

IN THE SUPREME COURT OF THE STATE OF NEVADA

Barry Harris,
Appellant

vs.

The State of Nevada,
Respondent,

) Supreme Court Case No.: 76774

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1 Is that what he asked you?

2 A That's what I -- yes, that's what I understood.

3 Q And your response to that was that you had not?

4 A That's correct.

5 Q So then today the question was had you tried to come
6 into contact with the defendant?

7 A Correct.

8 Q Had you tried to come into contact with him?

9 A I had tried to.

10 Q And how had you tried to come into contact with him
11 that night?

12 A Through my fellow detectives.

13 Q Okay. And you had been unable to do so?

14 A Correct.

15 Q So, therefore, you had not come into contact with him?

16 A Correct.

17 Q Okay. And then just directing you back to the
18 recorded statement with Ms. Dotson, when you were speaking with
19 her, did she tell you whether she asked the defendant to leave
20 her house when she first got there?

21 A She did indicate that, yes.

22 MS. CRAGGS: Nothing further.

23 THE COURT: All right. Recross.

24 ///

25 ///

1 RECROSS-EXAMINATION

2 BY MR. SHEETS:

3 Q Officer -- or Detective, the specific question you
4 were asked at preliminary hearing was did you ever have any
5 reason to come into contact with Mr. Harris during your
6 investigation, isn't that accurate?

7 A I don't recall.

8 Q Would it refresh your recollection to look at this
9 transcript?

10 THE COURT: What's the pages again?

11 MR. SHEETS: Going to be page 7.

12 THE COURT: All right. Go ahead.

13 THE WITNESS: Thank you.

14 BY MR. SHEETS:

15 Q Did that refresh your recollection?

16 A It does.

17 Q That's the question that was asked; correct?

18 A Correct.

19 Q And you answered I did not; correct?

20 A Correct.

21 Q So the State just talked about the -- the thought that
22 you would -- you believed the firearm had been taken out of the
23 apartment; correct?

24 A Correct.

25 Q She never says that in this recorded statement, does

1 she?

2 A No, she doesn't.

3 Q Okay. You don't note that in the report, do you?

4 A I'm sorry?

5 Q You don't note that in your report, do you?

6 A I did not.

7 Q You didn't think maybe there's another gun and I
8 should look in the apartment; correct?

9 A Correct.

10 Q You didn't think maybe there's some ammunition and I
11 should take a look; correct?

12 A I'm sorry, I didn't hear the question.

13 Q You didn't think maybe there's some ammunition there
14 -- in there, and I should take a look for it; correct?

15 A I didn't think that, no.

16 Q So when you write your reports, you try to be as
17 accurate as possible; correct?

18 A Of course.

19 Q And as detailed as possible; correct?

20 A I do.

21 Q And in this particular circumstance, you didn't note
22 that he had ever indicated to you that the -- the gun had been
23 taken out of the apartment; correct?

24 A Correct.

25 MR. SHEETS: No further questions.

1 THE COURT: Any redirect?

2 MS. CRAGGS: No, Your Honor.

3 THE COURT: Does any member of the jury have a
4 question for this witness? Okay. I see a hand. All right.
5 Make sure your jury number is on that. Anybody else?

6 Can I see counsel at sidebar.

7 (Bench conference)

8 THE COURT: This is from Juror No. 6. I don't think
9 he can answer this, but maybe. When did Nicole go back to the
10 apartment?

11 MS. CRAGGS: I don't think he can answer that, yeah.

12 THE COURT: I can ask if he's aware of the next time
13 she -- you know, was he -- I can tell him if he's only
14 personally aware. I doubt he knows if she went back in at that
15 night.

16 MR. SHEETS: I'm not even sure it's relevant.

17 THE COURT: Yeah.

18 MS. CRAGGS: I don't think there's any harm in asking
19 it because the answer is going to be I have no idea.

20 THE COURT: All right. Any problems with the State?

21 MS. CRAGGS: No.

22 THE COURT: Defense?

23 MR. SHEETS: Just on relevance.

24 THE COURT: Well, I'll go ahead and ask it. All
25 right.

1 (End of bench conference)

2 THE COURT: All right. Detective, after you finished
3 your interview and recorded statement with Ms. Dotson, did she
4 ever go back into the apartment?

5 THE WITNESS: No, she did not.

6 THE COURT: Okay. Are you aware of any -- of the next
7 time she went back to that apartment?

8 THE WITNESS: I have no idea.

9 THE COURT: All right. Does that generate anything
10 further from the State?

11 MS. CRAGGS: It does not, Your Honor.

12 THE COURT: Defense?

13 MR. SHEETS: No, Your Honor.

14 THE COURT: All right. Thank you very much,
15 Detective, for your testimony. You're excused.

16 THE WITNESS: Thank you, sir.

17 THE COURT: All right. State may call its next
18 witness.

19 MS. SUDANO: Your Honor, we don't have any additional
20 witnesses for today.

21 THE COURT: It's my -- are you -- do -- are you at the
22 end of your case?

23 MS. SUDANO: We are.

24 THE COURT: All right. I know you wanted to check and
25 make sure you had all your exhibits admitted. What I'm going to

1 ask the jury to do is, if you would, just step outside of the
2 room while we take care of a couple pieces of business at that
3 point. It's my understanding, then, that the State will rest,
4 and we'll continue on with the case today.

5 So while you're out there, don't talk to each other
6 about it, don't let anyone -- don't talk with anyone else about
7 it, don't let anyone talk to you about it, don't go on the
8 Internet or social media or do any sort of research or
9 investigation on your own, and do not begin to form or express
10 any opinion. Please just sort -- if you can, just stay outside
11 of the -- in the hall so we can bring you right back in once we
12 get done with a couple matters in here.

13 (Jury recessed at 4:27 p.m.)

14 THE COURT: All right. I'll ask that the State check
15 and make sure you've got everything you want admitted admitted
16 while I canvas the defendant as to his rights. Okay.

17 MR. SHEETS: He's going to now -- I have one witness.
18 They're going to talk to you about those same things that I
19 talked to you about last night.

20 THE COURT: Okay. Mr. Harris, we've chatted a number
21 of times during the course of your litigation here. As you
22 know, I'm Eric Johnson, I'm the District Court Judge presiding
23 over your trial.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I want to, at this point in time, it's my

1 obligation to make sure that you're aware of your right to -- to
2 testify, and the implications if you do testify and the
3 implications if you don't testify. So if we can, we'll just
4 spend a minute or two going through that. First of all, Mr.
5 Harris, you have the right under the Constitution of the United
6 States and under the Constitution of the State of Nevada not to
7 be compelled to testify in this case. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. That means, essentially, that no
10 one can make you take the witness stand and make you answer any
11 questions. Do you understand that?

12 THE DEFENDANT: Right.

13 THE COURT: Okay. You may, if you wish, give up this
14 right and you may take the witness stand and testify. If you
15 do, you will be asked questions by your attorney and be subject
16 to cross-examination by the Deputy District Attorney. Do you
17 understand that you have the right to testify and be subject to
18 cross-examination? I need to get an oral --

19 THE DEFENDANT: Correct, sir. Correct.

20 THE COURT: You understand that?

21 THE DEFENDANT: Yes, sir. Yes, sir.

22 THE COURT: All right. Now, anything that you say,
23 whether it's in answers to questions put to you by your attorney
24 or by the Deputy District Attorney, will be the subject of fair
25 comment when the Deputy District Attorney and your attorney

1 speak to the jury in final argument. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Your testimony will be
4 available to the jurors to consider in their deliberations, and
5 they will evaluate your testimony as any other witness, and may
6 believe all your testimony, part of it, or none of it, and give
7 it as much weight as they feel it deserves. Do you understand
8 that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: If, by chance, you are convicted of any
11 crime with which you are charged in this case, your testimony
12 will be subject of comment by the Deputy District Attorney and
13 your attorney during the sentencing hearing, and the Court may
14 consider your testimony in determining an appropriate sentence.
15 Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Your testimony will also be
18 recorded and be considered public information and available to
19 anyone and could be used on your behalf or against you as the
20 law permits in any personal, business, or legal matter,
21 including any subsequent criminal or civil litigation in which
22 your testimony would be relevant. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: If you choose not to testify, the Court
25 will not permit the District Attorney to make any comment to the

1 jury concerning the fact that you have not testified. Do you
2 understand that?

3 THE DEFENDANT: Correct, sir.

4 THE COURT: All right. You understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. If you elect not to testify, the
7 Court will instruct the jury, only if your attorney specifically
8 requests, an instruction which reads substantially as follows.
9 The law does not compel a defendant in a criminal case to take
10 the stand and testify, and no presumption may be raised, and no
11 inference of any kind may be drawn from the failure of a
12 defendant to testify. Do you understand that I would give an
13 instruction like that if requested by your attorney and you
14 didn't testify?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Now, do you have any question that
17 you would like to ask me about your constitutional rights?

18 THE DEFENDANT: As far as?

19 THE COURT: What I've just gone over with you.

20 THE DEFENDANT: The whole process of me going through
21 incarceration or --

22 THE COURT: No, no. I'm just talking about your right
23 to testify or not to testify. Do you have any questions about
24 my -- what I've said to you about your constitutional right to
25 testify or not to testify?

1 THE DEFENDANT: What constitution amendment is that?

2 THE COURT: Well, technically, under the Fifth
3 Amendment to the United States Constitution you have a right not
4 to testify. Okay.

5 THE DEFENDANT: Yeah, yeah, yeah. I understand that.

6 THE COURT: Okay. Now, if -- is there any other
7 question that you have?

8 THE DEFENDANT: Not -- not -- well, I've got other
9 questions about --

10 THE COURT: No, but I --

11 THE DEFENDANT: -- my rights.

12 THE COURT: -- want to focus right now on your
13 constitutional right to testify or not to testify. Any other
14 question about that?

15 THE DEFENDANT: No, sir.

16 THE COURT: Okay. Now, if you choose to testify and
17 you have been convicted of a felony within the -- well, is that
18 relevant here in the case --

19 MS. SUDANO: Yes, it is.

20 THE COURT: Okay.

21 MR. SHEETS: Yes, Your Honor.

22 THE COURT: All right. Okay. If you choose to
23 testify and you have been convicted of a felony within the past
24 10 years or have been on parole or probation for a felony within
25 the past 10 years, the District Attorney will be permitted to

1 ask you if you have been convicted of a felony, what was the
2 felony, and when it happened.

3 THE DEFENDANT: Right.

4 THE COURT: No details may be gone into regarding any
5 prior felony convictions. Do you understand that?

6 THE DEFENDANT: Somewhat. But when you say 10 years,
7 do you -- what is 10 years from now?

8 THE COURT: Well, if you've been convicted from -- for
9 -- of a felony within the past 10 years or if you've been on
10 parole or probation for a felony within the past 10 years. So
11 if you go back, it's what, 28 -- March or -- or April? April of
12 2018. So if you go back the issue is were you convicted of a
13 felony after April of 2008, or were you on probation or parole
14 for a felony after 2008? All right. Do you understand that?

15 THE DEFENDANT: Slightly, I do. Now, when you say
16 conviction, does that count too, or in --

17 THE COURT: A conviction would count, too.

18 THE DEFENDANT: Conviction will be counted, so --

19 THE COURT: That would count.

20 THE DEFENDANT: -- the conviction will be the date of
21 the conviction, ten years from that date?

22 MR. SHEETS: It's -- it's --

23 THE COURT: No, it's the date --

24 THE DEFENDANT: Or 10 years --

25 THE COURT: -- of the conviction.

1 THE DEFENDANT: -- from now?

2 THE COURT: Now, if you got a -- say you were
3 convicted of a crime in 2006, okay.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And it's a felony, okay. Are you
6 listening to me, Mr. Harris?

7 THE DEFENDANT: Is what I'm saying is audio?

8 THE COURT: I'm sorry?

9 THE DEFENDANT: Is what I'm speaking right now is
10 audio? Because I'm -- I notice the reporter ain't typing.

11 THE COURT: She's -- it's being recorded.

12 THE DEFENDANT: Oh. So it's audio.

13 THE COURT: She keeps notes. So don't worry about
14 that.

15 THE DEFENDANT: Okay.

16 THE COURT: All right. So let's say, for instance,
17 you were convicted of a felony in 2006.

18 THE DEFENDANT: Yes.

19 THE COURT: And you were placed on probation for three
20 years.

21 THE DEFENDANT: Uh-huh.

22 THE COURT: And your probation continued into 2009.

23 THE DEFENDANT: Correct.

24 THE COURT: All right. That would be within the 10
25 years.

1 THE DEFENDANT: So it'd be -- so it would be starting
2 point of 2009?

3 THE COURT: Well, that would be --

4 THE DEFENDANT: On that 10 years?

5 THE COURT: It's essentially the last whenever -- if
6 your parole -- if you were convicted of a felony and it
7 continued into -- by parole or probation into the last 10 years,
8 they'll be able to ask you about that.

9 MR. SHEETS: And -- and Your Honor, if I could just
10 make it clear so that he understands. I did explain to him he
11 had a conviction for battery, and Your Honor is aware of this,
12 but he had a battery with a deadly weapon causing substantial
13 bodily harm conviction. He was sentenced on February 19th of
14 2008, however he was --

15 THE DEFENDANT: It wasn't 2008.

16 MR. SHEETS: -- he was not paroled until 2011. So
17 I've informed that that would be fair game.

18 THE COURT: And that one would -- they would be able
19 to ask you about that.

20 THE DEFENDANT: Yeah, but it's some special
21 speculations in that because I was in Judge, I think it was
22 Douglas's courtroom at that time, and I believe that it was when
23 I was 16 years old and I'm 28 right now, and 10 years from now
24 will put me at what, 18?

25 THE COURT: Well, was this an adult conviction?

1 MS. SUDANO: Yes, Your Honor.

2 THE DEFENDANT: It was juvenile certified.

3 THE COURT: Well, you may have been a juvenile at the
4 time, but the conviction shows that it was an adult conviction.

5 MR. SHEETS: Yes, it was -- you were certified as --

6 THE DEFENDANT: Right.

7 MR. SHEETS: -- an adult.

8 THE DEFENDANT: But what -- what year is on that
9 paper?

10 MS. SUDANO: So he was convicted in 2007, his original
11 parole eligibility date was that 2008 date, but he was in
12 custody and not paroled until at least 2011.

13 THE COURT: Okay. That's the -- that's the optimal
14 date here, 2011.

15 THE DEFENDANT: So would it start from 2011?

16 THE COURT: That would be -- if that's the last
17 conviction that you were -- felony conviction in which you were
18 on parole or probation, yes, it would start in 2011.

19 THE DEFENDANT: Okay.

20 THE COURT: So same within the last 10 -- I'm not
21 going to go on talking to you anymore. That conviction will
22 come in and they will ask you about it if you testify --

23 THE DEFENDANT: I understand that --

24 THE COURT: -- all right?

25 THE DEFENDANT: -- but it was some other stuff you

1 said --

2 THE COURT: I don't --

3 THE DEFENDANT: -- to me.

4 THE COURT: -- I don't want to go into the other stuff
5 now.

6 THE DEFENDANT: Is that some bias there, Judge?

7 THE COURT: I'm sorry, what?

8 THE DEFENDANT: Is there some bias?

9 THE COURT: No, I have other things to do, and I think
10 you're smart enough to understand what's going on here.

11 THE DEFENDANT: I just want to --

12 THE COURT: So if you've got --

13 THE DEFENDANT: -- understand.

14 THE COURT: -- a question, ask a question. I've told
15 you that this conviction, because you weren't paroled until
16 2011, will be able to be mentioned by the State.

17 THE DEFENDANT: All right, Your Honor.

18 THE COURT: They will be able to ask if you have been
19 convicted of that felony, what was the felony, and when it
20 happened. Do you understand that?

21 THE DEFENDANT: Yes. I'm just trying to get the
22 severity of understanding, because sometimes I know the law can
23 be --

24 THE COURT: All right.

25 THE DEFENDANT: -- tricky in --

1 THE COURT: All I care --

2 THE DEFENDANT: -- in certain ways.

3 THE COURT: -- about is that you understand that. Do
4 you understand that?

5 THE DEFENDANT: Correct.

6 THE COURT: All right. Now, they can ask those three
7 things, if you've been convicted of a felony, what was the
8 felony, and when it happened. Now, no details may be gone into
9 regarding any prior felony conviction. Do you understand that?

10 THE DEFENDANT: No details can be --

11 THE COURT: They can ask you if you've been convicted
12 of the felony --

13 THE DEFENDANT: Yes.

14 THE COURT: -- what it was --

15 THE DEFENDANT: Uh-huh.

16 THE COURT: -- and when it happened. Those are the
17 only three things that they can -- the -- the Deputy District
18 Attorney can ask you --

19 THE DEFENDANT: That's -- that's --

20 THE COURT: -- if you testify.

21 THE DEFENDANT: -- the only things they can ask?

22 THE COURT: Right.

23 THE DEFENDANT: Okay.

24 THE COURT: They cannot go into any of the details
25 regarding the prior felony convictions.

1 THE DEFENDANT: Okay.

2 THE COURT: Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. If you deny a felony
5 conviction, the State may impeach you with your testimony or
6 impeach -- may impeach your testimony with certified copies of
7 the conviction which may contain more information in them than
8 simply that a felon -- what the felony was and when it occurred.
9 Do you understand that?

10 THE DEFENDANT: So that's -- that only can be a
11 conviction referred as into two-thousand and --

12 THE COURT: If you -- for instance, if you -- they
13 asked you if you had been convicted of that felony and you said
14 no --

15 THE DEFENDANT: Uh-huh.

16 THE COURT: -- they are allowed to introduce a
17 certified copy of the felony.

18 THE DEFENDANT: Okay. So --

19 THE COURT: Do you understand that?

20 THE DEFENDANT: -- if I was brought in custody for
21 jaywalking, but I didn't get convicted of jaywalking, they --
22 could they bring that up?

23 MR. SHEETS: That's not a felony.

24 THE COURT: No, they're not going to be able to bring
25 up jaywalking.

1 MR. SHEETS: It's not a felony.

2 THE DEFENDANT: Oh.

3 MR. SHEETS: They won't be able to address that.

4 THE COURT: But if you -- this 2007 conviction which
5 you were on -- weren't paroled until 2011, if they ask you about
6 that conviction and you deny it --

7 THE DEFENDANT: Yes.

8 THE COURT: -- then they can put in records to show
9 that you have been convicted. Do you understand that?

10 THE DEFENDANT: So it got to -- I understand. I'm
11 just trying to make sure --

12 THE COURT: All right, then.

13 THE DEFENDANT: -- because --

14 THE COURT: Good. Now, I don't want to -- you to
15 disclose any communication with your attorney, but have you
16 discussed with your attorney the right to testify and your right
17 not to testify in this trial?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. And has he answered all your
20 questions?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you feel you need any more time
23 with him to speak with him about your right to testify or not to
24 testify?

25 THE DEFENDANT: Well, besides that, no. I don't need

1 no more time, but --

2 THE COURT: Okay.

3 THE DEFENDANT: -- it is questions that I need to be
4 answered.

5 THE COURT: Well --

6 MR. SHEETS: I can tell Your Honor I have one short
7 witness, and then it would be 5:00. So, theoretically, if I
8 could have the morning with him to --

9 THE COURT: Okay. All right.

10 MR. SHEETS: Yeah.

11 THE COURT: Let's see. All right. So I want you --
12 you say you have some more questions?

13 MR. SHEETS: You don't?

14 THE DEFENDANT: Yeah.

15 MR. SHEETS: Oh, Your Honor, let's go ahead and have
16 him make this decision now.

17 THE COURT: Okay.

18 MR. SHEETS: I like the decision.

19 THE COURT: All right. Well, you mentioned you have
20 any more -- do you have any more questions that you need to talk
21 to your attorney about before you make your decision?

22 THE DEFENDANT: No. Just -- it wasn't a part of the
23 decision, but you just let me know do I need to speak to my
24 attorney.

25 THE COURT: Right.

1 THE DEFENDANT: But I was like, yeah, I need to speak
2 to him.

3 THE COURT: But about other questions?

4 THE DEFENDANT: I would like to have time to speak to
5 him.

6 THE COURT: Oh. Okay. And we'll let you have time to
7 speak --

8 THE DEFENDANT: But not --

9 THE COURT: -- but I need to know --

10 THE DEFENDANT: -- about that.

11 THE COURT: What I need to know is do you need more
12 time to ask -- to speak to him about your decision whether or
13 not to testify?

14 THE DEFENDANT: No, sir.

15 THE COURT: Okay. Have you made a decision whether or
16 not you're going to testify?

17 THE DEFENDANT: Yes, I have made a decision.

18 THE COURT: And what is that?

19 THE DEFENDANT: I'm not going to testify.

20 THE COURT: Okay. Now, you -- I'm -- you've indicated
21 that you have made this decision.

22 THE DEFENDANT: Yes.

23 THE COURT: And you made it the decision with -- after
24 discussing it with your attorney, and as I will encourage you
25 always to do, you should carefully listen to the advise of your

1 attorney. But I do want you to understand that the ultimate
2 choice on whether or not you testify is your choice. Do you
3 understand that?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Okay. Now, I want to make sure you
6 understand that I'm going to ask your attorney if -- when the --
7 when the State has -- the State is -- the next thing that's
8 going to happen is the State is going to rest. That means the
9 State is done presenting its evidence. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. At that point, I'm going to turn to
12 your attorney and ask him if he has a case to present. He has
13 indicated he has a witness. That witness will testify, and
14 after that witness testifies, I'll ask -- I'll have him ask if
15 he's going to present any additional witnesses. And when he --
16 and he'll say, from what I understand, that the defense rests.

17 Is that correct, Mr. Sheets?

18 MR. SHEETS: Yes, Your Honor.

19 THE COURT: All right. I just want you to know, up
20 until the point in time in which he says the defense rests, you
21 have the option to reconsider your decision whether or not to
22 testify. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: However, once he says the defense rests,
25 then the decision is set and you can't pull it back at a later

1 time. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. All right. Let's bring in the
4 jury.

5 (Inside the presence of the jury)

6 THE COURT: All right. Let the record reflect the
7 presence of the attorneys for both sides, the presence of the
8 defendant. Do the parties stipulate to the presence of the
9 jury?

10 MS. SUDANO: Yes, Your Honor.

11 MR. SHEETS: Yes, Your Honor.

12 THE COURT: Okay. As I said before, the State may
13 call its next witness.

14 MS. SUDANO: The State would rest at this time, Your
15 Honor.

16 THE COURT: Okay. Ladies and gentlemen, that means
17 that the State has concluded its presentation of evidence. At
18 this point in time, the -- the defense has the right, if they
19 choose to do so, to present evidence to you.

