

**JUSTICE COURT, HENDERSON TOWNSHIP**  
**CLARK COUNTY, NEVADA**  
**DOCKET SHEET . . . CRIMINAL**

CASE #	06PH0742A-C
State	- vs- DOMONIC RONALDO MALONE #1670891 JASON DUVAL MCCARTY #0932255 DONALD JAY HERB #1217129
Charge	CONSPIRACY TO COMMIT KIDNAPPING (Malone & McCarty) FIRST DEGREE KIDNAPPING - 3 Counts (Malone & McCarty) BATTERY WITH SUBSTANTIAL BODILY HARM (Malone & McCarty) PANDERING - 3 Counts (Malone) CONSPIRACY TO COMMIT MURDER (Malone & McCarty) CONSPIRACY TO COMMIT BURGLARY (Malone & McCarty) BURGLARY (Malone & McCarty) MURDER WITH USE OF A DEADLY WEAPON 2 Counts (Malone & McCarty) ROBBERY WITH USE OF A DEADLY WEAPON 2 Counts (Malone & McCarty) ACCESSORY TO MURDER (Herb)

DATE, JUDGE, OFFICERS  
OF COURT PRESENT

PROCEEDINGS  
APPEARANCES - HEARING

CONTINUED TO:

<p>JULY 24, 2006  S.L. GEORGE, JP  C. OWENS, DDA  C. CANO, SDPD &amp; R.  PIKE, SDPD (MALONE)  A. SCRO &amp; C. DENNIE,  ESQ (MCCARTY)  B. STEELE, CLK  S. GRAHAM, CR</p>	<p>PRELIMINARY HEARING CONTINUES:  <b>BOTH</b> Defendants PRESENT IN CUSTODY  CORRENA PHILLIPS Recalled as witness by State. Sworn in by clerk. Cross continues by Mr. Sgro. Defense (Sgro) Prop A -H Marked. Defense Prop H ID, Offered. ADMITTED. Prop #E, G, ID Voir Dire ADMITTED. Prop #F, D, C &amp; A ID, Prop #D &amp; A Offered. Voir Dire. Objection by State. Cross by Mr. Cano. Re-Direct. Re-Cross by Mr. Sgro. Re-Cross by Mr. Cano. Witness Excused.  LYNN NAGEL Called as witness by State. Sworn in by clerk. Direct. Witness ID Both defendants. Cross by Mr. Sgro. Defense Prop #I &amp; J Marked. Prop B, C, D ID, Offered. ADMITTED. Cross by Mr. Cano. Re-Direct. Re-Cross by Mr. Sgro. Re-Cross by Mr. Cano. Witness Excused.  GERARD COLLINS Called as witness by State. Sworn in by clerk. Direct. Witness ID defendant Malone.  Preliminary Hearing Date Continued  RETURN TO METRO</p>	<p>JULY 26, 2006  10:30 A.M.  DEPT #2</p> <p style="text-align: right;">cud</p>
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DATE, JUDGE, OFFICERS OF COURT PRESENT	PROCEEDINGS APPEARANCES - HEARING	CONTINUED TO:
JULY 19, 2006 S.L. GEORGE, JP	CONTINUED: Re-direct by Mr. Digiacomio. Re-cross by Mr. Sgro, Witness Excused. Preliminary Hearing continued. RETURN TO METRO (Both)	JULY 20, 2006 10:00 AM DEPT #2 bs
JULY 20, 2006 S.L. GEORGE, JP C. OWENS, DDA C. CANO, SDPD (MALONE) A. SGRO & C. DENNIE, ESQ (MCCARTY) B. STEELE, CLK S. GRAHAM, CR	PRELIMINARY HEARING: Malone & McCarty BOTH defendants PRESENT IN CUSTODY CORRENA PHILLIPS Called as witness by State, Sworn in by clerk. Direct. Witness ID Both Defendants. Cross by Mr. Sgro. Matter continued. RETURN TO METRO	JULY 24, 2006 10:30 AM DEPT #2 bs

**JUSTICE COURT, HENDERSON TOWNSHIP**  
**CLARK COUNTY, NEVADA**  
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DATE, JUDGE, OFFICERS  
OF COURT PRESENT

PROCEEDINGS  
APPEARANCES - HEARING

CONTINUED TO:

JUNE 27, 2006	Ex-Parte Application to Appoint Investigator and for Fees In Excess of Statutory Maximum and for Contact Visits AND Order Approving Ex-Parte Application to Appoint Mark Henry of Nordeen Investigations as Investigator FILED by Anthony F Sgro, Esq.	dds
JULY 6, 2006	Order - Signed and FILED (Herb)	dds
JULY 19, 2006 S.L. GEORGE, JP M. DIGIACOMO & C. OWENS, DDA C. CANO & R. PIKE, SDPD (MALONE) A. SGRO & C. DENNIE, ESQ (MCCARTY) B. DURHAM, ESQ (HERB) B. STEELE, CLK S. GRAHAM, CR	PRELIMINARY HEARING: (ALL) All defendants PRESENT IN CUSTODY As to defendant Herb: Per Negotiations: Defendant UNCONDITIONALLY WAIVED Preliminary Hearing. Bound Over to District Court. Stipulated defendant released to House Arrest. RETURN TO METRO  As to defendants Malone & McCarty: Motion by Mr. Sgro to vacate & reset preliminary hearing. Mr. Cano joins in this motion. Objection by Mr. Digiacomo. Further arguments by Mr. Sgro & Mr. Pike. Hearing to go forward today. State Ready. Defense Ready with noted objections. Exclusionary rule invoked. MELISSA ESTORES called as witness by State. Sworn in by clerk. Direct by Mr. Digiacomo. Witness ID BOTH defendants. Cross by Mr. Sgro. Cross by Mr. Cano.	AUGUST 2, 2006 9:00 AM LOWER LEVEL Track to Dept #5 (Herb)

**JUSTICE COURT, HENDERSON TOWNSHIP**  
**CLARK COUNTY, NEVADA**  
**DOCKET SHEET ... CRIMINAL**

CASE #	06FH0742A-C
State	- vs- DOMONIC RONALDO MALONE #1670891 JASON DUVAL MCCARTY #0932253 DONALD JAY HERB #1217129
Charge	CONSPIRACY TO COMMIT KIDNAPPING (Malone & McCarty) FIRST DEGREE KIDNAPPING - 3 Counts (Malone & McCarty) BATTERY WITH SUBSTANTIAL BODILY HARM (Malone & McCarty) PANDERING - 3 Counts (Malone) CONSPIRACY TO COMMIT MURDER (Malone & McCarty) CONSPIRACY TO COMMIT BURGLARY (Malone & McCarty) BURGLARY (Malone & McCarty) MURDER WITH USE OF A DEADLY WEAPON 2 Counts (Malone & McCarty) ROBBERY WITH USE OF A DEADLY WEAPON 2 Counts (Malone & McCarty) ACCESSORY TO MURDER (Herb)

DATE, JUDGE, OFFICERS  
OF COURT PRESENT

PROCEEDINGS  
APPEARANCES - HEARING

CONTINUED TO:

<p>JUNE 12, 2006 M. TOBIASSON, PROTEM M. DIGIACOMO, DDA R. PIKE, SDPD and C. CONO, SDPD (MALONE) B. STEELE, CLK L. BRENSKE, CR</p>	<p>STATUS CHECK: (Malone &amp; McCarty) Defendants PRESENT IN CUSTODY</p> <p>As for Malone Defense Counsel ACKNOWLEDGES Matter continued for Preliminary Hearing Date to be set RETURN TO METRO</p> <p>As for McCarty Public Defender C. Brown states Can not represent Due to conflict, Matter continued for confirmation of Court appointed counsel. Notified by Clerk. RETURN TO METRO</p>	<p>JUNE 14, 2006 9:00 A.M. DEPT #2 (BOTH)</p> <p style="text-align: right;">cad</p>
<p>JUNE 14, 2006 D.E. MARTIN, PROTEM B. SMITH, DDA C. CANO, SDPD (MALONE) A. SGRO, ESQ (MCCARTY) B. DURHAM, ESQ (HERB) B. STEELE, CLK L. BRENSKE, CR</p>	<p>STATUS CHECK: ALL Defendant PRESENT IN CUSTODY Court Counsel APPOINTED &amp; ACKNOWLEDGED, Order of Appointment SIGNED &amp; FILED In Open Court (McCarty) WAIVED 15 day rule as to ALL Preliminary Hearing Date Set RETURN TO METRO</p>	<p>JULY 19, 2006 9:30 A.M. DEPT #2 (ALL)</p> <p style="text-align: right;">cad</p>

## DOCKET SHEET... CRIMINAL

CASE #	06FH0742A-C
State	- vs- DOMONIC RONALDO MALONE #1670891 JASON DUVAL MCCARTY #0932255 DONALD JAY HERB #1217129
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DATE, JUDGE, OFFICERS  
OF COURT PRESENT

PROCEEDINGS  
APPEARANCES - HEARING

CONTINUED TO:

JUNE 7, 2006  
S.L. GEORGE, JP  
B. SMITH, DDA  
M. CLEVELAND, DPD  
(MCCARTY)  
B. DURHAM, ESQ  
(HERB)  
B. STEELE, CLK  
L. BRENSKE, CR

INITIAL ARRAIGNMENT: ALL  
As to: Malone  
Defendant PRESENT IN CUSTODY  
Defendant ADVISED, WAIVED reading of the Complaint.  
Matter continued for confirmation of Counsel  
RETURN TO METRO

**As to: McCarly**  
**Defendant PRESENT IN CUSTODY**  
 Advised. Requests Public Defender, Defense Counsel  
**APPOINTED & ACKNOWLEDGES, WAIVED** reading of  
 the Complaint.  
**Matter continued for Public Defender to check for Conflict**  
**REMAND TO METRO**

As to: Herb  
Defendant PRESENT IN CUSTODY  
Defense Counsel ACKNOWLEDGES, WAIVED reading of  
the Complaint.  
Matter continued for Defense to received Discovery  
RETURN TO METRO

JUNE 12, 2006  
9:00 A.M.  
DEPT #2  
(Malone & McCarty)

JUNE 14, 2006  
9:00 A.M.  
DEPT #2  
(Herb)

**cud**

**JUSTICE COURT, HENDERSON TOWNSHIP**  
**CLARK COUNTY, NEVADA**  
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DATE, JUDGE, OFFICERS OF COURT PRESENT	PROCEEDINGS APPEARANCES - HEARING	CONTINUED TO:
MAY 25, 2006 R.T. BURR, JP	Original Case # 06FH0731X Consolidated (Malone) FIRST APPEARANCE BEFORE MAGISTRATE BAIL SET: \$250,000 CASH OR SURETY BOND	JUNE 1, 2006 9:00 A.M. DEPT #2
MAY 30, 2006 R.T. BURR, JP	FIRST APPEARANCE BEFORE MAGISTRATE (Malone) BAIL SET: NO BAIL and \$2,000,000 TOTAL CASH OR SURETY BOND ON ALL OTHER CHARGES FIRST APPEARANCE BEFORE MAGISTRATE (McCarty) BAIL SET: NO BAIL and \$2,000,000 TOTAL CASH OR SURETY BOND ON ALL OTHER CHARGES FIRST APPEARANCE BEFORE MAGISTRATE (Herb) BAIL SET: NO BAIL and \$2,000,000 TOTAL CASH OR SURETY BOND ON ALL OTHER CHARGES	JUNE 7, 2006 9:00 A.M. DEPT #2
JUNE 1, 2006	Notification of Media Request FILED	
JUNE 5, 2006	Media Request and Order Allowing Cameras in the Courtroom and Order FILED	

1 THE COURT: Okay.

2 MR. PIKE: And I drafted, for the Court's -- just  
3 for the Court's information, I drafted two proposed Orders and  
4 sent them over to the State if they -- so that they can add or  
5 make a determination which Order they want, because I don't  
6 have a preference one way or the other.

7 THE COURT: So we could start at 9:30 Monday?

8 MR. PIKE: That would be fine.

9 MR. DIGIACOMO: Yes.

10 MR. CANO: That's fine, Your Honor.

11 THE COURT: Okay. Good. All right. Let's call the  
12 jury in.

13 (Pause in the proceedings)

14 THE MARSHAL: Officers and members of the Court,  
15 Department 17 jurors.

16 (Jury reconvened at 1:23 p.m.)

17 THE MARSHAL: You may be seated, ladies and  
18 gentlemen. Let's make sure all cell phones are turned off,  
19 please.

20 THE COURT: All right. We're back on the record  
21 here. I understand that we do have a verdict.

22 And who is our foreperson?

23 Sir, if you could please hand the verdict form to  
24 the Marshal.

25 All right. The Clerk will now read the verdict.

1 The Defendant could please stand, and counsel.

2 VERDICT

3 THE CLERK: District Court, Clark County, Nevada,  
4 The State of Nevada, plaintiff vs. Domonic Ronaldo Malone,  
5 defendant. Case No. C-224572, Department No. 17.

6 Verdict. We, the jury in the above-entitled case,  
7 find the defendant, Domonic Ronaldo Malone, as follows:

8 Count 1. Battery with Substantial Bodily Harm;  
9 Guilty of Battery with Substantial Bodily Harm.

10 Count 2. Conspiracy to Commit Kidnapping; Guilty of  
11 Conspiracy to Commit Kidnapping.

12 Count 3. First Degree Kidnapping; Guilty of First  
13 Degree Kidnapping.

14 Count 4. Battery with Substantial Bodily Harm;  
15 Guilty of Battery without Substantial Bodily Harm.

16 Count 5. Robbery; Not guilty.

17 Count 6. Pandering; Not guilty.

18 Count 7. Conspiracy to Commit Burglary; Guilty of  
19 Conspiracy to Commit Burglary.

20 Count 8. Conspiracy to Commit Kidnapping; Guilty of  
21 Conspiracy to Commit Kidnapping.

22 Count 9. Conspiracy to Commit Murder; Guilty of  
23 Conspiracy to Commit Murder.

24 Burglary; Not guilty.

25 Count 11. First Degree Kidnapping; Guilty of First



1 Degree Kidnapping.

2 Count 12. First Degree Kidnapping; Guilty of First  
3 Degree Kidnapping.

4 Count 13. Murder with Use of a Deadly Weapon,  
5 Charlotte Combado; Guilty of First Degree Murder with Use of a  
6 Deadly Weapon.

7 Special Verdict. If you find the Defendant guilty  
8 of First Degree Murder with Use of a Deadly Weapon, or First  
9 Degree Murder without Use of a Deadly Weapon, answer the  
10 following by checking the appropriate box, or boxes.

11 The jury unanimously finds the murder wilful,  
12 deliberate and premeditated.

13 The jury unanimously finds the murder was committed  
14 during the perpetration or attempted perpetration, kidnapping.

15 The jury unanimously finds the murder was committed  
16 during the perpetration or attempted perpetration of robbery.

17 Count 14. Murder with Use of a Deadly Weapon,  
18 Victoria Magee; Guilty of First Degree Murder with Use of a  
19 Deadly Weapon.

20 Special Verdict. If you find the Defendant guilty  
21 of First Degree Murder with Use of a Deadly Weapon, or First  
22 Degree Murder without Use of a Deadly Weapon, answer the  
23 following questions by checking the appropriate box, or boxes.

24 The jury unanimously finds the murder wilful,  
25 deliberate and premeditated.

1           The jury unanimously finds the murder was committed  
2 during the perpetration or attempted perpetration, kidnapping.

3           The jury unanimously finds the murder was committed  
4 during the perpetration or attempted perpetration of robbery.

5           Count 15. Robbery with Use of a Deadly Weapon;  
6 Guilty of Robbery With Use of a Deadly Weapon.

7           Count 16. Robbery with Use of a Deadly Weapon;  
8 Guilty of Robbery with Use of a Deadly Weapon.

9           Signed this 15th [sic] day of February by the Jury  
10 Foreperson.

11           Ladies and gentlemen of the jury, is this your  
12 verdict, so say you one, so say you all?

13           THE JURY: Yes.

14           THE COURT: Do either side wish to have the jury  
15 polled? State?

16           MR. LALLI: No.

17           MR. DiGIACOMO: No, Your Honor.

18           THE COURT: Defense?

19           MR. PIKE: Yes.

20           THE COURT: Yes?

21           MR. PIKE: Yes, Your Honor.

22           THE COURT: All right. Go ahead, Carol.

23           THE CLERK: Juror No. 2, is this your verdict, as  
24 read?

25           JUROR NO. 2: Yes.

ORIGINAL

1 AINF  
2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 CHRISTOPHER J. LALLI  
6 Chief Deputy District Attorney  
7 Nevada Bar #005398  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

NOV 03 2010

BY: Carol Donahoo  
CAROL DONAHOO, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 DOMONIC RONALDO MALONE,  
13 #1670891,  
14 JASON DUVAL MCCARTY, #0932255

15 Defendants.

Case No: C-06-224572-3  
Dept No: XVII

SECOND AMENDED  
INFORMATION

060224572-3  
AINF  
Amended Information  
1036006



16 STATE OF NEVADA }  
17 COUNTY OF CLARK } ss.

18 DAVID ROGER, District Attorney within and for the County of Clark, State of  
19 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

20 That DOMONIC RONALDO MALONE and JASON DUVAL MCCARTY, the  
21 Defendant(s) above named, having committed the crimes of CONSPIRACY TO COMMIT  
22 KIDNAPPING (Felony - NRS 200.310, 200.320, 199.480); FIRST DEGREE  
23 KIDNAPPING (Felony - NRS 200.310, 200.320); BATTERY WITH SUBSTANTIAL  
24 BODILY HARM (Felony - NRS 200.481); PANDERING (Felony - NRS 201.300);  
25 CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor - NRS 205.060,  
26 199.480); CONSPIRACY TO COMMIT MURDER (Felony - NRS 200.010, 200.030,  
27 199.480); BURGLARY (Felony - NRS 205.060); MURDER WITH USE OF A DEADLY  
28 WEAPON (Felony - NRS 200.010, 200.030, 193.165); and ROBBERY WITH USE OF A

1 DEADLY WEAPON (Felony - NRS 200.380, 193.165), on or between April, 2006 and May  
2 19, 2006, within the County of Clark, State of Nevada, contrary to the form, force and effect  
3 of statutes in such cases made and provided, and against the peace and dignity of the State of  
4 Nevada,

5 COUNT 1 - FIRST DEGREE KIDNAPPING

6 Defendant DOMONIC RONALDO MALONE did, in April of 2006, wilfully,  
7 unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice, decoy,  
8 abduct, conceal, kidnap, or carry away MELISSA ESTORES, a human being, with the intent  
9 to hold or detain the said MELISSA ESTORES against her will, and without her consent, for  
10 the purpose of inflicting substantial bodily harm on the said MELISSA ESTORES.

11 COUNT 2 - BATTERY WITH SUBSTANTIAL BODILY HARM

12 Defendant DOMONIC RONALDO MALONE, did, in April of 2006, then and there  
13 wilfully, unlawfully, and feloniously use force or violence upon the person of another, to-  
14 wit: MELISSA ESTORES, by beating and kicking the said MELISSA ESTORES about the  
15 head and body, resulting in substantial bodily harm to the said MELISSA ESTORES

16 COUNT 3 - CONSPIRACY TO COMMIT KIDNAPPING

17 Defendants did, on or about May 16, 2006, then and there meet with each other and  
18 between themselves, and each of them with the other, wilfully, unlawfully, and feloniously  
19 conspire and agree to commit a crime, to-wit: kidnap MELISSA ESTORES, and in  
20 furtherance of said conspiracy, Defendants did commit the acts as set forth in Counts 4-6,  
21 said acts being incorporated by this reference as though fully set forth herein.

22 COUNT 4 - FIRST DEGREE KIDNAPPING

23 Defendants did, on or about May 16, 2006, wilfully, unlawfully, feloniously, and  
24 without authority of law, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or  
25 carry away MELISSA ESTORES, a human being, with the intent to hold or detain the said  
26 MELISSA ESTORES against her will, and without her consent, for the purpose of inflicting  
27 substantial bodily harm on the said MELISSA ESTORES.

28 ///

1 COUNT 5 - BATTERY WITH SUBSTANTIAL BODILY HARM

2 Defendants did, on or about May 16, 2006, then and there wilfully, unlawfully, and  
3 feloniously use force or violence upon the person of another, to-wit: MELISSA ESTORES,  
4 by beating and kicking the said MELISSA ESTORES about the head and body, resulting in  
5 substantial bodily harm to the said MELISSA ESTORES, the Defendants being responsible  
6 under one or more of the following theories of criminal liability, to-wit: (1) by directly or  
7 indirectly committing said crime, and/or (2) by conspiring with each other to commit the  
8 crime of battery and/or kidnapping where each co-conspirator is liable for the general intent  
9 crimes committed by fellow co-conspirators which were a foreseeable consequence of the  
10 conspiracy; and/or (3) by aiding and abetting, by Defendant JASON DUVAL MCCARTY  
11 driving the said MELISSA ESTORES and Defendant DOMONIC RONALDO MALONE to  
12 the location where said battery took place, then instructing the said MELISSA ESTORES to  
13 submit to said beating.

14 COUNT 6 - ROBBERY

15 Defendants did, on or between May 16, 2006 and May 17, 2006, then and there  
16 wilfully, unlawfully, and feloniously take personal property, to-wit: purse and/or its contents,  
17 from the person of MELISSA ESTORES, or in her presence, by means of force or violence  
18 or fear of injury to, and without the consent and against the will of the said MELISSA  
19 ESTORES, the Defendants being responsible under one or more of the following theories of  
20 criminal liability, to-wit: (1) by directly or indirectly committing said crime, and/or (2) by  
21 conspiring with each other to commit the crime of battery and/or kidnapping where each co-  
22 conspirator is liable for the general intent crimes committed by fellow co-conspirators which  
23 were a foreseeable consequence of the conspiracy; and/or (3) by aiding and abetting, by  
24 Defendant JASON DUVAL MCCARTY driving the said MELISSA ESTORES and  
25 Defendant DOMONIC RONALDO MALONE to the location where a battery took place,  
26 then instructing the said MELISSA ESTORES to submit to said beating, thereafter driving  
27 both DOMONIC RONALDO MALONE and MELISSA ESTORES from the location as  
28 DOMONIC RONALDO MALONE robbed MELISSA ESTORES of her purse and/or its

1 contents.

2 COUNT 7 - PANDERING

3 Defendants did, on or between May 16, 2006 and May 17, 2006, then and there  
4 wilfully, unlawfully, and feloniously induce, persuade, encourage, inveigle, entice, or  
5 compel VICTORIA MAGEE to become a prostitute, and/or to engage or continue to engage  
6 in prostitution.

7 COUNT 8 - CONSPIRACY TO COMMIT BURGLARY

8 Defendants did, on or between May 17, 2006 and May 19, 2006, then and there meet  
9 with each other and between themselves, and each of them with the other, wilfully and  
10 unlawfully conspire and agree to commit a crime, to-wit: Burglary, and in furtherance of  
11 said conspiracy, Defendants did commit the acts as set forth in Count 11, said acts being  
12 incorporated by this reference as though fully set forth herein.

13 COUNT 9 - CONSPIRACY TO COMMIT KIDNAPPING

14 Defendants did, on, about, or between May 17, 2006 and May 19, 2006, then and  
15 there meet with each other and between themselves, and each of them with the other,  
16 wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: kidnap  
17 CHARLOTTE COMBADO and/or VICTORIA MAGEE, and in furtherance of said  
18 conspiracy, Defendants did commit the acts as set forth in Counts 11-17, said acts being  
19 incorporated by this reference as though fully set forth herein.

20 COUNT 10 - CONSPIRACY TO COMMIT MURDER

21 Defendants did, on or between May 17, 2006 and May 19, 2006, then and there meet  
22 with each other and between themselves, and each of them with the other, wilfully,  
23 unlawfully, and feloniously conspire and agree to commit a crime, to-wit: Murder, and in  
24 furtherance of said conspiracy, Defendants did commit the acts as set forth in Counts 11-17,  
25 said acts being incorporated by this reference as though fully set forth herein.

26 COUNT 11 - BURGLARY

27 Defendants did, on or between May 17, 2006 and May 19, 2006, then and there  
28 wilfully, unlawfully, and feloniously enter, with intent to commit assault and/or battery

1 and/or a felony, to-wit: Kidnapping and/or Murder, that certain building occupied by  
2 LEONARD ROBINSON, located at 1525 East Fremont, Room No. 222, Las Vegas, Clark  
3 County, Nevada.

4 COUNT 12 - FIRST DEGREE KIDNAPPING

5 Defendants did, on or between May 17, 2006 and May 19, 2006, wilfully, unlawfully,  
6 feloniously, and without authority of law, seize, confine, inveigle, entice, decoy, abduct,  
7 conceal, kidnap, or carry away CHARLOTTE COMBADO, a human being, with the intent  
8 to hold or detain the said CHARLOTTE COMBADO against her will, and without her  
9 consent, for the purpose of committing murder.

10 COUNT 13 - FIRST DEGREE KIDNAPPING

11 Defendants did, on or between May 17, 2006 and May 19, 2006, wilfully, unlawfully,  
12 feloniously, and without authority of law, seize, confine, inveigle, entice, decoy, abduct,  
13 conceal, kidnap, or carry away VICTORIA MAGEE, a human being, with the intent to hold  
14 or detain the said VICTORIA MAGEE against her will, and without her consent, for the  
15 purpose of committing murder.

16 COUNT 14 - MURDER WITH USE OF A DEADLY WEAPON

17 Defendants did, on or between May 17, 2006 and May 19, 2006, then and there  
18 wilfully, feloniously, without authority of law, and with premeditation and deliberation, and  
19 with malice aforethought, kill CHARLOTTE COMBADO, a human being, by striking the  
20 said CHARLOTTE COMBADO about the head and body with a deadly weapon, to-wit: a  
21 golf club and/or a knife and/or a rock and/or an unknown blunt object and/or an unknown  
22 sharp object, the said actions of the Defendants resulting in the death of the said  
23 CHARLOTTE COMBADO; the Defendants being responsible under one or more of the  
24 following principles of criminal liability, to-wit: (1) by having premeditation and  
25 deliberation in its commission; and/or (2) the killing occurring during the perpetration or  
26 attempted perpetration of kidnapping and/or robbery and/or burglary and/or (3) by being  
27 liable as co-conspirator for the acts done in furtherance of the conspiracy, which acts were  
28 intended by the Defendants; and/or (4) by aiding and abetting in the commission of the crime

1 by accompanying each other to the crime scene where the Defendants acted as lookouts for  
2 one another, the Defendants did physically take the said CHARLOTTE COMBADO, to a  
3 remote area, the Defendants did take personal property from the person or presence of the  
4 said CHARLOTTE COMBADO, the Defendants did either both physically strike the said  
5 CHARLOTTE COMBADO, or did act as lookout and prevent her from escaping while the  
6 other struck the said CHARLOTTE COMBADO about the head and body with a golf club  
7 and/or a knife and/or a rock and/or an unknown blunt object and/or an unknown sharp  
8 object, the said actions of the Defendants resulting in the death of the said CHARLOTTE  
9 COMBADO, the Defendants left the crime scene together, the Defendants encouraging one  
10 another throughout by actions and words, the Defendant and the accomplice acting in  
11 concert throughout each with intent to commit murder.

12 COUNT 15 - MURDER WITH USE OF A DEADLY WEAPON

13 Defendants did, on or between May 17, 2006 and May 19, 2006, then and there  
14 wilfully, feloniously, without authority of law, and with premeditation and deliberation, and  
15 with malice aforethought, kill VICTORIA MAGEE, a human being, by striking the said  
16 VICTORIA MAGEE about the head and body with a deadly weapon, to-wit: a golf club  
17 and/or a knife and/or a rock and/or an unknown blunt object and/or an unknown sharp  
18 object, the said actions of the Defendants resulting in the death of the said VICTORIA  
19 MAGEE; the Defendants being responsible under one or more of the following principles of  
20 criminal liability, to-wit: (1) by having premeditation and deliberation in its commission;  
21 and/or (2) the killing occurring during the perpetration or attempted perpetration of  
22 kidnapping and/or robbery and/or burglary and/or (3) by being liable as co-conspirator for  
23 the acts done in furtherance of the conspiracy, which acts were intended by the Defendants;  
24 and/or (4) by aiding and abetting in the commission of the crime by accompanying each  
25 other to the crime scene where the Defendants acted as lookouts for one another, the  
26 Defendants did physically take the said VICTORIA MAGEE, to a remote area, the  
27 Defendants did take personal property from the person or presence of the said VICTORIA  
28 MAGEE, the Defendants did either both physically strike the said VICTORIA MAGEE, or



1 did act as lookout and prevent her from escaping while the other struck the said VICTORIA  
2 MAGEE about the head and body with a golf club and/or a knife and/or a rock and/or an  
3 unknown blunt object and/or an unknown sharp object, the said actions of the Defendants  
4 resulting in the death of the said VICTORIA MAGEE, the Defendants left the crime scene  
5 together, the Defendants encouraging one another throughout by actions and words, the  
6 Defendant and the accomplice acting in concert throughout each with intent to commit  
7 murder.

8 COUNT 16 - ROBBERY WITH USE OF A DEADLY WEAPON

9 Defendants did, on or between May 17, 2006 and May 19, 2006, then and there  
10 wilfully, unlawfully, and feloniously take personal property, to-wit: clothing, from the  
11 person of CHARLOTTE COMBADO, or in her presence, by means of force or violence or  
12 fear of injury to, and without the consent and against the will of the said CHARLOTTE  
13 COMBADO, said Defendants using a deadly weapon, to-wit: a golf club and/or a knife  
14 and/or a rock and/or other unidentified blunt or sharp object, during the commission of said  
15 crime.

16 COUNT 17 - ROBBERY WITH USE OF A DEADLY WEAPON

17 Defendants did, on or between May 17, 2006 and May 19, 2006, then and there  
18 wilfully, unlawfully, and feloniously take personal property, to-wit: clothing, from the  
19 person of VICTORIA MAGEE, or in her presence, by means of force or violence or fear of  
20 injury to, and without the consent and against the will of the said VICTORIA MAGEE, said  
21 Defendants using a deadly weapon, to-wit: a golf club and/or a knife and/or a rock and/or  
22 other unidentified blunt or sharp object, during the commission of said crime.

23 DAVID ROGER, District Attorney

24  
25 BY

*Christopher J. Lalli*  
CHRISTOPHER J. LALLI  
Chief Deputy District Attorney  
Nevada Bar #005398

Names of witnesses known to the District Attorney's Office at the time of filing this  
Information are as follows:

<u>NAME</u>	<u>ADDRESS</u>
ALLRED, CLAY	HPD #1221
BENJAMINS, FELICIA	HPD #720
COLLINS, GERARD	HPD #324
ESTORES, MELISSA	UNKNOWN ADDRESS
FUENTES, FRANKLIN	HPD #621
HALL, RAMAAN	UNKNOWN ADDRESS
HERB, DONALD	UNKNOWN ADDRESS
HERB, HAROLD	140 SIR NOBLE ST., LVN
HOSAKA, MARK	HPD #777
KUBICZEK, PIOTR DR.	CORONER'S OFFICE
NAGEL, LYNN	C/O CCDA OFFICE
PARKER, DAVID	CANCUN APARTMENTS
PHILLIPS, CORRINA	C/O CCDA OFFICE
RIDINGS, CRAIG	HPD #358
ROBINSON, LEONARD	1525 E. FREMONT #F-222, LVN
WEBSTER, MICHAEL	HPD #899

DA#06FH0742A, B/mb  
HPD EV#06-11513  
CONSP; KIDNAP; BWSBH; BURG; MWDW; RWDW - F  
(TK5)

3

(Amended Information; read by Clerk)

(Jury Instructions read by Court; not transcribed)

THE COURT: State, are you ready for your closing?

MR. LALLI: Yes, Your Honor.

THE COURT: All right.

MR. LALLI: Thank you.

STATE'S CLOSING ARGUMENT

MR. LALLI: May it please the Court. Mark Twain, the quintessential American playwright, once wrote, "How lovely is death, and how awfully it is doled out."

There can be little question that Victoria Mogee and Christine Combedo suffered more than their fair share of cruelty at the time of their death. This trial is our community's endeavor to discern who is responsible for that cruelty, and to find some justice for Victoria and Christine. How do the various charges work that were contained in Instruction No. 3, our charging document, the Information? To kind of understand the charges and how they relate together, I've created a time line that I will use to keep track of where we are in determining whether the State has, in fact, met its burden.

And what we've done is we have divided the case into five different areas, or groups, or clusters of crimes. The first would be the Count 1, of the felony battery, related to Red being battered at the Sportsman's. And that was roughly

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1 in April of 2006.

2 And then we proceed to May 16th, 17th of 2006, the  
3 very early morning hours, where Red is battered at the desert,  
4 and there are a number of counts related to that event. Count  
5 2, 3, 4, and 5, conspiracy, kidnapping, battery, and robbery.  
6 Later, after that event occurs, the defendants take  
7 the girls to the Hard Rock. Another area that I will discuss,  
8 Count 6, gendering.

9 Then we proceed to the abduction of Victoria and  
10 Christine from the South Cove Apartments. Count 7, conspiracy,  
11 conspiracy, burglary. Counts 11 and 12, kidnapping. And then  
12 finally, the fifth sort of cluster that I've created is the  
13 girls, Christine and Victoria, being murdered and robbed in  
14 the desert. So we will come back and refer to this time line  
15 throughout my presentation to you.

16 At the very back of your instructions, you will see  
17 that the Court has prepared forms of Verdicts for you so that  
18 you can record your decisions and return them to us. And you  
19 will see that the various counts contained in the verdict  
20 forms correspond to Instruction No. 3, the Information, which  
21 actually contains the charge.

22 There are a number of pages associated with the  
23 verdict forms because there are numerous counts. But we will  
24 go through the verdict form together, and certainly you can  
25 follow along. But for each charge, you will ask yourself, was

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1 there a crime committed and who was responsible for that  
2 crime. That is your mission, your charge as a jury.

3 There I would like to really begin my comments is in  
4 a discussion of how it is that we hold people responsible for  
5 crimes in the criminal justice system here in the State of  
6 Nevada. And Judge Villani has told you that there are  
7 essentially three ways that we do that.

8 The first is direct liability, or direct  
9 responsibility. He talked to you in the instructions about  
10 aiding and abetting responsibility. And he also discussed a  
11 third form of holding people responsible called conspiracy  
12 liability, or conspiracy responsibility. So we'll talk just a  
13 little bit about each one of those.

14 Direct responsibility, obviously, is that thing that  
15 first comes to mind when we think about holding somebody  
16 responsible for a crime. So if somebody actually themselves  
17 commits the criminal offense, they are directly responsible  
18 for it.

19 But there are other ways that we hold people  
20 responsible for crimes; aiding and abetting. And I would  
21 direct you to Instruction No. 5. It's up on the monitor, or  
22 you can certainly follow along in your instructions.

23 But what we are told by Judge Villani is that, "All  
24 persons concerned in the commission of a crime, who either  
25 directly or actively commit the act constituting the offense,

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1 or who knowingly, and with criminal intent, aid and abet its  
2 commissions are regarded by the law as principals in the crime  
3 thus committed, and are equally guilty thereof."

4 So, what you learn from this instruction is that the  
5 law makes no distinction between the responsibility of  
6 somebody who directly commits that crime, or someone who is an  
7 aider and abettor. The law treats them exactly the same.

8 This instruction continues. "The State is not  
9 required to prove precisely which defendant actually committed  
10 the crime, and which defendant aided and abetted." That is  
11 not incumbent upon us to prove to you.

12 So, what is aiding and abetting? What does it mean  
13 to aid and abet? That is also contained in Instruction No. 5.  
14 "A person aids and abets in the commission of a crime if he  
15 knowingly and with criminal intent aids, promotes, encourages,  
16 or instigates by act or advice, or by act or advice, the  
17 commission of such crime with the intent that the crime be  
18 committed."

19 So, you're helping, you're encouraging, either by  
20 acts, or words, or some form of helping out that other person  
21 who is actually committing the crime.

22 You're given in Instruction No. 3 -- I'm sorry,  
23 number 6, a lengthy and somewhat complicated instruction.  
24 But what Judge Villani is essentially telling you here is that  
25 to be responsible as an aider and abettor, you must have the

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7  
1 same intent as the principal, as the person who was actually  
2 committing the crime. So, we've talked about two forms of  
3 responsibility, direct, and aiding and abetting. I'd like to  
4 talk with you a little bit about conspiracy responsibility.

