

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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1 MR. SGRO: Objection, Your Honor. Everybody lies?
2 That's not responsive. The question was real simple --

3 THE COURT: Yeah, that's not responsive.

4 BY MS. WECKERLY:

5 Q Okay. Well, the fact that she put out her hands
6 and she touched you, does that make you more likely to believe
7 her?

8 A No, that's why the interview was so long.

9 Q And the interview lasted 12 hours because you
10 kept challenging her on her versions of events?

11 A Absolutely.

12 Q Now, Mr. Sgro asked you about -- this is Defense
13 Exhibit BB, which is the lab request. Can you see that or do
14 you want me to bring it up to you?

15 A It's -- it's still a little fuzzy on this
16 screen.

17 Q Okay. I'll -- I'll approach. It's -- this is
18 Defense Exhibit BB. I'd ask you to review that.

19 A Myself?

20 Q Yeah, just to yourself.

21 A (Witness complied.)

22 Q So this --

23 A The rest of it too, or --

24 Q No, that's okay.

25 A -- okay.

1 Q So this is a conversation that someone wrote
2 notes on -- about a conversation that occurred on September
3 the 30th of 2010?

4 A Correct.

5 Q Now, what is the process you have to go through
6 to request that items of evidence be analyzed for DNA?

7 A Well, we submit all the related items of
8 evidence through a request through the crime lab and then they
9 review that request. In this case because of the great number
10 of -- of things that we asked or requested that they test they
11 in turn had a conversation with me of, like, trying to ask me
12 why I needed all of these things tested, which isn't uncommon.

13 Q I mean, in -- in your experience, does the lab
14 try to limit --

15 A Yeah, they have --

16 Q -- for various reasons the number of actual
17 pieces of evidence that are analyzed for the presence of DNA?

18 A They have an extreme number of cases that they
19 have to work, not only from our own agency, but from other
20 agencies and limited resources to do so. So they request --
21 they try and get us to limit the amount of things that we
22 test.

23 Q And because of the nature of the case you were
24 investigating, did you want them to go and analyze everything,
25 rather than a portion of the collected evidence?

1 A Yes, as much stuff that we felt was pertinent
2 for that case, absolutely.

3 Q Okay. And so did you have a conversation where
4 you said, Look, I want every piece of evidence analyzed?

5 A Yeah, and I don't recall specifically exactly
6 what, but yes. I mean, ultimately we want everything that
7 we're requesting, we want it analyzed, so...

8 Q Okay. And the Defense has highlighted that you
9 said that you're trying to corroborate a story. Is that -- is
10 that why you wanted every piece of evidence analyzed?

11 A Well, as I said before, everybody -- we believe
12 that everybody is in this case that I spoke to and that other
13 detectives spoke to, we know that they're going to be
14 deceptive or minimize their involvement --

15 MR. SGRO: Objection to what -- Judge, that's just
16 not appropriate. We know everyone we talk to is going to be
17 deceptive. That's not to call the question.

18 MS. WECKERLY: Well, I asked why he made -- if he
19 made this request that they --

20 THE COURT: Objection's overruled.

21 MS. WECKERLY: -- validated --

22 BY MS. WECKERLY:

23 Q So why did you make the request that you did?

24 A Well, we want to basically confirm or, you know,
25 show that basically, that the story that each individual is

1 giving is consistent with the evidence at the scene and to
2 match those things up. That helps us determine what is truth
3 and what is deception.

4 Q And, I mean, in the real world the reality is
5 you don't -- although you swab something for DNA, you don't
6 always get results on it?

7 A Probably less than 50 percent is a guess, but
8 there are many times where we -- I mean, I know we request
9 prints and DNA, all sorts of things and -- many times and we
10 don't get half of that stuff. It just doesn't show up for
11 many -- a multitude of reasons.

12 Q Now, when you finally got the DNA results at the
13 Meikle Lane scene, was there any unidentified male DNA?

14 A Yes.

15 Q And that was on a cigarette butt and a kitchen
16 knob?

17 A That's correct. Excuse me.

18 Q Going to Job-Loc's apartment in Las Vegas, was
19 there unknown DNA in that apartment?

20 A Yes.

21 Q And was that -- some of that DNA labeled as
22 Unknon Male No. 4?

23 A Yes.

24 Q Do you recall the types of items Unknon Male No.
25 4 was on?

1 A I believe a -- some cigarette butts. There was
2 a number of items. I don't recall specifically each one,
3 though.

4 Q We've heard testimony that's -- there was
5 unknown male DNA mixed with Monica Martinez's DNA on a
6 cigarette butt and also with Mr. Burns and that there was also
7 a toothbrush of his -- of Unknon Male 4?

8 A Correct.

9 Q So at that point it probably wouldn't have been
10 surprising that Job-Loc's DNA would be in his own apartment?

11 A No. No, not --

12 Q And --

13 A -- at all.

14 Q -- if he's Unknon Male No. 4, and you know he's
15 not in your crime scene?

16 MR. SGRO: Objection. Calls for --

17 THE WITNESS: Correct.

18 MR. SGRO: -- speculation. How would he know who
19 Unknon Male No. 4 is?

20 MS. WECKERLY: Well, if -- Your Honor, we have
21 testimony that Unknon Male No. 4 is an Unknon Male No. 1,
22 which is the only thing I can --

23 THE COURT: Objection overruled.

24 BY MS. WECKERLY:

25 Q Detective, I'm showing you now what has been

1 marked as State's 282, and it's a collection of photographs?

2 A Correct.

3 Q Do you recognize those photographs?

4 A I do.

5 Q Where are they taken from? Look at --

6 A Well, this is Jerome Thomas or Job-Loc, that we
7 know as Job-Loc, and he's strapped down in a gurney, obviously
8 receiving medical care from medical attendants.

9 Q And are these Metro photos?

10 A They are.

11 Q And what incident are they associated with?

12 A This is from a petty larceny at Walmart on West
13 Charleston -- 6310 West Charleston Boulevard.

14 Q And this was in July of '10?

15 A Correct.

16 MS. WECKERLY: The State moves to admit 282.

17 MR. SGRO: May I just see them, first? Which number?

18 MS. WECKERLY: 282.

19 MR. SGRO: No problem. No objection.

20 MR. LANGFORD: No objection.

21 THE COURT: They'll be received.

22 (State's Exhibit 282 admitted.)

23 BY MS. WECKERLY:

24 Q So in July there was an incident he was involved
25 with at a Walmart where Job-Loc or Jerome Thomas got medical

1 attention, and I'm putting one of the photographs on the
2 scene, and this is one of the photographs that was taken
3 associated with his treatment or that incident?

4 A Correct.

5 Q And now, sir, I'm showing you a letter that was
6 admitted as State's 345. It's written by Willie Mason and
7 it's to who?

8 A Jerome Thomas.

9 Q And on page 1, can you read -- it's pretty
10 faint, but can you read that -- that second sentence?

11 A I hope this letter finds you in good health due
12 to your unfortunate situation with your leg and all.

13 Q Now, when you showed the photographic lineup to
14 Devonia, did you tell her that it is one of the six, or you
15 have to pick one of the six, or --

16 A No.

17 Q -- did you make her read the instructions, or
18 because she's a child would you have explained them?

19 A I read the instructions.

20 Q Okay. When you -- when you spoke to Devonia,
21 there's a transcript eventually made, correct?

22 A Correct.

23 Q And we see it -- we've seen the transcript and
24 there are -- there are lines, which as Mr. Sgro mentioned,
25 indicate that at least the transcriber found that portion

1 unintelligible?

2 A Yes.

3 Q And in those portions there is actual dialogue
4 or someone saying something at -- at some point; would that be
5 fair?

6 A Correct.

7 Q And when you're listening to her live, as that
8 interview is occurring, had she said something like, my dad,
9 Cornelius or some -- C-note, anybody like that, shot me, that
10 probably would have gotten your attention?

11 A No. In fact, she said that -- she mentioned
12 specifically --

13 MR. SGRO: Objection, Your Honor.

14 A -- somebody else shot her.

15 MR. SGRO: This is a narrative and it's not
16 responsive. That --

17 THE COURT: Rephrase the question.

18 BY MS. WECKERLY:

19 Q If she had said that Cornelius Mayo in some way
20 was responsible for the gunshot wound to her stomach, do you
21 think that you -- that would have alerted you in some way
22 during the interview?

23 A Yes.

24 Q And would you have followed up on that?

25 A Absolutely.

1 Q In this case, we have Job-Loc's phone records,
2 the cell phone data and the towers from the phone company,
3 correct?

4 A Yes.

5 Q Did you ever have his physical phone?

6 A No.

7 Q How about Willie Mason's physical phone?

8 A No, ma'am.

9 Q But we have the records?

10 A Yes, ma'am.

11 Q So you can get data on phones without having the
12 phone in your hand?

13 A Yes.

14 Q When you -- when you testified in family court
15 about the investigation -- do you recall that?

16 A I recall testifying, yes, ma'am.

17 Q You -- were you the only detective that
18 testified?

19 A I believe so.

20 Q And were you testifying as to a narrow aspect of
21 the investigation, or broadly what the investigation had
22 shown?

23 A I think just the general overall of what took
24 place, the circumstances.

25 Q When you met with Monica Martinez and her

1 attorneys and myself and Mr. DiGiacomo for that proffer, is
2 that -- was that pretty soon after her arrest or was that
3 something more recent?

4 A Definitely it wasn't recent. I don't recall the
5 date, but it definitely was not recent.

6 Q And just because these haven't -- I don't think
7 these have been admitted yet. Showing you State's Proposed 7.
8 Do you recognize who that is?

9 A I do.

10 Q Who is that?

11 A That is Stephanie Cousins.

12 Q And who is the -- 8?

13 A Monica Martinez.

14 Q And who is in -- sorry, 12?

15 A Donovan Rowland.

16 Q And are -- are those all fair and accurate
17 pictures of how those three individuals looked back in 2010?

18 A Yes, ma'am.

19 THE COURT: While we're on Stephanie Cousins, did you
20 personally interview Stephanie Cousins?

21 THE WITNESS: Yes.

22 THE COURT: When?

23 THE WITNESS: Well, I did more than once. I don't
24 know the specific dates, but I have them in my OR. I can get
25 them for you. I just don't know off the top of my head.

1 THE COURT: Where?

2 THE WITNESS: A couple different places. I believe
3 -- I know we did at our office for sure.

4 THE COURT: Was she in any way intoxicated or under
5 the influence when you interviewed her?

6 THE WITNESS: I don't think so. No.

7 MS. WECKERLY: State moves to admit 7, 8, and 12.

8 MR. SGRO: No objection, Your Honor.

9 THE COURT: Okay. They'll be received.

10 (State's Exhibit 7, 8, and 12 admitted.)

11 BY MS. WECKERLY:

12 Q Okay. Let's start with --

13 MS. WECKERLY: Oh, could we please move that over to
14 marked. Thank you.

15 BY MS. WECKERLY:

16 Q -- 7.

17 MR. DIGIACOMO: Might want to wait for --

18 MS. WECKERLY: Oh.

19 MR. DIGIACOMO: -- it to come back over to you. Just
20 a second.

21 BY MS. WECKERLY:

22 Q Who is that?

23 A That's Ms. Cousins.

24 Q And 8, please?

25 A It's --

1 Q I know you know who it is.
2 THE COURT: You know, you can turn that?
3 THE WITNESS: Monica.
4 MR. DIGIACOMO: I know I can, Judge, but --
5 THE COURT: You're so fancy --
6 MR. DIGIACOMO: -- for some reason --
7 THE COURT: -- fancy with that thing.
8 MR. DIGIACOMO: -- oh, there it goes.
9 MS. WECKERLY: We'll see how fast he can turn it.
10 MR. DIGIACOMO: There you go.

11 BY MS. WECKERLY:

12 Q Who's that?

13 A It's Monica Martinez.

14 Q And 12?

15 A Yeah, that's Jerome.

16 Q How long is his hair?

17 A Well, I can't see it in this picture, but I
18 don't recall -- I recall it being pretty short.

19 Q Now, there's been a lot of discussions about
20 these two shots at the end of the hall, and then the number of
21 shots in the bullets and all that.

22 A Yes, ma'am.

23 Q I'm going to show you a picture -- this is
24 marked as State's Proposed 346. Do you recognize that photo?

25 A Yes, ma'am.

1 Q Is that of the crime scene after -- well,
2 probably on the first day, the 7th when you arrived?

3 A Yes, ma'am.

4 Q And is it a fair and accurate depiction of the
5 scene as it appeared that morning?

6 A Yes.

7 MS. WECKERLY: The State moves to admit 346.

8 MR. SGRO: No objection.

9 MR. LANGFORD: No objection.

10 MR. DIGIACOMO: Can we go back to me? It somehow
11 clicked off of me.

12 (State's Exhibit 346 admitted.)

13 BY MS. WECKERLY:

14 Q So looking -- one second.

15 Looking at 346, this is the piece of furniture
16 that -- that you and Mr. Sgro were discussing on
17 cross-examination?

