

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Elizabeth A. Brown  
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Supreme Court Case No. 77424

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1           So your discussions in this case, while certainly  
2 you're going to be talking about Job-Loc and Donovan and  
3 Stephanie, your focus, your role here is to determine whether  
4 these two defendants are guilty of the crimes that were  
5 charged in this case. It should not be a determination of  
6 whether anyone else is guilty.

7           One other thing that you are not to be talking about  
8 in the deliberation room is punishment, and this probably  
9 sounds pretty ridiculous given that you all sat through jury  
10 selection where we asked you, Well, can you consider this  
11 punishment? Can you consider that one? And how long have you  
12 thought about it? And how long did you hold the -- how long  
13 have you held your opinion? But at this point in the trial,  
14 it's a factual determination, and that is simply whether the  
15 defendants are guilty and have been proven guilty beyond a  
16 reasonable doubt.

17           You are not -- at this point in the proceedings, you  
18 may not discuss or consider the subject of punishment. Your  
19 duty is now confined to a determination of the guilt or  
20 innocence of one or more of the defendants. So what you  
21 should not be discussing is anything about what the  
22 appropriate punishment should be. That is left for another  
23 time.

24           Now let's start with sort of the easiest question in  
25 the case, and that's whether or not a deadly weapon was used

1 in these offenses. The Judge read you the instructions, and  
2 he defined for you what a deadly weapon is, and certainly a  
3 firearm is a deadly weapon.

4 Now, from the facts in the case, we know that there  
5 was one firearm -- which is what I just showed you and you can  
6 also see photographically -- used in this offense. One  
7 firearm at issue but we have four people in that car who  
8 arrived to commit the crimes.

9 And so you may be asking yourselves, Well, is Mr.  
10 Mason also guilty of use of a deadly weapon? Because he  
11 didn't have the gun. The gun was with Mr. Burns, and the  
12 instructions tell you the answer to that question, and on --  
13 I'm reading from the second paragraph: An unarmed offender  
14 uses a deadly weapon when the unarmed offender is liable for  
15 the offense, another person liable for the offense is armed  
16 and uses a deadly weapon in the commission of the offense, and  
17 the unarmed offender had knowledge of the use of the deadly  
18 weapon.

19 And certainly everybody in that car, Monica,  
20 Stephanie, Mr. Mason and Mr. Burns, everybody knew there was a  
21 gun in that car, and everybody knew that Mr. Burns was the one  
22 who had the gun. So a deadly weapon is -- is an enhancement  
23 and should be marked with all of the crimes on your -- on your  
24 verdict form, a robbery with use of a deadly weapon and a  
25 burglary with use of a deadly weapon and also a murder with

1 use of a deadly weapon and attempt murder.

2           Now, you've heard a lot of testimony in this case.  
3 The firearms expert Mr. Krylo was on the stand for quite a  
4 while, and what he told you was the bullet fragments in this  
5 case, he could associate, but because of the nature of the  
6 fragments, he couldn't necessarily tie them to the gun because  
7 -- you'll remember -- the barrel of this gun has been damaged.  
8 It's been altered. So no comparison was possible. So there's  
9 no way to conclusively prove that this was the gun that fired  
10 those bullets that were in this case -- or recovered in this  
11 case.

12           The law tells you though that that doesn't really  
13 matter. The State is not required to have recovered a deadly  
14 weapon used in an alleged crime or produce a deadly weapon in  
15 court at trial to establish that a deadly weapon was used in  
16 the commission of the offense, and what that means is we don't  
17 have to bring the deadly weapon into court in order for you to  
18 find the enhancement if you can see it from the other  
19 evidence, and certainly in this case, we know what happened to  
20 Derecia Newman. We know that had to be caused with a deadly  
21 weapon. So regardless of whether or not this is the gun or it  
22 has been conclusively proved, you know a gun was used in the  
23 commission of these offenses.

24           Now, let's talk about conspiracy. Conspiracy is a  
25 theory of liability, and it also is a -- there's two actually

1 conspiracy crimes charged in this case, and I'm just going to  
2 read a little bit, but as I said, you'll have the whole packet  
3 when you all deliberate: A conspiracy is an agreement between  
4 two or more people for an unlawful purpose. So it's  
5 essentially an agreement amongst individuals to commit a  
6 crime.

7 To be guilty of a conspiracy, a defendant must intend  
8 to commit or aid in the commission of the specific crime  
9 agreed to, and the crime itself is the agreement to do the  
10 crime or to do something unlawful, and it doesn't matter  
11 whether the crime was successful or not. So in this case,  
12 what we have is the agreement amongst the four individuals to  
13 commit the crime of robbery and to commit a murder.

14 We know that there was a conspiracy from all of the  
15 evidence in this case. Specifically, we know from Christine  
16 Pierce that she received a call from Willie Mason asking for  
17 her mom's phone number, Stephanie Cousins, and that she  
18 provided that number, and then the cell phone records show you  
19 that Willie Mason's phone called Stephanie Cousins's phone,  
20 and eventually, Monica Martinez, Willie Mason and Stephanie  
21 Cousins are all by Stephanie Cousins's apartment, and then the  
22 three of them or their three phones move in the same place all  
23 night up to the murder scene, back to Stephanie's apartment,  
24 over to Job-Loc's apartment, and then Monica goes back to the  
25 Texas by herself.

1           There is a coordinated series of acts before and  
2 after the crime occurred. We know from Devonia Newman that  
3 there was a coordinated act actually when the crime occurred,  
4 right? Stephanie came in acting like she was going to buy  
5 some marijuana or possibly crack from Derecia. That was all a  
6 ruse to get Derecia to open the door, to get her to let her  
7 guard down, and so once Stephanie did that, Burns busts in.  
8 Monica is sitting in the back -- or sitting outside as the  
9 getaway driver. That is a coordinated series of acts.

10           They made a plan, I mean, and it doesn't even have to  
11 be an elaborate plan. They made a plan. They followed  
12 through with it, and that is a conspiracy to commit robbery  
13 and a conspiracy to commit murder.

14           Now, let's talk about burglary. Burglary is defined  
15 as follows: Any person who by day or night enters a house,  
16 room, apartment or other building with the intent to commit  
17 larceny, robbery and/or murder. So basically, what the crime  
18 of burglary is is just simply -- it's usually called, like, a  
19 crime of entry, meaning you enter some structure with the  
20 intent to commit a crime inside of it, and larceny is just  
21 entering with, like -- well, larceny is just stealing  
22 something.

23           And we know in this case of course that these four  
24 individuals made this plan, came up with this way to trick  
25 Derecia Newman, and then they went inside, and the robbery was



1 committed. So that alone, making the plan and entering the  
2 house with the intent to commit a crime is the crime of  
3 burglary.

4 Now, you may be asking yourselves, like, Well, wait a  
5 minute. Monica Martinez was sitting out in the car, and  
6 Willie Mason was out of the car, but do we know if he entered  
7 the house or not, and does that make a difference? The  
8 instructions and the law is: When two or more persons  
9 participate in the commission of a burglary and one or more of  
10 them enters the structure, it is not necessary to prove the  
11 other individual actually entered because someone -- because  
12 one who aids and abets another in the commission of a burglary  
13 is equally guilty as a principal.

14 So what that tells you is, if a bunch of people get  
15 together and commit a crime, like the one you've heard about  
16 for the last couple weeks, and one of them goes inside and  
17 other -- and the plan is someone else stays out to be the  
18 getaway driver, they can both be charged with burglary because  
19 they're in a conspiracy together, and they're working together  
20 to commit this crime.

21 It would be pretty ridiculous for people to be able  
22 to coordinate criminal activity like that and then have the  
23 getaway driver say, Well, you know, I was part of the plan,  
24 but I didn't actually go inside. So I'm not really  
25 responsible for the burglary. The law tells you that's

1 different. Once you're in the conspiracy and you're acting  
2 together and you're helping each other commit the crime, you  
3 do not have to actually enter to be guilty of burglary.

4 Now, the other question you may have is, well,  
5 Derecia Newman actually opened the door thinking she was going  
6 to do a drug transaction with Stephanie. So she -- the door  
7 wasn't forced open. She opened it herself. The instructions  
8 answer that question as well. Consent to enter is not a  
9 defense to the crime of burglary so long as it is shown that  
10 entry was made with the specific intent to commit a larceny,  
11 robbery or murder therein, and moreover, force or breaking is  
12 not a necessary element of the crime.

13 So what that instruction tells you is it really  
14 doesn't matter that they were tricking Derecia into opening  
15 that door. She opened it certainly without -- without them  
16 using any force, but by that time, the plan had already been  
17 made to accomplish the robbery. So they are guilty of  
18 burglary, and we know there was a transaction that was going  
19 to occur because Derecia Newman was found with a \$20 bill in  
20 her hand at the time she suffered that gunshot wound.

21 Now, robbery is obviously a different crime than  
22 burglary, and robbery is simply the taking of personal  
23 property from the person of another by force or threat of  
24 force, and obviously we have that in this case. Force -- the  
25 most deadly force was actually used to accomplish the robbery

1 in this case. The property doesn't have to be, like,  
2 literally on the person. It can be in their constructive  
3 possession if you're in a home.

4 And we know from this instruction -- and I'm looking  
5 at the last paragraph here -- that the value or money taken is  
6 not an element of the crime of robbery. It's only necessarily  
7 -- it's only necessary that the State prove the taking of some  
8 property or money. Remember how Cornelius Mayo said, well,  
9 maybe it was like \$450 or a hundred dollars. It could be \$1.  
10 If \$1 was taken from the presence of Derecia and Devonian by  
11 force or threat of force, a robbery has occurred, and we know  
12 that occurred in this case.

13 And because they are all in a conspiracy together, it  
14 doesn't matter who physically took the object, who was the  
15 getaway driver, who was the set-up person or who was the  
16 lookout. When you're in a conspiracy, you have liability for  
17 the general intent crimes committed by your co-conspirators,  
18 and we know that property was taken from that drawer from the  
19 statements of Devonian Newman, and we know from the spilled  
20 crack cocaine that drugs were taken as well.

21 Now, let's talk about first-degree murder. This is  
22 obviously concerning Derecia Newman, and the law on  
23 first-degree murder is that there are sort of two paths, two  
24 independent paths that you can get to to have liability for  
25 first-degree murder. The first one is probably the one you

1 may be most familiar with, and that's a wilful, premeditated  
2 and deliberate murder, and then there's also one that you may  
3 have heard of, and it's called the felony murder rule or  
4 felony murder.

5 And within each of those forms of first-degree murder  
6 you can have liability as a direct actor, liability because  
7 you conspire to commit that crime, or liability as an aider  
8 and abettor, and any of those circumstances mean you are  
9 guilty of first-degree murder.

10 When you finish your deliberations, you will be asked  
11 what type of liability you found in this case, and you'll have  
12 to -- if you find the defendant guilty of first-degree murder,  
13 you would mark that first box, but then you would also have to  
14 select under which theory that you found. So if you find  
15 unanimously that a wilful, deliberate and premeditated murder  
16 was committed, you mark that box.

17 If you also find that there's liability under the  
18 felony murder rule -- which is that second one, During the  
19 perpetration of a robbery and/or burglary -- you'd mark that  
20 box, and that third box I'll talk about in just a second, but  
21 you'll be selecting sort of the theory of liability that  
22 you're relying on in this case. So as I mentioned, for both  
23 of those forms of first-degree murder, you can have liability  
24 for what we call being the direct -- direct actor, being in  
25 the conspiracy, or aiding and abetting.

1           Now, we know in this case that there's unquestionably  
2 a first-degree murder, and I showed you briefly the photograph  
3 of Derecia Newman at autopsy. Her injury was sustained when  
4 someone came in and put a gun to her head and pulled the  
5 trigger. Unquestionably, that is a first-degree murder, and  
6 the person who did it is what we would call the direct actor,  
7 the one who actually held the gun and inflicted the gunshot  
8 wound. Clearly that is a murder that was wilful. It  
9 certainly shows an intent to kill. You don't shoot anybody in  
10 the head because you're just trying to injure them.

11           And premeditation and deliberation are instructions  
12 that are defined for you in your packet. You may have thought  
13 that -- before you came into the courtroom -- premeditation  
14 and deliberation required, like, an elaborate plan, months and  
15 months of planning, and it's really not like that. It's a  
16 determination to kill before the killing is accomplished. So  
17 all it is is a decision to kill before you do it, and  
18 certainly we have that in this case because whoever did that  
19 put that gun to her head and pulled the trigger, bursting  
20 through the door and doing that.

21           It wasn't an accident. It wasn't, you know, the  
22 result of any kind of argument. There certainly isn't any  
23 defensive injury on Derecia Newman. It is a pure, passionless  
24 disinterested, stranger killing, and that is a wilful,  
25 deliberate and premeditated murder, and as I said, the person

1 who pulled the trigger would have direct liability because  
2 they are the direct actor who committed the crime. We know  
3 from many pieces of evidence that David Burns is that person.

4 This is the excerpt of his letter that he wrote to  
5 Devonia Newman, and it's remarkable -- not to Devonia Newman,  
6 to Monica Martinez, and it's remarkable in several respects.  
7 The first is he apparently in a medical miracle overcame his  
8 mental disability and memory loss that he had with the  
9 detectives because at this point he seems to know a lot about  
10 this case and a lot of what might be a problem for him as he  
11 comes to trial.

12 He tells -- or he writes to Monica Martinez: I have  
13 to say, it's probably been hurting my case to write you.  
14 Everything happens for a reason. I want you to look through  
15 your statement and see that you were not read your rights --  
16 and he's able to determine this because he's overcome whatever  
17 mental disability he apparently had and overcome memory loss  
18 as well -- you have the right to remain silent. You have the  
19 right to appoint an attorney while being questioned. Anything  
20 you say can and will be used against you in a court of law.  
21 If you don't have any money, an attorney will be appointed for  
22 you. I know a guy who made a statement and fucked himself,  
23 but he was not read his rights. I noticed this about your  
24 case about a year ago. They're going to say you weren't under  
25 arrest at the time, but when they handcuffed you, took you to

1 that room and brought you back, that changed. I don't think  
2 Stephanie was read her rights neither.

3 Now, that's kind of a remarkable letter, right?  
4 Because according to the defense, Monica Martinez met with the  
5 detectives and told a lie blaming David Burns for the murder,  
6 and, yet, Burns who has read this statement knows that, right?  
7 I mean, he read her statement, and he's saying, Look, Monica,  
8 you weren't read your rights. Let me help you out with your  
9 case here. He is not saying, Hey, you lied about me. Why did  
10 you use my name? Why did you -- why did you decide to blame  
11 everything on me when you know I didn't do it?

12 Instead, he wants to help her with his case -- with  
13 her case and get her whole statement thrown out for his  
14 benefit, sort of an altruistic effort on the part of David  
15 Burns to help Monica with his case -- or her case. The reason  
16 for him doing this is of course obvious. If there is no  
17 statement in her case, the state of Nevada has no leverage on  
18 her to get her to testify against David Burns.

19 He doesn't want her to do exactly what she did in  
20 this trial, which is to get up here and testify that he was  
21 the one who used that gun that night. He doesn't want her  
22 case to go badly for her. He wants there to be no case  
23 against her. So he's trying to help her out. He's not  
24 saying, You framed me. You know your boyfriend did it. He's  
25 not saying, Hey, look, you know it's Donovan who did it. I

1 can't believe you did this to me. He's saying, Hey, Monica,  
2 let me help you out, because he knows that it helps him.

3 Another reason of course that we know that he was the  
4 shooter is because of even in the haze of the last four and a  
5 half years, Devonian says, I remember the clothing that the  
6 shooter wore, and it was overalls, and who's in the overalls  
7 right before the crime occurred? And who admits being in the  
8 overalls with the -- in his letters? None other than David  
9 Burns, and that is who Devonian says committed the shooting.

10 Now, another way you can have liability -- Burns  
11 obviously has liability as the direct actor for a wilful,  
12 deliberate and premeditated murder, but another form of  
13 liability would apply to the other individuals involved in  
14 this case, and that is conspiracy liability, and as I read to  
15 you earlier, conspiracy is an agreement to commit a crime.

16 Now, in the case of this theory of murder, a wilful,  
17 deliberate, premeditated murder, the conspiracy or the crime  
18 agreed to has to be a crime of murder. So it would be they  
19 got together -- or two of them got together and decided that  
20 they were going to commit a murder, and if you conspire to  
21 commit a murder, it doesn't matter if you're the one who pulls  
22 the trigger or not. You have the same liability as the person  
23 who pulls the trigger.

24 The instructions tell you murder in the first degree  
25 is a specific -- specific-offense crime. A defendant can't be



1 liable under a conspiracy and/or aiding and abetting -- aiding  
2 and abetting theory for first-degree murder for acts committed  
3 by the co-conspirator unless the defendant also had a  
4 premeditated and deliberate specific intent to kill and/or  
5 intent to commit robbery and/or intent to commit burglary,  
6 which I'll talk about in just a minute, but under that theory  
7 of wilful, deliberate and premeditated, you would have to have  
8 the intent to kill under a conspiracy theory in order for a  
9 defendant to have liability.

10           The same is true, as the instruction just said, for  
11 aiding and abetting. If you knowingly aid and abet a wilful  
12 and deliberate and premeditated murder, you are liable for  
13 first-degree murder under that theory. Now, in this case, the  
14 facts that we know are that the defendants arrive at Derecia  
15 Newman's house and Cornelius Mayo's house, and they use sort  
16 of that trick of buying crack cocaine to get into -- get into  
17 the residence or get access to the residence and get Derecia  
18 Newman to let her guard down, and that certainly got them in  
19 the door.

20           But the reality was, if they didn't shoot who was  
21 there, and they didn't kill who was there -- she knew them.  
22 Like, she knew Stephanie. So without killing Derecia, there  
23 would have been a good chance that Derecia could have reported  
24 the murder -- or could have reported a robbery. They killed  
25 her, or a decision to kill her would eliminate her as a

1 witness, and under that theory of liability, that would be a  
2 wilful, deliberate, premeditated murder whether you're aiding  
3 and abetting or you're the one who is directly committing the  
4 offense.

5 As I said -- and this is the instruction on aiding  
6 and abetting, and I'm going to read from the second paragraph:  
7 A person aids and abets the commission of a crime if you  
8 knowingly and with criminal intent aids, promotes, encourages  
9 or investigates by act or advice, or by act and advise the  
10 commission of such crime with the intention that the crime be  
11 committed, and importantly, the State isn't required to prove  
12 which defendant actually committed the crime and which  
13 defendant aided and abetted.

14 Now, in this case, that last paragraph in the  
15 instruction isn't too much of a mystery because we know David  
16 Burns is the shooter, but when people conspire to commit a  
17 first-degree murder or people aid and abet a first-degree  
18 murder, there is no distinction made in the law regarding who  
19 actually pulls the trigger and who doesn't. If you aid and  
20 abet or conspire to commit that crime, you have liability, the  
21 same liability as if you pulled the trigger yourself.

22 So when you go back to deliberate -- and I'm going  
23 back to your verdict form -- there'll be an X for guilty of  
24 first-degree murder, and that first special verdict box would  
25 be the jury unanimously finds a wilful, deliberate and

1 premeditated murder, and that can be for a direct actor, a  
2 conspirator, or someone who aided and abetted the murder.

3 Now let's talk about a completely different way you  
4 can arrive at a first-degree murder conviction, and that is  
5 through the felony murder rule. Some of you may have heard of  
6 this, but if you haven't or -- these are the instructions on  
7 what the felony murder is: There are certain kinds of murder  
8 in the first degree which carry with them conclusive evidence  
9 of malice aforethought. One of these classes of first-degree  
10 murder is a killing committed in the perpetration or attempted  
11 perpetration of a burglary and/or robbery. Therefore, a  
12 killing which is committed in the perpetration of a burglary  
13 and/or robbery is deemed to be murder in the first degree,  
14 whether the killing was intentional, unintentional or  
15 accidental, and this is called the felony murder rule.

16 And this is sort of the legislative instruction in  
17 the sense that the law is made to discourage people from  
18 committing dangerous felonies, like burglary and like robbery,  
19 and what it tells you is, if you choose to engage in that type  
20 of dangerous crime and someone dies, either on purpose or not  
21 on purpose or even accidentally, if it's during that dangerous  
22 crime, you are automatically guilty of first-degree murder,  
23 and that is the felony murder rule.

24 So within the felony murder rule, you can examine the  
25 evidence in this case in terms of whether there was direct

1 liability, and remember, we're no longer talking about a  
2 specific intent to kill. We're no longer talking about a  
3 wilfulness, premeditation or deliberation. We're talking  
4 about whether the person engaged in a dangerous felony, like  
5 robbery or like burglary, which of course we know these two  
6 defendants did.

7 David Burns was the direct actor. He busted in, and  
8 he is the one that took the property. He committed a burglary  
9 and a robbery. So even if you completely disregard a wilful,  
10 deliberate and premeditated murder, he still has liability for  
11 first-degree murder because the death occurred during the  
12 commission of a dangerous felony, that being robbery or  
13 burglary.

14 In terms of Mr. Mason, even if you believe that David  
15 Burns killed Derecia Newman, not part of any plan by those  
16 conspirators, you know that Willie Mason clearly participated  
17 in that robbery and burglary. He's the one that got Stephanie  
18 Cousins in the mix, and her role of course was to create the  
19 ruse and find the location.

20 He aided and abetted in that burglary and robbery,  
21 and once he did that -- he was part of the conspiracy -- a  
22 murder occurred during those crimes. So he has liability as a  
23 conspirator for first-degree murder whether or not he knew  
24 that Burns was going to do the shooting or not. He  
25 participated in that burglary and robbery. He has liability

1 for first-degree murder.

2 The same is true for his actions of getting Stephanie  
3 to join the conspiracy, picking her up, contacting her in  
4 order for them to find a location for this robbery. Those  
5 actions entwined him in the burglary and robbery. A death  
6 occurred. So he has liability for first-degree murder.

7 Incidentally, that would also be why Monica Martinez  
8 similarly had liability in this case for first-degree murder.  
9 She was the getaway driver in the robbery. A death occurred.  
10 So she was initially facing first-degree murder charges, as  
11 was Stephanie Cousins who set up the deal to begin with.

12 Now, you may be thinking, Well, look, you know, we've  
13 heard a lot about Job-Loc, and there's some suggestion that he  
14 was involved in this crime, at least to some extent. Maybe he  
15 got proceeds from the robbery. Why isn't he charged with  
16 murder in this case? And the instructions answer that, and  
17 it's -- it's just the reality of what the law is: A  
18 conviction shall not be had on the testimony of an accomplice  
19 unless he's corroborated by other evidence which in itself and  
20 without the aid of testimony of the accomplice -- accomplice  
21 tends to connect the defendant with the commission of the  
22 offense.

23 Now, what evidence is there that Job-Loc had  
24 connection to this? Well, that came from Monica.

25 MR. LANGFORD: Your Honor, I apologize, and I hate to

1 interrupt counsel, but may we approach?

2 THE COURT: Yes.

3 (Bench conference.)

4 MR. LANGFORD: From day one they had said that  
5 Job-Loc is a co-conspirator. The Court in fact at first said,  
6 I'm not sure he is a co-conspirator. They said, Oh, no, he  
7 provided the murder weapon. That was Mr. DiGiacomo's exact  
8 words: He provided the murder weapon. And he goes on and on,  
9 and so now to say --

10 THE COURT: He helped cover up the murder weapon by  
11 getting rid of it.

12 MR. LANGFORD: So he is an accomplice by providing  
13 the murder weapon. She's just saying they couldn't charge him  
14 because he wasn't an accomplice. That's it.

15 MR. DIGIACOMO: That's not what she said.

16 THE COURT: There is a difference between failure to  
17 charge and failure to prove. The question is whether she  
18 could prove it.

19 MR. DIGIACOMO: It's a failure to prove. That's what  
20 she said. Can we prove it --

21 THE COURT: That's a different issue.

22 UNIDENTIFIED ATTORNEY: I'm just noting this as  
23 contemporaneous to when she's making it, and I object.

24 THE COURT: All right.

25 (Bench conference ends.)

1 MS. WECKERLY: There's -- well, let me reread that.  
2 Basically, it says: A conviction shall not be had on the  
3 testimony of an accomplice unless he is corroborated by other  
4 evidence which in itself and without the aid of the testimony  
5 of the accomplice tends to connect the defendant with the  
6 commission of the offense.

7 Well, what connects Job-Loc to the commission of the  
8 offense? Well, it would be statements from Monica, right?  
9 And she's the co-conspirator. There's not phone -- there  
10 isn't cell-site information tying him there. There certainly  
11 isn't any eyewitness testimony tying him to the crime. Now,  
12 he was probably involved, and maybe he got some of the  
13 proceeds, but there's nothing independent of an accomplice to  
14 tie him to the crime, which is why he is not charged with  
15 first-degree murder.

16 Now, as I went through the two theories of  
17 first-degree murder, there are, as I said, the wilful,  
18 deliberate and premeditated murder and also the felony murder  
19 rule. When you get back to the deliberation room, it could be  
20 that there is a difference of opinion amongst you all as to  
21 which theory is appropriate. Maybe they're both appropriate.  
22 If that's the case, you mark both of those boxes in the  
23 special verdict form, that it was a wilful, deliberate,  
24 premeditated murder, and it also is a murder that falls under  
25 the felony murder rule.

1           However, if there is a situation where you cannot  
2 reach agreement under which -- unanimously under which theory  
3 of murder applies for first-degree murder, like nine of you  
4 think it's wilful, deliberate and premeditated, and three of  
5 you think, well, I don't know if that's the case, but I  
6 definitely know that it occurred during the commission of a  
7 robbery and burglary, the instructions tell you that you don't  
8 have to be unanimous as to your theory of guilt as long as you  
9 all agree that it qualifies as a first-degree murder.

10           The instructions say: Although your verdict must be  
11 unanimous as to the charge, you do not have to agree on the  
12 theory of guilt or liability. Therefore, even if you cannot  
13 agree on whether the facts establish the defendant is guilty  
14 of premeditated and deliberate murder or felony murder or is  
15 liable as a principal, aider and abettor or co-conspirator, so  
16 long as you all agree that the evidence establishes the  
17 defendant's guilt of murder in the first-degree, your verdict  
18 shall be murder in the first degree.

19           And on the verdict form, that's -- that's the last  
20 box under the special verdict form where you would mark --  
21 well, we don't unanimously agree on either theory, but there  
22 -- but all of us either think it's a wilful, deliberate and  
23 premeditated murder or a felony murder. So it qualifies as  
24 first-degree murder.

25           The last charge I want to talk about is the attempted



1 murder, and obviously this charge concerns the injuries  
2 inflicted on Devonia, and attempted murder is defined as: The  
3 performance of an act or acts which tend but fail to kill a  
4 human being when such acts are done with express malice,  
5 namely with the deliberate intention to unlawfully --  
6 deliberate intention unlawfully to kill.

7           Obviously, when you shoot someone in the stomach,  
8 again, you're trying to kill them. Thankfully, Mr. Burns was  
9 not successful in doing that, and she survived, but there  
10 definitely was an intention to kill, and so that is the  
11 appropriate verdict with Devonia with the enhancement of use  
12 of a deadly weapon because obviously a firearm was used when  
13 he inflicted that shot and that injury on her.

14           Now, when you are evaluating this case, you have to  
15 look at all of the evidence. Certainly you'll go through each  
16 aspect of the evidence for each piece of the evidence, but you  
17 have to look at the evidence as a whole, and when you look at  
18 the evidence as a whole, there's one consistent picture. You  
19 can't just isolate one piece of evidence and say, Well, where  
20 does that leave me, and just follow that, or where does this  
21 piece of evidence lead?

22           You have to look at the evidence as a whole, the  
23 dynamics and the relationships, and that is not easy in this  
24 case, and it's kind of onerous because there's so many  
25 relationships and letters and timing, and all of those aspects

1 come into the case, and those are things that you would have  
2 to look at in your deliberations, and with this many players,  
3 it does become a little bit of a complex task, but, I mean,  
4 this is real. This happened.

5         You have various forms of evidence. I mean, the  
6 whole murder wasn't obviously captured on surveillance, but a  
7 lot of it was, and you can look at that. A lot of letters  
8 were -- letters were written, and you can look at those, and,  
9 you know, the results of DNA and firearms testing, and all of  
10 it together points to one set of facts.

11         And unquestionably, not disputed by anybody, is that  
12 Stephanie Cousins was the person who made that initial call to  
13 Derecia Newman in order to get access to the residence. They  
14 wouldn't have been at that house except for Stephanie Cousins  
15 being along for the ride. Stephanie is the only one of this  
16 group of individuals who knew Derecia. She'd known her for,  
17 like, eight years, right? Derecia is going to open the door  
18 for Stephanie Cousins.

19         The fact that she's involved tells you who else is  
20 involved in this case. The fact that Stephanie is there tells  
21 you that Willie Mason is involved in the case. He calls  
22 Christine for Stephanie's number. He gets the number, and  
23 after that, he's calling Stephanie, and once he's calling  
24 Stephanie -- remember what time it is. It's not, Hey, it's 5  
25 o'clock. Let's go out for drinks. They're not going out to

1 dinner. It's like 3 in the morning when they're together, 3  
2 in the morning.