5 What is a conspiracy? Well, Judge Villani tells us  
6 what a conspiracy is in Instruction No. 8. "A conspiracy is  
7 an agreement between two or more persons for an unlawful  
8 person" -- "purpose. The crime is the agreement to do  
9 something unlawful. It does not matter whether it was  
10 successful or not."

11 So, a conspiracy is nothing more than an agreement  
12 to do something unlawful, period. We don't actually have to  
13 do it, we simply need to agree to do it.

14 Judge Villani also tells us something very important  
15 in Instruction No. 8. "Conspiracy is seldom susceptible of  
16 direct proof, and is usually established by inference from the  
17 conduct of the parties. In particular, a conspiracy may  
18 supported by a coordinated series of acts in furtherance of  
19 the underlying offense sufficient to infer the existence of an  
20 agreement."

21 So, what we're being told here is that a conspiracy  
22 is seldom susceptible of direct proof. You're not going to  
23 have a written agreement between two criminal offenders  
24 setting forth what their respective responsibilities in the  
25 conspiracy are.

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8  
1 You look at their conduct. You looked at a --  
2 whether there was a coordinated series of acts, whether they  
3 are acting in concert to determine whether or not a conspiracy  
4 actually exists.

5 We are told in Instruction No. 9, just like aiding  
6 and abetting, for conspirators to be responsible, they must  
7 have the same intent as the principal.

8 And then a very important part of the law of  
9 conspiracy is the effect of it. And Judge Villani tells us  
10 this in Instruction No. 9, "In contemplation of law, the act  
11 of one is the act of all."

12 So, once again, just like direct responsibility or  
13 aider and abetter responsibility, when we're talking about  
14 conspiracy responsibility, the law treats principals and  
15 conspirators the same. There is no difference in how those  
16 individuals are treated in the eyes of the law.

17 Something else that's very interesting about  
18 responsibility in criminal cases. You do not need to be  
19 unanimous in your verdict in discerning what form of  
20 responsibility to attribute to each criminal defendant.

21 What Judge Villani tells us in Instruction No. 12  
22 is, "You do not need to be unanimous in deciding whether the  
23 defendant is responsible by directly committing an offense, by  
24 aiding" -- "by being an aider and abetter, or by acting  
25 pursuant to a conspiracy."

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1 so, what does this mean? It means that some of you,  
2 quite frankly, can believe that Demond Malone is the person  
3 who actually killed and murdered Victorio Magee and Christine  
4 Camacho. Some of you can believe that he was the person who  
5 actually did that, and certainly there is plenty of evidence  
6 to support that.

7 But some of you might believe that he was just an  
8 aider and abetter, and that he was just there to help. Some  
9 of you could also believe that he was there pursuant to a  
10 conspiracy; there was an agreement to kill the girls, and his  
11 involvement stems from that conspiracy. But you do not all  
12 have to agree on which form of responsibility it is that ties  
13 him to these crimes.

14 So now let's actually talk about the crimes, and go  
15 to our time line and talk about the first component, the  
16 beating of Red at Sportsman's. And we're going to be talking  
17 about Count 1, battery.

18 Judge Villani provides us with Jury Instruction No.  
19 17, which defines battery. "Battery is an wilful and unlawful  
20 use of force or violence upon the person of another." It's  
21 force upon somebody else, or violence upon somebody else.

22 There should be no doubt that Red, Melissa Astores,  
23 was the victim of a battery. She told us that. She told you  
24 about this beating that occurred at the Sportsman's, how the  
25 defendant accused her, or believed that he owed him some

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1 money. He puts his arms around her and directs her to that  
2 remote pool location in the Sportsman's. Her jewelry is  
3 pulled off.

4 And then remember her testimony, in that very  
5 bizarre episode in the instructions that he gives her, just  
6 before he administers this battery. You have to stand there  
7 and take it. Do not fight back. If you do those things, I'll  
8 only hit you in the chest. But if you fight back, I'm going  
9 to hit you in the head, in the face, in your temples.

10 And remember what the defendant looked like back in  
11 April of 2006. Remember, if you would, the testimony of  
12 Correne Phillips, who testified she lived in that world, that  
13 drug infested world back in 2006.

14 And she was in this courtroom, and identified the  
15 defendant. But she did so with hesitation and fear. You  
16 could see the fear that she had when she was on that stand,  
17 and the hesitation when identifying the defendant. And she  
18 did identify him, but she said, "He's thinner, he's just  
19 thinner than he used to be."

20 He was a larger man back when this occurred. And  
21 Red tells us, he began to hit her, and she fell back, and her  
22 arms went up. And he beat her in the chest, and he beat her  
23 in the head, and he beat her until she fell to the ground, and  
24 she was trying to put her legs around him to prevent the  
25 beating, but the beating continued.

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11

1 And there was some suggestion in this case that this  
2 wasn't really a beat-down, that somehow this was some form of  
3 a mutual fight or mutual conduct. And I would just suggest to  
4 you that the evidence that you've heard entirely repudiates,  
5 that. There is absolutely no evidence that this was a mutual  
6 fight, or mutual combat. The defendant was the aggressor  
7 throughout, and that is the only conclusion that the evidence  
8 supports.

9 He is the one who believed that Red was being  
10 unfaithful to him. The defendant is the one who believed that  
11 Red owed him some money. The defendant is the one who  
12 directed her to a remote location of the Sportsman's. It was  
13 the defendant who began to tear off her jewelry. The  
14 defendant who gave her the instructions about how she is to  
15 conduct herself during the course of that beating. It was the  
16 defendant who punched her repeatedly in the chest.

17 And others knew that this battery had occurred.  
18 Recall, if you will, the testimony of David Parker, who  
19 testified from this very stand, Red's good friend. Red had  
20 told him about the battery.

21 And he described at the time that Red had come and  
22 stayed with him for a series of days after this battery. He  
23 needed to get her out of the Sportsman's lifestyle, give her  
24 some time to heal and to recuperate.

25 And remember, he described that event where he and

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1 Red actually go to the Sportsman's. And who do they see  
2 there? They see the defendant. And Red is a little  
3 concerned, she's a little timid around him. But he comes  
4 over and talks to them, and he apologizes for what he had done  
5 to her. He tells her how much he loved her, he embraces her.  
6 But I would suggest to you ladies and gentlemen,  
7 you're not going to apologize for mutual combat. You're going  
8 to apologize if there was some sort of a beat-down.

9 And when you're considering whether this was mutual  
10 combat, or whether this was just a battery of a substantial  
11 level, remember how Red crumbled in this courtroom on that  
12 very stand, during the cross-examination by Mr. Cano. He was  
13 showing her a series of a photos. And I certainly do not  
14 fault him for one moment for doing what he did. Mr. Cano is a  
15 very skilled attorney, and he has represented his client well  
16 during these proceedings.

17 But as he is cross-examining Red, you will remember,  
18 he was asking her about the photos that were taken, and  
19 whether any of those photos depicted the back of her head.  
20 And one by one, he showed her the photos, and he asked her  
21 whether the photo depicted the back of her head.

22 And she was able to see the injuries that she  
23 suffered, and his voice began to raise and become louder, and  
24 she began to tear up, and well up, and cry. And you saw her  
25 absolutely fall apart, and begin to cry to the extent that the

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1 Court was required to call a recess to give her the  
2 opportunity to collect herself.

3 So, in spite of her exterior, and her hard outer  
4 shell, you saw the real Red. And I think it tells you  
5 everything you need to know about whether she was engaged in  
6 some sort of mutual combat with the defendant in April of  
7 2006.

8 So, when we are considering the crime of battery, we  
9 go to our verdict form, and we eliminate the possibility of  
10 not guilty, because there clearly was a battery in this case.

11 And the only question for you with respect to Count 1 is  
12 whether there was substantial bodily harm suffered as a result  
13 of the battery.

14 Judge Villani defines substantial bodily harm in  
15 Jury Instruction No. 13. As used in these instructions,  
16 substantial bodily harm means, one -- and he gives you a  
17 definition, or two, prolonged physical pain.

18 So, what one quickly realizes upon receiving the  
19 instructions by Judge Villani is that in the State of Nevada,  
20 there is a very, very low threshold for substantial bodily  
21 harm. It's nothing more than prolonged physical pain.

22 The beating of Red in April of 2006 clearly  
23 qualifies for that. She described for you the knots and the  
24 swelling of her head, the difficulty breathing. She  
25 described having a chest that was almost completely black and

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1 blue. She went to the hospital. She didn't stay to receive  
2 treatment because she didn't want to get caught up in what  
3 could potentially be a police report.

4 But her injuries were to the extent that she did  
5 attempt to receive medical treatment for it. And you don't  
6 have to take Red's word for it alone, because David Parker saw  
7 the beating that she suffered -- or the results of the  
8 beating, I should say. He wasn't present for the beating, but  
9 he saw those bruises on her chest, and he described them as  
10 eggplant colored.

11 So, when you put those together, clearly, you have a  
12 situation of prolonged physical pain. And when you go back to  
13 the verdict form pertaining to this battery, clearly, you  
14 eliminate the possibility of, without substantial bodily harm.  
15 The appropriate verdict as to Count 1 is, guilty of battery  
16 with substantial bodily harm.

17 So, let's go back to our time line, and now turn our  
18 attention to the second area, or cluster of charges pertaining  
19 to Red being battered out in the remote desert location in  
20 Henderson.

21 Once again, as evidence of this count, you have the  
22 testimony of Red, herself. And she told us about that  
23 beating, how she was taken to a construction trailer, an area  
24 in a remote portion of Las Vegas. This was after the  
25 defendant and Jason McCarthy, Mr. -- Romeo, or Rome as he's

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1 been referred to, were up and down the strip here in Las Vegas  
2 after they had driven around.

3 And over a period of time, Red is taken out into the  
4 desert for "prayer time," or "PT time," punishment time, over  
5 a dispute for money. Once again, the defendant believes that  
6 she owes him some money. And she described the brutality of  
7 the beating, punching in the face, kicking in the head. And  
8 it is so telling, the small details that sometimes we receive  
9 from witnesses, that so much support and give credibility to  
10 what they tell us.

11 And you remember Red describing this incident, where  
12 she is driven to that area, and they're in the green Alero,  
13 and she gets out of the vehicle. She is beaten. She's on the  
14 ground. And the beating ends with the defendant and Romeo,  
15 Mr. McCarty, walking away, back toward the Alero. And what  
16 does she tell you she hears? She can hear the defendant's  
17 breathing. He was breathing heavily, because of all the force  
18 that he used in beating her. The truth is found in such small  
19 details.

20 But again, other witnesses told us about this  
21 beating, as well, and observing the effects of it. David  
22 Parker, he picked up Red and the girls from the Hard Rock, and  
23 he observed the swelling and bruising on Red's face. He told  
24 us all that when he testified.

25 Recall, if you will, the testimony of Niccolin

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1 Broderway, another one of the individuals who was involved in  
2 the happenings at the Sportsman's back in May of 2006. After  
3 the girls had been abducted, she was at the Sportsman's with  
4 Black, Leonard Black. And she -- Niccolin encounters Red, and  
5 can actually see the evidence, the physical evidence of the  
6 beating that occurred.

7 She had seen the defendant was actually bragging  
8 about having battered Red. And I would suggest to you that  
9 he's not going to be bragging about a beating that he had put  
10 on a woman if there was any kind of mutual combat that was  
11 involved.

12 MR. CMO: Your Honor, I'm going to object. That's  
13 not evidence that was presented at this trial.

14 MR. LAULI: Your Honor, it certainly was evidence --  
15 THE COURT: I'm going to overrule the objection.

16 MR. LAULI: Thank you.

17 And then of course there are the photos that were  
18 taken by the police when Red first went to members of law  
19 enforcement to report the crime, and you see the various  
20 injuries that she had suffered on her head and on her face.

21 And whether the bruising is a result of the battery  
22 that she suffered in May of 2006, or whether the deep bruising  
23 that was on her chest are the remnants of the battery that she  
24 suffered back in April of 2006, the result is the same, the  
25 conclusion is the same.

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1 It's just as the witnesses had described the  
2 eggplant color. It's just as Red had told you, almost her  
3 entire chest was bruised. Either way you look at it, the  
4 result is inescapable. She suffered a horrendous beating,  
5 which qualifies as battery resulting in substantial bodily  
6 harm on two occasions.

7 So, when you look at Count 4, battery with  
8 substantial bodily harm, related to Red being beaten in the  
9 desert area, the proper verdict is guilty of battery with  
10 substantial bodily harm.

11 Was there a kidnapping? Judge Villani explains  
12 kidnapping in Instruction No. 13. "Every person who wilfully  
13 seizes, confines, inveigles, entices, decoys, abducts,  
14 conceals, kidnaps, or carries away any person for the purpose  
15 of committing murder and/or inflicting substantial bodily harm  
16 is guilty of first degree kidnapping."

17 So, if you take somebody, and you move them to  
18 another location, and your purpose in moving them is so that  
19 you can inflict substantial bodily harm upon them, that is a  
20 first degree kidnapping in the State of Nevada.

21 You're given another instruction related to a  
22 similar crime, which is false imprisonment. And Judge Villani  
23 defines false imprisonment for you in Instruction No. 14.

24 "False imprisonment is an unlawful violation of the personal  
25 liberty of another, and it consists of confinement of

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1 detention."

2 The reason this is not a false imprisonment is  
3 because it involved moving Red from one location to another.  
4 False imprisonment is merely detaining someone where they are  
5 at, whereas kidnapping involves moving them to another  
6 location where you're either going to kill them, or you're  
7 going to inflict substantial bodily harm on them.

8 So, we know that when Red went to this location when  
9 she was beaten, she did not go willingly. She didn't go there  
10 because she wanted to go there, or even knew that she was  
11 going there. She was misled. It was Mr. McCarty who told her  
12 that they were going to take the girls to a location to look  
13 for houses -- or look at houses that were being built. She  
14 was brought to the remote location, she was placed in the  
15 desert, and then beaten.

16 Why? Why was she taken to the desert? Why take her  
17 to this location? Well, it's what makes this crime a  
18 kidnapping as opposed to a false imprisonment. There are  
19 benefits to a perpetrator who takes his victim to a remote  
20 location. No one can see the crime if you are in a remote  
21 location. There are no observers. No one can hear cries for  
22 help. No one can intervene. There is less of a chance of  
23 someone coming for help.

24 And compare that, if you will, to the beating that  
25 had occurred back in April at the Sportsman's. Remember how

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1 that beating ended. There is a friend of Rod's who actually  
2 called out to her. And as a result of that, the defendant  
3 stopped his beating.

4 That's not going to happen in a remote desert area.  
5 The defendant has more free reign, there's less holding him  
6 back. And importantly, it is infinitely more dangerous to  
7 commit a crime against a person in a remote area.

8 This is precisely why the appropriate verdict as to  
9 Count 3 is not false imprisonment, but guilty of first degree  
10 kidnapping.

11 Was it a conspiracy? Because the State is charging  
12 a conspiracy for those crimes. And we've already talked about  
13 conspiracy. Conspiracy, as I've told you, as Judge Villaniti's  
14 told you, is a way that we hold people responsible for  
15 criminal conduct. But just as it is a theory of  
16 responsibility in the State of Nevada, engaging in a  
17 conspiracy is also a crime.

18 So, once again, if we go back and we look at  
19 Instruction No. 8, we look to a coordinated series of acts in  
20 furtherance of the underlying offense. So, who is the obvious  
21 conspirator here? It is Mr. McCarty, Rome, who accompanied  
22 the defendant out to this location.

23 So, was Romeo involved in this crime somehow? Well,  
24 certainly he was. Recall how they got there. They got there  
25 in the green Alero that Romeo had procured from his good

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1 friend, Donny Herd. Who was driving the car? It was Mr.

2 McCarty. We know he was there, not only from the testimony of  
3 Rod who told you that he was there, but from some very

4 powerful evidence in this case, which are cell phone records.

5 And Mr. DiGiacomo, through the expert from AT&T, as  
6 well as through Detective Collins, talked to you, and

7 explained a little bit to you about the cell phone evidence.

8 And you will see in evidence various diagrams setting forth  
9 cell phone records from this case.

10 And if we look to the cell phone records from May  
11 17th of 2006, we have cell phone activity from 1:02 in the  
12 morning, 1:03 in the morning, and we're looking at the area  
13 over here. And as we work our way across, we see Mr. McCarty  
14 making cell phone calls. And this area is the cell phone  
15 tower that he's pinging off. And what the expert tells us is  
16 you're going to hit -- or you're going to ping off the cell  
17 phone tower that you are closest to.

18 And based upon that, we can discern where people  
19 were at certain times. And if we go to the map -- let me just  
20 go back here. We see that the cell phone tower being used is  
21 the Railroad Pass tower, and the Wagonwheel tower. Those are  
22 the two towers that Mr. McCarty's cell phone is pinging off  
23 of.

24 So, when we go to a map of the area, we see where  
25 the construction trailer is, and it's a very short distance

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1 from where Victoria and Christine's bodies were found. And we  
 2 see the Wagonwheel tower, and we see the Railroad Pass tower.  
 3 And we know, based upon this very powerful evidence, that Mc-  
 4 McCarty was out at the scene when Red was being beaten. He  
 5 was there. We can believe Red when she tells us he was there.  
 6 And what does she tell us about his conduct at the  
 7 scene? Well, she told us that he lied to her about where they  
 8 were going, which is the reason she got into the car and drove  
 9 to that area of town. She also told us what happened when she  
 10 got there, how McCarty pulls Victoria out of the car, and as  
 11 that's happening, he tells Red, you need to go with D-Roc.  
 12 So, he directs Red to D-Roc, who eventually beats her.  
 13 And then recall her testimony as she's being beaten  
 14 by D-Roc, and as she's down on the ground, what Mr. McCarty  
 15 says to her. "Just take it, Red. Just take it." And  
 16 certainly, how can we believe Red when she tells us that?  
 17 Well, think ahead in our time line to the point in time when  
 18 after the murders, Mr. McCarty returns to the Sportsman's and  
 19 he is beaten up. Do you recall that testimony?  
 20 He's beaten up by Leonard Black and by Black's  
 21 cousin, and Red sees that. And maybe it's something that  
 22 Red's not proud of, maybe it's something she is proud of. But  
 23 do you remember what Red told us she did in reaction to seeing  
 24 that beating, what did she say to Mr. McCarty? "Take it."  
 25 Just take it." It's in direct response to the words that he

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1 said to her as she was being beaten by the defendant.  
 2 So, he's encouraging her not to fight, just take the  
 3 beating. Clearly, there was a conspiracy here, and it  
 4 involved the defendant acting in concert with Jason McCarty.  
 5 And so when you look at Count 2, the conspiracy to commit  
 6 kidnapping, the appropriate verdict, I would submit to you, is  
 7 guilty of conspiracy to commit kidnapping.  
 8 The final charge in this cluster of crimes is  
 9 robbery. Judge Villani defines robbery for us in Instruction  
 10 No. 20. And he says, "Robbery is the unlawful taking of  
 11 personal property from the person of another by means of force  
 12 or violence, or fear of injury."  
 13 So, we really look to two things in robbery, a  
 14 taking of some sort with force.  
 15 Now is the force used? Well, it can be used in any  
 16 number of ways. "Such force or fear must be used to, one,  
 17 obtain or retain possession of the property." So, you use  
 18 force to take it. "Two, prevent or overcome resistance to the  
 19 taking of the property. Or three, to facilitate escape with  
 20 the property." He continues to tell us in this instruction  
 21 that the degree of force is immaterial. It can be a lot of  
 22 force, or it can be very little force, as long as there is  
 23 force present.  
 24 And finally in Instruction No. 20, he tells us the  
 25 value of the property or money taken is not a element of the

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1 crime of robbery. It doesn't matter if somebody steals my pen  
2 in the course of a robbery, or if somebody steals my car  
3 forcibly. Either one of those things would result in a  
4 robbery, irrespective of the amount or value of the item  
5 taken.

6 So, what was the evidence regarding the robbery?

7 Well, once again, it comes from Melissa Estroes, it comes from  
8 Red. And she describes how she is driving from having been  
9 beaten, and the defendant and Mr. McCarty are in the vehicle,  
10 and she is in the back seat, and she has her purse. And she  
11 described how the defendant took her purse, began to go  
12 through it, threw things out the window of the car, and  
13 eventually threw her entire purse out of the car.

14 And recall her testimony, because something is very  
15 clear. And that is the degree of horror that she experienced  
16 on that car ride from the desert to the Hard Rock. Do you  
17 remember what she told us? She actually began to pull hair  
18 out of her head. She told us that she pulled hair out of her  
19 head. Why? Because she wanted to leave in that green vehicle  
20 some evidence that she had been there, because she wasn't sure  
21 she was going to survive that night.

22 She wanted some evidence in the car that someday,  
23 somebody could find that she was in that vehicle. And we know  
24 that she was successful in that endeavor. Do you remember the  
25 testimony from Patrick Farrell who processed this vehicle, the

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1 Crime Scene Analyst with the Henderson Police Department? And  
2 there was testimony regarding the lifts of evidence, of  
3 material that was found on the various floorboards of that  
4 vehicle.

5 And those lifts were submitted for DNA testing. And  
6 we had Erin Beatt, the DNA analyst from the State of Texas who  
7 testified. And he told us, on the lift from the rear driver's  
8 seat floorboard -- the rear driver's seat floorboard, he found  
9 a large amount of hair. Not a single hair, a large amount of  
10 hair from which he actually took two root follicles and did a  
11 DNA analysis on those.

12 And he told you how he ran the numbers on those, and  
13 how many times the population of Earth the rarity of that DNA  
14 profile is, and he told you whose hair that was. It was Red's  
15 hair. You can believe her when she tells you she was in that  
16 car, scared to death and pulling her hair out so somebody  
17 would know she was there.

18 And when we're talking about the crime of robbery,  
19 it doesn't matter that you have the specific intention to  
20 complete that robbery, but merely that there is some form of  
21 taking with force. And remember what's going on. McCarty  
22 wants cigarettes. Red is trying to hide her purse. She  
23 doesn't want the defendant to get her cell phone. He  
24 eventually gets it, goes through it, and just throws her  
25 things out the window as though they're trash.

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1 At this point, Red is completely beat down. Why  
2 would he take her purse? Just to be mean. Just to show the  
3 power and domination he has for her. And Red is no doubt  
4 thinking, this is the end of the line. He's getting rid of my  
5 property. What's going to happen to me? But make no doubt  
6 about it, her things were thrown out of the car.

7 And when you look at Instruction No. 21, it doesn't  
8 matter why that's done. Judge Villani tells us, "Robbery may  
9 spread over a considerable and varying periods of time. Thus,  
10 although the acts of violence and intimidation preceded the  
11 actual taking of the property, and may have been primarily  
12 intended for another purpose, it is enough to support the  
13 charge of robbery when a person takes the property by taking  
14 advantage of the terrifying situation he created."

15 You have this woman who is completely broken at this  
16 time. She's not going to fight back. But in taking her purse  
17 and her things, he committed the crime of robbery. So, when  
18 we look at our verdict forms, Count 5, the appropriate verdict  
19 is guilty of robbery.

20 Returning to our time line, I would next like to  
21 talk about Count 6, the charge of pandering. And you will  
22 recall that -- again, after this car ride from the remote area  
23 of Henderson, Red, Christine, Victoria, they're taken to the  
24 Hard Rock Hotel.

25 Judge Villani explains to us what is meant by

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1 pandering in Instruction No. 22. And he tells us that, "Any  
2 person who induces, persuades, encourages, intrigues, entices,  
3 or compels a person to become a prostitute, or to continue to  
4 engage in prostitution is guilty of pandering."

5 And then, in the very [indiscernible] Instruction  
6 No. 23, he kind of explains what acts of prostitution are.

7 But there is no doubt that these girls were taken to the Hard  
8 Rock. And certainly as evidence of that, once again, we have  
9 cell phone records.

10 And if you look at the cell phone records, we're  
11 still talking about May 17th, and now we're in the area of  
12 4:30 in the morning or so. And what we have are calls by Mr.  
13 McCarty, as well as a call by the defendant. And what you're  
14 going to see is a pattern of the two of them being together.

15 It is a pattern that will be duplicated over, and over, and  
16 over again.

17 But again, we see May 17th of '06, the early morning  
18 house, 4:31, 4:32. And when we look at the cell towers, we're  
19 talking about Callaway [phonetic] and Paradise, calls by Mr.  
20 Malone and Mr. McCarty. And when we look to our map, we see  
21 the Hard Rock Casino, and the cell tower of Paradise, and the  
22 cell tower of Callaway, totally consistent with both of those  
23 individuals being in the vicinity of the Hard Rock.

24 You know that the girls were taken to the Hard Rock  
25 because David Parker told you he picked them up from the Hard

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1 Rock. You know that the girls went to the Hard Rock, because  
2 Correna Phillips told you that she heard the defendant and Mr.  
3 McCarty talking about taking the girls to the Hard Rock.

4 Well, why did they go there? It was for the same  
5 reason that Red and Victoria were beaten earlier that night,  
6 because of this perception that they somehow owed the  
7 defendant and McCarty money. They didn't go there for a night  
8 on the town. They went there because they were directed to go  
9 there to make money, to work.

10 Now would this happen? What sort of skills did  
11 Victoria have? Sadly, she had one. She was a prostitute, and  
12 it was the only means she had by making any money. And  
13 everyone knew this sad reality. Whether it was Red, whether  
14 it was Correna, whether it was Niccolin Broderway, perhaps  
15 Victoria's best friend in Las Vegas. All of them told you  
16 that she was a prostitute.

17 And we know who she worked for. Recall Niccolin's  
18 testimony. She had been released from custody, and she knew  
19 that Victoria was now working for, or associating with Jason  
20 McCarty. And you will recall that meeting that she had with  
21 him. And she describes getting out of jail, going over to the  
22 Sportsman's, seeing Mr. McCarty, and asking Mr. McCarty,  
23 "Where's Victoria?" And the two of them drive to where  
24 Victoria is at.

25 And recall, if you will, what Niccolin told us about

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1 that conversation that she had with Mr. McCarty, how Victoria  
2 was now working for him, how he was kind of dragging about how  
3 much money she was making for him, \$300 a day, and how he had  
4 moved her to the Strip so that she could make more money.

5 What about the defendant? Niccolin told you that the  
6 defendant was trying to get into the business. And you didn't  
7 just hear that from Niccolin Broderway, incidentally. Recall,  
8 if you will, the testimony of Sarah Matthews, who told us that  
9 the defendant had a conversation with Trey Black about getting  
10 into the pimping business.

11 So, when the defendant and Mr. McCarty take the  
12 girls to the Hard Rock, they're taking, specifically, Victoria  
13 there for one reason, so that she can engage in acts of  
14 prostitution.

15 And remember the threat that was leveled against the  
16 girls if they didn't come back with money. We heard it in two  
17 different forms of evidence. Number one, Red told us, if they  
18 didn't get money that night, the defendant told her there  
19 would be three shallow graves in the desert.

20 And recall what she told David Parker, and how David  
21 Parker described how fearful those girls were after he picked  
22 them up and took them to his place. If they didn't get the  
23 money, they would be killed.

24 So, when we look at our verdict form for pandering,  
25 Count 6, I would suggest to you, ladies and gentlemen, the

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1 appropriate verdict for pandering is guilty.

2 The next area of criminality I would like to talk  
3 about are the girls being abducted from the South Cove,  
4 conspiracy, burglary, and again, kidnapping.

5 Let's talk about the crime of burglary. This  
6 pertains to Room 222 at the South Cove. Judge Villani defines  
7 burglary in Instruction No. 24, "Any person who by day or  
8 night enters any house, room, apartment, or other building  
9 with the intent to commit assault and/or battery, and/or  
10 kidnapping, and/or murder is guilty of burglary."

11 And we're given more insight into the crime of  
12 burglary in Instruction No. 27. The gist of the crime of  
13 burglary is the unlawful entry with criminal intent. So,  
14 we're really looking at two things when we're talking about  
15 burglary. Entry, because first and foremost, burglary is a  
16 crime of entry. But it's entry with a certain criminal  
17 intent, either to commit battery, or assault, or certain  
18 felonies after entry is made.

19 Another way of asking, or of answering the question  
20 of whether a burglary has occurred, is to ask yourselves, why  
21 did the individuals enter the residence? Why did they go  
22 there? If it was to commit a crime, then they're probably  
23 guilty of burglary.

24 But what do we know about what occurred? Recall the  
25 testimony of Sarah Matthews. She was staying in Room 217 with

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1 Trey Black. And Room 222 is just to the left of 217, which  
2 we're seeing almost in the center of the monitor. And she  
3 told us about the time that the defendant and Mr. McCarty came  
4 by, and it was the only time, and the first time, that she had  
5 met Mr. McCarty.

6 And both of them came by, and they were talking to  
7 Trey, and they were looking for the girls, again talking about  
8 how the girls had owed them money and how they were angry  
9 about it. And they were heading to Apartment 222. And she  
10 recalls seeing a golf club, and she can't remember for certain  
11 which defendant was handling it at that time. But she clearly  
12 remembers a golf club.

13 Why do the defendants proceed down the hall and  
14 enter Room 222? Because they're looking for the girls. We  
15 know that the girls were forcibly removed, because Sarah tells  
16 us what the girls' demeanor was like when they left the room.  
17 They were crying. They were clearly upset.

18 We know that there was a struggle in Apartment 222,  
19 and we know this from the evidence found inside. There was a  
20 dumped out purse in the bedroom. More importantly, there was  
21 a single earring which we know connects the murder scene to  
22 this location. The earring matches the necklace that  
23 Christine was wearing when she was murdered. We know where  
24 those girls ended up.

25 Why did they enter the room? They entered the room

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1 to forcibly remove the girls from it, so that they could take  
2 the girls from the South Cove out to the desert, where they  
3 would eventually be beaten and murdered. And that is, ladies  
4 and gentlemen, the crime of burglary.

5 So, when you look at the verdict forms, Count 10,  
6 burglary, I would suggest to you, the appropriate verdict is  
7 guilty of burglary.

8 And we've already talked about conspiracy. This  
9 wasn't the defendant acting alone. This was the defendant and  
10 Mr. McCarty working together. And therefore, they are also  
11 guilty, or at least Mr. Malone, is guilty of conspiracy to  
12 commit burglary.

13 What about kidnapping? We've already talked about  
14 the crime of kidnapping. And we have taking and carrying  
15 away, or moving for the purpose of inflicting substantial  
16 bodily harm or death.

17 Is there any question that the girls were removed  
18 from the South Cove on this May evening? Well, Sarah Matthews  
19 tells us this. She tells us about what she sees, not only the  
20 defendant and Mr. McCarty coming up and going into 222, but  
21 what happened as the girls are led out, how they are crying.  
22 How the defendants have their hands on the girls' arms, and  
23 are directing them down to a green car as they're crying.  
24 And the defendant clearly has a golf club in his  
25 hand as he's walking by her apartment, down to a green car.

1 You can -- you can believe Sarah Matthews, because when I  
2 showed her a photo of this car, she said, "I can't tell you  
3 that's the car. I don't think that's it." If she were just  
4 here to help the State, to help the prosecution, she would be  
5 all in, "that was certainly the car." But that's not what she  
6 said. She did the best she could to remember what she  
7 observed.

8 Perhaps the most powerful evidence that the girls  
9 were actually abducted from the South Cove, once again, are  
10 the cell phone records. We now are talking about the early  
11 morning hours on May 18th, 12:35 a.m., 12:36 a.m., 12:39 a.m.  
12 And we have a series of phone calls from Mr. Malone, as well  
13 as a phone call from Mr. McCarty. And again, we're looking at  
14 the early morning hours.

15 We have Direct Connects. Malone, and McCarty, and  
16 the cell tower. South Bruce is the tower that they are  
17 pinging off of. When we go to our map and we look at the  
18 South Cove Apartments, what's the closest cell tower? South  
19 Bruce. We know that both defendants were there at the South  
20 Cove, because their cell phones were pinging off the tower  
21 next to that apartment complex.

22 So, when we look at kidnapping, I would suggest to  
23 you that the defendant is guilty of two counts of kidnapping:  
24 one for Victoria, and one for Christine. As I've indicated  
25 before, you have two defendants working together in concert.

1 So, Mr. Malone is also guilty of conspiracy to commit  
2 kidnapping, number 8.

3 And something else very significant happens at this  
4 point in time. As the defendants head away from Room 222,  
5 they begin to embark on their course of murder. "Now lovely  
6 is death, but how cruelly it is doled out."

7 The defendant is charged in Count 9 with conspiracy  
8 to commit murder. And I would suggest to you that guilty is  
9 the appropriate verdict, because of what he does when he  
10 leaves the South Cove.

11 Which brings me now to the last group of crimes that  
12 are charged. The girls, Victoria and Christine, being  
13 murdered and robbed; Counts 13 and 14 pertaining to murder,  
14 and Count 15 and 16 pertaining to robbery.

15 Let's talk about murder.

16 Judge Villani tells us in Instruction No. 30 that,  
17 "The charge of murder includes murder of the first degree and  
18 murder of the second degree."

19 And when you look at the verdict form for murder,  
20 you will see that there are many, many options. And so how do  
21 we begin to eliminate some of those? Well, we are told in  
22 Instruction No. 41 that, "You are instructed that if you find  
23 the defendant guilty of murder and/or robbery, you must also  
24 determine whether or not a deadly weapon was used in the  
25 commission of the crime."

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1 And then, in Instruction No. 42, Judge Villani  
2 defines what a deadly weapon is. And he tells us that,  
3 "Deadly weapon means, any instrument which, if used in the  
4 ordinary manner contemplated by its design and construction,  
5 will or is likely to cause substantial bodily harm or death,  
6 or any weapon, device, instrument, material, or substance  
7 which under the circumstances in which it is used, attempted  
8 to be used, or threatened to be used, is readily capable of  
9 causing substantial bodily harm or death."

10 So, in the State of Nevada, if I use any  
11 instrumentally, whether it be my remote clicker, in a manner  
12 that is going to cause death or substantial bodily harm, if I  
13 use it in that manner, if I pick up a chair and beat somebody  
14 with it, in the State of Nevada, that chair, or this clicker,  
15 is a deadly weapon.

16 Well, what are the facts in this case? Well, we  
17 know that a knife was used. And I apologize for this  
18 photograph. But you can see how Christine's neck is sliced,  
19 almost completely open, with a knife.

20 We know that a golf club was used, and we know the  
21 force of this golf club by the testimony of Dr. Kubiczek. He  
22 told us, this is Victoria's skull, and it is removed as  
23 standard procedure during the course of an autopsy, and how  
24 there are these little punch-out holes entirely consistent  
25 with the head of this golf club.

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1 So, we now that these instrumentalities were used.  
 2 We knew that from the DNA evidence, that these  
 3 instrumentalities were used. And because a deadly weapon was  
 4 used in these murders, we eliminate some of the options. We  
 5 eliminate every option of verdict that would be without the  
 6 use of a deadly weapon.

7 So really, what we have is, not guilty, second  
 8 degree murder, and first degree murder.

9 So what is it? Well, no one has suggested that this  
 10 is a second degree murder. There has been no discussion of  
 11 that whatsoever. But as a matter of completeness, let's talk  
 12 about first degree murder, and what the law requires in the  
 13 State of Nevada of first degree murder.

14 Judge Villani defines the elements of first degree  
 15 murder in Instruction No. 34. "Murder of the first degree is  
 16 murder which is perpetrated by any kind of willful deliberate  
 17 and premeditated killing."

18 So I would suggest to you that there are three  
 19 elements to first degree murder in the State of Nevada;  
 20 willfulness, deliberation and premeditation.

21 And he proceeds to define those things in  
 22 Instruction No. 34. "Willfulness is nothing more than the  
 23 intention to kill."

24 Deliberate is defined in Instruction No. 34, as  
 25 follows: "Deliberation is the process of determining upon a

1 course of action to kill."

2 It is determining to kill, making the decision to  
 3 kill and then killing. And he tells us, this determination  
 4 can be arrived at in a short period of time.

5 Where Nevada is different from most other states is  
 6 in its definition of premeditation. In Instruction No. 34,  
 7 Judge Villani defines premeditation for us. "Premeditation is  
 8 a design, a determination to kill, distinctly formed in the  
 9 mind by the time of the killing."