18 A Correct.

19 Q You call it a shelf and I forget what he called
20 it, but this -- you guys were talking about the same piece of
21 furniture?

22 A Correct.

23 Q Now, when that was moved the next day, what was
24 behind it?

25 A There were two holes in the -- the north wall,

1 the hallway.

2 Q Okay. And those were the ones that we'd
3 separate, A and B?

4 A Correct. I believe A and B. I --

5 Q Okay. Were -- on the first day, were those
6 holes in the wall behind this piece of furniture noticed? I
7 mean, did you --

8 A No. No.

9 Q Those were missed on the first day?

10 A Correct.

11 Q Ultimately, that -- that furniture was moved and
12 you guys go back with the dowels and the --

13 A Correct.

14 Q -- to measure the -- I guess, the angles of the
15 bullets?

16 A Correct.

17 Q So if those shots behind there -- behind that
18 piece of furniture actually were from this incident, we'd
19 expect there to be some damage to that furniture?

20 A Yeah, that's -- absolutely.

21 MR. DIGIACOMO: Now you've gone too far.

22 MS. WECKERLY: No, I can see it.

23 MR. DIGIACOMO: Oh, there it is. Now I can see it.

24 BY MS. WECKERLY:

25 Q So looking at that closeup of 346, can you see

1 down into that piece of furniture?

2 A It appears that there's damaged areas, yes,
3 ma'am.

4 Q And when a bullet strikes a hard object like
5 furniture, is it unusual for it to fragment?

6 A No.

7 Q When -- when you showed Devonia the photographic
8 lineup --

9 A Yes, ma'am.

10 Q Oh, nevermind.

11 MS. WECKERLY: I'll pass the witness, Your Honor.

12 THE COURT: Anything further, Mr. Sgro?

13 MR. SGRO: Yes, sir.

14 RECROSS-EXAMINATION

15 BY MR. SGRO:

16 Q You were asked some questions just now by Ms.
17 Weckerly about this application and affidavit for a search on
18 Donovan Rowland's place, right?

19 A Correct.

20 Q Now, she made a point to -- to suggest to you
21 that these were Ulonda Cooper's words that you recited in your
22 warrant, right?

23 A Correct.

24 Q Ulonda Cooper's words turned out to be true, at
25 least you found the gun, right?

1 A Some of them were, sure.

2 Q Well, you don't know. I mean, you're -- you're
3 -- now you're guessing. Let's talk about what we know. We
4 know, at least relative to Donovan Rowland trying to sell a
5 gun, we know that turned out to be true?

6 A That's correct.

7 Q We know, based on what you were able to learn as
8 a result of Ulonda Cooper, Donovan Rowland told you where it
9 was located too, right?

10 A Yes, he did.

11 Q So the only part that is not true is the part
12 you take issue with on Donovan Rowland being in the crime --
13 involved in the crime, right?

14 A Well, we were able to prove that, so, yeah.

15 Q Don't -- just -- with my question, the answer is
16 the only part you quarrel with is the part that conflicts with
17 David Burns's innocence, right?

18 A No, that's not the only part. There's another
19 part on there that I actually disagree with as well.

20 Q You were asked by the State if Stephanie Cousins
21 told you whether or not Job-Loc was the shooter?

22 A Say that one more time.

23 Q Were you asked just now whether or not Stephanie
24 Cousins told you that Job-Loc was the shooter?

25 A She never told me that he was the shooter.

1 Q Again, do you recall being asked that question
2 just a minute ago?

3 A I remember -- no, not the specific that she --
4 that he was -- she told me that, no.

5 Q Did you not -- you interviewed Stephanie Cousins
6 three times?

7 A Correct.

8 Q You, on the third time you talked to her, you
9 said you had a shooter in custody named D-Shot, right?

10 A Right -- well, I -- assuming so if it's on
11 there, sure.

12 Q Okay. I could --

13 A We did a photo lineup with her with who we
14 believed to be D-Shot, so, yes, I'm sure I told her that.

15 Q And then, do you remember her saying, Well, why
16 were they calling him Job-Loc in front of me? Do you remember
17 that?

18 A No.

19 MR. SGRO: May I approach?

20 THE COURT: Yes.

21 MR. SGRO: Page 5, Counsel.

22 MR. DIGIACOMO: I'm sorry, which interview is this?

23 MR. SGRO: I'm sorry, the third one.

24 MR. DIGIACOMO: What's the date?

25 MR. SGRO: Just a second. 9/30/2010, 11:15, page 5.

1 MR. DIGIACOMO: Thank you.

2 BY MR. SGRO:

3 Q Okay. So my predicate was, Did I tell you the
4 shoot -- D-Shot, the shooter is in custody, right?

5 A Okay.

6 Q Is that right?

7 A Correct.

8 Q And then she says, Well, you said you were going
9 to get him, right?

10 A You said that you -- yes.

11 Q And then you guys say, Well, we got him, he's in
12 jail, right?

13 A Correct.

14 Q She says, So that was his name? His nickname is
15 D-Shot? And then you guys say, Yes. Right?

16 A Okay.

17 Q And then does she say, Well, I don't know, why
18 were they calling him Job-Loc in front of me, right?

19 A Yeah, her daughter told her that name.

20 Q Sir, please just stick with my questions.

21 A Yes, that's what that says --

22 Q Does it say --

23 A -- absolutely.

24 Q -- that?

25 A Yes, it does.

1 Q All right. Then you guys say, Well, maybe
2 you're mixed up, right?

3 A Okay.

4 Q And then --

5 A And he just --

6 Q -- does she say, I -- I ain't miss nothing like
7 that, right?

8 A Correct.

9 Q Then you guys say, Well, they called him Job-Loc
10 a bunch of times? And she says, Exactly. I wasn't that
11 fucked up --

12 A Right.

13 Q -- right?

14 A Correct.

15 Q And then you say, Well, maybe that's their way
16 of concealing his identity, right?

17 A Okay.

18 Q And then in front of the Grand Jury --

19 MR. SGRO: Can I approach again, Your Honor?

20 THE COURT: Yes.

21 BY MR. SGRO:

22 Q -- the information was adduced and this is page
23 158. We got information --

24 A Who is this -- I don't -- who -- who is
25 speaking?

1 Q This is Detective Wildemann. Do you agree that
2 you got information that -- at that time -- when we got the
3 information, we believed that the possible shooter was a man
4 that went by the moniker of Job-Loc?

5 A Correct.

6 Q Job-Loc, we were able to identify through
7 California as Jerome Thomas?

8 A Yes, that is accurate.

9 Q You were shown --

10 MR. SGRO: May I have the ELMO, please?

11 BY MR. SGRO:

12 Q -- Exhibit 346. This is the one with the vacuum
13 cleaner?

14 A Yes, sir.

15 Q Are you aware that the CSAs, the crime scene
16 analysts in this case have traced what they believe a travel
17 path through this vacuum cleaner to a bullet that ends up
18 going through the vacuum, bouncing off a --

19 A Yes, I am.

20 Q -- or through the mattress, hitting --

21 A Yes, sir.

22 Q -- a curtain, landing on a curtain?

23 A Yes, sir.

24 Q Okay. And are you aware that crime scene
25 analyst in this case, and there have been several that have

1 testified --

2 A Right.

3 Q -- have never said that the bullet that traveled
4 through that vacuum did anything other than go into the master
5 bedroom. You --

6 A Well, I don't know what they said, but I'll
7 take --

8 Q Okay.

9 A -- your word for it.

10 Q Let me ask you this: In your case file can you
11 point me to a single report that disputes that the bullet that
12 went through the vacuum cleaner did anything other than end up
13 in the master bedroom?

14 A Well, the one that shows the two holes at the
15 north end of the hallway.

16 Q I understand what your testimony is about the
17 two holes in the hallway today.

18 A Right.

19 Q I'm asking you if any expert has written a
20 report that says, When we did the travel path and it went
21 through the vacuum, not only -- not only did it go into the
22 master bedroom --

23 A Right.

24 Q -- okay, but also, it went off and went through
25 the wall. Do you have such a --

1 A No.

2 Q -- report?

3 A No.

4 Q And you're sitting here today in court
5 suggesting that that's a possibility, right?

6 A Absolutely.

7 Q Okay. How does --

8 A I'd be happy to explain.

9 Q -- how much -- I'm sure you would be. How much
10 did the fragments weigh that went into the television?

11 A I have no idea.

12 Q How much does a bullet weigh that's used as
13 ammunition in a .44 Ruger?

14 A I don't know.

15 Q How much did the -- did the piece of the bullet
16 weigh that was in the master bedroom?

17 A I don't know. I didn't do the analysis on that.

18 Q Well, but you're sitting here testifying in
19 front of the jury about an analysis relative to fragments,
20 right? If you added -- if you added the weight, sir -- and
21 plus, Cornelius Mayo handed you a bullet, ostensibly, that
22 came from the television, right?

23 A Which matched the other bullets.

24 Q Is that a yes?

25 A Yes.

1 Q The bullet from Cornelius's hand --

2 A Correct.

3 Q -- the fragment from the television --

4 A Okay.

5 Q -- and the bullet that went into the master
6 bedroom, if you weighed all of them, wouldn't they exceed the
7 weight of one single round of Ruger ammunition?

8 A I don't do bullet analysis, sir, so I'm not in
9 any --

10 Q It sounded like --

11 A -- position to answer --

12 Q -- you did.

13 A -- that.

14 MR. SGRO: I have nothing else, Your Honor.

15 MR. LANGFORD: Nothing here.

16 FURTHER REDIRECT EXAMINATION

17 BY MS. WECKERLY:

18 Q Mr. Sgro showed you an interview --

19 THE COURT: Re-redirect?

20 MS. WECKERLY: Yes, please. Just one.

21 THE COURT: It's unusual. One question.

22 BY MS. WECKERLY:

23 Q Mr. Sgro showed you an interview from Stephanie
24 Cousins that was on September the 30th of 2010?

25 A Correct.

1 Q Where she's discussing the name of the shooter,
2 and -- Job-Loc?

3 A Yes.

4 Q Now, if you -- I'll have you just -- so this is
5 quicker, look on page 25 of your report.

6 A (Witness complied.) Okay.

7 Q On the date of September 12, two weeks earlier,
8 did you show Stephanie Cousins a photographic lineup?

9 A I did.

10 Q And did she identify David Burns as the shooter?

11 A She did.

12 Q So whatever name she's calling him, she
13 identified David Burns as the shooter, never Job-Loc?

14 A Correct.

15 Q Thank you.

16 THE COURT: All right. Thank you, Detective, for
17 being a witness. You'll be excused.

18 THE WITNESS: Yes, sir. Thank you.

19 MR. DIGIACOMO: Judge, understanding that all the
20 exhibits that have been offered have -- and the Court has
21 admitted, are admitted, and I've confirmed that with your
22 clerk, I believe, at this point --

23 THE COURT: Let's check on that.

24 THE CLERK: Yeah, just [inaudible].

25 THE COURT: Correct.

1 MR. DIGIACOMO: And anything that was offered today,
2 we checked yesterday. So there was only four exhibits, I
3 think offered today. They've all [inaudible] by the clerk.

4 We would rest.

5 THE COURT: All right. Ladies and gentlemen, that
6 concludes the State's case in chief. It is now the
7 opportunity of the Defendants to call witnesses if they wish
8 to. Keep in mind that it's always the burden of the State to
9 prove the Defendants' guilt. The Defendants do not have to
10 call witnesses if they don't wish to. And they never have a
11 burden of proof.

12 We've got to take a recess for a few minutes. We're
13 going to take a mid-morning recess, and then we're going to
14 come back and we'll have further proceedings.

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

23 We'll be in recess for about -- about 15 minutes.

24 THE MARSHAL: Thank you. Jurors, please.

25 (Jury recessed at 10:41 a.m.)

1 THE COURT: Let the record reflect that the jury has
2 left the courtroom. Mr. Burns and Mr. Mason, if you'd remain
3 standing, please. While I don't wish to give you advice, I
4 want you to be aware that in a trial the defendants are
5 entitled to testify in opposition to the State's case in
6 chief. That means that either one or both of you can offer
7 testimony if you wish to.

8 Did you know that, Mr. Burns?

9 DEFENDANT BURNS: Yes.

10 THE COURT: Mr. Mason?

11 DEFENDANT MASON: Yes, sir.

12 THE COURT: While you have a right to testify, you
13 also have a right not to testify.

14 Did you know that, Mr. Burns?

15 DEFENDANT BURNS: Yes, sir.

16 THE COURT: Mr. Mason?

17 DEFENDANT MASON: Yes, sir.

18 THE COURT: I can advise you this much, that if you
19 do testify, the district attorney would be entitled to
20 cross-examine you, and if you have any prior convictions for
21 offenses, they may be admissible to impeach you.

22 Did you know that, Mr. Burns?

23 DEFENDANT BURNS: Yes, sir.

24 THE COURT: Mr. Mason?

25 DEFENDANT MASON: Yes, sir.

1 THE COURT: If you decide not to testify, the State
2 is prohibited from commenting to the ladies and gentlemen of
3 the jury that you failed to testify or failed to call
4 witnesses.

