

In the Supreme Court of the State of Nevada

Jemar Demon Matthews,

Appellant,

v.

The State of Nevada,

Respondent.

Electronically Filed
Supreme Court Case No.: 77751
Jul 29 2019 01:55 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Appeal from Judgment of Conviction
of Eighth Judicial District Court, Clark
County, in Case No.: 06C288460-2

**Appellant's Appendix
Volume 4**

/s/ Todd M. Leventhal

Leventhal and Associates, PLLC

Todd M. Leventhal, Esq.

NV Bar No. 8543

626 South Third Street

Las Vegas, NV 89101

Leventhalandassociates@gmail.com

(702)472-8686

Attorney for Appellant

Appellant's Appendix
Volume 4 of 4, PP.0751 to 913

Bates No. Appx.

1. Docket.....	1 AA 0001
2. Amended Information, 09/15/2017	1 AA 0014
3. Notice of Witnesses and/or Expert Witnesses, 07/19/2018.....	1 AA 0020
4. State's Supp. Amended Ntc. of Witnesses, 08/06/2018.....	1 AA 0026
5. Transcript of Trial Day 1, (relevant portions) 09/24/2018.....	1 AA 0035
6. Transcript of Trial Day 2, (relevant portions) 09/25/2018.....	1 AA 0054
7. Transcript of Trial Day 3, 09/26/2018.....	1 AA 0063
8. Transcript of Trial Day 4, 09/27/2018.....	1 AA 0226
9. Transcript of Trial Day 5, 09/28/2018.....	2 AA 0424
10. Transcript of Trial Day 6, 10/01/2018.....	3 AA 0617
11. Transcript of Trial Day 7, 10/02/2018.....	4 AA 0759
12. Instructions to the Jury, 10/02/2018.....	4 AA 0841
13. Transcript of Trial Day 8, 10/03/2018.....	4 AA 0888
14. Verdict, 10/03/2018.....	4 AA 0902
15. Judgement of Conviction, 12/07/2018.....	4 AA 0906
16. Notice of Appeal, 12/19/2018.....	4 AA 0910

CERTIFICATE OF SERVICE

The undersigned, an employee of Leventhal and Associates, hereby certifies that she served the foregoing on the State by delivering a true and correct copy of it on July 29, 2019, to the following persons via electronic service through the Nevada Supreme Court electronic filing system.

Steven S. Owens
Chief Deputy District Attorney

Adam Paul Laxalt
Attorney General / Carson City

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Jemar Matthews
Reg. No.:1014654
PO Box 650
Indian Springs NV 89070-0650

/s/ Maribel Godinez
An Employee of Leventhal and Associates

1 transfer can be excluded and sometimes it can't; right?

2 A I don't know if there's been testimony about exclusion yet.

3 Q So, in other words in the hierarchy or in the list of four different
4 potential sources of GSR, you testified that there's firing the weapon,
5 handling a weapon, being in the vicinity of a fired weapon or transfer;
6 fair?

7 A Correct, correct.

8 Q Okay. In and among those four, is there any hierarchy
9 between them?

10 A Not unless there's a scientific basis such as a videotape that
11 shows the person that you're testing firing a gun. That would be the
12 evidence showing him firing the gun so that's the source of it.

13 Q And did you see that -- any evidence of that in this case?

14 A No.

15 MR. TANASI: Thank you. I'll pass the witness.

16 THE COURT: Any recross?

17 MS. LEXIS: No, thank you.

18 THE COURT: Okay. Thank you very much for your testimony
19 here today. You may step down and you are excused.

20 THE WITNESS: Thank you.

21 THE COURT: Thank you for being here. Does the Defense
22 have any further witnesses?

23 MR. TANASI: Your Honor, can we approach?

24 THE COURT: Sure.

25 [Bench conference -- begins]

1 MR. TANASI: I just wanted to have the discussion and not in
2 front of the jury those with respect to our other witness that Mr.
3 Leventhal has raised earlier.

4 MR. LEVENTHAL: Oh, yeah.

5 THE COURT: Okay.

6 MR. TANASI: I don't know where we're at with that. I haven't
7 had a chance to check his phone or --

8 THE COURT: Okay, okay.

9 MR. TANASI: -- and so I just did want to make a record of
10 that.

11 THE COURT: So--

12 MR. TANASI: I think what we can do now is probably just go
13 on to jury instructions or let them go and then come back tomorrow and I
14 find her, I find her. If I don't we'll just go right into closing. How's that?

15 THE COURT: Yeah, but I -- and we're [indiscernible].

16 MS. LEXIS: No.

17 THE COURT: I'm going to let the jury go. I'm not going to
18 hang on to them because we will resolve jury -- you know, resolve jury
19 instructions when they left.

20 MR. GIORDANI: So, what does this mean to the Defense
21 resting, like --

22 THE COURT: I mean, so you want to leave open --

23 MR. TANASI: Yeah. In the morning if she shows up, she's
24 here, then we can argue. If she's not we can rest and go to closing.

25 MS. LEXIS: We'd like a ruling on whether --

1 THE COURT: Well, I'd like to hear more because what I've
2 heard is some witness maybe might come to testify. I haven't heard
3 anything specific. So, I'd like to let them go and we can take it up. But
4 do you want to do your stipulation before they go?

5 MR. LEVENTHAL: Yes.

6 MR. TANASI: Sure, yeah. Okay. And let them go and --

7 THE COURT: 10:30 tomorrow.

8 MR. LEVENTHAL: Ten-thirty of 11?

9 MR. TANASI: Is Your Honor okay with me reading the motion
10 of the temporary restraining order restraining him from being near that
11 house or did you want to --

12 THE COURT: Yeah. That's your stipulation; correct?

13 MR. LEVENTHAL: Yes.

14 THE COURT: Okay.

15 [Bench conference -- concludes]

16 THE COURT: All right. I know the Defense has a stipulation
17 that you'd like to read into the record.

18 MR. TANASI: I would. Thank you, Your Honor. At this time,
19 there will be two exhibits offered by the Defense, Defense Exhibit E and
20 Defense Exhibit F. First, Defense Exhibit E is a temporary restraining
21 order dated 4/7/06 to 4/25/06. It's restraining Mr. Matthews from being
22 around the 1301 Jimmy Ave address. There's an extension on that
23 restraining order which is Exhibit F which goes from April 26, 2006 to
24 April 25th, 2007. Thank you.

25 MR. GIORDANI: And we stipulated.

1 THE COURT: Okay. Thank you. At this time, Ladies and
2 Gentlemen, we are going to conclude for the day. During this recess,
3 you're admonished not to talk or converse amongst yourselves or with
4 anyone else on any subject connected with this trial, read, watch or
5 listen to any report or commentary on the trial or any person connected
6 with this trial by any medium of information, including without limitation,
7 newspapers, television, the internet or radio or form or express an
8 opinion on any subject connected with this trial until the case is finally
9 submitted to you. Let's start tomorrow morning at 10:30. Thank you
10 very much and you're excused.

11 [Outside the presence of the jury]

12 THE COURT: The record will reflect that the hearing is taking
13 place outside the presence of the jury panel. I know you wanted to be
14 heard further on your witness; is that correct?

15 MR. TANASI: We did, Your Honor. And I think our position is
16 if we can still have the evening to determine whether or not we hear
17 back from this witness that we talked about earlier on the record,
18 Jomeesha [phonetic], I believe her name was, and if in fact we do hear
19 from her we would -- it would be our position that we'd like to have her
20 testify tomorrow before we rest. I know the State had an objection to her
21 actually being able to testify if and when we get there.

22 THE COURT: Okay. But you -- she hasn't indicated, yes, I'm
23 coming or anything like that? Because before lunch it was she hasn't
24 responded to me.

25 MR TANASI: Correct. And that hasn't changed. She

1 indicated to me last night that she could not do it definitely Monday
2 because she just gave birth and she's breast feeding. So, maybe
3 Tuesday, maybe Wednesday, but I texted her at night saying give me a
4 call because I wanted to see if I could get a subpoena and she never
5 responded to me after that. So, I don't -- that's -- I'm just telling that's
6 where I'm at --

7 THE COURT: Okay.

8 MR. TANASI: -- and I just checked my phone and still there's
9 been no response from her.

10 THE COURT: All right. So, Pam -- I gave Pam some
11 changes on the jury instructions so they're probably ready. So, just give
12 me a few minutes and we can come back and settle instructions. Did
13 you have any other instructions you wanted to submit or were they
14 included?

15 MR. TANASI: I did. There were two additionally that Mr.
16 Giordani and I discussed. One was a mere presence instruction and I
17 don't think there's an objection on that one. There is one with respect to
18 eye witness identification that comes -- both of them come from the
19 Ninth Circuit model instructions. So, I can email them.

20 THE COURT: Did you give them to us?

21 MR. GIORDANI: I didn't give them to you. The Defense did.

22 THE COURT: Okay. Because I have -- I would have
23 remembered those.

24 MR. TANASI: Yeah, again, Your Honor, I apologize. I added
25 and copied and pasted them and sent it to Mr. Giordani. We talked

1 about it and I haven't had a chance to send it your way. I'll do that right
2 now.

3 THE COURT: Okay. No problem.

4 MR. TANASI: Okay.

5 MR. GIORDANI: And are we going to settle them in
6 chambers?

7 THE COURT: Well, I go back there first and then we settle
8 them formally in here.

9 MR. GIORDANI: Yeah. We're going to go with you.

10 THE COURT: Sure, sure. Just give me a few minutes.

11 MR. GIORDANI: Okay.

12 [Off the record at 3:24 p.m.]

13 [Proceedings resumed at 4:27 p.m.]

14 THE COURT: The record will reflect that the hearing is taking
15 place outside of the jury panel. Is the State familiar with Court's
16 proposed 1 through 43?

17 MR. GIORDANI: Yes, Your Honor.

18 THE COURT: Any objection?

19 MR. GIORDANI: No, Your Honor.

20 THE COURT: Any further instructions that you would like to
21 propose?

22 MR. GIORDANI: No, Your Honor.

23 THE COURT: Is the Defense familiar with Court's proposed 1
24 through 43?

25 MR. TANASI: Yes, Your Honor.

1 THE COURT: Any objection?

2 MR. TANASI: No, Your Honor.

3 THE COURT: Any further instructions you'd like to propose?

4 MR. TANASI: No, thank you.

5 THE COURT: Okay. Is the State familiar with the verdict

6 form?

7 MR. GIORDANI: Yes, Your Honor.

8 THE COURT: Any objection?

9 MR. GIORDANI: No.

10 THE COURT: Is the Defense familiar with the verdict form?

11 MR. TANASI: Yes, Your Honor.

12 THE COURT: Any objection?

13 MR. TANASI: No, Your Honor.

14 THE COURT: Okay. And the verdict form will be lodged with

15 the clerk. So, tomorrow I guess you're going to give me an update on

16 the morning?

17 MR. LEVENTHAL: Yes, Your Honor.

18 MR. TANASI: Yes, Your Honor.

19 THE COURT: Okay. And then if that witness isn't here we'll

20 just go right into instructions and closings.

21 MR. GIORDANI: Yes, ma'am. Your Honor.

22 MR. TANASI: Sounds good.

23 THE COURT: So, are we -- she'll probably bail this. If we

24 don't have a witness we can probably get it to the jury panel by lunch;

25 right?

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MR. TANASI: Sounds right.

MS. LEXIS: Yes.

THE COURT: All right. Have a good night.

MR. GIORDANI: Thank you.

THE COURT: See everybody tomorrow.

MR. TANASI: What time tomorrow, Your Honor, 10:30?

THE COURT: Ten-thirty.

MR. TANASI: Okay. Thank you.

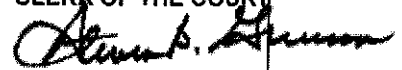
THE COURT: Ten-thirty. We have a criminal calendar in the morning, but we'll be done by probably ten.

MR. TANASI: Okay. Thank you.

[Jury Trial, Day 6, concluded at 4:28 p.m.]

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


PATRICIA SLATTERY
Court Transcriber



1 **RTRAN**

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3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6
7 **THE STATE OF NEVADA,**
8 **Plaintiff,**

CASE#: C228460-2
DEPT. XII

9 **vs.**

10 **JEMAR D. MATTHEWS aka**
11 **JEMAR MATTHEWS**
12 **JEMAR DEMON MATTHEWS,**

13 **Defendant.**
14

15 **BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE**
16 **TUESDAY, OCTOBER 02, 2018**

17 **RECORDER'S TRANSCRIPT OF PROCEEDINGS:**
18 **JURY TRIAL, DAY 7**

19 **APPEARANCES:**

20 **For the State:**

AGNES M. LEXIS, ESQ.
Chief Deputy District Attorneys
JOHN L. GIORDANI, III., ESQ.

21
22
23 **For the Defendant:**

TODD M. LEVENTHAL ESQ.
RICHARD E. TANASI, ESQ.

24
25 **RECORDED BY: KRISTINE, SANTI, COURT RECORDER**

1 TUESDAY, OCTOBER 02, 2018 AT 11:00 A.M.

2
3 [Outside the presence of the jury]

4 THE COURT: Okay. The record will reflect that the hearing is
5 taking place outside the presence of the jury panel.

6 MR. TANASI: Good morning.

7 MR. LEVENTHAL: Good morning.

8 THE COURT: Good morning. And Mr. Matthews is present
9 and in custody with his lawyers.

10 And there is some problems with the conspiracy and aiding
11 and abetting that I understand that both sides have had an opportunity
12 to now view these instructions.

13 MR. TANASI: Yes, Your Honor, that's correct.

14 THE COURT: Okay. So, we -- it's my belief that we need to
15 settle them again. So, is the State familiar with --

16 THE COURT CLERK: How come there's only 42
17 [indiscernible].

18 THE COURT: Okay. Because there are only 42 today.
19 Yesterday there were 43. I don't think we got rid of any; right?

20 MR. GIORDANI: We shouldn't have.

21 THE COURT: Okay. Let me just -- sorry -- let me just check
22 real quick because that doesn't make sense to me.

23 [Pause in proceedings at 11:04 a.m.]

24 [Proceedings resumed at 11:32 a.m.]

25 THE COURT: Okay. The record will reflect that the hearing is

1 taking place outside the presence of the jury panel. I just want to give
2 everyone a few minutes to go through those instructions. We added 37.

3 Okay. Is the State familiar with Court's proposed 1 through
4 43?

5 MR. GIORDANI: Yes, Your Honor.

6 THE COURT: Any objection?

7 MR. GIORDANI: No, Your Honor.

8 THE COURT: Any further instructions you'd like to propose?

9 MR. GIORDANI: No, Your Honor.

10 THE COURT: Any objection to the verdict form?

11 MR. GIORDANI: No, Your Honor.

12 THE COURT: Okay. And is the Defense familiar with Court's
13 proposed 1 through 43?

14 MR. TANASI: Yes, Your Honor.

15 THE COURT: Any objection?

16 MR. TANASI: Yes, Your Honor, just with respect to number
17 27, the mere presence. Your Honor, yesterday we -- may I be heard?
18 Thank you.

19 Yesterday the parties agreed that the mere presence
20 instruction that came right from the Ninth Circuit model jury instructions.
21 I do understand that the current instruction does reflect the state of the
22 law in Nevada. So, I don't necessarily disagree on that. However, I
23 guess I would just point if tested, I believe that the Ninth Circuit jury
24 instruction probably would prevail. And so thinking ahead down that
25 road I would still ask the Court to go with the Ninth Circuit instruction.

1 THE COURT: Thank you. Does the State wish to respond?

2 MR. GIORDANI: Yes, Your Honor. The instruction as
3 proffered in this packet is an accurate statement of the law as Mr.
4 Tanasi stated. I do have two case citations, *Walker v. State* 113
5 Nevada, 853 and *Palmer v. State*, 112 Nevada 763. This mere
6 presence instruction added the second paragraph as opposed to the
7 one yesterday which only had the first paragraph, and I believe this is a
8 more complete statement of the law.

9 THE COURT: All right. I don't necessarily think the one that
10 was proposed by the Defense is inaccurate. I just think that 27 with the
11 allegations in the State's charging document that this is more accurate.

12 MR. TANASI: Your Honor, can I just make extra point, Your
13 Honor?

14 THE COURT: Of course.

15 MR. TANASI: With respect to the -- Instruction number 27,
16 the word companionship is really the word that is jumping out at me as
17 being an issue especially given kind of the nature of the relationships in
18 this case that we kind of danced around in terms of the -- it being
19 precluded, the gang reference being precluded from being mentioned in
20 any way and then our objections, you know, at the bench to the use of
21 words to show how they may or may not have known each other. So, I
22 think companionship in this case is a specific issue and an important
23 issue in this case. And so having it in the instruction is I think an
24 elevated level of prejudice to my client.

25 MR. GIORDANI: I don't see any issue with the word

1 companionship as applied in this case or any other case. It doesn't infer
2 any gang membership or anything like that. So, I don't think it's
3 problematic in the least.

4 THE COURT: Okay. And I indicated the Court was going to
5 give number 27; any other objections?

6 MR. TANASI: None from the Defense, Your Honor.

7 THE COURT: Anything else to propose?

8 MR. TANASI: Not with respect to jury instructions, Your
9 Honor.

10 THE COURT: Okay. I know you have one more thing. Do
11 you have any objection to the verdict form?

12 MR. TANASI: I don't, Your Honor.

13 THE COURT: Okay. Thank you. Now, it's my understanding
14 you want to talk about the witness issue.

15 MR. TANASI: Yes, please, briefly, Your Honor. I did have an
16 opportunity to speak with Jomeesha [phonetic] Gilchrist last night,
17 G-I-L-C-H-R-I-S-T, and I did confirm essentially the same substance of
18 potential testimony if allowed that Mr. Leventhal had indicated last night
19 or yesterday. She is unavailable. She is unable to be here. She has
20 child care issues. I would request the Court allow us to have her
21 testimony via telephone -- telephonic testimony. I, again, I understand
22 the notice issue that the State has in this case, but we -- we have
23 brought it to the Court as soon as we essentially have learned of it.

24 Getting to kind of a substance and hearsay issues that were
25 raised yesterday, I would point out Your Honor I think that it's accepted

1 under the rule that existing state of mind with respect to Mr. Matthews.
2 NRS 51.105 allows hearsay statements and the statement of declarant's
3 then existing state of mind, emotion, sensation or physical condition
4 such as intent. And in this case his intent was to go visit his child in that
5 neighborhood and not to go and participant in the crime alleged in this
6 case. And so she can as offer evidence consistent with that intent.

7 I'd also point out that it's a statement against his interest.
8 Ultimately, you know, being mindful of a temporary restraining order that
9 carries liability if he violates it by going over and see -- seeing his child,
10 his statement to still go over and to see his child would be a statement
11 against his interests except that under NRS 51. 345.

12 And lastly, Your Honor, I would even argue potentially it's not
13 hearsay if we were to get into the way that it's proffered and potentially
14 asking a witness what she learned Mr. Matthews' plan was that evening,
15 what she knew of his plan, and I would equate it to the police officers
16 when they testify and what they learn in the course and scope of their
17 investigation taking it away from the hearsay rule altogether.

18 THE COURT: Okay.

19 MR. GIORDANI: So, there are three levels of notice issues in
20 the State's opinion.

21 So, first off, this is not a noticed witness that's been dropped
22 on us the day before closing arguments in a murder trial. Second, there
23 is now this request for audio/visual testimony which my understanding is
24 requires at least ten days notice as well. Third, there is now, based
25 upon what we've heard, it's essentially a quasi alibi witness and there

1 was no alibi notice. So, you know, this case arises from 2006. This
2 person has been around and is apparently related to Jemar -- Mr.
3 Matthews since then. So, it's troubling to the State that this person just
4 all the sudden pops up and has some form of alibi or excuse for his
5 location or actions that night.

6 And, finally, we haven't heard a thing from the witness. So, I
7 don't even really know that I can address the hearsay exception they
8 claim. At the end of the day if they're proper and she's going to say Mr.
9 Matthews said I'm going to this place where I have a TPO, that is being
10 offered for the truth, first off. Second, that potentially opens a whole
11 Pandora's box of doors that we, up until today, avoided. That -- if she
12 gets --

13 THE COURT: Like what?

14 MR. GIORDANI: If she gets -- if she testifies, I'm going to ask
15 her well did -- was he going there with Pretty P, Pierre Joshlin? Did he
16 have his red glove? Did you know he had a beef with Maurice who was
17 a block away? Did you know he had a beef with Bahoo? Did you know
18 Bahoo killed his friend the night before and that he was present? I
19 mean, it's a whole slew of issues that if someone's going to come up
20 and say I know where he was going or he told me where he was going,
21 it was completely innocuous, he was going to see his kid, I mean, that --
22 the cross-examination on that would be lengthy, to say the least, and
23 potentially open a whole lot of doors.

24 So, the notice issue is the first thing and the most important in
25 my opinion, but secondarily it's offered for the truth and then it opens up

1 a whole bunch of other issues that we've since avoided. And I should
2 say had we --

3 THE COURT: Well, I mean, it maybe could come in under a
4 hearsay exception. What do you think about the presence sense
5 impression?

6 MR. GIORDANI: I get generically it fits the description. I
7 haven't heard the statement. I've heard a, you know, second hand
8 conveyance of the statement.

9 The last thing I was going to say, Judge, is had we known
10 about this, a whole slew of things may have been different in this trial,
11 mostly importantly, we have a witness who is noticed and who has been
12 discovered to the Defense that was present for the murder the night
13 before which is the reason all these officers are in the area to begin with,
14 and he says Pretty P and Country Grammar were there or were talking
15 about getting revenge. So, I mean, a whole lot of things would have
16 been addressed up front had we known about this and that's why notice
17 is required to begin with.

18 MR. TANASI: Your Honor, if I can speak to one thing. I
19 disagree with the State that it's an alibi witness or has any smell of an
20 alibi witness because he was --

21 THE COURT: Well, it does seem to be a little alibi-ish
22 because you'll be using the testimony to say he was in the area but the
23 reason why he was in the area was for -- to see his child and the child's
24 mother.

