

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAVAR ERIS KETCHUM,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

Electronically Filed
Oct 29 2018 01:52 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 75097

RESPONDENT'S APPENDIX
Volume 3

NICHOLAS M. WOOLDRIDGE, ESQ
Nevada Bar #008732
Wooldridge Law Ltd.
400 South 7th Street, Suite 400
Las Vegas, Nevada 89101
(702) 330-4645

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

ADAM PAUL LAXALT
Nevada Attorney General
Nevada Bar # 012426
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Appellant

Counsel for Respondent

INDEX

<u>Document</u>	<u>Page No.</u>
District Court Minutes of 05/19/17 (All Pending Motions)	RA II 361-362
District Court Minutes of 10/17/17 (All Pending Motions)	RA II 451
District Court Minutes of 02/17/17 (Argument: Petition for Writ of Habeas Corpus).....	RA II 481-482
Motion for New Trial, filed 06/02/17	RA II 363-420
Notice of Motion and Motion in Limine Reference Prior Acts of the Victim, filed 05/09/17	RA II 348-353
Petition for Writ of Habeas Corpus and Motion to Dismiss, filed 12/30/16	RA II 452-463
Recorder's Transcripts of 05/23/17 (Jury Trial-Day 2), filed 07/10/17	RA I 1-99
Recorder's Transcripts of 05/24/17 (Jury Trial-Day 3), filed 07/10/17	RA I 100-241
Recorder's Transcripts of 05/25/17 (Jury Trial-Day 42), filed 07/10/17	RA II 242-347
Recorder's Transcripts of 05/26/17 (Jury Trial-Day 5), filed 04/26/18	RA III 483-531
Reply Memorandum of Law in Response to State of Nevada's Return to Petitioner's Petition for Writ of Habeas Corpus and Motion to Dismiss, filed 01/19/17.....	RA II 476-480
Reply Memorandum to State of Nevada's Opposition to Defendant's Motion for New Trial, filed 09/27/17.....	RA II 434-442
Return to Writ of Habeas Corpus, filed 01/04/17	RA II 464-475
State's Opposition to Defendant's Motion for New Trial, filed 09/05/17	RA II 421-433
Supplemental to Defendant's Motion for New Trial, filed 09/28/17	RA II 443-450
Supplement to State's Motion in Limine Reference Prior Acts of the Victim, filed 05/18/17	RA II 354-360

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 29th day of October, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

NICHOLAS M. WOOLDRIDGE, ESQ.
Counsel for Appellant

JOHN T. NIMAN
Deputy District Attorney

/s/ J. Garcia

Employee, Clark County
District Attorney's Office



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
vs.
JAVAR ERIS KETCHUM,
Defendant.

CASE: C-16-319714-1
DEPT. XVII

BEFORE THE HONORABLE KATHY HARDCASTLE, SENIOR DISTRICT
COURT JUDGE

FRIDAY, MAY 26, 2017

PARTIAL TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 5
(CLOSING ARGUMENTS ONLY)

APPEARANCES:

For the State:

JOHN L. GIORDANI, ESQ.
Chief Deputy District Attorney
STEVEN ROSE, ESQ.
Deputy District Attorney

For the Defendant:

NICHOLAS N. WOOLDRIDGE, ESQ.

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

State’s Closing Argument	3
Defense Closing Argument	21
State’s Rebuttal	30

1 Las Vegas, Nevada, Friday, May 26, 2017

2 [Trial began at 9:40 a.m. - previously transcribed]

3 [State closing argument begins at 10:33 a.m.]

4 [Inside the presence of the jury]

5 **[STATE CLOSING ARGUMENT]**

6 MR. ROSE: Ladies and gentlemen, this case is not a whodunit. It's
7 not a mystery. It's also not, as Defense Counsel would have you
8 believe, self-defense. And it is certainly not a case of divine intervention.

9 Now, use your common sense. This case is about the
10 Defendant shooting a man in the belly, ripping his pants off, yanking the
11 belt out of those pants before sauntering over to his getaway car,
12 returning to the body that he has just left bleeding to death on the
13 pavement, taking more items from that person, walking back to the car,
14 and then fleeing, fleeing not just the scene but the state, being picked up
15 2 weeks later four states away.

16 Ladies and gentlemen, this case is a case of murder and
17 robbery. This is a case of that man determining that that belt and that
18 watch that you see there they were worth more than Ezekiel Davis' life,
19 but they were worth so little that the Defendant told you he threw them
20 away in a trash can at a gas station. That's what this case is about,
21 ladies and gentlemen.

22 Now, the State has charged two counts; murdering Ezekiel
23 Davis with a weapon and robbing him. First I want to kind of talk about
24 murder. We all kind of know what murder is. We have initial anticipation
25 of it, but the law gives us some very specific definitions. And here

1 murder is actually pretty broad. It's the unlawful killing of a human being
2 with malice aforethought. Now, murder doesn't have to happen in any
3 particular way. It doesn't have to be a shooting. It doesn't have to be a
4 stabbing. It doesn't have to be anything in particular because the law
5 tells you that by any means that you could possibly think of to kill
6 somebody you can commit murder.

7 Now, there are two types of murder. You're given the
8 instruction that says open murder can be either first or second degree.
9 So if you look at the indictment that you were read, it just says murder. It
10 doesn't say first degree murder. That's because that charge includes
11 both of these things. Second degree murder is really simple; any murder
12 that's not first degree. All you need for that is malice aforethought. First
13 degree murder is like second degree plus. You add on some additional
14 thing to get you from second degree up to first degree. What you add on
15 to that is either premeditation and deliberation, or felony murder. And I'm
16 going to get to what those actually mean in just a moment.

17 Now, if you noticed one thing that was common between the
18 two of them is malice aforethought. It's kind of an archaic term, probably
19 not something that most people use in their everyday lives so the law
20 gives us a fair number of explanations for what we actually mean by this.
21 What is this? Well, it's the intentional doing of a wrongful act without --
22 Court's brief indulgence --

23 [Colloquy between State Counsel]

24 MR. ROSE: -- without legal cause, excuse, or adequate
25 provocation. It can also arise from anger, hatred, or revenge. It can also

1 come about simply from ill will or a grudge or just petty spite towards
2 your victim. It can arise from any unjustifiable motive or purpose to
3 injure, or from a reckless disregard of consequences and social duty.

4 So what do those mean? It can come about if you want to kill
5 the person or to take their belongings, if you want to kill the person in
6 order to get revenge upon them, if you want to kill that person so you
7 can run away with that person's wife. It doesn't matter what the motive is
8 as long as it's an unjustifiable motive or purpose to injure.

9 With regard to a reckless disregard for consequences, if you
10 are -- you know if you drive by a crowd and you decided it would be fun
11 to fire off a couple of rounds, you might not intend to actually kill
12 anybody in there, you might not intend to hurt one specific person, you
13 just don't really care. Well, that's a reckless disregard of your
14 consequences in your social duty. Any of those things can give rise to
15 malice aforethought.

16 Now, it says aforethought which kind of gives you the idea that
17 there's some kind of time frame in there and that happens before the
18 killing, but it does not talk about the length of time between when you
19 intend to hurt that person or when you actually do it. We'll get to that
20 time frame a little bit later. Malice aforethought does not refer to that. All
21 it is is the mixture of your action in hurting and killing that other person
22 along with your -- either the unlawful intent or your reckless disregard for
23 the consequences.

24 Now, there are two ways that you can have malice. There are
25 actually three but these are two ways that you will have it, either

1 express, a deliberate intent -- it's going to be demonstrated through
2 external circumstances. Somebody says I'm going to kill him. They have
3 made it clear their express intent to kill that person. Similarly, if the
4 person says I'm going to get at him, if that means I'm going to kill him --
5 if that's understood I'm going to kill him, he has now expressed
6 externally his intentions.

7 Now, that's not the only way of having malice aforethought.
8 You can also have it if it's implied. If, when you look at the situation, the
9 person didn't say to their friend, hey, you know what, I'm going to kill this
10 guy, or when you look at the situation you find that there's no adequate
11 provocation for the actual killing, you can imply from that the malice.
12 That's what they call, and you'll see it in your instructions, demonstrating
13 an abandoned and malignant heart. Again, it's kind of an archaic term
14 but that's what they're referring to.

15 Now, first degree murder I said it had to have something extra
16 to it, right? It has that malice aforethought, just like second degree you
17 have to add on to that. The first thing you add on is willfulness; that's just
18 the intent to kill. That doesn't talk about timing at all. These are the
19 things which we'll talk about, that timing. We've all seen Law & Order.
20 Most of us have seen CSI. We think we have the idea of what we mean
21 by premeditated and deliberated. But again, the law gives us very
22 specific examples. For deliberated, it's just choosing the action. You
23 weigh the reasons for it and against it and the consequences. There is
24 no minimum time required. We don't say, oh, you only thought about it
25 for 5 seconds so you didn't deliberate.

