMPFT: Can I ask you a question?  
 10 MR. WIXOM: Sure.  
 11 MS. ZUMPFT: Did you say on 8/23, that was the day  
 12 that he did the second test?  
 13 MR. WIXOM: Yes.  
 14 MS. ZUMPFT: And you said that he was not working  
 15 at that time?  
 16 MR. WIXOM: Correct. He was on vacation that day.  
 17 MS. ZUMPFT: Do we have a record of what the  
 18 temperature was on that day?  
 19 MR. WIXOM: I don't recall the temperature.  
 20 MR. SHANE LOWERY: According to the Google  
 21 forecast, it was between 98 and 102.  
 22 MR. WIXOM: I know he was at home. He was working  
 23 on dinner in his backyard.  
 24 MS. ZUMPFT: Okay.  
 25 MR. SHANE LOWERY: Correct.

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1 MR. WIXOM: I would like to address another issue.  
 2 And that's the discussion of whether or not it's possible to  
 3 have a secondhand exposure to cannabis smoke. Exhibit  
 4 No. 4, there's a great deal of information on the web as far  
 5 as possible or not possible, et cetera. Exhibit No. 4 is a  
 6 document that was prepared and published by the Oxford  
 7 University Press on research that was done, I believe,  
 8 through John Hopkins University School of Medicine. It's a  
 9 long document that talks about a study where people were,  
 10 nonsmokers, were exposed in varied controlled environments  
 11 to various levels of marijuana smoke. They included in a  
 12 sealed chamber with ventilation and no ventilation,  
 13 employees that were, it said several nonsmoking specimens  
 14 spaced in between smoking specimens. And then they analyzed  
 15 the urine tests afterwards to determine if it's possible to  
 16 have a nonsmoker have exposure to secondhand smoke.  
 17 What I would like to focus on is the last sentence  
 18 of this, the first page summary. And you are welcome to  
 19 read all of the document. But it says, However, positive  
 20 tests are likely to be rare limited to the average  
 21 immediately post-exposure and occur only under environmental  
 22 circumstances where exposure is obvious.  
 23 In this case, it was a sealed room with a  
 24 nonsmoker sitting immediately adjacent to a smoker, in some  
 25 cases with ventilation off and in some cases with

1 MS. BRECKE: Yes. I spoke to Work-Med on a couple  
 2 of occasions about the secondhand smoke issue. They agreed  
 3 with the Oxford study. They said in incredibly controlled  
 4 experiments they have seen positive results up to 12 hours  
 5 after. Anything beyond that, none. And they said to her  
 6 knowledge that it's not an issue.  
 7 MAYOR SMITH: Okay. Thank you.  
 8 MR. WIXOM: From the town administration point of  
 9 view, we have a positive test. We have a second requested  
 10 test which I believe was an effort to mislead or falsify  
 11 resulting in a diluted sample. We have a section of the  
 12 town policy manual that fairly spells out if we have a  
 13 positive drug test following a post-accident, there shall be  
 14 disciplinary action imposed.  
 15 At the time that we were ordering the second test,  
 16 my mind wasn't made up about what type of disciplinary  
 17 action should be imposed, given the options of suspension  
 18 with pay or suspension without pay or termination.  
 19 Following the second test, it seemed to me to be  
 20 pretty clear that there was an effort to mislead and to be  
 21 untruthful. That I determined at that point that  
 22 termination was the most appropriate disciplinary action  
 23 pursuant to that policy. Any questions for me?  
 24 MR. ALLTUCKER: Work-Med, what do we know about  
 25 their credentials and standards? Our policy talks about

1 ventilation on.  
 2 A public concert in Las Vegas, however that is set  
 3 up, is not going to replicate this type of situation. And  
 4 even in this study where that was so highly controlled, it  
 5 was likely to be rare, limited to the hours of immediate  
 6 past exposure. Four days after, after a public concert,  
 7 however big the building was, however many people were in  
 8 it, if there is going to be ventilation, there is not going  
 9 to be the same type of conditions that were required to be,  
 10 to occur to even have a positive sample immediately after  
 11 post-exposure, much less four days later.  
 12 In my opinion, that the cause, I don't believe  
 13 there is any scientific proof to show that there's a  
 14 secondhand cause that can be high enough to pass, high  
 15 enough to show as a positive test several days after  
 16 exposure.  
 17 MAYOR SMITH: Rick, did anybody talk to the  
 18 testing service about that situation?  
 19 MR. WIXOM: I haven't. I believe Miss Brecke has.  
 20 MAYOR SMITH: Dawn, did you talk with --  
 21 MS. BRECKE: I did speak with Work-Med, yes.  
 22 MR. HARDMAN: So, we probably ought to have her  
 23 speak into the microphone.  
 24 MS. BRECKE: Which one?  
 25 MAYOR SMITH: That big one up there.

1 that the levels consistent with substance abuse and mental  
 2 health service administration panel. Is that the thresholds  
 3 that they are using in their testing?  
 4 MR. WIXOM: So, Work-Med sends -- you see on both  
 5 of the laboratory results at the bottom of those reports,  
 6 Work-Med collects the sample. They verify that it meets the  
 7 temperature guidelines, you know, that the sample was  
 8 collected appropriately. They then send those samples to  
 9 this Quest Diagnostics in Lenexa, Kansas which I understand  
 10 is a certified laboratory that are meeting all of those  
 11 requirements. I don't know much about that certified  
 12 laboratory except that it is one.  
 13 But I feel confident that if they are a federally  
 14 certified laboratory as this seems to indicate, DHSS  
 15 certified laboratory that they are meeting all of those  
 16 guidelines.  
 17 MR. ALLTUCKER: So, as far as we know, the  
 18 collection and the testing were in accordance with our  
 19 standards, state standards, federal standards?  
 20 MR. WIXOM: As far as I know, yes.  
 21 MR. ALLTUCKER: Do we know whether the positive  
 22 test procedure was by a gas chromatography mas-spectrometry?  
 23 MR. WIXOM: I don't.  
 24 MR. ALLTUCKER: Just from my experience, if it's a  
 25 DHSS certified lab, that's the equipment they use, but we

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1 don't know that for sure?  
 2 MR. WIXOM: I don't know that for certain. All I  
 3 know is that we use a certified laboratory.  
 4 MR. ALLTUCKER: Okay. Let's talk about the second  
 5 test that you called for on or about the 23rd. Did Shane  
 6 request that?  
 7 MR. WIXOM: No. I did.  
 8 MR. ALLTUCKER: Okay. And where in our policy was  
 9 that second test triggered or is it something that you just  
 10 did?  
 11 MR. WIXOM: It was something I chose to do, as I  
 12 said, to do several things. One was to, is it still there?  
 13 Is it at a level that is still a positive? Has it gone up?  
 14 Has it gone down? Shane had been on vacation. He had been  
 15 hunting. I wasn't sure of what his circumstances were at  
 16 that time.  
 17 MR. ALLTUCKER: But this wasn't triggered by  
 18 policy, more just something you extended to Shane?  
 19 MR. WIXOM: Yes.  
 20 MR. ALLTUCKER: The suspension letter, I think it  
 21 was the termination letter, talks about an accident on 8/18,  
 22 but it should have been 8/17.  
 23 MR. WIXOM: Yes. On Exhibit No. 5, it says on  
 24 August 18th. And that should have been August 17th. I did  
 25 the very same thing that many people did and looked at the

1 MR. WIXOM: We did not meet until after that  
 2 second test was ordered.  
 3 MR. SHANE LOWERY: Okay. But that's what I am  
 4 saying. You tested me after that, correct?  
 5 MR. WIXOM: No.  
 6 MR. SHANE LOWERY: But I told you that before?  
 7 MR. WIXOM: I don't recall exactly when you told  
 8 me that.  
 9 MR. SHANE LOWERY: You don't recall? Okay.  
 10 MR. WIXOM: I know that on the 23rd, you had a  
 11 phone call where you called me about 12:30, and there was a  
 12 phone call about an hour later when I called you. And, at  
 13 that point in time, I said that I was sending you down for a  
 14 second test. And that's when you said, you know, it's still  
 15 going to be there. It stays in your system for 30 days.  
 16 MR. SHANE LOWERY: That's when I looked into the  
 17 internet and I understood, yeah.  
 18 MR. WIXOM: Yeah.  
 19 MR. SHANE LOWERY: But you don't recall that?  
 20 MR. WIXOM: I recall it various times you said you  
 21 can drug test me any time you want. But I don't recall  
 22 exactly when that occurred.  
 23 MR. SHANE LOWERY: So, on the drug test, the first  
 24 drug test was a post-accident?  
 25 MR. WIXOM: That's correct.

1 log-in date. And that's what I wrote down, was the  
 2 collection date.  
 3 MR. ALLTUCKER: So, it should have been 18th?  
 4 MR. WIXOM: It should have been the 17th.  
 5 MR. ALLTUCKER: Okay. Those are my questions.  
 6 MAYOR SMITH: Any other questions for Rick?  
 7 Shane, do you have questions for Rick?  
 8 MR. SHANE LOWERY: I do have a couple questions.  
 9 MAYOR SMITH: You bet. If you would stand up at  
 10 the microphone.  
 11 MR. SHANE LOWERY: Let me know. I'm not an  
 12 attorney here. I am a lonesome individual. And I have  
 13 always been taught if you are right to stand up for  
 14 yourself, you don't need an attorney. I don't have one here  
 15 because I believe I am in the right.  
 16 On the date about the drug test, when you called  
 17 me at the office -- I'm really bad at this, bear with me --  
 18 and we had our first discussion with you and I and Dawn and  
 19 Darci, did I or did I not make the comment that you can drug  
 20 test me any time you wanted to?  
 21 MR. WIXOM: I think you have repeated that  
 22 comment. That's correct.  
 23 MR. SHANE LOWERY: Okay. So, the second drug test  
 24 you gave me is because I said that or because you thought it  
 25 was something that needed to be done?

1 MR. SHANE LOWERY: The second was a preemployment.  
 2 Is that two different kinds of drug tests? Are they two  
 3 separate things or are they the exact same thing? Because  
 4 according to the papers they are two different kinds of  
 5 tests. Is one a stronger test than the other?  
 6 MR. WIXOM: According to the reports, Exhibit 1  
 7 and Exhibit 2, the testing levels are exactly the same. I  
 8 assume that they are, that that was a notation that was made  
 9 by Work-Med.  
 10 MR. SHANE LOWERY: For preemployment?  
 11 MR. WIXOM: I can't recall how Work-Med marks  
 12 their -- how they log things in. The first was one was very  
 13 much a postaccident. The second one was --  
 14 MR. SHANE LOWERY: Well, wouldn't it show up as a  
 15 second test for the accident and not a pre-employment test?  
 16 MR. WIXOM: I don't know. What you -- if you look  
 17 on page 3 of that exhibit, let's read that together. This  
 18 was a statement from somebody down at Work-Med. I can't  
 19 read the --  
 20 MR. SHANE LOWERY: Correct. I can't read the name  
 21 either.  
 22 MR. WIXOM: Shane came to the drug screen as a  
 23 repeat.  
 24 MR. SHANE LOWERY: As a repeat, not as a  
 25 preemployment.

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1 MR. WIXOM: Can I finish? And told me to check  
 2 in. He was there for his drug screen because we messed up.  
 3 "We messed up on it." I don't know how they marked that.  
 4 Well, we can see that they marked it as a preemployment. I  
 5 don't think it has any bearing on whether or not the results  
 6 of that test are any different than what the report says.  
 7 MR. SHANE LOWERY: And my comment to that was, I  
 8 could not believe I had drugs in my system. That's why I  
 9 made that comment. There is no way. So, when it's my turn  
 10 to state, would you please let me know?  
 11 MR. HARDMAN: Sure.  
 12 MAYOR SMITH: Shane, this is your time.  
 13 MR. HARDMAN: Well, we are still on the town's  
 14 presentation of the evidence. So, if Rick --  
 15 MR. SHANE LOWERY: So, anything that Rick just  
 16 said I have a chance to talk about?  
 17 MR. HARDMAN: Yes. You have a chance to  
 18 cross-examine him about anything he said. And then once you  
 19 do that, then, and then he has an opportunity to respond.  
 20 And that will complete the town's presentation of evidence.  
 21 And then the next phase is your presentation of evidence  
 22 during which you can call your witnesses and address  
 23 whatever additional information you want the town council to  
 24 consider.  
 25 MR. PLAYER: I have a question, Shane.

