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IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN TURNER, _____)
)
Appellant,)
)
v.)
)
THE STATE OF NEVADA,)
)
Respondent.)
_____)

No. 76465

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APPEARANCES:

For the Plaintiff(s):

LEAH C. BEVERLY, ESQ.
(Deputy District Attorney)
JOHN L. GIORDANI III, ESQ.
(Deputy District Attorney)

For the Defendant
Steven Turner:

TEGAN C. MACHNICH, ESQ.
(Deputy Public Defender)
ASHLEY L. SISOLAK, ESQ.
(Deputy Public Defender)

For the Defendant
Clemon Hudson:

CLAY PLUMMER, ESQ.

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WITNESSES

FOR THE STATE:

No witnesses called.

FOR THE DEFENSE:

No witnesses called.

EXHIBITS

Page #

No exhibits offered.

1 **LAS VEGAS, NEVADA, WEDNESDAY, APRIL 25, 2018**

2 [Proceedings commenced at 1:20 p.m.]

3
4 [Outside the presence of the jury.]

5 THE COURT: This is continuation of the trial in Case No.
6 C-15-309578-1 and -2, *Plaintiff, State of Nevada vs. Defendants, Steven*
7 *Turner and Clemon Hudson*. The record will reflect the presence of
8 counsel for the State, counsel for the defendants, and the presence of
9 the defendants.

10 MS. MACHNICH: Your Honor, I do have something outside
11 the presence, if I may at this time.

12 THE COURT: Go ahead.

13 MS. MACHNICH: Your Honor, based on the last witness's
14 testimony yesterday with regard to the stippling word that was discussed
15 ad nauseam up at the bench and in our argument, at this time I would
16 request on behalf of my client that Your Honor take judicial notice
17 pursuant to NRS 47.130 of the medical dictionary definition of stippling.
18 And if I may, I do have reasoning for this.

19 I believe what counsel had noted and why information
20 regarding stippling was being elicited was because the word stippling is
21 referenced in the medical records in I believe one or two location. It's
22 referenced as a medical term and is not explained further to my
23 knowledge in those and to my reading of the medical records. These
24 are medical records that are currently in evidence.

25 Because of that and because of the legal pathological

1 definition that we received yesterday from the witness with regard to
2 what stippling means in relation to firearms, I would request that Your
3 Honor take judicial notice of the medical definition, because I do not
4 believe that there will be a medical expert coming in to testify and I
5 believe that pursuant to NRS 47.130:

6 This is something that is capable of accurate and ready
7 determination by resort to sources whose accuracy cannot
8 reasonably be questioned.

9 I brought a hard copy of a medical dictionary and I do have
10 some additional case law to support my position that this is proper for
11 judicial notice.

12 THE COURT: State, what's your position? I mean, what it
13 would be is I would read to the jury that the Court takes judicial notice
14 that the medical definition of stippling is as follows.

15 MR. GIORDANI: Right, and --

16 MS. MACHNICH: And my understanding would be further that
17 you would have -- during a criminal case, which is similar to federal law,
18 it would be that the -- the jury is not -- that the Court wants to instruct --
19 so in -- under criminal -- under federal law, the jury may or may not
20 accept the noticed fact as conclusive. So I think that that is the proper
21 way to do it. The jury's does not have to accept it.

22 THE COURT: If I -- what I'm going to make you do, counsel,
23 is again, I -- this is coming up last second. I'm not even sure the State
24 was aware of it. So what I'm going to make you do, counsel, is provide
25 me with a proposed instruction, provide it to the State, provide me with

1 your case authority. Also provide to the State. And when you settle
2 instructions, this will be a matter that we'll resolve at that time.

3 MS. MACHNICH: Okay. So it would not be judicial -- you
4 would not just state it to the jury, we would take care of it in instructions?

5 THE COURT: Well --

6 MS. MACHNICH: Either way is fine with me.

7 THE COURT: What -- when the Court takes judicial notice,
8 and quite frankly, counsel, I've had it occur in civil case ad nauseam.
9 We usually just -- usually the jury's just instructed that the Court has
10 taken judicial notice. But I'm not going to resolve the issue right now --

11 MS. MACHNICH: Okay.

12 THE COURT: -- because the State should have an
13 opportunity to at least review what you want happening.

14 So like I said, you -- I'll let you make your argument, but I'm
15 going to need to see what exactly you want me to take judicial notice of.
16 You provided a hard copy, but I don't know what the actual definition is
17 that you want. So you need to do what it is that you want the judicial
18 notice to say, provide it to the State, provide them with some authority
19 for your position.

20 MS. MACHNICH: Okay.

21 THE COURT: And then we can make argument tomorrow.

22 MS. MACHNICH: Okay. I will do that.

23 MS. SISOLAK: Thank you, Your Honor.

24 MR. GIORDANI: Just --

25 MS. MACHNICH: That's all.

1 MR. GIORDANI: -- for the record, I'm reading this medical
2 definition. Unless it's somewhere else, it says:

3 Stippling is a spotted condition in the retina in some diseases
4 in the eye or in basophilic red blood cells.

5 So -- unless I'm missing it.

6 MS. MACHNICH: No, it says, For Example, *e.g.*

7 MR. GIORDANI: Yeah.

8 MS. MACHNICH: So it's really just three words.

9 MR. GIORDANI: Okay. So it says a spotted condition.

10 MS. MACHNICH: Yes.

11 MR. GIORDANI: Example, in the retina and some --

12 THE COURT: All right. I wouldn't give the example.

13 MS. MACHNICH: Right. That's --

14 THE COURT: Or whatever the definition is is what she's
15 asking me to take judicial notice of.

16 MS. MACHNICH: That's exactly right.

17 MS. BEVERLY: Well --

18 MR. GIORDANI: It's -- right. It's different in this context. This
19 is a medical term. We're talking about a firearm.

20 THE COURT: No, but that's not what she's talking about.
21 What she is talking about is that in the medical records, it references
22 stippling in medical terms. And so what she wants me to do is take
23 judicial notice, and it would be in the context of medical terms. Not in
24 context of what your expert testified to.

25 MR. GIORDANI: I understand that.

1 THE COURT: And that's what she is asking me to do. And
2 what I am advising counsel is prepare the judicial notice, what she wants
3 me to take judicial notice of, and case authority in support of her
4 judicial -- position, provide it to you to give you an opportunity to make a
5 determination if it's something you want to object or not, or want to
6 provide me with -- I mean, I know what judicial notice is. You don't have
7 to give me case law --

8 MS. MACHNICH: Okay.

9 THE COURT: -- on what constitutes judicial notice.

10 MS. MACHNICH: Right. I just have -- just for Your Honor's --
11 I was looking in Nevada law. Most of the case law on judicial notice is
12 federal. And because the Nevada rule is --

13 THE COURT: It can be instructed. You can provide me with
14 federal case law, because Nevada law -- and so I can take it is federal
15 law is being instructed.

16 MS. MACHNICH: Perfect. And that's -- and that's what I do
17 have, so I can provide those cites to the State right now.

18 THE COURT: And maybe you and the State can work
19 something out. It's --

20 MR. GIORDANI: Sure, I --

21 THE COURT: -- judicial notice. It's judicial notice.

22 MR. GIORDANI: Right. And we'll probably ask that you take
23 judicial notice of the definition of stippling as it regards to firearms,
24 gunshots. So we'll -- we'll probably have a competing definition.

25 THE COURT: Okay. I think her concern, quite frankly, is

1 stippling in the context -- in the medical context may be different than
2 stippling as it relates to firearms.

3 MR. GIORDANI: Right.

4 THE COURT: I think that's her concern.

5 MR. GIORDANI: Right. And --

6 MS. MACHNICH: And --

7 MR. GIORDANI: -- and --

8 THE COURT: Again, if this --

9 MS. MACHNICH: -- we have no opposition to that.

10 MR. GIORDANI: To?

11 THE COURT: All right. You know what?

12 MS. MACHNICH: To your --

13 THE COURT: Let's get the jury in.

14 MS. MACHNICH: Okay.

15 MR. GIORDANI: Well, this is the -- I'm sorry to interrupt you,

16 but --

17 THE COURT: No, go ahead.

18 MR. GIORDANI: -- if this is going to happen, we might -- we
19 have medical doctors noticed, so we might need to call somebody now.

20 This is brand new to us. So, I mean, I'm sorry, but we can't --

21 THE COURT: Don't --

22 MR. GIORDANI: -- just have --

23 THE COURT: Don't be sorry. It's -- it's -- all right. So what's
24 happening today?

25 MR. GIORDANI: Well --

1 THE COURT: Are you presenting any additional witnesses?

2 MR. GIORDANI: We did not intend to. And what we expected
3 to do was everyone was going to rest or we presumed so. And then we
4 were --

5 THE COURT: Are we hearing any witnesses today, Defense?

6 MS. MACHNICH: No.

7 THE COURT: You're not presenting any witnesses?

8 MS. MACHNICH: Mr. Turner is not.

9 MR. PLUMMER: None for Mr. Hudson, Your Honor.

10 MR. GIORDANI: So we had planned that -- we brought all our
11 instructions to settle and then we figured we would close tomorrow,
12 because it's going to take a good four hours to get through all of these
13 closings in my rebuttal. And if we do that on Friday, then we're going to
14 lose jurors --

15 THE COURT: No, I understand, counsel.

16 MR. GIORDANI: I mean, I can do quick research on that
17 issue if you want to try to get it resolved today.

18 THE COURT: All right. Here's what I'm going to do then. I'm
19 going to bring the jury in. I'm going to ask the State is there any
20 additional witnesses. And you're going to say there's no additional
21 witnesses. Correct?

22 MR. GIORDANI: Well, no. With the caveat that if this -- if
23 something comes up with this, that's -- we feel is misleading or doesn't
24 help --

25 THE COURT: All right. Here's what we're going to do. Tell

1 the jury that we're not going to convene till 2:30. We're going to settle it
2 now.

3 MR. GIORDANI: Okay.

4 THE COURT: I'm going to give 15 minutes. I want -- I want
5 the proposed judicial -- whatever you want me to advise the jury, I want
6 it now. And I want your case law.

7 MS. MACHNICH: Okay.

8 THE COURT: And we'll -- I intend to reconvene on this
9 argument at 2:00.

10 MS. MACHNICH: Okay. Thank you, Your Honor.

11 MR. GIORDANI: Okay.

12 THE COURT: We'll be in recess.

13 [Court recessed at 1:30 p.m., until 2:21 p.m.]

14 [Outside the presence of the jury.]

15 THE COURT: This is the continuation of the trial in Case No.
16 C-15-309578-1 and -2, *State of Nevada vs. Steven Turner and Clemon*
17 *Hudson*. The record will reflect the presence of counsel for the State,
18 counsel for the defense, and the presence of the defendants.

19 Counsel, I have been provided with the proposed -- what the
20 defendant have proposed as the judicial notice. Have you received a
21 copy of that?

22 MS. BEVERLY: Yes.

23 MR. GIORDANI: Yes.

24 THE COURT: In addition, they have provided me with case
25 law that supports their position.

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State?

MR. GIORDANI: We don't have an issue with the idea of judicial notice. Obviously, that -- that happens, I've had it happen in my cases before. What we do have an issue with is the definition that they've provided. We believe it's misleading in the context in which it's used.

And I've written out, number one, we spoke with Dr. Amy Urban who is one of the treating physicians of Mr. Turner there, and she indicated the definition of stippling as it applies to a gunshot or fragment ricochet is different from what is said in the instruction that they've provided.

So I've written out alternative or in addition to that. We don't have an issue with a spotted condition, as long as it's provided in context with gunshot wounds or ricochet wounds.

THE COURT: What is that that's --

MR. GIORDANI: I didn't have time to type it, but I've written it.

THE COURT: That's fine. Have you provided it to opposing counsel?

MR. GIORDANI: No, I've showed Ashley -- Ms. Sisolak.

MS. SISOLAK: I saw it, Your Honor.

MS. MACHNICH: We are obviously not agreeing with this. This is argument. Additionally, when we're speaking of the evidence that's been presented in the case, we're obviously speaking about the expert who testified, who testified to specifically stippling in the firearms context. We provided a medical definition. Obviously, the State is able

1 to bring their medical expert if they want to today, right -- I mean, if
2 they -- they called her.

3 But this is -- this is argument and this basically completely
4 changes what judicial notice is. It's crafted language by the State, it's
5 not a definition.

6 THE COURT: Okay. State, do you have a medical expert
7 available?

8 MR. GIORDANI: She's not available right now.

9 THE COURT: When would she be available?

10 MS. BEVERLY: She's working. So, I mean, I could --

11 THE COURT: I mean, I'm not saying today. When would she
12 be available? Could she come in tomorrow and testify?

13 MS. BEVERLY: I can ask her if she can come tomorrow. But
14 I -- I want to note, there actually is a definition regarding gunshot. Let
15 me just go back to find it.

16 MS. MACHNICH: And they did not show me this, so --

17 MS. BEVERLY: This is the book that she gave us.

18 MS. MACHNICH: I -- I did not read the entire medical
19 dictionary, candidly, Your Honor. I looked up the word that I was looking
20 for.

21 MS. BEVERLY: So --

22 MS. MACHNICH: What is it, I guess, is all I'm asking.

23 MS. BEVERLY: Well, it's talking about --

24 MS. MACHNICH: Gunshot. Okay.

25 MS. BEVERLY: Uh-huh.

1 MS. MACHNICH: And I think that this is appropriately defined
2 as a gunshot wound. And I would not be opposed to this definition being
3 taken -- Your Honor taking judicial notice of this definition. I don't think
4 that it is properly on the same piece of paper. I don't think that it
5 necessarily -- and maybe I'm -- at no point in here, and please correct
6 me if I'm reading this incorrectly, does this say stippling at all in it. But
7 this does say gunshot.

8 THE COURT: Okay. But they may want --

9 MS. MACHNICH: If they want it, this is fine. I'm happy to
10 have that --

11 MR. GIORDANI: But that's not all we want.

12 MS. BEVERLY: That's not -- what we're saying, Judge, is
13 that --

14 THE COURT: Ladies and gentlemen, this is judicial notice of
15 a definition in a dictionary. Whatever it may or may not be. Okay.
16 That's what I'm being ask to take judicial notice of. I receive -- if -- if
17 there something that you want me to take judicial notice of out of a
18 medical dictionary, I will consider it.

19 MS. BEVERLY: That -- that's fine, Judge. But --

20 THE COURT: No, I'm just stating, this is just judicial notice of
21 a definition from a medical dictionary.

22 MS. BEVERLY: I -- I understand that. But I think it needs to
23 be in the context of this particular case. I mean, I could ask for judicial
24 notice of -- of anything in a -- in a dictionary. But I think it needs to be in
25 the context of this particular case. And in this particular case, what the

1 records are talking about when they're referring to stippling, which is I
2 can read directly from the records or with a gunshot wound. Literally --
3 that's exactly what it says in the record, or fragment. And I believe just
4 to say -- I mean, I could pick out any term in this dictionary and say take
5 judicial notice of it.

6 THE COURT: Let me ask you a question, counsel. Is
7 anybody presenting any witnesses today?

8 MR. GIORDANI: Well, we can't answer that. The problem is
9 if you just accept this definition, then we don't have a chance to respond
10 to that in any way, because we don't have a forensic pathology
11 dictionary in front of us, because we've been given 30 minutes of notice
12 to get this done.

13 THE COURT: I agree, counsel. I agree.

14 MR. GIORDANI: So we're not going to rest until this issue is
15 resolved. We can't rest. We -- we have our doctor, she's noticed. So if
16 this is going to be an issue, then we'll call our doctor.

17 MS. MACHNICH: Okay. They should call their doctor.

18 MR. GIORDANI: Okay. So I guess we're going to resume on
19 Friday, because she's not available right now, she's at work.

20 MS. BEVERLY: And she just told me that she's not -- she's
21 working today and tomorrow. Because I didn't know this was
22 happening.

23 THE COURT: I understand, counsel.

24 MS. BEVERLY: So --

25 THE COURT: What is the other definition that you're looking

1 at that you've provided to counsel?

2 MS. BEVERLY: The other definition --

3 THE COURT: Let -- let me see it.

4 MR. GIORDANI: The other -- okay. The other definition is a
5 gunshot wound. The problem is, is that we don't have a forensic
6 pathology dictionary. What we're dealing with here is not a gunshot
7 wound. I think everyone will agree it's a fragment. I can show you the
8 x-ray, it's not a gunshot, it's a fragment. And it's from a -- a ricochet.

9 So what the jury would be misled on is that Ms. Machnich or
10 whoever does their closing can get up and say, He wasn't even shot, so
11 stippling doesn't matter. It's a ricochet. You wouldn't have stippling.

12 Well, the science, forensic science, says the opposite.
13 Forensic science says pseudo stippling is particularly associated with
14 ricochet incidents. So if it goes -- if it -- if it comes in as is, it's
15 misleading to the jury. And it's going to tell the jury, you know, the
16 argument --

17 THE COURT: But where did you get that from, counsel?

18 MR. GIORDANI: From -- in the 30 minutes, for the record,
19 that I had --

20 THE COURT: Yeah, I --

21 MR. GIORDANI: -- to look this up, it's a published medical
22 record -- I mean, published medical article called *A Systematic Review*
23 *on Ricochet Gunshot Injuries*, published 2017 in Tokyo, Yong Ye Leg
24 Med.

25 THE COURT: When you talk to your doctor, is she under

1 subpoena?

2 MR. GIORDANI: No. We can put her under subpoena right
3 now.

4 MS. BEVERLY: Because this is now at this point rebuttal.
5 So -- it is. It is rebuttal.

6 THE COURT: I understand.

7 MS. BEVERLY: So I can give her a subpoena. But --

8 THE COURT: Okay. But my question is when she says she's
9 working today and tomorrow, I would work around her schedule if -- if
10 they give you an opportunity to present her as a witness. And I'm just
11 curious what her work schedule is tomorrow. This cannot be that
12 lengthy of testimony.

13 MS. BEVERLY: I will text her right now.

14 THE COURT: See if she could be available tomorrow at 1:00.

15 MR. GIORDANI: And, you know, frankly, this -- this might not
16 be an issue if we had a forensic pathology, you know, dictionary in front
17 of us. But we just didn't have time to do it. So.

18 THE COURT: Counsel, I understand. I mean, this is trial.
19 This happens in trials. Things occur. I want to give both sides the
20 opportunity to make their best argument.

21 [Pause in proceedings.]

22 THE COURT: And counsel, if necessary, we will go the full
23 day on Friday. I don't believe I have any matters on Friday. But I would
24 like to move this problem along.

25 MS. MACHNICH: Your Honor, just to note, there is a juror

1 who's flying out Friday night. I don't know if that affects anybody's
2 calculus. But I do recall one of the jurors --

3 THE COURT: All right. Counsel, the State will have an
4 opportunity, if I give this as judicial notice, to present an additional
5 witness.

6 [Pause in proceedings.]

7 MR. GIORDANI: You know what, I could try -- I didn't even
8 think of -- I could call the forensic scientist who was here yesterday and
9 see if she has a copy of the forensic textbook, I guess.

10 THE COURT: Okay. Here's what I'm going to do, counsel.
11 I'm going to excuse the jury for today.

12 MR. GIORDANI: Okay.

13 THE COURT: Okay. I don't want to have them just keep
14 sitting out there. Rather than -- we'll go through as much of the jury
15 instructions as we can.

16 MR. GIORDANI: Okay.

17 THE COURT: And also -- but I want to know by the end of
18 today if you're going to present an additional witness. I'm inclined to
19 give -- to take judicial notice of what's contained -- what I probably would
20 say, something along the lines that with the -- did you have a problem
21 with it -- I understand you have a concern, but did you have a problem
22 with how this is worded?

23 MR. GIORDANI: Well, yes. Because it's not in the context
24 of --

25 THE COURT: Right. Then what I would say, then, is

1 something along this line. That the Court is taking judicial notice that the
2 definition of stippling in the *Cyclopedic Medical Dictionary* is as follows:
3 A spotted condition. You and the jury may not -- may or may not accept
4 this notice fact as conclusive of any fact at issue in this case.

5 In other words, I'm just going to say, this is what the dictionary
6 says. That's why I'm asked to be taken -- not put it in the context, just
7 that -- and that would be it.

8 MR. GIORDANI: Right. And then in our -- in response, we
9 would be asking to take judicial notice of definitions in the forensic
10 pathology --

11 THE COURT: Which I can do.

12 MR. GIORDANI: Yeah. I just don't have it.

13 THE COURT: If it's a dictionary. If it's a dictionary, I can do
14 that.

15 MR. GIORDANI: Right.

16 THE COURT: So that would be something along the lines that
17 I would state as judicial notice.

18 MR. GIORDANI: And if --

19 THE COURT: Just straight out.

20 MR. GIORDANI: Yeah. And if we find that, what we're
21 looking for, it's just we didn't have time, but if we find that, we wouldn't
22 need to call the doctor.

23 THE COURT: Okay. But what I'm saying is tomorrow at 1:00,
24 I want -- I mean, before we leave today, I want to know if you're going to
25 present any additional witnesses, if I'm going to give that judicial notice.

1 Before we leave today. We're -- you have -- we're going to go over jury
2 instructions if I excuse the jury.

3 MR. GIORDANI: Okay. I'll -- Ms. Beverly will go through
4 instructions and I'll work on this.

5 THE COURT: Okay. All right. So at this time, counsel, what
6 I'm going to do is I'm going to bring the jury in and advise them that
7 there's some matters that have to be resolved, and I'm going to excuse
8 them for today. Then I'm going to reconvene tomorrow at 1:00. I have
9 a 40-page calendar tomorrow. So I should be done hopefully by noon.
10 Shouldn't run past -- through the lunch hour.

11 So I'm going to reconvene tomorrow at 1:00, at which time,
12 depending on what happens today, you'll either rest or present
13 additional -- I'll do the judicial notice, and you either give me a judicial --
14 a dictionary that you want me to take judicial notice of, or present an
15 additional witness at your discretion.

16 MR. GIORDANI: Okay. And then tomorrow, say we get our
17 instructions settled, which I expect we will today, tomorrow should we
18 expect to close if we don't call that witness?

19 THE COURT: I -- I would expect to close tomorrow.

20 MR. GIORDANI: Okay.

21 MS. BEVERLY: Thank you.

22 THE COURT: All right. So does the parties have any
23 objection to what I'm going to do today?

24 MR. GIORDANI: No.

25 MS. MACHNICH: No questions, Your Honor.

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MR. PLUMMER: No, Your Honor.

THE COURT: I'll let you bring the jury in.

[Jury reconvened at 2:36 p.m.]

THE COURT: You may be seated.

Will the parties stipulate to the presence of the jury?

MS. BEVERLY: Yes, we will.

MS. MACHNICH: Yes, Your Honor.

MR. PLUMMER: Yes, Your Honor.

THE COURT: Ladies and gentlemen, a matter has come up that needs to be resolved and we're not going to be taking any testimony today. So I'm going to excuse you for today. I intend to start tomorrow at 1:00, resume the trial, and if necessary, I intend to go all day on Friday. I'll be more specific tomorrow depending on what occurs tomorrow. But again, I have to resolve some matters and we won't be taking any testimonies -- any testimony today.

So if you could return tomorrow at 1:00, and that's when we'll begin. Thank you.

And just so you know, I have to admonish you. I'm required to admonish you.

During this recess you're admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial, or read, watch, or listen to any report of or commentary on the trial, or any person connected with this trial by any medium of information, including, without limitation, newspapers, television, radio, or Internet, or form or express any opinion on any subject connected

1 with the trial until this case is finally submitted to you.

2 We'll be in recess till 1:00 tomorrow.

3 [Jury recessed at 2:38 p.m.]

4 THE COURT: Counsel, Mr. Giordani, again, if either advise
5 me of the definition that you want me to take judicial notice of or the
6 availability of your witness.

7 MR. GIORDANI: Okay.

8 THE COURT: My preference would be if you're not going to
9 give me a definition, a dictionary definition, that the witness testify
10 tomorrow.

11 MR. GIORDANI: Okay.

12 THE COURT: I mean, I can accommodate -- I mean, I don't
13 know what her -- is it a male or female? I apologize.

14 MS. BEVERLY: I can tell you just right now she said the
15 earlier the better. She's trying to move some things around in the
16 morning. I don't know if she's going to be available at 1:00 tomorrow.

17 THE COURT: All right.

18 MS. BEVERLY: So I'm asking her now about Friday morning.

19 MR. GIORDANI: Hold on. I'm sorry. I just got what I'm
20 looking for from Ms. Lester, who is the expert who testified yesterday.
21 And that definition -- can I just hand the Court my phone?

22 THE COURT: Sure.

23 MS. MACHNICH: May we see it as well?

24 THE COURT: Show it to opposing counsel.

25 Mr. Plummer, if you want to look at it?

1 MR. PLUMMER: Your Honor, don't have a dog in the fight.

2 THE COURT: All right.

3 [Pause in proceedings; colloquy between counsel.]

4 THE COURT: Why don't you put it on the record --

5 MR. GIORDANI: Okay.

6 THE COURT: -- that you want to put --

7 MR. GIORDANI: Okay. My proffered definition would be
8 starting with the words that Ms. Machnich used, a spotted condition. In
9 the context of gunshot wounds and/or bullet fragments, stippling is
10 characterized by small pieces of soot and/or gunpowder and/or metallic
11 fragments striking the skin, leaving small abrasions and/or discoloration.
12 A bullet ricocheting off a hard surface can generate secondary
13 fragments that may produce stippling of the skin. These marks can be
14 due to fragments of wood or stone from the surface from which the bullet
15 ricocheted or to metal fragments of the bullet itself.

16 THE COURT: Counsel, do you have any objection to that?

17 MS. MACHNICH: I -- I don't believe so. But I would like to
18 see -- I saw that Mr. Giordani, I'm not necessarily objecting to this, he
19 read off his piece of paper as well as the phone. And so I wanted to see
20 what --

21 THE COURT: Okay. Here's the --

22 MS. MACHNICH: -- the additions.

23 THE COURT: Here's what I'm going to take judicial notice of,
24 counsel. Whatever is the dictionary definition. Whatever --

25 [Pause in proceedings; colloquy between counsel.]

1 THE COURT: All right. Here's the deal, counsel. We're going
2 to take our recess. I'm going to give this as judicial notice tomorrow.
3 Like I said, I'm going to make it very generic. This is what the
4 *Cyclopedic Medical Dictionary* states as. If you have a dictionary
5 definition as to stippling that you want me to give, I will give that
6 definition also.

7 MR. GIORDANI: Okay.

8 THE COURT: All right. We're going to be in recess --

9 MS. MACHNICH: Are we meeting back for jury instructions?

10 THE COURT: We're going to go to the back and start settling
11 jury instructions.

12 MS. MACHNICH: Perfect.

13 THE COURT: So I will meet you in the jury room.

14 MS. MACHNICH: Thank you, Your Honor.

15 THE COURT: We'll be in recess.

16 [Court recessed at 2:44 p.m., until April 26, 2018, at 1:00 p.m.]

17 ///

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

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24 _____
Shawna Ortega, CET*562

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APPEARANCES:

For the Plaintiff(s):

LEAH C. BEVERLY, ESQ.
(Deputy District Attorney)
JOHN L. GIORDANI III, ESQ.
(Deputy District Attorney)

For the Defendant
Steven Turner:

TEGAN C. MACHNICH, ESQ.
(Deputy Public Defender)
ASHLEY L. SISOLAK, ESQ.
(Deputy Public Defender)

For the Defendant
Clemon Hudson:

CLAY PLUMMER, ESQ.

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FOR THE STATE:

AMY URBAN

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EXHIBITS

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No exhibits offered.

1 **LAS VEGAS, NEVADA, THURSDAY, APRIL 26, 2018**

2 [Proceeding commenced at 1:03 p.m.]

3
4 [Outside the presence of the jury.]

5 THE COURT: All right. This is the continuation of the trial in
6 Case No. C-15-309578-1 and -2, *Plaintiff, State of Nevada vs.*
7 *Defendants, Steven Turner and Clemon Hudson.* The record will reflect
8 the presence of counsel for the State, counsel for the defense, and the
9 presence of the defendants.

10 Counsel, the defense has requested that I take judicial notice
11 of the definition of stippling. I intend to give that judicial notice.

12 It's my understanding that the State has one additional
13 witness; is that correct?

14 MR. GIORDANI: Yes, Your Honor. Yes, Your Honor.

15 THE COURT: I'm going to give the judicial and then allow you
16 to call your witness.

17 MR. GIORDANI: Understood.

18 MS. BEVERLY: Thank you.

19 THE COURT: After that, counsel, however long the witness
20 takes once we conclude testimony, I'm going to inquire the State, if you
21 rest. I'm going to inquire the defense, if you rest, if that's the situation,
22 then I'm going to excuse the jury for a half-hour recess and we're going
23 to settle instructions. And once the instructions are settled, then I intend
24 to read the instructions and go into closing argument.

25 MS. BEVERLY: Great.

1 THE COURT: Also, counsel, do you need to request that
2 instruction on the record? Or you can do it right now.

3 You'll waive your self-incrimination instruction?

4 MS. BEVERLY: Do you request it?

5 MS. MACHNICH: Yes. We agree --

6 THE COURT: The defense has to actually request it on the
7 record.

8 MS. MACHNICH: And, Your Honor, we would request that
9 you give the defense Fifth Amendment instruction.

10 THE COURT: Thank you.

11 Counsel?

12 MR. PLUMMER: The same, Your Honor.

13 THE COURT: Thank you.

14 MS. BEVERLY: No objection.

15 THE COURT: All right. Let's bring the jury in.

16 Counsel for the defendants -- for the State, approach.

17 [Pause in proceedings.]

18 [Jury reconvened at 1:05 p.m.]

19 THE COURT: You may be seated.

20 Do the parties stipulate to the presence of the jury?

21 MR. GIORDANI: Yes, Your Honor.

22 MS. MACHNICH: Yes, Your Honor.

23 MR. PLUMMER: Yes, Your Honor.

24 MS. SISOLAK: Yes, Your Honor.

25 THE COURT: Thank you.

1 Ladies and gentlemen, this court has taken judicial notice that
2 the definition of stippling as defined in Taber's Cyclopedic Medical
3 Dictionary is a spotted condition. You, the jury, may or may not accept
4 this noticed fact as conclusive of any fact at issue in this case.

5 State, do you have any additional witnesses?

6 MR. GIORDANI: Yes. One briefly.

7 The State would call Dr. Amy Urban.

8 THE COURT: Thank you.

9 **AMY URBAN,**

10 [having been called as a witness and first duly sworn, testified as
11 follows:]

12 THE CLERK: Please be seated. Would you please state and
13 spell your name for the record.

14 THE WITNESS: It's Amy Urban, A-M-Y, last name is
15 U-R-B-A-N.

16 MR. GIORDANI: May I? May I, Judge?

17 THE COURT: You may.

18 **DIRECT EXAMINATION**

19 BY MR. GIORDANI:

20 Q Ma'am, what do you do for a living?

21 A I am an emergency medicine physician.

22 Q And where at?

23 A University Medical Center.

24 Q How long have you been at UMC?

25 A 13 years.

1 Q What did you do prior to going to UMC?

2 A I was an emergency medicine resident in Detroit.

3 Q As an emergency medicine resident in Detroit and with your
4 employment with UMC, have you come across, treated, or diagnosed or
5 observed several gunshot wound-type injuries?

6 A Yes, many.

7 Q Can you estimate how many --

8 A Probably several hundred.

9 Q Okay. I want to draw your attention back to September 4th
10 of 2015; were you working on that date?

11 A Yes.

12 Q And did you have an opportunity to treat a person by the name
13 of Steven Turner?

14 A Yes.

15 Q Do you recall around what time that treatment was?

16 A I do not recall.

17 Q Okay.

18 MR. GIORDANI: Can I approach the witness, Your Honor.

19 THE COURT: You may.

20 BY MR. GIORDANI:

21 Q Showing you State's already admitted 401. This is several
22 pages, but I just want to show you the first page of the document; does
23 that look like a set of UMC medical records to you?

24 A Absolutely.

25 Q Does this indicate when the treatment date, admit date, and

1 admit time were?

2 A Yes.

3 Q And what were those dates?

4 A It's 9/4/2015 at 8:28.

5 Q Okay. And where did you treat -- where in the hospital did you
6 treat Mr. Turner?

7 A In the trauma center.

8 Q Did you observe any apparent injuries to Mr. Turner?

9 A Yes. There was an open wound on the leg that looked like a
10 laceration or open wound, and then there was stippling around it.

11 Q Okay. What does stippling mean to you?

12 A Stippling is little black marks that go around the skin of a
13 wound from a gunshot wound. It's from high-pressure gas and debris.

14 Q Okay. I want to -- well, before I move on, did you observe that
15 with your naked eye?

16 A Yes, I did.

17 Q And in the medical records, there's another doctor with the last
18 name Turner, actually, who's referenced.

19 A Correct.

20 Q Who is that in relation to treating Steven Turner?

21 A He was my emergency medicine intern.

22 Q Okay. So at the time, was he a doctor or an intern?

23 A He's a doctor. But they always work under an attending.

24 Q Understood. And were you the attending that evening?

25 A That's correct.

1 Q And did you observe those -- that wound and what appeared
2 to be stippling around that wound on Mr. Turner yourself?

3 A Yes, I did.

4 Q Did you or other medical staff conduct an X-ray examination of
5 Mr. Turner's leg?

6 A Yes.

7 Q And was that his left leg?

8 A Yes.

9 Q Showing you the last page of Exhibit 401; does that look
10 familiar to you, ma'am?

11 A Yes.

12 Q Does that appear to be Mr. Turner's left leg?

13 A Yes.

14 Q And would the calf be in the top-right portion of the exhibit?

15 A Yes.

16 Q And zoom in a little bit; what are we looking at there?

17 A A piece of metal shrapnel.

18 Q Okay. Was that piece of metal shrapnel near where you
19 described that laceration was --

20 A Yes.

21 Q -- with the stippling around it? Is that a yes?

22 A Yes.

23 Q Okay. Thank you, ma'am.

24 MR. GIORDANI: I'll pass the witness, Your Honor.

25 THE COURT: Thank you, counsel.

1 Any cross-examination?

2 MS. MACHNICH: Yes, Your Honor.

3 **CROSS-EXAMINATION**

4 BY MS. MACHNICH:

5 Q All right. Doctor.

6 A Yes.

7 Q Okay. So you said you've been doing this, emergency
8 medicine, for 13 years?

9 A I've been an attending for 13 years.

10 Q Fantastic. So how many patients did you say you see a year?

11 A On average, as I see -- if I work a 12-hour shift, I see about 40
12 patients per shift. So it's about a 108 to 140 hours a month; so a
13 significant amount.

14 Q Okay. And we're talking about a treatment that you did or
15 were involved in in September 2015?

16 A Correct.

17 Q So we're talking over two and a half years ago?

18 A Correct.

19 Q Would it be fair to say you don't have any independent
20 recollection of this?

21 A I actually do.

22 Q Okay.

23 A I actually specifically remember this patient.

24 Q Okay. So when you do medical records and type out what --
25 do you personally type out medical records?

1 A No. We dictate.

2 Q Right. And within medical records, you indicate who dictates
3 or who puts in what section, correct?

4 A Correct.

5 Q And that's indicated by either initials or a designation or a full
6 name in different locations?

7 A Correct.

8 Q Okay. Now, prior to your testimony today, would it be fair to
9 say that you reviewed the medical records associated with this case?

10 A Yes.

11 Q And you also spoke with the deputy district attorneys who are
12 present in court?

13 A Yes.

14 Q And did you speak with them over telephone or in person?

15 A Telephone.

16 Q Okay. And did you spoke to them via text or via phone, like,
17 voice?

18 A Both of those yesterday.

19 Q Okay. And they asked you specifically to come in because
20 you're here to discuss something about stippling?

21 A Correct.

22 Q All right. Now, as the attending or attending physician, you
23 were the supervisor to the person --

24 A Correct.

25 Q -- who was doing, like, the day-to-day stuff?

1 A Correct.

2 Q Okay. And the person who was doing the day-to-day stuff is a
3 Dr. Turner?

4 A Correct.

5 Q Okay. Is it fair to say that at the time you saw Mr. Turner, the
6 wound area has been cleaned?

7 A No. We actually saw it together.

8 Q Okay. So from the beginning you did see it together?

9 A Uh-huh.

10 Q Okay. And so you saw it when there was dried blood?

11 A Yes.

12 Q Okay. And just --

13 [Phone ringing interruption; pause in the proceedings.]

