

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

NORMAN BELCHER,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

S.C. CASE NO. 72325
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Elizabeth A. Brown
Clerk of Supreme Court

PETITION FOR REHEARING

Norman Belcher hereby petitions this Court for Rehearing pursuant to NRAP 40(c)(2), following this Court's Order of Affirmance, filed June 4, 2020. "The court may consider rehearing in the following circumstances: (A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or (B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case." NRAP 40(c)(2).

I. REHEARING IS WARRANTED AS THIS COURT'S DECISION OVERLOOKS A MATERIAL FACT CENTRAL TO THE COURT'S ANALYSIS.

The majority explained, "when the totality of the other evidence of Belcher's guilt is considered against the contrastingly weak and cumulative consciousness of guilty exhibited in Belcher's statement there can be no debate that a rational jury would have found belcher guilty with or without his statement to the police." (Order of Affirmance, p. 14). This finding is inaccurate because this Court has overlooked and misapprehended materials facts central to its decision.

Mr. Belcher can clearly establish the State of Nevada did not acquiesce regarding the strength of the "other evidence". In fact, Mr. Belcher will provide a

1 statistical analysis illustrating the State's assessment of the weight of the
2 evidence.

3 In order to understand the methodology utilized, the following should be
4 carefully considered. Mr. Belcher has reviewed the closing argument of both
5 prosecutors. In analyzing the prosecutor's closing arguments, Mr. Belcher
6 considered the "other evidence" that this Court addressed. Specifically, this Court
7 explained:

8 But there was other, significantly more compelling evidence against
9 Belcher. Nick identified Belcher as the man who shot him. Evidence
10 established the disintegration of William and Belcher's elicited
11 business relationship. Including a heated disagreement between the
12 two men regarding a drug debt close in time to the shooting and
13 Belcher openly contemplated harming Williams fifteen year old
14 daughter as revenge. Eyewitness testimony placed a white car at the
15 scene of the shooting and minutes after the shooting a patrol officer
16 stopped Belcher for speeding in the white rental car that, two hours
17 later was set on fire and destroyed. The defense even admitted that
18 Belcher committed third degree arson and when Belcher was booked
19 into the jail he made an unsolicited comment to one of the
20 correctional officers that seemingly acknowledged he killed Alexis:
21 "Sir, are you...going to put me in max custody because I killed a
22 kid?" In this context, Belcher's statement was cumulative and much
23 weaker than other evidence of this guilt (Order of Affirmance, p. 14).

24 Essentially, the "other evidence" can be categorized into six areas: 1) the
25 overall identification of the defendant by Nick; 2) evidence regarding the drug
26 business and disintegration of that business, including text messages, 3) the
27 defendant's openly contemplated harming of the victim, 4) eyewitness testimony
28 identifying the white car at the scene and that the defendant was stopped in the
car and set fire to the car, 5) the defense admitted arson, and 6) the defendant's
alleged confession at the Clark County Detention Center.

Mr. Belcher has analyzed all six categories against the prosecutor's closing
argument and discussions of the defendant's statements as well as derivative
fruits of that statement. Before arriving at the results of Belcher's statistics, it is
important for appropriate review to consider the experience and talent of the two
prosecutors tasked with prosecuting Mr. Belcher. Ms. Jacqueline Bluth is listed as

1 a Chief Deputy District Attorney in the transcripts. Ms. Bluth was a highly
2 experienced and talented prosecutor who rose through the ranks of the district
3 attorney's office. Ms. Bluth achieved such a high status, she was tasked with
4 prosecuting death penalty cases, including Mr. Belcher. Moreover, Ms. Bluth is
5 now a district court Judge.

6 Similarly, Mr. Giancarlo Pesci is also listed as a Chief Deputy District
7 Attorney. Mr. Pesci has had an illustrious career with the district attorney's office,
8 concentrating for years on the prosecution of major violators and capital murder
9 cases. It could hardly be an understatement that Belcher was prosecuted by two of
10 the finest prosecutors in the district attorney's office. The reason the experience
11 of the prosecutors is necessary for this analysis is simple. These two prosecutors
12 are the most skilled in determining which facts will assist the State in securing a
13 conviction. A statistical analysis of Ms. Bluth and Ms. Pesci's closing argument
14 are powerful. Mr. Belcher has broken down all six categories of "other evidence"
15 by Ms. Bluth's and Mr. Pesci's reference to the page, how many paragraphs she
16 mentioned the evidence, as well as how many lines for each of the six pieces of
17 evidence.¹

18 **A. THE FACTS FROM MS. BLUTH'S CLOSING ARGUMENT**

19 **1. The Identification by Nick**

20 The identification was mentioned by Ms. Bluth on 4 pages (ROA p. 5914-
21 5916, 5925). The total paragraphs concerning the identification by Nick as
22 mentioned by Ms. Bluth was 10 paragraphs and approximately 59 lines of text.

23
24 ¹The undersigned has tried to be as accurate as possible with regard to what
25 sections apply to each category of "other evidence". However, counsel would
26 recognize that there may be a small error rate due to likely room for debate
27 between the parties.
28

1 **2. The Drug Business Deterioration and Text Messages**

2 The drug business deterioration and text messages were mentioned by Ms.
3 Bluth on 2 pages (ROA p. 5916-5917), within 9 paragraphs and for
4 approximately 38 lines of text.

5 **3. The Open Contemplation of Harm to the Victim**

6 Ms. Bluth mentioned this evidence on ROA p. 5918, for 2 paragraphs
7 which amounted to 17 lines of text.

8 **4. Eyewitness Identification of the White Car, the Car Stop of**
9 **Mr. Belcher and Subsequent Fire Destroying the Car**

10 This evidence was discussed by Ms. Bluth on ROA p. 5920, for 1
11 paragraph and approximately 9 lines of text.

12 **5. The Defense Admitted to Mr. Belcher Committing Arson**

13 Although cited by the majority as “other evidence” in support of Mr.
14 Belcher’s guilt, the prosecution obviously did not think this evidence was
15 powerful as they never refer to it in closing argument.

16 **6. Statement by Mr. Belcher to the Officer at the Clark**
 County Detention Center

17 This evidence was discussed by Ms. Bluth on 1 page (ROA p. 5923), for 1
18 paragraph and approximately 5 lines of text.

19 In total, the other evidence was mentioned in seven pages, 23 paragraphs,
20 and 128 lines. It is important to note that Ms. Bluth spent almost the entire first
21 two and a half pages of argument dedicated to convincing the jury that the
22 alternate suspect, Ravon, was not responsible. Ms. Bluth mentioned this argument
23 on three pages (ROA p. 5911-5913) over the course of nine paragraphs and 60
24 lines of text.

25 With regard to the defendant’s statement, Ms. Bluth refers to it on six
26 pages (ROA p. 5918-5923). Ms. Bluth mentions Mr. Belcher’s statement or
27 evidence that is derivative of the statement in fifteen paragraphs and 88 lines of
28 text.

1 A quick glimpse of these statistics establish the areas Ms. Bluth thought
2 was most important. Ms. Bluth found the most important subject to be Mr.
3 Belcher's statement, which she mentioned during approximately 88 lines of text.
4 Coming in second, was Ms. Bluth's concern that the jury may believe that Ravon
5 committed the crime. Ms. Bluth spent 60 lines urging the jury to reject the
6 alternate suspect. In a close third place was Nicholas' identification which was
7 discussed for approximately 59 lines. The drug business and deterioration came
8 fourth with 38 lines of discussion, followed by the defendant's statements
9 contemplating killing the victim which was over the course of 17 lines. Further
10 back was Ms. Bluth's mentioning of eyewitnesses observing the white car and the
11 arson at 9 lines. Lastly, the defendant's alleged statement at the Clark County
12 Detention Center was discussed by Ms. Bluth for 5 lines.

13 In sum, Ms. Bluth spent approximately 128 lines mentioning "other
14 evidence." However, Ms. Bluth spent a total of approximately 148 lines
15 discussing the defendant's statement and urging the jury to reject Ravon as the
16 guilty party (88 lines regarding the statement and 60 lines regarding Ravon).

17 These statistics provide overwhelming evidence that Ms. Bluth was well
18 aware that the most important piece of evidence she could utilize to secure a
19 conviction was the defendant's statement. The defendant's statement made up
20 approximately two-thirds of the lines compared to all of the "other evidence". (88
21 lines versus 128 lines).

22 Lastly, Ms. Bluth's closing argument could be divided into four chapters:
23 First, Ms. Bluth's argument that Ravon was not responsible. Second, the "other
24 evidence" argument. Third, the defendant's statement. Finally, Ms. Bluth spends
25 considerable time explaining the application of the law.

26 A statistical analysis of Mr. Pesci's closing argument reveals identical
27 concerns.

28 ///

B. THE FACTS FROM MR. PESCI'S CLOSING ARGUMENT

1. The Identification by Nick

The identification was mentioned by Mr. Pesci on 2 pages (ROA p. 5980-5981). The total paragraphs concerning the identification by Nick as mentioned by Mr. Pesci was 4 paragraphs and approximately 35 lines of text.

2. The Drug Business Deterioration and Text Messages

The drug business deterioration and text messages were mentioned by Mr. Pesci on 3 pages (ROA p. 5966, 5973-5974), within 4 paragraphs and for approximately 26 lines of text.

3. The Open Contemplation of Harm to the Victim

Mr. Pesci mentioned this evidence on 1 page (ROA p. 5974), for 3 paragraphs which amounted to 20 lines of text.²

4. Eyewitness Identification of the White Car, the Car Stop of Mr. Belcher and Subsequent Fire Destroying the Car

This evidence was discussed by Mr. Pesci on 5 pages ROA p. 5969-5970, 5965, 5967, 5974), for 11 paragraphs, and spanning 67 lines.

5. The Defense Admitted to Mr. Belcher Committing Arson

This evidence was never referred to by the prosecutors in closing argument.

6. Statement by Mr. Belcher to the Officer at the Clark County Detention Center

This evidence was discussed by Mr. Pesci on 1 page (ROA p. 5973), for 2 paragraphs and approximately 12 lines of text.

The sum of the "other evidence" discussed by Mr. Pesci amounted to 9 pages, 24 paragraphs, or 160 lines of text throughout closing argument. Contrast

² With regard to the defendant's alleged contemplation of killing the victim, lines from this section of closing argument have been added to not only this section, but also to those regarding the viewing of the car and the arson.

1 these numbers with Mr. Pesci's mentioning of the defendant's statement, which
2 occurred on 8 pages (ROA p. 5965-5968, 5975, 5976-5978), 16 paragraphs, and
3 over 109 lines of text.