10 It is a determination to kill, before the killing  
 11 itself. And this is critical. Premeditation need not be for  
 12 a day, an hour, or even a minute. It may be as instantaneous  
 13 as successive thoughts of the mind. So, unlike in other  
 14 states, in Nevada, premeditation is making the decision to  
 15 kill, and then killing.

16 If I decide to kill somebody and I made that  
 17 decision last week, and then I killed them, that's a  
 18 premeditated killing Nevada. If I decide an hour ago that I  
 19 want to kill somebody, and then I kill them, that is a  
 20 premeditated killing in Nevada. If I decide right now that I  
 21 want to kill somebody, and then I kill them, in the State of  
 22 Nevada, that is a premeditated killing.

23 So what do the facts of this case tell us? Well, we  
 24 have two girls who are kidnapped from the South Cove  
 25 Apartments. They are taken out to a remote desert area.

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1 They're stripped of their clothes and they are executed. That  
2 plan is a wilful and deliberate and premeditated killing.

3 Those facts alone tell us that this was a first degree murder.

4 The manner of the killing tells us that this is a  
5 first degree murder. Recall again, if you will, the testimony  
6 of Dr. Kubiorch, who described those injuries. And he told  
7 you the number of blows that each of these young ladies  
8 suffered. This wasn't a single stab wound, or a single blunt  
9 force trauma. This is repeated, beating and stabbing, about  
10 the head and body.

11 The fact that each girl was killed using at least  
12 two different instrumentalities, a knife, and some form of  
13 weapon, be it a club, or a rock. He describes, particularly  
14 with Christine, the irregular shaped injuries that she had to  
15 her face, totally consistent with a rock being used.

16 This was not a killing that was short. This was a  
17 killing that occurred over the course of time. And the manner  
18 of killing tells us that this is a first degree murder.

19 So when you go to your verdict forms, with respect  
20 to Count 13, we eliminate the possibility of second degree  
21 murder. We're just talking about first degree murder in this  
22 case.

23 And you will notice something else associated with  
24 your verdict forms as to the murder counts, and that is what we  
25 as lawyers refer to as a Special Verdict. We're asking you

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1 for additional information, besides just guilt or innocence.

2 And so Judge Villani tells you, that if you find the  
3 defendant guilty of murder of the first degree, he wants more  
4 information. He wants to know whether you unanimously find  
5 that the murder was wilful, deliberate, and premeditated.

6 And as I've just explained to you the manner of this  
7 killing, it is nothing but a wilful, deliberate and  
8 premeditated killing. So I would suggest to you that it would  
9 be appropriate to check that box.

10 But there are other form of first degree murder in  
11 the State of Nevada.

12 I'd like to discuss with you Instruction No. 37. In  
13 that instruction, Judge Villani tells us that, there are  
14 certain kinds of murder which carry with them conclusive  
15 evidence of malice aforethought. Therefore, a killing which  
16 is committed in the perpetration of burglary and/or kidnapping  
17 and/or robbery, is deemed to be murder of the first degree.

18 Whether the killing was intentional, unintentional or  
19 accidental. Whether the killing was intentional, unintentional  
20 or accidental. This is called the Felony Murder Rule.

21 So, in our state, like most other states, if you  
22 kidnap someone, and during the course of that kidnapping they  
23 wind up dead, whether it was intended, whether it was  
24 unintended, you are still on the hook for first degree murder  
25 in the State of Nevada. It's as simple as that.

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1 So when you go to, again, your Special Verdict Form,  
2 there is an area for you to check that they unanimously finds  
3 the murder was committed during the perpetration, or attempted  
4 perpetration of kidnapping. I would suggest to you that it is  
5 appropriate to check that box.

6 And you go through the same exercise, whether you're  
7 talking about the burglary, or you're talking about the  
8 robbery.

9 Theories of first degree murder in the State of  
10 Nevada are just like theories of responsibility. We've  
11 already talked about, you need not be unanimous in determining  
12 whether a defendant directly commits the crime, aids and  
13 abets in its commission, or is acting pursuant to a  
14 conspiracy.

15 Well, the same is true with respect to first degree  
16 murder. Judge Villani tells us in instruction No. 38, that,  
17 "You need not be unanimous on the means or the theory of first  
18 degree murder in arriving at your verdict."

19 So some of you may believe that it was a willful,  
20 deliberate and premeditated killing. Others may find that  
21 it's not, but that it is, in fact, a killing in the  
22 perpetration of kidnapping.

23 So you need not be unanimous in all arriving at the  
24 same means of first degree murder, as long as all of you do,  
25 in fact, believe that it was first degree murder, by some

1 theory. But in this case, it's a very simple exercise to  
2 understand how it is willful, deliberate and premeditated, as  
3 well as felony murder.

4 So the only question left with respect to murder is  
5 whether the defendant was a participant in the killing,  
6 whether he was involved.

7 And perhaps some of you will recall the question  
8 asked by Mr. Cano of Denny Herb. He asked him, "If you were  
9 involved in this kidnapping, Mr. Herb, it would make it a lot  
10 more likely that you were involved in murder, wouldn't it?"

11 Do you remember those questions?

12 And this is one area where I would certainly agree  
13 with Mr. Cano. And we've already discussed how the defendant  
14 is guilty of kidnapping and that abduction. And it clearly  
15 follows from those facts alone that he is the person who is  
16 responsible for the murders in this case.

17 But there is certainly more evidence than that. We  
18 know that the defendant was looking for the girls. We know  
19 that from Sarah Matthews. We've already talked about that.  
20 We know that from David Parker. Again, that is evidence that  
21 we've already mentioned. We know it from Nicolin Broderway.

22 Remember Nicolin's testimony, about the night of the  
23 murder, when she sees the defendant and Mr. McCarty out in the  
24 vehicle with two women sitting by -- kind of by the gas pumps  
25 at the Sportsman's? And Mr. McCarty has that conversation with

1 her, "Nickel, if you see those girls, I'll give you 100 bucks  
2 if you beat them into the concrete."

3 Clearly, McCarty is looking for the girls. He wants  
4 to find them. And the defendant is sitting there listening to  
5 the conversation. And what does he tell to Nickel? What does  
6 he say to her? "Remember, Nickel, your family. Remember  
7 where your roots are. Remember where your allegiance ought to  
8 be. It's to us."

9 We know that the defendant was looking for the girls  
10 from Correna Phillips. She hears the defendant talking on the  
11 phone about taking girls out to the desert, no shoes, no  
12 clothes. We know that the defendant is involved in the  
13 murders based upon the cover-up that was attempted afterwards.  
14 You will recall the green Alero, after the murders,  
15 when Correna is approached by Mr. McCarty and the defendant  
16 about getting new tires for the vehicle, and how they tell her  
17 to take it somewhere, and leave no evidence behind. Don't  
18 talk to anyone. Don't get a receipt. Pay cash. Don't  
19 mention this to anyone.

20 In fact, what the evidence has shown is that after  
21 the murders occurred, almost every time Mr. Malone and Mr.  
22 McCarty are seen, they are together. And I would suggest to  
23 you, that's for a reason. They are carrying the wagons. They  
24 are trying to keep this crime a secret.

25 Of course, evidence of the defendant's involvement

1 in this murder, these murders, comes from Donald Herb, who you  
2 received testimony from. He receives a call from McCarty on  
3 the night of the murders and he tells him, "We found the  
4 girls."

5 Another phone call, he wants Mr. Herb to come out to  
6 pick up the green Alero. Mr. Herb leaves. He stops  
7 fortuitously at the Terribles near his house and then proceeds  
8 to drive out to the murder scene. And what he tells us is, he  
9 is almost continually on the telephone with Mr. McCarty.  
10 They're calling back and forth. And he told us about that  
11 series of conversations.

12 And at one point, Donny arrives out at this  
13 location. And he described that area by the trailer where he  
14 was. And he described for us that telephone call. He hears  
15 both the defendant and McCarty talking on the telephone, as he  
16 is talking to -- rather, he's talking to Mr. McCarty and he  
17 hears a conversation between Mr. McCarty and the defendant.

18 And this is what he testified to in this case. "I  
19 heard Mr. Malone's voice in the background. He tells Mr.  
20 McCarty, 'She's not dead yet.' Mr. McCarty tells him, 'Eat  
21 her with a club or something.' And I hear Mr. Malone say,  
22 'The club's broken. We only brought one.' Mr. McCarty then  
23 says, 'Just bit the bitch in the head with a rock. Let's  
24 go.'" And that was the end of the conversation.

25 The testimony of Donald Herb in this courtroom. And

1 we know that he had conversations with Mr. Malone and Mr.  
 2 McCarty in the days after the murder, and how they relayed to  
 3 him, as they were together, that they had taken the girls,  
 4 that they had gone to the desert, that they had beaten them,  
 5 that they had taken their clothes, all verifiable -- all  
 6 verifiable facts, all things that actually happened.

7 Well, we know that Mr. McCarty was certainly  
 8 involved in these murders. He was a participant in the  
 9 murders. And we know that from his cell phone records, which  
 10 we'll talk about in a moment.

11 But we know that he did not act alone. We know that  
 12 he could not have acted alone, and that is because Mr. McCarty  
 13 suffered from cerebral palsy. And every person who knew him,  
 14 every person who came in contact with Jason McCarty knew one  
 15 thing: he did not have the full use of his arm. And everyone  
 16 described how that arm would be held up close to the middle of  
 17 his chest, not that he couldn't do anything with the arm, but  
 18 that he had very limited use of the arm.

19 And when you consider how these murders occurred,  
 20 the fact that there were multiple weapons used, clearly, he  
 21 could not have done this by himself. Someone else was  
 22 involved, and that someone else was Domenic Malone.

23 Now, the defense has suggested that maybe it was  
 24 Donald Berr who was involved. And the only scenario by which  
 25 this could work is the body dump, which is why the defense

1 things so desperately to that theory. But it just did not  
 2 happen in this case.

3 How do we know that for certain? Because of the  
 4 testimony of Jamie Ayers, the Crime Scene Analyst who  
 5 responded to that scene. There is no evidence to suggest that  
 6 this was a body dump. We know this from the bloodstain  
 7 evidence on the girls' bodies, and the various ways that the  
 8 blood was flowing downward. We know, because there was dirt  
 9 on the girls' feet. The girls would not be walking around out  
 10 in that desert if this was a body dump.

11 We know that there were no drag marks from where the  
 12 tire marks were found, to where the bodies were ultimately  
 13 located. And we know that there was no blood trail from where  
 14 those tire marks were, to where the girls were ultimately  
 15 found. This was not a body dump. As sad as it is, those  
 16 girls were murdered out in the desert where their bodies were  
 17 located.

18 So not only do we have the defendant's motivation  
 19 for wanting to have these girls killed, and the very powerful  
 20 evidence of Donald Berr, which in and of itself would  
 21 establish that he was involved, but we have this very  
 22 significant corroboration of Donald Berr's testimony.

23 You can believe Donald Berr, because he has  
 24 corroborated, once again, by cell phone evidence, as well as  
 25 video evidence. If we look at the sequence of phone calls,

1 and the cell phone towers, we know that Donald Herb was not  
2 involved. And we begin to see a series of phone calls.

3 At 1:08 in the morning, between Jason McCarty and  
4 Donald Herb, and we know that Donald Herb told us that he  
5 receives the phone call from McCarty telling him that they  
6 found those girls about 1:00 o'clock, 1:30 in the morning, and  
7 sure enough, we have a phone call at 1:08 in the morning, from  
8 McCarty to Donald Herb.

9 And if we go back, Donald Herb's phone is pinging  
10 off of the Stewart Tower. The testimony was that Donald Herb,  
11 at the time, was living with his parents at 140 Sirmoble. And  
12 sure enough, the closest tower to Sirmoble is the Stewart  
13 tower.

14 So we know that at 1:08 in the morning, not only  
15 from Donald Herb's testimony, but from the cell phone tower  
16 information, that Donald Herb is at home. He's at 140

17 Sirmoble.

18 Later, there are more phone calls. And we see that  
19 Jason McCarty is pinging off of the Wagonwheel tower. Where's  
20 Donald Herb? He's still pinging off of the Stewart tower. So  
21 what do we know? We know that while this call is being made,  
22 Jason McCarty is at the murder scene, while Donald Herb is at  
23 home, just like he told us.

24 We have the defendant pinging off of Wagonwheel.  
25 Donald Herb pinging off of Stewart. And if you look at a map

1 of the respective areas, we see Sirmoble literally miles away  
2 from the murder scene, just like Donald Herb told us.

3 Donald Herb told us that as he eventually made the  
4 decision to join the defendant and Mr. McCarty, he first  
5 stopped at Terrible Herbst located at Charleston and Nellis.  
6 And you heard from James Hannah, who used to work for the  
7 Terrible Herbst corporation, and how he obtained video, and  
8 how that video was analyzed by Detective Robert Griffin of the  
9 Henderson Police Department.

10 And they talked about metadata, which is this  
11 information at the top. And that information, that metadata  
12 tells us the date and the time that the video was taken. And  
13 he told you, this video is from May 18th at 1:40 in the  
14 morning, which is totally consistent with the time line that  
15 Donald Herb provided you.

16 And we know from the video that Donald Herb was, in  
17 fact, at this store. Mr. Herb is a fairly unique looking  
18 individual, and there are at least two clear slides from the  
19 video showing that Donald Herb was, in fact, at that  
20 Terribles. And again, if we go back to a map of the  
21 respective locations you can see the distance between the  
22 Terribles and the murder scene.

23 Donald Herb arrives at the murder scene at 2:17 in  
24 the morning, almost 40 minutes after the defendants had  
25 arrived there. We see Jason McCarty, again, pinging off of



1 Wagon(wheel). He's still at the murder scene. And we see  
 2 Donald Herb pinging off of Railroad Pass, Hillside, and  
 3 eventually Black Mountain. We go to a map of the area and we  
 4 can see Black Mountain, High Side (phonetic), Railroad Pass.  
 5 Now, 40 minutes later, Donald Herb is eventually arriving at  
 6 the murder scene.

7 We see what happens when they leave the murder  
 8 scene, how they go to the Gold Strike, how they're pinging off  
 9 of the Gold Strike tower, which is where the weapons were  
 10 deposited, just like Donald Herb tells us.

11 When Donald Herb tells us that Jason McCarty and  
 12 Damonio Malone were responsible for the murders of Christine  
 13 and Victoria, we can believe him, because he is corroborated.

14 The appropriate verdict is guilty of murder of the  
 15 first degree, with use of a deadly weapon, Count 14 for  
 16 Charlotte, and Count 15 for Victoria.

17 Which leads us to the last grouping of charges, the  
 18 robbery. We know that when the girls were found they were  
 19 completely naked, and the robbery pertains to the clothing  
 20 that was removed from them. We know that they didn't leave  
 21 the South Cove naked, because obviously Sarah Matthews  
 22 would've told us that. She would've remembered that they  
 23 didn't have clothes on.

24 So at some point, between the South Cove and the  
 25 time that the girls were murdered, their clothing is taken

1 from them. We know this. Donald Herb told us that. It was  
 2 part of the plan.

3 We also know this from Correna Phillips, who told us  
 4 about that phone call, no clothes, no shoes, words from the  
 5 defendant's mouth. They did this on purpose. They did this  
 6 to make it more difficult for the girls to leave this area and  
 7 to get help. They took their clothes so they would have to  
 8 stay there.

9 And so when you look at the charges of robbery, I  
 10 would suggest to you, ladies and gentlemen, that the  
 11 appropriate verdicts are guilty of robbery, with use of a  
 12 deadly weapon, as to both Counts 15 and 16.

13 How lovely is death? How cruelly it is done?  
 14 In a case like this, it's easy to say, who cares.

15 Who was murdered? A prostitute and a drug dealer. Christine  
 16 and Victoria were people. They were human beings. And just  
 17 like you and me, they were entitled to the protections of our  
 18 constitution and our laws. And they deserve something from  
 19 each one of you, and that is justice.

20 Thank you.

21 THE COURT: Thank you, Mr. Ball.

22 Ladies and gentlemen, we're going to take our lunch  
 23 break now. I've been advised the food has arrived. The  
 24 Marshal's going to take you into the back room here.  
 25 So during this lunch recess, it is your duty not to

1 converse amongst yourselves or with anyone else on any subject  
2 connected with this case, or to read, watch, or listen to any  
3 report or or commentary on the trial, or any person connected  
4 with the trial, or by any medium of information, including  
5 without limitation, newspapers, television, radio or the  
6 Internet. You're not to form or express an opinion on any  
7 subject connected with this case until the case is finally  
8 submitted to you.

9 Again, this is not deliberation at this point; that  
10 closing arguments have not been completed. It's strictly a  
11 lunch break. Please follow the Marshal.

12 (Jury recessed at 12:06 p.m.)

13 THE COURT: One o'clock, counsel. Is that

14 sufficient time, Mr. Cano?

15 MR. CANO: That's fine, Judge, yeah.

16 THE COURT: We'll come back at 1:00 o'clock.

17 (Court recessed at 12:06 p.m. until 1:06 p.m.)

18 (In the presence of the jury)

19 THE COURT: Ready, Mr. Cano?

20 MR. CANO: Yes, Your Honor.

21 THE COURT: All right. Go ahead.

22 DEFENSE'S CLOSING ARGUMENT

23 MR. CANO: Your Honor, counsel.

24 Ladies and gentlemen, I don't have a fancy quote to  
25 start off my presentation to you. Although, I do admire those

1 people that can do that. Unfortunately, I'm not one of those  
2 people. But what I do have in this case are the facts that  
3 was presented to you as part of the evidence, as well as the  
4 law.

5 Now, one of your instructions, I think it's No. 8,  
6 if I'm -- or No. 45, actually, it talks about the presumption  
7 of innocence, the burden of proof. And if you'll recall back  
8 when we first started this process three weeks ago, well,  
9 three-and-a-half-weeks ago, when we were going through the  
10 voir dire process, we all asked you, not only the defense, but  
11 also the State, that if you could -- that you're supposed to  
12 hold Mr. Demonic Malone here, you're supposed to assume that  
13 presumption of innocence stays about him throughout this trial  
14 until this case is given to you.

15 And we're about to go into that journey now as you  
16 go back to deliberate. You've heard the evidence that's been  
17 presented. That presumption stays with him until the evidence  
18 is proven beyond a reasonable doubt that he's guilty of these  
19 charges. And part of that presumption also is the burden of  
20 proof for the State.

21 And we all also asked you that if you could hold the  
22 State to their burden of proof in here, in this case. And  
23 that's what they have to prove, every material element of the  
24 crimes charged beyond a reasonable doubt.

25 Not only did we ask you that, so did the State. And

1 you all said that if they weren't able to do that, that you'd  
2 be fine in acquitting Mr. Malone of this case and these  
3 charges.

4 So now what is this case really about? Because when  
5 you put it in a nutshell, what is this case really, really  
6 about? It's about these three people. We've got Red, Melissa  
7 Estroes, we've got Sarah Matthews, and you've got White Boy,  
8 Donny Red. It's about them, and their credibility, and what  
9 their story is.

10 And it's also about the these phone records the  
11 State's presented to you. Because these phone records that  
12 they've presented to you, they're just records. They mean  
13 nothing without putting them into context. And the only  
14 context that we can put them in is based upon these three  
15 witnesses here.

16 Now, obviously, they've presented other witnesses in  
17 this case. But these are the three main witnesses that --  
18 whose credibility it's your job to judge, because if you don't  
19 believe them, if you doubt their credibility, then these phone  
20 records are just phone records. Okay?

21 And the three key phone records that we're probably  
22 going to be dealing with here, and I'm a little old school,  
23 are the records of the May 16th, May 17th, and May 18th.  
24 Those are the ones we're talking about in question. So when I  
25 refer to that, that's what I'm going to be talking about, are

1 these phone records here.

2 And I put them in this format, because you get them  
3 kind of individually pegged. And I'm a visual person. I kind  
4 of need to see things kind of lined up, in a way kind  
5 [indiscernible] in order to make sense of them. And that's  
6 why I did this. Myself and Mr. Pike, that's why we put them  
7 together this way, so you could see the records as they were  
8 being made time, after time, and in order -- in order, the  
9 16th, through 17th, through the 18th.

10 So that's what this case is about, these three  
11 witnesses and those phone records.

12 Now, what's really important is one of the  
13 instructions that they gave you, and I think it's instruction  
14 No. 50 on the credibility of witnesses. And they tell you  
15 what you should take into consideration when you're evaluating  
16 the credibility of witnesses. And like I said, those three  
17 witnesses are what's key to this case. They're part of the  
18 puzzle.

19 You have Red talking about what happened to her in  
20 April, and part of May. You have Sarah kind of filling in  
21 that middle ground of part of that puzzle. Then you have  
22 White Boy filling in that last tall part of that.

23 So what do we do when we're evaluating the  
24 credibility? We look at how did they act on the stand? What  
25 are their relationships to other people in this case? What are

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1 their motives, interests, what do they have to relate to you,  
2 the process in this case? Did they lie before? Did they not  
3 lie before? You get to judge their character and their  
4 credibility in this case. And that's what's important.

5 Another thing I want you to think about are the  
6 [inaudible] and [inaudible]. There's another instruction that  
7 follows, I think, right after the credibility one, about what  
8 did some of these people gain in this case? And I'll talk a  
9 little bit about this more in a little bit. But a couple of  
10 things I want you to keep in mind.

11 What did Red get out of this case? You've got to  
12 remember who she was, what her lifestyle was at that point in  
13 time. She was living in that drug world. She was going from  
14 place, to place, to place, from apartment, to apartment, to  
15 apartment to sell her drugs.

16 She got two weeks -- practically two weeks courtesy  
17 of the Henderson Police Department on this case, clothing,  
18 food, money, cell phone. A cell phone, something that she  
19 needs in order to sell her drugs. Those are benefits that  
20 you've got to take into consideration when you're evaluating  
21 the credibility.

22 What did Donald Herb get in this case? Originally,  
23 he was charged with the counts, along with Dominic Malone and  
24 Jason McCarty. He got a 1 to 5 probationable offense. He's  
25 been on the streets three months after this case was

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1 initiated. He hasn't been in custody ever since. Think about  
2 those things as you're judging their credibility in this case.  
3 Now, the State's broken it up a little bit  
4 differently than what we did, but essentially, there are like  
5 three separate instances -- incidents that happened in this  
6 case, that they're trying to make into one, trying to glow it  
7 all together.

8 The instance that happened in April and May, that  
9 has to do with Red and Dominic, particularly. Originally,  
10 they were [inaudible] charged with first degree kidnapping,  
11 battery with substantial bodily harm, but the state, after the  
12 evidence was produced -- that's been produced with this case,  
13 decided not to produce the original Count 1 now. So the  
14 battery with substantial bodily harm is all we need to talk  
15 about, the April incident.

16 Now, those events are in no way connected with 2006.  
17 Not one iota, not one bit whatsoever. It happened to be  
18 between Dominic and Red, what was going on between them.

19 Now, you're not allowed to think that, hey, just  
20 because April happened, Dominic must have done May. There's  
21 an instruction that tells you, the state has to prove every  
22 element of every charge beyond a reasonable doubt. So you're  
23 not allowed to just, you know, clump up -- and just because  
24 April happened, they clump them into May. There's specific  
25 instructions about that.

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1 You have to take every count, every incident  
2 separately. So, let's talk about Red, because this is a  
3 person whose credibility you have to judge. This is what your  
4 duty is as a juror, as you're deliberating.

5 And who is she -- and who was she? And how did she  
6 act on that stand? Her demeanor, how she acted, who she was,  
7 who did she tell you she was? She said, "I'm a hustler. I  
8 got hustles on top of hustles. And my hustles never stopped."  
9 That's who Red was.

10 She was part of a gang. Remember when I asked her  
11 about that tattoo on her eye, and what that meant, the tattoo  
12 with the dollar sign? Make money millionaires. People of  
13 like minds, we all have this tattoo. In reality, we know what  
14 that is. She's trying to sugarcoat it, but she was part of a  
15 gang.

16 MR. DIGIACOMO: Objection, Judge. You can't call a  
17 witness a gangster.

18 MR. CANO: Your Honor, she testified to that on the  
19 stand.

20 THE COURT: I'm going to overrule the objection.  
21 Go ahead, Mr. Cano.

22 MR. CANO: Two time convicted felon. For what?

23 Possession of a credit card without owner's consent,  
24 possession of fraudulent instruments. Those are crimes that  
25 go towards someone's credibility, the core of their

1 credibility. This is who the State wants you to rely on as  
2 part of their case -- as part of their case against Mr.  
3 Malone.

4 She was tough. There's no doubt about how tough she  
5 was. She told you she was a Golden Gate boxer. Remember her  
6 knuckles? They said, "Game over." And she wants you to  
7 think, hey, I had those tattoos on my knuckles, because I'm  
8 out of the game now. But in reality, is that what it really  
9 meant? Because she was a person who first mentioned "PT time"  
10 to the police, the first time she talked to them on the 20th.

11 At the end of her interview -- and I brought that  
12 out on cross-examination, what did she say? I want to have 5  
13 minutes of PT time with those soggy cornflakes, and she used  
14 the "n" word. Do you remember that? And do you remember how  
15 she interpreted the "n" word? How she thought that that was  
16 okay to call a person of color, an African American person,  
17 the "n" word? As long as you use the "n" and not the "r".

18 The is the character and the credibility of a person  
19 you're supposed to judge here in this case.

20 Who else was she? She was a drug dealer, soft and  
21 hard. She told you about that, and what she did on a daily  
22 basis. She was a drug user, an addict. She would smoke weed  
23 daily. She would prefer to smoke blunts, and described what  
24 those were. You know, cigar wrappers, filled with the  
25 marijuana, much bigger than a joint. She would do that and

1 she would get high, daily.

2 She preferred crystal meth. She didn't want to  
3 admit that voluntarily, but she had to, because on

4 cross-examination, she said that before in another trial. She  
5 was trying to hide that fact. That if she had it, she would  
6 smoke. I mean, she sold it. Obviously, she sold it. So,  
7 obviously, she had it at times. But she did smoke it, as  
8 well.

9 And this is a person whose credibility you have to  
10 judge.

11 She was an alcoholic. Do you remember her  
12 testifying? And the defense brought this up, testifying at  
13 the preliminary hearing down in Henderson. On this case, of  
14 this magnitude, a double homicide with capital implications,  
15 capital punishment implications, she was drinking shots of  
16 Crown Royal prior to her getting up on the stand and  
17 testifying back there.

18 This is this person's character and credibility.

19 She would drink daily. She lied to the police. She  
20 told you that. She lied under oath. She admitted to that,  
21 too, on cross-examination. And you go back to your memories  
22 as to what it was that she was being honest and dishonest  
23 about. Small things and big things.

24 But what it is at the end of the day, they're lies,  
25 and it goes towards her credibility, and it goes towards her

1 character, as well.

2 She told you how her lifestyle was in that drug  
3 lifestyle that she was living back there at the Sportsman's.  
4 She went from place to place, because that's where they were  
5 selling drugs, had different places, you know, to lay her head  
6 down. She would do anything for money, any hustle, whether it  
7 be stolen goods, whether it be drugs, whatever it was, as long  
8 as she was making money off of it, that was her hustle. She  
9 was a hustler. She had hustles on top of hustles.

10 And what does she get from this case? I already  
11 mentioned it a little bit, but she did get some benefits from  
12 the Henderson Police Department, at their courtesy. Was it  
13 another hustle she had? Did she hustle the Henderson Police  
14 Department, so that she can, you know, go from three different  
15 hotel rooms and extend it as long as she could?

16 She was able to get food out of them? At their  
17 beckon call. She would call the police officers. They would  
18 come over, get her, "What do you need? Do you need food?  
19 What is it that you need? Do you need some money? Do you  
20 want to get some pizza? Do you need some clothes? Let's take  
21 you shopping. You must need some clothes. Let's take you  
22 shopping." That's what they did.

23 You need a phone? Let's go get you a prepaid phone.  
24 That's what they did for her. Was that another one of her  
25 hustles?

1 Now, we don't have to fight about the kidnapping,  
2 because the State's not pursuing that anymore.

3 MR. DIGIAMOND: Judge, once again, I object. It's  
4 improper for him to be referencing anything other than the  
5 charges in this case.

6 THE COURT: I'm going to sustain the objection.

7 MR. CANO: But let's talk about the incident of  
8 April, because that's really what's at core here. The State  
9 wants you to think that it wasn't a mutual fight, but you've  
10 got to listen to what the testimony was, because it was a  
11 fight. And it was a fight between two people.

12 At first they're trying to give you that image that  
13 it had to deal with drugs. But when you really peeled back  
14 the layers of that onion, what really was going on there?

15 Because she said it really wasn't about drugs. She didn't owe  
16 any money to anybody. It really wasn't about that. That was  
17 pretense.

18 What this case really was, was about a lover's  
19 quarrel. Dominic wanted to be with her, she didn't want to be  
20 with Dominic. She was a free agent. She could be with  
21 whoever she wanted to be. She was with Mine then. Dominic  
22 wanted to maintain the relationship.

23 So it started off as a discussion, as an argument  
24 that escalated into a fight. And it was a mutual fight  
25 between the two, about their personal relationship, nothing to

1 do with drugs really.

2 Now, her injuries. There's no doubt that she  
3 suffered some injuries in this case. But what brings you  
4 suspect as to those injuries is what she said in this case.

5 She says she went to the hospital. She was going to get some  
6 help, but then she avoided it, because she'd have to get  
7 involved with the police.

8 But what's interesting about this incident is what  
9 David Parker said. And I want to submit to you, of all the  
10 witnesses that the State brought into this case, he's probably  
11 one of the most credible witnesses that they had in this case.

12 But a lot of what David Parker says contradicts what  
13 Red says. And you can't cherry pick in this case. You can't  
14 pick this part of this person's testimony, and this part of  
15 this person's testimony, and try to fit it into the State's  
16 theory. That's not your job.

17 That's what they would like you to do, but that's  
18 not your job. Your job is to evaluate their testimony as a  
19 whole, comparing it to another witness's testimony as a whole.  
20 And if there are those contradictions that exist there, then  
21 that attacks their credibility. The State was bringing  
22 witnesses that attacked their own key witness's credibility.

23 They have the burden in this case, we don't. But we  
24 highlighted that to you time, and time, and time, again. What  
25 did she tell David Parker? I just got out of the hospital. I

1 was there for 3 or 4 days. That's when he met up with her  
2 again at the Sportsman's, completely contradicting what Red's  
3 saying about what had happened to her.

4 There's no doubt that she had some injuries. And  
5 you have pictures of those injuries. And I want you to take a  
6 really good look at those injuries, whether they happened --  
7 what happened as all these injuries that she talked about on  
8 her chest, relate to the April injuries.

9 But I want you take in particular look, and I think  
10 Mr. Walli had in his presentation, this picture with a little  
11 scale around it, a little measuring thing. Now, there was  
12 some testimonies about bruising, remember, how they're remote  
13 and they're recent. But use your common sense in this case

14 If you've ever had a bruise, and you can bring that  
15 into this case, your common sense. What's the life cycle of a  
16 bruise? First, you get hit, it gets red, starts turning  
17 purple, right? Then it starts kind of fading that purple,  
18 gets a little yellow ring around it as it's healing, and that  
19 purple gets less, and that yellow ring gets more, until it's  
20 kind of just all yellowish, until it goes back to normal.

21 Anyone's who had a bruise knows that's what the life  
22 cycle of a bruise is. So when you look at the injuries that  
23 she had, look at the injuries that she had on her chest and  
24 compare them to the injuries that she had on her eye. They're  
25 the same. They're in that healing process that happened a few

1 weeks before.

2 That injury that she had on her eye had nothing to  
3 do with what happened in May. She told you what injuries she  
4 suffered then. That goes towards her credibility. Was she  
5 being honest about what she was saying what happened in May?

6 Now, if you feel that Doreonic was the instigator of  
7 this fight, you have your verdict form. If you feel that  
8 these injuries came from that fight, you should find him  
9 guilty of that. But if you feel that that's not what happened  
10 in this case, that she doesn't have any credibility, then you  
11 should find him not guilty.

12 Let's talk about May 16th. That was the first day  
13 of the events of sequence that happened in -- back surrounding  
14 the takings of the girls. Again, this involves Red and  
15 Doreonic, Counts 2, 3, 4 and 5, the conspiracy to commit  
16 kidnapping, first degree kidnapping, battery with substantial  
17 bodily harm and robbery.

18 I want to talk to you a little bit about conspiracy.  
19 And I don't remember, I think it was Instruction No. 8,  
20 conspiracy in this case, and what it tells you.

21 Mr. Walli was right as he read it to you.  
22 Conspiracy is an agreement between two people, and they have  
23 to have the same intent. That's what conspiracy is. But if  
24 you read along it says, a person who knowingly does any act to  
25 further the object of a conspiracy or otherwise participates



1 therein is criminally liable as a conspirator.

2 But the part that he left out, the important part of  
3 the instruction that he left out, begins with that "However."  
4 Mere knowledge or approval of, or acquiescence in the object  
5 and purpose of the conspiracy without an agreement to  
6 cooperate in achieving such object for the purpose does not  
7 -- does not make one guilty -- one a party to conspiracy.

8 So what does that mean? You've got two people  
9 around each other. This one's talking about something he  
10 wants to do. Just because you're merely present, just because  
11 you're there doesn't make you part of that conspiracy. And  
12 there's no evidence of a conspiracy in this case.

13 What a conspiracy is, is these two people coming  
14 together, having the same intent, and doing an act to carry it  
15 out. That's that meeting of the minds that they have to have.  
16 This little highlighted area, the green area, that's the  
17 conspiracy. That's what you need to have in this case, and  
18 that's what doesn't exist in this case.

19 Now do we know? Listen to their key witness, and  
20 what does she tell you what was going on? Everything that  
21 happened between her and Demonic, was between her and Demonic.  
22 Everything else that was going on, between Romeo, Christine  
23 and Victoria, was between Romeo, Christine and Victoria. One  
24 had nothing to do with the other.  
25 Just because they happened to be in the same area

1 doesn't make it conspiracy. And the State's trying to tell  
2 you, well, you know, sometimes there's not going to -- you're  
3 not going to really have evidence of what a true conspiracy  
4 is, because you've got to, you know, look at other evidence  
5 that kind of puts it together for you, because you're not  
6 going to have direct evidence.

7 Well, I disagree with that. Because if you listen  
8 to the testimony in this case, of what a true conspiracy is,  
9 it came out of Red's mouth. She told you when -- she told you  
10 when they were going up -- when they were at the Sportsman's.  
11 Okay. Well, let me go back to this.

12 She told you when they were at the Sportsman's, how  
13 they kind of left out of there and she went over to the Oasis,  
14 and how Christina was out of money, things of that nature,  
15 and that Romeo had made an offer to Christina, why don't you  
16 get Victoria back for me. You owe \$150, I'll give you \$80.

17 Remember that?  
18 That's a conspiracy. Those are her actual words.

19 She was present when all that happened. Yet she wasn't  
20 charged with any of those counts. Okay? Conspiracy is not  
21 guilt by association. Could you imagine, just being around  
22 something -- somebody that's -- some conspiracy someone else  
23 is making? You just happen to be around it, but being found  
24 guilty for that? No.  
25 Guilty by association doesn't count. You have to do

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1 something. You have to have that same intent. You have to  
2 have that same mindset as that other person and do something  
3 to carry it out.

4 Now, May 16th, let's go through what happened. She  
5 was up all night selling drugs with Christine, that Christina  
6 got from Demarco, remember that? She was trying to come up  
7 with some ball money for Black, some other names that came up  
8 in this case. And -- but she was gambling it all away. She  
9 was gambling it all away. She was trying to help her out.  
10 She actually had breakfast with a couple of her homies, is how  
11 she described it, Red did.

12 And they didn't buy it, that they were going to help  
13 her out. Remember that? So what happens? She goes outside.  
14 And she gets into a fight with some woman who's pumping gas,  
15 who is having a problem with the clerk. She gets herself in  
16 the middle of it. And she gets into a fight with her. A  
17 person who had been so brutally beaten a few weeks before, but  
18 was not afraid to get into a fight with a woman who called her  
19 a "bitch," or "mind your own business," something to that  
20 effect? No.

21 She was tough. She wasn't afraid of confrontation,  
22 and so that's what she did. She confronted this woman, and  
23 she got into a fight. She hit her. She hit her back. And  
24 she got some injuries. That's when all this started on May  
25 16th. Okay?

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1 she jumps into the car with Romeo and Christina.  
2 Why? To avoid the police, knowing that if I get stopped by  
3 the police for what I just did in this case, I'm going to get  
4 into problems. That's the character, that's the credibility  
5 of this person who you need to judge.

