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DISTRICT COURT  
CLARK COUNTY, NEVADA  
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THE STATE OF NEVADA  
Plaintiff,  
vs.  
JUSTIN D. PORTER,  
Defendant.

CASE NO. C-17495

DEPT. NO. 6

Transcript of  
Proceedings

Office of  
Court  
Reporter

JAN 27 2010

FILED

BEFORE THE HONORABLE ELISSA CADISH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 5

FRIDAY, MAY 8, 2009

APPEARANCES:

FOR THE PLAINTIFF:

LISA LUZAICH, ESQ.  
Chief Deputy District Attorney

JOSH TOMSHECK, ESQ.  
Deputy District Attorney

FOR THE DEFENDANT:

CURTIS BROWN, ESQ.  
JOSEPH ABOOD, ESQ.  
Deputy Public Defenders

COURT RECORDER:

JESSICA RAMIREZ  
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC  
Littleton, CO 80120  
(303) 915-1677

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

1 LAS VEGAS, NEVADA, FRIDAY, MAY 8, 2009, 10:43 A.M.

2 (Outside the presence of the jury.)

3 THE MARSHAL: All rise. This court, Department 6, is  
4 now in session, the Honorable Judge Elissa Cadish presiding.

5 Please be seated. Come to order.

6 THE COURT: Good morning.

7 MR. ABOOD: Good morning, Your Honor.

8 THE COURT: All right. Obviously, we'll do this in  
9 front of the jury, but will the defense -- sorry, go ahead and  
10 have a seat.

11 Will the defense be presenting any evidence?

12 MR. BROWN: No, Your Honor. Thank you.

13 THE COURT: All right. You have been handed the  
14 prepared instructions 1 through 36. Are there any objections  
15 problems, issues with them?

16 MR. BROWN: None in addition to yesterday's record.

17 THE COURT: Right. Thank you. I appreciate that.

18 MR. TOMSHECK: No, Your Honor.

19 THE COURT: Okay. All right. And the verdict form  
20 as well, have you seen that in final form?

21 MR. ABOOD: Yes, Your Honor.

22 THE COURT: And any objections to that?

23 MR. BROWN: No, Judge.

24 MR. ABOOD: No, Your Honor.

25 THE COURT: All right. Let's go ahead and bring in

1 the jury.

2 (In the presence of the jury.)

3 THE MARSHAL: Please rise.

4 THE COURT: Everybody can go ahead and have a seat.

5 Counsel stipulate to the presence of the jury?

6 MS. LUZAICH: Yes, Judge.

7 MR. ABOOD: Yes, Your Honor.

8 THE COURT: All right. Good morning, everybody. We  
9 didn't keep you waiting too long today I hope. We do our best.  
10 All right. At the end of the day yesterday the State  
11 rested.

12 Does defense have any evidence to present?

13 MR. ABOOD: No, Your Honor.

14 THE COURT: Okay. Thank you.

15 MR. ABOOD: Thank you.

16 THE COURT: All right. In that case, it --

17 THE CLERK: (Indiscernible).

18 THE COURT: Yes, defense rested --

19 MR. ABOOD: Yes, Your Honor.

20 THE COURT: -- has nothing to present. No need for  
21 any rebuttal since defense presented nothing.

22 In that case, it is time for me to instruct you on  
23 the law which will be followed by the closing arguments. Now,  
24 you know, I would like to be able to just sit here and have a  
25 conversation with you about the law and just look at you the

1 whole time, but as you can see, there are some fairly detailed  
2 instructions on the law. It will take some time to go through  
3 and they have been carefully prepared. So I will need to read  
4 from them, but you do have them there with you to read along,  
5 and it does help to do that.

6           And understand that you will be able to take those  
7 copies of the instructions back to the jury room with you. So  
8 if it sounds kind of confusing as we're reading through it,  
9 just know that you'll be able to take your time with it in the  
10 jury room as well and look back at anything that may seem  
11 confusing as we're reading through it.

12           JUROR NO. 4: Can we write on it?

13           THE COURT: Yes. They're your copies, so you can  
14 make notes on them as you would in your note pads, and you'll  
15 be able to take all that back. All right.

16           (Instructions read; not transcribed.)

17           THE COURT: Counsel.

18           STATE'S CLOSING ARGUMENT

19           MS. LUZAICH: Andrew Young once observed it is a  
20 blessing to die for a cause, because you can so easily die for  
21 nothing. Oftentimes in cases of homicides, we are left asking  
22 the question why, and many times as in this case we may never  
23 know.

24           What we do know is Gyatso Lungtok died senselessly.  
25 He was a quiet man who bothered no one. He certainly didn't

1 deserve what happened to him on June 8th of the year 2000.

2 Today, the State of Nevada asks you for justice.

3           First, I'd like to thank you all for your time and  
4 attention in this case. Being jurors is a difficult job. We  
5 know that. It calls for many sacrifices. And fortunately,  
6 although this case didn't last very long, it is dependent on  
7 you, people like yourselves who are willing to take time out of  
8 your lives and sit as jurors. Without people like yourselves,  
9 our system simply couldn't function, so for that we do thank  
10 you.

11           Today we are here to give you what is commonly called  
12 closing arguments. And, you know, I never really understand  
13 why anyone calls them closing arguments. I am not going to  
14 argue with defense counsel. Defense counsel's not going to  
15 argue with myself or Mr. Tomsheck, and we are certainly not  
16 going to argue with any of you all. What it is, really, is our  
17 opportunity to talk to you about what we believe the evidence  
18 has shown and how it applies to the law that the Court just  
19 read to you.

20           Please keep in mind what we say is not evidence. The  
21 only evidence that you can consider is what came from right  
22 here.

23           When the witnesses came, they raised their right  
24 hands, they swore to tell the truth, and they told you what  
25 they know. We showed you evidence, physical pieces of

1 evidence. That is what you could consider. What we say is not  
2 evidence.

3           You all were here all week. You took careful notes.  
4 So if any discrepancy arises, check your notes, pay attention  
5 to your notes, talk to each other.

6           In this case there are several different counts, and  
7 what you have to decide is did the State of Nevada prove beyond  
8 a reasonable doubt each and every count.

9           Count No. 1 is burglary while in possession of a  
10 firearm, and what Instruction No. 14 tells you is what is  
11 burglary. Anybody who enters a building, an apartment, with  
12 the intent to commit larceny, robbery or another felony is  
13 guilty of burglary.

14           Burglary is a crime of entry. The crime of burglary  
15 is complete upon entry. So technically it doesn't matter what  
16 happens once inside. What is the person's intent at the time  
17 they enter the apartment.

18           Instruction No. 17 talks to you about that. We don't  
19 have to provide that anything bad happened in the apartment,  
20 just what happened or what was in his mind at the time of  
21 entry. Well, if he entered with the intent to commit larceny.  
22 And what is larceny? It's simply to steal.

23           Did he enter with the intent to commit robbery? What  
24 is robbery? It's taking by means of force or violence.

25           Intent, now how do we prove intent? How do we prove

1 what was his intent at the time that he entered? I mean, we  
2 can't crawl inside a person's mind and figure out what they  
3 actually meant. So what do we do? We look at what is the  
4 conduct of the individual and the circumstances that are  
5 disclosed by the evidence.

6 And what evidence did we have of the intent at the  
7 time of entry? Well, first of all, the door was kicked in.  
8 Now, when people are going for a reasonable, lawful purpose,  
9 you don't generally kick in a door.

10 And how do we know the door was kicked in? Well,  
11 first of all, it's broken. Second of all, it was kicked in  
12 with so much force that the lock was actually found on the  
13 floor inside the apartment.

14 And then, finally, we have a shoe print. So we know  
15 at the time the person entered the apartment they had the  
16 intent to do something wrong. You don't kick a door in unless  
17 you're going there to do something wrong.

18 Additionally, we know that the person went with a  
19 gun. How do we know that? Well, you heard from the crime  
20 scene analyst and you saw the photographs there was a bullet  
21 found in the bathroom. There was a casing found right outside  
22 the door. There was another bullet found in the apartment.  
23 Actually, there was a third bullet found. I forgot that  
24 picture. Sorry.

25 So we know that the person kicked the door in and

1 went in with a gun. What other intent could there be but to do  
2 something evil, evil intent.

3 Burglary with a deadly weapon. Well, we know, like I  
4 said, that there was a gun because we have all the evidence  
5 that the gun left behind, the bullets, the casing.

6 But there is an instruction. Instruction No. 25,  
7 tells you that we are not required to find and show you the  
8 weapon for you to find that a weapon was used at the time of  
9 the crime. So burglary with a deadly weapon, proven. A  
10 firearm -- sorry -- you are instructed is a deadly weapon.

11 Count 2 charges the defendant with attempt robbery  
12 with a deadly weapon. Now, robbery we know is the unlawful  
13 taking of property by means of force or violence.

14 Now, an attempt robbery is somebody enters with the  
15 intent -- well, or enters -- goes with the intent to commit a  
16 crime. There is performance of some act towards its  
17 commission, but the act is not actually consummated.

18 And how do we know that that's what happened? Well,  
19 the intent to commit the robbery is shown by the fact that he  
20 goes there at 2:00 o'clock in the morning, and he goes with a  
21 gun. If you're going for a lawful purposes, why are you going  
22 to go at 2:00 o'clock in the morning with a gun?

23 Performance of an act. The door is kicked open, so  
24 he has tried to do something in furtherance of the robbery.

25 Failure to consummate. Well, Mr. Lungtok surprised



1 him. Had Mr. Lungtok not been there, what would have happened?  
2 We expect the apartment might have been cleaned out. But  
3 because he was there, uh-oh, bang, bang, and runs away.

4 So we know that he went there with the bad intent,  
5 the intent to steal, to commit robbery, but he got foiled by  
6 poor Mr. Lungtok.

7 Count 3, murder with use of a deadly weapon. We  
8 begin with Instruction No. 5, and Instruction No. 5 tells you  
9 that murder is the unlawful killing of a human being with  
10 malice aforethought. Killing with malice is murder, so you  
11 have to decide was the killing of Gyatso Lungtok done with  
12 malice. Certainly it was.

13 Okay. Now, Instruction No. 6 defines malice  
14 aforethought for you. Malice aforethought is a very complex  
15 phrase for a very simple concept. What malice aforethought  
16 means is ill will.

17 Instruction No. 7 tells you that malice can be either  
18 expressed or implied. Express malice, an intentional killing.  
19 You have to decide did he intentionally kill Gyatso Lungtok.  
20 And as I said before, we can't crawl up inside somebody's head  
21 to determine what their intent is. So what do we do? We look  
22 at the circumstances surrounding the actions.