1 MR. SHANE LOWERY: Yes, sir.  
 2 MR. PLAYER: I am confused, because you just said  
 3 that you couldn't believe you had drugs in your system.  
 4 MR. SHANE LOWERY: Correct.  
 5 MR. PLAYER: And, yet, I heard earlier that you  
 6 told Rick that it shows up for 30 days. So, would you not  
 7 have expected to have it show up on the second test?  
 8 MR. SHANE LOWERY: The first time I said that is  
 9 when Rick and I had the first meeting here. And he told me  
 10 it was dirty. And I told him I can't believe that. And  
 11 then he knew I went to this concert. And I didn't know it  
 12 stayed in your system until I started looking through  
 13 things. I don't own a computer. I don't know how to run a  
 14 computer. And so, everything that I have done has been  
 15 talked to other people or go ask other people for help that  
 16 does have a computer. There is plenty of witnesses in this  
 17 room that knows I don't computer.  
 18 MR. WIXOM: I would like to clarify. It wasn't a  
 19 meeting. It was a phone call. Miss Brecke was in my office  
 20 listening to the phone call. And, yes, he did state exactly  
 21 what I have said that he stated.  
 22 MR. SHANE LOWERY: Okay. So, you said that when  
 23 you called me I was cooking a chicken?  
 24 MR. WIXOM: Correct.  
 25 MR. SHANE LOWERY: Did I not tell you that I had

1 been outside several hours splitting wood while I was  
 2 smoking a chicken?  
 3 MR. WIXOM: It could be, yes.  
 4 MR. SHANE LOWERY: So, you did hear me say that?  
 5 MR. WIXOM: At home smoking a chicken. If you  
 6 were cutting wood, that's --  
 7 MR. SHANE LOWERY: Okay. So, when a police  
 8 officer came over and delivered this letter to me, and that  
 9 would have been Officer Ray, JJ -- just looking to see if he  
 10 was in here -- when he arrived at my house, I was outside  
 11 splitting wood. That's the only way I have to heat my  
 12 house. I don't have central air or anything else like that.  
 13 I have a wood burning fireplace.  
 14 MR. WIXOM: So, Officer Ray didn't deliver the  
 15 first letter. That was Mr. Martin that took you to Work-Med  
 16 for the second test. Any conversation you have had with  
 17 Officer Ray came about after the letter. I don't believe he  
 18 delivered any letters to you until after the letter after  
 19 the appeal hearing when you were told that the hearing was  
 20 upheld, the decision was upheld.  
 21 MR. SHANE LOWERY: Okay. So, that's when he came  
 22 to my house and seen me actually splitting wood. That was  
 23 before the second drug test.  
 24 MR. WIXOM: That was after the second drug test.  
 25 That was after the termination and after the appeal hearing.

1 MR. SHANE LOWERY: So, anyways, you did know that  
 2 I was outside working in my yard splitting wood. That is  
 3 what I told you, correct?  
 4 MR. WIXOM: Okay.  
 5 MR. SHANE LOWERY: You do remember that one,  
 6 right?  
 7 MR. WIXOM: I'll state that, yes, I can remember.  
 8 MR. SHANE LOWERY: Okay. As I quoted, average  
 9 temperature was between 98 and 102. I spent all day outside  
 10 just like up here. And I drink mass amounts of water. I  
 11 drink tons of Gatorade. Do you know what happens to you  
 12 when you dehydrate and you don't drink enough? One of three  
 13 things: Heat exhaustion, dehydration, heat stroke. So, I  
 14 drink mass amounts of water. Even when I am at home and I  
 15 am working my guts out, I do the same thing. I stay  
 16 hydrated.  
 17 Several years ago we lost a little girl over here  
 18 called Kathryn Roth from hiking up out of the Grand Canyon  
 19 and not having enough water. I have been on the fire  
 20 department long enough to know that you have to stay  
 21 hydrated. So, when it's that hot outside, yes, I pound  
 22 water, I pound Gatorade, I pound anything I can get in my  
 23 body to put the nutrients back inside me. You will die if  
 24 you don't. That's against your questions.  
 25 MR. CHAMBERS: Can I ask a question?

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1 MR. SHANE LOWERY: You bet.  
 2 MR. CHAMBERS: How much time passed between the  
 3 time the town manager called you to say you were going to  
 4 have a test and Zac picked you up?  
 5 MR. SHANE LOWERY: I am guessing 45 minutes.  
 6 MR. CHAMBERS: Forty-five minutes?  
 7 MR. SHANE LOWERY: I'm just guessing. I don't  
 8 have all this stuff wrote down.  
 9 MR. CHAMBERS: Does that sound right to you, Rick?  
 10 MR. WIXOM: Seems reasonable. I called him when I  
 11 knew Zac was traveling, so it's about 40 minutes to  
 12 Hurricane.  
 13 MAYOR SMITH: Any other questions?  
 14 MR. CHAMBERS: I have a question for Rick. Just  
 15 looking -- this is what I understand the results of the  
 16 test. It says the marijuana metabolic --  
 17 MR. HARDMAN: You have to reference the exhibit  
 18 number.  
 19 MR. CHAMBERS: Oh. Exhibit No. 1, the results  
 20 says 30 MGMLs. What is the initial to the right of that,  
 21 the initial test level? What does that mean, Rick?  
 22 MR. WIXOM: I think that's the first level that  
 23 they test at. I believe they do it descending.  
 24 MR. CHAMBERS: So, they do it descending down  
 25 to --

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1 MR. WIXOM: To what would be no longer be a  
 2 positive, which is their confirmed test level.  
 3 MR. CHAMBERS: So, the confirmed would go from 50  
 4 down to 15. Then if it was 14 or below it would come back  
 5 as negative. So, between 50 and 15 is where it lands? And  
 6 this landed in 30?  
 7 MR. WIXOM: Correct.  
 8 MR. SHANE LOWERY: Question. So, it sounds to me  
 9 like you have done a lot of these drugs tests, you know all  
 10 about these and you know how to read them. Are you a  
 11 professional at this?  
 12 MR. WIXOM: No.  
 13 MR. SHANE LOWERY: Okay. You could be wrong?  
 14 MR. WIXOM: I could be wrong. The word positive  
 15 seems pretty clear.  
 16 MR. SHANE LOWERY: Yes, sir, it does. It says  
 17 that I had it in my system.  
 18 MR. WIXOM: That's correct. However it got there.  
 19 MAYOR SMITH: Any other questions for Rick?  
 20 MR. SHANE LOWERY: Like I say, I'm not an  
 21 attorney.  
 22 MAYOR SMITH: Well, everybody --  
 23 MR. SHANE LOWERY: There are a lot of questions I  
 24 should be asking him right now that I just don't know.  
 25 MAYOR SMITH: Well, all of us, this is our first

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1 time for all of us other than Mr. Hardman. That's why Mr.  
 2 Hardman is here, to make sure we do it right.  
 3 MR. SHANE LOWERY: And I am here, little old me by  
 4 myself because I have nothing to hide.  
 5 MAYOR SMITH: Mr. Wixom, do you have anything  
 6 else?  
 7 MR. WIXOM: I don't.  
 8 MAYOR SMITH: Shane, it's your turn, whatever you  
 9 would like to present.  
 10 MR. SHANE LOWERY: Okay. I went to this concert  
 11 August 13th. And it started approximately 8 o'clock at  
 12 night. I got there around 7:30-ish to find me a seat. I  
 13 had eaten about, oh, 10:30 that morning at the outdoor swap  
 14 meet. I said concert started around eight. When I walked  
 15 in there, it was a haze. Has anybody here been to a concert  
 16 indoors in Vegas?  
 17 SPECTATOR: Yep.  
 18 MR. SHANE LOWERY: What was it like?  
 19 SPECTATOR: Kind of what you just said.  
 20 MR. SHANE LOWERY: Anybody here been in a concert  
 21 in Salt Lake?  
 22 SPECTATOR: It was a Bob Marley concert.  
 23 MR. SHANE LOWERY: What was it like?  
 24 MR. HARDMAN: You probably ought to have him -- if  
 25 you are going to have him testify --

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1 MR. SHANE LOWERY: So, now I have to wait?  
 2 MR. HARDMAN: I am saying if you want to have this  
 3 gentleman testify in your behalf, or ask him questions, then  
 4 you should invite him to come forward. He should state his  
 5 name.  
 6 MR. SHANE LOWERY: Would you please come up here?  
 7 Can I have him read their letters at this time or  
 8 would it not be appropriate, sir?  
 9 MR. HARDMAN: No. However you want to present.  
 10 MR. SHANE LOWERY: Would you state your name and  
 11 what you do?  
 12 MR. DILLON: My name is Dillon Tomky. I work for  
 13 the Rockville Springdale Fire Department. And I also have a  
 14 loan service in town here. I am just here today with this  
 15 letter I wrote as a testament to Shane Lowery's character.  
 16 During the time that I worked with him, with the Rockville  
 17 Springdale Fire Department.  
 18 I have known Shane for about six years total,  
 19 about three of those years I worked with him at the fire  
 20 department, directly with him. He always showed up on time  
 21 to all of his shifts and was dependable. He never showed  
 22 any signs of having a drug problem at all nor did we have  
 23 any problems with him at all in that aspect. He would often  
 24 fill in, when we had no one else, to take shifts and be up  
 25 to 72 hours at a time.

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1 I do not believe it's likely, in my opinion, that  
 2 someone with a drug problem would be able to do that. He  
 3 stuck around when the times were tough and helped the  
 4 department get through that.  
 5 When I found out what happened with this incident,  
 6 and him not passing a drug screen, I was very surprised.  
 7 This does not seem to fit his character. And from what I  
 8 have seen, he takes pride in his work and always gave people  
 9 the proper respect that they deserve. For what it's worth,  
 10 I think he should be given the opportunity to have his city  
 11 job back.  
 12 Also, I am not an expert at this kind of stuff at  
 13 all with drug screens or anything like that. But I do know  
 14 somebody personally who has had this same thing happen with  
 15 a diluted sample. She's a woman. And she gets urinary  
 16 tract infections very easily from damages she sustained to  
 17 her kidneys and stuff and not drinking enough water, being  
 18 in 138 degrees heat. She has to stay extremely hydrated  
 19 when it's hot out too. And she had to take a urinalysis  
 20 test to get a job in St. George in which she went in, she  
 21 had a UTI. She had been drinking a ton of fluids and  
 22 cranberry juice, like what Shane had said. And same thing  
 23 happened. They said it was a diluted sample. And she ended  
 24 up going back in a couple days later. And it passed fine.  
 25 So, I do know this is something that can happen. Like I

1 eight years.  
 2 MR. SHANE LOWERY: In eight years have you ever  
 3 known me to come to work under any kind of drugs or alcohol  
 4 or have I ever showed any kinds of signs of it?  
 5 ZAC MARTIN: Absolutely not.  
 6 MR. SHANE LOWERY: So, you have been to a couple  
 7 concerts?  
 8 ZAC MARTIN: I have been to many concerts.  
 9 MR. SHANE LOWERY: Indoors?  
 10 ZAC MARTIN: Indoor, outdoor.  
 11 MR. SHANE LOWERY: Tell me about these indoor  
 12 concerts.  
 13 ZAC MARTIN: Indoor and outdoor. There is a lot  
 14 of pot smoking going on all around you.  
 15 MR. SHANE LOWERY: Is there any way to avoid it?  
 16 ZAC MARTIN: Leave.  
 17 MR. SHANE LOWERY: So, if you paid a lot of money  
 18 for tickets, would you walk out on how much money you  
 19 shelled out?  
 20 ZAC MARTIN: No.  
 21 MR. SHANE LOWERY: Would you think for a second it  
 22 would be in your system?  
 23 ZAC MARTIN: Not until this happened.  
 24 MR. SHANE LOWERY: Thank you. Appreciate you.  
 25 Can I call a couple more character witnesses?

