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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

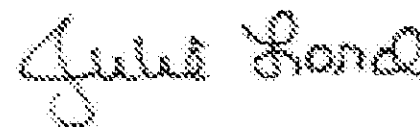
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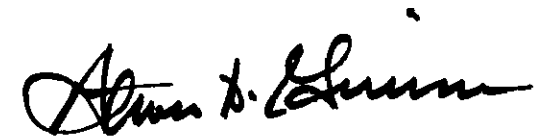
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JULIE LORD, INDEPENDENT TRANSCRIBER



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,	.	<b>TRANSCRIPT OF</b>
DAVID MURPHY, a/k/a	.	<b>PROCEEDINGS</b>
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

TRANSCRIPTION BY:

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

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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

1 make?

2 MR. LANDIS: Let me let Mr. Wolfbrandt go there.

3 THE COURT: Okay.

4 MR. WOLFBRANDT: I'm trying to find the instruction  
5 that was actually given to the jury by number --

6 THE COURT: Okay.

7 MR. WOLFBRANDT: -- and that's not happening right  
8 quick.

9 MR. DiGIACOMO: It's going to be right around 26.

10 THE COURT: Yeah. I found it.

11 MR. DiGIACOMO: 27. And I'll give the Court back  
12 your copy.

13 THE COURT: Thank you.

14 MR. WOLFBRANDT: Right. It is 27. I think 27,  
15 instruction 27, that was given to the jury is sufficient for  
16 them to make a determination.

17 THE COURT: So 27 --

18 MR. WOLFBRANDT: -- but I've also --

19 THE COURT: Excuse me.

20 MR. WOLFBRANDT: -- as the Court said --

21 THE COURT: I didn't mean to interrupt you. What  
22 were you going to say?

23 MR. WOLFBRANDT: But I also recognize that  
24 instruction number 57 that was given, as you pointed out to  
25 me, gives the language of, "If you desire to be further

1 informed on any point of law," and that's what their question  
2 is is exactly on a point of law so --

3 THE COURT: Correct. And so --

4 MR. WOLFBRANDT: -- I think instruction 27 is  
5 sufficient as it was given, but I recognize that there's  
6 language in Echavarria that probably should have been added in  
7 the first place.

8 THE COURT: It may have been, you know, as far as  
9 the robbery question. But don't forget their question  
10 involves not just the robbery, but also the burglary and the  
11 home invasion. So I think it's clear, and this instruction  
12 further clarifies that because nothing in the instructions  
13 would help them with that.

14 But this number 27, "The robbery may spread over  
15 considerable and varying periods of time all matters prior to  
16 and having direct causal connection with the robbery as well  
17 as acts immediately following it or deemed so closely  
18 connected with it to be a part of the occurrence," probably  
19 should be enough, but apparently, they're still confused, and  
20 so if we give them some further guidance and --

21 MR. DiGIACOMO: And for the record, the language was  
22 taken directly from Echavarria v. State 108 Nevada 734 in  
23 1992.

24 MR. LANDIS: My concern, I guess, is this. I think  
25 as to burglary and home invasion, those statements are clear,

1 they're assisting to the jury, and I have no problem with  
2 that.

3           The one as to robbery, I just don't know if that's  
4 -- how much help that's providing them, I guess I'm saying. I  
5 don't think it's a wrong statement of the law. I'm reading  
6 straight from Payne. Payne has this section that says  
7 something along the lines of, whether the chain's been broken  
8 is a question for the jury. Here's the exact line, "The chain  
9 of events between the attempt crime or completed felony is  
10 broken with the question usually being a fact determination  
11 for the jury." Would a further instruction like that help  
12 them? I just, I don't know.

13           MR. DiGIACOMO: Well, that's the question is, is  
14 that the Payne instruction is -- is it the causal connection,  
15 and that's why it was a question of fact. The issue for them  
16 is what does that mean and Echavarria clears that up that the  
17 effort to escape is covered within that. I think it's a  
18 correct statement of the law and I think it's appropriately  
19 given. And it doesn't mean that it doesn't help them in the  
20 sense that if he's shot and now he can't escape, then he's not  
21 committing it within facilitating escape.

22           If he's doing the act just to facilitate escape and  
23 for no other purpose, then it does. So I think that does help  
24 them.

25           MR. LANDIS: It becomes a tough question in that

1 "can escape" context. I mean --

2 MR. WOLFBRANDT: It sure does.

3 MS. McNEILL: Right.

4 MR. DiGIACOMO: I mean, that's what the law is. I  
5 don't know how else to tell them.

6 MR. LANDIS: I'm not raising an objection, to be  
7 honest with you.

8 MS. McNEILL: I'm not either, Your Honor.

9 THE COURT: Okay. All right. So I'm going to  
10 number this as 59, and we'll send it -- do you want me to send  
11 it back with a note that also says -- or I can actually write  
12 it on their note that says, "Please see additional Instruction  
13 Number 59," and we'll just give it to them? Shall we blue  
14 back this?

15 MR. DiGIACOMO: But take all the instructions as a  
16 whole or something --

17 THE COURT: Yes.

18 MR. DiGIACOMO: -- to that effect.

19 THE COURT: So please see additional --

20 (Off-record colloquy)

21 THE COURT: We'll go off the record.

22 (Off the record at 4:29 p.m. until 5:02 p.m.)

23 (In the presence of the jury)

24 THE MARSHAL: Your Honor, the jury is all present  
25 and accounted for.

1           THE COURT: Thank you. Please be seated. And the  
2 record will reflect that we are back within the presence of  
3 all 12 members of the jury. The alternates were excused to go  
4 home and be on call. And the defendants are present with  
5 their respect tough counsel, the Chief Deputies District  
6 Attorney prosecuting the case as are all officers of the court  
7 present.

8           And so am I seeing that Ms. Yates is our foreperson?  
9 Has the jury reached a verdict?

10          JUROR NO. 1: Yes.

11          THE COURT: And would you hand the Verdict forms to  
12 the Marshal, please. All right. The Clerk will read the  
13 Verdicts, please.

14          VERDICT RE: DEFENDANT JORGE MENDOZA

15          THE CLERK: District Court, Clark County, Nevada.  
16 The State of Nevada versus Jorge Mendoza. Case C-303991,  
17 Department 5.

18          Verdict. We, the jury in the above-entitled case,  
19 find the defendant, Jorge Mendoza as follows:

20          Count 1, conspiracy to commit robbery; guilty of  
21 conspiracy to commit robbery.

22          We the jury in the above-entitled case find the  
23 defendant, Jorge Mendoza as follows.

24          Count 2, burglary while in possession of the a  
25 deadly weapon; guilty of burglary while in possession of a

1 deadly weapon.

2 We, the jury in the above-entitled case, find the  
3 defendant, Jorge Mendoza as follows.

4 Count 3, home invasion while in possession of a  
5 deadly weapon; guilty of home invasion while in possession of  
6 a deadly weapon.

7 We the jury in the above-entitled case find the  
8 defendant, Jorge Mendoza as follows:

9 Count 4, attempt robbery with a deadly weapon;  
10 guilty of attempt robbery with a deadly weapon.

11 We the jury in the above-entitled case find the  
12 defendant, Jorge Mendoza as follows:

13 Count 5, attempt robbery with a deadly weapon;  
14 guilty of attempt robbery with a deadly weapon.

15 We, the jury in the above-entitled case find the  
16 defendant, Jorge Mendoza as follows:

17 Count 6, murder with a deadly weapon; guilty of  
18 first degree murder with a deadly weapon.

19 We the jury in the above-entitled case find the  
20 defendant, Jorge Mendoza as follows:

21 Count 7, attempt murder with a deadly weapon;  
22 guilty of attempt murder with a deadly weapon.

23 Dated this 7th day of October, 2016, foreperson.

24 VERDICT RE: DEFENDANT JOSEPH LAGUNA

25 The State of Nevada versus Joseph Laguna. Case C-

1 303991, Department 5.

2 Verdict. We the jury in the above-entitled case  
3 find the defendant, Joseph Laguna as follows:

4 Count 1, conspiracy to commit robbery; Guilty of  
5 conspiracy to commit robbery.

6 We the jury in the above-entitled case find the  
7 defendant, Joseph Laguna as follows:

8 Count 2, burglary while in possession of the a  
9 deadly weapon; Guilty of burglary while in possession of a  
10 deadly weapon.

11 We the jury in the above-entitled case find the  
12 defendant, Joseph Laguna as follows:

13 Count 3, home invasion while in possession of a  
14 deadly weapon; Guilty of home invasion while in possession of  
15 a deadly weapon.

16 We the jury in the above-entitled case find the  
17 defendant, Joseph Laguna as follows:

18 Count 4, attempt robbery with a deadly weapon;  
19 Guilty of attempt robbery with a deadly weapon.

20 We the jury in the above-entitled case find the  
21 defendant, Joseph Laguna as follows:

22 Count 5, attempt robbery with a deadly weapon;  
23 Guilty of attempt robbery with a deadly weapon.

24 With the jury in the above-entitled case find the  
25 defendant, Joseph Laguna as follows:

1 Count 6, murder with a deadly weapon; Guilty of  
2 second degree murder with a deadly weapon.

3 We the jury in the above-entitled case find the  
4 defendant, Joseph Laguna as follows:

5 Count 7, attempt murder with a deadly weapon;  
6 Guilty of attempt murder with a deadly weapon.

7 Dated this 7th day of October, 2016, foreperson.

8 VERDICT RE: DEFENDANT DAVID MURPHY

9 District Court, Clark County, Nevada. The State of  
10 Nevada versus David Murphy. Case C-303991, Department 5.

11 Verdict. We the jury in the above-entitled case  
12 find the defendant, David Murphy as follows:

13 Count 1, conspiracy to commit robbery; Guilty of  
14 conspiracy to commit robbery.

15 We the jury in the above-entitled case find the  
16 defendant, David Murphy as follows:

17 Count 2, burglary while in possession of a deadly  
18 weapon; Guilty of burglary while in possession of a deadly  
19 weapon.

20 We the jury in the above-entitled case find the  
21 defendant, David Murphy as follows:

22 Count 3, home invasion while in possession of a  
23 deadly weapon; Guilty of home invasion while in possession of  
24 a deadly weapon.

25 We the jury in the above-entitled case find the

1 defendant, David Murphy as follows:

2 Count 4, attempt robbery with a deadly weapon;  
3 Guilty of attempt robbery with a deadly weapon.

4 We the jury in the above-entitled case find the  
5 defendant, David Murphy as follows:

6 Count 5, attempt robbery with a deadly weapon;  
7 Guilty of attempt robbery with a deadly weapon.

8 With the jury in the above-entitled case find the  
9 defendant, David Murphy as follows:

10 Count 6, murder with a deadly weapon; Guilty of  
11 second degree murder with a deadly weapon.

12 We the jury in the above-entitled case find the  
13 defendant, David Murphy as follows:

14 Count 7, attempt murder with a deadly weapon;  
15 Guilty of attempt murder with a deadly weapon.

16 Dated this 7th day of October, 2016, foreperson.

17 Ladies and gentlemen of the jury, are these your  
18 Verdicts as read? So say you one, so say you all.

19 THE JURY: Yes.

20 THE COURT: Counsel approach.

21 (Off-record bench conference)

22 THE COURT: Would anyone like the jury polled?

23 MS. McNEILL: Yes, Your Honor.

24 MR. DiGIACOMO: No, Your Honor.

25 MR. WOLFBRANDT: Yes.

1 THE COURT: The Clerk will poll the jury.

2 THE CLERK: Juror Yates, is this your Verdict -- are  
3 these your Verdicts as read?

4 JUROR NO. 1: Yes.

5 THE CLERK: Juror White, are these your Verdicts as  
6 read?

7 JUROR NO. 2: Yes.

8 THE CLERK: Juror Mruzek, these your Verdicts as  
9 read?

10 JUROR NO. 3: Yes.

11 THE CLERK: Juror Palma-Garcia, are these your  
12 Verdicts as read?

13 JUROR NO. 4: Yes.

14 THE CLERK: Juror Clark, are these your Verdicts as  
15 read?

16 JUROR NO. 5: Yes.

17 THE CLERK: Juror Warren, are these your Verdicts as  
18 read?

19 JUROR NO. 6: Yes.

20 THE CLERK: Juror Wood, are these your Verdicts as  
21 read?

22 JUROR NO. 7: Yes.

23 THE CLERK: Juror Victorson, are these your Verdicts  
24 as read?

25 JUROR NO. 8: Yes.

1 THE CLERK: Martinez, are these your Verdicts as  
2 read?

3 JUROR NO. 9: Yes.

4 THE CLERK: Juror McDonald (sic), are these your  
5 Verdicts as read?

6 JUROR NO. 10: Yes.

7 THE CLERK: Juror Coyle, are these your Verdicts as  
8 read?

9 JUROR NO. 11: Yes.

10 THE CLERK: Juror Simmons, are these your Verdicts  
11 as read?

12 JUROR NO. 12: Yes.

13 THE COURT: Thank you. And ladies and gentlemen, I  
14 thank you very much for your jury service. I know it's been a  
15 very long trial in this matter. I'm going to ask the Marshal  
16 just to conduct you back to the jury room. We'll collect your  
17 badges and I'll come and thank you personally. And then also,  
18 I'll find out if any of you'd like to speak to any of the  
19 lawyers because they often want to speak to the jurors  
20 afterwards.

