

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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1 STATE'S REBUTTAL ARGUMENT

2 MR. DiGIACOMO: What happens in courthouses across
3 America and what should be happening in this courtroom by a
4 jury of 12 people is that it's a search for a truth. And
5 before about 20 minutes ago, that would seem to be what we
6 were all doing here for the last four weeks.

7 MR. ORAM: Judge, I object to that. That's
8 disparaging counsel.

9 MR. DiGIACOMO: He just accused me --

10 MR. ORAM: To -- to --

11 MR. DiGIACOMO: -- of lying and deceiving this jury.

12 THE COURT: Please. Objection's overruled.

13 MR. DiGIACOMO: Thank you.

14 THE COURT: Sit down. Let's go.

15 MR. DiGIACOMO: The past 20 minutes Mr. Sgro got up
16 here as opposed to two sides arguing an issue and suggested
17 that the players themselves somehow are manipulating what
18 happens with the 12 people to search for that truth.
19 Certainly a jury system, that's all this is, 12 jurors decide
20 what the truth is and then decide whether or not Ms. Weckerly
21 and I can establish beyond a reasonable doubt that these two
22 individuals committed the crimes that they are accused of.

23 Mr. Sgro suggested to you that our version of events
24 has to be true in order for you to convict the defendants.
25 Really? That's not what your jury instructions say. Your

1 jury instructions say if every material element of the offense
2 is established, you convict these defendants. If they fired
3 six shots, if they fired seven shots, if they fired 15 shots,
4 if someone got murdered and they're the perpetrators, you
5 convict them. It's wholly irrelevant how many shots were
6 fired. You don't have to believe Detective Bunting wanted
7 six.

8 And now you can kind of see why Detective Bunting was
9 as angry as he was on the stand during cross-examination by
10 Mr. Sgro. The suggestion that he was manufacturing the story
11 and manufacturing the evidence. Apparently now he's written
12 David Burns' letters that are in evidence that came out of his
13 cell that were collected with his address on them, because
14 there's two different handwritings.

15 Actually, look at the letters. The two we put up
16 were absolutely consistent, and the third one is a different
17 handwriting. Why? It's Willie Mason's handwriting. Look at
18 the letters: The letters are in only have one envelope, so
19 please forward a letter onto Job-Loc. And there's two
20 different letters in that exhibit. One is the Willie Mason
21 letter, one is the -- the David Burns letter, written by two
22 different people. No kidding there's going to be different
23 handwriting on those. That's the truth of what happened.

24 There's only one thing that happened in this case.
25 Whether or not we can establish every tiny little thing where

1 every person was standing at any given time is irrelevant.
2 The question is can we establish that the two of them were at
3 the crime scenes, that they were involved in a conspiracy,
4 that they aided and abetted each other, and ultimately one of
5 them -- or, hey, maybe Stephanie or Monica's the shooter, I'm
6 not real sure -- but one of them, one of these two fired the
7 shots. I'm going to suggest to you, and I think Ms. Weckerly
8 did, there isn't any doubt that David Burns is the shooter in
9 this case. Right. I mean, that's not going to be -- there's
10 no surprise that our position is the evidence establish he's
11 the shooter.

12 But the law tells you it's not really relevant who
13 the shooter is in this phase of the trial. This is a guilt
14 phase. And the question is applying the law to the evidence.
15 Do you convict the defendants? You could talk about the
16 shooter and not the shooter, because that's what the truth is.
17 Ultimately, a jury's supposed to find that truth.

18 So let's start off with Mr. Sgro's suggestion that,
19 well, one, apparently we were manipulating the witnesses. But
20 two, the quality of the witnesses. God, I wish that --

21 MR. ORAM: Objection as to what he wishes.

22 THE COURT: Sustained.

23 MR. DiGIACOMO: It would be a wonderful situation
24 should we be standing in -- or we should be living in a world
25 in which people who are selling crack out of their house who

1 get murdered happen to have a priest and a nun who's standing
2 there and is part of the witnesses in the case. Or maybe
3 Mother Theresa to tell us who's living in Job-Loc's apartment
4 over at the Brittnae Pines.

