
IN THE SUPREME COURT OF THE STATE OF NEVADA

JORGE MENDOZA,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

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Elizabeth A. Brown
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Case Number: 72056

Appeal from Judgment of Conviction
Eighth Judicial District Court, Clark County
The Honorable Carolyn Ellsworth, District Court Judge
District Court Case No. C-15-303991-1

APPELLANT'S AMENDED APPENDIX VOLUME XII

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INDEX OF APPENDICES

Criminal Complaint.....	Vol. 1-000001
Second Amended Criminal Complaint.....	Vol. 1-000003
Third Amended Criminal Complaint	Vol. 1-000008
Fourth Amended Criminal Complaint	Vol. 1-000013
Minutes - 9/23/2015 - Arraignment.....	Vol. 1-000019
Indictment.....	Vol. 1-000020
Superseding Indictment.....	Vol. 1-000027
Transcript of Hearing – Calendar Call.....	Vol. 1-000041
Transcript of Hearing – Trial Day 1.....	Vol. 1-000060
Transcript of Hearing – Trial Day 2.....	Vol. 1-000203
Transcript of Hearing – Trial Day 3.....	Vol. 2-000378
Transcript of Hearing – Trial Day 4.....	Vol. 3-000606
Transcript of Hearing – Trial Day 5.....	Vol. 4-000803
Transcript of Hearing – Trial Day 6.....	Vol. 5-001018
Transcript of Hearing – Trial Day 7.....	Vol. 5-001139
Transcript of Hearing – Trial Day 8.....	Vol. 6-001315
Transcript of Hearing – Trial Day 9.....	Vol. 6-001448
Transcript of Hearing – Trial Day 10.....	Vol. 7-001598
Transcript of Hearing – Trial Day 11.....	Vol. 8-001849

Transcript of Hearing – Trial Day 12.....	Vol. 8-001994
Transcript of Hearing – Trial Day 13.....	Vol. 9-002144
Transcript of Hearing – Trial Day 14.....	Vol. 10-002309
Transcript of Hearing – Trial Day 15.....	Vol. 11-002567
Transcript of Hearing – Trial Day 16.....	Vol. 12-002635
Transcript of Hearing – Trial Day 17.....	Vol. 12-002775
Transcript of Hearing – Trial Day 18.....	Vol. 12-002807
Transcript of Hearing – Trial Day 19.....	Vol. 12-002934
Judgment of Conviction.....	Vol. 13-003013
Notice of Appeal.....	Vol. 13-003017

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Dated: November 1, 2017

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1 Q So, in other words, there's about six shots right
2 there at the front door that are consistent with the markings
3 of F1, B1, and G --

4 A Yes.

5 Q -- that you described?

6 A Yes.

7 Q Okay. And -- and that front doorway, of course, is
8 within that green cone --

9 A The green or the blue, yes.

10 MR. WOLFBRANDT: Okay, thank you. That's all I
11 have.

12 MS. McNEILL: Your Honor, I don't have any questions
13 for this witness.

14 THE COURT: Mr. Landis?

15 MR. LANDIS: Briefly.

16 CROSS-EXAMINATION

17 BY MR. LANDIS:

18 Q On State's Exhibit 13, which is in front of you now,
19 I presume that was compiled by somebody you know --

20 A Yes.

21 Q -- in the department, right?

22 A Yes.

23 Q Reasonable to rely on their work, based on your
24 experience, right?

25 A Yes.

1 Q BT1, BT2, BT3, those are all shown on that diagram,
2 yes?

3 A Yes, sir.

4 Q And those were what?

5 A These were drops of blood on the driveway of the
6 residence.

7 Q And --

8 A So, on the cement.

9 Q Yes, sir. And from what you can tell from that,
10 they're singular drops, meaning BT1 is a drop?

11 A Yes.

12 Q BT2 is a drop, and BT3 is a drop?

13 A Yes, a drop where they collected samples that night.

14 Q Were you advised as to whose blood that was or if
15 blood testing was done on those three drops?

16 A No.

17 MR. LANDIS: Could you go to that -- here. 346.

18 BY MR. LANDIS:

19 Q As to 346, this diagram, you created, yes?

20 A Yes, sir.

21 Q The blue -- I think it's blue -- cone-shaped just
22 picture on there, that's to kind of show the limitations from
23 firing inside?

24 A From outside in, not so much from inside. The
25 insides would be similar; I would just set it up different.

1 For example, we have these impacts here on the wall. If I was
2 to do the same thing for that, I would draw a straight line
3 back, and miss the door and the pillar here, and a straight
4 line back, so it'd kind of look just opposite. You have the
5 wider end of the cone in this area, and the smaller end here.
6 So, that's -- it's just opposite.

7 Q You'd agree with me though, to calculate the cone
8 kind of restrictions from inside, you have to have an idea as
9 to where inside the person's shooting?

10 A Not really, because again, I'm not trying to place
11 him specifically in a spot. I'm just saying that it's a wide
12 area here, and the same would hold true of the inside of the
13 residence. I can't say where it took place here, but I can
14 say it took place there, and it just restricts where that can
15 be.

16 Inside, it would be kind of the same thing. We'd
17 have restrictions. You have the same doorway, you have the
18 same pillar that's restricting, but I couldn't put down one
19 spot and say this is where he was. You can look at cartridge
20 cases that are expended inside and say, well, maybe they would
21 help tell a story, and those things help us to pinpoint where
22 somebody might be.

23 Q Right.

24 A But that's what we have to work with. It's a wider
25 area than a specific spot.

1 Q Let me make sure I understand you. So, you're
2 telling me, based on your experience, if a shooter's towards
3 the back end of that home --

4 A Yes.

5 Q -- which would be the west side of the home?

6 A Yes.

7 Q Let's just say they're on that far west wall --

8 A Okay.

9 Q -- facing towards the door, that shooter is going to
10 be able to shoot the same area as outside as somebody who's
11 one foot away from the front door?

12 A No, not at all, not at all. I just -- that's why
13 you have to cone it out like that. You just have to, to find
14 out what their positions could have been. I wasn't dealing
15 with that aspect of it.

16 Q Yeah. All I want to establish with you is to
17 determine that that range from an inside shooter, you're going
18 to have to have some information about where they were
19 shooting from inside to know what the limitations about where
20 they could have shot outside were?

21 A We could make the same kind of cone, that's all I'm
22 trying to say, make the same kind of cone inside that
23 residence to show that it had to have occurred within this
24 area. And that's how -- that's how you work. We can't
25 identify specifics.

1 Q Right, and I --

2 A Just a general area.

3 Q And I respect that. You believed, based on both
4 your looking, your talking to these people at the scene, and
5 the other CSA work, that three shots were fired from the
6 street?

7 A There were three cartridge cases out there. It
8 would stand to reason, yes.

9 Q And that kind of starting point there in the street
10 where those cartridges were, and near -- somewhere near where
11 that blood trail was, that was what you were considering to be
12 the potential shooting point, right, into the house?

13 A No, not at all. I don't -- I don't know where these
14 cartridge cases came from in the whole scheme of things,
15 because to get inside the house, we've already established it
16 has to be within either one of these two conical areas, and
17 these are obviously outside of that area, especially for a
18 right ejection gun.

19 I don't know if those cartridge cases hit something,
20 I don't know if they were kicked, I don't know if wind blew
21 them. I really don't know. I don't like the placement of
22 these cartridge -- cartridge cases, but the trajectories
23 cannot move, they are solid, and the cartridge cases can, so
24 that's kind of -- I don't know how to answer that question
25 aside from that.

1 Q Because a trajectory either puts something in a wall
2 or it's --

3 A Yes.

4 Q -- a fixed --

5 A Yes.

6 Q And I understand that. You -- as you were out there
7 the other day and you were trying to figure these things out,
8 do you have any idea if any shots from outside the house
9 actually went into walls inside the house?

10 A I don't know which ones. We have different impacts
11 in the house for sure. We have impacts to the carpet, we have
12 impacts to the ceiling, we have impacts to the wall. I don't
13 know which ones were which.

14 Q All of those shots -- all of those impacts inside
15 the home could have been made from a shooter inside the home?

16 A There would have been no restrictions inside the
17 house. You could hit any one of those things if the shooter
18 was inside the house.

19 Q And none of the bullet holes, bullet scrapes, all of
20 the things found interior of the home suggested to you that,
21 no, the shooter had to be outside of the -- the front door?

22 A I'm just trying to think. I want to answer fairly.

23 Q Yeah, yeah, no problem.

24 A The bullet holes themselves did not suggest that.
25 The cartridge cases suggest that they were outside.

1 Q Certainly, and that's because of --

2 A Yeah.

3 Q The cartridge cases, we're presuming, are going to
4 be near where the shots --

5 A Right.

6 Q -- were fired?

7 A Because if you -- obviously, if I'm inside this door
8 and I'm shooting, I could shoot anywhere I wanted in that
9 house, and I could hit anything. The restrictions are when
10 you're outside the door.

11 And the placement of the cartridge cases outside
12 would suggest that we have some shooting event happening on
13 the step here. There was even one inside the house that may
14 have been inside just right at the door there. S, so we have
15 possibly one -- at least one being fired inside the house,
16 some being fired from the steps, and some being fired from the
17 street, according to locations of cartridge cases.

18 Q Did you independently see at the scene there when
19 you were out there at 1661 Broadmere or in any of the things
20 you reviewed, bullet injuries to the exterior of the
21 residence?

22 A Exterior -- the east-facing side?

23 Q Yeah.

24 A Yes.

25 Q Where?

1 A There was one on the pillar here, one labeled A on
2 that. There was also one on this door frame here, the door
3 jamb, that went through. And I can't think of anything else
4 that I know of that was on the outside.

5 Q And that pillar injury you testified to, which is a
6 pillar that's on the kind of south end of that stoop, right?

7 A Yes.

8 Q Was that on the east or west side of the pillar, the
9 bullet?

10 A It was the side facing the street, the east side.

11 MR. LANDIS: I have no further questions. Thank
12 you, sir.

13 THE WITNESS: You're welcome.

14 THE COURT: Redirect?

15 MR. DiGIACOMO: No.

16 THE COURT: May this witness be excused?

17 MR. DiGIACOMO: Yes.

18 THE COURT: Thank you very much. Unless the witness
19 is -- oh, we do. We have a -- witnesses. The jury has a
20 question. They've been so silent, I haven't thought we'd get
21 one.

22 (Off-record bench conference)

23 THE COURT: The first question, can you testify as
24 to where Monty Gibson, the decedent, had been standing when he
25 was shot in the head?

1 THE WITNESS: No, that -- I really didn't look at it
2 in that kind of detail. I really can't answer that question.
3 There's a lot to that, and I don't know if we would ever be
4 able to specifically answer it. But we may have been able to
5 tell more about it by looking at the blood at the scene, and I
6 really didn't look at those photos for that purpose, so I
7 can't, I'm sorry.

8 THE COURT: Next question. Is BT4 within falling
9 distance from the bullet impact cone F?

10 THE WITNESS: I -- I think it's pretty close. It's
11 pretty close. I wouldn't want to have to say one way or
12 another. It's fairly close.

13 THE COURT: Any questions as a result of this
14 question from counsel? Follow up questions? Okay. All
15 right. I will mark this next in order. Those were the only
16 questions from the jury? All right. Now may this witness be
17 excused?

18 MR. DiGIACOMO: He may.

19 THE COURT: Thank you very much for your testimony.

20 THE WITNESS: Thank you.

21 THE COURT: And you may call your next witness.

22 MR. DiGIACOMO: Detective Tod Williams.

23 THE MARSHAL: Go ahead and take the stand. Remain
24 standing, please. Face the court clerk. Raise your right
25 hand.

1 DETECTIVE TOD WILLIAMS, STATE'S REBUTTAL WITNESS, SWORN

2 THE CLERK: Please be seated, and then please state
3 and spell your first and last name for the record.

4 THE WITNESS: Detective Tod, T-o-d; Williams,
5 W-i-l-l-i-a-m-s.

6 THE CLERK: Thank you.

7 DIRECT EXAMINATION

8 BY MR. DiGIACOMO:

9 Q Detective, I think they've already heard from you
10 what you do for a living, but did you come down to my office
11 at 1:00 o'clock today and look at some GPS coordinates and
12 make sure that a map looks accurate as it relates to those
13 cell towers?

14 A Yes, I did.

15 MR. DiGIACOMO: May I approach, Judge?

16 THE COURT: Yes.

17 BY MR. DiGIACOMO:

18 Q Did I -- first, State's Proposed Exhibit number 338,
19 looking at that particular exhibit, did you watch -- or did
20 you watch us put into the Google Maps the GPS location from
21 275 for T-Mobile tower 24599/6222, and then there's a star
22 because it would go to that location?

23 MR. DiGIACOMO: 24599, page 65, counsel, I think at
24 this.

25 BY MR. DiGIACOMO:

1 Q There is a number of sectors to that particular
2 tower; is that accurate, Detective?

3 A Yes.

4 Q And then did we also do Tower 24599/397, plus a
5 number, and 5937, plus a number?

6 A Yes.

7 Q Okay. And that is accurate placement on this map of
8 Las Vegas Valley?

9 A Yes, it is.

10 MR. DiGIACOMO: Move to admit State's Exhibit 338.

11 MR. LANDIS: I object, because there's no foundation
12 for this that came through the expert. A detective watching
13 the district attorney put things in a computer does not admit
14 a document of that sort.

15 MS. McNEILL: I would join the objection.

16 THE COURT: All right, approach.

17 (Off-record bench conference)

18 THE COURT: All right. So, Mr. Landis had objected.
19 Were there objections from Ms. --

20 MS. McNEILL: I would join Mr. Landis's objection.

21 THE COURT: And Mr. --

22 MR. WOLFBRANDT: I would join that, too.

23 THE COURT: -- Wolfbrandt also joins? Okay, and it
24 was the same objection, and so that's overruled. You may
25 proceed.

1 MR. DiGIACOMO: 338 is admitted?

2 THE COURT: It is.

3 (State's Exhibit 338 is admitted)

4 BY MR. DiGIACOMO:

5 Q Detective, I also -- I think you testified
6 previously that on September 21st into the morning hours of
7 September 22nd, you had a conversation with Jorge Mendoza; is
8 that correct?

9 A Yes, it is.

10 Q Okay. When you initially had that conversation, did
11 you know that his first name was Jorge, or did you think it
12 was something else?

13 A I thought it was Jose.

14 Q Okay. And at some point, you get corrected, and
15 then you begin the interview; is that fair?

16 A Yes, he told me his name was Jorge.

17 Q And the two recordings that are -- that were made of
18 Mr. Mendoza that night, were they also transcribed into one
19 transcript?

20 A Yes, they were.

21 Q So, I'm going to show you what's been marked as
22 State's Proposed Exhibit number 334. Does that appear to be a
23 true, fair, and accurate copy of that transcript?

24 A Yes, it does.

25 MR. DiGIACOMO: And I've also had both the audio

1 recordings dropped to 334A, and I would offer them at this
2 time.

3 MR. LANDIS: No objection.

4 MS. McNEILL: No objection.

5 MR. WOLFBRANDT: No objection.

6 THE COURT: Those will be admitted.

7 (State's Exhibit 334A is admitted)

8 MR. DiGIACOMO: Judge, based on the time, I believe
9 we have time to listen to the first recording, and not the
10 second, so -- unless -- the second recording's a little bit
11 longer. We would have to stay a little longer. So, I am
12 going to publish 334A, the first recording that's on the disk.

13 THE COURT: All right.

14 (Jorge Mendoza's First Interview is played)

15 THE COURT: All right, approach.

16 (Off-record bench conference)

17 THE COURT: Ladies and gentlemen, we were just
18 trying to come up with our schedule for tomorrow. So, there
19 is another tape that they're going to play for you, and that's
20 37 minutes, but -- but the lawyers and I have to settle the
21 jury instructions that -- and you're not a part of that. So,
22 we do that together and come up with the -- all the
23 instructions on the law, so we're going to do that.

24 It's going to take us a couple of hours tomorrow, so
25 I'm going to have you come in at 2:30, because we'll start,

1 you know, right after I finish my calendar, and you know, have
2 15 minutes for lunch, and then I'll have them come in, and
3 we'll settle the instructions. That's going to take us a
4 couple of hours.

5 We'll come back, we'll hear the last of the
6 evidence, and then I'll read you the jury instructions, then
7 we'll recess, then I -- and then when we come back on Thursday
8 at 1:30 after Drug Court, it will be -- you'll -- we'll go
9 right into the closing arguments, and then after closing
10 arguments, of course, you get the case for deliberation.

11 All right, so that's our plan, and best laid plans,
12 right? We've got to get a microphone because we've got a
13 question. Your name?

14 JUROR NO. 12: My name is Thad Simmons, I'm Juror
15 number 12, Badge number 703.

16 THE COURT: Yes, sir.

17 JUROR NO. 12: When we begin deliberations, whose
18 schedule are we on? Does the Court determine the schedule, or
19 will we?

20 THE COURT: Oh, well, as far as -- you'll start your
21 deliberations as soon as closing is over. And then, you know,
22 depending on how late it is, I usually check on you. Say you
23 deliberate until 5:00, I'll find out -- you know, I'll send
24 the marshal in to check on you and ask you if you want to go
25 any later.

1 You know, I'm not going to -- I certainly am
2 amenable to following your schedule as far as how late you
3 want to deliberate, to a point. I'm not going to have you up
4 all night, because that's not good for anybody, but, you know,
5 I do ask the jury how you're doing, if you want to continue or
6 break for the night and come back the next day on Friday.

7 JUROR NO. 12: I guess my -- I asked that question
8 poorly. I was more concerned about Friday.

9 THE COURT: Oh.

10 JUROR NO. 12: Like what time would we come in?
11 Would that be our decision, or your decision?

12 THE COURT: Well, I would -- I always consult with
13 the jury as to how early you want to start, but you could be
14 here as early as 8:00, but you can't be here before that
15 because the courthouse isn't really -- we're not set up --
16 court personnel gets here at 8:00.

17 JUROR NO. 12: Thank you.

18 THE COURT: Anybody else have any questions on
19 scheduling? No? All right. So, I'll see you tomorrow 2:30.

20 THE MARSHAL: One more question, ma'am.

21 THE COURT: Oh, one more question.

22 JUROR NO. 8: Sara Victorson, Seat number 8, Badge
23 696.

24 THE COURT: Yes, ma'am.

25 JUROR NO. 8: So, there's a possibility we could

1 come bac on Monday, correct, for deliberation as well?

2 THE COURT: That's really up to how long the jury
3 deliberates, and we -- you know.

4 JUROR NO. 8: Got it.

5 THE COURT: I don't know. That kind of -- then that
6 becomes in your hands.

7 JUROR NO. 8: Okay.

8 THE COURT: That's always a possibility. I don't
9 want to say that's not possible, because it depends on how
10 long you want to deliberate.

11 JUROR NO. 8: Thank you.

12 THE COURT: Um-hum.

13 JUROR NO. 7: Angela Wood, I'm Juror number 7. I
14 have to look for my other number.

15 THE COURT: It's fine.

16 JUROR NO. 7: Monday is a holiday. It's Columbus
17 Day. Is the courthouse still open?

18 THE COURT: It is a federal holiday --

19 JUROR NO. 7: Okay, well --

20 THE COURT: -- for the courts, and so federal court
21 is closed, I believe, on Columbus Day, but we are not.

22 JUROR NO. 7: Okay.

23 THE COURT: So, we're -- yes, we're open on Monday.

24 Now, are -- is there anyone that's impacted by the
25 Jewish holidays that are coming up? Okay. Anybody else,

1 questions on scheduling? Let's get you out of here. I'm
2 going to read to you the admonition that you probably all know
3 by heart by now.

4 All right, it is -- we're taking an overnight
5 recess. During this recess, it is your duty not to converse
6 among yourselves or with anyone else on any subject connected
7 with the trial, or to read, watch, or listen to any report of
8 or commentary on the trial by any person connected with the
9 trial, or by any medium of information, including, without
10 limitation, newspaper, television, radio, or internet, and you
11 are not to form or express an opinion on any subject connected
12 with this case until it's finally submitted to you. I'll see
13 you tomorrow at 2:30.

14 THE MARSHAL: All rise for the jury, please.

15 (Jury recessed at 5:11 p.m.)

16 THE COURT: All right, and the record will reflect
17 that the jury has departed the courtroom. Are there any
18 matters we want to put on the record that -- from bench
19 conferences?

20 MS. McNEILL: I just wanted -- Mr. -- I can't talk
21 -- Mr. Laguna wanted to make sure that he was here for the
22 settling of jury instructions. Sometimes they don't want to
23 be here for that, but he does, so just so the officers know to
24 have him here tomorrow at that --

25 THE COURT: Okay.

1 MS. McNEILL: -- think we said 12:30.

2 THE COURT: All right, so we'll -- do the other
3 defendants wish to be here at 12:30? You're going to miss
4 lunch, I think, if you --

5 DEFENDANT MURPHY: I can wait until 2:00 or whenever
6 the jury's going to be here.

7 THE COURT: Yeah, it's pretty -- it's pretty boring.

8 DEFENDANT MURPHY: Yeah, my lawyer can let me know
9 what happened or whatever. That's fine, for me.

10 MS. McNEILL: Okay, he's fine not being here. I've
11 told him it's just all legal argument. It's not -- you know,
12 it's --

13 THE COURT: Right. And of course you'll be present
14 when we read all the instructions to the jury. And so, okay,
15 so they don't need to be here then until 2:30. That way,
16 you'll get your lunch.

17 And all I would ask of counsel, too, is would you
18 just read over the instructions, even the stocks, for typos?
19 Because there have -- you know, various ones have had typos
20 that then get promulgated, and I find myself then catching
21 them when I read them aloud. Of course, I don't catch them
22 either because I'm expecting that they're going to be perfect,
23 and there's some typo, and then I have to on-the-fly correct
24 it, which I will do if I find a typo.

25 MR. DiGIACOMO: Every one of my burglary

1 instructions has a typo, and I can never find it. I sent it,
2 and I still can't find it, so will somebody please read it and
3 figure it out?

4 MR. LANDIS: I can give you two typos in a second.
5 I don't want to waste your time with that.

6 THE COURT: All right. Okay. So, I'll see you
7 tomorrow at 12:30. Were there any other bench conferences you
8 wanted to make --

9 MR. DiGIACOMO: And 2:30 for them, right?

10 THE COURT: Whoops, whoops, hey.

11 MR. LANDIS: Yeah, you got it.

12 MR. DiGIACOMO: You want my typos now?

13 THE COURT: Listen up here. We're not off the
14 record.

15 MR. DiGIACOMO: Oh, you got like a --

16 THE COURT: We're not off the record. I just want
17 to make sure you didn't want -- any other bench conferences
18 you didn't want to make a record of.

19 MR. LANDIS: Oh, yes. That's a good point, I'm
20 sorry.

21 MS. McNEILL: Yeah, I don't remember anything, but.

22 THE COURT: Mr. Landis?

23 MR. LANDIS: There was an objection raised during
24 the expert's -- I'm sorry, I don't remember his name.

25 MS. LEXIS: McPhail.

1 MS. McNEILL: McPhail.

2 MR. LANDIS: McPhail's testimony. I think Mr.
3 Wolfbrandt initially raised the objection based on a lack of
4 notice and outside of his expertise. We approached, and the
5 Court ordered the State to lay more foundation as to the blood
6 evidence, I believe.

7 THE COURT: Right, well, what he -- his objection
8 was that I hadn't accepted him as an expert. I pointed out
9 that the Court doesn't do that, that when he's asked his
10 opinion, if the defense feels that he has not stated enough to
11 -- to then opine on something, that an objection needs to be
12 made. And if he wished to have Mr. DiGiacomo lay a better
13 foundation for what he was about to opine with, which I agreed
14 there hadn't been that foundation, he could do that. He asked
15 that that be done, correct, Mr. Wolfbrandt?

16 MR. WOLFBRANDT: Yes.

17 THE COURT: And that's when we went back -- back to
18 our -- and on the record, you know, in the presence of the
19 jury, and Mr. DiGiacomo laid a better foundation for his
20 experience to then opine, and there was no further objection.
21 Is that correct?

22 MR. LANDIS: Yeah, that sounds fine to me.

23 MS. McNEILL: Yes.

24 MR. LANDIS: And then, during Sotelo's testimony --
25 Gabriel Sotelo, I believe it was when Mr. DiGiacomo finished,

1 I asked to approach, and it had to do with -- he had asked him
2 that question about bail bonds, and that's when the Court did
3 the research. And so, to the best of my memory, he asked Mr.
4 Sotelo if he had ever posted a bail -- a bail bond or a felony
5 bail bond. His question was something like that. Sotelo said
6 no.

7 I asked to approach because I wanted to clarify the
8 record. And at the bench, the Court looked at one of the
9 cases, and the truth was, in one case that predated this
10 murder, he had posted a bail bond. On another case that
11 stayed a misdemeanor after negotiations, it did have an entry
12 in the Justice Court minutes that said "Released per Judge
13 Smith."

14 So, both he had posted a bail bond and he had gotten
15 out on a case without posting bail or getting an OR at least
16 directly from the City Judge. I think we cleared up the
17 facts. You did make a ruling, but I just wanted to put that
18 out there.

19 MS. McNEILL: And we had one more. It was the map.
20 I just -- my client reminded me.

21 THE COURT: Yes, I was just going to say.

22 MS. McNEILL: Right, during Detective Williams'
23 testimony of -- that Mr. -- it was Mr. DiGiacomo who put in
24 the coordinates, and the detective watched him do that, and
25 Mr. -- I think we all three objected to that.

1 THE COURT: Right. And so, at -- and so the ruling
2 was -- well, there was sort of two objections at the bench.
3 First, that Mr. DiGiacomo was putting in the coordinates while
4 the witness watched him do that and observed, then thus that
5 generating the map, okay. And so there was the objection
6 that, well, he couldn't testify because Mr. DiGiacomo had
7 actually typed in the coordinates.

8 And so I said, well, I mean -- I overruled that
9 objection, because it wouldn't matter, as long as he was
10 present, and observed it, and knew that it was -- that's what
11 had happened, then he can certainly testify to the thing
12 that's generated from that. Then there was also sort of an
13 objection about the process itself with Google.

14 MS. McNEILL: Well --

15 THE COURT: Is that correct?

16 MR. DiGIACOMO: I think the objection was that
17 Detective Williams is not an expert in --

18 MS. McNEILL: Right.

19 MR. DiGIACOMO: -- cell phone records or whatever,
20 and I think we addressed it with I didn't do anything other
21 than what the custodian of records already explained, which is
22 take the GPS coordinates and place them on a Google Map and
23 you will get the tower location, and thus, there was no expert
24 opinion being asked of Detective Williams.

25 MR. LANDIS: Those were the two objections; the one

1 the Court first acknowledged and the one Mr. DiGiacomo just
2 put on the record.

3 THE COURT: Okay, and so I overruled both of those,
4 because I said, you know, that's -- that was fully explained
5 to the jury that that's all that was being done, so there was
6 no opinion evidence offered, nor was there anything more than
7 what had already been testified to by an expert; it was just
8 for demonstrative purposes, adding those coordinates in using
9 the tool of Google Maps, which no one challenged its accuracy,
10 so. That's it?

11 MR. LANDIS: Court's brief indulgence.

12 MR. DIGIACOMO: 338.

13 MR. LANDIS: We believe the exhibit was 338.

14 MR. DIGIACOMO: 338.

15 MR. LANDIS: That's what that map was.

16 THE COURT: Correct, and that was admitted. And
17 just to be clear -- let's see.

18 MR. DIGIACOMO: The six photographs that I showed
19 Mr. McPhail from the scene that he didn't take, I did not
20 offer. It was solely to --

21 THE COURT: Okay.

22 MR. DIGIACOMO: -- for foundational purposes, and I
23 wasn't going to offer them because he can't authenticate them,
24 really.

25 THE COURT: Right. So that would have been 343 and

1 344, which were photos of gunshot wounds to Monty Gibson --

2 MR. DiGIACOMO: Correct.

3 THE COURT: -- you showed him, and those were marked
4 as proposed but never offered, so they weren't admitted. And
5 then the others, I -- I'm not sure of my --

6 MR. DiGIACOMO: The four before those two that you
7 just referenced --

8 THE COURT: Okay.

9 MR. DiGIACOMO: -- were also the bloodstains for
10 BT2, 3, 4, and 5, were not offered or admitted.

11 THE COURT: Okay. All right. Okay, I think we've
12 made a record of everything that happened at the bench.

13 MR. LANDIS: Thank you. I agree.

14 THE COURT: You're very welcome.

15 MS. McNEILL: Thank you, Your Honor.

16 (Court recessed at 5:19 p.m. until Wednesday,
17 October 5, 2016, at 2:41 p.m.)

18 * * * * *

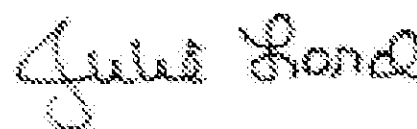
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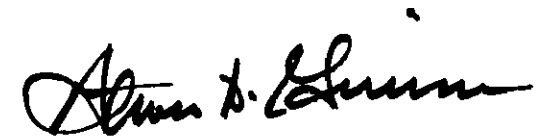
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-15-303991-1
	.	CASE NO. C-15-303991-4
Plaintiff,	.	CASE NO. C-15-303991-5
	.	
vs.	.	DEPT. V
	.	
JORGE MENDOZA,	.	TRANSCRIPT OF
DAVID MURPHY, a/k/a	.	PROCEEDINGS
DAVID MARK MURPHY,	.	
JOSEPH LAGUNA, a/k/a	.	
JOEY LAGUNA,	.	
Defendants.	.	
.	

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 17

WEDNESDAY, OCTOBER 5, 2016

APPEARANCES:

FOR THE STATE:	MARC P. DiGIACOMO, ESQ. AGNES M. LEXIS, ESQ.
FOR DEFENDANT MENDOZA:	WILLIAM L. WOLFBRANDT, ESQ.
FOR DEFENDANT MURPHY:	CASEY A. LANDIS, ESQ.
FOR DEFENDANT LAGUNA	MONIQUE A. McNEILL, ESQ.

COURT RECORDER:

LARA CORCORAN
District Court

TRANSCRIPTION BY:

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INDEXWITNESSESSTATE'S REBUTTAL WITNESSES:DETECTIVE TOD WILLIAMS

Direct examination by Mr. DiGiacomo (resumed) .. .	3
Cross-examination by Mr. Wolfbrandt	5
Cross-examination by Ms. McNeill	7
Cross-examination by Mr. Landis.. . . .	13
Redirect examination by Mr. DiGiacomo	22
Redirect examination by Mr. Landis	23

EXHIBITS

(No Exhibits Admitted)

1 LAS VEGAS, NEVADA, WEDNESDAY, OCTOBER 5, 2016, 2:47 P.M.

2 (In the presence of the jury)

3 THE MARSHAL: Your Honor, all 12 members of the jury
4 are present, along with the 3 alternates.

5 THE COURT: Thank you. Please be seated. And the
6 record will reflect that we have been rejoined by all 12
7 members of the jury, as well as the 3 alternates, and we're
8 proceeding with testimony. The defendants are all present
9 with their respective attorneys. The Chief Deputies District
10 Attorneys prosecuting the case are present, as are all officer
11 of the court.

12 And Detective Jensen -- no --

13 THE WITNESS: Williams.

14 THE COURT: -- Williams is on the stand, and you're
15 still under oath, sir, from before. State?

16 DIRECT EXAMINATION (RESUMED)

17 BY MR. DiGIACOMO:

18 Q And I think we left off after playing the first
19 recording. After the first recording, do you go back and then
20 try to talk to Mr. Mendoza again?

21 A Yes, I do.

22 Q And between the time that you talk to him initially
23 and the time that you go back to him, have you already talked
24 to Amanda Mendoza on the phone?

25 A Yes.

1 MR. DiGIACOMO: I'm going to publish 334, Judge, the
2 second half.

3 (Jorge Mendoza's Second Interview is played)

4 BY MR. DiGIACOMO:

5 Q Detective, we've sort of already heard from
6 Detective Jensen about some of the interview techniques that
7 police officers use and are allowed to use in interviewing
8 suspects. You've heard about those techniques before,
9 correct?

10 A Yes.

11 Q And you've used them before, I'm assuming?

12 A Yes, I have.

13 Q During the course of this interview, there are times
14 when you're discussing sort of where you think the blood
15 trail's going to start or, you know, where he got shot, those
16 type of things. Did you know at that point as you're sitting
17 there talking to him, exactly where the blood trails were
18 going to be, where exactly it was going to start, those type
19 of things?

20 A No, I knew some of it, but not exactly all of it.

21 Q Now, it's clear from the interview that you were
22 telling Mr. Mendoza that, you know, you don't believe the
23 version of events he's giving you, correct?

24 A That's correct.

25 Q And you also tell him it's okay because everybody

1 lies to the police. Let me ask you this, do you think it's
2 unusual for a suspect to initially not tell you the truth?

3 A No, that is not unusual.

4 Q Okay. Even where a suspect isn't telling you the
5 truth, is there evidence you can gather from the statement?

6 A Yes, many times as a suspect explains a story,
7 they'll a lot of times be partial truths or half truths.

8 Q And so there may be things within this statement
9 that are accurate, it's just necessarily the whole thing in
10 total may not be what the story really is?

11 A That is correct.

12 MR. DiGIACOMO: I have nothing further, Judge. I'd
13 pass the witness.

14 MR. LANDIS: Shall we go left to right again?

15 THE COURT: Sure. Mr. Wolfbrandt?

16 MR. WOLFBRANDT: Yeah.

17 CROSS-EXAMINATION

18 BY MR. WOLFBRANDT:

19 Q Detective Williams, when you met Jose (sic) where
20 exactly within the hospital were you?

21 A He was lying in one of -- a gurney inside one of the
22 rooms at UMC trauma.

23 Q Were there tubes connected to his arms?

24 A I don't recall that, but I would assume there was.
25 I would agree to that, yes.

1 Q Would you agree that he was sedated with some pretty
2 heavy pain medication?

3 A I have no idea if he was sedated.

4 Q Well, you knew pretty much the nature of that leg
5 injury, didn't you?

6 A I knew that his femur was broken, he had a bullet in
7 his leg.

8 Q Okay. And would you expect that to be tremendously
9 painful?

10 A I would, yes.

11 Q Would you expect it that the hospital would have
12 given him some pain medication to take care of that?

13 A Yes, I would expect they would.

14 Q When did you place or did you place Mr. Mendoza
15 under arrest?

16 A I never arrested Mr. Mendoza.

17 Q Do you know who did?

18 A I did not.

19 Q When you left the hospital that night, was he under
20 arrest?

21 A No, he was not.

22 Q All right. Thank you.

23 MR. WOLFBRANDT: That's all I have.

24 MS. McNEILL: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MS. McNEILL:

2 Q Mr. DiGiacomo asked you if you were aware
3 interrogation techniques and you said that you were. I assume
4 that you're not just aware of them, you've had training in
5 them?

6 A Yes.

7 Q Okay. And that's training that you need to have
8 when you become a detective because you're going to spend a
9 lot of time interviewing suspects, right?

10 A That's correct.

11 Q Okay. And you would agree with me that you are
12 allowed to use certain interview tactics so you that can get
13 information from people because they don't always want to talk
14 to you, right?

15 A Yes.

16 Q Okay. Would you also agree with me that one of your
17 other concerns that you have to be careful about is the
18 suspect's constitutional rights, right?

19 A Absolutely.

20 Q Okay. So that's the reason why you -- when someone
21 is in custody, you read them the Miranda warnings, right?

22 A If they're in custody, yes.

23 Q Okay. You also have to be careful that you're
24 getting accurate information from a suspect?

25 A You mean, I have to make sure I'm getting accurate

1 information?

2 Q Well, you don't want to ask questions in a way where
3 they might give you a false confession say?

4 A Oh, yes, no, we do not want false confessions,
5 that's correct.

6 Q So you're trained on sort of ways to ask questions
7 to determine whether or not the person is really giving you
8 good information or maybe they just heard about it and they're
9 telling you information that they they've learned from
10 somewhere else?

11 A Well, I don't know of any tactic that can -- to make
12 that happen. They tell us what they tell us.

13 Q Okay. Well, one of the things you do is you look to
14 see maybe if they can corroborate things that you know
15 happened at the scene, right? They can give corroborative
16 details?

17 A Well, we hope that they'll tell us the truth and
18 we'll be able to corroborate that. I don't know if there's a
19 technique that will actually get them to say a specific thing.
20 I'm not sure I -- maybe I'm misunderstanding what you're
21 asking.

22 Q Maybe I'm just asking bad questions because we're on
23 day 17 or something. I guess, my point is when you interview
24 someone, you want to make sure that, say, they're not under
25 the influence of anything, right? That they're not high when

1 you're talking to them?

2 A Well, I have no control over that. Either they are
3 or thorough not. I -- I can't -- I interview people. If they
4 are, then that's taken into consideration. If they're not,
5 then that's taken into consideration.

6 Q Okay. Do you receive any training on, I guess,
7 valid Miranda waivers? What constitutes --

8 MR. DiGIACOMO: Objection. Relevance.

9 MS. McNEILL: Well, I'll go somewhere else.

10 THE COURT: Okay. Are you going to withdraw the
11 question?

12 MS. McNEILL: Yes.

13 THE COURT: Okay.

14 BY MS. McNEILL:

15 Q Would you agree with me that somebody who's under
16 the influence of a controlled substance may not give as
17 accurate information to you as someone who isn't under the
18 influence?