1 said, I don't know the trace amounts or anything like that  
 2 it takes to not show up or show up. But that's all I have  
 3 to say.  
 4 MR. SHANE LOWERY: So, you have been to an indoor  
 5 concert?  
 6 MR. DILLON: Yes.  
 7 MR. SHANE LOWERY: What was it like in there?  
 8 MR. DILLON: I don't really go to concerts very  
 9 much. Somebody else is -- actually, the second concert I  
 10 have been to in my entire life. I am not into reggae music,  
 11 but it was a reggae concert. And, yeah, I felt like I  
 12 didn't want to be in there very long because I didn't want  
 13 to have the exposure. And like I said, I don't know what it  
 14 takes to get the trace amount in your system from exposure  
 15 like that. But it was bad enough to where it pretty much  
 16 just felt like you were smoking it yourself. So, I ended up  
 17 leaving because I couldn't take anymore. So, it is like  
 18 that. They are making people put it out. But I don't know,  
 19 I guess they can't control it that way, because a lot of  
 20 people were doing it.  
 21 MR. SHANE LOWERY: Thank you. Zac, would you step  
 22 up here and be a character witness for me? Would you state  
 23 your name and where you are employed?  
 24 ZAC MARTIN: My name is Zac Martin. I work for  
 25 the Town of Springdale. And I was Shane's supervisor for

1 MAYOR SMITH: It's your time.  
 2 MR. SHANE LOWERY: Ed, would you step up here and  
 3 state your name, what you do?  
 4 MR. FARNSWORTH: My name is Edward Farnsworth. I  
 5 also worked with Rockville Springdale Fire Department. And  
 6 I am a full time student.  
 7 MR. SHANE LOWERY: Have you ever been to any  
 8 concerts?  
 9 MR. FARNSWORTH: I have. I would not get into my  
 10 stories about concert going.  
 11 MR. SHANE LOWERY: Well, would you admit that it  
 12 is like what Dillon and Zac said?  
 13 MR. FARNSWORTH: I would say that there are people  
 14 that go to concerts and use drugs, yes.  
 15 MR. SHANE LOWERY: Okay. During the time that I  
 16 have been at the fire department and worked all these shifts  
 17 with you, have you ever known me to be under the use of  
 18 drugs or alcohol?  
 19 MR. FARNSWORTH: I have never noticed Shane to be  
 20 under the, to be under the -- I have never suspected it,  
 21 that you would be under the use of drugs or alcohol. I was  
 22 extremely surprised to hear that this had happened, because  
 23 I would have never suspected it in a million years. He's  
 24 always, Shane has always been a very stand-up person and  
 25 does what he says he's going to do. And I've always taken

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1 him very strongly at his words.  
 2 MR. SHANE LOWERY: You lived across the street  
 3 from me for a year, year and-a-half?  
 4 MR. FARNSWORTH: Yeah. Actually, three years.  
 5 MR. SHANE LOWERY: Three years. So, in that time  
 6 living directly across the street from me, did you ever, I  
 7 mean, we had our visits and seen each other all the time?  
 8 MR. FARNSWORTH: Yeah.  
 9 MR. SHANE LOWERY: Did you ever see me under the  
 10 influence of anything like that?  
 11 MR. FARNSWORTH: I have never seen you under the  
 12 influence. I have never suspected you to be under the  
 13 influence of drugs at all.  
 14 MR. SHANE LOWERY: Have you ever smelled it around  
 15 my house, being a neighbor?  
 16 MR. FARNSWORTH: No. Like I said, I never  
 17 suspected that behavior on your behalf ever. Never had  
 18 reason to suspect that.  
 19 MR. SHANE LOWERY: Would you like to add anything  
 20 else on my behalf, sir?  
 21 MR. FARNSWORTH: I think I know, I have said just  
 22 that I have always taken your word and never suspected that  
 23 you would do anything like that.  
 24 MR. SHANE LOWERY: Have I ever lied to you?  
 25 MR. FARNSWORTH: No.

1 to his house several times just to stop by and see him and  
 2 never suspected anything.  
 3 MR. SHANE LOWERY: Thank you, sir. Appreciate  
 4 you.  
 5 MR. HANS: You bet.  
 6 MR. SHANE LOWERY: Would you step up here, sir?  
 7 MR. MCSHANE: Hi. My name is Ciarin McShane. I  
 8 am part of this community, a resident of this community, and  
 9 have a business in this community. And I have known Shane.  
 10 I have known him as somebody who has been a dedicated  
 11 employee of this town who I have seen in the community  
 12 capacity to work very hard. My son, who just turned seven,  
 13 has looked up to Shane for many years. And Shane in turn  
 14 has always been respectful. In fact, gave my son a little,  
 15 it's a little paper which my son carries with him. My son,  
 16 it gives him strength.  
 17 MR. SHANE LOWERY: It's called a good luck bee. I  
 18 am a bee keeper.  
 19 MR. MCSHANE: My son keeps that. And Shane, my  
 20 father-in-law Ross Clay, stated on this, and but my wife and  
 21 my mother-in-law wanted to be here to stand for Shane, who  
 22 can't because she's got a doctor's appointment. When my  
 23 father passed away last year, Shane went out of his way,  
 24 even though we didn't know him personally, to make sure that  
 25 our family was taken care of with the burial. He made it as

1 MR. SHANE LOWERY: Have I ever cheated?  
 2 MR. FARNSWORTH: Not to my knowledge, no.  
 3 MR. SHANE LOWERY: Thank you. Appreciate your  
 4 time. Mr. Hans.  
 5 MR. HANS: My name is Dave Hans. I live in  
 6 Rockville. Retired from the Town of Springdale last  
 7 October. I have known Shane since probably a year before he  
 8 came to work for the town when he was in the maintenance  
 9 down here at one of the local motels. When we were here  
 10 together, I saw Shane probably five mornings a week for  
 11 every week that we were working together. Never saw him  
 12 under the influence of anything. Not proposing that I am an  
 13 expert, but I ran on the ambulance up here for over 30  
 14 years. And in that time I have treated people under the  
 15 influence of about everything. And you learned to kind of  
 16 recognize the signs and stuff. And I have never seen Shane  
 17 come to work or at any social function that we were together  
 18 at under the influence of anything.  
 19 I have never known him to lie, cheat, steal, talk  
 20 down about anybody. Been working with him, always ready,  
 21 willing and able to help. If you call him and say, Shane, I  
 22 need help with this, he would say give me a minute. And he  
 23 would come and help.  
 24 So, yeah, like I said, I have never known him to  
 25 ever show up at work under the influence. And I have been

1 easy as possible. And it was such a hard, difficult time.  
 2 And Shane came back over to the house and checked on us, and  
 3 saying, is everything okay? That is not an employee. That  
 4 is somebody who is current in the community and that has to  
 5 be commended and thought of.  
 6 Now, I know that the town has its policies. And I  
 7 respect them. And Rick is following what he has to do. And  
 8 I respect that too. I also believe that there is a slight  
 9 possibility that the results could be wrong. You know,  
 10 Shane, like I said, he had been to a concert. And even with  
 11 the findings that were presented in number four that said  
 12 the tests are likely to be wrong, but it still doesn't say  
 13 it's not a possibility. There is also publishings to the  
 14 effect that says that, you know, there is a chance that, you  
 15 know, people can fail drug tests because of being with  
 16 secondhand exposure.  
 17 There are articles that have been written that  
 18 say, that I submitted that, because it was a published  
 19 article, it's documentation to say, you know, it's a  
 20 possibility.  
 21 MAYOR SMITH: And you are referring to Exhibit?  
 22 MR. SHANE LOWERY: Exhibit 12, is it?  
 23 MR. HARDMAN: I think it's 15.  
 24 MR. MCSHANE: Exhibit 15. If there is any remote  
 25 possibility that we have what everybody is saying as a

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1 witness to Shane they don't see him taking pot. And maybe  
2 there is a possibility that this test is wrong. With the  
3 second diluted test that was submitted, and came back as a  
4 negative dilute, and according to the Department of  
5 Transportation, which is a government source, employees of  
6 the Department of Transportation, which is Exhibit No., is  
7 it 16, they say if it's negative that the person who is in  
8 question should have a second chance for another drug test.  
9 That is inconclusive.

10 And I think all this needs to be taken into  
11 consideration today that even though Rick has gone through  
12 the policies, and that the town has its standards, and  
13 maybe, just possibly, Shane is innocent. Maybe Shane didn't  
14 take anything. And I think that we need to look at his  
15 character and what he has done for this community and what  
16 he continues to do for this community. He is not just an  
17 employee. He is a member of this community.

18 Even though he doesn't live here, he has his heart  
19 and soul here. This is this man's career. It's not just a  
20 job to him. This is his life. And it's a very serious  
21 matter that I hope that everyone can take into consideration  
22 today.

23 And as far as our family goes, Shane, I want to  
24 thank you on behalf of all the things that you have done for  
25 us and for my son and for my wife and my kids. And we hope

1 yourself down or did someone drive you down?

2 MR. SHANE LOWERY: I had been in St. George all  
3 morning picking up equipment and supplies for the music  
4 festival. I got back up here. It was relatively not too  
5 bad in St. George. I drank a couple bottles of water and a  
6 Gatorade, but my truck has AC, so I was not outside in the  
7 hot sun, so I wasn't pounding water all day. It was pretty  
8 nice.

9 The town gave me an awesome vehicle. I take care  
10 of my truck. And I was in the AC. I wasn't pounding water.  
11 Yes, I had drank some, but not like the days out that I was  
12 outside splitting wood and working.

13 MS. ZUMPFT: Okay. And you had made some  
14 comments, apparently, about having some kidney concerns,  
15 that's why you drink more water?

16 MR. SHANE LOWERY: I do.

17 MS. ZUMPFT: So, what's your routine for drinking  
18 liquids?

19 MR. SHANE LOWERY: I usually drink anywhere from  
20 maybe a gallon and-a-half, 2 gallons of water a day when I  
21 am working outside. Like, if I am mowing or water leaks. I  
22 mean, several of you people have seen us outside in the  
23 middle of summer working on water leaks. Several of the  
24 guys will run back and forth to fill water jugs up.

25 I have been making homemade wine now since right

1 that this committee can take all of that into consideration  
2 when you make your vote. I hope you can give him a second  
3 chance. And so, he said he'll subject to more drug tests if  
4 needed. And if that was a possibility, just give the man  
5 who has dedicated 18 years of his time to make this  
6 community a better place. And that's right.

7 MAYOR SMITH: Shane, I have a question for you.  
8 Ciarin brought up the statement that if it was diluted did  
9 you request another test after it was diluted.

10 MR. SHANE LOWERY: I didn't know anything about  
11 this. I don't understand this stuff. I have never been in  
12 this position. How would I ask something if I didn't know?

13 MR. WIXOM: When I mentioned that the test was  
14 diluted, first reaction was, I have been drinking a lot of  
15 cranberry juice because I have a kidney thing. Clearly,  
16 that is a problem. He could have requested another test.  
17 Could have done something else. The story has then changed  
18 to, I have been drinking a lot of water and a lot of  
19 Gatorade.

20 MS. ZUMPFT: I have a question. On 8/17, the day  
21 of the first test, that was performed at 1:20 in the  
22 afternoon?

23 MR. SHANE LOWERY: Yes.

24 MS. ZUMPFT: The second test was performed at  
25 4 o'clock in the afternoon. The first time, did you drive

1 around the end of July, first of August, using fresh fruit,  
2 sugar and yeast. Well, I was drinking it before it was  
3 actually done. And the amount of yeast in my body gave me a  
4 kidney infection. And I did find this from that, whatever  
5 the website is, what is the, what is, you know, what is your  
6 symptoms.

