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Respondent.

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Clerk of Supreme Court

APPELLANT'S APPENDIX VOLUME V PAGES 926-1067

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Case No. 77425

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7)
8 STATE OF NEVADA,)

9 Plaintiff,)

10 vs.)

11 SHAWN GLOVER, aka SHAWN LYNN)
12 GLOVER, JR.,)

13 Defendant.)
14)

CASE NO. C-16-312448-1

DEPT. IX

15 BEFORE THE HONORABLE JENNIFER P. TOGLIATTI, DISTRICT COURT JUDGE
16 THURSDAY, AUGUST 2, 2018

17 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 4**
18

19 **APPEARANCES:**

20 For Plaintiff:

DAVID STANTON, ESQ.
WILLIAM FLINN, ESQ.

21
22 For Defendant:

ROBERT E. O'BRIEN, ESQ.
RYAN J. BASHOR, ESQ.

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25 RECORDED BY YVETTE G. SISON, COURT RECORDER

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FOR THE PLAINTIFF:

MARKED

RECEIVED

None

FOR THE DEFENDANT:

MARKED

RECEIVED

None

1 Las Vegas, Nevada, Tuesday, August 14, 2018

2
3 [Case called at 2:38 p.m.]

4 THE COURT: Okay. We're back on the record in State of Nevada v.
5 Glover. The record shall reflect the Defendant is present and dressed for trial
6 with all attorneys present. State, you were saying that at the Court's request
7 you submitted to the Court Clerk a copy of your opening PowerPoint.

8 MR. STANTON: Yes, Your Honor.

9 THE COURT: That will be marked Court's exhibit next in order
10 number

11 THE CLERK: 2.

12 THE COURT: And, obviously, does not go back with the ladies and
13 gentlemen of the jury. I believe we're waiting on one juror. So, it was -- I will
14 say this, and you may or may not know this, but it was pelting rain as I am
15 sprinting back from the Commission meeting, so maybe that held the person
16 up. I mean like big, fat not fast enough windshield wiper type rain. So,
17 hopefully, that's all it is and nothing serious. Are we calling -- we're calling
18 your person, right?

19 MR. O'BRIEN: Yes, Your Honor.

20 THE COURT: And remind me your witness' name, I'm sorry?

21 MR. O'BRIEN: Michael Reyes.

22 THE MARSHAL: All rise. The jury is entering. The jurors are all
23 present, ma'am.

24 THE COURT: Thank you. Counsel, will you stipulate to the
25 presence of the jury?

1 MR. STANTON: Yes, Your Honor.

2 MR. O'BRIEN: Yes, Your Honor.

3 [In the presence of the jury.]

4 THE COURT: Okay. Please be seated. At this time, ladies and
5 gentlemen, due to witness availability issues, the State has agreed, and the
6 Defense have agreed, that the State take a break from its case in chief to allow
7 the Defense to call a witness out of order that's here from out of State. So, at
8 this time, we're going to take a break from the State's case and we're going to
9 hear from a Defense witness.

10 MR. O'BRIEN: Your Honor, the Defense will call Michael Reyes to
11 the stand.

12 THE MARSHAL: Follow me, sir.

13 THE COURT: Sir, if you could while you're still standing, face my
14 Clerk, raise your right hand and be sworn.

15 MICHAEL REYES, DEFENDANT'S WITNESS, SWORN

16 THE CLERK: Thank you. Please be seated and state and spell your
17 first and last name for the record.

18 THE WITNESS: Michael Angelo Padua Reyes.

19 THE COURT: Definitely spell that.

20 THE WITNESS: M-I-C-H-A-E-L, Angelo, A-N-G-E-L-O, middle name
21 P-A-D-U-A, last name R-E-Y-E-S.

22 THE COURT: Thank you.

23 DIRECT EXAMINATION

24 BY MR. O'BRIEN:

25 Q Good afternoon, Mr. Reyes. Thank you for being here.

1 A Good afternoon.

2 Q Mr. Reyes, where do you live?

3 A I live in Los Angeles, California.

4 Q Okay. And I'll ask you a couple of questions about an event a couple
5 years ago; is that okay?

6 A Yes.

7 Q Where -- do you recall where you were January 1st -- we'll start with
8 December 31st, 2015?

9 A December 31st, 2015, my family, together with my brother's and sister's
10 family, we were here for New Year. We stayed at my sister's house --
11 townhouse and, you know, to celebrate New Year.

12 Q Okay. So, the family got together for New Year's?

13 A Correct.

14 Q All right. And you said your sister's townhouse, is that in North Las
15 Vegas?

16 A That's in North Las Vegas.

17 Q At specifically 4032 Smokey Fog?

18 A That is correct.

19 Q Okay. And so, you're here to celebrate New Year's Eve. What did you
20 do for New Year's Eve, what did you and the family do?

21 A Well, we waited until 12:00. We watched firework out at the back, and
22 then we ate, we drank a little bit, and, you know, have a family gathering and
23 went to sleep.

24 Q Do you recall what time you went to bed?

25 A Around 2 or 3:00 in the morning.

1 Q Okay. Big celebration?

2 A Big celebration.

3 Q Okay. And so, the next day is New Year's Day?

4 A Yes.

5 Q January 1st, 2016?

6 A Yes.

7 Q And what are your plans for that day?

8 A That day, we were just going to go around. Before -- usually, when we

9 go to Las Vegas, we stop by at their outlet store and shop, and then go back to

10 California.

11 Q Okay. So, you went to bed around 2 to 3 in the morning --

12 A Correct.

13 Q -- the night before. Around what time did you get up?

14 A Between 10:30 -- before 11 a.m.

15 Q Okay. And how do you recall what time you woke up?

16 A Well, they were, my wife and my sister were preparing brunch

17 downstairs, so we were getting ready for breakfast and lunch.

18 Q Okay. While you were getting ready for brunch, did anything happen?

19 A Yes. We heard somebody is arguing from the other side of the place

20 where we're living in.

21 Q Okay. Let me slow you down just a little bit.

22 A Sure.

23 Q You said you were at 4032 Smokey Fog, it's a townhome; is that correct?

24 A It's a townhome.

25 Q And are there other townhomes in the same building?

1 A Correct.

2 Q Okay. And is your townhome -- you sister's townhome, one floor or two
3 floors?

4 A Two floors.

5 Q Okay. What's on the ground floor?

6 A The ground floor is the living room, kitchen, and garage, and a bathroom
7 there.

8 Q Okay. And then what's on the second floor?

9 A All the bedrooms.

10 Q All right. And you were saying you were preparing brunch.

11 A Well, my sister and -- the girls were preparing brunch downstairs.

12 Q Okay. And so, you said you heard something from the other side?

13 A Correct.

14 Q What do you mean by the other side?

15 A The neighbor.

16 Q So, through the wall?

17 A Through the wall, correct.

18 Q Okay. What do you -- what did you hear?

19 A Just an argument. You know, there was an argument, and somebody
20 said I don't give a -- F word, you know, and there's some other arguments that
21 we really couldn't understand.

22 Q Okay. And then what happened after that?

23 A And then we heard two loud noises. You know, we didn't know what it
24 was. You know, just two loud noises and then that was about it.

25 Q Okay. Do you recall around what time this was?

1 A I would say anywhere from 11:15 to 11:30.

2 Q Okay. And eventually did the -- did you -- the police come and contact
3 you?

4 A Yes. After a few minutes, police came, knocked on our door, and they
5 started asking us questions, if we heard anything.

6 Q Okay. And you talked to the police?

7 A We did.

8 Q And you eventually gave them a statement; is that right?

9 A I did.

10 Q Okay. Let's talk a little bit about -- you said after a few minutes the police
11 knocked on your door; is that right?

12 A They did.

13 Q Okay. It wasn't right after the loud noise?

14 A No.

15 Q When you say a few minutes, was it more like five minutes or more like
16 45 minutes?

17 A I would say anywhere from 20 to 30, 35 minutes.

18 Q Okay.

19 A In that neighborhood.

20 Q So, somewhere between 20 and 35 minutes, you remember? And you
21 said you heard the noise around 11:35?

22 A 11:15, 11:30.

23 Q Okay. So, the police are arriving. Let's say we go to 11:30, I just want to
24 get the math right.

25 A Correct.

1 Q Twenty minutes later, would be 11:50. And you said 20 to 35 minutes
2 later?

3 A Yes.

4 Q Okay. So, 35 minutes later, doing the math in my head, it would be
5 around 12:05?

6 A Close.

7 Q Okay. Somewhere in that range the police arrived?

8 A Correct.

9 Q Okay. All right. Thank you very much, sir.

10 MR. STANTON: I have no questions of Mr. Reyes. And thank him
11 for appearing.

12 THE COURT: Do any of the ladies and gentlemen of the jury, have
13 any questions you wish the Court to ask the witness? There being no
14 questions, thank you very much, sir, for your testimony. You're excused.

15 THE WITNESS: Thank you.

16 THE MARSHAL: Follow me, please.

17 THE COURT: So, we're going to go back to the State's case. Yes?

18 MR. O'BRIEN: Yes, Your Honor.

19 THE COURT: Okay. So, we're going back to the State's case, and
20 they're going to call their next witness.

21 MR. STANTON: Thank you, Your Honor. The State would call
22 Detective Ben Owens.

23 THE MARSHAL: Watch your step.

24 BENJAMIN OWENS, PLAINTIFF'S WITNESS, SWORN

25 THE CLERK: Thank you. Please be seated. State and spell your

1 first and last name for the record.

2 THE WITNESS: My name is Benjamin Owens, B-E-N-J-A-M-I-N O-
3 W-E-N-S.

4 MR. STANTON: May I proceed, Your Honor?

5 THE COURT: Yes. Thank you.

6 DIRECT EXAMINATION

7 BY MR. STANTON:

8 Q Sir, how are you employed?

9 A I'm a detective with the North Las Vegas Police Department.

10 Q How long have you been a police officer?

11 A Twenty-one years.

12 Q And can you describe what your current assignment is?

13 A I'm a detective assigned to the robbery/homicide detail.

14 Q And how long have you been in that particular detective assignment?

15 A Twelve years.

16 Q In those 12 years, and including your years in other detective
17 assignments and patrol, how many violent either death scenes or violent crime
18 scenes have you ever been the primary investigating detective or in an
19 assistant capacity?

20 A Close to a hundred.

21 Q And does a number of those involve wounds that are inflicted by
22 gunshots?

23 A Yes.

24 Q Now, Detective Owens, I would like to go back to January of 2016.

25 Clearly by your previous answers, you are assigned to the Homicide/Robbery

1 Division of the North Las Vegas Police Department. How is it that detectives
2 are assigned to a particular case when a homicide takes place?

3 A If a homicide occurs during normal business hours, which for me would
4 be day shift, we would respond to the scene to assist the first responders,
5 which would be patrol. If it occurs during after hours, we would be called out
6 to the scene.

7 Q And is there a rotational basis among detectives who are kind of up for
8 the next homicide?

9 A Yes. We're usually on call for a period of time, which we would handle
10 basically any homicides that occur, or any crimes that we would investigate
11 during that time we were on call.

12 Q Directing your attention now specifically to January 1st, 2016, did you
13 and other members of your unit, or the on call detectives for homicide
14 investigations that responded to a case ultimately involving the homicide of
15 Patrick Fleming?

16 A Yes.

17 Q Can you describe kind of what your role is and how those roles within
18 the Detective Unit, or the Detective Division, are split up when you respond to
19 a scene?

20 A Yes. We always work with a partner. Each team will be assigned -- one
21 detective will be assigned as the lead investigator, the other detective will be
22 assigned as the co-lead. Generally, you switch it off and determine -- based on
23 whoever the lead is, will determine whether or not -- how the duties are going
24 to get delegated out.

25 Q And so, at this time in this case involving Patrick Fleming, were you one

1 of the two, what is referred to in your line of work, primary homicide
2 detectives responsible for this investigation?

3 A Yes.

4 Q Who is your partner?

5 A At the time, my partner was Detective Sayoko Wilson.

6 Q So, do you respond to the scene?

7 A Yes.

8 Q Were you familiar with the general area and the address of the scene
9 that you responded to?

10 A Yes.

11 Q Where is that?

12 A I believe it's off of Centennial, the northwest portion of our city.

13 Q And I'm going to show you a photograph that has been admitted as
14 State's Exhibit 4, and do you recognize the location that's depicted in that
15 photograph?

16 A Yes. So, this is the building of the scene, 4032 Smokey Fog. You can
17 see the numbers there, 4032, posted on the building.

18 Q Now, prior or soon after your arrival, is there a briefing process that
19 occurs involving you, the crime scene analyst, and first responders?

20 A Yes.

21 Q Can you kind of describe how that occurred in this case?

22 A So, we basically were briefed in by the patrol, first responders that
23 responded to the initial 9-1-1 calls at the scene. They gave us the basics of the
24 incident, the who, where, what, when and why, and what occurred.

25 Q Okay. And you were aware after that briefing, that there were two

1 individuals still inside the home, adults, by the name of Miranda Sutton and
2 Akira Veasley?

3 A Yes.

4 Q As part of the assignments, once that briefing takes place, interviewing
5 those two individuals becomes a priority and kind of divvied up between you
6 and the other primary; is that accurate?

7 A That's correct.

8 Q What was your responsibility compared to your partner's about the
9 scene kind of from the initial processing timeframe?

10 A My responsibility was for the scene inside the apartment and the vehicle.
11 I was tasked with obtaining telephonic search warrants.

12 Q So, let me talk to you about some aspects of the scene to begin with and
13 from this protective -- perspective in my next questions, Detective Owens, I'm
14 not asking kind of chronologically, but an overall assessment of your
15 investigation from the entirety of the time you were there and in days going
16 forward, okay?

17 A Yes.

18 Q So, is this photograph and the areas of entrance and exit, windows,
19 doors, garage doors, important for you as a crime scene analyst to examine
20 closely?

21 A Yes.

22 Q And I'm going to show you Exhibit 5. Do you recall that portion of this
23 residence?

24 A I do.

25 Q And that's the front door?

1 A Yes.

2 Q Let me ask you, Detective, in your investigation, did you see anywhere in
3 any part of the structure, windows, doors, garage doors, anything else, signs
4 of forced entry?

5 A No.

6 Q In your field, that is as a homicide detective, is investigating for signs of
7 forced entry an important thing to do?

8 A Yes.

9 Q I'm going to now talk to you about what I'll refer to as the bottom of the
10 stairs inside the apartment. Are you kind of familiar with that whole portion of
11 the scene, itself?

12 A Yes.

13 Q Let me show you State's Exhibit 20. Do you recognize what's depicted in
14 that photograph?

15 A I do.

16 Q Now as you're investigating the scene from -- now, I want to jump back
17 to an earlier perspective in the processing of the scene. Is there kind of a
18 concern and a strict protocol about how -- and the limitations of the
19 investigation of Mr. Fleming's physical body?

20 A Yes.

21 Q What is the limitation, what's kind of the protocol about you, as a
22 homicide detective investigating this aspect of the scene?

23 A Basically, we want to protect the integrity of the crime scene once it's
24 determined that he is deceased and that, you know, there's -- medical aid is
25 not going to be -- wouldn't -- you know, once it's determined that he is

1 deceased, then basically his body, itself, becomes part of our -- the evidence
2 for the crime scene.

3 Q And there is another investigative agency that has primary -- a priority
4 above yours, at least initially, about his body at the scene?

5 A Yes. That would be the Clark County Coroner's Office.

6 Q So, kind of tell me about what happens in the scene. Can you go up, go
7 through his pockets, look at wounds, anything, when you first get there?

8 A No.

9 Q And is that because of that process?

10 A That's correct.

11 Q Now, let -- I want to, in this photograph, direct your attention to the
12 waistband of Mr. Fleming. Do you recall what that item I just pointed to is?

13 A Yes. It is the grip portion of a Glock pistol, semi-automatic pistol.

14 Q Now, the condition of that pistol and its caliber, was that important to
15 you?

16 A Yes.

17 Q Now, initially when you're here, based upon what you just testified, you
18 didn't, and you couldn't, pursuant to the protocol, retrieve that, look at it, find
19 out what caliber it is and what condition it is; is that correct?

20 A No, because it is -- basically, it's tucked into his waistband on his person,
21 on his body.

22 Q Let me ask you some questions about what you are -- now, I'm going to
23 go through asking you globally in your investigation. So, Detective Owens,
24 here, feel free to address any part of your investigation, either that day or the
25 next day, when you, along with your partner, attended the autopsy of Mr.

1 Fleming, okay?

2 A Yes.

3 Q Now, once that weapon is fully examined, both at the scene, at the crime
4 lab, or back at the North Las Vegas Police Department, were you able to
5 determine the condition of that weapon in the holster about how it was
6 oriented for a shooter?

7 A Yes. The weapon is tucked into his waistband, in what's referred to as
8 an inside the waistband holster. So, what that is, there's a metal clip that
9 hooks over the belt. The holster and the firearm, itself, are tucked into the
10 pants waistband, and the way that that pistol is oriented just to the right of the
11 center line, is what's referred to as an appendix carry inside the waistband,
12 and it's oriented for what would be a right-handed shooter.

13 Q And you, to state the obvious, as a detective, as a police officer, carry a
14 firearm?

15 A I do.

16 Q What kind of firearm do you carry?

17 A I carry a Glock 19, 9 by 19 millimeter handgun.

18 Q And do you have to qualify with that weapon?

19 A Yes.

20 Q How often?

21 A I have to qualify with it at least twice a year, but I usually qualify four
22 times a year.

23 Q And you have done with that weapon that you just mentioned, or a
24 weapon similar to that, every year since you've been a police officer?

25 A Correct.

1 Q While you were at the scene, and let me just focus now here at the
2 scene, did you, knowing what you observed about the position and oriented to
3 a right-hand shooter, did you notice any concern about damage to Mr.
4 Fleming's right arm at the scene?

5 A Yes. We noticed that he had more than one apparent gunshot wound,
6 and one of those wounds was to his right arm.

7 Q And did you attend the autopsy the next day?

8 A Yes.

9 Q As part of the autopsy procedure -- well, let me back up a question. I
10 apologize. How many autopsies in cases that you've investigated have you
11 attended?

12 A Just a ballpark, it's got to be at least a couple hundred.

13 Q And during those procedures, is it frequently where an x-ray is taken or
14 multiple x-rays?

15 A Yes.

16 Q Did you see those in this case about Mr. Fleming?

17 A Yes, I did.

18 Q What did you notice about Mr. Fleming's right arm?

19 A That the right humerus, which is his upper arm bone, was fractured
20 completely.

21 Q Let me go back now to the condition of the weapon. As it's being
22 processed, were you aware of and observed the condition of that firearm as to
23 what it contained and whether there was a round in the chamber?

24 A Referring to the weapon that's tucked into the decedent's waistband still?

25 Q Yes, sir.

1 A Yes. So that's a semi-automatic pistol. We determined later that it was a
2 Glock 19, 9 by 19 millimeter caliber, and there was a magazine loaded with
3 light cartridges, however, the chamber was empty, meaning it was not -- it did
4 not have a round in the chamber ready to fire.

5 Q So, if I pulled that trigger, based upon your knowledge of this firearm,
6 would it have gone off?

7 A No.

8 Q It would have required what for it to have been ready to actually fire
9 when pulled the trigger?

10 A You would have to cycle the slide to the rear to the first chamber round
11 in order to make it ready to fire.

12 Q The next series of questions I want to transition to, Detective, are how
13 you kind of coordinate your activities with crime scene analysts. There's been
14 testimony in this trial about this particular case. You are aware that crime
15 scene analysts from the North Las Vegas Police Department can conduct
16 certain forensic sampling at scenes?

17 A Yes.

18 Q DNA, fingerprints, gunshot residue, several others, but just to name
19 some relevant ones here; is that correct?

20 A That is correct.

21 Q Now, when that decision is made about where to take samples and what
22 type of samples to make, what information do you go from to make those
23 decisions?

24 A We look at the totality of the circumstances, and that information can
25 change as the investigation progresses.

1 Q And that information changing as it progresses, does that also include
2 the progression of time, and in some cases, the progression of significant
3 amounts of time?

4 A Yes. If it's not contemporaneous with the time -- with the crime, itself,
5 then that may alter our decision whether or not to do certain types of testing,
6 like if we recover evidence later on, days or even weeks after the crime, itself.

7 Q Now what is the difference between -- or what is the process, if you
8 could describe once again in a general fashion, your role and submitting
9 forensic samples that are taken for further testing in a crime laboratory
10 setting?

11 A So, in general, if we believe something has evidentiary value that would
12 require further forensic testing at the lab, for example, to compare a sample of
13 potential DNA to a known person, then we would send it off and make that
14 request.

15 Q And that -- those requests can be made days, weeks, sometimes even
16 months later in the cases you investigate?

17 A Oh, yes.

18 Q At the end of your day and in processing this scene on January 1st, 2016,
19 would it be fair to say that you had one suspect described, that is, an African
20 American male adult with the name of Hatch?

21 A Yes.

22 Q Were you aware of requests made by Ms. Sutton and Ms. Veasley about
23 concerns for their safety?

24 A Yes. They were interviewed by detectives where they directly made
25 those concerns about this.

1 MR. O'BRIEN: I'm going to object as to hearsay.

2 THE COURT: Counsel?

3 MR. STANTON: Wait. Your Honor, it's not being offered for truth
4 of the matter through this witness, but simply that those requests were made
5 through law enforcement, and that he was aware of it.

6 THE COURT: Just the request?

7 MR. STANTON: Yes.

8 THE COURT: And that's it?

9 MR. STANTON: Yes.

10 MR. O'BRIEN: Your Honor, can we approach briefly?

11 THE COURT: Sure. I'll see you in the hallway, how about that,
12 because it's hard to talk up here. Sir, if you could remain seated and not talk
13 to anyone, I'll be right back.

14 THE WITNESS: Yes, Your Honor.

15 [Court and counsel exit courtroom at 3:12 p.m., not recorded]

16 THE COURT: Okay. So, based upon conversations at sidebar, it's
17 my understanding you're withdrawing the question at this time, for now?

18 MR. STANTON: At this time, Your Honor, yes.

19 THE COURT: All right. And ladies and gentlemen, you're
20 instructed to disregard the last testimony in response to the last question
21 because it's been withdrawn. And please continue.

22 MR. STANTON: Thank you, Your Honor.

23 BY MR. STANTON:

24 Q Detective, at some point, were you advised that there was a Dodge
25 Durango affiliated with the Sutton/Veasley/Fleming side of the family, or

1 people that lived at that home?

2 A Yes.

3 Q Did you request that that -- I think you stated in your answer to a
4 previous question that you were the Affiant to a search warrant for that
5 vehicle; is that correct?

6 A Yes.

7 Q At the time that you made that request that it be processed, did you
8 know physically where that vehicle was?

9 A All I knew that it was nearby, and that -- I did not know the exact location,
10 no.

11 Q Detective, on what date was the Defendant, Shawn Glover, arrested?

12 A January the 4th, 2016.

13 Q As you testify today, has the .40 caliber semi-automatic handgun
14 involved in this case ever been recovered?

15 A No.

16 Q Based upon your investigation, I believe you answered previously that
17 there was no signs of forced entry?

18 A That's correct.

19 Q Based upon your investigation, were you able to determine that there
20 was any property loss within the Sutton/Veasley/Fleming home?

21 A No.

22 Q Detective, I want to show you State's Exhibit 28. Let me turn off this
23 light. Do you recall the condition of the tile where the evidence tag is
24 underneath that carpet?

25 A Yes.

1 Q Based upon your training and experience, and your knowledge of the
2 wounds -- the gunshot wounds of Mr. Fleming the next day at autopsy, do you
3 have an opinion about where the shooter would have been to cause a bullet
4 strike where you see it in that photograph?