19 A It is possible. It would entirely depend on that
20 individual and their -- their ability to function under that
21 kind of environment.

22 Q Okay. Would you agree with me that perhaps someone
23 who is in a lot of pain may also not be as able to give
24 accurate information?

25 A I don't know if pain causes someone to lie.

1 Q Well, I'm not necessarily talking about lying. I'm
2 just talking about perception of events and whether or not
3 their information's accurate.

4 A I've never experienced anybody being in pain that
5 gave misinformation. I -- I don't know if I can say "yes" or
6 "no" to that. I've never had that. I've never seen that.

7 Q Have you had any training on -- any medical training
8 at all?

9 A Medical training?

10 Q Yeah, on treating injuries in the field; in the
11 Police Academy you get a little bit of that, right?

12 A I've had first aid training, yes.

13 Q So you have a little bit of training on people maybe
14 when they're in shock?

15 A Yes.

16 Q Okay. And you would agree with me that pain can
17 sometimes be a cause of someone going into shock?

18 A Absolutely, yes.

19 Q This interview that we just heard, was that a half
20 hour long, a little bit more?

21 A I think the total was about an hour.

22 Q Okay. This section was about 37 minutes, I think?

23 A Yes.

24 Q Okay. So Jorge Mendoza had been taken out of the
25 car at the scene, right?

1 A Yes.

2 Q He was bleeding substantially?

3 A I didn't see how much he was bleeding, but I would
4 assume that a wound like that would bleed a lot, yes.

5 Q Right. It was a gunshot wound, right?

6 A Yes.

7 Q Was taken to the hospital, right?

8 A Yes, he was.

9 Q The interview that we heard, sounds like there was a
10 lot of background noise. Would you agree with me?

11 A Yes, it's a standard problem when we're trying to do
12 a recorded interview in an emergency room, yes.

13 Q Okay. So what was all that noise? Was it other
14 officers in the room?

15 A There was another patrol officer in there. I don't
16 remember where he was. And I don't even know if he was
17 associated with this. I assume he was probably one of the
18 ones that came with him. But mainly, there was just a lot of
19 hospital personnel moving around and near us. And remember,
20 the -- it's not a room. We're actually just in an area that's
21 enclosed by a curtain is all that is.

22 So anything that happens within 20 to 30 feet is
23 going to be picked up on that recorder.

24 Q So these are medical staff sort of bustling around
25 treating traumas?

1 A Yes, yes.

2 Q And I assume there was some of those medical staff
3 treating Mr. Mendoza?

4 A No.

5 Q No. Okay. He had already been treated?

6 A Yes. We wait until the medical personnel are
7 completely done with what they're doing and he was waiting for
8 surgery so there were no medical personnel around Mr. Mendoza
9 while he talked to him.

10 Q Okay. But he was -- you said he was awaiting
11 surgery?

12 A I believe so, yes.

13 Q Okay. So at some point someone was going to come
14 get him and wheel him into an operating room?

15 A Yes.

16 Q Okay. Do you know if he had already been
17 administered any type of anesthesia?

18 A Oh, I don't imagine so. He was conscious and
19 speaking with us.

20 Q Okay. But he was under the influence of some sort
21 of pain killer, I would imagine?

22 A Well, again, I don't know what he was or wasn't
23 given. I would assume that somebody gave him some pain
24 medication, whether that was a Tylenol or something, I don't
25 know.

1 Q Did you ask anybody what they had given Mr. Mendoza
2 before you started talking to him?

3 A No, we're not allowed to know. HIPAA rules, we're
4 not allowed to know what medications or what medical things
5 are going on.

6 Q You could have asked Mr. Mendoza, correct?

7 A Yes, I could have.

8 Q Okay. You didn't do that?

9 A No, I did not.

10 Q Okay. Detective Merrick didn't ask him if he had
11 been given any pain killers?

12 A No, he did not.

13 Q Did you ask him how he was feeling?

14 A I don't believe I did.

15 MS. McNEILL: Nothing further.

16 THE COURT: Mr. Landis.

17 CROSS-EXAMINATION

18 BY MR. LANDIS:

19 Q I know this a hard question based on the time that's
20 passed. How long would you say you waited between the
21 conclusion of that first interview we heard yesterday and the
22 start of the second interview we heard today?

23 A Probably just a few minutes. Just enough to call
24 and talk to his wife.

25 Q And you guys remained close to him during those few

1 minutes, I assume, there in the hospital?

2 A I don't know what you would determine close. I was
3 without -- without -- I was outside of earshot.

4 Q Okay.

5 A I would have probably walked out in the hallway
6 because it was so noisy in there.

7 Q You mentioned that this other patrol officer, who
8 might have been in the emergency room, who may have been there
9 because of Mendoza, maybe not. A patrol unit did follow the
10 ambulance from the scene near Broadmere Street to the
11 hospital, right?

12 A I don't know if he followed or actually was inside
13 the ambulance.

14 Q One of those two, if you're comfortable saying?

15 A One of those two would have happened, yes.

16 Q Does that happen every single time an ambulance
17 transports somebody from a crime scene?

18 A Pretty much.

19 Q It doesn't matter if they're a suspect, a victim?

20 A That is correct.

21 Q And what's the purpose of that?

22 A Well, if it's a victim -- anybody that's shot at
23 that point is a victim of a gunshot wound, and we would like
24 to know if they have any statements. If they say this person
25 did it or that person did it, we want to be able to record

1 those statements.

2 Q What if you were able to obtain statements from the
3 injured person at the crime scene before they go to the
4 hospital, you know, maybe not a gunshot, such as a black eye,
5 is a patrol officer still going to follow to the hospital?

6 A I'm sorry, you'll have to ask that again.

7 Q Sure. What if you guys are able to take statements
8 from the injured person at the crime scene before the hospital
9 trip, do you still have somebody, a patrol officer, follow the
10 person to the hospital?

11 A Yes.

12 Q And what's the purpose of that?

13 A Again, because there's an injured victim been going
14 -- going to the hospital. So there's somebody that escorts
15 them.

16 Q Okay. And in this case, eventually, you arrested
17 Mr. Mendoza?

18 A I did not.

19 Q Who did?

20 A I don't know. I'm assuming a warrant was issued for
21 his arrest.

22 Q On his booking sheet, you're listed as the arresting
23 officer?

24 A That's possible.

25 Q But that doesn't mean you were the arresting

1 officer?

2 A Well, I did the paperwork. It would have been just
3 sent in. I would have just written out the paperwork. As far
4 as going and placing handcuffs on somebody and placing them in
5 custody, I did not do that.

6 Q Did you fill out his booking sheet, do you recall?

7 A If my signature's on it, yes. Well, it would depend
8 on where my signature's at as well.

9 MR. LANDIS: May I approach the witness?

10 THE COURT: Yes.

11 THE WITNESS: This is not my signature.

12 BY MR. LANDIS:

13 Q Any of the handwriting on the form?

14 A No, none of this handwriting is my handwriting.

15 Q Somebody forged your signature is what you're
16 saying?

17 A No, somebody printed my name.

18 Q What's that next to your printed name?

19 A That is not my signature.

20 Q Sure.

21 A So another -- clearly another detective filled out
22 the paperwork on my behalf.

23 Q Do you recognize that signature as belonging to
24 another detective?

25 A No, I don't recognize the signature. Well, I

1 wouldn't recognize signatures from other detectives either. I
2 don't see those on a regular basis.

3 Q Not even Detective Jensen's?

4 A No. Well, I can -- I think that's not -- I don't
5 think that's Detective Jensen's signature.

6 Q That form, you've seen them before and I'm sure
7 you've filled them out before. Not that particular form, but
8 booking sheets at Clark County, right?

9 A Yes, many times.

10 Q Sometimes people are booked into Clark County
11 Detention Center even though they're not physically being
12 booked into Clark County Detention Center, correct?

13 A Yes, do you mean booking in absentia?

14 Q Right.

15 A Yes.

16 Q That's a term that's used for that kind of
17 circumstance, yes?

18 A Yes, it is.

19 Q And that's how Mendoza was booked in this case, yes?

20 A More than likely, yes.

21 Q And can we assume that he would have been booked in
22 when he was still at CCDC?

23 THE COURT: At CCDC?

24 THE WITNESS: I don't understand.

25 BY MR. LANDIS:

1 Q At UMC, I'm sorry.

2 A It's possible. There's a facility or a room in the
3 hospital where inmates go. It's possible that after he was
4 treated and he would have gone to that area.

5 Q Yesterday, when Mr. DiGiacomo was talking to you,
6 you guys were talking a little bit about the lack of Miranda
7 warnings on that first interview we heard, yes? Do you
8 remember those questions?

9 A I don't remember the questions.

10 Q He asked you if he was under arrest at the time.

11 A And he was not.

12 Q And I think he followed up and asked is that why you
13 didn't give Miranda, something like that?

14 A That would be one of the reasons, yes.

15 Q And I just want to clarify that a little bit, and
16 I'm not trying to have you give legal opinions up here, but
17 arrest and custody are different things, right?

18 A I don't think so. I think they're the same thing,
19 aren't they?

20 Q Well, let me say this; if somebody's in that
21 situation, arrest, custody, do you have to give Miranda
22 warnings in your view?

23 MR. DiGIACOMO: Objection. Calls for a legal
24 opinion.

25 MR. LANDIS: It follows up from his questions where

1 he asked him on direct yesterday why you didn't give Miranda
2 warnings. I can't follow up? I don't think that's fair.

3 THE COURT: Overruled. I'll let him. This is his
4 understanding you're asking?

5 MR. LANDIS: Yes, very much so.

6 THE COURT: All right. Okay.

7 BY MR. LANDIS:

8 Q Somebody's in arrest or in custody, meaning,
9 whatever they mean to you, do you need to give Miranda
10 warnings as an officer if you're going to talk to them?

11 A My understanding of Miranda is that if an individual
12 is in my custody -- in custody, and I'm asking interrogatory
13 type questions, I must read Miranda.

14 Q And at a minimum would you view custody as meaning
15 they're not free to leave?

16 A Well, I made it very clear in my interview that he
17 was not under arrest.

18 Q Sure. I guess, does custody mean something beyond
19 arrest to you, or no?

20 A Well, he was not in my custody. I had not placed
21 him under arrest. I'm not sure I -- it's almost like you're
22 splitting hairs. I did not arrest him. He was not in my
23 custody.

24 Q Let me ask you this, if he -- could he have ended
25 the interview halfway through that first one and left the

1 hospital? Would you have allowed that?

2 A Well, I don't think he was going to get up and walk
3 on a busted femur, but --

4 Q Yeah. Correct.

5 A -- he could have stopped the interview at any time
6 he wanted to.

7 Q And could he also then leave the hospital without
8 you guys stopping him?

9 A Part way through the middle, probably not. He
10 probably would have been detained.

11 Q How about ten seconds before you start the first
12 interview?

13 A Oh, absolutely he could have.

14 Q He could have?

15 A Oh, absolutely.

16 Q That first interview ended, I think, we heard on the
17 recording at 00:11 hours; do you recall that?

18 A Ended? Yes.

19 Q And what would that mean as far as time?

20 A Well, that's 12:11 in the morning.

21 Q So we're now into the 22nd of September?

22 A I'm sorry, that would be 1:11 in the morning.

23 Q On September 22nd?

24 A Yes.

25 Q And that interview was somewhere around, again,

1 talking about the first interview, 18 minutes? Does that
2 sound true? A little under?

3 A Actually, I just know the interview total was about
4 an hour. I don't know how it was bifurcated.

5 MR. LANDIS: Stipulated we bring it up, either one,
6 the length of the first interview?

7 MR. DiGIACOMO: I can bring it up. I know that at
8 the end of -- or grab the transcript, we can do it from that.

9 MR. LANDIS: It doesn't have a time that it starts.

10 MR. DiGIACOMO: Yeah, but it has the time the first
11 one ends. The other one's 37 minutes, so we could figure it
12 out. If you had the transcript -- do we have 334? I can
13 stipulate to the time it started and the time it ended. I
14 just need 334 to do it.

15 (Mr. Landis/Mr. DiGiacomo conferring)

16 MR. DiGIACOMO: If you give me a minute, I can pull
17 it up and drag it down. I just don't know the answer to the
18 question. So here, I'll put it on mute so we don't have to
19 listen to it again.

20 MR. LANDIS: I apologize.

21 MR. DiGIACOMO: That's all right. I just don't know
22 the answer to the question. Looks like it's a little over 18
23 minutes.

24 MR. LANDIS: By stipulation?

25 MR. DiGIACOMO: Yeah. By stipulation, it is 17

1 minutes and 56 seconds. So it's a little less than 18
2 minutes.

3 BY MR. LANDIS:

4 Q So we can assume that interview started around 11:53
5 p.m. on the 21st of September?

6 A I may have misspoken. I'm a little confused in
7 military time since I've never served in the military. If
8 it's 00:11 hours, it -- I believe, that is going to be 24 --
9 or midnight, around midnight.

10 Q 11 minutes past midnight?

11 A Yes, so I apologize.

12 Q Subtracting roughly 18 minutes from that, that puts
13 us around 11:53 p.m. on the 21st that that interview starts?

14 A I guess it does.

15 Q At least according to his booking paper, he was
16 arrested at 11:30 p.m. on September 21st?

17 A Yes, that's what the booking paper says.

18 MR. LANDIS: I have no further questions.

19 THE COURT: Redirect?

20 MR. DiGIACOMO: Only to clear that up, and I just
21 don't know if this is in here.

22 REDIRECT EXAMINATION

23 BY MR. DiGIACOMO:

24 Q So, page 18 of 334. Detective, at page 18 of 334,
25 the first paragraph you put the time you end that first

1 interview; is that correct?

2 A That is correct.

3 Q And the time 23:24 means what?

4 A That's 11:24 in the evening, p.m.

5 Q You did the first one at 11:24. Your second one is
6 about 37 minutes and ends at 11:00. So there's a short period
7 of time between the two statements, correct?

8 A That's correct.

9 MR. DiGIACOMO: Nothing further.

10 RECROSS-EXAMINATION

11 BY MR. LANDIS:

12 Q Don't you also list a time at the end of the first
13 interview?

14 MR. DiGIACOMO: That is the end of the first
15 interview.

16 MR. LANDIS: Not in my transcript, but I'll pass the
17 witness. I don't have any recross.

18 MR. WOLFBRANDT: No. No more.

19 THE COURT: Anything further for this witness?

20 MR. DiGIACOMO: Not from the State.

21 THE COURT: Thank you very much for your testimony.
22 You're excused. All right. Counsel approach.

23 (Off-record bench conference)

24 THE COURT: Ladies and gentlemen, so we're talking
25 about scheduling here. And we did work for the two hours that

1 I said, on the jury instructions. They're not quite complete
2 yet, and we're concerned about making you wait while we
3 finish. We were wondering if I can get another judge, if I
4 can find another judge to take over my drug court in the
5 morning, would you be able to come in in the morning and we
6 can make up the time that we're -- so we don't have to start
7 at 1:30. Is there another 80 people in drug court tomorrow?

8 Is there anyone who can't? Okay. We've got one.
9 Okay. Wait a minute, wait. Microphone.

10 JUROR NO. 12: Thad Simmons.

11 THE COURT: Yes, sir.

12 JUROR NO. 12: I have a tutoring appointment at my
13 school from 8:00 o'clock until 9:00 o'clock tomorrow morning.
14 I can be here by 9:15 to 9:30, just depending on traffic.

15 THE COURT: Okay. That's better than a poke in the
16 eye with a sharp stick, as my father would say. Okay.

17 JUROR NO. 2: Jasmine White, No. 276. I normally
18 work in the mornings from at least until 11:00 with the
19 clients. Because I normally schedule -- if we're going to be
20 in court from like 1:00 to 5:00, I take in my clients from the
21 morning until on.

22 THE COURT: I can't -- I'm sorry, it's been too
23 long. I can't remember what your job is.

24 JUROR NO. 2: I'm a nail technician. I own a nail
25 salon.

1 THE COURT: Okay. So you could -- do you have --
2 what do you have tomorrow? Do you have walk-ins or you have
3 appointments?

4 JUROR NO. 2: I have appointments.

5 THE COURT: So you could call those people and move
6 them tonight? I mean, if we don't do that, I'm concerned.
7 Now, I can't -- I've got to find a judge. But I'm just saying
8 if I can make this happen, it's a possibility. So what I want
9 to do is let you take a recess the next 15 minutes so I can
10 scramble around and see if I can find a volunteer. All right?

11 So, ladies and gentlemen, during this recess, it is
12 your duty not to converse among yourselves or with anyone else
13 on any subject connected with the trial or read, watch or
14 listen to any report of or commentary on the trial by any
15 person connected with the trial or by any medium of
16 information, including without limitation, newspaper,
17 television, radio or Internet. And you are not to form or
18 express an opinion on any subject connected with this case
19 until it's finally submitted to you. 15 minutes.

20 THE MARSHAL: All rise for the jury.

21 (Court recessed at 3:53 p.m. until 4:22 p.m.)

22 (In the presence of the jury)

23 THE COURT: We're back on the record in the presence
24 of the jury, and I found someone to cover my drug court
25 calendar. So now we're just trying to accommodate Jasmine,

1 Juror No. 2. Jasmine White. When's your --

2 JUROR NO. 2: My appointments are at 9:00 and 10:30.
3 One of my clients was able to reschedule, but the other one,
4 she's going out of town so she'll probably just have to go to
5 another nail salon. I'll just miss out on some money.

6 THE COURT: Is that your 10:30?

7 JUROR NO. 2: Yes.

8 THE COURT: I was going to say we could accommodate
9 the 9:00 o'clock, but I need you here, you know, I think by
10 1:30. I mean, you can't start a nail appointment at 10:30.
11 We need to start no later than 11:00 so -- I mean, you could
12 do 9:00 o'clock gal right?

13 JUROR NO. 2: Yes.

14 THE COURT: Okay. When will you be done with her?

15 JUROR NO. 2: It's probably an hour so about 10:30.
16 Yeah.

17 THE COURT: Be done by 10:30?

18 JUROR NO. 2: Yes.

19 THE COURT: And you can get -- you can't be late,
20 okay?

21 JUROR NO. 2: Okay.

22 THE COURT: Are you pretty fast?

23 JUROR NO. 2: Yes, I am, actually.

24 THE COURT: Okay.

25 JUROR NO. 2: Yes.

1 THE COURT: All right. So that ought to work then
2 if everybody's here by 11:00 o'clock. We can start rolling
3 then. And then we'll order lunch for you and we'll try and go
4 right through. We'll -- jury instructions, lunch, and then as
5 soon as you're done, we can go into argument. Okay. So that
6 will be the plan.

7 All right. So ladies and gentlemen, we're taking on
8 overnight recess. And during this recess, it is your duty not
9 to converse among yourselves or with anyone else on any
10 subject connected with the trial or read, watch or listen to
11 any report of or commentary on the trial by any person
12 connected with the trial or by any medium of information,
13 including without limitation, newspaper, television, radio or
14 Internet. You are not to form or express an opinion on any
15 subject connected with this case until it's finally submitted
16 to you. So, I'll see you at 11:00.

17 THE MARSHAL: All rise for the jury, please.

18 (Jury recessed at 4:25 p.m.)

19 THE COURT: All right. And the jury's departed
20 courtroom. So let's see, we're off -- let's go off the
21 record --

22 (Court recessed at 4:25 p.m. until 4:30 p.m.)

23 (Outside the presence of the jury)

24 THE COURT: All right. We're back on the record.
25 We're outside the presence of the jury. The defendants are

1 still present with their respective counsel. Chief Deputies
2 District Attorney prosecuting the case and all officers of the
3 court are present.

4 And now, there's something Mr. DiGiacomo, you wanted
5 to put on the record?

6 MR. DiGIACOMO: Yes. Yesterday when I left, I had
7 ask your court recorder to give me a copy of Barry Jensen's
8 testimony so I could see whether or not the questions asked
9 were specific as to, did you ever give Gabriel Sotelo a
10 benefit, because I don't remember him being asked that way.

11 I also had Detective Jensen come to my office so
12 that I could talk to him. And when I said to him, you know,
13 the defense asked you, he goes yeah, they did, and I can tell
14 you, I didn't give him any benefit.

15 And so then I started talking to him about the fact
16 that there's the thing with Judge Smith, and I went back and
17 started looking at the records, because I this I it was
18 represented to the Court yesterday on the record that on
19 October 29th, there was a phone call from Doug Smith to Chris
20 Lee, and that's the same date that orders were issued in this
21 case.

22 There -- orders were issued on October 29th, by
23 Judge -- actually, I don't even know what Judge it is, but
24 there's October 29th. The call, according to the records that
25 I looked at, was on October 31st.

1 Moreover, Detective Jensen said, even if there was a
2 possibility I called and got Gabriel Sotelo out of jail,
3 certainly, I have never, ever, when I've gotten somebody out
4 of jail, gone down to the jail and walked them out, and I
5 certainly didn't do it 13 days after I took the statement from
6 Mr. Sotelo.

7 And, in fact, I took the statement from Mr. Sotelo,
8 he drove us to those residences, and I personally have not
9 seen Mr. Sotelo until he called me when he got a subpoena for
10 this case.

11 I just wanted to make sure the record was clear; I
12 don't think it has any legal movement other than the
13 accusation that potentially Detective Jensen was lying and I
14 didn't feel the need and I don't feel the need to put
15 Detective Jensen up there to say that Gabriel Sotelo might
16 possibly be telling lies about stuff.

17 But I also didn't want the record to be left
18 unanswered as to whether or not Detective Jensen did or did
19 not give a benefit to Mr. Sotelo, and I'll live it at that.

20 MR. LANDIS: A couple things, and I'm just going to
21 -- I don't have them here today, about you I'll just move them
22 into evidence as court's exhibits, for the record.

23 The Minutes from North Las Vegas that referenced
24 that Doug Smith communication, they speak for themselves. The
25 entry date of the minutes is 10/31, but it references a 10/29

1 event, and that's what it does.

2 I'll also move in court order signed by Judge Smith,
3 like I said, but at that time.

4 THE COURT: A court order signed by Judge Smith to
5 get somebody out of jail.

6 MR. DiGIACOMO: No, they're pen registered --

7 MR. LANDIS: Unrelated to Sotelo.

8 MR. DiGIACOMO: -- signed by Detective Jensen.

9 MR. LANDIS: Signed by Judge Smith --

10 MR. DiGIACOMO: And Detective Jensen.

11 MR. LANDIS: -- in this case around that time
12 involving evidence procured, not Sotelo.

13 MR. DiGIACOMO: Right. There's a court order for
14 the phone records for --

15 THE COURT: Oh.

16 MR. DiGIACOMO: -- various people. And I would note
17 also that the day that allegedly he gets Mr. Sotelo out of
18 jail, he's already talked to Figueroa and found out that
19 Mr. Sotelo has lied to him about a number of relevant things,
20 so I don't know that there was a motivation.

21 The records I provided to the defense previously as
22 to when Mr. Sotelo got taken into custody, he's clearly
23 providing information in that case related to Manny Barientos
24 and allegedly he committed that crime, not him, as well as, he
25 admitted on the stand that he was providing information on a

1 lot of crimes to more than just Detective Jensen.

2 And so is there a possibility that some cop got him
3 out of jail? Yes. But Detective Jensen does not believe it
4 was him. And, you know, we could leave the record as it is.
5 I don't know how relevant it is, but just I didn't want that
6 to go unanswered.

7 MR. LANDIS: I mean, truthfully, I'll move in those
8 documents. I don't think what he says or what I say really
9 matters as far as the record's concerned on this issue.

10 THE COURT: Well, I can understand why you'd want to
11 make a record and that's fine. Do you have the things you
12 want marked as court exhibits?

13 MR. LANDIS: I didn't bring them today. I had them
14 during my cross yesterday, but I'll bring those tomorrow.

15 THE COURT: Okay. Let's -- as soon as bring them,
16 let's note that -- so what will be the next in order?

17 THE CLERK: For defense or court?

18 THE COURT: Court. Court exhibits here.

19 THE CLERK: I think it's -- I put it away. I think
20 it's 10 though.

21 MR. LANDIS: So it would be two or we can make it
22 one or two, one being the -- just North Las Vegas Minutes and
23 the second one being court orders.

24 THE COURT: Okay.

25 THE CLERK: So, 10-A and 10-B?

1 MR. LANDIS: Or 10, 11, whatever you want.
2 Whatever's easier for you.

3 THE CLERK: Okay.

4 THE COURT: All right. Okay. Now, anything else
5 that needs to be on the record? Can we go off the record?

6 MR. LANDIS: No.

7 MR. DiGIACOMO: Yeah, we can go off the record now.

8 THE COURT: Okay. All right.

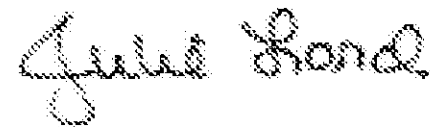
9 (Court recessed at 4:35 p.m. until Thursday,
10 October 6, 2016, at 9:52 a.m.)

11 * * * * *

12 ATTEST: I hereby certify that I have truly and correctly
13 transcribed the audio/visual proceedings in the above-entitled
14 case to the best of my ability.

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JULIE LORD, INDEPENDENT TRANSCRIBER

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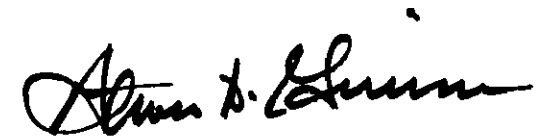
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-15-303991-1
	.	CASE NO. C-15-303991-4
Plaintiff,	.	CASE NO. C-15-303991-5
	.	
vs.	.	DEPT. V
	.	
JORGE MENDOZA,	.	TRANSCRIPT OF
DAVID MURPHY, a/k/a	.	PROCEEDINGS
DAVID MARK MURPHY,	.	
JOSEPH LAGUNA, a/k/a	.	
JOEY LAGUNA,	.	
Defendants.	.	
.	

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 18

THURSDAY, OCTOBER 6, 2016

APPEARANCES:

FOR THE STATE:	MARC P. DiGIACOMO, ESQ. AGNES M. LEXIS, ESQ.
FOR DEFENDANT MENDOZA:	WILLIAM L. WOLFBRANDT, ESQ.
FOR DEFENDANT MURPHY:	CASEY A. LANDIS, ESQ.
FOR DEFENDANT LAGUNA	MONIQUE A. McNEILL, ESQ.

COURT RECORDER:

LARA CORCORAN
District Court

TRANSCRIPTION BY:

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INDEX

STATE'S CLOSING ARGUMENT BY MS. LEXIS.. . . .	27
DEFENDANT MENDOZA'S CLOSING ARGUMENT BY MR. WOLFBRANDT. . .	67
DEFENDANT LAGUNA'S CLOSING ARGUMENT BY MS. McNEILL. . . .	81
DEFENDANT MURPHY'S CLOSING ARGUMENT BY MR. LANDIS.. . . .	100

1 LAS VEGAS, NEVADA, THURSDAY, OCTOBER 6, 2016, 9:52 A.M.

2 (Outside the presence of the jury)

3 THE COURT: All right. We are back on the record.
4 We are outside the presence of the jury. The defendants are
5 also not present as we put the jury instructions on the
6 record. And now all three counsel, however, for the defense
7 is present, as well as the two Chief Deputy District Attorneys
8 and all officers of the court.

9 And so are counsel familiar with the Court's
10 proposed Jury Instructions Numbers 1 through 58?

11 MR. DiGIACOMO: Yes, Your Honor.

12 MS. McNEILL: Yes, Your Honor.

13 MR. WOLFBRANDT: Yes.

14 THE COURT: Mr. Wolfbrandt?

15 MR. WOLFBRANDT: I said, yes.

16 THE COURT: Okay. I didn't hear you, I'm sorry.
17 And does the State have any additional instructions to
18 propose?

19 MR. DiGIACOMO: No, Your Honor.

20 MS. LEXIS: No, Your Honor.

21 THE COURT: Does the -- does Defendant Mendoza have
22 any objection to the giving of any of these instructions?

23 MR. WOLFBRANDT: No.

24 THE COURT: And does Defendant Murphy have any
25 objection to the giving any of these instructions?

1 MR. LANDIS: In terms of proposed, but not given
2 instructions. I don't know if you were asking that question
3 as well.

4 THE COURT: Yes, I will. I will ask that next.

5 MR. LANDIS: Oh, I didn't know if they were -- yeah.
6 As to these, not of the current instructions, no.

7 THE COURT: And then as to Defendant Laguna?

8 MS. McNEILL: No, Your Honor.

9 THE COURT: All right. Now, does the defendant have
10 -- Defendant Mendoza have any additional instructions to
11 propose?

12 MR. WOLFBRANDT: Yes.

13 THE COURT: Okay.

14 MR. WOLFBRANDT: I believe you have the set of them
15 up there, the self-defense instructions.

16 THE COURT: All right. Well, I don't know which
17 ones they are so, I mean, I have some, but I don't know if
18 these are the ones that you're proposing.

19 MR. WOLFBRANDT: I'm going to go through them here.
20 And do we want to identify these like with letters A, B, C?

21 THE COURT: Yes. Well, I can mark them, but I just
22 need to know first where they are. Why don't you approach and
23 see if these that I'm holding in my hand are the same ones or
24 do you have a copy to give me?

25 MR. WOLFBRANDT: I've got -- I've got a set here,

1 too.

2 THE COURT: Is that your only set? All right, let's
3 go off the record for a minute.

4 (Off the record at 9:54 a.m. until 10:01 a.m.)

5 (Outside the presence of the jury)

6 THE COURT: All right. So we're back on the record,
7 same status, we're outside the presence of the jury. And now
8 I have in my hand the seven instructions that Defendant
9 Mendoza wishes to offer, and the Court has indicated that it's
10 not going to give, but these are the self-defense
11 instructions.

12 So Mr. Wolfbrandt, would you like to state for the
13 record why you believe that the Court should give them?

14 MR. WOLFBRANDT: Yes. I think these were required
15 in this case. The way I elicited the testimony and the whole
16 theory of my defense was that the killing in this case was not
17 a product of the Felony Murder Rule, and that the underlying
18 felonies qualified for the Felony Murder Rule, specifically
19 the burglary, the home invasion and the attempt robbery had
20 been completed by the time Mr. Mendoza had turned from the
21 door and was escaping the area.

22 And that, you know, through his testimony, as he was
23 leaving the area, in his mind, he was posing no threat to
24 anybody. He was just trying to get away. He heard some other
25 shots, and a lot of the lay witnesses, the neighbors that

1 called 911, they call described two distinct sets of shots.
2 There was the first set and then there was a time gap and then
3 there was another set of shots.

4 And it was our contention that the second set of
5 shots occurred when Mr. Mendoza was -- was well into the
6 street, you know, where his blood trail started. And that as
7 he testified, he then saw -- he heard a shot, he looked back
8 at the house, and then he saw Monty Gibson and Joey Larsen at
9 that front doorway area leaning around that pillar that's in
10 front of the doorway, and he saw Joey Larsen had a gun with
11 him.

12 Having already heard a shot, he then in self-defense
13 returned fire and that would be the time that Monty Gibson got
14 shot in the head and died. And that that shooting was -- was
15 -- at least to Mr. Mendoza, was in an act of self-defense.
16 The State's argued that the -- I recognize that the
17 instruction -- I don't know offhand which one it is -- the
18 instruction on conspiracy is that the conspiracy's not
19 complete until all of the perpetrators escape the area or just
20 effectuate their escape.

21 My contention is that -- is that Mendoza had escaped
22 because he was away from the house. He was no longer a threat
23 to that house and he was on his way down the street and but
24 for him not having a good leg, he would have been run -- gone
25 out of the neighborhood just like the other individuals. So I

1 think that we still should be entitled to our theory of
2 defense and that the self-defense instruction should have been
3 given.

4 THE COURT: All right. And the State's response?

5 MR. DiGIACOMO: Thank you. Judge, I don't disagree
6 with Mr. Wolfbrandt that he can argue that the robbery was
7 complete. It's what happens after that argument as a matter
8 of law. And I see this like a summary judgment motion. The
9 question is, is as a matter of law, if the robbery is
10 complete, can Mr. Mendoza fire his weapon at the homeowners
11 that he's just shot at as they come to look out their door,
12 whether they're holding a weapon or not? The answer is, no.

13 He does not have the right to create the situation
14 that occurred in this case and then say, because I'm injured,
15 I'm allowed to shoot. He doesn't like the answer that -- you
16 know, if that situation occurs and the homeowners decided to
17 shoot him, they'd be justified in doing so. But the law of
18 self-defense is very specific about when it is you can and
19 cannot use self-defense, and the law does not allow it to
20 happen there.

21 Moreover, the problem for Mr. Mendoza is that there
22 is a second degree Felony Murder Rule, which says if you're
23 still engaged within the felonious intent when the killing
24 occurs, that crime is second degree murder no matter what your
25 reason is. I recognize his motivation, at least his claimed

1 motivation was self-preservation. That does not mean that the
2 law justifies his use of deadly force. So, I believe,
3 Mr. Wolfbrandt can argue that robbery was complete and thus,
4 my client didn't premeditate and deliberate his crime so it's
5 in the first degree felony murder, and it's not premeditated
6 and deliberate murder.

7 And if he does so, then he can argue to the jury
8 that it's second degree murder. He cannot argue as a matter
9 of law under the instructions in Runyon (phonetic) under the
10 second degree Felony Murder Rule, under any sort of analysis
11 of a law school exam of self-defense in application to facts,
12 there is not a single fact presented by Mr. Mendoza to say,
13 one, I communicated to the individuals in that house that I
14 was no longer a threat, and I was -- I dropped my weapon and I
15 put my hands up and I said, I surrender, I surrender and they
16 started shooting at me and then I crawled over and I got the
17 weapon and then I returned fire.

18 Maybe if he had said something like that, we'd have
19 a different argument here. But Mr. Mendoza's claim is, I was
20 shot, I hear more shooting, I look up, I see the homeowner.
21 The homeowner has a weapon. He doesn't say the weapon's
22 pointed at him. Just, he has a weapon, and I decide I'm going
23 to shoot at them and I wind up killing somebody. That is not
24 self-defense as a matter of law, and the Court should not
25 instruct on it.

1 THE COURT: And that's why the Court said it would
2 not give the self-defense instructions. And so these will be
3 marked as a group as, offered but not given, by the Court.

4 MR. WOLFBRANDT: And just lastly, it was my
5 position, too, that it was for the jury to determine whether
6 or not the conspiracy was still ongoing as they apply the
7 instructions that the Court's going to give to the facts that
8 they heard. So --

9 THE COURT: Well, yeah, but that doesn't --

10 MR. WOLFBRANDT: -- it's our contention that it
11 wasn't a matter of law. That it's -- it's up to the jury to
12 determine whether there was still an ongoing felony, namely,
13 the conspiracy to commit robbery.

14 THE COURT: I don't think that that's the State's
15 entire argument. They're saying you can't, as a matter of
16 law, create the situation that causes -- you know, you can't
17 start a gun fight and then say, well, I shot this person in
18 self defense, unless, as Mr. DiGiacomo stated, there's been a
19 definite break where he's indicated to the person, well, you
20 know, I am no longer a threat. I'm surrendering, I'm done.
21 You know, I'm not going to hurt you. And then the person came
22 up and, you know, wag go to shoot him and then he had
23 self-defense.

24 But we didn't have that kind of argument from --

25 MR. WOLFBRANDT: Well, he didn't -- you know, he

1 didn't wave his hands and yell at them, I give up, you know,
2 for sure. But it's our contention it's still for the jury to
3 decide based on his behavior and him trying to extricate
4 himself from the scene, from that area, that he was giving up.
5 So that's just my contention that that's still for a jury to
6 decide that it's not a matter of law that he didn't
7 extricate himself from the conspiracy or from -- you know, and
8 from the robbery at all. So that's just my argument. You've
9 rule against it --

10 THE COURT: Right.

11 MR. WOLFBRANDT: -- so.

12 THE COURT: Okay.

13 MR. WOLFBRANDT: Okay.

14 THE COURT: And as to Mr. Murphy, are there any
15 additional instructions the defense would like to propose?

16 MR. LANDIS: There were, and if -- it's nothing
17 beyond what we talked about yesterday, but I submitted them at
18 least for e-filing last night.

19 THE COURT: Oh, okay.

20 MR. LANDIS: I can also move in a hard copy if you
21 want.

22 THE COURT: Yes. We -- well, let me ask the Clerk.
23 If he's e-filed them, is that sufficient?

24 THE CLERK: I don't know. I would imagine it's in
25 the file.

1 MR. LANDIS: All right, I'm --

2 THE CLERK: Is it titled?

3 MR. LANDIS: Yeah, Defendant's Proposed.

4 THE COURT: It has a caption on it and what is it
5 titled?

6 MR. LANDIS: Defendant's Proposed Jury Instructions.

7 THE COURT: Okay.

8 THE CLERK: The one I put in will say, Proposed and
9 Not Given. I don't know if that makes a difference.

10 MR. LANDIS: If you guys want to -- I'm comfortable
11 that I'll be okay. But if you want me to hard file them, I'm
12 happy to do that.