20 As I've emphasized at the jury selection process and
21 at the beginning of this trial, defense has no obligation to
22 present any evidence because the burden of proof never shifts to
23 -- to -- from the State to prove all of the elements required
24 for all of the charges beyond a reasonable doubt. But the
25 defense does have the opportunity, if it wishes, to present

1 evidence to you.

2 Does the defense wish to present any witnesses?

3 MR. SHEETS: Defense would call Shelia Towns, Your
4 Honor.

5 THE COURT: All right.

6 All right. Ma'am, if you'd come up here to the
7 witness stand. And there's a couple steps when you get to the
8 top. Stay standing for just a second and our clerk will swear
9 you in.

10 SHELIA TOWNS, DEFENSE WITNESS, SWORN

11 THE CLERK: Please be seated. Please state your name
12 and spell your first and last name for the record.

13 THE WITNESS: Shelia Towns, S-H-E-L-I-A, last name
14 Towns, T-O-W-N-S.

15 THE COURT: Okay. Can I get you to scoot up as close
16 as you can to that microphone that's on top of that box?

17 THE WITNESS: Okay.

18 THE COURT: All right. Thank you very much.

19 THE WITNESS: You're welcome.

20 THE COURT: Counsel, go ahead.

21 DIRECT EXAMINATION

22 BY MR. SHEETS:

23 Q Good afternoon, Ms. Towns.

24 A Good afternoon.

25 Q Do you own a silver vehicle or a gray vehicle?

1 A Yes.

2 Q What kind of vehicle is that?

3 A It's a 2000 Honda accord.

4 Q Can I get you to speak up just a little bit?

5 A It's a 2000 Honda Accord.

6 Q And that's not a Honda Civic; correct? It's an
7 Accord?

8 A I think it's an Accord, yes.

9 Q Okay. Showing you Exhibit 51. Is this your vehicle?

10 A No. this vehicle looks white. It's silver.

11 MR. SHEETS: If I may approach, Your Honor.

12 THE COURT: All right. Go ahead. And you're
13 approaching with what? Just so we have a record.

14 MR. SHEETS: I'm approaching with 49 and 50.

15 THE COURT: Okay. I thought 50 -- not 51?

16 MR. SHEETS: No.

17 THE COURT: Okay. All right. I'm sorry. Go ahead.

18 THE WITNESS: Yes.

19 BY MR. SHEETS:

20 Q Does that appear to be your car?

21 A Yes.

22 Q Okay. Is that car registered to you?

23 A Yes.

24 Q Is it insured by you?

25 A Yes.

1 Q Turning your attention back to the last week of August
2 of 2017, who did you let use that vehicle?

3 A I can't remember way back who all used the vehicle,
4 but I had Barry using the vehicle and a couple other family
5 members using the vehicle.

6 Q About how many other family members?

7 A Maybe five or six. Five.

8 Q And were they allowed to use that vehicle during that
9 time in late August?

10 A Yes. Anybody is allowed to use the vehicle that's a
11 family member.

12 Q And have those family members, in fact, used that
13 vehicle?

14 A Yes.

15 Q Okay. And did they use it often?

16 A Yes.

17 Q Okay. Showing you Exhibit 57. Do you recognize that
18 bag?

19 A No, I do not.

20 Q Okay. Did you keep ammunition in -- inside your
21 vehicle?

22 A No, I did not. I don't even own a gun.

23 Q When -- so you had said that my client used the
24 vehicle; correct?

25 A Yes, him and a couple other people.

1 Q And did he return that vehicle to you when he was done
2 using it?

3 A On his weekends, yes. But when he had to go to work,
4 he used the vehicle and he kept the vehicle until his weekend
5 came.

6 Q Okay. Were there some times when he would bring it
7 back in the evenings?

8 A Yes, when he was off of work, which is probably on his
9 Fridays.

10 Q Okay. And whenever he returned the vehicle, did you
11 ever find ammunition in it?

12 A No.

13 MR. SHEETS: No further questions.

14 THE COURT: And just so we're clear, counsel, you just
15 -- you referred to your client as your client, but let's make
16 sure that we have a record that -- who she understands your
17 client to be so that we're -- we have a clean record.

18 BY MR. SHEETS:

19 Q And when I say my client, who did you understand that
20 to be?

21 A Barry Harris.

22 MR. SHEETS: Thank you, Your Honor.

23 THE COURT: Okay. Thank you.

24 MR. SHEETS: No further questions.

25 THE COURT: Counsel, cross-examination?

1 MS. SUDANO: Yes. Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. SUDANO:

4 Q All right. Ma'am, how do you know Barry Harris?

5 A He's my kid's uncle.

6 Q So --

7 A Their dad is his brother.

8 Q There we go. Thank you. Now, correct me if I'm
9 wrong, it doesn't really seem like you're thrilled about being
10 here today; is that right?

11 A I'm not. I didn't want to be a part of this at all.

12 Q Okay. Now, who first contacted you about being a part
13 of this and coming in to testify?

14 A Barry. He called me to be -- for support. He didn't
15 say anything about testifying.

16 Q Okay. And when did Barry call you for support?

17 A He called me last night if I could come in to support
18 because some people needed to talk to me about the car.

19 Q Okay. And so the first time you knew anything about
20 potentially testifying was today?

21 A Last night.

22 Q Last night, and then today?

23 A Yes.

24 Q Okay. So it was your testimony that around this time
25 you said other people were using the car; is that correct?

1 A Yes.

2 Q Okay. Do you have any specific recollection of who
3 was using the car that last week of August?

4 A The -- Barry, my mom used it a few times.

5 Q So let me make sure my question is really specific.
6 That last week of --

7 MR. SHEETS: Objection, Your Honor. I think she cut
8 her off, she was answering.

9 THE COURT: She was answering, but there was enough of
10 a pause there. I think that I'll -- I'll overrule the
11 objection. You can go ahead with your next question, counsel.

12 BY MS. SUDANO:

13 Q Okay. So ma'am, let me rephrase this. So you didn't
14 have any knowledge or any idea that you were going to be
15 testifying until last night or this morning; is that --

16 A Exactly.

17 Q -- correct?

18 A Correct.

19 Q Okay. So you do actually have specific recollection
20 of who was using your car the last week of August of 2017?

21 A I can't remember that far back, but I know, you know,
22 one of the persons was Barry, my mom, my sister because her car
23 was broken down.

24 Q Okay. So those are the people that were generally
25 using the car; is that correct?

1 A Yes.

2 Q Okay. But you don't know who specifically had it
3 during that time; is that right?

4 A Exactly.

5 Q Okay. And you said you yourself don't own any guns or
6 ammunition; is that correct?

7 A Correct.

8 Q Okay. Now, you said that Mr. Harris would drive the
9 car during his work week; is that correct?

10 A Yes.

11 Q Okay. So was he the primary person, then, that was
12 driving this vehicle?

13 A Off and on, you know. When people call and ask me to
14 use the car, you know, I'll see who is using it that week, and
15 if nobody is using it that week, then, yes, Barry will have the
16 car, you know.

17 Q So he would have it unless some other family member
18 needed it; is that correct?

19 A Yes.

20 Q Okay. So did he drive it more than those other family
21 members?

22 A Once he got a job, yes.

23 Q Okay. Now, you're aware, obviously, that Mr. Harris
24 was arrested in this case at the end of August; is that correct?

25 A Yes, I do. Because when I picked up the car, the

1 papers was sitting on the seat, and I had to get the car from
2 impound.

3 Q Okay. So that's exactly where I was going. You had
4 to get the car from impound. And --

5 A Exactly.

6 Q -- did Mr. Harris have the car at the time that he was
7 arrested?

8 A Yeah. I believe they --

9 MR. SHEETS: Objection. Foundation.

10 THE WITNESS: -- picked him up from work.

11 THE COURT: Well, if she knows where they -- if she
12 knows. I'll overrule.

13 MS. SUDANO: Okay.

14 THE COURT: But let's emphasize in terms of how -- lay
15 a foundation for how she knows.

16 BY MS. SUDANO:

17 Q Okay. Was Mr. Harris the last person to have the car
18 before he was arrested?

19 A Yes.

20 Q Okay. And you had to go pick the car up from impound;
21 is that correct?

22 A Yes.

23 Q Okay. And it was your understanding that was because
24 Mr. Harris had been arrested; is that correct?

25 A Yes.

1 Q Okay. So you didn't have to pick it up because any
2 other family member had access to the car at that time; is that
3 right?

4 A Yes.

5 Q Okay. So Mr. Harris was using the car at the time of
6 his arrest?

7 A Yes.

8 MS. SUDANO: Nothing further.

9 THE WITNESS: He was at work.

10 MS. SUDANO: Thank you, Your Honor.

11 THE COURT: I'm sorry?

12 THE WITNESS: He was at work.

13 THE COURT: He was at work?

14 THE WITNESS: Yes.

15 THE COURT: Okay. All right.

16 MS. SUDANO: Thank you, Your Honor. Nothing further.

17 THE COURT: Redirect.

18 REDIRECT EXAMINATION

19 BY MR. SHEETS:

20 Q Just briefly, the -- the State had asked you if my
21 client was the primary user of the vehicle, but you -- you
22 testified that you had a family member whose car was broken down
23 at that same time in August; correct?

24 A Yes.

25 Q And they used the car, as well?

1 A Yes.

2 MR. SHEETS: No further questions.

3 THE WITNESS: As long as with my mom.

4 MR. SHEETS: No further questions.

5 THE COURT: I'm sorry, what was the last thing you
6 said?

7 THE WITNESS: As long as my mom used the car, too.
8 She used it, too.

9 THE COURT: Okay. Anything -- recross?

10 MS. SUDANO: Very briefly.

11 THE COURT: I'm sorry?

12 MS. SUDANO: Very briefly.

13 THE COURT: Okay.

14 RE CROSS-EXAMINATION

15 BY MR. SHEETS:

16 Q Ma'am, does your mom own any firearms?

17 A No.

18 Q Okay. And you said there is one other person that
19 owns the vehicle, is that your sister? Or, excuse me, that uses
20 the vehicle.

21 A She used the vehicle.

22 Q Is your --

23 A I said a few family members used the vehicle. She was
24 just one of them that week besides my mom and Barry that used
25 the vehicle.

1 Q Okay. Does your sister, to your knowledge, own any
2 firearms?

3 A Not that I know of, no.

4 MS. SUDANO: Thank you. Nothing further, Your Honor.

5 THE COURT: Redirect?

6 FURTHER REDIRECT EXAMINATION

7 BY MR. SHEETS:

8 Q Have you searched your sister's residence, home, or
9 car for firearms?

10 A No, I don't -- no.

11 Q So you don't really know if she owns a firearm?

12 A I don't.

13 Q Does the same go for your mother?

14 A I don't.

15 Q Okay.

16 MR. SHEETS: No further questions.

17 THE COURT: Any recross?

18 MS. SUDANO: No. Thank you.

19 THE COURT: Does any member of the jury have a
20 question for this witness? Anybody?

21 JUROR NO. 5: A general question.

22 THE COURT: Well, if you have a general question,
23 write it -- that you want to ask, then write it down and put
24 your juror number on it. Anybody else? I see another hand.
25 All right. Write your question on a clean sheet of paper with

1 your jury number. Okay. All right.

2 Why don't -- can I have counsel at sidebar.

3 JUROR: Yeah. Hold on, hold on.

4 MS. SUDANO: Oh, wait -- wait, wait --

5 THE MARSHAL: There's more, one more.

6 THE COURT: I know, but what -- I was -- oh, okay.

7 JUROR: Almost done.

8 THE COURT: You're -- I was going to give you time to

9 finish writing it.

10 THE MARSHAL: I didn't know who was writing it.

11 THE COURT: Oh, okay

12 (Bench conference)

13 THE COURT: All right. Juror No. 5, when was the car

14 impounded? State? Oh, it's your witness. Any objection,

15 defense?

16 MR. SHEETS: No, I think it's fair.

17 THE COURT: Okay. Any objection, State?

18 MS. SUDANO: No, Your Honor.

19 THE COURT: All right. I think I said that was from

20 Juror No. 5. Juror No. 2, does the defendant own a firearm?

21 MR. SHEETS: I'm going to object to that one.

22 THE COURT: State?

23 MS. SUDANO: I'm all in favor of it. Kidding.

24 THE COURT: All right. I won't ask that one. I'll

25 ask if she knows when the car was impounded. And then I'm going

1 to ask you to call your next witness.

2 MR. SHEETS: Yes.

3 THE COURT: Are you going to --

4 MR. SHEETS: I'm going to [inaudible].

5 THE COURT: Okay. All right.

6 (End of bench conference)

7 THE COURT: All right. Almost done, ma'am. Let me
8 ask, do you remember when your car was impounded?

9 THE WITNESS: I believe like the -- if I'm not
10 mistaken, like the 28th, the 29th.

11 THE COURT: Of August?

12 THE WITNESS: Yeah. I -- I think so. I'm not really
13 sure.

14 THE COURT: All right. But that's the best of your
15 recollection?

16 THE WITNESS: Yes.

17 THE COURT: And that was in 2017?

18 THE WITNESS: Yes.

19 THE COURT: All right. And --

20 THE WITNESS: But I know I couldn't pick it up right
21 away.

22 THE COURT: Okay.

23 THE WITNESS: I had to wait a couple days later to
24 pick it up.

25 THE COURT: All right. All right. Thank you. Does

1 that generate anything further from defense?

2 MR. SHEETS: No, Your Honor.

3 THE COURT: Anything further from the State?

4 MS. SUDANO: No. Thank you, Your Honor.

5 THE COURT: All right. Thank you very much, ma'am,
6 for your testimony here today.

7 THE WITNESS: Thank you.

8 THE COURT: You're excused. All right. The defense
9 may call its next witness.

10 MR. SHEETS: Defense rests, Your Honor.

11 THE COURT: Okay. That means that the defense has
12 concluded its presentation of evidence in this case. Now, the
13 State does, if it wishes to do so, have the right to present
14 rebuttal evidence to the evidence presented by the defense.

15 Let me ask the State, do you have any rebuttal
16 evidence to present?

17 MS. SUDANO: No, Your Honor.

18 THE COURT: All right. So with that, the presentation
19 of evidence to you has been concluded. The next step in this
20 process is for me to give you the law that you will use in
21 considering the evidence and in determining whether the State
22 has proven its burden beyond a reasonable doubt of each of the
23 elements, essential elements, of the crimes charged. And then
24 the parties will give their closing statements -- or closing
25 arguments or summations, and then you will go back and start

1 jury deliberations on the case.

2 We will start that tomorrow, and we'll start that at
3 12:30. So if you come back tomorrow at about 12:20, we will try
4 to get started around 12:30 and try to get the case to you as
5 soon as possible.

6 I hope you have a great evening, and while you're out
7 there having a great evening, don't talk to each other about the
8 case, or about anyone who has anything to do with it until the
9 end of the case when you go to the jury room to decide on your
10 verdict. Do not talk with anyone else about this case or about
11 anyone that has anything to do with it until the trial has ended
12 and you've been discharged as jurors.

13 Anyone else includes members of your family and your
14 friends, you may tell them that you are a juror in a criminal
15 case, but don't tell them anything else about it until after
16 you've been discharged by me. Do not let anyone talk to you
17 about the case or about anyone who has anything to do with it.
18 If someone should try to talk to you, please report it to me
19 immediately by contacting the marshal.

20 Do not read any news stories or articles or listen to
21 any radio or television reports about the case or about anyone
22 who has anything to do with it. Do not visit the scene of any
23 of the events mentioned during the trial or undertake any
24 investigation, experimentation, or research on your own,
25 including use of social media to in any way discuss the case, or

1 the use of the Internet or other reference materials to do any
2 investigation or research. And do not begin to form or express
3 any opinion on any subject connected with this case until it's
4 finally submitted to you.

5 And I'll remind you once again my instructions, don't
6 go home and play with your scales in the bathroom or anything
7 like that until after you've been discharged by me.

8 Again, thanks for your -- it's been a long day. You
9 all were great, I know we missed a couple times in terms of our
10 start times to -- to get into session, but we did work really
11 hard to do that, and I think we got a lot done today and I
12 really appreciate you all getting back here as quickly as you
13 can for us to do that. So have a great evening, and we'll see
14 you tomorrow.

15 (Jury recessed at 5:00 p.m.)

16 THE COURT: Okay. Do we think we can discuss --
17 tomorrow I supposedly don't have that horrendous of a calendar.
18 Can you guys get together and we can then -- I can hear where
19 you stand at about 11:00 tomorrow for jury instructions?

20 MS. SUDANO: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. SHEETS: Yes. That sounds great. I think we're
23 going to -- we're -- we're going to reconvene earlier in the
24 morning so that we are ready to roll.

25 THE COURT: Well that's what I want you to do. I want

1 you to reconvene earlier in the morning and we'll get together
2 as soon as I get done with my morning calendar to go over any
3 final issues and then we'll -- we'll make sure we go on record
4 as to any final issues. Anything else we need to talk about at
5 this point in time from the State?

6 MR. SHEETS: Can we leave our setup -- I'm sorry. Can
7 we leave our setup in the deliberation room? We have all of the
8 -- the --

9 THE COURT: I don't know of any -- is there anything
10 anybody knows that would be a problem?

11 THE CLERK: No, there shouldn't be.

12 THE MARSHAL: Shouldn't be.

13 THE COURT: Okay. We'll -- no, we can go ahead and do
14 that. All right. Anything --

15 THE CLERK: We can -- we can lock the door.

16 THE COURT: Mr. Harris, I want to tell you I
17 appreciate your cooperation these past three days. I feel that
18 you've -- I've seen you working with your attorney, and I really
19 appreciate you working with Mr. Sheets these last three days and
20 -- and assisting him in terms of his presentation of your case.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I -- I've got -- I know Mr. Sheets has got
23 things he wants to do tonight, but I -- is there anything -- you
24 know, you mentioned you had some questions relating to something
25 other than your right to testify or not to testify. Are these

1 the questions you can talk to Mr. Sheets about, or is there
2 something in particular you wanted to raise with me?

3 THE DEFENDANT: It was something in particular because
4 I know that I was scheduled for a speedy trial, and it was --
5 I'm 30 days over that.

6 THE COURT: Okay.

7 THE DEFENDANT: Which that I did not waive.

8 THE COURT: I know. And I understand that. And as I
9 told you, my -- you know, the statute does provide that the
10 trial judge may, which is not mandatory, set the trial and have
11 it go within the 60 days. In this instance, I did send you to
12 overflow. The judge who took the overflow case found reasonable
13 cause to send the case back to me, and we got this trial as soon
14 as possible.

15 That being said, your attorney may be able to file a
16 motion after the conclusion of the case, if you're not
17 acquitted, may be able to file a motion in which he seeks
18 certain remedies, such as dismissal of the case, or whatever it
19 may be. But we're going to wait until after we see what happens
20 with the jury before we deal with that issue.

21 But I'm not precluding you from filing that motion and
22 being -- having your attorney filing that motion if he feels he
23 has a basis, and you obviously have a right to take that up on
24 appeal to the Supreme Court, again, if you're convicted. You
25 may not be. That's why we're here to determine as to whether or

1 not you will or will not be convicted of any crime.

2 THE DEFENDANT: Right. And it's -- it's also my
3 understanding that like on this jury instructions, that I'm
4 allowed to be a part of that?

5 THE COURT: What we -- at the end, what I'll do is
6 we'll be on the record and you'll be here, and I'll go through
7 and get on the record the instructions that the parties agreed
8 to, the State agrees to, and the defense agrees to. I'll get on
9 the record any objections that one party has to an instruction
10 or the other party has to an instruction. I will make rulings
11 on how I will ultimately phrase the instruction, and that will
12 be all -- all on the record and you'll be present during that
13 point.

14 THE DEFENDANT: And some of them rules come from
15 citations in other cases?

16 THE COURT: Well, the parties, when they propose a
17 jury instruction, have a right to provide citations, and that's
18 always helpful to me in terms of determining whether or not to
19 use a particular instruction or not to use a particular
20 instruction. So if you have some citations relating to some of
21 the instructions that are in this case, feel free to give them
22 to your attorney. And if he feels they're applicable, he'll --
23 he'll provide those to me.

24 THE DEFENDANT: Well, what if I find a nature or a
25 need or I find something in particular that fits the meaning to

1 the charges that they charging me for?

2 THE COURT: Well, that's what I mean.

3 MR. SHEETS: Then let me know.

4 THE COURT: If you find something --

5 MR. SHEETS: When I come see you tomorrow morning --

6 THE DEFENDANT: I'll let you know.

7 MR. SHEETS: -- let me know.

8 THE COURT: If you find something, give it to Mr.
9 Sheets, and he'll -- if he feels it's appropriate, he'll give it
10 to me and I'll consider that.

11 THE DEFENDANT: Right, but --

12 THE COURT: We'll have it on the record.

13 THE DEFENDANT: -- what if we have like a different
14 debate? Is that possible, do I let you know?

15 THE COURT: What do you mean a different debate?

16 MR. SHEETS: If he disagrees with me --

17 THE DEFENDANT: If I disagree --

18 MR. SHEETS: -- on a jury instruction.

19 THE DEFENDANT: -- with him.

20 THE COURT: Well let's wait until we see if you do,
21 all right? And at that point, we'll -- we'll -- if you feel
22 that there's something strongly that you need to bring to my
23 attention, we'll -- I'll let you bring it to my attention, okay?

24 THE DEFENDANT: Yes, sir. My -- my mainly concern is
25 that I know this judicial system, I respect it from my whole

1 journey and process through this, I been speaking my rights, and
2 I'm -- I'm a person that I abide by the liberty that was
3 supposed to be our truly principle of the Constitution --

4 THE COURT: Okay.

5 THE DEFENDANT: -- and declarations, and -- and we
6 here on the -- on the facts of matter of law and a matter of
7 facts; correct?

8 THE COURT: Well, that's -- the goal is to have the
9 due process of law carried through here. Now, Mr. -- Mr.
10 Harris, now, you -- you indicated before when we were talking
11 about your constitutional right to testify or not to testify
12 that you didn't have any more questions about that, that you had
13 some questions about something else. Have --

14 THE DEFENDANT: The constitutional laws.

15 THE COURT: Have we covered those other questions?

16 THE DEFENDANT: Have we -- have we covered them?

17 THE COURT: Yeah.

18 THE DEFENDANT: I have a lot more because this the
19 first time I was able to speak to you because sometimes you
20 kicked me out your courtroom --

21 THE COURT: Well, I --

22 THE DEFENDANT: -- when I try to speak.

23 THE COURT: -- I understand. That's because -- and
24 I've told you why. But I do want to make sure that we -- we
25 have a good record so that you, you know, if there is a need for

1 you to do any appeal, that -- that you -- that you can do any
2 appeal that you'd feel is appropriate.