1 With premeditation, that's the determination to kill. That can
2 come from as little as two consecutive thoughts. So if you -- if a person
3 plans out their murder a full year in advance, they've got their plane
4 tickets all set up, they know exactly where they're going, they know
5 exactly how they're going to commit this and get away with it; that's
6 clearly premeditated. If a person plans out for a day, that's also
7 premeditated and deliberated. If a person plans it out for a second, that's
8 still premeditated and deliberated.

9 And to give kind of a more real life example, because I
10 imagine that most people in this room have not committed murder with
11 the exception of Javar Ketchum, a person's running late for work. They
12 hit snooze one too many times on their alarm. They get up. They see
13 what time it is and they start freaking out because they'll be late for work.
14 So they move as fast as they can. They brush their teeth. They put on
15 their clothes. They hop in the car and they start booking it. And they can
16 see the building getting closer. They can see that they're getting there.
17 They're looking at the time. They think they're going to make it. And they
18 get to the last stop light beforehand and as they're approaching that stop
19 light it turns yellow. And they look at their clock. They look and they see
20 if there are any cops right there. They think about their brief case in the
21 back. Is it going to slide forward if they slam on the brakes? They think
22 about the coffee that they have in their hands; are they going to spill
23 that? They run through all of those things and in a split second they say,
24 you know what, I'm going to do it. In a split second they go and they
25 press on that gas pedal. That person has just premeditated and

1 deliberated their decision to get through that light. To go even faster than
2 that, the person comes up to the exact same stop light and this time the
3 only thing that runs through their head is I can make it. They don't even
4 think about anything else. They just think it went yellow, I can make it
5 and they press on that gas pedal. In that split second, that person has
6 premeditated and deliberated. That's how fast it can be.

7 Now, the other kind of first degree murder that we were talking
8 about here is felony murder. And in this particular case, its murder
9 committed during a robbery or an attempted robbery. Now, the law says
10 that, in and of itself, is conclusive evidence of malice aforethought. You
11 don't -- if you find that its felony murder, that the person killed the other
12 individual during the commission of the robbery or attempted robbery,
13 you don't have to worry about anything else with regard to malice
14 aforethought. Was there a lack of adequate provocation? Was it
15 expressed malice or implied malice? You don't have to worry about any
16 of that because you have been told by the law that because you have
17 undertaken such an inherently dangerous activity as committing or
18 attempting to commit a robbery and somebody died as a result of your
19 actions, that, in and of itself, is conclusive proof of malice aforethought.

20 Similarly, and this is very important, with felony murder it does
21 not matter if the killing was intentional, unintentional, or accidental. If you
22 -- if a person commits or attempts to commit a robbery and the person
23 that they're trying to rob or that they do end up robbing dies, it doesn't
24 matter if that's what they wanted. It doesn't matter if that's what the killer
25 wanted to have happen, intended to have happen, thought was going to

1 have happen. It does not matter because that person has undertaken
2 such a dangerous action in trying to rob the victim that the law says that
3 person is guilty of first degree murder. The other thing, that
4 robbery/attempt robbery has to be proven. You have to find that that
5 actually happened. But the intent to rob that person has to come up at
6 any point in time before the killing is done.

7 Now, you have an instruction in your packet that says your
8 verdict must be unanimous. And it does; you all have to determine in
9 order to render a verdict that you are unanimous as to either guilt or not
10 guilt. But with regard to first degree murder, there are two different ways
11 to get at it. You can either find that it's premeditated and deliberated or
12 you can find that it was felony murder. Now, -- or I guess you could find
13 there was both. If three people on the jury find beyond a reasonable
14 doubt that it was premeditated and deliberated and another three people
15 find that it wasn't premeditated and deliberated but it was done in the
16 commission of a robbery so its felony murder, and then the last six say,
17 well, you know what, we [indiscernible] think it was both of them; you're
18 all unanimous as to your verdict even though you get there different
19 ways. As long as you get to the same end point the path you take to get
20 there doesn't matter.

21 Now, we've talked about robbery. It's charged as a second
22 charge. It's also the theory that the State has presented for that felony
23 murder. So what is a robbery?

24 Is a robbery just when a person puts on the black ski mask,
25 hides in the alley, pops out with his gun, and says, give me everything

1 you got? That's clearly a robbery. But again, similarly how murder is very
2 broad and it encompasses a lot of different things, robbery
3 encompasses a lot as well. What robbery is is the unlawful taking of
4 personal property from the person of another or in his presence, nearby
5 him, with -- against his will -- he didn't want to give it to you -- and by use
6 of force or violence or fear of injury. That's all you need to have a
7 robbery. How you actually work it out, you actually commit your
8 Robbery, you can be very inventive and commit it in a brand new way
9 that we've never thought of, as long as you meet these elements you've
10 committed a robbery.

11 Now that force, the force or fear of injury has to use either
12 obtain or retain possession of property. A person's walking down the
13 street carrying their purse. A robber runs up, grabs onto that purse and
14 rips it from her. She tries to hang on but she can't. He rips it from her.
15 He's now used force to obtain or retain possession of the property.

16 If you use force or threat of force to prevent or overcome
17 resistance to it that's also robbery. He walks up to that same woman
18 holding her purse. He says give me your purse. She said, no, I'm not
19 giving you my purse. It's mine. He pulls out a gun and says give me your
20 purse and she hands it over. That's also a robbery. He didn't actually
21 use the force on her but he used that force or threat of force to
22 overcome her resistance to taking it.

23 And lastly, to facilitate escape; he's now -- he runs up, he
24 grabs the purse from that woman and she starts chasing him and he
25 turns around and pulls out the gun and points at her and says, you better

1 leave me alone. Okay, take it. Take it. And he runs off. He has now
2 used that force or threat of force to facilitate his own escape.

3 Under any one of those theories or multiple of them, that
4 person has used that force to take that property and has committed
5 robbery.

6 Now, if you use that force to actually take the property or to
7 overcome resistance, it doesn't matter. If you hit the person once, that's
8 enough for robbery. If you hit the person ten times that's enough for
9 robbery. You shoot the person in the stomach and you allow them to
10 bleed to death on the ground; that's enough for a robbery. You yank the
11 pants off of them while they're bleeding on the ground; that's enough for
12 a robbery.

13 And lastly, value is not an element here. You don't have to
14 worry about, well, how much -- how expensive was that belt? Was it
15 really a designer belt? The law does not say that just because a person
16 stole a fake Rolex and not a real Rolex that it wasn't actually a robbery.
17 You steal a stick of gum from a person it's the same as stealing a
18 \$10,000.00 ring. It doesn't matter as long as you take some personal
19 property from that individual against their will and you use force or threat
20 of force to do it, you have committed that robbery.

21 Now the actions within a robbery can be spread over time.
22 And in fact, the force could come well before the actual taking and even
23 before the intent to take. The law says if you take advantage of the
24 situation that you create, if the robber takes advantage of the situation
25 they create, even if when they created the situation they didn't intend to

1 take any property, they still have committed a robbery.

2 Now to give a slightly better example of that: two people are
3 talking to one another and they get into a little bit of an argument. The
4 one person goes and decks the other guy, just hits him in the face. At
5 that point in time he was just angry at him. He didn't intend to take
6 anything from that person and now that the guys on the ground a bunch
7 of bills fall out of his pocket. He's unconscious. He can't do anything.
8 You know, maybe I'll just grab those. I'll take them with me for my
9 trouble. Even though at the time that you used the force, he didn't
10 intend to commit the robbery, he didn't intend to take anything, because
11 he took advantage of the situation that he himself made to take some of
12 the things of somebody else's, he has committed that robbery under our
13 law.

14 Now, we said that murder is the unlawful killing of a human
15 being. In this particular case we have that. We have the unlawful killing
16 of Ezekiel Davis. Nobody's disputing that Ezekiel Davis is dead or that
17 he was a human being so you got that. We also need the malice
18 aforethought. That's kind of what we need to get to the murder.
19 Remember, that's our unlawful intent or disregard for consequences. It
20 wasn't an accident. Well, what was he doing? He wanted that watch. He
21 wanted that belt and he was going to take them.

22 Ladies and gentlemen, any unlawful motive, any unlawful
23 purpose, even if you don't believe that he wanted to take them
24 immediately -- if you believe that the -- that Zek was talking with the
25 Defendant, you believe that Defendant was angry at Zek, didn't notice at

1 first that he had the belt and the watch, he just wanted to hurt him, he
2 wanted to kill him because he had bumped into him earlier in the club,
3 he was angry about that, he didn't like the way he was looking at him;
4 any unlawful motive or intent to injure, or any lack of adequate
5 provocation can be malice aforethought. So, remember for second
6 degree all you need, unlawful killing of a human being, malice
7 aforethought. But that's not all that we have in this case. We have first
8 degree murder. We have that second degree plus, right, because it
9 could be either premeditation and deliberation or it can be felony murder.

