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IN THE SUPREME COURT OF THE STATE OF NEVADA

JAIDEN CARUSO,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Case No. 80361

APPELLANT'S APPENDIX VOLUME XI

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ALPHABETIC APPENDIX FOR APPELLANT'S APPENDIX

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Defendant Jaiden Caruso's Joinder to Defendant Kody Harlan's Motion to Set Aside Guilty Verdict as to Counts One and Two; In the Alternative Motion for a New Trial filed August 28, 2019	I	0014-0015
Defendant Jaiden Caruso's Joinder to Defendant Kody Harlan's Motion to Sever or in the Alternative Motion to Deem Statements of the Co-Defendant Inadmissible filed April 22, 2019	I	0016-0017
Defendant Jaiden Caruso's Supplemental Points and Authorities in Support of His Joinder to Defendant Kody Harlan's Motion to Set Aside Guilty Verdict as to Counts One and Two; In the Alternative Motion for a New Trial filed September 12, 2019	I	0018-0033
Information filed July 17, 2018	I	0034-0037
Judgment of Conviction filed December 12, 2019	I	0038-0039
Notice of Appeal filed January 2, 2020	I	0040-0041
Notice of Motion to Place on Calendar to Set Aside Guilty Verdict as to Counts One and Two; In the Alternative Motion for a New Trial and to Request Additional Time for Supplemental Briefing filed August 13, 2019	I	0042-0046
Notice of Non-Filed Plea Agreements of Jaiden Caruso and Kody Harlan filed May 27, 2020	I	0046A-0046W
Order Denying Defendant's Motion to Sever, or in the Alternative, Motion to Deem Statements of the Co-Defendant Inadmissible filed May 15, 2019	I	0047-0048
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State's Opposition to Defendant Harlan's Motion to Sever or in the Alternative Motion to Deem Statements of the Co-Defendant Inadmissible filed April 11, 2019	III	0430-0442
State's Opposition to Defendant's Motion to Set Aside Jury Verdict as to Counts One and Two; or in the Alternative, Motion for New Trial and Supplemental Briefing filed August 20, 2019	III	0443-0460
State's Return to Writ of Habeas Corpus filed September 11, 2018	III	0461-0472
State's Supplemental Opposition to Defendant's Motion for New Trial filed September 26, 2019	III	0473-0500
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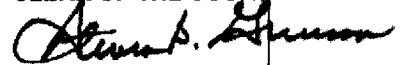
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

JAIDEN CARUSO &
KODY HARLAN,

Defendants.

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

DEPT. III

BEFORE THE HONORABLE DOUGLAS W. HERNDON,
DISTRICT COURT JUDGE

TUESDAY, AUGUST 06, 2019

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 6

APPEARANCES:

For the State:

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

For the Defendant
Jaiden Caruso:

MACE J. YAMPOLSKY, ESQ.
JASON R. MARGOLIS, ESQ.

Kody Harlan:

RYAN K. HELMICK, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

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1 Las Vegas, Nevada, Tuesday, August 06, 2019

2
3 [Trial began at 12:06 p.m.]

4 [Outside the presence of the jury]

5 THE COURT: All right. We will be on the record. Mr.
6 Harlan and Mr. Caruso are present. All the attorneys are present.

7 Before we get our jurors in, as I mentioned when I was in
8 the courtroom just a little bit ago, we had an issue arise where Ms.
9 Evans who is Alternate Number 1 called to indicate that her
10 husband had been admitted to the emergency room at a local
11 hospital which I'm not going to name on the record.

12 Anyway, be -- normally I probably would have tried to get
13 you all into court to have some discussion about it but since she's
14 an alternate and we're going into closing arguments today, I told
15 her don't worry about court, take care of your husband, let us know
16 if there's anything we can do, and I told her that she did not need to
17 report. So I'm not going to expect that she's going to be here since
18 the gentleman was still in the emergency room, okay?

19 MR. YAMPOLSKY: That's fine.

20 MR. PESCI: No objection from the State.

21 MR. HELMICK: No objection.

22 MR. YAMPOLSKY: No objection.

23 THE COURT: Thank you very much.

24 Okay. Anything outside the presence before we continue
25 on with the witness this morning?

1 Yeah.

2 MR. HELMICK: Yes, Your Honor. Did you see the
3 proposed --

4 THE COURT: About the jury instructions?

5 MR. HELMICK: Yes.

6 THE COURT: Yeah, we'll talk about that --

7 MR. HELMICK: Oh, okay.

8 THE COURT: -- as soon as we finish with the witness.

9 MR. HELMICK: Oh, okay.

10 THE COURT: Your witness is here, correct?

11 MR. DONELSON: Yes.

12 MR. YAMPOLSKY: My witness?

13 THE COURT: Yeah. There he is he just raised his hand.
14 Well, yeah, yours is the only witness we have left.

15 MR. YAMPOLSKY: I'm here, I'm here.

16 THE COURT: Okay. Well I know you're here.

17 MR. YAMPOLSKY: The case didn't settle because of you,
18 but that's fine.

19 THE COURT: Okay.

20 MR. YAMPOLSKY: No, I'm only kidding.

21 THE COURT: All right. Anything from the State?

22 MR. PESCI: No, Your Honor.

23 THE COURT: Okay. Then Greg, we can go ahead and get
24 our jurors in.

25 [In the presence of the jury]

1 THE MARSHAL: All rise for the jury.

2 THE COURT: All right. You all can be seated. Thank you.

3 We will be on the record. Mr. Harlan and Mr. Caruso are

4 present with their attorneys, States' attorney, all of our jurors are

5 present.

6 Good afternoon, Ladies and Gentlemen. We're going to

7 continue on with the Defense case of Mr. Caruso. So Mr.

8 Yampolsky, Mr. Margolis, you all can call your witness.

9 MR. MARGOLIS: Thank you, Your Honor.

10 Mr. Caruso calls Doctor Alan Donelson.

11 THE COURT: Thank you.

12 **ALAN DONELSON**

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

14 testified as follows:]

15 THE CLERK: Thank you, please be seated.

16 If you could state and spell your name for the record,

17 please.

18 THE WITNESS: Alan Charles Donelson; A-L-A-N,

19 D-O-N-E-L-S-O-N.

20 THE COURT: Thank you very much, sir.

21 All right. Mr. Margolis.

22 MR. MARGOLIS: Thank you, Your Honor.

23 **DIRECT EXAMINATION**

24 BY MR. MARGOLIS:

25 Q Good afternoon, Mr. Donelson.

1 A Good afternoon.

2 Q Tell us a little bit about your education and background.

3 A Sure. I started out in chemistry in college and graduated
4 with a BA degree with a major in chemistry. Went to University of
5 California for a year or so to study organic chemistry at the
6 graduate level and then switched horses in midstream and went
7 back to school, not in chemistry but pharmacology, which is
8 essentially the science of dropping a chemical into a living system
9 of some sort and finding out what happens; how the system with
10 the drug and how the drug affects the system.

11 So I earned a PhD in 1976. Spent a year at the University
12 of Michigan writing my thesis and doing research on the effects of
13 marijuana on the brain of rats.

14 Q If you could, tell us a little bit about your professional
15 experience in pharmacology.

16 A Well after completing my education, I joined the Highway
17 Safety Research Institute at the University of Michigan. Going from
18 an animal laboratory to a research organization that studied road
19 accidents. And the bridge was alcohol, other drugs, and road
20 accidents.

21 There was an increased interest in drugs, other than
22 alcohol and motor vehicle crashes at the time and the National
23 Highway Traffic Safety Administration released to us and gave to
24 us a series of contracts that led eventually to a report to Congress
25 on marijuana, other drugs, and highway safety. That was in 1980.

1 Q And what did you do following the highway safety studies
2 you were involved in?

3 A Well after that I joined the Traffic Injury Research
4 Foundation of Canada. I moved from the United States to Canada,
5 to Ottawa and continued my research. We then within a few years
6 pulled off the then largest study of alcohol and marijuana and
7 traffic fatalities in the province of Ontario. And I continued that
8 work through, oh, 1989.

9 One special project was studying every single fatal
10 accident in the province of British Columbia for two whole years to
11 determine just what percentage of those crashes, but for alcohol,
12 would not have happened.

13 Q Have you had occasion before based on your work in
14 pharmacology to be called as a witness in court?

15 A I have. I went from Canada to a company called Failure
16 Analysis Associates in Menlo Park, California. It was an
17 engineering scientific consulting company and I began work there,
18 not so much in pharmacology but in the study of how and why and
19 the risk of accidents; motor vehicle accidents in particular. And that
20 company's core business was litigation. So in that period of time I
21 was serving as an expert witness in court.

22 Now since retiring from Failure Analysis Associates, since
23 2005, the last 14/15 years I've been serving as an independent
24 consultant doing research and testifying, both in criminal and civil
25 cases investigation drugs, including alcohol.

1 Q So it's fair to say that you are pretty well experienced in
2 the capacity of discussing the effects of marijuana and alcohol and
3 other drugs on the human brain?

4 A Yes, sir.

5 Q Have you specifically studied the effects of alcohol, Xanax
6 and marijuana on the human brain and on cognitive functioning?

7 A I have not personally done those experiments. There are
8 a thousand plus drugs, there are a thousand plus experiments for
9 each one of them. Our work generally involves reviewing the
10 research done by others, published as peer review papers, building
11 on what is known, and applying principles of both pharmacology
12 and toxicology to the case. And the case may involve toxicology
13 results chemical testing or they may not. But we know enough
14 about the dosing and the effects of drugs to be able to speak from
15 first principles, given facts of a case.

16 Q And along those lines, do you have an approximate
17 number of times that you've been called on to testify about the
18 effects of alcohol and other drugs on the cognition and on the
19 ability -- on accidents?

20 A I have an estimate. I have given sworn testimony 200
21 times. I've had approximately 800 cases since I've retired. The vast
22 majority of which do involve drugs, and in particular the most
23 commonly found; benzodiazepines like Xanax, marijuana, alcohol,
24 not to mention methamphetamine.

25 Q So that was kind of my next question. Have you had

1 occasion to actually investigate the effects of Xanax or
2 benzodiazepines on human beings?

3 A Well I have not given the drug to human beings --

4 Q Right.

5 A -- and studied their response.

6 Q Right.

7 A However, there have literally been dozens, if not hundreds
8 of such studies, thousands for alcohol, very many hundreds for
9 marijuana. And out of that comes an understanding of the dose
10 and the response that can be expected, taking into account
11 personal characteristics, experience with the drug, possible
12 tolerance.

13 Q What are some of the commonly cited symptoms of
14 Xanax intoxication in these studies that you've been exposed to?

15 A Well the word intoxication is a little bit extreme --

16 Q Okay.

17 A -- because in the human studies done, the greatest
18 interest of clinicians and other investigators is what effects do
19 prescribed doses of these chemicals have on people. In other
20 words, is it safe for patients to drive given you've got a prescription
21 say for Xanax? And so the doses given to human subjects are
22 generally within the range of those prescribed.

23 For example, in studying just where the threshold of bad
24 effects from Xanax is, they give doses ranging say from half a
25 milligram to one milligram. And what has been found often in the

1 literature is that as soon as you get about one milligram of Xanax,
2 your ability to drive is determined to be impaired. People do not
3 think as quickly, they have less emotions, less concerns, which is
4 very consistent with a drug. It's an anti-anxiety drug. It's given to
5 people who have crowd fears, agoraphobia.

6 And so it's expected that it will reduce your cognitive
7 skills to the point where you stop worrying. So that's the nature of
8 the drug.

9 Q And in your experience and in your study, have -- would
10 you conclude that if a dose approaching one milligram could cause
11 some impairment that substantially higher doses would cause
12 substantially greater impairment?

13 A That is the rule of pharmacology. Dose makes the poison.
14 It may be quite a good drug, it may help a lot of people, but if you
15 take too much of it, it becomes poisonous and deleterious.

16 Q And have you also had occasion to review studies that
17 involved the ingestion of Xanax in combination with other
18 substances, let's say alcohol and/or marijuana?

19 A That trio has been also well studied. The initial concern
20 back in the 1980s, I can fairly tell you that it was alcohol plus
21 marijuana. That was the real concern. Since then though
22 benzodiazepines have basically been prescribed to so many people,
23 both Xanax plus marijuana, and Xanax plus alcohol have been
24 studied independently.

25 Q Does alcohol exacerbate the adverse effects, or the

1 impairment effects brought about by Xanax?

2 A Absolutely.

3 Q Does marijuana similarly exacerbate these effects?

4 A Not similarly, but it will definitely make the effects more
5 strong, therefore worse. And I can explain briefly, if it's
6 appropriate.

7 Q Please.

8 A Alcohol -- well let me back up one -- just one step. The
9 brain essentially functions with two controls; one is like the
10 accelerator on a car. If you increase the acceleration, your system
11 is going to work harder, faster, stronger. Now for the same car, if
12 you put on the brakes, your car is going to reduce its speed, lose its
13 function and you're not going to travel so quickly.

14 Alcohol basically puts the brakes on sequentially from
15 your upper brain, all the way down to your brain stem and can take
16 you from feeling a little bit buzzed to dead.

17 Now Xanax is a very, very selective drug that kind of does
18 the same thing as ethanol but not exactly. What it does is increase
19 your braking power. So if you have ethanol plus Xanax, you got a
20 double whammy, both of them slamming on the brakes to your
21 brain, which means you're not going to think as well, react as well,
22 make sensible decisions, et cetera. Because you're taking off layer
23 after layer of what makes you human.

24 Q Fair to say though substances in combination depress
25 central nervous system activity?

1 A Ethanol and Xanax are both CNS depressants. The
2 difference being that Xanax will not kill outright. In other words it
3 can't take you to general anesthesia, coma, and death. Alcohol
4 could do that. But Xanax is much more selective and will take you
5 basically to the point where you put yourself to sleep.

6 Q Turning now to this case, what, if anything, did you
7 review in preparation for your testimony here today?

8 A I reviewed the statements that were given or taken by -- or
9 interviews by detectives --

10 MR. PESCI: Judge, I apologize for the interruption. Can
11 we approach?

12 THE COURT: Yes.

13 [Bench conference transcribed as follows.]

14 MR. PESCI: He can't say that he reviewed Jaiden's
15 statement because that hasn't been introduced into evidence.

16 THE COURT: So where are we going because I know the
17 witness noticed by Ryan said he's going to talk about effects of
18 drugs on the human body, not specific to [indiscernible] or
19 anything like that. He's going to say the Defendant was under
20 intoxication and [indiscernible].

21 MR. HELMICK: I was using just for educational purposes,
22 that's all.

23 THE COURT: Okay.

24 MR. YAMPOLSKY: We did have him review the discovery,
25 so.

1 THE COURT: I know but you can't take him beyond what
2 he was noticed on. You didn't notice him on --

3 MR. YAMPOLSKY: Right.

4 THE COURT: -- but if he -- you can't start talking about
5 things like I reviewed a guy's statement and I'm going to express an
6 opinion about something.

7 MR. PESCI: Yeah, yeah, yeah.

8 THE COURT: You can't examine the guy about that.

9 MR. MARGOLIS: Okay.

10 MR. YAMPOLSKY: Okay.

11 THE COURT: So where were you trying to go?

12 MR. MARGOLIS: I'll change tacts.

13 THE COURT: Okay.

14 [End of bench conference.]

15 THE COURT: All right. Jason, you can continue.

16 MR. MARGOLIS: Thank you.

17 BY MR. MARGOLIS:

18 Q Just returning to the effects of Xanax in combination with
19 other substances on the brain. In your studies, in your work, have
20 you noticed any difference in these effects of these substances on
21 younger individuals; for instance teenagers versus grown adults?

22 A The best thing I can say as a quick answer to that is that
23 younger people, say adolescents, young adults, have experienced
24 and manifest more frequently the deleterious effects of alcohol and
25 other drugs, partly because of the effects of the drugs but also

1 partly based under immaturity, lack of experience, and in the
2 context of driving, their lack of driving experience.

3 So if you combine the characteristics of an adolescent
4 with the effects of these drugs, the effects of the drugs are much
5 greater than on say an older, more mature individual.

6 Q And that's in part because there's differences between a
7 teenage brain and a fully formed adult brain, isn't that right?

8 A Yes.

9 Q Okay. And I would imagine that if Xanax has deleterious
10 effects on critical thinking, reasoning ability, speech and the like,
11 those effects would be more pronounced with a younger individual
12 without a fully formed brain?

13 A Well the thing is that the adolescents tend to engage in
14 recreational drug use to a degree that many adults do not. And
15 they're taking doses that are heck of a lot higher than therapeutic
16 doses. So if you are a mature person taking the drug as prescribed
17 for anxiety or helping you go to sleep, you're not going to be
18 abusing the drug, you're taking your pill. Adolescents don't do it
19 that way, in general.

20 Q And what ways -- if you could, what are a couple ways in
21 which Xanax would manifest itself in an individual's behavior? You
22 said something about less care about consequences. You
23 mentioned that it's used to treat agoraphobia. How would a person
24 that had ingested Xanax appear to the uninitiated versus the --

25 THE COURT: Just to be clear, are you asking a

1 therapeutic taking of Xanax or an abusive amount?

2 MR. MARGOLIS: I would say maybe both. I think the
3 effects are shown even in a therapeutic dose, but I think they're
4 more pronounced when the drug is taken in an abusive manner.

5 BY MR. MARGOLIS:

6 A The dose is related to the response. In a therapeutic
7 dose -- and a therapeutic dose could be one milligram -- as high as
8 one milligram, perhaps even two milligrams, depending on the
9 severity of the condition, and depending on the extent to which a
10 patient has developed tolerance.

11 After a while drugs don't work as well because your body
12 gets used to them and therefore the doctor has to prescribe a
13 higher dose. But in the therapeutic range, you definitely find what
14 we would call anti-anxiety effects. People who have this feeling of
15 tension and worry all of the sudden are relieved of it.

16 Now that also relieves them of a certain degree of
17 sensitivity to their environment so they may not respond as well
18 say to a hazard or a threat. They're a little bit laid back, you know,
19 they're not as excitable. And therefore, they may not rise to the
20 occasion as quickly as needed.

21 Now as you increase the dose to two, to three, to four
22 times the therapeutic dose, you are now going to move into
23 essentially a range of effects that we're familiar with, with alcohol.
24 It's -- Xanax is a depressant. It's going to depress you, it's going to
25 reduce your psychomotor coordination, your ability to think clearly.

1 You could become appearing drunk. If nobody knew any different,
2 they'd think you'd been drinking.

3 Q So these individuals are going to be sluggish, they're
4 going to be ill-equipped to deal with changing circumstances and
5 then -- I mean, they're basically going to be lead-footed effectively,
6 right?

7 A Lead-footed and blind drunk.

8 Q Thank you, Doctor.

9 THE COURT: Mr. Pesci.

10 MR. PESCI: Yes, thank you.

11 **CROSS-EXAMINATION**

12 BY MR. PESCI:

13 Q Sir, if I heard you correctly, you have a PhD?

14 A I earned the PhD in pharmacology.

15 Q Okay. So you're not a medical doctor, you're a doctor by
16 way of your PhD?

17 A Yes --

18 Q Okay.

19 A That is so. Although I did take two years of medical
20 school in order to study pharmacology. That's the requirement.

21 Q Okay. But as you sit here today, you're not a medical
22 doctor?

23 A No, sir.

24 Q So you can't speak medically as to the effects on these
25 specific two individuals, as far as drugs on that.

1 A That's correct.

2 Q All right. And now speaking with the generalities because

3 as you just explained earlier you rely on other people's actual

4 firsthand tests, correct?

5 A Partly, yes.

6 Q And you review that body of information to apply, as you

7 said, general principles of pharmacology to those studies?