13 THE CLERK: That's fine, I think.

14 THE COURT: Well, let's do a hard copy, too.

15 MR. LANDIS: Of course.

16 THE COURT: Just --

17 MR. LANDIS: I only have one.

18 THE COURT: All right. So go ahead and tell me how
19 many instructions are there?

20 THE CLERK: Yeah, I can print them and (inaudible).

21 MR. LANDIS: Seven total.

22 THE CLERK: Okay.

23 THE COURT: And do you want to -- no record has been
24 made as to what they are --

25 MR. LANDIS: Correct.

1 THE COURT: -- yet and so go ahead and --

2 MR. LANDIS: The first five in sequential order,
3 they're all voluntary manslaughter instructions, as well as
4 the deliberation between murders and voluntary manslaughter.

5 It's my position, at least, that based on the open
6 murder charge that's a lesser included offense, that the Court
7 has an obligation to grant the defense, and that's why those
8 instructions are provided.

9 THE COURT: Okay. And the State's position on that?

10 MR. DiGIACOMO: Yes. The law is very clear that
11 there has to be some evidence of provocation for it to be an
12 issue in the case. Otherwise, it's not a lesser included,
13 certainly, because the element of provocation that is required
14 and there's been no evidence of that, and it's nobody's theory
15 of the case. Those two elements have to be there to get the
16 voluntary. It's a theory of the case and there's some
17 evidence to support it.

18 And thus, in a murder case, I recognize the other
19 lesser included stuff. But in a murder case, the case law's
20 absolutely clear that you don't instruct on voluntary unless
21 there's some evidence to support it.

22 THE COURT: And that was the Court's belief as well,
23 which is why I said I wasn't going to give those because, of
24 course, those instructions go on quite -- at some length about
25 provocation and heat of passion and all of those things, and

1 there was certainly no evidence of that. And, of course,
2 Mr. Murphy's defense is that he wasn't there and didn't
3 participate in this crime at all so.

4 MR. LANDIS: I am leaning that way for closing. I
5 am leaning that way. The sixth one, second to last, is the
6 circumstantial evidence, two reasonable interpretations, if
7 that is fair enough.

8 It starts with, "Before you may rely on
9 circumstantial evidence to conclude." That's an instruction
10 that the Nevada Supreme Court has held a Court can give, a
11 Court cannot give. This Court chose not to give it, I think,
12 because other instructions kind of encompassed a better
13 definition or at least an accurate definition.

14 THE COURT: Correct. We have an instruction that
15 talks about what is circumstantial, what is direct, and how
16 the jury may treat those, you know, different types of
17 evidence and the whole, you know, benefit of the doubt issue
18 and all of that is really, to me, infringes upon the probable
19 cause -- or proof beyond a reasonable doubt definition and
20 that's why I generally don't give that type of instruction.

21 MR. LANDIS: Sorry. Does the State want
22 (inaudible)?

23 MR. DiGIACOMO: Just that in addition to that, when
24 Bales (phonetic) talks about it can be very confusing for a
25 jury in a case where the entire case is not circumstantial

1 evidence. And thus, in this case, there is at least two
2 witnesses that give direct testimony as to what happened at
3 the residence at the time the crime occurred as well as to
4 other time periods, and thus, so it's not a simply
5 circumstantial case.

6 THE COURT: That's correct as well.

7 MR. LANDIS: And then the last one, which is seventh
8 sequentially reads, "It is not a crime if an act was done
9 through misfortune or by accident when it appears that there
10 was no evil design, intention, or culpable negligence," and
11 that's a direct quote from 194 -- NRS 194.010, which is just a
12 statute that applies to criminal law in general. It doesn't
13 apply to a specific crime.

14 Since it's an accurate statement of Nevada law, I
15 thought it was fair to give it.

16 THE COURT: State's response?

17 MR. DiGIACOMO: I mean, there's a lot of accurate
18 law we could give. It just -- there was no direction as to
19 how it is it would be relevant in this case and we don't
20 instruct on irrelevant areas of the law. And thus --

21 THE COURT: That's -- and I agreed with that, and
22 that's why I said I would not give it. Although, of course,
23 it's a correct statement of law, just not applicable or
24 relevant to this particular case.

25 MR. LANDIS: May I approach the clerk?

1 THE COURT: Yes, you may. Thank you very much.

2 (Mr. Landis/Clerk conferring)

3 THE COURT: So those, likewise, will be marked as,
4 proposed but not given. And let's see, and the State had no
5 additional instructions to propose?

6 MR. DiGIACOMO: No, not from the State.

7 THE COURT: Okay. And then Ms. -- because I wasn't
8 sure I had asked you that. And for Mr. Laguna, did you have
9 any additional instructions to propose?

10 MS. McNEILL: I did not, Your Honor. The ones that
11 I proposed, I think, we came to an agreement with the State so
12 there were none that I wanted that I didn't get so.

13 THE COURT: Okay. So all of the ones that you had
14 originally proposed are now incorporated in 1 through 58,
15 correct?

16 MS. McNEILL: Yes, Your Honor. I would note that I
17 did -- I would join in Mr. Landis's request on the on the
18 voluntary manslaughter -- I'm sorry, I should stand up. On
19 the voluntary manslaughter instruction. I would join in that.
20 But otherwise, on behalf of Mr. Laguna, there were no
21 instructions.

22 THE COURT: Okay. So you would have been asking for
23 that same set of instructions on voluntary manslaughter?

24 MS. McNEILL: Yes, Your Honor.

25 THE COURT: Okay. That will be noted for the

1 record.

2 MR. WOLFBRANDT: And Mr. Mendoza would join in that
3 as well.

4 THE COURT: All right. That will be noted as well.
5 And do counsel, I presume, request that the Court instruct the
6 jury before closing argument?

7 MS. McNEILL: Yes, Your Honor.

8 MR. LANDIS: Yes.

9 MR. WOLFBRANDT: Yes.

10 MR. LANDIS: Yes, please.

11 THE COURT: All right. We will do that. Thank you.
12 So we'll go off the record.

13 (Court recessed at 10:15 a.m. until 11:22 a.m.)

14 (Outside the presence of the jury)

15 THE COURT: We're on the record outside the presence
16 of the jury. The three defendants are present with their
17 respective counsel. The Chief Deputies District Attorney
18 prosecuting the case are present, as are all officers of the
19 court.

20 And apparently, there has now been a stipulation
21 between all counsel that if, in fact, the jury comes back with
22 first degree murder, that rather than have the jury do --
23 decide the penalty, that the parties are stipulating that the
24 State will not seek life without. And so that the option
25 would be life without (sic) or the definite term of years.

1 That the Court would decide that, and the Court has already
2 indicated to the parties that it acquiesces in that agreement
3 that, I think, that that would be appropriate having heard at
4 this point at least all the facts.

5 MR. LANDIS: Can I interrupt? I'm so sorry.

6 THE COURT: Yes.

7 MR. LANDIS: I think you might have misspoke and
8 said the options will be life without.

9 THE COURT: Oh, I did.

10 MS. McNEILL: You did, right.

11 THE COURT: Yes, I did. Thank you for correcting
12 that. Life with, or a definite term of years. Is that the
13 stipulation, and are you also planning on reducing it to
14 writing as well?

15 MR. LANDIS: Yes.

16 MR. DiGIACOMO: We're in the process of reducing it
17 and I assume before we argue, we can have it signed off on,
18 but I don't think we should hold up instructing.

19 THE COURT: No. Okay. All right, is that --

20 MR. WOLFBRANDT: That's our understanding.

21 THE COURT: And Ms. McNeill, is that correct?

22 MS. McNEILL: Yes, Your Honor.

23 MR. LANDIS: Yes.

24 THE COURT: All right. And, of course, the
25 defendants are all present, and my understanding is they've

1 all been consulted and all have agreed; is that right
2 Mr. Mendoza?

3 DEFENDANT MENDOZA: Yes.

4 THE COURT: Mr. Laguna?

5 DEFENDANT LAGUNA: Yes.

6 THE COURT: Mr. Murphy?

7 DEFENDANT MURPHY: Yes.

8 THE COURT: Thank you very much, gentlemen. All
9 right. Are we then ready to bring the jury in?

10 MS. McNEILL: Yes, Your Honor.

11 MS. LEXIS: Yes.

12 THE COURT: All right. Let's do it.

13 (Off the record at 11:24 a.m. until 11:25 a.m.)

14 (In the presence of the jury)

15 THE MARSHAL: Your Honor, all 12 members of the jury
16 and the 3 alternates are present.

17 THE COURT: Thank you. And please be seated. And
18 the record will reflect that we have now been joined by all 12
19 members of the jury, as well as the 3 alternates. Good
20 morning, ladies and gentlemen.

21 THE JURY: Good morning.

22 THE COURT: So, ladies and gentlemen, I'm about to
23 instruct you upon the law in this case as it applies to the
24 fact that you will determine, and I'm going to instruct you by
25 reading you these jury instructions.

1 Of course, I'd like to do it more informally, but
2 these jury instructions were carefully crafted with -- between
3 the Court and the lawyers, and so it's necessary for me to
4 read to you these carefully prepared written instructions.
5 And of course, they're somewhat lengthy. There are 58
6 instructions, and so don't worry about trying to take notes.
7 You will have these with you when you go back to the jury
8 deliberation room. So rather than trying to take notes, it's
9 better to just listen as I read them to you.

10 (THE COURT READS JURY INSTRUCTIONS TO THE JURY)

11 THE COURT: So, ladies and gentlemen, I told you
12 yesterday that I would have ordered lunch for you. So we've
13 done that. We're going to take you back to the jury
14 deliberation room for the purpose of you eating lunch over the
15 next half an hour.

16 And you are not, of course, to discuss this case in
17 any way because it's not over. So you may talk about other
18 things, but you may not discuss any aspect of this case.

19 So ladies and gentlemen, during your lunch recess,
20 you are not to discuss this case among yourselves or talk to
21 each other about it or confer in any way. You're subject to
22 the same admonition that I have read to you each time, that it
23 is your duty not to converse among yourselves or with anyone
24 else on any subject connected with the trial, or to read,
25 watch or listen to any report of or commentary on the trial by

1 any person connected with the trial or by any medium of
2 information, including, without limitation, newspaper,
3 television, radio or Internet. And you are not to form or
4 express an opinion on any subject connected with the case
5 until it's finally submitted to you. Marshal?

6 THE MARSHAL: All rise for the jury.

7 (Jury recessed at 12:26 p.m.)

8 THE COURT: And the record will reflect that the
9 jury has departed the courtroom. Any matters outside the
10 presence?

11 MR. DiGIACOMO: Just a couple of things, Judge. One
12 is the we'll have the written stip here probably within the
13 half hour and -- or we can send it to your JEA, maybe she can
14 print it for us because we're not going to go back to the
15 other building.

16 THE COURT: Sure.

17 MR. DiGIACOMO: Two --

18 MR. LANDIS: Sorry.

19 MR. DiGIACOMO: -- I think Mr. Landis was going to
20 mark as a court exhibits, and I don't know that we ever -- did
21 we ever make a record about Barry Jensen? Yesterday, it was
22 off the record or was it on the record?

23 MS. McNEILL: It was on the record.

24 MR. LANDIS: No, it was on the record.

25 MR. DiGIACOMO: It was on the record? Okay. Three,

1 is this, and I have struggled with this for, well, since
2 Mr. Mendoza got up on Friday, and I've talked to as many
3 people as I could talk to, and it struck me as you were
4 reading it, why it is they're saying what they're saying.

5 I am never going to argue that Mr. Mendoza
6 establishes the corroboration of Mr. Figueroa. But yesterday,
7 we all kept talking about how he's an accomplice, and he's not
8 because the definition of accomplice is liable to the offenses
9 for which the defendant is on trial. In this case would be
10 the defendants on trial.

11 He's a defendant on trial, ergo, by definition he is
12 not an accomplice, thus, I'm not going to argue this to the
13 jury. I don't think that it's necessary one way or the other.
14 I just don't want the co-defendants to be saying, he's an
15 accomplice, he has to be corroborated. I believe, that that's
16 not true and would suggest to them that he has motives to lie
17 that any other defendant wouldn't have, which isn't true
18 either.

19 So I would just -- would like to make that request
20 that they not be allowed to argue he's an accomplice, and I
21 will agree and Ms. Lexis will agree that we won't argue he's
22 the corroboration to an accomplice.

23 MR. LANDIS: I'm not going to agree to that. I
24 don't agree with the premise of what they're saying. Number
25 two, I think the timing of it is too late. I think we have

1 every right to argue he's an accomplice under the
2 instructions.

3 I think we've talked about it collectively as we've
4 went through things in this case, and we've all been on the
5 same mindset, based on what I've heard, which is, you know,
6 it's up for the jury to decide, it's arguable.

7 For him to now say he wants a legal ruling that bans
8 us -- that forces this Court to ban us from arguing that to
9 the jury, I don't think's fair, and I also don't it's a
10 correct application of the law. I don't think there's one
11 case that directly holds that. I haven't researched it
12 because I didn't know this was coming, but I don't think
13 there's a little basis to restrict our argument in that
14 regard.

15 MS. McNEILL: And I would agree with Mr. Landis.
16 And maybe I misheard Mr. DiGiacomo it he end where he was
17 saying that, you know, he's not going to argue that his
18 testimony corroborates the other accomplices, and I understand
19 that, but it sounded like he was also saying and we can't say
20 that his testimony is subject to some sort of credibility.

21 I mean, he's subject to -- he chose to take the
22 stand, and if I want to call him a liar and say he needs to be
23 corroborated just like the other -- you know, Mendoza or
24 Figueroa or Summer Larsen, I think I'm allowed to argue that.
25 I think --

1 MR. DiGIACOMO: Well, I'm not sure she can argue
2 he's a liar. I don't think any of us could say that, but I
3 think if they start to say he has to be corroborated just like
4 Mr. Figueroa, I'm going to object, and I expect that the Court
5 would sustain that as, even under this definition, he is as
6 the defendant on trial. It's one trial. There's no like,
7 hey, he's an accomplice. And why we struggled with those
8 instructions yesterday is because we were only reading the
9 first half of the instruction, which is, it is defined as one
10 who's liable for prosecution, but the identical offense
11 charged against the defendant on trial.

12 They're the defendants on trial. He's not the
13 accomplice. He's a defendant on trial.

14 MR. LANDIS: I mean, based on his argument, if these
15 trials were severed, and I'm not trying to bring up severance,
16 but just to prove my point, if the trials were severed and he
17 testified without a negotiation from the State --

18 MS. McNEILL: Right.

19 MS. LEXIS: -- this would be a different outcome,
20 that's impossible. And that seems to be what he's saying
21 because he's part of this trial, my argument's different than
22 if they were severed and that cannot be the state of the law.

23 MS. McNEILL: Right.

24 THE COURT: Okay.

25 MR. DiGIACOMO: Well, I --

1 THE COURT: So let me just say what my understanding
2 of it is. An accomplice is somebody who could be charged for
3 the same crime. Could be liable for the same crime as the
4 defendant that's on trial. And whether that's together.

5 So if he testified in severed trials or in a joint
6 trial, it's the same. I think he is an accomplice, and that
7 testimony by any accomplice, that has to be set aside, and
8 then there has to be evidence which tends to connect the
9 defendants to the crime. And so that --

10 MR. DiGIACOMO: Look, I --

11 THE COURT: -- that's my understanding.

12 MR. DiGIACOMO: -- accept that that's the Court's
13 ruling. I was just trying in my mind think what if Figueroa
14 and Summer Larsen did not testify, and now we are giving jury
15 instructions, would there be an accomplice instruction? The
16 answer is no, there wouldn't be.

17 THE COURT: I believe so.

18 MR. DiGIACOMO: There's absolutely no case out there
19 that ever says that this applies to anybody other than
20 somebody who's testifying sort of on behalf of State. This is
21 a defendant in a co-defendant case. I don't -- that's what
22 I'm saying is like I'm not going to argue that he isn't
23 corroborative. I don't think that they can argue he's an
24 accomplice and has some sort of motive to lie independent of
25 being a defendant who's hoping to get a not guilty.

1 THE COURT: I feel like we're talking about how many
2 angels can dance on the head of a pin. If you're saying
3 you're not going to argue it -- argue that his testimony is
4 the corroboration, I think --

5 MR. DiGIACOMO: Correct.

6 THE COURT: -- we're fine. And but I don't think
7 that they can't testify, hey -- or they can't argue that you
8 can't consider his testimony as corroboration.

9 MR. DiGIACOMO: Oh, I don't -- I mean, yeah, I mean
10 what I'm suggesting is that they can't argue that he has some
11 motive like some of those accomplice instructions are about --

12 THE COURT: A deal or --

13 MR. DiGIACOMO: Yeah, right, like, he wants some
14 sort of leniency for the State so that's the reason he told
15 the story up there, or he wants this. They'd have to have
16 some evidence of that and there isn't any.

17 MS. McNEILL: Well, I --

18 THE COURT: I think that they can argue he would
19 have any kind of motive. I suppose, they could argue that he
20 did this in hopes that at sentencing you'll be nicer to him,
21 you know.

22 MR. DiGIACOMO: He could argue that.

23 THE COURT: I don't -- yeah. So --

24 MS. McNEILL: I think his testimony is up for fair
25 comment by us.

1 THE COURT: Yeah.

2 MR. LANDIS: I'll concede this, though, I have no
3 intent to argue the State's going to give him a deal at the
4 end of this trial and that's what --

5 MS. McNEILL: No.

6 MR. LANDIS: I mean, that's --

7 MS. McNEILL: Yeah, there's no evidence.

8 MR. LANDIS: I understand that. I'm not going to
9 argue that.

10 MR. DiGIACOMO: No.

11 THE COURT: All right. Anything else?

12 MR. DiGIACOMO: No.

13 THE COURT: Thank you.

14 (Court recessed at 12:33 p.m. until 1:26 p.m.)

15 (In the presence of the jury)

16 THE MARSHAL: Your Honor, all 12 members of the jury
17 and the alternates are present.

18 THE COURT: Thank you. Please be seated. The
19 record will reflect the presence of all three defendants with
20 their respective counsel, the Chief Deputies District Attorney
21 prosecuting the case, all 12 members of the jury and the 3
22 alternates as well as all officers of the court. And ladies
23 and gentlemen, you'll now hear closing arguments. And the
24 State has the burden of proof so they both open and close the
25 final arguments. Ms. Lexis?

1 MS. LEXIS: Thank you, Your Honor.

2 STATE'S CLOSING ARGUMENT

3 MS. LEXIS: Good afternoon, ladies and gentlemen of
4 the jury. On September 21st, 2014, Jorge Mendoza, Robert
5 Figueroa, Joey Laguna and David Murphy started the day with
6 really bad intentions. Those bad intentions became a plan.
7 It's a plan that they put into action. It's a plan that ended
8 very tragically for Monty Gibson.

9 Joey Larsen and Monty Gibson could not have known
10 that as they went about their daily life that particular day
11 that four armed men had come up with a plan to invade their
12 home and rob them.

13 In every criminal case, the State must prove two
14 things; that crimes were committed and that the defendants
15 sitting right there committed those crimes.

16 In this particular case, there are a lot of
17 different charges the defendants are facing. They include
18 burglary while in possession of a deadly weapon, home invasion
19 while in possession of a deadly weapon, attempt robbery with
20 use of a deadly weapon, both for Monty Gibson and Joey Larsen,
21 conspiracy to commit robbery, attempt murder with use of a
22 deadly weapon and murder with use of a deadly weapon.

23 We're going to talk about the charges that are in
24 white first. The purpose of this particular closing argument
25 is for the State to have the opportunity to go over the jury

1 instructions and then to explain the evidence as they've come
2 in and to ask you to apply the law to the evidence that you've
3 heard.

4 So that's what we're going to do. And we're going
5 to start out with something easy, okay?

6 A deadly weapon. As you've seen, a lot of the --
7 all of the charges in the indictment involve a deadly weapon.
8 So let's get that out of the way.

9 "A deadly weapon is any instrument, if used in the
10 ordinary manner, contemplated by its design and construction
11 will or likely" -- "is likely to cause substantial bodily harm
12 under" -- "or under the circumstances in which it is used or
13 attempted to be used is readily capable of causing substantial
14 bodily harm or death."

15 A firearm, you're instructed, is a deadly weapon.
16 And in this particular case you've heard evidence of a 9
17 millimeter rifle being used, a .40 caliber Ruger being in the
18 possession of Mr. Figueroa and also a .38 snub nose revolver
19 in the possession of Mr. Laguna. Okay.

20 You also know that Monty Gibson was killed due to
21 two gunshot wounds; one in the chest and one in the head. So
22 we can get that out of the way right now, okay? If you are to
23 find them guilty of any of the charges, the verdict for that
24 particular charge should include the use of a deadly weapon.

25 One of the other charges is home invasion.

1 Basically, you have an instruction that tells you what it is.
2 It is a forceful entry into an inhabited home or dwelling.
3 And force has to be used. So what kind of evidence do we have
4 that there was a forceful entry into this particular home,
5 1661 Broadmere?

6 Well, you have part of the door frame on the ground
7 next to Mr. Gibson's dead body, and you have proof of forced
8 entry on the door. Okay. So you have proof that a home
9 invasion was, in fact, committed.

10 Burglary is also charged. And burglary just means
11 when any person enters into a house with the intent to commit
12 larceny, robbery and/or murder is guilty of burglary. You
13 don't need force like you do with a home invasion. With
14 burglary, it's the intent that's important.

15 So, "The intention with which an entry was made is a
16 question of fact, which may be inferred from the defendant's
17 conduct and all other circumstances disclosed by the
18 evidence." Okay, because very seldom can you have direct
19 proof of a person's intent. You know, what they mean -- what
20 they were meaning to do when they did something.

21 So you as jurors, you're going to be allowed to make
22 inferences depending on the defendant's conduct and also other
23 circumstances. For instance, in this particular case, what
24 was the intention when they made entry into the home? Armed
25 with a rifle, a Ruger, snub nose revolver, mask over their

1 face, breaking the door open.

2 Well, it doesn't take, you know, a rocket scientist
3 to figure out that they weren't supposed to be there, and they
4 were forcing their way in there to do something bad like rob
5 the homeowners.

6 "It is not necessary that the State prove a
7 defendant actually committed a larceny, robbery or murder
8 inside the house after he entered in order for you to find him
9 guilty of burglary." Again, "The gist of the crime of
10 burglary is the unlawful entry with criminal intent."

11 "Therefore, a burglary was committed if a defendant
12 entered the home with the intent to commit a larceny, a
13 robbery, or a murder regardless of whether or not that crime
14 actually committed." So it's done once entry is made with
15 that intent.

16 So again, we have proof in this particular case that
17 entry was made. There's damage to the door. Mr. Figueroa's
18 tooth is found on the carpet. You have a cartridge casing
19 found very near Mr. Gibson's body inside of the home as well
20 as cartridge cases immediately after. You have testimony to
21 consider, testimony that defendants, at least two of them,
22 made entry into the home. So the cartridge case was from that
23 9 millimeter rifle.

24 The other charge that we're going to discuss is the
25 attempt robbery. An attempt, as Judge Ellsworth has already

1 read, is basically you need three things; an intent to commit
2 the crime, the performance of such an act towards its
3 commission, and the failure to consummate its commission.

4 In this particular case, as we're discussing
5 attempt, it relates to the robbery. We know they attempted to
6 rob them of anything, but you haven't heard evidence of them
7 actually being successful in doing so. Nothing was taken as
8 far as we've proven. That's why it's an attempt robbery.

9 So what is robbery? "Robbery is the unlawful taking
10 of the personal property from the person of another by means
11 of force or violence or fear of injury, immediate or future,
12 to his person or to another -- to a member of his family. The
13 force or fear must be used to obtain or retain possession of
14 the property to prevent or overcome resistance to the taking
15 of the property or to facilitate escape of the property."

16 So I think it's fair to say now that you've listened
17 to two-and-a-half weeks of testimony that there's not much
18 dispute that the crimes that we just talked about were
19 committed, right? 1661 Broadmere, people came in, forcefully
20 came in armed, masked up. We know that people went in there
21 with the intent to take something forcefully from the
22 homeowners.

23 We know that there was an attempted robbery, okay?
24 That much isn't in dispute. What is in dispute, though, is
25 whether or not the defendants sitting right there, whether

1 they committed those crimes. And that's what we're going to
2 talk about now.

3 So far what you have evidence of is this, okay; we
4 have one person who obtained information or who came up with a
5 plan, okay, and a plan to do something unlawful. That person
6 who came up with that plan pretty much got his friends or
7 other people who he thought would be willing to participate in
8 this plan.

9 So just like every kind of robbery checklist, you
10 know, you come up with a plan, then you get somebodies to help
11 you, okay. Because crimes are so much easier to complete
12 successfully when you have other people helping. Right? When
13 you delegate and you designate roles. Hey, I'm the one that's
14 going to run in and grab the duffel bag while you wait in the
15 truck so we can load up all that stuff in the truck.

16 And your girlfriend, she's going to drive the other
17 getaway car because there's not enough room in the trunk.
18 Okay. Conspiracies, aid, or aiders and abettors, plans are so
19 much easier to complete successfully when you have more than
20 one person.

21 What else did they get? Well, they got all the
22 other things that they would need to commit this particular
23 crime, in this case, the home invasion, the burglary and the
24 robbery. You get masks, you get gloves, you have weapons, and
25 of course, a getaway car.

1 We know that crimes were committed. We know because
2 Monty Gibson was found dead in the doorway of 1661 Broadmere.
3 We know shots were fired inside the residence, and we know
4 that shots were fired into the residence.

5 There are different ways that a defendant can be
6 found guilty, and those are called theories of liability. A
7 defendant could have directly committed the crime, as in this
8 case, Mr. Mendoza, who directly shot the rifle and killed
9 Monty Gibson.

10 Another way a defendant can be found guilty is if
11 they aid and abet someone who is also committing an unlawful,
12 felonious act. And a defendant can also be found guilty if he
13 or she acted pursuant to a conspiracy. And we're going to go
14 through these.

15 Let's start out with a conspiracy, okay? What is
16 it? Well, "A conspiracy is an agreement between two or more
17 people for an unlawful purpose. To be guilty of a conspiracy,
18 a defendant must intend to commit or to aid in the commission
19 of a specific crime agreed to. The crime is the agreement to
20 do something unlawful. It does not matter whether it's
21 successful or not." Okay?

22 So just because they were not successful in getting
23 or robbing this particular house or Mr. Larsen or Mr. Gibson
24 does not mean that the conspiracy didn't exist. Okay? It
25 doesn't have to be successful. But the key to a conspiracy is

1 that there was an agreement to do something unlawful.

2 So what's a co-conspirator? Well, it's a person who
3 knowingly does any act to further the object of a conspiracy
4 or otherwise participates therein. A co-conspirator is
5 criminally liable as a conspirator or that person who does
6 that is criminally liable as a conspirator.

7 "Every member of a criminal conspiracy is liable for
8 each act and bound by each declaration of every other member
9 of the conspiracy if the act or the declaration is in
10 furtherance of the object of the conspiracy. The act of one
11 conspirator pursuant to or in furtherance of the common design
12 of the conspiracy is the act of all conspirators," okay?

13 So the gist of a conspiracy is, the act of one is
14 the act of all. How is it that the State, Mr. DiGiacomo and
15 I, can prove a conspiracy? I mean, it is not necessary in
16 proving a conspiracy so show a meeting of the alleged
17 conspirators or the making of an express or formal agreement.
18 Because let's face it, people who plan to do something bad or
19 to commit a crime are not going to put -- are not going to
20 enter into a contract, you know, where hey, I'm going to do
21 this so you do this and now we're bound by each other. Okay?
22 Very seldom does that happen.

23 And so what we're asking the jury and when you're
24 allowed to do is you can consider and make inferences from all
25 of the circumstances tending to show a common intent, right?

1 We don't have a print screen function for our brains. You
2 know, right as you're doing something, you can't say hey, you
3 know, what was it that you were thinking? We don't videotape
4 how our minds work or what we are intending to do. But as
5 jurors you can use your common sense to make inferences from
6 the circumstances tending to show a common intent.

7 So again, criminal intent can be inferred. Okay?
8 You are instructed that presence, companionship and conduct
9 before, during and after the offense are circumstances from
10 which one's participation in the criminal intent may be
11 inferred. So these are things that you can consider; their
12 presence, companionship, conduct before, during and after the
13 offense.

14 The instruction actually says, "A conspiracy is
15 seldom susceptible of direct prove and is usually established
16 by inference from the conduct of the parties." Have you ever
17 heard that saying, actions speak louder than words? Well,
18 that's what this is. You can make inferences from the conduct
19 of the parties.

20 In particular, "A conspiracy may be supported by a
21 coordinated series of acts in furtherance of the underlying
22 offense sufficient to infer the existence of an agreement."
23 Coordinated series of acts.

24 When does a conspiracy end? Well, it doesn't end
25 once the crime -- or once the -- a crime is completed. Okay?

1 For instance, when they invaded the home and that was the
2 object of the conspiracy, that's what they meant to do, the
3 conspiracy doesn't end there. A conspiracy goes on until the
4 co-conspirators have successfully gotten away and concealed
5 their crime.

6 The other way a defendant can be found guilty -- so
7 now we have directly committed, we have pursuant to a
8 conspiracy, and now there's aiding and abetting. So these are
9 the different ways that you can find a defendant liable or
10 criminally responsible.

11 This is the third. It's under an aiding and
12 abetting theory. "A person aids and abets the commission of a
13 crime if he knowingly and with criminal intent aids, promotes,
14 encourages or instigates by act or advice or by act and advice
15 the commission of such crime with the intention that the crime
16 be committed."

17 So you're an aider and abettor if you help assist,
18 aid to commit a crime. "Where two or more persons are accused
19 of committing a crime together, their guilt may be established
20 without proof that each personally did every act constituting
21 the offense charged."

22 So it doesn't matter who did what. If you have a
23 group of people who are aiding and abetting each other and
24 committing a crime, it doesn't matter if one person pulls the
25 trigger, the other's the getaway driver. It doesn't matter,

1 they're equally liable.

2 And that's why State is not required to prove
3 precisely which defendant actually committed the crime and
4 which defendant aided and abetted. Okay. So it casts a wider
5 net in terms of who can be held responsible for planning to do
6 something unlawful.

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

14 Let me give you an example. So, I mean, you've
15 watch movies. A lot of times when things like this happen,
16 there's a getaway driver, okay? So say there's a group of
17 individuals who decide they're going to rob a bank. Okay?
18 One of them has a gun. The other one doesn't. The other
19 one's supposed to just provide back up. And you have a
20 getaway driver who's supposed to wait around the corner while
21 the two individuals, one armed and one not, go into the bank.
22 Okay. They come in, the person with the gun starts yelling,
23 get down on the ground. Everybody get down on the ground.

24 Okay. And they do. And during the course of that
25 robbery, a customer who has a weapon decides to be a hero,

1 pulls out the gun, and the armed robber shoots the customer.
2 They escape. The three of them, the armed robber who shot,
3 the person who acted as a back-up, as a lookout, the person
4 who acted as a getaway driver, because they aided and abetted
5 each other in committing that robbery, they're equally guilty.
6 And in that case, they're equally guilty of murder.

7 Another example. Husband decides he wants to kill
8 his wife, okay? He goes to his best friend says, hey, I'm
9 going to kill my wife. I can't get a gun, though, can I get
10 yours? And that person gives him the gun knowing exactly what
11 he intended to do with that particular gun. That person,
12 because they had knowledge of this unlawful act that was going
13 to be committed with that gun and voluntary gave it, that
14 person is also liable for the murder if the husband does, in
15 fact, kill his wife. That's aiding and abetting. That's
16 conspiracy.

17 I wanted to point this out because you have a
18 burglary charge. There's a burglary charge. It says, "When
19 two or more persons participate in the commission of a
20 burglary or home invasion and one or more of them enters the
21 structure, it is not necessary to prove the other individual
22 actually entered because one who aids and abets another in the
23 commission of a burglary or home invasion is equally guilty as
24 a principal."

25 So same theory, okay? Get away driver doesn't

1 necessarily enter the bank or in this case, the evidence will
2 show Mr. Laguna may not have entered the house. Mr. Murphy
3 may not have entered the house, but just because they didn't
4 enter doesn't mean they're not guilty of also the burglary.
5 Does that make sense?

6 So let's talk about the defendants, okay? And why
7 it is that they should be held liable for -- or they should be
8 found guilty of the charges in the indictment. The key
9 questions here for you at this point in time is going to be
10 was there a conspiracy between these four individuals? Did
11 they aid and abet each other? Did they intend to commit a
12 robbery, a home invasion and a burglary on September 21st, at
13 1661 Broadmere?

14 Mr. Figueroa was previously charged with the same
15 offenses; however, if you'll recall, he testified.
16 Mr. Figueroa as a matter of law is an accomplice, okay? An
17 accomplice is hereby defined as one who is liable for
18 prosecution for the identical offense charged against the
19 defendant on trial in the case in which the testimony of the
20 accomplice is given. And this is important because to be an
21 accomplice, the person must have aided, promoted, encouraged
22 or instigated by act or advice the commission of such offense
23 with knowledge of the unlawful purpose of the person who
24 committed the offense.

25 "The conviction shall not be had on the testimony of

1 an accomplice unless he or she is corroborated by other
2 evidence which in itself and without the aid of the testimony
3 of the accomplice tends to connect the defendant with the
4 commission of the offense."

5 "In determining whether an accomplice has been
6 corroborated, you must first assume the testimony of the
7 accomplice has been removed from the case, and then you are to
8 determine whether there's any remaining evidence which tends
9 to connect the defendant with the commission of the crime."

10 So let's do that. Let's remove Mr. Figueroa's
11 testimony and discuss the evidence. Starting from the
12 beginning. Mr. DiGiacomo went through this during opening
13 statements. At the very beginning you're left -- you have a
14 crime scene. And you know that your homeowners or the home
15 occupants are Joey Larsen and Monty Gibson. You know that
16 Joey Larsen has an estranged wife, Summer Larsen or Summer
17 Rice, and that Steve Larsen, Joey's dad helped them to get
18 this house. The lease was under his name and Summer's name.

19 So as any detective would, you get to the scene and
20 you try to figure out why this house, why these people? What
21 you also have, though, at the scene is Mr. Mendoza hiding in a
22 car one street down with a gunshot wound to the femur. And so
23 the police are wondering when is the connection between
24 Mr. Figueroa and the homeowner? They couldn't find one. What
25 is the connection, excuse me, Mr. Mendoza and Monty Gibson?

1 They couldn't find one. What's his connection to Summer Rice
2 or Summer Larsen? Couldn't find one.

3 They also find eventually, Robert Figueroa. And we
4 know he has two gunshot wounds, okay? And we know from DNA
5 and other things at the scene that he's involved. The police
6 look into a connection between Mr. Mendoza and Mr. Figueroa,
7 can't find one. Is he connected to Monty Gibson? Is he
8 connected to Joey Larsen to Summer Larsen? No.

9 Then they talk to Mr. Mendoza at the hospital
10 because at the hospital he talks about this car that he got to
11 the scene with.

12 (Portion of Jorge Mendoza's Statement playing)

13 MS. LEXIS: Okay. So you have Mr. Mendoza the night
14 of the shooting, he's interviewed by police, and he tells
15 Detective Tod Williams that his car was taken, but that there
16 was a car at the scene. Later, they connect the car by
17 speaking to Michelle Estavillo, Mr. Mendoza's mother-in-law,
18 that her daughter, Amanda Mendoza, had gotten the car from a
19 location near Mr. Laguna's house with the help of David
20 Murphy.

21 So suddenly, now you have a connection between
22 Mr. Mendoza and Mr. Murphy. Then you come to find out that
23 Mr. Murphy also has a connection to Summer Rice. They were
24 sleeping together. And during their pillow talk or their
25 conversations, Summer Larsen had mentioned the drug supplier

1 house and that Joey, or excuse me, and that David Murphy also
2 had knowledge of Joey Larsen. He had been to that house
3 before.

4 And then you have evidence of the beginning of the
5 conspiracy early, early that morning. You have cell phone
6 records. This particular slide shows Mr. Mendoza, his phone
7 pinging off of a cell tower near his house. And by as early
8 as 3:31 in the morning, Mr. Murphy and Mr. Mendoza are
9 communicating. And they continue to communicate all into an
10 hour later.

11 And by 5:05 through 5:15 a.m., David Murphy is at a
12 location, pinging off of a location, the cell tower being near
13 the 215 and Jones, where you know that's the location of the
14 drug supplier house that was the object of the robbery for
15 that particular morning.

16 And then -- so that was around 5:00 o'clock in the
17 morning -- by 6:30, Doughboy, Mr. Murphy communicates with
18 Joey Laguna, and they're communicating back and forth. This
19 shows just calls from 6:30, 6:31, and it shows brief
20 conversation, one lasting 44 seconds, the other one for a
21 minute, next one for about 34 seconds. So, they're
22 communicating.

23 This next slide shows that by 6:30, 7:24 in the
24 morning, Mr. Laguna and Mr. Murphy -- Mr. Laguna's at home and
25 he and Mr. Murphy continue to talk about 7:24. You also have

1 evidence at the scene which connects these particular
2 defendants, okay? You have testimony from Steve Larsen. You
3 also heard the 911 call made by Joey Larsen that he saw two
4 individuals come into the house. That shortly after the
5 shooting Mendoza is found at the scene shot in the leg and
6 there's a blood trail that indicates another suspect was also
7 injured or shot.

