

IN THE SUPREME COURT OF THE STATE OF NEVADA

KODY HARLAN

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Case No. 80318
Elizabeth A. Brown
Clerk of Supreme Court

**APPELLANT'S APPENDIX
Volume XVI**

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Harlan v. State Case No. 80318

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1 of time and these are very serious matters that we ask people to get
2 involved in. So you have my most sincere thanks for being willing
3 to do that.

4 If once you leave and we're all done with everything,
5 anybody persists in trying to talk to you, after you've told them you
6 don't want to talk about the case, then by all means call my
7 chambers and we'll do what we need to do to help you out with
8 that.

9 I cannot necessarily help you out with your significant
10 others in your lives, but anybody else that kind of bugs you or
11 persists in annoying you or harassing you in any fashion after
12 you've said you know what, the Judge told me I didn't need to talk
13 about that and I don't really want to talk about it any longer, as I
14 said, give me a call and then we'll help you out, okay?

15 So with that, if you'll go ahead and grab your belongings
16 and go on back to the deliberation room and then I'll be back there
17 in just a moment to chat with you, okay?

18 THE MARSHAL: All rise for the jury.

19 [Outside the presence of the jury]

20 THE COURT: Either side have anything outside -- you all
21 can be seated. Thank you.

22 Have anything outside the presence?

23 MR. PESCI: Not from the State, Your Honor.

24 MR. HELMICK: No, Your Honor.

25 MR. YAMPOLSKY: No, Your Honor.

1 THE COURT: Okay. We will record the verdicts into the
2 minutes of the Court. We'll go ahead and refer the matters over the
3 Department of Parole and Probation and set them down for
4 sentencing hearings in 50 days which will be?

5 THE CLERK: September 18th at 9:30.

6 MR. PESCI: Thank you, Your Honor.

7 THE COURT: Does that date work with everybody?

8 MR. HELMICK: Sure.

9 THE COURT: Yeah? Okay. Do you guys wish to chat with
10 them a little bit?

11 MR. MARGOLIS: Yes.

12 THE COURT: Okay. If at least some of you are going to
13 stick around, then I'll get them back here. I'm going to talk to them
14 and just find out a little bit of input that I can get from them about
15 the court process and everything. And then I'll let you guys talk to
16 them as well, okay?

17 And as far as the general public's concerned, family, I
18 know you all are interested in these proceedings as well, but you'll
19 need to excuse yourself from the courtroom while I allow the jurors
20 just to chat with the attorneys, okay?

21 And I'll let you guys kind of explain that if you would,
22 please when I go talk to the jurors, okay?

23 MR. PESCI: Do you want one group to go first, Your
24 Honor?

25 THE COURT: I'll leave that up to the marshals.

1 Everybody's been more than respectful, I expect that that'll keep
2 going but if you guys want to assist everybody, thank you.

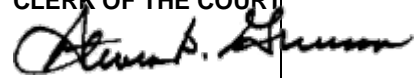
3 [Trial concluded at 2:54 p.m.]

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

24 

25 Brittany Mangelson
Independent Transcriber



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JAIDEN CARUSO,
KODY HARLAN,

Defendants.

CASE#: C-18-333318-1

CASE#: C-18-333318-2

DEPT. III

BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE

THURSDAY, OCTOBER 10, 2019

**RECORDER'S TRANSCRIPT OF HEARING:
HEARING RE: MOTION TO SET ASIDE GUILTY VERDICT
AS TO COUNTS ONE AND TWO, IN THE ALTERNATIVE
MOTION FOR A NEW TRIAL**

APPEARANCES:

For the State:

GIANCARLO PESCI, ESQ.
SARAH OVERLY, ESQ.
Chief Deputy District Attorneys

For Defendant Jaiden Caruso: JASON R. MARGOLIS, ESQ.

For Defendant Kody Harlan: RYAN K. HELMICK, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

1 Las Vegas, Nevada, Thursday, October 10, 2019

2
3 [Hearing began at 11:06 a.m.]

4 THE COURT: Harlan and Caruso, 333318, gentlemen are
5 both present in custody with their attorneys; this is on pages 8 and 9.

6 This is time set for the motion, set aside guilty verdict, in the
7 alternative for new trial.

8 Mr. Helmick.

9 MR. HELMICK: Good morning, Your Honor.

10 I wanted to first address, I guess, whether Your Honor felt that
11 the motion was proper in regard to the response that I gave, I guess
12 before I should get started.

13 THE COURT: Yeah, and so -- so let -- let me make a little bit
14 of a record, because I don't know if you guys have had a conversation
15 about this.

16 When Ryan first filed the motion very -- shortly thereafter was
17 an ex parte request to get jury information as well for them to pursue
18 what they were ultimately pursuing here. I didn't think it was appropriate
19 to bring that up when we were in court the very last time we were in
20 court, in part, because what I said was, I don't think it's proper for an ex
21 parte issue because if -- and basically my thought process -- which I
22 didn't express to you-all, because I can't really talk to you ex parte -- but
23 my thought process was, if I'm going to provide this, everybody's going
24 to need it if they want to go out and talk to all these people.

25 So I said, look, if you need that to kind of do your

1 investigation, it needs to be a motion in court that we can address and
2 decide the propriety of releasing that information.

3 And so then when we came back in court there was, I believe,
4 the statement by Mr. Helmick about, look, there's other issues I'm trying
5 to look into. I wanted to preserve the motion and we need more time
6 talking about finishing up whatever investigation was done.

7 So I -- I kind of knew that there was going to be more to the
8 motion than just, we want to reverse the conviction based on a
9 sufficiency of the evidence.

10 And it -- I mean, I'm not saying you've abandoned that --

11 MR. HELMICK: Sure.

12 THE COURT: -- but I would agree that the motion that was
13 supplemented is essentially not a lot about that and more about this juror
14 misconduct issue.

15 MR. HELMICK: Okay.

16 THE COURT: Fair?

17 MR. HELMICK: Fair enough, yes. Thank you.

18 THE COURT: Okay. All right.

19 MR. HELMICK: The first thing that I wanted to talk about
20 really the key here is the cumulative effect of everything because we
21 have a lot of little instances of juror misconduct, each one carrying its
22 own respective weight.

23 I was trying to think of an analogy here and it's -- it's kind of
24 like boxing where maybe the first headbutt the fight goes on. But then
25 when you have a headbutt after a headbutt after a headbutt, which we

1 have here, the fighter is unable to properly perform. And I'm comparing
2 that to the jury here, they were unable to properly perform their duties
3 given the misconduct that was -- that took place in that deliberation
4 room, given the misconduct that was brought into that deliberation room
5 through the use of the cell phones, through the talking about the stolen
6 vehicle that Your Honor had admonished them not to discuss, through
7 the Caruso letter, which is a form of whether or not he testified or didn't
8 testify, in my opinion that's kind of a form of touching on something that
9 shouldn't be talked about.

10 And then -- I mean, here's the thing, the theme of the State's
11 case was that it was a robbery. That's the theme. Our theme was that it
12 was an accidental, in a nutshell.

13 THE COURT: Correct.

14 MR. HELMICK: And so for putting more stuff out there to -- to
15 fit into this theme of a robbery, then that is prejudicial when that
16 information or that evidence shouldn't have been brought in. Whether
17 they say it's not material or whether it's not significant. It's another -- it's
18 another piece of their theme to this robbery that was interjected
19 improperly into that deliberation.

20 And so we feel that that has severely prejudiced Mr. Harlan. I
21 get the case law and the intrinsic conduct but there are -- there's an
22 exception. Mr. Pesci and Ms. Overly talked about it, it had to be
23 extreme.

24 In my opinion this was extreme. We're dealing with a very
25 serious case here, with a complex case here, and we want to have -- at

1 the end of a case like this we want to have a juror not walk into the
2 verdict wearing sunglasses and -- and walking out of the -- after the
3 verdict, out of the courtroom, out of order, in tears. We don't want her --
4 we don't want a jury member to go home and tell her boss that she can't
5 come to work the next day because she's sick to her -- excuse me -- to
6 her stomach over the verdict that she had rendered. That she wants to
7 move out of the State of Nevada because of -- of what had happened to
8 her.

9 We don't want that. We want it to be fair. And in a case like
10 this it's got to be fair. And we feel that it was not fair and Mr. Harlan was
11 absolutely prejudiced here.

12 And if Your Honor -- the burden shifts to the State at this point,
13 in our opinion, but if we -- and that's according to the case law. But if
14 Your Honor feels that, you know, maybe I've got to see the prejudice.
15 We've heard it from Ms. Esparza but we haven't heard it from the other
16 jurors. Maybe I've got to see the prejudice --

17 THE COURT: Well, I was going to ask, I mean, and so she's
18 the only one you-all have interviewed; correct?

19 MR. HELMICK: I talked to Stephen Libauska --

20 THE COURT: Okay.

21 MR. HELMICK: -- but he didn't really remember much.

22 THE COURT: But none of the other people --

23 MR. HELMICK: No.

24 THE COURT: -- that she was mentioning that got mentioned
25 in the pleadings --

1 MR. HELMICK: I couldn't get --

2 THE COURT: -- nobody's talked to any of them?

3 MR. HELMICK: -- I couldn't get the information and so I guess
4 that'll be an additional request today after we talk about everything, for
5 both parties.

6 But, you know, we're asking for an evidentiary hearing to -- to
7 go through and see whether these factors were actually met.

8 THE COURT: Okay.

9 Anything, Jason?

10 MR. MARGOLIS: I mean, very briefly, look, I understand
11 extrinsic evidence, in and of itself, is often not enough. But the
12 cumulative effect of several items of extrinsic evidence that all kind of
13 combine forces to support a state theory being advanced by a number of
14 jurors was kind of used to bamboozle and mislead Ms. Esparza. And
15 that's certainly how she felt.

16 Now, I understand there's a fine line between bullying in the
17 jury room and a good vigorous debate 12 Angry Men style. But when
18 we call upon extrinsic evidence and a misinterpretation of jury
19 instructions in order to prevail in that argument, I think we might be
20 generating the very prejudice and the very undermine competence in the
21 verdict that we're seeking to avoid.

22 And that's kind of where I would leave it.

23 THE COURT: All right. Mr. Pesci or Ms. Overly.

24 MR. PESCI: Thank you, Your Honor.

25 I apologize, my question is intended to try to flush out the

1 record.

2 THE COURT: Sure.

3 MR. PESCI: So, please, receive it that way.

4 You just asked if they were able to talk to the other individuals,
5 the State was not a party to any communications that Your Honor had
6 with defense counsel providing information.

7 So -- so, I know, how much did you give them because --

8 THE COURT: I didn't give them anything.

9 MR. PESCI: Okay. All right.

10 THE COURT: And I'm sorry to interrupt. But that's a good
11 question.

12 MR. PESCI: Because it would really --

13 THE COURT: My -- my sense was that when they submitted
14 the ex parte request they had already talked to a juror.

15 MR. PESCI: Right.

16 THE COURT: I didn't -- I don't think they named Ms. Esparza
17 at that time but -- and they were seeking to get contact information for
18 the whole jury.

19 MR. PESCI: Right.

20 THE COURT: And I -- I didn't communicate with them. I had
21 my law clerk tell them, if you want to pursue this, you need to do it by
22 open motion in court so that we can decide the propriety of this and get
23 both sides, in my thinking.

24 Like I said, I didn't express this. My thinking was, that's a
25 motion for open court, both sides get an opportunity to be involved in it,

1 and if there's anything to be divulged, both sides are entitled to get it.

2 And so thereafter there was no follow-up on that so I assumed
3 that they were satisfied with who they had interviewed or maybe on their
4 own they had got in contact with other folks.

5 MR. PESCI: And based on us not knowing that you could see
6 why in our supplemental opposition --

7 THE COURT: Yeah.

8 MR. PESCI: -- we took that position.

9 THE COURT: Sure.

10 MR. PESCI: So we were not trying to be flippant.

11 THE COURT: No, no, no --

12 MR. PESCI: We didn't know that.

13 THE COURT: -- not at all.

14 MR. PESCI: I also wanted that information because in
15 essence, as I've heard it now, they've had, what, over a month to try to
16 get this done, and they haven't, when the statute says one week.

17 THE COURT: Right.

18 MR. PESCI: You provided them more time. You have the
19 right under the statute. With that time they haven't gotten it done.

20 So we object to any continuance or any evidentiary hearing to
21 try -- for them to get more witnesses. Because there's already been
22 testimony -- or not testimony -- representations by counsel that they
23 spoke to one of the others and that person didn't remember it. So they
24 didn't support what they were saying.

25 So as far as continuing this for them to have another shot, the

1 State objects.

2 THE COURT: Well, I'm --

3 MR. PESCI: Whatever you rule, you rule.

4 THE COURT: -- not of that mindset. But you would agree
5 that if -- that if a side interviews a juror who alleges a variety of things
6 that would conduct juror misconduct, even if that side can't interview
7 everybody else, I mean, it's incumbent to kind of flush out what that one
8 jurors had to say, whether it's critical or not, to figure out whether there's
9 juror misconduct that warrants a new trial.

10 MR. PESCI: There -- there could be a situation where it
11 merits that. I understand that.

12 THE COURT: Okay.

13 MR. PESCI: And we're talking about difference cases,
14 *Maestas*, that was the case --

15 THE COURT: Right.

16 MR. PESCI: -- where they had 11 jurors come in; right. But
17 there's no rule that requires that.

18 And the State's position, and the angst that you're feeling right
19 now, is that there's been time for them to do that. And in the face of not
20 being able to do that, the State feels it speaks volumes.

21 THE COURT: Okay.

22 MR. PESCI: That they can't get somebody else to -- to
23 corroborate Ms. Esparza's feelings about being coerced because
24 somebody rubbed her back. Or Ms. Esparza's feeling that there's
25 non-verbal communication by a family member who never violated the

1 Court's order, who behaved the entire time, and did nothing to
2 communicate to this jury.

3 So, to us, it speaks volumes and bolstering to the fact that this
4 is a spurious claim, there is nothing to support it.