10 I want to talk for a moment about premeditation and
11 deliberation again. Remember how I said that it can happen in an
12 instant? Well, say you just -- say you choose to believe that Ezekiel
13 Davis had a gun even though there's no actual evidence that he ever
14 did. Nobody saw him there with a gun. He's not on camera with a gun at
15 any point in time and no gun is seen being taken from him at any point in
16 time. But say you believe he had a gun. And say you believe that he
17 actually went and tried to rob the Defendant. And say you believe that
18 the Defendant closed his eyes and prayed to God and got that warm
19 feeling from his grandmother, and he says, you know what, this guy's
20 not taking something from me. I'm angry now. You're not taking
21 something from me; I'm taking something from him. And he pulls out his
22 gun and he shoots. At that moment he has premeditated and
23 deliberated. He has made that conscious choice to pull that trigger.

24 Let's break down felony murder. Remember, felony murder
25 can be intentional, unintentional, or accidental. He goes and says, you

1 know what, you're not taking something from me. I'm taking something
2 from him. Say Zek doesn't have a gun. Say Zek just says give me what
3 you got. Tear it off, apparently. Not sure what he's supposed to tear up
4 but he says tear it off. He says, no, no, this ain't happening, not to me,
5 not to me. I'm feeling good. I'm out at the club. I'm having a good time. I
6 know I've got my gun. I'm going to take something from him. Well, the
7 moment he thinks that he's going to take something from Ezekiel Davis
8 and he pulls out that gun to do it -- first off, that's your robbery right
9 there. And secondly, maybe he doesn't intend for the gun to go off.
10 Maybe the gun goes off as he's pulling it out of his pocket, didn't mean
11 to pull the trigger. Doesn't matter; that's still a felony murder. Say he
12 pulls the gun out and he fumbles it and it falls on the ground and the gun
13 goes off and it shoots and it kills Ezekiel Davis. That is still felony murder
14 because it does not matter at that point in time if it's intentional,
15 unintentional, or accidental. Say instead that Javar Ketchum goes up to
16 Ezekiel Davis where he had seen him in the club kind of staggering
17 around. He's got some fancy stuff on. He's got, you know, some chains
18 on. He's got a watch on. And Javar Ketchum has decided that he wants
19 some of that. He goes up to him and he pulls out the gun. He demands
20 the property. And Zek says, hey, man, no, I'm not doing that, no. Maybe
21 he never intended for the gun to go off. He didn't mean for it to. Zek
22 says, no, man. He starts to step back. In the first instinct without even a
23 thought by Javar Ketchum is to pull that trigger. It's a reflex. There's no
24 thought involved whatsoever. Because he intended to take the property
25 of Ezekiel Davis by force against his will and Ezekiel Davis wound up

1 dead as a result, that is still felony murder. That's all it takes.

2 The State has presented to you arguments for both
3 premeditation and deliberation and felony murder. You know, you could
4 take the entirety of my arguments about premeditation and deliberation
5 and forget them. You could put down that we never charged
6 premeditation and deliberation. It's just not even there. They didn't
7 consider it. They don't want to. You still have more than enough
8 evidence to get to felony murder. Why? Because it's unlawful taking of a
9 person's property from them or by -- or near them against their will and
10 with use of force or fear of force.

11 Well, what do we have in this case? We have some video and
12 you can watch the video. I encourage you to. You also have the
13 Defendant telling you on the stand he took Ezekiel Davis' property by
14 force. Well, we have not only his statements but you'll see in about 5
15 seconds the Defendant walking on screen with the victim's pants.

16 [Video played]

17 Remember, he didn't just tug those pants off. No, it wasn't a
18 tug. No, he ripped those pants off and he yanked out that belt. He took
19 Ezekiel Davis' property against Zek's will by force. He robbed Ezekiel
20 Davis and during the commission of that robbery Ezekiel Davis died.
21 That, ladies and gentlemen, is felony murder. That is first degree murder
22 and that's what we're asking you to find. Go back and watch it.
23 Remember, you can zoom in if you want to, right? You go to the zoom
24 feature, just scroll up and down on the mouse. It will help you zoom in,
25 okay? Go back and watch it as many times as you'd like. You know

1 what you'll see? You'll see the Defendant, pants in one hand, gun in the
2 other -- one gun, not two, one gun. You will see him committing that
3 robbery.

4 Again, we have charged two counts here; murdering Ezekiel
5 Davis and robbing him. One thing that you'll notice between both counts
6 that I haven't really touched on so far is they both say with the use of a
7 deadly weapon; okay? That is something that you will have to find. If
8 you find that he's committed murder with -- that he murdered Ezekiel
9 Davis, you'll have to determine, well, did he use a deadly weapon in
10 doing so. Similarly, when you find that he robbed Ezekiel Davis you'll
11 find -- you'll have to determine whether or not he used a deadly weapon
12 in doing that.

13 So, what's a deadly weapon? We can probably list off a whole
14 bunch of them but all you really need to know is by law a firearm is a
15 deadly weapon. No if's, and's or but's about it. It doesn't matter if -- you
16 know how big the gun is. You don't have to be Dirty Harry. It doesn't
17 matter what it is.

18 Also, you should remember the State is not required to
19 recover the weapon. A person doesn't escape liability for using that
20 weapon just because they ditch it so that when they get picked up at a
21 border patrol check point in Texas they don't get caught with the murder
22 weapon. That doesn't get a person out of liability for using that gun.

23 How do we know that there was a gun involved? Well, there
24 really isn't a dispute that a gun was involved. Nobody's really been
25 arguing that Javar Ketchum didn't have a gun; all right? Zek Davis is

1 shot. The pictures, the bullet wound, the pictures of the bullet are in
2 evidence. You can take a look at those if you want to. There's no real
3 dispute there. Beyond all of that, you have Zek Davis out back showing
4 off that gun, listening to Lil Boosie. Lil Boosie, a song about carrying it
5 not for protection but just a part of your wardrobe, feeling themselves,
6 having a good time, taking out that gun and showing her off. Clearly,
7 there is a firearm and you're instructed that a firearm is a deadly
8 weapon.

9 So, first we had our murder; right? We got our unlawful killing
10 of a human being, Zek Davis, and we have our malice aforethought.
11 Now, what the State has also proven with the evidence that you have
12 before you, the evidence that you'll be able to look back at will prove to
13 you first degree murder, that second degree plus; both the premeditation
14 and deliberation. When he tells Antoine Bernard, I'm gonna go get this
15 guy, all right --

16 MR. WOOLDRIDGE: Objection; misstates the --

17 MR. ROSE: I apologize.

18 MR. WOOLDRIDGE: -- evidence.

19 MR. ROSE: I'm gonna get at him, my apologies, I'm gonna get at
20 him. Antoine Bernard understood what that meant. Look at where the
21 car is. Look where the car is going. As the shot goes off, he backs out
22 and he's already ready to go. You'll watch him drive up over the curb as
23 he pulls forward to let the Defendant in.

24 You also have a clear case of felony murder. Remember,
25 intentional/unintentional/accidental; it does not matter. The moment that

1 you find that during the commission of the robbery that Ezekiel Davis died
2 you have felony murder. You have first degree murder. Because it
3 happened with a firearm you have first degree murder with use of a
4 deadly weapon.

5 Ladies and gentlemen, you were told at the beginning of this
6 case that this case was about self-defense. And while Defense Counsel
7 might argue to you, he doesn't have to, but he might argue to you that
8 it's about self-defense. What happened here was not in fact
9 self-defense. Much like a number of the other things, we have our own
10 kind of ideas of what self-defense means. Well, under the law, under the
11 law that we've all sworn an oath to follow in this particular case there
12 was some specific rules on it.

13 So, first off, -- I mean he's -- the killer actually and reasonably
14 believes imminent danger that the victim's going to kill the [indiscernible]
15 or cause great bodily injury and that it is absolutely necessary to use
16 deadly force. And the reason for using that has to be to avoid your own
17 death or bodily harm or that of somebody around you. Remember, a
18 bare fear is insufficient. If you're just afraid of the person for no good
19 reason it doesn't count. A reasonable person in the same position has to
20 have that same kind of fear, that justifiable fear. Also an honest but
21 unreasonable belief; the person is genuinely terrified but there's simply
22 no reason for them to be. You are instructed -- it is in your packet and
23 you'll have the packets back there -- that is not self-defense. The killing
24 has to be solely caused by that fear, not revenge. So, if the person walks
25 up and pulls out the gun and says give me your stuff and you simply get

1 angry and say no, I'm not giving you my stuff and your anger causes you
2 to kill the person, your pride -- you say, no, you're not robbing me. I'm
3 taking your belt. I'm taking your watch. That is not self-defense.

4 Now, you have the right also to defend yourself against
5 apparent danger if the appearance of that danger brings about that
6 honest belief that you are about to be killed and you act solely upon that,
7 and a reasonable person would also believe the same thing even if
8 you're later mistaken. Here, what evidence is there that the Defendant
9 was ever actually in danger? What evidence is there that Zek Davis had
10 a gun? Nobody else saw him with a gun. You know, they're standing out
11 back with a gun but nobody else saw Zek with a gun [indiscernible] at
12 the scene. And where on that video do you see him putting that gun in
13 his pants as he walks back to the car as opposed to the gun that the
14 Defendant has in his hand?

