

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 5:00 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 Sportsman's. You heard how tight  
24 that time line was, right? Oasis, Sahara and White Boy's  
25 house. Did we go eat? Did we not go eat? I don't remember.

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. Domonic 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."

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 Domonic, that she was a free agent, that she  
25 could work for whoever she wanted to work? Why? Because

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. What  
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 he 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, Domonic,  
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 McCarty'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 Domonic  
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 be 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 Domonic's girlfriend."  
12 She didn't tell them she was Trey's girlfriend. "I'm  
13 Domonic's girlfriend." She knew the room was under Domonic'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 Domonic'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

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 Domonic, 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.

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 Domonic 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?

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 Domonic 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 Sportsman's

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

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 permit 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 these 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 can 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 boarder. 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 25th. 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 Domonic was  
25 at Dawson? Remember the area where the girls were beat 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, Domonic'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 Domonic. Was he at Railroad Pass?  
12 No. His phone records aren't there. It's Herb, McCarty, but  
13 not Domonic'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 McCarty 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 Domonic, 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 Herb, White Boy. Domonic 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 Domonic'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 Domonic, 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 Domonic 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 Domonic 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 Domonic.

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 here in here, you know, to say how Domonic 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, Domonic  
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 counteracting 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 Domonic on the passenger's side, but that's  
16 probably the only connection that they were able to make in  
17 this case with Domonic.

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 Domonic  
24 was inside of that car? No, there wasn't.

25           And the tire tracks. Tire tracks. Remember they

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. DiGIACOMO: Judge, I apologize.

24 MR. CANO: And --

25 MR. DiGIACOMO: May we approach?

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. CANO: 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. CANO: 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. CANO: Thank you.

5 (End of bench conference)

6 MR. CANO: 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 compone. 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? Domonic 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 ties Domonic  
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 Domonic 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 Randolf 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 Randolf  
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. DiGiacomo 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 received 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 sua 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. DiGiacomo, 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. Lalli 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 evidence, 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. Lalli  
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 sheet 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 Estores, 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 Domonic  
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 95, 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. Lalli 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 Herb 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 Herb, 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 Herb 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 Herb 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 Domonic 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 Domonic  
9 Malone's world.

10 These aren't witnesses Mr. Lalli 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, scripts written in hell  
14 don't have angels for witnesses.

15 We don't choose our witnesses. God knows Mr. Lalli  
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 Domonic 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 Lalli 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. Nicolin, well, I  
4 kind of know the guy, but he wasn't really around and I  
5 didn't really see him anywhere. Ryan Noe, 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 impeach 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 Sportsman'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 Domonic'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. Cano 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 Estores says Donny Herb went home, Donny Herb says they all  
4 went home.

5 Now, any way that Melissa Estores 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 Estores is  
11 one individual, Domonic 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 Sportsman'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 Domonic Malone  
20 as Victoria went off to commit the act of prostitution being  
21 forced upon her by Jason McCarty, and Christina was out  
22 there, too. What does Correna say? Well, I saw Domonic  
23 there. And maybe that's slightly inconsistent that Domonic  
24 was out of the car, and it was either Domonic 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 Donny, Melissa Estores, and Correna Phillips all got together  
7 to frame Domonic 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 Estores 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 Estores 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 Estores' 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 Domonic 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 hooker, 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 Domonic Malone. So, what happens?  
5 They get into the car, and the phone records show going up  
6 there. Domonic Malone is now with Jason McCarty, the only  
7 person he's been with for these three days.

8 He 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 What is it that Mr. Cano said to you? You know,  
16 who would do this, his best friend; his best friend, Donny  
17 Herb? Donny Herb'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

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. How 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

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 fives 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 Domonic 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

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 Nicolín 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, Domonic 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 there 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



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 Domonic 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.

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 Domonic 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,

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 Domonic 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 Nicolin, 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, Nicolin Broderway, Melissa Estores. 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.

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 Correna, or they were like Nicolin Broderway. That because  
7 of who they were, it's okay to kill them. That's Domonic  
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 And so, we'll do that in just a minute here.

2 The clerk will swear in the marshal to take charge  
3 of the jury panel.

4 MARSHAL SWORN

5 THE COURT: And in the event that you need  
6 assistance for taking charge of the jury panel, the clerk  
7 will swear in our court recorder as well.

8 COURT RECORDER SWORN

9 THE COURT: All right. Jurors, please follow the  
10 marshal.

11 (Jury retires to deliberate at 3:11 p.m.)

12 THE COURT: All right. We're outside the presence.  
13 I'm assuming everyone's given the contact numbers to our  
14 court clerk. If not, if you could do that.

15 MR. DiGIACOMO: I think Cliff got a list from us  
16 this morning.

17 THE COURT: Okay.

18 MR. PIKE: We did.

19 THE COURT: Great.

20 MR. CANO: There's one issue I'd like to bring up,  
21 Your Honor.

22 THE COURT: I'm sorry?

23 MR. CANO: There's one issue I'd like to bring up.

24 THE COURT: Okay.

25 MR. CANO: I waited until Mr. DiGiacomo finished

1 his --

2 THE COURT: Okay.

3 MR. CANO: -- rebuttal. While I was giving my  
4 closing, I noticed that the juror who's seated in Seat No. 2,  
5 the gentleman was dozing while I was giving my closing  
6 statement in this case. So, I just wanted to bring that to  
7 the Court's attention. I didn't see if he did that on the  
8 rebuttal, but I did notice that while I was doing my closing.

9 THE COURT: Did State notice anything? I didn't --  
10 I didn't notice anything. I mean, I'm not disputing what  
11 you're saying. I mean --

12 MR. DiGIACOMO: I saw him blink one long time.  
13 Because Mr. Cano told me before that. But during the course  
14 of my rebuttal, I saw him blink one -- like, kind of blink  
15 and open his eyes, but that's it. So, I didn't have any  
16 issue with him sleeping during my rebuttal at all. I  
17 actually was watching him.

18 THE COURT: All right. And one -- I don't know if  
19 it's a housekeeping matter. When the trial started, there  
20 was a statement attributed to one of the defendants, and the  
21 objection was hearsay. And the State's response was,  
22 co-conspirator's statement. And I said, well, you know,  
23 obviously the State needs to establish by a certain burden  
24 that a conspiracy existed before a co-conspirator's statement  
25 has -- can be considered.

1           It's the Court's belief that the State has met  
2 their burden of establishing that a conspiracy existed to  
3 allow the co-conspirator's statement to come in under the  
4 hearsay rules. And so, I make that specific finding. The  
5 State has met their burden in that regard.

6           Anything else?

7           MR. PIKE: Yes, Your Honor. I have one thing. And  
8 it was during Mr. DiGiacomo's argument. At the -- and I know  
9 he was winding up at the end. And so, I thought if I  
10 objected, all it would do is bring it to the jurors'  
11 attention, was when he was making his argument about, there's  
12 something that we just have to discover that one man knows  
13 here all too well, and he directed his comments and his  
14 direction theatrically, as he has want to do, towards Mr.  
15 Malone.

16           It is -- I think it was a very articulate and  
17 calculated way to bring out to the front without exactly  
18 saying that, and he's not telling you. Because that's the  
19 next thought that goes through anybody's mind. And so, it is  
20 as direct and indirect reference to the defendant's failure  
21 to testify, as I've seen. And I'll give the devil his due.

22           But -- and so -- but for that, because of that  
23 comment, I think it's -- I have to, in this situation, bring  
24 it to the Court's attention, bring a motion for a mistrial,  
25 and then have the Court make a ruling on it.

1 THE COURT: All right. Mr. DiGiacomo?

2 MR. DiGIACOMO: Thank you, Judge. I did not in any  
3 way comment on his rights to remain silent. That statement,  
4 although I don't know that there's published opinion on it,  
5 is something I've been saying for 13 years. And this is  
6 actually the first time that I've actually had it raised that  
7 somehow, that that's a comment on a silent. I mean, it's  
8 not. What I was saying, that there was at least one person  
9 in this room who knows beyond any doubt who killed.

10 And I actually don't remember that I made any  
11 reference or indication, or looked at Mr. Malone when I said  
12 that. And if the natural indication of the jury is to think,  
13 oh, yeah, that guy does it, that means he's guilty, not  
14 because he didn't tell us, or anything else like that. So, I  
15 don't believe that's a comment on his right to remain silent,  
16 Judge. And I would say that therefore, obviously, it's not a  
17 basis for a mistrial.

18 THE COURT: I don't think it was a comment on the  
19 defendant's right to remain silent, or not testify in this  
20 particular case. So, I'm going to deny the motion for a  
21 mistrial.

22 And we'll see you back as -- we'll find out around  
23 5:00. If they wish to stay later, we'll keep you guys  
24 advised. We will give you a phone call one way or the other  
25 to say they've gone home, or they're still deliberating.



1 MR. PIKE: Thank you very much, Your Honor.

2 THE COURT: And then Cliff, do you know -- we'll  
3 have them back about 9:30 tomorrow or so, the jurors?

4 THE MARSHAL: Tomorrow [inaudible], 9:00 o'clock.

5 THE COURT: 9:00 o'clock.

6 (Pause in the proceedings)

7 (Court recessed at 3:16 p.m.)

8 \* \* \* \* \*

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**CERTIFICATION**

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

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JULIE LORD, TRANSCRIBER

2-1-12  
DATE

INSTRUCTION NO. 49

An accomplice is one who is subject to prosecution for the identical offense charged against the defendant on trial.