5 And let's go to what they just told you, which is this cumulative
6 error. What's interesting is they cite to these cases about cumulative
7 error, specifically they cite to *Maestas*.

8 Judge, when you look at the cumulative error analysis within
9 that case, it's as to prosecutorial misconduct. Not to juror misconduct.
10 There is juror misconduct alleged in that case.

11 Which, by the way, the district court did not find and the
12 Supreme Court upheld the not finding of it.

13 It's about cumulative error of prosecutorial misconduct. But
14 you see we blur these lines and make it sound as if it's somehow better.
15 Because when you go to their next representation, in the same motion,
16 they talk about how -- and this is really crucial, Judge -- they cite to
17 *Meyer* to say that, could have affected the hypothetical juror. That is
18 dead wrong. And that is inappropriate to present that to this Court as
19 the standard. It is, would have. The very case that they cited to, *Meyer*,
20 says, would have.

21 In fact, the most recent case, *Bowman*, which they did cite to,
22 which goes through what the standard is, says that, it would have
23 influenced the average hypothetical juror. Not could. Because could
24 anything could have. It's would have.

25 So let's look at what she actually says. Why would we need a

1 hearing? We've already heard from her via the affidavit. Now all of a
2 sudden we're hearing something about allegations of her being willing to
3 or wanting to move. That's nowhere in the affidavit. That's why we don't
4 need to have a hearing because it's just going to keep going and keep
5 going with her talking about how she feels uncomfortable.

6 It has to be extrinsic. Her feelings of being coerced because
7 someone, I don't know, crazily rubbed her back, doesn't rise to the level
8 of extrinsic. That's intrinsic. The Statute and the case law is very clear.
9 You cannot go into the deliberative process. Everything she said is the
10 deliberative process. The only thing arguably that's extrinsic --

11 THE COURT: Hold -- go ahead.

12 MR. PESCI: -- is her use of the cell phone. Her use of the
13 cell phone to look up graffiti, not the part that says, F the victim, not that
14 part, that's the only part the State tied the defendants to.

15 The other part that had no bearing on the case was in the
16 room. It was in the house. It's impossible to show this evidence without
17 that coming up. She looked into that. That's not material. Under the
18 case law, when you're looking at extrinsic -- or intrinsic, it has to be
19 material. We never -- we never argued, you know what, they're robbers
20 because these -- these guys just spray painted somebody else's house.

21 We did argue they said, F Matt. And that's what we tied them
22 to.

23 So it doesn't matter that she seemingly violated this -- the rule
24 about not doing that. When you look at what she even says it doesn't
25 qualify. All the rest of this is -- is intrinsic. And it's not to be gone into

1 with her deliberative process.

2 And you already know what it is because they put it in the
3 affidavit. So there's no reason to have a hearing. And none of this rises
4 to the level to grant the motion --

5 THE COURT: What about --

6 MR. PESCI: -- because --

7 THE COURT: -- what about the allegation that the jury
8 discussed things they weren't supposed to discuss? That there was
9 discussion made about the stolen vehicle after I had admonished them
10 that can't be a part of your deliberation. And that there was this
11 allegation that one of the jurors brought up something or failed to
12 disclose something about a nephew's death in a DUI accident.

13 MR. PESCI: Okay. Starting with the DUI --

14 THE COURT: So those aren't -- those aren't so much
15 Ms. Esparza's feelings about things, which I tend to agree with you on,
16 but those are allegations that there was some things brought up in jury
17 deliberations that shouldn't have been.

18 MR. PESCI: Okay. There's no evidence that a juror held
19 something back. There is the attorney's opinion that it might or might
20 not have been addressed. That is not the basis to reverse a conviction.
21 They don't have evidence to support it.

22 And even if they did, let's assume that they did; right? There's
23 nothing even from their juror and her feelings that shows it had anything
24 to do with this determination. The fact that somebody in the family might
25 have been killed in a DUI, and that person got a tattoo, doesn't say that,

1 oh, because of that she, Esparza, went to guilty. She didn't even allege
2 that in there. It was the fact that it was discussed.

3 But for her it was this whole concept of this instruction being
4 given to her by one juror and how she says she was misled. That's the
5 deliberative process. That is the deliberation. That's literally the jurors
6 talking, trying to figure it out, and coming to a conclusion.

7 How do we go against the statute to flush that out? I don't see
8 how we do that.

9 THE COURT: All right. And then the other thing was the
10 issue of the stolen vehicle.

11 MR. PESCI: Right.

12 And the stolen vehicle, again, we've highlighted it before, but
13 the State didn't introduce that; right?

14 THE COURT: Right.

15 MR. PESCI: I understand that it came out, but the State didn't
16 introduce it. There was an instruction given to -- to disregard it. And
17 there's nothing other than this particular juror's position that that had
18 something to do with in the deliberative process. It's the same analysis,
19 Judge. We just keep going back to a violation of -- of NRS 50, where it
20 says you can't get into the deliberative process.

21 And it's the -- their -- they bear the burden, as we put in our
22 brief, to show that there's a reasonable probability or likelihood that the
23 juror misconduct affected the verdict.

24 THE COURT: All right. Mr. Helmick.

25 MR. HELMICK: Yes.

1 Let me just start with a few things here, they talked about us
2 having a month to -- to work on this. I haven't been able to get the
3 contact information for the -- we were given other names of jurors that
4 may be able to corroborate what Ms. Esparza said.

5 THE COURT: Okay.

6 MR. HELMICK: And so the reason that I didn't go any further
7 after Your Honor's order on the ex parte motion is I just figured we just
8 do it -- we just do it orally. If I'm going to ask for it, then Mr. Pesci is
9 probably going to want it as well. And so I've kind of just backed off of it
10 until we had this hearing today.

11 If I had the contact information, then I could call them and say,
12 hey, did this happen, did this not happen, which is the point of asking for
13 an evidentiary hearing to determine the credibility of Ms. Esparza's
14 statements in her affidavit.

15 So I think that's -- that's big for us to do that, to determine that
16 we have one juror who has said a lot of different things and we've got to
17 determine that, I think, on the record, an evidentiary hearing to
18 determine whether or not it had a prejudicial impact on Mr. Harlan.

19 In regard to the cell phone, it was alleged that Ms. Hocker,
20 another juror, was on her cell phone. What she was doing, we don't
21 know. This is something that we'd have to flush out. But they're not
22 supposed to be on their cell phone during the deliberation process.

23 You know, they keep talking about the back rub and stuff like
24 this, it's -- it's their way of minimizing what happened. Yes, the
25 intrinsicness of some of these misconducts is difficult to get into with the

1 case law. However, if it's extreme, we can get into it and we can at least
2 test the waters with an evidentiary hearing, which we haven't had the
3 ability to do because I've only been able to get ahold of one, the contact
4 information for only Ms. Esparza, and like I said, Mr. Libauska, which --
5 which nothing was gained from that. He just didn't remember really
6 much of it to begin with, whether or not it was corroborative or not.
7 That's all there was to it.

8 But I think that the case law, and I put that at the end of the
9 motion, warrants -- when you have an allegation in a serious case like
10 this, warrants an evidentiary hearing for us to determine the credibility of
11 what was stated in her affidavit to be questioned by myself, to be
12 questioned by Mr. Pesci, and to have the other jurors, at least be able to
13 get ahold of them, through Your Honor maybe giving us the contact
14 information for that and having them testify.

15 So that's what we're asking for. I think that's completely
16 appropriate in a case like this and what's been alleged.

17 THE COURT: So here's what I'll say, I'm going to grant you a
18 limited evidentiary hearing and it's going to be very limited and it's based
19 on one thing that's being alleged to have been said by Ms. Esparza.

20 But what I will also say is, kind of moving forward, I think it's --
21 it was incumbent upon you to come back to the Court on written motion.
22 Not just wait until this hearing and say, well, orally request to get more
23 juror information at this point. I mean, it is at the time that you're
24 preparing that motion, your kind of burden to do your investigation and --
25 and try and identify those other people.

1 In regard to the things that -- that Ms. Esparza has alleged, I
2 don't think that there -- there warrants any evidentiary hearing in regard
3 to the cell phone issues. I would agree that there wasn't any testimony
4 at the time of trial that either these individuals were responsible for any
5 other abbreviations that were painted in places in that house. It wasn't
6 their house. It was an abandoned house. I believe the testimony was
7 that those were there before the date in question anyway.

8 So the fact that she is the one that apparently on her own
9 started trying to look things up about -- about these -- these
10 abbreviations that were painted in various places, doesn't give rise to
11 anything that would rise to the level of prejudice in terms of the verdict
12 that was returned based on the evidence in the case.

13 Additionally, her statement that she saw some other juror
14 using her phone, that's it, using her phone at some point during a break
15 or during -- while they were deliberating but at some point, doesn't rise
16 to the level of impropriety. I never told the jurors you can't ever use your
17 phone or anything while you're here in the buildings.

18 So if a juror checks a text message, you know, answers a
19 phone call from their child and -- and they're smoking on the balcony or
20 even if it rings in the deliberation room, the fact that people have the
21 device doesn't mean they've used the device improperly to -- to research
22 the case. That's the admonition of the Court, don't research the case.

23 So I don't think there's anything in regard to that allegation on
24 the cell phone use.

25 I would also agree that in terms of her statements about

1 disregarding jury instructions and jurors telling her -- or pointing out to
2 her things about the instructions that say we don't have to be unanimous
3 on theories, that -- that's correct. That's the -- that is the jury
4 instructions. But that does go into the jury deliberation process.

5 So her feeling like somehow they could return a verdict
6 without her, well logically then she would maintain whatever her verdict
7 was going to be and think that we're going to go back into court and
8 return an 11 to 1 verdict because I'm not agreeing.

9 So, I mean, I don't think it's appropriate to have an evidentiary
10 hearing on those issues because they are a part of the jury deliberating,
11 interpreting jury instructions, and coming up with what they think an
12 appropriate verdict is.

13 The allegation about discussing the case prior to deliberations
14 is another one that I think is without merit. There wasn't any allegation
15 that anybody discussed the case. She says she overheard a couple of
16 jurors commenting about it's going to be a difficult case to decide,
17 maybe it's an easy case to decide. But that's not, hey, here's what I
18 think about this evidence and that witness and here's what my verdicts
19 going to be, things like that.

20 I don't -- even if you could say that was an improper statement
21 for a juror to make, I don't think it rises to the level of warranting any type
22 of evidentiary hearing.

23 We have to remember, yes, it's a serious case, very serious
24 case, that doesn't change the standard of the evaluation of these
25 extrinsic evidence issues and how you have to view things. The fact that

1 it's a serious case you're still looking at any kind of juror issue from a
2 serious thing.

3 I don't think that there's any merit to the allegations that
4 somehow there should be an evidentiary hearing because of attempts by
5 third parties to influence anything. There was a lot of family members on
6 both sides in the courtroom. They're always looking at the jurors. I'm
7 watching people during the trial process. They're looking at the jurors.
8 They're kind of what -- what kind of body language am I getting from
9 jurors. Sometimes they're looking at witnesses.

10 The fact that she says people looked at her, stared at her
11 when they saw her, I mean, they were looking at all of the jurors. There
12 is nothing improper about family members of a defendant or a victim
13 being in the court, outside the court, and looking at the jurors that are
14 deciding the case that deals with loved ones on either side of the case.

15 So I don't see anything about that, including her -- her
16 statements or beliefs that somehow somebody was -- was looking at her
17 for the purpose of somehow influencing her. I'm not sure how you glean
18 that from somebody simply looking in your direction.

19 And I don't think any allegation that other jurors who were
20 saying, what is it you don't understand, Shayra, is somehow bullying her.
21 I mean, to me that's jurors doing what they're supposed to do. They go
22 through the deliberation and if one person is having some kind of
23 confusion or misunderstanding and other jurors feel that it's one certain
24 way, you're going to ask that person, what is it that you don't
25 understand, what is it that you need clarification on, what is your -- what

1 are your feelings about this.

2 Nor do I think a juror expressing some type of empathy
3 towards another juror and rubbing their back if -- if things are getting,
4 you know, difficult in a -- in a jury deliberation process. I don't think
5 that's bullying or improper at all.

6 I also don't think that there's any impropriety or -- or need for
7 an evidentiary hearing regarding this allegation that jurors reference
8 something Mr. Caruso did in front of the jury with his attorney.
9 Everybody has to own their conduct; right? And if a defendant decides
10 to act up in some fashion in court, jurors are going to notice that, they're
11 going to see that.

12 If a defendant is speaking loud enough for them to overhear
13 what the defendant has said, sometimes that can be to the prejudice of
14 that defendant.

15 So the fact that Mr. Caruso may have made some kind of
16 statement to his attorney in court about some document, and the
17 attorney said something back to him about not reading that document,
18 there's no evidence of what that was or how it would have affected, you
19 know, prejudicially or otherwise particularly.

20 And there isn't any explanation of how, from Ms. Esparza's
21 standpoint, somehow that somehow caused some prejudice to the
22 verdict.

23 So I don't think the burden is met in any kind of extreme
24 nature in that either.

25 The last thing, I believe, -- no, I would also say that the

1 allegation that one of the jurors referenced something about having a
2 nephew that died and she got a tattoo from that, I don't think that rises to
3 the level of impropriety and juror conduct or necessitates a need for any
4 type of evidentiary hearing.

5 The one thing I'm going to grant the limited evidentiary hearing
6 on is Ms. Esparza's statement that there was discussion about the
7 stolen vehicle and how it made it more likely that there was a robbery
8 and a murder.

9 Now, whether that's a completely credible statement or not,
10 how it was discussed, did somebody bring it up, and the foreperson
11 says, hey, we can't discuss that. I mean, there's -- there hasn't been
12 anything flushed out about that. But the statement in and of itself is
13 concerning to me such that I think you-all would be entitled to have a
14 limited evidentiary hearing on that issue to bring Ms. Esparza in and
15 have some discussion about that, including bringing in any other jurors
16 that you guys want to bring in on that.

17 So I'm assuming both parties kind of what to be able to
18 contact folks to be able to interview them and potentially bring them in.

19 MR. PESCI: Yes.

20 THE COURT: So, I mean, it would kind of be a joint request
21 at this time to go ahead and get the juror contact information.