15 Let's talk for a moment about original aggressor. You'll have a
16 couple of instructions on this too. A person doesn't get to start a fight
17 and then when they start to lose that fight decide they're going to kill the
18 guy and then say, oh, no, it was self-defense. You don't get to do that.
19 The law does not allow you to do that. At that point in time the person
20 who has started that fight is the initial aggressor. They cannot take
21 advantage of self-defense except in a very limited circumstance. If you
22 make a good faith effort to decline any future struggle, you realize you
23 picked a fight with the wrong person and you're about to be killed so you
24 just simply start to walk away, the guy chases you down and kills you or
25 is trying to kill you, then you have to defend yourself; that could be

1 self-defense. But other than that, the person who starts the fight, the
2 person who brings it about, right -- you can only [indiscernible] if you did
3 not voluntarily seek, provoke, invite, or willingly engage in a struggle. If
4 you by some means brought about that conflict, you don't get to then
5 turn around and claim self-defense unless you have that good faith effort
6 to decline any more struggle.

7 There are a lot of self-defense instructions. You'll have a lot of
8 them. And this one kind of sums it up very nicely. It must appear that the
9 danger was so urgent, so pressing that in order to save the killer's own
10 life or prevent great bodily harm that killing of that other person was
11 absolutely necessary or that they had really in good faith tried to decline
12 any more struggle. I'd ask you to take another look at this when you get
13 back there. Obviously, read all the instructions. There's no greater
14 weight to give to one than another, but I think this one encapsulates
15 self-defense pretty nicely.

16 This is going to be your verdict form. This is how you will make
17 known to the Court your voice. This is how you give your voice to the
18 Court. This is how you decide the facts that you find in this case from all
19 the evidence that's given to you, all the evidence that you'll be allowed to
20 review back in the jury room.

21 Ladies and gentlemen, I submit to you that the State has
22 proven first degree murder with use of a deadly weapon. Whether you
23 get there from premeditation and deliberation, or you get there from
24 felony murder, or some of you take each path, it does not matter. The
25 State has proven to you first degree murder with use of a deadly

1 weapon. Similarly, the State's proven robbery with use of a deadly
2 weapon; yanking those pants off, shooting a man and leaving him to die
3 on the ground.

4 Ladies and gentlemen, the State is asking that the Defendant
5 be held accountable for doing exactly what it is that he did, for robbing
6 and killing Ezekiel Davis, for leaving him to bleed to death while the
7 Defendant fled, while the Defendant tossed that belt in the trash can
8 somewhere and then took off to Texas trying to get away. The State is
9 asking that Javar Ketchum be held responsible for causing the end of
10 Ezekiel Davis' night of celebration, the end of his fatherhood to his 2
11 year old daughter and the daughter he never got to meet, the one born
12 less than a week after his death, for allowing this to be the end of his life.

13 [Video played]

14 [State's closing argument concludes at 11:09 a.m.]

15 [Trial resumes - previously transcribed]

16 [Court in recess at 11:11 a.m.]

17 [Trial resumes at 12:36 p.m. and inside the presence of the jury -
18 previously transcribed]

19 [Defense closing argument begins at 12:38 p.m.]

20 **[DEFENSE CLOSING ARGUMENT]**

21 MR. WOOLDRIDGE: Where its at. Tear it off before I pop yo ass,
22 nigger. That is what Zek Davis said to Javar Ketchum when he shoved a
23 revolver into his rib cage and pulled him on his belt. This case is about
24 self-defense. It's about Zek Davis trying to rob Javar Ketchum and Javar
25 fearing for his life and doing what he reasonably believed he had to do,

1 what he has every right to do, and that's defend himself.

2 I talked about self-defense in my opening statement; right? I
3 gave you a quote from James Monroe. Self-defense is one of the most
4 sacred rights. It is necessary to both nations and people. It correlates
5 with the very first law of nature, self-preservation; right? You fear for
6 your life, your instincts kick in, and you can defend yourself.

7 Before I get to the evidence in this case, I want to discuss
8 some legal principles with you; right? These legal principles protect us
9 all as American citizens should we ever find ourselves in a situation
10 where we are accused of a crime where we had to defend ourselves like
11 Javar Ketchum, a situation where you have to defend yourself. These
12 legal principles protect us; right? It is the State's burden. They have to
13 prove beyond any reasonable doubt that the Defendant didn't act in
14 self-defense. That's their burden. We didn't have to do anything. They
15 have to do it.

16 And when we talk about reasonable doubt, right, this is the
17 highest burden of proof our legal system requires. It is higher than the
18 standard used to take away ones property. It is even higher than the
19 standard used if the State wanted to remove your children from you.

20 So, what is it? Well, I am not going to talk about what it is but
21 I'll tell you what it's not; right? If, after listening to all the evidence in this
22 case you came to the conclusion that, you know what, Javar probably
23 didn't act in self-defense, or if you came to the conclusion after listening
24 to all the evidence, you know, he most likely did not act in self-defense --
25 if that was your conclusion you would have to find not guilty --

1 MR. GIORDANI: And I would object.

2 MR. WOOLDRIDGE: -- for Mr. Ketchum.

3 MR. GIORDANI: That is quantifying reasonable doubt and there's a
4 reasonable doubt instruction that defines it.

5 THE COURT: Objection sustained.

6 MR. WOOLDRIDGE: Let's go to the evidence; all right? Let's go to
7 the State's evidence. The State brought in a lot of photos. I think there's
8 probably at least about 150 photos, right, pictures that are sad, pictures
9 that are gruesome, pictures that pull at your heart strings, pictures that
10 evoke sympathy. We are not here to tell you that Javar Ketchum didn't
11 shoot Zek Davis. He shot him and he shot him in self-defense. We've
12 been telling you that since the very beginning. They want to talk to you
13 about an unjustified killing, that that's murder. This shooting was not
14 unjustified. This shooting was done in self-defense. If it's done in
15 self-defense it's not unjustified. It's not unlawful. They want to talk to you
16 about self-defense; right? They said that self-defense -- for it to be
17 self-defense it has to be so urgent, so pressing. Think about it. Tell
18 yourself what's more urgent, what's more pressing than a man pressing
19 a revolver into your rib cage and saying, break it off before I pop yo ass?
20 What's more pressing and urgent than that? Javar didn't have to try to
21 run away. You can stand your ground in this state.

22 They also brought in a video; right? Let's talk about that video,
23 what it shows, and more importantly, what it doesn't show; right? That
24 video doesn't show the shooting. That video doesn't show what led to
25 the shooting. And if it did, and I wish it did, you, ladies and gentlemen of

1 the jury, would not be here today. Javar Ketchum would not be charged
2 with murder if that video showed what really happened. Instead, what it
3 does show is before the shooting and it shows after the shooting; right?

4 So, let's talk about before. Before the shooting it shows Javar
5 coming to the club; right? He goes into the club. He's got money in his
6 hand. He's as happy as a clam. He does his two-step dance before he
7 even gets in there. He's not arriving there to rob anyone. He's going
8 there to have a good time. It also shows Javar outside the club with
9 money in his hand. Take a look at the video. Watch those portions. It
10 also shows Zek and Javar walking out of the club arm in arm; right?
11 Zek's leading the way. He's the first one out the door. They get out the
12 door, and what does Zek do in camera view? Points and motions over
13 here. Where is he pointing and motioning to? His car. Why does Zek
14 want to bring Javar over to his car? Think about that.

15 The video also shows the aftermath of the shooting; right? It
16 shows Javar pulling on the pants and grabbing Zek's belt. And that's the
17 thing that the State wants you to focus on. They want you to focus on
18 what Javar did after the fact. But what Javar did after the fact doesn't
19 change the fact that Javar acted in self-defense; right, after Javar
20 defended himself, after Zek debased him, disgraced him, and
21 dishonored him, grabbed him right above his crotch, pulled him to him
22 and stuck a gun into his rib cage and made Javar fear for his life; right?
23 We talked about that. We even -- we use our common sense every day
24 experiences; right? Some of you -- I think some of you are still here, but
25 we all talked about this during *voir dire*. There were people that had

1 been victims of robberies. We talked about the emotions that you
2 experience as a victim of a robbery. First, you're scared. You're fearful.
3 Then you're pissed. You're angry. That's the laws of nature; fear and
4 anger.

5 Now, the State, what they want to do here is they want to try
6 and sneak in this felony murder thing, sneak in this felony murder to get
7 a murder conviction. They want to tell you that, well, now see, if Javar --
8 when Zek -- if Zek tried to rob Javar and then Javar was going to pull out
9 his gun because he was going to rob -- because he wanted to get back
10 at Zek and rob him, well then that's felony murder, or it's really about the
11 intent. When did the intent to take the belt happen? If the intent to take
12 the belt happened before Javar shot Zek, well then that's felony murder.
13 Javar taking Zek's belt was an afterthought. It was after the shooting.
14 When Zek had a gun in Javar's rib cage you think he's thinking about a
15 belt? He's not thinking about a belt or robbing Zek. He's thinking about
16 his life. That's what he's thinking about. And let's talk about the belt.
17 Javar's got a stack of money. He wants to rob and kill somebody to take
18 a belt? The video also shows Javar coming back into camera view and
19 just like he told Antoine, my ID. He goes back to Zek and what does he
20 do? What does he tell the -- what does he tell us? And he didn't have to
21 tell us this. He tells us that Zek reached for his gun. I whacked him with
22 the belt buckle in his face. I grab his belt. I grab my ID and I get the hell
23 out of there.

