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**APPELLANT’S APPENDIX VOLUME XIII PAGES 2770-2989**

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**Case No. 74468**

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1 MR. GASTON: I don't know whether they --

2 THE COURT: -- at this precise point in time.

3 MR. GASTON: I don't know whether they intentionally did it or not.

4 THE COURT: That they wouldn't have to let you know about it, but  
5 they still had it in time to use it for their rebuttal.

6 MR. GASTON: I don't know whether they intentionally did it or not,  
7 and I don't really get how we can ever figure it out. She's going to say she didn't  
8 do the search until recently. I believe she didn't do the search until recently.

9 Whether she planned on waiting until trial to do that, whether she did  
10 it before, no one really knows, except Ms. Lexis. And I don't think that's the  
11 proper venue for the court, because nobody really knows the answer.

12 THE COURT: Yeah.

13 MR. GASTON: But the fact is, there's also an additional requirement  
14 on why the State has to do due diligence before. Not getting to the discovery  
15 statute yet. There's also another case in Nevada, and I don't have the citation,  
16 because I obviously haven't had the opportunity to do the research, but I believe  
17 that there was another case in Nevada that talks about how if evidence --  
18 that they used in rebuttal, if that evidence could have been and should have been  
19 used in its case in chief, it must have been.

20 And I would argue, assuming I'm not just making up this case, that if  
21 that principle of law really exists, then that directly applies here, because --

22 THE COURT: Probably a case I need to see, right?

23 MR. GASTON: And I can give it -- obviously, I can give it to the  
24 court -- if -- if it exists, I'll find it and I'll send it to the court. I don't think I'm making  
25 up law here.



1           The position would be that this is evidence that could have been --  
2 and -- and Ms. Machnich is on Westlaw, she's trying to find it as we speak.

3           MS. MACHNICH: I'm trying. But --

4           MR. GASTON: But with respect to the State's position, they could  
5 have done this lead search anytime in the last 14 to 16 months.

6           THE COURT: Right. You already said that point and since you're  
7 going circular now, I'm getting close to cutting you off.

8           MR. GASTON: I'm sorry. But this is the point I'm trying to make. The  
9 evident -- the fact is the evidence -- if they had exercised due diligence, this is  
10 evidence that could have been done prior to -- it could have used in their case in  
11 chief.

12           Just because they didn't do the lead search until after the case in  
13 chief had already started or we had started our case in chief, doesn't somehow  
14 mean that evidence couldn't have been used in their case in chief, because they  
15 could have done the lead search earlier, anytime earlier, and used it in their case  
16 in chief.

17           And then as a -- as the second prong of the rule of law that I cited  
18 should have been used in their case in chief, if they had this evidence before, it  
19 should have been used in their case in chief. They can't sand -- the -- the whole  
20 point of that case is to prevent exactly what happened here -- sandbagging --  
21 intentional, unintentional, whatever. The effect is sandbagging a critical piece of  
22 evidence.

23           Then I segue into the argument I made earlier -- I'll just use it by  
24 reference -- you know, not -- not go into detail again, just make sure I'm stating  
25 everything here, is I interpret the discovery statutes to impose a requirement that

1 the State must act -- must exercise due diligence in gathering materials, and they  
2 must disclose those materials to the State. If -- or to the defense.

3 If they had exercised due diligence, they would have had the  
4 information in advance of trial and been required to disclose it. They couldn't  
5 have then decided to use it in their rebuttal case and that violates the same  
6 principles of happiness, sunshine, fairness, and the Constitution that I earlier  
7 cited.

8 With respect to another -- another point, staying with the sandbagging  
9 case -- I believe that this is probably the same case that I was citing without the  
10 name, but I -- I recall another principle of law -- and I'll try to find the case name,  
11 where, again, talking about sandbagging -- it talks about how the State can't  
12 intentionally hold back evidence, let the -- let the defense put on a case or say  
13 stuff to the jury or whatever, and then bring in the evidence that causes the  
14 defense to lose all credibility to the jury, because then we look like incompetent  
15 buffoons. And they can't intentionally make us look like incompetent buffoons.  
16 They can maybe unintentionally do so, but they can't intentionally do so or  
17 negligently do so, which I argue is what they did here.

18 And then with respect to the hearsay argument that I was trying to  
19 flesh out earlier, and I -- I think this is my final point -- obviously, it is hearsay.  
20 They laid the business records exception. And so it was admitted.

21 But then we pivot to the confrontation clause. And I guess the  
22 confrontation clause applies to two people here. It for sure applies -- I mean, it  
23 certainly applies to the person who actually input this evidence into the card. This  
24 was the manager who was testifying about general business records with the  
25 pawnshop, et cetera. She is not the individual who specifically input -- that -- who

1 did this sale of items from Omara McBride and input the evidence in.

2           So we are not able to cross-examine the person who actually entered  
3 the hearsay, and inquire into the many things that we want to -- would have asked  
4 her, was she tired? Was she -- how long had she been working on a shift?  
5 Et cetera. And basically argue that she didn't do a very good job of checking ID  
6 against the person or any other area of cross-examination that we would have  
7 thought relevant.

8           The cross-examination has been cited forever as the pillar -- that  
9 sword of truth, et cetera, and the crucible of fire that leads out the truth. We  
10 weren't able to use that because we weren't have -- we were deprived -- we were  
11 deprived of our opportunity to confront the person actually making the out-of-court  
12 statement.

13           Just because they can lay business records -- records exception  
14 through a custodian of records, doesn't mean they can get around the  
15 confrontation clause requirement.

16           So at a minimum, they should have been required to bring in the  
17 person who actually input the data that is -- that contains the out-of-court  
18 statement.

19           The second confrontation clause issue would apply to Omara McBride  
20 herself, potentially, depending on how the out-of-court statement actually ended  
21 up going, because it seems like first level of hearsay is the actual document that  
22 got admitted into evidence. Second level of hearsay or the person inputting that  
23 hearsay is the person who actually wrote that information in. The third level of  
24 hearsay or the next level of hearsay would be Omara McBride, either through a  
25 driver's license, through her words, or both, representing to that person that she

1 is, in fact, Omara McBride.

2 That is another out-of-court statement which is hearsay, and, A,  
3 pivoting back to the hearsay requirement, that did not come in through any  
4 hearsay requirements. But even if we want to put that within the business record  
5 exception, we still have the second issue, which is confrontation clause. We were  
6 not able to confront Omara McBride about her -- because the State didn't call her.  
7 We were not able to confront Omara McBride regarding her actually inputting -- or  
8 actually going to this pawnshop to pawn these items. We can't ask --

9 THE COURT: There's no statement of Omara McBride that was  
10 introduced in this trial, so the confrontation clause --

11 MR. GASTON: My -- my position is --

12 THE COURT: -- is not implicated with respect to her.

13 MR. GASTON: My position is the statements that -- that was  
14 Introduced is, in fact, stemming from Omara McBride because Omara McBride is  
15 the person who represented herself to be Omara McBride through her driver's  
16 license and her actual statement in the pawnshop of being Omara McBride.

17 So there is an out-of-court statement stemming from Omara McBride.

18 If we take this evidence at face value, the person pawning the item is  
19 representing themselves to be Omara McBride. How else would the pawnshop  
20 person know to input that information unless they receive it from the person  
21 actually making the pawn -- making the sale. Right? So that's that second level  
22 of hearsay. So Omara McBride did make an out-of-court statement.

23 Either the person who pawned this is not Omara McBride or she is  
24 and Omara McBride made the out-of-court statement that she is Omara McBride,  
25 which is exactly the evidence that's being introduced as the truth of the matter

1 asserted.

2 The evidence on the pawnshop ticket being introduced to show that  
3 the person actually saying -- or pawning the item is Omara McBride. So there's --  
4 there's two levels of hearsay there -- two or three levels of hearsay there  
5 depending how you look at it. And so there's two aspects of confrontation clause.

6 THE COURT: All right. What about the fact that it's a nontestimonial  
7 statement by Omara McBride?

8 MR. GASTON: Well, I guess is it a nontestimonial statement?

9 THE COURT: Yeah.

10 MR. GASTON: I don't think that's a fact that we're talking --

11 THE COURT: Yeah. Was it -- yeah. Going to the pawn shop and  
12 saying I am who I say is not -- is not a testimonial statement. It's not a deposition,  
13 not an affidavit. It's not investigation. It's not something that's being given for  
14 purposes of preserving testimony. I think -- what is it, *Crawford* -- would -- would  
15 suggest that --

16 MR. GASTON: I believe it would be *Bryan* --

17 THE COURT: -- that once you satisfy hearsay and -- and then you  
18 establish that it's not testimonial, I don't think you have a Sixth Amendment  
19 confrontation clause issue here.

20 MR. GASTON: That would be correct. If -- if that were correct.

21 THE COURT: Right.

22 MR. GASTON: Or, I -- I mean the -- the analysis of law is correct.

23 THE COURT: Yeah.

24 MR. GASTON: I don't believe it applies here though, because I  
25 believe they would be testimonial, and that was the second point I was pivoting to.

1 THE COURT: Okay.

2 MR. GASTON: The -- I'm sorry. I'm just trying to make my full record.

3 THE COURT: That's the one that's been in my mind for the last --

4 MR. GASTON: Right. The testimonial aspect of it.

5 THE COURT: Okay.

6 MR. GASTON: Because I do think it is testimonial.

7 THE COURT: All right.

8 MR. GASTON: Stuff you put in a deposition isn't just testimonial. It is

9 a record that she is giving them. She has to sign her name. She has to show her

10 ID. She has to give information to the pawnshop. She sees them recording it.

11 She knows this is literally being recorded for later use. That is in essence

12 testimonial. That is not a conversation for an -- an investigation. That is not

13 casual conversation. That is not chatting among a friend. That is giving

14 information for the official purpose of having it recorded and being used later for

15 multiple purposes.

16 I believe that evidence is testimonial.

17 And what's certainly testimonial is the evidence of the second hearsay

18 person, the person actually inputting the information into the pawnshop ticket.

19 THE COURT: All right. I -- I've got to cut you off.

20 MR. GASTON: Can I respond to the court's earlier --

21 THE COURT: You have one more minute.

22 MR. GASTON: Yeah. The court earlier discussion made a point that

23 since we have the opportunity to call witnesses ourselves, that there's no

24 confrontation clause issue, because I could have called Omara McBride, I could

25 have called the person who actually input this information.

1 And my position is I don't think that's how the confrontation clause  
2 works. If the State is the one introducing a statement, they must provide the  
3 accuser for us to cross-examine. We are not required to go out and try to find the  
4 person and procure their presence so that we have the opportunity to satisfy our  
5 own Constitutional right.

6 So to the point that the -- to the fact that the -- or to the extent that the  
7 court was relying on --

8 THE COURT: I agree. I agree with that point.

9 MR. GASTON: Okay. Well, that's it for me, then.

10 THE COURT: And -- I wasn't relying on it. I was just saying, well,  
11 why couldn't you go.

12 MR. GASTON: Make sure I didn't forget anything. I don't think I did.

13 THE COURT: All right.

14 MR. GASTON: I'm just objecting to being unfair, as well, if I didn't say  
15 that.

16 THE COURT: Okay. That's good.

17 MS. LEXIS: Your Honor --

18 THE COURT: Do you want to respond to any of that?

19 MS. LEXIS: I won't to the ones that the court has already addressed.  
20 I just would also like to make a clear record.

21 I find it ironic that Mr. Gaston is now arguing so vehemently against a  
22 business record coming in, when they got a valet ticket in and also California  
23 registration authenticated as a business record.

24 When we objected and indicated we could not cross-examine the  
25 actual person who inputted this information --

1 THE COURT: I let it all in.

2 MS. LEXIS: -- you let it all in, because it met the -- and -- and one of  
3 those business records actually had Omara McBride's information on it. Okay.  
4 So there was no objection.

5 The rules only apply when it's bad for them, you know.

6 MS. MACHNICH: Okay. That's inappropriate. That's absolutely  
7 inappropriate.

8 MS. LEXIS: And so --

9 THE COURT: Just let her make her argument. She's not disparaging  
10 you.

11 MS. LEXIS: So I think --

12 MS. MACHNICH: She -- she is. That -- that last statement was.

13 THE COURT: All right. I'll make -- I'll make that decision. Sit quietly,  
14 please.

15 Go ahead.

16 MS. LEXIS: And so I just -- the rules are, as the court has already  
17 indicated, this is business record. She is a custodian of records. There was no  
18 confrontation issue, if you even bought the argument that it's testimonial, which  
19 we are saying it absolutely is not, because it was not prepared or stated for the  
20 purpose of prosecution or an investigation.

21 I vehemently -- or I --

22 THE COURT: Would you hold back an investigation to -- for -- to  
23 orchestrate the timing of this?

24 MS. LEXIS: No. Not at all. I mean, I -- I find that actually rather  
25 offensive --



1 THE COURT: Well --

2 MS. LEXIS: -- because as the court indicated earlier, the more  
3 evidence the better. We have the burden. We have the absolute burden.

4 THE COURT: You have the burden.

5 MS. LEXIS: And should have -- should the detective done -- have  
6 done this? Yes. But to the -- also to speak on the detective, maybe he did a  
7 pawn -- maybe he did a pawn request for Keandre Valentine and nothing came  
8 up. You know, maybe that was the case.

9 But who knew that Omara McBride was going to play such a key role  
10 in the car and being with the defendant.

11 Which brings me to my next point.

12 THE COURT: All right. Make sure one of your points is whether this  
13 was beyond the scope.

14 MS. LEXIS: Oh, yes, Your Honor.

15 THE COURT: All right.

16 MS. LEXIS: I think we should do a playback of Mr. Gaston  
17 reserving --

18 THE COURT: We don't need to do that.

19 MS. LEXIS: Okay.

20 THE COURT: I'll do that.

21 MS. LEXIS: Okay.

22 THE COURT: You guys don't need to worry about that.

23 MR. DICKERSON: Waiving.

24 MS. LEXIS: Waiving that. Okay.

25 But concerning the scope --

250

1 THE COURT: So suppose he didn't waive it.

2 MS. LEXIS: Okay.

3 THE COURT: Suppose he didn't waive it. Why -- what were you  
4 rebutting?

5 MS. LEXIS: Yes, Your Honor.

6 THE COURT: What were you rebutting?

7 MS. LEXIS: They have placed identification at issue in this particular  
8 case. And so I think really that runs the gamut of anything to prove that the  
9 defendant committed the crime.

10 Here, Omara, his girlfriend, the individual he came to Las Vegas with,  
11 is pawning items, one -- one hour and a half after he committed the robbery with  
12 Marvin Bass.

13 THE COURT: Oh.

14 MS. LEXIS: There was also testimony from Chanise Williams, if you'll  
15 recall, just minutes before, that Mr. Valentine and Omara just got here Friday  
16 afternoon, when they all went out -- Friday afternoon being the 27th, somewhat  
17 alibiing Mr. Valentine for the 26th incident, and kind of to imply that he, Omara,  
18 the car, didn't -- didn't arrive to Las Vegas until Friday night, the night of the 27th.

19 THE COURT: All right. I get it. So it goes to identification.

20 MS. LEXIS: So -- absolutely.

21 THE COURT: She's saying she's rebutting your evidence on  
22 identification.

23 MR. GASTON: What evidence on identification?

24 MS. LEXIS: And timing.

25 MR. GASTON: Which evidence did I present on identification,

1     though? What -- because the -- our eyewitness identification expert couldn't  
2     testify about identification. He just talked about it in general terms of -- nothing --  
3     nothing he said rebuts the ID expert.

4             THE COURT: Well, he raised the whole issue that it was an invalid  
5     identification.

6             MR. GASTON: But then doesn't that allow them to rebut -- do  
7     whatever they want in rebuttal? Because our defense is identification --

8             THE COURT: No.

9             MR. GASTON: -- so I put on a case in chief, that -- that's what I said  
10    they're doing.

11            And I'm not trying to cut off their argument. Again, it's 15 seconds,  
12    caps. My -- I get it, but 15 second --

13            THE COURT: You like to monopolize all the time, don't you? It's not  
14    quite fair, but go ahead.

15            MR. GASTON: I won't make the argument, then.

16            THE COURT: All right. Thank you. I will -- is it a new argument that  
17    you want to put on the argument that you haven't made yet?

18            MR. GASTON: It was in response to your question.

19            THE COURT: Okay.

20            MR. GASTON: You -- you said you find that their rebuttal evidence  
21    was with respect to identification. My position is --

22            THE COURT: Well, I -- I was repeating what she said. I wanted to  
23    make sure you heard that.

24            MR. GASTON: Oh, I thought you were asking me to -- well, that was  
25    my 10-second response is I don't think that that evidence -- yes, I get it -- the

1 evidence that he did it or his girlfriend pawned the items or the girl he came in  
2 with pawned the items shows that he did the crime more likely than not. I get the  
3 relevant -- I get the relevance.

4 But it doesn't rebut anything we said. Our case in chief is designed to  
5 show he didn't to the crime, yes, because we're putting on a defense.

6 But we have to actually say something or put on some evidence that  
7 she rebuts. There's nothing she's rebutting. Our ID expert isn't talking about  
8 whether he did it or not.

9 THE COURT: Well, let's see what her position is, then. I'm anxious  
10 to find out her position on that.

11 What were you rebutting?

12 MS. LEXIS: Their claim of lack of identification. But specifically, the  
13 testimony of Chanise Williams indicating that the defendant did not arrive here  
14 with Omara McBride until the night of Friday, May 27th, 2016. These pawn items,  
15 with Omara -- with Omara's -- Omara is his girlfriend. They arrived here together.  
16 That's -- that's the state of testimony right now.

17 They didn't arrive here until the 27th, the night of, when this clearly  
18 shows, Your Honor, that -- that he had the -- the motive and time and the  
19 opportunity to have committed the robbery against Mr. Bass on the 26th, and that  
20 these pawn certificates were -- were transacted about an -- an hour, hour and a  
21 half after the robbery. It was at 12:58 p.m.

22 Shortly thereafter, Omara McBride, who came here with the  
23 defendant, who shares a car with the defendant, is out pawning items which just  
24 happen to match the immediate description or the exact description of the items  
25 taken from Mr. Bass.

1           Also, Your Honor, their expert -- their identification expert specifically  
2 noted, out of everything that we could get out from this expert, it was that the  
3 importance of corroborating evidence is -- is crucial.

4           And this is yet another piece of corroborating evidence, specifically to  
5 rebut whether he was even in town on the 26th, whether he could have committed  
6 this crime, whether he was with Omara, the individual who pawned it. So I think it  
7 absolutely rebuts.

8           THE COURT: All right. Anything else?

9           MS. LEXIS: Nope.

10          THE COURT: All right.

11          MS. MACHNICH: And Your Honor, just briefly, those last two things  
12 she just said --

13          THE COURT: Yeah. Okay.

14          MS. MACHNICH: -- about corroborating evidence and hammering on  
15 corroborating evidence, hammering on the timing, that was all done on her cross,  
16 for both of those witnesses.

17                So I -- and I even clarified with her, when I was -- and, of course, I  
18 can't lead her on direct. What I'm saying is, you know, in even saying when it first  
19 came out, my understanding was she wasn't entirely clear on the day.

20                I guess Ms. Lexis got her to -- after putting words in her mouth on  
21 cross -- which is what you're allowed to do on cross, but she's the one who locked  
22 her into that day.

23                So how could she now say, well, she said that day? Okay. Because  
24 you told her to say that day. I was the one who was try -- on -- on direct, she was,  
25 like, it was either the day before or that day, I'm not entirely sure exactly what day

1 it was. And then I even tried to clarify, you don't know exactly what day they got  
2 into town. She's the one who hammered into that day. So she created the issue  
3 that she's now rebutting. And the same thing with our expert. Everything single  
4 time he was saying corroborating evidence, corroborating evidence.

5 THE COURT: So --

6 MS. MACHNICH: She hammered it over and over.

7 THE COURT: Okay.

8 MS. MACHNICH: She create her own rebuttal.

9 THE COURT: I appreciate that. I -- I wanted you make sure  
10 everybody had a chance to make the record.

11 MS. MACHNICH: Okay.

12 THE COURT: I'm denying the Motion for a Mistrial. I find that the  
13 court properly admitted the evidence, that the evidence -- that the evidence  
14 submitted during the rebuttal stage of the State's case was within the proper  
15 scope of rebuttal. The evidence was properly admitted as a business record.  
16 The court properly considered the probative value versus the prejudicial impact,  
17 allowed the evidence to come in. Didn't violate the hearsay rule. The evidence  
18 doesn't violate the confrontation clause. The proposed evidence was  
19 nontestimonial in nature.

20 The State -- the defense has not demonstrated to the court that there  
21 was any bad faith motive by the part of the State. And the court also finds that the  
22 State did not violate any duty to more timely disclose the pawnshop evidence that  
23 it had obtained. All right.

24 Now --

25 MS. MACHNICH: And just to be perfectly clear, we're not waiving the

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1 idea that they acted in bad faith, by any means of the imagination. I know that  
2 there's been no specific evidence and the statements they've made -- we have to  
3 take them at the value that they come at. But we are not waiving any argument  
4 that they acted in bad faith.

5 THE COURT: Well, whether anything's been waived or not waived,  
6 that's not for me to decide.

7 MS. MACHNICH: I understand. I just want the record to be clear  
8 because we just --

9 THE COURT: So let's discuss -- thank you.

10 MS. MACHNICH: Okay. Thank you. Thank you for the clear ruling.

11 THE COURT: The record is whatever the record is.

12 MS. MACHNICH: Okay.

13 THE COURT: Let's discuss jury instructions.

14 MS. MACHNICH: Okay.

15 THE COURT: First, I have the State's set.

16 MS. MACHNICH: We -- we haven't received those.

17 THE COURT: Okay. The State didn't provide copies to the -- well,  
18 then we're at --

19 MS. MACHNICH: Nor -- nor did they e-mail them to us.

20 MR. GASTON: We can -- we can still go. Just -- if they -- if they have  
21 a copy with them, I can do review this as we go.

22 MS. LEXIS: No. We had difficulty getting a copy.

23 So we need to make copies of this. This is our only copy.

24 MR. DICKERSON: And the copy machine was down, last I checked.

25 MR. GASTON: Can we just make a copy of this quickly? And then --

1 THE COURT: When did it get a set?

2 MR. GASTON: Your Honor, is it possible to step in the back and just  
3 make a copy of this real quick for the State? And then we can both just do it  
4 tonight.

5 THE COURT: Do whatever you got to do. I -- I don't make -- I don't  
6 make copies.

7 MR. GASTON: No. I mean, I'm not asking you to make a copy. I can  
8 go to it.

9 THE COURT: If you want to do it.

10 MR. GASTON: If you'll -- okay.

11 THE CLERK: I -- I don't think the copy machine on this floor is  
12 working.

13 THE COURT: You don't think it is or it isn't?

14 THE CLERK: No. I don't think it is working, the copy machine on this  
15 floor.

16 THE COURT: Did you hear that? Where did she --

17 Well, then, we can't do jury instructions. Well, let me just tell you my  
18 tentatives.

19 MS. LEXIS: Okay.

20 MS. MACHNICH: Okay.

21 THE COURT: This is really, really frustrating.

22 MS. MACHNICH: Can we -- let's -- if this is your only copy, we can --  
23 there's probably not a whole lot of objections to the State's.

24 MR. GASTON: We can hand it back and forth, Judge.

25 MS. MACHNICH: We can look at it together, if we start with the

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1 State's, and then we can sit down, because I shut the --

2 MR. GASTON: Your Honor, the clerk said -- or she can actually just  
3 print a copy for us so we have a copy ready to go.

4 THE COURT: Oh, my God.

5 MR. GASTON: Just trying to get it done today.

6 MS. MACHNICH: But I -- I think we can start these, because some of  
7 these are standard.

8 THE COURT: How -- how could I -- how can the State get me a copy  
9 without getting the defense a copy? How can that happen?

10 MS. LEXIS: We didn't give a -- we didn't get a copy of theirs, either. I  
11 mean, they -- they just -- we just finished them.

12 THE COURT: Nothing should go to the court without opposing party  
13 getting it.

14 MS. MACHNICH: We provided them to the State.

15 THE COURT: Why did the defense get me a copy without getting it to  
16 the State?

17 MS. MACHNICH: I e-mailed it --

18 THE COURT: And don't you guys know for -- for valid settling of jury  
19 instructions, you each need to have a full set?

20 MS. MACHNICH: And, Your Honor, I printed a copy for every single  
21 person involved in this case and they're sitting on the desk. So they do have  
22 copies of our instructions in front of them right now. To this day, I do not have a  
23 copy of theirs. They have ours. I printed them and brought them, because I  
24 thought we were settling them at lunch.

25 MR. DICKERSON: And we apologize, Your Honor. That was just an

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1 oversight on our part.

2 THE COURT: Okay.

3 MR. DICKERSON: We're very sorry about that.

4 THE COURT: I do appreciate that. All right.

5 MS. MACHNICH: But I'm happy to move on with them.

6 MR. GASTON: I don't it prejudices either side. I'm pretty sure we can  
7 just go forward with it.

8 MS. MACHNICH: We can do it.

9 THE COURT: Let's just share.

10 MS. MACHNICH: Yeah, it's fine. I'll stand here. I'm sure a lot of  
11 these are going to be standard, so we can --

12 MS. LEXIS: Well, bring your chair, so you don't have to stand in  
13 heels.

14 THE COURT: All right. Things go long sometimes in trial, and that's  
15 why it's very refreshing when people say, rather than getting indignant about the  
16 court pointing out something that's wrong, to actually acknowledge, gee, I'm sorry,  
17 something went wrong. All right. Not to get all pissy about when something is  
18 pointed out.

19 MS. MACHNICH: Okay. Are we beginning with the State's  
20 instructions or the defense?

21 THE COURT: I'm looking at the State's instructions here.

22 MS. MACHNICH: Okay.

23 THE COURT: Any -- any objection to Instruction No. 1?

24 MS. MACHNICH: No.

25 THE COURT: I'm asking my points -- or my questions are directed to

1 the defense now.

2 MS. MACHNICH: Okay.

3 THE COURT: Any objection to Instruction No. 2, which begins, If in  
4 these instructions?

5 MS. MACHNICH: No.

6 THE COURT: It's accepted.

7 Any objection to the instruction regarding the indictment?

8 MS. MACHNICH: No.

9 THE COURT: Any objection to the instruction regarding to constitute  
10 the crime charged?

11 MS. MACHNICH: No.

12 THE COURT: Any objection to the instruction that begins, The  
13 defendant is presumed innocent?

14 MS. MACHNICH: Yes. And we've provided a different wording for --

15 THE COURT: And I saw -- you want -- unless I -- my philosophy on  
16 that has changed. I like what the State's doing here, because it's until. The  
17 presumption of innocence always exists until the contrary is proved.

18 If you say unless, it's an incorrect statement of the law that suggests  
19 that the presumption may not exist. And -- and I think it's incorrect. Until is the  
20 right type of word to use there. So we're sticking with until.

21 So your objection is noted. I'm not giving the defense proposed.

22 MS. MACHNICH: Okay.

23 THE COURT: All right. So that is State's Proposed page 3 is not  
24 given.

25 MS. MACHNICH: Defense's proposed page 3?

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1 THE COURT: The defense proposed.

2 MS. MACHNICH: Okay. That's fine.

3 THE COURT: Take that one and put it to the record.

4 What about the State's next proposed, You are here to determine the  
5 guilt or innocence?

6 MS. MACHNICH: They're not here to determine the innocence.  
7 They're here to determine whether defendant is guilty or not guilty. We did  
8 propose a different wording. That's our page 2. And we would object to guilt or  
9 innocence. They are not here to determine the innocence.

10 THE COURT: State's -- what's State's position?

11 MS. LEXIS: Court's brief indulgence.

12 THE COURT: Theirs is page 2.

13 MS. LEXIS: I'm okay with that, Your Honor. We can the change it to  
14 what they -- they said. I think it's still correct.

15 THE COURT: All right. Very good. The State's instruction will be  
16 deemed withdrawn and defense instruction that begins, You are here to  
17 determine -- I'll read the whole thing. This is the one that will be given.

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

23 That will be given. All right. Thank you.

24 MS. MACHNICH: Yes. Okay.

25 THE COURT: Next instruction on, The evidence which you are to

1 consider in this case consists of the testimony, et cetera.

2 Any objection to that by the defense?

3 MS. MACHNICH: I don't believe so. I -- I can't review for typos, but I  
4 am familiar with this instruction and have no objection to this.

5 MR. GASTON: It seems that we proposed -- I'm just looking at our  
6 instruction. It looks like Instruction 5, we -- we had an extra line about witnesses  
7 being convicted of a felony. And we turned -- and -- and it looks like  
8 Ms. Machnich also -- and although I don't think any evidence came in about a  
9 witness being convicted of a felony --

10 MS. MACHNICH: I think that's a different instruction, Tyler.

11 THE COURT: That's a different instruction. You're -- you're one  
12 ahead of us, Mr. Gaston.

13 MR. GASTON: Credibility instruction?

14 MS. MACHNICH: No.

15 THE COURT: We're on the evidence, not -- not believability. All right.  
16 So State instruction which begins, The evidence which you are to  
17 consider is given.

18 Let's go to the -- will be given.

19 Next instruction, The credibility or believability of a witness. I'm going  
20 to use the defense proposed instead, which is their page 5. I think it's -- I think it's  
21 a little bit more --

22 MS. MACHNICH: We can also remove that paragraph. That's gone.  
23 Yes.

24 THE COURT: Unless -- unless the State has an objection to the  
25 reference to a felony.

1 MS. MACHNICH: We -- we would actually request that that be  
2 removed now that that has not come out. So we would still request ours insofar  
3 as it's gender neutral.

4 MS. LEXIS: That's fine.

5 MS. MACHNICH: Given the witnesses that have testified.

6 MS. LEXIS: That's fine. I think that his or her is fine. The gender --  
7 make it gender neutral.

8 THE COURT: Yeah. So use the --

9 MS. LEXIS: Yeah.

10 THE COURT: -- defense proposed on page 5 without the last  
11 paragraph, because it's gender neutral.

12 MS. MACHNICH: Okay.

13 THE COURT: And the State proposed on believability will be deemed  
14 withdrawn.

15 MS. MACHNICH: Okay.

16 THE COURT: Okay?

17 MS. MACHNICH: Thank you.

18 THE COURT: All right. The next State proposed is, A witness who  
19 has special knowledge; you okay with that one?

20 MS. MACHNICH: Yes.

21 THE COURT: All right. That will be given.

22 Next State instruction, The elements of an intent to commit a crime  
23 are; any objection?

24 MS. MACHNICH: No, no objection.

25 THE COURT: Next instruction, In determining whether or not such an

1 act was done.

2 MS. MACHNICH: That appears to be a correct statement of the law,  
3 so we have no objection.

4 THE COURT: That will be given.

5 Next instruction, When a person has once done things which  
6 constitute an attempt; any objection?

7 MS. MACHNICH: No.

8 THE COURT: All right. That will be given.

9 Next instruction, As used in these instructions a deadly weapon  
10 means.

11 MS. MACHNICH: I -- as long as that is a correct statement of the law.  
12 I'm not familiar with the loaded or unloaded, operable or inoperable. If that is out  
13 of the statute, we have no objection.

14 MS. LEXIS: *Berry vs. State*.

15 THE COURT: Very good. That will be given.

16 Next instruction, The State is not required to have recovered.

17 MS. MACHNICH: Accurate statement.

18 THE COURT: That will be given.

19 The next instruction, In order to use a deadly weapon.

20 MS. MACHNICH: No objection.

21 THE COURT: All right. Next instruction, Robbery is the unlawful  
22 taking.

23 MS. MACHNICH: No objection.

24 THE COURT: All right. Next instruction, It is not necessary to prove  
25 both violence and intimidation?

1 MS. MACHNICH: No objection.

2 THE COURT: Next instruction, You are instructed that if you find the

3 defendant guilty of an attempt.

4 MS. MACHNICH: No objection.

5 THE COURT: Next instruction, You are instructed that if you find a

6 defendant guilty of robbery.

7 MS. MACHNICH: Yeah. With or without deadly weapon. Yeah. No.

8 It's -- it's a breakdown. I -- I don't have a problem with it.

9 THE COURT: Okay. Very good. Next -- so that one will be given.

10 Next instruction, A person who -- a person who by day or night enters

11 any house.

12 MS. MACHNICH: I -- I believe there is a typo in that one.

13 MR. GASTON: No, they're saying that the robbery is the underlying

14 offense that they're intending to enter when they enter them.

15 MS. MACHNICH: No, no, no. A person who -- a person who by day

16 or night.

17 MS. LEXIS: Oh, she's right.

18 MS. MACHNICH: I believe it just restates the first three words.

19 MS. LEXIS: It's a --

20 MS. MACHNICH: It's -- there's a typo.

21 THE COURT: All right. Well, the typo will fixed, so that will be given

22 without objection. Correct?

23 MS. MACHNICH: Correct.

24 THE COURT: Next one, Larceny is defined as the stealing.

25 MS. MACHNICH: I don't entirely see why that's relevant, but maybe



1 I've missed something.

2 MS. LEXIS: Well, it's just because with the burglary, we pled it as --  
3 to commit a larceny, assault, or battery on any person or -- or a felony.

4 MS. MACHNICH: And then in the State of Nevada the crime of  
5 robbery is a felony. I -- I mean, larceny is not surcharged in the case, so I don't  
6 think it's relevant on the grounds, I'll object. Otherwise, I will submit.

7 MS. LEXIS: We just pled it that way, Your Honor. It's an and/or on  
8 the burglary. So whether it was just to steal something or place --

9 THE COURT: Where is burglary defined?

10 MS. LEXIS: It was in --

11 MR. DICKERSON: In our first couple pages.

12 MS. LEXIS: It was in the first -- it's actually the one right before that, a  
13 person who by day or night enters any house, vehicle -- it's the one right before  
14 that, Your Honor. With the intent to commit larceny --

15 THE COURT: Oh, larceny is one of the predicates for --

16 MS. LEXIS: Right.

17 MR. DICKERSON: Yeah.

18 THE COURT: -- for -- for burglary, so I'll allow that. So you -- the  
19 State's larceny instruction is given over the objection of the State -- or over the  
20 objection of the defense.

21 Next, Assault is defined as.

22 MS. MACHNICH: Again, I think it's confusing, because that's not  
23 relevant in the case, but I'll submit.

24 THE COURT: All right. So that's -- assault instruction will be given  
25 over the objection of the defense.

1 Next, Battery is defined as; same thing?

2 MS. MACHNICH: Same thing, submit.

3 THE COURT: All right. That will be given over the objection of the  
4 defense.

5 Next instruction, It is not necessary that the State prove the defendant  
6 actually committed a larceny.

7 MS. MACHNICH: I have no objection to that. That appears to be  
8 correct law.

9 THE COURT: All right. That will be given. Thank you.

10 Next instruction, The intention which -- with which entry was made is a  
11 question of fact.

12 MS. MACHNICH: Yes, that's fine.

13 THE COURT: That'll be given.

14 Next instruction, The mere fact that a person was in conscious  
15 possession of stolen property, et cetera.

16 MS. LEXIS: I put that for the defense. I mean, I -- because he  
17 conceded in opening that he had possession of that stolen property, I put that in  
18 there for them, but --

19 MR. GASTON: Is that a lesser -- or is that a lesser -- going to be a  
20 lesser included?

21 MS. LEXIS: No.

22 MR. GASTON: Or a lesser offense?

23 MS. MACHNICH: I -- I -- in ours, we have it requested. But --

24 MR. GASTON: Obviously, if the court gives the lesser offense, then  
25 we think the instruction should be given.

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1 MS. LEXIS: It's up to you guys, but --

2 THE COURT: You don't want it? We'll take it out. I need -- I need an  
3 answer.

4 MS. MACHNICH: Your Honor, this is the first time I'm looking at it. I  
5 just need to think about it for a second. I -- I'm really sorry.

6 THE COURT: Okay.

7 MS. MACHNICH: I haven't seen this specific instruction before, so.

8 MS. LEXIS: I guess while she's doing that, it kind of brings up this  
9 whole point of when you opened, you made certain admissions. And so when I  
10 prepared -- when I was thinking and putting these jury instructions together, I had  
11 that in mind. But none of that's been proven, really.

12 MR. GASTON: I think the last --

13 MS. LEXIS: Because there's no admission in terms of evidence that  
14 he possessed anything, but.

15 MR. GASTON: I think the lesser should be on -- I mean, my position  
16 would be the lesser should be on the verdict form and the -- then we should  
17 define what the lessers are. That would be my position.

18 MS. MACHNICH: Well, let's get to those, because they're ours.

19 MR. GASTON: It answers this question.

20 MS. MACHNICH: It does. Can we -- can we come back to this,  
21 Your Honor?

22 MR. GASTON: I think we should make it conditional, I mean --

23 THE COURT: All right. Question mark on this one.

24 MS. MACHNICH: Thank you.

25 THE COURT: All right. Next instruction, An entry is deemed

1 complete when.

2 MS. MACHNICH: No objection.

3 THE COURT: All right. That will be given.

4 Next instruction, To prove an entry in establishing the crime of  
5 burglary.

6 MS. MACHNICH: I feel like there's a lot of burglary ones, but that is a  
7 correct statement of law. So.

8 THE COURT: Okay. It'll be given.

9 Next, Every person who commits the crime of burglary who has in his  
10 possession or gains possession.

11 MS. MACHNICH: We have no objection to that one.

12 THE COURT: That one will be given. Thank you.

13 Next one, Any person who possesses a credit card without consent.

14 MS. MACHNICH: No objection.

15 THE COURT: That will be given.

16 Next instruction, In a criminal prosecution for possession of a credit  
17 card.

18 MS. LEXIS: The first paragraph is statutory. I added the -- the  
19 second paragraph for -- in favor of the defense, so that they'd know that I -- we  
20 have to prove all of the other evidence before the inference can be drawn.

21 MS. MACHNICH: Let me just read that. Is it two or more or more  
22 than two?

23 MS. LEXIS: It's two or more.

24 MS. MACHNICH: I mean, I'm -- I'm reading this as two or more, but  
25 I --

1 MS. LEXIS: I -- I can pull up the statute, but it's two or more.

2 MS. MACHNICH: I would like a chance to review the statute on that  
3 one.

4 THE COURT: You can review it and raise any new objection  
5 tomorrow. I'm inclined -- I'm -- for the record, though, I'm giving this one. So in a  
6 criminal prosecution, it is being given.