To be an accomplice, the person must have aided, promoted, encouraged, or instigated by act or advice the commission of such offense with knowledge of the unlawful purpose of the person who committed the offense.

A defendant cannot be found guilty based upon the testimony of an accomplice unless such testimony is corroborated by other evidence which tends to connect such defendant with the commission of the offense.

It is not necessary that the evidence of the corroboration be sufficient in itself to establish every element of the offense charged, or that it corroborate every fact to which the accomplice testifies. The necessary corroboration of an accomplice's testimony need not be found in a single fact or circumstance; rather, several circumstances in combination may satisfy the law. If evidence from sources other than the testimony of the accomplice tends on the whole to connect the accused with the crime charged, the accomplice's testimony is lawfully corroborated.

INSTRUCTION NO. 50

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

INSTRUCTION NO. 51

The fact that a witness was given an inducement in exchange for his or her cooperation may be considered by you only for the purpose of determining the credibility of that witness. The existence of such an inducement does not necessarily destroy or impair the credibility of the witness. It is a circumstance that you may take into consideration in weighing the testimony of such a witness.

INSTRUCTION NO. 52

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

INSTRUCTION NO. 53

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.



INSTRUCTION NO. 54

In arriving at a verdict in this case as to whether the defendant is guilty or not guilty, the subject of penalty or punishment is not to be discussed or considered by you and should in no way influence your verdict.

If your verdict is murder in the first degree, you will, at a later hearing, consider the subject of penalty or punishment.

INSTRUCTION NO. 55

When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

INSTRUCTION NO. 56

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The marshal will then return you to court where the information sought will be given you in the presence of, and after notice to, the district attorney and the Defendant and his/her counsel.

Playbacks of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a playback, you must carefully describe the testimony to be played back so that the court reporter can arrange his/her notes. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 57

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:



DISTRICT JUDGE

CONFIDENTIAL

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

JAN 1 2012

BY \_\_\_\_\_  
CAROL DONAHOO, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

THE STATE OF NEVADA,	.	CASE NO. C-224572
	.	
Plaintiff,	.	DEPT. NO. XVII
	.	
vs.	.	
	.	<b>TRANSCRIPT OF</b>
DOMONIC RONALDO MALONE,	.	<b>PROCEEDINGS</b>
	.	
Defendant.	.	
.....	.	

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 15**

TUESDAY, JANUARY 31, 2012

APPEARANCES:

FOR THE PLAINTIFF:                      MARC DiGIACOMO, ESQ.  
CHRISTOPHER LALLI, ESQ.  
*Chief Deputy District Attorneys*

FOR THE DEFENDANT:                      RANDALL H. PIKE, ESQ.  
CHARLES A. CANO, ESQ.  
*Assistant Special Public  
Defenders*

COURT RECORDER:

MICHELLE RAMSEY  
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC  
Englewood, CO 80110

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

1       LAS VEGAS, NEVADA, TUESDAY, JANUARY 31, 2012, 10:00 A.M.

2                   (Court was called to order)

3                   (In the presence of the jury)

4           THE COURT: Good morning, ladies and gentlemen. As  
5 I had mentioned to you earlier, all of you will be provided --  
6 or have been provided with a copy of the jury instructions.  
7 The attorneys may reference them during their closing  
8 arguments. And you will have a packet for each one of you to  
9 take back with you to the jury room when you deliberate in  
10 this case.

11                   (Jury instructions read by Court; not transcribed)

12           THE COURT: Ladies and gentlemen, I'm going to have  
13 my Court Clerk read Instruction No. 3.

14                   (Pause in the proceedings)

15           THE COURT: I understand there was an agreement as  
16 to --

17           MR. LALLI: There was, Your Honor. We do not oppose  
18 an abbreviated form of Instruction No. 3 being read to the  
19 jury provided that they are given the entirety of Instruction  
20 No. 3.

21           THE COURT: Okay. Is that correct, Mr. Pike?

22           MR. PIKE: That is correct, Your Honor. We've  
23 confirmed that it's in the package that's being delivered to  
24 the jury.

25           THE COURT: Okay. Do you have it, Carol? Okay.

1 (Amended Information; read by Clerk)

2 (Jury Instructions read by Court; not transcribed)

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

4 MR. LALLI: Yes, Your Honor.

5 THE COURT: All right.

6 MR. LALLI: Thank you.

7 STATE'S CLOSING ARGUMENT

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

11 There can be little question that Victoria Magee and  
12 Christine Combado suffered more than their fair share of  
13 cruelty at the time of their death. This trial is our  
14 community's endeavor to discern who is responsible for that  
15 cruelty, and to find some justice for Victoria and Christine.

16 How do the various charges work that were contained  
17 in Instruction No. 3, our charging document, the Information?  
18 To kind of understand the charges and how they relate  
19 together, I've created a time line that I will use to keep  
20 track of where we are in determining whether the State has, in  
21 fact, met it's burden.

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

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, pandering.

9 Then we proceed to the abduction of Victoria and  
10 Christine from the South Cove Apartments. Counts 7 through 9,  
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



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

3 Where 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,

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 abetter. 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 abetter, you must have the

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.

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."

1           So, what does this mean? It means that some of you,  
2 quite frankly, can believe that Domonic Malone is the person  
3 who actually killed and murdered Victoria Magee and Christine  
4 Combado. 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 Estores,  
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

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 Correna 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.

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

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



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. 19. 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 difficultly breathing. She  
25 described having a chest that was almost completely black and

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 McCarty, Mr. -- Romeo, or Rome as he's

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 Nicolin

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 -- Nicolin 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. CANO: Your Honor, I'm going to object. That's  
13 not evidence that was presented at this trial.

14           MR. LALLI: Your Honor, it certainly was evidence --

15           THE COURT: I'm going to overrule the objection.

16           MR. LALLI: 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.

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

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

1 that beating ended. There is a friend of Red'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 Villani'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 coconspirator 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 get there. They get there  
25 in the green Alero that Romeo had procured from his good

1 friend, Donny Herb. Who was driving the car? It was Mr.  
2 McCarty. We know he was there, not only from the testimony of  
3 Red 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



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 Mr.  
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

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           How 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

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 Estores, 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

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 Reat, 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.

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

1 pandering in Instruction No. 22. And he tells us that, "Any  
2 person who induces, persuades, encourages, inveigles, 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 hours, 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

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 How 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 Nicolin 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 Nicolin'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 Nicolin told us about

1 that conversation that she had with Mr. McCarty, how Victoria  
2 was now working for him, how he was kind of bragging 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? Nicolin told you that the  
6 defendant was trying to get into the business. And you didn't  
7 just hear that from Nicolin 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 levied 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



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

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

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. "How 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."

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 instrumentality, 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.

1           So, we now that these instrumentalities were used.  
2 We know 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 wilful 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 wilfulness, deliberation and premeditation.

21           And he proceeds to define those things in  
22 Instruction No. 34. "Wilfulness 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.



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. Kubiczek, 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 form as to the murder counts, and that is what we  
25 as lawyers refer to as a Special Verdict. We're asking you

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 intention, 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.

1           So when you go to, again, your Special Verdict Form,  
2 there is an area for you to check that jury 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, aides 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 wilful,  
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 wilful, 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 Donny 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 he 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 circling 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, 'Hit  
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 hit 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 help 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 Domonic Malone.

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

1 clings 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 Jennie 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 Herb, which in and of itself would  
21 establish that he was involved, but we have this very  
22 significant corroboration of Donald Herb's testimony.

23           You can believe Donald Herb, 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 Sirnoble. And  
12 sure enough, the closest tower to Sirnoble 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 Sirnoble.

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 Sirnoble 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 Wagonwheel. He's still at the murder scene. And we see  
2 Donald Herb ping 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 ping 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 Domonic 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 doled out.

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. Lalli.

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 of 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. Domonic 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 Estores, we've got Sarah Matthews, and you've got White Boy,  
8 Donny Herb. 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 paged. 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 tail 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 relationship to other people in this case? What are



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 Domonic 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

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 glom it  
7 all together.

8 The instance that happened in April and May, that  
9 has to do with Red and Domonic, 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 Domonic and Red, what was going on between them.

19 Now, you're not allowed to think that, hey, just  
20 because April happened, Domonic 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.

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 "a" 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. DiGIACOMO: 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. Domonic wanted to be with her, she didn't want to be  
20 with Domonic. She was a free agent. She could be with  
21 whoever she wanted to be. She was with Nino then. Domonic  
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 these 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. Lalli 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 Domonic 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 Domonic, 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. Lalli 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 party -- 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              How 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 Domonic, was between her and Domonic.  
22   Everything else that was going on, between Romeo, Christine  
23   and Victoria, was between Romeo, Christina 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

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 Christina, that Christina  
6 got from Demarco, remember that? She was trying to come up  
7 with some bail 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 puts 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?

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   rode 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

1 White Boy, Donny, he was driving. Domonic 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 Domonic. 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 Domonic. They never told her, go do some prostitution,  
3 neither one of them did. They're just merely presence [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. Lalli 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 State 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 Domonic, 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 Parker,  
15 contradicts her. Contradicts her. Because he says he saw  
16 them 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 Nino, 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. Nor 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 Sportsman'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?