8 So at the scene, we know almost definitively that
9 there are two individuals involved in this crime, Mendoza, who
10 they find hiding in the car and the person whose blood that is
11 leaving a trail around the neighborhood. You also know or
12 there's evidence to suggest that there is a third person in
13 that particular conspiracy, or part of the crime, because
14 Mendoza's car, who he tells police he used to get to that
15 particular scene, is not found at the scene.

16 And Mendoza couldn't drive, and we know Robert
17 Figueroa didn't drive. And the apprehended suspects, again,
18 have no connection to the house or to the victims so there's
19 indication that someone identified that house or that victims
20 -- or those victims to the suspects found at the scene.

21 Detectives also knew that Mendoza's car, again, was
22 found near Mr. Laguna's residence and that the cell phone
23 records indicate that Amanda Mendoza was pinging off of
24 Mr. Laguna -- or a cell tower near Mr. Laguna's residence at
25 12:50 a.m. during the early morning hours of September 22nd.

1 So, that Monday.

2 And that her cousin, David Murphy, his cell was also
3 pinging off of a cell tower near Mr. Laguna's residence. And
4 this is, again, 12:54 in the morning so it's showing
5 connections between these two individuals who participated in
6 the crime.

7 What the evidence also showed is that Mr. Mendoza's
8 phone was left in the car. But by the time Amanda Mendoza got
9 to the car, the phone was no longer there. And the phone was
10 pinging off an area near Mr. Laguna's house. So these are
11 connections, connections between Mr. Mendoza and Mr. Laguna,
12 connections between Mr. Mendoza and Mr. Murphy. So you have a
13 connection and a relationship between the people involved in
14 this particular conspiracy.

15 Now, this was the very same phone that Mr. Mendoza
16 had used to call his wife at 6:18 that same night, about an
17 hour-and-a-half before the murder. It was the same phone that
18 he used -- or that David Murphy called him on at 6:24. Again,
19 about an hour-and-a-half before the crime. It was the same
20 phone that Mr. Mendoza used to call Mr. Figueroa at 6:42, to
21 let him know that he was outside waiting to pick him up to
22 commit that second robbery. Same phone.

23 You also have Mr. Figueroa at the scene. And we
24 know that he was shot. We know there's a bullet lodged in his
25 neck. So as you -- or as the police work through the scene

1 and work through this incident, they are beginning to see the
2 connections between the individuals, okay? At first it wasn't
3 clear how it was that Joey Laguna would have been involved.
4 Comes to find out he's friends with David Murphy and they just
5 happen to have had a lot of contact with each other that
6 particular day right before this robbery and this murder.

7 Come to find out, Mr. Laguna is actually prior
8 roommates with Mr. Figueroa. They have a connection. And --
9 well, the only connection between Mr. Figueroa and Mr. Mendoza
10 is that they're both found at the scene or they were at the
11 scene. We have evidence of them at the scene.

12 But now suddenly, the connections are a lot clearer.
13 Okay? Whereas, before you couldn't figure out why this house,
14 why these people? Now you have links in the chain pointing to
15 guilt.

16 And then we have Mr. Figueroa, okay? And now we're
17 going to discuss the evidence that shows that Mr. Figueroa
18 told the truth when he testified, and that he told the same
19 truth on October 24th, 2014, when he was first interviewed at
20 the Clark County Detention Center by detectives.

21 So during that particular interview, this was the
22 one where he had the lawyer, where he was read his Miranda
23 rights, he had the lawyer present and he told the police
24 everything. So he said he got a call from Matone early in the
25 morning that day. Matone and Doughboy or Mr. Murphy had a

1 lick lined up. Matone told him, I know you're with it.
2 Meaning, I know you're going to take part in this, I know
3 you're down for this, I know you're going to do this with me.

4 And that Doughboy was the one scoping out the stash
5 house and they were going to rob this particular stash house
6 of a significant amount of marijuana, about 100 to 200 pounds.

7 (Portion of Robert Figueroa's Recorded Statement played)

8 MS. LEXIS: And sure enough, phone records show that
9 by 6:46 a.m., early in the morning that Sunday, Robert
10 Figueroa received a phone call from Joey Laguna. And they
11 continued to make contact. They speak again for about an hour
12 and 55 -- excuse me, a minute and a 55 seconds at 6:48. And
13 at 6:56, they speak for about a minute and 43 seconds. And by
14 7:22 a.m., Mr. Mendoza is hitting off a tower near
15 Mr. Laguna's residence.

16 And the phone records also show that Robert Figueroa
17 and Joey Laguna speak again at about 7:09 a.m., and that Jorge
18 Mendoza -- excuse me, Joey Laguna talks to Mr. Figueroa again
19 at -- yeah, that's the same call. It's an incoming and an
20 outgoing, so they speak at 7:09 a.m. for about 40 seconds.

21 And that by -- between 7:00 and 7:22 a.m.,
22 Mr. Murphy is also hitting off of a tower near Mr. Laguna's
23 house. And contact continues between Mr. Figueroa and
24 Mr. Laguna, and that by 7:46 a.m. that Sunday morning,
25 Mr. Laguna's phone is ping off of a tower near

1 Mr. Figueroa's residence.

2 And that ping is recorded because Mr. Laguna makes
3 various calls to Mr. Murphy while he's in that area. So
4 Mr. Figueroa, during the same October 24th, 2014 interview,
5 talks about how Mendoza drove them to the stash house in the
6 northwest. How Doughboy was already in the area, Doughboy's
7 girlfriend got in the driver's seat of Mr. Mendoza's gold car,
8 Doughboy was in a white truck. He showed them the house and
9 their plan was they go in. Doughboy and his girlfriend are
10 the getaway drivers and here's what he says.

11 (Portion of Robert Figueroa's Recorded Statement played)

12 MS. LEXIS: And sure enough, the cell phone records,
13 the cell tower records show David Murphy's phone pinging off
14 of a cell tower located near the Jones and the 215 at about
15 8:55, 8:59 a.m.

16 And you have this as an exhibit, but Mr. Figueroa
17 identified Mr. Murphy's girlfriend, Maricella in that
18 particular exhibit as having been the one that he recruited to
19 be the getaway driver for Mendoza's car.

20 The cell phone records, cell phone tower location
21 also shows that Mr. Laguna was pinging off of a tower near the
22 location of Jones and the 215 at about 8:55 a.m., same time
23 that Mr. Murphy was pinging off of that cell tower nearby in
24 that same area.

25 (Portion of Robert Figueroa's Recorded Statement played)

1 MS. LEXIS: And sure enough, the cell phone records,
2 the tower records show that by 9:13 a.m., David Murphy is
3 pinging off of a cell tower near Mr. Laguna's house. And
4 Robert Figueroa at about 9:26 a.m. is also pinging off of a
5 tower near Mr. Laguna's house.

6 (Portion of Robert Figueroa's Recorded Statement played)

7 MS. LEXIS: And the cell phone records show that at
8 about 10:36 a.m., Mr. Mendoza's phone is pinging off of a cell
9 tower near Mr. Figueroa's residence. The cell phone records
10 show that by 2:26 p.m., Mr. Figueroa is back home. Mr. Laguna
11 by 10:40 is pinging off a cell tower near his home. And
12 Mr. Mendoza at about 4:20 -- between 4:20 and 6:00 o'clock is
13 pinging off of a tower near his own home. So they've broken
14 -- they've broken up only to meet again.

15 Mr. Laguna is still home around 7:00 o'clock, but in
16 between 6:00 -- 5:00 and 6:00, you have cell phone records
17 that you can look at that's been admitted into evidence
18 showing the consistent contact between Mr. Mendoza,
19 Mr. Murphy, Joey Laguna, Mr. Murphy, just the back and forths
20 that occurred in between this time.

21 And then the cell phone records show the pick-up.
22 Mr. Mendoza picking up Mr. Figueroa for the second robbery for
23 the nighttime robbery at 6:42 p.m., and there's a phone call
24 logged between Mr. Mendoza and Robert Figueroa presumably
25 telling him that he was waiting outside also logged.

1 By 7:29 p.m., Mr. Mendoza's cell phone is pingging
2 off of a cell tower near Mr. Laguna's house. So is David
3 Murphy's at 7:29.

4 (Portion of Robert Figueroa's Recorded Statement played)

5 MS. LEXIS: By 8:10 p.m., Joey Laguna's phone was
6 pingging off of a tower near 1661 Broadmere. By 8:06 p.m.,
7 David Murphy was pingging off of a cell tower near 1661
8 Broadmere. By 8:10 p.m., Robert Figueroa, his phone was
9 pingging off of a cell tower near 1661 Broadmere.

10 (Portion of Robert Figueroa's Recorded Statement played)

11 MS. LEXIS: So, at 8:10 p.m., which is the time of
12 the first 911 call, certainly, Mr. Figueroa is at the scene,
13 Mr. Laguna, Mr. Murphy's phones are pingging off of this scene.

14 (Portion of Robert Figueroa's Recorded Statement played)

15 MS. LEXIS: And you know from the cell phone records
16 -- you'll have an opportunity to look at them if you see fit
17 during deliberation, but as early as 8:10, Mr. Figueroa has
18 started calling Joey Laguna because at this point, he's
19 running and he's trying to find a place to hide and he's
20 trying to find a ride out of there.

21 (Portion of Robert Figueroa's Recorded Statement played)

22 MS. LEXIS: The phone records show that Mr. Figueroa
23 immediately after being shot, as he has found a place to hide,
24 does, in fact, go into panic mode and he pretty much starts
25 calling everybody he knows. And he finds a place to hide

1 right there off of Shifting Winds where the blood trail ends
2 and then he hops a couple of walls and ends up at a vacant
3 house to the east of that particular house that he was hiding
4 at.

5 (Portion of Robert Figueroa's Recorded Statement played)

6 MS. LEXIS: So immediately after the shooting, we
7 know that Figueroa is hiding, Mendoza's shot -- I mean,
8 Figueroa's shot, too, but he's hiding. Mendoza's shot and we
9 have two individuals in the car that are unaccounted for. The
10 cell phone records show that by 9:09 p.m., Mr. Laguna is at
11 home. By 12:50 a.m., Amanda Mendoza, Mr. Mendoza's wife, is
12 pinging off of a cell tower near Mr. Laguna's house, and you
13 know from Michelle Estavillo's testimony that Amanda went to
14 pick up this car, and that David Murphy, who's also pinging in
15 that same location, took her there.

16 And that Amanda is home at the 1219 Westlund address
17 by 1:19 a.m., shortly before detectives made contact with her
18 to ask her about her husband and the whereabouts of the car or
19 how is it is that that gold car got in the garage.

20 During opening statements, Mr. Laguna's attorney
21 talked to you about an individual by the name of Emanuel
22 Barrientos and how this particular individual, who goes by the
23 name of Manny, is the individual who committed the crime with
24 Mr. Figueroa. Basically, alleging that Mr. Figueroa just
25 named the wrong people.

1 During the course of trial, we've established that
2 Mr. Barrientos, his cell phone number, as give to the police,
3 was 702-542-8981. We've established, and Mr. Figueroa told
4 you during his testimony that Mr. Barrientos was one of the
5 individuals he called while he was hiding during that eight to
6 ten hour window, and that the phone records do support this.
7 By 8:37, or as early as 8:28 going down all the way to 10:11,
8 we have phone calls by Mr. Figueroa, not only to Mr. Laguna,
9 but also to the 542-8981 number.

10 But what's particularly important is that during the
11 course of trial it was established that that phone number, the
12 8981 number, was registered or belonged -- the account
13 belonged to an individual by the name of Maria Sandoval. And
14 the phone records indicate that Mr. Barrientos or Manny was on
15 completely the other side of town, nowhere near the crime
16 scene from 6:54 a.m. through 8:30 p.m. or 8:29 p.m.

17 Now, a lot has been made of the cell phone records,
18 okay. And the argument is, at least by defense counsel is
19 that just because those cell phones were pinging off of those
20 particular towers doesn't mean that their particular
21 defendants were present at the scene. Okay? But here's what
22 you can use the cell phone records for, okay? It establishes
23 contact between co-conspirators between the key times. If you
24 look at it, it shows contact before, during and after the
25 crime.

1 If you look at it, it shows the locations of the
2 phones in the same area throughout the day. And it shows the
3 presence and companionship and conduct of the individuals
4 charged and those who testified. But most importantly, it
5 shows that coordinated series of acts that your jury
6 instruction tells you you can consider when determining the
7 existence of a conspiracy.

8 I mean, if you look at the phone records, it is
9 consistent contact going as early as 10:00 o'clock the night
10 before, going into the early, early morning hours of September
11 22nd, 2014. Evidence at the scene, we know that Joey Larsen
12 fired two different kinds of weapons. He fired two from the
13 .38. One goes into the house. The other one presumably is
14 still in Mr. Figueroa's neck.

15 He also fired four times out of his semi-automatic
16 weapon. The four cartridge cases are shown in this particular
17 exhibit. There's bullet impact outside showing him firing out
18 at the intruders. And there's also a bullet fragment further
19 down the road and most importantly, there is a bullet
20 recovered from Mr. Mendoza's leg that is identified as having
21 been shot from Mr. Larsen's semi-automatic weapon.

22 So it is not only about the testimony of
23 Mr. Figueroa, but you can consider all of this evidence in the
24 totality, the grand scheme of things, the entire picture, you
25 can consider the connections, the cell phone records, the

1 other testimony, the other evidence in determining whether
2 Mr. Laguna and Mr. Murphy were engaged in a conspiracy with
3 Mr. Figueroa and Mr. Mendoza.

4 The other charge that I kind of held off talking
5 about is, is the murder charge. You know that all three
6 defendants are charged with murder with use of a deadly
7 weapon. And in this particular case, the State has charged
8 what's called open murder. And open murder basically includes
9 first degree murder or second degree murder, and it's your job
10 as the jury to determine if they're guilty, whether it's
11 they're guilty of first degree murder or second degree murder.

12 Generally, Murder is the unlawful killing of a human
13 being with malice aforethought, either express or implied.
14 The unlawful killing may be affected by any of the various
15 means of which death may be occasioned. Malice can be express
16 or implied. In terms of implied malice can be implied when no
17 considerable provocation appears. Okay?

18 In this particular case, I submit to you there was
19 absolutely no provocation. Armed men stormed into this house
20 with the intention of robbing and burglarizing its residence.
21 So there was no provocation whatsoever.

22 But in terms of first degree murder, there are two
23 ways that you can arrive at a verdict of first degree murder.
24 The first is called willful premeditated and deliberate
25 murder. And this is the type of murder that more people are

1 familiar with. This is the type of murder that you hear about
2 on the news, that you see on TV shows, where someone plans and
3 you have evidence of a plan, someone obtains a weapon two days
4 before, hides, ambushes and then shoots and kills someone,
5 okay?

6 There's another type of murder, but we're going to
7 discuss that in a minute. Let's talk about premeditation
8 deliberation and willfulness first. "Murder of the first
9 degree is murder which is perpetrated by means of any kind of
10 willful, deliberate and premeditated killing. All three
11 elements, willfulness, deliberation and premeditation must be
12 proven beyond a reasonable doubt before an accused can be
13 convicted of first degree murder."

14 "Willfulness is an intent to kill. There need be no
15 appreciable space of time between the formation of the intent
16 to kill and the act of killing. Deliberation is the process
17 of determining upon a course of conduct to kill as a result of
18 thought including weighing the reasons for and against the
19 action and considering the consequences of the actions."

20 "A deliberate determination may be arrived at in a
21 very short amount of time. Premeditation is a design. A
22 determination to kill distinctly formed in the mind by the
23 time of the killing. Premeditation need not be for a day, an
24 hour or even a minute. It may be as instantaneous as
25 successive thoughts of the mind. For if the jury believes

1 from the evidence that the act constituting the killing has
2 been proceeded by and has been the result of premeditation, no
3 matter how rapidly the act follows the premeditation, it is
4 premeditated."

5 Let me give you an example of how quickly one can
6 premeditate, deliberate and intend to kill. I've lived in Las
7 Vegas since 1999, 1998. And I live on the west side of town,
8 and every morning to get to work, I drive through the
9 intersection of Sahara and Decatur. And I'm typically a late
10 person. If you ask me to be somewhere at 9:00 o'clock, I will
11 be there at 9:10.

12 And so on any given day, running late for court,
13 don't want the Judge mad at me, as I'm approaching the
14 intersection of Sahara and Charleston -- now, this is a busy
15 interaction in any given morning, okay? One of the busiest
16 intersections in the Valley.

17 And I see as I'm approaching this particular
18 intersection that the light's turning yellow. And I'm still
19 about three car lengths away. And so what do I do? Okay?
20 Hang onto the steering while, right, brace yourself, look
21 quickly at your side and front mirror, look to see behind you
22 if there's a car that's going to slam into you because if you
23 brake, they could slam into you. If you go through the
24 intersection too quickly, you could t-bone someone. You could
25 hit a pedestrian. So many things could happen, right?

1 But as quickly as you're able to do that in just
2 spontaneous successive thoughts of your mind, as I'm
3 approaching that intersection, I am weighing out the
4 decisions, okay? When I look at my rear view to see if
5 there's a car behind me, I'm weighing that decision. Should I
6 run the light or should I stop, okay? Of course, I decide to
7 run it, okay?

8 But that's how quickly premeditation can happen. As
9 much as -- the few seconds that it took me to decide to run
10 that light, that's how quickly one can form a deliberate
11 intention to kill, one can form the specific intent to kill
12 and one can premeditate a killing.

13 Again, as we've discussed previously, intent is a
14 little bit more difficult to show, okay? But you have jury
15 instructions throughout your packet that says the intent with
16 which an act is done is shown by the facts and circumstances
17 surrounding the case. So in this particular case, when
18 Mr. Mendoza picked up his rifle and fired nine times in the
19 direction of or into that house in the direction of Monty
20 Gibson and Joey Larsen, what was he intending? And did he
21 have the opportunity to form a deliberate intent to kill? Did
22 he have the opportunity to premeditate?

23 Well, I submit to you you heard from Anya Lester
24 that this is a semi-automatic weapon, one where you would need
25 to pull the trigger each time to fire. So we know while

1 Mr. Mendoza was at this scene, while he was invading this
2 home, while he was burglarizing home, while he was robbing the
3 occupants or attempting to rob the occupants, okay, he pulled
4 that trigger nine times.

5 I submit to you with each pull of that trigger, he
6 has formed the premeditation, he has formed a deliberate
7 intent to kill, and he has formed the specific willful intent
8 to kill. Bullets were recovered. The evidence at the scene,
9 and you'll have this to look at, these diagrams, show exactly
10 where it has Mr. Mendoza was firing this 9 millimeter rifle
11 into an occupied home. It's all clustered together near the
12 kitchen and the dining room area. Well, guess who was there?
13 Joey Larsen and Monty Gibson. Okay?

14 When you aim a high caliber rifle and you shoot nine
15 times towards the occupants of a house, I submit to you, that
16 is premeditated, deliberate and willful murder. The
17 defendants are also charged with the attempted murder of Joey
18 Larsen, and the same evidence that I just discussed right now
19 proved that they also had the intent to kill Joey Larsen
20 because intent can transfer. They could have wanted to shoot
21 Joey, they could have been aiming at Joey, but if they shoot
22 Monty, they're guilty nonetheless. Okay?

23 So when you fire in the direction of Joey and Monty,
24 yes, you fire into the direction of a human being, you're
25 attempting to kill them. And in the case of Monty Gibson,

1 they did kill him. Certainly, the bullet recovered from
2 Mr. Gibson's head came from -- was shot from that 9 millimeter
3 rifle.

4 I told you there were two different kinds of murder,
5 the first being deliberate, willful, premeditated murder.
6 We're going to talk about the second kind now.

7 The law says there are certain kinds of murder in
8 the first degree which carry with them conclusive evidence of
9 malice aforethought. Such that we don't have to prove malice,
10 if you find this particular type of murder.

11 This is called the Felony Murder Rule. The Felony
12 Murder Rule states that a killing which is committed in the
13 perpetration or attempted perpetration of a burglary and/or a
14 robbery and/or a home invasion is murder in the first degree.
15 The Felony Murder Rule says it does not matter if the killing
16 was intentional. It doesn't matter if the killing was
17 unintentional. It doesn't matter if it was accidental.

18 If someone is killed during the perpetration or
19 attempted perpetration or a robbery, a home invasion or a
20 burglary, it's first degree murder. The intent to perpetrate
21 or attempt to perpetrate burglary, robbery, home invasion has
22 to be proven beyond a reasonable doubt.

23 Mr. Mendoza, when he took the stand, admitted to
24 committing pretty much all of the acts, except the murder,
25 okay. His argument to you when he comes up is going to be

1 that the robbery was complete when he shot Monty Gibson.
2 Thus, he's not guilty of first degree murder because that's
3 exactly what he's going to try to do. He's going to try to
4 beat the first degree murder charge, okay?

5 But I submit to you that even if the robbery was
6 complete, Mr. Mendoza would still be guilty. Maybe instead,
7 he would be guilty of second degree murder with use of a
8 deadly weapon, but I submit to you that in no way is
9 Mr. Mendoza entitled to a not guilty verdict, even if you were
10 to believe that the robbery was already completed.

11 But there's an instruction that tells you what it is
12 you need to consider in determining whether the robbery was,
13 in fact, committed. And that is this instruction, it says,
14 "Robbery may spread over considerable and varying periods of
15 time. All matters immediately prior to and having direct
16 causal connection with the robbery as well as acts immediately
17 following it are deemed to closely connected with it as to be
18 a part of the occurrence."

19 Okay. We know that the home invasion, the burglary,
20 the attempt robbery happened very quickly. We know that there
21 was a short, short, short break. There was a two different
22 sets of gunfire, but they happened very quickly one after the
23 other.

24 This instruction tells you that based on the facts
25 and circumstances that you have heard the evidence that you've

1 heard, the robbery was not over when Mr. Mendoza pulled the
2 trigger and killed Monty Gibson, thus, he's guilty of first
3 degree murder.

4 Mr. Mendoza admitted to committing the home
5 invasion. He admitted to committing the burglary, the
6 attempted robbery, all with a deadly weapon. Okay? And
7 Mr. Wolfbrandt during opening statements told you that
8 Mr. Mendoza would essentially get on the stand and claim
9 self-defense, okay?

10 I am telling you based on the instructions that you
11 have to look at, there is no legal justification for the
12 killing of Monty Gibson. Self-defense doesn't apply here, and
13 we'll discuss that in a minute.

14 So Mr. Mendoza, as a matter of law, is guilty of
15 first degree murder with use of a deadly weapon based on his
16 testimony, based on all of the evidence that we've presented.

17 His testimony and the evidence mean there is no way
18 that he should be found not guilty. Self-defense. There's no
19 self-defense in this case. There's an instruction that tells,
20 okay? And this might seem like common sense, but this is the
21 law of the land. "One who commits or attempts to commit a
22 burglary, robbery or home invasion armed with deadly force and
23 attempts to kill or kills the intended victim or another when
24 the victim responds with force to the robbery attempt may not
25 avail himself of a defense of self-defense." Okay?

1 In this particular case, these defendants were
2 unlucky. Not as unlucky as Mr. Gibson, okay? But the
3 homeowners decided to respond with force to this home
4 invasion. They decided to respond with force to the burglary
5 and to the attempt robbery, okay? But just because they do
6 that, just because a homeowner responded with force, doesn't
7 mean that the home invaders, armed with guns, doesn't mean
8 they can avail themselves to self-defense.

9 In fact, in other words, if the person who kills or
10 attempts to kill was committing an act inherently dangerous to
11 human life with felonious intent during the course of a
12 burglary, robbery or home invasion, or as the natural and
13 probable consequence of a conspiracy, the person may not rely
14 upon self-defense. And that's exactly what we have here.

15 You have four individuals committing an act so
16 inherently dangerous to human life. They know they're going
17 into an occupied home. It's not nighttime, they're armed,
18 they're masked. Mr. Mendoza told you when he testified, he
19 had his finger on the trigger when he entered.

20 Individuals who commit an act that dangerous may not
21 avail themselves to the defense of self-defense. Mr. Mendoza,
22 when he testified, said something to the effect of, you know,
23 he felt his life was in danger and that the -- you know, that
24 the robbery was over. He was trying to plea, okay.

25 But I submit to you these facts, okay? We know that

1 at some point Mr. Mendoza was in the front or near the street
2 area of 1661 Broadmere, okay. And while he was claiming that
3 the robbery was over or while he was claiming that he felt
4 like his life was in eminent danger, he was still masked and
5 he was still armed with that 9 millimeter rifle.

6 And we know that that rifle still had bullets in it
7 because we found three cartridge cases outside on the street,
8 which he fired. The evidence showed Mr. Mendoza, at no point
9 in time did he try to remove himself from this conspiracy. Or
10 at no time did he tell anyone who was out there, particularly
11 the homeowners that he was victimizing, at no time did
12 Mr. Mendoza voice that he was done with this crime. Okay?

13 He didn't yell help. He didn't say I'm sorry, don't
14 shoot me. And certainly, he didn't let go of the still loaded
15 weapon and certainly, he didn't get rid of that mask. So the
16 argument that the robbery was over or that he was somehow
17 entitled to some kind of self-defense, one, is not legally
18 supported, and two, is not supported by the evidence.

19 So what about Doughboy and Matone, right? Mendoza
20 admitted to pulling the trigger. So what about them? Well,
21 let me suggest this to you; if it was anyone other than
22 Doughboy, why would Mendoza implicate his cousin? If it was
23 anyone other than Mr. Laguna or Matone, why would Mendoza
24 blame him?

25 We also have evidence that at least in terms of the

1 weapons that we recovered, Mr. Mendoza was armed and
2 Mr. Figueroa was armed. But certainly, we don't have
3 independent evidence that Mr. Murphy himself had a weapon or
4 that we didn't recover Mr. Laguna's weapon, okay? Does that
5 matter? No.

6 Because if more than one person commits a crime and
7 one of them uses a deadly weapon in the commission of that
8 crime, each may be convicted of using the deadly weapon even
9 though he did not personally use the weapon himself.

10 An unarmed offender uses a deadly when the unarmed
11 offender is liable for the offense, another person liable to
12 the offense is armed, and the unarmed intruder or offender had
13 knowledge of the use of a deadly weapon.

14 So the question is, did Mr. Murphy and Mr. Laguna
15 have knowledge of this weapon? Yes. Are they liable? Yes.
16 Under conspiracy aiding and abetting theory. Yes. Were the
17 other people that they were with armed? Yes. So they are
18 also, despite not being able to put actual guns in their
19 hands, they're also guilty of having the deadly weapon for all
20 of those charges.

21 What about the murder? Murder in the first degree
22 is a specific intent crime. A defendant cannot be liable
23 under conspiracy and/or aiding and abetting theory for first
24 degree murder for acts committed by co-conspirator unless the
25 defendant also had the premeditated and deliberate specific

1 intent to kill and/or the intent to commit a robbery and/or
2 burglary and/or home invasion. And that's why we went through
3 the analysis of conspiracy, aiding and abetting for the
4 burglary, for the home invasion and for the attempt robbery,
5 okay?

6 Because the bottom line is this, if you find that
7 Mendoza, Murphy and Laguna aided and abetted each other and
8 Mr. Figueroa to burglarize, invade and/or rob Joey Larsen and
9 Monty Gibson with the intent that those crimes be committed,
10 each of those men sitting right there is guilty of all of the
11 charges, including first degree murder.

12 The bottom line is if you find that Mendoza, Murphy
13 and Laguna conspired with each other and Figueroa to
14 burglarize, invade, rob Joey Larsen or Monty Gibson with the
15 intent that those crimes being committed, each person is
16 guilty of all charges, including first degree murder with use
17 of a deadly weapon.

18 The rationale or the reasoning for the Felony Murder
19 Rule is sound. Basically, it's kind of a strict liability
20 offense, okay? And I submit to you that the reason for the
21 existence of the Felony Murder Rule, the rule that says if
22 someone is killed during the perpetration or attempted
23 perpetration of a home invasion, burglary or robbery, it's
24 first degree murder no matter what, the reason for that is to
25 make sure that no one who had a hand in the death of Monty

1 Gibson is able to escape the consequences and the
2 responsibility for their actions.

3 Their bad intentions, Mr. Mendoza, Mr. Laguna,
4 Mr. Murphy's bad intentions brought into a plan, set into
5 motion, killing Mr. Gibson, that makes them all guilty of all
6 charges, but in particular, murder in the first degree. And
7 we'll ask you to find them guilty of such. Thank you.

8 THE COURT: Okay, ladies and gentlemen, we're going
9 to be hearing the defense closing arguments and we're going to
10 be starting with Mr. Wolfbrandt, but before we do that, do you
11 need a bathroom break? Yes, I'm seeing nods of the head.

12 Okay. So ladies and gentlemen, we're going to take
13 a ten minute -- 10 to 15 minute recess, however long it takes
14 you to finish. And during this recess, it is your duty not to
15 converse among yourselves or with anyone else on any subject
16 connected with the trial or read, watch or listen to any
17 report of commentary on the trial by any person connected with
18 the trial or by any medium of information, including without
19 limitation, newspaper, television, radio or Internet. And you
20 are not to form or express an opinion on any subject connected
21 with this case until it's finally submitted to you.

22 THE MARSHAL: All rise for the jury, please.

23 (Jury recessed at 2:46 p.m.)

24 THE COURT: And the record will reflect that the
25 jury has departed the courtroom. We'll be in recess for 10 to

1 15 minutes.

2 (Court recessed at 2:47 p.m. until 3:04 p.m.)

3 (Outside the presence of the jury)

4 THE COURT: All right, come to order. We're on the
5 record. All right. We are outside the presence of the jury.
6 The defendants are all present with their respective counsel.
7 The Chief Deputies District Attorney are present as are all
8 officer of the court. I just wanted to let you know before we
9 resume argument that when a -- you know, all arguments are
10 done and we're going to let them go back to start
11 deliberating, I'm going to be letting them know that they'll
12 have the instructions and the evidence, but I'm also going to
13 tell them I'm not sending the firearms back to the jury room
14 because some of them are still together with live rounds. So
15 that's not happening.

16 But if they want for some reason to actually see
17 them, then they need to ask and I'll have the marshal go in,
18 show them. They're not to discuss anything in front of the
19 marshal. He will not, you know, say anything to them at all
20 about that. He'll just display. They'll look for as long as
21 they want. And then they -- he will leave. And that's how
22 we'll handle those because I just don't want a situation of a
23 weapon and live rounds in there. Okay? All right.
24 Everybody's nodding in the affirmative, the record will
25 reflect. All right.

1 Are we ready to go? Again, everybody's nodding in
2 the affirmative so let's bring in the jury.

3 (Pause in the proceedings)

4 THE MARSHAL: All rise for the jury, please.

5 (Jury reconvened at 3:06 p.m.)

6 THE MARSHAL: Your Honor, all 12 members of the jury
7 and the 3 alternates are present.

8 THE COURT: Thank you. Please be seated. And the
9 record will reflect now that we have been rejoined by all 12
10 members of the jury as well as the 3 alternates. And
11 Mr. Wolfbrandt.

12 DEFENDANT MENDOZA'S CLOSING ARGUMENT

13 MR. WOLFBRANDT: Thank you. Good afternoon, ladies
14 and gentlemen. On behalf of Mr. Mendoza, I want to thank all
15 of you for being here, and we've been here pretty much the
16 better part of September and now, into October. So I really
17 appreciate that you've been here. You all have been really
18 attentive and patient, especially even the alternates because
19 you're kind of like the second string quarterback. You get to
20 do all the work, put in all the practice, but don't get to
21 play in the game, hopefully, but you've got to be ready at a
22 moments notice. So, once again, thank you very much.

23 You heard a lot of testimony over the days. Some of
24 it I'm sure gave you as big a headache as it did me as all the
25 testimony on the cell phone records, the towers and all of

1 that. I'm not going to talk about any of that to you as it
2 related to Jorge because none of it really relates to Jorge,
3 you know, other than putting his phone in certain parts of
4 town.

5 I just want to focus you on really the events that
6 occurred at 1661 Broadmere that evening because that's what's
7 -- that's what brought us all here is that particular night.

8 Ms. Lexis was right, and I told you from the opening
9 that Jorge was going to admit and he testified he admitted to
10 certain of the crimes that did occur at that location. He did
11 commit a burglary. He did commit a home invasion, and he did
12 commit an attempt robbery.

13 It's going to be for you to decide if it was two
14 attempt robbery, one as to Joey Larsen, one is to Monty
15 Gibson. And those, of course, he did have a firearm with him.
16 But we are absolutely contesting here and the reason why we're
17 here is that it's our position that no attempt murder
18 happened, and that no murder happened.

19 And/or if you do determine that there was a murder
20 that occurred, that it was at no more than second degree and
21 absolutely was not first degree murder. Marc, can we get --

22 MR. DiGIACOMO: Which one do you need? Both of them
23 or --

24 MR. WOLFBRANDT: Let's do -- no, let's do 13 first.
25 Okay, you heard -- well, first off, you heard from his

1 mother-in-law and from Jorge. Jorge, you know, started off,
2 he's had a good career going as an electrician, as a lineman.
3 He got caught up using some heroin, lost his job, so he
4 started going into a funk and going and hanging out, staying
5 away from home, kind of hiding out from his wife. And that
6 she then started trying to track him down by using his cell
7 phone, and he would try to avoid her at certain times, too.

8 But that really, the worst decision he ever made was
9 to get caught up with Robert Figueroa that morning, and
10 certainly, that evening of September 21st, 2014.

11 You've got all the jury instructions with you so I'm
12 not going to belabor those at all. I just want to point out
13 on the very, very first instruction is that you as a jury
14 decide. The law that you're to use in this case is what's
15 contained within the 58 pages of the jury instructions. And
16 in Instruction No. 1, the bottom part of that is it would be a
17 violation of your oath to base a verdict upon any other view
18 of the law other than that given in the instructions of the
19 Court.

20 You heard Ms. Lexis tell you on a few different
21 phrases there that malice was shown as a matter of law. That
22 it's first degree murder as a matter of law. That's for you
23 to decide. So let's take a look here. On that evening, the
24 first one through the door is Robert Figueroa. And he told
25 you he got -- he gets shot almost immediately after he goes in

1 and then Jorge tells you he was behind Robert.

2 And as soon as that door breaches open, they start
3 hearing gunshots. And Robert takes a shot right in the mouth
4 and he turns and falls and turns and starts to run away.
5 Jorge immediately turns and tries to exit the scene.

6 Now, there's been a lot of contention, I'm sure the
7 State's try to suggest to you that Jorge wasn't killed at the
8 -- I'm sorry, Jorge wasn't shot there on the doorstep or there
9 in the front part of the house. I'm going to submit to you
10 and I'll get to that in a minute that he was shot out into --
11 in the area of the yard, as he testified.

12 All right, let's talk first about the six shell
13 casings that are -- there were, 4, 5, 6, 7, 8 and 10 all in
14 the green. Those are the ones that are associated with
15 Jorge's rifle, the Hi-Point 9 millimeter. All of those are
16 right there at the front of the door. And you've heard
17 testimony from one of the witnesses about how shell casings
18 eject out of weapons, and they don't go always the same way
19 every time, you know, something can deflect, they can divert.
20 So it's of no consequence that number 10 is just inside the
21 doorway, you know, as it is that the ones are on the outside
22 other than the shots were taken right in that area.

23 And those are the shots that Jorge made right after
24 he was getting shot at you will. Now, there's no question had
25 Monty been killed then, the Felony Murder Rule would have

1 applied. But it's our contention that that's not what
2 happened. Jorge told you that he didn't see anybody in the
3 house. Clearly, he knew people were in the house because he
4 was getting shot at, they were getting shot at as that door
5 opened.

6 You'll have all the photographs, all the -- all
7 these exhibits to take back with you, but I just wanted to
8 point out on here, and you'll find that virtually all of the
9 shots that were identified as 9 millimeter bullets that were
10 located, were all in that weight room area, which was
11 basically, a vacant room, and then one round was the one back
12 here, H1, that went straight through in between the dining
13 room and the kitchen to the back wall.

14 Jorge never saw anybody. He was just -- he was
15 firing in there, absolutely. Was he trying to hit anybody?
16 He told you, no, he didn't see anybody, and you can see
17 clearly from the photographs and the crime scene diagrams and
18 the trajectory discussion that was had by one witness, all
19 those shots were either going downward into the carpet or one
20 of them even went upstairs.

21 And the ones that went through these sidewalls here,
22 that E1 and F1, that's -- that's a wall that you -- I mean,
23 it's hard to tell from here, but if you look at the
24 photographs and compare them, you know, that's a wall that
25 goes from floor to ceiling. And I submit that those shots

1 were ones that ricocheted off of the floor, went through the
2 wall and ended up in the kitchen. At no time were any of
3 those shots fired at anybody nor were any of those shots fired
4 with an intent to kill anybody.

5 And it's important because attempt murder is a
6 specific intent crime where the purpose -- the shooter has to
7 have the intent of actually killing somebody and just not
8 accomplishing that. That's not the case here.