25 MR. TANASI: Understood. But the distinction that I would

1 make is that would make sense, at least in my mind, if it were the area
2 of the murder that we were talking about and that's not what we're
3 talking about. I'm talking about he was in the area where he was
4 apprehended which is blocks away from the murder.

5 THE COURT: Sure.

6 MR. TANASI: So, in my mind that's why I would differentiate it
7 from an alibi and I would say those doors that the State has referenced
8 would be opened by this particular testimony are doors that the State
9 and only the State would be opening because, again, the questions
10 would be very limited to why -- what was your knowledge of where he
11 was that evening and when he left your house what did you know he
12 was going to do and that's it. It wouldn't -- I don't think it would open the
13 doors the State indicated it would.

14 THE COURT: Anything else?

15 MR. GIORDANI: Well, it's a party opponent -- it's a party
16 statement, it's not a party opponent statement so --

17 THE COURT: I agree.

18 MR. GIORDANI: If he wants to get his alibi in he can take the
19 stand and say it himself. If this witness comes in or by phone says I
20 knew where Jemar was going that night, which is what I'm hearing, we
21 would certainly be -- I would hope we'd be entitled to cross-examine and
22 say well did you know in that direction where the homicide occurred he
23 had a beef with the guy who lived at the home where the homicide
24 occurred. I mean, a whole lot of things not -- it wouldn't be the State
25 opening doors up. It would be their cross-examination on this last

1 minute alibi.

2 THE COURT: Okay.

3 MR. TANASI: I'll submit it, Your Honor.

4 THE COURT: Okay. At this time the Court is going to sustain
5 the objection as to the witness based on the lack of notice.

6 MR. TANASI: Understood. Thank you.

7 THE COURT: Do you have anything else before I bring the
8 witness in because I don't think that the Defense has rested yet.

9 MR. GIORDANI: Oh, that's right.

10 THE COURT: Right?

11 MR. GIORDANI: I believe that's [indiscernible] of Defendant.

12 MR. TANASI: Yes, because of this issue. You're correct.

13 THE COURT: Right. Because, yes, we have this issue so we
14 left it open. And so, Mr. Matthews, I just wanted to check with you one
15 more time because it appears though your attorneys have completed all
16 of their testimony. So, as we discussed the other day you do have the
17 right to testify or to remain silent. I know you told me you didn't want to
18 testify. I just want to make sure that's still your position.

19 THE DEFENDANT: I want to talk to my attorneys.

20 THE COURT: Of course.

21 MR. TANASI: Court's indulgence.

22 THE COURT: Of course. You know, Mr. Tanasi, if you want
23 more time and privacy, I can clear the courtroom.

24 MR. TANASI: I appreciate that. I don't think we need it.

25 THE COURT: Okay.

1 MR. TANASI: I think we're all set. Thank you, Your Honor.
2 THE COURT: Okay. Mr. Matthews.
3 THE DEFENDANT: No, ma'am, I'm not going to testify.
4 THE COURT: Okay. I just wanted to give you one last
5 opportunity. And so when they come in you guys are going to rest;
6 correct?
7 MR. LEVENTHAL: Correct. But our witness, I think the Court
8 said, bring you -- he left, the expert. We don't need him. Just the jury I
9 think Court -- bring the jury. Okay.
10 THE COURT: Right, right.
11 MR. LEVENTHAL: Okay. The Court said bring the witness in
12 and he left.
13 THE COURT: Did I say -- I'm sorry.
14 MR. LEVENTHAL: I thought I heard witness.
15 THE COURT: I made a mistake then. Sorry about that.
16 MR. LEVENTHAL: That's okay.
17 THE COURT: And then the State has nothing in rebuttal;
18 correct?
19 MR. GIORDANI: No, ma'am.
20 THE COURT: Okay. All right.
21 MR. LEVENTHAL: Do we want to -- before we come in, can
22 we move the -- we want to set for the --
23 THE COURT: Yeah, yeah, go ahead because we go right into
24 closings. If you want to, yeah, feel free.
25 [Colloquy between the Court and the Court Reporter]

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[Inside the presence of the jury]

THE COURT: Does the State stipulate to the presence of the jury panel?

MR. GIORDANI: Yes, Your Honor.

THE COURT: The Defense?

MR. LEVENTHAL: Yes, Your Honor. Thank you.

THE COURT: Thank you. Does the Defense have any further witnesses that they intend to call?

MR. LEVENTHAL: No, Your Honor. At this time the Defense rests.

THE COURT: Thank you. Does the State have anything in rebuttal?

MR. GIORDANI: No, Your Honor.

THE COURT: Okay. At this time, Ladies and Gentlemen, you have heard all of the evidence that will be introduced in this matter. It's now my duty as the judge to instruct you in the law that applies. The Court Marshal has provided you each with copies. I am required to read them to you. You will be able to take your copy with you when you go back to deliberate upon your verdict.

[The Court read the instructions to the jury]

THE COURT: The State of Nevada may open and close the arguments.

CLOSING ARGUMENTS BY THE STATE

BY MS. LEXIS:

Good afternoon. Ladies and Gentlemen of the jury, almost

1 exactly 12 years ago shots rang out on the corner of Balzar and
2 Lexington Avenue, 39 of them. On September 30th, 2006, the
3 Defendant, Jemar Matthews, his co-conspirator and partner in crime,
4 Pierre Joshlin, and two unidentified co-conspirators wearing black shirts,
5 jeans, gloves, armed like they were going to war, convened upon 1271
6 Balzar Avenue and ambushed the individuals inside that home and also
7 outside.

8 At the end of the day, the end of that night, at the end of the
9 39 shots that rang out, Michel'Le lay hiding across the street in a
10 backyard; Myniece was played dead next to her cousin. That's what
11 those 39 shots did.

12 In every criminal case, the State has to prove two things; first,
13 that crimes were committed and that the Defendant committed the
14 crimes. We're going to through it step by step, and I apologize in
15 advance that I'm going to have to go through those jury instructions with
16 you. The charges Mr. Matthews is facing today is conspiracy to commit
17 murder, murder with use of a deadly weapon for killing Mersey Williams,
18 attempt murder with use of a deadly weapon against Maurice Hickman,
19 Michel'Le Tolefree, and Myniece Cook. He also faces possession of
20 short barreled rifle, conspiracy to commit robbery, robbery with use of a
21 deadly weapon against Geishe Orduno Bolden, and Melvin Bolden, a
22 couple on Lawry Street.

23 He also faces two charges of assault with use of a deadly
24 weapon for what occurred with Officer or now Sergeant Bradley Cupp
25 and Officer or now Detective Brian Walters [sic].

1 While throughout this trial you've heard evidence and
2 testimony concerning potentially four black male adults including
3 concerning the Defendant and his co-conspirator partner in crime Pierre
4 Joshlin, I'd like to just remind you that this trial concerns Jemar
5 Matthews. Okay. You can consider the evidence about Pierre, about
6 those two others who have not been identified, but there's a jury
7 instruction that say you are here to determine whether the State of
8 Nevada has met its burden of proof from the evidence in the case. You
9 are not called upon to return a verdict as to any other person. So, if the
10 evidence convinces you, the jury, beyond a reasonable doubt as to the
11 guilt of the Defendant, Jemar Matthews, you should so find even though
12 you may believe one or more people are guilty.

13 I'm going to get the easy stuff out of the way first. Deadly
14 weapon. Well, here's the instruction on a deadly weapon. Any
15 instrument which if used in the ordinary manner contemplated by its
16 design and construction will or is likely to cause substantial bodily harm
17 or death or any weapon, device, instrument, material or substance
18 which, under the circumstances in which it is used, attempted to be used
19 or threatened to be used is readily capable of causing substantial bodily
20 harm or death. I don't think there's room to be any dispute in this case
21 that these fully loaded semi-automatic firearms with extended
22 magazines and clips are deadly weapons. Not only do you have the
23 pictures and you have the testimony from James Krylo, the forensic tool
24 mark and firearm examiner, but you also have evidence what happened
25 to Myniece. She had a gunshot to her wrist. What happened to

1 Mersey? She had gunshot wound to her forehead. Is the firearm
2 deadly? Absolutely. That's pretty obvious.

3 There is a jury instruction also that talks about use of a deadly
4 weapon. Several of you through your questions appeared as though
5 you were trying to figure out who had which weapon [indiscernible] and
6 also which bullet fired the fatal shot killing Mersey. Okay. But there's a
7 jury instruction that talks to you about what it means to use a deadly
8 weapon. Okay. If one -- if more than one person commits a crime and
9 one of them uses a deadly weapon in the commission of that crime,
10 each may be convicted of using the deadly weapon even though he did
11 not personally himself use the weapon. An unarmed offender uses a
12 deadly weapon when that unarmed offender is liable for the offense,
13 another person liable for the offense, say Pierre Joshlin, or these two
14 other unidentified partners in crime were armed with and used a deadly
15 weapon in the commission of the offense and the unarmed offender say
16 here, Mr. Matthews, had knowledge of the use of a deadly weapon. Did
17 he have knowledge of the use of a deadly weapon? Absolutely. There
18 were three guns and they converged upon 1271 through that side yard.
19 Absolutely he had knowledge.

20 One of the charges that you are to contemplate and deliberate
21 on is the count of -- or two counts of assault with use of a deadly
22 weapon. Okay. What does that mean? What's an assault? Well, it's
23 intentionally placing another person in reasonable apprehension of
24 immediate bodily harm by or through the use of a deadly weapon. A lot
25 of words. But basically in this particular case how that applies is, oh,

1 say Mr. Matthews, as the evidence has shown, coming out of or peering
2 through the driver's seat of this stolen carjacked vehicle and he turned
3 around, red glove holding it open, that driver's side door, short barreled
4 rifle in his right hand, as he turned his attention and firearm towards
5 Officers Cupp and Officer Walter. That's an assault with a deadly
6 weapon because you've heard testimony from both of those officers that
7 as he was turned to them pointing that firearm to them, it placed them in
8 fear, reasonable apprehension of substantial bodily harm. Okay.

9 There's also testimony that the Defendant, as he came out of
10 that driver's side door, he had that firearm, that short barreled rifle in his
11 hand. And what did Officers Cupp and Officer Walter tell you? Well,
12 they were -- they were concerned because they were in their unmarked
13 patrol vehicle -- well, lights and sirens were on at this point, right, but
14 they were engaged in such a quick high speed pursuit that they were -- I
15 think they used the word sitting ducks. Okay. One of them during their
16 testimony said we felt like sitting ducks or I felt like we were sitting ducks
17 because here's this person who we identify as Jemar Matthews facing
18 us, coming towards us, with a short barreled rifle. That, Ladies and
19 Gentlemen, is an assault with a deadly weapon against or -- against
20 Officer Cupp and Officer Walter.

21 In fact, Officer Cupp was in so much fear that what did he tell
22 you. As he saw the Defendant coming towards him and his partner as
23 they say like sitting ducks inside that unmarked patrol vehicle, what did
24 he do? He didn't have a chance to un-holster his weapon or holster his
25 weapon or un-holster his weapon yet. So, what did he do? He swerved

1 his car so he could hit the Defendant, so he could strike him, cause him
2 to fall to kind of eliminate that threat. That's how much fear these
3 officers were in.

4 So, we have proven to you beyond a reasonable doubt that
5 the Defendant committed two counts of assault with use of a deadly
6 weapon against Sergeant Bradley Cupp and Detective Brian Walters
7 [sic]. Here's another reason why. Possession of a short barreled
8 shotgun. Well, we read in the testimony of firearms and tool mark
9 examiner, James Krylo, and there's a jury instruction that says it is
10 unlawful to knowingly possess, manufacture or dispose of any short
11 barreled rifle or shotgun. Short barreled rifle means a rifle having one or
12 more barrels less than 15 inches in length or any weapon made from a
13 rifle whether by alteration, modification or other means with an overall
14 length of less than 26 inches.

15 What is in evidence is the actual report that James Krylo
16 authored and in that report you'll see concerning the Ruger rifle shown
17 here, he said the Ruger rifle was examined and test fired and
18 determined to be functional. Well, we know that. The rifle was received
19 with the barrel and stock cut off leaving a barrel length of 11 and 5/8
20 inches and an overall length of 19 and 1/2 inches. The trigger pull of
21 this rifle is three to three and a half -- three and a fourth pounds, and the
22 submitted magazine had a capacity of 30 cartridges. Okay.

23 Well, here's the law. Barrels less than 16 inches in length.
24 The evidence here. The barrel length was 11 and 5/8 inches in length.
25 Okay. The law. Overall length less than 26 inches in length. What's the

1 evidence? Overall length of this particular rifle, the one that was fired
2 multiple times at Mersey, Michel'Le, and Myniece had an overall length
3 of 19 and 1/2 inches. So, clearly the testimony beyond a reasonable
4 doubt is that the weapon, the short barreled Ruger firearm that the
5 Defendant possessed, okay, is a short barreled rifle. Guilty, possession
6 of short barreled rifle.

7 Another charge that you are to consider is robbery with use of
8 a deadly weapon. Okay. Pretty easy. Unlawful taking of the personal
9 property from the person of another or in his or her presence against his
10 or her will by means of force or violence or fear of injury, immediate or
11 future, to his or her person or property.

12 Well, you heard the testimony from Geishe Orduno and also
13 Melvin Bolden. They were at 24 --1284 Lawry Avenue and they just
14 inadvertently provided a getaway vehicle, not provided voluntarily or with
15 their consent, but they were carjacked, okay, guns to their faces; these
16 armed men with gloves telling them to get out of the car, and it's the
17 same four young black males that were seen at 1271 Balzar coming
18 down the street that they described. They're wearing black shirts,
19 gloves. One had red gloves. The one with the red gloves told Mr.
20 Melvin Bolden get out of the car, get out of the car. Is it a coincidence
21 that then the guy with the red gloves is the one seen by Officer Cupp
22 and Officer Walter as having been the one coming out of the driver's
23 side of that stolen car? One had a sawed off or short barreled rifle.
24 Yeah, we just talked about that, the one that Jemar Matthews had. One
25 had a handgun.

1 All of the accounts, the testimony by Geishe and Melvin, were
2 consistent with the description from the evidence found at 1271 Balzar
3 Street. Those two scenes are connected because of the same type of
4 descriptions, the same type of weapons, the same four young black
5 males wearing the same thing, and now they carjacked them. So, the
6 evidence has shown that Jemar Matthews, Pierre Joshlin, the two
7 unidentified co-conspirators committed an armed robbery, a carjacking.
8 Guilty, two counts of robbery with use of a deadly weapon.

9 Attempted murder with use of a deadly weapon. Another
10 [indiscernible]. Attempted murder is the performance of an act or acts
11 which tend but fail to kill a human being, when such acts are done with
12 express malice, namely, with the deliberate intention unlawfully to kill.
13 Well, they are charged with attempt murder on Myniece Cook because
14 despite 39 rounds being fired in her direction and in the direction of the
15 other victim, she lived. She sustained that cut to her wrist or that shot to
16 her wrist, okay, but otherwise it's an attempted murder because we
17 know 39 shots mean they meant to kill her. They just failed. That's
18 exactly what an attempt murder is.

19 The same with Maurice Hickman, the same with Michel'Le
20 Tolefree. Okay. Shots being fired in their direction. You heard
21 testimony from Michel'le. As she was running across the street, Balzar,
22 for her life, for her life, she heard and saw strikes being hit or bullets
23 striking the ground as she ran. Okay. Did he have the intent to kill? Did
24 he, Pierre Joshlin, the two unidentified co-conspirators, did they have
25 the intent to kill Michel'le and Maurice as they ran away? Yes. But they

1 failed. Guilty of three counts of attempt murder with use of a deadly
2 weapon. Myniece Cook, Maurice Hickman, Michel'le Tolefree.

3 In this case the Defendant is accused in an Amended
4 Information alleging an Open Murder. This charge may include murder
5 of the first degree and murder of the second degree. The jury must
6 decide if the Defendant is guilty of any of the offenses and if so of which
7 offense. That's what we're going to discuss now.

8 Murder is the unlawful killing of a human being with malice
9 aforethought either express or implied. The unlawful killing may be
10 effected by any of the various means of which -- by which death may be
11 occasioned. Okay. We're going to get the second degree murder
12 option out of the way for you first.

13 All murder which is not murder in the first degree is murder of
14 the second degree. Murder of the second degree is murder with malice
15 aforethought but without the admixture of premeditation and
16 deliberation.

17 I submit to you, Ladies and Gentlemen of the jury, that this is
18 not a case of second degree murder. We're about to discuss that
19 because premeditation, deliberation, and intent to kill was absolutely
20 present in this case, and the evidence has shown that to you beyond a
21 reasonable doubt. He is not guilty of second degree murder with use of
22 a deadly weapon. He is guilty of first degree murder with use of a
23 deadly weapon and here's why. First degree murder -- murder of the
24 first degree is murder which is perpetrated by means of any kind of
25 willful, deliberate, and premeditated killing. All three elements,

1 willfulness, deliberation, and premeditation must be proven beyond a
2 reasonable doubt for -- before an accused can be convicted of first
3 degree murder. You have to have all three things.

4 Willfulness is the intent to kill. There need be no appreciable
5 space of time between formation of the intent to kill and the act of killing.
6 Deliberation is the process of determining upon a course of action to kill
7 as a result of thought, including weighing the reasons for and against the
8 action and considering the consequences of the action. A deliberate
9 determination may be arrived at in a short period of time.

10 Premeditation. Premeditation is a design, a determination to
11 kill, distinctly formed in the mind by the time of the killing. Premeditation
12 need not be for a day, an hour or even a minute. It may be as
13 instantaneous as excessive thoughts of the mind. For if the jury
14 believes from the evidence that the act constituting the killing has been
15 preceded by and has been the result of premeditation, no matter how
16 rapidly the act followed the premeditation, it is premeditated.

17 Let me give you an example. I live on the southwest side of
18 the town. I tend to run late to work every once in a while. I take the
19 same route to and from work every work day. I come down Sahara,
20 okay. It tends to not be as busy as the freeway at about 7:50. Okay.
21 I'm in my car and I always pass the intersection of Sahara and Decatur.
22 It's a very busy intersection. Okay. So, as I'm coming up maybe I'm ten
23 car lengths away from that intersection of Sahara and Decatur. Mind
24 you, I'm running late. I know that -- okay, hey, I think the light's going to
25 turn yellow. The light turns yellow as I'm approaching that stop at that

1 intersection. What am I doing? Well, success is thought of the mind. I
2 immediately look behind me to see if I slam on my brakes and
3 someone's going to hit me from the back. I look at the intersection to
4 see if it's clear so that if I need to run that red light, if I need to run that
5 yellow light, I've made the decision. I considered the consequences.
6 You know what else I'm looking for as I'm going through that
7 intersection? Police officers. Because they tend to hang around that
8 particular area and task people who are late for work just trying to get
9 there on time. Okay.

10 So, as I am looking in my rear view mirror considering all of
11 the consequences, the choices, should I run the yellow or should I stop?
12 Is it safe for me to stop? Is it safe for me to run the light? Is there a
13 police officer there who can give me a ticket? That happens in a matter
14 of seconds. That's how quickly premeditation, deliberation, and intent to
15 kill can be born.

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

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

5 Look, let's face it. Contrary to what Dr. Scott or the -- one of
6 Defense experts, one of the firearms' guys, but you know the only way
7 to really know is if there was a video. Well, unfortunately, we don't have
8 a video recording someone's mind. Okay. So, we're not going to be
9 able to just press rewind to September 30th, 2006. What did Jemar
10 Matthews intend to do when he fired multiple times into the direction of
11 1271 Balzar Avenue? We don't have that ability. That's why we have
12 jurors, that's why you're called fact finders. That's why you get to
13 determine the intent to kill based on this jury instruction, considering the
14 weapon, the way it was used, and the attendant circumstances
15 characterized in that act.

16 Here are the three weapons we know were used at 1271
17 Balzar. We know that because, as we will discuss later, multiple
18 cartridge cases were found linked to these firearms linked to this
19 Defendant among others.

20 So, when you are thinking about whether or not the
21 Defendant, his partners in crime, and co-conspirators has the intent to
22 kill Mersey, Maurice, Michel'el, and Myniece, look -- think about the
23 weapons they used. We have a short barreled rifle with an extended
24 banana clip magazine capable of holding 30 rounds. We have two .45
25 caliber firearms but for the one jamming. It also had an extended clip.

1 The one found near Pierre Joshlin, look at that extended clip, all in the
2 direction of 1274 -- 1271 Balzar.

3 So, the evidence in this case has shown and I'm sure you
4 have this by now, the Defendant and his co-conspirators and partners in
5 crime ambushed these people. They came from a side entrance under
6 the cover of darkness not caring who they killed, intending to kill but not
7 caring who they killed; up Lexington standing at or near that bundle of
8 cones representing cartridge cases. Thirty-nine shots were fired
9 according to the forensic evidence, okay, the cartridges that were found,
10 the cartridge cases we talked about at length and we read that testimony
11 in. I mention this because the testimony from James Krylo that was
12 read into the record was that each of these weapons, each of those
13 three firearms were semi-automatic. To those of you who are not
14 familiar with firearms, semi-automatic means you have to pull the trigger
15 each time to fire your weapon.

16 During jury selection I think it was brought up that you're not
17 expected once you become a juror to leave your common sense at the
18 door. And there is actually a jury instruction that tells you to use your
19 common sense, and that's what I'm asking you to do when you're
20 looking at the evidence.

21 This instruction says although you are to consider only the
22 evidence in the case in reaching a verdict, you must bring to the
23 consideration of the evidence your everyday common sense and
24 judgment as reasonable men and woman. Thus, you are not limited
25 solely to what you see and hear as the witnesses testify. You may draw

1 reasonable inferences from the evidence which you feel are justified in
2 the light of common experience, keeping in mind such inferences should
3 not be based on speculation or guess. There's an instruction that tells
4 you use your everyday common sense as reasonable men and women.

