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Counsel for Respondent

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Case No. 66552

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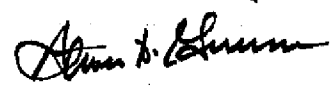
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DISTRICT COURT
CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

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Plaintiff,

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vs.

CASE#: C285825-1

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PATRICK NEWELL,

DEPT. XX

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Defendant.

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BEFORE THE HONORABLE JEROME TAO, DISTRICT COURT JUDGE

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THURSDAY, JUNE 19, 2014

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**RECORDER'S ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 4**

17

APPEARANCES:

18

For the State:

ROBERT STEPHENS, ESQ.
HETTY O. WONG, ESQ.
Deputy District Attorneys

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For the Defendant:

SCOTT L. COFFEE, ESQ.
SETH GUTIERREZ, ESQ.
Deputy Public Defenders

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RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 THURSDAY, JUNE 19, 2014 AT 9:43 A.M.

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3 [Outside the presence of the jury]

4 THE COURT: All right. This is State versus Patrick Newell, C285825. Mr.
5 Newell is not present. Yesterday we were talking about setting jury instructions. We
6 agreed to waive his presence while we're doing this.

7 All right. So, I have sets of proposed jury instructions by the
8 State as well as some additional instructions proposed by the defense. Let's start
9 with the State's. Any objections on behalf of Mr. Newell to the State's proposed
10 instructions.

11 MR. COFFEE: And, Judge, is it okay if we grab a chair while we're going
12 through this?

13 THE COURT: Yeah, of course.

14 MR. COFFEE: There's one typo that I don't know if we got --

15 THE COURT: Well there's --

16 MR. COFFEE: -- it corrected.

17 THE COURT: And then the, you know, the whole thing with the assault with a
18 deadly and the Defendant and the Carter instruction obviously needs to be ditched.
19 All right. So, let's start with the State's proposed instruction. What was the typo you
20 had in mind, what page number?

21 MR. COFFEE: It was page 22.

22 THE COURT: Page 22.

23 MR. COFFEE: It's because of the change that we had before.

24 THE COURT: Oh, yeah, the Defendant; is that what you're talking about?

25 MR. COFFEE: It should be the Defendant, but that's true also. I didn't catch

1 one. Attempt assault with a deadly weapon because the Court's allowing them to
2 amend. We don't have assault with a deadly weapon charged.

3 THE COURT: Oh, yeah, right, right, right. All that needs to be because it has
4 to be attempt assault with a deadly weapon. The verdict of attempt assault with a
5 deadly is the appropriate verdict.

6 MR. COFFEE: I think it shows up again two or three more times.

7 THE COURT: Yeah, there's a couple of instructions there. Let's see. If you
8 find that a deadly weapon is not used in the commission of the attempt assault but
9 you do find that an attempt assault was committed then you instructed that the
10 verdict of attempt assault is the appropriate verdict, you are instructed that you
11 cannot return a verdict of attempt assault with a deadly weapon and attempt assault.

12 MR. COFFEE: Right.

13 THE COURT: Okay. What else? Let's see here. Then I think on page -- let
14 me check my page numbers here. All right. On page 21 of the most recent version,
15 that's the assault with a deadly weapon instruction, is there an attempt instruction
16 that goes along with that?

17 MS. WONG: Yes; the instruction number 20.

18 THE COURT: Number what?

19 MS. WONG: Twenty.

20 THE COURT: Number 20. Oh, yeah, right. Okay. All right. Any other
21 objections to the State's proposed instructions?

22 MR. COFFEE: Judge, yeah, I think we're going to come back around to this.
23 I think there's going to be a lot of disagreement when we talk about act of -- a
24 person who performs an act in neglect or duty, the one reckless disregard. It's
25 number 23 and number 24.

1 THE COURT: Hang on. Twenty-three and 24.

2 MR. COFFEE: I think they're legally correct, but I think there's some
3 problems with the pleadings. I don't want to agree to these right now until we figure
4 out exactly what we're doing with 'em because I think they are defensible based on
5 necessity. There's also another issue with self-defense in the way it is pled in this
6 particular instance where the substantial bodily harm is only suffered by Theodore
7 Bejarano. So, I don't know if that can provide -- bootstrap essentially. This is one of
8 those either or statutes. It's a gross misdemeanor or a felony and it's only a felony if
9 there's substantial bodily harm. Is the Court following so far?

10 THE COURT: Right.

11 MR. COFFEE: But the substantial bodily harm here was caused by justified
12 battery or self-defense from the defense position. So, I don't know if that if they find
13 him not guilty on the attempt murder and not guilty on the battery they can find him
14 guilty of the substantial bodily harm for the purpose of this statute. It seems like
15 there's a bootstrapping that's going on. It's going to take a lot longer to flush it all
16 out. If the Court just understands that we're going to be addressing these when we
17 go through the defense proposed they will probably make the most sense. Then I
18 think they're legally correct, but I think there's some problems with the way things
19 are pled. I didn't want to get too far into it now because I think we're just going to
20 confuse them so we went through the other things that we agree on.

21 THE COURT: All right. So, what are you proposing? You're saying we're
22 just going to skip these for the time being until we settle some of the other ones?

23 MR. COFFEE: If we could just skip these for the time being. And I'm fine with
24 the rest.

25 THE COURT: Okay. So, just 23 and 24 are the only ones that are still left.

1 MR. COFFEE: Yeah.

2 THE COURT: All right. So, let's jump to the instructions proposed by the
3 defense. All right. We have the parties on the sentencing. Do you mind if I just do
4 the sentencing real quick just to get 'em out of the way and get the officers out of
5 here too?

6 [Proceedings trailed at 9:43 a.m.]

7 [Proceedings resumed at 9:59 a.m.]

8 THE COURT: All right. Let's go back to State versus Patrick Newell. All
9 right. So, let's pick up with the defense's proposed instructions. Let's see. We
10 have the first instruction which I have is the one numbered if the State has failed to
11 prove beyond a reasonable doubt that the specific intent to kill then the Defendant is
12 entitled to a verdict of not guilty as to the charge of attempted murder; any objection
13 to that one?

14 MS. WONG: No.

15 THE COURT: All right. The next one is to justify use of force or violence does
16 not constitute the performance of an act in wanton disregard for person or property.
17 I gather this is the one that overlaps with the discussion we just had about the other
18 one.

19 MR. COFFEE: Yeah. If we could just trail it because that's going to be the
20 lengthy argument, I think.

21 THE COURT: All right. The next one is page four, justifiable battery is the
22 battery to a human being which does not result in death and is necessary for self-
23 defense when there is reasonable ground to apprehend a design on the part of the
24 person injured to do some great personal injury to the person inflicting the injury.

25 MS. WONG: That's fine.

1 THE COURT: All right. So, there's no objection to that one?

2 MS. WONG: No objection.

3 THE COURT: The next one, page five. The use or attempt to use force or
4 violence upon or towards a person or another, et cetera, et cetera.

5 MS. WONG: No objection to this one.

6 THE COURT: All right. Use of force contemplated in these instructions
7 includes a threat of force as well as actual physical force.

8 MS. WONG: We just wanted to insert the word immediate after includes the
9 immediate threat of force as well as actual force.

10 THE COURT: The use of force as contemplated in these instructions includes
11 the threat of immediate force or includes the immediate threat of force?

12 MR. STEPHENS: Immediate threat of force.

13 MS. WONG: Includes the immediate threat of force.

14 THE COURT: All right. Mr. Coffee, any response to that? I mean, that is the
15 law. It's not a threat of future force. I'm going to come to your house a year from
16 now.

17 MR. COFFEE: That's okay. I was just trying to -- going back and forward on
18 which force we're talking about. I don't have an issue with that.

19 THE COURT: Okay. So, that one is accepted with the addition of the word
20 immediate after the -- before the word threat.

21 All right. Next one, number seven. If you find the Defendant guilty of
22 either count one attempted murder with use of a deadly weapon, et cetera et cetera.

23 MS. WONG: We object to that one. That's not a correct statement of the law.

24 MR. COFFEE: And we believe that it is a correct statement of the law per our
25 cites.

1 This act and wanton and reckless disregard -- and we're not going to
2 get too far a field on arguing this part.

3 THE COURT: Well I mean -- let me just tell you where I'm coming from.

4 You're saying that this is a duplicative count, a redundant count,
5 whatever word you want to use but, you know, typically what I do is I don't actually
6 put those instructions. I just, you know, you let the jury come back and if they
7 convict and everything, then what you do at sentencing you just dismiss the
8 duplicative or lesser ones. It's like the burglary home invasion issue.

9 MR. COFFEE: And, Judge, we thought that might be what the Court was
10 going to do. That's what Ms. Wong had suggested. We are offering this. We think
11 it perhaps should be a jury decision, but I don't have any specific case law. We're
12 offering it because we think -- the way the statute's worded it's not an offense if
13 there's a great offense where there's a conviction. That's the reason we think it
14 should be a jury decision, and we submit to the Court's discretion.

15 THE COURT: Yeah, I mean, in the end if even if they do check that off in the
16 verdict form I'm going to dismiss at sentencing. There's no prejudice. He's not
17 getting sentenced on it anyway.

18 MR. COFFEE: Right.

19 THE COURT: You know, in my mind it's slightly less confusing if you just give
20 them the options and we just strike out the ones that are redundant. So, that one
21 I'm not giving it, but if in fact they convict him with everything and it is a -- and if it is
22 a lesser included or redundant one then we'll just deal with it at sentencing then.

23 MR. COFFEE: And, Judge, I ask that it be marked as Court's exhibit.

24 THE COURT: Yeah. Do you have clean one because I write all over mine.

25 MR. COFFEE: I think I do. Permission to approach?

1 THE COURT: Yes, you may. And we'll mark that as Court's Exhibit. Okay.
2 So, this will be -- the one we just discussed, the instruction that I'm not giving based
3 on the fact that we can deal with that at sentencing is going to Court's Exhibit
4 number --

5 MR. COFFEE: Seven. Court's Exhibit 1, I think.

6 THE COURT: Okay. For the record that is going to be Court's Exhibit
7 number 9.

8 All right. The next defense proposed instruction is the one that I have
9 as page number 8. A private person may arrest another person for a public offense
10 et cetera, et cetera.

11 MS. WONG: We have no objections with a few modifications. On line 3 it
12 says a private person may only use such force as is reasonable and necessary
13 under the circumstances, blah, blah, blah, and then we also want the last sentence
14 deleted. I'm not sure what that sentence has to do with the rest of the paragraph,
15 and that sentence is not actually in *Weddell*. So, I don't think it's really probably to
16 put it in there.

17 THE COURT: Yeah, I mean, I'm not even sure what that means. A threat or
18 of deadly force is not in it of itself the use of deadly force.

19 MR. COFFEE: Well here's what it means, Judge. And it comes from this
20 case *Weddell* case in instruction 16 which talks about the restatement of torts. And
21 what it says is -- and this is a peculiar theory -- but you have a right the threat and
22 harm that you don't intend to use to the extent greater than what you intend to use.
23 Let me give you an example. It's easier if I give you a clear example, Judge.
24 Somebody comes on to my property and they take out a shotgun and I say I'm going
25 to shoot you if you don't leave.

1 THE COURT: Right.

2 MR. COFFEE: That is legal if I don't shoot them. If I shoot them, it's not
3 legal. It's an interesting little conundrum that's talked about in *Weddell*. In *Weddell*,
4 there was a shop keep who threatened a boy to leave his shop, and his position was
5 I could use the threat so long as I didn't use the force because I was stopping him
6 from trespassing.

7 THE COURT: Right. Because the force would be excessive considering the
8 crime, but the threat is a just a verbal thing; right?

9 MR. COFFEE: That's exactly it. That's exactly the thing that we're trying to
10 embody with that. My language may not be perfect. I don't disagree with the State
11 to that extent, but that's the concept that we're try to embody. The threat of force
12 may be more reasonable than the use of force. For example, saying I'm going to
13 shoot you is not the same as shooting him and saying I'm going to shoot you may
14 be reasonable to back somebody down for shooting them.

15 THE COURT: I understand the concept. I'm not sure your sentence is all that
16 clear though.

17 MR. COFFEE: And I don't know that it is, but I would like the jury instruction
18 on that concept. I'm amenable to any language anybody would suggest.

19 MR. STEPHENS: Your Honor, I think the point that Mr. Coffee is trying to
20 make is made in lines three, four and five there where it says you can use
21 reasonable and necessary force under the circumstances. So, if it's reasonable or
22 necessary to just make a verbal threat or if it's just reasonableness to actually
23 commit the threat, actually fulfill your threat, I think that's included in lines three,
24 four, five and six there. This last part here that actual language there is not in the
25 case of *Weddell*. We're objecting because there's no real basis for that language

1 and I think it's already contained in the previous sentences.

2 MR. COFFEE: I think I have a solution from looking at this. If we could add
3 but under no circumstances may actual deadly force be used unless the arrestee
4 poses a threat of serious bodily harm to a private arrestee or others, I would find it
5 acceptable.

6 MS. WONG: Say that again.

7 MR. COFFEE: Okay.

8 THE COURT: Oh, I see. I think that'll work. He's saying line three and four.
9 A private person may only use such force as is reasonable and necessary under the
10 circumstances to affect an arrest but under no circumstances may actual deadly
11 force be used unless the arrestee -- and then we strike the last sentence.

12 MS. WONG: Okay. I agree.

13 MR. COFFEE: Yeah.

14 MR. STEPHENS: I'm happy with that.

15 THE COURT: I like that too. All right. So, we'll do -- with that amendment
16 we'll do that instruction. All right.

17 The next one, page nine. Justifiable battery is the battery of a human
18 being, et cetera where there is reasonable ground, et cetera, et cetera.

19 MS. WONG: We object to that. There has been no evidence of a -- first of all,
20 actually --

21 THE COURT: Oh, you know what. Let me cycle back for a second. Let's
22 jump back to the arrest one. I actually -- it's not a legal thing, but just to clarify. Just
23 because there's kind of a lot going on in this case, there's the throwing of the
24 gasoline twice, then there's the lighter, and then there's the knife incident afterward.
25 I gather -- actually maybe I shouldn't phrase it that way. You're saying the arrest

1 was after the burning. It's the pointing the knife and saying stay here; right?

2 MR. COFFEE: Yes.

3 THE COURT: So, I'm wondering if in instruction that we just went through on
4 page number eight we should add a sentence, just to clarify, because I see -- when I
5 went through this my first thought was how did he arrest him by setting him on fire.
6 And then I think, oh, he's talking about this. I'm wondering if we should add a
7 sentence in this case -- something along the lines of, you know, in this case the
8 Defendant claims that he used a knife to keep Mr. -- to keep the victim from leaving
9 the scene until the scene arrived. It is your duty to determine whether this meets a
10 definition of an arrest, just so they know that you're talking about that and not the fire
11 incident. Because when I first read this I thought to myself how is that an arrest. I'm
12 wondering if the jury is going to have that same thought process.

13 MR. COFFEE: No problem. How about the arrest in question in the instant
14 case or the alleged arrest in question. The alleged arrest in question.

15 THE COURT: Well let me ask you. Do you think that clarification is needed
16 or you guys just going to argue that because --

17 MS. WONG: I would prefer Mr. Coffee just argue that.

18 MR. COFFEE: We're going to agree with it.

19 THE COURT: Okay. It's not a legal thing. I just thought just to clarify
20 because when I first read this my thought was how hell is that an arrest setting you
21 on fire. Then I had to think, oh, he's talking about, you know -- but if you're okay just
22 doing that in closing we'll just leave it out then.

23 MR. STEPHENS: I will argue it.

24 MR. COFFEE: Yeah, we'll argue it. I'm fine with it.

25 THE COURT: All right. So, let's go to page number nine. Justifiable battery

1 is the battery of a human being when there is reasonable ground, et cetera, et
2 cetera.

3 MR. COFFEE: And, Judge, number nine is often in conjunction with number
4 ten. If the Court didn't give number ten, number nine would be appropriate.

5 MS. WONG: Correct.

6 MR. COFFEE: It is the remaining part of the justifiable battery from -- is it the
7 *Davis* case -- it's from *Davis*. There was a question in *Davis* as to whether or not
8 you can use deadly force to defend against any felony. *Davis*, like things we're
9 going to get to in a minute, the Supreme Court doesn't really say that's the law --
10 well it intimates to things that may be the law.

11 Our position is that by his actions and by his words, Mr. Bejarano was
12 attempting to coerce Mr. Newell into giving him a ride.

13 THE COURT: No, I know. Here's the thing. This is actually an instruction
14 that I deal with from time to time so I actually, you know, it's one of the ones where I
15 have a pretty good knowledge of it because I deal with it. It comes up in every self-
16 defense case. If you go back to the *Weddell* case in 2002, okay, that one -- the
17 actual issue in front of the Supreme Court in the *Weddell* case is it was that was the
18 fleeing felon rule. Okay. That was actual issue. And they said well even though the
19 statute 200.160 literally says any felony you can use deadly force. They said well
20 that's kind of ridiculous because there's a whole range of felonies like, for example,
21 not paying a marker to a casino. You don't get to just shoot a guy; right? And if you
22 look at the language in that case, I mean, here's the analysis I've used before. In
23 that case, even though the factual situation is a fleeing felon, the language they use,
24 they say well the lesser are amended, all these whole bunches of statutes. And the
25 fleeing felon case that we have here, it's no longer just any felony that justifies

1 deadly force. It's only if the felony is -- is the person battered poses a threat of a
2 serious bodily injury or harm kind of a thing.

3 MR. COFFEE: Right.

4 THE COURT: Now the question is well does that apply to the use of force in
5 a non fleeing felon area. And frankly the way I read the case it almost has to
6 because the way the Legislature amended the statute it would be a stupid almost
7 ridiculous amendment to say only in a fleeing felony case to not use deadly force of
8 any felony but if the guy's not fleeing you can kill a guy for any felony. That would
9 be kind of a ridiculous argument to make, right, [indiscernible] amendment for the
10 Legislature to have made.

11 MR. COFFEE: While I might think so, there's a specific statutory provision in
12 the law for the use of deadly force to prevent a felony. The justifiable battery
13 language that we're talking about here comes from this *Davis* case and *Davis*
14 considered one. *Davis* came out in the last year and a half.

15 MS. WONG: That last three months.

16 MR. COFFEE: The last three months. *Davis* is almost a brand new case.

17 THE COURT: Right. I read it.

18 MR. COFFEE: And *Davis* says the -- in that case the Court refused to give an
19 instruction for a prevention of felony, something like what we're asking. And the
20 Court says well the State says that it's not available for every felony and we're not
21 sure you can read the statute that way but, you know, at the end of the day we don't
22 have to make that decision now, is essentially what *Davis* says. So, they leave
23 everybody kind of hanging out on a limb. Our position is that if *Davis* does reach a
24 decision that it's going to -- in the case of actual commission of a felony -- going to --
25 I'm not going to say eviscerate, but we're going to make the distinction on one but

1 between somebody's trying to commit a felony and somebody's trying to flee from a
2 felony.

3 THE COURT: Right.

4 MR. COFFEE: And *Davis* seems to intimate that they want to do that or they
5 may be going to do that, I should say.

6 THE COURT: Right.

7 MR. COFFEE: But they don't come out and say that they've done that.

8 THE COURT: Yeah, I know. I read *Davis* and I went and re-read *Weddell*
9 after *Davis*, and I'm not exactly sure what they're trying to do. You can read it a
10 couple different ways. On its face, the language used in *Davis* suggest that they
11 want to create a distinction, but that distinction, frankly, makes no sense. If the
12 guy's committing a felony you can shoot him. If he flees from committing that same
13 felony, you can't shoot him. If you read the *Weddell* case, that's -- the analysis in
14 that case seems to suggest that's not what the Legislature is doing, but *Davis* has
15 this weird language in it. Now that may be what -- because strictly speaking, it's a
16 question of statutory interpretations so now it's not just what the Supreme Court
17 wants but it's how they think -- it's what they think the Legislature wanted, and that's
18 where *Davis* and *Weddell* are almost incompatible because the one case seems to
19 be saying the Legislature intended this and the other case is saying well I don't know
20 if that's [indiscernible] a jury question which is almost the opposite thing.

21 MR. COFFEE: Your Honor --

22 THE COURT: It's really unclear, is my point.

23 MR. COFFEE: And I understand the Court's analysis.

24 The only point that I would make is the difference between a fleeing
25 felon and preventing the commission of a felony, the harm's already done with the

1 fleeing felon.

2 THE COURT: Well unless it's an attempt. See, that's the problem because
3 an attempt is also a felony or most felonies; right?

4 MR. COFFEE: Right; you're right.

5 THE COURT: That's why --

6 MR. COFFEE: It's very touch.

7 THE COURT: -- you know, as you can tell, this is an issue I've thought about
8 because it's come up. It just doesn't make any sense. And I'm not even sure that's
9 what the Supreme Court was thinking of. Sometimes they use loose language and
10 they clarify it. The whole thing, if you read it literally, doesn't make any sense
11 whatsoever.

12 MR. COFFEE: And whichever decision the Court makes is fine. I do make a
13 record on why we're offering it.

14 THE COURT: No, I understand.

15 So, where's what I'm going to do. I'll tell you why I'm doing this. I made
16 this -- I had this exact, almost exact same argument come up and I made this
17 amendment to the instruction. What happened was it went up on appeal. The
18 Supreme Court affirmed me in an unpublished order, but they didn't actually say
19 anything about this amendment. What they did is -- this opinion where they address
20 other issues and they had to [indiscernible] all the remaining [indiscernible] without
21 merit. So, whether that was an affirmance of what I did, you know, whatever --

22 MR. COFFEE: Close.

23 THE COURT: But at least I wasn't reverse; right? So, this is the amendment
24 that I made to this, a very similar instruction. So, if you take this justifiable battery
25 instruction, the two sentences that are in here, and here is what I added before, the

1 amount of force used to effectuate the battery must be reasonable and necessary --
2 It's basically copied from that other instruction -- must be reasonable and necessary
3 under the circumstances, deadly force cannot be used unless the person battered
4 poses a threat of serious bodily injury. I made a very similar instruction and that's
5 the one where they didn't say anything but they didn't reverse me. So, you know, I
6 interpret that as not a reversal. You can -- I guess you can make the argument it's
7 sub silentio. I don't know. That's the one I'm comfortable making because that to
8 me seems like it's what the Legislature and *Weddell* intended, granted it may not be
9 what *Davis* intended although *Davis* and *Weddell* now you have two cases that are
10 not saying the same thing.

11 MR. COFFEE: Understood. We would, again, just based on *Davis* because
12 I'm not sure what the Supreme Court's going to do, object to the amendment --

13 THE COURT: Right.

14 MR. COFFEE: -- because it creates a condition precedent that's not
15 necessary.

16 THE COURT: Right. I'll note your objection for the record. I, you know, I
17 completely understand because you're stuck with, you know, what the Supreme
18 Court says and sometimes what they say at different times or different things and it
19 is what it is. But that's I'm comfortable doing. It's what I did before. Well, you know,
20 if they reverse it, they reverse it. At least we'll have another case where they
21 provide some clarity; right?

22 MS. WONG: Your Honor, not to drag this out but just for appellate purposes.
23 I don't think that the defense could have proven that there was even a felony that
24 they -- that was committed the victim that could have justified them purposing this
25 instruction. The felony that they were going to rely upon was coercion.

1 THE COURT: Coercion.

2 MS. WONG: And in order to allege the felon version of coercion they had to
3 have shown that there was some immediate threat of physical force which is
4 something even after the testimony that we heard, including the Defendant, there
5 was never any testimony that there was any immediate threat of force used. And so
6 while at most the defense could have proven a misdemeanor coercion, they never
7 could have proven a felony version of coercion. So, therefore, they would not have
8 gotten that instruction, Instruction number 9.

9 MR. COFFEE: And if I might respond just briefly. Our position is that threats
10 need not be verbalized. Threats can be based on physical action when he chases
11 Mr. Newell around the truck when he continues to move forward. Mr. Newell has
12 good faith basis of believing that he is going to be harmed.

13 THE COURT: Right. Here's what I'm going to do. I'm mean it's obviously
14 your theory of the case. This is what I was thinking about doing. In addition to that
15 amendment just so that -- just to make it more clear to the jury, what I was thinking
16 about doing is after the [indiscernible] I just added a new paragraph. The felony that
17 the Defendant alleges occurred was the crime of coercion, and then follow that with
18 a coercion instruction. In other words, lump those two together so that there's a
19 connection between your [indiscernible] battery instruction and your coercion
20 instruction just so they know that -- I guess my concern is to having the coercion
21 definition out there but there's no charge of coercion they may not link them. So,
22 that's why I thought we'll put 'em on the page. That way that's your argument, that's
23 your theory of the case. If they don't agree with that a felony coercion occurred,
24 then the justifiable battery doesn't make any sense because it's not even a felony.
25 But that's clearly the theory of the case. If the jury thinks that by cornering him, you

1 know, between the gas station and his car is a felony coercion, well that's certainly
2 his argument. Yeah, I know, you're saying that's not credible and that's the jury's
3 call. So, you okay with that amendment?