8 A Not exactly. If I could expand, I could explain.

9 Q No.

10 A Okay.

11 Q What I want to ask is this, you personally did nothing with

12 these two Defendants?

13 A That's correct. We already established that.

14 Q And then when you reviewed things in this case, did you

15 review any video?

16 A I looked at some of the videos, but I did not study them.

17 Q So you didn't watch the video of the Defendants walking

18 through the Galleria Mall?

19 A No.

20 Q You didn't watch the video of the Defendants purchasing

21 items from a store? A Foot Locker store?

22 A No.

23 Q You didn't watch the video of the three Defendants

24 walking out of the Galleria Mall?

25 A No.

1 Q All right. So you have no firsthand knowledge of their
2 actual gaits because just a moment ago Defense Counsel talked
3 about being, I think it was lead-footed. You don't have any
4 personal knowledge as to how these individuals were walking
5 literally after the events in this case?

6 A That's true.

7 Q Okay. Separate from videos, let's talk about some maps.
8 Did you review any maps in this case?

9 A No.

10 Q All right. Are you familiar -- you're from out of town,
11 right?

12 MR. HELMICK: Could we approach, Your Honor, please?

13 THE COURT: Yeah.

14 MR. HELMICK: Thank you.

15 [Bench conference transcribed as follows.]

16 THE COURT: So --

17 MR. HELMICK: I know this is not my --

18 THE COURT: -- your earlier objection I thought was that
19 he couldn't talk about things that he reviewed in the case because
20 that wasn't what he was noticed about.

21 MR. PESCI: My objection was as to statements. The last
22 word he said before my objection was, I reviewed the statements
23 and I approached and my objection he can't talk about what Jaiden
24 said because that's not in evidence.

25 THE COURT: Okay.

1 MR. PESCI: Now I'm asking about specific evidence --

2 THE COURT: All right. But just to be clear, when they go
3 back on redirect, you're not objecting then to him talking to the
4 specifics about the case, just not about the specifics of any
5 statement of the Defendant.

6 MR. PESCI: Correct.

7 THE COURT: Okay. All right. And I apologize, maybe I
8 should have clarified all that, but I had him noticed generally to talk
9 about things in general, not about anything specific to the case.

10 MR. HELMICK: Right.

11 THE COURT: [Indiscernible] go into specificity they can --
12 I understand about the statement. But in any event, okay?

13 MR. HELMICK: Can I say something?

14 THE COURT: Yeah.

15 MR. HELMICK: So -- because I know it's not my witness
16 but Giancarlo and -- you talked about Kody just now, so I had to
17 object. I mean, the reason that we noticed him was to talk about
18 the educate -- educate the jury in regards to what Xanax and
19 alcohol and marijuana does to the human body.

20 THE COURT: Right.

21 MR. HELMICK: That's it. I wasn't -- I was not -- if this was
22 my witness, I wasn't going to get into any of this other stuff.

23 THE COURT: Okay.

24 MR. HELMICK: And so I don't think that that's appropriate
25 because of the reason that we noticed him for. He -- Jason didn't

1 get into any of that stuff.

2 THE COURT: So what all are you wanting to get into?
3 Because what I hear a little bit is that if you use him beyond what
4 he was noticed for, particularly when a Defendant that didn't notice
5 him has called him and the Defendant that noticed him has decided
6 they don't want to call him and we start using case-specific stuff
7 with him, there's prejudice to the Defendant that decided I don't
8 want to call this guy at all.

9 MR. PESCI: So the State's position is as follows. Even if
10 Mr. Caruso had not been the one to call him --

11 THE COURT: Okay.

12 MR. PESCI: -- Mr. Harlan did --

13 THE COURT: Okay.

14 MR. PESCI: -- the State would still be able to go into the
15 specifics of the case because they're talking in generalities to lay it
16 over the case as if there's this effect in these defenses. I'm
17 countering with the evidence to say --

18 THE COURT: But --

19 MR. PESCI: -- this effect is not borne out by the evidence.

20 THE COURT: -- isn't that really argument though --

21 MR. PESCI: Well --

22 THE COURT: -- as opposed to -- I mean, the witness -- if
23 the witness is saying I'm not expressing any opinion on when
24 anybody did it in this case, then going into the specifics of the case
25 to say it's different than what you expect to see in people, I mean --

1 MR. PESCI: All right. I'll back off the specificity just in
2 case. I'll talk in generalities as far as pharmacology and say how it
3 can affect one person different than another.

4 THE COURT: Where are going with the maps?

5 MR. PESCI: To show that there were various ways to get
6 to locations and that they were able to think through this, even
7 though I have all this onboard, that they have the capacity to be
8 able to figure out how to get to a place.

9 THE COURT: And then what else did you want to do that
10 was specific?

11 MR. PESCI: That was it. It was the videos, the map, and
12 then I was going to talk about like, you know, some people get
13 affected by drugs differently than others.

14 THE COURT: All right. So let's move off the map issue
15 then. You can go into those other things; you're talking about how
16 the effects are different on other people.

17 MR. PESCI: Okay.

18 THE COURT: All right.

19 [End of bench conference.]

20 THE COURT: All right. Mr. Pesci.

21 MR. PESCI: Thank you.

22 BY MR. PESCI:

23 Q Sir, when you talked about the effects of these particular
24 drugs on an individual, you would agree with me that it could be
25 different from one person to the next?

1 A Not different qualitatively, but certainly different
2 quantitatively.

3 Q Okay. So let's say for example I don't drink and then I
4 take a shot of whiskey. Could the effects of that shot of whiskey be
5 more severe, as opposed to my brother who drinks all the time and
6 he takes that shot of whiskey?

7 A Well if you had a sensitive enough test, you could
8 probably detect a difference.

9 Q I mean, as far as they behave. How I behave versus my
10 brother. If I'm a non-drinker and I take a shot of whiskey, the effects
11 of that shot of whiskey versus my brother, who drinks and takes
12 that whiskey.

13 A Well if you're both engaged in the same behavior and
14 you're both sitting there watching a football game, you probably
15 couldn't distinguish them. But if you have a sensitive test that
16 could pick up the effects of alcohol after a few drinks, they could
17 probably say yeah, your brother's more affected than you.

18 Q Okay. So your testimony is, is that it affects us both the
19 same way?

20 A Well, you had only one drink. One drink may not do much
21 for you even if you are a teetotaler.

22 Q Oh.

23 A But if you have several whiskeys, even if you are a
24 drinker, you can be more affected.

25 Q Let's shift out of drinking and let's --

1 A Okay.

2 Q -- apply it to a different situation where you talked about
3 earlier; introducing a drug to a person's system to see the effects of
4 that drug, fair?

5 A Sure.

6 Q All right. So let's say there's a woman that goes to have a
7 baby, right, and has to have an epidural. Would you agree with me
8 that an epidural might affect one woman differently than another?

9 A Possibly.

10 Q Like one dose of an epidural on one woman could only
11 really numb the pain to the knees, whereas for another woman it
12 might go all the way up to her waist.

13 A It's possible.

14 Q So somebody could be affected by that one does
15 differently because they're different people.

16 A It is possible. But again, qualitatively the effects will be
17 there --

18 Q Sure.

19 A -- it's the matter of degree.

20 Q You're saying the effects are there but the degree or the
21 effects on one person is lesser or greater than another.

22 A For that, one has to appeal to other factors. For example,
23 experience, age, gender, how big you are. All these factors come
24 into play but if the dose is so high that it's so far above therapeutic
25 level, you can predict that a person even like yourself would be just

1 as affected as somebody who has taken the drug for a while.

2 Q All right. So with that analysis, let's say I'm going to have
3 a surgery and I'm going to be put under anesthesia. Don't
4 anesthesiologists have different anesthesia there in case my
5 reaction to this particular anesthesia is negative versus somebody
6 else's reaction?

7 A Well there's a whole workup to anesthesia with
8 preoperative anesthetics and -- that's a very complex subject. I --

9 Q Well would you agree with me --

10 A -- don't think it's simple --

11 Q -- that some people react differently to anesthesia than
12 others?

13 A Most of them are put out. Anesthetics work pretty
14 uniformly.

15 Q Okay. But what I'm saying is a negative reaction. Some
16 people can have a negative reaction to a particular anesthesia that
17 works on 75 other people but for this person, they have a negative
18 reaction. Maybe they go into anaphylactic shock.

19 A Very unlikely. It's possible, but it's not a good example.

20 Q Okay. Thank you.

21 MR. PESCI: Nothing further.

22 THE COURT: Mr. Helmick, any questions?

23 MR. HELMICK: No, Your Honor. Thank you.

24 THE COURT: Mr. Margolis, anything further?

25 MR. MARGOLIS: Just a couple.

1 **REDIRECT EXAMINATION**

2 BY MR. MARGOLIS:

3 Q Doctor, Mr. Pesci kept asking don't different substances
4 affect -- or the same substance, excuse me, might have a different
5 impact on Individual A versus Individual B, correct?

6 A Sure.

7 Q Now, would you agree that if the therapeutic dose of let's
8 say Xanax is one milligram, if Individuals A, B, C, all the way to Z,
9 took three, four, five, six times that dose, regardless of their
10 tolerance, there would be a deleterious impact on their cognitive
11 function, correct?

12 A That is correct.

13 Q Thank you.

14 THE COURT: Anything further?

15 MR. PESCI: No. Thank you.

16 THE COURT: Anything Ryan?

17 MR. HELMICK: No, Your Honor. Thank you.

18 THE COURT: Anything from our jurors?

19 Yes.

20 [Bench conference transcribed as follows.]

21 MR. YAMPOLSKY: Gee, what a surprise.

22 THE COURT: I think the first question is what he's just
23 testified to for the last half an hour. The second question though I
24 get.

25 MR. YAMPOLSKY: What does it say?

1 THE COURT: How long it will last. How long will the
2 effects last?

3 MR. PESCI: I'm not sure.

4 THE COURT: Well I'm sure he's going to say it's going to
5 vary.

6 Do you guys want me to ask the first question again?

7 MR. HELMICK: Sure.

8 THE COURT: Okay.

9 MR. YAMPOLSKY: Why not, we've got time.

10 THE COURT: Thank you.

11 [Mumbling between Counsel]

12 THE COURT: That's good.

13 MR. PESCI: No objection.

14 THE COURT: Okay.

15 [End of bench conference.]

16 THE COURT: Okay. Dr. Donelson, I have a couple of
17 questions for you if I could.

18 **EXAMINATION BY THE COURT [JURY QUESTIONS]**

19 BY THE COURT:

20 Q Could you just describe specifically what effects do
21 Xanax, marijuana, and alcohol have on human beings?

22 A In 25 words or less.

23 Q Yeah, 25 words or less. Thank you.

24 A Ethanol is a general CNS depressant. Therefore, the
25 effects of alcohol on the human body, particularly the brain is that

1 of reducing function to the point of dysfunction and possibly death.

2 Xanax is a CNS depressant but it's very selective and will
3 not take you to general anesthesia and will not kill you, at least in
4 terms of your heart failing, your breathing failing.

5 Marijuana is a completely different drug in the sense that
6 it's not a depressant, it's not a stimulant. There's a whole system of
7 nerves in the brain called the endocannabinoid system. That
8 endocannabinoid system seems much more dedicated to
9 integrating functions in the brain. In other words, it's not functional
10 per se, it helps coordinate functions.

11 One of the obvious effects of marijuana on the brain is
12 that people lose their short-term memory. They start talking about
13 something and the thought is gone. So it's an example of how
14 marijuana interrupts the integration in the brain.

15 Now if you had that interruption in the brain from the
16 integration to the depressant effects, you're going to get a whole lot
17 worse.

18 Q Okay. How long would the effects last on someone
19 abusing the drug, as in -- and there's a separate part of this says in
20 a 24-hour period. So why don't you speak to that, if you would,
21 please as to each of those individually and then how they're taken
22 in combination if that would affect them.

23 A Uh-huh. Let's start with the familiar one, alcohol. The
24 duration and the intensity of effects is strictly a function of how
25 much you drink. And you could knock yourself out for 24 hours if

1 you have a near poisonous amount of alcohol in you. So the dose
2 is the key.

3 For marijuana, generally speaking, the drug will last about
4 four to six hours, measurably. In other words, if you give people
5 marijuana in a laboratory and you have a bunch of sensitive tests,
6 you could pick up the effects of marijuana for maybe four to six
7 hours. After 24, the general consensus is you're not going to find
8 effects of marijuana. You may find THC in the blood and in the
9 urine but there's no effects of that drug then.

10 For Xanax, Xanax is one of the most powerful
11 benzodiazepines on the market. So in measuring certain of the old
12 benzodiazepines you may know as Valium or Librium, diazepam.
13 They were taken in tens of milligrams. Xanax is taken maximumly
14 without impairment, maybe one milligram dose, so it's more
15 powerful.

16 It is also a shorter-acting benzodiazepine, so it's useful
17 when people taking it at night, they don't wake up with hangovers.
18 So its effects will dissipate say in six to eight hours, depending on
19 dose. Now if you overdose on any drug you could have the effects
20 go for some time. But not necessarily obvious effects.

21 Q All right. The next question has two parts and the first
22 part of it I think you already answered in terms of where we classify
23 weed as either a stimulant or a depressant. But the question is
24 what is the weed in the mix of three drugs, a stimulant or
25 depressant, and how does it affect the outcome of symptoms?

1 A It's still neither a depressant or a stimulant. It is a drug
2 unto itself. The endocannabinoid nerves in the brain do not
3 increase or augment function like a methamphetamine would. And
4 it doesn't depress function like alcohol would or Xanax would.

5 When you add all three brain disruptors together, you're
6 going to get a very complex mix of dysfunction and it's not
7 necessarily predictable. It's not predictable because scientists and
8 investigators do not give people all three of those drugs and watch
9 what happens. It's just simply not done.

10 THE COURT: Thank you. Mr. Margolis, any further
11 questions?

12 MR. MARGOLIS: No, Your Honor.

13 THE COURT: Mr. Pesci?

14 MR. PESCI: No. Thank you.

15 THE COURT: Mr. Helmick?

16 MR. HELMICK: No, Your Honor. Thank you.

17 THE COURT: Dr. Donelson, thank you very much for your
18 time, sir, I appreciate it. You are excused.

19 Any further witnesses on behalf of Defendant Caruso?

20 MR. YAMPOLSKY: No, Your Honor. The Defense rests.

21 THE COURT: Thank you. Any rebuttal witnesses from the
22 State?

23 MR. HELMICK: No, Your Honor.

24 THE COURT: All right. Ladies and Gentlemen, that
25 completes the presentation of witnesses and evidence. We're

1 going to take a break before we get started with closing arguments
2 so I can finish up a couple things getting the jury instruction
3 packets for you.

4 So during the recess you're admonished not to talk or
5 converse among yourselves or with anyone else on any subject
6 connected with the trial. Or read or watch or listen to any report of
7 or commentary on the trial by any medium of information
8 including, without limitation, newspapers, television, the internet,
9 and radio. Or form or express any opinion on any subject
10 connected with the case until it's finally submitted to you. No legal
11 or factual research, investigation, or social media communication
12 on your own.

13 You're getting real close to never hearing me say that
14 again. So we'll be in break. Hopefully we'll get started in about 15
15 minutes with our arguments, okay?

16 THE MARSHAL: All rise for the jury.

17 [Outside the presence of the jury]

18 THE COURT: All right. You all can be seated.

19 So yes, I did get the information that you wanted to seek
20 larceny from the person as a lesser included.

21 MR. HELMICK: Yes, Your Honor.

22 THE COURT: The problem is I don't think it's a lesser
23 included.

24 MR. HELMICK: Well, you know, in reading that case that
25 Mr. Pesci provided us, an unpublished opinion I might say, but --

1 THE COURT: Correct.

2 MR. HELMICK: -- it seems that the Court in that case is
3 making a distinction in regard to talking about the penalties. That's
4 kind of what I -- they really focus a lot on the penalties.

5 THE COURT: Right.

6 MR. HELMICK: But when I look at robbery and I look at
7 larceny from a person, it seems as though that robbery consumes
8 larceny from a person, taking the property of another. The only
9 difference is by force or fear, or the threat of force or fear.

10 THE COURT: Right.

11 MR. HELMICK: And so I feel like -- I mean, it is kind of
12 consumed in there, but it seems like a lesser included offense to
13 me.

14 THE COURT: I think you have a logical approach to that.

15 Mr. Pesci? I think the case speaks to what I have to do,
16 but is there anything you want to add?

17 MR. PESCI: Yes, Judge, so I pointed out this case because
18 it's the very most recent --

19 THE COURT: Right.

20 MR. PESCI: -- addressing this by the Nevada Supreme
21 Court. Now it's unpublished but post-January of 2016, we're
22 allowed to utilize unpublished opinions --

23 THE COURT: Correct.

24 MR. PESCI: -- and it's the State Supreme Court. And they
25 go so far as to literally interpret the legislative import of the statutes

1 and to say that they're mutually exclusive.

2 THE COURT: Right.

3 MR. PESCI: The actual instruction or the statutes on it
4 says that it is not robbery so clearly it cannot be subsumed in it
5 because it's saying it's not robbery. That's why at first blush we
6 might think that it is but it's in actuality not and the State Supreme
7 Court just three months ago was -- told us directly on point.

8 THE COURT: Yeah, here's the reality. I think in the past I
9 may have very well given that as a lesser included, prior to the case
10 that Mr. Pesci's referring to and I remember when Hodges came out
11 because I think it was Hardesty, Stiglich, and Silver. And I was a
12 little surprised by some of the language to be honest.

13 I never read that statute where it says in circumstances
14 not amounting to robbery as excluding those two from each other,
15 but rather saying if it's force, right, then it's robbery. If there's no
16 force then it's larceny from the person but they're not exclusive
17 other than that. But I agree that that case stands for the proposition
18 that they are completely exclusive of each other.

19 That being the case, at best it's a lesser related and we
20 don't give instructions on lesser related offenses. You know, a lot
21 of times we get requests for that, maybe to instruct the jury about
22 trespass or petty larceny in a burglary case, things like that. You're
23 certainly free -- and I would also say this. The instructions are
24 pretty specific that we've settled in talking about when the intent to
25 commit a robbery has to occur. It can't be an afterthought kind of

1 robbery situation.

2 So I think that it's completely covered in that regard and
3 you're certainly free to argue that at best, folks maybe stole
4 something from the gentleman after he was deceased but that it
5 doesn't amount legally to robbery under the instructions they're
6 given. But I don't think it's appropriate to give any kind of
7 instructions on larceny from the person.

8 MR. HELMICK: Okay. In that regard then in closing
9 argument, if I'm saying that it doesn't amount to robbery because it
10 was taken after he was deceased, am I able to even mention --
11 because the jury mention -- because the jury might be thinking well
12 what does it equal because it's --

13 THE COURT: Right.

14 MR. HELMICK: -- some type of crime, right? Am I able to
15 mention the words that it's a different type of theft or --

16 THE COURT: Well, no -- I mean, you -- yeah, if you're
17 mentioning the words theft or --

18 MR. HELMICK: Larceny from --

19 THE COURT: -- larceny that somebody stole something
20 from an individual after they were deceased even though -- I mean,
21 it's not simply they took his property after he was deceased. That
22 can still be robbery if you form the intent for robbery prior to --

23 MR. HELMICK: Right.

24 THE COURT: -- the force or violence being used.

25 MR. HELMICK: Right.

1 THE COURT: But if it's just for instance the -- I've had
2 more than one case sadly where a homicide occurs and then
3 people are all going back to the residence to steal from the person
4 after --

5 MR. HELMICK: Right.

6 THE COURT: -- a homicide occurs because they found out
7 there was a homicide there. So that's grand larceny or petty
8 larceny, whatever it may be.