5 Those aren't the people that are involved in murders.
6 I don't get to choose these people. There's no doubt that
7 these are these two individuals' friends. They're not my
8 friends. These are people that are associated with these two
9 defendants. You can't blame us for the quality of the
10 witnesses.

11 But more importantly, it's not about were they
12 telling the truth on the stand completely about that. Right?
13 It's not a question, did what he say, is that what he said, is
14 that true? No. It's what did he say that makes it relevant?
15 What can we figure out from what they said in this particular
16 case.

17 And why do I say that? For example, Donovan Rowland,
18 was that guy a real credible witness? No. But when you look
19 at his taped statement and you go back and you look at it, now
20 you have an understanding of why in the letters they're
21 talking about, Hey, West, or that Donovan Rowland bitch, as
22 they put it, he gave -- he got out of a gun charge by giving
23 up the burner. Well, now you understand, right? He didn't
24 get charged with being in possession with -- of the murder
25 weapon.

1 They don't say, Hey, West got out of the murder by
2 giving up the weapon. No. What are they telling you in those
3 statements? Why do we call Donovan Rowland? Why did -- why
4 is he up there? Because he's believable? No. Because the
5 information he has to provide you is going to lead you to what
6 the truth in the case is.

7 That's the same with Monica Martinez. Because I have
8 to wonder to myself, right. Monica Martinez starts off with
9 the same thing that David Burns does. She's a little bit more
10 angry with Detective Wildemann when she says, Can I pull a
11 rabbit out of my ass, I don't know what happened. But
12 ultimately that's her first story.

13 And what happens after that? Detective Bunting, the
14 most patient human being on Earth, apparently, after watching
15 that five and a half hours, sits there with her for a very
16 long period of time. But what is her first story after she
17 tries for about 30 seconds and goes, I don't remember; what
18 does she say?

19 And I'm not sure that anybody in this courtroom
20 caught it. I'm not even sure the detectives at the time
21 caught it. She says, I'm with two guys in a car, we go and we
22 pick up this -- this crack head, and we go to an apartment.
23 Now, Detective Bunting and Detective Wildemann, they're
24 thinking the apartment she's talking about is the murder
25 scene. But she's not. And then she says, After we leave that

1 apartment, I drive somewhere, it was dark, Chris, it was dark,
2 Chris. Yes. And then she won't give up any more information.
3 That's her first story.

4 Well, guess what? When you get to the end of this
5 case, the physical evidence is going to establish that that
6 version of events is actually true. And what is she trying to
7 do? She's trying to avoid liability in the case, much like
8 Mr. Burns is doing. Do you think that he actually has mental
9 problems after reading those letters? No. There's no
10 evidence before you he has mental problems. He is whistling
11 and humming and doing whatever he can to avoid having to
12 answer the questions. Why? Because unlike Monica Martinez,
13 he has no moral out.

14 David Burns has no explanation that is going to save
15 him from the horrific knowledge that he put a gun,
16 a .44-caliber, that giant hog-leg of a revolver, to the head of
17 a woman and pulled the trigger without ever letting her
18 getting a word out edgewise, and then chased a 12-year-old
19 girl down. What reasonable explanation could he give? Well,
20 I was really high on drugs. That wouldn't excuse it.

21 Well, and notice in his statement he doesn't ever
22 deny. He just says, I don't remember, I don't remember.
23 Until he gets to the death penalty part. Do you believe in
24 hell, Detective? And then also listen for the tune that he's
25 humming and singing and whistling in the background.

1 So let me start with one last thing I want to talk
2 about Monica, which is Story No. 2. Right. First story is
3 she kind of gives you the sequence of events, but she wants to
4 go with I don't remember. What's Story No. 2? Because I
5 haven't heard an explanation for this.