24 Now, the State wants you to focus on the fact that he got out
25 of there, that he left. You tell me. You react in self-defense -- someone

1 has been shot, this guy's got friends in the club, this guy is a known jack
2 boy, this guy is -- has an -- people have an opinion that he's a violent
3 guy. You're going to wait around and stick around for this guy's friends?
4 Absolutely not. You're going to high tail it out of there.

5 The video also shows people that should have been
6 interviewed; right, people that actually saw what happened. Do you
7 remember that guy with the white shirt, the black guy with the white shirt
8 and the jeans? And there was another black guy that walks out; right?
9 They walk out when Zek and Javar walk out. The black guy with the
10 white shirt and the jeans comes back into camera view right before the
11 shooting. After the shooting he comes back into camera view, then he
12 goes in the direction of Zek. What did that guy see? What did that guy
13 take? What about the guy he was with? What did he see? What did he
14 take? And what about Antoine Bernard's girlfriend? She was there.
15 Where is she? She spoke with Antoine the day he testified.

16 Then the State brought in some witnesses; right? They
17 brought in some witnesses to establish beyond a reasonable doubt that
18 Javar Ketchum didn't act in self-defense. The first witness they called,
19 Deshawn Byrd; right? This was Zek Davis' friend he said. He told us he
20 didn't see the shooting, he doesn't know what led up to the shooting,
21 and he told us that Zek was super hyper that night. He was hyper. He
22 was amped because he's high on meth. He also said that for some
23 reason, some reason he just -- something was telling him to ask Zek,
24 hey, are you all right? Are you straight? He wasn't all right. He wasn't
25 straight because right before he was getting ready to go he was planning

1 on robbing Javar Ketchum. That's their witness. That's what he said.

2 We also heard from Officer Childers; right? This was the first
3 officer on the scene. Didn't see the shooting, doesn't -- has no personal
4 knowledge as to how the shooting occurred.

5 We heard from Officer Torres. Arrived on the scene. Didn't
6 see the shooting. Doesn't know how the shooting occurred.

7 We heard from crime scene analyst Jennifer Reiner. She went
8 to the hospital and took pictures. She didn't see the shooting, doesn't
9 know how the shooting occurred.

10 We heard from CSA Szukiewicz. He didn't see the shooting,
11 doesn't know how the shooting occurred. He took a bunch of pictures at
12 the scene. He drew some diagrams. And he told us about one important
13 fact. He told us that there was a bullet casing right by Zek Davis' car.
14 Come over here, Javar. Come over to my car where I can rob you, get
15 in, and get away.

16 Then we also heard from Antoine Bernard; right? This was a
17 guy who had a lot to lose. This is a guy that struck a deal with the State
18 to testify against Javar. And what did he say? What did he really say?
19 He told us that he had told the truth to the police earlier. And when he
20 talked to the police he told them that Javar didn't have any ill intentions
21 that night. He told them that Javar was laughing, having a good time. He
22 told us that Javar never told him he planned to kill anybody. Javar never
23 told him that he planned to rob anybody. But then he did say -- now he
24 says and he didn't tell this to the police originally, that I thought
25 something was up and Javar did say I'm going to get at him. What does

1 that mean? Well, does it mean he wants to fight him? Does it mean he
2 wants -- it could mean that. Then -- but think about this, what does he
3 do; right? He's walking out of the club nonchalantly. He gets into his car.
4 He says his music is so loud he doesn't hear the shot. He says that at
5 the time of the shooting he's messing with his auxiliary cord. He doesn't
6 see it. You tell me, ladies and gentlemen, he thinks that something --
7 that Javar's going to do something to Zek Davis and he's going to turn
8 up his music as loud as he can and he's going to mess with his auxiliary
9 cord? Absolutely not. He's going to be focused on what's going on. This
10 guy, he's got to save his own you know what.

11 We heard from Detective Bunn. He's here today. He was the
12 lead homicide detective on the case; right? He talked about how he
13 didn't see the shooting, doesn't know how the shooting occurred. He
14 recovered some DVR's, some Night Owl equipment. He played -- helped
15 play the video, talked about where stuff was. And on cross-examination I
16 asked him, I said, Detective Bunn, do you know who this guy is, this guy
17 with the white shirt and the jeans? Did you ever interview him? No, I
18 didn't. Don't know who he is. Do you know what he's doing over by Zek
19 Davis after the shooting? I don't know. Detective Bunn, after the -- when
20 you started the investigation, did you ever look into who Zek Davis was?
21 Did not. I knew it was a murder. All right, how did you know that? Well, I
22 knew it wasn't self-defense 'cause Javar left and because of the
23 witnesses. What witnesses? There is no witness to a murder. What --
24 there's not a single witness to a murder. That doesn't exist in the State's
25 case.

1 Then we heard from Zek's girlfriend. Sad. We all have
2 compassion. It -- I -- it was sad. And what did she tell us? She didn't see
3 the shooting, doesn't know how the shooting occurred. She told us that
4 that night the following day she was going to have a baby; right? And so,
5 Zek was going out to celebrate without her and he was going to go out to
6 a after hours club, stay up all night long, and then do meth all night and
7 what, come back to be present for the birth of the child? She also told us
8 that she never knew him to do any drugs; right? She also told us that
9 she never knew him to carry a gun in the past 3 years.

10 Then we put on some witnesses for the Defense. We called
11 Dr. Mel Pohl. And Dr. Pohl testified that he reviewed records, toxicology
12 reports, and that Zek Davis was intoxicated on methamphetamine. He
13 told us what happens to a person that's intoxicated on
14 methamphetamine, what kind of characteristics they display; violent and
15 aggressive behavior.

16 We heard from Tracy Smith. This was the very clean cut,
17 professional guy with the suit. He came all the way down here from Salt
18 Lake City to tell you, members of the jury, I know Zek Davis. I've had a
19 personal interaction with him and the guy is violent.

20 We also heard from Gail MacGuyer [sic], tattoos, he was
21 physically fit, took the day off work, came here, sat on the stand to tell
22 you, ladies and gentlemen of the jury, I know Zek Davis. I've had a
23 personal interaction with him. Based on that personal interaction, the
24 guy is violent, has -- these two people have no interest in this case. They
25 don't know Javar Ketchum. They're here to tell you who Zek Davis is.

1 We heard from Giovanni Amoroso. Giovanni told us after -- in
2 late September I got a call from Javar. Javar told me to watch his house.
3 I saw a black car hanging out by Javar's house with two black guys in it.
4 It was hanging out there for the past three days watching. I told some -- I
5 told Javar's girlfriend. I also know that Javar really does carry two cell
6 phones.

7 We also heard from Javar Ketchum. He told it like it
8 happened. The State cross-examined him, talked to him about inches,
9 feet, right hand, left hand, where's the cell phone. He's not a
10 professional witness. He didn't even need to take the stand but he did;
11 right? He told us that Zek Davis and him walked out arm in arm, Zek
12 lead the way. When they got outside Zek motioned him over to his car.
13 They get over there. Zek tells him they're going to smoke weed. Zek
14 pulls a gun, grabs him by the belt, shoves a gun in his rib cage, and
15 says, break it off before I pop yo ass, nigger. Javar feels the presence of
16 his grandmother and she says, stand up for yo self. And he does. That's
17 self-defense.

18 Thank you.

19 **[STATE'S REBUTTAL ARGUMENT]**

20 MR. GIORDANI: Let me bring you back to reality, ladies and
21 gentlemen.

22 This is one of the few cases where the State is fortunate
23 enough to have overwhelming evidence. You have video after video that
24 you can watch in the back. I'm going to encourage you to do that. I'm
25 going to show you a few clips here in a moment. But I want you to keep

1 in mind throughout this process that you are not to simply consider the
2 law and the facts. You are to bring to your considerations in the back
3 room your common sense as reasonable men and women. The reason
4 you were selected for this jury is because you are reasonable. You don't
5 have preconceived notions about the Defendant. You don't have
6 preconceived notions about the State. You don't have preconceived
7 notions about the case. You're going to look at the evidence and you're
8 going to make a logical determination based upon that.