22 MR. HELMICK: Yes, Your Honor.

23 MR. MARGOLIS: Yes, please.

24 MR. PESCI: If your -- yes, if the hearing is ordered, yes.

25 THE COURT: Yeah, okay.

1 So we will go ahead and release that to you. I'll just ask that
2 you get with Jen and she will get with Mariah and get that information for
3 you.

4 And just -- one side or the other, just prepare an order that's
5 saying it's a joint request for the side to get the juror contact information,
6 that'll be kept confidential, and we'll provide, you know, phone numbers
7 and whatnot to you so you can reach out to people.

8 MR. HELMICK: I'll do the order, Your Honor.

9 THE COURT: Okay.

10 And then -- I mean, we can set a hearing date today or we can
11 set a status check, if you want, to get that information. I would kind of
12 like to keep on top of it and get it done quicker rather than later.

13 MR. PESCI: Court's pleasure.

14 THE COURT: So why don't we then set a hearing in maybe
15 30 days. And if for any reason you guys aren't having success in
16 contacting people and we need to move that, we can. But I don't want to
17 delay things.

18 So we are going to go ahead and set a hearing date then on
19 the motion to set aside verdict.

20 THE CLERK: It will be November 13th at 9:30.

21 THE COURT: And the other thing, I mean, since the original
22 motion dealt with sufficiency of the evidence, and I know you haven't
23 brought that up today.

24 MR. HELMICK: Right.

25 THE COURT: I don't know if you're still pursuing that or.

1 MR. HELMICK: Well, I'd still like to, I mean, I still did put it out
2 there with some facts involved.

3 THE COURT: Okay.

4 MR. HELMICK: And so certainly I'd still want to preserve it
5 before the Court.

6 THE COURT: Okay. Well, then -- then go ahead. If there's
7 anything else you want to add on that issue, I'll listen to that as well.

8 MR. HELMICK: Nothing other than -- then I put in the motion
9 thus far --

10 THE COURT: Okay.

11 MR. HELMICK: -- at this time.

12 THE COURT: State.

13 MR. PESCI: I'm sorry, I was just trying to see if the date --

14 THE COURT: On the sufficiency of the evidence, Ryan was
15 basically just saying I'll submit it on the pleading that I gave.

16 MR. PESCI: Yeah, we've already responded to that that there
17 was more than sufficient evidence to support the verdict.

18 THE COURT: All right. I do think on the totality of evidence
19 presented to the jury there was a reasonable basis for reasonable jurors
20 to render the verdicts that they rendered. So I think there was sufficient
21 evidence for them to reply upon in coming up with their verdicts.

22 I mean, it's all about the disagreement and apparent
23 agreement of the jurors that there was sufficient evidence to believe, at
24 least, that there was some discussion of this robbery such that it gave
25 rise to felony murder on both of the defendants under the various

1 theories that were alleged, separate from the, you know, the
2 premeditated and deliberative aspect of things. So I do think there was
3 certainly sufficient evidence.

4 So that part of the motion is going to be denied.

5 MR. HELMICK: Okay.

6 [Colloquy between the Court and the Court Clerk]

7 THE COURT: How about Friday, November 15th?

8 MR. PESCI: Okay. So the 13th is that just -- is that another
9 date or we're just changing it to the 15th?

10 THE COURT: What -- the what, I'm sorry?

11 MR. PESCI: I thought we were told the 13th.

12 MR. HELMICK: Yeah, yeah, I'm confused too.

13 THE COURT: Oh, did you mention a date?

14 THE CLERK: I did.

15 THE COURT: Oh, she mentioned a date, I'm sorry. I didn't --

16 MR. PESCI: No, my fault --

17 THE COURT: -- I didn't -- no, no, no --

18 MR. PESCI: -- my fault --

19 THE COURT: -- I didn't hear Cory, I apologize.

20 MR. PESCI: The 15 is great.

21 THE COURT: So, no, no status check, we're just going to set
22 the hearing. If you guys are having any issue, let us know --

23 MR. HELMICK: Sure.

24 THE COURT: -- and we can talk about moving that hearing
25 date to accommodate you.

1 But we'll plan on having the hearing the morning of the 15th
2 and we'll set that at 9:00. I'm anticipating I'm going to be in Mata's
3 capital case during then, so I would hope that it would be a hearing we
4 could get done in a morning.

5 MR. PESCI: Okay.

6 THE COURT: Okay.

7 MR. HELMICK: I think so.

8 THE COURT: All right.

9 MR. HELMICK: In regard to the sentencing, are we going --

10 THE COURT: Yeah, we're going to -- I'm sorry, thank you,
11 Ryan.

12 MR. HELMICK: Okay.

13 THE COURT: We'll vacate the sentencing dates that were set
14 for -- I don't know why I gave two dates, I apologize -- but the sentencing
15 dates that were set next week we'll vacate those. We will reset
16 sentencing when we come back for the motion hearing.

17 If I deny the motion, it doesn't have to go forward that day
18 because I'll give you both an opportunity to contact whomever you want
19 to have present at sentencing.

20 MR. PESCI: I appreciate it.

21 THE COURT: But we'll reset it when we come back on
22 November 15th; okay.

23 MR. HELMICK: Okay. Thank you.

24 MR. PESCI: Thank you very much, Your Honor.

25 MR. MARGOLIS: Thank you, Your Honor.

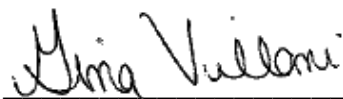
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THE COURT: Thank you.

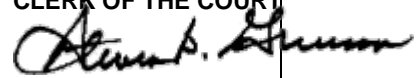
[Hearing concluded at 11:34 a.m.]

* * * * *

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.



Gina Villani
Court Recorder/Transcriber
District Court Dept. IX



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

JAIDEN CARUSO and KODY
HARLAN,
Defendants.

CASE NO: C-18-333318-1
C-18-333318-2

DEPT. III

BEFORE THE HONORABLE DOUGLAS HERNDON, DISTRICT COURT JUDGE
MONDAY, NOVEMBER 25, 2019

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
ALL PENDING MOTIONS**

APPEARANCES:

For the State:

SARAH OVERLY, ESQ.
GIANCARLO PESCI, ESQ.
Chief Deputy District Attorneys

For the Defendants:

JAIDEN CARUSO:

MACE J. YAMPOLSKY, ESQ.

KODY HARLAN:

KIRK R. HELMICK, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

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Las Vegas, Nevada; Monday, November 25, 2019

[Proceeding began at 9:05 a.m.]

MR. YAMPOLSKY: Your Honor?

[Colloquy between the Court and the Clerk]

MR. YAMPOLSKY: Mr. Caruso's not here --

THE COURT: Oh.

MR. YAMPOLSKY: -- and they're allegedly bringing him out.

THE COURT: Okay. Then we shall wait, sorry. I thought they were both here, I apologize, guys.

MR. HELMICK: Okay.

[Recess taken at 9:05 a.m.]

[Proceeding resumed at 9:17 a.m.]

THE COURT: You guys can be seated, thank you. All right, we will be on the record in 333318. Mr. Harlan and Mr. Caruso are present with their attorneys. State's attorneys are present, as well. This is the time set for our evidentiary hearing.

So, what's your pleasure in proceeding? How many witnesses do you all anticipate having?

MR. HELMICK: Three.

THE COURT: Three? Okay. And, are any of them cross-overs? Or do you have three --

MR. HELMICK: I believe one of them might be a cross-over.

THE COURT: Okay.

MR. PESCI: I believe so. I think Christopher Young has been

1 subpoenaed by both sides.

2 MR. HELMICK: Right.

3 THE COURT: Okay. So, who all did you want to call first, Mr.
4 Helmick?

5 MR. HELMICK: I wanted to call Hector Martinez first, because
6 he has to leave, so I wanted to get him over and done with.

7 THE COURT: Okay. All right, can you go ahead and get Mr.
8 Martinez? Thank you.

9 [Colloquy between the Marshal and the Witness]

10 THE MARSHAL: Sir watch your way -- watch your step on the
11 way up, remain standing, raise your right hand, and face our Clerk.

12 **HECTOR MARTINEZ**

13 [having been called as a witness and being first duly sworn, testified as
14 follows:]

15 THE CLERK: Thank you, please be seated. And, will you
16 please state and spell your first and last name for the record?

17 THE WITNESS: Hector Martinez. H-E-C-T-O-R, M-A-R-T-I-
18 N-E-Z.

19 THE CLERK: Thank you.

20 THE COURT: All right, Mr. Martinez, thank you. Thank you
21 for coming back to court, as well. Mr. Helmick?

22 **DIRECT EXAMINATION**

23 BY MR. HELMICK:

24 Q Thank you, very much, Your Honor. Good morning, Hector.

25 A Good morning.

1 Q So, I wanted to start off by saying that you're not in trouble for
2 anything, okay?

3 A Mm-hmm.

4 Q And, please don't be scared to be here today to talk about
5 what happened in this case.

6 A Mm-hmm.

7 Q Is that fair?

8 A Yeah, that's fair.

9 Q Okay. We just want to know what happened, okay?

10 A Mm-hmm.

11 Q Is that okay? You have to just --

12 A Yes.

13 Q -- remember, we have to say yes?

14 A Yes, sorry.

15 THE COURT: You have to answer out loud.

16 THE WITNESS: Sorry.

17 BY MR. HELMICK:

18 Q I know it's awkward for you to be in this situation now, right?
19 But, you and I have talked on the phone, right?

20 A Yes.

21 Q Okay, I called you and asked you about what happened
22 during the deliberations in this case, right?

23 A Yes.

24 Q As a juror?

25 A Yes.

1 Q All right. And, specifically, I talked to you about whether or not
2 the fact about the Mercedes Benz that Kody Harlan was driving was
3 stolen.

4 A Yes.

5 Q Right?

6 A Mm-hmm.

7 Q And, during the deliberations, did you hear that fact brought
8 up?

9 A Yes, it was brought up, but it wasn't discussed about. It just
10 was brought up, and that was it.

11 Q Okay, so let me -- I'll ask you some follow-up questions.

12 A Mm-hmm.

13 Q So, it was -- you heard it brought up --

14 A Mm-hmm.

15 Q -- how many people talked about it?

16 A It wasn't talked about, it was just brought up, and like I said,
17 nobody -- it wasn't like a big deal, like --

18 Q Sure.

19 A -- we were not focused on that.

20 Q Okay, well let me just direct the question, here.

21 A Mm-hmm.

22 Q How many people did you tell me talked about it, when I
23 talked to you on the phone?

24 A I want to say one or two. I'm not --

25 Q Okay.

1 A -- really sure.

2 Q Do you recall telling me that you had -- you heard three
3 people talk about it?

4 A Maybe, yeah I don't know.

5 Q Does that sound about right?

6 A Maybe, yeah.

7 Q Enough?

8 A Yes.

9 Q Okay, and our phone call was, you know, what three weeks
10 ago now, or something like that?

11 A Something like that.

12 Q Okay. And, in that conversation that I had with you, you
13 explained to me how it was discussed, right, that -- the stolen car?

14 A Yeah, like I said, it was just brought up, but it wasn't -- does --

15 Q Did you bring it up, or no?

16 A That I recall? No, I don't remember.

17 Q You don't remember if you brought it up?

18 A If I brought it up.

19 Q But, you did -- but you were one of the --

20 A Well, I did when -- the first time we went in, like not in the --
21 like when we were deliberating --

22 Q Yeah.

23 A -- but then when we came back, the Judge says -- said forget
24 about that.

25 Q Okay.

1 A And, so we forgot about that. It wasn't not a -- it wasn't a big
2 deal.
3 Q Sure, sure. So, let's just focus on the deliberation --
4 A Mm-hmm.
5 Q -- because the Judge's instruction, that took place during the
6 trial, right?
7 A Yeah.
8 Q When that witness testified, right?
9 A Yes.
10 Q And so, we're just -- we're just talking about --
11 A Deliberation?
12 Q -- here, today, we're talking about the deliberations.
13 A Okay.
14 Q And, you had mentioned, isn't that right, that you did talk
15 about it, but to be honest with you, you said it didn't affect your verdict,
16 right?
17 A No, I --
18 Q Okay.
19 A -- like I said, we -- it wasn't -- it was brought up --
20 Q Yeah.
21 A -- but, it wasn't talked about. Like, it was just brought up, and
22 nobody like -- everybody said this wasn't part of a -- you know, like we
23 were focused on -- we were focused on what we had in front of us --
24 Q Sure.
25 A -- all the evidence and stuff.

1 Q Sure, okay. But, let me just back-track, though.

2 A Mm-hmm.

3 Q You were one of the person that did talk about the stolen car,

4 though; isn't that right? Whether it was brief or not?

5 A Yeah, like it was --

6 Q Okay.

7 A Yeah. Yes.

8 Q Okay. And now, do you remember the context in which it was

9 discussed? You know what that means?

10 A Like when it was brought up?

11 Q Yeah, like the context.

12 A It was just -- It was just brought up, was the car stolen, and

13 that was it.

14 Q As far as --

15 A That's all. As far as --

16 Q -- as far as you know, right?

17 A Yeah.

18 Q Okay.

19 A Yes.

20 Q And, you had said, now, it wasn't a factor specifically for you,

21 right, in reaching your verdict in this case?

22 A Yes.

23 Q Okay. But, safe to say, though, you don't know whether it

24 impacted any other juror?

25 MR. PESCI: Judge, objection, calls for speculation.

1 MR. HELMICK: Your Honor, let me just say something. I
2 think the objection is premature. We have to try to perfect the record
3 here, at least in this regard.