23 So an example of express malice. You take somebody  
24 up to the 25th floor of a building out on the roof. You walk  
25 up to the edge and you push them off the edge. Everyone knows

1 that if you push somebody off the top of a 25-story building,  
2 that person's going to die. So if you push them off, you  
3 intended for them to die. Express malice, intent to kill.

4 Implied malice, on the other hand, there's still ill  
5 will, but you don't necessarily intend for the person to die.  
6 Here seven gunshot wounds. Sorry about that. Seven. He kept  
7 shooting until Mr. Lungtok was dead.

8 So once you've decided that it was a murder because  
9 there was malice, you must determine whether it was murder of  
10 the first degree or murder of the second degree.

11 Instruction No. 4 tells you that in Nevada in every  
12 case of murder it is the jury, you guys, who decide is it  
13 first- or second-degree murder. Now, the Judge differentiates  
14 between first- and second-degree murder in a number of  
15 instructions.

16 Instruction No. 8 tells us that murder of the first  
17 degree is murder that is committed in the perpetration or  
18 attempted perpetration of a robbery and/or a burglary or murder  
19 that is perpetrated by any kind of willful, deliberate and  
20 premeditated killing.

21 So if there's a killing that's willful, deliberate  
22 and premeditated or if it's committed during the perpetration  
23 of a robbery or a burglary, that is first-degree murder.

24 We are then told in Instruction No. 21 that all  
25 murder that's not first degree is second degree. So let's talk

1 about was the killing of Gyatso Lungtok done in a willful,  
2 deliberate and premeditated manner, and I would submit to you  
3 that, yes, the evidence shows that it was.

4 Okay. First, willful. Willful is another word for  
5 intentional. Was there intent to kill. And remember, seven  
6 gunshot wounds. Not one, not two, not three, not four, seven  
7 gunshot wounds. He kept on shooting.

8 He pulled that trigger again and again until Mr.  
9 Lungtok was dead. First in the back again -- well, maybe not  
10 first. Two shots in the back, a shot in the chest that  
11 remember Dr. Olson talked about could have even been standing  
12 right over him. Not done yet. More shots in the arm, in the  
13 upper arm. He shot again and again and again. Intentional,  
14 willful.

15 Now, deliberate. Deliberation is the process of  
16 determining upon a course of action. It's merely thinking  
17 about something and deciding upon a course of action. And it  
18 doesn't have to be a great thought process. A deliberation --  
19 or, sorry, a deliberate determination can be arrived at in a  
20 very short period of time Instruction No. 9 tells us.

21 So when Mr. Lungtok surprised this stranger in his  
22 home, that stranger could have just left, but he did not. He  
23 raised the gun and he shot and he shot.

24 Look how small that apartment was. He could have  
25 been out of that apartment in about three seconds, but he chose

1 not to. Rather than leave, he shot again and again.

2 Premeditation, the determination to kill Instruction  
3 No. 9 tells us. By the time he committed the intentional  
4 killing, he had the determination to do so. He had decided he  
5 was going to do it. It was not just a reflex action killing  
6 Mr. Lungtok. Each time he pulled the trigger he chose to keep  
7 on going.

8 Now, you know, most people have this preconceived  
9 idea about what premeditation is. You know, people watch too  
10 much TV and movies and stuff, and there they always show  
11 premeditation involving a great deal of planning.

12 You know, you see your wife with another guy. And  
13 you go home and you get your gun, and you try and figure out  
14 where are they going to be, and you follow them around town.  
15 That, of course, is premeditation. But that is not what  
16 premeditation requires.

17 Instruction No. 9 tells us that premeditation need  
18 not be for a day or an hour or even a minute. It can be as  
19 instantaneous as successive thoughts of the mind. Bang, bang,  
20 bang.

21 So when you have a willful, which is on purpose,  
22 deliberate, something that you thought about, and premeditated,  
23 made a decision, murder, that is first-degree.

24 Now, you know, it sounds with all these instructions  
25 like a whole lot is required for this premeditation, willful,

1 deliberate killing, but it's not, okay? An example that  
2 everybody can relate to.

3           You wake up one morning and you look at your clock.  
4 Oh my God, I forgot to set the alarm. You're late for work.  
5 You don't have time to take a shower. You don't even have time  
6 for coffee. You race out the door, get in your car, and you're  
7 driving down the street. And what do you see? That pesky  
8 yellow light.

9           So you have to decide as you're driving down the  
10 street late for work what am I going to do. You think, well,  
11 how far am I from the light? How fast am I going? Are there  
12 any police cars around? Are there any pedestrians around? Is  
13 somebody coming in the other direction?

14           In all of those decisions that you're making in about  
15 two-and-a-half seconds, that is premeditation and deliberation.  
16 So when you put your foot on the gas and choose to cruise  
17 through that red light, yellow, orange, red, when you make that  
18 decision you have willfully, deliberately and premeditated your  
19 decision to run the red light. It is as quick -- as  
20 instantaneous as successive thoughts of the mind.

21           In addition to premeditation and deliberation which I  
22 would submit that we have shown by the bang, bang, bang,  
23 repeated shots, another way to get to first-degree murder is  
24 what we call the felony murder rule. The felony murder rule  
25 tells us that there are certain types of offenses that are

1 conclusive evidence of malice aforethought, and that would be  
2 murder that is committed in the perpetration or attempted  
3 perpetration of a robbery or a burglary.

4           If you find, which you already have, the burglary  
5 with a weapon and the attempt robbery with a weapon that the  
6 killing occurred during the commission of those crimes whether  
7 it's intentional or not, that is first-degree murder,  
8 first-degree felony murder.

9           Now, because there -- Instruction No. -- sorry -- 20  
10 tells us, you have heard many, many times in order for there to  
11 be a verdict you have to be unanimous, so everybody has to  
12 agree that there was a murder or that there was a first-degree  
13 murder.

14           What you do not have to be unanimous about is the  
15 theory upon which you find him guilty of first-degree murder.  
16 So, for example, you're back in the deliberation room and  
17 you're talking, and seven of you believe that it's felony  
18 murder. You're not quite convinced that it's premeditation,  
19 deliberation. You're convinced that there's felony murder.

20           The other five of you aren't quite sure about the  
21 felony murder, but you're sure that there was premeditation and  
22 deliberation.

23           All 12 of you agree that it's first-degree murder.  
24 You do not all 12 have to agree whether it's felony murder or  
25 premeditation and deliberation as long as you all agree that

1 one or the other is present. So you do not have to be  
2 unanimous about that, just the fact that it is first-degree  
3 murder.

4 So once you've decided that it was first-degree  
5 murder and obviously with use of a deadly weapon, a firearm is  
6 a deadly weapon, you have to determine who was it who did it.

7 Well, we heard from the defendant's own mouth that it  
8 was him. We also heard from the defendant's mouth about Dion,  
9 but we heard that it was him. But you don't even have to  
10 accept I did it from him.

11 Who is the person who knew only things that person at  
12 the scene could know. Who is the person who has the Saucony  
13 tennis shoes that we heard kicked in the door. Who is the  
14 person who called Detective Jensen -- oops, spelling, sorry --  
15 four times within such a short period of time right after his  
16 mother heard from Detective Jensen that the police were looking  
17 for him. Who is the one who hid behind the couch when the  
18 police were knocking at his door at 1:00 o'clock in the  
19 morning. Who is the person who had the reaction to the photo  
20 of the murder location but the defendant, Justin Porter.

21 Now, the defendant, Justin Porter, knew things that  
22 only the killer could know. We heard from his own mouth he was  
23 talking -- he knew it was a semiautomatic weapon as opposed to  
24 something else. And how do we know that? Because he was  
25 talking about the shells. He was talking about shells being

1 left behind. And we know that it is a semiautomatic weapon  
2 that leaves shells behind that a revolver does not.

3 We know that he knew it was a small-caliber weapon  
4 because you heard him talking about the small bullets.

5 He knew that the shells were missing. There was only  
6 one shell found at the location, but there were seven shots  
7 fired. Unless he went back and grabbed the shells himself, how  
8 else would he know that the shells were missing.

9 He knew that there was blood on the door tread.  
10 Unless he was physically there and having committed the  
11 offense, how else could he know?

12 He knew that the door was kicked in. He talked about  
13 the door being kicked in and that it was near the door nob. We  
14 saw the pictures of where the tread was, and he told the  
15 detectives that the door was kicked right by the knob.

16 And he knew that the gun was not recovered. Only the  
17 killer and the police knew that the gun was not recovered.

18 But not only did he know things that only the killer  
19 could know, the stories that he told kept evolving. Remember,  
20 you heard first I had nothing to do with any crimes in Las  
21 Vegas. When he calls Detective Jensen on the phone, I did  
22 nothing. Somebody's lying on me. And he comes up with some  
23 guy named Dude who's lying on him.

24 The detectives then go to Chicago, and they talk to  
25 him, and they show him a picture, and that changes everything.



1 Remember, you heard about his reaction to the picture of the  
2 apartment. He paled, he stood up and he paced around, I didn't  
3 do it, I didn't do it, I had nothing to do with that. Just by  
4 seeing the picture, that reaction.

5           So then his story evolves into Story No. 2. Dion did  
6 it. I was there, but I didn't go in. He talks about that  
7 nonexistent phone booth. He talks about the fact that it was  
8 his gun, but Dion did it and he didn't do it.

9           And then they give him a little bit of time. And  
10 what do they say? While he's out of the -- or while they are  
11 out of the room, he's pacing around, pacing around. They come  
12 back in, and now we have Story No. 3 that evolves yet again.

13           I did it but I didn't mean to do it. It starts off  
14 with I know nothing to yes, I did, but I didn't mean to do it.  
15 What does he do? He minimizes.

16           But think about it. I mean, even his minimization  
17 story doesn't really make any sense because he's talking about  
18 how he's trying to get away from the police; therefore, he has  
19 to kick in the door and go inside.

20           Well, you know, when you heard from the detective and  
21 you can see in the pictures, there are tons of places he could  
22 have gone to get away from a police car because what he told  
23 you was -- on the tape -- that the police were driving down the  
24 street and lit him up with a spotlight.

25           All he had to do was run behind a building, run

1 behind a bush, run anywhere. There was no reason he had to run  
2 up the stairs and kick in a door unless he was going to commit  
3 a robbery or a larceny, to steal.

4           And he says, well, I knew that nobody lived there.  
5 But when you listen more carefully to what he said, they asked  
6 him -- they showed him the picture and they asked him was the  
7 shade up or down. He says at first, well, in the picture it's  
8 up. But they said no, but when you were there was the shade up  
9 or down. He says he can't remember is what he says if the  
10 shade was up or down.