3 He's not her friend. He is her daughter's  
4 boyfriend's friend. What is he doing with her at 3 in the  
5 morning but for planning to commit some sort of crime. There  
6 is no reason for them to be together at that time of day for  
7 any reason other than this crime, and Stephanie, who we know  
8 is involved, doesn't know Job-Loc. She doesn't know Donovan.  
9 Stephanie is in the car with someone she knows. She's with  
10 Willie Mason. It's not Job-Loc calling Stephanie to take him  
11 somewhere where he can get -- do a robbery for crack. It's  
12 not Donovan doing that. It's Willie Mason.

13 And the other thing that Stephanie's involvement  
14 shows is the people who did this crime didn't know where to  
15 buy crack or dope by themselves. Job-Loc lives in town. He  
16 could figure out where to rob somebody without the help of  
17 Stephanie Cousins. Donovan could do that, too. I mean, my  
18 goodness, you heard evidence that they committed a crime  
19 together, Jerome Thomas and Donovan, a couple weeks before the  
20 homicide. They don't need Stephanie Cousins to help them out.

21 It's Willie Mason who needs that. He is from out of  
22 town. He doesn't know where to go for an easy target, for an  
23 easy robbery, and look at the phone records in this case.  
24 That tells you who was involved, and you'll have all of that  
25 in the deliberation room, and once you know it's Willie Mason,

1 you look at the surveillance tape, and you look and see, well,  
2 who is Willie Mason with? He came up from San Bernardino with  
3 David Burns. They stay or spend time at Monica's according to  
4 Monica's daughter Tyler. She identifies them as coming up.

5 And look at the letters. There's camaraderie in  
6 those letters. They're worried about the two women in the  
7 case talking to the police. They're both worried about that.  
8 Why are they worried about the two women? Well, they're  
9 Monica and Stephanie, and what can Monica and Stephanie say?  
10 Who else was in the car and who's responsible for this crime.

11 And incidentally, when you read those letters, it's  
12 no more, yes, sir, officer, sir. They use some pretty  
13 derogatory terms to describe Stephanie, and they use some  
14 pretty derogatory terms to describe Monica, and I don't think  
15 that David Burns was particularly scared or nervous about the  
16 officer's use of swear words when they spoke to him.

17 When you go back to the deliberation room, you will  
18 also as I've said have the initial interview that Detective  
19 Bunting conducted with Devonina, and you can play it over and  
20 over again. Now, her testimony here establishes David Burns  
21 is the shooter because she still remembers the overalls all  
22 these years later, and, remember, she said, Well, I remember  
23 kind of poofy hair or curly hair, which he had at the time,  
24 and she picked him out of a photo lineup.

25 But when you listen to that interview, that 12 year

1 old is remarkable. She describes everything that matches the  
2 scene. She says, My mom and I were in the living room. True,  
3 matches what the detectives find at the scene. She said,  
4 Stephanie came to the door, but it seemed like she was kind of  
5 acting. No one disputes that Stephanie is the one that set up  
6 the deal.

7 She said, he ran in and shot my mom before she could  
8 give up the money. That's what happened to Derecia. She was  
9 shot before she could give up the money. The money is in her  
10 hand.

11 She said, The guy who came in and did that and later  
12 shot me was wearing overalls. The 12 year old draws the  
13 overalls, close in time, years ago when these events occurred.  
14 She hasn't seen any surveillance tape. She knows what the  
15 shooter was wearing because she saw him, because he leaned  
16 over her rummaging through her pockets and asking her, Where's  
17 the money, and where's the dope? She said, Well, his hair was  
18 kind of curly and went down past his ears. His hair is kind  
19 of curly, and it goes past his ears.

20 And later she identifies David Burns in a photo  
21 lineup. That is what? Oh, consistent with Monica, who she  
22 doesn't know. How are these two people who have nothing in  
23 common converging on who's the shooter in this case?

24 What did she say about the gun in the interview?  
25 Listen to it. She said, The gun was silver, and it had one of

1 those things that you push out and twist. She's describing a  
2 revolver, a silver revolver. It has the thing you push out  
3 and twist.

4 She said, He chased me down the hallway, but he  
5 didn't get me yet. She's describing running down the hallway  
6 and being shot at. What does the apartment show? Oh, it  
7 shows bullet trajectory, bullets hitting the sides of the  
8 hallway consistent with the scene that she couldn't examine.

9 What did she say the killer did? I ran into the  
10 bathroom, and then he shot through the door, but he didn't get  
11 me. What do we have in the bathroom door? Oh, there's a shot  
12 through it, and we know that shot goes further into the  
13 bathroom. So it's not the shot that actually hit her. Then  
14 she says, Well, we struggled with the gun, and he was a little  
15 bit stronger than me, and he shot me in the stomach. And we  
16 know she was shot in the stomach.

17 And then when she's describing what this person's  
18 actions are, she said, He pulled out the nightstand drawer,  
19 and he took some of the drugs that were on top of the water  
20 bottle. And what's at the scene? A nightstand drawer pulled  
21 out, drugs just randomly distributed over the floor like  
22 somebody grabbed them in a hurry, and then he left.

23 And what does the defense say? Hey, you know what?  
24 She got that shirt color wrong. She did. And she did, didn't  
25 she? It's a blue shirt, not a white shirt, but are you to

1 ignore everything else that she got right? And all of that is  
2 without one word from Monica Martinez.

3 Now, Monica Martinez sat through a 12-hour interview,  
4 back and forth and this and that, and the reason she did that  
5 is because she was kind of a bad liar. The detectives knew  
6 they weren't getting the truth out of her for several hours in  
7 that case, but then Monica comes around, and apparently Monica  
8 is -- she's either psychic, or she's able to pull a rabbit out  
9 of her hat because what she describes matches to all of the  
10 evidence in the case and the testimony of other individuals in  
11 the case who she doesn't know.

12 She said, I didn't go inside. She's corroborated by  
13 Devonia and Cornelius. She says, I'm the one who drove the  
14 car that night. That's corroborated by phone records and the  
15 fact that these people all have to leave on the Greyhound bus  
16 the next day to get out of town. She's the only one with a  
17 car. She says, We picked up Stephanie. She's corroborated by  
18 phone records, Cornelius, Devonia and Stephanie Cousins's  
19 daughter who says, Hey, yeah, my mom went along on this thing  
20 and was involved in some sort of shooting and a robbery.

21 Monica also says, Stephanie ran out, and we had to  
22 pick her up a little bit later, like, on Christie. She's  
23 corroborated by Christine Pierce, Stephanie's daughter, who  
24 said her mom's feet were all cut up, and you can actually see  
25 on the cell sites that the car goes over -- there's

1 communication first between Willie Mason and Stephanie  
2 Cousins, and then Stephanie Cousins is picked up.

3 She says, That night I was with Stephanie Cousins,  
4 Mason and Burns. After we committed the crime, we went back  
5 to Job-Loc's apartment, and they left town. She's  
6 corroborated by video surveillance. She's corroborated by the  
7 Greyhound evidence. She's corroborated by phone records.  
8 She's corroborated by the fact that they all did leave town  
9 the week after. She's corroborated by Christine Pierce who  
10 says her mom was involved and who provides the number for  
11 Willie Mason and says there was phone contact that night.  
12 She's corroborated by Devonia who IDs David Burns as being  
13 there. She's corroborated by Donovan Rowland -- who clearly  
14 does not like her -- about them all being there the next day  
15 and the gun being altered or being cleaned out, and she's of  
16 course corroborated by DNA evidence at Job-Loc's apartment  
17 showing they were all there.

18 She said, Burns is the one that had the gun. She's  
19 corroborated by Devonia. She's corroborated by Devonia's  
20 drawing. She's corroborated by that letter that he wrote to  
21 Monica, the let me help you, Monica, and he's -- and by the  
22 fact that he's the one who leaves town. She is corroborated a  
23 number of ways in every significant fact that she offered you.

24 The two defendants in this case, David Burns and  
25 Willie Mason, they committed their crimes with people who were



1 vulnerable because of their own involvement. Monica Martinez  
2 was knee-deep in this and so was Stephanie Cousins, and they  
3 counted on -- to a certain extent -- their silence because  
4 they were participants, because they were involved, but once  
5 the shooting happened, Stephanie -- Stephanie clearly  
6 panicked. She runs back home to her daughter and starts  
7 calling the police because she's afraid of Cornelius.

8           And Monica goes along for a little while, but then  
9 the police arrived, and once they arrive and take her down to  
10 the homicide office, it soon becomes clear to Monica that she  
11 has a lot more to fear than David Burns and Willie Mason, and  
12 what that is is spending the rest of her life in prison, and  
13 so she starts telling them eventually -- and admittedly it  
14 took a long time -- what happened.

15           And when she does that, the detectives pieced  
16 together the events of that night with surveillance, with DNA,  
17 with evidence in the form of photographs and witness  
18 testimony, and all of those pieces together present a clear  
19 picture of what happens, and what that picture is is that  
20 these two defendants are without a doubt guilty of the crimes  
21 they're charged with.

22           THE COURT: Ladies and gentlemen, it's now the  
23 opportunity of the defendants to present closing arguments.  
24 It's my understanding that they have agreed that Mr. Langford  
25 will present the first of the closing arguments.

1           Is that right, Mr. Langford?

2           MR. LANGFORD: That's correct, Your Honor.

3                   DEFENDANT MASON'S CLOSING ARGUMENT

4           MR. LANGFORD: Counsel, may it please the Court,  
5 ladies and gentlemen, before I start, I'd like to say that  
6 there's nobody in this courtroom that doesn't understand that  
7 this was a tragic, horrible murder, absolutely, but I have to  
8 speak harshly about the State's case. It's my responsibility,  
9 and we talked about through jury selection that there were two  
10 trials here, and it's my turn to talk on behalf of Mr. Mason,  
11 and I am going to speak harshly about the State's case.

12           I talked -- in opening statement, remember I talked  
13 about, you look up in the sky, and the old Greeks used to look  
14 up, and they point to this star, and they point to that star,  
15 and they'd say, If you connect the dots, you can see a bear.  
16 Do you see that bear? For the life of me, I never saw the  
17 bear. I don't know. Maybe you saw the bear. Do you see the  
18 water carrier? That's exactly what the State has done. I  
19 warned you that's what they were going to do in my opening  
20 statement. That's exactly what they've done. That's exactly  
21 what their PowerPoint was, right? Remember, it was, Oh, look,  
22 and here's -- here's Stephanie Cousins, and if you draw the  
23 line to Willie Mason, then that's his involvement.

24           Well, this case is all about reasonable doubt, and  
25 you're going to go back and you're going to talk about

1 reasonable doubt. Well, what -- what does the jury  
2 instruction say about reasonable doubt? Reasonable doubt is  
3 one based on reason. It is not mere possible doubt, but it is  
4 such a doubt as would govern or control a person in the more  
5 weighty affairs of life. That's reasonable doubt.

6 I'm going to ask you to go back now and look at one  
7 other instruction when you talk about reasonable doubt.  
8 Remember also in voir dire, in choosing a jury, I mentioned  
9 that, you know, you don't check your brain at the doorway when  
10 you come in as a juror. In fact, we are relying upon it.

11 No. 41 -- I apologize -- No. 49, although you are  
12 considered -- to consider only the evidence in -- in this case  
13 in reaching a verdict, you must bring to the consideration of  
14 the evidence your everyday common sense and judgment as  
15 reasonable men and women. Thus, you are not limited solely to  
16 what you see and hear as the witnesses testify. You may draw  
17 reasonable inferences from the evidence which you feel are  
18 justified in the light of common experience, keeping in mind  
19 that such inferences should not be based on speculation or  
20 guess.

21 So let's talk about the robbery, okay. The robbery,  
22 they want you to believe that this was a robbery. If this is  
23 a robbery, it clearly is not a reasonable robbery. If this is  
24 a planned robbery -- which is what you'd have to have for the  
25 conspiracy, right? Monica Martinez says they sat in the car

1 and they planned and they talked about it. This has got to be  
2 the stupidest, worst planned robbery.

3 The prosecutor earlier said, And they executed their  
4 plan. What plan? Where do you see a plan and hence a  
5 conspiracy in the facts of this particular case? I've got an  
6 idea. This is the plan. This is the plan. Let's the four of  
7 us get together at 3 o'clock in the morning, drive to  
8 somebody's house that we know sells drugs. Let's pretend like  
9 we're going to buy drugs. Let's hand -- oh, wait. Oh, wait.  
10 Let's take a person that everybody in that house knows so that  
11 anybody in that house that's there will know that -- who  
12 committed the robbery right away.

13 Let's take an extra touch. Let's have an extra  
14 touch. Let's give a \$20 bill to the person that everybody in  
15 the house knows and have them give that -- the person in the  
16 house the \$20 bill. Does that sound reasonable to you? Is  
17 that a reasonable thing to do? If it's not reasonable, then  
18 the State hasn't proved their case beyond a reasonable doubt.

19 If there is another more reasonable explanation, then  
20 the State hasn't proved their case beyond a reasonable doubt.  
21 The other more reasonable explanation is there -- you know  
22 what? My mom always said, nothing good happens after  
23 midnight. The State is right about that. They were there to  
24 commit a crime. They were there to commit a crime with the  
25 occupants of the house, and that crime was selling drugs,

1 buying drugs, using drugs. Absolutely that's what was going  
2 on here. Does that make more sense we as reasonable men and  
3 women, does that make more sense?

4 Willie calls up and talks with Stephanie Cousins's  
5 daughter Tamika in July. What did he call her then for? He  
6 wants to get some drugs. What did he call Stephanie for this  
7 night? He wants to get some drugs. That's what's going on.  
8 That is the only thing that really makes reasonable sense is  
9 that they were out to buy drugs. They had the \$20, and then  
10 somebody went crazy.

11 This is a crazy horrible murder. I mean, even the  
12 murder in light of if this was a conspiracy to commit a  
13 robbery is an unnecessary stupid thing. There's no gun there.  
14 There were no knives there. So that was a stupid crazy thing,  
15 a crazy act, a crazy act that doesn't fit this being a  
16 robbery. Nothing about this fits it being a robbery.

17 What else tells us that it was not a conspiracy and  
18 that it was not planned? Finally, Cornelius -- after forcing  
19 him to spit out his Grand Jury testimony -- says that he hears  
20 Stephanie Cousins scream. He doesn't like it now. He doesn't  
21 like it today when he's in a court of law, this court of law,  
22 trying to tell you that these guys did something, but when  
23 he's testifying to the Grand Jury, his statement is that  
24 Stephanie Cousins screams, and then she says, What the fuck?  
25 Excuse my language, but that's what he said, right?

1           Why, if Stephanie Cousins is part of this grand  
2 conspiracy, does she have to be pushed out of the way?  
3 Because that's what Devonian says, that she got hit by the door  
4 and pushed out of the way. Why? That doesn't make sense, not  
5 if you're doing a planned -- and they're going to say, oh,  
6 well, you know, that's part of the ruse. That's part of --  
7 what act?

8           Who talks about act? Two people talk about, Perhaps  
9 Stephanie was acting. The first person that says it really is  
10 Cornelius Mayo. He says it after he talks to Stephanie  
11 because he's already decided she's in on it. When he talks to  
12 her, he's decided that already, and he accuses her of that,  
13 and what are her words, according to him? I love you guys. I  
14 would never do that.

15           What did Devonian say? Devonian says that the sister  
16 of Stephanie Cousins used to bring her kids over, and she  
17 didn't want to say on the stand that Stephanie was a friend of  
18 the family because of what's taken place, but it's pretty  
19 clear, and we understand why she wouldn't want to. It's  
20 pretty clear. Stephanie was over there a lot, was a friend of  
21 the family. She says to Cornelius that night, I wouldn't do  
22 this. I love you.

23           But he's mad. He's angry. Of course he is. Of  
24 course he is. Who wouldn't be? And not thinking correctly,  
25 he jumps to conclusions, and he immediately thinks she must've

1    been acting. That's the first thing he says.

2           The next day, when they interviewed Devonia, what  
3    does she say? She might've been acting. Wow. A 12 year old  
4    under sedation who's gone through this horrific thing comes up  
5    with this sophisticated thought that maybe Stephanie was  
6    acting, or being a 12 year old under heavy sedation having  
7    spoken with Cornelius Mayo -- who is fit to do murder himself  
8    -- hears those words, Maybe Stephanie was acting, and she  
9    starts that train of thought herself because she didn't get  
10   everything right.

11           She did not get everything right. Clearly, she was  
12   not understanding everything or was taking in and keeping a  
13   good history of everything that had taken place. It doesn't  
14   make sense. Again, it doesn't make sense. What are the odds  
15   that this 12 year old would say exactly the same thing that  
16   Cornelius said, Cornelius in his anger and his grief? Why  
17   would she -- why would she do that? It just doesn't make  
18   sense.

19           If it doesn't make sense, it's not reasonable, and if  
20   it's not reasonable, then you should have a reasonable doubt  
21   about whether that's the way it took place. We don't have to  
22   prove anything, but if we show that there's a reasonable  
23   doubt, you have to acquit. You have to acquit.

24           What else? What else shows that this wasn't planned?  
25   Does Stephanie run back to the car right after this takes

1 place? Did she run back? Do they hustle her out of there and  
2 get her back into the car? No. She's walking around God  
3 knows where, and so what had to happen at that point? Where's  
4 Stephanie? They have to call her. She's scared. She gets in  
5 the car, clearly upset, if you believe Monica.

6 Even the State says they were there to do a  
7 transaction. That's what they just said, There to do a  
8 transaction because she had a \$20 bill in her hand. That's  
9 right. That's what was going on. They were there to buy and  
10 sell drugs.

11 So who really says that this was a planned  
12 coordinated effort at committing a robbery? Who says that?  
13 Monica Martinez says that. Why should we believe Monica  
14 Martinez? What did Monica Martinez say over and over that was  
15 the truth? Nothing. Nothing.

16 Towards the end of the statement that she gave to the  
17 police officer some 12 hours after they took her to the police  
18 station and she's finally getting some mileage out of what  
19 she's telling, the story that she's finally telling there, she  
20 turns to the officer -- and I don't know if you caught it --  
21 but she says, Am I -- Am I still -- excuse my language again  
22 -- Am I still fucking up? Why do you ask that question if you  
23 just told the truth? If you've told the truth, shouldn't you  
24 be like, I told the truth. It's off of me. I absolutely told  
25 the truth. I know I'm telling the truth. I don't need to ask



1 this officer, Chris, am I -- am I still fucking up? Do you  
2 believe me yet?

3 Do you know what? He had something that was pretty  
4 accurate there right at the very end, right at the very end,  
5 and he finally says, You told me -- When you tell me 20 times  
6 that, I was lying then, but now I'm telling you the truth, I  
7 mean, it comes to a point where you wonder, what is truth and  
8 what isn't, right? Absolutely. What is truth?

9 And then we know she had a meeting with the district  
10 attorneys after this where she told a little more information.  
11 Maybe I'll give them a little more because now after being in  
12 custody for many years and seeing my discovery and reading all  
13 of the facts of the case as the State says that these are the  
14 facts and hearing all of the witness statements, now I can  
15 come in with a little more information, and she says that she  
16 told them in October a little more of what they thought was  
17 the truth, a little more of what the State thought was the  
18 truth, a little more, closer to what the State wanted to hear  
19 because the State cut a deal with her at that point.

20 They cut her a deal, ladies and gentlemen, where  
21 she'll be eligible for parole perhaps, perhaps eligible for  
22 parole in five years. She's been in custody for four years.  
23 Play her cards right, she's out pretty darn quick compared to  
24 the 20-year minimum for first-degree murder, which is what she  
25 was on the hook for. She's got kids. You met one of them.

1 She's got family members. They were sitting in court. She  
2 has loved ones. She has people she wants to see.

3 I ask you, would you lie about those two individuals  
4 to not do 15 years in prison? Would you lie? Would you tell  
5 a lie? Would you tell the State anything they wanted to hear  
6 to avoid 15 years in prison? Absolutely. Any mother, father,  
7 person in their 40s would. Any reasonable person would.  
8 She's just being reasonable. When she lies on the stand,  
9 she's just being reasonable.

10 But what she said, again, doesn't make sense. What  
11 she said is unreasonable. It's an unreasonable scenario, and  
12 if it's not reasonable -- and what is reasonable is that this  
13 was not a conspiracy and not a robbery -- then that means if  
14 there's no conspiracy and no robbery, then under the State's  
15 theory, the only way that Mr. Mason can then be found guilty  
16 is if you believe that he went up there with whoever the  
17 shooter was and said, We're going to go up there to kill  
18 somebody. In spite of the State's argument that that's a  
19 possible theory here, that's really remote.

20 Now, it's pretty clear, either they get their  
21 felony-murder robbery and conspiracy to do so. That's about  
22 the only way that you could convict Mr. Mason in this  
23 particular case, but you have to do it with an unreasonable  
24 scenario. Yeah, they picked those stars out of the sky. They  
25 connected those lines on their PowerPoint presentation, but

1 the more reasonable scenario here is that they went up to buy  
2 drugs and somebody went crazy.

3 I leave you with the words of Tamika Pierce: I know  
4 Willie himself wouldn't do nothing like this. And she was  
5 angry. She was upset that her mother had gotten into this and  
6 came over to her house where she had her kids, but she wasn't  
7 really mad at Willie because she knows that he wouldn't do  
8 anything like this because it's pretty darn stupid.

9 So if you have a reasonable doubt as to whether there  
10 was really a conspiracy, if you have a reasonable doubt as to  
11 whether there really was a robbery and if it makes more sense  
12 that they're just there to buy drugs and somebody went berserk  
13 for whatever reason, then you have to acquit Willie Mason, and  
14 that's what I'm going to ask you to do.

15 MR. ORAM: Your Honor, it may take me a minute just  
16 to plug in my computer.

17 MR. SGRO: I want to do a quick restroom break.

18 THE COURT: We'll do a quick restroom break, ladies  
19 and gentlemen.

20 During the recess, it is again your duty not to  
21 converse among yourselves or with anyone else on any subject  
22 connected with this trial or to read, watch or listen to any  
23 report of or commentary on the trial from any medium of  
24 information including newspapers, television and radio. You  
25 may not form or express an opinion on any subject connected

1 with this case until it is finally submitted to you.

2 We'll be in recess for about 10 minutes.

3 (Jury recessed 3:42 p.m.)

4 THE COURT: The record will reflect that the jury has  
5 left the courtroom.

6 10-minute break.

7 (Court recessed at 3:42 p.m. until 3:55 p.m.)

8 (In the presence of the jury.)

9 THE COURT: All right. State of Nevada vs. Mason and  
10 Burns. The record reflect the presence of the defendants,  
11 their counsel, the district attorneys, and all members of the  
12 jury.

13 Ladies and gentlemen, both Mr. Oram and Mr. Sgro are  
14 going to make closing arguments to you. It's my understanding  
15 that Mr. Oram will probably go about 45 minutes or so.  
16 Because -- we're not going to finish closing arguments today.  
17 I can tell you that. So Mr. Oram's going to go first, and  
18 then we're going to give you an evening recess. You come back  
19 tomorrow morning at 9:45. Mr. Sgro will finish the defense  
20 arguments. And then Mr. DiGiacomo will be given the  
21 opportunity for a brief reply. That's the procedure that the  
22 State always gives -- gets the last opportunity to talk to  
23 you.

24 All right. Mr. Oram.

25 MR. ORAM: Thank you, Your Honor.

1 DEFENDANT BURNS' CLOSING ARGUMENT

2 MR. ORAM: May it please the Court. Ladies and  
3 gentlemen of the jury, first I would like to do something that  
4 I was sure I would forget. And that is, you know, you -- all  
5 13 of you come out of your lives, you have important lives,  
6 important things to do. I always think it's interesting that  
7 our Constitution gives a person the right to a trial by jury,  
8 people coming out of their lives. They're brought into a  
9 courtroom, told, Don't talk, don't talk to each other about  
10 this or that. Make sure that you get here on time.

11 You come here. You've been here for a long time.  
12 And I think it's so important that people do that. So I thank  
13 you, each and every one of you, for your service.

14 Okay. This case in the end, there's something about  
15 it that is a little more simplistic than I think most people  
16 see. And I'll show it to you right from the very beginning.

17 Okay. Really, there's something that the State says  
18 happened. And remember, the State has the burden of proof.  
19 And when you look at that, that's sort of my rendition of a  
20 vehicle. Not very good. But you get my point.

21 The State says that Monica Martinez is the driver.  
22 Okay. On behalf of Mr. Burns, we accept that. You can accept  
23 that. It's not a fight.

24 The State says Willie Mason is in the vehicle. Okay.  
25 You can accept that. That's not a problem with Mr. Burns.

1 The State says Stephanie Cousins is sitting in that back.

2 So what is this really about, this case? Well,  
3 Monica Martinez says to all of you there are four people in  
4 the vehicle. And that's what the State has said. There are  
5 four people in the vehicle. So in order for Mr. Burns to be  
6 guilty, then you know one thing has to be true; he's got to be  
7 sitting there in that seat. Because that's what Monica said.  
8 And that's what the State is saying. Right?

9 So if you look at that, the question in this case  
10 becomes did they prove to you beyond a reasonable doubt that  
11 Mr. Burns is in that seat? Okay. That seems what's -- what I  
12 would argue to you is somewhat simplistic. Not because the  
13 facts are simplistic, but because the issue is simplistic.

14 If you at the end of this case have a reasonable  
15 doubt that Mr. Burns is not in that seat -- and I don't mean  
16 in the back seat, I mean in the car, not present at the scene  
17 -- then, ladies and gentlemen, your duty is to come in here  
18 and find him not guilty.

19 And I'm going to talk a lot about that. And in the  
20 end, there is so much doubt that Mr. Burns is not there.

21 Now, we have no burden of proof. You've heard that  
22 from the first time we talked to you. We have no burden of  
23 proof. I don't have to make this argument. You -- you could  
24 all recite this by now. We don't have to ask questions, all  
25 of that. But I think you can tell that Mr. Sgro and I have

1 spent a considerable effort in attempting to prove things,  
2 even though we don't have to. And Mr. Sgro and I may differ  
3 on one aspect of this case. And that is Mr. Sgro will tell  
4 you the State has not proven beyond a reasonable doubt that  
5 Mr. Burns is there. The difference is I would suggest to you  
6 that we have showed you who is there. And I'm going to prove  
7 it today.

8 Before I get into Mr. Jerome Thomas, I want to talk  
9 about some other aspects of the case. And I want to show you,  
10 to bring back your memory, some of the clips from the evidence  
11 in this case.

12 Monica Martinez. Monica Martinez is an admitted  
13 liar. She lied over and over and over and over again in this  
14 case. She lied from the very beginning. And she lied to you,  
15 as well.

16 If you have any doubts about her lying to you, just  
17 remember that trip she took with her daughter to California.  
18 Do you recall that? Oh, I went with my daughter to  
19 California. So I asked Tyler Mitchell. Did you go to  
20 California with your mother? Oh, no. She lied to you. And  
21 she lied to you often.

22 I want to show you a clip of Monica from when I'm  
23 questioning her.

24 (Audio/video played.)

25 Ladies and gentlemen, she admitted -- admitted that

1 she's lied so many times, how could anybody know what the  
2 truth is? In a case this serious, coming into this courtroom  
3 and lying over and over. Did you catch the one where I asked  
4 her, You didn't mention Donovan Rowland, you didn't mention  
5 the murder weapon in 12 hours talking to the police.

6 Yes, I did. I think I heard it. We watched it.  
7 She's just not -- she's not even paying attention. She can't  
8 even catch her own lies. But you know what? That was pretty  
9 clever of Monica not to mention the murder weapon or Donovan.  
10 You know, I asked her, How come you didn't mention Donovan?  
11 Well, I wasn't asked the right question. What question should  
12 I have asked her? How many questions? Oh, was there a man  
13 named Donovan Rowland, did he come over? It's ridiculous.

14 Everybody knows that you'd want to know -- homicide,  
15 that detective wanted to know where the murder weapon was.  
16 And she wouldn't tell. Why? It's obvious. It's Job-Loc.  
17 She loves Job-Loc. She admitted it. I love Job-Loc. And I  
18 cover up for Job-Loc.

19 And the State put on a diagram, Ms. Weckerly did  
20 during her closing argument. And I thought it was quite  
21 interesting. It was the one with the arrows, one pointed  
22 between Job-Loc and his lover Monica, and the other between  
23 Willie Mason and Stephanie Cousins. And there was something  
24 missing, wasn't there? And it's something that's out of place  
25 in that. And that is Mr. Burns. You see? Mr. Burns is out



1 of place. Because I would suggest to you that those arrows  
2 show you who was in that car.

3           You know, Monica Martinez deceived so many times,  
4 there was something that came to mind before I got ready to  
5 question her that I thought would be a very simplistic way to  
6 tell you what was interesting about her. When we were  
7 children, there was a thing that you'd see in coloring books  
8 or children's books, and it would show you a picture -- you  
9 probably all are going to remember this -- there's a picture  
10 and it shows things on the picture. And then there's another  
11 picture that looks very similar below it. And it tells you,  
12 the instructions tell you look for the differences in the  
13 pictures. You all have to remember it from when you were  
14 children. It's kind of a fun thing, even as adults it'd  
15 probably be fun to do. You know, and one tree is missing a  
16 branch or something along those lines.