9 Now, was it careless and reckless shooting?
10 Absolutely. Is it -- are those shots something that he could
11 have been liable for for other crimes? Absolutely. But
12 there's a crime called shooting into an occupied residence.
13 It's a felony, and it is such because anytime somebody would
14 shoot into an occupied residence, it's risky and dangerous to
15 any of the occupants inside.

16 He's not charged with that so you can't find him
17 guilty of that, and what I'm suggesting, too, is just because
18 -- I mean, that's what he did there. But just because it was
19 a random -- not random, but reckless shooting there at the
20 doorstep, it does not equate to attempt murder.

21 All right, so Ms. Lexis was right. It is my
22 contention and it's for you to decide based on the jury
23 instructions, is that the burglary was completed once that
24 door was opened and Robert step foot inside the home. Ms.
25 Lexis said there was some testimony that Jorge entered the

1 home. Jorge said he didn't. It really doesn't matter because
2 the burglary occurred once Robert stepped foot inside the
3 doorway. At that point, the burglary is over with.

4 The attempt robbery started, of course, when that
5 door opened. That was there purpose to go there. But that
6 crime ended when shots rang out towards the door from inside
7 the house and Robert and Jorge turned and abandoned that
8 course of activity and left the area.

9 (Mr. Wolfbrandt conferring with Mr. DiGiacomo)

10 MR. WOLFBRANDT: There was testimony yesterday or
11 the day before by Mr. McPhail. He was the State's rebuttal
12 witness talking about trajectories of bullets and shot
13 patterns. You'll these diagrams, you'll have all the
14 photographs with you. I suggest to you the significance of
15 this is where Jorge got shot in the leg.

16 On Exhibit 346, the arrows there, the cones, I
17 guess, he called those for the bullet impact trajectories, I
18 guess you will, the blue pattern there is what would be the
19 shots that would go unimpeded into the home, which you
20 remember he said, too, the reverse is true. Any shots from
21 inside the home that were unimpeded would go that direction.

22 And the evidence is clear that that's what happened
23 because you've got two impacts on that wall. You've got
24 Figueroa got hit in the mouth right there in the doorway, and
25 what it would appear is that Joey Larsen started shooting with

1 that .38 revolver that was found on the kitchen counter, if
2 you remember that. And it certainly gives all the indication
3 that he fired two rounds. I'm sure he tried to fire a third
4 time and it turned to open chamber. And so he set that one
5 down and then that's when he picked up the .40 caliber -- the
6 Glock that he had.

7 And that's when he continued shooting because -- all
8 right, because Robert Figueroa had the .38 slug that went
9 through his jaw, but ballistics show that the bullet recovered
10 out of Jorge's leg was a -- a jacket identified to that .40
11 caliber gun, the Glock.

12 The reason I can tell you that the shots came from
13 inside the house is because of the -- of where the casings are
14 on Exhibit 13, the diagram there on the right. Like I said,
15 again, you'll have this all in the jury room with you. But
16 those four yellow -- I guess, I've got to use this, all right.
17 Yellow 11, 12, 13 and 14, those are the spent casings from the
18 Glock .40. They're well back inside the house, and that would
19 indicate to you that those shots had to have -- the only
20 pattern they could have followed was the blue bullet impact
21 pattern that's there on the left Exhibit 346.

22 So that tells you that Jorge got hit in his leg in
23 the yard, as he described, immediately dropped and started
24 scooting, you know, across the driveway out into the street to
25 try and extricate himself from that whole situation.

1 None of the neighboring witnesses described Jorge in
2 any other way than on his butt scooting across -- scooting
3 down the street. Eugene Walker described it that way. Roger
4 Day described it that way. And Renee Delgado (sic) described
5 that way. Now, Renee Delgado is kind of important, too,
6 because if you recall, she described seeing Jorge scooting on
7 his butt. Yeah, he had the mask on. He still had the rifle
8 across his lap is what they all testified to.

9 But she also testified that she could see the clear
10 -- clearly to the front door area, and it was clear. And then
11 she moved somewhere in the house and then came back to look --
12 heard a couple more shots and then came back to look, and then
13 in that front door area was Monty, which we later learned it
14 was Monty.

15 The significance of that is, that that establishes
16 for sure that Monty was not killed by any of the first six
17 shot that is were done at the doorway. That he would have
18 been killed by one of the three shots indicated by -- it's a
19 different diagram. The one that's got the blood trail
20 starting in the street and you've got the three green labeled
21 casings, you know, there in the street.

22 Robert Figueroa just took off as fast as he could.
23 He stopped for a minute, as he described, and that was
24 verified by it was either Gene Walker or Roger Day. One of
25 the witnesses that was right there said he saw a guy in dark

1 standing at the corner, looked back to the house and then
2 continued on down the street.

3 So Robert takes off on a dead run. Anybody else
4 that may have been involved, they took off on dead run. And
5 Jorge just moved as fast as he possibly could with that
6 shattered leg. He had abandoned any kind of thought and made
7 no effort whatsoever to finish any kind of robbery. That was
8 out of his mind, out of everybody else's mind, which is why I
9 tell you that the attempt robbery -- any attempt to rob was
10 concluded once they turned and started leaving that scene.

11 We heard from Steven Larsen, Joseph's father. So we
12 heard a little bit of -- heard a little bit of Joseph Larsen
13 on the phone. And Joseph didn't testify here. Steven is the
14 one -- his testimony has to be somewhat suspect in that he
15 described his son as just a very small time weed dealer. He
16 got small amounts that he could sell some to his friends so he
17 could have some of his own so that he could smoke for free.

18 But all the other evidence shows that Joey Larsen
19 was a big time marijuana dealer, dealing in 20 to 30 pounds at
20 a time every time he re-upped. The significance of this is
21 that Steven is going to try and protect his son. Nobody
22 knows, Steven doesn't really know what happened inside that
23 home because he wasn't there, you know, either.

24 But I submit to you that when he said that Joey
25 fired -- you know, I agree that Joey fired some shots, but he

1 didn't fire them after Monty was shot. He fired -- Joseph
2 fired his shots prior to Monty getting shot. And those would
3 be the shots that all the neighbors heard, and it wasn't a
4 short, short, short passage of time as described by Ms. Lexis.
5 It was a significant amount of time. Significant enough for
6 Jorge to get from the yard to the spot in the street where the
7 shell casings were, and it was significant enough that on the
8 other -- or the lay witnesses around there described them as
9 being significant enough separation of time between the shots.

10 So if you believe that, as I suggested, that the
11 Felony Murder Rule doesn't apply here, because the underlying
12 felonies were already completed, then you move on and take a
13 look at whether or not the shooting of Monty was just, you
14 know, diagnose what it was. Jorge told you he heard, as he
15 was scooting across there, he wasn't paying attention to the
16 house. He was just trying to get out of there.

17 He heard a bullet fly by, of course, he heard the
18 shot at the same time, and that's when he looked back towards
19 the house. He saw Joey Larsen and Monty around that pillar
20 area there. It's the black rectangle there in front. And he
21 felt that he was in fear of his life. And he probably was.

22 So he returned -- he turned -- excuse me, he
23 returned fire. But he told you he was just shooting in that
24 direction. He had no intention of killing anybody. Wasn't
25 trying to harm anybody. Weighs just trying to get out of the

1 way. You'll have Instruction 22, which talks about you saw a
2 little bit of it there about malice aforethought. It means
3 intentional doing of a wrong act without legal cause or excuse
4 and what the law considers adequate provocation.

5 You know, it's for as a jury to decide based on
6 these instructions, on the evidence that was presented to you,
7 and on your deliberations as to whether or not Jorge was
8 provoked, whether or not the underlying facts -- felonies had
9 ceased, and that he was simply, you know, trying to get away.
10 He -- the State talked about consecutive thoughts of the mind
11 or successive thoughts of the mind. The same thing can apply
12 here where, you know, it started off as a bad deal there with
13 the breaking into the front door there.

14 But I submit to you, that relationships changed as
15 time went on. As Jorge was extricating himself from that
16 area, he was no longer an aggressor. He doesn't have to yell
17 out. He can demonstrate by other behavior whether or not he
18 has abandoned all of the activity that he was into before,
19 which is exactly what he did. He -- as best he could, he
20 abandoned any attempt to rob. The burglary and the home
21 invasion were already concluded and he was trying to get the
22 heck out of there.

23 So if in your collective determination you find in
24 applying these instructions regarding malice to the facts and
25 to the evidence that you've heard, if you as a jury determine

1 that malice wasn't present, express or implied, then you find
2 that malice wasn't there and that the killing of Monty was not
3 murder.

4 If however, you do find that the malice is in place,
5 then you've got to look at whether it was willful, deliberate
6 and premeditated. And that's one of the things is clearly it
7 was none of that. Jorge Mendoza had no ill will towards Joey
8 Larsen or Monty Gibson. He was simply -- got himself caught
9 up in a really bad situation and was trying his best to get
10 away. He was absolutely afraid that -- he was fearful he was
11 going to get -- he was going to get hurt more so, or more than
12 likely killed.

13 He was trying to extricate himself further because
14 if you recall, there was that white car that pulled up, and he
15 talked -- you know, talked to the people inside trying to get
16 help to get away, and they would not help him.

17 So you've got to find through these instructions
18 that the willfulness is the intent to kill. And Jorge told
19 you he had no intention of killing anybody. Deliberation is
20 the process determining upon the course of action to kill as a
21 thought including weighing the reasons for and against the
22 action. You've seen Jorge here. You've seen his demeanor.
23 You saw him on the stand. He had no desire of killing anybody
24 that night.

25 So I submit that you will find that there was no

1 willfulness or no deliberation and no premeditation as it
2 related to shooting Monty Gibson.

3 You know, the charge for the attempt murder of Joey
4 Larsen and I've shown, I believe, how there was no intent to
5 kill anybody when the first shots were, you know, shot into
6 the home there at the doorstep.

7 Likewise, when Jorge told you he saw Joey Larsen at
8 that post on the outside, he simply was shooting in that
9 direction to get them to quit and so that he could get away.
10 He wasn't trying to hurt or trying to kill Joey. He wasn't
11 trying to kill Monty. He wasn't trying to kill anybody that
12 night.

13 So the reason that we have jurors like yourself is
14 to bring a collective experiences, opinions, thoughts so that
15 it's not just one or two people looking at the evidence, you
16 know, and deciding, it's all of you.

17 So when you get back to the jury room, have a good
18 discussion. Don't let it get personal, but go ahead and
19 disagree with each other, you know, if you do. Again, just
20 don't make it personal, but listen to each other's opinion and
21 look at the evidence. I'm sure you will. Study it all. And
22 I think that you will come back with the conclusion yeah, that
23 Jorge was guilty of home invasion, burglary and attempt
24 robbery.

25 But I submit to you, that you're going to find that

1 he didn't attempt to kill anybody. And that if you feel that
2 there was no malice as defined in that instruction, then you
3 can find him not guilty of murder. If you find that there was
4 malice there, and that it was a murder, I submit to you it's
5 not first degree because the Felony Murder Rule, of course,
6 did not apply and that there was no premeditation,
7 deliberation that would elevate that to first degree murder.
8 Thank you.

9 THE COURT: Ms. McNeill.

10 DEFENDANT LAGUNA'S CLOSING ARGUMENT

11 MS. McNEILL: Thank you, Your Honor. You've been
12 sitting here for four weeks listening to all kinds of
13 witnesses come in here. Police officers, CSAs, Robert
14 Figueroa, Summer Larsen, Jorge Mendoza himself. You probably
15 have a pretty good idea in your mind about what you think
16 happened, and you're probably thinking there's not a lot that
17 I can say to you to change your mind.

18 But I know that some of you sitting here are
19 probably a little bit uncomfortable with some of the things
20 that happened in this courtroom over the last four weeks.
21 Because what happened in this courtroom was not the State
22 proving the case to you beyond a reasonable doubt. What
23 happened in this courtroom was desperate people acting
24 desperately, and that includes the police officers that came
25 in here and testified.

1 What we know happened is that Monty Gibson is dead.
2 What we know happened is that Joey Larsen was somehow the
3 central figure. What we know happened is that Jorge Mendoza
4 and Robert Figueroa were inside that house. That's all you
5 know. That's all you knew the first day of the trial and
6 that's all you know now.

7 Detective Jensen said it's human nature to paint
8 yourself in a better light. Guess what? That applies to him,
9 too. It applies to him. It applies to Tod Williams. It
10 applies to Jorge Mendoza, Robert Figueroa and Summer Larsen.
11 Because those five people, all in their own desperation, sat
12 on the stand and told you things that don't quite add up.

13 What we know happened is Joey Larsen on the 911
14 call, when he's frantic and in the middle of watching this
15 happen says two men came into his house. Two men. What we
16 know from Roger Day is one of those men running down the
17 street wearing all black, Robert Figueroa, shot back at that
18 house.

19 What we know happened is that Jorge Mendoza scooted
20 down the street leaving a blood trail and was found at the
21 scene. And that's all you know because the rest of the story
22 is bizarre and doesn't make any sense.

23 Let me ask you this, the 20, 30, 50 went all the way
24 up to 50 pounds of weed that they were going to get from Joey
25 Larsen's house, where is it? It wasn't in the house. The

1 police documented everything in that house, didn't they?

2 Where was it? It wasn't there.

3 And I would agree with Mr. Wolfbrandt that Steve
4 Larsen wants to protect his son, but I don't think he's going
5 to perjure himself. He said himself Joey was a small-time
6 dealer who sold just enough so that he could smoke for free.

7 He never saw large amounts of cash around the house.
8 Remember he said, I wish Joey had a lot of money because I
9 just had to bury my wife and I didn't have the money for it.
10 You don't think Joey Larsen would have helped out with that if
11 had tens of thousands of dollars float around his house?

12 Steve Larsen said, I never had to call before I came
13 over. Joey never said don't just show up at the house, dad,
14 right, because I've got to hide my 20 pounds of weed and my
15 tens of thousands of dollars. So where is that marijuana and
16 where is that money, if that was the point of what happened in
17 that house on that day?

18 None of that part of the story makes sense. It's
19 kind of a big hole in their version of events. What happened
20 in this case is the perfect storm of desperate people trying
21 to save themselves. And it's not enough to convict Mr. Laguna
22 of any of the crimes he's charged with, let alone murder,
23 because you can't even consider Robert Figueroa's testimony.

24 I would submit you can't even consider Summer
25 Larsen's testimony. And I would submit you can't consider

1 Jorge Mendoza's testimony unless the State connects Mr. Laguna
2 to the crime; not to Robert Figueroa, not to Summer Larsen,
3 not to Jorge Mendoza, to the crime. You can't even get to
4 what any of those people said.

5 Well, the only thing that you had learned about Joey
6 Laguna is this, he had a cell phone number back in September
7 of 2014. That cell phone number wasn't in his name. It was
8 in the name of Anthony Flores, and that's all you know about
9 Mr. Laguna in September of 2014.

10 His cell phone number may have hit off some towers
11 in some places connected to this crime. That is the only
12 thing the State's proven to you about Joey Laguna, absent
13 Robert Figueroa, Summer Larsen and Jorge Mendoza. And
14 remember, you have to pretend like that doesn't even exist
15 before you can even get to it. They have to connect him to
16 the crime.

17 Desperate people trying to save themselves. What's
18 interesting about desperate people is Gabe Sotelo was on
19 interesting character. And this case is full of -- it's the
20 cast of characters unlike any other that you can't couldn't
21 even write if you were trying to write a fiction story.

22 Gabe Sotelo says, Robert Figueroa tells me that he
23 was involved in this. Okay, that's pretty easy, right? We
24 know he was. His blood, his DNA is all over that crime scene.
25 Gabe Sotelo says Robert Figueroa tells me that he and Manny

1 were involved. And Manny was there during this conversation.
2 And then what? Manny and Robert were friends since they were
3 in their 20s.

4 But isn't it funny that Robert described Manny to
5 the cops as just some homie? Isn't it also interesting how
6 everyone involved in this case was trying to take Manny out of
7 this, including Detective Jensen? That's an interesting fact.
8 Why might that be? You have to ask yourself that question.
9 You'd have to ask yourself of this, why was Gabe Sotelo so
10 interested in telling Detective Jensen that Manny was involved
11 in this crime in September of 2014, but today now he's -- this
12 week he suddenly remembered that about a year ago, he
13 remembered Manny couldn't have been involved because Manny was
14 with him at a park.

15 So why did he tell Detective Jensen that Manny was
16 involved? Because that's his cousin. So you're going to
17 implicate your cousin in a murder even though you knew he was
18 with you that day? Because wouldn't it make more sense than
19 in October of 2014 he would have remembered Manny was with him
20 than now two years later?

21 Gabe Sotelo, the State tried to suggest that he got
22 his details from the news. That's possible. I doubt that the
23 news said that it was a marijuana related robbery. How did
24 Gabe know that? Gabe Sotelo put his cousin there for a
25 reason. And Ms. Lexis showed you oh, well we have this map of

1 this phone that's connected with Manny. We don't know that
2 phone's connected with Manny. We can guess that.

3 But again, that doesn't mean that Manny wasn't
4 involved in this crime. A cell phone number and cell tower
5 locations do not put a person in a place at a time, unless you
6 have an eyewitness who can tell you that person was using that
7 phone at that time.

8 What's also interesting about that phone number, as
9 well as the phone number that Detective Jensen said belonged
10 to Gabriel Sotelo, the 337-0892 number, what's interesting
11 about those two phone numbers and what I would ask you to do
12 is look at Robert Figueroa's phone calls before the crime,
13 days before the crime, the day of the crime, because
14 interspersed with all of Robert Figueroa's phone calls related
15 to Mr. Laguna, Mr. Murphy are a whole bunch of calls right
16 after to that phone number associated with Manny, and phone
17 numbers associated with Gabe Sotelo. Isn't that interesting?

18 Around the same times that they're saying he's
19 calling these gentlemen to plan this crime, he's calling those
20 gentlemen. It's also interesting, Gabe Sotelo's relationship
21 with Detective Jensen. And that's why I said, desperate men
22 because over the course of the last four weeks, we sure heard
23 a lot of things we've never heard before.

24 Remember how Detective Jensen said, listen, I did
25 not get Gabe Sotelo out of jail, I don't know how it happened.

1 Maybe it did. Maybe some judge did it? I don't know. Gabe
2 Sotelo, Detective Jensen walked me out of the city jail,
3 right? That's odd. And then they talked a few times. And
4 then he said well, I knew Manny wasn't involved because
5 Detective Jensen told me.

6 Why does Detective Jensen care so much that Manny
7 Barrientos is not involved in this crime? You never heard
8 Detective Jensen tell you how he definitively ruled him out,
9 did you? No? Why does he care so much?

10 Robert Figueroa sure wanted to distance Manny from
11 this crime, didn't he? Oh, no, no, no, he's not involved.
12 He's just some homie. Just some homie. It was brought up in
13 his interview, and he sure was quit to shut that down. And he
14 sure was quick to deny that he ever had that conversation with
15 Gabe Sotelo.

16 So what do we know about Robert Figueroa? Desperate
17 men trying to save themselves. You know he was involved in a
18 murder. He knew he was involved in a murder. And he was
19 smart enough to know that if he went to the hospital here, the
20 police would be called.

21 So he's not a dumb guy. He goes to California. He
22 lies to the police there. Gets his injuries treated. And he
23 knows the cops are looking for him. Word's on the street.
24 And when the police come talk to him, he doesn't -- he tells
25 this story about this weed dealer, and that's when it starts.

1 That's when the perfect storm of desperate people trying to
2 save themselves starts.

3 The police tell him -- and you have his interviews,
4 you can see this for yourself -- we know there's more to your
5 story. We talked to the other guy. We got that guy. And
6 Robert knows they have that guy. I mean, Robert's admitted he
7 saw the news. Everyone knew Jorge has been arrested at the
8 scene.

9 We know there's more to the story, Robert. We
10 talked to the other guy. And yeah, these -- the detective
11 said these are tactics they're allowed to use. But imagine
12 the effect they're having on Robert, right? He knows he was
13 there. He knows he's going down for a murder. And now
14 they're telling him, there's other people. We know it wasn't
15 you. We know you're not the master mind.

16 Your story is important. This isn't you, Robert.
17 This isn't like you. These are the detectives' words, you can
18 see them in the statement. People talked you into it, Robert.
19 Don't take the heat for this. We have phone calls. Phone
20 calls were made. We know you didn't plan this. And when he
21 says I want a lawyer, they tell him, you're going to need a
22 fantastic lawyer.

23 Well, guess what? It happened, didn't it. Pretty
24 good lawyer gets a guy out of a murder charge, right? When he
25 decides he wants to talk to the cops, they go to see him and

1 they tell him again, we know there are other people involved.
2 You don't want to face this alone. What's he concerned about?
3 Look at his statement. I want to talk about sentencing,
4 right? I want to know what you're going to do for me.

5 But he needs his attorney there. Why does he need
6 his attorney there? His words, I don't know all the loopholes
7 in the law. The loopholes. Why do you need to know loopholes
8 if you just want to tell your story?

9 He says this is really serious. There's a lot of
10 different things involved. The next day a lawyer shows up.
11 And you can tell, despite him saying he didn't have time to
12 talk to his lawyer, at the beginning of that interview, his
13 lawyer is there, and his lawyer says, they've had a chance to
14 talk. And his lawyer says, I've explained to him that people
15 who talk get a much better deal.

16 And what did Robert Figueroa, by his own words, by
17 his own motion that he wrote to the Court, think he was going
18 to get on a first degree murder? The State's alleged first
19 degree murder. He thought he was going to get three to eight
20 years in prison. That's fantastic, isn't it?

21 Robert Figueroa knew what happened that day. Only
22 two people knew what happened that day that the police had any
23 contact with at that point, Robert Figueroa and Jorge Mendoza.
24 Robert Figueroa could have controlled whatever he wanted them
25 to know because he knew what had happened. He also knew phone

1 calls that he'd made, places that he'd been. He was in
2 control of that story.

3 And it's interesting because you can watch the
4 progression of information that Robert gives to the police
5 that goes from, well, we were going to rob this other weed
6 dealer, right? Remember that? That's another whole weird
7 story in and of itself. We were going to rob them of 100 to
8 200 pounds of weed. Remember he described those blocks?

9 But yet, Doughboy parked down the street and around
10 the corner. So they were going to, 100 to 200 times carry
11 those out to the truck? So we were in this part of town.
12 Where? Somewhere. That's pretty descriptive. Again, they
13 ask him a different interview, where was this? I could take
14 you there.

15 It's not until he's testifying for the Grand Jury --
16 and by the way, we do know this, he also talked to the police
17 a few times that those conversations weren't recorded. We
18 also know his stepfather is a Metro cop. Don't you wonder
19 what might be on those recordings, and we're going to take
20 Detective Jensen's word, even though we learned Detective
21 Jensen doesn't always give you the full story, because, right,
22 he had nothing to do with Gabe Sotelo getting out of jail.

23 So wouldn't it be interesting to know what those
24 conversations were about? Because suddenly he goes from well,
25 this other weed house to somewhere to, it's in the north,

1 northwest.

2 Again, even though he said he could take Detective
3 Jensen to that house, Detective Jensen said well, I didn't ask
4 him to take me there because I'm just not interested in drugs.
5 Okay. I'll accept that version of events, maybe. Except,
6 Detective Jensen one of the things we needed to do was
7 corroborate Robert's story, right? We needed to know if he's
8 telling us the truth.

9 So you don't ask him to take you to this drug house?
10 This drug house that, by the way, cargo vans show up every
11 Thursday or sorry, every Saturday night to drop off hundreds
12 of pounds of drugs and the next day all of Las Vegas's drug
13 dealers converge to pick up their dope, and none of the
14 neighbors ever thought that was a little odd?

15 It's like Breaking Bad up in the north, northwest in
16 Las Vegas. And none of the neighbors ever called the cops.
17 And even though Detective Jensen is a narcotics detective,
18 wasn't interested in that. Didn't even tell anybody else
19 about it. And sure didn't drive up to corroborate if Robert
20 was telling the truth.

21 Is it possible that maybe Robert knew he was up
22 there earlier that day doing who knows what? We don't know
23 what else is up there. We don't even really know where it is.
24 And Summer Larsen, the best she can tell you is, interestingly
25 enough, the exact same words that Robert Figueroa used, the

1 north, northwest.

2 Well, we know that by the time Summer Larsen decided
3 to talk, she had all of her paperwork of Robert Figueroa's
4 version of things. Robert Figueroa says that Joey Laguna
5 asked him to give him a gun. The first time we ever heard
6 that it was Manny's gun, well, and not even really Manny's
7 gun. Manny had just left it behind in his house because, you
8 know, when you're a drug dealer, you just want to leave your
9 gun lying around. I just left it at his house and Robert
10 Figueroa decided he'd just make it his gun, and that just
11 happens to be the gun that he gave to Mr. Laguna.

12 That's interesting. Robert Figueroa sure knows a
13 lot about collecting evidence, right? That's why he didn't go
14 to the hospital here in Las Vegas. Is it possible that he was
15 worried that if any bullets did come back to Manny's .38, if
16 the police ever found it, that it would trace back to Manny,
17 so sure, isn't it easy to put it in Mr. Laguna's hand?

18 What's interesting about that, too, is we learned
19 from Detective Jensen that Mr. Laguna had corneal transplant.
20 He couldn't see. He said he couldn't see at night to drive,
21 but he also couldn't see. He was holding his papers up to his
22 face during that interview.

23 You're going to give that guy a gun? Hey, blind
24 guy, stand behind me with a .38. Seems like bad planning on
25 Robert's part. Probably not the guy you should take to a

1 robbery.

2 Robert Figueroa's testimony was just full of
3 minimization to save himself. And he wants to save himself
4 and he wants to save his friends. And he told you that they
5 were -- he and Mr. Laguna were roommates at some point.
6 That's not the same as someone you've been friends with since
7 you were in your 20s, is it?

8 Are there phone calls to Mr. Laguna's phone
9 afterwards? Sure. Again, that doesn't mean Mr. Laguna had
10 the phone. Because Robert said that he called -- he saw Joey.
11 Remember, he says he saw Joey get in Doughboy's car.
12 Although, nobody else saw a car leave that scene that day.
13 Roger Day didn't, Gene Walker didn't, Renee Salgado didn't.

14 And if he had parked, if Doughboy had parked the car
15 where Robert said he did, he would have driven past that house
16 on Broadmere and one of those people would have seen that car,
17 and we would have seen Joey Laguna running and getting in that
18 car.

19 But he claims that Joey and David drove away,
20 leaving him behind, abandoning him at that scene. And then he
21 calls to ask him to come back. He calls him and asks him to
22 come back to the crime scene that he just successfully fled,
23 knowing there's cops and helicopters everywhere?

24 And that's another interesting fact is that the
25 police know there was someone else involved and there surely

1 had to be someone involved because they never found a car that
2 Robert or Jorge took to there other than Jorge's car, which is
3 another interesting issue.

4 But Dan Michalski sees two people who look like
5 they're hiding, and Detective Jensen said well, he didn't
6 think it was related because it was a couple hours later. Is
7 it possible that those could have been, I don't know, some
8 younger guys. How old do you think Gabe Sotelo looked? 20s?
9 Young Hispanic guy? Just seems to match the description that
10 Dan Michalski gave.

11 What do you think Manny Barrientos looks like? So
12 it's a couple hours later. Well, Robert Figueroa was there a
13 couple hours later. A couple hours later doesn't mean it's
14 not related. I don't know that Detective Jensen is the best
15 judge of what was relevant to the crime considering he didn't
16 think that Jorge Mendoza's car was important.

17 Detective Jensen. If you don't think that he has
18 just as much interest in this case as anyone else in this
19 room, you're wrong. Right? He's arrested people and put them
20 in jail and written police reports, signed affidavits. He has
21 just as much interest. He's not a neutral party here.

22 He's just as desperate as Robert Figueroa and Jorge
23 Mendoza and Summer Larsen to wrap this thing up neatly the way
24 that he has asserted that it happened. But Detective Jensen
25 sure created a lot of problems in his rush to decide what

1 happened.

2 Let's talk about Jorge Mendoza's car. Remember that
3 Tod Williams said well, they knew that he had gotten there
4 somehow. They knew there was someone else involved and that
5 just at the same time that he gets to Amanda Mendoza's house,
6 this car pulls up. And she said she had to go get it from
7 another part of town and she didn't know where Jorge was, and
8 she'd been calling him all night.

9 I don't think you have to be Sherlock Holmes to
10 piece those two things together. They didn't take one single
11 picture of that car. They didn't look for any forensic
12 evidence in that car. They didn't impound the car to process
13 it later. It sure would be nice to know who else's DNA could
14 be in that car or fingerprints or hairs, what else might be in
15 that car.

16 And they say that Amanda told them that they found
17 the car in this area near Mr. Laguna's house. What else did
18 we learn that Amanda said? They have a friend who lives on
19 the same street as Mr. Laguna. Wonder who that friend is?
20 Wish we knew. But the detectives didn't think anything
21 related to that car was important.

22 The other interesting thing that Detective Jensen
23 told you is that they impounded, right? People's phones.
24 Phone numbers might have changed, but Mr. Laguna told them he
25 had the same phone. And Detective Jensen said that he was

1 pretty sure it was in their evidence that he impounded it.

2 You know what would be even better than cell phone
3 tower locations, actual GPS coordinates. Remember the cell
4 phone guy was like yeah, that's way more accurate than cell
5 phone tower location information? If only there was a way.
6 None of those cell phones were ever processed for forensic
7 information. Wish we had that information. I know Mr. Laguna
8 wishes we had that information.

9 And then they tried to tell you that they did this
10 pinging on Jorge Mendoza's phone. And it just happened to be
11 near Mr. Laguna's house. That again, just all of these things
12 that is came up years, two years later. Remember Tod Williams
13 said, oh, yeah, well, we did this -- I did this pinging, but,
14 you know, it wasn't Metro that did it. It was this other
15 team, you know, the FBI's related to, and I didn't make a
16 single note about it. I didn't write it in my report. I
17 didn't really talk about it. Then I went on vacation. And
18 then I came back and I didn't think it was important. But you
19 know when I remembered it? Two years later when I just
20 happened to be talking to the district attorney about this
21 case.

22 Well, that just helps put a nice little bow on
23 things, doesn't it, that Jorge Mendoza's phone was pinged at
24 Joey Laguna's house, except the cell phone guy from Metro said
25 oh, yeah, you know, we do do -- we are capable of doing it

1 ourselves. So again, why didn't Metro do it and there
2 probably would have been a report for that.

3 But sometimes, you know, when we're going to make an
4 arrest we'll have the FBI criminal apprehension team involved.
5 Who were they arresting? Because Joey Laguna wasn't a suspect
6 at that time. And he said he doesn't remember anything about
7 that, about the pinging. And there would probably be reports
8 for that. But there wasn't. And we didn't learn be about it
9 until you learned about it, two years after the fact.

10 You know what else they didn't do was the Pinger
11 phone that Summer Larsen had. Their Metro guy said, yeah, you
12 could look at the IP coordinates for those things, and yeah,
13 sometimes it will ping off the cell phone tower, and that
14 wasn't done.

15 The list of things that they didn't do that they
16 should have done is astounding. And the things that they came
17 in here and tried to tell you they suddenly remembered is kind
18 of embarrassing. And it's kind of offensive that they would
19 ask you to convict somebody of multiple felony crimes,
20 including murder, for things they suddenly remembered that
21 sure are convenient.

22 And that is not, that is not what the Constitution
23 wants from our criminal justice system is for you to excuse
24 sloppy police work, and I would submit to you some outright
25 lies to make their case neater and nicer and easier for them.

1 That's not why we're here. It's desperation all the way
2 around from almost every single person who testified in this
3 case.

4 Which brings us to Jorge Mendoza. I would submit
5 that Jorge is one of the most desperate people involved in
6 this case. And whether he had the intent to call Monty Gibson
7 is up for you to decide. But I will tell you this, desperate
8 people do desperate things.

9 Jorge Mendoza had a heroin problem, and it was
10 pretty bad, and he was pretty desperate. He'd never been in
11 trouble before. He said he was desperate to he got involved
12 in this scheme to make money. And out of that sheer
13 desperation, he ended up with a bullet hole in his leg and a
14 dead guy on the other end of his rifle.

15 So to save himself, after seeing Robert saving
16 himself and getting what Robert thought might be a 3 to 8 in
17 prison, and after seeing Summer Larsen save herself --
18 remember, Summer said thinks she's getting probation. After
19 seeing what they did to save themselves, he did the same
20 thing, and he told you it was Mr. Laguna and he told you it
21 was Mr. Murphy. Because what else is he going to tell you at
22 that point. He's been sitting here for four weeks just like
23 you, listening to all the other desperate attempts the State
24 has put in front of you to convict Mr. Laguna.

25 So what else is he going to say, right? He wants

1 you to believe him because he doesn't want to go down for a
2 murder. He want you to think that he had to act in
3 self-defense. And you know what, he probably really believed
4 he did. But he wants you to believe that, and so he's going
5 to tell you what he thinks he needs to tell you so that he can
6 save himself, too.

7 And Jorge couldn't even keep his story straight and
8 he was there that night. He said Mr. Laguna never had a gun.
9 Then when Mr. DiGiacomo questioned him, yeah, Mr. Laguna did
10 have the gun. He had a .38. He had -- you know, he couldn't
11 even keep his own story straight. Because those details
12 weren't really important to him. What's important to him is
13 that you buy his version of events. And so he puts Mr. Laguna
14 there.

15 But ask yourself this, is there any evidence, any
16 evidence that Mr. Laguna was involved in the crime, absent any
17 other accomplice or co-defendant's testimony? Because that's
18 what you have to do. That's what you are required too. You
19 are legally instructed you cannot consider that testimony
20 until they connect him to the crime.

21 Have they done that? Because what they're relying
22 on for that is cell phone tower records and all of these other
23 tiny little things that Detective Jensen and Detective
24 Williams came up with. And if you're comfortable convicting a
25 man of multiple felony crimes including murder because of a

1 cell phone that you don't know who was on the other end, that
2 you don't know who had, then convict him.

3 But I don't think anyone believes that a cell phone
4 is enough to connect you to this crime. And that's where it
5 stops. If you don't think they've connected him to this crime
6 because all they have is a cell phone hitting off some towers,
7 you're done. He's not guilty. And that's all you need to
8 think about.

9 If you think they have connected him, I don't know
10 that Robert Figueroa or Summer Larsen or Jorge Mendoza gets
11 them over the rest of the hurdles they face. Mr. Laguna asks
12 you to think about what the State has presented to you over
13 the last four weeks, and it is not enough to convict that man
14 of the crimes which he's charged.

15 And when you go back to deliberate, it's pretty easy
16 that Mr. Laguna is not guilty of any of the crimes which
17 they've charged him.

18 THE COURT: Mr. Landis.

19 DEFENDANT MURPHY'S CLOSING ARGUMENT

20 MR. LANDIS: Thank you. Let me start by saying
21 something that I think lawyers say all the time during closing
22 arguments, something I've never said before at the start of a
23 closing argument, thank you for your time in this case. Thank
24 you for the commitment you've made.

25 And I say that because I know this has been taxing

1 on all of you. I know you spent a lot of time, I know you've
2 waited a lot. I know you've been frustrated at times, and I
3 know you've probably been sitting in those seats annoyed at
4 times. And I respect that you sat through this and that
5 you've given us those commitments.

6 I'm tired. I'm worn out. My life needs some
7 reorganization based on the length and time of this trial.
8 And the thing about lawyers, we see these trials coming months
9 ahead. We can plan as best we want to. We have plenty of
10 time to do so. If I'm this way with that kind of planning,
11 you guys don't get that luxury. You know you have jury
12 summons one day, you come in that one day. You have no idea
13 you're signing up for month of your life being taken, and I
14 respect that. I do.

15 I respect that you are also tired. I respect that
16 you've been juggling your normal lives and then this new
17 monthly or daily interference that's come. And I respect
18 that. But what I'd ask you to do is this, please don't let
19 the exhaustion, the desire to get back to your lives let you
20 cut the last corner on this book because I submit to you,
21 that's the most important contribution you guys are making to
22 this process.

23 Easier said than done, but please use whatever you
24 have left and give this case a fair deliberation at the end,
25 look at this evidence critically, and do yourselves what you

1 deserve, which is to render a verdict, however you see it,
2 that you're confident in. That you can rely on. That you can
3 look back an and be proud of. If you do that, I'm satisfied,
4 Mr. Murphy's satisfied, and I can't complain about that. But
5 please don't rush the decision and look back at this with
6 concern. You don't deserve that. We don't deserve that.
7 This process doesn't deserve that.

8 I also know we've heard a lot of witnesses. We've
9 seen a lot of evidence, a lot lawyer talk today. I'm going to
10 try to be efficient, make the points I think I need to make to
11 you guys and get out of your way so you can get to work.
12 Probably talk faster than I usually would. Probably less
13 dramatic pauses than I usually would. Please understand I'm
14 just doing that so we can get you guys deliberating.

15 They oftentimes say that closing arguments, and I
16 think you guys have heard this once or twice, they're a chance
17 for a lawyer or the lawyers to tell you how the facts of the
18 case apply to the law, which I take no issue with. I think
19 that's true.