3 THE DEFENDANT: Right, Your Honor. And it's to your
4 recollection that I was found competent to stand trial; right?

5 THE COURT: Yes. I -- you have mentioned that before,
6 and I know that Judge Togliatti has entered that before.

7 THE DEFENDANT: And Judge Togliatti get you a
8 certification and a paper that states the defendant understand
9 the nature of the charges.

10 THE COURT: That's right.

11 THE DEFENDANT: The defendant is capable of assisting
12 his attorney; right?

13 THE COURT: That's right. That's what that --

14 THE DEFENDANT: That's NRS 178.420?

15 THE COURT: All right. And -- and that -- that allows
16 you to assist your attorney, and you have been doing this here,
17 and I want to thank you --

18 THE DEFENDANT: And participate --

19 THE COURT: -- for that.

20 THE DEFENDANT: -- in my defense; right?

21 THE COURT: Well, and as I've told you before, unless
22 you represent yourself, your attorney is the one who determines
23 the strategy of your defense. What you have a right, as we've
24 talked about just before, what you have a right is to -- you
25 have an absolute right to decide whether or not you're going to

1 testify.

2 THE DEFENDANT: Oh. So --

3 THE COURT: But the rest of it, your attorney
4 controls.

5 THE DEFENDANT: So what about the rights to subpoena
6 people to court on --

7 THE COURT: That --

8 THE DEFENDANT: -- my behalf?

9 THE COURT: -- your attorney controls.

10 THE DEFENDANT: What about the right to -- to admit
11 evidence?

12 THE COURT: That your attorney controls.

13 THE DEFENDANT: But at some stage or point I tried to
14 submit evidence to you, and you didn't let that happen; right?

15 THE COURT: That's because your attorney controls
16 that.

17 THE DEFENDANT: Well, now I'll take you back, Your
18 Honor. You said I was found competent to stand trial.

19 THE COURT: That's right. And --

20 THE DEFENDANT: And --

21 THE COURT: -- but what you're not --

22 THE DEFENDANT: -- and I --

23 THE COURT: -- understanding is the fact that you're
24 allowed to assist your attorney in the trial does not mean that
25 you're co-counsel in the trial. It simply means that you're

1 capable of assisting your attorney.

2 THE DEFENDANT: Now, the definition of assist, let me
3 get that.

4 THE COURT: All right. Well I'm not going to do that
5 tonight. Your attorney needs to get to a very important hockey
6 game, and I think that --

7 THE DEFENDANT: Oh, yeah.

8 THE COURT: -- we're -- and we're just --

9 THE DEFENDANT: It is the Golden Knights --

10 THE COURT: -- talking in circles here --

11 THE DEFENDANT: -- playoffs tonight.

12 THE COURT: -- Mr. Harris. I don't know how else to
13 tell you. Judge Togliatti did not find that you were co-counsel
14 in this case. She found that you were able to understand the
15 charges and you were able to --

16 THE DEFENDANT: Capable.

17 THE COURT: -- assist your attorney.

18 THE DEFENDANT: Capable.

19 THE COURT: And so that's what you've been doing here
20 is assisting your attorney --

21 THE DEFENDANT: And --

22 THE COURT: -- and I appreciate you assisting --

23 THE DEFENDANT: -- participate in my defense --

24 THE COURT: -- and Mr. Sheets --

25 THE DEFENDANT: -- right?

1 THE COURT: -- appreciates you assisting. But the --
2 but as I've told you before, as long as you're represented by an
3 attorney, your attorney is the one who determines whether or not
4 -- what -- what your defense is, what exhibits are introduced,
5 and who is subpoenaed. As I expressed to you before, you do
6 have the ultimate decision whether or not to testify or not to
7 testify in your case --

8 THE DEFENDANT: Right, but --

9 THE COURT: -- and that's what we went over before --

10 THE DEFENDANT: -- when I -- when I did try to --

11 THE COURT: -- and you indicated you understood. But
12 in terms of how the case is presented, that's up to your --
13 beyond that one point, that's up --

14 THE DEFENDANT: But --

15 THE COURT: -- to your attorney.

16 THE DEFENDANT: -- at them point is that I did try to
17 present stuff to you --

18 THE COURT: Okay.

19 THE DEFENDANT: -- nobody listened.

20 THE COURT: We're at a point where -- well, I don't
21 know how else to tell you --

22 THE DEFENDANT: Well, thank you, Your Honor.

23 THE COURT: -- you need to present it --

24 THE DEFENDANT: I appreciate you.

25 THE COURT: -- to Mr. Sheets, and if he feels --

1 THE DEFENDANT: It's -- it's -- it's --
2 THE COURT: -- it's worthwhile --
3 THE DEFENDANT: -- nothing personal.
4 THE COURT: -- he'll bring it --
5 THE DEFENDANT: I appreciate you.
6 THE COURT: -- to my attention.
7 MR. SHEETS: Just let me know tomorrow morning. Talk
8 to me tomorrow morning.
9 THE COURT: Okay. All right.
10 MR. SHEETS: All right.
11 THE COURT: Thank you, everybody.
12 MS. CRAGGS: Thank you.
13 MS. SUDANO: Thank you, Your Honor.
14 MR. SHEETS: Thank you, Your Honor.
15 (Court recessed at 5:10 p.m., until Thursday,
16 April 12, 2018, at 12:46 p.m.)
17 * * * * *
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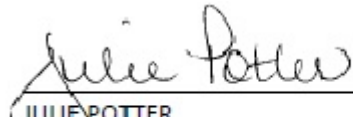
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

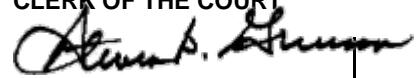
AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**Julie Potter
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JULIE POTTER
TRANSCRIBER



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-17-326569-1
)	
vs.)	DEPT NO. XX
)	
BARRY HARRIS,)	
)	
Defendant.)	Transcript of
)	Proceedings

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

JURY TRIAL - DAY 4

THURSDAY, APRIL 12, 2018

APPEARANCES:

FOR THE STATE:	MICHELLE L. SUDANO, ESQ.
	GENEVIEVE C. CRAGGS, ESQ.
	<i>Deputy District Attorneys</i>

FOR THE DEFENDANT:	DAMIAN R. SHEETS, ESQ.
--------------------	------------------------

RECORDED BY: ANGIE CALVILLO, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

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WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
(No witnesses called)				

* * * * *

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
(No exhibits admitted)	

1 LAS VEGAS, NEVADA, THURSDAY, APRIL 12, 2018, 12:46 P.M.

2 (Outside the presence of the jury)

3 THE COURT: All right. Calling State of Nevada vs.
4 Barry Harris, Case No. C326569. Counsel, please note your
5 formal appearances for the record.

6 MS. SUDANO: Good afternoon, Your Honor. Michelle
7 Sudano and Genevieve Craggs for the State.

8 MR. SHEETS: Good afternoon, Your Honor. Damian
9 Sheets on behalf of Mr. Harris who's present in -- or in
10 custody.

11 THE COURT: Okay. We're getting started late.
12 Hopefully the jury will be understanding. I want to get through
13 and finalize these jury instructions. All right. I've got a
14 packet here that I understand that's been agreed upon, or
15 essentially agreed upon by the parties, and then a group of
16 defense proposed instructions and then a couple of miscellaneous
17 instructions depending upon some of the Court's rulings. I also
18 have a couple of instructions that I want to talk about. So I
19 have a packet here.

20 Now, have they all been provided the same materials?

21 THE LAW CLERK: Yes.

22 THE COURT: Okay. All right. Looking at instructions
23 to the jury, Instruction No. 1, members of the jury, it's now my
24 duty as Judge to instruct you, etcetera. Any objection to this
25 by the State? I assume not, since you proposed it, but --

1 MS. SUDANO: No, Your Honor.

2 THE COURT: Defense?

3 MR. SHEETS: Which instruction was it? I'm sorry.

4 THE COURT: You want to go down and make sure he's on
5 the same page as we all are?

6 MR. SHEETS: All right, Your Honor. So we're looking
7 at the front of the -- the joint packet, Your Honor?

8 THE COURT: Yeah.

9 MR. SHEETS: All right.

10 THE COURT: It's that.

11 MR. SHEETS: Excellent.

12 THE COURT: All right. Any objection to No. 1?

13 MR. SHEETS: No, Your Honor.

14 THE COURT: Okay. Instruction No. 2, if in these
15 instructions any rule, direction, or idea, etcetera. Any
16 objection to this, State?

17 MS. SUDANO: No, Your Honor.

18 THE COURT: Defense?

19 MR. SHEETS: No, Your Honor.

20 THE COURT: All right. Instruction No. 3.

21 THE DEFENDANT: Could you read them, Your Honor?

22 THE COURT: An indictment is but a formal method of
23 accusing a person of a crime, etcetera. Any objection to this
24 by the State?

25 MS. SUDANO: No, Your Honor.

1 THE COURT: Defense?

2 MR. SHEETS: No, Your Honor.

3 THE COURT: Okay. All right. Going now to
4 Instruction No. 4, to constitute the crime charged, there must
5 exist a union or joint operation, etcetera. Any objection by
6 the State?

7 MS. SUDANO: No, Your Honor.

8 THE COURT: Defense?

9 MR. SHEETS: No, Your Honor. Court's indulgence.

10 THE COURT: All right.

11 MR. SHEETS: Thank you, Your Honor.

12 THE COURT: All right. No problem. This is
13 Instruction No. 5, defendant is presumed innocent unless the
14 contrary is proved, etcetera. Any objection to this, State?

15 MS. SUDANO: No, Your Honor.

16 THE COURT: Defense?

17 MR. SHEETS: No, Your Honor.

18 THE COURT: No. 6, the evidence which you are to
19 consider in this case consists of the testimony of witnesses,
20 exhibits, and any facts admitted to or agreed to by counsel.
21 Any objection to -- etcetera. Any objection to this by the
22 State?

23 MS. SUDANO: No, Your Honor.

24 THE COURT: Defense?

25 MR. SHEETS: No, Your Honor.

1 THE COURT: All right. A person who is -- a witness
2 is a person who has knowledge related to this case -- a witness
3 is a person who you must decide whether you believe each
4 witness. Is this the State's proposed instruction?

5 MS. SUDANO: It is, Your Honor. We had agreed upon
6 this being our sort of credibility instruction between the
7 parties. However, then we got Your Honor's proposed credibility
8 instruction and it's different from this one, which is the only
9 reason that it's highlighted is because we had agreed. But I
10 know it's different than Your Honor's.

11 THE COURT: I generally use the Ninth Circuit
12 credibility instruction. Does anybody have a problem with that?
13 Let me ask the State.

14 MS. SUDANO: We would prefer this instruction, but,
15 no, we don't actually have a problem with it, Your Honor.

16 THE COURT: Let me ask defense.

17 MR. SHEETS: In -- in good faith, I will say that I
18 had agreed on this instruction set with the State, but I like
19 the Ninth Circuit better. It's closer to what I had originally
20 proposed.

21 THE COURT: All right. I'm going to go with the Ninth
22 Circuit instruction. But, actually, this is a better
23 instruction than I've generally seen the State present. So if I
24 had more time to look -- I'm not ruling this out in the future.
25 If I had more time to look at it, I would ponder it more, but --

1 MS. SUDANO: Just so Your Honor is aware in the
2 future, it's typically proposed by the Public Defender's Office
3 and it comes from like the California stock --

4 THE COURT: Okay.

5 MS. SUDANO: -- and the California proposed
6 instructions.

7 THE COURT: Well, I'm going to use the Ninth Circuit
8 instruction. Okay. So we'll take that one out and use the
9 Ninth Circuit instruction. All right. No. 8, page 10, a
10 witness who has special knowledge, skill, etcetera. Any
11 objection, State?

12 MS. SUDANO: No, Your Honor.

13 THE COURT: Defense?

14 MR. SHEETS: Court's indulgence. Just noting for my
15 records.

16 THE COURT: Sure.

17 MR. SHEETS: No, Your Honor.

18 THE COURT: All right. No. 9, a person who by day or
19 night enters any house, room, apartment, etcetera. Any
20 objection to this by the State?

21 MS. SUDANO: No, Your Honor.

22 THE COURT: Defense?

23 MR. SHEETS: No. No, Your Honor.

24 THE COURT: Okay. Now, page 12, Instruction No. 10 I
25 have highlighted, it is not necessary that the State prove the

1 defendant actually committed an assault and/or battery and/or
2 felony inside the house, room, or apartment after he entered in
3 order for you to find him guilty of burglary.

4 The gist of burglary is the unlawful entry with
5 criminal intent, therefore, burglary was -- burglary was
6 committed if the defendant entered the house, room, or apartment
7 with intend to commit an assault and/or battery, regardless of
8 whether that crime occurred. All right. I take it there's a
9 split on this. So what's the defense position?

10 MR. SHEETS: Yes, Your Honor. I -- I had proposed
11 that same instruction with the exception of the highlighted
12 portion. I believe that the highlighted portion itself is clear
13 enough. It tells the jury exactly what they're looking for, and
14 it doesn't specifically specify an offense with inside of it.
15 This seems too directed towards this case, and may confuse the
16 jury or lead the jury to believe that they should be addressing
17 their conclusions on the other charges when determining his
18 intent.

19 THE COURT: All right. So you are opposing what's
20 marked in yellow, or you're --

21 MR. SHEETS: Correct.

22 THE COURT: Okay.

23 MR. SHEETS: And I'm not opposed to what's in white.

24 THE COURT: Okay. State's position?

25 MS. SUDANO: And, Your Honor, the State did propose

1 the entire instruction, obviously. The first half of it is just
2 really for clarification. It is an accurate statement of the
3 law. You know, it's not tailored to this specific case because
4 it's the State's position, obviously, that an assault and
5 battery did take place once he was inside the apartment. So
6 it's just to clarify that the main thing that we're looking at
7 is the intent upon the entry for the burglary, but we do need to
8 clarify that you don't actually have to find those other things
9 in order to find the burglary.

10 MR. SHEETS: And just -- just my brief response is the
11 "therefore" sentence already does that, it just does it in a
12 more artful way that doesn't lead off the instruction and
13 detract from the fact that the main purpose of the instruction
14 is to address intent. Not what's not needed, but specifically
15 intent. And "therefore" says regardless of whether or not that
16 crime occurred. I think it's clear, I think it's duplicative, I
17 think it's unnecessary language.

18 THE COURT: Okay. I do -- I'm going to use the
19 defense instruction. I don't think -- I think it is -- the
20 second sentence is repetitive of the first. So the highlighted
21 portion will be struck. All right. Instruction No. 11, the
22 intention with which entry is made is a question of fact which
23 may be inferred. Any objection, State?

24 MS. SUDANO: No, Your Honor.

25 THE COURT: Defense?

1 MR. SHEETS: No, Your Honor.

2 THE COURT: All right. 12 is highlighted. Let's see.
3 To prove an entry in establishing the crime of burglary, the
4 State need only show an entry without the consent of the
5 possessor of the house, room, apartment, or other building,
6 force or breaking is not a necessary element of the crime. All
7 right. What's the defense position on this?

8 MR. SHEETS: Actually, Your Honor, my objection is
9 going to be that 12 and 13 together for kind of the same
10 purpose. I don't know if we want to read the 13 in at this
11 time, but my position is we don't --

12 THE COURT: I'm looking -- all right, we'll look at 13
13 right now. I've got a consent to enter is not a defense,
14 etcetera.

15 MR. SHEETS: Yes, Your Honor. When you read into the
16 -- when you actually read the case that the State cites for
17 their instruction to prove an entry, I think this instruction is
18 confusing, misstates the law, and unnecessary for a couple of
19 reasons. First of all, if you're reading that to the jury, you
20 may believe that showing an entry without consent is -- is all
21 you need to prove entry in establishing the crime of burglary.

22 I just don't -- I think that's confusing, it leads the
23 jury to believe if he doesn't have consent, then all of the
24 sudden it's a burglary, and there's no law to that effect. In
25 fact, if you go to the case they cite of State versus Adams, the

1 very first sentence in the paragraph that they would be
2 theoretically referring to actually says that it's the intent
3 upon entry that's the issue. And they're not talking about
4 consent. I mean, it's like the opposite. It's -- it's
5 virtually --

6 THE COURT: What's the --

7 MR. SHEETS: -- the opposite.

8 THE COURT: What's the case that's being cited?

9 MR. SHEETS: Adams versus State, it's 94 Nev. 503. If
10 I remember correctly, it's a three paragraph decision. And the
11 first -- the second paragraph, a common law breaking is not an
12 essential element of the crime of burglary. Our statute
13 requires only an entry with the intent to commit a larceny or
14 other felony. They -- they make it clear the intent is the
15 center of the focus. Consent has no bearing on the law for the
16 same reason that lack of consent has no bearing on it.

17 You can burglarize a home that you have consent to
18 enter, you can burglarize a home you don't have consent to
19 enter, but not having consent doesn't play any way or another
20 because it's the intent to commit the crime when you cross those
21 doors. You may be committing a trespassing, but you're not
22 committing a burglary. That's why I think that 12 and 13 are
23 absolutely unnecessary.

24 THE COURT: All right. Well, 12, you're saying that
25 the issue of consent is irrelevant.

1 MR. SHEETS: Correct.

2 THE COURT: I can -- the issue is do I intend to enter
3 a building with the intent to commit a crime.

4 MR. SHEETS: Correct. And one of the crimes depicted
5 in the statute.

6 THE COURT: 12 would seem to be inconsistent with that
7 position. What -- what's the State's position?

8 MS. SUDANO: And, Your Honor, the State's position is
9 that 12 and 13 deal with separate things. 12 deals with the
10 force requirement and the breaking requirement. So, you know,
11 that common law, it had to be, you know, some sort of breaking
12 or entering. It's been made clear that there doesn't need to be
13 breaking and entering as long as there is the entry with that
14 unlawful intent. It can be through an unlocked door, it can be
15 through an open window, none of that matters. So that's the
16 State's position on that. The other instruction,
17 Instruction 13 --

18 THE COURT: Well, I mean, it doesn't need to be a
19 breaking. A forced entry, that's -- that's agreed, but this
20 says that the State need only show an entry without consent of
21 the possessor of the house. He's -- the defense is saying that
22 the issue of consent is irrelevant, that you enter a house with
23 the intent to commit a crime that you have a burglary. Now, do
24 you agree with that?

25 MS. SUDANO: If we want to add something in there that

1 says entry without the consent of a possessor and with the
2 intent to commit a felony, that's fine.

3 THE COURT: All right. Well are you saying that the
4 entry has to be without the consent of the possessor?

5 MS. SUDANO: I'm not saying that because the next
6 instruction says exactly the opposite of that, which is, you
7 know, that consent is not an offense --

8 THE COURT: All right. I think -- I do think that
9 these are confusing. I don't -- together. I'm not inclined to
10 necessarily give 12. I mean, the definition that you provide of
11 burglary doesn't indicate anything in terms of -- of breaking or
12 forcing entry. But I am tending to lean to consent to enter is
13 not a defense to the crime of burglary, so long as it's shown
14 that the entry was made with specific intent to commit an
15 assault and/or battery and/or felony therein.

16 MS. SUDANO: Could we include somewhere in there,
17 though, that that last sentence of 12, that force or breaking is
18 not a necessary element of the crime?

19 THE COURT: I don't have a problem with that. What's
20 the State's position on that?

21 MR. SHEETS: I'm -- I'm -- State's -- what was her --

22 THE COURT: I mean, defense's position on that.

23 MR. SHEETS: What was your suggestion again? I'm
24 sorry.

25 MS. SUDANO: I think that the jury does need to be

1 instructed in some way or another that that last sentence, force
2 or breaking is not a necessary element of the crime of burglary.
3 I don't care where or how, but I think that that is --

4 MR. SHEETS: I -- I'm okay with that sentence.

5 THE COURT: All right. All right. What I'd prefer to
6 do is get rid of the first sentence of 12 and take the forced or
7 breaking as such is not a necessary element of the crime, and
8 take the instruction on 13 and combine those two into the
9 Instruction No. 10. 10. State's position?

10 MS. SUDANO: No objection, Your Honor.

11 THE COURT: Defense position?

12 MR. SHEETS: No objection, Your Honor.

13 THE COURT: Okay. Did you get that?

14 MR. SHEETS: So they'll all become No. 10?

15 THE DEFENDANT: Do I got some say so?

16 THE COURT: All right.

17 THE DEFENDANT: Do I got some say so, Your Honor?

18 THE COURT: All right. Let's --

19 THE DEFENDANT: Your Honor.

20 THE COURT: I'm not talking to you right now. I'm
21 talking to your attorney. Let me see, move to Instruction 10
22 and move to -- okay. All right. Instruction No. 14. Every
23 person who commits the crime of burglary who has in his
24 possession, gains, or possession, etcetera, any objection,
25 State?

1 MS. SUDANO: No, Your Honor.

2 THE COURT: Defense?

3 MR. SHEETS: This is No. 14? No, Your Honor. No
4 objection, Your Honor.

5 THE COURT: Okay. Instruction No. 15 as used in the
6 instructions, a deadly weapon means one and two, etcetera. Any
7 objection, State?

8 MS. SUDANO: No, Your Honor.

9 THE COURT: Defense?

10 MR. SHEETS: No objection, Your Honor.

11 THE COURT: All right. And Instruction No. 16, as
12 used in these instructions, firearm includes one, two, three,
13 etcetera. Any objection, State?

14 MS. SUDANO: No, Your Honor.

15 THE COURT: Defense.

16 MR. SHEETS: No, Your Honor.

17 THE COURT: Instruction No. 17 I show in yellow.
18 What's your objection to this one?

19 MR. SHEETS: Your Honor, I just proposed a slightly
20 different -- I'm not objecting that the -- the state of the law
21 is correct. What I'd be asking Your Honor is to add the
22 language, such as merely one of several factors that you may
23 consider when determining beyond a reasonable doubt if a deadly
24 weapon was used. That way this instruction doesn't maybe
25 indicate to a jury that -- that they can find him guilty simply

1 based on one notion, but that there are many, many things to
2 consider.

3 THE COURT: Okay. State's position?

4 MS. SUDANO: And, Your Honor, I think that the
5 addition of that second sentence makes it confusing. They can
6 still find beyond a reasonable doubt without the deadly weapon.
7 Including in there this, you know, oh, other factors, there
8 aren't really any other factors. It's did you find the gun, did
9 you not find a gun.