5 Do you understand that, Mr. Burns?

6 DEFENDANT BURNS: Yes, sir.

7 THE COURT: And, Mr. Mason?

8 DEFENDANT MASON: Yeah.

9 THE COURT: Have you discussed with your counsel your
10 right to testify and not to testify?

11 Mr. Burns?

12 DEFENDANT BURNS: Yes, sir.

13 THE COURT: Have you made a decision as to testify or
14 not to testify?

15 DEFENDANT BURNS: [Inaudible.]

16 THE COURT: You haven't made a decision yet?

17 DEFENDANT BURNS: I made a decision.

18 THE COURT: You made a decision?

19 DEFENDANT BURNS: Yes.

20 THE COURT: All right.

21 Mr. Mason, do you have any questions about that?

22 DEFENDANT MASON: I'll talk with Mr. Langford.

23 THE COURT: You've already talked with Mr. Langford
24 about it?

25 DEFENDANT MASON: Yeah.

1 THE COURT: All right. Any questions about your
2 right to testify?

3 Mr. Burns?

4 DEFENDANT BURNS: No, sir.

5 THE COURT: Any questions, Mr. Mason?

6 DEFENDANT MASON: No, my attorney is -- has apprized
7 me of everything.

8 THE COURT: I understand.

9 Anything further on the canvass?

10 MR. SGRO: No, Your Honor.

11 THE COURT: Can we take a few minutes recess, and
12 then --

13 MR. SGRO: We need -- we probably need some time to
14 go over -- well, Your Honor, we need to make a decision who
15 we're going to call, if anybody, and I didn't have anyone
16 scheduled until 11, so --

17 THE COURT: Okay. 11:00, we'll start.

18 MR. SGRO: Well, yes. We'll do the best we can. And
19 we also have a stipulation relative to a Proposed Exhibit --
20 and --

21 MR. DIGIACOMO: Okay. But, I mean, the rest of this
22 doesn't even relate to Devonian --

23 MR. SGRO: That's what I'm saying.

24 MR. DIGIACOMO: I'd offer you to leave it on. It
25 doesn't matter.

1 THE COURT: We're on the record and you guys are
2 mumbling. You're not going to get a very good record if
3 you're mumbling like this.

4 MR. SGRO: Okay. So here's what we want to do, Your
5 Honor -- may I approach the clerk?

6 THE COURT: Certainly.

7 MR. SGRO: So we're going to mark an exhibit next in
8 order, and what it is is part of that medical chart we were
9 talking about earlier.

10 MR. DIGIACOMO: Are you giving her the whole thing,
11 or are you just going to take the one page?

12 MR. SGRO: Just the one page.

13 MR. DIGIACOMO: Yeah, just the one page is the only
14 thing that you can --

15 MR. SGRO: So all we want is the very first entry
16 that -- just to establish the timeline, Your Honor, of when
17 Cornelius Mayo went to UMC, it's got a notation there 5:30 in
18 the morning. The balance of the entries have nothing to do
19 with our case, and I need -- just need them to be whited out
20 or Sharpied out.

21 THE COURT: If they have nothing to do with the case,
22 we don't have to do that, do we?

23 MR. SGRO: I just don't want the jurors to be
24 confused, like, it reads as if it's a progressive chart and
25 it's not.

1 THE COURT: As opposed with the rest of this case,
2 they're not going to be confused.

3 MR. SGRO: We'll submit it to your -- whatever you
4 want to do, Your Honor.

5 THE COURT: What do you want to do? I -- if the
6 counsel stipulate to it, I'll do it, but --

7 MR. SGRO: We stipulate to the admission of that
8 first entry.

9 THE COURT: All right. You stipulate to the
10 admission of the document. And if you want us to just cross
11 out or something, we can do that, rather than -- I don't think
12 she wants to sit there and black out the rest of the page.

13 MR. SGRO: I was thinking just taking a white piece
14 of paper and running another copy so we only see the top part.

15 THE CLERK: Okay.

16 THE COURT: Can you do that?

17 THE CLERK: Mm-hmm.

18 THE COURT: She thinks she can do that. My clerk is
19 pretty good.

20 MR. SGRO: Yes, she is.

21 THE COURT: I can guarantee you that I could not do
22 that, so --

23 MR. ORAM: Thank you, Judge. We're going to go make
24 --

25 THE COURT: Hold on. Hold on. They're still

1 discussing it.

2 MR. DIGIACOMO: Yeah. I mean, because the --

3 THE COURT: Do we need the context in which the
4 statement is made?

5 MR. DIGIACOMO: Well, no. There's an entry at 10:25
6 in the morning that says, Cornelius has not -- snuck into the
7 room to see the patient, but it's noted on here that it's not
8 until 1610 that day that CPS put a hold and that they
9 restricted [inaudible], so if he wasn't restricted from seeing
10 her, I'd like the whole record.

11 THE COURT: All right. Leave the whole thing in.
12 We'll leave the whole thing in.

13 MR. SGRO: Sounds good.

14 THE COURT: To the extent that it has any value in
15 this case.

16 MR. SGRO: Thank you.

17 THE COURT: Anything further on the record, before we
18 take a break?

19 MR. DIGIACOMO: No.

20 MR. ORAM: No, sir.

21 THE COURT: There being no request, off the record.

22 (Court recessed at 10:46 a.m. until 10:59 a.m.)

23 (Outside the presence of the jury.)

24 THE COURT: Okay. Back on the record. Mr.
25 DiGiacomo?

1 MR. DiGIACOMO: Yes. Judge, we learned after October
2 9th of 2014 that the defense had interviewed Devonia Newman.
3 We also learned that -- from Ms. Newman, that she had drawn --
4 drawn a picture for the defense and had provided them a
5 statement. Shortly after learning that information -- and --
6 and so the Court's aware, there's been an entry of an order of
7 reciprocal discovery in this case for years at this point. We
8 made a specific request from those items from the defense.
9 And they said we don't have to turn them over to you. I'm
10 assuming because they thought they -- they didn't have to put
11 it in their case in chief.

12 They're now at the case in chief, and just a moment
13 ago handed me the two items we asked for six weeks ago or
14 actually more than that. It would have been some time in
15 October of 2014.

16 I'm asking the Court to exclude the items, because
17 there's an entry of an order. They've said they didn't have
18 to turn them over to us. Well, they have to live with that if
19 they didn't put it in in our case in chief. The rules of
20 discovery apply to their case in chief. It wasn't discovered;
21 it needs to be excluded.

22 MR. SGRO: Your Honor, Mr. DiGiacomo full well knows
23 they asked for it under reciprocal discovery in a discovery
24 statute. The Gray case holds that unless and until we know
25 we're going to put it in, we don't need to produce it this

1 week, have an obligation to produce things that we know are
2 going to occur in our case in chief. And until they rested,
3 we did not know who we're calling. We were making decisions
4 literally right now in the intervening minutes.

5 THE COURT: I understand. I'm -- I'm going to let
6 you use it. I have -- I've complete confidence that if I
7 excluded it, it would be affirmed. But just because I'm happy
8 to let you have things, even if you're not entitled to them,
9 I'm going to let you have them.

10 MR. SGRO: Thank you, Judge.

11 THE COURT: Bottom line is you're going to get it in.

12 MR. DiGIACOMO: Well, then let me ask you this --

13 THE COURT: Or if you lay foundation for it.

14 MR. DiGIACOMO: Let me ask you this question. When
15 we asked investigator Ifill --

16 THE COURT: The rules doesn't apply to you.

17 MR. DiGIACOMO: Well, no. But when we asked
18 Investigator Ifill -- because, yeah, the Rules of evidence
19 doesn't apply to Mr. Sgro, either. But --

20 THE COURT: The rule of just-give-them-what-they-want
21 applies to the defense, not to the State.

22 MS. WECKERLY: Oh, we know that.

23 MR. DiGIACOMO: We know that. But if we ask
24 Investigator Ifill has he written anything or documented
25 anything in any way, in any manner by his own hand, I'm

1 assuming that answer is no if they're about to put him on the
2 stand and have it handed to me.

3 THE COURT: We'll find out.

4 MR. SGRO: The report's on its way. I'm waiting for
5 it.

6 THE COURT: Okay.

7 MR. DiGIACOMO: The report from the witness they're
8 about to call is on its way?

9 MR. SGRO: Yes, sir.

10 MR. DiGIACOMO: When was it written?

11 MR. SGRO: Well, this -- sadly for the State, this
12 isn't my deposition and I'm not on the stand. All these
13 questions and more will be answered here in just a moment.

14 THE COURT: All right.

15 MR. ORAM: We're ready --

16 THE COURT: Are we ready to bring the jury in?

17 MR. SGRO: We're -- we're not.

18 THE COURT: The -- the Court's ready, the jurors are
19 -- are ready.

20 MR. SGRO: I don't -- I'm not ready. We don't have
21 our witness here yet. I'm told they're in the elevator. I
22 just got a text. So I need the Court's indulgence maybe a
23 couple more minutes.

24 MR. DiGIACOMO: I'd like to see the -- whatever it is
25 the witness allegedly is going to bring and put into evidence

1 in violation of all the discovery rules.

2 THE COURT: Let's -- let's just wait and let them put
3 it into evidence.

4 MR. DiGIACOMO: Who knows what it says?

5 THE COURT: We'll find out when we get it into
6 evidence.

7 (Pause in proceedings.)

8 THE COURT: So we save the tape, why don't we go off
9 the evidence -- off the record for a few minutes.

10 (Court recessed at 11:06 a.m., until 11:08 a.m.)

11 (Outside the presence of the jury.)

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

15 As I indicated, ladies and gentlemen, the State has
16 rested. That means they have completed their case in chief.
17 It is now the opportunity of the defendants to call witnesses.

18 Mr. Sgro, Mr. Burns may call his first witness.

19 MR. ORAM: Your Honor, we would call at this time
20 Tiffany Flowers Holmes.

21 MR. DiGIACOMO: Home?

22 MR. ORAM: Holmes. Tiffany Flowers Holmes.

23 TIFFANY FLOWERS HOLMES, DEFENDANT'S WITNESS, SWORN

24 MR. ORAM: May I proceed, Your Honor?

25 THE COURT: Yes.

1 THE CLERK: Please state your name and spell your
2 first and last name for the record.

3 THE WITNESS: Tiffany Flowers Holmes, F-L-O-W-E-R-S
4 H-O-L-M-E-S.

5 DIRECT EXAMINATION

6 BY MR. ORAM:

7 Q Good morning.

8 A Good morning.

9 Q How are you employed?

10 A I'm employed with the Clark County Department of
11 Family Services.

12 Q And how long have you been so employed?

13 A Six years.

14 Q Okay. And for those of us who don't know
15 exactly about all the different departments, is that commonly
16 known as CPS?

17 A Yes.

18 Q Okay. Child Protective Services?

19 A Yes.

20 Q Okay. And in this case, you were called because
21 you prepared certain -- authored certain reports; is that
22 right?

23 A Yes.

24 Q And you have a copy of your report in front of
25 you, I see?

1 A A case note, yes.

2 Q It's a case note, okay.

3 A Uh-huh.

4 Q And you have your attorney here today with you
5 in court?

6 A Yes.

7 Q Okay. And she's back in the back of the court,
8 right?

9 A Yes.

10 Q Okay. And I want to ask you, in October of
11 2010, did you have an investigator that you worked with named
12 Hava Simmons?

13 A Yes.

14 Q And that's H-A-V-A, last name S-I-M-M-O-N-S?

15 A Yes.

16 Q Okay. Did you happen to go with Investigator
17 Hava Simmons to visit Devonia Newman?

18 A Yes.

19 Q And where did that interview take place?

20 A University Medical Center.

21 Q Okay. And when you went there, how -- what was
22 the condition of Ms. Newman? Physical condition?

23 A Devonia was in the hospital. She had recently
24 been shot.

25 Q Okay. And so I understand that, and I know the

1 jury understands that.

2 A Uh-huh.

3 Q When you were talking to her, in other words,
4 was she lucid or was she, you know, groggy? That's what I
5 mean by what was her condition.

6 A I honestly can't recall her exact condition. I
7 -- she was -- she was able to speak with me and the
8 investigator.

9 Q And you were able to understand her?

10 A Yes.

11 Q Okay. Did Ms. Newman tell you that she would
12 not have been alive but for a man named Cornelius?

13 A Yes.

14 Q Did she say that things had not happened the way
15 that people were saying that they had happened?

16 A Yes.

17 Q And these are things that you specifically put
18 in your report or in your case note?

19 A Yes.

20 Q Okay. What I'm reading seems to be an accurate
21 rendition of what you put in your case note?

22 A Yes.

23 Q Do you recall that Ms. Newman stated to you that
24 the gunman had shot her in the back?

25 A Yes. That's what I put in the note.

1 Q And you were accurate when you prepared this,
2 weren't you?

3 A Yes.

4 Q Okay. You probably prepared this note sometime
5 right after; is that fair to say?

6 A Yes.

7 Q How does that work? In other words, you know,
8 it's not as though you wait a few years and then -- tell --
9 tell me how?