14 THE COURT: I apologize ladies and gentlemen. I'm not
15 taking the call, by the way.

16 Proceed.

17 BY MS. MACHNICH:

18 Q So you were saying that -- and I'm showing you what has
19 been marked and admitted as State's Exhibit 27. Whoop, that's zoomed
20 in. Let's look at the larger area here.

21 Okay. This is the wound as you remember it?

22 A Yes.

23 Q And it's fair to say that there's also some dried blood in the
24 area?

25 A Absolutely.

1 Q And, additionally, some darker hair follicles?

2 A Correct.

3 Q Okay. Now, and just so I know that we're discussing the same
4 thing, stippling is something that doesn't wipe off, correct?

5 A Correct.

6 Q It's actually a physical abrasion or burn or scratch into the
7 skin?

8 A Correct.

9 Q Okay. So that's notable, because it actually does affect the
10 surface of the skin?

11 A Correct.

12 Q Okay. So let's go to the medical records just very briefly. We
13 are talking about --

14 MS. MACHNICH: The Court's brief indulgence.

15 Q Okay. So we're talking about stippling. Stippling was
16 mentioned -- in these 40-some pages of medical documents, the word
17 stippling was used two times.

18 A Okay.

19 Q Is that -- would you have any reason to dispute that?

20 A No.

21 Q Okay. So the first time -- and I am referencing part of State's
22 Exhibit 401 that's previously admitted. And this is indicated as part of a
23 confidential medical record, page 3 of 8. There's not a master page
24 numbering on this to my knowledge; so this is going to have to be -- it's
25 part of the files? All right. We will use those numbers. That's great. All

1 right.

2 So page 6, which is at the upper right-hand side. And I'm
3 going to show you the section of it. And I will actually zoom in a little bit
4 so we can read it.

5 We're saying when we refer to stippling, we're looking right
6 about in the center of the musculoskeletal section, correct?

7 A Correct.

8 Q Okay. And so areas of the stippling on the dorsal foot, ankle,
9 and distal left lower leg, correct?

10 A Correct.

11 Q And that was something that was input or dictated by
12 Dr. Turner?

13 A Correct.

14 Q Okay. Then, you're also speaking of -- let me pull them from
15 my copy. Okay. So this would be -- okay.

16 And so this also is from State's Exhibit 401, which is the
17 confidential medical record, page 8 at the upper right-hand corner. I'll
18 place this used in the middle here. And you can see on this page, there
19 appears to be some reference to stippling of the left lower extremity?

20 A Yes.

21 Q Okay. And so that's what we're referring to. And this was also
22 dictated or entered otherwise by Dr. Turner?

23 A Correct.

24 Q All right. You actually yourself dictated a part of this report as
25 well, correct?

1 A Correct.

2 Q Okay. And that would consist of what appears to be a
3 two-page -- I guess, I don't want to say summary, but what would you
4 call --

5 MS. MACHNICH: May I approach the witness, Your Honor?

6 THE COURT: You may.

7 BY MS. MACHNICH:

8 Q I'm showing you what has previously been marked as the
9 exhibit we've been discussing, medical records pages 38 and 39; what
10 would you call these?

11 A A teaching physician addendum.

12 Q Okay. Fantastic.

13 A Okay.

14 Q I want to refer to it as the right thing.

15 A Okay.

16 Q Okay. So we are looking at the teaching addendum. And
17 would it be fair to say that in a teaching addendum, you strive to be as
18 complete and thorough as possible?

19 A We try to just say that we oversaw the resident. We try to give
20 the big findings and a summary of the care.

21 Q Okay. So I will direct your attention to page 38 of the medical
22 documents, specifically the bottom where we start discussing the lower
23 extremities.

24 It's fair to say this goes into a fair amount of detail. Right
25 lower extremity, unremarkable -- so that would be the other leg?

1 A Correct.

2 Q Okay. Left lower extremity, the medial aspect -- so we start
3 going to the details of what was going on with his left leg?

4 A Uh-huh.

5 Q Okay. And this goes into a fair amount of specificity when
6 we're talking about medial aspect of the calf. There is a puncture
7 wound, correct?

8 A Correct.

9 Q And a little bit of underlying swelling, right?

10 A Correct.

11 Q And there was no knee tenderness, correct?

12 A Correct.

13 Q And there was no fluctuants, correct?

14 A Correct.

15 Q There is dried blood in the area, correct?

16 A Correct.

17 Q But no active extra -- extravasation?

18 A Uh-huh.

19 Q Did I pronounce that right?

20 A Extravasation.

21 Q Extravasation. Okay. There is no tenderness, palpitation over
22 the tibia or the fibula?

23 A Correct.

24 Q Okay. There is no tenderness, palpitation over the knee, yes?

25 A Correct.

1 Q And it goes on from there?

2 A Yes.

3 Q It's all written out. And, additionally, you noted that at the
4 top -- and this is page 2 -- Skin unremarkable?

5 A Yes. Otherwise unremarkable, because it had already been
6 documented in the musculoskeletal system.

7 Q Okay. So everything that wasn't documented on the prior
8 page was documented -- if there had been something else, it would have
9 been documented there?

10 A Correct.

11 Q All right.

12 MS. MACHNICH: I have no further questions.

13 Thank you, Doctor.

14 THE COURT: Thank you.

15 Is there any -- Mr. Plummer, any questions?

16 MR. PLUMMER: No, Your Honor.

17 THE COURT: Thank you.

18 State, any redirect.

19 MR. GIORDANI: Very briefly.

20 **REDIRECT EXAMINATION**

21 BY MR. GIORDANI:

22 Q Stippling's actually mentioned more than two times in these
23 records, right?

24 A It may be. I did not count, I have to be honest.

25 Q Ms. Machnich referenced page 6.

1 MR. PLUMMER: And I'm using my copy. If there's any issue
2 with this, I'm sure it'll be raised.

3 Q I'll be very brief here. Ms. Machnich mentioned page 6, and
4 that's where it says:

5 Exam revealed some stippling of the left lower extremity.

6 Correct?

7 A Yes.

8 Q The bottom, it says:

9 Dr. Amy Urban agrees with my assessment and plan;
10 etcetera?

11 A Correct.

12 Q So that would have been Dr. Turner?

13 A Correct.

14 Q Does Dr. Turner now work in Michigan or something?

15 A I think he's in the Pacific Northwest.

16 Q Okay. So you're here today, ma'am --

17 A Uh-huh.

18 Q --- and I want to ask you a couple more questions.

19 A Okay.

20 Q I just showed you page 6. Now I'm going to show you page 8.

21 It says, again:

22 Exam revealed some stippling of the lower left extremity.

23 On page 8; is that right, ma'am?

24 A Yes.

25 Q And I want to go to page 15. Stippling is referenced twice on

1 Q And they're all --
2 A But they're --
3 Q -- based on the same --
4 A Correct.
5 Q The --
6 A Absolutely.
7 Q Based on the same analysis?
8 A Correct.
9 Q Okay. And you documented in your teaching addendum all of
10 the big findings associated with this case?
11 A Yes. Because I base mine on whatever the resident says. I
12 review theirs and I see the patients with them.
13 Q Okay.
14 A And so I review their dictation, and then I add my addendum.
15 Q Fantastic. Thank you, Doctor.
16 THE COURT: Any redirect by the -- by the State?
17 MR. GIORDANI: No, Your Honor.
18 THE COURT: Thank you. May this witness be excused?
19 MR. GIORDANI: Yes, Your Honor.
20 THE COURT: Thank you.
21 Ma'am, you are excused.
22 THE WITNESS: Thank you.
23 THE COURT: Thank you.
24 Does the State have any additional witnesses?
25 MS. BEVERLY: Your Honor, if I can just confirm that all of the

1 State's exhibits have been admitted.

2 [Pause in proceedings.]

3 MS. BEVERLY: With that, Your Honor, the State will rest.

4 THE COURT: Thank you.

5 Defense, do you have any witnesses to present in your case
6 in chief?

7 MS. MACHNICH: Your Honor, on behalf of Mr. Turner, we
8 have no -- no witnesses to present. So we'll rest.

9 THE COURT: Thank you.

10 Mr. Plummer.

11 MR. PLUMMER: Your Honor, on behalf of Mr. Hudson, we
12 rest.

13 THE COURT: Thank you, counsel.

14 Ladies and gentlemen, that concludes the evidentiary portion
15 of this trial. At this time, we're going to take a half-hour recess, at which
16 time the jury instructions will be read to you. And we'll go on to closing
17 argument.

18 Ladies and gentlemen, we are going to take a 30-minute
19 recess. During this recess, you are admonished not to talk or converse
20 among yourselves or with anyone else on any subject connected with
21 this trial, or read or watch or listen to any report of or commentary on the
22 trial or any person connected with this trial by any medium of
23 information, including, without limitation, newspapers, television, radio,
24 or Internet, or form or express any opinion on any subject connected
25 with the trial until the case is finally submitted to you.

1 We'll be in recess for 30 minutes.

2 [Jury recessed at 1:25 p.m.]

3 THE COURT: Let the record reflect that the present -- that the
4 jury is no longer present.

5 At this time, we are going to settle jury instructions.

6 Counsel, I've been provided a -- several packets of proposed
7 jury instructions. The first packet I'm going to go over was the packet
8 that was submitted by the State and labeled as undisputed.

9 Counsel for the defense --

10 MS. MACHNICH: Yes, Your Honor?

11 THE COURT: -- have you had an opportunity to review that
12 packet that was labeled as undisputed?

13 MS. MACHNICH: Yes, Your Honor.

14 THE COURT: Mr. Plummer?

15 MR. PLUMMER: Yes, Your Honor.

16 THE COURT: And does -- does either party have any
17 objection to the giving of the undisputed jury instructions?

18 MS. BEVERLY: Not from the State.

19 MS. MACHNICH: Not from Mr. Turner.

20 MR. PLUMMER: Not from Mr. Hudson.

21 THE COURT: Actually, Mr. Plummer, I think you had an
22 objection to one of them --

23 MR. PLUMMER: And then you modified it.

24 THE COURT: -- and I modified it. For the record, that was
25 the -- the instruction said:

1 The intention to kill may be ascertained or deduced from the
2 facts and circumstances of the attempted killing, such as the use of
3 a weapon calculated to produce death in the manner of its use and
4 the intended circumstances characterizing the act.

5 That instruction was modified to read:

6 The intention to kill may be ascertained or deduced from the
7 facts and circumstances of the attempt killing, such as the use of a
8 deadly weapon, the manner of its use in the intended circumstances
9 characterizing the act.

10 Is that correct?

11 MS. BEVERLY: Yes.

12 THE COURT: Is that correct, Mr. Plummer?

13 MR. PLUMMER: Yes, Your Honor.

14 THE COURT: Okay. Absent that, is there any objections to
15 the Court giving the -- what we've termed the undisputed jury
16 instructions?

17 MS. BEVERLY: Not from the State.

18 MS. MACHNICH: Not from Mr. Turner.

19 MR. PLUMMER: Not from Mr. Hudson.

20 THE COURT: Thank you, counsel.

21 Also, I received some packets entitled, Disputed. I'm going to
22 start with the State's proposed jury instructions, disputed.

23 The first one begins:

24 A conspiracy is an agreement between two or more persons
25 for an unlawful purpose.

1 Counsel, is there any objection to giving that instruction?
2 Defense.

3 MS. MACHNICH: Oh. No. I guess I'm -- is this one of the --

4 THE COURT: This is -- counsel, actually, in your proposed
5 instructions --

6 MS. MACHNICH: Ah. It's that one.

7 THE COURT: -- you had offered an instruction in lieu of that
8 instruction.

9 MS. MACHNICH: Ah. Okay.

10 THE COURT: So why don't we use -- we'll compare them
11 side by side --

12 MS. MACHNICH: Okay.

13 THE COURT: -- so that we make it faster.

14 MS. MACHNICH: It is -- so this is, like:

15 A conspiracy is an agreement between two more persons.

16 I know that Your Honor has made the decision to give the
17 State's in lieu of the defense proposed one. We believe that the defense
18 proposed one is a more direct version of saying the same concept, and
19 therefore we proffered that. But beyond that, we'll submit to
20 Your Honor's discretion.

21 THE COURT: Mr. Plummer?

22 MR. PLUMMER: Same, Your Honor.

23 THE COURT: Okay. I'm going to give the State's instruction.
24 In looking at Defendant's attorney proposed jury instructions disputed as
25 to the definition of conspiracy, in lieu of the State's instruction, I'm not

1 going to give Mr. Turner's jury instruction.

2 MS. BEVERLY: Thank you.

3 THE COURT: The next one is:

4 Each member of a criminal experience is liable.

5 It's my understanding that -- and then Mr. Turner also had a
6 instruction in lieu of the State's instruction. It's my understanding both
7 instructions were withdrawn.

8 MS. BEVERLY: Correct.

9 MS. MACHNICH: Correct.

10 THE COURT: Thank you.

11 The next instruction is during -- the State's instruction is:

12 During an attack upon, a group of defendants intent to kill may
13 not be directed at any one individual. It is enough is if the intent to
14 kill is directed at the group.

15 Defense, what's your position on giving that instruction?

16 MS. MACHNICH: Your Honor, on behalf of Mr. Turner, we
17 would object. I believe that those are not -- it's not the factual scenario
18 of this case. There was not a large group of people that was shot into.
19 That's not particularly the factual scenario and therefore the instruction
20 itself is confusing.

21 Additionally, we believe that transferred intent is covered by
22 other instructions given by the State and given by the Court, ultimately,
23 in the instructions. And thus, we would object to it and submit to the
24 Court's discretion.

25 THE COURT: Thank you, Counsel.

1 Mr. Plummer?

2 MR. PLUMMER: Your Honor, we have the same objection.
3 It's not the factual scenario in this case. In the *Ewell* [phonetic] case, the
4 defendant shot into a group of people, and there was two named
5 individuals as targets, in essence, attempted murder. In this case,
6 there's two named individuals. There is no other side group that was
7 shot into. We don't believe the factual scenario supports the instruction,
8 and, again, would -- though, if it supported it -- the case law says under
9 the other factual scenario, notice is given. We don't believe proper
10 notice is provided -- provided in this instruction. And with that,
11 Your Honor, again, the facts aren't the same. We object.

12 THE COURT: State, what's your position?

13 MS. BEVERLY: I mean, I know it's the State's position that
14 this is -- case is extremely similar to the *Ewell* case that we cited. In this
15 particular case, there's more than one person, more than one person is
16 a group. We're forgetting about the homeowners, who were actually
17 right in the back of the house as well. The defendant shot into that
18 house. The two officers were up at the door.

19 So I think given that, Your Honor, that this case, it's squarely
20 within your allowance to have that instruction.

21 THE COURT: And my recollection of the testimony from the
22 homeowners is they could actually see the molten -- I can't remember if
23 he said molten bullet or molten lead go by his head, I believe was the
24 testimony. I'll stand corrected, but I do remember him testifying. So I
25 am going to give this instruction. I do think the facts support this

1 instruction.

2 And then I believe the State had an additional instruction that
3 they submitted to me, and that was -- oh, I'm sorry, that was the
4 instruction that -- that -- where they cited *Ewell v. State*, 785 P.2d 1020,
5 the 1989 case.

6 Did the State have any additional proposed instructions?

7 MS. BEVERLY: No.

8 THE COURT: Thank you.

9 All right. Now, as to Defendant Turner's proposed
10 instructions, Turner had proposed an instruction -- Mr. Turner had
11 proposed an instruction:

12 There is no such criminal offense as an attempt to achieve an
13 unintended result.

14 State, what -- what's your position on giving that instruction?

15 MS. BEVERLY: The State's objection to that was that I
16 believe that is -- that instruction is covered by other instructions,
17 specifically, the specific intent instruction, and, specifically, the
18 instruction dealing with the fact that attempt murder and attempt burglary
19 are specific intent crimes and how someone can be guilty under aiding
20 and abetting a conspiracy liability. So we believe it's covered by other
21 instructions. Additionally, there are three different theories someone can
22 be convicted of. So with that, we'll submit.

23 THE COURT: Thank you, counsel.

24 Mr. -- counsel?

25 MS. MACHNICH: Your Honor, I believe this is the *Sharma*

1 instruction. And we submitted this because we believe that as a defense
2 theory, it was appropriately written with more of a factual scenario of this
3 case.

4 However, pursuant to discussions in chambers in the
5 settlement of instructions, Your Honor suggested that we put in a third
6 section, because conspiracy is charged in this case, and additionally
7 requested that the exact language from *Sharma* be used. And that that
8 is what we did submit per -- per the Court's order, and I believe that is
9 being given. And we'll submit on that.

10 THE COURT: And that's correct. I -- I am going to give a
11 modified version of this instruction. My ruling was that I would give that I
12 would give this instruction, I needed to track the language of *Sharma*.
13 And I believe that has some been -- that has been submitted. So I will
14 give a modified version of this instruction.

15 MS. BEVERLY: Thank you.

16 THE COURT: As to Mr. Turner's next instruction:

17 Before you may rely on circumstantial evidence to prove that a
18 fact necessary.

19 State, what's your position on this instruction?

20 MS. BEVERLY: The State's objection to that, Your Honor, is
21 that per the instruction regarding direct and circumstantial evidence are
22 to be treated exactly the same, this instruction is confusing and makes it
23 seem like you -- it actually is not treated equally, despite the fact that
24 they are. So with that, we object to that instruction.

25 THE COURT: Counsel, what's your position?

1 MS. MACHNICH: Your Honor, our position is that pursuant to
2 *State v. Supranovich*, which was cited in our authorities presented to the
3 Court, and I know that the Court has reviewed, we believe that it is a
4 correct statement of the law. And the Supreme Court stated that giving
5 it in its full form is appropriate. It is not required, as is noted in that
6 decision.

7 However, we believe given the facts that have come out in this
8 case, that this is not only a correct statement of the law, but is -- along
9 with the theory of defense.

10 That being said, we will submit to Court's discretion on the
11 issue.

12 THE COURT: Thank you. And I did review *State v.*
13 *Supranovich*, which is an unpublished opinion, which, basically, stood for
14 a proposition. If I do give this instruction, I'm going to give the complete
15 version. However, we're relying on *State v. Neill*. I believe other
16 instructions in the packet that's going to be provided to the jury
17 sufficiently cover this. And therefore, I'm not going to give this
18 instruction.

19 MS. BEVERLY: Thank you.

20 THE COURT: The next one is a conspiracy -- a conspirator:

21 A conspirator can withdraw from the conspiracy by taking
22 definite, decisive, and positive steps to associate himself from the
23 conspiracy.

24 State, what's your position on this instruction?

25 MS. BEVERLY: Your Honor, I believe this was from the *Fox*

1 case. The *Fox* instruction gave multiple ways. So we were just
2 objecting to the language in the proposed instruction. But it's my
3 understanding that that has been modified to quote the *Fox* language.
4 So with that, we'll submit.

5 THE COURT: Okay. Counsel, your position?

6 MS. MACHNICH: Our position is that while we did submit this
7 version, we were happy to submit the ordered revised language, which
8 is the language mirroring the *Fox* decision, in addition to the added
9 sentence, which was from the State's proposed version of this
10 instruction:

11 The State has the burden to prove beyond a reasonable doubt
12 that the defendant did not withdraw from the conspiracy.

13 So that was also added in the edited version that was
14 provided to the Court, and it is our understanding that that is being
15 given. So we will submit.

16 THE COURT: Thank you, counsel.

17 This instruction will be given as modified.

18 As to Defendant Hudson's proposed instructions, the first one
19 is justifiable battery.

20 State, what's your position on this?

21 MS. BEVERLY: Just for the record, the State's position on
22 this justifiable battery, as well as the self-defense instructions we'll talk
23 about soon, is that there is zero evidence of either justifiable battery or
24 self-defense in this case. So that's pretty much our objection. So we'll
25 submit for -- that's my whole argument for all of them, just FYI.

1 THE COURT: Thank you, counsel.

2 Mr. Plummer?

3 MR. PLUMMER: Your Honor, we believe that this is a proper
4 instruction under *Davis v. State*. The facts at trial came out that the
5 officers may have shot first.

6 Also, I believe there was testimony that Officer Grego-Smith,
7 when the door opened, moved forward with his gun shining in the
8 doorway, which could put somebody in a reasonable apprehension of
9 fear. And I believe the instruction is warranted.

10 THE COURT: Is this mainly offered as a theory of defense
11 instruction, counsel?

12 MR. PLUMMER: It is, Your Honor.

13 THE COURT: All right. And as counsel is aware, under
14 theory of defense, if there is weak or incredible evidence, the Court is
15 still inclined to give it.

16 So I am -- I do not believe this instruction was the correct
17 statement of the law. I ask that it be modified. I am going to give the
18 modified version of this instruction.

19 MS. BEVERLY: Thank you.

20 THE COURT: The next one offered by Mr. Hudson:

21 The defendant may assert a viable claim of justifiable battery
22 or self-defense against a law enforcement officer.

23 State, what's your position on giving this instruction?

24 MS. BEVERLY: I object to that instruction. I don't think it's a
25 statement of law. I think it's just a statement regarding facts. I don't

1 think it's a proper statement of any law. And so with that, I would object
2 to that.

3 THE COURT: Thank you.

4 Mr. Plummer?

5 MR. PLUMMER: Your Honor, I believe that the law is clear,
6 that police officers don't have a special status in certain circumstances.
7 And because the information is that they tried to attempt murder on a
8 police officer and substantial bodily harm on police officers, that in the
9 jury's mind that they will have some special status. And we believe the
10 Court should instruct that they don't.

11 THE COURT: Thank you, counsel.

12 I reviewed the authority that you cited and supported this
13 instruction, *Rosas v. State* and *Walker v. State*, and this does not appear
14 to be -- this instruction does not appear to be a correct statement as
15 indicated in those cases. The cases were more fact-based, dealing with
16 a law enforcement officer. Therefore I'm not going to give this
17 instruction. I feel other instructions sufficiently cover this aspect.

18 As to Mr. Hudson's next instruction:

19 Actual danger is not necessary to justify self-defense.

20 State, what's your position on this?

21 MS. BEVERLY: Well, as I noted earlier, I object to those in
22 general, but especially this particular instruction. I don't believe it is an
23 accurate statement of the law. *Runion* has made clear what the
24 self-defense instructions are. They can be modified for battery or for
25 attempted murder situations. However, *Runion* is very clear as to what

1 the instructions should be.

2 So as we talked about in chambers, if those instructions were
3 going to be given, I was going to ask that they be given directly from
4 *Runion*.

5 THE COURT: Mr. Plummer?

6 MR. PLUMMER: Your Honor, we also believe that the
7 Nevada Supreme Court has made it clear that the instructions are to be
8 tailored to each case and we are not to take specific instructions right
9 out of the cases as gospel. And because there's no model instructions
10 here in Nevada, we believe that the modification that we have submitted
11 was proper and that it should be given.

12 THE COURT: Thank you, counsel.

13 I reviewed the *Runion v. State* case. And while the
14 proposed -- while the instructions in *Runion* are sample instructions, and
15 other *Runion*, the Court is to -- is to tailor the instructions to the case, I
16 find that the more accurate statement of self-defense is to provide the
17 jury with the -- all the proposed samples as contained in *Runion*.
18 Therefore, I am going to give this instruction as modified.

19 MS. BEVERLY: Thank you.

20 MR. PLUMMER: Thank you, Your Honor.

21 THE COURT: The next one is:

22 If the injuries of what they are justified are excusable, the
23 person then guided shall upon his trial be fully acquitted and
24 discharged.

25 State, what's your position on this?

1 MS. BEVERLY: Just that I don't think we necessarily believe
2 that's an accurate statement, though I think it's the -- the self-defense
3 instructions should be the ones given by *Runion*, not something made
4 up that's outside of the scope of *Runion*.

5 THE COURT: Mr. Plummer?

6 MR. PLUMMER: Your Honor, I believe the instruction is
7 warranted under *State v. Milosevich*, and we'll submit on that.

8 THE COURT: Thank you, counsel. I actually read *State v.*
9 *Milosevich*, a 1918 case. I could find this proposition within that case.
10 Similar to my ruling dealing with the -- where I reviewed *Rosas v. State*
11 and *Walker v. State*, where I couldn't find the language in that instruction
12 and in either of those cases, I could not find this language or even this
13 proposition, necessarily, in *State v. Milosevich*. Therefore, I'm going to
14 not give the instruction.

15 Is there any other instructions which I have not covered that
16 were proposed by either party?

17 MS. BEVERLY: Not from the State.

18 MS. MACHNICH: Not from Mr. Turner.

19 MR. PLUMMER: No, Your Honor.

20 THE COURT: All right. So does -- do the parties have a copy
21 of the instructions to be given to the jury?

22 MS. BEVERLY: Yes, they do.

23 MS. MACHNICH: Yes, Your Honor.

24 MR. PLUMMER: Yes, Your Honor.

25 THE COURT: Okay. I will advise counsel, I've numbered the

1 instructions. And the last two had the number of 24 at the bottom of the
2 instructions. I had my law clerk just recopy and then fill out the
3 number 24 on the bottom.

4 MS. BEVERLY: Perfect. Thank you.

5 THE COURT: According to my numbering, there's 50
6 instructions; is that correct?

7 MS. BEVERLY: I believe so, Your Honor.

8 THE COURT: All right. Let's go through them.

9 All right. These will be the instructions I'm going to give to the
10 jury.

11 Instruction No. 1: It is now my duty.

12 Instruction No. 2: If in these -- I'm sorry -- if in these
13 instructions.

14 Instruction No. 3: An amended indictment. And
15 Instruction No. 3 is multiple pages.

16 Instruction No. 4: In this case.

17 Instruction No. 5: To prove that a defendant.

18 Instruction No. 6: A conspiracy is an agreement.

19 Instruction No. 7: It is not necessary.

20 Instruction No. 8: Evidence that a person.

21 Instruction No. 9: A conspirator can withdraw.

22 Instruction No. 10: The defendant aids and abets.

23 Instruction No. 11: Mere presence at the scene.

24 Instruction No. 12: The elements of attempt to commit a
25 crime.

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- Instruction No. 13: Every person who.
- Instruction No. 14: Every person who commits.
- Instruction No. 15: Attempt murder is the performance.
- Instruction No. 16: The intention to kill may be ascertained.
- Instruction No. 17: The defendant's state of mind.
- Instruction No. 18: In this case, the defendant are accused.
- Instruction No. 19: Battery means any wilful.
- Instruction No. 20: You are instructed that if you find either
defendant guilty.
- Instruction No. 21: Substantial bodily harm means.
- Instruction No. 22: You're instructed that if you find the
defendant guilty of attempt murder or battery.
- Instruction No. 23: A deadly weapon is.
- Instruction No. 24: If more than one person commits a crime.
- Instruction No. 25: Attempt burglary and attempt murder are
specific intent crimes.
- Instruction No. 26: Specific intent.
- Instruction No. 27: You're instructed that the doctrine of
transfer of intent.
- Instruction No. 28: If you believe at the time of the shooting.
- Instruction No. 29: During an attack upon a group.
- Instruction No. 30: Justifiable battery.
- Instruction No. 31: The battery of another.
- Instruction No. 32: A bare fear or death.
- Instruction No. 33: The right of self-defense.

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Instruction No. 34: Actual danger.
Instruction No. 35: If the evidence of self-defense.
Instruction No. 36: Although your verdict.
Instruction No. 37: In this case.
Instruction No. 38: The right of a person.
Instruction 39: To constitute the crime.
Instruction 40: The defendant is presumed innocent.
Instruction 41: Is the constitutional right of the defendant.
Instruction No. 42: You are here to determine if each
defendant.
Instruction 43: The evidence which you are to consider.
Instruction No. 44: The credibility or believability of a witness.
Instruction 45: A witness who has special knowledge.
Instruction 46: Although you are to consider only the
evidence.
Instruction 47: In your deliberation, you may not discuss.
Instruction 48: When you retire to consider your verdict.
Instruction 49: If during your deliberation.
Instruction 50: Now, you will listen to argument of counsel.
Are those all the instructions that the parties have submitted?
MS. BEVERLY: Yes, Your Honor.
MR. PLUMMER: Yes, Your Honor.
THE COURT: And, counsel, the self-defense instructions you
just asked, those were the instructions out of *Runion*, correct?
MS. BEVERLY: Correct.

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THE COURT: Thank you.

All right. Ladies and gentlemen, we're going to take a very short recess. And then I'm going to read the instructions to the jury, and then we're going to go into closing argument.

Oh, one last thing. I apologize. Counsel, approach.

These are the verdict forms that have been submitted. Are they the ones that I'm giving to the jury?

MS. BEVERLY: Yes.

MR. PLUMMER: Yes, Your Honor.

MS. MACHNICH: Yes, Your Honor.

THE COURT: No objection?

MS. BEVERLY: No objection.

MS. MACHNICH: No objection.

MR. PLUMMER: No objection.

THE COURT: Thank you. All right. We're going to be in a short recess for about five minutes, and then I'm going to bring the jury back in.

[Court recessed at 1:49 p.m., until 1:56 p.m.]

[Outside the presence of the jury.]

THE COURT: Counsel ready?

MS. BEVERLY: Yes.

MS. MACHNICH: Yes.

MR. PLUMMER: Yes, Your Honor.

THE COURT: This is the continuation of the jury trial in Case No. C-15-309578-1 and -2. *Plaintiff, State of Nevada, vs.*

1 *Defendants, Steven Turner and Clemon Hudson.* Record will reflect the
2 presence of counsel for the State, counsel for the defense, and the
3 presence of the defendants.

4 Counsel, at this point, I'm going to bring the jury back in, read
5 them the jury instructions, and we'll proceed directly into closing
6 arguments.

7 I do want just to notify you, my clerk advised me on the verdict
8 forms, because they don't have -1 and -2, then when he files them, he's
9 going to have to correct them. But as far as sending these forms back to
10 the jury, he says that will not be an issue.

11 MS. BEVERLY: Okay, thank you.

12 MS. MACHNICH: Thank you, Your Honor.

13 And, Your Honor, just briefly. It is our understanding that after
14 the jury comes in, in the gallery, there's going to be a lot of law
15 enforcement officers into the courtroom. And I believe that that is going
16 to be extremely intimidating to the jury that is considering a police officer
17 shooting case.

18 I realize this is an open courtroom, and anyone who can be
19 here -- I know that there have been family members here from both of
20 the defendants throughout this case. But the idea that numerous,
21 numerous officers are going to come into this gallery and stare at this
22 jury immediately before a case involving an officer-involved shooting and
23 an officer that was shot goes to the jury is extremely prejudicial. I need
24 to make a record on that at this point. And, obviously, we'll submit to
25 Your Honor's discretion on any remedy thereof.

1 But I anticipate this is going to be very apparent very shortly
2 that an extreme number of officers are going to come and sit in here
3 based on people who are outside, and that is very troubling to us.

4 THE COURT: Are the officers in uniform?

5 MS. BEVERLY: Yes. Judge, this is an open courtroom.

6 THE COURT: I understand.

7 MS. BEVERLY: The same way his family's been here the
8 whole two weeks we've been here, that multiple family members, and
9 we haven't said anything about that. This is an open courtroom. There
10 is no rule preventing them from being here.

11 THE COURT: All right. My only concern, quite frankly, is not
12 that they're here, that the jury is going to think that this is a security
13 issue.

14 MS. BEVERLY: Well, Judge --

15 THE COURT: That we're going to have multiple officers in the
16 courtroom because of some security issue that the defendants are --
17 so --

18 MS. BEVERLY: Judge, there hasn't been any security in here
19 the last two weeks.

20 MR. GIORDANI: There's no --

21 MS. BEVERLY: This is --

22 THE COURT: Okay. Counsel, I'm going to allow them in. I
23 will tell the jury, if you request, that this trial is a public forum and
24 anybody that -- can attend. And if there's any family members or police
25 officers in attendance, they're not here for security, but just to witness

1 the case.

2 MS. MACHNICH: Your Honor, the idea and the perception of
3 security is not our concern. It's the intimidation factor.

4 THE COURT: Okay. Then, I'm not going to give that
5 instruction then.

6 MS. MACHNICH: Correct. Yes. I would not request it.

7 MS. BEVERLY: Thank you.

8 THE COURT: Okay.

9 MR. PLUMMER: Your Honor, this is the first I'm hearing
10 about it also as far as a courtroom packed with police officers. I would
11 also make an objection. I believe this is a huge intimidation factor with a
12 courtroom packed with police officers with guns.

13 MS. BEVERLY: Judge --

14 MS. MACHNICH: Given the subject matter.

15 MS. BEVERLY: -- there is zero rule -- this is an open
16 courtroom. There are named victims in this case. I can bring who --
17 anybody who wants to come -- if my daughter wants to come, she can
18 come and sit in this courtroom.

19 THE COURT: All right.

20 MS. BEVERLY: It is irrelevant.

21 THE COURT: I -- again, this is a trial. It's a public forum that
22 can be attended by the public. We have transparency regarding trials.
23 So if the parties aren't concerned about the security issue, I'm going to
24 allow it. Thank you.

25 Bring the jury in, please.

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Counsel, approach.

[Bench conference transcribed as follows:]

THE COURT: If the State would -- if one of the State attorneys would go and advise the police officers of the concern of the defense and just make them aware that the defense is concerned that somehow they're going to be intimidating and --

MS. BEVERLY: That's fine. Just can you just make sure that they tell their clients' family not to do the same thing.

THE COURT: Can you tell your people too --

MR. PLUMMER: Yeah.

THE COURT: -- that they know --

MS. MACHNICH: Of course. Absolutely.

THE COURT: -- there are to be no --

MS. MACHNICH: And also --

THE COURT: -- intimidation by either side.

MS. MACHNICH: -- we'll inform ours. But if we can also inform everybody else, no clapping.

THE COURT: Okay.

MS. MACHNICH: I've actually had someone clap in the gallery.

MS. BEVERLY: That's not normal. That's not normal.

THE COURT: Okay. All right. Go -- both parties go -- go and inform them.

MS. MACHNICH: Just nothing.

THE COURT: You -- both parties.

1 MS. MACHNICH: I appreciate that. Oh, yes. No, she's --
2 she's going right now.

3 THE COURT: Thank you, counsel.

4 MS. SISOLAK: Yes, thank you.

5 [End of bench conference.]

6 THE COURT: Can I bring -- oh, no. Mr. Plummer went
7 outside.

8 Hold -- hold off for one second.

9 Is the jury outside?

10 MR. GIORDANI: Shouldn't the jury be brought in before we all
11 start talking?

12 THE COURT: Yeah, let's do that. Bring -- let's do that.
13 Thank you. Bring the jury in.

14 Tell Mr. Plummer to come in.

15 [Pause in proceedings.]

16 THE COURT: Okay. Mr. Plummer, I'm bringing the jury in.
17 Then you can -- then you can -- I'm going to bring the jury in.

18 MR. PLUMMER: Yes, Your Honor.

19 MS. MACHNICH: Understood, Your Honor.

20 [Jury reconvened at 2:03 p.m.]

21 THE COURT: You may be seated. Let the record the
22 presence of counsel for the State, counsel for the defendants, and the
23 presence of the defendants.

24 Will the parties stipulate to the presence of the jury?

25 MS. BEVERLY: The State --

1 MS. MACHNICH: On behalf of Mr. Turner, we would
2 Your Honor.

3 MR. PLUMMER: Yes, Your Honor.

4 MS. BEVERLY: Yes from the State.

5 THE COURT: All right. Are the parties prepared to go
6 forward with closing arguments?

7 MS. BEVERLY: Yes, we are.

8 THE COURT: Thank you.

9 [Jury instructions read.]

10 THE COURT: Counsel, approach.

11 [Bench conference transcribed as follows:]

12 THE COURT: Will counsel stipulate that all the jury
13 instructions were given to the jury?

14 MS. BEVERLY: Yes.

15 MR. PLUMMER: Yes, Your Honor.

16 MS. SISOLAK: Yes, on behalf of Mr. Turner, Your Honor.

17 THE COURT: Thank you.

18 MS. MACHNICH: Thank you, Your Honor.

19 [End of bench conference.]