10 THE COURT: Did you have a citation at all for that,
11 Mr. Sheets?

12 MR. SHEETS: No, Your Honor. Their citation, they
13 take language straight out of a decision. It's not the exact
14 language, but it's -- the language was related to a different
15 offense, but it's still similarly applicable here. I -- I just
16 -- it's generally the jury can consider many factors --

17 THE COURT: I'm not --

18 MR. SHEETS: -- and circumstances.

19 THE COURT: -- going to include that. I think the
20 instruction as proposed is fine, so I will overrule the
21 objection to the sentence, to the inclusion. However, I won't
22 include the sentence such as merely one of several factors that
23 you may consider in determining beyond a reasonable doubt the
24 deadly weapon was used.

25 All right. 18, you are instructed if you find the

1 defendant guilty of burglary you must also determine whether a
2 firearm was used in the commission of the burglary, etcetera.
3 Any objection to this one, State?

4 MS. SUDANO: No, Your Honor.

5 THE COURT: Defense?

6 MR. SHEETS: No, Your Honor.

7 THE COURT: Okay. 19, I'm showing highlighting down
8 at the bottom. Where do we stand on this one, defense, or is --
9 defense?

10 MR. SHEETS: Your Honor, I would -- the reason the
11 highlighting is there is I had proposed a different language
12 with regards to the movement, I actually proposed it over a
13 course of two different instructions just because of the fact
14 that we were going through. Now, while they do state that it
15 doesn't require to be carried for a minimal distance, I believe
16 that our proposed instruction is -- is clearer on the law. It
17 comes from the same case that theirs does come from, Your Honor,
18 and it discusses, I think, more appropriately incidental
19 offenses and how those were to --

20 THE COURT: You're looking at your with regard to a
21 movement instruction, or in this case whether the movement
22 and/or confinement?

23 MR. SHEETS: It would be first with the regards to the
24 movement, Your Honor.

25 THE COURT: Okay. All right. Okay. Does the State

1 have any movement instruction? I don't see anything here.

2 MS. SUDANO: If you got to the next instruction,
3 Instruction 20, that is the incidental movement --

4 THE COURT: Okay.

5 MS. SUDANO: -- instruction.

6 THE COURT: Okay. You know, this -- this instruction
7 seems to outline the specific conditions set by the State
8 Supreme Court as to what you need for first degree kidnapping.

9 MR. SHEETS: And by this instruction, just so I know,
10 you're referring to my proposed?

11 THE COURT: No, I mean the State's Proposed
12 Instruction 20.

13 MR. SHEETS: With -- just with regards to the law does
14 not require the person being kidnapped or carried away for any
15 minimal distance. The reason that my proposed instruction
16 exists is because of the fact that in this case there are
17 incidental offenses, and the jury has to make a determination.
18 So, I mean, I guess if we include that language from the
19 State's, I'd ask that we include my instruction as maybe a
20 separate instruction. Because the one thing that the State's
21 propose instruction, the very next one, it doesn't indicate that
22 they must find him not guilty of kidnapping if that movement or
23 confinement was merely incidental. That's specific language
24 from the case.

25 THE COURT: Well, and -- and it has to be something,

1 but this says that any movement of the victim was not
2 incidental, that any incidental movement of the victim. I mean,
3 so it can be incidental. That's the issue. It can be
4 incidental if it causes substantial risk or harm to the victim,
5 or that above necessary to do the battery, or it's -- you know,
6 and so it can be incidental. So that's my issue here.

7 I'm going to do 20 and I'm going to -- I think 20
8 outlines what has to be shown, and so I'm -- I'm not going to
9 use No. 3. I think it would confuse the jury because it seems
10 to indicate that if it was merely incidental to the unlawful
11 act, then you can't have the first degree kidnapping, where it
12 can be incidental. But if it increases the risk of harm,
13 exceeds the -- substantially exceeds that required to complete
14 the battery, then it can't be incidental movement, which if it
15 -- if it meets those different categories. So I'm not going to
16 give the defense's proposed instruction.

17 Now, what about the -- in this case, whether the
18 movement and or confinement is incidental to the offense is a
19 question for you to determine after considering all the facts
20 and evidence -- circumstances in the case.

21 MS. SUDANO: I don't --

22 THE COURT: What's the purpose of this?

23 MR. SHEETS: Oh, this -- this section, Your Honor?

24 THE COURT: Yeah.

25 MR. SHEETS: It's just to remind the jury that they

1 can infer from all of the circumstances and facts --

2 THE COURT: I think that's --

3 MR. SHEETS: -- when coming to the --

4 THE COURT: -- repetitive --

5 MR. SHEETS: -- conclusion.

6 THE COURT: -- and, I mean --

7 MR. SHEETS: They -- they went in tandem. I gave the
8 two proposed versus the one. That's really what it is, Your
9 Honor.

10 THE COURT: Well, I -- if you'd like, on the State's
11 Instruction 20, in order for you to find the defendant guilty of
12 first degree kidnapping, in addition to the associated offenses
13 of battery, you must also find -- find beyond a reasonable doubt
14 from all -- from all -- beyond a reasonable doubt, considering
15 all the facts and circumstances in the case, either duh-duh-duh.
16 And, actually, it shouldn't be either because either should be
17 only when there's two. Must find beyond a reasonable doubt,
18 considering all the facts and circumstances in this case. I
19 mean, we can use either, but either isn't grammatically proper.

20 MS. SUDANO: If we get rid of either, then I would
21 just ask that we add after subsection 4 on line 10, the word
22 "or" just to make it clear that we don't have to do all of them.

23 THE COURT: Okay. All right. Okay. So you want "or"
24 between, let's see, 3 and 4?

25 MS. SUDANO: Between 4 and 5.

1 THE COURT: Okay. What about 3 and 4?

2 MS. SUDANO: Oh. There is one "or" up there. So,
3 yeah, let's do it after all of them.

4 THE COURT: Okay. All right. Does that meet at least
5 some of your concerns, counsel?

6 MR. SHEETS: It does, Your Honor.

7 THE COURT: Okay. All right. What about the yellow
8 -- any issue with the -- the yellow language on page 21,
9 Instruction 19?

10 MR. SHEETS: It's accurate as to the state of the law,
11 Your Honor.

12 THE COURT: Okay. So any objection then to
13 Instruction 19, State?

14 MS. SUDANO: No, Your Honor.

15 THE COURT: Defense?

16 MR. SHEETS: Absent what we've already discussed, no,
17 Your Honor.

18 THE COURT: Okay. All right. Instruction 20, we've
19 already discussed as modified to include considering all the
20 facts and circumstances in this case, striking "either", putting
21 "or" in after 3, and "or" after 4. Any objection, State?

22 MS. SUDANO: No, Your Honor.

23 THE COURT: Defense?

24 MR. SHEETS: So everything we talked about. Nothing
25 else, Your Honor.

1 THE COURT: Okay. All right. 21, when a -- where a
2 person is charged with a crime of first degree kidnapping for
3 the purpose, etcetera. Any objection, State?

4 MS. SUDANO: No, Your Honor.

5 THE COURT: Any objections, defense?

6 MR. SHEETS: No, Your Honor.

7 THE COURT: All right. 22, as used in these
8 instructions, substantial bodily harm means, etcetera. What's
9 the issue with prolonged pain?

10 MR. SHEETS: I have a proposed instruction, Your
11 Honor. I should, in the package you have, have a cited and
12 uncited copy. The language I took is specifically from the
13 case. I thought that the language that LaChance puts out acts
14 to flush out a somewhat vague term. The same reason that the
15 State wants to include Collins versus State, and they agreed to
16 Collins versus State, the -- necessarily encompass some physical
17 suffering.

18 I believe that LaChance versus State further acts to
19 clarify it, the language is taken directly from that case, so it
20 is accurate to the law. And it -- where it says in a battery,
21 for example, the wrongdoer would not be liable for prolonged
22 physical pain for the touching itself; however, the wrongdoer
23 will be liable for any lasting physical pain resulting from the
24 touching. And I think that gives them a very clear indication,
25 and I think that the use of the term lasting physical pain

1 resulting from that touching is important.

2 THE COURT: Defense? I mean, State?

3 MS. SUDANO: And Your Honor, that is accurate from
4 that LaChance case. However, it says, you know, in that first
5 sentence, prolonged physical pain encompasses suffering lasting
6 longer than the -- the incident itself. But then below, it says
7 you're not liable for prolonged physical pain for the touching
8 itself, which is just confusing to the State. I understand,
9 essentially, what they're trying to say, but I don't think that
10 this actually clarifies anything because it's just sort of
11 rehashing it and saying, oh, you're not actually liable for the
12 prolonged physical pain, except that you are is essentially what
13 LaChance says.

14 MR. SHEETS: Like I said, Your Honor, my language is
15 taken directly from the case. It's their exact language.

16 THE COURT: Well, it sounds like both of them are
17 exact language.

18 MR. SHEETS: Yes.

19 THE COURT: Hold on a sec.

20 MR. SHEETS: And I don't think they're really
21 duplicative. I think they address different concepts of what I
22 believe is a fairly vague term and statute.

23 THE COURT: Well, I'm sort of wondering, in a -- in a
24 battery, the wrongdoer is not liable for prolonged physical pain
25 for the touching itself. Prolonged physical pain must

1 necessarily encompass some physical suffering or injury that
2 lasts longer than the pain immediately resulting from the
3 wrongful act. How does that sound?

4 MS. SUDANO: No objection from the State.

5 THE COURT: All right. Does that meet your concerns,
6 counsel?

7 MR. SHEETS: I just like the use of the word lasting.
8 I think it gives them an impression that obviously something is
9 going to hurt when you first get hit, but --

10 THE COURT: Well --

11 MR. SHEETS: -- but the --

12 THE COURT: -- I mean, I think -- I think that's
13 encompassed by the prolonged physical pain necessarily
14 encompasses some physical suffering or injury that lasts longer
15 than the pain immediately resulting from the wrongful act. You
16 know, I think that --

17 MR. SHEETS: Your proposed version, Your Honor, other
18 than what we -- I mean, if you're saying that's what it's going
19 to be, that's what it's going to be. I just, for the record,
20 would just kind of preserve it.

21 THE COURT: Okay. All right. So I'm going to --
22 we're going to add to Instruction No. 22, in a battery -- in a
23 battery, a wrongdoer is not liable for prolonged physical pain
24 for the touching itself, period. Prolonged physical pain
25 necessarily encompasses some physical suffering or injury that

1 lasted -- that lasted longer than the pain immediately resulting
2 from the wrongful acts. All right. Any additional -- is the
3 State okay with that?

4 MS. SUDANO: Yes, Your Honor.

5 THE COURT: Any additional objections, defense?

6 MR. SHEETS: No, Your Honor.

7 THE COURT: Okay. All right. Instruction No. 23, the
8 intention or purpose for which the victim was held, etcetera.
9 Any objection, State?

10 MS. SUDANO: No, Your Honor.

11 THE COURT: Defense?

12 MR. SHEETS: No, Your Honor.

13 THE COURT: All right. Instruction No. 24, while a
14 guilty verdict must be unanimous, you need not be unanimous on
15 the means or theory of first degree kidnapping in arriving at
16 your verdict.

17 MR. SHEETS: I -- I have a proposed version that I
18 think is clearer and more specific to the charge of first degree
19 kidnapping.

20 THE COURT: Okay.

21 MR. SHEETS: If you unanimously conclude beyond a
22 reasonable doubt that the defendant is guilty of first degree
23 kidnapping, the theory by which you find the defendant guilty
24 need not be unanimous. I think that's a clear instruction, I
25 think it, from the get go, lets them know that this is talking

1 about as the theory relates to that first degree kidnapping. I
2 think the other one is just a little less clear.

3 THE COURT: State's position?

4 MS. SUDANO: And, Your Honor, it's just really a
5 grammatical or semantic difference, so whichever one Your Honor
6 prefers and thinks is more clear is fine.

7 THE COURT: All right. Let's go with the defense one.
8 Instruction 25, if you find beyond a reasonable doubt the
9 defendant committed a first degree kidnapping, etcetera. Any
10 objection, State?

11 MS. SUDANO: No, Your Honor.

12 THE COURT: Defense?

13 MR. SHEETS: No, Your Honor. Subject to we will have
14 kind of a discussion about lesser includeds that may -- we have
15 alternates prepped for that in the event.

16 THE COURT: Okay. Do we need to talk about that? Is
17 that one of the miscellaneous instructions?

18 MS. SUDANO: It is.

19 THE COURT: Do we need to talk about that here?

20 MS. SUDANO: We can.

21 THE COURT: Okay. Would that go here?

22 MS. SUDANO: Yes.

23 THE COURT: Okay. Then let's talk about it here.

24 MS. SUDANO: Well, I guess it would maybe.

25 MR. SHEETS: Yes, Your Honor. The State's --

1 MS. SUDANO: I don't know, somewhere in there.

2 MR. SHEETS: Defense is taking the position that the
3 State doesn't have the authority to choose which lesser included
4 offenses would be included or instructions given. The defense
5 has taken the position that all of the case law in the Nevada
6 Supreme Court specifically notes that a defendant has the right
7 to the jury instruction that -- on his theory of defense. The
8 defendant is entitled to the jury instruction on a lesser
9 included offense.

10 In fact, Collins v. State, Rosas v. State, Alotaibi,
11 are all cases that specifically note that it's a defendant who
12 has that right. And so we would be taking the position, Your
13 Honor, that we can choose which lesser included offenses are
14 instructed and which ones are not, just as we can choose whether
15 or not to have an instruction based on lesser included offenses.
16 The State has indicated their intent to ask for the lesser
17 included instruction of second degree kidnapping, which we do
18 not wish to do, and with regards to the strangulation, the
19 lesser included of battery constituting domestic violence.

20 THE COURT: All right.

21 MR. SHEETS: Is that right? Did I miss anything?

22 THE COURT: Give me the -- your best citation on that.

23 MR. SHEETS: On Collins v. State, the 405 --

24 THE COURT: I'm sorry. What is it? 4 --

25 MR. SHEETS: 405 P.3d 657.

1 THE COURT: Okay. Okay. Where in -- where are we
2 looking at?

3 MR. SHEETS: It's a defendant is entitled to a jury
4 instruction on a lesser included offense. It specifically says
5 defendant, and then it refers to other cases which repeat that
6 same language. And that's generally been the case law regarding
7 requested jury instructions based on theories of defense, is the
8 defendant has that right. I -- I've seen no case law. We've
9 done everything we can to look to see if the State can add a
10 lesser included. It's actually a very unaddressed question of
11 whether or not the State can request lesser included offenses,
12 especially in jury instructions or on verdict forms.

13 THE COURT: Okay. All right. All right. The State
14 have any thoughts?

15 MS. SUDANO: And Your Honor, the State's thought would
16 be this. We have the burden of proving this case beyond a
17 reasonable doubt. It is a lesser included offense. It's not as
18 though it's a lesser related offense, I think there is case law
19 on point where the State has asked for lesser related offenses,
20 and that has been granted. In this particular case, I do have
21 concerns that should he be convicted of a first degree
22 kidnapping, then we're going to be dealing with this on post
23 conviction of why wasn't the lesser included of second degree
24 offered as a jury -- on the jury form.

25 I understand the strategic reason why Mr. Sheets is

1 doing this, I think, but at the same time, for appellant
2 purposes, I think that it's appropriate to include it, because
3 it is a lesser included, not a lesser related. And it's the
4 State's position that because we have the burden of -- or burden
5 of proving this case beyond a reasonable doubt, we do have as
6 much, if not more, say as what those lesser included should be
7 as the defense.

8 MR. SHEETS: And -- and with all due respect to the
9 State, the State has the opportunity or the ability to charge
10 alternate offenses in a charging document. That has been held
11 to be clear. However, the defense is entitled to notice, which
12 is why the charging document needs to reflect these theories.

13 The -- the State chose to specify first degree
14 kidnapping as the charge on their criminal complaint. They did
15 not choose kidnapping and propose alternate theories that would
16 both meet the definition of first degree and the definition of
17 second degree. They only proposed a theory as to first degree.
18 We have prepared a defense to it based on such, and there would
19 be a notice issue.

20 Second of all, from a standpoint of post conviction
21 relief, the State's concerns about post conviction relief are
22 not a right conveyed upon the State, nor are they intended to --

23 THE COURT: Okay. I'm not going to -- I -- I do
24 believe that the defense has built up its defense based upon the
25 charges that were included in the indictment, and that I think

1 it would be inappropriate here to allow the State, over the
2 defense's objection, to -- to include second degree without it
3 being included in the indictment. So I'm going to not include
4 that. Does that kill both of the two miscellaneous
5 instructions?

6 MS. SUDANO: I think it just kills the first one
7 because even though, you know, there was no notice as to the
8 false imprisonment, the defense is actually seeking that as a
9 lesser included offense.

10 THE COURT: Okay. All right. So if you do not find
11 the defendant is guilty of first degree kidnapping, and then
12 strike second degree kidnapping, but you do find the State has
13 established beyond a reasonable doubt that the defendant has
14 committed each element of the crime of false imprisonment, you
15 shall select false imprisonment as your verdict. Did we give
16 them the elements of false imprisonment?

17 MS. SUDANO: They're included a little bit later in
18 the packet, yes.

19 MR. SHEETS: Yes. And there is a lesser included
20 instruction that goes with it at that time --

21 THE COURT: Yeah.

22 MR. SHEETS: -- I think.

23 THE COURT: So --

24 MR. SHEETS: I know we had gone over --

25 THE COURT: -- do we put this --

1 MR. SHEETS: -- one.

2 THE COURT: -- in here?

3 MS. SUDANO: We can move it back if Your Honor wants.

4 THE COURT: All right. We'll strike the or second
5 degree kidnapping. All right. Well, let's go ahead. Where
6 would it make sense, right here after first degree -- after
7 first degree kidnapping?

8 MS. SUDANO: No. If you read Instruction 26, that
9 goes through the lessers, and then after that I have the lessers
10 of second and false imprisonment. So it -- it should probably
11 be after 28 is where that should go.

12 THE COURT: All right. You okay with putting it after
13 28?

14 MR. SHEETS: Yes, Your Honor.

15 THE COURT: All right. All right. All right. 26,
16 when it is possible to commit a particular crime without
17 committing at the same time, etcetera. Any objection, State?

18 MS. SUDANO: I don't have any objection, but we do
19 need to reword it based on Your Honor's ruling.

20 THE COURT: Okay. All right. Where do we need to --

21 MS. SUDANO: The third paragraph down, the crimes of
22 first degree kidnapping necessarily includes the lesser offenses
23 of. We need to strike second degree kidnapping.

24 THE COURT: Lesser offense of second degree
25 kidnapping. All right. That change, are you good with that,

1 defense?

2 MR. SHEETS: Yes. We also need to strike. I think, if
3 the premise remains the same, line 16 and 17.

4 MS. SUDANO: No. Okay. That one is, I think,
5 completely different and ridiculous to argue. He can't commit a
6 battery domestic violence by strangulation without committing
7 the battery domestic violence as an underlying offense. So just
8 because Mr. Sheets doesn't want that as a lesser, he had notice
9 of that, it's not as if there's any sort of different defense
10 theory that can be posited on that.

11 THE COURT: I'm going to allow the State to argue
12 battery constituting domestic violence. All right. So I'm not
13 going to change 16 or 17. With that -- any other objection, Mr.
14 Sheets?

15 MR. SHEETS: Yeah. The only thing is that would
16 almost create a double jeopardy situation. And the only reason
17 that I say that is, I mean, in the charging document they say to
18 wit, by strangulation. It's not by placing his hands around the
19 neck or person of Ms. Nicole Dotson, it doesn't say by punching
20 or kicking. The jury could definitely have trouble concluding
21 because they specifically pled it as strangulation, they either
22 have to conclude that he strangled her or he didn't because
23 punching and/or kicking and/or hitting is already charged in the
24 other section that had or body of.

25 THE COURT: Well, punching or -- is -- is -- where is

1 it? I'm sorry.

2 MR. SHEETS: Let me -- I'm sorry, do you have your
3 charging document?

4 THE COURT: Oh, the crime of battery or assaulting and
5 substantial bodily harm constituting domestic violence?

6 MR. SHEETS: Correct.

7 MS. SUDANO: So, I mean, Your Honor --

8 THE COURT: Yeah, I mean, he does have a point there.

9 MS. SUDANO: So --

10 THE COURT: Isn't that -- essentially, you've charged
11 that substantively in the information?

12 MS. SUDANO: So, Your Honor, I think, though, the
13 distinction is the strangulation, obviously, is contact with her
14 neck. That is implied, it's inferred, that was the testimony
15 that was elicited. So I don't think that you can stand here
16 with a straight face and say that because it's pled this way and
17 because he grabbed her by the neck, but it doesn't meet the
18 legal definition of strangulation, that there's any issue with
19 it.

20 If you want to give them some specific caption or
21 something on the verdict form or somewhere else in the
22 instruction that the lesser is for touching her neck or for
23 making contact with her neck that does not rise to the level of
24 strangulation, I think that that's fine. But I honestly don't
25 know how you can sit here and say that it's not a battery

1 domestic violence just because it doesn't rise to the level of
2 strangulation. It's not a double jeopardy issue. It's
3 obviously very separate conduct.

4 MR. SHEETS: I disagree, Your Honor. The head and/or
5 body, that's what it says. It's very clear, it includes the
6 entire body. It's absolutely a double jeopardy --

7 THE COURT: All right.

8 MR. SHEETS: -- situation.

9 THE COURT: Yeah, I -- this is why I hate having to do
10 -- deal with these like I'm dealing with these, and why I try to
11 get the parties to bring this in the week before, so I'm not
12 dealing with these at the last moment. At this point in time
13 I'm going to strike 16 and 17.

14 All right. 27, person who willfully and without
15 authority or law seizes, inveigles, carries away. What's --

16 MR. SHEETS: The second degree kidnapping, so that
17 would go.

18 THE COURT: All right. I will strike that. False
19 imprisonment, 28. Everybody good with this one?

20 MS. SUDANO: Yes.

21 THE COURT: State.

22 MR. SHEETS: Yes.

23 THE COURT: And defense.

24 MS. SUDANO: Yes, Your Honor.

25 THE COURT: All right. We've already talked about

1 after 28 if you do not find the defendant is guilty of first
2 degree kidnapping, but do find the State has established false
3 imprisonment. All right. 29, assault is defined as unlawful
4 attempting to use -- any objection, etcetera. Any objection,
5 State?

6 MS. SUDANO: No, Your Honor.

7 THE COURT: Defense?

8 MR. SHEETS: No, Your Honor.

9 THE COURT: 30, you are instructed if you find the
10 defendant guilty of assault, you must also determine whether a
11 deadly weapon. Any objection, State?