10 A We conduct the visit and then the notes have to
11 be put in within 48 hours.

12 Q Okay. So fair to say that these statements
13 would have been fresh in your mind?

14 A Yes.

15 Q Okay. And that's why you try to as accurately
16 as you can record them?

17 A Yes.

18 Q Okay. So you recall that Ms. Newman stated that
19 the gunman had shot her in the back?

20 A Yes.

21 Q Okay. And that Ms. Newman also stated that she
22 had seen three men grab drugs and money and leave the home?

23 A Yes.

24 Q Okay. And that again, I'm reading that
25 correctly from your note?

1 A From my note, yes.

2 MR. ORAM: Court's indulgence.

3 (Pause in proceedings)

4 MR. ORAM: That concludes my examination.

5 THE COURT: Do you have questions, Mr. Langford?

6 MR. LANGFORD: I do not, Your Honor. Thank you.

7 THE COURT: Any cross-examination?

8 MR. DiGIACOMO: I do, just briefly, Judge.

9 CROSS-EXAMINATION

10 BY MR. DiGIACOMO:

11 Q Ma'am, what -- what part of CPS do you work for?

12 A I work for the permanency unit.

13 Q What does that mean that you do for a living?

14 A So that means that once the investigated --
15 investigation is concluded, I take over the case to either
16 reunify children with their families or find other means of
17 permanency for them.

18 Q And was this the first day that you ever met
19 Devonia?

20 A It was.

21 Q Okay. So Investigator Hava Simmons was doing
22 investigation of whether or not there's abuse or neglect or
23 whatever those issues are, your role is the reunification of
24 either the family or the placement in some place?

25 A Exactly.

1 Q Okay. When you go over there to speak to
2 Devonia, do you -- have you done any investigation into the
3 underlying facts of the case?

4 A No. I don't -- I don't conduct the
5 investigation, no.

6 Q So you're in a room with Devonia and
7 Investigator Simmons, and she starts speaking, and you try and
8 jot down -- did you take physical notes at the time?

9 A Yes.

10 Q Okay. So you try and jot down the best of what
11 you're hearing and then you ultimately place it in a case note
12 that's part of the CPS file --

13 A Yes.

14 Q -- would that be fair? You'd agree with me that
15 when you went there to see Devonia, she was at UMC in a
16 hospital room?

17 A Yes.

18 Q And she told you that -- well, you talked about
19 the fact that the other children were placed with their aunt,
20 and she was happy with that?

21 A Yes.

22 Q Right? And then she actually was upset because
23 CPS wasn't allowing her to see Cornelius, the person she
24 considered to be her father?

25 A Yes.

1 Q Okay. And she told you that there are certain
2 things that she disagreed with after she was speaking to
3 Cornelius about what CPS was saying happened at the scene --

4 A Yes.

5 Q -- is that fair?

6 A Yes.

7 Q And one of the things that she told you is that
8 she wasn't involved -- wasn't involved at all in the selling
9 of drugs and that she really wanted to see Cornelius?

10 A Yes.

11 Q Okay. And then she provides you kind of a -- a
12 story of kind of what happens and what -- in that she heard --
13 her mom heard a knock at the door, correct?

14 A Yes.

15 Q And then went to answer it, because a family
16 friend -- and she said a family friend asked to buy some drugs
17 and handed the mother a \$20 bill?

18 A Yes.

19 Q That's what she told you? And stated that as
20 soon as her mother tried to close the door, the man pushed it
21 open and shot her mother?

22 A Yes.

23 Q And Devonia stated she was stunned, but ran
24 after a few seconds?

25 A Yes.

1 Q And she says -- Devonian stated that is when the
2 gunman shot her in the back?

3 A Yes.

4 Q Did you know when she made that statement where
5 she had been shot?

6 A Not at that time, I did not.

7 Q Do you subsequently learn that she had been shot
8 in the stomach?

9 A Yes.

10 Q So you write it down as the gunman shot her in
11 the back, but ultimately you learn, no, she's been shot in the
12 stomach?

13 A Yes.

14 Q She made it back to the bathroom and closed the
15 door?

16 A Yes.

17 Q Told you that? And that Cornelius was in the
18 shower and called the police?

19 A Yes.

20 Q She said that she saw the gunman look in the
21 rooms where her siblings and aunt were -- were, but did not
22 bother with them, correct?

23 A Correct.

24 Q And then that's -- after that, there's a
25 statement in your report where it says something like Devonian

1 stated that she saw three men grab drugs and money and leave
2 the home?

3 A Yes.

4 Q She said that she was glad that nobody bothered
5 her brother and the sisters?

6 A Uh-huh.

7 Q Correct?

8 A Yes, she did.

9 Q Okay. She said that the kids did not see her
10 mother's face?

11 A Yes. That's what -- she said that, she reported
12 that.

13 Q And in response, you said that's still a loss to
14 her, that all the children are going to be receiving
15 counseling?

16 A Yes.

17 Q Okay. So she's saying, Hey, it's a good thing
18 the children didn't see my mother's face, and you still
19 explain to her, But they have a loss, so we're still going to
20 give them counseling?

21 A Yes.

22 Q And you're -- that's what you're talking to her
23 about is the fact that she's going to get counseling, as well,
24 and that there's -- this is going to be a difficult time for
25 her, and that's what your role is in the room, correct?

1 A Exactly. Yes.

2 Q Thank you very much.

3 MR. DiGIACOMO: I have nothing further, Judge.

4 MR. ORAM: Nothing further.

5 MR. LANGFORD: Nothing, Your Honor.

6 THE COURT: Ms. Flowers Holmes, thank you for being a
7 witness -- or, excuse me. Before you leave, a -- one question
8 that one of the jurors wanted me to ask.

9 You mentioned that you prepare your reports in about
10 48 hours after or within 48 hours of the interview?

11 THE WITNESS: Yes.

12 THE COURT: Is that 48 hour calender hours, or do you
13 have -- or is it just two days or two business days?

14 THE WITNESS: Well, two business days, yes.

15 THE COURT: Two business days?

16 THE WITNESS: Yes.

17 THE COURT: So if you interviewed on a Friday, you do
18 it maybe Monday or something like that?

19 THE WITNESS: Right. Exactly.

20 THE COURT: All right. Have a good day.

21 THE WITNESS: Thank you.

22 THE COURT: Call your next witness.

23 MR. SGRO: Willis Ifill. If I may approach the
24 clerk, Your Honor?

25 WILLIS IFILL, DEFENDANT'S WITNESS, SWORN

1 THE COURT: Yes.

2 THE CLERK: Please be seated. Please state your name
3 and spell your first and last name for the record.

4 THE WITNESS: It's Willis, W-I-L-L-I-S, Ifill,
5 I-F-I-L-L.

6 DIRECT EXAMINATION

7 BY MR. SGRO:

8 Q Good morning, sir.

9 A Good morning.

10 Q Sir, how are you employed?

11 A I'm a private investigator.

12 Q And what's the name of your company?

13 A Southwest Investigations.

14 Q And in your capacity as a private investigator,
15 did there come a time when Mr. Oram and I asked you to do some
16 work for us on a case called State of Nevada vs. David Burns?

17 A Yes, sir.

18 Q And did you get some specific assignments to do
19 in the course of that project?

20 A Yes, sir.

21 Q Was one of those assignments to interview
22 somebody named Cornelius Mayo?

23 A Yes, sir.

24 Q And did you do that assignment?

25 A Yeah. I interviewed him on October the 9th of

1 2014.

2 Q Where -- where was the interview?

3 A Interview was conducted at his residence, which
4 is -- if I can just refer to my notes?

5 Q Do you have a report, sir?

6 A Yes, sir.

7 Q And would that refresh your recollection as to
8 the specific address?

9 A Yes, sir.

10 MR. SGRO: May he do so, Your Honor?

11 THE COURT: Yes, certainly.

12 THE WITNESS: He was interviewed on the 9th of
13 October, approximately 2:15, at 2700 North Rainbow Boulevard,
14 Apartment 2095.

15 BY MR. SGRO:

16 Q Now, when you went to Mr. Mayo -- well, let's
17 back up.

18 First of all, is it your common practice to identify
19 yourself when you approach someone you're going to interview?

20 A Yes, sir.

21 Q And how do you identify -- how did you identify
22 yourself in this case when you went to speak with Mr. Mayo?

23 A I've got my state ID for the private
24 investigator.

25 Q Okay. And did you tell him anything beyond

1 that?

2 A Basically, I indicated that we were working the
3 case State of Nevada vs. Burns in reference to the incident at
4 his -- at his home. And I also provided him with a business
5 card.

6 Q All right. Does your business card say DA on
7 it?

8 A No, it does not.

9 Q Now, I want to talk about some specific areas of
10 inquiry. There was an issue in this case about a 911 call
11 that Mr. Mayo made; you were aware of that, right?

12 A Yes, sir.

13 Q Did you ask Mr. Mayo whether he contacted anyone
14 before he dialed 911?

15 A Yes, sir.

16 Q And what did he tell you?

17 A He indicated that he had contacted his brothers,
18 because of the -- the situation, and he wanted them to come
19 over to the house so that they can "go handle their business."

20 Q So coming over -- so Mr. Mayo's brother's coming
21 to the house to handle their business; that was the phrase
22 that he used?

23 A That's correct.

24 Q Did you ask -- strike that. And there was no
25 doubt as Mr. Mayo relayed that to you that he was talking

1 about that phone call being placed prior to 911?

2 A No doubt.

3 Q Did there come a time when you asked him about
4 whether or not he owned a gun?

5 A Yes.

6 Q And what did he tell you?

7 A He indicated that he had kept the firearm in the
8 house, but I believe it was that day or sometime within that
9 timeframe said he's loaned it to one of his home boys, because
10 he didn't want to keep the gun in the house, because there
11 were kids, you know, in the residence.

12 Q Okay. So did he tell you whether or not
13 Stephanie Cousins knew that he owned a gun?

14 A Yes.

15 Q Did there come a time when you interviewed --
16 I'm sorry -- Devonia Newman?

17 A Yes, sir.

18 Q And did you ask her in a similar fashion
19 questions about the event?

20 A Yes, sir.

21 MR. SGRO: May I approach the witness, Your Honor?

22 THE COURT: Yes. Do we have a date and time when
23 that occurred?

24 MR. SGRO: Oh, I'm sorry, Your Honor.

25 BY MR. SGRO:

1 Q What's the date --

2 THE COURT: I think a foundation would be appropriate
3 under the circumstances.

4 MR. SGRO: Thank you.

5 BY MR. SGRO:

6 Q What's the date and time of the interview?

7 A It occurred on the same date, October 9th, 2014,
8 and it was -- give me one moment -- approximately 4:00 in the
9 afternoon.

10 Q How long did you spend with Mr. Mayo?

11 A Mr. Mayo, I'd say probably about an hour, hour
12 and 10 minutes.

13 Q And was there also another person from my office
14 named Jamie that was with you at Mr. Mayo's interview?

15 A Yes, sir.

16 Q And then did Mr. Oram and I join you and Jamie
17 at Devonian's interview?

18 A In the afternoon, yes, sir.

19 Q All right.

20 MR. SGRO: May I, Judge?

21 THE COURT: Yes.

22 MR. SGRO: Thank you, Judge. May I ask a couple of
23 questions from here, Your Honor?

24 THE COURT: Yes.

25 BY MR. SGRO:

1 Q So when you're speaking to Devonian, do you
2 remember handing her a copy of the tape-recorded police
3 statement?

4 A Yes, sir.

5 Q And did she have any comments about the accuracy
6 or the rendition contained within the four corners of the
7 police statement?

8 A Yeah. She had indicated that in some areas of
9 the statement -- and I guess let me backtrack.

10 She had stated that she had had a meeting, I believe
11 it was that morning, I'm not sure if it was the district
12 attorney himself or herself, or the investigator. But she
13 felt that whoever the individual that she had spoke with was
14 kind of, you know, I guess putting words in her mouth or
15 trying to -- I don't know, that the officers may have -- there
16 was some blanks and stuff in the statement and she had some
17 concerns about that.

18 Q So did you ask her to sort of put that in her
19 own words and write it out in her own hand?

20 A I did.

21 Q And did she do that?

22 A Yes, she did.

23 Q And does that appear to be what's marked as
24 Defense Exhibit EE?

25 A That's correct.

1 Q And did you sign and date this note after she
2 made it?

3 A Yes, I did.

4 MR. SGRO: Move for its admission, Your Honor.

5 MR. DiGIACOMO: No objection.

6 THE COURT: Be received.

7 (Defendant's Exhibit EE admitted.)

8 BY MR. SGRO:

9 Q Did you ask her to do the best she could to
10 summarize her feeling about what the police statement
11 included?

12 A Yes.

13 Q And is Defense Exhibit EE a reflection of that
14 request?

15 A That's correct.

16 Q And does it say, "After reading my statement, I
17 didn't feel that things I said were from me, like something on
18 the statement didn't seem right to me." And then she signed
19 it?