4 Mr. Pesci clearly focuses on the strengths of the prosecution's case. His
5 number one concern is the defendant's statement at 109 lines of text. Coming in a
6 distant second would be the "other evidence" concerning eyewitness
7 identification of the white vehicle at the scene, the stop and subsequent arson,
8 which involved 67 lines. The identification by Nick was a distant third at 35 lines
9 of text from Mr. Pesci. The deterioration of the drug business only garnered 26
10 lines. Mr. Belcher's open contemplation of harming the victim was given a total
11 of 20 lines of consideration by Mr. Pesci at closing. Lastly, Mr. Belcher's alleged
12 statement at the Clark County Detention Center was mentioned in 12 lines.

13 In sum, Mr. Pesci spent 9 pages, 24 paragraphs and approximately 160
14 lines dedicated to the "other evidence" listed by the majority. Whereas, Mr. Pesci
15 dedicated 109 lines, to Mr. Belcher's statement. Additionally, upon information
16 and belief, Mr. Pesci played portions of the defendant's statement on three
17 occasions during closing argument. Ms. Bluth also appeared to play a portion of
18 Mr. Belcher's statement during closing argument.

19 Mr. Pesci on occasion linked the defendant's statement directly to the
20 commission of the murder. Mr. Pesci stated:

21 He's hiding his face from the very officer who can tie him to the car,
22 which is why he burned that car. You hide your face because that car
23 ties you to the scene where this is what the result was of the
24 defendant's interaction with Nick. You hide your face from the
25 police because what was this gentleman is now an individual who
you saw with scars up to his stomach, who is missing most of his
intestines.

26 You hide your face to that officer because what was this beautiful
27 girl was turned into that." (ROA p. 5968).

28 Mr. Pesci explained, "he's so adamant about that because he knows that

1 implicates him and convicts him on the murder, not the arson.” (ROA p. 5978).

2 Mr. Pesci further explained,

3 The defendant told the police that on October the 18th and October
4 the 19th he got traffic tickets. Why on earth would someone who
5 would go to those lengths of arson or an arsony, admit to the cops of
6 other traffic tickets? That’s completely unbelievable. He burnt that
7 car because that car ties him to the murder. He burnt that car because
8 he was seen getting into that car that fits that description. He burnt
9 that car because it had evidence that would tie him to it. Not because
10 of traffic tickets, especially when he made admissions in the same
11 statement to two other traffic tickets (ROA p. 5967).

12 These three quotes specifically prove the prosecutor believed that Mr.
13 Belcher’s statements directly implicated him in the murder and arson, crimes in
14 which he was charged and convicted.

15 A total breakdown of the prosecution’s closing argument reveals the “other
16 evidence” listed by this Court was mentioned on approximately 288 lines, versus
17 the defendant’s statement and evidence derived thereof which was listed on 197
18 lines. The defendant’s statement was overwhelmingly the single most important
19 topic argued by the prosecutors.

20 Two of the most experienced and talented prosecutors in our State
21 dedicated almost an equal amount to Mr. Belcher’s statement that they dedicated
22 to the “other evidence” mentioned by the majority. If Ms. Bluth’s argument
23 regarding Ravon not being culpable is included, those two numbers add up to 257
24 lines of text. Given this, the prosecutors spent 257 lines of closing trying to
25 convince the jury that Ravon was not guilty and that Mr. Belcher was guilty by
26 utilizing his statement.

27 To accept the premise that the jury would have convicted without this
28 statement has a logical conclusion that has been disproven. These prosecutors
spent an inordinate amount of time discussing the defendant’s statement that was
completely harmless to the defendant. Nothing could be farther from accurate.
These experienced prosecutors know how to seize the day, and obtain convictions
and sentences of death. That is the simple reason why they dedicated so much

1 time to Mr. Belcher's statement during closing arguments.

2 Next, to illustrate the fact that a jury would have acquitted Mr. Belcher
3 absent the inclusion of his statement, Mr. Belcher would respectfully request this
4 Court review Exhibit A. Mr. Belcher has highlighted all portions of the closing
5 argument that mention Mr. Belcher's statement or information derived therefrom
6 from each of the prosecutor's arguments.³ A review of the closing argument
7 without reviewing the highlighted portions (which contain the defendant's
8 statement) establishes that the evidence against Mr. Belcher was at best anemic. It
9 would result in an acquittal.

10 Mr. Belcher was never given an opportunity to address harmless error. Mr.
11 Belcher was never given an opportunity to carefully go through the massive
12 record to establish the incredible weaknesses of the State's case. The State's case
13 is nonexistent without the statement. However, Mr. Belcher will give a sampling
14 of the weakness connected to the State's "other evidence." This by no means is
15 exhaustive, but rather a sampling of how weak the evidence was.

16 First, Mr. Belcher has provided statistical proof that the State mentioned
17 the identification by Nick on approximately 94 lines. Hence, Nicholas'
18 identification appears to be the second most important topic of incriminating
19 evidence discussed during closing argument from the State's point of view
20 (compare defendant's Statement for 197 lines and eyewitness identification and
21 arson of the car with 76 lines). More importantly, the majority first lists Nicholas'
22 identification in the "other evidence." The strength of Nicholas' identification is

23
24 ³ Mr. Belcher realizes when it comes to redacting statements, there will be
25 disagreements between the parties. The undersigned has tried to be as accurate as
26 possible with regard to what sections apply to the statement and/or the fruits
27 derived thereof, but there may be slight room for debate.
28

1 alarmingly weak. The following are facts listed in the defendant's Opening Brief
2 that completely refute Nicholas' identification.

3 In the evening of December 5, Nicholas was present in the house with his
4 friend Ashley Riley and Alexis (ROA Vol. 20, P. 4549). Nicholas claimed to be
5 asleep in his room with Ashley when something "woke him up" (ROA Vol. 20, P.
6 4552). Nicholas went to the bedroom door, and when he opened it, he claimed to
7 see the defendant in front of him (ROA Vol. 20, P. 4553). Nicholas claimed that
8 the defendant then shot him five or six times causing Nicholas to go back in the
9 bedroom and hide in the closet (ROA Vol. 20, P. 4553).

10 Then, Nicholas heard additional gun shots and Alexis scream (ROA Vol.
11 20, P. 4554). Nicholas claimed that right before the shooting, he noticed Mr.
12 Belcher's blonde hair, pale complexion, and blue eyes (ROA Vol. 20, P. 4556).

13 Nicholas claimed to have no memory of telling the police that two masked
14 men had broken into the house when he initially spoke to them on December 6,
15 2010. (ROA Vol. 20, P. 4575).

16 Nicholas also admitted that when he was interviewed by Detective Hardy,
17 he claimed he was outside of the home prior to the shooting and that no one else
18 but Alexis was present in the home (ROA Vol. 20, P. 4578). Nicholas claimed
19 that he was under a lot of medication in the hospital and that is why he provided
20 that statement (ROA Vol. 20, P. 4578). In fact, Nicholas claimed that the first
21 thing that he remembered prior to the shooting was being downstairs (ROA Vol.
22 20, P. 4579). Nicholas admitted that was wrong (ROA Vol. 20, P. 4580). When
23 Nicholas spoke to the police, on December 12, he stated that he was coming up
24 the stairs and noticed the defendant at the top of the stairs, which he now admits
25 is false (ROA Vol. 20, P. 4580).

26 Nicholas also admitted, that he was wrong when he told the police that he
27 viewed the defendant coming out of Alexis' room (ROA Vol. 20, P. 4583).
28 Nicholas also admitted he was wrong when he told the police that Ashley was not

1 present at the house (ROA Vol. 20, P. 4583). In fact, Nicholas told police that
2 Ashley was waiting in a car (ROA Vol. 20, P. 4584).

3 In January, Nicholas told the police that he saw “two outlines” and did not
4 see a gun (ROA Vol. 20, P. 4586). Nicholas also told police that he saw no
5 damage to the front door (even though it had it been forcefully kicked in) (ROA
6 Vol. 20, P. 4587).

7 Nicholas did not remember that Ravon Harris was present at his residence
8 on the day of the initial burglary (ROA Vol. 20, P. 4592).

9 Between the time of the shooting and his initial recorded interview on
10 January 12, Nicholas had numerous interactions with family members (ROA Vol.
11 20, P. 4594). At the preliminary hearing, Nicholas testified he was “pretty
12 certain” that the defendant was the shooter (ROA Vol. 20, P. 4596). During the
13 preliminary hearing, Nicholas affirmed that somebody else was present with the
14 individual being identified as the defendant (ROA Vol. 21, P. 4604).

15 In essence, the identification of the defendant by Nicholas is
16 extraordinarily weak. A better question is this – if this is a good identification,
17 what does a bad one look like?

18 Next, the majority notes that the defendant openly contemplated killing the
19 victim and as show above, 37 lines were dedicated to that subject. A quick
20 analysis of that evidence is necessary. This evidence was derived from Bridgette
21 Chaplin, the alleged friend of the defendant. Ms. Chaplin had serious credibility
22 problems.

23 Ms. Chaplin was apprehended by the federal government and charged with
24 62 different criminal counts in state court (ROA Vol. 23, P.5163 (including
25 forgery, possession of forged instruments, and possession of sale of document of
26 personal information). In state court, Ms. Chaplin was represented by attorney
27 Michael Gowdey (ROA Vol. 23, P. 5164). Ms. Chaplin notified Mr. Gowdey that
28 she wished to provide information to the police to lessen her culpability for her

1 criminal charges (ROA Vol. 23, P. 5164-5165). Ms. Chaplin met with Chief
2 Deputy District Attorney Robert Daskas to provide a proffer (ROA Vol. 23, P.
3 5165). After the proffer, her case was negotiated (ROA Vol. 23, P. 5165). All of
4 the charges were negotiated down to one charge. Ms. Chaplin was sentenced for
5 possession of a financial forgery lab and sentenced to 3 ½ -10 years (ROA Vol.
6 23, P. 5167-5168).

7 Ms. Chaplin admitted that she had seen information about the case in media
8 coverage and had learned that a burnt car had been recovered that was attributed
9 to Mr. Belcher (ROA Vol. 23, P. 5175). Ms. Chaplin was aware of this
10 information before speaking to detectives and the prosecutor (ROA Vol. 23, P.
11 5175).

12 The majority finds Mr. Belcher openly contemplated killing the victim. The
13 evidence comes from a convicted felon who has sixty-two charges reduced to one
14 based upon her desire to reduce her culpability and testify against Mr. Belcher.
15 Not surprisingly, Ms. Chaplin had already learned important information prior to
16 talking to the authorities.