6 They went to the Oasis. And she was present when  
7 Romeo was making her deal. When I was talking to you about  
8 the conspiracy, she was present when all that was going on.  
9 If you think about it, she probably was part of that  
10 throughout this whole process, yet never charged.

11 And she says, paying \$80 for -- you know, paying  
12 someone \$150 to get \$80. Does that even make sense? That's  
13 illogical. But the State wants you to buy it, because that's  
14 what Red says, so you have to roll with that. You have to  
15 ride the horse that they brought to this dance. Again, going  
16 towards her credibility.

17 And what happens after that? She gets so high  
18 smoking blunts with Romeo that she walks by the Stratosphere.  
19 Do you remember she said that? We're all residents of Nevada.  
20 Las Vegas. The Stratosphere is a landmark. How do you walk  
21 by the Stratosphere and not know you're walking, when that's  
22 the purpose of where you're going?

23 That's her mindset. That's where she was at that  
24 time. That's the credibility you have to judge. She says,  
25 according to her, she gets in the car, behind the Sahara, with

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1 White Boy, Donny, he was driving. Dominic was in the car with  
 2 Christina and Victoria. She walked there with Romeo. And  
 3 they did some kind of a little musical chairs, where everybody  
 4 gets out and gets back in, because she remembers that she  
 5 either sat on Christina -- Christina's lap, or Christina sat  
 6 on her lap, I think is what she said. Remember that? She  
 7 couldn't remember it.

8 But you never heard that there was any use of force  
 9 when she was getting into that car, or anything that was going  
 10 on there. And then they go to White Boy's house.

11 Let's talk about what happened at the Sportsman's.

12 Because then -- and although the State said that the pandering  
 13 counts apply to what happened at the Hard Rock, the way that  
 14 they're written in the Indictment -- or in the Information,  
 15 itself, is the 16th or the 17th, so I'm going to address that.

16 And this goes to Red's credibility, as well. She  
 17 said they went to the Sportsman's and she stayed in the car  
 18 with Dominic. They had a conversation about their  
 19 relationship again. They were in the car the whole time.

20 They never got out. She got out of the back seat, or got into  
 21 the front seat, something of that nature. The whole time  
 22 they're both sitting in the front seat of that car having a  
 23 conversation.

24 They weren't involved with whatever was going on  
 25 with Victoria, with Christina, and with Romeo. That was their

1 thing. She was doing her thing, if you want to believe her,  
 2 with Dominic. They never told her, so do some prostitution,  
 3 neither one of them did. They're just merely preposterous [sic].  
 4 That's what she says happens.

5 And there, from there they go to the desert  
 6 incident. Now, does that happen, or is it exaggerated? And I  
 7 propose to you that whatever happened out there is somewhat  
 8 exaggerated.

9 Mr. Balli talked about her emotion that she showed  
 10 when I was showing her those pictures. And I appreciate his  
 11 comments saying that I'm a strong advocate for my client. And  
 12 I am. That's what I am. I will zealously represent my  
 13 client, especially against people who do not have credibility  
 14 in this case.

15 And when she showed that emotion, was it because  
 16 she was remembering those injuries? Does that give her  
 17 sincerity, or is it because she got caught? She got caught  
 18 in one of her hustles? Because you remember my questioning,  
 19 that was about the injuries to the back of her head, and  
 20 about what happened out in the desert.

21 She said, he stood on her head with his full  
 22 weight. I even did that jump when she was testifying. And  
 23 he kicked her at the same time in the back of the head.  
 24 Those are the injuries that she said she suffered that day,  
 25 with her head on the ground. And you saw the pictures that

1 the scene showed you about that area, was it asphalt, in the  
2 desert, in the grass, with her head pressed up against that  
3 ground.

4 Pictures speak a thousand words. Do those injuries  
5 relate to what she said had happened to her? She didn't even  
6 tell the police about the injuries to the back of her head.  
7 Then they're taking pictures of the injuries that she had  
8 suffered, according to her, at the hands of Domenico, but she  
9 forgets to tell them that, I got kicked in the back of my  
10 head to the point where like, I had to fake that I was dying.  
11 Don't you think they would've written that somewhere down in  
12 a police report?

13 MR. DIGIACOMO: I apologize, Judge, but she did  
14 tell the police that. There was no photograph that Mr. Cano  
15 was able to show. So that misstates the evidence.

16 MR. CANO: It does not, Your Honor. I asked her  
17 that question directly, and she said that she did not tell  
18 the police.

19 MR. DIGIACOMO: That's --

20 MR. CANO: But their memories is what rules in this  
21 case.

22 THE COURT: Right. And at this point, I'm going to  
23 allow the jury to make that determination and the State in  
24 rebuttal can address this issue.

25 MR. CANO: I asked her that question, I hope you

1 wrote it down, because she didn't tell the police that. And  
2 those picture did not show those injuries to the back of the  
3 head. And if they had those pictures, don't you think the  
4 State would've presented them? They presented all her other  
5 injuries, but they didn't. That goes towards her  
6 credibility.

7 Now, she also said Victoria had enough marks on her  
8 face that this is all going down with her. She could focus  
9 as she was supposedly getting beaten down so savagely, to see  
10 what was going on with Victoria, because Romeo was slapping  
11 around and beating Victoria to the point where it was leaving  
12 marks on her face and leaving her all red. Do you remember,  
13 she said that? And we asked her that specifically.

14 Yet the State's own witness, David Barker,

15 contradicts her. Contradicts her. Because he says he  
16 then after the hard rock. And I asked them specifically, did  
17 the girls have any injuries, the other girls, Christina or  
18 Victoria?

19 And this is hours after supposedly this incident  
20 happens. And what did he say to you? No. And what did he  
21 say about the injury that Red had? Scratch on her head is  
22 the way he described it. She describes that they're much  
23 more horrendous, but what injuries does she describe to him?  
24 Scratch on her forehead.

25 And these records that are so important, did you

1 see Red's name anywhere in the records here? Because we know  
2 she had a cell phone. Do you remember her telling it, that  
3 she was trying to hide that cell phone, kicking it under the  
4 chair, trying to hide it because she didn't want Domonic to  
5 find out the call history between her and Mino, her new guy?  
6 Remember that?

7 Or her cell phone records, because she had a cell  
8 phone. She was using it. She's a drug dealer. Do you see  
9 anything that puts her there with these people at all? No.  
10 It's not there. Not any cell phone records that puts Domonic  
11 with Red there at the same time. It's not there. And don't  
12 forget, she got into a fight earlier that day with someone  
13 else, that can account for the injuries that she had.

14 Now, they brought in Correna Phillips. I know why  
15 the brought in Correna Phillips, to dirty up Domonic,  
16 obviously. But like I said, you can't cherry pick in this  
17 case. You just can't say, this witness said this, it fits  
18 into my theory. This other witness said this, it fits into  
19 my theory. You have to look at them on a whole. And you've  
20 got to compare what they said.

21 Remember Red's version? They go from the Oasis, to  
22 the Sahara, to White Boy's house. They went to Sportman's,  
23 they stayed in the car, the other people got out. From there  
24 they went to the desert.

25 Correna said she never saw or met Red. Remember?

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1 She was talking about Tuesday. She remembers Tuesday,  
2 specifically. She never saw Red, she never met Red. She'd  
3 heard about her, but never met Red.

4 Correna says Domonic, Victoria, Christina, Romeo,  
5 White Boy, herself, and Lynn were all in her house smoking.

6 They were getting high. Do you remember that, how she  
7 described what was going on that Tuesday? Remember? Domonic  
8 and Romeo went to Wal-Mart with her and Lynn, about 3:00 or  
9 6:00 o'clock that evening?

10 She remembers specifically, because Romeo took his  
11 shoes off and he went in there barefoot to get another pair  
12 of shoes. And they went into great detail to describe what  
13 Domonic purchased, was it a sweatshirt, was it a sweater? Do  
14 those phone records show that they were anywhere near a  
15 Wal-Mart?

16 Domonic was sitting there in front of a big table  
17 full of drugs. Do you remember she said that? That was on  
18 that Tuesday. Christina was coming in and out, selling the  
19 drugs. Romeo, he sent her out to do some prostitution acts  
20 throughout that whole evening. That's Correna's version of  
21 what had happened there.

22 Red said they were beaten all the way to the  
23 desert, right after the Sportman's. You heard how tight  
24 that time line was, right? Oasis, Sahara and White Boy's  
25 house. Did we go out? Did we not go out? I don't remember.

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1 A Carl's Jr. drive-through. Then we went to the Sportsman's.  
2 And then straight to the desert.

3 She says she saw Victoria getting beaten to the  
4 point where she had all these injuries. Correna never  
5 mentioned any injuries to any one of these girls, whatsoever.  
6 Red said they went from the desert to the Hard Rock.

7 Oh, wait. In this version, she said they stopped  
8 along the way at a bus stop so Victoria could get out and  
9 give some patron sitting at bus stop a blow job, that she'd  
10 never testified to before, that she never told the police  
11 before. Remember, you're judging her credibility.

12 What did Correna say? They went from the  
13 apartments to the Hard Rock Hotel to take these girls there,  
14 just these two girls there.

15 These are the State's witnesses that contradict  
16 each other; two people saying two different things about one  
17 event that's happening on Tuesday. Both can't be true. Both  
18 attack each other's credibility. That's what that proves.  
19 Like I said, you can't cherry pick and pick whatever the  
20 State wants you to fit into their theory.

21 Let's talk about the Hard Rock incident, the  
22 pandering count, Count 6. Dominio didn't give any drugs to  
23 the girls, that was Romeo, according to Red. Red always told  
24 you, she's not a prostitute. "I'm not a ho. I'm not a ho.  
25 I'm a hustler, but I'm not a ho."

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1 Red was angry with Christina and Victoria, because  
2 she blamed them for getting into this whole situation. They  
3 went into the bathroom, Christina and Victoria started taking  
4 drugs. Remember that? Red says that they were there for a  
5 couple hours, yet throughout this ordeal where she was so  
6 savagely beaten, never walks up to a security guard once?

7 She supposedly is coming from being beaten in the  
8 desert, someone stood on her head, her clothes are all  
9 disheveled. She goes to clean herself up, but what do the  
10 other girls do instead? They take drugs. She gets pissed  
11 off about that. And why is she pissed off about that?

12 Because they're messing with her money. They're messing with  
13 her money. Because she had a vested interest in those drugs,  
14 because she could hustle those drugs, she could turn those  
15 drugs into \$300. They gave them a couple hundred dollars  
16 worth of drugs, and she could turn that into \$300, if that's  
17 going to save their lives, because she was threatening them  
18 with their lives, remember that little statement?

19 Did that happen, or is that an exaggeration? Or is  
20 that one of her hustles?

21 Don't forget, when she was at the Oasis earlier  
22 that day, who was she talking about doing business with?  
23 Remember how she had to clear it up with Romeo, that she was  
24 no longer with Dominio, that she was a free agent, that she  
25 could work for whoever she wanted to work? Why? Because

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1 Romeo wanted to work with her. Because -- for whoever she  
2 was, she was a good hustler. She was good at selling drugs.  
3 She had a vested interest in those drugs. She was  
4 part of whatever was going on in this. But the State doesn't  
5 want you to believe that.

6 Let's talk about David Parker. Like I said,  
7 probably one of the more credible witnesses of the lay  
8 witnesses that testified in this case. And does he  
9 corroborate part of Red's story? Sure. But does he  
10 contradict a lot of her story, as well? Yes.

11 Picks them up at 2:00 or 3:00 o'clock. She had  
12 that scratch on her forehead that counteracts all the  
13 injuries that she should've gotten if someone was standing on  
14 their head full force, kicking them in the back of the head.  
15 You didn't see any bruises, any injuries on the side of her  
16 head that would account for that.

17 Christina and Victoria don't have any injuries.  
18 Remember, they went to his house to clean up? I asked him  
19 specifically, were they drinking wine, were they smoking a  
20 blunt? No, they're not going to do that in my house. That  
21 did Red tell you she was doing after this savage beating?

22 Drinking again, smoking a blunt.

23 And let's talk about Red's \$3,000 story, which is  
24 telling, I think, in this case. Because she testified here  
25 that their lives were in danger, they were in peril. If they

1 didn't come up with \$300, or \$360, whatever that amount was,  
2 there were going to be three shallow graves out in the  
3 desert.

4 But what does she tell David? Hey, David, I need  
5 \$3,000, not \$300. What do we know about their relationship?  
6 Remember how they bonded at the Sportsman's? Because David's  
7 brother died in an accident in Hawaii and Red went on a  
8 memorial ride in memory of her [sic] brother, and instantly  
9 they had a connection there? Remember that?

10 Don't you think if she only needed \$300 to save her  
11 life in this case he would've come up with that? More than  
12 likely. But \$3,000, well, I think he knows Red a little bit  
13 better than that. \$3,000, that's a lot of money. That's a  
14 lot of money for anyone. Was that part of her hustle? Was  
15 she hustling her own friend? Because she's got hustles on  
16 top of hustles, and her hustles never stop?

17 And remember what he said, if they were in such  
18 danger, they could stay there as long as they wanted to stay  
19 there. Sure, he had to go out of town to Pittsburgh in a few  
20 days, but if they were in that much dire straights and that  
21 much danger, there was no hurry for them to go.

22 But what does Red say? Oh, we had to get out of  
23 there because he didn't like a couple of the other girls. So  
24 he's kind of like, politely ask -- I can stay as long as I  
25 wanted but, you know, he didn't really like them. They had

1 to leave. Again, their own witness counteracting their main  
2 witness.

3 And he doesn't believe that they're in that much  
4 danger. Do you remember that? They could take care of  
5 themselves. A man who was this close with Red, who allows  
6 her to come to his house. Their house is like a getaway for  
7 her, so she doesn't have to be part of this drug scene  
8 anymore. Remember that they were talking about that? She  
9 would do laundry, get her act together for a little bit, and  
10 then go back in -- go back into -- into her hustles?

11 This person, is he going to take them back into the  
12 mouth of the lion if he thought that they were really in  
13 danger? If he cares so much about her and he's so close with  
14 her, he doesn't call the police, after this story about this  
15 horrendous beating that they suffered out there in the  
16 desert? He doesn't even take her to the hospital?

17 Look at the injuries that she had on her face,  
18 because it doesn't add up. It's her credibility that's on  
19 the line here in this case.

20 And let's go to the phone records. Let's go to the  
21 phone records. And when you're looking at these phone  
22 records they do play a part in this case, an important part,  
23 because like I said, without these people putting them into  
24 context they make no sense, they're just records.

25 Red's story. That time line of what had happened

1 to them, from back at the Sahara all the way until they're  
2 dropped off at the Hard Rock Hotel, right? Who's with them?  
3 At first, White Boy was there until he gets dropped off at  
4 home. But then who's with them after that? Romeo, Dominic,  
5 Christina, Victoria, and herself. Right?

6 I went through these phone records. And let's look  
7 at the phone calls when they're supposed to be together here.  
8 And let's look at McCarthy's phone calls and who he's calling  
9 in this case. Victoria Magee's cell. Victoria Magee's cell.  
10 Victoria Magee's cell. Victoria Magee's cell. Victoria  
11 Magee's cell. Victoria Magee's cell. Victoria Magee's cell.  
12 Victoria Magee's cell. If she's with him constantly that  
13 whole time, and he's calling her and direct messaging her,  
14 why would he do that? She's with him. She's right there  
15 next to him.

16 That's lying about a material fact in this case.  
17 You can discount her testimony. Those phone records  
18 themselves attack her credibility more than anything in this  
19 case. That's the person you get to judge in this case, her  
20 credibility, if it happened or not. Because they have to  
21 prove their case beyond a reasonable doubt.

22 She's got hustles on top of hustles, but she's not  
23 credible in this case. And eliminating her from that  
24 equation, from that puzzle, you have enough to acquit Dominic  
25 Malone.



1 But let's talk about their next piece. Sarah  
2 Matthews. She's the one that connects them. Remember, she  
3 talks about those girls being carried out of the South Cove.  
4 They need that piece of the puzzle, too, because without that  
5 piece they don't have a case. They need all three of these  
6 people here.

7 Now, May 17th and 18th involve Counts 7 all the way  
8 through 16, where -- and they both involve the State's  
9 witnesses, Sarah and White Boy, in this case. Let's talk  
10 about what happened over at the South Cove.

11 222, that was Black's apartment, remember? Red had  
12 been there earlier in that week, on a Sunday, with Christina.  
13 She knew Christina who was working for Black. Remember, the  
14 drugs, the connection between the drug dealers and people  
15 that were working for them? She was working for Black.

16 But by the time the police get there on the 22nd,  
17 because remember, they're at the South Cove on the 22nd, when  
18 they talked to Sarah Matthews the first time, it was the  
19 22nd. By the time that they get there, there was already  
20 other people that are in there.

21 They try to show you pictures of, you know, of what  
22 was going on inside of there with a purse overturned and, you  
23 know, the clothing all astrue [phonetic], things of that  
24 nature. But remember what the facts are in this case. There  
25 are already people that are there. There are already people

1 that are wearing the clothing that may belong to Christina or  
2 Victoria in this case. They asked them to take it off.

3 That purse is dumped over. It's dumped over,  
4 because the police requested the person who was using that  
5 purse to take everything out of there. Detective Collins  
6 told that person to do that. That's why it's dumped over.  
7 There's no signs of a struggle, because by the time they get  
8 there, that crime scene, doesn't really have anything of  
9 evidentiary value.

10 They showed you those dressers and those drawers  
11 and things that may have been inside of there. But did they  
12 tell you, they swabbed the area to see if they can collect  
13 any kind of DNA? If there's a struggle, two girls being  
14 taken by force at -- you know, against their will out of that  
15 apartment, don't you think there's going to be some type of  
16 residual DNA from someone? But you never heard any of that,  
17 did you?

18 Let's talk about 217. That's where Trey lived with  
19 Sarah. Remember that apartment? What was interesting is  
20 that there was something -- a big interest to Sarah inside of  
21 that apartment. Remember that cell phone that was on top of  
22 the fridge? She goes back on the 22nd to get her stuff that  
23 she wanted to get there. Right?

24 But what was there? We have a cell phone that  
25 said, "Island Girl," and "Christina" on it. Who do we know

1 is Island Girl in this case? We've heard that he referred to  
2 Christina throughout this case, Island Girl. There's no  
3 doubt that that's her phone.

4 But the police, they don't check the text messages  
5 on it. They don't check the voice mails. They don't even  
6 fingerprint it. Do you remember when Mr. Pike asked their  
7 fingerprint expert, could you get fingerprints off of a cell  
8 phone? Yeah, sure I can. I've done that in the past before.  
9 Did they even do that in this case? No.

10 What do they do? Detective Collins gives it to  
11 somebody in his Department that knows more about cell phones  
12 and they're not able to get any information on it, because  
13 there's no SIM card in it.

14 Well, I've had one of these phones before, Nokia's,  
15 and there isn't a SIM card on them. But what do we note,  
16 that this picture that was taken on the 22nd, and there's a  
17 time stamp on the date and the time. It's 5:22 on the 22nd,  
18 of '06. There's a button here that says, "Contacts," and  
19 there's a button here that says, "Menu." This phone is fully  
20 charged. Look at the little battery and where the symbol is.  
21 On these kind of phones, all you have to do is hit  
22 "Menu" to get access to other areas inside of that phone.  
23 All you have to do is hit "contacts" to see who she knows and  
24 who she's been calling on that phone. You don't have to  
25 process a SIM card. But did they even do that? No, they

1 didn't do that. That's the kind of police investigation that  
2 we have here on a double homicide, capital case.

3 The big question is, and I think some of you have  
4 written this down, how did Christina's phone end up in Room  
5 217 after her death? Because remember, they don't get there  
6 until the 22nd. It's the State's theory she died earlier,  
7 the week before.

8 So let's talk about Sarah, that middle piece of  
9 that puzzle that they need, and who she is. She admitted she  
10 lied to the police on the 22nd. Do you remember what she  
11 told them in that first contact? "I'm Dominic's girlfriend."

12 She didn't tell them she was Trey's girlfriend. "I'm  
13 Dominic's girlfriend." She knew the room was under Dominic's  
14 name, but she was staying there with Trey.

15 She said she already moved out to the sunflower  
16 across the street. But she tells the police, as she's trying  
17 to get in there to get her stuff, "I'm Dominic's girlfriend."  
18 Looked at them in the eye and lied. She lied about that she  
19 was still living there, because she wasn't. But she needed  
20 to get access to that. To get what? I think we know what  
21 she wanted to get access to.

22 She lied to them when she talked to them on the  
23 5th, June 5th, about a week-and-a-half later, two weeks  
24 later. She lied to them again. This is the person whose  
25 credibility you have to judge. She told the police, I don't

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1 do drugs, and she's got a conviction for drug trafficking.

2 She told the police, Trey doesn't sell drugs, yet  
3 we heard all the connections that he has dealing with drugs  
4 with everybody in the neighborhood, and she even admitted,  
5 yeah, he does do drugs, on the stand. She was covering for  
6 him then. She even said that on the stand. "I was covering  
7 for Trey."

8 She has kids with him. She had a relationship with  
9 him. They're no longer together, but she was covering for  
10 the father of her children.

11 And neither one of these two statements -- and this  
12 is key, another material fact -- neither one of these two  
13 statements does she ever tell them about the abduction. The  
14 first time she has contact with the police does she say, hey,  
15 you know what, something interesting happened here. It's  
16 funny that you guys are here. A couple days ago I saw this  
17 guy I know as Dominick, and this other guy I know as Romeo,  
18 grab these two girls and force them out of here. They're  
19 crying and they're -- and they're, you know, dragging them  
20 out of here, taking them into a car and disappearing.

21 Does she say that at all? No. Does she even say  
22 that in her statement from the 5th? No. It changes a little  
23 bit. It says, hey, yeah, I did see them and, yeah, they were  
24 upset with them. But she never says in that statement that  
25 she saw them dragging them out of there.

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1 The first time you hear that is when she's taking  
2 that stand and testifying. This is a person who has no  
3 problems lying to anybody to cover for Trey. And you know  
4 what's key about that? She got it wrong. She got it wrong.  
5 That middle piece of that puzzle, got it wrong.

6 Because the only person to say that this abduction  
7 happened in the middle of the day is Sarah Matthews. Sarah  
8 Matthews said that, remember? Middle of the day, they were  
9 fully dressed, because I would've remembered if they were  
10 naked. They weren't that. Which contradicts what Red said,  
11 because Red said the only such clothing they had to their  
12 name was left in that room, so they had to be drug out of  
13 there naked.

14 Again, you can't cherry pick. You can't say, this  
15 fits and this fits. No. What happened was, she got it  
16 wrong. She got it wrong, because she was still covering for  
17 Trey. And what's the strongest evidence that we know that  
18 she got it wrong? Let's go back to the phone records that  
19 the State needs to put in context.

20 They've shown you time, and time again, on the  
21 18th, in the early morning hours, how Dominick is at the South  
22 Cove, how McCarty's at the South Cove, how they know that  
23 this -- you know, this kidnapping and everything that  
24 instigated everything that followed that, started at this  
25 point in time in the South Cove; remember that?

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1 Remember those records? 12:38 a.m. And I don't  
2 care who you are, you're not going to confuse 12:38 a.m., in  
3 the morning, with the middle of the day. That's a lie.  
4 That's not a mistake. And you're not allowed to fill in the  
5 blanks for the State. And because of that lie, you can  
6 disregard everything she has to say about this. Because she  
7 didn't know what happened out there.

8 Who is she still covering for in this case? That's  
9 enough reasonable doubt to acquit Dominic Malone in this  
10 case.

11 But we're not going to stop there. Let's talk  
12 about Herb. He's their main witness after the fact. They  
13 need him to try to tie everything up at the end. He's that  
14 piece of the puzzle. And who is Donald Herb?

15 Two time convicted felon, drug dealer, drug user, a  
16 liar. A liar. This a person's whose credibility you've got  
17 to judge. The first question I asked him, "You're a liar?"  
18 And he had to admit, yes, I'm a liar, because I lied to my  
19 probation officer, I lied to the drug court, I lied to family  
20 -- to my family, my own flesh and blood. I had no problems  
21 lying to the police, looking at them straight in the eye and  
22 lying to them.

23 This is the person who they're basing this case on,  
24 this person's credibility. Had he lied to his probation  
25 officers. Remember? He said he was going to the Sportman's

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1 pretty much on a daily basis, selling drugs to Correna and  
2 Lynn, \$20 or \$40 worth on a daily basis. Oh, wait, wait,  
3 according to him, it's not really a lie, because he was never  
4 asked directly that question by his probation officers. So,  
5 I guess, you know, since they didn't ask me that directly, I  
6 must not be lying.

7 Come on, ladies and gentlemen. I think we all know  
8 better that that. He was lying by omission in this case.  
9 Drug court. He got in trouble in drug court.

10 Remember those sentences that he had to write, all those  
11 things at drug court? What was he doing? Selling drugs,  
12 using drugs. Oh, I don't use drugs. I don't use drugs.  
13 Wait, wait, wait. Oh, yeah, I did get a couple dirty --  
14 dirty UA's there that tested positive for cocaine. That's  
15 right. That's right. No, but that's not because I was using  
16 it. No, no, no, no, I must have been handling it while I'm  
17 doing all my drug deals. But drug court didn't ask me  
18 specifically. And it doesn't say in the rules that I can't  
19 sell drugs while I'm in drug court and I'm doing my rehab. I  
20 just can't take them. I can sell them, but I can't take  
21 them.

22 This is the person who they want you to rely on,  
23 ladies and gentlemen.

24 His family. Why do you think they brought his dad  
25 up here? Because they've got to try to bolster him. Because

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1 they know how shaky of a witness he is for them. Dad, solid  
2 guy. Not going to lie for his son on this kind of a case.

3 He was there definitely doing sentences.

4 He pulled the wool over their eyes. I asked him,  
5 would you pervert your son to sell drugs out of your home?

6 No. I would never do that. No, he wouldn't do that. Not  
7 from my house. Yet he admitted it on the stand, that he did  
8 do that.

9 And who was living there? His mom, his dad, his  
10 brother, his nine year old son. This is the person's  
11 credibility who you have to judge in this case.

12 To the police, so that's no big deal. For a guy  
13 who can do that, to probation, drug court and his family, do  
14 you think lying to the police is hard? Not at all. And he

15 admitted pretty much his whole first statement was a lie.

16 And then he admitted, yeah, part of his second statement was  
17 a lie, too. And then he got pressured by the police. He was  
18 afraid of prison. He was desperate. He was willing to do  
19 anything that he could do to avoid custody. Remember that?

20 I asked him those questions. And he was.

21 And look at his demeanor on the stand. And this is  
22 key. This is important. Because throughout his testimony,

23 that they say is so key in this case, he had a few slip-ups.

24 You figure that out later, because there's no doubt, this is  
25 a smart guy, but there are a few slip-ups.

1 Remember when I asked him about what he talked

2 about to the police? I asked him when he got phone calls,

3 you know, the night of the 17th, going into the 18th in the

4 early morning. Remember those phone calls I was asking

5 about? And he said, yeah, I got a call earlier in the

6 evening, you know, 8:00 o'clock, 9:00 o'clock at night, I was

7 doing my sentences, can I come out and play.

8 Remember that series of questions that I asked him?

9 And then I asked him, the police asked you, when you got that

10 phone call, were the girls already with him, with Romeo?

11 Yeah, they were there. Detective Collins asked again, and

12 the girls are already there? Yeah, they were there.

13 But what did he say on the stand? What was his

14 demeanor on the stand when I asked him those questions? No.

15 Doesn't say that. No. Okay, well, let me show you what you

16 said to the police. Let me refresh your recollection. No,

17 doesn't say that. It wasn't until we had to read it together

18 here, you know, using that screen and using the monitor did I

19 say, was this question asked for you, verbatim, word for

20 word? Yes. Was this your response? Yes. Was this question

21 asked to you? Yes. Was this your response? Yes.

22 So he did say those things to the police. And why

23 is that a slip-up? Because he knows that if he knew about

24 those girls, and them being disappearing 8:00 o'clock at

25 night, and they're being taken out to the desert to have

1 what's done in this case, and then later he goes out to join  
2 them, according to the State's theory, he's part of the  
3 conspiracy. He's just as liable as the main players in this  
4 case.

5 And he didn't want to be part of that conspiracy.  
6 He was trying to avoid that like the plague. He didn't want  
7 to be part of -- any part of those murders. Who has more  
8 reasons to lie about that than him? So he caught himself.  
9 And as he reviewed those transcripts and those statements,  
10 hours and hours and hours. How much time did he spend doing  
11 that; 8, 10 hours? He realized where he slipped up.

12 And that's not the only place he slipped up.  
13 Remember, when they're talking about the girls being out in  
14 the desert and the reason why they took their clothes was so  
15 it would take them longer to get back into town? How would  
16 he know that if he wasn't there? He slipped up again.

17 And whatever that goes to, I think it goes to what  
18 happened out there. Where they trying to teach him a lesson?  
19 Were they killed after the kidnapping, or for battery, or  
20 something to that effect? I don't think it was  
21 premeditation, deliberation, whatever happened at that  
22 desert, because they wanted those girls to just take a long  
23 time to get back into town.

24 Whether it be felony murder, or second degree, or  
25 something like that, whatever he was involved with, he

1 slipped up. That's what he did in this case.

2 And remember how he had to rush back to get home to  
3 turn off that alarm? Common courtesy so he wouldn't wake up  
4 his folks, because he goes to work early, you know, he needs  
5 to try to be nice to his folks, despite the fact that he's  
6 selling drugs out of their house. Was it really for that, or  
7 was it so that they wouldn't wake up so they knew he wasn't  
8 gone?

9 And they have a picture. Remember that video, they  
10 showed you the picture of what he was wearing that day? Did  
11 you hear any testimony from Detective Collins, that, we got a  
12 search warrant, we went into the house, we got those  
13 clothings to double check that there weren't any of the  
14 girls' blood on top of that clothing? They know what he was  
15 wearing. They have a video of it. It's time stamped,  
16 according to the State. Did they do that? No. They didn't  
17 do that.

18 And one of you picked up on this. I don't remember  
19 for sure who it was, but one of you picked up on it, and it  
20 was a great point of question. Why'd you go by yourself out  
21 there to get the car? You had two cars. Oh, because the  
22 green car was a better car than the white car I had, that I  
23 -- you know, that I bought from a buddy, so I needed to go  
24 get the green car, because they were going to take it out of  
25 state, and I didn't want them to take it across the, you

1 know, state border. So I had to go get that car.

2 That car was more important to them [sic] than what  
3 was going on with these girls. If you want to believe what  
4 he's saying, he's got a phone call. He's hearing something  
5 going on on the other end. Right? And when you look at  
6 those records, you're not going to see any kind of direct  
7 connects between him and McCarty, they're phone calls.

8 Use your common sense. We all have cell phones.

9 How much background noise are you going to hear? How clearly  
10 did he say what he needed to say to fill in that last part of  
11 the blank for the State?

12 He was really charged with everything, and he was  
13 able to manage his way to deal himself out of it, pled guilty  
14 to his third felony, accessory after the fact, 1 to 5 year,  
15 probationable felony. And that's what he expects to get, as  
16 soon as he finishes his part of the negotiations.

17 Now, let's talk a little bit about what the  
18 scenario was when all this was going on. Put it in  
19 perspective. According to him, he's involved with these  
20 crimes the week before. The police went to his house on the  
21 23rd. They impound his vehicles, because they want to go  
22 inside of it. He knows this is serious. He knows that there  
23 are two dead women who are out in the desert.

24 And they talk to him. In that first statement, do  
25 you remember? And they put the press on him. Do you want to

1 be a witness? Do you want to be a suspect? Well, those  
2 choices, whose going to want to be a suspect, ladies and  
3 gentlemen? And they put the press on him.

4 And, you know, the thing that I want you to keep in  
5 mind is, that a lot of good cops, a lot of them tend to press  
6 hard on a terrible case. And there's no doubt in my mind  
7 that this is a terrible case. But when you press so hard you  
8 tend to lose site of how coercive your tactics can be. And  
9 when you do that, you've also got to always never forget who  
10 the source of that information is in this case.

11 And they pressed him, and they pressed him hard on  
12 this case. The first interview, the second interview, until  
13 they said, hey, let me give you a story. Let me tell you  
14 what we think in this case. And he's smart enough to pick up  
15 what they were thinking in this case, and what his role could  
16 be in this case.

17 There's no doubt in my mind he's an ignorant  
18 person. They even asked him, you know, it sounds like you  
19 could be an accessory. You can fill in the blanks, can't  
20 you? Oh, yeah, he can fill in those blanks. And how did he?  
21 After the fact. Those three little words. He picked up on  
22 that -- I can't snap, but there we go, right away.

23 This is the person's credibility who you get to  
24 judge. Is he being honest in this case, or is he not? He  
25 got arrested. He was desperate. Remember, he was trying to

1 like, dispute the fact that he was saying, hey, I'll be a  
2 witness, I'll be a witness, before he was arrested, or after  
3 he was arrested.

4 But I had to show him on that transcript, you were  
5 arrested here at this point in time? Yes, I was. And a few  
6 pages later, what did he tell the police? Hey, I'll be your  
7 witness. That's what you need in this case. You need that  
8 last piece of the puzzle. I'll be that man for you.

9 And, oh, guess what? Let me tell you something.

10 Check my phone records, because they're going to show that I  
11 was talking to McCarty when all this is going on, even though  
12 you think I'm involved in it, I'm not really involved. Let  
13 me -- let me throw some other people under the bus in this  
14 case. And the phone records will back me up.

15 And do they? Do the phone records really back him  
16 up? What do they really show? Time of death? No. The  
17 coroner testified to that. He couldn't even tell you at what  
18 time they were killed. Just, sometime the week prior to them  
19 being found. The only way we know that, is you have to  
20 believe Donald Herb. He has to be credible, to put those  
21 phone records in perspective.

22 Do they tell you who did what? No. The only  
23 person that we have is Donald Herb. He has to be credible in  
24 order for you to believe that. Do they tell you Dominick was  
25 at Dawson? Remember the area where the girls were kept up,

1 that Wagonwheel, that area? Look at these phone records.

2 Because I looked at them, and the series of phone records  
3 starting at like 1:08, all the way down to like about, I  
4 don't know, 7:00 in the morning, 4:00 to 7:00 in the morning,  
5 those are the ones that are going back and forth between  
6 White Boy and Romeo, Dominick's phone is not there.

7 When have you even asked the question, when was the  
8 last time you used this phone? South Cove. When was the  
9 next time you used this phone? Like, 7:00 or 8:00 in the  
10 morning. His phone records are not on there. It's Herb, and  
11 it's McCarty, but it's not Dominick. Was he at Railroad Pass?

12 No. His phone records aren't there. It's Herb, McCarty, but  
13 not Dominick's.

14 Did he hide the weapons? No. Who did? Romeo and  
15 White Boy. They were at the murder scene together. They hid  
16 the weapons. The phone records back that up. They're at  
17 that Dawson area, they're at the Railroad Pass area, they're  
18 beyond that. That's what those records show.

19 And you know what's curious about this case, these  
20 records that are so damning according to the State? It was  
21 curious and something that I want you to pick up on when  
22 you're looking at the map of things that are going on in  
23 here, is there are clusters. There are little clusters of  
24 calls. And I kind of like highlighted them on my version  
25 here.



1 And you have these -- you can go back and you can  
2 look at these. And I urge you to do that. Line them up if  
3 you want, this way, so you can put them in perspective.  
4 Whenever there's calls that are involving Domonic, there's  
5 clusters of calls that involve the Glitter Gulch, and the  
6 Moulin Rouge, and Owens, and Downtown, and the Spaghetti  
7 Bowl. Remember those little clusters that they would -- the  
8 State would highlight, as well as we would highlight? Yes,  
9 they do exist.

10 Because they indicate when Domonic was either with  
11 Herb or not, and where he was at. And where does Domonic  
12 live? Over on Blankenship. And where are the clusters that  
13 are around there? The Moulin Rouge. You go to Gulch,  
14 Downtown, it's not on here, but Owens is on there as well.  
15 Those are the ones that are on there.