5 A Basically standing directly overhead.

6 MR. STANTON: Pass the witness.

7 MR. O'BRIEN: The Court's indulgence.

8 CROSS-EXAMINATION

9 BY MR. O'BRIEN:

10 Q Good afternoon, Detective.

11 A Good afternoon, counsel.

12 Q Do you recall what time the North Las Vegas police were dispatched to
13 4032 Smokey Fog?

14 A I believe it was a morning call. I want to say approximately 7:45 a.m.

15 Q Okay. Are you sure of that time?

16 A No.

17 Q Okay. Would it assist you to be more specific if you were able to look at
18 your own report?

19 A Sure.

20 Q And to be clear, you did write a report in this case; is that correct?

21 A Yes, I did.

22 Q And that was -- the report was written closer in time than obviously
23 today?

24 A Yes.

25 Q Okay.

1 MR. O'BRIEN: Your Honor, if I can approach?

2 THE COURT: Yes.

3 MR. O'BRIEN: The Court's indulgence to find the report.

4 BY MR. O'BRIEN:

5 Q Detective, did you bring a copy of your report with you, by any chance?

6 A I did.

7 Q You did?

8 A Yes.

9 Q If I could ask you to take a look at it?

10 MR. O'BRIEN: Your Honor, if I can approach, please?

11 THE COURT: Yes.

12 THE WITNESS: So, I was mistaken. It was actually just in the
13 afternoon, about 12:06 is when the patrol officers were first dispatched.

14 BY MR. O'BRIEN:

15 Q At 12:06 p.m.?

16 A 12:06, yes, p.m.

17 Q All right. Thank you, Detective.

18 MR. O'BRIEN: No further questions.

19 MR. STANTON: Nothing further.

20 THE COURT: Do any of the ladies and gentlemen of the jury have
21 any questions you wish the Court to ask the witness? There being no
22 questions, thank you very much for your testimony. You're excused.

23 THE WITNESS: Thank you.

24 MR. STANTON: Your Honor, the State rests.

25 [STATE RESTS]

1 THE COURT: All right. Can I see counsel at the bench?

2 [Sidebar begins at 3:19 p.m.]

3 THE COURT: What's next? Do you need a recess for anything?

4 MR. STANTON: No.

5 THE COURT: Are you done?

6 MR. STANTON: We're done.

7 MR. BASHOR: We've -- the admonition to the Defendant about
8 testifying and his answer to the Court?

9 MR. STANTON: He actually never answered the question whether
10 or not you asked him --

11 THE COURT: We'll take a quick break.

12 MR. STANTON: Right. Right.

13 THE COURT: Okay.

14 MR. STANTON: Okay.

15 [Sidebar ends at 3:19 p.m.]

16 THE COURT: Okay. Well, we were going to take the afternoon
17 recess after the two witnesses were done, and it's time for the afternoon
18 recess. So, we're just talking like a quick restroom break.

19 During this recess, you are admonished not to talk or converse
20 among yourselves or with anyone else on any subject connected with this trial.
21 You are not to read, watch or listen to any report of, or commentary on the
22 trial by any person connected with this case or any medium of information,
23 including, without limitation, newspaper, television, the internet or radio. You
24 are not to form or express any opinion on any subject connected with this trial
25 until the case is finally submitted to you. Ten minutes.

1 THE MARSHAL: All rise. The jury is exiting.

2 THE COURT: By the way, that's real time. I know I have court time,
3 which means it's, you know, ish.

4 [Outside the presence of the jury]

5 THE COURT: Okay. It's closed, right? I can't see.

6 MR. STANTON: It is, Your Honor.

7 THE COURT: Okay. The record shall reflect we're outside the
8 presence of the jury. I wanted to make a record about a bench -- a sidebar
9 conference right now and then let you fill in the blanks if I leave anything out.

10 Basically, there was an objection to a question related to what
11 other detectives did or didn't request as far as the investigation goes. In the
12 hallway, the Defense counsel objected as to calls for hearsay, et cetera. The
13 District Attorney decided to withdraw the question and decide whether they
14 wish to pursue that line of questioning on redirect, and as a result, I ordered
15 the jury to disregard the answer to the question and documented that the
16 District Attorney withdrew the question at that time. Is there anything else on
17 that sidebar?

18 MR. STANTON: Not from the State.

19 MR. BASHOR: And the question was referencing what the
20 detective had heard from other detectives about requests for protection and
21 safety, and that was the grounds for the objection. So, the question and the
22 answer were struck pending cross-examination, which would make it more
23 relevant.

24 MR. STANTON: I just want to modify something slightly. It's not
25 what -- it is, in part, what he heard from other detectives, but a secondary, and

1 the more primary source is the transcript of the recorded interviews on both
2 the 1st and the 2nd of both Ms. Veasley and Ms. Sutton, where those concerns
3 are expressed in the recording and this detective's review of the transcript as
4 part of his investigation back in the time and not in preparation of trial.

5 THE COURT: Well, you could have gotten into all of that had I
6 made a ruling on redirect and gone through all of that, but you withdrew the
7 question. It seems moot at this point.

8 MR. BASHOR: It is.

9 THE COURT: You got the relief you requested, I granted the
10 Defense motion. I ordered them to disregard it. Anything else?

11 MR. BASHOR: No.

12 MR. STANTON: No.

13 THE COURT: Okay. So, quick question then. We -- State, you
14 brought to my attention at the bench, and I wasn't paying attention to that
15 exact issue. So, at this time, I'm going to -- you spoke to the Defendant about
16 his right to take the stand and testify?

17 MR. BASHOR: On several occasions, including today.

18 THE COURT: And I gave you your rights yesterday, and I told you
19 that the State and the Court can't consider comment, and the jury can't if you
20 choose not to testify, and you went through all of that with your lawyers?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And they answered your questions?

23 THE DEFENDANT: I don't want to testify.

24 THE COURT: Okay, but did they answer your questions?

25 THE DEFENDANT: Yeah.

1 THE COURT: Okay. And no questions for your attorneys or for the
2 Court before your lawyers rest?

3 THE DEFENDANT: No.

4 THE COURT: Okay. And it's my understanding you are going to
5 rest, yes?

6 MR. BASHOR: That's correct.

7 THE COURT: Okay. So, as far as scheduling and what to tell the
8 jury when they come back in, I believe we can settle jury instructions this
9 afternoon, giving you the overnight period to be able to incorporate, you
10 know, actually numbered instructions into your arguments. I'm looking right
11 now at the competency calendar, which is only a mild 41 pages. I can usually
12 move through that -- that's 40 people. Give me -- I'll do it in an hour or an
13 hour and five minutes.

14 So, there's no challenge hearings, it's just you're either competent
15 or you're not. There might be some allegations of NSA and some other -- I'm
16 the queen of the Samaritans. Once I get through those things, I'll finish. From
17 the competency folks, perhaps a physical or verbal outburst, which might
18 delay me another three to four minutes, but otherwise, I'm going to get this
19 done in an hour and five minutes. So, I moved my challenge hearing, we're
20 not having a challenge hearing. I can start your trial at 10:15.

21 MR. BASHOR: Sounds great.

22 MR. STANTON: Sounds great.

23 THE COURT: How long do you need for closings?

24 MR. STANTON: Thirty to 40 minutes on behalf of the State.

25 MR. BASHOR: Same.

1 THE COURT: And then what, a ten minute rebuttal?

2 MR. STANTON: In this case, it's probably going to be --

3 THE COURT: Fifteen?

4 MR. STANTON: -- ten, 15 minutes.

5 THE COURT: Okay. I'm just trying to determine, you know, if I
6 have to order the jury lunch tomorrow, which I apparently need to do so that
7 they can have a working lunch and deliberate.

8 So, if there's nothing else, I'll bring the jury in, I'll excuse them.
9 You can take a short restroom break. The Defendant has to stay because we're
10 settling jury instructions, and when we're done with that he can go back.

11 MR. BASHOR: Would you like me to formally rest in front of the
12 jury?

13 THE COURT: Yes.

14 THE MARSHAL: All rise. The jury is entering. The jury is all present, ma'am.

15

16 THE COURT: Counsel, may you stipulate the presence of the jury?

17 [In the presence of the jury.]

18 MR. STANTON: For the State, yes, Your Honor.

19 MR. BASHOR: Yes, Your Honor.

20 THE COURT: All right. At this time, does the Defense have any
21 additional evidence or witnesses to present?

22 MR. BASHOR: No, Your Honor. The Defense rests.

23 [DEFENDANT RESTS]

24 THE COURT: Is there any rebuttal evidence?

25 MR. STANTON: No, Your Honor.

1 THE COURT: All right. Ladies and gentlemen, that concludes the
2 evidence portion of the trial. The way the settling of the jury instructions work,
3 the Court has to settle jury instructions after the conclusion of the evidence.
4 So, the lawyers and I are going to stay and work on our settling of the jury
5 instructions, and when you come back tomorrow morning at 10:15, as soon
6 thereafter as I can start, I will read to you the jury instructions, and you will
7 hear final closing arguments in this case. And then you will retire to deliberate
8 on your verdict.

9 During this overnight -- and I'm sorry I gave you the recess, but I
10 have to discuss scheduling with the attorneys and whatnot. So, during this
11 overnight recess, you are admonished not to talk or converse among
12 yourselves or with anyone else on any subject connected with this trial. You
13 are not to read, watch or listen to any report of, or commentary on the trial by
14 any person connected with this case or any medium of information, including,
15 without limitation, newspaper, television, the internet or radio. You are not to
16 form or express any opinion on any subject connected with this trial until the
17 case is finally submitted to you. 10:15 tomorrow morning.

18 THE MARSHAL: All rise. The jury is exiting.

19 [Outside the presence of the jury.]

20 THE COURT: Is it closed?

21 MR. STANTON: Yes, Your Honor.

22 MR. BASHOR: Yes, Your Honor.

23 MR. O'BRIEN: Yes, Your Honor.

24 THE COURT: Okay. Let's give them a minute. Let's start -- first of
25 all, we're outside the presence of the jury. Before we take a short break

1 ourselves to dig into the jury instructions, I thought I could just cover the
2 verdict form while they are clearing out of the hallway.

3 So, I've reviewed a verdict form that appears to have been
4 attached to an email. I just want Mr. Bashor to come up here and tell me this
5 is the one -- a hard copy of the one that everybody's agreed to.

6 MR. BASHOR: Yes, Judge. If I could just run it by Mr. Stanton
7 really quickly.

8 [State and Defense confer]

9 MR. BASHOR: We're okay, Your Honor.

10 THE COURT: Okay. Thank you. Okay. So, this is the verdict form
11 the parties have stipulated -- you can have a seat. Thank you.

12 The parties have stipulated to the use of that verdict form. Let me
13 just poke my head into the back hallway and make sure the jurors have cleared
14 out, and then I will give you all a short break, and then we can get into the
15 packet.

16 MR. STANTON: Thank you.

17 THE COURT: And if the Defendant needs a break now.

18 [Recess at 3:33, recommencing at 3:42 p.m.]

19 THE COURT: Okay. We're back on the record in State v. Shawn Glover
20 outside the presence of the jury to settle jury instructions.

21 Unfortunately, during that meeting, I told you I was planted front
22 and center in the Legislative Council Bureau, testimony, Grant Sawyer
23 Building. I'm thinking they could see my pores in Reno, and I couldn't really
24 study the jury instructions, even though I thought if I was in my usual seat in
25 the back, I could have done it. So, you will have to bear with me as we go

1 through, and you tell me -- I did notice that there was Defense -- I read the
2 email, I just couldn't read the minutia of each instruction.

3 So, as we go through this grouping that I have here, you can tell
4 me what you agree on, what you don't, and then I'll go back to what you don't.

5 MR. BASHOR: Sounds good.

6 THE COURT: So, Instruction Number 1, members of the jury, any
7 objection? Stock?

8 MR. BASHOR: No, Your Honor.

9 THE COURT: I'm just going to go through them. I'm not
10 numbering them. I just want to hear no objection, no objection.

11 MR. BASHOR: No objection.

12 THE COURT: Okay. If in these instructions any rule, direction or
13 idea. Any objection?

14 MR. BASHOR: No objection.

15 THE COURT: An amended indictment is what a formal method of
16 accusing a person, and it obviously takes out the count that the District
17 Attorney didn't include in the -- to be read by the Clerk.

18 MR. BASHOR: Correct.

19 THE COURT: Any objection?

20 MR. BASHOR: No, Your Honor.

21 THE COURT: Murder is the unlawful killing of a human being. Any
22 objection?

23 MR. BASHOR: No, Your Honor.

24 THE COURT: Am I in a different order than you, you think?

25 MR. BASHOR: I have accused of an indictment, alleging an open

1 charge of murder.

2 THE COURT: Well, that's Page 2 of the previous instruction. That's
3 a two-page instruction. Usually --

4 MR. BASHOR: The information?

5 THE COURT: Yeah.

6 MR. BASHOR: Oh.

7 THE COURT: Usually -- I noticed the State put a separate
8 instruction number on the top, but usually it's the end of the first page.

9 MR. BASHOR: Oh, okay.

10 MR. FLINN: Correct. It just ran over based upon the multiple
11 counts, so.

12 MR. BASHOR: Okay.

13 MR. FLINN: That's just a formatting issue.

14 THE COURT: So, I'll call it a separate instruction if you want or I'll
15 white it out. Usually, it's the same instruction.

16 MR. BASHOR: That's fine. White out is fine, Your Honor.

17 THE COURT: You see what I'm saying?

18 MR. BASHOR: Yes, Your Honor.

19 THE COURT: It's the end of the previous page.

20 MR. BASHOR: I understand.

21 THE COURT: Having done this, I don't know, a couple hundred
22 times.

23 MR. BASHOR: I'm going to take your word for it.

24 THE COURT: I feel like I could instruct, you know -- I wish I could
25 instruct you orally without having to read to you, but I probably could.

1 Murder is the unlawful killing of a human being, no objection.
2 Malice and forethought means the intentional doing of a wrongful act without
3 legal cause or excuse or what the law considers adequate provocation, and it
4 goes on. Any objection?

5 MR. BASHOR: No, Honor.

6 THE COURT: Express malice is that deliberate intention unlawfully
7 to take away the life of a fellow creature.

8 MR. BASHOR: No, Your Honor.

9 THE COURT: I wish we just would say fellow person or another
10 person instead of a creature, but some of these are so old.

11 Murder of the first degree is murder which is perpetrated by means
12 of any kind of willful, deliberate and premeditated killing. Any objection?

13 MR. BASHOR: No, Your Honor.

14 THE COURT: Willfulness is the intent to kill, and it goes on. Any
15 objection?

16 MR. BASHOR: No, Your Honor.

17 THE COURT: Deliberation is the process of determining upon a
18 course of action, and it goes on. Any objection?

19 MR. BASHOR: No, Your Honor.

20 THE COURT: A deliberate determination may be arrived at in a
21 short period of time, but in all cases, and it goes on.

22 MR. BASHOR: No, Your Honor.

23 THE COURT: Premeditation is a design, a determination, and it
24 goes on. Any objection?

25 MR. BASHOR: No, Your Honor.

1 THE COURT: Premeditation need not be for a day, an hour, or
2 even a minute. It may be as --

3 MR. BASHOR: No, Your Honor.

4 THE COURT: Okay. The law does not undertake to measure in
5 units the length of time -- or the length of the period during which, and it goes
6 on. Any objection?

7 MR. BASHOR: No, Your Honor.

8 THE COURT: All murder which is not murder of the first degree is
9 murder of the second degree, and it goes on. Any objection?

10 MR. BASHOR: No, Your Honor.

11 THE COURT: A deadly weapon is any instrument -- okay. I have --
12 I don't know if your -- apparently, your office hasn't caught this because I've
13 brought it up before. On the next instruction, the deadly weapon instruction, I
14 have an unpublished opinion in a case of mine where the last sentence was
15 included because it was a firearm case, and the Supreme Court commented on
16 it with disfavor because it was a question of fact. So, I'm inclined to take out
17 the last sentence.

18 MR. STANTON: That's fine.

19 THE COURT: I haven't -- I can --

20 MR. FLINN: The firearm is a deadly weapon?

21 THE COURT: Yes. I have an unpublished opinion in --

22 MR. STANTON: I read it.

23 THE COURT: Okay. So, you know, I don't -- it's never been a
24 subject of discussion in your office, I don't think, because --

25 MR. STANTON: Well, yeah, and look, my office is like a cargo ship

1 in the ocean, it takes quite a bit to change it one degree, but I agree with you
2 both by statutory definition, but I guess from the Supreme Court in your
3 opinion, the unpublished one, their comment is that it's a factual finding in
4 each case, and there's probably extreme hypotheticals where you wouldn't
5 have, as a mandatory presumption, so I don't have any problem with it.

6 MR. BASHOR: That's fine with me, Your Honor.

7 THE COURT: Isn't it refreshing to hear the cargo ship to move a
8 degree to take -- I mean I know that, and you know that, but they rarely admit
9 that.

10 MR. STANTON: Well, we had 20 years that we charged an ex-felon
11 in possession of a firearm. There is no crime of ex-felon in -- in fact, the
12 element is the exact opposite, but you think somebody might catch that or do
13 something about it. So, I bring it up when I come down to this office and say
14 why do you do it that way, and I think it took five years before they changed it,
15 so.

16 THE COURT: Because we always have. Okay. So, you don't have
17 a problem with me taking out the sentence that a firearm is a deadly weapon?

18 MR. BASHOR: No, Your Honor.

19 THE COURT: A deadly weapon is any instrument which, if used in
20 the ordinary manner, contemplated by its -- oh, I'm sorry, that's the same one.
21 Excuse me. The State is not required to have recovered the deadly weapon,
22 and it goes on. Any objection?

23 MR. BASHOR: No, Your Honor.

24 THE COURT: An assault means intentionally placing another
25 person in reasonable apprehension of immediate bodily harm, and it goes on.

1 Any objection?

2 MR. BASHOR: No, Your Honor.

3 THE COURT: Okay. You're not going to like this, but Line 6 and 7
4 goes right with the firearm is a deadly weapon, in my opinion, to draw an
5 analogy.

6 MR. BASHOR: And then here's the problem. The statute reads
7 that the area must be designated by a city or county ordinance as a populated
8 area, and we haven't had any evidence of that. It's not like, oh, it's a populated
9 area, and you can use your common sense to fulfill that element. The statute
10 requires that it be an element, that it's pursuant to an ordinance or county
11 code.

12 MR. STANTON: Well, is there a reasonable dispute that this area is
13 not within the definition of the North Las Vegas area of congested -- for
14 purposes of destruction?

15 THE COURT: Well, the question is, is that a question of law or a
16 question of fact, because if it's pursuant to a county code, they don't have to
17 go -- you don't have to -- I mean -- right?

18 MR. FLINN: It is the county code defines all of the areas that are --
19 and it's basically all of Clark County, unless you're out in a -- where we all
20 would say this is an empty place.

21 THE COURT: If he asks a witness did that happen here in Clark
22 County, State of Nevada, and the witness says yes, then I'm legally
23 determining that, you know, the area -- I mean there are certain, certain legal
24 determinations. So, the question is, is this something that he would have to
25 present a statute or a code for?

1 MR. BASHOR: In my opinion.

2 THE COURT: Well, let me look at the statute. Do you have it
3 handy?

4 MR. BASHOR: Yes, Your Honor. Can I approach?

5 MR. STANTON: What's the -- oh, the statute.

6 MR. BASHOR: It's 202.287.

7 THE COURT: State, are you looking at this? I assume you're
8 familiar with it.

9 MR. FLINN: The NRS yes, absolutely.

10 THE COURT: Okay. So --

11 MR. FLINN: I do know what -- I mean it says exactly what's in the
12 instruction, correct?

13 MR. BASHOR: With the exception of -- the first paragraph to the
14 instruction --

15 MR. FLYNN: Right.

16 MR. BASHOR: -- isn't the problem, it's the finding of the element,
17 similar to the deadly weapon. Your Honor, in all due candor, I've never tried a
18 case with this count. For -- if I can give you a for instance, like in New Jersey,
19 where I used to practice? It was thousand foot map. If you were dealing
20 drugs within a thousand feet of a school, you would actually have to bring in a
21 map and have this circle go around the school a thousand feet in all directions
22 in order to prove up that element. So, I guess in my -- what I'm saying is that's
23 kind of analogous to here. Like because the code or the ordinance defines
24 what is and what is not a populated area, while I agree that common says it's,
25 in all likelihood, a populated area, and here's the houses, and cars, and stuff

1 like that. I don't think that's sufficient to meet that element.

2 THE COURT: So, you're saying they have to prove beyond a
3 reasonable doubt that the county or the city has designated this as a popular
4 area -- a populated area?

5 MR. BASHOR: Correct.

6 THE COURT: As opposed to the Court finding that as a matter of
7 law and giving the instruction in that regard?

8 MR. BASHOR: Correct.

9 MR. STANTON: And the State disagrees with that. Number one, I
10 would like to use the analogy that counsel did, because the distinction
11 between that is that there's actually a factual element that might be in dispute.
12 That is, what is the distance --

13 THE COURT: Sure.

14 MR. STANTON: -- between a particular event, and what is the
15 event, and whether that falls within the thousand foot rule. Here --

16 THE COURT: What is -- what is --

17 MR. STANTON: I'm sorry.

18 THE COURT: -- the city or county ordinance that designates North
19 Las Vegas, that the city of North Las Vegas is a populated area?

20 MR. FLINN: I didn't bring it.

21 THE COURT: Can you find that, please? Because if you want me to
22 determine that as a matter of law, you better give it to me.

23 MR. FLINN: No, I understand, Your Honor. I apologize, I didn't
24 bring it because Mr. Bashor said he didn't have an objection to my email, so.

25 MR. BASHOR: Right, because -- I didn't mean to interrupt. Yeah, I

1 didn't have an objection because, again, I thought that, like the deadly -- I
2 wasn't aware of the unpublished case you're talking about with the deadly
3 weapon. I thought that is was something that -- and my other concern, just to
4 make the record clear, Judge, is that this element dramatically changes the
5 penalty. If it's an unpopulated area, it's a misdemeanor. If it's a populated
6 area, it's two to 15 years. And so, I would think that something of that
7 significance, and the fact that is it an element of the crime, would have to be
8 something that the jury would determine as a matter of fact, not law.

9 THE COURT: Could you find the ordinance for me? Like not right
10 this second, but you can be working on it while we're doing this?

11 MR. FLINN: Absolutely, Your Honor, yes.

12 THE COURT: Sure. Okay.

13 MR. STANTON: So, can we mark that one and then move on or --

14 THE COURT: Yeah. Put a question mark on it. To constitute the
15 crime charged, there must exist a union or joint operation of an act forbidden
16 by law and an attempt to do the act. Any objection?

17 MR. BASHOR: No, Your Honor.

18 THE COURT: The Defendant is presumed innocent. I assume you
19 have no objection to the only beyond a reasonable doubt standard instruction
20 that the Supreme Court has approved?

21 MR. BASHOR: No objection.

22 THE COURT: The evidence which you are to consider in this case
23 consists of the testimony of the witnesses, the exhibits, and any fact admitted
24 and agreed to by counsel, and it goes on. Any objection?

25 MR. BASHOR: No, Your Honor.

1 THE COURT: The flight of a person after the commission of a
2 crime is not sufficient in itself to establish his guilt. However, if flight is
3 proved, blah, blah, blah.

4 MR. BASHOR: No, Your Honor.

5 THE COURT: No objection. Credibility or believability of a witness.
6 This is a stock instruction.

7 MR. BASHOR: No objection.

8 THE COURT: All right. The witness -- the commonly known as the
9 expert witness instruction, a witness who has special knowledge, skill,
10 experience, training or education, and it goes on. Any objection?