4 THE COURT: Well, I'm going to sustain the objection. You
5 can rephrase the question --

6 MR. HELMICK: Sure.

7 THE COURT: -- to the extent that any other juror said
8 anything about it, but I think as stated, it's objectionable.

9 BY MR. HELMICK:

10 Q Okay. Well, I guess I could put it this way. Did you hear any
11 other jurors talk about it, that you know of?

12 A No, like I said it was just --

13 Q Well, I'm sorry, we already asked that, right?

14 A Yeah.

15 Q Yeah, I'm sorry about that. Okay. Now, let's just talk about
16 the layout of the room --

17 A Mm-hmm.

18 Q -- the deliberation room. It's a round table, right?

19 A Yes.

20 Q Okay. You were sitting, obviously, at one part of the table,
21 right?

22 A Yes.

23 Q And, there were times throughout the deliberation where
24 people would come and go from the room, right?

25 A Yes.

1 Q Okay. And, there were conversations amongst -- you couldn't
2 hear, basically, if somebody was having a conversation with another
3 person across the table, I mean, throughout the whole deliberation
4 process, right?

5 A Yeah, no.

6 Q Okay. So, you wouldn't know if they were talking about
7 something -- a fact in this case or anything like that, right?

8 A Yeah, I wouldn't know.

9 Q Okay. Okay, that's all I have, Hector. Thank you.

10 THE COURT: Thank you. State?

11 MR. PESCI: I'm not sure, is Mr. Yampolsky --

12 THE COURT: Mr. Yampolsky?

13 MR. YAMPOLSKY: I have no questions, Your Honor.

14 THE COURT: Thank you.

15 **CROSS-EXAMINATION**

16 BY MR. PESCI:

17 Q Thank you. Sir, how you doing?

18 A I'm good.

19 Q Just to reiterate what was expressed earlier, there's nothing to
20 worry about --

21 A Mm-hmm.

22 Q -- just relax --

23 A No, that's fine.

24 Q -- and just answer the questions. Thanks for coming. Mr.
25 Martinez, if I heard you correctly, I think you said you recall during the

1 trial the Court ordering you and your other jurors to forget, and to not
2 consider, the concept of the car being stolen?

3 A Yes.

4 Q Do you remember the Court giving you and the others that
5 order?

6 A Yes.

7 Q And, when you went back into the deliberation room, when
8 that topic came up, did someone then say, hey, that's been stricken, we
9 can't go into that?

10 A Nobody said that, but as soon as it brought up, like I said,
11 nobody went into that -- about that conversation, about the car being
12 stolen. We were just focused on what we had in front of us.

13 Q Okay.

14 A All the rest of that.

15 Q So, then as far as you personally saw and heard --

16 A Mm-hmm.

17 Q -- nobody factored the stolen car into your verdict?

18 A No.

19 Q So, you followed the Court's order?

20 A Yes.

21 Q And, there was nothing that anybody did to force a verdict
22 based on a car being stolen?

23 A No.

24 Q Thank you, very much.

25 THE COURT: Mr. Helmick, anything further?

1 **REDIRECT EXAMINATION**

2 BY MR. HELMICK:

3 Q Just briefly. And, just to reiterate, here.

4 A Mm-hmm.

5 Q Nobody, as far as you know and saw, and -- nobody, as far as
6 you know, that you saw or heard --

7 A Mm-hmm.

8 Q -- talked about it, right?

9 A Yeah.

10 Q I mean, sorry, had it affect their verdict, in this case?

11 A Not that I know --

12 Q As far as you know, right?

13 A Yes, as far as I know.

14 Q But again, there were conversations that were taking place,
15 that you did not know about, during the whole process of deliberations,
16 right?

17 A Some of them. Like, when we had like little breaks --

18 Q Yeah.

19 A -- and it was basically everybody was quiet. There was like
20 maybe a couple people talking, but I couldn't -- it wasn't --

21 Q Okay, so in other words, you were not a part of every
22 conversation that took place?

23 A Oh, no.

24 Q Okay. All right, thank you, Hector.

25 THE COURT: Anything, Mace?

1 MR. YAMPOLSKY: No. No questions.
2 THE COURT: Anything for the State?
3 MR. PESCI: No, thank you.
4 THE COURT: All right, I have a question just to clarify, if I
5 could, Mr. Martinez?
6 THE WITNESS: Yes.
7 THE COURT: That -- there was -- when Mr. Helmick started,
8 he was using the terms, talked about it, and you said nobody talked
9 about it --
10 THE WITNESS: Mm-hmm.
11 THE COURT: -- so, are you telling me that, just at some
12 point, somebody said the words about the car being stolen, but there
13 was no then follow-up discussion about it?
14 THE WITNESS: Yeah, there was no follow-up. Like -- like I
15 said, it was brought up, and everybody was like --
16 THE COURT: And --
17 THE WITNESS: -- I guess everybody knew that --
18 THE COURT: -- and, by brought up you mean, somebody
19 mentioned it --
20 THE WITNESS: Mentioned it.
21 THE COURT: -- but it didn't --
22 THE WITNESS: It --
23 THE COURT: -- did not get discussed?
24 THE WITNESS: Exactly.
25 THE COURT: Okay.

1 THE WITNESS: Yes.

2 THE COURT: I just needed to figure out what you were

3 saying. Thank you.

4 THE WITNESS: Mm-hmm.

5 THE COURT: All right, Mr. Helmick, any questions based on

6 mine?

7 MR. HELMICK: No, Your Honor, thank you.

8 THE COURT: Mr. Yampolsky?

9 MR. YAMPOLSKY: No, Your Honor.

10 THE COURT: Mr. Pesci?

11 MR. PESCI: No, thank you.

12 THE COURT: All right, Mr. Martinez, thanks again, very

13 much. I appreciate it.

14 THE WITNESS: Thank you, very much.

15 THE COURT: Enjoy your Thanksgiving.

16 THE WITNESS: Thank you, you too.

17 THE COURT: All right, you can call your next witness.

18 MR. HELMICK: Christopher Young, please.

19 THE MARSHAL: Sir, watch your step on the way up. Remain

20 standing, raise your right hand, and face our Clerk.

21 **CHRISTOPHER YOUNG**

22 [having been called as a witness and being first duly sworn, testified as

23 follows:]

24 THE CLERK: Thank you, please be seated. Will you please

25 state and spell your first and last name for the record?

1 THE WITNESS: Christopher Young. C-H-R-I-S-T-O-P-H-E-
2 R, Y-O-U-N-G.

3 THE CLERK: Thank you.

4 THE COURT: All right, Mr. Young, thank you. Did I -- did we
5 pull you out of the dental lab?

6 THE WITNESS: No, sir, I just came just in case we're done
7 early enough, I'll go help my guys out.

8 THE COURT: All right, thank you very much for coming back
9 to court, I appreciate it.

10 THE WITNESS: Yes, sir.

11 THE COURT: Mr. Helmick?

12 **DIRECT EXAMINATION**

13 BY MR. HELMICK:

14 Q Thank you. How you doing, Chris?

15 A All right, yourself, sir?

16 Q Good, thank you. Thank you for coming and testifying here,
17 today. I just want to preface something that you're not in trouble for
18 anything, so please don't be scared to answer any questions. We're just
19 trying to figure out what happened, okay?

20 A Yes, sir.

21 Q Nobody's in trouble, here. Is that fair?

22 A Fair enough.

23 Q Okay. You and I have talked on the phone, right, after this
24 case took place?

25 A Yes, sir.

1 Q Okay. Now, I want to ask you, was the fact of the stolen car --
2 and that's why we're here, today, the Mercedes Benz, was that talked
3 about during the deliberations?

4 A It was brought up by one juror, yes sir.

5 Q Okay. Well, me and you had talked about, what, three weeks
6 ago, or something like that, over the phone?

7 A Yes, sir.

8 Q Okay. Do you remember telling me that you thought it was
9 around three or four people that talked about it; does that refresh your
10 memory?

11 A Well, I mean, however many people talked about it --
12 someone did -- I remember one specific juror talked about it. But, the
13 foreperson pretty much shut it down. She said it was to be stricken, I
14 mean, it didn't --

15 Q Right.

16 A -- it wasn't a large topic of discussion.

17 Q Okay, it wasn't something that affected your verdict, right?

18 A Not even a little bit.

19 Q Okay. But, it was definitely discussed?

20 A It was brought up, yes sir.

21 Q Okay. And, you can't remember the names of the exact
22 people that brought it up, right?

23 A No sir, I'm -- I --

24 Q That's okay.

25 A -- don't remember it. I only remember one name and it was

1 the foreperson, so.

2 Q Okay. There were times during the deliberations where
3 people would talk in small groups, right?

4 A Essentially, yes sir. It's, you know, 12 people. So, there was
5 smaller conversations happening amongst the big ones, yes sir.

6 Q Okay, and so, you were not privy to every conversation --

7 A No --

8 Q -- that was taking place?

9 A -- no, sir.

10 Q Right?

11 A No, sir.

12 Q Okay. Were you one of the people that had specifically talked
13 about it?

14 A The car?

15 Q Yeah.

16 A No. I -- not -- no.

17 Q No? Okay. Do you remember how long it was talked about
18 for or anything like that?

19 A A matter of minutes, maybe? I mean, not -- again, it wasn't a
20 long term --

21 Q Not very lengthy?

22 A Most of our discussion was reading the law and talking about
23 what we felt about, you know --

24 Q The jury instructions?

25 A -- if what -- yes, sir.

1 Q Okay.
2 A We read that packet many a times.
3 Q Okay, that's all I have, Your Honor, thank you.
4 THE COURT: Mr. Yampolsky, anything?
5 MR. YAMPOLSKY: No questions.
6 THE COURT: Mr. Pesci?
7 MR. PESCI: Ms. Overly has it, if it's okay with Your Honor.
8 THE COURT: Oh, I'm sorry --
9 MS. OVERLY: Thank you, Your Honor.
10 THE COURT: -- Sarah, go ahead.
11 MR. PESCI: Thank you, Your Honor.

12 **CROSS-EXAMINATION**

13 BY MS. OVERLY:

14 Q Mr. Young, just to clarify, you indicated that one juror brought
15 up the stolen car, correct?
16 A Yes, ma'am.
17 Q But, you can't recall who that was?
18 A She's actually out in the lobby, there.
19 Q Okay, the person that brought up the stolen vehicle?
20 A That asked about -- there's -- the stolen car, yes ma'am.
21 Q Okay, and who was that?
22 A I don't -- the mom -- the lady -- not Ms. Rice, the foreman, but
23 the other lady that's out there.
24 Q Would that be Ms. Huston?
25 A Yes, ma'am.

1 Q Okay. And, do you recall that soon after that, the foreperson
2 made reference that you couldn't discuss that?

3 A Yes, ma'am. She said, Judge said that was to be stricken,
4 that's irrelevant, didn't happen.

5 Q And, do you recall the Judge instructing the jury that --

6 A Yes ma'am, I do.

7 Q -- you could not discuss it?

8 A Mm-hmm.

9 Q And, from your recollection, once that was brought up by the
10 foreperson, did the rest of the jurors comply with that?

11 A I felt like they did. I mean, there was nothing else to say about
12 it.

13 Q Okay. So, was the concept of the stolen car brought up after
14 that?

15 A After the initial -- no.

16 Q And, was there any discussion about the stolen car in relation
17 to the guilt of either Defendant?

18 A No, ma'am. Not to my knowledge, ma'am.

19 Q Nothing that you personally observed?

20 A I did not -- I was not part of any of those conversations.

21 Q Okay.

22 [Colloquy between counsel]

23 Q Was there any point in time that you actually believed the car
24 was not stolen?

25 A I thought I -- from the -- until that happened, I thought it was

1 one of their cars.

2 Q And, that was just the belief that you had?

3 A Yes, ma'am.

4 Q And, do you recall a post-verdict discussion in the courtroom?

5 A Yes, ma'am.

6 Q And, do you recall being asked about whether or not the
7 stolen vehicle played a part in your deliberations?

8 A Yes ma'am, I believe Judge asked us.

9 Q And, do you recall what the collective answer from the jurors
10 was?

11 A No, didn't affect us, at all --

12 Q And --

13 A -- the five of us, or however many they came afterwards.

14 Q Those that were sitting around?

15 A Yes, ma'am.

16 Q Okay. And, would that be consistent with what the
17 discussions were in the juror room?

18 A Yes, ma'am.

19 Q Okay, no questions, Your Honor.

20 THE COURT: All right. Mr. Helmick, anything further?

21 **REDIRECT EXAMINATION**

22 BY MR. HELMICK:

23 Q Yes, thank you. This is just a follow-up, here. And, you had
24 said it already, post-verdict, about five or -- what, five or six jurors?

25 A Four, five, six, yes sir.

1 Q Okay. And, not every single one of them raised their hand
2 and said, it didn't affect my verdict, right?

3 A I could not say that with certainty.

4 Q Sure.

5 A I believe the general consensus was that it didn't matter at all
6 whether the car was stolen, or not.

7 Q Between those five people?

8 A Between the people that came afterwards.

9 Q Okay.

10 A Yes, sir.

11 Q And, you're certainly not suggesting that it didn't affect any
12 other persons, did it?

13 A I could not say. Obviously, I can only speak for myself.

14 Q Absolutely, yeah. Okay. All right, thanks Chris.

15 A Yes, sir.

16 THE COURT: Mr. Young, thank you, very much.

17 THE WITNESS: Yes, sir.

18 THE COURT: I appreciate it, sir. You are excused. All right,
19 Defense can call their next witness.

20 MR. HELMICK: Shayra Esparza.

21 THE MARSHAL: Please watch your step on the way up.
22 Remain standing, raise your right, and face our clerk.

23 **SHAYRA ESPARZA**

24 [having been called as a witness and being first duly sworn, testified as
25 follows:]

1 THE CLERK: Thank you. Please be seated. Will you please
2 state and spell your first and last name for the record?

3 THE WITNESS: Shayra Esparza. S-H-A-Y-R-A, E-S-P-A-R-
4 Z-A.

5 THE CLERK: Thank you.

6 THE COURT: All right, Mr. Helmick?

7 **DIRECT EXAMINATION**

8 BY MR. HELMICK:

9 Q Thank you. Good morning, Shayra.

10 A Good morning.

11 Q I want to say what I've said to every juror that's come up here,
12 that nobody's in trouble --

13 A Mm-hmm.

14 Q -- okay? We're just trying to figure out what happened in the
15 deliberation room. You understand?

16 A Yes.

17 Q Okay. All right so, specifically during the deliberations, was
18 the fact about the Mercedes Benz being stolen and Kody Harlan driving
19 the stolen Mercedes Benz, was that talked about?