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \*

DOMONIC MALONE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. 61006

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APPELLANT'S APPENDIX

VOLUME 17

Direct Appeal From A Judgment of Conviction  
Eighth Judicial District Court  
The Honorable Michael Villani, District Court Judge  
District Court No. C224572

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FILED IN OPEN COURT  
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CLERK OF THE COURT

JAN 30 2012

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-06-224572-2  
Dept No: XVII

THIRD AMENDED  
INFORMATION

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

06C224572-2  
AINF  
Amended Information  
1769673



18 MARY-ANNE MILLER, District Attorney within and for the County of Clark, State  
19 of 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 Defendants above named, having committed the crimes of BATTERY WITH  
22 SUBSTANTIAL BODILY HARM (Felony - NRS 200.481); CONSPIRACY TO COMMIT  
23 KIDNAPPING (Felony - NRS 200.310, 200.320, 199.480); FIRST DEGREE  
24 KIDNAPPING (Felony - NRS 200.310, 200.320); ROBBERY (Felony - NRS 200.380);  
25 PANDERING (Felony - NRS 201.300); CONSPIRACY TO COMMIT BURGLARY (Gross  
26 Misdemeanor - NRS 205.060, 199.480); CONSPIRACY TO COMMIT KIDNAPPING  
27 (Felony - NRS 200.310, 200.320, 199.480); CONSPIRACY TO COMMIT MURDER  
28 (Felony - NRS 200.010, 200.030, 199.480); BURGLARY (Felony - NRS 205.060);

1 MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030,  
2 193.165); and ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380,  
3 193.165), on or between April, 2006 and May 19, 2006, within the County of Clark, State of  
4 Nevada, contrary to the form, force and effect of statutes in such cases made and provided,  
5 and against the peace and dignity of the State of Nevada,

6 COUNT 1 - BATTERY WITH SUBSTANTIAL BODILY HARM

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

11 COUNT 2 - CONSPIRACY TO COMMIT KIDNAPPING

12 Defendants did, on or about May 16, 2006, then and there meet with each other and  
13 between themselves, and each of them with the other, wilfully, unlawfully, and feloniously  
14 conspire and agree to commit a crime, to-wit: kidnap MELISSA ESTORES, and in  
15 furtherance of said conspiracy, Defendants did commit the acts as set forth in Counts 3-5,  
16 said acts being incorporated by this reference as though fully set forth herein.

17 COUNT 3 - FIRST DEGREE KIDNAPPING

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

23 COUNT 4 - BATTERY WITH SUBSTANTIAL BODILY HARM

24 Defendants did, on or about May 16, 2006, then and there wilfully, unlawfully, and  
25 feloniously use force or violence upon the person of another, to-wit: MELISSA ESTORES,  
26 by beating and kicking the said MELISSA ESTORES about the head and body, resulting in  
27 substantial bodily harm to the said MELISSA ESTORES, the Defendants being responsible  
28 under one or more of the following theories of criminal liability, to-wit: (1) by directly or

1 indirectly committing said crime, and/or (2) by conspiring with each other to commit the  
2 crime of battery and/or kidnapping where each co-conspirator is liable for the general intent  
3 crimes committed by fellow co-conspirators which were a foreseeable consequence of the  
4 conspiracy; and/or (3) by aiding and abetting, by Defendant JASON DUVAL MCCARTY  
5 driving the said MELISSA ESTORES and Defendant DOMONIC RONALDO MALONE to  
6 the location where said battery took place, then instructing the said MELISSA ESTORES to  
7 submit to said beating.

8 COUNT 5 - ROBBERY

9 Defendants did, on or between May 16, 2006, and May 17, 2007, then and there  
10 wilfully, unlawfully, and feloniously take personal property, to-wit: purse and/or its contents,  
11 from the person of MELISSA ESTORES, or in her presence, by means of force or violence  
12 or fear of injury to, and without the consent and against the will of the said MELISSA  
13 ESTORES, the Defendants being responsible under one or more of the following theories of  
14 criminal liability, to-wit: (1) by directly or indirectly committing said crime, and/or (2) by  
15 conspiring with each other to commit the crime of battery and/or kidnapping where each co-  
16 conspirator is liable for the general intent crimes committed by fellow co-conspirators which  
17 were a foreseeable consequence of the conspiracy; and/or (3) by aiding and abetting, by  
18 Defendant JASON DUVAL MCCARTY driving the said MELISSA ESTORES and  
19 Defendant DOMONIC RONALDO MALONE to the location where a battery took place,  
20 then instructing the said MELISSA ESTORES to submit to said beating, thereafter driving  
21 both DOMONIC RONALDO MALONE and MELISSA ESTORES from the location as  
22 DOMONIC RONALDO MALONE robbed MELISSA ESTORES of her purse and/or its  
23 contents.

24 COUNT 6 - PANDERING

25 Defendants did, on or between May 16, 2006, and May 17, 2007, then and there  
26 wilfully, unlawfully, and feloniously induce, persuade, encourage, inveigle, entice, or  
27 compel VICTORIA MAGEE to become a prostitute, and/or to engage or continue to engage  
28 in prostitution.

1 COUNT 7 - CONSPIRACY TO COMMIT BURGLARY

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

7 COUNT 8 - CONSPIRACY TO COMMIT KIDNAPPING

8 Defendants did, on, about, or between May 17, 2006 and May 19, 2006, then and  
9 there meet with each other and between themselves, and each of them with the other,  
10 wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: kidnap  
11 CHARLOTTE COMBADO and/or VICTORIA MAGEE, and in furtherance of said  
12 conspiracy, Defendants did commit the acts as set forth in Counts 10-16, said acts being  
13 incorporated by this reference as though fully set forth herein.

14 COUNT 9 - CONSPIRACY TO COMMIT MURDER

15 Defendants did, on or between May 17, 2006 and May 19, 2006, then and there meet  
16 with each other and between themselves, and each of them with the other, wilfully,  
17 unlawfully, and feloniously conspire and agree to commit a crime, to-wit: Murder, and in  
18 furtherance of said conspiracy, Defendants did commit the acts as set forth in Counts 10-16,  
19 said acts being incorporated by this reference as though fully set forth herein.

20 COUNT 10 - BURGLARY

21 Defendants did, on or between May 17, 2006 and May 19, 2006, then and there  
22 wilfully, unlawfully, and feloniously enter, with intent to commit assault and/or battery  
23 and/or a felony, to-wit: Kidnapping and/or Murder, that certain building occupied by  
24 LEONARD ROBINSON, located at 1525 East Fremont, Room No. 222, Las Vegas, Clark  
25 County, Nevada.

26 COUNT 11 - FIRST DEGREE KIDNAPPING

27 Defendants did, on or between May 17, 2006 and May 19, 2006, wilfully, unlawfully,  
28 feloniously, and without authority of law, seize, confine, inveigle, entice, decoy, abduct,

1 conceal, kidnap, or carry away CHARLOTTE COMBADO, a human being, with the intent  
2 to hold or detain the said CHARLOTTE COMBADO against her will, and without her  
3 consent, for the purpose of committing murder.

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 VICTORIA MAGEE, a human being, with the intent to hold  
8 or detain the said VICTORIA MAGEE against her will, and without her consent, for the  
9 purpose of committing murder.

10 COUNT 13 - MURDER WITH USE OF A DEADLY WEAPON

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

1 and/or a knife and/or a rock and/or an unknown blunt object and/or an unknown sharp  
2 object, the said actions of the Defendants resulting in the death of the said CHARLOTTE  
3 COMBADO, the Defendants left the crime scene together, the Defendants encouraging one  
4 another throughout by actions and words, the Defendant and the accomplice acting in  
5 concert throughout each with intent to commit murder.

6 COUNT 14 - MURDER WITH USE OF A DEADLY WEAPON

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

1 murder.

2 COUNT 15 - ROBBERY WITH USE OF A DEADLY WEAPON

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

10 COUNT 16 - ROBBERY WITH USE OF A DEADLY WEAPON

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

17 MARY-ANNE MILLER, District Attorney

18  
19 BY

  
20 CHRISTOPHER J. LALLI  
21 Chief Deputy District Attorney  
22 Nevada Bar #005398

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

25 <u>NAME</u>	<u>ADDRESS</u>
26 ALLRED, CLAY	HPD #1221
27 BENJAMINS, FELICIA	HPD #720
28 COLLINS, GERARD	HPD #324



1	ESTORES, MELISSA	UNKNOWN ADDRESS
2	FUENTES, FRANKLIN	HPD #621
3	HALL, RAMAAN	UNKNOWN ADDRESS
4	HERB, DONALD	UNKNOWN ADDRESS
5	HERB, HAROLD	140 SIR NOBLE ST., LVN
6	HOSAKA, MARK	HPD #777
7	KUBICZEK, PIOTR DR.	CORONER'S OFFICE
8	NAGEL, LYNN	C/O CCDA OFFICE
9	PARKER, DAVID	CANCUN APARTMENTS
10	PHILLIPS, CORRINA	C/O CCDA OFFICE
11	RIDINGS, CRAIG	HPD #358
12	ROBINSON, LEONARD	1525 E. FREMONT #F-222, LVN
13	WEBSTER, MICHAEL	HPD #899

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

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STEVEN D. GRIERSON  
CLERK OF THE COURT

JAN 31 2012

BY \_\_\_\_\_  
CAROL DONAHOO, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,	.	CASE NO. C-224572
	.	
Plaintiff,	.	DEPT. NO. XVII
	.	
vs.	.	
	.	<b>TRANSCRIPT OF</b>
DOMONIC RONALDO MALONE,	.	<b>PROCEEDINGS</b>
	.	
Defendant.	.	
.....	.	