9 Now, I mentioned that we are very fortunate to have
10 overwhelming evidence. Mr. Rose told you in the opening statement that
11 we're -- we almost didn't have that evidence. And the reason we almost
12 didn't have that evidence is 'cause the Defendant's buddies tried to hide
13 it. They were unsuccessful. Luckily the detectives --

14 MR. WOOLDRIDGE: No.

15 MR. GIORDANI: -- did their job.

16 MR. WOOLDRIDGE: Objection, Your Honor. There's been no --

17 MR. GIORDANI: Well, I don't hear a --

18 MR. WOOLDRIDGE: -- evidence of buddies.

19 MR. GIORDANI: -- basis -- I don't hear a basis for --

20 THE COURT: All right, just a minute.

21 MR. WOOLDRIDGE: There's been no evidence --

22 THE COURT: Just a minute.

23 MR. WOOLDRIDGE: -- there's been no evidence that anybody --
24 that those people were Javar's buddies.

25 THE COURT: The jury will rely upon their own memory with what

1 the evidence was and draw their own conclusions and inferences.

2 MR. GIORDANI: Thank you, --

3 THE COURT: Thank you. You --

4 MR. GIORDANI: -- Your Honor.

5 THE COURT: -- may proceed.

6 MR. GIORDANI: And I'll show you that they were buddies in a
7 minute. Don't worry about that.

8 Admit what you can't deny and deny what you can't admit.
9 That is what Mr. Ketchum has to do, admit what you can't deny and
10 deny what you can't admit. The guy cannot deny to you that he
11 committed a cold, calloused, calculated robbery. The guy cannot deny
12 that to you. It's all over the screen. Deny what you can't admit. Well, the
13 one thing he can't admit to you is that he went over out of the screen
14 with the thought that he was going to rob Mr. Davis, 'cause if he does
15 that he's on the hook for felony murder. Case closed. Done. He's got
16 nothing to say. So, what does he have to do? He has to create a
17 narrative and sell it to you as to what happened in that 17 seconds, 17
18 seconds that they are off the screen.

19 I talked to you about common sense and I want you to apply
20 that common sense as I go through both the Defendant's testimony from
21 the stand and the videos and the surrounding evidence from the crime
22 scene which Mr. Wooldridge you know conveniently forgot to address to
23 you. Now, I'm not disparaging him in any way. Mr. Wooldridge has done
24 an artful job of trying to get his story across. If I was in trouble I'm going
25 to hire that guy probably. But he cannot, he cannot sell you on the 17

1 seconds that his guy's version -- his guy's version of the 17 seconds off
2 that screen. And there are several different portions of this video that
3 happened before the robbery that will indicate to you exactly what was
4 going to happen when they went off that screen.

5 Now, one thing I want to briefly address before I get into the
6 common sense evidence in this case, if evidence of self-defense is
7 present, stop right there. There is no evidence of self-defense in this
8 case. The only arguable evidence of self-defense is what Mr. Ketchum
9 tried to sell you on yesterday. That's the only arguable evidence of
10 self-defense. Keep that in mind. You would have to completely rely upon
11 what he told you from that witness stand, say that everything he told you
12 up there is the absolute truth in order to walk this guy on the murder
13 charge. You would have to accept what he told you.

14 Now let me tell you why what he told you is a load of crap.
15 First, Mr. Ketchum tried to ingratiate himself to you and make you feel
16 sympathy for him. Forget about the victim. I'm disabled. I'm vulnerable.
17 That's why I carry a concealed weapon. I'm vulnerable. Watch the
18 videos. He's a big guy. He's a broad guy. He's strong. You can tell he's
19 strong just by the way he's built. He's agile. He's a hell of a dancer. You
20 see it all through the night. That's not a guy who has a problem reaching
21 down to tie his shoes I'll tell you that much. You can look at the video
22 and see that. He's confident throughout the night. He's not vulnerable.
23 He's confident. He's messing with people. He's having rap battles. He's,
24 you know, pulling his gun out and, you know, kissing it or whatever to
25 the rap songs. And from the video you can see he wasn't the vulnerable

1 victim that he would have you believe. You can see from the video that
2 he saw an opportunity arise throughout this night.

3 Now, Mr. Wooldridge just said that the State would have you
4 believe that Mr. Ketchum ran -- went in there that night thinking he was
5 going to rob someone. Well, look at the video and he was dancing when
6 he walked in; no, no, no, no, let me bring you back to reality. We're not
7 telling you he went there that night to rob Ezekiel Davis. We're not
8 necessarily telling you he went there to rob anybody that night. I'm not
9 going to sell you that. That's not supported by the evidence.

10 What I am going to tell you is that throughout the night he saw
11 a target, a target developed, an opportunity developed. I'm not saying
12 this was a preconceived plan that he showed up there to do this. This
13 was this was an opportunistic robbery that went horribly wrong and now
14 he's on the hook for felony murder, period. He saw a guy who didn't
15 know many people there. He saw a guy who was clearly intoxicated on
16 drugs and alcohol. We're not hiding that fact. Not every victim, by the
17 way, that gets murdered is your upstanding citizen. You know everyone
18 in the world has things about them that they don't want displayed in front
19 of their peers. I'm not telling you Zek Davis was perfect. But I am telling
20 you that he is a victim. He is the victim here. Not him. Not him [pointing
21 to Defendant].

22 Ezekiel Davis was a hardworking man who was out
23 celebrating. Now, Mr. Wooldridge just tried to take a dig at his character
24 by saying, oh, this is how you celebrate when your wife's pregnant and
25 she's going to have the baby the next day. Maybe it's not the way you

1 celebrate. It's the way he celebrated. Don't judge him for that. His family
2 loves him. Don't judge him for the way he celebrated. He had a second
3 daughter coming soon and everything in that video throughout the night,
4 watch as much as you want, will show you that Ezekiel Davis was in a
5 hell of a good mood that night. He was dancing. He was rapping too. He
6 was joking around with people, giving daps, giving fives. He was in a
7 great mood that night. In fact, he was still in a great mood when he
8 walked out to his death. You can see that from the video too.

9 Mr. Ketchum said, I didn't know anyone there. Well, we'll get to some
10 video in a moment but it's pretty clear that he was amongst friends.

11 Throughout the night you can see him, he's having conversations.

12 Mr. Davis is too but I think you can see -- you will see from the video that
13 the conversations that Mr. Ketchum is having are more involved. They
14 aren't Zek Davis stumbling over to people and going, hey, what's up
15 bro? I'm having a kid tomorrow. Let's party. Except, oh wait, I didn't
16 know anyone there except I happen to know the one guy who I robbed
17 and killed. And why is that important for you to believe? Because he
18 has to sell you on the fact that he knew that two random guys, from
19 wherever Mr. Wooldridge said they're from, they're opinion is true. That's
20 why he has to have you believe that. Except the one guy I robbed and
21 killed. I knew him, nobody else. Do not buy that. Look at the video
22 yourselves. Do not buy that. He knew nothing about Ezekiel Davis.

23 Now, I took some pains to walk Mr. Ketchum through his story
24 because I wanted details so that you could parse that out and look at the
25 videos and compare and contrast it. I wasn't attempting to bully him or

1 put words in his mouth. I was trying to nail down answers for you
2 because you need to compare what he said happened in those 17
3 seconds to what the evidence shows. He said, I was looking at my
4 phone when suddenly I was grabbed by the belt. He grabbed me by the
5 belt with his right hand, I mean left hand. He fixed that when I kind of
6 say, well, that doesn't make sense. He fixed that. And he said he
7 dropped his phone.

8 Now, at the time he testified, keep this in mind, he didn't know
9 what Bianca Hicks was going to say on the stand. He had to explain
10 away the evidence at the scene and there's a cell phone at the scene.
11 He didn't know what Bianca Hicks was going to say. You know that was
12 Bianca's cell phone. She gave it to Zek because there could have been
13 a baby on the way. He was trying to explain that away and didn't realize
14 she was coming up later. Obviously, the only phone recovered at the
15 scene was Bianca's. And he said that Zek reached out and pulled out
16 this revolver that they've invented for you and that -- and I want to
17 remind you that evidence in the case suggests one and only thing, one
18 and only thing, that Zek didn't have a gun. Didn't possess a gun, didn't
19 own a gun, didn't want them around his kids. Now, whatever he may
20 have done years in his past it is what it is. We've all made mistakes.
21 We've all done stupid crap in our past. Don't judge him on that. You
22 heard from Bianca. Bianca's not up here selling you on a narrative that
23 isn't true. Bianca's telling you this is the man I knew for the three years I
24 knew him; hardworking, never without a job in the whole time they are
25 together, for the last 3, 4 months, whatever it was, he had commuted

1 from Hawthorne to install solar panels and come home on the
2 weekends. That's the Ezekiel Davis who she knew in the three years
3 that she knew him. That's the Ezekiel Davis who fathered two of her
4 children -- her two children.

5 Mr. Ketchum told you the first time I recognized the victim, the
6 first time I recognized him was when he tried to rob me. And he tried to
7 explain that away and he said, no, I saw him once before in the club by
8 the girls. I saw him but it was dark and he had his hat over his eyes.
9 Why does he need to sell you on that fact? Why does he need to sell
10 you on the fact that he didn't realize until right that moment that this was
11 the Ezekiel Davis who is so scary and dangerous? To strengthen his
12 argument that he was in fear for his life. That's why he has to sell you on
13 that fact.