4 MR. COFFEE: I'm okay with that amendment.

5 THE COURT: I think it just clarifies things.

6 MR. COFFEE: As long as my objection stands on the sentence before.

7 MS. WONG: Are we going to insert basically jury instruction 10 into what
8 Your Honor proposed? Because I want to amendments to their --

9 THE COURT: Okay, yeah. That was he -- yeah, I was going to merge the
10 ones on page nine and ten together so that they're clearly linked one to each other.
11 So, what were the specific amendments to the one on page ten?

12 MS. WONG: So, on line eight I just want to insert the word and, and then --

13 THE COURT: Where --

14 MS. WONG: I basically want to combine that last paragraph and just it an
15 element. I don't think we need to make the distinction to the jury between a
16 misdemeanor or a felony.

17 THE COURT: Wait. Where are you now? I'm sorry.

18 MS. WONG: So, on line eight after attempt to intimidate the person by threats
19 or force --

20 THE COURT: Uh-huh.

21 MS. WONG: -- and then go to -- and then put D, there is an immediate threat
22 of physical force is used. And then just delete everything else such as this is crime
23 of coercion and all that language afterwards. I was just going to say we need to
24 make a distinction to the jury between a --

25 THE COURT: Oh, oh, right. Basically you're saying that a misdemeanor

1 coercion is not even an option is kind of what of you're saying.

2 MR. GUTIERREZ: Right. I don't think we [indiscernible] coercion in there; did
3 we?

4 MS. WONG: Yeah. Line -- well line nine is this is a coercion and --

5 THE COURT: Yeah. Mr. Coffee, I think this is what she's saying. If you look
6 at that instruction, okay, A, B and C --

7 MR. COFFEE: Oh, coercion felony no problem.

8 THE COURT: --yeah, A, B and C themselves are just a misdemeanor. So,
9 she's saying why don't we make it a D which makes it a felony. I think that's what
10 you're saying; right?

11 MS. WONG: Yes.

12 THE COURT: Any objection to that?

13 MR. COFFEE: Okay. I'm not following.

14 MS. WONG: Okay. Because A, B, and C are the elements for a
15 misdemeanor coercion.

16 MR. COFFEE: No.

17 MS. WONG: Yes, it is. And in line nine you say this is the crime of coercion.
18 And then in line ten he says where the immediate threat of physical force is used
19 coercion is a felony. So, now you're advising them when coercion is a felony when
20 that last requirement, the threat requirement is met.

21 THE COURT: Right. This is what I think she's saying. A, B and C by
22 themselves are just a misdemeanor. The next paragraph, where the immediate
23 threat of physical force is used, then it's a felony; right? So, she's saying why don't
24 we just say -- you're not asking them to find that there was a misdemeanor coercion
25 because that doesn't even help your defense. Why don't we just say it's A, B, C and

1 D, the immediate threat of physical force is used. In other words, it can only be
2 felony coercion. They can't find there's a misdemeanor coercion. It doesn't even fit
3 with your defense; right?

4 MR. COFFEE: I understand, Judge. But if you threaten to use violence or
5 inflict injury on another person, that's a felony coercion.

6 MS. WONG: No, it's not.

7 MR. COFFEE: Yeah, it is. It's just -- getting somebody to stop doing what
8 they have a right to do is misdemeanor coercion. The threat of force makes it a
9 felony. I pulled it directly from the statute. I copied this from the statute.

10 MS. WONG: Right, I know; right.

11 THE COURT: Well hang on. Now that I look at it, you got a typo on line four
12 as well because that doesn't make any sense. Use violence of inflict injury.

13 MR. COFFEE: I think I cut and pasted from the statute which wouldn't shock
14 me the way the Legislature puts things together.

15 THE COURT: Yeah. I mean, you'd surprised how many typos there are in
16 civil statutes.

17 MR. COFFEE: I don't know [indiscernible] just using the statutory definition of
18 felony coercion, but I'd just like to see what it is. I thought I had it. Oh, I see what
19 you're saying. Okay. Okay. No problem.

20 THE COURT: All right. So, we're going to say C, attempt to intimate the
21 person by threat or force and, D, the immediate threat of physical force is used,
22 period, in there.

23 MS. WONG: Yes.

24 MR. COFFEE: Okay.

25 THE COURT: Right. And then I don't think we need the rest of that since I'm

1 merging this with the instruction number nine anyway which talks about the
2 reasonable necessary force. We probably don't need the rest of that.

3 MR. COFFEE: Okay. So, we're ending at C and then we're starting the next
4 paragraph where the immediate threat of force is used.

5 THE COURT: This is the way she's proposing. All right. You have A, B and
6 C. C is attempt to intimate the person by threat or force and then replace the period
7 with a semi colon and, D, the immediate threat of physical force is used. Period.

8 MR. COFFEE: Okay. Then it should be A or B or C and D. Because if you
9 do A or if you B or C and D it's a felony.

10 MS. WONG: No, no, you're right. It's or, it's not and.

11 MR. COFFEE: Yeah. It's or for the first three and and in the second part.

12 MS. WONG: We'll go to the and for this last part, yeah.

13 MR. COFFEE: That's the reason that it creates confusion.

14 THE COURT: Oh, yeah, you're right. That's why it's broken out the way it is.

15 MR. COFFEE: Yeah, that's the way it's broken out.

16 MR. STEPHENS: We can strike B altogether.

17 THE COURT: Oh, yeah, because that's not even your theory of the case.

18 MS. WONG: But what do we need -- yeah.

19 MR. COFFEE: Well actually deprived of a tool truck. I mean, he's trying to
20 keep him from using his truck or trying to take his truck away from him. So, I've got
21 an issue with striking B.

22 THE COURT: Well -- but wait a second. He's asking for a ride. He's actually
23 used the truck; right? How is that --

24 MR. COFFEE: It also interferes -- this hinder; right? It says hinder the
25 person's use thereof. Making him give him a ride hinders my client's right to use the

1 truck in any way he sees fit. He's trying to make him do something with his tool, his
2 truck that he's got a right not to do. That's hindering his use.

3 I believe we've got for the threat of immediate physical force. How
4 about saying the threat of immediate force must also be shown to establish
5 coercion; does that solve your problem?

6 MS. WONG: The immediate threat of physical force must be used --

7 MR. COFFEE: Must also be shown to establish coercion.

8 THE COURT: Well what about this. What if we take the immediate threat of
9 physical force is used, why don't we bring it to the top? Okay.

10 MR. COFFEE: Perfect.

11 THE COURT: So, it opens with it is unlawful for a person with the intent to
12 compel another to do or abstain from doing an act which the other person has a
13 right to do or abstain from doing to -- with the immediate threat of physical force to
14 A, B and C, something like that.

15 MR. COFFEE: Yes.

16 THE COURT: Or some variation of that?

17 MR. COFFEE: Yes, yes, yes. How about bringing it --

18 MS. WONG: How about is it unlawful for a person --

19 MR. COFFEE: To use the immediate threat of physical force.

20 MS. WONG: Right. With the intent to compel.

21 MR. COFFEE: Compel. That's it.

22 MS. WONG: Okay. So it is unlawful for a person to --

23 MR. COFFEE: Use the immediate threat of physical force.

24 THE COURT: Oh, yeah, yeah. To use the immediate threat of physical force
25 with the intent to compel another to do or abstain.

1 MR. COFFEE: Yes.

2 MS. WONG: Yes.

3 THE COURT: Okay. Yeah, that makes a lot more sense, yeah, yeah, yeah.

4 That's probably how they should have written statute in the first place, frankly.

5 MR. COFFEE: Yes.

6 THE COURT: Excellent. All right. Then next one is -- well the next one I
7 have is eleven -- I have might have two versions here. Do you have some -- assault
8 with a deadly weapon. I don't know if these are moot or not considering it's an
9 attempt now.

10 MR. COFFEE: They're offered. I don't anticipate the Court to give them. I'm
11 offering them because of arguments considering the attempt. We were -- I don't
12 know if there is a such a thing as an attempt to assault another person. If the
13 Court's made a ruling on that, I don't intend to revisit here. So, they're moot for our
14 purposes but if it was an assault with a deadly weapon they were offered for that
15 purpose. It's just -- us trying to establish the record.

16 MS. WONG: And I think it's count three with the assault not count one.

17 MR. COFFEE: Yeah, maybe you're right.

18 And the point that I'm offering -- goes for, Judge, is that by allowing
19 them to plead an attempt to assault, we've essentially negated the element that I'm
20 asking for the instructions on which is the actual apprehension [Indiscernible].

21 THE COURT: Right. That's why I thought these two might actually be moot
22 considering the amendment.

23 MR. COFFEE: They are moot considering the amendment. That's my point
24 though is we're eliminating this portion of the statute. I think I'd be entitled to this if
25 we were given the assault statute.

1 THE COURT: Right. So, do you want me to mark these as Court exhibits for
2 you guys?

3 MR. COFFEE: Yes.

4 THE COURT: Okay. So, these will be Court's Exhibits -- what numbers?

5 THE COURT CLERK: Eleven and 12.

6 THE COURT: Eleven and 12. All right.

7 MR. COFFEE: Very good.

8 THE COURT: Yeah, I mean, honestly -- let's see. And then the other, it's my
9 understanding that the -- of the defense proposed instructions one through seven
10 were agreed to; right? That's what I was told yesterday or pages one through
11 seven.

12 MR. COFFEE: We were except for the wanton disregard which I think is page
13 two.

14 THE COURT: Oh.

15 MS. WONG: Three, page three.

16 MR. COFFEE: It's three. Yeah, and we're going to come back to that. I got
17 an email last night -- this morning.

18 THE COURT: Okay. Page three is the justifiable use of force or violence did
19 not constitute the performance of an act in wanton disregard for persona or property.
20 Do you have a citation for that or where's that from?

21 MR. COFFEE: There is. We are flying blind on this act of force --

22 THE COURT: Yeah. There's no case law on this. Honestly, I've never even
23 seen it charged so it's just a weird statute.

24 MR. COFFEE: It's a Nevada unique statute.

25 THE COURT: Right.

1 MR. COFFEE: And not only is it a Nevada unique statute, we've got another
2 problem in that there's a felony and a gross misdemeanor form of the statute and
3 the distinction is whether there's substantial bodily harm.

4 THE COURT: Right.

5 MR. COFFEE: We have offered this because of the way it's pled in the
6 charging document. The way it's pled in the charging document is, did then there
7 willfully and unlawfully perform --

8 THE COURT: Well okay. Let me just summarize what I think -- where I think
9 you're coming from. If this is in fact a lesser included of any other offense, then any
10 defense that you would have to the greater offense, including justifiable battery,
11 would also be a defense or lesser included; is that the basic theory of what you're
12 saying here?

13 MR. COFFEE: That's even better than my theory.

14 THE COURT: All right. Well what was your theory then?

15 MR. COFFEE: Well my theory is also if you use self-defense against Teddy
16 Bejarano that you can't use an injury to Bejarano to bootstrap into a felony situation
17 for the act and wanton -- and reckless disregard.

18 THE COURT: Why not?

19 MR. COFFEE: Well I think -- I think the reason is because he has the right to
20 use force. The injury caused were the result of a justifiable use of force. Now the
21 act of wanton and reckless disregard has to put somebody in danger but I think it
22 has to be some third person. Interestingly, the way they've got this pled, they don't
23 pled any property, they haven't pled any person. All they've pled is Theodore
24 Bejarano.

25 THE COURT: Yeah, I saw that, as opposed to any other people in the gas

1 station.

2 MR. COFFEE: As opposed to any other people. So, because of the way it's
3 pled I think that this is a correct statement of law, that if he's using self-defense, that
4 would also justify this act in wanton and reckless disregard because by definition not
5 wanton if he necessarily has to use self-defense to defend himself or if he's using
6 justifiable self-defense by its nature not wanton. There would be a separate gross
7 misdemeanor pled here for people near the gas station --

8 THE COURT: Because they weren't actually harmed.

9 MR. COFFEE: -- or for the property of the gas station.

10 THE COURT: Right.

11 MR. COFFEE: But it's not pled in the charging document. And the State's
12 position is that it is pled in the charging document.

13 MS. WONG: It is pled. I mean, it's not pled after the to wit but it is pled in the
14 pleading itself. Did then and there willfully and unlawfully perform an act in willful or
15 wanton disregard of the safety or person or property in the following manner: to wit.
16 Now are you saying that the -- I agree with you for how we could have pled it better,
17 but it doesn't lack notice.

18 MR. COFFEE: It does. I mean, it's non-specific and lacks notice.

19 THE COURT: Okay. So, State, you're saying what, that count four covers
20 what, both a felony as to Mr. Bejarano and a gross misdemeanor as to everybody
21 else in the gas station?

22 MS. WONG: No, no.

23 THE COURT: I'm not sure what he's saying.

24 MS. WONG: No, that's not what I'm saying.

25 THE COURT: What are you saying then?

1 MS. WONG: Well we charged the felony version. The Defendant's reckless
2 act did cause substantial bodily harm to a person and that fits under the felony
3 version of [indiscernible]. All I have to show is that somebody was substantially
4 harmed by it to make it a felony.

5 THE COURT: Okay.

6 MS. WONG: Which we have. And that's the only -- that's all I pled. I haven't
7 pled a misdemeanor. Now what Mr. Coffee is saying though is if he somehow
8 defeats the substantial bodily harm element or the jury acquits on the first three
9 charges because they feel that his actions were justified, then we can't rely on the
10 substantial bodily harm that the jury has just negated which makes it a gross
11 misdemeanor. I think that's what his argument is.

12 MR. COFFEE: Well there's two arguments. The gross misdemeanors have
13 been pled. I don't think we've got specificity for anything other than lighting Teddy
14 on fire.

15 THE COURT: Unless the gross misdemeanor is a lesser included of the
16 felony.

17 MR. COFFEE: Perhaps although I don't know if it -- I think you still have to
18 name the person or property that was put at risk. And I think if you eliminate Teddy
19 Bejarano from this, you're left with a non-charge, you're left with an Information that
20 didn't charge an offense. It's just as they put somebody in --

21 THE COURT: Well no. It would be a lesser included in a sense for example if
22 the jury doesn't believe that Mr. Bejarano actually suffered substantial bodily harm.

23 MR. COFFEE: Oh, I wasn't looking at it that way.

24 MS. WONG: Oh, that's what I thought you were looking at.

25 MR. COFFEE: No; I was not looking at it that way. I look at substantial bodily

1 harm to Mr. Bejarano is justified and covered under self-defense. Here's the easiest
2 example I can give, Judge. Suppose I'm at a casino and somebody comes at me
3 with a knife and I shoot them.

4 THE COURT: Right.

5 MR. COFFEE: By definition -- okay. I am acting in self-defense. They could
6 charge us act in wanton reckless disregard. There's other people -- there's other
7 people nearby and charge me with a felony for something that's done clearly and
8 completely in self-defense. That can't be what the Legislature intended when they
9 adopted this statute.

10 MS. WONG: And, Your Honor, the State's position is there's a difference
11 between self-defense and necessity. That's what -- that's the instruction that I
12 proposed to Mr. Coffee last night. I think what they're saying here is if they can
13 prove necessity, it was necessary for the Defendant to light the victim on fire, that
14 would then absolve him of liability of the reckless disregard effect.

15 MR. COFFEE: And actually I think necessity is a defense to the gross
16 misdemeanor charge if the Court feels a gross misdemeanor is also charged. I think
17 both necessity and self-defense justifiable use of force are defense to the bodily
18 harm posed to Theodore.

19 MS. WONG: Okay. But I could just explain further so I talk about his
20 hypothetical here. The difference between -- well in Mr. Coffee's hypothetical if
21 somebody were chasing him and tried to cut him with a knife and he shoots him and
22 it endangers the lives of everybody else, he can prove that it was necessary
23 because if somebody's chasing you there really isn't time to do anything else. You
24 fire and it if happens to hit somebody else, you know, that's unfortunate.

25 In this particular case, the Defendant's relying upon self-defense, and

1 they're going to specifically rely on the instruction that's saying he has no duty to
2 retreat.

3 THE COURT: Well --

4 MS. WONG: If the victim --

5 THE COURT: Here's the other hypothetical situation where this statute might
6 be a little different -- where it doesn't overlap with the other offenses. Okay. Let's
7 say I'm in a situation where I can clearly use deadly force. All right. Somebody's
8 coming at me with gun. He's actually opening fire and the bullets whizzing passed
9 my ear. In that situation, I think we all agree that I can use deadly force; right? So,
10 the use of deadly force to stop that attack is justified. I'm not guilty of that. But
11 here's where the statute could conceivably come into play. The force that I use --
12 let's say I detonate a nuclear bomb. I've killed that guy but I killed a million other
13 people as well. In that situation you can well the two things aren't the same. I was
14 justified in the abstract in using deadly force, but I used such excessive deadly force
15 that I not only stopped the attack I blew up the entire city of Las Vegas. That would
16 be a situation where you don't have a factual -- where there's a distinction between
17 the two.

18 MR. COFFEE: You know I think that's a great example, Judge, because in
19 that situation you've caused substantial bodily harm to a lot of other people.

20 THE COURT: A million people. Right.

21 MR. COFFEE: In this situation the only bodily harm that we've got is to the
22 person that we're claiming he was defending himself against. Now I think the Court
23 can see the problem with making this a felony as opposed to a gross misdemeanor
24 for the underlying injury and the underlying infliction of bodily harm is only against
25 Mr. Bejarano.

1 Now the other thing that's interesting about this if this was the
2 duplicative offense, there might be more to be said here. But because it is
3 duplicative if they find him guilty on the battery, they can't find him guilty on this
4 charge anyway. The Court will end up having to throw out the charge after the
5 verdict. So, the only way that they can find him guilty and we have adjudicated
6 guilty is if he is acquitted on the other charges. I wouldn't bring up the issue and I'd
7 bring it up after trial except our Supreme Court has seen fit to allow inconsistent
8 verdicts.

9 So, the problem is we get an inconsistent verdict where we
10 [indiscernible] self-defense on the first charges and then the second charge they find
11 act and wanton reckless disregard and we don't have a finding on this -- specific
12 finding on this bodily harm to Theodore. Then we've got -- I'm kind of at a quandary.
13 The Supreme Court's going to say you're stuck because you didn't try to take care
14 of it now, Mr. Coffee. I suppose one way to take care of it might be a special verdict
15 form, and I hadn't thought of that till right now. So a special verdict form to the
16 extent that we find that the -- that the injuries to Mr. Bejarano were permitted in self-
17 defense that were to reduce this charge to a gross misdemeanor. My position is it
18 would reduce the charge to a gross misdemeanor if they came back with a special
19 verdict form to that conclusion, and if they didn't then we've just have inconsistent
20 verdicts assuming that we have a defense verdict on the other portions, obviously. I
21 mean, that's --

22 THE COURT: Right. You're assuming there's any consistency. Right.

23 MR. COFFEE: Yes. I don't know how to preserve my record any other way.

24 THE COURT: Right.

25 All right. If you -- I mean, the problem with using a special verdict form,

1 just off the top of my head, is now you have to have a whole bunch of instructions
2 and walking them through what they're supposed to check off and not check off and
3 that kind of thing. If you find this, you have to check off this; if you find that, you
4 know, then you have to -- I mean, I don't mind doing that, but that's what we have to
5 do then.

6 MR. COFFEE: I know. I don't love it.

7 The other solution is we could work on the assumption that if they
8 acquit on the battery with substantial bodily harm and on the attempt murder, that
9 they have found that he used self-defense. I don't know any other way they acquit
10 in this case. We all agree factually what happened, that he lit the man on fire. So,
11 they'd had to find the justifiable use of force and if we work on that assumption then
12 we can sort out afterwards I suppose whether or not it should be the gross
13 misdemeanor or the felony.

14 THE COURT: All right. State, your response to all that.

15 MS. WONG: So, Mr. Coffee's proposal is see what the jury decides and then
16 we figure it out after the fact.

17 MR. COFFEE: See what the jury decides and if the jury finds him not guilty
18 on the battery and attempt murder.

19 MS. WONG: And it's both.

20 MR. COFFEE: Both. We assume that they found the justifiable use of force
21 against Mr. Bejarano and we can argue whether or not that reduces your gross
22 misdemeanor and not afterwards. We're all going to work on the assumption that's
23 what happened.

24 THE COURT: I mean, really this only comes up in one situation.

25 MR. COFFEE: Yes.

1 THE COURT: One outcome he's convicted of every count. Then it's, you
2 know, it's not inconsistent because they didn't believe his self-defense or necessity
3 claim. The other possibility is he's acquitted of every count, in which case they
4 believe that everything was justified. The only way this even comes up is they
5 acquit him of counts one and two but convict him of count four. That's where you
6 have the situation of well what was the factual basis for that.

7 MR. COFFEE: Yes, that's right.

8 THE COURT: Right.

9 MR. COFFEE: My only concern about not sorting this out later is the
10 inconsistent verdicts portion of it. If the State's willing to concede that they found
11 that he used justifiable force, if they acquit on the attempt murder and the battery
12 with substantial, we can sort this out later. We can look at ALRs and look at all
13 kinds of weird cases to try to figure out exactly what the law should be. We have no
14 guidance from the Nevada Supreme Court. I just don't want to lose my opportunity
15 to litigate the issue because I haven't offered a specific verdict form or because the
16 Supreme Court decides they want to rely on inconsistent verdicts. So, I need to
17 make my record now on it. I'm just saying that might be an accommodation to all
18 the parties. It would have to be something the State would find acceptable.

19 THE COURT: Yeah. Because it's a relatively -- it's not -- well it's not an
20 uncommon thing in civil cases. In criminal cases, it's a little bit uncommon but it's
21 not exactly breaking new ground because I think of a couple cases where people
22 tried that, but it is a little bit unusual; it's different.

23 MR. COFFEE: What [indiscernible] it works if the State agrees.

24 MR. STEPHENS: Your Honor, could we just have a moment to chat?

25 THE COURT: Of course. It is a different thing.

1 Let's do this. Let's go off the record so my staff can get a break. You
2 guys can talk for a couple minutes anyway.

3 MR. STEPHENS: Thank you, Your Honor.

4 THE COURT: And let me also chew on it as well. I like the idea but in a
5 sense if you get clear on the record assuming that they come back with verdicts that
6 you believe are inconsistent, but it's more complicated, and you would have to sit
7 down and flush out literally a detailed instruction. If you find this fact you check this.
8 You'd have to, you know, put some work into that. And the other thought is, you
9 know, I don't know --

10 MR. COFFEE: Well this we just stipulate to the special verdict essentially
11 without having to do an instruction.

12 THE COURT: But how would they know how to -- what to check off.

13 MR. COFFEE: They wouldn't have to. I'm just saying we could -- you could
14 look at the jury's verdict and if they acquit on self-defense on the battery charge and
15 the attempt murder, it's clear that they found the use of force justifiable.

16 THE COURT: Okay.

17 MR. COFFEE: So, you don't need a specific verdict form to come to that
18 conclusion. So, we could just assume the use of force was justifiable and we can
19 argue later as to whether that reduces it to a gross misdemeanor, whether they can
20 rely on that to make it a felony or not. We're just getting around the inconsistent
21 verdict -- the inconsistent verdicts problem is what I'm suggesting.

22 MS. WONG: Are you going to argue that the battery was unintentional
23 because I heard a lot of testimony about -- I didn't mean to light him on fire.

24 MR. COFFEE: I don't think it makes any difference whether it's intentional or
25 not. He's lit on fire.

1 MS. WONG: Because then they can find that a battery didn't occur if they
2 believe the testimony [indiscernible].

3 MR. COFFEE: No; I'm trying to scare you when I touch you. That's still a
4 battery.

5 MS. WONG: Right. But I don't think he -- I'm not sure if he admitted to
6 actually touching. I'm not sure because now we're getting into the minds of the -- let
7 me talk to Rob about it.

8 MR. COFFEE: I'm not going to argue that the fire didn't touch him.

9 MS. WONG: Okay. Well that's what --

10 MR. COFFEE: I'm not going to argue that the fire didn't touch him.

11 MR. STEPHENS: We can stipulate to that.

12 MS. WONG: Are we off the record now?

13 THE COURT CLERK: We have to hear from the Judge.

14 THE COURT: I'm thinking for a second. I'm just thinking if there's anything
15 we should cover before we take a break so there's -- you know, if there's anything
16 we need to think about on the break. All right. Let's go off the record for at least a
17 couples minutes. Let's have bathroom break and you guys can chew on it.