20 I think it's important, though, to point out what's
21 maybe basic to some, if not all of you. What I'm doing for
22 the most part is I'm arguing to you. I want to convince you
23 that what I'm saying is right. Just like they are. They're
24 trying to convince you the same. Just like they are. That's
25 argument. And that's why what we say isn't evidence.

1 Don't take my judgment and just accept it without
2 critically thinking about what I'm saying. If I can point out
3 a way maybe you should look at something, great. But don't
4 accept it just because a lawyer's saying it, and that applies
5 to every lawyer you're going to hear from today.

6 On the other hand, the law, the jury instructions
7 we've already heard of and some things I'm going to get into
8 in a minute, that's not lawyer speak. That's something you
9 have a duty to follow. If it's a law and it's read and it's
10 on an instruction, that's not something that you have the
11 ability to be critical of, to disregard, to say no, I just
12 don't agree with that. You guys have a duty to follow that
13 stuff.

14 Sometimes it's going to agree with what you think a
15 right and wrong, sometimes it's not, but you have to
16 understand the power to look at that law and be critical of
17 the law, whether it's wise, whether it's not, that's not your
18 duty. Making those kind of decisions and a basing your
19 verdict on it, very dangerous.

20 With those concepts in mind, let me start with an
21 argument. Are you convinced beyond a reasonable doubt that
22 there was more than two suspects, two perpetrators involved in
23 this case, September 21st, 2004, on Broadmere Street? What
24 evidence do we have to support that? Because before you try
25 to identify who these suspects might be to try to determine if

1 they've proven beyond a reasonable doubt who these suspects
2 are, we probably should determine if there are suspects to
3 begin with.

4 What evidence do we have from the crime scene at
5 1661 to suggest that? Did we hear one independent witness,
6 neighbor, somebody in the house describe more than two
7 suspects? I'd suggest to you that based on my recollection,
8 we haven't.

9 None of these neighbors testified to seeing a third
10 person. None of these neighbors -- and mind you, these
11 neighbors are stationed in pretty good locations in reference
12 to the house -- see a getaway car, none of them. Figueroa
13 says he sees the getaway car pull up, and I'm going to address
14 that in a little bit.

15 But let's talk about independent neutral witnesses.
16 Can we say there's more than two suspects? Let's look at the
17 police and what they determined after they completed their
18 investigation of 1661. We believe there was more than two
19 suspects because the longer blood trail abruptly stopped in
20 the middle of the street and we assumed a car picked that guy
21 up.

22 And of course, we now know that was Robert
23 Figueroa's blood trail. Assuming we believe that section of
24 Robert Figueroa's testimony, we can go ahead and say that was
25 an incorrect assumption by the police, right? He wasn't

1 picked up by a getaway driver.

2 What evidence is there, honestly, folks, as we sit
3 here today, to say there's more than two suspects? How could
4 it be that there was a getaway driver, and that this getaway
5 driver pulled up somewhere in front of Broadmere, somewhere in
6 front of 1661 Broadmere and picked up another suspect and left
7 and none of the neighbors saw it?

8 Before you get to trying to figure out if they've
9 proven that David Murphy is guilty, determine if they've
10 proven that there's a third, let alone, a fourth suspect.

11 The law. You've heard these. You've heard them
12 read by the Court and you've heard them in some of the closing
13 arguments already, but I want to focus you guys to some of the
14 language in 46 and 47. You guys will have these back there if
15 you want to look at them.

16 This is the law. This isn't lawyer talk. "The
17 conviction shall not be had on the testimony of an accomplice
18 unless he/she is corroborated by other evidence which in
19 itself and without the aid of the testimony of the accomplice
20 tends to connect the defendant with the commission of the
21 offense." That's part of 46.

22 Part 47, "To corroborate the testimony of an
23 accomplice, there must be some evidence of some act of fact
24 related to the offense which, if believed, by itself and
25 without any aid, interpretation or direction of the testimony

1 of the accomplice tends to connect a defendant with the
2 commission of the offense charged."

3 Later on in that same instruction it reads, "In
4 determining whether an accomplice has been corroborated, he
5 must first assume the testimony of the accomplice has been
6 removed from the case. You must then determine whether there
7 is any remaining evidence which tends to connect a defendant
8 with the commission of the offense."

9 "Evidence showing that a defendant was with an
10 accomplice near the scene on the night that it was committed,
11 at the time it was committed, is not in and of itself
12 sufficient evidence to corroborate the testimony of an
13 accomplice. Where the connecting evidence shows no more than
14 an opportunity to commit a crime simply prove suspicion or is
15 equally consonant with the reasonable explanation pointing
16 toward innocent conduct on the part of a defendant, the
17 evidence is to be deemed insufficient."

18 If you get beyond the suspect question then put the
19 law down. If you get beyond the suspect question, and you're
20 going to start trying to determine if they've proven that this
21 third or fourth suspect is David Mark Murphy, that's your
22 starting point, I would suggest, folks.

23 Look at the evidence in this case outside of the
24 testimony of Robert Figueroa, outside of the testimony of
25 Summer Larsen and outside of the testimony of Jorge Mendoza.

1 Specific to David Mark Murphy, what evidence is there that
2 connects him to this crime?

3 Physical evidence in and around 1661 Broadmere
4 Street, not a drop. Fruits of this failed robbery attempt,
5 ski masks, guns, bullets found on David Murphy at his house,
6 at his car, didn't hear about that.

7 I would suggest there's two things that are arguably
8 incriminating of David Mark Murphy that are not the testimony
9 of Figueroa, Summer Larsen or Jorge Mendoza. What are those
10 things? Cell phone location data on the one end. Cell phone
11 calls/text messages on the other end.

12 I'm not trying to trick you. If you think there's
13 some other independent evidence, please consider it. But I'm
14 comfortable sitting in front of you and saying, that's all.
15 That's all we've got. Looking at that evidence in and of
16 itself, closing your mind, which is difficult, to what those
17 individuals said on the witness stand, does that connect him
18 to the crime? Doesn't have to be proof beyond a reasonable
19 doubt, but it can't be something that's innocently explained
20 away just as reasonably.

21 The fact that he had phone calls and text messages
22 with two people, we've heard throughout trial he knows very
23 well. Is that evidence of criminality? I'd suggest to you
24 it's not. And I'd also suggest to you that if you're going to
25 give that testimony or that evidence weight, look at his phone

1 records, which you'll have back there and consider his phone
2 activity that day.

3 He makes a lot of phone calls and a lot of texts. I
4 think if you look at it, and this was my account, you'll find
5 on September 21st, 2014, he made around 200 phone calls in and
6 out, incoming and outcoming (sic), around 200 total phone
7 calls. Text messages a little higher. All on September 21st,
8 2014.

9 They want to single out those calls, and there's
10 multiple to Mr. Mendoza and there's multiple to Mr. Laguna,
11 but make it look like it's obvious he's committing criminal
12 acts because he has communication with people he already knew
13 before trial. Pretty busy day on his phone for a guy who's
14 doing all of these crimes. Pretty busy day getting calls,
15 giving calls, text messages for a guy who's committing the
16 crimes more or less from before sun up to after sundown.

17 Can you look at the fact that an individual had
18 contact with these two people and say, yeah, I believe he was
19 connected to this crime? I'd say, no. Look at the cell phone
20 location data. And when I say look at the cell phone location
21 data, I ask you to look at it this way; are you comfortable
22 with the testimony we heard during this trial that you know
23 what the cell phone location data is?

24 Are you comfortable that you could go through these
25 records, determine it yourself? Are you comfortable that the

1 expert, the Las Vegas Metropolitan police expert they put up
2 there to talk about this, critically looked at the maps the
3 State made and you can rely on that, absent your own judgment,
4 rely on that to find that Mr. Murphy was involved in these
5 crimes.

6 Don't just assume that evidence is what they say it
7 is. Do your job as jurors. And I'm going to show you a
8 couple things that I would hope cause you to do that. I know
9 this thing is like, it's a little annoying. I'm not going to
10 use it too long. Bear with me. These records are too small
11 for me to show you guys everything well. So what I'm going to
12 show you is this, this exhibit, which will be back there with
13 you, real small type, I'm not going to even try to put it on
14 the overhead, it's State's Exhibit 303, if you want to look at
15 it.

16 These, according the witnesses they put on, are my
17 client's text messages in that period of 2014. Interestingly,
18 and I think this is important, if you look at the very top of
19 this, it's going to tell you that these records were
20 requested, requested from T-Mobile and received September of
21 this year.

22 If you remember, we heard the testimony about how,
23 you know, there's different columns, and they list a whole
24 bunch of stuff. Important to cell phone location data, they
25 list a cell phone tower. After the cell phone tower they list

1 sometimes an address, sometimes a latitude and longitude.

2 What you'll find, folks, the State's maps that
3 they're going to show you as conclusive proof of location,
4 aren't supported by these records. This is a map the State
5 made. This is a map they showed their expert. This is a map
6 their expert verified as accurate.

7 As you can see on the top, they're trying to tell
8 you this is David Murphy tower, 5:05 a.m., 5:14 a.m. You take
9 this, which is text messages, it's a different exhibit, 302,
10 if you want to see his phone calls. If you look at this,
11 you'll find an entry from 5:05 a.m., a text message, and you
12 can see it on here, but as it says on the top, don't forget,
13 in case you want to check what I'm telling you, minus 7 hours
14 because these are in UTC. It tells you right on the top. You
15 don't have to remember that.

16 So for a 5:00 a.m. call, the record's going to show
17 a time noon 05 or 12:05 in military time. If you look at this
18 record as to 12:05, and you go down to the tower, it lists the
19 tower, but after the tower where it lists the latitude and the
20 longitude, they're blank.

21 A lot of these towers after they list latitude and
22 longitude, they'll list an actual address, blah, blah, blah
23 numbers on blah, blah, blah street, blank. Not a single
24 reference point as to where that tower is in these records
25 from September 2016.

1 I anticipate the State's going to bring you
2 something else, and that something else is State's Exhibit
3 275. And this one's a little bigger, it's definitely thicker.
4 It doesn't say what company this belongs to. Doesn't say when
5 this was printed, when it was requested. According to them,
6 it's going to be these same towers. If you look at this, it
7 has a latitude and longitude for that tower.

8 Are you comfortable relying on this document, based
9 on what you heard on that witness stand, to conclusively say
10 beyond a reasonable doubt, you can conclude the location data
11 from these cell phones that were admitted in this case show
12 you that about my client? I suggest, no.

13 And I'm not pointing out one outlier in these
14 records of reliability. Let me show you one more. Well,
15 before I leave this one, as you can see, it shows 5:05 a.m.
16 and 5:14 a.m., those two times are two different text
17 messages. If you look at those records for the 5:14 a.m.,
18 you'll see it does list a latitude and a longitude and it also
19 lists an address and that address, if you look in the record,
20 is North Maverick Road.

21 And I'd submit to you, North Maverick road is near
22 that map. Of course, those times are important in this case
23 because that's when the State is going to claim Mr. Murphy was
24 at Jones and 215 by L's house, the drug dealer.

25 Let me show you one more very important tower. And

1 this is, again, within State's Exhibit 324. This one purports
2 to show David Murphy's tower at 8:06 p.m., which we all know
3 to be a critical time in this case, don't we? Go to the text
4 messages records, same one I showed you, if you want to check
5 what I'm telling you. 303. Find that time, 8:06 p.m.,
6 remember to take the 7 hours off.

7 What you'll find again for that tower, for that text
8 entry, these records don't tell you a latitude and longitude.
9 They don't tell you an address as to where that tower is
10 located. My memory is the T-Mobile gentleman that T-
11 Mobile/Metro MCS gentleman who was up here as a custodian of
12 records, I think the first cell phone individual we heard
13 from, talked about what it meant when there wasn't a latitude
14 or longitude listed for a tower, talked about what it meant
15 when there wasn't an address listed for a tower.

16 And that means the tower was newer, it's not in
17 their coordinates yet. It hasn't made it through their
18 system. That's my memory. Again, don't rely on it. But the
19 bottom line is, folks, be critical of the cell phone location
20 data before you use it in any way to be convinced that my
21 client is guilty beyond a reasonable doubt.

22 And let me step back to those accomplice
23 instructions and where we started. Are you convinced -- this
24 is what I beg you to decide -- are you convinced there's
25 sufficient evidence outside of Mendoza, Figueroa and Summer

1 Larsen to connect David Murphy on this crime based on phone
2 calls to two people he knew and (inaudible)?

3 And as Ms. McNeill said, if the answer to that is
4 no, your deliberation is over as to Mr. Murphy so long as
5 you're following the law as you promised to do. That's not a
6 legal technicality, folks. The reason why accomplice
7 testimony requires corroboration is because it tends to be
8 unreliable. And the law recognizes that. That's not a
9 technicality. That's something that aids in the reliability
10 of (inaudible).

11 If you do not see it my way as to how that
12 instruction tells you, I think it would be time to start
13 assessing the credibility or the trustworthiness, the
14 believability of what you heard on that witness stand from at
15 least most centrally Summer Larsen and Robert Figueroa.

16 With every witness who came in here, you guys have
17 the right to ignore everything they said and find it
18 unreliable if you find that they've told you a lie. That's a
19 jury instruction. I'm not going to quote it.

20 I think it's safe to say that we can conclude that
21 there was things said by both of those witnesses that were
22 less than truthful. Does that mean you should disregard
23 everything? That's your call, but let me say this, pay
24 attention to the ins and outs of their story and ask
25 yourselves if you can trust in what they say.

1 Are these the kind of people that you're going to
2 hang your hat with confidence on, combined, separately? You
3 make that decision.

4 Court's brief indulgence. Figueroa admitted, and we
5 heard it on that recording the State played a little bit ago,
6 he was willing to die, to die to avoid going to jail, getting
7 caught for this crime. I don't have to convince you of this,
8 it's common sense. Somebody who's willing to die to avoid
9 jail is going to be willing to lie to avoid a substantial
10 prison sentence. That's just a fact.

11 Stories don't change over time when they're true.
12 And I'm not talking about Figueroa's story or Summer Larsen's
13 story before they accepted a deal and after, I'm talking about
14 the stories the multiple times they told them after they
15 entered into negotiations with the State. Huge points their
16 memory changed on.

17 And I'll give you an example. Robert Figueroa, when
18 he testified at the Grand Jury in January 2015, the
19 transcript's in there if you guys want to see it, he was
20 talking about this alleged morning event. He said, hey,
21 Murphy was alone. Nobody was in the truck with him.

22 They asked him specifically, are you sure? Was
23 Murphy with anybody? And he said no. That's a substantial
24 and important fact for him to change his mind on. And I don't
25 think that's something you forget and you overlook when you're

1 testifying under oath, first at a Grand Jury, and then later
2 at a trial.

3 Summer's story also changed over time. And Summer's
4 story was so strong that after she sat down with the State and
5 told them her story, they waited months and months and months
6 and months and months and months and months to the eve of
7 trial, the week before, to enter into negotiations with her.
8 Does that ring a strong reliable, believable story when you
9 hear it?

10 Look at Summer's story, some of the details, and
11 please ask yourselves if her story makes sense. As McNeill
12 pointed out some; her story was she knew of this drug dealer's
13 house named L. Mind you, we've heard no other testimony from
14 any other witness that there is this drug dealer named L that
15 Joey Larsen bought weed from.

16 Nevertheless, L has to white cargo vans come every
17 Saturday night into Sunday morning full of marijuana.
18 Thereafter, all these criminal drug buyers descend on the
19 house at the same time, which I'd suggest to you common sense
20 doesn't tell you is the way they do it. But again, as she
21 pointed out, no neighbors noticed this weekly occurrence of
22 these two suspicious vans followed by a whole bunch of other
23 guys cruising into this place. No neighbor ever calls.

24 And we know L's been doing business for a long time
25 because Summer and Joey hadn't been talking or living together

1 for a long time before this event. In a cul-de-sac in a
2 populated area of town is it easy to believe that that thing
3 would happen and no neighbor would call the police? No.

4 Two, is that the time you would really pick to rob
5 this place? In other words, when you know there's going to be
6 a bunch of criminals there in the broad daylight? I'd say it
7 isn't. And I say it sure isn't when you're going to go there
8 with what everybody except for Robert Figueroa, according to
9 them, thought were no weapons.

10 Robert Figueroa said he had a gun hidden. Doesn't
11 know if anybody saw. That's the house you rob with no weapons
12 early in the morning? That kind of stuff, folks, cargo vans
13 pulling up to houses, people descending to get their drugs,
14 that's movie talk. That's not real life talk.

15 Figueroa said on the recording we heard today, said
16 on that witness stand, the reason we left is because there was
17 too much activity out front. There was too much activity, and
18 you know, we looked suspicious. You knew there was going to
19 be a lot of activity based on the plan, according to what
20 we've heard. How can you go to this place because there's
21 going to be activity there and then leave because there was
22 activity that you expected? Hard to believe. It is. It is.

23 What evidence do we have that this was a drug house?
24 That would be something that I think would be valuable for you
25 guys to know when you have to make this decision. I do.

1 Fine, marijuana or a drug detectives, don't listen to homicide
2 detectives, okay, that's fine. Has there been any arrests at
3 this house before? Did you look into that?

4 Has there been any, you know, people known who live
5 there who deal in narcotics? Knock on the neighbors' doors.
6 Say, have you seen anything that caused you concern here.
7 Park your own squad car in front of the house, unmarked squad
8 car, and see what happens one Saturday night into Sunday
9 morning and see if you can verify what Figueroa is telling
10 you, what Summer's telling you.

11 Those are cold hard facts, if we could have them,
12 that don't require you to make credibility determinations
13 about difficult people. They have no evidence, as Ms. McNeill
14 said, that Joey Larsen's house was a big time drug sales spot.
15 No marijuana there. No money there. Makes you question if
16 the intent behind going to this house was truly to rob it of
17 marijuana and money.

18 Makes you question if what Steven Larsen said to the
19 police that night after the murder rings more true. Summer
20 told me he was going to get him. There seems to be more
21 evidence in this trial record to support that than there does
22 to support that Joey Larsen was a big time weed dealer.

23 Summer Larsen, what she said about this
24 conversation, Ashley Hall, what she said about this
25 conversation. The State of Nevada, this prosecutor's office,

1 they utilized to their benefit Summer Larsen at a previous
2 hearing. I mean, sorry, Ashley Hall at a previous hearing.
3 They called her as a witness on their behalf.

4 We weren't going to hear from that witness in this
5 trial unless I called her. The reason they changed, I'll
6 submit to you, is because their case changed because of what
7 Summer told them and they were tied to it, and Ashley no
8 longer matched. So, she was disregarded. Okay. Okay.

9 I think it's important for you guys to know that
10 there's a conversation in Ashley's car -- or yeah, in Ashley's
11 car where Summer was talking to men and saying things that she
12 was going to rob Joe's house and have money. And this is the
13 important thing to draw out from that. According to Summer's
14 testimony, Ashley thought she overheard that, Ashley said
15 something and they hammered it out in the car, and when they
16 left, Summer was comfortable there was no miscommunication.

17 Ashley testified differently, but put Ashley's
18 testimony aside and look at it this way, we know Ashley was
19 still concerned enough she got word back to the Larsen family,
20 and specifically Steven Larsen got word. Notified Joey, who
21 was there waiting for a potential robbery. Obviously, folks,
22 evidence alone that Ashley Hall and Summer Larsen didn't bang
23 out this disagreement or miscommunication when they left the
24 car.

25 And the State's theory that they put in front of you

1 in this case is this, Summer Larsen said some things about
2 potentially robbing Joey's house the day it was robbed, so
3 much so that her friend who knows her well was concerned
4 enough to get word back to Joey.

5 We then know at least an attempt robbery happened at
6 Joey's house the day Ashley was worried about it, based on her
7 conversation with Summer. After, Summer fled to Utah. But
8 we're to believe, we're to sit here and believe and you're
9 supposed to conclude that Summer Larsen played no role and had
10 no part in the planning, the information, the scheme to rob
11 Joey's house that night, September 21st, 2014? That's
12 difficult to believe.

13 And the last thing I want you to question is this,
14 some of the things the police could have done in this case
15 would have made your jobs easier, clearer, and the unfortunate
16 thing is you're placed in a position where your jobs are a lot
17 harder, in my opinion, based on what's not in front of you.

18 The computer forensics, the cell phone forensics,
19 I'm not going to keep going over what she said, but search
20 these phones. See if there's text messages in there. Not
21 records, text messages, see what they say. That would be very
22 valuable information as to any of these folks. You're
23 deprived of that.

24 You have to remember the burden's on the State. I
25 don't present evidence. I don't prove things, folks. They

1 should put these things in front of you if they think you need
2 them. Mendoza's Maxima, give us a picture of it. If you're
3 not going to search the inside for DNA, get us a picture of
4 it, which to this date we don't have.

5 Please write accurate dates on your reports so we
6 can tell when you made conclusions in your investigation.
7 That's police work, folks. Do you sit here today when you're
8 about to embark on making this decision and believe you have a
9 full story about the investigation the police did in this
10 case? Louis Mendez-Martinez, he's the individual who's
11 identified in that first 28-page police report.

12 According to Jensen's testimony, I got the name
13 Doughboy from Robert Figueroa. I put it in your computer
14 system, it brought up about ten different potential hits so I
15 just chose this guy. If you heard more, I apologize, I don't
16 remember it. But I think he said so I just chose this guy.
17 He was the best match. Don't know why. Didn't tell us.

18 Guy's name wasn't even Doughboy. It was Duboy.
19 Then yeah, I just took that picture, after I made this kid as
20 a suspect for a murder in a police report and eventually, made
21 it to Figueroa and he identified the guy as not being
22 involved, so no harm, no foul.

23 We don't have a complete picture as to why that kid
24 was a suspect. And I don't think we have a complete picture
25 as to why they changed (inaudible). Isaac Rodriguez, a/k/a

1 Snoop, a/k/a the guy who shot Summer, a/k/a the guy Summer
2 said burglarized Joey's house with her weeks, months, before
3 this September 21st event.

4 How can we rule him out as a suspect? How do we
5 know what Metro did to rule him out as a suspect? What do we
6 know? Jensen testified to this; I caught wind that he was
7 playing slot machines at the casino. So I went up there, I
8 took a DNA buccal swab, I talked to him a little bit.
9 Eliminated him as a suspect. That's what we got, folks.

10 Does that sound accurate, full -- do you feel like
11 you have a full picture about what that determination was
12 made? Not hearing from Joseph Larsen in this case is a
13 disadvantage to all of us. It is. He is the only eyewitness
14 we had inside that house who could testify today, and State
15 didn't put him on.

16 Gabriel Sotelo. We can debate if he's credible. We
17 can debate if he's not. But again, the State chose not to
18 call him, and I did. I at least think you have the right to
19 hear this relevant evidence and make the credibility
20 determinations about it, folks. These things you were
21 deprived of, make your job harder and aren't things that
22 should allow you to skip necessary elements to convict my
23 client.

24 It's one thing to develop evidence in a case that's
25 reliable and points to someone's guilt. It's another thing to

1 try to create evidence to fit the words that come out of
2 somebody's mouth. And in this case, the only evidence pointed
3 to any criminal conduct on my client's part, the words of
4 people whose testimony with purchased.

5 It's very difficult to find somebody not guilty of
6 murder, in my opinion, because you're scared. You're scared
7 to let the bad guy back out on the streets. You're scared
8 that you should just trust the police and what they did. But
9 please, do your job in this case and please follow the law and
10 apply it to what you believe to be the proper way to look at
11 the facts.

12 Near the end of her closing argument, the district
13 attorney said, no one who played a part in the death of Monty
14 Gibson will escape responsibility. And she said that in
15 reference to the Felony Murder Rule. But let me say this,
16 Robert Figueroa desires to walk out of this matter with a 3 to
17 8 year sentence. Summer Larsen hopes to walk out of this
18 matter with probation.

19 People are escaping responsibility for the death of
20 Monty Gibson. Don't hold my client guilty based on that. The
21 evidence in this case is insufficient for you to find David
22 Mark Murphy guilty of murder. I'd ask that you critically
23 look at it, and I'm confident you'll find him not guilty.
24 Thank you, folks.

25 THE COURT: Thank you. Approach a moment regarding

1 scheduling.

2 (Off-record bench conference)

3 THE COURT: Okay. Ladies and gentlemen, I know we
4 have one person that needs to go pick up children. Is that
5 the case tonight? And what -- where's the microphone?

6 JUROR NO. 4: Sarai. He's at Safe Key so I need to
7 get there before 6:00.

8 THE COURT: Before 6:00. And how -- you know,
9 you've been doing this a while.

10 JUROR NO. 4: Yeah.

11 THE COURT: So how long is it? I know there was one
12 time where you almost missed it and --

13 JUROR NO. 4: Yeah, like by eight minutes and I sped
14 there.

15 THE COURT: Okay.

16 JUROR NO. 4: So, 5:30's too late.

17 THE COURT: Driving the speed limit because we don't
18 want you to violate the law --

19 JUROR NO. 4: Yeah.

20 THE COURT: -- how -- when do you need to be out of
21 here to get there on time?

22 JUROR NO. 4: Probably like 5:15, 5:20.

23 THE COURT: 5:15, okay. And it's already almost 10
24 of, and is there anyone that needs a bathroom break?
25 Everyone's shaking their head negative.

1 MR. DiGIACOMO: I don't know that I can do this in
2 20 minutes, Judge. I'd prefer to just bring them back at
3 9:00. It's 10 minutes to 5:00. If we could stay until like
4 5:30, I could probably get through the whole thing, but I know
5 about Safe Key. I've had to pay that bill and for every
6 minute after. Thus, whatever the Court's pleasure, but it's
7 not like I can do half. I have three separate defendants to
8 address.

9 THE COURT: Well, yeah, my concern is that lawyers
10 always like to say, well, I'll be brief, and then they just go
11 on and on so. But so, I -- if I can't guarantee that you're
12 going to be out of here or done by 5:15, then we'll have to
13 start in the morning.

14 What -- could you start as early as 8:00 or is that
15 -- is there anyone who can the start at 8:00, raise your hand.

16 MR. LANDIS: Can we approach?

17 THE COURT: Yeah, sure.

18 (Off-record bench conference)

19 THE COURT: All right, so other children dropping
20 off issues. So, 9:00 o'clock, we could start as early as
21 9:00. I had an evidentiary hearing in another case scheduled
22 for 9:00, but I'll make them wait, and they'll just wait until
23 we're done, and you can start your deliberating and then I'll
24 do my evidentiary hearing after we're done.

25 So, it will be 9:00 o'clock tomorrow morning. So

1 ladies and gentlemen, during this overnight recess, it is your
2 duty not to converse among yourselves or with anyone else on
3 any subject connected with this case or to read, watch or
4 listen to any report of or commentary on the trial by any
5 person connected with the trial or by any medium of
6 information, including without limitation, newspaper,
7 television, radio or Internet. You are not to form or express
8 an opinion on any subject connected with this case until it's
9 finally submitted to you. I'll see you at 9:00.

10 THE MARSHAL: All rise for the jury, please.

11 (Jury recessed at 4:50 p.m.)

12 THE COURT: All right. The record will reflect that
13 the jury has departed the courtroom. Any matters outside the
14 presence?

15 MR. DIGIACOMO: Not from the State.

16 MR. LANDIS: We had those couple exhibit things. G
17 and H were defense exhibits, I was going to propose and admit,
18 but I changed my mind in the cross so they're just empty.

19 THE CLERK: So I wrote on here not submitted.

20 THE COURT: Okay.

21 MR. LANDIS: And then, yeah, my belief is when I was
22 trying to play that jail call for -- during Jensen's
23 testimony, it was that Summer Larsen, and we approached and
24 you read it and you were less than impressed with the
25 language. I think I at least asked to mark and admit it as a

1 court exhibit at the time.

2 MR. DiGIACOMO: That's correct. It should be a
3 court exhibit as the audio that he wanted to play --

4 THE CLERK: I'll mark it a next in order.

5 THE COURT: Right. That's my recollection --

6 MR. DiGIACOMO: -- (Inaudible).

7 THE COURT: -- as well. So we need to absolutely
8 mark that as a court exhibit.

9 MR. WOLFBRANDT: The only thing I have was that
10 we've already signed that stipulation regarding waiving the --

11 MR. LANDIS: Your mic's off.

12 MR. WOLFBRANDT: Mr. Mendoza and I have already
13 signed and given to you our stipulation to waive the penalty
14 hearing.

15 THE COURT: Correct. And the Court has signed that
16 and the clerk is filing that in open court. Of course, we had
17 a stipulation on the record in court between the parties
18 concerning that. So actually, according to the rules, and
19 that serves as an adequate stipulation, but I always like to
20 also have the written if we can have it. Do you have those
21 or --

22 MS. McNEILL: Mr. Laguna has read it. I don't know
23 if the officers are willing to let him stay for a few minutes
24 just so I can -- I'd rather discuss it with him before he
25 signs it.

1 MR. DiGIACOMO: Or we could do it in the morning.

2 MR. LANDIS: Yeah, that's fine.

3 MR. DiGIACOMO: Either way is fine.

4 MS. McNEILL: Yeah.

5 MR. DiGIACOMO: I mean, we've can put it on the
6 record. We've told this jury if they were --

7 MS. McNEILL: Yeah.

8 MR. DiGIACOMO: -- going to change their mind, it
9 would really be bad for them, so I imagine they're not going
10 to.

11 MS. McNEILL: Right.

12 THE COURT: Well, and we have the stipulation on the
13 record so -- all right. I'll see you tomorrow at 9:00.

14 (Court recessed at 4:53 p.m. until Friday,
15 October 7, 2016, at 9:09 a.m.)

16 * * * * *

17 ATTEST: I hereby certify that I have truly and correctly
18 transcribed the audio/visual proceedings in the above-entitled
19 case to the best of my ability.

20

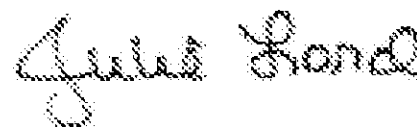
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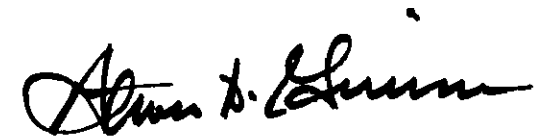
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JULIE LORD, INDEPENDENT TRANSCRIBER



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-15-303991-1
	.	CASE NO. C-15-303991-4
Plaintiff,	.	CASE NO. C-15-303991-5
	.	
vs.	.	DEPT. V
	.	
JORGE MENDOZA,	.	TRANSCRIPT OF
DAVID MURPHY, a/k/a	.	PROCEEDINGS
DAVID MARK MURPHY,	.	
JOSEPH LAGUNA, a/k/a	.	
JOEY LAGUNA,	.	
Defendants.	.	
.	

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 19

FRIDAY, OCTOBER 7, 2016

APPEARANCES:

FOR THE STATE:	MARC P. DiGIACOMO, ESQ. AGNES M. LEXIS, ESQ.
FOR DEFENDANT MENDOZA:	WILLIAM L. WOLFBRANDT, ESQ.
FOR DEFENDANT MURPHY:	CASEY A. LANDIS, ESQ.
FOR DEFENDANT LAGUNA	MONIQUE A. McNEILL, ESQ.

COURT RECORDER:

LARA CORCORAN
District Court

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INDEX

STATE'S REBUTTAL CLOSING ARGUMENT BY MR. DIGIACOMO.	7
VERDICT RE: JORGE MENDOZA..	72
VERDICT RE: JOSEPH LAGUNA..	73
VERDICT RE: DAVID MURPHY.	75

1 LAS VEGAS, NEVADA, FRIDAY, OCTOBER 7, 2016, 9:09 A.M.

2 (Outside presence of the jury)

3 THE COURT: All right. We're on the record. We're
4 outside the presence of the jury. The three defendants are
5 present with their respective counsel. The Chief Deputies
6 District Attorney prosecuting the case are present, as are all
7 officer of the court.

8 The Marshal informed me this morning that Juror No.
9 11, Patrice Zamani, is here today, but indicated that she'd
10 been up all night, very ill and vomiting, and that she was not
11 feeling well. Was feeling very queasy and couldn't guarantee
12 whether she was going to be able to make it through the rest
13 of the trial.

14 Although, of course, she, having been here for four
15 weeks, she really wants to participate. But my concern is --
16 well, several. I have several concerns; that she'll give
17 whatever she has -- you know, what I mean, if it's not food
18 poisoning, she might give whatever she has to the rest of the
19 or jurors and then they'll start dropping like flies because
20 whatever this is had a quick onset.

21 And I don't want that happening in the middle of
22 deliberations. I don't want her getting sick and vomiting in
23 the courtroom or jumping up and running out of the courtroom
24 and causing an interruption in the middle of the final
25 closings. So all of those things we discussed off the record,

1 and my understanding is that all attorneys have now stipulated
2 that she can be released.

3 MR. DiGIACOMO: Yes, Your Honor.

4 MS. McNEILL: Yes, Your Honor.

5 MR. LANDIS: Yes, Your Honor.

6 THE COURT: And we will substitute the first
7 alternate who is Melissa Coyle, to sit in seat number 11. Is
8 that right?

9 MS. McNEILL: Yes, Your Honor.

10 MR. LANDIS: Yes.

11 MR. DiGIACOMO: Yes.

12 THE COURT: Okay. Thank you.

13 THE MARSHAL: Your Honor.

14 THE COURT: Yes? What?

15 THE MARSHAL: I just gave her the information --

16 THE COURT: Yeah.

17 THE MARSHAL: -- and she's very upset and really
18 wants to stay. And I just thought you should know that. She
19 said she's feeling better by the minute. So I just wanted to
20 relay that to you before we made the --

21 MR. DiGIACOMO: I mean, look --

22 MR. LANDIS: Yeah, I hate it, too.

23 MR. DiGIACOMO: I think, if she is saying I am
24 capable of being here, she had no reason to tell the
25 Marshal --

1 MS. McNEILL: Right.

2 MR. DiGIACOMO: -- otherwise so.

3 MS. McNEILL: Yeah.

4 MR. DiGIACOMO: -- you know, she should stay if
5 that's what she's saying.

6 MS. McNEILL: Yeah. I mean, she --

7 MR. DiGIACOMO: I thought her request was like I
8 really can't do this, but I don't want to not go, if I'm here.
9 If her request is, I think I'm feeling well enough, I think
10 she should stay.

11 MS. McNEILL: I agree.

12 MR. LANDIS: Yeah. I think we'll unstipulate.

13 MS. McNEILL: Yes.

14 THE COURT: All right. Well, okay.

15 THE MARSHAL: Would you want to bring her in by
16 herself right now and have this conversation with her?

17 THE COURT: No, not necessarily. I mean, she
18 doesn't -- I don't want to -- but I think what we need to do
19 is, do we have a waste basket we can put in front of her just
20 in case?

21 THE MARSHAL: A barf bag.

22 MR. LANDIS: If she pukes on you, this is going to
23 be good.

24 (Off-record colloquy)

25 (Off the record at 9:12 a.m. until 9:19 a.m.)

1 (Outside the presence of the jury)

2 THE COURT: All right. The record will reflect
3 we're still outside the presence of the jury. Everybody's
4 here. It's only been, what, five minutes since Ms. Zamani
5 said oh, she could make it and now she's saying no, she can't.
6 So, I'm not surprised, given her symptoms that that's
7 happening. But we're going to -- everybody's now in agreement
8 we'll dismiss her and put in the alternate; is that right?

9 MS. McNEILL: Yes, Your Honor.

10 MR. DiGIACOMO: Yes, Your Honor.

11 MR. LANDIS: Yes.

12 MR. WOLFBRANDT: Yes.

13 THE COURT: Okay. All right, let her go.

14 THE MARSHAL: I'll let her go and bring everyone
15 else in, ma'am.

16 THE COURT: Yes.

17 (Pause in the proceedings)

18 THE MARSHAL: All rise for the jury, please.

19 (Jury reconvened at 9:20 a.m.)

20 THE MARSHAL: Your Honor, all 12 members of the jury
21 are present, along with the now 2 alternates.

22 THE COURT: Okay, thank you. And the record will
23 reflect the presence of the 12 members of the jury. We've now
24 substituted our first alternate in to Seat No. 11, and of
25 course, that's why we chose the alternates, as I explained to

1 you.

2 And so we have two remaining alternates with us.
3 And we are ready to hear the final closing argument from the
4 State. You ready?

5 MR. DiGIACOMO: Yes, Your Honor.

6 THE COURT: Thank you. You may proceed.

7 STATE'S REBUTTAL CLOSING ARGUMENT

8 MR. DiGIACOMO: In every jury trial, actually,
9 hopefully for almost everything we do in this courthouse it's
10 really one thing. It's about a search for the truth. That
11 the responsibility of the 12 people who sit on the jury. It's
12 deciding what is the truth and then deciding can the State
13 establish the guilt of these individuals beyond a reasonable
14 doubt? Those are the charge of the jury.

15 And to suggest as sort of I took the arguments of
16 the defense that there is a separate truth for Mr. Mendoza
17 than there is for Mr. Murphy or that there is from Mr. Laguna,
18 it's one truth. The question is did we prove these each
19 individual's guilt beyond a reasonable doubt?

20 So as I talk to you a little bit about what the
21 evidence shows, that is one thing. Then I'm going to talk
22 also about, sort of, what the rules are when you apply them to
23 the various defendants and then ultimately, I'm going to tell
24 you what I think the evidence has shown at this point.