7 And I, my daughter looked all this stuff up. And  
8 it says possible urinary tract infection from the yeast that  
9 has not been fermented or whatever you call it all the way.  
10 And, yeah, I have been making a lot of wine. I have made  
11 probably 40 gallons so far using fresh fruit, sugar and  
12 yeast. I think it's pretty good stuff.

13 MS. ZUMPFT: So, my original question was, on the  
14 day that you had your first test, was a couple of hours  
15 earlier than the day you had your second test. And you had  
16 been in your vehicle most of that day and not been drinking  
17 as much liquid as you usually do?

18 MR. SHANE LOWERY: Correct. The first day I was  
19 in an AC truck. And I drank, like I said, a couple quarts  
20 of water and a Gatorade.

21 MS. ZUMPFT: The second day you were at home?

22 MR. SHANE LOWERY: Yes.

23 MS. ZUMPFT: The whole day?

24 MR. SHANE LOWERY: Outside splitting wood and  
25 smoking dinner for my wife, yes, ma'am.

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1 MR. CHAMBERS: And have you been to the doctor for  
 2 your kidneys or --  
 3 MR. SHANE LOWERY: I just went online and did  
 4 that. When all of this stuff happened, it was kind of like  
 5 I lost my insurance and everything else. Dawn sent me a  
 6 paper the other day. The town was grateful enough to pay  
 7 for my insurance. Well, the COBRA paper that came back for  
 8 me and my wife's insurance, it's \$2,100 a month. I only  
 9 make 25,000 a year.  
 10 MR. CHAMBERS: But before the insurance was  
 11 initiated, you didn't --  
 12 MR. SHANE LOWERY: I just used the internet thing.  
 13 I used all of my insurance for my wife. She is the one that  
 14 needs it. She's got the messed up back from a wreck. So,  
 15 everything that I have I give her. I don't have any  
 16 prescriptions. The only couple prescriptions I have I don't  
 17 even take because they mess with my head. I have migraines  
 18 really bad. And you can ask, you can ask Mr. Hans. And he  
 19 can verify this. I won't take them because I take one. And  
 20 my head is foggy for a day or two. I can't think. I can't  
 21 anything.  
 22 MR. HANS: Can I say something further?  
 23 MR. SHANE LOWERY: Would you, please?  
 24 MR. HANS: This is Dave Hans again. In having  
 25 worked with Shane, when we are doing stuff, we have laid

1 MR. BRECKE: I do see you.  
 2 MR. SHANE LOWERY: You talk to me quite often?  
 3 MR. BRECKE: I don't know what quite often is.  
 4 MR. SHANE LOWERY: A couple times a week?  
 5 MR. BRECKE: Occasionally.  
 6 MR. SHANE LOWERY: A couple times a week maybe?  
 7 MR. BRECKE: Maybe.  
 8 MR. SHANE LOWERY: What about the music festival?  
 9 MR. BRECKE: What about it?  
 10 MR. SHANE LOWERY: I am usually the first one to  
 11 the music festival and I am usually the last one to leave.  
 12 You are there a lot. Have you ever noticed me being under  
 13 the influence of any kinds of drugs or anything like that?  
 14 MR. BRECKE: I have not.  
 15 MR. SHANE LOWERY: You are a trained law  
 16 enforcement officer, correct?  
 17 MR. BRECKE: Yes.  
 18 MR. SHANE LOWERY: Have you ever dealt with dope  
 19 heads?  
 20 MR. BRECKE: Drug addicts? Is that what you are  
 21 asking?  
 22 MR. SHANE LOWERY: Yes, sir.  
 23 MR. BRECKE: Yes.  
 24 MR. SHANE LOWERY: Do I fit into the category?  
 25 MR. BRECKE: I am not sure what you mean by that.

1 pipeline, dug ditch, dug graves, all kinds of physical work.  
 2 And in the summer when it's hot, Shane's always got wraps  
 3 around his neck to keep cool. And he consumes a lot of  
 4 water when he's out working. We should all drink as much as  
 5 he does. So, I do know firsthand when he is out working and  
 6 it's hot he consumes a lot of water. He's always got  
 7 bottles of water, jugs of water, bringing them to everybody  
 8 else. So, he does consume a lot of water when he's out  
 9 working. Thank you.  
 10 MR. SHANE LOWERY: Garen, will you come up here  
 11 for a minute? Would you please state your name and what you  
 12 do?  
 13 MR. BRECKE: Garen Brecke. I am the chief of  
 14 police, Springdale Police Department.  
 15 MR. SHANE LOWERY: How long have I known you?  
 16 MR. BRECKE: It's been about eight years,  
 17 probably.  
 18 MR. SHANE LOWERY: And pretty much every morning  
 19 don't we visit, especially in the days when I was crossing  
 20 kids?  
 21 MR. BRECKE: I don't know that I would say visit.  
 22 MR. SHANE LOWERY: We talk to each other?  
 23 MR. BRECKE: We pass each other on the road.  
 24 MR. SHANE LOWERY: We talk. And then, as you  
 25 became chief here, you see me quite often?

1 The category as a drug addict?  
 2 MR. SHANE LOWERY: Yes. Have you ever known me to  
 3 do anything illicit with drugs?  
 4 MR. BRECKE: I have never known you to do that.  
 5 But I don't live with you. I am not around you every day.  
 6 One thing I think you need to understand, there is different  
 7 levels of alcoholics and drug addicts that do maintain a  
 8 level.  
 9 MR. SHANE LOWERY: I like to drink. I like my  
 10 beer. I like my homemade wine.  
 11 MR. BRECKE: So, there are those levels of  
 12 drinking. You probably know that. They have a level of  
 13 alcohol. To be a normal person, that's what they do.  
 14 Marijuana users, meth users, heroin users, pill addicts,  
 15 people like that, they take a level of those pills and those  
 16 oxidants to be normal, and I am using air quotes, in their  
 17 life. And they can seem normal.  
 18 MR. SHANE LOWERY: So, it is possible that I could  
 19 be one of them?  
 20 MR. BRECKE: It is possible.  
 21 MR. SHANE LOWERY: Do you think it's probable?  
 22 MR. BRECKE: Probable? I don't know your  
 23 lifestyle that well. I would not care to answer that just  
 24 because I don't know you that well.  
 25 MR. SHANE LOWERY: But you have been around me

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1 enough at music festivals, you have never seen me under  
 2 anything like that?  
 3 MR. BRECKE: I have never seen you ingest  
 4 anything. You have a different kind of character. I  
 5 consider you my friend.  
 6 MR. SHANE LOWERY: Correct.  
 7 MR. BRECKE: I have known you for a long time.  
 8 You are a little erratic.  
 9 MR. SHANE LOWERY: That's me. High strung.  
 10 That's why I work so hard. Thank you. Appreciate your  
 11 comments. Is Gray here?  
 12 MAYOR SMITH: Garen, I have a question for you  
 13 while you are up there. You worked on the drug task force  
 14 before?  
 15 MR. BRECKE: I have. I spent nine years, a little  
 16 over nine years on the drug task force.  
 17 MAYOR SMITH: On contact highs or secondhand  
 18 smoking, what is your opinion?  
 19 MR. BRECKE: My opinion under the contact is, it's  
 20 not a theme. I worked many a times undercover and in lots  
 21 of situations. I have been drug tested a lot during my 20  
 22 years of experience as a law enforcement officer. And I  
 23 never tested positive for that, for any drugs, including  
 24 marijuana. I don't believe in secondhand contact high for  
 25 marijuana is a theme.

1 the only way I have to heat my house. I don't have electric  
 2 heat. I don't have central air. I have nothing.  
 3 So, the time that I was supposedly hunting, I  
 4 never drew a tag this year. I was hauling wood from the top  
 5 of Kolob to my house in Hurricane. I made two trips in one  
 6 day. I made one trip in one day and one trip in one day.  
 7 Brought home approximately four and-a-half cords. In those  
 8 two or three days, I split most of it by hand. And, yes, I  
 9 pounded water. And I drank tons of Gatorade. And I drank  
 10 fruit juice. You bet. But I had nothing to hide, like I  
 11 said. I didn't think it would actually come back positive  
 12 because I don't smoke dope.  
 13 And the last time we had this meeting with a few  
 14 of the council members and the Mayor I told you right there  
 15 I don't smoke dope. Any time you want to drug test me. And  
 16 if a couple of my other witnesses were here that were  
 17 conveniently not here today, they would tell you the same  
 18 thing.  
 19 There's been several times that I worked with Joe  
 20 Barker who was on the fire department with me. I worked 75  
 21 hours in four days at the fire department. I worked 40  
 22 hours here. Running into a burning building for \$7 an hour  
 23 is not what you call good money. Going on brush fires and  
 24 car accidents and dragging people out from under rocks when  
 25 there ain't nothing left of them is not what you call good

1 MAYOR SMITH: Okay. Thank you.  
 2 MR. SHANE LOWERY: So, can I give my testimony?  
 3 Is it my turn?  
 4 MAYOR SMITH: Um-hmm. It's still your turn.  
 5 MR. SHANE LOWERY: My name is Shane Curtis Lowery.  
 6 And I here do by swear on this Bible that everything that I  
 7 am about to say is the truth, the only the truth so help me  
 8 God.  
 9 I went to this concert August 13th as I stated.  
 10 Got there about 7:30. And when I walked in there it was a  
 11 cloud. When I left there, 11:30-ish, a quarter to 12, it  
 12 was still a cloud. By the time I got back to my room, I was  
 13 puking sick. I drank two beers. That's it. Two beers. I  
 14 was sick. I woke up the next morning. And I still didn't  
 15 feel good.  
 16 So, a few of these other things, like I have said,  
 17 I was out splitting wood. Average temperature, according to  
 18 Google and the National Weather Service was between 98 and  
 19 102. When JJ came by my house, I don't know which day it  
 20 was, because it's in one of these papers. And like I said,  
 21 I'm not a lawyer. But I am telling you the truth. He saw  
 22 me outside splitting wood. And I was soaked down to here  
 23 with sweat. And I was still splitting wood when he left. I  
 24 signed the paper. He got in his truck, turned around. And  
 25 as he left I was still splitting wood. Like I say, that's

1 money.  
 2 I feel like this community is part of mine. If I  
 3 could afford to live up here I would live up here, not in  
 4 Hurricane. I love this community. I love the people here.  
 5 The people around here see how hard I work. You look at my  
 6 parks. You look at my cemetery. For a long time nothing  
 7 bad to say about Zac. But he can't be in four places at  
 8 once. How many letters have you got from townspeople saying  
 9 how good that cemetery looks? Several. Because I have a  
 10 file of them. I work hard for you people. The people that  
 11 live here pay my wages. I work hard for them people. I  
 12 like my stuff looking good.  
 13 On the way up today, I see there's dead trees at  
 14 the river park, ones I planted. Doing so good when I left  
 15 here. A couple trees up here not looking that great. I see  
 16 there's weeds all over my trail that I have always taken  
 17 care of. I see there is posts broke down all over my trail  
 18 that I used to take care of. What's going on here?  
 19 I feel like the town is losing something when you  
 20 get rid of me because my hard work shows. It shows right  
 21 out there how much I care about this town. One of the worst  
 22 jobs I have here is burying friends and friends of family I  
 23 know. I have buried three people in that cemetery that I  
 24 had known for years. Ronnie Excel was the last one. Brian  
 25 Peterson was one of them. Him and my wife and my daughter

1 were best friends for years.  
 2 Christmas Eve, right there next to it, I was out  
 3 there at 9 o'clock at night still burying his grave. That's  
 4 some of the hardest stuff I have ever done. I don't like  
 5 that job. But it's my job. I love the townfolk. That's  
 6 why I work so hard here.  
 7 I think this is bull crap. I think I am being  
 8 railroaded. If I did something wrong, I am man enough to  
 9 tell you I was wrong. But I will not be backed into a  
 10 corner and lay on my back and put my feet in the air for  
 11 something I didn't do. I have always been taught if you are  
 12 right you stand up and you don't back down. If you are  
 13 wrong or you think you are wrong, you stop. You back up.  
 14 And you double check. And if you are wrong you admit you  
 15 are wrong. But if you are not wrong, you don't admit you  
 16 are wrong and you stand your ground. That's what I am doing  
 17 here today. That's why I am still fighting this. That's  
 18 exactly why I am still fighting this. If I could do it all  
 19 over again, I would have never went to the damn concert. I  
 20 never had a clue. I don't smoke dope.  
 21 But I was there for almost four hours. And it was  
 22 like this. It was like trying to part your way through a  
 23 cloud. I have a few other people that have wrote letters on  
 24 my behalf. I would like one of you people to read them.  
 25 Would you do that?