9 So if you're talking about theft in that kind of a concept
10 that this is all that occurred here because the facts of this case don't
11 show that a robbery occurred then your -- yes, you can --

12 MR. HELMICK: Okay.

13 THE COURT: -- make that argument.

14 MR. HELMICK: Okay.

15 THE COURT: It's just that we don't instruct them on those
16 lesser related offenses in terms of how they're defined because
17 they're not asked to render a verdict on them.

18 MR. HELMICK: Okay, good.

19 THE COURT: Okay.

20 MR. HELMICK: And I do have one more thing.

21 THE COURT: Sure.

22 MR. HELMICK: I brought a chart.

23 THE COURT: Okay.

24 MR. HELMICK: And I've used this -- in the case last
25 year --

1 THE COURT: Okay.

2 MR. HELMICK: -- [indiscernible] case. Your Honor let me
3 use it. And I used it also in Judge Adair's case in a murder trial last
4 year as well.

5 THE COURT: Okay.

6 MR. HELMICK: And it's this one right here. Do you
7 remember this one last year?

8 THE COURT: I believe so, yeah.

9 MR. HELMICK: Yeah. And so I want to use this in my
10 closing argument not to -- it's not to excl -- give a different
11 reasoning for guilt beyond a reasonable doubt. I'm not trying to do
12 that. The way that we analyzed it before was that we're reminding
13 the jury of what it isn't. It's not -- you can't say well he's possibly
14 guilty.

15 THE COURT: Understood.

16 MR. HELMICK: So that's what I'm using. It's a visual aid
17 as well.

18 THE COURT: Okay.

19 MR. HELMICK: So.

20 THE COURT: Mr. Pesci?

21 MR. PESCI: The State objects as quantifying reasonable
22 doubt. Reasonable doubt's the third rail, we're not supposed to
23 touch it, Your Honor. We're not supposed to go near it, other than
24 what's in the statute.

25 THE COURT: I agree. But there's a difference between

1 quantifying the definition of reasonable doubt and telling a juror
2 that this isn't a preponderance of the evidence, it's not clear and
3 convincing evidence, it's not hey I think somebody's guilty, et
4 cetera. It is beyond a reasonable doubt. That has to be the
5 standard of proof.

6 MR. PESCI: Correct. But this is quantifying it. It's
7 possibly guilty, probably guilty, guilty likely, guilty highly likely,
8 that's quantifying --

9 THE COURT: But you would agree that all of those things
10 are not reasonable -- beyond a reasonable doubt, right? That
11 you're just pointing out in writing as opposed to -- like --

12 MR. PESCI: I wouldn't agree with Your Honor,
13 respectfully --

14 THE COURT: Okay.

15 MR. PESCI: -- because that's where the slippery slope is.
16 That's if I get up and I start saying look, you feel it in your gut, right.
17 We've been told we can't do that, Judge. This is doing that. It's
18 akin to that. That's giving some sort of concept that it equals -- they
19 get to decide what's reasonable doubt. Not us.

20 THE COURT: Well look, sometimes we have to agree to
21 disagree.

22 MR. PESCI: Okay.

23 THE COURT: I don't think quantifying reasonable doubt is
24 the same as telling people that it isn't these certain things. The
25 definition of reasonable doubt, what constitutes reasonable doubt

1 can't be quantified in any fashion by people talking. But it is not
2 inappropriate for people to talk to a jury and say you can't find
3 somebody guilty just because you think they may be guilty or
4 because you suspect they may be guilty. You have to find it to the
5 standard that's defined in reasonable doubt.

6 And so I don't think -- and I get it. I think there was an
7 objection to it probably when we had it last summer in the case as
8 well, which --

9 MR. PESCI: The State --

10 THE COURT: -- look, resulted in a guy being convicted of
11 first-degree murder. So I know that jurors are capable of
12 understanding this.

13 MR. PESCI: I potentially -- I would ask that this be made a
14 court's exhibit because I'd like to utilize that potentially on appeal.

15 THE COURT: Yeah, I don't want to take your poster from
16 you --

17 MR. HELMICK: Sure.

18 THE COURT: -- but do you have it as a pdf like before it
19 was printed out?

20 MR. HELMICK: I think I do at the office.

21 THE COURT: Okay. Well I don't want --

22 MR. HELMICK: If not -- I mean, if I --

23 THE COURT: If not I need to make that as an exhibit
24 because I don't --

25 MR. HELMICK: That's fine.

1 THE COURT: -- think that's inappropriate.
2 MR. HELMICK: Yeah, that's fine.
3 THE COURT: But we have a pdf we can use it and I'll just
4 say for the record that it's approximately a three by four-foot poster
5 and we'll get a pdf of what's actually depicted --
6 MR. HELMICK: Sure.
7 THE COURT: -- upon there so there can be a court exhibit
8 for any --
9 MR. PESCI: Thank you.
10 THE COURT: For the purposes of --
11 MR. YAMPOLSKY: Take a picture and text it to him.
12 THE COURT: -- any record on appeal.
13 MR. HELMICK: Okay. Thank you.
14 MR. PESCI: We just need it --
15 THE COURT: No, no, I don't want to text it.
16 MR. PESCI: We need it in a format that it can go with the
17 file.
18 MR. YAMPOLSKY: Yeah. Got it, Your Honor.
19 THE COURT: My phone doesn't go in the file, Mace.
20 Thank you, though.
21 MR. YAMPOLSKY: You can e-mail it.
22 THE COURT: All right. Anything further before we get
23 started?
24 MR. PESCI: No, not from the State. Thank you.
25 MR. HELMICK: No, Your Honor.

1 THE COURT: Okay.

2 MR. YAMPOLSKY: No, Your Honor.

3 THE COURT: Then did you guys each get a copy of the
4 instructions? Did Sarah give you them this morning? We printed
5 out copies for everybody.

6 MR. PESCI: No.

7 MR. YAMPOLSKY: I did not get one.

8 THE CLERK: Greg has them.

9 MR. YAMPOLSKY: Ah-hah.

10 THE COURT: So after I finished correcting everything and
11 numbering them all and organizing them last night, I did e-mail
12 them out to everybody by Word and --

13 MR. YAMPOLSKY: We got that.

14 THE COURT: -- made sure that I pointed out the two that
15 had a couple of corrections and invited you all to respond if there
16 was anything. I didn't hear any response or concern about any of
17 those.

18 MR. PESCI: Not from the State.

19 THE COURT: Right?

20 MR. HELMICK: What was that? I'm sorry I was --

21 THE COURT: No, I was just saying the e-mail that I sent
22 last night with all the instructions, I didn't get any response, so I
23 didn't think there --

24 MR. HELMICK: Everything's good.

25 THE COURT: -- was any issue.

1 Okay. Mace, and you all had no issue as well?
2 MR. YAMPOLSKY: No, I got them.
3 THE COURT: Okay.
4 MR. MARGOLIS: No, we're good.
5 THE COURT: But there was no issue with the e-mail that I
6 sent out? Everything looked good?
7 MR. YAMPOLSKY: No, everything looked fine.
8 THE COURT: Okay. Thank you. All right.
9 MR. YAMPOLSKY: I actually got it. I -- for whatever
10 reason --
11 THE COURT: I'm very happy that you got it.
12 MR. YAMPOLSKY: -- I did not get Mr. Pesci's e-mails,
13 even though I know he sent it.
14 THE COURT: Thank you.
15 All right. You guys want to take a minute and make sure
16 your stuff's all hooked up you're working with the equipment? And
17 then we'll get started. Like five minutes.
18 [Court recessed at 12:56 p.m., until 1:08 p.m.]
19 [In the presence of the jury]
20 THE MARSHAL: All rise for the jury.
21 THE COURT: You all can be seated. Thank you.
22 Okay. We will be back on the record. Mr. Harlan, Mr.
23 Caruso are present with their attorneys, States' attorney, all of our
24 jurors are present.
25 Ladies and Gentlemen, did each of you have in chairs a

1 packet of the jury instructions, yes? Okay.

2 So as we talked about many moons ago when we started
3 jury selection, I told you there'd come a point in time in the case
4 where I was going to read you or give to you the law that applies in
5 the case. I have to by law read the instructions to you, kind of to
6 make sure that you've actually gone through them.

7 But I gave you your own packet so that you can read
8 along while I'm reading them to you. I think it's a lot more
9 comfortable to go through it that way for you and I think it makes it
10 easier for you to kind of start digesting what the law is and be able
11 to think about it a little bit.

12 I will tell you that you will get to take that packet with you
13 when you go back to deliberate, your individual packet. So if you
14 want to write any notes while I'm reading them to you, feel free to
15 do so. Write any notes on them while the attorneys are arguing,
16 feel free to do so. You might write your name or initials on the
17 front of your packet just -- as you know back in the deliberation
18 room you just have that one big table; so your packet doesn't get
19 mixed up with anybody else's.

20 But I will try and read through these as quick as I can so
21 that we can get you on to the arguments.

22 [The Court read the Instructions to the Jury]

23 THE COURT: Each of you should have attached to your
24 jury packet a copy of the verdict form as well that lists the three
25 charges. I'm sure the attorneys may talk about that with you during

1 their closing arguments, but I will simply point out to you it's pretty
2 self-explanatory and you only check one box under each of the
3 three charged offenses for each of the Defendants. There's a
4 verdict form for each of the Defendants.

5 All right. Thank you very much for your patience. Before
6 we get started with argument, as to our audience, everybody has
7 been incredibly appropriate during the course of our trial and
8 respectful and I greatly appreciate that. Closing arguments are a
9 really critical time and I would like the attorneys and the jurors to
10 be able to focus on what's being stated and shown so please, try
11 and limit yourselves from leaving the courtroom. And if you do
12 leave the courtroom, I don't want people coming and going during
13 the argument.

14 So if you need to leave for any reason you need to wait
15 outside until we take a recess and then we'll let people back in.

16 You got that, Greg?

17 THE MARSHAL: Say that again, Judge.

18 THE COURT: I'm saying if anybody needs to leave, I don't
19 want people coming and going back and forth. So if they need to
20 leave, they need to wait outside until we get to the next recess,
21 okay?

22 THE MARSHAL: Okay, Judge.

23 THE COURT: All right. On behalf of the State, Ms.
24 Overly?

25 ...

1 **CLOSING ARGUMENT BY THE STATE**

2 BY MS. OVERLY:

3 Ladies and Gentlemen, approximately a week ago I stood
4 before you and I explained why we're here. And I explained that it
5 is because on June 8th of 2018, Matthew Minkler was murdered.
6 And the people responsible for that are the Defendants Jaiden
7 Caruso and Kody Harlan.

8 So now I stand before you to explain what that really
9 means. And that means that the State must do two things; that -- to
10 prove that a crime was committed and that the Defendants are the
11 individuals responsible for committing that crime.

12 We already know that the Defendants are responsible.
13 This isn't a whodunnit. We already know that Jaiden Caruso
14 possessed the firearm that shot and killed Matt Minkler on June 8th.
15 We know that Kody Harlan was with him in that house and
16 proceeded to clean up the scene and go with him about town after
17 that murder.

18 So what we're really here to establish is what crimes were
19 committed. The Defendants in this case are both charged with
20 murder with use of a deadly weapon and robbery with use of a
21 deadly weapon. Additionally, Defendant Kody Harlan is charged
22 with accessory to murder with use of a deadly weapon.

23 And you're instructed on what accessory to murder with
24 use of a deadly weapon is; essentially that every person who after
25 the commission of a felony destroys or conceals or aids in the

1 destruction or concealment of material evidence, or harbors or
2 conceals such offender with the intent that the offender may avoid
3 or escape from arrest, trial, conviction or punishment, having
4 knowledge that such offender has committed a felony or who is
5 liable to arrest is an accessory to that felony.

6 And we already know that Kody Harlan is an accessory to
7 murder with use of a deadly weapon. We know that by his own
8 admission. He tells police, he tells Detective Nichols that he in fact
9 helped assist in cleaning of the scene. In fact, he even indicated
10 that it was his idea where to move Matt Minkler in the house. We
11 know that this information is corroborated by Traceo Meadows,
12 who testified and indicated that he saw Kody Harlan participate in
13 cleaning up the house.

14 So the next thing to establish is whether or not a deadly
15 weapon was used. You'll notice that in all of the charges here,
16 deadly weapon is added to the charge. So what is a deadly
17 weapon? You'll be instructed on the actual jury instruction on what
18 a deadly weapon is, but you're also instructed that a firearm is in
19 fact a deadly weapon. And what do we know here? That a firearm
20 was used.

21 We know that there were actually two firearms that keep
22 coming up throughout this trial but specifically in regards to the
23 one that killed Matt Minkler was this .357 revolver possessed by
24 Jaiden Caruso. We know that that occurred because we've seen
25 photos of it, we've seen videos of it, we've heard from the coroner

1 in this case that Matt Minkler suffered a gunshot wound to the
2 head. We've heard from a firearms examiner that this gun was
3 operational and working. So we already know that a deadly
4 weapon was used.

5 So let's go to Count 1, Murder with Use of a Deadly
6 Weapon. As the Judge previously instructed you, the charge may
7 include various degrees of murder; murder of the first-degree,
8 murder of the second-degree, and that of manslaughter. So in
9 order to establish what this is, let's first talk about what it isn't.

10 Manslaughter, the unlawful killing of a human being
11 without malice, express or implied, and without any mixture of
12 deliberation. It can include voluntary and involuntary.

13 Specifically, involuntary is the killing of a human being
14 without any intent to do so. In the commission of an unlawful act
15 or a lawful act which probably might produce such a consequence
16 in a unlawful manner where the involuntary killing occurs in the
17 commission of an unlawful act, which in its consequences naturally
18 tends to destroy the life of a human being or is committed in the
19 prosecution of felonious intent, the offense is murder.

20 So with regards to involuntary manslaughter, you'll also
21 be instructed that this does not include the conscious use of a
22 deadly weapon. You cannot commit involuntary manslaughter and
23 simultaneously consciously use a deadly weapon. And what do we
24 know about the evidence here? That Jaiden Caruso pointed the
25 firearm at Matt Minkler's head and pulled the trigger. That's a

1 conscious use of a deadly weapon. So involuntary manslaughter
2 does not apply in this case.

3 That's evidenced by the coroner photos that we saw in
4 this case. Again, let's talk about what this isn't. Voluntary
5 manslaughter, which is defined as a killing upon a sudden heat of
6 passion, caused by a provocation apparently sufficient to make the
7 passion irresistible. The provocation must either consist of a
8 serious and highly provoking injury inflicted upon the person
9 killing, sufficient to excite an irresistible passion in a reasonable
10 person.

11 And what do we know about the facts of this case? We've
12 heard testimony from the various witnesses that came in here, from
13 Charles, Alaric, we've heard from Ghunnar, Kymani. We heard that
14 prior to the Defendant, Jaiden Caruso, standing up, walking over to
15 that kitchen, he was sitting on this very loveseat. We've seen him
16 in videos sitting there.

17 We also hear from witnesses that there was no quarrel
18 beforehand, there was no argument, there was no fist fight, there
19 was no yelling. But the Defendant calmly stood up, walked over to
20 where Matt Minkler was standing in the kitchen, picked up that
21 firearm, pointed at Matt Minkler, and fired. There was no heat of
22 passion, there was no provocation here.

23 So when you get your verdict form in the jury room, it's
24 clear that any option that lacks a deadly weapon and that involves
25 any form of manslaughter does not apply in this case. And why is

1 that? Because let's talk about what this actually is. And this is first-
2 degree murder, Ladies and Gentlemen. There's no ifs, ands, or buts
3 about it.

4 Murder's the unlawful killing of a human with malice
5 aforethought, either express or implied. Malice aforethought is the
6 intentional doing of a wrongful act, which would be the killing,
7 without legal cause or excuse or what the law calls adequate
8 provocation, which is what we just talked about involuntary
9 manslaughter.

10 Malice aforethought can arise in various ways. It can arise
11 from anger, hatred, revenge, ill will, spite, grudge, any unjustifiable
12 or unlawful motive or purpose to injure another. It denotes an
13 unlawful purpose or design, as opposed to an accident or a
14 mischance.

15 Now there are two ways that you can reach the conclusion
16 of first-degree murder. The first is willful, deliberate, and
17 premeditated killing. The second is otherwise known as felony
18 murder, which is a murder committed in the perpetration or the
19 attempted perpetration of a robbery.

20 So let's first talk about the willful and deliberate and
21 premeditated killing, which is also a specific intent crime. It's a
22 specific intent crime because there needs to be an establishment of
23 intent behind the killing. So let's talk about what willful is. Willful
24 is pretty straightforward. It's an intent to kill. How do we know that
25 there was an intent to kill in this case? Again, we heard evidence.

1 Jaiden Caruso walked over to Matt Minkler, pointed a loaded
2 firearm at his face and pulled the trigger.

3 Deliberation is the process of determining upon a course
4 of action to kill as a result of thought, including weighing the
5 reasons for and against the action and considering the
6 consequences of the action. A deliberate determination may be
7 arrived in a short period of time. This isn't a situation where
8 somebody needs to think about it for days, for hours, or even
9 minutes. We know that Jaiden Caruso on June 8th, 2018, knew that
10 this firearm was operational, that it was loaded. In fact, he was the
11 one that would load it.

12 And we know that that was actually the case because
13 when he fired that shot at Matt Minkler, it went off.

14 And what do we know about premeditation? It's a design,
15 a determination to kill distinctly formed in the mind by the time of
16 the killing. It need not be for a day, an hour, or even a minute. It
17 can be as instantaneous as successive thoughts of the mind.

18 Oftentimes an example of that would be you're driving
19 down the road and the light turns yellow and it's about to turn red.
20 And in the moment that you decide whether or not you're going to
21 rush through that yellow light or you're going to stop for that red
22 one, that can be as instantaneous as successive thoughts of the
23 mind. So if the formulation to kill and an intent to kill was derived
24 within that instantaneous successive thoughts of mind, it's
25 premeditated.

1 [Video playing]

2 BY MS. OVERLY:

3 And we know, like I said before, that Jaiden Caruso was
4 operating that gun all day. Taking the bullets in, putting the bullets
5 out, firing it. At one point he even shot it into the ceiling. And we
6 heard evidence from other witnesses that Matt Minkler in fact was
7 somewhat stunned by this and he even said to him at some point
8 man, you almost shot me. You're lucky you're my friend.

9 And how do we know that that actually happened?
10 Because Matt Minkler then posted simultaneously of that video, this
11 photo: Lucky I fw with him.

12 And I'd submit to you that Matt Minkler in this post is
13 referring to Jaiden Caruso. And the State's not required to
14 establish motive in this case, but I would submit to you that if there
15 was going to be one, it was right here.

16 And you've -- you're going to be instructed and you've
17 heard a lot of evidence on this idea of voluntary intoxication. But
18 it's important to note that when you're discussing voluntary
19 intoxication, it may be a defense to a specific intent crime, which in
20 this case would be willful, premeditated and deliberate murder.

21 The person's intoxication can be taken into consideration
22 when you're thinking about the person's motive and intent. It
23 doesn't negate the crime, but you can consider it.

24 So with regards to the state of mind and the intent, the
25 State is not required to present direct evidence of a Defendant's

1 state of mind as it existed during the commission of the crime.
2 Meaning the State does not have to prove that Jaiden Caruso stood
3 up and said I'm going to kill you Matt Minkler; that we can
4 determine that based off of the circumstances.