11 MR. BASHOR: No, Your Honor. We withdraw the next one, before
12 you may rely on circumstantial evidence, Judge.

13 THE COURT: Withdrawn?

14 MR. BASHOR: Withdrawn.

15 THE COURT: Okay. The next is in arriving at a verdict in this case
16 as to whether Defendant's guilty or not guilty, the subject of penalty or
17 punishment is not to be discussed or considered and in no way influence your
18 verdict.

19 MR. BASHOR: No objection.

20 THE COURT: It is the constitutional right of a Defendant in a
21 criminal trial that he may not be compelled to testify, and it goes on. I assume
22 you requested this?

23 MR. BASHOR: We do.

24 THE COURT: All right. And so, that will be given. Although you
25 are to consider only the evidence in the case in reaching a verdict, you must

1 bring to the consideration, and it goes on. Any objection?

2 MR. BASHOR: No, Your Honor.

3 THE COURT: When you retire to consider your verdict, your
4 verdict must be unanimous. Stock instruction. Any objection? I don't know,
5 mine are not in an order I would normally do, but that's okay.

6 MR. BASHOR: I have -- yes, Your Honor, I have that. No objection.

7 THE COURT: Okay. Playback instruction, any objection?

8 MR. BASHOR: No, Your Honor.

9 MR. STANTON: And, Judge, based upon your comment, the State
10 has no objection to the Court ordering these instructions in any manner, in any
11 order that you believe --

12 THE COURT: Well, the order in which the instructions are given
13 has no relevant -- no -- what is the language? Something of their relative
14 importance.

15 MR. BASHOR: Uh-huh.

16 MR. STANTON: I understand that, but I think courts have an
17 assessment of a logical flow, and so, at least from the State, I have no
18 objection.

19 MR. BASHOR: I join. Whatever order is fine with me, Your Honor.

20 THE COURT: Okay. So, during this trial and your deliberations,
21 you are not to communicate with each other, and it goes on.

22 MR. BASHOR: No objection.

23 MR. STANTON: That was not offered by me, I don't believe; was
24 it?

25 MR. BASHOR: No, I don't remember if this was an instruction I

1 stole from *Coleman Vaoga*, which we tried in here about a year ago, or from
2 Judge Herndon's, but I don't know if this is -- I just added it in there. I don't
3 have a position either way.

4 MR. STANTON: I think I had a case within the past year or two, I
5 think within the past year, where somehow this was considered by District
6 Court Judges, or at least the Court, for -- that this was something that was
7 encouraged to include. Do you know anything about that, Judge, because --

8 THE COURT: Yes.

9 MR. STANTON: -- I don't have this as a predicate --

10 THE COURT: Yeah, I want to say it's Herndon.

11 MR. STANTON: Yeah, because I think it's probably --

12 MR. BASHOR: Uh-huh.

13 THE COURT: I have an email from Herndon.

14 MR. STANTON: -- a pretty good thing to do, and I want to
15 incorporate it in all mine, if that's what the Court's feeling is as well, that it's
16 going to be a stock.

17 THE COURT: The only thing is, you know, once they go to the jury
18 deliberation room, I think, you know, this instruction, where it says during the
19 course of the trial, I tell them that in the introduction. So, I don't have any
20 problem that they shouldn't be communicating with anyone by text, phone or
21 internet, or other means, and I think it's wise to give it. And if you don't care,
22 I'll put it before now you will listen to the arguments of counsel. It's just kind
23 of my second to last instruction before I get -- obviously weave the
24 manslaughter in there somewhere.

25 MR. BASHOR: Very good, Your Honor.

1 THE COURT: Okay. So, if nobody objects to it, I like it, so let's give
2 it.

3 MR. BASHOR: Great.

4 THE COURT: Now, you will listen to the arguments of counsel,
5 who will endeavor to aid you. I assume you have no objection since that's
6 stock?

7 MR. BASHOR: No objection.

8 THE COURT: Okay. Now, these are the -- let me just look real
9 quick here. Okay. So, I have two instructions from the State. One is funky to
10 me. It starts, it is a killing. Is that the second page of something or -- it just
11 starts oddly.

12 MR. STANTON: Yeah, that's just a typographical error of a
13 combination of two instructions, so.

14 THE COURT: So, can you redact it and give it back to me in the
15 way you would like it to look, so I could look -- compare that to what the
16 Defense is proposing?

17 MR. STANTON: Sure.

18 THE COURT: Because the Defense -- I don't know, let's see.

19 MR. STANTON: It should read manslaughter is a killing upon, or
20 probably more precisely --

21 THE COURT: Voluntary manslaughter?

22 MR. STANTON: Yeah. The Lines 8 and 9 should be at the
23 beginning of the instruction, and then it contextually reads, I think, the way it is
24 written. So, the first line would be --

25 THE COURT: So, it would say voluntary manslaughter is the

1 unlawful killing of a human being without malice, forethought, or without
2 deliberation, or premeditation. It is a killing upon a sudden quarrel or heat of
3 passion, and so on?

4 MR. STANTON: Yes.

5 THE COURT: Okay. And then you have a heat of passion
6 instruction. So, there's only two total instructions, as opposed to kind of a
7 broken down -- so let me ask you this, is there a reason why the Defense has
8 manslaughter is the unlawful killing of a human being without malice,
9 expressed or implied, and without any mixture of deliberation, and then the
10 next -- very next page says voluntary manslaughter is the unlawful killing of a
11 human being without malice, forethought, and without deliberation or
12 premeditation. It's the same thing, except for the expressed or implied. Why
13 are we --

14 MR. BASHOR: Judge, I pulled these four instructions right from
15 *Vaoga*. I didn't -- because it was the most recent trial, I had that we actually
16 have the jury charged with the law on manslaughter was *Vaoga*.

17 THE COURT: So, what's your difference between your heat of
18 passion and the State's heat of passion? Okay, because yours says the basic
19 injury is whether or not at Line 8, and that's not right. So, I'm just curious. I
20 mean I'm not picking on you; a typo is not a big deal. I'm just saying --

21 MR. BASHOR: You know, Judge, this is not of --

22 THE COURT: All right. Well, let's go back to the State's first.

23 MR. BASHOR: Right, let's use theirs.

24 THE COURT: Okay. What's the beef with the first one, when the
25 State asks to move lines 8 and 9 to lines 1 and 2, and then it goes on. You

1 don't think it's an inaccurate statement of the law; do you?

2 MR. BASHOR: No.

3 THE COURT: Okay.

4 MR. BASHOR: No.

5 THE COURT: So --

6 MR. BASHOR: I have no objection to using the State's two
7 instructions as modified.

8 THE COURT: Okay. So, can you take your Lines 8 and 9 then --

9 MR. STANTON: Yes. I'm sorry, Your Honor.

10 THE COURT: -- and move them to Lines 1 and 2.

11 MR. STANTON: Yes.

12 THE COURT: And then just bump everything else down so that we
13 could -- you could email it to my law clerk. Or does he have -- he must have it.
14 Is he -- he's here, isn't he?

15 MR. STANTON: I've been sending it to Diane; is that okay?

16 MR. BASHOR: I've been sending -- I sent it to him yesterday.

17 THE COURT: Yeah, either one.

18 MR. BASHOR: I did. I sent it to him.

19 THE COURT: But, you know, she's going to make him do it, so.

20 MR. STANTON: Yeah. I'll send it to Diana. I don't have the law
21 clerk's.

22 THE COURT: That's the benefit of 29.5 years of experience. Okay.
23 So, you don't have a problem with the two -- let me get -- let me get somebody
24 on fixing this real quick --

25 MR. STANTON: Okay.

1 THE COURT: -- and I'll be right back.

2 [Judge exits the courtroom at 4:02 p.m. and re-enters at 4:03 p.m.]

3 THE COURT: Okay. As we speak, my law clerk is doing your work
4 for you. Excellent. Next. So, the State has no more manslaughter
5 instructions, correct?

6 MR. STANTON: Correct.

7 THE COURT: Okay. So, moving to the -- I was going to go to the
8 Defense and see if there's anything they're withdrawing in light of that or want
9 to add on top of it.

10 MR. STANTON: Okay. The only comment that I would like to
11 make, Your Honor, I think it's important when the settling instructions record is
12 developed is, I'm aware of the law about when lesser includeds in an open
13 murder are permitted. It's important, I think, for the record, that I submitted
14 these instructions under the -- better to submit them than to have them in the
15 same font and paginated, as opposed to the State's belief that they can or
16 should be given.

17 So, number one, it is, in my opinion, the lesser includeds being
18 inconsistent with the theory of the Defense. I'm also aware that the Nevada
19 Supreme Court, in addressing this issue, says that it's not to be determined
20 based upon the theory of the Defense, but whether or not there's the slightest
21 whiff of evidence that could be argued about these.

22 So, with that, I just want the record to state the State's perspective
23 of the lesser includeds while they're in here and that -- I'm assuming that the
24 Defense, from a strategic perspective, is requesting that the lesser includeds
25 be given.

1 MR. BASHOR: Yes.

2 THE COURT: Okay. So, I was waiting when you were -- waiting to
3 see when you were going to bring that up. That's not my --

4 MR. BASHOR: Did you want to go to the Defense unsettled?

5 THE COURT: Yes. Just give me one second. So, starting with
6 your manslaughter, the unlawful killing of a human being without malice,
7 expressed or implied, and without any mixture of deliberation, and then
8 your --

9 MR. BASHOR: I withdraw all four, Judge.

10 THE COURT: Okay. So, you believe they're covered here?

11 MR. BASHOR: Yes, Your Honor.

12 THE COURT: Okay. All right. Can you approach and get a copy of
13 the, you know, corrected version?

14 MR. FLINN: I do have that municipal code, as well, Your Honor,
15 whenever the Court's ready to listen to that.

16 THE COURT: Okay. Right now, we have the Prosecution is not
17 required to present direct evidence of a Defendant's state of mind as it existed
18 during the commission of a crime, and the jury may infer the existence of a
19 particular state of mind from the circumstances disclosed by the evidence.
20 The State has offered that instruction with authority cited as *Miranda v. State*,
21 101 Nevada 562, a 1985 case, and it's in a pile marked objected to by the
22 Defense.

23 MR. BASHOR: That's correct, Judge.

24 THE COURT: So, at this time if you would like to make a record
25 about what your objection is so the District Attorney can respond, and then I'll

1 make a decision.

2 MR. BASHOR: Sure. I mean, Judge, in its plain reading, first of all
3 I think it's cumulative to the other explanations of how circumstantial evidence
4 can be used. It is, as Your Honor explains in the opening instructions, and it's
5 repeated here, circumstantial evidence can be just as powerful, if not more
6 powerful, as direct evidence of the state of mind.

7 And so, my opinion, when we go out of our way to say -- and
8 remind them that the circumstantial evidence is state of mind, it's something
9 that can be considered. It kind of lowers, in my mind, their burden, especially
10 since the cumulative nature exists. I also read *Miranda*. It's kind of a
11 *McConnell* issue in *Miranda* because the argument by the, I guess the
12 Appellant and *Miranda* was that there was kind of a double counting, that the
13 felony murder got them to the penalty phase, and then the only aggravated
14 they had was the felony.

15 And so, they went into great length to explain that there was
16 circumstantial evidence of a robbery separate and apart from the murder. And
17 so, I think in that context, I could understand it's applicable -- excuse me,
18 applicability, but I would ask that it not be given, given the other instructions.

19 MR. STANTON: Well, I think I agree that that's the context is what
20 it is, but the Supreme Court in the *McConnell* analysis, I think delves precisely
21 to why this is a correct statement of the law and speaks directly to that issue.
22 Once again, I don't think it highlights anything because they're instructed that
23 none of the instructions have more importance than one another, and the well-
24 worn phrase that they're dutybound to follow their instructions, and we
25 assume that they will.

1 THE COURT: This is not an inaccurate statement of the law, in the
2 Court's opinion. I've given this instruction probably 50 times, and I'm going to
3 give it in this case over the Defense's objection. So, I appreciate the argument,
4 understand it, and it's overruled. I'll give that instruction and --

5 [Judge and Clerk confer.]

6 THE COURT: So other than that instruction, which you made a
7 very good record on, were there any other State proffered instructions that I
8 haven't covered that were objected to by the Defense, because that's the only
9 one that was presented to me.

10 MR. BASHOR: No, Your Honor.

11 THE COURT: Okay. Let me get a copy of that, because I took off
12 the cite from the bottom, and I'll give that to you. If we go to the Defense
13 proffered instructions now, please.

14 Starting with you are instructed, and if you find the State has
15 established the Defendant has committed first degree murder, you shall select
16 first degree as your verdict. The crime of first degree murder includes the
17 crime of second degree murder. You may find the Defendant guilty of second
18 degree murder if -- thank you. I'm sure Mr. Stanton needs that.

19 MR. BASHOR: That's no problem. I need to burn the calories.

20 THE COURT: So, I'm sorry. You may find the Defendant guilty of
21 second degree murder if you have not found beyond a reasonable doubt that
22 the Defendant is guilty of murder in the first degree, and all 12 of you are
23 convinced beyond a reasonable doubt the Defendant is guilty of the crime of
24 second degree murder. If you are convinced beyond a reasonable doubt that
25 the crime of murder has been committed by the Defendant, but you have

1 reasonable doubt as to whether the murder is in first or second degree, you
2 must give the Defendant the benefit of that doubt and return the verdict of
3 murder in the second degree. I'm just going to read all the second degree
4 related because that's -- then we can have one discussion.

5 The next says, when it is impossible to commit a particular crime
6 without committing it, at the same time and by the same conduct, another
7 offense of less or greater degree, the latter is with respect to the former or
8 lesser included offense. If you're not satisfied beyond a reasonable doubt the
9 Defendant is guilty of the offense charged, he may, however, be found guilty
10 of any lesser included offense if the evidence is sufficient to establish his guilt
11 of such lesser offense beyond a reasonable doubt.

12 The offense of murder, which actually charges the Defendant with
13 first degree murder, necessarily includes the lesser offense of second degree
14 murder. Voluntary manslaughter is a lesser included offense of both first and
15 second degree murder. Thus, you may return a verdict of voluntary
16 manslaughter if you first rule out both first and second degree murder.

17 You're instructed if you find the State has established the
18 Defendant's committed second degree murder, you shall select second degree
19 murder as your verdict. The crime of second degree murder can include the
20 crime of voluntary manslaughter. You may find the Defendant guilty of
21 voluntary manslaughter if you have not found beyond a reasonable doubt the
22 Defendant is guilty of murder in the first degree or second degree; and, two, all
23 12 of you are convinced beyond a reasonable doubt that the Defendant is
24 guilty of the crime of voluntary manslaughter.

25 If you are convinced beyond a reasonable doubt that the crime of

1 murder has been committed by the Defendant, but you have reasonable doubt
2 as to whether such murder was a second degree or voluntary manslaughter,
3 you must give the Defendant the benefit of that doubt and return a verdict of
4 voluntary manslaughter.

5 Next, if you do not find beyond a reasonable doubt the Defendant
6 committed first degree murder or second degree murder, and after
7 consideration of all the evidence you have reasonable doubt as to whether
8 Defendant enacted in the heat of passion caused by adequate legal
9 provocation, you must return a verdict of either voluntary manslaughter or not
10 guilty. This is because the State has the burden of proving beyond a
11 reasonable doubt the Defendant did not act in a heat of passion caused by
12 adequate legal provocation.

13 Next, the term passion, as used in the definition of -- well, I guess
14 we can talk about that one separately. That's more -- let's talk about the first
15 one, two, three, four instructions that I just read into the record. You don't
16 have to talk about them first because you're offering them, and the State has
17 an objection. So, I'll hear the objection, then I can --

18 MR. STANTON: Your Honor, as to the first instruction, you are
19 instructed that you find. I believe, and for purposes of my argument, that's a
20 transition instruction. I have no objection to the Lines 1 through 10 of the
21 instructions. The portions I object to are the last paragraph of that instruction.

22 THE COURT: Okay.

23 MR. STANTON: And I can lay my foundation about the basis of
24 why I object to that portion of the instruction.

25 THE COURT: Sure.

1 MR. STANTON: Number one, I'm aware that there is case law
2 where courts have said that it's not error to give this instruction, but it's a
3 circuitous argument because no one has ever, in my experience, been able to
4 cite to the authority of that portion of the instruction.

5 Number one, I believe it's absolutely nonsensical.

6 THE COURT: Murder.

7 MR. STANTON: Number two, it violates what I think the other
8 instructions are about the jury's duty and method in which they deliberate in a
9 case.

10 THE COURT: Specifically meaning?

11 MR. STANTON: That there is no way, without doing violence to
12 their obligation to apply the elements and instructions of law to the facts,
13 where someone gives the benefit of the doubt if there's a tie. Number one, I
14 can't envision a tie. I don't know how that comes about, but to -- what I read
15 this to be is a very subtle request for compromise, and there is absolutely no
16 authority in any state or federal jurisdiction that I've found remotely that
17 supports this proposition.

18 MR. BASHOR: First, Your Honor, you have given this instruction.
19 It came from *Coleman Vaoga*. Second, I would assert to the authority, it
20 probably rests in *Crawford*, in which it's just an inverse statement that if they
21 haven't reached -- or they have a reasonable doubt, that they should, as to
22 premeditation, deliberation, et cetera, that they should return a verdict of
23 second degree.

24 THE COURT: Well, you're the first DA to ever make this argument.
25 I don't know that I necessarily disagree with it, but I'm going to give this

1 instruction. One, because based upon the facts of this case and the evidence
2 that I heard, I can't even wrap my mind around this being really prejudicial to
3 you. So, we might make law, but it won't be in this, it won't be on that
4 instruction in this case. Next.

5 MR. STANTON: The next one, Judge, is when it's impossible. I
6 think --

7 THE COURT: A lot of its repetitive of what I just read, except for
8 that last part --

9 MR. STANTON: Right.

10 THE COURT: -- voluntary manslaughter.

11 MR. STANTON: And I think to the next one is this second to
12 manslaughter, which I presume, based upon your previous ruling, you're
13 going to give. I have my same objections for the record to that. And with that,
14 I think it's not only cumulative, but --

15 THE COURT: Yeah. I mean if I give, you -- if I give the instruction
16 you were instructed if you find that the State has established the Defendant
17 has committed second degree murder, you shall select second degree murder
18 as your verdict. The crime of second degree murder can include the crime of
19 voluntary manslaughter. And I include Lines 12 through 15, because I've
20 already done that in your other transition instruction, how is --

21 MR. STANTON: Then I agree.

22 THE COURT: -- the middle one not cumulative?

23 MR. BASHOR: Then I agree. When it is impossible to --

24 THE COURT: So, it's withdrawn?

25 MR. BASHOR: Yes.

1 THE COURT: Okay. I'll give the one you -- I'll give the one that
2 Stanton doesn't like, the first objection I've ever heard, that I don't necessarily
3 disagree with, but I'm just going to give it in this case. Next.

4 MR. STANTON: What's the next one that you have in your order,
5 Your Honor. I might have -- is it if you do not find?

6 THE COURT: Yes.

7 MR. STANTON: I think this is --

8 THE COURT: How is this not covered by everything else? I'm just
9 curious.

10 MR. BASHOR: I believe it is, it's withdrawn.

11 THE COURT: Okay. He's withdrawing it. Next is the term passion.
12 I didn't really look at this one yet, so if you give me just a minute. Does this
13 come from a case?

14 MR. BASHOR: We crafted this after a long --

15 THE COURT: It looks crafted.

16 MR. BASHOR: It has a lot of Your Honor's language in it because
17 again, we stole it from *Vaoga*. We -- because the passion definition is used
18 twice, we -- I believe Ms. Craig, in that case, had like 18 different versions and
19 the State had a couple versions, and we --

20 THE COURT: Okay. *Vaoga* beat someone to death with a rock --

21 MR. BASHOR: Right.

22 THE COURT: -- in the desert after some kind of, you know,
23 alleged --

24 MR. BASHOR: A chicken was stolen.

25 THE COURT: Yes.

1 MR. BASHOR: Yeah.

2 THE COURT: There was a theft of chicken.

3 MR. BASHOR: Yes, there was.

4 THE COURT: Hot fresh chicken.

5 MR. BASHOR: Yes.

6 THE COURT: Okay, I'm just -- I'm just putting it out there that the
7 facts are he didn't do it --

8 MR. BASHOR: Well --

9 THE COURT: -- and I haven't heard any other arguments other
10 than there was yelling, yelling by three different other people. Okay. So, you
11 want this?

12 MR. BASHOR: Yes.

13 THE COURT: And the State, I --

14 MR. STANTON: Well, first of all, starting with the first paragraph, I
15 have an objection because I don't think it's --

16 THE COURT: Is there more than one paragraph? What are you
17 looking at?

18 MR. STANTON: No, just one paragraph.

19 THE COURT: Oh, okay.

20 MR. STANTON: In the first paragraph, first sentence of the
21 instruction --

22 THE COURT: Okay.

23 MR. STANTON: -- is a complete misstatement, I think, of the law.

24 The term passion, as used in the Defense definition of deliberation -- I'm
25 unaware that passion is an operative element within deliberations of the

1 instructions in this case or any --

2 THE COURT: Well, did I -- is there a passion and first degree
3 murder in these instructions and I -- that like needs to be clarified for them?
4 Did I miss --

5 MR. BASHOR: It's just that it, that deliberate must be found in the
6 absence of passion. It's a delivered determination may be arrived in a short
7 period of time, but in all cases, the determination must not be formed in
8 passion, or if formed in passion, it must be carried out after there has been
9 time for the passion to subside and deliberation to occur. A mere
10 unconsidered and rash impulse is not deliberate even though it includes the
11 intent to kill.

12 I don't necessarily disagree with what Mr. Stanton is saying as to,
13 like, how it's phrased.

14 THE COURT: Yeah, that first sentence.

15 MR. BASHOR: Right.

16 THE COURT: If I gave that to you that's because nobody objected
17 to it.

18 MR. BASHOR: Right.

19 MR. STANTON: Who was the DA on this case, the rock and
20 chicken case?

21 MR. FLYNN: Pam Weckerly and Nick Ports [Phonetic].

22 THE COURT: Can I tell you something?

23 MR. STANTON: Yeah.

24 THE COURT: Sometimes you can be a DA and agree to everything
25 the Defense wants in an instruction and still win your case. Do you

1 understand what I'm saying?

2 MR. STANTON: I take that exactly as it was intended, Your Honor.

3 THE COURT: So, I agree about the first sentence. It's confusing,
4 and so I --

5 MR. STANTON: And I think the rest of it is duplicative. I think it's
6 already contained in other instructions, either manslaughter or --

7 THE COURT: Can we look at that instruction that it's in?

8 MR. STANTON: Sure. Well, the second sentence is, as applied to
9 first degree murder, a deliberate determination must be formed, and that's the
10 standard --

11 THE COURT: Isn't that in the first degree murder instruction?

12 MR. STANTON: Yes. It's --

13 MR. BASHOR: Yes. It's what I just read.

14 MR. STANTON: -- actually the Defense's instruction is broken
15 down. I think it's the *Runyon* premeditation deliberation. I just put it all in
16 one, but it's in a series of about four or five instructions that break down --

17 MR. BASHOR: That's the one I just read.

18 MR. STANTON: -- premeditation deliberation.

19 THE COURT: You still want what?

20 MR. BASHOR: I said that was the one I just read, that he's referring
21 to.

22 THE COURT: Oh, so it's covered?

23 MR. BASHOR: That is covered.

24 THE COURT: Okay. So, I'll mark this as Defense -- this is going to
25 be marked as a Court's exhibit --

1 MR. BASHOR: Okay.

2 THE COURT: -- next in order number --

3 THE CLERK: 3.

4 THE COURT: -- 3, proffered by the Defense, and the Court declines
5 to give it for two reasons. Number one, the first sentence is confusing,
6 whether I gave it in *Vaoga* -- *Coleman Vaoga* or not; and, number two, the
7 remainder of the instruction is covered in the other instructions.