18 I'm not -- I guess -- I can see the appeal idea. I'm not necessarily in
19 love with it because it is a more complicated thing, but given that it is a statute
20 where it's a relatively new statute I've never, you know, in my years in the DA's
21 office and the PD's office, I've never even seen this case, this charge ever. So, for
22 purposes of -- on appeal, if there is one assuming Mr. Newell is convicted of
23 something, it doesn't hurt I suppose other than it's a little bit more work. And the
24 other complicating thing -- when I say complication it's not that I'm saying I'm lazy or
25 any of that -- when I say complicated if in fact you do the special verdict form but we

1 do the instructions on the special verdict form wrong, that's another potential appeal
2 thing. That's what I mean when I say complicated. You may be introducing more
3 elements into this that don't need to be there.

4 MR. COFFEE: I've got another potential --

5 MR. STEPHENS: [Indiscernible].

6 MR. COFFEE: -- that might save some problems. We take a verdict, don't
7 dismiss the jury. If they come back only on the act and wanton reckless disregard
8 then we send them back with an instruction that says did you find the use of force
9 justifiable against Mr. Bejarano. We do our special verdict form after we take the
10 regular verdict because it's only necessary in the one instance if we have a
11 conviction on the one count. That's the only time the special verdict form becomes
12 necessary.

13 THE COURT: Right. 10: 42: 56 And honestly I've never going to try to
14 predict, you know, what the jury does.

15 MR. COFFEE: Right.

16 THE COURT: But honestly I guess I'm having trouble seeing that, actually, as a
17 practical thing's going to happen. I mean, honestly, the way I see the case they're
18 either going to believe that it was -- that the whole thing was justified or it wasn't.
19 Although, you know, who knows. They do different things and maybe it's a
20 compromise or something.

21 MR. COFFEE: Here's my concern. We had a couple people testify that, oh,
22 he could have blown everybody up. He lit somebody on fire. They may want to
23 convict him of something even though they think he was defending himself. So, I
24 could see 'em returning a verdict on the one count. I don't think it's an impossibility.

25 THE COURT: I mean -- okay. The underlying issue here is, is self-defense

1 even a defense to this kind of charge versus-- is necessity the only defense. Self-
2 defense in necessity being two different defenses. That's really the underlying legal
3 question. The two argument would be on the one hand if this is in fact truly a lesser
4 included of battery with substantial bodily harm with a deadly weapon then you
5 would think the same defense is applied, but if it's not truly a lesser included -- and
6 the problem is I don't know if it is or isn't because it's a whole new thing -- then
7 maybe -- then the same defenses wouldn't necessarily apply.

8 MR. COFFEE: And, Judge, just a little more -- I don't mean to cut you off --
9 it's a little more nuance than that because it's whether self-defense is a defense to
10 the substantial bodily harm element. Because -- my position is the justifiable abuse
11 of force justifiable bodily harm to Mr. Bejarano takes that out of whatever may be
12 found. He may have put others in one in, you know, disregard for their safety. So,
13 I'm not saying that self-defense is a complete defense to the charge. I think it's a
14 complete defense to the charges pled although the State's got some arguments that
15 they've included, you know, person or property is enough that they've given me
16 notice, but I think it's certainly a defense to the claim of substantial bodily harm
17 because substantial bodily harm would be justified if they returned a verdict of self-
18 defense; does that make sense?

19 THE COURT: And so State your position is that this -- I mean -- basically
20 your position is self-defense isn't even a defense of this charge --

21 MS. WONG: That's correct.

22 THE COURT: -- only necessity is a defense of this charge.

23 MS. WONG: That's correct. That is our position.

24 THE COURT: All right. Let me chew on that. Why don't we take a break
25 because I think my staff needs a break anyway. It may be a good opportunity. You

1 guys can chew on it; let me chew on it because I'm, you know, like I said, this is the
2 problem whenever there's a new statute. We're always breaking new ground.
3 Yeah, it's interesting. Necessity or is self-defense actually a defense charged like
4 this which is actually sort of a recklessness crime as opposed to I have -- not to use
5 the word malice out of context but, you know, a directed anger at a particular person
6 or directed intention to a person. It's more the recklessness type of thing. Is self-
7 defense a defense with a recklessness type of charge.

8 MS. WONG: And the reason I say it is because, you know, in Nevada, as Mr.
9 Coffee emphasized there's no duty to retreat. You can defend yourself, you know,
10 you have a right to defend yourself. You don't have to retreat. However, if you
11 choose to stand your ground and fight and yet your reckless actions can endanger
12 the lives of others then you're still liable for that reckless act.

13 THE COURT: Right. It's the nuclear bomb example. If I can justify they used
14 deadly force against Mr. Stephens because he's shooting with a gun, in that
15 situation where I detonated a nuclear bomb, in theory [indiscernible]. I'm actually
16 not guilty for killing him with a nuclear bomb, but I'm guilty of killing everybody else
17 in Las Vegas which is a weird fact or scenario but that's kind of how it plays out with
18 that nuclear bomb scenario.

19 MR. COFFEE: And that's exactly my point. The only harm here is the person
20 he's defending himself against.

21 THE COURT: Right. It's an interesting question.

22 All right. Let's go ahead and take the break and chew on it a little bit
23 then.

24 [Recess taken at 10:46 a.m.]

25 [Proceedings resumed at 11:00 a.m.]

1 [Outside the presence of the jury]

2 THE COURT: Back on -- hang on. Back on record. State, do you need a
3 couple minutes actually? You talk to him about something that's --

4 MR. COFFEE: No; I think we've got a resolution.

5 [Colloquy between the State and the defense]

6 MR. COFFEE: We have a resolution.

7 THE COURT: All right. What are we doing?

8 MR. COFFEE: Here's what we're going to do. I had objected to notice --

9 MR. STEPHENS: We are on the record.

10 MS. WONG: She's on the record.

11 MR. COFFEE: I had objected to notice to this count for wanton and reckless
12 disregard concerning danger to Circle K and danger to the other person. As an
13 agreement with the State and as part of a compromise, I'm going to withdraw that
14 objection with the following understanding. If the jury comes back guilty on only the
15 wanton and reckless disregard, the scenario that we've been talking about, the
16 parties are going to agree that it's treated as a gross misdemeanor.

17 THE COURT: Oh, okay.

18 MR. COFFEE: That solves the problems for special verdict forms and all the
19 other things we've been talking about.

20 THE COURT: Okay. So, where does that leave us with the instructions then
21 because we have to have matching instructions for that. I know there were a couple
22 that we deferred if there were some potential objections to.

23 MR. COFFEE: I can withdraw 'em.

24 THE COURT: Withdraw which? Your proposed instructions?

25 MR. COFFEE: The justifiable abuse of force does not constitute --

1 MR. STEPHENS: Page three of the defense.

2 MR. COFFEE: Oh, actually I can't withdraw that. I offer and I'd submit to the
3 Court's discretion.

4 THE COURT: Okay. Let me just clarify then. When you say that on count
5 four it's s a gross misdemeanor; what does that mean? Are you saying it's two
6 people other than Bejarano or are you saying it's to Bejarano but they don't have to
7 believe the substantial bodily harm because that's two different ways to get to a
8 gross misdemeanor.

9 MR. COFFEE: It is two different ways. I'm okay with the State giving their --
10 either direction however they've like to set up the language is fine with me. I
11 suggest that they may want to strike Bejarano because they're taking on an extra
12 burden. But for some appellate purposes, I think the State wants to keep it the way
13 that it is. I'm fine with that also. I'm not going to object to them arguing either
14 because of this compromise that there was danger to other people near the 7-
15 Eleven [sic] and that's what they're charging here.

16 THE COURT: Oh well in that case then your proposed instruction three no
17 longer makes sense because if it's a threat to other -- I mean, wanton disregard is
18 doing something that's, one, a reckless regard of the safety of persons other than
19 Mr. Bejarano. Then it becomes more like the nuclear bomb scenario.

20 MR. COFFEE: Correct.

21 THE COURT: Just to beat back Mr. Stephens' attack, I can't just kill
22 everybody else in the room kind of --

23 MR. COFFEE: Correct.

24 THE COURT: All right. So, with that stipulation then, do you want me to mark
25 number three as a Court's exhibit to preserve for the record or no?

1 MR. COFFEE: That's fine.

2 THE COURT: All right. So, that one is not being given. We're going to mark
3 it as Court's exhibit number, what, 13?

4 THE COURT CLERK: Thirteen.

5 MR. COFFEE: There was some --

6 MS. WONG: And there's these two that you proposed later.

7 MR. COFFEE: And then the two that we proposed later --

8 THE COURT: The twins. What are the page numbers?

9 MS. WONG: One and two. He sent them this morning. Did you send them to
10 the Judge?

11 MR. COFFEE: I sent them, yeah. I did send them. They were our addendum.

12 THE COURT: Oh, the addendum. Okay.

13 MR. COFFEE: The addendum. Number two becomes moot. The addendum
14 -- are you talking about this this one, in determining whether there --

15 MR. COFFEE: Yes.

16 THE COURT: -- was an unnecessary risk or harm in regards to the charge or
17 performance of that with wanton disregard?

18 MR. COFFEE: Yes.

19 THE COURT: So, is that one now moot then?

20 MR. COFFEE: It's moot.

21 THE COURT: Okay. So, that one's moot. All right. And then the next one,
22 the necessary use of force or violence does not constitute the performing --the
23 performance of an act in wanton disregard. Is that moot or what?

24 MR. COFFEE: I am offering that as a necessity defense to the gross
25 misdemeanor. There's additional requirements for necessity.

1 MS. WONG: Yes.

2 THE COURT: Yeah, that's the problem. You don't have all the element here.

3 MR. COFFEE: And the Nevada Supreme Court has been kind enough not to
4 give us all the elements in the two or three cases that they've published on
5 necessity. Necessity is a defense. I would also --

6 THE COURT: Actually the best Supreme Court case held that necessity in
7 duress is an unpublished one which we can't really cite as authority. You probably
8 know the case I'm talking about but yeah. It begins with a Z.

9 MR. COFFEE: The other issue here is with the offering of this instruction I
10 would offer the additional language, it is the burden of the defense to prove -- to
11 prove necessity by a preponderance of the evidence. I would offer that line in
12 addition because it is our burden to prove necessity by preponderance as opposed
13 to the State having the burden of proving beyond a reasonable doubt there was no
14 necessity.

15 THE COURT: I mean the problem is -- okay. Hang on. So, the addendum
16 here -- this is -- okay. This is a necessity defense but it's literally ten words long. I
17 mean, don't you have to define necessity? I know the Supreme Court hasn't given
18 us a complete definition, but there's got to be something more than this. I know
19 there is.

20 MS. WONG: I just provided Mr. Coffee with a sample on necessity defense
21 instruction that was taken from the 9th Circuit.

22 MR. COFFEE: I'm fine with it.

23 MS. WONG: I think it's an accurate [indiscernible].

24 MR. COFFEE: It's as close as we're going to get. I'm fine with it.

25 THE COURT: Okay. Do you have a copy for me then so we can actually --

1 MS. WONG: Can I -- Your Honor, can I --

2 THE COURT: Yeah, you may. So, we're giving this one along with this one
3 here then; is that what we're doing?

4 MS. WONG: I would strike that one.

5 MR. COFFEE: No; strike that one.

6 THE COURT: You're strike this one. Do you want this as a Court's exhibit
7 then or are you withdrawing it and we're going to do this one?

8 MR. COFFEE: We'll just use that one.

9 THE COURT: Okay. All right. So, this one here -- let's see. So, we're just
10 going to do this whole instruction as it is right now?

11 MR. COFFEE: You can put the instruction in.

12 THE COURT: So, we're doing this one and you're withdrawing the other one?

13 MR. COFFEE: Yeah, yeah.

14 THE COURT: So, is that it then? Let me get Paula started on it then.

15 MR. STEPHENS: Could we -- did we resolve all this [indiscernible].

16 THE COURT: Oh, there were two that we're holding in abeyance because it
17 was the same issue. I think it was like page number 20 or something, 23 and 24.

18 MS. WONG: Yeah. It's 23 and 24. So, that's fine.

19 THE COURT: So, you're withdrawing the objection to the State's?

20 MR. COFFEE: Yes.

21 THE COURT: Okay. Then let me get Paula started typing on it. Why don't
22 we go take a lunch break because the jury's coming back at 12. Then I'll get Paula
23 started putting all these together then. All right.

24 MR. COFFEE: Very good.

25 THE COURT: And then if you guys can do me a favor. I know it's cutting into

1 your lunch break. If you can show up here early that way I can give you the final
2 copy of what Paula has and you can guys can proof it one last time; all right?

3 MR. COFFEE: Very good. Thank you, Judge. And, Judge, is there a
4 question about where we're going to insert the defense instruction?

5 THE COURT: Yeah. We haven't discussed that. Why don't we do this. I will
6 -- okay. This is going to be a little bit complicated because we're in lunch break now
7 technically, but I use the --

8 MR. COFFEE: Right after self-defense.

9 THE COURT: What's that?

10 MR. COFFEE: Just right after self-defense.

11 THE COURT: Okay.

12 MR. COFFEE: I think the State said wherever we want to put 'em is fine.

13 MS. WONG: Wherever you want to put 'em is fine.

14 MR. COFFEE: Just put 'em right after self-defense.

15 THE COURT: Okay.

16 MR. COFFEE: And before the specials at the end.

17 THE COURT: Okay. You know what. The issue I forgot to bring up. Randy
18 just reminded me. What are we going to do about the juror who did the fuel pump
19 experiment? All right. Any thoughts on that considering that, you know, we've kind
20 of left this open. I kind of threw out a whole bunch of thoughts last night, but any
21 thoughts on Juror number 11?

22 MS. WONG: Your Honor, I mean, I don't have a strenuous, you know,
23 position one way or another, a very strong position one way or another. However,
24 my preference is I think we should kick him. He's not supposed to doing any outside
25 experiments. You know, I know Mr. Coffee had that example. Well this is a

1 common everyday thing that everybody does. The law does not make that
2 distinction. They're instructed you can't experiment outside of the courtroom. Just
3 for a post-conviction purposes, appellate purpose, I just prefer to not have him
4 deliberate with the rest of the jury.

5 THE COURT: Well let me ask you this. Since you said you didn't have a
6 strong preference, let's just make the record clear. Is there a motion by either side
7 to do anything about Juror 11 or not?

8 MR. COFFEE: No, Judge. I'd ask to keep him.

9 MS. WONG: I would move to actually remove him.

10 THE COURT: All right. Mr. Coffee, your response.

11 MR. COFFEE: I would like to keep him. I don't think what he committed was
12 that egregious. I know the Court had some concerns about his second question and
13 some of the things that he wrote, but that's the reason we have diversity in juries.
14 Again, he was one of the selected jurors. We do what we can in jury selection. I
15 know the Court didn't find the argument compelling, but at the end of the day I would
16 ask to keep him. I don't think we have anything that egregious that requires kicking
17 him off.

18 MS. WONG: I mean, doing experiments outside of the courtroom causes
19 mistrials and it causes reversals and it is egregious.

20 THE COURT: That's exactly my concern is the appellate record; whether or
21 or not -- and I understand that Mr. Coffee has, you know, made some stipulations
22 but that's exactly my concern is it could be a kind of thing the Supreme Court says
23 this is just plain error whether you objected to it or not. Because, you know, it may
24 be that jurors do -- violate all kinds of instructions, you know. The instruction that's
25 probably most violated is the one where I say you can't even talk to your wives and

1 husbands about the jury that you're on. They probably do but we don't -- but it's not
2 that common. So, I guess my point is there's probably all kinds of potential jury
3 misconduct that we just don't know about, but in this case we happen to know about
4 it because he wrote on a piece of paper and said I did an experiment this morning.
5 So, that being the case that it's in the record that he did it in an experiment, I
6 understand, Mr. Coffee, you know, he did go out of his way to get a stipulation not
7 only from him but his client. But then, you know, I didn't spend a ton of time on this,
8 but in surfing around in some of the juror misconduct cases, you know, they
9 frequently say this is plain error. It didn't need to be [indiscernible]. We're just going
10 to remand this back. And that's my concern is even if you're okay with it, they may
11 not be not be okay with it is my concern.

12 MR. COFFEE: Judge, if it doesn't rise to the level of a mistrial which I think --
13 if it rose to the level of a mistrial the Court would be obligated to grant a mistrial.

14 THE COURT: Right; sure.

15 MR. COFFEE: If it doesn't rise to the level of a mistrial, I'm not sure why it
16 rised to the level of removing somebody on a juror that we've got sat. I'll submit with
17 that.

18 THE COURT: Well here's my other concern. We know that he did
19 something, but the problem is we don't know exactly what he did. If this were a
20 mistrial motion, what I'd do is call that guy in here and quiz him. The problem is, you
21 know, considering it's -- you know, what everyone projected to a [indiscernible] of
22 the trial, do we even want to spend a whole bunch of time on this when we have
23 some evidence that something improper happened? Whether it rises to the level of
24 the mistrial or not is the question, but do we even want to waste a bunch of time on
25 that? And if we waste a bunch of time on it and it turns out it rise to the level of a

1 mistrial, then we're not starting until say 1:30 or 2 and we're in the same place we
2 are now is kind of my concern, nothing [indiscernible] as practical time, you know,
3 time management thing.

4 MS. WONG: Your Honor, I don't think this rises. I'm sorry. I just don't think
5 this rises to the level of a mistrial yet because he hasn't deliberated with this jury.

6 THE COURT: Right.

7 MS. WONG: So, he hasn't tainted this jury yet.

8 THE COURT: At least in theory he hasn't talked to anybody else.

9 MS. WONG: Right. Correct.

10 THE COURT: And contaminated them, at least in theory; right.

11 MS. WONG: And so the option is not to declare a mistrial but to kick him off
12 the jury which is what I'm proposing.

13 MR. COFFEE: And I'm not waiving my right to have him voir dired outside the
14 presence. I know it may slow things down. But if we're going to remove him I'd like
15 to find out what the violation is.

16 THE COURT: Well, I mean, the violation that we know of that he wrote down
17 is he did some kind of experiment with the, you know, with some gas thing and
18 based on that -- based on the note that I have, he drew a conclusion from that
19 which is, hey, is this pump broken. I have all this extra knowledge. I did this
20 experiment. You couldn't spray it out.

21 MR. COFFEE: Is the note been made a Court's exhibit?

22 THE COURT: Yeah, it's a Court's exhibit, yeah.

23 MR. COFFEE: What was the final line, if I might ask? Because I was under
24 the impression that he said I tried with the pump or I was at a pump and
25 [indiscernible]. I know the Court termed it an experiment but --

1 THE COURT: This is literally his last sentence here. I tried it this morning
2 and couldn't make a spray. It cut off before I got it out.

3 MR. COFFEE: Submit to the Court's discretion. The Court understands our
4 objection.

5 THE COURT: Yeah.

6 MR. COFFEE: The Court understands our request to --

7 THE COURT: I mean, honestly I thought about this for a long time last night
8 and it just -- I mean, there's a couple things early on. I mentioned some of this
9 yesterday. I have two concerns; one is, you know, you're not supposed to doing
10 experiment anyway. I mean do some things different than other departments. When
11 I send them out for a break, I give them much longer admonishment which most
12 judges give a two sentence one. I give the long one that has the eight bullet points
13 and one is do not do any investigation of the facts. I say that, you know, four times
14 a day. But the second thing is, okay, aside from the fact that you violated an
15 instruction and did this experiment, I have a concern that it's an experiment on
16 something that everybody has stipulated to; you know, what he is doing. And I'm
17 concerned he's going to go in there and say well wait a second. How do we even
18 know there's just gasoline because I couldn't get to work, even though there's a
19 stipulation that, yeah, he's got gasoline on him. And so I guess I'm concerned of
20 what is the thought process here? Of all the things that you could be experimenting,
21 why would it be on the one thing that nobody is even fighting. You know, there's a
22 concern -- now that's not necessarily a mistrial issue, it's more of a what a hell is he
23 thinking because -- just because a juror is confused that's not a mistrial. It's not.
24 But it's some evidence that, you know, I've just had concerns about what he's doing.

25 MR. COFFEE: But also just before he's confused is not a reason to remove

1 him from a jury.

2 THE COURT: Of course it's not. It's not grounds for a mistrial. I just throw
3 that as an observation of in the fact there appears to be a violation of the
4 instructions anyway. It's a violation of instructions. It makes me wonder if he even
5 -- where I was going with that is it makes me wonder of the instructions he's been
6 given, would he actually understands or doesn't understand because there's a
7 violation -- apparent violation already occurred and relates to something that
8 everybody agrees is a stipulation. At the beginning of the trial in my pre-trial
9 instructions I tell them what a stipulation is. You are to regard that fact as proved;
10 right? And so it makes me wonder if he understood any of that, honestly.

11 MR. COFFEE: But we haven't stipulated in front of the jury. We've said that
12 half -- we're agreed -- we haven't done a formal stipulation in front of the jury that he
13 was sprayed with gas. I offered to do in instructions of course because it might be
14 one of the curative measures. I said we could do that in the instructions. But to his
15 -- he doesn't know that it's a stipulation. He's not been read instructions about
16 stipulation or any of those sorts of things.

17 THE COURT: But here's the thing. I know there's no formal stipulation but
18 what I say in my pre-trial instructions is if the attorneys agree to a fact or stipulate to
19 a fact, you are to regard that fact as proved. So, even though there's no formal
20 stipulation, he's not received a specific instruction that jurors you are to regard this
21 fact as proved. You said you're agreeing to that. So, technically speaking, he has
22 been instructed. That's a stipulation. And so again that is not a legal ground to
23 remove a juror and declare a mistrial. It's just sort of an added thing to -- of all the
24 things he's experimenting, it makes me wonder what he's doing and whether he is a
25 guy who just either doesn't understand the instructions or doesn't care what the

1 instruction are. Not caring what the instructions are, you can make an argument.
2 It's a complicated thing and I don't want to say anything about it. But you can make
3 an argument well who knows whether juries really follow them closely. But if you
4 have evidence that he's affirmatively violated one coupled with does he even
5 understand what they are, that's my concern.

6 MR. COFFEE: Well the flip side he's a juror who is deeply concerned about
7 whether or not the first spray was intentional or not which has been raised in the
8 courtroom. I mean, it has been raised at different points whether it was intentional
9 on the first spray or not. One of the State's witnesses said, you know, I was
10 surprised when it sprayed. That's all the experiment goes to. I don't think it goes to
11 whether or not he was sprayed but whether or not the spraying was intentional,
12 whether or not Mr. Newell expected the hose to spray when he pulled it out.

13 THE COURT: Well I mean here's what I am going to do. This has been
14 bothering me for a literally the last, you know, almost whatever is 20 hours or
15 something like that. But I think because we have some evidence that he conducted
16 some kind of improper experiment despite the fact that that's an instruction I give, as
17 I said, four or five times a day, I'm not going to kick him. What I'm going to do is I'm
18 going to make him the alternate because he's the only alternate we have. I don't
19 know that it -- based on what we know it rises to the level of mistrial. I guess my
20 concern is if in fact something happens this afternoon, and hopefully it doesn't, and
21 he ends up being needed to be called in, what I'm going to do at that stage if he -- if
22 he looks like he's going to be in the panel, at that stage I think I have to at least have
23 a conversation with him, what exactly did you do; what was the, you know, specific
24 thing. I don't know that it's worth it to delay everybody to have the conversation with
25 him now because if we move him to the alternate we may not need him. But if we

1 need him, I think I have to, I'm almost forced to based on the incomplete record we
2 have now to at least have that conversation and see. And then if it turns out he did
3 something really improper, we're looking at a mistrial because we don't have enough
4 jurors is the problem.

5 So, that's the safest thing, I think, I'm going to do right now. So,
6 basically I'm going to switch him around so Juror number 11 now is going to be our
7 only alternate which makes Juror number 13 now an active member of the pool
8 then. All right.

9 MR. COFFEE: Understood.

10 THE COURT: Oh, 13 was 7 so it's 14 who is now the active member. Okay.
11 Gotcha.

12 All right. See you guys a little bit before trial. Hopefully I'll have the
13 copies ready and we can proof them one last time then. All right.

14 MR. COFFEE: Understood. And, Judge, one last thing on that. I understand
15 the Court's ruling. We did agree before we started the trial as where the alternate
16 positions were going to be and that was an inquiry I made of the Court. I was just
17 making the -- I know the Court now -- just for the record.

18 THE COURT: I understand that but, I mean, you know, things like this
19 happen and, you know, we've had two moving around of people or the alternates
20 but it is what it is. All right.

21 [Recess taken at 11:19 a.m.]

22 [Proceedings resumed at 12:06 p.m.]

23 [Inside the presence of the jury]

24 THE COURT: You guys need a minute to go through the instructions and
25 make sure they match or are we okay?

1 MR. STEPHENS: I've been doing it.

2 THE COURT: Okay. Want me to wait for a second.

3 MR. STEPHENS: Okay.

4 THE COURT: I did move yours, the attempt murder one, if you find that
5 there's no specific intent to kill, I moved that up to the block of attempt murder
6 instructions.