20 A Yes.

21 Q Did there come a time during the interview you
22 had with Ms. Newman that you asked her identify for you
23 certain characteristics of who the assailant was?

24 A Yes.

25 Q And did she indicate to you at some point that

1 the person was wearing a hat and wearing a bandanna?

2 A That is correct. I believe she said it was a
3 orange hat, possibly with some form of logo on the top, but
4 she couldn't recall it. Also, the individual had a bandanna
5 covering his face. Yeah.

6 Q And did -- when you got the facial features of
7 the assailant, did you ask her to draw it out?

8 A I did.

9 MR. SGRO: May I approach, Your Honor?

10 THE COURT: Yes.

11 BY MR. SGRO:

12 Q And does that drawing appear in her hand signed
13 by her and signed by you on Defense Exhibit DD?

14 A Yeah. That's my signature affixed.

15 MR. SGRO: Move for its admission, Your Honor.

16 MR. DiGIACOMO: No objection, Your Honor.

17 MS. WECKERLY: Your Honor, we've already previously
18 stated the State's position on these.

19 THE COURT: Is that no objection?

20 MS. WECKERLY: No, it's not no objection. But I
21 understand the Court made a different ruling.

22 THE COURT: Oh, even though it was not timely
23 produced --

24 MS. WECKERLY: It was not timely produced.

25 THE COURT: -- the objection's overruled. It'll be

1 received.

2 MR. SGRO: Thank you, Your Honor.

3 (Defendant's Exhibit DD admitted.)

4 BY MR. SGRO:

5 Q Have I put on the screen now Defense Exhibit DD,
6 which reflects what Devonia drew relative to the facial
7 features of the assailant?

8 A Yes, sir.

9 Q Did she also -- well, strike that. Did you ask
10 her what color skin tone the assailant had in this case?

11 A I did. She actually indicated that once, I
12 guess, she had gone down, she got a good look at the
13 individual's facial features, because apparently whoever the
14 shooter was rifled through her pockets. And she indicated it
15 was at a distance approximately 8 to 10 inches. And she said
16 that the assailant was of her same skin complexion, if not a
17 little darker.

18 Q Okay. So someone that had her same complexion
19 or a darker skin complexion than her?

20 A That is correct.

21 MR. SGRO: That's all, Your Honor. Pass the witness.

22 MR. LANGFORD: Nothing, Your Honor.

23 MS. WECKERLY: Your Honor, may the Court take
24 judicial notice of the fact that defense counsel just handed
25 us these reports while the jury was out on a break?

1 THE COURT: Okay.

2 CROSS-EXAMINATION

3 BY MS. WECKERLY:

4 Q Good morning, sir.

5 A Good morning, ma'am.

6 Q How are you?

7 A I'm fine, thank you.

8 Q You are a private investigator?

9 A Yes, ma'am.

10 Q How long have you worked as a private
11 investigator?

12 A I've been on my own right now for three years,
13 and prior to that I was with the Clark County Public
14 Defender's Office for four years.

15 Q Okay. And when you were working at the PD's
16 office --

17 A Uh-huh.

18 Q -- had you worked anywhere prior to that, like,
19 as a -- any kind of officer in any, like, police or maybe a
20 related agency?

21 A I've been a deputy probation officer from 2000
22 to 2008, and before that when I first came into State of
23 Nevada, I was a corrections officer.

24 Q Okay. And certainly -- well, let me ask you
25 this. When you met with both of these witnesses, did you have

1 a tape recorder with you or something that, you know, a
2 digital recorder I guess is more modern?

3 A No.

4 Q And have you done that before?

5 A Have I done?

6 Q Have you ever taped someone you were
7 interviewing?

8 A I generally don't tape. I -- I usually
9 handwrite. Because if it's -- if it's taped, then it becomes
10 discoverable, and we'd have to, you know, turn that over. And
11 so I usually take handwritten notes.

12 Q Okay. And did you take any handwritten notes at
13 -- for these interviews? Because what I have right now are
14 typed.

15 A What's that?

16 Q I have right now typed notes.

17 A Yes.

18 Q So this wouldn't be your handwritten notes?

19 A No.

20 Q Where are those?

21 A The handwritten -- what we do is I would type up
22 a report or what have you, and then my handwritten notes get
23 shredded.

24 Q Okay. So those have been destroyed?

25 A Yeah.

1 Q And there is not recording, because then you'd
2 have to give it to us ahead of time?

3 A That is correct. That's my understanding.

4 Q Okay. So was that a request made of you not to
5 record it?

6 A No. It's been through my training and
7 experience, having been with the Public Defender's Office and
8 the attorneys that I've worked with over there, basically, I
9 mean, it was not a policy, but it was all procedure to just,
10 you know --

11 Q Right.

12 A -- take things in your mind, take copious notes
13 and --

14 Q Okay. And that's from the defense side, right?
15 Because you'd have to turn it over?

16 A Right.

17 Q Okay. So it's probably a tactical reason,
18 right, to not tape?

19 A You would have to ask that of the attorneys.
20 I --

21 Q Okay.

22 A -- for me, it's just -- it's just common
23 practice for me.

24 Q Okay. From working for the Public Defender's
25 and private --

1 A That's correct, ma'am.

2 Q Okay. Now, certainly, given your background and
3 when you worked in corrections and even as -- certainly your
4 background as a investigator now, would you agree with me that
5 people's ability to recall events is better closer in time to
6 the event versus about five years from the event?

7 A Absolutely.

8 Q And would you agree with me that the best way to
9 memorialize what they say or what their impressions were would
10 be to record -- record them close in time to the event?

11 A If -- if you can, yeah.

12 Q If -- if possible?

13 A If possible.

14 Q That's optimal. Did you -- were you provided by
15 the attorneys in this case any police reports?

16 A Oh, yeah. When I'm assigned on a case, I get
17 all of the State's discovery. What I do is I go through the
18 witness statements, police reports, just to kind of develop a
19 theory of the case. And at that point, I mean, we do kind of
20 case reviews. And then Mr. Sgro, whoever my attorney is,
21 gives me assignments or we provide feedback, what do we --
22 what we believe needs to be done, who needs to be interviewed.
23 And then we go out and interview the -- the individuals.

24 Q Would you have reviewed all of the discovery,
25 like all those four binders of police reports in this case, or

1 do you try to concentrate on certain parts?

2 A No. I -- I get -- every -- whatever the State's
3 discovery is, Mr. Sgro would have provided me, again, for my
4 review, all the audio tapes, police recalls, catalogues. And
5 I review all of that stuff, look for, you know, fact check,
6 look for inconsistencies. And then we start to develop a
7 theory of the case.

8 Q Okay. And what -- what does that mean, develop
9 a theory of the case?

10 A Well, we -- we -- what happens is you
11 cross-reference what the -- the police statements and
12 interviews say with, you know, the -- the alleged victim, if
13 possible. And look at our client's statement and
14 codefendant's statements and then cross-reference it. And
15 then we go out, as I said, we go out and we conduct
16 interviews.

17 Q Okay. Now, one of the interviews you did was
18 Mr. Mayo?

19 A That is correct.

20 Q And in his interview he told you that he never
21 saw the shooter during this incident?

22 A That's correct.

23 Q And he said that as of October 9th of 2014?

24 A That is correct.

25 Q Now, I want to put your report --

1 MR. SGRO: It's not in evidence, Your Honor.

2 THE COURT: Sustained.

3 BY MS. WECKERLY:

4 Q Flip to page 2 of your report. Now, I
5 understood from your testimony on direct that Mr. Mayo told
6 you that he ended up speaking with family members prior to the
7 police --

8 A That's --

9 Q -- and they came over to handle their business?

10 A No, I didn't say they came over. I said he
11 called them to come over.

12 Q Prior to calling the police?

13 A That is correct.

14 Q Okay. And did they make it there before the
15 police got there?

16 A I don't believe so.

17 Q Did you ask him that?

18 A Yeah.

19 Q And he said that they got there after the
20 police?

21 A That's my understanding. That's correct.

22 Q Okay. Is that in your report?

23 A No.

24 Q Okay. Did you review his 911 call?

25 A I did.

1 Q Okay. And it's your belief that he made that
2 call sometime after he called family members?

3 A That is correct.

4 Q And what -- how many times did you listen to
5 that call?

6 A Over -- I mean, I been on this case close to two
7 years. So I've reviewed that in different stages. So I
8 couldn't --

9 Q A lot?

10 A A lot.

11 Q A lot. Okay. And so that is -- that call is
12 made after he calls family members, but presumably, is that
13 call -- the 911 call, made after he's seen the two victims?

14 A Is the 911 --

15 Q Call made after he --

16 A The 911 call was made because in it he
17 specifically -- he's -- he's kind of freaking out, for lack of
18 a better term --

19 Q No, I -- yeah. I agree.

20 A -- and -- because he -- and he's saying on
21 there, Oh, my God, they blew her bleeping face off --

22 Q Uh-huh.

23 A -- or whatever. Come on, come on, get here,
24 come on. And then you hear the phone smash against the wall.
25 So.

1 Q Okay. But it's your belief that he, although
2 he's so animated and obviously in shock, it's your belief that
3 he made another call before that --

4 MR. SGRO: Objection to his --

5 BY MS. WECKERLY:

6 Q -- talking to family members?

7 MR. SGRO: -- his belief, Your Honor. I believe --

8 THE COURT: Sustained.

9 BY MS. WECKERLY:

10 Q Is it your -- that's what --

11 MS. WECKERLY: Well, that's what he wrote in his
12 report.

13 Q That's what you wrote, right?

14 A That's correct.

15 Q Okay. So he made some call to family members to
16 come handle business. What did that mean?

17 MR. SGRO: Calls for speculation. I think it was
18 just a quote that was elicited.

19 THE COURT: If he has an interpretation of what that
20 means --

21 MS. WECKERLY: Is Mr. Sgro testifying?

22 THE COURT: -- we'll let him -- we'll -- that may
23 mean something and -- I think. So I'll let -- if he can
24 interpret it, fine. If not, I understand.

25 MS. WECKERLY: Okay.

1 BY MS. WECKERLY:

2 Q Who did he call?

3 A His brothers.

4 Q What are their names?

5 A I have no idea. He said --

6 Q Did you ask him?

7 A He said he called his brothers.

8 Q Okay. Did you ask him who his brothers were?

9 A No. But he did indicate that shortly after I
10 believe it was this -- this incident, he spoke more of his --
11 one of his brothers being shot by the police and so --

12 Q And who is that, what was that brother's name?

13 A He didn't indicate that.

14 Q Okay. Did he tell you the number he dialed?

15 A You know what, I asked him for his -- his phone
16 to -- because he had made reference to some text messages and
17 stuff. He said that he did not have that phone or that he
18 would have provided it to me. And he never did.

19 Q Okay. But what I -- my question was, is did he
20 tell you the number he dialed before he called the police?

21 A No, he did not.

22 Q Okay. Did you ask him?

23 A What's that?

24 Q Did you ask him for that number?

25 A For the number?

1 Q Yeah.

2 A He said he was going to get us the phone to --
3 so I can review it to see what the text messages were and so
4 we can --

5 Q Yeah. And I think we're maybe miscommunicating.
6 I'm not talking about the text messages. I'm talking about
7 this call that you report that he made before 911.

8 A Right.

9 Q Who did he call?

10 A Called his brothers.

11 Q And we don't know their names?

12 A No.

13 Q And you didn't ask him?

14 A For his brother's names?

15 Q Right.

16 A No.

17 Q Okay. So obviously you didn't talk to them and
18 verify any conversation took place or anything like that?

19 A One's dead.

20 Q Well, I assume that's not who --

21 A One --

22 Q -- you're --

23 A Right.

24 Q -- that he's calling.

25 A I'm just -- I'm just saying, he was supposed to

1 provide the phone so I can, you know --

2 Q Right.

3 A -- review call logs, phone --

4 Q But my question is did you do any followup to
5 see what that meant or what he was talking about?

6 A What what meant?

7 Q Who he called or what number he dialed before he
8 called 911, as you're reporting here.

9 A No, he did not. Again, he didn't provide me
10 with his phone, so.

11 Q Okay.

12 A And then when I tried to follow up with him, I'd
13 gone back to the residence and there was a breakdown in, I
14 guess, communication with the family members and whatnot. And
15 I never had contact with him after that, albeit I tried on
16 approximately two to three occasions.

17 Q Okay. And you also write in your report that
18 you -- that Mr. Mayo met with Detective Shoemaker to show him
19 text messages from his phone?

20 A Hang on one sec. Yes.

21 Q Did he give you the name Shoemaker?

22 A Did he give me -- no, he said he met with the
23 detective.

24 Q And so you put in the name Shoemaker?

25 A What's that?

1 Q Did you put in the name Shoemaker here in your
2 report?

3 A If it's in here, yeah.

4 Q Okay. So you inserted that he met with
5 Detective Shoemaker?

6 A And I believe that -- that possibly came from my
7 reviews of the, you know, the police reports or whatever the
8 case may be.