16 The State wants you to think, oh, well, you know,  
17 that doesn't really mean anything, because they could take  
18 the 95 and drive down if they're hanging out at the Oasis, if  
19 they're hanging out downtown, they just take the 95 and get  
20 down. But, no, that's not what they show you. And when you  
21 look at these, you'll see what they show you. They show you  
22 that they were together at times, and every time they're  
23 around it, you're going to hit the same clusters, to Glitter  
24 Gulch, to Downtown, the Spaghetti Bowl, to Owens, all that  
25 stuff.

1 But what's key here, a couple times here, on the  
2 16th, they show McCarthy over by the Western. They show  
3 Domonic by East Sahara. Now, I don't know if the Western's  
4 up on this map, but if I remember right, Western's over here  
5 by the Oasis, and Sahara. East -- the East Sahara one is on  
6 its way down to the Sportsman's. They're in opposite  
7 directions. They're not together. That's on Wednesday.  
8 They don't really show them together again -- I  
9 mean, there are occasions when they're around each other, at  
10 the Hard Rock at 4:00 o'clock on the morning? Remember that?

11 Does that mean Domonic was with them the whole time before  
12 that, or not? They split up. They didn't bring in any  
13 evidence that they got back together, except for those  
14 witnesses that are supposed to be credible, right?

15 The phone records don't tell you that they got back  
16 together before the Hard Rock. Was he with them when they  
17 were looking for the girls? Sure. Does that make him part  
18 of anything? No. Never found the girls at 4:00 o'clock in  
19 the morning. Did he get dropped off? Because right after  
20 that, there was those clusters at the Owens house [sic].

21 Does he get dropped off at home? Yeah, he does. Then he's  
22 not back with them for another significant period of time.

23 And then is he with them at the South Cove? Sure.  
24 Do we know what happens there? No, we don't, because Sarah's  
25 not credible. But what do we have? We have another cluster,

1 of Domenico, from the Bruce, to Downtown, to the Moulin Rouge,  
2 to the Spaghetti Bowl, to Glitter Gulch. And there's time --  
3 there's about 10 minutes there where he's taken and dropped  
4 off at home.

5 And then what's the first call after that, that  
6 McCarty makes at 1:08? Who's the first person he calls in  
7 this case? Donald Reid, White Boy. Domenico had no motive in  
8 this case to kill anybody. And he didn't, because he wasn't  
9 there. He was at home. The only person that ties him into  
10 this is White Boy. He had nothing to -- no reasons to hurt  
11 or want to kill Victoria or Christina. He was not connected  
12 with them in any way whatsoever. He had no history with  
13 them.

14 Who did? Romeo. Romeo had a connection with  
15 Christina and Victoria. He was trying to use Christina to  
16 get Victoria. Was that his girlfriend, was that his  
17 prostitute? I don't know. It wasn't Domenico's.

18 Who else? Red was mad at Christina and Victoria  
19 because, you know, they were messing with her money. Red  
20 worked for almost everybody in this case; Trey, Black,  
21 Demarco, you know, Romeo. Remember? She had to clear up  
22 about choosing up between her and Domenico, all those things.  
23 And let's think about this, and let's think about  
24 the relationship between Romeo and White Boy. Best friends.  
25 He said it on the stand. They lived together. White Boy,

1 with Romeo, and his family. They were described as two peas  
2 in a pod. They would see other daily, call each other daily,  
3 they would sell drugs together. Remember? White Boy bought  
4 Romeo a car, because he needed one to take his family around.

5 I mean, how close of a friendship do you have to  
6 have, for someone to go buy you a car? Because it's cheaper  
7 for me to buy you a car, because the rental on it is too  
8 expensive. And by the way, the rental on it, it's on my  
9 name. So not only did I get you a rental car, let me buy you  
10 a car, so I don't have to pay so much for rental fees.

11 That's how close these two people are.

12 They were partners in crime. Okay, ladies and  
13 gentlemen? They were partners in crime. Because, here,  
14 Jason McCarty, Romeo, may have a motive. That motive doesn't  
15 transpose to Domenico whatsoever. And this is one thing that  
16 you've got to use your common sense on.

17 You don't kill somebody with a complete stranger.  
18 Who's more likely to do this; two best friends, or someone  
19 who you met with, like, three or four weeks earlier? Is when  
20 they started talking to Domenico and started hanging around  
21 with him somewhat. And they weren't partners. They each had  
22 their own little drug trade, although White Boy and Romeo  
23 were more connected than anyone.

24 But three or four weeks earlier, are you going to  
25 go out and kill someone, in this case, take more care in

1 hiding the weapons than disposing of the bodies? Really?  
 2 No. He's not credible. And if he's not credible, these  
 3 records, they don't mean what the State wants you to think  
 4 they mean. That's more than enough to acquit Domanic.  
 5 And we're not going to stop there. Let's talk  
 6 about the investigation in this case. Double murder, capital  
 7 case. What happened here? Time stamps. Something that they  
 8 could try to verify easily? When's the last time you  
 9 calibrated the machine? What's the difference between what's  
 10 on the video and what's not on the video? That's easy police  
 11 work. Was that done here in this case, a double homicide, a  
 12 capital case? No.  
 13 Chain of custody. The videos that were coming in  
 14 here, there was a date that said, November of '07, and then  
 15 after that, May or June of '07. My calendar, November never  
 16 comes before May or June. That shows you the lack of  
 17 precision that they had on a double homicide capital case.  
 18 Broderway, remember she testified and they brought  
 19 her in here, you know, to say how Domanic was around there  
 20 with her, you know, and that Romeo had tried to give her some  
 21 money, things of that nature? She said that happened around  
 22 10:00 or 11:00 on the 17th. This video is time stamped the  
 23 18th, 4:00 in the morning. They looked that up from midnight  
 24 of the 18th, forward. They couldn't go back an hour or two  
 25 to see if what Broderway said was true?

1 Remember what she said on the topographical map  
 2 where everything happened, right by the gas pumps, they were  
 3 parked up here in this area where you could see her, Domanic  
 4 and Romeo and these two other girls that nobody knows about?  
 5 They didn't even go back a couple hours to see if that even  
 6 existed to try to corroborate her? No.  
 7 And remember her testifying about how like what  
 8 happened at the fight, how Red said she grabbed her by the  
 9 hair and showed her to Romeo, see this is the guy you wanted  
 10 to pay to kick my ass? She said that never happened. Again,  
 11 two witnesses countering each other. You can't have it  
 12 both ways in this case. The evidence is, what the evidence  
 13 is.  
 14 And remember the video from the 76 Station, where  
 15 Herb bought McCarty a bottle of water, and we don't know if  
 16 he washed his hands or drank it, because at one trial he says  
 17 he drank it, and at another trial he says he washed the blood  
 18 from his hands. Detective Collins' look of surprise, video  
 19 from 76?  
 20 I mean, there's no doubt that they tried to do the  
 21 right thing in this case. They went to the Hard Rock to try  
 22 to get the videos to see if they could corroborate Red and  
 23 they didn't get them, because they got the wrong ones. And  
 24 by the time they went back, those didn't exist anymore.  
 25 There's no doubt that they were trying to do good

1 work on this case, but they didn't. On a double homicide  
2 capital case, they should've done better, but they didn't.

3 What did the forensics tell you? Remember, they're  
4 showing up to a scene where they don't know what happened,  
5 who's involved, or why. Clothes are all about, things of  
6 that nature. Did they test any of them? Even to rule out  
7 that they didn't belong to the girls, because they had their  
8 DNA. At the coroner's office, they took all that stuff from  
9 those girls. They could've compared it to them.

10 [Inaudible] relate to the girls? Does it relate to  
11 anybody else in this case as they came up? No. It was never  
12 done. What evidence was inside of the green Alero?

13 Fingerprints inside the green Alero? No. I remember  
14 fingerprints on the outside window, a partial palm print that  
15 belonged to Domico on the passenger's side, but that's  
16 probably the only connection that they were able to make in  
17 this case with Domico.

18 They had some hair in there, and they told you --  
19 you know, Red told you what happened in there if you choose  
20 to believe her. But they had tape lifts. Were there any  
21 cells? If there was a brutal beating that was going on  
22 inside of that car? We shed skin cells all the time. Was  
23 there anything that turned up that would show that Domico  
24 was inside of that car? No, there wasn't.

25 And the tire tracks. Tire tracks. Remember they

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1 took pictures, precision, took pictures out at the desert,  
2 you know, on the tires. They had all the cars, they could  
3 compare all the tire tracks? They had the expert on the  
4 stand. They didn't put anything together? No, they didn't.

5 Remember, the condom that was out at the desert?  
6 Their DNA expert told you about that. The non-nucleated  
7 cells. And obviously, it was -- the condom was deteriorated  
8 after a couple years, but those non-nucleated cells could  
9 provide some information in the future as to whether or not  
10 it was related to the case or not.

11 But unfortunately, because of the two year lapse in  
12 testing, whatever they could do now as far as doing the DNA  
13 testing, it destroyed that evidence. Do you remember that?  
14 But who asked that it got tested? Shouldn't it have been the  
15 police that were investigating this case so they could rule  
16 it out? I mean, you have two naked women in the desert, and  
17 you have a condom that's not far away from the body.

18 No, they decided, hey, these look old, that looks  
19 old, I don't think we should test it. We shouldn't do  
20 anything regarding this evidence. That's not the kind of  
21 police work you'd expect on a double homicide capital case,  
22 ladies and gentlemen. It's not.

23 MR. DISTACOMO: Judge, I apologize.

24 MR. CMO: And --

25 MR. DISTACOMO: May we approach?

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1 THE COURT: All right.

2 (Bench conference)

3 MR. DIGIACOMO: I've let it happen --

4 THE COURT: Come in closer.

5 MR. DIGIACOMO: I've let it happen ten times. He

6 should be admonished for addressing the penalty. He's asking

7 them, in a double (inaudible) capital case. They can't

8 consider penalty. And he's asking them to consider the

9 penalty. I'm asking you to instruct him to not reference the

10 penalty in this case again, until it gets to the penalty

11 phase.

12 MR. CAMO: I'm not referencing the penalty but

13 that's the nature of this case. We've talked to them about

14 that this case could be, but I'm not referencing (inaudible).

15 MR. DIGIACOMO: In a double homicide capital case,

16 meaning, there's a different standard for the guilt phase in

17 a capital case than there is in any other type of case. He

18 can't make that argument, Judge. It's improper.

19 THE COURT: I don't think he's talking about -- I

20 mean --

21 MR. DIGIACOMO: He keeps referencing the penalty,

22 Judge.

23 THE COURT: Well --

24 MR. DIGIACOMO: You're not allowed to.

25 MR. CAMO: He's interrupted me right in the middle

1 of (inaudible).

2 THE COURT: Okay. I don't think he's referencing

3 penalty, so I'm going to allow it.

4 MR. CAMO: Thank you.

5 (End of bench conference)

6 MR. CAMO: Okay. Who requested it? The defense

7 did. So we don't know what could've been there, because it

8 wasn't until two years later when Mr. Pike and myself

9 requested that these things get tested that should've

10 happened in this kind of case.

11 What do we do know about what was done about the

12 golf club? No response. It could belong to any male.

13 Remember, we don't know, because there wasn't enough

14 specificity as to who it was. But what else do we know?

15 Donald Herb had a cut on his hand. He had a cut on his hand

16 when he was talking to those investigators, and it didn't

17 happen at work, because I asked him specifically, if you got

18 a cut on your hand, wouldn't you have reported it to your job

19 site? Yes, I have to. It's one of those policies that they

20 have at their work.

21 We do know he handled that club. He admitted to

22 that. We also know he didn't go to work on the 17th, and he

23 only went in for 45 minutes on the 18th. Why? So he could

24 be seen at work, so he could have some type of an alibi over

25 there? Why?

1 What did the forensics show you in this case,  
 2 ladies and gentlemen? Dominic Malone's fingerprints are not  
 3 on the -- not on the golf clubs, nor is his DNA on that golf  
 4 club, nor is his fingerprints on that knife that was used in  
 5 this case, nor is his DNA on that knife. No. They don't  
 6 show you anything like that.

7 This is objective science. They don't tie him to  
 8 this case. Remember what I told you this case was about?

9 The credibility of those three people? What about the rocks?

10 That's useless. There was nothing on that rock. There

11 wasn't even blood there. So nothing scientific lies Dominic  
 12 to this case. This case is about those three witnesses,  
 13 trying to put this map into context. And they can't.

14 Probably one of the most important instructions

15 that you're going to have here, reasonable doubt. It's based  
 16 on reason, not mere possibility. It's the kind of things  
 17 that govern a person in the more weighty affairs of life.

18 Are they credible? Can you trust their word as to what they  
 19 said on that stand?

20 Do you want to go away for the weekend? Would you

21 give them the keys to your house so they could take care of

22 it, any one of those witnesses that they're relying on in

23 this case? Would you let them take care of your house and

24 take care of your kids if you went on vacation? No. If you

25 wouldn't do that, they're not credible, they're not reliable.

1 Those are the type of weighty affairs that we're talking  
 2 about, that give you pause, and that give you reasonable  
 3 doubt in this case.

4 And if you have reasonable doubt in this case, the  
 5 State asked you, as well as we did in voir dire, if they  
 6 haven't met their burden of proof in this case, if they  
 7 haven't proven every element that they should in this case,  
 8 and they haven't, not with these witnesses and the facts that  
 9 were presented to you, because you're not allowed to fill in  
 10 the blanks for them. You've got to take the case as it was  
 11 presented to you.

12 They haven't met that burden. And if they haven't  
 13 met that burden, then there is reasonable doubt in this case  
 14 and Dominic is entitled to a verdict of not guilty.

15 Thank you.

16 THE COURT: Thank you, Mr. Cano.

17 And how long are you -- you know, ladies and  
 18 gentlemen, let's take a break. You've been sitting for  
 19 awhile. I want to make sure we have your full attention  
 20 during these arguments.

21 So during the recess, it is your duty not to  
 22 converse amongst yourselves or with anyone else on any  
 23 subject connected with this case, or to read, watch, or  
 24 listen to any report of or commentary on the trial, by any  
 25 person connected with the trial, or by any medium of

1 information, including without limitation, newspapers,  
2 television, radio or internet. Or form or express an opinion  
3 on any subject connected with this case until the case is  
4 finally submitted to you.

5 We'll see you back in a few minutes.

6 (Off the record at 2:26 p.m. until 2:27 p.m.)

7 [Outside the presence of the jury]

8 MR. DIGIACOMO: -- record. Do you want to do it on

9 the way back from the break, or --

10 THE COURT: We'll do it now. Go ahead, Mr.

11 DIGIACOMO. We're outside the presence.

12 MR. DIGIACOMO: Just a couple of things, Judge.

13 I just want the record to reflect that I made an

14 objection during Mr. Cano's closing in which he repeatedly

15 used the statement, "Is this what you expect from police on a

16 double homicide," which I didn't have a problem with. That's

17 nothing inappropriate.

18 But then he kept saying, "capital case." It was

19 kind of the theme of the last five minutes of his closing. I

20 let him do it 5 or 6 times. The only difference between a

21 double homicide, and a double homicide capital case, is that

22 there's some different standards for the police officers when

23 the death penalty is involved.

24 And the only way that that becomes relevant is if

25 the jury could consider the fact that it's a potential death

1 penalty case in making their determinations. I recognize the  
2 Court overruled me, but I did note that Mr. Cano didn't  
3 reference it again after I made the objection.

4 However, during the ending of his closing argument  
5 he quantified reasonable doubt for the jury, as the more  
6 weighty affairs of life, and started listing out those  
7 affairs, Judge. It was an objectionable. I don't want the  
8 Court to instruct, but I want the record to reflect that

9 occurred, and that the -- that that behavior is specifically  
10 precluded by a number of cases, that you cannot make those  
11 type of references because it's highly prejudicial.

12 THE COURT: Anything to add, Mr. Cano?

13 MR. LALLI: Well, if I can just --

14 MR. CANO: Your Honor --

15 THE COURT: Oh.

16 MR. LALLI: If I can just supplement, Your Honor.

17 With respect to the reasonable doubt, what Mr. Cano did is he  
18 talked about giving people keys to your house, things of that  
19 nature, would you do that. Those are the weighty affairs of  
20 life. He specifically said that.

21 And under Randolph v. State, 117 Nev. 970, a 2001  
22 case, the Nevada Supreme Court said, quote, "We again caution  
23 the defense bar and prosecutors alike not to explain,  
24 elaborate on, or offer analogies or examples based upon the  
25 statutory definition of reasonable doubt. Counsel may argue

1 that evidence and theories in the case before the jury either  
2 amount or fall short of that definition, nothing more."

3 So it is a blatant violation of the Randolph  
4 decision.

5 THE COURT: Mr. Cano?

6 MR. CANO: The record speaks for itself, Your

7 HONOR. THE COURT: I'm sorry?

8 MR. CANO: The record speaks for itself, Your

9 HONOR.

10 Although, Mr. Disineno objected to my terminology  
11 of calling this a double homicide, capital case, I think the  
12 record did overrule that objection and said that I could go  
13 into that, because I was not making reference to the penalty  
14 in this case, and I was not making reference to the penalty  
15 in this case. And we'll submit it, Your Honor.

16 THE COURT: Well, how about the issue of the

17 weighty affairs issue as far as --

18 MR. CANO: I think I had --

19 THE COURT: -- letting someone use your --

20 MR. CANO: -- proper argument in this case, Your

21 HONOR, and that was proper argument.

22 THE COURT: You know, the Court always -- not this

23 Court or every court -- is always in the position of when do

24 we interject ourselves into the case. I am aware of

25 published opinions that various Judges in this courthouse

1 have -- unpublished opinions -- have reviewed where the  
2 Supreme Court has said perhaps the Court should have  
3 intervened.

4 I am troubled by such statements, because at some  
5 point the other side may not want to object for tactical  
6 reasons, because they may come back on their rebuttal  
7 argument with what we'll call a "zinger" for that.

8 And there was no objection by the State when Mr.  
9 Cano gave the example of letting someone stay at their home.  
10 And there's a balancing process by this Court and, you know,  
11 I didn't -- it wasn't intentional not to sum sponte interpose  
12 an objection on behalf of the State or the court system.

13 It's just, I'm just troubled by the fact that we're put in a  
14 position to guess what the other side's trial strategy is.  
15 As a defense attorney, sometimes I would welcome

16 the prosecutors overstating their case, because then I felt  
17 like I could come back in and attack that. And I don't know  
18 if it was a tactical decision on behalf of the State not to  
19 object or not.

20 And so that's why I didn't stop Mr. Cano from doing  
21 that. I did not have an objection. And like I said, I don't  
22 know if that was the State's decision not to object or not.

23 And, you know, the Supreme Court has sometimes allowed  
24 statements that weren't objected to, and other times they've  
25 admonished Judges that we should've interjected ourselves



1 into that. I don't know --

2 MR. DIGIACOMO: Thank you, Your Honor.

3 THE COURT: I don't know what the answer is to that  
4 question.

5 MR. DIGIACOMO: All right.

6 THE COURT: So --

7 MR. DIGIACOMO: Thank you, Judge.

8 THE COURT: -- I'll see you back in a few minutes.

9 (Court recessed at 2:32 p.m. until 2:39 p.m.)

10 [In the presence of the jury]

11 THE COURT: Welcome back, ladies and gentlemen.

12 Mr. DiGiaco, are you ready?

13 MR. DIGIACOMO: Yes, Judge.

14 THE COURT: All right. Proceed.

15 STATE'S REBUTTAL CLOSING ARGUMENT

16 MR. DIGIACOMO: Every criminal trial, every civil  
17 trial, pretty much anything we do in this courthouse, it's  
18 all about the same thing. It's all about the truth. End of  
19 the day, that's all that really matters, right? What did or  
20 did not happen, whether it's true or not true.

21 And then we establish certain rules. Certain rules  
22 about when we are confident about the truth. As the Court  
23 has told you, if you have an abiding conviction of the truth.  
24 If you're confident enough of what happened and whether or  
25 not that's the person that did it, then you get to make

1 certain decisions.

2 But at the end of the day, it's not a search for  
3 doubt, it's a search for the truth. And so we establish  
4 certain rules. And I'm going to say something that -- about  
5 something Mr. Halli said to you. And I'm going to say  
6 something to you about what Mr. Cano said, and I don't  
7 remember what Mr. Pike said three and a half weeks ago, to be  
8 honest with you, during his opening.

9 But they reasonably set the rules is -- it's  
10 because it's what comes from here, and what's behind that  
11 clerk, and what you take to that back room. Because your job  
12 isn't done right now. Your job just really kind of begins.  
13 Right? You've had that presumption of innocence. He has sat  
14 there, and you've had to presume him innocent.

15 And you're going to wind up in a back room, and  
16 you're going to have to take all the notes of everything of  
17 what everybody said. You're going to have to take all of the  
18 evidences, and you're going to have to make a decision as to  
19 what happened, and do we feel comfortable enough about  
20 knowing what happened to convict an individual of the crime.

21 And you're not going to rely upon what Mr. Halli  
22 said. In his opening, closing arguments to you, he talked  
23 about those phone records. And Mr. Cano unfortunately  
24 wouldn't leave his little street up here for me. But after  
25 this point in time, I think I know pretty well. He talked to

1 you about how you can put Mr. Malone's phone and Mr.  
 2 McCarty's phone at 4:32 in the morning at the Hard Rock  
 3 hotel. And he suggested to you that that's them going to the  
 4 Hard Rock Hotel.  
 5 That's not the first time that evening they went to  
 6 that Hard Rock Hotel. The first time they went to that Hard  
 7 Rock Hotel was at 2:00 o'clock in the morning. And what did  
 8 Red say, day one, to the police before they ever know  
 9 anything? They dropped us off at the Hard Rock and said,  
 10 we're going to be back in a couple of hours to get you. And  
 11 I made a series of phone calls to a series of individuals,  
 12 and eventually, David Parker got me.  
 13 Now, I want to know how it's possible that Melissa  
 14 Rectoris, the crack-dealing, meth-dealing individual that she  
 15 is, is so intelligent to know that there was going to be  
 16 phone records, not just from Mr. McCarty's cell phone, not  
 17 just from Victoria's cell phone, not just from Dominic  
 18 Malone's cell phone, that tells you that sequence of events  
 19 actually happened.  
 20 That when they left down there where she got beaten  
 21 on Tuesday night into early Wednesday morning, the phone  
 22 shows the car going directly up 55, down the road to the Hard  
 23 Rock Hotel. And two-and-a-half hours later, somehow Mr.  
 24 Malone, who I didn't hear really from Mr. Cano where that  
 25 was, where he was during this time period, happens to somehow

1 get back in the vehicle two and a half hours later to go back  
 2 to the Hard Rock and find the girls missing.  
 3 So, you ask yourself -- well, I think Mr. Cano just  
 4 said it. Well, do you want to rely upon what Mr. Cano said  
 5 to you? Well, he made a number of statements that I don't  
 6 know that necessarily the facts would support. He said,  
 7 Donny Herb, you know, he got caught in a lie. No. As I  
 8 recall -- and I believe Mr. Cano did this with a number of  
 9 witnesses.  
 10 He took one statement out of a long statement and  
 11 said, you said on the first phone call right there that, you  
 12 know, at 8:00 o'clock at night, you had the girls. He never  
 13 said that. And then, Mr. Talli went through all of it. He  
 14 never said it. What he said was, I got a call at 1:30 in the  
 15 morning. Detective Collins actually is the one who said, was  
 16 that the first call you got? Well, I got one earlier. And  
 17 we heard from his father, Harold Herb, that there was a house  
 18 phone call.  
 19 And so because that phone call at 8:00 o'clock that  
 20 Mr. Cano says happened is not on these records, which means  
 21 it had to come from the Sportsman's, and it had to go to the  
 22 Sherb house phone, right? Because those are the two things --  
 23 if you ever want to commit a crime, don't use your cell  
 24 phone, is the first rule of this case. But the second rule  
 25 is, that for house phones, as you know, local phone calls

1 aren't going to show up.

2 So, when you go through those, that phone call  
3 happened at 8:00 o'clock at night. Do you want to come out  
4 and play? No, I've got to write my sentences. Oh, wait,  
5 there's a drug court thing showing he's got to write his  
6 sentences. There's Harold Barb, which they seem to think is  
7 telling the truth from the stand, saying he was home, he got  
8 a phone call on the house phone.

9 And then later, first phone call -- it's actually  
10 1:08, he was off by 22 minutes, that he gets a phone call  
11 saying, we've got the girls. And that phone call happens  
12 where? Yeah, just as they're driving down 93. And so, Mr.  
13 Barb had to be this smart before anyone has any cell phone  
14 records, to tell this story to Detective Collins. So, both  
15 of them had to know exactly what those phone records are  
16 going to say.

17 I noticed Mr. Cano's cross-examination of Melissa  
18 Estores. How many times did he go, well, you didn't say that  
19 at the last trial, Mr. McCarty said he was going to his  
20 mother's house. Well, he didn't when he turned onto Boulder,  
21 but he didn't when he turned onto Wagonwheel. And so, don't  
22 take the statements of the lawyers -- I'm sure that during  
23 this particular argument, that I'm going to misstate  
24 something. I'm sure that witnesses, when they're talking to  
25 detectives, they misstate things.

1 I'm sure that none of you would give Melissa  
2 Estores the keys to your house if she were to ask you, and  
3 I'm sure none of you would give Donny Barb the keys to your  
4 house, would he ask you. But that's not the question. The  
5 question is, are we going to have a policy consideration that  
6 dope dealers like Dominick Malone can kill people at whim,  
7 because it's not like you're going to have Mother Theresa and  
8 the priests out there who see what happens in Dominick  
9 Malone's world.

10 These aren't witnesses Mr. Balli and I are asking  
11 you to believe. This is his friends. This is -- Melissa  
12 Estores is his employee. There is a statement kind of in  
13 this courthouse that says, you know, scribbles written in hell  
14 don't have angels for witnesses.

15 We don't choose our witnesses. God knows Mr. Balli  
16 and I would love to choose people who don't have felony  
17 convictions, would love to choose people who aren't involved  
18 in the dope world, would love to choose people who can be  
19 consistent after six years about the smallest, minute little  
20 details. Those aren't the people who are hanging out with  
21 the Dominick Malone's of the world when they're killing  
22 people. That's just the facts of the case.

23 So, as a police consideration, if you're going to  
24 say, Melissa Estores, everything she said has got to be a lie  
25 because she got two convictions sometime after she told the

1 police on May 21st, Donny Herb because he was arrested for  
2 murder -- and I think that's kind of strange. He was  
3 arrested for murder. He certainly wasn't ever charged with  
4 murder, because when all the evidence came in and the  
5 district attorney's office looked at it, there's no evidence  
6 he committed murder.

7 The only evidence is, is that he was an accessory  
8 after the fact. That's what he got charged with. And  
9 ultimately, I recognize that that's an issue you want to deal  
10 with in his credibility. But, you know, thinking about  
11 getting a great deal, he committed accessory after the fact.  
12 He pled guilty to accessory after the fact. I'm not exactly  
13 sure what a huge deal he got.

14 Are they suggesting that Donny Herb, who wasn't  
15 present for 47 minutes while these girls are being killed  
16 down there, should have been charged with murder? That Mr.  
17 Telli and I should have filed a criminal Complaint against  
18 Donny Herb for a guy who wasn't present during the killing,  
19 for murder? Because ask yourself, how many people implicate  
20 Donny Herb in the crime? Is there any person who implicated  
21 Donny Herb in the crime?  
22 I'd like you to go back there and figure out a  
23 single witness who implicates Donny Herb in the crime. You  
24 will get one, Donny Herb. He is the only person who  
25 implicates himself in the crime. Correna Phillips, Donny

1 Herb's not really around.

2 Red, the only time I saw Donny during three days is  
3 when we went from the Sahara to his house. Nicollin, well, I  
4 kind of know the guy, but he wasn't really around and I  
5 didn't really see him anywhere. Ryan Doe, yeah, I know who  
6 he is, but I never really see him.

7 Red -- and this was another one of Mr. Cano's  
8 things, you said he was never in the bar. Well actually, the  
9 very next thing I said was, well, he was in there once or  
10 twice, which is exactly what she testified to on the stand,  
11 by the way. Nobody in this case implicates Donny Herb, other  
12 than Donny Herb. And so, he must be lying, because he  
13 happened to provide the police information about a murder  
14 that he knew about. That's the argument.

15 Okay, Red. Red must be lying because she chose,  
16 despite everything in her life that says, don't go to the  
17 police, to go to a police station on May 21st and tell a  
18 story.

19 And if she's this doped up, crazy person that they  
20 have suggested that she is to you, you have to ask yourself  
21 this. Ask yourself that on May 21st, because they didn't  
22 impinch her on a single thing she said on the time line, how  
23 did she know before the phone records that those time line --  
24 those phone records will corroborate every single event that  
25 she describes?

1 But not only that, it will corroborate every single  
2 event that every one of these witnesses described to you.

3 She says, in the morning time, we're down at the Sportman's,  
4 and only McCarty is there. Yeah, phone records. No doubt,  
5 that's where they're at. She says, I go to the Oasis with  
6 McCarty. No doubt, phone records go to the Oasis. She says,  
7 we're there for a while, but eventually Mr. McCarty leaves.  
8 Look at the phone records. Yep, Mr. McCarty leaves.

9 At some point, and you hear this from Donny, Mr.  
10 McCarty comes back down to the Oasis area. No doubt, you'll

11 see Mr. McCarty and Mr. Herb's phone and Dominic's phone all  
12 get together, and then Mr. McCarty to be left down by the  
13 Oasis while that car drives away, just like Mr. Camp said you  
14 would see on Tuesday afternoon.

15 But what else do you know? They go back to the  
16 Sahara to pick them up. And you'll see that on Mr. Malone's  
17 phone, you'll see that on Mr. Herb's phone. And you'll see  
18 Mr. McCarty -- why do you think all those calls are happening  
19 to Victoria? Because he's chirping back and forth to  
20 Victoria's phone, just like Red says they're doing, as  
21 they're walking down the street, past the Sahara, chirping  
22 back and forth to Victoria's cell phone.

23 But then, look at the records. Once they get into  
24 the car with Victoria, funny, a guy who chirps Victoria every  
25 day, all day long, isn't chirping Victoria anymore. What

1 does that tell you? He's in the car with Victoria. What do  
2 you know, phone records show Donny Herb going home. Melissa  
3 Bistores says Donny Herb went home, Donny Herb says they all  
4 went home.

5 Now, any way that Melissa Bistores and Donny Herb  
6 manufactured this story in any way whatsoever? What  
7 connection is there between the two, right? There's no  
8 connection between Donny Herb and Trey. And we'll have to  
9 talk about that, because I'm not really sure how he's guilty.  
10 The only connection between Donny Herb and Melissa Bistores is  
11 one individual, Dominic Malone.

12 And what motivation is it for the two of them to  
13 manufacture the same story to implicate one man, Mr. Malone?  
14 But follow the time line from there. Where does that vehicle  
15 go? That vehicle goes back to just where the Sportman's is.  
16 And then you throw in another witness, Correna Phillips.  
17 They said Correna and Red don't corroborate each other.

18 Really?  
19 Red says, I stayed in the car with Dominic Malone  
20 as Victoria went off to commit the act of prostitution being  
21 forced upon her by Jason McCarty, and Christine was out  
22 there, too. What does Correna say? Well, I saw Dominic  
23 there. And maybe that's slightly inconsistent that Dominic  
24 was out of the car, and it was either Dominic or Jason that  
25 forced Victoria to go upstairs to commit this act of

1 prostitution, and Christina was going in and out.

2 But what else did she say? And there was somebody  
3 in the car that I don't know. And somebody that she doesn't  
4 know, that she meets for the first time at the preliminary in  
5 this case, is Red. So, let me get this straight. Now, it's  
6 Dorsey, Melissa Esteves, and Correna Phillips all got together  
7 to frame Demonic Malone. It has to be. Otherwise, the  
8 easier answer here is, he's got to be guilty.

9 So, what happens from there? Well, follow the  
10 records. Correna says they all leave together. Melissa  
11 Esteves says they all leave together. Where do the phone  
12 records show they all go? They all go down to the place  
13 where Melissa Esteves says she is beaten. In the green  
14 Alero. She tells you she's so scared that she's pulling her  
15 hair out in the green Alero. And you get tape lifts out of  
16 the back of the green Alero and it's got clumps of -- who?

17 Melissa Esteves' hair.

18 And then, we drive from there to the Hard Rock.

19 Look at the phone records. Oh, yeah. Wait, that's all true.

20 Get out of the vehicle -- and I've already said this. You  
21 look at Victoria's records. They are calling. And so, there  
22 was this conversation now about Christina's phone. Well, did  
23 Red say Christina had a phone? No. What did Red say about  
24 her phone? I had a phone, but I had no minutes on it. So,  
25 the only reason I didn't want Demonic Malone to have my phone

1 is because I didn't want him to get the contacts out of it.

2 And despite the discussion by Mr. Cano, and Mr.

3 Pike for that matter, you're telling me that the experts at  
4 the Henderson Police Department who know phones go, oh,

5 there's no SIM cards, but we're not going to hit the contacts  
6 button? I mean, was that legitimately the argument made to  
7 you by Mr. Cano just now, that the experts at the Henderson

8 Police Department didn't know to hit the contacts button, so  
9 there really are contacts in that phone, and we're just to  
10 incompetent to figure it out or to hit the menu button?

11 No. The phone is on, the screen is on, but there's  
12 nothing in there for us to get. Which means there's no phone  
13 number to request, which means there's no cell site records  
14 to request. So, there's absolutely zero evidence in that --  
15 in this case that that phone was there. You don't know if  
16 that phone got there after the murder, got there before the  
17 murder, got there when they went back over to the South Cove.

18 You have no idea where that phone came from. But ask

19 yourself, why is it relevant?

20 But I think it was back at the -- back at the Hard

21 Rock. What do we know from the Hard Rock? David Parker, the

22 guy they say is the most credible, I took the three girls

23 home. Okay. And from those -- then later that night, I took

24 them over to the South Cove. So, you know that by nighttime,

25 they're not over at the South Cove.

1 And what else did you hear? Mr. Cano just told you  
2 Jason McCarty committed the crime. So, we know that Jason  
3 McCarty committed the crime. I agree with Mr. Cano on this  
4 point. There is no question in my mind -- or sorry. There's  
5 no question in anybody's mind that Jason McCarty was involved  
6 in the killing of these two little girls.

7 And so, what do we know? Well, they were taken  
8 from the South Cove, which means they were taken the last  
9 time Mr. McCarty went to the South Cove. What else do you  
10 know? Correna Phillips. Correna Phillips tells you, they're  
11 at my apartment until it's time for them to leave, and the  
12 two of them leave together in the green Alero.

13 And if you go back to the phone records, you will  
14 see contact between Victoria Magee and Jason McCarty's phone  
15 slightly before midnight. And by midnight, they're moving  
16 towards the South Cove Apartments, and you can follow Jason  
17 McCarty's phone towards the South Cove Apartments, up Sam's  
18 Town, and along that way.

19 What else do you know? You know that Victoria  
20 Magee's phone has, at 11:40 in the evening on Wednesday  
21 night, a phone call, an inbound call from the Sportsman's.  
22 Who do you think that is? That's Jason McCarty in Correna  
23 Phillips' apartment, calling his brother, calling his girl,  
24 and she makes the mistake of talking to him. It was a fatal  
25 mistake for her.

1 But Jason McCarty is with one person at that  
2 particular point in time. The only person in this case that  
3 anybody has implicated in being involved in any violence in  
4 this case, and that is Domenic Malone. So, what happens?  
5 They get into the car, and the phone records show going up  
6 there. Domenic Malone is now with Jason McCarty, the only  
7 person he's been with for these three days.

8 Re happens to be at the South Cove Apartment at the  
9 time the girls were taken, and suggests to you what? How did  
10 he get home allegedly? What's the story about that, right?  
11 What happened at that point? That McCarty took these girls  
12 with one hand out of the apartment by himself, and was able  
13 to hold them during this time period? No. Mr. Malone is the  
14 enforcer, right?

15 That is it that Mr. Cano said to you? You know,  
16 who would do this, his best friend, his best friend, Donny  
17 Berto? Donny Berto's nowhere near that place at this time.  
18 Who would do it? The one guy you heard is the enforcer in  
19 this case, D-Roc. He's the guy who would be able to take  
20 these girls out of that particular apartment.

21 What else do we know? Well, from the time you  
22 leave that apartment until the 1:08 phone call, is just  
23 enough time to drive down Fremont to get on the freeway and  
24 head south. And from there, they go directly to the crime  
25 scene. So, when they say those phone records only implicate

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1 Mr. McCarty, well, they implicate Mr. McCarty in the third  
2 person, or the second person. And we know Donny Herb is not  
3 there.