25 Is what is the evidence is and this is why you

1 should convict these three individuals of all the counts that
2 are charged in the Indictment.

3 The first rule of a jury is deciding the facts.
4 Well, how do you that? And you do that from the evidence
5 itself. And you heard the Court and you have an instruction,
6 there's direct evidence and there's circumstantial evidence.
7 And maybe this seems somewhat obvious, but there's the
8 evidence that is direct, in that, I saw this, I heard this,
9 whatever, I smelled this. Then there's the evidence that's
10 circumstantial that the Court sort of describing. And people
11 think of circumstantial evidence like, you know, some of the
12 best evidence the criminal justice system has ever seen, DNA.

13 What's the circumstance of DNA? It's not direct
14 evidence, right? There's no person saying it. If there's an
15 individual, a woman who has sperm in her and it's male DNA and
16 that turns out to be her husband, it's irrelevant. If it's a
17 child and there's male DNA, well, guess what, you know who the
18 perpetrator of the crime is. It's the circumstance that that
19 piece of information provide you.

20 What's less evident from the instructions provided
21 or really thinking about it is that sometimes the direct
22 evidence is circumstantial in the sense that why is it this
23 particular person is saying this? What does this statement
24 establish for you? And that's an interesting distinction and
25 a very important distinction in this case as you go through

1 the evidence.

2 So once you get past evidence, there's another sort
3 of rule that we have, right? Mr. Murphy and Mr. Laguna get to
4 be tried on the rule that says, hey, the other people guilty
5 of this crime, I don't care if you believe those people beyond
6 a reasonable doubt, no matter what they say, there better be
7 something else that tends to connect them to the crime. And
8 that's a rule that you have and why do you have it? Well,
9 because there's motivations for anybody else who's guilty of
10 this crime to say that a particular, another individual is
11 involved.

12 Now, are Mr. Mendoza's motivations the same as
13 Mr. Figueroa's motivations? Absolutely not. Mr. Figueroa's
14 motivations, if he has those, you have a jury instruction
15 about he wants this court to look favorably upon him, and
16 thus, he should -- he needs to provide truthful information,
17 and if that information turns out to be not to be truthful,
18 he's not going to get the benefit.

19 And when you sort of looked at all the documents
20 associated with Mr. Figueroa, one, you'll come to the
21 realization he fully understands that, but two, that
22 Mr. Figueroa in every statement that he has provided is
23 concerned about one thing, which is how much time is he going
24 to have to do, and if he gets caught in any particular lie,
25 how bad it's going to be for him because there's no question,

1 you'll see it in the attachment to his motion to dismiss, what
2 his lawyer tells him is basically, you got to chance out of
3 this one. And that's sort of true, right?

4 Mr. Figueroa has no defense to any of the crimes
5 charged here and I'm going to suggest to you neither does
6 Mr. Mendoza. He has no defense to the crimes charged based
7 upon the facts that are admitted in front of the jury.

8 So Mr. Mendoza, though, he wants you to believe that
9 at the time he fired that shot, he's no longer engaged in an
10 attempt robbery. He doesn't really mean to hurt anybody, and
11 thus, there's no malice so he gets a not guilty. Well, read
12 the instruction on malice. Malice says for any wrongful
13 purpose. So by definition, he is engaged in malice once he
14 started the attempt robbery. You can't get a not guilty on
15 these facts.

16 What he can do is say, hey, the robbery is complete.
17 And when you read the instruction, the question of when that
18 robbery is complete is up to you. I read those instructions
19 to say, if their actions in the attempted robbery result in
20 the murder, the attempt robbery is still ongoing, and if the
21 attempt robbery is still ongoing, it's felony murder. If it's
22 not felony murder, then if you somehow reject, and I don't
23 know how you could on facts we've heard, that it's an ongoing
24 robbery, then you get to the second step, which is okay, is
25 there premeditation and deliberation in this crime? And if

1 there's not premeditation, deliberation, then all other
2 murders, second degree murder, thus, the unlawful killing. He
3 had malice because he had a wrongful purpose in doing what he
4 was doing, ergo, thus, at the end of the day, that's the
5 choice for the jury, is it first or is it second?

6 And I'm going to suggest to you that really, that is
7 a very difficult defense to actually establish on the facts
8 that you heard and the testimony of Mr. Mendoza.

9 As it relates to Mr. Murphy and Mr. Laguna, they
10 have a right to have evidence which, quote, "tends to connect
11 them to the offense". Now, the burden of proof as it relates
12 to tends to connect them, is not within those jury
13 instructions. It's not an element of the crime. It is
14 evidence which tends to connect them to the offense. And it
15 tells you like the mere fact Mr. Murphy was in the area or
16 Mr. Laguna was in the area at the time of the crime is not
17 enough to say that that tends to connect them.

18 And think about why that would be. So a guy goes in
19 and he burglarizes a place and as he's running out, he sees
20 another individual standing there and he gets caught and he
21 says yeah, I did it with that guy, and there's absolutely no
22 evidence other than that guy happened to be standing in the
23 parking lot when the burglary occurred. That's not evidence
24 which tends to connect the individual to the crime.

25 There was to be something more that's there. But

1 the suggestion to you that the cell phones alone are what
2 connect these individuals to this crime is just not borne out
3 by the evidence in any manner, in any way, because the first
4 thing you do is take away the testimony of these individuals.
5 Not the existence of these individuals.

6 Once you have Mr. Mendoza shot, bleeding at his
7 scene, there's no question, as we will discuss, that
8 Mr. Murphy is connected to this crime. There's no question
9 about it. Why? Because who is Mr. Mendoza? Mr. Mendoza is
10 just some random guy who would have absolutely no knowledge of
11 what was going on at that house, who lived at that house with
12 that person in that house, whether he was selling dope, he had
13 a wife that was mad at him. There was any other reason to go
14 to that particular house.

15 But you know that whoever went to that house knew
16 the occupants of that house. And you don't know it because of
17 what Ashley Hall says. You don't know it because of what
18 Summer Larsen says. You know it because before the crime
19 occurred, somebody knew that it was going to be that house
20 that was going to be hit. That Summer Larsen in some way is
21 related or, as I'm going to suggest to you, Ashley Hall,
22 somebody who's related to either Summer Larsen or Ashley Hall
23 because from what you've heard, the information goes from
24 Ashley Hall to Tracy Rowe to Steve Larsen and it happens late
25 in the afternoon on Sunday.

1 So thus, you know that there is a specific reason to
2 go there. So when Mr. Mendoza commits this is crime, there's
3 only one connection between Mr. Mendoza and Summer Larsen, and
4 that is Murphy. And you know that that evidence tends to
5 connect them because you hear Mr. Murphy's getting arrested in
6 December of 2015, and Barry Jensen over here doesn't even
7 learn about the phone number that ties them all in until
8 January 29th of 2015. That's after Mr. Figueroa has given
9 statement on the 20th. When he gives the confession on the
10 24th. When he's talked to, again, with Ms. Lexis on January
11 25th and he testifies at the Grand Jury. It's the day he
12 testifies at the Grand Jury that Barry Jensen learns about the
13 phone number for Mr. Murphy.

14 That evidence, the phone, isn't what connects him.
15 It's the fact that, what you do you know about Mr. Murphy?
16 You know that Mr. Mendoza's wife, Amanda, know there's
17 something wrong before Tod Williams over here calls her on the
18 phone. There's a problem with Mr. Mendoza.

19 And you know that what happens then? It is
20 Mr. Murphy who takes her to the location where that car is.
21 Does that tend to connect Mr. Murphy with the offense that
22 occurred in this particular case? The answer is absolutely.
23 Has nothing to do with the phone whatsoever.

24 The police, they may not know it, but there's a
25 whole lot of evidence that tends to connect Mr. Laguna or

1 Montone to this crime long before they ever hear it from
2 Robert Figueroa. They have the Find My iPhone app that's
3 pinging on Lucky Horseshoe.

4 They have Tod Williams going to an address. And I
5 know that there's some argument that they should have been
6 prescient enough at the time that they're writing this report
7 along, to know that there was a difference between the car
8 being at the Lucky Horseshoe address, and the phone being at
9 the Lucky Horseshoe address. And that that Lucky Horseshoe
10 address just happens to be Mr. Laguna's house. All of that
11 evidence, and one of which you can't say, as was suggested
12 that these desperate men made up, it's on a recording. Lucky
13 Horseshoe, that's where the car is.

14 How is it that they're desperate when they make this
15 up? And then what else do you know about Mr. Laguna? The
16 defense, or one of the defense witnesses in this case,
17 Mr. Sotelo, which we will talk about, Mr. Sotelo, what do you
18 know from him? Yeah, he's not a very credible individual, and
19 you can pretty much catch that information.

20 But what's the one thing that he gives before
21 Mr. Figueroa ever hits the -- before they know who
22 Mr. Figueroa is? Hey, who lives at the -- or who lives up by
23 Cheyenne and Gowan or whatever it is they say, Alexander and
24 Gowan? And the response, it's Montone. He lives in a very
25 nice house. And guess what? That just happens to be 3668

1 Lucky Horseshoe.

2 There's all kinds of information that the police are
3 gathering before Mr. Figueroa ever comes forward that suggests
4 that potentially, Mr. Murphy and Mr. Laguna are involved in
5 this crime, and you don't even have to get to what
6 Mr. Figueroa says. Once you get to the phone records, we're
7 not talking about tending to connect them. We're talking
8 about proof beyond a reasonable doubt independent of Figueroa
9 and Mendoza.

10 Because if Mr. Figueroa hadn't entered a guilty plea
11 and if Mr. Mendoza had not been standing up in the stand,
12 you'd essentially get the rebuttal I'm about to give you about
13 what the facts show in this case, because once you get those
14 phone numbers, there is no question that these two individuals
15 are guilty of the crimes. None whatsoever. It's not even
16 close. There's no chance to get around it.

17 So let's think about, though, credibility of the
18 witnesses because in order to sort of understand the evidence,
19 you have to understand the credibility of the witnesses. So
20 credibility is not a black and white concept, right? Telling
21 the truth is a black and white concept. But credibility, when
22 you read that instruction, goes to a lot more than that.

23 People could be trying their best to tell the truth
24 and not be accurate in what actually happened. And there are
25 a number of examples of those type of individuals in this

1 case. And so some of them, for example, all the 911 calls,
2 all four of them, they provide what -- there's no reason to
3 believe -- is not truthful information. But are they all
4 accurate?

5 And so let's start with Mr. Day, the obvious one.
6 Is Mr. Day being truthful? Well, there's no reason to suggest
7 he's not being truthful, but what does he say? He says in
8 here, I see this individual, he's got a semi-automatic
9 firearm, not the revolver that Mr. Mendoza put in his hand.
10 And I see him at the corner and I see him pointing, and I
11 believe that he's shooting a weapon. And then I get my gun
12 and I go outside, and then I see Mr. Mendoza on the ground and
13 then I call 911. Okay.

14 Is all of that accurate? Well, listen to the 911
15 call by Mr. Day. What does he say? He says, hey, there's a
16 guy out in the street who's got a rifle, he's got an orange
17 mask, he's sliding on his butt. I heard some gunshots. And
18 before that, I saw a guy with a mask on the corner wearing a
19 gun.

20 Now, could it have been that he just forgot to tell
21 the police in his 911 call that that guy was shooting or is it
22 more likely this scenario, which is, he sees this individual
23 outside as he's hearing the shots only three houses away. And
24 he's holding a weapon. And in his mind now as he's telling it
25 to you, this individual's shooting.

1 Well, he's semi-automatic weapon and there's no
2 casings at the scene. Okay, well, maybe he's wrong about that
3 fact. So he's holding a revolver. Well, that already makes
4 him wrong even though he's trying to be as accurate as
5 possible.

6 Well, there's no bullet strikes associated with this
7 revolver. Or is it more likely that he hears the second set
8 of shots, the one that puts Mr. Mendoza on the ground, and he
9 associates that in his testimony to you, that those are the
10 shots? And I will suggest to you what he said from the stand,
11 his direct evidence, provides you the circumstantial proof of
12 that's the actual thing that happened, that Mr. Figueroa
13 didn't fire his weapon.

14 And here's why. Because here's a Corrections
15 Officer who says I saw a guy out there and I heard the shots.
16 I got my gun, and I went outside. Well, why did you do that?
17 Well, I didn't know if it was a real gun or if it was a pellet
18 gun, or if it was an Air Soft gun. And for anybody who knows
19 weapons, if there's muffled shots down there, what's it going
20 to sound like to him? His reactions tell you. Because if he
21 saw Mr. Figueroa and he knew he was firing a weapon, he would
22 have called 911 first before getting his gun and going outside
23 to see if there's something odd going on.

24 What about the idea that he didn't see a car driving
25 away? Well, you know his eyes were off this area for some

1 period of time. How do you know that? Well, you know that
2 from Mr. Walker, who's at the house that's caddy corner
3 looking down Long Cattle. That individual, he doesn't see
4 Mr. Figueroa. He doesn't see Mr. Mendoza until he's in front
5 of his house, and thus, after the time period that Mr. Day saw
6 him.

7 And, you know, I see my neighbor out there. Well,
8 what do you know Mr. Day had to do? He had to go get the
9 phone. And during that time he got the phone, what does
10 Mr. Walker see? He sees the car that drives up Long Cattle
11 and has a connection with Mr. Mendoza.

12 Now, what car that is? I don't know that it's
13 absolutely relevant, although, we will get to the fact that
14 it's likely the champagne colored Nissan Maxima. But do each
15 of them provide accurate information? Yes. Does that
16 necessarily mean everything they told you is what actually
17 happened? Answer, no. How about Ms. Salgado, the woman who's
18 at the house that's looking down at the scene?

19 Listen to her 911 call. What does she hear or what
20 does she see? Well, I looked out the window, I saw an
21 individual on the ground bleeding, I went back and I called
22 911.

23 When you listen to her 911 call, she says, I heard
24 two sets of shots. I'm not going back to that window. I'm
25 not going back to that window. And eventually she goes back

1 later on and now she sees Mr. Larsen drive up, jump in, and
2 that's when she thinks she should call back. And when she's
3 looking at where Mr. Larsen's running, she sees the feet.

4 Well, how would it be possible that Mr. Gibson is
5 not laying in that doorway if both sets of shots have occurred
6 after she's left the window and Mr. Mendoza is down? It's not
7 that Monty Gibson wasn't in that doorway. That's not where
8 her eyes were focused. Her eyes were focused on the guy on
9 the ground and she does not, on that 911 call, ever say
10 between the time I saw the guy on the ground and I heard
11 shots. No, she says I, I saw the guy on the ground and then I
12 heard shots. Which tells you what? Monty Gibson's in the
13 doorway, she's not just not looking there. She's looking at
14 the guy who's wearing a mask holding a rifle in the middle of
15 the street.

16 If you were to put all of those facts together, you
17 could pretty much establish sort of the sequencing of events,
18 and when we get sort of to the end, that's why you can't just
19 take at face value what people say, you have to analyze it in
20 relationship to the rest of the evidence.

21 The same with Mr. Maszuski (phonetic) or Michalski,
22 or whatever his name was, he sees a helicopter, he sees two
23 individuals in an area away from really where the lights are,
24 but in his behind, he draws the conclusion that we're related.
25 He could be right, and you'll see why in a few moments. But

1 he might be wrong, too.

2 He drew a conclusion from some evidence, but there
3 wasn't anything there that the police could have followed up
4 on. What else could the police have followed up on? There's
5 two individuals that ran away from this particular area. Do
6 we have any identifying information? No. Is there anything
7 else you could do as it relates to those two individuals? No.
8 They didn't do anything wrong, those two police officers.

9 Which gets me sort of to the final sort of thing I'm
10 going to say before I get to the individual witnesses, which
11 is, in relationship to what Ms. McNeill talked about Barry
12 Jensen was desperate or Tod Williams was desperate. I'm not
13 exactly sure what they were desperate of or what they're
14 desperate for.

15 What is it that they could have said? For example,
16 there was a suggestion that Barry Jensen lied because he did
17 give Gabriel Sotelo a benefit, and he lied about it, because
18 when Mr. Landis said, did you ever get Gabriel Sotelo a
19 benefit, he said no. Well, the evidence of that is what?
20 Gabriel Sotelo, which is either lying before, or lying now,
21 because he can't be telling the truth in both situations.
22 It's impossible. Why? Because now he says I was with Manny
23 when I got a phone call and I'm talking to Mr. Figueroa on the
24 phone the night this crime occurs.

25 And what does he tell the police or Mr. Jensen or

1 Detective Jensen initially, which was a few weeks later I was
2 trying to get ahold of him, I went over and Robert told me
3 this story about the shot in the mouth and how Manny did it.
4 Well, if you're standing next to Manny, what is going on here?
5 Is Gabriel Sotelo telling the truth to Detective Jensen?

6 You can pretty much figure out the answer to that
7 question, which is, no. He's doing what you expect him to do.
8 He's a two-time, doesn't want to be a three-time, and now
9 three-time felon who doesn't want to get arrested by Officer
10 Stucky, so he provides her a story. She gets ahold of
11 Detective Jensen. He provides Detective Jensen a story, and
12 there's information in there which is helpful to the
13 investigation, one piece, Robert Figueroa. Is Orco helpful?
14 No. Is Manny helpful? No.

15 And Detective Jensen doesn't know how helpful
16 Montone is. The suggestion is we didn't call him. That's
17 because what relevant information does he have to provide you?
18 Do you honestly believe anything comes out of the mouth of
19 Gabriel Sotelo?

20 But more importantly, if Detective Jensen had
21 provided him a benefit, and I'm suggesting to you that he's
22 not a credible individual, why would Detective Jensen deny it?
23 Absolutely, I can't believe what I did for that guy. I got
24 that guy out of jail and yet, it turns out he lied and
25 everything he said about my investigation with the exception

1 that Robert Figueroa is the -- is -- got shot in the face, is
2 false.

3 What was Barry Jensen's motivation to lie about
4 that? Because he tells you, yeah, I get people out on ORs all
5 the time. I just never did it for Gabriel Sotelo. And what
6 else did you hear from Gabriel Sotelo? Yeah, you know what, I
7 know I said it was the next day when Stucky arrested me, but
8 it really was October 29th. Well, what do you know about
9 October 29th? By now they've had Gabriel Sotelo's story since
10 the 16th. The only thing that's checked out is Robert
11 Figueroa, and they've talked to Figueroa on the 24th. Why is
12 Barry Jensen getting him out of jail? And more importantly,
13 why is Barry Jensen showing up to the Las Vegas jail? Like,
14 is he also his taxi driver?

15 What about any of that makes any sense whatsoever?
16 Desperate people doing desperate things, I think, is what Ms.
17 McNeill said. And, you know, I understand that in a jury
18 trial you argue what you can argue. But what evidence is
19 there that either one of these individuals are desperate?
20 Would you have liked Detective Jensen to have done certain
21 things differently? Yes. But whose fault is that, really? I
22 mean, couldn't they possibly have had this entire story?
23 Couldn't they have had the testimony of Jorge Mendoza not
24 whatever might have happened a week ago? Couldn't they have
25 had it 11:30 at night on September 21st of 2014? I know

1 Murphy, I know Laguna, here's Murphy's phone number. Oh, my
2 phone's -- yeah, my phone's in their car so wait a second, my
3 wife would have Murphy's phone number. You can get to Murphy
4 from there.

5 And if that had happened, right, what would
6 Detective Jensen and Williams have done? They would have
7 known the whole story and then they could have gone and done
8 it. It's one thing to know a very complex series of facts and
9 then investigate it. It's another thing to uncover the
10 complex series of facts without making any mistakes or hoping
11 you had done something better.

12 Detective Williams doesn't know that the car is at
13 the scene because he knows the story that Mr. Mendoza's
14 telling him is completely unsupported by the evidence. So in
15 his mind, he didn't take the car, but what could the car have
16 told us anyways? Didn't have blood in it. Trace evidence.
17 Fingerprints.

18 Well, the only two people -- I guess, theoretically
19 Figueroa's could have been in there. We could have found
20 Figueroa that way, but if it had found fingerprints of Laguna
21 or Murphy or even the DNA of Laguna or Murphy, what have you
22 heard? They know each other. They all know each other.

23 So when did those fingerprints get there or when did
24 they sweat within that car or when would one of their hairs
25 fall off in the car? What did they tell you? It told you

1 nothing additional. The fact that Tod Williams didn't take
2 the car is only fodder for the defense attorneys'
3 cross-examination. It has nothing to do with whether or not
4 these individuals are guilty or not.

5 Which leads me to two witnesses, Figueroa and Summer
6 Larsen. And the suggestion to you is that the State of Nevada
7 is suggesting to you that Summer Larsen is telling the truth.
8 Summer Larsen and Robert Figueroa are two separate individuals
9 and should be examined based upon the separate nature of their
10 testimony.

11 Mr. Figueroa is a defendant who provided information
12 October 24th, before any discovery which turned out to be
13 absolutely 100 percent corroborated by every single thing of
14 piece of information that was found afterwards. That
15 individual is -- if he was Albert Einstein, could not have a
16 told a lie that turns out to be corroborated by every single
17 fact afterwards. That's impossible.

18 Summer Larsen, on the other hand, she has a story to
19 tell. And her story is one which, well, may be slightly
20 incredible if you look at the evidence. I had a conversation.
21 It was with an African-American male, and it was with a white
22 guy, and we were talking about the dope dealer's house. And
23 what happens after that is she confronts me about it being
24 Joey. I tell her it's not Joey. And after that I don't know
25 anything about this. I had no idea that David Murphy went and

1 hit the house.

2 Well, that doesn't make a whole hell of a lot of
3 sense. I mean, that's sort of what Ashley says happens in her
4 first interview, and you can figure out why the police have to
5 go back to her. Oh, wait a second, Steve Larsen knows exactly
6 what time people are coming over to Joey's house on Sunday
7 night, and we didn't hear that in Ashley Hall's statement the
8 first time.

9 So yeah, Ashley Hall was called at the January 29th,
10 2015 Grand Jury. Why was she called at the January 29th?
11 Because there was no information that suggested that Ashley
12 Hall wasn't being truthful. Yeah, she was a drug addict, and
13 yeah, she's on probation. Yeah, she's a felon. Yeah, we got
14 to put her into in-patient, but is there anything -- I mean,
15 she's inherently unreliable in that sense, but is she lying
16 about the story?

17 Well, right now there's no evidence that she is.
18 Well, now there is, because the moment you get the phone
19 records of David Murphy, you know that Ashley Hall is not
20 telling the truth, and you know why she comes up with the
21 second story that she comes up with on Saturday.

22 So the question is well, great, the only way I
23 convict Summer Larsen is to believe Ashley Hall, and well the
24 evidence seems to suggest that Ashley Hall is lying. So now
25 the predicament is do you put Summer -- do you give her a

1 deal, one? Absolutely. I don't have proof beyond a
2 reasonable doubt she committed the crime.

3 Two, do I put Summer Larsen on in front of the jury?
4 Yes. Why? Because it establishes something that is very
5 important. Whether she's telling the truth or not, certainly,
6 the conversation with Ashley Hall occurred on Friday, one.
7 Two, if she's lying, what is she lying about? It isn't some
8 African-American guy and some white guy that went over and
9 robbed this house. What is she lying about?

10 If she's lying, she's lying that she specifically
11 asked David Murphy to go over to that house at 7:30 at night
12 and rob Joey. Well, as you know from David Murphy, she
13 doesn't need to tell him where the house is. She probably
14 doesn't even need to tell him how to get the weed. So is
15 there something more going on?

16 And when Casey Landis suggested to you there might
17 be something more going on, absolutely, there might be
18 something more. Steve Larsen could be 100 percent correct,
19 because these three idiots or four idiots go over to rob the
20 200-pound dope supplier house with one gun on them. Even
21 Mr. Mendoza admits that. But yet, they're onto the T. He's
22 got this weapon fully loaded with nine millimeter rounds with
23 his finger on the trigger when they're going to hit the door
24 at Joey Larsen's house? The guy who has maybe a little bit of
25 weed with -- inside that house.

1 Is there a possibility that this is something a hell
2 of a lot more than just the simple attempted robbery that we
3 allege? Absolutely. And if Summer Larsen is lying, that's
4 likely what maybe this is. That the payment is to take the
5 dope and the marijuana out of this house so there's going to
6 be a robbery, there's going to be a home invasion, there's
7 going to be a burglary.

8 But the truth is, she sent over a couple of guys to
9 take care of her problem. That's it. Or Ashley Hall is more
10 likely the person, if you think that's not what happened here,
11 it's more likely that Ashley Hall is deeply more involved in
12 this case, deeply more involved in this case.

13 So let's go to what it is the evidence does show.
14 Let's start with the idea that Gabriel Sotelo is a truthful
15 individual. These are -- you have this exhibit, although not
16 exactly the same. In the exhibit you have all of Figueroa's
17 calls, all of Laguna's calls. And Ms. Lexis put this up
18 yesterday. And when you download two individual's phones and
19 they both are calling each other, you get duplicates.

20 When it goes to voicemail, you're going to get -- if
21 the phone records show a call in, then a call to voicemail and
22 then a call to somewhere else and then a call somewhere else,
23 you get duplicates. So I've shrunk this down, and you can do
24 it back in the room if you want to. You can draw a line
25 through it. Whatever you guys want to do, but you can see

1 what happens at 8:10 p.m., Mr. Figueroa, who is he calling?
2 And later I will suggest to you that if you're shot and you
3 need to get out of somewhere really fast, do you call the
4 person you know is closest to you? You don't have to depend
5 on Mr. Figueroa -- Mr. Figueroa's testimony to tell you
6 Mr. Laguna's with him. That's the only number of the people
7 he has that he can call.

8 Who is he calling first? But then what does he do?
9 Then he calls to try to call his roommate, Jeff Boone, who you
10 know is working this night, and every one of them goes to
11 voicemail. So then what does he do? He calls Manny
12 Barrientos. And when you look at Manny's phone records, it's
13 11:19 p.m. on Manny's records, but it's ATM, so that means
14 it's in Atlanta. So that means it's 8:19 p.m.

15 So at 8:19 p.m., where is Manny Barrientos? Well,
16 weird, ten minutes after the crime, which is all the way
17 across town, he happens to be north of that tower. Okay.
18 Maybe it's not Manny Barrientos's phone, but the person who
19 says Manny Barrientos is involved in this crime is Gabriel
20 Sotelo. And the person who says this is the phone number for
21 Manny Barrientos is Gabriel Sotelo. So if it's not Manny,
22 well, then nothing Gabriel Sotelo said was true that night.

23 After there is a conversation between Figueroa and
24 Manny Barrientos that goes along for about 7 minutes and 36
25 seconds, Manny starts trying to call back, and he can't get

1 through. And when he can't get through, weird. It isn't
2 Robert Figueroa calling Gabriel Sotelo repeatedly trying to
3 get ahold of him, it's Gabriel Sotelo calling Robert Figueroa.

4 How, if Gabriel Sotelo is not with Manny, does he
5 know that Robert Figueroa's in trouble and he's calling in
6 trying to find out what's going on? That evidence indicates
7 what Gabriel Sotelo says now, which is, yeah, Manny wasn't
8 involved. And he's doing what suspects do, right? Tod
9 Williams, I think Barry Jensen talked about this.

10 They talked about how sometimes even when they're
11 lying, they're sticking to some of the truth. I like to call
12 it this for you guys to consider when you consider all the
13 evidence in this case; you admit what you can't deny. But you
14 deny what you cannot possibly admit. And in Gabriel Sotelo's
15 world, that means he admits he's with Manny Barrientos, but he
16 denies that he just manufactured the whole story up from
17 Robert Figueroa.

18 Robert Figueroa told you, I said to Gabriel Sotelo
19 that me, the third guy who got hit that I didn't identify,
20 weird, that Gabriel Sotelo misidentifies, and Laguna were
21 stacked up at the door. And he puts them in the right
22 location and everything else. Do you think it's more likely
23 that after Robert Figueroa talks to Gabriel Sotelo at the same
24 time he's with Manny that he told him Manny, or do you think
25 that he told him Laguna and that Gabriel Sotelo has a

1 motivation not to snitch on Laguna, and he doesn't care about
2 snitching on Manny Barrientos? You draw that conclusion.

3 So now let's get to Ashley Hall. Ashley Hall, I
4 grew up on Bamboo. No, no, no, Delphinium. Technically, I
5 was on Delphinium. Oh, so you know David Murphy? I don't
6 know David Murphy. Well, isn't is this you on the Facebook?
7 Oh, that's a different Ashley Hall on the Facebook. Oh, okay,
8 yeah, yeah. Well, you've talked to him on phone? No, I've
9 never talked to him on the phone.

10 Well, you gave Barry Jensen your phone number and
11 it's the same phone, right? Yeah. Weird. So this is now
12 September 20th at 7:19, phone contact between Ashley Hall and
13 who? David Murphy. How is that possible if she does not know
14 David Murphy? And it's not just one. There's an outgoing and
15 then there's an incoming where they actually talk at 9:18.

16 And note, Mendoza's testimony is it's about 9:00
17 o'clock on this night when he says that, I've got a robbery or
18 a lick we can do, you can make some money. It's not exactly
19 at 9:00 o'clock that he's over at Mr. Mendoza's house, but if
20 you jump forward a little bit, it's about 11:53 when he first
21 starts hitting that tower that's right by Mendoza's house.

22 So he is over at Mr. Mendoza's house that night.
23 And then let's just sort of follow along what happens with
24 David Murphy and Jorge Mendoza from there. After he leaves
25 the house, he drives way up north, right in the region of

1 Durango and 95. Now in and of itself is that enough to say
2 there's something going on? Well, at least there's enough to
3 say there's something going on. And then what happens?

4 Remember Jorge Mendoza's at home at 11:30 and
5 Mr. Murphy is in his house over here. See if we can -- this
6 covers Delphinium. If he was on the other side of this tower,
7 it would cover Lucky Horseshoe because him and Laguna live so
8 close together. And he makes a phone call to Jorge Mendoza.

9 Now, Mendoza says yeah, I drove there right up
10 Rancho. Well, that's true, but you don't need to listen to
11 Jorge Mendoza to know that because at 4:28 in the morning,
12 Mendoza's phone has left his house and is now hitting on the
13 tower that's halfway between his house and Murphy's house on
14 Rancho. Where is it that Jorge Mendoza's going? He's going
15 to David Murphy's house.

16 And I'm going to suggest to you, Mr. Mendoza did on
17 the stand, what I suggest to you Gabriel Sotelo did on the
18 stand, what I suggest to you Mr. Mendoza did during his
19 interview. He admitted what he couldn't deny and he denied
20 who he couldn't admit.

21 See, because the next time his phone records become
22 relevant in the least bit is 7:14 in the morning. So what
23 Mr. Mendoza did in between that time period, his records don't
24 tell you. But what Mr. Murphy did during that time period,
25 his records do tell you.

1 5:00 -- between 5:05 and 5:30, and the suggestion
2 yesterday was that this tower location that happens to be at
3 Jones and 215, that -- oh, and it just happens to be the
4 north, northwest, and it was testified to by Robert Figueroa
5 before we had Mr. Murphy's phone records that this tower isn't
6 in an accurate location. Well, maybe Mr. Landis wasn't
7 listening to the testimony of two the separate experts that
8 testified to phone records in this case.

9 You can listen to first Officer Gandy who sort of
10 put this together and confirmed the information. But is there
11 anybody in this courtroom who knew more than the custodian of
12 records for T-Mobile about T-Mobile records? That guy loved
13 phone records. And I know it was boring as all get up, but
14 once you get into these phone records, there's nowhere you can
15 go except to the guilt of these two individuals.

16 What did he say about that exhibit that we got in
17 September of 2016? It's generated, we keep the information,
18 the tower location, the LACS, all of that is accurate, but
19 some of them will have GPS coordinates, some of them don't.
20 But whatever you do, make sure you use the one off 275, that
21 big list of tower location information, because that we can
22 say is accurate in September of 2014. It is why some of these
23 with the LAC that ends in 93, the 24593s, why it is you don't
24 get the site of a tower, because the list they gave us back
25 then did not have the tower side, but the actual phone records

1 had GPS locations. Use that one and make sure you use that
2 one because T-Mobile says these are accurate.

3 Mr. Landis got up here and said you should reject
4 that testimony because, well, he didn't give you a reason. Do
5 you have any evidence in front of you that suggests that any
6 of this information's unreasonable? And when they were
7 cross-examining Officer Gandy, it was like well, is it
8 possible this tower wasn't working? It is possible this
9 tower's not working, but it's not possible for this tower not
10 to be working at 5:05 and 5:30 in the morning because if it
11 wasn't working, it wouldn't actually have any connection to
12 the phone. That's impossible.

13 If all the towers around it weren't working, maybe
14 this circle wouldn't be here, it would be out here. But
15 either way, this information tells you that that phone is in
16 the area of that tower.

17 Well, why can't Mr. Mendoza say this? Well, the
18 reason he can't say it is because that makes Figueroa even
19 more credible. Because Mr. Landis yesterday suggested to you
20 that Mr. Figueroa at the Grand Jury misstated or lied or
21 didn't tell the truth about Mr. Murphy being alone in his
22 vehicle, in the truck at the time that the first robbery was
23 going to occur. Go look at that testimony. And you've seen
24 it here in trial. You ask a question and somebody misspeaks
25 and you correct them, or you ask them a question and they

1 answer it and sometimes you ask them a question differently
2 and they answer it a different way.

3 The question being asked by Ms. Lexis of
4 Mr. Figueroa about the location of Mr. Murphy and whether or
5 not he was alone in the truck was after the time period when
6 they're parked down here and Murphy's up at the corner,
7 wherever that is, whether it's this corner or that corner
8 because that's the long cul-de-sac described by both
9 Mr. Figueroa and Ms. Larsen that backs up to 215. When she
10 asks him at that point, who's in Mr. Murphy's truck and he
11 says Mr. Murphy.

12 He's never asked, hey, back when you guys were all
13 together at the Rebel or when you first saw Mr. Murphy, who
14 was in the truck? He wasn't asked that question. And so he
15 answered the question truthfully, and nobody went back to say
16 well, let me back up, earlier at this time period what was
17 going on? He wasn't ever asked. And thus, you can't say he's
18 lying because he answered the question truthfully.

19 What else? What happened when Ms. Lexis asked
20 Mr. Figueroa a question? Because you will hear from the
21 statements, he says, you know what, this was Doughboy's idea.
22 Doughboy had the location. Doughboy -- Montone told me
23 Doughboy had the location. Doughboy told me Doughboy had the
24 location.

25 Ms. Lexis asked the question slightly different.

1 She asked him what was your understanding of who had been here
2 before? And his answer was, Mr. Murphy and Mr. Mendoza. And
3 you know what? You go back to all the statements. He never
4 said that before.

5 But he was never asked that question before either.
6 And weird, you think he knows these phone records like you're
7 going to know them by the time we're done here? No way. How
8 is it possible that he knows that these two individuals were
9 at that location at that time? After Murphy goes home and
10 it's why Mr. Mendoza's face is not down here, is Mr. Mendoza
11 with Murphy that entire time? I'm going to suggest to you
12 that answer is clearly, no. Is when it is they separate, I'm
13 going to assume for purposes of this argument -- not that it's
14 real relevant -- that after they go to the dope dealer's
15 house, he drives back and Mendoza goes home.

16 Where does he go? He then goes back up in the area
17 of 95 and Jones or Durango and 95. You know, something about
18 this doesn't make sense, that he's running an errand at this
19 time in the morning. To what? Why is he up there? And why I
20 say Mr. Mendoza's not with him is because when they then meet
21 up over at Joseph Laguna's house and now the plan really is
22 being formed, who's present? Well, Murphy and Laguna are at
23 the house first, and Jorge is called to come to the house or
24 texted to come to the house, and now he's hitting that tower
25 on the middle of Rancho again.

1 So when Mr. Mendoza says to you, I was with David
2 Murphy that whole time, that answer is no, you weren't with
3 David Murphy that whole time. And when you go back and say to
4 Ashley, it doesn't make sense what you told us about Friday
5 that you know specifically when the house was going to get hit
6 on Sunday, and she tells the Saturday story that was relied
7 upon in the Grand Jury indicting Summer Larsen, that I don't
8 know which one of those is true, you don't which one of those
9 is true, but you certainly know there is not proof beyond a
10 reasonable doubt that Summer Larsen was going to hit Joey's
11 house at 8:30 at night on Sunday.

12 What you do know is that either Ashley Hall or
13 Summer Larsen was involved in some way with this crime because
14 she knew when the house was going to be hit. And the only
15 person in this case who's tied to both Summer Larsen and
16 Ashley Hall is David Murphy. And that has nothing to do with
17 Robert Figueroa.

18 So when you suggest that I'm giving some benefit to
19 Summer Larsen, she essentially pled guilty to what it is she
20 admits she does. And I guess, theoretically she could have
21 just said that that's what the story is so that, you know, she
22 didn't face the charges at the end of the day, but that was
23 her admission way back when. And when you finally get all the
24 evidence forward, it's either Ashley Hall or it's Summer
25 Larsen, but who really knows?