1 and helped it, helped to facilitate its well-being, given  
 2 our town over eight years of dedicated service.  
 3 We ask that you please consider his dismissal,  
 4 especially since his contributions to our town have been so  
 5 great. Thank you for your time and consideration.  
 6 Sincerely, Ciarin McShane.  
 7 The second letter is a handwritten letter, page 2  
 8 of Exhibit 14. It appears to be written by Norma Clay, I  
 9 think is what it says: To the town office of Springdale and  
 10 Shane. First, I would like to take the opportunity to thank  
 11 Shane for his dedicate -- devoted, I think the word is  
 12 service, to the Town of Springdale for his devoted caring  
 13 service he gave to my husband, Ross Clay. Not sure what  
 14 that word is, of the --  
 15 VOICE: Owner.  
 16 MR. HARDMAN: It might be better to have Mr.  
 17 McShane since it's his writing.  
 18 MR. MCSHANE: This is a letter from my  
 19 mother-in-law that was written on behalf of Mr. Lowery. To  
 20 Springdale, first I would like to take that what you need to  
 21 thank Shane for his devoted services to the Town of  
 22 Springdale, for his devoted and current service that he gave  
 23 to my husband, Ross Clay. Owner of the Novel House Inn when  
 24 he passed. For Shane's help with the gravesite, no one  
 25 else, to my knowledge, gave sincere understanding and

1 MR. HARDMAN: Sure. We should take a break. And,  
 2 oh, these are the ones that have been marked as our exhibit.  
 3 MR. SHANE LOWERY: Yes, sir. Those are the ones  
 4 that are on my behalf. I believe a couple of them have been  
 5 read, but there are several that still haven't.  
 6 MR. HARDMAN: Okay. So, you are referring to  
 7 Exhibit 14. And I have a copy of that here.  
 8 MR. SHANE LOWERY: Okay. The first letter is  
 9 dated October 4th, 2016. It's from Mr. McShane. It says,  
 10 To whom it may concern: My family will always be indebted  
 11 to Shane Lowery for everything that he did following the  
 12 death of my father-in-law, Ross Clay. During the most  
 13 difficult time of my family's life, Shane went out of his  
 14 way to show every single one of us kindness and compassion.  
 15 The lengths that Shane went to in order to honor Ross was  
 16 truly touching. Prior to this, please note that we did not  
 17 know Shane outside from seeing him professionally. We also  
 18 witnessed him working diligently around town but did not  
 19 know him beyond that, which makes his service and heartfelt  
 20 compassion towards my family all the more commendable.  
 21 Shane is not just a town employee. He is an  
 22 individual who truly cares about our community. Shane  
 23 embodies qualities that could not be hired nor replaced. By  
 24 letting think him go, this town is losing what makes our  
 25 small town so special. Shane has looked after our community

1 condolences except Shane. His caring and his responsibility  
 2 have truly been missed while he has been gone, also his wave  
 3 and smile while driving by.  
 4 It is my sincere plea that Shane be reinstated to  
 5 his position. Springdale and the people need him. People,  
 6 please take this as a kind, caring consideration. Thank  
 7 you. Signed, sincerely Norma Ray.  
 8 MAYOR SMITH: Shane? Instead of reinstated,  
 9 wouldn't that word be reinstated?  
 10 MR. MCSHANE: That's my mother-in-law. I didn't  
 11 write that.  
 12 MAYOR SMITH: Well, I am just looking at that  
 13 right now. And to me it says reinstated.  
 14 MR. MCSHANE: Reinstated.  
 15 MR. HARDMAN: The third letter is an email to the  
 16 town. Looks like it was sent from Mike Straub to Rick Wixom  
 17 September 15, 2016.  
 18 Sir, I am writing to you on behalf of Shane Lowery  
 19 and his exemplary character. I was informed that recently  
 20 his employment with the city was terminate. I have talked  
 21 to a handful of citizens and other city employees to obtain  
 22 the story as to why he was terminated. After revealing what  
 23 I have heard, seen and know, I believe you have made a  
 24 mistake.  
 25 I have known Shane for a couple of years now and

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1 have worked with him on the Rockville Springdale Fire  
2 Department. And in all the years I have known him I have  
3 not known him to break any laws. He is a red blooded  
4 patriotic American, and do not believe he used any legal  
5 substances. From what I have seen, he's a hard worker and  
6 has the qualities any employer would want an employee. I  
7 would like you to reconsider Shane Lowery for employment.  
8 Thank you. Michael Straub.

9 The next letter is a two-page letter from Randy J.  
10 Scott. Subject: Character reference for Shane Lowery.

11 To whom it may concern: My name is Randy Scott.  
12 And I have known Shane since approximately 1980 when we both  
13 attended Dixie Junior High. We had one class together at  
14 the time but did not really know each other well. I thought  
15 he was kind of a cocky jerk at the time.

16 Fast forward to 1986. I was working for Roy  
17 Parker Drywall in St. George, Utah. Roy had just hired  
18 Shane on to our crew. He started messing with me while I  
19 was cutting out a board by yelling out random numbers so I  
20 would screw up the cut. Well, I screwed up the cut.

21 I complained to Roy that I didn't want to work  
22 with him because he was such a jerk. He told me to give him  
23 a chance, which I did when we were paired up the next  
24 morning. We ended up becoming close friends within just a  
25 few days. I became close with his whole family: His

1 construction field for most of the time until he started  
2 working at a motel in Springdale as a maintenance man. He,  
3 obviously, cares deeply for the Town of Springdale as his  
4 next position was working for the town.

5 His co-workers and citizens of the town know his  
6 work ethic and the pride he takes in doing a job well.

7 I retired in December of 2014 after serving for  
8 over 25 years in Nevada, Department of Public Safety. I  
9 served seven years as a Nevada Highway Patrol Trooper and 18  
10 years as a patrol and probation officer.

11 I have worked with many people over the years but  
12 I would have to say that Shane is one of the hardest working  
13 people I have ever known. He is absolutely reliable and is  
14 very old fashioned in many of his ways. He believes that a  
15 deal is sealed with a handshake and not a subcontract,  
16 because if a person's word is not any good, then his  
17 signature doesn't mean much either.

18 I have always known him to be honest and truthful.  
19 I have spent every waking moment with him for days on end  
20 and never seen him use drugs. I know that he despises drugs  
21 and does not use any controlled substances. You sometimes  
22 have to put yourself in another's shoes and think, would I  
23 be in the same situation? Because I attended a Willy Nelson  
24 concert once and noticed the very noticeable odor of  
25 marijuana in the air.

1 father, his wife and his three kids.

2 We worked together for many different contractors  
3 over the next few years. And we remained partners when we  
4 both were freelancing working in the drywall trade. Every  
5 single work day we worked together for three years until I  
6 went to Southern Utah State College in the spring of 1989.  
7 And then in the summer we picked right back up again until I  
8 was hired by the Nevada Highway Patrol as a cadet in the  
9 fall of 1989.

10 We kind of drifted apart for a few years and  
11 didn't see each other or talk to each other much as I lived  
12 about 500 miles away in Tonopah, Nevada.

13 In 1997, I was remodeling a house that my family  
14 and I were going to move into. I was in a bind and needed  
15 some help with some of the work and gave him a call just out  
16 of the blue. He was there the following weekend and stayed  
17 until we were done with that part of the remodel. I know  
18 that it cost him time and expenses to come out and to help  
19 me. And I found out later that he lost his job over being  
20 longer than planned. That kind of quality of friendship is  
21 what I have measured friends by ever since.

22 We have stayed much closer since then and make a  
23 point of see each other every year with few exceptions, when  
24 one or both of us couldn't make it. Our careers took us  
25 through life on different paths. Shane worked in the

1 For the Grace of God, any one of us could end up  
2 in this situation. It would be an injustice for Shane to  
3 lose his current job under these circumstances. Sincerely,  
4 Randy J. Scott.

5 The next letter is dated September 14th, 2016 from  
6 Bishop Brian W. Hinton.

7 To whom it may concern: I am writing today for a  
8 personal character witness of Shane Curtis Lowery. I have  
9 known Shane for at least 22 years. He currently lives one  
10 block from me and my family and has for 19 years. Our  
11 children have hung out together at each other's houses over  
12 the years when they were younger. Our children are still  
13 great friends with his.

14 I am currently Shane and Karla's bishop. He and  
15 his wife are block captains in the Hurricane City Emergency  
16 Preparedness Plan. They do a great service for our ward and  
17 our community by doing this, by taking time out of their  
18 busy schedules to cover this most important duty.

19 I have been around Shane a lot over these years,  
20 as we chat often. I have never in all these years ever seen  
21 him impaired with any kind of drug. Believe me, I know the  
22 look and smell of drugs. And he has never taken drugs to my  
23 knowledge. He is too smart for that. I also know he has  
24 never had a DUI. He is very kind to me and my family and  
25 always has been as long as I have known him. Many ward

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1 members appreciate and love Shane and Karla as they are  
2 neighbors and are very helpful when we need a quick favor  
3 from them.

4 Shane is very voluntarily minded as he helps many  
5 people with projects, usually with no pay. Shane has been a  
6 very hard worker as long as I have known him. I am sure you  
7 already know that as he has been a great Town of Springdale  
8 employee for quite a few years. In my years, Shane is very  
9 honest and it is an outstanding friend and individual. I am  
10 grateful to call him a friend. It is my hope and prayer  
11 that Shane will get his job back very soon as he loves this  
12 job and is the bread winner of his family and needs it  
13 terribly.

14 MR. SHANE LOWERY: May I ask who that was from?

15 MR. HARDMAN: Yes. I indicated at the outset.

16 The letter is signed sincerely, Bishop Brian W. Hinton.  
17 Hurricane Seventh Ward, Hurricane West Stake.

18 MR. SHANE LOWERY: Thank you.

19 MR. HARDMAN: And it's on letterhead from the  
20 Church of Jesus Christ of Latter Day Saints.

21 MR. SHANE LOWERY: Thank you.

22 MR. HARDMAN: The next letter is dated  
23 September 19th, 2016. It's from Alex Pelton. To whom it  
24 may concern: Over the past several years I have had the  
25 opportunity to work with Shane at town events. It has been

1 fighting for it. When I start getting mad, I start to cry.  
2 I am going to sit down and shut up right now.

3 MS. ZUMPFT: Can I ask you one question, Shane? I  
4 don't quite understand what your mistake is.

5 MR. SHANE LOWERY: I went to a concert. And I  
6 stayed there when everybody was smoking dope instead of  
7 leaving. But I paid \$85 apiece for these tickets. My wife  
8 and our anniversary was July 16th. We didn't go anywhere.  
9 We wanted to go to this outlaw country band. There was like  
10 four or five of them. We wanted to go see these. So, for  
11 our 33rd anniversary we went to Burger King and had a  
12 hamburger. And that was it. This was our anniversary. I  
13 can't change the past. I should have never went there.  
14 But, like I say, it was my anniversary. Thirty-three years  
15 to the same woman. It was what we did for our anniversary.