5 You can infer the existence of a state of mind of a party or
6 a witness from the circumstances disclosed by the evidence. And
7 as I indicated, the State's not required to establish that Jaiden
8 Caruso stood up and said he's going to shoot Matt Minkler and kill
9 him, but we did in fact hear from Ghunnar when he testified that
10 Jaiden Caruso was talking before Matt Minkler even got there that
11 day saying he wanted to kill somebody.

12 And we know with this regard to voluntary intoxication,
13 that despite consuming alcohol, marijuana, and Xanax, which
14 you've heard a lot about, that Jaiden Caruso that day was capable
15 of rising from that loveseat, he was capable of grabbing that gun,
16 he was capable of pointing a loaded gun at Matt Minkler's face, he
17 was capable of shooting Matt Minkler.

18 He was then capable of filming and uploading videos of a
19 deceased Matt Minkler on the ground. He was then capable of
20 cleaning up that scene consciously. And then he was also capable
21 of texting and calling his friends hours later, bragging about
22 catching a body. We know that he was capable of going to the mall
23 and shopping. And we know that he was even capable of going to
24 a party afterwards.

25 So this concept of consuming alcohol, weed, and Xanax

1 didn't prevent him from doing all of these things after shooting
2 Matt Minkler in the face.

3 So Ladies and Gentlemen, this is straightforward. This is
4 murder of the first degree. But there's also another means by
5 which you can find the Defendant is guilty of first-degree murder. If
6 you don't find that it's willful, premeditate, and deliberate, he can
7 be found guilty of first-degree murder by means of the felony
8 murder rule. And that is that a killing is committed in the
9 perpetration or attempted perpetration of a robbery. And that is
10 first-degree murder, whether that killing was intentional or
11 unintentional or accidental.

12 The intent to commit the robbery has to have arisen
13 before during the conduct resulting in the death. However, in
14 determining whether the Defendant had the requisite intent to
15 commit that robbery before or during the killing, you can infer that
16 intent from the Defendant's actions during and immediately
17 thereafter of the killing.

18 You're also instructed on these various theories of
19 liability; the first being that the individual directly committed the
20 crime. Directly committed a robbery. Directly shot Matt Minkler.
21 Or that they aided and abetted in the commission of that crime. Or
22 that it was done pursuant to a conspiracy to commit the crime.

23 Aiding and abetting is when a person commits -- if he
24 knowingly and with a criminal intent aids, promotes, encourages, or
25 instigates by act or advice. Or by act and advice the commission of

1 such crime with the intention that the crime be committed.

2 Conspiracy is simply an agreement or mutual
3 understanding between two or more persons to commit a crime. A
4 Defendant must intend to commit or aid in the commission of the
5 specific crime agreed to and the formation and existence of that
6 conspiracy can be inferred from all the circumstances tending to
7 show the common intent and can be proved by direct or
8 circumstantial evidence.

9 And what's important to note about this is that there may
10 not be an agreement on the theory. So what does that mean? That
11 means that your verdict must be unanimous as to the charge,
12 meaning it must be unanimous as to first-degree murder. It must
13 be unanimous as to robbery with use of a deadly weapon.

14 But what that does not mean is that you need to come to
15 an agreement on the theory of it. Meaning that if some of you
16 because that Jaiden Caruso committed the crime of first-degree
17 murder by means of willful, deliberate, premeditated murder and
18 another portion agree that he committed first-degree murder but
19 pursuant to the felony murder rule, then it's first-degree murder.

20 If half of you believe that a robbery was committed
21 because he directly did it or half of you believe that he merely aided
22 and abetted in it, regardless the crime is robbery.

23 And you'll get the robbery instruction for you and it's the
24 unlawful taking of personal property of another in the person's
25 presence, by means of force or violence or fear of injury. And that

1 it must be used to obtain or retain possession of the property to
2 prevent or overcome the resistance and to facilitate escape with the
3 property.

4 And again, in determining whether the Defendants have
5 the requisite intent to commit robbery before or during the killing,
6 that can be inferred from the intent by the Defendant's actions
7 during and after the killing.

8 Now with regards to voluntary intoxication, we talked
9 about how voluntary intoxication can be considered when you're
10 looking at a specific intent crime. Meaning you're looking at a
11 crime of willful, deliberate, and premeditated murder because there
12 needs to exist an intent to kill.

13 But it's important to note that when we're talking about
14 voluntary intoxication, it does not apply to general intent crimes.
15 And general intent crimes consist of robbery and first-degree felony
16 murder committed through the perpetration or attempted
17 perpetration of robbery.

18 So what that means is if you believe the Defendants
19 intended to rob Matt Minkler and his death resulted in furtherance
20 of that robbery, no level of intoxication is a defense to that. It's
21 first-degree murder.

22 So we know that Jaiden Caruso is responsible and liable
23 for first-degree murder, either through the premediated, deliberate,
24 and willful or by means of felony murder. Meaning that he had an
25 intent to rob Matt Minkler that day and his death resulted in

1 furtherance of that.

2 So how is Kody Harlan liable for murder? Same way.
3 Under the theory of felony murder.

4 [Video playing]

5 BY MS. OVERLY:

6 And how do we know about the evidence of the robbery
7 here? We know that Matt Minkler posted that video to his Snapchat
8 on June 7th. That would have been a day before his murder.

9 We know that we've heard a lot about Snapchat in this
10 case. That's the way of life. That's the way they're communicating,
11 that's the way they're keeping tabs on each other. And that's
12 exactly what was posted to Matt Minkler's Snapchat the day before.
13 A whole lot of cash that looked very similar to the cash that we see
14 Kody Harlan in a video later.

15 What else do we know about evidence of this idea and
16 conspiracy to commit robbery by both Jaiden and Kody? We know
17 that from the witnesses' testimony that on June 8th, the Defendants
18 are the only two people in that house with guns. You don't hear
19 evidence about Alaric having a gun, you don't hear evidence that
20 Charles has a gun, you don't hear evidence that Kymani does, that
21 Ghunnar, that Traceo does.

22 We hear from Kymani that both Jaiden and Kody
23 mentioned wanting to rob someone and wanting to do a lick. We
24 hear from Kymani that they kept talking about it. That Matt's name
25 was brought up in this idea of committing a robbery or getting

1 more weed.

2 We also know that Ghunnar testified that he didn't hear
3 Kody talking about it, but he heard Jaiden talking about it; that
4 Jaiden wanted to commit a robbery, do a lick, and he wanted to kill
5 someone. And we know that Ghunnar indicated that Kody was
6 sitting right there on the couch as this conversation is happening.

7 We also know that Ghunnar told us that within 20 minutes
8 of that conversation is happening, the Defendants leave, Kody
9 driving and they go and they pick up Matt Minkler and they bring
10 him back to the house. You didn't hear any other evidence about
11 the Defendants picking up anybody else. There were several
12 people that came and went from that house that day. They all
13 found their own ride. Matt Minkler didn't.

14 We also know that Ghunnar and Kymani that their
15 testimony's corroborated by the phone logs that we see. Kymani
16 indicated and Ghunnar indicated that after they fled the house that
17 day, after that shot to the ceiling that the Defendant was calling
18 them, come back, come back, come back and smoke weed with us.
19 And this I corroborated when you look at the phone records.

20 We also heard from Charles that he fled after the killing.
21 That's corroborated because you see here that the Defendant
22 attempted to call Charles after.

23 We know that the Defendants went, picked up Matt
24 Minkler, drove back. And we know that at 6/8 of 2018, at 12:32 there
25 is a text message -- SMS message from Matt Minkler to Jaiden

1 Caruso where he says I got you on some when you get here.

2 And we know that Jaiden Caruso had all these contacts in
3 his phone. He had Ghunnar in his phone, he had Nate in his phone,
4 he had all these people, but he certainly didn't have Matt as a
5 contact in his phone. And we see here that like the -- Detective
6 Spangler indicated when he testified that Jaiden Caruso had to be
7 the one to text Matt because Matt had a Samsung and Kody was
8 only equipped with doing iMessages.

9 So this contact was between Jaiden Caruso and Matt
10 Minkler. And we know that at 12:32, Matt Minkler was waiting to
11 get picked up.

12 [Video playing]

13 BY MS. OVERLY:

14 We know that this video was created at 12:59. Matt sent
15 that text to Jaiden Caruso at 12:32 and waited to be picked up. This
16 video is created at 12:59, approximately 30 minutes after that. We
17 know that Matt's not in this video, which makes sense because
18 Matt's waiting at home, waiting to get picked up.

19 We know that there's clearly bullets in the gun, we see
20 that in the video. We see Jaiden Caruso's beginning of what
21 appears to be this obsession with carrying this gun and pointing it
22 at people.

23 We know that Kymani testified that he had a bad vibe
24 from the second he showed up at that house. And we know that
25 Ghunnar said when he was over there that there was something

1 about the situation that made him uneasy. Like he felt like he was
2 invited there to be killed.

3 [Video playing]

4 BY MS. OVERLY:

5 We know that that video, now Matt's at the house. We
6 know that both Defendants still have guns. We know Kody's awake
7 on the couch. In fact, he's waving around that gun and pointing it
8 at Matt Minkler.

9 We know that at this point Jaiden shot into the ceiling.
10 And we know that the only two people to have fled the house that
11 day after the shot to the ceiling were the same two people that had
12 an uneasy feeling and the same two people that heard a
13 conversation about a lick.

14 We also know that Kymani even came back -- he testified
15 that he came back and he retrieved that lighter. When asked why
16 he did that, he said he didn't even want to leave a trace of him
17 being at that house.

18 He anticipated something was going to go down. This
19 wasn't just a vibe anymore, it was corroborated because shortly
20 thereafter, Matt Minkler was killed.

21 And what do we know at the time that this happened? We
22 heard some evidence that Kody Harlan was asleep on the couch or
23 falling asleep on the couch, that he had taken some Xanax and, you
24 know, was, you know, kind of out of it. But Ladies and Gentlemen,
25 that doesn't matter because if you believe that Jaiden Caruso and

1 Kody Harlan had agreed to rob Matt Minkler, then anything done by
2 Jaiden Caruso in furtherance of that is felony murder. And Kody
3 Harlan is liable for felony murder.

4 You'll be instructed on the concept of a conspiracy which
5 means each member of a criminal conspiracy is liable for each act
6 of every member of the conspiracy, even though the acts may have
7 occurred in the absence and without the knowledge of that
8 Defendant, provided they were knowingly made and done during
9 the continuance of such conspiracy and in furtherance of some
10 object or purpose of the conspiracy.

11 And I'd submit to you that when Jaiden Caruso and Kody
12 Harlan went to go pick up Matt Minkler in that car that day and
13 bring him back to the house that this agreement was already
14 established, they were moving forward with it, that they were both
15 well aware that they had firearms on them that were loaded, and
16 that any act done by either or after that in furtherance of that
17 conspiracy makes the other liable for it. And that's the concept
18 behind felony murder.

19 So what acts in furtherance? So like I said even if Kody
20 was asleep when Matt Minkler was shot by Jaiden Caruso, even if
21 he was unaware, if it's in furtherance of the robbery, he's liable for
22 first-degree murder.

23 And how do we know the killing of Matt was in
24 furtherance of that robbery? Well like we said, we can infer the
25 intent to commit the robbery from the actions during and after the

1 killing? And what do we know about the killing of Matt Minkler and
2 what the Defendants did immediately thereafter? We know that the
3 video Jaiden Caruso filmed of I caught a body was filmed at 2:44.
4 We know that Matt Minkler was still waiting to get picked up around
5 12:30 or so. So by 2:44 Matt Minkler's dead.

6 We know that at this point in time, after Jaiden Caruso
7 shot Matt Minkler, Charles fled, Alaric fled, Kymani and Ghunnar
8 were already gone. Who doesn't flee? He just woke up off the
9 couch, he's out of it, he's just taken, you know, all this Xanax and
10 he wakes up and his buddy's dead on the ground. He doesn't flee.
11 He doesn't follow suit like Charles, like Alaric. Doesn't call police.
12 Doesn't render aid. Doesn't drive back to Matt Minkler's house,
13 same place he had just picked him up from.

14 And we see in this video that Matt is on his side and his
15 pant pockets are tucked in. And who's standing by him?

16 [Video playing]

17 BY MS. OVERLY:

18 And if you slow down that video, you'll see that that was
19 Kody Harlan standing right there. Not bent down trying to render
20 aid to his friend, not rushing to call anyone, not fleeing out of panic.
21 Standing there while Jaiden Caruso films and documents this.

22 We know that this second video, which was sent as
23 attachment was at 2:50 p.m. We know that now in this video Matt's
24 body's been moved. We know that at this point in time Traceo
25 Meadows has arrived at the house, he's come upon this, we hear

1 from Traceo that Matt, again, doesn't render aid to his friend,
2 doesn't call police. His next step is to remove his shoes, check his
3 pockets, pull out his wallet, pull out his phone.

4 [Video playing]

5 BY MS. OVERLY:

6 No effort to wipe any blood off Matt Minkler because it
7 was more important for Jaiden Caruso to wipe the blood off of his
8 shoes.

9 We also know that Kody Harlan and Jaiden Caruso
10 cleaned up the scene. We know that based off of Kody Harlan's
11 own statements and we know that based off of Traceo Meadows
12 testifying. We also know that because it's corroborated by the
13 photographic evidence in this case. And again, we see that Matt
14 Minkler's pockets have been turned out.

15 We heard from Detective Spangler that Matt Minkler's
16 phone, which was recovered from on top of that tarp that Kody
17 Harlan tossed over his dead body that that phone wasn't just spray
18 painted. That phone, the charger was irreparable. We heard that
19 he had to replace the digitizer. It had been burned. It had been
20 water damaged. It had been cracked. There were several attempts
21 to destroy that phone.

22 We know that efforts were made to clean up the blood.
23 Traceo Meadows testified that Jaiden Caruso took this nozzle here
24 from the kitchen and sprayed the floor with water. We know that
25 there were Clorox wipes that were out and open. We know that

1 Matt Minkler originally was shot in that kitchen and that it was Kody
2 Harlan's idea to then move him, his buddy, to this hallway closet
3 here.

4 We know that he was then tossed into this hallway closet,
5 a tarp was thrown over him, his phone had been damaged, was
6 tossed on top. And we can see here, again, that his pockets had
7 been turned out.

8 And what do we know about Kody Harlan's statement to
9 police. He said Matt was friend, this was his homie. He wouldn't
10 want to just leave him there. He tried to help him. He didn't know
11 he was dead. He never had a gun. Repeatedly said he never had a
12 gun. And he doesn't really know how Matt got there, he must have
13 just popped up. And he also said that he was never driving that
14 Mercedes.

15 And what do we know is in direct contrast of all of this?
16 That this is exactly how Kody Harlan left his homie, his friend, the
17 one he tried to help, the one he didn't know was dead. And this is
18 how he left his homie, his friend for dead inside of a closet while he
19 proceeded with Jaiden Caruso to drive around town and shop, and
20 socialize, and hang out.

21 Because we know that shortly after this, they drive to the
22 Galleria Mall. Not to a police station, not to Matt's house, not to a
23 hospital; nowhere but the Galleria Mall. We see them with Traceo
24 Meadows walking throughout the food court. And you'll see that
25 this timestamp of this video is at 3:30.

1 We know that that video attachment where Matt's body
2 had been moved and his pockets had been turned out was at
3 2:50 p.m. So by 3:30 that crime scene has been cleaned up, he's
4 been tossed in a hallway closet, and it's time to get shopping
5 because now they've got money.

6 So what do we know about intent? Like I said within 45
7 minutes of tossing him in a closet, throwing a tarp over him, they're
8 now shopping. It's time to get some food, it's time to shop for
9 shoes.

10 We see them walk into Shoe Palace. We see that Jaiden
11 Caruso originally walks in with black sneakers, but we know those
12 have got to go because now they've got Matt Minkler's blood on
13 them. So it's time to get new shoes, which is exactly what he does.
14 He buys new shoes at Shoe Palace which he then changes into.

15 Then we see Kody Harlan at Foot Locker, again, buying
16 some new shoes. I mean, he wouldn't just leave his homie and his
17 friends in a hallway closet.

18 And he conveniently has a ton of cash on him. Cash that
19 has been used to purchase shoes, cash that seems to be in several
20 denominations, similar to that very Snapchat that we saw from
21 Matt Minkler the day before.

22 We know that when they leave, they've now gotten
23 themselves a drink, they've done a little shopping, and it's time to
24 leave. And the only person who didn't shop for anything was
25 Traceo Meadows. There's been some insinuation that Traceo

1 Meadows is the one that might have stolen the money from Matt
2 Minkler but if he had money, why wouldn't he just shop with it.
3 Why feel the need to steal something. The people who had money
4 were the Defendants because they were the ones who took the
5 money from Matt Minkler.

6 And we know that after this, they decided to go to an
7 apartment complex pool party because now, in addition to
8 shopping, they needed to socialize.

9 So when they do, we hear from Angie Knox who testified
10 that she was there with her friend Patrick and her other friend Jacy
11 and that she overheard Kody Harlan bragging about catching a
12 body. Not Jaiden Caruso; Kody Harlan.

13 We also know that Jaiden Caruso then sent that video of
14 Matt dead on the floor to his buddy Nate at 4:32, well after going to
15 the mall. Now they're at a party. So this convenient accident is
16 something that he's continued to now brag about to other
17 individuals. Having posted these videos on Snapchat, sending
18 them to friends. All the while Matt Minkler lie in this house in a
19 closet.

20 You'll also be instructed on flight and the flight of a
21 person after the commission of a crime isn't itself sufficient to
22 establish their guilt, but you can use it as circumstantial evidence of
23 that guilt. And what do we know about the flight in this case? We
24 know that had Officer Cochran not stopped the Defendants in that
25 car, who's to say what they would have done next.

1 They stopped because they crashed. And after crashing,
2 they fled. You head Jaiden Caruso fled towards the Chevron,
3 Officer Cochran had to chase after him and that finally upon
4 apprehending him, his response to her was well this will all just
5 wash away.

6 We also heard that Kody Harlan fled in the other direction,
7 conveniently towards Jaiden Caruso's house at the Villas
8 Apartments. And we heard from Detective Condratovich that
9 pursuant to some investigation, they discovered they wanted to do
10 a search warrant at Jaiden Caruso's Villas Apartments.

11 And why? Because Jaiden Caruso had received a text
12 shortly after this crash and there had been some other
13 conversations indicating that Kody Harlan might have stopped by
14 that Villa Apartment. It might have been the place where that gun
15 was ditched. So they executed a warrant approximately a week
16 later and they didn't find anything.

17 We know that inside that very vehicle were the shoes that
18 were purchased by Kody Harlan, that those shoes were purchased
19 with cash. We see the Shoe Palace shoe bag that Jaiden Caruso
20 purchased. We see the shoes that originally had blood on them,
21 and he switched out of. We see the shirt that he was wearing at the
22 scene of the crime and at the mall has now been thrown in the back
23 and taken off.

24 We know that the firearm that was used was now in the
25 passenger side seat compartment where Jaiden Caruso fled from.

1 And we know that Matt Minkler's wallet was found in the very back
2 seat. And a day before Matt Minkler was posting a Snapchat about
3 all the money he had. And conveniently, a day later this wallet is
4 now in the backseat and the only thing left in it is his Silverado high
5 School ID card.

6 Now Ladies and Gentlemen, you were instructed a lot on
7 the law and you're given an enormous amount of it. However, one
8 of the most important things you will be instructed on is to provide
9 and allow for your common sense. You are reasonable men and
10 women and you're allowed to make reasonable inferences from the
11 evidence.

12 Mr. Helmick stood before you during opening statements
13 and indicated that injustice anywhere is a threat to justice
14 everywhere. And I'd submit to you that that is very true. And I
15 would submit to you that the only justice in this case is to find the
16 Defendants guilty of first-degree murder with use of a deadly
17 weapon, robbery with use of a deadly weapon, and accessory to
18 murder with use of a deadly weapon.