11           Well, he's trying to tell you that every time he went  
12 by there it looked like nobody was home because it was always  
13 open. But then he says, well, I only walked passed a few  
14 times. So he can't even keep track of his own lies and  
15 stories.

16           Ladies and gentlemen, use your common sense. I asked  
17 everybody. You have common sense. You'll bring it with you.  
18 Use your common sense. Each and every one of you has lived  
19 through your lives, gone through your experiences. You all  
20 have common sense.

21           Listen to the evidence. Go back and listen to his  
22 statement to the police. Read through the transcripts. Your  
23 common sense will tell you there's a killer in the courtroom.  
24 He's sitting right there, and he is guilty of all the charges.

25           Thank you.

1 THE COURT: Thank you. Defense?

2 DEFENDANT'S CLOSING ARGUMENT

3 MR. BROWN: Thank you, Your Honor. Morning, ladies  
4 and gentlemen.

5 COURT RECORDER: Do you need the overhead?

6 MR. BROWN: Pardon me?

7 COURT RECORDER: Do you need the overhead  
8 (indiscernible)?

9 MR. BROWN: I am going to need the overhead. Thank  
10 you.

11 This is a tale of two stories. But instead of the  
12 best of times and the worst of times, this truly is the most  
13 tragic of times. Gyatso Lungtok should not be dead, but he is.  
14 We all shouldn't be here going through this trial with this  
15 young man for murder, but we are.

16 So where do we go from here? How do we decide what  
17 happened? How do we decide responsibility? Who do we believe,  
18 Justin or Justin? Do you have to believe him at all? Well,  
19 that's entirely up to you. You are the commanders of that  
20 ship. You get to make those decisions.

21 But keep in mind that without Justin's words, without  
22 his statements to the police, where would this case be? What  
23 would the evidence of this case be?

24 Well, we know without Justin's statements to the  
25 police nothing from the crime scene was ever found on Justin

1 Porter either in Las Vegas or in Chicago. And we know that  
2 nothing from Justin Porter was ever found at the crime scene.  
3 There were no fingerprints. There was no DNA. There was no  
4 blood on any of his clothing. There was none of his blood at  
5 the scene. There were no valuables of Mr. Lungtok's in Mr.  
6 Porter's possession either at his house in Vegas or in Chicago.

7 And although not required to, the police never did  
8 recover a firearm. We do have a shoe print, but keep in mind  
9 with that shoe print without Mr. Porter putting into context  
10 and explaining the shoe and his shoe, what you have is a shoe  
11 print that may or may not match that but also matches any shoe  
12 made by Saucony between a 10-and-a-half and an 11-and-a-half  
13 with up to 60 different top patterns because they all have the  
14 same outsole design. So without Mr. Porter's input, that  
15 really doesn't connect anything to anybody.

16 And I bring these points up simply to underscore the  
17 importance of his statements and the reliability of what Mr.  
18 Porter says himself to the police in their investigation and to  
19 the State in their prosecution.

20 But what you're going to discover -- and you got a  
21 little bit of it listening to Ms. Luzaich, and you probably  
22 will get some in listening to Mr. Tomsheck -- is they're going  
23 to want you to pick and choose things to believe that fit, puts  
24 Mr. Porter at the scene and makes him a killer, absolutely  
25 believe it. But if it explains why he may have been there,

1 what he was feeling, what he was thinking, what he was doing,  
2 please disregard it.

3           They want you to belive but not believe. They want  
4 you to hear, but they don't want you to listen.

5           And I concur. I want you to go back and I, too, want  
6 you to listen to that statement again. I think that you owe it  
7 to yourselves, and we've introduced into evidence a copy of the  
8 transcripts. You can follow along with it. But rely on the  
9 statement itself if you have any questions about what was said.

10           Now, you got a clear message from Detective  
11 LaRochelle that he didn't really put a whole lot of stock into  
12 what Mr. Porter was saying with regard to Dion. And yes, I'm  
13 aware that the State takes the position that this is a tale of  
14 three stories.

15           But when you think about that first phone call, you  
16 know, Detective Jensen had left a business card with Justin's  
17 mother and said please have your son call me about some crimes.  
18 He never said that they were investigating a murder. Certainly  
19 didn't indicate to Ms. Porter they were investigating a murder.  
20 There's no evidence Justin Porter ever knew they were talking  
21 about a murder, just a generalized phone call by have him call  
22 us.

23           He tried calling back. He left him a message,  
24 somebody's lying on me. You know, whether that's the initial  
25 beginnings of a story or just a denial of a 17-year-old, that's

1 up to you to decide. Regardless, the State didn't do anything  
2 with it.

3           Didn't investigate, didn't look into it. You know,  
4 it was a phone call that he just basically disregarded similar  
5 to Detective LaRochelle disregarding the entire first statement  
6 that Justin Porter gave him when he's talking about what  
7 happened with Dion.

8           And the reason that the State is disregarding the  
9 first statement about Dion and the reason that Detective  
10 LaRochelle and the police have disregarded that first statement  
11 with respect to Dion is because if you believe the first  
12 statement that Dion perpetrated these offenses, then you have  
13 to find this young man not guilty. Based upon the crimes  
14 charged and the instruction that you have before you, you would  
15 have to return a verdict of not guilty for Mr. Porter.

16           Now, what I will tell you with respect to the Dion  
17 case is it's obvious that they didn't put any stock into it.  
18 They didn't -- you know, he told them where you could find this  
19 gentleman, what he looks like, who he lives, where he's at.  
20 Very easy to do, very easy to follow up, go look. Just tie up  
21 your loose ends.

22           They neglected to do that. They decided that they're  
23 putting all their eggs in the number two story basket and  
24 didn't even bother to disprove anything that Justin was trying  
25 to tell them with respect.

1           Now whether those were reasonable actions by the  
2 police is up to you. But what's also reasonable is for you as  
3 a jury to accept the first story that Justin gave the police as  
4 what happened because they didn't go any -- they didn't do  
5 anything with regards to the Dion story to disprove those facts  
6 and that what Justin told them explains many of the things that  
7 they found. You are well within reason in believing that that  
8 first story is true, and that would mean that Mr. Porter's not  
9 guilty of these charges.

10           But what I want to spend the remainder of my time  
11 with you this morning about and what I want to get down to  
12 talking about is Statement No. 2. This is the one that you  
13 heard. This is the one that was played in the courtroom. This  
14 is the one that the State of Nevada is relying on in asking you  
15 to convict Mr. Porter of certain offenses.

16           What we have is first-degree murder, burglary and  
17 attempt robbery. The way I'm going to discuss first-degree  
18 murder with you -- and you'll recall from the instructions and  
19 you have them with you, and I have a copy of them as well -- is  
20 that murder of the first degree can be committed one of two  
21 ways. And this is Instruction No. 8.

22           Essentially -- hopefully I'll get this right at some  
23 point. You can get to first-degree murder two ways. Ms.  
24 Luzaich very thoroughly explained this. You can either have  
25 committed premeditation and deliberation in the execution to

1 get to first-degree murder, or it could have been committed  
2 during the perpetration of a felony.

3 In this case, the felonies are burglary and attempt  
4 robbery. Interesting that it's charged as an attempt robbery.  
5 It's acknowledging that nothing was taking -- taken from the  
6 house, and we'll talk about that in just a minute. But they've  
7 charged with attempt robbery.

8 And when I discuss felony murder with you, that's  
9 really the time to talk about the burglary and the robbery  
10 offenses because if you find Mr. Porter guilty of burglary or  
11 robbery, then the felony murder attaches. If you don't find  
12 him guilty of those offenses, then it's not felony murder, and  
13 we're really deciding is the premeditated first-degree murder a  
14 second-degree murder.

15 And I think when you're done looking at the  
16 instructions and listening to arguments, that you're going to  
17 conclude that what the second statement does if you believe it  
18 is -- convicts Mr. Porter of a second-degree murder but not a  
19 first-degree murder. Keep in mind your choice between the two  
20 statements.

21 So what is premeditation and deliberation? Ms.  
22 Luzaich showed you a few highlights of the instruction. And,  
23 you know, it's going to be hard for you, probably, to follow on  
24 the monitor, but you have your own copies.

25 So if I would ask you to look at your own copy and



1 this is Instruction No. 9. And premeditated and deliberated  
2 murder is kind of what we think about. It is an intentional  
3 killing. You want to kill somebody, you plan to kill somebody,  
4 that's your purpose, that's your intent, you go about doing it,  
5 and you're successful at it, okay? But that's just our  
6 generalized knowledge.

7           The specific law really says that for you to convict  
8 an individual of a first-degree premeditated and deliberated  
9 killing, three elements have to be met. And they're listed for  
10 you right here; willfulness, deliberation, premeditation. And  
11 we'll talk about those.

12           You have to have all three. Not two out of three,  
13 not one out of three. You have to have all three. And you  
14 have to have all three at the time or before the killing, and  
15 that's important as well.

16           The State emphasizes successive thoughts in mind.  
17 There is a following instruction which we'll talk about that  
18 tells you that it doesn't take forever to figure these things  
19 out, even a day or an hour, but you do have to have all three  
20 of those elements.

21           So let's look at it. Willfulness simply is the  
22 intent to kill. Justin Porter's pulling the trigger. Is he  
23 intending to kill Gyatso Lungtok? Well, you listen to the  
24 statement. You decide whether he was intending to kill him or  
25 intending to shoot and get out of there.

1           Now, the point has been made about this firearm,  
2 seven shots. But what's also important to recall is that the  
3 seven shots -- even Detective LaRochelle testified about this  
4 -- will occur very rapidly.

5           There's very little trigger pull on a .22. It can be  
6 as quick as you could pull your trigger. So seven shots  
7 theoretically could happen in a very short period of time. I  
8 won't attempt to quantify it for you, but I can at least tell  
9 you that it would be very quick.

10           There's no evidence to suggest which is why we asked  
11 the coroner any of those shots take place after the person may  
12 have been deceased. There's no evidence to support that.

13           You know, so they -- what's a more likely scenario is  
14 exactly what Justin Porter said. When he went in the house and  
15 he closed the door, he's hiding. So close the door made sense.  
16 Somebody came out of the bedroom he wasn't expecting, he was  
17 startled, he turned, and he pulled the trigger on that gun  
18 until it was empty.

19           Now, Ms. Luzaich talked about seven shots. Those are  
20 seven bullets. There may have been more. We don't know.  
21 There may have been eight or nine. Remember, one bullet went  
22 through the door and one ricochet off the wall. There may have  
23 been more.