17 The intent of these two experienced prosecutors portrays a picture of what
18 the prosecutors believed was important for conviction. This is evidenced by the
19 amount of time the prosecution spent discussing each portion of the “other
20 evidence” when compared to the defendant’s statement. Nicholas’ identification
21 accounted for 19.4% of the closing argument. The eyewitness concerning the car
22 and subsequent arson of the car closely followed and accounted for 15.6% of the
23 closing argument. The deterioration of the drug business and the text messages
24 accounted for 13.2% of closing. Playing much more minor roles, the open
25 contemplation of harming the victim accounted for 7.6%, the alleged confession
26 at the Clark County Detention Center accounted for 3.1% and the defendant’s
27 admission of arson was never discussed, thus rendering 0% of closing.
28 Importantly, discussion of Mr. Belcher’s statement accounted for 40.6% of the

evidence discussed during the prosecution's closing argument.⁴

Overwhelmingly, statistical evidence proves beyond any doubt that it was the defendant's statement that was mentioned in more lines than any other topic. Hence, the reason the state of Nevada did not dare to raise harmless error on direct appeal. The prosecutors were acutely aware they could not argue to this Court that Mr. Belcher's statement was harmless given their zealous advocacy in consistently seizing upon Mr. Belcher's statement.

Based upon the above statistical analysis, this Court has materially overlooked these facts in this case and the factual conclusions of the court are directly belied by the statistical evidence.

II. REHEARING IS WARRANTED AS THIS COURT'S MAJORITY DECISION OVERLOOKS UNITED STATES SUPREME COURT PRECEDENT.

The majority's decision failed to consider United States Supreme Court case law which dictates a court should give the parties an opportunity to be heard before determining facts *sua sponte*.

The dissent explained,

As the majority recognizes, the record here is complex and sizeable, as it memorializes the proceedings leading up to and including a three week trial. Three dozen witnesses provided general information about the night of the crimes and details about highly specific evidence attendant to the case. As such, I believe the 44-volume record is large enough to make the harmless inquiry a burdensome one absent any guidance from the parties on the issue (Stiglich, J., dissenting p. 2).

The dissent further explained,

Considering these burdens and the reasons for them, we should be more reticent to make harmless arguments on the State's behalf, particularly when the error is one of constitutional dimension. (Stiglich, J., dissenting p. 3).

⁴ The statistics are based upon the number of lines pertaining to Mr. Belcher's statement and the six "other evidence" areas only.

1 The dissent concluded that the size of the record weighs against unguided
2 harmless error review in the case (Stiglich, J., dissenting p. 4).

3 The dissent's rationale is consistent with United States Supreme Court case
4 law. In *Day v. McDonough*, 547 U.S. 198, 126 S. Ct. 1675, 164 L. Ed. 2d 376
5 (2006), the United States Supreme Court considered an appeal from a petitioner
6 who had been time barred. In *McDonough*, the Supreme Court noted that the
7 federal magistrate and subsequent district court judge had made findings which
8 would lead to the determination that the petitioner as time barred. Importantly, the
9 United States Supreme Court was considering a time bar issue as opposed to a
10 Fifth Amendment constitutional violation. The United States Supreme Court
11 explained, "[h]ere the magistrate judge gave Day due notice and a fair
12 opportunity to show why the limitation period should not yield dismissal of the
13 petition. *Id.* at 1684. However, the United States Supreme Court stated, "[o]f
14 **course, before acting on its own initiative, a court must accord the parties**
15 **fair notice and an opportunity to present their positions.**" *Id.* (emphasis
16 added).

17 The dissent has referenced the extreme difficulty in attempting
18 harmless analysis without the aid of the parties based upon the sizeable
19 record. Unfortunately, the majority gave Mr. Belcher no opportunity to address
20 the prejudicial nature of the admission of Mr. Belcher's statement.

21 As was noted in the statistical section above, the single most important
22 topic for both prosecutors was the defendant's statement, during their closing
23 arguments. Hence, statistics prove the lack of harmless. The dissent argued
24 that the harmless of the error is debatable based upon the facts (5-6 of
25 opinion). Surely, the very existence of the three dissenters demonstrates the
26 matter is debatable. A statistical analysis establishes that the "other evidence"
27 cited by the majority paled in comparison to the emphasis placed on the
28 defendant's statement by the prosecution. How are these facts anything other than

1 debatable. Both the United States Supreme Court and the Ninth Circuit as well as
2 three Justices of this Court have reasoned that harmlessness of a defendant's
3 statement should be utilized extraordinarily sparingly and only with the input of
4 the parties.

5 Ninth Circuit law is in accord. *See United States v. Valenzuela-Espinoza*,
6 697 F.3d 742, 753 n.5 (9th Cir. 2011) (observing that a defendant's confession
7 will rarely be harmless). The court has generally found harmless error for the
8 erroneous admission of confessions only where the statements did not go to the
9 heart of the case. *See e.g. United States v. Garibay*, 143 F.3d 534, 539–40 (9th
10 Cir. 1997) (holding admission not harmless where defendant's statements "were
11 the thrust of the prosecutions case.")

12 The United States Supreme Court has reasoned,

13 A confession is like no other evidence. Indeed, the defendant's own
14 confession is probably the most probative and damaging evidence
15 that could be admitted against him.... certainly, confessions have
16 profound impact on the jury, so much so that we may justifiable
17 doubt its ability to put them out of mind even if told to do so.
18 *Arizona v. Fulminante*, 499 U.S. 279, 296, (1991) (quoting *Bruton v.*
19 *United States*, 391 U.S. 123, 139–40 (1968) (White, J., dissenting).

20 As is demonstrated above, the majority's decision failed to consider
21 Supreme Court case law which dictates a court should give the parties an
22 opportunity to be heard before determining facts *sua sponte*. Under these
23 circumstances, rehearing is warranted.

24 CONCLUSION

25 For the foregoing reasons, Mr. Belcher requests this Court grant his
26 Petition for Rehearing, finding he is entitled to a new trial.

27 DATED this 13th day of July, 2020.

28 Respectfully submitted by:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this petition for rehearing complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word Perfect Times New Roman 14 font.

I further certify that this brief complies with the page limitations of NRAP 40(b)(3) because it does not exceed 4,667 words, to wit, 4,623 words.

Dated this 13th day of July, 2020.

Respectfully submitted,

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NORMAN BELCHER

1 **CERTIFICATE OF SERVICE**

2 I hereby certify and affirm that this document was filed electronically with
3 the Nevada Supreme Court on July 13, 2020. Electronic Service of the foregoing
4 document shall be made in accordance with the Master Service List as follows:
5

6 AARON FORD
7 Nevada Attorney General

8 CLARK COUNTY DISTRICT ATTORNEY'S OFFICE

9 BY:

10
11 /s/ Nancy Medina
12 An Employee of Christopher R. Oram, Esq.
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EXHIBIT A

**Excerpt of ROA p. 5911-5940 (State's closing argument), 5965-5982
(State's rebuttal closing argument) edited for emphasis as noted
within the Petition for Rehearing**

1 of first degree murder there will be a subsequent penalty
2 phase to the case.

3 All right. State, argument.

4 MS. BLUTH: Thank you, Your Honor.

5 STATE'S CLOSING ARGUMENT

6 MS. BLUTH: People must be held accountable for the
7 decisions they make and the actions that they take. And on
8 December 6, 2010, Norman Belcher made decisions, and that
9 man's decisions and that man's actions caused 15-year-old
10 Alexis Postorino her life. And that's why you're here today.

11 In every criminal case the State of Nevada has to
12 prove to you two things; number one, was a crime committed,
13 and number two, did the defendant commit those crimes. We
14 refer to those things as the who and the what. And so today
15 I'm going to start with the who. But before we get to the who
16 in this case, I'd like to start with who it's not, and that's
17 Ravon Harris, this jealous, controlling, angry, ticking time
18 bomb, who went to that house for one reason and one reason
19 only.

20 But that falls short for several reasons. Number
21 one, the beef had been squashed. You heard from Nick Brabham,
22 and Nick stated, What beef, there was no beef. He had been
23 driving with him on the day of the residential burglary. He
24 was with Ravon on the day of the residential burglary. Ravon
25 had recently helped him move a TV into the house.

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1 You heard from Billy. Billy said there was no beef.
2 He told you that Ravon had actually recently given Alexis a
3 ride home from the skating rink because Ravon had a daughter
4 of similar age, and that he had -- Ravon and Billy had smoked
5 a blunt together recently, and the last time that he saw Nick
6 and Ravon and Ashley together everybody was hanging out and
7 everything was fine. There is no reason that Ravon Harris
8 would do these things.

9 But more importantly, this is what Nick Brabham
10 looked like that morning. This is what Alexis Postorino
11 looked like that morning. And this is what Ashley Riley
12 looked like, this teeny, teeny, teeny, teeny little band-aid
13 right here. And that's not even from somebody in the house.
14 That's because she jumped out the window.

15 They want you to believe that Ravon Harris walked
16 into that house, man on a mission to get her. The ticking
17 time bomb, that's who he was here to get. I mean, did he just
18 stop ticking? Did he just run out of energy? He's so busy
19 killing and attempting to kill that by the time he gets to
20 her, it's just like I'll deal with her late -- I'll just deal
21 with her later?

22 If Ravon Harris was there to kill, he would have
23 killed her, or he would have grabbed her, ripped her out of
24 that house and beat the crap out of her. And where does she
25 go after the murder? She goes back to him. And what does she

1 say? She says -- I said, Well, what was his demeanor; calm.
2 Was he upset; no, he told me that this is why I shouldn't be
3 over there, because these things could happen.

4 When you're thinking about Ravon Harris, the State
5 would ask you to ask a few questions. Number one, why would
6 Ravon Harris kill Alexis? Why? Why would you kill that
7 15-year-old little girl in that bed? He has no beef with
8 Billy. He doesn't want to get back at Billy. And what's
9 the -- what's the worst thing you could do to Billy Postorino?
10 Kill Alexis. Ravon doesn't mean that. He doesn't have any
11 motive to do that.

12 And why this time? What did Ashley say? Ashley
13 said, He didn't just get mad or beat me up if I was hanging
14 out with Nick. It was anybody. He was mad about me hanging
15 out with anybody at any time. I mean, if Ravon Harris was
16 going to beat or kill somebody every time they were hanging
17 out with Ashley, we'd have dead guys all over Las Vegas.

18 And then lastly, why rob the house? If you are
19 there, if you are there because you are pissed that Ashley and
20 Nick are together, why would you rob the house? You go in
21 there and you start shooting people, but before you get to
22 Ashley you get sidetracked by this TV, and you're like
23 forget -- I'll get Ashley later, for right now I'm just going
24 to grab a safe and a TV and I'm going to put those in the car
25 and I'm going to get outta here. It does not make sense.

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1 It does not make sense. It defies gravity. What
2 does make sense is this guy. Norman Belcher makes sense. So
3 how as a jury do you know that Norman Belcher committed these
4 crimes? Well, first and foremost let's talk about Nick. Nick
5 came in here. He sat on this stand. He raised his right
6 hand. He swore to tell the truth and nothing but the truth,
7 and he told you who did it. He told you Bates is the one who
8 shot me.