20 THE COURT: The State -- is the State ready to proceed with
21 closing argument?

22 MS. BEVERLY: Yes, Your Honor.

23 THE COURT: You may proceed.

24 **CLOSING ARGUMENT BY THE STATE**

25 MS. BEVERLY: On September the 4th of 2015, Steven

1 Turner and Clemon Hudson attempted to break into the residence of
2 Willoughby Grimaldi and Eric Clarkson, and attempted to kill Officer
3 Grego-Smith and Officer Robertson by shooting directly at them with
4 high-powered weapons. And as a result of that, the defendants --
5 defendants in this case are charged with various crimes.

6 And we appreciate your time and your consideration here over
7 the last couple of weeks. You've heard a lot of evidence, you've heard a
8 lot of testimony, and we ask that you bring all of the exhibits back with
9 you to the jury deliberation room to give them careful consideration. And
10 the State is confident that by the time you finish deliberating, you will find
11 both Mr. Hudson and Mr. Turner guilty of all crimes.

12 Now, in every criminal case, the State has to always prove two
13 things: That a crime was committed, and that the defendant was the
14 person who committed those crimes.

15 In this particular case, we have five crimes: Conspiracy to
16 commit burglary; attempt burglary while in possession of a firearm;
17 Counts 3 and 4 are the attempt murder with a deadly weapon; and
18 Count 5, battery with use of a deadly weapon resulting in substantial
19 bodily harm.

20 And now, Judge Bailus just read to you a lot of jury
21 instructions. Okay. You will have that packet of information to take back
22 with you to the jury deliberation room to look through it as you need to
23 during deliberations. Okay. But it's important that we go through some
24 of those instructions as we're going through the crimes in this case to
25 make sure that we all have an understanding of the various theories of

1 criminal liability, how they apply in this case, as well as the actual crimes
2 in this case. Okay.

3 Under criminal law, a person can be liable for a criminal
4 offense under one or more theories of criminal liability. And there's three
5 of them. There's directly committing a crime, conspiracy theory, and
6 aiding and abetting.

7 And you heard all those instructions, but sometimes they
8 seem a little complicated. So as we go through those, I'm going to try to
9 give you some examples to hopefully make it simpler for all of us,
10 including myself. Okay.

11 So first way is directly committing a crime. I take a gun, I point
12 it at you, I fire; I'm directly liable for committing that particular crime.

13 The next one is conspiracy theory. That's an agreement to
14 commit a crime between two or more people.

15 And then lastly, aiding and abetting the commission of a
16 crime.

17 Okay. So let's talk about -- we'll talk about those theories, but
18 let's talk about, first, this instruction regarding specific and general intent,
19 because this becomes important as we talk about the crimes in this
20 case.

21 Specific intent is the intent to accomplish -- to accomplish the
22 precise act which the law prohibits. Okay. So what that means is that
23 when I do an action, I have to have -- intend a specific result.

24 So let's use the example in this particular case, which is
25 attempt murder and attempt burglary. I have to do something with the

1 intent to kill. Kill is the end result that I'm intending to do. Okay. I can't
2 do something with an intent to scare or intent to intimidate, because that
3 wouldn't be attempt murder.

4 Same thing with attempt burglary, I have to enter, which is the
5 act, with the intent to commit a felony, larceny steal, robbery, for
6 example. Okay. So you're intending the -- the end result.

7 In contrast, general intent is the intent to do that which the law
8 prohibits. But it's not necessary that we prove the intent to commit a
9 specific result. Okay. In this particular case, we're talking about battery,
10 Count 5, being the general intent crime. In a general intent crime such
11 as battery, all the State has to prove is that you have to intent to do the
12 actual act, not a particular result.

13 So if I punch you, all I have to prove is that I intended to punch
14 you. If somehow, you break your nose in that process, that's substantial
15 bodily harm, I'm still liable for battery with substantial bodily harm,
16 because I intended to hit you and there was additional results. Okay.

17 So in this case, Counts 1 through 4, conspiracy to commit
18 burglary, attempt burglary, and the two counts of attempt murder are
19 specific intent crimes, and Count 5 is our general intent crime.

20 So what is a conspiracy? Basically, it sounds complicated, but
21 it's just an agreement between two or more people to commit a crime.
22 Okay.

23 So as an example, and I'm going to use this example as we
24 go throughout, Mr. Giordani and I decide that we're going to rob a bank.
25 Okay. Now, unfortunately, it's not like TV, where there's going to be all

1 these notes or text messages or e-mails between Mr. Giordani and I
2 saying, Okay, this is -- we're going to rob the bank on this day. We're
3 going to go at this time, etcetera, etcetera. Okay. If it was that easy, I
4 mean, that would be every case. Okay.

5 So what the law says is that it's not necessary in proving a
6 conspiracy to show some making of an express or formal agreement.
7 Okay. The formation of a conspiracy can be inferred from the facts and
8 circumstances of a crime. Okay.

9 I wish that we could open up people's minds and see what
10 they're thinking in the exact time period, but that's simply not possible.
11 So the law takes that into consideration and says, Look at the
12 circumstances, look at people's conduct, look at their work, look at their
13 behavior to infer the making of this agreement. Okay.

14 And let's use an example of that. Mr. Giordani and I decide
15 that we're going to rob a bank. No notes, no e-mails, nothing like that.
16 But the facts that you do have is that Mr. Giordani and I get in a vehicle,
17 we drive over to the bank on First Street, we walk in there together with
18 a couple of guns. Mr. Giordani goes to the teller and says -- demands
19 the money. I tell people, Get on the ground. He gets the money. He
20 gives it to me. We run out of the bank, get in the car, take off. Okay.

21 Those facts and circumstances and conduct demonstrate that
22 we had an agreement to rob this bank. Okay. We don't have any notes,
23 we don't have any e-mails, but what we have is our coordinated series of
24 acts showing our conduct, and that proves a conspiracy. Okay.

25 One other thing to know about conspiracy is that mere

1 knowledge or approval of a criminal act doesn't make you liable as a
2 coconspirator. Okay. Again, we look at the conduct of the parties.

3 Using that same example, Mr. Giordani tells me, You know,
4 Ms. Beverly, I'm going to rob a bank tomorrow. And I'm like, Well,
5 sounds like a good idea, go for it. Okay.

6 That's it. I don't do anything else. I don't make an agreement
7 with him. I don't try to help him in any way. I don't want to participate
8 whatsoever. I just think it's a good idea to rob a bank. Okay.

9 I'm not going to be liable as a coconspirator. Okay. Only he's
10 going to be liable for committing that act.

11 So again, what the law says is that we look at the coordinated
12 series of acts, we look at conduct, to help determine that conspiracy.

13 Going back to that specific intent, this instruction sounded a
14 little confusing, but really, what this means is that for the specific intent
15 crimes in this case, both coconspirators have to have the required intent.
16 So for the attempt murder, the attempt burg, both Mr. Hudson and
17 Mr. Turner have to have the intent to kill and they both have to have the
18 intent to commit a felony or a larceny or robbery for the burglary. Okay.

19 However, for general intent crimes, as long as the crime that's
20 committed is a probable and natural consequence of the original plan,
21 you're liable for that. Okay.

22 Best example I can use in that is -- let's go back to this bank
23 robbery. Mr. Giordani and I, we go over to that bank. The plan is to rob
24 the bank. The robbery starts. Somebody who's in the bank, the
25 customer, decides to fight back. Okay. And I shoot that customer in the

1 leg. That's a battery with substantial bodily harm. Okay.

2 Mr. Giordani is still liable for me shooting that customer. And
3 the reason for that is because it is a natural and probable consequence
4 of a robbery that someone's going to get hurt. Okay. Because the
5 general nature of our original plan, which was a robbery, the general
6 violent nature of that, the likelihood of someone getting hurt, is very
7 possible; so he's going to be liable for that even if that wasn't part of the
8 original plan. Okay. Does that make sense to everybody? Okay.

9 So let's talk about aiding and abetting and what that means.
10 Again, it sounds complicated, but it's really not. You assist somebody in
11 committing a crime by advice, by words, by actions, with the specific
12 intent that that crime be committed. Okay.

13 Using an example of our bank robbery, Mr. Giordani tells me,
14 Ms. Beverly, I want to rob a bank. And I say, Okay, that sounds like a
15 good idea. I'm not necessarily making an agreement to -- with you, but
16 I'm going to help you rob that bank. Okay. Because actually, I used to
17 work at that bank and they just recently fired me. So I don't really like
18 that bank, and I think that that bank should be robbed.

19 So I'm, like, Hey, Mr. Giordani, you know, since I used to work
20 there, I know when the money is going to be dropped off, and I know
21 what teller it gets dropped off to. I know what time the bank opens. I
22 know the blueprint of the bank. Here's all this information. Go rob the
23 bank, because I want the bank robbed too. Sure enough, he goes out
24 and robs the bank. Okay.

25 I am liable as if I directly committed the crime. Okay.

1 Because I helped him by advice, by words, because I wanted the bank
2 robbed too. And that's what the law tells us is that an aider and abettor
3 in a crime is treated the exact same as if you directly committed a crime.
4 Same thing with a coconspirator. Okay.

5 One other thing to know about aiding and abetting is that you
6 can't just be a mere spectator. You have to actually do something to aid
7 in the commission of the crime. All right.

8 As an example -- excuse me -- Mr. Giordani are driving down
9 the street. He tells me, Hey, I want to -- I'm going to rob the bank. Pulls
10 over to the side of the road, and I'm kind of like, I don't know what's
11 happening. He just told me he's going to rob the bank. I'm sitting in the
12 car. He goes in and robs the bank, hops in, and takes off. Okay.

13 I have literally done nothing to help him other than being
14 present and knowing he was going to be the bank. Okay. There has to
15 be more than that.

16 But what the law tells us is that we look to the surrounding
17 circumstances to see what someone's intent is, to see if they were an
18 aider and abettor. Their conduct before and after the crime, their
19 presence at the scene, all those factors that you can take back and look
20 at when you're looking through your jury instructions. Okay.

21 Let me go back for one second.

22 Now, I want to be clear about this particular case. In this
23 case, all of the evidence supports that Mr. Turner and Mr. Hudson
24 directly committed these crimes. Okay. But you can find them guilty
25 under any theory of liability. I submit to you they both had guns, they

1 both directly committed this crime; but just so you know, you can find
2 them guilty under either of these three theories that we just talked about.

3 I also want to direct your attention to the transferred intent
4 instructions. Okay. And what that says is that if you have the intent to
5 kill, it doesn't matter who you actually injure. Okay.

6 An example, Mr. Giordani and I decide we're going to go over
7 to Suzy Q's house. Okay. We bring our weapons. We go up to Suzy
8 Q's door. The door opens. We fire at her, because we're intending to
9 kill her. Turns out it's actually not Suzy Q behind that door, it's Suzy's
10 poor 90-year-old grandma who's visiting. She goes down. She doesn't
11 die. Okay. But she's injured. We are both liable still for attempt murder
12 on Grandma, because it doesn't matter who you intend to kill as long as
13 you intend to kill someone. Okay.

14 Lastly, you all do not have to agree on the same theory of
15 liability. Maybe one person believes they directly committed the crimes,
16 maybe another person believes it's a conspiracy or aiding and abetting,
17 as long as you find them guilty under one theory or more. Okay.

18 So let's start talking about the crimes in this case. The first
19 one would be conspiracy to commit burglary. I don't think that anyone is
20 going to get up here and tell you that they are not guilty of conspiracy to
21 commit burglary. In fact, both Mr. Hudson and Mr. Turner's attorney,
22 when they got up in opening statements, said find them guilty of
23 conspiracy to commit burglary. Okay.

24 But just a quick review of the testimony regarding that from the
25 homeowner, remember Eric and Willoughby. It's 3:30 in the morning.

1 There was more than one person out there casing the house, running
2 around. There's noise on the back patio.

3 And I refer you to that 911 call. You'll have that to take back
4 with you and play it if you so desire. This is going on for a period of time
5 before the officers even being there. So this whole time, Mr. Turner and
6 Mr. Hudson are back there trying to figure out how to get into this house.
7 They're jumping over walls, it's the middle of the night, and they're
8 bringing high-powered weapons. The only reason you go to someone's
9 house at 3:30 in the morning with guns is because you're intending to
10 burglarize them. Okay. That's just logic.

11 What does Mr. Hudson say about this? The plan was to go to
12 the house to rob the people of some weed. He meets up with someone,
13 Mr. Turner. They go to the house together. They've checked out this
14 house the week before.

15 What does Mr. Turner say? He went to that house to do a
16 dope -- he knows the homeowner. He knows the homeowner has
17 marijuana there. He's with Mr. Hudson riding in that car. They hop in
18 the backyard. Okay.

19 All of those acts, those coordinated series of acts, all show
20 this agreement to go over there for an unlawful purpose. All right. So I
21 ask on your jury verdict form that you check guilty for both defendants of
22 conspiracy to commit burglary.

23 Then we have the attempt burglary while in possession of a
24 firearm. Okay. Again, I don't think that anyone is going to come in here
25 and tell you that they are not guilty of attempt burglary. All right. But just

1 to be clear, because we have another attempt crime later on, the
2 elements of an attempt to commit a crime are the intent to commit the
3 crime, performance of some act towards it, and, basically, it fails to be
4 completed. All right. That's why it's called an attempt.

5 Burglary is just entering any building with intent to commit
6 larceny or robbery. A lot of people think that burglary -- in order for there
7 to be a burglary, you have to break something in someone's house or
8 take the door off the hinges or do something to actually break into the
9 house. That's not what the law says. Breaking is not an element. All
10 you have to do is enter with the intent to commit a crime. Okay.

11 And lastly, if you get a firearm or possession of a deadly
12 weapon at any point during the commission of the burglary or attempt
13 burglary, you're now liable for attempt burglary while in possession of a
14 firearm.

15 So where's the attempt to enter to commit larceny or robbery
16 in this case? Well, we know that Mr. Hudson and Mr. Turner, based on
17 the evidence, are back on that patio trying to get into the house. Okay.
18 They're moving stuff around, they're checking doors, they're checking
19 windows, trying to figure out how to get into this house at 3:30 in the
20 morning. There's metal chairs moving around. They're close to that
21 back door when the door opens.

22 And remember that 911 call. They're back there for a
23 significant period of time trying to figure out how to get in the house.
24 Remember, some of the doors are locked. The windows, if you can see
25 in those photos, have kind of bars on them; so they're trying to figure out

1 how to get in there.

2 Both Mr. Turner and Mr. Hudson say the plan was to go over
3 to the house to rob them of marijuana. Okay. That's an attempt
4 burglary. They just didn't get in the house, because they decided to fire
5 into the house.

6 Mr. Hudson admits to twisting the side door of the house, but it
7 was locked. He admits to checking out particular areas of the house.

8 Mr. Turner -- remember, Mr. Clarkson, the homeowner, knows
9 Mr. Turner. Okay. And remember he testified last week that nobody
10 called him and told him they were coming over. Nobody sent them a
11 text saying it was coming over. Mr. Turner was there to do a dope raid.

12 So how do we know that Mr. Turner and Mr. Hudson had
13 weapons during this attempt burglary? Well, let's start with Mr. Hudson.
14 Okay. He told you he had both this little gun and this shotgun. His
15 fingerprints are on that shotgun. His DNA is on the hat that's found in
16 the backyard.

17 And again, you'll have all of the exhibits to take back with you.
18 It's a lot. Flip through them as you see fit, but you have all of that to take
19 to look at.

20 And remember Willoughby's testimony that the person cocking
21 the shotgun in the backyard had on a hat. Sure enough, there's that hat
22 with Mr. Hudson's DNA on it.

23 And remember the canine officer's testimony that Mr. Hudson
24 is laying right there, there by that shotgun, when he ends up being taken
25 into custody. Okay.

1 Let's talk about Mr. Turner for a second. How do we know he
2 had a gun? Well, he told you, conveniently, that gun belonged to his
3 uncle. I don't know how Mr. Hudson would possibly have access to
4 Mr. Turner's uncle's gun. Okay. So the only logical conclusion is that
5 Mr. Turner brought that gun as part of this conspiracy to break in this
6 house. Okay. He knew that gun was in the car. He's on the patio when
7 those shots come out, same place where those rifle casings are found.
8 And, remember, he has that wound to his left calf with that fragment.
9 Okay.

10 The plan is, Mr. Hudson, you bring that shotgun. Mr. Turner,
11 you bring that SKS. And that's what the evidence supports.

12 This is an instruction I really ask you to pay attention to, and it
13 talks about coconspirators and use of a deadly weapon. Okay. And
14 what the law says is that each person who's part of conspiracy can be
15 convicted of using a deadly weapon, even though he did not personally
16 himself use the weapon, if you find that he aided and abetted or
17 conspired to commit the offense. An unarmed defender uses a deadly
18 weapon when the unarmed defender is liable for the underlying offense
19 under aiding and abetting or conspiracy, another person who's liable
20 uses a deadly weapon, and the unarmed person has knowledge of the
21 deadly weapon. Okay.

22 Again, I submit to you that each of them had a gun; Mr. Turner
23 had the SKS and Mr. Hudson had the shotgun.

24 But even if, for some reason, let's just say for the sake of
25 argument, you believe that one of them didn't have a gun, they are both

1 still liable for attempt burglary while in possession of a firearm.

2 MS. MACHNICH: Wait. Your Honor, may we approach just
3 briefly? I apologize.

4 THE COURT: You may.

5 [Bench conference transcribed as follows:]

6 MS. MACHNICH: I don't think that that's the correct
7 application of this. This is while in possession of a firearm and not uses
8 a deadly weapon. It's not the same terminology used in both
9 instructions.

10 THE COURT: I'm sorry, I can't hear you.

11 MS. MACHNICH: Oh, sorry. I don't believe that it's the same
12 terminology used. The instruction that was proffered by the State and
13 given to the jury is -- what's up there is an unarmed defender uses a
14 deadly weapon.

15 This is not use of a deadly weapon. This is while in
16 possession of a firearm. It is an attempt burglary while in possession of
17 a firearm, and those are specific intent offenses.

18 I don't believe that the uses coconspirator liability applies to
19 this.

20 MS. BEVERLY: I believe it absolutely does apply to this,
21 Your Honor.

22 THE COURT: Is that the instruction that was given to the
23 jury?

24 MS. BEVERLY: Yes.

25 THE COURT: That's the instruction that was given to the

1 jury?

2 MS. BEVERLY: That is the exact instruction.

3 MS. MACHNICH: Yes.

4 THE COURT: And what's your position?

5 MS. MACHNICH: Uses -- this is not a -- with use of a deadly
6 weapon charge, the battery and the attempt murder are.

7 THE COURT: But that was the instruction that was given to
8 the jury.

9 MS. MACHNICH: Correct.

10 MS. BEVERLY: Yes.

11 THE COURT: Which you have stipulated to.

12 MS. MACHNICH: But this is not correct. Uses a deadly
13 weapon. This is not with use of a deadly weapon; this is while in
14 possession of a firearm. It's different wording in the charge. It's not the
15 same wording. It's not the same intent from the statute. It's possession
16 of a firearm, not use. I agree that that is correct with the other three
17 charges, but I don't believe that that's correct for while in possession of a
18 firearm.

19 MS. BEVERLY: I mean, it's the State's position that it
20 absolutely applies. It's coconspirator liability. It applies. And I can
21 move on, but it's our position --

22 THE COURT: All right. Why don't you move on, counsel.

23 MS. BEVERLY: Okay.

24 THE COURT: Thank you.

25 MR. PLUMMER: I agree with your objection.

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[End of bench conference.]

MS. BEVERLY: So we're going to ask that you find both Mr. Hudson and Mr. Turner guilty of the attempt burglary while in possession of a firearm. Okay. They both had those guns.

Let's talk about attempt murder for a second -- well, not for a second -- for a little while. Okay.

Attempt murder is the performance of an act which tends but fails to kill a human being when someone has the specific intent to kill. Okay.

Again, we can't open up people's minds and figure out what they're thinking at a particular point in time. So the law allows us to use facts and circumstances, including the type of weapon used, and all other circumstances produced by the evidence. Okay.

MR. PLUMMER: Your Honor, may I approach?

THE COURT: Yes.

[Bench conference transcribed as follows:]

MR. PLUMMER: You've ruled that that language to calculate or to produce death in the instruction was removed. It's not removed on this slide.

THE COURT: That's correct.

MS. BEVERLY: I'm sorry. I've changed the slide. I'm sorry.

THE COURT: Okay.

MS. BEVERLY: That was a clerical error.

THE COURT: I agree. The objection is sustained.

MS. BEVERLY: Okay.

1 THE COURT: I'm going to tell them to disregard that last
2 comment.

3 MS. BEVERLY: Okay.

4 MR. PLUMMER: Thank you, Your Honor.

5 [End of bench conference.]

6 THE COURT: Ladies and gentlemen, I'm instructing you to
7 disregard the last comment by the deputy district attorney.

8 MS. BEVERLY: Ladies and gentlemen, I submit to you we
9 can -- well, the law says you can infer intent from the facts and
10 circumstances of the crime. Okay.

11 I submit to you that at 3:30 in the morning, when you go over
12 to someone's home in the darkness of night, in the undercover
13 blackness of night, with a high-powered weapon, and you see the door
14 open and you fire directly at the people behind the door, that is attempt
15 murder with use of a deadly weapon. There is no other conclusion that
16 is possible. Okay.

17 Let's talk about all the facts that talk about attempt murder.
18 We know three guns involved in this case, first one being that small
19 pistol. Mr. Hudson had that. Okay. Loaded. Remember the testimony
20 of the firearms expert: Loaded gun.

21 Next gun, shotgun, loaded. Fully loaded, one in the chamber.
22 Okay.

23 Third gun, that SKS. Loaded, one in the chamber.

24 There is no reason that you bring loaded firearms unless you
25 are intending violence. Okay.

1 If, really, the plan was just to go over there and steal some
2 marijuana, you don't bring loaded firearms. Okay. Mr. Turner, let's not
3 forget, knows who lives in that house. I don't believe that Eric Clarkson
4 or Willoughby Grimaldi are in any way intimidating where you need to
5 bring weapons to their house at 3:30 in the morning. Okay. If they were
6 just there to simply steal some weed, it's not necessary. Okay. The
7 only reason you do that is because you're intending to hurt someone.

8 What else do we know? That shotgun, an SKS, are fired as
9 soon as that door opens. Okay. And what that means is that those
10 guns are being aimed at that door, because when that door opens, there
11 is no, Hey, put your hands up, I'm here to steal weed from you. There's
12 no time of racking, because someone's not cooperating inside and
13 giving you their weed.

14 Instant. Okay. Because they're ready. The guns are loaded
15 and they're ready to be fired upon on whoever is behind that door.
16 Okay. And in this case, it's Officer Robertson, and it's Officer
17 Grego-Smith. And poor Willow and Eric are back hiding. Okay. Trying
18 to get out of the way.

19 And where do those rounds go? Well, the first round goes into
20 the house, through Officer Robertson's leg. And you'll have his medical
21 records. They're huge. You can take them back with you. But I submit
22 to you that it's a through-and-through shot from a high-powered rifle.
23 Okay.

24 And where does it go? Right across the living room after
25 coming out of his leg, through that metal door, and outside. And you

1 have that picture where that bullet went through.

2 Where does the shotgun blast go? Through that house, into
3 that window by the front door, exploding. Okay. Shattering that glass.
4 Pellets all over the floor -- so many, CSA Robbie Dahn couldn't even
5 count them. Tons of them, all over that living room.

6 And what do we know? Those guns go through that small
7 area of the doorway. Okay. There's no damage to the walls. There's
8 no damage to the side patio walls. They go straight through. And what
9 does that mean? That means those guns are aimed at that doorway,
10 and they're aimed at whoever's coming to open that door.

11 If you remember how Willow and Eric, who are standing in
12 their home and are watching this unfold, describe this incident, okay, two
13 different caliber of bullets coming through, inches from their head. Okay.
14 Even closer to Officer Robertson and Officer Grego-Smith, because they
15 happen to be behind that door.

16 Willow says one of them is like a shooting star, straight
17 through my living room. The other one was like fireworks exploding in
18 my living room. And remember, it's dark in there; so they can see what
19 this is looking like.

20 But that doesn't end there. Two more shots from that SKS
21 rifle. Okay. And you'll have these diagrams to take back with you, and
22 what I have circled is where the cartridge cases from that SKS were
23 located. Okay.

24 Mr. Turner is firing as he's backing up and then away. So one
25 shot wasn't enough. He continues to fire. And where do those shots

1 go? That's the casing, one of them. There's three of them. You have
2 those photos to take back with you.

3 Let's go back. Where do those shots go? One into the TV,
4 one into the back of the chair. Okay. We know those shots came from
5 the SKS, and we know that because all of Officer Grego-Smith's bullets
6 went through that spining. Okay. 12 holes, 12 casings, 12 shots from
7 Officer Robertson.

8 So Mr. Turner, one shot wasn't enough. He continues to
9 shoot. Why? Because he's trying to kill. It wasn't enough that that first
10 shot already went into Officer Robertson. Okay.

11 So again, both of them directly committed the crime of attempt
12 murder. Okay. Because there is no other explanation for why you
13 would be shooting into a house.

14 What else do we know? There's a car outside the residence,
15 parked in front of the house. Okay. Let's not forget Mr. Turner has been
16 over to this house. He claims it's a couple of times. You heard Eric's
17 testimony. He was over there multiple times throughout the year. Okay.
18 Sometimes a couple times a week. So he knows what's going on with
19 this house. He knows the people that live there.

20 It's 3:30 in the morning. The people are at home. There's a
21 car in the driveway. Yet still, those guns are brought into the backyard
22 of that house, loaded, ready to be fired. And the only explanation for
23 that is because they intended to kill and they intended violence. They
24 know someone is home. Mr. Turner told you there's someone home.
25 There's a car in the driveway.

1 And Mr. Hudson says, Oh, when I checked out the house the
2 week before, didn't go in, because there was someone home. There
3 was a car in the driveway. Yet on September 4th, there's also a car in
4 the driveway. Okay. He knows somebody's home. Yet still, they go
5 back there.

6 How do we know it's Mr. Turner and Mr. Hudson back there?
7 Okay. All of the evidence in this case supports two people. Okay. Let's
8 start with that radio traffic, which you will also have to take back with
9 you. What does Officer Robertson say seconds within getting shot by
10 this high-powered rifle? I saw two people, and I was shot with a rifle.

11 What else do we know? Remember that diagram? You'll
12 have this map to take back with you as well. Two stars right up against
13 that window. Two people.

14 And who were those two people? Mr. Turner and Mr. Hudson.
15 Okay. That window, right up there, right up against that window, when
16 they start firing.

17 What did Mr. Turner say? When I got to the point where the
18 patio and the TV is, the shots started. What does Mr. Hudson say?
19 Both are standing by the window when the shots come out, when they
20 start shooting. Okay.

21 During both of their interviews, they are given multiple
22 opportunities to put the blame on somebody else. Okay. Let somebody
23 else deal with the fact that you guys opened fire into a structure and
24 intended to kill someone. And they both adamantly denied there being
25 any third person involved in that backyard.

1 What else do we know? Again, Mr. Hudson has that firearm.
2 He fires the one shot. His prints are on the gun. He's wearing that
3 beanie. That shotgun is cocked. Okay. Mr. Turner -- again, the gun
4 belongs to his uncle. He described that gun to a tee. There is no one
5 else involved.

6 Let's not also forget that when this 911 call -- or, actually, the
7 radio traffic comes out that there's shots fired, remember that the
8 Las Vegas Metropolitan Police Department began to swarm the area.
9 Okay. They set up a huge perimeter as you heard described.
10 Over 200-plus officers. And yet, only two people are apprehended:
11 Mr. Hudson in the backyard, and Mr. Turner less than half a mile from
12 that house. You have that surveillance video too, tracking his path.
13 Okay.

14 Two people, two cell phones in that car you heard described
15 earlier this week, two guns fired, two people. Who are they? Mr. Turner
16 and Mr. Hudson. And let's not forget that fragment that comes from the
17 SKS round exploding in Mr. Turner's leg.

18 Officer Grego-Smith and Officer Robertson survived because
19 of a miracle, not because of some lack of trying by Mr. Hudson and
20 Mr. Turner. Okay.

21 We ask that you find -- check on your box on the verdict form
22 guilty of attempt murder with use of a deadly weapon for both Officer
23 Grego-Smith and Officer Robertson, because they are the people that
24 were behind the door.

25 Last but not least is battery with substantial bodily harm -- or

1 deadly weapon resulting in substantial bodily harm. Okay. Battery is an
2 unlawful -- excuse me -- willful and unlawful use of force or violence
3 upon the person of another.

4 I don't think anyone's disputing that a battery occurred on
5 Officer Robertson. He was, obviously, struck by that bullet. I don't think
6 anyone's going to dispute that substantial bodily harm occurred in this
7 case. I mean, his medical records are voluminous. He said on the
8 stand, I think it was last Friday, talking about for over 10 minutes his
9 injuries and how even today he has lasting injuries. Okay. You know,
10 there is a picture of him, unfortunately, how badly he was injured.

11 And we know that the bullet that struck him was that round
12 from the SKS. Okay. From Mr. Turner.

13 Now, again, the only reason that you fire at someone when
14 the door opens is because you're intending to use unlawful force against
15 them, right? And as a result -- remember this is a general intent crime --
16 he had suffered substantial bodily harm.

17 Remember we talked about this instruction earlier, that a
18 coconspirator is liable for the natural and probable consequences of the
19 outcome of the conspiracy. Again, we already talked about how there
20 was this conspiracy to commit burglary. It is a natural and probable
21 consequence of that, that someone's going to get injured.

22 So Mr. Hudson, while his shotgun blast didn't actually hit
23 Officer Robertson, he's still liable for the battery with a deadly weapon
24 resulting in substantial bodily harm. Number one, it's just a miracle his
25 shot then didn't hit Officer Robertson. It wasn't because of a lack of

1 trying on his part. Okay. It just so happened to miss -- miss him. But
2 he's still liable, because Officer Robertson actually was hit by his
3 coconspirator, Mr. Turner, firing that gun.

4 And again, this -- an unarmed person can still be convicted of
5 using a deadly weapon if they have knowledge of it and they're liable for
6 the underlying events. He's definitely liable for the battery, because it's
7 a natural and probable consequence, and he knew they had those guns
8 back there.

9 I mean, this is not some, like, secret where this happened and
10 they just kind of showed up at the same time. They rode over there
11 together. They had guns in the back of the car. I mean, they had been
12 over there the week before. This is not some, you know, quickly
13 put-together plan. All of this was -- was planned out.

14 Mr. Turner and Mr. Hudson opened fire on September the 4th
15 of 2015 because they intended to kill. There is no other conclusion. The
16 State has proved this beyond a reasonable doubt. The evidence in this
17 case is overwhelming, and we ask that you convict both of them of all
18 five charges. Thank you.

19 THE COURT: Defense, are you prepared to go forward with
20 your closing argument?

21 MS. MACHNICH: Yes, Your Honor. Although we do need to
22 connect to the wireless presentation software.

23 [Pause in proceedings.]

24 MS. MACHNICH: The software is working, Your Honor.

25 [Pause in proceedings.]

1 THE COURT: Counsel, do you need the lectern moved
2 towards the jury?

3 MS. MACHNICH: I don't. I won't use a demonstrative.

4 THE COURT: Thank you.

5 MS. MACHNICH: Thank you, Your Honor. May I proceed?

6 THE COURT: You may.

7 **REBUTTAL CLOSING ARGUMENT BY DEFENDANT TURNER**

8 MS. MACHNICH: Thank you.

9 All right. Good afternoon, ladies and gentlemen of the jury.

10 Steven Turner goes along for the ride. That night, Steven was
11 in to steal some weed. But as soon as things got violent, both literally
12 and figuratively, Steven was out.

13 So let's consider what Steven did in this case. Just as the
14 State said, he did conspire to burglarize that house. That's absolutely
15 true. And as we said in opening, it's not something that he contests.

16 Additionally, he did attempt to burglarize that house. Either
17 directly or under an aiding-and-abetting query, as the State directed, he
18 didn't have to actually physically be the one trying to get into the house
19 or have gone that close. But he certainly went over there to do that.
20 And because of that, he is guilty of attempt burglary.

21 So the close of evidence and after all of the closing arguments
22 you're going to hear, we're going to ask that you correctly find him guilty
23 of conspiracy to commit burglary and guilty of attempt burglary.

24 So what happened that night? First, as you heard, Steven
25 was at home with his family when Hudson calls, and they go out to take

1 some weed.

2 MR. GIORDANI: Objection. That misstates the testimony.
3 Hudson didn't call him.

4 THE COURT: Counsel, approach.

5 [Bench conference transcribed as follows:]

6 MS. MACHNICH: Hudson did call him. Your Honor, my --

7 THE COURT: What is the stated evidence? Did Hudson call
8 him, or did he call him?

9 MS. MACHNICH: I believe they each say the opposite.

10 THE COURT: Huh?

11 MS. MACHNICH: I believe they each say the opposite.

12 THE COURT: Okay. It's argument, I'm going to allow it.

13 MR. GIORDANI: Okay. They don't say [indiscernible].

14 MS. MACHNICH: They do. He doesn't even --

15 THE COURT: It's argument, counsel.

16 [End of bench conference.]

17 THE COURT: Overruled.

18 MS. MACHNICH: Thank you, Your Honor.

19 Then Mr. Hudson comes and picks Steven up, and he drives
20 that night. How do we know that? Well, we know that Hudson drives
21 and Steven rides, because we have a car that's parked in front of that
22 house. And that car is a car that is registered to Hudson's mom.

23 We know that he came in that car. We also have his own ID.
24 He drove it there that night. That's why it was still sitting there after the
25 police arrived.

1 We also know that Steven rode with Mr. Hudson, because
2 there are three videos of Steven walking that night. And you're going to
3 see these. There are three videos with multiple views each, and they
4 show him walking away from the house.

5 Now, you can use your common sense. If he had driven in a
6 different car or something like that, he would have gone to that car. He
7 wouldn't have walked across the neighborhood and stayed in the area.

8 Additionally, Steven is found on foot. He's found walking
9 with -- a couple hours later within about that mile radius that the police
10 talk about. He's there. He's not able to leave, and that's why he doesn't
11 leave.

12 Okay. There we go.

13 Additionally, Steven's phone was in Hudson's car. And you
14 heard the officers testify to that, or CSAs, about they found two cell
15 phones within Hudson's car when they did execute a search warrant on
16 it, and one of those returned to a relative of Mr. Turner.

17 Now, we know that Hudson had the guns and he brought the
18 guns. How do we know that? You heard testimony that Steven saw
19 them in the back of the car and that he recognized his uncle's gun in the
20 back of the car. Hudson admits to having the shotgun and the Beretta.

21 And let's look at the pictures from the search warrant of
22 Hudson's car, because in the glove box, there's actually a magazine
23 belonging to a firearm. The Beretta, an unidentified firearm, perhaps
24 carried by one of Hudson's coconspirators? I don't know. And a bullet,
25 a round that, as you will note when you have all of the evidence, looks

1 very similar to the rounds that were found in the SK -- sub-high-powered
2 rifle that the State was talking about.

3 And just how we go to recognizes his uncle's stolen gun, that
4 was in the statement that was made, a gun that had gone missing. You
5 can infer that someone who would come over and pick someone up to
6 go steal some weed might also know where someone's uncle lives, if
7 they live in the immediate area.

8 Additionally, when they find Hudson in the backyard, the
9 Beretta is found there at Evidence Marker 3, and the other two weapons
10 are found within close proximity to where Hudson is found. This is 1
11 and 2, and you'll see these.

12 And right there, right where Hudson is located on the patio
13 where Loki first attaches is a round of the SK or a spent shell from a
14 round of the SK.

15 One second.

16 And we also know that no one sees Steven. No one sees --
17 no one sees Steven.

18 Now, this is what Steven was wearing that day.
19 Mr. Clarkson saw one African-American man with an afro.

20 I love technology.

21 Clearly, as you can see, this picture, same as this picture,
22 Mr. Turner does not have an afro. He has maybe a one, maybe a two,
23 probably a one shave on his hair. Clearly never going to be shown as
24 an afro, certainly not in moderate darkness, which is -- we'll talk about
25 that more a little bit later.