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 14**

MONDAY, JANUARY 30, 2012

APPEARANCES:

FOR THE PLAINTIFF:

MARC DIGIACOMO, ESQ.  
CHRISTOPHER LALLI, ESQ.  
*Chief Deputy District Attorneys*

FOR THE DEFENDANT:

RANDALL H. PIKE, ESQ.  
CHARLES A. CANO, ESQ.  
*Assistant Special Public  
Defenders*

COURT RECORDER:

MICHELLE RAMSEY  
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC  
Englewood, CO 80110

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

1 LAS VEGAS, NEVADA, MONDAY, JANUARY 30, 2012, 11:41 A.M.

2 (Court was called to order)

3 (Outside the presence of the jury)

4 (Pause in the proceedings)

5 THE COURT: All right. Thank you. Outside the  
6 presence. We'll put the jury instructions on the record here.

7 MR. LALLI: Your Honor, I would just note that this  
8 morning we caused to be filed a Third Amended Information,  
9 which strikes Count 1, the first degree kidnaping charge.

10 MR. PIKE: And the defense has no objection --

11 THE COURT: Okay.

12 MR. PIKE: -- to striking that charge.

13 THE COURT: That will be received.

14 All right. Is the State familiar with  
15 Instructions 1 through 57?

16 MR. LALLI: Yes, Your Honor.

17 THE COURT: Do you object to any of those?

18 MR. LALLI: No.

19 THE COURT: Are you familiar with the Verdict form?

20 MR. LALLI: Yes.

21 THE COURT: Any objection to the Verdict form?

22 MR. LALLI: No, Your Honor.

23 THE COURT: All right. Defense, are you familiar  
24 with Instructions 1 through 57?

25 MR. PIKE: Yes, Your Honor.

1 THE COURT: I think you may have had some  
2 objections. Please set forth those on the record.

3 MR. PIKE: Yes, Your Honor. Thank you.

4 If we go to -- let's see, Court's indulgence --  
5 Instruction No. 8, beginning with, "A conspiracy is an  
6 agreement," we believe that the -- on the last sentence of  
7 this instruction, that it should more properly read, in  
8 particular, "The State may establish," and I proposed  
9 corrections to it in our written objection to that.

10 MR. LALLI: Your Honor, the "coordinated series of  
11 acts" language is taken directly from Doyle v. State,  
12 112 Nev. 879, a 1996 case, and is a correct statement of the  
13 law.

14 MR. PIKE: Well, and it's not so much the  
15 "coordinated series of acts" that we're objecting to, but on  
16 line 13, "to infer the existence of an agreement," we're  
17 talking about to establish that the State has proven it beyond  
18 a reasonable doubt, as opposed to just an inference.

19 MR. LALLI: Likewise, that language is also  
20 contained in Doyle.

21 THE COURT: Right. And I think it's supported by  
22 the case law, so I'm going to give Instruction 8.

23 Your next one, Mr. Pike?

24 MR. PIKE: That would be Instruction No. 9, Your  
25 Honor. We objected to that. We proffered an objection, in

1 our written objections and this -- we think that that should  
2 be added with -- excuse me.

3 (Pause in the proceedings)

4 MR. PIKE: Okay. Oh, this -- in reference to this,  
5 the -- we had some issues about robbery being a general intent  
6 crime and the language involving the specific intent to commit  
7 the robbery, which is a general intent crime.

8 So because of that, we had an objection in reference  
9 to this instruction.

10 MR. LALLI: Your Honor, robbery is a general intent  
11 crime. Therefore, the instruction that's given in No. 9 is a  
12 correct statement of the law under Bolden.

13 THE COURT: All right. I do find that robbery is a  
14 general intent crime, so I'm going to give the proposed  
15 instruction.

16 Mr. Pike, next one?

17 MR. PIKE: Thank you. Instruction No. 10, we had  
18 objected to the initial proposed instruction by the State that  
19 initially read, "Wherever there is slight evidence that a  
20 conspiracy existed," I think that after presenting -- after  
21 reviewing this with the State, the State has agreed to modify  
22 that and remove "slight," and so that has been corrected.

23 THE COURT: All right. The next one?

24 MR. PIKE: Court's indulgence.

25 THE COURT: While you're looking for the next one,

1 State, I don't --

2 MR. LALLI: It was 13.

3 THE COURT: -- know if I asked you; do you request  
4 any additional instructions?

5 MR. LALLI: No, Your Honor.

6 THE COURT: Okay.

7 MR. PIKE: And --

8 MR. LALLI: 13.

9 MR. PIKE: 15?

10 MR. CANO: 13.

11 MR. LALLI: 13.

12 MR. PIKE: Okay. Thank you.

13 We -- Instruction No. 13, the defendant had objected  
14 because of the use of the term "inveigle." The Court added  
15 that the State -- or indicated that it would be appropriate to  
16 add a definition of "inveigle" and that was added into that.

17 Okay. And we objected to that -- the final portion  
18 of it saying that a person being kidnaped and being carried  
19 away for any minimal distance, we felt that that was confusing  
20 to the jury and that that minimal distance is -- should just  
21 be stricken.

22 MR. LALLI: Your Honor, it's our position that under  
23 NRS 300.310, and Mendoza, M-e-n-d-o-z-a, v. State, 112 Nev.  
24 267, a 2006 case, that the last sentence in Instruction No. 13  
25 is a correct statement of the law and appropriate in this

1 case.

2 THE COURT: All right. I am going to give the  
3 instruction as set forth here. And we -- and I think we --  
4 there's another instruction that identifies "inveigle." We  
5 didn't define it a second time, because it's --

6 MR. PIKE: That's correct.

7 THE COURT: -- defined in Instruction 13.

8 MR. PIKE: And that was in the pandering count.

9 THE COURT: Right.

10 MR. PIKE: So. The defendant had requested a false  
11 imprisonment instruction. That was provided in Instruction  
12 No. 14. That was a proposed, that was adopted.

13 The next, substantial bodily harm, which would be  
14 Instruction No. 19. The defendant had proposed an alternate  
15 instruction for substantial bodily harm in which the count --  
16 the second subdivision of that, prolonged physical pain, would  
17 not be included. And we provided the Points and Authorities  
18 in support of that.

19 MR. LALLI: Your Honor, under NRS 0.060, that's a  
20 correct statement of the law.

21 THE COURT: All right. And that's what the Court  
22 found as well, so that's what I'm giving, section two of the  
23 instruction.

24 MR. PIKE: And that -- the defense acknowledges that  
25 that is the current state of the law, but we're making that

1 because we think that's an -- an inappropriate interpretation  
2 of the law and that we wish to preserve that for appeal.

3 Okay. Let's see, the next one is the burglary  
4 instruction, which --

5 MR. LALLI: 24.

6 MR. PIKE: 24. We ask that "or other building"  
7 language be stricken on that. Here specifically, there isn't  
8 any allegation that there was any other building that was  
9 involved. It was an apartment, or a room for let.

10 MR. LALLI: Your Honor, under the facts of this  
11 case, we think that the definition of "burglary" given in  
12 Instruction No. 24, sufficiently narrow, and tailored for this  
13 case. The actual statute includes things such as a boat, or a  
14 train car, things of that nature. And we believe that the  
15 definition given in 24 is sufficiently narrow.

16 THE COURT: And I think it's consistent also with  
17 the facts of this case. Some -- I mean, it appears to be an  
18 apartment; it could be a motel room, who knows, because  
19 they're daily, weekly rentals, if I recall. So I'm going to  
20 give this instruction.

21 The next one?

22 MR. PIKE: Instruction No. 26, "The intention in  
23 which an entry must" -- or, "was made is a question of fact."  
24 The defendant objects to the use of the term "inferred" may be  
25 -- and believes that that lessens the burden of proof and that



1 it's more appropriately stated that upon which the jury may  
2 find that the State has proven beyond a reasonable doubt.

3 And so we'd object to that.

4 MR. LALLI: Your Honor, Instruction No. 26 is a  
5 correct statement of the law, almost taken verbatim from the  
6 case Moore, M-o-o-r-e, v. State, 112 Nev. 27, a 2006 case.

7 THE COURT: All right. I would agree, so we're  
8 going to give Instruction 26.

9 MR. PIKE: The next instruction, "The prosecution is  
10 not required," is --

11 MR. LALLI: 36.

12 MR. PIKE: Yeah. Again, this is, "The jury may  
13 infer the existence of a particular state of mind." The state  
14 of mind is a material element and it's consistent with the  
15 last -- the argument that we made on the last instruction, as  
16 the State must prove each and every material element of the  
17 offense.

18 MR. CANO: "Beyond a reasonable doubt" -- we want to  
19 add -- we wanted to add the language "beyond a reasonable  
20 doubt" in this instruction, Your Honor.

21 MR. PIKE: That is correct.

22 THE COURT: Okay.

23 MR. LALLI: Your Honor, first, the jury is already  
24 instructed that they're required to find each material element  
25 beyond a reasonable doubt. So the reasonable doubt

1 instruction is provided in the packet.

2           Additionally, with respect specifically to  
3 Instruction No. 36, it is a correct statement of the law taken  
4 almost verbatim from Miranda v. State, 101 Nev. 562, a 1985  
5 Nevada Supreme Court case.

6           THE COURT: I think that's correct. And also,  
7 "reasonable doubt" is previously described or defined in the  
8 instructions. And so I'm going to give the proposed  
9 instruction.