21 I know it's late and you may not wish to, but I'll  
22 ask if anybody wants to and then come and -- come right back  
23 and let them know. So Marshal, if you would --

24 THE MARSHAL: Certainly. All rise for the jurors,  
25 please.

1 (Jury excused at 5:12 p.m.)

2 THE COURT: All right. So we will need to refer  
3 this matter to the Division of Parole and Probation for  
4 Presentence Investigation Reports and set it down for  
5 sentencing.

6 THE CLERK: November 23rd, 9:00 a.m.

7 THE COURT: Thank you.

8 MR. DiGIACOMO: That's the week of Thanksgiving. I  
9 think that is. Could we do a week later?

10 MR. LANDIS: It has to be at least six weeks.

11 THE CLERK: November 28th.

12 MR. DiGIACOMO: Thank you.

13 THE COURT: And I'll be right back to see if they  
14 want to talk with you.

15 (Court adjourned at 5:13 p.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

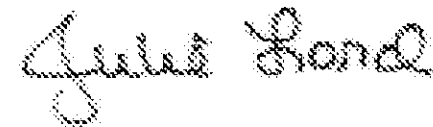
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JULIE LORD, INDEPENDENT TRANSCRIBER

OCT 07 2016

BY S. Boyle  
S. BOYLE, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JORGE MENDOZA,  
DAVID MURPHY,  
JOSEPH LAGUNA,

Defendant(s).

CASE NO: C-15-303991

DEPT NO: V

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

MEMBERS OF THE JURY:

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

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



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

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

A Superseding Indictment is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Superseding Indictment that on or about the 21st day of September, 2014, the Defendants committed the offenses of CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 199.480, 200.380 - NOC 50147); BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony - NRS 205.060 - NOC 50426); HOME INVASION WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony - NRS 205.067 - NOC 50437); ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 193.330, 200.380, 193.165 - NOC 50145); MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001) and ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031), within the County of Clark, State of Nevada, as follows:

COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

did wilfully, unlawfully, and feloniously conspire with each other and/or ROBERT FIGUEROA to commit a robbery.

COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

did then and there wilfully, unlawfully, and feloniously enter, with intent to commit larceny and/or robbery and/or murder, that certain residence occupied by JOSEPH LARSEN and/or MONTY GIBSON, located at 1661 Broadmere Street, Las Vegas, Clark County, Nevada, said Defendants did possess and/or gain possession of a deadly weapon, to wit: a 9mm rifle and/or a hand gun and/or pellet gun, during the commission of the crime and/or before leaving the structure; the Defendant being responsible under one or more theories of criminal liability, to wit: 1) by directly or indirectly committing the acts constituting the offense and/or 2) by aiding and abetting in the commission of the crime by Defendant DAVID MURPHY, aka, David Mark Murphy driving co-conspirators to scene and/or acting as a lookout and/or by acting as the "get away" driver, SUMMER LARSEN identifying

1 JOSEPH LARSEN's home as a target and/or meeting with the co-defendants and/or  
2 unidentified co-conspirators to plan the robbery of JOSEPH LARSEN and/or MONTY  
3 GIBSON, and JORGE MENDOZA and/or ROBERT FIGUEROA and/or JOSEPH  
4 LAGUNA going to the residence with weapons to rob JOSEPH LARSEN and/or MONTY  
5 GIBSON, thereafter, JOSEPH LARSEN shooting at JORGE MENDOZA and ROBERT  
6 FIGUEROA and/or JOSEPH LAGUNA to prevent the taking of the property, JORGE  
7 MENDOZA and/or other conspirators returning fire, striking and killing MONTY GIBSON,  
8 the co-conspirators acting in concert throughout and/or 3) a conspiracy to commit this crime.

9 COUNT 3 - HOME INVASION WHILE IN POSSESSION OF A DEADLY WEAPON

10 did then and there wilfully, unlawfully and feloniously forcibly enter an inhabited  
11 dwelling, to-wit: 1661 Broadmere Street, Las Vegas, Clark County Nevada, without  
12 permission of the owner, resident, or lawful occupant, to-wit: JOSEPH LARSEN and/or  
13 MONTY GIBSON, the said Defendant did possess and/or gain possession of a deadly  
14 weapon consisting of a 9mm Firearm and/or a hand gun and/or pellet gun, during the  
15 commission of the crime and/or before leaving the structure; the Defendants being  
16 responsible under one or more theories of criminal liability, to wit: 1) by directly or  
17 indirectly committing the acts constituting the offense and/or 2) by aiding and abetting in the  
18 commission of the crime by Defendant DAVID MURPHY, aka, David Mark Murphy  
19 driving co-conspirators to scene and/or acting as a lookout and/or by acting as the "get away"  
20 driver, SUMMER LARSEN identifying JOSEPH LARSEN's home as a target and/or  
21 meeting with the co-defendants to plan the robbery of JOSEPH LARSEN and/or MONTY  
22 GIBSON, and JORGE MENDOZA and/or ROBERT FIGUEROA and/or JOSEPH  
23 LAGUNA going to the residence with weapons to rob JOSEPH LARSEN and/or MONTY  
24 GIBSON, one of the conspirators breaking open the front door to the residence, thereafter,  
25 JOSEPH LARSEN shooting at JORGE MENDOZA and ROBERT FIGUEROA and/or  
26 JOSEPH LAGUNA to prevent the taking of the property, JORGE MENDOZA and/or  
27 JOSEPH LAGUNA returning fire, striking and killing MONTY GIBSON, the co-  
28 conspirators acting in concert throughout and/or 3) a conspiracy to commit this crime.

1 COUNT 4 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

2 did then and there wilfully, unlawfully, and feloniously attempt to take personal  
3 property, to-wit: lawful money of the United States and/or marijuana, from the person of  
4 JOSEPH LARSEN, or in his presence, by means of force or violence, or fear of injury to,  
5 and without the consent and against the will of JOSEPH LARSEN, by entering his home  
6 with a weapon to take the property by force, thereafter JOSEPH LARSEN shooting at the  
7 defendants to prevent the taking of the property, with use of a deadly weapon, to-wit: a 9mm  
8 Firearm and/or a hand gun and/or pellet gun; the Defendants being responsible under one or  
9 more theories of criminal liability, to wit: 1) by directly or indirectly committing the acts  
10 constituting the offense and/or 2) by aiding and abetting in the commission of the crime by  
11 Defendant DAVID MURPHY, aka, David Mark Murphy driving co-conspirators to scene  
12 and/or acting as a lookout and/or by acting as the "get away" driver, SUMMER LARSEN  
13 identifying JOSEPH LARSEN's home as a target and/or meeting with the co-defendants  
14 and/or unidentified co-conspirators to plan the robbery of JOSEPH LARSEN and/or  
15 MONTY GIBSON, and JORGE MENDOZA and/or ROBERT FIGUEROA and/or JOSEPH  
16 LAGUNA going to the residence with weapons to rob JOSEPH LARSEN and/or MONTY  
17 GIBSON, one of the conspirators breaking open the front door to the residence, thereafter,  
18 JOSEPH LARSEN shooting at JORGE MENDOZA and ROBERT FIGUEROA and/or  
19 JOSEPH LAGUNA to prevent the taking of the property, JORGE MENDOZA and/or other  
20 conspirators returning fire at JOSEPH LARSEN, the co-conspirators acting in concert  
21 throughout and/or 3) a conspiracy to commit this crime.

22 COUNT 5 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

23 did then and there wilfully, unlawfully, and feloniously attempt to take personal  
24 property, to-wit: lawful money of the United States and/or marijuana, from the person of  
25 MONTY GIBSON, or in his presence, by means of force or violence, or fear of injury to,  
26 and without the consent and against the will of MONTY GIBSON, by entering his home  
27 with a  
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1 weapon to take the property by force, thereafter JOSEPH LARSEN shooting at the  
2 defendants to prevent the taking of the property, with use of a deadly weapon, to-wit: a 9mm  
3 Firearm and/or a hand gun and/or pellet gun; the Defendants being responsible under one or  
4 more theories of criminal liability, to wit: 1) by directly or indirectly committing the acts  
5 constituting the offense and/or 2) by aiding and abetting in the commission of the crime by  
6 Defendant DAVID MURPHY, aka, David Mark Murphy driving co-conspirators to scene  
7 and/or acting as a lookout and/or by acting as the "get away" driver, SUMMER LARSEN  
8 identifying JOSEPH LARSEN's home as a target and/or meeting with the co-defendants  
9 and/or unidentified co-conspirators to plan the robbery of JOSEPH LARSEN and/or  
10 MONTY GIBSON, and JORGE MENDOZA and/or ROBERT FIGUEROA and/or JOSEPH  
11 LAGUNA going to the residence with weapons to rob JOSEPH LARSEN and/or MONTY  
12 GIBSON, one of the conspirators breaking open the front door to the residence, thereafter,  
13 JOSEPH LARSEN shooting at JORGE MENDOZA and ROBERT FIGUEROA and/or  
14 JOSEPH LAGUNA to prevent the taking of the property, JORGE MENDOZA and/or other  
15 conspirators returning fire, striking and killing MONTY GIBSON, the co-conspirators acting  
16 in concert throughout and/or 3) a conspiracy to commit this crime.

17 COUNT 6 - MURDER WITH USE OF A DEADLY WEAPON

18 did then and there wilfully, unlawfully, feloniously, with premeditation and  
19 deliberation, and with malice aforethought, kill MONTY GIBSON, a human being, by  
20 shooting at and into the body of the said MONTY GIBSON, with a deadly weapon, to-wit: a  
21 firearm, the defendants being responsible under one or more theories of criminal liability,  
22 to-wit: 1) by directly or indirectly committing the acts constituting the offense and/or 2) by  
23 aiding and abetting in the commission of the crime by Defendant DAVID MURPHY, aka,  
24 David Mark Murphy driving co-conspirators to scene and/or acting as a lookout and/or by  
25 acting as the "get away" driver, SUMMER LARSEN identifying JOSEPH LARSEN's home  
26 as a target and/or meeting with the co-defendants and/or unidentified co-conspirators to plan  
27 the robbery of JOSEPH LARSEN and/or MONTY GIBSON, and JORGE MENDOZA  
28 and/or ROBERT FIGUEROA and/or JOSEPH LAGUNA going to the residence with

1 weapons to rob JOSEPH LARSEN and/or MONTY GIBSON, one of the conspirators  
2 breaking open the front door to the residence, thereafter, JOSEPH LARSEN shooting at  
3 JORGE MENDOZA and ROBERT FIGUEROA and/or JOSEPH LAGUNA to prevent the  
4 taking of the property, JORGE MENDOZA and/or other conspirators returning fire, striking  
5 and killing MONTY GIBSON, the co-conspirators acting in concert throughout and/or 3) a  
6 conspiracy to commit this crime; the defendants being responsible under one or more of the  
7 following principles of criminal liability, to-wit: 1) by having premeditation and deliberation  
8 and/or 2) during the perpetration or attempted perpetration of a robbery and/or burglary  
9 and/or Home Invasion.