8 MR. BASHOR: Fair enough, Your Honor.

9 THE COURT: Okay. So, do you have any other proposed
10 instructions that you would proffer, you know, to me to give?

11 MR. BASHOR: Yes, Judge. It's the modified -- I sent this as a
12 separate email around noon today. It's one instruction. It's a limine -- it's a
13 version of the limine instruction that Your Honor had given.

14 MR. STANTON: It's a Tog instruction, Your Honor.

15 THE COURT: Oh, yeah, yeah, yeah. Where is it? Yes, yes, yes. I
16 like this. So, we're going to put it -- do you care where it goes?

17 MR. STANTON: No.

18 MR. BASHOR: No.

19 THE COURT: Okay. This is a good instruction, and I'm going to
20 give that.

21 MR. STANTON: You created it.

22 THE COURT: Yeah.

23 MR. BASHOR: Well, that one I slightly modified.

24 MR. STANTON: It's the tog instruction.

25 THE COURT: That's right.

1 MR. BASHOR: It is slightly modified, Your Honor, because of the
2 concerns you gave the, ladies and gentlemen, now I'm going to caution you. I
3 took --

4 THE COURT: Yeah.

5 MR. BASHOR: -- that part out.

6 THE COURT: Right. Well, that would explain why I like it, because
7 I helped write it.

8 MR. BASHOR: Right.

9 THE COURT: I was a contributing author.

10 MR. BASHOR: Very good. So, that just leaves us with the
11 discharging.

12 THE COURT: Right. But first, I just need to get -- if you don't
13 mind, what I was going to do was get a little order together here.

14 MR. BASHOR: Great.

15 THE COURT: Then listen to the argument, decide if I'm going to
16 give it, then copy them and give them to you in the same order, and then
17 number them.

18 MR. BASHOR: That's perfect.

19 MR. STANTON: That's perfect.

20 THE COURT: So, just give me a minute. Okay. Okay. I've made a
21 proposed order, which I will give you a copy of, and then if you -- I won't
22 number it, obviously, and we'll go through it, and if there's something you
23 prefer moved around, we can do it.

24 So, the final issue then is related to the instructions proposed by
25 the State, that reads any person who willfully, unlawfully, maliciously

1 discharges a firearm within an occupied structure is guilty of discharging a
2 firearm within a structure. That structure must be within an area designated
3 by the city or county in a populated area for purpose of prohibiting the
4 discharge of weapons. The city of North Las Vegas is designated as a
5 populated area for the purpose of prohibiting the discharge of weapons.

6 It's that last sentence that the Defense takes issue with, and I asked
7 you to give me what you were relying on to say that as a matter of law, the
8 Court could take judicial notice and instruct the jury accordingly.

9 MR. FLINN: Yes, Your Honor, and I just emailed -- I did a
10 screenshot of my phone, but to Defense counsel and to the Court's law Clerk.
11 The Municipal Code for the city of North Las Vegas, 9.32.110, entitled Firing of
12 Weapon, states: It is unlawful for any person to explode or fire any pistol,
13 revolver, rifle, shotgun, or any other firearm within the limits of the city of
14 North Las Vegas.

15 So, as a matter of law, you cannot shoot a gun. It's a designated
16 place that you cannot discharge a firearm under its own code, which the
17 statute, the NRS, says the county or city designates it accordingly. Any other
18 issue about whether, there's a question for the jury, whether the gun was fired,
19 whether it was fired in a building, of course, all of those things are, but this is a
20 matter of law. It's a municipal code that it's a prohibited place.

21 MR. STANTON: And, Judge, could I just add one thing? In the
22 Defense exhibits, the aerials, at the bottom in their Google maps index, it says
23 City of North Las Vegas, 4032 Smokey Fog Avenue. So, I think that -- well,
24 that's it.

25 MR. BASHOR: Judge, I would just rest on the previous objection. I

1 think that since it is an element of the offense, it's not something that should
2 be taken judicial notice of. I don't think there's a dispute that this occurred in
3 North Las Vegas. And I know that this might be considered splitting hairs, but
4 since it is an element, I would submit that they would have had to present
5 some evidence which would support the element that it was pursuant to a
6 county ordinance, that this was designated a populated area.

7 THE COURT: Well, I'm going to -- interesting argument, like it,
8 overrule your objection to this instruction. Honestly, I don't want to start
9 having them question -- I guess I could give them an instruction that says
10 Municipal Code 932.110. Why can't that be an instruction then if that's the
11 issue? Why does it have to be in evidence? I mean they're instructed on what
12 the law is. I guess what you're saying is -- that's different than saying a
13 firearm is a deadly weapon, which is a question of fact. So, I'm going to ask
14 you to prepare -- because you understand what I'm saying?

15 MR. STANTON: Yes.

16 THE COURT: What we would be doing in response to that
17 objection is taking out Line 6 and 7, and telling them Municipal Code of North
18 Las Vegas, 932.110 permits the firearm -- firing of a firearm in the city of Las
19 Vegas.

20 MR. FLINN: And quote the -- yes, Your Honor.

21 THE COURT: Because it's almost the same as a firearm in that
22 unpublished opinion --

23 MR. FLINN: Yes, Your Honor.

24 THE COURT: -- type scenario. See what I'm saying?

25 MR. BASHOR: I understand what you're saying.

1 THE COURT: So, can you cut and paste something right now and
2 email it to my law clerk with an instruction number at the top?

3 MR. FLINN: I can as soon as I get to my office. I don't think I can
4 do it on my phone.

5 THE COURT: On your phone? Why not?

6 MR. STANTON: I don't know who, other than Mark Dejakavo
7 [Phonetic] , I'm not sure who could do that and he would do it on his --

8 MR. FLYNN: I don't know if I'm --

9 THE COURT: Stanton, you need to go --

10 MR. FLYNN: -- skilled.

11 THE COURT: -- to a class, seriously.

12 MR. STANTON: I got to do a lot of things.

13 THE COURT: You don't have a Google Docs or nothing on your
14 phone? What's happening?

15 MR. STANTON: We work for the Clark County District Attorney's
16 Office, Your Honor.

17 THE COURT: This is like Circa 1972. What's happening with you?

18 MR. STANTON: We don't have Word apps.

19 THE COURT: And Flinn, you got must more hair, so you should be
20 able to do this.

21 MR. FLINN: That doesn't -- I wish it equated to not as many years,
22 but.

23 MR. BASHOR: Judge, maybe we could, Mr. Flinn and I, if your law
24 clerk --

25 MR. FLINN: I'm working on it.

1 MR. BASHOR: -- doesn't matter, we could just stand over him
2 and --

3 THE COURT: He's used to that. Go lord over him and get this
4 done.

5 MR. BASHOR: Okay.

6 THE COURT: Can you just get it done, because I need to get -- we
7 need to get a -- he lives to be lorded over.

8 UNIDENTIFIED MALE: Oh, that's my life.

9 THE COURT: That is your life, only usually it's me.

10 MR. STANTON: So, tomorrow 10:15 is when the --

11 THE COURT: Oh, wait, gentlemen. You also have to redact the city
12 of North Las Vegas as designated. So, take this instruction and take that last
13 sentence out, in addition to typing up North Las Vegas, blah, blah, blah.

14 MR. FLINN: Very good.

15 THE COURT: Okay? You see what I'm saying?

16 MR. FLINN: Yes, I do.

17 THE COURT: Okay. I don't need to give it, do you, because then I'll
18 forget.

19 MR. STANTON: Ryan, I'm going to address the Count 4.

20 MR. BASHOR: Okay. I believe I can trust Mr. O'Brien.

21 MR. STANTON: Okay. Your Honor --

22 THE COURT: Okay, so wait a minute. Hold on.

23 MR. STANTON: Okay.

24 THE COURT: The record shall reflect that two of the attorneys have
25 gone to work on the instructions, Mr. Bashor and Mr. Flinn, and that you two,

1 in the presence of the Defendant, outside the presence of the jury, have
2 something else you want to address. Go ahead.

3 MR. STANTON: Yes, Your Honor. Mr. Bashor and myself have
4 been in discussions over the past couple days about Count IV, the one of the
5 prohibited person count. And so, to be honest, this is the first time I've ever
6 had to formally do the bifurcation of this particular count. It's Dave Stanton's
7 belief that if the Defendant is convicted, then we have no intent of, even the
8 brief time that I hear it takes to present it, deliberate it, to go forward on that.

9 So -- but there's a condition too, that Mr. Bashor, I believe, is in
10 agreement, and that is this, if the Defendant is convicted of first degree
11 murder, or even something else, there's a high degree of likelihood that the
12 State is not going to seek to go to that second issue, and, therefore, we would
13 conditionally dismiss it on this ground, that we can agree to dismiss it at this
14 time, but if for whatever reason this matter were to come back for a retrial, the
15 State would then have the opportunity to reinvigorate that count.

16 THE COURT: So, the State would -- if your client's convicted --
17 here's what I'm hearing in greater Togliatti detail: First degree murder with
18 use of a deadly weapon, first degree murder, second degree murder with use
19 of a deadly weapon, second degree murder, voluntary manslaughter with use
20 of a deadly weapon, voluntary manslaughter with use of a deadly weapon,
21 voluntary manslaughter. Is that it? Meaning and/or, and/or, and/or, or are you
22 throwing in the if it's just assault with a deadly weapon, which I can't even
23 wrap my mind around, or discharging a firearm because --

24 MR. STANTON: Right.

25 THE COURT: -- the facts are --

1 MR. STANTON: If it's --

2 THE COURT: -- it's either all or nothing, right?

3 MR. STANTON: Right. If it's first or second degree murder, I don't
4 have any intention of what I --

5 THE COURT: What about voluntary manslaughter?

6 MR. STANTON: Maybe.

7 THE COURT: So, what I'm hearing is, if your client is convicted of
8 first or second degree murder with use of a deadly weapon or without, the
9 State will dismiss that count conditionally, meaning if you're -- and the
10 condition being if the Defendant is ever in a position, whether it's as the result
11 of an appeal or a result of a successful writ of habeas, post-conviction, to be
12 able to have another trial, that the State reserves the right to charge him with
13 that offense and have it go forward?

14 MR. O'BRIEN: Understood.

15 THE COURT: And as to whether he's convicted of voluntary
16 manslaughter with the use of a deadly weapon, which would surprise
17 everyone, but nothing surprises me anymore, the State -- is that undecided,
18 and we'll make that determination presumably at the time, yes?

19 MR. STANTON: Yes.

20 MR. O'BRIEN: Understood.

21 THE COURT: Okay. So, win, win for your client. I mean, you
22 know, on a minor scale.

23 MR. O'BRIEN: Understood. Once we put into the perspective of
24 chicken and a rock, everything kind of -- it seems fine.

25 THE COURT: Yep. So, let's wait just a -- we'll get these last two --

1 we'll get this instruction fixed and get the new one, and then I can copy them,
2 give them to you, number them really quick, and you're on your way. Wow,
3 Google Docs.

4 MR. FLINN: This is awesome.

5 THE COURT: Google Docs.

6 MR. BASHOR: Is that okay? Is this what you wanted?

7 THE COURT: Yeah, that's exactly what I want. Perfect. Okay. So,
8 could you -- will you do me a favor? How many copies do you need? Two for
9 now, right?

10 MR. FLINN: I just need one copy.

11 THE COURT: Right. You each get one, so two.

12 MR. FLINN: Right.

13 MR. BASHOR: Yeah, that's fine.

14 THE COURT: Make a copy of this for them, one each, and then we
15 can go through them.

16 [Pause]

17 THE COURT: Okay. So, let's go through this. Instructions to the
18 jury, instruction number 1.

19 Two is, if in the instructions, any rule direction ideas, two.

20 Three is an amended indictment is but a formal method of
21 accusing a person, and it's two pages long. And by the way, if I don't state
22 there was an objection, there wasn't an objection, right?

23 So, four, murder is the unlawful killing of a human being. There
24 was no objection.

25 Malice or forethought means the intentional doing of a wrongful

1 act is five. No objection.

2 Express malice is six, and it goes on. No objection.

3 Murder in the first degree, which is murder -- excuse me, is murder
4 which is perpetrated by means of any kind of, and that is seven. No objection.

5 Willfulness is the intent to kill is eight. No objection.

6 Deliberation is a process of determining is nine. No objection.

7 Deliberate determination may be arrived at is ten. No objection.

8 Premeditation is a design, 11. No objection.

9 Premeditation need not be for a day, an hour, or even a minute is
10 12. No objection.

11 The law does not undertake the measure in units of time is 13. No
12 objection.

13 All murder which is not murder in the first degree, murder in the
14 second degree, 14. No objection.

15 You are instructed that if you find the State has established is 15.
16 The record should reflect, that as to instruction number 15 proposed by the
17 Defense, that Lines 12, 13, 14 and 15 were objected to by the State of Nevada.

18 You are instructed that if the State has established that the
19 Defendant has committed second degree murder, you shall select second
20 degree murder as your verdict was Instruction Number 16. The record shall
21 reflect this was proposed by the Defense and the State of Nevada objects to
22 Lines 12, 13, 14 and 15.

23 Voluntary manslaughter is the unlawful killing of a human being
24 without malice or forethought and without deliberation or premeditation is 17,
25 and there was no objection.

1 The heat of passion will reduce a homicide to voluntary
2 manslaughter -- excuse me, which will reduce is 18.

3 There was no objection. The Prosecution is not required to present
4 direct evidence is 19. The Defense made an objection, which I incorporate
5 here and by reference that I overruled, and I'm giving the instruction.

6 Assault means an intentional placing of another person in
7 reasonable apprehension is 20. There was no objection.

8 A deadly weapon is any instrument which, is 21. No objection.

9 The State is not required to have recovered is 22. No objection.

10 Any person who willfully, unlawfully, and maliciously discharges a
11 firearm is 23. There was no objection.

12 The city of North Las Vegas Municipal Code 9.32.110 is 24. The
13 record shall reflect that the Defense's position is that rather than this
14 instruction being given to the jury, the State should have had to present
15 evidence of the city of North Las Vegas Municipal Code or evidence that it was
16 a populated area pursuant to Nevada law, and giving the jury the law and the
17 evidence in the State's case in chief. Does that --

18 MR. BASHOR: Yes.

19 THE COURT: -- accurately state your position?

20 MR. BASHOR: It does.

21 THE COURT: So, while Instruction Number 24, from your point of
22 view, is not an inaccurate statement of the law, it's simply your view that
23 procedurally, the Court should have handled this in a different manner and
24 required the State to prove it in their case in chief?

25 MR. BASHOR: Correct.

1 THE COURT: Okay. Instruction Number 25, to constitute the crime
2 charged. There was no objection.

3 The Defendant is presumed innocent is 26. No objection.

4 The evidence which you are to consider is 27. No objection.

5 The flight of a person after the commission of a crime is 28. No
6 objection.

7 The credibility or believability is 29. No objection.

8 Any testimony that a witness believed that the Defendant had a
9 history of violence is being requested by the Defense based upon a previous
10 court ruling that is already in the record, and there was no objection to this
11 instruction.

12 Any witness who has special knowledge, skill, experience, training,
13 or education is 31. No objection.

14 In arriving at a verdict in this case as to whether Defendant is guilty
15 or not guilty, the subject of penalty or punishment is 32. No objection.

16 It is the constitutional right of a Defendant in a criminal trial that he
17 may not be compelled to testify is 33. And requested by the Defense,
18 therefore, no objection.

19 Although you are to consider only the evidence in the case is 34,
20 and there was no objection.

21 When you retire to consider your verdict is 35. No objection.

22 If, during your deliberations, commonly known as the playback
23 instruction, is 36. No objection.

24 During the course of this trial, you are not to communicate with
25 anyone in any way regarding blah, blah, blah, commonly known as the social

1 media instruction, is 37.

2 Over to the left, is anyone bothered by that because I am not?

3 MR. BASHOR: No.

4 MR. FLYNN: No.

5 THE COURT: All right. Now you will listen to the arguments.
6 Counsel, will endeavor to aid to reach a proper verdict is 38. Any objection?

7 MR. BASHOR: No, Your Honor.

8 THE COURT: Okay. Is there anything else regarding the jury
9 instructions that you would like to address? I've marked as a Court's Exhibit 1,
10 that you proposed that I didn't give. I made a record and incorporate all
11 arguments into the objections that you've made. Is there anything else?

12 MR. STANTON: Just that all parties agree that the verdict forms
13 are in proper order.

14 MR. BASHOR: That's correct.

15 THE COURT: Okay. Then I will see you tomorrow at 10:15. Thank
16 you very much.

17 MR. STANTON: Thank you, Your Honor.

18 MR. BASHOR: Thank you, Your Honor.

19 [Proceedings concluded at 4:58 p.m.]

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

23 

24
25

Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708



1 RTRAN
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7)
8 STATE OF NEVADA,)

9 Plaintiff,)

10 vs.)

11)
12 SHAWN GLOVER, aka SHAWN LYNN)
13 GLOVER, JR.,)

14 Defendant.)

CASE NO. C-16-312448-1

DEPT. IX

15 BEFORE THE HONORABLE JENNIFER P. TOGLIATTI, DISTRICT COURT JUDGE
16 FRIDAY, AUGUST 3, 2018

17 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 5**

18 APPEARANCES:

19 For Plaintiff:

20 DAVID STANTON, ESQ.
21 WILLIAM FLINN, ESQ.

22 For Defendant:

23 ROBERT E. O'BRIEN, ESQ.
24 RYAN J. BASHOR, ESQ.

25 RECORDED BY YVETTE G. SISON, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, August 14, 2018

2
3 [Case called at 10:19 a.m.]

4 THE COURT: -- presented in -- is it one or two?

5 MR. FLINN: I'm sorry.

6 THE COURT: Does the State have two or one PowerPoint?

7 MR. FLINN: One.

8 THE COURT: Okay. The State's PowerPoint that Mr. Flinn is going
9 to use in closing?

10 MR. FLINN: Yes, Your Honor.

11 THE COURT: Will be marked as Court's Exhibit, next in order,
12 number --

13 THE CLERK: 4.

14 THE COURT: And obviously, it doesn't go back to ladies and
15 gentlemen of the jury. Then the Defense, according to my clerk, has presented
16 a PowerPoint for closing, that will be marked Court's Exhibit, next in order,
17 number --

18 THE CLERK: 5.

19 THE COURT: And that will not go back to the ladies and gentlemen
20 of the jury.

21 MR. BASHOR: Can I see the Court Exhibit 5 real quick? I'm going
22 to -- I just believe there's a line I want to cross out.

23 THE COURT: So, are we ready?

24 THE MARSHAL: Yes, ma'am.

25 THE COURT: Bring them in. Let's go.

1 THE MARSHAL: Okay. Judge, are we ready for the jury?

2 THE COURT: Oh, I'm sorry. Yes.

3 THE MARSHAL: All rise. The jury is entering. The jury is all
4 present, ma'am.

5 [In the presence of the jury.]

6 THE COURT: Counsel, will you stipulate to the presence of the
7 jury?

8 MR. STANTON: Yes, Your Honor.

9 MR. BASHOR: Yes, Your Honor.

10 THE COURT: All right. Ladies and gentlemen of the jury, I'm now
11 about to instruct you on the laws as it applies in this case. I would like to
12 instruct you orally without having to read to you these instructions, but they're
13 of such importance that I have to read them to you verbatim.

14 The instructions are long, and some might seem complicated. If
15 they're not especially clear to you when I first read them, please keep in mind
16 that you're going to have a copy of the jury instructions with you in the
17 deliberation room where you can there read and consider them carefully.
18 Instructions to the jury.

19 Instruction number 1. It is now my duty as judge to instruct you in
20 the law that applies to this case. It is your duty as jurors to follow these
21 instructions and to apply the rules of law to the facts as you find them from the
22 evidence. You must not be concerned with the wisdom of any rule of law
23 stated in these instructions regardless of any opinion you may have as to what
24 the law ought to be. It would be a violation of your oath to base a verdict on
25 any other view of the law than that given in the instructions of the Court.

1 Instruction number 2. If in these instructions any rule, direction, or
2 idea is repeated or stated in different ways, no emphasis thereon is intended
3 by me and none may be inferred by you. For that reason, you are not to single
4 out any certain sentence or any individual point or instruction and ignore the
5 others, but you are to consider all the instructions as a whole and regard each
6 in the light of all the others. The order in which the instructions are given has
7 no significance as to their relative importance.

8 Instruction number 3. An amended indictment is but a formal
9 method of accusing a person of a crime and is not of itself any evidence of his
10 guilt. In this case, it is charged, in an indictment, that on or about the 1st day
11 of January 2016, the Defendant committed the offenses of murder with use of
12 a deadly weapon, a category A Felony, NRS 200.010, 200.030, 193.165 assault
13 with a deadly weapon, a category B Felony, NRS 200.471, and discharge of a
14 firearm from or within a structure or vehicle, a category B felony, NRS 202.287.
15 It is the duty of the jury to apply the rules of law contained in these
16 instructions to the facts of the case and determine whether or not the
17 Defendant is guilty of the offense charged.

18 Count 1. Murder with use of a deadly weapon, did willfully,
19 unlawfully, feloniously, and with malice aforethought kill Patrick Fleming, a
20 human being with the use of a deadly weapon, to wit: a handgun, by shooting
21 at and into the body of said Patrick Fleming, the said killing having been
22 willful, deliberate, and premeditated.

23 Count 2. Assault with a deadly weapon, did willfully, unlawfully,
24 feloniously, and intentionally place another person in reasonable
25 apprehension of immediate bodily harm and/or did willfully and unlawfully

1 attempt to use physical force against another person, to wit: Miranda Sutton,
2 with use of a deadly weapon, to wit: a handgun, by pointing said handgun at
3 the said Miranda Sutton.

4 Count 3. Discharge of firearm from or within a structure or vehicle,
5 did willfully, unlawfully, maliciously, and feloniously while in, on, or under a
6 structure located at 4032 Smokey Fog, apartment number 201, North Las
7 Vegas, discharge a firearm within or from the structure, while being within an
8 area -- excuse me -- an area designated by a City or County Ordinance as a
9 populated area for the purpose of prohibiting the discharge of weapons.

10 In this case, the Defendant is accused in the indictment alleging an
11 open charge of murder. This charge includes and encompasses murder of the
12 first degree, murder of the second degree, and voluntary manslaughter. The
13 jury must decide if the Defendant is guilty of any offense and if so, of which
14 offense.

15 Instruction number 4. Murder is the unlawful killing of a human
16 being with malice aforethought whether express or implied. The unlawful
17 killing may be affected by any of the various means by which death may be
18 occasioned.

19 Instruction number 5. Malice aforethought means the intentional
20 doing of a wrongful act without legal cause, or excuse, or what the law
21 considers adequate provocation. The condition of mind described as malice
22 aforethought may arise not alone from anger, hatred, revenge or some
23 particular ill will, spite, or a grudge toward the person killed, but may result
24 from any unjustifiable or unlawful motive or purpose to injure another, which
25 proceeds from a heart fatally bent on mischief or with reckless disregard of

1 consequences and social duty.

2 Malice aforethought does not imply deliberation or the lapse of
3 any considerable time between the malicious intention to injure another and
4 the actual execution of the intent but denotes rather an unlawful purpose and
5 design in contradistinction to accident and mischance.