5 Under that [indiscernible] or looking at the crime scene with
6 that in mind, the evidence can show nothing but a clear intent to kill.
7 Premeditation and deliberation with each pull of that trigger,
8 premeditation, deliberation, intent to kill, 39 counts.

9 Each time a conscience decision to fire that weapon in the
10 direction of people running trying to save themselves, each one
11 evidence of premeditation, deliberation, intent to kill. But you can also
12 consider when you're thinking about an intent to kill is you have this
13 diagram and we went through it during the trial. You know where the
14 bullet strikes were found? Inside the home of 1271 Balzar Street where
15 we know from the testimony of MyNiece that Maurice Hickman's mother
16 was in. Specifically, Mr. Giordani went through this with the lead
17 detective. Bullet holes through a window on the Lexington side of 1271
18 Balzar Avenue. What does your common sense and judgement tell you
19 if the intention of people who fire into a home like this? We're not talking
20 to scare, we're talking to kill.

21 What else is struck by bullets, okay, that vehicle at 1261
22 Balzar, the same vehicle that could be seen right here, the same vehicle
23 that was in the direction of MyNiece and Mersey. Remember MyNiece's
24 testimony. Mersey froze when these armed men came in from that dark
25 side of the street armed the way they were. Mersey froze. So, Mersey

1 and MyNiece were pretty much just feet away from where they stood
2 and almost exactly where Mersey laid.

3 What else does the scene tell you? Well, in terms of an intent
4 to kill, okay, Michel'Le testified that she and Maurice Hickman ran
5 across Balzar Street. You saw the pictures of Michel'Le's white shoe.
6 You know, what's further evidence of an intent to kill Michel'Le and
7 Maurice? Well, bullet strikes on the vehicle that were in the background
8 of where they were running. Common sense and judgment, evidence of
9 intent to kill.

10 First degree murder, premeditation, deliberation, intent to kill.
11 I harp on this a lot because a lot of times with first degree murder people
12 think well, you know, it has to be like someone who's been planning, you
13 know. Oh, I think my wife's cheating on me. So, next week or
14 tomorrow, you know, I'm going to go by there. Then I'm going to tell her
15 I'm going to call off work and try to surprise her at home. Then I'm going
16 to sit in the bushes and wait. Okay. That's what most people think is
17 first degree murder because there's that pre-meditation, deliberation,
18 that planning that kind of stands over time. Well that's not what the law
19 says. Okay. I want you to remember that. Premeditation deliberation
20 can happen as quickly the second goes through. The intent to kill, you
21 look at the circumstances, and you decide.

22 They're all dressed the same. That's another evidence of
23 premeditation and deliberation, you know, that planning. While it's not
24 the same planning as the husband trying to catch his wife cheating on
25 him, you know, well, they're wearing the same clothing, dark clothing,

1 okay, at least that's what the witnesses say with Pierre Joshin and
2 Jemar Matthews. They're both armed with gloves in September while
3 walking out on the street. Oh, and they're armed with semi-automatic
4 firearms with extended magazines and fully loaded.

5 There's been evidence in this particular case that Maurice
6 Hickman was perhaps the intended target, okay, or whoever was in the
7 home at 1271 Balzar. How do you know that? Well, we heard from
8 MyNiece and Michel'Le. All right. They weren't expecting this. They
9 had no reason to think that a random happenstance visit to 1271 Balzar
10 they're going to end up with their cousin being dead, MyNiece being
11 shot; Michel'Le hiding for her life across the street. And the evidence is
12 you can also think is, well, there was shots fired directly into 1271
13 Balzar. You know who lives there? Maurice Hickman, the one who was
14 uncooperative, the one who didn't even bother to give police a
15 statement. But you don't even have to decide necessarily who it is that
16 the Defendant and his partners in crime intended to kill because there's
17 a jury instruction that says during an attack upon a group a Defendant's
18 intent to kill need not be directed at any one individual. It is enough if
19 the intent to kill is directed at the group.

20 Now, you heard the testimony. Initially, they were in a group,
21 gunfire started. Maurice grabbed Michel'Le and ran across the street.
22 Meanwhile, you have Mersey frozen with fear and MyNiece not wanting
23 to leave her cousin, urging her to run. And you have bullets flying in all
24 sorts of directions at both of these groups of people. It's a doctrine
25 called transferred intent. Okay. It's an illegal yet unintended act results

1 from the intent to commit a crime, the act is also considered illegal.
2 Under the doctrine of transferred intent original malice is transferred
3 from one against whom it was entertained to the person who actually
4 suffers the consequences of the unlawful act. Even if they meant to
5 shoot Maurice, his family members, that intent to harm Maurice and
6 intent to kill Maurice or his family members in that house transfers onto
7 Mersey, onto Michel'Le into MyNiece. Mersey who suffered the
8 consequences of the unlawful act, the ultimately consequences.

9 For example, if a person intentionally directs force against one
10 person wrongfully that instead hits another, his intent to said to be
11 transferred from one to the other so he did not intend it in the first
12 instance.

13 Now, you have plenty of evidence there was a specific intent
14 to kill Mersey, Michel'Le, MyNiece based on the evidence, based on the
15 scene. But even if you were to believe that they were really after
16 Maurice and his family, so does that make him guilty of murdering
17 Mersey, attempting to kill Myniece or Michel'Le? The answer is yes.
18 Guilty. Transferred intent.

19 Now, the jury instructions talk about what are called theories
20 of liability. Okay. There are three different theories of liability that you
21 can consider. You don't have to be unanimous as to the theory of
22 liability you believe and I'm going to explain. You could believe that the
23 Defendant directly committed the act. You could believe that the
24 Defendant directly committed the act. He had the short barreled rifle; he
25 shot -- he fired 25 times. He killed Mersey. Specifically, though, with

1 the charges of assault with a deadly weapon and possession of short
2 barreled shotgun or rifle, we've charged it with he directly committed.
3 Okay. So, we say he committed assault with a deadly weapon, we're
4 saying he himself, Jemar Matthews, had the short barreled rifle, pointed
5 it at the officers when he was running towards them at that church.

6 As it pertains to the possession of the short barreled shot --
7 rifle, yes, we are alleging, Mr. Giordani and I are alleging that Jemar
8 Matthews on September 30th, 2006 had that short barreled rifle in his
9 hands. He was in possession of it. So, he directly committed that crime.

10 Well, there are two other theories of liability, right, aiding and
11 abetting and pursuant to a conspiracy, and that's what we're going to
12 discuss now. What is a conspiracy? A conspiracy is an agreement
13 between two or more persons for an unlawful purpose. To be guilty of
14 conspiracy, a Defendant must intent to commit the specific crime agreed
15 to. The crime is the agreement to do something unlawful. It does not
16 matter whether it was successful or not.

17 In this case, what was the conspiracy? Oh, let's put on some
18 gloves, arm up semi-automatic firearms with extended clips, go this
19 house and shoot up the place, shoot up some people. Conspiracy. It's
20 an agreement to do something unlawful. A person who knowingly does
21 any act to further the object of a conspiracy or otherwise participate
22 therein is criminally liable as a co-conspirator. If you -- a person
23 knowingly does any act to further the conspiracy, oh, like showing up to
24 1271 Balzar, you and your closest friend; bringing a firearm loaded,
25 wearing gloves, and then shooting. Jemar Matthews, Pierre Joshlin, two

1 other unidentified individuals under the law are conspirators, co-
2 conspirators. They further the conspiracy, the agreement to do
3 something unlawful.

4 Each member of a criminal conspiracy is liable for each act
5 and bound by each declaration of every other member of the conspiracy
6 if the act or the declaration is in furtherance of the object of the
7 conspiracy. The act of one co-conspirator pursuant to or in furtherance
8 of the common design of the conspiracy is the act of all. The act of one
9 is the act of all. It's like the Four Musketeers of the law. The act of one
10 is the act of all. It doesn't matter if Jemar Matthews was the one who
11 had the short barreled rifle who ultimately killed Mersey. What matters
12 is he was a co-conspirator who did things to further that agreement, that
13 conspiracy. So, he is liable even if he didn't pull that trigger it is as if he
14 did it himself. That's what the law says.

15 So, how is a conspiracy proven? All right. It is not necessary
16 in proving a conspiracy to show a meeting of the alleged conspirators or
17 the making of an expressed or formal agreement. Now this is common
18 sense, right, and he -- mostly we can as reasonable men and women
19 [indiscernible] your common sense.

20 Most people who are engaged in a criminal conspiracy
21 particularly to kill are not going to put together a contract, right, that
22 says, hey, you we're going to wear the same clothes, we're all going to
23 put gloves on. I'm going to have -- I'm going to bring this weapon, you
24 bring that weapon, and you bring that weapon, and we'll all come up on
25 Lexington and we're going just fire as much as we can and take out as

1 many people as we can. You're not going to expect a contract; right?
2 Things like that don't happen.

3 We don't have to show that there was a meeting either. This
4 isn't a movie where, you know, right before a bank heist they always
5 meet at a Denny's, for some reason, some breakfast place; right?
6 Always talking about how it's going to go, you know. You do this, I do
7 that, hey, go do this. Remember, no one gets killed, you know. This
8 isn't that. Okay. Because the law says it's not necessary for us to show
9 an agreement or that they even had a meeting to prove that a
10 conspiracy existed. The formation and existence of a conspiracy may
11 be inferred from all the circumstances tending to show the common
12 intent. We've gone through it. What was the common intent? Kill, rob,
13 scare.

14 Criminal intent can be inferred. Okay. Evidence of a person
15 was in the company or of or associated with one of more persons
16 alleged or proved to have been members of a conspiracy is not in itself
17 sufficient to prove that such person was a member of the alleged
18 conspiracy. It makes sense; right? However, you're instructed that
19 present companionship and conduct before, during and after the offense
20 are circumstances which my considered in determining whether a
21 conspiracy existed. Oh, they were all present at 1271 Balzar. Mr.
22 Matthews, Pierre, those two other dudes, they were in a companionship.
23 Their conduct before, well, like I said, planning, gloving up, bringing the
24 weapons, going up Lexington and surprising and ambushing these
25 people. So, that's the conduct before. Oh, how about during. Oh, they

1 all shot different firearms but shot in that direction. After, after they killed
2 Mersey, shot MyNiece, sent Michel'Le into hiding, oh, they go carjack
3 someone, all of them. And then they engage the police in a high speed
4 chase and then a foot pursuit and then they hunker down. Conspiracy is
5 seldom susceptible of direct proof and it's usually established by
6 inference from the conduct of the parties. In particular, a conspiracy
7 may be supported by a coordinated series of acts in furtherance of the
8 underlying offense sufficient to infer the existence of an agreement.

9 So, again, we don't have the luxury of a videotape playing into
10 -- to play for you Defendant saying, hey, when I ran up to Geishe and
11 Melvin I intended to carjack them. And there's no videotape that we can
12 play for you, okay, it's going to say, oh, let's say it's of Jemar Matthews.
13 September 30th, 2006 while I was armed with a short barreled rifle, I
14 fired 25 times in the direction of these people I intended to kill. That can
15 -- you can draw an inference from their conduct supported by a
16 coordinated series of acts: Going to the scene together, acting together
17 while they're there, leaving together, trying to get away together. When
18 does the conspiracy end? Well, it ends upon the completion of the
19 crime. The conspiracy continues until the co-conspirators have
20 successfully gotten away and concealed the crime.

21 The other theory of liability. Okay. Again, you don't have to
22 be unanimous. You could think this person directly committed. He fired
23 that ultimate shot that killed Mersey. You could think that, look, it was
24 pursuant to a conspiracy the act of one is the act of all. So, he's just as
25 guilty even if it was Pierre who shot.

1 The third version is called aiding and abetting. Okay. A
2 person aids and abets the commission of a crime if he knowingly and
3 with criminal intent aids, promotes, encourages or instigates by act or
4 advice or by acts and advice the commission of such crime with the
5 intention that the crime be committed. You just help each other commit
6 the crime. Words, advice. When two or more persons are accusing of
7 committing a crime together, their guilt may be established without proof
8 that each personally did every act constituting the offense charged. In
9 other words, it does not matter who did what. If you find that they
10 helped -- if you find that they helped each other, okay, they acted
11 together to advise, counsel or their acts. It doesn't matter who had the
12 .35 that jammed. It doesn't matter who had the other .45 or who shot
13 the one found underneath Pierre Joshlin in that dumpster; it doesn't
14 matter who actually shot the short barreled rifle. It doesn't matter.

15 The State is not -- this is a jury instruction -- the State is not
16 required to prove precisely which Defendant actually committed the
17 crime and which Defendant aided and abetted. That is the law. All
18 persons concerned in the commission of a crime who either directly and
19 actively commit the act constituting the offense of who knowingly and
20 with criminal intent aid and abet in its commission or whether present or
21 not who advise and encourage its commission with the intent that the
22 crime be committed are regarded by the law as principals in the crime
23 thus committed and are equally guilty thereof. Again, it doesn't matter
24 who did what. If you find that they aided and abetted, helped each other
25 to act, advice, words, equally guilty.

1 Let me give you an example. I used a bank heist, right,
2 example. Say four individuals decide to rob a bank. One thinks I'm
3 going to be really smart. I'm just going to be the getaway driver.
4 There's always got to be a getaway driver; right? So, three go in armed,
5 masked, gloved up. The one's that driving, that getaway driver,
6 engaged in a conspiracy. The act of one is the act of all. Aiding and
7 abetting. Equally guilty. What if you have a situation where, hey, there's
8 someone who is like, ooh, I don't necessary want to like commit a bank
9 robbery with you, but you can have my gun, you can use my gun.
10 Engaged in a conspiracy, aided and abetted. The act of one is the act of
11 all. Equally guilty.

12 I will almost venture to say that the fact that these crimes were
13 committed is not going to be the ultimate issue in this case. Okay.
14 We're going to go to the second element or the second thing the State
15 must be prove, okay, and that's that the Defendant Pierre -- I mean,
16 excuse me -- Jemar Matthews committed the crimes that we just went
17 over.

18 So, what evidence have we proven? Well, what have you
19 heard? At about 9:52 p.m. Sergeant Cupp, Officer Cupp at the time,
20 and his partner were near that Circle Park. Shots rang out. They made
21 their way past Balzar Avenue, totally quiet. So, they make that left turn
22 into Lexington where they see a disturbance. They see the Defendant
23 as you heard testimony, okay, and his co-conspirators, his partners in
24 crime, carjack Geishe and Melvin, Betty and Steve, their friends, okay.
25 And then take off at a high rate of speed basically running that stop light,

1 getting on Lawry, getting down to MLK, passing Lake Mead, blowing
2 another stop light. Evading, okay, lights and sirens are on, turning into
3 ultimately Lexington near the front of that church. You've seen the
4 pictures. Okay. There's Lawry, 1284 Lawry. Defendants take off and
5 end up at 1915 Lexington.

6 You've heard testimony from Officer Cupp that were two
7 individuals in the passenger side of the vehicle Okay. Pierre Joshlin, he
8 indicated, was in the front passenger and an unidentified co-conspirator
9 in the back seat. That unidentified co-conspirator ran through the
10 parking lot. Officer Cupp saw that he was not armed. Mind you there is
11 a jammed firearm left in the vehicle. Okay. He is not armed. So, Officer
12 Cupp doesn't turn his attention on that particular person. Instead, he
13 turns his attention towards the person ultimately identified as Pierre
14 Joshlin comes out of that front passenger seat and run towards Doolittle.
15 He sees that this individual has a black firearm, and so he follows him
16 down Doolittle where he fires three rounds after Pierre Joshlin points a
17 firearm at him as he turns towards Officer Cupp. And Officer Cupp tells
18 you at some point he abandons that foot pursuit and he sees the
19 Defendant -- excuse me -- Pierre Joshlin going towards the area of
20 1701 North J Street, and you know, you heard testimony. Pierre Joshlin
21 found in a dumpster located at 1701 North J Street, okay, with gloves,
22 with a firearm in that dumpster. And Officer Cupp now Sergeant Cupp
23 testified to you that the person in that dumpster was the person he was
24 chasing, the person who he saw come out of that vehicle, that carjacked
25 stolen vehicle, as Pierre Joshlin.

1 Okay. We've also introduced evidence Pierre Joshlin gunshot
2 residue on the palm of his right hand, on the back of his left hand. What
3 does that mean? He may have discharged a firearm, handled the
4 firearm, or was in close proximity to a discharged firearm.

5 The black gloves found beneath him were also tested for
6 gunshot residue. Positive on the right back area of the right hand glove,
7 positive for the right palm area of the right hand glove, and positive for
8 the left back area of the left hand glove. What does that mean? The
9 black glove may have come into contact with a discharged firearm or
10 was in close proximity to a discharged firearm. More importantly, okay,
11 Pierre Joshlin, that firearm found behind him in that dumpster, the Glock
12 model 21, the .45 caliber semi-automatic handgun with a 28 round clip,
13 well, 11 of those cartridge cases fired -- were fired at 1271 Balzar.

14 Back at the church we're going to discuss what Officer Cupp
15 found or what -- excuse me -- not what Officer Cupp found but what
16 police found in the carjacked vehicle belonging to Geishe and Melvin.
17 Well, on the front passenger floorboard they find this gun, a Colt model
18 officer's ACP .45 caliber semi-automatic pistol. One cartridge case
19 found at 1271 Balzar Avenue was fired from this gun. This was the gun
20 that jammed.

21 Back at the church. Okay. You've heard testimony from
22 Officers Cupp and also Officer Walter. This is the view that they have of
23 the Defendant, Jemar Matthews, as he came out of that car with a short
24 barreled rifle aimed at them, ran towards them. I did a still photo from
25 that video, that reenactment of the chase, to show you just how lit up

1 this particular area was. You have the back lighting from that church
2 sign and you have the headlights pointing right in the direction of Jemar
3 Matthews such that Officers Cupp and Officer Walter got a great view of
4 his face. Particularly as he fell, they got a great view of his face, they
5 got a great view of his gloves, they got a great view of the short barreled
6 rifle that he held in his hand.

7 Now, the Defense put on a witness, Dr. Chambers, to talk
8 about eye witness identification. Okay. But when Mr. Giordani
9 conducted his direct examination of both Officers Cupp and Officer
10 Walter, they both testified to that they had -- they were familiar with
11 Jemar Matthews. They had seen him around before. Okay.

12 So, I wanted to talk to you about the difference between
13 recognition and identification. Okay. There was this expert witness that
14 they put on. They also made a lot to do about how -- oh, the only
15 description that these officers were able to give was BMA, black shirt,
16 blue jeans, and maybe it pertains to the Defendant's red glove. Okay.
17 Oh, you didn't mention the corn rows. I did but it didn't make it into the
18 CAD. Oh, you didn't mention that you knew him before. Officer Cupp is
19 like or Officer Walter is like how would that had helped anybody. How
20 would have that helped me describe someone to other officers? How
21 would that have helped him describe someone that he was familiar with?
22 Okay. The difference is recognition versus identification. Let me give
23 you an example of how those little details are not quite as important as
24 the Defense made them out to be.

25 Cindy Crawford, the famous model, has a mole. Which side?

1 Left or right? Okay. The fact that you didn't remember, besides one of
2 our jurors, that it was on the left side doesn't preclude you from
3 identifying this woman in this picture as Cindy Crawford. The
4 description, BMA, black male adult wearing jeans and a black shirt.
5 Aah, that's so vague, that's so general, but as Officer Walter said how
6 would that have helped. BMA, BMA. That description though, vague as
7 it may be, won't stop you from recognizing Denzel Washington over
8 Shamar Moore. Recognition versus identification. There's a difference.
9 You recognize someone versus just identify. These details, cornrows,
10 things that change, are not as big of a difference when you have prior
11 knowledge of the person and you are simply recognizing them. Not so
12 vague after all.

13 There's another instruction concerning the credibility or
14 believability of a witness. Okay. It should be determined by or a
15 manner upon the stand, his relationship to the parties, his fears,
16 motives, interests or feelings, his opportunity to have observed the
17 matter to which he has testified, the reasonableness of his statements,
18 and the strength or weakness of his recollections.

19 There's another instruction that says all these things that you
20 can talk about or give -- factors that you can use in evaluating eye
21 witness identification testimony. You know the most common sense
22 thing that even the Defense expert had to admit, look, the longer time
23 you get to get someone the better your view, the better the lighting; the
24 sooner after you identify or recognize them, the sooner you identify
25 them, all things that make ID more reliable. That's actually in a jury

1 instruction, okay, including Number 7 totality of everything. All right.

2 So, when you are considering the reliability or believability of
3 the identification of Officers Cupp and Officer Walter, think about how
4 different they are to just the ordinary observer. Here are two police
5 officers, okay, who have worked in this area command, this Bolden Area
6 Command, for up to three years leading up to September 30th, 2006.

7 Okay. These are officers who have actual training and experience
8 chasing bad guys. Okay. It's their job to observe. While I'm driving
9 down the street on a daily basis, it's not my job to recognize that the
10 license -- the car next to me the license plate is expired, the registration
11 is not right, someone's on their phone. That's not my job. I am not a
12 paid observer. But police officers, when they clock in that's their job all
13 the way up until they clock out. So, yeah, they are trained observers.

14 One of the other things that you can also consider, okay, Mr.
15 Giordani asked both Officers Cupp and Officer Walter what -- who
16 caused you to remember this particular scene and each one told you
17 that that was about the first time I was engaged in an officer involved
18 shooting. I had to discharge my firearm for the first time, three years on
19 the force, that particular day. I was scared for my life. An actual armed
20 person confronted me. Yeah, I remember it. I may not remember
21 whether it was a leg that stuck out or whether it was a foot, but I
22 remember a red glove holding that door open, and I remember a short
23 barreled rifle in his right hand, and I remember him looking at me. I
24 remember striking him. I remember him landing on the hood of my car.
25 I remember looking at him and I remember recognizing him. I remember

1 identifying him and identified him again today or the day that they
2 testified.