7 Next one, A person --

8 MS. MACHNICH: Your Honor, I've been clarified. It's fine.

9 THE COURT: Okay. Thank you.

10 MS. MACHNICH: Yep.

11 THE COURT: Next -- so it is given.

12 Next one, A person who possesses, sells, or transfers.

13 MS. LEXIS: That one's straight out of the statute.

14 MS. MACHNICH: I'm just reading it. No objection.

15 THE COURT: Great. That will be given.

16 Next one, You are here to determine the guilt or innocence of the  
17 defendant.

18 Oh, wait, this is a duplicate.

19 MS. MACHNICH: Wait.

20 THE COURT: So let -- let's -- I'm asking the State to withdraw this.  
21 This is an exact duplicate of one that you have earlier.

22 MS. LEXIS: Okay. I apologize. Sorry about that.

23 THE COURT: Next one, Portions of the defendant's statements to  
24 police have been admitted in this case. Basically, telling them that some have not  
25 been given. And they're not to speculate on what's not in the portions that were

1 given.

2 MS. MACHNICH: I mean, are we talking about the jail calls? Are  
3 we -- I mean, are they intending to bring in the statement --

4 THE COURT: Well, it says statements to police, not jail call. This  
5 isn't dealing with the jail calls.

6 MS. MACHNICH: Okay.

7 THE COURT: All right. So this will be given.

8 The next one, The flight of a person immediately after the commission  
9 of a crime. I think the defense had an alternate flight instruction.

10 MS. MACHNICH: We -- and yes we have --

11 THE COURT: But the --

12 MS. MACHNICH: We have a reverse flight instruction, as well.

13 THE COURT: Yeah. Hold on. Let me see. The defense flight  
14 instruction is -- is pertaining to flight after defendant is accused of a crime. The  
15 State flight instruction pertains to flight after the commission of a crime.

16 MS. MACHNICH: I -- I mean, I think they'd be appropriately given  
17 together.

18 MR. GASTON: Your Honor -- Your Honor, with respect to the State's  
19 flight instruction, Nevada is pretty clear, and I'm sure it's the -- I don't have the  
20 citation version.

21 THE COURT: I got them all.

22 MR. GASTON: But I'm sure it's what the citations are. The Nevada  
23 law is pretty clear in the federal circuit -- all the cases that deal with flight  
24 instructions is that it's not automatically given. There must instead -- it's -- it's  
25 similar to *Sanborn*, in that there must be predicates that are met. Specifically, the

1 State must show, in order to warrant a flight instruction, they must show a  
2 nonbroken chain of inferences from the flight -- from the -- from the flight to the  
3 defendant to consciousness of guilt.

4 And in this case, the defendant, specifically -- it's not that the robber  
5 fled after committing a robbery. They have to show that the defendant fled, and  
6 that shows consciousness of guilt. The defendant didn't flee anything. The  
7 defendant was in the apartment, pretended to be asleep, and then got arrested.  
8 So there's no -- there's no evidence of flight of the defendant.

9 There's evidence that the robber fled or the robber finished a robbery  
10 and went on to do more robberies and they've identified that as being Keandre.  
11 But that's not the same thing as giving a flight instruction. Because otherwise,  
12 why wouldn't you just give a flight instruction every single case ever, where the  
13 defendant did something and then left. That's not how it works.

14 You must show a nonbroken chain of inferences from flight to  
15 consciousness of guilt. And in this case the defendant didn't even flee, which is  
16 why we proposed a reverse flight instruction, because we think that there could be  
17 an inference from the fact that the defendant didn't flee to -- to the other  
18 argument.

19 I'm not trying to get into that argument and justifying that. Tegan can  
20 do that if she wants.

21 But with the State's flight instruction, I don't think they met the  
22 sufficient evidence to warrant giving a flight instruction.

23 THE COURT: So does the State have an argument as to whether the  
24 evidence shows consciousness of guilt, based on him going back to the  
25 apartment?

1 MS. LEXIS: We'll submit to the court. I don't even -- I don't even -- it  
2 doesn't matter to me. I --

3 THE COURT: I'm looking at *McGuire v. State*. I don't think so the  
4 evidence in this case rises to the standard of -- of a deliberate attempt to avoid  
5 apprehension through -- by virtue of a flight, from parking the car and going  
6 upstairs to the apartment.

7 MR. GASTON: Thank you, Your Honor.

8 THE COURT: It has to be more than that. So I'm not going to give  
9 any flight instruction, based on this evidence. I don't remember anybody even  
10 arguing flight in opening statement.

11 So. All right. So no flight instruction. So this is not given. I'll mark it  
12 for the record and -- and give it to the court -- the court person.

13 MR. GASTON: Is the court also indicating it's not giving our reverse  
14 flight instruction?

15 THE COURT: I'm not giving either.

16 MR. GASTON: Thank you.

17 THE COURT: All right. Next instruction, It is a Constitutional right of  
18 the defendant.

19 MS. MACHNICH: No objection.

20 THE COURT: Okay. So that one will be given.

21 Next instruction, Although you are to consider only the evidence in the  
22 case in reaching a verdict.

23 MS. MACHNICH: No objection.

24 THE COURT: That will be given.

25 Next one, In your deliberation, you may not discuss or consider the



1 subject of punishment.

2 MS. MACHNICH: No objection. Oh, actually, I do have an edit on  
3 this one. I may have proposed it. It's your -- your duty is confined to the  
4 determination of -- and we believe the correct law would be whether the  
5 defendant is guilty or not guilty.

6 THE COURT: Didn't we already say that a million times?

7 What's the State's position?

8 MS. LEXIS: I'm okay with adding -- I mean, with -- with it changing to  
9 the whether he's guilty or not guilty. That's fine.

10 THE COURT: Okay. So the --

11 MR. DICKERSON: Defense.

12 MS. MACHNICH: Defense 4, page 4.

13 THE COURT: -- defense page 4 will be given. All right.

14 All right. The next State proposed instruction, During the course of  
15 this trial and in your deliberations, you are not to. I'm not going to give this,  
16 because I think it's confusing and not accurate.

17 MS. LEXIS: Okay.

18 THE COURT: A lot of these things they're supposed to do.

19 MS. LEXIS: Okay.

20 THE COURT: So please will State just withdraw this one?

21 MS. LEXIS: Yes.

22 THE COURT: All right. Thank you.

23 Next instruction, When you retire to consider your verdict. Can we  
24 give that without objection?

25 MS. MACHNICH: Of course.

1 THE COURT: Okay. Next instruction, If during your deliberations.  
2 This -- the one dealing with read backs should be withdrawn and we'll give the  
3 next one on playbacks, is that okay?

4 MS. MACHNICH: Yes.

5 MS. LEXIS: Yes, Your Honor.

6 THE COURT: So this is withdrawn.

7 Next instruction, If during your deliberation, et cetera, on playbacks.  
8 That will be given without objection?

9 MS. MACHNICH: Yes.

10 THE COURT: Next instruction, Now you will listen to the arguments  
11 of counsel. Given without objection?

12 MS. MACHNICH: Yes.

13 THE COURT: Next instruction -- or there is no more instructions.

14 Let's look at some of the -- let's look at the defense right away. Okay.

15 MS. MACHNICH: Okay.

16 THE COURT: Okay. Defense proposed instruction, circumstantial  
17 evidence, page 6, Before you may arrive at circumstantial evidence, et cetera.  
18 What do you guys want to say on that? Does the State object to that?

19 MS. LEXIS: Court's brief indulgence.

20 I haven't had a chance to look at this particular --

21 THE COURT: I've seen it many times.

22 MS. LEXIS: -- case.

23 THE COURT: So I don't think this is a circumstantial evidence case,  
24 but you guys tell me what you think.

25 MR. DICKERSON: No. And Your Honor, we object to it given the fact

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1 that it's misleading to the jury. This two reasonable interpretations type of  
2 *Sopranovich* [phonetic] instruction would lead a person to believe that they need  
3 to consider each piece of circumstantial evidence in a vacuum. And when, in  
4 reality, that's the misleading part. In reality they can consider all circumstantial  
5 evidence together to show and prove that the person is, in fact, guilty.

6 So it -- it leads a jury to try to compartmentalize circumstantial  
7 evidence, instead of considering everything as a whole under the totality of the  
8 circumstances analysis that they are here to do.

9 THE COURT: This side?

10 MR. GASTON: Your Honor, with respect to Mr. Dickerson's position,  
11 the Nevada Supreme Court disagrees. And this -- this *Sopranovich* case kind of  
12 came from a situation where our office, in a murder case, kind of cherry picked  
13 the language we like from this instruction, submitted it, got it approved. The State  
14 appealed it, and the Supreme Court struck us down -- or struck that court's ruling  
15 down, and found that the cherry picked instruction isn't fair. It's misleading, it's  
16 confusing.

17 What they said was two points. Number one, they put the specific  
18 instruction -- we have taken that word for word from the *Sopranovich* case. They  
19 said if the instruction is going to be given, it needs to be given in this form, that we  
20 can't just cherry pick our favorite line from it. And we get that. That's why we've  
21 included the instruction as a whole. They said this is a correct statement of the  
22 law. If it's going to be given, this is the one that should be given.

23 They also said a second point, that it's discretionary and it's up to the  
24 court. They didn't say you can't. They didn't say you have to. My position would  
25 be, personally -- so with respect to the misleading aspect, that's what I meant by

1 the Nevada Supreme Court disagrees. This is a correct statement of law. It's the  
2 one they formulated.

3 With respect to the discretionary point and the court's question about  
4 circumstantial evidence, this case is all circumstantial evidence. We have the  
5 identifications based on various circumstances, and we have put on a lot of  
6 evidence to -- to contest those.

7 But there is circumstantial evidence. He's found in the stolen  
8 property. Omara McBride pawned these items, and blah, blah, blah. Everything  
9 in this case is circumstantial, other than arguably the identifications, which we're  
10 contesting largely based on various things.

11 But because a lot of the evidence, the corroborating evidence, so to  
12 speak, that the State's going to make a big deal of, is circumstantial evidence, we  
13 think that is critically important in this case.

14 And also, furthermore, it's not a rule of law that's somewhat obviously  
15 apparent. I was surprised when I read it, and then I thought about it, and I get it.

16 It's just from knowing reasonable doubt and presumption of  
17 innocence. It doesn't -- this isn't a -- this isn't a new principle of law, so to speak,  
18 as it is an -- unusual or nonobvious extrapolation, which makes it not cumulative.  
19 It's not cumulative. It is a separate point that it is making.

20 And the point is, if there are two reasonable conclusions, it is your  
21 duty as a matter of law to adopt the one that's based on not guilty. And I don't  
22 think so that's a very obvious point from the other instructions. And it's critically  
23 important, especially in a case like this, where there are literally two hypotheses  
24 putting forth to the jury. Keandre did it; Bobby did it.

25 If both are reasonable, it is their duty to adopt the one that points to

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1 not guilty. And I don't think that's a very obvious point from the other instructions,  
2 and I think it's critically important in a case like this.

3 THE COURT: I -- I think it's completely unnecessary. The jury's  
4 already instructed properly on reasonable doubt, and so I'm not going to give it.  
5 And I'm relying on the *Troy Donahue* case, May 31, 2016, No. 68, 398 is pretty  
6 instructive in this case. And I -- I don't think circumstantial evidence is a big part  
7 of this case. So I'm not going to give that one. I marked it rejected and I'll give it  
8 to the court clerk.

9 The next one is the jail calls. We are going to give this one, right?

10 Page 9?

11 MR. GASTON: We are or are not.

12 THE COURT: We are. Right? The State?

13 MS. LEXIS: Yes, that's fine.

14 THE COURT: That -- that'll be given. Page 9.

15 Next one is page 10, State failed to present the -- preserve the video.  
16 Anything more you wanted to say on that one?

17 MR. GASTON: On our next instruction, I want to talk more about the  
18 gross negligence. But on this one, I'm going to submit largely on the evidence  
19 that he collected this video that would have showed the car, could have shown  
20 the face of the person, it could have shown things that could be exculpatory. He  
21 received video. It was in working condition when he received it. We know this  
22 from the testimony of the position of the witness we called in our case in chief.  
23 We know he did receive it, because he put it in his police report. And we also  
24 know that it no longer exists, because it was never disclosed to us and never  
25 seen it. And the State has told us it no longer exists.

1 THE COURT: All right. I'm rejecting No. 10 based on the prior  
2 comments in the record, but without waiver of your right to -- to make your  
3 argument after trial.

4 MR. GASTON: [Indiscernible.]

5 THE COURT: Page 11 is the State failed to preserve show up  
6 identification form based on prior discussions. I'm also rejecting that one --

7 MR. GASTON: Your Honor, may I ask --

8 THE COURT: Hold on. I'm talking. All right.

9 MR. GASTON: Oh, I'm sorry.

10 THE COURT: I'm rejecting that one, as well, based on the record that  
11 we already have. You can make a further record on that after trial, if you want to.  
12 Or right now, if you want to.

13 MR. GASTON: I'd like to do it now, since we're here doing jury  
14 instructions.

15 THE COURT: But stick -- stick to a minute.

16 MR. GASTON: Sure. On the last -- the last point I was trying to make  
17 on the instruction we just passed is also the State implied during  
18 cross-examination that perhaps the video was lost during an error, and that was  
19 not substantiated by the detective's testimony. So we do think that rises to the  
20 level of gross negligence.

21 With respect --

22 THE COURT: Are you sure that he said --

23 MR. GASTON: Yeah. He said -- he said he doesn't remember any  
24 file being corrupted --

25 THE COURT: He said he -- well, he didn't know -- he didn't know how

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1 it could have been --

2 MR. GASTON: He says -- he says he doesn't remember any file  
3 being corrupted. That was the answer. I mean, the record speaks for itself, but --

4 THE COURT: It does speak for itself. Well, since -- well, does the  
5 State want to have anything in the record on the jury instructions on this point?

6 MR. DICKERSON: Absolutely. We oppose the proposed  
7 instructions, Your Honor. This would -- if any --

8 THE COURT: I don't know. I just don't think it rises to the level of  
9 gross negligence.

10 MR. DICKERSON: Right.

11 THE COURT: I mean, there's -- there might have been some  
12 negligence here. I don't think there's evidence of gross negligence.

13 MR. DICKERSON: Right. And, Your Honor, I -- I do actually have a  
14 bench memo on this topic. But the whole issue would come down to the fact that  
15 this, first of all, was not bad faith. And second of all, if the only other way to get  
16 there would be if it was the apparent value of it -- of this material was realized, the  
17 exculpatory value was realized at the time it was destroyed, and the defense is  
18 prejudiced by that.

19 In fact, we have corroborating evidence through Ms. Lexis herself that  
20 could tell you how everything happened and that there are e-mails to -- to back up  
21 the fact that it was a corrupted file.

22 THE COURT: Well, if they file a motion after trial --

23 MR. GASTON: That's not --

24 MS. MACHNICH: Wait. We haven't seen that.

25 THE COURT: -- we might have to do an evidentiary hearing, which is

1 what -- which is a remedy that the court might allow.

2 MR. DICKERSON: And based on the fact that it -- if anything, it's not  
3 failure to collect. It's a -- it would be a failure to preserve. So there's no bad faith.  
4 And there's no prejudice and no apparent exculpatory value that was realized at  
5 the time.

6 So without those, Your Honor, it has to be denied.

7 MR. GASTON: And Your Honor, I don't think I made my initial record  
8 on the -- the second instruction with respect to gross negligence.

9 THE COURT: Go ahead. No, you didn't. Go ahead.

10 MR. GASTON: If the -- I'm arguing --

11 THE COURT: There's the showup form.

12 MR. GASTON: The showup form is what I'm talking about.

13 THE COURT: Yeah. And I -- I -- I think I made my record clear, so I  
14 didn't need to say anything more on that.

15 MR. GASTON: No. I get that. I -- I just want to -- after he testified, I  
16 want to talk about why there's gross negligence.

17 Previously, we addressed why I thought it was material and  
18 exculpatory value. I don't think I need to reiterate those. I think that's pretty  
19 obvious.

20 I'm not arguing bad faith. I'm arguing gross negligence.

21 His testimony at trial as to why he lost this form is literally, I don't  
22 know. I don't know what else I possibly could have brought out, if we were  
23 designing the fact pattern for a law school first-year essay that could have shown  
24 gross negligence? What else facts -- other than maybe he brought it home with  
25 him and left it in the toilet. I don't know what I could possibly bring out in facts that



1 would show gross negligence that didn't already come out.

2 He has something that's clearly of value, in a big robbery case,  
3 decades in prison, potentially. He has it. He lost it. And the fact -- even if the  
4 court denies -- the court did deny my previous instruction with respect to the  
5 video, it still all goes together.

6 Detective Majors' involvement in this case as the lead detective, he  
7 collected two pieces of evidence that we know of; a showup form from Darrell  
8 Faulkner and a video from EZPAWN. Both of these items were lost.

9 This is a guy who exercised absolutely no care whatsoever with  
10 critical pieces of evidence, thereby depriving us of opportunity from ever seeing it.  
11 I don't understand how that's not gross negligent.

12 THE COURT: And so you have to excuse me, sir, because I have to  
13 go. So I'm -- the rest -- the rest of these instructions -- I'm planning -- I'm planning  
14 to let the State's 12, 13, and 14 go in. And -- but not the rest of them.

15 I -- you guys, I have to go. We'll be back here tomorrow at -- what  
16 time? Tell them what time. 1:00. I'm late for an appointment.

17 MR. GASTON: Okay.

18 THE COURT: 1:00 tomorrow, you can have more time to put on more  
19 records.

20 I'm asking the State to have compiled the final jury instructions based  
21 on everything I've said.

22 MR. DICKERSON: Yes, Your Honor.

23 THE COURT: All right. Thank you. And I'll get the -- the clerk the  
24 other ones that are not admitted later.

25 [Court recessed at 5:43 p.m., until August 3, 2017, at 11:06 a.m.]

1 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
2 audio/video proceedings in the above-entitled case to the best of my ability.  
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7 Shawna Ortega, CET\*562  
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RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
vs.  
KEANDRE VALENTINE,  
Defendant.

CASE NO. C-16-316081-1  
DEPT. NO. II

BEFORE THE HONORABLE RICHARD SCOTTI, DISTRICT COURT JUDGE

**THURSDAY, AUGUST 3, 2017**

**TRANSCRIPT OF PROCEEDINGS RE:  
JURY TRIAL - DAY 9**

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**APPEARANCES:**

For the Plaintiff:

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MICHAEL DICKERSON, ESQ.  
Deputy District Attorney

For the Defendant:

TEGAN C. MACHNICH, ESQ.  
Deputy Public Defender  
TYLER GASTON, ESQ.  
Deputy Public Defender

RECORDED BY: DALYNE EASLEY, COURT RECORDER

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1 **LAS VEGAS, NEVADA, THURSDAY, AUGUST 3, 2017**

2 [Case called at 11:06 a.m.]

3 [Outside the presence of the jury.]

4 THE COURT: Thank you for accommodating my schedule. I had to  
5 run -- kind of run out of here in a hurry last night. I had a 6:30 appointment in  
6 Henderson I couldn't be late for.

7 MS. LEXIS: Of course.

8 THE COURT: So thank you.

9 MS. LEXIS: Thank you.

10 THE COURT: And I'd be available now to finish discussing jury  
11 instructions, I appreciate that. Thank you.

12 MR. GASTON: Were -- were you in a hurry, Judge? We didn't even  
13 notice. I -- I --

14 THE COURT: It was nothing to do with you guys. I had to -- I had to  
15 be out of here. So all right. So let's finish where -- wherever we left off. I think --  
16 it looks like the State gave me the revised set. And -- and let's go to -- I'm trying  
17 to think. Let's go -- we've got assault -- well, we finished all the State's set. Let's  
18 go to --

19 MS. LEXIS: Your Honor, may we -- I'm so sorry.

20 THE COURT: No, no. However you want to do this.

21 MS. LEXIS: We have horrible -- we have a horrible computer  
22 problems at the DA's office.

23 THE COURT: Oh.

24 MS. LEXIS: It's, like, office wide. So I -- the copy that I printed was  
25 the wrong one that I sent you. So I don't have a current version and neither does

1 Mr. Gaston.

2 MR. GASTON: That was the same copy I got, was the original copy.

3 THE COURT: Oh, could --

4 MS. LEXIS: Could we please get a copy?

5 THE COURT: Oh, of what I have now?

6 MS. LEXIS: Yes.

7 THE COURT: So you don't have this one?

8 MS. LEXIS: I don't have that one that I last e-mailed to Stephanie.

9 THE COURT: I have all these tab Post-Its on it now.

10 MS. LEXIS: Can you print another --

11 THE COURT: Well --

12 MS. LEXIS: -- one, Stephanie?

13 THE COURT: Yeah. Do you know how to print this?

14 THE CLERK: Yeah, I printed it for you.

15 THE COURT: Can you -- well, can you get it to them? Do you  
16 need -- do you need this to print it?

17 THE CLERK: No. It will just take me longer to print than to copy. So  
18 it might be a couple minutes.

19 THE COURT: Okay.

20 MS. LEXIS: I'm -- I'm sorry, Your Honor. It was the wrong copy.

21 MR. GASTON: I think I had just -- if I remember right, I just finished  
22 making a record on why I felt that it was gross negligence. The court denied it  
23 and then left. I think he gave tentative rulings on the last --

24 MS. LEXIS: He did.

25 MR. GASTON: -- few instructions.

1 THE COURT: So let's go to, like, the defense proposed -- well, let's at  
2 least discuss them --

3 MS. LEXIS: Okay.

4 THE COURT: -- while you're waiting for the copies. I'm just going to  
5 bring one up, page 12 of the defense proposed. You guys probably have all of  
6 that from yesterday.

7 MS. LEXIS: Yes.

8 THE COURT: Oh, Mr. Gaston --

9 MR. GASTON: No. I know -- I know what we're talking about.

10 THE COURT: I'll read it into the record. It says:

11 If the State --

12 Basically, it's like a counterinstruction.

13 If the State fails to prove beyond a reasonable doubt that the  
14 defendant personally committed the robberies and burglaries charged in  
15 Counts 1 through 11, then you must find the defendant not guilty of those  
16 charges.

17 It's basically saying, you know, if you -- if the State doesn't meet its  
18 burden, then they're not guilty. I think it's a correct statement of the law. But I  
19 needed to hear from the State on that.

20 MS. LEXIS: I understand, Your Honor. I included it in the revised  
21 packet, knowing the court was ruling that way.

22 THE COURT: I'm inclined to give it, yeah.

23 MS. LEXIS: That's no problem.

24 THE COURT: All right. But -- but -- all right. Anything -- any other  
25 record you want to make on that?

1 MS. LEXIS: No.

2 THE COURT: Okay. Page 13, also -- it's the same thing, it's -- it's  
3 one that, If the State fails to prove beyond a reasonable doubt instruction. My  
4 tentative is to include that.

5 Do you want to make a record or just submit it?

6 MS. LEXIS: Submit it, Your Honor.

7 THE COURT: All right. And then page 14 was one that says, again:  
8 If the State fails to prove beyond a reasonable doubt that the  
9 defendant possessed the driver's license.

10 Et cetera --

11 MS. LEXIS: Submit.

12 THE COURT: Okay. Submit. All right.

13 Let's see. Page 15 from the defense set:

14 A person commits an offense involving stolen property. If the person  
15 for his or her own gain or to prevent the owner from again possessing the  
16 owner's property, buys, receives, possesses, or withholds property, knowing  
17 that it is stolen property or under such circumstances as should have caused  
18 a reasonable person to know that it is stolen property.

19 This one I wasn't sure about. I guess I'm leaning towards allowing it,  
20 but I -- but it -- but it seems to me to be the definition of the crime of possessing  
21 stolen property, which I don't think was charged here.

22 MS. LEXIS: That's correct.

23 THE COURT: So I -- I wasn't sure why the defense included it. But  
24 let's first hear from the State if they have any opposition to it.

25 MS. LEXIS: I do have an opposition to it, only because there's been



1 absolutely no evidence, particularly possession of stolen property isn't charged.  
2 There hasn't been any allegation that he just possessed stolen property. It's not --  
3 it's not a crime that we've charged here.

4 I understand from the defense point of view that Mr. Gaston, when he  
5 opened, made admissions about the defendant being guilty of possession of  
6 stolen property and obstructing, and all of these things. But evidence involving  
7 those admissions made by the defense during opening never came in, so.

8 THE COURT: That -- that he -- did -- did -- is -- is possession of the  
9 property an element of any of the offenses that are charged?

10 MS. LEXIS: No.

11 THE COURT: Because if possession was an element, then this  
12 might -- it might make this a lesser-included offense.

13 MS. LEXIS: It is not. It is not, Your Honor. It's robbery with use of a  
14 deadly weapon, which doesn't even necessitate possession for any given point in  
15 time. It's stealing an item. Doesn't necessarily mean the afterwards of continuing  
16 to possess it as charged in this particular case, because as it -- it pertains to the  
17 credit cards and the phones and things like that. I don't think that that necessarily  
18 carries over.

19 For instance, in gun crimes, I don't charge robbery with use of a  
20 deadly weapon and then the defendant for possessing the stolen property,  
21 because I feel like it's part of one incident. And in order to have taken the  
22 property, he possessed it at some point, whether it's at the time that he stole it or  
23 at that time that it was recovered, if it -- if it is, in fact, recovered.

24 THE COURT: Right. Well, but you do -- let's see, you do have  
25 possession of credit or debit card. So --

1 MS. LEXIS: I don't think it's a lesser of anything, of any of the  
2 charges.

3 THE COURT: Well, a lesser included is just -- is basically any -- any  
4 crime that has a subset -- an exact subset of the elements of another crime.

5 MS. LEXIS: Mr. Dickerson was so kind to put together a bench  
6 memorandum on lesser included. May I approach?

7 THE COURT: Yes.

8 MS. LEXIS: Thank you. And I'll give Mr. Gaston a copy, as well.

9 THE COURT: Yeah. Thank you.

10 MS. LEXIS: Thank you, Your Honor.

11 I think it pretty succinctly points out the analysis.

12 MR. GASTON: Trouble with the bench memo, it doesn't seem to  
13 state a different set of law than what the court just said.

14 THE COURT: Okay.

15 MR. GASTON: It's -- it's a lesser included if it has -- if it's a subset.

16 MS. LEXIS: And I have --

17 THE COURT: So -- so -- I mean, generally, what I do because I have  
18 these lesser-includes come up, I usually, like, on the left side right down the  
19 elements of what's charged.

20 MS. LEXIS: Right.

21 THE COURT: And on the right side, I write down the elements of the  
22 alleged lesser-included. And if -- you know, if what's on the right is a subset of  
23 what's on the left, then -- then I find that it's a lesser-included. I mean, you  
24 know -- now, the lesser-related, I don't give that. A lesser-included, you know,  
25 generally if the evidence -- if there's evidence introduced to support the

1 lesser-included, then I give the lesser-included.

2 MS. LEXIS: So what offense is the court considering giving this?

3 THE COURT: Well, no, it's not burden to -- for you guys to prove to  
4 me if -- if the -- if the plaintiff -- if the defense wants to show that it's  
5 lesser-included, they've got to -- they've got to prove to me what are the elements  
6 on the left side and what are the elements on the right side, and prove that there  
7 exists -- there -- it's a subset.

8 So no one's proved to me yet that it's lesser-included. So.

9 MS. LEXIS: Okay.

10 THE COURT: I'm -- I'm not doing your homework for you.

11 MR. GASTON: No. I didn't -- I was just waiting -- I was waiting my  
12 turn. I was --

13 THE COURT: Okay.

14 MR. GASTON: I believe it is a lesser-included, especially if  
15 specifically we can focus on possession, for example, of credit cards without  
16 cardholder's consent. Because the elements of that is you have credit cards that  
17 belong to someone else and you intend to use them fraudulently. And if you have  
18 over two, there's a presumption that you do intend it.

19 THE COURT: So -- so --

20 MR. GASTON: Because someone --

21 THE COURT: Possession and intent to use it?

22 MR. GASTON: Yep.

23 THE COURT: Possession, cards of another, intent to use them?

24 MR. GASTON: Yep. And --

25 THE COURT: Those are the three elements? All right. All right.

1 Well, hold on. Let me just write those down.

2 MS. LEXIS: Do you want to do that? I mean, PSP is a C.

3 MR. GASTON: No. It -- it's a --

4 MS. LEXIS: Well, you're trying to go for the misdemeanor?

5 MR. GASTON: Yeah. Possession of stolen property, it's only a C if it  
6 has a value over something, right?

7 THE COURT: All. Right. So possession, cards of another, and intent  
8 to use. And why -- and what are -- what are you -- what's the lesser-included?

9 MR. GASTON: Possession, cards of another. So it's -- it's,  
10 essentially, the same crime. You're possessing property --

11 THE COURT: You just don't need to show the intent to use the -- you  
12 don't need to show the intent to do something with that stolen property in the  
13 future?

14 MR. GASTON: Correct. And obtaining it or -- or whatever the other  
15 one was, possessing personal identifying information of another, I would argue  
16 same -- same premise, lesser-included there, too.

17 THE COURT: Won't it be confusing to the jury to have a  
18 lesser-included instruction for a count that's not on the verdict form?

19 MR. GASTON: Well, I want the count to be on the verdict form.

20 I don't think it -- I don't know if Tegan submitted a verdict form. But if  
21 she didn't, I'm going to make the executive decision here. We want the -- that --  
22 that's the whole point here. We -- I mean, I don't really see a point of --

23 THE COURT: Well, can you interrupt -- or can you excuse me one  
24 second. I need to ask my law clerk a question. All right?

25 There's a file I want you to get. It's -- it's in my credenza, lower, lower

1 lateral. It's called lesser-included/lesser-related. It's a file. Will you go get it?

2 Thank you. All right.

3 MR. GASTON: And I'm -- I'm asking for that to be on the verdict form,  
4 possession of stolen property, as a misdemeanor. We don't call it a  
5 misdemeanor, you know, we don't -- we don't label it or whatever, but --

6 THE COURT: No. You don't label it.

7 MR. GASTON: -- possession of stolen property. I feel it's a  
8 lesser-included of possession of those specific items with intent to defraud. So.

9 THE COURT: Well, Ms. Lexis, there is evidence that there are stolen  
10 goods or -- or purportedly -- there is evidence that the goods that were found in  
11 Apartment 218 --

12 MS. LEXIS: 218. Good memory, Judge.

13 THE COURT: -- 218 were -- were, in fact, stolen. And there's  
14 argument that -- that they were perhaps in the possession, custody, or control of  
15 the defendant, given that -- given that he had -- well, he acknowledged touching  
16 the gun and -- and taking it apart.

17 MS. LEXIS: But that wasn't proven at trial. That was only in opening.

18 MR. GASTON: We don't have to prove anything. We just have to --

19 MS. LEXIS: He hasn't acknowledged anything.

20 THE COURT: I think -- you put on that evidence of the jail calls. He  
21 said in the jail calls that he took the guns apart and hid them around the  
22 apartment. That was your evidence.

23 MS. LEXIS: Well, the gun. The gun.

24 THE COURT: Yeah.

25 MS. LEXIS: But that -- the gun's not stolen, that we know of.

1 THE COURT: Oh, the gun wasn't stolen. Okay.

2 MS. LEXIS: He didn't acknowledge moving anything else in the jail  
3 calls. He didn't talk about the credit cards, the ID, the phones. He didn't talk  
4 about any of that, just the gun.

5 THE COURT: So he didn't admit he possessed them. But you're  
6 saying there's no evidence --

7 MS. LEXIS: Yes.

8 THE COURT: -- that he possessed them?

9 MS. LEXIS: I mean, technically, because when Mr. Gaston --

10 THE COURT: I mean, you're -- that -- hold on for a second.

11 You're not suggesting that this -- the defense only gets a  
12 lesser-included if it puts on the evidence that it -- it committed the  
13 lesser-included?

14 MS. LEXIS: No, not at all.

15 THE COURT: All right. But if there's any evidence in the record that  
16 would support a lesser-included, I should consider giving it.

17 MS. LEXIS: Yes, of course.

18 THE COURT: So --

19 MS. LEXIS: And if it falls within *Blockburger* and -- and you know  
20 other cases, where it -- where it meets the definition, yes.

21 THE COURT: Okay. And so you're saying that there -- that there's  
22 no evidence for which a jury could infer that he was in possession of the stolen  
23 goods?

24 MS. LEXIS: There is absolutely evidence of it. But, I mean, we're  
25 arguing that it's our corroborating evidence that he was in possession of the

1 stolen property.

2 THE COURT: So there is evidence --

3 MS. LEXIS: And that there is --

4 THE COURT: -- for -- that the jury could believe that he was in  
5 possession of stolen goods.

6 MS. LEXIS: Right. I -- I'm sorry. I was just correcting the court in  
7 terms of what he had admitted. He didn't admit that.

8 THE COURT: Oh, oh, yeah.

9 MS. LEXIS: Yeah.

10 THE COURT: He -- he only admitted it as to the gun.

11 MS. LEXIS: Yes. Yes, Your Honor.

12 THE COURT: Yeah. But I'm -- -- but I'm thinking, couldn't -- isn't it a  
13 reasonable inference that if -- if the stuff was in his apartment --

14 MS. LEXIS: Uh-huh.

15 THE COURT: -- and he admitted having the gun, he admitted taking  
16 the gun apart. I think the jury could infer that he had possession of the stolen  
17 goods.

18 MS. LEXIS: Your Honor, as it pertains to the possession of credit  
19 card or possession of ID, I'll submit to the court in whether -- insofar as whether  
20 the possession of stolen property is a lesser-included. But I just don't think it's  
21 appropriate -- it's an appropriate lesser-included for robbery or burglary.

22 THE COURT: Oh.

23 MR. GASTON: It doesn't matter. I -- I just want it on the verdict form,  
24 possession of stolen property, specific to those items.

25 THE COURT: Well, we don't tell the jury what -- I mean, we don't tell

1 the jury it's one or the other. We just give them the options, and let them decide  
2 based on the evidence.

3 MR. GASTON: So it would be -- it would be a lesser-included --

4 MS. LEXIS: Well, I'm sorry.

5 MR. GASTON: -- under those specific charges, the possession of --

6 MS. LEXIS: Yes. That's -- that's what I'm saying.

7 THE COURT: Oh, you wanted lesser-included under -- under  
8 everything, and she says it should only be lesser-included to possession of the  
9 stolen credit cards?

10 MR. GASTON: Well, I mean, I agree with Ms. Lexis on possession of  
11 stolen property. It's a lesser-included of the -- of the possession --

12 MS. LEXIS: Of the credit card and ID.

13 THE COURT: The credit card drives.

14 MR. GASTON: Right. I think we're saying the same thing.

15 MS. LEXIS: We are.

16 MR. GASTON: We're on the same page.

17 MS. LEXIS: But not as it pertains to the burglary or the robbery with  
18 use.

19 MR. GASTON: And so it's like one count -- maybe one count of  
20 possession of stolen property or it would be a count for every item.

21 MS. LEXIS: One.

22 MR. GASTON: I think it's one count. Yeah. It's just -- it's just a  
23 separate verdict.

24 THE COURT: It's not one for each credit card.

25 MS. LEXIS: No.



1 MR. GASTON: It's just a separate -- it's -- it's not under anything on  
2 the verdict form. It would just be Count 15, possession of stolen property. Right?

3 MS. LEXIS: No. If -- if you're saying it's a lesser-included --

4 MR. GASTON: Well, then, how do you put that without putting it  
5 under --

6 MS. LEXIS: -- it needs to go underneath the possession of credit card  
7 without debit on that part of the verdict form.

8 THE COURT: Give me a second to find it.

9 MS. LEXIS: On that part of the verdict form.

10 MR. GASTON: I think it would go under each of the -- it would go  
11 under each of the verdicts that it's a lesser-included.

12 MS. LEXIS: Right.

13 MR. GASTON: Each of the counts that it's a lesser-included for.

14 MS. LEXIS: Correct.

15 MR. GASTON: And then just later, if -- if that's what they come back,  
16 it's not that he has three convictions of possession of stolen property, just one.

17 MS. LEXIS: Correct. One per count.

18 THE COURT: So --

19 MR. GASTON: Yeah. That's what -- yes. We're saying the same  
20 thing.

21 THE COURT: -- on the verdict form that I'm looking at proposed by  
22 the State, it looks like this wouldn't affect Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11.  
23 But when I get to Count 12, Count 12 is possession of document or personal  
24 identifying information. Are you saying that -- that it would be referenced under  
25 that?

1 MS. LEXIS: Yes.

2 THE COURT: So the -- one option would be guilty of possession of  
3 document or personal identifying information.

4 The next -- then we would have another -- add another box above not  
5 guilty, which would be --

6 MS. LEXIS: PS -- possession of stolen property, and then not guilty.

7 MR. GASTON: Correct.

8 MS. LEXIS: We can do that.

9 MR. GASTON: And then the same -- same principle for the other  
10 possession counts.

11 THE COURT: For 13 and 14?

12 MS. LEXIS: Correct.

13 THE COURT: All right. That will be the court's order. I am inclined  
14 to -- I -- I am going to give the -- I am going to allow the possession of stolen  
15 property instruction as requested by the defense, which is page 15.

16 MR. GASTON: Thank you.

17 THE COURT: So would the State please add that?

18 MS. LEXIS: Yes, Your Honor.

19 MR. GASTON: Thank you.

20 THE COURT: All right. Next -- the next instruction -- what about this  
21 page 16:

22 Every person who after the commission of a felony destroys or  
23 conceals or aids in the destruction or concealment of material evidence.