12 MS. SUDANO: No, Your Honor.

13 THE COURT: Defense?

14 MR. SHEETS: No, Your Honor.

15 THE COURT: All right. Instruction 31, battery means
16 any willful or unlawful use of force or violence upon the person
17 of another. Any objection, State?

18 MS. SUDANO: No, Your Honor.

19 THE COURT: Defense?

20 MR. SHEETS: No, Your Honor.

21 THE COURT: 32, battery constituting domestic violence
22 occurs when a person commits a battery against or upon the
23 person, spouse, or former spouse, etcetera. Any objection,
24 State?

25 MS. SUDANO: No, Your Honor.

1 THE COURT: Defense?

2 MR. SHEETS: No, Your Honor.

3 THE COURT: 33, you are instructed that if you find
4 the defendant guilty of battery constituting domestic violence,
5 etcetera. Any objection, State?

6 MS. SUDANO: No, Your Honor.

7 THE COURT: Defense?

8 MR. SHEETS: No, Your Honor.

9 THE COURT: 34, you are instructed that if you find
10 the defendant guilty of battery constituting domestic violence,
11 you must also determine whether a deadly weapon was used,
12 etcetera. Any objection, State?

13 MS. SUDANO: No, Your Honor.

14 THE COURT: Defense?

15 MR. SHEETS: No, Your Honor.

16 THE COURT: 35, any person who commits a battery,
17 etcetera. Any objection, State?

18 MS. SUDANO: No, Your Honor.

19 THE COURT: Defense?

20 MR. SHEETS: No, Your Honor.

21 THE COURT: All right. 36, as used in these
22 instructions, strangulation means, etcetera. Any objection,
23 State?

24 MS. SUDANO: No, Your Honor.

25 THE COURT: Defense?

1 MR. SHEETS: No, Your Honor.

2 THE COURT: 37, a person who by intimidating or
3 threatening another person, etcetera. Any objection, State?

4 MS. SUDANO: No, Your Honor.

5 THE COURT: Defense?

6 MR. SHEETS: No, Your Honor.

7 THE COURT: 38, a person who carries a concealed
8 weapon on his or her person, a pistol, etcetera. Any objection,
9 State?

10 MS. SUDANO: No, Your Honor.

11 THE COURT: Defense?

12 MR. SHEETS: No, Your Honor.

13 THE COURT: 39, a concealed weapon as used in these
14 instructions. Any objection, State?

15 MS. SUDANO: No, Your Honor.

16 THE COURT: Defense?

17 MR. SHEETS: No, Your Honor.

18 THE COURT: All right. 40, carrying upon a person
19 means actually on the person or in a container carried by the
20 person. Any objection, State?

21 MS. SUDANO: No, Your Honor.

22 THE COURT: Defense?

23 MR. SHEETS: No, Your Honor.

24 THE COURT: 41, crimes of burglary, kidnapping, false
25 imprisonment, assault, etcetera. Any objection, State?

1 MS. SUDANO: No, Your Honor.

2 THE COURT: Defense?

3 MR. SHEETS: We had one question that we wanted to
4 have just kind of resolved so there's a record of it, Your
5 Honor. It's written in this instruction that dissuading a
6 witness is a general intent crime. Just kind of for the record,
7 the defense would be taking the position it's a specific intent
8 crime because it requires the place of fear and then the result.

9 It's honestly not a very well-worded statute, Your
10 Honor. It's somewhat ambiguous as to the intent required. So
11 if Your Honor were to rule it's a specific intent crime, we
12 would object insofar as we would move it up to the specific
13 intent crime paragraph versus a general. But we would take the
14 position it's specific and the State takes the position it's
15 general.

16 MS. SUDANO: I do take the position that it's general,
17 Your Honor.

18 THE COURT: Okay. Why?

19 MS. SUDANO: Looking at the statute, it's just a
20 person who by intimidating or threatening another person
21 prevents or dissuades a victim of a crime, a person acting on
22 behalf of the victim, or a witness from doing all of these
23 things. It doesn't require the intent that they prevent them
24 from doing these things. It's just the intimidation or the
25 threat. So whatever the victim ultimately does with that is not

1 an element of the statute.

2 THE COURT: All right. I'm going to use the
3 instruction as is.

4 MR. SHEETS: Yes, and just -- just to memorialize the
5 record. The only reason that we would take the position that
6 that's different is because the intimidation by itself without
7 the purpose would constitute an assault versus an intimidating.
8 And that's why we would take the position that it requires more
9 than just the intimidation. It requires an intent to engage in
10 a purpose.

11 THE COURT: Well, it's an intimidation. It has to be
12 for the -- well, it does have to be for the purpose of causing
13 him to keep the person from reporting a crime or --

14 MS. SUDANO: So but there's no intent element that
15 it's really required. It's just the intimidation or the threat,
16 and then a victim then does whatever the victim is going to do.
17 So I don't think that it's specific intent in that sense that
18 it's requiring the defendant to specifically intend the victim
19 to take those actions or not take those actions.

20 MR. SHEETS: Again, my only concern is at that point
21 that's -- that's an assault.

22 THE COURT: Yeah, I have to -- all right. You
23 convinced me, Mr. Sheets. Let's move that up to specific
24 intent. So you are also instructed preventing or dissuading a
25 witness or victim from reporting a crime or commencing

1 prosecution. So that should be changed to you are also
2 instructed that carrying concealed weapon is a general intent
3 crime. And we'll move preventing or dissuading. Where does
4 that go?

5 MS. SUDANO: That goes up on line 1.

6 THE COURT: Okay.

7 MS. SUDANO: So we would say -- get rid of and
8 assault, and just make it assault, comma, and preventing or
9 dissuading a witness.

10 THE COURT: Okay. All right. With that, any
11 objection, defense?

12 MR. SHEETS: No, Your Honor.

13 THE COURT: And we've got the State's objection
14 preserved. Any other objection?

15 MS. SUDANO: No.

16 THE COURT: Okay. All right. 42, when a trial
17 witness fails for whatever reason, etcetera. Any objection,
18 State?

19 MS. SUDANO: No, Your Honor.

20 THE COURT: Defense?

21 MR. SHEETS: No, Your Honor.

22 THE COURT: 43, what's the position of the defense on
23 this one?

24 MR. SHEETS: Your Honor, I don't think there's been
25 any evidence of flight. Flight requires an intent to flee

1 prosecution or being arrested. All they have is him driving
2 away from the scene at the time an officer arrives. They have
3 no other conduct at all. They've made it clear they didn't have
4 any contact with him, they couldn't make contact with him. Yet
5 when they went to his work, he was right there.

6 They didn't say that they tried to call him. They
7 didn't even try to make a phone call. They had already decided
8 he was going to be arrested as soon as Ms. Dotson had made the
9 claim. Hitting his brakes and then proceeding doesn't mean he's
10 fleeing the scene in any way, shape, or form. It doesn't mean
11 he's fleeing the officers, or that he's fleeing prosecution,
12 either.

13 THE COURT: Well, all right. You have him gathering
14 up his items and clothes of a man found in the trunk. I think
15 the State's got enough there to justify it, so I'll overrule the
16 objection and we'll use 43.

17 44, you've heard evidence at some point that defendant
18 is -- oh, any other objection from the State?

19 MS. SUDANO: No, Your Honor.

20 THE COURT: Okay. 44, you've heard evidence at some
21 point defendant was in custody, etcetera. Any objection, State?

22 MS. SUDANO: No, Your Honor.

23 MR. SHEETS: No, Your Honor.

24 THE COURT: Defense? Defense?

25 MR. SHEETS: No, Your Honor.

1 THE COURT: Okay. 45, the defendant in a criminal
2 trial has a constitutional right not to be compelled to testify,
3 etcetera. Any objection, State?

4 MS. SUDANO: No, Your Honor.

5 THE COURT: Defense?

6 MR. SHEETS: No, Your Honor.

7 THE COURT: And you are requesting that, Mr. Sheets?

8 MR. SHEETS: I am, Your Honor.

9 THE COURT: Okay. 46, although you are consider -- to
10 consider only the evidence in the case to reach a verdict, you
11 must bring, etcetera. Any objection, State?

12 MS. SUDANO: No, Your Honor.

13 THE COURT: Defense?

14 MR. SHEETS: No, Your Honor.

15 THE COURT: 47, in your deliberation you may not
16 discuss or consider subject of punishment, etcetera. Any
17 objection, State?

18 MS. SUDANO: No, Your Honor.

19 THE COURT: Defense?

20 MR. SHEETS: No, Your Honor.

21 THE COURT: 48, during the course of the trial and
22 your deliberations, you're not to, etcetera. Any objection,
23 State?

24 MS. SUDANO: No, Your Honor.

25 THE COURT: Defense?

1 MR. SHEETS: No, Your Honor.

2 THE COURT: Okay. 49, when you retire to consider
3 your verdict, you must select one of your members as the
4 foreperson. Any objection, State?

5 MS. SUDANO: No, Your Honor.

6 THE COURT: Defense?

7 MR. SHEETS: No, Your Honor.

8 THE COURT: Okay. 50, I think, is my instruction.

9 MS. SUDANO: Yes.

10 THE COURT: Okay. All right. We obviously don't need
11 to -- to deal with that. So any objection, State?

12 MS. SUDANO: No, Your Honor.

13 THE COURT: Defense?

14 MR. SHEETS: No, Your Honor.

15 THE COURT: Okay. 51, if during your deliberations.
16 Any objection, State?

17 MS. SUDANO: No, Your Honor.

18 THE COURT: Defense?

19 MR. SHEETS: No, Your Honor.

20 THE COURT: Okay. 52, any objection, State?

21 MS. SUDANO: No, Your Honor.

22 THE COURT: Defense?

23 MR. SHEETS: No, Your Honor.

24 THE COURT: All right.

25 MR. SHEETS: I do have one more, Your Honor, and I

1 didn't have -- my client presented something to me right here.
2 It was --

3 THE COURT: Okay.

4 MR. SHEETS: -- what he was talking to me --

5 THE COURT: All right.

6 MR. SHEETS: -- about at the very beginning. I think
7 I'm obligated to convey it because he showed me what I believe
8 to be a valid basis for the instruction.

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

10 MR. SHEETS: State versus White, 330 P.3d 482.
11 Specific language from the conclusion.

12 THE COURT: All right. What is it again?

13 MR. SHEETS: A person with -- it's going to be 330
14 P.3d 482. A person with an absolute unconditional right to
15 enter a structure cannot burglarize that structure.

16 THE COURT: All right. What is the number again?

17 MR. SHEETS: 330 P.3d 482. And it's in the conclusion
18 section.

19 THE COURT: Okay. State of Nevada versus Troy White.
20 We conclude the legislature has not eliminated the common law
21 notion that a person with an absolute unconditional right to
22 enter a structure cannot burglarize that structure. As such, we
23 concluded the District Court did not err in granting White's
24 petition for a writ of habeas corpus. Accordingly, we affirm
25 the order of the District Court.

1 All right. What's the State's position?

2 MS. SUDANO: Your Honor, the State's position is that
3 while that is an accurate summary of the law, it's not
4 applicable in this case. What was going on in the White case
5 was that a defendant had an arrangement with his ex-wife where
6 the two of them both lived in a house that they had purchased
7 together while they were married, they lived there with their
8 children.

9 They were going through a separation and they had sort
10 of an agreement where dad was there with the kids like Monday
11 through Wednesday or something, and then mom was there with the
12 kids for the rest of the week and the weekend. There was no
13 TPO, there was division of the property in a formal divorce
14 decree or anything along those lines.

15 So both parties had purchased the house and did have
16 an unqualified right to live in the house because there was no
17 TPO or anything along those lines that prevented either of them
18 from entering. So when the defendant in that case came in on
19 one of the mom's days and shot and killed her, the Supreme Court
20 found that that was not a burglary because although they had an
21 informal agreement that he wasn't supposed to be there that day,
22 he did still have an unqualified right to enter.

23 This particular case, he does not have an unqualified
24 right to be in the house. We have testimony that he's not on
25 the lease, told the officers that day that although he had a

1 key, didn't get mail, didn't have clothing, didn't have any of
2 those things present in the residence. And, furthermore, she
3 had told him not to come over that day. He did not have
4 permission to be in the house that day, and the only reason that
5 he had --

6 THE COURT: Those are all questions of fact for the
7 jury. I'm going to be -- I'm going to go ahead and give the
8 instruction. A person with an absolute unconditional right to
9 enter a structure cannot burglarize the structure. Where do we
10 want to include that?

11 MS. SUDANO: Probably back in that Instruction 10, I
12 think it was.

13 MR. SHEETS: Yes, I would think after Instruction 10,
14 Your Honor.

15 MS. SUDANO: I would say with Instruction 10.

16 THE COURT: Yeah, that sort of works for the other
17 pieces and parts that we sort of threw in there. So we'll put
18 that at the last sentence of Instruction 10.

19 Okay. All right. Okay. How long are your closings?
20 Oh, let's look at the verdict form. Count 1, any objection?

21 MS. SUDANO: No, Your Honor.

22 MR. SHEETS: No, Your Honor.

23 THE COURT: Count 2 we need to strike guilty of second
24 degree kidnapping with use of a deadly weapon and guilty of
25 second degree kidnapping; correct?

1 MR. SHEETS: Yes, Your Honor.
2 THE COURT: With those changes, any objection?
3 MS. SUDANO: No, Your Honor.
4 THE COURT: All right. Any objection to Count 3?
5 MR. SHEETS: No, Your Honor.
6 THE COURT: Any objection to Count 4?
7 MS. SUDANO: No, Your Honor.
8 MR. SHEETS: No, Your Honor.
9 THE COURT: Any objection to Count 5?
10 MS. SUDANO: No, Your Honor.
11 MR. SHEETS: Yes, Your Honor. Strike guilty of
12 battery constituting domestic violence.
13 THE COURT: Okay.
14 MS. SUDANO: Okay.
15 THE COURT: Yep. All right. Count 6?
16 MR. SHEETS: No, Your Honor.
17 MS. SUDANO: No, Your Honor.
18 THE COURT: All right. Count 7?
19 MS. SUDANO: No, Your Honor.
20 MR. SHEETS: No, Your Honor.
21 THE COURT: And Count 8?
22 MS. SUDANO: No, Your Honor.
23 MR. SHEETS: No, Your Honor.
24 THE COURT: Okay. All right.
25 MR. SHEETS: Now, so I don't have to try and get all

1 my scribble notes, will we get copies of the final jury
2 instructions?

3 THE COURT: Yeah.

4 MR. SHEETS: Okay.

5 THE COURT: I'm going to --

6 MR. SHEETS: Excellent.

7 THE COURT: I'm going to take it and start getting --
8 we'll get a complete set for me to read for the jury, and we'll
9 be printing out sets while I'm reading to the jury, and then
10 everybody will get -- I will give each side one of the sets so
11 you can read along while I'm going through it.

12 All right. Any -- let's see. Any -- how long is your
13 opening -- I mean, closing?

14 MS. CRAGGS: 45 minutes, maybe.

15 THE COURT: How long is yours?

16 MR. SHEETS: Mine is probably an hour. I mean, I --

17 THE COURT: I understand.

18 MR. SHEETS: I'm overestimating. Last time I
19 underestimated and I owed somebody a cup of coffee for taking
20 too long.

21 THE COURT: Well --

22 MR. SHEETS: I can't anticipate it being much more
23 than an hour, but if I get rolling.

24 THE COURT: We're going to have to get -- I mean, all
25 right. All right. Well, I'll equalize things for both sides.

1 The State can have one hour between its opening and closing --
2 opening and rebuttal, and the defense can have one hour.

3 MS. SUDANO: And, Your Honor, I would object for the
4 record because we do have the burden of proof.

5 THE COURT: I understand, you know. And, you know,
6 I've been pounding to get these jury instructions done since the
7 beginning. And if you look at my website, I say on there I want
8 jury instructions passed out between the parties before --
9 before the trial even starts on Friday. We're going to get this
10 done today. I have to leave at 4:00 or 4:10. And so we're
11 going to get this to the jury. I'm not going to make them sit
12 until Monday in order to get this.

13 So, you know, and that is -- so I usually allow only a
14 third of the time for the -- of what the defense allows for a
15 closing rebuttal, so that would be 20 minutes anyway. So if
16 she's 45 minutes, I'm only restricting you by five minutes, and
17 so it should work about the same anyway. But I want to make
18 sure both parties understand the time limitations going into it.

19 MS. SUDANO: And, Your Honor, I do also just want to
20 remind the Court that depending on how things go today, we do
21 still potentially have the ex-felon in possession count, as
22 well.

23 THE COURT: Well, and if they come back and we need to
24 go down that route, we'll have them come back in on Monday to
25 hear the evidence relating to the ex-felon thing. I don't mind

1 that, but I'm not going to have them sit here through the
2 weekend and not get anything done. And they've been here now
3 for an hour and 15 minutes.

4 (Court recessed at 1:49 p.m., until 2:09 p.m.)

5 (Outside the presence of the jury)

6 THE COURT: All right. Well, let's get the jury in.
7 I'll read -- these aren't numbered. I'm going to -- I've got to
8 edit it, but we have to renumber them. We'll get the jury in
9 and I'll see how long it takes me to read these. I may need to
10 modify further the closing times for the parties. This is why I
11 sit here and I have in my website and I tell you people I want
12 these done earlier so I'm not sitting here with the jury waiting
13 outside.

14 And, you know, I appreciate the time that it takes to
15 do this, but that's why it's important to do this. It seems to
16 be a continual problem that I have with these trials is I'm
17 sitting here and nobody seems to get around to working with the
18 jury instructions until we're sitting here waiting and having
19 the jury wait for the time to be done. So we'll see what we can
20 get done today.

21 MR. SHEETS: I can promise you any more trials in
22 front of Your Honor, I'll be on top of it now that I know the
23 process.

24 THE COURT: Okay.

25 MS. SUDANO: Same from the State, Your Honor. We

1 apologize.

2 MR. SHEETS: And, Your Honor, you had indicated, I
3 think, that they weren't numbered. Ours were numbered.

4 THE COURT: Well, they're sort of -- I haven't had him
5 change the numbering.

6 MR. SHEETS: Okay.

7 THE COURT: He's changing the numbering -- he'll
8 change the numbering during closing arguments. Can you change
9 them while we're going?

10 THE LAW CLERK: I'll try.

11 THE COURT: All right. He's going to try to change
12 them while I'm reading.

13 (Inside the presence of the jury)

14 THE COURT: Let the record reflect the presence of the
15 attorneys for both sides, the presence of the defendant. Do the
16 parties stipulate to the presence of the jury?

17 MS. SUDANO: Yes, Your Honor.

18 MR. SHEETS: Yes, Your Honor.

19 THE COURT: Okay. Let's let everybody get situated.
20 Ladies and gentlemen, I'm going to apologize big time, and --
21 and I -- my calendar this morning ran longer than I anticipated
22 it to, and then I had to go through the jury instructions with
23 the parties and finalize those. And so we just got through with
24 finalizing those instructions, and I know you've been here for
25 over an hour and a half and I want to apologize. I hate wasting

1 your time.

2 The other concern I want to know, we'll get started
3 with me going through the jury instructions, like I said, and
4 then we'll start our closing arguments. My hope is that we get
5 through those today and can get you started with deliberations.
6 If we don't get through them today, we'll have you come back.
7 We'll have to have you come back on Monday at noon and we will
8 finalize the arguments at that point in time and then get you
9 started on deliberations. But we will try our best to get
10 things done so you can start deliberations today and go into
11 deliberations tomorrow on Friday.

12 So we aren't going to delay any more. I'm going to
13 read through the instructions. After we get the instructions, I
14 read through them, the parties will give their arguments. We
15 will provide you with written copies of the instructions once
16 I'm done reading through this, and you'll be able to take those
17 instructions back with you to the jury room to assist you in
18 your deliberation process.

19 (Jury instructions read)

20 THE COURT: Okay. Now we'll begin the opening
21 argument phase -- or closing argument phase of the case. Before
22 we do that, can I see counsel at sidebar.

23 (Bench conference)

24 THE COURT: All right. There's no realistic way we're
25 going to be able to get this done before I have to leave at

1 4:00, so I'm not going to restrict any of you in terms of your
2 time. Although, I will tell you that I do limit rebuttal
3 argument to one-third of the time used by the defense attorney
4 during his argument. That doesn't change by this, all right.
5 You're going first?

6 MS. CRAGGS: Yes.

7 THE COURT: Okay. Very good.

8 MR. SHEETS: Procedurally, if -- if I'm not sure I'm
9 going to be done by 4:00, do I just not start my closing or --

10 THE COURT: No, I'm going -- you're going to start
11 your closing and I -- now, I don't expect you to do another hour
12 in addition to your closing here. I mean --

13 MR. SHEETS: Fair enough.

14 THE COURT: -- I expect you to be right around an hour
15 between today and Monday. And, remember, each minute, you know,
16 you go, it gives her -- each three minutes you go, it gives her
17 another minute.

18 MR. SHEETS: Yes, Your Honor.

19 THE COURT: All right.

20 MS. SUDANO: Your Honor, we did notice an error in the
21 verdict form. On Count 2, I believe it was the kidnapping
22 count, there should be a lesser first degree kidnapping without
23 the deadly weapon or substantial bodily harm, and we did miss
24 that.

25 THE COURT: Okay. Do you want to --

1 MS. SUDANO: We can deal with it later. I just wanted
2 to make sure that it was --

3 THE COURT: Well, let's -- let me go ahead and correct
4 that now. That's -- where is -- you mean --

5 MS. SUDANO: Count 2. So there should just be a first
6 degree kidnapping.

7 THE COURT: Wait. There should be guilty of first
8 degree kidnapping by itself; right?

9 MS. SUDANO: Correct.

10 THE COURT: Yeah, so add that down. Okay. I haven't
11 read this to the jury, so at this point it's no harm, no foul.

12 MR. SHEETS: Okay.

13 THE COURT: Okay. So after the guilty of false
14 imprisonment, put in guilty of first degree kidnapping.

15 MS. SUDANO: Thank you, Your Honor.

16 THE COURT: Okay. All right.

17 MS. SUDANO: Thank you.

18 THE COURT: Thank you.

19 (End of bench conference)

20 THE COURT: All right. As I expressed in my initial
21 instructions to you, with the closing arguments the State gets
22 to go first because the State has the burden of proof, then
23 defense will have an opportunity to give a closing argument, and
24 then the State will have an opportunity to give a second
25 argument, which is typically referred to as rebuttal argument to

1 respond to the defense's points the defense attorney raises in
2 his closing arguments.