4 They argue to you that Trey is involved in this  
5 murder. Now on Earth is there evidence that Trey is involved  
6 in this murder? Is there a single witness that has suggested  
7 to you that Trey Black had a motive, was involved, where he  
8 was, when he was, or any evidence to that fact? No. This is  
9 a question about the guilt of three individuals. That's it.  
10 Mr. McCarty, we all agree, had to do it. The only question  
11 is, what is Malone and what is Herb's liability for it?  
12 That's the only issue in this case.

13 And if you take that, you have one thing that you  
14 know for sure. Donny Herb has the best, airtight alibi on  
15 Earth. Donny Herb is at his house. Oh, well maybe he's not  
16 the one at his house, maybe somebody else has his cell phone.  
17 Oh, wait a second, he's on videotape with the white car at  
18 the gas station, which tells you what? Of our three suspects  
19 -- and we know two of them are down there beating these  
20 women. And I kind of heard Mr. Cano suggest to you, well, I  
21 don't think that was premeditated. Really?

22 I mean, I'm going to suggest to you Mr. McCarty had  
23 the knife, right? He has the most motive against Victoria.  
24 He's the one who's least likely to be able to wield the golf  
25 club, and it's Victoria's DNA on that knife. Somebody's got

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1 the golf club. And Mr. Cano said, well, there's no  
2 fingerprints. Well, there's no fingerprints of anybody  
3 wielding that golf club.

4 So, what, did Victoria and Christine beat  
5 themselves to death with the golf club, and cut their own  
6 knives [sic] with the knife? I mean, I would love to have  
7 the fingerprint -- if Mr. Malone hadn't left the items out in  
8 the desert for five days in the sun, I would love to have  
9 those fingerprints in this particular case. But to suggest  
10 to you the fact that they're not there means that somehow,  
11 all the other evidence indicates he's not guilty.

12 The argument as to the police investigation. I  
13 would like to know what it is that they suggest that the  
14 police should have done differently. They collected all the  
15 clothes all over the southern part of the Valley, and none of  
16 them had blood. So, what other testing are you going to do  
17 to them? What can they possibly tell you?

18 They collected a used condom that when you look at  
19 the photographs, is so far away from the scene, how many  
20 people have lived in Vegas for a while, how many used condoms  
21 are out there, and do we honestly think that Jason McCarty or  
22 Demonic Malone is using a condom out there with these two  
23 girls? No.

24 This wasn't about sex, this was about power.  
25 That's all there is. This wasn't some sort of sexual

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1 mutilation sex crime. This was purely about power. And so  
2 when they asked, sure, we'll run the condom, but the condom  
3 has absolutely nothing to do with the case.

4       So, you move forward a little bit. There was some  
5 suggestion -- and you know, look, it's kind of like a game of  
6 telephone, right? You tell somebody, who tells somebody, who  
7 tells somebody, you know. Hey, David Parker said it was  
8 3,000, Red said it was 3,600. Does that mean she actually  
9 said 3,000, or is that because six years later, he says  
10 that's what his recollection was? Is it because there was a  
11 miscommunication?

12       Red says, I dragged Nicolin out. Well, go look at  
13 the video. She does kind of have her arm around it, and  
14 maybe that's her description of it; I don't know. But ask  
15 yourself, once you get to the point where at 1:41 in the  
16 morning, Dominic Malone and Jason McCarty are down there,  
17 what do you know has to happen? There has to be something  
18 happening for 40 minutes.

19       And just like Herb says -- and I have to ask  
20 yourself (sic), if Herb's standing down there killing the  
21 girls, why are these phone calls back and forth between Herb  
22 and Jason McCarty? If he's there, standing with McCarty,  
23 killing them, McCarty doesn't need to be calling. But when  
24 you get those phone records, look at them bounce, and ask  
25 yourself, what happened for 40 minutes, and ask yourself how

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1 close these girls were to each other. Does that suggest to  
2 you something? There's no binding to them.

3       So, let's say Victoria Magee's first. As she's  
4 getting beaten with the golf club, and her neck's sliced or  
5 her chest cut, and she's being beaten to death in front of  
6 Christine as she's standing there naked, is Christine going  
7 to be found within ten feet of Victoria if there's not  
8 somebody holding her there? Of course she's going to be  
9 running. There's no way these two girls get killed that  
10 close to each other if there's only one perpetrator.

11       And if it's a body dump, what happens for that 40  
12 minutes? What is Mr. McCarty doing? Hey, I got to get these  
13 girls out my car. Hey, Herb, can you please come down here  
14 to help me get the girls out of the car? Does that make any  
15 sense? There's 40 minutes. Talk about successive thoughts  
16 of the mind, that's execution.

17       From there, everything else is sort of  
18 corroborated. I mean, Donny Herb's there ten minutes.  
19 There's a phone call that bounces off the Gold Strike. You  
20 see where the -- where the -- all the weapons go. And you go  
21 back to the phone records. And yeah, a juror did -- said,  
22 what's the next phone call? 7:30 in the morning. Where is  
23 Dominic Malone? At his house. Where did Donny Herb say he  
24 dropped him off around 4:00, 5:00 in the morning? At his  
25 house.

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1 And every other time, with the exception of when he  
 2 has Donny Herb's car, with Mr. McCarty out at the Oasis,  
 3 where is Dominic Malone at this point, in these three days of  
 4 his life? He's with Jason McCarty. Well, how did he get  
 5 home if Donny Herb didn't drive him there?

6 There was questions asked of, did Red really get  
 7 beaten in April? Well, I mean, gosh, did she do that to  
 8 herself? And did she really get beaten on May 16th? Well,  
 9 you saw those photographs. Yeah. Five days later, the --  
 10 maybe she looks a little better.

11 But you looked at those photographs. Go look at  
 12 them closely. That face isn't like any human face you've  
 13 ever seen before. The entire side of that face is swollen.  
 14 How did it get like that? It certainly wasn't from April  
 15 that her face looked like that. Even if the bruising on her  
 16 chest was still from April, certainly the rest of her  
 17 injuries were not.

18 And so, when you go back to that room, I guess you  
 19 really have two choices. The choice could be, you know what,  
 20 Red has lied and been a hustler. And therefore, we're not  
 21 going to believe anything she says. Or you can follow what  
 22 the law says, which is, ask yourself what's corroborated.  
 23 And when you ask yourself what was corroborated, every  
 24 material fact she said.

25 Notice, there wasn't any lie they caught her in,

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1 except for one, which is on day one, she didn't walk into the  
 2 police station and say, I'm a low level dope dealer. But by  
 3 day three, she had already told them, I'm a low level dope  
 4 dealer. So, what was her motivation for telling the lies  
 5 about Dominic Malone? And you can ask yourself about that,  
 6 about every other witness.

7 Ryan Noe. What was his motivation to go down  
 8 there, and say, hey, she knows who killed these two girls,  
 9 that's my girlfriend out there. Why does he want somebody  
 10 other than the people who killed the woman that he allegedly  
 11 loved? Why did Niccolin, the best friend of Victoria, come in  
 12 here, and tell you what she told you about him? What was her  
 13 motivation to lie?

14 Nobody wants people to be drug dealers. But I  
 15 would tell you that -- or you would know, Ryan Noe, Correna  
 16 Phillips, Niccolin Broderway, Melissa Bstora. Six years ago,  
 17 they lived in a terrible world that none of us want to be.  
 18 But today, they are all sober. They all came in here and  
 19 told you, this man killed my friend. And what motive is that  
 20 for them to lie about that?

21 The question in this case isn't about, did he do  
 22 it. The question is solely about whether or not you're  
 23 willing to go back there, look at the instructions, look at  
 24 the evidence, and do what the Court told you to do, which,  
 25 make a determination about the truth.

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1 And I submit to you that if you go back there, that  
2 you will know what at least one other person in this  
3 courtroom knows beyond any doubt. That that's the individual  
4 who thought it was okay to beat, to completely dehumanize two  
5 individuals, because they were like Red, or they were like  
6 Corrina, or they were like Nicolin Broderway. That because  
7 of who they were, it's okay to kill them. That's Dominic  
8 Malone. The question is, do those two little girls still  
9 deserve justice? Thank you.

10 THE COURT: Thank you, Mr. DiGiacomo. Cliff, can  
11 you approach, please?

12 (Off-record bench conference Court/Marshal)

13 THE COURT: All right. The clerk will now swear in  
14 the marshal to take charge of the jury. Ladies and  
15 gentlemen, as we had mentioned at the beginning of this trial  
16 after you were selected, that we have 12 jurors deliberate.  
17 The alternates have been randomly selected for this  
18 particular case. And we do continue to need the assistance  
19 of the alternates.

20 During these deliberations, if for any reason one  
21 of the deliberating jurors becomes disqualified or is unable  
22 to continue with deliberations, the alternates would take  
23 their place throughout this case. And so, it is an essential  
24 that we did have alternates. We do have alternates, and the  
25 Marshal will advise those individuals who are the alternates.

1 12:30, or 1:00 o'clock, is that correct?

2 MR. DIGIACOMO: I believe so, Judge.

3 MR. PIKE: That's --

4 THE COURT: And we'll schedule lunch for the jurors  
5 at that time.

6 Counsel, we may be another 5 or so minutes. There's  
7 something -- if you needed a quick snack in chambers, if you  
8 need that, for both sides.

9 MR. DIGIACOMO: Thank you.

10 (Court recessed at 10:05 a.m. until 10:12 a.m.)

11 (In the presence of the jury)

12 THE COURT: Good morning, ladies and gentlemen, and  
13 welcome back. Both sides have rested in the penalty phase of  
14 this case. And it's now my duty to instruct you on the law  
15 that applies to these continued proceedings.

16 (Jury instructions read by Court)

17 THE COURT: State, are you ready?

18 MR. LAHIT: Yes, Your Honor.

19 STATE'S CLOSING ARGUMENT

20 MR. LAHIT: May it please the Court. Judge Villani  
21 just instructed you as to the laws that pertain in this  
22 penalty hearing. And he ended his instructions with this  
23 admonishment: "It is your duty to be governed in your  
24 deliberations by the evidence as you understand it and  
25 remember it to be, and by the laws given to you in these

1 instructions, with the sole, fixed, and steadfast purpose of  
2 doing equal and exact justice between the defendant and the  
3 State of Nevada."

4 That is your charge. That is your responsibility at  
5 this point, to do equal and exact justice between the  
6 defendant and the State of Nevada. What does that require of  
7 you? You must decide what the appropriate punishment is for  
8 this unthinkable crime. You must decide what justice requires  
9 of Dominick Malone for his involvement in this case. You must  
10 also decide what justice Victoria Magee and Charlotte Combarde,  
11 and their families are due, for what they have had to suffer  
12 and endure during the course of this case.

13 And getting to the answer is not an easy task.  
14 Penalty hearings draw on our emotions. And certainly, we've  
15 seen that in this case over the past several days. As I  
16 recall, it was Latanya Malone, who I think was the first  
17 witness that defense called. And she described the child that  
18 she has in common with the defendant, her daughter pulling her  
19 hair out as a result of learning of your verdict in this case,  
20 that her father had been found guilty of two counts of murder  
21 of the first degree.

22 Why would that testimony be elicited? Did it make  
23 you feel bad because of your verdicts? Well, don't feel bad.  
24 This case is about decisions. And the decisions that Dominick  
25 Malone made to bring two girls out to the desert to be

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1 stripped naked, and beaten to death. It's about his decisions  
2 that bring us here; not anything you did, ladies and  
3 gentlemen. We are here because of him.

4 So, let's talk about justice, and what punishment is  
5 appropriate in this case. And to get there, you really must  
6 address two questions in your deliberations. One is, can you  
7 consider the death penalty at all? Can you consider it? The  
8 first question. The second question is, what is the  
9 appropriate punishment in this case?

10 So, I want to begin my comments by addressing that  
11 first question, can you consider the death penalty? How do  
12 you get there? And to answer that question, you start with an  
13 analysis of aggravating circumstances. And Judge Villard has  
14 told you about aggravating circumstances. So, are there any  
15 aggravating circumstances in this case? Well, what are they?  
16 Aggravating circumstances are, for lack of a better  
17 word, bad things. They are specifically prescribed by Nevada  
18 law, and they are listed for you in Jury Instruction No. 10.

19 You are told in the instructions, specifically  
20 Instruction No. 6, that the state is required to prove the  
21 existence of each aggravating circumstance, or circumstances,  
22 beyond a reasonable doubt. So, you look at aggravators. Are  
23 there aggravators?

24 And you look at mitigating circumstances. What are  
25 mitigating circumstances? Well, I used to call them good

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1 things, but I'm not sure that that really accurately reflects  
2 what they are. Mitigating circumstances may be understood as  
3 negatives in the defendant's life, things that might reduce  
4 his moral culpability. They don't reduce his legal  
5 responsibility, but maybe they reduce his moral culpability in  
6 the case.

7 Mitigating circumstances might be things that make  
8 us feel sorry for the defendant. They are alleged by the  
9 defense, and there are numerous mitigating circumstances that  
10 are alleged. They're found in Jury Instruction No. 13, and  
11 they work differently from aggravating circumstances.

12 In Instruction No. 6, we are told that you do not  
13 have to agree on mitigating circumstances. The jurors need  
14 not find mitigating circumstances unanimously.

15 In Instruction No. 7, you are told that mitigating  
16 circumstances do not need to be found to exist beyond a  
17 reasonable doubt. And you're further told in this instruction  
18 that a mitigating circumstance is found if anyone believes  
19 that it exists. Anything. Anything at all can be a  
20 mitigating circumstance if you choose to find it.

21 It could be the fact that the defendant wears  
22 eyeglasses. You can find that to be a mitigating  
23 circumstance, if you so choose. You can find that the  
24 defendant's hair color might be a reason to be a mitigating  
25 circumstance. If any one of you believes that it exists at

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1 all, you can find it, if you so choose.

2 So, you consider the aggravating circumstances, the  
3 mitigating circumstances. And after considering the  
4 aggravating circumstances and the mitigating circumstances,  
5 two things must be found before you can consider the death  
6 penalty. And I want to talk to you about this Instruction No.  
7 6. It actually lists three things, that is, if you're  
8 actually going to impose death. But I'm just talking about,  
9 can you consider death, because that has to be your starting  
10 point.

11 Can you consider death? Well, you can consider it  
12 if the State has proven the existence of at least one  
13 aggravating circumstance beyond a reasonable doubt. So, at  
14 least one aggravating circumstance must be proven to you  
15 beyond a reasonable doubt.

16 And then there is a weighing process that is  
17 undertaken by you. If you find that a mitigating circumstance  
18 exists, you determine how much weight to give it, how  
19 important is that. And then you, as a jury, engage in a  
20 balancing process, a weighing process, and you weigh the  
21 aggravating circumstances against the mitigating  
22 circumstances.

23 And there is no mathematical formula that the Court  
24 will give you. You decide the weight to be given these  
25 respective things. So, 24 mitigating circumstances can be

1 outweighed by one aggravating circumstance. Five aggravating  
2 circumstances can outweigh 50 mitigating circumstances. 24  
3 mitigating circumstances can be outweighed by 24 aggravating  
4 circumstances. You decide the respective weight.

5 And the Supreme Court of Nevada requires that we  
6 instruct in kind of a backwards way. But the weighing is in  
7 terms of the mitigating circumstance, and that's what this  
8 instruction says. "Every juror determines that the mitigating  
9 circumstance or circumstances, if any, which he or she has  
10 found, do not outweigh the aggravating circumstance or  
11 circumstances." But it's just a weighing.

12 As he did in the trial phase, the first phase of  
13 these proceedings, Judge Willard has prepared for you verdict  
14 forms for you to record your actual verdict. And they do not  
15 look anything at all like the verdict forms that you used in  
16 the penalty phase, they -- I'm sorry, in the guilt phase, in  
17 the trial phase. These are -- it is a Special Verdict form.

18 And you will see it when you return to the deliberation room.  
19 But the process that I've just told you about, the  
20 consideration of aggravators, and then mitigators, and then  
21 the balancing, really is set forth in that verdict form.

22 So, you will see, for example, on the first page of  
23 the Special Verdict form that you receive, Section 1,  
24 aggravating circumstances. And it tells you, "Look at each  
25 aggravating circumstance and check "yes" or "no," has the

1 state proven that to you unanimously and beyond a reasonable  
2 doubt?" So, you will consider those.

3 Once you go through the nine that have been alleged,  
4 you'll get to the end of the verdict form. And it will tell  
5 you, if there are no aggravating circumstances, your  
6 consideration of the death penalty is over, and you consider  
7 options other than death. However, if you do find that there  
8 is at least one aggravating circumstance, then you go on to  
9 consider mitigating circumstances.

10 And just a little further down on the verdict form  
11 is Section 2, mitigating circumstances. And all of the  
12 mitigating circumstances that the defense has alleged are  
13 listed on your verdict form.

14 And so you simply go through, and if any one juror  
15 believes that the mitigating circumstance has been  
16 established, you check "yes." If no one finds that it has  
17 been established, you check "no." And you will work your way  
18 down the verdict form until you get to page 10, and you see  
19 this section. It's mitigating circumstance No. 32 on the  
20 verdict form.

21 However, what Judge Villani is telling you is to  
22 consider any other mitigating circumstances that you may find  
23 that have not been alleged by the defense. And so he's given  
24 you room to write anything you believe is a mitigating  
25 circumstance that's not been alleged. You may find mitigating

1 circumstances in addition to those alleged, you may not.  
2 There is no obligation for you to write anything in this area,  
3 but it's provided for you if you want to.

4 Once you've considered the aggravators and the  
5 mitigators, you get to that balancing section that I told you  
6 about, and that is Section 3. And you consider the two  
7 options. Number one, there are no mitigating circumstances  
8 sufficient to outweigh the aggravating circumstance or  
9 circumstances. So, in other words, the aggravating  
10 circumstances weigh more.

11 Versus the second option, there are mitigating  
12 circumstances sufficient to outweigh the aggravating  
13 circumstances, so the mitigating circumstance weigh more. And  
14 if the aggravating circumstances weigh more, you go to Section  
15 4, and you can consider death as an option as a potential  
16 punishment. If the mitigators outweigh, then you go to  
17 Section 5, and you do not -- you cannot consider death as an  
18 option.

19 So, let's talk about aggravating circumstances, and  
20 the aggravating circumstances that the state has alleged. And  
21 as I indicated before, there are nine aggravating  
22 circumstances that we have alleged here, seven of which you've  
23 already found to exist by virtue of your verdicts in the trial  
24 phase of this case. Let's go through the aggravating  
25 circumstances one at a time.

13

1 Number one, "The murder was committed by a person  
2 who at anytime before a penalty hearing is conducted for the  
3 murder, is, or has been convicted of a felony involving the  
4 use or threat of violence to the person of another." This is  
5 the aggravating circumstance we've referred to as a prior  
6 crime of violence. If a person has a prior conviction for a  
7 felony of violence, it's an aggravating circumstance.

8 With respect to aggravating circumstance number one,  
9 we are alleging that the defendant was convicted of battery  
10 with intent to commit a crime in case number C-168678 in the  
11 Eighth Judicial District Court in and of the State of Nevada,  
12 County of Clark.

13 We entered into evidence State's Exhibit No. 263,  
14 which is a judgment of conviction. You will see that it is a  
15 certified copy, issued under the Clerk of Court. And it calls  
16 you, this is the official court record of a felony conviction.  
17 It tells you, the defendant, Demonic Malone, has, in fact,  
18 been convicted of a felony, battery with intent to commit a  
19 crime.

20 Now, you know that that is a felony, because the  
21 judgment of conviction tells you that it's a felony. You know  
22 that it involves the use or threat of violence, because you've  
23 already found the defendant guilty of a felony battery, and  
24 you're familiar with the definition of battery, the use of  
25 force or violence against the person of another. So, by

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14

1 virtue of the admission of the judgment of conviction, we've  
2 proven that to you beyond a reasonable doubt.

3 And you heard other evidence related to this  
4 judgment of conviction, this prior crime of violence. It's  
5 the sexual assault and the binding of Deanna Jones, the  
6 mother of the defendant's first child, how she was sexually  
7 assaulted and a cord was wrapped around her throat.

8 You know that it was a crime of violence, not only  
9 from the judgment of conviction, but also by the evidence that  
10 you've heard. So, we've certainly proven that to you beyond a  
11 reasonable doubt. So, I would suggest to you that this is an  
12 aggravator that you should find.

13 As I told you, many other aggravating circumstances,  
14 you've already found. You've already convicted the defendant  
15 of a prior crime of violence. With respect to aggravating  
16 circumstance No. 2, you found him guilty in the trial phase of  
17 Count 1, the battery with substantial bodily harm, on Red.  
18 So, that is another aggravating circumstance that's already  
19 been found.

20 Conviction of a violent felony. Once again,  
21 aggravating circumstance No. 3 pertaining to your verdict in  
22 Count 3, the kidnapping pertaining to Red, when she was taken  
23 out into the desert. So again, you found that aggravating  
24 circumstance unanimously, beyond a reasonable doubt exists.  
25 Number 4 is a different kind of aggravating

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15  
 1 circumstance, and it pertains to certain felonies that are  
 2 committed during the commission of murder. And specifically,  
 3 the aggravator reads that, "The murder was committed while the  
 4 person was engaged alone, or with others, in the commission of  
 5 any kidnapping in the first degree, and the person charged  
 6 killed, or attempted to kill the person murdered, or knew or  
 7 had reason to know that life would be taken, or lethal force  
 8 used."

9 And here we're talking about the kidnapping of  
 10 Victoria and Charlotte from the South Cove, and taking them  
 11 out to the desert to be murdered. By virtue of your Special  
 12 Verdict in the trial phase, where you checked the box that  
 13 this was a murder during the course of a kidnapping, you've  
 14 already found this aggravating circumstance. So, the  
 15 appropriate verdict would be "yes" as to No. 4.

16 The same with respect to aggravating circumstance  
 17 No. 5. Again, we're talking about kidnapping. You'll  
 18 remember that there were two counts, one for Victoria, one for  
 19 Charlotte. So, the appropriate verdict is "yes" as to  
 20 Aggravator 5.

21 Aggravator 6, is the same aggravating circumstance,  
 22 except it applies to robbery. "The murder was committed while  
 23 the person was engaged alone or with others in the commission  
 24 of any robbery, and the person charged killed, or attempted to  
 25 kill the person murdered, knew or had reason to know that life

16  
 1 would be taken, or lethal force used."

2 You know that these girls were stripped naked during  
 3 the process of that murder, and you've already found the  
 4 defendant guilty of robbery with use of a deadly weapon. And  
 5 you've found, by virtue of your Special Verdict, that this was  
 6 a murder that was committed during the perpetration of that  
 7 robbery.

8 So, by virtue of your Special Verdict in the trial  
 9 phase, once again, the appropriate finding is "yes" as to  
 10 Aggravator 6, and "yes" as to Aggravator 7, one pertaining to  
 11 Victoria, one pertaining to Charlotte.

12 Now, Aggravator 7 -- I'm sorry, Aggravator 8, is  
 13 different. It is a murder to obtain money, or something of  
 14 value. And specifically it reads, "The murder was committed  
 15 by a person for himself or another to receive money, or  
 16 anything of monetary value."

17 It's the motivation for murder. Why did the murders  
 18 happen in this case? What was the motivation? We know that  
 19 Dominic Malone believed that he was owed money by these girls,  
 20 and he wanted to obtain it from them. That's why the girls  
 21 were taken out to the desert, that's why they were ultimately  
 22 killed. And how do we know this? We know it from various  
 23 witnesses who testified during the trial phase.

24 So, for example, told us that's why the girls were  
 25 taken to the Hard Rock in the first place, because the

17

1 defendant and Jason McCarty believed that they were owed  
2 money, and they were attempting to do whatever they could, to  
3 get the money from those girls.

4 Sarah Matthews, remember Sarah. She was in the  
5 South Cove apartment on the day that the defendant and Jason  
6 McCarty pulled those girls from that complex, and had a  
7 conversation with the defendant -- or overheard, more  
8 precisely, the conversation that the defendant was having with  
9 Trey Hall about these girls, and how the defendant was angry  
10 because they owed him money, and he wasn't going to let it go.

11 You also heard about this monetary motivation from  
12 Correna Phillips. Remember Correna, she and her girlfriend  
13 were referred to as "the lesbians" in the Sportsman's. The  
14 defendant and Jason McCarty were at her apartment eating  
15 spaghetti one evening, and she overheard the defendant talking  
16 about these girls owing them money, and being angry or  
17 aggravated about it.

18 And as sad as it is, and as pitiful, and as small as  
19 it is, that's why these girls were murdered. And the evidence  
20 has shown that. So, I would suggest to you that the  
21 appropriate verdict as to Aggravator 8 is, "yes", we have  
22 proven that to you.

23 And finally, there is Aggravator 9, which you have  
24 already found. Aggravator 9 reads that, "The defendant has,  
25 in the immediate proceeding, been convicted of more than one

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1 offense of murder in the first or second degree." And you  
2 have already found this, by virtue of finding the defendant  
3 guilty of murder of the first degree for both the murder of  
4 Victoria and of Charlotte.

5 So, there is no doubt, there is no question that at  
6 least one aggravating circumstance has been proven to you  
7 beyond a reasonable doubt. I would submit to you that all  
8 nine have been proven to you beyond a reasonable doubt.

9 So, the next phase, the next step in your  
10 consideration is to think about mitigating circumstances.

11 Mitigating circumstances are contained in  
12 Instruction No. 13, as I have indicated before. And if you  
13 look at the mitigating circumstances, they cover two pages.  
14 And what you will find is a number of things when you analyze  
15 these.

16 I guess what jumps out most is the redundancy. Many  
17 of them are repetitive. They're different ways of saying the  
18 same thing. And Dr. Reglini, he acknowledged this in his  
19 testimony. He said, "Some of these are redundant. Some of  
20 these -- two or three of them overlap." And that's a big  
21 concession for Dr. Reglini. He doesn't like to acknowledge or  
22 admit certain things. He doesn't like to concede things.

23 So, let's talk about these mitigating circumstances,  
24 and some examples of the redundancy in them. Number 16 is  
25 poverty. Number 19 is, residing in extremely low income

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1 areas. They're essentially saying the same thing. Moving  
2 around a lot. Mitigating circumstance No. 5, residential  
3 instability, and 14, frequent school transitions. When you  
4 think about how much weight you're going to give these things,  
5 you should think about, are they just saying the same thing  
6 several different ways?

7 The fact that the defendant's mother and stepfather  
8 used drugs. Mitigating circumstance No. 1, parental  
9 criminality. And No. 6, parental attitudes favorable to  
10 substance abuse. The fact that the defendant suffered  
11 depression. There -- mitigating circumstance No. 9,  
12 adolescent depression. And 25, defendant exhibited signs of  
13 depression as an adolescent. It's the exact same thing.  
14 Abandonment, No. 11, and 27, the defendant was abandoned by  
15 his mother at the age of 16.

16 So, there is a lot of repetition in the mitigating  
17 circumstances. If you look at them and consider them, you'll  
18 find that some are just not supported by the evidence. For  
19 example, 24, siblings identified defendant as being the  
20 caretaker of the family. And 31, parentification. As a  
21 child, Dominic cared for his siblings due to his mother's,  
22 stepfather's neglect of the family.

23 Well, what is the evidence of that, that Dominic was  
24 the caretaker of his family? You heard from Jewel, his  
25 sister. She told you that she cared for the other children,

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20

1 as well as her own child. Dominic was not around. That's not  
2 a mitigating circumstance that they have established.

3 Some, I would suggest to you, border on the absurd;  
4 13, dropped out of school, and 15, high delinquency rate at  
5 schools. Is it really a mitigating circumstance that the  
6 defendant chose not to be educated, he chose not to go to  
7 school?

8 Mitigating circumstance No. 5, residential  
9 instability, and 14, frequent school transition. Does that  
10 reduce his moral culpability because he moved around a lot?  
11 There are many families who are required to move around  
12 because of the jobs that they had.

13 Poverty, No. 16, and residing in extremely low  
14 income areas, mitigating circumstance No. 19. Unfortunately,  
15 a large portion of the population of the United States lives  
16 in poverty. Is that something that helps us understand why  
17 Dominic Malone decided to kill two women? I would suggest to  
18 you that it does not.

19 Mitigator No. 23, collateral sources say he was  
20 nice. Remember Dr. Peglini again, and he talked about  
21 collateral sources, and what they are, what that means. Well,  
22 when you conduct one of these mitigation analyses, you talk to  
23 the defendant. And then you look for collateral sources,  
24 other sources, other people who can corroborate what the  
25 defendant is telling you. Objectively, is what he said. It

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added to his mitigation analysis.

Well, what are those collateral sources in this case? What did he use to bring objectivity to his analysis? The defendant's mother. The defendant's father, sister, aunts and uncles. How objective are they? And is it truly a mitigating circumstance that those people who are closest to their son, believe that he's nice? How much consideration should be get for that.

When you look at the mitigating circumstances that have been alleged by the defense, I would suggest to you that they can really be categorized into two areas. One pertains to the dysfunction of his family life, family dysfunction. And two pertains to his depression and hospitalization at Charter Hospital. So, let's talk about those, and the evidence that you've seen pertaining to them.

His dysfunctional home life. One of the mitigating circumstances that they offer is that his parents -- his mother and his stepfather used drugs. Well, they did. They did, and he observed it. And his sister observed it. She told you about that. But we know something else about that. We know that the defendant learned from that experience. He learned that drugs make people vulnerable.

Remember what he told Dr. Paglini during one of his interviews? He said -- and this is right out of Dr. Paglini's report. "He doesn't do drugs" -- he, the defendant -- "He

doesn't do drugs, weed or alcohol because you need to be aware on the streets." And he further told Dr. Paglini friends of his were killed when they were not aware.

He knows that people are vulnerable when they're under the influence. And he also knew that Christine -- Charlotte and Victoria, were vulnerable at the time that he murdered him [sic]. So, how much weight are you going to give that mitigating circumstance?

The defense alleges that the defendant's parents, his mother and stepfather were physically and emotionally abusive. And I will tell you that you have heard evidence of that. You heard the testimony of Bishop Frederick Allen, the defendant's uncle. And he described some of that abuse.

And just as an observation, it's kind of convenient when you're blaming the mother, and the mother's not able, or around, or you're blaming the stepfather who's never even interviewed by your mitigation expert. But that's the source of this dysfunction. But were the defendant's mother and stepfather a bad influence on him? No doubt. There's no doubt that they were. But how bad were they? How bad were they?

Bishop Allen never called the police. He never brought those children into some facility, a hospital, or a doctor to be treated for injuries. He never called CPS. And I certainly don't blame him for that. He's a good and decent

1 man. He certainly loves his nephew, the defendant. But if  
2 the abuse had been that terrible, that over the line, wouldn't  
3 you expect this good and decent man to call the police, or to  
4 get help in some way? He works with problem youth. If it was  
5 that over the line, this good and decent man would have done  
6 something about it.

7 We know that CPS was called out on at least two  
8 occasions. And we know that CPS investigators are people who  
9 are specifically trained to look and identify -- look at and  
10 identify abuse and neglect in homes. After the defendant was  
11 hospitalized at Charter, Charter alerted CPS. And in August  
12 of 1996, they came out, and they found no signs -- no signs of  
13 abuse and neglect. The home was clean and well stocked.

14 And what happened? They came out to investigate the  
15 defendant's parents. And while they were there, they did find  
16 a problem, but it was the defendant. The defendant was  
17 identified as the source of the problem in that household when  
18 CPS came out. The report was unsubstantiated, case closed.

19 A month later, the defendant calls CPS. And in  
20 October of 1996, CPS comes out once again. And while they are  
21 there, called out to investigate the parents, what do they  
22 find? They do not find fault with the parents. Once again,  
23 their focus becomes the defendant, domestic violence with his  
24 sister, unmanageable behavior.

25 The mother is given counseling -- a counseling

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1 referral. And the police tell her, use the counseling service  
2 to confront the defendant. Use the counseling service to  
3 address the problems that he's exhibiting. Once again, the  
4 call is unsubstantiated, case closed.

5 Was there abuse? There's no doubt that there was  
6 abuse. But is it the sort of abuse where CPS comes in and  
7 removes children? No. Does that happen? Of course, it does.  
8 Is it the sort of abuse where parents are arrested and  
9 prosecuted criminally? No. Does that happen? Of course it  
10 does. Is it the kind of abuse where authorities come in and  
11 say, Angela Malone, you're not fit to be a mother, we're  
12 taking your children away from you? No. That did not happen.  
13 And does it happen? Of course, it happens.

14 So, sure there was abuse. But you have to assess  
15 it. You have to put it in context. You have to ascribe some  
16 weight to it. And when you consider how much weight to give  
17 the abuse, is that more significant than murdering two women?  
18 And I would suggest to you that it is not.

19 Let's talk about abandonment. When Dominic Malone  
20 was 16 years-old, his mother left Las Vegas to return to  
21 Alabama because her father had died and the defendant was left  
22 to be with his stepfather for a period of time. And when you  
23 consider abandonment, you have to consider what's going on in  
24 the defendant's life at that time. What do we know? What do  
25 we know is going on with him?

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1 Well, we know he has a girlfriend. We know that he  
 2 is sexually active. We know that he's living with the  
 3 girlfriend and the girlfriend's mother. We know that he has  
 4 impregnated the girlfriend. She is pregnant. Remember --  
 5 when you're considering abandonment, remember what they're  
 6 finding out when he is at Charter Hospital. He is diagnosed  
 7 with oppositional defiant disorder. It's a diagnosis that  
 8 this treatment team made, that is in a report signed by Dr.  
 9 Collins.

10 And what do we know about oppositional defiant  
 11 disorder? It's someone who repudiates authority. What are  
 12 the characteristics? Dr. Paglini told you, reading out of the  
 13 DSM. Someone with oppositional defiant disorder often loses  
 14 temper. Often argues with adults. Often actively defies or  
 15 refuses to comply with adults' requests or rules. Is often  
 16 angry and resentful. Is often spiteful or vindictive. Often  
 17 blames others for his or her mistakes or misbehavior. That's  
 18 the defendant's mind set at this time.

19 So, think about it. What do you think happened when  
 20 his stepfather says, hey, Domonic, we're going back to  
 21 Alabama, we're leaving Las Vegas. He wants nothing to do with  
 22 it. He has a girlfriend here, she is expecting a child, and  
 23 he doesn't want to leave.

24 Now, should a 16 year-old ever be left alone?  
 25 Absolutely not. Certainly not. But let's put this in some

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1 context. How much weight are you going to give it, and is it  
 2 more significant than kidnapping two young girls, and taking  
 3 them out to the desert to be murdered? I would suggest to you  
 4 that it is not.

5 Let's talk about the defendant's depression and  
 6 hospitalization at Charter. We know that he did attempt  
 7 suicide by overdosing on pills. We know that he was diagnosed  
 8 with a disorder by Dr. Collins, and I've already talked about  
 9 that. But does he want help? Does he want help while he's  
 10 there at Charter? No. He wants to leave.

11 And we went through the progress notes from Charter  
 12 with Dr. Paglini. "Domonic is refusing psychological  
 13 testing." Dr. Timney [phonetic] noticed that Domonic appeared  
 14 poorly engaged, Domonic wants to go home, Domonic stated he  
 15 was leaving and refused a one-on-one follow-up. Dr. Timney  
 16 noted that Domonic refused a follow-up.

17 And Dr. Paglini dismisses this. He says that no  
 18 teenager wants help for depression. Really? He says that 40  
 19 percent of all Charter patients have oppositional defiant  
 20 disorder. 40 percent. Where did he come up with that  
 21 statistic?

22 When you were considering the testimony of Dr.  
 23 Paglini, I would urge you to consider Jury Instruction No. 17.  
 24 It's the credibility instruction. And it reads, "The  
 25 credibility or believability of a witness should be determined

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27

1 by his manner upon the stand, his relationship to the parties,  
2 his fears, his motives." You can think about how much money  
3 he's being paid.

4 And what you've learned is that the death penalty  
5 business is very lucrative for some people. And when you  
6 consider that amount of money, might someone want to extend  
7 themselves just a little? Does Dr. Fogliani have some things  
8 to offer? Sure, he does. Do you want to embrace every word  
9 out of his mouth? I don't think so.