19 Thank you.

20 THE COURT: Mr. Yampolsky, on behalf of Mr. Caruso.

21 MR. YAMPOLSKY: Thank you, Your Honor.

22 **CLOSING ARGUMENT FOR THE DEFENDANT CARUSO**

23 BY MR. YAMPOLSKY:

24 There is no justice, just us. No matter what happens, is
25 there justice for Matt? Should that have happened? Absolutely not.

1 I told you in the beginning, my client who shot and killed Matt
2 Minkler. Didn't mean to. Didn't murder him. Shot and killed him.

3 As I said in opening several times, I'm going to say it
4 again. Stupid kids, doing drugs, playing with guns resulted in a
5 tragedy. If anyone could go back and turn back the hands of time,
6 they would but they can't. Just can't do it.

7 Who is Jaiden? My client, Jaiden, you've heard all these
8 awful things about him. And I'll admit, he shot and he killed Matt
9 Minkler. He didn't plan to kill him, didn't murder him. Why? Who
10 is he? He was a stupid 16-year old kid doing drugs, doing lots of
11 drugs, playing with guns. Playing Russian Roulette.

12 You've seen him this whole trial, how he's behaving. He
13 would have loved to come and talk to you, I wouldn't let him. My
14 call. I don't like my clients testifying, so he didn't.

15 What do we know that happened? You've heard a lot of
16 witnesses, the players. And, you know, once again stupid kids
17 doing drugs. I don't want to brand myself an old fogey, I have a
18 daughter who's 20-years old and kids do stupid stuff, but when you
19 do drugs, you play with guns, people get hurt and unfortunately
20 that's what happened.

21 Now you heard from a lot of these kids and one of them
22 that Ms. Overly mentioned was Ghunnar Methvin. Now it was
23 really interesting because he had given a statement to the police, he
24 gave a statement on the 12th of June, four days after this
25 happened. And he wanted to be helpful. He ran, he got of Dodge,

1 he was there, he talked to the police, and he wanted to be truthful
2 and accurate and complete as possible and he wanted to tell them
3 what happened. And they asked him all these questions.

4 And then he said well he spoke to law enforcement a
5 couple of weeks before this trial. And then he said he spoke to Mr.
6 Pesci about a week before this trial. And that was the only time that
7 he said oh by the way, Matt -- Matt said he wanted to kill -- excuse
8 me, Jaiden said he wanted to kill someone, and Jaiden said he
9 wanted to do a lick.

10 And Mr. Pesci asked him he said oh, you never said that
11 before and he said oh no, because no one ever asked me about
12 that. Well he's right because no one ever asked him hey Ghunnar,
13 did you ever hear Matt say he want to do a lick. Did you ever hear
14 Matt say he wanted to kill someone? No, he wouldn't ask him that.

15 So why wouldn't he say that? If that were the truth, you
16 know, why would he just come up with that? Because no one asked
17 him. But as I pointed out in his statement, you said -- and he
18 answered: I felt like it was you all guys need to leave before I kill
19 someone shot, like it was not an accident, like I really felt like
20 planning on doing something to somebody in that house that day.

21 So I asked him well that's your perception, right? That's
22 what you think? He said yeah, yeah, that's what I think. And
23 nobody asked him. But right before that, right before that very
24 answer, the detective said so when he fires a warning shot, we did
25 see it in the roof. Did you get the impression that this was an

1 accident or it's a deliberate?

2 Well, don't you think at that time if he had heard Jaiden
3 say that, oh no I know it's deliberate because he said he wanted to
4 kill someone. He didn't say that. You know why? Because it didn't
5 happen. There is no way he said that.

6 And another thing that was testified that didn't happen.
7 Matt Minkler, according to Charles Osurman, I believe, said oh
8 yeah, you know, after Jaiden shot that bullet into the ceiling, Matt
9 picked up the gun, pointed it at Jaiden and said something like oh,
10 you're lucky you're my friend or something like or I'd kill you.

11 I forget -- I don't know the exact words but use your own
12 memory but he said something like that. Now does that make any
13 sense? It's not Matt's house, he's not pointing at Matt. He shoots
14 at the ceiling, this other house, this party house and Matt Minkler is
15 so incensed that he's going to kill them over that? Really? No, that
16 didn't happen.

17 I mean, if that were the case, I could come before you with
18 a self-defense theory because self-defense is a defense for killing
19 someone. I'm not going to insult your intelligence. This isn't a self-
20 defense case, this is an accidental killing. And that didn't happen.

21 Now I told you what Jaiden is, now I'm going to tell you
22 what Jaiden isn't. Not a gangbanger, not out there selling drugs,
23 wearing his colors, looking for people to kill. That's not him. Nope.
24 Not a mass murderer. He didn't get an assault rifle, didn't go to a
25 crowded place like in El Paso or on the Strip and kill a lot of people.

1 No, didn't do that.

2 And he's not some evil criminal mastermind. I think I'm
3 going to sell drugs. I'm going to get all these people hooked. I'm
4 going to give them a loss leader and then later I'm going to be able
5 to sell them more drugs and line my pockets. No. I mean, you saw
6 the pictures, he's 16-years old.

7 I mean, look at him now, he's not very big, he was 30
8 pounds lighter. He was doing Xanax, lots of Xanax. He was
9 smoking weed. He was drinking. Do you really think he had this
10 ability, this criminal mastermind to think of all this stuff to do?

11 I mean, you heard from Mr. Donelson, what happens
12 when you smoke marijuana or ingest marijuana; I guess you can
13 eat it with edibles these days. Smoke marijuana, drink, take Xanax.
14 How does that affect your cognitive ability?

15 And he said: It is a complex mix of dysfunction.

16 The trifecta of dysfunction. Do you really think he knew
17 what he was doing? Do you really think that he got up there and
18 said hmm, ah, Minkler, my buddy, I get drugs from him, we get
19 high together, I think I'm going to kill him? Is that what you think
20 he was saying?

21 And let me ask you this if, as Ghunnar said, oh yeah, I'm
22 going to kill -- I want to kill someone, I -- I'm going to kill Minkler,
23 going to rob Minkler. Now don't you think the time to do that
24 would have been when Jaiden and Kody went and picked him up to
25 bring him to the party? No one else is there, if they want to rob

1 him, why didn't they rob him there? Why didn't they rob him
2 before? Oh yeah, he was providing the dope.

3 Why should they rob him? They didn't need to rob him,
4 he wanted to smoke with them. He was their smoking buddy, their
5 drinking buddy. There is no animus, there's no need for them to
6 rob him, he was willingly providing it. There's no robbery. There
7 was no robbery here.

8 And you'll hear from the instructions and I hope, Ladies
9 and Gentlemen, that I'm able to do this right because I have my
10 technological issues, but I do want to go over some of the
11 instructions. You'll have them, you'll take them back to you, but I
12 do want to highlight a couple.

13 Is this right?

14 THE COURT: Yep, that's right.

15 MR. YAMPOLSKY: All right.

16 BY MR. YAMPOLSKY:

17 So you'll get them all take back to you. I'll try and refer to
18 the right ones and everything but when we talk about the
19 instructions, this is the law and once again we talked about it in the
20 beginning you don't have to agree with it, you know, but -- it's not
21 your job to agree or disagree, it's your job to follow the law. The
22 instructions as given that is the law and whether you like them or
23 not -- and I know I don't like some of them, but you got to follow
24 them.

25 So what should we talk about? Ms. Overly said hey this is

1 all or nothing. It's first-degree murder or it's not guilty. Well I
2 respectfully disagree. It could be first-degree, or it could be not
3 guilty, it could be second-degree, it could be voluntary.

4 I'll give you this, I don't think it's involuntary
5 manslaughter. I know there's an instruction on that and our
6 position it's an accidental killing, there should be no crime.
7 However, if you believe that a crime has been committed,
8 involuntary manslaughter is not the crime. It doesn't fit the facts.

9 But this is Number 22 and it says: Willfulness is the intent
10 to kill. Deliberation is the process of determining upon a course of
11 action -- this is for first-degree murder -- to kill as a result of
12 thought, including weighing the reasons for and against the action
13 in considering the consequences of the actions.

14 You see him deliberating? You've seen him on the
15 videos. You've heard about how much -- how many drugs that he's
16 ingested. Do you see him really deliberating after you go get his
17 buddy bring him back? Was he deliberating when he picked him
18 up, oh, I'm going to bring him back and kill him?

19 Premeditation is a design, a determination to kill distinctly
20 formed in the mind at the time of the killing. So when was it? Was
21 it when hey come on in here, let's play Russian Roulette when he
22 took the bullets out or all -- some of the bullets when he was
23 clicking it at everyone else, when he clicked it at his own head; is
24 that when the premeditation occurred?

25 Or was it when he picked up the gun playing Russian

1 Roulette and when he picked it up and he pointed it, is that when
2 premeditation happened? No, there was no premeditation.

3 It says: It may not be for a day, an hour, or a minute, it
4 may be a instantaneously as successive thoughts of the mind.

5 Or the jury believes from the evidence that the act
6 constituting killing has been preceded by has been the result of
7 premeditation no matter how rapidly the act follows the
8 premeditation, it is premeditated.

9 Do you think anything in this case really was premeditated
10 when it came to the shooting? Do you think he thought playing
11 Russian Roulette, screwed up on drugs, boom. I mean, it's a tragic
12 accident. But it's not first-degree murder.

13 Now, the State has talked about well, in addition to the
14 premeditation and everything -- in addition to all that you can do
15 the felony murder rule. And they talk about felony murder which is
16 if a killing is committed in the course of a felony, then it becomes
17 first-degree murder.

18 So if this killing was -- had occurred -- was done in the
19 course of a robbery, you could consider it first-degree murder. Not
20 have to worry about anything else. No premeditation, no
21 deliberation, none of that. But there was no robbery. There are no
22 evidence that Jaiden Caruso participated in a robbery. No evidence
23 he had a spray paint can, no evidence of a robbery.

24 Well -- but what happened -- you know, you saw that his
25 wallet didn't have any money, well wouldn't that be a robbery?

1 Well the instructions go into that saying that robbery can't be an
2 afterthought. So it can't be an afterthought. So if you're going to
3 talk about felony murder, it has to be in the commission of that
4 particular crime.

5 So this is -- and I've highlighted some of this, it's
6 Instruction 25. Okay. It says: Therefore, a killing which is
7 committed in the perpetration or attempted perpetration of a
8 robbery is deemed to be murder of the first degree, whether the
9 killing was intentional, unintentional, or accidental. This is the
10 felony murder rule.

11 But for the purposes of felony murder rule, the intent to
12 commit the robbery must have arisen before or during the conduct
13 resulting in death. There is no felony murder rules where the
14 robbery occurs as an afterthought following the killing. There was
15 no intent to rob, there was no threat to rob.

16 They were in there, playing Russian Roulette, he took the
17 gun, he pointed it, he fired it. He never said hey, give me your
18 weed or else; give me your money or else. None of that. That's not
19 what happened. He picked up the gun, he shot him. Nothing to do
20 with any robbery. There was no robbery. This is not a felony
21 murder case because there's no felony murder when the robbery
22 occurs as an afterthought of the killing.

23 Now, we talked about -- oh excuse me.

24 So we talked about Instagram, Snapchat, social media
25 that's what kids do these days. I know Facebook is antiquated and

1 everything because it's not quick enough, it's not instantaneous.
2 Snapchat, that's what they do. The problem is these kids -- lots of
3 kids, they have no social skills. What do they do? Oh something
4 happens, they go on their phones, they text it, they go back and
5 forth, they post it, that's what they do. There's no back and forth,
6 that's just the way it is, unfortunately.

7 Now, one thing we talked about was the texts and the
8 texts back and forth between -- it was Nate S -- Detective Spangler
9 talked about it and it was this conversation where it said -- and this
10 came out on -- excuse me -- Detective Spangler's testimony and this
11 would be from Nate: Quit being a mark.

12 And then this comes from Jaiden: I just caught a body.

13 Nate: You lying.

14 Jaiden sends him the video.

15 And then he says that's tg, whatever that means.

16 And then Jaiden says popped him on accident.

17 He's saying this to his friends. He's not talking to police;
18 he's not talking to anyone else. Yeah, this is what happened, I killed
19 him. Popped him on accident.

20 Well, you know, that's what he said, how is that an
21 accident? Really? Well according to -- and I forget which witness
22 because -- one of the kids said -- maybe it was Traceo? One of
23 them said yeah, they were playing Russian Roulette. They were
24 playing Russian Roulette; they were playing a game. So where's
25 this willful premeditation, where's this animus, where's this malice?

1 You talk about malice. In order to be first-degree murder, if it's not
2 felony murder, there has to be malice aforethought.

3 And what is malice. Malice aforethought means: The
4 intentional doing of a wrongful act without legal cause or excuse or
5 what the law considers adequate provocation. Condition of mind
6 as described as malice aforethought may arise from anger hatred,
7 revenge, from particular ill will, spite or grudge toward the person
8 killed.

9 So let's stop right there. You've heard from several
10 witnesses, there's no anger. These guys were drinking buddies,
11 smoking buddies. There's no hatred, there's no revenge. Almost
12 all the witnesses said that. There is none of this between Matt
13 Minkler and Jaiden Caruso. None of that. Or a grudge -- it may
14 also arise from an unjustifiable or unlawful motive of a person to
15 injure another proceeding from a heart fatally bent on mischief or
16 with reckless disregard of consequences and social duty.

17 Do you really think he has, and the term of art is an
18 abandoned malignant heart? Did you see any evidence of that in
19 this case? Lapse in judgment, absolutely, but abandoned malignant
20 heart?

21 Malice does not imply deliberation but denotes an
22 unlawful purpose and design, as well as by accident and
23 mischance. There wasn't any actual malice. There wasn't any
24 implied malice. There wasn't any malice. Stupid kids, doing drugs,
25 playing with guns that resulted in an awful tragedy. I can say it a

1 hundred times, it's not going to change things.

2 And you'll go through each and every of the jury
3 instructions and I don't want to go through all of it but one of things
4 is that Ms. Overly said well look, it's all or nothing. It's either going
5 to be first-degree murder or not guilty. Nothing in between. And I
6 disagree.

7 And while involuntary manslaughter is the killing of a
8 human being without any intent to do so in the commission of an
9 unlawful act or lawful act which probably might produce such a
10 consequences in an unlawful manner, the involuntary killing occurs
11 in the commission of an unlawful act which in its consequence it
12 naturally tends to destroy the life of a human being or is committed
13 in the prosecution of a felonious intent, the offense is murder.
14 Involuntary manslaughter does not involve the conscious use of a
15 deadly weapon. I already said it's not involuntary.

16 But when it comes to voluntary, usually voluntary
17 manslaughter is thought of oh, in the heat of blood. You come
18 home, your spouse is in bed with someone else, you're overtaken,
19 you shoot and kill your spouse. That's not first-degree murder
20 because it was premeditated, it wasn't deliberate. That wasn't your
21 intention it was called in the heat of blood.

22 Did that happen here? No. Well if that didn't happen
23 here, there's no heat of passion like that, how do we get to
24 voluntary. Well this is how. First of all, in the instructions -- and I'll
25 use the expression, I'm a baseball fan, tie goes to the runner. So in

1 the instructions it says if you're not sure if it's first-degree or
2 second-degree then the Defendant is entitled to the benefit of the
3 doubt. So it should be second-degree.

4 Similarly, how do you get to voluntary? You get to
5 voluntary manslaughter if first of all, you decide that a crime has
6 been committed. Our position is a crime has not been committed.
7 However, if you disagree, you are the jury, you are the finder of
8 fact, that's your prerogative.

9 But let's say you disagree, and you say oh, something
10 happened here, absolutely a crime has been committed. But what
11 is it? Is it first-degree? I know he was killed, but I don't think it was
12 first-degree. Was it second-degree? I don't know, I just don't think
13 it's second-degree. But if you think there's going to be criminal
14 responsibility and you think it's not first-degree and you think it's
15 not second-degree, then based on that, you can come back with
16 voluntary manslaughter.

17 And Ladies and Gentlemen of the Jury, if you think there
18 is criminal responsibility, it's not first-degree. There's no
19 premeditation, there's no felony murder. If there's criminal
20 responsibility for Jaiden Caruso, for this killing, it is voluntary
21 manslaughter. Voluntary manslaughter with use of a deadly
22 weapon. A deadly weapon was used, there is no question. So
23 that's what it should be if you decide that he's criminally
24 responsible.

25 So we talked about the robbery and you'll see it and

1 robbery's basically taking and carrying away personal property
2 either by force or fear. In the specific felony murder instruction it
3 talks about it can't be done as an afterthought. So I mean, you can't
4 be in force or fear if you're already deceased. So there was no
5 robbery. There was no robbery committed here by anyone. The
6 killing was committed by Mr. Caruso. It wasn't murder, but he did
7 kill him.

8 So tough job what you folks have to do. I just got my first
9 Jury Summons by the way, I'm not happy. But you have to sit here
10 and decide what happened. You're the finder of fact. It's not what I
11 think, what they think, even what he thinks doesn't matter. It
12 matters what you think. So what happened?

13 Remember when Mr. Helmick was talking to you in jury
14 selection are you a palm tree or are you a redwood? You know, do
15 you kind of go with the flow or do you stand strong? That's a good
16 question because with your oath as jurors, everyone is entitled to
17 your personal opinion. So everyone is entitled to your opinion.

18 Ah-hah. So this is a picture of Tiananmen square.
19 Remember when Hong Kong was ceded -- the city of Hong Kong
20 was seized back to mainland China after British rule for 99 years?
21 Remember this guy? They brought the tanks into Tiananmen
22 Square. There's this guy by himself standing in front of those
23 tanks. He was a redwood. We need you all to be redwoods. And if
24 it's your decision, yes; if someone convinces you, that's right. But if
25 they don't convince you, be a redwood.

1 So I'm about to wrap up. I'm always worried I forgot
2 some things and I don't have the burden of proof beyond a
3 reasonable doubt. And you know, we talked about other jurors, it's
4 not, you know, preponderance of the evidence, more than likely
5 than not. It's beyond a reasonable doubt. The instruction talks
6 about beyond a reasonable doubt. Mr. Helmick will go into detail
7 as to what things that reasonable doubt is not. I won't.

8 But I'll say this, our justice system is constantly maligned,
9 sometimes justifiably, sometimes unjustifiably and it's flawed. I'll
10 be the first one to admit it, I don't think many people are going to
11 argue you with me. Still the best in the world. And our justice
12 system comes from English common law because that's where
13 justice was given its voice.

14 In London, Old Bailey, the majestic courtroom where
15 English common law, that we all know, that came into the United
16 States on how people should judge other people, what the laws are.
17 Old Bailey. In Old Bailey there's this huge rock in front of Old
18 Bailey. And in that rock emblazoned it says: The Crown never
19 loses.

20 And what's that mean? That means that as long as a
21 Defendant is found -- is tried fairly, whether he's found guilty or
22 negligence, the Crown never loses.

23 Stupid kids, playing with guns, doing drugs, a tragedy
24 occurred on June 8th, 2018. By our verdict please don't let there be
25 another tragedy. Do justice. Thank you.

1 THE COURT: All right. Ladies and Gentlemen, we're
2 going to take a short break before we continue on.

3 During the recess, you're admonished not to talk or
4 converse among yourselves or with anyone else on any subject
5 connected with the trial or read, watch, or listen to any report of or
6 commentary on the trial by any medium of information, including,
7 without limitation, newspapers, television, the internet, and radio.
8 Or form or express any opinion on any subject connected with the
9 case until it's finally submitted to you. No legal or factual research,
10 investigation, or recreation of testimony, or social media
11 communication.