7 MR. COFFEE: Perfect.

8 THE COURT: But all the other self-defense ones, necessity and self-defense
9 ones are at the back.

10 MR. COFFEE: Perfect.

11 MR. STEPHENS: They all look good for me.

12 THE COURT: You've gone through yours Mr. Coffee? We're not on the
13 record right now but --

14 MR. COFFEE: They look like what we had settled, Judge. In reading these --
15 I had to think about how this was going to play. I've got a concern about Instruction
16 38.

17 THE COURT: This is the one that the -- the 9th Circuit one.

18 MR. COFFEE: The necessity, yes.

19 THE COURT: Right.

20 MR. COFFEE: And it's not nothing to do language. It has to do with the fact
21 that we are claiming necessity as to the act as to the act performed in wanton and
22 reckless disregard. It just seems like it's a little confusing and it may imply that we
23 have to show necessity to establish self-defense. So, I don't know if we need
24 something that says that necessity is a defense apart and separate from self-
25 defense -

1 THE COURT: Hang on, hang on. We on the record, Sara?

2 THE COURT RECORDER: Yes.

3 THE COURT: We're on the record. So, what do you propose?

4 MR. COFFEE: Necessity legally excuses the crimes charged in count four
5 would be fine.

6 MS. WONG: And there's a typo anyways on line 15.

7 THE COURT: Is there? Oh, has been proved. All right. Let's do this. The
8 problem is Randy's already got the jury's copies. How about we amend this by
9 interlineation. Okay. So, you want the opening sentence to read, the Defendant
10 contends that he acted out of necessity with respect to count four; is that correct?

11 MR. COFFEE: Yes.

12 THE COURT: So, I'm going to amend the original one that I'm going to sign
13 by interlineation, and when we get there I will direct that the jury do that just so we
14 don't have to wait 20 minutes while we make a bunch more copies; is that
15 acceptable to you?

16 MR. COFFEE: That's fine.

17 THE COURT: And then obviously I'm also going to have 'em correct a typo in
18 line 15. That should be been provided. So, I will note those for the record in my
19 original copy which is going to be the one filed with the Supreme Court and when we
20 get there I will verbally instruct the jury to make that change on all of their copies as
21 well. Other than that then, do all the other instructions conform with what we
22 discussed? Any objections or concerns?

23 MR. COFFEE: No additional objections to the ones that were made
24 previously.

25 THE COURT: State, any objections or concerns?

1 MS. WONG: No, Your Honor.

2 THE COURT: All right. Anything else you guys want to address before we
3 bring jury in or are you guys ready to bring 'em in?

4 MR. COFFEE: We're ready.

5 THE COURT: All right. Randy, let's go ahead and bring 'em in.

6 [Inside the presence of the jury]

7 THE COURT: All right. Hang on. We have a juror here who apparently has
8 some concern or question here. Can I get counsel to approach?

9 [Bench conference -- not recorded]

10 THE COURT: We're back on the record. Juror number 10 has given me
11 three pieces of paper with what looks like questions for Mr. Newell. Juror number
12 10, at this stage of the case the only thing that I can tell you is the presentation of
13 evidence is closed. Both sides have rested their case. So, I can't ask these
14 questions because no one is under oath right now to answer them. However, we will
15 mark these as Court's exhibits for the record. What numbers will they be? It is 14,
16 15 and 16?

17 THE COURT CLERK: Correct.

18 THE COURT: All right. For the record then.

19 All right. Randy, do you have the copies ready?

20 All right. Ladies and gentlemen, you've now heard all of the evidence in this
21 case. It is now my duty to read you the instructions on the law. Randy is going to
22 give all of you written copies of what I'm about to read to you. You will be allowed to
23 bring these instructions with you into the jury room so feel free to underline, circle,
24 make notes on 'em, whatever you want to do. I'll wait for a second while those are
25 being handed out. All right. Does everybody have a copy? Excellent.

1 [The Court read the instructions to the jury]

2 THE COURT: That concludes the jury instructions, Ladies and gentlemen. Is
3 the State ready to argue?

4 MS. WONG: Yes, Your Honor.

5 THE COURT: Can I get counsel to approach very quickly?

6 [Bench conference -- not recorded]

7 THE COURT: There was another small mistake in the jury instructions. On
8 the back of the instructions that I just read to you there is a sample verdict form.
9 That is actually an incomplete verdict form. What I want all of you to do is tear off
10 those two pages and just dispose of them, and Paula is going to make copies of the
11 pages that should belong there. We're going to hand them to you in a second and
12 treat those as the ones that should be attached. Why don't we have you hand those
13 two pages to Randy so that there aren't multiple copies floating around. All right.
14 As soon as the clean copies are ready, Paula's going to hand them to me and
15 Randy will hand them out to you. All right.

16 Is the State ready to argue?

17 MS. WONG: Yes, Your Honor.

18 THE COURT: You may proceed.

19 **CLOSING ARGUMENT BY THE STATE**

20 BY MS. WONG:

21 On October 10th of 2012, Patrick Newell dealt with an annoying situation
22 by setting a man on fire at a gas station. This is a case about going too far. In
23 every criminal case, the State must prove two things; one, that crimes are
24 committed and, two, that it was the Defendant, in this case Patrick Newell,
25 committed those crimes.

1 Now we can easily dispose of the second requirement because ID is
2 not an issue in this case. Like Mr. Coffee told you on Monday during jury selection,
3 this is not a case of who done it. Nobody's going to dispute that it was the
4 Defendant who set this victim, Teddy, on fire. So, the question is what crimes were
5 committed in this case.

6 Defendant's charged with four counts. Count one, attempt murder with
7 use of a deadly weapon; count two, battery with use of a deadly weapon resulting in
8 substantial bodily harm; count three, attempt assault with a deadly weapon, and
9 count four, performance of act in reckless disregard of person or property. We're
10 going to discuss these charges out of chronological order because they will be
11 easier to explain that way.

12 Let's start with count two. Battery with use of a deadly weapon
13 resulting in substantial bodily harm. Now battery is any willful and unlawful use of
14 force or violence upon the person of another. A battery can be a push, it can be a
15 punch, it could be a kick. It can occur if somebody were to just spit on you or throw
16 a drink on you.

17 Well what occurred in this case was not just a simply battery; rather, the
18 battery was committed with the use of a deadly weapon. A deadly weapon can be
19 many things and it actually has several definitions. We most commonly think of a
20 guy or a knife as a deadly weapon and we'll talk more about knife when we get to
21 the attempt assault with use of a deadly weapon count in count three. But aside
22 from a gun or a knife, a deadly weapon is any weapon, device, instrument, material
23 or substance under the circumstances in which it is used, attempted to be used or
24 threatened to be used is readily capable of causing substantial bodily harm or death.

25 Now the deadly weapon in this case was the gas that used in

1 combination with the fire. Had the Defendant simply sprayed the victim with
2 gasoline and walked away, he would have committed a simply battery. However,
3 when the Defendant sprayed the victim was gas, used the gas as an accelerant and
4 flicked his lighter, that course of conduct constituted battery with use of a deadly
5 weapon because using gas and fire in that manner was readily capable of causing
6 substantial bodily harm or death. And even though the victim in this case did not
7 die, he still suffered substantial bodily harm as a result of being burned.

8 Substantial bodily harm can be one of two things. It can be bodily injury
9 which creates a substantial risk of death or which causes serious permanent
10 disfigurement or protracted loss or impairment of the function of any body member
11 or organ or it can be prolonged physical pain. You only need to find that either one
12 of these two things occurred to find that substantial bodily resulted. Teddy, of
13 course, suffered both.

14 Let's first talk about the bodily injuries that Teddy suffered. Teddy was
15 hospitalized for two weeks so that his injuries could be treated. He was in a
16 medically induced coma for much of those two weeks, and he suffered burns
17 throughout his body. Specifically, he suffered burns to the left side of his face,
18 chest, and his left arm and hand. As a result of being burned, Teddy suffered
19 protracted loss of eye-hand coordination because he lost his depth perception. For
20 a while he couldn't even do simply things like grab a cup. He also suffered
21 protracted loss of muscular activity in his arm. This is somebody who was able at
22 one point to lift a eight pound object. After this incident, he couldn't lift his one year
23 old son.

24 He also suffered permanent scarring to his arm and face, and Teddy
25 showed you the scarring that still remains today on his arm and on his face. You

1 also saw the discoloration in his left arm. And, finally, he suffered a continued loss
2 of speech mobility. To this day, Teddy cannot speak as well as he used to due to
3 the burns on his face.

4 Aside from these physical limitations, Teddy also suffered prolonged
5 physical pain. Prolonged physical pain is physical suffering or injury that last longer
6 than the pain immediately resulting from the wrongful act. So, if say an hour after
7 being burned, Teddy's face is a little red, his arm's a little red, but otherwise he
8 doesn't feel any pain. That's not substantial bodily harm.

9 But the pain that Teddy suffered in this case lasted not just for minutes
10 or hours or days, it lasted for months. Teddy told you that he experienced
11 headaches once or twice a day for three months. The overall pain that he felt lasted
12 for six months. Even though it appears that Teddy has almost made a full recovery,
13 he had to endure months and months of pain to get there. And Teddy's very
14 fortunate that he didn't suffer more serious injuries given the egregiousness of the
15 Defendant's conduct, which takes us to count one. Attempt murder with use of a
16 deadly weapon.

17 Now attempt murder is the performance of an act or acts which tend,
18 but fail to kill a human being when such acts are done with express malice, namely,
19 with the deliberate intention unlawfully to kill. The same facts that make the
20 Defendant guilty of battery with the deadly weapon resulting in substantial bodily
21 harm are the same facts that make the Defendant guilty of attempt murder with use
22 of a deadly weapon. The only difference is when we talk about attempt murder we
23 don't just look at what the Defendant did. We also look at what his intent was at the
24 time that he set Teddy on fire. Now defense may argue to you that even if the
25 Defendant meant to light Teddy on fire his intent was not to kill him. Well what other

1 intent is there besides the intent to kill when you light somebody on fire. Sure,
2 Teddy didn't die and the fire burned out surprisingly quickly. But the Defendant
3 didn't know that when he lit Teddy on fire. He's lucky he's not on trial for murder
4 because his actions are indicative of an intent to kill.

5 And even the Defendant lit the victim on fire, he did not feel one bit of
6 remorse. Instead, the Defendant took out his knife and mocked the victim
7 threatening to cut his penis off. And the Defendant mocked the victim a second time
8 during his interview with the police describing to the detective how the victim was
9 crying like a little girl saying he burned me, he burned me. And when the police
10 asked him if he had anything else to add to the interview he said, the only thing I can
11 think of is I made a very bad mistake trying to save two cents by going up the street
12 to another gas station.

13 Now a normal person under these circumstances would have said, you
14 know what, I made a mistake. I overreacted. I shouldn't have lit a human being on
15 fire. That's not what the Defendant said. Instead he says, if he would have been
16 like everybody else that is transient or an alcoholic or whatever when you ask him,
17 hey buddy, don't bother me, they walk away and that's the end of it. So, it's the
18 victim's fault that he got set on fire. In the Defendant's mind he had a right to set the
19 victim on fire because he was a pest. He's not sorry for what he did. Look at the
20 grin on his face. He knew what he was doing and he meant what he did. He's just
21 lucky he didn't kill the victim.

22 In count four the Defendant is charged with performance of act in
23 reckless disregard of persons or property. A person who performs any act in willful
24 or wanton disregard of the safety of persons or property that results in substantial
25 bodily harm or death is guilty of performance of act in reckless disregard of person

1 or property. Earlier I said the Defendant was lucky he's not on trial for murder. He's
2 not only lucky he didn't kill the victim, he's lucky he didn't kill anybody else.

3 MR. COFFEE: Objection to the line of argument that he's lucky. I don't think
4 that's appropriate.

5 THE COURT: The objection's overruled.

6 BY MS. WONG:

7 He's also lucky he didn't kill anybody else at the gas station that night. It's
8 dangerous enough to set anything on fire anywhere, but when the Defendant lit the
9 victim on fire at a gas station in front of a gas pump he put the lives of everybody
10 who was at or near the gas station in jeopardy that night. People aren't even
11 supposed to smoke near a gas pump. There's a reason for that. There's gas in
12 those gas pumps. We all saw what could happen if you put fire with gas.

13 In count three the Defendant's charged with attempt assault with a
14 deadly weapon. Now assault means unlawfully and intentionally placing another
15 person in reasonable apprehension of immediate bodily harm. So, if the Defendant
16 does something to scare the victim, intimate him, and make him think he's going to
17 hurt him in some way, he's committed an assault. And if the Defendant uses a knife
18 to scare the victim, then he's committed an assault with use of a deadly weapon.

19 Now earlier we already talked about one definition of a deadly weapon
20 such as when you use gas to light somebody on fire. But a deadly weapon is also
21 any instrument which if used in the ordinary manner contemplated by its design and
22 construction, will or is likely to cause substantial bodily harm or death. So, obviously
23 a knife is a deadly weapon especially when you threaten to cut somebody with it,
24 which is exactly what the Defendant did in this case. And when I say the
25 Defendant threatened to cut the victim, I'm not talking about the time when he took

1 out his knife and he told the victim to get away from his truck. That's okay. I'm
2 talking about the time when after the Defendant already set the victim on fire and the
3 victim had taken off his clothes, he's standing there naked, he's screaming in pain.
4 That's when the Defendant takes out his knife, waves it at the victim's penis and
5 says I'm going to cut your little dick off or I'm going to cut your pencil dick off. We
6 don't know whether or not Teddy was actually afraid by the Defendant's conduct
7 because he doesn't really remember the incident. And that's why the Defendant is
8 charged with attempt assault with a deadly weapon as opposed to a straight assault
9 with a deadly weapon.

10 Now a person attempts to commit a crime if he, one, intends to commit
11 the crime or, two, performs some act towards its commission and, three, fails to
12 consummate its commission. So, here the Defendant intended to scare the victim.
13 He waved the knife at the victim's penis and threatened to cut it off, but he failed to
14 actually scare the victim because the victim was either in shock or in too much pain
15 to even notice what the Defendant was doing. But there's no denying that the
16 Defendant intended to scare the victim. There was no reason for the Defendant to
17 take out that knife. The victim was no threat to him at this point. He'd already been
18 burned. He's standing there screaming in pain; he's urinating involuntarily. He's
19 standing nowhere near his truck. The Defendant took out his knife in order to assert
20 his dominance over Teddy to show him who's boss. Like he told the detective
21 during his interview, he was going to teach somebody, namely the victim, a lesson
22 and that's what this case is really about.

23 This is not a self-defense case. I'm sure you're going to hear a lot
24 about self-defense in the defense's closing argument. So, I want to talk to you
25 about what self-defense actually is and why this is not a self-defense case. Use of

1 force against another person in self-defense is justified if the Defendant actually and
2 reasonably believes there is imminent danger the victim would either kill him or
3 cause him great bodily injury and it is absolutely necessary under the circumstances
4 for him to use in self-defense force or means that might cause substantial bodily
5 harm or death of the other person for the purpose of avoiding death or great bodily
6 injury to himself or others. To claim self-defense Defendant had to have actually
7 and reasonably believed that he was in some imminent danger.

8 Now I'm not going to stand here and pretend the victim was an angel
9 that night. He was stubborn, he was persistently annoying, he was a pest. He
10 acted like how drunk people act. Now Teddy doesn't think he was drunk but he's
11 not going to admit that. He's so drunk he doesn't remember being drunk. That's
12 like asking a crazy person if he thinks he's crazy. But regardless of whether or not
13 the victim was drunk, he posed no threat to the Defendant. He never raised a hand
14 at the Defendant, he never touched the Defendant. He simply stood there and
15 insisted that the Defendant give him a ride. When the Defendant said no, he kept
16 on asking, and when the Defendant told him to go away, quit leaning on my truck,
17 he said this is public property and I'm not going anywhere. That's all he did.
18 So, yes, the victim was annoying; yes, he was a pest; yes, he was a drunk but he
19 never threatened to harm the Defendant. So, regardless of what stupid things the
20 victim may have said, it did not justify the Defendant lighting him on fire. You can't
21 light somebody on fire just because you're sick of arguing with them.

22 And we also know that it was not absolutely necessary for the
23 Defendant to use force or means that might cause substantial bodily harm or death
24 to the victim.

25 MR. COFFEE: Objection; misstates the law.

1 THE COURT: Hang on. What's the objection?

2 MR. COFFEE: Misstates the law. He has to reason and believe it's
3 absolutely necessary. The reasonable belief modifies one section.

4 THE COURT: Hang on. The objection's overruled. The jury's got the
5 instructions. They can see -- they can see match up themselves. The objection's
6 overruled.

7 BY MS. WONG:

8 There were other things that the Defendant could have done besides lighting
9 the victim on fire; one, he could have stopped talking to the victim; stop engaging
10 him; stop trying to reason with a drunk; two, he could have just walked away. In
11 fact, at one point he went into the store and told the clerk to call 9-1-1. If he thought
12 he was in such danger he could have stayed inside the store and waiting for the
13 police to arrive. Instead, he went back outside to confront the Defendant or to
14 confront the victim. And when he got outside he didn't just get into his truck and
15 drive away. No, he sprayed the victim with gasoline and then while the Defendant
16 was in so called imminent danger, he somehow had time to take out his lighter, walk
17 towards the victim, flicked his lighter not once not twice but three times, and set the
18 victim on fire. Spraying somebody with gas and lighting them on fire is not
19 something that you in a moment of desperation because there isn't time to do
20 anything else. You can stab someone or shoot someone in an instance, but
21 spraying somebody with gas and lighting them on fire takes time. Nobody is going
22 to choose lighting something on fire as a method of self-defense. And that's why
23 this is not a self-defense case. This is a case about somebody who lost their
24 temper and overreacted to an albeit annoying situation. Patrick Newell's manhood,
25 so to speak, was challenged that night and he wasn't going to let some young punk

1 lean on his truck and tell him he had a right to be there. So, what does he do? He
2 douses him with gasoline and lights him on fire.

3 Now, Ladies and gentlemen, is this how a reasonable person would
4 have reacted under the same circumstances? If your answer is no, find the
5 Defendant guilty of all the charges in this case. Thank you.

6 THE COURT: Mr. Coffee, is defense --

7 MR. COFFEE: Permission to approach for sidebar.

8 THE COURT: Okay.

9 [Bench conference -- not recorded]

10 **CLOSING ARGUMENT BY DEFENSE**

11 BY MR. COFFEE:

12 Mr. Lucky. The State just told us this is Mr. Lucky. He goes to buy
13 candy for his wife of 30 plus years. He is accosted by a man who is younger and
14 stronger than him who is acting irrationally who is drunk who everybody knows,
15 everybody knows. He's pushing the situation, starting a fight. He stays in jail for
16 year. This is Mr. Lucky.

17 It's interesting. They pull up one photograph where he shows his teeth
18 and suddenly it's no remorse; right? It's slight of hand. You saw Mr. Newell on the
19 stand. When he talks to the police afterwards when he gives a statement it is clear
20 beyond question that he doesn't know how bad the man's hurt. It's clear. It's clear
21 beyond question, by the way, that Mr. Newell didn't try to kill the man. Don't believe
22 me, believe the detective on the case, Kowalski. Remember him? Remember
23 when he testified. Detective Kowalski said, yeah, his statement was [indiscernible].
24 He didn't seem to be making things up. I asked him time and time again about
25 things in the statement that he gave afterwards. The State had the burden of

1 proving everything beyond a reasonable doubt. They never ask Mr. Newell was he
2 trying to kill the man, but it's clear in the statement that he wasn't, that he doesn't
3 know badly the man was hurt. You can watch his actions in the video, by the way.
4 And we've got the video broken up into small pieces so you can actually see what's
5 going on.

6 You've seen the video from inside. The gas pumps, you've seen the
7 whole thing. You've see some things from inside the store, gambling for example.
8 We're going to show you a few more things. One of the most desperate things
9 about this case, one of the most troubling things about this case and one of the most
10 heart breaking things about this case is going to be the video of the front door
11 because you're going to watch person after person after person come in and come
12 through the front door and Mr. Newell is out there alone as seconds turn into
13 minutes as minutes run as Bejarno keeps forcing the issue. He's by himself and
14 nobody's here to help. Even the security guard who eventually comes out after the
15 fire is started and goes into the store. Mr. Newell, 64 years old, is out there alone.
16 You can watch it. Mr. Lucky.

17 We talked about Kowalski. There's a very interesting point in the video
18 and the things -- I know you've seen it a lot of times and I know you're probably
19 bored to death of the video. I understand it. But you have to look at it in detail. You
20 have to sit and think about it and use your common sense. There's an instruction
21 that says you can do that. Use your common sense and figure out what's going on.
22 When you watch the video, you will see that after the fire lights -- remember there's
23 some questions where Mr. Newell says I tried to pat him down. I wanted to pat him
24 down. I helped the security guard pat him down. He took my away. That seemed
25 kind of strange. That doesn't make any sense for somebody who wants to kill

1 somebody for certain; right? I mean, that's kind of proof that he's not intending to kill
2 somebody. If you watch the video closely, there's something I will bet that none of
3 you caught at this point, and that is when he's sparking that lighter in the left hand,
4 as soon as the fire catches and it's raging and it lasts for three or four seconds, Mr.
5 Newell's right hand is reaching into the fire trying to pat the fire out, but nobody has
6 caught that. We'll look at that. You'll get to see that. Okay.

7 The intent to kill. Some things to keep in mind when we're talking about
8 instructions. Reasonable minds can differ. Okay. The State has made some
9 arguments and they went through some pains to talk about absolute necessity. That
10 was the end and we had some discussion about that. Was it absolutely necessary?
11 You know what. The law doesn't require perfection. We are not able to walk on
12 water as humans. The law understands that reasonable minds can differ. Let me
13 give you the following example. In my house we have some small children and we
14 run out of diapers on occasion. And I say I will get in my car and go to Smith's
15 because it close and I want to save some time, and my wife says don't go there. It's
16 expensive. Go to Walmart and get the bigger box. It's cheaper. And we debate
17 back and forth and we compromise and we end up at Target. Okay. None of those
18 choices are unreasonable, not a single one.

19 The law requires Mr. Newell to act reasonably. It doesn't require him to
20 act perfectly. It's not a case of hindsight. Let's look back. What could have Mr.
21 Newell have done better. If I was there, I'm big, I'm brave, I'm strong. I wouldn't
22 have set anybody on fire. They put an officer on for no other reason than to say that
23 I would never set someone on fire. He wasn't in Mr. Newell's shoes of course.
24 When he asked about his service revolver, what does he say? Oh, yeah, I carry one
25 of those. Deadly force is deadly force whether it is a knife, a service revolver, or a

1 flame. The law does not make a distinction. Look in the instructions. Look head to
2 toe in the instructions. It doesn't make a distinction. Deadly force is deadly force. If
3 he has a right to use it, he has a right to use. It's pretty simple.

4 Flames are scary. You know, next to dogs and drowning if we did a
5 survey, flames would probably be near the top, burning to death. It is frightening
6 what Mr. Newell did. It is frightening. To say it's not desperate it just not the truth.

7 Next slide, please. It's a matter of perspective. Now, interestingly -- it's
8 a very interesting thing when we talk about perspective because, you know, from
9 Teddy's perspective things went terribly wrong also; right? Whether he started the
10 situation or not and you all know he did. You all know that he's the one that pushed
11 the situation. He didn't have a right to reach in the back of the truck; he didn't have
12 a right to demand a ride; he didn't have a right to keep pushing about things. The
13 State said that's all there was to it. Not really. It goes on for 15 minutes. At some
14 point Mr. Newell goes into the store and says call 9-1-1 please.

15 By the way, I pulled a clip from when he goes in the store. Watch how
16 long it takes for 9-1-1 to be called. It is minutes before anybody calls 9-1-1. It is
17 excruciating long. The clerk serves multiple customers before 9-1-1 is called. Okay.

18 There was some discussion during the trial about the clerk being unable
19 to see -- let's talk about that, obstructions, I think, from the clerk's view from the front
20 of the store. Another reason we pulled the front door video is you're going to see
21 the clerk is paying an inordinate amount of attention to what's going on even though
22 he's not calling 9-1-1. He steps outside twice and watches what's going on and
23 doesn't intervene. Another thing that's heartbreaking. He steps outside and
24 watches what's going on and doesn't intervene and steps back inside, steps outside,
25 and then calls 9-1-1. He is keenly aware of what's going on. Remember the 9-1-1

1 call. Okay. If there's any question on who started this, the 9-1-1 call -- and the clerk
2 was watching. He served Mr. Bejarano, he served Mr. Newell. He saw what was
3 going on. You're going to be able to see those things also, and what does he say?
4 There's some drunk guy with his hair pulled up that's starting a fight with customers.
5 I think he's psychotic; I think he's throwing matches.