10 The record's clear, Dominic Malone had a depression.  
11 He did not want help for it. He wanted to get out of there.  
12 And the question again is, how much weight are you going to  
13 give that? Is that more significant than stripping down two  
14 girls, humiliating them as they're naked, before they are  
15 ultimately murdered? It is not.

16 So, you do this balancing. You balance the  
17 aggravating circumstances, with the mitigating circumstances.  
18 When you balance those, there are no mitigating circumstances  
19 sufficient to outweigh the aggravating circumstances. The  
20 aggravating circumstances far exceed the mitigating  
21 circumstances in this case. Because that is true, when you  
22 look at penalty options, you can consider the death penalty in  
23 this case.

24 And the analysis we've done just pertains to one of  
25 the murders. But it's the same analysis for both. And so

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1 when you look at the verdict form, you're going to see these  
2 various sections repeat for the two counts of murder. So, the  
3 two questions that you ask, can you consider the death  
4 penalty? Well, you can.

5 So, we move now to the next question, what is the  
6 appropriate punishment in this case? What is equal and exact  
7 justice between the defendant and the State of Nevada? What  
8 is justice going to require from Dominic Malons, and what  
9 justice is due Victoria and Charlotte, and their families?  
10 What about a sentence with parole? And I will suggest to you  
11 that there is no difference between a sentence of 100 years,  
12 or of life with parole after 40. There's no practical  
13 difference between those two things.

14 Those sentences -- a sentence which contemplates  
15 parole, is the lightest possible punishment for murder. That  
16 is a sentence that is reserved for newcomers to the criminal  
17 justice system, for people who have benign or innocent  
18 criminal records. The lowest possible sentence is not for the  
19 Dominic Malone's of the world. It is not for people who have  
20 a long history of violent crime. A sentence with parole is  
21 appropriate for some people, but not for this defendant.

22 There really are just two options in this case. Are  
23 you going to sentence him to life without the possibility of  
24 parole, or does justice require something more? Let's talk  
25 about life without the possibility of parole. And it means

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1 exactly what it says, that the defendant will spend the rest  
2 of his natural life in the Nevada Department of Corrections.

3 Well, we know that he's already spent a significant  
4 period of his life in prison. When you look at his sparse job  
5 history, part of the reason for that is because he has spent  
6 so much time in prison.

7 But how terrible is prison life, really? We heard  
8 from Warden Batchelor about the privileges that inmates have in  
9 their stay. They have radio, television, cable, artwork and  
10 decorations in their cells, baseball, basketball, tier time.  
11 They get to hang out with their buddies in the common areas of  
12 the prison. Access to the Internet. A job where you can  
13 actually make minimum wage, and earn money on your books to  
14 buy things.

15 You heard from the defendant's own father about  
16 prison. What did he tell you? Dope, wine, whiskey, anything  
17 on the street, you can get in prison. Think about that. Is  
18 that the appropriate punishment for this crime?

19 We know that being locked up has not curbed the  
20 defendant's violence. He admitted to Dr. Paglini that he had  
21 been involved in numerous fights while he was in custody.

22 Remember what he did to Melvin Sharone (phonetic), remember  
23 that's 60 year-old Max's face.

24 What do we know about the defendant? We know  
25 something that the doctors at Charter recognized years ago,

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1 that he has a longstanding history of explosive behavior. Do  
2 you remember that in the Charter records? A longstanding  
3 history of explosive behavior. What is that? People who  
4 exhibit explosive behavior display repeated episodes of  
5 aggressive, violent behavior, in which you react grossly out  
6 of proportion to the situation.

7 Not only did he have that at the time, and before he  
8 went to Charter. You know from sitting through this penalty  
9 hearing that he has had problems with explosive behavior for  
10 years after the time he was committed to Charter. We know  
11 that he has explosive behavior by what he did to Melvin  
12 Sharone, while in custody. We know that he has explosive  
13 behavior by what he did to Duwana Jones, by sexually  
14 assaulting her, and then wrapping that telephone cord around  
15 her, and pulling it tight, bringing her literally to her  
16 knees, and then telling her, "you're not even worth it."

17 We know that he has explosive behavior by strabbing  
18 Greyvion Hampton multiple times back in 2000, the other murder  
19 case that he was investigated for. We know that he has  
20 explosive behavior by the manner in which he beat Red, causing  
21 those grotesque bruises on her body. And we know that he has  
22 a problem with explosive behavior by what he did to his  
23 victims in this case, by beating these young girls with a  
24 club, and with a rock, almost to the point of being  
25 unrecognizable.

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1 So, the problem with life without the possibility of  
2 parole is that prisons are filled with potential victims.  
3 Guards, counselors. To borrow a phrase from the Wizard of Oz,  
4 do-gooders, people who go to the prisons to minister to  
5 inmates. Other inmates. These are all potential victims.  
6 Remember what Tami Bass told us. She was the lady  
7 that was appointed by Governor Guinn to the Parole Board. The  
8 best indicator of what someone is going to do in the future is  
9 what they have done in the past. And what do we know about  
10 Dominick Malone's past? It is explosive. He beats people. He  
11 harms people that he's not happy with. And life without the  
12 possibility of parole fails to adequately protect the people  
13 he will come into contact with in his future life.  
14 We know that relationships continue in prison. When  
15 you go to prison, it does not end your relationships with  
16 others. Remember what Warden Hatcher told us about visits,  
17 and how important visits are to inmates, family contact. When  
18 you go to Elly, twice a week, you are entitled to family  
19 contact visits for up to seven hours. Seven hours, sitting in  
20 the same room, across the table from your loved ones.  
21 What would Lisa Taylor give for seven hours with her  
22 daughter? Charles and Cecilia Combedo, what would they give  
23 for just one more opportunity to see their daughter's  
24 beautiful face? There are inequities -- there are fundamental  
25 inequities with a sentence of life without the possibility of

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1 parole.  
2 The ultimate question, perhaps the only question in  
3 this penalty hearing, is whether justice requires that Dominick  
4 Malone be sentenced to death. What are the reasons for the  
5 death penalty? Well, one of them certainly is deterrence.  
6 One reason for the death penalty is the deterrent effect that  
7 it has on violent crime. Violent crime is deterred by the  
8 imposition of a harsh punishment.  
9 We know that when the death penalty is imposed, it  
10 is a news item. Not only here in our state, but across the  
11 country. When there is an execution, it is national news.  
12 There are young people in schools, in communities, who hear  
13 about it. These very well may be one among them who decides  
14 not to kill, or not to engage in violent conduct, out of fear  
15 of the violent -- or the serious punishment that will come as  
16 a result of his or her violent behavior.  
17 What will the imposition of the death penalty do in  
18 this case? Will it bring Charlotte back? No. Will it bring  
19 Victoria back? Of course not. Can the imposition of the  
20 death penalty save Dumas life by the message that it sends?  
21 Absolutely. Will the imposition of the death penalty in this  
22 case guarantee that Dominick Malone never kills again?  
23 Absolutely.  
24 When you look at the death penalty, remember that it  
25 is there to punish. The death penalty can be viewed as

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1 society's expression of outrage. It is society reacting, and  
2 punishing & -- punishing someone for horribly atrocious  
3 conduct. Society allows punishment. Parents punish children,  
4 teachers punish students.

5 In the criminal justice system, one of the goals is  
6 to punish. And punishment serves a necessary right in  
7 society. It prevents anarchy from forming, because  
8 perpetrators know that if violent crime is committed, there is  
9 an equal and exact punishment that looms for them.

10 The key to punishment in any situation is that the  
11 punishment that is handed down fits the crime. It must fit  
12 the crime. And the more egregious the crime, the more serious  
13 and egregious should be the punishment. So, what is the  
14 appropriate punishment for somebody who murders, not one, but  
15 two people? And if you think about it -- let's assume for a  
16 moment that Dominic Malone had only killed one person.

17 When you consider his history in the prison system,  
18 when you consider his violent criminal past, when you think  
19 about the manner in which he killed in this case, if he had  
20 committed just one murder, at a minimum, the appropriate  
21 punishment would be life without the possibility of parole.  
22 That would be the minimum punishment for Dominic Malone. But  
23 there's a problem. There's a philosophical, there's a moral,  
24 there's an ethical problem. And that is, if he kills someone  
25 else, doesn't justice require something more?

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1 So, if you think about that, if he is to receive a  
2 punishment of life without the possibility of parole, we know  
3 that he is going to spend the rest of his life in prison. But  
4 without a death sentence, what is the punishment for the  
5 second murder? Effectively, it is no punishment. You cannot  
6 punish him anymore than life without the possibility of parole  
7 for a second murder. And so does justice require something  
8 more?

9 When you consider what justice requires in this  
10 case, remember the manner in which Victorio and Charlotte were  
11 murdered. They weren't just executed. They weren't just  
12 stabbed a time or two in the heart. They were dehumanized.  
13 They were destroyed. Their humanity was taken from them.  
14 Consider where the injuries to their bodies were inflicted,  
15 and the significance of that, the concentration of this blunt  
16 force on their heads and on their faces.

17 You know, our spirits, our consciousness resonates  
18 from our heads, from our faces. When we think of ourselves,  
19 when each one of us thinks about how we are, and we get an  
20 image of our self, we get the image of our head, of our face.  
21 That's who we are. That makes us uniquely human. And when  
22 you do what Dominic Malone did to these girls, think about how  
23 personal that was, and how malicious that was, and think about  
24 what justice requires for that.

In a short time, you will begin to make your

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1 decision as to what the appropriate punishment is in this  
 2 case. And whatever you decide, on behalf of the State of  
 3 Nevada, we will accept it, we will respect it, and we will  
 4 thank you for it. But as you sit down to record your verdicts  
 5 on the verdict form, if you're tempted to check the box that  
 6 says life without the possibility of parole, stop and ask  
 7 yourself, is that what justice requires in this case?

8 THE COURT: Thank you, Mr. Tallie. Ladies and  
 9 gentlemen, we're just going to take a very quick recess.  
 10 Cliff, you can take them out the back here.

11 Ladies and gentlemen, during this recess, it is your  
 12 duty not to converse among yourselves, or with anyone else on  
 13 any subject connected with this case. Or to read, watch or  
 14 listen to any report or commentary on the trial by any  
 15 person connected with the trial, or by any medium of  
 16 information, including without limitation, newspaper,  
 17 television, radio, or the Internet. You are not to form or  
 18 express an opinion on any subject connected with this case  
 19 until this matter is submitted to you.

20 We'll see you back in just a few minutes.

21 (Court recessed at 11:30 a.m. until 11:39 a.m.)

22 (In the presence of the jury)

23 THE COURT: Mr. Cano, are you ready, or Mr. Pike?

24 MR. PIKE: I'll be doing this portion of it, Your

25 Honor.

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1 THE COURT: All right.

2 DEFENSE'S CLOSING ARGUMENT

3 MR. PIKE: May it please the Court, ladies and  
 4 gentlemen of the jury, counsel for the state, [inaudible]  
 5 Domico, and the family, and the families and representatives  
 6 that are here to see justice be done.

7 I knew coming into this trial it was going to be  
 8 long. We kept to the schedule. We got done ahead of  
 9 schedule. We didn't cut any corners, because you wanted to  
 10 know who it was that you would have to make a decision on.  
 11 During voir dire, you said, for you to consider death, that  
 12 you would have to know the human, not somebody that was  
 13 dehumanized, not something that's just called "the defendant,"  
 14 but who Domico is.

15 Mr. Tallie talked about that process, that  
 16 dehumanization. And that's something that happens in the  
 17 courtroom. We'll point to the defendant, what's he wearing,  
 18 Not, who is he, what does he look like, what does his face  
 19 look like. Who is he? How did we get here? You wanted to  
 20 know that. You know how we got here with the charges, and now  
 21 we hope that through the presentation of family members, and  
 22 the presentation with Dr. Pagliani coming into testify, that  
 23 you know how Domico got here.

24 That you understand what it's like, what his future  
 25 in prison would be like, and why death is never mandatory, and

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1 in this case, not an -- not an option. I'll -- I'm going to  
2 be dealing with the weighing portion of it. Mr. Cano and I  
3 have been allowed to split our arguments up. I won't be here  
4 very long. But I'm grateful that you've been here long enough  
5 to consider this and make this decision.

6 The Court has given you an instruction that says  
7 death is never mandatory. It's never something you have to  
8 do. It's never something that any one jury says, justice  
9 requires this, and nothing less. And as Mr. Halli closed  
10 saying, if you think of checking life without the possibility  
11 of parole, you should pause.

12 Let me tell you that this weighing process, the fact  
13 that death is permanent, that before you check something that  
14 cannot be checked, something that cannot be undone, that you  
15 should pause, and you should pause and reason together. And  
16 that's what I'm hoping to do at this point in time. Let's us  
17 reason together.

18 You had an opportunity in completing stage one of  
19 the trial, you met with your fellow jurors, you made a  
20 decision. You deliberated. Premeditation. Deliberation.  
21 You sat, and in congress together, you discussed, made  
22 decisions, and went count, by count.

23 And we could tell by the questions that you asked,  
24 and the time that you spent, that you're a conscientious jury.  
25 You went through and you just didn't check every count. You

1 went through them all. We appreciate that. We appreciate the  
2 time that you put in determining those, each and every  
3 separate offense that was charged in this, and that you were  
4 able to reach unanimous decisions in reference to that. That  
5 was then, this is now, and death is different.

6 Instruction No. 12. Did that make it any brighter,  
7 or? "In determining whether mitigating circumstances exist,  
8 jurors have an obligation to make an independent and objective  
9 analysis of all the relevant evidence." An independent and  
10 objective analysis.

11 I discussed this process with you at one time  
12 before, about your deliberation, where you take the  
13 information that we are arguing at this point in time, you  
14 take the evidence back with you into Room 1. That just  
15 doesn't want to -- where you want to go through -- and when  
16 you go into your deliberations, Mr. Halli said that the first  
17 thing that you have to consider, is whether or not have the  
18 aggravating circumstances been proven beyond a reasonable  
19 doubt. That's in Room 1. Let's see.

(Pause in the proceedings)

20 MR. PIRB: Have the aggravating circumstances been  
21 proven beyond a reasonable doubt. Well, it's -- we're not  
22 going to argue that. You went through the trial. You -- as  
23 Mr. Halli suggested, they're all based upon -- almost all of  
24 them are based upon the counts that you've already considered.  
25

1 So, let's go beyond that.

2 That isn't the question that we're here to decide at  
3 this point in time. What we're to determine is the next  
4 process, the process that you go through. What are mitigating  
5 circumstances, and how you individually compare them for your  
6 independent and objective analysis is going -- analysis that's  
7 going to be done in this case.

8 And in determining what the mitigating circumstances  
9 are, well, go back to the aggravating circumstances first.

10 Those are the ones listed in the aggravating circumstances  
11 portion. You'll see that the allegations about the 2000  
12 murder, isn't there. It's not there. That's -- that's what I  
13 called in my opening argument, the elephant in the room.

14 That's not there. That's not a secret aggravator. That's not  
15 something that you can even consider.

16 During this first weighing process. It's not  
17 something that you can even, in your mind, say, oh, it's a  
18 wink and a nod. I know it's out there, and I'm not -- I'm  
19 just going to pretend that I'm ignoring it. But the fact is,  
20 is that you'll remember the testimony that was offered, and  
21 the burden of a preliminary hearing, and that there was not a  
22 scintilla of legally cognizable evidence at the time of that  
23 preliminary hearing, and it was dismissed.

24 Dismissed by a chief deputy district attorney, and  
25 has not been charged up to this day. It's not a conviction,

1 not like the other case, where Domanic pled guilty to. It's  
2 something you cannot consider during this weighing process, no  
3 matter how much your mind wants to say, no. No. It's there.

4 But you have to do it. To use a phrase in reference  
5 to that, how you can put it in your mind, or take it from your  
6 mind and put it out. Well, unsubstantiated. Case closed.

7 Gone. That's the value that that has.

8 Do the aggravators make you angry? Do they label  
9 you -- or, excuse me, does it cause you to label Domanic?

10 Could it cloud you with hate? Could it let -- cloud you with  
11 anger? This is a deliberative process. We need to talk  
12 together. We need to reason together.

13 It would be -- it would almost be optimum if the  
14 prosecutor and one of the defense attorneys, either me or  
15 Charlie, could sit down with each juror and talk about the  
16 case, individually. Because it's that independent  
17 determination that you need to make. And you can't make them  
18 based on anger. You can't make them based on labels. The

19 Court's instructed you what you can base them on.

20 Instruction No. 11, and that's that there are  
21 factors that may be considered by you. In fairness and in  
22 mercy, because that's what makes us people. We all want to be  
23 fair. We all want to do justice. We all want to be right.

24 We all want to have justice for everybody. And that's what --  
25 that's what our whole country is based on: justice for all.

1 And justice is not a determination based upon a  
 2 professional orator's tactic to try and sway your decisions.  
 3 It's what you reason in your mind, and feel in your heart.  
 4 It's what you look around you and say, in my experience, in my  
 5 life, and based upon what I know about me, and those around me  
 6 and my community, this is what's right. This is what's just.  
 7 And we have 12 different people coming in to make that just  
 8 decision. And what's just to one person, what's right to  
 9 another person, what may affect another person. You're  
 10 representatives of each and separate parts of the community,  
 11 and that's why we want you to -- that's why there's 12 people  
 12 here, because not everybody sees the world the same way.  
 13 So, that's why you list the mitigators. That's why  
 14 Instruction No. 7, indicates that, "A mitigating circumstance  
 15 is found if one juror believes that it exists." You don't  
 16 collaborate. You don't meet together, and you don't say,  
 17 okay, does everybody here find that this exists? And then  
 18 check it off "yes" or "no." And you don't put it out and lay  
 19 it over another one and -- over an aggravator and say, well,  
 20 this one's less than that one, so let's just say it doesn't  
 21 exist.  
 22 That's not the process. It's not a numbers game.  
 23 It's not a numbers process. One mitigator, one mitigating  
 24 circumstance can outweigh all the aggravators that the State  
 25 has. And remember, there doesn't have to be anything that

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1 outweighs the aggravators, because death is never mandatory.  
 2 You've listed a number of potential mitigators.  
 3 Those are ones that were identified by Dr. Pagini, who came  
 4 in. And he did not offer absurd mitigators. A mitigator is  
 5 that you wear glasses. We're talking about a man's life. To  
 6 point at him and say, well, he wears glasses. That's a  
 7 mitigator.  
 8 Well, let's not consider that. Let's denigrate  
 9 everything else. Let's denigrate and let's say that his  
 10 childhood doesn't mean a thing. Think of a great four letter  
 11 word that starts with "s", but I can't say it in open court.  
 12 We brought in a psychologist, who works for the  
 13 Family Court, makes decisions on child custody. Works for the  
 14 District Attorney's Office. Has been hired and then qualified  
 15 to testify in open court. There was no contra veiling expert.  
 16 There was no psychologist, psychiatrist, any mental health  
 17 specialist, expert, to controvert the findings of Dr. Pagini.  
 18 And things weren't hidden from him. Did he attempt  
 19 to corroborate information? Yeah. He called family members.  
 20 Who do you call? Did he have the reports of the 2000  
 21 murder? Well, yeah, he had that. Did he have the reports  
 22 about the case with Darnanna? He had that. Did he have the  
 23 Charter Hospital records? Did he attempt to locate all of  
 24 those collaborate -- or collateral sources and review them?  
 25 Yes, he did.

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1 To suggest that he was somehow unthorough is belied  
2 by the facts, is belied by the testimony, and is supported by  
3 who else, but the U.S. Department of Justice.

4 And we've got family factors. They talk about  
5 parental criminality, child maltreatment, poor family  
6 practices. Discuss this with you. These are the same things  
7 that the State now says, well, Dr. Paglini, he's -- that's  
8 absurd what he's saying. That doesn't have any import. You  
9 shouldn't consider that. Well, the U.S. Department of Justice  
10 thinks that's important.

11 Remember, it doesn't matter what the State says, it  
12 doesn't matter what I say, it's what you say. And those  
13 mitigating factors that are brought out, affect, and can  
14 affect you down to your very heart and soul.

15 Remember, in Instruction No. 8, if at least one of  
16 you determines that the mitigating circumstances outweigh the  
17 aggravating, the defendant is not eligible for the death  
18 sentence. If just one of you decides that, then your decision  
19 has to be life with the possibility of parole, or life  
20 without. And I agree with Mr. Telli, 100 years, or life, is,  
21 in effect, meaningless as far as the penalty.

22 Let's talk about how children develop, by what Dr.  
23 Paglini talked about, and why all this information about his  
24 childhood is important.

25 Children are what they learn. If they grow up in a

1 loving household, it doesn't matter how much money is in that  
2 household, does it? If they grow up with a family around,  
3 that's supportive, that wants them to achieve, that helps them  
4 achieve. The resiliency is there.

5 When you grow up with an intact family, with  
6 acceptance, affirmation, and you have stability. And you have  
7 structure and consistency, as all these blocks build up a  
8 family, then you have a healthy person.

9 You start crumbling those down, you have a family  
10 that's not intact. You have a father that's gone to prison  
11 for murder. You have a mother that marries a man who,  
12 remember her recorded statement, "I didn't want to be addicted  
13 to crack. I wanted a man around, because I thought that was  
14 important." Well meaning lady, passed while her son's in  
15 prison.

16 How did she get to where crack became important to  
17 her? Talked about being forced to have crack. She talked  
18 about how it affected her, and what it did to her family.

19 How did that affect the stability? She couldn't  
20 give for her kids anymore. She started to take from them.  
21 Couldn't turn them over to Uncle B, or the Allen family,  
22 because, remember what Uncle B, Bishop talked about? They  
23 were worth something. She could sell the benefits. Oh, you  
24 get the food stamps from my baby, give me a little bit, I'll  
25 give you a little bit, and then we'll use it for some crack.

1 We'll do that. It was never an all or nothing. It was never  
2 an opportunity to go into -- to go into a family.

3 And we wanted you to know what it was like to walk  
4 through the projects in Mobile, Alabama. It's hard to know a  
5 place that you've never been. It's hard to know a prison if  
6 you've never been to a prison, and it's hard to know a slum,  
7 if you've never been in a slum. It's hard to know poverty.

8 And housing, it was so bad, it was torn down.

9 Housing that was historically -- whether you

10 remember this or not, this may be within some of your

11 knowledge -- wasn't that the housing developed -- developments  
12 that were so bad, that Reverend Martin Luther King went in to  
13 stage much of his civil rights actions. It didn't get better.

14 No, and crack made it worse. You live in a hit

15 house, go in to do that.

16 Take those things away, you end with exactly what

17 Dr. Fogelin talked about, psychological disorders, drug  
18 dependency and criminal activity. It's not an excuse. It's  
19 not a defense. But it's a reality. If there isn't a  
20 resiliency, then that's what's going to happen.

21 In considering the mitigating factors, let's start

22 with what it's like.

23 The paternal criminality. That's a simple one. Yes,  
24 it's there. Dad's in prison for murder. Mom, stepped are  
25 doing drugs. No if's, and's or but's about that. Nothing to

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1 controversy that.

2 Jewel supports it. Uncle B supports it. Curtis

3 Allen come in and supported that. How does that cascade?

4 Criminality and abuse and ability to -- and an inability to  
5 cope with drug addictions, and the multi-generational problems  
6 that are involved in this, start affecting children at a very  
7 young age.

8 It might not mean a thing to you. But I put up a  
9 cigarette lighter up here. But to children, when they see  
10 this, and when they hear this, or that, or know that this it  
11 lit up, do you know what this means? This means that mom,

12 stepped, are taking that pipe in. (makes sound). And what's  
13 going to come out of that door? What's going to happen next?

14 It's like living with an alcoholic. When you hear

15 that first bottle cap shoot off that beer, what's dad going to  
16 do. What's stepped going to do. What's going to happen?

17 What's going to come in? What's he going to do to me next?

18 Demonic. Where's your daddy at? Demonic? You ain't my son.

19 Demonic. Want something to eat? (makes sound) Here. Eat  
20 your grates. And your sister, too.

21 You can't take that away from a child without it

22 leaving deep and permanent scars. And did it change? Did

23 people try and help? Could mom help? Mom, I need some help.

24 Second. Mom goes back. Closes the door. When that door  
25 closes, and this gets lit up, then there's a good chance that

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1 they're going to get lit up, too.  
 2 little Jewel, held upside down and whipped, and  
 3 beaten. Demented, stuttering. What's wrong with you? And hit  
 4 him. I'll make you stop stuttering.  
 5 Do you want to go home to a place that has no  
 6 stability? Do you want to go home to a place where the -- you  
 7 don't know, when you come home, if the lights are going to be  
 8 on, if there's going to be food in the refrigerator. You  
 9 don't know what you're going to walk into, because you're  
 10 walking into a hit house.  
 11 Remember how Uncle B described it, what it was?  
 12 People sleeping over there. People having sex over there.  
 13 Because remember when Jewel couldn't provide enough money for  
 14 Mr. Hunter, their work, and couldn't provide enough money so  
 15 that she'd have her drugs, too. Well, what could she do on  
 16 the side? God bless her, what did she train her daughter to  
 17 do?  
 18 Poor family management practices. That's a  
 19 psychologist's term. That's somebody that wears suits. And  
 20 somebody that is using diagnostic tools to try and make --  
 21 change it into a language of science and not into what it  
 22 really is, which is chaos.  
 23 Not only was it bad, but you couldn't count on from  
 24 year-to-year if it was going to be the same place. You  
 25 couldn't count on, from month to month, what was going to

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1 happen. And you go from school, to school, to school, to  
 2 school.  
 3 Now, children when they're born, they're like little  
 4 mirrors. You look in them, you see their face. I'll borrow  
 5 from the prosecutor, Mr. Tally. When you see -- when a baby  
 6 sees you smile, that baby smiles back. When that baby looks  
 7 you in the eye, you look at that baby back.  
 8 And you can tap glass, and you can keep tapping it.  
 9 And one day, that mirror, that glass breaks. And when it  
 10 shatters, it's next to impossible to put it back. And that's  
 11 resiliency. What is the final hit that breaks a child, and  
 12 besides the decent into criminality. Not an excuse, not a  
 13 defense, but an understanding of who it is that the State  
 14 wants you to sign a verdict of death.  
 15 How does depression start, and why is it listed in  
 16 different ways? It's like each tap on the glass. You get  
 17 depressed when you go in, and you get excited, because you see  
 18 what's going on in that child's world. You see that when the  
 19 family is trying to help out, goes in and buys them toys, or  
 20 buys them clothes, that all that is, is another way to feed  
 21 that crack habit.  
 22 That's the way -- that falls under so many different  
 23 categories that you have to look at all of these and make a  
 24 determination which one fits, and which one resonates within  
 25 your heart, because those are the languages of a psychologist

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1 that are placed in here. They're not your words. You'll have  
2 a chance for your words. But that's later.

3 What's the adolescent depression? You go through  
4 and that's No. 9. Going through that, you remove from  
5 Alabama, you're taking away from the -- those members of your  
6 father's family, Ms. Carrie. Remember, Ms. Carrie? She's the  
7 one that would take Dornonic and Little Jewel to the prison.

8 And no matter how baggy, or what a circumstance the  
9 State wants to paint that, walking in and seeing your dad in  
10 prison clothes, sitting across the table from them, and going  
11 out, and leaving and knowing that he's staying behind those  
12 prison bars, takes a toll on children.

13 It's a whole lot different than playing ball with  
14 them. A whole lot different than going out and working with  
15 them, and learning how to work, and having somebody model  
16 that. And having somebody show you that you get up every  
17 morning at 5:00 o'clock, and you go to work. And it doesn't  
18 matter if you don't feel good, and it doesn't matter that you  
19 don't like your job, and it doesn't matter -- it just doesn't  
20 matter. You have to do, what you have to do.

21 Lack of modeling. That's kind of the way that the  
22 -- that would've been described by the psychologist. But  
23 that's what it really means, helping your son be a man,  
24 helping your stepson be a man, instead of creating a world of  
25 fear, of chaos, abuse, and the inability to cope.

1 Dropped out of school. Now can you go in and  
2 complete something you can't embrace, because you're never  
3 there long enough? In school, after school, after school,  
4 after school. A big difference if it's part of your job that  
5 your father has to go somewhere, that there are assignments  
6 that you have to move. If there's an intact family, or if  
7 there's other resiliency factors.

8 But if all you have is some family that wants to  
9 help you, and you hope at school you're going to have  
10 something more, then it's not -- the jumping from school, to  
11 school, to school creates another instability. You go through  
12 each one of those piths, each one of those mitigating  
13 circumstances. And you go through and you find the first  
14 attempt of Dornonic -- Dornonic still at that time, to seek help  
15 outside the family. Goes to the principal. He's turned down.  
16 Reach outside of the home. What does it take for a child to  
17 reach outside of the family, and to be turned down?  
18 Second cry for help, suicide. What is suicide? I  
19 can't take it anymore. I can't do it. I need help. By this  
20 time, is he getting the help that he wants, getting the help  
21 of what he really wants? Get Hunter out of the home. I want  
22 my mother back. I don't -- I'm tired of this crack addicted  
23 prostitute that is my -- my mother has been turned into. I  
24 don't want that anymore. Well, no, you didn't get it there  
25 either.

1 The -- No. 22. Contacted Child Protective Services.  
 2 Well, Child Protective Services, come over. We know what  
 3 happened there. Somebody knocked at the door, looked at it.  
 4 Who's there? Child Protective Services. Okay, let's clean up  
 5 the living room. There. Here, I've got some food today. Or  
 6 did they call up, set an appointment? There's so much  
 7 information that is lacking in what was done there, that you  
 8 -- all you can look at it and say is that who initiated the  
 9 call, and what happened? Nothing.  
 10 Nobody sees it, or nobody wanted to see it, or they  
 11 believed that Dominic's mom was not under the influence at  
 12 that time. What do we know? We don't know.  
 13 We go through all of those, listed by the  
 14 psychologist, that are uncontested by any expert testimony.  
 15 And you'll find the ones that resonate -- or, excuse me,  
 16 resonate within your heart. And you'll sign those, or check  
 17 those off.  
 18 The next step is to go to the sheet, where you list  
 19 the additional mitigators that you may find. Well, those are  
 20 the ones, the mitigators that aren't done by psychologists.  
 21 Those are the ones that are done by people. Those are the  
 22 ones that you have to take into your -- into your mind and  
 23 look at it.  
 24 And Mr. Lalli talked about different aspects of this  
 25 going -- whether it's punishment, rehabilitation, or personal

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1 collateral. Those were things that you had expressed an  
 2 interest in when we discussed this in the voir dire portion at  
 3 the very beginning of this trial.  
 4 You wanted to know about punishment. In the State  
 5 of Nevada, punishment is severe and certain. With your  
 6 punishment, Dominic Malone will spend at least 40 years in  
 7 prison. That's a mitigator. It's a long time. Dominic  
 8 Malone will spend every day of the rest of his life in prison,  
 9 if you choose life without the possibility of parole. He will  
 10 be severely punished.  
 11 The State will control him every day for the rest of  
 12 his life. And he can be safely housed in prison. There was  
 13 nothing that was brought to you at this trial to indicate that  
 14 Mr. Malone had any violence while in prison. He had fights in  
 15 the Clark County Detention Center. He had that.  
 16 But what was the only evidence that was brought to  
 17 you about what happened in prison that he was beat down by a  
 18 bunch of guards when he was in there? There's a big  
 19 difference between prison and jail. He can be housed quietly,  
 20 without incident, and without violence in prison. There is no  
 21 evidence to suggest otherwise, from his time in prison. Jail  
 22 is different than prison.  
 23 What about rehabilitation? Is rehabilitation  
 24 possible? Yes, it is. We brought in an example of it and  
 25 that's Mr. Allen. Who despite having been sentenced to a life

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1 of imprisonment for ten years, and he didn't make it until his  
2 sixth parole, but he kept trying. He kept his nose clean and  
3 he learned how to work. He learned how to get up. And he  
4 learned how to go and do a job and he wants to give that  
5 opportunity, he wants to help that rehabilitation with his  
6 son.

7 The fact that he is there, he's an example of this.  
8 This -- these are things that are mitigators. These are  
9 things that have impact, and these are things that --  
10 personally, things you have to consider personally.

11 What's the collateral effects. What would the  
12 execution -- the effect of the execution have on his family?  
13 How would it affect Curtis Allen, his father, Little Jewel,  
14 Latanya, his wife, Adariana and Danielle.

15 An instruction, specifically Number 9, "The law does  
16 not require the jury to impose the death penalty under any  
17 circumstances." Under any circumstances at all.

18 But as I have suggested, when you look at all that  
19 has been brought before you in this trial, that that is merely  
20 a personal -- that's a validation of your personal belief, or  
21 what may be an unalaid mitigator, that every life has value.

22 That Dominic is a person.

23 That the weighing process, you will not allow it to  
24 dehumanize him. You will not know -- you will -- you will  
25 look at that weighing process and you will make a

1 determination, no matter how bad these crimes are, and these  
2 are bad. But is he the worst of the worst? And is he --  
3 should he be one of those people put with the approximately 90  
4 people that are currently on death row, according to Sherman  
5 Batchner?

6 Then when you go through and do the weighing at this  
7 time, it would be appropriate for you to take your pen, and  
8 not hesitate. There are mitigating circumstances in this  
9 case. Again, this isn't a group process. Individually, you  
10 need to step into that second room, and step back and say,  
11 these are the mitigators I find. Write them on there.

12 Even if just one of you finds it, write it there.  
13 You don't need to say that -- do you all think this works?

14 No. This is a mitigator to me. It matters to me. And you're  
15 one of 12 very important people. You're the one person.

16 You're the independent.

17 And then you do not have to consider death. You can  
18 choose life. Life is irreplaceable. We can't bring back  
19 those that have passed, as much as we would like to. Justice  
20 is a human team. And justice encompasses the need of us  
21 individually, to bring our minds and our hearts together.

22 Robert Frost said it best, nothing can make

23 injustice just, but mercy. And we have an instruction that  
24 says that mercy is a part of your deliberative process.

25 Choose life.

1 Thank you.

2 THE COURT: Thank you, Mr. Pike. Mr. Cano?

3 MR. CANO: Thank you, Your Honor.

4 DEFENDANT'S CLOSING ARGUMENT

5 MR. CANO: This hasn't really been an easy journey  
6 for any one of us. We've been here for quite a long time. I  
7 know it's been probably a very difficult journey for everyone  
8 involved in this case; the attorneys, the courts, all of you,  
9 the families and they've had to go through.

10 And in the last five weeks I haven't gotten a lot of  
11 sleep. Actually, last night I didn't sleep at all. And as I  
12 was watching the son kind of come up this morning, it kind of  
13 just hit me, the importance and the magnitude of the decision  
14 that you guys are going to have to make in a few minutes.

15 And it's a decision each one of you get to make by  
16 yourself. Twelve of you are going to have to go back there  
17 and decide in this case, pretty much, what's the ultimate  
18 decision. Do we choose life, or do we choose death? Because  
19 that's really what this boils down to, and that's really what  
20 this is about.

21 Now, courts make decisions to send people to prisons  
22 every day. And the Court takes into consideration who a  
23 person is, the good and the not so good, in making that  
24 decision. And it's not easy for a Judge to make that decision  
25 to send somebody away to prison.

1 But our laws don't even allow a Judge to make the  
2 kind of decision that you guys are going to have to make. The  
3 Judge doesn't make a decision between life and death. The way  
4 the jury system works here in Nevada, they leave that up to  
5 the individual to make that decision, because it is so great  
6 of a responsibility.

7 And it's a personal decision that you have to make  
8 in this case. You saw the pack of instructions that you got  
9 in the first phase of this case to give you that guidance.  
10 And if you compare it to what you just got today, it's not a  
11 lot. There's not a lot of law that can tell you to choose  
12 life or death.

13 There is some guidance and some instructions that  
14 there is -- that some -- some of it does exist. The law never  
15 requires you to impose the death penalty. Any one of you,  
16 just one, can say, no, not this case. And then that  
17 [indiscernible]. So there is some guidance. But this is a  
18 decision that you each have to make yourself.

19 And I think that the reason why it's structured that  
20 way is because this is the kind of decision that you don't get  
21 a second chance. You don't get a do-over. You don't get to  
22 come back tomorrow and say, hey, wait, wait, wait. I  
23 just thought of something else. You know, I changed my mind.  
24 That doesn't happen.

25 And that's why the way that this part in making this

1 decision is structured, so that each one of you get to outline  
2 those aggravators, each one of you get to outline, you know,  
3 what you think a mitigator is. And it only takes one person  
4 to come up with that mitigator, because this is so hard.