24 Does the State have an opposition to that?

25 I don't think I made a ruling on that one. Or at least my -- my tentative

1 was not to give that one yesterday, when I was --

2 MS. LEXIS: Yes. There's been absolutely no evidence of the  
3 defendant doing any of this.

4 THE COURT: Is this referring to the video again? And the -- the  
5 showup form? I think that's what this relates to.

6 MS. LEXIS: No.

7 MR. GASTON: Or to accessory after the crime definition.

8 MS. LEXIS: This is their accessory after the crime.

9 MR. GASTON: Yeah.

10 MS. LEXIS: He's not charged with that. There's no evidence that he  
11 did any of that. This goes back to -- I mean, they claimed in opening statement,  
12 which is not evidence, that, you know, he saw the police, he panicked, Bobby just  
13 dropped off all the stuff. And -- and in his panic, he committed the crime of  
14 accessory after the fact, because he did X, Y, or Z. You know, he --

15 THE COURT: Oh, he hid the -- he hid the evidence.

16 MS. LEXIS: Right. But that's not evidence. That didn't come out  
17 during trial at all.

18 THE COURT: What didn't come out at trial?

19 MS. LEXIS: That he did any of that.

20 THE COURT: Well, the gun's evidence.

21 MS. LEXIS: That's -- that's true. The gun is evidence.

22 THE COURT: And he hid -- and he hid the gun.

23 MS. LEXIS: That's true.

24 THE COURT: So --

25 MS. LEXIS: But he's not charged with an accessory.

1 THE COURT: Okay. I -- I understand your -- is this another case  
2 where it's a lesser-included?

3 MS. LEXIS: I don't think so.

4 THE COURT: Let's see.

5 MS. LEXIS: No, it's absolutely not. Because --

6 THE COURT: Well, no, because it's a different -- it's a whole different  
7 element.

8 MS. LEXIS: It's a whole different crime.

9 MR. GASTON: It's a different crime.

10 THE COURT: It's a whole different crime.

11 MS. LEXIS: Right.

12 THE COURT: He wasn't charged with this?

13 MR. GASTON: Correct.

14 THE COURT: Why do you want a -- an instruction on a crime he  
15 wasn't charged with, it's not even lesser-included?

16 MR. GASTON: Two distinct -- two distinct issues.

17 THE COURT: Okay.

18 MR. GASTON: First, go ahead and make my brief request. I'm  
19 asking that the court give, as a lesser-related, on the verdict form of accessory to  
20 the crime.

21 THE COURT: Oh.

22 MR. GASTON: It is a separate felony crime. It's not like aiding and  
23 attempting where liability is imputed through some vicarious -- it's just a separate  
24 crime. I think it is a lesser --

25 THE COURT: So that is a separate crime?

1 MR. GASTON: Accessory to a felony. Or accessory after the fact.  
2 Actually, I don't know the exact title, but I can get it. But it -- it's the definition of --

3 THE COURT: Well, whatever the -- it might make a difference,  
4 because I need to know the elements.

5 MR. GASTON: It's the elements that's defined right there in the -- in  
6 the jury instruction.

7 THE COURT: Okay. Okay.

8 MR. GASTON: That defines the crime. That's from the statute.

9 THE COURT: All right.

10 MR. GASTON: And, basically, you help after the fact. So it wasn't --  
11 it's different than aiding and abetting, because it's not like you intended from the  
12 outset to complete the crime. It's Joe commits the crime, goes to Bob's house,  
13 and Bob helps him cover it up. Bob is guilty not of the initial crime, but he's guilty  
14 of a separate crime, a C felony, one to five years in prison.

15 So I'm asking first the instruction should be given, because I'm asking  
16 for this on the verdict form, as well, of as a separate felony, because I believe it's  
17 a lesser-related.

18 Under *Peck*, I think it's pretty clear that the court has to -- can -- it's  
19 not maybe the most favored instructions and kind of things to do. But I still think  
20 the court has the discretion. They're really worried about notice issues. It's not  
21 fair that we can kind of sandbag the State with different felony instructions or  
22 felony charges they didn't know they had to prove.

23 In this case, the trial's been going on for 9, 10 days, I don't think  
24 they're sandbagged. I don't think the same notice issues that the supreme court  
25 talked about in that case.

1           So I guess as my first request, I think the instruction should be given  
2 to support our lesser-related crime, if the court determines that that should be  
3 given.

4           And with response to the brief, it's the theory of our defense -- it is the  
5 theory of our defense he's an accessory. It's helpful to the jury to know that. And  
6 there is evidence to support it, because if the jury comes back -- I mean, there's  
7 evidence to support it.

8           The inference could be exactly what we've been doing our entire  
9 defense around. So that there is evidence to support our theory. And it can be  
10 only -- it doesn't matter how much of it, it's just is there some evidence, no matter  
11 how slight or marginal. So I think we've met our burden, and if the court is  
12 inclined to give the lesser-related before I get to my second argument -- if the  
13 court is inclined to give the lesser-related, then it should give this jury instruction  
14 to define it obviously, as well.

15           THE COURT: I'm just trying to refamiliarize myself with some of the  
16 authorities here. I know, my recollection is *Peck* stood for the proposition that not  
17 only are courts not required to give lesser-related instructions, they should not do  
18 so if the State has not charged or attempted during trial to prove the lesser-related  
19 offense.

20           And I don't think in this case there's anything to suggest, either in  
21 opening statements or any of the questioning, that the State has attempted to  
22 prove the lesser related crime of -- of accessory after the fact or -- or, you know,  
23 whatever is the crime demonstrated by the elements on page 16.

24           Now, I notice that *Peck* was limited to some extent by the *Rosas v*  
25 *State* case, 122 Nev. 1258 (2006). I think that was only to the -- with respect to

1 lesser-included offenses. I don't think *Rosas* has changed the *Peck* ruling on  
2 lesser-related offenses. That's my recollection, but I've got to read some of my  
3 notes --

4 MS. LEXIS: That's mine, as well.

5 THE COURT: -- on *Rosas* right now.

6 MS. LEXIS: That's mine as well.

7 MR. GASTON: No. I -- I agree with what you're saying --

8 THE COURT: Okay.

9 MR. GASTON: -- with respect to that. My only difference would be  
10 the interpretation of *Peck* and the [indiscernible] relateds. It says courts -- should  
11 tend not to do it because of A, B, and C. And if the -- and my position would be  
12 that if those reasons as to why they shouldn't be given aren't present, then we  
13 should go back to where we were originally, and they should be given.

14 And reasons I remember *Peck* talking about are, you know, the  
15 surprise to the State. It -- they -- they're -- they get the right to decide what they're  
16 going to choose to charge. We shouldn't be able to let them, last second, force  
17 them to scramble to try to prove this other case. And I don't think we've done that.

18 So largely, I believe the issues were notice issues, which aren't  
19 necessarily present here.

20 MS. LEXIS: I completely disagree. I -- my understanding of *Peck* is  
21 exactly as the court articulated it. We have not ever -- this is not a charged  
22 offense. We have never asserted it. We have never attempted to prove this  
23 during trial.

24 I disagree with his analysis completely. My understanding of *Peck* is  
25 you do -- you are not to give lesser-related instructions. It is disfavored for the

1 very reasons that Mr. Gaston has indicated. The -- the State makes the charging  
2 decisions. And so when we come into trial, we come into trial knowing what our  
3 burden is. And I don't think the -- the defense gets the opportunity to say, hey,  
4 this is lesser-related, so we want this on the jury form. Never mind the fact, State,  
5 that, one, the charging entity, you, never even bothered to charge it; or two, didn't  
6 try proving this particular offense at trial; or three, this is kind of what we argued in  
7 closing, but we didn't really give evidence to. I just think that's completely unfair.

8 THE COURT: I can't -- I'm going to go along with -- with what I think  
9 is *Peck*. And here's -- here's the reasons why I think that the supreme court has  
10 been gravitating towards a more bright line approach on lesser-related.  
11 Eventually they're going to say, you know, the courts don't have the discretion to  
12 give them, I think.

13 But, you know, we have *Peck* and then we have -- we have *Barton v*  
14 *State*, 2001, which was it reported, unreported, I don't know. I have that. But it  
15 did say after some dialogue:

16 This is consistent with our recent decision in *Peck*, to extinguish the  
17 use of lesser-related offense instructions, as an attempt to rectify what has  
18 become an abyss of confusion for district courts in determining what  
19 instructions they are to give."

20 That's *Barton* in 2001.

21 And then we have 2015, it's unpublished, but at least it -- it lets me  
22 see what three of the judges were thinking on the supreme court in -- in a  
23 footnote, saying *Peck* stands for the proposition that, you know, district courts are  
24 not required to give instructions on lesser-related offenses, and should not do so if  
25 the State has not charged or attempted to prove the lesser-related.



1 I -- I understand the distinction that you're making, Mr. Gaston, that --  
2 that perhaps that should be limited to those situations where the State has not  
3 had sufficient notice of the particular lesser-related crime, and is somehow  
4 prejudiced in their ability to defend against it -- or ability to promote it.

5 I don't want to draw that distinction. I -- under the circumstances here  
6 where the State has not attempted to prove the lesser-related and didn't argue it  
7 and didn't charge it, I'm not going to give it.

8 MR. GASTON: With respect to the State's second argument that  
9 there was no evidence to support it, are we considering that issue or we don't  
10 have to because you already independently --

11 THE COURT: I -- I think there is some evidence to support it. I will  
12 put that on the record. I -- I think there is some -- some evidence to support the  
13 lesser-related charge. But that's not the charge that they elected to proceed on.  
14 And so I think, under the circumstances, the current state of the law, the court  
15 should not give a lesser-related instruction.

16 MR. GASTON: So with respect to a second argument for the jury  
17 instruction, not the lesser-related charge --

18 THE COURT: Yes.

19 MR. GASTON: -- but -- so court's denied the appearing on the verdict  
20 form, I still think independently from that the instruction should be given, in  
21 connection with another instruction I'm assuming Tegan put in there. And if she  
22 didn't, I'm asking for it now.

23 But we have -- our entire theory is that it was an accessory after the  
24 felony -- or accessory after the fact. I just think it should be clear to the jury that  
25 being an accessory after the fact does not make you liable for the original crime.

1 Everyone watches TV. Everyone knows in their head the conspiracy  
2 theories in aiding and abetting. And I don't want them to get the wrong idea of  
3 that if they believe or if they have a doubt as to whether our version of events  
4 happened or didn't happen, that that somehow doesn't matter, because he's still  
5 guilty of robbery.

6 Like, that would kill me if the jury came back and said, hey, no, we  
7 believe you, that Bobby did it. And that your guy just helped cover up the  
8 evidence after that fact. But doesn't that make him just as guilty? That's why we  
9 found him guilty. That would kill me.

10 THE COURT: Well --

11 MR. GASTON: So I just think independently we should give an  
12 instruction to finding accessory after the fact, and another instruction, if it's not  
13 already in there, saying being an accessory after the fact does not make you  
14 liable for the crimes.

15 THE COURT: You can argue that. He hasn't, but you can certainly  
16 argue that he hasn't been charged with being an accessory after the fact. The  
17 State had -- you know, the State hasn't argued that he's an accessory after the  
18 fact. It is the State's burden to prove the elements of what he was charged with,  
19 and looking at those elements, he didn't -- he -- you know, there's insufficient  
20 evidence beyond a reasonable doubt that he did those things. You can make all  
21 those arguments. I don't think we need a -- I'm not going to have a jury instruction  
22 on the accessory, because I think it'll confuse the jury.

23 MR. GASTON: Yes, sir.

24 THE COURT: All right. But I'm allowing you to make the argument  
25 that he was not charged as an accessory, and even if he was an accessory, that

1 doesn't meet the burden that the State has to -- that doesn't satisfy the elements  
2 that the -- that the State has to prove for what he was charged with.

3 MR. GASTON: Thank you.

4 THE COURT: You can make those arguments. All right. But we  
5 don't -- I don't want another jury instruction.

6 So 15 is not given. I'm going to mark on here rejected and give it to  
7 the court clerk, so you have a record of what I refused. Okay.

8 That's 15 and 16 are -- it looks like they're identical. I don't know the  
9 difference between 15 and 16. But they both begin, Every person who after the  
10 commission of a felony displays or conceals.

11 MR. GASTON: Okay.

12 THE COURT: I'm rejecting both of those. One's --

13 Oh, can I have that one back, please?

14 MS. LEXIS: And No. 17, as well?

15 THE COURT: Well, I'm not there yet.

16 MS. LEXIS: Oh, okay.

17 [Pause in proceedings.]

18 THE COURT: So go back to -- so 16 was not given. That's the one  
19 we were talking about.

20 What -- what did we decide on 15? Did we -- 15 is the one that  
21 says -- is this the lesser-included, A person who commits an offense involving  
22 stolen property, if the person, for his or her own gain or to prevent the owner from  
23 again possessing the owner's property, buys, receives, possesses, or withholds  
24 property knowing that it is stolen property or under such circumstances as should  
25 have caused a reasonable person to know that it is stolen property.

1 MR. GASTON: I think that was the lesser.

2 MS. LEXIS: You allowed this one.

3 THE COURT: So that's the lesser-included?

4 MS. LEXIS: Yeah. You allowed that one.

5 THE COURT: Yeah. So that one's okay.

6 MS. LEXIS: I'll add -- I'll add it.

7 THE COURT: All right. Thank you. I appreciate that.

8 So then, let's go to 17. Yeah, 17, I'm rejecting based on prior  
9 discussions. Your objection is noted for the record and incorporated herein. You  
10 can make any further comment, if you wanted to.

11 MR. GASTON: No. I'm -- I'm good on that. I -- I don't believe the  
12 defense submitted any instructions in paper. I would just, while I'm here, go  
13 ahead and request orally that the State would give -- or that the court gives two  
14 other lesser-related offenses for the same reasons I talked about earlier.

15 THE COURT: Go ahead.

16 MR. GASTON: Specifically, obstructing a public officer and providing  
17 a false statement to the police officers. I believe the evidence came out sufficient  
18 to support those. It is our theory of the case, and I just renew my argument earlier  
19 about why I think the lesser-related should be given.

20 MS. LEXIS: And I renew my objection for the same analysis as what  
21 we've just been talking about.

22 THE COURT: All right. I'm going to deny the request on the grounds  
23 that it's the court's view that it should not give lesser-related where the State has  
24 not charged them or sought to prove them in this case. And the court finds that  
25 the State has not sought to prove those lesser-related offenses in this trial, as of

1 yet.

2 MR. GASTON: Thank you, Your Honor.

3 THE COURT: Okay. But your objection is noted for the record.

4 MR. GASTON: Okay.

5 MS. LEXIS: Thank you.

6 THE COURT: Are there any other jury instructions that the State  
7 wishes to -- to give or wishes the court to consider?

8 MS. LEXIS: No, Your Honor.

9 THE COURT: Are there any additional objections that the State  
10 wishes to put on the record?

11 MS. LEXIS: No, Your Honor. Thank you for your indulgence.

12 THE COURT: All right. Are there any additional instructions that the  
13 defense would like to propose?

14 MR. GASTON: No, Your Honor.

15 THE COURT: Are there any additional objections that you would like  
16 to place on the record?

17 MR. GASTON: No. This is probably a dumb question. All of the  
18 proposals that we just gave you, we always submit those as court exhibits, right?  
19 So the actual paper instructions are there?

20 THE COURT: The ones that I reject --

21 MR. GASTON: Because I don't think we read that one --

22 THE COURT: -- I -- I mark rejected and give to the court clerk.

23 MR. GASTON: Okay.

24 THE COURT: But -- but the ones -- there's some that you guys agree  
25 to, in which case I don't mark it. There's some -- if you want it -- if you want

1 everything you submitted to be part of the record, you've got to ask the clerk to  
2 mark that.

3 MR. GASTON: No, that's not -- the rejected ones -- are the ones  
4 that --

5 THE COURT: Yeah. Let's just make sure that all the rejected ones --  
6 the only one that I didn't give, the instruction that said:

7 The defendant is presumed not guilty.

8 You wanted it change to unless. I didn't give that one to the court  
9 clerk. I'll give that one right now to mark that as rejected.

10 I think all the others --

11 MR. GASTON: I think that's all I've got.

12 THE COURT: The one on circumstantial evidence with the two or  
13 more reasonable conclusions, I'm not sure if I gave that to the court clerk, so I'm  
14 giving her another copy right now --

15 MR. GASTON: Okay.

16 THE COURT: -- marked rejected. Okay.

17 MR. GASTON: Okay.

18 THE COURT: Now, what about the -- the stipulations that we  
19 reached? There's one on jail calls. I saw that Tegan sent me an e-mail with the  
20 language that -- for the instruction that she was going to include, and that  
21 instruction reads:

22 This court has ordered that the jail calls presented to the jury in this  
23 case be redacted. You are not to speculate as to the contents of the  
24 redactions.

25 You'll -- both parties agree to that instruction?

1 MS. LEXIS: Yes. And I believe I included it in this packet. Did I not?

2 THE COURT: Okay. Very good.

3 MR. GASTON: We also got another -- that doesn't replace the earlier  
4 limiting instruction the court said it's going to give, right, on -- not to assume --  
5 absent other evidence, not to assume they did anything wrong?

6 MS. LEXIS: No. That's not in place of -- it's both.

7 MR. GASTON: Okay. Okay.

8 THE COURT: Oh, okay. And the instruction on showup identification,  
9 irrebuttable presumption, I marked rejected, not given. In this case I didn't give it  
10 to the clerk yesterday, that's on page 11 of your set, I'm handing it to her now.  
11 And I think you had one more irrebuttable presumption instruction, and I wanted  
12 to make sure --

13 MR. GASTON: Page 10, page 10 in the --

14 MS. LEXIS: Yes. It was page 10.

15 THE COURT: Page 10. Will you help me look for page 10 through all  
16 that stuff and that stuff? I just want to make sure that -- oh [indiscernible]  
17 page 10. And I have it here. Give me a moment. I want to make sure that  
18 page 10 gets marked.

19 THE CLERK: I have it.

20 THE COURT: You have it? Can you -- let's mark that rejected so he  
21 preserves his -- there it is. So everything has been marked now.

22 MR. GASTON: Thank you.

23 MS. LEXIS: And also flight, you rejected for both the State. So I think  
24 that was in there.

25 THE COURT: Oh, did you want that marked?

1 MS. LEXIS: Oh, I don't -- no.

2 THE COURT: I thought there was a stipulation not to give flight.

3 MR. GASTON: No. We -- we objected to their flight instruction, you  
4 agreed not to give theirs. They objected to ours, you agreed not to give ours. But  
5 that was the court's ruling, not a stipulation.

6 THE COURT: Okay, then. Then we'll go ahead and submit those, as  
7 well.

8 MS. LEXIS: Perfect.

9 THE COURT: Do you happen to remember the number?

10 MS. LEXIS: Their flight instruction was -- it was their No. 8.

11 THE COURT: Their No. 8. Will you find that for me, please.  
12 Everything got mixed up.

13 MS. LEXIS: Their No. 8 and our -- I'm sorry, ours doesn't have page  
14 numbers. It's towards the end of the original. But I -- I already took it apart.

15 MR. GASTON: You trying to say in terms of the court's exhibit?

16 MS. LEXIS: I already took it out of your copy, because -- or the new  
17 copy that I sent you.

18 THE COURT: Oh, yeah, the clerk already has it.

19 MS. LEXIS: Okay.

20 THE COURT: Already has their page 8. And your proposed flight  
21 instruction, we need to give it to the clerk.

22 MS. LEXIS: You want it?

23 THE COURT: Yeah.

24 MS. LEXIS: Okay.

25 THE COURT: It needs to be marked rejected.



1 Madam Clerk, you can mark that rejected.

2 Thank you. All right. Very good. Then we'll see you guys back  
3 at 1:00. All right.

4 MS. LEXIS: I'll e-mail.

5 THE COURT: This concludes the settling of the jury instructions. I'll  
6 ask the State to please put -- make sure you prepare a complete set.

7 MS. LEXIS: Yes, Your Honor.

8 THE COURT: We don't need -- we don't usually in this department  
9 give one set to each of the jurors.

10 MS. LEXIS: Okay.

11 THE COURT: We just give one for the foreman, one for the court  
12 clerk, and then -- and then one for each of you.

13 MS. LEXIS: Okay.

14 MR. GASTON: And -- and it is my hope that we finish our surrebuttal  
15 case by Friday, so I'm hoping we can close by Monday.

16 MS. LEXIS: Stop -- stop messing around, Tyler. You just --

17 MR. GASTON: I think we're closing today. I was joking.

18 THE COURT: Why do you scare me?

19 MR. GASTON: I was just joking.

20 MS. LEXIS: He -- he does that, you know. He's a pain.

21 Your Honor, so the instructions that Tegan e-mailed concerning the  
22 stipulations or the limiting instructions, would you like those all incorporated into  
23 the original instructions? Or were they going to be exhibits? What are we doing  
24 with that?

25 THE COURT: Put those in the -- in the set of jury instructions --

1 MS. LEXIS: Okay.

2 THE COURT: -- so I can read them again to the jurors.

3 MS. LEXIS: Okay.

4 MR. GASTON: Thank you.

5 THE COURT: All right.

6 MS. LEXIS: I'll include them.

7 THE COURT: Thank you. Thanks. Have a -- have a good day. I'll

8 see you back at 1:00.

9 MS. LEXIS: See you at 1:00.

10 THE COURT: All right.

11 [Court recessed from 11:41 a.m., until 1:10 p.m.]

12 [Outside the presence of the jury.]

13 THE COURT: Hi. *State vs. Valentine*, C-316081.

14 The State may call its next rebuttal witness.

15 MS. LEXIS: We're not going to be calling a rebuttal witness. We're

16 ready to rest.

17 THE COURT: Oh.

18 MS. LEXIS: Yesterday after court, I sent Ms. Machnich -- well, I told

19 her I would send her the transcript of the redactions on the jail call that was at

20 issue yesterday. I did that at 5:00 a.m. this morning, as soon as I could type it up,

21 because I manually type it up myself.

22 I sent it to Ms. Machnich and just asked her if she could get me her

23 thoughts or additions or deletions as soon as possible, so that I can give them to

24 IT, so they can do the actual clip of the audio.

25 Ms. Machnich, I don't think she had an opportunity to look through or

1 look through the redactions or anything like that.

2 Our office also had extreme technical issues this morning. No one  
3 had access to their computers. So at this point, the State is not going to be  
4 moving to play or admit the jail call at issue from yesterday.

5 THE COURT: Oh, good.

6 MS. LEXIS: I did ask Ms. Machnich if she wanted it played for some  
7 reason, and she indicated that she did not.

8 THE COURT: Okay. Well, that simplifies a lot of things.

9 MS. LEXIS: It does. And so that's, I guess, a nonissue at this point.  
10 So we're not -- we're resting.

11 THE COURT: Is there -- so you rest? All right.

12 Any surrebuttal from the defense?

13 MS. MACHNICH: No, Your Honor.

14 THE COURT: All right. Very good. Are we going to bring the jury in  
15 and let them know that both sides have rested and we can move forward with  
16 reading the instructions and doing closing arguments.

17 I have the final form of jury instructions and the final verdict form has  
18 been presented to me.

19 How did I get it?

20 MS. LEXIS: It was e-mailed to me and I printed it for you.

21 THE COURT: Very good. So it's been e-mailed to the Court. Who  
22 e-mailed it?

23 MS. LEXIS: My secretary, Laura Mollinox [phonetic].

24 THE COURT: All right. I have just have juror questions.

25 MS. LEXIS: I did not have access to e-mail, so --

1 THE COURT: So your secretary -- the State secretary e-mailed it.

2 MS. LEXIS: Yes.

3 THE COURT: Did the State secretary include the defense on the  
4 same e-mail?

5 MS. LEXIS: Yes.

6 MS. MACHNICH: Yes.

7 THE COURT: All right. So now, let me ask the defense, has the  
8 defense had a chance to review that e-mail to confirm that the form of the -- that  
9 the jury instructions and the form of the verdict is consistent with our -- our  
10 dialogue?

11 MR. GASTON: Yes, sir.

12 THE COURT: Okay. Very good. Thank you.

13 MS. MACHNICH: Yes.

14 THE COURT: All right. Then I have the final set, and so it's  
15 consistent, we can move forward.

16 Let's bring the jury in.

17 The set that I have is the final agreed-upon set -- well, agreed, subject  
18 to your discussion. That's what I'm going to read to the jury. So I just wanted to  
19 make sure -- oh, wait, wait. It hasn't been numbered yet.

20 I've got to number -- I'm going to, here, give this to my law clerk.

21 She's going to number this for me, 1 through whatever -- note that page 1 is  
22 number 1.

23 MS. LEXIS: Okay.

24 THE COURT: Okay. Do you guys each have your own set to follow  
25 along?

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MS. LEXIS: Yes.

THE COURT: All right.

MS. LEXIS: It took a lot -- it took a while, but.

THE COURT: No. Thank you for getting all that work done. I appreciate it.

MS. LEXIS: That's okay.

THE COURT: I know how hard that is. Well, your set's not going to be numbered, but --

MS. LEXIS: We can -- I'll number it.

THE COURT: Just fill in the numbers as you go along.

MS. LEXIS: Okay.

THE COURT: So we can make sure we all have the same page.

MS. LEXIS: I only printed one copy, Mike.

[Jury reconvened at 1:14 p.m.]

THE COURT: All right. Please be seated, everybody.

Ladies and gentlemen of the jury, since we've seen you, a lot's been figured out. At this point, I -- I asked the State if they have an additional rebuttal witness, and they said no, that they now have rested.

Is that correct?

MS. LEXIS: That is correct. We rest.

THE COURT: All right. And then I have asked the defense if they have any further witnesses, and they rest also.

Correct?

MR. GASTON: Yes, sir.

THE COURT: All right. Very good. So that concludes the evidence

1 portion of this trial. And we also -- while -- in your -- or in -- outside of your  
2 presence, we finished resolving all the jury instructions.

3 So the jury instructions are ready for me to read to you, as soon as we  
4 just have some numbering to do. So our plan is for me to read the jury  
5 instructions to you and then we'll proceed with closing arguments. Okay.

6 All right. There's a lot to read, so just bear with me here. Okay.

7 [Jury instructions read.]

8 THE COURT: Counsel, this instruction looks like it's different than the  
9 one that I had agreed, but it's still an acceptable instruction. Do you guys want to  
10 approach or do you want me to just use this one?

11 MS. LEXIS: Let's approach. It's No. 8, right?

12 [Bench conference transcribed as follows.]

13 THE COURT: Yesterday I said I was going to use the defense  
14 version.

15 MS. MACHNICH: I believe this is the same -- they just added his or  
16 her and took out the last paragraph, which is --

17 THE COURT: Oh, you choose the his or her?

18 MS. MACHNICH: Yeah. They changed it.

19 THE COURT: Oh, because yours looked longer. But --

20 MR. GASTON: We took out the last paragraph.

21 MS. LEXIS: They took out a paragraph.

22 THE COURT: So it is the correct one?

23 MS. MACHNICH: Yes.

24 MS. LEXIS: Yes.

25 THE COURT: Thank you for correcting it.

1 MS. MACHNICH: Thank you.

2 [End of bench conference.]

3 THE COURT: This is the right one.

4 [Jury instructions read (cont.)]

5 THE COURT: Can you guys approach?

6 [Bench conference transcribed as follows.]

7 THE COURT: That should -- should the --

8 MR. GASTON: The jury shouldn't be in there.

9 THE COURT: Should the jury be stricken?

10 MS. MACHNICH: Yes.

11 THE COURT: Okay. Okay. Thank you. I'll just strike that.

12 [End of bench conference.]

13 THE COURT: Okay. Let me start over. There was a typo -- my  
14 catch.

15 [Jury instructions read (cont.)]

16 THE COURT: Counsel, any comments regarding the instructions to  
17 be put on the record?

18 MS. LEXIS: Not from the State.

19 MS. MACHNICH: No, Your Honor.

20 THE COURT: All right. I am providing the original jury instructions  
21 now to the court clerk.

22 Was there a set that I can use to follow along with during closing  
23 statements -- closing arguments?

24 You know, what, I'm going to keep -- I'm going to keep hold of the  
25 original jury instructions just for reference during closing arguments. And the

1 verdict form is now being handed to the court clerk.

2 The State may now present its closing argument to the jury.

3 MR. DICKERSON: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 MR. DICKERSON: Ladies and gentlemen, over the past two weeks,  
6 in this courtroom, the evidence has become clear. It's become so clear, in fact,  
7 that it tells us exactly what the defendant was doing here in Las Vegas, Nevada,  
8 from May 26, 2016, to May 28, 2016; he was robbing every single victim that got  
9 on the stand.

10 Ladies and gentlemen, in a criminal case, this one included, the State  
11 must prove two things: That a crime was committed, that the defendant  
12 committed it.

13 Here, we look to the crimes. We have a number of crimes charged,  
14 including robbery with the use of a deadly weapon -- seven counts, one for each  
15 victim of that robbery. The first being Marvin Bass, Darrell Faulkner, Deborah  
16 Faulkner, Jordan Alexander, Santiago Garcia, Lazaro Bravo-Torres, and  
17 Mrs. Rosa Vazquez Ramirez. Additionally the defendant is charged with attempt  
18 robbery with use of a deadly weapon for his action in attempting to rob Juan  
19 Carlos Campos Torres, bringing him down from the roof that fateful day.

20 Additionally, he's charged with burglary while in possession of a  
21 deadly weapon. That's reference the acts going into Mr. Marvin Bass's car to rob  
22 him; going into the Faulkners' garage to rob them; and entering the vehicle of  
23 Lazaro Bravo-Torres, to rob him and his wife.

24 Additionally, he's charged with possession of a document or personal  
25 identifying information of another, for having the Nevada identification card of



1 Jordan Alexander in his possession at the time of his arrest.

2 And finally two counts of possession of a credit card or debit card  
3 without cardholders' consent. Those are for having Jordan Alexander's Visa card  
4 and Mrs. Rosa Vazkuez Torres -- or Rosa Vazkuez Ramirez's credit card, as well.

5 Now, first, we'll look to the crimes of robbery with a deadly weapon or  
6 attempt robbery with a deadly weapon and burglary while in possession of a  
7 deadly weapon. All three of those crimes include the deadly weapon. So let's talk  
8 about that first.

9 You are instructed here what a deadly weapon is, any instrument  
10 that's used in the ordinary manner contemplated, which was likely to cause  
11 substantial bodily harm or death; that's a deadly weapon. Or anything that's used  
12 under the circumstances that could cause such damage is a deadly weapon.

13 But, specifically, here, in this case and under the law, you are  
14 instructed that a firearm is, in fact, a deadly weapon. It's that easy.

15 Now, you've heard evidence of the firearm here and the use of that  
16 firearm under the robbery, the -- in order to use a deadly weapon, it need not be  
17 actually produced to cause harm, but only conduct which produces fear of harm.  
18 All right. And I think that it's very clear that we have that here; in every single  
19 instance, we have that use of the deadly weapon, because that gun was used to  
20 produce a fear of harm.

21 And without a doubt, we have the deadly weapon. You heard from  
22 every single victim who told you varying accounts how they described the gun.  
23 Multiple victims describing it as a Glock, which it is; multiple victims describing it  
24 as a small, black, semiautomatic handgun, which it is. This is, in fact, a firearm.  
25 This is a deadly weapon, ladies and gentlemen.

1 Based on that, you can also consider the fact that the State does not  
2 need to recover the weapon. So the mere testimony of these witnesses telling  
3 you what they saw, that gun that they felt pressed against them, the gun that was  
4 shoved in their face, seeing it, knowing what it was, that establishes the fact that  
5 it's a deadly weapon. We've met that element and that will carry on into the next  
6 three crimes that we'll talk about.

7 Robbery with use of a deadly weapon, the seven counts that we have  
8 charged is the first crime that we need to talk about. You heard the instructions  
9 from the judge, but we need to go over them carefully again. So robbery is the  
10 unlawful taking of personal property from the person of another or in that person's  
11 presence.

12 Now, pay no attention to the pronouns used here. They're  
13 interchangeable. It's a crime against a person, man or woman. And here it's  
14 either in their presence or from their person; against their will by means of force or  
15 violence; fear of injury, immediate or future; to his person or property or the  
16 person or property of a member of his or her family. That's important, as well,  
17 because we know we have two husbands and wives in this case.

18 That force or fear used is enough to overcome the resistance to the  
19 taking of the property. Just that degree of force is immaterial, as long as it  
20 overcomes resistance. Consider that, consider the force used by a gun being  
21 pointed in their faces in this case, and how it all comes into play with overcoming  
22 a victim's resistance.

23 Now, it's not necessary to prove both violence and intimidation. If the  
24 fact be attended to the -- with the circumstances of threatening word or gesture,  
25 as is in common experience, and is likely to create an apprehension of danger

1 and induce a man or woman to part with his or her property for the safety of that  
2 person, it's a robbery.

3 And there's no doubt we have any of that force here. Absolutely  
4 every single situation is enough to make any reasonable person fear not only for  
5 their safety, but the safety of their loved ones that are also involved in these  
6 circumstances.

7 We first look to Marvin Bass's robbery that happened just after noon  
8 on May 26, 2016. There, at the Rancho Discount Mall at 2901 West Washington,  
9 you heard that -- where that red circle is is approximately where Mr. Bass had  
10 parked. He had gone in and he had gotten himself a new outfit to wear out to a  
11 concert that evening.

12 It was when he got back into his car, he sees a white, small four-door  
13 unregistered vehicle pull up right behind him. The driver, the defendant, get out,  
14 start walking towards him. Marvin Bass thinking, do I know this guy? Rolls down  
15 his window.

16 Give me your gold, give me your wallet, or I'll shoot your fat ass.  
17 That's what he gets. In his hand, described as a Glock handgun.

18 What does he get? He gets the gold with the diamond-encrusted  
19 cross pendant, he gets the gold necklace with the dragon pendant, and he gets  
20 Mr. Bass's wallet. The defendant takes all those things. He rips those chains  
21 with -- chains with those pendants off Mr. Bass's neck and he takes his wallet  
22 right from his person, all while possessing a firearm.

23 Pulling this firearm out, putting it into the car, reaching into the car,  
24 patting Mr. Bass down, without a doubt the use of force and fear of injury to  
25 Mr. Bass to get all that property.

1 Without telling Mr. Bass, I'm going to shoot you, without pulling out  
2 that gun, without his immediate force used upon Mr. Bass rolling down that  
3 window, immediately taking his right hand and grabbing those two chains right off  
4 his neck. So hard, in fact, that it broke both the clasps, as we learned later. That  
5 was a robbery with a deadly weapon, the first one.

6 The next one, Mr. Jordan Alexander, the first -- the second robbery  
7 that occurred on May 28th, 2016. Mr. Alexander was outside of his home at  
8 approximately 7:01, probably about two minutes before that, maybe 6:59, 7:00,  
9 putting a car seat, and his mother and his fiancée's purses into the vehicle so they  
10 can get ready to go out of town and to his auntie's funeral.

11 That's when unregistered white Mazda 3, with a very specific  
12 SKYACTIV symbol on the back in a black placard, pulls up right behind his car.

13 Defendant gets out, walks around him, pulls out a gun. Once again,  
14 Where the money? Where the purses? Give me everything -- using that firearm  
15 the entire time to signify exactly what he's going to do if he doesn't get what he  
16 wants: Going to get shot.

17 Mr. Alexander describes it as a small, black semiautomatic handgun.  
18 What does he get? The defendant takes Mr. Alexander's wallet, which among  
19 other things in that wallet contains these two items: Mr. Alexander's Nevada  
20 identification card and this Visa debit card, ending in numbers 8220, items that we  
21 know are later found. That is, in fact, a robbery with a deadly weapon.  
22 Everything about this shows that the defendant came upon Mr. Alexander, used  
23 force, and the fear of violence, to take this property from Mr. Alexander.

24 The next robbery we look at is robbery with use of a deadly weapon of  
25 Santiago Garcia, which occurred at 7:08 a.m., approximately, on May 28th, 2016,

1 there on Nye Street. As Mr. Garcia was doing landscaping with Mr. Campos  
2 Torres, getting ready to cut down that tree, they see a white unregistered small  
3 sports-type vehicle, pull down the street, pass the house, park about three houses  
4 down.

5 And then they see the defendant get out of that vehicle and make his  
6 way right over to the house where they're working. Mr. Garcia, there, at the  
7 bottom of the ladder, Mr. Campos Torres on the roof. The defendant pulls out  
8 that firearm. Give me your fucking money. He puts that gun within inches of  
9 Mr. Garcia's chest, indicating nothing more to Mr. Garcia than this is serious, you  
10 might die.

11 Mr. Garcia described that as a black handgun, and in fact, the  
12 defendant at that time takes approximately \$500 in cash and an iPhone with a  
13 black case from Mr. Garcia.

14 Mr. Bravo-Torres and Ms. Vazquez Ramirez here at their house over  
15 on Leonard Street, approximately 7:15 a.m., they too are getting ready to go to  
16 work and work as landscapers that day. They've loaded up their truck, they have  
17 their trailer attached, and they're pulling out of driveway, when the defendant  
18 comes up to them on foot and asks, Hey, which way is Martin Luther King?  
19 Mr. Bravo-Torres, in what he could in English, describing where Martin Luther  
20 King is.

21 In the next split second, we know what happens. The defendant  
22 again pulls his gun and robs these two individuals. Mr. Bravo-Torres, he tells him  
23 don't move, or I'll shoot. And he goes on to tell his wife, Ms. Vazquez Ramirez,  
24 you want me to kill him? In the process, it's noticed that this is a Glock handgun  
25 by Mr. Bravo-Torres, and the defendant then goes into their vehicle and he takes

1 a purse out of the center console, which contains a Samsung phone, a Visa debit  
2 card, the identification card of Rosa, and \$40 to \$50 approximately. That Visa --  
3 that -- excuse me -- that Visa debit card, we all know, later found.

4 Now, the Faulkners occurs first. And there was -- it was supposed to  
5 be on here. Here's the thing, the Faulkners occurred at approximately 6:53 a.m.  
6 And it's very important to note these times, because what we're seeing between  
7 each one of these incidents, each one of these incidents that occur within less  
8 than a two-mile area, as testified to by Detective Majors, occur no more than  
9 seven to eight minutes apart, one after another.

10 Darrell and Deborah Faulkner were there in their garage getting ready  
11 to move, packing. The first of all the victims that day. Who knows why? Who  
12 knows why it started? But they're just there, talking as husband and wife do, in a  
13 garage full of boxes.

14 Next thing we know, the defendant walks up their driveway. Deborah  
15 looks at Darrell and says, Hey, someone's here for you. Defendant pulls out his  
16 gun as he comes into the garage, and he makes them both get down onto the  
17 ground. It's there where he forces Mrs. Faulkner to pour out her purse,  
18 rummaging through it for anything valuable, which she doesn't have.