3 As I explained earlier, the reason that the State gets
4 to start and gets to end is because it does have the burden of
5 proving beyond a reasonable doubt each of the elements that I've
6 just gone through as to each of the offenses that the defendant
7 is charged with. And so the State goes first, and then
8 concludes it.

9 Now, as we go into these closing arguments, I want to
10 emphasize again that what the attorneys tell you in these
11 closing arguments is not evidence. What is the evidence in the
12 case is the testimony from the witnesses and the exhibits that
13 have been introduced. And it's your memory that controls as to
14 what is the evidence in the case.

15 If you -- if one of the attorneys says, you know,
16 witness so and so said X, Y, and Z, and you remember witness so
17 and so saying A, B, and C, what the attorney says is not
18 evidence. It's your recollection of what the witness says that
19 controls.

20 And so I want to emphasize that point because
21 frequently people will get confused as to what the attorneys
22 say. Well, whatever the attorneys say, it's intended to help
23 you and I have no doubt that, you know, in good faith the
24 attorneys, you know, remember the evidence the way they remember
25 it, but it's how you guys remember it that controls.

1 All right. We'll be pleased to hear from the State.

2 MS. CRAGGS: Thank you, Your Honor.

3 STATE'S CLOSING ARGUMENT

4 MS. CRAGGS: What could you sacrifice for me like I'm
5 sacrificing for you? This is what the defendant, Mr. Harris,
6 said to Nicole Dotson over the phone calls that you heard. Like
7 His Honor said, you remember the evidence as you heard it. You
8 can go back and listen to those phone calls yourself.

9 He said this to her after he punched her, kicked her,
10 strangled her, put a gun to her head, put a gun in her mouth,
11 and kidnapped her. And this epitomizes the manipulation between
12 these two individuals that you saw for yourself when she
13 testified, that you heard on those phone calls.

14 Now, ladies and gentlemen, this isn't a case of
15 whodunnit. We know that it was Mr. Harris. He admits that he
16 punched Nicole Dotson. He just takes issue with the rest of the
17 evidence that the State has proved to you beyond a reasonable
18 doubt.

19 The counts that we've proved are burglary while in
20 possession of a firearm, first degree kidnapping with use of a
21 deadly weapon resulting in substantial bodily harm, assault with
22 a deadly weapon, battery with use of a deadly weapon
23 constituting domestic violence, battery constituting domestic
24 violence strangulation, resulting in substantial bodily harm,
25 preventing or dissuading witness or victim from reporting crime

1 or commencing prosecution, and carrying concealed firearm or
2 other deadly weapon.

3 Now, as the Judge said, the purpose of this discussion
4 is I'm going to talk about some of the law that you were read,
5 and I'm going to talk about the evidence that we presented
6 through the testimony and the other evidence that you've seen,
7 and how that evidence applies to the law, and how we have proven
8 each and every one of these counts beyond a reasonable doubt.

9 The big question is for a lot of these counts, because
10 a lot of them have a deadly weapon involved, how do we know that
11 the defendant had a firearm? So first of all, a firearm is a
12 deadly weapon. That's in your instructions. The State does not
13 have to produce the deadly weapon at trial to prove that it was
14 used in the commission of a crime.

15 Now, why is that? Because a lot of times when a
16 deadly weapon is used in the commission of a crime, the
17 individual who used it takes off with it, just like in this
18 case. Mr. Harris left Ms. Dotson's apartment, and he took the
19 firearm with him.

20 Now, the Judge also talked about direct and
21 circumstantial evidence. Direct evidence is eyewitness
22 testimony. So, for example, the evidence that you heard
23 regarding what the officer saw, what Ms. Dotson saw. And then
24 there's circumstantial evidence, proof of a chain of facts and
25 circumstances which tend to show whether the defendant is guilty

1 or not guilty. And the law makes no distinction between the
2 weight to be given to either, so they're both very important and
3 you can consider both types of evidence equally.

4 So how do we know the defendant had a firearm? He's
5 arrested a week later. And, ladies and gentlemen, this would be
6 circumstantial evidence, a chain of facts that go to show
7 reasonable inference that the defendant had a firearm that day.
8 Arrested a week later using the silver Honda Accord at the time.

9 The envelope in the car with his name on it showed a
10 possessory interest in the vehicle, inside the car are different
11 types of ammo and magazines, which go to firearms. Other family
12 members use the car, but you heard from Shelia Towns when she
13 actually testified yesterday. And she said to her knowledge
14 that the other family members don't own firearms.

15 And he's seen fleeing the scene in the same vehicle.
16 Nicole tells Officer Ferron that that's the defendant's car,
17 that he just left in that silver Honda. I don't think my volume
18 is working.

19 (Body camera video played)

20 MS. CRAGGS: Now, you also have the body camera with
21 you in the back, as well, when you go to deliberate. You can
22 listen to that and watch that all for yourselves, but I just cut
23 out a few clips that I think are important. This is Officer
24 Ferron. You can actually hear him saying I got the license
25 plate. And it's the same license plate that's on that vehicle

1 where that ammunition is found and those magazines are found.
2 There is some of just the magazines and ammunition. You'll have
3 all the photos, as well.

4 Now, how else do we know that he had a firearm? Well,
5 Nicole tells Officer Ferron that he had a firearm. She tells
6 Officer Bianco. She writes it in her voluntary statement. She
7 tells Detective Carey in her recorded statement. She tells the
8 paramedics when no police officer is around that he did, in
9 fact, have a firearm.

10 (Body camera video played)

11 MS. CRAGGS: Now, I would encourage you to go back and
12 watch that body camera because I know it can be a little bit
13 hard to hear.

14 (Body camera video played)

15 MS. CRAGGS: Now, as you know, ladies and gentlemen,
16 this body camera was taken directly after the incident occurred.
17 This is the second officer she's telling that he put the gun in
18 her mouth and actually describing what it looked like.

19 (Body camera video played)

20 MS. CRAGGS: Now, the defense is positive that perhaps
21 it was a hairbrush and that she got confused. Go back and watch
22 that body camera, listen to how she describes it, look at how
23 she cocks that gun back. There's no way that she was confused
24 as to whether or not it was a gun or whether or not it was a
25 hairbrush.

1 Now, additionally, as I stated, she tells the
2 paramedics when no officers are around that there is a gun
3 involved. And you'll have those medical records that you can
4 look at, as well. Hit in the head with the end of a pistol a
5 few times. Her boyfriend assaulted her with his fist and a gun.
6 Two separate pages in those medical records.

7 So our first count is burglary with possession of a
8 firearm. So what's burglary? A person who enters a structure,
9 and when he enters, he has the intent to commit assault and/or
10 battery and/or a felony. Now, how do you determine what
11 somebody's intent is? Because a lot of the times they don't
12 just announced it for everybody to hear.

13 So similar to circumstantial evidence, it's shown by
14 facts and circumstances, so you look at the facts and
15 circumstances surrounding what an individual did and draw a
16 reasonable inference from that.

17 (Body camera video played)

18 MS. CRAGGS: Now, this is where Nicole was telling
19 Officer Ferron that the defendant does not live in her home. He
20 did not have an unqualified right to be in Nicole's home that
21 night. He occasionally stayed there. They were dating for many
22 years, that makes sense. She told him not to come over that
23 night, however, because he didn't have an unqualified right to
24 be there. He's not on the lease, he doesn't get mail there. He
25 doesn't get to come over if she doesn't want him to come over.

1 Detectives didn't find evidence that a male was living
2 there, and he only had a few minutes to gather up all of his
3 things. So I think we figured out that there was about eight
4 minutes between when the 911 call comes out and when the first
5 officer arrives. So she didn't call the police. Somebody else
6 heard her yelling help.

7 So within the time that somebody else calls 911 and
8 the time when he hears the sirens and leaves, he'd have to
9 gather up all of his things at that point and leave the
10 apartment. You can see in the pictures, you heard from
11 Detective Carey that there was nothing in that house that made
12 him believe a male was living there.

13 So how do we determine what Mr. Harris's intent was
14 when he went over to Nicole's house that night? How do you make
15 that determination without him telling us? Well, they're
16 fighting on the phone before he even gets there. She tells him
17 not to come over. He's laying on the bed when she arrives. He
18 has a firearm, and they start to fight immediately. She tells
19 him to get out, he punches her within minutes of her arrival.

20 So, ladies and gentlemen, they're fighting, they're
21 yelling at each other, she says don't come over, he shows up
22 with a gun, and then starts fighting with her immediately and
23 punches her. His intent, ladies and gentlemen, was to go into
24 that house and either assault or batter Ms. Dotson. So burglary
25 in possession of a firearm is a burglary, possession of a

1 firearm at some point during the burglary.

2 And this is what your verdict form will look like when
3 you have a chance to go back and deliberate. The defendant is
4 guilty of burglary while in possession of a firearm.

5 Count 2, first degree kidnapping with use of a deadly
6 weapon resulting in substantial bodily harm. This one is a
7 little bit more complicated. So kidnapping, a person who
8 willfully seizes, confines, inveigles, so tricks, essentially,
9 entices, decoys, abducts, conceals, kidnaps, or carries away any
10 person by any means whatsoever with the intent to hold or
11 detain, or who holds or detains the person for the purpose of
12 inflicting substantial bodily harm.

13 And then we also have that he used a deadly weapon, so
14 that firearm we've already talked about, and that substantial
15 bodily harm results. No specific distance is required for a
16 kidnapping under the law. And how did the defendant kidnap
17 Nicole? Well, there are two different ways.

18 He forced her into the bathroom at gunpoint. He moved
19 her from the living room to the bathroom at gunpoint and/or he
20 didn't allow her to leave that apartment. He confined her in
21 that apartment. From the minute she gets there and tells him
22 that she wants him to leave and he punches her and he won't let
23 her leave. And he tells her that he's going to kill her if she
24 yells for help, and he points the gun at her. So these two
25 different ways.

1 Now, if you find the defendant guilty of first degree
2 kidnapping, the theory by which you find the defendant guilty
3 may not be unanimous. So some of you think that the first way
4 is how it happened, and some of you think that the second way is
5 how it happened. As long as you all think it happened, you can
6 find him guilty of first degree kidnapping.

7 (Body camera video played)

8 MS. CRAGGS: Like I said, go back and take a look at
9 this for yourself, but it sounds to me like Officer Ferron is
10 saying did he hold you against your will, and she said yes.

11 So what did Nicole tell the officers? That she
12 screamed for help, that he said he'd kill her if she tried to
13 leave, that he forced her into the bathroom at gunpoint, he beat
14 her throughout her time in the apartment, her hands were sore
15 from blocking his blows, and he kept the gun trained on her and
16 he said he'll blow her brains out if she tries to leave or calls
17 the police.

18 Now, I understand that Nicole got on the stand and
19 told you something else, and we'll talk about that, too. But,
20 ladies and gentlemen, this is what she says the night that this
21 happens to multiple individuals, and on the body cam that you
22 can see for yourselves.

23 Now, another piece of this whole kidnapping situation
24 is the kidnapping incident that's the battery. So you have to
25 determine that the kidnapping was not incidental to the battery

1 in order to find him guilty of first degree kidnapping. So any
2 incidental movement of the victim substantially increased the
3 harm to the victim over and above that necessarily present in
4 the battery.

5 So essentially the movement that he made Nicole do
6 increased the harm to her substantially. There's a couple
7 different ways that this can happen, and they're all going to be
8 listed in your jury instructions, but I won't go over all of
9 them. But any incidental movement of the victim substantially
10 exceeded that required to complete the battery.

11 So he wanted to batter Nicole, he battered Nicole.
12 No. When he moved her and went to all of these different rooms
13 and continued to do so. That's why it's not incidental to the
14 battery. So, for example, here they are, they're in the master
15 bedroom where they start. They go out into the living, he puts
16 the gun on her, and then she goes into the bathroom because she
17 feels scared because he has that deadly weapon on her.

18 It's not incidental because this movement
19 substantially increased Nicole's risk of harm. First of all,
20 somebody heard her yelling and actually called 911 at some
21 point. He moves her back into a room where she is in a little
22 side room of the apartment, and you can look at that actual map
23 that the defense introduced, where there are not windows and
24 where there's not a door to get out. So it's farther from the
25 front door, it's farther from getting help, and it's farther

1 from her phone, which is plugged in next to that master bedroom
2 bed.

3 Now, the movement also substantially exceeded what was
4 required to complete the battery. He strangled her in her
5 bedroom, he punched her in her bedroom, he kicked her in her
6 bedroom. He didn't need any further movement from that initial
7 battery. But instead they're out in the living room, they're
8 yelling at each other, he's pointing a gun at her, he's hitting
9 her over the head with the gun, he's punching her on the head.
10 It goes on and on and on throughout this entire time.

11 Now, substantial bodily harm. The good thing is, a
12 lot of these things repeat, so we won't have to go over them
13 again and again. Substantial bodily harm is a substantial risk
14 of death or prolonged physical pain. So the purpose of the
15 kidnapping has to be for risk of death or -- I'm sorry, for
16 substantial bodily harm, and that's what that means.

17 So how can we see that the defendant is attempting to
18 cause substantial bodily harm throughout the kidnapping? He's
19 kicking her about the body, he's punching her about the head,
20 he's hitting her on the head with the gun, and her hands hurt
21 from blocking his many blows from the beginning of the time when
22 he punches her to the very end when he finally leaves because
23 there are sirens that are going off.

24 Now, substantial bodily harm actually resulted, as
25 well. He didn't just intend for it to result, but it actually

1 happened because she had pain for one month after this occurred,
2 prolonged physical pain. It didn't heal for four months. It
3 was a process, as she told us. She had to have a procedure to
4 remove blood clots that were a direct result of the defendant's
5 battering her. She has to go back for checkups every six
6 months. Ladies and gentlemen, this is prolonged physical pain.
7 She had to have a procedure. This is substantial.

8 So first degree kidnapping with use of a deadly weapon
9 resulting in substantial bodily harm. The defendant willfully
10 seized and/or confined Nicole Dotson with the intent to hold or
11 detain her for the purpose of inflicting that substantial bodily
12 harm, the continual beating, using a deadly weapon, and
13 substantial bodily harm resulted. So, therefore, the defendant
14 is guilty of first degree kidnapping with use of a deadly weapon
15 resulting in substantial bodily harm.

16 So assault with a deadly weapon. This is Count 3.
17 This means that you place another person in reasonable
18 apprehension of immediate bodily harm, did so intentionally, and
19 used a deadly weapon. Well, we know a firearm is a deadly
20 weapon.

21 (Body camera video played)

22 MS. CRAGGS: Ladies and gentlemen, she says it right
23 there. He pointed the gun at her, he put it in her mouth, he
24 used a deadly weapon, and she was in a reasonable fear that she
25 was going to get substantially harmed or killed. The defendant

1 is guilty of assault with a deadly weapon, Count 3.

2 Count 4, battery with use of a deadly weapon
3 constituting domestic violence. So what's battery? We haven't
4 covered that yet. Force or violence on another person that's
5 not wanted. It's pretty simple. And it can be slight touching,
6 as long as it's not wanted touching. So we have battery, and
7 you know the deadly weapon is the firearm, so domestic violence.

8 There's all these different ways that you can be in a
9 domestic relationship with somebody, but the one we have here is
10 a dating relationship. We know that. She got up here and told
11 you that they're still in a relationship. The defendant shoved
12 the firearm inside of Nicole's mouth. We've seen the body cam
13 that says that. The defendant struck her on the head with the
14 firearm. She tells multiple officers this and it's in multiple
15 medical records.

16 (Body camera video played)

17 MS. CRAGGS: Here you go again with the medical
18 records right here that say the end of the pistol a few times,
19 he hit her on the head with it. So you'll see that it's pled
20 both of those ways, that, one, he put the pistol in her mouth,
21 and, two, he hit her over the head with it. So either of those
22 ways. He's guilty of battery with use of a deadly weapon
23 constituting domestic violence.

24 Count 5 is the battery constituting domestic violence
25 strangulation. You already know what battery domestic violence

1 is. Strangulation, what does that mean under the law?
2 Intentionally impeding the normal breathing or circulation of
3 the blood by applying pressure on the throat or neck or by
4 blocking the nose or mouth of another person in a manner that
5 creates a risk of death or of substantial bodily harm.

6 So you heard from Dr. Gavin when she testified that if
7 you have continual pressure on either -- on those arteries or on
8 that windpipe for 10 to 15 seconds, you could be unconscious.
9 There's not enough oxygen to your brain. Sorry, I keep clicking
10 this. You can have death in two to four minutes. That's it.
11 10 seconds of continual pressure and you're unconscious.

12 She also told you there may not be any marks or
13 bruising on the body. It really depends on how it was done and
14 the person. She told you there was no neck CT scan done, so it
15 wouldn't show up on the medical records. And you can look
16 through those. There was a head CT scan done, not the neck.

17 There was one thing that made Dr. Gavin, or at least
18 Dr. Gavin told us that this is a symptom of strangulation, and
19 that was incontinence. So essentially strangled so much that
20 you go to the bathroom on yourself. And in the ambulance
21 records, it shows that that happened to Ms. Dotson.

22 Now, Nicole tells the detectives that he strangled
23 her, that he applied pressure, that she couldn't breathe, that
24 she thought she was going to pass out, and she complained of
25 neck pain to the CSA and to the officers. Now, there wasn't any

1 sign of that on the photos, but, as Dr. Gavin said, there's not
2 always a sign of that.

3 So strangulation, what she told the detectives and
4 what we can see is that she -- that the defendant intentionally
5 impeded her normal breathing, he applied pressure. And there's
6 obviously risk of death or substantial bodily harm because in 10
7 to 15 seconds you can be unconscious. The defendant is guilty
8 of battery constituting domestic violence strangulation, Count
9 5.

10 Count 6, battery resulting in substantial bodily harm
11 constituting domestic violence. So we basically covered all of
12 this at this point. The defendant punched and hit Nicole with
13 whom he was in a dating relationship causing prolonged pain. He
14 hit her in the eye. It took her a month for the pain to go
15 away. They were dating, battery domestic violence causing
16 substantial bodily harm.

17 And this is just a few snippets from the medical
18 records that talk about what they found, a facial contusion, a
19 head injury, etcetera. The defendant is guilty of battery
20 resulting in substantial bodily harm constituting domestic
21 violence.

22 Now, Count 7, that's preventing or dissuading a
23 witness or victim from reporting a crime or commencing
24 prosecution. Now, that essentially means that a person who,
25 through intimidation or threats, hinders or delays a victim from

1 contacting the police, prosecutors, or causing the arrest of the
2 person.

3 So this is what we've heard that the defendant said to
4 Nicole during this time. Bitch, I'm going to kill you. I'm
5 going to blow your brains out. If you call the police, I will
6 kill you. Would come back and kill her if she called the
7 police.

8 And she didn't call the police. Somebody else
9 actually called the police. You heard, she had to be arrested
10 to even come to the preliminary hearing and testify. You heard
11 about that. You heard that she was given an opportunity to come
12 testify on her own. She didn't show up, and so the State took
13 action for her safety. And she didn't want to testify at trial.

14 Obviously, ladies and gentlemen, the comments that the
15 defendant made to her that night, that he would kill her if she
16 called the police, show that he's guilty of preventing or
17 dissuading the witness or victim from reporting the crime or
18 commencing prosecution.

19 Count 8 is carrying a concealed firearm. That's
20 pretty self-explanatory. Conceal upon your person a revolver,
21 firearm, pistol, and it's not discernible by ordinary
22 observation, so you can't see it. Nicole didn't see the firearm
23 when she was first talking to the defendant and she believes
24 that he got it out of his pants pocket later. Guilty of
25 carrying concealed firearm or other deadly weapon.

1 And then this other instruction, it's a flight
2 instruction. And essentially it just says that you believe that
3 we've proved beyond a reasonable doubt that the defendant fled
4 the scene, then you can take that into consideration as
5 consciousness of guilt, but that it's up to you to determine the
6 weight that you want to give that flight.

7 And in this case, ladies and gentlemen, he heard the
8 sirens, he grabbed his stuff, and he fled the scene, and they
9 found him a week later. Consciousness of guilt. So that's
10 essentially the elements of the charges that the State has
11 proved, and the facts that we've proved to meet those elements
12 beyond a reasonable doubt.

13 But, obviously, there's a lot more going on in this
14 case than in other cases or what you might expect because Nicole
15 came in here and told a different story and told you that she
16 was still in love with the defendant, and told you that she
17 didn't really want to see anything happen to him because, ladies
18 and gentlemen, they're in that type of relationship.

19 And those phone calls that you listened to for a good
20 30 to 40 minutes yesterday, that embodies what's going on here,
21 and that tells the story of these two and why Nicole was
22 terrified that night of Mr. Harris and why she came in here with
23 a completely different story. And it's because she's in love
24 with him and she's trying to help him and she's forgiven him.
25 And so now she came in here and she said something completely

1 different.

2 And that's why it's so important in this case to use
3 your common sense. And there's an instruction that we give you
4 that tells you that you can do that, that we want you to bring
5 your experiences and things that have happened in your life, and
6 we want you to use those and then draw reasonable inferences
7 from them. We don't want you to check everything you know about
8 life at the door. And like I said, this is a very important
9 instruction for this case in particular because it is different
10 than what you've probably seen on TV. And this instruction is
11 important because of what I just talked about.

12 So if a witness fails to remember a previous statement
13 made by that witness, that's a denial of that prior statement.
14 And, essentially, what it means is if she failed to remember,
15 she told you she couldn't remember, and then a different witness
16 like the detective or the officer came in and told you what she
17 initially said that night, the law tells you that you can
18 consider that initial statement, what she's saying on the body
19 cam, what she said to the officers. You can consider that
20 substantively and also for impeachment purposes.

21 And, ladies and gentlemen, the State submits to you
22 what she said that night, what she said over and over again to
23 those officers on that body cam minutes after it happened to
24 paramedics, that's the truth and it should be considered by you
25 substantively. Because the defendant, and along with the

1 defendant, Ms. Dotson, now he's admitting what he can't deny and
2 he's denying what he can't admit.

3 He says he punched her. Why does he say that? Well,
4 because there's a lot of pictures and she clearly, clearly had a
5 swollen left eye. He can't deny that. He doesn't deny, and
6 neither does Ms. Dotson, the fact that he picked up a soda can
7 and called her names and poured it all over because, again, we
8 have the soda bottle and we have the corroborating evidence.
9 You can see. When you look at the photos yourself, you'll be
10 able to see it clear, the stains from that lemonade all over
11 that bathroom floor and all over that toilet. Because he
12 figured it out what can he admit to and what can he deny, and
13 that's what he's done.