20 A Yes.

21 Q Okay. Do you remember how many people talked about it?

22 A Three or four people.

23 Q Okay.

24 A I'm not sure.

25 Q In what context, or how was it talked about, that you can

1 recall?

2 A I was looking at the evidence -- the pictures of the evidence,
3 and there was a picture with the wallet in the car.

4 Q Okay. And, were you the one who brought up the --

5 A I believe so.

6 Q -- stolen car?

7 A Yeah.

8 Q Okay. And, you said there was a picture, was it sitting on the
9 table, of the wallet in the back of the car?

10 A Yes.

11 Q Okay. And, what did you do with that photo when you brought
12 up the fact about the stolen car?

13 A I was just looking at it and I mentioned it.

14 Q Okay. Did you say -- did you talk about it having anything to
15 do with any elements of the crime, or anything like that, like
16 premeditation?

17 A I recall a lot of jurors talking -- well, they were trying to
18 convince me that it was premeditated. And, I was not --

19 Q Well --

20 A -- I mean, that was -- I brought up the car.

21 Q Okay.

22 A I recall bringing up, why would you run if you got pulled over, if
23 it wasn't a stolen car?

24 Q Okay. Do you remember for about how long it was talked
25 about?

1 A I want to say about a minute and a half; it was brief.

2 Q Brief?

3 A Yeah.

4 Q Okay. Did the fact that Kody and Jaiden were driving around

5 in a stolen car --

6 A Mm-hmm.

7 Q -- make it more likely to you, that it could have possibly been a

8 planned robbery?

9 A Yes.

10 Q Of Matthew Minkler?

11 A Yes.

12 Q Okay. So, was the context at all, if you can remember, of the

13 stolen car, was it talked about in the context of the robbery?

14 A Okay, repeat it.

15 Q Of the planned -- I'm sorry was the fact that the car was

16 stolen --

17 A Mm-hmm.

18 Q -- was that talked about in the context of whether this was a

19 planned robbery or not? When you were talking about the wallet and

20 stuff?

21 A I'm sorry.

22 Q Do you remember?

23 A No, I'm trying to.

24 Q Okay. Well, let me ask you this, I mean here's --

25 A Mm-hmm.

1 Q -- here's, right, one of the bigger questions, I mean, was it a
2 factor that you considered in reaching your own verdict?

3 A Yes.

4 Q Okay. And, did you in fact write a note to the Judge prior to
5 one of the witnesses talking about the Mercedes Benz being stolen?

6 A Yes.

7 Q Did you write a note to the Judge?

8 A Yes.

9 Q Okay. And, what was on that note?

10 MR. PESCI: Judge, I apologize. I think we're talking about in
11 the deliberation room, and I think this question has to do during the
12 actual trial. I'm a little confused as how this has anything to do with the
13 deliberative process.

14 THE COURT: Can you -- yeah, can you clarify?

15 MR. HELMICK: Sure.

16 THE COURT: You're talking about a juror note --

17 MR. HELMICK: Sure.

18 THE COURT: -- during trial?

19 MR. HELMICK: So, let me just make a proffer then.

20 THE COURT: Okay.

21 MR. HELMICK: So, she wrote a note prior to this information
22 being elicited, in regards to whether or not the Mercedes Benz was
23 stolen, if you recall. And we said -- we didn't answer that question
24 because it was stricken. And --

25 THE COURT: You're talking about during trial, though?

1 MR. HELMICK: During trial.

2 THE COURT: Okay.

3 MR. HELMICK: And so, the point I'm trying to make is that
4 she had already had this on her mind, even during the trial, and then it
5 did come out and infected her verdict in the deliberation.

6 THE COURT: Okay, you can go ahead.

7 BY MR. HELMICK:

8 Q Okay. So, you did write a note to the Judge; what was that
9 note?

10 A Who was the car registered to?

11 Q Okay. And well, so that was a factor in --

12 A In mine, yes.

13 Q -- in your analysis of this case?

14 A Yes.

15 Q Okay. Was it a factor and did it play a role into your analysis
16 of whether this was some sort of a planned robbery?

17 A Yes.

18 Q Okay. Did you believe based up -- well, let me ask you this.
19 You had conversations with some other jurors --

20 A Mm-hmm.

21 Q -- right?

22 A Mm-hmm.

23 Q Yes?

24 A Yes.

25 Q Okay. And, did you believe that it had an impact on other

1 jurors?

2 MR. PESCI: Judge, objection, calls for speculation.

3 THE COURT: I -- yeah. Not just whether she believes --

4 MR. HELMICK: Yeah.

5 THE COURT: -- but if anybody said anything about utilizing
6 that information.

7 MR. HELMICK: Okay.

8 THE COURT: So, you can rephrase that.

9 BY MR. HELMICK:

10 Q Did anybody say anything about utilizing that -- as far as you
11 know, utilizing that information and coming to their verdict on this case, if
12 you can recall?

13 A No.

14 Q Okay. Did you personally believe that it played a major role in
15 the robbery aspect of the case?

16 A Yes.

17 MR. HELMICK: Okay, that's all I have, Your Honor.

18 THE COURT: Okay. Mr. Yampolsky, anything?

19 MR. YAMPOLSKY: No questions.

20 THE COURT: Pardon?

21 MR. YAMPOLSKY: No questions.

22 THE COURT: No? Okay. Mr. Pesci?

23 **CROSS-EXAMINATION**

24 BY MR. PESCI:

25 Q Thank you. Ma'am, do you recall the portion in trial, not back

1 in the deliberation room, when the concept of the car being stolen came
2 up?

3 A Yes, I believe so.

4 Q Okay. Do you remember the Court giving an order to you and
5 the other jurors to disregard that fact?

6 A Yes.

7 Q Okay. So, when it came up in the deliberation room --

8 A Mm-hmm.

9 Q -- shifting from the courtroom to the deliberation room --

10 A Mm-hmm.

11 Q -- did the jurors follow that order, that is to not discuss that?

12 A There were three, four people in the conversation.

13 Q Okay.

14 A So, no.

15 Q Do you remember it coming up during the deliberation, the
16 concept of it being stolen?

17 A Yes.

18 Q Do you remember the foreperson indicating that that was
19 stricken and that was not to be discussed?

20 A No.

21 Q You have no recollection of her saying that?

22 A No.

23 Q Okay. Do you have recollection of after the juror -- the
24 foreperson saying that --

25 A Mm-hmm.

1 Q -- that everyone moved on and didn't discuss anymore, the
2 fact that the car was stolen?

3 A I remember it was a short-lived conversation.

4 Q Okay. So, it -- when you describe it as a short-lived
5 conversation --

6 A Mm-hmm.

7 Q -- what does that mean?

8 A A minute, a minute and a half, at most.

9 Q Okay. So, it was a minute and a half and then the car being
10 stolen was no longer a part of the deliberation process?

11 A No.

12 Q Okay. And so, when you were just asked a moment ago
13 about it being important to, or crucial to, your decision --

14 A Mm-hmm.

15 Q -- that was a decision you made by yourself, correct?

16 A That's correct.

17 Q Okay.

18 A I had my questions while the trial was going, in regards to the
19 vehicle.

20 Q But, as far as the other jurors, no other jurors in the
21 deliberation actually said to you, well hey, it's a murder because the car
22 was stolen?

23 A No, nobody said that to me.

24 Q All right. It's a murder because there was this car that was
25 stolen which shows that they steal things, so they must have stolen

1 money from the victim?

2 A Nobody said that to me, no.

3 Q So, nobody was discussing this concept of a stolen car or
4 using that as a basis to come to a verdict?

5 A A possibility of a stolen car was broughten [sic] up, that was
6 the extent of it.

7 Q That was the extent of it, right?

8 A Basically, yeah.

9 Q That's their point right, right? They didn't use that to say Ms.
10 Esparza, they -- they're guilty --

11 A No.

12 Q -- because of this fact?

13 A No.

14 Q Okay. So, it was something that was on your mind, if I'm
15 understanding correctly?

16 A Correct.

17 Q But, nobody else used that on your mind?

18 A It was discussed. I can't say if they used that on my mind.

19 Q Well, I guess what I'm trying to say is if I've heard you
20 correctly, you said it was discussed for about a minute and a half, right?

21 A Uh-huh.

22 Q That after that minute and a half it never came up again?

23 A No.

24 Q All right. So, all that time, except that minute and a half, it had
25 nothing to do with the decision?

1 A With my decision, it did.

2 Q But, with everybody else talking?

3 A I can't say.

4 Q You don't recall --

5 A I can't say. I can't say this is a reason -- they never said this

6 is why I'm making this decision.

7 Q Okay. That's what we're trying to get to is that --

8 A Got it.

9 Q -- nobody said or used --

10 A Mm-hmm.

11 Q -- that concept as a means of arguing, or deliberating, with

12 others --

13 A Mm-hmm.

14 Q -- saying, they're murderers because they stole some car?

15 A Yeah, I can't -- I can't say. I can't make that judgment on

16 them.

17 Q But, do you --

18 A Did they say it or not? No.

19 Q They didn't --

20 A There was a discussion for a minute and a half, those people

21 that were talking to me about it, basically were agreeing with me. Other

22 than that, that was it.

23 Q Okay. And, one of the people that you said was discussing it

24 with you was Hector Martinez, right?

25 A Yeah. Mm-hmm.

1 Q That's what you said in your affidavit?

2 A Mm-hmm.

3 Q Okay. So, I'm sorry, just for the record --

4 A Yes.

5 Q Thank you.

6 A Sorry.

7 Q It's okay. It's okay, now you know what the witnesses felt like,

8 right?

9 A Yeah.

10 Q And so, you're saying that Hector Martinez had a --

11 A Mm-hmm.

12 Q -- conversation with you --

13 A Mm-hmm.

14 Q -- about the car being stolen?

15 A Yes.

16 Q All right. And, was that during that minute and a half time

17 frame?

18 A No.

19 Q Was it after?

20 A It was before.

21 Q It was before?

22 A Mm-hmm.

23 Q Okay. During the deliberative process?

24 A No, during the trial.

25 Q During the trial? Okay. So, you're not saying that Hector had

1 a conversation in the deliberation room, about the car being stolen?

2 A He may have said one word, but he wasn't directly in the
3 conversation.

4 Q Okay.

5 A He was on the other side of the table, so it's not like we were
6 yelling at each other.

7 Q Okay. So, when you were talking in your affidavit --

8 A Mm-hmm.

9 Q -- you weren't talking about Hector in the deliberation room?

10 A No, I was talking when we went to lunch.

11 Q Okay.

12 A Mm-hmm.

13 MR. PESCI: Court's indulgence?

14 THE COURT: Okay.

15 MR. PESCI: Pass the witness, Your Honor.

16 THE COURT: Mr. Helmick, anything further?

17 MR. HELMICK: Court's indulgence?

18 THE COURT: While you're looking at that, let me just ask a
19 quick question. So, what I got from Mr. Helmick --

20 THE WITNESS: Mm-hmm.

21 THE COURT: -- and I'm trying to recall, specifically, from the
22 trial, but prior to anything coming up at trial --

23 THE WITNESS: Mm-hmm.

24 THE COURT: -- about the car being stolen, you had asked a
25 question --

1 THE WITNESS: Yes, I did.

2 THE COURT: -- that did not get asked of the witnesses,
3 which was who was the car registered to?

4 THE WITNESS: Yes, sir.

5 THE COURT: So, you were just curious but -- who the car
6 was registered to, before there was any mention of it being stolen?

7 THE WITNESS: Yes.

8 THE COURT: Okay. All right, Ryan?

9 MR. HELMICK: 30 more seconds, Judge, let me see, here.

10 THE COURT: Okay.

11 **REDIRECT EXAMINATION**

12 BY MR. HELMICK:

13 Q You just said something that when you had talked about it, the
14 stolen car --

15 A Mm-hmm.

16 Q -- you said there were some people that were agreeing with
17 you?

18 A Mm-hmm.

19 Q Okay. Is that a yes?

20 A Yes.

21 Q Oh. Now, the positioning of the jurors in this room, is
22 important right?

23 A Mm-hmm.

24 Q Is that a yes?

25 A Yes. Sorry.

1 Q Sorry, sorry. So, I know, it's a habit, right?

2 A Mm-hmm.

3 Q Because, it's a round table, right?

4 A Yes.

5 Q And so, there were other conversations throughout the
6 deliberation room, that you were not a part of, right?

7 A Yes.

8 Q And, there were conversations that you had that others were
9 not a part of, right?

10 A Yes.

11 Q And, people were talking during breaks, as well?

12 A Yes.

13 Q Okay. Safe to say though, you don't remember everybody's
14 name that was involved in this trial, the jurors, right?

15 A Probably two.

16 Q Okay. All right. Thank you.

17 THE COURT: All right, Ms. Esparza, thank you very much for
18 your time, you're excused.

19 THE WITNESS: Mm-hmm.

20 THE COURT: Defense have any further witnesses?

21 MR. HELMICK: No, Your Honor.

22 THE COURT: Okay, State? And, Mr. Yampolsky, you don't
23 have any separate --

24 MR. YAMPOLSKY: No.

25 THE COURT: -- from Ryan, right? Okay.

1 MS. OVERLY: Your Honor, the State would call Karen Rice.

2 [Colloquy between counsel and the Marshal]

3 THE MARSHAL: Please watch your step on the way up.

4 THE WITNESS: Okay, thank you.

5 THE MARSHAL: And then, remain standing, raise your right
6 hand --

7 THE COURT: Raise your right hand, please.

8 **KAREN RICE**

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

11 THE CLERK: Thank you, please be seated. Will you please
12 state and spell your first and last name for the record?

13 THE WITNESS: Karen Rice. R-I-C-E. You wanted the first
14 name, too?

15 THE COURT: Yeah, how do you spell your first name?

16 THE WITNESS: K-A-R-E-N.

17 THE CLERK: Thank you.

18 THE WITNESS: R-I-C-E.

19 THE COURT: Thank you, very much. All right, Ms. Overly?

20 **DIRECT EXAMINATION**

21 BY MS. OVERLY:

22 Q Thank you, Your Honor. Ms. Rice, you were a juror on this
23 case, correct?

24 A Yes.

25 Q Specifically, were you the foreperson?

1 A Yes.

2 Q And, subsequent to this trial being over, did you contact this
3 Court? Specifically, this --

4 A Yes.

5 Q -- this Department? And, why is that?

6 A I read in the paper that there was some allegations about jury
7 misconduct.

8 Q And, was that the extent of what you knew in the paper?

9 A Yes.

10 Q Okay. And, why is it that you wanted to contact the Court?

11 MR. HELMICK: Objection, to relevance.

12 MS. OVERLY: Your Honor?

13 THE COURT: Well, you can answer the question.

14 BY MS. OVERLY:

15 A Ask the question again, please?

16 Q Why is it that you wanted to contact the Court?

17 A Because, there was allegations of jury misconduct and I knew
18 there wasn't. I mean, I was the foreperson, so I took it a little personal.