9 He said, I have this memory seared into my mind, and
10 it's me going to my bedroom door, opening the door, going on
11 my tiptoes and saying, No, Bates, no, and then seeing the
12 muzzle and seeing Bates light up. That's what's in his
13 memory. That is seared in his memory. But the defense would
14 have you believe that you cannot believe what Nick Brabham
15 tells you.

16 When Mr. Modafferi did his opening he said, Nick has
17 an agenda, he has an agenda to hide the truth. What is the
18 agenda? I mean, it's not Ashley. He hasn't spoken to Ashley
19 since the day this happened. Wouldn't you want the person who
20 shot you to be held accountable? Wouldn't you want that
21 person who did this to you and who did that to a girl you love
22 so much, wouldn't you want that person to be responsible?
23 That's not an agenda.

24 And they tell you that Nick's story has changed. So
25 let's talk about how Nick's story has changed. When Nick was

1 first interviewed in the hospital, when he's in the intensive
2 care unit and he's had about three or four surgeries, what
3 does he say? He says, I remember coming through the front
4 door, going up the stairs, seeing Bates and getting shot.
5 That's what he said.

6 And then he told you after he got out of the
7 hospital and he thought about things and he was off the drugs,
8 he said, no, no, I was wrong. I came to my bedroom door, I
9 opened the door and that's when I saw Bates. That's what he
10 changed his story to. But what has he always said? It was
11 Bates.

12 What did he tell Lisa when he got out of his coma?
13 It was Bates. What did he tell Billy? It was Bates. What
14 did he tell the police? It was Bates. What did he testify to
15 at the preliminary hearing? It was Bates. What did he come
16 in here and tell you? It was Bates. It was Bates.

17 And then this whole idea of confirmation bias and
18 Dr. Shomer up here and you can't remember anything and you're
19 not capable of having a memory. I mean, I -- honestly, I'm
20 surprised at this time in your life that you even remember
21 your names, if you listen to what Dr. Shomer says. I mean,
22 you are incapable of having a memory.

23 Norman Belcher knows Nick Brabham. Nick Brabham
24 knows Norman Belcher. It's not like the first time he saw
25 Bates. He said, I've seen Bates 15, 30, 40 times. You open

1 the door and someone you know, someone who has been to your
2 home over and over again has a gun and shoots you, and you
3 don't think you're capable of remembering that?

4 But you know what. Take what -- right now let's
5 take Nick out of it. Okay. You don't want to believe Nick,
6 you don't want to take him for his word, let's look at some of
7 the other evidence. Let's talk about motive. Now, the judge
8 just read you the instructions and she talked to you about the
9 State doesn't have to prove motive to you. It's not an
10 element of one of the crimes that the State has to prove to
11 you.

12 But it is something that you can think about, and it
13 is something that you can consider. And you know, from
14 hearing this trial for the last two weeks, that this
15 relationship had gone south and it had gone south quickly. It
16 started out with the defendant coming to the house a couple
17 times with scripts that hadn't worked and that hadn't gone
18 through, and that he was frustrated with that.

19 And then you have this residential burglary on
20 December 1, and you know what happens. Billy's like, We're
21 done, I'm not messing with you anymore. And then it's just
22 done. After that it's just south from there. And you know
23 that because you've seen the text messages. And a lot of the
24 time you don't get to know what's going on in people's minds,
25 right. You just have to look at the circumstances.

1 But that's not this case, because you have several
2 text messages that the defendant says, and you can read these
3 text messages and you know what he's saying, and it's
4 building. Look at the times.

5 "12:48 p.m. If we refund my slips, the total is
6 1450 and I owe you a thousand, so my 450 is being overlooked
7 and now have justifiable reason to get what is owed me.

8 "12:59. And I'm actually hoping that you don't pay
9 me, because I then feel I'm only following protocol, and I
10 love it that you just paid rent. I love funk season.

11 "1:05." I mean, these are coming like this
12 [indicating]. "And yes, I'm hoping you get upset, because I
13 pointed Lisa's, Nick and your spot out if I end up dead. So
14 \$450 or war, an element of surprise.

15 "1:21. And I haven't got my 450. I got to collect
16 once school starts.

17 "1:28. I'm going to have some homies roll with me
18 to get that 450, and have to live up to my scheduled
19 appointments, and I actually know you're now getting ready,
20 hurry. And since I'm close, I can come over alone and we can
21 talk, and I haven't got my 450. I got to collect."

22 And the 6:36 p.m. on the 4th. "No, we creep, but I
23 got a smoke grenade, 20,000 square feet to sell illegally. No
24 questions asked. See, I stay ready and have been doing cardio
25 daily."

1 But not just the text messages. What did Bridgette
2 Chaplin tell you? Bridgette Chaplin told you in the days
3 leading up to the murder that the defendant wasn't only angry,
4 but he was hurt, that all of his hurt and his anger was
5 directed towards Billy. And not only was he talking about it,
6 but she said he was pacing. He's pacing back and forth. He's
7 walking back and forth. He would not sit down. She even said
8 it was like he was lecturing.

9 And then in the middle of that lecture he stops and
10 he says to her, What is the worst thing that can happen to
11 you. And she's on the run from the Feds, so she says, Get
12 caught. And he says, No, no. What if something was to happen
13 to your kids. That's what he said in the middle of that
14 lecture. Do you want to talk about a ticking time bomb? He's
15 pacing back and forth sending text messages like a crazy
16 person and telling Bridgette about something happening to her
17 kids.

18 Now, what else did the defendant say in this case?
19 And I want you to think about the car stop, and think about
20 what did the defendant say before he knew about all the
21 evidence that the police would get. When they asked him about
22 the car stop, it's complete denial.

23 He looks those detectives in their face at homicide,
24 "I never went west of the I-15; I never was stopped by a cop;
25 I never got a speeding ticket; If someone got a ticket in that

1 car and passed for me, then that cop gave the ticket to
2 someone who wasn't me." And then he even says, "Whoever has
3 that car, I would like you guys to go ask them and see if my
4 driver's license is in there."

5 Those are his comments to the police before he knew
6 that Officer Cavaricci had taken his license and made sure he
7 was the person on the license, before he knew that all his
8 personal information and the car which he rented at Nissan was
9 put in these papers, before he knows Officer Cavaricci could
10 [inaudible].

11 (Video played.)

12 MS. BLUTH: And then what did he tell those same
13 detectives about the car burn? "Sahara and Nellis? That's
14 not possible. Impossible. Impossible. Sir, that is
15 impossible. That's a damn lie about me being on Sahara and
16 Nellis at 6:00 o'clock in the morning."

17 That was his position very early on in the
18 investigation, before he knew that the police would have video
19 of him committing the car burn, that they would have his
20 rental car on video, that they would recover the blue jacket
21 he was wearing in that video, as well as the cap he's wearing
22 in that video, as well as the bracelet he's wearing in that
23 video, that he would still have the fob and they would find
24 out that you can't move that car without the fob, and that his
25 phone would be transmitting off the tower 2 miles away from

1 that car burn.

2 And so now, now the tune has changed, because they
3 got him. They know and he knows that they know they got him
4 on the car burn. So now there has to be a reason of why that
5 car is torched. But if you were worried about a traffic
6 ticket and losing your license, why would you need to torch
7 the car? You could just dump it in some neighborhood and say
8 it as stolen. You wouldn't have to torch it. You could just
9 lie and say somebody stole it.

10 The reason why you torch cars is because they have
11 something in them. What could that car have had? Maybe the
12 shoes. Whoever was in that house and robbing that house and
13 killing Alexis had blood on their shoes. There's bloody
14 footprints all over that house. When he got into that car,
15 was Alexis's blood on those floorboards? I mean, take it from
16 Mr. Belcher himself. What did he tell Bridgette Chaplin. How
17 do I get rid of evidence; I torch things and I bleach them, I
18 use chemicals. Well, check and check.

19 And that is all -- they would have you believe that
20 that's all because of a speeding ticket. Because Norman
21 Belcher would lose -- he could have lost his license. Well,
22 what about arson? You're worried about being in trouble and
23 getting your license revoked, but you're not worried about
24 committing arson? You ain't going to need a car in prison.
25 When you're doing prison for arson, you don't need a car and

1 you don't need a license. It does not make sense.

2 There is a common sense instruction in there, and it
3 talks about using your common sense. There's a lot of things
4 that you can't bring into the courtroom, you know, like things
5 that have happened to you in the past and things like that.
6 But common sense, you get to bring that in.

7 There's a saying in criminal law that you admit what
8 you can't deny, and you deny what you can't admit. He had to
9 admit the burn. He cannot deny it. But if you look at what
10 else he has said and what he denied in comparison to the
11 evidence, you will see inconsistencies.

12 The defendant says, "I went to two bars around 11:00
13 and midnight and I got home between 2:00 and 3:00 in the
14 morning. From the time I left the bar I went straight home.
15 I have nothing to worry about because I was at a bar until
16 3:00 a.m. I got home around 2:00 or 3:00 a.m. and a woman
17 came over. My bank records can prove it."

18 Well, what did the bank records prove? The bank
19 records, which are two hours off remember, show the last
20 transaction at that Speed Zone which is right by his house was
21 at 11:14 p.m. Nothing close to 2:00 or 3:00 in the morning.
22 And it's interesting that he puts himself back at home between
23 2:00 or 3:00 in the morning. What was it that happened
24 between 2:00 and 3:00 in the morning? Oh, the murder.

25 Then remember, I went straight home. I went from

1 the bar straight home. Well, the only thing about that is
2 that his cellphone is transmitting towers the opposite
3 direction of his house. Here it is at Sahara and Nellis at
4 11:48. Here it is further down at 11:52, at right over by the
5 Clark County Wetlands Park, Sam Boyd Stadium. And then
6 finally, at 12:58, the last tower hit before the murder, he's
7 all the way at West Sunset and Mountain Vista over, I think
8 that the detective testified at most 18.5 miles away from his
9 house.

10 And you'll look and you'll see the phone records
11 which are State's Exhibit 491, and you can turn to any page
12 and you'll see phone calls, 2015, 2019, 2021, 2021, 2033,
13 2034, 2040, 2044, 2049. Literally there are calls coming and
14 going all day every day. But just coincidentally at this time
15 period during the murder, because remember, these are off by
16 one hour, the radio's silent. Not using the phone. There's
17 not a whole lot of time to be making and taking calls when
18 you're busy killing people. And that's what these records
19 show.

20 He says that he was in his hotel room. We know that
21 that's not true because we see that there was either a going
22 or coming at 6:11 a.m. Well, we know that just before that,
23 at 5:30 he's doing the burn. And then what does he tell the
24 detectives? I was with a girl, remember? And they're like,
25 well, how can we know. Oh, well, her DNA will be all over my

1 sheets.

2 But the detectives, through the phone dump, get that
3 text message from that lady, Paula, 672-0092. "I'm coming
4 your way now. I fell asleep. Forgive me. I'll be at your
5 door shortly. Stopping for shampoo. If it's not okay, text
6 me back." 6:27 a.m., this woman that he was supposed to have
7 been with during the murder, she hadn't even gotten there and
8 it was 6:30 in the morning.