17           The reason I thought that was interesting is because  
18 I thought it would be very interesting if I asked all of you  
19 to go back there, figure out how many lies she told. Because  
20 as Mr. Burns' attorney tried to question her, I was attempting  
21 to do that in front of you, show you the lies. And I  
22 guarantee you that I missed many of them. Because that woman  
23 lies so much.

24           And the State of Nevada offers her a negotiation to  
25 come into this court and do what? Well, we all know she

1 pointed at Mr. Burns. That's easy. But what I would suggest  
2 to you is much more interesting was that who is her lover?  
3 Job-Loc. And she just has to be jumping up and down thinking,  
4 I get to come into this court, point at Mr. Burns, say Hey,  
5 there's the truth, can I have my four and a half years so I  
6 can go to the parole board, please? And I don't have to point  
7 at Job-Loc.

8 Ladies and gentlemen of the jury, even after the  
9 detectives put her under oath -- now, she wasn't under oath.  
10 They were just using techniques to try to get her to tell the  
11 truth. What did she say? She -- right after she was put  
12 under oath, she started on braids. The man had braids. Well,  
13 is that true? No. That's a pack of lies.

14 And after that she pointed at Detective Wildemann.  
15 And if you saw his hair, his hair is shorter than mine. And  
16 said, Yeah, the curls. And she goes into this great detail  
17 about curls. That's what the man looked like. A pack of  
18 lies. She did it over and over and over and over again.

19 And when you're talking about a case this serious and  
20 you hear somebody deceiving a jury that much, it causes  
21 concern that what the State is really doing is picking and  
22 choosing what they want. Was the man wearing braids? Well,  
23 the State doesn't like that, so of course not. Was it Mr.  
24 Burns? Yes, she said it was Mr. Burns. Ladies and gentlemen,  
25 she's all over the place.

1 I'm going to show you another clip. Now this one to  
2 me, ladies and gentlemen, I would suggest from the evidence  
3 that this should be disturbing to every single person who  
4 cares about our system of justice. This one.

5 (Audio/video played.)

6 Said an innocent man was guilty of a crime like this.  
7 What a disgrace. She said it twice. I would suggest,  
8 although I don't have the memory of it, that I asked a second  
9 time, because it's, like, really? You're really going to  
10 admit that to the jury that you would actually blame an  
11 innocent man? And who was that innocent man? That was her --  
12 Sean, her ex-boyfriend.

13 Do you remember -- and I showed pictures of it. And  
14 the reason I wanted to show pictures of him is because they  
15 were ugly pictures. Do you remember? He's standing there  
16 with a gun like that. And the reason I want you to think  
17 about that is because if that man had gone on trial and you'd  
18 seen pictures of him, you'd be, like, he's a pretty violent  
19 looking guy. Probably -- probably did it. That's the  
20 direction that lady's willing to go. Who would admit that  
21 other than somebody with devoid -- devoid of morals? She  
22 doesn't care. She doesn't care about our system.

23 And she doesn't care -- why should she? -- about Mr.  
24 Burns. She doesn't care. That cockamamie thing through the  
25 vents. Oh, yeah. We believe that, because they're through

1 the vents. You've got to believe Monica.

2 Monica said something interesting about Mr. Burns.  
3 She said she met him on the Strip; do you remember? They  
4 said, Well, you've never met the guy with the braids before?  
5 No, I'd never met the guy with the braids before. And then  
6 she starts saying, Yeah, I did. See, we were on the Strip.  
7 And we were going to buy some dope. And we were walking.

8 And I would suggest to you when she said that, that I  
9 think it's reasonable as human beings to think, What did that  
10 look like? Do you think it was nighttime? Was it daytime?  
11 Where were they on the Strip? I think we do that. We sort of  
12 picture what the person is telling us, almost like a story.  
13 And it was a lie. She made it up. She made it up. And if  
14 she hadn't admitted that that was a lie, I'd suggest to you,  
15 each and every one of you may well have believed her. You  
16 would have thought she met Mr. Burns on the Strip, and it was  
17 a lie. And you would have believed it. Because it's easy to  
18 say things when people aren't there. And that's what she's  
19 doing by saying Mr. Burns is in that car.

20 I'd like to show you another clip. This is from  
21 Donovan Rowland. And ladies and gentlemen, the -- Burns is  
22 innocent is something he says after, and I'll explain what I  
23 want to tell you about that.

24 (Audio/video played.)

25 That's interesting. Because I suppose most of you

1 think now I'm going to say, See? He's innocent. The man that  
2 smokes embalming fluid said so.

3 Oh, no. No, no, no. The reason I play that clip for  
4 you is to show you that when you go around pulling people like  
5 that, putting them on the witness stand and saying, Look, he  
6 said Mr. Burns is innocent, it must be true. Oh, no.

7 But that's what the State of Nevada is doing, isn't  
8 it? Oh, don't worry when Mr. Donovan Rowland, when West says  
9 that. That's not true. You can't believe him. He's a liar.  
10 Smoked too much embalming fluid and he wouldn't remember, it's  
11 too many years later. But when he said before that Mr. Burns  
12 is guilty, you should believe him then. He's quite credible.

13 And it's sort of amazing. Because when we were  
14 picking you, ladies and gentlemen, we often talked about red  
15 light/green light. And we asked you how do you tell when  
16 somebody's lying to you? Because they change from red light  
17 to green light, oh, I wasn't even there. Okay.

18 So when that man says he's innocent, do I stand up  
19 here and say, Yeah, where they go. It's street knowledge. Do  
20 you see? He would know. He's -- he's Little Homeys. He's  
21 Baby Job-Loc. He would know that Mr. Burns is innocent.  
22 Maybe somebody believes that. Okay. If you believe it,  
23 great.

24 But I think it's got a greater purpose, that clip,  
25 that information, that when the State comes up here and shows

1 you different things that these witnesses say, ask yourself,  
2 something that the witness said before. So really, State,  
3 what you're doing is you're jamming this evidence together,  
4 picking and choosing. Okay. It's not braids, it not short  
5 curly hair. It's hair -- bushy hair. That's the one we like.

6 Identification evidence I would suggest to you is  
7 some of the worst that comes into a court. Because humans,  
8 we're -- we make mistakes. We do. We all make mistakes. And  
9 it happened right in the court. And you may not have noticed,  
10 but we're sitting over there going, Look at that right in  
11 front of you.

12 Tyler Mitchell knew David Burns. Right? She said  
13 she knew him as D-Shot or Curly. And -- and she knew Mr.  
14 Mason. She -- in casual, casual relationship, like you're  
15 sitting there in your own house, your mother's house, you  
16 could see somebody. Right? It's not under the fear of  
17 something like if you're being robbed, where terror, time is  
18 small. Your eyesight is shorter, more narrow.

19 What did she say?

20 (Audio/video played.)

21 She misidentified the defendants. She came into this  
22 court, and then when I asked her about it, she said, Oh, well,  
23 their names are similar. Look, you weren't asked about names.  
24 You were asked to identify defendants in this courtroom. A  
25 person who knows Mr. Burns, Mr. Mason can't even get it right.

1           What does it mean? It simply means that we asked you  
2 again in jury selection. Have you ever been -- had somebody's  
3 -- thought -- thought you were somebody that you weren't or  
4 you've made the same mistake? It's much more common. And  
5 that proves it. And that proved it right in front of you,  
6 that a person who wasn't under stress came in here and got it  
7 wrong. Got it severely wrong.

8           There's an instruction that -- several of them deal  
9 with Monica. I'll just read it to you. It's Instruction No.  
10 10.

11           "The fact that a witness was given an inducement in  
12 exchange for his cooperation" -- in this case her cooperation  
13 -- "may be considered by you only for the purpose of  
14 determining the credibility of that witness. The existence of  
15 such an inducement does not necessarily destroy or impair the  
16 credibility of the witness. It's one of the circumstances  
17 that you may take into consideration in weighing the testimony  
18 of such a witness."

19           What it's really saying is there's a -- there's an  
20 area of law, an area of law that says you take a look, take a  
21 careful look at when somebody's got a reason, a motive to lie.  
22 And they're being given something. Can you imagine if we flip  
23 this around and I could give Monica the key and say, Now,  
24 Monica, I have the key to your freedom. I want to have a  
25 meeting with you and I don't want you -- nobody's going to

1 take any notes. Then we'll have a second meeting with Mr.  
2 Sgro and some other people. We won't take notes. And I want  
3 to talk to you about Mr. Burns. And then I'm going to put you  
4 on the witness stand. I've got the key to your freedom. Mr.  
5 Burns in that car wasn't Job-Loc.

6 Ladies and gentlemen of the jury, I submit to you --  
7 I submit to you there are reasonable inferences that woman  
8 would point at whoever she had to at this point if she could  
9 gain her freedom. Because that's what the term bought and  
10 paid for is about. She came in here with the truth that the  
11 State wanted. And that truth, there was never going to be any  
12 doubt, was going to be Mr. Burns is guilty.

13 You know, I'm going to come back to the science in a  
14 while. But that document is disturbing. Don't know how well  
15 you can see it. I'm going to do a close-up in a second. But  
16 that is something Las Vegas Metropolitan Police Department  
17 Forensic Laboratory. They sure don't bring the person who  
18 wrote that in there. Although at the very bottom I pointed  
19 out it's initialed by the DNA analyst.

20 I spoke with Bunting at length about this case. And  
21 they have to put the suspects in the car, and in both  
22 residences Newman and Thomas to corroborate the story, so all  
23 these samples need to be worked despite the sample limits  
24 policy. This has been okayed by K. Merga.

25 Okay. Now, the reason I think it's important and the



1 date of it was important was because that's after a grand jury  
2 has said, Okay, yeah, yeah. Okay. We've gone to the grand  
3 jury. We've presented, we've got our evidence. And in an  
4 internal memo, internal memo, they're saying we need more, we  
5 have to have more.

6 And we found that document and they don't even bring  
7 in the person who said it. And Detective Bunting is all over  
8 the place trying to explain it.

9 But it really makes obvious sense. What is it really  
10 saying? I mean, I think we could take a unanimous vote as to  
11 what it's saying. They're saying we need science. That makes  
12 sense. Prove it with science.

13 Because, you see, in the end if I was standing here  
14 on the date of that letter, on the date of that I was standing  
15 before you and saying, Okay, challenge. I challenge you,  
16 State, we'll see if science proves that it's Mr. Burns or  
17 we'll see if science proves it's Jerome Thomas.

18 Science, ladies and gentlemen, did not hurt Mr. Burns  
19 one bit. It helped him. And these talented, really, really  
20 talented prosecutors -- these are very talented people, I hope  
21 you know that. There's something to be said for bringing  
22 their best in. And they do, and they should, because a lady  
23 lost her life. So you expect to see talent like we have  
24 sitting here.

25 But you know what? They're ignoring science.

1 Because science really is helping exonerate Mr. Burns. This  
2 is a man who is not sophisticated, no matter what they say.  
3 That is not a particularly smart man sitting next to me. It  
4 isn't. It isn't. And for him not to have left DNA at that  
5 scene -- do you remember the pushing on the door? Think about  
6 these things. Fingerprints. Pushing on the bathroom door.  
7 Fingerprints, DNA. You would think he's probably sweating or  
8 fear or something. DNA, pushing on the door. Do you  
9 remember, look, grab -- he grabbed Stephanie Cousins. Look  
10 for the touch DNA. Nothing. No fingerprints. Look in the  
11 drawers. Nothing. No DNA, no fingerprints. That's not  
12 shocking? That's not shocking?

13 They thought they'd have it in a heartbeat. They  
14 did. They thought they'd have it. Because it made all the  
15 sense in the world. And if any one of you -- you see, gloves  
16 were never mentioned. But there's going to be -- well, maybe  
17 we'll try to argue the gloves from Job-Loc. But, you see,  
18 they even tested the gloves. No, there was an unknown female  
19 on the gloves. No Mr. Burns. No touch DNA. Nothing.

20 How about the murder weapon? No touch DNA. No  
21 fingerprints. Not on the inside. Nothing. Nothing.

22 In this day and age they're asking to convict on a  
23 pair of overalls, which you see people misidentifying people  
24 all the time. That's a horrible statement. Because it shows  
25 they knew it. They knew that it would be extraordinarily

1 difficult to come to a jury like you and convict Mr. Burns  
2 when science was not on their side. Their only chance is to  
3 bring in two of their most talented, which they've done, were  
4 very clever.

5 This woman. You know, you see the State, you know  
6 Mr. Burns, they pull his jail letters and they -- it's almost  
7 like we're reading hieroglyphics, the Rosetta Stone. This is  
8 what he meant, and this is what he said, and when he said the  
9 clip, then he meant this, then he meant that. You know what  
10 that is? That's a confession. It's a confession. Look at  
11 what he said.

12 Back to Job-Loc, to Monica. Even if the smoker bitch  
13 told them I was there, she can't pick me out of no lineup.  
14 And even if she did, it documents saying my leg is broke.

15 Now, I asked this question of Monica, which I thought  
16 was very important. Because, you remember, Monica admitted  
17 she wrote a letter to him saying, I told them you weren't  
18 there. Okay.

19 So this -- just use your ordinary common sense,  
20 that's all I want you to do. Use your ordinary common sense.  
21 We all have people we love. Every one of you have people you  
22 love. Every one of you. So if you have someone you love,  
23 maybe your significant other, and something happened, a car  
24 accident happened, you weren't there, why would your  
25 significant other, your loved one be saying, I've told them

1 you weren't there? Well, even if they say I was there, and  
2 even if I'm picked out of a lineup, just go with the broken  
3 leg thing.

4 Why would you do that unless you were there? Unless  
5 you're guilty? Why? If that's true -- if that's true, then  
6 he's innocent.

7 Said I was going to prove it. Don't have a duty, and  
8 I just know that Mr. Sgro will dispute it. But we're going to  
9 do this and try not to overlap too much. But now we're going  
10 to take all the technology away, I'm going to do something in  
11 a real old-fashioned way. Okay. Real old-fashioned way, I'm  
12 going to show you this guy's guilty.

13 That's my idea of a circle. I'm going to call this a  
14 circle of coincidence. Okay. My handwriting is terrible.  
15 But you'll all hear me and you'll all understand me. Okay.

16 In the middle, that's Job-Loc. And I'm going to show  
17 you just how guilty -- guilty as heck he is. Guilty of  
18 murder. Not this nonsense they're charging. And since I have  
19 a jury in front of me, I'm going to ask you a question. In  
20 the end, if I prove it and you say, Yeah, you're right beyond  
21 a reasonable doubt, we convict Job-Loc of murder, of being  
22 there, you've got to acquit Mr. Burns.

23 What a coincidence that Job-Loc, who's completely  
24 innocent, has a girlfriend, a lover who happens to be the  
25 convicted murderer, the getaway driver in this crime. That's

1 a terrible coincidence for an innocent man, now, isn't it?

2 Monica equals the driver, the getaway driver. Really  
3 quite simple. It's a bad coincidence for that poor guy, isn't  
4 it? What did Monica admit in her statement to the police? Do  
5 you remember that? One of the things she admitted is I'm  
6 covering up, I'm covering up. They asked, For who? Job-Loc.  
7 And it's not Detective Bunting, but I think Detective  
8 Wildemann who says two pages later, Listen, I want to get to  
9 this whole covering-up-of-Job-Loc thing. What are you telling  
10 us? You're not telling us he's done anything. What are you  
11 covering up for?

12 There she was, slinking, doing her little thing,  
13 lies. Covering up for an innocent man. What a coincidence.  
14 That's a bad coincidence for him, isn't it? He's innocent and  
15 somebody's covering up for him. Why do you cover up for an  
16 innocent man? Seems strange, doesn't it?

17 Monica covers up. She admitted it. You know, I was  
18 trying to show something with those maps. Okay. You see how  
19 from -- according to Stephanie Cousins or -- excuse me --  
20 according to Monica where they're going. You see, Mr. Burns  
21 they say is at the Opera House. What I was trying to show  
22 desperately, and was able to do it, was there's stops along  
23 the way. And she had to drive right -- Monica had to drive  
24 right by her own house. Remember she tried to say, Oh, it's  
25 two major streets away. No, it isn't. I told you. You go

1 out the side. She admitted it. Okay. So -- so it's -- it's,  
2 like, a mile away. Literally a mile away. Two minutes  
3 driving.

4 Job-Loc, we know there was a change of personnel,  
5 right? So if they -- we accept the State's theory, at the  
6 Opera House we see Mr. Burns, Mr. Mason, and Monica.  
7 Therefore, that must be who went there. Oh, no, no, no, no,  
8 no. Isn't somebody missing? Where's Stephanie Cousins?

9 So we know there's change of personnel. Change of  
10 personnel. So why, given all their little maps, fancy little  
11 technology, she changes personnel and drives right by her  
12 house. And that's -- that's, ladies and gentlemen, one of the  
13 big answers. You see, Job-Loc had opportunity because of  
14 location. He was right within two minutes. He hung out there  
15 all the time. Isn't that a coincidence?

16 Coincidence for an innocent man that his lover  
17 happens to live a mile from where this happened. Wow, does  
18 that give opportunity. Unfortunate coincidence for him, isn't  
19 it? Hangs out there.

20 I asked her, you're scared of the consequences of  
21 Job-Loc that night? Oh, yes. Now, think about this, use your  
22 ordinary common sense. Okay. Mr. Burns has been shooting  
23 people in a house. Shooting people in a house. Just -- you  
24 -- can you imagine? No. My goodness. Boom, boom, boom. And  
25 then coming out and sitting there, I got blood on me. No

1 blood in the car.

2 And she's got an answer to Job-Loc's consequences?

3 You're worried about Job-Loc when you've got this guy sitting  
4 behind? Remember she said he was talking about shootings.

5 Stephanie Cousins, I'll shoot her, saying bad things.

6 Wouldn't you be scared of the man who's shooting people and  
7 sitting right behind you? Who would you be scared of  
8 consequences for?

9 But she tells us, I'm scared of the consequences from  
10 Job-Loc. Job-Loc's consequences. That's an unfortunate  
11 coincidence for an innocent man. The star witness in the  
12 State is scared of the consequences of you. Your  
13 consequences. What did he have to do with anything?

14 Job-Loc committed a crime two weeks beforehand in her  
15 car. That's a terrible coincidence. You've committed a crime  
16 with Baby Job-Loc two -- two weeks before the crime. That's  
17 unfortunate coincidence for an innocent man. That's an  
18 unfortunate coincidence for an innocent man.

19 Monica admits they were stressed about money hours  
20 before the murder. That's a terrible coincidence. See, these  
21 are all terrible coincidences for him, Job-Loc. Stressed  
22 about money, so, you see, he has motive. That's what that  
23 proves. They had motive to want to hurt, to want to rob.

24 Disposal of the murder weapon. You know, if you own  
25 a firearm -- some of us like firearms -- and you found out

1 something bad had happened to it, I would suggest that a  
2 reasonable person would be, like, Get that away from me. What  
3 -- what have you done with that? Wouldn't an innocent person  
4 really -- 70 minutes later, did you catch that? 70 minutes  
5 later at 5:00 in the morning, he's in there rubbing away at  
6 it, rubbing away at it. Rubbing away at the murder weapon.  
7 Can you just for a second indulge me. Can you imagine if Mr.  
8 Burns had done that? Oh, they'd be jumping up here -- and  
9 they would be, too -- he had his hands on the murder weapon,  
10 you know he's guilty.

11 So all I'm doing is say, Hey, look at him. Hands on  
12 the murder weapon, disposing, wiping it off. That's a bad  
13 coincidence. Poor Mr. Job-Loc. Why would an innocent man do  
14 that? Because you're guilty as hell, that's why.

15 Job-loc asked Monica for discovery. Wanted,  
16 remember, she -- he wanted a summary of discovery. Why would  
17 you want that? Why would you care? You've got your own  
18 problems in California. Right? You've got your own problems  
19 in California. Why are you writing to your lover there  
20 saying, Could you give me a summary of all the witnesses?  
21 Don't forget about my broken leg, please. Don't forget about  
22 my inability to be able to, you know, I could do that, too.  
23 That's not -- yeah. Identify theft woman. Stealing people's  
24 identity. Some kind of surgery, allegedly. Got only knows  
25 what kind of insurance fraud those people are committing.



1           What they did is ridiculous. And to believe this  
2 without any medical evidence that that man is hurt is  
3 pathetic. Pathetic. With the amount of lies and deception  
4 and crimes those people have committed, to think that they're  
5 not up to no good is unbelievable. One summary of discovery.

6           See, they've got this little friend called Baby  
7 Job-Loc. You know, I promised I'd -- I'd get through as fast  
8 as I could. If I take a little bit longer, I apologize to  
9 you. But this is really important. Okay.

10          Baby Job-Loc. Right. This is his little homey, his  
11 little guy he hangs out with. Isn't it just a little bit too  
12 coincidental that one, did you notice they don't -- they don't  
13 tell us anything about an alibi for this guy. His phone  
14 happened to drop into a hot tub a couple of days after the  
15 crime. He's told people he's involved in this and at the  
16 murder scene. If somebody here thinks Baby Job-Loc is at that  
17 murder scene, well, fine. We don't have to prove otherwise.  
18 So if somebody on -- I -- I think it was Baby Job-Loc, fine.  
19 Okay. Mr. Burns goes home. Not guilty. Okay. I would  
20 suggest to you -- well, see, there I go. Because it's just  
21 him. It's not a coincidence, horrible coincidence for that  
22 guy.

23          Flight. There's a flight instruction in here. Did  
24 you hear the -- the judge was reading it, that flight can be  
25 evidence of guilt. You know, if you fly and get on a plane

1 and you go to -- you go to Peru the next day, it's kind of  
2 suspicious. Especially if you've never been out of the  
3 country. Okay. I guess you wouldn't have a passport. But  
4 you see the point of flight, that somebody running away.

5 Now, don't forget, when I hear Mr. Burns is running  
6 away, Mr. Burns didn't live here. Mr. Burns would have had  
7 money, right, of all the thousands or hundreds or whatever it  
8 is. He's running around with a gun. He could have just got  
9 on a bus and left.

10 But oh, no, 36 hours later, on a Sunday, by the way,  
11 he's going to back to California with old Job-Loc, he's an  
12 older man, and Willie Mason. I worry -- strike that.

13 I submit upon the evidence that guilt by association  
14 -- there's an instruction in there -- could hurt Mr. Burns.  
15 He's seen with these people. But that does not make a human  
16 being guilty.

17 So flight. Job-Loc runs to California, to a place  
18 where he's facing a life sentence. Kidnapping, robbery. Why  
19 would you run there? And another thing. If you're so hurt,  
20 why on Earth would you get on a bus and go on a Greyhound bus?  
21 That doesn't sound fun if you're hurt. Unless you're really  
22 running for something. Or you're not hurt. Either way, that  
23 guy's running. That guy -- that's a terrible coincidence for  
24 him, isn't it? Terrible coincidence.

25 He's the owner of the murder weapon, or he was in

1 possession of the murder weapon. Now you may think, No,  
2 Chris, you talked about that already with the disposal of the  
3 murder weapon. No, there's two different things. You see,  
4 two different coincidences. One, that you just so happen to  
5 be the owner. What a terrible coincidence, I'm the owner of a  
6 -- of a .357 and now it's been used in a murder. God, that's  
7 bad for me. But not just that. Then I dispose of it. You  
8 see, two different coincidences there.

9 The grand jury, detectives had information linking  
10 him to the crime. That he's the shooter. That was told to  
11 the grand jury. That's not our words. That's detectives  
12 words. He's the shooter. And there's no reasonable doubt.  
13 And that's presented to a grand jury.

14 That's a terrible coincidence, to have all those  
15 things and then have detectives come in and say there was  
16 information that he was the shooter, Job-Loc. Oh, that's a  
17 terrible coincidence. What a terrible -- poor Job-Loc.

18 DA charged him with crime in this case. Get charged  
19 in a crime, have had no involvement. You're not a -- you're  
20 not responsible. You didn't do it.

21 And Ms. Weckerly stood before you today and say, We  
22 couldn't charge him, you see, because we didn't have any  
23 corroboration. You need to corroborate Monica in order to  
24 find Job-Loc guilty. You need to have corroboration.

25 Well, ladies and gentlemen of the jury, here's the

1 corroboration. Donovan Rowland said he saw him cleaning the  
2 murder weapon 70 minutes later. What, is that not  
3 corroboration? Was that not independent corroboration that he  
4 is guilty of murder?

5 How about that cell phone? The one with the nasty,  
6 ugly messages coming through? That's not corroboration?  
7 That's not independent corroboration that he's guilty as hell?  
8 Yes, it is. Guilty. Job-Loc is guilty. And there is  
9 independent evidence. And if you all would say he's guilty,  
10 then you know it exists.

11 And now I would suggest some of the worst ones for  
12 Job-Loc. Science. Why didn't they take his DNA? Oh, that's  
13 hard, we can't get a warrant. You saw how easy that is. You  
14 saw how easy it is to get a warrant. You saw it on the video.  
15 They could have got a warrant. They just neglected to do it.  
16 They absolutely neglected to do it.

17 Why does science prove him guilty? Because isn't it  
18 a terrible coincidence that when they get the murder weapon  
19 and they test it, that they could not exclude Baby Job-Loc,  
20 Donovan Rowland, nor could they exclude Monica. Only one out  
21 of 36. So if there's 12 jurors deliberating, that's three  
22 times a jury. Only one could possibly test. And both of them  
23 could not be excluded. Yet Mr. Burns was excluded.

24 The science hurt Job-Loc. And it's a terrible  
25 coincidence that his two closest people -- remember I asked

1 her that. I asked Monica who is -- is Donovan Rowland the  
2 closest person other than you? It's Job-loc. She admitted  
3 it. Science. Terrible coincidence for him.

4 Nasty cell phone message. Why would you write -- why  
5 would you write horrible things like that in a cell phone  
6 unless you were involved? Why? Why would a human do that?  
7 If your gun was used and some crazy dude used it, that's the  
8 State's theory, why would you say, like, God, oh, my God -- he  
9 said, according to Donovan Rowland, who he knew what the news  
10 was, why would you do that? Why? Why would you do that?  
11 Because you're guilty. That's why. That's a terrible  
12 coincidence, innocent man wrote a terrible -- terrible cell  
13 phone message.

14 And lastly, I showed it to you. The letter to  
15 Monica. So in my most technologically advanced moment, if you  
16 say that man in that circle of coincidence demonstrates his  
17 guilt, then you should find him not guilty. Because that goes  
18 back to that four people in the car. It's the State's theory  
19 there were four. And that evidence, that is overwhelming  
20 evidence of his guilt. We didn't have to prove it. It's not  
21 our responsibility. We have no burden of proof, ladies and  
22 gentlemen of the jury. But it's such a terribly, terribly  
23 important case for a man that is incapable of really doing  
24 much in his own defense.

25 Ladies and gentlemen of the jury, I ask you to look

1 at those verdict forms. I ask you to return verdicts of not  
2 guilty. If -- if you let a guilty man go, our system fails.  
3 If you let a guilty man go, our system fails. If they've  
4 proved it beyond a reasonable doubt and a jury ignores the  
5 evidence, we failed. But if in the end you know there's a  
6 doubt that's reasonable, and you convict, our system has also  
7 failed.

8 Ladies and gentlemen of the jury, I ask you come back  
9 in here through that door and find Mr. Burns not guilty. It  
10 was Job-Loc. We've done our best to show it.

11 Thank you so much for listening to me.

12 THE COURT: All right. Ladies and gentlemen, we'll  
13 take our evening recess now.

14 During the recess it's again your duty not to  
15 converse among yourselves or with anyone else on any subject  
16 connected with this trial, or to read, watch, or listen to any  
17 report of or commentary on the trial from any medium of  
18 information including newspapers, television, or radio. You  
19 may not form or express an opinion on any subject connected  
20 with this case until it's finally submitted to you. And it is  
21 still not submitted to you.

22 We'll see you tomorrow morning at 9:30 in the  
23 morning. I've got a 8:30 criminal calender. I'll try to be  
24 done and ready to go by 9:30. Again, if I'm delayed at 9:30,  
25 it's not these lawyers, it's some other lawyers. I'll do the

1 best I can.

2 (Jury recessed at 4:50 p.m.)

3 THE COURT: All right. Record reflect that the jury  
4 has exited the courtroom.

5 You have something on the record?

6 MR. DiGIACOMO: No. I just didn't know if you were  
7 going to keep this or is it just --

8 THE COURT: You mean to take home or what?

9 MR. DiGIACOMO: I mean, like, is it going to be  
10 marked as a Court exhibit or is it just --

11 THE COURT: I haven't heard anybody request that.

12 MR. DiGIACOMO: Great. I'm going to take it, then.

13 MR. LANGFORD: Judge, that's --

14 MR. SGRO: No, I --

15 MR. ORAM: Judge, I would ask that he not write on it  
16 or something like that.

17 MR. DiGIACOMO: Okay. Well, I'll take a photograph  
18 of it. That's fine.

19 MR. LANGFORD: Just take it and throw it away.

20 MR. DiGIACOMO: I will take a photograph of it, Mr.  
21 Oram. How's that?

22 THE COURT: You can take a photograph of it.  
23 Everybody have a nice evening.

24 (Court recessed for the evening at 4:51 p.m.)