16 Yeah, when I walked in there and I seen everybody  
17 smoking pot and the clouds, I should have left. But I had  
18 no stinking clue that it would affect a pee test. If it  
19 wouldn't have been for the stupid garbage truck running me  
20 off the road, which has happened to other people here  
21 before, it would have been out of my system in a few days  
22 and over with. If it wasn't for a stupid garbage truck  
23 running me off the road. I wasn't going to hit him head on.  
24 He's bigger than me. I pulled to the right. He passed me.  
25 And as I pulled out, my truck slid off into the ditch. I

1 my experience during those events that Shane was a hard  
2 working honest employee of the Town of Springdale. He  
3 demonstrated a strong worth ethic and dedication to his job  
4 while working with me. My relationship with Shane has  
5 always been amicable and professional.

6 Then the last letter is from Mr. Tomky. I believe  
7 he read this into the record previously.

8 MR. SHANE LOWERY: He did, sir. Can I have a  
9 final statement?

10 MR. HARDMAN: You can have all the time to present  
11 whatever you like.

12 MR. SHANE LOWERY: Most of you people have been  
13 around me enough. And you all know me. It's really tough  
14 to stand here and fight for something that I know isn't  
15 right. I want you to use your heads and think about this.  
16 Because I know you guys know it's not right either. I made  
17 a mistake. Anybody here ever made a mistake and manned up  
18 to it? I would hope so. When you are wrong, you are wrong.  
19 You admit you are wrong. Like I have said before, you can  
20 drug test me any time you want. Any time you want. I have  
21 nothing to hide. I made a stupid mistake. Really, you are  
22 going to ruin my life over it? I don't think that's quite  
23 fair because I have worked my guts out for this town. And I  
24 have worked my guts out for the people that live here. I  
25 love this community. And that's why I am standing here

1 drove my truck out of the ditch, went to the shop, walked  
2 around it. And I was upset. That's the only thing in my  
3 life I have ever had brand new. That's the only thing.

4 I can't afford nothing brand new. I make \$25,000  
5 a year here. I was making a lot more than that in other  
6 places. But I like doing this. I like the people. When JJ  
7 was there writing the report, he saw how mad I was. I was  
8 very upset that he wrecked my truck. When I came up here  
9 and seen Rick in the driveway, Rick knew I was very upset  
10 because he recognized my truck. I was pretty well hot.  
11 That's the only thing I have ever had brand new. Anything I  
12 have ever owned has been at least 12 years old. Because my  
13 family comes first. Not a new vehicle for me. I drive an  
14 '02. My wife drives an '04. That's what we can afford. We  
15 are still making payments on them. Still paying for my  
16 house. I can't afford nothing spectacular. I can't afford  
17 to live up in this community.

18 Years ago you could buy property almost  
19 reasonable. Huh. What is it now? You can't even touch it.  
20 You can't even touch the property in this town because  
21 everybody's moving in here. I love this place. I worked my  
22 guts out here. I love the town folks. Like what I do.  
23 There's been several times I have been called in the middle  
24 of the night for a water leak. I am the first one here. If  
25 I was under dope, and it states somewhere in the policies

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1 and procedures if you think one of your co-workers is under  
2 the influence of anything, you are supposed to contact the  
3 town manager instantly.

4 Eight years, I have never heard of it because I  
5 don't. I don't. Any time you want to drug test me, and I  
6 have told Joe Barker my captain chief, fire department, I'll  
7 pee in a cup. Whip it out and hold it for me. I have  
8 nothing to hide. That's why I am still here fighting. If  
9 people were in the wrong, they wouldn't go through all of  
10 this stuff. They would already just cower down and leave.  
11 I am not cowering down because I didn't do anything wrong.  
12 I made a stupid mistake. At least, I am man enough to step  
13 up and admit my mistake. I can't change the past. But I  
14 can change the future. I know better now. I know better.  
15 Please think about it. I want my job back. I need that  
16 job. I am 52 years old. I don't want to start over.  
17 Please.

18 MAYOR SMITH: Are there any questions for Shane?

19 MR. WIXOM: I don't.

20 MR. ALLTUCKER: I have some. My turn? Apologize.  
21 I know you went through this in the other hearing, but I  
22 wasn't there.

23 MR. SHANE LOWERY: Yes, sir.

24 MR. ALLTUCKER: Describe the accident to me a  
25 little better as to what happened. And in hindsight, how

1 each other is about how far we are off from each other. I  
2 mean, you could see the eyeballs. You could see the whites  
3 in your eyes, you are that close.

4 So, when I seen it, I slammed on the brakes and  
5 stopped. He slowed down. I pulled up right to the edge.  
6 And he just hugged that side and went clear right, I mean,  
7 just almost touching me. And after he passed, I went to  
8 pull forward. And my truck slipped in the ditch. And I  
9 just pulled up out of the ditch and then went up to the  
10 shop. And that's when I got out and looked at it and became  
11 really upset that he wrecked my truck. Or I wrecked my  
12 truck. I wasn't going to hit a garbage truck head on. The  
13 road is narrow, narrow, narrow, narrow, very narrow. Please  
14 drive up there to look at it.

15 MR. ALLTUCKER: I have been up there. Were you on  
16 the other side of the cemetery? The report said down by the  
17 wonderland.

18 MR. SHANE LOWERY: No, sir. We were right almost  
19 directly across from, not Joe's shop anymore, the street  
20 shop almost directly across from that.

21 MR. ALLTUCKER: Beyond the cemetery?

22 MR. SHANE LOWERY: Yes, sir. Almost to the street  
23 shop. And I took JJ, who was the officer there. And I  
24 showed him the tire tracks over the top of my tire tracks.  
25 And he took pictures of it of the road. You could see it.

1 could you have prevented what happened if you were going to  
2 do it again.

3 MR. SHANE LOWERY: Okay. The road to our shop is  
4 big enough for one vehicle. It's a very, very narrow road.  
5 There's one place at the very bottom that if you really  
6 squeeze it, because you've got like a 30-foot drop off on  
7 one side and mountain on the other side, if you really  
8 squeeze it and fold your mirrors in you could almost get two  
9 vehicles, we are talking trucks, industry trucks. You won't  
10 get a backhoe and a city truck by. You will not get a city  
11 truck pulling the big 20-foot trailer that we pull the  
12 maniacs on. No chance. I have backed down that road  
13 several times. I know Zac has done it. If Trevor was here,  
14 they could contest to it. If Joe Barker was here, which I  
15 thought he would be, he could contest to it. If Robby  
16 Trotten was here he could contest to it. If our new  
17 employee Robert was here, he could contest to it. These  
18 guys have all been almost ran off the road by the garbage  
19 truck. If you don't believe me ask the only other person  
20 here that works for the city. Ask Dave. It's a narrow  
21 road.

22 So, when you come up around the bend you make that  
23 swoop, then you come back to the right, and you are starting  
24 to climb. He was coming down. And there was a ditch right  
25 when you get around that blind turnabout. The time you see

1 MR. ALLTUCKER: So, back to where I started. If  
2 you were going to do this again, what would you do  
3 different?

4 MR. SHANE LOWERY: Be there at a different time.

5 MR. ALLTUCKER: No. I mean, you have this  
6 interaction with the truck. What do you do?

7 MR. SHANE LOWERY: I did the only thing I could  
8 do. I slammed on the brakes and sucked over as hard as I  
9 could as he went by. I don't know what else I could have  
10 done other than been five minutes later, five minutes  
11 earlier. I don't know how else. I don't understand.

12 MR. ALLTUCKER: Well, I am always of the opinion  
13 that accidents could be prevented.

14 MR. SHANE LOWERY: I totally agree.

15 MR. ALLTUCKER: If he would have stopped --

16 MR. SHANE LOWERY: I guess I probably could have  
17 tried to back up. I guess I could have tried to back up. I  
18 guess that would have been an option, but it happened so  
19 fast. But the time we were side-by-side, I mean, it was  
20 like that.

21 MR. ALLTUCKER: Got you.

22 MR. SHANE LOWERY: I didn't have enough time to do  
23 that. There was just the narrowness of the road.

24 MR. ALLTUCKER: Got you. The garbage truck, did  
25 he stop?

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1 MR. SHANE LOWERY: No. He came up beside me then  
 2 just drove right on by.  
 3 MR. ALLTUCKER: Because he didn't --  
 4 MR. SHANE LOWERY: No, because I was still sitting  
 5 on flat ground when he passed me. But I was sucked up to  
 6 that side as far as I could suck up.  
 7 MR. ALLTUCKER: I mean, other than the truck being  
 8 damaged, you weren't injured in this accident?  
 9 MR. SHANE LOWERY: No, sir.  
 10 MR. ALLTUCKER: One of these exhibits that you  
 11 provided had some DOT regulations in it. Are you a  
 12 commercial driver? Do you have a CDL?  
 13 MR. SHANE LOWERY: DOT?  
 14 MAYOR SMITH: Exhibit 15.  
 15 MR. SHANE LOWERY: DOT, I don't know anything  
 16 about that, sir.  
 17 MR. ALLTUCKER: Well, it was one of your exhibits.  
 18 It was Department of Transportation.  
 19 MR. SHANE LOWERY: I have never seen this before.  
 20 It was just given to me by this --  
 21 MAYOR SMITH: No. Ciarin gave it to you.  
 22 MR. SHANE LOWERY: Okay. That was the guy that  
 23 was here with me.  
 24 MAYOR SMITH: Yeah.  
 25 MR. SHANE LOWERY: I have never seen this before

1 notice of a positive test, did you ask for that backup  
 2 sample to be run for a second test on your sample?  
 3 MR. SHANE LOWERY: I have never even heard of  
 4 that. No. Why would I ask for something that I don't know  
 5 anything about?  
 6 MR. ALLTUCKER: Okay. Let's go back a second. If  
 7 you were aware that we have, the town has a drug and alcohol  
 8 policy, I mean, you referred to it a couple times.  
 9 MR. SHANE LOWERY: Yeah. Because I got one back  
 10 from Dawn, because the original one was, well, it was the  
 11 truck after the orange dump truck. So, it was like the  
 12 truck that Zac used to drive, the one that you guys  
 13 auctioned off. All my stuff was in that truck. And I  
 14 hadn't seen a new policy until Dawn gave me one just before  
 15 this. And I started going through this and tried to learn  
 16 information.  
 17 MR. ALLTUCKER: But you had the option, right, to  
 18 request that that sample be retested? And what you are  
 19 saying is you didn't do that.  
 20 MR. SHANE LOWERY: I did not know that. If I  
 21 would have known it I would have asked them to, yes.  
 22 MR. ALLTUCKER: Okay. On the second test, the  
 23 dilute sample test, there is this note by somebody that we  
 24 talked about.  
 25 MR. SHANE LOWERY: It's on the back page.

1 at.  
 2 MR. ALLTUCKER: Okay. My question is, are you a  
 3 commercial driver?  
 4 MR. SHANE LOWERY: No, sir.  
 5 MAYOR SMITH: You don't have a CDL?  
 6 MR. SHANE LOWERY: No, sir. The biggest thing I  
 7 drive is the dump truck, the big old Ford. And we bought  
 8 that just for the reason we don't need to have a CDL.  
 9 MR. ALLTUCKER: I heard your story about the  
 10 concert. Is there any other way that the marijuana could  
 11 have gotten in your system? Did you eat anything? Did you  
 12 take a toke on something.  
 13 MR. SHANE LOWERY: No. I don't smoke dope.  
 14 MR. ALLTUCKER: I know you said that, but did you  
 15 eat something?  
 16 MR. SHANE LOWERY: I ate at like 10 o'clock in the  
 17 morning. We went and had a hamburger.  
 18 MR. ALLTUCKER: So, at the concert you had nothing  
 19 to ingest?  
 20 MR. SHANE LOWERY: No. Two beers.  
 21 MR. ALLTUCKER: Okay.  
 22 MR. SHANE LOWERY: But, like I said, it was a  
 23 cloud when I got in there. And it was a cloud when I left.  
 24 MR. ALLTUCKER: Let's talk about the tests that  
 25 you went through at Work-Med. After you received that first

1 MR. ALLTUCKER: And your comment was --  
 2 MR. SHANE LOWERY: I cannot believe that this is  
 3 dirty because I don't do dope. I don't understand how it  
 4 could be right. And that's why I said I don't think it's  
 5 right.  
 6 MR. ALLTUCKER: Your comment is we messed up on  
 7 it. What you do you mean by that?  
 8 MR. SHANE LOWERY: Either they didn't use my  
 9 sample, they used somebody else's, or they did something  
 10 wrong and it came back dirty. I don't smoke dope.  
 11 MR. ALLTUCKER: We, though. Are you talking about  
 12 the lab?  
 13 MR. SHANE LOWERY: No. She is saying that's what  
 14 I said. She said we messed up, referring to the company  
 15 doing the drug test.  
 16 MR. ALLTUCKER: Okay. That's not how I read it.  
 17 MR. SHANE LOWERY: That is the lady's statement  
 18 saying what you said. And she is saying that me, as in the  
 19 company, messed up. Because I told her there is no way it  
 20 can be dirty, because I don't do dope.  
 21 MR. ALLTUCKER: Okay. I follow you. But then  
 22 also included in this is this chain of command sheet that  
 23 you signed that you initialed the samples. You agreed that  
 24 they were, the protocol was correct when you signed that.  
 25 MR. SHANE LOWERY: I am signing a paper.