6 Mr. Langford got up there and said to you, The
7 evidence suggests to you it was a dope deal gone bad and
8 somebody went crazy. And if -- he didn't point the finger at
9 anybody as to who went crazy. But Willie, he's merely
10 present, but it's just the dope deal, was kind of what the --
11 what I took from what Mr. Langford said to you.

12 Well, if that's true, why isn't the second version of
13 Monica's story, Hey, I had two guys, they went up to pick up a
14 girl, and we went up to do a dope deal and somebody went
15 crazy? Why does she implicate herself with a robbery at that
16 point?

17 When you look at her statement, she has given no
18 identifying information of the perpetrators whatsoever. The
19 only thing she's done is convicted herself of first degree
20 murder. Before she ever identifies anybody, the first thing
21 she says is, It's a robbery.

22 Why is that important? Well, you now know that the
23 punishment for first degree murder is 20 to life. What does
24 Monica Martinez plead to? She pleads to a bunch of charges
25 where she's eligible for a life sentence and a minimum parole

1 eligibility is somewhere going to be between 10 and 18 years.

2 So she got on the stand, got basically two years cut
3 off her parole eligibility date, and told you she was a driver
4 on a robbery. Anything else she has to say you don't need to
5 know about. You can ignore everything else the woman says in
6 the entire case. The fact of the matter is, is Monica
7 Martinez establishes this isn't a dope deal gone bad. Because
8 there's no reason for her to lie.

9 Because otherwise she's innocent. She's the woman
10 going to 18 to life who's innocent of a crime. Right. If I'm
11 just a driver on a dope deal and -- and somehow the dope deal
12 goes bad, maybe I have some accessory liability for driving
13 them away. But if I don't know anything's going to happen
14 before it happens, well, then, I'm not guilty. I'm innocent.

15 And yet she's 18 to life up there telling the story
16 about how this is a robbery. That fact's got to be true, that
17 this is, in fact, a robbery. Anything else she says you can
18 completely ignore for all I care. Who cares what else she
19 says after that.

20 See, because the other thing is she took two years
21 off her minimum parole eligibility sentence for what? To be a
22 snitch for the next 18 years in prison. Mr. Sgro got up here
23 and said, Snitches get stitches. Meaning she put herself at a
24 significant amount of risk in order to get up on the stand and
25 save two years on her life. For what? Ultimately, to

1 establish there's no question in anybody's mind that anybody
2 who's in this care knew it was a robbery, they were engaged in
3 a robbery. And who cares who the identity of the perpetrators
4 are. She establishes that fact and that fact alone.

5 Mr. Sgro also went through the State's theory of this
6 is the six shots. Not the State's theory. Detective Bunting
7 thinks it's consistent with six shots. But this is about a
8 search for the truth. So let's talk a little bit about the
9 truth, whether or not it's six shots or eight shots. Because
10 I've got to tell you, if it's eight shots, it's really bad for
11 Mr. Burns. Because after he fired six shots, he reloaded the
12 gun two times and continued firing. That's even worse than
13 emptying the last shot into your six -- into the 12-year-old
14 little girl and then searching her pockets while whistling
15 about it.

16 Here's your crime scene. And I didn't realize Mr.
17 Sgro was going to continue with his slide from his opening
18 statement here, so I cut a little bit of his opening in for
19 you.

20 I apologize, Judge. Give me just...

21 (Audio/Video played.)

22 First of all, there's no evidence that the revolver
23 was loaded when the person entered the residence. Okay. But
24 whatever gun was used had to be loaded at some point. Right?
25 I mean, does it really matter whether they loaded it in the

1 front room or they loaded it outside or they loaded it -- or
2 they took it from Job-Loc when it was already preloaded? I'm
3 not really sure why that's relevant.

4 Can tell you this, the evidence suggests -- because
5 it would be better for the State when we come to talking about
6 how egregious this crime is, had there been either two
7 shooters, because there could be Mr. Mason and Mr. Burns being
8 shooters, and it would also be better for us if there were,
9 you know, someone had to reload that weapon. Because that
10 just makes this that much more offensive, what happened in
11 that house.