3 So, I want you to take a listen at this particular -- and also
4 view this video that's in evidence. Listen to the tone of Officer Cupp as
5 he is broadcasting this high speed pursuit and then also this foot pursuit
6 where he had to discharge his weapon.

7 [Video plays]

8 BY MS. LEXIS:

9 A trained observer who is paid to run towards danger as
10 opposed to the ordinary person, civilians like ourselves, who can -- the
11 benefit of being able to run away from danger. When -- during cross-
12 examination, Officer Walter, you know, Defense counsel tried to --
13 weren't you focused on the weapon, weren't you focused on the
14 weapon. You weren't able to get a good look at Jemar Matthews. You
15 weren't able to look at his face because you were so scared of that
16 weapon. What did Officer Walter tell you? He was, like, no. That's
17 what you call tunnel vision. Officers like Officer Cupp, like Officer Walter
18 testified to you they do not have the luxury of tunnel vision, okay,
19 because someone who would just be afraid of a weapon or run away,
20 no. They need to be able to assess the situation during a high speed
21 pursuit of a vehicle and then during a full on foot pursuit high speed try
22 to catch suspects who are armed. These are the kinds of things that
23 you can think about and consider when you are considering the
24 believability or reliability of their identification.

25 And then I ask you to ask yourself this. What motivation,

1 okay, would Officers Cupp and Walter have to make a mis-
2 identification? You had the ability to listen to them testify. Do they strike
3 you -- you are the judges of character for credibility -- do they strike you
4 as a type of officers who want to put away the wrong person, a person
5 who committed a homicide and attempt murder, an armed carjacking, a
6 felony pursuit, a foot chase, people who pointed firearms at them? What
7 motivation do they have to try to put away the wrong person? None.
8 They were able to identify Jemar Matthews then, they're able to identify
9 him today, and they saw what you just saw. They had every reason to
10 remember what occurred that day. That fear in Officer Cupp's voice, the
11 first time he discharged his firearm, yeah, it's going to stick out in his
12 mind probably forever.

13 Officer Walter told you he saw the Defendant come out of the
14 vehicle, red glove, coming towards him. His partner struck him with that
15 part of the car. He ended up on the hood; he got a good look.
16 Defendant ended up on the ground. He couldn't even open the door, he
17 was struggling to open the door; again, very close proximity to the
18 Defendant such that he could see his face, such that he could recognize
19 him as someone he had had contact with before. And he testified all of
20 this corroborate and he presented all of this corroborating evidence.
21 Remember the ID expert, Dr. Chambers, Mr. Giordani asked him, well,
22 corroborating evidence helps too, right. Like, you know it's not like, oh,
23 they're just identifying with nothing else. Yeah, there's corroborating
24 evidence. You saw it. In the direction that Jemar Matthews ran at the
25 church on the grass, short barreled rifle with a cup holder from the

1 vehicle, the direction that he ran, dropped the gun that he had in his
2 hand that they saw him with. And as he went up on the Eleanor, guess
3 what they find at 1200 Eleanor? The glove that he dropped. And then
4 at 115 Jimmy or 116 Jimmy, what did they find in the direction of the
5 homes where he was last seen? The Defendant hiding against a fence
6 in someone's back yard covered in mulch with bites from Lasco, the
7 canine dog, who smelled that adrenaline.

8 You heard testimony gunshot residue was found on the palm
9 of his right hand, the back of his left hand, palm of his left hand. What
10 does that mean? Discharged a firearm, handling the discharged firearm
11 or was in close proximity to a discharged firearm. The red knit glove
12 tested for gunshot residue. What does that mean? Positive. The red
13 knit glove may have come into contact with a discharged firearm or was
14 in close proximity to a discharged firearm, the same red knit glove that
15 they saw him wearing. Oh, and by the way, the Ruger, the .22 caliber
16 short barreled rifle with the 30 round magazine, linked to the 1271
17 Balzar murder. Twenty-five of the cartridge cases from 1271 Balzar
18 were fired from this short barreled rifle. Again, it doesn't matter if he
19 himself pulled the trigger on that rifle. The act of one is the act of all.
20 He's guilty.

21 Look, the truth of the matter is the evidence has shown they
22 didn't have enough time to run away from the homicide scene. Okay.
23 As you can tell from the diagram here, the area of the last cartridge
24 casing as denoted by 4725-2, that green, you know, set of numbers at
25 the end to Lawry is 181 feet. So, shots rang out 1252 or 9:52. The

1 cops, Cupp and Walter, are right on it. They hear it, they go in that
2 direction, and what do they see? They see people matching the
3 description with the same type of firearms conducting an armed robbery
4 right at the corner. Again, four young black males, black shirt and
5 gloves, one had red gloves; short barreled rifle, had a handgun, and
6 fired two shots in the air.

7 And what you also learned in this trial is that Pierre Joshlin
8 and Jemar Matthews are friends. We're not talking coincidences. We're
9 talking evidence, we're talking conspiracy, we're talking aiding and
10 abetting. We're talking about pre-meditation deliberation intent to kill.
11 Murder. The bullet that killed Mersey was consistent with a small caliber
12 -- .22 caliber rifle. The evidence showed that. The coroner said it was
13 consistent with a small caliber and so James Krylo. The act of one is
14 the act of all. It does not matter who did what. They're equally guilty.

15 So, in opening statements, as claimed, now Mr. Matthews, oh
16 he was just at the wrong place at the wrong time. You know, I mean,
17 here we have an individual who hid in a backyard covered in mulch, and
18 only gave up after he was bit by canine Lasco twice or he said I give up,
19 just don't let the dog bite me again. He was in such a hurry or so
20 concerned about this potential violation of a temporary restraining order
21 or an extended protective order, he lost his shoes, all for violating a
22 TPO. Credibility, credibility believability, you get to think about fears,
23 motive, interest, reasonableness of those statements. Is that
24 reasonable hiding from the police? This place is infested with police at
25 this point. You heard the testimony. A perimeter's been established;

1 cops everywhere. There's a shooting, there was a murder, there was an
2 officer involved shooting, there was a carjacking. You've got the scene
3 at the church; you've got officers trying to find the outstanding suspects.
4 You have canines searching this place. And he expects you to believe
5 that he was hiding in the way that he was for as long as he was without
6 his shoes after he ditched his gloves for potentially violating a TPO.
7 That's not reasonable.

8 The only people who were at the wrong place at the wrong
9 time, September 30th of 2006, it wasn't the Defendant. It was Mersey
10 Williams who paid the ultimate price for being there. It was Michel'Le
11 who hid, who ran and hid for her life. It was Myniece who laid and
12 pretended to be dead next to her cousin who was. He was not there at
13 the wrong place at the wrong time. He was there because he engaged
14 in a conspiracy and he aided and abetted the people who took Mersey's
15 life and who tried to take her cousin. The evidence has shown beyond a
16 reasonable doubt that he is guilty of all of the counts that we have
17 charged. And I ask after you deliberate, find him guilty. Thank you,
18 Your Honor.

19 THE COURT: Thank you very much. At this time we are
20 going to take a recess. During this recess you are admonished not to
21 talk or converse amongst yourselves or with anyone else on any subject
22 connected with this trial or read, watch or listen to any report of or
23 commentary on the trial or any person connected with this trial by any
24 medium of information, including without limitation, newspapers,
25 television, the internet or radio or form or express an opinion on any

1 subject connected with this trial until the case is finally submitted to you.
2 Officer Hawkes, we have lunch back there. We have lunch for you back
3 here. So, Officer Hawkes is going to take you back into a room where
4 you'll have lunch and then we'll resume with closing arguments. All
5 right. So, we'll break for an hour. Thank you.

6 [Recess taken at 1:39 p.m.]

7 [Outside the presence of the jury]

8 THE COURT: Can the attorneys approach for just a moment

9 [Bench conference -- begins]

10 THE COURT: Instruction number 3 had the wrong date. So,
11 Pam had to fix this, the 15th day of September 2017. So, I'm assuming
12 you don't have any objection to us replacing it.

13 MR. LEVENTHAL: No.

14 THE COURT: Okay. We'll make sure you guys all get the
15 correct one as well.

16 MR. TANASI: Thank you.

17 THE COURT: Okay. We'll see you in an hour.

18 [Proceedings resumed at 2:43 p.m.]

19 [Outside the presence of the jury]

20 THE COURT: Are you ready?

21 MR. LEVENTHAL: I just got the exhibits -- five seconds to
22 organize.

23 THE COURT: Sure, sure, sure.

24 MR. LEVENTHAL: Thank you.

25 THE COURT: No problem.

1 MR. LEVENTHAL: I just go to make sure they're in the right
2 place. Thank you, Judge.

3 THE COURT: Are we on?

4 THE COURT RECORDER: We are, Your Honor.

5 THE COURT: Okay. The record will reflect that the hearing is
6 taking place outside the presence of the jury panel.

7 MR. TANASI: It's come to my attention, Your Honor, from
8 what my client has been hearing and is going on in the courtroom that
9 maybe the victim's family has been making noises of some kind,
10 whether they're noises of sadness, noises of kind of snickering at some
11 of the comments that are made. I can't say one way or the other, but I
12 just want to put that out there to the Court's attention and make sure that
13 it does get to the victim's family that, you know, that's not appropriate
14 conduct in the courtroom.

15 THE COURT MARSHAL: And it's been coming from both
16 sides and I've been watching them, but I can't figure out which one it is
17 yet.

18 MR. GIORDANI: And I can tell you our Victim Witness
19 Advocate, Chelsea Garvin, has been in the courtroom for the last portion
20 and just before the break she came to Ms. Lexis and I said she kind of
21 overheard that Mr. Matthews' concern about snickering and Chelsey,
22 our advocate, said I've been with the family. They've been holding back
23 tears and like going like [sniffs], like that and not snickering at all. For
24 what it's worth I don't know. I'm just throwing it out there. I will instruct
25 them though to be quiet if you want me to.

1 THE COURT: Sure. Okay.

2 MR. GIORDANI: Okay.

3 THE COURT: Anything else? You have panel back there;
4 right?

5 THE COURT MARSHAL: Yes, ma'am.

6 THE COURT: Okay. You can bring them in. Wait, wait, no.
7 Give Mr. -- Mr. Leventhal wants a couple minutes.

8 MR. LEVENTHAL: Thank you.

9 THE COURT: Go ahead. I forgot I told you that you could
10 have a couple minutes.

11 [Inside the presence of the jury]

12 THE COURT: Will the State stipulate to the presence of the
13 jury panel?

14 MR. GIORDANI: Yes, Your Honor.

15 THE COURT: The Defense?

16 MR. LEVENTHAL: Yes, Your Honor. Thank you.

17 THE COURT: Okay. Mr. Leventhal, you may address the jury
18 in your closing argument.

19 MR. LEVENTHAL: Thank you, Judge.

20 **CLOSING ARGUMENT BY DEFENSE**

21 BY MR. LEVENTHAL:

22 Ladies and Gentlemen, as you know my name is Todd
23 Leventhal and I'm representing Mr. Matthews here for the last week in
24 these very serious allegations. And we appreciate it that you listened
25 and you heard all the evidence. And obviously I want to acknowledge

1 that, you know, a young Mersey Williams innocently died -- passed away
2 that night. She lost her life and it was a tragedy and it's a tragedy for her
3 family and friends when anything like this happens.

4 But during voir dire, if you remember correctly today in 2018
5 as you sit here all of our motions have to be set aside because you all
6 took an oath that you would listen to the evidence and you would
7 evaluate the evidence and you would evaluate the evidence only to
8 Jemar Matthews and nobody else. You also indicated that you would be
9 able to be fair and impartial with both sides.

10 I'm going to show you and read to you your Jury number 32.
11 This is the instruction that the judge is going to give you or has given
12 you already. A Defendant is presumed innocent until the contrary is
13 proved. Right now he's innocent until you all collectively go back and
14 say one way or another which it is. This presumption places upon the
15 State of Nevada the burden of proving beyond a reasonable doubt every
16 element of the crime charged and that the Defendant, Jemar Matthews,
17 and no one else is the person who committed the offense, and
18 reasonable doubt is one based on reason. It is not mere possible doubt
19 but is such a doubt as would govern or control a person in the more
20 weighty affairs of life. If the minds of the jurors after the entire
21 comparison and consideration of all the evidence are in such a condition
22 that they can say they feel an abiding conviction, an abiding conviction
23 of the truth of the charge, there is not a reasonable doubt. An abiding
24 conviction. Doubt to be reasonable must be actual and not mere
25 possibility or speculation. You can't speculate. If you have a

1 reasonable doubt as to the guilt of Jemar Matthews, he is entitled -- as a
2 matter of fact it's mandatory that you do not -- if you have reasonable
3 doubt you must find him not guilty.

4 Instruction number 34 goes on to say that you are here to
5 determine whether the State of Nevada has met its burden from the
6 evidence in the case. You are not called upon to return a verdict as to
7 any other person, just Jemar. I know you've heard a lot of evidence
8 about somebody located in a dumpster. You give it the weight that it
9 needs but really he's not here. Jemar is. So, if the evidence in this case
10 convinces you beyond a reasonable doubt of the guilt of the Defendant
11 you should find even though you may believe one or more persons are
12 also guilty.

13 I want to walk through sort of how I see this case and I sort of
14 put it in my mind there's places and events because there's quite
15 enough of them, and then back it up with how the evidence or the facts
16 actually come out in this case. It's not based on emotion, it's not based
17 on argument or innuendo. Most of my argument is going to be based on
18 what has the government proved, what have they not proved, what have
19 they brought you to show that this man Jemar had anything to do with
20 this.

21 The first thing we know and we agree and that is we agree on
22 is that at 1271 Balzar there was a shooting and you all saw it. I have no
23 disagreement that that didn't happen. However, what you heard was
24 that hundreds of officers were subbed out, called out, hundreds of
25 officers. As a matter of fact it was saturated in that area, was

1 mentioned, saturated. There were multiple, multiple CSI agents, crime
2 scene investigators went out and they came before you and they told
3 you all of the stuff that they had collected, how they bag it, how they
4 process it. They told you the process that they do that and they wear
5 gloves so as to not to disturb the scene, and they collected as much as
6 they could. You have first CSI agent came in and indicated that ten
7 days after September 30th he actually went back out there because they
8 found two more casings.

9 So, what does that tell you? It tells you that this was an
10 ongoing investigation and they weren't done collecting items. It's
11 important -- it's important to know that at that scene even though they
12 collected an enormous amount of shell casings, maybe fingerprints,
13 DNA, everything they collected, I want you to think back, did anything
14 from that scene come back to Jemar Matthews. I can tell you it did not,
15 nothing, not a shell casing has his fingerprint on it, not a shell casing had
16 his DNA on it. There is nothing. No eye witnesses, nothing. There's no
17 connection at this point.

18 We'll move on quickly to 1284 Lawry where Mr. Bolden
19 indicated that some African-American males, and he lived there, came
20 up to him and the one person, if you remember, who came over to him
21 who is five foot seven or shorter, five foot seven or shorter. Jemar,
22 stand up. Five foot seven or shorter. Five foot seven, and I'm five-ten,
23 five-foot seven would put that eye to eye level as to Mr. Bolden. Right.
24 He's staring at him, eye to eye. He also said that the person that he was
25 sure about this had a handgun, and he was also positive that the person

1 who got in the passenger side had some kind of a shotgun or some kind
2 of sawed off shotgun. And, again, if you don't believe me, then your
3 notes, your memories will suffice. Okay. That's what I wrote down,
4 that's what I remember him saying, five-foot seven, shorter, got into the
5 vehicle, got into the driver's side of the vehicle as though the person had
6 a gun, a pistol.

7 Now, let's talk real briefly about Cupp and Walters [sic]. First
8 of all, Cupp and Walters [sic] indicated that they both dressed the same
9 that evening. As a matter of fact, I would assume all six of those
10 Problem Solving Unit officers all had tee shirts, jeans, tennis shoes, a
11 ballistic vest on that said police. I would assume that they all had sort of
12 -- I mean, we know that Cupp and Walters [sic] both indicated that they
13 dressed the same, a tee shirt, blue jeans, tennis shoes, and a ballistic
14 vest that indicated they were with the police. Cupp and Walters [sic]
15 picks up this vehicle traveled a high rate of speed to where they see the
16 commotion, and they go down Martin Luther King, they turn left on
17 Jimmy, and they turn right on Lexington. And you guys all know the
18 story.

19 But I want to slow this down because it's very interesting how
20 the describe this because they indicate that the driver of the door puts
21 his left leg out and holds the door open with his left hand out as well as
22 he's holding something near and dear to his chest which they imagined
23 might be a weapon. Now, they also said that the windows were highly
24 tinted. And when I asked I believe Cupp where were you, he indicated
25 for the first time while they were swerving. But really what he said and

1 when I got him to admit this, he cut off to the right thereby being out of
2 view of the driver. And he cut off to the right because he saw that the
3 driver could maybe look around and see what was going on. So, he
4 wanted to get out of his visual, but by definition if he's out of his visual,
5 they're out of his visual.

6 Then he indicated that at some point when the car rolled down
7 to about 15 miles an hour, the driver exited. And I think about this
8 because I imagine that I got a left leg out and left foot -- a hand out, I've
9 got something here. I mean, there's only two ways out of a vehicle. You
10 pull yourself out, you push yourself out. If both of your hands are being
11 occupied, I don't know how the person gets out, but the person got out.
12 And I assume because nobody really [indiscernible], the person got out
13 and when the person got out, they roll jumped out, and then Officer Cupp
14 indicated that he swerved because he saw something that he thought
15 was a gun, swerved, and hit that person, that suspect in the right front
16 panel of his vehicle. That suspect then rolled off and then dropped to
17 the ground.

18 Now, both of those officers now say and it's interesting. I think
19 both of them indicated that that suspect was face to face. It's almost an
20 impossibility that you have two officers sitting at two ends of a vehicle
21 and they're face to face. What he said in his voluntary, which I got him
22 to admit, was in fact the suspect rolled, he rolled like that.

23 MR. GIORDANI: I would object. That misstates the
24 testimony.

25 MR. LEVENTHAL: Again --

1 THE COURT: Okay. And it is. It's the jury recollection that
2 would prevail during deliberations.

3 BY MR. LEVENTHAL:

4 If I say anything different than you recall and your notes say
5 then hold me to it.

6 Now, Officer Cupp came in here and said to you guys as well
7 as Officer Walter, he said to all of you that they were one hundred
8 percent certain that they were -- they had recognized this person. I
9 going to show you, again, this is Officer Cupp's statement that evening.

10 MR. GIORDANI: Judge, I would object. That's not in
11 evidence.

12 MR. LEVENTHAL: Nor was Cindy Crawford's -- Cindy
13 Crawford's picture.

14 THE COURT: You're publishing something to the jury that's
15 not in evidence.

16 MR. LEVENTHAL: Can we approach?

17 THE COURT: Sure.

18 MR. LEVENTHAL: Okay.

19 [Bench conference -- begins]

20 MR. LEVENTHAL: They put up pictures of Cindy Crawford. I
21 don't think she's in evidence. They put up pictures of Denzel
22 Washington and he's not in evidence. They put up pictures of one just
23 now --

24 THE COURT: Okay. That's different than taking somebody's
25 statement that was discussed and putting it up and publishing it.

1 MR. LEVENTHAL: Can I read it to them then and not put it
2 up?

3 THE COURT: Okay. But that part read into evidence.

4 MR. LEVENTHAL: Absolutely, absolutely.

5 THE COURT: Okay.

6 MR. GIORDANI: Not the whole page.

7 MR. LEVENTHAL: No, just that one sentence.

8 THE COURT: All right. You -- I don't mind you reading into
9 evidence --

10 MR. LEVENTHAL: Okay. That's fine.

11 THE COURT: -- something that they've already heard. I just
12 don't want you to publish it.

13 MR. LEVENTHAL: Fair enough, fair enough.

14 THE COURT: Thank you.

15 [Bench conference -- concludes]

16 BY MR. LEVENTHAL:

17 So, that evening Officer Cupp gave a sworn statement to
18 homicide detectives. This was a few hours after the event occurred.
19 And the question was do you have any idea what the suspect looked
20 like? Answer. Question. It's blank. Answer: You know, all the subjects
21 involved were wearing like black and dark colored gray shirts. I would
22 say all of them were black male juveniles --

23 MR. GIORDANI: Can I have a page number, please?

24 MR. LEVENTHAL: -- late teens, probably early 20s. Page 18.

25 MR. GIORDANI: Thank you.

1 MR. LEVENTHAL: And the driver in particular had gloves,
2 two gloves. That was what Officer Cupp told in a sworn statement that
3 evening just hours after and gave no other indication other than that. As
4 a matter of fact, never ever mentioned the fact that he recognized these
5 people.

6 Now, you need to go back because really it's a little -- it's a
7 little bait and switch when you've got two officers here now sitting here
8 telling you they've been on the force for 15 years and they've done --
9 and one's a sergeant and -- go back to 2006 when these officers were
10 pretty much new. One had been on the Problem Solving Unit for two
11 months and the other one, I believe, said five to six months. So, they
12 were new on the street then.

13 So, we're in 2018. It was 12 years ago. And, you know, your
14 memory fades, but they're spot on in everything they're -- that they're
15 saying. Ms. Lexis asked what would their motive, what would their
16 motive be. You know, I don't know. I don't know and I'm not going to
17 speculate what their motive would be on why their story would change
18 from the night that they were there to 12 years later where they're
19 picking out and spotting whether or not this guy has blond hair, blue hair,
20 corn rows or whatever and remember everything like it was yesterday.
21 And yet Walters [sic], that night when he gave a description, after they
22 picked up Jemar is when he decided to say, oh, I remember corn rows.
23 This was after he already picked up Jemar, after he had gotten him over
24 to him to that little show-up that they did.