10           The next one, Mr. Pike?

11           MR. PIKE: "While" -- it begins with, "While a  
12 guilty verdict must be unanimous."

13           MR. LALLI: I think [inaudible].

14           MR. PIKE: Excuse me. Sorry.

15           MR. LALLI: 45?

16           MR. PIKE: Is it that far out? No, it's a Crawford  
17 instruction.

18           MR. DiGIACOMO: 38. Is it the one you want to make  
19 a record on?

20           MR. PIKE: Which one?

21           MR. DiGIACOMO: 38.

22           MR. PIKE: 38?

23           MR. DiGIACOMO: Is that the one you [inaudible]?

24           MR. PIKE: Okay, yeah, we changed it. That's right.

25           MR. CANO: 38.

1 MR. LALLI: 38.

2 MR. PIKE: Okay.

3 MR. LALLI: And it was changed.

4 MR. PIKE: It was changed. That's -- that's why  
5 we're looking at it thinking -- all right.

6 MR. LALLI: Are you taking credit for the change,  
7 Mr. Pike?

8 MR. PIKE: I'll take credit for anything. Anything  
9 good, I'll take it for.

10 In reference to Instruction No. 38, we wanted to add  
11 the information that -- that if the jurors are not unanimous  
12 in finding that the defendant committed the offense of first  
13 degree murder, then a verdict of not guilty must be returned.

14 MR. LALLI: Your Honor, that is already covered by  
15 the "reasonable doubt" instruction.

16 THE COURT: I agree. And also this accurately sets  
17 for the state of the law, so I'll give the instruction.

18 The next one?

19 MR. PIKE: The Court might want to note that there  
20 were changes that were made in the initial draft on that and  
21 those were the final objections that we had. Okay.

22 THE COURT: Is your original packet of objections,  
23 Mr. Pike, were they filed with the Court?

24 MR. PIKE: They were, Your Honor.

25 THE COURT: Okay. All right.

1 MR. PIKE: Yeah.

2 THE COURT: They'll be made part of this record --

3 MR. PIKE: That --

4 THE COURT: -- for the jury instructions.

5 MR. PIKE: So while I'm not citing to the specific  
6 authority, each one of the objections I'm making is supported  
7 by the Points and Authorities I had previously filed with the  
8 Court. I'm just highlighting these.

9 On Instruction No. 40, the -- I believe that in the  
10 first line it should read, instead of "If you find that the  
11 State has established that the defendant has committed murder  
12 of the first degree," it should contain, "If you unanimously  
13 find" -- "unanimously".

14 MR. LALLI: Which instruction?

15 MR. PIKE: Instruction No. 40, the first line. And  
16 it would be established beyond a reasonable doubt.

17 MR. LALLI: Your Honor, Instruction 40 is the  
18 transition instruction taken virtually verbatim from Green v.  
19 State, 119 Nev. 542, a 2003 instruction, as well as Lisby,  
20 L-i-s-b-y, v. State, 82 Nev. 183, a 1966 case.

21 MR. PIKE: I understand that it adequately states a  
22 transition that is to occur, but it does not give the -- it  
23 does not highlight the materiality that the State -- or excuse  
24 me, that the jury must find -- and that they must unanimously  
25 find that the State has established beyond a reasonable doubt.

1 And I think that just adds to the certainty of the instruction  
2 and to the guidance to the jury.

3 THE COURT: We have another instruction about  
4 "unanimous [indiscernible] by the jury", so I think this  
5 instruction is appropriate, so I'm going to give this one.

6 MR. PIKE: Thank you, Your Honor.

7 Instruction No. 45, the presumption of innocence.  
8 This is an objection to make it consistent with the objections  
9 that we've made throughout this, is that the State has the  
10 burden of proving beyond a reasonable doubt every material  
11 element of the crime charged.

12 And as -- we've attempted to point out and raise in  
13 each of our objections every item that we feel is material,  
14 we're requesting that in that instruction it be included  
15 unanimously and beyond a reasonable doubt.

16 And so without listing the material elements out, or  
17 providing the guidance in what is material, this instruction  
18 is insufficient. Although, the portion regarding the  
19 presumption of innocence is appropriate.

20 THE COURT: Mr. Lalli, on the issue of material  
21 element?

22 MR. LALLI: Your Honor, the language contained in  
23 Instruction No. 45, the first paragraph, has specifically been  
24 upheld by the Nevada Supreme Court in Blake v. State, 121 Nev.  
25 779, a 2005 case; Barone v. State, B-a-r-o-n-e, 109 Nev. 778,

1 a 1993 case; and most recently in Nunnery v. State,  
2 127 Nev. Adv. Op. No. 69, a 2011 case.

3 THE COURT: I think the instruction on presumption  
4 is accurate, and I will give it.

5 MR. LALLI: Your Honor, I erroneously -- with  
6 respect to the unanimity instruction, I erroneously referred  
7 to it being covered in the reasonable doubt instruction. What  
8 I meant to say, it's already covered in Instruction No. 55,  
9 which specifically says, "Your verdict must be unanimous."

10 THE COURT: Okay. Thank you.

11 MR. LALLI: So I just wanted to correct the record  
12 on that.

13 THE COURT: And then, I know you're not objecting to  
14 this, but I just want to put it on the record.

15 Instruction No. 46 talks about the defendant's right  
16 not to testify. The defense is requesting that instruction.

17 MR. PIKE: That is correct. We requested that  
18 specifically.

19 THE COURT: All right. The next one?

20 MR. PIKE: Thank you. Instruction No. 47, "You are  
21 here to determine whether the defendant is guilty or not  
22 guilty."

23 The defense feels that a more appropriate statement  
24 of the law is, "You are here to determine whether the State  
25 has proven the defendant's guilt beyond a reasonable doubt

1 from the evidence presented in this case."

2 Again, it would -- that articulates better and  
3 demonstrates more appropriately that each and every element  
4 must be proven beyond a reasonable doubt.

5 MR. LALLI: Your Honor, this -- actually, a more  
6 favorable instruction to the State was approved by the Nevada  
7 Supreme Court in Guy v. State, 108 Nev. 770, a 1992 case. In  
8 that case, the way the instruction read, which was affirmed by  
9 the Nevada Supreme Court, was, "You are here to determine the  
10 guilt or innocence of the defendant."

11 What we've done to make it more favorable to the  
12 defense is change the language as the Court has it in  
13 Instruction No. 47. What's interesting in Guy is that the  
14 proffered instruction in that case was determined to be,  
15 quote, "appropriate and necessary" by the Nevada Supreme  
16 Court. So this would only inure to the defendant's benefit to  
17 have the language that we have in the instant Instruction  
18 No. 47.

19 THE COURT: All right. Thank you.

20 Mr. Pike, the next one?

21 MR. PIKE: Okay. Thank you. Court's indulgence for  
22 just a second.

23 Instruction No. 49, in reference to the  
24 corroboration of an accomplice and the corroboration -- the  
25 corroborative evidence. The defendant's -- the defense

1 proposed a different instruction regarding corroboration in  
2 reference to this and we feel it would be appropriate that our  
3 proposed instruction be given.

4 MR. LALLI: Your Honor, the instruction in 49 is  
5 taken from Austin v. State, 87 Nev. 578, a 1971 case, as well  
6 as Cheatham, C-h-e-a-t-h-a-m, v. State, 104 Nev. 500, a 1988  
7 case, as well as, just overall being based on NRS 175.291(2),  
8 we believe it is an appropriate statement of the law.

9 MR. PIKE: And we also cited to the Austin case. It  
10 was just a different interpretation of what the State believes  
11 is a appropriate instruction, and what we believe is the  
12 proper import of Austin.

13 THE COURT: I think the state of the law is  
14 appropriately identified in 49, so I'm going to give 49 over  
15 objection.

16 MR. PIKE: Thank you. Let's see, I think that  
17 completes the objections that the defense has in reference to  
18 the instructions.

19 THE COURT: And any objection to the Verdict form?

20 MR. PIKE: Yes, Your Honor. We had proffered a  
21 proposed Verdict form, which I will lodge with the Court, and  
22 file prior to the Court providing this to the jury.

23 We believe that the jury should have the obligation  
24 in the Special Verdict Form of establishing specifically  
25 whether or not the defendant personally committed the



1 homicides, or whether or not the State has proven beyond a  
2 reasonable doubt that he was responsible under one or more of  
3 the theories.

4           Additionally, in determining the proper weighing  
5 equation in reference to this, we also believe that the jury  
6 should be given the opportunity of checking a determinative  
7 instruction that says the jury does not unanimously agree upon  
8 any one of the above felonies, but all the jurors agree that  
9 the murder was committed during the perpetration of at least  
10 one of the above felonies.

11           I think that there has to be a better articulation  
12 as to the theories upon which the jury finds the defendant  
13 guilty so that we can establish the proper weighing equation.

14           MR. LALLI: Your Honor, with respect to the Special  
15 Verdict Forms contained, or attached to, I believe, their  
16 counts --

17           MR. PIKE: It would be 13 and 14.

18           MR. LALLI: -- 13 and 14. Under McConnell, the  
19 Nevada Supreme Court indicated that if certain theories of  
20 felony murder also serve as aggravators, they cannot be used  
21 as aggravating circumstances in a penalty hearing.

22           And the Court suggested that if the -- if the  
23 Special Verdict Form were used to determine what theories the  
24 jury relied upon, it would make those aggravators felony  
25 murder aggravators then available in a penalty hearing.