9 If you consider what the defendant has said, if you
10 follow this line of logic, one of your closest friends cuts
11 you out of his business and life, the same week you send him
12 several threatening text messages, and that same week that
13 same friend's daughter gets killed, an eyewitness describes a
14 vehicle that looks just like yours leaving the scene of that
15 crime, and then shortly after the murder you get a traffic
16 ticket.

17 You're so worried about that traffic ticket that you
18 decide to burn your car. Because you burned your car, the
19 police think you are the murderer. And then when you get to
20 jail and you say, Hey, am I going to get into max custody
21 because I killed a kid, and the corrections officer gets that
22 wrong and thinks that that's what you really said. I mean,
23 that's a bad friggin' week.

24 All of those things did not happen like that.
25 Common sense shows you that that does not work. The who in

1 this case is Norman Belcher. Look around every corner, look
2 in every picture, look at every witness and he will be right
3 there, because he did it. What he did is what we need to talk
4 about.

5 The what in this case are these charges. And this,
6 when you go back there you'll get to take the jury
7 instructions with you. And the law can be very confusing, and
8 so when you have a question, you will most likely find the
9 answer in these instructions. They look long and they look
10 cumbersome, but the answer to your questions will be in the
11 law.

12 So it's my duty to talk about some of these
13 instructions. And the first thing is liability. You heard
14 the judge talk about direct liability, conspiracy liability
15 and aiding and abetting. Direct liability is if you do
16 something yourself. You go into a bank and you rob the bank,
17 that's direct liability.

18 Conspiracy, the law defines it as an agreement or
19 mutual understanding between two or more parties to commit a
20 crime. The act of one conspirator pursuant to or in
21 furtherance of the common design of the conspiracy is the act
22 of all. Conspiracy may be proven by direct or circumstantial
23 evidence or by both.

24 It is not necessary in proving a conspiracy to show
25 a meeting of the alleged conspirators or the making of an

1 express or formal agreement. The formation and existence of a
2 conspiracy may be inferred from all the circumstances tending
3 to show the common intent.

4 So for example, if Mr. Pesci and I are in the car
5 and I say to him let's go rob the 7-Eleven, and he says okay,
6 you go in and I'll be the getaway driver. I go in, I rob the
7 clerk, I go back to the car and we drive off. We're both
8 guilty. We're both guilty of that crime. Even though he
9 didn't go in with me, we're both guilty because we had that
10 plan.

11 Now, in this case you heard Nick say he didn't know
12 if it was one or two people. He saw a shadow behind Bates
13 when Bates shot him, but he doesn't know if that was his
14 shadow or that was a second person. And you also heard Ashley
15 say that she believed there was two people because she thought
16 she heard rummaging in two different areas of the room. Well,
17 whether Bates was there by himself or whether he was working
18 in a conspiracy with another person to do these things, he's
19 still guilty. And that's the same thing for aiding and
20 abetting.

21 Aiding and abetting says that a person who aids and
22 abets the commission of a crime, if he knowingly and with
23 criminal intent aids, promotes, encourages or instigates by
24 act or advice or by act and advice, the commission of such
25 crime with the intention that the crime be committed.

1 All persons concerned in the commission of a crime
2 who knowingly and with criminal intent aid and abet in its
3 commission, or who advise and encourage its commission with
4 the intent that the crime be committed are regarded by the law
5 as principals in the crime thus committed and are equally
6 guilty thereof.

7 A good example of aiding and abetting is if I work
8 at a bank and I know when the people come and drop the money.
9 So I call Mr. Pesci and I say, hey, the drop's going to go
10 down at 4:00 o'clock, be there. And so I have facilitated and
11 aided him in doing that robbery, in doing that theft. So
12 because I aided him, I can be found guilty too.

13 Murder is the unlawful killing of a human being with
14 malice aforethought, either express or implied. Malice
15 aforethought means the intentional doing of a wrongful act
16 without legal cause or excuse or what the law considers
17 adequate provocation.

18 The condition of mind described as malice
19 aforethought may arise from anger, hatred, revenge, or from
20 particular ill will, spite or grudge towards the person
21 killed. Malice aforethought does not imply deliberation or
22 the lapse of any considerable time between the malicious
23 intention to injure another and the actual execution of the
24 intent.

25 Sometimes when people hear malice aforethought, they

1 think -- when they hear aforethought, they think it has
2 something to do with time. Malice aforethought has nothing to
3 do with time. It has to do with the feelings that I was just
4 reading to you in regards to the instruction beforehand, and
5 those are going to be defined in your instructions as well.

6 Now, I'm sure you've heard there are different
7 degrees of murder. There are first degree murder and there
8 are second degree murder. What the law says is that second
9 degree murder is murder with malice aforethought, but without
10 the addition or the admixture of premeditation and
11 deliberation. It says all murder which you don't find to be
12 first degree murder is then second degree murder.

13 So really to understand that we have to figure out
14 what first degree murder is. Murder of the first degree is
15 murder which is perpetrated by means of any kind of willful,
16 deliberate and premeditated killing. So you need all three of
17 those. It has to be willful, it has to be deliberate, and it
18 has to be premeditated.

19 The law says that willfulness is the intent to kill.
20 There need be no appreciable space of time between the
21 formation of the intent to kill and the act of killing.
22 Deliberation is defined as the process of determining upon a
23 course of action to kill as a result of thought, including
24 weighing the reasons for and against the action, and
25 considering the consequences of those actions.

1 Premeditation is a design, a determination to kill
2 distinctly formed in the mind by the time of the killing. It
3 may not be for a day, an hour or even a minute. It may be as
4 instantaneous as successive thoughts of the mind. Sometimes
5 when people hear the term "premeditated," they think you kind
6 of have to be in like this dark room rubbing your hands
7 together like, oh, I'm going to get him, this is how I'm going
8 to do it. That's not what the law says premeditation has
9 to be.

10 It talks about successive thoughts of the mind
11 [indicating]. A good example of this is you're ready for a
12 job interview, so you set your alarm clock, you get on the
13 freeway, there's a car accident, so you start running late.
14 You get off the freeway, you're almost there, you're speeding,
15 and then the light goes yellow. And at that moment you have
16 to think to yourself do I stop or do I go. That's how fast
17 that can happen. Successive thoughts of the mind
18 [indicating].

19 So what evidence do we have in this case of these
20 things? Well, you heard from Dr. Simms, and you heard about
21 these wounds. You heard that he said that it would be normal
22 for Alexis to raise her hand so that she wouldn't get shot,
23 and he talked to you about how that bullet went through her
24 ear, through her neck and out her back. You also heard that
25 there were two shots to her chest. Some were within 24

1 inches.

2 In fact, three out of the four shots were within 24
3 inches of her body. That is willful. That is deliberate.
4 What do you think is going to happen if you shoot somebody
5 four times? She was shot four times. Three of those shots
6 were close range. That's premeditated, that's willful, and
7 that's deliberate. If you find that Norman Bates [sic] is the
8 person who was in that house, he committed murder.

9 Deadly weapon, I know you think, well, that sounds,
10 I mean, it's easy, what is a deadly weapon. And you'll have
11 this definition, but you will know that you are instructed
12 that a firearm is a deadly weapon. And you know that a deadly
13 weapon was used because there's bullets all over the house.

14 The State isn't required to actually recover the gun
15 to show that a weapon was used. So we don't have to -- the
16 police don't have to find the gun. We don't have to bring it
17 in to you. You can infer from the evidence there's bullets
18 all over the house and there's people shot, so we know that a
19 weapon was used.

20 Attempted murder is the performance of an act or
21 acts which tend but fail to kill a human being when such acts
22 are done with express malice, namely with the deliberate
23 intention unlawfully to kill which is manifested by external
24 circumstances capable of proof.

25 The intention to kill may be ascertained or deduced

1 from the facts and circumstances of the attempted killing,
2 such as the use of a weapon calculated to produce death, the
3 manner of its use, and the attendant circumstances
4 characterizing the act. Well, let's look at how this weapon
5 was used and the manner of which it was used.

6 You saw Nick, and you heard from Dr. Coats. You saw
7 that he had two entrance wounds, one exit wound, and you heard
8 about the surgeries. The last surgery he has is two months
9 later on February 4, and then he gets out a little bit later
10 in February. But what is the intention when you shoot someone
11 in the stomach at close range that many times; you're
12 obviously intending to kill that person.

13 And but for the grace of God he lived. I mean,
14 Dr. Coats said, We got in there and at that point we were just
15 plugging holes there was so much blood. Norman Belcher should
16 be thanking Dr. Coats, because if it wasn't for Dr. Coats,
17 he'd be looking at a double homicide. We know that a deadly
18 weapon was used because we have bullets.

19 Now, the next crime is robbery with use of a deadly
20 weapon, which is the taking of personal property of another
21 against his or her will by means of force or violence or fear
22 of injury. So what do we have -- excuse me. There's one
23 thing that I want to clarify in regards to robbery.

24 Robbery may spread over considerable and varying
25 periods of time. We normally think of a robbery as someone

1 runs up with a gun, says give me your wallet, you give the
2 wallet and then you run -- they run. It doesn't have to be
3 something that quick. It can spread over periods of time.

4 Personal property is in the presence of a person in
5 respect to robbery. When it is within the person's reach,
6 inspection, observation or control and the person could, if
7 not prevented by intimidation or threat of violence, retain
8 possession of the property.

9 So what do we have in regards to evidence that Nick
10 Brabham was robbed? Well, we have the taking of Nick's
11 personal property. Because if you remember, when Nick and
12 Ashley testified, they both talked about the fact that Nick
13 fell asleep with his laptop open. We know that it was against
14 his will and by means of force or violence, because he was
15 obviously shot.

16 Now, if this is where that door, the door to Nick's
17 room was kicked in, we know whoever was in that house went
18 into Nick's room because we have that footprint that matches
19 the kick on the front door. Now, we also know that Nick's
20 cellphone -- or excuse me, Nick's computer was moved from his
21 room to Billy's room.

22 Now, they don't have to take it and actually leave
23 the house. The fact that they -- the fact that Bates picked
24 up the computer and moved it into Billy's room, that's a
25 robbery. The same thing with the wallet. You remember I

1 asked Billy is there any reason why Nick's wallet would be in
2 your closet, and there is no reason. So that would be -- that
3 would be the robbery, and of course it was done with use of a
4 deadly weapon.

5 Now, what about Alexis, the taking of her personal
6 property? Well, the jewelry and the safe. Billy told you
7 that in the property that was taken there was a safe, and
8 inside that safe was rings and a bracelet of Alexis's. We
9 know it was against her will because Nick talked to you about
10 one of the last things he heard was Alexis scream.