25 Then when I asked him if you're in pursuit of a subject that

1 you think just committed a homicide, don't you think it would be
2 important that you get that out on the radio as best you can if you
3 recognize him that he had corn rows, some kind of indication that you
4 know who you're talking about? And his answer was sort of flippant. It
5 was, well, I think I told another officer. You had an hour and a half from
6 the time that you left the suspect to when you went back to the vehicle,
7 the Lincoln, and there was no one around, and you starting looking for
8 evidence. You could have mentioned something on the radio. I think I
9 told someone this. It's not good enough. That doesn't help the State
10 prove beyond a reasonable doubt that Jemar is the person that they say
11 he is. As a matter of fact, that's a lot of doubt. That puts a lot of doubt
12 into this.

13 Cupp, on the other hand, who came in here and he said he
14 remembered it like yesterday. I think I spent eight to ten times walking
15 back and forth refreshing his memory on what he actually said the night
16 of because he didn't remember, but he came in here and said I
17 remember it like yesterday. Again, motive, I have no idea what their
18 motives are. I can't get into the mind of an officer. I don't know. Nor is
19 it something that I guess you guys need to worry about or figure it out.
20 But I do know this. That their description of the people that they saw in
21 that vehicle, black male, blue jeans, tee shirt, was probably ninety-five
22 percent of the African-American males that lived in that area at the time
23 in 2006, maybe even today.

24 Ms. Lexis put up a picture of Cindy Crawford for the
25 proposition that there's somebody different about recognizing somebody

1 and identifying somebody. And she asked you if you recognized
2 whether or not Cindy Crawford had a mole on the right or the left and
3 then she showed you a picture. Okay. But I guess the bigger question
4 that I have is if you saw Cindy Crawford walking down the street, would
5 you keep it to yourself or would you get on the phone and say I just saw
6 Cindy Crawford or anybody who you idolize. Let's say you're -- you just
7 saw the Pope. Well, you don't know if he's got a mole here, but you get
8 on the phone and you go tell a friend, you say something, you say
9 something. You don't just -- if you recognize somebody you say it. You
10 don't just keep it to yourself especially with a dynamic scene where
11 we've got people running around looking for suspects. You say
12 something. You don't just keep it to yourself. If that's how they were
13 trained, I'm not sure how they -- where they're at.

14 You heard from our eye witness expert and you can give it
15 whatever weight you want, but it's clear. The show-up out of the three
16 types of identification is the least reliable most suggestive of all of them,
17 and the reason for that is because they take one person, they put them
18 cuffs, they take -- put them in the car, and they take them over to
19 somebody who says, oh, that's him. Oh, come on, it makes sense.

20 The better way of doing it is you put somebody in a lineup.
21 You know, what he said, if you remember, is you do one at a time but
22 you tell the person that they may or may not be in there. You tell that
23 person. You don't suggest anything. You do it one at a time so that
24 people can look. It's almost like -- that show-up is almost as if you put
25 one African-American male around five other white people and say pick

1 him out. It's a show-up. It's a necessary suggestive and it's the least
2 reliable you can possibly do. That should give you doubt.

3 You heard about his stress. The expert indicated that there's
4 a level of stress that you go through and, yes, you do remember
5 something [indiscernible], but if it goes over that hump then it gets less,
6 your memory gets less. Lighting. Lighting is important. Mr. Giordani
7 spent a lot of time talking about that big light. Let me show you another
8 picture, another angle that you didn't see. What I'm going to show you
9 is this. That's the vehicle. Do you see who sits in that right there?
10 That's the lighting in the street. We may have a big bright light over here
11 right here and that's fine, but what happened in the street where the
12 driver, the suspect bailed out, that wasn't next to that sign, that bright
13 light, that was over there in the street. They all testified to that because
14 then the car veered off to the right going slowly. So, if you can see that
15 officer right there. I don't know if the guy's leg there. That's what they
16 saw. That's their big white light. Again, that goes into the weight of their
17 credibility of how they identified my client late at night African-American.

18 Weapon. Weapon is another thing that the eye witness
19 indicated. You see a weapon? Sure. You're not going to tunnel vision
20 but it's going to go through your mind in a split second that all this is
21 happening. I mean, remember, both of these guys are seat belted in.
22 So, you've got to think about unseatbelting [sic] yourself; right? You got
23 to think about getting your gun out; right? There's all these things that
24 are going on. We put a lot of pressure on police officers. I get it. But
25 this is an eye witness case as you'll see as I go on through everything.

1 This is solely an eye witness case. So, you have to be sure that from 12
2 years ago, these two cops are spot on and I can tell you they are not
3 because they didn't say anything 12 years ago about who did -- who
4 was running from the vehicle. Not a word, not a word.

5 MR. GIORDANI: Objection. That completely misstates the
6 evidence.

7 THE COURT: The objection is sustained.

8 BY MR. LEVENTHAL:

9 Cross race. You heard about cross race. It lowers the
10 reliability completely. When you have an African-American male or any
11 race trying to ID another race it becomes very difficult to pick out the
12 specifics of that race. You see the race and obviously a time to observe,
13 and the time to observe was, they've all said it, it happened like that in
14 the blink of an eye. There was no time to observe.

15 Let's talk about the red glove real quick. Let's talk about the
16 red glove. First of all, that red glove, where it was found, it's found there
17 in front of a gate. You heard that the suspect was running, you heard
18 the suspect was jumping; you heard the suspect was sweating. That
19 glove should be soaked in sweat, soaked in DNA. Now, has the State
20 brought you any evidence to link that glove scientifically? You've heard
21 eye witnesses, but scientifically it's not hard to DNA off a glove. It's
22 easy.

23 MR. GIORDANI: Objection.

24 THE COURT: Sustained.

25 BY MR. LEVENTHAL:

1 Scientifically, did they --

2 MR. GIORDANI: I would move to strike that statement.

3 THE COURT: There wasn't any evidence to that.

4 BY MR. LEVENTHAL:

5 Okay. Did they bring anything scientifically that there was
6 DNA that linked to Jemar? The other question I have regarding that
7 glove is there's been two gloves; right? You heard about two gloves.
8 Where's the other glove? The other glove was never found. They found
9 Jemar. He didn't have a glove on him. They had crime scene analysts
10 out there, you would assume, looking all over where Jamar was found.
11 Didn't find it. They never found anything on Jemar to the glove.

12 I don't know. It seems like an odd place for somebody to put a
13 glove or to [indiscernible] a glove. If the officer is chasing a suspect --
14 and I think what he indicated was he knows where's that at because
15 those tire marks down there was the cop car. So, it gets to a point
16 where it's not believable but it doesn't matter is that where somebody
17 now is ready to jump over a fence, this chain link fence, and decide I
18 need to get rid of a glove when a cop car is behind me as well I'm being
19 chased another officer. It just seems odd that they would then jump
20 over the fence. But if they did do that and it was Jemar crime scene
21 analysts were out there. The officer indicted that he jumped over that
22 fence and he ran into the backyard and jumped over another fence and
23 went to the -- and then stopped because he jumped [indiscernible] then
24 went back.

25 So, if the glove is on the ground -- the State has not brought

1 you any evidence that there was DNA on that chain link fence, the State
2 has not brought you any evidence that there was fingerprints on
3 anywhere on that fence that contributed to Jemar Matthews. Nothing,
4 nothing. And if that's where the officer remembers that that person
5 jumped over the fence, it brought you nothing. That's doubt. And is that
6 reasonable doubt? That's reasonable doubt.

7 Let's look at the vehicles. The officer said that the suspect
8 came down and hit the hood. As a matter of fact you see the outline of
9 maybe what looks to be -- and this is in evidence and you can look at it
10 where it looks to be a hand print. They analyzed that vehicle. Nothing.
11 No fingerprints, no DNA. Nothing comes back to Jemar Matthews,
12 nothing. They analyzed the Lincoln. You see they've got the
13 fingerprints up here, again, taped fingerprints here, more fingerprints
14 there. The State has not brought you one iota of evidence that there
15 was any indication that Jemar was ever in that vehicle, not one hair
16 fiber, not one fingerprint, not one DNA, nothing, nothing. If that's not
17 done I don't know what is.

18 Let's talk about GSR. It's the other thing they want you to
19 [indiscernible]. You understand that GSR it's of a plume, it's a vapor.
20 The amount of weapons -- the amount of gunshots that were fired that
21 evening that man should be soaking in that stuff, soaking in it. But what
22 you heard was that the red glove that has no connection to Jemar had it,
23 and you also heard that Jemar had a little bit on his or his palm. That's
24 Jemar when they got him that night. When our expert came in and told
25 you, listen, if I had something scientific like a picture or video, that's what

1 he meant. We have a picture of what Jemar was wearing that night, a
2 black tee shirt and blue jeans. Did you hear anything or anybody come
3 in here and tell you they found gunshot residue on any of his clothing
4 that we knew he was wearing? Nothing. There's not nothing scientific.
5 They checked it out. I would assume that they did not -- bringing it in,
6 you can assume it doesn't exist.

7 What the expert did say was -- and both experts agreed that
8 there's something called transfer, that GSR is inherently in -- and on
9 police officer's cuffs, on police officer's holsters, in their vehicles, police
10 stations, even interview rooms. You heard all that. And the amount of
11 time that Jemar was handled that night at any one point somebody could
12 have transferred it onto him. You heard that the best practice would
13 have been that all they had to do was bag his hands; one, it stops
14 contamination and, two, if it had fallen off it would have fallen off in the
15 bag. They didn't do that. Again, it's their burden to prove their case and
16 they brought you none of this. This is important. This isn't stuff that you
17 want to say, hey, you got the guy. None of it.

18 You heard that the canine jumped into the bushes and bit
19 Jemar who was sitting there. One of the key pieces of evidence for me
20 here is not on the second glove, but it's the fact that Jemar has no shoes
21 on. They talked about Jemar ditching his shoes because of -- I'm not
22 sure what that meant. There was absolutely -- nobody talked about that.
23 But I want to think -- I want you to think about this logically. How many
24 people do you think go out or [indiscernible] are going to go commit a
25 murder with no shoes on? I'm going to go blow up or I'm going to, you

1 know, rapidly fire my gun with no shoes on. That's not logical. How
2 about this. We've got four people over at Balzar, we've got four people
3 over where the Lincoln was taken, we've got two cops, and not one
4 person ID'd a man with no shoes. That's kind of important. You would
5 think that, hey, I didn't see what he looked like. Fine. But the man had
6 no shoes on. And if you want to take it even further, you've got Cupp
7 and you've got Walters [sic] indicating that the person that they saw had
8 their foot out and their left hand out, and if they got such a great picture
9 then that person wearing no shoes there should have been a no brainer.
10 That's easy. He had no shoes.

11 So, let's talk about him ditching these so-called shoes. If you
12 remember 1915 Lexington is where Cupp and Walters [sic], that's the
13 last place they saw the suspect running leaving from the car. That
14 suspect then went down Eleanor to the right and right about there he
15 jumped over a fence, jumped over another fence, and then Walter
16 stopped chasing and went back to the vehicle. They found Jemar right
17 here, saturated, hundreds of officers. They're line of inquiry, if you will,
18 or their -- their line to see what evidence is or evidentiary value is goes
19 from here, Lexington down Eleanor, across here, and you can assume
20 to where they found Jemar. We're not talking about miles. We're talking
21 about a block -- a block and a half where you expected crime analysts
22 just like they did at every other place, at the dumpster, at the -- where
23 they went out and they thorough went through everything, and yet they
24 don't find a second red glove and they don't find shoes. So, you can't
25 start from the premise that I'm going to go out and murder with no

1 shoes. Nobody ID's the man with no shoes which makes no sense.
2 That should be a huge doubt in your mind that it was not Jemar.
3 Where's the shoes, where's the other red glove? If that's all -- I mean,
4 unless you want to go with the premise that he kept running, threw them
5 away and then came back. Is that logical? Does that make sense?

6 Remember, he had a TPO on him. That TPO, which is a
7 temporary protective order, was from his baby's mom who lived right
8 there, right there, a block on the corner of Jimmy and Lexington, that
9 corner house. That's where he had the TPO. He then was found on
10 1116 Jimmy a block away from where had a TPO on him. He lived, and
11 you heard from the detective, over on J Street right down here. Follow
12 along Jimmy, turning right on J Street, he would have been home. He
13 was found right in the middle of where he had a TPO. No shoes. He's
14 found. Where'd they go? It's not logical. It's doubt, it's reasonable
15 doubt.

16 Let's talk about the dog bite because, as you heard, that's all
17 that Jemar had on him was a dog bite. He went to the hospital for it. Bit
18 here and he had some defensive wounds here. But from the officer's
19 testimony you've got this suspect who jumps out of a vehicle going 10 to
20 15 miles an hour. He rolls on the ground, gets up, and then the officer's
21 vehicle then swerves over, hits this person in the legs where he lands on
22 the hood, and then he again rolls off the hood. Then you've got this
23 suspect, running and jumping over gates and yet there's no bruises that
24 you heard, no scratch that you heard, no scratches that you heard, no
25 other bleeding that you heard. You didn't even hear what happened to

1 the -- Jemar's legs that evening. Were they bruised? Did they tell you
2 what happened to them? I mean, they had Jemar in custody the entire
3 time. You didn't hear it because it didn't happen. The only thing he had
4 was a dog bite. Is that logical to you, does that make any sense that a
5 person -- a suspect that went through all of this stuff would then end up
6 with just a dog bite. That's it. It makes no sense, it's not logical.

7 The scientific proof in this case is zero. Not that every case
8 needs it or has it. The credibility of those two officers and their
9 testimony is zero. Why? Because it changed over time. It got better. It
10 went from black male to I recognized him. I don't know what -- like I
11 said, I don't know what their motive would be and I'm not going to
12 conjecture or speculate. But that's what the State is asking you to do is
13 speculate and conjecture on this whole case because there's nothing
14 scientifically linking that man to any of those weapons, linking that man
15 to any of the vehicles, linking that man to the shoes, linking that man to
16 the other glove. Nothing.

17 Now, Mr. Giordani is going to get up and he's going to have
18 the last say because in this system of ours the State has the burden.
19 So, they'll get two bites at it. So, this is the last time I'll be able to talk to
20 you. And when Mr. Giordani gets up I want you to think about it. Think
21 about all the things I've said because as emotional as it is to lose a
22 loved one, we are beyond that. Your decision now is whether or not
23 Jemar Matthews had anything to do with whether or not the State
24 proved beyond a reasonable doubt. I asked all of you, most of you, and
25 many of you in voir dire if you were sitting where Jemar was sitting

1 would you be you to be as a juror. You wouldn't be sitting here if you
2 told me anything otherwise, you wouldn't be.

3 Put Mr. Giordani to the test. It's mandatory. It's what makes
4 our system work. And in a minute you're going to back and you're going
5 to deliberate, and deliberate just means that you guys are going to
6 discuss this. You know, Jemar now he's trusted the system by sitting
7 here today and he's trusted you as the jurors as you all said you could
8 fair and impartial and keep the State to its burden. And you all come
9 from different walks of life and you should be able to discuss all of those
10 different aspects of life. Some people are going to believe that innocent
11 people don't hide and you can say that. Some people believe that they
12 can hide and you can say that. But you all said, when Mr. Giordani
13 asked you what's so great about system, you all said that it's the best
14 system in the world and many of you did, it's the best system in the
15 world, and that's because it's only the best system when it works. Okay.
16 When the DA does a professional job which they've done, when the
17 Defense does the job that we've done, and the judge sits and listens to
18 the evidence which she's done and we've all done our job, the system
19 only works when everybody is at its best.

20 I want you to break this case down. Don't get caught up in the
21 emotion. I understand it's emotional. But when the State just starts
22 telling of a story and saying he's the guy that did it, where's the proof? If
23 you were sitting there wouldn't you ask yourself I need the proof, the
24 evidence. This case, it drowns in doubt to me, it just does. I've gone
25 through every reason why I think it drowns in doubt. If you have doubt

1 and it's reasonable, Jemar's not guilty, that he's not guilty. Thank you.

2 THE COURT: Thank you very much. The State may address
3 the panel in their rebuttal.

4 MR. GIORDANI: Thank you, Your Honor.

5 **REBUTTAL ARGUMENT**

6 BY MR. GIORDANI:

7 Ladies and Gentlemen, doubt to be reasonable must be
8 actual, not mere of possibility or speculation. And what Mr. Leventhal
9 just did is ask you to speculate. Okay. But that's not your job. That's
10 not why you're here. You're here to interpret the facts and the evidence
11 as it came forth in this trial and limit your deliberations and your
12 considerations to what came out in the four corners of this room.

13 I want to give you an example. Now, Mr. Leventhal just spent
14 I'd say a third of that argument talking about the lack of forensics. I want
15 you to think for a second as reasonable men and women that you are
16 about this idea of no DNA on the glove, no prints on the hood, nothing
17 tying him to the scene of the murder or the carjacking. Now, if there was
18 DNA on that glove like Mr. Leventhal said you would have heard about
19 it. If there was DNA or prints or something on the shell casings which
20 weren't apparently hasn't happened in any event, you would have heard
21 about it. Okay. Just because Jemar isn't on the glove doesn't mean
22 someone wasn't wearing that glove. There wasn't someone else's DNA
23 on the glove. Does that mean the glove wasn't worn? Of course not. It
24 means we didn't get DNA off that glove. That's all it means. There's no
25 prints at the scene, that DNA at that scene, coming to anybody else.

1 Does that mean the murder didn't happen; does that mean there weren't
2 40 shell cases at the scene? Of course not. This case is not about
3 forensics, but there's a good amount of forensics already in it. Most
4 importantly, the guns that Jemar -- Mr. Matthews and his friends were
5 carrying are all conclusively linked to the scene. Every one of those
6 weapons is linked to that scene. That's forensics. Okay.

7 There are a couple of things that I think are in dispute.
8 Number one, this is a all or nothing case. I didn't hear Mr. Leventhal
9 argue and I didn't expect him to that the elements of the crimes weren't
10 committed. This is either Jemar -- Mr. Matthews committed all these
11 crimes or he committed none of them. That's one thing. The other thing
12 that shouldn't be in dispute at this point is that the group who committed
13 the murder is also the group that committed the carjacking, is also the
14 group that fled in the vehicle. There was no point in time where
15 someone other than that fourth guy that ran from the vehicle before
16 getting in, before these three got in, there's no other time where the
17 occupants of that vehicle could have ditched. As you saw from the walk
18 through or the drive through and from the testimony of the officers, there
19 was a continuous line of sight up until the point where Mr. Matthews got
20 out of the driver's side of the vehicle. And obviously the guns at that
21 scene, that final crash scene, are the ones that link to the homicide. So,
22 that's not question at all.

23 What this ultimately comes down to is identity and, you know,
24 we could have narrowed this case down a lot that you have to hear all
25 the evidence. So, we put on a whole lot of witnesses who can frankly

1 tell much. I mean, Mr. Bolden and Mrs. Bolden did their best to describe
2 what happened that night. It was dark. They were caught off guard.
3 They couldn't get much. What this is about is not that. We know those
4 crimes were committed. It's the identity of the people who jumped out of
5 the cars because those officers are the only ones who had the ability to
6 see them.

7 So, what it ultimately comes down to is those two officers who
8 came in here and looked you all in the eye and said I remember this, this
9 was a big thing in my life, and 12 years later you're damn right I still
10 remember it, do you believe him or not? That's what this is all about. If
11 you do, guilty all counts. If you don't, walk him out the door.

12 Those two men came in here under oath and identified him in
13 Court. They identified him at a prior proceeding in 2007, they identified
14 him at a prior proceeding to that in 2006, and one identified him in a
15 show-up back that evening. Both of those men knew him. As Ms. Lexis
16 said, this is pretty straight forward, guys. If those two men had any
17 doubt in their mind that it wasn't him, they'd be the first to say it. This
18 was a big deal to them. They don't want the wrong guy going away.
19 They want the right guy. I mean, if they had a doubt they would say it.

20 And I'll talk about Jury Instruction number 37 because Mr.
21 Leventhal brought it up. Because ID is such a big point in this case, it's
22 the case, I want to talk to you about these factors. In addition to those
23 factors you may consider in the prior instruction, you may also consider
24 the capacity and opportunity of the eye witness -- and this Instruction 37
25 if you mind -- if you care -- to observe the offender based upon the

1 length of time for observation and the conditions at the time of the
2 observation including lightning and distance -- lighting and distance.
3 Now, the Defense expert had to agree with me that being in close
4 proximity is a more reliable identification -- provides for a more reliable
5 identification than it would far away.

6 Both of those officers told you they were within feet of Mr.
7 Matthews. Now, I'm, you know, 10, 12 feet away from you right now;
8 right? You can see my face pretty clear. Any doubt that even in -- at
9 night in the middle of the road, if you're sitting on the hood of a vehicle
10 facing someone that you're not going to be able to see their face and
11 recognize it if you know them? Of course not. There's no doubt, no
12 doubt, not a reasonable doubt is no doubt at all. So, that factor actually
13 supports the identification. Whether the identification was the product of
14 the eye witness's own recollection or was the result of subsequent
15 influence of suggestiveness. Mr. Leventhal made a point about this too.

16 Now, I want to bring you back to Friday when Detective
17 Wildeman got up and testified. You'll recall that I went through a show-
18 up instruction sheet with him. Whether it was verbatim word for word as
19 it was in '06, the idea was, the substance is we may have the right guy,
20 we may have the wrong guy. It's just as important to identify wrong
21 doers as it is to release people who are not the wrong doer. Okay. I
22 brought that to your attention for one reason, not because that was read
23 to Officer Cupp, not because that was read to Officer Walter, but
24 because these guys are three years on the force at this time. They've
25 read it themselves to witnesses. They know the built-in problem with a

1 one on one ID. They know that you can't be suggested by the fact that
2 he's in custody, by the fact that he's sitting in cuffs. They're police
3 officers. They're not being -- they're not being suggestive or influenced
4 by fellow officers to ID the wrong guy. Give me a break. They know
5 what's going on. They knew what was going on when they looked at
6 him an hour after the event.

7 The eye witness's own recollection is a big factor. Okay.
8 These guys do not come in here and say I remember identifying Mr.
9 Matthews before. They identified him in open Court and looked at his
10 face and said he's the guy. Okay. There's no issue with recollection
11 here. This wasn't, oh, ID'd him an hour after the crime. In fact,
12 [indiscernible] was reliability because that was an hour after the crime.
13 They were in this courtroom last week and this week looking this man in
14 his eyes and telling him he's the guy. Okay. They did that based off
15 their own recollection.