24           The point is the gun was fired in a panic and it was  
25 fired until it was empty. Very short period of time.

1 stress of a startling event.

2           A mere unconsidered rash impulse is not deliberate  
3 even though it includes the intent to kill. And that's  
4 important because very often what you recognize is maybe there  
5 was an intent, but it was I didn't have time to think it  
6 through to deliberate what I was doing. I didn't have the time  
7 to collect myself and realize everything that was going on  
8 around me and weigh the consequences for and against my  
9 behavior. I didn't have the time because I was merely  
10 unconsidered and rashly impulsive and not deliberate. So in  
11 addition to the premeditation you have to have deliberation --  
12 I'm sorry -- willfulness and then premeditation.

13           Premeditation, a design, a determination. That's  
14 more than intent. That's a determination to kill, and it has  
15 to be distinctly formed in the mind at the time of the killing.  
16 That is more than just simple intent. That's another process  
17 taking it to another level, and it's important that it's  
18 included in the elements here. You have to have all three;  
19 intent, deliberation with the weighing, and this determination.  
20 Now, it's true this can all happen in a very short period of  
21 time.

22           And I think trivializing this entire process down to  
23 running a red light is insulting. We've all been in traffic  
24 situations. We're very familiar with driving. We approach  
25 intersections every day.

1 I know right now how I'd react to a yellow light,  
2 what the consequences are. I thought about that for my whole  
3 life since I've been driving. And to suggest that the first  
4 time I ever have to make a decision as to what I'm going to do  
5 in that intersection occurred in that instant is inaccurate,  
6 and it trivializes the requirements of reasonable doubt with  
7 respect to premeditation and deliberation because sitting in  
8 that intersection is nothing like being in the apartment and  
9 having somebody come out and startling you.

10 Now, with respect to the startling and Mr. Lungtok,  
11 please understand he bears zero responsibility whatsoever, of  
12 course. He's in his own house.

13 The point is is that when Justin went in the house,  
14 if you believe the statement, he wasn't expecting him. So when  
15 he came out, that's when he was surprised.

16 The other point I want to make with respect to  
17 deliberation because this may come up in your -- when you're  
18 deliberating. I don't think the State would make this point.  
19 Is that weighing the consequences, thinking about what's going  
20 to happen must occur before the killing.

21 In other words, when Justin tells the detectives in  
22 this statement that he ran to the field, sat and then went back  
23 and got the shells, that in the field is when he's thinking  
24 about what's going to happen. That has to take place  
25 beforehand, okay?

1           Now he's just scared. He's 17. He doesn't know what  
2 he's doing -- if you listen to the statement -- goes back.  
3 Hears the man who's clearly still alive, the groaning, the  
4 moaning. He hears that. He tells them that in the statement.  
5 He didn't want to believe it.

6           He wants to believe the guy's gone to the hospital.  
7 He's hoping amongst hope that that man has taken himself or had  
8 somebody take him to the hospital. But he hears it. Well,  
9 that's consistent with the neighbors who heard the same thing,  
10 so we know he didn't shoot him until he was dead. We knew he  
11 shot him until he was out and ran away.

12           If he truly, truly wanted this man dead, if that's  
13 all his intention was was to premeditate and kill this person,  
14 he had another opportunity. He goes back, the guy's still  
15 groaning, he's still alive.

16           If his intention had been before to kill him, his  
17 intention would still be that, and that's what would have  
18 happened. If he had another shot, he probably would have shot  
19 him in the head. We would have seen that or bashed him in the  
20 head something to effectuate the death which is consistent with  
21 a premeditation and deliberation and not with the story that  
22 Justin told.

23           While we're on this point, lest you think perhaps  
24 that maybe that he was shot while he was in the bedroom, and I  
25 mean Mr. Lungtok, and I don't know that the State would even

1 take this position, but I feel I better address it just in case  
2 one of you think about it.

3           Recall the testimony of the pathologist that the  
4 shots that would have been in his back would have been entirely  
5 consistent -- inconsistent with anybody walking in. The shots  
6 on Mr. Lungtok altogether are very consistent with a person who  
7 came out, was surprised to hear the noise, and all of a sudden  
8 found himself being peppered. He either heard a shot that went  
9 through the door or he felt the first shot, and we don't know  
10 where that was.

11           But the angle of the bullets going straight  
12 through-and-through, some of them at different angles, is  
13 entirely consistent with a person who does this. And that's a  
14 reasonable reaction of anybody in a very short period of time,  
15 and it didn't kill him. The unfortunate reality is one bullet  
16 was capable of killing him.

17           And he walked around. That even suggest he walked  
18 outside, maybe hit the porch light. There was blood on that  
19 light panel. Went at least down a couple of steps, then  
20 retreated back into the apartment, made his way to the bedroom  
21 where he tried to make a phone call it appears and expired.

22           And so the suggestion, if there is one, that maybe  
23 when Justin come back that he had shot this man in the back is  
24 inconsistent. The lower bullet never even penetrated the body.  
25 It traveled along the back and ended up in the left tissue.

1 You recall the coroner's testimony. And the bullet that was  
2 fatal was at an angle from low to up, through the lung and out.  
3 It could not have happened with Mr. Lungtok sitting in that  
4 position.

5 Now, we need to address another theory of  
6 first-degree murder, okay? And that's felony murder. Now,  
7 I'll come back to premeditation as it relates to second-degree  
8 murder in just a minute, but we first have to discuss the  
9 felony murder rule.

10 Well, what is the felony murder rule, okay? You have  
11 the instructions. But basically what it's telling us is even  
12 though you don't intend to kill somebody, that may not be your  
13 purpose, that may not be your plan. But if you engage in such  
14 activities that put people at risk and they die as a result of  
15 that, we're going to call it felony murder.

16 Now, the activity has to be a felony. If I'm  
17 committing a robbery, I walk into a 7-Eleven. I want to take  
18 the money from the cashier. I pull out a gun to scare him. He  
19 resists or is fumbling around, and I start shaking the gun to  
20 scare him into giving me the money, and it discharges and kills  
21 him. I didn't mean to kill him. I'm as surprised as the next  
22 guy. But he, nonetheless, is dead.

23 I was in the process of committing a robbery. That's  
24 felony murder. Makes perfect sense. You know, it doesn't let  
25 people off of the killings because they didn't intend to kill.

1 We've decided as a society that if someone dies during the  
2 commission of one of these felonies, and burglary and robbery  
3 or attempt robbery are two of them, that we call it felony  
4 murder.

5           So what that means is was Justin Porter committing an  
6 underlying felony when he went into the apartment. If you  
7 believe statement one with regard to Dion, no. Dion was doing  
8 that. Mr. Porter's not guilty.

9           If you do what Detective LaRochelle did and what the  
10 State has done and you rely on what they call is the true  
11 statement -- you heard him talk about that -- then you're  
12 relying on the second statement. And under the second  
13 statement the facts that were provided by Mr. Porter do not  
14 support felony murder. They do not support entering with the  
15 intent to commit a crime. They do not support wanting to  
16 commit a robbery. They support second-degree murder.

17           Now, the State's going to suggest to you that this  
18 young 17-year-old kid is capable of negotiating the statement  
19 mind field of confessing to a second-degree murder but avoiding  
20 somehow a premeditation and a felony murder through his  
21 discussions. But his statement if believed on the four corners  
22 never acknowledges that he was there to commit a felony. No  
23 burglary, no robbery.

24           He was there hiding. He went there to seek shelter,  
25 to seek refuge, and that was his purpose. And his story, of



1 course, is consistent with what he says, and we'll talk about  
2 that in just a second as well.

3           So robbery. What is robbery? Well, The State  
4 pointed it out to you. And it's interesting how this is  
5 playing out because robbery, you can't rob an empty place,  
6 okay?

7           We've all heard or we've said somebody breaks into  
8 your car, breaks into your house, I was robbed. Well, you  
9 weren't. You were burgled. Doesn't sound as good, so we say  
10 we were robbed. But the truth of the matter is you rob people,  
11 you burgle places, okay?

12           And so if Mr. -- and Ms. Luzaich touched on this. If  
13 he hadn't been home, the place would have been emptied out.  
14 Yeah, but it wouldn't have been a robbery. There would have  
15 been nobody home. You can't commit robbery on an empty  
16 structure.

17           And so this gets us to the point is do you believe  
18 Mr. Porter's statement when he says I thought no one was home.  
19 And you're going to have to listen to it and believe it.  
20 You're the ones that are going to have to decide that.

21           I thought it was empty. Because if he thought it was  
22 empty, he couldn't have been committing a robbery because when  
23 he went in, nothing happened other than he got surprised, fired  
24 the gun and left. He made no attempt whatsoever to steal  
25 anything.

1           There's no evidence presented to you that he made any  
2 attempt to steal anything. Now, we went to pains to have the  
3 detectives and the crime scene people talk about things that  
4 were of value there. And maybe if the State is right and the  
5 place was empty, that would have been somebody's plan. But  
6 there's no evidence to support that.

7           And what the truth is is that the things of value  
8 that were there were still there. Now had something been  
9 missing, a watch was missing, they found it at Mr. Porter's  
10 house in Las Vegas or Chicago, now you got something. That's  
11 evidence that he went there with a plan to take it and took it.  
12 But since nothing was taken -- and they acknowledge this by  
13 filing it as an attempt.

14           They're telling you that he knew a man was in the  
15 house, but then when he got in the house he was so surprised a  
16 man was in the house he left without taking anything. That  
17 doesn't make sense. Use your common sense on the logic of that  
18 flow, because if he knew someone was in the house, he couldn't  
19 have been surprised.

20           And if his intention was to kill him to take his  
21 property, then there would have been property missing. So  
22 those don't all line up quite right.

23           So what is the evidence? What is the actual evidence  
24 that you have? It's his statement. That's the only thing that  
25 places into context what happened.

1           What the State is asking you to do is to disregard  
2 the portions of that that don't fit their theory and believe  
3 what they want you to believe. They used the word use your  
4 common sense, but that's a substitute for speculate because  
5 they should apply evidence to support your common sense.

6           Yes. Could somebody have been going up the stairs?  
7 Could somebody have been kicking in a door to take property?  
8 Could somebody have been doing those things? Absolutely. But  
9 they got to prove it. They want to claim it, they got to prove  
10 it. And they've got to prove it beyond a reasonable doubt.