19 Q Okay. And, after that did you make contact with myself and
20 Mr. Pesci? And, speak with us?

21 A Yes.

22 Q Okay. Now, during the deliberation process, do you recall
23 there ever being a discussion with regards to the stolen vehicle?

24 THE COURT: Can I interrupt you for one moment, because I
25 just want to make sure that the record's really clear? Ms. Rice and I did

1 not have any conversations, correct?

2 THE WITNESS: Correct.

3 THE COURT: Ms. Rice reached out to the Court through my
4 Law Clerk, and my Law Clerk communicated that information to the
5 attorneys, correct?

6 THE WITNESS: Correct.

7 MS. OVERLY: Correct.

8 MR. HELMICK: Correct, Your Honor.

9 THE COURT: Thank you.

10 THE WITNESS: Yes.

11 BY MS. OVERLY:

12 Q So, you never had any conversation with the Judge, in this
13 case?

14 A Correct.

15 Q Okay. But, the Judge notified us that you had contacted
16 them?

17 A The --

18 Q Yes.

19 A -- the Clerk did, yes.

20 Q The Clerk did, okay. So, going back to my question about this
21 stolen vehicle, do you recall -- well, let me ask you this, first. Do you
22 recall during the trial that there was testimony about the vehicle being
23 stolen?

24 A Yes.

25 Q And, do you recall that the Judge instructed the jury with

1 regards to that testimony?

2 A Yes.

3 Q And, what was that instruction?

4 A To not use it in deliberations.

5 Q Okay.

6 A To strike it.

7 Q Okay. So you -- that you couldn't consider it?

8 A Correct.

9 Q Okay. Now, during the deliberation process, do you recall that
10 stolen vehicle being brought up?

11 A Yes.

12 Q Do you recall who brought it up?

13 A I don't recall who it was. It was somebody on the other side of
14 the table sitting down from me.

15 Q Okay. And, do you recall what it was that was brought up,
16 specifically?

17 A They said did you guys hear that the car was stolen, or
18 something to that nature.

19 Q And, you heard that?

20 A Yes.

21 Q And, based off of you hearing that, what did you do?

22 A I said that that was stricken and we couldn't talk about it.

23 Q And, did -- when you indicated that that was stricken and you
24 couldn't discuss it, did people agree with that?

25 A Yes. Well, one person made a comment about he thought --

1 he said it wasn't stolen.

2 Q Who was that?

3 A Chris.

4 Q Chris Young?

5 A Yes.

6 Q So, after you said that you couldn't consider it, Chris Young
7 indicated that he believed the car was in fact not stolen?

8 A Correct.

9 Q Okay. And, after that, did other people in the jury deliberation
10 room agree that you couldn't discuss it?

11 A Yes.

12 Q So, how long would you estimate this conversation went on
13 for, with regards to the stolen vehicle?

14 A Maybe one or two minutes. I mean, there was only those
15 maybe four comments about it.

16 Q Okay. So, would those four comments be from four different
17 people?

18 A Two of the comments were from me. I said that we can't talk
19 about it because it was stricken; I said that twice.

20 Q Okay. And, after that comment was made, and Chris made
21 the comment that he thought the vehicle was in fact not stolen, did you
22 discuss it any further?

23 A No, I just said we couldn't talk about it and we moved on.

24 Q So, was the stolen vehicle ever brought up, again?

25 A No.

1 MS. OVERLY: Court's indulgence. I pass the witness, Your
2 Honor.

3 THE COURT: Thank you. Mr. Helmick?

4 **CROSS-EXAMINATION**

5 BY MR. HELMICK:

6 Q Thank you, Your Honor. Karen, how you doing?

7 A Doing well, thanks.

8 Q I'm going to say the same thing I've said to every juror that
9 has come up here.

10 A Okay.

11 Q Nobody's in trouble, all we're trying to figure out is what
12 happened, okay?

13 A Okay.

14 Q Is that fair?

15 A Mm-hmm.

16 Q Okay. So, you had said that the -- it was -- actually, let me
17 back-track. You had reached out to Mr. Pesci and Sarah Overly about
18 this case, right?

19 A Well, I'd written a -- an email to the Court --

20 Q Mm-hmm.

21 A -- and then, the Clerk wrote me back and said that she was
22 going to ask me if she could forward my emails to you and --

23 Q Right.

24 A -- the DA, and I said yes.

25 Q Okay. Did you call them --

1 A So, then that was forwarded.

2 Q -- sorry. Did you call them, specifically, one of the DAs?

3 A No, they called me --

4 Q They called you?

5 A -- based off of the email.

6 Q Okay. And, you talked to them, right?

7 A Yes.

8 Q Okay. And, I tried to call you too, right Karen?

9 A Yes.

10 Q And, unfortunately when I called you, you were in Louisville,

11 right? Or something like that?

12 A Tennessee.

13 Q Tennessee? Okay. And, you had said that you were going to

14 call me back, right?

15 A Yes.

16 Q You didn't call me back, huh?

17 A No.

18 Q Okay. In regard to the stolen vehicle, you said it was brought

19 up, right?

20 A Correct.

21 Q Okay. Now, you had said that you had to say two times to

22 disregard it, to your fellow jurors, right?

23 A Correct.

24 Q Okay. And, you were just asked whether you knew if it was

25 brought up again, right?

1 A Correct.

2 Q Okay. But, you don't know whether it was actually brought up
3 again, right; isn't that safe to say?

4 A In the deliberation room?

5 Q Yeah.

6 A I do know that it wasn't brought up again.

7 Q Okay. So, you -- do you -- were you privy to every
8 conversation that took place in that deliberation room, over the course of
9 those hours?

10 A While we were deliberating.

11 Q Okay.

12 A Yeah.

13 Q You were sitting at a round table, right?

14 A Correct.

15 Q Okay. And, there were times, isn't that right, during the
16 deliberations, where somebody would talk to the person next to them,
17 right?

18 A During the deliberations, we basically all spoke together.

19 Q Okay.

20 A There were times when we had lunch --

21 Q Sure.

22 A -- that people had their own conversations, but we weren't
23 deliberating.

24 Q Sure. Any time that you were in the deliberation room, we'll
25 just focus on that, my question was, do you know if people were talking

1 to the person next to them?

2 A I can't --

3 Q You can't say?

4 A Yes.

5 Q Right. Certainly possible that somebody would talk to the
6 person next to them, right?

7 A I'm sure that it's possible, yeah.

8 Q Okay. And, it's certainly possible to discuss amongst the
9 people right in the vicinity of that person, right?

10 A Possible.

11 Q Okay. So, you're not -- I mean, you're not trying to let this
12 Court know -- I mean, you're not trying to say that you heard every word
13 that took place in that deliberation; you wouldn't make that type of
14 statement, would you?

15 A No.

16 Q Okay. All right, thank you, Karen.

17 A You're welcome.

18 THE COURT: Mr. Yampolsky, anything?

19 MR. YAMPOLSKY: No questions.

20 THE COURT: Mr. -- or Ms. Overly, anything further?

21 MS. OVERLY: No, Your Honor.

22 THE COURT: All right. Ms. Rice, thank you very much for
23 coming back --

24 THE WITNESS: Thank you.

25 THE COURT: -- I appreciate it. All right, State may call their

1 next witness.

2 MR. PESCI: State calls Steven Libauskas. I'm probably
3 mispronouncing that, I'm sorry.

4 THE MARSHAL: Watch your step on the way up.

5 THE WITNESS: Thank you.

6 THE MARSHAL: Remain standing, raise your right hand, and
7 face the Clerk.

8 **STEVE LIBAUSKAS**

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

11 THE CLERK: Thank you, please be seated. Will you please
12 state and spell your first and last name for the record?

13 THE WITNESS: Steve Libauskas. S-T-E-V-E, L-I-B-A-U-S-K-
14 A-S.

15 THE CLERK: Thank you.

16 THE COURT: Welcome back, sir.

17 THE WITNESS: Thank you.

18 THE COURT: Mr. Pesci?

19 **DIRECT EXAMINATION**

20 BY MR. PESCI:

21 Q Thank you, very much. Sir, I want to direct your attention to
22 the trial portion of this case when the fact of the car being stolen came
23 up, here in the courtroom, do you remember that happening?

24 A I do.

25 Q Do you remember the Court issuing an order to you and the

1 other jurors to disregard that fact?

2 A I do.

3 Q Okay. When you went back into the jury room for
4 deliberations, do you recall if in fact the idea of the car being stolen was
5 brought up?

6 A I believe it was by somebody.

7 Q Okay. Did you hear the foreperson then say anything about
8 the Court's order?

9 A Yes.

10 Q What did she say?

11 A Do not talk about that.

12 Q Okay. Did anybody talk about it after that?

13 A Not that I know of.

14 Q Okay. Did you talk about it?

15 A Nope.

16 Q Did anybody you heard talk about it?

17 A No.

18 Q Did it play any role in the deliberation process?

19 A No.

20 Q Thank you, very much. Pass the witness.

21 THE COURT: Mr. Helmick?

22 MR. HELMICK: You know what, just in regard to the last
23 question, I want to make an objection for the record. Did it play any role
24 in the deliberation process is speculative.

25 THE COURT: I will sustain the objection --

1 MR. HELMICK: Okay.

2 THE COURT: -- as to that.

3 **CROSS-EXAMINATION**

4 BY MR. HELMICK:

5 Q Thank you. Steven, how you doing?

6 A I'm doing good.

7 Q Okay. Let me just say what I've said to every juror, nobody's
8 in trouble, okay? We're just trying to figure out what happened that's all;
9 is that fair?

10 A Mm-hmm.

11 Q Is that a yes?

12 A Yes.

13 Q Sorry. Now, Steven I called you, right, about this case?

14 A You did.

15 Q Okay. And, I had asked you specifically in regard to the stolen
16 car; isn't that right?

17 A Correct.

18 Q And, do you remember telling me -- I know it was a few weeks
19 ago, but do you remember telling me, you know what Ryan, honestly it
20 was a while ago. I don't remember anything that happened. I couldn't
21 tell you what happened. Is that what you told me?

22 A Yes.

23 Q Okay. That's all I have, thank you.

24 THE COURT: Anything, Mr. Yampolsky?

25 MR. YAMPOLSKY: No questions.

1 THE COURT: Mr. Pesci, anything further?
2 MR. PESCI: No, thank you.
3 THE COURT: All right. Mr. Libauskas, thank you for coming
4 to court, I appreciate it.
5 THE WITNESS: Okay.
6 THE COURT: You are excused. State may call their next
7 witness.
8 MR. PESCI: State calls Theresa Huston.
9 THE MARSHAL: Please watch your step on the way up.
10 THE WITNESS: Thank you.
11 THE MARSHAL: Remain standing, raise your right hand, and
12 face our clerk.
13 **THERESA HUSTON**
14 [having been called as a witness and being first duly sworn, testified as
15 follows:]
16 THE CLERK: Thank you, please be seated. Will you please
17 state and spell your first and last name for the record?
18 THE WITNESS: Theresa Huston. T-H-E-R-E-S-A, H-U-S-T-
19 O-N.
20 THE CLERK: Thank you.
21 THE COURT: Probably weren't expecting you were coming
22 back to court so quick after getting done with jury duty --
23 THE WITNESS: It's very true.
24 THE COURT: -- right? All right, thank you very much. Mr.
25 Pesci?

1 **DIRECT EXAMINATION**

2 BY MR. PESCI:

3 Q Thank you, Your Honor. Ma'am, do you recall during the trial,
4 the fact of the car being stolen coming out on the witness stand?

5 A Yes.

6 Q Do you recall the Court, after that, giving an order to you and
7 the other jurors to disregard that fact?

8 A Yes.

9 Q When you were in the deliberation room, did the concept or
10 the idea of the car being stolen come up?

11 A Yes.

12 Q And, what was said after it was brought up?

13 A After it was brought up, somebody said that the Judge has
14 instructed us to disregard that and that we couldn't consider it. And
15 then, after that I said that it didn't matter whether -- whether the car was
16 stolen or not stolen, all we had to determine was whether there was an
17 intent to steal, or commit a robbery.

18 Q Okay. So, you, after being reminded of the Court's order by
19 somebody that you weren't supposed to talk about it, you even went
20 further and even said, it doesn't even matter?

21 A Correct.

22 Q That that's not what you're here about?

23 A Yeah. I --

24 Q Oh.

25 A -- yeah. I said, whether or not it was stolen, we're here to

1 decide this.

2 Q Okay. So, based on that fact, did -- was there any other
3 discussion about the car being stolen during the rest of the
4 deliberations?

5 A No, not at all.

6 Q Did it have any factor in the deliberation process after that;
7 anything being said?

8 MR. HELMICK: Objection, speculation.

9 THE COURT: Well, the way that that question was
10 characterized at the end saying, was anything said? So, do --
11 BY MR. PESCI:

12 A Nothing was said after that brief conversation.

13 Q Okay. And, that's your own personal knowledge, as far as
14 hearing things? You didn't hear every conversation, but as far as what
15 you heard, it never came up?