16 And I just want to step back for a moment and talk to you
17 about recollection in general. Mr. Leventhal brought this up a lot so --
18 Some of you are married, I recall, some of you I would presume have
19 been weddings of close family members or friends. Okay. Think about
20 a wedding, okay, even 12 years ago, a wedding in '06, if it's your
21 wedding or a close friend's. You may not remember what you ate, the
22 chicken or the fish, you may not remember who was sitting in the aisle
23 beyond you or in front of you. You may not remember how many
24 groomsmen or bridesmaids there were, but you're sure as hell going to
25 remember that the bride who was supposed to be married walked down

1 the aisle. Right. No offense to Mr. Matthews, but he's the bride here.
2 Okay. Their focus was on him. He's the star of the show. He has a
3 long short barreled rifle in his hand approaching them from this distance,
4 and the time it took for him to get up to the vehicle was enough to see it.
5 The time he was on the vehicle face to face with them was enough time
6 to see him. Okay. There was no doubt in their minds that they identified
7 the right person. So, that factor actually supports our position.

8 Any inconsistent identifications made by the eye witness.
9 That's interesting. You didn't hear a thing about that because it doesn't
10 exist. Never once have they been inconsistent in any way about him
11 being the guy. Okay. Now, Office Cupp said foot as opposed to leg
12 sticking out; remember that? That kind of inconsistency, I would submit
13 to you, is expected. Okay. The little things, 10 to 15 miles per hour
14 versus five to ten miles per hour, he got that wrong. So what. If he
15 didn't get things like that wrong that's when you become concerned.
16 Okay. It was 12 years ago. There -- little things are going to be off. Not
17 the bride. There was no doubt in either of those men's minds when they
18 sat before you and identified Mr. Matthews. Never been an inconsistent
19 identification ever by either of those witnesses. The witness's familiarity
20 with the subject identified. I'm not going to beat a dead horse at this
21 point, but they knew him. Okay. This wasn't a identification of a
22 stranger. This is identifying someone that they know.

23 The strength of earlier and later identifications. This one's
24 interesting. So, Mr. Leventhal made a big point about the descriptions
25 that Officer Cupp and Officer Walter gave initially. Okay. I thought they

1 made it clear but let me refresh your memory in case they didn't.

2 Both of these guys had just been in a pretty serious incident.
3 The suspect is in custody. Mr. Matthews is in custody at the time they
4 give this fact finding interview. The purpose of an interview such as this
5 is to make a historical record of events. When they are asked -- and you
6 saw Officer Cupp or Sergeant Cupp a little stiff or professional, right, he
7 referred to Mr. Matthews as the suspect repeatedly while he was on the
8 stand. That's just how he talks and how they talk. When they're asking
9 them in an interview with the detective what did the suspect look like or
10 describe the suspect, the response is going to be black shirt, dark pants,
11 red gloves, whatever it may be, a description, not dark shirt, blah, blah,
12 blah, oh, and it's this guy that I recognize, I've met him before. That's
13 not what was asked. There was no need -- this was not a outstanding
14 suspect that they're trying to find. That's different. Okay. If Mr.
15 Matthews had gotten away and they were trying to find him then I can
16 assure you Officer Cupp and Officer Walter would have said I know
17 where he is --

18 MR. LEVENTHAL: Objection, Judge, facts not assumed in
19 evidence.

20 THE COURT: I'm sorry?

21 MR. LEVENTHAL: Objection; facts not assumed in evidence.

22 MR. GIORDANI: It's argument.

23 MR. LEVENTHAL: That's what I did.

24 THE COURT: Fact assumed and not in evidence?

25 MR. LEVENTHAL: Yeah. He's arguing something that wasn't

1 even questioned by the jurors or it didn't come in.

2 THE COURT: Overruled. You may proceed.

3 BY MR. GIORDANI:

4 Okay. So, the point being if Mr. Matthews had gotten away as
5 he tried to hard to do, if he had gotten away, that interview would have
6 been a totally different thing. That would have been how do we find the
7 suspect. When they're recalling events when he's in custody already
8 and describing the suspect as he appeared to him, that's what you get.
9 It doesn't change the fact that it was Mr. Matthews who they knew and
10 recognized. So, the strength of earlier and later identifications and I
11 should say descriptions supports our position.

12 Lapses of time between the event and the identification. That
13 supports us within an hour. So, it's not days and days that pass. That
14 supports the State's position, and the totality of the circumstances
15 surrounding the eye witness's identification again. There's never been a
16 question in their mind and there shouldn't be a question in your mind at
17 this point.

18 And before I move on, there are a couple things that I need to
19 address, and first is Instruction 31; I don't think anyone's really touched
20 on it so I just want to bring this to your attention. Now, there was during
21 jury selection and -- well, during jury selection there was this discussion
22 about lapse of time and things that -- things that aren't relevant to your
23 determination as to whether they did this or not. Okay. Motive is
24 another one of those things.

25 Now, you can use your common sense as Ms. Lexis pointed

1 out, you should, I hope you do, when determining what a motive is. But
2 I want to be clear that that's not an element of the offense and you
3 haven't heard witnesses to that affect. Okay. So, we are not required to
4 prove motive. What you can do is infer based upon what you see in the
5 evidence. And as Ms. Lexis pointed out -- I won't go over all of it -- but
6 that home was the target. You know the occupants of the home or the
7 owner occupant of the home is Maurice Hickman. Okay. You know he
8 is -- I won't use the word -- but he's uncooperative. How about that.
9 You know he's the target for several reasons; first, there are 20 or so
10 bullets through his living room. Second, he's in the group with the girls
11 out front, and Mr. Matthews' friend Pierre Joshlin, who is the guy who
12 initially comes up and has his hands behind his back, he stands there
13 and the girls say he watches for a minute and he's watching them and
14 he's looking at them, and the girls got a weird vibe, and someone said
15 look up and they did and Maurice said run, not when he started
16 shooting. Maurice said run the moment he saw him. Okay. What does
17 that tell you, what does your common sense tell you? He had to be --
18 there was some kind of a problem for whatever reason. You know
19 Maurice was the target, third, because after this hail of gunfire they tried
20 to finish him, they went after him. Remember Michel'Le saw him
21 walking around and that's when she said I recognize the younger guy or
22 the shorter guy; looked around and couldn't find him in the shed and
23 then they ran down the block.

24 So, we know who the target was. I don't think there's any
25 evidence or inference that the girls were the target. It just didn't look

1 that way. Now, there's an important distinction between them being the
2 target and the Defendant and his buddies not caring if they were going
3 to get hit. That's what we have here. They're going for Maurice. It's
4 clear. But they also know that there are grown women standing there.
5 Okay. They completely disregard it, their lives, and ended up taking
6 one.

7 This was an attempted execution, not at Mersey, but she
8 stood in the way. Okay. So, we know who the target was. We don't
9 necessarily know the motive and it be hard to prove a prior beef for
10 whatever reason. So, that's not an element of the offense and that's not
11 something for you to worry about. You can make your own inferences
12 but it's not an element. So, I just wanted to make that clear.

13 The other thing Ms. Lexis pointed out and I'll briefly touch it is
14 40. In your deliberation you may not discuss or consider the subject of
15 punishment. Now we told you during jury selection that -- I don't
16 remember how it came up but it came up that we're not asking you to
17 judge Mr. Matthews as a person. We don't know him as a person. We
18 didn't present evidence of him as a person. We're asking you to judge
19 his actions and to hold him accountable for his actions that night.
20 Punishment is a separate thing. You let the judge worry about that.
21 That's not an issue for you to consider. What you're supposed to do
22 right now is go back and assess the facts and find him guilty based upon
23 the evidence as you heard it.

24 The other thing Ms. Lexis went over is 34. This is -- I think Mr.
25 Leventhal hit it too -- we know there are three people not sitting in this

1 room that are guilty of this murder as well. Pierre is one of them, Mr.
2 Joshlin is one of them, and there are outstanding suspects that are not
3 identified. Okay. You let us worry about that; you let me worry about
4 that, the State. That's not your concern. You worry about the man on
5 trial and that's it. It's the common sense instruction in 39. I just bring
6 that up to bring it back in your mind as I address the next viewpoints.

7 The -- sorry -- the gunshot residue is a concern of the
8 Defense. Okay. Not only do you have these identifications by Officer
9 Walter and Cupp, but you also have gunshot residue on Mr. Matthews'
10 hands. Okay. Keep -- Mr. Leventhal can say what he wants about
11 Officers Cupp and Walter. You can't get around gunshot residue and
12 here's why. Gunshot residue, this lead, barium and antimony, those
13 come from a source and that's from a gun. Okay. It's not brake lines,
14 it's from a gun. This idea of transfer, it's completely blown out of the
15 water when you use your common sense. Assume that the canine that
16 bit Mr. Matthews on the hand was chewing on bullets earlier that day,
17 and there's some kind of transfer to his hands. Just assume that for a
18 moment. What about the red glove? There's no transfer there. That
19 was forensically impounded, that same glove that Officers Walter and
20 Cupp saw on Mr. Matthews that was dropped in the scene, flagged, and
21 then impounded later. This whole argument of, oh, he rubbed his
22 handcuffs in the back of the patrol car or the dog bite or when he's
23 placed into custody, it doesn't matter. It goes out the window because
24 the same glove he was wearing has the same gunshot residue on it.
25 Okay. The person wearing that glove fired rounds. Again, it comes

1 down to who was wearing that glove, and Officer Walter and Cupp were
2 crystal clear in who had that glove on.

3 Now, Mr. Leventhal brought up a point about the other glove,
4 potentially another glove. I would submit to you there probably was a
5 second glove and it's probably sitting on a roof somewhere when Mr.
6 Matthews fled. His shoes, okay, this was a very large scene, as you
7 know. They found two extra shell cases right in the midst of all these 39
8 cases ten days later. That happens. These detectives aren't telling you
9 they're perfect. Things get missed. And when you jump over two gates
10 and into two different backyards and then ultimately hide in a third,
11 things get lost. It is what it is. The fact that he's not wearing shoes
12 doesn't help him. The fact that he's not wearing shoes tells you just how
13 damn fast he was running from those officers because he knew he was
14 on the hook for a murder. Just like Michel'Le. Remember her white
15 shoe on the murder scene. She ran out of it. She was running away
16 from the killers. He was running away from the guys that were going to
17 going to put him away. He ran out of his shoes. He wasn't running from
18 a TPO or fear of being arrested for a TPO or whatever it may be. He
19 was running to get away from a murder.

20 And I bring up the TPO. Now, that has been asserted as a
21 defense in this case, that this is the real reason Jemar was in the area.
22 Remember doubt to be reasonable must be actual not mere possibility
23 or speculation, and remember you are to use your common sense.

24 State's 24. I can appreciate what Mr. Leventhal is trying to
25 argue to you about that TPO. There's this term -- a phrase we turn in

1 our little world. Admit what you can't deny, deny what you can't admit.
2 Mr. Matthews can't admit he was involved in the homicide or the
3 carjacking or the officer involved -- well or the pursuit; right? He can't
4 admit that. What he can't deny is that he's found sweating with some of
5 the worse cottonmouth I've ever seen in a backyard picked up by a
6 canine unit. He can't deny that. There's no getting around it. So, what
7 do you do as a good attorney? You find a way to explain why he was
8 there. Fortunately for Mr. Matthews in this case the TPO doesn't help
9 him; it doesn't explain anything away. It just supports the State's theory.

10 Think about who we know was driving from the murder -- I'm
11 sorry -- from the carjacking and where did that person go? He didn't hit
12 the major streets, he didn't go right, didn't go here right from Lake Mead.
13 He went to a neighborhood that he knows very well. He lost control of
14 the vehicle and ditched. And where did he run? To his baby's mom's
15 house. Okay. That doesn't help him. It doesn't explain away anything.
16 It explains, if anything, why he drove to his very specific location
17 because he knew it. You heard where he lived.

18 You heard about where Mr. Joshlin lived. So, the TPO that
19 they're now asserting as a defense is 1301 Jimmy. I believe it's here
20 [indicating]. Mr. Matthews lived at 1801 J which is just down here, just
21 off this map a little bit, and Mr. Joshlin lived at 901 Silverman which is
22 just over here. It's actually off this map. Okay. They were driving to
23 where they knew the area. Okay. So, this idea that he lived in the area
24 or he had a TPO in the area and that's why he's there supports our
25 position. He drove there. That's where he was going. It's not an

1 excuse, it's not a doubt. It's not a reasonable doubt. It's just further
2 evidence that he's the driver.

3 Mr. Leventhal brought up the hand prints on the hood of the
4 red car, prints on the Chrysler, nothing at the scene in the -- as I
5 mentioned before the gloves should be soaked in Mr. Matthews' DNA.
6 This all goes back to that same narrative that I started this with. Mr.
7 Matthews -- there were no prints or DNA on the weapon. Mr. Matthews
8 and his buddies were smart enough that they wore gloves. They did
9 that right. What they did not expect going into this evening is that there
10 were officers two blocks away. That threw off their plans. They did
11 enough that had those officers not been there, they might have gotten
12 away with it. Thank God Mersey's family is getting justice because
13 Officers Cupp and Walter did their jobs. There's no DNA on the guns or
14 the casings at the scene because they did it right. Okay. It doesn't
15 mean that those casings didn't result in the shooting; it doesn't mean
16 that the crimes weren't committed. It just means that they got part of
17 this right. Officers Walter and Cupp are the only reason that these guys
18 didn't get away with it. Okay. This all comes down to their actions on
19 that night and their recollection as you recall yesterday and last week.

20 Twelve years have gone by. Mersey's still gone. Twelve
21 years from now Mersey will still be gone. Twelve years after that
22 Mersey will still be gone. Justice may be delayed in this case, but now's
23 the time. Tell him he's accountable. Follow your oath. It's very simple.
24 Follow your oath. Find him guilty as he is. Thank you.

25 THE COURT: Thank you very much. Our clerk may swear

1 the Officers of the Court who will take charge of the jury panel.

2 [The clerk swore in the officers to take charge
3 of the jury during deliberations]

4 THE COURT: Thank you. Before I do excuse you to
5 deliberate upon your verdict, Mr. Patterson and Ms. Cabrera, you've
6 been selected to be our alternate jurors. I'm not going to require you to
7 stay at the courthouse during deliberations, however, I'm not going to
8 excuse you yet. You'll be permitted to leave. I'm going to ask you to
9 see Ms. Rocha on the way out. She'll take your instructions, your
10 notebook, your badges. She's also going to take your phone number. I
11 ask that you don't go more than 45 minutes from the courthouse so if we
12 need to call you to come back to deliberate we can have you back within
13 that timeframe, and we will call you when the jury either has reached a
14 verdict or we need you or you're going to be discharged.

15 So, Mr. Patterson, Ms. Cabrera, you may step down and go
16 speak with Ms. Rocha. The rest of the jury panel now you can take your
17 notebooks, your instructions, all your notes. You're going to be excused
18 with Officer Hawkes to deliberate upon your verdict. Thank you very
19 much.

20 [The jury retires to deliberate at 4:02 p.m.]

21 THE COURT: You can come down here. Ms. Rocha is right
22 back there. She'll probably take you out in front of the courtroom and
23 just get further information from you. If I don't see you again, thank you
24 very much. Thank you.

25 MR. LEVENTHAL: Judge, excuse me, how -- if they plan on

1 going tonight or can I -- it's 4 o'clock. An hour or --

2 THE COURT: Probably at least an hour.

3 MR. LEVENTHAL: But you let them decide sort of how they --

4 THE COURT: Yeah. We'll call you both so you know they've
5 gone for the day. And then tomorrow is Wednesday. We'll have them
6 back at 8:30 if they come back.

7 MR. LEVENTHAL: Excellent. Thank you.

8 THE COURT: Okay. Thank you.

9

10 [Jury Trial, Day 7, concluded at 4:03 p.m.]

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

23

24

25


PATRICIA SLATTERY
Court Transcriber

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

OCT - 2 2018
BY, SUSAN BOTZENHART, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JEMAR MATTHEWS,

Defendant.

CASE NO: 06C228460-2

DEPT NO: XII

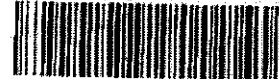
INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

MEMBERS OF THE JURY:

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

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

06C228460-2
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Instructions to the Jury
4788126



INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

INSTRUCTION NO. 3

An Amended Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Amended Information that on or about the 30th day of September, 2006, the Defendant committed the offense(s) of CONSPIRACY TO COMMIT MURDER (Category B Felony - NRS 200.010, 200.030, 199.480 - NOC 50038); MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001); ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031); POSSESSION OF SHORT BARRELED RIFLE (Category D Felony - NRS 202.275 - NOC 51435); CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147); ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138) and ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 50201).

COUNT 1 - CONSPIRACY TO COMMIT MURDER

did then and there meet with each other and between themselves, and each of them with the other, willfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: Murder, and in furtherance of said conspiracy, Defendants did commit the acts as set forth in Counts 2 - 5, said acts being incorporated by this reference as though fully set forth herein.

COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON

did then and there willfully, feloniously, without authority of law, and with premeditation and deliberation, and with malice aforethought, kill MERCY WILLIAMS, a human being, by shooting at and into the body of the said MERCY WILLIAMS, with a deadly weapon, to-wit: firearm, in the following manner, to-wit: Defendants being responsible under the following principles of criminal liability, to-wit: (1) by directly committing said crime; and/or (2) by the Defendants conspiring with each other and unidentified others to kill the said MERCY WILLIAMS, whereby each Defendant is

1 vicariously liable for the acts committed in furtherance of said conspiracy if that Defendant
2 intended that act to occur; and/or (3) the Defendants aiding or abetting in the commission of
3 the crime, by accompanying each other to the crime scene where both of them repeatedly
4 fired guns at the said MERCY WILLIAMS and helped provide a getaway vehicle by
5 assisting in the robbery of an automobile immediately after said shooting; the Defendants
6 encouraging one another throughout by actions or words; the Defendants acting in concert
7 throughout.

8 COUNT 3 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

9 did then and there, without authority of law, and malice aforethought, willfully and
10 feloniously attempt to kill MYNIECE COOK, a human being, by shooting at the said
11 MYNIECE COOK, with a deadly weapon, to-wit: a firearm, in the following manner, to-
12 wit: Defendants being responsible under the following principles of criminal liability, to-
13 wit: (1) by directly committing said crime; and/or (2) by the Defendants conspiring with
14 each other and unidentified others to kill the said MYNIECE COOK, whereby each
15 Defendant is vicariously liable for the acts committed in furtherance of said conspiracy if
16 that Defendant intended that act to occur; and/or (3) the Defendants aiding or abetting in the
17 commission of the crime, by accompanying each other to the crime scene where both of
18 them repeatedly fired guns at the said MYNIECE COOK and helped provide a getaway
19 vehicle by assisting in the robbery of an automobile immediately after said shooting; the
20 Defendants encouraging one another throughout by actions or words; the Defendants acting
21 in concert throughout.

22 COUNT 4 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

23 did then and there, without authority of law, and malice aforethought, willfully and
24 feloniously attempt to kill MICHEL-LE TOLEFREE, a human being, by shooting at the said
25 MICHEL-LE TOLEFREE, with a deadly weapon, to-wit: a firearm, in the following
26 manner, to-wit: Defendants being responsible under the following principles of criminal
27 liability, to-wit: (1) by directly committing said crime; and/or (2) by the Defendants
28 conspiring with each other and unidentified others to kill the said MICHEL-LE TOLEFREE,

1 whereby each Defendant is vicariously liable for the acts committed in furtherance of said
2 conspiracy if that Defendant intended that act to occur; and/or (3) the Defendants aiding or
3 abetting in the commission of the crime, by accompanying each other to the crime scene
4 where both of them repeatedly fired guns at the said MICHEL-LE TOLEFREE and helped
5 provide a getaway vehicle by assisting in the robbery of an automobile immediately after
6 said shooting; the Defendants encouraging one another throughout by actions or words; the
7 Defendants acting in concert throughout.

8 COUNT 5 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

9 did then and there, without authority of law, and malice aforethought, willfully and
10 feloniously attempt to kill MAURICE HICKMAN, a human being, by shooting at the said
11 MAURICE HICKMAN, with a deadly weapon, to-wit: a firearm, in the following manner,
12 to-wit: Defendants being responsible under the following principles of criminal liability, to-
13 wit: (1) by directly committing said crime; and/or (2) by the Defendants conspiring with
14 each other and unidentified others to kill the said MAURICE HICKMAN, whereby each
15 Defendant is vicariously liable for the acts committed in furtherance of said conspiracy if
16 that Defendant intended that act to occur; and/or (3) the Defendants aiding or abetting in the
17 commission of the crime, by accompanying each other to the crime scene where both of
18 them repeatedly fired guns at the said MAURICE HICKMAN and helped provide a getaway
19 vehicle by assisting in the robbery of an automobile immediately after said shooting; the
20 Defendants encouraging one another throughout by actions or words; the Defendants acting
21 in concert throughout.

22 COUNT 6 - POSSESSION OF SHORT BARRELED RIFLE

23 did then and there willfully, unlawfully, and feloniously possess a short barreled rifle
24 having a barrel less than 16 inches in length, to-wit: a Ruger Model 10/22 .22 caliber, with a
25 barrel approximately 10 3/4 inches long and overall length of 20 inches.

26 COUNT 7 - CONSPIRACY TO COMMIT ROBBERY

27 did then and there meet with each other and between themselves, and each of them
28 with the other, willfully, unlawfully, and feloniously conspire and agree to commit a crime,

1 to-wit: Robbery, and in furtherance of said conspiracy, Defendants did commit the acts as
2 set forth in Counts 8 and 9, said acts being incorporated by this reference as though fully set
3 forth herein.