12 But that's just not the truth. Here's the crime
13 scene. I'm going to say that the evidence is pretty darn
14 compelling. Mr. Burns is our shooter at the end of this case.
15 Mr. Burns comes through the front door. Stephanie bumps into
16 that table that you're going to see right there, knocking the
17 items off of it as Mr. Burns fires a round into Derecia
18 Newman.

19 Now, look at the one, two, three pieces of firearms
20 evidence that's found in the area where Derecia Newman is.
21 And then look at the pieces that are pulled out of her head.
22 What do you have? You basically have a complete bullet. On
23 the left-hand side is --

24 The laser pointer's not working real good. Right
25 here, that bullet is able to have enough identifying

1 information on it to conclusively tie it to the other bullets
2 in the case. There's the little fragment, when you go back
3 there and look, that Mr. Krylo said is consistent, but it's
4 just not big enough and doesn't quite have enough. But that
5 little fragment is found right between her legs.

6 So I'm going to suggest to you that that is one
7 bullet, and that there isn't really a compelling argument you
8 can make otherwise about there being more than one shot that
9 happened in that living room.

10 So what happens? As Devonina runs down the hall, Mr.
11 Burns doesn't chase. He doesn't need to chase. What has he
12 got? He's got a .44-caliber revolver. He doesn't need to run
13 after her, that's why he doesn't catch her. He just doesn't
14 quite hit her.

15 Shot No. 1 enters the right side of the fridge, it
16 comes out the back side of the fridge, it enters the wall
17 that's right there and skims back down to the wall behind the
18 wall that sits at the closet of the bunk-bed room and then
19 hits that dresser and drops to the bottom. At least what's
20 left of that bullet.

21 Why? Because despite digging out the hole there that
22 happens in the first skim of the wall, digging out the hole on
23 the top left -- or on the bottom left there, on the top side,
24 that's the hole that enters into the closet. And that's the
25 hole at the bottom where they tried to see if maybe the -- the

1 bullet stuff dropped down.

2 Ultimately, they get no evidence, or no -- of the
3 outside of the bullet that would give them rifling
4 characteristics. They got three little pieces of lead. But
5 I'm going to suggest to you that there's no other firearms
6 related evidence associated with that bullet that's recovery
7 [sic]. So that has to be Bullet No. 2.

8 Bullet No. 3, the -- either a magic bullet or the
9 bullet that people are lying about, or maybe it's just the
10 bullet that doesn't establish anything. I'm not real sure.

11 I'm going to suggest to you that one thing you know
12 for sure is we don't manipulate the witnesses. Why? Because
13 in the beginning of the case we called the crime scene analyst
14 who's present at this scene, who doesn't know about this at
15 the time that she's at the scene, the bullets that happened to
16 go into that TV. And what does she say about trajectory? She
17 says the bullet goes into the vacuum cleaner, fakes a -- goes
18 down a little bit farther, makes a hard right-hand turn, it
19 hits the mattress and it comes up there. Now, bullets do
20 weird things at a scene, but I'm pretty sure that if it went
21 through a wall, you'd see it.

22 Her problem is, is that she sees a bullet strike to
23 the vacuum cleaner, and she doesn't see the bullet strike that
24 happens in that wood shelving. And so she sees, How is that
25 humanly possible that it struck the -- and I don't see any

1 evidence of anywhere else that that bullet went. She just
2 missed it.

3 Like we talked about, there are good -- there are
4 good crime scene analysts and there are bad crime scene
5 analysts. And you know what, everybody's human. Even the
6 best of people make mistakes.

7 But what does the evidence show? The evidence shows
8 that if you were to draw a line from the bullet entry and exit
9 out of the -- the vacuum cleaner, there's a defect right in
10 the side of that cabinet. And most important about that
11 defect, notice two things. There's a big hole that's mostly
12 rounded. And then on this side there is -- it kind of -- kind
13 of has a non-round and there's kind of a weird shape to the
14 bullet hole.