11 And we know it was by means of force or violence
12 because she was shot, and obviously Dr. Simms already talked
13 about it and I already talked about her putting her hand up.
14 This was the room in which Alexis was at when the crime took
15 place. I mean, this is -- this was all in her presence. This
16 was all in her ability to reach. It was completely ransacked.
17 This is evidence of a robbery.

18 Now, when Billy testified, he stated that there
19 would be no reason for the defendant to have pills that --
20 like Billy packages. And if you remember, Billy packages all
21 his pills in these little plastic bags that say Easy Dose.
22 But he didn't give Bates pills. What did he give Bates?
23 Prescriptions.

24 So there would be no reason for these drugs in these
25 same plastic bags to be recovered at Bates's house. So that

1 means one of two things, or both. He either committed the
2 residential burglary and stole those, or he stole those while
3 committing the murder. But there is no reason that those
4 plastic bags should be at Bates' house, because he bought
5 scripts. He didn't buy drugs.

6 A person who by day or night enters any building
7 with the intent to commit a felony therein, or the crime of
8 larceny, assault, battery, robbery or murder is guilty of
9 burglary. So really, if you go into a house with the intent
10 to commit any of these crimes, you are guilty of the crime of
11 burglary.

12 If you look at each of these crimes, they are
13 defined. Larceny is the stealing, taking and carrying away of
14 the personal goods, property or money of another with the
15 intent to permanently deprive the owner of the goods, property
16 or money. A person who unlawfully attempts to use physical
17 force against the person of another or intentionally places
18 another person in reasonable apprehension of immediate bodily
19 harm is guilty of assault. And lastly, battery means any
20 willful and unlawful use of force or violence upon the person
21 of another.

22 So if you find that the defendant entered this door
23 when he kicked it down with the intent to rob, the intent to
24 kill, the intent to commit larceny, battery, assault, if you
25 find that he entered this, which you can tell the door has

1 been kicked in, if he entered with the intent to commit any of
2 those crimes, he is found guilty of burglary, and we know that
3 a deadly weapon was used.

4 And the State would submit to you that there's
5 evidence to support that, because as soon as Ashley hears
6 those loud what she thinks is pounding at the door, she hears
7 glass break, then she hears someone come upstairs, and then
8 immediately shots are fired. So obviously the defendant had
9 had in his mind to go into that house and do something, commit
10 larceny, kill, rob, because that's exactly what he did.

11 Battery with deadly weapon resulting in substantial
12 bodily harm. I already read to you the definition of battery.
13 So the last part says, If that force is accomplished with the
14 use of a deadly weapon, then the person is guilty of battery
15 with a deadly weapon. If that force results in substantial
16 bodily harm to the victim, the person is guilty of battery
17 resulting in substantial bodily harm.

18 Substantial bodily harm is defined as one, a bodily
19 injury which creates a substantial risk of death or which
20 causes serious permanent disfigurement or a protracted loss or
21 impairment of the function of any bodily member or organ, or
22 prolonged physical pain. And this count is for Nick.

23 So if you -- first of all, in regard to substantial
24 bodily harm, I mean, Nick was in a coma. He was in the
25 hospital for two months. He underwent, I think, six total

1 surgeries and he only has one-fourth of his bowels left. So I
2 mean, I think it's safe to say he suffered substantial bodily
3 harm. So if you find the defendant committed a battery when
4 he shot him, then he's guilty of battery with a deadly weapon
5 causing substantial bodily harm.

6 Now, the last crime I'd like to talk to you about is
7 arson. Any person who willfully and maliciously sets fire to
8 or burns or causes to be burned, or who aids, counsels or
9 procures the burning of one, any unoccupied personal property
10 of another which has the value of \$25 or more, or any
11 unoccupied personal property owned by him in which another
12 person has a legal interest, is guilty of third degree arson.

13 Well, we know that it wasn't the defendant's car,
14 but he had rented it for 200 and, I think it was 71, or \$277,
15 and the defense has already told you that the defendant did
16 commit the arson, so you can find him guilty of arson.

17 The last thing I wanted to talk about is there's one
18 other way to get to murder. So first degree murder can be
19 premeditated, willful and deliberate. And you'll remember we
20 talked about this when we were picking the jury. There's
21 another way to get to first degree murder, and that's
22 called -- it's through what is called the felony murder rule.

23 And there is a law in Nevada that says there is a
24 kind of murder which carries with it conclusive evidence of
25 premeditation and malice aforethought. This class of murder

1 is murder committed in the perpetration or attempted
2 perpetration of a robbery and/or the crime of child abuse.

3 Therefore, a killing which is committed in the
4 perpetration or attempted perpetration of a robbery and/or
5 child abuse is deemed to be murder of the first degree,
6 whether the killing was intentional or unintentional or
7 accidental. This is called the felony murder rule.

8 So let's go back to when Mr. Pesci and I decide to
9 rob the 7-Eleven. So on the way there I have a gun and I say
10 to him, let's go rob 7-Eleven, I have a gun, and he says okay.
11 So he drops me off. He waits for me in the parking lot. I go
12 in, I have a gun, and I say to the clerk, give me all your
13 money. But I get nervous and I drop the gun, and it
14 accidentally discharges and it kills the clerk.

15 It doesn't matter that that was an accident. It
16 doesn't matter that I didn't intend to do that. I was
17 committing the crime of robbery and someone died while I
18 committed that crime. That makes me automatically too bad, so
19 sad, guilty of first degree murder.

20 Now, it's not just the crime of robbery though. If
21 you find that the defendant committed the act of child abuse
22 and Alexis was killed in the commission of a child abuse, he's
23 automatically guilty of first degree murder. And a child
24 abuse is committed when somebody willfully causes physical
25 injury of a non-accidental nature to a child under the age of

1 18 years.

2 Physical injury means permanent or temporary
3 disfigurement or impairment of any bodily function. So if you
4 find that he intentionally caused physical injury,
5 intentionally shot her and she's under 18 years old, which we
6 know she was 15, he's automatically guilty of first degree
7 murder.

8 So here's the deal with this, is Count 4 will say
9 murder with use of a deadly weapon, and you'll have these
10 options. If you find the defendant guilty of first degree
11 murder with use of a deadly weapon, you will check that box.
12 And then there's what's called a special verdict form.

13 The thing about first degree murder is let's say
14 four of you think that he meant to kill Alexis, that it was
15 premeditated, that it was deliberate, that it was willful.
16 But the next four of you think that it was committed in the
17 perpetration of robbery. And the next four of you think,
18 well, no, I think it was committed in the perpetration of
19 child abuse. You don't have to agree. You just have to agree
20 that it was first degree murder.

21 So that's what this part is right here. So if you
22 all agree that he premeditated, willfully and deliberately
23 killed Alexis, which is the State's position, you will check
24 this box. If you all agree that the murder was committed
25 while he was committing a robbery, you will also check that

1 box. If you believe that the jury unanimously finds the
2 murder was committed in the perpetration of child abuse, you
3 check that box. So if you believe all three of those things,
4 you can check all three of them.

5 If you can't agree, let's say you all agree that
6 it's first degree murder, but you can't all agree on which
7 one, then the last box says, The jury unanimously finds the
8 defendant guilty of first degree murder, but we are not
9 unanimous as to any of the above-mentioned theories of
10 criminal liability, and that will be the special verdict form.

11 I want to leave you with, you know, there's a saying
12 that a picture can speak a thousand words. And this picture
13 just may look like any other bullet wound, right. But
14 Dr. Simms said that in three out of the four shots, those were
15 done within close range, within 24 inches.

16 But in regards to this shot he said, Do you see how
17 the stippling is much more centered closely in, that means it
18 was even closer than that. He talked about this shot being
19 when Alexis was on the ground, and when she was lying there,
20 this shot was over her. It was over her up close. He knew
21 who he was doing that to. He knew that that was that little
22 girl.

23 And the next photo speaks even more, because you
24 know what this mark is right here? That's a shoe print in her
25 blood. What does that say about the timing? Alexis is

1 already bleeding. What is he doing while she's lying there
2 bleeding and dying? He's not helping her. This is from the
3 closet. While she is laying there bleeding, he is ransacking
4 the closet.

5 This is about accountability. He made those
6 decisions, and that caused her her life. And you are the
7 only 12 people who can tell him what he did was wrong. And
8 the State of Nevada is asking you to go back in that room to
9 talk about this, and to come back in here and look at him and
10 tell him, You are guilty. Thank you.

11 THE COURT: Thank you. All right. Folks, we're
12 going to go ahead and take a short break before the defense
13 argument, but you're still obligated by these admonitions
14 you've been hearing for three weeks now.

15 You are admonished not to talk or converse among
16 yourselves or with anyone else on any subject connected with
17 this trial, or to read, watch or listen to any report of or
18 commentary on the trial, or any person connected with this
19 trial by any medium of information, including without
20 limitation newspapers, television, the Internet or radio, or
21 to form or express any opinion on any subject connected with
22 this trial until the case is finally submitted to you.

23 We'll take about ten minutes.

24 (Court recessed at 10:48 a.m. until 10:56 a.m.)

25 (Outside the presence of the jury.)

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1 THE COURT: Okay. You ready?

2 MR. DRASKOVICH: All set.

3 THE COURT: All right.

4 (Inside the presence of the jury.)

5 THE COURT: Counsel stipulate to the presence of the
6 jury?

7 MR. PESCI: Yes, Your Honor.

8 MR. DRASKOVICH: Yes, Your Honor.

9 THE COURT: Okay. Great. All right. Defense
10 argument.

11 MR. DRASKOVICH: Thank you.

12 DEFENDANT'S CLOSING ARGUMENT

13 MR. DRASKOVICH: I'll try not to be repetitive.
14 You've all paid good attention during this trial. I've seen
15 you taking notes and we appreciate the service that you've
16 given to the State of Nevada.

17 In the American justice system we have this
18 standard, and we see it on TV shows, we hear it in lectures
19 concerning the reasonable doubt standard. It's the highest
20 standard to which a party in the litigation arena is held to.
21 We have what's called preponderance of the evidence, we have
22 clear and convincing evidence, and then we have beyond a
23 reasonable doubt.

24 Beyond a reasonable doubt is higher than clear and
25 convincing evidence. It requires the State to prove its case

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1 MR. PESCI: Thank you.

2 STATE'S REBUTTAL CLOSING ARGUMENT

3 MR. PESCI: Thank you for your patience, ladies and
4 gentlemen. When I'm done, this is over, and you can actually
5 start to deliberate. And I'm going to take some time, and I
6 apologize in advance, but this is very important. So I beg
7 you, please stay with me.

8 Defense counsel's comment about this investigation,
9 it's a structurally flawed investigation. In fact, he says we
10 don't know, we just don't know. You know, it's not often that
11 I agree with defense counsel, but I've got to tell you, I
12 agree. There are things in this case that we don't know. We
13 just don't know. And if you believe the defense, Ken Hardy
14 sitting in the back over there and everybody else at Metro is
15 to blame. Lay the blame at Ken Hardy and Metropolitan Police
16 Department.