16 A Correct.

17 Q Okay. Thank you, very much. Pass the witness.

18 THE COURT: Mr. Helmick?

19 **CROSS-EXAMINATION**

20 BY MR. HELMICK:

21 Q Just to touch on that, just briefly --

22 A Sure.

23 Q -- Theresa. And, listen, nobody's in trouble here; we're just
24 trying to figure out --

25 A I understand.

1 Q -- what happened. You got it? Okay.

2 A Yep.

3 Q All right. So, as far as anything being discussed, you can only
4 talk about what you saw and heard, right?

5 A That is correct.

6 Q Okay. You weren't privy to every single conversation that took
7 place in that room; you would agree, right?

8 A I -- I probably -- no. I mean, I'd -- I don't think there was that
9 many, like sidebar conversations.

10 Q Sure.

11 A We were all talking mostly as a group.

12 Q Okay. Nothing said that you actually knew about in regard to
13 the stolen car, amongst other people?

14 A No.

15 Q Okay. All right, thank you, Theresa.

16 THE COURT: Mr. Yampolsky?

17 MR. YAMPOLSKY: No questions.

18 THE COURT: Anything further from the State?

19 MR. PESCI: No, thank you.

20 THE COURT: All right, Ms. Huston, thank you for coming
21 back to court. I appreciate it. You are excused.

22 THE WITNESS: You're very welcome.

23 THE COURT: State --

24 MS. OVERLY: Oh.

25 THE COURT: -- can call your next witness.

1 MR. PESCI: No further witnesses, Your Honor.

2 THE COURT: All right. Any further rebuttal witnesses?

3 MR. HELMICK: No, Your Honor.

4 THE COURT: Okay. Including you, Mace?

5 MR. YAMPOLSKY: None, Your Honor.

6 THE COURT: All right. Mr. Helmick?

7 MR. HELMICK: Thank you. So, I want to just start with the
8 motion in limine to begin with, okay? I filed this motion in limine for a
9 reason, because the theme of the case revolved around theft, right?
10 And so, I didn't want any discussion about there being -- especially my
11 client, who was driving the Mercedes, being stolen, because that falls
12 into the same umbrella of a theft, robbery; it's all under the same
13 umbrella. The motion in limine was granted for a reason, because it was
14 suspected that there could be a risk of prejudice if that were taken back
15 into the deliberation room.

16 THE COURT: Oh --

17 MR. HELMICK: And, of course that's why Your Honor gave
18 the admonishment. The real thing is it wasn't granted because -- it
19 wasn't not let in the trial to say that whether it -- we were concerned
20 whether it was going to affect their verdict or anything like that. It was
21 not let in because it was prejudicial. So, the fact that it was simply just
22 talked about, in our opinion, is enough for it to prejudice the outcome of
23 this case. In other words, there was no condition set forth on the motion
24 in limine that said, well, it can come in but it just can't affect your verdict
25 or anything like that. The fact is that it came in.

1 Now, the State had made a point, which we feel is irrelevant
2 that you know what, it came out during Mr. Helmick's cross-examination
3 of the detective. That's their witness. It doesn't matter how it came out;
4 it came out. They're supposed to admonish them not to talk about it and
5 maybe they did. But, he brought it out for whatever reason, we don't
6 know, whether it was intentional or unintentional.

7 But, the most important thing is, is that one juror's verdict was
8 affected. And, it takes 12. So, we have one juror that specifically said
9 that it did affect her decision in this case, that it did play a major role in
10 regard to the robbery aspect of this case, which was the entire theme,
11 and therefore, causes the felony murder rule to apply. And so, that's the
12 real concern here is that it affected one. And, that's all that is needed in
13 this type of this situation for a mistrial to be granted, because her verdict,
14 when she raised her hand, was affected, it was prejudiced, and it
15 prejudiced Mr. Harlan, and we're asking for a mistrial.

16 THE COURT: Mr. Yampolsky, anything to add?

17 MR. YAMPOLSKY: I join with Mr. Helmick's argument.

18 THE COURT: All right, and I'll note for the record that Mr.
19 Yampolsky had filed joinders to the original motion that was filed and
20 then a supplemental joinder to the supplemental motion that was filed.
21 On behalf of the State?

22 MR. PESCI: Judge, thank you. Just to recap the witnesses,
23 Hector Martinez, called on behalf of the defense during this hearing said
24 specifically, it was brought up and then not discussed. It was not talked
25 about. It wasn't a big deal; we were not focused on it. Everybody said it

1 wasn't part of it. That's his testimony. Christopher Young: it was
2 brought up by one juror. The foreperson shut it down. That's the
3 expression he used. It was to be stricken. A matter -- it was only a
4 matter of minutes. And, there was discussion about how that was
5 irrelevant. They were not to discuss it. And, that he said specifically
6 that it wasn't utilized by the jurors in the remainder of the deliberative
7 process to argue for, or deliberate for, a verdict of guilty of first degree
8 murder.

9 Karen Rice, the foreperson, who on her own reached out to
10 the Court, via email to the JEA, not to Your Honor, that she had
11 concerns based on what was put forth in the original motions and what
12 was reported in the newspaper. She said it was brought up and then
13 she said expressly, two times, she specifically said that was stricken and
14 we cannot talk about it. And that there was one comment, even by
15 Christopher Young, who said oh, I thought it wasn't stolen; was not
16 stolen. So, there's information there about it not being stolen, right?
17 And --

18 THE COURT: Well, I think that's -- and I apologize if I'm
19 mixing up my cases, but I think that was what my admonition to them
20 was, correct?

21 MR. PESCI: I don't recall the specific ruling, but it was
22 definitely clear to the jury that it was not stolen.

23 THE COURT: It -- this --

24 MR. PESCI: There was not information that it was stolen.

25 THE COURT: This issue came up, and I -- like I said, I'm --

1 was trying to find it in my notes. And, I apologize if I've got my cases
2 mixed up, but a -- it -- reference to a stolen vehicle came up, and I
3 admonished the juror that the Officer was wrong, that their testimony
4 that it was stolen was incorrect; you're to disregard any reference being
5 made to that.

6 MR. PESCI: Correct.

7 THE COURT: Which is -- generally, I admonish jurors just to
8 disregard things, but in this case, I think I specifically told them that your
9 State's witness was just wrong.

10 MR. PESCI: Right.

11 THE COURT: They were wrong about, you know, their
12 testimony; you need to disregard it.

13 MR. PESCI: That's my recollection. That's my recollection, in
14 fact -- you know, we were stuck with the fact that that kind of makes our
15 witness look worse, but we were going to deal with that, right, because
16 that's what happens when that comment comes out, and then it's clear
17 from this --

18 THE COURT: And, I'm sorry to interrupt. But, the only reason
19 I bring that up is that in regard to what --

20 MS. OVERLY: Mr. Young.

21 THE COURT: -- Ms. Rice said about Mr. Young saying

22 MS. OVERLY: Oh, yeah.

23 THE COURT: -- wait, I thought the car wasn't stolen.

24 MS. OVERLY: Right.

25 MR. PESCI: Right.

1 THE COURT: So, anyway, go ahead.

2 MR. PESCI: That's just where I was going to go Your Honor,
3 was that in fact the order -- the admonishment by this Court was
4 followed, because Mr. Young is saying back there, no, no, it's not stolen,
5 right? So, we've got a clear written -- well, oral statement to the jury to
6 disregard it and it's not stolen. We have the foreperson parroting,
7 almost, verbatim what Your Honor had said as far as disregard it, and
8 we have one juror even saying yeah, it's not stolen. What's even more
9 important though is that all these witnesses, everybody who's testified
10 today have said it had nothing to do with the remainder of the
11 deliberations and nothing to do with the actual determination.

12 And, what, Your Honor, I point out to, it's file stamped 9-12-
13 2019, which is Defendant Jaiden Caruso's supplemental points and
14 authorities, there is an affidavit by Ms. Esparza, and I would point to
15 page 6 of that affidavit, lines 9 through 18 or 19. What I find interesting
16 is I asked her specific questions knowing this is what she said here.
17 She says, coming up in about page 6, line 11, she says Hector Martinez
18 and I both discussed and asked questions about whose car was the
19 Mercedes Benz since it was possibly stolen. Hector Martinez's
20 testimony today was very clear that it came up for a minute to a minute
21 and a half, they moved on, and it wasn't discussed again. There were
22 lots of questions about how you can't hear everything; that's true. But,
23 Hector said yeah, I didn't talk about it, I didn't hear it; right?

24 Goes on, additionally, Ronald -- I don't know the last name,
25 how to pronounce it -- mentioned the fact of the stolen car in the

1 deliberations. The idea that some of these people had was that if Mr.
2 Harlan and Mr. Caruso were out stealing cars, then they probably
3 robbed Matthew Minkler, too. And, if the robbery was believed, then the
4 felony murder rule would apply.

5 I also stated that juror Gabriel Bernardo talked about the
6 stolen car comment and how I remembered it being in regard to the
7 premeditation element. She specifically said, while I was asking her
8 questions today, that after that minute to a minute and a half, nobody
9 else talked about it. She's all shifted now to what her feelings were,
10 right? But, you have an affidavit where she's saying it's being bantered
11 around, that that's the means by which this deliberation process came to
12 this conclusion, because hey, they must have stolen something. I asked
13 her about that and she said, no, they didn't talk about that. It wasn't
14 talked about again.

15 So, that's in direct contrast to what she has sworn out in an
16 affidavit. You have the testimony from Steven saying it was to be
17 disregarded; it was not discussed. Theresa said, it was brought up and
18 then it was said to be disregarded. In fact, she went further, much like
19 Chris Young, and said, you know what, it didn't matter if it was stolen or
20 not, it had nothing to do with the decision that we were tasked with,
21 which was looking over the evidence and applying it to the law.

22 And so, there's very clear evidence that this issue came up
23 and then it was promptly disregarded and disposed of, as the Court had
24 ordered the jury to do. And, this motion should be denied.

25 THE COURT: Mr. Helmick?

1 MR. HELMICK: Thank you. You know, in a perfect world,
2 when Your Honor makes an admonishment like that that something
3 should be stricken, we hope that they'd follow it, right? But, we know --
4 we know that at least one person did not and it was talked about. They
5 don't know what was going on -- every person that got up here, they
6 don't know exactly what was going on in every single person's mind.
7 And, every time I tried to ask about, you know, did you know if it affected
8 the other juror's deliberation? Well, of course, it's going to be objection,
9 speculation. So, to say that they -- that they didn't -- that it didn't affect
10 their deliberation is speculative, for the State to make that conclusion.

11 In regard to the Hector Martinez testimony, he said that he did
12 talk about it. And, in the affidavit, Ms. Esparza didn't clarify in regard to
13 when, whether it was deliberations or whether it was at lunch, during the
14 trial, she state that she talked to Hector about it; that's consistent with
15 exactly what she said she -- when she was on the stand. Now, we
16 weren't allowed to ask whether the idea that some of these people had
17 that if Mr. Harlan and Mr. Caruso were out stealing cars that they
18 probably planned to rob Matthew Minkler, too. We weren't allowed to
19 ask that, because that's calling for speculation, because we -- they don't
20 know whether that affected their verdict and whether that's what was
21 going through their mind at that particular time.

22 In regard to her having these conversations with these other
23 jurors, how do we not know that it didn't take place during this one to two
24 minutes? There's no time restriction on -- in regard to when the stuff
25 that she talked about in her affidavit was mentioned. But, the point is

1 here, if we narrow it down to its simplest form -- and listen, I know that
2 Your Honor has a tough decision here to make, but the point is, is that
3 one person's verdict was affected. That's what she said. That's what
4 she said under oath. That is prejudice to this case. That is prejudice to
5 Mr. Harlan. If her verdict was affected by it, and if it played a role in her
6 mind, it caused her to raise her hand, and vote in this case, then that's
7 wrong. And, it should be a mistrial, in this case.

8 THE COURT: Well -- go ahead.

9 MR. PESCI: Judge, you know, you ordered this hearing on
10 the limited issue about it being discussed by other jurors. This is not
11 about Ms. Esparza's personal belief system during the process. It was
12 only about whether other people said it. And, you remember,
13 respectfully --

14 THE COURT: Well, that's -- and I'll let you reply in a moment
15 if you need to, but that's part of what I was going to raise, and --

16 MR. HELMICK: Sure.

17 THE COURT: -- ask Ryan is, look, when we're talking about
18 what Ms. Esparza is saying went on in her head during the deliberative
19 process, isn't that what's kind of specifically excluded by *Echavarria* in
20 terms of you can't go into what the deliberative process is? If there's
21 some extrinsic evidence of something being brought up that shouldn't be
22 brought up, Court can take testimony on that, Court can evaluate that,
23 was it misconduct, was it not misconduct. If it was misconduct, is it
24 something that was prejudicial and you know, would have rendered the
25 proceedings unfair in some fashion?

1 But, it is a real, kind of, Alice in Wonderland rabbit hole to say
2 we're going to go into, post-trial, saying come in and tell me what you
3 were thinking when you decided to vote guilty in a particular case.
4 Because now, you're outside of the deliberation room, there's no
5 discussions of law, there's no discussions of facts, there's no
6 discussions with other jurors. You know, sometimes people -- you
7 know, maybe they become more emboldened and strengthened in their
8 verdict. Maybe some people, like Ms. Esparza, I think it's a fair
9 characterization because she said it, regrets her verdict.

10 MR. HELMICK: Mm-hmm.

11 THE COURT: But, getting into, kind of, parceling through,
12 months down the road, your deliberative process --

13 MR. HELMICK: Sure.

14 THE COURT: -- I think is improper.

15 MR. HELMICK: Well, just to touch on that, the scope of the
16 hearing in regards to the -- if Your Honor recalls --

17 THE COURT: Right.

18 MR. HELMICK: -- was, was it talked about and whether it
19 affected the jurors' verdict, right? That was the scope of this hearing.
20 And so, maybe I just mis-phrased that but the point I was trying to make
21 that yeah, it was talked about, and yes, it affected one person's verdict.
22 I mean, that was the scope of the hearing and that was the testimony
23 that was given.