9 Q Okay. So in your --

10 MR. SGRO: Counsel, what page you on?

11 MS. WECKERLY: 2.

12 MR. SGRO: Give me a little bit more than that?

13 MS. WECKERLY: Third paragraph from the bottom in the
14 middle, Cornelius says he met with Detective Shoemaker to show
15 him text messages.

16 BY MS. WECKERLY:

17 Q So that reference to the name Shoemaker is from
18 your read of police reports that you were provided?

19 A Yeah. I believe that's --

20 Q All right. So he didn't --

21 A He said -- he said he had met with -- he was --
22 either met with those -- had shown one of the detectives the
23 text messages in reference to the text from California.

24 Q Okay. But you inserted the name?

25 A Yeah.

1 Q Okay. Now, on the last page of your report, you
2 talk about Mr. Mayo saying that he normally was in possession
3 of a gun?

4 A Yes.

5 Q What were his exact words on that?

6 A He basically said that he had -- had firearms in
7 -- in the residence. But again, on that day or before that he
8 had loaned it to one of his "homeboys" because he didn't want
9 to keep guns in the house, because the kids were in the house
10 and -- but, yeah, he said he -- he had had firearms in the
11 residence.

12 Q When was the most recent time he had the gun in
13 the house?

14 A I couldn't tell you that. I interviewed -- I
15 interviewed him on the 9th, and I believe he had stated that
16 prior to this incident he had guns in the house --

17 Q Right.

18 A -- and that he had loaned to -- so I -- I
19 couldn't tell you when he --

20 Q Did you ask him how much prior he allegedly had
21 this gun in the house?

22 A It -- how much prior?

23 Q You're saying in your report as I understand it
24 that Mr. Mayo said, Oh, my gosh, on this night I didn't have
25 my gun in the house.

1 A He -- he said that on -- during the incident he
2 did not have the gun in the house because he had loaned it to
3 one of his homeboys or whatever, because --

4 Q Right.

5 A -- he had kids in the house and he didn't want
6 the gun to be around.

7 Q Okay. Well, those kids lived there all the
8 time.

9 A Uh-huh.

10 Q So what my question is, when was the most recent
11 time he told you that he had a gun in the house?

12 A It would be the -- prior to this incident, that
13 -- that day or that afternoon or -- before his homeboy picked
14 it up.

15 Q So he said --

16 A He loaned it out.

17 Q So he said to you that earlier that day his
18 friend came and got the gun?

19 A He said his homeboy, he had loaned the gun to
20 his homeboy.

21 Q That same day?

22 A That was -- that was his statement. Yes.
23 He's --

24 Q Okay. What time was that?

25 A I have no idea.

1 Q Did you ask him?

2 A No.

3 Q Did you ask him who the friend was?

4 A No. That's -- I mean, he's not going to tell me
5 who he gave a gun to. He's indicated that on the day prior --
6 before this incident, he loaned the gun to one of -- I'm
7 telling you -- these are his statements.

8 Q Yeah, I know. I'm just trying to figure out
9 what was asked of him. And so we don't have a recording. So
10 my question --

11 A What was --

12 Q My question is was he asked what time he gave
13 the gun to the friend --

14 A No.

15 Q -- or to the homeboy?

16 A No.

17 Q You didn't ask him that?

18 A No.

19 Q You -- did you ask him the name?

20 A Of the homeboy?

21 Q Yeah.

22 A No.

23 Q Did you ask him what type of gun it was?

24 A No.

25 Q Did you ask him what caliber it was?

1 A No.

2 Q Did you ask him where he kept the gun?

3 A It -- it's my understanding -- and again, this
4 is four months ago, but I believe it was in the bedroom.

5 Q And we would know for sure what he said if it
6 had been taped, right?

7 A Yeah.

8 Q Okay. But we don't have that?

9 A Right.

10 Q And he said he kept it in the bedroom; did he
11 say where in the bedroom?

12 A Like, in the dresser area or somewhere on top.

13 Q Okay. And you did no followup or actually
14 didn't ask any followup questions on that?

15 A Did I do -- as I indicated, I tried to do
16 followup with him, but --

17 Q With regard to the gun.

18 A No.

19 Q Okay. So let's talk about Devonian. She told
20 you that the person who shot her -- well, actually, let me
21 back up.

22 She told you that the person who came to the door was
23 Stephanie Cousins?

24 A That is correct.

25 Q And that she knew this, like, four and a half

1 years after the incident? And she told you that the person
2 who shot her and rummaged through her pockets was wearing
3 overalls?

4 A That is correct.

5 Q And she -- when she was describing the
6 complexion of the individual, the person was described by her,
7 according to you, as a little bit darker than her own skin?

8 A Her complexion to -- oh, maybe a little bit
9 darker, correct.

10 Q What was the lighting in the room at the time of
11 the incident?

12 A She said -- I'm -- I'm guessing that the --

13 Q No, not guessing. What was it?

14 A Oh, I -- I have no idea.

15 Q Okay. That was my question. Now, on the next
16 part of your report, you talk about how she said that her
17 voluntary statement to the police didn't seem right to her.
18 Okay. And then you give an example that she said, I hadn't
19 seen this person in my life, how would I be able to give a
20 physical description of them?

21 A Say that again? I'm sorry.

22 Q On the next part of your report, you say that --

23 A What -- what page are we on?

24 Q 2.

25 A Okay.

1 Q That Devonia said that with regard to her police
2 statement, that some of it doesn't seem right to her, correct?

3 A That's -- that's what she said, yes.

4 Q In what way didn't it seem right?

5 A Well, she -- she said that there were some
6 blanks or spaces that were left out in the report. And she
7 also made reference to, at the time that I guess she was
8 interviewed or whatnot, she was drugged. So she didn't
9 believe that -- and she had -- I don't know if it was you,
10 ma'am, or someone at your office she said she had met with, I
11 guess earlier that morning before we interviewed her.

12 Q Uh-huh.

13 A And she said that -- and it's not a direct
14 quote, but she felt like things were intentionally left blank
15 or that they were trying to make her say things that, in fact,
16 she hadn't said.

17 Q Okay. Now --

18 A So she was -- she seemed like she was a bit
19 confused in terms of the process and maybe some statements may
20 have been left out and some things.

21 Q So she was concerned about, as I understand from
22 what you're saying, the blanks in her transcript?

23 A Right. The interview that morning at the DA's
24 office or with --

25 Q Okay. And you're aware now that she said that

1 she wasn't pressured by either side in this case to say
2 anything?

3 A Oh, yeah. I didn't feel that she was pressured.

4 Q Okay. So what her concerns were, were the
5 blanks in the statement and what else?

6 A And the interview that morning with a member of
7 the DA's staff or -- I don't know if it was the attorney,
8 investigator.

9 Q Okay.

10 A She just said --

11 Q And what was her concern about that interview?

12 A In -- in terms of -- she just felt like, I don't
13 know if -- if the individual which she had met with --

14 Q Uh-huh.

15 A -- was trying to pressure her into making
16 certain statements or what have you.

17 Q Did she say she felt pressured?

18 A Yes.

19 Q Okay. And you're aware now she's testified that
20 she didn't --

21 A Well, I --

22 MR. SGRO: Objection. Asked and answered. And he
23 wouldn't be -- he --

24 THE COURT: Overruled.

25 MR. SGRO: -- the exclusionary rule has been evoked

1 [sic], Your Honor.

2 THE COURT: Overruled.

3 MS. WECKERLY: Not by us.

4 THE WITNESS: Am I aware as to?

5 BY MS. WECKERLY:

6 Q She -- she testified in this case already --

7 A Okay.

8 Q -- and she said that she didn't feel pressured
9 by you or anybody who's interviewed her in this case.

10 A Well, I wouldn't know that because I didn't have
11 any discussion with Mr. Sgro --

12 Q Okay.

13 A -- in reference to this --

14 Q Okay. But your --

15 A -- these proceedings.

16 Q But your representation is when she spoke to
17 you --

18 A On October the 9th.

19 Q Uh-huh. That she said she felt pressured?

20 A That is correct.

21 Q Now, I don't see that in your report, the word
22 pressure. Is that your word or her word?

23 A No, that's -- I believe that's what she had --
24 not in the statement that she had written out on the 9th with
25 the bandanna, that's what -- I believe that's where it -- it

1 was...

2 Q This is Defense EE. Yeah. Where did she say
3 she was pressured?

4 A Well, based on this, where she says, "The
5 statement didn't seem right to me."

6 Q Right.

7 A That's --

8 Q So she didn't say pressure?

9 A She said pressured when we -- we -- when we
10 interviewed her. But she didn't put it in her statement here.

11 Q Where does it say pressured in your report?

12 A It doesn't.

13 Q It doesn't?

14 A Right.

15 Q Okay. And I guess if she had been taped, we'd
16 know that?

17 A Yeah.

18 Q Now, in your report, you indicate that you were
19 doing the interview of her. Was anybody else present as you
20 spoke to her?

21 A Yes.

22 Q Did anyone else ask questions at the same time
23 you were?

24 A At the same time?

25 Q Uh-huh.

1 A No. I -- I asked questions, the attorney asked
2 questions.

3 Q Okay. And you were able to keep notes of all of
4 it?

5 A What's that?

6 Q And you were able to keep notes of all of that?

7 A Yeah.

8 Q And that's -- and that's been destroyed, though,
9 right?

10 A My handwritten stuff and whatnot? Yeah. Well,
11 except the picture and the -- of the stuff that...

12 Q Okay. And you had her draw a picture four and a
13 half years after the incident, correct?

14 A Yeah.

15 Q Okay. Would you agree with me that a
16 photographic identification is always or typically or
17 generally more accurate than a 17-year-old's handwritten
18 drawing five years, four and a half years after an incident?

19 A Oh, anytime you can get a photograph, it's --

20 Q A photographic identification's probably better?

21 A But in -- in terms of that, in terms of her
22 depiction, I don't think we'd get a photograph of a guy with a
23 bandanna and a hat. So -- but anytime you can get a
24 photograph, it would be beneficial.

25 Q It's a better ID?

1 A Yeah.

2 Q Thank you.

3 THE COURT: Anything further?

4 MR. SGRO: Just a second, Your Honor. No.

5 THE COURT: All right. Thank you for being a
6 witness.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: You'll be excused, sir.

9 THE WITNESS: Thank you.

10 MR. SGRO: And that concludes our presentation, Your
11 Honor.

12 THE COURT: All right. Mr. Langford, you may call
13 your first witness.

14 MR. LANGFORD: I do not have any witnesses to call,
15 Your Honor.

16 THE COURT: All right.

17 MR. LANGFORD: I rest.

18 THE COURT: A rebuttal?

19 MR. DiGIACOMO: No, Your Honor.

20 THE COURT: All right. Ladies and gentlemen, that's
21 all the witnesses and the evidence in the case. It's now my
22 obligation to read to you instructions on the law. Those
23 instructions are pretty much prepared, but I've got to finish
24 them. And before I do, we'll -- I'll do that over the lunch
25 hour. We'll come back at 1:00 and you'll listen to my closing

1 instructions. The instructions are going to take about 45
2 minutes to read to you. Believe me, they're long. And after
3 that you'll listen to the closing arguments of counsel.

4 During the recess it's again your duty not to
5 converse among yourselves or with anyone else on any subject
6 connected with this trial, or to read, watch, or listen to any
7 report of or commentary on the trial from any medium of
8 information including newspapers, television, or radio. You
9 may not form or express an opinion on any subject connected
10 with this case until it's finally submitted to you.

11 And it is still not submitted to you. We'll be in
12 recess till 1:00 this afternoon. Have a good lunch.

13 (Jury recessed at 11:51 a.m.)

14 THE COURT: Record reflect the jury has left the
15 courtroom. Counsel are familiar with my Proposed jury
16 Instructions Nos. 1 through 53. Does the State object to the
17 giving of the -- any of those instructions?

18 MS. WECKERLY: No, Your Honor.

19 THE COURT: Does the defense wish to make any
20 objections to those instructions?

21 MR. ORAM: Your Honor, we have already sent over to
22 the Court any objections that we had. The Court has made
23 rulings. The only thing I want to put on the record, and I
24 can't remember if we did it the other day, and that was the
25 Haglemeyer [phonetic] instruction, which we asked to be --

1 THE COURT: It was not on the record, I don't think.
2 So you're going to object to Instruction Nos. --

3 MR. ORAM: It -- that would be --

4 THE COURT: -- 8 and 9.

5 MR. ORAM: Yes. And we would ask that they not be
6 given. And there was lengthy discussion as to our tactical
7 reasons for doing so. And -- and the reason I put that on the
8 record, Your Honor, is because I could see how postconviction
9 counsel, in the event of a conviction, could look at this and
10 say, Why would you want the Haglemeyer instructions out? The
11 Haglemeyer being 9, that I recognize as Haglemeyer vs. State
12 of Nevada.