15 What happens after it passes through there? And then
16 I don't have the picture, the defense put it in, where the two
17 trajectories cross about two or three or -- inches outside of
18 the wall. When it hits the back of the shelving, it finally
19 comes -- the bullet finally comes apart. They change
20 direction, like Krylo says, what happens to them? You could
21 see this bullet on the -- going inside, the big one's on
22 bottom, the little one's on top. Going out, the big one's on
23 top, the little one's on bottom. And then you look at the TV
24 and there's two bullet strikes to the TV.

25 Now, what did the CSA -- Keller -- whose name escapes

1 me what -- what her name was, I think her name -- married name
2 now is Keller. What did she say? I took off the bottom of
3 the TV, and I took off the back of the TV, and I found this
4 little fragment. That's all I found. I didn't see any exits
5 to the TV. I just saw two bullet holes. She doesn't find
6 that bullet.

7 Well, there's two possibilities. Somehow Cornelius
8 Mayo has the real murder weapon, he fired the round to -- to
9 call the police, because he knows the forensic analysis that
10 happened here and he's going to now help us fix the fact that
11 there's only five bullets in this house, or that bullet wound
12 up wedged up in the actual workings of the TV, and when it got
13 moved, eventually shook out, and when it came out, Cornelius
14 Mayo turned it over.

15 Because either Mr. Krylo is absolutely crazy or that
16 bullet that looks like a completely pristine bullet that just
17 happens to physically match the little fragment off the front
18 end, the little lead piece off the front end that's missing
19 from that bullet, either one of those two -- two things is
20 true. Either one of those two -- two things is true. Either
21 someone had -- did a hell of a job manufacturing the evidence
22 in this case, which doesn't really matter one way or the other
23 how many shots there are, or the truth just is some CSA missed
24 it.

25 Next shot. Now Devonian's turned the corner and Mr.

1 Burns was following her. And as she goes into the bedroom
2 there's another shot. That shot winds up hitting the bed,
3 hitting -- bouncing up into the two coverings of the window,
4 and ultimately is recovered at the bottom of those two
5 coverings right there, and it's almost a complete bullet.
6 Bullet No. 4.

7 Now what happens? Devonian runs into the bathroom.
8 And notice what Devonian says in her statement that just --
9 maybe Cornelius Mayo told her this that morning, there are
10 towels hanging off the door to the bathroom. So she couldn't
11 get the bathroom door completely closed.

12 He shoots a round through the door, she lets go of
13 the door, that round winds up behind the sink there in the
14 wall. And while they cut out the wall, they ultimately never
15 recover that bullet. That's Shot No. 5.

16 And then she exits the bathroom and she gets shot
17 right in her stomach, right in the front where she should be
18 shot if she's coming out of that bathroom. And that's Bullet
19 No. 6.

20 Does it matter if there's eight bullets? Does it
21 matter if there's seven bullets? Does it matter if there's 15
22 bullets? No. But a jury's job is to find what the truth is.
23 And, ultimately, I don't know any other explanation you could
24 come up with.

25 So let's talk about Jerome Thomas's DNA from the

1 opening. This is a big deal, because on the -- the September
2 12th of 2011, Detective Bunting tells the lab, We never
3 collected Jerome Thomas's DNA. The part that everybody's
4 missing, though, is the report from the DNA comes out in
5 October of 2011. So now you have the reports. It doesn't say
6 Detective Bunting is never going to collect Jerome Thomas's
7 DNA. It says buccal swabs have not been collected or never
8 been collected per Chris Bunting. And it's true; by September
9 of 2011, it wasn't collected.

10 But what do we know now? We have one piece of
11 foreign DNA inside the residence. You have a small cigarette
12 butt, which, if you look at that table that Stephanie would
13 have bumped against when the door hit her, there is a kind of
14 a handmade little ashtray that falls down and there's a
15 cigarette butt.

