```
your agreement, Mr. Cortes, that your client waives
1
     his right to cross-examination and confrontation on
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     these issues?
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                     MR. CORTESZ: It is, Your Honor.
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                     THE COURT: And, Mr. Park, is that
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     your agreement?
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                     THE DEFENDANT: Yes.
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                     THE COURT: All right. Then I will
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     approve State's Exhibit No. 7. And I will admit
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     State's Exhibit 7 through 12 into evidence.
                     MR. THOMAS: And the State would call
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12
     Joseph Flanagan.
                     THE COURT: All right.
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14
                     Mr. Flanagan, you're still under oath
     in this case.
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                    Return to the witness stand, please.
16
                     (Witness complies)
17
                     THE COURT: You may proceed.
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                     MR. THOMAS: Thank you.
                     THE COURT: You're welcome.
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20
                        JOSEPH FLANAGAN,
     having been previously sworn, testifies as follows:
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                       DIRECT EXAMINATION
     BY MR. THOMAS:
23
               Deputy Flanagan, we heard your testimony in
24
         0.
     the earlier part of trial regarding the incident.
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- would like to take your attention to the effect this incident has had on you. And to your knowledge, what extent it's had an effect on your children.
 - A. All right.

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- Q. What kind of medical procedures did you have to undergo as a results of this incident?
- A. Well, initially, I was transported to the emergency room that day to receive the sutures for the contusion. Approximately two weeks later, I had to undergo surgery to rebuild the eye socket -- basically; I had to undergo surgery to rebuild the eye socket.
- Q. And that surgery, can you describe generally that process? Was it a day surgery? Did you have to be admitted to the hospital?
 - A. It was a day surgery, yes.
- Q. Did they have to use any kind of anesthesia?
 - A. They did.
- Q. And how long was that procedure, if you know?
- A. Approximately, an hour and a half in the operating room. Basically, they had to go underneath the eyeball and put -- it was fractured, the part that your eye sits on. They had to go in and put a

- 1 little thin piece of, whatever, fake bone.
 - Q. And how long after the actual incident was that?
 - A. Two weeks.

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- Q. Two weeks. Okay. Did you feel any kind of pain, or was it continued pain between the time of incident and that or not?
- A. It was. And the way we found out about it was that continual pain right there. And the doctor advised me as recently as two weeks ago at my last follow-up visit that they don't know if I'll get complete feeling in this (indicating) part of the cheek or complete 100 percent vision out of this left eye. It may or may not, he can't tell.
- Q. So at this time what is your status with regard to your eye and that bone that was repaired?
- A. There is no pain. Like I said, the numbness in this (indicating) part of my cheek and about 80 percent vision in the left eye.
 - Q. So it's still affecting your ability --
- 21 A. Correct.
- 22 | O. -- to see on that side?
- 23 A. Correct.
- Q. Did you incur any kind of out-of-pocket expenses? I know that you're employed as a Deputy

- Constable. Was there anything out-of-pocket expenses that you were responsible for due to this incident?
 - A. My out of pocket has been approximately \$3,000 to \$3,500. I had the documents yesterday when I came, and I left them in the other vehicle. I didn't bring them with me today, but approximately \$3500.
- 8 Q. Would that be, like, copays or something
 9 else?
- A. Yeah, copays and stuff for Aetna. Aetna

 Was out of \$50,000 for the surgery, but luckily the

 County has good insurance so that's just been my

 copays.
 - Q. Has James Park or Tim Park reimbursed you for any of that at this point?
- 16 A. They have not.

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- 17 Q. So that's been entirely from your own than 18 funds?
- 19 A. Yes, it has.
- Q. And has that been paid up to this date?
- 21 A. Yes, it has.
- Q. You testified earlier that your two
 children were with you in the boat at the time of
 this incident?
- 25 A. They were.

- Q. Prior to this was going out on the boat something you and your family did regularly?
- A. At least every two weeks. Because, you know, on a police officer's salary, for a hundred dollars we could get drinks, snacks, and gasoline and spend the whole day on the river and have a good time. My children are 14 and 10.
- Q. Since this incident have your children been back on the boat with you?
 - A. No, they wouldn't go.
 - Q. Why?

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- A. That was early on in the summer. They would make excuses, like, We're tired. We are hot. But they're kids, they're not tired and hot. They would ask: Is anybody else going with us? Meaning, some of my cop buddies or other couples and stuff like that. And if I said, No, then they would bail out. They never would really say outright why they don't want to go but I know.
- Q. Did you observe the demeanor of your children at the time immediately after this incident?
- A. They had calmed down. According my wife, they were pretty frantic during the incident, but they had calmed down somewhat afterwards, while we were waiting on the ambulance.