10 COUNT 7 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

11 did then and there wilfully, unlawfully, feloniously and with malice aforethought  
12 attempt to kill JOSEPH LARSEN, a human being, by shooting at JOSEPH LARSEN, with  
13 use of a deadly weapon, to-wit: a 9mm Firearm and/or a hand gun and/or pellet gun, the  
14 defendants being responsible under one or more theories of criminal liability, to-wit: 1) by  
15 directly or indirectly committing the acts constituting the offense and/or 2) by aiding and  
16 abetting in the commission of the crime by Defendant DAVID MURPHY, aka, David Mark  
17 Murphy driving co-conspirators to scene and/or acting as a lookout and/or by acting as the  
18 "get away" driver, SUMMER LARSEN identifying JOSEPH LARSEN's home as a target  
19 and/or meeting with the co-defendants and/or unidentified co-conspirators to plan the  
20 robbery of JOSEPH LARSEN and/or MONTY GIBSON, and JORGE MENDOZA and/or  
21 ROBERT FIGUEROA and/or JOSEPH LAGUNA going to the residence with weapons to  
22 rob JOSEPH LARSEN and/or MONTY GIBSON, one of the conspirators breaking open the  
23 front door to the residence, thereafter, JOSEPH LARSEN shooting at JORGE MENDOZA  
24 and ROBERT FIGUEROA and/or JOSEPH LAGUNA to prevent the taking of the property,  
25 JORGE MENDOZA and/or other conspirators returning fire at JOSEPH LARSEN, the co-  
26 conspirators acting in concert throughout and/or 3) a conspiracy to commit this crime.

1           It is the duty of the jury to apply the rules of law contained in these instructions to the  
2 facts of the case and determine whether or not the defendants are guilty of one or more of the  
3 offenses charged.  
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INSTRUCTION NO. \_\_ 4 \_\_

You must give separate consideration to each individual defendant and to each separate charge against him. Each defendant is entitled to have his case determined from his own conduct and from the evidence that may be applicable to him.

1  
2 A conspiracy is an agreement between two or more persons for an unlawful purpose.  
3 To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission  
4 of, the specific crime agreed to. The crime is the agreement to do something unlawful; it  
5 does not matter whether it was successful or not.

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

14 A conspiracy to commit a crime does not end upon the completion of the crime. The  
15 conspiracy continues until the co-conspirators have successfully gotten away and concealed  
16 the crime.  
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2 It is not necessary in proving a conspiracy to show a meeting of the alleged  
3 conspirators or the making of an express or formal agreement. The formation and existence  
4 of a conspiracy may be inferred from all circumstances tending to show the common intent  
5 and may be proved in the same way as any other fact may be proved, either by direct  
6 testimony of the fact or by circumstantial evidence, or by both direct and circumstantial  
7 evidence.  
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Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy.

The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators. Every conspirator is legally responsible for a specific intent crime of a co-conspirator so long as the specific intent crime was intended by the defendant. A conspirator is also legally responsible for a general intent crime that follows as one of the reasonably foreseeable consequences of the object of the conspiracy even if it was not intended as part of the original plan and even if he was not present at the time of the commission of such act.

Buglary, attempt robbery, and attempt murder are specific intent crimes.

Home invasion is a general intent crime.

INSTRUCTION NO. 8

Evidence that a person was in the company or associated with one or more other persons alleged or proven to have been members of a conspiracy is not, in itself, sufficient to prove that such person was a member of the alleged conspiracy. However, you are instructed that presence, companionship, and conduct before, during and after the offense are circumstances from which one's participation in the criminal intent may be inferred.

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

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

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

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

Any person, who by day or night, enters any house, room, or other building with the intent to commit larceny, robbery and/or murder is guilty of burglary. Moreover, force or a "breaking" as such is not a necessary element of the crime of burglary.

INSTRUCTION NO. \_\_\_\_ 11 \_\_\_\_

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

It is not necessary that the State prove a defendant actually committed a larceny, robbery, or murder inside the house after he entered in order for you to find him guilty of burglary. The gist of the crime of burglary is the unlawful entry with criminal intent. Therefore, a burglary was committed if a defendant entered the house with the intent to commit a larceny, robbery or murder regardless of whether or not that crime occurred.

INSTRUCTION NO. \_\_\_\_13\_\_\_\_

Larceny is the stealing, taking and carrying away of the personal goods or property of another, with the specific intent to permanently deprive the owner thereof.

INSTRUCTION NO. \_\_\_\_ 14 \_\_\_\_

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

A person who, by day or night, forcibly enters an inhabited dwelling without permission of the owner, resident or lawful occupant, whether or not a person is present at the time of the entry, is guilty of Invasion of the Home.

"Forcibly enters" means the entry of an inhabited dwelling involving any act of physical force resulting in damage to the structure.

"Inhabited dwelling" means any structure, building, house, room, apartment, tenement, tent, conveyance, vessel, boat, vehicle, house trailer, travel trailer, motor home or railroad car in which the owner or other lawful occupant resides.

Every person who commits the crime of burglary and/or home invasion, who has in his possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure, or upon leaving the structure, is guilty of burglary or home invasion while in possession of a weapon.

INSTRUCTION NO. \_\_17\_\_

When two or more persons participate in the commission of a burglary or home invasion, and one or more of them enters the structure, it is not necessary to prove the other individual actually entered because one who aids and abets another in the commission of a burglary or home invasion is equally guilty as a principal.

The elements of an attempt to commit a crime are:

- 1) the intent to commit the crime;
- 2) performance of some act towards its commission; and
- 3) failure to consummate its commission.

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

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

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

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

In this case the defendants are accused in a Superseding Indictment alleging an open charge of murder. This charge may include murder of the first degree or murder of the second degree.

The jury must decide if each or any defendant is guilty of any offense and, if so, of which offense.

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

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

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

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

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

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

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

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

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

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

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

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

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2       There are certain kinds of murder in the first degree which carry with them conclusive  
3 evidence of malice aforethought. One of these classes of first degree murder is a killing  
4 committed in the perpetration or attempted perpetration of a burglary and/or robbery and/or  
5 home invasion. Therefore, a killing which is committed in the perpetration or attempted  
6 perpetration of a burglary and/or robbery and/or home invasion is deemed to be murder in  
7 the first degree, whether the killing was intentional, unintentional, accidental, or the result of  
8 provocation. This is called the felony murder rule.

9       The intent to perpetrate or attempt to perpetrate a burglary and/or robbery and/or  
10 home invasion must be proven beyond a reasonable doubt. In order for the felony murder  
11 rule to apply under a robbery theory, the intent to take the property must be formed prior to  
12 the act constituting the killing.  
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Robbery may spread over considerable and varying periods of time. All matters immediately prior to and having direct causal connection with the robbery, as well as acts immediately following it are deemed so closely connected with it as to be a part of the occurrence.

One who commits or attempts to commit a burglary, robbery, or home invasion armed with deadly force, and attempts to kill or kills the intended victim or another when the victim responds with force to the robbery attempt, may not avail himself of the defense of self-defense.

In other words, if the person who kills or attempts to kill was committing an act inherently dangerous to human life, with felonious intent, during the course of a burglary, robbery or home invasion or as the natural and probable consequences of a conspiracy, the person may not rely upon self-defense.

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2 If an illegal yet unintended act results from the intent to commit a crime, that act is  
3 also considered illegal. Under the doctrine of "transferred intent", original malice is  
4 transferred from one against whom it was entertained to the person who actually suffers the  
5 consequences of the unlawful act. For example, if a person intentionally directs force against  
6 one person wrongfully but, instead, hits another, his intent is said to be transferred from one  
7 to the other although he did not intend it in the first instance.  
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2 Murder in the first degree is a specific intent crime. A defendant cannot be liable  
3 under conspiracy and/or aiding and abetting theory for first degree murder for acts  
4 committed by a co-conspirator, unless that defendant also had a premeditated and deliberate  
5 specific intent to kill and/or the intent to commit a robbery and/or burglary and/or home  
6 invasion.

7 Murder in the second degree may be a general intent crime. As such, a defendant may  
8 be liable under a conspiracy theory and/or aiding and abetting for murder of the second  
9 degree for acts committed by a co-conspirator if the killing is one of the reasonably  
10 foreseeable consequences of the object of the conspiracy and the felony murder rule does not  
11 apply.

Although your verdict must be unanimous as to the charge, you do not have to agree on the theory of guilt or liability. Therefore, even if you cannot agree on whether the facts establish a defendant is guilty of premeditated and deliberate murder or felony murder or is liable as a principle, aider and abettor, or co-conspirator, so long as all of you agree that the evidence establishes beyond a reasonable doubt that a defendant is guilty of murder in the first degree, your verdict shall be murder of the first degree.

You are instructed that if you find that the State has established that a defendant has committed first degree murder you shall select first degree murder as your verdict. The crime of first degree murder includes the crime of second degree murder. You may find a defendant guilty of second degree murder if:

1. You have not found, beyond a reasonable doubt, that a defendant is guilty of murder of the first degree, and

2. All twelve of you are convinced beyond a reasonable doubt that said defendant is guilty of the crime of second degree murder.

If you are convinced beyond a reasonable doubt that the crime of murder has been committed by a defendant, but you have a reasonable doubt whether such murder was of the first or of the second degree, you must give that said defendant the benefit of that doubt and return a verdict of murder of the second degree.

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

Attempted murder is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate intention unlawfully to kill.

It is not necessary to prove the elements of premeditation and deliberation in order to prove attempted murder.

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

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

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

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

A firearm is a deadly weapon.

INSTRUCTION NO. \_\_37\_\_

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

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

An unarmed offender "uses" a deadly weapon when the unarmed offender is liable for the offense, another person liable to the offense is armed with and uses a deadly weapon in the commission of the offense, and the unarmed offender had knowledge of the use of the deadly weapon.

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

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

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

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

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

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

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

If you find that the State has failed to prove beyond a reasonable doubt any one element of a charged offense, you must find the defendant not guilty of that offense.

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

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

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

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

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

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

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

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

The conviction shall not be had on the testimony of an accomplice unless he/she is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.

An accomplice is hereby defined as one who is liable for prosecution, for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

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

To corroborate the testimony of an accomplice there must be evidence of some act or fact related to the offense which, if believed, by itself and without any aid, interpretation or direction from the testimony of the accomplice, tends to connect a defendant with the commission of the offense charged.

However, it is not necessary that the evidence of the corroboration be sufficient in itself to establish every element of the offense charged, or that it corroborate every fact to which the accomplice testifies. If circumstances and evidence from sources other than the testimony of the accomplice tend on the whole to connect the accused with the crime charged, the accomplice is corroborated.

In determining whether an accomplice has been corroborated, you must first assume the testimony of the accomplice has been removed from the case. You must then determine whether there is any remaining evidence which tends to connect a defendant with the commission of the offense.

Evidence showing that a defendant was with an accomplice near the scene of the crime on the night it was committed, at the time it was committed is not, in and of itself, sufficient evidence to corroborate the testimony of an accomplice. Where the connecting evidence shows no more than an opportunity to commit a crime, simply proves suspicion, or is equally consonant with the reasonable explanation pointing toward innocent conduct on the part of a defendant, the evidence is to be deemed insufficient.

If there is not such independent evidence which tends to connect a defendant with the commission of the offense, the testimony of the accomplice is not corroborated.

Robert Figueroa is a co-defendant in this case and has testified. His negotiations are set forth in an exhibit, which has been provided to you, wherein he must testify truthfully to receive the benefit of those negotiations. Robert Figueroa has not been sentenced and the State has not indicated if they believe he has testified truthfully. You may view his testimony and regard the same in the light of possible pressure to which he is subject, which may include his desire to assist the State in obtaining a conviction, and his desire to receive the benefit of his negotiations.