14 Now, he specifically told you, and I made sure to get this clear:
15 I saw him one time before that inside the club by the girls but it was dark
16 inside and he had his hat on covering his eyes. Do you recognize the
17 guy in the bucket hat and the green shirt? Do you recognize the stocky
18 guy in the USA white shirt?

19 [Playing video]

20 MR. GIORDANI: Joking and [indiscernible] and I believe some time
21 around rap battle's about to start here. Everyone's in close proximity.
22 Zek Davis kind of swaying a little bit and bobbing to the music. Oh, a
23 direct rap battle between them I think we're seeing there. Oh, there goes
24 the hat. Eye to eye. [Indiscernible] still going. Remember what
25 Mr. Ketchum told you: The first time I saw him is when I was face to face

1 with him. I saw the devil in his eyes. He was foaming at the mouth. He
2 was a rabid animal about to rob me and I had to defend myself. My life
3 was in jeopardy.

4 Now, there's an instruction that will tell you if you do not
5 believe one thing the witness said on the stand, you can either disregard
6 that one thing or you can say, you know what, I don't buy his credibility
7 one bit and disregard everything he had to tell you. That's what the law
8 says. There's one example as to why you should disregard everything
9 he tried to sell you. It was a Freudian slip I believe when Mr. Ketchum
10 was on the witness stand -- I just want to mention it. Now,
11 Mr. Wooldridge is sharp enough that he picked up on it and changed his
12 closing argument, but in the opening you remember there were some
13 very specific words he used: Where's the stacks, where's the stacks,
14 gimmie the stacks before I bust a cap in yo ass. Mr. Ketchum apparently
15 forgot what he had rehearsed and said, tear it off, bitch ass nigger. That
16 was his version. And I made sure to ask him that's what he said, right,
17 those are the exact words? Yup.

18 Mr. Ketchum went on to describe this critical moment where
19 he will have you believe that he was in fear for his life. He said, I closed
20 my eyes. I prayed or I felt the feeling of God, the warm feeling, the
21 presence of God, the spirit of my grandmother told me to stand up for
22 myself. That's not self-defense, by the way, but -- then I lifted my shirt,
23 pulled my gun out of my right pocket and shot him. And I said, well, so
24 this whole time all that's happening you close your eyes, you're praying
25 or you're listening to, you know, your family member speak to you, he

1 still has got the gun in your ribs? Yes. And he would have you believe
2 that all that went through his head. He was able to pull out a firearm
3 from, mind you, you see his shirt throughout the video. He would have to
4 lift his shirt, reach into his pocket, not a holster, pull that out, stick it to
5 Mr. Davis' ribs and shoot him all the while there's a gun pressed against
6 his ribs. You going to buy that? He said, I shot him. He acknowledged
7 that. He has to; admit what you can't deny, deny what you can't admit.
8 Of course he has to acknowledge he shot him.

9 And then he described his emotion. This is also very important
10 for you. For Mr. Wooldridge to thread the needle that it is self-defense in
11 this type of case, he has to thread right into that pin hole and show you
12 that he was scared for his life when this went down. So, he described
13 how scared he was. He said -- I believe he said 8 or 9 out of 10 and he
14 didn't want -- he doesn't want to look weak but -- but then he went from
15 scared for his life to so angry that he would violate an dying man's body
16 by ripping his pants off to the point where they were inside out
17 completely. Ripped his pants off to the point where his shoes came off
18 first and his pants are left inside out after he flopped the belt off that he --
19 he didn't steal 'cause it was nice belt, he stole 'cause he was pissed.
20 You can't buy that.

21 And I'll remind you again, all of this that's just been described
22 in these last three or so slides, this all has to happen within 17 seconds.
23 There's two views. You see the feet of the two go off the screen and
24 then you see Ketchum coming on to the screen with the belt. There's a
25 17 minute gap if you overlay the videos. All of that, closed eyes -- well,

1 no, let me step back. Zek Davis grabs him by the belt, pulls him close,
2 takes a gun out, says whatever he says. He prays [pointing to
3 Defendant], talks to his grandmother, closes his eyes, draws a firearm
4 from a pocket, not a holster, from a pocket, puts it into Zek's ribs and
5 shoots, and then takes the pants off of him; all of that within 17 seconds.
6 It's crazy. That's crazy. I don't know what else to say to that. Then when
7 asked, he said, oh, he started to shake his own pants off but I also
8 started ripping them off. He was sagging and I wanted to take the belt
9 out because I wanted to take something from him because he's just tried
10 to take something from me. Again, 17 seconds he's trying to explain to
11 you.

12 Mr. Ketchum said Zek's gun was still within arm's reach while
13 he was on the ground. Zek's gun in quotes because there was no damn
14 gun but that's neither here nor there. Accept his story is true right there.
15 Say -- so what's happened so far, all this praying and stuff and the
16 shooting, all that is -- just accept for the moment that what he told you
17 was true. He says Zek's gun was still within arm's reach while he was on
18 the ground.

19 [Playing video]

20 MR. GIORDANI: You'll be able to zoom in on this. There they go.
21 There's Zek luring him outside. I didn't hear testimony from Bianca that
22 Zek was an Oscar winning actor. If that's him luring someone out to be
23 robbed then he deserves an Oscar for that. And you'll remember there's
24 another view. I'm not going to show you right now. I just want to show
25 you what this Defendant would have you believe happened. He's going

1 to have you believe that his actions when he comes back on the screen
2 are the actions of a man who his assailant who had just tried to shoot
3 him and rob him is on the ground with a gun within arm's reach. You're
4 going to want to watch up here obviously. There's Mr. Roger Davis [sic]
5 that you saw a little bit earlier. Now pause that please.

6 A couple of things I want to point out before you see
7 Mr. Ketchum walking away from the man who has a gun within arm's
8 reach. This vehicle is parked before anything has happened, right,
9 because we don't see the head snap until the shooting occurs. This
10 vehicle is parked here and you just saw a guy in a white shirt.
11 Mr. Wooldridge attempted to, I guess, impugn the detective's
12 investigation somehow by saying where's that guy. Well, good question.
13 I would love to have had all of the Defendants friends as witnesses in
14 this case. Well, unfortunately, they all scatter after their buddy shoots
15 Zek Davis. And unfortunately, once that video was ripped out of the wall
16 by Mr. Chiles, you don't see anything that happens thereafter. You
17 know, not everything is on video unfortunately. But I want you to note
18 that that guy in the white shirt, Q is all we know him as, he tried -- the
19 detective tried to find him and that's Q and that's all he got -- that's as far
20 as he got. That guy in the white shirt is going to walk over to this car and
21 tell the driver of that car, hey, move up. Mr. Ketchum and his getaway
22 driver are about to commit a robbery and he's trying to pull out. Watch.

23 [Playing video]

24 MR. GIORDANI: There's the guy in the white shirt, this is the
25 getaway vehicle by Mr. Antoine Bernard. That's who we believe is Q. All

1 right, there we go. Mr. Ketchum would have you believe there's a guy
2 who just tried to kill him with a gun within arm's reach while he's doing
3 that, turning his back to the threat, sauntering over while he's ripping his
4 belt away, still has his back to him. He runs back to get his ID. Now, this
5 was a very minute detail. I think you probably caught it but I'm just going
6 to reiterate it. Mr. Ketchum told you that he realized his ID was missing.
7 He then said something to the effect of I have bad eyesight. I couldn't
8 see my ID or something to that effect. Now, at this point he has the gun
9 and the belt in his hand when he realizes his ID is missing so he had to
10 run back for it. How does he realize his ID is missing with a gun and a
11 belt in his hand? I'm presuming he's not able to check his pockets for his
12 ID, and why would you if you've just been assaulted and your life's in
13 danger. That makes no sense. I mean I guess if when he went back to
14 steal Zek's watch he saw his ID on the ground. He probably picked it up.
15 I don't know how, you know, he would have done that in the 11 seconds
16 that he goes off frame that time, but.

17 This is important. It hasn't been mentioned very much.
18 Mr. Ketchum would have you believe that he went back to get his ID to --
19 I already told you is absurd. The victim was still alive at that point. He
20 was reaching for the gun, which is inconsistent with Antoine Bernard
21 saying the victim's going, no more, I'll give you whatever you want. He
22 says, I had the belt in my right hand, swung it with my right arm, a
23 normal baseball swing, and hit him in the face and I was at his feet
24 facing him. Remember, I nailed down those details and I did that for a
25 reason. So, I can understand if you say, you know what, give the guy a

1 break. Maybe he didn't remember which hand the belt was in. This is --
2 there's a lot going on, give the guy a break. There's certain non-verbal
3 cues that people give you when they're telling the truth and a lie and I
4 just want you to remember that when he was on the witness stand I
5 didn't trick him into saying his right hand. He demonstrated. Remember,
6 he turned his face. He did it a couple of times, turned his face to the right
7 as though he had whipped -- he was demonstrating, right? Zek's face
8 went to the right. He just took it, I believe was his words. The injury is not
9 on the left. If he whipped him on the left side of the face and his head
10 went right, wouldn't the injury be on the other side? It's a small detail and
11 when you're trying to keep your story straight you don't remember the
12 small details. That injury, in and of itself, shows you that this was a
13 robbery on this guy's behalf. That's a pistol whip. You can see the
14 pattern of either the butt of a gun or the front end of the gun. I'm no
15 medical expert. You can observe that yourself and come to whatever
16 determination you feel is right. You can see the wound to the back of the
17 ear which would probably be about from butt of gun to the front of it if
18 you're whipped across the face, like a telephone kind of. It doesn't
19 matter. Set that aside.