25

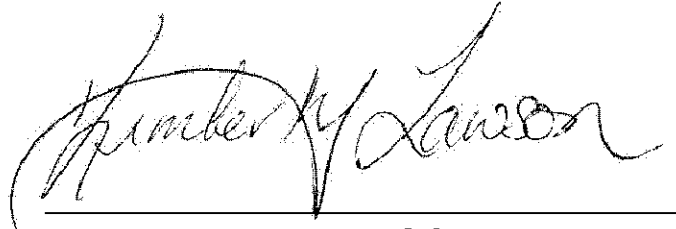
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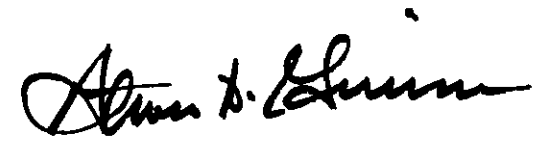
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CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-10-267882-1
	)	C-10-267882-2
vs.	)	DEPT NO. XX
	)	
WILLIE DARNELL MASON, AKA	)	
WILLIE DARNELL MASON, JR.,	)	<b>TRANSCRIPT OF</b>
AKA G-DOGG,	)	<b>PROCEEDING</b>
DAVID JAMES BURNS, AKA	)	
D-SHOT,	)	
	)	
Defendants.	)	

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

**JURY TRIAL - DAY 15**

THURSDAY, FEBRUARY 12, 2015

APPEARANCES:

For the State:	MARC P. DIGIACOMO, ESQ. PAMELA C. WECKERLY, ESQ. Chief Deputy District Attorneys
For Defendant Mason:	ROBERT L. LANGFORD, ESQ.
For Defendant Burns:	CHRISTOPHER R. ORAM, ESQ. ANTHONY P. SGRO, ESQ.

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## **I N D E X**

### **CLOSING ARGUMENT:**

By Mr. Sgro 3

### **REBUTTAL ARGUMENT:**

By Mr. DiGiacomo 50

1           **LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 12, 2015, 9:48 A.M.**

2                           **\* \* \* \* \***

3                           (In the presence of the jury.)

4           THE COURT: State of Nevada vs. Burns and Mason. The  
5 record will reflect the presence of the defendants, their  
6 counsel, the district attorneys, all members of the jury.

7           Good morning, ladies and gentlemen. As you are  
8 aware, we are in the middle of closing arguments, and each  
9 defense attorney was given the opportunity to make a closing  
10 statement to you. Mr. Oram already talked to you. Mr. Sgro  
11 now is going to address you on behalf of Defendant Burns.

12           THE MARSHAL: Give me one second, Mr. Sgro. Let me  
13 get their books all back to them.

14           THE COURT: Oh, yeah. Got to pass out the paper  
15 there.

16                           (Pause in proceeding.)

17                           DEFENDANT BURNS' CLOSING ARGUMENT

18           MR. SGRO: Good morning. So I'm going to try to pick  
19 up where Mr. Oram left off, and we're going to do everything  
20 we can to stay so that we don't duplicate. One of the things  
21 I want to make clear is that this case is about one question,  
22 one question [inaudible]; the failure of the State of Nevada  
23 to meet its burden of proof.

24           And there are things that we talked about even back  
25 to voir dire, when we were asking you questions and we talked

1 about TV shows and those crime shows that, you know, they put  
2 everything to bed in an hour. You know, you have the wrong --  
3 wrong person accused, and then they figure out who the right  
4 person was and it all gets nice and neat. And that's not,  
5 clearly not this case.

6 And we asked you to commit to us that you would stick  
7 with your job task in this case, which was very simple. Did  
8 the State present you a set of facts that causes you to  
9 believe the case has been proven beyond a reasonable doubt,  
10 because if they have not, then they have failed to meet their  
11 burden of proof, and it is not your job to then figure out,  
12 well, if not what they said, then what.

13 Now, I want to talk to you for a minute about the  
14 evidence relative to the bullets at the scene. Now, at the  
15 end of the day, at the end of the day, it does not cause Mr.  
16 Burns to be guilty or not guilty relative to the bullets at  
17 the scene. Right. He is either the shooter or he is not.  
18 But when we talk about their burden of proof and them  
19 presenting you a set of facts that you can rely on, we start  
20 briefly with what's at the crime scene.

21 Well, we know at the crime scene, at least according  
22 to a crime scene analyst, that that individual left  
23 understanding that there were five rounds that had been  
24 expended at the crime scene, and more importantly, that they  
25 had missed two. There's been quite a lot of conversation

1 about those two bullet strikes in the wall behind the armoire  
2 or hutch or entertainment center. And you have heard some  
3 pretty remarkable effort to circumvent that explanation.

4 Now, this is the photo that the State showed you that  
5 they blew up, and you can't even see it on this resolution, I  
6 don't think. But if you magnify this photo enough, you'll see  
7 a hole in the armoire. Now, that hole was missed. And  
8 incidentally, they show a photo at magnified I don't know how  
9 many times magnification, but that you still only see one  
10 hole, not two.

11 Crime Scene Analyst Taylor told us that there were  
12 two different trajectories on the bullets. Now, remember she  
13 talked about bullets in one part of her report. She talked  
14 about bullet fragments in another part of her report.

15 (Audio/Video played.)

16 MR. SGRO: Two different travel paths. Now,  
17 yesterday we heard some mention about a vacuum cleaner and,  
18 you know, a bullet splitting off a vacuum. Well, wouldn't you  
19 expect if a bullet struck the vacuum and did, I guess, what  
20 this new theory is that's been advanced, both bullets are  
21 going to travel in the same direction and strike the wall  
22 straight. That's not what these -- those poles depict.

23 This is another interesting thing that happened. A  
24 trained crime scene analyst takes apart a big screen TV and  
25 does a very careful examination, and pulls a fragment out of

1 the television.

2 (Audio/Video played.)

3 MR. SGRO: Now, I don't know how or what would cause  
4 that TV to ever get pulled out again and taken apart to find  
5 that second fragment that came into this case. I don't know  
6 how or why that bullet, which was larger -- by the way, the  
7 size of the bullet that comes from Cornelius Mayo that's  
8 supposedly all part of this big the magic bullet, came  
9 supposedly from this TV. How did she miss it?

10 The photos are in evidence. You can see the whole  
11 thing's pulled apart. And that piece of that fragment, you  
12 really got to look at that picture to see where it even was.  
13 So she got that one, but she missed a much larger, much more  
14 intact bullet. And this is the sort of the point.

15 You know, I cross-examined Mr. Krylo on these academy  
16 of science books, publications, the study that was  
17 commissioned by Congress to determine whether or not forensic  
18 evidence like this is -- what they call ballistics, is it  
19 reliable.

20 (Audio/Video played.)

21 MR. SGRO: Now, imagine that. He's looking through a  
22 microscope. He doesn't have the most recent kind of  
23 microscope, the fluorocarbon microscope that has 3D imaging,  
24 that measures the depth of the groove inside of a bullet.  
25 He's looking through a high magnification microscope.

1           And remember that UPC code example on the two  
2 different bags of Cheetos, I think I said. Just imagine those  
3 two UPC codes finding a way where they finally match up as you  
4 turn them in circles, and that's all we have. That's why  
5 these books were written. That's why this organization was so  
6 critical, and that's why it is so markedly different than, for  
7 example, State's 335.

8           Now, before we get to exactly what this is, I want  
9 you -- to remind you what is the American firearm and tool  
10 mark examiner policy that Mr. Krylo is the president -- was  
11 the president of, and that sets the tone for what's going on  
12 in Metro. It is in the best interest of the profession that  
13 every effort be made by both examiners to resolve their  
14 conflict before the case goes to trial. How scary is that.

15           Let's make sure we never reveal if I as the examiner  
16 and then Person B as the reviewer, if we disagree, we need to  
17 figure that out before this case ever goes to trial, because  
18 what we will do if we don't is we will legitimize these  
19 studies. We will come get under further attack by accredited  
20 scientists who criticize us.

21           And notice the language there. It says it's in the  
22 best interest of the profession. Not it's in the best  
23 interest of justice, it's in the best interest of truth. In  
24 the best interest of making sure we have a job to not let  
25 anyone ever know if we disagree.

1           Detective Bunting testified that when it came to  
2 ballistics he wouldn't defer to a crime scene analyst. I  
3 expect the State's going to make an argument when I'm done --  
4 and understand the way this goes. The State will go last.  
5 Mr. DiGiacomo will get up here and do a reply, as the judge  
6 told you. And the reason I bring this up now is because we  
7 don't get to come back up again or this thing would never end,  
8 and I'm sure you all don't want that to happen.

9           So when the State comes up and argues, well, here's  
10 what we think the evidence shows, doesn't that further make  
11 our point? If I can get up here and tell you here's what the  
12 crime scene analyst said, here's what, you know, the first  
13 time we ever heard of fragments, well, now we're going to  
14 explain it and now I'm going to come up in my reply, and I'm  
15 going to draw some diagrams and I'm going to show you how the  
16 bullet went through the vacuum, and I'm going to show you how  
17 it hit the wall. He's a capable attorney, no doubt. A  
18 ballistics expert he is not.

19           And when he gets up here and he does a demonstration,  
20 if he does one, if he does one, ask yourself is it not exactly  
21 what we're talking about. You all can do this too. You can  
22 take the pictures in the back and you can come to your own  
23 conclusions. But as a science, does it have enough  
24 credibility for you to say, yeah, you know what, on that point  
25 they've met their burden.



1           This fragment argument is very interesting, because  
2 we never heard about it until trial started. And there's been  
3 a couple of times when there's a big difference, and a lot of  
4 it comes from what issue they're trying to advance, the  
5 State's trying to advance. We'll talk about it in a minute.

6           When fragments get talked about and we hear about it  
7 for the first time in trial four years later, okay, it's all  
8 right. When evidence comes in from the witness stand, and we  
9 hear it for the first time four years later and it benefits  
10 Mr. Burns, holy cow, wasn't your memory better then than it is  
11 now, you're coming in for the first time four years later. I  
12 hope you all picked up on the difference in attack, whether it  
13 benefits them or hurts them, how they treat evidence as it  
14 comes in years, years later.

15           This is my personal favorite. They got this magic  
16 bullet. The magic bullet hits the vacuum. I think they're  
17 going to say splits into three pieces because remember, one of  
18 those travel paths has got to go into the master bedroom.  
19 Now, remember in the master bedroom that bullet continues its  
20 magical flight as it hits the bed with not sufficient strength  
21 to tear the mattress, but yet can catapult itself up about  
22 3 feet, burn the curtain, and drop nicely down on a crate.

23           Even if you buy that travel path, you take that  
24 bullet from the crate, you take the stuff from the TV and you  
25 know, if you're really an expert, how much a bullet, how much

1 one round of ammunition weighs. And if you look at the TV  
2 bullet that was given by Cornelius Mayo that's supposed to be  
3 in the back of that TV, and you look at the bullet on the  
4 crate, I mean, they're pretty much intact. And you got to add  
5 those with the other fragments.

6 Didn't it occur to anyone to say, hey, this might  
7 weigh more than a round of ammunition? They don't do that,  
8 because to do so may cause them to realize they have too much  
9 material to make this argument that it's just fragments.

10 Now, I told you about Exhibit 333. And there's  
11 actually three exhibits in evidence; 333, 334 and 345, and  
12 these are the DNA charts. Now, you have these when you go  
13 back. And I neglected to put the exhibit in the PowerPoint,  
14 so if I may, I'll just show you. This is the chart you'll  
15 have when you go back. And as you look at this chart, look at  
16 the marks on the left and look at the marks on the right.  
17 They match 15 times.

18 There are numerous points of comparison when they do  
19 DNA. And I ask you, do you think two DNA experts, like they  
20 do in firearms, do you think if I asked two DNA experts look  
21 at these charts, can two DNA experts come to different  
22 conclusions? No chance. There's too many points of  
23 comparison. Eyesight is eyesight. Looking through a  
24 microscope is looking through a microscope. And that's the  
25 only point, ladies and gentlemen, of that whole exercise.

1           Do not make the mistake of having the State put you  
2 in a position of having to, quote/unquote, figure it out  
3 because they did not prove this case. And if we look back to  
4 what we said in opening statement, now you understand a little  
5 better what I was trying to explain to you about the three  
6 bullets that came from the travel paths, you know, the ABC, A1  
7 through 6, et cetera. We have then two more bullet paths  
8 identified as A and B. Those are the two with the poles in  
9 them.

10           We have the one that killed the victim in this case.  
11 All of this has come out. We have the one taken from Devonia,  
12 the one that went through her stomach and was in her buttocks.  
13 And we have the one from Cornelius Mayo's hands. And then we  
14 have a new edition that according to Mr. Krylo it was as  
15 little as four, as many as 15 possible bullets. Now, we don't  
16 know some of those fragments were recovered right from the  
17 same area. I think two came just from Derecia.

18           Okay. So we know it's not 15. But there certainly  
19 is a pretty wide margin for error. Now compare that to  
20 Detective Bunting, who I don't know if he was proffered as an  
21 expert or was just on the job training, whatever he said, but  
22 it's six. It's six. Which one do we go with?

23           And by the way, I told you in opening statement  
24 nobody would tell you in this case that as whatever assailant  
25 walked into that apartment that night, that no evidence would

1 ever be presented to you about how many rounds were in the  
2 revolver to begin with. So in order for the State's theory to  
3 work -- not what we say happened. Not what we think happened.

4 In order for the State, for them to tell you what  
5 they think happened, they have failed from the outset because  
6 we don't know how many were in that revolver when the person  
7 entered. And I'm sure they're going to say, well, we know now  
8 because there were six shots. Well, that's convenient. We  
9 know now, right.

10 There is an instruction I want you to look at when  
11 you weigh the evidence and you go back into the jury  
12 deliberation room, and it's the credibility instruction. We  
13 talked a lot about this during the voir dire, about, you know,  
14 are you going to be okay assessing credibility. We told you  
15 there's going to be conflicts in this case. You know,  
16 someone's going to say the light's red, someone's going to say  
17 the light's green.

18 Every one of you told us no problem, we will figure  
19 it out. And this is the part of the instruction that tells  
20 you what your rights are as jurors. If you believe a witness  
21 has lied about any material fact in the case, you can  
22 disregard the entire testimony of that witness or any part of  
23 it which is not proved by other evidence.

24 This instruction's extremely important in this case  
25 because we have admitted perjured testimony. Admitted. So to

1 the extent you rely on these folks for anything, you really  
2 got to take a hard look at the ins and outs of what they said.

3 Now, let's start with Cornelius Mayo, who yesterday  
4 Ms. Weckerly was quick to dismiss him. She didn't want to  
5 talk about Cornelius at all. You know, he had some troubles,  
6 didn't want to admit it, but he's not relevant. Well, you  
7 know, I heard yesterday he drinks and smokes a lot. That's  
8 what the State told you yesterday in their closing remarks.  
9 And so for portions of what Mr. Mayo says he's not credible  
10 because he drinks and smokes.

11 But when he tells you he went to the hospital to see  
12 his daughter and he didn't discuss any of the facts of the  
13 case with her, believe that. This is sort of like that, you  
14 know, your testimony four years ago versus today. This is  
15 another one that they try to sneak in there too. The person's  
16 not credible for Fact A, but extremely credible for Fact B.

17 Now, we all know that there are drugs in the  
18 apartment, and I think we're all going to agree the police  
19 didn't put them there. We all know that Cornelius Mayo had  
20 rock cocaine in his shoe. When he ran out of the apartment  
21 barefoot and he got a pair of shoes, when he went to put his  
22 shoes on, rock cocaine fell out of his shoe.

23 Erica Newman, this would be his sister-in-law.  
24 Remember there's a weird age difference, whatever. But she's  
25 Devonia's age, but Cornelius's sister-in-law.

1 (Audio/Video played.)

2 MR. SGRO: Detective Bunting said he knew Mayo sold  
3 drugs from the residence. He testified against Cornelius Mayo  
4 in family court at the CPS hearings and said Cornelius Mayo  
5 sells drugs. Okay. Cornelius denies selling drugs.

6 (Audio/Video played.)

7 MR. SGRO: All right. Now, what's the point of this?  
8 Are we here to prove that Cornelius Mayo sells drugs? No.  
9 Clearly he does. And that'll be a problem for him to deal  
10 with on a different day. But what's the point?

11 The point is in the face of everything that we had,  
12 pictures, his sister-in-law, also the cocaine that fell out of  
13 his shoe, he lied. He lied. And when you look at that  
14 credibility instruction, okay, it says if you believe  
15 witnesses lied, you can disregard their testimony.

16 Now, it is difficult if not impossible to judge his  
17 tone and demeanor, which was pretty consistent. That's -- how  
18 he looks on this video is pretty much how he testified the  
19 whole time he was on the stand. And now we're going to rely  
20 on him, if we're the State, to prove certain things. How  
21 could you trust this man to prove anything to you in the face  
22 of what -- just this little exercise we did?

23 We don't care that he sold drugs. We care that he  
24 lied about it incessantly and that his head, eye, vocal,  
25 everything, tone and demeanor was the same, the same way

1 through his testimony. We got to meet him in this courtroom  
2 for what, an hour he was on the stand. So now you get an hour  
3 glimpse into this man, and you're going to come away with half  
4 of it was for sure untrue, but now we're going to buy the  
5 other half; that's what you're being asked to do in this case.

6 Now, I asked him about a gunshot residue test. This  
7 is Defense Exhibit U. He was adamant with me. He was pretty  
8 pissed off I even asked him the question, if you recall. And  
9 he told me absolutely not, that did not happen. Well, I  
10 showed him the exhibit. Do you recall what he said after  
11 that? Well, you know, there was too much stuff going on, I  
12 can't remember.

13 Well, that's an okay answer if I ask, sir, did you  
14 get a gunshot residue test and you say, you know what, I don't  
15 remember, there was so much going on. That answer becomes  
16 much more transparent when you get angry at me for even asking  
17 the question, then I show you the exhibit and then he relents  
18 and says, well, I don't remember now.

19 In addition to the first part of his testimony, every  
20 document that we have, every exhibit that we have in this case  
21 completely contradicts what he says. But we're going to take  
22 this leap of faith on the other stuff; is that right? Now,  
23 the State yesterday said, ah, he's just a small time dealer.  
24 And it was just interesting to me as I heard that, you know,  
25 he's charged with drug trafficking in cocaine right now. He's

1 charged with child endangerment for selling drugs in a  
2 residence where children are.

3 Okay. And I'm wondering if the prosecutor's going to  
4 get up at his criminal trial -- if it ever happens by the way.  
5 We know it's been postponed for years and years. No one knows  
6 if the State's going to pursue charges. No one knows if  
7 Cornelius thinks that because he testified he gets a pass on  
8 that.

9 But let's assume hypothetically we get to a place  
10 where Cornelius is being prosecuted. Do you think that  
11 prosecutor's going to say, ladies and gentlemen of the jury, I  
12 know we charged this case, but don't worry about Cornelius,  
13 he's just a small time dealer, he's fine? No. And this is  
14 another effort by the State to pick and choose how they  
15 deliver material to you.

16 There is this 911 call which the State played  
17 portions of for you yesterday. Remember they did the whole  
18 this part of the call is where he's in this part of the  
19 apartment, this part of the call is, you know, he's in a  
20 different part of the apartment. Well, first of all, again,  
21 much like Devonia's statement which we're going to get to in a  
22 minute, listen to the 911 call and tell me if you didn't hear,  
23 I'm in the plant, I'm in the plant. That's what I heard.

24 Maybe you all hear something different. Your audio  
25 perception of what all these tapes say controls. It doesn't



1 matter what these folks say. It doesn't matter what I say. I  
2 encourage you though, if this 911 call becomes something  
3 relevant for you when you're deliberating, please take a  
4 listen to it.

5 Here's another interesting point. Much was made of  
6 whether or not Cornelius Mayo called his friends or brothers  
7 to come and, quote/unquote, handle their business. Right.  
8 And there was a pretty terse and angry examination of our  
9 investigator when he said, Hey, this is what Cornelius told  
10 me. How about where's Mayo's cell records? You got everyone  
11 else's cell records. Why don't we have Cornelius's cell  
12 records so we can tell you what happened?

13 Where's the pin register on his residential phone?  
14 Where's the -- instead of us arguing about it, where's the  
15 evidence about it? They could have given it to you and they  
16 did not. And what's the whistle in the background? Because  
17 this is also interesting. Some mention was made about some  
18 whistling noises. I don't know what they are. Maybe you all  
19 will figure it out.

20 But keep in mind that Cornelius's brothers, when  
21 night -- when the police respond to the scene, are there.  
22 Right. Remember he even admitted, he told me, I never said I  
23 called my brothers before I called 911. That's what he told  
24 me. His brothers just coincidentally are there. They live  
25 down the street, according to Cornelius, and they just

1 happened to be across the street when the police got there.

2 Now, when you judge credibility, remember this other  
3 theme that the State of Nevada put into play here. The police  
4 didn't ask you the right questions. And this goes to, you  
5 know, Witness A came with something to trial five years later  
6 and it helped the State. Right.

7 Because if it helps the State, clearly it's because  
8 of incompetency on the part of the police. That's the only  
9 reason that you didn't see it before. Right. Because our  
10 police officers are so dumb they don't know how to ask the  
11 right questions.

12 Now, Monica Martinez, who Mr. Oram spoke at length  
13 about yesterday, didn't get asked a right question. Right.  
14 She went through 12 hours of an interview, or 15, whatever  
15 those tapes were. She went through two, not one, two  
16 proffers, which is where you sit down with all the lawyers,  
17 the DA's, the investigators twice. She spent -- she spent, I  
18 think, three days on the witness stand. Unbelievably,  
19 unbelievably there was a hat in the back seat of the car that  
20 she threw away.

21 Remember there was this big drama. Even as she was  
22 on the witness stand she said, you know what, I gave my  
23 statements, I've been debriefed twice, I'm still holding  
24 something back. And you know what, Mr. DiGiacomo didn't even  
25 ask her about it while he had her on direct for three days.

1 The question about the hat didn't come out until after Mr.  
2 Oram was done with his cross-examination.

3 So apparently this theme of it's got to be our  
4 incompetence, you know, if it helps us, it carried all the way  
5 through, even through trial. And even the DA apparently, on  
6 direct examination, forgot to ask, they just forgot, tell me  
7 about the hat in the back seat that you threw away. Is that  
8 believable to any of you? It's ridiculous.

9 Here's another example. Erica Newman testifies for  
10 the first time ever, ever that not only did she see the  
11 assailant in the home, but he was wearing overalls. Right.  
12 First time ever. Here's the State's response.

13 (Audio/Video played.)

14 MR. SGRO: You know, you're a homicide detective for  
15 25 years, you just forgot to say, hey, did you see the  
16 shooter. Well, that's not true at all. Her statement's in  
17 evidence. What did she say in her statement? "I didn't want  
18 to get up at first because I had no clue what was going on  
19 until I raised up. I didn't see who the person was. I didn't  
20 see who the person was."

21 So I suppose the police should have said, okay, the  
22 person that you didn't see, what were they wearing. I mean,  
23 it's ridiculous. But it shows you the extent to which they  
24 will go to try to persuade you that now this statement five  
25 years later has some truth or validity to it.

1           Now, we also have this issue with Officer Houghton.  
2 Officer Houghton is asked about a description that he got.  
3 Remember, this is Cornelius Mayo threatening Stephanie  
4 Cousins. Stephanie Cousins giving information and Cornelius  
5 repeating it to Houghton, sort of like a telephone situation.

6                           (Audio/Video played.)

7           MR. SGRO: Okay. Now, this is what Stephanie Cousins  
8 is giving Cornelius Mayo minutes, minutes after the homicide  
9 happens, right. So of course, anything about overalls from  
10 Stephanie, because obviously you know the State needs to have  
11 overalls not be mentioned because that if Cornelius doesn't  
12 know about it he can't [inaudible] it, right.

13                           (Audio/Video played.)

14           MR. SGRO: The truth was Officer Houghton didn't  
15 know. Now, remember the sequence that it happened -- that  
16 happened there. The State showed Officer Houghton a report  
17 prepared by somebody else that was a sum report of a large  
18 group of people and said, "Look at this paragraph right here.  
19 That's the paragraph attributed to you on this 30-something  
20 page report. In this report that's a summary report not  
21 prepared by you, does it say overalls? Well, no."

22           We do know Officer Houghton heard Cornelius threaten  
23 Stephanie Cousins. We do know those scare tactics worked. We  
24 do know that Cornelius got a description from Stephanie  
25 Cousins. And God forbid David Burns is not guilty in this

1 case and he's not in the car. Think about this. Cornelius  
2 Mayo calls Stephanie Cousins minutes, minutes after the  
3 homicide's done.

4 Stephanie Cousins is in the car with a shooter and  
5 some other people. If her phone rings and those people are  
6 still together, she's not going to be on the phone where other  
7 people can hear her conversation and start describing folks  
8 that are in the car. Her description is consistent with the  
9 only person not in the car.

10 Now, Erica Newman came with the overall story for the  
11 first time and so I said, okay, this is five years later, I  
12 did what they did. This is five years later, was your memory  
13 better at the time, all those questions. Yes, yes, yes. And  
14 then --

15 (Audio/Video played.)

16 MR. SGRO: I said, you know, let me go call somebody.  
17 And she had nobody she could give me. And I get it. She's a  
18 16-year-old kid. I understand. It was not my purpose to beat  
19 her up. You know what, 16 or 66, if you walk into court and  
20 you change your testimony from a police statement of years  
21 ago, you at least should be able to tell me who you said it to  
22 if you're telling the truth. You know, it's often been said  
23 the truth has no memory. Right. If you always tell the  
24 truth, you never have to remember anything. Okay. And I  
25 couldn't get her to give me one person who she ever said this

1 to before.

2           How about Detective Jensen. This is the incompetent  
3 25 year homicide detective that forgot to ask Erica Newman who  
4 already told him she didn't see who the shooter was. He  
5 forgot to say, well, what was he wearing.

6                           (Audio/Video played.)

7           MR. SGRO: Well, the State, after I was done with  
8 that, didn't get up and cross-examine him to prove his  
9 incompetency, so something's got to give, right?

10           There is an instruction in this case as well, it's  
11 the burden of proof or the burden of proof instruction. And  
12 this is the instruction that tells you that the -- this is  
13 what we've been going on and on about since you guys were  
14 being asked questions to sit as potential jurors. The State  
15 has the burden of proof of proving every element of this  
16 crime, and if they don't, you have to come back not guilty.

17           Now, when you look at burden of proof, sometimes and  
18 in a case like this, it may be helpful to compare and contrast  
19 some of the things that you've heard about that ostensibly go  
20 to convicting David Burns versus the quantum of evidence they  
21 have that points another direction. And Mr. Oram spoke to you  
22 a little bit about this yesterday, about that circle of  
23 coincidences with Job-Loc.

24           And I don't think it's any secret here that there's a  
25 significant amount of evidence as to Job-Loc. But what I

1 wanted to discuss with you briefly are the objective pieces of  
2 evidence that the State has been discussing that ostensibly  
3 points towards conviction. And we have what I call the  
4 videotapes. These are the tapes -- remember the Opera House  
5 videotape. There's the videotape where they're walking across  
6 a hotel. There's videotapes of the bus station, et cetera.

7         So the one compelling thing that we know from the  
8 videotapes, it's that the last time entered on the videotape  
9 from the Opera House is 2:57 a.m., right. This is about an  
10 hour before the homicide occurs. What else do we know? The  
11 people in the car changed. We know that. The State concedes  
12 that, admits it. They charged Stephanie Cousins. They say  
13 she's in the car. So they had to change passengers.

14         Stephanie Cousins has to have had an opportunity to  
15 have seen David Burns, because there came a time when the  
16 personnel in the car changed. On September 30, 2010,  
17 Stephanie Cousins will have a conversation with the police  
18 about that individual in the back seat of the car. And during  
19 the time that this videotape ends at 2:57 until the time of  
20 the homicide, Jerome Thomas, Job-Loc, is not accounted for.

21         Now, unbelievably, when the detectives have their  
22 third interview with Stephanie Cousins, they say -- remember I  
23 read it with Detective Bunting yesterday. They say, "Hey, we  
24 arrested the shooter. His nickname's D-Shot." Stephanie  
25 says, "Well, I don't know why they keep calling him Job-Loc in

1 front of me." Whoops. Whoops.

2 The police say, "Well, maybe you were mixed up. You  
3 know, maybe you just misheard it," you misheard Job-Loc. Now,  
4 the rest of that, the rest of that is, I remember it. And I  
5 think the quote is, I ain't missing anything like that. And  
6 it is the police that tell her, that tell her. And  
7 interestingly enough, this happens on September 30.

8 Why is this date relevant, September 30? Because  
9 remember what happens on, I think it's September 13. We're  
10 going to talk about it in a minute. September 13, that's when  
11 they go and speak to David Burns. They already made up their  
12 mind they knew the case. They, in our view and the evidence  
13 suggests, the police had made up their minds about the case  
14 long before even they saw David Burns.

15 But even the police admitted by the time they go  
16 speak to him, they're not interested in his side of the story.  
17 They're interested in getting him to incriminate himself so  
18 they can use it against him. They already knew they were  
19 arresting him. And so by the time they get to Stephanie  
20 Cousins, two things happen. Number one, the dust has settled.  
21 It's been almost two months now since the homicide. She feels  
22 safe, much different than what we're going to talk about in a  
23 minute.