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

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2 In deciding whether to believe testimony given by a witness pursuant to a plea  
3 agreement, you should use greater care and caution than you do when deciding whether to  
4 believe testimony given by an ordinary witness. Because that witness is also subject to  
5 prosecution for the same offense, that testimony may be strongly influenced by the hope or  
6 expectation that the prosecution will reward testimony that supports the prosecution's case by  
7 granting that person immunity or leniency. For this reason, you should view with distrust that  
8 testimony that supports the prosecution's case.

9 In giving you this warning about this testimony, I do not mean to suggest that you  
10 must or should disbelieve the testimony given by a witness pursuant to a plea agreement that  
11 you heard at this trial. Rather, you should give the testimony whatever weight you decide it  
12 deserves after considering all the evidence in the case.

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INSTRUCTION NO. \_\_50\_\_

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) The witness' opportunity and ability to see or hear or know the things testified to;
- (2) The witness' memory;
- (3) The witness' manner while testifying;
- (4) The witness' interest in the outcome of the case, if any;
- (5) The witness' bias or prejudice, if any;
- (6) Whether other evidence contradicted the witness' testimony;
- (7) The reasonableness of the witness' testimony in light of all the evidence; and
- (8) Any factors that bear on the witness' believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

INSTRUCTION NO. \_\_51\_\_

The fact a person has been convicted of a felony, may only be considered by you for the purpose of determining the credibility of that person. The fact of such a conviction does not necessarily destroy or impair the person's credibility. It is but one of the circumstances that you may take into consideration in weighing the testimony of such a person.

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

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

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

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

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2 In your deliberation you may not discuss or consider the subject of punishment. Your  
3 duty is confined to the determination of the guilt or innocence of each defendant. If your  
4 ~~verdict is murder in the first degree, you will, at a later hearing, determine the issue of~~  
5 ~~penalty or punishment.~~ E  
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During the course of this trial, and your deliberations, you are not to:

- (1) communicate with anyone in any way regarding this case or its merits-either by phone, text, Internet, or other means;
- (2) read, watch, or listen to any news or media accounts or commentary about the case;
- (3) do any research, such as consulting dictionaries, using the Internet, or using reference materials;
- (4) make any investigation, test a theory of the case, re-create any aspect of the case, or in any other way investigate or learn about the case on your own.

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

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

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

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

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

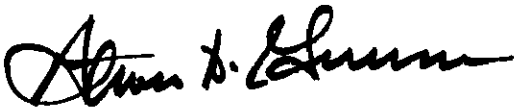
Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation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

GIVEN:

  
DISTRICT JUDGE

INSTRUCTION NO. 59

Burglary and home invasion end upon exit from the structure. Robbery can extend to acts taken to facilitate escape so long as the killing took place during the chain of events which constitute the attempt robbery.

  
CLERK OF THE COURT

MISC  
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Attorney for Defendant

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

THE STATE OF NEVADA,

Plaintiff,

v.

DAVID MURPHY,

Defendant.

CASE NO.: C-15-303991-4

DEPT. NO.: V

**DEFENDANT'S PROPOSED JURY INSTRUCTIONS**

COMES NOW, the Defendant, DAVID MURPHY, by and through his attorney, CASEY  
A. LANDIS, ESQ., and hereby submits the following jury instructions for inclusion in the final  
collection of jury instructions provided to the jury.

Before you may rely on circumstantial evidence to conclude that a fact necessary to find the defendant guilty has been proved, you must be convinced that the State has proved each fact essential to that conclusion beyond a reasonable doubt.

Also, before you may rely on circumstantial evidence to find the defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant is guilty. If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.<sup>1</sup>

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<sup>1</sup> State v. Eighth Judicial Dist. Court, No. 68837, 2015 WL 5666184, at \*1 (Sep. 24, 2015) (unpublished); Crane v. State, 88 Nev. 684, 687 & n. 4 (1976).

It is not a crime if an act was done through misfortune or by accident, when it appears that there was no evil design, intention or culpable negligence.<sup>2</sup>

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<sup>2</sup> NRS 194.010(4)

Manslaughter is the unlawful killing of a human being without malice express or implied and without any mixture of deliberation. It is not divided into degrees, but is of two kinds, namely, Voluntary Manslaughter and Involuntary Manslaughter.

Voluntary Manslaughter is a voluntary killing upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible.

The provocation required for Voluntary Manslaughter must either consist of a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing. The serious and highly provoking injury which causes the sudden heat of passion can occur without direct physical contact.

For the sudden, violent impulse of passion to be irresistible resulting in a killing, which is Voluntary Manslaughter, there must not have been an interval between the assault or provocation and the killing sufficient for the voice of reason and humanity to be heard; for, if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, then the killing shall be determined by you to be murder. The law assigns no fixed period of time for such an interval but leaves its determination to the jury under the facts and circumstances of the case.<sup>3</sup>

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<sup>3</sup> NRS 200.040; NRS 200.050; NRS 200.060; Schoels v. State, 114 Nev. 981, 966 P.2d 735 (1998); Roberts v. State, 102 Nev. 170, 717 P.2d 1115 (1986).

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2 The heat of passion which will reduce a homicide to Voluntary Manslaughter must be  
3 such an irresistible passion as naturally would be aroused in the mind of an ordinarily reasonable  
4 person in the same circumstances. A defendant is not permitted to set up his own standard of  
5 conduct and to justify or excuse himself because his passions were aroused unless the  
6 circumstances in which he was placed and the facts that confronted him were such as also would  
7 have aroused the irresistible passion of the ordinarily reasonable man if likewise situated. The  
8 basic inquiry is whether or not, at the time of the killing, the reason of the accused was obscured  
9 or disturbed by passion to such an extent as would cause the ordinarily reasonable person of  
10 average disposition to act rashly and without deliberation and reflection and from such passion  
11 rather than from judgment. <sup>4</sup>  
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28 <sup>4</sup> Ricci v. State. 91 Nev. 373, 383, 536 P.2d 79 (1975); State v. Gregory, 66 Nev. 423, 429, 212 P.2d 701, 705 (1949).

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If you are satisfied beyond a reasonable doubt that the killing was unlawful, but you have a reasonable doubt whether the crime is murder or manslaughter, you must give the defendant the benefit of such doubt and find it to be manslaughter rather than murder.

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Manslaughter is the unlawful killing of a human being without malice, express or implied,  
and without any mixture of deliberation.

The distinction between murder and voluntary manslaughter is that murder requires malice while voluntary manslaughter does not.

When the act causing death, though unlawful, is done upon a sudden heat of passion caused by a provocation apparently sufficient to make the passion irresistible, the offense is voluntary manslaughter. In such a case (even if an intent to kill exists) the law that is malice, which is an essential element of murder, is absent.

To establish that a killing is murder and not voluntary manslaughter, the burden is on the State to prove beyond a reasonable doubt each of the elements of murder and that the act which caused the death was not done in the heat of passion as definite in these instructions.<sup>5</sup>

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<sup>5</sup> Collman v. State, 116 Nev. 687, 713-15(2000); citing State v. Vaughn, 22 Nev. 285, 299-302 (1895). Crawford v. State, 121 Nev. 746, 754 (2005).

ORIGINAL

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

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OCT - 6 2016

BY:   
DENISE TRUJILLO, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

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STATE OF NEVADA  
VS  
DAVID MURPHY

CASE NO.: C-15-303991-4

DEPARTMENT 5

DEFENDANT'S PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL

Attached hereto are the proposed jury instructions which were offered to the Court, but not submitted to the jury in the above entitled action.

DATED: This 6th day of October, 2016.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By:   
Denise Trujillo, Deputy Clerk of the Court

C-15-303991-4  
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Proposed Jury Instructions Not Used At Tri:  
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Manslaughter is the unlawful killing of a human being without malice express or implied and without any mixture of deliberation. It is not divided into degrees, but is of two kinds, namely, Voluntary Manslaughter and Involuntary Manslaughter.

Voluntary Manslaughter is a voluntary killing upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible.

The provocation required for Voluntary Manslaughter must either consist of a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing. The serious and highly provoking injury which causes the sudden heat of passion can occur without direct physical contact.

For the sudden, violent impulse of passion to be irresistible resulting in a killing, which is Voluntary Manslaughter, there must not have been an interval between the assault or provocation and the killing sufficient for the voice of reason and humanity to be heard; for, if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, then the killing shall be determined by you to be murder. The law assigns no fixed period of time for such an interval but leaves its determination to the jury under the facts and circumstances of the case. <sup>6</sup>

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<sup>6</sup> NRS 200.040; NRS 200.050; NRS 200.060; *Schoels v. State*, 114 Nev. 981, 966 P.2d 735 (1998) *Roberts v. State*, 102 Nev. 170, 717 P.2d 1115 (1986).

The heat of passion which will reduce a homicide to Voluntary Manslaughter must be such an irresistible passion as naturally would be aroused in the mind of an ordinarily reasonable person in the same circumstances. A defendant is not permitted to set up his own standard of conduct and to justify or excuse himself because his passions were aroused unless the circumstances in which he was placed and the facts that confronted him were such as also would have aroused the irresistible passion of the ordinarily reasonable man if likewise situated. The basic inquiry is whether or not, at the time of the killing, the reason of the accused was obscured or disturbed by passion to such an extent as would cause the ordinarily reasonable person of average disposition to act rashly and without deliberation and reflection and from such passion rather than from judgment. 7

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<sup>7</sup> *Ricci v. State*, 91 Nev. 373, 383, 536 P.2d 79 (1975); *State v. Gregory*, 66 Nev. 423, 429, 212 P.2d 701, 705 (1949).

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3 If you are satisfied beyond a reasonable doubt that the killing was unlawful, but you have a  
4 reasonable doubt whether the crime is murder or manslaughter, you must give the defendant the benefit  
5 of such doubt and find it to be manslaughter rather than murder.  
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Manslaughter is the unlawful killing of a human being without malice, express or implied, and without any mixture of deliberation.

The distinction between murder and voluntary manslaughter is that murder requires malice while voluntary manslaughter does not.

When the act causing death, though unlawful, is done upon a sudden heat of passion caused by a provocation apparently sufficient to make the passion irresistible, the offense is voluntary manslaughter. In such a case (even if an intent to kill exists) the law that is malice, which is an essential element of murder, is absent.

To establish that a killing is murder and not voluntary manslaughter, the burden is on the State to prove beyond a reasonable doubt each of the elements of murder and that the act which caused the death was not done in the heat of passion as definite in these instructions.<sup>8</sup>

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<sup>8</sup> Collman v. State, 116 Nev. 687, 713-15(2000); citing State v. Vaughn, 22 Nev. 285, 299-302 (1895). Crawford v. State, 121 Nev. 746, 754 (2005).

Before you may rely on circumstantial evidence to conclude that a fact necessary to find the defendant guilty has been proved, you must be convinced that the State has proved each fact essential to that conclusion beyond a reasonable doubt.

Also, before you may rely on circumstantial evidence to find the defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant is guilty. If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.<sup>2</sup>

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<sup>2</sup> State v. Eighth Judicial Dist. Court, No. 68837, 2015 WL 5666184, at \*1 (Sep. 24, 2015) (unpublished); Crane v. State, 88 Nev. 684, 687 & n. 4 (1976).

INSTRUCTION NO. \_\_\_\_\_

It is not a crime if an act was done through misfortune or by accident, when it appears that there was no evil design, intention or culpable negligence.<sup>3</sup>

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<sup>3</sup> NRS 194.010(4)

5:03 pm

OCT 07 2015

BY

S. BOYLE, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

DAVID MURPHY,

Defendant.