1           Therefore, we have specifically created a Special  
2 Verdict Form to address the issues contemplated in McConnell.  
3 And, of course, there is no balancing in a -- in the guilt  
4 portion of a trial.

5           With respect to balancing, if the defense has  
6 concerns, if we ever get to a penalty hearing, and mitigating  
7 circumstances, they can certainly offer any mitigating  
8 circumstance they want to. And if they want to offer a  
9 mitigating circumstance that maybe the jury wasn't unanimous  
10 on something, there's nothing that says that they can't.

11           But those sorts of Special Verdict Forms do not  
12 serve any purpose other than to confuse what is already a  
13 somewhat technical Verdict form. And so we believe that the  
14 Verdict form the State has submitted is the appropriate one to  
15 use.

16           THE COURT: I think it is supported by McConnell.  
17 And I think the defense's was somewhat confusing and could be  
18 confusing to the jury, so I'm going to give the Verdict form  
19 as is.

20           Anything else? Did you request any additional  
21 instructions?

22           MR. PIKE: I have proposed, filed with the Court, a  
23 proposed Jury Instruction. We requested the lesser included  
24 of larceny. We had an alternate determination regarding the  
25 instruction on the sufficiency of circumstantial evidence, a

1 corrective instruction under Sanborn v. State [phonetic]. We  
2 presented a cautionary instruction in relationship to Count 1,  
3 now on the Third Amended Information, not being considered in  
4 relation to the other counts.

5           Additionally, we presented an instruction based upon  
6 Crane v. State [phonetic], regarding the interpretation of  
7 conflicting evidence, circumstantial evidence, and that does  
8 pre-date Boyles v. State. However, we think in this case it  
9 may be more appropriate.

10           And we also requested an instruction regarding the  
11 non-appearance or flight of Ramaan Hall to indicate that he  
12 may be considered a suspect as one of the jurors had queried  
13 of the Court.

14           And finally, we requested an alternate instruction  
15 regarding coercion in relationship to the kidnapping counts,  
16 but not in reference to the pandering counts.

17           THE COURT: All right.

18           MR. LALLI: Your Honor, if I could just respond to  
19 those. In the order that they're presented in the defendant's  
20 proposed Jury Instruction pleading, which was filed, the first  
21 instruction begins at the top, "A finding of guilt as to any  
22 crime may not be based upon circumstantial evidence." It  
23 proceeds to talk about two reasonable interpretations of  
24 evidence. That would deviate from the reasonable doubt  
25 instruction contained in NRS 175.211(1). It would

1 specifically be prohibited pursuant to Randolph v. State, 117  
2 Nev. 970, a 2001 case.

3           Moreover, that instruction was properly denied under  
4 Bails, B-a-i-l-s, v. State, 92 Nev. 95, a 1976 case, where the  
5 Court ruled -- the Court -- or the Supreme Court ruled that a  
6 District Court could properly refuse that instruction provided  
7 the jury were properly instructed on the standard for  
8 reasonable doubt, which the Court has done.

9           Although it is an unpublished decision, as recently  
10 as December 27th of 2011, in Shaw v. State, which is cited at  
11 55887, 2011 WL 6916449, the Nevada Supreme Court, once again,  
12 adopted that position, that it would be appropriate to  
13 withhold that instruction provided a Court properly instructs  
14 the jury on reasonable doubt.

15           With respect to the instruction that begins, "You  
16 are instructed that because the State failed to properly  
17 impound and preserve the condom," and then it goes on. It's  
18 our position that the factual predicate for that instruction  
19 under Sanborn has not been met. Jennie Ayers, the Crime Scene  
20 Analyst who testified even upon cross-examination, maintained  
21 that the condom was properly impounded.

22           During the course of this trial, DNA expert, Erin  
23 Reat, testified that the condom had been properly impounded  
24 and therefore the predicate to that instruction is not  
25 appropriate, or is not found, and therefore the instruction

1 would not be appropriate.

2           With respect to the instruction that begins, "The  
3 State, in an effort to present circumstances surrounding the  
4 commission of the alleged murders," that instruction, as an  
5 accommodation to the defense, the Court is giving Instruction  
6 No. 4, which essentially directs that the jury consider each  
7 count separately, and the evidence pertaining to each count  
8 separately. The defense's concern here was that the State  
9 might argue propensity from one count to the other, and  
10 Instruction No. 4 specifically says that that cannot be done.

11           The defense offers an instruction that begins, "If  
12 the evidence in this case is subject to two constructions of  
13 interpretation, each of which appears to be reasonable," for  
14 the same reasons I've already argued pursuant to Bails and  
15 Shaw, that instruction is properly denied by the Court.

16           With respect to their, "Corroborating evidence must  
17 independently connect the defendant," instruction, we have  
18 provided an alternate instruction which more closely follows  
19 Austin v. State.

20           With respect to the purposeful flight and non-  
21 appearance of Ramaan Hall, that is a -- that would be an  
22 instruction directly opposite to the Guy instruction that the  
23 Court is giving, that the jury is not to be concerned with the  
24 guilt or innocence of any other persons. They're only to  
25 consider the guilt or innocence of the person on trial. So

1 that would actually violate Guy v. State.

2 They offer substantial bodily harm instructions,  
3 however, those would be violative of the statute.

4 They ask for a coercion, lesser included offense to  
5 the kidnapping, and I believe the -- is it -- was it just the  
6 kidnapping count?

7 MR. PIKE: Yes.

8 MR. LALLI: Under Davis v. State, 110 Nev. 1107, a  
9 1994 case, the Supreme Court specifically criticizes the use  
10 of coercion and attaching it haphazardly to any sort of  
11 violent felony.

12 To read from that case, our Supreme Court says,  
13 quote, "Thus, to adopt Davis's request, not only in this case  
14 of kidnapping, but also in the case of robbery, rape, false  
15 imprisonment, child pornography" -- I'm sorry, "Thus, to adopt  
16 Davis's reasoning on the point would mean that a coercion  
17 instruction would have to be given whenever requested, not  
18 only in the case of kidnapping, but also the case of robbery,  
19 rape, false imprisonment, child pornography, child sex abuse,  
20 et cetera. Frequently, such an instruction would needlessly  
21 confuse jurors in otherwise straightforward cases."

22 So it would also confuse in this case, and not to  
23 give that instruction was specifically found to be proper in  
24 Davis.

25 The defense is requesting a larceny, lesser included

1 offense to be given with respect to the robbery cases. Under  
2 Grant v. State, 117 Nev. 427, a 2001 case, the Nevada Supreme  
3 Court recognized the element of larceny, the intent to  
4 permanently deprive the owner of the property. Thus, larceny  
5 is a specific intent crime.

6 Robbery, however, is a general intent crime. There  
7 is no specific intent element. Therefore, if one crime has an  
8 element that the other does not, it cannot be said to be a  
9 lesser included offense of it. Therefore, it would be  
10 improper to give a larceny instruction as a lesser included  
11 offense to robbery.

12 THE COURT: Anything else, Mr. Pike?

13 MR. PIKE: Yes, Your Honor. We made a specific  
14 decision not to request the coercion under the pandering, as  
15 coercion is a 1 to 6, pandering is a 1 to 4 felony. So there  
16 were also considerations in relationship to that.

17 And in reference to the substantial bodily harm, we  
18 recognize that that's not the current state of the law, but as  
19 I've indicated in my Points and Authorities, but that we  
20 believe that that should be preserved for possible review by  
21 the Supreme Court.

22 THE COURT: All right. Thank you. I think the  
23 requested instructions were either not factually or legally  
24 appropriate to be given in this particular case, so the  
25 Court's not giving the proposed instructions which we have

1 just set forth.

2 All right. Any other issues before we leave? And  
3 we come back tomorrow at 10:00.

4 MR. LALLI: Not on behalf of the State.

5 MR. PIKE: None on behalf of the defense, Your  
6 Honor.

7 THE COURT: All right. We'll see everybody at  
8 10:00. I'll read the instructions and we'll see how long that  
9 takes, depending on whether or not we take a break or not.  
10 Definitely, after Mr. Lalli's closing, I'm assuming we're  
11 going to be into the lunch hour at that point.

12 MR. LALLI: Probably.

13 THE COURT: We might break for lunch at that time  
14 and start up with closing.

15 And, Mr. Cano, you had requested for you and Mr.  
16 Pike to break up -- possibly to break up the closing. And,  
17 State, do you have any objection to that, so long as defense,  
18 they don't cover the same areas?

19 MR. LALLI: We object. It's our position that only  
20 one attorney can deliver the closing argument.

21 THE COURT: All right. Mr. Cano?

22 MR. CANO: Your Honor, I believe it was granted in  
23 the last trial against Mr. McCarty. We don't see any  
24 difference from that case and this case. As long as we're not  
25 redundant, we think it's appropriate for either -- for both



1 Mr. Pike and myself to argue.

2 THE COURT: If you so choose, I'm going to allow it,  
3 as long as, again, you are not redundant. So be careful of,  
4 you know, I always find it's just not good to be objected to  
5 in a closing, and -- all right.

6 All right, thank you everybody.

7 MR. CANO: Okay. Thank you, Your Honor.

8 (Pause in the proceedings)

9 (Court recessed at 12:29 p.m., until the following day,  
10 Tuesday, January 31, 2012, at 10:00 a.m.)

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**CERTIFICATION**

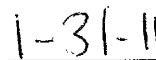
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INST

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

JAN 31 2012

BY Carol Donahoo  
CAROL DONAHOO, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DOMONIC RONALDO MALONE,

Defendant.