19 Mr. Faulkner, angry as all hell, staring, just staring at the defendant's  
20 face, memorizing it. Memorizing it more than anything else. He too described the  
21 gun as a Glock, double-large frame. It submit to you that's because he spent all  
22 his time, every second he could, studying the defendant's face. In an effort to  
23 de-escalate this situation, Mr. Faulkner pulled out his wallet, kept it to himself, and  
24 handed the defendant a hundred dollars, there in their garage. The defendant no  
25 doubt took that money and he took that money by force or fear of injury to both

1 Mr. Faulkner and Mrs. Faulkner. So robbery from both of them. They're a  
2 married couple. That's their hundred dollars, just as the debit cards and the  
3 property that exist in that vehicle of Vazkuez Ramirez and Mr. Bravo-Torres is, in  
4 fact, their property.

5 The fear that both these couples felt for themselves and their spouses  
6 goes to the heart of these robberies. That is why the statute and the law reads  
7 the way it does. It's not that you have to be the only one to feel fear for your own  
8 life, because we all know that sometimes the scariest thing that could ever  
9 happen is the fear of losing a loved one right in front of you. And that's exactly  
10 what Darrell Faulkner felt. That, too, was a robbery with a deadly weapon, both  
11 Darrell and Deborah Faulkner.

12 The elements for all those crimes have been met.

13 We go on to the attempt robbery with use of a deadly weapon of Juan  
14 Carlos Campos Torres.

15 Now, an attempt has general elements. That's the intent to commit  
16 the crime being one -- the number one. Number two, the performance of some  
17 act towards that commission of the crime. And three, the failure to consummate  
18 that crime.

19 Once a person has started the act, the attempt to commit a crime,  
20 they cannot avoid being guilty of an attempt, simply because they were prevented  
21 or interfered with from committing that crime. That's what you're instructed here in  
22 this instruction.

23 Mr. Juan Carlos Campos Torres, working for Santiago Garcia on  
24 May 28th, 2016, was already on the roof. He was on the roof when the defendant  
25 came up and tried to rob him. What did the defendant say? What did Mr. Garcia

1 tell you? Get down. Gun pointed up, get down. We know what the defendant's  
2 intent was, because he'd been acting it out all morning, and he continued to act it  
3 out right there with Santiago Garcia, robbing him of his money and his phone.

4 Now, his efforts to try to get Mr. Juan Carlos Campos Torres down  
5 from the roof was, in fact, to rob him. The intent is clear. It was an intent to rob  
6 Mr. Juan Carlos Campos Torres in addition to Santiago Garcia. There, too, he  
7 had the firearm and he used it in the process. That's why he's charged with this  
8 crime and that's why he's guilty of that crime; attempt robbery with use of a deadly  
9 weapon.

10 Now, looking to the burglary while in possession of a deadly weapon,  
11 touched on it briefly, this is a crime about entry into a structure or a vehicle. Here,  
12 we have one structure and two vehicles. We'll go through all three of them. Like  
13 we talked about the deadly weapon, as it's been in robbery with a deadly weapon  
14 and attempt robbery with a deadly weapon, it's the same, except as you'll hear it's  
15 not a matter of use, it's a matter of possession.

16 So a person who by day or night enters any house, vehicle, or other  
17 building with the intent to commit larceny, assault, battery, or any felony is guilty  
18 of burglary. In the State of Nevada, the crime of robbery as charged here, as  
19 committed against these victims, is a felony.

20 So it could be larceny, assault, battery, or robbery. And that's what it  
21 is. With the intent to commit any of those, the entry renders it burglary.

22 Every person who commits a crime of burglary, who has in his  
23 possession or gains possession of a firearm or deadly weapon during any time  
24 during that commission of the crime at any time before leaving the structure or  
25 upon leaving the structure, is guilty of burglary while in possession of a deadly



1 weapon.

2 So the crime is so specific that if at any point in time, there is a deadly  
3 weapon involved or, as in this case, a firearm, that's burglary while in possession  
4 of a deadly weapon.

5 So someone could enter a home with a gun, that's burglary while in  
6 possession of a deadly weapon. Someone could enter a home without a gun and  
7 get a gun inside a home, that's burglary while in possession of a deadly weapon.  
8 Simply having a deadly weapon involved in that person's possession makes it this  
9 crime.

10 Now, as you were instructed, a firearm is a deadly weapon. It's not  
11 necessary for us to show that the defendant actually committed a robbery or a  
12 larceny or an assault or a battery inside that house, though we have. The -- the  
13 gist of the crime, it says here, is the entry -- with that criminal intent. Therefore, a  
14 burglary is committed if the defendant entered a house, a vehicle, or other  
15 building with the intent to commit, here, robbery; here, assault; here, battery; here,  
16 larceny. That entry with the intent makes it a burglary.

17 The intention with which the entry is made is a question of fact to be  
18 inferred by all the conduct that the defendant displays in this case and all  
19 circumstances that the evidence shows.

20 So we don't have to somehow magically peer into the mind of the  
21 defendant and say, what were you thinking at that time? Because the evidence  
22 shows us. The evidence does it for us, peers into the mind and says, what was  
23 he thinking? Well, we know. Because he was doing it all morning and the day  
24 before, victim after victim, committing robberies. His intent when he entered all  
25 three of the structures that we'll talk about, was no doubt to continue to do the

1 same. And the reason for that entry was to further his efforts to rob these people.

2 Very important, an entry is deemed completed when however slight  
3 any portion of the intruder's body penetrates a space within the house, vehicle, or  
4 building. Any portion. Here, we need to consider this. Now, it's -- the entry is the  
5 entry of any portion of that person's body. The firearm possession occurs at the  
6 same time, but it's not necessarily that that firearm also has to enter. All right.

7 Now, an entry being breaking that threshold. My hand crossed  
8 through there, that's a portion of my body, that's an entry. If I had the criminal  
9 intent to commit a robbery when I made that entry through that door, through that  
10 threshold, that would be a burglary.

11 Here we look to the first. Back to Marvin Bass, on May 26, 2016,  
12 there at the Rancho Discount Mall. You heard from Mr. Bass how the robbery  
13 took place, that the defendant reached into his car, ripped the necklaces off his  
14 neck. The defendant had the gun in his possession at that time. The defendant  
15 then shoved the gun actually through the open window, which, though it makes it  
16 extremely clear, is not necessary for burglary with a deadly weapon that he put  
17 that gun through the window. But, again, we had it on the first, him ripping the  
18 chains off his neck while in possession of a firearm, and now we have it again,  
19 shoving his hand through the window of Mr. Bass's car.

20 And then, again, the defendant reaches in, still holding the firearm in  
21 his other hand, and pats Mr. Bass down while he's seated inside his vehicle. Very  
22 clear. The first entry, his hand through the window to grab those chains and rip  
23 them off Mr. Bass's neck. There's only one intent you could have, to further your  
24 robbery to commit that larceny.

25 Next, shoving the gun through the window, your intent is extremely

1 clear. It goes without saying, to further that robbery, commit that larceny, do what  
2 you're doing.

3 And, finally, patting down Mr. Bass' legs, making sure that he's got  
4 everything that he can out of this robbery, clearly, his intent when he made that  
5 third entry was also to commit robbery.

6 Now, we look to the Faulkners, Mr. and Mrs. Faulkner. They're here  
7 in their garage at 2605 Rising Legend Way. There they were, standing inside  
8 their garage, as they told you. Defendant walks up, pulls out the gun.

9 Mr. Faulkner tells you that by the time Mrs. Faulkner told him, Hey, there's  
10 somebody here for you, and he turns around, the gun's out. The gun's out.  
11 That's when the entry is made into the garage. At that point in time, it's extremely  
12 clear this guy came up to the house with the gun and walked right in. He's not  
13 here to see you, Mr. Faulkner. He's here to rob you.

14 Defendant stood here, approximately, according to the Faulkners,  
15 inside the garage. This is the area where he stood, holding the firearm, and  
16 approximately in the area of Mrs. Faulkner's head. The easiest way to gain  
17 control of Mr. Faulkner was, in fact, doing that. Because Mr. Faulkner seems to  
18 be a man that has more fear for the safety of his wife than he does for himself,  
19 rightfully so, and that's what happens. Defendant standing there, puts both of  
20 them on the ground, and proceeds to rob them.

21 Now, we take a look, these green lines demonstrate the threshold of  
22 their garage. You can see that clearly, the area where the defendant stood is  
23 within the threshold of their garage, which is part of their home. It is a building; it  
24 is a structure. It is a burglary. Bottom line, he made entry into that garage. He  
25 made that entry with the clear intent, as demonstrated by his action a day earlier

1 and his separate actions following this, as well as the very clear fact that he pulled  
2 that firearm out before entering that garage, that he entered with the intent to  
3 commit robbery. Again, the defendant is guilty of burglary while in possession of  
4 a deadly weapon for the entry into the Faulkners' garage.

5 Now, we have Mr. Bravo-Torres and Ms. Vazkuez Ramirez here,  
6 again, in their vehicle. In the center console, that's where the defendant found the  
7 proceeds of his crime and he, in fact, went in to get them. He broke the threshold  
8 of their vehicle, coming in through the driver's side door, leaning across that  
9 door -- across that seat, and reaching into the center console, all while  
10 possessing a firearm. We know that. We know the firearm was already out. It  
11 was already pointed at Mr. Bravo-Torres. And that's where he ends up taking  
12 Mrs. Vazkuez Ramirez's purse, containing all the items that we later found, and  
13 some that he apparently disposed of.

14 That being so, the defendant is guilty. He's guilty of all seven counts  
15 of robbery with a deadly weapon. He's guilty of attempt robbery with use of a  
16 deadly weapon. He's guilty of all three counts of burglary while in possession of a  
17 deadly weapon.

18 So we look to the possession of documents or personal identifying  
19 information of another. This is the charge that's charged for Mr. Alexander's  
20 Nevada identification card. Here it says:

21 A person who possesses, sells, or transfers any document or  
22 personal identifying information for the purpose of establishing a false  
23 status, occupation, membership, license, or identity for himself or herself or  
24 any other person is guilty of possession of a document or personal  
25 identifying information.

1 Here, we, in fact, find that Nevada identification card in the drawer  
2 right next to where the defendant is pretending to be asleep.

3 Now, important that there is an intent element here in this crime. It's  
4 not mere possession alone that's a crime, because we have to have some reason  
5 to believe that we're going to want to do something nefarious here. And I think it  
6 calls in the fact that we need to look at the following two charges to really consider  
7 what we're looking at. And we have the possession of a credit card or debit card  
8 without cardholder's consent. These are charged for the two other items that we  
9 have there -- the two debit cards. Ms. Rosa Vazquez Ramirez and Mr. Jordan  
10 Alexander's, both of them.

11 So and that says:

12 Any person who possesses a credit card without the consent of the  
13 cardholder and with the intent to circulate, use, sell, or transfer the credit  
14 cards with the intent to defraud is guilty of possession of a credit card  
15 without cardholder's consent. A credit card includes a number, identifying  
16 information of a credit card, or credit account.

17 These are both Visa cards, absolutely qualify. That's satisfied.

18 The fact of the matter is that where an individual under the law has  
19 two or more cards issued in the name of another person, then you may infer that  
20 that person who has -- they are required to do so, that they've obtained and  
21 possessed the credit cards with the knowledge that they have been stolen, and  
22 with the intent to circulate, use, sell, or transfer them with the intent to defraud.

23 So you may infer, just from the fact that he has those two cards, that  
24 he intends to use them in a nefarious way, as required under the law. This is  
25 important. This is very important, especially considering the fact that we find

1 these two cards and we find Jordan Alexander's identification card along with  
2 them. The possession of that identification card in conjunction with these cards  
3 goes to show one thing, it's used to establish a false identity. Used likely to  
4 establish a false identity to go along with that card, that card that we know and  
5 you have the inference that he's going to use, circulate, in an -- with an intent to  
6 defraud.

7 That being so, there's only one purpose to keep the identification card  
8 around, when we see so many other innocuous items that were stolen during  
9 these robberies gone, things like other cards, health cards you heard about,  
10 things that really don't mean anything.

11 Now, we have this Nevada identification card being the only young  
12 black male victim of these crimes. The only one that could possibly pass for  
13 anybody. Right? So it's an easy sell. There's reason to keep the card. It's one  
14 thing to use it, hopefully, to try to pass that debit card before it's closed.

15 So for that reason, the possession of all three of those items is, in  
16 fact, criminal. The possession of those cards is criminal because the only reason  
17 to keep them after committing those robberies, especially considering one  
18 important thing, is to use them to defraud. And the thing I want you to consider is  
19 that Jordan Alexander sat up here and he told you that he told the defendant,  
20 Hey, I don't have any money, all I have is a card. And the defendant told him,  
21 give it to me. So it goes without saying that you don't have the money, but you  
22 have the card, give it to me. Well, I'm taking it, because that's just as good, I want  
23 to use that.

24 So all three of those, as well. That makes the defendant guilty of all  
25 three -- or all crimes charged here, that being robbery with use of a deadly

1 weapon, attempt robbery with use of a deadly weapon, three counts of burglary  
2 while in possession of a firearm, the possession of a document or personal  
3 identifying information of another, and possession of a credit card or debit card  
4 without cardholder's consent, two counts of that.

5 So we've shown that these crimes have, in fact, being committed.

6 Now, the second thing that the State needs to show in every criminal  
7 prosecution, that the defendant, in fact, committed these crimes. Well, we know  
8 who committed these crimes. We know through two weeks of evidence that it  
9 was, in fact, the defendant who committed all of these crimes.

10 How do we know this? Well, we know it, because the defendant's  
11 been identified -- first by Marvin Bass identifying the defendant saying, I'm very  
12 sure the suspect I identified in the photo lineup is him, 100 percent. He was very  
13 close to me when he robbed me at gunpoint. That's what Mr. Bass said when he  
14 was shown that photo lineup. He was shown that photo lineup only a few days  
15 later, on June 1st, 2016. It's right there, 10:00 a.m. Mr. Bass no doubt  
16 recognized this guy, no doubt saw the defendant and said, Yeah, that's him, I  
17 know it's him, 100 percent.

18 Mr. Bass then comes in and testifies here in court and tells you, right  
19 here, having another opportunity -- his first opportunity since May 26, 2016, to see  
20 the defendant. Once again, and look at him and say, Yeah, that's him. That's the  
21 guy who robbed me. Again, Mr. Bass identified the defendant, no doubt, as being  
22 the individual who robbed him.

23 Defendant's further identified right after these crimes in the showup,  
24 identified by Darrell Faulkner, at approximately 9:17 a.m. The importance of that  
25 is key. Mr. Faulkner identifies him only two hours and 20 minutes after being

1 robbed by him. Two hours and 20 minutes, 100 percent positive. Mr. Faulkner  
2 came in this courtroom. He again had an opportunity for the first time since  
3 May 28th, 2016, to see the defendant. And he told you, once again, absolutely  
4 positive, that's the man who robbed me.

5 Deborah Faulkner, you heard, she had not seen the defendant nor  
6 been asked to identify the defendant since the crime on May 28th, 2016. She  
7 came into this courtroom. She sat right here. She looked right over there. And  
8 she said, I'm a thousand percent positive that that is the man who robbed me.  
9 Once again, the defendant is identified.

10 Again, Jordan Alexander, we heard, as you can see these videos  
11 that -- everything that's been admitted will go back with you. You can review it all  
12 again. You can listen to exactly what he said again. The body cam footage of  
13 him going to do his showup. He sees the defendant right there. He says he  
14 is 100 percent -- a thousand percent, honestly, wow, wow, wow. He then  
15 proceeds to write his statement about what he saw, about his showup. He says, I  
16 am 100 percent sure that that -- it was that man, because the build of his body,  
17 because the hair for sure, the face gave me goose bumps seeing him again. The  
18 fact that we were face to face when he took my wallet made me positive that it  
19 was him. That was on May 28th, at 9:13 a.m. That's one hour and 54 minutes  
20 after Jordan Alexander was robbed by the defendant. Jordan Alexander, too,  
21 came in this courtroom and he told you, I'm absolutely positive that is the man  
22 who robbed me. Again, the defendant was identified.

23 And again, by Santiago Garcia -- excuse me -- by Santiago Garcia.  
24 Santiago Garcia shows up, sees the defendant, says, Yeah, that's him. I believe  
25 that's the guy that the officers had in custody is the guy that robbed me.



1 I 100 percent recognize his facial features. Though you heard that Santiago  
2 Garcia can't write. You heard that this is what he instructed the officer to write for  
3 him, that this was his statement, that he believed 100 percent it was the  
4 defendant who robbed him. And that was at 9:50 a.m. That's two hours  
5 and 42 minutes after the defendant robbed him. Again, the defendant was  
6 identified.

7 And again, Rosa Vazkuez Ramirez, she says, I believe that that is  
8 him, because the height, his hair, his face. Only he didn't have the same clothes,  
9 but I'm 95 percent that, yes, it is him, in Spanish, translated here in court.

10 Now, Rosa Vazkuez Ramirez, some extremely interesting testimony  
11 on identification. Rosa Vazkuez Ramirez sat here, got up, walked over here,  
12 clearly, clearly frightened. As the defendant stands up, she gets scared. She  
13 says, I don't know. But she still wants something to say. And what happens?  
14 She still wants to say something. What do we do? You guys come back in.  
15 She's back on the stand. The judge asks her, Tell us what you told us on the  
16 break. She said it's -- that's him. Yeah, that's him. It's been a long time, but,  
17 yeah, I'm positive that that's him.

18 Her husband testified, as well, Lazaro Bravo-Torres. He gives a  
19 statement upon seeing him at the showup. I saw him, the face is him, the height  
20 is him, the skinniness. I don't see the same hair, like he combed it or he cut it  
21 around a bit. And the clothes, this one is in shorts and the man had on all his  
22 clothes, a black T-shirt and pants, but 90 percent that's him. Once again, Lazaro  
23 Bravo-Torres comes in here, he testifies. He testifies that, in fact, it is the  
24 defendant who robbed him.

25 Now, we look to other evidence to see where's the corroboration?

1 What are we doing? It's clear. It's clear as day, based on those identifications.  
2 Based on those identifications of all these people, most of whom, if they aren't  
3 husband and wife, don't know each other from Adam, never seen each other  
4 except for maybe in passing after this, identify this man, the defendant, Keandre  
5 Valentine as being the person who robbed them.

6 Well, what does Keandre Valentine have for us? Well, he has the  
7 victims' property. He has those two cards, Rosa Vazquez Ramirez's debit card  
8 and Jonathan Alexander -- Jordan Alexander's debit card, as well. Both Visa and  
9 Jordan Alexander's ID.

10 Additionally, he has the phones, Rosa Vazquez Ramirez's Samsung  
11 and Santiago Garcia's iPhone with the black case. Additionally, his girlfriend, who  
12 it's been clearly established they came here together, they have a relationship, is  
13 found to be pawning Marvin Bass's gold necklace with diamond-encrusted cross  
14 pendant and his gold necklace with a dragon pendant.

15 She's pawning these items on May 26th, 2016, at 2-approximately-46  
16 is the first pawning. That is about less than two hours after his  
17 approximately 1:00 p.m. robbery of Mr. Bass. That, too, I submit to you, the  
18 defendant was in possession of Marvin Bass's items and this is evidence of it.  
19 These were sold -- the first one at 2:46 p.m. A total sale of \$775 for all four  
20 pieces of jewelry that day. Chanise did tell us that Omara [phonetic] had some  
21 cash on her, didn't she? I recall something like that.

22 Now, the defendant also had the gun. Here, the gun found in two  
23 different places in the home, clearly a Glock handgun.

24 You heard about the DNA evidence in this case. Now, the scientist  
25 came in. She told you she could not make any results. The results that she had

1 for the swab of the gun were below the threshold. But we went through every  
2 single one. And that's something you need to also take a look at when you go  
3 back there, just to see what you think for yourself.

4 When we went through and looked at the items below the 200  
5 threshold, but above the 40 threshold, this is what we found. We found that the  
6 swab of the handgun revealed a 12 and a 13 allele. Mr. Valentine, a 12 and a 13  
7 allele. The swab also a 28 allele on the next locus. A 28 allele on that same  
8 locus for Mr. Valentine.

9 MS. MACHNICH: Your Honor, I'm going to object. Their own expert  
10 said that this is improper.

11 MR. DICKERSON: And I think that's fair argument.

12 THE COURT: He's arguing the evidence. The expert said that the  
13 data is unreliable if there is less than a 200 threshold. And -- and I don't think I've  
14 heard anything from Mr. Dickerson that -- that contradicts that. At this point, he's  
15 merely arguing that there should be some weight to be given to this evidence. All  
16 right. It's up to the jury to decide what weight. All right.

17 MS. MACHNICH: And I respect that, Your Honor. It's just that their  
18 own expert said that this is unreliable and cannot be determined.

19 THE COURT: Well, and you can argue that when you get back up  
20 and argue to the jury so they can remember exactly what she said.

21 MR. DICKERSON: Thank you, Your Honor.

22 THE COURT: Thank you.

23 MR. DICKERSON: Again, ladies and gentlemen, it's worth taking into  
24 consideration. You are here for two weeks. Look at all the evidence. This is part  
25 of the evidence. You heard that under each locus there is a number of alleles.

1 And here, though, yeah, maybe the threshold is under 200, there's something  
2 here. But just consider for yourself.

3 Next, we have the locus on the swab of the handgun, 15 and 16.  
4 Mr. Valentine also at 15 and 16. Next locus at 7; Mr. Valentine also at 7. Next  
5 locus at 12 and 13; Mr. Valentine also at 12 and 13. So on and so forth,  
6 matching.

7 Now, as you heard here, it was a mixture. No person can have three  
8 unless it's some extreme mutation. We have on the locus D19S433; under the  
9 handgun, alleles 13, 13.2, and 14. We know one of those had to come from  
10 somewhere else. And under Mr. Valentine, we have 13 and 13.2.

11 Ladies and gentlemen, it's just worth considering. Take a look at it.  
12 See what you think. Make your own determination.

13 But really, it becomes extremely clear when we listen to the defendant  
14 in those calls and the defendant says this, he says:

15 They got all the pieces to the 27?

16 That being the Glock 27 that we all heard was impounded. That being  
17 this firearm right here, a Glock 27.

18 The female says:

19 I don't know, you put them all over the place?

20 He says:

21 Yeah. Where did they go, just in the room?

22 He says:

23 In the gray bin, so get that -- get it out of there, in the closet, and one  
24 piece is on top of the side of the closet in the shoes. Get that out of there, too.  
25 You heard me? Did you hear me?

1 Female said:

2 What did you say?

3 He said:

4 I said one piece is in the closet in the gray bin, so get that out of there,  
5 and one piece, them shoes still up in the top part of the closet, get them out  
6 of there.

7 Where was -- where were the pieces of the gun found? The box and  
8 in that gray bin. Defendant's car --

9 THE COURT: So Mr. Dickerson, I hate to interrupt your presentation.  
10 We've been going about, like, an hour and -- over an hour and 40 minutes. Do  
11 you think anyone -- I wonder if anyone needs to use the restroom yet, take a  
12 quick break? Or should we -- should we finish your presentation?

13 Raise your hand if you urgently need to take a break, otherwise we're  
14 going to keep going. All right. With no hands.

15 MR. DICKERSON: Thank you.

16 THE COURT: Keep going, then, sir. Thank you.

17 MR. DICKERSON: Thank you, Your Honor.

18 Mazda 3, seen by so many of the victims. Some would think it would  
19 be a good idea to go commit a crime in a nonregistered vehicle. But it turns out,  
20 having no license plate and having a -- the dealership placard is extremely  
21 recognizable. And so what do we have? We have ample evidence from many  
22 different sources showing defendant's connection to this vehicle.

23 We see that the defendant was interviewed. He tells the police, he  
24 and Omara bought the car, but he says he only sat in it at the dealership, just to  
25 test it out. And then we have calls where the defendant says he paid cash for the

1 car. He says he -- approximately 1500 he dropped on that; that he also got all the  
2 windows tinted in Las Vegas. And, most tellingly, Ain't nobody driving my car.  
3 We heard the defendant say that. He says that on one of those phone calls. Ain't  
4 nobody driving my car.

5 This is corroborated by additional evidence, as much as we can  
6 believe her, Chanise. She also says that this car arrives in Las Vegas without tint.  
7 Ultimately it gets tint. This is ultimately seen when we take a look at the vehicle  
8 itself. We can see it's newly tinted. We see that sticker saying, do not roll down,  
9 indicative of the tint. You heard from the CSA with experience in vehicles and  
10 fingerprinting vehicles, tint on the inside of the window.

11 And then we hear that that print that was on the inside of the window,  
12 the newly tinted window comes back to none other than Keandre Valentine. A  
13 vehicle that came to Las Vegas from a dealership in California, without tint,  
14 arrived here. He says he got it tinted. He says he only sat in the vehicle, in  
15 California, at the dealership, and his fingerprints are yet on that tint. It's the  
16 defendant's vehicle, ladies and gentlemen. It's the same car used in all these  
17 crimes.

18 He arrived in Las Vegas with Omara McBride in that car. We know  
19 that. It's become clear over the last two weeks. On May 26, 2016, at  
20 approximately 2:16 p.m., Omara McBride who he arrived with, his girl who he got  
21 this car with, she pawns the stolen items from Mr. Bass, here in Las Vegas.

22 Phone call, May 29, 2016, at 8:27 a.m., shortly after his arrest, female  
23 says:

24 Dame and Bobby were in the house, too, but they just put it all on  
25 you?

1 Mr. Valentine says:

2 Dame -- Dame. They let Dame go. They let Dame alone, because he  
3 didn't fit the description.

4 But Bobby's been left two days ago.

5 Ladies and gentlemen, you heard from both Marvin Bass and Jordan  
6 Alexander who came in here and told you, looking at that picture, Bobby McCoy,  
7 that ain't him. That's him. Defendant Keandre Valentine, that's the man who is  
8 guilty for all these crimes.

9 Ladies and gentlemen, that's what we've shown. We've shown that  
10 the defendant committed these crimes, and because of that, we're asking you to  
11 find the defendant guilty on all counts.

12 Thank you very much.

13 THE COURT: Thank you, Mr. Dickerson.

14 We'll go ahead and take our break.

15 Ladies and gentlemen, we're going to take a 15-minute recess.

16 During this recess, you are admonished, do not communicate among yourselves  
17 or with anybody else about this trial or the subject matter of this trial; do not  
18 communicate at all with any of the parties, attorneys, or witnesses involved in this  
19 trial; do not seek or obtain any information or comments about the case from my  
20 source, including newspapers, television, radio, Internet, e-mail, cell phones, or  
21 any other electronic device; do not read, watch, or listen to any report of or  
22 commentary about the case; do not perform any research or investigation; do not  
23 form any -- or express any opinion on any subject connected with this trial until  
24 the case is finally submitted to you.

25 You are directed to return to the hallway outside this courtroom for

1 further deliberations -- for further proceedings at 3:03. All right. 3:03. Thank you.

2 [Jury recessed at 2:46 p.m.]

3 THE COURT: Okay. We're outside the presence of the jury. Is there  
4 anything to put on the record?

5 MS. LEXIS: Not by the State.

6 MS. MACHNICH: I don't believe so, Your Honor.

7 THE COURT: All right. I'll see you back at 3:03.

8 [Court recessed from 2:46 p.m., until 3:03 p.m.]

9 [Outside the presence of the jury.]

10 THE COURT: All right. Marshal, why don't you bring the jurors in,  
11 please.

12 [Jury reconvened at 3:05 p.m.]

13 THE COURT: All right. At this time the State is invited to present  
14 their closing arguments to the jury.

15 MS. MACHNICH: Defense.

16 THE COURT: Or the defense. I've done that a couple times.

17 Ms. Machnich, I apologize.

18 MS. MACHNICH: That's okay.

19 THE COURT: Ms. Machnich, you may present your closing  
20 arguments to the jury.

21 MS. MACHNICH: Thank you, Your Honor.

22 THE COURT: All right.

23 MS. MACHNICH: Faces are complicated. Height isn't. At the  
24 beginning of this trial, nine trial days ago, Mr. Gaston came up before you and he  
25 said those words, because this is a case about identification.



1           The State just came up before you and went through elements of  
2 every single crime that they intend to prove in this case, check, check, check.  
3 And you know what? Robberies occurred; a gun was used. Burglaries occurred;  
4 a gun was used. You saw victims; they were victims. Their things were taken.  
5 That all happened.

6           But Keandre Valentine didn't do it. Bobby McCoy did.

7           The only three counts before you, where Mr. Valentine has any  
8 culpability, where he should be found guilty of anything, relate to the final three  
9 counts, 12, 13, and 14. There's a charge on there for possession of stolen  
10 property. And we will come up here and concede to you that he is guilty of those  
11 charges, because as Mr. Gaston said at the beginning of this trial, he was aware  
12 that there was a gun in the apartment. He was aware there was stolen property.  
13 He was aware that things had been going on. Those have never been contested.

14           So, yes, on Counts 12, 13, and 14, possession of stolen property, you  
15 can find Mr. Valentine guilty of those. But not the rest.

16           So why does height matter? We keep coming back to it over and over  
17 again in this case. It seems like one small element in so many pieces over  
18 nine days of trial. Well, here's why. Keandre Valentine is 6-foot-3 or 6-foot-2 and  
19 three-quarters to 6-foot-3, based upon the evidence that you heard.

20           Marvin Bass is 6-2. What he told you is the robber is shorter than I  
21 am. He gave multiple different heights. Yes, it did vary. He gave a range. But in  
22 the end, what he said was, The robber is shorter than I am. Mr. Valentine is not.

23           Next, we have Jordan Alexander. He's 5-7. And what did he testify  
24 to? The robber is a little bit taller than I am. And he gave amounts of 5-8 to 5-10,  
25 a little bit taller. Mr. Valentine isn't. He's significantly taller.

1 Next we have Santiago Garcia, The robber is 5-10. Mr. Valentine  
2 isn't.

3 We've heard about a Juan Campos Torres, he's named as a victim in  
4 one of the counts. We have no idea, because we didn't hear from him. We'll talk  
5 about him later.

6 The Faulkners made no mention of height, and as far as we know,  
7 never had an opinion as to height. From the evidence you've heard, it's never  
8 been mentioned.

9 Then we have Lazaro Bravo-Torres, who said he was 5-feet tall, and  
10 he said the robber was a little bit taller than I am. Okay. Do we know exactly  
11 where that is now? But what we can say is, someone who is 15 inches taller is  
12 not a little bit taller.

13 And then we have Rosa Vazkuez. This man is much, much taller than  
14 the man who robbed me. Much, much taller.

15 So let's put Bobby McCoy into this, because you've heard evidence  
16 that he was associated with the car and other various associations with the  
17 apartment and the people involved. Bobby McCoy is 5-10.

18 Marvin Bass, let's put Bobby McCoy in. Hmm.

19 Jordan Alexander -- whoa -- technology fail. Okay.

20 Santiago Garcia -- that happened again, there we go. Put Bobby  
21 McCoy in.

22 Lazaro Bravo-Torres, with Bobby.

23 And Rosa Vazkuez, with Bobby.

24 That is why height is important.

25 Now, let's talk about the law enforcement in this case because you did

1 hear from several detectives and at least one patrol officer and several other  
2 employees of the Las Vegas Metropolitan Police Department.

3 You heard from Detective Ludwig. He seems like a really good guy.  
4 He seems really thorough. He was not in charge in this case. They was not the  
5 decision-maker in this case. He did not choose what got fingerprinted, what got  
6 ran for DNA, what witnesses were recorded and talked to, what evidence actually  
7 made it in to storage so that it could be brought before the jury. He just didn't do  
8 that. It wasn't his job in this case.

9 Detective Majors, he was in charge in this case. He testified and he  
10 remembers virtually nothing. Every single step along the way, almost every single  
11 question that was posed, his recollection had to be refreshed by either the State  
12 or the defense, because he just doesn't have any knowledge of this. That's how  
13 important it is to him. And the same detective lost evidence. You heard  
14 testimony that there was a showup form done by Darrell Faulkner and that he was  
15 there witnessing that form. We don't know what's on that form, because it just  
16 disappeared.

17 Similarly, you heard testimony that he went and retrieved a video from  
18 the EZPAWN. We brought in the manager of the EZPAWN, who testified that the  
19 video system was working. He doesn't remember this exact instance, but he  
20 knows that if I detective came in, asked for video, that he would leave with  
21 something relevant if he took something, and, oh, yeah, that it would work when  
22 he left EZPAWN.

23 So what happened to the video? We don't know.

24 Also, Detective Majors, what didn't he do? He did not record the  
25 lineup interaction he had with Marvin Bass. Why is that important? Because

1 there's been a lot to do and say about the procedures in the lineup that we will  
2 cover in a few minutes, and we don't actually know what exactly happened that  
3 day. We don't know exactly what he said and didn't say, because we don't have a  
4 recording. And we know he takes a tape recorder with him every single day on  
5 the job, just like he had one with him the day that he recorded Marvin Bass's  
6 statement. He had it and he chose not to use it, and his explanation was, I didn't  
7 have to. Is that good enough?

8           Okay. And then we have Officer Wise. He is the one who was  
9 involved in detaining Omara. He did say that she would have been patted down  
10 before she went in the police vehicle and she was detained by police. And we  
11 discussed with him that this pat-down that occurred at -- on someone who was  
12 wearing what he said was tight clothes, this pat-down had to have been thorough  
13 enough to make sure that there were no weapons on her of any type -- knife, gun,  
14 et cetera, and officer safety and well being every single day on the job relies upon  
15 thorough and complete pat-downs. It's for officer safety there.

16           She didn't have some large items on her in her pocket. They would  
17 have felt that in a pat-down. They didn't.

18           Additionally, he explained how body cameras work, and how they can  
19 be flipped on and flipped off by the officer who is wearing them. We will  
20 [indiscernible].

21           Now, let's talk about the other law enforcement-related people who  
22 testified. The crime scene analysts, they did their job. They came, they  
23 photographed, they impounded evidence they were told to impound. I don't think  
24 we can take any issue with what they did. They did what they were told. But  
25 again, they were not the deciders in this case. They didn't decide what to -- what

1 phone to take, what clothes to take, what -- they didn't decide any of that. They  
2 followed, just as their job states, what the officers told them to do. And they did it  
3 well.

4 The DNA analyst, she seemed to really know her stuff. State's expert.  
5 They put her on. What did she testify to? Well, she testified to a lot with the State  
6 and she looked extremely uncomfortable, which was clarified on cross that, a lot  
7 of this, well, the peaks, there's a little bit of peak that sort of matches him. She  
8 was very uncomfortable about that because as she said on cross, that's not how it  
9 works. It's not reliable under a certain level. They can't say inside -- for scientific  
10 certainty that it's even possible. It's even plausible, because they might get totally  
11 different results if they run it again. That's why she was uncomfortable testifying  
12 to that.

13 The State tried to force that through, tried to cherry pick that evidence.  
14 And you know what, in the end, probably not really at issue in this case, is it,  
15 because we've acknowledged that Keandre Valentine has handled that gun, so  
16 his DNA could be on there.

17 But what's important is there was a mixed sample. So what she said  
18 was at -- two people held that gun at least, and at least one of those people was  
19 male, that means both of those people could have been male.

20 Fingerprint analyst -- again, she seemed to know her stuff. She got  
21 up here. She talked about her whole procedure. She talked about collecting the  
22 prints. And yes, she found Keandre Valentine's prints associated with the white  
23 car. She did. And he's never contested he was associated with the white car.  
24 Additionally, she found Bobby McCoy's fingerprint on that car. And we also  
25 addressed with her and the crime scene analyst that fingerprints that are taken off

1 of things are not the entire universe of all the people who have ever touched the  
2 thing. Because we know that Omara McBride drove the white car. We know that  
3 Chanise Williams was in the white car. And various other people, as well. And  
4 their fingerprints weren't on the white car. So different people can be in different  
5 locations, sitting in different seats.

6 But what we know for sure is between May 25th, when the car was  
7 purchased, and May 28th, when the police were involved in this, Bobby McCoy  
8 and Keandre Valentine were both associated with the white car. She did her job.  
9 She did a good job. And again, she followed what she was told to look for by the  
10 officers.

11 So let's get on to some of the identifications in this case because as I  
12 already stated and as we've made clear throughout this entire process, this is a  
13 case about identification. Let's start with Deborah Faulkner. Suggestive  
14 identification, at best.

15 This woman got on the stand and supposedly had never been shown  
16 a picture or a lineup, had never seen -- I put to you she's never seen Keandre  
17 Valentine before, ever, but she supposedly -- and she testified, and I'm sure she  
18 did, see the actual robber. But we're talking about 14, 15 months ago. The first  
19 time -- so her testimony, the first time she's seen Keandre Valentine is sitting at a  
20 table with the word defendant on it, next to two lawyers. She knows who she's  
21 supposed to identify. Additionally, she knows why she came to testify here, and  
22 she knows that her husband has identified someone in this case. It doesn't take a  
23 genius.

24 And then we have Deborah Faulkner on the stand. Judge her by her  
25 demeanor, because we all judge everyone by their demeanor in their testimony.

1 That's how we judge whether they're telling the truth, whether they're not.  
2 Whether they're being fully forthcoming, whether they're not. That woman got up  
3 on the stand and started yelling about the eyes -- the eyes, the eyes, the eyes.  
4 We know that she does take prescribed narcotics, and that they affect her ability  
5 to do certain things, including remember, communicate --

6 MS. LEXIS: Your Honor, I object. This was not the actual testimony  
7 of Mrs. Faulkner. Actually, she testified that it was -- it did not affect her during  
8 cross-examination. These are facts not in evidence, and actually misstatement of  
9 the -- the facts, as shown.

10 MS. MACHNICH: And Your Honor, I don't recall that being the case,  
11 but I believe that is in the province of the jury.

12 THE COURT: Well, I think she was questioned -- I think the lack of  
13 communication was in the question, not in the answer. And so the jury is directed  
14 to search their memories to -- and their notes and try to recall what specifically --  
15 what was said with respect to whether any of the medications that the witness is  
16 taking has affected her ability to perceive or recall or testify. And if you think it's  
17 important or material for your deliberations, you can request a playback. Okay.  
18 Thank you.

19 And you may continue.

20 MS. MACHNICH: Thank you, Your Honor.

21 Additionally, I will say, you also heard from Detective Majors, who was  
22 the one who decided not to take her statement that day, because she was on  
23 narcotics, because he had those concerns. So Deborah Faulkner, we're talking  
24 about the eyes, the eyes, the eyes. Who am I?

25 George W bush, right? That's what it looks like. The eyes. No.

1           So the eyes aren't everything. And -- well, we'll just let you judge  
2 Ms. Faulkner by her demeanor.

3           Darrell Faulkner, he had all the details that were wrong. Yes, he  
4 cried. He certainly did. And he gave a -- what he believed to be a thorough  
5 description of the man involved in this, and he described light blue jeans, a blue  
6 belt, a black shirt with a white shirt under it, and blue shoes. He also described  
7 no tattoos.