CASE NO: C-15-303991-4

DEPT NO: V

VERDICT

We, the jury in the above entitled case, find the Defendant DAVID MURPHY, as follows:

**COUNT 1 - CONSPIRACY TO COMMIT ROBBERY**

*(Please check the appropriate box, select only one)*

☒ Guilty of Conspiracy to Commit Robbery

☐ Not Guilty

We, the jury in the above entitled case, find the Defendant DAVID MURPHY, as follows:

**COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON**

*(Please check the appropriate box, select only one)*

☒ Guilty of Burglary While In Possession of a Deadly Weapon

☐ Guilty of Burglary

☐ Not Guilty



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2 We, the jury in the above entitled case, find the Defendant DAVID MURPHY, as  
3 follows:

4 **COUNT 3** – HOME INVASION WHILE IN POSSESSION OF A DEADLY WEAPON

5 *(Please check the appropriate box, select only one)*

- 6 ☒ Guilty of Home Invasion While in Possession of a Deadly Weapon  
7 ☐ Guilty of Home Invasion  
8 ☐ Not Guilty  
9

10 We, the jury in the above entitled case, find the Defendant DAVID MURPHY, as  
11 follows:

12 **COUNT 4** – ATTEMPT ROBBERY WITH A DEADLY WEAPON

13 *(Please check the appropriate box, select only one)*

- 14 ☒ Guilty of Attempt Robbery With a Deadly Weapon  
15 ☐ Guilty of Attempt Robbery  
16 ☐ Not Guilty  
17

18 We, the jury in the above entitled case, find the Defendant DAVID MURPHY, as  
19 follows:

20 **COUNT 5** - ATTEMPT ROBBERY WITH A DEADLY WEAPON

21 *(Please check the appropriate box, select only one)*

- 22 ☒ Guilty of Attempt Robbery With a Deadly Weapon  
23 ☐ Guilty of Attempt Robbery  
24 ☐ Not Guilty  
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1 We, the jury in the above entitled case, find the Defendant DAVID MURPHY, as  
2 follows:

3 **COUNT 6** – MURDER WITH A DEADLY WEAPON

4 *(Please check the appropriate box, select only one)*

- 5 ☐ Guilty of First Degree Murder With a Deadly Weapon  
6 ☐ Guilty of First Degree Murder  
7 ☒ Guilty of Second Degree Murder With a Deadly Weapon  
8 ☐ Guilty of Second Degree Murder  
9 ☐ Not Guilty

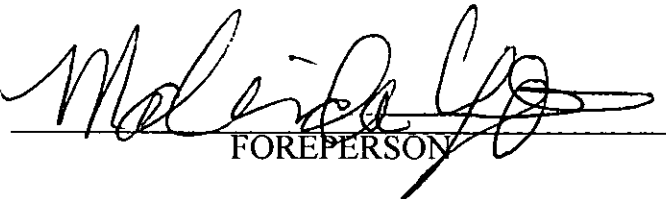
10  
11 We, the jury in the above entitled case, find the Defendant DAVID MURPHY, as  
12 follows:

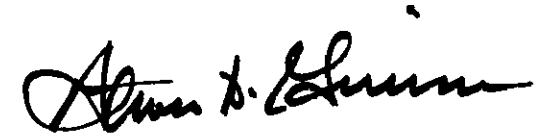
13 **COUNT 7** - ATTEMPT MURDER WITH A DEADLY WEAPON

14 *(Please check the appropriate box, select only one)*

- 15 ☒ Guilty of Attempt Murder With a Deadly Weapon  
16 ☐ Guilty of Attempt Murder  
17 ☐ Not Guilty

18  
19 DATED this 7th day of October, 2016

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22 FOREPERSON



CLERK OF THE COURT

1 RTRAN  
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4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA  
6

7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 JOSEPH LAGUNA,

11 Defendant.  
12

)  
) CASE NO. C-15-303991-5  
)  
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) DEPT. V  
)  
)  
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13 BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

14 MONDAY, NOVEMBER 28, 2016

15 ***ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:***

16 ***SENTENCING***  
17  
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19 APPEARANCES:

20 (See next page)  
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25 RECORDED BY: LARA CORCORAN, COURT RECORDER

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APPEARANCES:

For the State: MARC DiGIACOMO, ESQ.,  
AGNES M. LEXIS, ESQ.,  
Chief Deputy District Attorneys

For the Defendant, Mendoza: WILLIAM L. WOLFBRANDT, ESQ.,  
AMANDA S. GREGORY, ESQ.,

For the Defendant, Larsen: GREGORY E. COYER, ESQ.,

For the Defendant, Murphy: DANIEL R. GILLIAM, ESQ.,

For the Defendant, Laguna: MONIQUE A. McNEILL, ESQ.,

1                   **LAS VEGAS, NEVADA; MON7DAY, NOVEMBER 28, 2016**

2                   [Proceeding commenced at 10:43 a.m.]

3  
4           THE COURT: All right. Case number C303991, State of Nevada versus  
5 Jorge Mendoza, David Murphy, Joseph and Summer Larsen. Unless you have a  
6 preference, I was going to just take these in the order that they appear on  
7 calendar. Do you have a preference?

8           MR. GILLIAM: I don't, Judge.

9           MR. DiGIACOMO: No. I think my argument except for Ms. Larsen would  
10 be the same as it relates to the three that went to trial.

11          THE COURT: Okay. And so we'll begin with Mr. Mendoza and this is the  
12 time set for sentencing; are you ready to proceed?

13          MR. WOLFBRANDT: Yes.

14          THE COURT: State.

15          MR. DiGIACOMO: Yes, Judge. As it relates to Mr. Mendoza, and just so  
16 you're aware of many of -- or several of the family members are present. Some  
17 were noticed as speakers. They all just want to be present and they want you  
18 to know that their present, but they don't actually want to speak here today.

19               As it relates to -- to Mr. Mendoza, I'll be honest with you, his  
20 criminal history, the reason he's present at this house and everything else that  
21 occurred as it relates to this homicide, I recognize that he is the person who  
22 pulled the trigger. But other than that, that does not distinguish him.

23               The verdict in and of itself, and I've talked to the family about this,  
24 that he's not eligible for life without. The verdict itself was going to give him at  
25 the very least 21 years from the verdict. And so you know the facts of this

1 case and I'm going to leave it up to your discretion as what you believe is -- is  
2 an appropriate sentence for Mr. Mendoza. I will have more argument as it  
3 relates to the -- Mr. Murphy and Mr. Laguna.

4 THE COURT: Mr. Mendoza, would you like to address the Court?

5 DEFENDANT, MENDOZA: No, I don't.

6 THE COURT: Counsel.

7 MR. WOLFBRANDT: Judge, obviously you're very familiar with the  
8 circumstances of this case. I've got to know Jorge and his family for a bit.  
9 And this is something that was just -- it was tragic on many different levels.  
10 They were the Gibson family as well as the Mendoza family.

11 I thought the recommendation by Parole and Probation was pretty  
12 accurate. The only thing that I would request is when it comes to the weapon  
13 enhancement rather than the 36 to whatever months it recommended, I was  
14 going to ask you to do 12 to 30 months. It's all still going to be -- those are  
15 going to be consecutive, but ask you to run all the other counts concurrent to  
16 the life sentence that's come with the murder case.

17 THE COURT: All right. So by virtue of the jury's verdict in this case of --  
18 on Count 1, conspiracy to commit robbery, Count 2, burglary while in  
19 possession of a deadly, Count 3, home invasion while in possession of a deadly  
20 weapon, attempt robbery with a deadly weapon on Count 4, Count 5, attempt  
21 robbery with a deadly weapon, Count 6, murder with use of a deadly weapon  
22 and Count 7, attempt murder with use of a deadly weapon, I hereby adjudge  
23 you guilty of those offenses.

24 And as to Count 1, conspiracy to commit robbery, I hereby  
25 sentence you to a minimum term of 24 months, the maximum term of 72

1 months in the Nevada Department of Corrections.

2 As to Count 2, burglary while in possession of a deadly weapon, a  
3 minimum term of 48 months, a maximum term of 180 months in Nevada  
4 Department of Corrections. That will run concurrently with Count 1.

5 Count 3, home invasion while in possession of a deadly weapon, a  
6 minimum term of 48 months, a maximum term of 180 months. That will run  
7 concurrently with Count 2.

8 Count 4, attempt robbery with use of a deadly weapon, a minimum  
9 term of 36 months, a maximum term of 120 months which will run  
10 concurrently with Count 3.

11 Count 5, attempt robbery with use of a deadly weapon, a minimum  
12 term of 36 months, a maximum term of 120 months. There is a consecutive  
13 minimum enhancement for use of a deadly weapon, a minimum of 36 months, a  
14 maximum of 120 months. That count, Count 5, will run concurrently with  
15 Count 4.

16 As to --

17 THE CLERK: I'm sorry. Does Count 4 have that same enhancement?  
18 You didn't say that.

19 THE COURT: Oh yes. I'm sorry. I did my -- thank you for pointing that  
20 out, Madam Clerk. So there's a minimum term of 36, maximum term of 120 as  
21 the enhancement for Count 4 which was robbery with use of a deadly weapon.  
22 And still that runs concurrently to Count 3.

23 Count 5 runs concurrent to Count 4.

24 Count 6, murder with use of a deadly weapon, the term is life  
25 imprisonment with the possibility of parole after 21 -- 20 years has been

1 served. And a consecutive minimum term of 36 months, maximum of 240  
2 months for the deadly weapon enhancement. And that runs concurrent with  
3 Count 5.

4 And Count 7, attempt murder with use of a deadly weapon is a  
5 minimum term of 48 months, a maximum term of 240 months with an  
6 enhancement for use of a deadly weapon of -- which is consecutive to the  
7 underlying sentence of 36 to 240. But Count 7 also runs concurrently with  
8 Count 6.

9 So, how do I do the aggregate? Let's see. So there's an aggregate  
10 I guess sentence of a minimum of 23 and a maximum of life.

11 MR. DIGIACOMO: Correct.

12 THE CLERK: Twenty-three years?

13 THE COURT: Yes, 23 years, a maximum of life. And credit for time  
14 served which is through today is 800 days credit for time served. Do you  
15 believe that to be inaccurate?

16 MR. WOLFBRANDT: No.

17 THE COURT: Okay. Eight hundred days.

18 And the next is David Murphy.

19 MR. GILLIAM: Good morning, Judge, Dan Gilliam standing in for Mr.  
20 Landis. I think the Court's aware of his situation which is why I'm here. Mr.  
21 Murphy's been made aware of it.

22 THE COURT: And that is he's moved from the jurisdiction?

23 MR. GILLIAM: Correct.

24 THE COURT: Well I'm sad to see him go.

25 MR. GILLIAM: We all were, Judge. But, Judge, if I may, did Mr. Landis --

1 he told me that he filed a sentencing memorandum; is that accurate?

2 THE COURT: I do have -- have that I read it.

3 MR. GILLIAM: Thank you, judge.

4 THE COURT: And State.

5 MR. DiGIACOMO: Thank you, Judge. As it relates to Mr. Murphy and  
6 Mr. Laguna, when I read the recommendation of P and P it looks like from the  
7 formula that they had that they somehow wound up two years less than Mr.  
8 Mendoza. So it looks like that the aggregate is 21 to life as opposed to 23 to  
9 life which is what they recommend on Mr. Mendoza.

10 And I believe that formula came out that way because of the verdict  
11 for second degree murder instead of first degree murder which you know from  
12 the facts of this case is sort of a legal fiction in a sense that the jury found that  
13 they both had the intent to kill as well as it had conspired. But more  
14 importantly is why this crime occurred. And there's no question in anybody's  
15 mind that but for Mr. Murphy this crime doesn't occur ever.

16 And I know we can talk about what Summer Larsen said on the  
17 stand and, you know, whether the Court believes it or doesn't believe it. I  
18 know there's no evidence that directly contradicts it. And so that maybe 100  
19 percent the truth of what came out of Ms. Larsen's mouth. But certainly Mr.  
20 Murphy armed his cousin with a weapon, went over to do an act that was  
21 completely foreign to Mr. Mendoza and was breaking into a home that he had  
22 to believe was occupied 'cause it made no sense otherwise. Otherwise, the  
23 marijuana wouldn't have been there.

24 He brought along with him Mr. Laguna who you can see from his  
25 record is a very hardcore violent felon and the result of that was the death of an

1 innocent roommate who was actually in the process of moving out of that  
2 particular residence.