16 Any evidence that the shooters in this case were
17 smoking a cigarette when they came through the door and
18 executed Derecia Newman? No. But more importantly would be
19 that other little red circle, that the cabinet that nobody
20 says anybody disturbed during this crime doesn't appear to be
21 disturbed, that door -- that cabinet happens to have a
22 handle that has Unknown Male's -- No. 1's DNA, too.

23 So what could that tell you if you had an answer to
24 the question? Well, if it was Job-Loc's DNA, well, that would
25 be, you know, sort of bad. But as I'll explain shortly, it's

1 impossible. It can't be Job-Loc's DNA.

2 What else do you know? Well, there is at least one
3 male that lives in this room that's not the child of Derecia
4 Newman. And guess what? Of all those samples they took of
5 all those places where they had DNA, those are the only two
6 pieces that you don't have the answer to, and it comes back to
7 Unknown Male No. 1.

8 Would you expect to find Cornelius Mayo's DNA in the
9 house that he lives in? Of course you would. Would you
10 expect to find them on the cabinets that he would be using?
11 Would you expect him to be smoking the cigarettes? Remember,
12 he had cigarettes stolen during the -- during the robbery.
13 Newport cigarettes, interesting two packs that happened to be
14 -- two packs happened to be found in Job-Loc's apartment. But
15 would you expect that to be Cornelius Mayo's DNA? Yes. But
16 even if it's not Cornelius Mayo's, as long as it's not
17 Job-Loc's DNA -- because you know it's not Donovan Rowland's
18 DNA -- it doesn't really matter.

19 So then you get to Job-Loc. What happens when you go
20 to Job-Loc's place? You go to Job-Loc's place, you collect
21 the toothbrushes that are there, you collect the cigarettes
22 that are there, you collect a poem that's there. And, weird,
23 there's three toothbrushes there; one's Monica, and one's
24 Donovan, and one's Unknown Male No. 4. His -- his DNA found
25 on a single cigarette, Unknown Male No. 4, mixed with DNA with

1 David Burns, Unknown Male No. 4, and mixed with the DNA of
2 Monica Martinez, Unknown Male No. 4.

3 Unknown Male No. 4 cannot be Unknown Male No. 1. So
4 whose DNA is found at Job-Loc's apartment? Well, it's Unknown
5 Male No. 4. So the suggestion is that Detective Bunting is
6 supposed to fly back to California, get Jerome Thomas's DNA to
7 establish that he's Unknown Male No. 4. Now, that may be
8 important if we ever get Job-Loc out of his prison sentence in
9 California. But he's tied to this apartment 19 ways to
10 Sunday. It's his apartment.

11 You have his medical records in there, you have his
12 prescription medications in there, nobody -- his cell phone --
13 oh, and my favorite deception, his cell phone alibis -- the
14 way that they're making it sound, his cell phone alibis him.
15 But his cell phone puts him at that location.

16 Nobody's disputing that's Job-Loc's apartment. And
17 who is the only unknown male coming out of that apartment in
18 DNA? Job-Loc. And what would you expect to find in a guy's
19 own apartment? Unknown Male 4's DNA.

20 (Audio/Video played.)

21 That was from opening, as well. I didn't hear
22 anything about that in closing today. But we can know that
23 that can't possibly be Job-Loc, as well. And here's why.

24 Because when Monica, at 4:29, makes the phone call
25 where she's hitting near the Texas Station, remember that map

1 that we showed? The person she's calling is Job-Loc. And
2 Job-Loc answers -- or Job-Loc's phone answers and it's ping-
3 ging next to his apartment. But more importantly, continue to
4 watch at 4:38, as Monica Martinez walks into the Texas
5 Station.

6 (Audio/Video played.)

7 4:42, as she walks out of the Texas Station.

8 (Audio/Video played.)

9 And 4:46, what is she pulling out of her purse? And
10 what is she doing with her phone? And there's an --
11 one-minute -- or 147-second phone call answered by Job-Loc's
12 phone, where Job-Loc's phone's ping-
13 ging at his apartment.