6 To say that this man is a pest is, you know -- a pest is an ant. A pest --
7 it is to minimize what Mr. Bejarano has done. He's not a pest; he's a predator. He's
8 a predator. He walks outside. There's a reasonable chance that this man is
9 targeted, by the way, because Newell looks inside the vehicle and he sees the
10 handicapped sticker. He's watched -- not Newell -- Bejarano looks inside the
11 vehicle. There's a handicapped placard sitting there. Ask yourself this. Would
12 Bejarano have acted the same way if it was me driving that truck? Six foot two, 302
13 too much, as opposed to a handicapped 61 year old Mr. Newell. Make no mistake,
14 Bejarano was a predator.

15 A matter of perspective. Instructions 32 and 33. As I said, from
16 Teddy's perspective, this was horrible what happened and he didn't deserve it. An
17 officer said I can't see myself doing it. Luckily, the law makes the situation much
18 easier for you. There is a great -- and I'm going to get obscure here for a second. I
19 hate to do that but some of the times we do. There's a great Kurosawa film.
20 Kurosawa is a Japanese directors. If you watched the Magnificent Seven, that was
21 a remake of one of his films. If you saw most of the spaghetti westerns, those are
22 remakes of Kurosawa films. There's a film that he made called Rashomon and it's
23 about perspective and how things change from people's perspective, that things
24 look justified from one person's perspective if they are [indiscernible] from another
25 person's perspective may not be justified.

1 Luckily instructions 32 and 33 talk about perspective whereas -- and
2 they talk about whose perspective you have to evaluate things from. A person has a
3 right to defend from apparent danger to the same extent as he would actual danger.
4 The person is justified if he is confronted by the appearance of imminent danger.
5 That is from Mr. Newell's perspective not from Ms. Wong's perspective, not from my
6 perspective, not from perspective of officers. It is from Mr. Newell's perspective. He
7 is confronted by the appearance of danger which arises in his mind, not my mind,
8 not Ms. Wong's mind, Mr. Newell's mind and an honest belief or fear that he's going
9 to be killed or suffer great bodily harm. It is an honest belief or fear. No.

10 Leaning on truck. This doesn't start as a lighting somebody on fire
11 case. This starts as a trespass case, defense of property. Mr. Newell has the right
12 to defend his property. We're going to see a slide and tell you which instruction that
13 goes to it. He could even use reasonable force. He can't use deadly force to
14 defend his property, but that's how it starts. He just wants the man away from his
15 truck. He doesn't want to give him a ride. He has a right to do that just like you
16 have a right if I say, you know, my car's broke down, can you give me a ride home
17 tonight. You have a right to say no. That's how it works. We all do. Mr. Newell
18 does that and he has a right to have that man stop at some point, but the man
19 doesn't. In fact, if you look in the video it's a game to Teddy. This is a game -- as
20 this man gets panicked and he's leaning on the bar and there's a point where Mr.
21 Newell comes around and he's in Teddy's face and Teddy leans back and crosses
22 his arms and does this. And when Newell goes back to his side of the truck, he
23 reaches out and grabs the truck.

24 It is back and forth banter and none of that itself is enough to use
25 deadly force. The problem becomes when we get with the gas pumps. The police,

1 just call the police. And he hopes the police are coming and uses the threat of the
2 police with Teddy and he says, please, leave. I won't even say which way you went.
3 Just go. The police are coming. But that's not enough. Teddy approaches around
4 the back of the vehicle and there's that small space; we've heard that the door was
5 open. There's a small space. And he was cornered at some point and he sprays
6 gasoline. Anybody in their right mind at that point would run away. Anybody in their
7 right mind would run away. I think the State has said, you know, spraying with
8 gasoline isn't the use of deadly force. In fact, it's probably not warranted here. It's
9 reasonable to get him out of that tight confined space. But he's poke the bear. You
10 watch what Bejarano does. He backs up.

11 Now remember at this point the security guard is not physically
12 intervening. He's saying the same thing that Newell's saying, just leave, just go.
13 Instead of going, watch. He makes a purposeful turn to this right and he goes
14 directly back at Mr. Newell. What is a reasonable person in Mr. Newell's position to
15 think at that point? Now I've got an angry nest of hornets on me. What am I to do?
16 He pulls the pump and he sprays again and again the man will not retreat. The last
17 ditch effort to get the man to retreat is the lighter and even then there is warning
18 after warning after warning. If he thought the man was dangerous before, what
19 does he think when he won't retreat after being sprayed with gas? What does he
20 think when he won't retreat after seeing the lighter?

21 The State wants to make a big deal that Teddy didn't take a swing at
22 him and, you know, Teddy didn't say I'm going to crack your skull open. Remember
23 we asked the security guard have you ever been sucker punched. That doesn't
24 make the threat any less. A friend of mine told me a story of a jacket that he got
25 when he was a boy. I got a new jacket and I was proud of it. And I was walking

1 through a pad neighborhood and some bigger kids came at me. They said that's a
2 nice jacket. I was uncomfortable. I knew something wasn't right. And one of the
3 boys said let me try it on. Oh, no, I don't want to do that. No, I told you, let me try it
4 on. Let me try it on. There had no explicit threat, there'd been no punches thrown,
5 but he knew the fight was on. You don't have to throw punches to know the fight is
6 on. When this man won't retreat, Mr. Newell is in reasonable fear of bodily harm
7 and he can use force to protect himself. It's that simple, and it's again defined from
8 his prospective. Next slide, please.

9 And we talked about apparent danger instructions. Next slide. If it
10 appears necessary. This is Instruction 33. If a person acts in self-defense it must
11 appear that the danger was so urgent and pressing that to save his own life -- don't
12 know that he had to save his life -- but to prevent himself from receiving great bodily
13 harm, the battering of the other with use of a deadly weapon was absolutely
14 necessary. Mr. Newell told you as much. I didn't think I had a choice. I didn't think I
15 had a choice. Unless the State proves beyond a reasonable doubt that Mr. Newell
16 did this out of spite, out of ill will because he was annoyed, because the man asked
17 him for a ride, and if that's the case it would have happened a lot earlier. All right.
18 Unless they prove that he's entitled to use self-defense if he believes it's necessary.
19 A person battered was the assailant. You know who the assailant was here. This is
20 not calculus. We all know who the assailant was here.

21 In good faith endeavored to decline. Well that's a separate instruction
22 for a situation where somebody starts something and they say I don't want to fight
23 anymore and the other person keeps going. But the interesting thing is Mr. Newell
24 tried several times to do that. He wasn't the person who started [indiscernible].
25 Next slide.

1 Newell obviously isn't the original aggressor. There's an interesting
2 thing about self-defense. Nobody talks about it much. The original aggressor is not
3 entitled to the right of self-defense. And what that means is if I pick a fight I don't get
4 to defend myself unless I try to retreat. That makes sense; doesn't it? I can't go
5 pick a fight with you for the purpose of you fighting with me so I can pick up a rock
6 and hit you in the head. That would be inappropriate and the law recognizes that.
7 But the original aggressor here -- we've got Mr. Newell. Listen to how they define
8 original aggressor. The State has to prove beyond a reasonable doubt that he's the
9 person who starts the quarrel. Mr. Newell [indiscernible]. Of course not. With the
10 design to force the deadly issue. Of course not. Mr. Newell doesn't want to force
11 the deadly issue. He didn't seek out the fight. He went there to buy candy for his
12 wife. And thus through his [indiscernible] contrivance creates an apparent necessity
13 for making felonious assault. Even if you think he overreacted it's a fraud. Do you
14 think he just made it up because he went down to the service station thinking it
15 would be fun to light somebody up that night? Is that what anybody thinks? There's
16 no fraud here. Mr. Newell is not the original aggressor. He can't be the original
17 aggressor -- initial aggressor. Next side.

18 Right to defend property. We talked about that, that's 35. The use or attempt
19 use of force on the person of another is not unlawful but it's [indiscernible] or
20 attempting and you trespass, okay, getting into your car, leaning on your car. You
21 can use reasonable force where unlawful interference with real property for his
22 lawful possession -- while in possession provided that the force or violence used is
23 not more than sufficient to prevent such offense or more than seemed to a
24 reasonable man under the circumstances to be necessary. That means the initial
25 thing when he says get off my car. All right. And when the guy won't listen when he

1 threatens him and scares him to get off the car, he can do that. It's not
2 unreasonable. Next slide. Has the right to defend himself. We talked about that.
3 Next slide.

4 Justifiable battery. We haven't talked about that. There are several
5 ways to get to the same place. Justifiable battery is the battery of a human being
6 which does not result in death is necessary for self-defense when there's a
7 reasonable ground to apprehend a design on the person injured to do some great
8 personal injury. We talked about that. We know how we get there. You can call it
9 self-defense. You can call it justifiable battery. Next slide.

10 There's another way. I know the law is complicated and the instructions
11 are not particularly exciting. There's another way and another reason that Patrick
12 has the right to use force and that has to do with defense of a felony. Okay. You
13 have a right to defend yourself including using deadly force if you think a person's
14 going to commit a felony. Here, we're talking about something called coercion.
15 Somebody can't force you to do something that you have the right to abstain from
16 doing. It's called coercion. The details are listed in Instruction 37. It's not normally
17 a felony but it becomes a felony when they use the threat of force or violence to get
18 you to do something. Okay. If you think that Teddy is forcing the issue of the ride
19 and intimidating violence and threat to Mr. Newell, putting him in fear of bodily injury,
20 then he has a right to defend himself including with deadly force to prevent a
21 coercion from occurring. Okay. It says a person intends to use violence and inflict
22 an injury on another person to deprive the person of any tool or implement, for
23 example, the truck, right, interference with his truck. It's another way that we get to
24 the same place. Next. Okay. We talked about the jacket already. Next slide.

25 Citizen's arrest. Now we're getting further afield, but this is a strange

1 case because it happens in packets. It happens with defense property when he's
2 defending himself, and it's what happens after the fire's lit. There's packets of
3 things. And you have to think about things independently and whether he was
4 justified along the way. Remember what he said about Bejarano and remember
5 what the security guard said. The security guard said he said I'm going to cut off his
6 little dick, pencil dick, something like that. Afterwards he waved a knife at him. Do
7 you remember everything that he said? No, I didn't. Do you remember why he
8 didn't remember? I was busy stomping out the fire. What does Mr. Newell say,
9 what did he say to the Citizen's Review Board when he wrote a letter two years
10 ago? He said I'm going to make sure the man didn't leave. I'm going to make sure
11 the man didn't leave. Now that is consistent with trying to pat out the fire. We will
12 take a look at a video clip and you will see where Teddy gets up and wonders
13 around and when the likely confrontation is. And it's going to be left to your
14 discretion as to whether or not he has the right to make a threat in that manner.

15 Interestingly -- and this is -- this is a case that legally -- I've done this for
16 a long time and legally there's so many things in this case -- interestingly, the threat
17 of bodily harm can be reasonable when actual bodily harm isn't. Let me give you an
18 example. I am a cantankerous old farmer and kids love to trespass on my property
19 and I pull out a shotgun and I say get out of here or I'm going to shoot you. I have
20 no intention of doing it. It's filled with rock salt. If anything, I use it to scare off
21 bunny rabbits or whatever it might be. Will hope what if he does that to my kids?
22 It's not necessarily unreasonable. Now if you shoot somebody different question;
23 right? But it's a different question, the reasonable use of force whether waving a
24 knife and saying sit down and stay there is different than trying to cut somebody.
25 And you have to make that distinction, but we'll take a look at the video again. Slide,

1 please.

2 The most difficult question in the case is Instruction 38 and it is
3 necessity, and we were talking about this wanton and reckless act in disregard. It is
4 a very tough question, I think. I shouldn't interject my feelings. It is a very tough
5 question. Necessity is offered only as a defense to the act in wanton and reckless
6 disregard, meaning it's dangerous to have fire near a gas pump and other people
7 were in danger. Necessity is a defense to that. If he thinks it's necessary to defend
8 his life and he meets the requirements that we talked about here. He's faced with a
9 choice of two evils. He chooses the lesser. Rather than getting myself hurt I
10 choose to use this fire. Acted to prevent imminent harm. I think that's clearly the
11 case. He's trying to defend himself. He meets that goal. Briefly anticipated his
12 conduct would prevent such harm. If I scare him with a lighter he will go away. He
13 meets that prong. No other legal alternatives to violating the law. That's tough,
14 that's tough. From his prospective, he says I did what I thought was necessary. So,
15 maybe it fits.

16 Ms. Wong put up some interesting things on her slide. She said well
17 maybe he should have drove away. Of course the opportunity to do that was earlier
18 not when the fire's actually lit. I mean, he's in the heat of the battle at that point. He
19 stayed inside the 7-Eleven [sic], but that kind of conflicts with the other instruction
20 that you've got that says no duty to retreat. Right. You can stand your ground in
21 Nevada. If somebody else starts a fight with you, you can stand your ground. You
22 don't have to flee to the 7-Eleven [sic]. I think necessity is a more difficult question
23 and one you're going to have to decide; right? And he surrendered to the authorities
24 as soon as it was safe to do so. He did that; right? He didn't run from the police.
25 When they asked him he gave them his hands. He was cooperative.

The act in wanton reckless disregard, I think, is the most difficult question here of anything you've got because the self-defense instruction doesn't necessarily apply to that although if he's acting in a necessary manner, some of the same ideas apply.

I think that's it for the slide show. Let's talk about some video. We're going to start with front door entry. I put a time down so you know times if want to look at it when you're back in the jury room. You can pull up the times to make things a little bit easier for you.

[VIDEO PLAYED]

Okay. Front door. Mr. Newell, does he look like a man looking for a fight. He enters the store for the first time. He opens the door for another individual and he goes in. Let's go to front 2:39. A couple minutes later Mr. Newell leaves the store again. And remember what he says. We're talking about corroboration for his statement. He says I left and I remembered I didn't get gas and I came right back, and if you watch this continuously he gets out the door. He turned around and comes back in to get gas. Lo and behold exactly what he told the police had happened.

3:14, front door. This is Mr. Bejarano leaving right before Mr. Newell leaves. Now before that -- in fact, I'm going to let this run for a second. And that's what I said a moment ago; right? Bejarano leaves shortly before. We'd see it on the outside video too but that's what going on inside the store. This is in evidence. But before that, let's go to gaming one. You have Mr. Bejarano drinking at the store. He said let me drink there. It's not a big deal. I don't think there's a sign any place. Is any of that really believable? I mean, you all live in Las Vegas. You've all been to mini marts. Can you drink at the slot machines at mini marts? We all know

1 better. Everybody knows better.

2 And listening to the 9-1-1 calls from the clerk, when the clerk says
3 we've got somebody out of their head, they're drunk, they're trying to start a fight
4 with customers, it's pretty clear the clerk that Teddy says that he knows is not real
5 cool or copasetic with somebody drinking in his store; it's a reasonable assumption.
6 right, based on what the clerk says in the 9-1-1 call.

7 Now there was a question about some fumbling with money, and there
8 was some change in a pocket, and I think somebody said well you know Mr. Newell
9 said something about thirty cents, forty cents. He couldn't make a transaction;
10 remember that? But then there's money found outside, and it didn't appear to be
11 particularly inconsistent or it seemed to be kind of an odd little fact. I want you take
12 a look at something and we're going to look at -- let's go to position -- yeah, position
13 A, six minutes, four seconds. As I said, a drunken man he couldn't make a
14 transaction. This is around the time Newell has come back in to pay for his gas. He
15 puts something on the counter and wipes it off and doesn't make the transaction.
16 Consistent with what Newell had said. Doesn't know about the money in his pocket;
17 doesn't know if he didn't have enough money to buy things, but consistent with what
18 Newell had said. And somebody asked about a credit card, whether he used a
19 credit card to pay for gas. He used a credit card to pay for gas there.

20 And, again, let's go front door 4:12. Now you notice between 3:14 and
21 4:12 it's about a minute. I have to tell you that the videos in these stores -- I think
22 we talked about it beforehand when they came in -- the only thing that's in real time
23 is what's happening out at the gas pump. Some of these may be compressed
24 longer, shorter because of the way the videos are done. He points out to the pump;
25 he goes back out. Remember he said went in to call -- have somebody call 9-1-1-.

1 There's your video of him going in to have somebody call 9-1-1.

2 The clerk. Now this is even less time, [indiscernible] 30 seconds. It's
3 4:35; real time who knows, maybe as much as a minute but here we go; I said the
4 clerk was paying attention. You see him there, the gas pump to the front. He's
5 watching what's going on. He comes back in. Another one of the customers we
6 were talking about that nobody wants to do anything for Mr. Newell.

7 All right. And then let's look at 5:45. [Indiscernible] is still going on and
8 this is Phillips in the security guard uniform who comes inside to buy candy. Again,
9 Mr. Newell thinks he see the police, thinks there's help. He mentioned as much.
10 Phillips walks away to go buy a candy bar. He's not in very long, a matter of
11 seconds [indiscernible]. And 6:35, the front door still. Remember we said the clerk
12 was aware and paying attention. This is the second time he goes out to see what's
13 going on outside. And if you watch the video from behind the desk, there's a video
14 behind -- it's the other position behind the counter, you will see that the clerk doesn't
15 make the call until after the second check. You see the phone in his hand right
16 there, in fact. This runs for just a minute, but remember what I said about people
17 coming and going. The loneliest place in the world is a crowd on some occasions.
18 You see people just coming and going. The clerk's concerned but he doesn't walk
19 out to the pumps, and Newell is out there alone.

20 Things are really get out of control. Remember the testimony of
21 Phillips. Things are really getting out of control out there. We better do something.
22 He's going crazy, or something along that line. This is Gach. He came in and
23 testified for us. Back again with an update. You saw Mr. Phillips. Who in their right
24 mind doesn't listen to that man on top of everything else. I mean, he's 270 pounds,
25 six feet tall, in the security uniform telling Newell -- at the same time as Newell says

1 essentially, just go away. Leave him alone. [Indiscernible]. He can in -- we've seen
2 -- you'll see Newell's truck show up. You don't need to see that. He knows there's a
3 long time in real time from the time Newell arrives until -- let's do six minutes, 57
4 seconds.

5 Let's talk about folding the arms and the reaction. This is the first
6 interaction right after they leave the store. He says he's not reaching the truck. It
7 certainly looked like he reached in the truck. There's some discussions
8 [indiscernible]. Newell walks towards him. He asked him to leave. Watch the body
9 language. He'll fold his arms like the dispute's over and then he goes back to the
10 truck immediately when Newell goes to the other side.

11 Let's do 6.7. It is a mystery and one that you don't have to solve but
12 why does he go to the truck. It's just an odd, just an odd thing to do. It's out of
13 sequence. I apologize. He walks directly to the truck.

14 There's a question about whether the keys were in the truck or not. Mr.
15 Newell says the keys were left in the truck. The video isn't clear enough to be able
16 to tell that, but the video can tell us something. We heard numerous discussions
17 about the knife and the knife was something you might find on a key ring. The knife
18 was like a little key ring type knife. Watch what happens at eight minutes in on the
19 video at the gas pump, and it's right before Mr. Newell waves the knife at Mr.
20 Bejarano. And you this game was stepping back and forth stepping back and forth.
21 Mr. Newell goes into his truck and retrieves something. If the knife was on a key
22 ring it's not a big leap of faith to figure out what's he's retrieving because you can
23 see what he does afterwards. Circumstantial evidence if keys were left in the truck
24 consistent with what Mr. Newell had said. When he figures out that this won't work
25 is when he leaves. [Indiscernible] and I think he leaves to go call for help. You see

1 him turning to leave to go in to call for 9-1-1 at that point.

2 Next one. He comes back out and says the police have been called.
3 Just go. This is him walking out. Bejarano stayed there. He's going to the side of
4 the car next. He's pointing above the bed. Is he pointing at something on the bed?
5 In total, we're talking six minutes that this goes on. This is not pestering.

6 He comes back. At this point there's been no physical contact. He's
7 done everything he can to get rid of him. There's no physical contact at this point or
8 up until this point. But watch what happens. He's pointing to the front of the store. I
9 called the police. Just go away. When nothing else works we're going to have just
10 enough [indiscernible]. Just try to ignore him and he goes [indiscernible]. Maybe if
11 you ignore him he'll just go away. Standing on the other side of the truck he
12 approaches the side where Newell is. The door was open. That's when Newell
13 strikes when Teddy approaches. He hopes that it's done and it looks like it may be
14 with the security guard screaming, Newell screaming just go away. He walks to the
15 other pump. There's something about the shirt, the shirt my wife bought. And he
16 turns around and he goes -- that is direction, that's not wondering -- he goes directly
17 back for Mr. Newell. That's not wondering. That is directed activity. And there's
18 nobody helping. You saw all the people coming in and out of the store.

19 Mr. Newell strikes again. He wipes his eyes and turns -- he's back in
20 that small space again. This is when he closes in close. It's clear the man is a
21 threat and it's clear Newell feels the imminent threat of bodily harm. He asks them
22 man to disengage, Phillips asks the man to disengage; he will not. And as a last
23 result he pulls out a lighter. When he's turned towards the store, Newell backs
24 away. But when he turns to face him, Newell approaches. There's the sleeve.
25 Again, words aren't necessary. You know what that means. You're going to see the

1 fire. In the in frame should be the right hand reaching into the fire. We talked about
2 this patting down. You see the right hand he reaches into the fire with his right
3 hand. Mr. Newell has been questioned about whether he intentionally lit the man on
4 fire. For battery purposes it doesn't matter. Okay. You're responsible for your
5 consequences. If I try to assault you, try to scare you by swinging a bat at your
6 head and I have the misfortune of connecting, I am on the hook for battery. That's
7 the way the law works. Okay. But it does say something about whether or not Mr.
8 Newell is intending to kill. He is not. He's doing what he said. He tried to pat the
9 man down when the fire caught. The hand is in. You can see it in the flames. The
10 right hand right there. You can see the right hand reaching into the flames. He's
11 not stabbing him with a knife, by the way. That's ridiculous. If that was what was
12 happening you'd see some kind of knife wounds. This guy's at the hospital for a
13 week. There's no indication that he has any of those sorts of wounds. That's not
14 what's going on.

15 Okay. Next. Gas pump spray. 1770. There was questions about what
16 was going on and whether or not Mr. Theodore Bejarano is still a threat. He's still
17 up on his feet and he's still pointing. Look, he's reaching in and it's still the right
18 hand. That's the left hand that's he's holding the lighter with. The security guard
19 asked him to back up. It's consistent with what Mr. Newell had said. And he's
20 pointing. But watch Mr. Newell's actions. The security guard walks -- he walks with
21 the security guard. That's not a man wanting to engage in a fight. When the
22 security guard walks, he walks with the security guard. He tries to stamp out the fire
23 like he said he did. He's not trying to kill anybody. He places the security guard
24 between him and the nude Mr. Bejarano. Remember --well he sounds a little callus
25 and here is the threat with the knife. Sit down and don't go anywhere. The citizen's

1 arrest that we talked about. Sit down and don't go anywhere when he's told to back
2 off. And Teddy does sit down.

3 You can watch the rest of this yourself. It's 17.7. You will see Newell is
4 confronted by the passerby at some point who's completely off frame. He's never
5 very close to anybody. Of course, he doesn't know if that person's connected with
6 Theodore or not. There's no way to know at that point. He knows he's being yelled
7 at. He tells the person to mind their own business. That's not illegal. That's no
8 illegal. There's nothing wrong about him doing that. He wants the situation to end.
9 He's happy with security there.

10 Let's go to 3:59 position. This is the other angle of Teddy and the
11 transaction that we talked about that didn't happen. He steadies himself with his left
12 or reaches for something. He fumbles for change just like Mr. Newell said. He
13 makes a transaction to come up with change on the counter of what he sweeps up
14 in his hand. Okay.

15 The last one. I'm going to talk to you while this runs. The interesting thing he
16 is the amount of time that it takes for 9-1-1 to be called. We've talked about. The
17 video isn't critical. Nobody thinks that they will ever had to light someone on fire. It
18 is a horrendous thing to think about. And Mr. Newell, when everything is said and
19 done and gives a statement to the police, the statement is accurate. He tells what he
20 did. He doesn't think the person is hurt that bad. The person is still up and walking
21 around. Mr. Newell's adrenalin is still pumping. In hindsight, you saw him on the
22 stand, he feels horrible about what happened. It doesn't mean he thought he had a
23 choice that night; it doesn't mean he wasn't protecting himself. The law recognizes
24 self-defense; the law recognizes defense of property. The law says you don't have
25 to retreat when somebody confronts you. The law recognizes your right to use

1 deadly force if you think you're going to be injured. A reasonable person in your
2 position would think the same thing. Any reasonable person in Newell's position
3 would be shanking in their boots.