1 Next, we have Mr. Grimaldi. He saw three men. And again,
2 we will come back to this as well. But he saw three distinctly different
3 men. He saw one at the door who left. He saw one on the side who
4 was around that side wall. And he saw one in the back on the patio.
5 And he described all three of them.

6 The first man, the man at the front door, was tall, either white
7 or light-skinned African-American man. He was shirtless. He had a
8 two-inch afro, and he had black basketball shorts. And this man, as
9 Mr. Grimaldi testified, ran across the cul-de-sac, down the street shortly,
10 and turned on Nunca, which was a nearby adjacent street. So he turned
11 down that street, and that's when he lost visual on him.

12 Number two, which is more on the side, on the wall, a
13 African-American man with a wild, spiky, one-to-two-inch afro. And this
14 man was in this area along the side, and he ran in the general direction
15 of the wall and was on the wall, and you remember his testimony.

16 Clearly, under no circumstances, is this a wild one-to two-inch
17 afro. This is a photograph of Mr. Turner from that day. He didn't have
18 time to cut his hair, redo his hairstyle. There's no slicking it back. This
19 is what he looked like, and he's clearly not Person No. 2, both by his hair
20 and by the description of what he is wearing.

21 Number three, we have an African-American man who's
22 shirtless, who has a shotgun or long gun, wearing a cap. And you'll
23 have all of the photographs that we've been referring to in the back with
24 you. Take a look. There's actually a hat found on the patio, and the
25 evidence show that some of Mr. Hudson's DNA was on that hat.

1 And this is the man back here.

2 So Mr. Grimaldi testified that this night was burned into his
3 memory. His memory was not faltering. There was no medication that
4 was affecting how he perceived or how he remembered. He was
5 specific. And he told you about all three of these men.

6 He also told you about gunshots. He told you exactly how
7 many gunshots, exactly how they appeared to him, where he was, his
8 perception at the time. He was extremely specific. He gave those
9 descriptions we talked about.

10 And he also said that he had a great view. And why did he
11 have a great view? Because despite the fact that it was ambiently dark
12 out -- it was nighttime -- and despite the fact that the patio light was
13 technically off, there was plenty of ambient light in the area, because
14 there's 15 to 20 giant streetlights along Rainbow that backs up to the
15 house.

16 So in front of the house, there's house lights. In the back of
17 the house, there's all of these ambient streetlights. There was enough
18 light to see descriptions of the people there and to see the people who
19 were there, which is why everyone's been able to describe the people
20 who were there.

21 We also heard from Officer Grego-Smith, who certainly did his
22 best that night. And he saw one man with no shirt and basketball shorts.

23 Now, how important is this? Because that was not the man
24 who was taken into custody. So the man who was taken into custody in
25 that backyard, Mr. Hudson. So we're talking about this second person

1 that's referenced by Officer Robertson, who saw two men but couldn't
2 provide descriptions, and no one faults him for that.

3 But consider this: The person with no shirt and basketball
4 shorts is the only other person on that patio within a position to fire the
5 rifle that we've been talking about. He was standing right in front, right
6 there. The State has told you there are only two people, in their mind,
7 that were there. Well, one, Hudson; two, no shirt and basketball shorts.
8 Certainly not Mr. Turner.

9 And as an aside, you'll notice that it's not like he changed
10 clothes or scrounged these from somewhere. If you'll check his lower
11 leg in his bright orange pants, you'll see that there's plenty of blood. And
12 there's also rips that very likely came from the razor wire that was on top
13 of the wall that he would have had to jump; so there are holes in his
14 pants.

15 The fragment and the razor wire affected these pants; so he
16 was wearing these when he was in the backyard. He didn't change
17 clothes. It couldn't have been him.

18 So where was Steven? He was backyard, by the wall of that
19 seating area that you've seen pictures of, certainly adjacent to the patio,
20 but it's farther back.

21 How do we know that? Well, no one saw him. They can't
22 place him near the house. Everybody's been able to give these
23 descriptions. Mr. Grimaldi gave those specific descriptions of the three
24 men he saw near the house. Officer Grego-Smith described the man he
25 saw right in front, even though it was quick and a blur. The man had no

1 shirt and basketball shorts. You're not going to mistake this for a -- for
2 no shirt and black basketball shorts. You're not.

3 How else do we know? Mr. Turner didn't bleed on the wall; so
4 it was a newer wound.

5 So you're allowed to take into account your common sense.
6 And when you cut yourself or get injured, there takes a second for blood
7 to start coming out and start coming out in such a volume as to the
8 droplets or start dropping from your body and not just getting
9 immediately absorbed by your clothing.

10 So I put to you that the fact that he was further back is
11 evidenced by the fact that he did not bleed on the wall, because I believe
12 the State asked, I think on redirect, the CSA who was testifying, Did they
13 locate any blood on the wall?

14 And they said, We checked. We checked the top of the wall.
15 We checked the front of the wall, that's the exterior. They found no
16 blood. And that's why they didn't take any samples from there because
17 of course they would have. It could have returned somebody involved in
18 this, right?

19 Well, he did not bleed on the wall. And I put to you had he
20 been on the patio and had he dashed from the patio immediately
21 adjacent to the wall all the way across the backyard with his heart
22 pounding, blood would have been coming out a greater rate by that point
23 and would have gotten on the wall or on the razor wire. It didn't. He
24 didn't.

25 Also, consider where the bullets were impacting. Now, we've

1 heard something in the State's closing and during the evidence that
2 there was some ricocheting going on around the patio judiciary. And I
3 believe the State has already said and will likely continue to say in their
4 rebuttal that there was some ricocheting bullets, and that's how there
5 became to be a fragment of a bullet in Mr. Turner's leg.

6 But there was another area where bullets were impacted: The
7 back wall and seating area. Lots of bullet impacts. There was many of
8 them, tagged them, described them in detail to you.

9 There was one bullet from a caliber that matched Officer
10 Grego-Smith's weapon, because he was the officer who fired out from
11 the house. There was one recovered that day. There was one
12 recovered by Mr. Clarkson later. You heard testimony that another
13 bullet was later impounded by one of the police officers, because the
14 homeowner found it.

15 So 12 minus 2 equals 10. And we know that there were 12
16 shots both from the fact that 12 casings were found, but also because
17 there are 12 holes in the screen.

18 Okay. So you heard from CSA Fletcher. Seven bullets hit the
19 wall. Two penetrated into the wall. And so you can deduce that the two
20 bullets that penetrated into the wall are likely still in that wall.

21 Five impacted the wall, but didn't penetrate it, and we did
22 differentiate between those two. Where did those go? We don't know.
23 Did part of them go in the wall, part of them bounce off the wall? The
24 idea of ricocheting bullets and bullets fragmenting, it's very common.

25 And three are entirely missing. We have no idea where those

1 are based on the evidence we've seen in this case.

2 But I put to you that at least a piece of one of them is in
3 Mr. Turner's leg. And just so we can be clear -- and this is actually a
4 fragment, I believe, that was required -- recovered from inside the
5 shotgun that Mr. Hudson had -- just to be really clear, 411D, the bullets
6 that were fired by Officer Grego-Smith absolutely can turn into fragments
7 that are of varying shapes, sizes, and contours.

8 So it's not just pieces of a larger caliber weapon. You see
9 evidence, physical evidence, that Officer Grego-Smith's bullets could
10 also fragment. They just happen to have a fragment from the shotgun
11 that was recovered, and we know that that was hit by one of Officer
12 Grego-Smith's rounds. So you'll have this back with you.

13 All right. And there's a fragment.

14 All right. So there's been a lot of talk over the last one to three
15 days about stippling. Why do we care about stippling? Because it's the
16 only possible way to place Steven on the patio area near the guns,
17 because no one saw him, and they certainly can't put a gun in his hand
18 through any sort of forensics.

19 And we also know that no GSR testing was done. We talked
20 to the expert that testified in firearm comparisons two days ago now, and
21 she testified that that was not done. So no one knows whether there
22 was actually gunshot residue on anyone involved in this case, but
23 specifically relevant to myself, Mr. Turner, who they're saying was right
24 there.

25 So what is stippling with firearms? It's small scratches,

1 bruises, or burning. This was both from their expert, who testified a
2 couple days ago, this -- the firearm expert. So that's what she said that
3 meant. Additionally, we re-covered that this morning with that -- the
4 doctor who testified. That's what it means to have stippling.

5 I put to you that there is no stippling on this leg. There are
6 dark hair follicles, there is dry blood, and there is an apparent impact
7 wound that you've heard about, but there is no stippling. And we
8 certainly don't have any pictures after the blood is wiped away.

9 MR. GIORDANI: Objection. That misstates the testimony.

10 MS. MACHNICH: There are no pictures with all the blood
11 wiped away.

12 MR. GIORDANI: No --

13 THE COURT: It's argument, counsel. Overruled.

14 MR. GIORDANI: Okay.

15 MS. MACHNICH: There are -- there are other pictures of
16 Mr. Turner's leg. I believe that was from the scene. There's also
17 pictures from the hospital.

18 I put to you, and you'll have a chance to look at it, that there is
19 apparent dry blood on his leg, both at the hospital and at the scene. And
20 the doctor even acknowledged that when she saw the wound, there was
21 dried blood around it.

22 Okay. What is stippling in medicine? As His Honor took
23 judicial notice from a medical dictionary, stippling in medicine is a
24 spotted condition. And I put to you that is exactly what is apparent on
25 Steven Turner's leg, and it is a spotted condition from either the dried

1 brood or his hair follicles or a combination thereof. You have the
2 pictures, and you can look. But I put to you that there is no stippling
3 there.

4 It's okay. Again, there's a slightly cleaner photograph that
5 you'll have. But again, there is dried blood and no apparent stippling.

6 So let's talk about the medical records that we've touched on
7 today. As we noted, Dr. Turner, who you did not hear from in this
8 case -- sounds like he moved out of state, but again, the State's
9 attempting to ask you to find these men guilty of attempt murder, so it's
10 pretty important -- he was not here. And this Dr. Turner -- some areas of
11 stippling. Okay. Again, a medical document.

12 Additionally, areas of stippling. So it does show up more than
13 once. I put to you in the various places in the record, it was all based on
14 one examination. And it's noted in a couple places, and you'll see the
15 statement that's put in there. It almost looks like it was copied and
16 pasted between a few other pages.

17 And again, that's Dr. Turner's initials right there, and you'll see
18 that those are defined in the medical records as having been done by
19 Dr. Turner and not from the wonderful ER doc that we saw today.

20 So let's look at what else is in the medical records. The
21 nurse's notes -- this is from a nurse Paula Osborne around the same
22 time period, and it looks like she actually saw him before the doctors did,
23 which would make sense. She notes a total of one wound.

24 Why is this important? Because we covered with the doctor
25 that actual stippling that we've been talking about with gunshot wounds

1 that she would anticipate to see would create actual scratches or burns
2 up to the actual skin and leg itself. So the fact that there's only one
3 wound, I put to you, means that there's only one wound, and it's the hole
4 in his leg from the shrapnel.

5 And yet again, we see in the skin and soft tissue
6 assessment -- and, again, this is done by Nurse Osborne, who is doing
7 the initial assessment -- that there's a total of one wound.

8 We heard from Dr. Urban. She spoke with the DA yesterday
9 and was asked to testify to stippling specifically. She told you that. So
10 she came in here to talk about that. She created a two-page report at
11 the time, which is over two and a half years ago. You'll have that. And
12 the report itself was designed to include big findings, findings that
13 matter.

14 There is no reference to stippling in that report. Not one
15 reference to stippling.

16 I put to you if there was actual gunshot stippling surrounding a
17 wound, being this important thing that matters to the State's case, it
18 would have been a big finding and it would have been recorded.

19 You'll note -- and she also finds the skin unremarkable, and
20 she specifically states on her report the skin was unremarkable. That
21 makes sense. The skin, after the wound was cleaned, would have been
22 completely unremarkable, and you can't wash stippling off. Stippling is
23 actual damage to the skin when we're talking about a firearm context,
24 something [indiscernible] talking in medical contexts.

25 You're going to see her two-page report. It's at the end of the

1 medical records. The second-to-last and third-to-last pages was
2 dictated by Ms. Urban herself; so she was involved in it. Extremely
3 thorough lower extremity description. You can, obviously, use your own
4 experiences. Some of you have much more training in this than I do.
5 There's no stippling mentioned in there. And it's very detailed. She,
6 obviously, wanted to be thorough. She seems like a very thorough
7 woman. And skin, unremarkable.

8 All right. And I also put to you, if you look at the pictures back
9 there, and please do, that you're going to have pictures of a close-up of
10 Mr. Turner's pants.

11 If there was stippling caused by a gunshot, there would be
12 holes in the pants. Gunpowder, stuff that penetrates your skin doesn't
13 magically go through your clothes and attach to skin without leaving
14 something on your pants. You're going to see the holes in the pants put
15 to you from the razor wire and from the actual bullet fragment that was in
16 there. You'll see some blood discoloration.

17 But you'll actually have these back there. Take a look at
18 them. This isn't the best quality on here, but you will see that there is no
19 damage to that fabric otherwise. So this is some magic stippling.

20 No one sees Steven, because he's back here, sort of adjacent
21 to the patio area, but further back. And I put to you he's further back,
22 because he's not comfortable with the situation and he's taking definitive
23 steps to separate from it.

24 So let's go to Count 2. Count 2, for the while in possession of
25 a deadly weapon. The State has to prove that Steven knew Hudson

1 brought guns into the backyard. He had to have known they were there
2 beyond a reasonable doubt. They would have had to prove that, and
3 that he intended that a gun be taken into the house.

4 I put to you the State cannot put a firearm in the hands of
5 Mr. Turner. I can't downplay that enough. There was none of his DNA
6 on that gun that can be definitively matched to him. You heard a DNA
7 expert come over here. They're able to find DNA. They're able to
8 assess it. You heard testimony that she found DNA. There was DNA
9 analysis in this case. Mr. Turner's DNA was not found on that gun --
10 high-powered rifle.

11 And I'm sorry for anyone who doesn't like the interchange
12 between gun and rifle. I realize they're different.

13 So Mr. Turner had to have known that the guns were brought
14 into the backyard beyond a reasonable doubt, and he had to intend that
15 they be taken into the house. Where is the evidence of that?

16 So now we'll move on to -- so that first one was for Count 2.
17 This is now for Count 5, and the State must prove that Steven -- and I
18 will stop for a second in here and say we're not contesting that a bullet
19 impacted the leg of an officer and that he was very severely injured in
20 this case. That's not what we're considering. That happened. Okay.

21 But to prove that Steven did this, they have to prove that
22 Steven shot a firearm or aided and abetted someone who shot or
23 conspired with someone to shoot a firearm or it was a natural and
24 probable consequence of the attempt burglary that he was involved in.

25 And I put to you that's not the natural and probable

1 consequence of an attempt burglary, when you don't know the firearms
2 are even there and you certainly don't intend them to be taken
3 anywhere, that someone gets shot. Because for someone to get shot,
4 there has to be a firearm. And that is why we'll be asking that you find
5 Mr. Turner not guilty of Count 5.

6 Let's move on to attempt murder. The State must prove that
7 Steven had deliberate intention to unlawfully kill and that he shot a
8 firearm or aided and abetted someone who shot or conspired with
9 someone to kill.

10 There has been no evidence that there was some conspiracy
11 to assassinate these poor homeowners. I will acknowledge that the
12 police officers did tactically approach, so they likely did not know the
13 police officers were there. But there's no evidence there was some
14 conspiracy to kill anyone.

15 But moving back to the topic, they also can't prove that there
16 was a gun in the hands of Mr. Turner, so they cannot prove he shot a
17 firearm. And I put to you that if he didn't know the firearms were even in
18 the backyard, which he didn't intend them to be there, he didn't aid and
19 abet someone who shot.

20 But most importantly, and you will see this in the instructions,
21 attempt murder is so serious that you actually have to have a deliberate
22 intention to unlawfully kill. They have to establish that first, before you
23 can even consider the second part, knowledge, what actions were taken.
24 So if someone was scared and fired a gun, no intention to kill.

25 MR. GIORDANI: Objection. It's a misstatement of the law.

1 MS. MACHNICH: That's not accurate. It is a correct
2 statement of the law.

3 THE COURT: Counsel, approach. We're not going to --

4 MR. GIORDANI: I'll withdraw.

5 THE COURT: Okay. That's fine then.

6 MS. MACHNICH: All right. But if someone's scared and fires
7 a firearm, they did not have an intention to kill, I mean, unless they had
8 some conspiracy to kill otherwise, which there's been no evidence of in
9 this case.

10 Attempt murder is so serious that it requires that these things
11 be proven. So it's not enough that someone thought that they might die.
12 While that is extremely tragic and extremely scary, it's not relevant to the
13 consideration of whether something was attempt murder because, as
14 you see in the instruction with specific intent, we're talking about the
15 intent in the mind of the people who are alleged to have committed the
16 crime, not the intent of the person going through it.

17 That's a different circumstance and a different consideration
18 that while as human beings we should certainly consider, as jurors
19 considering attempt murder in a criminal case, it's not relevant. What is
20 relevant is what is within the minds of the defendants at the time.

21 I put to you that Mr. Turner was actually in the process of
22 leaving or backed -- backing off from this entire situation, but certainly
23 had no intention that anyone get hurt, much less die.

24 To find Steven guilty of Counts 3 through 5, the State must
25 prove beyond a reasonable doubt that Steven did not take definitive,

1 decisive, and positive steps to disassociate himself. They must prove
2 that. And while it seems and might seem unfair at the moment to say,
3 Well, why shouldn't he have to prove? There is no burden -- and you've
4 said during jury selection that you respected the fact that there is no
5 burden on the defense in this case.

6 But I put to you that Steven did take definitive, decisive, and
7 positive steps to disassociate himself as is evidenced by the fact that he
8 is further away, that he did not have a gun at the time -- a rifle, a
9 shotgun -- he did not a firearm in that backyard. And there is no
10 evidence that he signed up for any of this violence.

11 The state must prove beyond a reasonable doubt that he did
12 not. There is no burden on the defense to prove that he did.

13 So at this point, the State is desperate to win, but they can't
14 prove some very important things in this case. They cannot prove that
15 Steven was on the patio. They simply can't do it. No one saw him.
16 There are no forensics putting him there. And stippling -- it all, I guess,
17 comes back to that -- and there's no stippling evidence because he was
18 wearing pants, and certainly nothing penetrated that way.

19 They can't prove that he had a gun. They cannot put a gun in
20 his hands. There's no fingerprints, there's no DNA, and there's no
21 eyewitness testimony that puts that gun in his hands.

22 And they can't prove that Steven wasn't leaving when he was
23 shot. They can't prove that he wasn't already disassociating himself
24 when he was shot.

25 And then it comes down to this: The State can't prove there

1 were only two people. You heard discussion of that in the State's first
2 closing. I put to you that the State argues that there were only two
3 people, because those are the only people that were seen by the
4 officers.

5 Officer Robertson, doing his very best that night in a very
6 traumatic circumstance, saw two people. What two people did he see?
7 Hudson and the man with the black basketball shorts and no shirt.
8 Those are the two people he saw because you're not forgetting this. No
9 one is.

10 Officer Grego-Smith was even able to give a description and it
11 was nothing close to this. Steven was not on that patio.

12 But who was able to give descriptions, because they had a
13 little bit more time and there was less trauma at the time, because there
14 wasn't gunfire immediately upon opening the door? And you'll,
15 obviously, determine the timing of that. But the people who had more
16 time were the homeowners. And Mr. Grimaldi, as brave as he was, went
17 around the house to see what was going on, to see who was where and
18 what was happening, and he gave you very specific descriptions. Very
19 specific descriptions. None of them are Mr. Turner.

20 So I put to you that there were likely four people involved in
21 this: The man at the front door who ran away; the man on the patio with
22 the black shorts, no shirt, the person with the rifle; Mr. Hudson; and
23 Mr. Turner, who was farther of the back, withdrawn from the situation.
24 There were four people.

25 And why would the State be desperate to say there were only

1 two? Possibly because they want to get the right people and they want
2 to get all the people. But the actual evidence in this case shows that
3 they haven't and that Mr. Turner didn't do any of these things that led to
4 the wound on the officer.

5 Let's briefly talk about Mr. Hudson. He had been to the house
6 before. You heard that testimony. So, yes, Mr. Turner had been to that
7 house before as well on several to many occasions. But so had
8 Mr. Hudson, at least once.

9 Mr. Hudson had the guns. You heard that testimony. He
10 admitted to having two of them, and the other one was seen by
11 Mr. Turner in the back of his car. We recognize that as looking like his
12 uncle's missing gun.

13 Mr. Hudson shot a gun. He admitted to shooting a gun. He
14 admitted to shooting that shotgun. And he was found in the backyard.

15 So in case it hasn't been clear yet, I'll make it right -- very clear
16 right now. Mr. Turner is not associated with Mr. Hudson in this defense
17 and hasn't been associated with Mr. Hudson since before this all turned
18 violent, since before the situation became uncomfortable the night that
19 this happened.

20 Reasonable doubt. You have an instruction on reasonable
21 doubt, and none of the parties are allowed to define a percentage or
22 anything more than that about reasonable doubt. His Honor has
23 provided you with that definition and that is what was allowed under
24 Nevada law.

25 But I put to you the following. Imagine that there's a cat and a

1 mouse and a box.

2 MR. GIORDANI: Objection. Can't quantify reasonable doubt,
3 Your Honor.

4 MS. MACHNICH: I'm not. It's an analogy. It's allowed under
5 Nevada law.

6 MR. GIORDANI: It's not.

7 MS. MACHNICH: It is.

8 THE COURT: Counsel, approach.

9 [Bench conference transcribed as follows:]

10 THE COURT: The reason I have you approach is because I
11 don't want you arguing back and forth in front of the jury.

12 MS. MACHNICH: That's fair.

13 THE COURT: So I don't have any objection. But if you think
14 there's going to be speaking objections, I would prefer to do it at the
15 bench.

16 MR. GIORDANI: Understood.

17 MS. MACHNICH: Okay.

18 THE COURT: What's your objection, counsel?

19 MR. GIORDANI: That the analogy associated with reason --
20 any analogy associated with reasonable doubt is improper. The analogy
21 can be associated with direct or circumstantial evidence, but not
22 reasonable doubt.

23 MS. MACHNICH: That's not true.

24 MR. GIORDANI: It is.

25 THE COURT: Well, you can't quantify reasonable doubt.

1 MS. MACHNICH: I'm not going to. I promise.

2 THE COURT: What is the analogy you're trying to make,
3 counsel?

4 MR. GIORDANI: And I'm sorry, Your Honor. I'm going to go
5 ahead and withdraw it. I just -- I want to get my rebuttal done, so --

6 THE COURT: Let's get -- let's move on.

7 MS. MACHNICH: So do I. I just want --

8 THE COURT: And counsel, come here. Just so you know,
9 can you represent your closing is going to be 20 minutes?

10 MR. PLUMMER: I'm guessing it will be approximately 20.

11 THE COURT: Okay. I was going to let him do his closing,
12 take a break, and then finish with your --

13 MR. PLUMMER: Can you at least ask the jury if they need
14 one?

15 MS. MACHNICH: Yeah. We may need to push through. I'm
16 close.

17 THE COURT: Are you almost done?

18 MS. MACHNICH: Yes.

19 THE COURT: Almost? All right, then. We'll do it maybe now
20 then. We've already been at this thing for over an hour, quite frankly.

21 MS. MACHNICH: Can we ask them after I finish?

22 THE COURT: After you finish.

23 MS. MACHNICH: Thank you.

24 THE COURT: All right. Let's go.

25 [End of bench conference.]

1 THE COURT: Counsel, you withdraw your objection?

2 MR. GIORDANI: I withdraw my objection.

3 THE COURT: Thank you.

4 MS. MACHNICH: I think we have and end.

5 THE COURT: Yes, ma'am.

6 MS. MACHNICH: Okay. So now --

7 THE COURT: Can we -- she's -- how much longer do you
8 have on your closing, counsel?

9 MS. MACHNICH: Ten minutes. But if we're going to be
10 break, this would be a good place.

11 THE COURT: All right. But you've got to use the -- okay.

12 MS. MACHNICH: Okay.

13 THE COURT: We'll take a break. We'll take a 10-minute
14 break right now.

15 Okay -- wait. I have to admonish you.

16 Ladies and gentlemen, we are going to take a 10-minute
17 recess. During this recess, you are admonished not to talk or converse
18 among yourselves or with anyone else on any subject connected with
19 this trial or read, watch, or listen to any report of or commentary on the
20 trial or any person connected with this trial by any medium of
21 information, including, without limitation, newspapers, television, radio,
22 or Internet, or form or express any opinion on any subject connected
23 with the trial until the case is finally submitted to you.

24 We will be in recess for 10 minutes. Thank you.

25 [Jury recessed at 4:05 p.m.]

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THE COURT: We'll be in a recess.

MS. MACHNICH: Thank you, Your Honor. Thank you.

[Court recessed at 4:06 p.m., until 4:15 p.m.]

[Outside the presence of the jury.]

THE COURT: This is the continuation of the trial in Case No. C-15-309578-1 and -2, *Plaintiff, State of Nevada vs. Defendants, Steven Turner and Clemon Hudson*. The record will reflect the presence of counsel for the State, counsel for the defendants, and the presence of the defendants.

Bring the jury in, please.

MS. MACHNICH: Thank you, Your Honor.

[Jury reconvened at 4:15 p.m.]

THE COURT: You may be seated.

Will the parties stipulate to the presence of the jury?

MS. MACHNICH: We will, Your Honor.

MR. GIORDANI: Yes.

MR. PLUMMER: Yes, Your Honor.

THE COURT: State?

MR. GIORDANI: Yes.

THE COURT: Thank you. You may proceed.

**REBUTTAL CLOSING ARGUMENT BY DEFENDANT TURNER
(CONT.)**

MS. MACHNICH: Thank you, Your Honor.

Okay. To the topic of reasonable doubt, again, we're not -- it's not proper to quantify it, but I do put to you the following for your

1 consideration.

2 Imagine that there's a cat and a mouse and a box. Someone
3 puts the cat and the mouse in the box, ties that box up with a nice little
4 bow, leaves it in a dark room, comes back 20 minutes later, opens the
5 box. There's a cat, no mouse. That's circumstantial evidence that the
6 cat ate the mouse. Okay.

7 Also, now, let's consider that situation one more time. There's
8 the cat and the mouse and the box. And you again put them in the box,
9 tie them up in a pretty little bow, leave the room, come back 20 minutes
10 later. Again, the mouse is gone. However, this time, there's a hole in
11 the corner of that box. Not a huge hole; a hole that's just big enough.

12 I put to you that that hole is reasonable doubt. And in this
13 case, the State has failed to prove beyond a reasonable doubt that
14 Mr. Turner didn't withdraw from the situation, the conspiracy to
15 burglarize the house, to break in. They haven't proved that Steven
16 Turner had a gun in his hands, that he fired a gun, that he was on that
17 patio. They certainly haven't proved beyond a reasonable doubt that he
18 had an intention to kill.

19 Before I wrap up, just something briefly. Let me see here.
20 The State mentioned in their first closing that intending violence, they
21 suggested that that means the same as attempt murder. But those are
22 two different concepts under the law. Intending violence -- and I'm not
23 saying that Mr. Turner intended violence at all in the case. But just to be
24 clear, intending violence is not the same thing as an intent to kill. It's a
25 separate mindset in the mind of the defendant.

1 Additionally, the State gets together up here one more time to
2 have a rebuttal closing, because the burden is on them. And that
3 burden, beyond a reasonable doubt, is what it is, and the State gets a
4 chance to come up here and prove their case last.

5 You heard from the judge that you don't have to agree on a
6 theory of liability that some of your panel may decide that a defendant --
7 and Mr. Hudson, because Mr. Turner was not involved in those charges,
8 did -- aided and abetted versus some of you believe there's direct
9 liability here. There's different theories of liability as the State presented
10 them, and you don't have to agree upon them, and that is the law in this
11 case.

12 But I put to you that the State's going to get up here on
13 rebuttal, you should hold them to having the same theory of liability.
14 There's two of them, and if they want to ask you to find Mr. Turner guilty
15 beyond a reasonable doubt on these serious charges, at least they
16 should know what theory of liability they're asking, right? I put to you
17 that.

18 Mr. Turner was along for the ride. Steven was in to steal
19 some weed, but when things got violent, suggested to get violent, a gun
20 maybe even peeked out, he was literally and figuratively out.

21 Because of that, we are going to ask you to find Mr. Turner not
22 guilty of possession of a firearm in Count 2; of Count 3, attempt murder
23 with use of a deadly weapon; Count 4, attempt murder with use of a
24 deadly weapon; and Count 5, battery with use of a deadly weapon
25 resulting in substantial bodily harm.

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I thank you for your time and attention.

THE COURT: Mr. Plummer.

REBUTTAL CLOSING ARGUMENT BY DEFENDANT HUDSON

MR. PLUMMER: Thank you, Your Honor.

They spooked us as much as we spooked them. That's what this case is about. This case is about being startled, being scared, reacting when you're spooked and startled at 3:30 in the morning, not expecting anything.

This case is not about attempted murder. And we know it's not about attempted murder, because you're not -- it doesn't make any sense. It hasn't made any sense from the start of the case on why these two young men or a third young person would want to kill the people in the house.

What was the plan? Well, Mr. Hudson's idea and knowledge of the plan was that they're going over to this house, where Steven knew the resident. He knew the person that lived there. He knew that he had weed. Mr. Hudson, Clemon -- I don't actually -- as far as he understood, Steven bought weed from this house and that's that this was a dope dealer that they were going to steal weed from. That's his understanding.

What else is his understanding? His understanding is that no one is supposed to be home. The door was supposed to be open, unlocked.

They get to the house. What's one of the things they do? They ring the doorbell. They knock on the door. Why? To make sure

1 no one's home. When no one answers the door, turns a light on, they
2 don't hear anything inside, they're in the backyard, figuring out how to
3 get into the house.

4 Well, we know what happens during that time period. Eric
5 calls 911. He's talking to 911.

6 They dispatch officers. And the two officers arrive. And we
7 know what happens when they arrive. They park up the street. They
8 tactically approach the house. Officer Grego-Smith hears them in the
9 backyard, doesn't shine his flashlight back there, doesn't yell out. They
10 tactically go into the house. They meet with the homeowners very
11 briefly. I know Eric tells Officer Robertson about the key. Willow tells
12 Officer Grego-Smith about the light. And then they go to the back door.

13 They get to the back door, and this is where everything goes
14 south, where everything goes bad. Officer Robertson unlocks the door,
15 and he opens the door.

16 Now, at that moment in time, what is the picture? The picture
17 is that the inside of the house, all of the lights are off. It's completely
18 dark. You can't see. Numerous officers have testified to the lighting that
19 was at the house and outside. All of them describe it as being dark,
20 even pitch-black, couldn't see.

21 So when the door is opened in, as it was described, unlocked,
22 swings open the door, Officer Grego-Smith steps forward with his gun.
23 And as the officers testified, a shot went off.

24 Well, let's think about that shot. If it was that fast, the door
25 opens, gun comes out, and a shot goes off, Officer Robertson saw two

1 people out on the patio. If someone's standing there hearing nothing,
2 thinking no one's home, the door swings open and they react, that's not
3 attempted murder. That's being startled.

4 Now, how do we know that that initial shot was not attempted
5 murder and was being startled? Look where the round went. If
6 someone's holding a weapon and they are this close -- where did the
7 round hit? It hit in the leg, which means it's pointed down. The first
8 round fired is pointed down.

9 If you're trying to shoot a person, you have it aimed straight
10 ahead. If you're really trying to, you put it to your shoulder. But you
11 don't hold a weapon aiming down and pull the trigger if you're trying to
12 kill someone. It doesn't work that way.

13 Let's talk about the next two rounds that came from this SK.
14 They didn't go into the house. One went into a chair off to the side. The
15 other one, not sure where that one really went. We got some rods going
16 through holes. There's no way that the TV with that angle is anything
17 but a ricochet. So it was somewhere on the patio down. So if you're
18 aiming a gun down, you are not trying to kill someone. It doesn't work
19 that way.

20 Four times I heard the prosecution say there's no other
21 conclusion. There's no other conclusion possible, no other explanation.
22 It's the only explanation. I was writing them down. Actually, there's no
23 explanation for attempted murder, because none of it lines up. If you're
24 trying to kill somebody, it doesn't work that way.

25 Now -- so those first rounds that go off on the SKS, we know

1 that they're not attempted murder because of just the angle and where
2 the rounds are going.

3 Shrapnel -- well, when those SKS rounds are going off,
4 shrapnel's going all over the place.

5 Well, what's the first thing that happens when the first round
6 goes off? The first round goes off, and Officer Robertson's tragically hit
7 in the leg, and he spins, and he falls. Two more -- one or two more
8 rounds go off from the SKS. And at some point, the shotgun goes off.

9 Now, let's talk about the shotgun. The shotgun went off -- and
10 I'm going to pull up an angle here in a little bit and show you -- is -- lines
11 up perfectly where Clemon fell over the wall, where he fell over the wall.
12 And you have the pictures and it's shown, the angle goes through the
13 door and goes through the house.

14 So what other diagrams or whatever, you know, there's a
15 handwritten statement during the interview with the detective, can't really
16 tell if the detectives are the one that made all the marks. It was unclear.
17 But where he fell over that wall was the angle where the shotgun was
18 fired.

19 Now, the shotgun itself, we have the shotgun. Instead of the
20 hole going through the hand guard, that hole, basically, inside was a
21 piece of shrapnel. That shrapnel, I think everyone's going to agree,
22 came from one of the SKS rounds, because I haven't -- the expert or the
23 analyst that testified, if she thought that one of Grego-Smith's rounds hit
24 that, she would have testified to that. Also, 12 holes, all 12 of his
25 rounds, line up with the screen; so to my knowledge, I don't believe the

1 prosecution's going to argue that the shotgun was hit by one of
2 Grego-Smith's rounds. They might, but it doesn't line up.

3 It lines up with one of the fragments from the SKS. In fact, it's
4 right here. And counsel brought it out during their closing in the last one,
5 and it's a pretty good piece of shrapnel that would have punched a hole
6 right through a plastic case without completely shattering it to little bitty
7 pieces.

8 Now, what's important about this shrapnel hitting the shotgun?
9 Well, the damage that it did, that the analyst testified to, is you would not
10 be able to rack another round into it. Well, what that damage on the
11 Cartridge 2 does not do -- and the analyst didn't testify to this -- it would
12 not prevent, if a live round was in that chamber, from going off.

13 So if you're holding the shotgun and one of those pieces of
14 shrapnel comes up and punches a hole through the hand guard, it's -- it
15 can still fire, and that would be startling. And -- and the firing of a
16 shotgun with a piece of shrapnel hitting it, causing it to go off with a
17 wall behind -- the little wall behind you, off-balance with no intention on
18 firing the gun, is going to launch you over the wall. You're going to
19 stumble and fall.

20 The -- one of the things here is -- I'm sure it's going to be
21 addressed -- is why did the shotgun round go through the door? If a
22 person is holding a weapon, it's going to go where their eyes go. So
23 wherever their eyes are looking, that's where that barrel is going to point.
24 This distance across this patio is no more, if you look at the diagrams,
25 from here to the wall. That's -- and this is actually probably bigger

1 than -- when you look at the photos. It's not very far. Wherever the
2 eyes are turned, the gun is going to go.

3 Also, the height -- a person with a gun, if they're intending on,
4 no kidding, shooting at a person to shoot that person, they bring it up. It
5 would not have been at the height that it hit the wall. It would not have --
6 the height does not match up. If you're holding a gun down not
7 preparing to fire, the height matches up where the pellets hit.

8 What else do we want to know about this shotgun? It had
9 birdshot in it. The majority of those pellets are scattered all over the
10 floor, because it's just not powerful enough to go through the walls. Yes,
11 it shattered the glass, but there was birdshot in it.

12 What else do we know about that scenario and the timing?
13 We talked about timing. If those shots were fired in the way that it was
14 described, as the SKS goes off and the shotgun immediately goes off
15 and it's bang-bang, Officer Robertson would have birdshot through him,
16 because the shotgun went through the door. If he was still standing up
17 in that doorway, he would have been hit. But he wasn't standing up. He
18 was on the ground. He had been hit already. He's on the ground.