6 Instruction number 6. Express malice is that deliberate intention,
7 unlawfully to take away the life of a fellow creature which is manifested by
8 external circumstances capable of proof. Malice may be implied when no
9 considerable provocation appears or when all the circumstances of the killing
10 show an abandoned and malignant heart.

11 Instruction number 7. Murder of the first degree is murder which
12 is perpetrated by means of any kind of willful, deliberate, and premeditated
13 killing. All three elements, willfulness, deliberation, and premeditation must
14 be proven beyond a reasonable doubt before an accused can be convicted of
15 first-degree murder.

16 Instruction number 8. Willfulness is the intent to kill. There need
17 no -- excuse me -- there need be no appreciable space of time between
18 formation of the intent to kill and the act of killing.

19 Instruction number 9. Deliberation is the process of determining
20 upon a course of action to kill as a result of thought, including weighing the
21 reasons for and against the action and considering the consequences of the
22 actions.

23 Instruction number 10. A deliberate determination may be arrived
24 at in a short period of time, but in all cases the determination must not be
25 formed in passion or if formed in passion, it must be carried out after there has

1 been time for the passion to subside and deliberation to occur. A mere
2 unconsidered and rash impulse is not deliberate even though it includes the
3 intent to kill.

4 Instruction number 11. Premeditation is a design, a determination
5 to kill distinctly formed in the mind by the time of the killing.

6 Instruction number 12. Premeditation need not be for a day, an
7 hour, or even a minute. It may be as instantaneous as successive thoughts of
8 the mind. For if the jury believes from the evidence that the act constituting
9 the killing has been preceded by and has been the result of premeditation, no
10 matter how rapidly the act follows the premeditation, it is premeditated.

11 Instruction number 13. The law does not undertake to measure in
12 units of time, the length of the period during which the thought must be
13 pondered before it can ripen into an intent to kill, which is truly deliberate and
14 premeditated. The time will vary with different individuals and under varying
15 circumstances. The true test is not the duration of time, but rather the extent
16 of reflection. A cold, calculated judgment and decision may be arrived at in a
17 short period of time, but a mere unconsidered and rash impulse, even though
18 it includes the intent to kill, is not the deliberation and premeditation as will fix
19 an unlawful crime as murder in the first degree.

20 Instruction number 14. All murder, which is not murder of the first
21 degree, is murder of the second degree. Murder of the second degree is
22 murder with malice aforethought, but without the admixture of premeditation
23 and deliberation.

24 Instruction number 15. You are instructed that if you find the State
25 has established that the Defendant has committed first-degree murder, you

1 shall select first-degree murder as your verdict. A crime of first-degree murder
2 includes a crime of second-degree murder. You may find the Defendant guilty
3 of second-degree murder if: one, you have not found beyond a reasonable
4 doubt that the Defendant is guilty of murder of the first degree; and, two, all 12
5 of you are convinced beyond a reasonable doubt that the Defendant is guilty
6 of the crime of second-degree murder.

7 If you are convinced beyond a reasonable doubt that the crime of
8 murder has been committed by the Defendant, but you have a reasonable
9 doubt whether such murder was of the first degree or second degree, you
10 must give the Defendant the benefit of that doubt and return the verdict of
11 murder of the second degree.

12 Instruction number 16. You are instructed that if you find the State
13 has established this Defendant has committed second degree murder, you
14 shall select second degree murder as your verdict. The crime of second
15 degree murder can include the crime of voluntary manslaughter.

16 You may find the Defendant guilty of voluntary manslaughter if:
17 one, you have found -- you have not found, beyond a reasonable doubt, that
18 the Defendant is guilty of murder of the first degree or second degree, and
19 two, all 12 of you are convinced beyond a reasonable doubt that the Defendant
20 is guilty of the crime of voluntary manslaughter. If you are convinced beyond
21 a reasonable doubt that the crime of murder has been committed by the
22 Defendant, but you have a reasonable doubt as to whether such murder was
23 of the second degree or voluntary manslaughter, you must give the Defendant
24 the benefit of that doubt and return a verdict of voluntary manslaughter.

25 Instruction number 17. Voluntary manslaughter is the unlawful

1 killing of a human being without malice aforethought and without deliberation
2 or premeditation. It is killing a person upon a sudden quarrel or heat of
3 passion caused by a provocation sufficient to make the passion irresistible.
4 The provocation required for voluntary manslaughter must either consist of a
5 serious and highly provoking injury inflicted upon the person killing, sufficient
6 to excite an irresistible passion in a reasonable person, or an attempt by the
7 person killed to commit a serious personal injury on the person killing.

8 For the sudden, violent, impulse of passion to be irresistible
9 resulting in a killing, which is voluntary manslaughter, there must not have
10 been an interval between the assault or provocation and the killing sufficient
11 for the voice of reason and humanity to be heard. For if there should appear
12 to have been sufficient time for a cool head to prevail and the voice of reason
13 to be heard, the killing shall be attributed to deliberate revenge and
14 determined by you to be murder. The law assigns no fixed period of time for
15 such an interval but leaves its determination to the jury under the facts and
16 circumstances of the case.

17 Instruction number 18. The heat of passion which will reduce a
18 homicide to voluntary manslaughter must be such an irresistible passion as
19 naturally would be aroused in the mind of an ordinarily reasonable person in
20 the same circumstances. A defendant is not permitted to set up his own
21 standard of conduct and to justify or excuse himself because his passions
22 were aroused unless the circumstances in which he was placed and the facts
23 that confronted him were such as also would have aroused the irresistible
24 passion of the ordinarily reasonable man if likewise situated.

25 The basic inquiry is whether or not at the time of the killing the

1 reason of the accused was obscured or disturbed by passion to such an extent
2 as would cause the ordinarily reasonable person of average disposition to act
3 rashly, and without deliberation and reflection, and from such passion rather
4 than from judgment.

5 Instruction number 19. The prosecution is not required to present
6 direct evidence of a defendant's state of mind as it existed during the
7 commission of a crime and the jury may infer the existence of a particular
8 state of mind from the circumstances disclosed by the evidence.

9 Instruction number 20. Assault means intentionally placing
10 another person in reasonable apprehension of immediate bodily harm. As
11 used in this instruction, reasonable apprehension is defined by the objective
12 standard.

13 Instruction number 21. A deadly weapon is any instrument which
14 if used in the ordinary manner contemplated by its design and construction
15 will or is likely to cause substantial bodily harm or death or any weapon or
16 device, instrument, material, or substance, which under the circumstances in
17 which it is used, attempted to be used, or threatened to be used if readily
18 capable of causing substantial bodily harm or death.

19 Instruction number 22. The State is not required to have recovered
20 the deadly weapon used in alleged crime or to produce the deadly weapon in
21 court at trial to establish that a deadly weapon was used in the commission of
22 the crime.

23 Instruction number 23. Any person who willfully, unlawfully, and
24 maliciously discharges a firearm within an occupied structure is guilty of
25 discharging a firearm within a structure. Said structure must be within an area

1 designated by a city or county as a populated area for purposes of prohibiting
2 the discharge of weapons.

3 Instruction number 24. The City of North Las Vegas Municipal
4 Code 9.32.110 states that it is unlawful for any person to explode or fire any
5 pistol, revolver, rifle, shotgun, or any other firearm within the limits of the City
6 of North Las Vegas.

7 Instruction number 25. To constitute the crime charged there must
8 exist a union or a joint operation of an act forbidden by law and intent to do
9 the act. The intent with which the act is done is shown by the facts and
10 circumstances surrounding the case. Do not confuse intent with motive.
11 Motive is what prompts a person to act. Intent refers only to the state of mind
12 with which the act is done. Motive is not an element of the crime charged.
13 And the State is not required to prove a motive on the part of the Defendant in
14 order to convict. However, you may consider the evidence of motive or lack of
15 motive as a circumstance in the case.

16 Instruction number 26. The Defendant is presumed innocent until
17 the contrary is proved. This presumption places upon the State the burden of
18 proving beyond a reasonable doubt every element of the crime charged and
19 that the Defendant is the person who committed the offense. A reasonable
20 doubt is one based on reason. It is not mere possible doubt, but is such a
21 doubt as would govern or control a person in the more weighty affairs of life.

22 If the minds of the jurors, after the entire comparison and
23 consideration of all the evidence are in such a condition that they can say they
24 feel an abiding conviction of the truth of the charge, there's not a reasonable
25 doubt. Doubt, to be reasonable must be actual, not mere possibility or

1 speculation. If you have a reasonable doubt as to the guilt of the Defendant,
2 he is entitled to a verdict of not guilty.

3 Instruction number 27. The evidence which you are to consider in
4 this case consists of the testimony of the witnesses, the exhibits, and any facts
5 admitted or agreed to by counsel. There are two types of evidence, direct and
6 circumstantial. Direct evidence is the testimony of a person who claims to
7 have personal knowledge of the commission of the crime which has been
8 charged, such as an eyewitness. Circumstantial evidence is the proof of the
9 chain of facts and circumstances, which tend to show whether a defendant is
10 guilty or not guilty. The law makes no distinction between the weight to be
11 given either to direct or circumstantial evidence. Therefore, all the evidence in
12 the case, including the circumstantial evidence should be considered by you in
13 arriving at your verdict. Statements, arguments, and opinions of counsel are
14 not evidence in the case. However, if the attorneys stipulate to the existence
15 of a fact, you must accept the stipulation as evidence and regard that fact as
16 proved.

17 You must not speculate to be true any insinuations suggested by a
18 question asked a witness. A question is not evidence and may be considered
19 only as it supplies meaning to the answer. You must disregard any evidence
20 to which an objection was sustained by the Court and any evidence ordered
21 stricken by the Court. Anything you may have seen or heard outside the
22 courtroom is not evidence and must also be disregarded.

23 Instruction number 28. The flight of a person after the commission
24 of a crime is not sufficient in itself to establish guilt. However, if flight is
25 proved, it is circumstantial evidence in determining guilt or innocence. The

1 essence of flight embodies the idea of deliberately going away with
2 consciousness of guilt and for the purpose of avoiding apprehension or
3 prosecution. The weight to which such circumstances entitled is a matter for
4 the jury to determine.

5 Instruction number 29. The credibility or believability of a witness
6 should be determined by his manner upon the stand, his relationship to the
7 parties, his fears, motives, interest, or feelings, his opportunity to have
8 observed the matter to which he testified, the reasonableness of his
9 statements, and the strength or weakness of his recollections. If you believe
10 that a witness has lied about any material fact in the case, you may disregard
11 the entire testimony of that witness or any portion of his testimony which is
12 not proved by other evidence.

13 Instruction number 30. Any testimony that a witness believed that
14 the Defendant has a history of violence against persons is offered solely for
15 the purpose of explaining the state of mind of the witness at the time she
16 made her statement to police on January 1st, 2016. This testimony, if
17 believed, is not to be considered as substantive evidence that the Defendant
18 has a history of violence against persons or that he is a person of bad
19 character.

20 Instruction number 31. A witness who has special knowledge, skill,
21 experience, training, or education in a particular science, profession or
22 occupation is an expert witness. An expert witness may give his opinion as to
23 any matter in which he is skilled. You should consider such expert opinion
24 and weigh the reasons, if any, given for it. You are not bound however by
25 such an opinion. Give it the weight to which you deem it entitled, whether that

1 be great or slight, and you may reject it if, in your judgment, the reasons given
2 for it are unsound.

3 Instruction number 32. In arriving at a verdict in this case as to
4 whether the Defendant is guilty or not guilty, the subject of penalty or
5 punishment is not to be discussed or considered by you and should in no way
6 influence your verdict.

7 Instruction number 33. It is the constitutional right of a defendant
8 in a criminal trial that he may not be compelled to testify. Thus, a decision as
9 to whether he should testify is left to the Defendant on the advice of counsel of
10 -- excuse me -- on the advice of counsel of his attorney. You must not draw
11 any inference of guilt from the fact that he does not testify, nor should this fact
12 be discussed by you or enter into your deliberations in any way.

13 Instruction number 34. Although you are to consider only the
14 evidence in the case in reaching a verdict, you must bring to the consideration
15 of the evidence your everyday common sense and judgment as reasonable
16 men and women. Thus, you are not limited solely to what you see and hear as
17 the witness testifies. You may draw reasonable inferences from the evidence,
18 which you feel are justified in the light of common experience keeping in mind
19 that such inferences should not be based on speculation or guess. A verdict
20 may never be influenced by sympathy, prejudice, or public opinion. Your
21 decision should be the product of sincere judgment and sound discretion in
22 accordance with these rules of law.

23 Instruction number 35. When you retire to consider your verdict,
24 you must select one of your number to act as foreperson who will preside over
25 your deliberation and will be your spokesperson here in court. During your

1 deliberation you will have the exhibits which were admitted into evidence,
2 these written instructions, and a form of verdict which has been prepared for
3 your convenience. Your verdict must be unanimous. As soon as you have
4 agreed upon a verdict, have it signed and dated by your foreperson and then
5 return with it to this room.

6 Instruction number 36. If during your deliberation you should
7 desire to be further informed on any point of law or hear again portions of the
8 testimony, you must reduce your request to writing signed by the foreperson.
9 The officer will then return you to court where the information sought will be
10 given to you in the presence of and after notice to the District Attorneys and
11 Defendant and his counsel.

12 Playbacks of testimony are time consuming and are not
13 encouraged unless you deem it a necessity. Should you require a playback,
14 you must carefully describe the testimony to be played back so the court
15 recorder can arrange her notes. Remember, the Court is not at liberty to
16 supplement the evidence.

17 Instruction number 37. During the course of this trial in your
18 deliberations you are not to: one, communicate with anyone, in any way
19 regarding this case or its merits, either by phone, text, internet, or other
20 means; two, read, watch, or listen to any news or media accounts or
21 commentary about the case; three, do any research such as consult a
22 dictionary, using the internet, or using reference materials; four, make any
23 investigation, test a theory of the case, recreate any aspect of the case, or in
24 any other way investigate or learn about the case on your own.

25 Instruction number 38. Now you will listen to the arguments of

1 counsel who will endeavor to aid you to reach a proper verdict by refreshing in
2 your minds the evidence and by showing the application thereof to the law,
3 but whatever counsel may say, you will bear in mind that is your duty to be
4 governed in your deliberation by the evidence as you understand it and
5 remember it to be and by the law as given you in these instructions with the
6 sole fixed and steadfast purpose of doing equal and exact justice between the
7 Defendant and the State of Nevada.

8 Can I see counsel at the bench before you start?

9 [Sidebar begins at 10:45 a.m.]

10 THE COURT: There's a couple typos and so I read it as corrected,
11 meaning you (indiscernible) spelled the E-G-A-T-E-R and stuff like that. I'm
12 going to go through and fix it if you want a copy, let me know. They're little
13 things.

14 MR. STANTON: No.

15 MR. BASHOR: No.

16 THE COURT: Okay.

17 [Sidebar ends at 10:45 a.m.]

18 THE COURT: State, closing argument when you're ready.

19 MR. FLINN: Thank you, Your Honor.

20 [STATE CLOSING ARGUMENT]

21 MR. FLINN: Shawn Glover murdered Patrick Fleming. He followed
22 behind him down the stairs, he pulled out a gun, and he shot him, one fatal
23 shot right in the back of the head. Patrick's death was almost instantaneous.
24 But determined to make sure the job was done as though one bullet through
25 the skull and brain stem is not enough, the Defendant followed Patrick's falling

1 body as it went down the stairs and hit the landing, and he stepped up to him
2 and shot him twice more.

3 When the State introduced this case to you, Mr. Stanton told you
4 this is a first degree murder case. Now, you know why. You have the
5 evidence, and you have proof beyond a reasonable doubt that Shawn Glover
6 is guilty of first degree murder. And now it's time for you to find him guilty
7 and hold him accountable.

8 These are the facts from the evidence at trial. New Year's Day
9 2016, at the townhome at Smokey Fog. Everybody's up in the morning.
10 There's four adults in the house. Patrick, Miranda, Akira, and the Defendant.
11 Patrick has already left, dropped off Angela at work, and had come back. And
12 so, what happens is you have a family dispute, sort of some classic family
13 drama. The overprotective dad goes a step too far in checking up on his
14 daughter and what she's doing with her boyfriend. And they get in an
15 argument about it. They're in the garage away from everybody else, all the
16 little kids, and they're arguing it out. And at some point, Miranda comes down
17 and she joins in, and as she told you she's sticking up for Akira, she's a grown
18 woman, et cetera.

19 And they start to cool down. And that's when the Defendant, for
20 the first time, inserts himself into this family dispute. And as you remember,
21 Angela is Miranda's goddaughter. And the Defendant has just come back and
22 been staying at the house for about a week. So, this really doesn't concern
23 him, but he comes down with the phone. He's got Angela on the phone, and
24 he gives it to Miranda, she talks to her, he takes the phone and goes back up.

25 The discussion continues, and it's winding down. As they told you,

1 they're starting to just calm down, say their sorries [sic]. And the Defendant
2 inserts himself once more. This time he comes down and goes directly to
3 Miranda, can I talk to you? She says: sure, of course. They've only been
4 staying there for a few weeks. They're thinking, you know, we're arguing in
5 somebody's house. She starts to go up the stairs with the Defendant. She
6 gets up there, and there is something peculiar because the little kids had been
7 running around playing, going in and out of the rooms, but now, they're in a
8 closed bedroom.

9 And she has a conversation with the Defendant. And he tells her,
10 hey, I hear what's going on down there. Do you want me to take care of this
11 for you? He's already thinking about it. Miranda: no, no, no, you've got it
12 wrong. Everybody's getting along. We're okay. I got this. Don't sweat it. But
13 by that point, Patrick and Akira -- Patrick's already told her, hey, I'm sorry, and
14 they're coming back up.

15 But now Patrick's interested in why -- why is the Defendant
16 jumping in to his family, and pulling his wife away, and having a private
17 conversation. Hey, why do you need to do that? This is between us. We're
18 resolving this. And the Defendant is still agitated. You're yelling at these
19 women. And Patrick is, no, no, no, no, it's not like that.

20 The Defendant keeps going with it. So, there comes a point where
21 Patrick said, you know what, you and I need to have a conversation. We need
22 to talk about this. Have a man-to-man talk downstairs, outside. And that's the
23 point where Patrick, unsuspecting, thinks he's just in a family argument,
24 makes, certainly, a fatal mistake. He goes first. He starts to walk down the
25 stairs. The Defendant, maybe five steps down, directly behind, pulls out a gun,

1 and fires the fatal shot right into Patrick's skull, right in the back of his head,
2 toward the left side. He continues. As I told you, he goes down, fires two
3 more into the body.

4 At this point, he's not done, because Miranda and Akira hear all of
5 this of course, and they come running over. So, they start to go down the
6 stairs. And if you remember, from the pictures, the stairs have a couple of
7 steps, another landing, and then they go down the rest of the way, making a
8 left turn is you're going down. And they get a couple of steps down. Akira is
9 behind Miranda, so she hasn't really made it around the corner. But Miranda
10 sees -- she sees the Defendant standing there over Patrick's body, holding a
11 gun. And what does he do? He points the gun right at her.

12 If you and your kids want to live, you'll shut the fuck up. That's
13 what he tells her. She's obviously frozen in place. The Defendant wedges the
14 door open against Patrick's body and heads off through the garage. He was
15 located three days later.

16 That is the evidence of a first degree murder. Miranda and Akira
17 told you the level of fear that they had that day. Their fear of the Defendant,
18 knowing him, knowing what happened, and, of course, that day they told the
19 police not all the details. They misled them a bit. They of course left the
20 Defendant's name out of it. And why is that? Is it because there was some
21 mysterious man that came over to purchase some pot from Patrick and
22 decided to just shoot him, not take anything, and leave? Of course not. They
23 were scared to death. Scared to death of Shawn Glover. He had just
24 murdered Patrick. Patrick's body is laying there on the floor, blood on the
25 door, on the floor. He's pointing a gun, threatening about snitching. What are

1 they supposed to do?

2 They talk to the police. The police can't stay with them. They don't
3 know where to go. They've only been there a few weeks. They were
4 supposed to go that day to go rent a new apartment. They're panicked. So,
5 they leave the Defendant out of it, for the moment. And, of course, they came
6 back around because, as Miranda told you, family helped. Got them out of
7 that house, gave them a place to go, gave them some degree of feeling safe,
8 and by the next day they realized there was really only one thing to do. One
9 thing to do is the right thing to do. And the one thing to keep their family safe
10 is to tell the police who did it, not make something up so that the actual
11 murderer, the person who's threatened to kill them just roams free. Of course,
12 that makes no sense.

13 So, they did. They swallowed it. They swallowed hard and went
14 to the police station and said it was Shawn Glover. And if you'll notice when
15 they were talking about the first statements that they made on January 1st,
16 there were differences between -- inconsistencies between Akira and Miranda.
17 You know, somebody knocked on the door, came in, and there was gun shots
18 versus somebody's sitting up on the couch. But what they told you, under
19 oath from that stand, the same thing they told the police the next day, was
20 completely consistent between the two of them.

21 Of course, they were all -- they were both in different places at
22 different times, but it all was consistent. It was all corroborated by physical
23 evidence. And there's a reason for that. There's only one truth and if two
24 people are telling the truth, it's consistent. And that's exactly what happened.

25 What makes this a first degree murder? It's a murder that's willful,

1 deliberate, and premeditated. You have instructions that go into great detail
2 about what those mean, but it really boils down to this. It's willful because the
3 Defendant acted. He knew what he was doing, and he intended to kill. He shot
4 someone in the back of the head. It's deliberate, because he knows the
5 consequences. I pull out my gun, and I shoot Patrick in the back of the head.
6 He's dead, and I can make a decision to not do that. I have the time to do that.

7 And it's premeditated because he planned to do it. He closed the
8 door, put the children away, followed Patrick from behind, pulled out his gun.
9 He made decisions. And your instructions will tell you that time isn't the key
10 part here. It doesn't have to be this long drawn out process. It can be
11 successive decisions. And that's what happened.

12 The evidence of first degree murder is really grouped into four
13 categories of the things you heard and what it tells you about the first degree
14 murder. First, the gunshots themselves, the quantity, the locations,
15 eyewitness testimony, what Miranda and Akira told you about the
16 circumstances, the circumstances immediately before the shooting, the crime
17 scene itself, and certainly, perhaps most compelling, Patrick's injuries and
18 what Dr. Corneal told you them.

19 The gunshots. Three times. You saw the pictures of these -- the
20 confined surroundings. The stairwell is pretty narrow. It goes down, and
21 there is nowhere to go but two doors, garage, front door, and this little
22 landing. Three shots. He shot him in the back of the head, but that wasn't
23 enough. He's going to make sure he's dead. It's evidence of his intent to kill
24 and his plan to do it, and he shoots him three times. First shot, back of the
25 head.

1 And you remember Akira testified she's listening because she's
2 sitting over on the couch when this -- when this happens. And she hears
3 about five steps down the stairs. So, you figure the landing
4 -- the couple stairs at the top, the landing, and then a few more on the way
5 down. That's when she hears the first shot, there's a pause, then boom,
6 boom, second and third shots. And that's because he shot him in the head.
7 Now, Patrick's down, and he's finishing him off. There is no chance the
8 Defendant's letting Patrick get up.

9 What about Miranda and Akira's testimony? It tells you of the
10 deliberation, the premeditation -- again, it's the -- think about the kids. They
11 were running around. Why does he put them in a room and close the door if
12 he is not planning on something bad happening? You know, put the little kids
13 -- one of them is his -- put them away for this. They don't need to see this.

14 Then he even tells Miranda, do you want me to take care of this?
15 He's ready to go. He's ready to take care of it. And of course, he makes sure
16 he's behind.