24 The other thing that the State will tell you  
25 ostensibly that goes to convict David Burns is his statement,



1 right. And much was made about, oh, you know, you showed him  
2 pictures and he said he didn't know who anybody was. You can  
3 hear -- you can hear noises in the jail in the background.  
4 You can hear people's voices. If you're interested, listen to  
5 the tape.

6 I asked -- I asked Detective Bunting about this  
7 phrase that they use, you know, snitches get stitches.  
8 Imagine David Burns is extracted and sitting with police  
9 officers, I'm assuming within earshot -- within earshot for  
10 sure, because you can hear voices. Imagine what he went back  
11 to when he was done with those police officers.

12 Now, a couple things jump out of this statement.  
13 When he is pressed he asks about Las Vegas and he doesn't say  
14 what's going to happen to me. He says, "Will they -- will  
15 they get the death penalty?" That's what he says, will they.  
16 David Burns says to the police, "I think I got's mental  
17 problems." The police don't respond very kindly to Mr. Burns.

18 And in fact, during the course of his interview, and  
19 I'm going to apologize for my language in advance, but these  
20 are the police officer's words. "Are you retarded? You're a  
21 mother fucker. You're a jackass. You're a twisted person.  
22 Are you autistic? And cut the shit." There's our tough guy  
23 Metro guy going in because he wanted to beat up 18-year-old  
24 David Burns, and this is how -- this is their mechanism by  
25 which they saw to extract information from him.

1           They introduced some letters. Now, this one is  
2 interesting, because they gave you the letters without  
3 suggesting to you who the writer was. And I'm going to talk  
4 about that in just a second. One of the letters, one of the  
5 letters was to Monica. And this letter is extremely  
6 interesting.

7           If you look at the letter to Monica, this is the one  
8 that they say, you know, he's telling her -- I heard it  
9 yesterday. He's telling her you have the right to remain  
10 silent, right. Anything you say will be used against you.  
11 You have a chance to kick your statement out of court, words  
12 to that effect. That's what was told to you yesterday.

13           And yesterday it was told to you that this was an  
14 effort by David Burns to advise Monica Martinez to hang in  
15 there and try and get this statement out, because it was  
16 somehow going to help him. Interesting though, if you look at  
17 the backdrop, we all know now what discovery is. Discovery  
18 are the case files, the documents that show what everybody  
19 said.

20           The same thing that you all saw in the transcript  
21 when we did Monica's statement, that's discovery. What's on  
22 Monica's statement that we all listened to? Her rights. Her  
23 rights. The police read her her rights. Understand the  
24 context of this letter. The medical miracle, remember that  
25 phrase yesterday? He had a medical miracle.

1           And I don't know if that was such a miracle after  
2 all, because he wrote a letter to someone, after,  
3 quote/unquote, reading discovery, advising her that no one  
4 read her her rights, when if he had read the very statement he  
5 talked about he would have seen it right there in black and  
6 white, they read her her rights.

7           Now, the State could have brought a handwriting  
8 expert in here. They didn't. I am not a handwriting expert  
9 for sure. But I want you to look at these letters.

10          Can I have the ELMO just for a second, please.

11          I want to ask you to decide who wrote the letters and  
12 was it more than one person. And I'll show it to you so you  
13 can take a look at it when you get back there. This one here  
14 is Exhibit 339. Now, again, for your consideration, you see  
15 it starts, "What it zoo my LOC." Look at the A in what. Look  
16 at how LOC is written. The A is lower case, the L-O-C is  
17 capitalized. And people, when they write, typically will  
18 write about the same as they -- sorry.

19          UNIDENTIFIED JUROR: Yes. Can we take a recess?

20          THE COURT: Certainly. All right. Ladies and  
21 gentlemen, during the recess, it's again your duty not to  
22 converse among yourselves or with anyone else on any subject  
23 connected with this trial, or to read, watch or listen to any  
24 report of or commentary on the trial from any medium of  
25 information, including newspapers, television and radio, and

1 you may not form or express an opinion on any subject  
2 connected with this case until it's finally submitted to you.

3 We'll be in recess for about ten minutes.

4 (Jurors recessed at 10:35 a.m.)

5 THE COURT: The record will reflect that the jury's  
6 left the courtroom. Ten minutes.

7 (Court recessed at 10:35 a.m. until 10:48 a.m.)

8 (In the presence of the jury.)

9 THE COURT: State of Nevada vs. Burns and Mason. The  
10 record will reflect the presence of the defendants, their  
11 counsel, the district attorneys and all members of the jury.  
12 Mr. Sgro, you may continue.

13 MR. SGRO: Thank you, sir.

14 DEFENDANT BURNS' CLOSING ARGUMENT (continued)

15 MR. SGRO: So we left off, I was going to show you  
16 some things on the letters with the caveat that I'm not  
17 pretending to be a handwriting expert, but certainly one of  
18 the things for you to decide is was there any evidence as to  
19 who wrote these, you know. And I am assuming they're going to  
20 say, well, they were addressed a certain way and sender  
21 returned and all that. But who actually wrote this stuff? I  
22 think it's still in dispute.

23 And let me show you for example Exhibit 339. Now, if  
24 you look here, and again, we ask you guys to bring your common  
25 sense into the door, look at how big the letters are on this

1 letter. They go from line to line and look at what, w-h-a-t,  
2 with a small case A, and look at L-O-C capitalized and real  
3 big, and compare that to 341. Look how much smaller the  
4 handwriting is. L-o-c is lower case now. They certainly  
5 appear at first blush to be dissimilar.

6 And then there's not going to be enough room for all  
7 three, but if I put this one down, and this one is 343, in  
8 this the "what" is capital letter A. It's interesting,  
9 interesting that these three letters that the State put so  
10 much emphasis on appear to be drafted by someone that doesn't  
11 have the same writing habit every time they write, which is  
12 unusual.

13 Can you put it back up. Put back on that PowerPoint,  
14 please.

15 Now, the other thing that the State will tell you  
16 relative to the quantum of proof with Mr. Burns is a six-pack,  
17 you know, that's the term we use for those, the six  
18 photographs next to each other that the police show people and  
19 they say, hey, do you know anyone in this group.

20 So what do we know about the six-pack? Other than  
21 one for -- that included David Burns's photo, she wasn't shown  
22 any others. She says she was 10 percent sure. Now, this is  
23 interesting, because it demonstrates a couple things.  
24 Remember that whole double -- I'm going to call it a double  
25 standard now, you know, if the State needs someone who's

1 remembered something from five years ago, brings it up for the  
2 first time it's okay.

3           How about the fact that 10 percent sure allowed  
4 Ms. Weckerly yesterday to get up and stand before you and say  
5 Devonian picked him out of a lineup. Picked him out of a  
6 lineup. When I'd have a better chance of throwing a dart at  
7 six pictures, I got a one in six, that's 16 percent chance.  
8 And how the State thinks that 10 percent sure means that,  
9 quote/unquote, she picked him out of a lineup is pretty  
10 incredible.

11           How about this question. Devonian's shown a lineup.  
12 She circles the person in the top left and she says, I'm 10  
13 percent sure the person in the top left is the shooter. What  
14 would the State have said -- would the State have come in and  
15 said, hey, you got to acquit, she's 10 percent sure that, you  
16 know, we basically got the wrong person? Of course not.

17           And the quality and the quantum of evidence doesn't  
18 get better or worse depending on whose argument it is, on who  
19 writes the subpoena or who makes -- who makes decisions in  
20 terms of what to advocate. It's the same. Remember we talked  
21 about this in voir dire. This is a level playing field.  
22 Could I have come to you and say she was 10 percent sure when  
23 she picked the wrong person, not guilty?

24           Now, this overall drawing comes on September 29,  
25 2010. I forgot to date it. It was the quote from Detective

1 Bunting. Not in a single report, all the case files we heard  
2 about, all the officer reports we heard about. It was comical  
3 when I saw the State go after Ifill for not recording a  
4 statement that he had notes for and then he type-wrote his  
5 notes, when this purported drawing here, this is a phantom  
6 piece of paper.

7 It's not referenced in one single sentence of  
8 thousands and thousands of pages of reports and discovery.  
9 Nowhere does it appear. If it happened on September 29, this  
10 would have been 16 days after David Burns had been arrested,  
11 right. And the police told you that by the time they went and  
12 visited David Burns, they already knew the case.

13 Now, in that credibility instruction that we talked  
14 about a few minutes ago, you're allowed to not only evaluate  
15 conflicts in testimony, right, was the light red and the light  
16 green, tone and demeanor, tone and demeanor too is something  
17 to evaluate. Is it of any consequence that when Detective  
18 Bunting was being asked questions by the State he was sweet as  
19 pie. I couldn't ask him to do anything without him arguing  
20 with me.

21 Now, maybe I have this terrible skill of bringing out  
22 the worst in people, but he was extremely combative. And I  
23 would submit to you that that is demonstrative of someone that  
24 came to court with an agenda. He was going to tell you guys  
25 what was on his mind no matter what. At one point I just told

1 him, I get it, everyone in this room knows your position,  
2 okay, I understand.

3 And the reason I put that in context for you is  
4 because there's certainly no recording when this happened. We  
5 don't even know for sure when it happened. That's our best  
6 guess. It came after the police knew, quote/unquote, knew the  
7 case. Do you think, based on Detective Bunting's tone and  
8 demeanor, when he went to visit Devonia in the hospital, do  
9 you think he said, Devonia, can you draw for me what you told  
10 me about in the statement, or do you think he went and said,  
11 Devonia, draw me some overalls?

12 In other words, what was -- what was the delivery to  
13 a little girl who only when she heard percentages -- remember,  
14 he -- Detective Bunting said, Well, you sure about 10 percent,  
15 you know, because if you get an F in school, that's like 50.  
16 Something -- he was using the grade letter F in school to  
17 communicate to Devonia that, you know, are you sure about that  
18 10 percent. When he said that to her, she changed from 10 to  
19 20. Evidence of her suggestibility, right. How did this  
20 picture come to be?

21 I am positive the State will come up and tell you,  
22 well, you know, he told you about Stephanie Cousins, and when  
23 he talked about six-packs he didn't remind you about Stephanie  
24 Cousins. Yeah, Stephanie Cousins picked someone named  
25 something out of a six-pack on September 12, right.



1 September 12, she wasn't sure yet that Cornelius Mayo had  
2 decided he wasn't going to try and kill her. And she told the  
3 police when she made her identification things that were  
4 consistent with what she had told Cornelius.

5 Now, remember I said I want to talk to you about the  
6 quantum of proof. We've looked at some things that the State  
7 is going to tell you help to secure the conviction of David  
8 Burns, the videos, the letters and such. Let's compare that  
9 to -- and some of this Mr. Oram touched on. I just want to  
10 look at it from a slightly different perspective in terms of  
11 quantum of proof, right, because we have burden of proof.

12 Okay. Donovan Rowland has the gun and asked if  
13 anyone wanted to buy a gun. And I think we mentioned this in  
14 opening statement as well, about what the value would be of  
15 this piece of evidence if David Burns had said this very same  
16 thing. And we also talked about Donovan Rowland admitting his  
17 involvement in the homicide.

18 Now, do you think if David Burns had admitted his  
19 involvement and said they took \$4,000, weed and dope out of  
20 the apartment and David Burns got a thousand dollars, how much  
21 would that be trampled on during this case? That's all we'd  
22 be talking about. Yet when it came to Donovan Rowland it's  
23 dismissed why? Oh, I swore to it under oath and I put it in  
24 search warrants. But those aren't my words.

25 According to Detective Bunting, I was garbage in,

1 garbage out; that's what Ulanda Cooper told me; I never got  
2 her taped statement; that's what she told me and I just put it  
3 in there. Okay. So you know, interestingly, the warrant that  
4 he drafted under oath didn't say garbage in, garbage out. The  
5 warrant was to allow police to intrude on, to intrude on a  
6 citizen's rights. When you do that it's pretty serious  
7 business. You have to get a court order. You can't just walk  
8 into someone's home. So he got a court order.

9 And you know what the most ironic thing about this,  
10 Ulanda Cooper was right. She was right. It is because of her  
11 that they found the gun. Why is it fair? Why is it fair that  
12 Ulanda Cooper gets to be right about the gun and about finding  
13 the gun, but she has to be wrong about the rest of her  
14 statement? Isn't that picking and choosing from the case, and  
15 that -- does that help or hurt when they tell you we've proven  
16 all this?

17 Now, Mr. Oram told you about these, the circle of  
18 coincidences, and I want to add a couple things to what he  
19 told you relative to the quantum and quality of proof when you  
20 go evaluate if the State's met their burden or not. This  
21 photo is in evidence. This is the photo, I believe, that was  
22 taken by the FBI.

23 Jerome Thomas cleaned and altered the gun. Now, how  
24 do we know that? If you believe Mr. Krylo, when he test fired  
25 the bullet, he couldn't match it to the other bullets to say

1 it was the same gun, assuming then that the damage to the gun  
2 left a different impression than the bullets that he had to  
3 examine.

4           How about this. Where are the medical records?  
5 Okay. Did the police find some random materials in Job-Loc's  
6 apartment when they did the search? Yes, they did. Did they  
7 go speak to the doctor and say, hey, he was hurt and had some  
8 intervention done on July 7, a month, a month before this  
9 homicide occurs, at what level -- at what level can Job-Loc  
10 ambulate, can he move around?

11           If you look at those records, they're going to tell  
12 you four to six weeks. Four to six weeks. Why -- why don't  
13 the police just go get the records? They're sure relying on  
14 the fact that Job-Loc was on crutches for something.  
15 Job-Loc's telling people in letters, don't forget about my  
16 broken leg, which incidentally occurred at a time when he was  
17 committing a different crime.

18           And this was interesting too. I don't know if you  
19 guys caught it, but Cornelius Mayo, in his recitation of  
20 events, and I don't know what you guys are going to take from  
21 him and not take from him, he did say that there was evidence  
22 of someone banging down the wall of the hallway. Could that  
23 be someone who is still in between on and off crutches?

24           How about the fact that the assailant, the assailant  
25 was unable to keep up with Devonia, 11-year-old little girl.

1 Imagine, imagine if someone's six-foot-one, six-foot-two, in  
2 two strides he covers -- you saw how short Devonia was when  
3 she walked in. She's going to be smaller four years ago, much  
4 smaller. If you're six-foot-two and you're trying to catch a  
5 little girl and you have no health issues, you're going to get  
6 there in a couple steps. It's not going to take you all the  
7 way down the hallway, turn right and go into the bathroom.

8 Another interesting point, he did travel. He left  
9 his knee brace and meds in Las Vegas. He only had one crutch  
10 when he was arrested, and as Mr. Oram told you, he left here.  
11 He fled. Imagine, imagine if you flee in order to travel to a  
12 place where you are facing life, what must you have had to  
13 have done to leave here to go there on a parole violation for  
14 yet another crime?

15 You don't get on parole unless you've committed a  
16 crime. He's on parole. He gets arrested. He commits another  
17 crime. It was kidnapping and robbery. That's not the crime  
18 he committed at the Walmart where he was with Donovan Rowland  
19 using Monica Martinez's car. He left here to go there.

20 A DNA report is generated on September 30, ostensibly  
21 to request DNA. What do we know? What do we know? It never  
22 happened, right. What else did we learn in this case? They  
23 never went to go see him. Right. They never bothered to  
24 make a -- walking down the hallway to see him when he was in  
25 jail in California. And what did we learn? How quickly a

1 warrant could be requested, right. We all saw it live on  
2 tape.

3 Coincidentally, we saw Monica Martinez's taped  
4 statement where within hours they had secured somebody, had  
5 asked questions, had gotten ahold of a judge, got a warrant.  
6 They showed her -- they showed her the warrant and they did  
7 the buccal swab right there.

8 And when I asked -- obviously I was a little  
9 combative myself with Detective Bunting and I asked him a  
10 flippant question, and I said, "Do they have DNA in  
11 California?" And my apologies for being a touch of a smart  
12 ass, but I was struggling with Detective Bunting. And what  
13 did he say very tersely to me? "I did two in California."  
14 That's right, you did. You did David Burns and you did Willie  
15 Mason. And then we know that in September of 2011, we're not  
16 doing it. Per Detective Bunting, we're not doing it.

17 Now, there's another thing that's been going on in  
18 this case that should disturb all of us. And this -- and I'm  
19 going to talk in a minute about some tactics that were  
20 employed. And it seems to me that if we come to a point in  
21 this country -- and we all talked about the criminal justice  
22 system and that it's the best in the world. We had many  
23 conversations with you all about our system.

24 It strikes me that if it was really to be  
25 transparent, shouldn't we as defense attorneys really never

1 ask a question, right. Do we not, in an idea world, expect  
2 the prosecutors to give you everything and let you all figure  
3 it out? Sadly, that's not how it goes. Sadly, even in a case  
4 this serious, there are efforts made to deceive, which is  
5 disturbing. What is one of the patent areas of deception in  
6 this case? Job-Loc's cellphone records.

7 We talked about this and it has never changed.  
8 Through his cellphone calls through the night, through the  
9 night he seems to remain in a single location. Man, that's a  
10 lie. That is a flat out lie perpetuated by law enforcement at  
11 the behest of a prosecuting agency. That's troubling. That's  
12 how innocent people go to jail. That's how guilty people walk  
13 the streets. I don't care what happens at the end of this  
14 case, that is unforgivable.

15 We know that it's not possible for Job to be at the  
16 scene. Really? Remember 2:03 to 4:25 a.m., there is no  
17 record of Job-Loc's activity. And when I asked Special Agent  
18 Hendricks about it, the FBI agent who participated in the  
19 search of Job-Loc's home and did some cellphone stuff, he  
20 admitted, he's the only one, he's the only one that admitted,  
21 well, yeah, I guess by looking at these records we don't know  
22 where he's at, so yeah, at 3:45 he could have been at the  
23 scene. This little -- this little exercise should bother and  
24 anger everybody.

25 Detective Wildemann from the outset points out to

1 Monica Martinez, you guys have the videotape, there's not one  
2 call from you to Job while you two are doing these robberies.  
3 I don't know how they had the guts to go and swear under oath  
4 in front of a grand jury and say the things that they said.

5 Special Agent Hendricks confirmed Wildemann's  
6 suggestion that the absence of phone contact between people  
7 suggests that they're together. He says, I don't know why  
8 those phones at Job-Loc's home weren't taken. And he said,  
9 The only thing I could think -- the only thing he said was,  
10 well, I wasn't the lead investigator, it was not my call.  
11 Would you have liked to have had them? Absolutely.

12 We had a question from one of you about whether the  
13 phone could have been the phone used in the homicide, and the  
14 State got up and said, well, what area code does that tower  
15 hit off of now, and the tower was in California, but it never  
16 answered the question about the phone. And I'm not going to  
17 pretend to know a lot about technology, but there are SIM  
18 cards. We asked about them. We asked about how they could be  
19 switched in and out.

20 As we sit here right now, we don't know. We don't  
21 know if one of those three phones was the one used that night,  
22 and more importantly, we don't know the data that's on those  
23 three phones and what -- what is stored internally in that  
24 phone. They just weren't taken. They took a disposable  
25 camera sitting next to it.

1           Now, we talked in opening statement about these  
2 records. Okay. Now, this was, you know, we talked about  
3 Job-Loc being alibied, and we had this phenomenon, this  
4 Daylight Savings Time phenomenon that occurred only to one of  
5 Job-Loc's bills. Even though they both said Pacific Time, we  
6 had two sets of records from one phone and they were an hour  
7 off. Who knows. And we had quite a convoluted explanation  
8 about it.

9           But when we came to opening statement, right, we  
10 said, look, here's Job's phone and there's calls at 3:29 and  
11 3:46. Now, if the homicide happens at 3:45, those calls might  
12 be relevant. They might be calls suggesting that Job-Loc gets  
13 picked up by Monica Martinez, because they're from her. Both  
14 the calls are from her.

15           And I thought when they started with -- they brought  
16 this whole alibi thing back into court again and Job-Loc's  
17 records saying he's not at the scene, I thought they were  
18 going to come and say, oh, the defense attorney screwed up,  
19 look at this record that shows that these towers put him at  
20 Brittnae Pines, right, and maybe we missed the tower  
21 information. But at the end of the day, these calls don't  
22 have tower information and they justified the time discrepancy  
23 by Daylight Savings Time. Well, you can't have it both ways.

24           Job-Loc is not alibied. It is a lie. Cellphone  
25 records making it impossible for Job-Loc to be at the scene is



1 a lie. It is a fantasy. It is disgusting that they put that  
2 out there to the grand jury in order to get this charging  
3 document, and you should be upset about that.

4 Even Cornelius Mayo pursued Job-Loc.

5 (Audio/Video played.)

6 MR. SGRO: The nasty text messages once Cornelius  
7 Mayo makes contact with Job-Loc. Now, this is the search of  
8 the residence, which I know you've all seen the picture. I  
9 know you all know where the phones are. I kept talking about  
10 the camera next to it which they did take.

11 Now, here's the interesting thing, and this I'm going  
12 to call a tactic. And it's little. This isn't the case  
13 cracker. This isn't David Burns is free. But I want you  
14 to -- this, I think, explains in a microcosm sometimes what  
15 happens when there's an effort more to be advocates and win  
16 than to understand how serious this case is.

17 These are Exhibits 191 to 249. They're admitted in  
18 evidence. These are the photos. And look at this big stack.  
19 These are the photos that were admitted by the State relative  
20 to the search that was executed in Job-Loc's home. Right.  
21 And if you remember the procedure, the State shows them to us,  
22 the judge says do you object, no objection, they come in.  
23 Before I started my examination of the witness that these are  
24 admitted through, I flipped through them and I thought to  
25 myself you got to be kidding me. That photo on the left isn't

1 in here.

2           Go back to the jury room and look through these.  
3 Look through these photographs and ask yourself why would they  
4 put in an inch worth of photos and specifically elect to not  
5 put in the one that shows the phones. And as I told you, it's  
6 not the case cracker, but why do we have to get up and ask the  
7 question about that? Why, if they have met their burden and  
8 they're confident in their case, why don't they just give you  
9 it all? Why the effort to play tactical games in a case of  
10 this magnitude?

11           We still have an indictment in front of us where  
12 Jerome Thomas is charged in every count. We still have a  
13 document in front of us where they haven't clarified in  
14 writing for us who they think the shooter is. I heard what  
15 Ms. Weckerly said. I know what Mr. DiGiacomo's going to say.  
16 Why didn't they clean this up?

17           Now, they even had a tip that Job-Loc was the  
18 shooter. They abandoned it. And this is really interesting  
19 too. This is a quote from yesterday. Aiding and abetting is  
20 Jury Instruction No. 20. And the quote is, Importantly --  
21 now, the part that starts with "the State," this part right  
22 here, the State is not required, that's on the instruction.

23           The State said yesterday, "Importantly, the State is  
24 not required to prove precisely which defendant committed the  
25 crime and which one aided and abetted." The State gets up

1 here, tells with all the confidence it can muster David Burns  
2 is the shooter, and then later in the same presentation,  
3 importantly; i.e. parentheses, if you don't buy it, convict  
4 him under another theory.

5 (Audio/Video played.)

6 MR. SGRO: Remember Cornelius Mayo goes to the  
7 hospital. He is armed with information that he's received  
8 from Stephanie Cousins. He doesn't tell the grand jury he  
9 went to the hospital. I pointed that out to him.

10 Now, there's a couple things we need to know about  
11 some of the information you received in this case. There's  
12 this phrase, and Mr. Langford talked about it yesterday, she's  
13 just acting. It seems reasonably innocuous until Cornelius  
14 Mayo and Devonia Newman say the same exact thing, she's just  
15 acting, in reference to Stephanie Cousins. That's an odd  
16 coincidence, isn't it?

17 The other thing is we have Erica Newman for the first  
18 time announcing overalls. Well, that's odd, isn't it? And  
19 the white T-shirt. Okay. Why is the white T-shirt important?  
20 I'll tell you why. Because if you believe, if you believe  
21 that David Burns was the shooter in this case, you would find  
22 that that white T-shirt description is not accurate. Right.  
23 He's wearing a blue shirt in the video.

24 White T-shirt comes from Stephanie Cousins. Right.  
25 And white T-shirt remains an error. If you believe David

1 Burns is the shooter, white T-shirt is used as a descriptor  
2 from the beginning of the case all the way through. We're not  
3 suggesting that she got everything right but she got the  
4 T-shirt wrong so you have to acquit. We're saying that this  
5 is evidence of the suggestion of information.

6 By the way, I didn't hear any mention yesterday, when  
7 the State said, oh, she just identified the shirt, how about  
8 white shoes, an orange hat, 27 to 30, facial hair and white  
9 overalls. Does he have white overalls on or not?

10 (Audio/Video played.)

11 MR. SGRO: Now, you all decide, is that Bunting  
12 saying that the overalls are blue, or is that Devonian? Is it  
13 Devonian saying the overalls were white? The tape is the tape.  
14 I encourage you, like the State did yesterday, to please  
15 listen to it, because I do not want you to take my word for  
16 it. I don't want you to take the State's word for it. But  
17 figure out who said what there. And she's heavily sedated  
18 when they talk to her.

19 (Audio/Video played.)

20 MR. SGRO: Now, we brought that up in  
21 cross-examination. Versed is a medication given to induce  
22 amnesia. There's no effort to controvert that. Fentanyl and  
23 Versed in the combination are both known to cause  
24 hallucinations. And that's the one and only statement we have  
25 from Devonian. Now, in 2015, this is what she said about the

1 suspect.

2 (Audio/Video played.)

3 MR. SGRO: Now, you all were here. You heard  
4 Investigator Ifill talk to you about a drawing she drew back  
5 in October, the hat and the bandanna which she testified  
6 consistently with the trial. Then I had her do it again at  
7 trial, her consistent. And it's amazing the attack that was  
8 lodged on Ifill when Devonian didn't say anything different  
9 from the witness stand before or after.

10 His interview with Devonian was 100 percent spot on  
11 with everything she said in the case, in the courtroom. She  
12 testified about her statement that she read.

13 (Audio/Video played.)

14 MR. SGRO: Now, imagine Devonian reads her statement,  
15 doesn't like it, thinks people are putting words in her mouth,  
16 talks to the DA and they say don't worry about it. And so  
17 when we asked her about it several months back, she wrote in  
18 her own hand in her own words what she told you when she  
19 testified. Perfectly consistent.

20 Somehow this document is sinister because, I guess,  
21 we called Ifill. There's no other explanation. I guess if we  
22 ask questions they're sinister and have a bad motive. They  
23 ask questions, it's all, you know, peace, love and joy. But  
24 when Ifill came and told you about this statement, they  
25 attacked him because they didn't like it.

1           Now, this is the remarkable statement that was  
2 characterized by the State yesterday. This is page 11, and  
3 it's in these two lines here at page 11 that the issue about  
4 what Devonina said she heard Cornelius say when she was laying  
5 on the bathroom is this.

6           Isn't it interesting that they didn't ask a single  
7 witness over the weeks of this trial to tell you all what  
8 happened during this exchange. Instead, they wait until  
9 closing argument and put in the words and say that's what she  
10 said. Well, they're not allowed to testify no more than I am.  
11 Listen to the tape.

12           And by the way, don't think for a second that  
13 uncovering this particular speech tells you who shot Derecia,  
14 because that's not the case. Again, they have the burden of  
15 proof. We are giving you explanations as in perspective as to  
16 what these items they provided for your consideration were,  
17 and I will echo again to review the statement.

18           There was some talk about the hair, the hair length  
19 in the statement. And I asked Detective Bunting whether or  
20 not she ever said the hair was cut, the hair was cut.  
21 Detective Bunting would later say in the statement, Curly?  
22 And then she said, Yes. Listen to it for yourself and see  
23 what you think she said.

24           Now, the tactics employed in the case in order to  
25 advocate, compare, compare the attack on Ifill for not

1 recording when he had typewritten notes with him to Monica  
2 Martinez who does proffers and they don't even bother to take  
3 notes. They have their main witness in the case and they take  
4 no notes. Agent Boles said, My notes are in the car, my notes  
5 are in the car. Houghton left his notes in his locker. That  
6 was all okay. But Ifill, don't you come in here and not  
7 record everything. I mean, that's a joke.

8 I circle back then to the only evidence in this case  
9 that cannot be twisted, contorted, manipulated, given an  
10 agenda. It has no motive to lie. And we come back to where  
11 we started in opening. We need to put the suspects in the car  
12 and in both residences. They knew -- this, by the way, is  
13 September 30. Why is that date important? Because of all the  
14 things they had done prior to the 30th.

15 They had David Burns's statement. They had these  
16 letters. They had Monica Martinez's statement. They had  
17 cellphone records. They had a grand jury proceeding. They  
18 had all kinds of information already. They had nothing  
19 scientific. They knew. This right here is an admission that  
20 they knew they needed something more. And that's where it  
21 stopped, because there would never in this case be anything  
22 more.

23 Now, reasonable doubt. I put up there it's always  
24 constant, and I'll tell you why. Because as we told you when  
25 we were questioning you when you were being selected as

1 jurors, you know, the burden of proof in any criminal case,  
2 even a traffic ticket, is beyond a reasonable doubt.

3 That burden stays the same no matter how serious the  
4 crime gets as you go up the ladder from whatever it is. Drug  
5 trafficking to robbery to using a weapon to rape to murder,  
6 that burden's always the same. And I asked you in voir dire  
7 if you'd be tempted to lessen the burden because of how  
8 serious the crime was, and you all told me no, the ones I  
9 spoke to anyway. You all confirmed a commitment to hold the  
10 State to its burden, and that I know for sure.