3 I recognize that they recommended that the attempt robbery run  
4 consecutive or the murder run consecutive to the attempt robbery. I'm going to  
5 suggest to the Court that you follow the recommendation, but you run the  
6 attempt murder from the murder count to consecutive and that would run the  
7 sentence ultimately to something significantly higher I believe than Mr.  
8 Mendoza. And I also think it'd be more commensurate of their responsibility  
9 combined with their criminal history.

10 And so I would request the Court to run the final two counts  
11 consecutive as opposed to the first two counts or as opposed to the attempt  
12 robbery and the murder counts consecutive. And I will submit it to the -- on  
13 that.

14 THE COURT: All right. And Mr. Murphy, would you like to address the  
15 Court?

16 DEFENDANT, MURPHY: No, I would not.

17 MR. GILLIAM: Judge, I'd just like to submit on Mr. Landis' sentencing  
18 memorandum please.

19 THE COURT: All right. And the Court has read that. I guess I disagree in  
20 that basically he says that he's -- his culpability is less than the shooter and he  
21 never intended for a murder to occur. I think it's pretty clear that maybe no one  
22 intended for a murder to occur. Certainly -- maybe they weren't expecting the  
23 people to be armed when they arrived at the house and that they're -- one of  
24 the victims to be waiting with a loaded gun into -- you know, so when they  
25 reached the door that there would a fire fight, but when you go especially in

1 Nevada where people are very fond of their guns to a house armed with  
2 weapons you ought to maybe expect a fire fight to happen.

3 So yes I see that Mr. Murphy's prior convictions have to do with  
4 stealing cars which, you know, he likes to do. But I have to agree with the  
5 State here that really without him deciding that they were going to go to this  
6 second house -- I mean, they went to the first house and I think the evidence of  
7 that was very convincing. Not only did we have witness -- a witness who  
8 testified about that and -- actually two witnesses who testified about going to  
9 the first house, but we have the cellphone records that show that.

10 And it's only after they decide to abort that robbery attempt as  
11 being too risky that the decision is made solely through Mr. Murphy to go and  
12 commit the robbery at the second location. And then all these bad things  
13 happen which is what one might expect.

14 And so in addition to the administrative assessment of \$25, the  
15 \$150 DNA testing fee, the \$3 DNA collection fee, there's also an order and  
16 judgment of restitution in the amount of \$5,500. And who is -- do we know  
17 who that's to be payable to? I think it's Nevada Victims of Crimes. Let me just  
18 double check.

19 MR. DiGIACOMO: I'm not positive. I'm looking right now in this.

20 THE COURT: Yeah.

21 MR. DiGIACOMO: I would assume --

22 MS. LEXIS: Victims of Crimes.

23 THE COURT: It's the --

24 MR. DiGIACOMO: -- it's the Victims of Crime.

25 THE COURT: -- the State of Nevada the count being the Nevada Victims

1 of Crime account, so the restitution is ordered payable to the State for  
2 reimbursement to the victims -- Nevada Victims of Crime account.

3 THE CLERK: Is that joint and several?

4 THE COURT: Yes. Joint and several liability with Jorge Mendoza and  
5 Joseph Laguna.

6 And by the way that's also going -- that restitution order as well as  
7 the same administrative assessment fees need to also be ordered for Mr.  
8 Mendoza as well.

9 As to Count 1, conspiracy to commit robbery, there will be a  
10 minimum term of 28 months, a maximum term of 72 months in the Nevada  
11 Department of Corrections.

12 Count 2, burglary while in possession of a deadly weapon, a  
13 minimum term of 48 months, a maximum term of 180 months.

14 Count 3, home invasion while in possession, a minimum term -- oh -  
15 - Count 2 runs concurrently with Count 1. Count 3, home invasion is 66  
16 months minimum, maximum 180 months in Nevada Department of Corrections  
17 concurrent with Count 2.

18 Count 4, attempt robbery with use of a deadly weapon, a minimum  
19 term of 48 months, a maximum term of 120 months with a consecutive  
20 enhancement for use of the deadly weapon, a minimum of 36 months and a  
21 maximum of 120 months.

22 As to --

23 THE CLERK: Is that concurrent or consecutive?

24 THE COURT: Concurrent with Count 3.

25 Count 5, attempt robbery with a deadly weapon, a minimum term

1 of 48 months, a maximum term of 120 months with a consecutive  
2 enhancement penalty of 36 months minimum, maximum 120 months. That  
3 runs concurrent to Count 4.

4 Count 6, second degree murder with use of a deadly weapon is life  
5 with possibility of parole after 10 years has been served and there is an  
6 enhancement for use of a deadly weapon of 36 -- minimum 36, maximum of  
7 240.

8 And then as to Count 7, attempt murder with use of a deadly  
9 weapon, a minimum -- oh -- Count 6 is concurrent to Count 4. Count 7,  
10 attempt murder with use of a deadly weapon, a minimum term of 84 months, a  
11 maximum term of 240 months with a consecutive minimum term for use of the  
12 deadly weapon of -- of 84 months and a maximum of 240 months. Actually  
13 no. I'm changing that. A minimum is 36 months and a maximum of 240  
14 months for the -- that runs consecutively with the life or excuse me with -- that  
15 runs consecutively to Count 6 -- that to Count, yes, 6.

16 So the enhancement then is -- let's see -- or aggregate is maximum  
17 of life and a minimum of --

18 MR. DiGIACOMO: I believe it comes out to 23 as well.

19 THE COURT: -- 23.

20 And let's see. I will also want to indicate that the Court in deciding  
21 the -- the enhancement penalties took into consideration the underlying facts of  
22 the case, the prior history of the Defendant in this case as well as arguments of  
23 counsel, everything indicated in the presentence investigation report as well.  
24 And that is the same for Mr. Mendoza. The Court took that into account as  
25 well. All right.

1 THE CLERK: So the credit for time served?

2 THE COURT: Credit for time served I think is --

3 MS. LEXIS: Seven hundred nineteen.

4 MR. GILLIAM: My understanding as well, Judge.

5 THE COURT: Seven hundred nineteen?

6 MR. GILLIAM: Yes, ma'am.

7 THE COURT: Seven hundred nineteen days credit for time served.

8 [Colloquy between the Court and the Clerk]

9 THE CLERK: Okay. What was the credit? I'm sorry.

10 MR. GILLIAM: Seven, nineteen.

11 THE COURT: Seven hundred ten.

12 MR. GILLIAM: One, nine. Seven, one, nine.

13 THE COURT: One, nine. Seven, nineteen.

14 All right. Joseph Laguna. Oh and before we get off of Mr. Murphy,

15 I make sure I adjudged him guilty of all those offenses. He's adjudged guilty.

16 And as for Mr. Laguna, you're as well adjudged guilty by reason of

17 the verdict of the jury to Count 1, conspiracy to commit robbery, Count 2,

18 burglary while in possession of a deadly weapon, Count 3, home invasion while

19 in possession of a deadly weapon, Counts 4 and 5, attempt robbery with use of

20 a deadly weapon and Count 6, second degree murder with use of a deadly

21 weapon and Count 7, attempt murder with use of a deadly weapon. State.

22 MR. DiGIACOMO: Thank you, Judge. As it relates to well practically I

23 guess Mr. Murphy, but more likely as it relates to -- to Mr. Laguna, he was

24 dangerously close to being a mandatory habitual criminal. And if nobody had

25 died, he could get a sentence of that you gave the other Co-defendants in this

1 case based upon that criminal history. He has acts of violence. He's on either  
2 probation or parole at the time of the offense for an act of violence against the  
3 Federal officer. And he is a continuing danger to our society.

4 I would once again urge the Court at the very least to give him the  
5 23 to life, but I believe that he -- that he has earned the 27 to life if you would  
6 have run the attempt murder counts consecutive in full as recommended by P  
7 and P and I would submit it.

8 THE COURT: Counsel.

9 MS. McNEILL: And, Your Honor, just for the record, I don't believe Mr.  
10 Laguna --

11 THE COURT: Mr. Laguna, do you want to say anything?

12 DEFENDANT, LAGUNA: No, Your Honor.

13 THE COURT: All right.

14 MS. McNEILL: Thank you, Your Honor. I advised Mr. Laguna that  
15 because of the pending appeal, it is best for him just to remain silent. I think  
16 he's going to do that. I'm not going to talk about the facts. Your Honor sat  
17 here for four weeks. It's a jury verdict. There's nothing I could do about that.

18 I would like Your Honor to consider the fact that I think clearly the  
19 jury felt that Mr. Laguna was not as culpable as Mr. Mendoza by their verdict. I  
20 think that's the only explanation for their verdict is that I think that they didn't  
21 feel that he should be standing in the same position as Mr. Mendoza.

22 I understand Mr. Laguna's record. He understands his record. It  
23 does not look favorable for Your Honor on a case where he's charged with  
24 crimes of violence. But I would like Your Honor to consider is -- is the following  
25 things about Mr. Laguna.

1 Mr. Laguna, he lost a parent to the prison system because that  
2 parent committed a murder; that was his father. He grew up with a lot of CPS  
3 involvement in his life. He was in special education classes. He hasn't had the  
4 easiest road ahead of him. It's certainly no excuse, but I think it does explain a  
5 lot of how Your Honor sees a lot of people come into the criminal justice  
6 system.

7 And what I would like you to know about Joey is that before he  
8 was arrested in this case, he had met his wife who is here in the courtroom in  
9 support of him. And he was doing everything that he could to stop the life that  
10 he was living so that he could be the husband that she needed to be.  
11 Unfortunately, when you grow up a product of the system and you enter into  
12 the prison system, you tend to be surrounded by people who are not productive  
13 outstanding members of the community themselves. And I think we found  
14 certainly by the facts that were presented to the Court the result of having  
15 those types of relationships in your life.

16 His wife indicates that he is a loving, hard-working man who has  
17 been trying his best to extricate himself from the life in which he's found  
18 himself. And I can say the same as his lawyer. He is very passionate person,  
19 but he is also very kind, very generous.

20 And I would ask Your Honor to consider not giving him the  
21 sentence that P and P recommends. I understand that Your Honor had  
22 sentenced Mr. Murphy. I assume that sentences between Mr. Laguna and Mr.  
23 Murphy it was probably your intent that they be similar.

24 Mr. Laguna is -- is almost 40 years old and while that's certainly not  
25 old, he's not going to make any type of first parole based on his record, based

1 on the ties that the allegations of gang affiliations. And he knew that going into  
2 this which is one of the reasons why he was very frank with me about not  
3 taking a deal from the State was that he knew he would not make his first  
4 parole and he knew that he would be ending up serving a fairly lengthy  
5 sentence that would have him in the Nevada Department of Corrections until he  
6 was in his 60's. Which again is not old, but when you consider the fact that  
7 you're in a system where you're not getting preventative care. You're not  
8 getting healthcare. He is going blind. He has had corneal transplants that are  
9 failing him. That is a very rough living in the Nevada Department of Corrections  
10 that he faces.

11 I think the term of years on the second degree murder ends up  
12 punishing him just as much as a life tail would do based on the life that he has  
13 ahead of him in the prison system. And I would submit it on that, Your Honor.

14 THE COURT: All right. Thank you.

15 So in addition to the \$25 administrative assessment, I'm waiving  
16 the DNA analysis as that was previously taken in 2009, there's a \$3 DNA  
17 collection fee.

18 And on Count 1, there is a minimum term -- that's conspiracy to  
19 commit robbery -- minimum of 28 years -- 28 years -- 28 months, excuse me, a  
20 maximum of 72 months in the Nevada Department of Corrections. There's also  
21 an order and judgment of restitution in the amount of \$5,500 and that's  
22 payable to in favor of the State of Nevada Victim -- Nevada Victims of Crimes  
23 fund.

24 Count 2 -- and that's joint and several liability with the Co-  
25 offenders, Mr. Mendoza and Mr. Murphy -- Count 2, a minimum term of 48

1 months, a maximum term of 150 months in the Nevada Department of  
2 Corrections, but runs concurrent to Count 1.

3 Count 3, home invasion is a minimum term of 66 months, maximum  
4 term of 180 months that runs concurrently with Count 2.