13 For tactical reasons we wanted it out. My
14 understanding is the Court is giving them over our objection.

15 MR. LANGFORD: The same objections as Mr. Oram.

16 THE COURT: And it's my understanding that the State
17 thinks that I should give them?

18 MS. WECKERLY: Yes, Your Honor. We do have a witness
19 in this case who was a charged co-defendant. And based on
20 that we have to corroborate her testimony, based on that case.
21 And the jury needs to be instructed.

22 THE COURT: I'm concerned that it might be err if I
23 do not give instructions 8 and 9. Therefore, I feel compelled
24 to do so.

25 Anything further on the instructions before I read

1 them to the jury after lunch?

2 MR. ORAM: Yes, Your Honor. One other one. You may
3 recall that on -- we e-mailed the Court stating that we didn't
4 believe that there was evidence of flight as to Mr. Burns.
5 Mr. Burns apparently comes from California. You heard his
6 statement where he said in a letter that our visit to
7 California was -- or our visit to Las Vegas was over. I
8 looked at the date that the bus was, and that was a Sunday. I
9 think it's not uncommon for people from California to go back
10 home on a Sunday. It's 36 hours after the crime. It just
11 does not appear to be flight to me.

12 THE COURT: I'll help you out, because you don't know
13 the number of it. It's Instruction No. 14 you want to object
14 to.

15 MR. ORAM: Yes. It is No. 14, yes.

16 THE COURT: That's -- I'm sure you knew that. I
17 think arguably the defendants leaving town, changing their
18 names to get on the bus and so on, that is arguably a flight,
19 that the State could argue. So I'm -- I'm going to give the
20 -- they -- the State offered it, I think I'm going to give it.

21 Anything further with regard to instructions before I
22 read them to the jury?

23 Oh, I've got something. When I read the Instruction
24 No. 3, which is the one -- the lengthy one that lists the
25 contents of the superseding indictment, I'm not going to read

1 for the jurors the numbers of the NRS, because they wouldn't
2 know what that is, anyway. I'm just going to read the charges
3 and the contents to the jury.

4 MR. ORAM: No objection.

5 MR. DiGIACOMO: No objection.

6 MR. LANGFORD: No objection.

7 MR. ORAM: And -- and then, Judge, there are three
8 instructions that I often raise on I think hundreds of appeals
9 now that have always been denied. I understand that Mr. Burns
10 has waived his penalty phase for life without parole if he's
11 convicted and an appeal. Again, they're issues that I raise
12 only in preservation of attacking --

13 THE COURT: You want to object to Instruction No. 5,
14 which defines it beyond a reasonable doubt.

15 MR. ORAM: Yes, Your Honor.

16 THE COURT: I thought so.

17 MR. LANGFORD: Your Honor -- go ahead.

18 MR. ORAM: And I'll submit it to the Court with that.

19 MR. LANGFORD: It is also -- would be my intent, Your
20 Honor, and I always do this to preserve for the record, it
21 would be my intent to argue to the jury what reasonable doubt
22 means and to use common -- everyday common sense issues. I
23 think the Supreme Court is dead wrong on this issue. And
24 until they change their minds, I'm going to continue to say I
25 am going to argue that this afternoon. I believe Mr.

1 DiGiacomo is going to say I object, that's not a proper
2 argument. And the Court will sustain his objection. But I
3 need to make the record.

4 MR. DiGIACOMO: Well, I believe Mr. Langford is aware
5 that the Supreme Court said it's misconduct for either party
6 to quantify, qualify, or give those type of examples that Mr.
7 Langford wants to give. I think for the record we accept that
8 he's going to offer it. He's not going to do it, so that he's
9 not going to force us to object here. So that was for the --

10 MR. LANGFORD: I -- I don't want to have to make them
11 object in front of the jury and --

12 THE COURT: I'm not prepared to overrule the Supreme
13 Court, at least today. So the objection is already sustained
14 without your having to -- to do it.

15 MR. LANGFORD: Thank you, Your Honor.

16 MR. DiGIACOMO: Judge, the only other thing is both
17 parties, both defendants have requested the -- this is just
18 for the record, the right of the defendant not to testify.
19 That instruction is in there, or the number --

20 THE COURT: It is in there.

21 MR. DiGIACOMO: It is in there. But for the record,
22 they are asking for it on the record.

23 MR. ORAM: Yes, that's correct on behalf of Mr.
24 Burns.

25 MR. LANGFORD: On behalf of Mr. Mason, as well.

1 THE COURT: All right. And you request that I read
2 the instructions before argument?

3 MR. LANGFORD: That's correct.

4 MR. ORAM: Yes, Your Honor.

5 THE COURT: All right. We'll see you at 1:00.

6 MR. SGRO: We have to -- that resolved the
7 instructions, Your Honor. But relative to the scheduling, the
8 -- the way that we had it mapped out is that Mr. Langford was
9 going to go first in closings.

10 THE COURT: Okay.

11 MR. SGRO: But by the time we read instructions and
12 Ms. Weckerly concludes, I'm told she -- they --

13 THE COURT: Is Ms. Weckerly doing the opening?

14 MS. WECKERLY: Yes.

15 THE COURT: Oh, okay.

16 MR. SGRO: I'm told they're going to --

17 MR. DiGIACOMO: That'll be 3:00.

18 MR. SGRO: I'm told they'll be done around 3:00. And
19 I also --

20 THE COURT: I don't want to waste the rest of the
21 day.

22 MR. LANGFORD: I -- I am not --

23 THE COURT: The least we can do is Langford.

24 MR. LANGFORD: I'm not prepared to argue today, Your
25 Honor.

1 THE COURT: But now -- now's a good time to start
2 working on it.

3 MR. LANGFORD: I -- well --

4 THE COURT: The case is four and a half years old.
5 Maybe is a good time for you to start working on it.

6 MR. LANGFORD: You know, they've got two attorneys.
7 They've got two attorneys. It's just me. I apologize that
8 I'm not able --

9 THE COURT: Well, how about ---

10 MR. LANGFORD: -- to do the work of --

11 THE COURT: -- how about Mr. Sgro doing his first
12 argument? I understand Sgro, and even though this is no
13 longer a death penalty case and you don't have a right to two
14 arguments, I'll let you have two. But at least one of you
15 could make their argument.

16 Mr. Sgro?

17 MR. ORAM: Court's indulgence.

18 MR. SGRO: Obviously --

19 THE COURT: I'll let you make yours. We'll be recess
20 till 1:00.

21 MR. ORAM: Your Honor, I'll tell you what. As -- as
22 a courtesy to the Court, I will make mine after --

23 THE COURT: You'll make yours.

24 MR. ORAM: And then I guess --

25 THE COURT: Mr. Oram's going to make his. We'll

1 leave Sgro for tomorrow morning, and then Langford thereafter.

2 MR. SGRO: Langford -- Mr. Langford would have to go
3 first thing tomorrow morning and I'll finish.

4 THE COURT: We're not going to break up --

5 MR. SGRO: Well, Your Honor, I'm not ready today. I
6 have a Powerpoint, we've gotten the DVDs the other day.

7 MR. DiGIACOMO: We're ready.

8 MR. SGRO: Well --

9 THE COURT: Well, we'll have -- we'll have Oram this
10 afternoon. Okay.

11 MR. SGRO: And we have to do Mr. Langford out of
12 order.

13 MS. WECKERLY: No.

14 THE COURT: Then we'll do Mr. Langford.

15 MR. ORAM: Then why don't we do them all?

16 MR. SGRO: Then, yeah, the alternative would be --

17 MR. ORAM: Just get them done today.

18 MR. SGRO: -- let's stay late.

19 MR. ORAM: Let's stay late and get them done.

20 THE COURT: Well, let's see how long it takes.

21 MR. ORAM: See what --

22 THE COURT: I don't know --

23 MR. ORAM: [Indiscernible].

24 THE COURT: -- how long you guys are going to take.

25 MR. ORAM: Judge, can we tell you what the problem

1 is? We've had a capital case with Mr. DiGiacomo. What --
2 what was very good for Mr. DiGiacomo is --

3 THE COURT: This is no longer a capital case.

4 MR. ORAM: No, I understand that. But what happened
5 is we all finished except for Mr. DiGiacomo, and then he was
6 able to get up and just have a whole morning with everybody
7 fresh. We don't want to do that. I think it's fair that
8 either we all go --

9 MR. DiGIACOMO: Amazing what the truth --

10 MR. ORAM: -- or --

11 THE COURT: I'm not going to waste a half a day.

12 MR. ORAM: No. That's fine.

13 THE COURT: Okay. Let's start this afternoon and see
14 how long Ms. Weckerly takes.

15 MR. ORAM: Okay.

16 THE COURT: All right.

17 (Court recessed at 11:59 a.m., until 1:05 p.m.)

18 (In the presence of the jury.)

19 THE COURT: You may be seated. State of Nevada vs.
20 Mason and Burns. The record will reflect the presence of both
21 defendants, their attorneys, the district attorney, and all
22 officers of the court and the ladies and gentlemen of the
23 jury.

24 Ladies and gentlemen, I'm going to read instructions
25 on the law to you now. These are in writing. They're long,

1 they're complicated. Keep in mind that you miss something,
2 you don't completely understand them, you're going to have a
3 copy of these instructions to take back to the jury room with
4 you. And you can go over them then again at your leisure if
5 you wish. You don't have to take notes, because you're going
6 to get a copy, complete set. As a matter of fact, I'm reading
7 them from a copy. And you're going to get a copy to have with
8 you when you're deliberating.

9 (Jury instructions read.)

10 THE COURT: All right. Ladies and gentlemen, that
11 concludes the instructions on the law. As I told you, they're
12 kind of lengthy. Most of them are required by -- they are
13 statutes and case directions that I read to you. So they're
14 -- that's why they're kind of long and lengthy, because
15 they're written by legislators.

16 And it's now the opportunity of each of the lawyers
17 to argue the case to you. Unlike opening statements where the
18 lawyers gave you an idea of what the evidence was going to be,
19 at this point it's the opportunity of the lawyers to explain
20 to you what evidence they think you should believe and what
21 evidence they think you might not want to believe, and how you
22 should apply that evidence to the instructions on the law that
23 I have given you.

24 Because the State has the burden of proof in this
25 case and in every criminal case, the State has the right to

1 begin and end the arguments. So the State argues first, then
2 each of the three defense lawyers will be given the
3 opportunity for an argument. And then the State will be given
4 an opportunity for reply. That's the procedure in every
5 single case.

6 I'm not sure we're going to complete all the
7 arguments today. They may go into tomorrow. But we'll start
8 with the State's argument for -- the opening argument first.
9 And I think Ms. Weckerly's going to do that?

10 MS. WECKERLY: Yes, Your Honor.

11 THE COURT: All right. Ms. Weckerly. Yes? Whoa.

12 UNIDENTIFIED JUROR: I know this is unusual, but I
13 could take a restroom break?

14 THE COURT: You want a recess?

15 UNIDENTIFIED JUROR: No, just a restroom break real
16 quick.

17 THE COURT: We'll take a recess for just a few
18 minutes.

19 UNIDENTIFIED JUROR: Yeah, could we please.

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

1 connected with this case until it's finally submitted to you.
2 And it's still not submitted to you.

3 We'll be in recess for about 10 minutes, everybody
4 get a restroom break.

5 (Court recessed at 2:03 p.m. until 2:15 p.m.)

6 (In the presence of the jury.)

7 THE COURT: All right. State versus Burns and Mason.
8 The record will reflect the presence of the defendants, their
9 counsel, the district attorneys and all the members of the
10 jury.

11 As I indicated to you, ladies and gentlemen, the
12 State is given the opportunity to make the first opening
13 statement and the last one, and so the State -- I understand
14 Ms. Weckerly is going to go first.

15 Ms. Weckerly.

16 MS. WECKERLY: Thank you. Thank you.

17 STATE'S CLOSING ARGUMENT

18 MS. WECKERLY: Good afternoon. At this point in the
19 proceedings, you've heard a lot about I guess the comings and
20 goings of Cornelius Mayo, and he is someone who in this case
21 when you hear about him is sort of easy to take issue with and
22 somewhat easy to criticize because of what was going on in the
23 house at the time this crime occurred, and maybe even to a
24 certain extent Derecia Newman as well.

25 And when he came before you, he said that he doesn't

1 know where the drugs came from and that he wasn't involved in
2 that sort of activity, and to a certain extent, maybe he
3 doesn't want to face the role he played in the offense that
4 took place on August the 7th of 2010, and it probably wasn't
5 the most courageous moment in his life when he was in the
6 bathroom hiding at the time his girlfriend and daughter got
7 shot.

8 But let's remember what the facts of the case are.
9 He didn't shoot anybody in the head, and he didn't shoot a
10 12-year-old girl. So any further discussion about him or some
11 possible gun fight taking place in that apartment that morning
12 is misguided and disregards literally every piece of evidence
13 in this case and all of the testimony that you've heard and
14 every exhibit that you've seen.