17 Really? Is that who we should lay the blame with,
18 ladies and gentlemen? Or should we lay the blame with the
19 person who destroyed the very evidence that could have been a
20 part of the investigation? Yesterday I asked Investigator
21 Franky, you know, it is because of Norman Belcher that we
22 don't know what's in that car. He admitted he burned that
23 car. You want to blame someone for this investigation not
24 being all that it is or could be or wanted it to be, point the
25 finger at the defendant. He admitted he burned that car. I'm

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1 not saying it -- of course I'm saying it, but he said it.

2 You know what we do know, ladies and gentlemen? We
3 know that war is a terrible, terrible thing, and that during
4 war, innocent victims are lost. Who declared war? Who
5 declared war in this case? So 450 or war. An element of
6 surprise. That's from his mouth on his phone, a text to
7 Billy. That predates any interview that the cops had with
8 Billy. Oh, you think it's Ravon? No, no, no, no. No, war
9 has been declared by the defendant for \$450.

10 And then they tell you, well, wait a second, it's
11 been paid, so there's no need for war. Really? What
12 livelihood does he have now that he's shut off? \$450 was
13 paid, that's true, but he's still shut off. Billy has shut
14 him off from prescriptions. He needs that. He's got to make
15 his appointments. He's got people calling in. He's done
16 because Billy has shut him down.

17 What could possibly make somebody do this? A
18 traffic ticket? A traffic ticket? That defies all
19 believability, all logic, all credibility. That is not what
20 you do because of a traffic ticket. It's so important to not
21 be tied to this traffic ticket. I mean, that's what you were
22 told at least at the beginning of this case. It's so
23 important that you're not tied to this -- this traffic ticket
24 that what do you do? During your statement to the police you
25 make admissions about two other traffic tickets. Does that

1 make any sense?

2 The defendant told the police that on October the
3 18th and October the 19th he got traffic tickets. Why on
4 earth would someone who would go to the lengths of arson or an
5 arsony, admit to the cops of other traffic tickets? That's
6 completely unbelievable. He burned that car because that car
7 ties him to the murder. He burned that car because he was
8 seen getting into a car that fits that description. He burned
9 that car because it had evidence that would tie him to it.
10 Not because of a traffic ticket, especially when he made
11 admissions in the same statement to two other traffic tickets.

12 Do you really go to the lengths at 5:30 in the
13 morning in the dark of dawn to stake out a place to burn it,
14 then drive the car that you've rented, that's rented in your
15 name, the traffic ticket is tied to that car, and light it up
16 because of a traffic ticket? There's no way. It's going to
17 come back to you because the rental agreement is going to come
18 back to you. You're not going to get away with that arson.
19 What you're going to get away with, though, is destroying
20 evidence. That's what you're going to get away with when you
21 do that burn.

22 That's all the information that ties him directly to
23 it, his name, his address. We've got the VIN. We know it's
24 that car.

25 (Video played.)

1 MR. PESCI: That was not me. Well, that's just a
2 boldfaced lie. Defense counsel told you that the defendant
3 lied in his statement to Ken Hardy. That is a boldfaced lie.
4 It wasn't me, I didn't get stopped, I wasn't west of the 15.

5 See, interestingly enough, the evidence that
6 establishes that to be true is somehow not to be believed when
7 it point to him as the murder. And do you really think
8 someone would hide their face like that because of a traffic
9 ticket, especially when you consider the fact that in that
10 same statement he's admitted to two other traffic tickets?

11 Ladies and gentlemen, you have in your instructions
12 the terminology of consciousness of guilt. You've just
13 watched it live. That's consciousness of guilt. He's hiding
14 his face from the very officer who can tie him to the car,
15 which is why he burned that car. You hide your face because
16 that car ties you to the scene where this is what the result
17 was of the defendant's interaction with Nick. You hide your
18 face from the police because what was this gentleman is now an
19 individual who you saw with scars up his stomach, who is
20 missing most of his intestines.

21 You hide your face to that officer because what was
22 this beautiful girl was turned into that. And the person who
23 did that is seated in this room, ladies and gentlemen. She
24 knew she was going to be shot. This poor, innocent victim of
25 the defendant's war that he declared put her hand up to try to

1 stop it, which clearly indicates she knew it was coming. It's
2 not as if she was actually asleep and just a shot went into
3 her, which would still be horrific, but at least she wouldn't
4 know. No, she knew it was coming. She put her hand up. It's
5 at close range. Those shots are at close range. The person
6 who did this to that beautiful little girl is the protector of
7 Alexis? Really? That's what we heard, that he was the
8 protector of Alexis. It's hard not to make a comment about
9 that.

10 You do this to a car, this to a car, because you've
11 been seen in that car. Remember Claudia Ortiz? She's coming
12 home with her friend Jarod and she stops because, you know, I
13 see somebody and it kind of gives me pause, this is what
14 Claudia is saying, and I wait to go in, my boyfriend and I, we
15 wait.

16 But the person standing in between the two houses,
17 that was her testimony, in between her house and the murder
18 scene, right, Alexis's house, is standing there and the dog is
19 not barking. Interesting. See, because Ravon is not chummy
20 with the dog for the dog to be quiet and calm. But the
21 defendant has been to the house multiple, multiple times. The
22 dog is not barking because the dog knows the defendant.

23 But now the defendant knows that this person has
24 seen him. She goes inside, and then she hears the shots.
25 That's why he burned that car. And, well, he burned the car,

1 too, because it's not just Claudia Ortiz that's putting you at
2 this scene. Remember, she said one guy. One guy. You've got
3 Brenda Williams saying there's a car parked out front of her
4 house. Brenda says she's awakened by the sound.

5 She looks outside, saw a male dragging a large item
6 down the street to a small white car that was rounded. The
7 person went back and forth between the car and the house down
8 the street twice pulling a sheet. So the item is wrapped in a
9 sheet and a being pulled. See, when a sheet is wrapping this
10 up, that's really going to hide or mask or cloak what exactly
11 the item is. Because, remember, she says it's not a TV.
12 Well, when that sheet is around it, it's hard to really show
13 that it's a TV.

14 But what she does know, what she does know and
15 doesn't back away from, that that item that got put in there
16 did not fit. Well, at first you were told this is just crazy,
17 this is not going to get in that car, when in reality it gets
18 in the car. You saw the video. It gets in the car, but the
19 door won't close. This reenactment completely corroborates
20 and confirms Brenda Williams.

21 White, small, four-door, rounded, the item that was
22 in there dragged in a sheet, fit, got in, but the door
23 wouldn't close. So that when the person drove away, they
24 drove away with the door open. That's completely consistent,
25 confirms and establishes what Brenda said. And that a 2009

1 Versa that the defendant rented would do exactly what Brenda
2 said.

3 Where have we seen that sheet? Remember, there was
4 a bag at the defendant's apartment 218? Defense counsel told
5 you it was outside the door. No, it wasn't. No. It's got
6 the defendant's stuff inside of it. It's got a sheet. Stay
7 with me now. 218, Siegel Suites. That's where that sheet is
8 found by the police. And, oh, by the way, that's hours after
9 the CAD entry of the fire burn. I mean, holy cow the cops are
10 working on this case after the fire burn at 5:19 or whatever
11 in the morning. Remember the CSA Erin Taylor, she came here
12 and took the stand, she's the one that did this. She
13 recovered that.

14 Billy Postorino came in here and testified. He was
15 shown a photograph of that sheet. Okay. Showing you State's
16 454, is that Alexis?

17 Answer, yeah.

18 Okay. You said Alexis was painting her bedroom.
19 Showing you State's 452. Is that how she was --

20 Yeah, that's one of the colors, yeah.

21 Okay. And what color was like her -- the --
22 obviously the sheets are -- everything was off the bed. What
23 color were those?

24 Those were like maroon, burgundy.

25 Showing you State's 41, if you zoom in.

1 They match that, they match that comforter.

2 That's the color?

3 Yeah.

4 What's missing off of Alexis's bed? And why on
5 earth is it in his stuff inside his stuff inside his
6 apartment? Here's the comforter. There's the stuff inside
7 his apartment in that bag. All those items inside, and the
8 sheet. I wanted to make this clear. The sheet was found at
9 218. It's not this K-Mart bag outside. Which, by the way,
10 the defendant had anyway. It's the one inside. But you've
11 been told that there's no physical evidence connecting the
12 defendant to the murder scene. Well, that's just not true.
13 There it is.

14 Just in case there's some confusion, hey, I mean, it
15 could have come from his bed. Really? Because that's his
16 bed. Erin Taylor took pictures of the room. Now, there are
17 pillow case missing, mind you. I will concede that. We don't
18 have the pillow case there. That's true. But I -- I see a
19 sheet, a fitted sheet. I see the sheet over the top and
20 they're white. There's no maroon bed setting sheets in that
21 room except for Alexis's that Billy looked at the photo and
22 said that's my daughter's.

23 MR. DRASKOVICH: Objection. That was not stated.

24 THE COURT: Well, all right, folks. So you saw what
25 the actual statement was. You should rely on the evidence.

1 Go ahead.

2 MR. PESCI: Are you going to put me in max custody
3 because I killed a kid? Do you think Officer Webb just made
4 that up? Why? What does he get for that? What benefit? I
5 mean, the benefit of coming to court and being cross-examined
6 and in essence, you know, attacked for saying excited
7 utterance?

8 What he was saying was I didn't ask him a question.
9 The defendant then just said are you going to put me in max
10 custody because I killed a kid? And are we really to believe
11 that Office Webb is a part of a grand expansive conspiracy out
12 here to frame the defendant? Officer Webb said that because
13 that's what the defendant said, not because he made it up.

14 And who's got the motive here; right? The defendant
15 is sending texts on December the 4th. We creep, but I got a
16 smoke grenade. But, hey, Ravon, he's a ticking time bomb.
17 Defendant, this is the defendant. I've got a smoke grenade, I
18 have to live up to my scheduled appointments. See, there's
19 the problem, even with the 450 paid, he's got appointments.
20 He's got to supply. But he doesn't have a source anymore
21 because Billy shut him off.

22 I've got to collect. I pointed out Lisa's, Nick,
23 and your spot out if I end up dead. He's the one talking
24 about people ending up dead on December the 4th. Ravon hasn't
25 even entered the picture yet because on the 6th is when Ravon

1 would arguably have an issue because of Ashley being there.
2 It's the defendant talking about people being dead. 450 or
3 war, an element of surprise.

4 What did Bridgette Chaplin tell you? He asked me
5 what is the worst thing that could happen to me? At the time
6 I was on the run, so I figured that he was talking about that.
7 And I told him that it would be me getting caught.