1 What do you know, though, if you follow the story
2 from there? Both Murphy, Mendoza are at Laguna's house now by
3 7:22 a.m.. And what happens shortly after? I didn't put
4 Mr. Mendoza's phone record up there because it's not his phone
5 record that tells you this. So for purposes of his trial,
6 he's in the car with Mr. Laguna. Theoretically, for purposes
7 of evidence that tends to connect Mr. Laguna and Mr. Murphy,
8 it's his phone record and Mr. Figueroa's phone record. But
9 what happens?

10 He actually doesn't hit on this tower when he calls
11 Mr. Figueroa. He's the tower before, if you were going to all
12 those records. He calls Figueroa, come outside, get in the
13 car, we're going somewhere to do this lick with Doughboy. But
14 then when he gets to the house, he makes a phone call, and it
15 hits on that 510, on the south side of the 510, right, that
16 services Mr. Figueroa's house, and who is he talking to? Oh,
17 yeah, he's talking to David Murphy. So right as he picks up,
18 Robert Figueroa, he's talking to David Murphy.

19 And when he's talking to David Murphy, Mr. Laguna's
20 cell phone starts traveling north, northwest all the way up to
21 the area that we know that he eventually arrives to. And the
22 only two conspirators that are talking during this time period
23 are David Murphy and Joey Laguna. And what does that suggest
24 to you? That suggests that the other conspirators are with
25 them just like you know that they are from by way of the phone

1 records of Mr. Figueroa, by way of the testimony of
2 Mr. Mendoza and by way of the testimony of Mr. Figueroa, but
3 you don't even need that to establish it.

4 And where is Mr. Murphy? Mr. Murphy's up here still
5 scoping out this location while this is happening. And then
6 what happens? Mr. Murphy goes off that tower. And as they
7 get closer, they wind up near -- on towers right next to each
8 other. What does that suggest about what happened? That
9 Mr. Laguna and Murphy met up, which means the four
10 conspirators are together. And after they're together at the
11 Rebel gas station with the Hispanic female with the tattoos
12 and he's in the white truck and they're in the gold car, what
13 happens after that?

14 They wind up right on the same towers. Right on
15 those towers that's going to serve as the location where
16 they're about to do something. Without Figueroa you don't
17 know what they're going to do, but certainly, you know that
18 something's going on at this point. And then right after
19 that, as they drive away from the location, Mr. Murphy's still
20 up there, but as Mr. Laguna drives away, he calls Murphy.
21 What do you know that that conversation is?

22 Oh, Mendoza doesn't want to do this. Let's regroup
23 back at my house. What do you know happens from there? Yep,
24 they're all back at the house, Mr. Figueroa, Mr. Laguna,
25 Mr. Murphy. Mr. Mendoza's phone records don't say it, but he

1 does. So for purposes of his trial we all know he's there.
2 But for purposes of their trial, all three of these
3 conspirators are back at Mr. Laguna's house by 9:15 in the
4 morning.

5 At this point, without knowing anything else about
6 this case, can you draw the inference that there has been a
7 coordinated series of acts sufficient to infer some agreement?
8 What that agreement is, you may not have evidence of without
9 Mr. Figueroa, but certainly, these people are doing something
10 together right now. Something together. Had they robbed the
11 dope house, you would have known what they were doing
12 together, but these people are certainly doing something
13 together.

14 And then as we discussed, the people separate for a
15 period of time. But ultimately, at 7:30 p.m., these three are
16 there, Mr. Figueroa's records, he's basically south at 15 or
17 the last time he hits is about 7:00 o'clock, but he's on his
18 way north to the location.

19 But certainly, all three of these phones are now at
20 Joey Laguna's house. And then they all drive together. And
21 how do you know they drive together? Well, because two of
22 these people are left at the scene. And then what do you
23 know? Well, you know that Murphy's phone happens to be right
24 at the crime scene shortly before the crime occurs, and then
25 moments after the crime occurs as Robert Figueroa is looking

1 to get out of this location, he calls Joey Laguna.

2 Now, if you're an individual who's shot and you want
3 to get out of somewhere, who do you call? You call the person
4 you know to be closest to you to get you the heck out of there
5 before the cops arrive. That alone suggests that these
6 individuals are involved in something together. And I guess,
7 theoretically, I should have removed Jorge Mendoza's phone
8 being at this location because his tower doesn't hit there,
9 but these three people do. Just him. He's physically there.

10 So the Murphy incoming text, the Laguna call from
11 Figueroa, all of that indicates that whatever this plan was,
12 they're still involved in this together because their acts are
13 coordinated in such a manner. Then you see what happens after
14 that. Call, call, call, call, call, call. Figueroa's trying
15 to get ahold of Laguna. Figueroa's trying to get ahold of
16 Laguna and finally Murphy figures, oh, my God, try better to
17 get ahold of Mendoza and that's when he probably realizes,
18 oops, the phone's still in the car.

19 And what do you know from those phone records?
20 Well, the phone's still in the car because it winds up driving
21 all the way back up to Mr. Laguna's house. That's Joey
22 Laguna's tower on the first call into him after he leaves that
23 -- the tower you saw before. That's the next tower he hits.
24 And then that's the tower that David Murphy hits.

25 What's going on here? Those two individuals are

1 fleeing the crime scene together. Those two phones are
2 fleeing the crime scene together, and they happen to have
3 Jorge Mendoza's phone. And then remember Mr. Figueroa, he
4 says I got a phone call from a number that I don't know, and
5 that number that I don't know, there was someone talked to me.
6 I know it's not Joey Laguna, I know it wasn't Mendoza, and I
7 don't really know Doughboy's voice, but I'm assuming it's
8 Doughboy? He wasn't being untruthful to you.

9 He was slightly inaccurate, though. Because if you
10 look up this phone number on Mr. Figueroa's phone records, and
11 you have a whole month, you'll never see it before the night
12 of September 21st of 2014. What you will see is these calls
13 going back and forth, these calls going back and forth, and
14 there's actually a conversation between Figueroa and Laguna
15 that occurs. And then Laguna tries to call back Figueroa.
16 And then what does Laguna do? He makes a phone call to a
17 number that is unknown. It's never shown up on Figueroa's
18 records before.

19 And then immediately after he hangs up the phone
20 talking to whoever's on the other end of this line, that
21 person starts repeatedly calling Mr. Figueroa, and I didn't
22 put the phone record up here, it takes some period of time
23 before that phone number finally connects, but Mr. Figueroa
24 has a conversation with that phone number.

25 Is it David Murphy on the other end of that line?

1 Who knows. Or is it Mr. Laguna saying, you know what, I need
2 to get my guy out of there, which would explain why it is that
3 there's two people that are trying to sneak into that
4 neighborhood when the helicopter hits and they run away and
5 Dan Michalski two hours later says they're running away. Does
6 that mean that's what that is? No. But does it indicate that
7 that could be what's going on? Yes.

8 Certainly, the fact that those phone numbers are
9 there corroborates, once again, what Figueroa says and it
10 corroborates that Laguna knows that there's a problem with
11 Figueroa because why is there this conversation and why are
12 these calls repeatedly in? And if you keep following these,
13 when he can't -- when this number can't get ahold of Figueroa,
14 he calls Laguna back, they talk again, and then boom, he's
15 trying to call back and the reason he can't get in is because
16 Figueroa is dialing everybody he knows to get the hell out of
17 there.

18 So the suggestion was it only says where the phone
19 is. Well, first, let's think about Mr. Laguna. Mr. Laguna,
20 it isn't that there's some circumstantial evidence that the
21 phone's in his possession. He says the phone's in my
22 possession. I mean, it takes a little while to get there.
23 And I guess, theoretically, you could come to the conclusion
24 that the phone that he has in possession is the same phone
25 that he had that night, although, I don't know how you come to

1 that conclusion from those questions an answers being provided
2 Detective Jensen. But either way, certainly, he got rid of a
3 phone number, but kept the same phone, and in this day and
4 age, when you comport phone numbers, why that happened, I
5 don't know.

6 But he says, that's my phone. If my friends are
7 talking on that phone, it's not going to be my wife. And
8 Detective Jensen sort of flippantly says to him, well, gee,
9 like could your wife having calling him to get a surprise
10 together for you? Could she be calling him about this? And
11 Mr. Laguna says no, shit, no. If that phone's being used with
12 these people, that's my phone, and I'm on it. So there isn't
13 any question that he's in possession of that phone.

14 Now, David Murphy. David Murphy, well he's using
15 the phone in September of 2014, that's circumstantial evidence
16 that the phone is in his possession. Certainly, it's in his
17 name. That's circumstantial evidence that it's in his
18 possession. Most importantly, you know somebody who
19 definitely talked to him that night on that phone; Amanda
20 Mendoza. When you look at Amanda's records, holy cow. Now,
21 remember, you have to correct Amanda's records just like
22 everybody else. Sometimes there will be a little DA at the
23 end so you got to take two hours off the telephones, not the
24 text messages. Sometimes it will be IE, so that's Pacific
25 time and sometimes it's AT, so you got to go three hours.

1 But either way, when you correct them, what happens?
2 She doesn't know why Jorge is. So at 9:45 she's trying to get
3 ahold of Jorge. When he doesn't respond, David Murphy, David
4 Murphy. Let me call David Murphy. Let me text David Murphy.
5 Let me text David Murphy, let me call Jorge, let me text David
6 Murphy.

7 What does that suggest to you about who's together
8 at this point? Independent of Mendoza and Figueroa, what does
9 that tell you about these two individuals? They are together.
10 She's calling Jorge, can't get ahold of him, so she's texting
11 Murphy. She's texting back and forth and this goes on. And
12 clearly, at some point, and I'm going to suggest to you that
13 when you look at these phone records, it's about 10:26 when
14 she finally has a conversation with David Murphy, and then
15 what happens to the phone records?

16 Now she's blowing up Jorge Mendoza's phone because
17 she's just talked to David Murphy. And she knows there's a
18 problem with Jorge. She just doesn't know how much of a
19 problem. And it gets worse because what happens after that?
20 She talks to him at 11:23. You heard the recording went off
21 -- recorder went off at 11:24 with Tod Williams. Tod then
22 calls in, and immediately after this three minute and some odd
23 second phone call, she calls David Murphy again.

24 And then what happens? She talks -- David calls her
25 back at 11:44. There's an incoming call from Tod Williams,

1 I'm coming to the house. She calls David Murphy. We got to
2 get the car out of there. She tries to call Jorge. She tries
3 to call David Murphy at 12:50. She tries to call Jorge.
4 What's going on right here?

5 Well, go to the rest of the phone records and you'll
6 find out. At 12:18 she's on this tower and so is David
7 Murphy, the guy who she says took her to go get the car.
8 Guess who's in possession of the phone and present at her
9 house? David Murphy. Is that evidence independent of
10 Figueroa and Mendoza?

11 What happens after that? Well, Amanda gets up to
12 the location of Joey Laguna's house and she's calling Jorge
13 Mendoza's phone. Why is she calling the phone? It's not in
14 the car. She's looking for it. Where you know it is a couple
15 days later when Tod Williams goes to 3668 Lucky Horseshoe,
16 what is she doing? She's making a phone call into the car or
17 to the phone from the car looking for it.

18 And when she can't find it, what does David Murphy
19 do? He calls Joey Laguna. Where the heck is the darn phone?
20 And they don't find it. But it's not left in the car and it's
21 taken into Laguna's house. At what point do we get to the
22 point where there isn't any question beyond any shadow of a
23 doubt that these two people are involved and that's without
24 Figueroa and Mendoza.

25 These two people are involved in the crime and

1 there's no question about it. And then Amanda Mendoza's back
2 at her house at 1:19. And you know afterwards Amanda Mendoza
3 gets her phone taken away from her by Tod Williams, and she
4 starts using Michelle Estavillo's phone, and what does she do?
5 And you can go back before 8:00 o'clock, the moment her phone
6 gets taken away and they leave the house, she starts blowing
7 up David Murphy's phone with her mother's phone. She's
8 calling, she's calling, she's calling.

9 And what does David Murphy do? A guy where there's
10 no evidence to suggest he's involved whatsoever. He does
11 nothing other than shut off the phone. 8:47 a.m. on September
12 22nd of 2014, he turns the phone off, and you know that
13 because after that, everything call forwards to his voicemail,
14 but most importantly, there's no tower location. He dumped
15 the phone. What innocent guy dumps the phone? What guy who
16 doesn't know anything about what just happened here dumps the
17 phone?

18 Evidence that tends to suggest he's -- or tends to
19 connect this individual to this crime. Are we kidding? At
20 what point do you get to, I don't need Robert Figueroa, and I
21 don't need Jorge Mendoza? Those records, they don't have
22 credibility problems. Those records can't lie. Those records
23 are in the sense better than DNA. Why? For this reason, you
24 saw those DNA charts, there's two numbers at 13 locations, and
25 you know, when you start calculating them together, what's the

1 random probability that somebody else would have that and you
2 get into numbers that are astronomical in the sense of, you
3 know, quitrillions (sic). And then you think about these
4 phone records. You think about the time period of these phone
5 records. A full 24 hours. You look at the thousands and
6 thousands of cell towers within Las Vegas's valley and you
7 look at four phones, one, two, three, four of the four
8 suspects in this case. What is the probability that those
9 four phones randomly hit on those towers?

10 And we're not talking quintillions. We're talking
11 quintillions upon quintillions, if you were to do those kind
12 of math. And unlike DNA when you don't know the time that it
13 was done or the location that it was done, these cell phones
14 tell you all of that. And they're suggesting to you not to
15 rely upon them.

16 Thirty-four calls between David Murphy and Joseph
17 Laguna on September 21st. After that, there's five attempts
18 by Laguna then Murphy's dumped his phone. And shortly after
19 that, Mr. Laguna gets a new phone number. What does that tell
20 you about who's involved in this case and why is it that
21 Mr. Mendoza or Mr. Figueroa are relevant? And the answer to
22 that is very simple. Mr. Figueroa, he signed his plea on
23 January 13th of 2015, 16 days before we knew the phone number.
24 Had I had David Murphy's phone number, do you think Robert
25 Figueroa would get the sort of deal that he got in this case?

1 So let's talk about something else that's hard to
2 put together, but is simply unquestionably true, and that's
3 what happened at this house. You have these three
4 individuals, Mr. Figueroa, you have Mr. Mendoza, you have
5 Mr. Laguna stacked up outside the door. Are they stacked this
6 way, are they stacked that way? I don't know, but it seemed
7 more reasonable that you would have protection if you've all
8 got guns and you're going into that location so that's why I
9 stacked them that way.

10 You have two individuals inside. You have Joey
11 Larsen, you have Monty Gibson and they're standing by the
12 pizza box. And then Robert Figueroa comes inside and Mendoza
13 starts to follow him with his finger on the trigger of that
14 weapon and what happens? Joey Larsen fires two shots out of
15 that .38 caliber revolver. How do you know that? One, it's
16 the angle of this entry. Look at the rod. It puts him right
17 here standing by the pizza, right there.

18 And the second shot -- what do you know the first
19 shot that has to hit Robert Figueroa is, is the one in the
20 face. Because if he was turned this way at the time he got
21 hit with that bullet to his jaw, you couldn't hit him that way
22 and his tooth is sitting right here in the middle of our crime
23 scene. So that's where he gets hit.

24 And the idea that he hit a door with a revolver in
25 his hand and banged into a door, that's ridiculous. He has to

1 have the gun wherever he has it on him at that point because
2 the guy who's hitting the door. And then what happens? Now
3 Mr. Larsen transitions to his .40 caliber Glock firearm and he
4 fires two rounds, both of which strike the wall, the west,
5 east bullet impacts that are against this wall that you saw in
6 those photographs.

7 How do you know that? Well, one, you can do exactly
8 what Randy McPhail did. You could cone out these back to this
9 location. His gun ejects just like that gun to the right and
10 to the back, and there's carpet right here and there's two
11 grouped casings right next to that carpet.

12 How else do you know that that's the location that
13 it happened? Because what do you know about Robert Figueroa?
14 He goes down and as he's coming up, he's got a bullet that
15 comes in here, comes out here. Bullets travel in straight
16 lines. That bullet has to be this one over here because it's
17 the only one that's height is accurate that could have gone
18 through his side, through this, hit that wall in that
19 location.

20 And then the second shot he fires, that can the
21 being the one that hit Mr. Mendoza's leg because that one's
22 almost to the top of the wall. Mr. Mendoza, unless he was 15
23 feet tall and there was no ceiling there could not get that
24 bullet into his leg because bullets travel straight.

25 And what else do you know at this point? You know

1 that Robert Figueroa runs. And consistent with that, you have
2 a bullet strike where? Right inside the door. So and I'm not
3 going to point this at you. If you're coming through the door
4 with this gun behind a guy and he bumps into you, where are
5 you going to shoot this gun? You're going to shoot it
6 straight through the ceiling like he did.

7 And then after he shot that one to the ceiling,
8 where is the target here? After he fires those first four
9 shots? He's jumping behind that wall and Mr. Mendoza fires
10 five more shots. Well, what happens with the five more --
11 when those five shots are fired is they go into the house from
12 an area where he could shoot from.

13 So the first one, boom. Then he comes down and he
14 probably goes too low and hits the ground that first shot that
15 skips up, boom. And then he's booking up, boom, boom. And
16 then he pulls out the door, boom, boom. Six shots. Your
17 casings all thrown to the right like you'd expect them to.
18 One inside the house, five outside the house. Six shots
19 inside the house. No question about it. No other way you
20 could know about it.

21 And what does Figueroa say about the car pulling up,
22 Laguna and Mendoza at this point? He doesn't see Mendoza. He
23 sees him pulling up and Laguna running to the car. But what
24 would you expect Mendoza to be doing? Yeah, he's trying to
25 get back to the car at that point because there's armed people

1 inside. And what do you know? Is it possible -- before I get
2 to that, I'm going to suggest to you that those first six
3 shots all happened. Is it possible that it was only five
4 shots and then this one hits and he fires three from out here?
5 It is. But it's best for Mr. Mendoza if all three shots he
6 fired did not go in this house. So give him the benefit of
7 the doubt and say those first six shots all go inside.

8 And guess what? None of those first six shots hit
9 Monty Gibson. Nobody's ever suggested that to you. And the
10 idea that that's possible, it's impossible for that to have
11 happened. But what do you know happens at this point? You
12 know that there are three more shots to be fired, two of which
13 could have been fired from anywhere outside of the house.
14 That one could have been fired from outside the house and that
15 one could have been fired from outside of the house.

16 Heads are a little bit different than other parts of
17 your body. I guess, it's theoretically possible for you to
18 get your head down low enough and turned enough to get a shot
19 that goes in up here, comes down here from somebody who's 20
20 inches below and firing their weapon. But I cannot figure out
21 and I don't know if anyone can figure out how it is you could
22 be sitting on the ground 20 inches below the step that that
23 individual's on. Or maybe, and I would suggest to you
24 probably 17 inches. And why is that? Because that has to be
25 the last shot that hits Monty Gibson because of where his feet

1 are.

2 And I think a juror asked this question, right, the
3 bullet went through his brain stem, nothing's happening with
4 Monty Gibson after that bullet hits him. And where does his
5 body fall? It falls right here. So he is standing right in
6 that location when that second shot hits him in the head.

7 So what happens? You're still short a shot. You've
8 got one more shot to fire. Where did shot number eight go,
9 assuming that the first one hit the pillar and the second one
10 hit his head or maybe it was the eighth one hit the pillar and
11 the ninth hit his head. Where did shot seven go? It had to
12 go in the house. It absolutely had to go in the house. Why?
13 Because there's seven bullets in the house that is consistent
14 with this gun and there is nine cartridge cases. Six plus
15 three equal nine. One to the wall, one to the head plus seven
16 in the house equals nine. That shot goes in the house.

17 Where did he get hit? He got hit up here. Well,
18 standing like this, how did that bullet -- why didn't that
19 bullet if he's sitting on the ground firing it, go in here and
20 go up there? Where did that bullet come out? It came out
21 back here. Bullets travel in straight lines.

22 And now he's 20 inches below the ground. So he's
23 sitting on the ground and he fires a shot. That bullet is
24 traveling at that angle. It's not traveling at that angle.
25 So what do you know happened with Monty Gibson? Exactly what

1 Joey Larsen tells his dad and there's simply no question about
2 it that it's true.

3 When they came in, I shot somebody. And when you
4 say Joey Larsen only saw two people, he only saw two people.
5 It's just not the same two people. Because what happens is
6 Figueroa comes to the door, he gets hit. He turns, he runs.
7 Joey's hiding back here. The shots are happening. Then they
8 start running out here.

9 Monty starts sneaking up to the door, and as he gets
10 close to the door, he is bent down looking out the door trying
11 to see if there's somebody out there still, when he catches
12 the round that hits him in the shoulder and he stumbles out
13 and he catches the round that hits him in the head and drops
14 him where he's standing.

15 What about those three casings? For those three
16 casings in an open area. Remember, they can be kicked. But
17 if they're kicked, they're going to be scattered. These are
18 grouped casings in the middle of the street. How did a gun
19 that throws to the right throw those casings over there to the
20 left of where Mr. Mendoza's shooting from. What did Randy
21 McPhail tell you? There has to be something that they bounce
22 off of. Now, he could be holding the gun differently, but
23 then why would he be holding the gun differently than he fired
24 the first six shots? What's changed about that? Nothing.

25 So there's an object that's in the way of the

1 ejection pattern. And what is the only object you know of
2 that could be big enough to do that? So when Joey Larsen says
3 I think I shot the second guy out hereafter they killed Monty,
4 yeah, there's two guys here that he sees. That's three
5 people. That's the car that's causing the casings to bounce
6 off.

7 And then now do you know that all of this has to be
8 true? Because there's only two more shots that Joey fires.
9 One of which when you look at that rod that's placed right
10 here in K goes directly they location where the F shot is. So
11 he has to be standing here when he fires one of those shots
12 and that leaves you one .40 caliber left that happens to be in
13 Jorge Mendoza leg, and then what happens to Mr. Mendoza? Is
14 he falls in the location of the blood trail like a juror
15 asked.

16 Look at the photographs, look at the evidence.
17 These are the things that cannot lie to you about what
18 happened in this case. And when a guy is sneaking out of his
19 house after it just got robbed within seconds of it happening,
20 and it had to be less than about 30 seconds because you hear a
21 first shot and then the second sets of shots happens when
22 Figueroa gets to Day's front yard or in that location. Well,
23 guess what? That's like three houses. How long does it take
24 to run that far? Boom, boom, boom, boom, boom, boom, boom.
25 And he starts sneaking up to close the door because it's

1 lights in and dark out. Joey sleeps over here to try and peek
2 around this corner. He goes to peek, boom, boom, boom, three
3 shots, Monty's dead and shot. He falls down. All consistent
4 with every single piece of evidence you have in this case.

5 You don't have to rely upon the credibility of
6 anybody. You just have to look at the evidence.

7 So when you get to the point where you've looked at
8 all this evidence, there's one thing, and I sort of addressed
9 it with you previously that Mr. Landis said yesterday. He
10 said well, Summer Larsen's escaping justice, and I want to say
11 when you look at this evidence, I don't know how she's
12 escaping justice because there isn't proof beyond a reasonable
13 doubt that she committed any crime. And while that's not
14 relevant to you when you read the jury instructions, it is
15 relevant to how you assess her testimony.

16 At the end of the day, it's just not there when you
17 get all of the evidence and you put all of it together, even
18 the fact that there are phone calls on the Pinger phone that
19 Ms. -- I think it was Ms. McNeill said, well, they didn't do
20 anything with the Pinger phone. Well, that's what she asked
21 the phone experts. She didn't ask Barry Jensen if they ever
22 got the Pinger phone number. And you have the Pinger phone
23 number. They didn't ask him if he ever got the Pinger
24 records.

25 You don't have the Pinger records, but what you do

1 have is David Murphy's phone records and the last time he had
2 communication back and forth with Summer Larsen is Friday,
3 September 19th. Look at the phone records. The text messages
4 back and forth from her Pinger phone. Is it possible that
5 that's when this occurred? Maybe. But after that the only
6 communication between David Murphy and Summer Larsen is a
7 single incoming text from Summer on the morning of September
8 21st.

9 There isn't evidence that Summer Larsen committed
10 this crime, and thus, she isn't escaping justice. She's
11 entered a plea to what she said she did, and there isn't
12 anything really for you to consider about that.

13 Is Robert Figueroa escaping justice? And that
14 answer is to a certain extent, yes. There is necessities
15 within the criminal justice system that none of us like. Had
16 Mr. Mendoza told the truth on September 21st of 2014, there
17 would be four defendants sitting there, not three. Whose
18 fault is that? Mine? Ms. Lexis? That we made a deal with
19 the devil, a three-time felon who you wouldn't think was
20 credible but hasn't told a single lie? Yes.

21 The fact is, is that as a very difficult choice I
22 had to steal some justice from Monty Gibson for Robert
23 Figueroa. But there's no question that each one of them
24 deserves to serve their justice for what they did to Monty.
25 Mr. Mendoza's statement on September 21st of 2014 is nothing

1 other than a statement of a co-conspirator in the course and
2 in furtherance of his conspiracy.

3 And when you read the instruction on that, it says
4 whenever there is slight evidence of a conspiracy, the
5 statements and actions of another person under the conspiracy
6 are imputed to them. In other words, what he said that night,
7 you can use as evidence that tends to connect David Murphy,
8 that tends to connect Mr. Laguna, that can establish their
9 guilt. And when he admits what he can't deny and he denies
10 what he can't admit, what are the things that he has to admit?
11 His car is in the neighborhood. Why does he have to admit
12 that? Because he thinks that somebody has seen it when it
13 turns out nobody has seen it.

14 He says, three guys took my car. Why does he have
15 to say that? Because they're going to see three other people
16 with him. And he says, I was shot in the street and even when
17 Tod Williams who at the time does not know what the actual
18 blood drop show at that scene is confronting him like but
19 that's never going to work, the one thing you can be sure
20 about that Jorge Mendoza knows is that he was shot in that
21 street.

22 Now, it doesn't work for him today, but that at that
23 time is what worked for him, and you can excuse that to
24 establish there is no question, there are four perpetrators in
25 this case. There are no question what the vehicle was. And

1 there is no question as to the guilt of these three
2 individuals and I'd ask you to find them guilty. Thank you.

3 THE COURT: Ladies and gentlemen, we're going to
4 have you -- we're going to swear the officers to take charge
5 of you and have -- the jury will go to the jury deliberation
6 room. The alternates will go to a separate to, you know, be
7 present while the other members of the jury are deliberating.

8 Now, the weapons that were admitted in this trial
9 are not going to go back to the jury room with you together
10 with live rounds that are also part of the evidence in this
11 case because that's not a safe thing. And however, if you
12 want to see any of those that were opened, like the rifle and
13 there's one handgun where the box was opened, then all you
14 need to do is let the Marshal know, and then he will bring
15 that to display to you. He will not -- he cannot answer any
16 questions. Don't even try and talk to him about anything
17 concerning that or anything about this case ever.

18 The only thing you can ask the Marshal about is
19 where's the coffee. Okay? The Marshal will not, you know, do
20 anything other than display the weapon for as long as you want
21 to look at it and then he'll take it away to make sure that
22 everything's safe. All right?

23 Let's -- who's -- oh, here's our officers. Swear
24 the officers.

25 (CLERK SWEARS OFFICERS OF THE COURT)

1 THE COURT: All right. Thank you.

2 THE MARSHALL: All rise for the jury, please.

3 (Jury retires to deliberate at 10:42 a.m.)

4 THE COURT: The record will reflect the jury's
5 departed the courtroom. Any matters outside the presences?

6 MR. DiGIACOMO: No, Your Honor.

7 MR. LANDIS: No.

8 MS. McNEILL: No.

9 THE COURT: Leave your phone numbers with the Clerk.

10 THE CLERK: They already have.

11 (Court recessed at 10:42 a.m. until 3:58 p.m.)

12 (Outside the presence of the jury)

13 THE COURT: All right. We're back on the record,
14 and we're outside the presence of the jury because I've got a
15 note from the jury, which is going to require us to write
16 another jury instruction to them -- for them. So this is the
17 question, "When does a person's involvement in the commission
18 of a crime of attempt robbery or burglary or home invasion
19 end?"

20 So, I started doing the research, and there's case
21 law on it, but we haven't instructed them on that. So
22 clearly, what their issue is, is, you know, for -- obviously,
23 for purposes of Felony Murder Rule, the whole argument has to
24 do with that, and our Supreme Court has in -- well, first in
25 the Payne case and then later in the Echavarria. You know

1 what I'm talking about? That said --

2 MR. DiGIACOMO: Well, the Payne instruction is in
3 that packet, though.

4 THE COURT: I don't remember that. Oh, get the jury
5 instructions. I pulled it out. That would be nice.

6 MR. DiGIACOMO: All acts immediately antecedent and
7 immediately following or --

8 MS. LEXIS: So closely.

9 MR. DiGIACOMO: -- so closely connected as to be
10 part of the occurrence?

11 MR. LANDIS: Yeah, that's in there.

12 MR. DiGIACOMO: That's the Payne language. That's
13 in the instructions.

14 THE COURT: Oh, good.

15 MR. DiGIACOMO: So we just refer them to that
16 instruction.

17 THE COURT: We need to.

18 MR. WOLFBRANDT: Yeah, I think --

19 THE COURT: Okay.

20 MR. WOLFBRANDT: I don't think you point that out
21 one. I'd just say that everything you need is in the
22 instructions.

23 THE COURT: Oh, yeah.

24 MR. DiGIACOMO: I think you refer them to that --

25 MS. LEXIS: I think we need to point it out.

1 THE COURT: Yeah, we refer them to --

2 MR. DiGIACOMO: -- instruction.

3 THE COURT: -- the instruction. And then I say --
4 then I always say, you're to -- you need to read this
5 instruction because this should tell you what you need to
6 know, but you're to consider all of the instructions as a
7 whole. That's what I always tell them like that, but yeah, to
8 just say, no, you have everything I need, the Supreme Court
9 has recently told us don't do that anymore. Oh, we can't --
10 sorry, we can't tell you about the law after we tell you, you
11 can't ask questions about the law.

12 Which one is it, do you remember?

13 MR. DiGIACOMO: It's going to be somewhere right
14 after the -- right around the -- either the robbery or the
15 felony murder.

16 THE COURT: Okay.

17 MR. WOLFBRANDT: It's got to be somewhere in the
18 20s, I think, late 20s.

19 THE COURT: Oh, robbery. You're talking about this
20 one; robbery may be spread over considerable and varying
21 periods of time, all matters immediately prior to and having
22 direct causal connection with the robbery as well as acts
23 immediately following it or deemed so closely connected with
24 it as to be part of the occurrence?

25 MR. DiGIACOMO: Occurrence. And if there's more

1 less than in Payne, I'm not aware of it. That's a combination
2 of Payne and about nine other cases.

3 THE COURT: Well, let's see, here's Payne. Well,
4 they --

5 MR. DiGIACOMO: But Payne may just be the antecedent
6 one and not the subsequent one.

7 THE COURT: Yeah.

8 MR. DiGIACOMO: But there's a number of them. What
9 we call the Leonard instruction. Well, I don't know if their
10 question is different than that.

11 THE COURT: No, yeah, it's more specific because the
12 argument, you know, he's saying I -- the robbery, the whatever
13 was over, and the Payne and then the Echavarria specifically
14 says that escape --

15 MR. DiGIACOMO: Except for that's escape with the
16 property.

17 THE COURT: No. It was an attempt.

18 MR. DiGIACOMO: Oh, well, then I didn't see a
19 Echeverria. I thought that that was --

20 THE COURT: It says, "Gurry argues his conviction of
21 first degree murder was improperly based upon the Felony
22 Murder Rule because the felonies in which he participated
23 ended before the murder occurred when Echavarria abandoned his
24 robbery attempt. However, the crime of robbery acts --
25 includes acts taken to facilitate the perpetrator's escape,

1 see Payne."

2 "Under the facts of this case, there's ample
3 evidence to support the conclusion the murder took place
4 during the chain of events which constitutes the attempt
5 robbery, thus, subjecting Gurry to the Felony Murder Rule as
6 an aider and abettor. And then they see Archibald, where a
7 homicide occurred during the perpetration of a robbery when
8 the defendant robbed a service station attendant in
9 California, kidnapped him and killed him in Nevada."

10 MR. DiGIACOMO: Correct.

11 THE COURT: Yeah.

12 MR. DiGIACOMO: I mean, that's where I crafted that
13 instruction. I didn't put in the language that said
14 facilitate his escape. I didn't think that was an issue. But
15 one way or the other, I don't know if the Court wants to craft
16 one that says it includes --

17 THE COURT: Well --

18 MR. DiGIACOMO: -- facilitating escape or not.

19 THE COURT: Well, that's what -- that's what the law
20 is in this. Now, is there a newer case? There's -- now, for
21 burglary it's different, right?

22 MR. DiGIACOMO: Yeah, burglary is complete upon
23 entry.

24 THE COURT: Completely different. And they're
25 asking about all three so --

1 MR. DiGIACOMO: Correct. I think --

2 THE COURT: -- that's a problem.

3 MR. DiGIACOMO: Yeah, I think we can tell them
4 that --

5 MS. LEXIS: I think, doesn't our burglary
6 instruction include that the crime is completed at -- once
7 entry is made with the intent?

8 MS. McNEILL: I thought it did.

9 MR. LANDIS: Yeah, there's something like that.

10 MR. DiGIACOMO: It says --

11 THE COURT RECORDER: Can you speak one at a time,
12 please.

13 MR. LANDIS: Oh, I forgot we're on the record.

14 MR. DiGIACOMO: It says something to the effect of
15 -- the one that says the crime of burglary is complete upon
16 entry or when entry is made or when any part of a person
17 enters or -- of course, these are some legal questions is, is
18 the bullet entering the house, is that --

19 THE COURT: All right. It says -- in Payne they're
20 talking about another case. It says, "In Fouquette, supra,
21 the court pointed out that robbery, unlike burglary is not
22 confined to a fixed locus, but is frequently spread over
23 considerable distance and varying periods of time. The
24 perpetration of the crime of robbery is not completed the
25 moment the stolen property is in the possession of the

1 robber."

2 "The escape of the robber with his ill-gotten gains
3 by means of arms is as important to the execution of the
4 robbery as gaining possession."

5 But that's Payne in 1965, and then in Echavarria
6 which is when they killed the FBI agent Bailey.

7 MR. DiGIACOMO: And that's got to be the '70s or the
8 '80s?

9 THE COURT: Yeah, that was when I was around. It
10 was 1992, but that's the -- it's that case. It's still in my
11 Rolodex. I need to update my Rolodex. But yeah, they
12 specifically say "attempt" in this, in the Echavarria case
13 because the Felony Murder Rule includes attempts.

14 And so that's what he was trying to argue, well, I
15 had abandoned my attempt because I was running away and I was
16 escaping and so --

17 MR. DiGIACOMO: Correct. I mean, I have no problem
18 with that Echavarria. I didn't --

19 THE COURT: Yeah.

20 MR. DiGIACOMO: I knew about Payne and I went from
21 there and Payne, I never found at Echavarria. I have no
22 problem if you want to say burglary is complete upon entry,
23 home invasion --

24 MS. LEXIS: With the requisite intent.

25 MR. DiGIACOMO: Home invasion is complete upon

1 entry. Robbery may continue through acts of -- or efforts to
2 escape.

3 THE COURT: Well, what I want you to do is draft --
4 because I want to give them a written instruction to add to
5 because this is a really specific question that I don't think
6 our instructions are adequately addressing because they
7 clearly are confused and --

8 MR. DiGIACOMO: And I'm sorry, when you read that,
9 did you read that only to be -- could you read the question?

10 THE COURT: Read the question? Sure.

11 MR. DiGIACOMO: Yeah.

12 THE COURT: "When does a person's involvement in the
13 commission of a crime of attempt robbery or burglary or home
14 invasion end?"

15 MR. DiGIACOMO: And you're assuming that relates to
16 Mendoza. I don't know that that does.

17 THE COURT: It could --

18 MR. DiGIACOMO: I think it might actually relate to
19 your two people. Like they're no longer doing that and he
20 shoots.

21 MS. McNEILL: I have no idea.

22 MR. DiGIACOMO: Okay. Can I borrow Echavarria?

23 MS. McNEILL: There's no way to know.

24 THE COURT: Well, and I want you obviously to weigh
25 in on --

1 MR. DiGIACOMO: Do you have a copy of the jury
2 instructions in here?

3 THE COURT: Yeah. Here.

4 MR. DiGIACOMO: I'm sorry, I didn't bring anything
5 with me.

6 THE COURT: I know. I knew you wouldn't so that's
7 why I printed everything.

8 THE COURT RECORDER: And I'm going to go off the
9 record.

10 (Off the record at 4:07 p.m. until 4:22 p.m.)

11 (Outside the presence of the jury)

12 THE COURT: All right. So we're back on the record
13 still, of course, outside the presence of the jury. We've
14 fashioned an additional instruction that answers -- or, you
15 know, seems to answer what they seem to be asking in his
16 question. So that will be next in order in the jury
17 instructions, and I'll call it 59.

18 And then so it will say, "Burglary and home invasion
19 end upon exit from the structure. Robbery can extend to acts
20 taken to facilitate escape so long as the killing took place
21 during the chain of events which constitute the event
22 robbery." Any objection to that by State? That was written--

23 MR. DiGIACOMO: No.

24 THE COURT: Or excuse me, that was written by State,
25 and any objections by the defense or changes you would want to