19 As the SKS goes off two more times at the ground -- because
20 the only explanation is the person has no idea what they're doing,
21 because if they had any firearms training, this would not have happened
22 because they wouldn't have their finger on the trigger and get startled
23 and have their finger off the trigger. If they got startled, they wouldn't
24 pull the trigger. So if they had any firearms training whatsoever, they
25 would know that. But they don't, and they didn't, because it's obvious

1 from what -- what happened.

2 The -- how do we know that Mr. -- how do we know that
3 Clemon doesn't have any firearms experience? He doesn't even know
4 what rounds he's using when he's talking to the officer. And the officer's,
5 like, Well, I'll tell you -- he's, like, I don't know, general buckshot? He
6 has no idea what he has, because he has no idea what he's doing. And
7 when you don't know what you're doing, you're not trained with firearms,
8 you're not trained with gun safety, and you don't have any military or
9 other training, these things are more likely to happen.

10 It's -- it's a shame we don't -- didn't have any body cams,
11 because if one of the officers had a body cam on, then we would actually
12 have a better understanding of how everything transpired. We could
13 hear the speed at which things were happening. But we don't.

14 But what do we have? Well, we have lots of pictures, lots and
15 lots and lots of pictures. We have discussions with witnesses. We have
16 lots of witnesses. We have an understanding of what took place after
17 the shooting, because it's on -- a lot of it's on tape.

18 Let's look at what happened after everything transpired, after
19 this startling event, after the -- the rounds hit the ground, after the
20 shrapnel went everywhere, after the shotgun went off, and after Officer
21 Grego-Smith put 12 rounds through a screen and suppressed the fire.

22 Well, what did he -- what did he do? He yelled out. You
23 know, he yelled out. And what was in the yard? Who was in the yard?
24 Clemon was in the yard, lying down like a scared little child. Lying down
25 like a scared little child.

1 He had three things he could have done with that fear that he
2 was feeling, with that kind of fear: You can fight, you can flight, or you
3 can freeze.

4 If he had murder on the brain, he would have fought. He
5 didn't flee. Oh, I did something wrong; this is bad, I'm going to run. No.
6 He didn't sign up for a gun battle. That's -- that's not what this was
7 about. This was about going into an empty house to steal some weed.

8 And the question is, well, why do they have guns if it's an
9 empty house? Well, Ms. Beverly put it best: Well, what if somebody
10 came home, why do you have guns on a burglary? Attempt to
11 intimidate, attempt to scare? That's a reason to have guns.

12 Clemon had clearly no idea what he was doing, had no idea
13 what was going on. This was his first time ever doing something like
14 this, not a thing that he has experience in, in his first time.

15 So what's important about him freezing? Well, him freezing is
16 that it's a natural response to fear. And he was afraid, and he stayed
17 afraid, from the moment that the gunfire started, from the moment that
18 he went on the ground.

19 There was a handgun that -- you heard the testimony -- that
20 was provided to him. The handgun was provided to him, and you heard
21 that testimony. It could be -- if he wanted to kill something, if he wanted
22 to fight, he could have used that handgun. He could have gone -- done
23 his own suppressive fire. But he was a scared kid and he laid there.

24 And he answered officer commands. All of the officers
25 testified that after the shooting, he was basically given commands. And

1 he complied with the commands, answered the commands. The air unit
2 came by, could see him on the ground with his hands on his head, his
3 hands above his head. Shotgun was down by his feet. Still not sure
4 how the AK -- or the SKS got by, because the air unit saw the one and
5 they're looking down. But somehow after the fact, this SKS wound up
6 and all the guns wound up together in a nice pretty picture. Still haven't
7 figured that one out.

8 The -- let's talk a little bit about the crime scene itself. I want
9 to say this is a crime scene. You see officers sending the police dog
10 out. Even the canine officer said that he knew that Clemon was
11 responding to him, but he just couldn't understand what Clemon was
12 saying, because his dog was barking too loud.

13 So rather than quiet the dog, let's just send the dog out there.
14 We know he's communicating with us. He's been complying. The air
15 unit says he's laid out and he's not moving. Well, we're going to send
16 the dog in anyway.

17 One other interesting thing that Officer Bitsko mentioned was
18 the -- because we're not -- you don't just rush into the backyard when
19 there's a report of a gun. That's -- I think this would have been a much
20 different evening had the announcement been a little different instead of
21 a tactical clearing of the backyard. But it's -- in this tragedy, Officer
22 Robertson probably would not be here right now.

23 I want to go back to Clemon being scared and why that's
24 important. He froze. He complied with officer commands. He gets
25 bitten by a dog. He goes to a hospital, and then he goes and gets -- sits

1 down with a detective.

2 And he spills his guts to the detective. What do you want to
3 know? Detective asked him questions, he gave him answers. Told him
4 why he was there; told him how he got there, what he was there for. He
5 even volunteered that, yes, we went there a week earlier, but somebody
6 was home so we left. Okay? Yes, I had the shotgun. Yep, my shotgun.
7 I'm not quite sure -- if I fired it. I might have.

8 I just -- everything happened so fast that in a situation like
9 that, when someone has that fear and they freeze and they're -- now
10 you're trying to ask questions about what happened and what you did
11 and what you saw; it can be difficult. I mean, you even hear from some
12 of the witnesses at trial, he had a shirt or he didn't have a shirt.
13 Prosecution put in a photo of a shirt, so I guess that shows that Clemon
14 did have a shirt. They had to cut it off him after the dog bite.

15 The -- Willow and Eric -- Officer -- both cops had their guns
16 out. Officer Robertson has it in its holster. I mean, there's so many little
17 differences from witnesses. Nothing's ever -- because you're trying to
18 piece things together after the fact on a traumatic and exciting event.
19 When you -- someone could get shot at, everything blends in time and
20 space. It just -- it's natural, the thought of war.

21 But this -- but unlike in war, where people are trying to kill
22 people, that's not what these young men were trying to do, and that was
23 not their intent. It makes no sense, because there's just no motive.

24 Real quick, the pictures and the scenes with all the little place
25 cards and everything that were -- you know, that you have in evidence,

1 take them with a grain of salt. And the reason I say that is because
2 when you have a dozen officers racing across a patio and then taking
3 Clemon into custody and then, you know, taking him back through and
4 taking him outside to the paramedics and all of that, that scene,
5 whatever the next morning when photographs were taken is not like it
6 would have been that night. Things would have got kicked around,
7 moved around. So we don't know what was there, and there's no way to
8 regroup that.

9 Again, I don't know exactly what Prosecution is going to argue
10 in their final rebuttal, but if there's a specific piece of evidence sitting, like
11 a shell casing at particular location, that thing could have been kicked
12 one way or kicked another. It could be in the original spot.

13 There's been some discussions that you've had about
14 instructions. And now I only have, like, five of them that I want to talk to
15 you about, but they're five very important ones. Why? Because we talk
16 about the law, because we're lawyers.

17 First, we talked about some of the facts and painted some
18 scenarios.

19 Okay. First one, elements of an attempt. Basically, any
20 attempt crime. You have to have intent. It's going to be a common
21 theme here.

22 Express malice, namely with a deliberate intention to
23 unlawfully -- to kill.

24 Deliberate intention. That's -- and it's not just deliberate
25 intention to fire a gun or deliberate intention to -- to fire a gun. It's the

1 deliberate intention to actually take another's life.

2 There's -- these are riddled throughout your instructions.
3 Why? Because they're so important. This -- we're here because of this
4 attempted murder, because these young men, these kids, did not have it
5 in their head. They weren't trying to kill police officers. None of it
6 makes -- the facts do not line up.

7 Now, there's three theories. There's -- and the reason I have
8 to talk about all these three theories is because they're confusing. They
9 are very confusing. All right.

10 The first one is direct. No kidding, Clemon sees the police
11 officer, sees a person, and he's trying to kill that person. That's direct.
12 Like, I'm going to kill you. The facts aren't there. The evidence isn't
13 there.

14 But now we have the second one: Aided and abetted. All
15 right, so how do you aid and abet on an attempted murder? So that
16 would mean that, basically, Clemon would be behind the other person
17 with the SK and saying, Shoot him, shoot him, or somehow telling -- you
18 know, he's going to aid him to commit that particular offense.

19 See, with this attempted murder, the rest of the offenses are
20 irrelevant. And what I mean by irrelevant is they -- when you think of
21 conspiracy, a conspiracy has to go with each individual crime separately.

22 So conspiracy to steal marijuana -- okay, that's one.
23 Conspiracy to break into a house -- okay, that's two. Conspiracy to
24 commit murder -- you can have conspiracy to commit one crime, but
25 there's no conspiracy to commit the other. They're separate crimes.

1 And if the instructions were not clear through either of those counsel,
2 hopefully, I'm being clear. They have to be separate conspiracies. So
3 they would have to conspire to say, We're going to murder someone.
4 That's not -- that's not here.

5 So the conspiracy theory doesn't fly. The aider and abettor
6 doesn't fly, because they're not -- there's no -- how -- how is he aiding?
7 I'm aiding this person, feeding him bullets and telling him -- there was no
8 plan to commit murder; so there can't be an aid. It -- again, three
9 theories.

10 Now, for the big one. And this I would consider probably one
11 of the most important instructions that you were given, and that is what
12 I'm referring to when I talk about attempted murder, specific intent crime.
13 You can't be liable under conspiracy or aider and abettor -- right here --
14 you can't be responsible under those two other theories for attempted
15 murder for acts committed by a coconspirator unless you yourself also
16 had the requisite specific intent to commit the murder.

17 So if one person, his intent was to commit murder, and the
18 other person is saying, I didn't sign up for this, I'm not here for this, I'm
19 here to steal weed, the one that's there to steal weed is not guilty of the
20 attempted murder. That's not how it works, and that's what this
21 instruction is talking about.

22 Now, this instruction also talks about the probable and natural
23 consequences when we're talking about general intent crimes. I believe
24 that that has been covered with you. In essence, what we're talking
25 about there is when we talk about the battery with substantial bodily

1 harm. We know that Clemon did not shoot Officer Robertson. We know
2 that. Prosecution's not even going to argue that he did, because they
3 know he didn't.

4 So if he didn't shoot Officer Robertson, he shouldn't be found
5 guilty of shooting Officer Robertson.

6 Now, under conspiracy theory, did he conspire to shoot Officer
7 Robertson? No. Did he aid and abet in shooting Officer Robertson?
8 No. Was his -- any of his actions the natural and probable
9 consequences -- in Clemon Hudson's mind, it's, Hey, we're supposed to
10 be going over here to an empty house to steal weed? Police officer's
11 going to get shot in the leg. It's probably going to happen. The probable
12 consequences -- oh, it's probably going to happen. He's going to get
13 shot.

14 Yeah, it's probably not going to happen after going to
15 someone's house to -- an empty house to steal marijuana from a dope
16 dealer. Chances are police officer's not going to get shot in the leg.

17 We're not allowed to quantify beyond a reasonable doubt. All
18 we can do is tell little metaphors. You heard the cat and the mouse and
19 the box. I wouldn't be doing my job if I didn't talk to you about
20 reasonable doubt. Why? Because it's our standard, and there are some
21 people who don't understand that presumption of innocence, don't
22 understand the burden of proof, and think, oh, well, he was there with a
23 gun, and police officer got shot, and I don't care about anything else. I'm
24 going to find him guilty. That is not what we do.

25 We look at all the facts, we look at the elements as they apply,

1 and we determine whether or not you're convinced beyond a reasonable
2 doubt that these young men had murder in their minds when those guns
3 went off, trying to murder someone. If they were not -- which they were
4 not trying to murder anyone and the facts don't support it, then they're
5 not guilty of attempted murder.

6 The person is in a hospital and they're going for a blood
7 transfusion. And this blood transfusion, bags of blood come in, and
8 there's an issue with it. They're missing a label. But they came off the
9 shelf where the type of blood that's needed for this blood transfusion
10 comes from.

11 The doctor says, Okay, well, I'm pretty sure that this blood is
12 the type that we need for this transfusion, even though the label has
13 fallen off. But, hey, I'm pretty confident. The only -- the only blood that's
14 on that shelf is this type, and we should be good to use it.

15 I don't think anybody would say that that blood is good enough
16 to use. Why? Because they have some doubt. They have reasonable
17 doubt. No matter what the doctor says, no matter where the blood came
18 from, no matter what systems they have in place, that label's not on
19 there, they're not going to use that.

20 At the end of all of this, we get to go home. The decision that
21 you make needs to be the right one. These young men are going to be
22 living with the results of your verdict for the rest of their life. It needs to
23 be the right one.

24 We're not asking you to say, oh, they're saints, and they're
25 innocent or everything, and send them on their way, and everything's

1 great. No. I don't think anyone is here for that. But what we are asking
2 is that you only find them guilty of what they actually did. That's it. What
3 they actually did, not --

4 Prosecution has their job to do. They do. They have their job.
5 And you've seen the exhibits. You've seen the witnesses. These are
6 prosecutors, and a police officer was shot. This case is going to be
7 taken extremely serious, very serious. All cases should be taken
8 serious. But when an officer is shot, you know, there's a bond there.

9 This is my last chance to talk to you. I'm not going to get to
10 talk to you again. Prosecution's going to be able to perform a rebuttal, a
11 rebuttal argument.

12 I would ask you during the rebuttal argument is to ask -- if I
13 had an opportunity to respond to their next argument, what would I say?
14 What would I say if I could respond to their next argument? And if you
15 ask that question, then I know you're going to be fair. And that's all
16 we're asking is that you be fair.

17 I don't want to keep repeating myself, but it's -- from day one
18 at opening statements, we told you this case, we were here because of
19 these young men did not commit attempted murder. There was no
20 intent there.

21 I'm asking you to find Clemon not guilty, and the reason I'm
22 asking you to find him not guilty is because he is not guilty. He didn't
23 intend to kill anyone, and he didn't shoot Officer Robertson.

24 Thank you.

25 THE COURT: Counsel for. State rebuttal argument.

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SURREBUTTAL CLOSING ARGUMENT BY THE STATE

MR. GIORDANI: Make no mistake, ladies and gentlemen:
There are two victims in this room. They're sure as hell not those guys.
It's those guys. Those men went there that day to do their jobs like
they're supposed to, like they're trained to do. They did their jobs like
they're trained to do. And these two opened fire.

Now, I'm not going to get up here and pitch to you that they
went there with a plan to kill a cop that day. That's ridiculous. I don't
think that was the case. I wouldn't argue that to you.

What they did do is they planned to go commit a violent
robbery with some high-powered weapons. When they got there, the
unexpected happened. Cops were there.

They didn't even need to know that they were shooting at
police to be found guilty of attempt murder. All they -- all you need to
believe is that they -- they were shooting at human beings. Whether it's
Willow and Clarkson or whether it's these two officers, they're guilty of
attempted murder.

Now, I don't want to go through all of the points that both
these defense counsel just made, but I want to bring you back to reality
for a minute. I want to talk to you about Instruction No. 46, and that's the
common sense instruction. It's the instruction that says:

Don't check your common sense at the door. Bring it back
with you and use that when you deliberate.

Now, if you heard this story at a bar, sitting and having a drink
with somebody, and someone came up to you and said, Hey, I heard

1 about this officer-involved shooting today. There's -- two officers
2 respond to a residence, and those two officers opened the door.
3 High-powered rifle round comes flying through the door, hits officer in
4 the leg. He goes down. Second round comes through. It's from a
5 shotgun. Cops return 12 rounds. Guys split. One of them's caught in
6 the backyard. The other one's caught with a shrapnel in his leg about
7 two blocks away.

8 If I were to tell you that story over a glass of whiskey, you
9 would look at me and go, Good. I'm glad you caught the two guys who
10 shot the cops. That's what this is about.

11 There is a whole lot of detail that went into the defense in this
12 case trying to create alternate suspects where there are none.

13 There are two people here. Two. Those people -- I mean the
14 witnesses in this case gave varying descriptions of those two people, but
15 they're giving varying descriptions of the same two people.

16 There is another instruction that I'd like to point out to you
17 before I move on, and that's 43. This is what Ms. Beverly talked about,
18 and I believe defense counsel did too.

19 Just a reminder, direct evidence and circumstantial evidence
20 are given the same weight. Okay. Not every case has direct evidence.
21 Not every case has forensics, that's for sure. And that's why the courts
22 and the law of our country treat direct and circumstantial evidence
23 equally.

24 There is -- talk about forensics for a second. Say Mr. Hudson
25 was wearing gloves. Does that mean he didn't pull the trigger on the

1 shotgun? Of course not. That means his print wasn't on the shotgun,
2 because he was wearing gloves.

3 There's no -- no DNA on the SKS. Who cares? There's -- it's
4 not -- his DNA isn't conclusively matched to the SKS. Does that mean
5 someone didn't hold the SKS and pull the trigger? Of course not. That
6 doesn't matter, and that's why you look to the circumstances
7 surrounding the offenses in order to determine whether they're guilty or
8 not.

9 The evidence in this case is absolutely overwhelming, and it
10 doesn't need to be direct evidence. It doesn't need to be someone --
11 one of these officers saying, Those are the guys that shot me. That's
12 not how the law works. That's not how reality works.

13 Now, Ms. Beverly mentioned a couple of varying descriptions
14 of -- that were given by witnesses, and I want to reiterate that. No one's
15 hiding the ball here. We called the witnesses that the -- Clarkson and
16 Willow -- to show that the crimes were committed, not who did it. No
17 one in this case stood up and told you, It's them, because they couldn't.
18 Okay. So what?

19 There are two people in that backyard. No one could see
20 them clearly, obviously, because it's dark. They did their best. They all
21 gave varying descriptions of people, and they said -- Robertson said two
22 people, and he saw an assault rifle. Okay. Officer Grego-Smith said he
23 thinks he saw one person. He didn't even see a gun. He thinks he
24 might have had his shirt off. He remembers the color purple. The two
25 homeowners are basically useless --

1 MS. MACHNICH: I'm going to object. That does misstate
2 evidence.

3 MR. GIORDANI: Well, he said, purple shorts, so.

4 THE COURT: You said shirt.

5 MR. GIORDANI: I didn't say shirt.

6 THE COURT: I thought -- counsel, approach.

7 MR. GIORDANI: Well, I must have misspoke. Well, no, I'll
8 clarify.

9 THE COURT: Okay, clarify. Counsel?

10 MS. MACHNICH: Can we approach?

11 THE COURT: You can.

12 MS. MACHNICH: Okay.

13 [Bench conference transcribed as follows:]

14 MS. MACHNICH: He -- Mr. Giordani said was he saw the
15 color purple. That misstates the testimony. The officer testified to black
16 shorts and then later purple shorts. He testified to two different colored
17 shirts, but he did not just see the color purple. He saw black shorts or
18 purple shorts. He didn't see a shirt at all. And that he's -- he -- the
19 insinuation he's making is incorrect.

20 THE COURT: Did you mean to say shirt or shorts, counsel?

21 MR. GIORDANI: I meant to say shorts. I didn't say shirt,
22 though. I said, He saw the color purple.

23 MS. MACHNICH: He saw the color purple, which --

24 MR. GIORDANI: That's what I said.

25 MS. MACHNICH: -- which misinterprets the evidence

1 completely. He did -- there is no talk of a shirt. He saw the color purple
2 is an argument that he could have been wearing a purple shirt. That is
3 absolutely what he said.

4 MR. GIORDANI: Okay. I have the trial testimony here that
5 says:

6 What I recall is a black male with no shirt and purple -- purple
7 basketball shorts.

8 MS. MACHNICH: That was the second time he said that, yes.
9 And if you say that, though, that's correct.

10 THE COURT: So he can say purple shorts; is that correct?

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

12 THE COURT: Then that's not -- okay. Overruled.

13 MS. MACHNICH: That's fine.

14 THE COURT: Okay. Overruled. And say purple shorts.

15 [End of bench conference.]

16 MR. GIORDANI: Thank you.

17 He saw purple shorts. Okay.

18 Now, Ms. Machnich printed up a really nice exhibit and made
19 a big issue of his description and said, How could no one have seen
20 this? How could no one have seen this?

21 Remember there's two pieces of corrugated plastic? I mean,
22 that's the backdrop. That's why no one mentioned the orange pants. I
23 mean, they saw what they saw. It doesn't matter.

24 There are two people in that backyard. And you know why --
25 you know how you know that? They told you. The people on trial told

1 you, not their attorneys three years later. The people on trial, when it
2 was close in time to the incident, told you.

3 I should have checked the brightness before I did that, but you
4 get the point. Officer Grego-Smith accounts for the purple shirt.

5 Maybe -- maybe Turner had his shirt off. Maybe he didn't. It doesn't
6 matter. There are two people there. They told you that. Two people.

7 Mr. Hudson had basketball shorts, which accounts for that
8 description you got from one of the officers of basketball shorts.

9 Mr. Hudson had a camo shirt on. And if you look in that backyard -- I'm
10 not going to dig through the photos -- but the whole backdrop other than
11 the orange is green. It's camo. The camo worked.

12 So what they didn't give exact descriptions? No one could
13 give an exact description of these people that night.

14 And think about this: Canine Officer Bitsko, Officer Russo,
15 who ran up to that scene with the shotgun -- even though he was told to
16 wait for SWAT -- who wanted to save these men's lives, and the air unit
17 all gave different descriptions of Hudson. We know Hudson was there,
18 and he was prone out on the ground. They all gave descriptions and
19 they weren't being fired at. One said a gray shirt, one said no shirt, and
20 one said a tank top. These guys are responding after the fact.

21 So what? Does that mean they're not guilty? Of course not.
22 Guilty as sin.

23 Now, I don't mean to repeat this, but there's absolutely zilch,
24 zero evidence, of a third person involved in this case. The only thing,
25 the only way that idea came into anyone's head, including the defense

1 attorney's, is because --

2 MS. MACHNICH: Objection, Your Honor. That's disparaging
3 counsel.

4 THE COURT: Objection is sustained. Disregard that last
5 comment.

6 MS. MACHNICH: Thank you.

7 MR. GIORDANI: I don't mean in any way to disparage them.
8 I'm saying they're doing their job. And there's this idea out there from
9 the homeowners who, for 15 -- 14 minutes and 48 seconds were being
10 terrorized and trying to peek out windows, that potentially we are talk
11 about three different suspects. That's it. That's where this idea of a third
12 person comes in.

13 Again, that's refuted by both of these guys. They told you
14 that. There's two cell phones in the car, two fired guns, a massive
15 perimeter, and two people captured. There's two confessions; both of
16 them said two people. There's two stars on the diagram. Turner said it.
17 Hudson said it. I could go on. But I know you want to get out of here, so
18 I won't.

19 Let me talk about what we know about how we know it real
20 quick. We know that Turner, Mr. Turner, is the link to that house.
21 Mr. Turner had been over there weekly for years or whatever it was. We
22 know that Turner knew those two guys are vulnerable.

23 You saw Mr. Clarkson. You know, he started crying on the
24 witness stand and I'll let his demeanor and everything speak for itself.
25 He knew he was going over there to rob with firearms some vulnerable

1 people. He knew Eric didn't have a gun in his home, and he knew there
2 was potentially --

3 MS. MACHNICH: And objection. That states facts not in
4 evidence.

5 MR. GIORDANI: Do you want me to respond?

6 THE COURT: Yes. Approach.

7 MR. GIORDANI: Well, can I just withdraw the statement?

8 THE COURT: Withdraw it.

9 MR. GIORDANI: You can strike it or --

10 THE COURT: Disregard the last statement.

11 MR. GIORDANI: Okay.

12 THE COURT: Sustained.

13 MR. GIORDANI: We know that contact between Mr. Turner
14 and the victim was cut off. We know that because Mr. Clarkson told you
15 he stopped communicating, he erased his -- all of his stuff from his
16 phone. Doesn't matter why it's cut off. There's some evidence that is
17 admissible and some that doesn't matter. That's something that doesn't
18 matter.

19 But what does matter is that Mr. Turner knew who was in that
20 house, what he could get from that house, and that those victims were
21 helpless. That's why they went over there, to rob them, to do a dope
22 raid.

23 We know Turner and Hudson arrived in Hudson's car. There's
24 two cell phones that come back to them in those -- in that car, and they
25 said so. There's no third person ever in the car. There's two

1 defendants, they told you, they were that car. There's two long guns, a
2 little pistol, and two big dogs in that car.

3 That in and of itself tells you there's not people in the
4 backseat. I mean, don't even take Turner and Hudson's word for it.
5 There's not two people in the back seat, because the dogs are sitting
6 back there. Which, funny enough, they get left behind because of what
7 happened. No one ran back to the getaway car, they just ditched out.
8 Or one got caught, and one ditched out.

9 We know they were going over to do an armed robbery,
10 because they brought guns. They told you they were going to do armed
11 robbery. Hudson said so. Turner minimized. He kind of distanced
12 himself from the gun when he realized that he put a round through an
13 officer. We know both guns were taken over to that side wall, and we
14 know it takes two people to do that. Okay. We got a big long shotgun
15 and a big old SKS, and they're being handed over that wall, Hudson to
16 Turner or Turner to Hudson, vice versa, acting in concert throughout.

17 We know Hudson banged on the front door, which eliminates
18 this idea of a third suspect, and again explains the idea this third
19 suspect. Hudson told you he banged on the door. He then went to the
20 side of the house. Turner went to the side of the house. They tried the
21 side door. Then they went around back.

22 And this is important. Mr. Turner, as much as he minimized
23 when he realized the seriousness of what he just did, he put himself on
24 that patio. I mean, he claimed that the minute he got there, shots just
25 started being fired. But he put himself there. It's not just the stippling,

1 which clearly indicates he's on the patio. He put himself there.

2 He didn't say, I got to the patio and I saw two other people,
3 two -- this random person who came out of nowhere. Wouldn't that have
4 been the time to do it? Of course it would have, if that was true or if he
5 had the presence of mind to think, Oh, if I insert this idea of a third
6 person, maybe three years down the road I won't get convicted at trial.
7 He didn't. He said he got up to the patio and shots just started coming
8 out, and then he ran.

9 One more point about that third person. Now, again, there's
10 absolutely no evidence of that whatsoever. But just for the sake of
11 argument, if I'm understanding Ms. Machnich's argument, she's saying
12 that Mr. Hudson called some of his buddies to join in or something.
13 When did he do that? On the car ride, when Turner was sitting right next
14 to him and then Turner had no idea about it? Makes no sense.

15 We know for a fact the officers opened the door. There's no
16 bullets through the door, and both the officers told you that and the lay
17 witnesses told you that. We know for a fact that both defendants
18 opened fire without warning because there's two different guns.

19 All the witnesses said they opened fire without warning.
20 Hudson claimed the other guy, who I submit to you is Turner, shot
21 before him. We know there are two different caliber rounds. The
22 witnesses described it in detail. Frankly, I thought it was a little dramatic,
23 but pretty good descriptions of the shooting star and the -- and the
24 fireworks.

25 I'm not going to -- try not to point this to you. But we know,

1 again, that there are two people, because this gun requires two hands to
2 load. It's pretty heavy. You'll have this back there. You'll be able to
3 hold it up yourself.

4 Mr. Hudson over there wasn't holding both of these guns and
5 firing. There are two people on that patio discharging rounds into that
6 home. There is absolutely no doubt of it. Forget reasonable doubt;
7 there's no doubt of that whatsoever.

8 We know Robertson was hit by the SKS round that went
9 through his femur and destroyed it. And then it came out his right
10 buttock, and flew up to the top of that front screen door.

11 So as much as Mr. Plummer was trying to help Mr. Turner out
12 a little bit, it wasn't pointed down. That gun was coming up when he hit
13 Robertson in the leg, because the round continued up and hit the door.
14 It then went out.

15 Officer Robertson dropped to the ground. Felt like 15 seconds
16 to him, but it was almost instantaneous. His leg was pulverized. And
17 when he dropped to the ground, thank God he did, because then
18 Mr. Hudson took his turn.

19 If the order of the shots were different, Officer Robertson
20 might not be here today. He took this round, and it probably oddly saved
21 his life, because he dropped to the ground and that shotgun blast went
22 over him.

23 We know that from the crime scene alone. Forget all the
24 witnesses saying shooting star and then fireworks. Forget that. Look at
25 the evidence at the scene. The shotgun blasts went through that narrow

1 door. No doubt about that, because it ended up in the front window,
2 right? It could not have done that without striking him unless he was
3 already down. That's the order of the shots. The evidence is clear.

4 We also know that both of them, both of those shots, were kill
5 shots. And Ms. Beverly said this, so I'm not going to get too into detail,
6 but if you look -- I'll use this bright orange thing that matches
7 Mr. Turner's pants to show you -- from the patio to the front door, there
8 is one area they were shooting, and that's right here. None of the
9 buckshot hit the wall, and none of it hit on this side. Those were both kill
10 shots.

11 Now, again, they didn't need to specifically intend to kill Officer
12 J. Robertson and Officer Malik Grego-Smith. They just need to intend to
13 kill human beings. So whether it's Willow and Eric opening that door or
14 the officers opening that door, their intent to kill was a human being, and
15 their intent to kill is obvious. When you fire a shotgun and you fire an
16 SKS round at a human being, there is no other perceivable outcome.

17 That's why we're here, no secret. It's an attempt murder.
18 That's what we're fighting over.

19 Now, they could have been charged with four counts of
20 attempt murder based upon the transferred intent instruction. They
21 could have been -- we could have charged them with four counts.

22 MS. MACHNICH: Objection, Your Honor.

23 MR. PLUMMER: Objection, Your Honor.

24 MS. MACHNICH: Relevance.

25 THE COURT: Objection. Sustained.

1 MR. GIORDANI: Okay.

2 THE COURT: Disregard that last comment. The jury is
3 instructed to disregard that last comment.

4 MR. GIORDANI: Okay.

5 They are charged with two counts because we can't prove that
6 they specifically shot -- intended to shoot at either the police officers or
7 Willow and Eric. Okay. That's an important distinction.

8 We know they tried to kill two shapes in the door. Whether or
9 not it's dark inside and they don't know who they're shooting at doesn't
10 matter. I mean, that's the truth. That's the reality of it. Whether they
11 thought it was Eric and Willow who finally had the, you know, whatever
12 it's called to come to the door, or whether they know those two bodies
13 are these two, they attempted to kill two human beings. That's all that
14 matters.

15 And that instruction that says an attack on a group, you know,
16 is sufficient -- the intent is sufficient for any member of that group, that is
17 why it's charged the way it is. That instruction -- I apologize -- well, it's
18 the attack-on-the-group instruction, and I don't need to find it. It's not
19 that big a deal.

20 The point is they're shooting at two human beings. Doesn't
21 matter if they can see the badges. Doesn't matter if they thought it was
22 Eric and Willow. They're shooting at two human beings and the only,
23 only result that comes from shooting a weapon like this is death.

24 MS. MACHNICH: Objection, Your Honor.

25 MR. GIORDANI: Unless --

1 MS. MACHNICH: That's a misstatement of the law.

2 Shooting --

3 MR. GIORDANI: I wasn't talking about the law.

4 THE COURT: Counsel, approach. Huh? Counsel approach.

5 [Bench conference transcribed as follows:]

6 THE COURT: What is your objection, counsel?

7 MS. MACHNICH: The fact that they're misstating the law by
8 stating that the only result of shooting is an intent to kill. That is not --
9 that's not how the law works. They have to have an intent to kill and
10 then shoot. Those are two separate and distinct concepts, especially
11 when we're talking about attempt murder.

12 MR. GIORDANI: That's where I'm going next, so.

13 MS. MACHNICH: But he just --

14 THE COURT: All right. Just say -- it's a specific -- they have
15 to have the intent when they shoot. I understand.

16 MS. MACHNICH: Okay.

17 THE COURT: I think that's what he's arguing. To the extent
18 that he's not arguing, I'll sustain it. The argue -- you have to have the
19 specific intent to kill and then shoot.

20 MR. GIORDANI: That's exactly what I was about to say.

21 THE COURT: Okay.

22 MR. GIORDANI: All right.

23 THE COURT: Thank you.

24 MR. GIORDANI: Thank you.

25 [End of bench conference.]

1 MR. GIORDANI: What I was about to say was the intent to kill
2 could have been formed the minute they heard the key being turned, or
3 the minute -- the second the door opened, or the millisecond it took to
4 go, That's a body, a human, and pull the trigger; that's the intent to kill.
5 That's what you're deciding in that brief moment when you -- when you
6 pull that -- decide to pull that trigger.

7 And real quickly, there's -- there's an example I'd like to give
8 you. You're driving towards an intersection. The light turns yellow when
9 you're about 50 feet away. You keep going. And in that instant where
10 you're in that sweet spot, you could either stop or go. The thoughts that
11 go through your mind are, Is my coffee going to spill? What's on the
12 passenger seat? Were there cops over there? Is my backpack going to
13 explode on the ground?

14 And you make that choice instantaneously within two
15 thoughts -- successive thoughts of the mind, you decide I'm going to run
16 this and risk it or I'm going to stop.

17 These guys did not go over there that day with the intent to
18 murder a police officer. They didn't. They went over to rob, with
19 high-powered weapons that were loaded, a couple of harmless people.

20 They formed the intent to kill when that door started to open.
21 And instead of going, This is a bad idea, or, Oh, this is about to get
22 crazy, or, Give me your weed, they chose to almost end that man's life.
23 By the grace of God, they missed his artery. He fell. The shotgun blast
24 missed him. Does not change their intent. Their intent was to kill. Both
25 of those shots were kill shots, and both of those men made their

1 decisions.

2 Now you have to make yours. There's only one decision in
3 this case.

4 And we know for a fact Officer Grego-Smith returned 12
5 rounds. We know for a fact he put his body and his life on the line for his
6 partner and he got in the way of that -- that doorway and dropped to a
7 knee and returned fire. We know that because it's corroborated by that
8 screen. That's actually a really nice piece of evidence. It's kind of nice
9 to have had that screen there, because it tracks his shots.

10 We know there were 12 casings in the living room. Those
11 officers never crossed the threshold outside. We know that before
12 Officer Grego-Smith could actually fire, or when he fired the higher
13 rounds, that Turner fired two more rounds. We know that because there
14 were two -- one round through the chair and then one round through the
15 TV, through the thing that holds the TV.

16 We know that he fired those as he backed up because he was
17 either trying to retreat and still fire or he was being pushed back. Either
18 way, based upon the scene and the evidence as it was laid out and the
19 casings -- even if they're kicked, they're -- the important ones up front
20 and the last two move back along with the -- the rounds. And we know
21 that because he had shrapnel in his leg.

22 Now, you obviously picked up on the fact that that's a big deal
23 and that stippling's a big deal. It is.

24 You see that stack of Officer Robertson's medical records?
25 Pretty big. And you saw earlier the little stack of Mr. Turner's records?

1 It's, like, this big. Stippling's referenced four times in there and not once
2 in there. That's because the muscle was far enough away, more
3 than 36 inches, to not leave stippling on Robertson.

4 Now, it was closer to Turner, because he was shooting it.
5 When he fired into that chair and that piece of shrapnel that looks just
6 like all the other shrapnel in that chair hit him in the leg. And that soot,
7 the same way the shrapnel bounced off that chair, the soot ended up on
8 his leg. And there are two medical doctors who concurred in that
9 opinion in those medical records.

10 Now, I believe Ms. Machnich questioned Dr. Urban -- I can't
11 recall exactly what she said about her, but unless those two officers are
12 lying, that guy's up on that patio and firing that SKS. That's where the
13 stippling comes from. It does not -- does not -- come from the rounds
14 that struck the back wall that came out of Officer Grego-Smith's weapon.
15 Common sense dictates that. Common sense tells you that the
16 gunpowder only goes 36 inches. It can deflect off a surface just like the
17 shrapnel can.

18 MS. MACHNICH: Objection. That states facts not in
19 evidence.

20 MR. GIORDANI: No, that's common sense.

21 MS. MACHNICH: I -- I don't think it's --

22 THE COURT: Counsel, that's argument. Overruled.

23 MR. GIORDANI: Thank you.

24 Common sense dictates that flecks of gunpowder can bounce
25 off a surface just like the shrapnel can. Common sense dictates that

1 from 25 feet away, the stippling -- the powder has dissipated by then.
2 Common sense dictates that those hollow point rounds that Metro uses
3 across the board, they mushroom instead of blowing up like these
4 high-powered rifle rounds.