4 It's self-defense. The tough count here is the wanton and reckless
5 disregard. Was it necessary? Was there some other means? If you do convict on
6 that, that's your right. It's your right to choose what happens to Mr. Newell. He
7 didn't go there to pick a fight. He's got no history of violence in his past. The
8 officers say he was being honest about what happened.

9 We ask you to return verdicts of not guilty to set this thing right. The
10 decision, that's with you folks. Thank you.

11 THE COURT: Ladies and gentlemen, we've been going for about two hours
12 now. Anyone need a break? All right. Yeah, I see a bunch of heads nodding.

13 All right. Ladies and gentlemen, all the same admonishments apply.
14 You are admonished that you until you begin deliberations, you are under oath and
15 have not been discharged do not reach any conclusions about this case, do not talk
16 to anyone about this case, do not investigate any facts of this case. Do not view any
17 media press or internet requests about this case. Do not talk to anyone who may be
18 involved in any way with this. Do not discuss the facts of the case with each other.
19 Remember wear your badge at all times. Please leave your notebooks on your
20 chairs and let Randy know when you're ready.

21 [Outside the presence of the jury]

22 [Recess taken at 2:12 p.m.]

23 [Proceedings resumed at 2:23 p.m.]

24 THE COURT: All right. We're still on the record outside the presence -- are
25 we ready, sir? We're outside the presence of the jury. Mr. Newell is present in

1 custody. There was a sidebar that was requested by the defense at the very tail end
2 of the State's opening -- I'm sorry-- the State's first closing argument. Mr. Coffee, do
3 you want to summarize your objection?

4 MR. COFFEE: I do, Judge. It was actually at the end. I waited -- I made two
5 objections during the argument. It was clear that the Court -- [indiscernible] was
6 unhappy with the objection but was going to overrule the objection.

7 THE COURT: No, it's not that I'm happy or unhappy. It's that -- my view is
8 they've got the jury instructions. They can study 'em for hours at a time if they want
9 to. There's where I'm coming from.

10 MR. COFFEE: Understood. Rather than risk the wrath of the Court on the
11 record, for lack of a better description, I've waited until the end of the State's closing
12 because I saw they were finishing to make a formalized objection on what I thought
13 was a misstatement of the law. It had to do with the second two slides that the State
14 had presented. The instruction number -- Court's indulgence for just a moment --

15 THE COURT: And while you're doing that, let me just clarify. I mean, it's a
16 little late in the game now. It's not like I ever intended that you can't make
17 objections. What I don't like is the whole speaking objections and it evolves into an
18 argument in front of the jury between the opposing counsel. If you want make an
19 objection, make an objection, you know, objection hearsay, whatever. I thought I
20 said this yesterday. And then if it's going to be more complicated you can approach.
21 It's not that you can't make objections. I just didn't want this whole bickering that we
22 ended up in at one point. That was the only reason -- that's what incurred my wrath,
23 if you want to call it. It was the act of making objections, clearly.

24 MR. COFFEE: And we avoid that today, I thought, as far as speaking
25 objections or anything, Judge.

1 THE COURT: Right, right.

2 MR. COFFEE: I try to stay within the Court's parameters.

3 MS. WONG: The instruction that I used, my flight instruction, number 27.

4 MR. COFFEE: Twenty-seven. Thank you.

5 My concern was that number 27 says -- okay. It has language, actually
6 and reasonably believes before sections one and two. And my contention is that
7 reasonably believe modifies both sections one and section two, meaning that he has
8 to reasonably believe that the force is absolutely necessary under the
9 circumstances, not that the force is absolutely necessary under the circumstances.
10 Anything else allows the jury just to consider hindsight and not only could have --

11 THE COURT MARSHAL: Mr. Coffee, can you stand behind the microphone
12 so you're not --

13 MR. COFFEE: Yeah, got it.

14 That was my issue is that the slide that was put up only contained the
15 second language and didn't contain what I thought was the modifier which is actually
16 unreasonable believes. I thought that was a necessary part of the second portion of
17 the instruction because, again, I don't think the law requires perfection. I think when
18 we start talking about absolute necessity we get into logical absurdities, for lack of a
19 better description. I think the standard is that he thinks that he has to take this
20 action and he doesn't have another choice, not that a smarter person in his position
21 might have come up with something better.

22 For that reason I objected. I thought that the argument misstated the
23 law and I thought particularly the last slide that only included the absolute necessity
24 language without including the reasonably believes language misstated the law. I
25 think it has a tendency to mislead the jury. So, I approached and I asked for a

1 curative instruction. The curative instruction that I asked for was something along
2 the lines of self-defense is justified. I suppose the curative instruction I would ask
3 for is simply deleting subsection 1. I'm trying to think of appropriate wording. The
4 standard -- the curative instruction we're going to ask for is as follows. The standard
5 for the use of self-defense is where the Defendant reasonably believes it was
6 absolutely necessary under the circumstances for him to use self-defense, force or
7 means that might cause substantial bodily harm or death to another person for the
8 purpose of avoiding death or great bodily injury to himself or others. That was a
9 curative instruction I would propose. I know the Court has another curative
10 instruction I think it was going to give pursuant to the sidebar, and our position is
11 while we appreciate the Court giving the other curative instruction and appreciate
12 the consideration on it, it doesn't cover the particular point that we feel needed to be
13 corrected.

14 THE COURT: All right. State, your response.

15 MS. WONG: And, Your Honor, I would object to Mr. Coffee's proposed
16 curative instruction. I mean, basically his instruction is just Instruction number 27. I
17 have no objections to the Court giving its version of a curative instruction. Secondly,
18 I did not misstate the law. My PowerPoint is actually verbatim -- taken verbatim
19 from Instruction number 27. I even showed Mr. Coffee my slide or my PowerPoint
20 after our bench conference there so he was able to see the words. The Defendant
21 was using or attempted to use force actually and reasonable believes, that sentence
22 is actually in my PowerPoint. I showed it to him. Okay.

23 So, you're arguing not my slide with the law. You're arguing the slide
24 after when I put it was not absolutely necessary for the defense to light the victim on
25 fire. That's called argument. I never told the jury that it was not necessary for the

1 State to prove that it was reasonable for the Defendant to believe that he could light
2 somebody on fire. I never argued that. It's called argument, and my PowerPoint
3 specifically tells the jury what the law is. I even read the law to the jury. I don't
4 really know what Mr. Coffee is saying in terms of I'm misstating the law. I told them
5 what the law was and I argued it was not necessary. And just so the Court's aware,
6 first of all, it is a reasonable person standard. It's not subjective whether Mr. Newell
7 thought it was necessary under the circumstances to light the victim on fire. It is the
8 reasonable person standard. So, when I argue it's not necessary to do so, I'm doing
9 so under the reasonableness standard. So, it's not a misstatement of law. It's
10 argument.

11 THE COURT: Yeah, I mean, frankly after hearing it now it's actually slightly
12 different than I even thought it was during the sidebar. Essentially, your objection is
13 not to the slide in which she actually stated the elements of the law. Your objection
14 is actually the slide in which she simply made a declarative statement is essentially
15 your objection; right?

16 MR. COFFEE: Two parts. That's the second part of the objection. The first
17 part of the objection was the slide that she put up -- well the slide stated the law; the
18 argument that was tailing along at the same time when she put up the slide that
19 stated the law made it seem that actually and reasonably believes on the modified
20 subsection one, not subsection two. That was the initial objection when I
21 misstatement -- misstates the law. When the next slide popped up, that was before
22 we had the sidebar and that was the thing that I addressed at sidebar. I think I
23 made a contemporaneous objection as to the first, the second was done at sidebar
24 concerning the next to last slide.

25 THE COURT: Well all right. Here's what I'm going to do. And this is what I

1 said at the sidebar. My view is, look, the law is and the jury's been instructed and
2 we went through in my preliminary instructions as well as during voir dire and that
3 instruction when I ask if anyone can't follow the law. The law is what has been read
4 to them by the Court. I've also given them written copies of it. They can certainly go
5 through line by line and see exactly what the law is. And frankly I'll just note this. I
6 understand that, you know, criminal trials are not symmetrical because the
7 Defendant has rights that the State obviously doesn't have under the Constitution.
8 But, you know, in your closing statement, Mr. Coffee, you were pretty Lucy Goosey
9 with the elements of the law as well, and that's just what happens with -- in closing
10 argument. But frankly given how Lucy Goosey you were, honestly, I was a little bit
11 more sympathetic to your objection before I heard the way -- your Lucy Gooseyness
12 because the idea being, you know, you're expecting precision from -- everybody
13 stating the law accurately when you are, again, kind of blowing through it in a
14 colloquial way kind of as well.

15 Nonetheless, what I'm going to do is I'm going to give the instruction
16 which I told you I was going to give during the side bar because I'm going to instruct
17 the jury that, you know, you've heard argument about what the instructions are but
18 you are instructed that the law is what has been read to you by the Court and what
19 is in your written packets. That is the only accurate statement of the law in this
20 case.

21 So, that's the instruction I'll give after the last closing has been given.
22 All right.

23 MR. COFFEE: Okay. And, Judge, we would object to giving that particular
24 curative instruction, just so the Court's aware and so that's on the record.

25 THE COURT: All right.

1 MR. COFFEE: If you're going to give that instruction, we'd just as soon not
2 have a curative instruction.

3 THE COURT: Well I'm not sure I understand. What specific instruction --
4 what's your specific objection to that instruction?

5 MR. COFFEE: I think it's covered by the other instructions already. I don't
6 think you're adding anything. I think when giving a curative instruction as no
7 meaning substance or added effect to anything that they've already got.

8 THE COURT: Okay. So, you're saying that now you don't want any curative
9 instruction or you don't -- at least you don't want it to effect the curative instruction
10 you're getting. You don't want it at all, is what you're saying.

11 MR. COFFEE: There we go. That's perfectly what I'm saying is if the Court's
12 going to not give the curative instruction we suggested, and I understand the Court's
13 not going to, our objection is noted with the request for that curative instruction. I
14 know the Court's offered to do this in lieu. While we respect the Court proffering to
15 do that, we decline --

16 THE COURT: Okay.

17 MR. COFFEE: -- in our objection to give the curative instruction.

18 THE COURT: And one thing I forgot to add to the record. One thing I did
19 mention in the sidebar that I should add is at the time we had the sidebar, Mr.
20 Coffee had not begun his closing yet. And so at the time one observation I made
21 which certainly was true is if -- you hadn't even argued yet -- if you think that the
22 State is misstating law you can certainly raise that in your closing and make the
23 State look bad. You can certainly point then to instructions and explain it all away.
24 So, I just want that to be clear that especially given the time that the objection was
25 made you certainly had the opportunity to do that and hold this -- and, you know, as

1 I said embarrass the State if you wanted to do that. And so based on that, I'm not
2 going to give the curative instruction that you're asking for, but it sounds like you
3 don't want the one that I'm proposed. So, you just don't want anything to be done at
4 all right now is what's going on.

5 MR. COFFEE: That's fine.

6 THE COURT: All right. So, let's go ahead -- unless there's anything else you
7 guys want to address, let's go ahead and bring the jury in. All right.

8 [Inside the presence of the jury]

9 THE COURT: All right. Will counsel stipulate to the presence of the jury?

10 MR. COFFEE: Yes, Judge.

11 MS. WONG: Yes. Your Honor.

12 THE COURT: All right. Does the State -- is the State ready for a final rebuttal
13 argument?

14 MR. STEPHENS: Yes, Your Honor.

15 THE COURT: You may proceed.

16 MR. STEPHENS: Thank you, Your Honor.

17 **REBUTTAL ARGUMENT**

18 BY MR. STEPHENS:

19 You've heard a lot of testimony and you've heard a lot of argument. I
20 submit to you in this case and these charges come down to four words. I'm going to
21 talk about two of them right now. The first one was actually uttered by Derrick
22 Philips, the first two words, just leave.

23 It appears that from the testimony that Derrick Philips fairly likely at
24 least talking to the victim, Teddy. It appears that way. I'm not going to argue
25 otherwise. But his counsel was also very appropriate for the other person that was

1 involved in this shuffle. The Defendant, Mr. Patrick Newell, just leave. Teddy
2 obviously had no ride. That's what he was asking for. It's far easier for the
3 Defendant to just leave. However, rather than just leaving, Teddy becomes
4 annoying, irritating. Rather than just leaving the Defendant lights him on fire. Just
5 leave.

6 I'm going to come back to the other two words later on, but I want to
7 discuss with you or maybe help provide an example for you to kind of understand
8 what's going on here. Maybe you can relate to this. We've all been in traffic, maybe
9 hectic traffic, and you have someone that gets right on your bumper, swerving back
10 and forth and trying to make you speed up; maybe they're swerving in and out of
11 traffic. They get in front of you and they cut you off. It's irritating, it's frustrating.
12 What's the reasonable person to do in this situation? Just leave. Leave it alone,
13 take another exit, just leave. Or is the more reasonable response to drive on the
14 side of him and smash your vehicle into him because he's irritating. What's the
15 appropriate response; what is reasonable? There's been a lot of discussion as to
16 whether or not the Defendant's actions have been appropriate or justified, and it's
17 the Defendant that's presented all these excuses for his actions.

18 Let's talk about the attempt assault with a deadly weapon. His
19 statement during testimony when he's on the stand is I told him not to leave. I
20 wanted to make sure he was going to be there when the cops arrived. Did he say
21 that to the police he was initially interviewed by the police that night? My
22 recollection of the evidence is that he did not tell the police that's why he pulled a
23 knife out and threatened to cut his dick off. The murder, the attempt murder with
24 use of a deadly weapon and, similarly, the battery with use of a deadly weapon
25 resulting in substantial bodily harm, the excuse here is I was scared, I was scared. I

1 had no other choice. I lit him on fire. That's the excuse for that. He could have
2 stayed in the store when the police were being called; he could have got back in his
3 truck; he could have left. There were a lot of different things he could have done.

4 What about the performance of an act in disregard of persons or
5 property. For that the excuse is that it was necessary, necessity. There's an
6 instruction on that. I'll go through it with you a little bit. That's a necessity. But he
7 choosing between great evils is the way that instruction reads. In fact, you know,
8 let's do it right now. This is Instruction number 38. I'm sorry. I made the notes that
9 I believe the Court instructed you to make on the instruction there. My handwriting's
10 probably far worse than yours. Now I've underlined some of the phrases that I'd like
11 you to focus on.

12 The necessity defense. This is what has to be proven. The Defendant
13 was faced with a choice of evils and choose the lesser evil. What are the two evils?
14 Lighting a man on fire or leaving. Those are not two evils. This necessity defense
15 doesn't work on that ground alone. What are the two evils? This is not a necessity.
16 The Defendant -- this is the second prong -- the Defendant acted to prevent
17 imminent harm. Where is the imminent harm, where's the imminent harm? You
18 heard several witnesses, eye witnesses, people that were actually there watching
19 what was going on tell you they didn't see a weapon in Teddy's hands. They didn't
20 see him ball up and make a fist. In fact, most of those witnesses said they heard
21 Teddy asking for a ride. Where's the imminent harm. This defense doesn't apply.

22 Let's go the fourth section here. There were no other legal alternatives
23 to violating the law. There are other legal alternatives here. Just to make sure
24 you're clear on this, there was some discussion as to the stand your ground
25 instructions that were given by the Court. The stand your ground instructions apply

1 to self-defense. If your life is in danger you can stand your ground and use force.
2 Necessity specifically applies to count four only. And so the question then becomes
3 were there any other legal alternatives. It only applies here. There are other legal
4 alternatives. The stand your ground doctrine does not apply to necessity. You don't
5 get to stand your ground and then out of necessity use violent force. Stand your
6 ground applies to self-defense.

7 While we're on self-defense [indiscernible] to my two other words I want
8 to discuss with you, reasonable and imminent. We've already discussed those a
9 little bit, but I want to draw your attention to the instructions. Instruction 27. Use of
10 force against another person in self-defense is justified and not unlawful when the
11 person who uses or attempts to use force actually and reasonably believes two
12 things; first, there's imminent danger that bodily harm will occur or that you'll be
13 killed, and it has to be reasonably and necessary -- I'm sorry -- reasonably believe
14 that it's absolutely necessary. So, in this case, again, I ask where is the imminent
15 harm, where's the imminent danger. This is what has to be presented for self-
16 defense to be established. And then absolutely necessary. It is reasonable. Would
17 the reasonable person absolutely think it was necessary to light Teddy on fire for
18 asking for a ride?

19 Instruction 28. This is an original aggressor argument. And I'll just go
20 over that last paragraph. You can read the rest of it. However, where a
21 person without voluntarily seeking, provoking or willingly engaging in a difficulty of
22 his own free will is attacked by an assailant, he has the right to stand his ground and
23 need not to retreat when faced with the threat of deadly force. It's, again, goes
24 towards the imminence. When faced with the threat of deadly force. There is no --
25 I'll submit to you that there is no deadly force that Teddy was using. He's asking for

1 a ride. In fact, when the Defendant took the stand Ms. Wong asked him a couple
2 times, explain to me the harm that was occurring. I don't know if you remember his
3 response, but my recollection of it was he said, homey, you're giving me a ride. Is
4 that imminent harm, is that imminent danger? Does that rise to the level of lighting
5 somebody on fire? Even when the police, Detective Johnson and Detective
6 Kowalski, interview him he has a very difficult time explaining what the deadly force
7 is; what he was so afraid of.

8 Instruction 29. This is a proportion of -- the use of force has to
9 proportionate to what the assailant is giving. So, in this example the defense has
10 alleged that Teddy was the assailant. So, the Defendant then would only be able to
11 use proportionate or reasonable force in comparison to what the Defendant was
12 using. Well in that case the appropriate response of the proportionate force would
13 have been, no, I'm not giving you a ride, not spray with gas, push him down, and
14 light him on fire. Proportionate force. Not justified use of greater degree of force
15 then is reasonably necessary.

16 Thirty. The right of self-defense exists only as long as the real or
17 apparent threatened danger continues to exist. I'll submit to you that the evidence
18 shows that there was no danger, that it never existed. I'll leave it to your recollection
19 of the evidence. However, when such danger ceases to appear to exist, the right to
20 use force in self-defense ends. Let's talk about this just a little bit here.

21 So, if the danger ceases to exist then the use of self-defense can no
22 longer be used. So, in the Defendant's own words, what did he say the force was
23 that Teddy was using. Homey, you're going to give me a ride. That's the end of the
24 threat. That's the end of the force. It's not clear exactly in the video when he says
25 that. It's not clear. But at that point the threat is over. In the Defendant's own

1 words that's what he said the threat was, homey, you're giving me a ride.

2 Thirty-one. This is relating specifically to a battery here. But it says to
3 justify battering another in self-defense, the circumstances must be sufficient to
4 excite the fears of a reasonable person placed in a similar situation. The person
5 battering must act under the influence of those fears alone and not in revenge. You
6 may have all -- you've all been to high school. You may have seen the two tough
7 guys at the school and approach each other. You better hit me. No, you hit me first;
8 no, you hit me. Right. You can't just hit somebody in the face out of revenge. You
9 don't just hit somebody or light somebody on fire unless it's reasonable that they
10 would excite a person in a similar situation.

11 Instruction 32. Actual danger is not necessary to justify a battery. The
12 person battery is justified if -- here we go again -- he is confronted by the
13 appearance of imminent danger and he acts solely upon these appearances and a
14 reasonable person in a similar situation would belief himself to be in the like danger.
15 The appearance of imminent danger does not exist when a reasonable person in a
16 similar situation do so, and he has to act solely upon these appearances. No other
17 ulterior motive can exist to justify his actions. It has to be act solely upon the
18 appearances of his fears and actual beliefs.

19 Thirty-three. If a person acts in self-defense it must appear that the
20 danger was so urgent and pressing that in order to save his own life or to prevent
21 his receiving greatly bodily harm, the battering of the other with a use of a deadly
22 weapon was absolutely necessary, and the person battered was the assailant or
23 that the batterer had really and in good faith endeavored to decline any further
24 struggle before the deadly blow was given. I point out to you, yeah, it's simply the
25 reasonableness standard.

1 Instruction 34. Justifiable battery continues on. When there is
2 reasonable ground to apprehend a design on the part of the person injured to do
3 some great personal injury to the person inflicting the [indiscernible]. The
4 reasonableness. He has got to act reasonably. I know I'm kind of beating a dead
5 horse but it's very important to understand.

6 Thirty-five. The attempt use of force or violence upon a person towards
7 the person of another is not unlawful when committed by a person preventing or
8 attempting to prevent a trespass or other unlawful interference with his real property.
9 The Defendant has alleged that there was some sort of inference with his vehicle.
10 However, provided that the force or violence used is not more than sufficient to
11 prevent such an offense. You'll recall in the video Mr. Coffee played it for you where
12 the Defendant got pushed and he fell over that concrete pylon. You've seen it a
13 couple times. I'm sure you remember. You'll see that there's no charge for that
14 offense. He can use force so long as it's sufficient to prevent such offense. It
15 cannot exceed that. Again, it has to be reasonable under the circumstances.

16 Thirty-six. This has to do with the arrest specifically related to the
17 attempt assault with a deadly weapon where it says that he was trying to arrest him
18 rather than assault him. It says here a private person may arrest another for a
19 public offense which was committed or attempted in the arrestor's presence and a
20 private person may only use such force as is reasonable and necessary. You have
21 those two words again, reasonable and necessary. Is it reasonable and necessary
22 after the man on fire, after he disrobes and is naked, to come over and tell him I'm
23 going to cut your dick off. Stay here. The Defendant even testified on the stand that
24 he threatened to cut his dick. Is that reasonable and is it necessary to ensure that
25 he stays? I'll remind the jurors where was Teddy going. He was looking for a ride

1 home. Where's he going? He's staying. He's not leaving. This is an excuse by the
2 Defendant to justify his action.

3 I'll also note the first time this really comes about is when he makes a
4 complaint against Detective Johnson where he then makes this allegation that he
5 was telling Teddy to stop after he had been arrested

6 Thirty-seven. Justifiable battery is -- I'm not going to read it all. I'll skip
7 down to line 10. It is unlawful for a person to use the immediate threat of physical
8 force with the intent to compel another to do or abstain from doing an act which the
9 other person has a right to abstain from doing. This instruction here goes toward
10 the fact that the Defendant has now asserted that Teddy was committing a coercion
11 against him. So, then he would allegedly justified in committing this battery. Again,
12 I've underlined the words immediate threat of physical force. To commit a coercion
13 there has to be an immediate threat of physical force from Teddy in order for a
14 coercion to occur. It has to be immediate. The fact that you say, homey, give me a
15 ride. Where's the immediate threat of physical force? This is not a coercion; this is
16 a request. Maybe he shouldn't have used the word homey but it's a request if you
17 believe that's what Teddy actually said. The witnesses, the eye witnesses that were
18 here never testified that that was what Teddy said. He didn't say homey give me a
19 ride. They said he was requesting a ride. This is not a coercion and thus this
20 defense does not work.

21 Those are most of the defense instructions. I might have skipped a
22 couple. Reasonable and necessary. It must be necessary to a reasonable person
23 and it also has to be reasonable, is his action reasonable. Think about that when
24 you're back there deliberating. Is it reasonable for the Defendant to light him on fire,
25 is it reasonable for him to threaten him with a knife and say I'm going to cut your

1 penis off, and is it reasonable for him to put everybody that was there in danger at
2 the gas station by lighting a man on fire?

3 I'll show you this last instruction. It's the last one I want talk about
4 although I do have a couple more points. I don't want to get you guys too excited.
5 I'm almost done.

6 Thirty-nine. Common sense and judgment. You guys use your
7 common sense and judgment. You cannot be influenced by sympathy, sympathy
8 for Teddy or sympathy for the Defendant. You cannot be influenced by sympathy
9 for either one of those individuals or anybody else that may have somehow been
10 impacted by this. It is not influence by sympathy. You must use your common
11 sense and judgment.

12 I only have a few more points. There's this idea that the Defendant was
13 scared of Teddy. I just made a list here of the some things I noticed throughout the
14 trial. I'll rely upon your notes and your recollection as to how the evidence came
15 out. These were some of the thoughts that I wrote down. Does a person in fear go
16 into the store and tell someone to call the police and exit the store to go back to the
17 confrontation? Does the person in fear not just get in the car and drive way? After
18 setting somebody on fire does a person in fear go approach them again like the
19 Defendant did in this case? After lighting him on fire he approached him again with
20 a knife. This is after Derrick Phillips had gotten involved. Does a person in fear
21 after doing all those acts go and confront another person who gets involved to try to
22 stop the situation like the Defendant did with Adam Carlos. These are not the
23 actions of a scared person. These are the actions of someone who is frustrated,
24 annoyed and angry.