24 THE COURT: All right, Mr. Pesci, and you can go ahead.

25 MR. PESCI: Judge, you were making the point that I was

1 trying to make, which is the fact that this was allowed so that, as I
2 understood it, Your Honor could hear if other people discussed it, right?
3 Because, as you pointed out, and we objected earlier, we don't want the
4 deliberative process of Ms. Esparza to be gone into because the case
5 law specifically does not allow that. And, in fact, our position was that
6 we shouldn't have been having this hearing to begin with; I just want that
7 for the record.

8 But, you allowed it, right? It was just so that other people
9 could say whether it came up. And so, we've got those witnesses
10 saying it came up, it was disposed with, and then we made pains to say
11 after it was brought up and after you were told to disregard it, nobody
12 talked about it again. And, there's all this conversation about you
13 couldn't hear everything. Okay. There's zero evidence before Your
14 Honor that anybody talked about it after it was told to be disregarded.
15 They haven't produced a single person to say, well yeah, I had a little
16 sidebar conversation. Everybody that testified said it was never brought
17 up again. And so, there's no evidence to support this; this motion
18 should be denied.

19 MR. HELMICK: Just in regard to the minute -- just briefly, the
20 minutes -- I mean, Your Honor, if we pull the minutes Your Honor said
21 whether it was talked about and whether it affected their verdict; that's
22 what the minutes said.

23 THE COURT: Well yeah, look, I mean it's -- that's kind of a
24 determination that I need to make, but I get it. I -- look, I mean, had
25 there been something that gone on during the testimony today that I felt

1 was beyond anything, I would have jumped in and said, no, this is
2 beyond anything. Although, generally speaking, I'm going to let you
3 guys ask the questions that you need to ask.

4 Look, while -- one -- I wasn't disputing from anything that was
5 raised originally that this got mentioned during deliberations. So, part of
6 my idea in having the hearing was I wanted to see, flush out, what
7 exactly "mentioned" means, right? What is "talked about" means? What
8 is "discussed" mean? What is "mentioned" mean?

9 And, I think, in a best case scenario for the defense, what I'm
10 getting at of this from everybody that's testified, is that somebody raised
11 the issue of the car. Now, she didn't say it in her affidavit, but she's
12 testified on the stand, Ms. Esparza, that it was her that raised the issue.
13 She -- in the affidavit she said she discussed it, as did a couple of other
14 people, but she says today: no, I'm the one that brought it up. Which
15 seems to make sense because she's the one that raised the issue
16 through a question at trial, before anything about the stolen vehicle
17 came up about, you know, who were the car registered to?

18 And, so what she says in her affidavit was that was the
19 question that came up. She said, we discussed and asked questions
20 about whose car was the Mercedes Benz, and then she says, since it
21 was possibly stolen. She didn't say that it was a stolen vehicle, which is
22 a key thing to me because I took what I thought was kind of an
23 extraordinary extra step in this trial, to tell the jury, coming from the
24 Judge, this witness isn't credible. They made a mistake; they told you
25 something that's not factually accurate when they said this car was

1 stolen.

2 So, I have to expect that the jury's going to follow my
3 admonition and it sounds like, you know, that at least Mr. Young stated
4 that in the deliberations to say, wait no, the car wasn't stolen. So, you
5 know, how that was brought up, and whether the car was stolen, is
6 questionable at best, in my mind. But, more importantly, from the
7 standpoint of this idea of this being discussed, everybody seems to
8 agree that we're talking on, you know, two minutes or less, that the issue
9 was raised. Somebody brought up the car, the foreperson says we're
10 not supposed to talk about that. There may have been a couple of other
11 people saying something about that. Some people saying it doesn't
12 matter, some people saying wait the car wasn't stolen, whatever it was.
13 And then, the foreperson again -- I'm satisfied by Ms. Rice's testimony --
14 said again, we're not supposed to talk about it. And, everybody says
15 thereafter it was never discussed again.

16 So, I -- I'm satisfied that there is absolutely zero evidence that
17 anybody else was affected by anything or had any discussions about the
18 stolen car, in a way that would constitute misconduct or render, you
19 know, any kind of prejudice to either Defendant in the jury deliberations.
20 So, you're really just dealing with Ms. Esparza. Because, the fact that
21 something gets brought up and -- doesn't make it misconduct. And, the
22 fact that something gets brought up that could be misconduct, doesn't --
23 if you're, you know, going through an evaluation under *Bowman* or any
24 of the other cases, mean that it's, you know, there's a reasonable
25 probability that whatever was brought up somehow affected a verdict. I

1 mean, so there's multiple levels of what the Court has to work through
2 here.

3 So, with Ms. Esparza, first thing I'll kind of reiterate is what I
4 just said a moment ago. You know, the role of the juror is to go into the
5 room with their fellow jurors, take the evidence, evaluate the evidence,
6 evaluate the law, have discussions, have disagreements, have
7 agreements, you know, work towards problem -- you know, problem
8 solving, address each other's issues, find common ground, and if
9 possible, return a verdict together. Going in beyond that is -- and
10 saying, wait, tell us why you reached your particular verdict, not only is it
11 excluded by 50.065 and case law, *Echavarria* being the one that we
12 referenced earlier, but it's just patently unfair to the parties, as well as,
13 fellow jurors, to have a juror singularly later on saying, wait a minute,
14 you know, now that I think about it, or this is what I was really thinking at
15 the time that I returned the verdict. There's no way for anybody else to
16 know that. They -- each juror is assuming that each juror is deliberating
17 based on the evidence and the law that they've been given, following the
18 directions of the Court, which is why the case law exists and our statutes
19 that tell us we don't go into the deliberative process of jurors.

20 So, it's a huge uphill battle with Ms. Esparza to kind of get on
21 what you're trying to get on here, because at best, I think, even though
22 this was mentioned, her statement that yes, it was in my mind, is really
23 part of her deliberative process. Now, that being said I also, you know,
24 honestly think that -- I struggle with Ms. Esparza's credibility. She
25 seems to clearly be somebody that just regrets having returned a guilty

1 verdict; that's not uncommon. That happens with jurors. You have, you
2 know, very difficult cases, as a homicide case is.

3 She, you know, in my mind -- and, I didn't get into questioning
4 her, you guys didn't get into questioning her, because I didn't think it was
5 relevant to anything. But in that affidavit that she gave originally, there
6 are things in there, which in my mind, are patently false, as well as,
7 things that are incredibly exaggerated, such as her statements that, you
8 know, she was crying in the courtroom, and stormed out of the
9 courtroom after the verdict was rendered, things like that. That didn't
10 happen. And, that's one reason I told you all that I reviewed the JAVS of
11 the return of verdict this morning, and offered to let you look at it, as
12 well.

13 We came into court, you know, if I -- and I've had occasions
14 where jurors can't answer the questions when they're being polled or
15 when they're asked, did you guys -- is that your verdict, so say you one,
16 so say you all. Like, I'm watching, and if somebody doesn't answer that
17 question, then I'm saying, you didn't answer the question. I mean, I'll
18 poll myself. If I have a situation where a juror seems to be struggling
19 very emotionally with what's going on, sometimes I'll send them back to
20 the deliberation room. Sometimes a verdict form may be filled out
21 incorrectly.

22 But, I didn't notice anything about Ms. Esparza, or anybody
23 else, that gave me any concern when they came back into the court to
24 return the verdict. And, even though the JAVS doesn't focus on the
25 jurors, that -- the microphones are, you know, at the tables. When we

1 ask them, is this your verdict, so say you one, so say you all, they all
2 answered out loud: yes. And, I think Ms. Esparza was referencing, you
3 know -- or maybe it was in the pleadings about flinging her hand into the
4 air, or something, but that's not how we asked them to return their
5 verdict. They're asked specifically, is this your verdict.

6 And then, I talked to the jurors for three or four minutes
7 thereafter, in court, it -- thanking them for their service, and telling them
8 that I was going to chat with them in a moment, telling them how
9 valuable it is to talk to the attorneys afterwards. We went through all of
10 this. Nobody ever stormed out of the courtroom. And then, she was in
11 the back when I went back and talked to the jurors, and obviously, she
12 and some of the other folks left -- and I tell them they can leave, and
13 then some of them came in to talk to you all.

14 So, you know, I struggled with that original, kind of, you know,
15 explanation of having this emotional and visceral reaction, and storming
16 out of the courtroom after the verdict was over, because that just didn't
17 happen. Thereafter, in her affidavit -- and, we dealt with a lot of these
18 things already when the motion first came on, but there was the victim's
19 family intimidated, other jurors bullied me, I saw jurors talking on their
20 phone during a break in deliberations. I mean, she was blaming
21 everybody for everything, in my mind. And, maybe that's because she
22 felt bad that she rendered a guilty verdict, but what there's -- like I said,
23 there's a reason, you know, we protect the sanctity of verdicts and they
24 don't go back in months later and start kind of trying to come up with
25 every reason under the sun to blame everybody else for a decision that

1 you made.

2 And, all of those other things that we dealt with when the
3 motion was first raised, in my mind, didn't justify a hearing and weren't of
4 any merit in terms of attacking the verdict, including, you know, the
5 discussion about other jurors about the various jury instructions, the
6 hearing, jurors discussing during the course of the trial about whether it
7 was going to be an easy or difficult decision; that's not really discussing
8 any factual matters or making decisions in the case. Saying that, you
9 know, the victim's family was looking at her during trial; well, they were
10 looking at the entire jury during trial, she just happened to sit there. That
11 wasn't anything that would justify, you know, vacating a verdict. Jurors
12 using their phones during breaks in the deliberation, every juror's
13 allowed to, you know, make phone calls, or do whatever they're doing
14 during a break in deliberations. So, that wasn't a problem.

15 There wasn't any evidence, in my mind, from the allegation
16 that she felt bullied by other jurors just simply asking her what she didn't
17 understand. So, we went through all of those things, but my point is,
18 she's kind of pointed and projected out on everybody. And then, today,
19 when she was testifying, which you know, was basically in line with the
20 affidavit , although as I said, there was a couple of things that she said
21 that were surprising to me, what -- you know, including that she was now
22 saying that she was the one that raised this issue first.

23 But, you know, in terms of the idea that somehow this affected
24 deliberations, well deliberations went on for an extended period of time
25 after this it sounds like. And, there was no mention ever made after the

1 foreperson did what the foreperson is supposed to do, is direct people to
2 evidence they can consider, evidence they can't consider. Because,
3 there are a lot of occasions where objections get raised and sustained
4 during trial, and if a juror starts to go into something, that's the
5 foreperson's obligation. We have this idea in society these days, that
6 everything has to be absolutely perfect, and it's not. We're dealing with
7 human beings. And, people are entitled to fair trials, which I think the
8 Defendants received here, not everything to be absolutely perfect.

9 So, I don't believe, even with Ms. Esparza, that she ever said
10 today, that anything about that was why she rendered the verdict she
11 rendered. Even though she said, you know, yes, that was part of what I
12 was thinking of, she never said, this is why I rendered a verdict that I
13 rendered. And, it would have been improper to ask her about that. So,
14 at best, we're dealing with somebody, in my mind, who is somewhat
15 incredible on a lot of things, has -- I hate to use the term buyer's
16 remorse -- but a great deal of regret having returned a verdict, which she
17 expressed, repeatedly, and is seeming to try to use our jury trial and
18 everybody else as jurors, the job that they did, and she's trying to use
19 her accusations as a way of alleviating whatever guilt she feels about
20 returning the verdict. And, I just don't think that that's an appropriate
21 thing to do.

22 And, I don't think that anything, particularly with the
23 admonition that I gave to the jurors, anything about that vehicle and the
24 nature of it, whether it was stolen or not, being mentioned, as I said
25 when I denied the -- because I believe there was a motion for mistrial. I

1 don't think anything about that rises to the level of prejudice that it would
2 have warranted a mistrial or that it would have rendered a verdict
3 different than the one we got, even if it got brought up during the course
4 of the deliberations. So, even if it was misconduct to bring it up, and
5 even if some folks had some brief discussion about it, I don't think based
6 on the totality of evidence available to me that it rises to the level of a
7 prejudice that would have rendered a different verdict.

8 So, I'm going to deny the motion for new trial. And then, we
9 need to reset our sentencing hearing. I don't know how much time you
10 all want for sentencing.

11 MR. PESCI: Whatever the Court orders.

12 MR. HELMICK: That's fine.

13 THE COURT: I mean, I can -- I mean I'd like to get it done
14 sooner rather than later since it's been pending so long. I mean, we can
15 do it tomorrow. I can do it next Tuesday.

16 MR. HELMICK: Oh, I'm still in a trial, right now.

17 THE COURT: Oh. When you going --

18 MR. HELMICK: Can we at least --

19 THE COURT: -- to get done?

20 MR. HELMICK: Did you do the PSI? I just -- is the PSI -- is
21 the PSI done?

22 MR. PESCI: Yes.

23 THE COURT: Yes. Yeah, yeah, yeah.

24 MR. HELMICK: Okay, good. I don't know, what do you think?
25 I'm going to be out of town next week, maybe two weeks at the most?

1 THE COURT: Okay.

2 MR. HELMICK: Two weeks?

3 THE COURT: So, maybe the 10th?

4 MR. HELMICK: That's fine.

5 THE COURT: Yeah?

6 MR. HELMICK: Yeah.

7 THE COURT: State?

8 MR. PESCI: I'm just checking with the family, Your Honor.

9 THE COURT: Okay.

10 MR. PESCI: And, I think there's an indication that December

11 10th works.

12 THE COURT: Okay. Mace?

13 MR. YAMPOLSKY: Let me check, real quick.

14 MR. PESCI: Okay.

15 MR. YAMPOLSKY: That's fine as long as it's not at 1:30.

16 THE COURT: Nope, nope, it would be in the morning. So,

17 we'll set it at 9:00 on December 10th.

18 MR. HELMICK: Okay, thank you, Your Honor.

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THE COURT: Okay. Thank you.

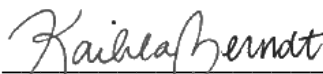
MR. YAMPOLSKY: Thank you.

MR. PESCI: Thank you.

[Proceeding concluded at 10:27 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.



Kaihla Berndt
Court Recorder/Transcriber