11           Asking you to disregard what they call the true  
12 statement and believe what they want to speculate and suggest,  
13 that's not fair to you and that's not fair to Mr. Porter.  
14 That's not evidence. So I submit to you that with respect to  
15 the attempt robbery they have not met their burden, and he's  
16 not guilty of attempt robbery.

17           The bigger question is was a burglary committed  
18 because you don't have to be intending to commit a robbery when  
19 you commit a burglary. You can be intending to steal anything.  
20 Burglary -- excuse me. Burglary is weird. It's a mental  
21 crime. You don't have to do anything after you're thinking.

22           Here's an example of a burglary. You're standing  
23 outside of the Walmart, you don't have any money, you know your  
24 kid wants the latest, you know, Wiggles DVD, and you can't  
25 afford it. So you figure out, all right, nobody's going to

1 notice if I just take it, so I'm going to go get me the DVD.

2           You walk into the Walmart. All of a sudden you start  
3 looking around. You see there's a camera. There's a guy in  
4 his nice blue vest that's keeping an eye on you. You get  
5 scared and you abandon it altogether. You decide I'm not  
6 taking the DVD, I'm going home.

7           You committed a burglary. You committed a felony in  
8 the State of Nevada by being outside the structure and  
9 intending on stealing something. And the moment you went in,  
10 you've committed the burglary.

11           How does the State prove that? How do they prove  
12 what's going on in your head? Well, one way, of course, is  
13 they ask you and you tell them. If you tell somebody, yeah, I  
14 was outside, I didn't have any money, I really needed it, and I  
15 went in and changed my mind, you've admitted to them that it's  
16 a burglary, and they can prosecute you based on that.

17           The real way they prosecute those plans, the real way  
18 they know what people had intended, what they were planning is  
19 what they do. Nine times out of ten the person actually gets  
20 caught trying to steal the DVD. Once he's caught, they start  
21 looking at other evidence. Okay. You attempted to larcen.  
22 You attempted to steal something.

23           How do we know whether you made your mind up once you  
24 got in or you made it when you were outside which would be the  
25 burglary? Well, you got any money on you? He didn't have any

1 money on him. When he came in here, he had to have been  
2 intending on stealing this, okay?

3 Now, these are examples of things that they have. We  
4 call that evidence, proof of things that they have to establish  
5 what is going on in the mind of somebody who's committing a  
6 burglary.

7 What they want you to accept is that his intention  
8 going up the stairs before he goes into the building was to  
9 break in there, they've alleged it, to rob the man. We talked  
10 about that, particularly if he's not home.

11 But he could have been going in there with the  
12 intention of just stealing anything. Well, how do you know  
13 what he's thinking? They want you to look at the  
14 circumstances, and you should, surrounding the entry. Kicked  
15 in the door. Okay. That's fair. But that's also consistent  
16 with what he said, what the evidence suggests, what Mr. Porter  
17 explained what he was doing.

18 Now, keep in mind who was in control of the interview  
19 process. Wasn't a 17-year-old kid. It was the two detectives  
20 sitting in Chicago. They were in charge of the direction of  
21 this interview. They are the ones that need to ask him the  
22 specific questions. But they were satisfied with his answers.

23 You know, it's interesting because there's at least  
24 one point in the statement later on when he's talking about,  
25 you know, I told the dude I met once, and Detective LaRoche

1 says that doesn't make sense, okay? And then he cleared it up.  
2 And I can point that out if I need to, but the point is he  
3 didn't say anything on any of the other parts. Because why?  
4 It did make sense.

5 The detectives didn't feel the need to follow that  
6 up, but they were the ones that needed to do that. So what the  
7 evidence is that you actually have is what Justin said  
8 happened.

9 How else do you prove what's going on in his mind?  
10 How could we know that his intention was to steal something?  
11 Certainly after he had -- this man had been shot he had the  
12 opportunity. If you take the property, now we know what your  
13 intention was. It's pretty clear. You didn't go in there for  
14 why you said. You went in there to take items that didn't  
15 belong to you.

16 When Justin went into the apartment -- and you have  
17 to listen to the statement -- and he tells Detective LaRochelle  
18 and Detective Jensen that I was scared, I was scared, man. And  
19 you heard it. Listen to it. You're going to have to feel it.

20 No one is suggesting that when he made the decision  
21 -- and that is an accurate statement by the State -- the  
22 decision to pull the gun and shoot it, that he was acting  
23 reasonably. If that were the case, for example, if we were  
24 trying for a moment to suggest that that statement suggests  
25 reasonable behavior by Mr. Porter, you would have jury

1 instructions on self-defense.

2 But of course it's not self-defense. A man in his  
3 own house is not going to -- you know, you can't defend  
4 yourself when you go in there even if your reason -- even if  
5 you go into a -- what you appear to be an abandoned warehouse  
6 and you're startled, it's not self-defense. You're aware  
7 you're not supposed to be (indiscernible).

8 And no one's suggesting to you that Justin's  
9 statement is rising to the level or the facts are suggesting a  
10 level of a manslaughter. We're talking about murder.

11 The question is first-degree murder or second-degree  
12 murder. So I just wanted to clarify for you please don't  
13 mistake these comments suggesting that his actions if believed  
14 in the statement were reasonable, acceptable or justified.

15 So how do we go about deliberating this case? How do  
16 you go about thinking through everything that's been presented  
17 to you and then what your obligations are, what your duties  
18 are, what the evidence is?

19 I suggest to you Instruction 22 helps guide through  
20 that. And if you could turn to 22 now, I would appreciate  
21 that.

22 The State went to great pains to explain to you that  
23 your theory does not have to be unanimous, okay? The seven for  
24 felony murder and the five for first-degree murder all equal a  
25 happy first-degree murder finding. And that's true.

1           But you do have to be unanimous, 100-percent  
2 unanimous, with respect to any finding of guilt. What this  
3 instruction tells you is that in order to find Mr. Porter  
4 guilty of second-degree murder, you have to do a couple of  
5 things.

6           First, you have to consider first-degree murder.  
7 That's the primary charge. And you're asked to do that. You  
8 talk about it.

9           Then after first carefully -- fully and carefully  
10 considering first-degree murder, if any one of you, any one of  
11 you has a reasonable doubt as to either premeditation or felony  
12 murder -- well, let's put first-degree murder. If any one of  
13 you has a doubt based on reason as to whether this is a  
14 first-degree murder, then you have not reached a unanimous  
15 verdict as to first-degree murder.

16           And if all 12 of you think it's second-degree murder,  
17 and I submit that it is based upon the evidence, based upon the  
18 definition of malice provided by Ms. Luzaich, it's not a  
19 manslaughter, it's not self-defense. It's either second- or  
20 first-degree. All 12 of you agree that it's second-degree  
21 murder and one of you thinks that it's not first-degree murder,  
22 it's second-degree murder.

23           So you see that all 12 of you don't have to agree  
24 that I don't think it's first, only one of you does. But all  
25 12 of you do have to agree that it's a second.



1           Not to beleaguer (sic) this, but this is probably one  
2 of the most important arguments and points that I get to make  
3 to you this morning. It underscores the importance of the  
4 individuality in the jury process. Yes, you are a collective  
5 group. You are a jury. You deliberate. You try to work  
6 together as a unit.

7           But your individual interpretations, your individual  
8 feelings and thoughts and the applications of the law to the  
9 facts are critical to the process. That's why if all 12 of you  
10 agree, we as a community and a society have confidence in that  
11 verdict because all 12 of you have individually thought it out,  
12 carefully weighed and evaluated it and came to a collective  
13 finding. Then we have confidence.

14           If somebody in the jury never offers an opinion,  
15 doesn't think it and just signs off with everybody else, we  
16 lose confidence in the process. That's why if one of you or  
17 two or three or four, but it only requires one of you, to have  
18 a reasonable doubt as to whether it's first-degree, then this  
19 case is a second-degree murder.

20           It would be very easy to convict Justin Porter of  
21 first-degree murder just based on a couple of things, seven  
22 shots without thinking through the law, without applying  
23 premeditation and deliberation. Feeling bad for Mr. Lungtok  
24 which we all do. But that would be a disservice to the system.

25           Justin Porter deserves a very thorough deliberation.

1 The State is correct. Mr. Lungtok deserves his justice.  
2 Submit that it's a second-degree homicide conviction. But Mr.  
3 Porter deserves a very thorough deliberation process. And as  
4 tragic as this is, the facts support second-degree murder and  
5 second-degree murder should be your verdict.

6 Now, I don't get to talk anymore after this. Mr.  
7 Abood doesn't get to talk anymore after this. Mr. Tomsheck  
8 does. State goes twice. That is to emphasize the importance  
9 of the burden they have. They have to prove the case, so they  
10 get to go, we address it, and they go.

11 And so he's a very smart gentleman, of course. You  
12 watched him throughout the trial. He's going to make some very  
13 good points. He's going to make some good arguments to you.  
14 They're going to make sense. But you know that if I had an  
15 opportunity, I'd probably have something to say about it.

16 And so I'm asking you before you just put stock into  
17 something, think what I would say. What would Brown have said  
18 I guess is what I would ask you to do, and then evaluate the  
19 importance of the comments with my suggestions or comments.  
20 You can disregard them and say something, yeah, he'd have been  
21 crazy. But I'm asking you to at least consider what we would  
22 have said from the defense perspective if an argument is made.

23 When you go to the jury room and you retire, I ask  
24 you to do a couple of things. I'm going to ask you, of course,  
25 to discuss this entire case. Listen to the tapes again,

1 deliberate as the process requires, and please respect each  
2 other and each other's thought process and opinions. You do  
3 these things, I'm sure that you will be able to arrive at a  
4 proper and just verdict for all.

5 Thank you for your time.

6 THE COURT: Thank you. Rebuttal?

7 STATE'S REBUTTAL CLOSING ARGUMENT

8 MR. TOMSHECK: This trial, ladies and gentlemen,  
9 really isn't unlike any other trial. Every trial is the same.  
10 Now, granted, the facts and circumstances of each individual  
11 trial are unique to that trial, and the individuals involved in  
12 every trial are individual to that trial. But at the end of  
13 the day, when all is said and done, each and every trial that  
14 takes place in each and every court is about exactly the same  
15 thing.

16 A trial, ladies and gentlemen, is a search. It's a  
17 search for the truth. And you as jurors in this case are in a  
18 rather unique position because you, as the Judge told you way  
19 back on the very first day, are the judges of fact. You as  
20 jurors are the finders of fact and you, ladies and gentlemen,  
21 get to decide the answer to the question what is the truth.