8           None of those -- well, none of the description of the clothing matches  
9 any other victim that's testified whatsoever. So we're saying these are all related  
10 robberies. I would put to you that they seem like they really are related, as in  
11 they're the same person. Is it really possible that the robber changed clothes?  
12 No. Changed clothes for one and then the rest of them he didn't. That doesn't  
13 make any sense.

14           Mr. Faulkner perceived wrong. He perceived details incorrectly. And  
15 you heard about how stressful situations can affect memory and affect those  
16 details. Again, we'll come back to no tattoos later, but he said he was studying  
17 every aspect of the robber, but did not match any of the tattoos.

18           Next, he said that he saw a large-frame gun, also, I believe, with night  
19 sights at some point. And he says he knows guns, and he was sure. And it was  
20 not a large-frame gun. Nobody else describes a large-frame gun. And at least as  
21 far as what the State has presented to you, the gun involved, from their  
22 perspective, is a small-frame gun. So he's not trying to lie. He's not trying to  
23 make stuff up. But his memory just isn't all there on it, because it's stressful.

24           And again, this goes to suggestivity. At grand jury he changes his  
25 testimony to black pants, and this is after speaking with people from the District



1 Attorney's Office.

2 And I put to you that it's reasonable to infer that that's because  
3 everybody else said black pants and he was told everybody else said black pants.  
4 He changed. And that's how memory works. You can adopt new memories as it  
5 goes forward, as time passes, as things are suggested to you by people that you  
6 respect or people you rely upon, like law enforcement or the District Attorney's  
7 Office, sort of an arm of law enforcement.

8 He testified that he has memory loss. So how much of his actual  
9 testimony here is from his actual memory at this point and not just refreshed by  
10 reading other things and preparing and talking to the district attorney's in  
11 preparing? I don't think any of us know for sure, because he said he's absolutely  
12 certain he has memory loss and he expressed that on the stand. And,  
13 unfortunately, it's because he's had health concerns. So nobody's faulting him for  
14 that, but do we actually know what's in his memory at this point?

15 And after all that, when he was asked to identify Mr. Valentine, he  
16 said, Oh, yeah, that's the guy -- or whatever specific language he used. But the  
17 first thing he said was, I'm pretty positive. And then there was a little bit, and then  
18 he said, Oh, yeah, he remembers that. I'm pretty positive. Do we know if pretty  
19 positive was the first thing he said at the same time when he was doing the  
20 original ID? What was he looking at at the time of the original ID? Was it the hair,  
21 like some of the other witnesses? We don't know that, because the detective who  
22 has been on the force for, if I'm remembering correctly, 16 years. If I'm wrong,  
23 forgive me.

24 The detective, Detective Majors lost the showup form, so we don't  
25 even know what's on it. We don't know what he identified when he originally saw

1 Keandre Valentine and said that he was or presumably said that he was the  
2 robber.

3 And, finally, vision. I'm not asking you to *12 Angry Men* this case, but  
4 you saw that his glasses came on and off several times during his testimony, and  
5 that was never specifically addressed. But do we really know how good his vision  
6 was at the time and if he was wearing his glasses or if he should have been  
7 wearing his glasses at the distance? We -- we don't know.

8 Marvin Bass -- six- to eight-inch window. Marvin Bass, on  
9 cross-examination, right after the State had gotten up next to the witness stand  
10 and gone through the distance between him and the robber, I also went up there  
11 to speak with him to get an idea of how much distance there was and what his  
12 view would have been. And he admitted that the window was about halfway  
13 down, six to eight inches open. Six- to eight-inch window. That is what he had as  
14 a view of the robber. And then a sedan, you'd have to be looking up to see a  
15 face, which is then blocked, I would argue, by the roof of the sedan. So this great  
16 view he had is actually not a great view.

17 He testified that the robber is shorter than him. Yes, he was sitting  
18 down, but he did see him in relation to vehicles and at a distance, walking there.  
19 Is it everything? No. But is it something? Yes. He described a two-door  
20 Kia-type or Fiat, and then he changed it to a four-door, after speaking with the  
21 district attorney or the detectives, the law enforcement. Again, this goes to  
22 suggestivity. He's not trying to lie. But it can be suggested to someone that  
23 something isn't what they observed if someone in a position of control, a position  
24 of authority tells them, Oh, but it's really this, isn't it? I mean, it's this. This is what  
25 you saw.

1 He also saw a red-and-white paper over the dealer plates. Not trying  
2 to say it's a different car, ladies and gentlemen of the jury. All I'm saying is  
3 memory isn't perfect and what you observe and what is in real life are not always  
4 the same thing.

5 He reported no tattoos on the arms or the neck. We'll come back to  
6 the neck in a second. But you will see -- and you have seen in State's Exhibit 59,  
7 that Mr. Valentine has a tattoo prominently on his arm, and you can actually see  
8 on his opposite wrist, as well. There are more pictures in evidence. Feel free to  
9 take a look at them. He mentioned none of this.

10 And then we have the suggestive lineup. We're going to specifically  
11 address that.

12 When Marvin Bass was called back on rebuttal, the State only called  
13 two of the victims to actually take a look at Bobby. And why they didn't call the  
14 rest, we don't know for sure. Maybe they got it wrong. But they put it back up  
15 there --

16 MS. LEXIS: Objection, Your Honor. I object to that statement.  
17 That -- that --

18 THE COURT: Maybe -- maybe -- maybe who got it wrong?

19 MS. MACHNICH: The people who weren't recalled, Your Honor.

20 MS. LEXIS: That is not a fair inference. That's actually quite  
21 misstating the law, arguing facts not evidence. I -- I --

22 THE COURT: But maybe that -- the witnesses might have gotten  
23 something wrong, I think it goes -- the jury's responsibility to judge credibility.  
24 Overruled.

25 Keep going.

1 MS. MACHNICH: Thank you.

2 They did put on Marvin Bass, however. And in rebuttal, when asked  
3 why the picture of Bobby McCoy looked different from the robber, he said, Well,  
4 the picture of Bobby McCoy, his hair is shorter. Because remember, in his  
5 original report to police, he said that the robber had a short afro. This man is  
6 clearly very focused on hair. That's a characteristic he looks at first.

7 The hair is shorter. Well, the picture of Bobby McCoy that we have in  
8 evidence, as His Honor informed you, is from December 2016. And as you heard  
9 from Chanise, Bobby McCoy, at the time that these robberies were occurring, he  
10 had a short afro or some length of afro that wasn't huge. She didn't know exactly  
11 the length. But he had longer hair than a smooth shave. So if we're looking at the  
12 hair.

13 Now, let's look at this lineup. Marvin Bass's line up. This is not the  
14 best copy. In fact, the best copy in evidence is the replication from Defendant's  
15 Exhibit J, which is from the Grand Jury Exhibit 7. So you're looking, specifically,  
16 for the tag Defendant's Exhibit J. But we'll use this for demonstration.

17 These three gentlemen do not fit the description at all of the person  
18 who was robbed, because they don't have an afro. That's what Detective Majors  
19 was putting in this lineup. That -- obviously you see that's something that Marvin  
20 Bass is drawn to. Those three people, not even close to having an afro.

21 Now, let's look at No. 2. He said, remember, he described the man  
22 being in his lower 20s. That man -- and Marvin Bass agreed with me -- looks like  
23 he's about 40. So he doesn't look anything like the description that was given,  
24 either.

25 And then let's look at No. 5. And I put to you, you can't see it at all in

1 this, and you possibly can't see it that well in the State's exhibit, but if you look at  
2 the defense exhibit, which was the version most closely replicated as Detective  
3 Majors indicated for the one that he actually showed to Mr. Bass that day, you can  
4 clearly see Person 5 as a visible neck tattoo.

5 Marvin Bass didn't report any neck tattoos. So even if we can say  
6 that No. 5 has an afro, and I -- I put to you that he doesn't, but even if he did and  
7 you can make that argument, he also has a very distinctive feature that was  
8 never -- never mentioned. So it's very clear, and it was very clear to Marvin Bass  
9 that he was not to pick that person.

10 And then finally, we're left with Mr. Valentine, who is the only  
11 remaining person in the lineup. And do we know what process of elimination, if  
12 any, Marvin Bass took when he was doing this lineup? Did he do that analysis?  
13 Did he do it out loud? Did he do it in his head? Did he point to anything? Did he  
14 ask any questions? We don't know, because we don't have that recording.

15 So there's Jordan Alexander. He specifically stated the hair and thin  
16 build is really why I recognized him. He did not report any arm tattoos. Being  
17 very specific, remember, and he didn't report any obvious arm tattoos? You  
18 heard no testimony of that. His wallet is still missing. It's gone. Was it dumped?  
19 Was it kept by the real robber? We can't know.

20 But we do know that Jordan Alexander identified Keandre Valentine  
21 from around 77 or more feet away. And how do we know that? We have a body  
22 cam, and that's the only body camera we have from any of the identifications,  
23 even though we know other officers were wearing them. It's the only one from  
24 any of the identifications that show what the person said and where the  
25 identification took place.

1           No wonder his hair and his build were what was recognized. That  
2 was the only thing that he could see from that distance.

3           And I'll turn your attention to Defendant's Exhibit A, which is a still  
4 from that body camera. I believe the actual body camera footage is also in -- in  
5 evidence, so if you want to take a look at that, go ahead. But this is the distance.  
6 Yeah, a camera is not going to be as clear as a human eye. But that's really far.

7           You saw the demonstration in court. We were at 65 feet when we hit  
8 the window outside the courtroom from the witness. The only thing he could tell  
9 was the hair and the build of the person. He didn't look at the face. All he could  
10 tell was the relative height difference between Damian, the shorter man who was  
11 in the lineup, and Keandre Valentine. So he picked the taller one.

12           And then, remember, he was also the other person who got called in  
13 rebuttal. And he said that Bobby isn't him. And then he also said the hair isn't the  
14 same. Again, he's looking at the hair, because he looked at the hair that day  
15 during his identification. He was so excited they found the guy, and from 77 feet  
16 away, he says, Yeah, that guy looks like him. Hair and build and his body.

17           Also, and I really ask you to note this one, when he was up on rebuttal  
18 and this [indiscernible] really quick, he commented on the goatee in the photo, the  
19 goatee on Bobby McCoy. And he said the robber had a mustache only. He didn't  
20 have a goatee. He just had upper, you know, a mustache. No need to define  
21 that.

22           Well, we don't know exactly what facial hair Bobby McCoy had at the  
23 time in May, because we don't have a photo from that time period. Nothing was  
24 presented into evidence on that. But I put to you what we do have in evidence  
25 is -- well, we have many pictures of Keandre Valentine in May 2016. And what

1 does Keandre Valentine have? Hair on his chin. So the robber only had a  
2 mustache. It's not Keandre.

3 Lazaro Bravo-Torres. He was 90 percent. The best he ever got to  
4 was 90 percent. He specifically stated in his ID showup, and this is in evidence,  
5 as well, that it looked like the robber had cut and styled his hair. When would that  
6 have happened exactly? Because we have photographs -- first of all, you've  
7 heard testimony and the State has emphasized, this was a very tight timeline;  
8 robbery, robbery, robbery, robbery, car, apartment, arrest, lineup -- or showups.  
9 Very quick timeline.

10 When did Keandre have time to cut his hair? And where? And how?  
11 These are photographs. I'm showing you State's Exhibit 71 and 94, which there  
12 are many more of the inside of that apartment. Where did he cut his hair? He  
13 didn't. Because it wasn't him.

14 There's no way the robber was 15 inches taller, if he's described him  
15 as a little bit taller. And remember, he knew and his wife told him the man -- the  
16 man they caught had her things. So that was told -- I -- do we know exactly  
17 when? Probably not. Was it after the original ID? It might have been. But before  
18 he came in here on the stand and testified, he had heard from his wife, if not from  
19 multiple other people -- the State, detectives -- that they had the things. And  
20 you -- you all heard how much Rosa Vazquez put -- how much weight she put on  
21 knowing that Keandre Valentine had her things. And I put that in quotation marks,  
22 because again, they weren't on his person. They were in the apartment.

23 Santiago Garcia. We talked a lot about an iPhone. A lot. And I put to  
24 you that it's not about an iPhone. It doesn't matter if the police impounded the  
25 right iPhone. It just doesn't matter. I mean, they don't have to do that in order to

1 prove the case. That's not really the issue here.

2 The issue is that when the State got on the stand and handed  
3 Mr. Garcia 37A, the -- it looked like an iPhone 6 or 7 body style, iPhone 6 body  
4 style, gray, like, steel gray iPhone. He said that that was his iPhone. And so,  
5 actually, the specific statement that was made -- because this was an issue and  
6 he wasn't answering as many questions on cross, and I put to that that was  
7 because he wasn't interested in answering questions for the defense, only for the  
8 State.

9 But when the State showed him that iPhone, this is what happened.

10 I'm showing you here what's been marked as State's 37 --

11 Exhibit 37A; do you recognize this?

12 Answer: Yes.

13 Question: What is that?

14 Answer: That's my phone.

15 Question: Is this your phone?

16 Answer: Yes.

17 Response: Thank you.

18 Now, after that, we had a lot of talk about whether that was the phone,  
19 whether it had a case, and did it have a black case, did he think they took the  
20 black case off. It went on from there.

21 But what he did was took what the State said at face value. They  
22 presented him with this phone. It's his phone. And I put to you it's not the same  
23 phone that he identified in the picture. And it's not identified in the -- the same  
24 picture when he testified at grand jury a month after. So he's now identified two  
25 phones.



1           It's not about the phone, insofar as it does not matter if they have the  
2 right phone in evidence. But what matters is that he is taking what the State says,  
3 what law enforcement is saying to be true, and adopting it. And, obviously, he  
4 does not feel that way about defense counsel. But that's fine. Now, he's clearly  
5 going to tell the State what they want to hear.

6           And now we have the question of what -- what really happened at his  
7 original showup, because we have the statement that he didn't write. We know he  
8 didn't write it. He doesn't write in English. So the officer wrote it. This is not a  
9 huge deal. I mean, yeah, the -- he first was taken to the ID of the car. And  
10 you'll -- you'll have the body cam in -- in evidence on that.

11           The State showed you the little snippet where there was the actual  
12 talking about the car, and yeah, I think that's the car. 90 percent. Then they have  
13 more discussion.

14           But I put to you what is important is the defense exhibit extension of  
15 that, which was the next little snippet of body camera, when they went back to  
16 have the statement written. And in the statement, the officer just dictates the  
17 statement, and he does not say what Mr. Garcia said. He does not put in that  
18 information. He just dictates what he wants in there. He doesn't even want  
19 Mr. Garcia to be dictating it to the -- I believe it's the client that he said who was  
20 writing it.

21           So I put to you the fact that the body camera was then turned off, and  
22 this is a conscious effort by a police officer to turn it off, and then he was taken for  
23 a showup, we don't know how far away he identified Mr. Valentine. We don't  
24 know what was said at the time of that identification. And, frankly, we don't know  
25 what his real words were at all, because that officer was going to write whatever

1 he wanted to write, as demonstrated by the prior body cam.

2 We have Juan Campos Torres. He's not here. Again, did he get it  
3 wrong? Did he get the ID wrong? What happened to him? He didn't testify. We  
4 don't know.

5 And Rosa Vazquez. Her showup was 95 percent. But she said it  
6 looked like he had cut his hair and styled it. Again, we don't have any evidence  
7 that any of that was done by Mr. Valentine, because he's not the robber.

8 Most importantly, she stood -- she came down here off the stand,  
9 where she was saying -- because she couldn't see well enough from here. She  
10 was within 25 feet, because that's -- that's about 25 feet to counsel table. She  
11 came closer. And she walked around. And just as the State said, she came and  
12 she stood right about here, in front, 8 to 10 feet.

13 The court asked Mr. Valentine to stand up. All the air was sucked out  
14 of the room as we waited for the answer. And what did she say? It's not the man  
15 who robbed me. This man is much, much taller than the man who robbed me.  
16 She did get on the stand later and she did explain, Well, they told me he had my  
17 stuff. No one else could have had the stuff. So it must be the man. Yeah, it's the  
18 man.

19 Well, what did she do when she was standing 8 to 10 feet away? She  
20 said it wasn't him. And she's the only person who ever had that opportunity.  
21 Today -- not today -- this week, this last week, last year, ever. She said it wasn't  
22 him.

23 So we're talking about height. She is why height matters.

24 And we talked about she backed off because the police had told her  
25 that the items were found on Mr. Valentine and no one else could have had them.

1 And, of course, we all know that's mistaken; there were many other people who  
2 had access to that apartment. All right.

3 What is the common thread between all these victims? You heard the  
4 State ask multiple victims do they know all the rest of the victims? And they did  
5 this with several of them. I -- I'll put to you I don't recall them doing it with every  
6 single one, but they certainly did it with a lot of them. And they said, Oh, I don't  
7 know them. Okay, they don't know them. There was not some grand conspiracy  
8 between all of these victims to make this up.

9 However, the common thread is police. And it's not that the police  
10 were out to get someone, necessarily. But they found the man that they said did  
11 it, and they never looked back. They went full steam ahead in all of their  
12 procedures from then on, implicated one man, because that's how their  
13 procedures were working. That's what they did. They took actions to make sure  
14 that their man, the man that they said did it, ended up here before you.

15 We heard from Chanise Williams in this case. She testified Omara,  
16 Bobby, Keandre, and another woman arrived at her house around the 27th. She  
17 said she didn't really remember the date. It was that Friday. The State pressed  
18 her, well, did they come straight from California? And she said she thought that  
19 they had. But remember, she doesn't know what they did before they got to her  
20 house. Ultimately, she knows what happened -- she knows when they got there.  
21 So we don't really know when they got into town. She doesn't have that  
22 knowledge.

23 She testified the girls went out, the boys stayed in. We showed you a  
24 valet ticket, demonstrating that. It also demonstrated that she was in that car and  
25 she said she was in that car. That's a fact. And remember, her fingerprints

1 weren't found on the car, which supports the idea that just because someone's  
2 fingerprints aren't on there doesn't mean they've never been associated with it.

3 So saying that Bobby's fingerprint was only on the passenger-side  
4 door and it wasn't in the driver's side, well, Omara's fingerprint wasn't on the  
5 driver's side either, but we know she drove it. So maybe that's not quite as  
6 relevant. It does still put them all associated with the vehicle.

7 She said on Saturday morning she woke up to the police officers  
8 being downstairs, her neighbors saying there are cops, they're messing with  
9 Omara's car. She said she didn't want to be in court. She looked like she didn't  
10 want to be in court. I put to you, she seemed very uncomfortable to be here.

11 And as the court noted, nothing was done wrong, as the State had  
12 insinuated, with her testimony between her and Mr. Valentine.

13 In fact, the jury instruction that he specifically read, you've heard in  
14 reference to the jail call that the State brought up, absent evidence proving  
15 otherwise, there has been no other evidence with regard to that. You are to  
16 assume -- you are not to assume anything said by Mr. Valentine, Defendant,  
17 during his call was wrong or that he tried to convince the witness to lie. And that  
18 is a matter of law that you must accept as a matter of law given by the court.

19 Let's talk about the jail calls. Yes, you all heard them. We heard one  
20 that's talking about you all supposed to leave before they even came upstairs.  
21 When I see them outside, I didn't know what they were outside for. Okay. So we  
22 have two here. She's -- and we have Chanise adopting this statement, this jail  
23 call as being hers. And she explained that they were supposed to leave before  
24 they got there. They were supposed to be gone. She explained that partially in  
25 that they were supposed to be gone. They weren't supposed to have even stayed

1 there. She's very frustrated that the police were even involved in a home with  
2 kids, this shouldn't have ever happened at all. Yeah. She was very rightfully  
3 concerned about that.

4 And I put to you, you can probably also infer that there was time for  
5 people to leave that apartment after she left to go downstairs to speak with the  
6 officers before the officers went upstairs. And she probably thought, they should  
7 have all just left. And I put to you, many of them did. For example, Bobby; Bobby  
8 left. Why did he leave? Because he knew why they were there. Keandre, not so  
9 much. When I seen them outside, I didn't know what they were outside for.  
10 That's why it's an explanation of why he didn't leave. You can take it for whatever  
11 it's worth. But that does explain why she was saying this.

12 I think you can also infer from her behavior, the jail calls in general,  
13 and what the police officer said about their discussions with Keandre, that this  
14 might not be a family/group of friends, I don't want to say associates -- but  
15 associates who maybe don't have a great view of police officers, and maybe they  
16 don't enjoy interacting with them on a daily basis.

17 Jail calls. Yep, Keandre knows where pieces of the gun are. You  
18 heard in opening that was not going to be an issue. He did know that. He  
19 explains the charges, but you heard from the State that their officers or detectives  
20 had spoken with him at length about those charges. It's not that he had  
21 knowledge of crimes. He had knowledge of the charges and what they were  
22 trying to put on him.

23 Bobby's been left, two days ago. He's been covering for Bobby since  
24 the beginning. He knew Bobby came back with something. He -- we know he hid  
25 the pieces of the gun. It's reasonable to infer he knew the other stolen property

1 that was in that apartment was there. Again, it does not take a genius to find out  
2 what possibly happened with Bobby and what Bobby would have done. He's  
3 been covering for him since he first got into jail. He was covering for him that day,  
4 because he didn't say, hey, not my stuff. It's Bobby's. He does not come from a  
5 family, friends, associates, that snitch people out to cops.

6 Jail calls. Who owns the car? There's a lot of talk about whose car --  
7 whose car, my car, your car, her car, my car, no one drives my car. They're  
8 probably all talking about the same car. It's probably the white car. Does it really  
9 matter? Because what matters is access to this car. We know multiple people  
10 have driven this car.

11 Omara McBride. She knows Bobby and Keandre. We've heard  
12 testimony about that. This is not some pull Bobby's name out of a hat, let's put  
13 this on some other stranger that no one ever knows and has no association.  
14 That's not what's going on here. Omara knows Bobby and Keandre, because you  
15 heard testimony that she drove into town with both of those gentlemen.

16 Her car. Again, her car, his car, their car, my car, no one drives my  
17 car. Who knows? She has access to the car. It's registered to her.

18 She pawned the gold chains. You heard that evidence. She pawned  
19 the gold chains. But does it really make it any more likely that it was Bobby than  
20 Keandre, Keandre than Bobby? Could it have been payback for letting Bobby use  
21 the car? We don't know. Wouldn't it have been great to hear from her? It's the  
22 State's burden to bring witnesses in this case.

23 So let's turn our attention to eyewitness identification, because that is  
24 the basis of this entire challenge to these State's charges. This is a case about  
25 identification. It is a case about eyewitnesses being able to observe, remember,

1 communicate what they remember, and identify the right person.

2 We heard from Dr. Smith. He was on the stand for a whole day. The  
3 State had -- in my count, two and a half hours to speak with him, as well as our  
4 direct and redirect. He has a Ph.D. in psychology. He's authored over a hundred  
5 books, articles, and chapters. Been a professor for 37 years. He attends  
6 conferences every year. He's specifically studied the science of eyewitness  
7 identification and memory.

8 Now, is the study of eyewitness identification science? Because it --  
9 there were some questions suggesting this is not science. This is -- this is made  
10 up. This is a theory, if that's, perhaps, I put to you what the State was trying to get  
11 at and what the State might argue on rebuttal. Yes, it's science. How do we  
12 know? Because it's subject to the scientific method. And it's continually  
13 challenged. It's continually tested. And it's continually reassessed. And it always  
14 needs more research.

15 And I put to you the State's questions suggested that the fact that it  
16 needs more research might make you consider that it's not good science. It's  
17 not -- you know, it's not valid. You shouldn't consider it. I put to you that medical  
18 doctors also feel that their fields need more research. And we would all want our  
19 doctors to continue researching. We would also want them to apply the science  
20 they have now in treating us.

21 Eyewitness identification. In the very best world, in the very perfect  
22 conditions, 78 to 80 percent accurate. Best controlled conditions. That's without  
23 any exterior influences and without any negatives driving it down. Under perfect  
24 circumstances, false identifications occur 10 to 15 percent of the time.

25 Other nonsuggestive factors ease or mitigate the suggestiveness

1 back to these levels. What does this mean? You don't get to add all of these  
2 things up and say we've done a good job. Taking away all of the bad things just  
3 gets them back to the 70 to 80 percent. That's the best-case scenario.

4 So in eyewitness identification, we have three areas of concern:  
5 Systemic, suggestibility, similarities.

6 Systemic: It applies to every eyewitness -- stress and anxiety,  
7 weapons, focus. You've heard testimony, you've heard comments in closing.  
8 Those victims were scared. We're never going to say they weren't scared. There  
9 was a high level of stress. They were very unhappy. They were frightened for  
10 their life. And there was a weapon involved. And those things, as Dr. Smith  
11 explains, do not help you make your memory better. At that high level of stress,  
12 remember, it gets worse.

13 As to this, he also testified that there's no consensus on a degree of  
14 confidence and accuracy being correlated. So the fact that someone says a  
15 thousand percent does not make it 1000 percent. It doesn't mean that they're  
16 more likely to be accurate. They just like to use a thousand percent instead of a  
17 hundred, which is the maximum.

18 Stress and anxiety weapons focus. Again, heightened anxiety stress  
19 is good. Highest anxiety stress is bad. And I put to you that in a situation where a  
20 gun is pointed at you or your spouse or your friend or yourself, that is the highest  
21 level of stress that you can get, because that is scary. And there was a weapon  
22 involved in every single one of these robberies. Never contested that, but we  
23 point to that to say that's where everyone would be focused.

24 Attention and memory is like money. Each person only has so much  
25 money to spend. Dr. Smith said that. You can't pay all the attention to



1 everything. You're going to describe the clothes. You're going to describe the  
2 weapon. You're going to try to describe the person or features that stand out to  
3 you. You're going to remember those features that stand out to you. Maybe not  
4 all the features, maybe some of the features. You're going to remember every  
5 single step of every single thing that happened.

6 Those victims got up on the stand and they recounted every single  
7 point of what happened in those crimes. And then I got out of my truck and then I  
8 stood there. And I had one leg up on the truck. And then he was reaching here  
9 and he reached with this arm and he did exactly this. They had a lot of details. I  
10 put to you those details don't mean they were paying more attention generally.  
11 Those details mean they were paying attention to the whole situation and  
12 spending their memory currency on that.

13 Suggestibility, the second issue. We have the photo spread line- up  
14 and we have the showups.

15 Line up: You can't tell height in a line up. And never was that  
16 illustrated to be more important and more apropos to a situation then when you  
17 saw Rosa Vazkuez stand within 10 feet of Keandre Valentine and say this isn't the  
18 man, he is much, much taller than the robber. Much, much taller, because she  
19 was able to stand next to him. In a lineup, you can't tell how tall these men are.  
20 They could be 5-3. They could be 7-3. We would have no way of knowing that.

21 You heard the State say on cross, it's not a hair line up. Clever,  
22 except it is if hair is what you're focusing on. And the purpose of putting together  
23 a line up is to put together photographs that otherwise are similar to the  
24 description and to the suspect so that there isn't a misidentification. But that didn't  
25 happen, because -- and again, this is a really bad photo of the lineup, and you'll

1 have much clearer versions back in the room with you.

2 But when -- if you do look at hair, which is a very distinguishable  
3 feature and something mentioned by multiple witnesses in this case, the only  
4 person with a noticeable afro is Mr. Valentine. And that's what was described.

5 And also we know in the lineup that Detective Majors didn't turn on  
6 the recorder. Why didn't he?

7 What we do not know. We don't know if he was actually read that full  
8 paragraph, that long paragraph of those great conditions saying this person might  
9 not be the person. The State went over it a whole bunch with Mr. Smith -- or  
10 Dr. Smith. They went over it a bunch of times with Mr. Bass and with Detective  
11 Majors. This great paragraph of this great language. We have no idea if  
12 Mr. Bass fully read and understood that. We have no idea if Detective Majors  
13 read it to him. We have no idea if Detective Majors emphasized part of it if he did  
14 read it to him.

15 We do know Detective Majors made the lineup and know who the  
16 suspect -- and knew who the suspect was. But we don't know if he said anything  
17 verbal or nonverbal to indicate who the suspect would be, more so than the fact  
18 that the line up itself has one person with an afro.

19 Why was it not recorded? He had the recorder with him. Because he  
20 didn't have to or because he didn't want to?

21 Why is hair such a big deal? We just discussed that, because it  
22 keeps coming up in this case, over and over again.

23 We'll go to the showup. It's a suggestive situation from the beginning.  
24 Dr. Smith was clear -- I believe that it might have even been suggested by the  
25 State at one point and then those factors, then, are mitigated.

1           It's a suggestive situation because, one, in the -- or in this case, two  
2 people are standing in front of a bunch of police cars with a bunch of police  
3 officers with handcuffs on, and they're going, Is this the guy? It's suggestive. The  
4 whole situation suggests that they found the guy and that you're to identify the  
5 guy.

6           They said that witnesses can move closer. Well, really, all we heard  
7 that from -- the only person we heard that from -- from an officer, really -- is  
8 Detective Ludwig, who again, seemed like he was totally doing his job. He did a  
9 great job. And he dealt with -- if -- from my recollection, and -- and I put to you  
10 that if you have a different recollection, go with that. But I put to you that he only  
11 really worked with Rosa Vazquez and Lazaro. He only worked with those two,  
12 because he was translating for them at the time, and he said he only translated  
13 for those two. So he was the one who was giving them the option to move up or  
14 move closer or move back.

15           There's only the one showup on body camera. We -- the only one we  
16 have, he certainly didn't move up. He was way far back. And one showup was  
17 specifically not on body camera, after the quasi idea of the car or the idea of the  
18 car when they finally talked it through, and then the statement that was written by  
19 the client, and that was on Santiago Garcia. That was -- specifically, the -- the  
20 officer made the choice not to record that, because he had to have flipped off his  
21 body camera to not record that.

22           And we have the situation, again, with the exhibit, looking at the  
23 distance, 77-plus feet away.

24           We see the relative difference in height, the body, the build, and you  
25 can see the hair.

1           Where are the rest of the showup videos? Faulkner, don't have one.  
2 Vazquez, don't have one. Bravo-Torres, don't have one. Juan -- we don't know  
3 what happened with Juan. Santiago Garcia, don't have one.

4           So let's talk about building blocks. The State has alluded both in their  
5 cross with Dr. Smith, and I would anticipate also on rebuttal, that all of the things  
6 that they did in the showup, all the things they did right, like having the  
7 admonishment, if we're to assume that everybody read it and took it to heart,  
8 maybe they did -- even assuming they did, they did that, they did the showups  
9 close to the time, they did -- they did every -- they're going to build up this tall pile  
10 of blocks, and but we did all these -- these things right. It had to have been okay.

11           But that's not the case. Because no amount of lighting conditions or  
12 quick IDs or admonishments are going to fix the situation. Because as Dr. Smith  
13 explained, eyewitness identification is more like a cake. You can have everything  
14 perfect, everything measured perfectly, the cake decorated perfectly, everything  
15 can be ideal. But if you put salt instead of sugar in that cake, I don't want to eat  
16 your cake.

17           The police involvement in this case was like that salt. The showups,  
18 the lineup, they were tainted by that salt.

19           And then we have similarity. The similarity between the robber and  
20 the suspect. There we go. Bobby and Keandre. Are they identical? By  
21 absolutely no means are they identical, and no one is saying that they are. Are  
22 they similar? I put to you they are similar in some ways. So first of all, we have  
23 the statistics, 5-10, 145, December from -- photo from December 2016; 6-3, 160,  
24 photo from May 2016. Are they identical? No.

25           But we also don't know the exact lighting conditions. We know that --

1 and -- and you can take a look at the photos that are in evidence. But Bobby's  
2 photo appears to be taken inside with some sort of indoor lighting. Keandre's  
3 photo was taken outside.

4 We know that about seven months went by between these  
5 photographs. It is -- I think it would be reasonable to assume that Keandre is in  
6 the same form that the robber would have been in that day, because it's the same  
7 day. But Bobby, most likely not. Or very likely not. And we've heard testimony  
8 that things have changed about Bobby, specifically, he's cut his hair significantly  
9 in that photograph.

10 I put to you that they look similar. And when you're talking about  
11 suggestive IDs, and you're talking about people who have been shown photos,  
12 and photos, and in-person, and police officers suggesting that these are the  
13 people and the conditions under which those suggestions were done, you've  
14 noticed what? The actual witnesses, the actual victims in this case point it out.  
15 They pointed out the hair and facial hair.

16 But also, don't let the State say, it was both a good lineup and that  
17 Bobby does not look similar to Keandre. So I'm going to show you something.  
18 There's a lineup. There's Bobby in the lineup.

19 There is no evidence that Keandre did this over Bobby.

20 I'm going to parse this out, because I believe this will be part of the  
21 State's rebuttal. Yes, Keandre was there lying in that bed. I put to you that that  
22 does not suggest Keandre did this more than Bobby. It actually suggests he did it  
23 less, because he didn't leave. You know that you've robbed multiple people, and  
24 you know cops are downstairs, you leave. Keandre didn't leave.

25 We know Keandre did not snitch on Bobby. That's clear. At no point

1 has he said Bobby did this. Because he's not going to snitch on Bobby. He's not  
2 going to snitch on his friend.

3 And this is not a balancing of who more likely did it. This isn't stack  
4 the things up for Bobby, stack the things up for Keandre, and see which one tilts  
5 more.

6 The standard here is beyond a reasonable doubt. I put to you, if  
7 you're getting to the point where you're saying which side of the scale is heavier,  
8 you have at least one humongous reasonable doubt, if not many, because you've  
9 been doing that balancing.

10 The judge rode you -- or read you a series of jury instructions. The  
11 State went over them very completely in their closing. And you'll have a copy with  
12 you there. But we'll be very, very clear. If the State has not proven beyond a  
13 reasonable doubt that Keandre Valentine was the robber, not that he possessed  
14 things, not that he knew where the gun was, that he was the robber beyond a  
15 reasonable doubt, you must find him not guilty of Counts 1 through 11. You'll also  
16 see the jury instruction on the call mentioned between Mr. Valentine and  
17 Ms. Williams, and many other very important points of law.

18 The State's rebuttal. They get to come up here again. And that  
19 illustrates again how heavy the burden is on the State. They even get to come up  
20 here and pick apart everything I said and talk to you yet again, and say their point  
21 of view yet again, and go through their evidence yet again, to try to convince you.  
22 And that speaks towards the fact that beyond a reasonable doubt is the highest  
23 standard under law. The definition of beyond -- of reasonable doubt is in your jury  
24 instructions.

25 The State is also going to come up before you, we believe, and state

1 that Dr. Smith said corroborating evidence is important. And there is so much  
2 corroborating evidence in this case, that's what bolsters the IDs. You would  
3 anticipate that. I -- I don't know, I can't read Ms. Lexis's mind, but we would  
4 anticipate that.

5 Why is there not corroborating evidence in this case? Because all of  
6 the evidence back at the apartment is just as likely, if not more likely, Bobby. Just  
7 as likely Bobby. It could have been Bobby. So it doesn't actually corroborate the  
8 identifications in the way that they say it does.

9 What is corroborating evidence? What could have been corroborating  
10 evidence in this case that would have linked Keandre Valentine to the crime, if it  
11 was him? Well, that would have been a fingerprint at the crime scenes. If his  
12 fingerprint was at the crime scenes, this would be a whole different case. DNA at  
13 the crime scenes. Perhaps even if the stolen property was found in his pocket  
14 and he was found walking somewhere. But that's not the case here.

15 The corroborating evidence doesn't point towards Keandre Valentine  
16 alone. And therefore, I put to you, it is not legitimately corroborating evidence in  
17 this case.

18 I would anticipate that the State is going to get up here and say a lot  
19 of things: That height isn't that important; that the IDs were clear; that there were  
20 lots of IDs. Just because there's lots of people who are put in suggestive  
21 situations and choose the wrong person because of the suggestive situations, just  
22 because there's a lot of them doesn't make it right.

23 It doesn't mean that a man who was not involved in robberies should  
24 be found guilty for something he didn't do.

25 And reasonable doubt. You can't define it. But I will put forward an

1 analogy for you. Imagine you have a cat and a mouse in a box. You put the box  
2 in a room and you tie the box up with a ribbon. You walk out and you come  
3 back 15 minutes later, open up the box. The cat is there; the mouse isn't. The  
4 cat's looking happy. You can infer, by circumstantial evidence, you can infer by  
5 the attendant circumstances what happened to that mouse. The cat ate the  
6 mouse. Cat's guilty.

7 But here's another situation. Similar. Put the cat and the mouse -- the  
8 mouse in that box, same box. It can be the same box. You tie it up with a ribbon.  
9 You walk out of the room. You come back 15 minutes later. Again, you open it,  
10 and that cat is in that box and that mouse is gone. Cat's looking happy. But this  
11 time -- this time, there's a hole in the corner of the box, just big enough for the  
12 mouse to get out. I put to you that that hole is reasonable doubt. We can't tell  
13 you exactly how big it needs to be, but there need only be one reasonable doubt  
14 to find a defendant not guilty.

15 And in this case, we have given you many reasons to doubt and many  
16 reasonable doubts to hang that verdict on. None, none more than the moment  
17 illustrated by Rosa Vazquez being the only person who was ever asked to stand  
18 on even ground with Keandre Valentine and to look at him at close range, assess  
19 his height, and asked, is that the guy? Because what did she say? That's not the  
20 man who did this. That man is much, much taller.

21 Thank you.

22 THE COURT: Thank you, Ms. Machnich.

23 Okay. Ms. Lexis, you may address the jury one last time.

24 MS. LEXIS: Thank you.

25 Ladies and gentlemen of the jury, Keandre Valentine, the defendant in



1 this case, must be the unluckiest man in the world.

2 What are the chances that seven victims who live in the same  
3 neighborhood, the same neighborhood that the defendant was found in -- what  
4 are the chances these victims, all robbed, all burglarized -- what are the chances  
5 that each of these victims -- Marvin Bass, Darrell Faulkner, Deborah Faulkner,  
6 Jordan Alexander, Santiago Garcia, Lazaro Bravo-Torres, and Rosa Vazkuez  
7 Ramirez -- what is the chance people who don't know each other, people who  
8 have never met before -- what are the chances that they all get robbed the very  
9 same morning, in the exact same way, and they pick Keandre Valentine as the  
10 person who robbed them?