8 What was his response to you?

9 He told me, no, what if something was to happen to
10 our kids.

11 That's the defendant to Bridgette after he's been
12 shut off by Billy and before the murder.

13 Also, she says, and then there was a time when the
14 defendant told you about evidence and about how to get rid of
15 evidence?

16 Yes.

17 What did he tell you?

18 He told me that the best way to get rid of stuff to
19 burn -- is to burn it or to bury it.

20 I mean, there's the evidence that corroborates it.
21 Alexis is dead. There's the evidence that corroborates
22 Bridgette. The evidence is burned. You can believe Bridgette
23 because it's corroborated by the defendant's very actions in
24 this case.

25 And I'm confused because I wrote down I'm not going

1 to tell you it's Ravon Harris. Really? Is that really what
2 you have presented this whole time, that it's not Ravon
3 Harris? I mean, the whole thrust -- I mean, you saw us
4 objection after objection about them saying what Ravon Harris
5 said or didn't say. No, they're saying it's Ravon Harris;
6 right?

7 You know it's not Ravon because that woman right
8 there took the witness stand. She's not dead. The ticking
9 time bomb, Ravon Harris, if you believe the defense, would
10 have killed that woman. If he showed up with jealousy and
11 rage and a time bomb internally inside of him, she's be dead
12 because she would be the focus of his jealousy and his anger.

13 She would be dead because she said after every shot,
14 I would say probably involuntarily, she screamed, clearly
15 indicating where she was and that she was in the house. And
16 Ravon chooses, no, I won't get the woman that I'm really mad
17 about, I'm going to go kill a 15 year old girl that I barely
18 even know. And while I'm at it, let's rob the place. That
19 defies all logic.

20 They ask him where were you during the statement.
21 Around midnight he went to two bars, got home around 2:00 or
22 3:00. He says that the bank records can prove it. No, it's
23 been admitted that he lied. But somehow you're not supposed
24 to factor that into your decision. Of course you are. Of
25 course you are. You are permitted and you should take it into

1 consideration when the defendant is trying to explain his
2 whereabouts which would be for the time period of the murder
3 because isn't it interesting that he says 2:00 or 3:00. They
4 ask him.

5 I mean, confirmation bias. They talk about how the
6 cops are slipping in information so people will know what to
7 say. The cops didn't ask him any specific time. It's the
8 defendant on his own who says between 2:00 or 3:00. I mean,
9 he's kind of fuzzy when he got to the bar, but he knows
10 between 2:00 or 3:00. Why on earth would he pick those
11 numbers? Why? Because he knows what he was doing between
12 2:00 and 3:00. The bank records don't prove that at all.

13 (Video played.)

14 MR. PESCI: 2:00 or 3:00 in the morning. He's the
15 one that says it. 2:00 or 3:00 in the morning. I'm not sure
16 about this, I'm not sure about that. 2:00 or 3:00 in the
17 morning he's got to cover that time. He says the ATM
18 withdrawals are going to justify him. That was his word,
19 justify him. Really? That's just not true. Completely not
20 true. The records show, and remember, it's two hours off.
21 His last activity is at 11:14 p.m. on the 5th. He's done
22 using his ATM card long before that important time of 2:00 and
23 3:00 that he volunteers to the cops.

24 And, remember, by the way, you know those bank
25 records? It's true that Ken Hardy didn't get them after he

1 retired, that the State of Nevada got them. Somehow we're not
2 supposed to believe anything the police did because they
3 didn't get them; right? Does the fact of when the records
4 were obtained changed what the records show? Absolutely not.
5 Those bank records show what we just explained to you.

6 So if they had been obtained earlier, it would have
7 been just another brick to pile on top of the defendant. And
8 that brick exists. It's here today. But on top of that, what
9 Ken Hardy and Metro did, they got that door log interrogation.
10 Between 11:41 on the 5th and 6:11 a.m. on the 6th, he's either
11 in all night or he's out all night. And he said he's out. He
12 says he's out at the bar, the ATM is going to justify him.

13 Yeah, that's not true.

14 He says he's out at the bar and he goes home between
15 2:00 and 3:00. He's got to get his butt home between 2:00 and
16 3:00, ladies and gentlemen. See, that's a big stinking
17 problem because there's no activity between 11:41 and 6:11.
18 If he went home between 2:00 and 3:00 it would show up on the
19 door log. He didn't go home. He was out. He was committing
20 that murder between 2:00 and 3:00.

21 (Video played.)

22 MR. PESCI: Well, that's just completely not true.
23 He told the cops something that's completely not true. He's
24 admitted that he did the burn. That's the last time he saw
25 that car and that was at 5:30 in the morning and he's burning

1 it because it can tie it to him to that murder because it does
2 tie him to that murder. That's why he's burning it at 5:30 in
3 the morning on the 6th, that vehicle. That's just an outright
4 lie to the cops, another one.

5 Then to add insult to injury, he says he doesn't
6 know how it is with the key fob in his possession somebody
7 else can have that car. You heard from the Nissan
8 representative that's impossible. You can't turn that car on
9 without it. He's the one in possession of it because he's the
10 one that burned it. He burned it because it ties him to the
11 murder. The traffic ticket we talked about earlier.

12 (Video played.)

13 MR. PESCI: He's so adamant about that because he
14 knows that implicates him and convicts him on the murder, not
15 the arson. He's so adamant about that because it's really
16 problematic for him. And what he just told the cop is, again,
17 something that's completely not true. What could make someone
18 do this? You've seen it a bunch. What could make somebody do
19 that? The fact that they committed this murder.

20 Now, you heard some -- some things I have to kind of
21 have to get back to, and then we'll talk again. But you heard
22 about GSR and how the State cleared Ashley Riley. That's what
23 you were just told. I'm a little confused. Ashley Riley had
24 gunshot residue taken from her hands. There was no testing
25 done. In fact, that was one of the, you know, bombs thrown at

1 the State. Hey, you didn't do anything, you didn't do
2 anything, GSR wasn't done.

3 GSR wasn't done on Ashley. There was no testing
4 done. Now, originally, because they don't know what's going
5 on, they take it; right? The GSR isn't done because the cops
6 talk to her and they believe her. That if it was, in fact, it
7 was, as they say, Ravon, she'd be dead. So you can believe
8 somebody without science actually confirming it.

9 Now, what would science show on a GSR on a blue
10 jacket that had nothing to do with the murder? Do we really
11 believe that the person who is going to go so far as to burn a
12 car that's registered to him with Nissan would keep the
13 clothes that he wore during the shooting? Would you really
14 believe that?

15 And then there's idea about Sergeant Sanford and how
16 he's got in his CAD -- or, I'm sorry, he's got in his search
17 warrant, the very first search warrant, which, by the way, the
18 second and third it's not in there about two individuals, two
19 masked individuals. We went through the CAD.

20 Ken Hardy talked about there was one officer who
21 said that he saw those two individuals, that in the CAD it
22 shows they tried to follow up and they were looking in stores
23 and a bus. Then they also talk about a white male and a white
24 female, they look after them. And then it also says in the
25 CAD that it was a three year old involved in this. There's no

1 three year old involved in this.

2 See, at the very beginning of the case, I think it
3 was described as a shotgun, a shotgun of information comes
4 out. Sergeant Sanford never said in his sworn statement I
5 heard from Nick Brabham. We put on the Hardmans who said that
6 they scooped up Nick and he didn't say that. We put on the
7 cop who was at the hospital when Nick got there and he said
8 that Nick didn't say that. Could Nick speak to some extent?
9 Yes. He's giving some medical history. But I am sure he
10 wasn't having a real long conversation with the medics and
11 with the medical staff.

12 And you had just read some -- a portion of the
13 medical records where he says 2:43. Do you remember Dr.
14 Coates? He was really uncomfortable with that 2:43 time
15 frame. He's like, no, no, no, no, no. We got him back -- we
16 got him back into surgery because he's going to die. Could he
17 have said something, did he say something to some of the
18 hospital? Sure. But nobody says that he saw two people.

19 And then if you believe Dr. Shomer, nobody can
20 remember anything. I mean, at one point he says eyewitnesses
21 can get it right, and then he says that they can get it wrong.
22 And then all of this talk is about how it's wrong; right?
23 Whatever concerns that you have about Nick, everything that we
24 just talked about was separate and distinct from Nick. All of
25 that evidence tells you that Nick was right and Nick didn't

1 come off the fact that it was the defendant who did it when he
2 first said it to his family, when he said it to the detectives
3 when they came to the hospital, when he testified at the
4 preliminary hearing, and when he came and testified here at
5 trial.

6 I mean, if you believe Mr. Shomer, I can't be
7 trusted to say I know that the south tower went down first. I
8 mean, that was a traumatic incident. Somehow it changes,
9 though. I mean, if it's traumatic like that, then you can be
10 believed. But if it's traumatic and has a gun, you can't. I
11 don't understand that logic. So when the defense says counsel
12 says it's uncontroverted as to what Mr. Shomer said, yeah,
13 it's controverted. The State does not subscribe to Dr.
14 Shomer's assessment of identification. And you have the
15 physical evidence to prove that.

16 Ms. Bluth went through the verdict form. There's
17 something I want to focus on here. The defendant is guilty of
18 all of these charges, burglary while in possession, robbery
19 with use of a deadly weapon of Nick, robbery with use of a
20 deadly weapon of Alexis, the attempt murder of Nick, the
21 battery with substantial -- battery with a deadly with
22 substantial of Nick. The arson, he said he was. And, you
23 know, he's guilty of the murder, as well.

24 Ladies and gentlemen, we're going to ask you to
25 check that top box because it was first degree murder. And

1 those pictures are hard to show, but I'm showing you for a
2 reason. The person who did this to Alexis intended to kill
3 her. It was a willful, deliberate, premeditated act. There
4 were multiple shots. She was hit on all of them. And that
5 person was so up close and personal, the defendant, that he
6 knew exactly who he was shooting. So it's willful. So it's
7 willful, it's first degree murder with use of a deadly weapon.

8 Now, you go down to the special verdict form.

9 Ladies and gentlemen, the State urges you to indicate that you
10 unanimously find that you all agree that it was willful,
11 deliberate, and premeditated. But you know what, it was also
12 during the course of a robbery, that he went over there
13 intending to get property. And so we'd urge you to check, as
14 well, that it was during the course of the robbery, and that
15 also it was child abuse.

16 That it's first degree murder and that you all agree
17 because the evidence clearly establishes that it was willful,
18 deliberate, and premeditated, that it was during a robbery,
19 that it was during child abuse. And at the end of the day,
20 ladies and gentlemen, the person who executed Alexis, not the
21 person that protected her as it's been alleged, is Norman
22 Belcher. Tell him you know that, too.

23 THE COURT: Thank you. All right. So the clerk
24 will now swear in the marshal and my assistant to take charge
25 of the jurors.