17 What they also told you shows his consciousness of guilt. And you
18 have a flight instruction as well, and that's part of it. And it's evidence that the
19 Defendant is conscious. He's aware. He knows what he has just done. It's no
20 shock to him, and he's covering it up. He's got to do a couple of things. He
21 has to threaten Miranda and Akira and make sure they're not interested in
22 telling the real story. So, he does that and then he flees. He takes off.
23 Nowhere to be found. It's a few days later before the police find him. It shows
24 he's aware. It shows his intent, his plan, and that he knew full well what he
25 was doing.

1 Patrick's body also, as part of the crime scene, starts to paint the
2 picture. You'll see -- and you'll remember Miranda told you he was face down,
3 a little bit more on the side when she found him, that she tried to do CPR while
4 she was on the phone with 911. So, she had to kind of flip him a little bit. But
5 he hit the ground right down there. And you can see blood on the door most
6 likely from his head, spent shell casings, bullets, fragments all around the
7 body.

8 The cases and bullets themselves, three spent .40 caliber casings
9 right down there. Two of them -- well, one against the wall, one against the
10 door. So, two right on the ground there. And a third in the righthand picture
11 that's on the rug basically under Patrick's body. They're .40 caliber. And you'll
12 remember the victim's gun is tucked neatly, still away, holstered on the inside
13 holster in his pants. It hasn't gone anywhere. There's no round chambered.
14 It's not been fired because there would be another round in the chamber. And
15 there's no 9 millimeter cases anywhere.

16 Patrick had no chance to defend himself. He had no idea what was
17 about to happen. The bullets and the fragments. In the left-hand picture you
18 have a nearly intact bullet right up against Patrick's body. And there's some
19 fragments that are eventually recovered from his arm. So, that bullet traveled
20 through. And then the next two on the rug and when the rugs were moved, on
21 that tile floor, more fragments from the bullets. And those relate to this defect
22 in the rug and the tile.

23 So, when you look at the pictures and the crime scene analyst was
24 testifying, she told you there's this hole in the rug. It goes through. They
25 peeled the rug back, and this is where the fragment, or that last fragment is,

1 right there where that tile is broken away. And then you'll remember Detective
2 Owens telling you what that means. Because there were -- if you look -- you
3 saw the pictures. There's not bullet holes in the walls, anything like that.
4 There's a bullet in Patrick Fleming's head, and there's bullets on the ground.
5 And the one hit that tile, it had to come from above. That means standing
6 over, shooting.

7 The injuries. This -- Dr. Corneal told you of course, the cause and
8 manner of death, gunshot wound to the head, a homicide. This really is no
9 surprise to anyone. Everybody from Miranda at the beginning, when she first
10 went down to Patrick, to everybody that saw him, could have told you this
11 part. But what they couldn't tell you, that Dr. Corneal can from examining
12 Patrick's body, is the significance of the injuries themselves.

13 And in particular, this gunshot wound to the head. So, it goes in
14 the back of the head, through the skull. And the trajectory, the path. The
15 bullet travels rightward, downward and forward. And you can see from the
16 picture the entrance wound is just slightly to the left of center. So not far off.
17 And it's traveling down. The bullet gets lodged in his jaw. So, it goes through
18 skull, severs the brainstem, lodges in the jaw, instantaneous death. The only
19 way that bullet travels that way is if someone is shooting from behind and
20 above, like on a stairway.

21 The gunshot wounds in the body have other significance. You
22 remember the right upper arm, the right upper leg, almost really the groin
23 area; those are both traveling downward on their path. So, again, consistent
24 with the Defendant standing over Patrick. And what's important, they're
25 perforating injuries. That shows that proximity and is consistent with the

1 crime scene and all this testimony about the defects in the floor, Detective
2 Owens' testimony. Those bullets are going through and hitting the ground.
3 Those are the fragments. That's the broken tile.

4 This is a first degree murder. There are two additional crimes on
5 your verdict form that the Defendant committed, and they probably seem
6 pretty obvious at this point, but assault with a deadly weapon, the Defendant
7 threatened Miranda with the gun. He raised the gun to her. He threatened
8 her. He put her in immediate fear. She told you, I thought I'm next. And
9 under the circumstances, what just happened in that house, what she just saw,
10 what she was just told, that fear is absolutely reasonable. Anyone would have
11 felt that way.

12 And of course, under the manner in which it's used, the deadly
13 weapon, it's of course a firearm, the Defendant's firearm. And discharging
14 from within the structure, the Defendant maliciously fired his gun. How do
15 you know it's malice? Again, pretty obvious, he just murdered somebody.
16 There's fragments, cases all over the floor. And as part of the instructions, the
17 law requires, of course, you can't shoot a gun in North Las Vegas, in that area.

18 What this case really boils down to is the Defendant put a bullet in
19 the back of Patrick's head. And that is first degree murder all day long. The
20 State has met its burden and proved to you, beyond a reasonable doubt, that
21 the Defendant, Shawn Glover, is guilty of all crimes charged, including first
22 degree murder with the use of a deadly weapon.

23 THE COURT: Does anybody need a break before we hear the
24 closing argument for the Defendant? Counsel, when you're ready. Do you
25 want to unplug that and re-plug it in?

1 [DEFENSE CLOSING ARGUMENT]

2 MR. BASHOR: Good morning, folks. The State has not met its
3 burden. The State has not proven Shawn guilty beyond a reasonable doubt.
4 That's what this case is about. It's defined in your instructions. You're going
5 to hear that phrase like you do all over television and everywhere else, but it
6 has special significance here because this is the courtroom and that is the
7 burden, the burden of proof and the level of proof that is required for the State
8 to prove guilt beyond a reasonable doubt.

9 Now, we're going to analyze some of this evidence. Common
10 sense, we don't leave that and check it at the door. We bring it with us.
11 Common sense, human experience. What makes sense under the
12 circumstances. We're also told about feelings and emotions. A man was
13 killed. It would be perfectly natural for you to have emotions about that
14 because you're a human being. You can have those emotions. It just can't
15 cloud your sincere judgment when analyzing the evidence in this case in
16 coming up with your verdict. No one's saying that you -- all of a sudden,
17 you've become some kind of robot. Of course, those emotions should enter
18 your head, but they can't be used.

19 That's the lens I ask you to analyze this evidence through. Use
20 your common sense. No sympathy, prejudice, public opinion. Use your
21 sincere judgment and sound discretion. So, let's dive in.

22 Miranda. She tells you that she calls 911 right after this -- after the
23 shooting. What does she tell 911? All crying, hysterical, little time to think.
24 My husband answered the door, and he's been shot. Who shot your husband?
25 I don't know. We attempted to discuss what she remembered and did not

1 remember from this first statement to the police later in that day on January
2 1st, right? Has no recollection and a transcript of that statement is of no help
3 to me. A transcript was of help to me 10 minutes before when I forgot what I
4 allege Shawn told me when he pointed the gun. That transcript that I didn't
5 sign, refreshed my recollection.

6 She said that she was afraid for herself and her family. What do
7 we hear now? We hear, it's a typical argument, family stuff. The argument
8 was really with me. It wasn't even with Akira. There was a lot of shouting and
9 hand clapping, but nothing necessarily out of the ordinary. She tells you that
10 Shawn asked to take care of something that he has no involvement in
11 whatsoever; doesn't concern him at all. Use that lens. Use that common
12 sense. Does that make any sense to you?

13 There's an argument going on in the garage between three
14 members of a family. And it doesn't concern him, and he's hot to trot. For
15 what reason? It makes no sense. And that the argument was over. Right?
16 We hear apologies. I'm sorry, smiles. So, he kills Patrick? What? The
17 argument's over. He says well, Shawn's angry. Patrick attempts to calm
18 Shawn down. Shawn doesn't want to be touched. Patrick invites Shawn to
19 talk about it and, for no reason whatsoever, he kills Patrick.

20 Credibility, instruction 29. The credibility of a witness should be
21 determined by his manner upon the stand, his relationship with the parties, his
22 fears, motives, interest, or feelings, his opportunity to have observed the
23 matter to which he testified, the reasonableness of his statements, and the
24 strength and weaknesses of their recollections. It's in your packet. You'll be
25 given that packet. I know that the Judge read it. I'm not meaning to patronize

1 you. And these are the instructions on the law. And they're important in their
2 entirety.

3 But let's explore some of the elements of this instruction when it
4 comes to the testimony of Miranda. If Miranda came in here and said I lied
5 because I was scared, and that's it, and I regret it, and here's what actually
6 happened, that'd be perfectly reasonable. What we saw here on the stand was
7 a hundred percent unreasonable. I don't remember what I told the police. I
8 believe I said that. I might have said that. I don't know. All I know I was
9 scared. For some reason in a higher state of emotion before giving her
10 statement on January 1st, 2016 on 911 she was oh, yeah, yeah, yeah, I told
11 them that. This person is not to be believed. Look at the credibility
12 instruction. He's [sic] unable to answer simple and direct questions.

13 Let's talk about reasonableness, also part of that credibility
14 instruction, right? I kept asking the police to stay for the safety of me and my
15 family. What evidence do we have of this other than from Miranda? No
16 police, no detective, no first responder, no CSA came into the courtroom, took
17 this stand and said, yes, she was begging for us to stay. No one. Your source
18 of that information is Miranda.

19 Recollections. I remember what I told 911. Don't remember what I
20 said two hours later. And that transcript that you have in your hands, is of no
21 help. It helped her on direct. We talked about that.

22 So, what do you do with this? You have these weird credibility
23 issues. You have a choice. The instruction tells you so. You can take it and
24 throw it all out. Look, I'm not -- I'm not stupid. I know you're not going to do
25 that. But the instruction also invites you to look at what is proved by other

1 evidence. Cooperation. If you believe that Miranda's lied to you about
2 material facts, I think the inability to recollect a statement made to police in
3 which you lead the police on an investigation into the false person, according
4 to you, who committed this crime, you probably have a pretty good
5 recollection of it. Demand other evidence.

6 So, we go on to Akira. And before I forget, we've heard on first
7 summation that well, you know, there was some inconsistencies in the first
8 statement of Miranda and Akira. First of all, I don't know how much of the first
9 statement of Miranda you got out of all that, but there's inconsistencies. And
10 how do we know when they come around the next day that it's the truth?
11 Well, they match. They had a day to talk with one another. A day to match.

12 So, Akira says Hatch is at the house, that Patrick sells marijuana,
13 that he's a customer, that Patrick averages two to three customers a day, that
14 she hears the shots. She doesn't see it. Doesn't see Hatch run away. She tells
15 the police never seen Hatch before. Told police Miranda doesn't know Hatch.
16 Told police she didn't know if Hatch went by any other names. And that's
17 critical because later she says -- she says Shawn's Hatch, right? I'm so afraid
18 for myself and my family. I'm so terrified I'm going to give the police his real
19 street name. What I believe his street name to be. I thought we were so afraid
20 that we were going to cast aspersions somewhere else.

21 She tells the police the car is not where it was usually parked. The
22 car was missing. The keys were missing. Tells the police it's likely Hatch took
23 the keys. We heard on first summation there was no evidence of anything
24 being taken. The car was taken. The car was certainly of interest to the police.
25 They dispatched a CSA to it. Took that buccal swab, that Q-Tip, swabbed the

1 gear shift, swabbed the steering wheel. Something was taken, the car. We
2 heard. It wasn't parked where it was supposed to be, and the keys are
3 missing.

4 The ID. This makes no sense. I'm so terrified. I'm so afraid. I
5 want to protect my mother. I want to protect myself. So, I'm going to lead the
6 police in a different direction. Let them go off on a different direction, but it
7 was Hatch and that means Shawn Glover. You heard no evidence from
8 anyone else that Hatch is Shawn Glover, none. No police officer, no detective.

9 Again, we have a description of the argument because it matches,
10 right? The argument over allowing a boy in the car. It was loud, but by the
11 time they exited the garage they were laughing and smiling, and Shawn is
12 upset. He's upset about an argument he's not a party to, upset about an
13 argument that has nothing to do with him, upset so much that he's
14 premeditating and deliberating a killing. Look, I'm not saying -- and I would
15 hope -- and I hope no one in this room ever has to experience even being
16 within earshot of a killing. It's natural that somebody would be afraid. It's got
17 -- well, at least at the very minimum a great shock. It's not an everyday
18 occurrence.

19 No one's blaming Miranda and Akira for being afraid. Just like any
20 normal human being would be. But afraid people across this country who are
21 in earshot or witness a murder tell the police the truth. And when you're
22 surrounded by the police, the people that are sworn to serve and protect, our
23 protectors, our first-responders, the people who are far braver than me, go out
24 in the front lines and protect us. And we know that. That's their rule, that they
25 have sworn to do that. Those are the people you tell the truth to if you're

1 afraid. Those are the people, because you know what the police will do? They
2 will attempt to find that person and arrest that person because that's their job
3 to protect everyone.

4 So, the worst thing you can do in that circumstance is send the
5 police along with incorrect information to only be left alone; that doesn't make
6 sense either. I'm so afraid, I'm going to lie to the police, so they go off into
7 wherever, and then I'm going to be alone. No. You tell them the truth. And
8 Detective Owens knows that because as the detective is being brought
9 different pieces of information, as we heard, and he testified to, that the
10 decision to where to take an investigation depends on the totality of the
11 information known.

12 So, if Shawn is the actual suspect, that first 12, 18, 24 hours he's
13 not being pursued because the information they're giving is someone that
14 they've never really seen before, that they don't really know, this unknown
15 person has committed this crime. So, what do we do? We have these two
16 witnesses who we know, if we believe them, are liars. So, what do we do?
17 Well, we look for corroboration. We look for other -- as the credibility
18 instruction told you, we look for other evidence out there. And we look at the
19 totality of the evidence that they proposit to have against Shawn.

20 So, we learn that the CSA basically drives a huge collection,
21 evidence collection kit. It's a van or a vehicle of some kind, stocked with all
22 kinds of different tests, right? They can test for DNA, touch DNA included,
23 right? Skin cells, fingerprints, blood tests, gun powder residue tests. So, let's
24 take a look at the list of the physical evidence. The physical evidence
25 connecting Shawn to that home. Let's look at the physical evidence that was

1 given to you. There's the list folks. That's your list. That's how much physical
2 evidence ties Shawn to that scene.

3 We heard that there were -- as a comparable print now, we heard
4 that there's, you know, prints that are just of no use whatsoever, right? We
5 heard comparable is kind of your medium range, who knows, maybe if we put
6 it in the system, we might get something. And then we heard there's this
7 AGIS (phonetic), like the gold standard print. Now, they have a comparable
8 print from the door leading -- from the garage. The door that goes in and out
9 of the garage. They have a comparable print.

10 So, let's look at the results. Not tested, no results. That's okay.
11 We know that the truck was taken. And we know that they used a touch DNA
12 kit again. Remember about the gear shift and the steering wheel and the
13 door? We saw the pictures of that, right? We saw the CSA doing that job and
14 well, if the car was taken, which we hear from Akira that that was something
15 that she wanted to point out to police the vehicle was taken. It wasn't found
16 where it was supposed to be found. And we went out of our way to collect
17 potential touch DNA. So, let's look at the results. They're going to put Shawn
18 in that car, right? There they are. Not tested.

19 So, corroboration, right? We know that the weapon used in this
20 killing was never recovered. We heard from Detective Owens that would
21 mean -- it's an important piece of evidence in any murder investigation. That
22 makes a lot of sense. It does. I mean, if you have a killer in possession of the
23 murder weapon, it's pretty damning stuff, right? But we do have the shell
24 casings, right? All three by the way are on the landing at the bottom. You
25 don't see one up the stairs or on the stairs. You see all three on the bottom.

1 No tests are done on these casings whatsoever. Remember what
2 we heard about prints and touch DNA? You have to touch a bullet to put it in a
3 gun. And don't settle for excuses for the lack of physical evidence in this case.
4 Let's just pretend that none of this stuff would be helpful to you. Well, North
5 Las Vegas' budget problems are solved. We can get rid of all the CSAs. We
6 can get rid of all the kits. We don't need them because they're going to be no
7 help in solving an investigation or prosecuting a defendant in our courts.

8 So, you're going to hear well, the next day they came clean. They
9 said it was Shawn. And then we hear on cross-examination of a CSA that their
10 own science is limited, that you know, certain surfaces and -- versus other
11 surfaces, and we heard that there's only one lab in the country that does the
12 gunshot residue tests. We heard, you know, it's all limited. And it's poor at
13 giving you a date and time. There's no
14 -- it's not like when you leave your DNA, you leave a date and time stamp with
15 it, right. That make sense. Test it. In this case, you have it, at least two things.
16 You have it. Test it. Give the ladies and gentlemen of a jury some
17 corroboration.

18 More excuses. There's no need to test because now they've come
19 clean. We don't have our own lab. This is an open and shut case. And Mr.
20 Stanton, in voir dire, made the point of an example of the cutting the plane of
21 the cornea to see what the eye had seen. Obviously, that's outrageous, right?
22 And it was explored for that reason because he's right. Some of the stuff on
23 those shows is -- it's pure fiction. It's entertaining maybe, but it's pure fiction.

24 But I'm not talking about pure fiction. I'm talking about the stuff
25 they have in the back of their van. We don't know what efforts were taken to

1 locate the weapon. I imagine that there were efforts made. And that's
2 because of what Detective Owens told us, right? It's a critical piece of
3 evidence in a murder investigation, but you don't have it. All the more reason
4 more testing, more swabs, more prints should have been taken that day is this.
5 Police, first responders, and detectives are told an unknown person did this,
6 but it occurred on the stairs. We don't see swabbings of walls, powdering of
7 walls. We don't see railings. We don't see shell casings being, you know,
8 tested for any of this stuff.

9 If you're trying to find an unknown person, to the people that are at
10 least in earshot of this crime, you're going to want to collect and test as much
11 as you possibly can, or maybe not because the two things we do collect, we
12 don't test. Our system demands more from the testimony, who if believed, of
13 two witness are liars, to prove someone guilty beyond a reasonable doubt of a
14 murder.

15 Okay. We have the suspect testimony of two people. We have no
16 corroboration, no physical evidence whatsoever linking Shawn to this murder.
17 Well, then Shawn must have had a reason to kill. That would make sense,
18 right? Do not confuse intent with motive. Motive is what prompts a person to
19 act. Intent refers only to the state of mind in which the act is done. Motive is
20 not an element of the crime. I'm not telling you it's the elements you see in
21 those instructions plus motive, right? But you can consider motive or lack of
22 motive as a circumstance in this case because it is relevant.

23 So why? Why then? Why there? Why at that moment? Why
24 under those circumstances do you commit what is alleged as a first degree
25 murder? I'm not the only person interested in the why. We heard from

1 Detective Owens. We like to get the who, what, where, why when we respond
2 to a scene, those are relevant and important.

3 So, Shawn kills Patrick for what reason? From what we heard,
4 since the time Shawn moved in to the time that this occurs, that they were
5 getting along. In fact, Patrick drove him to work the day before. He's not a
6 party to the argument. It's not his home. His child's with Angela, not Akira.
7 It's not like Shawn's going down to pound his chest to protect the mother of
8 his child. And the argument's not all that serious apparently. There's -- it's
9 loud. They're clapping. But it was over. Apologies. Coming back up the
10 stairs. It's about none of those things.

11 Why then? Why in front of them? Why within earshot of them?
12 It's not the best place to commit a first degree murder. Common sense told
13 you he had not motive to kill. No reason. And if we're going to say the hot
14 and bothered motive -- and I'm not saying -- the two other adults had more of
15 a motive if we're going to follow that logic. Akira's being dressed down as a
16 20-year-old woman for doing what adults are perfectly allowed and able to do,
17 right? She's getting dressed down. Patrick and Miranda are to the point
18 where they're clapping at each other and yelling at each other. That's actually
19 more motive than Shawn. But who else had a motive? Hatch? A customer?
20 Remember those casings were found at the bottom of the stairs, all three.

21 Okay. Before I conclude --- and I very much appreciate your
22 attention -- I made a list of things brought up in the first summation.
23 Fortunately, I covered all of them but one. The nefariousness of putting the
24 children in the room. There's no other reason, right? He's planning to kill.
25 How about not hearing your grandfather, your grandmother, your aunt argue?

1 And that's even if Shawn were there and Shawn was involved in this thing,
2 which he wasn't.

3 So, reasonable doubt, that's what this case is about. We have no
4 corroboration. We have no physical evidence, and we have no motive for first
5 degree murder. Do not accept excuses in the absence of evidence. Mr.
6 Stanton's going to get up last, and he should, because they have a burden of
7 proof; that's how it works. It's their burden to prove this case beyond a
8 reasonable case, but do not accept excuses for the absence of evidence.
9 Demand corroboration. Demand motive. These doubts are reasonable, folks.
10 Not saying E.T. did it. There are reasonable doubts. They exist. Remember
11 this is a criminal case. It's a murder case. They have the highest burden of
12 proof in the land, beyond a reasonable doubt. They have not met their
13 burden, and I submit to you it's simply not enough. Not in our system of
14 justice. It's not enough. And therefore, he's not guilty. Thank you for
15 attention, folks.

16 THE COURT: Does anyone need a break before the rebuttal
17 argument? All right. At this time, State, when you're ready.

18 [STATE REBUTTAL CLOSING ARGUMENT]

19 MR. STANTON: Thank you, Your Honor. I am. Let me kind of
20 address Mr. Bashor's argument and the blank screens about the physical
21 evidence in this case. Well, what theory of this murder do you want to operate
22 from? Do you want to operate from the theory that a purchaser of narcotics
23 knocks at the garage door, the door's opened, and for reasons that belie logic,
24 common sense, and business, shoots a drug dealer without taking anything,
25 things of value, that the person would be there to get? What DNA,

1 fingerprints, gunshot residue are you going to get from that?

2 Remember counsel's questioning of the crime scene analyst. Do
3 you know of any samples -- and I'm talking throwing whatever you want -- in
4 this case, fingerprints, DNA, gunshot residue, the railing, couch, counter -- if
5 those results came back and said that the DNA was Akira, Ms. Sutton, Patrick
6 Fleming, the Defendant, children would that make any difference? The key is
7 there's no timestamp to that. The only DNA and fingerprints are relevant if
8 that DNA is left at the operative, relevant time period involving this murder.
9 Would you expect the DNA of the Defendant to be in the locations that the
10 Defense is arguing should have been presented to you? No. The car, the
11 house, his DNA is all over it in all locations.

12 So, what you saw here is exactly what should have been done.
13 The testing wasn't to determine the identity of an unknown purchaser of
14 narcotics because why? Not only do you have two eyewitnesses that know the
15 assailant, not only marginally, but is a member of their family who they had
16 been around for a long period of time.

17 So, if this is, hey, I've never seen this guy before, kind of knew him,
18 had a mask on, had a hoodie, had a hat, that's when DNA, fingerprints could
19 tell you a part of the story, but it will only tell you that the person touched this
20 at some point in time. It wouldn't even tell you anything meaningful unless
21 you could prove with certainty that that person had never been there before.
22 And of course, if it's a drug dealer or purchaser, is he just going to knock on
23 random doors to see if people are slinging weed? You'd have to know that.
24 You'd have to know where to go.

25 And I'm waiting for Mr. Bashor to answer the question, well, where

1 was his client?

2 MR. BASHOR: Objection, Your Honor.

3 THE COURT: Sustained. Counsel, can you rephrase?

4 MR. STANTON: He said -- Mr. Bashor said, as he was making his
5 comment about this Defendant, is the Defendant was not even there. Where is
6 the evidence about that? In fact, the evidence is quite the contrary. Ms. Sutton
7 and Ms. Veasley say the Defendant is in the apartment at the time of the
8 shooting. Well, when the police arrive, where's Mr. Glover?