25

1 Jury Instruction number 7 talks to you about the credibility of witnesses.
2 There's a variety of different factors you can consider in determining who is credible
3 on the stand. One of those are motives. There are three eye witnesses to this
4 event that clearly didn't want to get too involved. Derrick Phillips only got involved
5 when it became a threat to everybody around him. After he was set on fire Derrick
6 gets involved. These are three people that don't necessarily want to be involved.
7 We got Derrick Phillips, Aaron Gach, and Adam Carlos. They have very little motive
8 to make any of this up. I'll submit to you that they have no motive to come in here
9 and tell false statements.

10 So, what do they say. If their testimony is supposedly the most reliable,
11 what do they say? They say that the Defendant and the victim were arguing. Aaron
12 even says he thought they were friends to some extent because Teddy answers
13 where am I supposed to go after the Defendant told him he couldn't get in. These
14 three individuals, from my recollection, never saw the victim, Teddy, make an
15 aggressive movement; they never heard the victim make a threat; they never saw
16 the victim with a weapon in his hand. What they did see was they saw the
17 Defendant push him, spray him with gas several times, and light him on fire. They
18 heard him, at least a couple of them heard him as Teddy disrobed, they heard him
19 make the threat to Teddy's own safety, and they recall the Defendant confronting
20 Adam Carlos when he got involved. Their testimony is not indicative of the
21 Defendant's self-defense claim. They're not indicative of someone who's fear,
22 who's scared, who's nervous. They're indicative of someone who is angry and
23 upset.

24 Now you've also got the words of the Defendant, his own testimony. I
25 don't know to go through what potential motives he may have. I'm sure you

1 understand that. So, what was his testimony to you? What did he say? He said in
2 hindsight I overreacted. There was some discussion on the defense's closing
3 argument about whether or not the Defendant had remorse.

4 Now I wanted to read to you some of those statements that he made
5 minutes maybe an hour or so after the incident. His first statement he gives to tell
6 his story when he has been charged, he's not facing trial. These are statements he
7 makes. And as Officer Knudson, Corea, and Detective Kowalski said these are the
8 statements he wanted to make. He was excited and anxious to speak to officers.
9 You'll have the audio with you in the back. He says -- this is the Defendant -- I said,
10 look, I'm not looking for a fight. I'm not looking for an argument, but if it gets to that
11 point, you know, I'm going to make sure that I'm the winner not you. That's the
12 Defendant's statement.

13 The next statement he makes. I proceed to then tell him, Teddy, that I
14 had a knife in my pocket and I will cut him if he doesn't remove himself from the
15 property. He's concerned about his property not his life. It goes on. Teddy came
16 around the back of the vehicle, okay, and was looking at me in a very threatening
17 and menacing manner looking at somebody. Heaven forbid whoever looked
18 threatening. He says, I pulled the pump out of my tank and I sprayed him with it.

19 The Defendant testified the first at least was an accident. His own
20 words he says I sprayed him with it. He continues. He says, I swear, if you come
21 any further I'm going to light you. Watch the video. We're going to watch it. You'll
22 know I'm close when you start watching the video. See what kind of steps the victim
23 makes to him. Right after that statement, he said and he did. Okay. And I lit his
24 butt on fire. He used a different word. I'll spare your ears. You know, it was
25 something just to scare him to get out of there, something just to scare him. He

1 continues on. The minute he gets patted out -- I didn't see him get patted. I actually
2 saw him disrobe in the video. That was my perception of the evidence. And this is
3 what happens. The minute he gets patted out, I mean, that fire was burning about
4 as long as a birthday candle. We patted him down, he strips his clothes off, okay,
5 and starts crying like little girl. He burnt me, he burnt me. It continues on. That kid
6 was no more burned than a man in the moon. Okay. I mean, you know, nobody
7 tries to injure somebody like that and disfigure them for the rest of their life.
8 Obviously he did. It goes on. You don't do that. That's not human, you know,
9 unless you're in war, unless you're in combat it's a different story.

10 The Defendant tells us when his force is appropriate, when you're in
11 war. That's when he says you get to light somebody on fire when you're in war,
12 when you're trying to kill somebody. That's when you get to light people on fire. He
13 continues on. You know -- but, you know, you teach somebody a lesson they're not
14 going to do it again. Do what, ask for a ride? They're not going to do it again. He's
15 teaching him a lesson. This is not something done out of fear. This is something
16 done out of anger and frustration. He goes on. This is a question. Did he have any
17 weapons on him that you saw? The Defendant answers not that I saw. Here's the
18 question. How was he threatening you? He was threatening in his -- sorry --
19 verbalization and his attitude towards me. That's the threat he describes. Is that
20 imminent danger saying, homey, give me a ride when your fist isn't balled and you
21 have no weapons? Did he say anything threatening to you? He says yeah. He told
22 me he didn't have to leave and he could hang out on my truck as long as he wanted.
23 It was public property. All I wanted to do is get him to leave.

24 Very last question and very last statement of the Defendant. Mr.
25 Newell, is there anything else that you'd like to add to the statement pertaining to his

1 investigation, anything that perhaps we have failed to ask you? Defendant: The
2 only thing I can think of is that I made a very bad mistake trying to save two cents by
3 going up the street to another gas station. Is this someone that's in fear of imminent
4 danger? Are his actions reasonable?

5 We'll only going to watch probably about a minute and a half because that's
6 when all of these crimes occur. Every single one of these crimes occur or are
7 committed in about a minute and a half span, the attempt murder with deadly
8 weapon, the battery with deadly substantial bodily harm, the attempt assault with
9 deadly weapon, and the performance of act in reckless disregard of persons or
10 property. They all happened very quickly. Well we'll improvise. You've seen it
11 enough. 16.50 is where I started my opening statement from, 16.50. You can start
12 it back further a little bit later, but 16.50. Ask yourself, is there imminent danger to
13 Patrick Newell that would justify him lighting somebody on fire? You'll see the
14 Defendant stand there. Go ahead, Ms. Wong.

15 **[VIDEO PLAYED]**

16 In closing arguments by the defense there was that comment that the
17 Defendant was trying pat out the fire on Teddy. Is he trying to pat him out? You
18 can't really tell. I'll submit to you he was trying to push him away because he
19 doesn't want to get burned. He's lighting a man on fire at a gas station. He doesn't
20 seem too concerned once the clothes are off of him; he doesn't seem so concerned
21 about patting out the fire.

22 You just saw the acts of battery with deadly weapon as well as attempt
23 murder with use of a deadly weapon. You will soon see the assault and attempt
24 assault with a deadly weapon. And now Derrick Phillips finally gets involved
25 understanding how serious and how extreme the Defendant's actions are. He gets

1 involved. I'll leave you with a few thoughts, the four words we discussed. Just
2 leave. Teddy maybe should have left. He was being a pest. The Defendant should
3 have left. He was picking a fight. He lit him on fire. He lit him on fire.

4 The other two words. Reasonable and imminent. Were the
5 Defendant's actions so reasonable because he was in imminent fear of harm?
6 Teddy's not making any move at that time when he gets lit on fire. He's got nothing
7 in his hands per the eye witness testimony. The State asks that you find the
8 Defendant guilty of attempt murder with deadly weapon. For what other reason
9 would you light a person on fire. His actions afterwards show what kind of state of
10 mind he was in. He continues to harass and mock the Defendant; he treated to cut
11 him. He even threatens to cut Adam Carlos. That shows what his state of mind is
12 at that time. We ask that you find him guilty of battery with use of a deadly weapon
13 resulting in substantial bodily harm. He intentionally lit him on fire. Teddy didn't
14 walk into that flame. The Defendant flicked the lighter three times. He wanted to
15 make sure he had a good flame going so he could light him on fire. He committed
16 an attempt assault with use of a deadly weapon when he walks over there and
17 threatens to cut his penis off. And he commits performance or an act in reckless
18 disregard of others when he lit someone on fire at a gas station. I ask that you find
19 him guilty of all counts. Thank you.

20 THE COURT: Ladies and gentlemen, the case is about to be submitted to
21 you. Madam Clerk, would you swear Randy Hawkes in to take charge of the
22 deliberating jury and Paula Walsh to take charge of the alternate.

23 [The Clerk swore in the officers to take charge of the jury and alternate juror]

24 THE COURT: All right. Ladies and gentlemen, in a minute I'm going to tell
25 you who the alternate is. The 12 of you who are going to be deliberating, Randy is

1 going to take you back to the jury room. He will give you some very short
2 instructions. He will also bring back the evidence. We're also going to bring back a
3 laptop computer so that you guys can watch the surveillance tape if you want. Give
4 us about maybe five or ten minutes to make sure it's working and that kind of stuff
5 before it comes back there.

6 For the alternate whose name I'm about to announce, I will let you know
7 that you're still under oath. It's not that uncommon that we have to call the alternate
8 in to have them fill in for a juror if some emergency happens. I will now inform you
9 that the alternate is Juror number 11, Mr. Smith. The other 12 of you go back with
10 Randy. Mr. Smith, sit tight for just one second. I'll introduce you to Paula Walsh
11 and she'll give you some instructions. All right.

12 THE COURT: Yeah. Bring all your stuff with you. You're not going to be
13 coming back. Everybody bring all your stuff. You're not going to come back here
14 until there's a verdict then. All right.

15 [The jury retired to deliberate at 3:14 p.m.]

16 THE COURT: Mr. Smith, go with Ms. Walsh. I will tell you. When I say
17 you're under oath that means, you know, you're going to free to go in a second.
18 She's going to get your phone number. But even though you're leaving -- because
19 you might be called in at any minute in case there's some emergency. All the same
20 admonishments that I've given you all along, don't talk to anyone about this case,
21 don't do any investigation, don't research this case, you know, don't let anyone talk
22 to you about this, don't talk to any witnesses or attorneys, all that kind of stuff
23 because you're still under oath and we don't want you, if we need to call you, in
24 being contaminated because you had some conversation with somebody. All right.
25 Go with Ms. Walsh and she'll give you some further instructions.

1 [Outside the presence of the jury]

2 THE COURT: All right. We're still on the record and outside the presence of
3 the jury. Anything that either side wanted to address or memorialize?

4 MR. COFFEE: Judge, beginning with the -- no, I'm just kidding.

5 THE COURT: We've got your cell phone numbers, I think. You gave them to
6 us the first day. So, we'll let you know. I will let you know that just -- around 4:40 I
7 usually send Randy in to sort of interrupt 'em and take them downstairs to get their
8 vouchers. But obviously if we hear anything before that, we'll let you know then. All
9 right. Thanks everybody.

10 MR. STEPHENS: Thanks, Your Honor.

11 MR. COFFEE: Very good. And, Judge, I know we go and back and bicker
12 and whatnot, but we appreciate the Court listening to our arguments. That doesn't
13 always happen. Well, you know, I try to. That's my job. I don't mind the bickering
14 as long as it doesn't happen in front of the jury.

15 MR. COFFEE: Understood.

16 THE COURT: And that's why, you know -- and Mr. Coffee because this has
17 been a very well litigated case and no one's really tried any stuff, that's why -- I think
18 I said before but if I didn't I just want to let you know when you had that bickering
19 with Ms. Wong in front of the jury I decided not to do anything in front of the jury and
20 embarrass anybody just because it's been a pretty well done case. No one's really
21 tried anything. And so I attributed that to maybe sort of a heat of the moment kind of
22 a thing. I guess we'll let you know when we hear anything then.

23 [Recess taken at 3:17 p.m.]

24 [Proceedings resumed at 5:36 p.m.]

25

1 [Outside the presence of the jury]

2 THE COURT: All right. Back on the record, State versus Patrick Newell,
3 C286825. Mr. Newell is present in custody with his attorneys. We are outside the
4 presence of the jury. I have been informed that the jury has a verdict. Anything that
5 either side wanted to address or put on the record before we bring the jury in?

6 MR. COFFEE: No, Judge.

7 MS. WONG: No, Your Honor.

8 THE COURT: All right. Randy, let's go bring them in.

9 [Inside the presence of the jury]

10 THE COURT: All right. Everyone please be seated. Will counsel stipulate to
11 the presence of the jury?

12 MR. COFFEE: Yes, Judge.

13 THE COURT: All right. Ladies and gentlemen of the jury, have you chosen a
14 foreperson and if so who is that person?

15 THE FOREPERSON: It is I.

16 THE COURT: Thank you, Mr. Foreperson. Have all 12 members of the jury
17 reached a unanimous verdict as to the charges presented?

18 THE FOREPERSON: Yes, Your Honor.

19 THE COURT: All right. Please hand the verdict form to the marshal. All
20 right. Mr. Newell, please stand. The clerk will now read the verdict of the jury.

21 THE COURT CLERK: District Court, Clark County, Nevada. The State of
22 Nevada, plaintiff, versus Patrick Newell, Defendant; case number C285825,
23 Department number 20; Verdict.

24 We, the jury in the above-entitled case, find the Defendant, Patrick
25 Newell, as follows:

1 Count one: Attempt murder with use of a deadly weapon, not guilty;
2 count two, battery with use of a deadly weapon resulting in substantial bodily harm,
3 guilty of battery with use of a deadly weapon resulting in substantial bodily harm;
4 count three, attempt assault with a deadly weapon, guilty of attempt assault with a
5 deadly weapon; count four, performance of act in reckless disregard of persons or
6 property, guilty of performance of act in reckless disregard of persons or property
7 resulting in substantial bodily harm. Dated this 19th day of June 2014. Roger
8 Corbman. Foreperson.

9 Ladies and gentlemen of the jury, are these your verdicts as read, so
10 say you one so say you all?

11 THE JURY PANEL: Yes.

12 THE COURT: Does either party wish to have the jury individually polled?

13 MR. COFFEE: No, Judge.

14 MS. WONG: No, Your Honor.

15 THE COURT: All right. The verdict of the jury shall now be recorded in the
16 minutes of the Court.

17 Ladies and gentlemen of the jury, thank you very much for the service
18 that you rendered. You are now released from jury duty. Oh, I'm sorry. You can go
19 ahead and have a seat if you want. All the previous admonishments no longer
20 apply. You can now talk to anyone you want to about anything to do with this case
21 including your family members, friends, whoever you want to talk to. If any press
22 calls, you're welcome to talk to them.

23 It's also my experience that sometimes the attorneys might want and
24 come and talk to you and sort of ask you what you thought and those kinds of
25 things. If you want to talk to any of those people, the attorneys, press, anyone else

1 you're very welcome to. If you don't want to talk with them, you don't have to. Tell
2 them, no, you don't want to talk with them. If they persist in trying to talk with you,
3 say it's a member of the press who is really kind of a pain in the rear end, let Randy
4 know. I take very seriously that we have asked you to come out of your lives for a
5 week and do this important duty for us and I take very seriously that I don't want you
6 guys to be harassed because of that. So, if anything like that happens, let Randy
7 know immediately. We have ways of taking care of that.

8 Again, thank you for your service. One thing that I ask is I will have
9 Randy return you to the jury room just for five minutes. All I want to do is I want to
10 come there and shake your hand one by one and thank you for your service. If you
11 have any questions about anything that happened in this trial for me, I'm happy to
12 answer to them. If you don't have any questions then just shake my hand and be on
13 your way and accept my thanks. But, you know, sometimes people have questions
14 about certain things and delays and that kind of thing. I will be happy to answer
15 them. I will be happy to stay as long as you want to stay. If you don't want to stay,
16 like I said, if you have to just let me shake your hand and then be on your way. All
17 right. Randy, take them back to the jury room and I'll be back there in about three
18 minutes.

19 [Outside the presence of the jury]

20 THE COURT: All right. We're still on the record outside the presence of the
21 jury. Go ahead and be seated if you want to.

22 One thing I will ask for since the jury did come back with a verdict on
23 number four. Mr. Coffee, one of the issues we raised when we were going through
24 jury instructions is you believed that to be a lesser included as some of the other
25 offenses.

1 MR. COFFEE: I think it's duplicitous by statute. I think the State was in
2 agreement with that pursuant to conversations beforehand.

3 THE COURT: Okay. Because I was going to ask for briefing if you wanted to
4 thank because it's a new charge. But if you guys have an agreement then --

5 MS. WONG: No; I think per the statute because the Defendant has been
6 found guilty of count two, battery with deadly with substantial bodily harm, we are
7 not going to ask the Court to sentence the Defendant on count three.

8 THE COURT: Okay. Then what we'll do is we'll dismiss it at sentencing then.
9 Anything else you guy want to address right now?

10 MS. WONG: I don't think needs to dismiss it. The Court just isn't going to
11 adjudicate him on it.

12 THE COURT: Oh, yeah. That's the other way to do. At sentencing I just
13 want to adjudicate him. That's fine. We'll do it that way then. All right. If you can
14 put that in the minutes so that I remember 90 days from now or whenever it is that
15 I'm going to -- the parties have agreed that I will not adjudicate him guilty of count
16 four. Anything else you guys want to address or not?

17 MS. WONG: No, Your Honor. The only thing is at this time I would ask for
18 the Defendant to be remanded without bail.

19 THE COURT: I don't know what his current status is, but based on the verdict
20 of the jury he's remanded to custody without bail pending sentencing. This is matter
21 is referred to P and P for a PSI and is set for entry of judgment and imposition of
22 sentence on this in custody date and time.

23 THE COURT CLERK: August 21st at 8:30.

24 THE COURT: All right. See you guys then.
25

1 Let's do this. I know it's a little bit late. I don't think jury services is still
2 open. Let me talk to the jurors. If you want to talk to the jury then wait for a minute.
3 I will ask them what they want to do and then I'll have to kind of make some kind of
4 arrangement and then Randy will come back and tell you where you can meet them
5 and all that kind of stuff. Okay. Just because I know you can't meet them on the
6 third floor any more at this late hour. We'll go off the record.

7

8 [Jury trial - Day 4, concluded at 5:44 p.m.]

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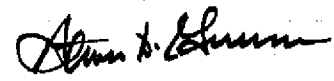
21 ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I
22 acknowledge that this is a rough draft transcript, expeditiously prepared, not
proofread, corrected, or certified to be an accurate transcript.

23

24

25


PATRICIA SLATTERY
Court Transcriber


CLERK OF THE COURT

1 RTRAN

2

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DISTRICT COURT
CLARK COUNTY, NEVADA

4

5 STATE OF NEVADA,

6

Plaintiff,

7

vs.

CASE NO. C-12-285825-1

8

PATRICK NEWELL,

9

Defendant.

10

11

BEFORE THE HONORABLE JEROME T. TAO, DISTRICT COURT JUDGE

12

13

THURSDAY, AUGUST 21, 2014

14

**ROUGH DRAFT
RECORDER'S TRANSCRIPT OF
SENTENCING**

15

16

17

18

APPEARANCES:

19

20

For the State:

HETTY O. WONG
Deputy District Attorney

21

22

For the Defendant:

SCOTT L. COFFEE
Deputy Public Defender

23

24

25

RECORDED BY: SARA RICHARDSON, COURT RECORDER

Rough Draft - Page 1

1 LAS VEGAS, NEVADA, THURSDAY, AUGUST 21, 2014, 9:35 A.M.

2 * * * * *

3 THE COURT: State versus Patrick Newell, C285825. Al right, Mr. Newell is
4 present in custody. This is the time set for sentencing. Any legal cause or reason
5 why sentencing should not go forward?

6 MR. COFFEE: Judge, we've actually got three or four things that we probably
7 need to address just briefly.

8 THE COURT: Okay.

9 MR. COFFEE: Did the Court get a copy of the supplemental P.S.I.?

10 THE COURT: Yes, I did.

11 MR. COFFEE: And the change in that P.S.I., so the Court is aware, the
12 original P.S.I. had said that he had been in prison twice, that was actually incorrect.
13 I had contacted Officer Farley and Ms. Wong. If you read closely, it actually -- not
14 been in prison at all. And they still have a mark of one there, and what that is, if the
15 Court looks, he was revoked under a Federal Youth Act and was sent to Y.C.A.,
16 which I don't know, technically, is whether it's prison or not. I would ask the Court to
17 either put a notation next to the one that is the Y.C.A. or I don't know what else to do
18 necessarily.

19 I hate to send it back for such a -- such a technical little -- little
20 difference. But they did -- they did change it from two to the one, but I think what
21 they're doing is they're counting this Y.C.A. revoked. It's the only revocation that
22 shows up any place as a prison term.

23 THE COURT: I'm sorry, so what's -- what's erroneous about this? I'm not
24 clear on that.

25 MR. COFFEE: He never went to prison.

Rough Draft - Page 2

1 THE COURT: Right, but --

2 MR. COFFEE: He went to -- he went to -- he went to a Youth Correction
3 Authority, as long as the Court's aware of that, that he's not been in prison even
4 though it says one.

5 THE COURT: Right.

6 MR. COFFEE: The concern is when he goes to the prison, when he goes to a
7 parole board, they're going to look at prison terms and other things, and I just
8 wanted to make sure it was clear someplace what we're talking about, and I think if
9 you read the P.S.I., with a keen eye that that becomes clear.

10 THE COURT: It kind of depends on what Y.C.A. actually means, which I have
11 no information on, yeah.

12 MR. COFFEE: It's the Youth Correction Authority. I did some research. It's
13 federal -- it's federal camp. You're eligible up to age 25. In the 1960s -- I can give
14 you a whole background, if you'd like. But it's -- it's essentially youth correction
15 under a federal act that was in, back then, in the '50s and the '60s.

16 THE COURT: Okay.

17 MR. COFFEE: I don't know what -- what the Court's preference with that --
18 for that would be or -- but I know that I need to make the Court aware of it now
19 rather than later.

20 THE COURT: Well, I mean, for purposes of sentencing, I understand. If you
21 think this is, however, if you think this is going to affect his parole, then the problem
22 is just saying it here doesn't mean anything because the parole board's not going to
23 look at this transcript. So I don't know what you want to do about that.

24 MR. COFFEE: I don't know if we should perhaps send it back for a
25 correction, but P&P may well take the position that Y.C.A. is some sort of prison

1 because he was over 18.

2 THE COURT: Right, and it is a revocation, I don't -- I don't know. I don't
3 know what the Y.C.A. is, but that may be their position, yeah.

4 MR. COFFEE: And the reason I think that may be the case is when I talked to
5 Officer Farley, Officer Farley said he's going to correct it to zero, but he had to send
6 everything back through, they have to do a full supplemental and send it back
7 through approval process. When they do that, the one that I got actually has a one
8 on it, so I don't know, other than a notation that that's Y.C.A, which, like I say, if
9 somebody reads it closely, I think it's -- I think it's apparent.

10 THE COURT: All right, the other thing I should put on the record is the P.S.I.
11 had this weird notation that Mr. Newell may have changed his name, but they
12 couldn't find it, well, just out of curiosity, I had my staff look into. We found a copy of
13 an order for change of name dated April 25, 2012, in which it looks like Mr. Newell
14 legally changed his name to Matteo Caprani. So we should probably add that in as
15 at least an a.k.a. for the file. I actually have a copy of it right here in my hand.

16 MR. COFFEE: I believe that's already an a.k.a.

17 THE COURT: What's your -- Mr. Newell, what do you consider to be, as you
18 stand here right now, your actual, legal name?

19 THE DEFENDANT: Patrick Newell.

20 THE COURT: What about this name change? Because according to this,
21 your official name is not that any more, did you change it back at some point or
22 what?

23 THE DEFENDANT: I set up a corporation, Matteo Caprani Luxury Furniture,
24 somebody else was using the name, and I was advised to do a name change, and
25 that would make it work. That's the only reason it was done.

1 THE COURT: All right. But the problem is unless you -- unless you changed
2 it back, as things stand, officially, according to the State of Nevada, your name is
3 still Matteo Caprani. You didn't file a subsequent name change?

4 THE DEFENDANT: No, I did not, Your Honor.

5 THE COURT: All right, let's do this, for the file then, just so there's no
6 confusion later on, in the court records, we'll also put as an a.k.a., Matteo Caprani,
7 M-A-T-T-E-O, last name, C-A-P-R-A-N-I. But you prefer for today for me to refer to
8 you as Mr. Newell?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Is that what you prefer?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. All right, any -- what else did you want to address,
13 Mr. Coffee?

14 MR. COFFEE: Judge, the only thing that I would suggest, is the court P.S.I.
15 the one that's going to go up to the prison? Because I know some judges have
16 done a process of interlineation for correction to the P.S.I.

17 THE COURT: Yeah, the problem is we actually had a discussion about this a
18 couple months ago at a judges' meeting. Some people tried that thinking that it
19 would go up to the prison, but it actually doesn't go up to the prison.

20 MR. COFFEE: It doesn't.

21 THE COURT: What they do is when they come -- when it comes up to the
22 parole board in the prison, they actually just get online and generate what was --
23 what's saved online. So our interlineations don't make it.