5 MS. MACHNICH: Again, Your Honor, states facts not in
6 evidence.

7 MR. GIORDANI: Again, that's common sense. That's
8 argument.

9 THE COURT: Okay. Counsel, there needs to be a
10 reasonable inference.

11 Counsel, approach.

12 [Bench conference transcribed as follows:]

13 THE COURT: All right. How many more common senses do
14 you have?

15 MR. GIORDANI: A lot.

16 THE COURT: All right. Well, it has to be a reasonable
17 inference.

18 MR. GIORDANI: How is that not reasonable?

19 MS. MACHNICH: Because it's a specific firearm. It's -- yeah.
20 So you've seen a mushroom bullet. That's in record. But no one
21 testified that the bullets could only do that, and that's actually incorrect.

22 THE COURT: Okay. It's argument, counsel.

23 MS. MACHNICH: It is --

24 THE COURT: He can make reasonable inferences from the
25 evidence that has been presented.

1 So somehow relate it to the evidence that's been presented.

2 MR. GIORDANI: I will.

3 THE COURT: If you're going to do common sense, all right, I
4 don't have a problem with that. But you have to relate it to evidence
5 that's in the record. So reference the evidence that's common -- that's
6 common sense.

7 MR. GIORDANI: I will.

8 THE COURT: And make your reasonable inference
9 therefrom.

10 [End of bench conference.]

11 MR. GIORDANI: Your Honor, I won't be much longer.

12 There is a photograph somewhere in there of one of the
13 officer's rounds, and it's State's 404. It's called a mushroom round.
14 Hollow points are made that way so they fold over. These aren't. These
15 shrapnel, from 25 feet away or whatever that backyard is -- you'll have
16 the diagram with the ruler on it -- there's no gunpowder left to go in -- on
17 his leg. So that's why stippling is a big deal.

18 Again, I don't want to repeat myself, but I must: All of the
19 rounds were fired. So what we know is there's two people on the patio,
20 and all of the casings were found in this patio area. What we know is
21 Hudson's gun, his shotgun, was hit as he ran away. Okay. There's 12
22 rounds through the screen. Mr. Hudson and Mr. Turner, when they
23 started receiving return fire, they ran around the screen this way, or at
24 least one of them did, and Mr. Hudson and his shotgun fell to the ground
25 when it was struck.

1 And to clarify what Mr. Plummer was trying to get at, the
2 shotgun, once it was hit, was rendered inoperable, so he couldn't clear
3 that next round and put a new one in the chamber. Okay. It didn't set
4 off the round in the gun; he pulled the trigger. It didn't make it so he
5 could reload; it made it the opposite. It made it so he could not remove
6 that cartridge.

7 Maybe it's then that he decides to run. Maybe he did intend to
8 keep shooting. Maybe not. Doesn't matter. His first shot was the kill
9 shot. That's the attempt murder, the intent to kill.

10 Mr. Plummer, I believe, or Ms. Machnich, said -- it was
11 Mr. Plummer -- said the guns ended up together in a nice pretty picture.
12 Well, we know why: Because when these guys started getting return
13 fire, they ran. They ran to try to get back to the getaway car by going the
14 same way they came in, around the wall. He got hit with a round in the
15 rifle. He went down and he decided to stay there. Probably a wise
16 choice, probably the only good choice he made in this case.

17 Turner didn't get hit other than the shrapnel from up on the
18 patio, and he kept running. That's why the guns ended up there, they're
19 going in the same direction. They're trying to get back to the getaway
20 vehicle, which, mind you, had the keys left in the ignition.

21 We know, and I don't want to harp on it, but I'll repeat, both
22 these guys made statements. Both of them did what we call admit what
23 you can't deny, deny what you can't admit. Hudson got caught on
24 scene. He's not denying he was there. Hudson got caught with a
25 shotgun right next to him. He's not denying he had a shotgun. Hudson

1 got caught with a pistol next to him. He knew he had the pistol. He's not
2 denying that, it's right there.

3 But what he can't admit is that he intentionally shot to kill.
4 What he can't admit, because he knows -- I mean, anyone with common
5 sense knows you can't admit you tried to kill a cop. That's not good. So
6 he -- admit what you can't deny, deny what you can't admit. He
7 distanced himself from the serious stuff or the most serious, and he
8 admitted what he had to.

9 Turner did the same thing. Turner's in a different position,
10 because he was able -- he was faster, I guess. He got away except that
11 he got caught on the perimeter. He admitted what he couldn't deny and
12 denied what he couldn't admit. He admitted he was up on that patio.
13 But the minute we start talking about guns, no, no, no, no, I'm not going
14 to admit that. Can't admit to getting in a shootout with a police officer.

15 That's what this is about. I mean, we know they were both
16 there. There's no third suspect. They were both there. They both did it.
17 That's why we're here, is because of the attempt murder. All the
18 evidence supports attempt murder.

19 We know they went there to do violence. Again, they didn't go
20 there with the intent to kill a cop. No one's going to say that to you. I'm
21 not going to say that to you.

22 And I'm going to make a point here, I just remembered.
23 Ms. Machnich had a little quote on the bottom of her PowerPoint that
24 said, The State's desperate to win.

25 I gave up being personally offended a long time ago in this

1 job. It is what it is. We're not desperate to win. We're desperate, if
2 anything, for justice. That's it. We're desperate for you to do what
3 you're sworn to do, and that's follow the law and look at the facts and
4 apply the facts to the law.

5 I need to -- I'll be brief. I'm almost done. I just want to hit a
6 couple of points.

7 No single person fired both these weapons. Both of the
8 people who fired those weapons had one intent when they pulled the
9 trigger. Not the intent going to the house, not even the intent when they
10 went into the backyard, maybe not the intent for the 15 minutes they
11 tried to break into the house to rob people with guns; but when that door
12 opened, the intent is clear: Rounds through the house, rounds at the
13 bodies of human beings.

14 Two -- two people in this room are victims. They are not
15 sitting at the defense table. Two people in this case attempted to kill
16 Officer Robertson and Officer Grego-Smith, and it's Mr. Turner and
17 Mr. Hudson. Follow your oath, follow the law, and you will come to that
18 conclusion without a problem.

19 Thank you very much for your time.

20 THE COURT: Thank you.

21 Ladies and gentlemen, we're going to take our evening recess
22 at this time.

23 During this recess, you are admonished not to talk or
24 converse among yourselves or with anyone else on any subject
25 connected with this trial or read, watch, or listen to any report of or

1 commentary on the trial or any person connected with this trial by any
2 medium of information, including, without limitation, newspapers,
3 television, radio, or Internet, or form or express any opinion on any
4 subject connected with the trial until this case is finally submitted to you.

5 I share this courtroom with another judge. He has a hearing
6 at 9:00 tomorrow. Hopefully, he'll be done by 9:30. I'm going to ask that
7 you return at 9:30 tomorrow. And then I'll bring you in. And then
8 afterwards, some preliminary matters, you can begin your deliberation.

9 So this evening, we're in recess until 9:30 tomorrow.

10 [Jury recessed at 5:37 p.m.]

11 THE COURT: We'll be in recess tomorrow -- until tomorrow
12 at 9:30.

13 MS. MACHNICH: Thank you, Your Honor. Thank you.

14 [Court recessed at 5:38 p.m., until April 27, 2018, at 9:30 a.m.]

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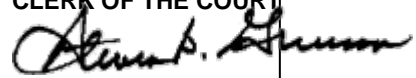
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Shawna Ortega, CET*562



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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff(s),
vs.
STEVEN TURNER AND CLEMON
HUDSON,
Defendant(s).

Case No. C-15-309578-1 and
Case No. C-15-309578-2
DEPT. XVIII

BEFORE THE HONORABLE MARK B. BAILUS,
DISTRICT COURT JUDGE

FRIDAY, APRIL 27, 2018

**TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL - DAY 10**

(Appearances on page 2.)

RECORDED BY: ROBIN PAGE, COURT RECORDER

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APPEARANCES:

For the Plaintiff(s):

LEAH C. BEVERLY, ESQ.
(Deputy District Attorney)
JOHN L. GIORDANI III, ESQ.
(Deputy District Attorney)

For the Defendant
Steven Turner:

TEGAN C. MACHNICH, ESQ.
(Deputy Public Defender)
ASHLEY L. SISOLAK, ESQ.
(Deputy Public Defender)

For the Defendant
Clemon Hudson:

CLAY PLUMMER, ESQ.

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1 **LAS VEGAS, NEVADA, FRIDAY, APRIL 27, 2018**

2 [Proceeding commenced at 9:39 a.m.]

3
4 [Outside the presence of the jury.]

5 THE COURT: Please be seated. Make sure my phone's off.

6 All right.

7 This is the continuation of the trial in Case No.
8 C-15-309578-1 and -2, *Plaintiff, State of Nevada vs. Defendants, Steven*
9 *Turner and Clemon Hudson*. The record will reflect the presence of
10 counsel for the State, counsel for the defense, and the presence of the
11 defendants.

12 Counsel, obviously, what I'm going to do this morning is bring
13 the jury in, swear in the officers, and we'll start jury deliberation. You
14 need to stay within 20 minutes of the courthouse once the jury starts
15 deliberation.

16 Anything that needs to be done outside the presence of the
17 jury?

18 MR. GIORDANI: Not on behalf of the State.

19 MS. BEVERLY: No.

20 MS. MACHNICH: Your Honor, I have one concern is I know
21 there's one juror who has a flight out tonight. No idea how long they're
22 going to take to deliberate. And, obviously, it's up to Your Honor's
23 discretion on this, but I guess we would request that in theory they be
24 told from the onset that they do not need to hurry, that they should give a
25 fair and honest deliberation.

1 THE COURT: I'm not going to do that, counsel. I've
2 instructed them on the law and --

3 MS. MACHNICH: Okay.

4 THE COURT: -- if there's an issue, they'll bring it to my
5 attention.

6 MS. BEVERLY: Thank you.

7 THE COURT: I understand your concern, counsel.

8 MS. MACHNICH: Okay.

9 THE COURT: But at this point I'm not going to give them
10 additional instructions on deliberation.

11 MS. MACHNICH: Okay.

12 THE COURT: I provide the 50 instructions to them, which I
13 expect them to follow.

14 MS. BEVERLY: It's a long instruction.

15 THE COURT: In any event, I'll bring the jury in.

16 MS. MACHNICH: Okay.

17 [Jury reconvened at 9:42 a.m.]

18 THE COURT: You may be seated.

19 Will the parties stipulate to the presence of the jury?

20 MS. BEVERLY: Yes, Your Honor.

21 MS. MACHNICH: Yes, Your Honor.

22 MR. PLUMMER: Yes, Your Honor.

23 THE COURT: Thank you.

24 The clerk now will swear the officers to take charge of the
25 jurors and the alternate jurors.

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[Officers sworn.]

THE COURT: Thank you. Officers, take charge of the jurors and the alternate jurors.

Mr. -- Marshal, just the jurors. I have the alternate jurors remain in the courtroom right now.

[Jury recessed for deliberations at 9:43 a.m.]

THE COURT: You may be seated.

MS. MACHNICH: Thank you, Your Honor.

[Alternate jurors recessed at 9:44 a.m.]

THE COURT: We'll be in recess.

MS. MACHNICH: Thank you, Your Honor.

MS. SISOLAK: Thank you.

[Court recessed at 9:44 a.m., until 9:45 a.m.]

THE COURT: We're going to go back on the record just for one second.

Counsel, just go back to your table for one second, please.

We're back on the record in *State of Nevada vs. Steven Turner and Clemon Hudson*. The record reflect the presence of counsel for the State, counsel for the defendants, and the presence of defendants.

Counsel, it's my policy when a weapon is involved that they -- I do not send the weapon back to the jury room. But if the jury requests to see the actual weapon, my marshal will take it back and remain in the -- within the presence of the weapon. Once they are finished reviewing the weapon, then he takes charge of it again.

1 Does anybody have any problem with that procedure?

2 MR. GIORDANI: No.

3 MS. MACHNICH: Just -- just a point of clarification, does that
4 include all of the items that are in the box with there? Because I know
5 that there's several --

6 THE COURT: If they want to keep the items in the box, I
7 don't really have a problem with, like, the bullets or the cartridges. It's
8 just the weapon itself.

9 MS. MACHNICH: Okay.

10 MS. BEVERLY: And live -- live rounds, obviously, shouldn't
11 be left alone with the weapon.

12 THE COURT: And that's why the marshal maintains control
13 of it. But again, if -- if they request to see the weapon, I don't
14 automatically send it back in there with them.

15 MS. MACHNICH: Understood.

16 THE COURT: If they request to see it, then he'll bring it in.
17 And then once they've reviewed it, he retrieves it.

18 MS. MACHNICH: Okay.

19 THE COURT: Does -- does -- is there any objection to that
20 procedure?

21 MS. MACHNICH: Well, no -- no objection. No - if the
22 marshal could inform them they -- if they would like it, they can see it.
23 Because if it's not back there with them and they have no one --

24 THE COURT: That's fine. Does anybody have any problem
25 with the marshal informing them of that?

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MS. MACHNICH: No, that's --

MR. GIORDANI: No, Your Honor.

THE COURT: Okay. Then that'll be the procedure if all parties are in agreement.

MR. GIORDANI: Thank you.

MS. MACHNICH: Thank you, Your Honor.

THE COURT: Thank you, counsel.

Just let them know if they want to see the -- the -- we're off the record.

[Court recessed at 9:47 a.m., until 1:27 p.m.]

[Outside the presence of the jury.]

THE COURT: Please be seated. This is continuation of the trial in Case No. C-15-309578-1 and -2, *Plaintiff State of Nevada vs. Defendant, Steven Turner and Clemon Hudson.*

The record will reflect the presence of counsel for the State, counsel for the defendants, and the presence of the defendants.

Counsel, I've been informed that the jury has reached a verdict. At this time I'm going to bring the jury in.

[Jury reconvened at 1:30 p.m.]

THE COURT: Please be seated. Will the parties stipulate to the presence of the jury?

MS. BEVERLY: Yes, Your Honor.

MS. MACHNICH: Yes, Your Honor.

MR. PLUMMER: Yes, Your Honor.

THE COURT: Thank you. Has the jury elected a

1 foreperson? Who is that person? Please stand, please.

2 And your name and badge number? Or your name, please.

3 JUROR NO. 3: Beatriz Cruz.

4 THE COURT: I'm sorry?

5 JUROR NO. 3: Beatriz Cruz, and Number 3.

6 THE COURT: Thank you. Has the jury reached a verdict?

7 JUROR NO. 3: Yes.

8 THE COURT: Will you please hand the verdict to my
9 marshal. You may be seated. Thank you.

10 Will the defendants and their attorneys please stand.

11 The clerk will now read the verdict out loud.

12 THE CLERK: District Court, Clark County, Nevada, State of
13 Nevada Plaintiff, Case No. C309578-1, Steven Turner, verdict.

14 We, the jury, in the above entitled case find the defendant,
15 Steven Turner, as follows:

16 Count 1, conspiracy to commit burglary, guilty of conspiracy
17 to commit burglary.

18 Count 2, attempt burglary while in possession of a firearm or
19 deadly weapon, guilty of attempt burglary while in possession of a
20 firearm or deadly weapon.

21 Count 3, attempt murder with a -- correction -- Count 3,
22 attempt murder with deadly weapon, guilty of attempt murder with deadly
23 weapon.

24 Count 4, attempt murder with deadly weapon, guilty of
25 attempt murder with deadly weapon.

1 Count 5, battery with use of deadly weapon resulting in
2 substantial bodily harm, guilty of battery with use of a deadly weapon
3 resulting in substantial bodily harm.

4 Dated this 27th day of April, 2018, Beatriz Cruz, Foreperson.

5 Case No. C-309578-2, Clemon Hudson, Defendant, verdict.

6 We, the jury, in the above entitled case find the defendant,
7 Clemon Hudson, as follows:

8 Count 1, conspiracy to commit burglary, guilty of conspiracy
9 to commit burglary.

10 Count 2, attempt burglary while in possession of a firearm or
11 deadly weapon, guilty of attempt burglary while in possession of a
12 firearm or deadly weapon.

13 Count 3, attempt murder with deadly weapon, guilty of
14 attempt murder with deadly weapon.

15 Count 4, attempt murder with deadly weapon, guilty of
16 attempt murder with deadly weapon.

17 Count 5, battery with use of deadly weapon resulting in
18 substantial bodily harm, guilty of battery with use of a deadly weapon
19 resulting in substantial bodily harm.

20 Dated this 27th day of April, 2018, Beatriz Cruz, Foreperson.

21 Ladies and gentlemen of the jury, are these your verdicts as
22 read, so say you one, so say you all?

23 THE JURY: Yes.

24 THE COURT: Thank you. You may be seated.

25 MS. SISOLAK: Thank you, Your Honor.

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MS. MACHNICH: Thank you, Your Honor.

THE COURT: Do either of the parties desire to have the jury
polled?

MS. MACHNICH: We would, Your Honor.

THE COURT: Mr. Plummer?

Will -- go ahead.

THE CLERK: Juror No. 1, are these your verdicts as read?

JUROR NO. 1: Yes.

THE CLERK: Juror No. 2, are these your verdicts as read?

JUROR NO. 2: Yes.

THE CLERK: Juror No. 3, are these your verdicts as read?

JUROR NO. 3: Yes.

THE CLERK: Juror No. 4, are these your verdicts as read?

JUROR NO. 4: Yes.

THE CLERK: Juror No. 5, are these your verdicts as read?

JUROR NO. 5: Yes.

THE CLERK: Juror No. 6, are these your verdicts as read?

JUROR NO. 6: Yes.

THE CLERK: Juror No. 7, are these your verdicts as read?

JUROR NO. 7: Yes.

THE CLERK: Juror No. 8, are these your verdicts as read?

JUROR NO. 8: Yes.

THE CLERK: Juror No. 9, are these your verdicts as read?

JUROR NO. 9: Yes.

THE CLERK: Juror No. 10, are these your verdicts as read?

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JUROR NO. 10: Yes.

THE CLERK: Juror No. 11, are these your verdicts as read?

JUROR NO. 11: Yes.

THE CLERK: Juror No. 12, are these your verdicts as read?

JUROR NO. 12: Yes.

THE COURT: The clerk will now record the verdict in the minutes of the court.

MS. MACHNICH: Thank you, Your Honor.

THE COURT: Ladies and gentlemen, ask you know, the right to trial by jury is one of our basic and fundamental constitutional guarantees. I firmly believe in this right, that is the right of every person accused of a crime to be judged by a fair and impartial jury.

We must have jurors, and unfortunately, jury service is something that many persons shirk from, they do not wish to become involved. That's why I'm pleased that you 12 men and women have been willing to give your valuable time and have been most attentive and most conscientious.

On behalf of counsel, the parties, and the Eighth Judicial District Court, I wish to thank you for your careful deliberation which you gave to this case.

The question may arise as to whether you may not talk to other persons regarding this matter. I advise you that you may, if you wish, talk to other persons and discuss your deliberation, which you gave to this case. You are not required to do so, however.

I will be available shortly to speak to you if you so desire.

1 And if any person persists in discussing this case after you have
2 indicated that you do not wish to do so or raises objections as to the
3 result or as to how you deliberate, you will report that fact directly to me.

4 So what that means is you're going to be released at this
5 point. If -- if sometimes the attorneys will want to come up and talk to
6 you just to give your thoughts about your deliberation, they can use it as
7 a learning tool sometimes. You can talk to them if you want to. But if
8 you don't want to talk to anybody, that's completely your decision. And if
9 somebody persists in talking with you or in any manner, please report it
10 to me or the -- or contact my marshal and let me know.

11 What I usually do is I have you in there the same way you
12 came in. I usually come back to the jury room afterwards. And if you
13 want to speak to me for a few minutes, I'm more than willing to -- to meet
14 with you and then you can just leave, or you can just leave after I
15 discharge you. It's your decision.

16 So again, thank you so much for sitting as jurors in this
17 matter. I know it's hard to make decisions regarding other individuals,
18 but our whole system is based on jurors being willing to participate in it.
19 So again, thank you so much.

20 You're discharged.

21 [Jury dismissed at 1:38 p.m.]

22 THE COURT: Okay. I'm going to -- the defendants will -- are
23 remanded into custody and will remain in custody until -- we're going to
24 set a sentencing date at this time.

25 MS. MACHNICH: Thank you, Your Honor.

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THE CLERK: Sentencing, June 21, 9:00 a.m.

MS. BEVERLY: Thank you, Your Honor.

MS. MACHNICH: Thank you, Your Honor.

MR. PLUMMER: Thank you, Your Honor.

THE COURT: Is there anything further, counsel?

MR. GIORDANI: No. Thank you.

MS. BEVERLY: No, Your Honor.

MS. MACHNICH: No, Your Honor.

[Court adjourned at 1:39 p.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.



Shawna Ortega, CET*562

1 Las Vegas, Nevada, Thursday, May 31, 2018

2 [Hearing began at 9:02 a.m.]

3 THE COURT: On page two, case number C309578, State
4 versus Turner. Counsel, state your appearances please.

5 MS. BEVERLY: Leah Beverly for the State, but I believe we're
6 waiting on Ms. Machnich.

7 MS. PLUNKETT: And it's going to be Mr. -- Ms. Sisolak today.
8 And I am now the counsel for the co-Defendant, Clemon Hudson. I filed
9 a notice of appearance yesterday that hasn't been file stamped yet. But
10 Ms. Sisolak invited me to be here, so.

11 MS. BEVERLY: And, Your Honor, Mr. Hudson's case is not
12 on calendar today, so I got the notice but I'm not sure.

13 MS. PLUNKETT: Correct.

14 MS. BEVERLY: Because they didn't file a joining of this
15 motion or anything, so I don't know why she's here.

16 THE COURT: Alright, well, you're here as an observer?

17 MS. PLUNKETT: I'm here as an observer as support for Ms.
18 Sisolak. I wasn't the attorney that tried this case, hence they've brought
19 me on for the sentencing. I don't know why a joinder --

20 THE COURT: I believe it was Mr. Mueller's office actually.

21 MS. BEVERLY: Correct.

22 MS. PLUNKETT: Correct.

23 THE COURT: Who's Mr. Sisolak?

24 MS. BEVERLY: Ms. Sisolak is the co-counsel for Mr. Turner,
25 with the PD's office as well. But what I'm saying is --

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THE COURT: Oh for the -- okay.

MS. BEVERLY: Right, only Mr. Turner -- only Mr. Turner filed a motion. Mr. Hudson --

THE COURT: Correct.

MS. BEVERTLY: -- didn't file a motion.

THE COURT: Did not file a motion nor a joinder.

MS. PLUNKETT: Correct. They really dropped the ball on that one.

THE COURT: Okay.

MS. PLUNKETT: Okay.

[Case trailed at 9:03 a.m.]

[Case recalled at 10:01 a.m.]

MS. SISOLAK: Good morning. Your Honor, I was wondering if we could call Mr. Turner on page 2?

THE COURT: We could.

MS. SISOLAK: Thank you.

I apologize for my tardiness, Your Honor.

THE COURT: You do not have to apologize.

MS. BEVERLY: Leah Beverly for the State.

MS. SISOLAK: Ashley Sisolak on behalf of Mr. Turner, Your Honor.

THE COURT: And let me call the case.

MS. PLUNKETT: And good morning, Judge, Alexis Plunkett --

THE COURT: Wait.

MS. PLUNKETT: -- stepping in for co-Defendant.

1 THE COURT: Let me call the case.

2 MS. PLUNKETT: I'm sorry?

3 THE COURT: Let me call the case.

4 MS. PLUNKETT: Sorry.

5 THE COURT: That's okay.

6 On page two, case number C309578 State versus Turner.

7 Counsel, state your appearances please.

8 MS. BEVERLY: Leah Beverly for the State.

9 MS. SISOLAK: Good Morning, Your Honor, Ashley Sisolak
10 present on behalf of Mr. Turner.

11 MS. PLUNKETT: Good morning, Judge, Alexis Plunkett
12 stepping in for co-Defendant Clemon Hudson who is not present in
13 custody. And if I could be briefly heard about why I should be allowed to
14 join?

15 THE COURT: Hold on one second. Let the record reflect that
16 Mr. Turner is present in custody.

17 MS. SISOLAK: Yes, Your Honor.

18 THE COURT: And, counsel, you did not join in this motion so
19 what is it that you want to be heard on?

20 MS. PLUNKETT: Correct, Judge. And I was contacted by Mr.
21 Hudson's family only days before a firm trial setting. At that point they
22 were unhappy with the representation that they were getting. I looked
23 over the case, and I basically informed them that with a firm trial setting
24 having me step in it would not be possible for me to try the case, and it
25 would greatly anger the Court if I came in at the eleventh hour and

1 asked for a continuance.

2 THE COURT: It would not have angered the Court counsel.

3 MS. PLUNKETT: Based on everything that I've heard it
4 sounds like Mr. Hudson's trial counsel was completely and totally
5 ineffective. They are not happy with the representation at all, which is
6 why I'm stepping in for a sentencing. They already have an appellant
7 attorney on board to try to get this kicked back for a new trial based on
8 ineffective assistance.

9 When his mother retained me, I was shocked that there had
10 been a motion for a new trial filed on behalf of Mr. Turner, and that Mr.
11 Mueller's office had not joined or done their own on behalf of Mr.
12 Hudson. So, had it been me I certainly would have either filed my own
13 motion for a new trial or joined Ms. Sisolak's. And so if that could be on
14 the record I would greatly appreciate it.

15 MS. BEVERLY: Judge, first of all Mr. Hudson's not even on
16 calendar today. He didn't join the motion. The time has passed for the
17 motion for a new trial to be filed, so I think all of this is irrelevant.

18 Your Honor and Ms. Sisolak, and Ms. Machnich, and I, all sat
19 through the same trial. That they want to later claim ineffective
20 assistance appeal on a petition, that's their right to do so. But I don't
21 even know why we're talking about that right now. It's not even an
22 appeal issue, really, so.

23 THE COURT: Alright, what -- I'm not sure -- again she's not
24 joining in the motion for new trial so we're going to proceed for -- on the
25 Defendant Turner's motion for a new trial. I guess she just wanted to

1 make a record that as to her appearance.

2 MS. SISOLAK: Thank you, Your Honor.

3 MS. BEVERLY: Thank you.

4 MS. PLUNKETT: Correct. Thank you, Judge.

5 THE COURT: Thank you.

6 This is on for Defendant Turner's motion for a new trial.

7 Counsel, I've read all the briefing did you want to be heard in argument?

8 MS. SISOLAK: Yes, Your Honor. I have read the State's
9 opposition to my motion. Your Honor, some of the points that Ms.
10 Beverly raises regarding this exculpatory NIBIN report or that the gun at
11 the scene was never fired. I'm not disputing that that gun was ever fired
12 at that scene. I'm disputing that that gun possibly was ever fired in life. I
13 don't know if that gun belongs to somebody else who's used it another --
14 and I -- there's no way for me to know. I'm aware that a NIBIN report
15 exists on this case and I'm aware that I don't have it. I understand --

16 THE COURT: Okay -- what are you aware?

17 THE CLERK: N-I-B-I-N.

18 THE COURT: I know what she said. Are you aware that -- I
19 thought --

20 MS. SISOLAK: I'm aware that it exists. I was told it existed.

21 THE COURT: Okay. So it's your representations that the
22 report does exist.

23 MS. SISOLAK: As to my knowledge that I have no access to,
24 I am under the impression that all firearms and all shell casings that
25 enter the Metropolitan Police Department are entered into NIBIN. And

1 I'm under the impression that a NIBIN report exists on either the SKS,
2 the shotgun for sure, and potentially the Beretta based upon the
3 procedures.

4 THE COURT: So you're disputing on page five of the
5 opposition, beginning on line five it says: Finally, Defendant Turner
6 cannot request a new trial based on newly discovered evidence when
7 the evidence does not exist. In this case there is no N-I-B-I-N report.
8 The State confirmed with one of the lead case agents in this case that
9 the report does not exist. The reason for that is that all three guns
10 recovered at the scene, Officer Greco-Smith's weapon, all cartridge
11 cases and wads, bullets, and fragments were submitted to the actual
12 forensic laboratory for testing. So you're disputing that representation?

13 MS. SISOLAK: I would, Your Honor. The way I came about
14 this was I had another matter in which I received a NIBIN report. I have
15 never seen a NIBIN report. Your Honor knows I'm a fairly new Deputy in
16 the office, I've never seen one. The first thing I did was call a Gun
17 Deputy from the District Attorney's Office who informed me that all shell
18 casings and all fire arms are entered into NIBIN.

19 The reason I received a NIBIN report on the other case was it
20 tied a specific firearm to a cold case from three years prior based on
21 shell casings. Including the shell casing that was obtained from firing
22 that gun in the tank after it was taken to Metro. At that time the Gun
23 Deputy told me all shell casings, and all firearms are entered into that
24 database.

25 THE COURT: Okay.

1 MS. SISOLAK: That's what the District Attorney's Office told
2 me directly.

3 MS. BEVERLY: Judge, can I be heard on that specific issue?
4 Well I'm sorry I don't want to interrupt Ms. Sisolak.

5 THE COURT: Well no, let her finish her argument counsel.

6 MS. BEVERLY: Okay, I'm sorry.

7 MS. SISOLAK: That being said, we've always maintained that
8 there were three people at the scene of this event. I don't --

9 THE COURT: Actually at trial I think you argued four.

10 MS. SISOLAK: At least three. We did argue four, that's
11 correct. We did maintain that there were three people in the backyard. I
12 don't know if that Beretta that was never fired or was fired in the tank,
13 and I don't have the report. I don't know if that gun is tied to other
14 crimes to another person. That's potentially exculpatory, Your Honor,
15 I'm entitled to that.

16 THE COURT: Okay.

17 MS. SISOLAK: If that gun is tied to someone who has seven
18 prior felonies using the same firearm or a different firearm, that's
19 exculpatory when I believe my client didn't fire a firearm.

20 THE COURT: Okay.

21 MS. SISOLAK: And I don't have it. The person who told me it
22 exists is a chief --

23 THE COURT: Told you that it exists in this case?

24 MS. SISOLAK: Yes. Told me specifically when I asked, does
25 it exist in the Hudson Turner case? I was told, yes.

1 THE COURT: Okay.

2 MS. SISOLAK: He may have been mistaken, but that's not
3 my issue. Now I understand that there's a report out there that I don't
4 have on a gun that was or was not fired in a tank and put into a national
5 database that ties bullets together. I didn't know the database existed.

6 THE COURT: Thank you. Anything further counsel?

7 MS. SISOLAK: No, Your Honor. I would submit on the
8 severance issue.

9 THE COURT: Okay.

10 Ms. Beverly, you've written in your report that this N-I-B-I-N
11 report does not exist.

12 MS. BEVERLY: Yes, I did.

13 THE COURT: And counsel I assume you're familiar with the
14 *Bradley* decision?

15 MS. SISOLAK: Yes, Your Honor.

16 THE COURT: In *Bradley versus Eighth Judicial District Court*
17 133 -- shucks -- 133 Nevada advanced opinion 92. It states in dicta that
18 although *Brady* and its progeny stand for the proposition that the
19 suppression by the prosecution of evidence favorable to an accused
20 upon request violates due process where the evidence is material either
21 to guilt or punishment irrespective of the good faith or bad faith of a
22 prosecution.

23 And then it references *Brady*, this analysis is applied
24 retrospectively. And then it cites *United States versus Coppa* which
25 stands for the proposition that the scope of government's constitutional

1 duty is ultimately defined retrospectively by reference to the likely affect
2 that the suppression of particular evidence had an outcome on the trial.
3 And then it continues in *Bradley* in dicta. There is never a real *Bradey*
4 violation unless non-disclosure was so serious that a post-trial review
5 leads judges to conclude that they undermine their confidence in the
6 verdict.

7 What is being represented to me today is that the N-I-B-I-N
8 report does not exist.

9 MS. SISOLAK: Your Honor, my concern is --

10 THE COURT: Now, counsel --

11 MS. SISOLAK: May we approach?

12 THE COURT: Let me just make our record real quick.

13 MS. SISOLAK: Understood, Your Honor.

14 THE COURT: Counsel has a continuing duty if it is
15 determined that this N-I-B-I-N report does exist under *Brady* it's her
16 obligation to review the report to see if it's *Brady* material. And then if
17 it's -- if their determination is that it's *Brady* material then there is a
18 requirement of disclosure. Now you can approach.

19 [Bench conference]

20 MS. SISOLAK: Your Honor, I understand where we're going.
21 My concern is I don't want to say in open court because --

22 THE COURT: You don't want to what?

23 MS. SISOLAK: I have a -- I don't want to say in opening court
24 that the Deputy that told me the report exists was Ms. Beverly's co-
25 counsel on the trial.

1 MS. BEVERLY: Okay. That's -- first of all let me -- can I say
2 this on the -- I think this is something that needs to be said on the
3 record.

4 THE COURT: Sure. Here's the deal, here's the deal counsel,
5 what you've given me isn't sufficient so far --

6 MS. SISOLAK: Well, Your Honor --

7 THE COURT: -- because it's conjecture -- unless, I mean,
8 well let's -- let's I agree with you, let's do this on the record.

9 MS. BEVERLY: Can I make --

10 MS. SISOLAK: Okay. Thank you, Your Honor.

11 MS. BEVERLY: Can I make a record?

12 THE COURT: We can do this on the record.

13 [End Bench conference]

14 THE COURT: Counsel, you've heard the argument of
15 opposing counsel. You put in your briefing that this report does not
16 exist. I've cited to you how *Brady* is viewed by the Nevada Supreme
17 Court. Does this report exist or does it not exist?

18 MS. BEVERLY: It does not exist. Let me be clear that
19 recently Metro began to require that all firearms be entered into this N -
20 B -- N-I-B-I-N -- I think it's called, sorry, database recently. This case
21 was from 2015. Ms. Sisolak referenced speaking to someone on the
22 guns unit, and that's correct is that recently Metro did start requiring that
23 these firearms be entered into this database. That was not the case in
24 2015. At the time of this offense the lead Detective on this case who I
25 spoke with indicated there is no N-I-B-I-N report. All of the firearms in

1 this case were actually sent to the lab for testing. I confirmed with him
2 the report doesn't exist. So there's nothing to turn over if it doesn't exist.

3 Now I don't know which -- I looked at Ms. Sisolak's example of
4 the report that she got, and it was from recently. It was not from the year
5 2015. There is absolutely nothing but conjecture that this report exists
6 because it doesn't exist. So that's the representation that I am making, I
7 stand by that, it doesn't exist.

8 And as I attached to my motion there's a firearms report in this
9 case testing all of these guns. So to say that someone told me it existed
10 I don't know how they would know that other than at -- I mean, the only
11 other person who would know would be the lead detective who I talked
12 to specifically. And I believe the person that she spoke to, I know who
13 she's talking about, again that's a recent Metro policy it was not in place
14 in 2015 which is why there's no report in this case.

15 MS. SISOLAK: Your Honor, in reference to the report that I
16 attached, the report from I attached is from a new case, an 18F case in
17 Justice Court. It is in reference to a cold case shooting from 2015 or '16.

18 MS. BEVERLY: Right, but, Judge, --

19 MS. SISOLAK: It -- meaning that bullet from 2015 or '16 was
20 entered into a database and then matched to a firearm that they fired in
21 a tank in 2018.

22 MS. BEVERLY: Right.

23 MS. SISOLAK: I understand, Your Honor, doesn't feel what
24 I've submitted is sufficient. I would ask an opportunity to submit
25 supplemental briefing then.

1 MS. BEVERLY: And that was a new policy. It at the time in
2 2018 --

3 THE COURT: No, I'm going to give her an opportunity, I
4 mean --

5 MS. BEVERLY: Okay.

6 I don't know --

7 THE COURT: How long will you need counsel?

8 MS. BEVERLY: -- what's the supplemental briefing is about
9 though.

10 MS. SISOLAK: You're Honor, I'd ask for --

11 MS. BEVERLY: Because --

12 THE COURT: I'm sorry?

13 MS. BEVERLY: I don't know what the supplemental briefing is
14 about.

15 THE COURT: Supplement briefing is either she's going to
16 give me an affidavit --

17 MS. BEVERLY: Okay.

18 THE COURT: -- or some type of -- she's asked for an
19 evidentiary hearing.

20 MS. BEVERLY: Okay.

21 MS. SISOLAK: That's correct.

22 THE COURT: Okay. So it's going to go to my determination
23 of whether I grant her an evidentiary hearing in this matter.