5 And you have to honor and respect your fellow juror.  
6 You've got to think about it like -- not like the process  
7 before, where you're coming together and coming up with, well,  
8 what happened in this case? No, we already know what  
9 happened. You made that decision.

10 Now, you get to determine, do I choose life or  
11 death. And everything matters, because if it matters to you,  
12 then it counts. You can't say -- you can't, you know, put it  
13 off on your fellow juror and say, well, I'm going to go along  
14 with them, because they said, yeah, you know, this is the  
15 right decision, I'm going to do that. You can't do that.  
16 That's not allowed here now. Each one of you have to make  
17 this decision.

18 So, how do we get there? And I've been thinking  
19 about this. And I know the State -- I remember back in voir  
20 dire someone said, and I don't remember who it was, but I  
21 remember hearing this in voir dire that, you know, the State  
22 wants you to dehumanize a person, because then you can  
23 consider death. Dehumanize a person.

24 And in a sense, that's what they've tried to do here  
25 in this case. I mean, Dominio is a human being. Do we really

1 take that away from him? We might not agree with the things  
2 we do, and the things that he has done was atrocious. But why  
3 do you think the State wants to dehumanize him? Why? Because  
4 if they can get you to do that, then they can get you to kill  
5 him.

6 Because basically, that's what they want you to do.  
7 They say it in nice, polite terms, but that's what they want  
8 you to do.

9 So, do we do that? Was Dominio not really abused?  
10 Did he not attempt suicide? Really? Did he not grow up in a  
11 family structure full of drugs and a violent environment?

12 Really? See, because if they attack those mitigators, then  
13 they can dehumanize him.

14 And like I said, I don't agree with what happened to  
15 Charlotte and Victoria. And I thought about that. I mean,  
16 what about them? What about their families? And if taking  
17 Dominio's life would bring them back, to fill the hole in the  
18 heart of Marissa or Jacob, or Robert or Michael, I know, that  
19 decision wouldn't take you very long. You'd come back in a  
20 couple of minutes.

21 But that's not possible, and that's not an option.  
22 So what do they do, other than dehumanize him? They try to  
23 get you angry. Why? Because if you're mad, and if you're  
24 angry, then you can kill him. Think about that. Think about  
25 if you've ever made a decision, when you've been in that state

1 of mind, when you're mad and you're angry.

2 That frame of mind, is that when you should make a  
3 decision of this magnitude? It's not. You have to be fair  
4 and make a sound, rational decision, based upon everything  
5 that's been presented to you. That's what this process is  
6 about right now.

7 So, when you think about this, let's look at the  
8 mitigation in this case. Does it exist? No, they're real.

9 They do exist. The ones that we've listed through our  
10 doctors, the ones that we haven't listed, they're there.

11 I mean, if he goes to prison, he's going to have to  
12 suffer, I mean, as much as the State would like you to think  
13 that, you know, prison's a cakewalk, it's not. Nobody would  
14 want to spend at least 40 years in prison, if not the rest of  
15 their life. That's not easy for anybody. There's no doubt  
16 about that.

17 But at least he's alive, right? I mean, Charlotte  
18 and Victoria don't have that. But he's not having that kind  
19 of life that we have, that we share with our families, is he?  
20 No. Is that fair? Is that right? That's your decision to  
21 make.

22 But one thing that really what it comes down to in  
23 this case, is really about mercy. I know the State has  
24 struggled, and they've told you this, about they can't find a  
25 definition for justice in this case, and I found one.

1 they're welcome to it. And I think it's applicable in this  
2 case, and in any case.

3 What is justice? Yes, justice is mercy. And why  
4 should we have mercy here in this case? I mean, it's easy to  
5 love and to forgive those that, you know, are around you, and  
6 your family members, and if they've wronged you, if they did  
7 something wrong, it's easy, you know, to show them compassion,  
8 and to forgive them.

9 But that's not what mercy is for. Mercy is for  
10 those who we're not close to, who are strangers to us. Mercy  
11 is for those that didn't take the higher road. That's what  
12 this case is about now.

13 We don't condone anything that happened to Charlotte  
14 or Victoria, and nothing will bring them back. We do know  
15 what this case, and the effect it have on Domenico and his  
16 family. And if that compassion that's inside of you, that  
17 mercy that's inside of you, is enough reason to choose life,  
18 then that's it. You've done your job.

19 And I'm going to beg you, on behalf of Domenico  
20 Malone, to choose life.

21 THE COURT: Thank you, Mr. Cano. Mr. DiGiuseppe?

22 MR. DIGIUSEPPE: Thank you, Judge.

23 STATE'S RESOLUTION CLOSING ARGUMENT

24 MR. DIGIUSEPPE: It's been a long five weeks. I  
25 don't have a whole heck of a lot to say. Hopefully, I'll be

1 as short as Mr. Cano.

2 You know, as you stand up here, at this point, after  
3 five weeks, none of us think that what we're asking you to go  
4 back there and do, I think probably from either side, that  
5 we're asking you to do something that's easy. And actually,  
6 we hope it's not.

7 We hope that your decision is tough because you get  
8 to the right decision. But as I stand here, I wonder to  
9 myself, how can it not be clear? Mr. Pike and Mr. Cano both  
10 tried to use a logical argument to you, to suggest --  
11 essentially they kind of suggest, hey, don't really  
12 deliberate.

13 Yeah, it's an individual decision, but read those  
14 instructions. This is a jury. The jury returns a verdict as  
15 a group, and they make a decision as a group. One person does  
16 not thwart the will of the jury, because they can. You follow  
17 the law.

18 And what does the law say? The law says, there are  
19 certain things that essentially make you immune from the death  
20 penalty. You're not eligible for the death penalty if certain  
21 things exist. And you heard during, I think, direct  
22 examination, you know, you can't execute someone who's  
23 retarded. That's a mitigating circumstance, as a matter of  
24 law, not eligible for the death penalty. And, you know, if  
25 you're below the age of 18, you're not eligible for the death

1 penalty.

2 But once there's aggravators, you're over 18,  
3 there's aggravators, we let the jury decide if there's enough  
4 mitigation there to establish whether or not you are, or are  
5 not, eligible for the death penalty. And so let's look at  
6 this particular case.

7 Did he have a bad childhood? Absolutely. Would you  
8 have hoped that he had a better childhood? Yes, you would.  
9 But are you prepared to say, that what happened, up until age  
10 16, right? Did you hear a single piece of mitigation after  
11 1996? Up to age 16, makes him immune from the death penalty  
12 for the rest of his life? Or, is it just ten years? Is he  
13 immune to age 18? Is he immune to age 20? Is he immune to  
14 age 22?

15 At 26 years of age, do you think that perhaps,  
16 maybe, having a bad childhood means you're still eligible for  
17 the death penalty? I'm not going to dehumanize him. Do you  
18 think that maybe Domenic Malone is still eligible for the  
19 death penalty, when he does what he does to Victorio and  
20 Charlotte? That logic argument that you should consider the  
21 death penalty in this particular case?

22 Whatever your decision is, like Mr. Talli says,  
23 we're going to respect it. But to suggest that having a bad  
24 childhood means you don't even get to consider the death  
25 penalty because you're immune from it, that's a double



1 homicide. That's only one aggravator. Heck, he's got eight  
2 others. Does that mean that at no point, somebody who has  
3 that type of history, is allowed to face the death penalty?

4 And then Mr. Pike got up here and said, hey, here's  
5 the things you should kind of write in there. That the  
6 punishment, you could give him otherwise, is a mitigator--  
7 Really? I read the definition of a mitigator in the  
8 instructions and it says, it reduces his moral culpability.

9 How is that mitigation, that there are other people  
10 who could be sentenced to something else? How is that there's  
11 the hope of rehabilitation for -- and we'll talk about what  
12 really that hope is -- for this individual mitigation? How  
13 does that reduce his moral culpability, if you decide not to  
14 impose the ultimate punishment?

15 And then -- and I mean this not cross in any way,  
16 but the personal and collateral thing that he wrote up there  
17 about mitigation. I mean, let's be honest. You can't call  
18 Dominic Malone a father. He was a sperm donor twice, but a  
19 father? We're going to call Dominic Malone a father? Let's  
20 see, he fathered a child, but raped her mother. Went to  
21 prison. Got out for a few months. Got revoked. Got out  
22 again. Had a quick baby, and was back in jail for a double  
23 homicide before that second baby was born.

24 And suddenly, because Dwantha Jones raised what  
25 appeared to be a beautiful 14 year old girl, that that somehow

1 reduces his moral culpability. Really?

2 MR. PIKE: Objection, Your Honor. Williams v. Ryan  
3 [phonetic]. There need be no nexus between the crime and the  
4 mitigator.

5 MR. DISABCOMO: Certainly, there has to be a nexus  
6 to his moral --

7 THE COURT: I'm going to --

8 MR. DISABCOMO: -- culpability.

9 THE COURT: I'm going to overrule the objection.

10 MR. PIKE: Thank you. I'm sorry to interrupt,

11 counsel.

12 MR. DISABCOMO: That's okay.

13 So, when you get to that first box, when they  
14 suggest to you that logic somehow implies that you shouldn't  
15 consider all four punishments, how is it that any reasonable  
16 person, any reasonable juror could say, yeah, he had a bad  
17 childhood, so we're not going to consider it.

18 So let's get to what it is that ultimately you get  
19 to decide in this particular case. And I don't have a lot to  
20 say, because Mr. Lolla covered it. But what I do want to talk  
21 about a little bit is the stuff you haven't seen, right?

22 When you consider the evidence of mitigation,  
23 because just because you get past the point where you click  
24 off that the aggravators outweigh the mitigators, you're still  
25 going to consider all that evidence in making your decision.

1 When you consider it, and when you consider the  
 2 weight of it, ask yourself how it was generated. Well, all  
 3 these family members know he's facing a possible capital  
 4 punishment. All these family members give a description.  
 5 And do they intentionally make it seem better, or do  
 6 they want, in their mind, to give a justification, or a reason  
 7 for why their family member is in this predicament? Is there  
 8 some motivation, external, to actually think about saying it's  
 9 lie, like Bishop Allen said, is, you know, I just didn't  
 10 realize it was that bad, otherwise, I would've done something.  
 11 I let my charity at home sleep, because I was giving charity  
 12 out here.  
 13 Or is the truth of the matter is, it really wasn't  
 14 that bad? And one of the mitigators they offered to you,  
 15 suggests it really wasn't that bad, because they said, he made  
 16 it to 9th grade and he had no problems, was a good kid, and  
 17 nice. I mean, if it was that horrible, how did he make it to  
 18 age, what, what's 9th grade, almost 19, without having these  
 19 problems. How was that possible?  
 20 And that by age 16, he has a longstanding history of  
 21 outbursts, and violence, and he has the Axis I diagnosis, and  
 22 today he certainly has a conduct disorder. What else?  
 23 Well, you look at every single thing that is not  
 24 related to his family, every single record, doesn't  
 25 corroborate that he had a bad childhood. Does his mom do

1 crack? Yeah. I mean, you could look at that video and go,  
 2 that woman did crack. No question.  
 3 But, Mr. Pike's reenactment of scenes in the  
 4 household, he's a very accomplished actor. You know he knows  
 5 Shakespeare. But is that really what it was like in the house  
 6 with Dominic Malone? Does the evidence suggest that that is  
 7 true? Because there is some truth to what we do here.  
 8 Or, really, is it about the motivations for why  
 9 people say what they do? What you haven't heard, is what's in  
 10 Tab 1, from Mr. Malone, when he raped Doreanna. Back after he  
 11 gets convicted, and gets probation. Because, yeah, you take  
 12 into account on your first felony offense, the fact that you  
 13 had a bad childhood.  
 14 And you're given an opportunity. And it took them  
 15 but a couple of weeks to get revoked. But a couple of weeks  
 16 after getting probation to get revoked. And, don't read just  
 17 the fact that he got picked up selling dope. That wasn't even  
 18 the biggest basis for the revocation. Read the report. He  
 19 basically tells the officer, I'm not doing what you tell me,  
 20 and you -- basically, there's no way you're going to supervise  
 21 me. And the response from the officer is, you want to tell me  
 22 that, or you're going to go to jail right now. Okay, I  
 23 promise, I'll behave. Here's my number, walks out the door,  
 24 and never answers the phone again. And they have to go grab  
 25 him.

1 And that's why when he gets picked with the PCG with  
2 intent, he gets revoked for it. He goes to prison. Well,  
3 guess what, being in prison isn't a happy place. And it's not  
4 as bad as they made it sound like with Sherman Batchelor on  
5 direct, but it's not a happy place.

6 So what does Mr. Malone do? He files a Proper  
7 Person Petition. It's in 262, where he talks about how  
8 Dawanna Jones lied, even though I pled guilty, none of this is  
9 true. Why? Because he was goal-oriented. He was motivated.  
10 I need to get out of this place, because now I'm in prison.  
11 It's not such a good thing for me anymore.

12 And you will see in there that it eventually gets  
13 denied. But now he's talking to Dr. Paglini, oh, God, I don't  
14 want to get executed. I'd better take responsibility for my  
15 aggravator.

16 And so now, to Dr. Paglini, his story is, I did it.  
17 She was a nice person. I shouldn't have done it. I'm really  
18 sorry about it. Well, everything in this case is like that  
19 when it comes to mitigation. Look at that.

20 They spent a lot of time talking about the murder.  
21 I heard Mr. Mall mention it once, the murder of Treyvion  
22 Hampton. Is it important? No, you should be sentencing this  
23 guy to death for what he did to Victoria and Charlotte. It's  
24 probably not that important that he killed a third person.  
25 But go ahead and read the reports. They tried to

1 suggest to you, he didn't do it. Ask yourself how his  
2 toothbrush got wound up at the scene. And remember, you get  
3 to consider everything. You get to consider the testimony of  
4 Jenae Ayers, when she went over blood spatter evidence.  
5 Remember the -- the low velocity, the medium velocity, the  
6 high velocity, or high impact spatter?

7 And remember how she did the little descriptions?  
8 Well, look at the blood underneath the toothbrush. High  
9 impact spatter. And what did she tell you? That's like from  
10 a gunshot wound. And so then the toothbrush wound up on top  
11 of the gunshot wound. And what do you know about the facts of  
12 the case?

13 The guy gets shot. The person he's in a fight with  
14 who, wearing the round glasses and tan pants. The defendant  
15 admits in his statement he's wearing tan pants, and those are  
16 his round glasses.

17 I haven't really figured out Dawanna Graves got his  
18 toothbrush and threw it on top of the gunshot blood spatter.  
19 Or that there's four or five other independent witnesses, or  
20 that he admitted to being present at that scene.

21 Are we suggesting to you it's an aggravator? No,  
22 he's not convicted of it. But are you [sic] suggesting to you  
23 that you shouldn't consider that? Well, there's a heck of a  
24 lot more evidence that he committed murder, and to Treyvion  
25 Hampton, then there was about the majority of his mitigation

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1 in this particular case. There is physical information there  
 2 that corroborates that he killed a third individual in this  
 3 case.  
 4 But do you really need to get there, to have what  
 5 you know to be the right answer in this case? That's the  
 6 question. The question isn't, did he kill two people. Right?  
 7 Not every person who kills two people deserves the death  
 8 penalty. Not every person who kidnaps somebody beforehand  
 9 deserves the death penalty. Not every person who robs someone  
 10 they kill, deserves the death penalty. Not even somebody  
 11 who's previously raped somebody before, necessarily deserves  
 12 the death penalty.  
 13 But how do you put all those facts together, with  
 14 the nature and circumstances of the way Victoria and Charlotte  
 15 died? And Mr. Talli didn't mention this, but which one lived  
 16 longer? Which one got to see the other one die, and ask  
 17 yourself, how do you not earn the right to get the ultimate  
 18 punishment, Dominic Malone. He's not the defendant. Don't  
 19 dehumanize him. Walk in here and tell Dominic Malone, you've  
 20 earned this punishment. Your record, your crimes, your  
 21 violence, and you are not safe.  
 22 Mr. Piko said, hey, you heard that he beat up a guy  
 23 who's 60 years old. Really? How motivated do you think right  
 24 now Dominic Malone is not to get the death sentence, right?  
 25 It's the only chance he's got in front of 12 people. He's

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1 sitting in the Clark County Detention Center. Go read Tab 5.  
 2 You heard that he got his notice of evidence in Aggravation  
 3 for the Death Penalty on September 24th of 2009, and yet in  
 4 2010, he's in violent confrontations inside the Detention  
 5 Center, where they have to pepper spray him and pull him off  
 6 another prisoner.  
 7 Ask yourself, not only has he earned it, is it  
 8 right, but is it going to protect somebody in the future. And  
 9 if your answer to all three of those are "yes", then you know  
 10 your decision.  
 11 Thank you.  
 12 THE COURT: Thank you, Mr. DiGiacomo.  
 13 Cliff, can you approach, please?  
 14 THE MARSHAL: Sure.  
 15 (Off-record bench conference Court/Marshal)  
 16 THE COURT: All right. At this time, the Clerk will  
 17 swear in the Marshal to take charge of the jury panel.  
 18 MARSHAL SWORN  
 19 THE COURT: The Clerk will swear in the Court  
 20 Recorder, to take charge of the alternates.  
 21 COURT RECORDER SWORN  
 22 (Jury retires to deliberate at 12:57 p.m.)  
 23 THE COURT: All right. We're going to have -- the  
 24 alternates will be in here during the lunch hour, waiting  
 25 during the deliberations if -- we'll see if their services are

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## REGISTER OF ACTIONS

CASE NO. 06C224572-2

The State of Nevada vs Dominic R Malone

Case Type: Felony/Gross  
Misdemeanor  
Date Filed: 07/27/2006  
Location: Department 17  
Conversion Case Number: C224572  
Defendant's Scope ID #: 1670091  
Lower Court Case Number: 06FH00742

### RELATED CASE INFORMATION

#### Related Cases

06C224572-1 (Multi-Defendant Case)  
06C224572-3 (Multi-Defendant Case)

### PARTY INFORMATION

Defendant Malone, Dominic R

Lead Attorneys  
David M. Schleck

Retained

7023821844(W)

Plaintiff State of Nevada

Steven B Wolfson  
702-671-2700(W)

### CHARGE INFORMATION

Charges: Malone, Dominic R	Statute	Level	Date
1. BATTERY WITH SUBSTANTIAL BODILY HARM (FELONY)	200.481	Felony	01/01/1900
1. KIDNAP WITH USE OF A DEADLY WEAPON	200.310	Felony	01/01/1900
2. CONSP KIDNAP 1ST DEGREE	200.310	Felony	01/01/1900
3. KIDNAPPING IN FIRST DEGREE	200.320	Felony	01/01/1900
3. CONSPIRACY TO COMMIT A CRIME	199.480	Felony	01/01/1900
3. KIDNAP WITH USE OF A DEADLY WEAPON	200.310	Felony	01/01/1900
4. BATTERY WITH SUBSTANTIAL BODILY HARM (FELONY)	200.481	Felony	01/01/1900
4. KIDNAP WITH USE OF A DEADLY WEAPON	200.310	Felony	01/01/1900
5. ROBBERY	200.380	Felony	01/01/1900
6. PANDERING	201.300	Felony	01/01/1900
7. KIDNAPPING IN FIRST DEGREE	200.320	Felony	01/01/1900
7. KIDNAP WITH USE OF A DEADLY WEAPON	200.310	Felony	01/01/1900
7. CONSP BURGLARY	205.060	Gross Misdemeanor	01/01/1900
8. CONSP KIDNAP 1ST DEGREE	200.310	Felony	01/01/1900
9. CONSP MURDER	200.010	Felony	01/01/1900
10. BURGLARY	205.060	Felony	01/01/1900
10. CONSPIRACY TO COMMIT A CRIME	199.480	Felony	01/01/1900
10. DEGREES OF MURDER	200.030	Felony	01/01/1900
11. CONSPIRACY TO COMMIT A CRIME	199.480	Gross Misdemeanor	01/01/1900
11. KIDNAP 1ST DEGREE	200.310	Felony	01/01/1900
12. KIDNAP 1ST DEGREE	200.310	Felony	01/01/1900
13. KIDNAP WITH USE OF A DEADLY WEAPON	200.310	Felony	01/01/1900
13. MURDER WITH A DEADLY WEAPON	200.030	Felony	01/01/1900
14. MURDER WITH A DEADLY WEAPON	200.030	Felony	01/01/1900

14. KIDNAP WITH USE OF A DEADLY WEAPON	200.310	Felony	01/01/1900
15. DEGREES OF MURDER	200.030	Felony	01/01/1900
15. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
15. ROBBERY WITH A DEADLY WEAPON	200.380	Felony	01/01/1900
16. ROBBERY WITH A DEADLY WEAPON	200.380	Felony	01/01/1900
16. DEGREES OF MURDER	200.030	Felony	01/01/1900
16. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
17. ROBBERY	200.380	Felony	01/01/1900
17. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
18. ROBBERY	200.380	Felony	01/01/1900
18. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900

## EVENTS &amp; ORDERS OF THE COURT

01/10/2012 Jury Trial (10:00 AM) (Judicial Officer Villani, Michael)  
01/10/2012, 01/11/2012, 01/12/2012, 01/13/2012, 01/17/2012, 01/18/2012, 01/19/2012, 01/20/2012, 01/23/2012, 01/24/2012, 01/25/2012, 01/26/2012, 01/27/2012, 01/30/2012, 01/31/2012, 02/01/2012, 02/06/2012, 02/07/2012, 02/08/2012, 02/09/2012, 02/10/2012

## Minutes

01/09/2012 1:00 PM

01/10/2012 10:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 10:48 a.m. Jury Trial commenced. Court and counsel begin Voir Dire examination of the Prospective Jurors. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Prospective Juror No. 021 canvassed. This Prospective Juror is familiar with some of the witnesses that may be called to testify in this matter; therefore, Court released him. PROSPECTIVE JURORS PRESENT: Voir Dire examination of the Prospective Jurors continued. 5:54 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/11/12 9:15 AM

01/11/2012 9:15 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 10:04 a.m. Jury Trial resumed. Court and counsel continued with the Voir Dire examination of the Prospective Jurors. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Prospective Juror No. 312 canvassed; he may have been sleeping. State advised the Court of its concerns; colloquy. PROSPECTIVE JURORS PRESENT: Voir Dire examination of the Prospective Jurors continued. 5:38 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/12/12 10:00 AM

01/12/2012 10:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 10:15 a.m. Jury Trial resumed. Court and counsel continued with the Voir Dire examination of the Prospective Jurors. 5:45 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/13/12 8:30 AM

01/13/2012 8:30 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 9:06 a.m. Jury Trial resumed. Court and counsel continue Voir Dire examination of the Prospective Jurors. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Prospective Juror No. 540 canvassed. This Prospective Juror has been sleeping through the Voir Dire process. Court released him. PROSPECTIVE JURORS PRESENT: Voir Dire examination of the Prospective Jurors continued. Jury and four (4) alternates selected and sworn. Court released the Jury at 5:15 p.m. OUTSIDE THE PRESENCE OF THE JURY: Mr. Pike made a Batson Challenge; Prospective Juror No. 469 and Prospective Juror No. 312 were excluded via Peremptory Challenge by the State. Arguments by counsel. COURT ORDERED, the Jury Questionnaires for the above-named Prospective Jurors shall be marked for identification as Court's Exhibits 1 and 2 respectively. 5:45 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/17/12 10:00 AM

01/17/2012 10:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 10:31 a.m. Jury Trial resumed. EXCLUSIONARY RULE invoked. JURY PRESENT: Clerk read the Second Amended Information to the Jury and stated the Deft.'s plea thereto. Opening statements by Mr. DiGiacomo and Mr. Pike. Testimony and exhibits

presented (see worksheets). 5:00 p.m. Court ADJOURNED, COURT ORDERED, Jury Trial CONTINUED, CUSTODY CONTINUED TO: 01/18/12 9:45 AM

01/18/2012 9:45 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 10:03 a.m. Jury Trial resumed. Testimony and exhibits presented (see worksheets). 4:09 p.m. Court ADJOURNED, COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/19/12 10:15 AM

01/19/2012 10:15 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 10:31 a.m. Jury Trial resumed. Testimony and exhibits presented (see worksheets). OUTSIDE THE PRESENCE OF THE JURY: The witness, Nicollin Broderway, was examined with regard to her testimony for trial today. JURY PRESENT: Testimony and exhibits presented (see worksheets). 5:25 p.m. Court ADJOURNED, COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/20/12 9:30 AM

01/20/2012 9:30 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 9:43 a.m. Jury Trial resumed. Testimony and exhibits presented (see worksheets). 3:36 p.m. Court ADJOURNED, COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/23/12 9:30 AM

01/23/2012 9:30 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 9:30 a.m. Jury Trial resumed. Testimony and exhibits presented (see worksheets). 2:38 p.m. Court ADJOURNED, COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/24/12 10:00 AM

01/24/2012 10:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 10:04 a.m. Jury Trial resumed. Testimony and exhibits presented (see worksheets). 4:47 p.m. Court ADJOURNED, COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/25/12 10:00 AM

01/25/2012 10:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 10:09 a.m. Jury Trial resumed. Testimony and exhibits presented (see worksheets). 11:40 a.m. Court ADJOURNED, COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/26/12 10:00 AM

01/26/2012 10:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. Malone's Objections to the State's Proposed Trial Phase Jury Instructions FILED IN OPEN COURT. 11:01 a.m. Jury Trial resumed. Testimony and exhibits presented (see worksheets). OUTSIDE THE PRESENCE OF THE JURY: Mr. DiGiacomo orally moved to introduce the taped statement of a non-testifying co-deft. Arguments by counsel; colloquy regarding redactions. COURT ORDERED, decision DEFERRED. JURY PRESENT: Testimony and exhibits presented (see worksheets). 4:40 p.m. Court ADJOURNED, COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/27/12 10:00 AM

01/27/2012 10:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. Deft.'s Points and Authorities In Opposition to the Introduction of the Non-Testifying Co-Deft.'s Recorded Telephone Call and State's Points and Authorities In Reply to Deft.'s Opposition to the Introduction of the Non-Testifying Co-Deft.'s Recorded Telephone Call FILED IN OPEN COURT. 9:43 a.m. Jury Trial resumed. OUTSIDE THE PRESENCE OF THE JURY: Arguments by counsel regarding the above-referenced issue. On the issue of the continuance of the conspiracy, the COURT DOES NOT FIND, that the statements in question fall into the concealment of the crime or a conspiracy; FURTHER, the statements are not specific enough to allow them in under NRS 61.069. COURT ORDERED, the motion is DENIED. JURY PRESENT: Testimony and exhibits presented (see worksheets). OUTSIDE THE PRESENCE OF THE JURY: Court canvassed Deft. with regard to his right not to testify. JURY PRESENT: Testimony and exhibits presented (see worksheets). 3:49 p.m. Court ADJOURNED, COURT ORDERED, Jury Trial CONTINUED; Court directed the Jury not to return until Tuesday at 10:00 a.m. as the Court is going to settle Jury Instructions on Monday, January 30, 2012. CUSTODY CONTINUED TO: 01/30/12 10:00 AM

01/30/2012 10:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. Third Amended Information and State's Opposition to Deft. Malone's Motion In Limine to Preclude Presentation of "Other Matter" Evidence Related to Another Homicide FILED IN OPEN COURT. 11:52 a.m. Jury Trial resumed. OUTSIDE THE PRESENCE OF THE JURY: the Jury is not present today as the Court is working on the Jury Instructions for this case. Jury Instructions settled on the record. 12:30 p.m. Court ADJOURNED, COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/31/12 10:00 AM

01/31/2012 10:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst

SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. Reply to State's Opposition to Deft.'s Motion to Admit Evidence of Other Bad Acts in Limine to Bar Improper Prosecutorial Argument FILED IN OPEN COURT. 10:00 a.m. Jury Trial resumed. Court instructed the Jury. Closing arguments by Mr. Lalli and Mr. Cano; rebuttal by Mr. DiGiacomo. At the hour of 3:16 p.m. the Jury retired to deliberate OUTSIDE THE PRESENCE OF THE JURY: Mr. Pike advised that at the end of Mr. DiGiacomo's Closing Argument, he made a statement which Mr. Pike believes was a reference to the Deft.'s failure not to testify and right to remain silent. Therefore, Mr. Pike orally moved for a mistrial. Argument by Mr. DiGiacomo. COURT ORDERED, motion DENIED. 3:18 p.m. Court ADJOURNED. Jury deliberated until 5:00 p.m. at which time COURT ORDERED, Jury Trial CONTINUED. The Jury is to return tomorrow at 9:00 a.m. to resume their deliberations. CUSTODY CONTINUED TO: 02/01/12 9:00 AM

02/01/2012 9:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 9:00 a.m. The Jury returned and retired to deliberate. During the Jury's deliberations, they presented four (4) questions to the Court. The Court provided answers to said questions and where the answers required consultation with counsel, the Court did so. The question were marked for identification as Court's Exhibits 32, 33, 34, and 35. At the hour of 1:22 p.m., the Jury returned with a verdict as follows: GUILTY of COUNT 1 - BATTERY WITH SUBSTANTIAL BODILY HARM (F); GUILTY of COUNT 2 - CONSPIRACY TO COMMIT KIDNAPPING (F); GUILTY of COUNT 3 - FIRST DEGREE KIDNAPPING (F); GUILTY of COUNT 4 - BATTERY WITHOUT SUBSTANTIAL BODILY HARM (F); NOT GUILTY of COUNT 5 - ROBBERY (F); NOT GUILTY of COUNT 6 - PANDERING (F); GUILTY of COUNT 7 - CONSPIRACY TO COMMIT BURGLARY (GM); GUILTY of COUNT 8 - CONSPIRACY TO COMMIT KIDNAPPING (F); GUILTY of COUNT 9 - CONSPIRACY TO COMMIT MURDER (F); NOT GUILTY of COUNT 10 - BURGLARY (F); GUILTY of COUNT 11 - FIRST DEGREE KIDNAPPING (F); GUILTY of COUNT 12 - FIRST DEGREE KIDNAPPING (F); GUILTY of COUNT 13 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (CHARLOTTE COMBADO) (F); GUILTY of COUNT 14 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (VICTORIA MAGEE) (F); GUILTY of COUNT 15 - ROBBERY WITH USE OF A DEADLY WEAPON (F); and GUILTY of COUNT 16 - ROBBERY WITH USE OF A DEADLY WEAPON (F). Jury Polled. 1:33p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED for Penalty Hearing. CUSTODY CONTINUED TO: 02/06/12 9:30 AM

02/06/2012 9:30 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. Deft.'s Motion to Recuse the Clerk County District Attorney's Office and Malone's Objections to the State's Proposed Penalty Phase Jury Instructions FILED IN OPEN COURT. 9:56 a.m. Jury Trial resumed; PENALTY HEARING. OUTSIDE THE PRESENCE OF THE JURY: Argument by Mr. Cano on the Motion to Recuse. For the reasons stated on the record, Mr. Cano believes that Mr. DiGiacomo should not participate any further in these proceedings and moved for a mistrial; he is requesting that a Special Prosecutor be appointed. Argument by Mr. DiGiacomo. Court noted that the Motion for Reconsideration of Deft.'s Motion in Limine to Bar Improper Prosecutorial Argument was GRANTED; in the State's original opposition, the Court based its decision on the documents provided; it did not have the numerous pages of documents and exhibits that the State attached to the Motion for Reconsideration. Upon reviewing the substantial number of documents attached thereto, the Court found that the 2000 charge was not based on highly suspect evidence. COURT ORDERED, Motion for Mistrial DENIED. Colloquy regarding the Deft.'s previously filed Motion to bifurcate the Penalty Phase of the trial. COURT FURTHER ORDERED, Motion DENIED. For the record, the Exclusionary Rule, which was previously INVOKED, is WAIVED for the purposes of the Penalty Hearing. 10:07 a.m. JURY PRESENT: Opening statements by Mr. DiGiacomo and Mr. Pike. Testimony and exhibits presented (see worksheets). 4:47 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 02/07/12 10:00 AM

02/07/2012 10:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 10:16 a.m. Jury Trial resumed; PENALTY HEARING. OUTSIDE THE PRESENCE OF THE JURY: Mr. Lalli advised that the State is prohibited from having victims' family members tell the Jury that they want a death sentence. Yesterday during cross-examination there were some questions with that type of an implication. Colloquy regarding this issue and State's Exhibit No. 262. 10:39 a.m. JURY PRESENT: Testimony and exhibits presented (see worksheets). OUTSIDE THE PRESENCE OF THE JURY: The Court advised Deft. of his right of allocution. JURY PRESENT: Testimony and exhibits presented (see worksheets). 5:03 p.m. Court released the Jury. OUTSIDE THE PRESENCE OF THE JURY: Mr. Pike orally moved for a mistrial based on a question that was asked by Mr. DiGiacomo to the witness, Tami Bass. Mr. Pike objected and a conference was held at the bench. COURT ORDERED, Motion DENIED. 5:11 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 02/08/12 9:30 AM

02/08/2012 9:30 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 9:37 a.m. Jury Trial resumed; PENALTY HEARING. Testimony and exhibits presented (see worksheets). OUTSIDE THE PRESENCE OF THE JURY: Arguments by counsel regarding State's Exhibit No. 262 and Deft.'s Exhibit No. HHH. JURY PRESENT: Testimony and exhibits presented (see worksheets). 3:00 p.m. Court released Jury. OUTSIDE THE PRESENCE OF THE JURY: Jury Instructions settled on the record. 4:18 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 02/09/12 10:00 AM

02/09/2012 10:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 10:01 a.m. Jury Trial resumed; PENALTY HEARING. OUTSIDE THE PRESENCE OF THE JURY: Further colloquy regarding State's Exhibit 262, the Exhibit will be admitted with certain documents being replaced/removed as stated on the record. 10:06 a.m. JURY PRESENT: Court instructed the Jury. Closing arguments by Mr. Lalli, Mr. Cano and Mr. Pike; rebuttal by Mr. DiGiacomo. At the hour of 12:53 p.m., the Jury retired to deliberate. Court noted that immediately after the Jury retired,



lunch was provided. After lunch, the Jurors commenced deliberations. At 3:39 p.m. the Jury sent a note out. The Court held a telephonic conference with counsel and agreed upon a response. The Jury was instructed to continue to deliberate; the note was marked for identification as Court's Exhibit 42 and ADMITTED. After the response was provided to the Jury, they were admonished and discharged for the evening and instructed to return on February 10, 2012, at 9:00 a.m. to continue their deliberations. 4:14 a.m. COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 02/10/12 9:00 AM

02/10/2012 9:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Caho, Dep SPD, present on behalf of Deft. Malone, who is also present. 9:00 a.m. The Jury returned and retired to deliberate. At the hour of 11:19 a.m., the Jury returned with a Special Verdict as recorded herein and a Verdict of Life without the Possibility of Parole for each victim. Court thanked and excused the Jury and alternates. COURT ORDERED, matter set for sentencing; Deft. REMANDED to CUSTODY without bail. 11:42 a.m. Court ADJOURNED. CUSTODY 04/12/12 8:15 AM SENTENCING

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JASON MCCARTY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Electronically Filed  
May 02 2012 02:29 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**APPELLANT'S SUPPLEMENTAL APPENDIX TO THE OPENING BRIEF  
VOLUME I**

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Docket 58101 Document 2012-13863

IN THE SUPREME COURT OF NEVADA

JASON MCCARTY,

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

CASE NO. 58101

SUPPLEMENTAL APPENDIX

<u>VOLUME</u>	<u>PLEADING</u>	<u>PAGE NO</u>
1	COURT MINUTES (DOMINIC MALONE)	117-121
1	JUSTICE COURT DOCKET SHEET (JASON MCCARTY)	001-006
1	SECOND AMENDED INFORMATION (FILED 11/30/2010) (DOMINIC MALONE)	011-018
1	TRANSCRIPT OF CLOSING ARGUMENT (TRIAL PHASE) (DOMINIC MALONE)	019-083
1	TRANSCRIPT OF CLOSING ARGUMENT (PENALTY PHASE) (DOMINIC MALONE)	084-116
1	TRANSCRIPT OF VERDICT (DOMINIC MALONE)	007-010

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on May 2, 2012. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ-MASTO  
Nevada Attorney General

STEVE OWENS  
Chief Deputy District Attorney

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Jessie Vargas  
An Employee of Christopher R. Oram, Esq.