Q. Have you attempted to discuss this incident 1 with them since, as a parent? 2 3 I have. My daughter, the 14-year-old, won't talk about it much. The only thing my 4 5 10-year-old said was: At least it took two of them 6 to whip you Dad. It's pretty funny. 7 Have you or your family had to go to any 0. kind of counsel? 8 9 Α. No, not at all. 10 Did you complete a Victim Impact Statement in this case? 11 Α. I did. 12 13 MR. THOMAS: May I approach the Bench, Your Honor? 14 THE COURT: Yes, sir. 15 16 MR. THOMAS: I'm going to tender to 17 the Court a copy the Victim Impact Statement and I'll tender it to counsel, as well. 18 I took it out. Hang on. 19 20 THE COURT: That's okay. 2.1 (Tendering Victim Impact Statement) 22 THE COURT: Thank you. 23 MR. THOMAS: And I will pass the 24 witness. 25 THE COURT: Mr. Cortes.

Joseph Flanagan - October 19, 2012 Direct Examination by Mr. Thomas

MR. CORTES: If it pleases the Court? 1 THE COURT: Yes, sir. 2 3 **CROSS-EXAMINATION** BY MR. CORTES: 4 Mr. Flanagan, this incident occurred when? 5 0. 6 Α. I believe it was June 3rd. 7 And you said two weeks later you had to 0. 8 have some sort of day surgery on your orbital bone? 9 Α. Correct. 10 But you had previously had a fight the month before, right? 11 12 Α. Correct. 13 How do we know that that fight didn't 14 affect your bone, as well? I wasn't hit. The person who swung at me 15 16 swung and missed. I didn't miss when I swung back. 17 So, your cousin didn't get any licks on 18 you? Α. It was my brother-in-law. 19 20 Q. Brother-in-law, I'm sorry. You said that you've spent \$3,500 out of pocket? 21 22 Α. Approximately. But you have no financials, no financial 23 24 documentation whatsoever with you? Α. Not today. I had them yesterday. I came 2.5

- 1 in a different vehicle this morning.
- Q. You didn't turn them in to the DA's office prior to this?
- 4 A. I did not.

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- 5 Q. You say you don't have complete feeling
 6 back in your cheek; is that correct?
 - A. Yes, sir.
 - Q. But you have no medical records to show that, as well?
- 10 A. Other than my word that I can't feel myself
 11 touching my cheek, no, there's nothing with that.
- 12 Q. Did you talk to your doctor about coming to 13 testify for you or anything?
- A. I have -- in the folder that left, I have a complete everything, the diagnoses and everything.
- They faxed me that before the trial, but nobody asked for it so I didn't produce it.
- 18 Q. The children, how old are they now?
- 19 A. The daughter's 14. At the time my son was 20 9.
- 21 Q. How old is your son now?
- 22 A. 10.
- Q. And it's your testimony that a 10-year-old and 14-year-old don't want to go boating with you anymore because of this incident?

- 1 A. That is correct, yes.
- Q. It's not the fact that at least one of them is a teenager?
 - A. No, they both enjoyed it.
- 5 Q. Would you agree with me that teenagers
 6 sometimes don't really want to spend a whole lot of
 7 time with their parents?
- 8 A. I would agree that some teenagers probably don't.
- 10 Q. And this is out there at Loves Marina,
 11 Banana Bend, on the East Side, right?
- 12 A. Yes.

- Q. Correct. Y'all used to go out every other weekend?
 - A. Almost every other weekend.
- 16 Q. Would you say there's a lot of partying 17 that goes on over there?
- A. At the lower part of the river would be a more adult area. Where we go is more family friendly, to the upper part, below the dam.
- Q. And the people that are at the lower part of the river have jet skis and boats and stuff too?
- A. I would assume so, yes, sir.
- 24 Q. And they go up and down the river too?
- A. They do.

- Q. And these people, would you call them unsavory characters?
 - A. There's always some wild drunken adult on the river. That's why we go up to the northern part where there's less of them there.
 - Q. But you did hear Deputy Wright testify that he'd been out to Loves Marina many times?
 - A. I wasn't in the room when he testified.

 $\label{eq:mr.THOMAS:} \textit{Objection to relevance}$ and improper impeachment.

11 MR. CORTES: I'll rephrase the 12 question, Your Honor.

- Q. (BY MR. CORTES) Where do you patrol?
- A. I'm in the Civil Division; Baytown's my area. I serve civil papers.
- 16 Q. So, you don't really patrol?
- 17 A. Not in 15 years.
- 18 Q. You know other people who patrol that area?
- 19 A. I know our deputies. I don't know a lot of 20 Sheriff's deputies.
- Q. Do you know your deputies that patrol that area?
- 23 A. I do.

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Q. Do they respond to a lot of calls for drunks, fighting, and things like that over there?