20 Then he made a mistake. Another detail when you're trying to
21 stick to a rehearsed story is he said, I had the belt in my right hand,
22 swung it with a full normal swing. And then I said, well, where's the gun?
23 He goes, oh, no, the gun was in my right hand. And I believe he said the
24 belt was then in his left hand. I don't remember exactly.

25 Now, this is the evidence that Mr. Wooldridge is calling for. He

1 asked where's the evidence, you have no witnesses telling you what
2 happened off screen? Well, of course we don't have any witnesses who
3 told you what happened off screen. Guess why? Because they're all
4 co-conspirators. They're all his buddies. Q knew what was going down
5 and told the car to move. You saw that Roderick Vincent was charged in
6 this case. He's now dealt with. You saw Marlo Chiles was arrested. They
7 told you that, so that's three. Antoine Bernard was certainly arrested
8 'cause he's the getaway driver and that's obvious. Mr. Ketchum; right?
9 Who else do you have, some of the girls that were dancing inside?
10 Deshawn Byrd? We showed you him. He didn't see the shooting. And
11 that reminds me to mention Mr. Bryd. If you -- you had a chance to
12 observe his body language and demeanor. Clearly, he isn't comfortable
13 testifying in a courtroom. Came in because Zek's his buddy. And I'm not
14 putting Mr. Byrd down in any way, but when you watch the video you
15 see Mr. Byrd along with all the other people watching from the door
16 while the Defendant rips the pants off of the victim and he went out there
17 when the coast was clear, you know, to help and try to revive his friend.
18 Now, if the Defendant is so scared of other people, what explains the
19 other people's behavior of standing at the door? Deshawn Byrd didn't
20 go out there until the coast was clear until Ketchum drove away because
21 he was scared shitless of that guy [pointing to Defendant]. Mr. Ketchum
22 wasn't scared of Zek's friends. That's not why he fled. He fled because
23 he's guilty. He fled because he knew he just committed a first degree
24 murder and he wanted to get the hell out of town. That's it. This whole
25 idea of this witness who says yeah, there was a black car sitting out of

1 the front of the house for 2, 3 days, I believe it was, okay? So what?
2 Who's black car? Was it Bianca? So what it was there for 2 to 3 days.
3 So you flee the state and go four states over to a border patrol
4 checkpoint? Come on. I'll get back to that.

5 Now, he was very clear on one thing, iron certain: We didn't
6 fight, we didn't wrestle. Remember I demonstrated it. You didn't -- no
7 fisticuffs, nothing? Nope, never touched his body other than pulling his
8 pants off, the belt whip. I absolutely did not touch his neck area. I asked
9 him that twice. And if I took his watch I would tell you because I told you
10 I took his belt. Admit what you can't deny, deny what you can't admit. Of
11 course he has to tell you he took the belt. You saw him on video doing it.
12 He can't deny that. I ironed him down to those facts for a reason
13 because the evidence at the crime scene shows what happened. You
14 never touched his neck, huh? How does Jesus pendant come off? Who
15 snatched his chain off? It's not accounted for in the rendition he gave
16 you. He said he took the shot, he went down and whipped him with the
17 belt once. So this jewelry just comes off his neck on its own? Come on.
18 Who took his rings off? Who ripped the rings from his hand? Who ripped
19 the rings from his hand? Come on.

20 I'm going to briefly address Antoine Bernard. Obviously I have
21 a slide for it so I knew Mr. Wooldridge is going to address it but I'm just
22 going to point this out to you. He was charged in this case. I'm a
23 prosecutor. We charged him. We had no other witnesses because they
24 all fled. So what do you do? You go to the guy that you have some
25 leverage on, and say, hey, better say what happened, better say what

1 happened that night or you're going to be in even more trouble. You're
2 still going to plead guilty to a felony. You're still going to be sentenced by
3 a judge who watches you testify. You're still subject to prison time if you
4 don't tell the truth. Call him what he is. He's a snitch. He's a getaway
5 driver. He's an accomplice. He's a co-conspirator. We're not hiding that.
6 We didn't put him up here and bully him into supporting -- helping our
7 case. We're putting someone up who the one person we had some
8 leverage against to talk. It is what it is. I'm not hiding the ball here.

9 Remember what he did not do. If you want to question his
10 credibility remember what he did not do. He did not sell the State story to
11 you. I had to drag answers out of the guy. He didn't say, yeah, yeah,
12 Mr. State, thank you, please give me probation. I saw that dude shoot
13 the guy. I saw him take all of his stuff. Yup, when we got in the car he's
14 like, yeah, I intended to rob him from the beginning. This was a plan. He
15 didn't give us anything we really needed. He gave you a couple of
16 helpful details, but that goes to his credibility. If he's such a -- if he has
17 so much riding on this and he has to, you know, support the State's case
18 why doesn't he give us, you know, every single fact or at least the
19 majority of it? He gave us what he saw. That's it.

20 Flight from the scene of the crime and flight thereafter; all
21 evidence of consciousness of guilt, so -- I only bring that up briefly
22 because the flight that happened here was egregious. It's not just fleeing
23 the scene because, you know, something crazy happened and you want
24 to get away right then; okay? Call the cops. Don't ditch your murder
25 weapon and then flee to Texas and try to get over the border; right?

1 Consciousness of guilt. He knew what he did. He wasn't going out to
2 raise money, I think he said. And I asked him, are you -- you were going
3 to work? You're going to Texas to work or something? No, I was going to
4 raise money. Come on. He was going over the border to get away from
5 you, the people who are going to judge him.

6 Briefly touch on this other second portion when they're off
7 frame. So the 17 seconds he tried to explain to you, a pile of crap. How
8 about the next 11 seconds, the other time he's off the frame? When I
9 went back for my ID and I had my gun in my hand but whipped him with
10 the belt, picked up the other gun, picked up my ID, and tucked it all
11 away. Oh, wait, but I did that before I came back on camera. He's off
12 frame for a total of 11 seconds. You're going to get to zoom in in the
13 back when you have the equipment hooked up.

14 [Playing video]

15 [Colloquy between State Counsel]

16 MR. GIORDANI: You know what, I'm not going to waste your time.
17 Just look for yourself. Watch the video. When he comes back on screen
18 the second time after stealing Zek's watch there's no second gun.
19 There's no way he could have jammed all of that stuff in his pockets.
20 Watch for yourself. You'll see that's also a pile of crap.

21 [Colloquy between State Counsel]

22 [Playing video]

23 MR. GIORDANI: This is critical. And I'm almost done and I'm not
24 going to hold you much longer, but this is critical. The entire idea of
25 self-defense you've already seen is out the window. The evidence at the

1 scene screams no self-defense. The video screams no self-defense.
2 That's the only thing he could have said to try to get out of this; not
3 supported by any of the evidence whatsoever. Not supported by any of
4 the evidence. But presume for a minute, forget all that, accept his
5 narrative as true. Remember what Mr. Wooldridge told you in the
6 beginning of this case; grandiose. Zekiel Davis robbed the wrong guy
7 and he met his maker. Zekiel Davis robbed the wrong guy and he met
8 his maker. He didn't know Javar Ketchum had a gun on him that night.
9 That wouldn't make any sense. If he knew Javar Ketchum had a gun on
10 him that night he certainly wouldn't have tried to rob him; right? Right?

11 Reasonable doubt is one based on reason, not mere possible
12 doubt but is such a doubt as would govern or control a person in the
13 more weighty affairs of life. This is kind of a weighty affair; right? If the
14 minds of the jurors, after the entire comparison and consideration of all
15 the evidence, are in such a condition that they can say they feel an
16 abiding conviction of the truth of the charge, there is not a reasonable
17 doubt. Doubt to be reasonable must be actual. It may not be based upon
18 speculation or mere possibility. Don't speculate. There's nothing
19 reasonable about what they're trying to sell you. We have proven our
20 case beyond any reasonable doubt, no question. Remember what this is
21 about. Do not judge this victim over some things in his past,

22 [indiscernible], the way they attempted to impeach his character and call

23 /////

24 /////

25 /////

1 him a meth head. This was a hardworking man who will not be able to
2 raise his two daughters. Do the right thing.

3 [State's rebuttal argument concludes at 1:38 p.m.]

4 [Trial resumes - previously transcribed]

5 * * * * *

6 **ATTEST:** I do hereby certify that I have truly and correctly transcribed the
7 audio/video proceedings in the above-entitled case to the best of my ability.

8 
9 CYNTHIA GEORGILAS
10 Court Recorder/Transcriber
11 District Court Dept. XVII
12
13
14
15
16
17
18
19
20
21
22
23
24
25