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1 MR. ALLTUCKER: But now you are saying they  
 2 possibly could have mixed those samples up?  
 3 MR. SHANE LOWERY: No. I am saying I peed in a  
 4 cup. And I handed it to them. That's what I signed a paper  
 5 saying, it was my urine in a cup that I handed them.  
 6 MR. ALLTUCKER: Correct.  
 7 MR. SHANE LOWERY: What happened after they get  
 8 the sample is out of my control, because I don't --  
 9 MR. ALLTUCKER: Okay. I follow you. The policy  
 10 has, our policy also has an option for you to request a  
 11 second clean sample following your first positive test  
 12 notification.  
 13 MR. SHANE LOWERY: What do you mean?  
 14 MR. ALLTUCKER: Well, you had, I don't know what  
 15 it is, six, seven hours. Hang on here.  
 16 MR. SHANE LOWERY: Like I said, I am not an  
 17 attorney. I read that stuff. And I don't understand.  
 18 MR. ALLTUCKER: I want to make sure that you had  
 19 the opportunity and did or didn't take the opportunity to  
 20 have a second test done.  
 21 MR. SHANE LOWERY: Well, I guess if I had the  
 22 opportunity I didn't know about it, because, like I said, I  
 23 didn't understand all of this stuff and paperwork.  
 24 MR. ALLTUCKER: It is in the policy.  
 25 MR. SHANE LOWERY: Okay. I'll take your word for

1 here. Hands me this cup. Go in and pee. Make sure the  
 2 temperature is right. And pour this much of it out and wash  
 3 your hands and put everything back in your pockets and go.  
 4 They don't discuss anything like that. This is only the  
 5 third time in my life when I ever had a drug test. The  
 6 second one when I started here, then the wreck, then this  
 7 one. I have never had a drug test before. This is all new  
 8 to me.  
 9 MR. ALLTUCKER: Well, I am just trying to make  
 10 sure that the procedure that is in place was followed.  
 11 MR. SHANE LOWERY: Well, I guess if somebody would  
 12 have explained it to me I guess I would have done other  
 13 things. But, like I say, just trying to read this stuff and  
 14 understand it. Like my paperwork, that's how good I am at  
 15 paper work. I don't do paperwork.  
 16 MR. ALLTUCKER: And the damage to the truck was,  
 17 like, no photos, it was --  
 18 MR. SHANE LOWERY: Yes, sir. It was just one side  
 19 on the passenger, right there on the third door with the  
 20 scratch on the door itself. Well, it would be on the second  
 21 door. It just slid off into the ditch. Didn't have to put  
 22 it in four-wheel drive or nothing to get out. I just pulled  
 23 up out of it.  
 24 MR. ALLTUCKER: Okay. Thank you.  
 25 MR. CHAMBERS: When you were talking about

1 it.  
 2 MR. ALLTUCKER: You had that right. But you  
 3 didn't do it.  
 4 MR. SHANE LOWERY: I guess if somebody would have  
 5 explained that to me like you just did it would have been  
 6 different. But, you know, I just kind of looked at it.  
 7 That's why I am not a lawyer, sir. That's why I mow lawns  
 8 and fix irrigation lines, is because I work with my hands.  
 9 I am one of those people that work with my hands. I am  
 10 not -- like I said, I don't even know how to run a computer.  
 11 I don't even own one. So, I don't know all of this stuff.  
 12 MR. ALLTUCKER: Back to the testing. And you have  
 13 said you've got this kidney issue where you have to drink --  
 14 MR. SHANE LOWERY: I was drinking homemade wine,  
 15 that the yeast hadn't fermented.  
 16 MR. ALLTUCKER: And you hadn't seen a doctor. You  
 17 are self-diagnosed, basically?  
 18 MR. SHANE LOWERY: Yeah.  
 19 MR. ALLTUCKER: But when you were in the  
 20 collection facility, did you raise that issue there that you  
 21 had been drinking a lot of water?  
 22 MR. SHANE LOWERY: No. The lady --  
 23 MR. ALLTUCKER: Or that you had a medical  
 24 condition?  
 25 MR. SHANE LOWERY: No. The lady there is, like,

1 splitting wood and it was hot and that JJ brought you the  
 2 letter, was that the same day that Zac came and picked you  
 3 up or was that a different day?  
 4 MR. SHANE LOWERY: I think that was a different  
 5 day. I think that was the day before. Like I said, I have  
 6 split wood for the last three or four days trying to get  
 7 enough built up. So, during this time that I was supposedly  
 8 hunting I was at home splitting wood for three or four days.  
 9 MR. CHAMBERS: And what happened between the time  
 10 that Rick called you to say that Zac was on his way to pick  
 11 you up?  
 12 MR. SHANE LOWERY: I turned the smoker off. And I  
 13 went in and took a wash rag and kind of cleaned the sweat  
 14 off of me. And Zac showed up. I grabbed two bottles of  
 15 water and headed down. Zac and I talked. Like, what have  
 16 you been doing? Well, for the last couple of days I have  
 17 been splitting wood trying to stockpile wood for my family.  
 18 I can show you pictures on my other phone that my fireplace  
 19 sits right there. I have a glass slider. I have frost on  
 20 the inside of the door. So, between the wood and the coal,  
 21 that's what I do this time of the year, I split and stoke  
 22 firewood and coal to keep my house warm.  
 23 MR. CHAMBERS: Okay. Thanks.  
 24 MAYOR SMITH: Shane, do you remember in the last  
 25 appeal that you had, just the same topic was brought up

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1 about asking for a second test. And you were told at that  
 2 time that you could have a second test?  
 3 MR. SHANE LOWERY: Yeah. But, at that time, I was  
 4 so upset over this stuff.  
 5 MAYOR SMITH: But you remember that conversation,  
 6 right?  
 7 MR. SHANE LOWERY: Well, I had the second test.  
 8 That's when Zac came and took me down there.  
 9 MAYOR SMITH: But you could ask for another test?  
 10 MR. SHANE LOWERY: That's the one that Zac took me  
 11 down for.  
 12 MAYOR SMITH: But do you remember talking in that  
 13 conversation saying that you could ask for a second test?  
 14 MR. SHANE LOWERY: That I could?  
 15 MAYOR SMITH: Yes.  
 16 MR. SHANE LOWERY: No. I remember saying I was  
 17 going to go for a second test, I believe.  
 18 MAYOR SMITH: Okay. I guess my question, after  
 19 that appeal you still had a chance to go and have another  
 20 pee test?  
 21 MR. SHANE LOWERY: I thought what's -- that's what  
 22 Zac took me for.  
 23 MAYOR SMITH: No.  
 24 MR. SHANE LOWERY: So, you mean I could have went  
 25 and had a pee test on my own?

1 is there is because this is a legal process. This gentleman  
 2 that's sitting right here, he's taking notes of everything  
 3 that goes on. And that is as much as for your protection as  
 4 it is the town's protection.  
 5 MR. SHANE LOWERY: Isn't that what Darci did when  
 6 it was just us?  
 7 MAYOR SMITH: Darci?  
 8 MR. SHANE LOWERY: Isn't that the same thing? So,  
 9 Darci wasn't taking notes --  
 10 MAYOR SMITH: Let me explain to you. Okay? As  
 11 explained at the very first, that you still, the same law  
 12 gives you, if the council comes back and says, no, we uphold  
 13 Rick's thing, you still have another appeal. And the  
 14 proceedings and the recordings that he's doing right there  
 15 will go with you to that proceeding.  
 16 MR. SHANE LOWERY: Now, see, when we had this last  
 17 one you said I only have one more appeal. And that's with  
 18 the town council. And now, all of a sudden, I have another  
 19 one. And nobody told me that when I was with you guys the  
 20 first time. You said you could appeal this to us. And  
 21 that's it. So, now I come here, and, now, all of a sudden,  
 22 there is another one. So, what am I missing here? Every  
 23 time I come here something is added to it.  
 24 MR. HARDMAN: The letter that was stated from that  
 25 I sent to you on the 22nd.

1 MAYOR SMITH: Absolutely.  
 2 MR. SHANE LOWERY: Oh. No. I--  
 3 MAYOR SMITH: You don't remember that  
 4 conversation?  
 5 MR. SHANE LOWERY: I remember some of it. But I  
 6 didn't know I could go do it. I thought the town was going  
 7 to do it.  
 8 MAYOR SMITH: During your appeal, that same  
 9 statement was brought up.  
 10 MR. SHANE LOWERY: Okay. Then I didn't understand  
 11 that. Like I said, I'm not good at this stuff. I don't  
 12 know anything about this kind of stuff. So, yeah, I may  
 13 have missed something trying to concentrate on something  
 14 else. I am sure I missed a lot of stuff that I would like  
 15 to ask you. That's in my paperwork. But I am just so  
 16 flustered, not being an attorney. I mean, you folks, you  
 17 hire a high dollar attorney to come and fight little old me.  
 18 I didn't feel like I needed an attorney because I made a  
 19 mistake. But I don't smoke dope.  
 20 So, I thought it would be us people talking about  
 21 this, not an attorney that's like I, how would you call this  
 22 that's doing it. I mean, I just don't understand all of  
 23 this stuff. I am not good at paperwork. I don't own a  
 24 computer. I don't know what to say.  
 25 MAYOR SMITH: One of the reasons that the attorney

1 MR. SHANE LOWERY: Yeah. I briefly read through  
 2 that. And I don't understand half of it. What was it?  
 3 Eight pages? Six pages? You have to be an attorney to  
 4 understand half of that stuff. I am not an attorney. So, I  
 5 mean, I read through it. And, yes, some of it made sense.  
 6 But most of it didn't make any sense, because there is just  
 7 so much there to try and comprehend. And I don't understand  
 8 that stuff.  
 9 MS. ZUMPFT: Shane, can we ask Greg to explain  
 10 that part of it again to help us all understand?  
 11 MR. PLAYER: Could I ask, I just want to make sure  
 12 I understood what you said. On the day of the concert, you  
 13 had Burger King burgers around 10 a.m.?  
 14 MR. SHANE LOWERY: Yes. We went and had something  
 15 to eat.  
 16 MR. PLAYER: And then you said, in responding to  
 17 Mike's question, you ate nothing else at the concert. And  
 18 you had two beers at the concert?  
 19 MR. SHANE LOWERY: Correct.  
 20 MR. PLAYER: And that's all that you ingested, all  
 21 that you drank?  
 22 MR. SHANE LOWERY: I mean, I drank some waters and  
 23 stuff. But I mean, I drank two beers at the concert. But I  
 24 drank waters while I was in Vegas, yeah. We were at the  
 25 swap meet. It's hot down there. Yeah, I drank waters down

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1 there.