12 We'll be in break for about 10 or 15 minutes and then we'll
13 continue on, okay?

14 THE MARSHAL: All rise for the jury.

15 [Outside the presence of the jury]

16 THE COURT: Do you all have anything outside the
17 presence?

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

19 THE COURT: Anything outside the presence, gentlemen?

20 MR. YAMPOLSKY: No.

21 MR. HELMICK: No, Your Honor.

22 THE COURT: No? Okay. We're in recess. Thank you,
23 guys.

24 [Court recessed at 2:57 p.m., until 3:12 p.m.]

25 [Outside the presence of the jury]

1 THE COURT: All right. We will be on the record, outside
2 the presence.

3 Mr. Pesci.

4 MR. PESCI: Thank you, Your Honor. I just wanted to
5 make the record referencing the exhibit now instead of interrupting
6 the flow of the argument because I know your ruling, but I need to
7 for a contemporaneous objection.

8 THE COURT: Sure.

9 MR. PESCI: It's the State's objection, I'd ask that it be
10 considered to be contemporaneous that I object to the use of that
11 exhibit and to the argument therefrom. But knowing your ruling, I
12 just wanted to do it now instead of in the middle.

13 THE COURT: No, you're perfectly fine.

14 MR. HELMICK: I appreciate that.

15 THE COURT: I appreciate the respect in doing it that way.
16 So we will note for the record the objection to the poster that we
17 discussed earlier with Mr. Helmick. He's getting ready to start his
18 argument so I will consider the objection to be contemporaneous
19 and you don't --

20 MR. PESCI: Thank you very much --

21 THE COURT: -- need to make it --

22 MR. PESCI: -- Your Honor.

23 THE COURT: -- in the middle of his argument.

24 Anything else from either side?

25 MR. PESCI: Not from the State.

1 MR. HELMICK: No, Your Honor.

2 MR. YAMPOLSKY: No, Your Honor.

3 THE COURT: Okay. You can go get them. Thank you.

4 [In the presence of the jury]

5 THE MARSHAL: All rise for the jury.

6 THE COURT: You all can be seated. Thank you.

7 We will be back on the record. Mr. Harlan, Mr. Caruso are
8 present, all the attorneys and our jurors are present.

9 Ladies and Gentlemen, we'll continue on with our closing
10 arguments. Mr. Harlan, on behalf of Mr. Harlan.

11 MR. HELMICK: Thank you very much.

12 **CLOSING ARGUMENT FOR THE DEFENDANT HARLAN**

13 BY MR. HELMICK:

14 Good afternoon, everybody.

15 You know I was sitting in my office last night, going over
16 what I was going to say here today and I'm sitting there and I'm
17 thinking to myself, have I done everything I could for this young kid.
18 And the fear begins to kind of sit in, I'm driving home, still thinking
19 that stuff. And even now I'm standing here and my heart's
20 pounding through my chest, everything's going on in here; that fear
21 is still there. And I'm glad it is because it motivates me to talk to
22 you about this case.

23 The Prosecution has asked the question why are we here.
24 They've asked that over and over. It's a great question. We're here
25 because some drugged-up reckless kid wanted to play a deadly

1 game with his gun. We're here because he bragged about it
2 afterwards. We're here to -- and I'm flattered that they used the
3 quote by we're here to provide justice to prevent injustice. We're
4 not here because of some alleged robbery. We're not here because
5 of some lick.

6 And we're certainly not here because of Kody Harlan's
7 actions in anyway, other than being an accessory after the fact.
8 Every single kid that got up here and testified in this case said that
9 Kody was asleep at the time that Jaiden fired into the ceiling and
10 that Kody was asleep at the time that Jaiden killed Matt.

11 They said it doesn't matter but that's wrong. It does
12 matter. We heard that he was laying down on the couch the
13 majority of the time, that he was out of it, that he wasn't saying
14 much, that he wasn't -- he didn't indicate his thoughts on getting
15 more drugs. All those things. There's not a single piece of
16 evidence that has been provided in this case by them that can test
17 those facts. Not one.

18 But let's talk about this robbery allegation for a minute.
19 Let's talk about the robbery allegations. And let's look at -- let's
20 look closely at the Prosecution's story here. Let's look at the facts.
21 Matt calls Jaiden three times. They say that well he's the only one
22 who got picked up, well because he asked to get picked up. He calls
23 Jaiden three times so that he can get picked up from his house.

24 They -- nobody called him first in an effort to lure him
25 over to that house to get robbed. He said I got you on some when

1 you get here, right? I got you on some marijuana. All the kids said
2 when he showed up, he had marijuana on him. If there was plan --
3 and Mr. Yampolsky talked about this. If there was some plan to rob
4 him, why didn't they do it then when they picked him after they got
5 him from his house when he was all alone, when he had the brand-
6 new bag of marijuana on him? Wouldn't that have been the time to
7 do it? It doesn't make sense. And then when he gets there, he's
8 sharing it with everybody. It also doesn't make sense to rob
9 somebody of something that they are giving away.

10 But let's look though -- let's look at what all the kids in this
11 case said. I want to go over each one of these. Let's start with
12 Kymani. So when Mr. Pesci was questioning Kymani at first, he
13 said he didn't remember anything about the lick. Mr. Pesci went
14 through every single person and he said he didn't remember and
15 then what does he do, he grabs his police statement, he refreshes
16 his memory. Okay, now he remembers that it came from Kody and
17 Jaiden, okay?

18 When I get up to question him on the stand, what does he
19 say? Now he vaguely remembers the mentioning of the word lick.
20 At the preliminary hearing, I talked to him about his testimony
21 there. He said he didn't remember any conversation about the lick
22 and that wasn't my question at the preliminary hearing, that was
23 Mr. Pesci's questioning. And again, same thing that happens, what
24 does he do? He refreshes his memory; okay, now he remembers
25 again.

1 You know what hasn't been mentioned and one of the
2 jurors actually asked about this in one of their questions. What
3 about this unknown African American kid that was there with the
4 spray paint can when Kymani showed up? Nobody's ever said
5 anything about him, where'd he go? Why haven't they talked about
6 him at all? So we have another person who's there that they
7 haven't taken away from the scene at all; who had the spray paint in
8 his hand.

9 More of my questioning to Kymani Thompson. Never
10 heard any talk about wanting to rob Matt while he was there.
11 Directly contradicts what Mr. Pesci was saying to him on direct
12 examination or what they were talking about. Nothing about
13 wanting to do a lick on Matt. Never heard -- well, who was the
14 target of this lick? What was to be taken? When was it to be taken?
15 Why? All of those important facts. None of that stuff.

16 And here's the most important thing, he only came up
17 with this robbery opinion based off of what he read on the news
18 articles and comments. And you remember him saying that. Can
19 you imagine if I were to make an argument to the Judge and he
20 says to me, well, Mr. Helmick, where'd you get that argument from?
21 How'd you come up from that? If I say, Judge, I read it off the
22 News -- read about the comment, can you imagine what would
23 happen to me if I said that?

24 Then what about a juror? What if a juror based their
25 decision to convict somebody -- or their verdict off of what they

1 read on the News or some comment? They would be disqualified.
2 Shouldn't the same be for Kymani Thompson? Shouldn't his
3 testimony in regard to any talk about a robbery or a lick, shouldn't
4 that be disqualified by you?

5 More of my questioning to Kymani Thompson. It's
6 important he wasn't there when Matt was shot. We know that he
7 left -- him and Ghunnar left right after that shot into the ceiling. So
8 he didn't know for sure what happened. He was just guessing. And
9 you saw me asking that. He was just guessing.

10 Okay. Let's talk about another kid. Let's talk about
11 Ghunnar. And he was a -- he said some interesting stuff. You know
12 what has really frustrated me this case is when kids get up here,
13 when they talk to the police, when they've had lengthy formal
14 interviews and all the sudden they get up here and they say
15 something totally different.

16 He was Kymani's friend. Kymani and him shared opinions
17 as to what happened after this case. He said he heard talk about a
18 lick but like I mentioned to you he didn't tell the police one year ago
19 when he had that formal interview with the detective. Didn't tell the
20 police two weeks ago when he had another interview with the
21 detective. And even so, even what he said when he testified, he
22 said any conversation that he heard about a lick or a robbery was
23 only in regard to Jaiden only. That's what he said.

24 Now this was actually an answer to one of your guy's
25 questions, which I thank you because listen I make mistakes and

1 stuff. I can't get it all right and sometimes you guys point that out
2 by your questions, and I appreciate that. And this is one of the
3 answers that was given by one of your questions to Ghunnar.

4 Kody was asleep on the couch. Didn't say anything about
5 a robbery or a lick.

6 That was his answer.

7 Okay. Let's talk about Charles for a second. Consistent
8 theme here, Kody was asleep on the couch at the time Jaiden shot
9 to the ceiling. He was asleep on the couch when Jaiden killed Matt.
10 No testimony from Charles who was there the whole time, we saw
11 him in the videos -- no testimony about hearing anything about a
12 robbery or a lick.

13 Okay. Let's talk about Trae for a minute here. When he
14 walked up to the house that day after Matt had already been shot,
15 Charles told him, Jaiden shot Matt. It was an act -- and then Jaiden
16 walks in, it was accident, he was playing Russian Roulette and
17 accidentally shot him.

18 If these things are being said, why are they lying to their
19 own friends? This is right after this event happened. It's fresh in
20 his mind. Never heard any talk about killing Matt so that he could
21 be robbed. Nothing like that from Traceo.

22 And then we get to Trae's new stuff, another kid who got
23 up here and said some stuff that I was totally taken back by because
24 he didn't say anything like that before. In fact, he said quite the
25 opposite. And so I hope I did a good job by showing you guys that

1 he said a bunch of other stuff. And how many times did I have to
2 get up here and grab the documents and say Trae, does this refresh
3 your memory? How many times did I have to impeach him on all
4 those things that he said?

5 He said now, when Mr. Pesci was questioning him, Kody
6 spray painted Fuck Matt. Kody went through Matt's pockets. Well,
7 what was his incentive? He walked in here with shackles on his
8 ankles and on his hands. These charges -- he was an accessory to
9 murder, malicious destruction of property, everything's on
10 probation, it's all stayed. He's up on the mountain, I'm sure he
11 wants to get off. He said that himself. Of course he's going to do
12 anything he can to get out of this jam. And he's definitely not going
13 to admit to what he did.

14 And then we get to his statement to the police. Well, the
15 statement to the police, Kody wasn't spray painting. Didn't even
16 know at first what was spray painted but then tells the police later
17 in the interview that he actually did know what was spray painted.
18 Why? I mean, why lie? Either you do or you don't now. Why are
19 you lying about that? Kody never touched Matt's pockets. That's
20 what he told the police, but in here he said something totally
21 different.

22 Then here's interesting -- here's an interesting thing. How
23 is Kody doing all these things that he said that he was doing now
24 but when he talks to the police, he says that Kody was out of it.
25 Wasn't really even talking. Awful to the point to where he couldn't

1 even comprehend what was going on. He was just standing there.
2 Jaiden doing all the talking.

3 Does that sound like someone who's going to be able to
4 go through pockets and spray paint and all kinds of stuff like that?

5 Here's some stuff that I want you to think about when
6 you're deliberating. Trae lies about sending the photos of the
7 bloody towels and his feet being wet to Kristin Prentiss. When she
8 testified, I asked her about that, and she said that Trae sent her the
9 bloody towels in the photo. So he was there, he was sending
10 photos too. Trae was standing next to Matt after the body was
11 moved. They showed you the first video of Kody standing there
12 and then after the body was moved, who was standing right next to
13 him? That was Trae.

14 Trae admits to spray painting both on Thursday and that
15 day. After Matt was already killed, he was spray painting, but he
16 didn't -- he wasn't the one who wrote Fuck Matt.

17 And then here's an interesting thing, he says that he just
18 waits outside after he helps move the body into the closet, middle
19 of the summer; you guys do your thing, I'm just going to sit outside
20 and sit in the hot sun, where there's no chairs, nothing but rocks.
21 That doesn't make any sense for five minutes. Why wouldn't he
22 just watch out with the kids that he was with, Jaiden and Kody
23 already in the house? Why wouldn't he just walk out together?

24 Trae steals. Yeah, he didn't buy stuff at the mall because
25 he didn't feel the need to buy stuff, he'd just rather steal it. And so

1 we already know that he's a thief. We know that somebody took
2 Matt's wallet, okay, and so we know that Trae was a thief. We
3 talked about what he was on probation for and so forth. Malicious
4 destruction of property, consistent with spray paint.

5 Now here's a very important witness, Alaric Oliver,
6 because he was the only kid that was actually there the whole time,
7 okay? He was in the house the whole time until Matt was shot.
8 Never heard any talk about wanting to rob Matt. Never heard any
9 talk about doing a lick. Nobody was angry or mean towards Matt,
10 didn't think there was a plan to rob Matt at all.

11 What else does Alaric say? Let's see. Kody was asleep on
12 the couch off and on. Called Kymani, told him that -- this is
13 somebody who was there. Told him that Jaiden was clicking the
14 gun, dry firing the bullets, but one of the times it didn't click no
15 more and Matt fell to the ground. On that same phone call he says
16 that Kody was asleep that after the loud bang he popped up. That's
17 what Alaric said.

18 Okay. So I mean, here's the thing. Alaric was the only kid
19 there who was awake at the time that Jaiden shot Matt, remember?
20 Because Charles said he was asleep, and Kody was asleep on the
21 couch as well. Therefore his story is direct evidence of exactly what
22 really happened. He saw it, he felt it, he heard it. Just like His
23 Honor said in his example about the rain at the beginning of this
24 trial.

25 And, you know, what's interesting is that he was the only

1 kid that became emotional when he was up here testifying. This
2 poor kid was the only -- because this poor kid was the only kid who
3 had to see this horrific incident unfold right before his very eyes.
4 The only kid. I ask that you give his testimony the most credit here
5 because he really was the only kid who knew what happened -- who
6 saw it all happen.

7 I want to talk to you about accountability because we had
8 talked about that way back in jury selection -- sorry, I got to take a
9 sip here. We had talked about that way back in jury selection and I
10 had asked every one of you the question and every one of you
11 raised your hand when I asked them about accountability, and you
12 made a promise. You said that you would hold each person in this
13 case accountable only for what they did.

14 Accountability is so important in this case for Kody Harlan
15 because only one kid pulled the trigger. Only one kid was taking
16 the bullets out of the gun, leaving one in and pointing it at the other
17 kids. Only one kid was bragging about what he did. Taking a video
18 of Matt laying in his own blood deceased. Awful videos. Only one
19 kid tried to post that on social media. Therefore only one kid in this
20 case is responsible for the death of Matthew Minkler. And we know
21 what his name is. It's not Kody Harlan. But since we're talking
22 about accountability, we got to talk about Kody's.

23 And I told you at the beginning of this case that he was no
24 angel here. Kody did some bad stuff. He did some wrong and
25 illegal stuff. Let's talk about what he was accountable for. I can't

1 stand up here and look at you in the eyes and try to pretend that
2 Kody didn't do anything wrong. He helped move the body. He lied
3 to the police about a gun. He ditched the gun, okay? He ran from
4 the police. He didn't call the police when he saw Matt on the floor,
5 dead after he woke.

6 What does he do? Yeah, he goes shopping, he goes to a
7 pool party, all those things. He pointed the laser of the gun at
8 people. He did all these wrong and illegal things in this case. And
9 this is the real reason that he's sitting here in this trial with Jaiden.
10 He made some bad and stupid mistakes. Mistakes that have severe
11 consequences and he's willing to accept that. He's willing to be
12 held accountable by you for that.

13 But, you know, all these things here that he did, all of
14 these things that Kody did wrong and illegal, they don't equal
15 murder. The law doesn't say that if you do all these things and you
16 just so happen to be friends with the kid that pulled the trigger, that
17 you too are guilty of murder. That's not what the law says. Nor do
18 all these things equal robbery.

19 Let's talk about that for a second. Let's talk about Matt's
20 wallet. Matt's wallet we know was taken in this case and we know
21 that Trae was sitting in the right rear passenger seat of the car on
22 the way to the mall; the exact spot where the police searched the
23 car and found Matt's wallet. We know that.

24 We also know that there was an error in this case because
25 the police did not test the wallet. It would have been nice if they

1 would have tested the wallet because then we would have our
2 answer, right? We'd have the fingerprints, we'd hopefully have the
3 DNA of the wallet, then we'd know who would have taken the
4 wallet. But that was an unnecessary error in this case.
5 Unnecessary error.

6 The Prosecution tries to make it seem as though the
7 robbery could have been done -- I mean, the taking of the wallet
8 could have been done by Kody. Could have, right? And they base
9 that off of Trae's testimony. Trae's inconsistent testimony. But
10 could have is not the standard in a criminal case. You can't convict
11 somebody for something you could have done. And I'll go over this
12 in a second. It has to be done beyond a reasonable doubt. We'll
13 talk about that in a second though.

14 The other thing is that -- I don't know if you all noticed this
15 but when you watched the video of Kody at the cash register,
16 buying the shoes, and maybe one of you guys caught this, I don't
17 know, but the person to his left was Jaiden and what does he do?
18 He walks up here, grabs a shoe cleaning kit, puts it in his bag, walks
19 right out.

20 Another person that we know stole something. So Trae
21 and Jaiden and the two people that we know who stole something
22 in this case.

23 But let's talk about the most important thing here is this
24 could not legally be considered a robbery -- and Mr. Yampolsky
25 talked a lot about it. It cannot legally be considered a robbery

1 because -- and listen, sadly and respectfully Matt was deceased at
2 the time that somebody took his wallet, therefore no force or fear
3 could have been -- could have even been used.

4 Let me give you an example. Somebody's asleep, they
5 have a hundred bill hanging out of their pocket. Another person
6 walks up, they take the hundred dollar bill out of their pocket, they
7 put it in theirs. That's not robbery. The person was asleep. That's
8 a different type of crime. Larceny from a person, theft from a
9 person. But there's no force or fear needed in this case, as I
10 mentioned, because he was already deceased.

11 Now, there's one caveat. There could be a robbery and
12 only by Jaiden if at the time that he pulled the trigger that killed
13 Matt, he was doing so for the purpose of taking Matt's stuff. He
14 was using the gun, the force, for the purpose of killing Matt to take
15 his stuff. That's the only way there could be a robbery and that's to
16 Jaiden only.

17 As we come to a close here, I want to just go back to
18 Jaiden's words -- I want to just go back to Jaiden's words one more
19 time. Because when we look at the words here -- when we look at
20 the words, it tells us what happened, who did it. The crime is
21 solved by just looking at the words that Jaiden wrote. Bro, I just
22 caught a body. I killed Matt. I shot him. I shot him on accident. I
23 just caught a body. Those are his words. Kody was asleep on the
24 couch at the time that Jaiden killed Matt.

25 By your verdict and your verdict only, injustice can be

1 prevented here. And it would undoubtedly be an extreme injustice
2 to convict someone of murder and robbery, the biggest crime there
3 is, while they were sleeping. What an awful nightmare that would
4 be to wake up to.

5 But by your verdict and your verdict only, you can also
6 provide justice by holding Kody accountable for what he did. In
7 regard to Kody Harlan's role, he was an accessory to this murder.
8 For all the things that he did after Matt was killed, he was an
9 accessory to this murder and he's willing to be held accountable for
10 that by each one of you.

11 Let's talk about this poster board here for a second
12 because I think this lays it out quite well. It's not -- if you think well,
13 you know what, maybe he's -- maybe Kody's probably guilty.
14 Maybe his guilt is highly likely. Maybe it's possible. All the way up
15 here, maybe it's highly likely. But still not guilty. They have to
16 show it beyond a reasonable doubt in your mind that there was this
17 robbery.