5 Count 4 is a minimum term of 48 months, a maximum term of 120  
6 months with a consecutive minimum enhancement of 48 months on the  
7 minimum and 120 months as the -- the maximum. That runs concurrent with  
8 Count 3.

9 Count 5, attempt robbery with use of a deadly weapon is a  
10 minimum term of 48 months, a maximum term of 120 months and a  
11 consecutive for use of the deadly weapon enhancement of a minimum of 48  
12 months, maximum of 120 months. That runs concurrent with Count 4.

13 Count 6, second degree murder, the sentence is life with the  
14 possibility of parole after 10 years has been served and a consecutive minimum  
15 term as in the enhancement for use of a deadly weapon of a minimum of 36  
16 months, the maximum of 240 months. That runs consecutive -- that is the  
17 consecutive enhancement. Count 6 -- yeah, consecutive to -- I'm sorry -- that's  
18 concurrent with Count 5.

19 Count 6 [sic], attempt murder is minimum term of 84 months, the  
20 maximum term of 240 months with a consecutive minimum enhancement term  
21 of 84 months, the maximum of 240 months for the deadly weapon  
22 enhancement. And that runs consecutive to Count 6. Okay.

23 And so the aggregate is -- who's been keeping track?

24 MR. DiGIACOMO: That's 27 I believe.

25 THE COURT: Twenty-seven and the --

1 MR. DiGIACOMO: Life.

2 THE COURT: -- to life.

3 THE CLERK: Credit time served?

4 MS. McNEILL: Six hundred sixty -- I'm sorry -- six hundred fifty five days.

5 THE COURT: Six hundred fifty five days credit for time served.

6 And as well as in considering the enhancements, the State -- the  
7 Court did in fact consider his extensive criminal record which is largely violent  
8 crimes and as well the facts of this case. But I also -- I did take into account in  
9 the entire sentence of course his -- the -- his background that counsel referred  
10 to in this case. Thank you.

11 And lastly we have Summer Larsen. And, Ms. Larsen, by virtue of  
12 your plea of guilty to Count 1, conspiracy to commit robbery, a felony, and  
13 Count 2, attempt robbery, a felony, I hereby adjudge you guilty of those  
14 offenses. And State's retained the right to argue.

15 MR. DiGIACOMO: That's correct, Judge. I can say that this is probably  
16 one of the more unique situations that I've been involved in my career in the  
17 sense that I've charged a lot of people with murder and I've heard a lot of  
18 stories in my time about why it is they are not guilty.

19 This story that was told was I'm not guilty of the crime you are  
20 charged me with because I'm guilty of something else. Now that happens and  
21 that happens after they've had a chance to review discovery and I hear that  
22 story. But this maybe the first time that when I go down into the minute details  
23 of this case, I can't find anything that disputes the version of events.

24 Ashley Hall's connection to Mr. Murphy is indicative of why it is the  
25 story came out the way the story came out. Ms. Larsen's version of events as

1 it applies to the phone numbers we had associated with her in connections with  
2 Mr. Murphy and from connections we had with Ashley hall or the other woman  
3 who reports, none of them dispute her version of events.

4 And I'm a Prosecutor and I have to rely upon reasonable doubt and I  
5 certainly said that to the jury. We give a Defendant the benefit of the doubt.  
6 And thus from perspective, I'm here arguing a conspiracy to commit robbery  
7 that as far as it's not attenuated is an attempt robbery that occurs at that first  
8 location. And that from as a matter of law, she is probably not liable for the  
9 crimes that occurred later that day if they're sufficiently attenuated.

10 And that was the reason for the negotiation and essentially she pled  
11 straight up. And this is her first criminal offense, so I am going to submit to  
12 your discretion what you believe the appropriate sentence should be. You  
13 know as much as I know from sitting through this trial and you can make a  
14 decision that's appropriate in this case.

15 THE COURT: All right. Ms. Larsen, would you like to address the Court?

16 DEFENDANT, LARSEN: I wrote you a letter, but I do want to say  
17 something. My intentions in this was not for this to happen. My intentions  
18 were to rob the first house. I had a conversation with my Co-defendant and we  
19 had an argument. He went without my acknowledgment out of our agreement.  
20 Do you know what I mean? I didn't even know that he had done it. And then  
21 they went to my husband's house. If I was guilty, I'd be right along with them.

22 Ms. Ellsworth, I had nothing to do with that second house. And I'm  
23 asking you for a chance -- like I don't have a horrible background, but I am  
24 asking you for a chance like of drug rehabilitation, anything. I'm asking the  
25 mercy of you to please help me. Do you know what I mean? I had a drug

1 problem and I relapsed. And it spiraled out of control and this happened.

2 I was put here for a reason. You know what I mean? To stop what  
3 I was doing because I was a Good Samaritan. I just really want a chance. I  
4 have two years in. If could give me a chance probation or consecutive -- can I  
5 address the family?

6 THE COURT: Yes. And -- and this letter --

7 DEFENDANT, LARSEN: Yes, ma'am.

8 THE COURT: -- I did not get this until just before I took the bench.

9 DEFENDANT, LARSEN: I know because --

10 THE COURT: So I haven't been able to -- if you want to read it to me,  
11 you can.

12 DEFENDANT, LARSEN: Okay. I wrote it 'cause last time I rambled.

13 Your Honor, I'm writing this letter to you and this Court today to  
14 formally take responsibility for my actions. I'm humbly pleading for the mercy  
15 of the Court as well as requesting a chance to prove myself by granting the  
16 opportunity to be on probation. I will like to eliminate any fear that the Court  
17 may have of me potentially being a repeat offender.

18 To accomplish this, I'm going to explain how my offenses are  
19 regrettable once in a lifetime mistake. Never again to be repeated and how I've  
20 -- everything to gain by being open and cooperative with in all assistance and  
21 guidance to this Court offers towards my rehabilitation and reentrance in  
22 society.

23 I was an addict who's life spiraled out of control after a shock and  
24 traumatic separation from my husband, a battle with methamphetamine  
25 addiction in the past. And when me and my husband got together I started

1 recovery. I was able to maintain a sobriety for seven years. I was working as a  
2 store manager. I was doing good. My husband and I had a house. I thought  
3 my life was great. Then I came home one day and found my husband had  
4 packed up and left and I was devastated. We hadn't even had an argument. I  
5 never even saw it coming.

6 A few weeks later I discovered that he had left me for another  
7 woman. A woman who ended up pregnant and as a result my husband then  
8 wanted the house back. He offered me the apartment that he and his new  
9 girlfriend shared. I accepted it at first, but then I couldn't -- I couldn't keep -- it  
10 was unbearable for me -- unbearable for me to be there knowing that they live  
11 there as a couple, so I moved in with a friend.

12 However, at this point in my depression was about to reach a peak.  
13 Within a couple of weeks I lost my job with the combination of losing of my  
14 husband, my house, my dog, my job. I began to fully embark on the path of  
15 self-destruction. After seven years of hard earned sobriety, I relapsed. I was  
16 so distraught over the tragedy that had become my life. I stopped thinking  
17 clearly and I started to lash out.

18 I started casually spending time with my Co-defendant, Mr. Murphy.  
19 This was my revenge on my husband for his affair. I also had another man I  
20 would sleep with occasionally too. My time with these men was spent getting  
21 high and having sex, attempting to fill the void that of all that I had lost.

22 After a few months of this routine, I discussed an idea with Mr.  
23 Murphy of robbing a friend of my husband's. Mr. Murphy and I had an agreed  
24 plan before we even took place in this action. Later we had a fight. Later I  
25 discovered that Mr. Murphy as a result of being mad at me had decided to act

1 out without me.

2           Instead he enlisted the help of three of his friends that I didn't even  
3 know. Except somehow his -- except somehow his plan changed from robbing --  
4 from robbing my husband's friends to robbing my husband which resulted in the  
5 death of a mutual friend and my husband -- was robbed -- my husband -- and  
6 resulted in a mutual friend. I was horrified and shocked. None of that was  
7 supposed to happen. This was not the plan of Mr. Murphy and I had discussed.  
8 He didn't even tell me that this had happened. I had to hear about it from  
9 somebody else.

10           Now, it's been two years later and the story that I thought that was  
11 going to be happily ever after has warped into a grizzly nightmare coming to a  
12 close. The experience has been depressing, terrifying and enlightening. I can't  
13 even begin to express how glad I will be when this is all behind me. I never  
14 want to look back. I never want to repeat the same mistakes. I want to start  
15 to build -- I want to start to build a new life.

16           So now the ending is in your hands. I begin -- I beg for the Court's  
17 mercy. I seek the Court's guidance and assistance and ask for an opportunity  
18 to have probation. I'm more than willing to cooperate with any additional  
19 restrictions in counts that the Court deems necessary. Thank you for listening.

20           THE COURT: Mr. Coyer.

21           MR. COYER: Good morning, Your Honor. Thank you. I apologize that  
22 the letters did come to me this morning. I provided them to the Court.

23           THE COURT: I read the letter from grandmother, step grandfather and I  
24 assume the mother. It's not signed, but it says she's pleading for leniency on  
25 her daughter's behalf. So I assume it's mom.

1 MR. COYER: It is mom and she's here today, Your Honor.

2 DEFENDANT: Yeah. I'm sorry.

3 MR. COYER: So thank you for reviewing those. Sorry they came in late,  
4 Your Honor.

5 We talked a little bit about some of the things that Ms. Larsen's  
6 done since she's been incarcerated at the motion hearing a couple of weeks  
7 ago. I'll just touch on them briefly.

8 She did provide me today her high school equivalency certificate  
9 that she did get that while she's been in jail. Not an easy feat, but certainly she  
10 has applied herself and done that. And that's here if the Court would like to  
11 see it.

12 She is, of course, maintained her sobriety while she's in jail, but  
13 she also still continues to work the program of -- the anonymous program. She  
14 goes to classes and does daily deal with this and consider what it's going to be  
15 like when she's out 'cause it's probably going to be tougher when she's out.  
16 And she knows that. And she's prepared for that, Your Honor.

17 She's managed to become a worker in jail which is someone as  
18 Your Honor well knows that the jail trusts with a large degree of privileges,  
19 much greater freedoms. And she has responsibilities including, you know, food  
20 service, cleaning, linens. And it is a significant achievement to accomplish in  
21 the jail.

22 It's difficult for me, Your Honor, to think really what more we could  
23 expect from someone during their incarceration. I do think that in the two year  
24 she's been in, she has really shown that she wants to apply herself and do  
25 positive good things. And it's difficult to demonstrate that from inside, but I

1 think to the extent that one can, I think she's done that.

2           The facts of this case Your Honor knows very well. I won't -- I  
3 won't belabor them, but I do think it's important to -- to reemphasize as the  
4 Court already knows that Ms. Larsen's involvement in this is so tangential that  
5 she was in a conspiracy with related -- with regard to that first house. There's  
6 no doubt about that.

7           Her engagement in that conspiracy was not just to get Mr. Murphy  
8 off her back. It truly was to redirect his attention away from 1661 Broadmere  
9 in hopes that there's wouldn't be any more problems at that address. It's in  
10 this unfortunate twist that that's where Mr. Murphy and his crew end up going  
11 after not being able to achieve their goal at the first house. But that was in  
12 many ways exactly one of the results that Ms. Larsen had hoped to achieve is  
13 to avoid any violence coming to that address. And it's so that that's exactly  
14 what happened after they changed the plan.

15           And I agree a hundred percent with Mr. DiGiacomo, it is a very  
16 strange set of facts, a very strange and unique set of circumstances. But in the  
17 real way Ms. Larsen really did plea straight up to the full extent of her  
18 involvement in this case. And we could have gone to trial and tried to explain  
19 that to the jury and make these very particular precise legal arguments while  
20 facing extremely serious charges. The risks of that were not desirable for  
21 obvious reasons.

22           But she certainly didn't have to go to the next step which is to  
23 actually stand up and have the courage to take part in and assist in the  
24 administration of justice with respect to Mr. Murphy and his Co-defendants,  
25 Your Honor. And I do think that some consideration should be given to her for

1 that. I think justice has been served with respect to Summer for the time she's  
2 been in. And I think the Court should consider that she has also assisted in the  
3 administration of justice with the other Defendants, Judge.