14 And that's the story that Nicole is telling, which is
15 why I think the phone calls are so important. And I will not
16 make you listen to any of it or go through it all, but there are
17 some things that are repeated over and over and over again. And
18 I would encourage you, this is my attempt at transcribing what I
19 heard, go listen to it for yourselves, but it's very telling.

20 These are some of the things that the defendant says
21 to Ms. Dotson after this all occurs and before she testifies in
22 trial for you. Fight for me, as I'm fighting for you. Is your
23 heart with me? I just need to see if you're on the same page
24 and if you're willing to fight for me as I'm willing to fight
25 for you and go through hell just to talk to you. I want to

1 check with you to make sure we're on the same page.

2 I would submit to you, ladies and gentlemen, that that
3 page is the story that they came up with because he can't deny
4 the punch to the face. And then, again, the same call, but I
5 just wanted to make sure you was on the same page. Then he says
6 that's why I let you know before the last phone call, I let you
7 know certain things. If your love for me is the same as my love
8 for you, you'll be spoken -- you will be speaking for the person
9 that you love.

10 Now, I believe it was Ms. Sudano who asked Nicole if
11 they had written letters, and I think she said no initially,
12 then maybe said like one. If you listen to these phone calls,
13 they're talking about letters over and over again. And here it
14 says before the last phone call I let you know certain things.
15 Use your common sense, ladies and gentlemen. What does that
16 mean?

17 I just want to know if the love is the same. I just
18 want to hear, I need to know, I need to see, I need the support
19 like if we're already married. If you listen to those calls in
20 chronological order, he's talking about getting her what she's
21 always wanted, and she talks about something she's wanted for
22 seven years. They're talking about getting married.

23 The defendant says, call back because I want you to
24 understand I love you and I want you to understand that I want
25 you to be quiet about things. Nicole, I get that part, I get

1 it. And I'd submit to you, ladies and gentlemen, he never says
2 this is what I want you to say, or we should change the story to
3 this, but that's because he knows that they're recorded. So
4 he's speaking like this instead, and that's why I think it's
5 important to look at the same words and the same exchanges that
6 are being used over and over and over again.

7 Some things Nicole says are interesting, as well.
8 She's not quite as good at hiding what they're talking about.
9 I'm willing to do what will help the situation, as well, I'm
10 willing to do that, I love you, I'll be thinking to myself I
11 want to help and do whatever it takes, it's just so serious, and
12 then like I'm hoping what you're saying is true, how am I going
13 to say anything, like what do I do?

14 Asking him like what do I say, what do I do? And a
15 lot of times when she does this and asks him direct questions,
16 he responds with, no, no, just the truth, I just want you to
17 prove your love to me, just the truth. Because she's going a
18 little too far in her questions. I know, I get it, I know now
19 what I need to do and that's fine.

20 And also interesting, ladies and gentlemen, he talks
21 about in the first call how he wants to fight as hard for me as
22 I'm fighting for you because some things me, you, and God only
23 know. And he also says, I just want to go through this because,
24 like I said, I want to see if your love is deeply for me as my
25 love is for you, and only two people know other things besides

1 you, two people know other from this what I'm trying to tell
2 you, only two people know.

3 Use your common sense, ladies and gentlemen. What's
4 he talking about? He thinks only two people know what really
5 happened that night, and now they're back in love and now he's
6 promised to marry her, and so it's all going to be fine. But,
7 ladies and gentlemen, more than two people know what really
8 happened.

9 You all know what really happened based on all the
10 evidence that we've presented to you, based on the body cam,
11 what the officers that told you, and really thinking about this
12 relationship, listening to those phone calls, and the
13 manipulation that's going on here. Ladies and gentlemen, the
14 defendant is guilty of Counts 1, I believe it's through 8.
15 We've proven that to you beyond a reasonable doubt, and we ask
16 you to find him so. Thank you.

17 THE COURT: Thank you, counsel.

18 All right. How is everybody in terms of bathrooms?
19 Can we start the defense? We're going to have to break today at
20 4:00. I'd like to get started with the defense closing.
21 Everybody good? Okay.

22 All right. Let's go ahead and we'll be pleased to
23 hear from the defense. You can move that podium, if you'd like.
24 Just be careful with the wires so we don't --

25 ///

1 DEFENSE CLOSING ARGUMENT

2 MR. SHEETS: Definitive statements, that what you hear
3 from the State. They're all definitive. This did happen, this
4 did happen this way, everybody knows what happened because of
5 the evidence we've presented to you. When the real fact is only
6 two people actually know what happened that night.

7 Now, a verdict may never be influenced by sympathy,
8 prejudice, or public opinion. That a very important
9 instruction. My client is not sitting here today denying that
10 he committed a domestic battery. He's not denying that she was
11 in fear. Domestic battery is never acceptable, and it makes
12 everybody angry that it even occurs.

13 The fact that he put his hands on her is infuriating,
14 but we have a job to do. You have a job to do. You have to
15 separate that emotion in able to compartmentalize the evidence,
16 and able to look at exactly what was presented to you and
17 determine if beyond a reasonable doubt that all of these other
18 things happened. That's what's important. You have to make
19 that separation. You have to make that distinction.

20 The State stands here and asks you to believe only one
21 set of statements from that night, and they provide to you the
22 idea or the thought that there's no other reason that she would
23 give a story that night that was untrue. I would pose to you
24 that there are plenty of reasons and plenty of evidence that
25 show that maybe some of the things she told officers that night

1 were inaccurate.

2 Was she in fear? You're darn right she was in fear.
3 I don't think she denied that on the witness stand. It scared
4 her, it shocked her, it disappointed her. Because you know
5 what? If you love somebody and they punch you in the face, they
6 swell your eye shut, they pour lemonade over you and they demean
7 you, you're going to be incredibly heartbroken. You're going to
8 be upset.

9 The testimony that we've heard, one of only a couple
10 items that have remained the same throughout this trial is that
11 she was in fear, that he hit her, and that she thought he was
12 cheating. That's one thing that was consistent.

13 So let's look at emotions and what goes through a
14 person. You're angry somebody hits you. You're angry because
15 you think somebody has been cheating on you. You're in fear
16 because he scared you when he hit you. You did not think that
17 he was capable of such a thing.

18 What are you going to -- are you going to want him to
19 walk away? No, you're not going to want him to walk away, so
20 you're going to tell the police things that may somewhat be
21 aggravated in the heat of the moment. That is a real,
22 legitimate possibility. The State has asked you to completely
23 disregard that as a possibility.

24 The State has made it a point to show you body
25 cameras. You will have the opportunity to watch those. But

1 let's look at what the officer says. He tells her exactly what
2 to say. Curiously enough, the first officer, Ferron, that
3 interviews her, the State doesn't show you a body camera of
4 that.

5 We've got one officer who claims to be Officer
6 Ferron's partner talking to her, making statements to you, the
7 jury, that she said certain things and they were all in response
8 to direct questions. You don't hear that on video. The one
9 video we do have has an officer telling her exactly what to say.
10 I pose that that is a valid basis for her saying certain things.

11 We've had an officer tell her what to say. It's his
12 icing on the cake. It's his money maker. Those were his words.
13 She didn't ask what should I say on this statement. He told her
14 what to say. He didn't just hand it to her and say tell me what
15 happened. He said tell me this happened.

16 And, of course, we have no video presented to you of
17 the first interaction with that Officer Ferron, so we have no
18 idea if that same kind of conversation occurred. Go and talk to
19 my partner, tell him these things happened. We don't have that.
20 What we do have is a video prior to a recorded statement telling
21 her exactly what to say, saying things that don't make sense and
22 are contradicted by direct evidence.

23 One, he didn't live there. That's what she tells
24 officer that night. Now, first, the State would have you assume
25 that simply because somebody's name is not on a lease that they

1 certainly didn't have an unqualified right to be there. You've
2 heard no evidence that the law says that's true. You've seen no
3 law that says that's accurate.

4 Listen to the jail calls, the calls that the State
5 tries to use against in him, in the very same respect, directly
6 contradict that very statement. If you listen to those calls,
7 she says I was so hurt when I didn't see you come home. She
8 doesn't know the State is listening. She hasn't planned that
9 out. That's not some kind of strategy.

10 She sat there and testified that he lived there today,
11 she testified that way at the other hearing, that night she said
12 no, but she had just been smacked by him. She didn't want him
13 there, obviously, so she can just assume, and you heard her say
14 it in the body camera, no, he didn't live there.

15 Does he have a key? Yes. If somebody doesn't live
16 there, why are you going to give them a key to your place? And
17 then immediately follow up with an unsolicited statement he's
18 not on the lease. Because you want him out. Heck yeah. It's
19 my name on the lease. I propose that you as the jury use your
20 common sense.

21 Another thing she says that doesn't make a lot of
22 sense. You heard the officer testify here, and it was the
23 detective, that during her recorded statement she indicated that
24 while she was in the bathroom she saw him walking around the
25 living room picking up his belongings. He was doing that the

1 entire time she was in the bathroom. You saw the diagram. You
2 can't see around the wall. So there were statements that did
3 not make sense.

4 In that same recorded statement she said she didn't
5 know if it was a real real gun. And you heard the detective
6 solidify that because she didn't know much about -- about guns.
7 On the stand she said there was not a gun. So we have testimony
8 which contradicts statements to the police.

9 I pose that this testimony here, we have to raise our
10 hand, we have to be sworn under penalty of perjury. She
11 testified at the preliminary hearing and testified here
12 regarding a firearm. Here she said there was no firearm, and
13 she said she's 100 percent sure that there was never a firearm
14 put in her mouth. As much as she can't remember certain things,
15 that's one thing she was certain of.

16 Now, let's look at the evidence. The sole basis for
17 the State claiming this evidence exists is that she made these
18 statements. Look at the video. Feel bad for how afraid she is.
19 We all do feel bad for how afraid she is and we feel bad for
20 what happened. It was wrong. But that can't play into your
21 verdict. That can't factor into your decision. That's
22 sympathy. The instructions are clear. And as much as it's hard
23 to do that, it's what your duty is.

24 So let's look at the evidence. The medical records.
25 No injuries to the neck. The State's expert, the doctor,

1 inconclusive. Their own witness says strangulation is
2 inconclusive. The only thing she sees in the medical records
3 which reflects a symptom or a result of a potential
4 strangulation is incontinence, which also comes from fear.

5 I pose it is just as likely that she was legitimately
6 and honestly afraid and may have become incontinent, or that the
7 doctors saw the wet pants and concluded incontinence because
8 nowhere in their medical records does it discuss the fact that
9 she had lemonade poured on top of her. There are a great
10 variety of things.

11 Now, the charging document which you see in your
12 instructions, it's Instruction No. 3, talks about what he
13 allegedly did. And it's incredibly important that we use that
14 document with that instruction as a basis for finding -- or
15 coming to your verdict.

16 As we look at Instruction No. 3, looking to Count 6,
17 battery resulting in substantial harm constituting domestic
18 violence substantial bodily harm, by punching and/or hitting
19 and/or kicking said Nicole Dotson about the head and/or the
20 body. Take a look at the medical records. The only injuries
21 they see is on that face and the eye. You have to look at that
22 document when you're convicting or acquitting, hopefully
23 acquitting, of these charges.

24 Now, let's go to -- let's -- let's address the
25 burglary charge. You've been instructed as to what burglary is.

1 Looking at a person who by day or night enters any house, room,
2 apartment or other building with the intent to commit assault,
3 battery, or any felony is guilty of a burglary. Intent. That's
4 what this is about. The gist of the crime of burglary is the
5 unlawful entry with criminal intent. The unlawful entry.

6 She has testified, Ms. Dotson, that he was allowed to
7 be there. She gave him a key. On a jail call she has made it
8 clear that that was home, you were coming home. The State would
9 like to make you think that he doesn't live there. However, in
10 their own closing argument they indicate he grabbed his stuff
11 before he fled the scene.

12 What do you see when the officers go in there? Two
13 open closets, one of them with suitcases and bags, and the other
14 with clothes. You see a hairbrush on the floor. Maybe a
15 personal belonging, a personal possession because he was leaving
16 with his personal possessions because they just had a fight,
17 very much could have been a breakup. You can take a look at
18 those photographs.

19 Take a close look at that picture next to the bed, a
20 bed that has two sets of pillows on it, I might add. Take a
21 close look at that picture. Take a good look at my client
22 before you do. That's him in that picture because it was home.
23 Because that was the relationship. In fact, she told officers
24 that she thought he was cheating, and one of the reasons she
25 told him not to come around anymore is because he won't come

1 home. It's one of the things she told the officer.

2 Simply saying don't come around anymore doesn't mean
3 it wasn't his home. And there's been no instruction on the law
4 that tells you that he doesn't have that right to be there when
5 he's given a key and it's his home, regardless of any lease. A
6 person with an absolute unconditional right to enter a structure
7 cannot burglarize that structure. An unlawful entry. One,
8 that's point number one with burglar.

9 Two, intent. She did not testify, nor did she tell
10 the police department that as soon as she walked in he attacked
11 her. It didn't happen. In fact all of the statements she said
12 that he was lying on the bed. She testified and talked a little
13 more in detail about it on the stand than she told officers, but
14 she said they began to talk at a level headed volume. It then
15 elevated and became worse, at which point he hit her.

16 There is, I would pose, enough reasonable doubt there
17 as to his intent what he entered. Another thing, we don't know
18 when he entered. We don't know how long he had been there.
19 There wasn't a claim that he pulled the gun out when she first
20 came in. No. Tempers flared. He snapped and did something
21 wrong.

22 Snapping after you get there, if you concluded the
23 entry was unlawful, snapping after he gets there isn't
24 sufficient. He had to go there for that purpose, specific
25 intent. That's an instruction you guys are given. Specific

1 intent requires more than just general intent.

2 A specific intent -- to establish a specific intent,
3 they must prove beyond a reasonable doubt that he knowingly did
4 the act to which the law forbids, purposefully intending to
5 violate that law. There has been, I would put forth, nothing to
6 show what his intent was when he entered that, and all of his
7 actions after the fact, as according to Ms. Dotson, show
8 otherwise.

9 First degree kidnapping with use of a deadly weapon.
10 The State would have you believe that he forced her into this
11 bathroom because she said it happened to the police. We have
12 heard a different story now. When she testified under oath and
13 under penalty of perjury, after she had a chance to not be so
14 upset at him because he had hit her wrongly, she tells the
15 truth. I asked her more than once is what you've told to the
16 jury today the truth? And she said yes.

17 So let's talk about the truth. She tells officers,
18 Ms. Dotson tells officers, that she was forced into the
19 bathroom. She was forced to crawl into the bathroom. We had
20 the CSA and a detective walk that scene. The carpet is
21 undisturbed. There are no trails, there are no tracks.

22 Somebody who is crawling on a floor is going to leave
23 trails and tracks. Somebody who is being drug along the floor
24 is going leave trails and tracks. The testimony was that there
25 was nothing don't to supposedly cover up or conceal anything of

1 the sort, and there was nothing in any statements to the police
2 to that effect. So I would pose that there is definitely an
3 absolutely reasonable doubt as to whether a kidnapping occurred.

4 Now, let's look at the testimony of Ms. Dotson
5 herself. I walked into the bathroom because I felt safe. Not
6 he told me to go to the bathroom, not he blocked the doorway.
7 She said he was in front of it when they were arguing, but that
8 she wasn't trying to leave at that time. She actually testified
9 that she didn't try to leave. She went in there.

10 And I pose that that's a very common sense thing.
11 You've been punched by your boyfriend, your heart broken, you
12 want to segregate yourself. You want to be alone. You want to
13 cry. It's awful and reasonable that that's where she would go.
14 Her testimony makes sense with regards to that today.

15 And then when you look at whatever evidence outside
16 her statements that are available and the statements, they take
17 this one statement and disregard the rest, but remember it's
18 their burden beyond a reasonable doubt, so you have to look at
19 everything. That's what your instructions say. No drag marks
20 on the carpet. None. No trails, no tracks. It's hard to prove
21 a negative. It didn't happen.

22 But in this case at least there's something to refer
23 to, the specific statement to the police that she was dragged on
24 the carpet or that she crawled on the carpet and physical
25 evidence to the contrary. That's reasonable doubt. And

1 statements to the contrary under penalty of perjury. It must be
2 done for the purposes of causing substantial bodily harm.

3 The State would have you believe that she got punched
4 and strangled in the living room or the bedroom and no harm had
5 been done. They say that. Her eye had been swelling. They
6 then tell her to go -- he then supposedly tells her to go to the
7 bathroom after that. We have no evidence that anything that was
8 done in the bathroom after that point would have caused
9 substantial bodily harm. They haven't made that distinction,
10 that separation.

11 And there's an instruction that you were told that in
12 order to find somebody guilty of kidnapping that the substantial
13 bodily harm need not occur, and that's correct in kidnapping.
14 But when you're charging somebody with kidnapping resulting in
15 substantial bodily harm, you have to prove beyond a reasonable
16 doubt that that substantial bodily harm resulted directly from
17 that kidnapping resulting in substantial bodily harm. That's
18 what it says.

19 Now, let's talk about the deadly weapon and Count 3,
20 assault with a deadly weapon. State says she -- she did this,
21 she said it was a gun. And you're right, she did say that night
22 that it was a gun. Today she says I'm not sure it was a gun.
23 Out there on the scene she called it a gun, but when she was
24 giving a recorded statement to the officer, the detective, she
25 was asked real real gun? I don't -- I don't know if it was a

1 real real gun. I haven't seen a bunch of guns. She doesn't
2 know.

3 The State has an obligation to prove that it was a
4 firearm. They have nothing from that night to prove that it was
5 a firearm for a couple of different reasons. First, while it is
6 not dispositive, the fact that a firearm wasn't found can be
7 considered as one of many things when coming to your conclusion.

8 One, there was no firearm found, but, two, let's take
9 a look at -- at whether there's been any evidence that -- that
10 even if he did pull an object out that it was actually a
11 machine, or as the instruction defines it, one that was capable
12 through explosion or compressed air from -- from firing a
13 projectile. There's been no testimony about that.

14 They had the opportunity to ask Ms. Dotson, listen,
15 when you said it was gun, why did you think it was a gun? They
16 didn't do it. They had an opportunity to present that
17 information through officers. They did not do it.

18 So even if there were a metallic object that was
19 pulled out, they have done nothing to prove that whatever that
20 object was was, in fact, a firearm other than him -- her calling
21 it a gun that night, which she says on the stand she's not sure
22 it was a gun. They have to prove every single element beyond a
23 reasonable doubt, every single one. And the instructions are
24 crystal clear as to what a firearm is. And they have to prove
25 that beyond a reasonable doubt.

1 In this case she's made it clear, he did not stick a
2 gun in my mouth. The State says, well, she said he did that
3 night, so you should believe it. Look at the evidence.
4 Supposedly, there's a tussle. She testifies there's a tussle.
5 Supposedly he's punching her and he's kicking her and he's
6 beating her and he's angry and he's upset and he's walking
7 around the apartment and he's strangling her. You have no
8 injuries.

9 If all that's going on, you have zero injuries to her
10 lips or her mouth. Both of the medical records and the pictures
11 you saw, if he sticks a gun in her mouth, it's not going to be
12 some light thing. She's going to be resisting that. She's
13 going to be crying, her mouth is going to be closed, he's going
14 to have to open her mouth, he's going to have to force it.
15 Because I doubt she's just going to sit there and go, stick it
16 in.

17 And I know it's such a terrible emotionless way to
18 talk about it, but we have to be somewhat real in the way we
19 talk about this because that's what our duty is today. There
20 are zero injuries to that mouth. The physical evidence is
21 contrary to the thought that a firearm was placed in the mouth.
22 Her testimony that it didn't happen is consistent with that
23 physical evidence.

24 Again, it's hard to prove a negative, but in this case
25 there is physical evidence which indicates that negative, and

1 it's not my client's burden to prove anything. It's the State's
2 burden to prove it all beyond a reasonable doubt, and they
3 haven't don't it. So we have one statement regarding a firearm
4 or a gun, she called it a gun without definition, but we have
5 one statement she gave police regarding a gun that night that's
6 directly refuted by physical evidence.

7 Now, let's talk about assault, placing somebody in
8 reasonable fear or apprehension, a lesser included offense of
9 assault with a deadly weapon. I would submit there is evidence
10 beyond a reasonable doubt that she was in fear. I think
11 everybody can see that. I think everybody heard that. That's a
12 consistent. That's a given. We're not asking for not guilty on
13 Count 3. We're asking for guilty of assault because there's
14 reasonable doubt as to the firearm.

15 Now, Count 4, battery with use of a deadly weapon.
16 We've already talked about this. A firearm, by shoving said
17 firearm into the mouth of said Nicole Dotson and/or striking her
18 with said firearm. No cuts, no bumps, no bruises. She tells
19 officers that night he hit me on the top of my head with a
20 firearm.

21 Detective Carey, you saw him, he sure didn't want to
22 go into it, but he did not feel bumps on the top of her head.
23 First he tells -- he tells the jury that he didn't feel her
24 head, but then he's confronted with other testimony under oath
25 that he didn't feel it. You don't have cuts on the top of the

1 head, you don't have bruising on the top of the head, you don't
2 even have a bump on the top of the head. Again, you have
3 physical evidence that contradicts being hit with what the State
4 purports would be a heavy metal object from somebody who would
5 be supposedly angry enough that they're not just going to
6 lightly tap you.

7 The same goes with any kind of complaint that a
8 firearm is on the cheek. You have zero broken bones, zero cuts,
9 you don't have any small readily identifiable wounds where there
10 would be an impact from a foreign object. All of the evidence
11 that's there is contrary to her being hit with a firearm, either
12 on the top of the head or the side of the face. The physical
13 evidence is to the contrary. Her testimony was to the contrary.

14 And shoving a firearm into the mouth, we've already
15 talked about. The physical evidence is to the contrary. With
16 regards to Count 4, we would be asking the jury to find not
17 guilty, but if the jury -- we're going to be asking the jury to
18 find not guilty, but if they conclude that he -- if you conclude
19 that he did strike her in the mouth, we'd be asking for battery
20 domestic violence on Count 4 only as it pertains to the mouth.
21 And, again, there's physical evidence to the contrary.

22 With regards to Count 5, battery constituting domestic
23 violence strangulation. Lisa Gavin, State's witness, she gave a
24 list of possible issues, or a list of possible symptoms that
25 would show up or could show up as a result. Petechial

1 hemorrhages, abrasions, scratches, redness, swelling, bruising,
2 coughing, lost voice, stroke, damage to the vessels. None of
3 those exist. The medical records clearly show none of those
4 exist.