22 Now, sometimes the jury to get to the truth, you take  
23 a long and interesting path. And, certainly, the defendant  
24 took us on a winding road when he took us through his stories  
25 and his versions to get where we are today. But we know it

1 took us nine years to get here. But here, today, you, ladies  
2 and gentlemen, will decide what the truth is.

3 When you do, I would submit to you that probably the  
4 most important of it is are the words of the defendant. So  
5 when you go back and deliberate, I would ask that you consider  
6 two things about the stories he tells.

7 First and foremost, and probably the most obvious I'd  
8 ask that you consider what he said in those statements. That I  
9 would ask for each of those statements when you consider what  
10 the defendant said, you consider what he had to know when he  
11 said it.

12 When the defendant makes the phone call to Detective  
13 Barry Jensen at 11:00 o'clock in the morning on August 11th of  
14 the year 2000, what does he know? He knows that Detective  
15 Jensen's left a business card with his mother, so he makes a  
16 phone call. And when he does, that's all he knows. That  
17 Detective Jensen wants to talk to him. So he places that phone  
18 call.

19 And in that phone call, what does he say? I didn't  
20 commit any crimes. Somebody's lying about me. It's a guy by  
21 the name of Dude, and I think he's in jail. That's all he  
22 says.

23 But, oh, how his story changes in 24-hours following  
24 when those detectives get on a plane and they fly to Chicago.  
25 Because when they sit down, Detective LaRochelle -- and I think

1 seeing him on the witness stand you can picture him doing this,  
2 sitting down across the table from this defendant and very  
3 calmly sliding that photograph in front of him.

4 And when he does that, ladies and gentlemen, the  
5 defendant knows that they know. He knows why they're there,  
6 and he knows that they know he's responsible for the homicide  
7 of Gyatso Lungtok. So he has to come up with a story. And  
8 I'll submit to you that unlike on the telephone when he's calm  
9 and cooperative, he jumps back, he puts up his hands.

10 And bear in mind, before this interview takes place,  
11 he's hiding. He knows that they're coming when they knock on  
12 the door. When Chicago detectives including Ed Cunningham knock  
13 on the door, where is he? He's on all fours up against a wall  
14 behind a couch, and then he sees that photograph.

15 So what does he say? It's at that point the  
16 defendant introduces Dion to the story. And unlike what Mr.  
17 Brown told you, I would suggest to you that the story about  
18 Dion is absolutely, positively, every bit as important as that  
19 third story. I'll come back to that in just a minute.

20 He talks about Dion and he tells the detectives that  
21 this is a robbery, this is a lick. It's an attempt to get  
22 money. That Dion tells me he's going to do a lick, so I give  
23 him my gun and I go with him. I stand outside at the phone  
24 booth, he goes up the stairs, kicks in the door, blau  
25 (phonetic), blau, a couple shots, he comes skipping down, they

1 run away.

2 Ladies and gentlemen, what the defendant doesn't  
3 realize at the time he makes that story and when he does, he  
4 makes a drawing. Outside that drawing to the right of that  
5 window, if you look out the front door, is where he says he is,  
6 in a phone booth, something that we know not to be true because  
7 that phone booth doesn't exist.

8 And what the defendant doesn't realize is the thing  
9 he'll hang his hat on in his third story about those windows  
10 being open does him in because he doesn't realize that back on  
11 June 10th of 2000 when the police are taking photographs, they  
12 don't know that two months and two days later the defendant's  
13 going to be claiming he's at a phone booth. So they don't take  
14 pictures across the street.

15 But what they do is they take pictures inside the  
16 apartment. And when they do, they take a photograph that peers  
17 out the window as it is open to the area where he says that  
18 phone booth would be in front of that school. And if you look  
19 at that photograph, there isn't any phone booth. So we know  
20 that story is not true.

21 You have to ask yourselves the question why is the  
22 defendant when he tells that story putting Dion in the motive  
23 and mind-set that he is? Because what is the defendant say  
24 Dion is doing? He says he's committing a robbery. He says he's  
25 going in there to get some money. He's going to do a lick.

1 Those are the defendant's words when he's talking about what  
2 Dion is supposedly doing.

3 And the defense would have you believe that the  
4 police somehow made an error by not investigating Dion. That  
5 they did something wrong when they didn't look or Dion after  
6 the interview. I would ask you the question how much  
7 investigation were they supposed to do a half hour before they  
8 left the building before he tells them the Dion story isn't  
9 true?

10 And then ask yourselves this. I ask you to ask  
11 yourselves this. Did the police really do something wrong by  
12 not looking for Dion after that interview or maybe, just maybe,  
13 the police were looking at Dion during that interview?

14 Ladies and gentlemen, I present to you Dion. For  
15 each and everything the defendant says about Dion in that first  
16 statement, take out the name Dion and put in the name Justin  
17 Porter.

18 And if you do, I would submit to you that that story,  
19 ladies and gentlemen, makes perfect sense. That story, ladies  
20 and gentlemen, is consistent with the evidence at the crime  
21 scene, the evidence that we know is there that was put into  
22 evidence and we have proven beyond a reasonable doubt in this  
23 case, which brings us to Story No. 3.

24 At the time the defendant makes Story No. 3, think  
25 about what Detective LaRochelle told him when he walked back in

1 that room. And think about what the defendant had to have  
2 going through his mind at that point in time, because Detective  
3 LaRochelle comes back in the room and he looks Justin Porter in  
4 the eye and he says, Justin, I don't think you've been telling  
5 us the truth. He says we have evidence that says the story you  
6 just told us isn't true.

7 Now, Justin Porter's in Chicago, and he knows the  
8 police have traveled 1750 miles to see him. He knows they have  
9 to know something, but he doesn't know what. So think about  
10 what he has to say in his third story because he doesn't know  
11 what proof they have.

12 He has to find a way to put his foot on the door, so  
13 he does. He doesn't know if the police have the gun at that  
14 time because what does he say during that third interview when  
15 Detective LaRochelle says, Justin, where do you think the gun  
16 is? He says I don't know. I gave it to my cousin. I think  
17 maybe the police have it.

18 The defendant's probably thinking at that point in  
19 time that they have the gun. They have evidence that can put  
20 him inside. So by his third story he has to put himself inside  
21 that apartment. But when he does that, he knows he has to  
22 remove the aspect of the Dion story that this is a burglary and  
23 it's a robbery because he knows if he does that, he's admitting  
24 to something that's going to put him on the hook for a big  
25 punishment.



1           And it's no secret what he's concerned about during  
2 that statement. He may cry and say he was scared. But what  
3 does he really say? When Detective LaRochelle asks him why are  
4 you telling us this third story, why do you now want to tell us  
5 the truth, his words, the defendant says I don't want to go to  
6 jail for the rest of my life. That's what he says through  
7 those tears. That's what the defendant's concerned about when  
8 he makes that third statement to the police.

9           See, at that point in time the defendant has to admit  
10 all of those things he thinks the police might be able to  
11 prove, but he can't admit the one thing that he knows would  
12 make him guilty. So he has to come up with a story like  
13 kicking in the door in order to hide.

14           And I submit to you, ladies and gentlemen, that you  
15 probably know that makes no sense because what's his story at  
16 that point? He's got a gun on him and he's afraid the cops are  
17 going to catch him, so he goes up some stairs, boots in a door  
18 to run in and hide.

19           Wouldn't it be more reasonable if he's concerned  
20 about the cops that just drove by a moment ago flashing a light  
21 at him because he's got a gun to toss his gun into one of those  
22 bushes, to throw it over the roof of the school, to hide in the  
23 stairwell?

24           It's the middle of the night. It's dark out. He  
25 could hide behind a bush, and we know he can do that because he

1 can certainly hide behind a couch when he knows the police are  
2 looking for him. But he's got to create a story that makes it  
3 seems as if he didn't really mean to kill Gyatso Lungtok.

4 Ladies and gentlemen, there are a million phrases  
5 about the truth. I'm sure you've heard the phrase, "There's  
6 two sides to every story." I'm sure you've heard the phrase,  
7 "There's three sides to every story." There's his side,  
8 there's her side, and then there's the truth.

9 Ladies and gentlemen, I would submit to you that if  
10 you look at the evidence and listen to both of those  
11 statements, they're both true. And if you put them together,  
12 that is what the truth of what occurred on June 10th of 2002  
13 is. The defendant was Dion and the defendant, just like he  
14 told you, pulled the trigger. And if you do that, the State  
15 has proven that this is a first-degree murder, and we've proven  
16 it beyond a reasonable doubt.

17 And I want to touch on reasonable doubt for just a  
18 second because it's obvious that if someone would have asked  
19 you a week or a month ago to define what reasonable doubt is  
20 and what it means to be beyond a reasonable doubt, you would  
21 have had an impossible time doing that because it's a very  
22 difficult concept to put into words. But as you sit here today  
23 you should take comfort in the fact that you don't have to do  
24 that because Judge Cadish defined or you reasonable doubt and  
25 what it means.

1           She told you in your jury instructions that a  
2 reasonable doubt is one based on reason. It's not mere  
3 possible doubt, but it's the kind of doubt that would govern or  
4 control a person in the more weighty affairs of life.

5           If in the minds of the jurors after comparing and  
6 considering all the evidence -- and this is the important part  
7 -- you are in such a condition that you feel an abiding  
8 conviction of the truth of the charge, there's not a reasonable  
9 doubt. If you right now believe and have an abiding conviction  
10 that the defendant's guilty of the crimes the State's charged  
11 him with, you don't have reasonable doubt, and you can in good  
12 conscious and good faith check the top box on each of those  
13 counts and find it him guilty of what he's charged.

14           The last thing I want to leave you with is this, and  
15 that's why this crime is a first-degree murder. And I think  
16 you should take careful -- pay careful attention to the fact  
17 that Mr. Brown spent a large part of his argument trying to  
18 explain to you why this isn't a first-degree murder and why it  
19 is a second-degree murder. I'd submit to you that the law and  
20 the evidence says otherwise, and this is a first-degree murder,  
21 and here's why.

22           There's two types of first-degree murder. You heard  
23 about felony murder and you heard about premeditated murder.

24           How do we know that this is a felony murder? Well,  
25 there should be no doubt in anyone's mind when you go back and

1 deliberate that he's the guy that pulled the trigger. I mean,  
2 he told you he pulled the trigger.

3 Elissa Luzaich pointed out to you that there are a  
4 number of things that only he knew, that only the person that  
5 fired the gun would know. He's the shooter. There's no doubt  
6 about that.

7 So, really, the only question you have to determine  
8 is what was his intent at the time he went into the house and  
9 at the time he pulled the trigger. If he went in there to  
10 commit a burglary, to steal something or to commit a robbery,  
11 to take something by force, then he went in there and it's a  
12 felony murder. There's no doubt about that. That's what the  
13 law tells you.