CASE NO: C-06-224572-2

DEPT NO: XVII

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

06C224572-2  
INST  
Instructions to the Jury  
1759669



INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

INSTRUCTION NO. 3

An Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt. In this case, it is charged in an Amended Information that on or between April, 2006, and May 19, 2006, the Defendant committed the offenses of:

COUNT 1 - BATTERY WITH SUBSTANTIAL BODILY HARM

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

COUNT 2 - CONSPIRACY TO COMMIT KIDNAPPING

Defendants did, on or about May 16, 2006, then and there meet with each other and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: kidnap MELISSA ESTORES, and in furtherance of said conspiracy, Defendants did commit the acts as set forth in Counts 3-5, said acts being incorporated by this reference as though fully set forth herein.

COUNT 3 - FIRST DEGREE KIDNAPPING

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

COUNT 4 - BATTERY WITH SUBSTANTIAL BODILY HARM

Defendants did, on or about May 16, 2006, then and there wilfully, unlawfully, and feloniously use force or violence upon the person of another, to-wit: MELISSA ESTORES, by beating and kicking the said MELISSA ESTORES about the head and body, resulting in substantial bodily harm to the said MELISSA ESTORES, the Defendants being responsible under one or more of the following theories of criminal liability, to-wit: (1) by directly or indirectly committing said crime, and/or (2) by conspiring with each other to commit the

1 crime of battery and/or kidnapping where each co-conspirator is liable for the general intent  
2 crimes committed by fellow co-conspirators which were a foreseeable consequence of the  
3 conspiracy; and/or (3) by aiding and abetting, by Defendant JASON DUVAL MCCARTY  
4 driving the said MELISSA ESTORES and Defendant DOMONIC RONALDO MALONE to  
5 the location where said battery took place, then instructing the said MELISSA ESTORES to  
6 submit to said beating.

7 COUNT 5 - ROBBERY

8 Defendants did, on or between May 16, 2006, and May 17, 2007, then and there  
9 wilfully, unlawfully, and feloniously take personal property, to-wit: purse and/or its contents,  
10 from the person of MELISSA ESTORES, or in her presence, by means of force or violence  
11 or fear of injury to, and without the consent and against the will of the said MELISSA  
12 ESTORES, the Defendants being responsible under one or more of the following theories of  
13 criminal liability, to-wit: (1) by directly or indirectly committing said crime, and/or (2) by  
14 conspiring with each other to commit the crime of battery and/or kidnapping where each co-  
15 conspirator is liable for the general intent crimes committed by fellow co-conspirators which  
16 were a foreseeable consequence of the conspiracy; and/or (3) by aiding and abetting, by  
17 Defendant JASON DUVAL MCCARTY driving the said MELISSA ESTORES and  
18 Defendant DOMONIC RONALDO MALONE to the location where a battery took place,  
19 then instructing the said MELISSA ESTORES to submit to said beating, thereafter driving  
20 both DOMONIC RONALDO MALONE and MELISSA ESTORES from the location as  
21 DOMONIC RONALDO MALONE robbed MELISSA ESTORES of her purse and/or its  
22 contents.

23 COUNT 6 - PANDERING

24 Defendants did, on or between May 16, 2006, and May 17, 2007, then and there  
25 wilfully, unlawfully, and feloniously induce, persuade, encourage, inveigle, entice, or  
26 compel VICTORIA MAGEE to become a prostitute, and/or to engage or continue to engage  
27 in prostitution.

28 COUNT 7 - CONSPIRACY TO COMMIT BURGLARY

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

6 COUNT 8 - CONSPIRACY TO COMMIT KIDNAPPING

7 Defendants did, on, about, or between May 17, 2006 and May 19, 2006, then and  
8 there meet with each other and between themselves, and each of them with the other,  
9 wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: kidnap  
10 CHARLOTTE COMBADO and/or VICTORIA MAGEE, and in furtherance of said  
11 conspiracy, Defendants did commit the acts as set forth in Counts 10-16, said acts being  
12 incorporated by this reference as though fully set forth herein.

13 COUNT 9 - CONSPIRACY TO COMMIT MURDER

14 Defendants did, on or between May 17, 2006 and May 19, 2006, then and there meet  
15 with each other and between themselves, and each of them with the other, wilfully,  
16 unlawfully, and feloniously conspire and agree to commit a crime, to-wit: Murder, and in  
17 furtherance of said conspiracy, Defendants did commit the acts as set forth in Counts 10-16,  
18 said acts being incorporated by this reference as though fully set forth herein.

19 COUNT 10 - BURGLARY

20 Defendants did, on or between May 17, 2006 and May 19, 2006, then and there  
21 wilfully, unlawfully, and feloniously enter, with intent to commit assault and/or battery  
22 and/or a felony, to-wit: Kidnapping and/or Murder, that certain building occupied by  
23 LEONARD ROBINSON, located at 1525 East Fremont, Room No. 222, Las Vegas, Clark  
24 County, Nevada.

25 COUNT 11 - FIRST DEGREE KIDNAPPING

26 Defendants did, on or between May 17, 2006 and May 19, 2006, wilfully, unlawfully,  
27 feloniously, and without authority of law, seize, confine, inveigle, entice, decoy, abduct,  
28 conceal, kidnap, or carry away CHARLOTTE COMBADO, a human being, with the intent

1 to hold or detain the said CHARLOTTE COMBADO against her will, and without her  
2 consent, for the purpose of committing murder.

3 COUNT 12 - FIRST DEGREE KIDNAPPING

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

9 COUNT 13 - MURDER WITH USE OF A DEADLY WEAPON

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



1 object, the said actions of the Defendants resulting in the death of the said CHARLOTTE  
2 COMBADO, the Defendants left the crime scene together, the Defendants encouraging one  
3 another throughout by actions and words, the Defendant and the accomplice acting in  
4 concert throughout each with intent to commit murder.

5 COUNT 14 - MURDER WITH USE OF A DEADLY WEAPON

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

1 COUNT 15 - ROBBERY WITH USE OF A DEADLY WEAPON

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

9 COUNT 16 - ROBBERY WITH USE OF A DEADLY WEAPON

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

INSTRUCTION NO. 4

Each charge and the evidence pertaining to it should be considered separately. The fact that you may find a defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

INSTRUCTION NO. 5

Where two or more persons are accused of committing a crime together, their guilt may be established without proof that each personally did every act constituting the offense charged.

All persons concerned in the commission of a crime who either directly and actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission or, whether present or not, who advise and encourage its commission, with the intent that the crime be committed, are regarded by the law as principals in the crime thus committed and are equally guilty thereof.

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the commission of such crime with the intention that the crime be committed.

The State is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

INSTRUCTION NO. 6

1  
2 A defendant cannot be criminally responsible under an aiding or abetting theory of  
3 first degree kidnapping for acts committed by an accomplice unless that defendant also had  
4 the specific intent that kidnapping and substantial bodily harm and/or death be inflicted upon  
5 the victim.

6 A defendant cannot be criminally responsible under an aiding or abetting theory of  
7 burglary for acts committed by an accomplice unless that defendant also had the specific  
8 intent to commit assault and/or battery and/or kidnapping and/or murder when entry was  
9 made.

10 A defendant cannot be criminally responsible under an aiding or abetting theory of  
11 murder of the first degree for acts committed by an accomplice unless that defendant also  
12 had (1) the willful, deliberate and premeditated intention to kill and/or (2) the specific intent  
13 to commit kidnapping and/or robbery and/or burglary and the killing was a reasonably  
14 foreseeable consequence of the that crime.

INSTRUCTION NO. 7

Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime, unless you find beyond a reasonable doubt that the defendant is a participant and not merely a knowing spectator. However, the defendant's presence, companionship, and conduct before, during and after the participation in the criminal act may be considered in determining whether he is an aider and abettor.

INSTRUCTION NO. 8

A conspiracy is an agreement between two or more persons for an unlawful purpose. To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission of, the specific crime agreed to. The crime is the agreement to do something unlawful; it does not matter whether it was successful or not.

A person who knowingly does any act to further the object of a conspiracy, or otherwise participates therein, is criminally liable as a conspirator. However, mere knowledge or approval of, or acquiescence in, the object and purpose of a conspiracy without an agreement to cooperate in achieving such object or purpose does not make one a party to conspiracy. Conspiracy is seldom susceptible of direct proof and is usually established by inference from the conduct of the parties. In particular, a conspiracy may be supported by a coordinated series of acts, in furtherance of the underlying offense, sufficient to infer the existence of an agreement.

INSTRUCTION NO. 9

Where several parties knowingly and with criminal intent join together in a common design to commit any unlawful act, each is criminally responsible for the acts of his confederates committed in furtherance of the conspiracy. In contemplation of law, the act of one is the act of all.

However, a defendant cannot be criminally responsible under a conspiracy theory of first degree kidnapping for acts committed by an accomplice unless that defendant also had the specific intent that kidnapping and substantial bodily harm and/or death be inflicted upon the victim.

A defendant cannot be criminally responsible under a conspiracy theory of burglary for acts committed by an accomplice unless that defendant also had the specific intent to commit assault and/or battery and/or kidnapping and/or murder when entry was made.

A defendant cannot be criminally responsible under a conspiracy theory of murder of the first degree for acts committed by an accomplice unless that defendant also had (1) the willful, deliberate and premeditated intention to kill and/or (2) the specific intent to commit kidnapping and/or robbery and/or burglary and the killing was a reasonably foreseeable consequence of the that crime.