11 And it says the weighty affairs in life. If you have  
12 a reasonable doubt as to the guilt of a defendant, he is  
13 entitled to a verdict of not guilty, and that's justice. And  
14 I'll reiterate to you a comment made yesterday. What we seek  
15 from you is justice at the end of the day. But we want it as  
16 much as they want it.

17 We want you to go back there and ask yourselves did  
18 they satisfy me to the extent on a weighty affair of life that  
19 they've met their burden. Because if they didn't, justice  
20 requires, not a profession like that firearms stuff, justice  
21 requires that you come back and you enter a verdict of not  
22 guilty.

23 When you look at the quantum of proof that they've  
24 advanced to you in the absence of science, these are some of  
25 the individuals you have to rely on. Can you rely on these



1 folks for proof beyond a reasonable doubt? And then let me  
2 ask you it the inverse way.

3           The inverse way is very simple. If David Burns --  
4 and this is hypothetical. He has no burden of proof. If  
5 David Burns had called -- and I just picked three. You can  
6 pick from any of them. But if he called Monica Martinez,  
7 Donovan Rowland and Cornelius Mayo, and we came to you at the  
8 end of the case and said, hey, all of them said David Burns  
9 was nowhere near that scene that night, what would the attack  
10 be on their credibility by the State? Would you go back and  
11 say, well, if them three said it, we're done here because  
12 that's beyond a reasonable doubt?

13           And the point is this. It does not matter whose name  
14 is on the subpoena. It does not matter whose witness they  
15 are. It is a level playing field. And if they come in here  
16 and they are not believable, then they are not believable  
17 either direction. And if we couldn't call them to persuade  
18 you to acquit, then how can they stand up here and call them  
19 and ask you to convict? That would be unfair.

20           Ladies and gentlemen, this case is serious. Someone  
21 lost their life and it is horrible. At the end of the day  
22 though, in this case, as to David Burns they have failed.  
23 They have failed in their burden. They have attempted to  
24 deceive. And they are not entitled to do anything more than  
25 to hear you come in and say that David Burns is not guilty.

1 And I thank you for your time.

2 THE COURT: All right. Now, ladies and gentlemen,  
3 Mr. DiGiacomo is entitled to a reply argument. Does anybody  
4 wish a recess before the reply argument?

5 All right. Mr. DiGiacomo -- is that a yes? Okay.  
6 During the recess, it's again your duty not to converse among  
7 yourselves or with anyone else on any subject connected with  
8 this trial, or to read, watch or listen to any report of or  
9 commentary on the trial from any medium of information,  
10 including newspapers, television and radio, and you're not to  
11 form or express an opinion on any subject connected with this  
12 case until it is finally submitted to you.

13 Be in recess for about ten minutes.

14 (Jurors recessed at 11:31 a.m.)

15 THE COURT: The record will reflect that the jury has  
16 left the courtroom. Ten minutes.

17 (Court recessed at 11:32 a.m. until 11:40 A.M.)

18 (In the presence of the jury.)

19 THE COURT: All right. You may be seated. State of  
20 Nevada vs. Burns and Mason, the record will reflect the  
21 presence of the defendants, their counsel, the district  
22 attorneys, and all members of the jury.

23 Mr. DiGiacomo.

24 MR. DiGIACOMO: Thank you.

25

1 STATE'S REBUTTAL ARGUMENT

2 MR. DiGIACOMO: What happens in courthouses across  
3 America and what should be happening in this courtroom by a  
4 jury of 12 people is that it's a search for a truth. And  
5 before about 20 minutes ago, that would seem to be what we  
6 were all doing here for the last four weeks.

7 MR. ORAM: Judge, I object to that. That's  
8 disparaging counsel.

9 MR. DiGIACOMO: He just accused me --

10 MR. ORAM: To -- to --

11 MR. DiGIACOMO: -- of lying and deceiving this jury.

12 THE COURT: Please. Objection's overruled.

13 MR. DiGIACOMO: Thank you.

14 THE COURT: Sit down. Let's go.

15 MR. DiGIACOMO: The past 20 minutes Mr. Sgro got up  
16 here as opposed to two sides arguing an issue and suggested  
17 that the players themselves somehow are manipulating what  
18 happens with the 12 people to search for that truth.  
19 Certainly a jury system, that's all this is, 12 jurors decide  
20 what the truth is and then decide whether or not Ms. Weckerly  
21 and I can establish beyond a reasonable doubt that these two  
22 individuals committed the crimes that they are accused of.

23 Mr. Sgro suggested to you that our version of events  
24 has to be true in order for you to convict the defendants.  
25 Really? That's not what your jury instructions say. Your

1 jury instructions say if every material element of the offense  
2 is established, you convict these defendants. If they fired  
3 six shots, if they fired seven shots, if they fired 15 shots,  
4 if someone got murdered and they're the perpetrators, you  
5 convict them. It's wholly irrelevant how many shots were  
6 fired. You don't have to believe Detective Bunting wanted  
7 six.

8 And now you can kind of see why Detective Bunting was  
9 as angry as he was on the stand during cross-examination by  
10 Mr. Sgro. The suggestion that he was manufacturing the story  
11 and manufacturing the evidence. Apparently now he's written  
12 David Burns' letters that are in evidence that came out of his  
13 cell that were collected with his address on them, because  
14 there's two different handwritings.

15 Actually, look at the letters. The two we put up  
16 were absolutely consistent, and the third one is a different  
17 handwriting. Why? It's Willie Mason's handwriting. Look at  
18 the letters: The letters are in only have one envelope, so  
19 please forward a letter onto Job-Loc. And there's two  
20 different letters in that exhibit. One is the Willie Mason  
21 letter, one is the -- the David Burns letter, written by two  
22 different people. No kidding there's going to be different  
23 handwriting on those. That's the truth of what happened.

24 There's only one thing that happened in this case.  
25 Whether or not we can establish every tiny little thing where

1 every person was standing at any given time is irrelevant.  
2 The question is can we establish that the two of them were at  
3 the crime scenes, that they were involved in a conspiracy,  
4 that they aided and abetted each other, and ultimately one of  
5 them -- or, hey, maybe Stephanie or Monica's the shooter, I'm  
6 not real sure -- but one of them, one of these two fired the  
7 shots. I'm going to suggest to you, and I think Ms. Weckerly  
8 did, there isn't any doubt that David Burns is the shooter in  
9 this case. Right. I mean, that's not going to be -- there's  
10 no surprise that our position is the evidence establish he's  
11 the shooter.

12 But the law tells you it's not really relevant who  
13 the shooter is in this phase of the trial. This is a guilt  
14 phase. And the question is applying the law to the evidence.  
15 Do you convict the defendants? You could talk about the  
16 shooter and not the shooter, because that's what the truth is.  
17 Ultimately, a jury's supposed to find that truth.

18 So let's start off with Mr. Sgro's suggestion that,  
19 well, one, apparently we were manipulating the witnesses. But  
20 two, the quality of the witnesses. God, I wish that --

21 MR. ORAM: Objection as to what he wishes.

22 THE COURT: Sustained.

23 MR. DiGIACOMO: It would be a wonderful situation  
24 should we be standing in -- or we should be living in a world  
25 in which people who are selling crack out of their house who

1 get murdered happen to have a priest and a nun who's standing  
2 there and is part of the witnesses in the case. Or maybe  
3 Mother Theresa to tell us who's living in Job-Loc's apartment  
4 over at the Brittnae Pines.

5 Those aren't the people that are involved in murders.  
6 I don't get to choose these people. There's no doubt that  
7 these are these two individuals' friends. They're not my  
8 friends. These are people that are associated with these two  
9 defendants. You can't blame us for the quality of the  
10 witnesses.

11 But more importantly, it's not about were they  
12 telling the truth on the stand completely about that. Right?  
13 It's not a question, did what he say, is that what he said, is  
14 that true? No. It's what did he say that makes it relevant?  
15 What can we figure out from what they said in this particular  
16 case.

17 And why do I say that? For example, Donovan Rowland,  
18 was that guy a real credible witness? No. But when you look  
19 at his taped statement and you go back and you look at it, now  
20 you have an understanding of why in the letters they're  
21 talking about, Hey, West, or that Donovan Rowland bitch, as  
22 they put it, he gave -- he got out of a gun charge by giving  
23 up the burner. Well, now you understand, right? He didn't  
24 get charged with being in possession with -- of the murder  
25 weapon.

1           They don't say, Hey, West got out of the murder by  
2 giving up the weapon. No. What are they telling you in those  
3 statements? Why do we call Donovan Rowland? Why did -- why  
4 is he up there? Because he's believable? No. Because the  
5 information he has to provide you is going to lead you to what  
6 the truth in the case is.

7           That's the same with Monica Martinez. Because I have  
8 to wonder to myself, right. Monica Martinez starts off with  
9 the same thing that David Burns does. She's a little bit more  
10 angry with Detective Wildemann when she says, Can I pull a  
11 rabbit out of my ass, I don't know what happened. But  
12 ultimately that's her first story.

13           And what happens after that? Detective Bunting, the  
14 most patient human being on Earth, apparently, after watching  
15 that five and a half hours, sits there with her for a very  
16 long period of time. But what is her first story after she  
17 tries for about 30 seconds and goes, I don't remember; what  
18 does she say?

19           And I'm not sure that anybody in this courtroom  
20 caught it. I'm not even sure the detectives at the time  
21 caught it. She says, I'm with two guys in a car, we go and we  
22 pick up this -- this crack head, and we go to an apartment.  
23 Now, Detective Bunting and Detective Wildemann, they're  
24 thinking the apartment she's talking about is the murder  
25 scene. But she's not. And then she says, After we leave that

1 apartment, I drive somewhere, it was dark, Chris, it was dark,  
2 Chris. Yes. And then she won't give up any more information.  
3 That's her first story.

4 Well, guess what? When you get to the end of this  
5 case, the physical evidence is going to establish that that  
6 version of events is actually true. And what is she trying to  
7 do? She's trying to avoid liability in the case, much like  
8 Mr. Burns is doing. Do you think that he actually has mental  
9 problems after reading those letters? No. There's no  
10 evidence before you he has mental problems. He is whistling  
11 and humming and doing whatever he can to avoid having to  
12 answer the questions. Why? Because unlike Monica Martinez,  
13 he has no moral out.

14 David Burns has no explanation that is going to save  
15 him from the horrific knowledge that he put a gun,  
16 a .44-caliber, that giant hog-leg of a revolver, to the head of  
17 a woman and pulled the trigger without ever letting her  
18 getting a word out edgewise, and then chased a 12-year-old  
19 girl down. What reasonable explanation could he give? Well,  
20 I was really high on drugs. That wouldn't excuse it.

21 Well, and notice in his statement he doesn't ever  
22 deny. He just says, I don't remember, I don't remember.  
23 Until he gets to the death penalty part. Do you believe in  
24 hell, Detective? And then also listen for the tune that he's  
25 humming and singing and whistling in the background.



1           So let me start with one last thing I want to talk  
2 about Monica, which is Story No. 2. Right. First story is  
3 she kind of gives you the sequence of events, but she wants to  
4 go with I don't remember. What's Story No. 2? Because I  
5 haven't heard an explanation for this.

6           Mr. Langford got up there and said to you, The  
7 evidence suggests to you it was a dope deal gone bad and  
8 somebody went crazy. And if -- he didn't point the finger at  
9 anybody as to who went crazy. But Willie, he's merely  
10 present, but it's just the dope deal, was kind of what the --  
11 what I took from what Mr. Langford said to you.

12           Well, if that's true, why isn't the second version of  
13 Monica's story, Hey, I had two guys, they went up to pick up a  
14 girl, and we went up to do a dope deal and somebody went  
15 crazy? Why does she implicate herself with a robbery at that  
16 point?

17           When you look at her statement, she has given no  
18 identifying information of the perpetrators whatsoever. The  
19 only thing she's done is convicted herself of first degree  
20 murder. Before she ever identifies anybody, the first thing  
21 she says is, It's a robbery.

22           Why is that important? Well, you now know that the  
23 punishment for first degree murder is 20 to life. What does  
24 Monica Martinez plead to? She pleads to a bunch of charges  
25 where she's eligible for a life sentence and a minimum parole

1 eligibility is somewhere going to be between 10 and 18 years.

2           So she got on the stand, got basically two years cut  
3 off her parole eligibility date, and told you she was a driver  
4 on a robbery. Anything else she has to say you don't need to  
5 know about. You can ignore everything else the woman says in  
6 the entire case. The fact of the matter is, is Monica  
7 Martinez establishes this isn't a dope deal gone bad. Because  
8 there's no reason for her to lie.

9           Because otherwise she's innocent. She's the woman  
10 going to 18 to life who's innocent of a crime. Right. If I'm  
11 just a driver on a dope deal and -- and somehow the dope deal  
12 goes bad, maybe I have some accessory liability for driving  
13 them away. But if I don't know anything's going to happen  
14 before it happens, well, then, I'm not guilty. I'm innocent.

15           And yet she's 18 to life up there telling the story  
16 about how this is a robbery. That fact's got to be true, that  
17 this is, in fact, a robbery. Anything else she says you can  
18 completely ignore for all I care. Who cares what else she  
19 says after that.

20           See, because the other thing is she took two years  
21 off her minimum parole eligibility sentence for what? To be a  
22 snitch for the next 18 years in prison. Mr. Sgro got up here  
23 and said, Snitches get stitches. Meaning she put herself at a  
24 significant amount of risk in order to get up on the stand and  
25 save two years on her life. For what? Ultimately, to

1 establish there's no question in anybody's mind that anybody  
2 who's in this care knew it was a robbery, they were engaged in  
3 a robbery. And who cares who the identity of the perpetrators  
4 are. She establishes that fact and that fact alone.

5 Mr. Sgro also went through the State's theory of this  
6 is the six shots. Not the State's theory. Detective Bunting  
7 thinks it's consistent with six shots. But this is about a  
8 search for the truth. So let's talk a little bit about the  
9 truth, whether or not it's six shots or eight shots. Because  
10 I've got to tell you, if it's eight shots, it's really bad for  
11 Mr. Burns. Because after he fired six shots, he reloaded the  
12 gun two times and continued firing. That's even worse than  
13 emptying the last shot into your six -- into the 12-year-old  
14 little girl and then searching her pockets while whistling  
15 about it.

16 Here's your crime scene. And I didn't realize Mr.  
17 Sgro was going to continue with his slide from his opening  
18 statement here, so I cut a little bit of his opening in for  
19 you.

20 I apologize, Judge. Give me just...

21 (Audio/Video played.)

22 First of all, there's no evidence that the revolver  
23 was loaded when the person entered the residence. Okay. But  
24 whatever gun was used had to be loaded at some point. Right?  
25 I mean, does it really matter whether they loaded it in the

1 front room or they loaded it outside or they loaded it -- or  
2 they took it from Job-Loc when it was already preloaded? I'm  
3 not really sure why that's relevant.

4 Can tell you this, the evidence suggests -- because  
5 it would be better for the State when we come to talking about  
6 how egregious this crime is, had there been either two  
7 shooters, because there could be Mr. Mason and Mr. Burns being  
8 shooters, and it would also be better for us if there were,  
9 you know, someone had to reload that weapon. Because that  
10 just makes this that much more offensive, what happened in  
11 that house.

12 But that's just not the truth. Here's the crime  
13 scene. I'm going to say that the evidence is pretty darn  
14 compelling. Mr. Burns is our shooter at the end of this case.  
15 Mr. Burns comes through the front door. Stephanie bumps into  
16 that table that you're going to see right there, knocking the  
17 items off of it as Mr. Burns fires a round into Derecia  
18 Newman.

19 Now, look at the one, two, three pieces of firearms  
20 evidence that's found in the area where Derecia Newman is.  
21 And then look at the pieces that are pulled out of her head.  
22 What do you have? You basically have a complete bullet. On  
23 the left-hand side is --

24 The laser pointer's not working real good. Right  
25 here, that bullet is able to have enough identifying

1 information on it to conclusively tie it to the other bullets  
2 in the case. There's the little fragment, when you go back  
3 there and look, that Mr. Krylo said is consistent, but it's  
4 just not big enough and doesn't quite have enough. But that  
5 little fragment is found right between her legs.

6 So I'm going to suggest to you that that is one  
7 bullet, and that there isn't really a compelling argument you  
8 can make otherwise about there being more than one shot that  
9 happened in that living room.

10 So what happens? As Devonia runs down the hall, Mr.  
11 Burns doesn't chase. He doesn't need to chase. What has he  
12 got? He's got a .44-caliber revolver. He doesn't need to run  
13 after her, that's why he doesn't catch her. He just doesn't  
14 quite hit her.

15 Shot No. 1 enters the right side of the fridge, it  
16 comes out the back side of the fridge, it enters the wall  
17 that's right there and skims back down to the wall behind the  
18 wall that sits at the closet of the bunk-bed room and then  
19 hits that dresser and drops to the bottom. At least what's  
20 left of that bullet.

21 Why? Because despite digging out the hole there that  
22 happens in the first skim of the wall, digging out the hole on  
23 the top left -- or on the bottom left there, on the top side,  
24 that's the hole that enters into the closet. And that's the  
25 hole at the bottom where they tried to see if maybe the -- the

1 bullet stuff dropped down.

2           Ultimately, they get no evidence, or no -- of the  
3 outside of the bullet that would give them rifling  
4 characteristics. They got three little pieces of lead. But  
5 I'm going to suggest to you that there's no other firearms  
6 related evidence associated with that bullet that's recovery  
7 [sic]. So that has to be Bullet No. 2.

8           Bullet No. 3, the -- either a magic bullet or the  
9 bullet that people are lying about, or maybe it's just the  
10 bullet that doesn't establish anything. I'm not real sure.

11           I'm going to suggest to you that one thing you know  
12 for sure is we don't manipulate the witnesses. Why? Because  
13 in the beginning of the case we called the crime scene analyst  
14 who's present at this scene, who doesn't know about this at  
15 the time that she's at the scene, the bullets that happened to  
16 go into that TV. And what does she say about trajectory? She  
17 says the bullet goes into the vacuum cleaner, fakes a -- goes  
18 down a little bit farther, makes a hard right-hand turn, it  
19 hits the mattress and it comes up there. Now, bullets do  
20 weird things at a scene, but I'm pretty sure that if it went  
21 through a wall, you'd see it.

22           Her problem is, is that she sees a bullet strike to  
23 the vacuum cleaner, and she doesn't see the bullet strike that  
24 happens in that wood shelving. And so she sees, How is that  
25 humanly possible that it struck the -- and I don't see any

1 evidence of anywhere else that that bullet went. She just  
2 missed it.

3 Like we talked about, there are good -- there are  
4 good crime scene analysts and there are bad crime scene  
5 analysts. And you know what, everybody's human. Even the  
6 best of people make mistakes.

7 But what does the evidence show? The evidence shows  
8 that if you were to draw a line from the bullet entry and exit  
9 out of the -- the vacuum cleaner, there's a defect right in  
10 the side of that cabinet. And most important about that  
11 defect, notice two things. There's a big hole that's mostly  
12 rounded. And then on this side there is -- it kind of -- kind  
13 of has a non-round and there's kind of a weird shape to the  
14 bullet hole.

15 What happens after it passes through there? And then  
16 I don't have the picture, the defense put it in, where the two  
17 trajectories cross about two or three or -- inches outside of  
18 the wall. When it hits the back of the shelving, it finally  
19 comes -- the bullet finally comes apart. They change  
20 direction, like Krylo says, what happens to them? You could  
21 see this bullet on the -- going inside, the big one's on  
22 bottom, the little one's on top. Going out, the big one's on  
23 top, the little one's on bottom. And then you look at the TV  
24 and there's two bullet strikes to the TV.

25 Now, what did the CSA -- Keller -- whose name escapes

1 me what -- what her name was, I think her name -- married name  
2 now is Keller. What did she say? I took off the bottom of  
3 the TV, and I took off the back of the TV, and I found this  
4 little fragment. That's all I found. I didn't see any exits  
5 to the TV. I just saw two bullet holes. She doesn't find  
6 that bullet.

7 Well, there's two possibilities. Somehow Cornelius  
8 Mayo has the real murder weapon, he fired the round to -- to  
9 call the police, because he knows the forensic analysis that  
10 happened here and he's going to now help us fix the fact that  
11 there's only five bullets in this house, or that bullet wound  
12 up wedged up in the actual workings of the TV, and when it got  
13 moved, eventually shook out, and when it came out, Cornelius  
14 Mayo turned it over.

15 Because either Mr. Krylo is absolutely crazy or that  
16 bullet that looks like a completely pristine bullet that just  
17 happens to physically match the little fragment off the front  
18 end, the little lead piece off the front end that's missing  
19 from that bullet, either one of those two -- two things is  
20 true. Either one of those two -- two things is true. Either  
21 someone had -- did a hell of a job manufacturing the evidence  
22 in this case, which doesn't really matter one way or the other  
23 how many shots there are, or the truth just is some CSA missed  
24 it.

25 Next shot. Now Devonian's turned the corner and Mr.



1 Burns was following her. And as she goes into the bedroom  
2 there's another shot. That shot winds up hitting the bed,  
3 hitting -- bouncing up into the two coverings of the window,  
4 and ultimately is recovered at the bottom of those two  
5 coverings right there, and it's almost a complete bullet.  
6 Bullet No. 4.

7 Now what happens? Devonian runs into the bathroom.  
8 And notice what Devonian says in her statement that just --  
9 maybe Cornelius Mayo told her this that morning, there are  
10 towels hanging off the door to the bathroom. So she couldn't  
11 get the bathroom door completely closed.

12 He shoots a round through the door, she lets go of  
13 the door, that round winds up behind the sink there in the  
14 wall. And while they cut out the wall, they ultimately never  
15 recover that bullet. That's Shot No. 5.

16 And then she exits the bathroom and she gets shot  
17 right in her stomach, right in the front where she should be  
18 shot if she's coming out of that bathroom. And that's Bullet  
19 No. 6.

20 Does it matter if there's eight bullets? Does it  
21 matter if there's seven bullets? Does it matter if there's 15  
22 bullets? No. But a jury's job is to find what the truth is.  
23 And, ultimately, I don't know any other explanation you could  
24 come up with.

25 So let's talk about Jerome Thomas's DNA from the

1 opening. This is a big deal, because on the -- the September  
2 12th of 2011, Detective Bunting tells the lab, We never  
3 collected Jerome Thomas's DNA. The part that everybody's  
4 missing, though, is the report from the DNA comes out in  
5 October of 2011. So now you have the reports. It doesn't say  
6 Detective Bunting is never going to collect Jerome Thomas's  
7 DNA. It says buccal swabs have not been collected or never  
8 been collected per Chris Bunting. And it's true; by September  
9 of 2011, it wasn't collected.

10 But what do we know now? We have one piece of  
11 foreign DNA inside the residence. You have a small cigarette  
12 butt, which, if you look at that table that Stephanie would  
13 have bumped against when the door hit her, there is a kind of  
14 a handmade little ashtray that falls down and there's a  
15 cigarette butt.

16 Any evidence that the shooters in this case were  
17 smoking a cigarette when they came through the door and  
18 executed Derecia Newman? No. But more importantly would be  
19 that other little red circle, that the cabinet that nobody  
20 says anybody disturbed during this crime doesn't appear to be  
21 disturbed, that door -- that cabinet happens to hand -- have a  
22 handle that has Unknown Male's -- No. 1's DNA, too.

23 So what could that tell you if you had an answer to  
24 the question? Well, if it was Job-Loc's DNA, well, that would  
25 be, you know, sort of bad. But as I'll explain shortly, it's

1 impossible. It can't be Job-Loc's DNA.

2           What else do you know? Well, there is at least one  
3 male that lives in this room that's not the child of Derecia  
4 Newman. And guess what? Of all those samples they took of  
5 all those places where they had DNA, those are the only two  
6 pieces that you don't have the answer to, and it comes back to  
7 Unknown Male No. 1.

8           Would you expect to find Cornelius Mayo's DNA in the  
9 house that he lives in? Of course you would. Would you  
10 expect to find them on the cabinets that he would be using?  
11 Would you expect him to be smoking the cigarettes? Remember,  
12 he had cigarettes stolen during the -- during the robbery.  
13 Newport cigarettes, interesting two packs that happened to be  
14 -- two packs happened to be found in Job-Loc's apartment. But  
15 would you expect that to be Cornelius Mayo's DNA? Yes. But  
16 even if it's not Cornelius Mayo's, as long as it's not  
17 Job-Loc's DNA -- because you know it's not Donovan Rowland's  
18 DNA -- it doesn't really matter.

19           So then you get to Job-Loc. What happens when you go  
20 to Job-Loc's place? You go to Job-Loc's place, you collect  
21 the toothbrushes that are there, you collect the cigarettes  
22 that are there, you collect a poem that's there. And, weird,  
23 there's three toothbrushes there; one's Monica, and one's  
24 Donovan, and one's Unknown Male No. 4. His -- his DNA found  
25 on a single cigarette, Unknown Male No. 4, mixed with DNA with

1 David Burns, Unknown Male No. 4, and mixed with the DNA of  
2 Monica Martinez, Unknown Male No. 4.

3 Unknown Male No. 4 cannot be Unknown Male No. 1. So  
4 whose DNA is found at Job-Loc's apartment? Well, it's Unknown  
5 Male No. 4. So the suggestion is that Detective Bunting is  
6 supposed to fly back to California, get Jerome Thomas's DNA to  
7 establish that he's Unknown Male No. 4. Now, that may be  
8 important if we ever get Job-Loc out of his prison sentence in  
9 California. But he's tied to this apartment 19 ways to  
10 Sunday. It's his apartment.

11 You have his medical records in there, you have his  
12 prescription medications in there, nobody -- his cell phone --  
13 oh, and my favorite deception, his cell phone alibis -- the  
14 way that they're making it sound, his cell phone alibis him.  
15 But his cell phone puts him at that location.

16 Nobody's disputing that's Job-Loc's apartment. And  
17 who is the only unknown male coming out of that apartment in  
18 DNA? Job-Loc. And what would you expect to find in a guy's  
19 own apartment? Unknown Male 4's DNA.

20 (Audio/Video played.)

21 That was from opening, as well. I didn't hear  
22 anything about that in closing today. But we can know that  
23 that can't possibly be Job-Loc, as well. And here's why.

24 Because when Monica, at 4:29, makes the phone call  
25 where she's hitting near the Texas Station, remember that map

1 that we showed? The person she's calling is Job-Loc. And  
2 Job-Loc answers -- or Job-Loc's phone answers and it's ping-  
3 next to his apartment. But more importantly, continue to  
4 watch at 4:38, as Monica Martinez walks into the Texas  
5 Station.

6 (Audio/Video played.)

7 4:42, as she walks out of the Texas Station.

8 (Audio/Video played.)

9 And 4:46, what is she pulling out of her purse? And  
10 what is she doing with her phone? And there's an --  
11 one-minute -- or 147-second phone call answered by Job-Loc's  
12 phone, where Job-Loc's phone's ping-  
13 at his apartment.

14 And I know he said in opening that this is shortly  
15 after Monica left that there's that guy who's allegedly on  
16 crutches. It's actually three minutes before. So somehow he,  
17 on his crutches, got out of the Texas Station and got home in  
18 time to answer the phone where he'd be ping-  
19 off the tower  
20 next to his house.

21 Mr. Oram suggested this yesterday, and I know I  
22 didn't do it with Tyler, but do you remember Tyler being on  
23 the stand and saying she'd never met G-Dogg? She only met him  
24 once? The suggestion that she wasn't stressed that made a  
25 mis-ID. Actually, I think she probably flipped the names.  
But ultimately, you don't think it was stressful for her to be  
in this courtroom and sit up there and have to testify? I

1 don't know. Her identifications don't really matter, as long  
2 as it's these two people that we're talking about.

3 But what does she say? I only met them both one  
4 time. And it was here in Las Vegas. And that's the only time  
5 I met them.

6 When you go to her records, you will see that on  
7 August 6th -- and I didn't go back, but there's an -- earlier  
8 August 6th and -- and August 5th, as well. But remember when  
9 you go to Mr. Mason's phone records, he starts the month of --  
10 of August in San Bernardino, when you look at his cell phone  
11 records. And if you keep looking, clearly Tyler has met  
12 G-Dogg, because in July of 2010, he's sending a text to her,  
13 Hey, you up, girl? So she knows him before August.

14 Now, four and a half years later, she's sitting up  
15 here and I asked, Did you ever drive to California to meet  
16 with your mother to -- and you met G-Dogg? She doesn't  
17 remember it. Does that mean she's lying about it? Or does  
18 that just mean four and a half years later someone's asking  
19 you did you meet G-Dogg about a month before you saw him here  
20 in Las Vegas and he was texting with you?

21 Her records are also important because it establishes  
22 that D-Shot, Mr. Burns, would be using Job's phone, because he  
23 didn't have a phone. Because he says in there, Hey, this is  
24 D-Shot. Job's sleeping. I just want to check on you.

25 So let's get to -- to Mr. Oram's circle of

1 coincidence. Let me make one thing perfectly clear. As a  
2 prosecutor, there is absolutely no doubt in my mind that  
3 Jerome Thomas --

4 MR. LANGFORD: Objection, Your Honor.

5 THE COURT: Sustained.

6 MR. DiGIACOMO: There's no doubt that the evidence  
7 establishes that Jerome Thomas is guilty of a crime. And  
8 there's no doubt that he's involved in this crime.