24 MS. SISOLAK: And, Your Honor, for Ms. Beverly's purposes I
25 will be submitting further documentation from the case in which I have

1 the NIBIN report. And quite frankly, Your Honor, we can solve all this if
2 Ms. Beverly can provide the Court with something that's from Metro that
3 says it does not exist and Metro's NIBIN policy.

4 MS. BEVERLY: Well, Judge --

5 MS. SISOLAK: I -- the DA I spoke to I specifically said are
6 the casings from Turner and Hudson in NIBIN and he said, yes.

7 MS. BEVERLY: Okay.

8 THE COURT: And counsel, I am -- I am not --

9 MS. SISOLAK: I understand Ms. Beverly doesn't believe it
10 exists. I will accept that --

11 THE COURT: The information that has been -- I am willing to
12 accept that the information that has been provided to Ms. Beverly by the
13 lead case agent is what she has represented in her -- in her briefing. If
14 you have supplemental briefing that disputes that, that what Ms. Beverly
15 is being told is inaccurate then I'm going to give you that opportunity.

16 MS. SISOLAK: And, Your Honor, I accept that as well but
17 we're all humans and we're all fallible and I believe this exists so let's
18 prove it doesn't. So I am happy to --

19 THE COURT: And that's why you're getting supplemental
20 briefing.

21 MS. SISOLAK: Absolutely, Your Honor, if I could have 30
22 days.

23 THE COURT: 30 days.

24 Counsel for the State, do you want to file any supplemental
25 reply? You want to be given that opportunity?

1 MS. BEVERLY: I guess I have to see what she says, I mean,
2 I --

3 THE COURT: Well when do you want me to put it back on
4 calendar? You want me to put it far enough down the road where you
5 have opportunity to file --

6 MS. BEVERLY: Well -- when is sentencing, Judge?

7 THE COURT: Sentencing is June 21.

8 MS. SISOLAK: Your Honor, sentencing is approaching
9 relatively quickly. I understand there is a time crunch. If Your Honor is
10 inclined to give me two weeks, I accept two week. I could have it done
11 in two weeks.

12 THE COURT: Alright, I'll give you two weeks. State, did you --
13 again, do you want an opportunity to file any type of supplemental reply?

14 MS. BEVERLY: That's the thing, Judge, I don't know because
15 I've already represented it doesn't exist.

16 THE COURT: Okay.

17 MS. BEVERLY: So I don't know what else.

18 THE COURT: Here's what I'm going to do. You'll have two
19 weeks to file your supplemental briefing.

20 MS. SISOLAK: Thank you, Your Honor.

21 THE COURT: And we'll set this out -- what's three weeks
22 from today?

23 MS. BEVERLY: Can we just keep the sentencing date and if I
24 file something I'll have it done before sentencing?

25 [Colloquy between the Court and court staff]

1 MS. SISOLAK: Your Honor, we could turn this into an -- we
2 could just schedule this into an evidentiary hearing if Your Honor would
3 prefer?

4 MS. BEVERLY: I object to an evidentiary hearing though.

5 THE COURT: I -- worst case scenario is the sentencing gets
6 continued.

7 MS. SISOLAK: That -- and, Your Honor --

8 THE COURT: I mean, that's the worst case scenario.

9 MS. SISOLAK: -- before my client does a significant amount
10 of time I'm fine with that.

11 THE COURT: Well, I'm not saying that's what's going to
12 happen.

13 MS. SISOLAK: I understand --

14 THE COURT: Alright.

15 MS. SISOLAK: -- but potentially --

16 THE COURT: Alright.

17 MS. SISOLAK: -- my clients facing a lot of time.

18 THE COURT: Here's what we're going to do, I will set this for
19 argument the -- on that Tuesday. What date is that?

20 [Colloquy between the Court and court staff]

21 THE COURT: Okay, so argument on this -- you'll have two
22 weeks to file. Argument will be on the June 19th.

23 And Ms. Beverly you have until noon the day before to file any
24 supplemental points and authorities you may want.

25 MS. BEVERLY: Okay.

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MS. SISOLAK: Thank you, Your Honor.

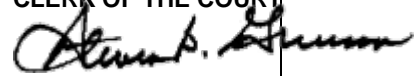
THE CLERK: June 19th, 9 a.m.

MS. SISOLAK: Thank you.

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.



Rubina Feda
Court Recorder/Transcriber



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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
vs.
STEVEN TURNER,
Defendant.

CASE#: C309578-1
DEPT. XVIII

BEFORE THE HONORABLE MARK B. BAILUS, DISTRICT COURT JUDGE
TUESDAY, JUNE 19, 2018

**RECORDER'S TRANSCRIPT OF HEARING:
DEFENDANT'S MOTION FOR NEW TRIAL**

APPEARANCES:

For the State: LEAH C. BEVERLY, ESQ.
JOHN L. GIORDANI III, ESQ.
Chief Deputy District Attorneys

For the Defendant: ASHLEY L. SISOLAK, ESQ.
TEGAN C. MACHNICH, ESQ.
Deputy Public Defenders

RECORDED BY: ROBIN PAGE, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, June 19, 2018

2
3 [Hearing began at 9:30 a.m.]

4 THE COURT: On page 7, case number C309578, State
5 versus Turner.

6 MS. SISOLAK: Good Morning, Your Honor, Ashley Sisolak
7 present on behalf of Mr. Turner with Ms. Machnich.

8 MS. BEVERLY: Leah Beverly and John Giordani with the
9 State.

10 MR. GIORDANI: Morning.

11 THE COURT: And I would advise counsel I have reviewed
12 the supplemental briefing filed by both the Defendant and the State in
13 this matter.

14 MS. SISOLAK: Thank you, Your Honor.

15 THE COURT: Did counsel want to be heard in argument?

16 MS. SISOLAK: Yes, Your Honor. Just as a collateral matter
17 briefly, Your Honor, unfortunately we're aware that you are losing -- you
18 are moving tracks on July 1st.

19 THE COURT: Second.

20 MS. SISOLAK: Second. Do you intend to keep the
21 sentencing in this case or will that go to the new judge?

22 THE COURT: It will go to a new judge or --

23 MS. BEVERLY: The sentencing is Thursday.

24 THE COURT: The sentencing is Thursday.

25 MS. SISOLAK: If it was to be continued, --

1 THE COURT: It would go to the new judge.

2 MS. SISOLAK: -- Your Honor.

3 MS. BEVERLY: Why would it be continued, Your Honor?

4 THE COURT: I have no idea counsel.

5 MS. SISOLAK: Your Honor, I don't believe it's going to be
6 continued. I know Ms. Plunkett intends to show up here at some point
7 with her client not on calendar and ask for a continuance.

8 THE COURT: Who's going to show up?

9 MS. SISOLAK: Ms. Plunkett.

10 MS. BEVERLY: Again, her client's not on calendar. She has
11 no basis to ask for a continuance, I mean --

12 THE COURT: Well counsel it'll be their determination whether
13 they ask for a continuance. My concern is I've received notice of victim
14 impact speakers. So if it's going to be continued it would have to be -- I
15 would have to be notified of that intent at some point.

16 MS. SISOLAK: On behalf of Mr. Turner we are not asking for
17 a continuance so --

18 THE COURT: Alright, well here's the situation --

19 MS. SISOLAK: -- just being clear.

20 THE COURT: -- who is showing as attorney on record as to
21 Mr. Hudson, just out of curiosity?

22 MS. SISOLAK: It -- Your Honor, it's still Mr. Mueller's office.
23 They haven't signed the substitution for Ms. Plunkett.

24 THE COURT: Well that's my concern. Right now until a
25 substitution of attorney's are signed or a notice of appearance is

1 entered, attorney of record is going to have to make the representations.

2 [Colloquy between the Court and court staff]

3 THE COURT: Well apparently she has filed a notice of
4 appearance. But I will advise either counsel that as of right now it's
5 going forward I believe it's set for Thursday for sentencing.

6 MS. BEVERLY: Thank you.

7 MS. SISOLAK: Understood, Your Honor.

8 Your Honor, as far as the supplemental briefing that I filed, I
9 did want to clear something up. The State stated in their opposition to
10 my supplement that I at some point stated that I was aware of a hit
11 report. I am not aware of a hit report, I have never made the assertion
12 that I was aware that a hit report was created. That's not what I'm
13 getting at. What I'm getting at is that I don't know if a hit report was
14 created. I have no notice of a hit I have no notice of a non-hit. I'm not
15 saying that anyone affirmatively told me that there was a hit, that was
16 not -- that was not my contention at all.

17 THE COURT: And I appreciate the clarification.

18 MS. SISOLAK: That being said, Your Honor, I'm still asking
19 for a new trial today. Based upon what I've attached to my supplement
20 ,we know that -- and based on what Ms. Beverly attached to her original
21 opposition, we know that the casings are in NIBIN. And we know that I
22 received no further information from NIBIN at all.

23 THE COURT: Okay. But I think your premise is faulty in your
24 supplement. In your supplement you state on page 5, beginning on line
25 17, it logically follows that if a search is run through any database and

1 there is a match a report is generated. Common sense dictates that if
2 there is a means by which a positive result occurs there must be a
3 means by which a negative result also occurs. And then you give me an
4 example of Amazon.

5 MS. SISOLAK: Correct, Your Honor.

6 THE COURT: The problem is when I reviewed your
7 attachments, most notably attachment C, it states under your heading,
8 N-I-B-I-N --

9 MS. SISOLAK: Uh-huh.

10 THE COURT: -- represented images of a test fired cartridge
11 case from the -- and my sheets a little blurred, I believe it says, Yugo
12 rifle and the Beretta pistol --

13 MS. SISOLAK: Beretta Pistol.

14 THE COURT: -- were entered into and searched in the nation
15 -- in the National Integrated Ballistic Information Network, paren, N-I-B-I-
16 N, close paren, period. Notifications will be made if there are any
17 associations in these entries.

18 So the only way a report was going to be generated is if an
19 association was made. What the State has argued is there is no report.
20 They've argued that both in their initial motion and in their supplement,
21 which indicates to me that no association was made. A report was not
22 going to be generated in the negative as you argued in your supplement.
23 So the fact that there's nothing in this record to indicate the negative.
24 That report was made in the negative. It's merely argument on your
25 behalf using common sense, but in looking at the actual exhibit, what

1 they advised that if there was a positive, if there was an association then
2 a report was generated which is consistent with the State's position.

3 MS. SISOLAK: And I understand that, Your Honor. What I
4 think I'm getting at is that this document was created in 2015. Based on
5 that, what I'm saying is that at some point somebody saw it was in
6 NIBIN, and there should have been some sort -- an email
7 communication of some sort that states that nothing returned. I
8 understand that a non-hit report may not look like a hit report. But what
9 I'm asking for is some type of affirmative confirmation either from NIBIN
10 the database itself or from the Metropolitan Police Department that it
11 doesn't exist. And I believe that I should have been provided with that
12 prior to trial. Like I discussed in my briefing, that could have altered
13 what my defense was.

14 I understand Ms. Beverly's contention that, that then would
15 have been inculpatory. I'm still entitled to that.

16 THE COURT: Okay, thank you counsel.

17 State, what's your position?

18 MS. BEVERLY: Judge, I think I've laid out pretty well my
19 supplement and our original opposition. It doesn't exist, there's nothing
20 to turn over if it doesn't exist. And I don't know in any way how a non-hit
21 report would in any way change their strategy, in fact it would of booster
22 the State's position that it was only two people there. So I think it's been
23 completely briefed, Your Honor. There's nothing else for me to say
24 other than it doesn't exist.

25 THE COURT: Okay. Any rebuttal, counsel?

1 MS. SISOLAK: And, Your Honor, I understand that the
2 contention is that the report doesn't exist. I understand, I'm not saying a
3 hit report exists. What I'm saying is, Your Honor, Ms. Beverly is correct
4 I'm telling her she's correct. It would have bolstered the State's
5 argument, but I'm still entitled to it. I'm still entitled to base my defense
6 on all of the information, not some of the information. And I'm saying I
7 was never made aware that there was no hit NIBIN.

8 THE COURT: Originally your argument was I think your
9 actual word was potential *Brady* material, now you're saying it's not
10 *Brady* material.

11 MS. SISOLAK: I'm saying that had there -- that the
12 information itself is *Brady*, because had there been a hit or had there not
13 been a hit I'm -- I believe I'm entitled to it, specifically if there was a hit.
14 But the fact that there is no hit is still -- I'm still entitled to it in discovery.
15 The State may view it as more inculpatory. I understand that and I tend
16 quite frankly, Your Honor, to agree with that. But that doesn't mean that
17 I'm not entitled to it. I'm entitled to all of the information that the State
18 has and I didn't get that. I was not made aware that there was no -- that
19 there was no hit in NIBIN.

20 THE COURT: Anything further, counsel?

21 MS. SISOLAK: No, Your Honor.

22 THE COURT: Based on the record before me, I'm going to
23 deny your motion.

24 MS. SISOLAK: Understood.

25 THE COURT: Obviously you have other avenues you could

1 subpoena records from the Las Vegas Metropolitan Police Department.
2 I don't know if you use the Freedom of Information Act at all, but that
3 may be available to you. But at this point based on the record that's
4 before me I'm going to deny your motion.

5 MS. SISOLAK: Understood, Your Honor, thank you.

6 MS. MACHNICH: Your Honor, at this time we have copies of
7 letters from our client's family that we'd like reviewed in advance of
8 sentencing. We have electronic copies we're going to send to the State
9 that when we get back to the office. But I know Your Honor prefers hard
10 copies.

11 THE COURT: I do. And what I -- what you probably should
12 do, counsel, is do a cover sheet. I used to call them letters of
13 recommendation with a cover sheet. File them electronically with copies
14 to the State. And then provide me with a hard copy of --

15 MS. MACHNICH: The filed version.

16 THE COURT: -- the filed.

17 MS. SISOLAK: Okay. Thank you.

18 MS. MACHNICH: Okay. Whatever Your Honor would prefer
19 we just want to make sure there's time to review them.

20 THE COURT: My preference would be hard copies.

21 MS. MACHNICH: Okay.

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MS. SISOLAK: Thank you, Your Honor.

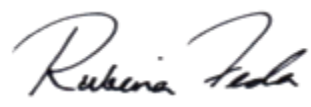
THE COURT: Thank you, counsel.

MS. MACHNICH: Thank you.

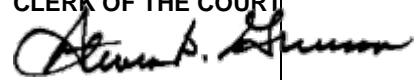
[Hearing concluded at 9:40 a.m.]

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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.



Rubina Fedak
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

STEVEN TURNER,
CLEMON HUDSON,

Defendants.

CASE#: C-15-309578-1
C-15-309578-2

DEPT. XVIII

BEFORE THE HONORABLE MARK B. BAILUS DISTRICT COURT JUDGE

THURSDAY, JUNE 21, 2018

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
SENTENCING**

APPEARANCES:

For the State:

JOHN L. GIORDANI, III, ESQ.
Chief Deputy District Attorney

For the Defendants:

Steven Turner

TEGAN C. MACHNICH, ESQ.
ASHLEY L. SISOLAK, ESQ.
Deputies Public Defender

Clemon Hudson

ALEXIS A. PLUNKETT, ESQ.

ALSO PRESENT:

ERIC CLARKSON
WILLOUGHBY GRIMALDI
BARBARA ROBERTSON
MELISSA ROBERTSON
JEREMY ROBERTSON
Victim Impact Speakers

RECORDED BY: ROBIN PAGE, COURT RECORDER

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THURSDAY, JUNE 21, 2018, AT 9:49 A.M.

THE COURT: Case number C309578, State versus Steven Turner and Clemon Hudson. Counsel, state your appearances, please.

MR. GIORDANI: Good morning, Your Honor, John Giordani on behalf of the State.

MS. PLUNKETT: Good morning, Judge, Alexis Plunkett for Clemon Hudson.

MS. MACHNICH: Tegan Machnich and Ashley Sisolak for Mr. Turner.

MS. SISOLAK: Thank you, Your Honor.

THE COURT: And we're going to do this in order as they appear on the calendar. And so Mr. Turner is first on calendar. Now, counsel, I've been notified that we're going to have victim impact statements.

MR. GIORDANI: That is correct, Your Honor.

THE COURT: I called the cases together so the -- will the parties stipulate that the statements that are made today by the victims are to be applied to both Defendants; is that correct?

MR. GIORDANI: Yes, Your Honor.

THE COURT: Do the parties stipulate to that?

MS. PLUNKETT: Yes, Your Honor.

MS. SISOLAK: Yes, Your Honor.

MS. MACHNICH: That's absolutely fine, Your Honor. We actually would be fine with the State making -- and I don't know if the

1 State's argument is substantially different for both co-defendants. We
2 would have no opposition to them just -- us going State, Defense,
3 Defense.

4 THE COURT: I don't want to do that because they're co-
5 defendants and they're going to have separate issues for appellate
6 review, so I want to keep the record as clean as I can.

7 MS. SISOLAK: Understood, Your Honor.

8 THE COURT: That's why I'm asking parties to stipulate. And
9 at the end of each victim impact statement I'll give the Defense an
10 opportunity to ask questions of that victim as they make their statement;
11 okay?

12 MR. GIORDANI: Yes. And our only request would be that the
13 victims be able to speak last.

14 THE COURT: That's correct. Well, it's going to be last as to
15 Mr. Turner. Oh, I see what you're saying.

16 MR. GIORDANI: No, just once at the end of the whole thing is
17 what we would ask.

18 THE COURT: Okay. So, you want me -- I think what the
19 State is requesting -- as long as the Defense doesn't have a problem I'm
20 going to do the preliminary matters together. Then you want both the
21 Defense counsel to make their argument at the same time?

22 MR. GIORDANI: Yeah, that's how we would do it on a --

23 THE COURT: Okay.

24 MR. GIORDANI: -- typical co-defendant --

25 THE COURT: So, both Defense counsel will then make your

1 argument at the same time, and then we'll do the victim statements.

2 Is that satisfactory with everyone?

3 MR. GIORDANI: Yes.

4 MS. MACHNICH: Yes, Your Honor.

5 MS. PLUNKETT: Yes, Judge.

6 THE COURT: All right. Thank you. This is the time set for
7 entry of judgement and imposition of sentence. Is there any legal cause
8 or reason why judgement should not be pronounced at this time?

9 MS. MACHNICH: No, Your Honor.

10 MS. PLUNKETT: No, Judge.

11 THE COURT: State?

12 MR. GIORDANI: Thank you, Your Honor.

13 THE COURT: No, no. Is there any reason we shouldn't go
14 forward --

15 MR. GIORDANI: No.

16 THE COURT: -- at this time?

17 MR. GIORDANI: No.

18 THE COURT: Thank you.

19 Mr. Turner, by verdict of the jury, I hereby adjudge you guilty
20 of the offenses of Count 1 conspiracy to commit burglary, Count 2
21 attempt burglary while in possession of a firearm or deadly weapon,
22 Counts 3 and 4 attempt murder with use of a deadly weapon, and Count
23 5 battery with use of a deadly weapon resulting in substantial bodily
24 harm.

25 Mr. Hudson, by verdict of the jury, I hereby adjudge you guilty

1 of Count 1 conspiracy to commit burglary, Count 2 attempt burglary while
2 in possession of a firearm or deadly weapon, Counts 3 and 4 attempt
3 murder with use of a deadly weapon, and Count 5 battery with use of a
4 deadly weapon resulting in substantial bodily harm.

5 State, what's your position on sentencing?

6 MR. GIORDANI: Thank you, Your Honor. I won't rehash the
7 entirety of the facts; you sat through a lengthy trial in this case, but what I
8 will do is remind the Court of a couple of things that came out during the
9 trial.

10 First off, there were two confessions given, one by each
11 Defendant, that were heavily redacted in order to be presented to the
12 jury, but I want to remind the Court that those statements are not invalid
13 for any reason or suppressed for any reason, and in those statements
14 both of these Defendants confessed that they were going over to this
15 home of Eric Clarkson and Willoughby Grimaldi in order to commit a
16 dope rip or a robbery.

17 As Your Honor's fully aware, they went over there heavily
18 armed. They went -- Mr. Turner went with an SKS rifle or what was
19 referred to a couple times as an AK-47. Mr. Hudson went with a
20 shotgun.

21 When they got to that home they repeatedly tried to get in
22 through the front door, the side door -- or -- side window and the back
23 door. Police are called, then you have that ten-minute -- ten or so minute
24 9-1-1 call in which the victims, who are present here in court today, were
25 absolutely terrified that there were armed men outside their home trying

1 to get in.

2 Officers Robertson and Grego-Smith respond to the call, get
3 to that home. They do what they're trained to do, they approach
4 tactically, they get to the back door, and without warning as soon as that
5 door is opened Mr. Turner fires his SKS rifle striking Mr. -- or -- Officer
6 Robertson, dropping him to the ground. Mr. Hudson then fires his
7 shotgun and because Officer Robertson went to the ground, he missed
8 entirely. It went over, narrowly missing the victims as well.

9 There were two other rounds fired from that SKS rifle. There
10 were no other rounds fired by the shotgun and that's because Officer
11 Grego-Smith put himself between his downed partner and the assailants,
12 and returned fire. And you'll recall one of those rounds struck the
13 shotgun, rendering it inoperable. So, you know, I can speculate as to
14 whether he would have kept firing. I won't do that. He fired at least one
15 round, and that round was intended to kill.

16 When you shoot a shotgun -- I don't know if Your Honor's shot
17 a shotgun before, but when you do you would understand you shoot that
18 at a human being, your intent is one thing and one thing only and that's
19 to kill.

20 The return fire from Officer Grego-Smith caused Mr. Turner to
21 drop his gun like a coward and flee. And then Mr. Hudson was struck in
22 his gun, went down, and was apprehended on the scene by the K-9
23 units. It was shortly thereafter, three hours later that Mr. Turner was
24 caught on the perimeter. He had that frag in his leg. He then was taken
25 into custody and ultimately gave those statements that I discussed

1 earlier.

2 What I'm asking this Court to do is sentence each Defendant
3 generally to the same sentence. As to Mr. Turner, because he actually
4 struck Officer Robertson changing his life forever, I'm asking for 16 to 40
5 years. That is eight to 20 on one count of attempt murder with use of a
6 deadly weapon, and a consecutive eight to 20 on the other count of
7 attempt murder with use of a deadly weapon. I believe that is an
8 appropriate sentence. It's in the midrange for each count.

9 I do believe that these victims should be treated separately
10 because one of the issues that you'll recall that the Defense raised and
11 the Defendants actually said in their statements generally was they didn't
12 know who they were shooting at. And my -- first I think that's a joke and
13 frankly just inaccurate, but even if you accept that as true, they're either
14 shooting at Clarkson and Willoughby or they're shooting at Officer
15 Grego-Smith and Officer Robertson.

16 So, in any event, whatever you accept as their mindset at the
17 time, there are two victims at least, and those two victims should be
18 treated separately. They're separate crimes. That's why I'm asking for
19 consecutive terms on the attempt murder with use of a deadly weapon.

20 I'll end with this, Your Honor. This crime changed Officer
21 Robertson's life forever. It changed Metro's approach to things. And I
22 can just say there are a number of officers in the courtroom in support.
23 This crime had a major impact on the law enforcement community.

24 If -- anyone who's here on this case in support of the officers
25 would you please stand briefly?

1 As you can see, Your Honor, this crime didn't just impact
2 Officer Robertson. It didn't just impact Officer Grego-Smith. It didn't just
3 impact Eric Clarkson and Willoughby Grimaldi, but it impacted the law
4 enforcement community.

5 You guys can have a seat.

6 This -- whatever their mindset was at the time, this was
7 egregious, egregious conduct. Had that bullet that came out of that SKS
8 rifle gone two centimeters to the right, we would be sitting here on a first
9 degree murder felony murder case. And during a felony murder, of
10 course, if someone dies it doesn't matter whether it's intentional,
11 unintentional or accidental. By the grace of God he didn't die. I
12 understand that, and that's why I'm not asking for the minimum of 20;
13 what it would be on a first of, course.

14 I think 16 to 40 years is appropriate as to Mr. Turner because
15 he's the one who actually struck Officer Robertson. As to Mr. Hudson,
16 while I believe he had the same exact intent and the only reason he
17 didn't strike anyone is because his firearm was hit by Officer Grego-
18 Smith's return fire, I do believe that there should be a little less on the
19 bottom for him. So, as to him I'm asking for 14 to 40, and that's two
20 years off the bottom on his sentence.

21 With that, I will submit it to the Court and just remind the Court
22 that we have five victim speakers and ask them to speak at the very end
23 once everyone else has. Thank you, Your Honor.

24 THE COURT: Thank you.

25 Mr. Turner, before your attorney speaks is there anything

1 you'd like to tell the Court on your own behalf before I pronounce
2 sentence?

3 MS. SISOLAK: Your Honor, I have a letter I'd like to read for
4 Mr. Turner. He's incredibly nervous, and based upon the fact that this
5 was a trial case and there is a mandatory appeal, I would ask that I be
6 able to read the statement.

7 THE COURT: That's fine.

8 MS. SISOLAK: Thank you, Your Honor.

9 First and foremost I would like to apologize to everyone
10 involved in this case, to the officers, the homeowners. I'm deeply sorry.
11 None of this was supposed to happen. There is no excuse. I allowed my
12 judgement to be clouded and I put myself and others in a position none
13 of us should ever be in. I also want to apologize to my family. I was
14 raised better than this, and I feel I let you all down.

15 To the Court, I ask you to show leniency as to -- as you see fit.
16 I have no prior convictions. I was a functioning member of society, and I
17 made a bad decision. I have to deal with the consequences for the rest
18 of my life.

19 I've thought about this day for the last 1,022 days to be able to
20 tell you all how deeply sorry I am, and I hope one day you will all forgive
21 me. Thank you.

22 THE COURT: Thank you.

23 Mr. Hudson, before your attorney speaks is there anything
24 you'd like to tell the Court on your own behalf before I pronounce
25 sentence?

1 MS. PLUNKETT: Judge, I've advised him to not make a
2 statement.

3 THE COURT: Thank you.
4 Who is going to be making the argument on behalf of Mr.
5 Turner?

6 MS. MACHNICH: I --

7 MS. SISOLAK: Ms. Machnich will be, Your Honor.

8 MS. MACHNICH: Yes. May I proceed?

9 THE COURT: You may.

10 MS. MACHNICH: Your Honor, this case is a tragedy all
11 around, and at no point during the process, during the trial, during the
12 sentencing will we be trying to say that lives were not changed and
13 affected for the rest of their lives.

14 We know that the homeowners will likely never feel safe in
15 their homes and have bad memory. We know that the officers who were
16 present on scene -- and from the witness notice that turned out to be
17 several hundred officers -- but specifically the officers directly affected in
18 this case will be scarred forever.

19 Officer Grego-Smith had to fire his service weapon and be
20 present when his fellow officer went down, not knowing if he would get
21 back up. And Officer Robertson sustained a very, very serious injury that
22 he made clear during trial, and made just clear from the documentation,
23 affected his life, affected his family, affected his children, his wife.

24 And none of us are trying to downplay what happened here.
25 Mr. Turner has wanted to take responsibility for this. Your Honor recalls

1 pretrial and the fact that there was a contingent offer. Mr. Turner did not
2 want to put anyone through this process and he was ready to take
3 responsibility at that time and he is ready to take responsibility today.

4 So, without downplaying any of the suffering by any of the
5 victims, their families, their futures -- and this will stay with each and
6 every one of them for the rest of their lives. This will also stay with Mr.
7 Turner for the rest of his and his family for the rest of theirs. He has
8 some family members present, including his mom who's been involved
9 throughout this entire case. Mr. Turner's life will never be the same. He
10 made a very bad decision; possibly the worst decision in -- I would say
11 what would be the worst decision of his life.

12 He came from a situation where he was working. He had
13 family, a fiancé, a loving mother; he had people in his life; a loving father,
14 cousins. Everyone was there for him, and he made this choice. And he
15 has never shied away from this choice and the fact that it was a decision
16 that he made.

17 Now, that being said, Mr. Turner is someone who did not have
18 a criminal history. He was not someone -- I believe there was a submittal
19 on a DUI that would have been dismissed. He had nothing else in his
20 history. He was not someone who toted around guns or knew anything
21 about them, dealt with them on a normal basis. He is not someone who
22 went out and robbed people on a normal basis. He is not someone who
23 was terrorizing the community. This was completely out of character for
24 him.

25 And because of his complete lack of criminal history -- who

1 he -- I -- you've observed him through the entire trial, Your Honor, before
2 trial, all of his demeanor in court, the fact that he has taken responsibility.
3 We are going to ask for something substantially less than the State is.
4 And we believe that an adequate sentence in this case -- because I don't
5 think there's a good sentence.

6 This is someone who's never been to jail substantially before,
7 much less prison. A year in prison is going to feel like ten years in prison
8 to him because he's not acclimated to that; he doesn't know. And as
9 much as we don't want to say that it's easier for people who have been
10 there before, it is easier for people who have been there before.

11 We're asking for an eight to 20-year sentence on this. We
12 have no problem with Your Honor dispersing that amongst the counts
13 how you deem fit, no problem punishing him for each of the counts so
14 that he feels the specific impact of what he has done to each of the
15 victims. But eight to 20 years, that is the maximum on a small habitual
16 criminal treatment; someone who gets maxed out on having committed
17 three or more felonies when they come before a District Court judge in
18 sentencing. Mr. Turner is not a habitual criminal.

19 So, when we're looking at the reasons for sentencing and
20 we're looking at recidivism, Mr. Turner has learned his lesson. And any
21 amount of time -- the time he spent already, he has already learned that
22 lesson to never ever, ever make a decision anything like what he did this
23 night again.

24 Then there's retribution and the fact that these officers and
25 homeowners went through a lot and will continue to go for a -- go through

1 a lot forever.

2 But eight to 20 years is a long time. And for an officer-
3 involved shooting there is a very good chance that he's not going to
4 parole anywhere near the bottom number. So, with eight to 20 years he
5 would do almost certainly more than eight years, substantially more than
6 eight years.

7 I would also note that my reading of the PSI -- and I know that
8 some of that comes off a little bit convoluted in the concurrent and
9 consecutive. My reading is that P and P recommends a ten to 40-year
10 sentence, and while I do believe that that is a little high based on his
11 criminal history, we are also -- it's substantially lower than what the State
12 is asking for here.

13 I will also note, on the scoresheet for P and P he came back
14 borderline; that's borderline for probation, obviously nowhere near what
15 we're asking for in this case, but that's how well he did prior to what
16 happened here because obviously the gravity of this offense is huge.

17 So, Your Honor, I'll wrap it up, but I know that you had a
18 chance to review the letters that we submitted this week from his family.
19 It was between 14 and 16 letters from family, friends. And just point out
20 that he is also a son. He is a cousin. He is a friend. He is someone who
21 will eventually return to his life, and we would ask that that not be after
22 some of his older family members pass away.

23 Your Honor, we are not downplaying the seriousness of this
24 and the impact on these victims. And I know they're going to get up here
25 and they're going to have compelling stories. Your Honor has heard

1 many of those compelling stories because Your Honor sat through this
2 trial. And I'm sure that they'll be very honest with what they say and how
3 it's affected them, but I ask Your Honor to look at what is fair and just,
4 given Mr. Turner's criminal history and his taking responsibility from the
5 beginning. Thank you.

6 THE COURT: Thank you.

7 Counsel, you'd be -- wish to be heard on mitigation on behalf
8 of Mr. Hudson?

9 MS. PLUNKETT: Yes, Judge, and as I stated, I advised him,
10 due to the mandatory appeal, to not give a statement today. But on
11 behalf of Mr. Hudson and myself I want to say how horribly sorry I am to
12 the officers who were directly involved, to the entire Metro police force, to
13 the homeowners.

14 This is -- as Ms. Machnich said this is a horrible case that
15 ended in a guilty verdict, a jury trial. And I'm so sorry that everyone even
16 has to be here today. And I believe we are here today -- and I was not
17 the attorney that represented him at trial. I believe we are here because
18 Mr. Hudson got some very bad advice, and I don't believe that we should
19 be here at a sentencing following a jury verdict, but hopefully that will be
20 addressed on appeal. I want to point out I submitted a Sentencing
21 Memorandum to Your Honor where --

22 THE COURT: I reviewed all the matters submitted to the
23 Court.

24 MS. PLUNKETT: Thank you, Judge. And Mr. Hudson is
25 someone who has a lot of family support as evidenced by the letters.

1 This is someone who grew up in a good home, a church going home, a
2 two-parent home. How we got here is shocking.

3 This is someone with no criminal history whatsoever; no
4 felonies, no misdemeanors, no gross misdemeanors, no prior arrests for
5 any offense, juvenile or adult, until this instance. This is not someone
6 who has any history with drug abuse, illicit drug abuse. This is someone
7 with no gang affiliation. This is someone who is a good person who has
8 been convicted of a hideous offense.

9 And this is not someone who is committing recurring sex
10 offenses where the likelihood of committing that offense again is so high.
11 This is not someone that was committing offenses to support a drug
12 habit. This is not someone who, as Mr. Turner's lawyer pointed out, was
13 terrorizing the community repeatedly. This is someone who made a
14 terrible, terrible mistake.

15 And this is someone that I genuinely believe that if he is
16 released today, if he is released at the end of 40 on the back end, that
17 regardless of that he will never do anything even close to this ever again
18 in his life. He has a two-year-old daughter.

19 And what I am looking at is slightly different than what Mr.
20 Turner's lawyer is arguing for. I am in the unique position where I
21 frequently represent inmates at parole revocation and release hearings.
22 I appear in front of the commissioners on a regular basis. I know that
23 this is not something where either of these gentlemen will get a first
24 parole. This is not something where they will get a mandatory parole. I
25 honestly, genuinely believe that whatever sentence Your Honor hands

1 down today, that these two gentlemen will expire that sentence and do
2 the full amount of time.

3 And so what I believe is appropriate here is something more
4 along the lines of 30 years on the back end. I'm asking Your Honor to
5 not consider the front end. Don't consider whether it's eight, ten, 12
6 because as a parole attorney, that is simply not going to happen. If he
7 expires on a 30-year sentence his two-year-old will be an adult when he
8 is released from prison. That is a very, very serious amount of prison
9 time, and I believe it is appropriate here.

10 I've tried cases in front of Your Honor. I'm not asking for
11 leniency. I'm genuinely trying to be reasonable considering the factors
12 involved with who Mr. Hudson is and how he got to this place and his
13 complete lack of criminal history. And I would submit it on that, Judge.

14 THE COURT: Do we have the victims available?

15 MR. GIORDANI: Yes, there are five. I'm going to start with
16 Eric Clarkson.

17 MS. SISOLAK: And, Your Honor, do you prefer that we
18 remain here or would you like to give the victims the entire floor? Court's
19 discretion.

20 THE COURT: Typically, what I do is I have them come to the
21 podium to speak and to be sworn in unless the parties have some other
22 preference.

23 MS. SISOLAK: No, Court's preference. Some judges prefer
24 that we have a seat and allow them the floor. I just wanted to make sure
25 we're not --

1 THE COURT: If you want to have a seat -- you don't have to
2 stand through the entire proceedings.

3 MS. SISOLAK: Oh.

4 THE COURT: I mean, if you -- because there are going to be
5 five speakers; it's my understanding.

6 MS. SISOLAK: Thank you, Your Honor.

7 **ERIC CLARKSON**

8 [having been called as a victim speaker and being first duly sworn,
9 testified as follows:]

10 THE COURT CLERK: Please state and spell your name for
11 the record.

12 THE VICTIM IMPACT SPEAKER: Eric Clarkson, E-R-I-C
13 C-L-A-R-K-S-O-N.

14 THE COURT: Sir, you may proceed.

15 THE VICTIM IMPACT SPEAKER: I want to start by thanking
16 Your Honor and the jury for finding these two men guilty on all charges. I
17 want to thank the Deputy District Attorney's Office and its staff for
18 working tirelessly for the last almost three years to bring these two men
19 to justice. Your Honor, I also want to thank all the first responders to the
20 event, but most of all a tremendous thank you to Officers Grego-Smith
21 and Robertson.