INSTRUCTION NO. 10

Wherever there is evidence that a conspiracy existed, and that the defendant was one of the members of the conspiracy, then the statements and the acts by the person likewise a member may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuance of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

INSTRUCTION NO. 11

A conspiracy to commit a crime does not end upon the completion of the crime. The conspiracy continues until the co-conspirators have successfully gotten away and concealed the crime.

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INSTRUCTION NO. 12

While a guilty verdict must be unanimous, you need not be unanimous on the means or the theory of liability in arriving at your verdict. In other words, you do not need to be unanimous in deciding whether the defendant is responsible by directly committing an offense, by being an aider or abettor or by acting pursuant to a conspiracy.

INSTRUCTION NO. 13

Every person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away any person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for the purpose of committing murder and/or inflicting substantial bodily harm is guilty of first degree kidnapping.

The term "inveigle" means to lead astray by trickery or deceitful persuasion.

The law does not require the person being kidnapped to be carried away for any minimal distance.

INSTRUCTION NO. 14

False imprisonment is an unlawful violation of the personal liberty of another, and consists of confinement or detention or confinement without legal authority.

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INSTRUCTION NO. 15

If you find that the State has established that the defendant has committed kidnapping, you shall select kidnapping as your verdict.

The crime of kidnapping includes the crime of false imprisonment. You may find the Defendant guilty of the lesser-included offense of false imprisonment if:

(1) after first fully and carefully considering the charge of kidnapping, you either (a) find the defendant not guilty of that charge, or (b) are unable to agree whether to acquit or convict on that charge; and

(2) all twelve of you are convinced beyond a reasonable doubt that the defendant is guilty of false imprisonment.

If you are convinced beyond a reasonable doubt that the crime has occurred, but you have reasonable doubt whether the crime is kidnapping or false imprisonment, you must give the defendant the benefit of that doubt and return a verdict of false imprisonment.

INSTRUCTION NO. 16

In order for you to find the defendant guilty of first degree kidnapping in addition to the associated offenses of battery, murder and/or robbery, you must also find beyond a reasonable doubt either:

- (1) That any movement of the victim was not incidental to the other crime;
- (2) That any incidental movement of the victim substantially increased the risk of harm to the victim over and above that necessarily present in the other crime; or,
- (3) That any incidental movement of the victim substantially exceeded that required to complete the other crime.

INSTRUCTION NO. 17

Battery is any willful and unlawful use of force or violence upon the person of another.

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INSTRUCTION NO. 18

You are instructed that if you find a defendant guilty of battery, you must also determine whether or not substantial bodily harm resulted from the battery.

If you find beyond a reasonable doubt that substantial bodily harm resulted from the battery, then you shall return the appropriate verdict reflecting that substantial bodily harm resulted.

If, however, you find that substantial bodily harm did not result from the battery, but you find that a battery was committed, then you shall return the appropriate guilty verdict reflecting that substantial bodily harm did not result.

INSTRUCTION NO. 19

As used in these instructions, "substantial bodily harm" means:

(1) Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or,

(2) Prolonged physical pain.

INSTRUCTION NO. 20

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. Such force or fear must be used to:

- (1) Obtain or retain possession of the property,
- (2) To prevent or overcome resistance to the taking of the property, or
- (3) To facilitate escape with the property.

In any case the degree of force is immaterial if used to compel acquiescence to the taking of or escaping with the property. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

The value of property or money taken is not an element of the crime of robbery, and it is only necessary that the State prove the taking of some property or money.

INSTRUCTION NO. 21

Robbery may spread over considerable and varying periods of time. All matters immediately prior to and having direct causal connection with the robbery are deemed so closely connected with it as to be a part of the occurrence. Thus, although acts of violence and intimidation preceded the actual taking of the property and may have been primarily intended for another purpose, it is enough to support the charge of robbery when a person takes the property by taking advantage of the terrifying situation he created.

INSTRUCTION NO. 22

Any person who induces, persuades, encourages, inveigles, entices or compels a person to become a prostitute or to continue to engage in prostitution is guilty of pandering.

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INSTRUCTION NO. 23

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2 "Prostitution" means engaging in sexual intercourse, oral-genital contact or any  
3 touching of the sexual organs or female breast of a person for monetary consideration,  
4 whether by credit, cash or check except between persons who are legally married to each  
5 other.

6 "Prostitute" means a male or female person who, for a fee, engages in sexual  
7 intercourse, oral-genital contact or any touching of the sexual organs or female breast of a  
8 person, who is not that person's legal spouse, for the purpose of arousing or gratifying the  
9 sexual desire of either person.

INSTRUCTION NO. 24

Any person, who by day or night, enters any house, room, apartment, or other building with the intent to commit assault and/or battery and/or kidnapping and/or murder is guilty of burglary.

INSTRUCTION NO. 25

"Assault" means intentionally placing another person in reasonable apprehension of immediately bodily harm.

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INSTRUCTION NO. 26

The intention with which an entry was made is a question of fact which may be inferred from the defendant's conduct and all other circumstances disclosed by the evidence.

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INSTRUCTION NO. 27

It is not necessary that the State prove the defendant actually committed an assault and/or battery and/or kidnapping and/or murder inside the building or apartment after he entered in order for you to find him guilty of burglary. The gist of the crime of burglary is the unlawful entry with criminal intent. Therefore, a burglary was committed if the defendant entered the building or apartment with the intent to commit assault and/or battery and/or kidnapping and/or murder regardless of whether or not those crimes occurred.

INSTRUCTION NO. 28

Consent to enter is not a defense to the crime of burglary so long as it is shown that entry was made with the specific intent to commit an assault and/or battery and/or kidnapping and/or murder. Moreover, force or a "breaking" as such is not a necessary element of the crime.

INSTRUCTION NO. 29

Every person who, in the commission of a burglary, commits any other crime may be prosecuted for each crime separately.

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INSTRUCTION NO. 30

In this case the defendant is accused in an Amended Information alleging a charge of murder. This charge includes murder of the first degree and murder of the second degree. The jury must decide if the defendant is guilty of any offense and, if so, of which offense.

INSTRUCTION NO. 31

Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

INSTRUCTION NO. 32

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief, or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

INSTRUCTION NO. 33

Express malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.



INSTRUCTION NO. 34

Murder of the first degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements – willfulness, deliberation, and premeditation – must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the actions.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

INSTRUCTION NO. 35

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

INSTRUCTION NO. 36

The prosecution is not required to present direct evidence of a defendant's state of mind as it existed during the commission of a crime. The jury may infer the existence of a particular state of mind of a party or a witness from the circumstances disclosed by the evidence.

INSTRUCTION NO. 37

There are certain kinds of murder which carry with them conclusive evidence of malice aforethought. One of these classes of murder is murder committed in the perpetration or attempted perpetration of burglary and/or kidnapping and/or robbery. Therefore, a killing which is committed in the perpetration of burglary and/or kidnapping and/or robbery is deemed to be murder of the first degree, whether the killing was intentional or unintentional or accidental. This is called the Felony-Murder Rule.

The intent to perpetrate or attempt to perpetrate burglary and/or kidnapping and/or robbery must be proven beyond a reasonable doubt. In order for the Felony-Murder Rule to apply under a robbery theory, the intent to take the property must be formed prior to the act constituting the killing.

INSTRUCTION NO. 38

If the jury returns a verdict of guilty on the charge of first degree murder, it must be unanimous. However, you need not be unanimous on the means or the theory of first degree murder in arriving at your verdict.

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INSTRUCTION NO. 39

All murder which is not murder of the first degree is murder of the second degree. Murder of the second degree is murder with malice aforethought, but without the admixture of premeditation and deliberation.

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INSTRUCTION NO. 40

If you find that the State has established that the defendant has committed murder of the first degree, you shall select murder of the first degree as your verdict.

The crime of murder of the first degree includes the crime of murder of the second degree. You may find the Defendant guilty of the lesser-included offense of murder of the second degree if:

(1) after first fully and carefully considering the charge of murder of the first degree, you either (a) find the defendant not guilty of that charge, or (b) are unable to agree whether to acquit or convict on that charge; and

(2) all twelve of you are convinced beyond a reasonable doubt that the defendant is guilty of murder of the second degree.

If you are convinced beyond a reasonable doubt that the killing was unlawful, but you have reasonable doubt whether the crime is murder of the first degree or murder of the second degree, you must give the defendant the benefit of that doubt and return a verdict of murder of the second degree.

INSTRUCTION NO. 41

You are instructed that if you find a defendant guilty of murder and/or robbery, you must also determine whether or not a deadly weapon was used in the commission of this crime.

If you find beyond a reasonable doubt that a deadly weapon was used in the commission of such an offense, then you shall return the appropriate guilty verdict reflecting that a deadly weapon was used.

If, however, you find that a deadly weapon was not used in the commission of such an offense, but you find that it was committed, then you shall return the appropriate guilty verdict reflecting that a deadly weapon was not used.



INSTRUCTION NO. 42

“Deadly weapon” means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; or, any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

INSTRUCTION NO.43

The State is not required to have recovered the deadly weapon used in an alleged crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon was used in the commission of the crime.

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INSTRUCTION NO. 44

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

INSTRUCTION NO. 45

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. 46

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 47

You are here to determine whether the Defendant is guilty or not guilty from the evidence in the case. You are not called upon to return a verdict as to whether any other person is guilty or not guilty. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty.

INSTRUCTION NO. 48

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court. Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.