15 His charges, child neglect, trafficking, that's left
16 for another jury and another day. They were dealing drugs out
17 of that apartment, and that made him the target, and that's
18 sort of just the facts of the case. This isn't the time or
19 the place to judge the actions of Derecia Newman or Cornelius
20 Mayo. It's just a fact that comes into this case.

21 At this point, ask yourselves what the point of
22 suggesting Cornelius Mayo actually having a gun was. Is the
23 defense suggesting to you that someone came in, shot Derecia
24 Newman in the head, ran down the hallway chasing Devonica,
25 shoots through the bathroom door, and it's actually Cornelius

1 who shoots Devonian after that? Is that what they're
2 suggesting to you?

3 Now, remember, it was a little while ago, but in
4 opening statements, Mr. Sgro actually played a portion of
5 Devonian's interview, and he actually even went over it with
6 Detective Bunting today. It was those lines on the transcript
7 -- you might recall that -- and he asked Detective Bunting
8 today and he suggested in his argument in opening statement
9 that in that blank spot that was regarded as unintelligible,
10 in that spot, that's Devonian recounting a telephone call, the
11 9-1-1 call or some call that Cornelius Mayo made, and
12 according to the defense interpretation, Devonian reports
13 hearing Mayo saying, I shot my daughter, or something to that
14 effect.

15 Now let's listen to the defense opening argument.

16 (Audio/video played.)

17 MR. SGRO: Objection. This is not evidence. This is
18 completely improper.

19 THE COURT: This is not in evidence?

20 MS. WECKERLY: This is in evidence.

21 MR. SGRO: I thought she said the opening argument --
22 opening statement.

23 MS. WECKERLY: This is the excerpt that was played by
24 the defense.

25 THE COURT: She can play what --

1 MR. SGRO: The opening statement?

2 THE COURT: -- you played in opening statement.

3 MR. ORAM: Judge. Judge.

4 MS. WECKERLY: I'm going to restart it because it was
5 interrupted by counsel.

6 (Audio/video played.)

7 MS. WECKERLY: So he -- they showed you that slide
8 and injected their own interpretation of the audio, and it
9 says, Telling family where we stay. He said, I shot my
10 daughter. Now, you will be the ultimate interpreters of what
11 that recording says, and you'll have the full recording on a
12 disc in the deliberation room, and you'll be able to listen to
13 it as many times as you want.

14 The State's interpretation of what she's saying is
15 different.

16 (Audio/video played.)

17 MS. WECKERLY: The State's interpretation is what
18 Devonia is reporting her dad saying is, My daughter got shot.
19 My daughter got shot. But as I said, you will have the
20 recording back there. You can play it for yourselves and make
21 your own determination individually and collectively regarding
22 what was said.

23 The other suggestion made by the defense is that
24 somehow Cornelius Mayo made another call before calling 9-1-1
25 on the morning of the incident. We'll be -- in a second, I'll

1 play for you his 9-1-1 phone call to the police that morning.
2 The first portion I'm going to play is the point where -- at
3 least according to what the recording is saying -- Cornelius
4 Mayo is coming out and discovering that his girl has been
5 shot, and he's not talking about Derecia. He's talking about
6 Devonian, and at the end of the clip, he actually says, Lay
7 down, or, Stay there, Devonian.

8 (Audio/video played.)

9 MS. WECKERLY: The State's interpretation of that is
10 that it's Cornelius Mayo finding Devonian, seeing she's shot,
11 believing she's dead and actually telling her to lay down. As
12 he described for you in his testimony, he was in the back
13 bedroom with her. He sees her, and then he goes to the front
14 part of the apartment, and that's when he sees Derecia.

15 I'm sure you've noted, as you just heard, the strain
16 in his voice, the stress and the surprise upon seeing the
17 injuries to his daughter. The suggestion that he made some
18 other phone call to call his friends over is absurd. He is
19 discovering her for the first time.

20 And now listen to what the State suggests to you is
21 him discovering Derecia.

22 (Audio/video played.)

23 MS. WECKERLY: Now, in that clip, that's obviously
24 Mr. Mayo describing seeing Derecia, and you can hear -- he's
25 almost nonverbal because he's so shocked and alarmed at what

1 he -- what he has seen, and it doesn't sound like someone who
2 has made some other phone calls to arrange to alter the
3 evidence in the case.

4 When he sees both of these women -- or a young girl
5 and a woman who are important in his life, he is literally on
6 the phone to 9-1-1, and you know from the testimony in this
7 case that the police arrive -- he meets them in the street,
8 and they're there about three minutes after the 9-1-1 call.
9 There's simply no time for him to alter the crime scene in any
10 way, and the idea that maybe he did it, maybe he did alter
11 that scene, well, he sure didn't do a good job, did he?
12 Because there's crack rocks all over the floor of that room.

13 Now, another suggestion we've heard from the
14 defendants throughout the trial is that Cornelius Mayo -- and
15 this was mentioned in opening statement -- somehow suggested
16 to Devonian prior to her interview with Detective Bunting that
17 the assailant, the person who shot her, was wearing overalls
18 and that he wanted Devonian to blame this person and somehow
19 say it in her interview.

20 This suggestion is sort of interesting in itself
21 because Cornelius Mayo -- if he really wanted that idea to be
22 put forth -- he didn't say it in his interview, and I'm
23 guessing he didn't tell Devonian to say the other thing she
24 said in her interview as well about him hiding in the
25 bathroom, about drugs being in the house and about other

1 activities of drug sales in the house back and forth.

2 Cornelius Mayo didn't have much of an opportunity to
3 edit or select what Devonian ended up telling Detective
4 Bunting, and remember, when she's talking to Detective
5 Bunting, this is a 12-year-old girl. It's not the 17 year old
6 who's been through Family Court, knows what happened to her
7 dad -- who she considers her dad who is now being charged with
8 drug offenses, knows what happened to her family after. That
9 is a more sophisticated kid, a kid who's more conflicted.
10 When she's 12 years old, she's just blurting out information
11 that she knows to the detective without understanding any of
12 the consequences for Cornelius and her family.

13 Cornelius drinks. He admitted to you that he smokes
14 marijuana. He certainly gambles. He said that, and the
15 evidence shows that he and Derecia were selling some amount,
16 some low amount of rock or crack cocaine out of their house.
17 So he was a small-time dealer, and that activity put children
18 at risk, and he may not be the pillar of the community, but he
19 isn't the villain in this case. He didn't blow off Derecia
20 Newman's face, and he didn't shoot Devonian.

21 Those acts were done by robbers and killers, and
22 that's a whole different level. Those acts were done by
23 people willing to prey on other people, willing to victimize
24 and willing to target what they viewed as an easy target or
25 someone who would be less defensible.

1 You will have this gun in evidence. This is State's
2 Exhibit 320. Pick it up. It is heavy, and what happened in
3 this case is David Burns took this gun in his hand, and he put
4 it up to another individual's head, Derecia Newman. He put it
5 up to her forehead, and he pulled the trigger. It was a
6 violent act. When he did that, half of her face came off.
7 That's different than selling a rock crack here or there. So
8 maybe we can make assessments about Cornelius's character, but
9 it really doesn't have much to do with this case.

10 As jurors in this case, what you owe the state of
11 Nevada and certainly what you owe the defense, too, is to
12 fairly and accurately evaluate the evidence in this case and
13 apply the law that the Judge just read to you in the form of
14 the jury instructions. In this case, like every other
15 criminal case, there are two questions at issue: What crimes
16 were committed? And who committed the crimes?

17 And in this trial, you heard the facts of the case,
18 and the facts of the case were presented to you through
19 evidence, and much like cell phone records, evidence tells you
20 what happened. It doesn't tell you what didn't happen. It
21 doesn't tell you what's plausible, what could've been, what
22 might've been if things were different or different people
23 were in the car. It tells you what happened.

24 Our burden is to prove to you what happened beyond a
25 reasonable doubt, to prove to you who committed these crimes

1 beyond a reasonable doubt. It is not our job to prove a
2 negative or to disprove that anyone else could have committed
3 these crimes beyond a reasonable doubt. That's an impossible
4 standard. We present the evidence. It shows you who
5 committed the crimes.

6 So you'll have that packet of the instructions that
7 the Judge just read to you. I'm going to go over some of them
8 with you, and I'm sure the defense may go over some of them,
9 too, but you'll have the entire packet along with all the
10 exhibits that have been admitted, and you can use them as you
11 decide and evaluate the evidence in this case and also what
12 crimes the defendants are guilty of.

13 One thing to remember is you've heard about a lot of
14 people who've been involved in this case. You've heard about
15 Stephanie. We've heard a lot about Job-Loc, and there's --
16 and Donovan is kind of, you know, thrown in the mix, too, but
17 what your focus is in this trial as jurors in this case, you
18 are here to determine whether the defendants are guilty or not
19 guilty from the evidence in this case.

20 You're not called upon to return a verdict as to the
21 guilt or innocence of any other person. So if the evidence in
22 this case convinces you beyond a reasonable doubt of the guilt
23 of one or -- one or both of the defendants, you should so
24 find, even though you may believe one or more other persons
25 are also guilty.

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

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

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

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

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

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

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

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

1 use of a deadly weapon and attempt murder.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 for first-degree murder.

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

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

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

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

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

1 interrupt counsel, but may we approach?

2 THE COURT: Yes.

3 (Bench conference.)

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

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

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

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

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

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

21 THE COURT: That's a different issue.

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

24 THE COURT: All right.

25 (Bench conference ends.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Is that right, Mr. Langford?

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

3 DEFENDANT MASON'S CLOSING ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 10-minute break.

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

8 (In the presence of the jury.)

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

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

24 All right. Mr. Oram.

25 MR. ORAM: Thank you, Your Honor.

1 DEFENDANT BURNS' CLOSING ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (Audio/video played.)

25 Ladies and gentlemen, she admitted -- admitted that

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (Audio/video played.)

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

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

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

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

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

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

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

24 (Audio/video played.)

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

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

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

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

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

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

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

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

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

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

19 What did she say?

20 (Audio/video played.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 Job-Loc, we know there was a change of personnel,
5 right? So if they -- we accept the State's theory, at the
6 Opera House we see Mr. Burns, Mr. Mason, and Monica.

7 Therefore, that must be who went there. Oh, no, no, no, no,
8 no. Isn't somebody missing? Where's Stephanie Cousins?

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

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

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

1 blood in the car.

2 And she's got an answer to Job-Loc's consequences?
3 You're worried about Job-Loc when you've got this guy sitting
4 behind? Remember she said he was talking about shootings.
5 Stephanie Cousins, I'll shoot her, saying bad things.
6 Wouldn't you be scared of the man who's shooting people and
7 sitting right behind you? Who would you be scared of
8 consequences for?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 Thank you so much for listening to me.

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

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

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

1 best I can.

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

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

5 You have something on the record?

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

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

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

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

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

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

14 MR. SGRO: No, I --

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

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

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

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

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

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

25

CERTIFICATION

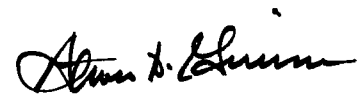
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

JURY TRIAL - DAY 15

THURSDAY, FEBRUARY 12, 2015

APPEARANCES:

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

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AA 3199

I N D E X

CLOSING ARGUMENT:

By Mr. Sgro 3

REBUTTAL ARGUMENT:

By Mr. DiGiacomo 50

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

2 * * * * *

3 (In the presence of the jury.)

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

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

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

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

16 (Pause in proceeding.)

17 DEFENDANT BURNS' CLOSING ARGUMENT

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

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

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

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

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

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

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

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

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

15 (Audio/Video played.)

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

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

1 the television.

2 (Audio/Video played.)

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

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

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

20 (Audio/Video played.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (Audio/Video played.)

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

6 (Audio/Video played.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (Audio/Video played.)

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

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

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

6 (Audio/Video played.)

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

13 (Audio/Video played.)

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

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

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

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

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

15 (Audio/Video played.)

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

1 to before.

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

6 (Audio/Video played.)

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

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

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

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

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

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

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

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

1 front of me." Whoops. Whoops.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (In the presence of the jury.)

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

13 MR. SGRO: Thank you, sir.

14 DEFENDANT BURNS' CLOSING ARGUMENT (continued)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 According to Detective Bunting, I was garbage in,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Detective Wildemann from the outset points out to

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

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

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

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

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

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

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

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

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

4 Even Cornelius Mayo pursued Job-Loc.

5 (Audio/Video played.)

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

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

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

1 in here.

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

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

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

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

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

5 (Audio/Video played.)

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

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

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

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

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

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

10 (Audio/Video played.)

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

19 (Audio/Video played.)

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

1 suspect.

2 (Audio/Video played.)

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

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

13 (Audio/Video played.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 And I thank you for your time.

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

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

13 Be in recess for about ten minutes.

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

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

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

18 (In the presence of the jury.)

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

23 Mr. DiGiacomo.

24 MR. DiGIACOMO: Thank you.

25

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No. 80834

APPELLANT'S APPENDIX

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 12th day of August, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven Wolfson, Clark County District Attorney's Office

Aaron Ford, Nevada Attorney General

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By: 

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