I can't answer that. 1 Α. But yet you think this is a family place to 2 Q. take your family? 3 Where we go on the river is more family 4 Α. 5 friendly, at the upper part. 6 Q. Your boat is fresh water or salt water? 7 It's either/or, but I don't take it to salt Α. 8 water. 9 Q. So, you could take them out to the Bay? I could. 10 Α. 0. Galveston? 11 12 Α. Correct. Lots of other places you could take them --13 Q. Sure could. 14 Α. -- where maybe there aren't so many drunks 15 0. 16 and people causing problems? MR. THOMAS: Object to relevance. 17 THE COURT: That's sustained. 18 (BY MR. CORTESZ) Would you let your 19 0. 20 daughter go out there by herself? Α. No, I wouldn't. 2.1 22 MR. CORTES: Pass the witness. 23 MR. THOMAS: May I, Judge --24 THE COURT: Yes.

MR. THOMAS: -- approach the witness?

Joseph Flanagan - October 19, 2012 Cross-Examination by Mr. Cortes

Yes. 1 THE COURT: REDIRECT EXAMINATION 2 3 BY MR. THOMAS: I'm going to show you what's been marked 4 5 for identification as State's Exhibit 13. Do you 6 recognize that photograph? 7 Yes, that me. Α. 8 0. And does that fairly and accurately depict 9 you after the incident on the date in question? 10 Α. Yes, it does. MR. THOMAS: I'm going to tender 11 State's 13 to counsel and offer it at this time. 12 13 THE DEFENDANT: Same objection as 14 during trial, Your Honor. 15 THE COURT: But you saw this the first 16 time when? Tuesday. 17 MR. CORTES: Actually, I don't know if 18 this was among the ones I saw on Tuesday. It might have been amongst those pictures, Your Honor, yes. 19 20 THE COURT: And the concern was that, 21 you hadn't been shown those with enough time to 22 evaluate them? 23 MR. CORTES: That's correct, Your 24 Honor. THE COURT: And, so, you've had since 25

Joseph Flanagan - October 19, 2012 Redirect Examination by Mr. Thomas

Tuesday that you've seen them. Is there anything 1 that you truly contest about them, other than the 2 discovery violation? 3 MR. CORTES: No, Your Honor, not at 4 5 this time. 6 THE COURT: All right. That's 7 overruled. And State's -- what number was that 8 again? 9 MR. THOMAS: 13, Your Honor. THE COURT: 13 is admitted. 10 (BY MR. THOMAS) Can you explain to the 11 12 Court what is depicted in State's 13, sir? 13 Α. That would be in the emergency room before the sutures of the contusion. 14 And is there any injury that is visible on 15 Q. 16 that photograph? There's some bruising around the eye. 17 Α. 18 0. And what about the redness over your eye, what is that? 19 20 Α. There were several more places on my head that hurt, but didn't open up any wounds or whatever. 21 22 There was a couple of knots on my head. 23 Is this blood that is visible above your

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eye?

Α.

Correct.

Joseph Flanagan - October 19, 2012 Redirect Examination by Mr. Thomas

- Q. And what is that, specifically, that big gash?
- 3 A. That's the gash right above the eye. It took 19 stitches, I believe.
 - Q. And that's from this incident?
 - A. Correct.

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- Q. That didn't have anything to do with any incident before this date?
- A. No, sir.
- 10 MR. THOMAS: Pass the witness.
- 11 MR. CORTES: If it pleases the Court?
- 12 THE COURT: Yes, sir.

RECROSS-EXAMINATION

- 14 BY MR. CORTES:
- 15 Q. Mr. Flanagan, would you agree with me that
 16 that injury is consistent with somebody being hit
 17 once or twice on the brow?
- 18 A. I would agree with that.
- 19 Q. It could even be one punch that could open 20 up an eye like that?
- A. Especially, if you're being held by someone, it's pretty easy to hit a target.
- Q. Are you a boxing fan?
- 24 A. No.
- 25 Q. You don't watch boxing?

Joseph Flanagan - October 19, 2012 Recross-Examination by Mr. Cortes

1 Α. I do not. What about UFC? 2 Q. 3 Α. No, sir. Even if a person was not being held and got 4 5 clocked in the eye like that, that could open up his 6 brow, right? I would agree with that, yeah. 7 Α. 8 MR. CORTES: Pass the witness, Your 9 Honor. 10 MR. THOMAS: Nothing further, Judge. THE COURT: All right. 11 12 Thank you, sir. You may take your 13 seat. 14 THE WITNESS: Thank you, ma'am. THE COURT: Call your next. 15 16 MR. THOMAS: Your Honor, the State 17 rests. 18 THE COURT: All right. Mr. Cortes, you may proceed. 19 20 THE DEFENDANT: Defense calls Jason Michael Park, Your Honor. 21 22 THE COURT: Is he here in the room? 23 MR. CORTES: Yes, ma'am. 24 THE COURT: All right. Come on up

25

here, please.