14 Well, how do we know that this is an attempted  
15 burglary or an attempted robbery? Well, why when the defendant  
16 tells the second story if this was not an attempt to steal  
17 money or to commit a robbery would he have his imaginary Dion  
18 committing one? Why would he do that?

19 If he was just trying to separate himself from the  
20 events and say, look, I didn't kill anybody, I was standing  
21 outside, why wouldn't he say Dion was hiding inside?

22 He says Dion went in there to do a robbery, and you  
23 don't go in someone else's apartment in the middle of the night  
24 armed with a gun kicking in a door unless it's to take  
25 something or do something that you shouldn't be doing. And in

1 a very general sense, that's what burglary and robbery is.

2           The last thing I want to talk to you about is  
3 premeditated murder. A first-degree murder of a premeditated  
4 (indiscernible), and Mr. Brown spent a lot of time talking to  
5 you about premeditation, willfulness and deliberation. And,  
6 really, they're kind of simple concepts.

7           Willfulness just means the intent to kill. Why but  
8 for to kill someone would you point a gun and fire it seven  
9 times? It's not to injure and it's not to just get away.

10           The defendant fired seven shots, seven. He would  
11 have wiped out the entire front row of this jury box. Seven  
12 shots. That is an intent to kill. It's not just because he's  
13 scared. It's because he intends to do something that will end  
14 someone else's life.

15           Deliberation, a determination to kill as a result of  
16 thought. Now, Mr. Brown would have you believe that it's  
17 trivializing premeditation, deliberation to give you an example  
18 of a stop light. That's a real-life, everyday experience that  
19 we can all relate to because most of us haven't shot someone.  
20 So that's an example of premeditating and deliberating. And we  
21 all know that going through a red light you have your life in  
22 your hands. That's not a trivial example.

23           I'll give you an example of premeditation and  
24 deliberation. It's what this defendant did back on June 10th  
25 when he pointed a gun at someone who was coming towards him and

1 shot him. And then as that person ran away because there are  
2 shots in his back, he continued to shoot. That is trivializing  
3 something, ladies and gentlemen. It is trivializing human  
4 life.

5 Gyatso Lungtok died for nothing when this defendant  
6 shot him in the back. The shot that killed him went in his  
7 back and through his lung. That, ladies and gentlemen, is a  
8 premeditated and deliberate act. And how do you know it's  
9 premeditated and deliberate? A deliberation is considering  
10 something, going through it.

11 What does the defendant tell you on that audio tape?  
12 He says he's deliberating. He says I was scared. I was  
13 thinking about it. It was like it was in slow motion. This is  
14 what's going on in my mind, and this is what I chose to do. I  
15 can experience the emotion of fear and I can make the choice to  
16 point a gun at someone and shoot it. That is deliberation.  
17 And out of his own mouth he defines deliberation for you and  
18 tells you what he was doing was deliberate.

19 Premeditation, premeditation can be very quickly or  
20 it can be over a long period of time. If I walk up to the  
21 first juror here, and I've got a gun pointed at him, and I  
22 decided yesterday I don't like him, and I'm going to take him  
23 out, and I shoot him, that's premeditation.

24 If I have a gun in my pocket and don't like the  
25 second juror, he looks at me funny, I pull out a gun and I

1 shoot him, that's premeditation. If I'm standing here pointing  
2 a gun at Juror No. 3, and I don't intend to shoot her at all,  
3 and all of a sudden I make the decision to squeeze the trigger,  
4 in one second I have premeditated and taken a life. That is a  
5 premeditated murder.

6 And Mr. Brown can say the seven shots happen quickly,  
7 but walk yourselves through that. Think about it. The time he  
8 pulls the trigger on the first shot, do you think he's  
9 thinking? What about the second shot? Is he thinking yet?  
10 The third, the fourth, the fifth, the sixth. (Slapping hands  
11 together.) One, two, three, four, five, six, seven. Again and  
12 again and again he made the decision to pull the trigger. That  
13 is a premeditated act, ladies and gentlemen, and this was a  
14 premeditated murder.

15 And then he goes back to pick up the shells. What  
16 does that action tell you about the defendant's mind-set? The  
17 same thing was going on in his mind then as was going on his  
18 mind two months later in the city of Chicago. He wanted to get  
19 away with it. That is what he was concerned about.

20 Ladies and gentlemen, the evidence in this case tells  
21 you that at the time Gyatso Lungtok breathed his last, died and  
22 left this earth, he had at his fingertips a telephone. He  
23 never had the opportunity to call out to anyone that could help  
24 him. He never had the chance to reach someone who could save  
25 his life.

1           In a few moments you're going to have at your  
2 fingertips this verdict form, and the evidence in this case is  
3 calling out to you to reach a verdict that is fair, that is  
4 just, and that is true. The evidence in this case is calling  
5 out to you to reach a verdict of guilty of first-degree murder.

6           THE COURT: Thank you. The clerk will now swear the  
7 marshal and my assistant to take charge of the jurors.

8                       (Court officers sworn.)

9           THE COURT: All right. Let's go ahead and select the  
10 alternates. We discussed this at the beginning of the case,  
11 ladies and gentlemen. Two of you will be identified as  
12 alternates.

13           Those of you who are the alternates, you'll need to  
14 give us -- number one, you'll need to give us your contact  
15 information in case for any reason we would later need to reach  
16 you if there were an issue with one of the jurors that had to  
17 be excused. You might be called back to deliberate.

18           And, alternatively, when a verdict is reached, we  
19 will contact those alternates, of course, and let you know what  
20 the verdict was because I would expect that after sitting here  
21 all week any of you would certainly want to know what the  
22 outcome was.

23           Because of the possibility that you might be called  
24 back to participate in deliberation, you remain under those  
25 admonitions I've been reading throughout the trial, and, most



1 importantly, not to discuss the case, yet. Until you get the  
2 call that says there's a verdict, continue to refrain from  
3 discussing the case with anyone.

4 THE CLERK: Alternate No. 1, Juror No. 1, George  
5 Tyrell. Alternate No. 2, Juror No. 3, Terry Phillips.

6 THE COURT: All right. So I appreciate if you follow  
7 my instructions in that regard as to the alternates, and the  
8 other 12 of you will be deliberating in the jury room.

9 (Pause in proceedings)

10 THE COURT: Counsel, make sure we know how to reach  
11 you.

12 THE MARSHAL: All rise.

13 (Court recessed at 12:33 p.m. until 3:59 p.m.)

14 (Outside the presence of the jury.)

15 THE MARSHAL: Please be seated. Come to order.

16 THE COURT: Good afternoon.

17 THE MARSHAL: Ready, Judge?

18 THE COURT: Yep.

19 (In the presence of the jury.)

20 THE MARSHAL: Please rise.

21 THE COURT: Go ahead and have a seat, everybody.

22 Counsel stipulate to the presence of our 12 jurors?

23 MR. BROWN: Yes, Judge.

24 MR. TOMSHECK: Yes, Judge.

25 MR. ABOOD: Yes, Your Honor.

1 THE COURT: All right. Has the jury selected a  
2 foreperson?

3 JUROR NO. 5: Yes.

4 THE COURT: All right. Has the jury reached a  
5 verdict?

6 THE JURORS: Yes.

7 THE COURT: Would you go ahead and hand that to the  
8 marshal.

9 Defendant and his attorneys please stand. The clerk  
10 will now read the verdict out loud.

11 THE CLERK: Yes, Your Honor. District Court, Clark  
12 County, Nevada, the State of

13 Nevada, Plaintiff, versus Justin D. Porter,  
14 Defendant, Case No. C-174954, Department 6.

15 Verdict. We the jury in the above-entitled case find  
16 the defendant, Justin D. Porter, as follows:

17 Count 1, burglary while in possession of a firearm,  
18 not guilty.

19 Count 2, attempt robbery with use of a deadly weapon,  
20 not guilty.

21 Count 3, murder with use of a deadly weapon, guilty  
22 of second-degree murder with use of a deadly weapon.

23 Dated this 8th day of May 2009, Foreperson. Ladies  
24 and gentlemen of the jury, are these your verdicts as read so  
25 say you one, so say you all?

1 THE JURORS: Yes.

2 THE CLERK: Thank you.

3 THE COURT: All right. Do either of the parties  
4 desire to have the jury polled?

5 MR. BROWN: We don't, Your Honor.

6 MR. TOMSHECK: No, Judge.

7 THE COURT: Okay. All right. The clerk will now  
8 record the verdict and the minutes of the Court.

9 Ladies and gentlemen, I want to thank you. You can  
10 go ahead and have a seat, folks. Ladies and gentlemen, I want  
11 to thank you very much for your service here this week as  
12 jurors. As we've discussed all week, a trial by jury is one of  
13 the most fundamental constitutional guarantees that we have in  
14 this country, and it's so important that people be willing to  
15 serve as jurors for cases like this that come before the Court  
16 system. We need folks like you who are willing to give the  
17 time and attention that you did give to this case and the  
18 consideration that you gave to reaching your verdict. So I  
19 thank you very much.

20 I think Anthony has probably let you know I'm going  
21 to want to talk to you for just a minute back in the jury room  
22 before you go home, but we won't hold you for too long. I  
23 promise you that.

24 Thank you so much. We'll see you in just a couple  
25 minutes.

1 THE MARSHAL: Please rise.

2 (Outside the presence of the jury.)

3 THE COURT: All right. The jury's left the room. Is  
4 there anything else that we need to take up, counsel?

5 MS. LUZAICH: Sentencing date.

6 THE COURT: Good point.

7 THE CLERK: June 17th, 8:30.

8 MS. LUZAICH: You know what, I think it needs to be  
9 closer to 60 days. I'm sorry.

10 THE CLERK: (Indiscernible) 60 days. More than 60  
11 days?

12 THE COURT: That's our typical in-custody.

13 MR. BROWN: Do you need more time?

14 MS. LUZAICH: Well, P&P's got to go through not only  
15 the murder, but the rest for background.

16 MR. BROWN: Yeah, 60 days or even a little further  
17 might be --

18 THE COURT: Do 60.

19 THE CLERK: Yes, Your Honor. July 8, 8:30.

20 THE COURT: Okay. That will be the date for  
21 sentencing.

22 MS. LUZAICH: Thank you.

23 THE COURT: Thank you.

24 MR. ABOOD: Thank you, Your Honor.

25 (Court concluded Friday, May 8, 2009, at 4:05 p.m.)