11 Chances of getting struck by lightning, like, one in 700,000. Chances  
12 of winning Powerball, one in four -- like four million -- 400 million -- astronomical.

13 The chances of the defendant being picked out at the scene, during a  
14 photo lineup, and then in court, and it be mistaken and that these identifications  
15 are false? Slim to none.

16 He just must be the unluckiest man in the world.

17 Let's get to the easy stuff first. Ms. Machnich talked to you about  
18 how, yes, he's conceding that he possessed stolen property -- Jordan's ID card,  
19 Jordan's credit card, Rosa Vazkuez Ramirez's credit card, but that he should only  
20 be found guilty of possession of stolen property.

21 Well, as diligent jurors, you will get a copy of the jury instructions, and  
22 you'll have the opportunity to read it. And if you look at the elements of the crime  
23 charged, for instance, Count 12: Possession of document or personal identifying  
24 information, okay, you're going to see that the evidence that we presented,  
25 because in this particular case, this personal identification information of another

1 happens to be Jordan Alexander's ID card. It's not just property. It's a specific  
2 type of property. In this particular case, it's an identifying -- it's a document with  
3 personal identifying information, his ID card.

4 The correct verdict is what meets what we've proven. Even what  
5 meets what they've conceded. They've conceded he had the ID card.

6 MS. MACHNICH: Objection, Your Honor. That misstates the law.  
7 There's an additional intent requirement.

8 THE COURT: Her statement was they conceded he possessed the  
9 ID card. As so that -- that statement, I think that's an accurate statement of what  
10 you said.

11 MS. MACHNICH: That is absolutely an accurate statement. But she  
12 is inferring that that's all that they have to show.

13 THE COURT: I -- I didn't gather that referral. The jury will look at the  
14 jury instructions -- the jury instructions outline exactly what you need to -- to find  
15 beyond a reasonable doubt to find the defendant either guilty or not guilty of each  
16 of these possibilities under Count 12. So look at the jury instructions. All right.

17 Go ahead.

18 MS. LEXIS: That's exactly what I'm asking you to do. Look at the jury  
19 instructions. Look at what they've conceded. He has -- he has talked to you or he  
20 has conceded -- defense counsel has conceded that he possessed these items.  
21 These items are just -- not just any items. They're actually an identifying  
22 document -- an ID card with information, and it's also a credit or debit card.  
23 Jordan's debit card. Rosa's debit card. It's not just any kind of stolen property.  
24 Okay. If you look at the elements, it's a specific type of property, and in this  
25 particular case, a credit card.

1           So the just verdict, as to Count 13, would be guilty of possession of  
2 credit or debit card --

3           MS. MACHNICH: I -- I've got to object.

4           MS. LEXIS: -- without cardholder consent.

5           MS. MACHNICH: Your Honor, objection. Again, she's implying that  
6 there's not an intent element.

7           THE COURT: All right. Well, the jury is instructed that mere  
8 possession by itself is not enough. You've got to have an intent element. These  
9 instructions are here for, you know, it's -- hold on a second. Let me tell them  
10 which instruction they need to look at.

11           Well, the -- the instruction for the middle one, possession of stolen  
12 property, is 33. And possession of credit or debit card without cardholder's  
13 consent, that's 32. And that instruction, you've already heard. And I'll just -- since  
14 it's brought up, everyone's focusing on that right now, I'll go ahead and reread it,  
15 since there's some issue as to whether the State is properly identifying the  
16 elements. I want you to hear it for yourself.

17           It says:

18           The person who possesses, sells, or transfers any document or  
19 personal identifying information for the purpose of establishing a false status,  
20 occupation, membership, license, or identity for himself or herself or any other  
21 person is guilty of possession of document or personal identifying information.

22           So it's not enough that you merely possess; you've got to possess it  
23 for the purpose of what it says here. Okay. Keep in mind. There's a distinction  
24 between the first checkmark, which is possession with a specific purpose, and the  
25 middle one, which is just -- which is possession, again, with another purpose of

1 you're withholding it from -- here, 33 is:

2 A person commits an offense involving stolen property of the person  
3 for his or her own gain or to prevent the owner from again possessing the  
4 property.

5 So you have to possess with the intent to keep it or to deprive the  
6 person -- the proper owner of it. All right. So that's the distinction. And you now  
7 are experts on -- in this area of law.

8 Let's continue.

9 MS. LEXIS: Same instruction for Count No. 14. Okay. Mr. Dickerson  
10 went through all of the elements of each of these crimes. What I was intending to  
11 point out to you is that -- draw your attention to the type of stolen property it is,  
12 and not just merely that it's just any kind of stolen property.

13 Ms. Machnich talked about Detective Majors, talked about how  
14 Detective Majors failed or couldn't find a showup -- showup form, and that he  
15 failed to or lost a video. Okay.

16 But I submit to you, that even without that evidence, we've proven this  
17 case to you beyond a reasonable doubt. We'll talk about reasonable doubt in a  
18 minute. Okay.

19 Ms. Machnich also pointed out, and I think she and Mr. Gaston,  
20 actually, during trial, pointed out a lot of what Detective Majors didn't test or didn't  
21 print. Oh, did you test these phones? Did you test the gun? Did you test the --  
22 did you test the credit cards and identification cards?

23 Well, I mean, Ms. Machnich already said it. I mean, at this point, he's  
24 admitted to having or touching these items. So DNA and fingerprints would have  
25 done absolutely nothing, so.

1 Ms. Machnich also, I guess, because what really ties the defendant to  
2 this particular crime also is this car. Right? There were also car identifications.  
3 Okay. By Marvin Bass, by Jordan -- by Jordan Alexander, and also by Santiago  
4 Garcia. They all saw a white four-door car near or with the defendant. Okay. Or  
5 with the robber.

6 And I guess the defense wants you to believe that at some point while  
7 Bobby and Keandre -- or while Keandre lay asleep, you know, Bobby -- and we'll  
8 talk about him a lot more -- took his car. Now, Bobby took his car and went on  
9 a -- on a spree.

10 But what they didn't tell you is that, really, the testimony is Chanise  
11 had the car last -- or excuse me -- Omara McBride had the car last. Okay.

12 There's been absolutely no testimony that Bobby had access to this  
13 car. There's been absolutely no testimony that Bobby got in this car. Remember,  
14 his fingerprints were found on the outside, on the passenger side door of the front  
15 of the outside of the car. Okay. So there's been absolutely no evidence that  
16 Bobby drove this car.

17 What there is evidence of, though, is that this car belongs to the  
18 defendant. The defendant drives it. He bought it with his girlfriend. This car is  
19 linked to him. It's his car. It's their car. Okay. It's the same car they rode  
20 together to come to Las Vegas. When, we'll talk about in a minute. Okay.

21 Credit cards, okay, this particular card -- I put the slide up here,  
22 because Ms. Machnich pointed out during -- during her -- during her closing  
23 arguments that we don't have to prove corroborating evidence. Okay. That the  
24 corroborating evidence here means nothing.

25 MS. MACHNICH: Your Honor, that's -- that's not what I said.

1 THE COURT: She didn't -- she didn't say that they don't have to  
2 prove corroborating evidence. She says that she doesn't believe corroborating  
3 evidence exists. Right?

4 MS. MACHNICH: Yes.

5 MS. LEXIS: Corroborating evidence doesn't exist. Excuse me.

6 THE COURT: Okay. Correct.

7 MS. LEXIS: I'll point you to the debit card. Okay. Jordan Alexander  
8 who happens to be a robbery victim. His ID card happens to be a robbery victim.  
9 Rosa Vazquez Ramirez happens to be a robbery victim. Phones that were  
10 identified by the victims all found in the same room or in the same apartment as  
11 the defendant. Okay.

12 And then you have SuperPawn receipts. This is corroborating  
13 evidence that the defendant committed the crime against Marvin Bass.  
14 Mr. Dickerson's talked about it. But it's not a coincidence that Omara McBride, his  
15 girlfriend, is pawning items or the items stolen from Mr. Bass about an hour and  
16 an hour and a half after the robbery. That is not a coincidence. Okay. Again,  
17 he's not the unluckiest man in the world.

18 So pawn receipt after pawn receipt all showing that they were both  
19 here, May 26th, 2016, pawning items that had just been taken from a -- from a  
20 robbery. This is corroborating evidence.

21 MS. MACHNICH: Your Honor, I'm going to object as to facts not in  
22 evidence. This doesn't actually say anything about Keandre Valentine being here,  
23 pawning anything.

24 MS. LEXIS: It's an inference.

25 THE COURT: It's an inference. Overruled. It's -- it's argument. I'll let

1 her argue it.

2 MS. LEXIS: Ms. Machnich makes a good point. Right? This pawn  
3 receipt doesn't actually prove that they were here together, right, that Keandre  
4 Valentine were here together, and Omara McBride.

5 But Marvin Bass, the victim of this particular robbery, identified  
6 Mr. Valentine. Mr. Bass also identified the white car that belongs to the  
7 defendant. We know from testimony, even from his own jail calls, that Mr. --  
8 Mr. Valentine and Omara McBride, his girlfriend, or some girl that he was seeing,  
9 bought a car together and drove out here to Las Vegas together. That's what we  
10 know. That's why this is corroborating evidence, okay, that Keandre Valentine  
11 committed the crime against Marvin Bass on May 26th, 2016, approximately an  
12 hour and a half before his girlfriend pawned the items.

13 Defense counsel, during their case in chief or when they provided  
14 information to you all, put up a registration certificate. Okay. It's not disputed that  
15 Omara, okay, the card was under her name, that there's jail calls saying that  
16 Keandre gave her money for it. Okay. And so they both have an owner -- they  
17 both had an ownership stake in the car.

18 I want to talk to you a little bit about Dr. Steven Smith, their ID expert,  
19 or as I'll call him, the forgetful doctor -- the forgetful expert. Okay. He testified,  
20 okay, as a paid defense expert. And you heard him say he gave the County a  
21 discount. And you know, Mr. Gaston either -- even admitted his -- his CV, okay,  
22 that you can look at. And what that CV will show you, probably towards the latter  
23 portions of this, you know, 30-something-page document, is that this man has  
24 made a lot of money testifying as a defense expert.

25 MS. MACHNICH: Objection. Misstates evidence. He actually didn't

1 testify to that.

2 MS. LEXIS: It's in his curriculum vitae.

3 MS. MACHNICH: Right. But that's not --

4 THE COURT: Well, I don't remember. So we're going to leave it up  
5 to the jury. All right.

6 MS. MACHNICH: That's fine.

7 THE COURT: You guys, again, if you think it's an important issue,  
8 and you can't remember from your notes and your own memory on what's what,  
9 ask for playback. All right.

10 Keep going. Let's get this over with.

11 I mean, I'm not rushing you.

12 MS. LEXIS: Thank you. Thank you.

13 THE COURT: I mean, let's -- let's continue. Sorry.

14 MS. LEXIS: Thank you.

15 THE COURT: I didn't mean to imply that you're taking too much time.

16 MS. LEXIS: Thank you.

17 THE COURT: Go ahead.

18 MS. LEXIS: You'll see in his -- in his CV how he's been paid to speak  
19 at defense conferences, how he's only always only testified for the defense, for  
20 payment, for money. Okay. He does this for the science, he says. Okay. But  
21 he's a paid defense expert.

22 And I submit to you that this paid defense expert, when he rendered  
23 whatever opinion he rendered on the stand, he hadn't reviewed all of the relevant  
24 case materials. You know that. He didn't look at the body cam. He hadn't heard  
25 the 911 calls. He didn't know any of that stuff. Okay. I mean, in the 14 hours that



1 he prepared for this case and in the hours that he was on the stand, this man paid  
2 so much attention to this particular case that he didn't know when calls were  
3 made. He hadn't even reviewed 911 calls. Hadn't looked at body camera  
4 footage, which by -- which, by the way, one of those body camera footage actually  
5 captured an actual showup.

6 You watched it. Jordan Alexander being read the instructions, okay,  
7 by a police officer, captured on her body camera. Her going through each  
8 instruction, having him sign, then driving him over. And what you'll see from  
9 that -- that body camera footage is immediately upon making that turn towards  
10 that alley, Jordan, as Mr. Dickerson pointed out, got super excited, exclaimed out  
11 loud, that's him, that's him. I'm 100 percent, I'm a thousand percent positive.  
12 Okay.

13 I mean, he hadn't reviewed any of that when he rendered an opinion  
14 in this particular case. All right. So how much weight can you really give the  
15 testimony of an individual who didn't prepare much for the testimony to begin  
16 with?

17 He testified a lot about showups. Okay. And I submit to you that  
18 really what doctor -- or you know, our forgetful doctor testified about is basically  
19 common sense. Okay. It's common sense. You didn't need or the County didn't  
20 need to pay \$8,000 or \$6,000 for him to tell you what you, as people with common  
21 sense, already know. Okay.

22 What do you know? Well, an identification is better if you actually  
23 good -- get a good look at the perpetrator. Common sense, right? You get a  
24 good look, you can ID. You make -- you get a good look, but you're not too far.  
25 Again, common sense, common sense. Okay. Get a good look, not too far.

1           What else did he tell you? Well, in an ideal case, full light. Okay.  
2       Common sense. Common sense.

3           The victims interviewed quickly. We went through that, as painful as it  
4       was. Each of these victims were interviewed very quickly after the offense. Okay.  
5       You heard their 911 calls made minutes after this. And they did give descriptions  
6       of this individual who robbed them violently at gunpoint, in their homes, in their  
7       cars -- in their garages, in their cars. Okay.

8           And he says there's no cross-racial issue. Okay. In this particular  
9       case, there really isn't a cross-racial issue, is it, at least as it pertains to Marvin  
10      Bass and Jordan Alexander, because they just happen to be the same race as  
11      the defendant.

12          And Dr. Steven Smith told you that people of the same race can  
13      identify people within their own race a lot better. Okay. So let's talk about as  
14      much weight as you'll give that testimony, okay, I submit to you -- as much weight  
15      as you'll give that testimony. Because, I mean, you can take your everyday  
16      common sense and experience as well, your experience as people who have  
17      lived in a very diverse town, such as Las Vegas, okay, and you can use your  
18      common sense, okay, when you test it against what this man testified to, this  
19      doctor. Okay.

20          But concerning Mr. Bass and Jordan Alexander, there wasn't a  
21      cross-racial issue, so let's just use them as an example. Okay. That would be the  
22      ideal case, right, no special circumstances, that's the ideal case.

23          What did Marvin Alexander -- or what did Marvin Bass do? When  
24      being presented a photo lineup, a couple days, a few days after he was robbed at  
25      gunpoint, positively identified the defendant. Okay. 100 percent sure that was

1 the defendant. When he got on the stand, positively identified the defendant.

2 Jordan Alexander, positively identified the defendant at a showup,  
3 positively, 1,000 percent identified him in court. Okay.

4 You take that -- their identifications are more reliable, as much weight  
5 as you'll give that, that those are good IDs. Right? That's the ideal case. Those  
6 identifications, according to these factors, are reliable.

7 No special circumstances, and we'll talk about that in a minute.

8 He talks about weapons focus. Again, common sense. Okay.  
9 Someone shoves a gun in your face, you're not expecting it, you're in the garage,  
10 you're putting a baby seat in the car. Okay. You're just sitting in the car, waiting  
11 to go to work. Okay. Yeah, you're going to be scared and you're going to notice  
12 the weapon. But noticing a weapon doesn't preclude you from identifying your  
13 assailant. Okay. It doesn't mean that you only look at this particular weapon and  
14 not see anything else.

15 And Darrell Faulkner was the best example of that, because how  
16 many times did this defendant, Keandre Valentine, have to tell him, Stop looking  
17 at me. Stop looking at me or I'm going to fucking shoot you. Darrell Faulkner who  
18 positively 100 percent identified the defendant during a showup, who 100 percent  
19 positively identified him here in court, got a good, good look at this man. Got such  
20 a good look and was willing to keep looking, even though he was facing himself --  
21 or putting himself and his wife in great danger. Okay.

22 Remember he told you, Go ahead and fucking shoot me then,  
23 because he wanted to keep looking. He was not going to be a victim in his own  
24 garage. Okay. He got such a good look at this man, such a good look.

25 Weapon? Yes, he noticed the weapon. He was the only one who

1 said it was a large-frame gun. You know, everyone else said it was small. But in  
2 this particular case, it was kind of like a different kind of focus. He noticed the  
3 weapon, but he really focused on his face. Really focused on his face.

4 Dr. Steven Smith talked about the suggestibility of a showup. Okay.  
5 But I submit to you, he testified, this is alleviated by that admonishment, you  
6 know, being read instructions, particularly being told the individual who committed  
7 this crime against you may or may not be the person that we presented.

8 You want to know evidence that this admonishment actually worked?  
9 Or that this -- these instructions actually worked? There's body camera footage of  
10 Santiago Garcia being presented another individual shortly after the crime, found  
11 in the same area, okay, within a block or two of where he was robbed at his  
12 client's house. And he looked at the man, nope, that's not him. Okay.

13 These are not people who have any motivation to pick out the wrong  
14 person. Okay. These are people who have been victimized violently, in places  
15 where they deserve to be safe. Okay. Their motivation for doing the right thing  
16 out on the field, during the showup, their motivation for picking out and doing the  
17 right thing in court, is to make sure the individual who committed these heinous  
18 crimes against them are held responsible.

19 These are not people who are going to just willy-nilly pick out the  
20 wrong person. Did you get that impression of these people? As you watched  
21 each of them testify, one by one, as they were brought here into court, did you get  
22 that impression? Did you get the impression that these people were just trying to  
23 put the wrong man away?

24 Our forgetful doctor also talked about this biased photo spread. Okay.  
25 And in particular, he took issue with the fact that the suspect in the photo lineup

1 looked similar to the actual perpetrator. And I think Judge Scotti was the one who  
2 pointed out something about this, you know. I mean, duh, isn't that the point? I  
3 mean, when you put together a photo lineup, one of the individuals is going -- is  
4 going to be the person that they think it is. Right? And the others are meant to  
5 look somewhat like them, but we don't have twins. Okay.

6 In a perfect showup, okay, we would have people who looked exactly  
7 the same. But that's -- how do you pick anybody out in that case? Okay. You  
8 look -- you put people who are similar looking and you put it upon this victim to  
9 make a -- an -- an identification, if they can. There's nothing biased about  
10 particularly this lineup. And we'll talk about that in a little bit. There's nothing  
11 biased about it.

12 Marvin Bass picked him out. He told you he got a good look at this  
13 person. And that's it. Did Marvin Bass give you the impression that he was trying  
14 to put the wrong man away?

15 Dr. Steven Smith also told you that showups are bad, you know.  
16 They're inherently suggestive. Right? You put someone up in handcuffs in front  
17 of, you know, these people, and oh, no, no, no, that's not supposed to happen.  
18 Okay. He told you photo lineups are bad too. Okay. They're biased, because,  
19 oh, my goodness, you know, people who look like the suspect are actually going  
20 to be on the lineup.

21 MS. MACHNICH: Objection, Your Honor. That's not what he stated,  
22 that that's --

23 THE COURT: Overruled. Go ahead.

24 MS. LEXIS: So I ask you, okay, taking into account everything that  
25 the forgetful doctor told you, okay, what are the police supposed to do? You can't

1 present photo lineups. Showups are bad, too. What? Do they just stop catching  
2 criminals? Should they stop presenting criminals and suspects to victims?

3 Showups and photo lineups are used widely in our country. They are  
4 a means of investigation used by law enforcement agencies all over the world. I  
5 agree, it shouldn't be suggestive. Okay. You can't have a photo lineup where  
6 one person has black background, you know, and everybody else has blue.  
7 Okay. You can't have people who look so dissimilar that it causes a  
8 misidentification.

9 I ask you to look at this lineup. It's in evidence. Look at it. Does it  
10 look biased to you?

11 Dr. Steven Smith also told you that, you know, identification he had --  
12 you know, this whole field of research, cognitive memory, cognitive psychology,  
13 identification, misidentifications, that that's a science. Okay. And I specifically  
14 asked him to compare it to DNA and fingerprints. Because what's not heard, what  
15 you didn't hear from our DNA analyst, okay, Beata Vida, you didn't say, Hey,  
16 before I can draw a conclusion that's like accepted in the field, I have to go do  
17 more research. Okay.

18 You didn't hear from our fingerprint analyst, Gayle Johnson, Hey, you  
19 presented me with this -- with this fingerprint, or these fingerprints, but I can't  
20 make a determination. The research is conflicting. So I'm going to have to do  
21 more research. Okay.

22 What's also different between, you know, what Dr. Smith does and  
23 what DNA and fingerprints -- actual forensic science does, is they have controlled  
24 variables. Okay. They have, we're talking about the sign disk method. They  
25 have a process. It's a controlled environment. The tests can be replicated.

1 Okay. The variables remain the same. You have an exemplar print, compared  
2 against a print that you lift. You get a DNA swab or a sample, compared against  
3 the DNA swab taken from another individual. Okay.

4 But what you have with these identification experts, as he's told you  
5 is, people doing mock crimes, Dr. Smith doing a demonstration for a psychology  
6 class, and then measuring how people behave. I submit to you people behave  
7 differently when they are in a college psychology class than they would when they  
8 have a gun pointed at them, someone screaming at them, someone pointing a  
9 gun at their wife. Okay.

10 These things can't be measured that way. And these experiments  
11 can't be replicated. And I submit to you, for that reason, they can't be trusted. It's  
12 unethical to get participants and subject them to the kind of fear that these victims  
13 went through. And I think that's one thing that shouldn't be lost. That fear cannot  
14 be duplicated, it cannot be replicated. What is seared in their mind forever can't  
15 be replicated by a study.

16 His opinion, oh, the ideal showup is let's get the victims right next to  
17 people who just robbed them at gunpoint. That would be ideal. Does that make  
18 sense to you? Is there a reason that people who are doing showups are held so  
19 far back in a patrol car in the back so they're not seen?

20 Rosa Vazquez Ramirez. Rosa Vazquez Ramirez was the only victim  
21 who had to get so close to the defendant. Okay. She is the only victim who after  
22 a year had the opportunity to stand so close to him. Okay.

23 You ever have a memory or a nightmare that just reoccurs or that  
24 saying the memories just flooded, just rushed back in, and it was so real it was  
25 almost like you were back at that moment where you were -- think of the most

1 fearful experience of your life. And that memory floods back, rushes back in. You  
2 all had the opportunity to observe this woman. You heard her 911 call. You saw  
3 how scared she was.

4 As you saw her walk over, this scared woman, standing so close to  
5 him, and to have this man stand up, what do you think -- what's the common  
6 sense here? She felt overpowered by his height. And once she was -- she had  
7 taken her step back, back at her -- at the witness stand, she immediately said,  
8 Oh, I -- Judge, I have something to tell you. I really have something to tell you.  
9 We rushed you out of here. The judge heard what she had to say. She told you  
10 what she told you guys --

11 MS. MACHNICH: Your Honor, I'm going to object to this talking about  
12 inferences from a bench conference and what may or may not have taken out --  
13 taken place outside --

14 THE COURT: I think you started it in your --

15 MS. MACHNICH: No. Outside the presence of the jury, I absolutely  
16 did not talk about anything outside the presence.

17 THE COURT: Well, and she -- she hasn't yet. You don't -- weren't --  
18 you guys are both just talking about inferences to derive from the portions of the  
19 trial that the jury saw. So I think that's -- I think that's acceptable.

20 MS. MACHNICH: Okay. I -- she started saying that the jury had to be  
21 rushed out of here.

22 THE COURT: She's not going to talk --

23 MS. MACHNICH: And -- and that was very concerning to the  
24 defense.

25 THE COURT: Yeah. She said she rushed. We talked. And then she



1 came back in and more things happened. I don't want anyone saying what  
2 happened, you know, outside the presence of the jury.

3 MS. MACHNICH: Right.

4 THE COURT: And -- and the jury knows that we talked to the  
5 witness. That's -- that's all they should know. But what was said, what was  
6 discussed, you know, none of that -- it should come to the jury.

7 MS. MACHNICH: Absolutely. That's our position.

8 THE COURT: Okay. All right. Thank you.

9 MS. LEXIS: When you all were allowed back in, she told you what  
10 she wanted to tell Judge Scotti, what she was trying to get her attention, when  
11 she returned to that witness stand. And it was: It was a year ago; I do recognize  
12 him. That is the man who robbed us. Okay.

13 But you don't even have to take just Rosa's -- just Rosa's testimony.  
14 Okay. She positively identified him back then.

15 But, you know what, her husband, Lazaro Bravo-Torres, was with her.  
16 Okay. He positively identified the defendant during the show up. And guess  
17 what? Upon defense questioning, Lazaro Bravo-Torres positively identified  
18 Keandre Valentine as the person who robbed him and his wife.

19 Corroborating evidence? Strength in numbers.

20 Dr. Steven Smith also gave his opinion, Damian Traylor met the --  
21 was closer to the description given by the victims -- and one of you had a question  
22 on this. Okay. If that was the case, okay, you all asked -- one of you asked --  
23 why is it if Damian Traylor, the person that he was presented with, the defendant  
24 was made to stand next to during a showup, if Damian looked closer, matched the  
25 description of the robber more --

1 MS. MACHNICH: Your Honor, I'm going to object.  
2 MS. LEXIS: -- why didn't everybody pick --  
3 MS. MACHNICH: Your Honor, I'm going to object. That's not what he  
4 testified to. He testified that the height was closer, and that he was standing next  
5 to him in relative.  
6 THE COURT: Okay. So --  
7 MS. MACHNICH: She's saying that his description otherwise  
8 matched closer. And that isn't -- that's just not what he said.  
9 THE COURT: Part -- height's part of a description, right?  
10 MS. MACHNICH: Height is part of it. But that is not what she was  
11 saying.  
12 THE COURT: All right. So what do you want me to do about it?  
13 MR. GASTON: Objecting.  
14 MS. MACHNICH: I -- I just --  
15 MS. LEXIS: Your Honor, we can do a playback. I wrote this word for  
16 word in my notes.  
17 THE COURT: Well, I'm -- but we're not going to take a -- do a  
18 playback now --  
19 MS. MACHNICH: Well --  
20 MS. LEXIS: Okay.  
21 THE COURT: -- until after we're all done. All right. And so the  
22 objection is taken under advisement by the jury. If the jury believes it's important  
23 to -- to -- this -- this point is important to them, they can ask for a playback. All  
24 right.  
25 Go ahead.

1 MS. LEXIS: One of you asked this question. You heard the same  
2 thing I did. His opinion was Damian Traylor matched the description, was closer  
3 to the description given by the victims.

4 And the question is, if that was the case, why did everyone pick the  
5 person standing next to him, the real robber?

6 Dr. Smith also gave an opinion. Okay. He said he looked at a photo  
7 of Bobby McCoy. He looked at a photo of Keandre Valentine. And they're not  
8 identical. They're just lookalikes. Okay. Take a look. Everyone picked him.  
9 Okay.

10 So let's talk about descriptions. I kind of gave away my next slide. If I  
11 were to tell you, and this is how descriptions are just inherently general, and I'll  
12 explain to you why I think that. Okay. Because there's been a big deal made  
13 about, oh, they just -- everybody's descriptions are wrong. Okay.

14 If I were to describe a white male adult, okay, with a really nice  
15 blond -- light-blond hair style, okay, that could be Mr. Dickerson. Okay. But that  
16 could also be Brad Pitt. Okay. White male adult, nice blond hair. That's how  
17 vague descriptions are. Just with that description, you don't know until you  
18 recognize the face. Okay.

19 Identifications are about recognition. These people picked Keandre  
20 Valentine out because they recognized him as the robber. Okay.

21 There's been some talk about facial features and details, you know,  
22 and some details being different. Okay. And I'll submit to you memory isn't  
23 perfect, as Ms. Machnich said. Right? We don't remember everything. But does  
24 the fact that you can't remember a single one thing about that person's face,  
25 whether it be facial hair or -- or eyes or something, you know, does that discount

1 your recognition of a person?

2 Let me ask you this, okay, how many of you are familiar with Cindy  
3 Crawford? She has a mole. Which side? Does the fact that you can't remember  
4 what side her mole is prevent you from being -- being able to identify Cindy  
5 Crawford? You recognize her.

6 Let's talk about hair. There's been much ado about this hair. Was it a  
7 small 'fro? Was it a medium 'fro? Was it a Jheri curl? Whatever. Okay. Even  
8 though the instructions say don't take hair into account, you know, when you're  
9 looking and making identifications, don't take those into account, okay, there's  
10 been much ado about it. Okay.

11 It's about recognition. It's about facial recognition. Jim Carrey with  
12 long hair. Jim Carrey with medium hair. Jim Carrey with short hair. No matter  
13 which picture, no matter which hair style, that's Jim Carrey.

14 Facial hair. Goatee, mustache, whatever. Right? Bushy, whatever.  
15 Slim goatee. George Clooney, clean shaven. George Clooney with a goatee and  
16 mustache, full beard, still George Clooney. Still recognized as George Clooney.

17 The height descriptions. Ah, this is just -- this is what's going to break  
18 this case wide open. Okay. The difference in heights. Okay. Because the  
19 heights don't match, he's not guilty. That's -- that's what they want you to believe.  
20 That's actually what they're expecting you to believe. Okay.

21 Chanise Williams. She testified, their witness. And I asked her,  
22 you've been around Omara McBride, right? How tall is she? What did she tell  
23 you? She's shorter than me. I'm 5-8. Shorter than me. And she -- she went like  
24 this with her hand, if you remember. She's like, she's short, she's -- she's just  
25 short. I said, well, if you were to guess? She's, like, 5-6. Well, we know from the

1 pawn slips, okay, Omara McBride, I take -- information taken from her driver's  
2 license, okay, 5-4.

3 This whole thing about faces are complicated -- or faces are not  
4 complicated, height is.

5 MS. MACHNICH: That is actually the opposite of what we said.

6 MS. LEXIS: I mean, let me see what it is exactly that you all said.

7 Faces are complicated; height is not.

8 THE COURT: I mean, it's not evidence. All right. So she can  
9 characterize your argument however she wants. All right.

10 Go ahead.

11 MS. LEXIS: Faces are -- oh, sorry, Judge.

12 THE COURT: Go ahead.

13 MS. LEXIS: Faces are complicated; height is not. Their own witness  
14 just proved height's a little bit harder to distinguish, plus or minus a couple inches.  
15 Faces are not.

16 This was the photo lineup. And I asked you when you get back to the  
17 deliberation room, take a look at it. Is it so biased when the instructions tell you to  
18 focus on the face? Is it so unbiased that this can't -- this can't be reliable?

19 Santiago Garcia, identifying the phone that was there. And then this  
20 picture, the phone with the cover. Does it even matter? No, it doesn't. Because  
21 had he identified the wrong phone, it doesn't -- it doesn't mean he wasn't robbed.  
22 Okay. It doesn't want mean he wasn't robbed at gunpoint. Doesn't mean money  
23 wasn't taken from him. Okay. He misidentified the phone. And what he did tell  
24 you, after more questioning and after he saw this picture, okay, what he kept  
25 telling you was, My phone had a case. I don't know -- I guess I don't know

1 because this doesn't have a case. My phone has a case. Okay.

2 Does it even matter? No. Does he have a reason to lie about that?

3 No.

4 A lot of what's happened or a lot of the evidence that we've presented,  
5 okay, not only shows guilt, but it shows actions by the defendant that are  
6 inconsistent with innocence. Okay. People who have nothing to do with a crime  
7 don't make calls like this, don't say things like this. Okay. And I submit to you that  
8 when the defendant made these calls, it wasn't to the police where he would have  
9 gotten his friend in trouble. Okay. This was after he had already been charged  
10 with a crime, charged with various crimes, okay, and taken into custody at the  
11 detention center.

12 And when he's talking to his girlfriend, someone he doesn't have to,  
13 like, lie to, someone he doesn't have to shade the truth with, okay. Or when he's  
14 talking to his cousin, okay, what does he tell you? Well, when he is talking to his  
15 girlfriend, he tells her, In the gray bin, so get that and get it out of there. In the  
16 closet, and one piece is on top. Okay. He talks about the gun. Okay. It's not his.  
17 And he didn't use it to do something bad, why does -- why does she have to get  
18 rid of it?

19 It's just inconsistent with innocence.

20 Then, when he actually talks to his cousin Chanise, he said I should --  
21 I said I should went Mad Dog's house. And she says:

22 That's what -- or when I wanted you to know they were coming and  
23 you -- and what you would have call it, supposed to be gone.

24 Okay.

25 Remember Chanise testified about how, oh, my gosh, she didn't know

1 who was in the apartment? She just woke up and didn't even check. But the  
2 police were out there, so she was trying to see what her guest's car was up to or  
3 whatever it was. All right. I submit to you that this conversation, reported  
4 conversation with Chanise Williams and the defendant, okay, is actually talking  
5 about that very thing. Okay.

6 Chanise was supposed -- went down, okay, she then let him know, I  
7 wanted you to know they were coming, and you were supposed to have already  
8 been gone.

9 Why would he have needed to have been gone?

10 Credibility. This is an actual instruction. You've heard it a little bit.  
11 The credibility or believability of a witness should be deemed -- determined by his  
12 or her manner upon the stand; his or her relationship to the parties; his or her  
13 fears, motives, interests, or feelings; his or her opportunity to have observed the  
14 matter to which he or she testified; the reasonableness of his or her statements;  
15 and the strength or weakness of his or her recollections.

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

19 You get to be the judges of credibility. We talked about that a lot  
20 during jury selection. Okay. And these are the things that you can take into  
21 consideration.

22 But I draw your attention to the second paragraph of this instruction:

23 If you find that a witness has materially -- has lied about any material  
24 fact in this case you may disregard the entire testimony of that witness.

25 Let's talk about Chanise Williams, okay, because she provided you

1 some information. As a matter of fact, she was the only piece of information that  
2 puts Bobby McCoy in that apartment with the defendant and his girlfriend, okay,  
3 the morning of the robberies. She is the only person to have provided that  
4 information.

5 So what does Chanise -- what does actually the defendant tell  
6 Chanise, okay, during a jail call?

7 They was searching from house to house. They were looking. They  
8 seen my car parked outside and they --

9 Oh, no, I'm sorry. This was when Keandre Valentine was talking to  
10 his girlfriend. Okay.

11 They were searching from house to house. They were looking. They  
12 seen my car parked outside and they went house to house looking to see  
13 who drove that car. So I sent somebody out. I sent -- I sent Chanise  
14 outside to look, so they wouldn't tow my car. They talking about --

15 Didn't Chanise tell you that she awoke, she hadn't talked to anybody,  
16 she didn't know if Keandre Valentine, the defendant, was still in the house? She  
17 knew that when she went to bed, he was in her bedroom, but she had no idea,  
18 right? No idea who else was in the house. She just went straight to the door and  
19 found out what the police were looking at. She couldn't tell you who was in her  
20 house. Okay.

21 But this jail call made by the defendant to his girlfriend specifically  
22 contradicts what Chanise testified to. I sent Chanise outside to look.

23 If you find that a witness has lied about a material fact in this case,  
24 you can disregard their entire testimony.

25 Chanise Williams also testified that Keandre Valentine, Bobby McCoy,



1 and Omara McBride, and some other girl, arrived in Las Vegas the day that they  
2 went out -- or the night that they went out. Okay. She testified that way on direct.  
3 She testified that way on cross. Okay. She's kind of started changing her mind  
4 during redirect. Okay. But that's what she told you. The night that we went out,  
5 us girls, that's when they got to Vegas. Okay.

6 And, well, they went out. 1:29 a.m. they parked that car at that valet  
7 parking, you know, to go to the Gold Spike and the D. So they arrived the night  
8 before the 27th, that Friday night. Okay. I mean, that's -- that -- that was the  
9 testimony.

10 But, you have evidence to the contrary. Right. You have those pawn  
11 slips. You have those pawn slips from Omara, the same person who the  
12 defendant told the detectives during a taped interview, okay, he said I came to  
13 Las Vegas with Omara, in that car. Okay. We bought a car. I gave her money.  
14 We drove to Las Vegas together. So he's -- finger's pointed at him for robbery  
15 with Marvin Bass. An hour and a half later Omara is pawning Mr. Bass's chains  
16 and pendant. Okay.

17 What does that piece of evidence tell you? Keandre Valentine was in  
18 Las Vegas, May 26, 2016, with Omara, with their car, with some stolen jewelry.

19 If you believe that a witness has lied about any material fact in this  
20 case, you may disregard the testimony of that witness.

21 So Chanise also testified about how the last time the last person who  
22 would have had the car keys, okay, was Omara, because Omara was driving  
23 when they went out on their girls' night. Right? She was in the passenger seat.  
24 They were with another girl. Okay.

25 And for all intents and purposes, that car was parked in the exact

1 same place that she and the girls left it in. Okay. So the police -- there's a crime  
2 scene analyst who testified that she -- they took these pictures shortly after they  
3 got into that car. Okay. Or they -- they noticed this car. They had a crime scene  
4 analyst look.

5 So I ask you, take a good look at this picture. I'd like to just draw your  
6 attention to how far back the seat is. So far back, as a vertically-challenged  
7 person myself, I know the importance of this. Okay. Omara McBride, all 5-foot-4,  
8 was not driving that car last.

9 Someone a lot taller, you know, the other person who had access to  
10 the car. The car was back by 1:30, or by Chanise's testimony, 3:30, okay, in that  
11 apartment complex, in that -- in that parking lot, giving Mr. Valentine plenty of time  
12 and opportunity to commit the four robberies right before he was apprehended.  
13 Okay. And I submit to you, he was the last person driving that car, all 6-foot-2  
14 and -- 2 and three-fourth inches.

15 Statements and arguments and opinions of counsel are not evidence  
16 in this case. That's already been made so clear, I hope, you know. But I bring it  
17 up because during opening statements -- and certainly I'll acknowledge, okay, the  
18 State has the burden of proving each and every element of each offense in this  
19 case beyond a reasonable doubt. That's the only way you can find the defendant  
20 guilty. Okay. We have the burden. We'll talk about that in a minute.

21 But if you'll recall, during opening arguments, Mr. Gaston told you a  
22 little bit about what happened with the defendant that morning before he was  
23 caught, things that he did, okay, from a first-person point of view.