4 COUNT 8 - ROBBERY WITH USE OF A DEADLY WEAPON

5 did then and there willfully, unlawfully, and feloniously take personal property, to-
6 wit: a 1991 Lincoln Town Car, from the person of GEISHE M. ORDUNO, or in her
7 presence, by means of force or violence or fear of injury to, and without the consent and
8 against the will of the said GEISHE M. ORDUNO, said Defendant using a deadly weapon,
9 to-wit: a firearm, during the commission of said crime, in the following manner, to-wit:
10 Defendant JEMAR MATTHEWS, aka, Jemar Demon Matthews, directly committing said
11 crime, PIERRE JOSHLIN aiding and abetting, by pointing said firearm at the said GEISHE
12 M. ORDUNO.

13 COUNT 9 - ROBBERY WITH USE OF A DEADLY WEAPON

14 did then and there willfully, unlawfully, and feloniously take personal property, to-
15 wit: a 1991 Lincoln Town Car, from the person of MELVIN BOLDEN, or in his presence,
16 by means of force or violence or fear of injury to, and without the consent and against the
17 will of the said MELVIN BOLDEN, said Defendant using a deadly weapon, to-wit: a
18 firearm, during the commission of said crime, in the following manner, to-wit: PIERRE
19 JOSHLIN, directly committing said crime, Defendant JEMAR MATTHEWS aiding and
20 abetting, by pointing said firearm at the said MELVIN BOLDEN.

21 COUNT 10 - ASSAULT WITH A DEADLY WEAPON

22 did then and there willfully, unlawfully, feloniously and intentionally place another
23 person, to-wit: BRADLEY CUPP, in reasonable apprehension of immediate bodily harm
24 with use of a deadly weapon, to-wit: a firearm, by pointing said firearm at the said
25 BRADLEY CUPP.

26 COUNT 11 - ASSAULT WITH A DEADLY WEAPON

27 did then and there willfully, unlawfully, feloniously and intentionally place another
28 person, to-wit: BRIAN WALTER, in reasonable apprehension of immediate bodily harm

1 with use of a deadly weapon, to-wit: a firearm, by pointing said firearm at the said BRIAN
2 WALTER.

3 It is the duty of the jury to apply the rules of law contained in these instructions to the
4 facts of the case and determine whether or not the Defendant is guilty of one or more of the
5 offenses charged.

6 Each charge and the evidence pertaining to it should be considered separately. The
7 fact that you may find a defendant guilty or not guilty as to one of the offenses charged
8 should not control your verdict as to any other offense charged.

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INSTRUCTION NO. 4

In this case the defendant is accused in an Amended Information alleging an open murder. This charge may include murder of the first degree, murder of the second degree.

The jury must decide if the defendant is guilty of any offense and, if so, of which offense.

INSTRUCTION NO. 6

Murder is the unlawful killing of a human being with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

Express malice is that deliberate intention unlawfully to take away the life of a human being which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

1
2 Murder of the first degree is murder which is perpetrated by means of any kind of
3 willful, deliberate, and premeditated killing. All three elements – willfulness, deliberation,
4 and premeditation – must be proven beyond a reasonable doubt before an accused can be
5 convicted of first-degree murder.

6 Willfulness is the intent to kill. There need be no appreciable space of time between
7 formation of the intent to kill and the act of killing.

8 Deliberation is the process of determining upon a course of action to kill as a result of
9 thought, including weighing the reasons for and against the action and considering the
10 consequences of the actions.

11 A deliberate determination may be arrived at in a short period of time. But in all cases
12 the determination must not be formed in passion, or if formed in passion, it must be carried
13 out after there has been time for the passion to subside and deliberation to occur. A Mere
14 unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

15 Premeditation is a design, a determination to kill, distinctly formed in the mind by the
16 time of the killing.

17 Premeditation need not be for a day, an hour, or even a minute. It may be as
18 instantaneous as successive thoughts of the mind. For if the jury believes from the evidence
19 that the act constituting the killing has been proceeded by and has been the result of
20 premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

1
2 The law does not undertake to measure in units of time the length of the period during
3 which the thought must be pondered before it can ripen into an intent to kill which is truly
4 deliberate and premeditated. The time will vary with different individuals and under varying
5 circumstances.

6 The true test is not the duration of time, but rather the extent of the reflection. A cold,
7 calculated judgment and decision may be arrived at in a short period of time, but a mere
8 unconsidered and rash impulse, even though it includes an intent to kill, is not deliberate and
9 premeditation as will fix and unlawful killing as murder of the first degree.
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2 If an illegal yet unintended act results from the intent to commit a crime, that act is
3 also considered illegal. Under the doctrine of "transferred intent", original malice is
4 transferred from one against whom it was entertained to the person who actually suffers the
5 consequences of the unlawful act. For example, if a person intentionally directs force against
6 one person wrongfully but, instead, hits another, his intent is said to be transferred from one
7 to the other though he did not intend it in the first instance.

8 Therefore, where a person unlawfully attempts to kill a person and, by mistake or
9 inadvertence during such attempt, commits a battery against another person, the law
10 nevertheless holds the assailant responsible for his felonious intent, merely transferring its
11 direction from the original object to the person battered.

12 During an attack upon a group, a defendant's intent to kill need not be directed at any
13 one individual. It is enough if the intent to kill is directed at the group.
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The intention to kill may be ascertained or deduced from the facts and circumstances of the killing, such as the use of a weapon calculated to produce death, the manner or its use, and the attendant circumstances characterizing the act.

INSTRUCTION NO. 11

All murder which is not Murder of the First Degree is Murder of the Second Degree.
Murder of the Second Degree is Murder with malice aforethought, but without the admixture
of premeditation and deliberation.

INSTRUCTION NO. 12

You are instructed that if you find that the State has established that the defendant has committed first degree murder you shall select first degree murder as your verdict. The crime of first degree murder includes that crime of second degree murder. You may find the defendant guilty of second degree murder if:

1. You have not found, beyond a reasonable doubt, that the defendant is guilty of murder of the first degree, and

2. All twelve of you are convinced beyond a reasonable doubt the defendant is guilty of the crime of second degree murder.

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

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2 In arriving at a verdict in this case as to whether the defendant is guilty or not guilty,
3 the subject of penalty or punishment is not to be discussed or considered by you and should
4 in no way influence your verdict.
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2 You are instructed that if you find the defendant guilty of First Degree or Second
3 Degree Murder, Attempt Murder, Robbery and/or Assault you must also determine whether
4 or not a deadly weapon was used in the commission of these crimes.

5 If you find beyond a reasonable doubt that a deadly weapon was used in the
6 commission of such an offense, then you shall return the appropriate guilty verdict reflecting
7 "With Use of a Deadly Weapon".

8 If, however, you find that a deadly weapon was not used in the commission of such an
9 offense, but you find that it was committed, then you shall return the appropriate guilty
10 verdict reflecting that a deadly weapon was not used.

1
2 "Deadly weapon" means:

- 3 a. any instrument which, if used in the ordinary manner contemplated by its design
4 and construction, will or is likely to cause substantial bodily harm or death; or
5 b. Any weapon, device, instrument, material or substance which, under the
6 circumstances in which it is used, attempted to be used or threatened to be used, is
7 readily capable of causing substantial bodily harm or death.
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INSTRUCTION NO. 16

In order to "use" a deadly weapon, there need not be conduct which actually produces harm but only conduct which produces a fear of harm or force by means or display of the deadly weapon in aiding the commission of the crime.

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2 Attempted Murder is the performance of an act or acts which tend, but fail, to kill a
3 human being, when such acts are done with express malice, namely, with the deliberate
4 intention unlawfully to kill.
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2 Malice aforethought means the intentional attempt to kill another human being
3 without legal cause, legal excuse or what the law considers adequate provocation. The
4 condition of mind described as malice aforethought may rise, not alone from anger, hatred
5 revenge or from particular ill will, spite, or grudge toward the person killed, but may result
6 from any unjustifiable or unlawful motive or purpose to injure another which proceeds from
7 a heart fatally bent on mischief or with reckless disregard of consequences and social duty.
8 Malice aforethought does not imply deliberation or the lapse of any considerable time
9 between the malicious intentions, but denotes rather an unlawful purpose and design in
10 contradistinction to accident and mischance.

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2 It is not necessary to prove the elements of premeditation and deliberation in order to
3 prove attempted murder.
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Robbery is the unlawful taking of personal property from the person of another, or in his or her presence, against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person or property. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking, in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force of fear.

The value of property or money taken is not an element of the crime of Robbery, and it is only necessary that the State prove the taking of some property or money.

It is unlawful to knowingly possess, manufacture or dispose of any short-barreled rifle or shotgun. Short-barreled rifle means:

1. A rifle having one or more barrels less than 16 inches in length; or
2. Any weapon made from a rifle, whether by alteration, modification or other means, with an overall length of less than 26 inches.

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2 An Assault With a Deadly Weapon is an intentional placing of another person in
3 reasonable apprehension of immediate bodily harm, by or through the use of a deadly
4 weapon.
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2 A conspiracy is an agreement between two or more persons for an unlawful purpose.
3 To be guilty of conspiracy, a defendant must intend to commit the specific crime agreed to.
4 The crime is the agreement to do something unlawful; it does not matter whether it was
5 successful or not.

6 A person who knowingly does any act to further the object of a conspiracy, or
7 otherwise participates therein, is criminally liable as a conspirator, however, mere
8 knowledge or approval of, or acquiescence in, the object and purpose of a conspiracy
9 without an agreement to cooperate in achieving such object or purpose does not make one a
10 party to conspiracy. Conspiracy is seldom susceptible of direct proof and is usually
11 established by inference from the conduct of the parties. In particular, a conspiracy may be
12 supported by a coordinated series of acts, in furtherance of the underlying offense, sufficient
13 to infer the existence of any agreement.

14 A conspiracy does not end upon the completion of the crime. The conspiracy
15 continues until the co-conspirators have successfully gotten away and concealed the crime.
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Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy.

The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators. Every conspirator is legally responsible for a specific intent crime of a co-conspirator so long as the specific intent crime was intended by the defendant. A conspirator is also legally responsible for a general intent crime of a co-conspirator that follows as one of the probable and natural consequences of the object of the conspiracy even if it was not intended as part of the original plan and even if he was not present at the time of the commission of such act.

Evidence that a person was in the company of or associated with one or more other persons alleged or proved to have been members of a conspiracy is not, in itself, sufficient to prove that such person was a member of the alleged conspiracy. However, you are instructed that presence, companionship, and conduct before, during and after the offense are circumstances which may be considered in determining whether a conspiracy exists.

It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators or the making of an express or formal agreement. The formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other fact may be proved, either by direct testimony of the fact or by circumstantial evidence, or by both direct and circumstantial evidence.

1
2 If more than one person commits a crime, and one of them uses a deadly weapon in
3 the commission of that crime, each may be convicted of using the deadly weapon, even
4 though he did not personally himself use the weapon.

5 An unarmed offender "uses" a deadly weapon when the unarmed offender is liable for
6 the offense, another person liable for the offense is armed with and uses a deadly weapon in
7 the commission of the offense, and the unarmed offender had knowledge of the use of the
8 deadly weapon.

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2 Mere presence at the scene of a crime or knowledge that a crime is being committed
3 is not sufficient to establish that a defendant is guilty of an offense, unless you find beyond a
4 reasonable doubt that the defendant was a participant and not merely a knowing spectator.

5 However, the presence of a person at the scene of a crime and companionship with
6 another person engaged in the commission of the crime and a course of conduct before and
7 after the offense, are circumstances which may be considered in determining whether such
8 person aided and abetted the commission of that crime.

Where two or more persons are accused of committing a crime together, their guilt may be established without proof that each personally did every act constituting the offense charged.

All persons concerned in the commission of a crime who either directly and actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission or, whether present or not, who advise and encourage its commission, with the intent that the crime be committed, are regarded by the law as principals in the crime thus committed and are equally guilty thereof.

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the commission of such crime with the intention that the crime be committed.

The State is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

INSTRUCTION NO. 29

Your verdict must be unanimous as to the charge. You do not have to be unanimous on the principle of criminal liability. It is sufficient that each of you find beyond a reasonable doubt that the crime was committed under any one of these principles of criminal liability.

INSTRUCTION NO. 30

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2 The flight of a person immediately after the commission of a crime, or after he is
3 accused of a crime, is not sufficient in itself to establish his guilt, but is a fact which, if
4 proved may be considered by you in light of all other proved facts in deciding whether the
5 State of Nevada met its burden of proof. Whether or not evidence of flight shows a
6 consciousness of guilt and the significance to be attached to such a circumstance are matters
7 for your deliberations.
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2 To constitute the crime charged, there must exist a union or joint operation of an act
3 forbidden by law and an intent to do the act.

4 The intent with which an act is done is shown by the facts and circumstances
5 surrounding the case.

6 Do not confuse intent with motive. Motive is what prompts a person to act. Intent
7 refers only to the state of mind with which the act is done.

8 Motive is not an element of the crime charged and the State is not required to prove a
9 motive on the part of the Defendant in order to convict. However, you may consider
10 evidence of motive or lack of motive as a circumstance in the case.

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INSTRUCTION NO. 32

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2 The Defendant is presumed innocent until the contrary is proved. This presumption
3 places upon the State of Nevada the burden of proving beyond a reasonable doubt every
4 element of the crime charged and that the Defendant is the person who committed the
5 offense.

6 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a
7 doubt as would govern or control a person in the more weighty affairs of life. If the minds of
8 the jurors, after the entire comparison and consideration of all the evidence, are in such a
9 condition that they can say they feel an abiding conviction of the truth of the charge, there is
10 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
11 speculation.

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a
13 verdict of not guilty.
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INSTRUCTION NO. 33

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

INSTRUCTION NO. 34

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

1
2 The evidence which you are to consider in this case consists of the testimony of the
3 witnesses, the exhibits, and any facts admitted or agreed to by counsel.

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

11 Statements, arguments and opinions of counsel are not evidence in the case.
12 However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation
13 as evidence and regard that fact as proved.

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

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

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

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INSTRUCTION NO. 36

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

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2 You have heard testimony of eyewitness identification. In deciding how much weight
3 to give to this testimony, you may consider the various factors mentioned in these
4 instructions concerning credibility of witnesses.

5 In addition to those factors, in evaluating eyewitness identification testimony, you
6 may also consider:

- 7 1. The capacity and opportunity of the eyewitness to observe the offender based
8 upon the length of time for observation and the conditions at the time of
9 observation, including lighting and distance;
 - 10 2. Whether the identification was the product of the eyewitness's own recollection
11 or was the result of subsequent influence or suggestiveness;
 - 12 3. Any inconsistent identifications made by the eyewitness;
 - 13 4. The witness's familiarity with the subject identified;
 - 14 5. The strength of earlier and later identifications;
 - 15 6. Lapses of time between the event and the identification(s); and
 - 16 7. The totality of circumstances surrounding the eyewitness's identification.
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2 A witness who has special knowledge, skill, experience, ~~training or education~~ in a
3 particular science, profession or occupation is an expert witness. An expert witness may
4 give his opinion as to any matter in which he is skilled.

5 You should consider such expert opinion and weigh the reasons, if any, given for it.
6 You are not bound, however, by such an opinion. Give it the weight to which you deem it
7 entitled, whether that be great or slight, and you may reject it, if, in your judgment, the
8 reasons given for it are unsound.

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2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind such inferences should not
7 be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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INSTRUCTION NO. 40 _

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the State of Nevada has met its burden of proof as to the Defendant.

During your deliberations you are not to communicate with anyone, in any manner regarding the facts and circumstances of this case or its merits, either by phone, email, text messaging, internet, or other means.

You are admonished not to read, watch, or listen to any news or media accounts or commentary about the case. You are not permitted to do any independent research, such as consulting dictionaries, using the internet, or any other reference materials.


You are further admonished not to conduct any investigation, test a theory of the case, re-create any aspect of the case, or in any other manner investigate or learn about the case on your own.

When you retire to consider your verdict, you must first select one of your member to act as foreperson who will preside over your deliberation, and will be your spokesperson in court.

During your deliberation, you will have all the exhibits admitted into evidence, these written instructions, and forms of verdict prepared for your convenience.

Your verdict must be unanimous. As soon as you agree upon a verdict, the foreperson shall sign and date the verdict form and return with it to this room.

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

GIVEN: 
DISTRICT JUDGE



1 **RTRAN**

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5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

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8 **THE STATE OF NEVADA,**
9 **Plaintiff,**

CASE#: 06C228460-2
DEPT. XII

10 **vs.**

11 **JEMAR D. MATTHEWS aka**
12 **JEMAR MATTHEWS**
13 **JEMAR DEMON MATTHEWS,**
14 **Defendant.**

15 **BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE**
16 **WEDNESDAY, OCTOBER 3, 2018**

17 **RECORDER'S TRANSCRIPT OF DAY 8:**
18 **JURY TRIAL - 8**

19 **APPEARANCES:**

20 **For the State:**

JOHN L. GIORDANI III, ESQ.
AGNES M. LEXIS, ESQ.
Chief Deputy District Attorneys

22 **For the Defendant:**

TODD M. LEVENTHAL, ESQ.
RICHARD E. TANASI, ESQ.

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25 **RECORDED BY: KRISTINE SANTI, COURT RECORDER**

1 Las Vegas, Nevada, Wednesday, October 3, 2018

2
3 [Hearing began at 10:27 a.m.]

4 [IPOJ]

5 THE COURT: Does the State stipulate to the presence of the
6 jury panel?

7 MR. GIORDANI: Yes, Your Honor.

8 THE COURT: The defense?

9 MR. LEVENTHAL: Yes, Your Honor. Thank you.

10 THE COURT: Okay.

11 Mr. Simmons, has the jury reached a verdict?

12 JUROR NUMBER 3: Yes, we have Your Honor.

13 THE COURT: Can you please hand the verdict form to Officer
14 Hawkes.

15 Thank you.

16 Okay. The Clerk will now read the verdict out loud. Will the
17 Defendant and his attorneys please stand for the reading of the verdict.

18 THE CLERK: District Court Clark County, Nevada, the State
19 of Nevada plaintiff versus Jemar Matthews Defendant, case number C --
20 06C228460-2, Department 12, Verdict. We the jury named above
21 entitled case find the Defendant Jemar Matthews as follows: Count 1,
22 conspiracy to commit murder, guilty of conspiracy to commit murder;
23 Count 2, murder with use of a deadly weapon, guilty of first degree
24 murder with use of a deadly weapon; Count 3, attempt murder with use
25 of a deadly weapon, guilty of attempt murder with use of a deadly

1 weapon; Count 4, attempt murder with use of a deadly weapon, guilty of
2 attempt murder with use of a deadly weapon; Count 5, attempt murder
3 with use of a deadly weapon, guilty of attempt murder with use of a
4 deadly weapon; Count 6, possession of short barreled rifle, guilty of
5 possession of short barreled rifle; Count 7, conspiracy to commit
6 robbery, guilty of conspiracy to commit robbery; Count 8, robbery with
7 use of a deadly weapon, guilty of robbery with use of a deadly weapon;
8 Count 9, robbery with use of a deadly weapon, guilty of robbery with use
9 of a deadly weapon; Count 10, assault with a deadly weapon, guilty of
10 assault with a deadly weapon; Count 11, assault with a deadly weapon,
11 guilty of assault with a deadly weapon. Dated this third day of October
12 2018, signed by Juror Number 3, Foreperson.

13 Ladies and gentlemen of the jury, are these your verdicts as
14 read, so say you once, so say you all as to Defendant Jemar Matthews?

15 THE JURY PANEL: Yes.

16 THE COURT: Does the State of Nevada wish to have the jury
17 panel polled?

18 MR. GIORDANI: No, Your Honor.

19 THE COURT: Mr. Leventhal?

20 MR. LEVENTHAL: Yes, Your Honor.

21 THE COURT: Okay. At this time, ladies and gentlemen, the
22 Clerk is going to ask you a question. I just ask that you respond yes or
23 no.

24 THE CLERK: Juror Number 1, are these your verdicts as
25 read?

1 JUROR NUMBER 1: Yes.
2 THE CLERK: Juror Number 2, are these your verdicts as
3 read?
4 JUROR NUMBER 2: Yes.
5 THE CLERK: Juror Number 3, foreperson, are these your
6 verdicts as read?
7 JUROR NUMBER 3: Yes.
8 THE CLERK: Juror Number 4, are these your verdicts as
9 read?
10 JUROR NUMBER 4: Yes.
11 THE CLERK: Juror Number 5, are these your verdicts as
12 read?
13 JUROR NUMBER 5: Yes.
14 THE CLERK: Juror Number 6, are these your verdicts as
15 read?
16 JUROR NUMBER 6: Yes.
17 THE CLERK: Juror Number 7, are these your verdicts as
18 read?
19 JUROR NUMBER 7: Yes.
20 THE CLERK: Juror Number 8, are these your verdicts as
21 read?
22 JUROR NUMBER 8: Yes.
23 THE CLERK: Juror Number 9, are these your verdicts as
24 read?
25 JUROR NUMBER 9: Yes.

1 THE CLERK: Juror Number 10, are these your verdicts as
2 read?
3 JUROR NUMBER 10: Yes.
4 THE CLERK: Juror Number 11, are these your verdicts as
5 read?
6 JUROR NUMBER 11: Yes.
7 THE CLERK: Juror Number 12, are these your verdicts as
8 read?
9 JUROR NUMBER 12: Yes.
10 THE CLERK: Jury's been polled, Your Honor.
11 THE COURT: Okay. At this time the Clerk will record the
12 verdict in the official records of the Court.
13 Can I have the attorneys approach for a moment? Thank you.
14 [Bench conference]
15 THE COURT: Are you all ready to go into penalty?
16 MR. GIORDANI: I think we're going to have a discussion.
17 THE COURT: Okay. So, what we can -- I'll give him like a 15
18 minute break. And then you guys can do, I mean, if he's going to waive I
19 don't know, but if not we'd be ready to go right into the penalty phase --
20 MR. LEVENTHAL: Okay.
21 THE COURT: -- correct?
22 MR. LEVENTHAL: Oh yeah. Fifteen minutes will work.
23 THE COURT: Okay.
24 MR. LEVENTHAL: Thank you.
25 THE COURT: No problem. Okay.