2 MR. PLAYER: Okay.

3 MS. ZUMPFT: Greg, could you explain the next

4 opportunity for appeal should it be necessary?

5 MR. HARDMAN: Sure. So, for the council's benefit

6 and Mr. Lowery's benefit, if you find the Exhibit No. 12 --

7 MR. SHANE LOWERY: This is why my wife does all

8 the house paperwork stuff, because of this.

9 MR. HARDMAN: Exhibit 12 is the letter that I sent

10 with my, on my law firm letterhead. So, if you turn to

11 page 3 of the letter, the second full paragraph says,

12 Enclosed with this letter is a copy of the aforementioned

13 Utah law, namely Utah Code Annotated Section 10-3-1106.

14 MR. SHANE LOWERY: What does that mean?

15 MR. HARDMAN: So, that's referencing the state law

16 that I have been explaining to you in the prior parts of the

17 letter that talks about these procedures. But what's

18 important is the next part of that first -- second sentence

19 of the second paragraph on page 3.

20 It says, This document which also discusses your

21 further appeal rights. The town intends to hire a certified

22 court reporter to transcribe the entirety of the public

23 portions of this final employee appeal board hearing. This

24 transcription, along with all tangible forms of evidence

25 that are presented to the town council, will comprise the

1 appeals to review along with whatever petition your letter

2 or document you may want to submit or the court to consider.

3 MR. SHANE LOWERY: So, what would that be?

4 MR. HARDMAN: Well, if you decide that you want to

5 do that, then you would probably want to consult with an

6 attorney, because that would be -- you could pursue that

7 appeal on your own.

8 MR. SHANE LOWERY: Is there any attorneys out

9 there that work for free? Okay.

10 MR. HARDMAN: Some people may qualify for free

11 assistance. And there are services in St. George where you

12 can seek to qualify yourself for those kind of services if

13 your income is --

14 MR. SHANE LOWERY: I have been trying to get

15 unemployment for the last couple weeks. And I keep getting

16 shot down. So, I can't get unemployment for working for the

17 last 15 years. What makes you think I can get an attorney

18 to help me with this? Be honest now.

19 MR. HARDMAN: Well, I'm not your attorney, Mr.

20 Lowery. Normally, I am Mr. Wixom's attorney. I'm just

21 here -- my purpose here today is to guide the town council

22 through these proceedings to make sure that this process was

23 fair to you, that you receive notice that the town council

24 conducted the proceedings in accordance with Utah law, that

25 you are given an opportunity to say everything that you

1 record of this proceeding. A copy of this transcription may

2 be requested by you following the hearing.

3 And then the next two pages of Exhibit 12 are a

4 copy of the state law that's referenced in the letter which

5 outlines all of this process and your further appeal rights.

6 And, let's see here which subsection it is that talks about

7 the further appeal. Okay. It's on the second page,

8 subsection (6). Says a final -- do you see that?

9 MR. SHANE LOWERY: I'm here now. Yeah.

10 MR. HARDMAN: A final action work order of the

11 appeal board or hearing officer may be reviewed by the court

12 of appeals by filing with that court a petition for review.

13 A petition under subsection (6)(a) shall be filed within 30

14 days after the issuance of the final action or order of the

15 appeal board or hearing officer.

16 MR. SHANE LOWERY: So, what does that mean?

17 MR. HARDMAN: What that means is the town council.

18 So, within 30 days following the town council's decision, if

19 the town council decides to uphold Rick's decision, you can

20 ask the Utah Court of Appeals to review this matter. And

21 so, if you take that opportunity, if the decision of the

22 town council is to uphold the town manager's decision to

23 terminate your employment, then the transcription that the

24 court reporter is making of this proceeding and all of these

25 17 exhibits will go to the court of appeals for the court of

1 wanted.

2 The reason the town has hired the court reporter

3 is so there will never be any question about what was or

4 wasn't said at the hearing. It will all be there preserved

5 for whatever future purposes, if any, there may be to this

6 proceeding.

7 MR. SHANE LOWERY: Okay. So, on page 2, number

8 seven, actually number eight, it says, This section does not

9 apply to employee. So, what does that mean?

10 MR. HARDMAN: Described in a different section.

11 What that's referring to is employees who are called exempt

12 employees. They don't get all of the protections that you

13 do as a full time nonexempt employee under state law. So,

14 what the statute basically says is, any full time employee

15 of the town or any government entity who is a nonexempt

16 employee has a property interest in continued full time

17 employment. And before that can be taken from you, the

18 municipality has to provide you with certain due process,

19 give you appeal options. And that's why the town has the

20 personnel policy.

21 MR. SHANE LOWERY: So, why couldn't they just

22 write that in there just like you explained it instead of

23 having to be a lawyer? This is my thing. I don't

24 understand this stuff. And you guys, you put it in that

25 kind of terms. A normal person don't understand this stuff.

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1 MR. HARDMAN: I understand. But the letter I sent  
 2 to you did say you have the option to have an attorney or to  
 3 ask any other representative to be here to help you through  
 4 this process.  
 5 MR. SHANE LOWERY: Right. I did read the part  
 6 that says I can get a attorney if I want to pay for one.  
 7 MR. HARDMAN: But you could have -- like this, the  
 8 letter likewise says any representative --  
 9 MR. SHANE LOWERY: So, what's a representative?  
 10 MR. HARDMAN: Well, it could have been any of your  
 11 witnesses or --  
 12 MR. SHANE LOWERY: That's what I had him here for,  
 13 to help me through this stuff, because he knows more about  
 14 it than me.  
 15 MR. HARDMAN: So, you, apparently, understood that  
 16 part and you brought some people to help you, which is good.  
 17 MR. SHANE LOWERY: I brought people as witnesses  
 18 that I have dealt with hand-in-hand other than a couple that  
 19 couldn't be here for some reason. I don't understand why  
 20 they couldn't be here. But, yeah. Okay. I am hoping I  
 21 don't have to go through this, because I am going to have to  
 22 go there and fight it the same way, because I can't afford  
 23 an attorney. And I refuse to back down over something like  
 24 this because I made a mistake. I can't change the past, but  
 25 I could sure damn sure change the future, knowing what I did

1 except for the council and Greg. And we will deliberate.  
 2 If you want to wait around outside, wait for this area, as  
 3 soon as we are finished with the deliberations, we'll let  
 4 everybody know and come back in. And we will see if we have  
 5 a decision or if we need more time. So, you are all  
 6 excused.  
 7 (Whereupon, a brief recess was taken.)  
 8 MAYOR SMITH: Okay. We are back in open session.  
 9 It is 4:05. Present are:  
 10 MR. CHAMBERS: Mark Chambers.  
 11 MS. ZUMPFT: Lisa Zumpft.  
 12 MAYOR SMITH: Mayor Smith.  
 13 MR. PLAYER: Adrian Player.  
 14 MR. ALLTUCKER: Mike Alltucker.  
 15 MAYOR SMITH: Greg is here. Darci is here.  
 16 MR. HARDMAN: Mr. Lowery is here.  
 17 MAYOR SMITH: Mr. Lowery is here. We are through  
 18 deliberating. We will now ask Darci to give us the ballots.  
 19 And we'll mark our ballots and give them back to Darci and  
 20 see how the vote goes.  
 21 MS. CARLSON: So, what I have done per the  
 22 instruction of Mr. Hardman is created five ballots. Each  
 23 one is numbered, but they are secret. There is no other  
 24 identifying thing on here. So, it just reads, Employee  
 25 Appeal Board Hearing on October 6th, 2016. Please mark your

1 wrong. Stupidity is when you make the same mistake over and  
 2 over and over. I am not stupid. I caught this. I caught  
 3 this. I understand. I made a mistake. Won't happen again.  
 4 But, like I said, I can't go up there and afford an attorney  
 5 for this stuff. And I am not going to back down. I keep  
 6 saying I made a mistake. I know how to fix the mistake.  
 7 Don't do the same stupid thing twice.  
 8 MAYOR SMITH: Does anybody have any other  
 9 questions for Shane?  
 10 Shane, do you have anything else you would like to  
 11 present?  
 12 MR. SHANE LOWERY: No, sir.  
 13 MAYOR SMITH: Okay. We need to take a personal  
 14 break. And we'll dismiss for five or ten minutes and be  
 15 back. Is that all right with you, Greg?  
 16 MR. HARDMAN: Sure.  
 17 MAYOR SMITH: We'll reconvene in ten minutes.  
 18 (Whereupon, a brief recess was taken.)  
 19 MAYOR SMITH: It is 2:44. We are back in open  
 20 session after a personal break. Is there any rebuttal,  
 21 Rick, that you would like to give?  
 22 MR. WIXOM: I don't believe so, no.  
 23 MAYOR SMITH: All right. So, if you don't have  
 24 any rebuttal, it's hard to rebut something that he doesn't  
 25 rebut. So, what we'll do now is we will excuse everybody

1 vote for one of two options. Vote to reinstate Mr. Shane  
 2 Lowery. Vote to uphold the decision to terminate Mr. Shane  
 3 Lowery.  
 4 Then it will have 1, 2, 3, 4, 5. So, and my  
 5 folding it in half. Then they would be put in the box.  
 6 I'll tally the results. And then once the results are  
 7 tallied, I have a decision statement here. And, again, it  
 8 just says Employee Board Decision, October 6th, 2016. And  
 9 this will be given to the Mayor. It says, Based on a tally  
 10 of the secret ballots of Springdale Town Council acting as  
 11 the employee appeal board, the town council have voted to --  
 12 then I will mark based on the results of the ballots,  
 13 Reinstate Mr. Shane Lowery or, Uphold the decision to  
 14 terminate Mr. Shane Lowery. And it will be signed by the  
 15 Mayor and attested by the town clerk along with today's  
 16 date.  
 17 MAYOR SMITH: Any questions? Okay.  
 18 (Council voting by secret ballot.)  
 19 MAYOR SMITH: Okay, Darci. Appeal Board Hearing  
 20 Decision, October 6, 2016.  
 21 Based on the tally of the secret ballot by the  
 22 Springdale Town Council acting as the appeal board, the town  
 23 council has voted to uphold the decision to terminate Mr.  
 24 Shane Lowery.  
 25 You can appeal this.

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1 MR. SHANE LOWERY: Okay.  
 2 MAYOR SMITH: That letter that you have is there.  
 3 If you would like help to understanding how to appeal it,  
 4 we'll help you.  
 5 MR. SHANE LOWERY: How many days do I have?  
 6 MAYOR SMITH: You have to respond within 30 days  
 7 from today.  
 8 MR. SHANE LOWERY: That including weekends or --  
 9 MAYOR SMITH: Thirty days. So, yeah.  
 10 MR. HARDMAN: It's 30 calendar days. Okay.  
 11 MAYOR SMITH: We'll adjourn this hearing.  
 12  
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1 CERTIFICATE  
 2  
 3 STATE OF UTAH  
 4 COUNTY OF WASHINGTON  
 5 THIS IS TO CERTIFY THAT THE FOREGOING PROCEEDINGS WERE  
 6 TAKEN BEFORE ME, RUSSEL D. MORGAN, A CERTIFIED SHORTHAND  
 7 REPORTER IN AND FOR THE STATE OF UTAH, RESIDING AT  
 8 WASHINGTON COUNTY, UTAH;  
 9 THAT THE PROCEEDINGS WERE REPORTED BY ME IN STENOGRAPHY,  
 10 AND THEREAFTER CAUSED BY ME TO BE TRANSCRIBED INTO  
 11 TYPEWRITING, AND THAT A TRUE AND CORRECT TRANSCRIPTION OF  
 12 SAID TESTIMONY SO TAKEN AND TRANSCRIBED TO THE BEST OF MY  
 13 ABILITY IS SET FORTH IN THE FOREGOING PAGES 3 to 101.  
 14  
 15  
 16  
 17 \_\_\_\_\_  
 18 RUSSEL D. MORGAN, CSR  
 19 LICENSE #87-108442-7801  
 20  
 21 October 18, 2016.  
 22  
 23  
 24  
 25