9 Remember whose home this is. It's Angela's home. If there was
10 DNA and fingerprints of another person in this case, based upon the evidence
11 you heard, DNA and fingerprints are only going to make a difference if it's a
12 male, if it's a black male, and he's pulling the trigger of a gun. The DNA and
13 fingerprints of a lot of people are going to be in that home. None of which
14 would have any relevance to this case whatsoever.

15 The why, the motive, the lack of a motive. Counsel argues there
16 was no motive for the Defendant to kill Patrick Fleming. But ladies and
17 gentlemen, that presupposes that it's a motive based on a reasonable person's
18 perspective. And I would submit to you that a person who's willing to talk to
19 Ms. Sutton and say, do you want me to take care of things? Now, at the time
20 Ms. Sutton doesn't understand the import of what she was just asked, she
21 finds out very shortly and very tragically. That's the person whose mind --
22 state of mind, is the determining motive, and that's Mr. Glover.

23 And it's evidenced, as Mr. Flinn told you, not only by what he says
24 to Ms. Sutton but what he does in preparation. So, if Mr. Bashor tells you,
25 look, the Defendant puts the kids in the room not because he's about to

1 commit murder, but he doesn't want to hear the kids hearing an argument.
2 What's more logical? I agree with Mr. Bashor you are, as the law instructs
3 you, not to leave your common sense at the door. Bring it into the
4 deliberation room with you. So, what's the common sense interpretation of
5 that? How about a person who's willing to -- and knows rationally to put the
6 kids in the room because of what he's about to do, and says to Ms. Sutton, do
7 you want me to take care of this?

8 And then armed with what? Not a carrot, a very powerful gun,
9 fully loaded, and without telling anybody, walks right up behind Mr. Fleming
10 and ends him. That's the motive, not from what you and I would do, but what
11 the Defendant is prepared and willing to do. And that, what he saw and
12 observed, offended him to the point that he did what he did. That's not our
13 perspective of what's right and wrong. That's his.

14 Counsel says, and argues to you, that Ms. Veasley and Ms. Sutton
15 are liars. He just said it to you, repeatedly. It's the core of their defense. So,
16 I'm going to address one aspect that -- my very last comment to you before I
17 sit down. But right now, let me ask you about whether or not they are indeed
18 liars. So, if you're to believe Mr. Bashor that Ms. Sutton and Ms. Veasley lied
19 to the police, then what you have to believe from the is that they have no
20 motive or -- to lie to the police.

21 Now, you heard what -- and understand, ladies and gentlemen, the
22 State, if you can recall, it's very subtle. The State never asked any question,
23 any question of Ms. Veasley or Ms. Sutton on what we call direct examination.
24 Mr. Flynn did it to both witnesses. The State's examination was what
25 happened that day. That is their 2nd -- the January 2nd version of the

1 statement they gave to police.

2 We never ask a question of either one of those witnesses about
3 what they said on January 1. Who did? The Defense did. They brought into
4 issue that their statements were inconsistent. That's the core of their defense.
5 That's what they want you to believe. Well, when you do that, their state of
6 mind about why those statements are inconsistent is now fair game. And
7 what did both of them tell you? We were afraid.

8 I would submit to you that that explanation, under the
9 circumstances that you heard in this courtroom, is absolutely reasonable. As
10 Mr. Flynn told you and as I am sure is not lost in your minds, they have no
11 protection. At the end of the day, Detective Owens, Renee Harder, all the
12 detectives, all the crime scene analysts, the tape, all comes down, people
13 leave. And who's left in that home? Them, with the killer still outstanding,
14 with children that they're responsible to protect, inside the home. Someone
15 who they know, who's armed, and who has every reason in the world to cause
16 them harm. But more importantly, ladies and gentlemen, their state of mind is
17 what they know of the Defendant. And what do they tell you?

18 And the Judge gave you a very specific instruction after you heard
19 the testimony of the witnesses in that regard. And that is they believed,
20 because of what had happened, but also what they believed that the
21 Defendant had been violent to others. That evidence can and should be used
22 by you to look at her state of mind, Ms. Veasley and Ms. Sutton, in an
23 explanation to you whether or not their first version and the inconsistencies
24 were reasonable under the circumstances. And I would submit, under these
25 facts, their perspective was abundantly reasonable.

1 Let me go back to kind of the question I had in voir dire about
2 crime scene analyst shows. And kind of what's on television, and then the
3 reality of what you see in this case. And it's a perfect example of the
4 distinction between the two.

5 So, from Dr. Corneal's perspective, she looks at the body. The
6 body of Mr. Fleming and the incredible amount of evidence, important
7 evidence that is and was derived in her examination of that slice of the crime
8 scene, his body. She could not tell you the sequencing of the shots fired that
9 killed Mr. Fleming and injured him, from her perspective, but if you take a
10 trained homicide detective with lots of experience and you expand the scope
11 of knowledge and evidence for a homicide detective to evaluate, you have
12 what Detective Owens told you. Because he and you, as the finder of facts
13 looking at these photographs and what you heard and when people heard
14 things, in what order, with what time delays, you can tell the exact sequence of
15 these gunshots.

16 Mr. Flinn told you that the first shot was to Mr. Fleming's head.
17 How do you know that? Well, in some sense, none of this is really relevant,
18 but I think it's critical to know because it tells you how, and why, and who
19 killed Mr. Fleming. Here to here, severs the brainstem, fractures the mandible.
20 So, two things Dr. Corneal told you about that wound. One, kind of obvious,
21 it's fatal. But two, my question is, Doctor, in your opinion, was this an
22 instantaneously incapacitating injury? Answer, yes. It's uncontested in this
23 case.

24 The severed brain stem. If he's walking, and I doubt he is, gravity
25 is pulling Mr. Fleming to the bottom of that staircase. He is dead when he hits

1 the floor at the bottom of the stairs when he comes to rest. The wound on the
2 inside of the thigh is at such a drastic angle there's no way he was shot
3 walking down the stairs unless the shooter is above him pointing down or
4 reaches over his shoulder and shoots in thigh going down.

5 What you heard from Detective Owens, as he examined Mr.
6 Fleming, was crucial because remember, Detective Owens, number one,
7 doesn't even know who the shooter is when he's looking at Mr. Fleming at the
8 scene, but he's a trained homicide detective. Not only is he determining, as he
9 said, the who, what, why, where, and how, he's trying to determine about the
10 gun in Mr. Fleming's waistband. Just off center to the right, inside the buckle,
11 and based upon a trained homicide detective, who also carries a firearm
12 oriented to a righthanded shooter.

13 So, certainly, Detective Owens has to investigate this case as to
14 whether or not there -- if there is a disagreement argument between two
15 parties and the deceased person has a gun, was there any evidence of self-
16 defense. The gun hasn't moved. And of course, that's why you examine the
17 gun as you heard in this case. It's not even ready to fire. It couldn't have been
18 fired. It had to be manually loaded by sliding back the slide mechanism to put
19 a round in the pipe and in the chamber.

20 And further, Detective Owens, because he is who he is, noticed not
21 only a bullet defect in Mr. Fleming's arm, his right arm, that there was an
22 additional indication to him about more injury than just a bullet going through
23 his right bicep. And sure enough, he's right, confirmed by the presence the
24 next day when he's present at the autopsy, reviews an x-ray, and indeed
25 confirmed as you hear it by Dr. Corneal, that this bone is completely fractured.

1 So, guess what happened to self-defense? It just grew wings and
2 flew out the window. Even if he were capable after being shot, he couldn't
3 have done it with his right arm, Mr. Fleming. And so, you have the two final
4 shots. And as Mr. Flinn suggested to you, and I as well, what does that tell
5 you? What does that tell you as evidence in this case? That while lying at the
6 bottom of the stairs, standing right over him, not pointing a carrot, but a .40
7 caliber semi-automatic handgun, pulls the trigger twice to a defenseless
8 individual lying on the ground.

9 Now, counsel suggests and put up a slide that says why would
10 someone do that if there's witnesses right there. You and I might not do that,
11 but if you turn around and say -- and remember the exact words that Ms.
12 Sutton testified to you from that chair, under oath, the Defendant said to her.
13 It wasn't just a threat to her and Ms. Veasley, it was a threat to the children as
14 well.

15 So why would someone do that? Well, guess what, ladies and
16 gentlemen, did it work? For a while it did. For a while it did. But Mr. Bashor
17 says, well, that's crazy. Guess what, they didn't tell the police the whole truth.
18 Most of what they said, if you were going to consider it a lie, is the omission.
19 Counsel says, well, she said Hatch. How's she afraid. That's inconsistent with
20 Ms. Sutton. Well, ladies and gentlemen, that presumes Ben Owens knows
21 who Hatch is. Okay? He doesn't know who Hatch is. Do you run Hatch
22 through the database trying to find a guy by the name of Hatch? Even when
23 the detectives knew his name 24 hours later, Shawn Glover, did they arrest
24 him an hour later? The uncontroverted testimony is he was arrested several
25 days after knowing who he was.

1 Ladies and gentlemen, there's one question that I was hoping Mr.
2 Bashor would answer. Because if you believe the Defense theory of this case,
3 you have to believe this. Patrick Fleming had a wife. Patrick Fleming had a
4 step-daughter. You heard Ms. Veasley call Mr. Fleming in her testimony to
5 you my dad. What you have to believe is that these liars took the stand, under
6 oath, looked and identified that man, Mr. Glover, right in the eye and told you
7 falsely, he's the killer of my husband and my father.

8 So, let me get this straight. You frame an innocent man, and that
9 the justice that you want for the killer of your husband and your father is not to
10 put the real killer in prison, but to frame an innocent man. So, with Mr. Bashor
11 in accord with me, apply your common sense to that theory. Thank you.

12 THE COURT: All right. The Marshal -- Marshals will be sworn,
13 thank you, to take charge of the ladies and gentlemen of the jury.

14 [The Clerk swore in the Marshals to take charge of the jury
15 during deliberations.]

16 THE COURT: Okay. Thank you. Ladies and gentlemen of the jury,
17 I need the two of you, jurors 13 and 14 are going to go with one of my
18 marshals to the jury lounge where we are going to bring you lunch in about 30
19 minutes give or take. Give us a little time, but we're going to bring you lunch,
20 because we ordered lunch for the jury. And then the jury -- the rest of you,
21 jurors 1 through 12 are going to have a working lunch while you deliberate.
22 So, you are excused.

23 THE MARSHAL: All rise. The jury is exiting.

24 THE COURT: And so, juror number 13 and 14, you're going to go
25 to -- you're under the same admonishment. You can't talk about the case until

1 you've been discharged.

2 Mr. Jones, you can't talk about the case okay? So, you're going to
3 go to the jury lounge. My staff's going to bring you there. We're going to
4 bring you lunch. Just hang out until you get further instructions from my staff,
5 okay? Thank you.

6 [Outside the presence of the jury]

7 THE COURT: I can't see that door.

8 MR. STANTON: Yes, Your Honor.

9 THE COURT: Thank you. Okay. So, my clerk has your phone
10 numbers. My clerk has the phone number?

11 MR. BASHOR: Yes.

12 THE COURT: Okay. So, thank you very much. Is there any other
13 record we need to make? There was one objection, and I sustained it.

14 MR. BASHOR: No.

15 THE COURT: All right. Then I'll see you when I see you.

16 MR. BASHOR: Very good.

17 MR. STANTON: Thank you, Your Honor.

18 [Recess at 12:03 p.m., recommencing at 3:50 p.m.]

19 [Outside the presence of the jury]

20 THE MARSHAL: Remain seated. Come to order. Court is back in
21 session.

22 THE COURT: All right. We're back on the record in C312448-1,
23 State of Nevada v. Shawn Glover. Let the record reflect that the attorneys and
24 the Defendant are present.

25 The jury's indicated they've reached a verdict. And where are the

1 alternates?

2 THE MARSHAL: Next door. They're going to be right behind
3 them.

4 THE COURT: Do either of you have a problem with the alternates
5 sitting in their seats in the jury box so that they can hear the verdict?

6 MR. STANTON: Not from the State.

7 MR. BASHOR: No, Your Honor. I do have a question. Now, do
8 you prefer that we stand for the verdict?

9 THE COURT: No.

10 MR. BASHOR: Okay.

11 THE COURT: I appreciate the offer, but no.

12 MR. BASHOR: Okay.

13 THE COURT: And for the record, that's the same in every case. I
14 just --

15 MR. BASHOR: It's good to know, Your Honor. I just -- different
16 judges, different --

17 THE COURT: No, I hear you. Can I see counsel at the bench
18 briefly?

19 [Sidebar begins at 3:52 p.m.]

20 THE COURT: I see you there with your file. And I see you there
21 with your little note thing on the left. And I see you're going to write a date
22 and then you're going to write the verdict in. That little piece of paper that's
23 exactly the same as when I sat in that seat 24 years ago.

24 MR. STANTON: Yeah.

25 THE COURT: Twenty-four years ago, a jury trial would come back

1 -- a jury would come back, and you sat there, and you wrote guilty Count I. It's
2 good to see that you're making a lot of progress in your office --

3 MR. STANTON: Well, it's funny you say that because I was just
4 over and sitting around in the office, bullshitting about that we just adopted a
5 new software to do subpoenas and stuff like that, that doesn't -- we spent \$2
6 million for software that didn't work. So, then we go --

7 THE COURT: Oh, I'm aware.

8 MR. STANTON: -- find out that -- oh, you know about the whole
9 thing?

10 THE COURT: Uh-huh.

11 MR. STANTON: So, now it's the breakout time, and they're not
12 working. So --

13 THE COURT: Well, I'm just saying --

14 MR. STANTON: And the software looks like 2005.

15 MR. BASHOR: Is it (indiscernible).

16 MR. STANTON: Yeah.

17 THE COURT: Just in case in you guys think, you know --

18 MR. BASHOR: Good luck with that.

19 MR. STANTON: Yeah, oh yeah.

20 THE COURT: -- you're under funded, it's --

21 [Sidebar ends at 3:53 p.m.]

22 THE COURT: Okay. Do you have the jury?

23 THE MARSHAL: Yes, ma'am.

24 THE COURT: All right. Go ahead and bring them in.

25 THE MARSHAL: All rise. The jury is entering.

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[In the presence of the jury]

THE COURT: Counsel, will you stipulate to the presence of the jury.

MR. STANTON: Yes, Your Honor.

MR. BASHOR: Yes, Your Honor.

THE COURT: And for the record the parties have agreed that the alternates could remain in the jury box so that they could hear the verdict being returned. Has the jury elected a foreperson?

THE FOREPERSON: Yes, Your Honor.

THE COURT: And which juror is the foreperson?

THE FOREPERSON: Juror Number 2.

THE COURT: All right. Has the jury reached a verdict, Juror Number 2?

THE FOREPERSON: Yes, Your Honor.

THE COURT: Could you hand the verdict to my Marshal? Okay. At this time the clerk will now read the verdict of the ladies and gentlemen of the jury out loud.

THE CLERK: District Court Clark County, Nevada, the State of Nevada, Plaintiff v. Shawn Glover, a.k.a. Shawn Lynn Glover, Jr. Defendant, case number C-16-312448-1, Department IV.

Verdict. We the jury in the above-entitled case find the Defendant, Shawn Glover, a.k.a. Shawn Lynn Glover, Jr. as follows: Count I, murder with use of a deadly weapon. Guilty of first degree murder with use of a deadly weapon.

We the jury in the above-entitled case find the Defendant, Shawn

1 Glover, a.k.a. Shawn Lynn Glover, Jr. as follows: Count II, assault with the use
2 of a deadly weapon. Guilty of assault with use of a deadly weapon.

3 We the jury in the above-entitled case find the Defendant Shawn
4 Glover, a.k.a. Shawn Lynn Glover as follows: Count III, discharge of firearm
5 from or within a structure or vehicle. Guilty of discharge of firearm from or
6 within a structure or vehicle.

7 Dated this 3rd day of August 2018, John Graber, Foreperson.

8 Ladies and gentlemen of the jury, are these your verdicts as read,
9 so say you one, so say you all?

10 JURORS: Yes.

11 THE COURT: Okay. Ladies and gentlemen of the jury, now I'm
12 going to poll you, which is just a fancy way of asking you each if this was your
13 verdict as read. Juror Number 1, was this your verdict, as read?

14 JUROR NUMBER 1: Yes.

15 THE COURT: Juror Number 2, was this your verdict, as read?

16 JUROR NUMBER 2: Yes.

17 THE COURT: Juror Number 3, is this your verdict, as read?

18 JUROR NUMBER 3: Yes.

19 THE COURT: Juror Number 4, was this your verdict, as read?

20 JUROR NUMBER 4: Yes.

21 THE COURT: Juror Number 5, was this your verdict, as read?

22 JUROR NUMBER 5: Yes.

23 THE COURT: Juror Number 6, was this your verdict, as read?

24 JUROR NUMBER 6: Yes.

25 THE COURT: Juror Number 7, was this your verdict, as read?

1 JUROR NUMBER 7: Oh, yes. Sorry.

2 THE COURT: You're Number 7. That's okay. Juror Number 8, was
3 this your verdict, as read?

4 JUROR NUMBER 8: Yes.

5 THE COURT: Juror Number 9, was this your verdict, as read?

6 JUROR NUMBER 9: Yes.

7 THE COURT: Juror Number 10, was this your verdict, as read?

8 JUROR NUMBER 10: Yes.

9 THE COURT: Juror Number 11, was this your verdict, as read?

10 JUROR NUMBER 11: Yes.

11 THE COURT: Juror Number 12, was this your verdict, as read?

12 JUROR NUMBER 12: Yes.

13 THE COURT: All right. Ladies and gentlemen, I want to you know
14 that a right to a trial by jury of our peers is the most basic, fundamental
15 constitutional right, that wouldn't be available to any of us unless people like
16 you are willing to step up and serve. I think you know from having
17 participated in jury service that it's a duty that people often shirk away from
18 because it requires personal and professional sacrifice. And I really -- myself
19 and the parties -- appreciate your time and attention to this case.

20 On behalf of the 8th Judicial District Court, I want to thank you for
21 all of your sacrifice to serve. The question may arise now can you talk about
22 the case. You are free to talk about the case or not talk about the case as you
23 see fit.

24 I'm going to ask my Marshal to bring you back to the jury room,
25 and then I'm going to come back there briefly to thank you and ask you if

1 there's anything myself or my staff, including the jury services people could
2 have done to make jury service any less stressful or more enjoyable, words to
3 that effect. I will not discuss anything to do with the case, because I'm going
4 to remain on the case going forward and will have matters to rule upon, so
5 that wouldn't be proper.

6 But I will come back briefly just to thank you personally and ask
7 you about staff and jury services. So, with that you have my greatest
8 appreciation and you are excused.

9 THE MARSHAL: All rise. The jury is exiting.

10 [Outside the presence of the jury.]

11 THE COURT: Okay. The Clerk has reported the verdict in the
12 minutes of the Court. The record should reflect that the Defendant's remanded
13 to custody of the Sheriff to be held without bail.

14 The matter's referred to the Department of Parole and Probation.
15 Preparation for presentence investigation report and the usual sentencing date
16 would be --

17 THE CLERK: September 26, at 9:30 a.m.

18 THE COURT: Does that work?

19 MR. STANTON: September 26?

20 THE CLERK: At 9:30 a.m.

21 MR. STANTON: Yeah, that's fine with the State, Your Honor. And
22 pursuant to the record, we previously developed, the State would, as the
23 conditions previously stated, dismiss Count IV.

24 THE COURT: Okay. So, Count IV is ordered dismissed. Here's
25 what I tell jurors. I reiterate I can't talk about the case or anyone who has

1 anything to do with the case or the Defendant or anything else. I don't tell
2 them anything. I do ask them though if jury services or my staff could have
3 done anything different that would have benefited them.

4 I will also ask on your behalf, if you want a few minutes to talk to
5 them, I usually give them the spiel and say it can help a lawyer in their practice
6 of law if you're willing to give them a few minutes of your time to discuss, you
7 know, the matter. If you want to you can, and they would probably appreciate
8 it. If you don't want to, you don't have to. And those of you that don't want to,
9 will leave before any attorneys come in. I'm not going to do that, if you don't
10 want to talk to them. If you want to talk to them, I will do that. What's your
11 pleasure?

12 MR. BASHOR: I'm open to speaking with them, Your Honor.

13 MR. STANTON: I think Mr. Flinn is as well.

14 THE COURT: Okay. So, what I'm going to do then is do my thing,
15 thank them, then if you'll have a seat here, I will let my staff know when it's
16 time to come back. Okay?

17 MR. BASHOR: Thank you.

18 [Proceedings concluded at 4:00 p.m.]

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

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25 _____
Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

SHAWN GLOVER, AKA:
AKA: SHAWN LYNN GLOVER, JR.,
Defendant.

CASE#: C-16-312448-1
DEPT. IX

BEFORE THE HONORABLE JENNIFER P. TOGLIATTI, DISTRICT COURT JUDGE
WEDNESDAY, OCTOBER 10, 2018

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
SENTENCING**

APPEARANCES:

For the State: DAVID STANTON, ESQ.
Chief Deputy District Attorney
WILLIAM F. FLINN, JR., ESQ.
Deputy District Attorney

For the Defendant: RYAN J. BASHOR, ESQ.
ROBERT E. O'BRIEN, ESQ.
Deputy Public Defenders

ALSO PRESENT: PATRICIA FLEMING,
CHARMAYNE WHITE, ROBIN FRANKLIN,
[Victim Speakers] ROBBIE FRANKLIN,
MARANDA K. SUTTON-FLEMING

RECORDED BY: YVETTE SISON, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, October 10, 2018

2
3 [Case called at 10:48 a.m.]

4 THE COURT: Okay, this is the time set for entry of judgment
5 and imposition of sentence on C312448, State versus Glover. The
6 record should reflect the presence of the – can you come down with –
7 right there. The record should reflect the presence of the Defendant in
8 custody. I have a Presentence Investigation Review. Let's start with the
9 Presentence Investigation Report. I have one dated August 29th, 2018.
10 Have you gone through that report with your client?

11 MR. BASHOR: Yes, Your Honor.

12 THE COURT: And based upon your review, does the defense
13 take any issue with the contents of the report pursuant to the *Stockmeier*
14 decision?

15 MR. BASHOR: No, Your Honor.

16 THE COURT: All right. The jury having returned its verdict
17 August 3rd, 2018, I hereby adjudge the Defendant guilty of Count 1, First
18 Degree Murder with Use of a Deadly Weapon, a Category A Felony.
19 And Count 2, Assault with Use of a Deadly Weapon, a Category B
20 Felony. And Count 3, Discharge of Firearm from or Within a Structure or
21 Vehicle, a Category B Felony.

22 In addition to reviewing the Presentence Investigation Report,
23 I have reviewed the Defendant's pre – excuse me, Sentencing
24 Memorandum, which has given me significant information about the
25 Defendant's early childhood, his criminal history, his mental state in the

1 weeks prior to the offense, his educational history and other personal
2 matters, along with Exhibits 1 through 7 that were attached. That
3 includes School District information about, you know, personal issues
4 related to the Defendant, and exhibits with photographs and information
5 about family members who specifically, I believe, the fact that his father
6 was murdered.

7 I've also received a letter from Robin Franklin who is the sister
8 of the named victim in the case, that was provided to me by facsimile by
9 DA Victim Witness Assistance Center. I have a letter from Miranda
10 Sutton-Fleming which was provided to me by DA Victim Witness. I have
11 a notice – a defense notification of oral statement of six victim speakers.
12 I may have said seven, but you've noticed six, unless I'm missing
13 another one.