18 And guess what, they want the robbery so bad because
19 that's the only way that they pull Kody into this first-degree murder
20 is by putting him into this robbery theory of theirs. That's the only
21 way they get him. But that's not what he did. He was an accessory.
22 Yes, he was. But there was no robbery and they have to prove that
23 beyond a reasonable doubt in this case.

24 We talked about redwoods and palm trees and Mr.
25 Yampolsky used that when he was talking to you guys and

1 everybody here -- almost everybody -- almost everybody here
2 raised their hand and the said that they felt like they were a
3 redwood. And -- an open-minded redwood but a redwood. And
4 because of this they would not be peer pressured into doing
5 something that they felt deep down that they did not want to do.

6 And we had talked about this again, during jury selection.
7 I'll just go back to this. Every person's voice on this jury, no matter
8 what the age, occupation, everything, it's just as important as the
9 person sitting next to them. But that's the beauty of it that we
10 talked about.

11 I want to show you one more quote actually before I tell
12 you just the last couple sentences I wanted to tell you. Here's one I
13 found last night when I was working on this. This is from a famous
14 lawyer from the early 1900s. He says: You can only protect your
15 liberties in their world by protecting the other man's freedom.

16 That's powerful. You can only protect your liberties in this
17 world by protecting the other man's freedom. Myself, as well as
18 my client Kody Harlan only ask that you take your time, that you
19 think it all over, that you ponder the evidence.

20 And after all that is done, we ask that you hold Kody
21 accountable for what he did, for being an accessory to this murder.
22 But not for committing the murder, not for committing some
23 alleged robbery, in any way, shape, or fashion that the Prosecution
24 is trying squeeze Kody into; through all their theories, they're trying
25 to squeeze him into. That's not what happened here. It's certainly

1 not what happened here beyond a reasonable doubt.

2 We ask that you find Kody Harlan not guilty of the murder
3 and robbery in this case. Hold him accountable for what he did,
4 being an accessory after the fact. Thank you.

5 THE COURT: Thank you.

6 Mr. Pesci, on behalf of the State.

7 MR. PESCI: Thank you, Your Honor.

8 [Colloquy between the Court and Counsel]

9 THE COURT: We're going to take a quick break, Ladies
10 and Gentlemen. If you go ahead and step outside with the marshal
11 and we'll see if we can get this figured out.

12 [Court recessed at 3:42 p.m., until 4:00 p.m.]

13 [In the presence of the jury]

14 THE MARSHAL: All rise for the jury.

15 THE COURT: You all could be seated. Thank you.

16 We will be back on the record. Mr. Caruso, Mr. Harlan, all
17 of our attorneys and all of our jurors are present.

18 We're going to continue on with closing arguments. I
19 patrol officer for the inconvenience. I think we have a workaround
20 in place, so keep your fingers crossed.

21 Mr. Pesci.

22 MR. PESCI: Thank you.

23 **CLOSING ARGUMENT FOR THE STATE**

24 BY MR. PESCI:

25 Ladies and Gentlemen, we just had a technological snafu.

1 Don't hold that against anybody, please. Thank you for your
2 patience, we're almost there. When I'm done, you will get the case
3 and you will start to argue.

4 There are some things I need to go over because you
5 heard a lot in this case, and we need to apply the law to the facts to
6 come to the conclusion. The conclusion in this case is that the
7 Defendants are guilty as we told you at the beginning. We're not
8 trying to force something through some hole. We're trying to hold
9 the people accountable who did what they did to Matthew.

10 We're here because Matthew's dead. That's why we're
11 here. We're here because someone put a gun to Matthew's face,
12 pulled the trigger, and then left him on the ground. And then
13 videoed. That's why we're here. We're not here about some quote
14 from somebody somewhere else, we're here because he's dead.
15 And when you're asked to say that this is not a conviction because
16 there is reasonable doubt, there is not reasonable doubt.

17 The instruction, Number 5, you have it in your packet, it's
18 even numbered for you. Instruction Number 5 specifically says:
19 Doubt to be reasonable must be actual, not mere possibility or
20 speculation. Possibility and speculation do not equate to
21 reasonable doubt. The evidence in this case shows you what
22 happened. You were just told a moment ago that somehow some
23 way you can't rob a dead person. That's dead wrong. The robbery
24 instruction has this language. This is in the packet. I'm not making
25 this up.

1 Such taking constitutes robbery whenever it appears that
2 although the taking was fully completed without the knowledge of
3 the person from whom taken.

4 That would be a dead person.

5 Such knowledge was prevented -- their inability to know
6 what's happening was prevented by the use of force or fear.

7 Under the law, you can rob a dead person. When
8 Matthew's shot in the face and killed and his money is taken, that's
9 robbery.

10 Now, what's really important to know and to apply and is
11 the law, in order for it to be a felony murder, in order for it to
12 become murder of the first degree because of felony murder, the
13 intent to commit the robbery has to predate the shooting.

14 So if there is intent to rob Matt before he is shot and killed
15 then taking of the -- from him, the money after he's dead is robbery
16 and is felony murder robbery. Keep that in mind when you're back
17 there and you're going through this.

18 You were just told who is Jaiden Caruso and you were
19 talked about how he's not a person who did some terrible shooting
20 in some other area of the country or even here on the Strip, you
21 know, eliciting this idea of these mass shootings. We're not saying
22 he's a mass murderer. And he doesn't get out of his responsibility
23 because the body count's not three, four, five, or fifteen. He's
24 responsible. And this is the guy who he is.

25 You know, there's a lot about impugning the witnesses in

1 this case, the teenagers -- and we'll get into that in a minute. But
2 there was an impugning of the witnesses in this case about what
3 they said. Officer Cochran has no ax to grind. She isn't working off
4 a case. She's not a teenager. What does she say the Defendant
5 said? When I turn 18 this will all wash away.

6 So in answer to the question posed by Defense Counsel,
7 who is Jaiden Caruso, there it is. He's someone who thinks this is
8 going to wash away. It's not going to wash away. Matt's not
9 coming home. And responsibility for what they did to him, it needs
10 to be imposed. Under the law. Not emotion, the law.

11 Malice. You were talked about malice. You know, the
12 instructions are really important. There's a Number 19 there for
13 you so you can go back into it, right? You were talked about how it
14 wasn't this and it wasn't that, so therefore it wasn't malice. What
15 does the instruction actually say? Malice aforethought means the
16 intentional doing, picking up a gun, walking up to a person, and
17 pulling the trigger, to the face. A wrongful act without legal cause
18 or excuse. It's not justified. It's not self-defense. It's not even
19 voluntary manslaughter, what they're saying. We'll get into that in
20 a minute.

21 Without the law considers adequate provocation. That's
22 what malice is. It's intentional doing of a wrongful act that you
23 don't have an excuse for. The instruction goes on to say it's really
24 important in the law, may and shall. Those are really important
25 concepts. And the concept of malice: The condition of mind

1 described as malice aforethought may arise from any hatred,
2 revenge, or roommate percent ill will, spite, or grudge towards the
3 person killed. It may also arise from an unjustifiable or unlawful
4 motive or purpose to injure another.

5 It is not required. You don't have to have those things in
6 order for it to be malice. Those are examples of how it could be.
7 And my co-counsel explained how that fit in the context of when
8 Matthew walked up and said hey, you almost hit me. And then
9 time passed and then Jaiden picked up the gun and walked over.

10 That could be that he was angry about that. That's a
11 possible way of showing that malice. You don't need that because
12 malice is the intentional doing of a wrongful act without legal cause
13 or excuse. He killed Matthew without a legal cause or excuse. That
14 was a wrongful act. That's malice.

15 You were just told earlier about how it was error for the
16 police to not have tested the wallet, right? Ask yourself this, what
17 did the test of the spray can -- spray paint can yield? An
18 inconclusive determination.

19 Do we know for a fact that DNA is going to be conclusive?
20 It might have been, but we don't know, right? So it's not
21 reasonable doubt just because something may have turned out one
22 way or the other. Remember going back to what I read, Instruction
23 Number 5, speculation's not reasonable doubt.

24 Voluntary manslaughter. It's the voluntary killing upon a
25 sudden heat of passion caused by a provocation, apparently

1 sufficient to make the passion irresistible. That's what you have to
2 have for voluntary manslaughter. Jaiden Caruso doesn't get
3 voluntary manslaughter without that.

4 Does that fit in our case? The killing upon a sudden heat
5 of passion. What was the sudden heat of passion? The evidence
6 from the witnesses was that time had passed between the shot to
7 the ceiling and the shot to the face. And we know that because
8 Ghunnar left, Kymani, left and we have actual video evidence from
9 Matt showing the shot to the ceiling and then panning out across
10 the room. Time has passed. There's no ill will, anger, screaming,
11 provocation. There's none of that. And even if there was, that
12 provocation apparently sufficient to make the passion irresistible.

13 Do you know what voluntary manslaughter is? I go home
14 and find my wife in bed with another man, I get my gun and I shoot
15 them both. That's voluntary manslaughter. That's -- the idea on
16 the law is like look that's still criminal, we're not going to condone
17 killing somebody, it's just less serious -- that's not the right word.
18 It's less criminally responsible than a premeditated killing because
19 the idea is the heat of passion. I lost my mind when I saw them in
20 bed. And it's the kind that's going to make it irresistible; that I just
21 knee jerk react to it. There is absolutely, positively none of that in
22 this case. That's why you cannot come back with voluntary
23 manslaughter. It does not apply.

24 Involuntary manslaughter. So I -- I mean, we got the
25 instruction, being told it's not involuntary. I'm a little confused why

1 we got the instruction if it wasn't. But let's go through it
2 nonetheless. It's a very long instruction, right, about what it could
3 be; what it's not? Look at that comma where it says but and pick it
4 up from there.

5 But where at the involuntary killing occurs in the
6 commission of an unlawful act which in its consequence it naturally
7 tends to destroy the life of a human being or is committed in the
8 prosecution of a felonious intent, the offense is murder.

9 Translation, you don't get involuntary manslaughter when
10 you take a gun and you point it at a person's face and then you pull
11 the trigger. There's nothing involuntary about that.

12 The fact is but where the involuntary killing occurs in the
13 commission of an unlawful act which in its consequences naturally
14 tends to destroy the life of a human being, pointing the gun at a
15 person's face and pulling the trigger, that naturally tends to destroy
16 the life. You've seen that. You've seen the video.

17 And then the added instruction, the added paragraph to
18 this instruction, Number 31: Involuntary manslaughter does not
19 involve the conscious use of a deadly weapon in the commission of
20 a crime.

21 If it is the conscious use of a deadly weapon, it cannot be
22 involuntary. We know it's a conscious use because he picked it up,
23 he walked over there, and he pulled the trigger. But even if you
24 somehow think oh well, you know, he's not really sure how a gun
25 works. Really? There's the shot to the ceiling that predates in time

1 the shot to the face. He knows that gun works. He knows what
2 happens when you pull the trigger. You've literally seen the
3 evidence of that, the hole in the wall.

4 You've heard about them being so high or drunk that
5 somehow this is not going to be a premeditated murder and you
6 have to assess that. You know, the interesting thing, where does
7 the evidence come in that they were so high or drunk? Who
8 provides that evidence? Who are some of the witnesses that
9 provide that?

10 Could it be, no, you're kidding Ghunnar? Could it be
11 Kymani? So let me get this straight, they want you to believe
12 Ghunnar and Kymani when it's good for them because they relied
13 on Ghunnar and Kymani's testimony about how everyone's
14 smoking weed, taking Xanax, and drinking. They are credible
15 witnesses there but somehow not later on. Keep that in mind when
16 you're assessing their credibility.

17 What is it that they did that shows you their capacity to
18 deliberate? They're able to drive. I mean, get in a car, work the
19 transmission, drive to a location. Now this is to go get Matt. This is
20 at the beginning of the drinking, the taking of the drugs. So maybe
21 they're not just that high yet.

22 What about the trip to the Galleria mall? You have an
23 exhibit. It's 10.7 miles. There are multiple ways to get from Cool
24 Lilac, you'll see it in the exhibit, to the Galleria Mall. There's a
25 capacity take the highway responsible surface street to go one way

1 or the other. Or better yet, when we get inside and we see the
2 actual purchasing of items.

3 Able to pull a trigger. Capable of doing that. By the way
4 there is evidence of premeditation; shot to the face after the shot to
5 the ceiling. Again, this showing what he knows a gun can do.
6 Knowing that it can do this and then walking up and pull the trigger
7 is evidence of the premeditation. Knowing the design, a
8 determination to kill, that's the instruction. You know that gun does
9 that because it's been shot into the ceiling.

10 [Video playing]

11 BY MR. PESCI:

12 Is he falling down? Is he stuttering? Is he stammering?
13 And do not confuse premeditation with a good decision. You can
14 premeditate and make a horrific decision to kill somebody and then
15 to post about it afterwards. You got to get out the phone, you've
16 got to pull up Snapchat. And if that's on the phone, which we know
17 it is, then you've got to utilize the application to upload that and
18 send it on its way.

19 And you can do all that but somehow you're so high or so
20 drunk you can't premeditate? What about that? How is it possible
21 to have the capacity to move that body and not just move that
22 body, to cover it. To cover it with a tarp and then take that phone
23 and burn it, put it in water, smash it, and spray paint it. But
24 somehow there's an inability of capacity to premeditate or
25 deliberate?

1 How about spelling? How's your spelling when you're
2 high and drunk? It seems to work. There's the phone. Just talked
3 about all that damage. Why do that to the phone? Ask yourself
4 that. Why do that to the phone? If this is an accident, if this is not a
5 robbery, why on earth burn it, put it in water, smash it, and spray
6 paint it?

7 We talked about able to drive. There's the map. Look at
8 the different routes. I mean, this is Google search, right?
9 Everybody's got that in their phones. You can go one way, you can
10 go another way, make a determination, I'm going to get to the
11 Galleria Mall, I'm going to utilize the car to get there. This is being
12 shown to you for a reason. It's to show you how they're acting,
13 walking, moving at this very time shortly thereafter.

14 And remember what Ms. Overly said, what's the purpose
15 of going to Shoe Palace? Who gets some shoes? Jaiden. And we
16 know from the video he's got blood on his black shoes. Got to
17 change those out.

18 And they were successful in all those purchases. Look at
19 the bags that Jaiden and Kody are carrying. And Traceo doesn't
20 have anything. No bags. And there's been this argument about
21 Traceo being the person who really stole, so maybe there is a
22 robbery? Wait a minute, am I confused? If he took it, could that be
23 a robbery?

24 Well if there is a robbery, Traceo didn't take it and these
25 guys did, that's a problem for them, right? So let's blame Traceo.

1 Let's partner Traceo on the hook. You saw that video, there's not
2 anything on him. He admitted he stole because he had no cash. If
3 he stole Matt's money, he uses his cash to buy those things. He
4 had no cash. You have literal video evidence to confirm that.

5 [Video playing]

6 You have to be able to select your item, bring it to the
7 counter, and wow, look at that cash. Look at how much cash. But
8 somehow it can't be premeditated or deliberate.

9 Remember something, when it comes to the context of
10 voluntary intoxication, when it comes to robbery -- because for
11 Kody he's a first-degree murder via felony murder. Voluntary
12 intoxication is not a defense to a general intent crime. The Court
13 has specifically told you that robbery is not a general -- that robbery
14 is a general intent crime. So voluntary intoxication does not negate
15 or get you out of robbery because you're so high or drunk.

16 But there's still more evidence of their ability to do things
17 because the car crash, he's able to run. You remember the very
18 beginning of this case, Officer Cochran chases him. He's able to
19 figure out to run down this back alley, go along this other wall,
20 jump over it, go past the side of the building, head south, and then
21 go inside and try to hide inside. That's what Jaiden's able to do.

22 What about Kody? And then Kody takes off beats feet
23 right way, goes in the opposite direction. He's able to leave that
24 area, head south and go to the Villas Apartment, where he's taken
25 into custody by the police. He's capable of doing that all the while

1 so high apparently he can't figure anything out.

2 And -- oh by the way, got rid of the gun. The gun. We'll
3 come back to that in a minute.

4 Corroboration. Ghunnar and Kymani. You remember the
5 Defense says that they're okay as witnesses when it comes to
6 establishing their clients having used alcohol, marijuana, or Xanax.
7 But somehow they're not good when it comes to talking about the
8 lick. They're being called into question. And they rely on them to
9 get in that voluntary intoxication. And you heard that. That's what
10 they told you. But they're not believable in the context of a lick.

11 Now remember, Ghunnar was 16 years old when he's
12 interviewed by police. He's not a homicide detective, I asked him
13 that. He doesn't know all the facts of the case. He's just a 16-year
14 old kid answering the questions he's being asked by the detective.

15 And this is important, I asked Detective Nichols this and it
16 might have seemed like it was out at left field. Ghunnar was
17 interviewed on June the 12th, 2018. Kymani was not interviewed
18 until June the 13th. Kymani mentions the lick. The first time the
19 police hear the word lick is on the 13th.

20 That's why it doesn't come up in Ghunnar's on the 12th
21 because they don't even know anything about it yet. Ghunnar's just
22 answering the questions. Ghunnar doesn't know what the police
23 are looking for other than the questions being asked. And the
24 police don't know yet to ask Ghunnar about a lick because they
25 haven't heard that yet. That doesn't happen until the next day.

1 You know, Ghunnar -- think about it, I mean, you can
2 assess the credibility from a person's demeanor on the stand.
3 Ghunnar's not working off any charges. Ghunnar has no ax to
4 grind. Ghunnar was scared. He was answering the questions.

5 And I asked him specifically after he'd been cross-
6 examined, after they were trying to say that he was making this up
7 about the lick and hearing that before they went to pick up Matthew
8 and I asked him are you saying this because you're making it up or
9 someone else told you? And his response was no, because that's
10 what he saw and he heard.

11 Speaking of working off charges, right? Traceo was
12 charged with accessory to murder. You have an instruction that
13 specifically says you're only an accessor to the charge that the
14 other person is charged with, right? So he -- this only needs to be
15 corroborated as to the charge of accessory to murder. That's the
16 only application of that instruction and it talks about how you have
17 to have independent corroboration. Well they just told you he
18 didn't. So it's established. Don't confuse what Traceo says about
19 the robbery and the murder as having to be corroborated, it's as to
20 the accessory charge.

21 We talked about Traceo didn't take anything from them.
22 Traceo -- you were told that this was crazy how he said he went and
23 sat outside. He didn't testify that he sat outside, he testified that he
24 went outside. He said it was only a few minutes, why is he going to
25 sit down if it's just a few minutes. He didn't say he say out there, he

1 said he went out there and waited. Because he's not calling the
2 shots at this place, Ladies and Gentlemen. He's just being utilized
3 to put a body in a closet. And then apparently being utilized as the
4 scapegoat as to who really committed a robbery event.

5 Kymani -- switching from Ghunnar to Kymani -- heard a
6 conversation between the Defendants about doing a lick.
7 Defendants wanted to rob someone for weed, they kept talking
8 about it, that's how Matt's name was brought into it. And there's
9 back and forth about what he said in his statement to police.

10 By the way, in the statement to the police he's with police,
11 as opposed to when he's in court. And then they're cross-
12 examining him about how in court he says this, then he says that.
13 He never backs off from the fact that he said that to the police, back
14 on June 13th, right? There's back and forth but he acknowledges
15 yep, that's my statement. And even at the preliminary hearing,
16 again, not with detectives, but in a courtroom, he acknowledges
17 that he said that. He was shown his statement.

18 Again, Ghunnar and Kymani talking about before Matt's
19 picked up, right? What's the corroboration? Why should you
20 believe Ghunnar and Kymani?