5 The medical records actually show there's no injury to
6 the neck at all. They say there's no distress. She has a full
7 range of motion and her neck is soft to the touch. They do
8 multiple CT scans. You'll see that in the record. She talks
9 about only looking at one, but all you've got to do is read the
10 records. There's two.

11 And even after looking at those medical records, she
12 sits here and tells you inconclusive. We have a medical expert
13 that is expressing doubt. I would pose to you, ladies and
14 gentlemen of the jury, that inconclusive and reasonable doubt,
15 that inconclusive is reasonable doubt. The State would have you
16 believe it because she said it happened that night. We did not
17 get that testimony from her under oath. And, again, you have a
18 multitude of physical evidence that shows that that just didn't
19 -- didn't happen.

20 THE COURT: Counsel, we're going to need to break now.

21 Ladies and gentlemen, I'm going to excuse you for the
22 weekend. We'll get back together on Monday at 12:00. Again, I
23 apologize for today. I know we killed about an hour and a half,
24 hour and 45 minutes of your time, and I don't like doing that
25 and I apologize. The blame is mine with my schedule, and we

1 needed to take special efforts to make sure that we had the
2 instructions right for everyone in this case.

3 So it's my fault and I take full responsibility. And
4 I hope you give me a little bit of leeway in that regard. But
5 we'll get back together on Monday at 12:00. We'll finish up
6 with defense counsel's closing argument, and we'll hear a
7 rebuttal argument from the State, and then you'll begin to do
8 your deliberations.

9 Until we get back together on Monday, do not talk to
10 each other about the case or about anyone who has anything to do
11 with it until the end of the case when you go to the jury room
12 to decide on your verdict. Do not talk with anyone else about
13 this case or about anyone who has anything to do with it until
14 the trial has ended and you've been discharged as jurors.
15 Anyone else includes members of your family and your friends.
16 You may tell them that you are a juror in a criminal case, but
17 don't tell them anything else about it until after you've been
18 discharged by me.

19 Do not let anyone talk to you about the case or about
20 anyone who has anything to do with it. If someone should try to
21 talk to you, please report it to me immediately by contacting
22 the marshal. Do not read any news stories or articles or listen
23 to any radio or television reports about the case or about
24 anyone who has anything to do with it.

25 Do not visit the scene of any events mentioned during

1 the trial or undertake any investigation or research on your
2 own, experimentation or research on your own. And that would
3 include use of social media to any way discuss the case or the
4 use of the Internet or other reference materials to do any
5 investigation or research. And do not begin to form or express
6 any opinion on any subject connected with this case until it's
7 finally submitted to you.

8 You've been a great jury this week in terms of getting
9 the selection process done and being here as we needed you to
10 get the evidence in. Again, I apologize for the waste of your
11 time today. I really do fight to try to keep that from
12 happening, but it did, and I really do apologize for it.

13 We'll get started at noon on Monday and get this case
14 to you and let you get started with your deliberations. Until
15 then, I wish you all the best weekend.

16 (Jury recessed at 3:59 p.m.)

17 THE COURT: All right. We'll see everybody on Monday
18 at noon.

19 MS. SUDANO: Thank you, Your Honor.

20 MR. SHEETS: Yes, Your Honor.

21 (Court recessed at 4:00 p.m., until Monday,
22 April 16, 2018, at 12:12 p.m.)

23 * * * * *

24

25

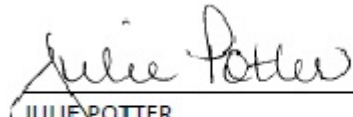
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**Julie Potter
Kingman, AZ 86402
(702) 635-0301**



JULIE POTTER
TRANSCRIBER

1 INST

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
APR 16 2018

BY Linda Skinner
LINDA SKINNER, DEPUTY 4:14 pm

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 BARRY HARRIS,

11 Defendant.

CASE NO: C-17-326569-1

DEPT NO: XX

12
13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

14 MEMBERS OF THE JURY:

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

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

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INST
Instructions to the Jury
4738360



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

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

An Amended Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Amended Information that on or about the 22nd day of August, 2017, the Defendant committed the offenses of BURGLARY WHILE IN POSSESSION OF A FIREARM; FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM; ASSAULT WITH A DEADLY WEAPON; BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING DOMESTIC VIOLENCE; BATTERY CONSTITUTING DOMESTIC VIOLENCE - STRANGULATION; BATTERY RESULTING IN SUBSTANTIAL BODILY HARM CONSTITUTING DOMESTIC VIOLENCE; PREVENTING OR DISSUADING WITNESS OR VICTIM FROM REPORTING CRIME OR COMMENCING PROSECUTION; and CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON.

It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the Defendant is guilty of one or more of the offenses charged.

COUNT 1 – BURGLARY WHILE IN POSSESSION OF A FIREARM

did willfully, unlawfully, and feloniously enter, with intent to commit an assault and/or battery, that certain building occupied by NICOLE DOTSON, located at 3850 Mountain Vista, Apartment No. 267, Las Vegas, Clark County, Nevada, said Defendant did possess and/or gain possession of a firearm during the commission of the crime and/or before leaving the structure.

COUNT 2 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON
RESULTING IN SUBSTANTIAL BODILY HARM

did willfully, unlawfully, and feloniously, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away NICOLE DOTSON, a human being, with the intent to hold or detain the said NICOLE DOTSON against her will, and without her consent, for the

1 purpose of committing inflicting substantial bodily harm, to wit: by forcing her into the
2 bathroom and/or preventing her from leaving the apartment and/or bathroom, with use of a
3 deadly weapon, to wit: a firearm, resulting in substantial bodily harm to NICOLE DOTSON.

4 COUNT 3 - ASSAULT WITH A DEADLY WEAPON

5 did willfully, unlawfully, feloniously and intentionally place another person in
6 reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully
7 attempt to use physical force against another person, to wit: NICOLE DOTSON, with use of
8 a deadly weapon, to wit: a firearm, by pointing the said firearm at NICOLE DOTSON while
9 threatening to kill her.

10 COUNT 4 - BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING
11 DOMESTIC VIOLENCE

12 did willfully and unlawfully use force or violence against or upon the person of
13 NICOLE DOTSON, a person with whom the Defendant has a dating relationship, with use
14 of a deadly weapon, to wit: a firearm, by shoving said firearm into the mouth of the said
15 NICOLE DOTSON and/or striking her with said firearm.

16 COUNT 5 - BATTERY CONSTITUTING DOMESTIC VIOLENCE - STRANGULATION

17 did willfully, unlawfully, and feloniously use force or violence upon the person of
18 NICOLE DOTSON, a person with whom the Defendant has a dating relationship, by
19 strangulation.

20 COUNT 6 - BATTERY RESULTING IN SUBSTANTIAL BODILY HARM
21 CONSTITUTING DOMESTIC VIOLENCE

22 did willfully and unlawfully use force or violence against or upon the person of his
23 spouse, former spouse, any other person to whom he is related by blood or marriage, a
24 person with whom he has had or is having a dating relationship, a person whom he has a
25 child in common, the minor child of any of those persons or his minor child, to wit: NICOLE
26 DOTSON, by punching and/or hitting and/or kicking the said NICOLE DOTSON about the
27 head and/or body, resulting in substantial bodily harm.

28 ///

1 COUNT 7 - PREVENTING OR DISSUADING WITNESS OR VICTIM FROM
2 REPORTING CRIME OR COMMENCING PROSECUTION

3 did then and there willfully, unlawfully, and feloniously, by intimidation or threats,
4 prevent or dissuade, or hinder or delay NICOLE DOTSON, from reporting a crime to police
5 and/or commencing prosecution by stating that he would kill her if she called the police
6 and/or stating that he would blow her brains out if she made any noise.

7 COUNT 8 - CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON

8 did then and there willfully, intentionally, unlawfully and feloniously carry concealed
9 upon his person, a firearm or other deadly weapon, to wit: firearm.

10 It is the duty of the jury to apply the rules of law contained in these instructions to the
11 facts of the case and determine whether or not the Defendant is guilty of one or more of the
12 offenses charged.

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14 Each charge and the evidence pertaining to it should be considered separately. The
15 fact that you may find a defendant guilty or not as to one of the offenses charged should not
16 control your verdict as to any other offense charged.
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To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

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

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

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

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

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

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

1
2 The evidence which you are to consider in this case consists of the testimony of the
3 witnesses, the exhibits, and any facts admitted or agreed to by counsel.

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

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

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

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

19 Anything you may have seen or heard outside the courtroom is not evidence and must
20 also be disregarded.
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In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

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

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

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

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

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

A person who, by day or night, enters any house, room, apartment, or other building with the intent to commit assault and/or battery and/or any felony is guilty of Burglary.

1 The gist of the crime of Burglary is the unlawful entry with criminal intent.
2
3 Therefore, a Burglary was committed if the defendant entered the house, room or apartment
4 with the intent to commit an assault and/or a battery regardless of whether or not that crime
5 occurred. Force or a breaking as such is not a necessary element of the crime. Consent to
6 enter is not a defense to the crime of burglary so long as it is shown that entry was made with
7 the specific intent to commit an assault and/or a battery and/or a felony therein. A person
8 with an absolute unconditional right to enter a structure cannot burglarize that structure.
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The intention with which entry was made is a question of fact which may be inferred from the defendant's conduct and all other circumstances disclosed by the evidence.

Every person who commits the crime of Burglary, who has in his possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure, or upon leaving the structure, is guilty of Burglary While in Possession of a Firearm.

As used in these instructions, a "deadly weapon" means:

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

You are instructed that a firearm, whether loaded or unloaded, operable or inoperable, is a deadly weapon.

As used in these instructions, "firearm" includes:

1. Any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion.
2. Any device used to mark the clothing of a person with paint or any other substance; and
3. Any device from which a metallic projectile, including any ball bearing or pellet, may be expelled by means of spring, gas, air or other force.

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

1
2 You are instructed that if you find the Defendant guilty of Burglary, you must also
3 determine whether a Firearm was used in the commission of the Burglary.

4 You are instructed that if you find that the state has established, beyond a reasonable
5 doubt, that the defendant has committed each element of the crime of Burglary while in
6 Possession of a Firearm, you shall select Burglary while in Possession of a Firearm as your
7 verdict.

8 If you are convinced beyond a reasonable doubt that the crime of Burglary has been
9 committed by the Defendant, but you have reasonable doubt whether such a Burglary
10 occurred while the Defendant was in possession of a firearm, you must give the defendant
11 the benefit of the doubt and return a verdict of Burglary.

Every person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away any person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person:

- 1) for ransom, or reward; or
- 2) for the purpose of committing sexual assault, extortion or robbery upon or from the person; or
- 3) for the purpose of killing the person or inflicting substantial bodily harm upon him; or
- 4) to exact from relatives, friends, or any other person any money or valuable thing for the return or disposition of the kidnapped person; or
- 5) A person who leads, takes, entices, or carries away or detains any minor with the intent to keep, imprison, or confine the minor from his or her parents, guardians, or any other person having lawful custody of the minor, or with the intent to hold the minor to unlawful service, or perpetrate upon the person of the minor any unlawful act;

is guilty of First Degree Kidnapping.

The law does not require the person being kidnapped to be carried away for any minimal distance.

If substantial bodily harm results to the kidnapped person during the act of the kidnapping, or the detention and confinement of the person, or in an attempt to escape or an escape therefrom, regardless of alleged purpose of the kidnapping, the Defendant is guilty of First Degree Kidnapping resulting in Substantial Bodily Harm.

In order for you to find the defendant guilty of First Degree Kidnapping in addition to the associated offenses of battery, you must also find beyond a reasonable doubt considering all the facts and circumstances in the case:

- (1) That any movement of the victim was not incidental to the battery; or
 - (2) That any incidental movement of the victim substantially increased the risk of harm to the victim over and above that necessarily present in the battery; or
 - (3) That any incidental movement of the victim substantially exceeded that required to complete the battery; or
 - (4) That the victim was physically restrained and such restraint substantially increased the risk of harm to the victim; or
 - (5) The movement or restraint had an independent purpose or significance.
- "Physically restrained" includes but is not limited to tying, binding, or taping.

Where a person is charged with the crime of First Degree Kidnapping for the purpose of inflicting substantial bodily harm or death, the crime of First Degree Kidnapping is accomplished when the kidnapping was done for the purpose of inflicting substantial bodily harm or death, regardless of whether such or death actually occurred.

As used in these instructions, "substantial bodily harm" means:

1. Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or

2. Prolonged physical pain.

In a battery, a wrongdoer is not liable for "prolonged physical pain" for the touching itself. "Prolonged physical pain" necessarily encompasses some physical suffering or injury that lasted longer than the pain immediately resulting from the wrongful act.

The intention or purpose for which the victim was held against his or her will is a question of fact to be determined by your consideration of the evidence. The intention may be inferred from the defendant's conduct and all other circumstances.

If you unanimously conclude, beyond a reasonable doubt, that the defendant is guilty of First Degree Kidnapping, the theory by which you find the defendant guilty need not be unanimous.

If you find beyond a reasonable doubt that Defendant committed First Degree Kidnapping with Use of a Deadly Weapon Resulting in Substantial Bodily Harm, then you are instructed that the verdict of First Degree Kidnapping with Use of a Deadly Weapon Resulting in Substantial Bodily Harm is the appropriate verdict.

If, however, you find beyond a reasonable doubt that a kidnapping occurred, but if the State did not prove some or all of the remaining elements beyond a reasonable doubt, then you shall return the appropriate verdict based on your findings.

For instance, if you find beyond a reasonable doubt that a first degree kidnapping did occur and that a deadly weapon was used in commission of the kidnapping, but that the kidnapping did not result in substantial bodily harm to the victim, then you are instructed that First Degree Kidnapping with Use of a Deadly Weapon is the appropriate verdict.

If you find beyond a reasonable doubt that a first degree kidnapping did occur and that the kidnapping resulted in substantial bodily harm to the victim, but you do not find that a deadly weapon was used in commission of the kidnapping, then you are instructed that First Degree Kidnapping Resulting in Substantial Bodily Harm is the appropriate verdict.

If you find beyond a reasonable doubt that a first degree kidnapping did occur, but you do not find that a deadly weapon was used in commission of the kidnapping or that the kidnapping resulted in substantial bodily harm to the victim, then you are instructed that First Degree Kidnapping is the appropriate verdict.

If you do not find beyond a reasonable doubt that a first degree kidnapping did occur, then you are instructed that Not Guilty is the appropriate verdict.

You are instructed that you may only select one of the options above. You may not return more than one verdict for each count.

When it is impossible to commit a particular crime without committing, at the same time and by the same conduct, another offense of lesser grade or degree, the latter is, with respect to the former, a "lesser included offense."

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the offense charged, he may, however, be found guilty of any lesser included offense, if the evidence is sufficient to establish his guilt of such lesser offense beyond a reasonable doubt.

The crimes of First Degree Kidnapping necessarily includes the lesser offense of False Imprisonment.

The crime of Assault with a Deadly Weapon necessarily includes the lesser offense of Assault.

The crime of Battery with a Deadly Weapon Constituting Domestic Violence necessarily includes the lesser offense of Battery Constituting Domestic Violence.

The crime of Battery Resulting in Substantial Bodily Harm Constituting Domestic Violence necessarily includes the lesser offense of Battery Constituting Domestic Violence.

False imprisonment is an unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority.

If you do not find that Defendant is guilty of First Degree Kidnapping but you do find that the State has established, beyond a reasonable doubt, that defendant has committed each element of the crime of False Imprisonment, you shall select False Imprisonment as your verdict.

Assault is defined as unlawfully attempting to use physical force against another person, or intentionally placing another person in reasonable apprehension of immediate bodily harm.

To constitute an assault, it is not necessary that any actual injury be inflicted.

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2 You are instructed that if you find the Defendant guilty of Assault, you must also
3 determine whether a deadly weapon was used in the commission of the Assault.

4 You are instructed that if you find that the state has established, beyond a reasonable
5 doubt, that the defendant has committed each element of the crime of Assault with a Deadly
6 Weapon, you shall select Assault with a Deadly Weapon as your verdict.

7 If you are convinced beyond a reasonable doubt that the crime of Assault has been
8 committed by the defendant, but you have reasonable doubt whether such an Assault was
9 done by use of a Deadly Weapon, you must give the defendant the benefit of the doubt and
10 return a verdict of Assault.

Battery means any willful and unlawful use of force or violence upon the person of another.

To constitute a battery, the force used by the defendant need not be violent or severe, and need not cause bodily pain or bodily harm. Any slight touching by the defendant upon the person of another suffices, as long as the touching was intentional and unwanted.

The word "willfully", when applied to the intent with which an act is done, implies simply a purpose or willingness to commit the act in question. It does not require in its meaning that the defendant held any intent to violate any law, or to injure another, or to acquire any advantage.

Battery Constituting Domestic Violence occurs when a person commits a battery against or upon the person's spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the person is or was actually residing, and/or any other person with whom the person has had or is having a dating relationship.

As used in these instructions, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement.

1
2 You are instructed that if you find the Defendant guilty of Battery Constituting
3 Domestic Violence, you must also determine whether substantial bodily harm resulted from
4 the commission of the battery.

5 You are instructed that if you find that the state has established, beyond a reasonable
6 doubt, that the defendant has committed each element of the crime of Battery Resulting in
7 Substantial Bodily Harm Constituting Domestic Violence, you shall select Battery Resulting
8 in Substantial Bodily Harm Constituting Domestic Violence as your verdict.

9 If you are convinced beyond a reasonable doubt that the crime of Battery Constituting
10 Domestic Violence has been committed by the defendant, but you have reasonable doubt
11 whether such Domestic Violence resulted in substantial bodily harm, you must give the
12 defendant the benefit of the doubt and return a verdict of Battery Constituting Domestic
13 Violence.

1
2 You are instructed that if you find the Defendant guilty of Battery Constituting
3 Domestic Violence, you must also determine whether a deadly weapon was used in the
4 commission of the battery.

5 You are instructed that if you find that the state has established, beyond a reasonable
6 doubt, that the Defendant has committed each element of the crime of Battery with Use of a
7 Deadly Weapon Constituting Domestic Violence, you shall select Battery with Use of a
8 Deadly Weapon Constituting Domestic Violence as your verdict.

9 If you are convinced beyond a reasonable doubt that the crime of Battery Constituting
10 Domestic Violence has been committed by the Defendant, but you have reasonable doubt
11 whether a deadly weapon was used in the commission of said crime, you must give the
12 defendant the benefit of the doubt and return a verdict of Battery Constituting Domestic
13 Violence.
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Any person who commits a battery upon another by strangulation is guilty of Battery
by Strangulation.

As used in these instructions, "strangulation" means intentionally impeding the normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person in a manner that creates a risk of death or substantial bodily harm.

A person who, by intimidating or threatening another person, prevents or dissuades a victim of a crime, a person acting on behalf of the victim or a witness from:

(a) Reporting a crime or possible crime to a:

(1) Judge;

(2) Peace officer;

(3) Parole or probation officer;

(4) Prosecuting attorney;

(5) Warden or other employee at an institution of the Department of Corrections; or

(6) Superintendent or other employee at a juvenile correctional institution;

(b) Commencing a criminal prosecution or a proceeding for the revocation of a parole or probation, or seeking or assisting in such a prosecution or proceeding; or

(c) Causing the arrest of a person in connection with a crime, or who hinders or delays such a victim, agent or witness in an effort to carry out any of those actions is guilty of Preventing or Dissuading a Witness or Victim From Reporting a Crime or Commencing Prosecution.

A person who carries concealed upon his or her person a pistol, revolver, or other firearm, is guilty of Carrying Concealed Firearm.

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2 "Concealed weapon" as used in these instructions, means a pistol, revolver, or other
3 firearm that is carried upon a person in such a manner as not to be discernible by ordinary
4 observation.
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"Carrying upon a person" means actually on the person or in a container carried by the person.

The crimes of Burglary, Kidnapping, False Imprisonment, Assault, and Preventing or Dissuading a Witness or Victim from Reporting a Crime or Commencing Prosecution as charged in this case are specific intent crimes. A specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent the state must prove that the defendant knowingly did the act which the law forbids, purposely intending to violate that law.

An act is "knowingly" done if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

General intent is the intent to do that which the law prohibits. It is not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result which eventuated if a crime is a general intent crime.

You are also instructed that Battery Constituting Domestic Violence, regardless of whether substantial bodily harm resulted, whether a deadly weapon was used, or whether committed by strangulation, is a general intent crime.

You are also instructed that Carrying Concealed Weapon is a general intent crime.

When a trial witness fails, for whatever reason, to remember a previous statement made by that witness, the failure of recollection constitutes a denial of the prior statement and makes it a prior inconsistent statement. The previous statement is not hearsay and may be considered both substantively and for impeachment.

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2 The flight of a person after the commission of a crime is not sufficient in itself to
3 establish guilt; however, if flight is proved, it is circumstantial evidence in determining guilt
4 or innocence.

5 The essence of flight embodies the idea of deliberately going away with
6 consciousness of guilt and for the purpose of avoiding apprehension or prosecution. The
7 weight to which such circumstance is entitled is a matter for the jury to determine.
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2 You have heard evidence that at some point the Defendant was in custody at the Clark
3 County Detention Center and made telephone calls while he was there. You must not draw
4 any inference of guilt from this fact, nor should this fact be discussed by you or enter into
5 your deliberations in any way.
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2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind that such inferences should
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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2 In your deliberation you may not discuss or consider the subject of punishment, as
3 that is a matter which lies solely with the court. Your duty is confined to the determination
4 of the guilt or innocence of the Defendant.
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During the course of this trial, and your deliberations, you are not to:

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

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

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

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

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2 If, during your deliberation, you should desire to be further informed on any point of
3 law or hear again portions of the testimony, you may send a note through the marshal, signed
4 by any one or more of you. No member of the jury should ever attempt to communicate with
5 me except by a signed writing, and I will respond to the jury concerning the case on in
6 writing or here in open court. If you send out a question, I will consult with the lawyers
7 before answering it, which may take some time. You may continue your deliberations while
8 waiting for the answer to any questions. Remember, you are not to tell anyone – including
9 me – how the jury stands, numerically or otherwise, on any question submitted to you,
10 including the question of the guilt of the defendant, until after you have reached a unanimous
11 verdict or have been discharged.
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2 Playbacks of testimony are time-consuming and are not encouraged unless you deem
3 it a necessity. Should you require a playback, you must carefully describe the testimony to
4 be played back so that the court recorder can arrange her notes. Remember, the court is not
5 at liberty to supplement the evidence.
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Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:


DISTRICT JUDGE