4 I do know that you heard a lot of bad things about Ms. Larsen  
5 throughout the course of these proceedings and certainly at trial. I would  
6 submit to you that the defense lawyers in this case had a difficult position when  
7 she finally decided to testify. When a skilled trial lawyer makes it their mission  
8 to paint someone in a negative light to try to damage their credibility to try to  
9 help their client, you're going to hear bad things. Those are -- those are to be  
10 expected.

11 And even though Ms. Larsen was the target of these attacks during  
12 trial, it really wasn't all that bad. You heard bad things about her relationships  
13 and about her people she keeps company with, but you didn't hear that she  
14 was a multi -- multiple time violent felon or any of these horrible things you've  
15 heard about some of the other people. She really doesn't have much criminal  
16 history at all and the PSI bears that out.

17 For what she has done, she has been incarcerated for two years,  
18 Your Honor. I think she's demonstrated to this Court that she has the potential  
19 to be a good a probationer and to be a productive citizen. And we are asking  
20 this Court to suspend her sentence whatever that may be and grant her  
21 probation today.

22 THE COURT: All right. I agree with you that there is a lot of bad things  
23 that came about out with Mr. -- Ms. Larsen at trial. Most of those things came  
24 from her own mouth. She didn't try and paint a better picture of herself. It  
25 seemed to after I've heard all of the facts that her testimony was truthful. You

1 know, Mr. Figueroa also testified at the trial and his testimony seemed to be  
2 consistent with what she was saying as far as what he knew about what had  
3 occurred 'cause he was sort of recruited into the whole thing.

4 Her step grandfather in the letter to me said she's got nowhere to  
5 go, but up. And that's probably true. You know you've certainly bottomed out  
6 here.

7 I guess the thing -- the recommendation of the Division, of course,  
8 is a total in aggregate sentence that would be a 28 month sentence on the  
9 bottom. She's already done actually ten days more than two years in prison.  
10 And so frankly I think it would be better to place her on probation to further  
11 supervise her and give her the chance to have continued follow up for what  
12 was a raging methamphetamine addiction that pretty much led to, you know, all  
13 of this bad behavior and associations.

14 Obviously, you have to reach back further to determine what  
15 caused her to use these things and to say -- to blame it on any single one thing  
16 is probably naïve. You will need to do a lot of work on your part to -- to make  
17 sure you don't go back to that.

18 DEFENDANT, LARSEN: Yes, ma'am.

19 THE COURT: Because otherwise what you're going to find yourself is,  
20 you know --

21 DEFENDANT, LARSEN: Yeah.

22 THE COURT: -- if you go back to using meth is, you know, a middle aged  
23 woman who looks like a senior citizen with no teeth, no prospects and a very  
24 bad life. And so it's going to be up to you. As I say, you've already done  
25 what's 730 days I think it is -- 740 days, excuse me in prison.

1           So in addition to the \$25 administrative assessment fee, the \$150  
2 DNA testing fee and the \$3 DNA collection fee, as to Count 1, conspiracy to  
3 commit robbery, I hereby sentence you to a minimum term of 12 months, a  
4 maximum term of 48 months. I'm not going to order the restitution in -- in this  
5 case because I don't think that was related to the crimes that she --

6           MR. DiGIACOMO: It's not.

7           THE COURT: And so I don't think it's appropriate.

8           As to Count 2, attempt robbery, a minimum term of 16 months, a  
9 maximum term of 72 months. That will run consecutive to Count 1. So the  
10 aggregate is one -- 28 to 120. I'm going to suspect those sentences and place  
11 you on probation for an indeterminate period not to exceed five years.

12           Special conditions of probation will be in addition to the standard  
13 conditions of probation which I'm going to hand you today. I want you to read  
14 those before -- right now -- before you leave the courtroom. And you'll notice  
15 on number 3, intoxicants, that I've lined through the words in parenthesis to  
16 excess as well as the last sentence, that's because while you're on probation  
17 you're not to consume alcoholic beverages whatsoever. You have a sobriety  
18 issue and any need substance is going to impact that and if you want to stay  
19 sober and off meth, you need to not drink too because those things are all tied  
20 in with each other.

21           Special conditions of probation are that you're not to have any use,  
22 possession or control of alcohol or marijuana while you're on probation. You  
23 are within the first 30 days after your meeting, your initial intake with Parole  
24 and Probation, you are to undergo a substance abuse evaluation and follow  
25 through with any recommendation for treatment or counseling on the

1 recommended schedule.

2           You are to provide the Division of Parole and with a complete  
3 financial disclosure at any time they request it and that's for the purpose of  
4 determining legitimate source of income.

5           You are to -- to complete 16 hours of community service each  
6 month unless you are employed at least 40 hours per week of each and every  
7 week of the month that you are on probation.

8           And if you have a cellphone, of course, may have a cellphone when  
9 you get out. You can get a cellphone, but you're not to let anyone else use  
10 your cellphone and you are to submit to a search of your cellphone at any time  
11 the Division of Parole and Probation asks for it. And if its password protected,  
12 you are to give Officer requesting to search your phone with that password.  
13 And you're not to let anyone else use your personal cellphone. Anything that's  
14 on your cellphone is yours and so don't be telling me that somebody else used  
15 your phone because that would be a violation of your probation.

16           Okay. And credit for time served is 740 days through today's date.

17           MR. COYER: Thank you very much, Your Honor.

18           MR. DiGIACOMO: Thank you, Judge.

19           MR. GILLIAM: Thank you.

20           MR. WOLFBRANDT: Judge, one last thing for Mr. Mendoza.

21           THE COURT: Yes.

22           MR. WOLFBRANDT: I just want to ask you to be allowed to withdraw at  
23 this point since the sentencing is over. I've got Amanda Gregory here willing to  
24 pursue the appeal. She would be willing to confirm today --

25           MS. GREGORY: Mr. Christensen's office did contact me to be appointed

1 to do the appeal on this case.

2 THE COURT: Okay. All right. I'll appoint you and allow Mr. Wolfbrandt  
3 to withdraw.

4 MS. GREGORY: Okay. Thank you, Your Honor.

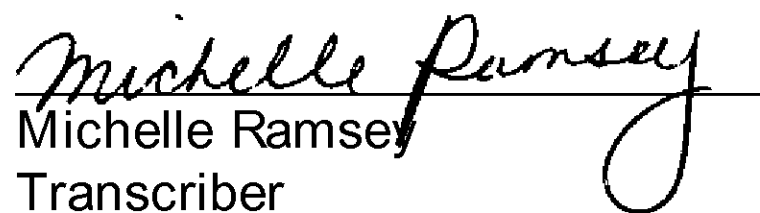
5 MR. WOLFBRANDT: Thank you.

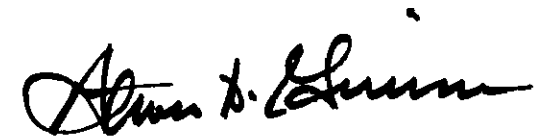
6 THE COURT: Thank you.

7 [Proceeding concluded at 11:32 a.m.]

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17  
18 ATTEST: I hereby certify that I have truly and correctly transcribed the  
19 audio/video proceedings in the above-entitled case to the best of my ability.

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

23   
24 Michelle Ramsey  
25 Transcriber



CLERK OF THE COURT

1 **JOCP**

3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5 THE STATE OF NEVADA,

6 *Plaintiff,*

7 -vs-

CASE NO: C-15-303991-4

8 David Murphy  
9 #859628,

DEPT NO: V

10 *Defendant.*

11 **JUDGMENT OF CONVICTION**  
12 **(JURY TRIAL)**

13 The defendant previously entered a plea of not guilty to the crimes of COUNT 1 –  
14 CONSPIRACY TO COMMIT ROBBERY (a Category B Felony) in violation of NRS  
15 199.480, 200.380; COUNT 2 – BURGLARY WHILE IN POSSESSION OF A DEADLY  
16 WEAPON (a Category B Felony) in violation of NRS 205.060; COUNT 3 – HOME  
17 INVASION WHILE IN POSSESSION OF A DEADLY WEAPON (a Category B Felony)  
18 in violation of NRS 205.067; COUNTS 4 & 5 - ATTEMPT ROBBERY WITH USE OF A  
19 DEADLY WEAPON (a Category B Felony) in violation of NRS 193.330, 200.380, 193.165;  
20 COUNT 6 – MURDER WITH USE OF A DEADLY WEAPON (a Category A Felony) in  
21 violation of NRS 200.010, 200.030, 193.165; and COUNT 7 – ATTEMPT MURDER  
22 WITH USE OF A DEADLY WEAPON (a Category B Felony) in violation of NRS 200.010,  
23 200.030, 193.330;

24 //

25 //

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28 X

1 and the matter having been tried before a jury and the defendant having been found guilty of  
2 said crimes, with a **SECOND DEGREE MURDER VERDICT** as to **COUNT 6**.  
3 Thereafter, on the 28<sup>th</sup> day of November, 2016, the defendant was present in court for  
4 sentencing with his counsel DANIEL GILLIAM, ESQ., and good cause appearing,

5 THE DEFENDANT IS HEREBY ADJUDGED guilty of said crimes as set forth in  
6 the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee, an order and  
7 judgment of Restitution in the amount of \$5,500.00 payable to and in favor of the State of  
8 Nevada Victims of Crime for which the defendant is jointly and severally liable with his co-  
9 defendants Jorge Mendoza and Joseph Laguna, a \$150.00 DNA Analysis Fee including  
10 testing to determine genetic markers, and a \$3.00 DNA Collection Fee, the defendant is  
11 sentenced to the Nevada Department of Corrections as follows:

12 on **COUNT 1** – to a MAXIMUM of SEVENTY TWO (72) MONTHS and a MINIMUM of  
13 TWENTY EIGHT (28) MONTHS;

14 on **COUNT 2** - to a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and a  
15 MINIMUM of FORTY EIGHT (48) MONTHS, Count 2 to run CONCURRENTLY with  
16 Count 1;

17 on **COUNT 3** - to a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and a  
18 MINIMUM of SIXTY SIX (66) MONTHS, Count 3 to run CONCURRENTLY with Count  
19 2;

20 on **COUNT 4** - to a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS and a  
21 MINIMUM of FORTY EIGHT (48) MONTHS, plus a CONSECUTIVE term of ONE  
22 HUNDRED TWENTY (120) MONTHS and a MINIMUM of THIRTY SIX (36) MONTHS  
23 for the Use of a Deadly Weapon, Count 4 to run CONCURRENTLY with Count 3;

24 on **COUNT 5** - to a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS and a  
25 MINIMUM of FORTY EIGHT (48) MONTHS, plus a CONSECUTIVE term of ONE  
26 HUNDRED TWENTY (120) MONTHS and a MINIMUM of THIRTY SIX (36) MONTHS  
27 for the Use of a Deadly Weapon, Count 5 to run CONCURRENTLY with Count 4;

28

1 on **COUNT 6** - to LIFE with a possibility of parole after a term of TEN (10) YEARS have  
2 been served, plus a CONSECUTIVE term of TWO HUNDRED FORTY (240) MONTHS  
3 and a MINIMUM of THIRTY SIX (36) MONTHS for the Use of a Deadly Weapon; Count 6  
4 to run CONCURRENTLY with COUNT 5;

5 on **COUNT 7** - to a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and a  
6 MINIMUM of THIRTY SIX (36) MONTHS, plus a CONSECUTIVE term of TWO  
7 HUNDRED FORTY (240) MONTHS and a MINIMUM of THIRTY SIX (36) MONTHS  
8 for the Use of a Deadly Weapon, Count 7 to run CONSECUTIVELY to Count 6; with  
9 SEVEN HUNDRED NINETEEN (719) days credit for time served. Defendant's  
10 AGGREGATE TOTAL SENTENCE is LIFE with a MINIMUM of TWENTY THREE (23)  
11 YEARS.

12 DATED this 30th day of November, 2016.

13   
14 CAROLYN ELLSWORTH  
15 DISTRICT JUDGE  
16  
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18  
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