9 Now, whether or not the Rules of Evidence allow him  
10 to be charged with murder is one thing. But the circle of  
11 coincidence that Mr. Oram put there was to suggest to you that  
12 these pieces of evidence establish that he's physically in the  
13 car, right? That's what he was suggesting to you. Right?  
14 He's the shooter, he must be in the car, these pieces of  
15 evidence establish that he was in the car.

16 Well, let's talk about it. Monica's the driver.  
17 Actually, the fact that Monica's driving this car establishes  
18 Job-Loc's not in the car. Why? Because if he doesn't have  
19 the broken leg, like in July when he goes to do that petty  
20 larceny at Walmart with Donovan Rowland, Baby Job-Loc, he  
21 dragged the car. He'd drop her off and allow her to be  
22 prostituting for him in the Golden Nugget while he drove his  
23 -- drove his buddies around to commit the robbery. The fact  
24 that she's the driver suggests he's not present, not that he  
25 is present.

1           Some of these are a little bit hard to hear.  
2 Monica's covering up. Well, no kidding Monica's covering up.  
3 Why? Well, one, he's involved. But what about her covering  
4 up means that he's the shooter? Right? It's his gun, the  
5 evidence certainly suggests, whether or not it's provable in a  
6 case where Job-Loc's sitting at that table, that he actually  
7 physically gave the shooters the gun with the knowledge that  
8 they were going to go commit a robbery or had an idea that  
9 they're going to go commit the robbery, under the instructions  
10 as required by law, whether or not you can establish that  
11 independent of any other conspirator in this case, that's an  
12 issue for Job-Loc.

13           But that's not really an issue in this case. We can  
14 all probably agree or you can all agree that he gave the gun  
15 to these two yahoos to go out there and commit the crime.

16           Job-Loc's consequences. You're right, these are  
17 Job-Loc's friends, who -- or Job-Loc, however you say it.  
18 These are Job-Loc's friends that she's going to be giving up.  
19 She's going to be giving up Job-Loc, who's got his warrant out  
20 of California, that she's in a very short period of time gone  
21 from a middle-aged woman who has a regular job to now identity  
22 theft, prostitution, selling drugs, and ultimately driving  
23 somebody on an armed robbery as a middle-aged -- middle-aged  
24 woman.

25           He's her pimp. She's out there prostituting herself



1 to give him money. Of course, the prostitute's going to be  
2 concerned about the consequences from her pimp should she rat  
3 -- should he -- she rat out him or his friends with the crime.  
4 That doesn't make Job the shooter.

5 Two weeks ago in her car, it's much like what Monica,  
6 being the driver in this case. Right. He doesn't need her to  
7 drive if he's capable of driving the car. The fact of the  
8 matter is he's not capable of driving the car. That's why she  
9 goes over to pick them up.

10 They're stressed for money. They are stressed for  
11 money. It's why she's going to prostitute herself. It's why  
12 she's willing to drive these guys on armed robbery. And what  
13 do you think Job's going to get from it? Some of the money,  
14 because it's his gun. He brought these guys up there. And he  
15 -- of course, he's going to be -- he's involved. But what  
16 about that fact makes him in the car or makes him the shooter?

17 Disposal of the murder weapon. Well, it's his gun  
18 and he now knows it's been used in a murder. Of course, he's  
19 going to get rid of it. Of course he's charged with that  
20 fact. He's charged currently as an accessory to this murder  
21 for getting rid of that gun. Of course, you're going to get  
22 rid of the gun. It's -- if you believe Monica, it's his gun.

23 I found it interesting that they want you to believe  
24 Monica about certain facts and reject her about others. The  
25 only way to establish that he's the owner of the gun or that

1 he even disposed of the gun is Donovan Rowland and Monica  
2 Martinez. They like that fact, they want you to rely on that  
3 fact, but reject everything else they have to say.

4 He's wanted in California for a serious offense.  
5 That's true. But it's not quite like being involved in the  
6 execution of Derecia Newman and the shooting of a 12-year-old  
7 girl. Everybody involved in this case is getting on that bus  
8 using a false name and getting the hell out of town. No  
9 question about it.

10 Baby Job-Loc. Once again, the suggestion that he's  
11 associated with Baby Job-Loc, how is that relevant? Is there  
12 any evidence whatsoever that Baby Job-Loc could possibly even  
13 be the shooter in this case? He doesn't match the physical  
14 description in the least bit, he's not on any video, his cell  
15 phone records don't seem to be connecting with -- with Job-Loc  
16 at the time that the crime committed. There's no connection  
17 whatsoever to him other than Ulonda Cooper. Oh, wait, we  
18 didn't hear from Ulonda Cooper. She's not a witness in this  
19 case. Did you assess Ulonda Cooper's credibility?

20 MR. ORAM: Objection. Burden shifting. That's  
21 burden shifting. We didn't hear from Ulonda Cooper is  
22 implying that we have a duty to call a witness. So I object.

23 THE COURT: You don't have a duty to call witnesses.

24 MR. DiGIACOMO: They don't have a duty. But they  
25 certainly want them to rely upon Ulonda Cooper's statement

1 that's relayed by Detective Bunting --

2 THE COURT: All right.

3 MR. DiGIACOMO: -- in a police report.

4 THE COURT: Objection -- go ahead.

5 MR. DiGIACOMO: Thank you. How do you assess that  
6 woman's credibility? How do you know if she was telling the  
7 truth or not telling the truth? She got parts of it right,  
8 she got parts of it wrong. It was \$400 versus \$4,000. It was  
9 a thousand dollars. He implied he was involved. What about  
10 that made him the shooter? There's a knife being grabbed, as  
11 I recall, that she was -- reported. Does it turn out that Mr.  
12 Rowland was attempting to sell a gun? Yeah. That fact is --  
13 seems to be corroborated. But what about the rest of it  
14 somehow makes him the shooter in this case?

15 Flight. My recollection is all three people got on  
16 that bus using fake names. So what about his flight makes it  
17 more likely that he's the shooter versus Mr. Burns or Mr.  
18 Mason? See, because everybody has a role in this case, right?  
19 Job's the OG, Job's the El Capitan, as Mr. Burns like to put  
20 it in his letters. He's the guy. He's the guy who provides  
21 the weapon, gets the transportation, that's his role. And Mr.  
22 Mason, he's the guy who gets Stephanie Cousins to get the  
23 target.

24 So what's Mr. Burns's role in this case? What about  
25 his involvement means that Mr. Burns would be the person who's

1 leaving town? Because he's got the single role in this case.  
2 And that role is to be the executioner, owner of the murder  
3 weapon.

4           Once again, straight from Monica. But ultimately  
5 whether or not that makes him the shooter or not, we know the  
6 murder weapon was inside of Job-Loc's apartment. What's to  
7 say Mr. Burns or Mr. Mason -- although I would suggest to you  
8 that facts don't indicate that, but certainly they had access  
9 to the weapon as much as anybody else in this particular case.  
10 But what about that makes Job the shooter?

11           Perhaps my favorite, the grand jury testimony. And  
12 Mr. Sgro actually referenced this at the end of his. That on  
13 September 30th of 2010, Stephanie Cousins -- suspect, by the  
14 way, so if somebody once again, who has some serious  
15 credibility issues -- says, But wait, they were calling this  
16 guy Job-Loc. And -- well, the cops told her his real name is  
17 D-Shot.

18           The part they're missing out is the day before they  
19 go and interview Mr. Burns in -- in California that you heard  
20 on September 12th of 2010, they show Stephanie Cousins a photo  
21 lineup saying, Who's the shooter? And she picks out David  
22 Burns. Whether or not she thinks his nickname is Job-Loc or  
23 she thinks his nickname is D-Shot, the facts are Stephanie  
24 Cousins identifies this man as being the shooter. That's what  
25 she says.

1           The text messages. I don't see anywhere in those  
2 text messages where Job-Loc says that he did the shooting.  
3 More importantly, as we all know, D-Shot liked to use  
4 Job-Loc's phone. So who knows who's sending those text  
5 messages back and forth? But either way, I don't know what  
6 about that makes him the shooter.

7           So then there's the letter. What does Job-Loc write?  
8 Well, you can't really say anything about me. I mean, who  
9 knows what Job knows about conspiracy to aiding and abetting  
10 law? But then he says, And either can Stephanie -- I think he  
11 uses a more colorful term for her. And, you know, even if she  
12 knows my name, she can't pick me out of a photo lineup.

13           And now we know what that all means, right? Because  
14 they're getting discovery back and forth and they're finding  
15 out about what the witnesses said. And she's saying, Hey,  
16 this guy, the shooter, might have the name of Job-Loc.

17           Well, she can't pick him out of a photo lineup. Why?  
18 Because Tamika tells you, or Christine Pierce, Stephanie  
19 Cousins' daughter, who by the way, buries Willie Mason, right?  
20 Because Willie's threatening to kill Stephanie if he tells --  
21 if she tells anybody about what happened here. But --

22           MR. LANGFORD: Objection. That's not the evidence,  
23 Your Honor.

24           THE COURT: I'm confused.

25           MR. DiGIACOMO: Christine Pierce says that Willie

1 Mason threatened to kill her mother if she told anybody about  
2 what happened in the crime.

3 THE COURT: Okay.

4 MR. LANGFORD: That's absolutely not correct.

5 THE COURT: We'll let the jury decide what the  
6 evidence is.

7 MR. DiGIACOMO: Oh. Okay. If you didn't hear that  
8 on the 911, you let me know. Or, I guess --

9 THE COURT: No.

10 MR. DiGIACOMO: -- if you -- I -- I apologize, Judge.  
11 If you didn't hear that on the 911, then that's your  
12 determination. But that 911, she says it. She says Willie  
13 Mason threatened to kill her if she told anybody about what  
14 they'd done.

15 MR. LANGFORD: I'm -- I'm going to continue to  
16 object, Judge.

17 MR. DiGIACOMO: But more importantly --

18 MR. LANGFORD: He's still making the same argument.  
19 It's not in evidence.

20 THE COURT: All right. He says it is. I -- we'll  
21 let the jury decide what the evidence is.

22 MR. LANGFORD: Thank you.

23 THE COURT: I don't remember one way or the other.

24 MR. DiGIACOMO: Listen to Christine Pierce's 911.  
25 Well, what else do you know from Christine Pierce?

1 Her mom doesn't know Job-Loc. She knows Job-Loc, but  
2 her mom never met Job-Loc. So she would have no idea who  
3 Job-Loc is.

4 So that leaves you with two things. They left up  
5 there, "Science," which I'd like to call more technology than  
6 science, because there's certain things that can't be  
7 manipulated, it can't lie.

8 And then Job's opportunity. So let's look at this.  
9 Who's in the car. I think we can all establish that if Monica  
10 Martinez is driving on a robbery and Stephanie Cousins is  
11 setting up the dope deal, and Willie Mason finds Stephanie  
12 Cousins and they're all in agreement to go up there and rob  
13 the dope man, that whoever else is in that back seat's guilty,  
14 whether the shooter or they're not the shooter, they've  
15 certainly now all conspired to commit this crime.

16 So let's start with the facts. The facts show, just  
17 like Christine Pierce testified, that Mr. Mason has been  
18 contacting her for a period of time. And eventually she gives  
19 up her mother's phone number. When does that happen? Well,  
20 if you look at Willie Mason's phone records, the last call to  
21 Christine before the first call to Stephanie is about 10:00 at  
22 night on the 6th.

23 Then there's the suggestion that Job-Loc could be at  
24 our scene. Because the cell phone records don't alibi him.  
25 The cell phone records do alibi him. No question about it.

1 If you think I'm lying to you about that, go ahead and find  
2 these two not guilty. Because he's alibi'd by those cell  
3 phone records. It's not solely by his cell phone records,  
4 it's all of the cell phone records. You can't take a single  
5 piece of evidence and go, What about this evidence can we  
6 fight about? No, you take it as a whole. You take every  
7 single one of these cell phone records and tell yourself how  
8 it's humanly possible Job-Loc's at the scene.

9 Why? Because at 2:00 in the morning Job-Loc's  
10 pinged off his apartment. And what do you know from  
11 surveillance video? That's 1:51 in the morning. There's  
12 Willie, there's Monica, and notice Mr. Burns with his hands in  
13 both pockets.

14 (Audio/Video played.)

15 A little after 1:52 in the morning, then 2:06 as  
16 she's holding her cell phone in her hand, she walks out of the  
17 Golden Nugget.

18 (Audio/Video played.)

19 So Job-Loc is not with Monica at 2:00 in the morning.  
20 The question is, is there an opportunity for Job-Loc to get  
21 into Monica's car before the crime occurred. Right? Because  
22 we all know Job doesn't have a car, and unless he can somehow  
23 jump on a Greyhound bus or -- or a CAP bus and get somehow  
24 over there in some manner, the only motive of transportation  
25 that he has, like when Tyler would drive him around --



1 testified to by Monica's friend Samantha -- is that he'd be in  
2 the passenger seat of the vehicle.

3 Which also tells you something, a little something  
4 about the DNA in that vehicle. Right? There's one thing of  
5 unknown DNA in the vehicle. It's Unknown Male No. 2. It's  
6 not Unknown Male No. 4. And where is it found? It's on a  
7 seat belt latch. And let me ask you this. You think the two  
8 people who committed this murder or the four people that  
9 committed this murder are such law-abiding citizens that  
10 they're going to follow the seat-belt law, so they must have  
11 grabbed the seat belt when they got in and out of this  
12 vehicle? No. None of the suspects, including Job-Loc, who we  
13 know has been in the car, DNA has shown up inside the car.

14 What happens? Well, let's go to Mr. Mason's cell  
15 phone records. You could do these with Monica's, as well.  
16 But if you go to Mr. Mason's cell phone records at 2:00 in the  
17 morning, where is he? He's downtown. So's Monica. And I'm  
18 going to suggest to you that -- you've got to remember that  
19 Mr. Mason and Ms. Cousins use Metro PCS, and T-Mobile uses --  
20 is -- is Job-Loc and Monica.

21 And why is that important? Because everybody --  
22 every company sets their own clock. Sort of like the Las  
23 Vegas Metropolitan Police Department. When you hear these  
24 911s, they have their clock.

25 So when you put these records together, and I -- I

1 guess maybe there's a dispute about the one-hour off one, if  
2 you want to start on August 5th and go through the first 175  
3 entries thereafter and see if they match up between the two  
4 records, go ahead. I'm going to suggest to you if you do  
5 that, that 175 is where I gave up. At 175, if you want to  
6 keep going, you can. But you can go on for days and match up  
7 the two records by that one hour.

8 But if you were to take Monica's and match them up to  
9 Mason's, there's three hour -- there's approximately three  
10 minutes off between the records. And if you were to take  
11 Mason's to Job-Loc's, they're about three minutes off. But if  
12 you take Monica's to Job-Loc's, they match. You take  
13 Stephanie's to Mason's, they match. And that's important when  
14 you get to the 911 call and how it is you know that the killer  
15 is still in the house while -- while Mr. Mayo is using -- or  
16 is calling 911.

17 But at 2:25, Mr. Mason's phone is hitting downtown.  
18 And then at 2:32, surprisingly, he's hitting off Jerry's  
19 Nugget. That phone call -- well, let me do this first.

20 (Audio/Video played.)

21 2:37, Job-Loc doesn't get out of the car. I find it  
22 interesting that Mr. Mason has a white shirt and there is some  
23 orange on his hat and the letter D, or what appears to be a  
24 letter D.

25 (Audio/Video played.)

1           2:57, those individuals exit together from the Opera  
2 House Casino. So notice 2:03 to 2:25 to 2:32, Job-Loc's way  
3 over here. So the car didn't go way over here.

4           2:32 is the phone call to Stephanie, Hey, are you  
5 ready yet? And then if you really wanted to do an analysis of  
6 the cell phones, you could actually go back and find out  
7 something that Monica Martinez is wrong about. It's in her  
8 statement, as well, I think, as on the stand. She says, I  
9 don't remember. I know I went to Stephanie's twice, but I  
10 can't remember the sequencing of events.

11           If you actually were to tape Mr. Mason's phone  
12 records, and then Monica has a single phone call at 1:32, you  
13 could see that before they actually go downtown, they drive  
14 over to Stephanie's apartment. And there's contact between  
15 Stephanie and Mason. And then they go driving downtown. But  
16 it doesn't matter, because you know that Job-Loc's at home at  
17 2:00.

18           So 2:32, you have the call to Stephanie, Hey, I'm not  
19 ready yet. So they go up to the Opera House. And then as  
20 they're leaving the Opera House, 2:57, which I'm going to  
21 suggest to you, because it was Mason's phone, was actually  
22 3:00 in the morning. But 2:57, 2:58 to Stephanie, 3:07 to  
23 Stephanie. And as they're driving south, 3:10, 3:11, 3:13.  
24 Not heading over here to pick up Job-Loc. And at 3:13, he's  
25 actually calling Job-Loc. Same as 2:57. And guess what?

1 Job-Loc's not answering the phone.

2 3:24, which I'm going to suggest to you is actually  
3 3:27, 3:24 he's all the way down here by Stephanie's. So 11  
4 minutes later, he's able to get basically from the Opera House  
5 down to Stephanie's apartment in a vehicle, which we know to  
6 be Monica's vehicle, because her cell phone records track down  
7 there, too.

8 And then there's these calls right here. His records  
9 show at 3:29, 3:29, and 3:30, between his phone and Monica's  
10 phone. Well, what do you know? They were separated two times  
11 during that evening. One time when Mr. Mason and Mr. Burns go  
12 inside the residence at Stephanie's residence, and one time  
13 when Mr. Mason and Mr. Burns go up to the failed robbery  
14 attempt because there was a gun.

15 They'll -- you'll -- you will see that at least at  
16 some point in time there was a reason for some of them to try  
17 and call each other back.

18 Then you just keep following these records. You'll  
19 see 2:58, 3:07, 3:24, 3:24, 3:24. Who's calling Stephanie's  
20 phone back and forth? Willie Mason. Then they get together  
21 and what happens?

22 3:37, which I'm going to suggest to you is 3:40 in  
23 the morning, Derecia Newman's being called. Hey, you got any  
24 stuff? Can we come up there and get some stuff?

25 And where are they? They're all the way down by

1 Stephanie's house.

2 Flip forward. This is why I'm going to tell you that  
3 it's three minutes off and go back to -- here's Mr. Mason's  
4 contacts, 3:29, 3:29, 3:30. Here's Ms. Martinez's contacts,  
5 3:22:24, 3:33:29, 3:33:59. Those numbers are slightly off,  
6 but the contact is there. And look where Monica Martinez's  
7 car is.

8 And then I'm going to suggest to you that her time is  
9 right at 4:40 -- at 3:45, as she's heading north on Nellis, to  
10 go to where? Derecia Newman's house. And then follow the  
11 phone records. These are Cousins' phones. And I'm going to  
12 suggest to you these are three minutes off.

13 Why do I say that these are three minutes off versus  
14 the time period of -- of maybe that they're three minutes  
15 early? Well, that would mean that this -- this crime happened  
16 way before or that T-Mobile was off by six minutes as opposed  
17 to three minutes. But more importantly, if you add three  
18 minutes to this phone call right here, approximately some time  
19 between two and a half and three minutes, you'd hit about  
20 exactly the same time as the 911 call. And if you actually  
21 were to use Monica's phone for the time, she gets the first  
22 phone call from Willie Mason as she's running out of the house  
23 saying, Hey, where are you? Where are you? And then Mr.  
24 Mayo's phone connects to 911.

25 But more importantly on her phone, Stephanie's phone,

1 what happens? 3:47, she has this weird kind of, I don't know,  
2 seven-star-one. It's not answered, but it hits the tower. It  
3 hits that tower that you would expect it to be hitting on the  
4 northwest part of town.

5 And then the weird one is 3:47:52, which I'm going to  
6 suggest to you is about 3:51 in the morning, what happens? It  
7 hits this tower. Why? She's calling Derecia. Why is she  
8 hitting this tower when she's up here and then down there?  
9 You only have to ask yourself, remember the guy from T-Mobile,  
10 the expert that talks about you don't always hit the closest  
11 tower if there's obstructions? Well, what do you know, she  
12 calls from right outside that door. She calls from right  
13 outside the door, Hey, I'm here. She has a blockage to that  
14 cell tower. She has a blockage to that cell tower. So what  
15 cell tower is she going to hit? That's why she hits that cell  
16 tower right before she goes through the front door.

17 Now what do you know from Mason's phone? Well, at  
18 3:51:09 he makes a phone call and he hits the tower to the --  
19 to the east of the crime scene to Monica -- to Stephanie  
20 Cousins' phone. All right. And then he makes another phone  
21 call to Stephanie Cousins' phone at 3:51:25 and it starts on  
22 that east tower, but somehow ends on that west tower.  
23 Suggestive of what? Sort of like what Monica said, I pulled  
24 out, I hung a left, I started driving towards the east, I then  
25 had to do a U-turn to get back to Christy Lane and to pick up

1 Stephanie.

2 There is no opportunity either for David Burns --

3 MR. ORAM: Judge, I object to that.

4 MR. DiGIACOMO: -- to not be in the car --

5 MR. ORAM: The Supreme Court has said that you cannot  
6 do what he has just done. In fact, that's why I didn't call  
7 it a circle of guilt.

8 Put it back up there, Mr. DiGiacomo, so the judge can  
9 see it.

10 He's called it a circle of guilt. The Supreme Court  
11 just reversed a case for saying "guilt" like that over the  
12 defendant. That's why I specifically called it circle of  
13 coincidences, because I didn't think I could do that. So I  
14 object to that and ask that it be removed.

15 MR. DiGIACOMO: That was in opening. The Court said  
16 it was argumentative and it shouldn't have been done. This is  
17 now closing. I certainly can say that he's guilty and this is  
18 a circle of guilt.

19 MR. ORAM: If I refrain --

20 THE COURT: I'm not familiar with the case you're  
21 talking about.

22 MR. ORAM: If I refrain from it based on that, I -- I  
23 am shocked that a prosecutor could do that.

24 THE COURT: I'm not -- I'm not familiar with it. I  
25 know Mel Harmon used -- that was Mel Harmon's --

1 MR. ORAM: That's right.

2 THE COURT: -- argument.

3 MR. DiGIACOMO: Classic Mel Harmon.

4 THE COURT: He was never reversed for it.

5 MR. DiGIACOMO: Yes. He was never reversed for it.

6 THE COURT: That I'm aware of.

7 MR. ORAM: No, he wasn't. But the Supreme Court  
8 overturned a case in the last -- in the last few months saying  
9 that the prosecutor --

10 THE COURT: I'm not familiar with the case.

11 MR. DiGIACOMO: And that was in opening.

12 THE COURT: In opening?

13 MR. DiGIACOMO: Not in closing. This is argument.

14 THE COURT: Okay.

15 MR. DiGIACOMO: That was opening.

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

17 MR. DiGIACOMO: Thank you. So what do you have left?  
18 Your science and your technology gives you one person with the  
19 opportunity to be the fourth person in the car. And that's  
20 him.

21 And like I said before, once you put David Burns in  
22 the car, once he's there, once he's there and Willie's there  
23 and Monica's driving them on a robbery, they're both guilty of  
24 murder. This guilt phase is over.

25 But this is about the truth. Don't we want to know



1 who executed Derecia Newman? Who's the person with that big  
2 gun in their pocket? Who is that person? Because that's what  
3 this whole trial's about, right?

4 Let's talk about Mr. Burns. What do we know? Well,  
5 Stephanie Cousins identifies him as a shooter. Whether or not  
6 that's real relevant or not, she's a codefendant, she didn't  
7 testify, much like Ulonda Cooper.

8 Okay. Well, maybe Derecia Newman. Maybe Derecia  
9 Newman at 10:45 in the morning on August 7th of 2010, when  
10 Cornelius Mayo is inside that room as she's just gone through  
11 an operation, her first of many operations, to try and save  
12 her life, some five hours or six hours after this crime  
13 occurs, as she's got the high levels of Versed, and Cornelius  
14 Mayo says she's sleeping, which seems to be very reasonable at  
15 10:45 in the morning after the operation that she had to  
16 receive, somehow he was able to convey with her -- to her  
17 every single fact that happened in this case that matches  
18 every single piece of physical evidence inside the crime  
19 scene. Is that a reasonable conclusion? Is that honestly a  
20 reasonable conclusion?

21 Or that the overalls here were somehow made up by an  
22 individual. Really? Because when they talk to her, they  
23 don't have the video. They have no idea what the video is  
24 going to say or who it's going to be. She hits on he's tall.  
25 She says 6'2". He's African-American. He's skinny. He's got

1 curly hair that goes about halfway down his ear, but he had a  
2 hat on. He's got a little bit of a -- of a shadow, dark  
3 shadow for a mustache that's on his lip. Every single fact  
4 she gives about the case, not just about the perpetrator, is  
5 corroborated by the evidence with the exception of some  
6 colors.

7 But who is the tall skinny guy wearing overalls?  
8 What else do we know? Mom was executed coming through the  
9 door. There's no if, ands, or buts about it. Stephanie  
10 Cousins is there trying to fake a dope transaction for \$20.  
11 The \$20 is still in Derecia Newman's hands, for God's sake.

12 She does run down the halls, because the shots follow  
13 her down the halls. She does go in the bathroom and there's a  
14 shot through the bathroom door. And then the door opens and  
15 ultimately she gets shot in the stomach. And her dad is in  
16 the shower. All of those facts are corroborated by every  
17 single piece of evidence in the case.

18 Whether or not she makes a photo identification or  
19 not, he's the only person in the car that matched that  
20 description. He's got to be the shooter. You can never get  
21 away from the overalls in this case. They can't get away from  
22 it. That's why they tried to suggest to you that Cornelius  
23 Mayo had to give her that information. That somehow Stephanie  
24 Cousins related to Cornelius Mayo, who's capable of relaying  
25 to Derecia -- or Devonia, the 12-year-old girl, who could

1 repeat that story. That's reasonable?

2 But you don't even need to know that. Look at Mr.  
3 Burns as he's got his hands in his pockets, the -- both hands  
4 in his pockets, actually, at the Binions. Well, there's a lot  
5 of video, though, in this night, and we haven't really talked  
6 about it.

7 Any time this guy is standing -- any time he is  
8 standing in any one of the videos, his left hand is in his  
9 pocket. And funny, really kind of weird about the whole  
10 situation, is this is the back, because there's a camera  
11 there, that's the front. His hand's barely in his pocket, but  
12 from looking at the front, when you watch that video -- and  
13 watch it live on the video -- there is something big and heavy  
14 in his front left pocket. And the only time he ever takes his  
15 hand out of his pocket is when he sits at that machine. Now  
16 his hand is out and that big, heavy, hog-heel of a revolver is  
17 sitting in that left pocket.

18 The video establishes it. Watch him as he walks out  
19 of that casino and he's got his left hand in his pocket.  
20 There's something in the left side of his pants as he's  
21 walking out like this. Just watch the video. He's the  
22 shooter.

23 And if that didn't convince you, how about what he  
24 tells you? What he says in his writings?

25 "What it zoom, my Loc. I got my paperwork. Goat

1 mouth is not the culprit. Willie Mason is not the guy who  
2 ratted me out. It's actually the black fuckin' ho or hope.  
3 We went to court today, the Loc brought all his paperwork.  
4 The fuckin' bay west put your name all through the shit. I  
5 seen it with my own eyes."

6 Go look at West's statement. Why is West put on the  
7 stand? So you could admit his statement and listen to his  
8 statement in consideration of what Mr. Burns is telling you.

9 "They added the battery with the deadly resulting in  
10 substantial bodily harm count, that's the eighth count. The  
11 stupid pinche hina [phonetic], somehow her daughter taking the  
12 stand along with that black piece of shit. Who's put in the  
13 bullshit. They have something, some T-Mobile shit and Metro  
14 PCS. I don't know all details, I'm just keeping you up to  
15 date."

16 Who's he updating? He's updating Job-Loc about the  
17 crime.

18 "Donovon Rowland is the bitch-ass nigger name he got  
19 in detail, which is all a lie, but bitch keep hisself out of a  
20 firearms charge so-called. The alpha bitch boys, Greyhound  
21 pictures of us really just don't mean shit, but our weekend  
22 was over in Vegas."

23 He's not saying to you he ain't here in Vegas, like  
24 he's telling the police, I don't ever remember going to Vegas.

25 "I got a new copy of charges." And then go look at

1 some of these other ones. "I should have got my transcripts  
2 before I got to accusing the Dogg. They spooked my young ass.  
3 I'm not going to lie."

4 "That only shows what I was wearing, though,  
5 basically, and that the three of us were together on the  
6 Strip."

7 "Smoker got gang a different stories." The Smoker  
8 being Stephanie Cousins. "Which all points to me as El  
9 Capitan," which I actually think may very well be a reference  
10 or -- let me rephrase -- the evidence suggests may actually be  
11 a reference to the Smoker calling him Job-Loc, "that had on  
12 blue overalls and curly hair. The Dogg says it's possible  
13 together to get her statement ruled out because she got five  
14 of them. Little Mama," the victim, "says I had on blue  
15 overalls, orange hat, white shirt under with curly hair. I  
16 would even feed" -- "feel a little more relaxed if you all  
17 wasn't in this shit with me. Not going to get in detail, but  
18 a nigga love the Locs and don't want to see you all sink in my  
19 boat."