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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MICHELE PHELPS, TRANSCRIBER

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DATE

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DEC 29 2009

*Elissa F. Cadish*  
CLERK OF COURT

TRAN

COPY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,

CASE NO. C174954  
DEPT. VI

vs.

JUSTIN D. PORTER,  
  
Defendant.

BEFORE THE HONORABLE ELISSA F. CADISH, DISTRICT COURT JUDGE  
WEDNESDAY, SEPTEMBER 30, 2009

**TRANSCRIPT OF PROCEEDINGS**  
**SENTENCING**

APPEARANCES:

For the State:

ELISSA LUZAICH, ESQ.  
Chief Deputy District Attorney

For the Defendant:

CURTIS S. BROWN, ESQ.  
JOSEPH K. ABOOD, ESQ.  
Deputy Public Defenders

RECORDED BY: JESSICA RAMIREZ, COURT RECORDER

1 Wednesday, September 30, 2009 at 9:40 a.m.

2  
3 THE MARSHAL: Top of page 6, State of Nevada v. Porter, Justin D.

4 MR. ABOOD: Good morning, Your Honor.

5 MR. BROWN: Good morning, Judge.

6 THE COURT: Good morning.

7 MR. BROWN: Curtis Brown and Joseph Abood on behalf of Mr. Porter.

8 MS. LUZAICH: And for the record, Lisa Luzaich for the State.

9 THE COURT: Okay. All right. We finally got a PSI.

10 MR. ABOOD: Yes.

11 THE COURT: All right. This is the time set for entry of judgment and  
12 imposition of sentence. Is there any legal cause or reason why judgment  
13 should not be entered at this time?

14 MR. ABOOD: No, Your Honor.

15 THE COURT: All right. So, by virtue of the jury's verdict in this case, I  
16 hereby adjudicate you guilty of second degree murder with use of a deadly  
17 weapon, a felony.

18 State.

19 MS. LUZAICH: Judge, the Court heard the trial, so I'm not gonna  
20 reiterate the facts. The Court has a decision between 10 to life and 10 to 25  
21 with an equal and consecutive for the weapon. I would ask the Court to  
22 sentence him to the 10 to life with an equal and consecutive 10 to life.

23 I would submit to the Court that when the legislature gave the  
24 option of an alternative sentence at 10 to 25 they were considering more the  
25 kind of person who commits one offense, and doesn't have anything else in the

1 system, and is somebody who is potentially redeemable, or -- as opposed to  
2 somebody who goes in and intentionally shoots a monk -- or retired, sorry,  
3 monk, -- over money.

4           So, the Court obviously hasn't heard the rest of the facts situation.  
5 But, the Court's aware that there are still basically ten other doors that he  
6 kicked in and either sexually assaulted or robbed somebody therein. There's  
7 DNA, and prints, and this, that, and the other thing connecting him to lots of  
8 them. So, I'd submit that the 10 to life is the appropriate sentence, and that's  
9 what I would ask the Court to do, with an equal and consecutive for the gun.

10          THE COURT: Okay. Mr. Porter is there anything you'd like to tell me  
11 today?

12          THE DEFENDANT: Upon the advice of my attorney, I have no statements  
13 concerning this matter. But, I do have something to say concerning what the  
14 DA is saying.

15          MR. BROWN: No, you -- no.

16          THE DEFENDANT: No, yes, I do.

17          MR. BROWN: Okay.

18          THE DEFENDANT: When it comes to sentencing me today. On all the  
19 things she says you'll see when the next trial comes about how it really plays  
20 out. So, when she comes about saying what she's saying, just leave that for  
21 the next jury.

22                 And all I have to say, Your Honor, when you sentence me today,  
23 don't sentence me because of what she wants you to give me or what my  
24 attorney don't want you to give me, but what you feel I should have.

25                 And you already know I did nine years in here. You know, what



1 furthermore do I have to say is nothing. But, just take into consideration I did  
2 do nine years. I was 17 at the time that I got into whatever they say I got into,  
3 coming and being incarceration. Now, I'm 26 years old. So, regardless of the  
4 fact of whatever, sitting in this County jail is stressful. So, I ask you to  
5 sentence me to what you want, not what they want, but what you feel I  
6 should have.

7 My family's not here. They didn't know I was supposed to get  
8 sentenced today. And I wish they would have been here. And that's all I have  
9 to say.

10 THE COURT: Thank you.

11 Counsel.

12 MR. BROWN: Thank you, Your Honor. And you recall that Mr. Porter's  
13 family was here throughout the trial. And they are, and do continue to be,  
14 supportive but when the matter got continued the communication break down  
15 occurred.

16 And just kind of finishing out what Mr. Porter was saying. There's  
17 not a long lengthy argument to be made here. You sat through the whole trial.  
18 You heard everything that happened. I would submit that what Ms. Luzaich  
19 represented to Your Honor as to what Mr. Porter did in that apartment is not  
20 what the jury concluded. They did not conclude he went in there to get  
21 money, otherwise they would have clearly convicted him of first degree murder  
22 under a felony murder theory. They did not come to that conclusion.

23 You do have only two choices. And the two choices are the 20  
24 basically with the weapon. It's either a life tail or it's a term of years tail. And  
25 let's not forget that the term of years we're talking about is pretty significant.

1 It's 50 years. So, it's a 10 to 25 and an equal and consecutive 10 to 25.

2 And I'm asking Your Honor to, similar to what Mr. Porter said, to  
3 evaluate it based on this case. He does have other pending matters and they  
4 are before Your Honor. So, at the conclusion of those trials, which you would  
5 handle the sentencing upon a conviction if there is any, you can do what you  
6 want. I mean, if it's a life sentence you want, you're going to have that  
7 discretion at that time. If it's longer than a life sentence, if it's two, three, or  
8 four lives, you're going to have the discretion again at that time. And so I  
9 would just ask you today to consider the term of years so that there is a back  
10 end time that Mr. Porter can look forward to if the trial doesn't play out the  
11 way that the State's alleging that it will.

12 I only have one other comment, Judge, and that's on the credit for  
13 time served. Miraculously they came pretty close. The only problem that we  
14 have is that P&P did not account for the time that Mr. Porter was actually  
15 arrested in Chicago. So there were I think 8 additional days for that, plus the 2  
16 days that we've continued for now -- from Monday rather, from what the PSI  
17 says. So, I have the total days 3,338 total days. He was arrested on August  
18 11<sup>th</sup> of 2000 in Chicago, and they only count the time once he got brought  
19 back here and booked into CCDC.

20 MS. LUZAICH: I don't have any objection to that.

21 MR. BROWN: And I'd submit it on that, Judge, unless Your Honor has  
22 any specific questions.

23 THE COURT: I will impose an Administrative Assessment Fee of \$25,  
24 DNA Analysis Fee of \$150, Extradition Fees of \$2,421.50. I will sentence the  
25 Defendant to life with the possibility of parole after 120 months, plus an equal

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24 DNA Analysis Fee of \$150, Extradition Fees of \$2,421.50. I will sentence the  
25 Defendant to life with the possibility of parole after 120 months, plus an equal

1 and consecutive term of life with the possibility of parole after 120 months,  
2 with 3,338 days credit for time served, and order restitution of \$425.

3 Do you want to talk about a trial date or --

4 MR. BROWN: We've been working on that, Your Honor. And one would  
5 think considering the time we've had we'd actually be able to come to some  
6 easy resolution, but we haven't. The problem we've come up with is the date  
7 that works best for all of us, the four attorneys; I'm not sure works for the  
8 Court, and that would be June of next year. As I understand that might be  
9 actually your civil stack.

10 THE COURT: My civil, yeah, until June 28<sup>th</sup> is when my criminal starts up  
11 again.

12 MR. BROWN: If -- you know, and I hate to ask for this, but maybe a  
13 week or two weeks so that we could see if maybe there's a possibility of  
14 moving other cases. Because that's where we're at, short of moving into, you  
15 know, October or so of next year, is perhaps trying to -- and we may not be  
16 able to do that. But, I understand that we both have cases we might be able to  
17 look into and maybe shuffle something around.

18 THE COURT: Okay. All right. So, let's set it a couple weeks out for trial  
19 setting.

20 THE CLERK: Yes, Your Honor. October 14<sup>th</sup>, 8:30.

21 MS. LUZAICH: Thank you.

22 MR. BROWN: And just again, Judge, and we'll check with your Clerk or  
23 your JEA on available times. We anticipate safely about 4 weeks for this. I  
24 mean, it --

25 THE COURT: Yeah.

1 MR. BROWN: -- it theoretically could be a little longer. But, I think we  
2 probably would be able to trim it down to about 4 weeks. But, I don't think it  
3 would be wise to set for anything -- counting on anything less than that.

4 MS. LUZAICH: I do agree that I don't think it would be a day less than 4  
5 weeks.


6 THE COURT: Okay. So, I will work on my end and see what -- I mean  
7 obviously I've got -- I don't have a lot set in that timeframe on my calendar.  
8 But, if that's really going to be when we go, I'll have to work on what I'm  
9 going to do with the other cases that otherwise get set there.

10 MR. BROWN: Thank you very much, Your Honor.

11 MS. LUZAICH: Thank you.

12 [Proceeding concluded at 9:48 a.m.]  
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14  
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20

21 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video  
22 proceedings in the above-entitled case to the best of my ability.

23   
24 Jessica Ramirez  
25 Court Recorder/Transcriber

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2                                   \_\_\_\_\_

3 JUSTIN JUG CAPRI PORTER,                    )  
4    )  
5    )  
6    )  
7 THE STATE OF NEVADA,                        )  
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No. 54866

9                                   **APPELLANT'S APPENDIX – VOLUME XIII – PAGES 2647-2715**

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Counsel for Respondent

15                                   **CERTIFICATE OF SERVICE**

16                                   I hereby certify that this document was filed electronically with the Nevada  
17 Supreme Court on the 19<sup>th</sup> day of June, 2010. Electronic Service of the foregoing  
18 document shall be made in accordance with the Master Service List as follows:

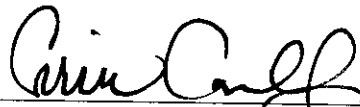
19 CATHERINE CORTEZ MASTO  
20 STEVEN S. OWENS

HOWARD S. BROOKS  
PHILIP JAY KOHN

21                                   I further certify that I served a copy of this document by mailing a true and correct  
22 copy thereof, postage pre-paid, addressed to:

23 JUSTIN JUG CAPRI PORTER  
24 c/o High Desert State Prison  
25 P.O. Box 650  
26 Indian Springs, NV 89018

27 BY

28   
Employee, Clark County Public  
Defender's Office