22 Your Honor, my roommate and I are survivors, not victims.
23 With that being said, I know now that surviving and actually living one's
24 life are very different things.

25 My personal and professional lives were destroyed that night,

1 Your Honor. I'm afraid to date or have sex with anyone in fear that they
2 too will try to murder me. I am no longer comfortable being out in the
3 GLBT community since this happened, as my fears are now greater than
4 the desire to perform. This is my livelihood I'm speaking of.

5 Your Honor, before this happened I was living and working as
6 a transgender female impersonator and stand-up comedian. Both of
7 those dreams, dreams I was living have ended now until somehow,
8 sometime I feel safe living and working as my true self again.

9 Your Honor, I am no longer comfortable inviting friends or
10 acquaintances over to my home. I am no longer comfortable showering
11 in my own home because of a window that faces out. I am no longer
12 comfortable sleeping in my bedroom because of a window that faces my
13 patio. It's the window in which I first saw a shadow of a man that night.
14 Every night since this happened while lying in bed I hear noises on my
15 patio and I open my eyes. I look towards that same window up to 100
16 times per night. My eyes just open and focus like that night is happening
17 all over again.

18 Your Honor, I have lost -- I -- we, my roommate and I have
19 lost dozens of friends and even family members. They are simply too
20 freaked out or afraid of being around us or in our home anymore, even
21 jokingly saying things like just in case they come back to finish the job I
22 don't want to be there.

23 Your Honor, my roommate and I are not lovers; we're just best
24 friends, but we chose to sleep in the same bed for three months after this
25 happened because we were both afraid to sleep alone.

1 Your Honor, I've always been proud of my abilities to bounce
2 back in life, but the health of my best friend has spiraled out of control
3 due to the graphic things he saw that night. It's killing him slowly, and I
4 simply cannot help him. He suffers from severe PTSD, as do I, and has
5 flashbacks from that night.

6 Your Honor, every time I walk by my back door or back
7 window or back kitchen window I am compelled to look in the backyard,
8 and I never had this fear before. Every time there's a loud noise I get
9 nervous and sometimes even cry. Even hearing gunshots on TV is too
10 much. New Year's Eve and the Fourth of July were my two favorite
11 holidays prior to this happening; now they are my least favorite because
12 of the PTSD.

13 Your Honor, I wonder sometimes if I will have to change my
14 name and move out of state that I don't have -- so that I don't have to
15 worry about this happening to us again.

16 Mr. Clemon did not know me or us prior to this happening. He
17 had never met me, but was willing -- or coerced into these crimes by Mr.
18 Turner. And if Mr. Turner has that kind of mind power to coerce people
19 into such heinous situations and crimes, I feel I have absolute reason to
20 worry about a smaller sentence and early release or even revenge after
21 release.

22 They tried to harm us, Your Honor, but instead they physically
23 harmed a Metro officer; someone who came to our home when we
24 needed and called for help.

25 Sometimes I think about hurting them, Your Honor, and I've

1 never wanted to harm another living soul ever in my life until now, and
2 feeling this way is terrible.

3 Please, Your Honor, consider imposing the longest possible
4 sentences onto these two men. And please allow my roommate,
5 Willough [phonetic], and I to try and slowly rebuild our lives free from
6 worry or fear. Thank you.

7 THE COURT: Thank you.

8 Any questions?

9 MS. MACHNICH: Not on behalf of Mr. Turner.

10 MS. PLUNKETT: No, Judge.

11 THE COURT: Thank you.

12 MR. GIORDANI: Willoughby Grimaldi.

13 THE COURT: Counsel, before the next speaker can you
14 approach?

15 [Bench conference -- not transcribed]

16 **WILLOUGHBY GRIMALDI**

17 [having been called as a victim speaker and being first duly sworn,
18 testified as follows:]

19 THE COURT CLERK: Would you please state and spell your
20 name for the record?

21 THE VICTIM IMPACT SPEAKER: My full name is Willoughby
22 Potter de Grimaldi, but W-I-L-L-O-U-G-H-B-Y, last name Grimaldi,
23 G-R-I-M-A-L-D-I.

24 THE COURT: And you may proceed, sir.

25 THE VICTIM IMPACT SPEAKER: Thank you. To begin I

1 would like to start by thanking the Court and Your Honor for passing a
2 guilty verdict on all accounts against these two criminals.

3 These past 33 months have been some of the darkest days of
4 my life. I have lived in fear not only day-to-day, but minute-to-minute; the
5 horror of the events of that night haunting every corner of my mind. My
6 best friend cannot even console me due to the fact that she too has
7 flashbacks and tons of guilt when we did nothing to deserve this.

8 Unable to move or run away into hiding, I continue to endure
9 living in the same place where so much violence occurred, and all for
10 nothing. While constantly visiting therapists, I replay that night -- I don't
11 look out -- I'm sorry -- I replay that night unable to let it go. There are no
12 windows in our home that I don't look out wondering if someone is
13 outside waiting to kill us.

14 I should be happy to be alive, yet somehow I feel like I did die
15 that night. I'm just a ghost wandering in pain for all eternity. This is not
16 living. I'm just going through the motions.

17 In the last many months I have learned the difference between
18 justice and hate. I understand that a crime of passion, even if committed
19 based in hate, does not equal a federally recognized hate crime.
20 Nevertheless, I cannot continue to live as a victim and replay the events
21 of that night.

22 It may be true that my heart is struggling to recover. The rage
23 and fear -- I'm sorry -- the rage and fear in my heart are like an
24 everlasting tug of war leaving me feeling empty. I know there is some
25 questions that will never be answered, yet the questions still haunt me.

1 Why? What hate would cause someone to act this way? I guess we'll
2 never know.

3 Our lives were shattered that morning, and since then my
4 health and physical abilities have plummeted leaving me disabled,
5 hopeless, and at a loss for -- feeling fully stressed. Our lives have been
6 completely altered forever. And although the PTSD and memories affect
7 us both differently, we will somehow leave this courtroom today as
8 survivors instead of just victims.

9 I believe in our justice system, and I beg Your Honor to please
10 pass the longest available sentence on these two in order to keep this
11 kind of ignorance and hate off of our streets. I feel anything less than 50
12 years is still not enough time to learn how bad this action actually was.

13 I would like to take one final moment to greatly thank the first
14 responding officers as well, who took on gunfire and everlasting trauma
15 that ultimately saved our lives and brought these two criminals to justice.
16 We are both eternally grateful to you and to all the police officers who
17 responded, put their lives on the line day in and day out. And to the
18 Deputy District Attorney and the whole team who worked tirelessly in this
19 case, thank you all. Between the jury and yourself, Your Honor, thank
20 you. I trust that justice will be served today, and that we will begin to heal
21 one more time.

22 THE COURT: Any questions?

23 MS. MACHNICH: Not on behalf of Mr. Turner.

24 MS. PLUNKETT: No, Judge.

25 THE COURT: Thank you, sir.

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MR. GIORDANI: Barbara Robertson.

BARBARA ROBERTSON

[Having been called as a victim speaker and being first duly sworn,
testified as follows:]

THE COURT CLERK: Please state and spell your name for
the record.

THE VICTIM IMPACT SPEAKER: Barbara Robertson,
B-A-R-B-A-R-A R-O-B-E-R-T-S-O-N.

THE COURT: You may proceed.

THE VICTIM IMPACT SPEAKER: First of all, I'd like to thank
Your Honor for letting me speak today. Jeremy wanted to be a fireman
or a police officer from the time he was a little boy. From the time he
applied and graduated from the police academy, the first question I was
always asked is aren't you afraid for him to be a police officer? My
answer was always no. I trust in all the training he has had. As his
mother I completely supported him. I knew he would become an
excellent officer. I am proud to call Office Robertson my son and hero.

Fast forward to September 4, 2015, a mother's worst
nightmare happened. I was awakened by a telephone call from my
daughter-in-law telling me Jeremy had been shot in the leg, and asked if I
could come over to watch my 18-month-old grandson so she could go to
the hospital.

I remember as I was driving over their house -- over to their
house crying because as much as I wanted to watch my grandson, I also
really wanted to be at the hospital with my son. At the time I was not

1 aware of the severity of his injury.

2 After arriving at their house, I then had to call my daughter to
3 tell her about her brother. She lived in Bakersfield, California at the time
4 and was devastated. Not only did I have to worry about Jeremy, I also
5 had to worry about her driving to Las Vegas by herself to be here for all
6 of us.

7 The news was on at the house and there was continuous
8 coverage of the shooting. I was trying to stay strong for my grandson, as
9 he didn't understand anything that was going on. It became apparent
10 that this was a very serious incident, and I worried the other suspect
11 would not be found.

12 I was finally able to go to the hospital, but wasn't prepared to
13 see my son in the condition he was in. The pool of blood on the floor as
14 he -- as they wheeled him to surgery will forever be in my memory. It
15 wasn't until he came out of surgery and the doctor talked to us that I
16 realized how lucky we were that he was alive. The doctor informed us it
17 would be a long road to recovery and that there was a strong possibility
18 that he would have to walk with a cane for the rest of his life.

19 My daughter-in-law was pregnant at the time with my second
20 grandchild. I was now worried that the trauma, physical and emotional,
21 that she was going through could be detrimental to the baby. She is like
22 another daughter to me, so I needed to be there for her along with
23 Jeremy. Trying to balance everything was overwhelming at times.

24 It broke my heart to see Jeremy in so much pain and never
25 complain. A mother is supposed to protect their children, and I felt like a

1 complete failure, as there was nothing I could do but be there for him and
2 the family. The worst part was having to watch him go through the
3 changing of his wound VAC every three days for about four months. The
4 exit wound from the bullet was left to heal from the inside out and was at
5 least four inches deep. I can't even imagine the pain associated with
6 pulling out the packing and replacing it with clean material. He would
7 have so much anxiety on those days. It was hard to watch.

8 Everyday things we do on our own were difficult or impossible
9 for Jeremy to do by himself. Jeremy so enjoys the role of being a
10 husband and father. He was very excited about having another child.
11 He and his son had a great relationship. They loved playing with each
12 other and rolling around on the floor together. Unfortunately, his injury
13 has put limitations on what he can and cannot do with his son and
14 daughter.

15 Jeremy was separated from his son for 11 days while he was
16 in the hospital. This was hard on both of them and the family. When he
17 was able to go home he wasn't even able to pick him up. That was
18 something his son just couldn't understand. Even walking around his
19 dad he had to be extremely careful so he wouldn't unplug the wound
20 VAC machine. His dad wasn't able to put him to bed like he had done
21 every night before September 4th because his room was upstairs.
22 Jeremy stayed downstairs for more than three months. His son went
23 from being a good eater, willing to try anything, to being a very picky
24 eater; that still continues today. He continues to worry that bad guys will
25 hurt his father again.

1 Through his recovery process the family chose to stay positive
2 and do whatever we could for Jeremy. The courage Jeremy displayed
3 through the recovery process amazes me each and every day. The pain
4 continues to this day and will be with him every day of his life. Dealing
5 with a leg that is an inch shorter than the other is not an easy task.
6 Walking with a noticeable limp has put stress on his other leg and hip.
7 He never complains, but I can see he is in pain.

8 I have learned that depression and PTSD are real.
9 Something as simple as the kids making loud noises can be agitating.

10 Jeremy was willing to agree to a plea deal for Mr. Turner and
11 Hudson. He just wanted to move on. They repeatedly turned the offer
12 down and drug this out for almost three years.

13 These young males will be able to walk out of prison as the
14 same person physically. However, Jeremy, along with his family have
15 been forever changed both physically and mentally because of their
16 decision in the early morning of September 4th.

17 They have not been willing to step up and take responsibility
18 for their actions, which is very disappointing. It is hard for me to believe
19 they were at the house only to steal marijuana with the type of firepower
20 they had on them. Shots were fired as soon as they heard the door
21 opening. There were other options that they could have taken, but they
22 made the choice to disregard the life of the person opening the door.

23 I wish no ill will on these two, but feel they need to be held
24 accountable. I am asking the Court to sentence both of them to the
25 maximum sentence allowed by law. I hope that this will be long enough

1 for them to reflect on their actions and come out ready to change and be
2 productive citizens. Again, Your Honor, thank you for letting me have the
3 opportunity to speak.

4 THE COURT: Thank you, ma'am.

5 Are there any questions?

6 MS. MACHNICH: None on behalf of Mr. Turner.

7 Thank you, ma'am.

8 MS. PLUNKETT: No, Judge.

9 THE COURT: Thank you.

10 MR. GIORDANI: Melissa Robertson.

11 **MELISSA ROBERTSON**

12 [having been called as a victim speaker and being first duly sworn,
13 testified as follows:]

14 THE COURT CLERK: Please state and spell your name for
15 the record.

16 THE VICTIM IMPACT SPEAKER: Melissa Robertson,
17 M-E-L-I-S-S-A R-O-B-E-R-T-S-O-N.

18 THE COURT: Please proceed.

19 THE VICTIM IMPACT SPEAKER: Hello, my name is Melissa
20 Robertson. I am the wife of Officer Jeremy Robertson. I want to thank
21 the Court for allowing me to speak today. On the day my husband was
22 shot I was four months pregnant and had an 18-month-old son. A week
23 and a half earlier my son had undergone emergency surgery and was
24 still recovering. This was my husband's first night back after taking care
25 of our son during his post-surgery recovery.

1 The day my husband was shot was one of the hardest and
2 scariest days of my life. I had to see my husband in pain and anguish
3 with blood on the floor. I had to wait for four hours while they replaced
4 his femur with a metal rod, and I had to wait with him in a hospital for 11
5 days while he tried to recover enough to be able to take a few steps. My
6 family and friends were worried about me because they didn't want to
7 see the stress and emotions of the situation hurt me or the baby.

8 But that's not the only hard days I've had to face since this
9 tragedy. Not only did I have to take care of an 18-month-old son while
10 pregnant, but I had to take care of a husband who was bound to a
11 wheelchair for months. And for a while I was the main caregiver for my
12 son, and I still had to work full-time while trying to save enough days for
13 maternity leave. And I was now taking on all of my husband's daily
14 responsibilities for our household.

15 I did not sleep in the same bed as my husband for months
16 because he couldn't even walk up the stairs and he had to sleep in a
17 hospital bed in our living room. To this day he still has trouble trying to
18 kneel to do bath time or get on the floor to play with our kids like he used
19 to with my son before he was shot.

20 Both of my kids were greatly affected when my husband was
21 shot. It breaks my heart to think that my two-year-old daughter, who is a
22 big daddy's girl and looks just like him, almost never got to meet her
23 daddy. My son though is the one that was affected the most. Kids are
24 very intuitive, so although my son was only 18 months old, he knew
25 something was wrong. During the 11 days my husband was in the

1 hospital my son stopped eating and became fixated on bad guys. To this
2 day he still doesn't eat much when he used to eat or try anything. And
3 sometimes he still randomly brings up bad guys and how they hurt his
4 daddy.

5 While I'm glad that justice was served and I believe they
6 deserve whatever punishment is given to them, I also hope they use this
7 as an opportunity to better themselves.

8 I had a lot of hate in my heart towards them for a couple
9 years, and it's very hard to let go of that. Even now I fight anxiety and
10 depression because of everything that I and my family have had to go
11 through. I still have nightmares about what could have happened and
12 what did happen, and I have had many sleepless nights since. While I
13 still battle with these lasting emotions, I can forgive. It has taken me a
14 very, very long time, but I have finally forgiven.

15 Although my husband has -- still lives with lasting side effects
16 both mentally and physically, I am grateful because his name is not on
17 memorials and on T-shirts along with other fallen officers that we've
18 tragically lost.

19 I will forever have a scar on my heart because of the pain that
20 has been caused, but all those scars are permanent reminders of pain
21 and suffering. They also remind me of the value of life, love, and my
22 family.

23 My hope is that the Court gives the maximum sentence
24 allowed because although this may be their first crime, it only takes one
25 offense to affect someone's lives the way that mine and my family's has

1 been affected.

2 I hope they work hard to better themselves and learn from
3 their mistakes. I hope they took a good look inside and truly take
4 responsibility and reflect on what they did and come out with a better
5 understanding of what it means to be a good member of society. They're
6 still going to have a chance at life after this, and I don't want them to
7 waste it and make any more reckless and horrible actions like they did
8 that night.

9 Thank you again for allowing me to speak. Thank you to my
10 family and to my wonderful husband. What he's been through is tragic,
11 and his recovery has been nothing short of a miracle. And without him
12 I'd be falling apart. So, thank you again.

13 THE COURT: Thank you.

14 Any questions?

15 MS. MACHNICH: No questions on behalf of Mr. Turner.

16 Thank you, ma'am.

17 THE COURT: Thank you.

18 MS. PLUNKETT: No, Judge.

19 MR. GIORDANI: Officer Robertson.

20 **JEREMY ROBERTSON**

21 [having been called as a victim speaker and being first duly sworn,
22 testified as follows:]

23 THE COURT CLERK: Please state and spell your name for
24 the record.

25 THE VICTIM IMPACT SPEAKER: Jeremy Robertson,

1 J-E-R-E-M-Y R-O-B-E-R-T-S-O-N.

2 Good morning, Your Honor, I thank you for allowing me this
3 opportunity today to address the Court. First I'd like to thank again the
4 Court for allowing me to speak today. I'd also like to thank the State for
5 the great job and time it took to put this case together. I also want to
6 thank everyone here that is here supporting me today.

7 The events that occurred on September 4th, 2015 will always
8 be an impact on my life. That night Turner and Hudson made a choice to
9 go to a house and, from what they say, steal some weed. They chose to
10 go to that house and take with them some hefty firepower with a rifle and
11 a shotgun. They and they alone are the ones that set things in motion
12 that morning. They chose where to go, they chose what firearms to
13 bring, and they chose to have those firearms ready to use.

14 I opened the door and was immediately met with a gunshot
15 that hit me in the right upper thigh shattering my femur causing me to fall
16 to the floor. I will never forget the moment I finally realized what had
17 happened and thinking immediately to my wife who was four months
18 pregnant at the time and my little boy who was 18 months. My mind
19 raced to thinking of them and how I needed to do everything I could to
20 survive so I could see them again.

21 I will never forget the pain of being rolled over by responding
22 officers and then them carrying me out of the house holding my dangling
23 leg. I will never forget laying on the table in trauma with all the doctors
24 and nurses surrounding me, and just praying that I would keep my leg
25 and one day be able to walk again.

1 One of my fellow officers started calling my wife while I was
2 laying on the trauma table. Not wanting to scare her I asked for the
3 phone so I could talk to her myself. She was woken up around 4:30 a.m.
4 with me on someone else's phone -- dazed trying to figure out why I
5 would call on someone else's phone -- and having to tell her that I had
6 been shot and to call my mom to come watch our son so she could come
7 down to the hospital.

8 I spent 11 days in the hospital. Some of the days, especially
9 the first few days after the incident and surgery, I was in a daze and not
10 coherent to what was going on around me. I woke with family and
11 friends surrounding me. I also woke to the pain that was in my leg, and
12 seen a tube attached that I later found out to be a wound VAC.

13 My son was allowed to visit the first day after the event, but
14 then due to him becoming sick he was not allowed to visit for my safety.
15 This was very hard for me and was very emotional, as I want to spend
16 time with him. I have a very great bond with my son.

17 The wound VAC that was attached to me stayed attached for
18 several months as my injury healed from the inside. The wound VAC
19 was a love-hate relationship, as it helped me heal and protected me from
20 infection, but the dressings had to be changed every three days and was
21 very painful.

22 I survived a pretty bad gunshot, but then every three days
23 after had to endure the dressing change that consisted of a tech
24 removing the tape to expose the wound and then pulling out foam pieces
25 that were packed inside the wound. The tech then had to spray and

1 clean the inside of the wound and then pack it with new foam and tape.
2 This event would last about an hour.

3 And the reason why I bring it up is to relay that just surviving
4 the gunshot was not the only thing. I had to endure the pain from the
5 wound for months. The pain was so bad I had to be put on anxiety
6 medication because I was -- would start freaking out about the next
7 dressing change.

8 When I finally got released from the hospital I was transported
9 home on a gurney and was taken inside where a hospital bed awaited
10 me inside my dining room. I was not allowed to put any weight on my leg
11 for two months, and had to have someone by me to help me with the
12 simplest of things. I had to have family help me use the restroom,
13 shower, eat and et cetera. I couldn't sleep in the same bed with my wife,
14 and was stuck sleeping in the dining room in a hospital bed for months.

15 My son had a hard time with this, as he could not play with
16 Daddy the way he was used to. Interactions became careful, Daddy's
17 leg, don't pull that tube, don't do this and that. My son became afraid to
18 be around me.

19 I was finally allowed to start physical therapy in November. I
20 still had the wound VAC attached to me, and started the yearlong
21 process of learning how to walk again. I was told by my surgeon to
22 expect to walk with at least a cane for the rest of my life, but I did not like
23 that idea, nor did my physical therapist. My therapist along with myself
24 pushed myself hard to do everything we could to get my leg to do what it
25 used to. I went to therapy three times a week, three hours each visit, and

1 many times left in tears from the pain and stretching and massaging that
2 had to be done.

3 As I was getting better it became apparent that my right leg
4 was shorter than the other leg. The titanium rod the surgeon had placed
5 inside my leg was shorter than my left leg. I now have to wear an insole
6 or have special boots made to counterbalance this.

7 I am very thankful that my therapist did not want to see me
8 using a cane and pushed me hard to be able to walk without assistance.
9 I wish I could say that I could walk every day without pain, but that would
10 be a lie. Every day I wake up sore with leg issues, back issues, and
11 have to stretch things out before I start my day. During the day the
12 muscles tighten up and throughout the day I need to stretch out. This will
13 be an issue for the rest of my life. My body has protected the hurt leg
14 and now caused problems for my good leg due to counterbalancing,
15 putting all the weight on my left leg.

16 I am very thankful to be alive and be here for my family, but it
17 is not, nor will it ever be, the same. I don't have full range of motion in
18 my leg like I used to. I can't sit on the floor and play with my kids like I
19 used to. Even though I get around, I know as I get older I'll have the
20 issues with my leg, and I am sure it will get worse as I get older.

21 As I stated at the beginning, Hudson and Turner both were the
22 ones who made the poor decision to do something that they knew was
23 wrong. My belief is if we had not shown up as officers those
24 homeowners would be dead and this would be a totally different trial --
25 or -- had been a different trial.

1 Today Hudson and Turner will get sentenced and spend the
2 time given to them, which I hope is the max time allowed, but when that
3 time is up they get to walk out and start their life with nothing in their way.
4 I'm not so lucky. I don't get to wait some years and then all the things
5 wrong with me caused from getting shot go away. I will forever have to
6 live with the pain, with the -- live with the emotional and PTS part.

7 My son knows something bad happened, and even though we
8 never told him exactly what happened he still once in a while tells me
9 when I put him to bed at night no bad guys are going to hurt Daddy. My
10 family and I have to live with this for the rest of our lives. We don't get to
11 do the same, get to do some years, and then erase it all.

12 The reason why I bring all these things up, reference the
13 healing process and the forever life-changing effects I have to deal with
14 is just to remind the Court and Turner and Hudson that one mistake can
15 cause a lifetime of pain and suffering.

16 I will continue to get better. This event has not broken me or
17 my family, but has made us stronger and built a stronger bond. This may
18 surprise the families of Turner and Hudson and themselves, but I forgive
19 you. Don't get me wrong, I hated you guys for a long time, but I grew up
20 going to church and know that living with hate will not help me. The
21 offense that occurred on 9/4/15 has happened and there's no going back
22 from that now. The only way is to move forward.

23 I could see from the few times I was at court during the trial
24 that both Turner and Hudson have family and friends that care for them.
25 Please, to you the family of Turner and Hudson continue to love and

1 support them. I know that you will get -- that they will get out one day
2 and they will get the opportunity to start life over and be part of this
3 community.

4 I would like to see Turner and Hudson take the time in prison
5 to better themselves, take classes, learn trade if they offer it. They'll
6 have to pay for the poor decision they made, but I want them to better
7 themselves and come out of this a better person who can function within
8 our community. Stay away from the people in prison that will only bring
9 you down, and surround yourself with positive people not looking for
10 trouble. A quote I've heard -- and I don't remember who said it -- you
11 want to know what your life will look like or live like when you get older,
12 look at your friends. You need to surround yourselves with the people
13 that will care for you and support you, not bring you down.

14 I've had the opportunity since being shot to work with a
15 program called Hope for Prisoners who help people getting out of prison
16 take classes and help them then find a job and get them to be part of the
17 community and not reoffend. This program is several weeks long, and
18 towards the end officers come in and have the opportunity to talk to them
19 and mentor them. I've had the privilege on several occasions to be part
20 of this, and also being part of the graduation at the end of the course --
21 sorry -- at the end of the course. The program has a great success rate
22 with hardly any of the graduates reoffending.

23 I hope this is something that you, Turner and Hudson, will be
24 interested in doing when you are released, as it will help you become a
25 better citizen to yourself, family, and the community. You will have a

1 chance to live life. Please don't screw it up again.

2 Your Honor, I thank you for the opportunity here. Like I said
3 before, one incident, one choice can make -- decide someone's life. My
4 life will never be the same. And I agree with the State with what they
5 have suggested for punishment. Thank you.

6 THE COURT: Thank you.

7 Any questions?

8 MS. MACHNICH: Nothing on behalf of Mr. Turner.

9 MS. PLUNKETT: No, Judge.

10 THE COURT: We'll be in a short recess.

11 THE COURT MARSHAL: Court's in recess.

12 [Recess taken at 10:48 a.m.]

13 [Proceedings resumed at 10:55 a.m.]

14 THE COURT MARSHAL: Remain standing. Court's back in
15 session.

16 THE COURT: Please be seated.

17 THE COURT MARSHAL: Judge?

18 MS. DEMONTE: I can take notes, I guess.

19 THE COURT MARSHAL: All right. I'll see if I can --

20 THE COURT: Are you standing in, counsel?

21 MS. DEMONTE: I can. I don't know where Mr. Giordani
22 went. I mean, we're at the point where it's just taking notes.

23 MS. LUZAICH: He'll be right back, Judge, if you don't mind;
24 two seconds. Thank you.

25 [Bench conference -- not transcribed]

1 THE COURT: State, do you know where counsel went?

2 MS. DEMONTE: I do not.

3 THE COURT: Did you text him?

4 MS. DEMONTE: Huh? Other people are. I can see everyone
5 on their phone.

6 THE COURT: All right. We'll be in a short recess. As soon
7 as counsel arrives let me know.

8 [Recess taken at 10:59 a.m.]

9 [Proceedings resumed at 11:00 a.m.]

10 THE COURT MARSHAL: Remain seated. Court's back in
11 session.

12 MR. GIORDANI: Sorry.

13 THE COURT: Please be seated.

14 As to Mr. Turner, in accordance with the laws of the State of
15 Nevada this Court does now sentence you, as to Count 1, to 364 days in
16 the Clark County Detention Center.

17 As to Count 2, to confinement in the Nevada Department of
18 Corrections for a maximum term of 72 months with minimum parole
19 eligibility of 16 months. Count 2 is to run concurrent with Count 1.

20 As to Count 3, to confinement in the Nevada Department of
21 Corrections for a maximum term of 48 months with minimum parole
22 eligibility of 30 -- I'm sorry -- with minimum parole -- retract. As to Count
23 3, to confinement in the Nevada Department of Corrections for a
24 maximum term of 120 months with a minimum parole eligibility of 48
25 months. A consecutive term of 36 months for the use of -- a maximum

1 term -- 120 months for the deadly weapon to run concurrent with Count
2 2.

3 As to Count 4, to confinement in the Nevada Department of
4 Corrections for a maximum term of 120 months with a minimum parole
5 eligibility of 36 months. A consecutive term of 36 months for use of -- a
6 maximum of 120 months for the deadly weapon consecutive to Count 3.

7 As to Count 5, the maximum, to confinement in the Nevada
8 Department of Corrections for a maximum term of 120 months with a
9 minimum parole eligibility of 36 months concurrent with Count 2.

10 As to Counts 3 and 4, as to the 36 months and maximum of
11 120 months for the use of a deadly weapon, the Court considered the
12 information described in paragraphs A through E in NRS 193.165 in
13 determining the length. The aggregate sentence as to Mr. Turner is a
14 maximum of 480 months with minimum parole eligibility of 168 months.

15 As to Mr. Hudson, in accordance with the laws of the State of
16 Nevada this Court does now sentence you, as to Count 1, to 364 days in
17 the Clark County Detention Center.

18 As to Count 2, to confinement in the Nevada Department of
19 Corrections for a maximum term of 72 months with a minimum parole
20 eligibility of 16 months.

21 As to Count 3, to confinement in the Nevada Department of
22 Corrections for a maximum term of 120 months with the minimum parole
23 eligibility of 48 months. A consecutive term of 36 months for the use
24 of -- a maximum term of 120 months for the deadly weapon. And Count
25 3 is to run concurrent with Count 2.

1 As to Count 4, to confinement in the Nevada Department of
2 Corrections for a maximum term of 120 months with minimum parole
3 eligibility of 48 months. A consecutive term of 36 months for the use
4 of -- and the minimum term of 120 months for the deadly weapon. And
5 Count 4 is to run consecutive to Count 3.

6 As to the use of a deadly weapon, the Court considered the
7 information described in paragraphs A through E in NRS 193.165 in
8 determining the length.

9 As to Count 5, to confinement in the Nevada Department of
10 Corrections for a maximum term of 120 months with the minimum parole
11 eligibility of 36 months to run concurrent with Count 4. The aggregate
12 sentence is a maximum term of 480 months with minimum parole
13 eligibility of 168 months.

14 Counsel, if my math is incorrect I need to know at this point.

15 MR. GIORDANI: Court's brief indulgence.

16 MS. MACHNICH: Your Honor, I think it was just -- and it may
17 have been that I just was writing it incorrectly. For Mr. Turner, Count 4 I
18 had --

19 THE COURT: The same as Count 3; a maximum of 120,
20 minimum of 48 with an additional 36 consecutive as regarded by law.

21 MS. MACHNICH: I had 36 to 120 and 36 to 120.

22 MS. PLUNKETT: As did I on Count 4.

23 THE COURT: No, it's supposed to be -- both the sentences
24 should be identical. It should be, as to Count 2, a max of 72, a minimum
25 of 16 concurrent with Count 1. Count 3 a max of 120, a minimum of 48

1 with a consecutive 36. That count's concurrent to Count 2. Count 4 is a
2 max of 120 with a minimum of 48 with a consecutive of 36, and that's to
3 be consecutive to Count 3. And Count 5 is a max of 120 with a minimum
4 of 36 concurrent to Count 4.

5 MR. GIORDANI: That looks accurate, Your Honor.

6 THE COURT: Okay.

7 MR. GIORDANI: Fourteen to 40 on each.

8 THE COURT: That's correct.

9 MS. SISOLAK: Thank you, Your Honor.

10 MR. GIORDANI: And as to credit for time served, I believe --

11 THE COURT: Well, wait, we're not there yet, counsel.

12 MR. GIORDANI: Oh, I'm sorry.

13 THE COURT: I further impose \$25.00 as an administrative
14 assessment fee, \$150.00 for a DNA analysis fee, \$3.00 for a DNA
15 administrative assessment fee. This is as to Mr. Turner. The Court does
16 not impose a fine. No restitution.

17 MR. GIORDANI: Oh, as to that, Your Honor, we were
18 requesting \$9,000.00 -- I'm sorry -- \$9,099.98 to Jeremy Robertson. One
19 of the two defense counsel has the proof. Most of his bills were covered
20 by insurance for the department.

21 THE COURT: Okay. It wasn't in the Presentence
22 Investigation Report.

23 MR. GIORDANI: Yeah, I don't want to speak out of turn, but I
24 believe that sir probably -- well, can I have the Court's brief indulgence?

25 THE COURT: Sure.

1 MR. GIORDANI: Sorry, Your Honor. I spoke to Officer
2 Robertson. He wasn't contacted by P and P. I think that his
3 understanding was he submitted it to our office, my victim/witness
4 advocate and it would get to the Court. So, that's what our request is;
5 \$9,099.98.

6 THE COURT: Say it again, please.

7 MR. GIORDANI: \$9,099.98.

8 THE COURT: State, are you -- not State. Defense, are you
9 objecting to the amount of restitution?

10 MS. PLUNKETT: Judge, I've seen the bill, and I don't believe
11 I have any objection on behalf of --

12 THE COURT: All right.

13 MS. PLUNKETT: -- Mr. Hudson.

14 THE COURT: Thank you.

15 What about -- counsel?

16 [Colloquy between counsel]

17 THE COURT: All right. Well, I can order it. If you have an
18 objection you can file a motion to reduce it if you feel it's inaccurate.

19 MR. GIORDANI: Understood.

20 MS. MACHNICH: It -- that's fine, Your Honor.

21 MS. PLUNKETT: Your Honor, we'd have no objection.

22 THE COURT: Okay. Thank you.

23 MR. GIORDANI: And I'd ask -- it's just jointly and severally.

24 THE COURT: I will, counsel.

25 The Court further orders you to pay restitution to Officer

1 Robertson in the amount of \$9,099.98 jointly and severally with your
2 co-defendant, Turner.

3 MR. GIORDANI: And credit for time served?

4 THE COURT: Credit for time served in the amount of 1,022
5 days.

6 MR. GIORDANI: Thank you, Your Honor.

7 MS. SISOLAK: Thank you, Your Honor.

8 MS. PLUNKETT: Thank you, Judge.

9 MS. MACHNICH: Thank you, Your Honor.

10 THE COURT: Now, I -- pronounced the sentence as to Mr.
11 Hudson yet?

12 MS. MACHNICH: Yes, you did.

13 MR. GIORDANI: Yes.

14 THE COURT: Okay. So I just need to do the imposition of
15 fines and restitution, credit for time served?

16 MR. GIORDANI: Yes.

17 THE COURT: Okay. So as -- that was as to Mr. Turner. As
18 to Mr. Hudson, \$25.00 is the administrative assessment fee, \$150.00 for
19 the DNA analysis fee, \$3.00 for a DNA administrative assessment fee.
20 The Court orders you to pay restitution to Officer Robertson in the
21 amount of \$9,099.98 jointly and severally with your co-defendant, Mr.
22 Turner. Credit for time served in the amount of 1,022 days.

23 Is there anything further? I've pronounced sentence in both
24 Defendants; correct?

25 MR. GIORDANI: You have.

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THE COURT: Imposed fines, restitution, and credit for time served?

MR. GIORDANI: Yes, Your Honor.

THE COURT: As to both Defendants; correct?

MR. GIORDANI: Yes, Your Honor.

THE COURT: Okay. Is there anything further, counsel?

MR. GIORDANI: Not on behalf of the State.

THE COURT: Anything further, counsel?

MS. MACHNICH: No, Your Honor, thank you.

THE COURT: Thank you.

MS. SISOLAK: Thank you, Your Honor.

MS. PLUNKETT: Thank you, Judge.

[Proceedings concluded at 11:12 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.



Trisha Garcia
Court Transcriber

1
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3
4 STEVEN TURNER,) No. 76465
5)
6 Appellant,)
7 vi.)
8 THE STATE OF NEVADA,)
9 Respondent.)
10)

11 **APPELLANT’S APPENDIX VOLUME X PAGES 1953-2192**

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18 **CERTIFICATE OF SERVICE**

19 I hereby certify that this document was filed electronically with the Nevada
20 Supreme Court on the 4 day of February, 2019. Electronic Service of the foregoing
21 document shall be made in accordance with the Master Service List as follows:

22 AARON FORD DEBORAH L. WESTBROOK
STEVEN S. OWENS HOWARD S. BROOKS

23 I further certify that I served a copy of this document by mailing a true and
24 correct copy thereof, postage pre-paid, addressed to:

25 STEVEN TURNER, #1200863
26 HIGH DESERT STATE PRISON
P.O. BOX 650
27 INDIAN SPRINGS, NV 89070

28 BY /s/ Carrie M. Connolly
Employee, Clark County Public Defender’s Office