20 He's not accusing Job-Loc of putting him in this  
21 situation. He's apologizing to Job-Loc.

22 But probably most spectacularly, who's he -- who's he  
23 apologizing to? He's apologizing to Monica Monroe, the woman  
24 who allegedly manufactured the story to put him in that seat  
25 as the shooter in this case. He's apologizing to her. And

1 there's a suggestion to you that he's not the guy.

2 But maybe what was subtle and was lost on everybody  
3 was how particularly disgusting and despicable the crime  
4 itself was. That it was -- got to be something horrific for  
5 most human beings on Earth. And when you're in an interview  
6 room with detectives and you get told about it, your behavior  
7 of humming and singing and whistling is really kind of  
8 offensive, to be honest with you. And you can't really blame  
9 the cops for using the kind of terms that they used with him.

10 But it's also relevant for something else. Because  
11 Cornelius Mayo's inside that shower when the shots ring out.  
12 And he calls 911. And if that matches the clock at T-Mobile,  
13 that means it's while the shooter's still in that house. And  
14 he's not obviously the person whistling on that 911. So  
15 whoever shot Derecia Newman and then put a bullet in Devonia  
16 Newman --

17 (Audio/Video played.)

18 -- whoever that shooter is, he's whistling as he's  
19 going through the crack cocaine and the drugs inside that  
20 residence as Cornelius Mayo, in that very small bathroom in  
21 that shower, is calling 911. Listen to that 911 over and over  
22 and over again. Cornelius Mayo doesn't see Devonia until  
23 after the whistling ends.

24 And when you get to walking to a -- someone's  
25 apartment here, whether they're a drug dealer or they're not a

1 drug dealer, when you walk in and you place a .44-caliber  
2 revolver against their head and blow half their face off,  
3 chase down their 12-year-old daughter, shoot her in the  
4 stomach, rifle through her pockets, and then get up and  
5 whistle, that is a cold, calculated murder. That is first  
6 degree murder.

7 Because this case is about the truth and the truth is  
8 undeniable. It is undeniable that David Burns is the shooter.  
9 And I'd ask you to hold him accountable.

10 Thank you.

11 THE COURT: All right. Ladies and gentlemen, this  
12 matter is now submitted to you for your determination. You're  
13 going to have with you in the jury room the exhibits that were  
14 marked and admitted during the trial. You'll have all the  
15 exhibits. You're going to have a computer so that if you wish  
16 to play any of the discs that are in evidence, you can do so,  
17 and, I think, speakers to go with the computer. And -- and I  
18 checked the computer myself and it's -- it's -- it's going to  
19 work, I'm pretty sure. So somebody among you I'm sure knows  
20 how to work a computer.

21 And you'll have the instructions that I read to you  
22 and you'll have forms of verdict, which we have prepared for  
23 your convenience. Now, I'm aware sometimes jurors start  
24 marking on the instruction -- on the forms of verdict. If you  
25 mess them up and you need more forms, we've got lots of

1 copies. So just ask the marshal for another copy. You can  
2 have as many copies of the forms of verdict as you want.

3 All right. The clerk will swear in the officers.

4 (Officers sworn.)

5 THE COURT: All right. The 12 regular members of the  
6 jury will follow the officers out here. Ms. Petty, you have  
7 to stay where you are for a minute.

8 (Jury recessed to deliberate at 12:49 p.m.)

9 THE COURT: All right. The record reflect that the  
10 jury and the alternate have left the courtroom. We'll be in  
11 recess until subject to the call of the marshals.

12 (Court recessed at 12:49 p.m.)

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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.

**KARR REPORTING, INC.  
Aurora, Colorado**

  
KIMBERLY LAWSON

1 INST

2 ORIGINAL

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT  
FEB 17 2015

3 BY Linda Skinner  
4 LINDA SKINNER, DEPUTY 4:33pm

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 THE STATE OF NEVADA, )

9 Plaintiff, )

10 -vs- )

11 WILLIE DARNELL MASON and )  
12 DAVID JAMES BURNS, )

13 Defendants. )  
14

CASE NO: C267882-1, 2

DEPT NO: XX

15 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

16 MEMBERS OF THE JURY:

17 It is now my duty as judge to instruct you in the law that applies to this case. It is  
18 your duty as jurors to follow these instructions and to apply the rules of law to the facts as  
19 you find them from the evidence.

20 You must not be concerned with the wisdom of any rule of law stated in these  
21 instructions. Regardless of any opinion you may have as to what the law ought to be, it  
22 would be a violation of your oath to base a verdict upon any other view of the law than that  
23 given in the instructions of the Court.  
24  
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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.

A Superseding Indictment 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 a Superseding Indictment that on or about the 7th day of August, 2010, the Defendants committed the offenses of CONSPIRACY TO COMMIT ROBBERY (Felony - NRS 199.480; 200.380); BURGLARY WHILE IN POSSESSION OF A FIREARM (Felony - NRS 205.060); ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380, 193.165); MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165), ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Felony - 200.010, 200.030, 193.330, 193.165), and BATTERY WITH A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Felony - 200.481) at and within the County of Clark, State of Nevada, as follows:

COUNT 1 – CONSPIRACY TO COMMIT ROBBERY

did then and there meet with each other and/or STEPHANIE JEAN COUSINS and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS aka JOB-LOC and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: robbery, and in furtherance of said conspiracy, Defendants and/or their co-conspirators committed the acts as set forth in Counts 3 thru 8, those acts incorporated by reference as if fully set forth herein.

COUNT 2 – CONSPIRACY TO COMMIT MURDER

did then and there meet with each other and/or STEPHANIE JEAN COUSINS and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS aka JOB-LOC and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: murder, and in furtherance of said conspiracy, Defendants and/or their co-conspirators committed the acts as set forth in Counts 3 thru 8, those acts incorporated by reference as if fully set forth herein.

COUNT 3 - BURGLARY WHILE IN POSSESSION OF A FIREARM

did then and there wilfully, unlawfully, and feloniously enter, while in possession of a

1 firearm, with intent to commit larceny and/or assault and battery and/or a felony, to-wit:  
2 robbery and/or murder, that certain building occupied by DEREZIA NEWMAN and/or  
3 CORNELIUS MAYO and/or DEVONIA NEWMAN, located at 5662 Meikle Lane,  
4 Apartment A, Las Vegas, Clark County, Nevada, the defendants being responsible under the  
5 following principles of criminal liability, to-wit: 1) by directly or indirectly committing the  
6 acts constituting the offense; and/or 2) by engaging in a conspiracy to commit larceny and/or  
7 assault and/or battery and/or robbery and/or murder and/or burglary whereby Defendants had  
8 the specific intent to commit burglary; and/or 3) by aiding or abetting each other in the  
9 commission of the crime by Defendant WILLIE DARNELL MASON aka G-DOGG  
10 accompanying Defendant STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES  
11 BURNS aka D-SHOT to the residence while MONICA LOUISE MARTINEZ drove the  
12 getaway vehicle and/or acted as a lookout, Defendant STEPHANIE JEAN COUSINS  
13 creating a ruse for DEREZIA NEWMAN to open the door, Defendant WILLIE DARNELL  
14 MASON aka G-DOGG and/or Defendant STEPHANIE JEAN COUSINS and/or Defendant  
15 DAVID JAMES BURNS aka D-SHOT entering the residence with the intent to commit  
16 larceny and/or assault and/or battery and/or robbery and/or murder, Defendant WILLIE  
17 DARNELL MASON aka G-DOGG and/or Defendant DAVID JAMES BURNS aka D-  
18 SHOT possessing the firearm, the Defendants and/or MONICA LOUISE MARTINEZ  
19 and/or JEROME THOMAS aka JOB-LOC offering counsel and encouragement to each  
20 other throughout.

21 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

22 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:  
23 cocaine and/or lawful money of the United States, from the person of DEREZIA  
24 NEWMAN, or in her presence, by means of force or violence or fear of injury to, and  
25 without the consent and against the will of the said DEREZIA NEWMAN, said defendant  
26 using a deadly weapon, to-wit: a firearm, during the commission of said crime, the  
27 defendants being responsible under the following principles of criminal liability, to-wit: 1)  
28 by directly or indirectly committing the acts constituting the offense; and/or 2) by engaging

1 in a conspiracy to commit larceny and/or assault and/or battery and/or robbery and/or murder  
2 and/or burglary; and/or 3) by aiding or abetting each other in the commission of the crime by  
3 Defendant WILLIE DARNELL MASON aka G-DOGG accompanying Defendant  
4 STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES BURNS aka D-SHOT to  
5 the residence while MONICA LOUISE MARTINEZ drove the getaway vehicle and/or acted  
6 as a lookout, Defendant STEPHANIE JEAN COUSINS creating a ruse for DEREZIA  
7 NEWMAN to open the door, Defendant WILLIE DARNELL MASON aka G-DOGG and/or  
8 Defendant DAVID JAMES BURNS aka D-SHOT possessing the firearm, Defendant  
9 WILLIE DARNELL MASON aka G-DOGG and/or Defendant DAVID JAMES BURNS  
10 aka D-SHOT shooting DEREZIA NEWMAN in the head, Defendant WILLIE DARNELL  
11 MASON aka G-DOGG and/or Defendant STEPHANIE JEAN COUSINS and/or Defendant  
12 DAVID JAMES BURNS aka D-SHOT taking money or cocaine, the Defendants and/or  
13 MONICA LOUISE MARTINEZ and/or JEROME THOMAS aka JOB-LOC offering  
14 counsel and encouragement to each other throughout.

15 COUNT 5 - MURDER WITH USE OF A DEADLY WEAPON

16 did then and there wilfully, feloniously, without authority of law, and with malice  
17 aforethought, kill DEREZIA NEWMAN, a human being, by shooting at and into the head  
18 and/or body of said DEREZIA NEWMAN, with a firearm, the actions of defendants and/or  
19 MONICA LOUISE MARTINEZ resulting in the death of the said DEREZIA NEWMAN,  
20 the killing having been (1) done with premeditation and deliberation, and/or (2) committed  
21 during the perpetration or attempted perpetration of robbery and/or burglary; the defendants  
22 being responsible under one or more of the following principles of criminal liability, to-wit:  
23 1) by directly or indirectly committing the acts constituting the offense; and/or 2) by  
24 engaging in a conspiracy to commit robbery and/or murder and/or burglary; and/or 3) by  
25 aiding or abetting each other in the commission of the crime with the intent a killing occur  
26 by Defendant WILLIE DARNELL MASON aka G-DOGG accompanying Defendant  
27 STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES BURNS aka D-SHOT to  
28 the residence while MONICA LOUISE MARTINEZ drove the getaway vehicle and/or acted

1 as a lookout, Defendant STEPHANIE JEAN COUSINS creating a ruse for DEREZIA  
2 NEWMAN to open the door, Defendant WILLIE DARNELL MASON aka G-DOGG and/or  
3 Defendant STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES BURNS aka  
4 D-SHOT entering the residence with the intent to commit larceny and/or assault and/or  
5 battery and/or robbery and/or murder, Defendant WILLIE DARNELL MASON aka G-  
6 DOGG and/or Defendant DAVID JAMES BURNS aka D-SHOT possessing the firearm,  
7 Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant DAVID JAMES  
8 BURNS aka D-SHOT shooting DEREZIA NEWMAN in the head resulting in her death,  
9 Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant STEPHANIE  
10 JEAN COUSINS and/or Defendant DAVID JAMES BURNS aka D-SHOT taking money or  
11 cocaine, the Defendants and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS  
12 aka JOB-LOC offering counsel and encouragement to each other throughout.

13 COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON

14 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:  
15 cocaine and/or lawful money of the United States, from the person of DEVONIA  
16 NEWMAN, a twelve (12) year old child, or in her presence, by means of force or violence or  
17 fear of injury to, and without the consent and against the will of the said DEVONIA  
18 NEWMAN, said defendant using a deadly weapon, to-wit: a firearm, during the commission  
19 of said crime, the defendants being responsible under the following principles of criminal  
20 liability, to-wit: 1) by directly or indirectly committing the acts constituting the offense;  
21 and/or 2) by engaging in a conspiracy to commit larceny and/or assault and/or battery and/or  
22 robbery and/or murder and/or burglary; and/or 3) by aiding or abetting each other in the  
23 commission of the crime by Defendant WILLIE DARNELL MASON aka G-DOGG  
24 accompanying Defendant STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES  
25 BURNS aka D-SHOT to the residence while MONICA LOUISE MARTINEZ drove the  
26 getaway vehicle and/or acted as a lookout, Defendant STEPHANIE JEAN COUSINS  
27 creating a ruse for DEREZIA NEWMAN to open the door, Defendant WILLIE DARNELL  
28 MASON aka G-DOGG and/or Defendant DAVID JAMES BURNS aka D-SHOT possessing

1 the firearm, Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant  
2 DAVID JAMES BURNS aka D-SHOT shooting DEVONIA NEWMAN in the stomach,  
3 Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant STEPHANIE  
4 JEAN COUSINS and/or Defendant DAVID JAMES BURNS aka D-SHOT taking money or  
5 cocaine, the Defendants and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS  
6 aka JOB-LOC offering counsel and encouragement to each other throughout.

7 COUNT 7 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

8 did then and there, without authority of law, and with malice aforethought, willfully  
9 and feloniously attempt to kill DEVONIA NEWAN, a twelve (12) year old child, by  
10 shooting at or into the body of the said DEVONIA NEWMAN, with a deadly weapon, to-  
11 wit: a firearm, during the commission of said crime, the defendants being responsible under  
12 the following principles of criminal liability, to-wit: 1) by directly or indirectly committing  
13 the acts constituting the offense; and/or 2) by engaging in a conspiracy to commit assault  
14 and/or battery and/or robbery and/or murder and/or burglary with the specific intent to kill;  
15 and/or 3) by aiding or abetting each other in the commission of the crime with the intent a  
16 killing would occur by Defendant WILLIE DARNELL MASON aka G-DOGG  
17 accompanying Defendant STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES  
18 BURNS aka D-SHOT to the residence while MONICA LOUISE MARTINEZ drove the  
19 getaway vehicle and/or acted as a lookout, Defendant STEPHANIE JEAN COUSINS  
20 creating a ruse for DERECA NEWMAN to open the door, Defendant WILLIE DARNELL  
21 MASON aka G-DOGG and/or Defendant DAVID JAMES BURNS aka D-SHOT possessing  
22 the firearm, Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant  
23 DAVID JAMES BURNS aka D-SHOT shooting DEVONIA NEWMAN in the stomach, the  
24 Defendants and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS aka JOB-  
25 LOC offering counsel and encouragement to each other throughout.

26 COUNT 8 - BATTERY WITH A DEADLY WEAPON RESULTING IN SUBSTANTIAL  
27 BODILY HARM

28 did then and there wilfully, unlawfully, and feloniously use unlawful force or violence



1 upon the person of DEVONIA NEWMAN, a twelve (12) year old child, with use of a deadly  
2 weapon, to wit: by shooting into the body of DEVONIA NEWMAN with a firearm, causing  
3 substantial bodily harm to the said DEVONIA NEWMAN; the defendants being responsible  
4 under the following principles of criminal liability, to-wit: 1) by directly or indirectly  
5 committing the acts constituting the offense; and/or 2) by engaging in a conspiracy to  
6 commit assault and/or battery and/or robbery and/or murder and/or burglary; and/or 3) by  
7 aiding or abetting each other in the commission of the crime by Defendant WILLIE  
8 DARNELL MASON aka G-DOGG accompanying Defendant STEPHANIE JEAN  
9 COUSINS and/or Defendant DAVID JAMES BURNS aka D-SHOT to the residence while  
10 MONICA LOUISE MARTINEZ drove the getaway vehicle and/or acted as a lookout,  
11 Defendant STEPHANIE JEAN COUSINS creating a ruse for DEREZIA NEWMAN to open  
12 the door, Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant DAVID  
13 JAMES BURNS aka D-SHOT possessing the firearm, Defendant WILLIE DARNELL  
14 MASON aka G-DOGG and/or Defendant DAVID JAMES BURNS aka D-SHOT shooting  
15 DEVONIA NEWMAN in the stomach resulting in substantial bodily harm, the Defendants  
16 and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS aka JOB-LOC offering  
17 counsel and encouragement to each other throughout.

18       It is the duty of the jury to apply the rules of law contained in these instructions to the  
19 facts of the case and determine whether or not either or both of the Defendants are guilty of  
20 one or more of the offenses charged.  
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To constitute a 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 a Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

The Defendants are presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of each crime charged and that the Defendants are the persons who committed those offenses.

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 a Defendant, he is entitled to a verdict of not guilty.

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

The statements, arguments and opinions of the attorneys are not evidence in the case. The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by the attorneys.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether a Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

A conviction shall not be had on the testimony of an accomplice unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.

An accomplice is defined as one who is liable for prosecution, for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

To be an accomplice, the person must have aided, promoted, encouraged, or instigated by act or advice the commission of such offense with knowledge of the unlawful purpose of the person who committed the offense.

To corroborate the testimony of an accomplice there must be evidence of some act or fact related to the offense which, if believed, by itself and without any aid, interpretation or direction from the testimony of the accomplice, tends to connect the defendant with the commission of the offense charged.

However, it is not necessary that the evidence of the corroboration be sufficient in itself to establish every element of the offense charged, or that it corroborate every fact to which the accomplice testifies.

In determining whether an accomplice has been corroborated, you must first assume the testimony of the accomplice has been removed from the case. You must then determine whether there is any remaining evidence which tends to connect the defendant with the commission of the offense.

If there is not such independent evidence which tends to connect the defendant with the commission of the offense, the testimony of the accomplice is not corroborated.

The fact that a witness was given an inducement in exchange for his cooperation may be considered by you only for the purpose of determining the credibility of that witness. The existence of such an inducement does not necessarily destroy or impair the credibility of the witness. It is one of the circumstances that you may take into consideration in weighing the testimony of such a witness.



In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it. If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of their testimony which is not proved by other evidence.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any other evidence that you believe.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. The testimony of one witness worth of belief is sufficient for the proof of any fact and would justify a verdict in accordance with such testimony, even if a number of witnesses have testified to the contrary. If, from the whole case, considering the credibility of witnesses, and after weighing the various factors of evidence, you believe that there is a balance of probability pointing to the accuracy and honesty of one witness, you should accept his testimony.

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.

INSTRUCTION NO. 13

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

The flight of a person immediately after the commission of a crime, or after he is accused of a crime, is not sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in light of all other proved facts in deciding the question of his guilt or innocence. Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to such a circumstance are matters for your deliberation

A conspiracy is an agreement between two or more persons for an unlawful purpose. To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission of, the specific crime agreed to. The crime is the agreement to do something unlawful; it does not matter whether it was successful or not.

A person who knowingly does any act to further the object of a conspiracy, or otherwise participates therein, is criminally liable as a conspirator. However, mere knowledge or approval of, or acquiescence in, the object and purpose of a conspiracy without an agreement to cooperate in achieving such object or purpose does not make one a party to conspiracy. Conspiracy is seldom susceptible of direct proof and is usually established by inference from the conduct of the parties. In particular, a conspiracy may be supported by a coordinated series of acts, in furtherance of the underlying offense, sufficient to infer the existence of an agreement.

A conspiracy to commit a crime does not end upon the completion of the crime. The conspiracy continues until the co-conspirators have successfully gotten away and concealed the crime.

1  
2 It is not necessary in proving a conspiracy to show a meeting of the alleged  
3 conspirators or the making of an express or formal agreement. The formation and existence  
4 of a conspiracy may be inferred from all circumstances tending to show the common intent  
5 and may be proved in the same way as any other fact may be proved, either by direct  
6 testimony of the fact or by circumstantial evidence, or by both direct and circumstantial  
7 evidence.  
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Whenever there is slight evidence that a conspiracy existed, and that the defendant was one of the members of the conspiracy, then the statements and the acts by any person likewise a member may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuance of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy.

The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators. Every conspirator is legally responsible for a specific intent crime of a co-conspirator so long as the specific intent crime was intended by the Defendant. A conspirator is also legally responsible for a general intent crime that follows as one of the reasonably foreseeable consequence of the object of the conspiracy even if it was not intended as part of the original plan and even if he was not present at the time of the commission of such act.



Evidence that a person was in the company or associated with one or more other persons alleged or proven to have been members of a conspiracy is not, in itself, sufficient to prove that such person was a member of the alleged conspiracy. However, you are instructed that presence, companionship, and conduct before, during and after the offense are circumstances from which one's participation in the criminal intent may be inferred.

INSTRUCTION NO. 20

Where two or more persons are accused of committing a crime together, their guilt may be established without proof that each personally did every act constituting the offense charged.

All persons concerned in the commission of a crime who either directly and actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission or, whether present or not, who advise and encourage its commission, with the intent that the crime be committed, are regarded by the law as principals in the crime thus committed and are equally guilty thereof.

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the commission of such crime with the intention that the crime be committed.

The State is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

INSTRUCTION NO. 21

Mere presence at the scene of a crime or knowledge that a crime is being committed is not sufficient to establish that a defendant is guilty of an offense, unless you find beyond a reasonable doubt that the defendant was a participant and not a merely a knowing spectator.

However, the presence of a person at the scene of a crime and companionship with another person engaged in the commission of the crime and a course of conduct before and after the offense, are circumstances which may be considered in determining whether such person aided and abetted the commission of that crime.

INSTRUCTION NO. 22

Any person, who by day or night, enters any house, room, apartment, tenement, shop, warehouse, store, other building, automobile or other vehicle with the intent to commit larceny, robbery and/or murder is guilty of burglary.

When two or more persons participate in the commission of a burglary, and one or more of them enters the structure, it is not necessary to prove the other individual actually entered because one who aids and abets another in the commission of a burglary is equally guilty as a principal.

INSTRUCTION NO. 24

The intention with which an 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.

It is not necessary that the State prove the defendant actually committed a larceny, robbery, or murder inside the house after he entered in order for you to find him guilty of burglary. The gist of the crime of burglary is the unlawful entry with criminal intent. Therefore, a burglary was committed if the defendant entered the house with the intent to commit a larceny, robbery or murder regardless of whether or not that crime occurred.

Consent to enter is not a defense to the crime of burglary so long as it is shown that entry was made with the specific intent to commit a larceny, robbery, or murder therein. Moreover, force or a "breaking" as such is not a necessary element of the crime.



INSTRUCTION NO. 27

Larceny is the stealing, taking and carrying away of the personal goods or property of another, with the specific intent to permanently deprive the owner thereof.

Every person who, in the commission of a burglary, commits any other crime may be prosecuted for each crime separately.

INSTRUCTION NO. 29

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 weapon.

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. Such force or fear must be used to:

1. Obtain or retain possession of the property,
2. To prevent or overcome resistance to the taking of the property, or
3. To facilitate escape with the property.

In any case the degree of force is immaterial if used to compel acquiescence to the taking of or escaping with the property. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

The value of property or money taken is not an element of the crime of Robbery, and it is only necessary that the State prove the taking of some property or money.

Robbery may spread over considerable and varying periods of time. All matters immediately prior to and having direct causal connection with the robbery are deemed so closely connected with it as to be a part of the occurrence. Thus, although acts of violence and intimidation preceded the actual taking of the property and may have been primarily intended for another purpose, it is enough to support the charge of robbery when a person takes the property by taking advantage of the terrifying situation he created.

Murder in the First Degree is a specific offense crime. A defendant cannot be liable under a conspiracy and/or an aiding and abetting theory for First Degree Murder for acts committed by a co-conspirator unless Defendant also had a premeditated and deliberate specific intent to kill and/or the intent to commit a robbery and/or the intent to commit burglary.

Murder in the Second Degree and Robbery are general intent crimes. As such, a defendant may be may liable under a conspiracy theory and/or aiding and abetting for Murder of the Second Degree and Robbery for acts committed by a co-conspirator if the killing or taking of property by force is a one of the reasonably foreseeable consequences of the object of the conspiracy.

Where several parties join together in a common design to commit any unlawful act, each is criminally responsible for the reasonably foreseeable general intent crimes committed furtherance of the common design. In contemplation of law, as it relates to general intent crimes, the act of one is the act of all. Robbery and battery are general intent crimes. Second Degree Murder is a general intent crime.

Additionally, a co-conspirator is guilty of the specific intent offenses which he specifically intended to be committed. Burglary and Attempt Murder are specific intent crimes. First Degree Murder is a specific intent crime unless the Felony-Murder Rule applies.

In this case the defendants are accused in a Superseding Indictment alleging an open charge of murder. This charge may include murder of the first degree or murder of the second degree.

The jury must decide if the defendant is guilty of any offense and, if so, of which offense.



Murder is the unlawful killing of a human being with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

Express malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

Murder of the first degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements -- willfulness, deliberation, and premeditation -- must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the actions.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

There are certain kinds of Murder in the First Degree which carry with them conclusive evidence of malice aforethought. One of these classes of First Degree Murder is a killing committed in the perpetration or attempted perpetration of a Burglary and/or Robbery. Therefore, a killing which is committed in the perpetration of a Burglary and/or Robbery is deemed to be Murder in the First Degree, whether the killing was intentional, unintentional, or accidental. This is called the Felony-Murder Rule.

The intent to perpetrate or attempt to perpetrate a Burglary and/or Robbery must be proven beyond a reasonable doubt. In order for the Felony-Murder Rule to apply under a robbery theory, the intent to take the property must be formed prior to the act constituting the killing.

Although your verdict must be unanimous as to the charge, you do not have to agree on the theory of guilt or liability. Therefore, even if you cannot agree on whether the facts establish the defendant is guilty of Premeditated and Deliberate Murder or Felony Murder or is liable as a principle, aider and abettor, or co-conspirator, so long as all of you agree that the evidence establishes the defendant's guilt of murder in the first degree, your verdict shall be Murder of the First Degree.

You are instructed that if you find that the State has established that the defendant has committed First Degree Murder you shall select First Degree Murder as your verdict. The crime of First Degree Murder includes the crime of Second Degree Murder.

The distinguishing feature between first and second degree murder is the presence or absence of premeditation and deliberation. If the unlawful killing is done with malice, but without deliberation and premeditation, that is, without the willful, deliberate and premeditated intent to take life which is an essential element of First Degree Murder, then the offense is Murder of the Second Degree.

In practical application this means that the unlawful killing of a human being with malice aforethought, but without a deliberately formed and premeditated intent to kill, is Murder of the Second Degree.

If you believe from the evidence beyond a reasonable doubt that a defendant is guilty of Murder, and there is in your minds a reasonable doubt as to which of the two degrees he is guilty, he must be convicted of the lesser offense which is Murder of the Second Degree.



Attempted murder is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate intention unlawfully to kill.

It is not necessary to prove the elements of premeditation and deliberation in order to prove attempted murder.

Battery with a Deadly Weapon means any willful and unlawful use of force or violence upon the person of another with the use of a deadly weapon. Any harmful or offensive unconsented touching with the deadly weapon, however slight, constitutes sufficient force or violence upon the person of another. If substantial bodily harm results to the victim of a battery, the crime committed is Battery with a Deadly Weapon Resulting in Substantial Bodily Harm.

"Substantial bodily harm" means 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 body member or organ, or prolonged physical pain.

You are instructed that if you find a defendant guilty of Robbery, 1<sup>st</sup> or 2<sup>nd</sup> Degree Murder, and/or Attempt Murder you must also determine whether or not a deadly weapon was used in the commission of this crime.

If you find beyond a reasonable doubt that a deadly weapon was used in the commission of such an offense, then you shall return the appropriate guilty verdict reflecting "With Use of a Deadly Weapon".

If, however, you find that a deadly weapon was not used in the commission of such an offense, but you find that it was committed, then you shall return the appropriate guilty verdict reflecting that a deadly weapon was not used.

"Deadly weapon" means 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, 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.

A firearm is a deadly weapon.

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.

If more than one person commits a crime, and one of them uses a deadly weapon in the commission of that crime, each may be convicted of using the deadly weapon even though he did not personally himself/herself use the weapon.

An unarmed offender "uses" a deadly weapon when the unarmed offender is liable for the offense, another person liable to the offense is armed with and uses a deadly weapon in the commission of the offense, and the unarmed offender had knowledge of the use of the deadly weapon.

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

At this point in the proceedings you may not discuss or consider the subject of punishment. Your duty now is confined to a determination of the guilt or innocence of one or more of the defendants. If, and only if, you return a verdict of Murder in the First Degree, you will, at a later hearing, consider the subject of penalty or punishment.



When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

If, during your deliberations, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of the defendants and their attorneys.

The testimony in this trial was recorded. A playback of portions of the testimony is possible. However, playing back the testimony is time consuming and is not encouraged unless you deem it a necessity. Should you require a playback, you must carefully describe the testimony you want to hear so that the recorder can locate your request. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 53

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 Defendants and the State of Nevada.

GIVEN:

*J. Charles Thompson*  
SENIOR DISTRICT JUDGE

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

DAVID BURNS,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No. 77424

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**APPELLANT'S APPENDIX**

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**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 28th day of February, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven Wolfson, Clark County District Attorney's Office

Aaron Ford, Nevada Attorney General

Jamie J. Resch, Resch Law, PLLC d/b/a Conviction Solutions

By: 

Employee, Resch Law, PLLC d/b/a Conviction Solutions