14 MR. STANTON: You're correct, Your Honor. There'll be four
15 speaking this morning.

16 THE COURT: Okay. So was there any other – were there
17 any other materials: Photographs, letters, or the like that you would
18 have wanted me to review, that I didn't list out for the record?

19 MR. STANTON: Not on behalf of the State, Your Honor.

20 MR. BASHOR: No, Your Honor.

21 THE COURT: Okay. So obviously State, because this case
22 went to trial and there was no negotiation, you have the right to argue as
23 to the appropriate sentence. And I would assume you would like to do
24 so at this time.

25 MR. STANTON: That's correct, Your Honor. Your Honor,

1 there's a couple of things that I think are kind of – rather significant in the
2 limited -- what the State believes is a limited discretion – or decisions
3 that the Court can make today. Number one is, you know, obviously on
4 the murder case, the distinction between the three different sentences.
5 So let me just speak to why I believe a life without possibility of parole is
6 appropriate.

7 Number one, this isn't the first murder that this Defendant has
8 committed. It's by, at least the PSI has said. Next is, when you hear
9 cases as you did today and as this Court has heard over the decades
10 about why someone takes another person's life. In mitigation, you often
11 hear, age, narcotics, wrong place, wrong time. All of those I would
12 submit do not apply in this case.

13 This gentleman is 32 years of age. He's largely been
14 unemployed his entire life. He knows the victims in this case, and of
15 course it's going to be very important is that there were multiple victims.
16 Not only in just the murder he committed, but the actual charges that the
17 jury returned. This was, by all accounts and by the evidence that this
18 jury found, an execution. A planned, thought out execution of someone
19 he knew, and presumably someone that he was friends with.

20 Certainly the family and the greater circumstances of people
21 that were surrounding this event at this – and I – I'm sure the court
22 remembers the photographs of this townhome where Azekura Beasley
23 [phonetic] testified in the trial, that they had previously taken the
24 Defendant to his place of employment. He had only been working there
25 for a very brief period of time, the day before.

1 So what happens is in, you know, the wrong place the wrong
2 time, or there is some provocation that causes the Defendant, or at least
3 that one could reasonably argue mitigates the basis of why a killing took
4 place. That doesn't exist in this case. This is an unprovoked
5 execution/murder of an innocent man.

6 And then, if you want to know who you're sentencing, the one
7 fact that I would submit to the Court that is uncontroverted, found by this
8 jury is, while Mr. Fleming is lying at the bottom of the stairs, dying, the
9 Defendant points a gun at his wife and stepdaughter and says, in effect:
10 Don't tell anybody about what just happened, you know how I roll.
11 That's who you're sentencing today.

12 Take out all the other factors, whatever, it's the old adage of:
13 "What do you do when no one's looking?" And so, he has been granted
14 parole before and he was – violated parole and they chose to
15 dishonorably discharge him off the manslaughter case. So that tells you
16 something about the Defendant's ability to perform on parole. And I
17 would submit that along with another -- a number of other items of
18 evidence, which speak to why a parole option does not suit this case
19 and does not suit this Defendant.

20 The time that he's out from serving time for killing another
21 person is very brief. And in this particular case, there were no
22 circumstances that would warrant the exercise or use of deadly force.
23 You're going to hear from the victims that will tell you about Mr. Fleming
24 and about the loss in their life.

25 And all of these people know the Defendant, knew him before

1 these events, and that I think is a compelling fact of what punishment
2 should fall around his shoulders. And that the Assault with a Deadly
3 Weapon to the victim's wife done instant -- moments after his
4 execution/murder, must be the maximum. And I would submit must be if
5 it's to have any meaning, at all, consecutive in nature.

6 I would submit the case on that indicate again to the court that
7 we have four speaking.

8 THE COURT: Sir, I realize you pled not guilty and went to trial
9 but, do you have anything that you wish to say before sentencing's
10 pronounced? Now is your opportunity, or you could let your lawyer
11 speak for you if you would prefer.

12 THE DEFENDANT: Thank you, Your Honor, I'm going to let
13 my lawyer speak for me.

14 THE COURT: Okay.

15 MR. BASHOR: And, Your Honor, I appreciate your preface to
16 that statement with my client. That's precisely why he's uncomfortable,
17 at this point, making a statement.

18 As for argument from a sentencing judge, you know, you got
19 two things to look at: You have the nature of the offense and the crime
20 and you have the person that has been convicted of committing that
21 crime. Your Honor saw the evidence, Your Honor sat through this trial.
22 I'm not going to belabor too much about what occurred that day.

23 Instead, I'm going to talk about why I submit Shawn is
24 deserving of something less than life without the possibility of parole.
25 Obviously I'm in a position where I would ask you to consider the 20 to

1 50 years, but most importantly that, that I believe, under the
2 circumstances, Shawn does and can perform on parole 20 plus years
3 from now. He'd be at least a 52 year old man.

4 The problem here is that I think the moment Shawn was born
5 the tea leaves read that he'd either be dead or be in this position. I'm
6 not a native of Las Vegas, but what I hear about the neighborhood in
7 which he grew up, this Carey Arms, which I guess no longer exists, was
8 just a nightmare. Constant violence. So much so that the North Las
9 Vegas Police Department put a substation right in the complex and that
10 didn't deter anything.

11 He was born, literally, into gang life. His grandfather, Larry
12 Weatherspoon, when Shawn was eight, was murdered while he was
13 attempting – not murdered, he was killed while he was attempting to, to
14 commit a robbery. His father was murdered when Shawn was 14 years
15 old, shot and killed. He was in the wrong neighborhood, apparently.
16 That lifestyle made it common place to carry weapons. That lifestyle is
17 what is ingrained in Shawn's head. It's – you got to survive by any
18 means.

19 If you go to the police you either can't trust them in their
20 minds, or you're, you know, a snitch which could be even worse. More
21 evidence that from the moment Shawn was born this was the path. Both
22 of his brothers are in prison. It's an upbringing, it's a mentality. It's a –
23 and it's unfortunate. As evidenced by both sides in this case, you see a
24 group of wonderful people here on behalf of Mr. Fleming. Another group
25 of people have been here for Shawn.

1 Obviously both individuals in this case have had a lot of love
2 for them and they're blessed with that. More about Shawn, the person.
3 Shawn was in special education. Early on I had him tested by Dr. Kapel,
4 a doctor that Your Honor relies on quite a bit in different sorts of
5 proceedings. He found he had a full scale IQ of 75.

6 He's got a three year old daughter who I can attest that he
7 loves very much, that he misses. That he – that to the best of the ability,
8 the child's mother rarely makes it down to the jail to do a visit through
9 the machine. He hasn't held her in almost two and a half years.

10 So this is the, the person, Judge, and, and obviously when a
11 jury finds the result as they did here, there has to be a punishment. It
12 has to be a severe punishment. But I submit these things, not to excuse
13 anything, but to kind of give Your Honor a context of the person standing
14 before you. I would submit that the odds of coming to a different
15 resolution than the two I suggested would be extremely long for Shawn,
16 and for those reasons, I would submit that something less than life
17 without the possibility of parole, is the appropriate outcome here.

18 THE COURT: Who do you wish to call for at first?

19 MR. STANTON: I'd like to call first Charmayne White.

20 THE COURT: Ms. White, if you could face my clerk. Raise
21 your right hand and be sworn.

22 THE CLERK: [Oath given to victim speaker and affirmed].
23 Thank you. Please be seated. State and spell your first and last name
24 for the record.

25 [Victim speaker, duly sworn, testified as follows]:

1 VICTIM SPEAKER: First name is C-H-A-R-M-A-Y-N-E,
2 Charmayne. Last name is White, W-H-I-T-E.

3 THE COURT: Okay. Ms. White, if you want to have a seat
4 and if you could pull that microphone a little bit closer to you. They'll do
5 it. There you go. When you're ready.

6 VICTIM SPEAKER: Your Honor, I prepared a letter for you
7 from the bottom of my heart to listen to what I just heard, I was – I was
8 raised on the West side. I was raised around gang activity, but I choose
9 to go to church. I choose to live a good life. I don't make a decision to
10 where my – the person to, to, to say that I can take somebody's life.
11 That is no reason for no one to do the actions that they do because of
12 where you were and where you're raised at.

13 Because I was raised right around the corner and I am an
14 upstanding citizen who work, who value life. I value so much more
15 because I have a child. My son is the reason that I live and the reason
16 that I do the things that I do. That wasn't in my letter, but that was just
17 what I felt as I heard of the reasoning for the things that have taken
18 place.

19 But my letter says that I can't have him anymore, Patrick
20 Fleming, first given under the God who was the head of my life. I would
21 also like to thank this Court for hearing this matter at hand. This jury has
22 – this journey has, by far, been a life changing moment for the entire
23 family and catastrophic events to Patrick's children. Never would I have
24 imagined that Patrick R. Fleming would have been taken in such a
25 senseless manner.

1 He was the armor of the family but he – we can't have him
2 anymore. On January 1st, 2016, I received a call early in the morning.
3 My first thought was that somebody was pulling a prank on me, but the
4 seriousness in my father's voice reached my soul and it began to cringe.
5 The past two and a half years have been really heartbreaking and
6 painful. I know that Patrick is with God, but that gives me more comfort
7 knowing that I will see him once again. I will laugh, I will smile. His
8 voice I really miss, his family, his children and his wife. He loved his
9 family and we will never forget him.

10 In life we are shown that life is wonderful during birth, but not
11 once are we prepared for this type of death. Losing the elderly who
12 have lived their lives span is completely different feeling compared to the
13 loss of someone who still had a life ahead of him. And nothing prepared
14 me for this unhealing pain. I will always remember my brother for his
15 bravery. He stood up for his family and togetherness.

16 The hardest part was the week of his death. When I was in
17 home, I was at home with his son who was in the shower and he began
18 to sing. The song tore my heart apart. As Michael was in the shower he
19 sang, "My daddy is dead because my Uncle Shawn shot him in the
20 head. My Mama keep cryin' and I don't know why. My daddy is dead
21 because Uncle Shawn shot him in the head."

22 All I could do is ask my sister to go in there and you hold your
23 child. You do whatever it takes to stop his pain. His kids are lost. His
24 wife feels abandoned and his family is left in pieces. The value that
25 Patrick had clearly was not taught to Shawn Glover. He couldn't

1 possibly think it was okay to take someone's life. Shawn has extensive
2 family history of violence, murder, and gang life is all he knows.

3 We all have parents to teach us the way of life, but Michael
4 and Jordan doesn't have that anymore. Shawn Glover thinks he can
5 pull the trigger, that he would be robbing us of the family dinners that
6 can no longer exist. The daddy-daughter dances that will make his
7 daughter feel alone and alienated from her peers. Or the late night
8 hoops that he can't have with his dad anymore.

9 What about the vacation, the holidays that we had planned for
10 family that will never ever come, especially New Year's. This is how my
11 family started the birth of New Year, inter rationally, without death [sic].
12 Every year we think about this now. Mr. Glover -- and I don't even want
13 to say Mister, destroyed his life. He not only destroyed his life he
14 destroyed Mariah's life. You destroyed her life unless the six month old
15 Mr. Glover rubbed -- robbed her of everything. She doesn't have a
16 positive father figure in her life.

17 Instead, all she will know is that this is a little girl that will think
18 that having a dad exist through a glass. She will not have no bonding
19 experience with him. She will only know of what another man could give
20 her. She won't have her grandfather, except despite the circumstances.
21 All she will know is a father who is a repeat offender of murder.

22 She will know him as a coward handing -- handling arguments
23 inappropriately. She will only know of another man who will have to
24 teach her. An upstanding man will now have to step into her life and
25 show her the right things to do. When faced with problem he thinks

1 inappropriately and thinks inappropriately of people's lives. Well it's time
2 for the court to remove his power and his right of – as a law abiding
3 citizen and show him what it feels like to have something gone.

4 Shawn Glover is a menace to society –

5 UNIDENTIFIED SPEAKER: Yes.

6 VICTIM SPEAKER: -- and needs to be put away so that he
7 cannot harm another soul. We can't have Patrick back but guess –
8 Patrick can't get patrol – paroled from life. So, Judge Togliatti, I ask you
9 and ask you to make a decision. And please consider Patrick's kids and
10 his family and his community while making this difficult decision.

11 What would happen if Shawn Glover is released and allowed
12 to see his children, Michael and Jordan, Miranda in the care again. We
13 will – we will not want to see anything lost again. We don't need any
14 more lives taken.

15 MR. STANTON: Thank you.

16 THE COURT: Thank you.

17 MR. STANTON: Next would be Robin Franklin.

18 THE COURT: If you could face my clerk, raise your right hand
19 and be sworn.

20 THE CLERK: [Oath given to victim speaker and affirmed].
21 Thank you. Please be seated, state and spell your first and last name
22 for the record.

23 VICTIM SPEAKER: Robin Franklin, R-O-B-I-N F-R-A-N-K-L-
24 I-N.

25 MR. STANTON: We've changed this a little bit.

1 VICTIM SPEAKER: Oh sorry. I, I gave you my letter already,
2 but this one is for my mom. She's not able to read it so –

3 THE COURT: Okay.

4 VICTIM SPEAKER: -- I wanted to get my mother's
5 perspective. My mom is in court. She didn't want to come up with me.

6 THE COURT: That's fine.

7 VICTIM SPEAKER: My name is Patricia Fleming and I'm the
8 mother of Patrick Fleming who was murdered on January 1st, 2016 by
9 Shawn Glover. I'm writing this letter to plead to the court for the
10 maximum sentence for him taking my son's life. I'm specifically asking
11 for life without parole. This young man, to my knowledge, has
12 committed murder before and was released only to do it again, whereby
13 I lost my only son.

14 As a mother, all I can see is my son as a baby and all of the
15 memories that proceed him is [pause] proceeded him in his life. Forty-
16 four years of life that was ruthlessly taken by Shawn Glover. His first
17 step, his first words, graduating from high school, becoming a father,
18 getting married. I have all of those memories to never have new ones to
19 share as he continued to grow in age as a human being.

20 My son missed seeing his first grandchild being born. Family
21 was everything to him. This was a huge milestone gone forever. No
22 more celebrating holidays or birthdays kills me, slowly, every day to
23 know that I will not see my son again. When this young man took my
24 son he took my only son, my firstborn. This act has impacted my life in
25 such a great way.

1 I cry every day for the loss that I have endured. My son was
2 such a special person to me and the people around him. He had the
3 ability to win over people and befriend him – over and befriend him. He
4 was widely popular in Las Vegas around through – sorry, in Las Vegas
5 through being a part of many sports teams and social groups working –
6 and working all over.

7 He has a – he was a responsible husband and father. He was
8 also a – an involved father and truly protective of his children. He was a
9 man's man, and I miss his love and support every day. Today I look at
10 his 12 year old twins' eyes and I'm reminded they will never truly know
11 their father. I look at my daughters, the women I have left and I still feel
12 a whole in my heart for losing my son.

13 These words cannot truly express the depth of my pain. I'm
14 begging you to please consider the sentence of life without parole as it's
15 the only thing that will bring some semblance of justice for my son. A
16 parent is not supposed to precede their children in death, especially
17 when that life is stolen.

18 THE COURT: Thank you.

19 VICTIM SPEAKER: Thank you.

20 MR. STANTON: Next, Your Honor, would be Robbie Franklin.

21 VICTIM SPEAKER: Hello.

22 THE CLERK: [Oath given to victim speaker and affirmed].

23 Thank you. Please be seated. State and spell your first and last name
24 for the record.

25 VICTIM SPEAKER: My name is Robbie Franklin, twin sister

1 of Robin Franklin, R-O-B-B-I-E F-R-A-N-K-L-I-N. I'm the sister of
2 Patrick's [indiscernible].

3 Just wanted to say that I'm requesting maximum sentencing of
4 the ruling of Shawn Glover, who murdered my big brother on January
5 the 1st, 2016. He has impacted my life and my children's lives,
6 tremendously, and my life will never be the same. My brother and I had
7 a bond that was unbreakable. He was my protector. I mean, that he
8 was there for me no matter what. He is the oldest of three sisters: Me,
9 myself, and my little sister. He's my only brother. He was my only
10 brother until he was stolen from us, cowardly.

11 When Shawn Glover senselessly murdered my brother, I feel
12 like I lost a part of my mother because she is not the same anymore.
13 My mother is always crying. We never have good holidays because
14 she's crying about her child that was taken away from her, away from
15 our family. She cries all the time. She's very emotional. My Mom has
16 seizures.

17 And with you taking my brother's life – with Shawn Glover
18 taking my brother's life, her health is just down fall. It was like she
19 turned 70, 70 years old overnight. My mom aged over 20 years after her
20 son was taken away from her. I miss my brother so much, it's
21 unimaginably [sic]. I miss our long talks. I miss our hugs, our kisses
22 when we see each other; we were very close. That was my only brother
23 and I will never see him again.

24 My brother was involved in a lot of different things that was
25 going on in the community. He was a tow truck driver and he used to

1 help Metro. He always participated in the Martin Luther King parades.
2 He was very active in the community. No one should feed their lives
3 because of a monster like Shawn Glover, who doesn't value the
4 meaning of life. He should be incarcerated for the rest of his life without
5 the possibility of taking another life. Thank you.

6 THE COURT: Thank you.

7 MR. STANTON: Your Honor, final witness is Miranda Sutton-
8 Fleming.

9 THE CLERK: [Oath given to victim speaker and affirmed].
10 Thank you. Would you please be seated. State and spell your first and
11 last name for the record.

12 MS. SUTTON-FLEMING: It's Miranda K. Sutton-Fleming, M-I-
13 R-A-N-D-A S-U-T-T-O-N-F-L-E-M-I-N-G. Good morning, Your Honor.
14 My name is Miranda K. Sutton-Fleming. I am Patrick Fleming's wife.
15 We were married on November 21st, 2003. We have five children and
16 four grandchildren. For 15 years we built our family, cherishing, loving,
17 growing and making memories. Your Honor, on January 1st, 2016, I lost
18 my best friend, the father of my children, my husband. A simple
19 argument that didn't concern the Defendant, turned into my worst
20 nightmare.

21 My husband asked to speak with the Defendant, headed down
22 the stairs and was executed. Looking – looking into the barrel of the gun
23 myself, while being threatened, knowing my children and grandchildren
24 are behind me, was the worst fear I've ever known. Seeing my husband
25 lying there is something I see every day. The tragedy this has caused

1 the family is overwhelming. My lifeline, provider, Patrick Fleming is no
2 longer here to raise his children, to hold his mother, shake hands with
3 his father, laugh with his siblings, or kiss his grandson.

4 Our family's broken because the Defendant chose to – chose
5 not to walk away but to pick up a gun. Defendant – the Defendant had
6 hid his gun, waited for my husband to turn his back, then shot him in the
7 back of his head. The Defendant is a known gang member with no
8 remorse, who has been incarcerated before and served minimal,
9 minimal time.

10 A person that's violated, repeatedly, with a prior record. If the
11 Defendant had served a full time given in 2012 he wouldn't have had the
12 chance to murder my husband. The Defendant was free, working,
13 raising his daughter, and chose to throw everything away by murdering
14 my husband, a hard working family man that was community minded
15 and loved his family.

16 Every morning I wake up I remind myself that Patrick's not
17 here. I can't sleep most nights. It hurts emotionally to watch my
18 children suffer. Patrick played a major part in his family's life and is truly
19 missed. My children and I still suffer. Sorry, my children and I still cry.
20 Our activities and lifestyles have try – changed. The financial hardship
21 has pursued my life.

22 My soulmate and best friend's life was taken for no reason.
23 Who will never see New Year's Eve the same. I've lost friendships.
24 This has divided our family and we no longer feel safe. My children are
25 still walking – waking up in the middle of the night with nightmares. I

1 constantly replay the day of the crime over and over in my head. I am
2 stressed, anxious and hypertensive. Because of my children, I erase
3 suicidal thoughts.

4 Paranoia never goes away. I've constantly – I'm constantly
5 asking why? Why my family? Why my husband? Why would the
6 Defendant do this after my husband befriended him? Taken the
7 Defendant to work, bringing him in to be with his family -- then executed
8 my husband. I'm afraid of what the Defendant might do after he is – he
9 gets out. This isn't the first time this type of crime has been committed
10 by him, and that he's sorry.

11 I don't want my family hurt by the Defendant, again. I want to
12 be protected from Shawn Glover, forever. No more threats, fear,
13 intimidation, or looking over my shoulder. On January 1st, 2016, the
14 Defendant made a decision to give up all rights to his children, to his life,
15 to freedom. It only took five months for him to violate his parole. When I
16 look into my – to my baby's eyes I see Patrick.

17 When I look into his mother's face I see him. His father and
18 mother still grieves from not having him as a pillar of our family. Losing
19 him in a brutal, traumatic and horrifying manner would never haunt –
20 would forever – will forever haunt my soul.

21 Today we come and honor Mr. Patrick Ramon Fleming.
22 Honoring our family, rebuilding, and holding onto cherished memories.
23 Thank you.

24 THE COURT: Thank you.

25 MR. STANTON: That will conclude the State's presentation.

1 THE COURT: Can you please give me an updated number
2 for credit for time served?

3 MR. STANTON: Yes, Your Honor, my calculations are 1,000
4 and 11 days.

5 THE COURT: Counsel, do you agree with –

6 MR. BASHOR: Yes.

7 THE COURT: Mr. Glover, certainly assist the Court in
8 sentencing to be able to have tried the case and have an understanding
9 of the facts and the overwhelming evidence in this circumstance. As to
10 Count 1, I sentence you – well, first of all there's a \$25 administrative
11 assessment fee that's required by Nevada law. You're given credit for
12 the DNA sample previously provided, which is required by Nevada law
13 in, on or about May 10th, 2012 in your previous Voluntary Manslaughter
14 with Deadly Weapon conviction. Nevada law requires a \$3 DNA
15 administrative assessment.

16 As to Count 1, I order restitution in the amount of \$25,303.27
17 to State of Nevada Victims of Crime, which the PSI indicates has been
18 paid out for expenses related to the victim's death. I sentence you to
19 Life in Prison Without the Possibility of Parole at Count 1, with a
20 Consecutive 48 to 180 months in the Nevada Department of Corrections
21 for the Use of a Deadly Weapon.

22 At Count 2, Assault with a Deadly Weapon. I sentence you to
23 28 to 72 months in the Nevada Department of Corrections to run
24 Concurrent with Count 1. As to Count 3, Discharge of Firearm from or
25 Within a Structure or Vehicle, I sentence you to 60 to 180 months in the

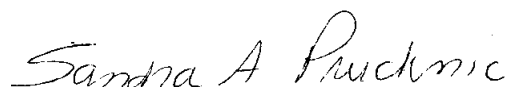
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Nevada Department of Corrections to run Concurrent with Counts 1 and
2. You have 1,011 days credit for time served and this case is closed.


[Proceedings concluded at 11:23 a.m.]

* * * * *

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


SANDRA PRUCHNIC
Court Recorder/Transcriber

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


Kerry Espatza
Court Recorder/Transcriber

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SHAWN GLOVER,) No. 77425
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Appellant,)
)
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v.)
)
)
THE STATE OF NEVADA,)
)
)
Respondent.)
_____)

DARIN IMLAY Clark County Public Defender 309 South Third Street Las Vegas, Nevada 89155-2610 Attorney for Appellant	STEVE WOLFSON Clark County District Attorney 200 Lewis Avenue, 3 rd Floor Las Vegas, Nevada 89155 AARON FORD Attorney General 100 North Carson Street Carson City, Nevada 89701-4717 (702) 687-3538 Counsel for Respondent
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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 17 day of April 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

SHAWN GLOVER, #1085475
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

BY /s/Rachel Howard
Employee, Clark County Public Defender's Office