21 Ms. Overly went through some of this. They told you he
22 shot in the ceiling. Well there's actual video evidence to support
23 that.

24 They told you that they left after the shot to the ceiling.
25 There's actual video evidence to support that. Matt's video shows

1 the shot to the ceiling corroborating, confirming what Ghunnar and
2 Kymani said. Additionally, Matt's video shows Ghunnar and
3 Kymani are gone. There's the hole to the ceiling and they ran.
4 That's what they told you. And other evidence is showing that
5 that's true. That video evidence corroborates them.

6 [Video playing]

7 BY MR. PESCI:

8 You don't see those two kids.

9 You even have Charles coming into this, Charles talking
10 about phone calls happening. Ghunnar and Kymani told you
11 Jaiden called the after they left the house, after he shot into the
12 ceiling. Charles testified that Jaiden called him after he left the
13 house. The phone evidence corroborates that. You have video
14 evidence; you have phone evidence corroborating these two young
15 men -- and including Charles. Because there's the call to Ghunnar.
16 You can literally see his name. That's to Ghunnar.

17 If he's making it up and he's a liar because he's making up
18 something about a lick that didn't happen, then why on earth is the
19 phone evidence actually proving him truthful? And it's not just
20 Ghunnar, it's also Charles. Charles said that he called.

21 Now listen, Ladies and Gentlemen, we don't pick our
22 witnesses. The witnesses that are in the case, those are the
23 witnesses I -- the people that they chose to do this crime in the
24 presence of, those are the witnesses. Would it be better if they
25 weren't teenagers? Absolutely. Would it be better if they weren't

1 also doing drugs? Absolutely. But those are the witnesses. That's
2 why they call -- we call them in because they're the ones that see it,
3 hear it, and know what happened.

4 Traceo said Kody Harlan when into Matt's pockets and
5 took Matt's wallet. Big to do about how Traceo said that. Traceo
6 said he didn't take Matt's wallet, right? And video evidence
7 corroborates Traceo. There it is. He's got nothing. Whatever he
8 stole has got to be in his pocket somewhere. He's not walking out
9 with bags of merchandise. If Traceo stole the money in the wallet
10 of Matt, Traceo would have stuff in his bags. He wouldn't have
11 stolen it if he'd had money to be able to purchase it. There's
12 nothing.

13 [Video playing]

14 BY MR. PESCI:

15 That's shown to you because that was posted on
16 Snapchat on June the 7th. That's out there. Because kids today
17 they just think oh, you know, I just post it and nothing happens. It's
18 out there for anybody to see. Who subscribes or sees or is a part of
19 his Snapchat. And ask yourself, it's amazing that flush cash that
20 Matt had on June 7th, look at the flush cash in Kody's hands.

21 We're not saying Kody shot Matt, we're saying that Kody
22 was a part of the robbery and he took steps in furtherance of that by
23 literally taking a wallet. And the evidence of that is what you just
24 watched.

25 Remember that gun? Remember how adamant he was

1 that he didn't do it? Detective Nichols talked about that.
2 Repeatedly, I didn't have a gun, I didn't have a gun, I didn't have a
3 gun. Well, who's got a gun? The picture on the left is to help you
4 realize who it is that's on the couch. I mean, pay attention to this.
5 We've got these torn jeans right there. The shirt, the red yellow up
6 at the top left. That's Kody with a gun. But he's adamant he didn't
7 have a gun. He didn't have a gun. Why be untruthful about that?
8 Ask yourself that.

9 I mean, Defense Counsel said, put it up there on the board
10 that his client lied about that, right? So why lie about that? Ask
11 yourself that. If he didn't commit a crime, if he wasn't a part of a
12 robbery, and this was just an accident, why on earth lie about it?
13 Especially when there's evidence to prove that it's not true.

14 We was just trying to help him out, trying to tell him to get
15 up and stuff. Or like -- we didn't know he was dead.

16 You've seen the video. It's clear as day he's dead.

17 Me and Jaiden were there trying to like clean it up like --
18 not like clean it up to hide it type shit.

19 Whoa. I said clean it up, whoa, I got to like explain that
20 away so it's not like I'm trying to hide it. Because what does hiding
21 it show? You hide something that you did wrong, you don't hide an
22 accident. You don't hide a mistake.

23 I just put a tarp over him and left him there. I cleaned up
24 the blood around his face and made sure like -- you know, like I
25 don't know -- I tried to help him out the best I -- because that was a

1 homie to me.

2 Really? That was a homie?

3 I want to help you all find it because that's my friend, you
4 know, like I just don't want to leave him sitting there.

5 When he says that to the detective, the shooting has
6 already occurred, shopping has already occurred, a pool party has
7 already occurred and then a chase with Officer Cochran has already
8 occurred, and then running from the scene has already occurred.
9 But, you know, I don't want to leave him sitting there? That's
10 exactly what they did, left him sitting there.

11 Like everything I've been telling you has been 100 percent
12 truth? No, no it hasn't. And knowing that you have to assess the
13 evidence, put it into context, and make a determination as to the
14 guilt of these Defendants.

15 The felony murder rule here: A killing which is committed
16 in the perpetration or attempted perpetration of a robbery is
17 deemed to murder of the first degree.

18 That's how Kody gets there. We've already talked about it
19 as far as Jaiden and shooting, right?

20 Whether the killing was intentional or unintentional or
21 accidental.

22 If you believe that Kody was on the couch sleeping, if you
23 believe that, that does not save him from the felony murder rule.
24 Because the evidence establishes that the idea of robbing them
25 predates the shooting. It happened earlier, it happened when the

1 conversation about the lick occurred, when they went and got him
2 and brought him back; Matt that is.

3 So when the force, the shooting occurred, he could be
4 asleep. As long as he was a part of the idea and a part of the acts in
5 furtherance of the conspiracy to commit the robbery by going and
6 getting him and then the acts -- as Ms. Overly explained, the acts
7 after -- you take into consideration taking his cash, taking his wallet
8 is evidence of that earlier intent. That's felony murder. So even
9 though he was asleep from the time the shot occurred, it still
10 applies.

11 We've already gone through this afterthought. You can
12 rob someone who's dead, but you have to intend to rob them
13 before they're killed in order for felony murder to apply.

14 Now you're being told repeatedly it's not a robbery. Okay.
15 Let's snapshot. I showed you some torn jeans and some black
16 shoes just a moment ago of Kody on purpose, to show he was the
17 person with the gun and also to show you look who's right next to
18 the body. Those -- that pocket, it's not turned out. That didn't
19 magically happen on its own.

20 That's the person next to him. That is Kody Harlan.
21 There's the ripped jeans, the black shirt. That's the person next to
22 that body before all that money comes out, right? Those are the
23 facts. They're unbending. You can't get away from that right there.
24 His pants have the pockets pulled out.

25 And to add insult to injury, I mean, you really have to be

1 motivated to go get someone's wallet when you're digging in all
2 that blood. You just saw the video. He, Matthew did not have his
3 pockets turned out after he was shot.

4 But now when he's being taken from the scene and you
5 heard from Crime Scene Analyst Proietto, he said I stay with that
6 body from when I get there until the coroner's investigator takes it
7 away in that body bag. That blue around the body's the body bag.
8 He didn't touch those pockets and nobody else touched those
9 pockets. Those pockets were turned out before police got there and
10 after he was shot. Because his money's taken and it's used to buy
11 some clothes.

12 The police asked Kody how Matthew got to the house and
13 Kody said -- I'm almost done. Here's what I want you to keep in
14 mind, when you're back there and you're going to make your
15 determination as to the guilt of these Defendants and if for some
16 reason you're thinking that okay, Kody didn't actually play a part in
17 this robbery so therefore he's not a part of the murder, ask yourself
18 this, the police asked him how Matthew got to the house and Kody
19 said: He walked -- I guess, he -- I'm honestly -- I don't know how he
20 got there. He just popped up.

21 Why be untruthful about that? The evidence from all the
22 witnesses, all the witnesses whether they're allegedly credible or
23 not credible is that the Defendants left and got Matt. He didn't just
24 pop up. Think about that. Why did he tell the police he just popped
25 up? Because you want to know something, Ladies and Gentlemen,

1 you can tell a lot about the truth by what people lie about.

2 I asked at the beginning of this case during jury selection
3 if some of you maybe as parents or teachers ever have to figure out
4 what happened between two people, usually kids we're talking
5 about. You know, who stole the cookie from the cookie jar?
6 Whatever. Fill the blank as to the thing that happened.

7 And I talked about in the face of people giving you
8 different stories, could you come to a conclusion as to what really
9 happened and people said yes. And think about it, when you're
10 making that analysis, when you're trying to figure out who are the
11 people that are talking to you and telling the truth, sometimes it's
12 the lies that lets you know the truth.

13 You know, if my son stole those cookies and he's adamant
14 he never came downstairs, never came downstairs, and he throws
15 his sister completely under the bus. But when I go to my son's
16 room there's all kinds of cookies on the floor. How'd that happen,
17 son? If you're so adamant about never being downstairs, that's a
18 big key. You now know he's been downstairs. And the fact that
19 he's lying so much about it, brings into question whether he did it.

20 So keep that in mind. Why say he just popped up? Why
21 distance himself from giving Matt a ride? Because the ride is the
22 beginning of the robbery. The ride is the plan to rob put in action.
23 That's where it starts. There's a conversation about a lick, but then
24 there's action. And the action is these two going to pick up
25 Matthew.

1 Lying about that also helps you know that Ghunnar and
2 Kymani heard about it. Why should he distance himself from just
3 getting a ride if there wasn't a conversation about a lick? Why do
4 that? You lie about the things that hold you responsible.

5 Truth and justice, you've heard about those things.
6 You've heard quotes, I'm not going to mess with those things.
7 Truth and justice leads to first-degree murder convictions with use
8 of a deadly weapon for both Defendants. Truth and justice leads to
9 a robbery with use of a deadly weapon charge for both Defendants.
10 And additionally, the accessory murder with use of a deadly
11 weapon for Kody.

12 Thank you very much.

13 THE COURT: Thank you, Mr. Pesci.

14 All right. We're going to swear our jury -- or our officers
15 to take charge of our jurors, please.

16 [The Clerk swore in the officers to take charge of
17 jury during deliberations]

18 THE COURT: All right. Gather all your belongings, take
19 your notepads with you. You can leave your clipboards here in
20 court and we'll get you back to the deliberation room, except Ms.
21 Sepulveda, Seat Number 5, was randomly chosen to be our
22 alternate seat before we seated.

23 So you're not going to go back to the deliberation room
24 right now, you're going to kind of peel off with Jackie once you get
25 back there and she's going to get some information from you and

1 then you're going to be release. You're under the same admonition
2 that you still can't talk to anybody about the case or anything until
3 we let you know that the jury has finished their duties, okay?

4 Everybody else we'll get you back to the deliberation
5 room. I know we're approaching 5:00. I don't have any
6 expectations for what you're going to do this evening, other than I
7 would like you to at least get a foreperson elected.

8 The foreperson is simply going to be the person that's
9 kind of in charge of leading your discussions and communicating to
10 the Court with any notes or communicating with the marshal about
11 if and when you want to go home this evening, what time you'd
12 want to come back tomorrow, things like that, okay?

13 But go ahead and get back there and we'll get all the
14 exhibits back there for you as well to assist your with your
15 deliberations and a clean computer so that you can watch any of
16 the videos or any of the other evidence that's in evidence, okay?

17 With that you guys can go ahead and head on out.

18 [The jury retired to deliberate at 4:39 p.m.]

19 THE COURT: You guys have anything outside the
20 presence?

21 MR. PESCI: Not from the State.

22 MR. HELMICK: No.

23 MR. YAMPOLSKY: No, Your Honor.

24 THE COURT: Okay. Do you guys --

25 MR. HELMICK: You need my cell phone?

1 THE COURT: -- have a -- pardon?

2 MR. HELMICK: Cellphone, that's all.

3 THE COURT: Oh, okay. You guys have a clean -- you
4 guys can be seated. Thank you.

5 THE CLERK: They already gave that.

6 THE COURT: Got it. Okay. All right.

7 Then yes, just make sure we have phone numbers and
8 everything for Kory to contact you at. I don't anticipate that they're
9 going to go long this evening and I don't ever think it's a great idea
10 to keep jurors late in the evening, so I'll just kind of take direction
11 from them and have them let me know when they want to leave
12 and then I'll communicate to you all, okay?

13 MR. PESCI: Thank you.

14 [Evening recess at 4:40 p.m.]

15 * * * * *

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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.

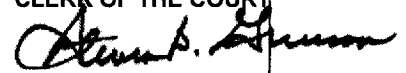
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Brittany Mangelson
Independent Transcriber



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

JAIDEN CARUSO &
KODY HARLAN,

Defendants.

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

DEPT. III

BEFORE THE HONORABLE DOUGLAS W. HERNDON,
DISTRICT COURT JUDGE

WEDNESDAY, AUGUST 07, 2019

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 7

APPEARANCES:

For the State:

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

For the Defendant
Jaiden Caruso:

MACE J. YAMPOLSKY, ESQ.
JASON R. MARGOLIS, ESQ.

Kody Harlan:

RYAN K. HELMICK, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

1 Las Vegas, Nevada, Wednesday, August 07, 2019

2
3 [Trial began at 2:44 p.m.]

4 [Outside the presence of the jury]

5 THE COURT: So before we get our jurors in, we will be on
6 the record outside the presence of the jury.

7 I just wanted to make a record of the one question that
8 came out. This morning the jurors had sent out a question and it
9 was I guess a three-part question you could say and the question
10 was, quote: Vince, just the name -- Vince, with a question mark, is
11 he the light-skinned curly hair guy? And why hasn't he been
12 questioned? End quote.

13 So I contacted the attorneys. Mr. Pesci was in court
14 because I had my homicide calendar this morning. I got Mr. Harlan
15 and Mr. Yampolsky on the phone. I told everybody what my
16 inclination was, and I believe everybody agreed with it.

17 And the answer that I responded to them was: As you will
18 recall from Instruction Number 43, the Court is not at liberty to
19 supplement the evidence. The Court also cannot speak to why any
20 particular persons were or were not questioned.

21 And I believe everybody was in agreement with that,
22 correct?

23 MR. PESCI: That's correct --

24 MR. HELMICK: Correct, Your Honor.

25 MR. PESCI: -- from the State.

1 THE COURT: Mace?

2 MR. YAMPOLSKY: Yes.

3 THE COURT: Yes. Okay. Thank you.

4 We'll have that marked as a Court Exhibit. And that's the
5 only note that came out that we had any response to.

6 [Pause in proceedings]

7 [In the presence of the jury]

8 THE MARSHAL: All rise for the jury.

9 THE COURT: All right. You all can be seated. Thank you.

10 We will be back on the record. Mr. Harlan and Mr. Caruso
11 are present. All of our attorneys and our jurors are present.

12 So Ms. Rice, my understanding is you're the foreperson of
13 the jury, correct?

14 THE FOREPERSON: Yes, Your Honor.

15 THE COURT: All right. And you all have reached a
16 verdict?

17 THE FOREPERSON: Yes, Your Honor.

18 THE COURT: Could you go ahead and hand those forms
19 to the marshal for me, please?

20 All right. And you all can remain seated.

21 In the matters of Kody Harlan and Jaiden Caruso, Case
22 Number 333318, Defendants Number 1 and 2, the verdict is: We,
23 the jury, in the above entitled case find the Defendants as to Count
24 1, murder with use of a deadly weapon; each Defendant guilty of
25 first-degree murder with use of a deadly weapon.

1 As to Count 2, robbery with use of a deadly weapon; each
2 Defendant guilty of robbery with use of a deadly weapon.

3 And as to Mr. Harlan, Count 3, accessory to murder with
4 use of a deadly weapon; guilty of accessory to murder with use of a
5 deadly weapon.

6 Ladies and Gentlemen of the Jury, are those your verdict?
7 So say you one, so say you all?

8 THE JURY: Yes.

9 THE COURT: Either side wish to have the jury polled?

10 MR. PESCI: Not from the State.

11 MR. HELMICK: No, Your Honor.

12 MR. YAMPOLSKY: No, Your Honor.

13 THE COURT: Ladies and Gentlemen with that, that
14 concludes your jury service with the great thanks of the Court, and I
15 will tell you on behalf of our community, I give you their thanks as
16 well.

17 First off, I'm not going to give you that admonition now,
18 so that just means you're free to talk to anybody that you want to
19 talk to about the case. You certainly don't have to talk to anybody if
20 you don't want to and I'll explain that to you a little further in a
21 moment. I'm going to come back there and chat with you for a
22 couple of minutes.

23 But thereafter the attorneys may want to talk to you and if
24 they do, I'll bring you back into the courtroom just with the
25 attorneys and myself. It's always very valuable for the attorneys to

1 learn from the people that sit in judgment of issues in our
2 community about what you thought about the process; everything
3 from getting a Jury Summons, to coming into Jury Services, to the
4 jury selection process. How they present a case as attorneys. Just
5 kind of get some feedback from you.

6 We don't talk about your deliberative process. There's a
7 reason that you go back there, and we close the door, and nobody
8 gets to communicate with you. That's a very private thing amongst
9 the collective members of the jury, okay? But nonetheless, to be
10 able to give some feedback to the attorneys and the people
11 involved in the case so that they can learn from it because we learn
12 every day, is a good thing.

13 So if some of you have some time and you're willing to
14 stick around and chat, I know on behalf of them, they would
15 appreciate it. On the other hand, if you want to get on your way, I
16 understand that as well. So don't feel like you have any obligation
17 to stick around. After I get a chance to chat with you, any of you
18 that want to leave, you're certainly free to do so.

19 As you'll recall from the jury selection process, there's a
20 lot of folks that come in for jury selection and try really hard to get
21 out of jury duty, right? Every question I ask they want to kind of
22 come up with an answer that's going to alleviate that inconvenience
23 on their life. So to the extent you all didn't do that, you were willing
24 to honor what it means to be on a jury and serve, on behalf of this
25 community I really, really do thank you because I know it takes a lot

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

Read @ 2:48pm
FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

AUG 07 2019

BY Kory Schütz
KORY SCHÜTZ, DEPUTY

1 VER

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3
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 THE STATE OF NEVADA,)

7 Plaintiff,

CASE NO: C-18-333318-1

8 -vs-

DEPT NO: III

9 JAIDEN CARUSO,

10 Defendant.

11
12 VERDICT

13 We, the jury in the above entitled case, find the Defendant JAIDEN CARUSO, as
14 follows:

15 COUNT 1 – MURDER WITH USE OF A DEADLY WEAPON

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

- 17
- 18 ☒ Guilty of 1st Degree Murder With Use Of A Deadly Weapon
- 19 ☐ Guilty of 1st Degree Murder
- 20 ☐ Guilty of 2nd Degree Murder With Use Of A Deadly Weapon
- 21 ☐ Guilty of 2nd Degree Murder
- 22 ☐ Guilty of Voluntary Manslaughter With Use Of A Deadly Weapon
- 23 ☐ Guilty of Voluntary Manslaughter
- 24 ☐ Guilty of Involuntary Manslaughter
- 25 ☐ Not Guilty
- 26

27 C-18-333318-1
28 VER
Verdict
4854531



AA 1844

2

1 **COUNT 2 – ROBBERY WITH USE OF A DEADLY WEAPON,**

2 *(please check the appropriate box, select only one)*

- 3
- 4 ☒ Guilty of Robbery with Use of a Deadly Weapon
- 5 ☐ Guilty of Robbery
- 6 ☐ Not Guilty
- 7

8

9 DATED this 7th day of August, 2019

10 

11 FOREPERSON

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