1 [Bench conference end]

2 THE COURT: At this time, ladies and gentlemen, we're going
3 to take a short recess. I'm going to ask the ladies and gentlemen of the
4 jury to go back into the jury deliberation room while we take this recess.

5 During this recess you're admonished not to talk or converse
6 amongst yourselves, or with anyone else on any subject connected with
7 this trial, or read, watch, or listen to any report of, or commentary on the
8 trial, or any person connected with this trial by any medium of
9 information, including without limitation, newspapers, television, the
10 internet, or radio. Or form or express any opinion on any subject
11 connected with this trial until the case is finally submitted to you. We'll
12 be in recess for 15 minutes.

13 THE MARSHAL: Thank you.

14 THE COURT: Thank you.

15 THE MARSHAL: Jurors, please go with Ms. Rocha.

16 THE COURT: And you will go with Ms. Rocha.

17 [OPOJ]

18 Okay, I need at least one DA to stay. I mean, aren't you guys
19 going to have to talk?

20 MR. LEVENTHAL: Yes.

21 MS. LEXIS: We thought they would talk with their client first.

22 THE COURT: Oh, okay. That's fine. That's fine. I can clear
23 the courtroom, so you can talk to your client.

24 MR. LEVENTHAL: Okay, great.

25 THE COURT: Okay.

1 MS. LEXIS: And we wanted also wanted to talk to the family
2 just to see --

3 THE COURT: Okay.

4 MS. LEXIS: -- if they had an opinion --

5 THE COURT: Alright.

6 MS. LEXIS: -- on --

7 THE COURT: So, we're going to clear the courtroom.

8 THE MARSHAL: Yes, ma'am.

9 THE COURT: And my staff everyone will leave, just the court
10 Marshal and the CO's can remain.

11 MR. LEVENTHAL: Thank you, Judge.

12 MR. TANASI: Thank you, Judge.

13 [Recess taken at 10:33 a.m.]

14 [Recess resumed at 11:29 a.m.]

15 [OPOJ]

16 THE MARSHALL: Please come back to order, court is now
17 back in session.

18 THE COURT: Okay. The record will reflect that the hearing is
19 taking place outside the presence of the jury panel. It's my
20 understanding the parties have reached a stipulation?

21 MR. GIORDANI: Yes, Your Honor.

22 MR. LEVENTHAL: That's correct. Parties are going to agree
23 at this time to waive the jury. Have them sentence Mr. Matthews, and
24 allow this Court to do so with the understanding that Mr. Matthews is
25 going to be stipulating to a life sentence with the parole eligibility after 20

1 years. And everything else, including the enhancement we will argue as
2 well as all of the counts that Mr. Matthews was found guilty to at a later
3 date. Knowing that there may be some language in there that the law
4 has changed, and we can argue that we haven't stipulated to the
5 enhancement.

6 THE COURT: Sure.

7 MR. GIORDANI: All correct.

8 THE COURT: Alright. Mr. Matthews, is this your
9 understanding of the stipulation?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And you understand you are waiving your right
12 to have a penalty hearing? To have this jury determine with the
13 appropriate penalty will be is. Do you understand that?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And did you talk to your lawyers about that?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And you are freely and voluntarily waiving that
18 right?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Did your attorneys answer all your questions?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Okay. This waiver I have in front of me, is that
23 your signature?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: You read it before you signed it?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: You understood it prior to sentencing -- I'm
3 sorry, prior to signing it?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Do you have any questions of the Court?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: Okay. And you know that the Court has
8 discretion to sentence on all the other counts, except the Count 1, first
9 degree murder, that's what the jury has the right to decide in Nevada.
10 And you understand you're waiving that right here?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And you understand you're stipulating to a life
13 sentence with a possibility of parole?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And you know it would be after serving a
16 minimum of 20 years?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And that there's also a deadly weapon
19 enhancement?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Okay. And you discussed the deadly weapon
22 enhancement with your lawyers?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And you understand that, I believe the way the
25 law is written and the fact that it changed not until 2007, that you are

1 facing an equal and consecutive sentence for the deadly weapon
2 enhancement?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Okay. Which would be, you know, life with the
5 possibility of parole after serving a minimum of 20 years, plus an equal
6 and consecutive life with the possibility of parole after serving a
7 minimum of 20 years, for a total of 40 years to life?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And you understand that?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And you understand your attorneys will be
12 given the opportunity to argue for any lawful sentence that they think is
13 appropriate pursuant to the law?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And you've had a chance to discuss all that
16 with your lawyers?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And do you have any further questions of the
19 Court?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: Okay. Alright, at this time I'm going to file and
22 make the stipulation in waiver of the penalty hearing a part of the record.
23 And we can bring the jury panel in and discharge them.

24 [Colloquy between the Court and staff]

25 THE MARSHAL: All rise for entering jury, please.

1 [IPOJ]

2 THE COURT: Does the State stipulate to the presence of the
3 jury panel?

4 MR. GIORDANI: Yes, Your Honor.

5 THE COURT: The defense?

6 MR. LEVENTHAL: Yes, Your Honor. Thank you.

7 THE COURT: Thank you very much. Ladies and gentlemen,
8 I know that we told you during voir dire that if this verdict was returned
9 that we would go in to a penalty phase. While you were out on our
10 break the parties reached a stipulation and agreement, so that we won't
11 have to go forward in the penalty phase.

12 So at this time I am going to discharge you from your duty.
13 Before I do I just want to extend my thanks and gratitude to all of you for
14 your willingness to be here. I know it's not easy to set aside all your
15 personal, family, and employment obligations and be here, and I do
16 appreciate it.

17 It went, you know, about as long as we thought it would go.
18 Well at least we're done by Wednesday, and we didn't go any further.
19 And I know that that was a hardship, and a burden for probably most of
20 you to do that. And I just want to make sure you understand how much -
21 - how grateful we are for your willingness to serve.

22 You may ask yourself now can you talk about the case, you're
23 free to talk about the case with whomever you want, but you are under
24 no obligation to discuss the case with anyone. I do usually give the
25 lawyers an opportunity to speak to the jury panel after a jury trial,

1 because I think it's helpful for them to get feedback from members of the
2 jury panel. But I just want to make sure everyone understands, you're
3 not under any obligation to speak to anyone, but you're now no longer
4 under the admonition not to discuss the case with anyone.

5 So again, thank you very much for your willingness to be here.
6 You're going to be discharged and then you go back and you'll get
7 further direction. And you'll be excused from your duty. Thank you very
8 much, ladies and gentlemen.

9 THE MARSHAL: All rise for exit of the jury, please.

10 Jurors please go with Ms. Rocha.

11 Thank you all, please be seated.

12 [OPOJ]

13 THE COURT: Okay. The record will reflect that the hearing is
14 taking place outside the presence of the jury panel. I'm going to refer
15 the matter to Parole and Probation, and set it for sentencing. Does the
16 State want to be heard on his custodial status?

17 MR. GIORDANI: Yes, we would ask that he be remanded
18 without bail at this point if he wasn't already.

19 THE DEFENDANT: I'm in prison.

20 THE COURT: I'm sorry?

21 THE DEFENDANT: I'm already in prison.

22 MR. TANASI: Your Honor, we'll submit it at this time.

23 THE COURT: Okay.

24 MR. TANASI: Thank you.

25 THE COURT: At this time he'll be remanded without bail, and

1 it'll be set for sentencing.

2 [Colloquy between defense attorneys]

3 THE CLERK: December 5, 8:30.

4 MR. LEVENTHAL: Will he be remanded back to prison, or is
5 he going to stick around? I mean, I don't know --

6 THE COURT: It's up to you.

7 MR. LEVENTHAL: I don't know do we need a probation -- I
8 mean, he's been in prison since, you know, the last probation report was
9 done.

10 MR. GIORDANI: Oh, yeah.

11 MR. LEVENTHAL: Does the Court need a --

12 MR. GIORDANI: We do need one. That was 12 years ago,
13 so.

14 MR. LEVENTHAL: Right, but --

15 THE COURT: Right. But an updated PSI would cover
16 anything --

17 MR. LEVENTHAL: Sure. That's fine.

18 THE COURT: -- that's happened over the last 12 years.

19 MR. LEVENTHAL: Okay.

20 THE COURT: Obviously, I know where he's been.

21 MR. LEVENTHAL: Right. So, is he going to be remanded
22 back up to the prison? Does the Court know?

23 THE COURT: I can release him to go back up to prison.

24 MR. LEVENTHAL: I think that's what he wants. That would
25 be great.

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THE COURT: Okay.

MR. LEVENTHAL: Thank you, Judge.

THE COURT: Alright. We'll do that.

MR. LEVENTHAL: Thank you.

THE COURT: Thank you very much.

MR. TANASI: Thank you, Judge.

MR. GIORDANI: Thank you.

THE COURT: Thank you. Yeah, just give me a few minutes.

MR. GIORDANI: Okay.

[Hearing concluded at 11:37 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.



Rubina Feda
Court Recorder/Transcriber

1 VER

2 ORIGINAL

3 DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

OCT - 3 2018 11:30 AM

BY: 
SUSAN BOTZENHART, DEPUTY

4 THE STATE OF NEVADA,

5 Plaintiff,

6 -vs-

7 JEMAR MATTHEWS,

8 Defendant.

CASE NO: 06C228460-2

DEPT NO: XII

9 VERDICT

10 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as
11 follows:

12 COUNT 1 - CONSPIRACY TO COMMIT MURDER

13 *(Please check the appropriate box, select only one)*

- 14 ☒ Guilty of CONSPIRACY TO COMMIT MURDER
15 ☐ Not Guilty

16 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as
17 follows:

18 COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON

19 *(Please check the appropriate box, select only one)*

- 20 ☒ Guilty of 1ST DEGREE MURDER WITH USE OF A DEADLY
21 WEAPON
22 ☐ Guilty of 1ST DEGREE MURDER
23 ☐ Guilty of 2ND DEGREE MURDER WITH USE OF A DEADLY
24 WEAPON
25 ☐ Guilty of 2ND DEGREE MURDER
26 ☐ Not Guilty

27 ///

28 ///

06C228460-2
VER
Verdict
4786082



1 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as
2 follows:

3 **COUNT 3 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON**

4 *(Please check the appropriate box, select only one)*

- 5 ☒ Guilty of ATTEMPT MURDER WITH USE OF A DEADLY
6 WEAPON
7 ☐ Guilty of ATTEMPT MURDER
8 ☐ Not Guilty

9 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as
10 follows:

11 **COUNT 4 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON**

12 *(Please check the appropriate box, select only one)*

- 13 ☒ Guilty of ATTEMPT MURDER WITH USE OF A DEADLY
14 WEAPON
15 ☐ Guilty of ATTEMPT MURDER
16 ☐ Not Guilty

17 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as
18 follows:

19 **COUNT 5 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON**

20 *(Please check the appropriate box, select only one)*

- 21 ☒ Guilty of ATTEMPT MURDER WITH USE OF A DEADLY
22 WEAPON
23 ☐ Guilty of ATTEMPT MURDER
24 ☐ Not Guilty

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1 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as
2 follows:

3 **COUNT 6 - POSSESSION OF SHORT BARRELED RIFLE**

4 *(Please check the appropriate box, select only one)*

- 5 ☒ Guilty of POSSESSION OF SHORT BARRELED RIFLE
6 ☐ Not Guilty

7 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as
8 follows:

9 **COUNT 7 - CONSPIRACY TO COMMIT ROBBERY**

10 *(Please check the appropriate box, select only one)*

- 11 ☒ Guilty of CONSPIRACY TO COMMIT ROBBERY
12 ☐ Not Guilty

13 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as
14 follows:

15 **COUNT 8 - ROBBERY WITH USE OF A DEADLY WEAPON**

16 *(Please check the appropriate box, select only one)*

- 17 ☒ Guilty of ROBBERY WITH USE OF A DEADLY WEAPON
18 ☐ Guilty of ROBBERY
19 ☐ Not Guilty

20 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as
21 follows:

22 **COUNT 9 - ROBBERY WITH USE OF A DEADLY WEAPON**

23 *(Please check the appropriate box, select only one)*

- 24 ☒ Guilty of ROBBERY WITH USE OF A DEADLY WEAPON
25 ☐ Guilty of ROBBERY
26 ☐ Not Guilty

1 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as
2 follows:

3 **COUNT 10 - ASSAULT WITH A DEADLY WEAPON**

4 *(Please check the appropriate box, select only one)*

- 5 ☒ Guilty of ASSAULT WITH A DEADLY WEAPON
6 ☐ Not Guilty

7 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as
8 follows:

9 **COUNT 11 - ASSAULT WITH A DEADLY WEAPON**

10 *(Please check the appropriate box, select only one)*

- 11 ☒ Guilty of ASSAULT WITH A DEADLY WEAPON
12 ☐ Not Guilty

13
14 DATED this 3 day of October, 2018

15
16 
17 FOREPERSON

Steven D. Grierson

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JEMAR MATTHEWS, aka
Jemar Demon Matthews
#1956579

Defendant

CASE NO. 06C228460-2

DEPT. NO. XII

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1
– CONSPIRACY TO COMMIT MURDER (Category B Felony) in violation of NRS
200.010, 200.030, 199.480; COUNT 2 – FIRST DEGREE MURDER WITH USE OF A
DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165;
COUNT 3 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B
Felony) in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 4 – ATTEMPT
MURDER WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS
200.010, 200.030, 193.330, 193.165; COUNT 5 – ATTEMPT MURDER WITH USE OF
A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010, 200.030,
193.330, 193.165; COUNT 6 – POSSESSION OF A SHORT BARRELED RIFLE
(Category D Felony) in violation of NRS 202.275; COUNT 7 – CONSPIRACY TO
COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480;
COUNT 8 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in

RECEIVED

DEPT 12

1 violation of NRS 200.380, 193.165; COUNT 9 – ROBBERY WITH USE OF A DEADLY
2 WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 10 –
3 ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS
4 200.471; and COUNT 11 – ASSAULT WITH A DEADLY WEAPON (Category B Felony)
5 in violation of NRS 200.471, and the matter having been **tried before a jury**, and the
6 Defendant having been found guilty of the crimes of COUNT 1 – CONSPIRACY TO
7 COMMIT MURDER (Category B Felony) in violation of NRS 200.010, 200.030,
8 199.480; COUNT 2 – FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON
9 (Category A Felony) in violation of NRS 200.010, 200.030, 193.165; COUNT 3 –
10 ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony) in
11 violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 4 – ATTEMPT MURDER
12 WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010,
13 200.030, 193.330, 193.165; COUNT 5 – ATTEMPT MURDER WITH USE OF A
14 DEADLY WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.330,
15 193.165; COUNT 6 – POSSESSION OF A SHORT BARRELED RIFLE (Category D
16 Felony) in violation of NRS 202.275; COUNT 7 – CONSPIRACY TO COMMIT
17 ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNT 8 –
18 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of
19 NRS 200.380, 193.165; COUNT 9 – ROBBERY WITH USE OF A DEADLY WEAPON
20 (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 10 – ASSAULT
21 WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; and
22 COUNT 11 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation
23 of NRS 200.471; thereafter, on the 5th day of December, 2018, the Defendant was
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1 present in court for **sentencing** with counsel TODD LEVENTHAL, ESQ. and RICHARD
2 TANASI, ESQ., and good cause appearing,


3 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
4 addition to the \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee
5 including testing to determine genetic markers plus \$3.00 DNA Collection Fee, the
6 Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows:

7
8 **COUNT 1** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a
9 MINIMUM parole eligibility of TWENTY-SIX (26) MONTHS; **COUNT 2** – LIFE with the
10 eligibility of parole after serving a MINIMUM of TWENTY (20) YEARS, plus a
11 CONSECUTIVE term of LIFE with the eligibility of parole after serving a MINIMUM of
12 TWENTY (20) YEARS for the Use of a Deadly Weapon, CONCURRENT with COUNT
13 1; **COUNT 3** – a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a
14 MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE
15 term of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of
16 FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon; CONCURRENT with
17 COUNT 2; **COUNT 4** - a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a
18 MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE
19 term of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of
20 FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon, CONCURRENT with
21 COUNT 3; **COUNT 5** – a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a
22 MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE
23 term of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of
24 FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon, CONCURRENT with
25 COUNT 4; **COUNT 6** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM
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1 parole eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 5; **COUNT 7**
2 - a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of
3 TWELVE (12) MONTHS, CONCURRENT with COUNT 6; **COUNT 8** - a MAXIMUM of
4 ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of FORTY
5 (40) MONTHS, plus a CONSECUTIVE term of ONE HUNDRED EIGHTY (180)
6 MONTHS with a MINIMUM parole eligibility of FORTY (40) MONTHS for the Use of a
7 Deadly Weapon, CONCURRENT with COUNT 7; **COUNT 9** - a MAXIMUM of ONE
8 HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of FORTY (40)
9 MONTHS, plus a CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS
10 with a MINIMUM parole eligibility of FORTY (40) MONTHS for the Use of a Deadly
11 Weapon, CONCURRENT with COUNT 8; **COUNT 10** - a MAXIMUM of SEVENTY-
12 TWO (72) MONTHS with a MINIMUM parole eligibility of SIXTEEN (16) MONTHS,
13 CONCURRENT with COUNT 9; and **COUNT 11** - a MAXIMUM of SEVENTY-TWO (72)
14 MONTHS with a MINIMUM parole eligibility of SIXTEEN (16) MONTHS,
15 CONCURRENT with COUNT 10; ALL COUNTS to run CONCURRENT with COUNT 2;
16 with FOUR THOUSAND, FOUR HUNDRED FIFTY (4,450) DAYS credit for time served.
17 The AGGREGATE TOTAL sentence is LIFE with the eligibility of parole after serving a
18 MINIMUM OF FORTY (40) YEARS.
19
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23 DATED this 6 day of December, 2018.

24
25 
26 MICHELLE LEAVITT
27 DISTRICT COURT JUDGE *SL* SB
28



1 TODD M. LEVENTHAL, ESQ.
2 Leventhal and Associates, PLLC
3 Nevada Bar No. 8543
4 626 South Third Street
5 Las Vegas, Nevada 89101
6 leventhalandassociates@gmail.com
7 (702) 472-8686
8 *Attorney for Defendant*

DISTRICT COURT

CLARK COUNTY NEVADA

8 THE STATE OF NEVADA

9 Plaintiff,

10 vs.

11 JEMAR D. MATTHEWS,

12 Defendant.

CASE NO.: 06C228460-2

DEPT NO.: 12

NOTICE OF APPEAL

15 TO: THE STATE OF NEVADA
16 STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY NEVDA AND
17 DEPARTMENT NO. XII OF THE EIGHTH JUDICIAL DISTRICT COURT OF THE
18 STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK.

19 NOTICE is hereby given that Defendant, JEMAR D. MATTHEWS, presently incarcerated at

20 High Desert State Prison, appeals to the Supreme Court of the State of Nevada from the

21 judgment entered against said Defendant on the 12 day of December, 2018, whereby he was

22 convicted and SENTENCED to the Nevada Department of Corrections (NDC) as follows:

23 COUNT 1 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a

24 MINIMUM parole eligibility of TWENTY-SIX (26) MONTHS; COUNT 2 - LIFE with the

25 eligibility of parole after serving a MINIMUM of TWENTY (20) YEARS, plus a

26 CONSECUTIVE term of LIFE with the eligibility of parole after serving a MINIMUM of

27 TWENTY (20) YEARS for the Use of a Deadly Weapon, CONCURRENT with COUNT

28 1; COUNT 3 - a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a

1 MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE
2 term of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of
3 FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon; CONCURRENT with
4 COUNT 2; COUNT 4 - a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a
5 MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE
6 term of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of
7 FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon, CONCURRENT with
8 COUNT 3; COUNT 5 - a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a
9 MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE
10 term of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of
11 FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon, CONCURRENT with
12 COUNT 4; COUNT 6 - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM
13 parole eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 5; COUNT 7
14 _ a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of
15 TWELVE (12) MONTHS, CONCURRENT with COUNT 6; COUNT 8 - a MAXIMUM of
16 ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of FORTY
17 (40) MONTHS, plus a CONSECUTIVE term of ONE HUNDRED EIGHTY (180)
18 MONTHS with a MINIMUM parole eligibility of FORTY (40) MONTHS for the Use of a
19 Deadly Weapon, CONCURRENT with COUNT 7; COUNT 9 - a MAXIMUM of ONE
20 HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of FORTY (40)
21 MONTHS, plus a CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS
22 with a MINIMUM parole eligibility of FORTY (40) MONTHS for the Use of a Deadly
23 Weapon, CONCURRENT with COUNT 8; COUNT 10 - a MAXIMUM of SEVENTY-
24 TWO (72) MONTHS with a MINIMUM parole eligibility of SIXTEEN (16) MONTHS,
25 CONCURRENT with COUNT 9; and COUNT 11 - a MAXIMUM of SEVENTY-TWO (72)

1 MONTHS with a MINIMUM parole eligibility of SIXTEEN (16) MONTHS, CONCURRENT
2 with COUNT 10; ALL COUNTS to run CONCURRENT with COUNT 2; with FOUR
3 THOUSAND, FOUR HUNDRED FIFTY (4,450) DAYS credit for time served. The
4 AGGREGATE TOTAL sentence is LIFE with the eligibility of parole after serving a
5 MINIMUM OF FORTY (40) YEARS.
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8 DATED this 19th day of December 2018.

9 RESPECTFULLY SUBMITTED:

10 /s/ Todd M. Leventhal

11 Todd M. Leventhal, Esq.
12 Leventhal and Associates, PLLC
13 Nevada Bar No. 8543
14 626 South Third Street
15 Las Vegas, Nevada 89101
16 leventhalandassociates@gmail.com
17 (702) 472-8686
18 *Attorney for Defendant*
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