24 MR. COFFEE: Court -- Judge, I've made a notation with the Court, I think it's
25 explainable with Parole and Probation when he goes in front of a parole board

1 based on what's in the actual document itself, meaning that the document shows the
2 revocation is Y.C.A., with that, I am comfortable going forward, but at some point we
3 may be asking for a transcript of this proceeding so that it's clear that we've made
4 that -- made that a point.

5 THE COURT: I mean, like I said, as long as you're aware that based on the --
6 because, you know, a lot of judges do that, I used to do it too until we actually had a
7 discussion with P&P and the parole board. We actually had somebody from the
8 parole board and the governor's office come in here and we asked 'em, So what
9 happens, and they basically said what they do is when they come up for parole
10 board, none of this gets up there. They literally go to P&P and say, Print us out from
11 your computer, the P.S.I., and that's what they use, so nothing that we do here ends
12 up in P -- P&P's system unless we have a supplemental.

13 That's why started doing all these supplementals and I stopped
14 amending by interlineation. That's what we were told by the parole board, so if you
15 want to, you know, I understand that, you know, at the parole board hearing you
16 have a right to submit materials on his behalf if you want to do that knowing that the
17 P.S.I. they will have in front of them won't have this stuff in it as a integral part of the
18 P.S.I., you know, that's your call as to whether you're comfortable with that or not.

19 MR. COFFEE: We can do that. I can provide a letter with the indication if
20 that's acceptable? Yes.

21 THE COURT: Do you understand, Mr. Newell, what's going on here?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. And you're comfortable with it?

24 THE DEFENDANT: If my attorney is then I am.

25 THE COURT: Okay. All right, then anything else to address before we

1 proceed to sentencing?

2 MR. COFFEE: There are a couple of other things, did the Court receive
3 letters from Mr. Newell's wife? There were seven or eight letters from community
4 members, I believe.

5 THE COURT: I received some letters. I don't know that I remember seeing
6 one from his wife.

7 MR. COFFEE: I think his wife submitted the package.

8 THE COURT: I don't know that I got that. I got -- I have a --

9 MS. WONG: Neither did I.

10 THE COURT: -- long letter from Mr. Newell.

11 MR. COFFEE: I didn't get any of them either.

12 THE COURT: I have some letters here, do you know how many -- which
13 letters -- which letters do you have?

14 MR. COFFEE: I don't know that it was a letter from his wife. I know that his
15 wife submitted letters. That's all I was --

16 THE COURT: Oh, okay. Yeah, I do have some letters. Okay. If you were
17 talking about a letter from his wife, that I don't have, but if it's a packet, I did receive
18 a pretty hefty packet, yes.

19 MR. COFFEE: Okay.

20 THE COURT: Okay.

21 MR. COFFEE: Additionally, Judge, there are two legal things that need to
22 take place. When were in trial, there was a charge of assault that was Count 2 that
23 was modified to an attempt assault. We'd objected at that time on the argument that
24 it was a legal impossibility. Just so there's no waiver, I'm going to object to him
25 being sentenced on that this morning. But I understand the Court's going to go

1 forward with sentencing on that. I just want to make sure there's not a waiver by
2 what we do this morning.

3 THE COURT: I understand. And for the record, that's Count 3 actually.

4 MR. COFFEE: Count 3? And the other thing has to do with Count 4, my
5 understanding is pursuant to statute he's not to be sentenced on Count 4 because
6 he's sentenced on a greater offense under Count -- is it 1 or 2?

7 MS. WONG: Count 2.

8 MR. COFFEE: Count 2.

9 THE COURT: All right, State, any response to that?

10 MS. WONG: No, I actually concur with respect to Count 4.

11 THE COURT: Right. I remember we discussed this during the trial as well.

12 MS. WONG: That's correct.

13 THE COURT: Yeah.

14 MS. WONG: I don't think the legislature intended double punishments for
15 these -- for Count 4 and Count 2.

16 THE COURT: Right, gotcha. All right, other than that, anything else you want
17 to address before we formally proceed to sentencing?

18 MR. COFFEE: No.

19 THE COURT: All right, Mr. Newell, by virtue of the jury's verdict, I hereby
20 adjudicate you guilty of the following offenses: Count 2, battery with use of a deadly
21 weapon resulting in substantial bodily harm; Count 3, attempt assault with a deadly
22 weapon -- given the redundancy, are we just dismissing Count 4 or --

23 MS. WONG: No, the Court just won't adjudicate him on it.

24 THE COURT: All right, and so I'm not adjudicating you guilty of Count 4
25 because it's a redundant count.

1 For the record, are you a veteran of the United States Armed Forces?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right, State, your position at sentencing?

4 MS. WONG: Well, Your Honor, I know Your Honor sat through a four-day
5 trial, so I'm going to go into too much details about the facts, especially since
6 Your Honor probably viewed the video at least 12 times throughout the trial.

7 THE COURT: You know what, I'm sorry, before you do that, let me just ask
8 you a technical question.

9 MS. WONG: Sure.

10 THE COURT: In the P.S.I., in the restitution amount it indicated the victim
11 sustained 263-and-some-odd-dollars in medical bills, but they weren't sure if Victims
12 of Crime had paid anything. Do you have anything from VWAC one way or the
13 other?

14 MS. WONG: I do not. And I was expecting the victim to be here today, but
15 he's not, so I --

16 THE COURT: Yeah, I mean, I'm not sure what to do with that because they
17 kind of left that open. They said those were his bills, but whether he was
18 compensated, I don't know. So I'm not even sure I have a basis to do anything one
19 way or the other. It's an enormous amount of money. I'm not sure what -- I mean,
20 the question here is did Victims of Crime compensate him, and that should be just a
21 quick phone call, right? You would think.

22 MS. WONG: I would imagine, it looks like P&P actually tried calling them and
23 they never --

24 THE COURT: And didn't receive a call back, is the problem. All right, then I
25 guess, well, let me ask you this, State, do you -- do you care much about the

1 restitution or what? I mean, do you want me to do something with that? Because I
2 can't do anything today is the problem.

3 MS. WONG: I'll submit it to the Court's discretion. I don't believe --

4 THE COURT: Okay.

5 MS. WONG: -- Mr. Newell will ever pay it anyways.

6 THE COURT: All right. All right, so your position at sentencing other than
7 that?

8 MS. WONG: Well, Your Honor, I'm going to be asking for a sentence of
9 6-to-15 years. The reason the defendant is standing before Your Honor today is
10 because he set a man on fire at a gas station in front of a gas pump. What's unique
11 about this particular case, aside from the fact that it was actually caught on video, is
12 the manner in which it occurred. The defendant got into an argument with the
13 victim. The victim admittedly was being somewhat of pest, insisting that the
14 defendant give him a ride. Defendant kept telling him no. Well, instead of just
15 walking away and getting into his truck and driving away, the defendant stood there
16 and continued to engage with this victim.

17 Now, this isn't a case where defendant suddenly gets mad, gets
18 impulsive, pulls out a gun and shoots him in a matter of seconds. This is a case
19 where the defendant tells the victim, Get away from -- get away from me or I'm
20 going to light you on fire, then proceeds to pump gas into his truck, takes the nozzle
21 out of the truck, sprays the victim with gasoline several times, takes out his lighter,
22 tells the victim again, I'm going to light you on fire; and then true to his word, lights
23 the victim on fire. This is something that took a lot of premeditation and a lot of
24 deliberation. And the defendant really could have killed the victim that night.

25 Now, the reason I'm asking for a 6-to-15 years, I -- even in asking for

1 6-to-15 years, which is the maximum that the Court can give on Count 2, I've taken
2 into consideration the mitigating factors in this case. I understand the, you know,
3 Mr. Newell's -- is -- his age, I'm taking into consideration his age, and also his lack of
4 a violent criminal history, he does have two prior felonies, one from the '70s, one
5 from the '80s and one's for drugs and the other's for fraud, so nothing really violent.
6 And I'm taking that into consideration.

7 I'm also taking into consideration the role that the victim himself played
8 in this. He wasn't entirely innocent in this, although he certainly didn't deserve to be
9 set on fire. I also do want to point out Mr. Newell's letter to the Court which I
10 actually read yesterday, and, you know, to his credit, Mr. Newell has admitted his
11 mistake. I've been waiting to hear this, and I'm sure the victim has been as well for
12 the past two years.

13 You know, normally when Mr. Newell comes into the courtroom, he
14 says, you know, If a jury would just see the -- I remember Mr. Newell actually
15 standing before the Court several months ago and saying, Your Honor, this is an
16 easy case, we just play the video and I'm sure the jury's going to see it my way.
17 Obviously, now that he's been found guilty, he's taking a different position. Whether
18 he's writing this letter to get some leniency from the Court or if he's being sincere in
19 his apology and I'd like to give him the benefit of the doubt and assume that he's
20 being sincere, you know, I do want to acknowledge that, and I appreciate that he
21 has apologized to the victim and he's taking responsibility for his actions and
22 admitting that he absolutely overreacted that night.

23 Nonetheless, writing a letter and expressing some remorse in no way
24 excuses what he did on October 10th of 2012. Aside from lighting the victim on fire,
25 what's troubling was also what happened after the fact. After Mr. Newell set the

1 victim on fire, he took out a knife and mocked the victim, said he was going to cut
2 the victim's little pecker off, you know, and then when an innocent bystander came
3 by to confront Mr. Newell about having just set a man on fire at a gas station,
4 Mr. Newell then threatens that individual with a knife as well, and, you know,
5 engages in a second confrontation.

6 And then when the cops arrive, Mr. Newell gives a statement to the
7 police, not saying how afraid he was for his life, but really bragging about what he
8 had just done and again mocking the victim, you know, saying, Oh, you know, the
9 victim's saying that he burnt me, he burnt me; he's crying like a little girl. I mean,
10 that's how he reacted that night. And I don't think an apology today excuses all of
11 that.

12 In addition, an apology does not, in any way, erase the effects that this
13 case has had on the victim. I wish the victim was here to speak on his own behalf.
14 I'm not sure why he's not here. Aside from the physical harm that the victim
15 suffered, which the Court heard about during the trial where he can't really speak as
16 well as he used to, he can't lift things like he used to, he still has scarring on his
17 body, on his face; but what I also want to emphasize the psychological effects that
18 this case has had on the victim. And we weren't -- we didn't present evidence of
19 that during the trial because it wasn't relevant to any of the elements to the offenses
20 charged.

21 But I will tell you this, the victim, for months, lived in extreme paranoia.
22 He thought everybody was out to get him, everybody was following him. He couldn't
23 even walk outside. He had nightmares. He was admitted into Rawson-Neal
24 because he had suicidal thoughts. I mean, these are -- these are effects that still
25 linger today, to a lesser extent, but they're still ongoing problems that he will

1 continue to deal with for the rest of his life.

2 So I understand there are mitigating factors in this case, but I'm going
3 to reiterate what I said during the trial. The defendant is lucky he's not on trial for
4 murder. So five, I'm sorry, 6-to-15 years is not unreasonable and indeed, warranted
5 for setting a man on fire at a gas station.

6 And with that I'll submit it.

7 THE COURT: All right, Mr. Newell, anything that you want to say prior to
8 sentencing? Or do you want to let your attorney speak for you? And just so you
9 know, I know you sent me this lengthy handwritten letter, I sent copies to your
10 attorney and the State. I did read it. In addition to the letter, anything that you want
11 to say today?

12 THE DEFENDANT: No, just except that I meant that letter from my heart, and
13 I meant it with all sincerity. And I want to apologize to the victim in open court and
14 apologize to my family and the Court. And I'll let my attorney speak.

15 THE COURT: All right. On behalf of your client?

16 MR. COFFEE: Judge, to begin with, the night of the incident I think it's pretty
17 clear that Mr. Newell has no idea how badly this person is injured and he was
18 callous, he was still upset about the situation that had taken place. Make no
19 mistake, this is not a situation that Mr. Newell went to the Circle K hoping to engage
20 in, nobody hopes to engage in this sort of thing, that was clear during the trial.

21 Mr. Newell did what he could, what he thought was appropriate to get
22 away from the situation. He went and asked for 9-1-1 to be called. He pushed the
23 man. You saw the videotape, it took 15 minutes to get to the point that he did.
24 Could he have made better judgments? Absolutely. There's no question that
25 Mr. Newell could have made better judgments. He could have stayed inside the

1 store and let the man do what he might with his truck. He could have tried to force
2 his way, perhaps, into the truck, taking a chance of getting injured and not doing
3 what he did. But he did what he did.

4 The State concedes that there is mitigation involved in this case, and
5 yet asked for the maximum sentence on a battery with use with substantial. They
6 talk about deliberation and premeditation. But the Court will recall that the jury
7 acquitted on a charge of attempt murder which would say, premeditation,
8 deliberation, attempt to kill. He wasn't trying to kill this man. He was reacting, and it
9 makes a difference. We always consider that. There was legitimate question of
10 whether he was defending himself, and the jury decided against Mr. Newell, he
11 takes that decision.

12 But you've got a 63-year-old man who's been out of trouble for 30
13 years, in essence. I don't see anything newer than 1982. So I guess it's 32 years.
14 He started a business on his own. He has a family. He's raised children. He has
15 not caused problems. I know this Court has had issue, and I thought Ms. Wong
16 might bring this up, that at times Mr. Newell seems to be a problem or a pest in the
17 courtroom situation. And --

18 THE COURT: Well, hang on --

19 MR. COFFEE: -- and --

20 THE COURT: -- hang on, I'm not sure that she's saying that because I know
21 he's not a lawyer, I think what she's actually saying is on the times when he was
22 talking he was saying things like, I'm innocent of this, all you have to do is look at
23 the videotape, and I think that's what she's saying. It's a lack of -- a lack of
24 awareness of his culpability, rather than being a pest.

25 Because I don't hold the fact that somebody who wants to represent

1 himself is talking in the courtroom in any way against him at trial or sentencing. And
2 I don't think that's what the D.A. was saying either.

3 MR. COFFEE: And I wanted to make sure that the Court didn't because I
4 know there's been times that the Court's been curt with Mr. Newell, I've watched it,
5 been curt with myself during the trial, and I hope that the Court doesn't hold that
6 against Mr. Newell or against myself.

7 THE COURT: No, no, no, it's not that, no, absolutely not, I think -- and, again,
8 I don't even think that's what the D.A. was saying, at least that's not what I thought I
9 heard.

10 MR. COFFEE: My -- my point is, I've dealt with Mr. Newell now for the better
11 part of a year. Mr. Newell, in dealing with me, has always been a gentleman. He's
12 always been easy to deal with. He is also one of, and I don't know if this is good or
13 bad, but I think it explains what happened that night to some extent, one of the most
14 nervous people I've ever had to deal with in my career. He is constantly worried and
15 worried and worried about everything, be it -- whether it's a number one or two on
16 the times when he's been in prison, when the rest of the P.S.I. reads right, or
17 whatever it might be. It's just Patrick's demeanor.

18 Given that demeanor, I can see how he reacted the way that he did. It
19 doesn't make it right, doesn't make it right. I don't think I'd have set a man on fire.
20 A lot of people wouldn't have, but I understand more from dealing with Patrick on a
21 personal basis than I would not having done that, and I think it's shown itself in the
22 courtroom also, which is the other point that I had. He's been through a number of
23 attorneys before he found somebody he was comfortable with. And I think a lot of
24 that has to do with Patrick just being very nervous about things.

25 His life has been turned upside down. The District Attorney says, you

1 know, we have to have 6-to-15. But the fact of the matter is, he's been in custody
2 for 400-plus days. His wife is destitute at this point because of his actions. He has
3 lost just about everything that he has because of these actions. It's a shame that
4 the victim's not here, I know there was contact with him as late as yesterday, and we
5 expected him to be here this morning. But he is not. I know Patrick wanted to
6 apologize to him. I think it took a long time for Patrick to realize exactly the damage
7 that he'd done.

8 This is a case, battery with substantial bodily harm, that is
9 probationable. If he had no time in custody, I would think a request for probation
10 would be laughable. But he has spent 400-plus days in, more than a year. So I
11 would ask the Court to consider that. If the Court's not going to consider that, and I
12 don't think the District Attorney made a recommendation on concurrent or
13 consecutive, but we'd had a conversation beforehand, I think her recommendation is
14 6-to-15, with the counts running concurrent, 6-to-15 on the -- is that correct?

15 MS. WONG: That is correct.

16 MR. COFFEE: -- 6-to-15 on the battery with substantial bodily harm. If the
17 Court is not going to consider the grant of probation, I would ask that the counts run
18 concurrently. I would ask the Court to follow, in essence, the recommendation for
19 underlying prison time with the exception of running it concurrently. That would give
20 us a sentence of, I believe, 36 months on the bottom end, less credit for time
21 served, Court's indulgence, 35 months to 156 months would be the total sentence.

22 I think there's some good reasons to run the separate count
23 concurrently. I think part of it has to do with the appellate posturing of the case, and
24 I understand that. I think they've asked for a long time. I don't know what a parole
25 board's going to do with him with these facts. So I don't think the Court should do

1 worse than the recommendation. And I would ask that, again, the counts run
2 concurrent in accord with what the District Attorney has asked.

3 THE COURT: All right. First of all, I understand your argument Mr. Coffee,
4 although I'm not entirely sure I agree with you that you can conclude that because
5 the jury acquitted him of Count 1 that therefore, they found there was no
6 premeditation. The other possible explanation is they could have thought that there
7 was premeditation, but Mr. Newell didn't want to kill him, he just wanted to hurt him
8 very badly. The problem is we can sit here and speculate all day long. There's -- I
9 can think of a couple other iterations.

10 MR. COFFEE: Sure.

11 THE COURT: The problem is they say what they said. I'm not sure you can
12 necessarily conclude that they concluded that the -- that the way they concluded is
13 what you think they concluded, you know, by definition, we don't know.

14 I mean, here's the situation. This is a situation that, unfortunately in
15 modern society, many of us encounter. You go and get gas at a gas station late at
16 night and some guy starts harassing you, whether they're homeless or drunk or
17 whatever, it's, unfortunately, you know, it's just something that happens in large
18 cities like ours.

19 You wanted to say something?

20 MR. COFFEE: I apologize, Judge, and it's my fault, Mr. Newell gave me a
21 number of certificates of things --

22 THE COURT: Oh, okay.

23 MR. COFFEE: -- that he'd completed in custody. If I could approach --

24 THE COURT: Sure want me to make these part of the file then?

25 MR. COFFEE: -- and give those to you, I want to make sure everything's

1 considered.

2 THE COURT: Sure.

3 MR. COFFEE: And I didn't mean to cut you off, that was just --

4 THE COURT: Do you want me to make these part of the file then? Or you
5 want me to just look at them?

6 MR. COFFEE: That's fine. That's fine, you can make them part of the file.
7 And again, I apologize to the Court.

8 THE COURT: No, that's fine, I mean, you have the right to, you know,
9 anything he wants me to look at I should look at so. So these are what? These are
10 classes he's completed while he's been in C.C.D.C., just so I know?

11 MR. COFFEE: While he's been in C.C.D.C., anger management, family,
12 parenting classes.

13 THE COURT: Why is he taking parenting classes? Does he have small kids?

14 THE DEFENDANT: Just grandkids.

15 THE COURT: Oh, okay. All right, we'll make these part of the file then, I'm
16 handing them to my clerk.

17 All right, so this is what I was starting to say, you know, unfortunately,
18 we've all -- not all, but many of us have been in the situation where you get gas late
19 at night, maybe it's not a great part of town, maybe it's a part of town like downtown
20 where after the sun goes down everybody goes home and there's not a lot of people
21 there. And, you know, people get harassed by homeless guys, drunk guys, guys
22 asking for money, guys offering to, you know, wash your windshields. You know, it's
23 unpleasant, it's not something anybody wants. It's, but unfortunately as I said, it's
24 just a fact of life in cities like Las Vegas. And, you know, it's just the way it is.

25 But, you know, what -- what you don't get to do is light a guy on fire. I

1 know that the victim in this case didn't die, but that's the risk you run. And, you
2 know, Count 4, I'm not adjudicating him on, but the reason that count exists, is you
3 light a guy on fire at a gas station, he's damn lucky only one person got lit on fire,
4 frankly, and you know what I mean by that. You know, gas is spraying all over the
5 place, the pump lights on fire, it could have been a disaster, and you know, thank
6 God it didn't happen, but that's -- that's the problem with doing with what Mr. Newell
7 did.

8 Al right, here's what I'm going to do, in accordance with the laws of the
9 State of Nevada, I assess a \$25.00 administrative assessment fee, \$150.00 DNA
10 analysis fee and require Mr. Newell to undergo testing for the determination of
11 genetic markers, and the \$3.00 DNA collective fee.

12 First of all, for the record, given the conversation we had earlier, I'm not
13 going to order any restitution because I'm really unclear on what the amount is and it
14 sounds like everybody else is too. If the victim wants to seek any restitution, he's
15 going to have to do so civilly just because of the lack of information that both P&P
16 and I and the State have at this point.

17 But I hereby sentence Mr. Newell as follows: On Count 2 to a minimum
18 term of 72 months, maximum term of 180 months; on Count 3 to a minimum term of
19 24 months, maximum term of 60 months; Counts 2 and 3 to be concurrent to each
20 other. I'm not sentencing him on Count 4 because of the redundancy. I'm awarding
21 him 468 days credit for time served. That will be the order. Good luck to you,
22 Mr. Newell.

23 MS. WONG: Thank you, Your Honor.

24 THE CLERK: Okay. But, Judge, I have to have a disposition to Count 4 so it
25 either has to be dismissed or -- I can't --

1 THE COURT: Yeah, you know what, now that you mention that, I have this
2 memory where I had a case where there was a home invasion and a burglary
3 charge, I don't know, two or three years ago, and I sort of stayed sentencing on
4 Count 4 and the Supreme Court, they didn't do much with it because it wasn't before
5 them, but they threw a footnote in their opinion that I shouldn't have just stayed
6 adjudication on it. I should have either sentenced him or dismissed it.

7 MS. WONG: My only concern is if something happens on appeal where
8 Count 2 gets kicked --

9 THE COURT: No, I understand, but it's a redundant count, I mean,
10 honestly --

11 MR. COFFEE: And, Judge, perhaps --

12 MS. WONG: We can do a conditional dismissal.

13 MR. COFFEE: -- perhaps -- perhaps I can make this easier, we will go on the
14 record and Mr. Newell will agree that if for some reason this comes back on appeal,
15 that there's not a double jeopardy problem with Count 4, if Count 4 is dismissed
16 now. And that should solve the issue.

17 MS. WONG: And Count 4 will be reinstated --

18 MR. COFFEE: Yeah, they could reinstate it and refile it at that point.

19 THE COURT: All right, I appreciate that, that helps because --

20 MR. COFFEE: And that's probably the easiest way to do it.

21 THE COURT: -- you know, honestly, the staying adjudication is something
22 that for years I watched judges do it, and then suddenly I got this Supreme Court
23 order with this footnote saying that you can't do that anymore apparently. So here's
24 what I'm going to do, pursuant to that, I'm conditionally dismissing Count 4.
25 Obviously, if there's an appeal issue, then, you know, we'll deal with that. But that

1 will be the order then. Good luck to you, Mr. Newell.

2 MR. COFFEE: And, Judge, we probably want him on the record, we're not
3 going to pursue -- if it comes back on appeal, we're not going to pursue a double
4 jeopardy claim on that last count, they can still go on that count.

5 THE COURT: Do you understand what's going on here, Mr. Newell?

6 THE DEFENDANT: I'm sorry?

7 THE COURT: Do you understand what Mr. Coffee is saying to you?

8 THE DEFENDANT: Yes.

9 THE COURT: Basically, there's this confusing issue about Count 4, it's,
10 technically speaking, a count that's redundant with Count 2, so I can't sentence you.
11 So what I'm going to do is I'm dismissing the count, but the confusion here is let's
12 say on appeal you're successful and the Supreme Court dismisses Count 2, then
13 what your attorney's agreeing then, rather than have me sentence you today on
14 Count 4, that if in fact that happens, then Count 4 could be refiled and we'll
15 resentence you on Count 4, are you agreeing to that and do you understand -- first
16 of all, do you --

17 THE DEFENDANT: Yes.

18 THE COURT: -- understand what we're talking about?

19 THE DEFENDANT: Yes, I understand.

20 THE COURT: And are you agreeing with that?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. Thanks very much. All right, good luck to you.

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MR. COFFEE: Thank you.

MS. WONG: Thank you, Your Honor.

PROCEEDING CONCLUDED AT 10:02 A.M.

ATTEST: Pursuant to Rule 3C(9) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.



SARA RICHARDSON
Court Recorder/Transcriber

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PATRICK NEWELL,)
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 Appellant,)
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 vi.)
)
 THE STATE OF NEVADA,)
)
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 17 day of December, 2014. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO	HOWARD S. BROOKS
STEVEN S. OWENS	SCOTT COFFEE

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

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Employee, Clark County Public Defender's Office

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