24 He saw the police. He panicked. He did this. He hid this. He did  
25 that. Bobby had been there. Bobby left. Left him holding the bag. Remember

1 that? That's not evidence. Okay. You know why it can't be considered by you?  
2 One, because statements and arguments and opinions of counsel are not  
3 evidence in this case. But number two, and, more importantly, none of that was  
4 ever proven.

5 MS. MACHNICH: Objection, Your Honor. This is burden shifting.  
6 Just because she says it's not, doesn't make it not burden shifting.

7 THE COURT: So -- so there -- there -- you make a valid point, that  
8 the State has the burden of proof beyond a reasonable doubt of all elements of  
9 the crime, and that is stated in the Jury Instruction No. 5. The court would  
10 encourage you to reread that when you're back there.

11 The defense never has to prove anything. I'm assuming what the  
12 State was intending to say is that there's been no evidence presented as to -- as  
13 to the points made in Mr. Gaston's argument.

14 MS. LEXIS: Absolutely.

15 THE COURT: And -- but I -- as to the -- which is fine argument.  
16 Just -- just as long as the jury understands the defense never has the burden to  
17 prove anything. Okay.

18 But the point that the State is making is -- is that there is no evidence  
19 to -- to -- consistent with the argument made. All right. We'll just leave it at that.

20 Let's -- let's move on.

21 MS. LEXIS: Since that's not evidence, you can't consider that. You  
22 cannot consider the rendition given in opening statements. That is not evidence,  
23 that has not been testified to. Not in this case.

24 MS. MACHNICH: Okay. Your Honor, she's saying that inferences  
25 can't be considered in a case. And that it -- that's what it appears --

1 THE COURT: Well, she's making the argument --

2 MS. MACHNICH: That inference --

3 THE COURT: -- which is not evidence in itself --

4 MS. MACHNICH: Right.

5 THE COURT: -- that the jury should not consider your argument,  
6 because you didn't present any evidence to support your argument. It's her  
7 argument.

8 MS. MACHNICH: But -- but that --

9 THE COURT: This is all argument, of course. And the argument is  
10 not evidence. What the attorneys are just doing in -- in this last two hours is  
11 very -- leading you to different propositions that they want you to make. All right.

12 It's up to you to determine whether you can draw any reasonable  
13 inferences from the evidence that's been presented. If you could draw a  
14 reasonable inference that Bobby McCoy was -- was at the apartment, you know,  
15 that's up for you to decide. Okay. All right. Let's leave it at that.

16 MS. MACHNICH: Thank you, Your Honor.

17 MS. LEXIS: What has been proven by other evidence is that the  
18 defendant did handle this gun that was taken apart and found in  
19 Apartment No. 218. Okay. We know that because there's a jail call that says it.  
20 Okay. He knew about it; he put it there.

21 There's no evidence -- I submit to you there's no evidence that the  
22 defendant has been covering for Bobby this whole time.

23 We're going to -- let's talk about that. Bobby  
24 McCoy, 5-10, 145 pounds, Bobby McCoy, the defendant's friend, that one that he  
25 allegedly does not want to snitch on. Okay. No evidence of snitching, okay, at

1 all. No evidence that he doesn't have a reason to snitch. No evidence of  
2 snitching presented in this case. No evidence presented as to why he would not  
3 want to or why he would. Okay.

4 So what do we know about Bobby McCoy and who places Bobby  
5 McCoy in this particular case? Okay. Chanise Williams. Evidence or the  
6 arguments or the statements by counsel during opening statements, not  
7 evidence. You received evidence from Chanise Williams. She is the only person  
8 who gave you direct evidence or direct testimony of Bobby being there that  
9 morning, May 28th, 2016. She's the only person that puts Bobby there. Okay.

10 But Chanise's lackluster testimony, okay, the same testimony that  
11 we've already proven to be inaccurate and inconsistent with other evidence, okay,  
12 is also belied or contradicted by the defendant's own statement. And you've  
13 heard this time and time again. Okay.

14 So Dame and Bobby were in the house, too, but they put it all on you.

15 Okay. They're talking about the morning of May 28th, 2016. Okay.

16 What does the defendant say?

17 Dame, Dame -- they -- they let -- they let Dame alone, because that  
18 he didn't fit the description. Bobby's been left two days ago.

19 He made this call shortly after he was booked in the Clark County  
20 Detention Center on May 28th, 2016. Two days ago, okay, would have brought it  
21 to Friday. Bobby McCoy was not here, by the defendant's own statements, during  
22 the robberies. He could not have committed these robberies, by the defendant's  
23 own words. And they're directly talking during this jail call, if you look at what  
24 they're talking about, they're talking about that morning, and why it is that Keandre  
25 got picked out, why is it Keandre was there, why they let Dame go, who was also

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1 there. He was the guy standing next to him in the -- in the showups. But why  
2 Bobby didn't get in trouble.

3 And again, these are statements where he -- the defendant, had no  
4 incentive to make anything up. He wasn't in any danger by Bobby. Bobby  
5 wouldn't have known he made these statements. Right? Okay. Bobby's been  
6 gone two days ago. Bobby was not here. That's the evidence.

7 We know the defendant was here, May 26, 2016. We've gone over  
8 that. So let me bring your attention to this, and during jury selection we talked  
9 endlessly about this reasonable doubt. Okay. Just reasonable doubt. What is it?  
10 Well, it's defined for you, actually. Okay.

11 The defendant is presumed innocent until the contrary is proven. The  
12 presumption places upon the State the burden of proving beyond a  
13 reasonable doubt every element of the crime charged, and that the  
14 defendant is the person who committed the offense. A reasonable doubt is  
15 based on reason -- is one based on reason. It is not mere possible doubt,  
16 but it is such a doubt as would govern or control a person in the more  
17 weighty affairs of life.

18 If the minds of the jurors, after the entire comparison and  
19 consideration of all evidence, are in such a condition that they can say they  
20 feel an abiding conviction as to the truth of the charge, there is not a  
21 reasonable doubt.

22 If the minds of the jurors, after the entire comparison and  
23 consideration of all of the evidence, are in such a condition that you can say you  
24 have an abiding conviction as to the truth of these charges, there is not  
25 reasonable doubt.

1 Doubt, to be reasonable, must be actual. Not mere possibility or  
2 speculation.

3 Not coulda, woulda, shoulda. Okay. It has to be actual doubt. Okay.  
4 Not speculation.

5 There's another instruction that says -- that actually tells you use your  
6 common sense, believe it or not. Okay.

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

14 A verdict may never be influenced by sympathy.

15 So on and so forth. Okay. But you are allowed to use your common  
16 sense. When you walk through the doors and you -- you get put on a jury, you're  
17 not expected to put your common sense at the door. That's actually the test upon  
18 which you should measure the evidence. With common sense, as a reasonable  
19 person.

20 So the defense wants you to believe this is just -- this is a case of  
21 misidentification. Okay. All of the evidence, they say, points to Bobby McCoy  
22 doing this. I submit to you, after you look at all of the evidence, that's absolutely  
23 not the case. Okay. Let's talk about it a little more. Let me address this before,  
24 though.

25 Ms. Machnich talked about Juan Campos Torres, and about how you

1 didn't hear from him. I submit to you that there was ample and sufficient  
2 testimony for you to consider and to find beyond a reasonable doubt that Keandre  
3 Valentine also committed an attempt robbery with use of a deadly weapon as to  
4 Juan Carlos Torres. Okay. You heard from Santiago Garcia, who was right there  
5 with him on that ladder, who saw the defendant point a gun at Juan Carlos Torres  
6 up on that roof and told him to get down.

7 Juan Carlos Torres hid. Okay. Do you remember that testimony from  
8 Santiago? Okay. If you believe Santiago's testimony about Juan Carlos Campos  
9 Torres being there, about the defendant pointing the gun at him, about him hiding  
10 in fear, okay, and then the defendant robbing Santiago Garcia, because he  
11 couldn't hide, that's beyond a reasonable doubt, that an attempt robbery with use  
12 of a deadly weapon was committed against Juan Campos Torres.

13 Rosa Vazquez Ramirez. Ms. Machnich talked about how, oh, she  
14 picked him out, because the police told -- told her that they found that stuff in  
15 there. Okay. That they found her stolen stuff in there. That's not true. Okay.  
16 The evidence has shown that the search of that apartment was done after the  
17 showups.

18 If you recall with Detective Majors, who went through a timeline of  
19 when the show ups were done, and immediately, 9:41, okay, like, five -- five,  
20 10 minutes after the last showup, they executed that search warrant and  
21 searched the house and began finding items.

22 Rosa Vazquez Ramirez, Lazaro Bravo-Torres had already completed  
23 their showups and had already picked up -- picked out the defendant as the  
24 person who robbed them. When they made that -- that identification, they did not  
25 know that that information, the cards, the phone, was found in -- in that apartment



1 where he was pulled from. Okay.

2 We admitted the grand jury testimony, and you'll see we showed them  
3 pictures, and that's when they identified their items. They were not taken into the  
4 apartment. These victims were not taken into the apartment to do a, you know,  
5 personal goods lineup. Okay. Is this your phone? Is this your card? Is this, this?  
6 They were -- they were not doing that.

7 The fact of the matter in this particular case is while we have a lot of  
8 corroborating evidence, okay, if you believe the victims, okay, if you believe  
9 Marvin Bass, Darrell Faulkner, Deborah Faulkner, Jordan Alexander, Santiago  
10 Garcia, Lazaro Bravo-Torres, Rosa Vazquez Ramirez, if after consideration of all  
11 of the evidence in this case, you, as reasonable men and women exercising  
12 common sense and judgment, if you feel an abiding conviction as to the truth of  
13 the charge, they were robbed with guns, in cars, in garages, okay, if you feel an  
14 abiding conviction as to the truth of that charge, you find him guilty.

15 Even if you -- even if none of that other evidence existed, none of that  
16 corroborating evidence, okay, if you believe these victims, you find him guilty.

17 The other stuff is just icing on the cake. The car linked to him. Okay.  
18 The BS story about Bobby McCoy. Okay. Bobby not being here, proving that.  
19 Cards being found, IDs being found, SuperPawn receipt after SuperPawn receipt,  
20 that -- you don't even need that.

21 If you believe the victims, you find him guilty. Icing on the cake.

22 We have proven each and every count, each and every charge in this  
23 case to you beyond a reasonable doubt. The defendant, Keandre Valentine, is  
24 the person who committed these robberies against each of these -- each of these  
25 victims. Okay. He is not the unluckiest man in the world. He is not the victim of

1 seven false identifications. He's the one who did it. We ask you to find him guilty.

2 Thank you.

3 THE COURT: Thank you, Ms. Lexis.

4 All right. Ladies and gentlemen of the jury, at this time this matter is  
5 now submitted to you.

6 Let's see what we're going to do. It's 5:15. I'm going to first have the  
7 court clerk swear in the officers who will take charge of the regular jurors and the  
8 alternate. But before I do that, let me -- let me -- I think what I'm going to have  
9 you guys do is go back to the jury deliberation room and begin the -- your  
10 process.

11 You'll -- you'll have, you know, the exhibits. You'll have the jury  
12 instructions. You'll have the verdict form. You'll have to select a foreperson, like  
13 we indicated.

14 The first thing we want to hear from you is how long you want to  
15 deliberate tonight. I'll leave that up to you. All right.

16 So I'm going to ask the attorneys to stick around and you guys to -- to  
17 send us a note indicating how long you want to stay tonight. If you wish to  
18 deliberate a while, I can -- can staff stay and how long? Can -- can you stay till --  
19 or who -- who would stay for -- for the court clerk? Or would we have someone  
20 on call? Let me ask. Do you know how that works?

21 THE CLERK: [Indiscernible] has to be on call.

22 THE COURT: All right. Is it too late to -- oh, so you would have to be  
23 the person? I see. Okay. Well, I don't want to put you on the spot. Do you have  
24 any --

25 THE CLERK: [Indiscernible.]

1 THE COURT: I was thinking of giving them until -- well, I was  
2 thinking 7:30, giving them two hours.

3 THE CLERK: Okay.

4 THE COURT: Is that -- is that going to be too much of a burden? I  
5 don't want to -- 7:00, do you think? Let's -- let's say 7:00. All right. You're okay  
6 to 7:00? All right.

7 So if you guys -- I'm going to let you decide. If you decide we want to  
8 go home now and -- and deliberate tomorrow, beginning at 9:00, send us a note  
9 and let us know that. If you want to stay until 7:00 and see how far you can get,  
10 let me know that, as well. All right.

11 And maybe you guys -- you decide to stay until 7:00 and you don't  
12 finish and you want to come back at 9:00 tomorrow, too. I'm going to leave it up  
13 to you. Just make it very crystal clear what you want. All right. If you want to  
14 stay until 7:00, you can do that. All right. All right.

15 Now, please swear in, Madam Clerk, the parties to serve as the jury  
16 officers.

17 [Jury officers sworn.]

18 THE COURT: Is there -- first of all, is there any objection to -- to me  
19 asking the jury to send us a note on how long they would like to stay?

20 MS. MACHNICH: Sounds like a good plan.

21 MS. LEXIS: No.

22 THE COURT: Okay. Good. So you guys -- why don't you stick  
23 around.

24 MS. MACHNICH: Tomorrow's fine.

25 THE COURT: I don't want to put any undue pressure on the jury. But

1 if you would send us a note as soon as it's -- you're able to conveniently do that,  
2 we'd appreciate that. All right.

3 Madam Clerk, will you please identify the person who was  
4 designated -- who is designated as the alternate in this case?

5 THE CLERK: Juror No. 14, Timothy Duerson.

6 THE COURT: 15, Timothy Duerson.

7 THE CLERK: 14.

8 THE COURT: 14. 14, is that correct, counsel?

9 MS. LEXIS: Yes, Your Honor.

10 THE COURT: All right. Mr. Duerson, raise your hand.

11 Sir, you are the alternate. You still need to be on call in the event that  
12 the jurors need to deliberate into tomorrow and something happens to somebody  
13 and they're aren't able to -- so you'll be instructed not to -- let me go ahead and  
14 give you this admonishment.

15 And this admonishment applies to the jurors tonight, if they go home.

16 Do not communicate among yourselves or with anybody else about  
17 this trial or the subject matter of this trial, except to the extent you're allowed to do  
18 so during deliberations; do not communicate at all with any of the parties,  
19 attorneys, or witnesses involved with the trial; do not seek or obtain any  
20 information or comments about the case from any source, including newspapers,  
21 television, radio, Internet, e-mail, cell phones, or any other electronic device; do  
22 not read, watch, or listen to any report of or commentary about the case; do not  
23 perform any research or investigation; do not form or express any opinion on any  
24 subject connected with the trial until the case is finally submitted to you for  
25 deliberations.

1           You are directed to -- well, these instructions apply to the alternate  
2 who is not supposed to do anything pending further notification.

3           The jurors are allowed to begin their deliberations now. All right.

4           Madam Clerk, will you please -- well, let's -- Melody Howard and  
5 marshal, will you please excuse the jurors to the deliberation room, and the  
6 alternate to go home as appropriate.

7           Thank you.

8           Take you notepads this time. Everyone takes their notepads, with the  
9 exception of the alternate, who hands the notepad over to the officer.

10                   [Jury recessed to deliberate at 5:17 p.m.]

11           THE COURT: All right. Please be seated, everybody. All right.

12           You guys had a lot -- bunch of objections there. I just wanted to give  
13 everyone a full opportunity if there's anything more -- I think you all made your  
14 objections pretty clear. Is there anymore that you want to put on the record? This  
15 is a -- a fair chance of doing that.

16           MS. LEXIS: Not from the State.

17           MR. GASTON: Your Honor, I think at the time we were able to make  
18 most of our objections and -- and flesh them out. But I do want to focus on one  
19 that I thought was a big deal that didn't get the attention I thought --

20           THE COURT: Okay.

21           MR. GASTON: -- it might have deserved, was the -- the objection  
22 about burden shifting.

23           That whole section of closing, the -- the State -- and you could tell  
24 they knew they -- they were approaching a sensitive subject, because they started  
25 with we have the burden. Right. But despite the disclaimer, it's still burden

1 shifting. Any -- the State is not allowed, period, to ask the jury to draw any  
2 inference or lack of inference from the absence of evidence. That is burden  
3 shifting, period.

4 Because that implies that we had some obligation to put forth that  
5 evidence in order to -- for them to draw that inference or in order for them to not  
6 draw an inference, however way you're spinning it. But it -- at any time the  
7 State --

8 THE COURT: What's up?

9 MR. GASTON: I was just waiting. I didn't know if the jury was right  
10 outside or not. I didn't want to --

11 THE COURT: Oh, okay. Yeah.

12 MR. GASTON: Anytime the State is asking a jury to draw or not draw  
13 an inference from the absence of evidence, that is pure burden shifting, period.  
14 Unless, of course, the burden is actually on us to provide some evidence, like  
15 something --

16 THE COURT: How else could I have attempted to mitigate your  
17 concern besides what I did?

18 MR. GASTON: Told them not to do it. Because what did happen was  
19 the court instructed the jury --

20 THE COURT: Oh, well --

21 MR. GASTON: Well, the court instructed the jury about the burdens,  
22 but then the State then proceeded to go on, point, point, point, about all the lack  
23 of evidence. There's no evidence of the snitching. There's no evidence of this.

24 The burden isn't -- the question for the jury is not did the defense put  
25 sufficient evidence for you to draw an inference that Bobby was in the apartment?

1 That's what they argued. The question is, did the State present sufficient  
2 evidence for you to be convinced beyond a reasonable doubt that Bobby was not  
3 the one who did it, not -- the one who's not in the apartment? And that period of --  
4 that period of argument in the closing was them asking the jury to not draw the  
5 inference we asked them to from the absence of evidence. That is burden  
6 shifting. Full stop.

7 THE COURT: All right. I understand your -- your position. I'll let --  
8 does the State want to respond to that?

9 MS. LEXIS: Yes. I would just like to add, absent my -- my response, I  
10 absolutely -- there was absolutely no burden shifting in this particular case.

11 I don't think the defense is allowed to open, Your Honor, and say this,  
12 like, first-hand account, as if the defendant himself was going to testify about the  
13 things that he did and why he did what he did, and I not be allowed on rebuttal,  
14 okay, to -- the -- the slide actually said statements and opinions and arguments by  
15 counsel are not evidence. I just wanted to make it very clear to the jury that what  
16 Mr. Gaston told them, the story that he told them during opening, was not  
17 supported by evidence -- any evidence. Okay.

18 THE COURT: Yeah.

19 MS. LEXIS: Any evidence in this particular case.

20 THE COURT: Yeah. No, I understand. And I -- and I -- I don't -- I  
21 didn't -- I never viewed that as burden shifting. If it is, I guess I'll -- I'll learn that.

22 I -- I always thought that if a party says, you know, I intend to prove X,  
23 Y, and Z, and then put no evidence of X, Y, and Z, then the opposing party could  
24 say, they said they were going to put in evidence of X, Y, and Z, and they didn't  
25 put on any evidence of X, Y, and Z. And just to point out that -- that disparity

1 between the opening statement and the actual evidence. I never viewed that as  
2 burden shifting.

3 It sounds like the defense is contending that, at least under the  
4 circumstances as we had here in this case, that it was burden shifting. I don't  
5 know what to do about that.

6 MR. GASTON: I'll respond. 30 seconds or so.

7 THE COURT: Okay.

8 MR. GASTON: Brief -- briefly, I think in that situation it's still burden  
9 shifting. But that's definitely than what happened here, because the opening was  
10 based on the evidence that was going to come out at trial and an inference that  
11 could be made, pretty much the entire theory of the case.

12 The State's response -- and they actually didn't even just say it's not a  
13 strong point because of the lack of evidence. I mean, that would just be a lot of  
14 baseline burden shifting. They went further and told the jury that you are not  
15 allowed to consider that inference because there was no evidence to support it.

16 THE COURT: I --

17 MR. GASTON: That is literally burden shifting.

18 THE COURT: I -- I see it. You know, I recently just -- I recently read  
19 some Ninth Circuit cases on burden shifting in some California cases. We were  
20 discussing burden shifting just a couple days ago. And, actually, it seems to be  
21 the trend is to allow the State to actually argue the lack of evidence to support  
22 different points, as long as you make it clear that, ultimately, that the State has the  
23 full burden and -- and defense has no burden.

24 So anyway, I think you made a good record.

25 MR. GASTON: Thanks, Judge.



1 THE COURT: I -- I will leave it at that. And why don't you make sure  
2 that -- I'll get you the Ninth Circuit case I was looking at, as a matter of fact. I'll  
3 just see if I can find it right now, just -- just so you're aware of it. Do -- do  
4 whatever --

5 MR. GASTON: I'm surprised -- I would be surprised that that's the  
6 ruling now. Not that I'm saying you're wrong. It's just that I would be surprised.

7 THE COURT: No. No. No, I know.

8 Let's go off the record and make sure you guys provided your contact  
9 information.

10 [Court recessed at 5:22 p.m., until August 4, 2017, at 1:18 p.m.]  
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17 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
18 audio/video proceedings in the above-entitled case to the best of my ability.  
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22 Shawna Ortega, CET\*562  
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RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
vs.  
KEANDRE VALENTINE,  
Defendant.

CASE NO. C-16-316081-1  
DEPT. NO. II

BEFORE THE HONORABLE JERRY A. WIESE, DISTRICT COURT JUDGE

FRIDAY, AUGUST 4, 2017

**TRANSCRIPT OF PROCEEDINGS RE:  
JURY TRIAL - DAY 10**

\*\*\*\*\*

APPEARANCES:

For the Plaintiff:

AGNES M. LEXIS, ESQ.  
Chief Deputy District Attorney  
MICHAEL DICKERSON, ESQ.  
Deputy District Attorney

For the Defendant:

TEGAN C. MACHNICH, ESQ.  
Deputy Public Defender  
TYLER GASTON, ESQ.  
Deputy Public Defender

RECORDED BY: DALYNE EASLEY, COURT RECORDER

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INDEX

Page No.

Verdict read

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1  
2 **LAS VEGAS, NEVADA, FRIDAY, AUGUST 4, 2017**

3 [Case called at 1:22 p.m.]

4 [In the presence of the jury.]

5 THE COURT: Welcome back, ladies and gentlemen. We're back on  
6 the record in Case No. C-316081.

7 Parties stipulate to the presence of the jury?

8 MS. LEXIS: Yes, Your Honor.

9 MS. MACHNICH: Yes.

10 THE COURT: Ladies and gentlemen, I'm obviously not Judge Scotti.  
11 My name's Jerry Wiese. I'm the judge in Department 30. I was just asked to come  
12 and take the verdict for Judge Scotti, because he's unavailable.

13 Has our jury reached a verdict?

14 JUROR NO. 7: We have, Your Honor.

15 THE COURT: And has somebody been selected as a foreperson.  
16 What's your name, ma'am?

17 JUROR NO. 7: Kelly Day.

18 THE COURT: Ms. Day, can you hand the verdict to the marshal,  
19 please. All right.

20 I'll hand this to the clerk and have the clerk read the verdict out loud,  
21 please.

22 THE CLERK: District Court, Clark County, Nevada, the State of  
23 Nevada, Plaintiff, vs. Keandre Valentine, Defendant, Case No. C-16316081-1,  
24 Department 2, Verdict.

25 We, the jury, in the above-entitled case find the Defendant Keandre  
Valentine as follows:

3

1 Count 1: Robbery with use of a deadly weapon; guilty of robbery with  
2 the use of a deadly weapon.

3 Count 2: Burglary while in possession of a deadly weapon; guilty of  
4 burglary while in possession of a deadly weapon.

5 Count 3: Robbery with use of a deadly weapon; guilty of robbery with  
6 use of a deadly weapon.

7 Count 4: Robbery with use of a deadly weapon; guilty of robbery with  
8 use of a deadly weapon.

9 Count 5: Burglary while in possession of a deadly weapon; guilty of  
10 burglary while in possession of a deadly weapon.

11 Count 6: Robbery with use of a deadly weapon; guilty of robbery with  
12 use of a deadly weapon.

13 Count 7: Robbery with use of a deadly weapon; guilty of robbery with  
14 use of a deadly weapon.

15 Count 8: Attempt robbery with use of a deadly weapon; guilty of  
16 attempt robbery with use of a deadly weapon.

17 Count 9: Robbery with use of a deadly weapon; guilty of robbery with  
18 use of a deadly weapon.

19 Count 10: Burglary while in possession of a deadly weapon; guilty of  
20 burglary while in possession of a deadly weapon.

21 Count 11: Robbery with use of a deadly weapon; guilty of robbery with  
22 use of a deadly weapon.

23 Count 12: Possession of document or personal identifying information;  
24 guilty of possession of document or personal identifying information.

25 Count 13: Possession of credit or debit card without cardholder's

1 consent; guilty of possession of credit or debit card without cardholder's consent.

2 Count 14: Possession of debit -- credit or debit card without  
3 cardholder's consent; guilty of possession of credit or debit card without  
4 cardholder's consent.

5 Dated this 4th day of August, 2017, Kelly Day.

6 THE COURT: Thank you.

7 Do either of the parties wish that the jury to be polled?

8 MS. MACHNICH: Yes, Your Honor.

9 THE COURT: Okay. So what's going to happen now, folks, is the  
10 clerk's going to ask each of you, is this your -- is this your verdict as read? So if --  
11 if you didn't agree with the verdict, you would say no. If you agreed with the  
12 verdict, you would say yes.

13 THE CLERK: Mr. Winterbourne, are these your verdicts as read?

14 JUROR NO. 1: Yes.

15 THE CLERK: Mr. Lee, are these your verdicts as read?

16 JUROR NO. 3: Yes.

17 THE CLERK: Mr. Vandenboom, are these your verdicts as read?

18 JUROR NO. 5: Yes.

19 THE CLERK: Mr. Grusinski, are these your verdicts as read?

20 JUROR NO. 6: Yes.

21 THE CLERK: Ms. Day, are these your verdicts as read?

22 JUROR NO. 7: Yes.

23 THE CLERK: Ms. Smallwood, are these your verdicts as read?

24 JUROR NO. 4: Yes.

25 THE CLERK: Ms. Ward, are these your verdicts as read?

1 JUROR NO. 8: Yes.

2 THE CLERK: Mr. Armanious, are these your verdicts as read?

3 JUROR NO. 9: Yes.

4 THE CLERK: Mr. Muhlestein, are these your verdicts as read?

5 JUROR NO. 10: Yes.

6 THE CLERK: Ms. Garity -- McGarity, are these your verdicts as read?

7 JUROR NO. 11: Yes.

8 THE CLERK: Ms. Jones, are these your verdicts as read?

9 JUROR NO. 12: Yes.

10 THE CLERK: And Mr. Maurer, are these your verdicts as read?

11 JUROR NO. 13: Yes.

12 THE CLERK: Thank you.

13 THE COURT: Okay. Folks, appreciate your time. I understand that  
14 this case was supposed to go a week and went two weeks. We appreciate your  
15 patience in being here. I know I wasn't here, but I know you folks were here, and  
16 as the court system, we appreciate the service that you've rendered.

17 You're going to be excused and you're going to have the opportunity at  
18 this point -- some of you may wonder, can -- you know, we've been admonished  
19 throughout the trial that we can't talk to anybody about what's been going on. You  
20 may wonder, once you're discharged, can you talk to people about what  
21 happened? And you can. You're not obligated to talk to anybody. So if somebody  
22 wants to talk to you against your wishes, and they won't leave you alone, let us  
23 know and we'll take care of that. But you're welcome to tell anybody whatever you  
24 remember or what you did or what you thought.

25 Oftentimes the lawyers like to talk to the jurors after a trial, because

1 that's how they learn how to be better lawyers, that's how they learn what  
2 witnesses you liked or didn't like or -- sometimes, you know, what it was about the  
3 case that you liked or didn't like, things like that. And I can tell you as a practicing  
4 lawyer, before I became a judge, that was sometimes part -- the best part of the  
5 trial is finding out why a jury did what they did and what they thought about how I  
6 presented the case or how the other side presented the case. It's very -- very  
7 informative and helpful to them. So I would encourage you to talk to them, if you  
8 so desire, but you don't have to.

9 Wes, their vouchers are probably downstairs still?

10 THE MARSHAL: Yes, sir.

11 THE COURT: Okay. So do you just want to talk to them here or  
12 downstairs? Preference?

13 MR. GASTON: Do you mind -- do you mind if we use the deliberation  
14 room in the back? Or we can --

15 THE COURT: We don't usually use the deliberation room. I'll -- I can  
16 bring them back out here if you'd like, or we can have them meet with you in the  
17 hallway or down on the third floor.

18 MR. DICKERSON: We'd appreciate it here, Your Honor.

19 THE COURT: Okay. So here's what I'm going to do. I'm going to  
20 excuse you here for a minute and I'm going to have you step back in the back  
21 room. If you have stuff back there, you can grab that. In about two or three  
22 minutes, we'll bring you back out here. For those of you that want to stay, you can  
23 stay and talk to the lawyers. If you don't want to stay, Wes will show you how to  
24 get down to the third floor and you can go down and get your vouchers and take  
25 off.



1 Okay. But we do appreciate your time. The system doesn't work  
2 without jurors. And I know sometimes you're -- you're here for longer than you  
3 want and it's against your will, some of you, but we do appreciate you being here  
4 and -- and you're thanked and excused with -- with the appreciation of the court for  
5 your service.

6 [Jury dismissed at 1:28 p.m.]

7 THE COURT: Okay. Go ahead and be seated. We're still on the  
8 record. We're outside the presence of the jury.

9 Mr. Valentine will be remanded into the custody of Clark County  
10 Detention Center to await sentencing. And how -- how far out do you  
11 [indiscernible] your sentencing date?

12 THE CLERK: September 21st.

13 MS. LEXIS: Your Honor, also the State has a motion.

14 If -- I -- I don't know what his bail is at right now. I think it's 500,000.  
15 At this point the State would ask that he be remanded, no bail. He's a three-time  
16 convicted felon. He's been convicted of several -- 14 counts, many of which are  
17 robbery with use of a deadly weapons. I would ask that he be remanded, no bail.

18 THE COURT: Do you want to say anything?

19 MR. GASTON: Your Honor, he's 23 years old. He's an indigent client.  
20 We're from the Public Defender's Office. He's still here. He's been in custody for  
21 16 months at half a million dollar bail. I don't really get the posture of changing it  
22 from no bail to -- or from half a million dollar bail to no bail. I think half a million  
23 dollar bail is more than appropriate, given his young age and financial  
24 circumstances.

25 THE COURT: Well, if he couldn't bail out at a half a million dollars, he

1 probably wouldn't be able to bail out from now on, anyway. But the fact that he's  
2 now been convicted of I think it was 14 charges may give him an extra incentive to  
3 bail out.

4 So I'm going to grant the State's request, and hold him on no bail at  
5 this point.

6 MR. GASTON: Thank you, Your Honor.

7 THE COURT: Sentencing date will be 9 -- September 21 at -- what  
8 time?

9 THE CLERK: 9:00 a.m.

10 THE COURT: 9:00 a.m. Does that give us enough time to get a PSI  
11 done?

12 MS. LEXIS: That should be, yeah.

13 MS. MACHNICH: It will.

14 THE COURT: Okay.

15 MR. GASTON: Thank you.

16 THE COURT: Anything else we need to do before we're done today?

17 MR. GASTON: No, sir.

18 MS. LEXIS: Not by the State. Thank you.

19 THE COURT: Okay. Court's adjourned.

20 We're off the record. Thank you, counsel.

21 [Court adjourned at 1:30 p.m.]  
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Shawna Ortega, CET\*562



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA  
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8 THE STATE OF NEVADA, ) CASE #: C-16-316081-1  
9 )  
10 Plaintiff, ) DEPT. II  
11 )  
12 vs. )  
13 KEANDRE VALENTINE, )  
14 Defendant. )

15 BEFORE THE HONORABLE RICHARD SCOTTI, DISTRICT COURT JUDGE  
16 THURSDAY, SEPTEMBER 28, 2017

17 *RECORDER'S TRANSCRIPT OF PROCEEDINGS:*  
18 **SENTENCING**  
19

20 APPEARANCES:

21 For the State:

AGNES M. LEXIS, ESQ.  
Chief Deputy District Attorney

22 For the Defendant:

TEAGAN C. MACHNICH, ESQ.  
Deputy Public Defender

23  
24  
25 RECORDED BY: DALYNE EASLEY, COURT RECORDER

1 THURSDAY, SEPTEMBER 28, 2017; 11:15 A.M.

2 \* \* \* \* \*

3 MS. MACHNICH: Good morning, Your Honor.

4 THE COURT: Good morning. You can be seated if you want. This is  
5 State versus Keandre Valentine, C-16-316081. Please state your appearances,  
6 everybody.

7 MS. LEXIS: Good morning, Your Honor, Agnes Lexis for the State, bar  
8 number 11064; nice to be in your courtroom.

9 THE COURT: Very good, Ms. Lexis.

10 MS. MACHNICH: Teagan Machnich for the defense, 11642, Public  
11 Defender's Office on behalf of Mr. Valentine who is present and in custody.

12 THE COURT: Alright, very good. So this is a time set for sentencing. Are  
13 we ready to proceed?

14 MS. MACHNICH: Yes, Your Honor.

15 MS. LEXIS: We are.

16 THE COURT: Alright, very good. Let's hear from the State first.

17 MS. LEXIS: Yes, Your Honor.

18 THE COURT: Are you gonna have any speakers?

19 MS. LEXIS: Well, we're not.

20 THE COURT: Okay, go ahead.

21 MS. LEXIS: Thank you. Your Honor, we're not gonna have any speakers.  
22 In speaking with all of them, they feel comfortable with the fact that you heard  
23 their testimony and had the ability to listen to the details of what occurred to  
24 them on May 26<sup>th</sup> and May 28<sup>th</sup> of 2016.

25 Your Honor, the Defendant is twenty -- I think he's twenty-six --

1 twenty-three years old. And I understand that Ms. Machnich did her due  
2 diligence and submitted some photographs and some letters from Mr.  
3 Valentine's family but I submit to you, and I read the letters, that the person  
4 that these individuals are talking about, that his family members and his friends  
5 are talking about, is not the same person. I don't think they know him very  
6 well at all because that's not the same person who committed these very, very  
7 violent and offensive robberies, armed robberies, on two separate days against  
8 all of the victims that you heard from during court.

9           He victimized, in his twenty-three years of life, he's victimized  
10 people in two different states, California and also Nevada. He's engaged law  
11 enforcement in two different states, California and Nevada. I tried to think and  
12 as I was going through the Presentence Investigation Report about all the things  
13 that the Defendant could tell you or argue in mitigation. For instance, the  
14 Presentence Investigation Report says he has a drug problem, okay? Codeine,  
15 marijuana, whatever it is. But I submit to you that drug use, just like robbing  
16 people with a gun, that's a choice. It's a choice being made over and over  
17 repeatedly by the same person. And I submit to you that that's what Mr.  
18 Valentine has done in this particular case. I'll talk more in detail about it but the  
19 Defendant already has three prior felony convictions before he even started trial  
20 before Your Honor a few months ago.

21           During those times he was given probation. So, he was being  
22 supervised, though not for very long, and I'll go into more detail about that in a  
23 minute, in California. At that point, that should have been the bulb that goes  
24 off in Mr. Valentine's head that he needs to not live life as a criminal. He would  
25 have been given the opportunity on probation to address his substance abuse

1 issues, to, perhaps, get his GED, to get a job and become a productive member  
2 of society. But, while he didn't take those opportunities, and I'll go through  
3 that in more length in a minute, he also did take that opportunity to address this  
4 drug problem that he talked about during the Presentence Investigation Report.

5 Another thing, the letters submitted by Mr. Valentine's family talks  
6 about is that he has kids. And, you know, they submitted photographs of Mr.  
7 Valentine with his children. And I submit to you, Your Honor, that Mr.  
8 Valentine, if the argument is, that you know, he needs to get a lenient sentence  
9 so he can be there for these children, he wasn't there before. He was too busy  
10 out committing crimes.

11 You heard during trial or you heard, yes, you did, you heard jail calls  
12 where his baby's mother talked at length about how wasn't there for his  
13 children, how he disappeared from California, how he has not taken care of  
14 them. Instead, he's doing God-knows-what in Las Vegas or wherever it is after  
15 they lost contact. So he first starts contacting his baby's mother to check on  
16 the children and also to get money and help while he's in custody at the Clark  
17 County Detention Center. So, he was not there for them before. I submit to  
18 you that wanting to get him a lenient sentence for them, I just don't think that's  
19 a rightful justification.

20 As I indicated, the Defendant, before he even stepped foot on the  
21 first day of trial before Your Honor, is already a three-time convicted felon. I  
22 have given the judgments of convictions and all of the accompanying  
23 documents to Defense Counsel.

24 In 2013 the Defendant was convicted of burglary, first degree  
25 residential burglary, and that's shown in the Presentence Investigation Report

1 on page four. And so, part of the judgments of convictions and the  
2 accompanying items that I submitted to defense counsel included in that packet  
3 was an arrest report specifying exactly what it was that caused this conviction  
4 for burglary, first degree residential.

5 Well, a resident from a home in California reported to the police a  
6 possible break in. And there was a --

7 MS. MACHNICH: Your Honor? Excuse me. We've never received any of  
8 this information.

9 MS. LEXIS: Yes, you did.

10 MS. MACHNICH: From the specifics of the offense?

11 MS. LEXIS: Yes, you did. Here you go. It's all Bates stamped. It's in  
12 the back of each of these.

13 THE COURT: When was that provided?

14 MS. LEXIS: January 25, 2017. Ms. Machnich signed judgments of --  
15 excuse me, receipts of copies. And also Bates stamp, for instance, page Bates  
16 stamp one-thirty-nine is the County of Alameda holdover declaration and  
17 determination probable cause for warrantless arrest.

18 MS. MACHNICH: Okay, it is an alleged warrant out of there. By the  
19 way, the signing of receipts of copy were all -- there was a lot of contention  
20 about that. That's for another time. I honestly haven't looked at -- I mean, this  
21 is not something that was provided in preparation for sentencing. So, it was  
22 deep in the depths of thousands of pages of discovery. So, we'll submit to the  
23 State but.

24 THE COURT: You can argue it when it's your turn.

25 MS. MACHNICH: Of course. And now that I've seen that it was in the



1 Bates stamped copies, it is what it is.

2 THE COURT: Okay.

3 MS. LEXIS: And so, a resident in Alameda County, California called the  
4 police indicating a potential break-in at this particular resident's home. The  
5 police showed up and they saw that a rear door window or the rear window  
6 was smashed in; the interior of this particular home was ransacked. The  
7 Defendant and the coconspirator were seen evading or leaving that particular  
8 residence, that area. Neighbors called it in. There was a description of a car  
9 given. The Defendant was with a coconspirator.

10 The Defendant and this particular coconspirator evaded police first  
11 in the vehicle and then by foot. At some point during this chase or during  
12 neighbors reporting, they had this residence's flat screen TV hanging from the  
13 passenger side of their door. The TV -- they finally ditched the vehicle and the  
14 TV and jewelry were recovered from inside of the vehicle. I believe this  
15 particular vehicle was a 1989 Ford T-Bird, and a citation issued to Mr. Valentine  
16 was found in the vehicle. And he was subsequently arrested and convicted of  
17 burglary, first degree residential, and sentenced to five years of probation with  
18 six months in jail.

19 So he was placed on probation in California on May 2, 2013. And  
20 the times make a big difference because that was the first time that he was  
21 effectively placed on probation: May 2, 2013, in California.

22 Well, I would say about four months later the Defendant had picked  
23 up his next case in California while at the very beginning, early stages of his  
24 probation on the residential burglary. So, by September 5, 2013 he had been  
25 arrested again. While on probation for the residential burglary, he was arrested

1 for taking a vehicle without owner's consent, equivalent of a possession of  
2 stolen vehicle or grand larceny auto in Nevada, and evading a police officer with  
3 disregard for the safety of others. The arrest report or the warrantless  
4 declaration was also included in discovery and in that it tells you that the  
5 Defendant led the police on a high-speed chase through the streets of Alameda  
6 County. He ditched the vehicle, forgot to put it on park, hit a fire hydrant after  
7 this very high speed chase, and he left his phone in the vehicle. And the police  
8 ultimately tracked the phone to Mr. Valentine.

9           At that time they saw that he had an outstanding warrant out for  
10 the residential burglary and I don't know if it was a violation or not but they  
11 subsequently took him into custody in November, November 6, 2013; about a  
12 month later. In that particular case he was sentenced to five years of probation  
13 and three hundred sixty-five days of jail.

14           So now he's on probation in two different cases in California. He  
15 picked up the second one within months of being placed on probation for the  
16 residential burglary. Well, the PSI notes that he had a probation violation in the  
17 2014 California case dated August 9, 2014. That is when he absconded from  
18 probation from the California cases. And the next arrest that you see is, guess  
19 where? Here in Las Vegas. So, he is noted as an absconder 8-9-2014 and a  
20 little less than a year later he's in Nevada. And this particular case, the arrest  
21 from July 28, 2015, was actually an open case while he went to trial before  
22 you for the instant offenses.

23           So in that particular case, he attempted to rob a woman at  
24 gunpoint. He took the gun, racked the slide of the handgun as if he was  
25 loading a bullet into the chamber as he demanded that this woman give him her

1 property. The woman put her hands up and said look, I don't have anything to  
2 give you and at some point, thankfully, he believed her and he ran off, told her  
3 you never saw me, you never saw me. The police ultimately find him. The  
4 woman does a show up and she positively identifies him as the person who just  
5 put a gun to her head, racked it and demanded money.

6 A preliminary hearing was held. He was bound over in District  
7 Court and set for trial before Judge Togliatti. Somehow or another he was  
8 released from custody. And while he was awaiting trial in that attempt robbery,  
9 burglary case he picked up the case before Your Honor. And I know that it was  
10 a lengthy trial and you heard a lot of testimony so I'm just gonna briefly  
11 summarize it.

12 So, by May 26, 2016, with a violent case pending in Nevada, with  
13 absconder cases from California, on May 26, 2016 you'll recall the older  
14 African American gentleman, Marvin Bass, was in his vehicle after he had just  
15 gone shopping at that swap meet or store over at the Rancho Discount Mall.  
16 He had the unfortunate luck to run into Mr. Keandre Valentine, the Defendant,  
17 where the Defendant put a gun to his face, ripped off his gold chains and took  
18 off running. You heard from Mr. Bass during trial, this was not a good  
19 experience for Mr. Bass. He relayed he was in fear for his life and that this was  
20 the first time this had ever happened to him.

21 But it didn't stop there. Two days later he commits four other  
22 robberies. The first event on that particular morning, because it was a series of  
23 robberies over several minutes apart, involved Darrell and Deborah Faulkner.  
24 They were the couple who had moved to Waco Texas or who were in their  
25 garage packing up their belongings because they were moving to Waco Texas.

1 You heard Mr. Faulkner and Mrs. Faulkner testify. You heard the 911 call  
2 placed by Mr. Faulkner where you could hear Mrs. Faulkner unraveling in the  
3 background. And I think she testified before Your Honor that she couldn't even  
4 do a show up, she couldn't talk to the police because she had taken two  
5 valiums, or something to that affect, just to calm her down.

6 You also heard from Mr. Faulkner who is, you know, he's a strong,  
7 defensive type of man but he talked to you about how during that whole time  
8 when Mr. Valentine threatened to shoot them, threatened to kill them when Mr.  
9 Valentine had Mrs. Faulkner get on her knees and get on the ground. And  
10 when Mr. Valentine pointed the gun at Mrs. Faulkner how Mr. Faulkner, all he  
11 could think about was how to get them out of this particular situation because  
12 he feared that the Defendant would do exactly what he threatened to do, which  
13 was pull the trigger and kill this woman that he had been married to for years  
14 on end, right before his eyes. I mean, I think it goes without saying that the  
15 fact that this happened in their garage in the early morning hours, how he  
16 threatened this particular couple with death to obtain I think it was a hundred  
17 dollar bill from a wallet, it's so offensive and it really adds to the violent  
18 offensive nature of that particular crime.

19 The next victim was Jordan Alexander. He was the young African  
20 American boy who was outside of his residence where he lived with his mom,  
21 his fiancé and his baby. They were on their way to a funeral in California. He  
22 was tasked with putting the car seat, or transferring the car seat in his mother's  
23 vehicle so they could make their way to California for this funeral when he had  
24 the unfortunate luck of just being there and Keandre Valentine saw him as an  
25 easy target.

1           You heard Jordan. He came twice, actually, to testify at trial. You  
2 heard Jordan tell you that he was very, very afraid and he wanted to just  
3 comply with what the Defendant was demanding and forcing and requesting  
4 that he give because his baby, fiancé and his mother were in the home getting  
5 ready to come out. So he did everything he could to appease Mr. Valentine and  
6 have him leave as soon as possible because he felt his family inside the home,  
7 were also in danger. You saw the body camera footage where Mr. Alexander  
8 positively identified Mr. Valentine, how excited he was at that time.

9           Mr. Alexander is the exact opposite of Mr. Valentine. Here's a kid  
10 who is hard working, who is actually providing for his family, trying to keep his  
11 family safe, you know, doing what he needs to do as a young man to be a  
12 productive member of society. And I thought it ironic that someone like Mr.  
13 Valentine, who doesn't work, who feels his job is really just to victimize people,  
14 innocent, hardworking members of our community that he actually targeted Mr.  
15 Alexander. They're just the complete opposite. And I think Mr. Alexander  
16 shows what Mr. Valentine could have been had he made the right choices. And  
17 it's about choices, early on.

18           The next victim, Your Honor, on that particular day was Santiago  
19 Garcia; he's the roofer or tree cutter, the landscaper who was, you know, just  
20 there with his employee cutting trees at this woman's house and Keandre  
21 Valentine decided look, here's some easy targets. And he points a gun at them,  
22 demands phones, money.

23           This is the one where the friend or the worker on the roof hid while  
24 Santiago Garcia dealt with the Defendant. The Defendant threatened him as  
25 well with the firearm each time; threatened harm to him if he didn't comply. He

1 gave him his phone. This is the same man when I talk about hardworking good  
2 people of our community, at 7:00 in the morning -- this is someone who in  
3 between show ups and being taken by police to and from locations was found  
4 at different jobs because he was trying to complete his day. He was trying to  
5 complete his day so he could make money so he could provide for his family the  
6 right way. These are people, by the way, who missed days of work so they  
7 could come to trial and testify to make sure justice happened.

8           The last set of victims, Your Honor, was another couple, Lazaro  
9 Bravo-Torres. He was the man in the landscaper truck, the one who couldn't  
10 read but who, by the way, found a way to make a living for his family; to  
11 provide for his family. His wife Rosa Vazquez-Ramirez was the one shutting the  
12 gate and on her way to the truck, which was parked outside on the street in  
13 front of their home, when the Defendant put a gun to his chest and demanded  
14 his money; threatened to kill him in front of his wife, Rosa Vazquez-Ramirez.

15           You saw both of these people testify, Your Honor, and particularly  
16 Rosa Vazquez-Ramirez. You saw the fear in this woman's face, in her  
17 demeanor, in her actions when she had to get off the stand and identify this  
18 Defendant. And it played out before you, before the jury. How it all came  
19 coming back to her, how the look on her face as I sat here watching, the look  
20 on her face, the fear in her face, the fear in her eyes; it's actually heart  
21 breaking. It's heart breaking because these are people who did not deserve to  
22 have something like this happen to them.

23           So, we're talking about the case before Your Honor. We have  
24 seven victims and five events. To say that this is a crime spree by the  
25 Defendant is an understatement, I think, because within two days he managed

1 to pull off five different robberies and victimize seven members of our  
2 community. To say that it's violent and offensive and egregious would also be  
3 an understatement. I frankly can't find the words to describe his conduct. Four  
4 out of the five events involved crime in the driveway, in the garage, or directly  
5 outside of people's homes and I think that has to be something that should also  
6 be taken into account because there's something about feeling safe in your own  
7 home. And the fact that this happened so close to their home, I think it further  
8 victimized these people, with the exception of the Faulkners since they moved  
9 to Waco shortly after this incident.

10               Jordan Alexander, Lazaro and Rosa, I think it's safe to say that they  
11 lived in fear and no longer felt as safe, and neither did Jordan Alexander, in  
12 their homes knowing that they be so easily victimized by someone like the  
13 Defendant.

14               You heard over and over and over again that this wasn't a robbery  
15 where it's just you brandish a firearm, not that you just brandish a firearm but  
16 this is someone who pointed firearms in people's faces, at their heads, at their  
17 chests, and threatening to kill them. It's not just a, hey, give me your money,  
18 the guns enough, this is someone who repeatedly said, particularly to Mr.  
19 Faulkner, stop looking at me or I'm gonna fucking kill you. I'm gonna fucking  
20 shoot you. This is something that he told a majority of our victims in order to  
21 get them to comply with what he said.

22               You know, that person that you heard about that these victims  
23 testified about is not the same person that these letters are talking about.  
24 These people do not know him. His true character is found in the testimony of  
25 those witnesses and in the verdicts rendered by this particular jury in this case.

1 He is violent. He is a continuous offender as well.

2 P&P, Your Honor, recommended forty-two to a hundred and forty  
3 years in the Nevada Department of Corrections. I don't take P&P's  
4 recommendation lightly. And I saw what P&P did in that they did exactly what  
5 I'm gonna ask Your Honor to do in that they counted a sentence for each victim  
6 of the robbery. I think to do less than that would be an injustice in this  
7 particular case. Each victim deserves justice in their own way. And, you  
8 know, being in the gun crimes unit we deal with a lot of robbery series. We're  
9 faced with this issue of -- you know, it's like is it Costco where you get a  
10 discount for buying in bulk, you know? Because he committed crime in bulk he  
11 should not escape responsibility or liability for each of these victims. I think  
12 they need to be treated separately and they need to be treated accordingly.  
13 They need to each get their justice.

14 I am asking Your Honor for an aggregate sentence of twenty-five to  
15 seventy-five years. It's less than P&P but how I arrived at this particular  
16 number is five years per robbery incident. So there are five incidents, five years  
17 per robbery incident. With that, I already took into account a discount because,  
18 you know, some of the robberies had multiple victims that should receive more  
19 time. But I thought twenty-five to seventy-five years was appropriate.

20 So, as to Count 1, I am asking, that's the robbery concerning  
21 Marvin Bass, for the robbery I'm asking three to ten years, and two to five  
22 years consecutive for the deadly weapon enhancement.

23 As to Count 3, that involves the Faulkner's robberies, I'm asking  
24 three to ten years for the robbery, and two to five years for the deadly weapon  
25 enhancement.



1 As to Count 6 for Jordan Alexander, three to ten years for the  
2 robbery, two to five years for the deadly weapon enhancement, to run  
3 consecutive to Count 1 -- excuse me, to run consecutive to Count 3. So,  
4 everything I'm that I'm saying I'm asking to run consecutive, obviously.

5 As to Count 7 concerning Santiago Garcia, I'm asking for three to  
6 ten years for the robbery, and two to five years on the with use of a deadly  
7 weapon, to be run consecutive to Count 6.

8 And as to Count 9 for Lazaro Bravo-Torres and Rosa Vazquez-  
9 Ramirez, I'm asking for three to ten years on the robbery, and two to five years  
10 with a deadly weapon enhancement, consecutive to Count 7.

11 THE COURT: So basically, three to ten for each of the robberies, and two  
12 to five enhancement for each of the robberies. That's five to fifteen times five  
13 which gives you the twenty-five to seventy-five?

14 MS. LEXIS: Yes, Your Honor.

15 THE COURT: Okay.

16 MS. LEXIS: And it's for each of the robbery events, not each victim.

17 THE COURT: Right, I understand that.

18 MS. LEXIS: Thank you.

19 Your Honor, I think this is a fair sentence. I know a lot of times  
20 defense attorneys will come in and say oh, this is worse than a murderer, you  
21 know? Murderers don't get this much time. Well, that's not what we're talking  
22 about. It's a whole different kind of equation because in each particular robbery  
23 the statute, the Nevada legislatures, they all account for a certain sentence.  
24 And when you commit more than one of these mandatory prison-type crimes  
25 you deserve to get a sentence for each of those occurrences for each of those

1 acts, to be run consecutive to each other. And it's not the legislature's fault,  
2 it's not the victim's fault, it's not the Court's fault, it's not my fault that he  
3 committed all of these robberies, its Mr. Valentine's fault. And so he's the one  
4 that's gonna have to reap the consequences of his actions.

5 This is not an individual, Your Honor, where sometimes it's  
6 someone who doesn't have a criminal record standing before Your Honor, so  
7 leniency is proper. Again, he was a three time convicted felon on probation in  
8 two different cases, had committed another armed robbery, or attempted armed  
9 robbery in Nevada when long before he even faced you. He has shown through  
10 his criminal history, through the crimes he committed here in Nevada, a  
11 propensity for committing crime after crime after crime. And we're talking  
12 brazen crimes. Evading the police, residential burglaries, putting guns in  
13 people's faces, racking slides telling them he's gonna shoot them. We're not  
14 talking about someone who has an angel halo on his head. He has been given  
15 two prior opportunities to change his life. He was given probation in his first  
16 two felonies. He didn't take that opportunity.

17 Again, I ask you please don't forget that he victimized seven  
18 people. Each one of them deserves justice. And, I would also be requesting  
19 restitution in the amount as set forth in P&P's recommendation.

20 THE COURT: Alright, thank you.

21 MS. LEXIS: Thank you.

22 THE COURT: Alright, Ms. Machnich, it's your turn.

23 MS. MACHNICH: Thank you, Your Honor.

24 THE COURT: And your client has the opportunity to speak also. You can  
25 decide whether he's gonna speak first or last.

1 MS. MACHNICH: Your Honor, to start, I've advised him not to speak at  
2 sentencing in this case. He originally did want to. He wanted to be able to tell  
3 Your Honor how sorry he was that this got to this point, that this happened.  
4 And I'm gonna go into a lot of this later but I've advised him not to make any  
5 statements to the Court because there will be an appeal in this case and it was  
6 an ID case, and obviously statements that a Defendant makes could potentially  
7 be used against them. So, I've advised him not to say anything but he did want  
8 Your Honor to know that he is sorry and he does take responsibility for his  
9 actions.

10 THE COURT: Alright, I understand that. And I've also read all the letters  
11 that were submitted.

12 MS. MACHNICH: Thank you, Your Honor.

13 THE COURT: So, please provide some context and recommendation.

14 MS. MACHNICH: Of course, Your Honor.

15 So, we'll just start out with the recommendation and then my  
16 explanation of why that's what we're doing.

17 The individual offenses, obviously there are more than one charged  
18 offense in this case and we're interested in the aggregate because that is the  
19 amount of time that Mr. Valentine will be sitting behind bars. And because  
20 these are violent B felonies we are looking at him doing the entire bottom  
21 number. He's not gonna get any good time off of that. So he'll do every day  
22 of that time.

23 So we're asking Your Honor for a sentencing range between eight  
24 and ten years on the bottom. And I'm now gonna go into why. For the top  
25 end we understand that Your Honor would potentially be inclined to give him a

1 higher top end because of the circumstances and also for additional supervision.  
2 However, we don't believe that the State's recommendation is appropriate  
3 given the circumstances.

4 And the State had mentioned at one point that some defense  
5 counsel argue that well, murderers get less time. And that's absolutely true.  
6 And the thing that differentiates everything that happened in this case with a  
7 murder is that no one got shot and no one got killed and no one is dead, no one  
8 is away from their family, no one is missing a brother, sister, mother, father,  
9 child. No one is missing any of those people because what didn't happen in  
10 this case Your Honor is that no gun was ever fired. No one was ever injured.  
11 No one went to the hospital to seek medical care for a stab wound, a gunshot  
12 wound. Not one of them.

13 So, while there's certainly, and I will not downplay the seriousness  
14 of a robbery in general, and the fact that this was robbery with use and there  
15 was a gun that they testified about, that gun never fired a bullet and no one got  
16 hit. So, we're not talking about a situation where there's an injured party who  
17 was physically injured and hurt where there was a chance that they could die.

18 I'm not trying to say that any of this was a good decision. And as  
19 Your Honor read in the Presentence Investigation Report, my client has had  
20 ongoing drug issues. Now, the State seems to think addiction works that every  
21 single time you take a drug you're making that decision to make [sic] that drug.  
22 But the State obviously misunderstands how addiction works because that's  
23 not how addiction works. It's not a conscious decision each and every time.  
24 At one point, yes. At one point there was no addiction and there were  
25 circumstances that led to drugs being taken but that became an addiction and

1 that became a controlling factor in Keandre's life.

2 And so that absolutely was at play here throughout the offenses  
3 that we've talked about in this case. And you've heard lengthy, lengthy  
4 testimony about this trial, it went two weeks. So, Your Honor's well aware of  
5 the facts. But drugs were at play. And while the State seems to think that  
6 was his decision I believe that it is a mitigating factor here. Not that it's a good  
7 idea to take drugs nor would I ever advocate for that but that it happens and  
8 addiction happens. And at some point people need to get help for that. And  
9 that's obviously something that Keandre will have to do while he's in prison  
10 because -- and the one thing that I believe the State is right on, this is non-  
11 probational. He's not probation eligible.

12 So, we heard a lot about Mr. Valentine's priors and things that  
13 happened but these cases all resolved to less than six months or less in jail.  
14 There was probationary periods, yes, because in California they do half time.  
15 So he's never done more than six months in jail before this time waiting for trial  
16 and pending sentencing. Six months. That's not as big of a wakeup call as  
17 most of us with the six months in California prison. And now we're in a totally  
18 different circumstance. And we're talking -- what? Oh, and county jail; he  
19 corrected me. It was six months in county jail. So he's already going on  
20 tripling that time just pending sentencing, not quite but he's more than doubled  
21 that time in custody.

22 We're not asking for a minimum in this case. We're not saying this  
23 case is worth a three to eight although, that would be many, many times the  
24 amount of time he has ever done before. It's not worth the three to eight. We  
25 understand that there were multiple victims and things were stolen and we

1 don't want to downplay that because Your Honor did see the witnesses. And  
2 we're not asking for this level of leniency that suggests that he should walk  
3 free in a year or two. He knows he's not going to.

4 But when we come down to it, no one got hurt, no one got shot, no  
5 one got killed. And Mr. Valentine is a person with family members who love  
6 him. So the State seems to think that his family doesn't love him but I actually  
7 put to Your Honor that it's not that his family doesn't know him it's that the  
8 actions that he's taken during his short adult life, because he's only been an  
9 adult for five years, during that time, those are out of character for him. His  
10 family has known him much longer than that. And they're gonna miss him and  
11 he's gonna miss them.

12 The State made these comments about him never taking care of his  
13 kids and not being around them but that's not true. Keandre used to live with  
14 his kids. He saw them the day before he came out to Las Vegas. Yes, he's not  
15 there twenty-four seven but he was there routinely, regularly, with the mother  
16 of his children, with his children. And he has these kids who are three and five  
17 and we provided some pictures to Your Honor because this shows his humanity  
18 and the fact that he's a person too who has the capacity for love and  
19 gentleness and compassion. And he knows that because of this trial, because  
20 of what happened here, and because of his actions he's gonna miss their entire  
21 childhood. If Your Honor gives him ten years on the bottom his youngest child  
22 will be around thirteen, twelve, thirteen when he is first eligible for parole.

23 And there's no guarantee he's making parole on the first shot  
24 either. The State's right, he doesn't have a clean record and so he may not  
25 make parole on the first shot but he'll do every day of that bottom number.

1 And he's already, because of his actions, forfeited raising his children. They'll  
2 be teenagers by the time he gets out at best; at best.

3 Now, the State was saying all of these things about the other cases  
4 in the other state and, obviously, the State of California did not find them  
5 serious enough to give him prison time. So I do put that before Your Honor as  
6 we're left with that. What police reports say and what actually happens in  
7 cases, not always the same thing. There are different gradations and that's  
8 why they resolve lower. And so, these prior cases of probation and then  
9 minimal time in county jails while, again, I don't want to downplay any criminal  
10 offense to say that it was petty or something very small but they certainly have  
11 the very potential for not being as major as the State makes them out to be.

12 I think that they do demonstrate that he's not probation eligible. He  
13 obviously is not in a place in his life where he can be under supervision. But  
14 that's not even an issue here because we're not talking about a case that can  
15 end in probation at all.

16 And when we're talking about the other case that was here in Las  
17 Vegas, I don't know where the State was getting their information about  
18 everything but the reason he was released, to my understanding having spoken  
19 with my client, is that there was a real issue with the ID. And it wasn't as  
20 strong of a case as the State makes it out to be. So, that case was going to be  
21 fought. That was originally the reason he was coming back to Las Vegas. Poor  
22 decisions were made once he got here, but that was originally the reason he  
23 was coming back out was to get that warrant quashed and to get the case  
24 taken care of. That never happened. Other things happened and bad decisions  
25 were made. But it wasn't the cut and dry case that the State makes it out to

1 be.

2 And yes, at this point he has pled in that case and that's before  
3 another judge, Judge Togliatti, I believe, will be making the decision on the  
4 sentencing in that matter. And he pled in that one because, you know, it's the  
5 opportunity to get cases wrapped up when we're talking about what he  
6 understands will be a hefty sentence in this case. Because, frankly, anything  
7 over six months is a hefty sentence for Keandre, it's something he's never  
8 experienced before. And we're many, many, many times multiples of that.  
9 And he knows it and he accepts that based on what's happened.

10 Keandre's not a bad person. He's not this horrible human being  
11 who has been on a crime spree for his whole life. He's young. And people  
12 make bad decisions when they're young. Some people make bad decisions  
13 when they're a lot older as we see by a lot of -- I see through a lot of my  
14 clients. But, he has always wanted to take responsibility but the time is just so  
15 great.

16 And I believe we put on the record at the beginning of this case; we  
17 were looking at such a substantial amount of time to deal this case that it had  
18 to go to trial. I mean, with that volume it's not that he wanted to put the Court  
19 and the State and everyone, the victims through a two-week trial. He never  
20 wanted to do that. But twelve to thirty years is a lot of time to stick to. It's a  
21 lot of time. And I know we had put that on the record before but like that's  
22 just a lot of time to commit to with no appellate rights. And, unfortunately, we  
23 weren't able to resolve it because of that. But he never wanted this to get to  
24 this point. And it's a lot of his life and a lot of his time.

25 And you see behind me, Your Honor, we have numerous family



1 members: his mom and his dad, they're here to support him because they love  
2 him. And they love him despite what's happened in this case and in prior cases  
3 and they've been there for him. And, unfortunately drugs got the best of him  
4 and despite a very good upbringing he chose to make very poor decisions in  
5 taking drugs and letting them control him. And so hopefully, and I will urge him  
6 to get help for that while he's in prison and he'll have substantial time to turn  
7 his life around.

8 But, Your Honor, there was just a sentencing on yesterday that I  
9 heard about on the news last night where during a robbery, an armed robbery  
10 --

11 MS. LEXIS: Your Honor, I would object. The Court is not to take other  
12 sentencings into account. This is solely at your discretion. That's improper.

13 THE COURT: Yea, I don't want to hear what other judges have done in  
14 different situations because each case is unique and I think it would be err for  
15 me to even consider what happened in another case.

16 MS. MACHNICH: Okay.

17 THE COURT: Because I don't know all the background and  
18 circumstances.

19 MS. MACHNICH: Of course, Your Honor.

20 THE COURT: I don't have the letters of the family. I don't have the  
21 criminal record of the other person. I mean, there's so many things.

22 MS. MACHNICH: That's fair.

23 THE COURT: It would be too random for me to have to rely on that.

24 MS. MACHNICH: I'll be more generic then.

25 THE COURT: Okay.

1 MS. MACHNICH: Numerous, numerous times people get shot during  
2 robberies, get shot during confrontations and conflicts and defendants get  
3 substantially less time; substantially, substantially less time. And I keep coming  
4 back to that and the State brought this up in their sentencing that we always  
5 argue that there are people who kill people who get less time. That's precisely  
6 why we argue that because no one died here.

7 THE COURT: Well, I don't know that I've had a case where someone  
8 intentionally shot another person and they got less time. I've had some  
9 involuntary manslaughter cases where maybe they got close to or less than  
10 what the State was asking for but not an intentional murder.

11 MS. MACHNICH: I --

12 THE COURT: Maybe you've seen them.

13 MS. MACHNICH: Again, at this point I don't want to go into specific  
14 other cases.

15 THE COURT: That's fine. That's okay.

16 MS. MACHNICH: But it's, I mean, it does happen. And it's usually on  
17 negotiations, it's not a trial.

18 THE COURT: Okay, yea.

19 MS. MACHNICH: Because we like to try to negotiate cases to something  
20 that's fair and we just weren't able to here.

21 THE COURT: Well, and I don't punish a defendant for exercising his  
22 Constitutional right to go to trial. So, but I have to take into account the facts  
23 that I see them and not any offer that was made prior to trial because that  
24 involves a lot of different factors.

25 MS. MACHNICH: Of course.

1 THE COURT: So, but, go ahead.

2 MS. MACHNICH: But part of it was, Your Honor, is he didn't want -- he  
3 doesn't want the Court to think that he necessarily wanted to go through a trial  
4 and take up all this time and resources and do that. He did want to resolve.  
5 So, it wasn't for lack of trying. And we are where we are now and here we  
6 are.

7 But there are many, many cases where people get at least seriously  
8 injured, if not killed, and they get less time than twelve or sixteen years on the  
9 bottom. They don't get substantially less and I'm not asking for that in this  
10 case. Again, I'm not asking for three, four, five, six on the bottom; I'm not.  
11 Cases get dealt for that and that's not the case here. And I won't go into  
12 specifics but they're out there and they happen all of the time.

13 But he never pulled a trigger. It wasn't that there were shots fired  
14 and they missed. There were never shots fired. No one, no one got pistol  
15 whipped, no one got shot, no one got -- there was no knife but there was no  
16 stabbing, there was no injury. And that is an important factor because while  
17 these are certainly violent offenses it's a different level of violence to actually  
18 cause harm to someone, because robbery encompasses force or fear of force  
19 or, you know, you could put someone in fear. Armed robbery is an armed  
20 robbery if you fire a shot at someone and hit them, I mean, there may be other  
21 offenses involved as well, but it's still an armed robbery. That didn't happen  
22 here though. No shots were fired because no one's life was put at risk in that  
23 way. And, bad decisions were made but a decision that bad was not made.

24 So that's why we're asking for eight to ten years on the bottom,  
25 which again, an extremely substantial amount of time for Keandre Valentine

1 given that he has not done time in custody for any -- for even a year. He hasn't  
2 -- I mean, this is the first time he's been in custody straight for a year in his  
3 entire life. And he understands he's going to be in custody for many years to  
4 come. But when it comes down to what's fair for the offenses I know the  
5 State focuses on each victim having their own chunk of flesh, I guess, but I  
6 think that we should look at what is just for Keandre Valentine to be sentenced  
7 to overall. And what will affect -- I mean, obviously, there's a retribution point  
8 in the criminal justice system, an element, but there's also rehabilitation and  
9 making not necessarily an example out of him but also stopping him from  
10 continuing this train in his life. And this is the stop in that train.

11           And again, we're not asking for a minimum amount of time in this  
12 because we understand that it is serious and there is a gravity to this situation.  
13 But is the gravity twenty-five to seventy-five years? No. Not in a case where  
14 no one got hurt. Not in a case where no one got killed. Not in a case where, I  
15 mean, he's not fifty-five with a bunch of violent felonies before him, he has two  
16 prior cases and they were when he was very young. Not, that he's much older  
17 now but he will be much older when he gets out.

18           And he's missing something that's possibly the most dear which is  
19 his children's childhood; all of it. He'll miss all of their childhood. And he's  
20 never gonna get that back.

21           And with that, Your Honor, we'll submit on the issue of sentencing.  
22 With the issue of restitution, the State's never provided us anything on the  
23 chains. We had that little ambush at trial. We never received copies of  
24 anything. I don't know if they were actually pawned. If they were pawned I  
25 don't know what they were pawned for, what they were valued for at the

1 pawn store. We just never got any of the documents. And so, I think it's a  
2 little disingenuous to say that they want two thousand. That's just what the  
3 victim said they were --

4 THE COURT: We had testimony of that at trial.

5 MS. MACHNICH: I don't believe we had any testimony of what they  
6 were pawned for or if they were pawned. It was the person who pawned  
7 them.

8 THE COURT: Oh, I --

9 MS. LEXIS: We did.

10 THE COURT: I'm thinking.

11 MS. MACHNICH: I don't know. I don't have any paperwork to refer to.

12 THE COURT: I remember testimony regarding the value.

13 MS. MACHNICH: Honestly, without the paperwork that we should have  
14 been provided, it's hard to say for sure what that is because that's not what  
15 they're basing it on here. It's a small factor compared to the sentencing.  
16 Obviously, we're most interested in the sentencing in this case but that's an  
17 issue.

18 Also, I'll note, victim number five, which I believe is the gentleman  
19 who was on the ladder, he lied on the stand about how much money was  
20 taken. So, I would like to put that out there that he was trying to make money  
21 off of the situation versus what was submitted to the State and what was  
22 submitted in this report, and also in the police report. And he has not followed  
23 up or changed that.

24 MS. LEXIS: Actually, he is requesting no restitution.

25 MS. MACHNICH: Right.

1 MS. LEXIS: Okay.

2 MS. MACHNICH: But even in here he said there was twenty taken.

3 MS. LEXIS: I don't understand how he's trying to make money off it

4 THE COURT: Well, my --

5 MS. LEXIS: -- if he's not --

6 MS. MACHNICH: Well, originally he said there was substantially more

7 taken.

8 MS. LEXIS: -- asking for restitution.

9 MS. MACHNICH: Well.

10 MS. LEXIS: So.

11 THE COURT: I understand.

12 MS. MACHNICH: Maybe he realizes that making that representation at

13 that point was not appropriate, but.

14 MS. LEXIS: I would just object to the speculation, but.

15 MS. MACHNICH: Well, you know what? She got to talk about their

16 testimony, so.

17 THE COURT: You know what? I heard the trial and I see the P&P report.

18 Let me just rely on that, those things; okay?

19 MS. MACHNICH: There's just several questions with regard to some of

20 these statements: a wallet being returned when we never received information

21 on a wallet being returned; all the supporting documentation for the pawned

22 situation in which we never received, even after the fact. It just raises a lot of

23 questions but I guess that those can be left for appeal.

24 And I guess, only to note that the demeanor of the witness on the

25 stand when the State was saying that one of the witnesses was so scared

1 when she was identifying. We'll note that she did not identify him and she  
2 ended up stating that they told her he had her stuff. So, she couldn't even  
3 identify him. So, yea, the situation was stressful for her but it's a little bit of a  
4 misstatement by the State to say that that woman was so scared in doing that  
5 part because it was Keandre. She at that point said it wasn't him. He was  
6 much taller than the man who did it. Again, that's, an aside. It was Rosa  
7 Vazquez, I believe, and that's aside.

8 THE COURT: ID is, perhaps, an issue on appeal.

9 MS. MACHNICH: And, obviously, we will bring that up but when the  
10 State's making blanket statements that she's this -- anyway.

11 MS. LEXIS: You had the opportunity to observe her.

12 MS. MACHNICH: Yes, and also --

13 THE COURT: Last word to the defense though, okay? Thanks.

14 MS. MACHNICH: As a community, as a state, we're all paying to put him  
15 behind bars. And eight to ten years is not only enough retribution and  
16 rehabilitation but it's enough time for us to pay to keep him in jail, keep him in  
17 prison when he may not even make parole on the first try. So it could be  
18 substantially more than the bottom end.

19 I'll submit. Thank you.

20 THE COURT: Thank you. I appreciate the argument from both counsel,  
21 which I have considered very carefully. In determining the appropriate sentence  
22 I must make sure that the sentence is commensurate with the type of crime and  
23 the seriousness of the crime, the fear experienced by the victims, the risk of  
24 continued criminal activity, the possibility of future harm to the public and  
25 Defendant's background, and the possibility of rehabilitation over time. I've

1 considered all that.

2 I think this is a situation where there has to be some degree of time  
3 for each of the major robberies here with deadly weapon. And the State  
4 actually sees five but I'm also concerned with the forcing of the one person on  
5 the ground in their garage, and I think that warrants counting it as an additional  
6 incident. So I think there's basically six different incidents that warrant time.

7 So, what I'm gonna do here is, here's my sentence. As to Count 1,  
8 I'm imposing a sentence of two to five years on underlying crime, and one to  
9 three years for the enhancement. So that's a total of three to eight years as to  
10 Count 1.

11 As to Count 2, I'm imposing three to eight years, that's burglary  
12 while in the possession, but Count 2 will run concurrent with Count 1.

13 Count 3, robbery with use of a deadly weapon, two to five years  
14 for the underlying crime, one to three years for the enhancement. So that's a  
15 total of three to eight years. Count 3 to run consecutive to Count 1.

16 Count 4, two to five years for the underlying crime, one to three  
17 years for the enhancement for a total of three to eight years. Count 4 to run  
18 consecutive to Count 1 and 3.

19 Count 5, burglary while in possession of a deadly weapon, three to  
20 eight years to run concurrent with the other Counts.

21 Count 6, robbery with use of a deadly weapon, two to five years  
22 for the underlying crime, one to three years for the enhancement for a total of  
23 three to eight years. Count 6 to run concurrent -- I'm sorry, consecutive to  
24 Counts 1, 3, and 4.

25 Count 7, two to five years for the underlying and one to three for



1 the enhancement for a total of three to eight; that to run consecutive to Counts  
2 1, 3, 4, and 6.

3 And then Count 8, attempt robbery with use of a deadly weapon,  
4 three to eight years but that to run concurrent with Counts -- with all the prior  
5 Counts.

6 Count 9, this would be like the sixth event for which the Court  
7 wants to impose a separate penalty. The Court imposes two to five years for  
8 the underlying and one to three years for the enhancement. So that's a total of  
9 three to eight years to run consecutive to Counts 1, 3, 4, 6, and 7.

10 Count 10, burglary while in possession of a deadly weapon, Court  
11 imposes a sentence of three to eight years to run concurrent with all the prior  
12 Counts.

13 Count 11, robbery with use of a deadly weapon, two to five years  
14 for the underlying, one to three years for the enhancement for a total of three  
15 to eight years. And this one will run concurrent with all the other Counts. And  
16 I'm specifically saying concurrent on that one with the intent to do that.

17 Count 12, possession of document or personal identifying  
18 information, one to three years to run concurrent with all prior Counts.

19 Count 13 and 14, on each of those, one to three years. That's  
20 possession of credit or debit card without a cardholder's consent. Each of  
21 those again, one to three to run concurrent with all prior Counts.

22 The total sentence then, basically for each of the Counts 1, 3, 4, 6,  
23 7, and 9 that's three to eight years but that's six instances. So that's eighteen  
24 to forty-eight years total is the total aggregate sentence that I'm imposing in  
25 this case.

1 Fees: twenty-five dollar administrative assessment, three dollars  
2 DNA administrative fee, one hundred and fifty -- is it two hundred and fifty for  
3 indigent defense fund fee? Two-fifty, I believe.

4 MS. MACHNICH: We would waive it if we could. We don't collect but,  
5 it's two fifty.

6 THE COURT: I'll waive the indigent defense fund fee and one thousand  
7 dollars in restitution.

8 MS. LEXIS: Thank you, Your Honor.

9 THE COURT: Alright, that's the Court's sentence. The JOC will be  
10 prepared and Court is adjourned.

11 MS. LEXIS: Your Honor, I'm sorry, just so the record is clear.

12 THE COURT: Yes.

13 MS. LEXIS: With the deadly weapon enhancement, the Court considered  
14 the factors listed in 193.165?

15 THE COURT: Yes, I did. I did consider those factors.

16 MS. LEXIS: Thank you, Your Honor.

17 THE COURT: Thank you for putting that on the record.

18 MS. MACHNICH: And we would just ask that the aggregate be reflected  
19 in the JOC.

20 THE COURT: The aggregate of -- yes.

21 MS. MACHNICH: Yes.

22 THE COURT: The aggregate of eighteen to forty-eight will be reflected in  
23 the JOC.

24 MS. MACHNICH: Thank you.

25 MS. LEXIS: Credit for time served is?

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MS. MACHNICH: Four hundred and eighty-nine days.

THE COURT: Alright, the Court will give credit for time served of four hundred and eighty-nine days.

MS. MACHNICH: Okay, thank you.

THE COURT: Alright, thank you. Court is adjourned.

[Proceedings concluded, 12:10 A.M.]

\* \* \* \* \*

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

  
DALYNE EASLEY  
Court Recorder

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Appellant, )  
)  
vi. )  
)  
THE STATE OF NEVADA, )  
)  
Respondent. )  
\_\_\_\_\_)

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