14 And I know he said in opening that this is shortly
15 after Monica left that there's that guy who's allegedly on
16 crutches. It's actually three minutes before. So somehow he,
17 on his crutches, got out of the Texas Station and got home in
18 time to answer the phone where he'd be ping-
19 ging off the tower
20 next to his house.

21 Mr. Oram suggested this yesterday, and I know I
22 didn't do it with Tyler, but do you remember Tyler being on
23 the stand and saying she'd never met G-Dogg? She only met him
24 once? The suggestion that she wasn't stressed that made a
25 mis-ID. Actually, I think she probably flipped the names.
But ultimately, you don't think it was stressful for her to be
in this courtroom and sit up there and have to testify? I

1 don't know. Her identifications don't really matter, as long
2 as it's these two people that we're talking about.

3 But what does she say? I only met them both one
4 time. And it was here in Las Vegas. And that's the only time
5 I met them.

6 When you go to her records, you will see that on
7 August 6th -- and I didn't go back, but there's an -- earlier
8 August 6th and -- and August 5th, as well. But remember when
9 you go to Mr. Mason's phone records, he starts the month of --
10 of August in San Bernardino, when you look at his cell phone
11 records. And if you keep looking, clearly Tyler has met
12 G-Dogg, because in July of 2010, he's sending a text to her,
13 Hey, you up, girl? So she knows him before August.

14 Now, four and a half years later, she's sitting up
15 here and I asked, Did you ever drive to California to meet
16 with your mother to -- and you met G-Dogg? She doesn't
17 remember it. Does that mean she's lying about it? Or does
18 that just mean four and a half years later someone's asking
19 you did you meet G-Dogg about a month before you saw him here
20 in Las Vegas and he was texting with you?

21 Her records are also important because it establishes
22 that D-Shot, Mr. Burns, would be using Job's phone, because he
23 didn't have a phone. Because he says in there, Hey, this is
24 D-Shot. Job's sleeping. I just want to check on you.

25 So let's get to -- to Mr. Oram's circle of

1 coincidence. Let me make one thing perfectly clear. As a
2 prosecutor, there is absolutely no doubt in my mind that
3 Jerome Thomas --

4 MR. LANGFORD: Objection, Your Honor.

5 THE COURT: Sustained.

6 MR. DiGIACOMO: There's no doubt that the evidence
7 establishes that Jerome Thomas is guilty of a crime. And
8 there's no doubt that he's involved in this crime.

9 Now, whether or not the Rules of Evidence allow him
10 to be charged with murder is one thing. But the circle of
11 coincidence that Mr. Oram put there was to suggest to you that
12 these pieces of evidence establish that he's physically in the
13 car, right? That's what he was suggesting to you. Right?
14 He's the shooter, he must be in the car, these pieces of
15 evidence establish that he was in the car.

16 Well, let's talk about it. Monica's the driver.
17 Actually, the fact that Monica's driving this car establishes
18 Job-Loc's not in the car. Why? Because if he doesn't have
19 the broken leg, like in July when he goes to do that petty
20 larceny at Walmart with Donovan Rowland, Baby Job-Loc, he
21 dragged the car. He'd drop her off and allow her to be
22 prostituting for him in the Golden Nugget while he drove his
23 -- drove his buddies around to commit the robbery. The fact
24 that she's the driver suggests he's not present, not that he
25 is present.

1 Some of these are a little bit hard to hear.
2 Monica's covering up. Well, no kidding Monica's covering up.
3 Why? Well, one, he's involved. But what about her covering
4 up means that he's the shooter? Right? It's his gun, the
5 evidence certainly suggests, whether or not it's provable in a
6 case where Job-Loc's sitting at that table, that he actually
7 physically gave the shooters the gun with the knowledge that
8 they were going to go commit a robbery or had an idea that
9 they're going to go commit the robbery, under the instructions
10 as required by law, whether or not you can establish that
11 independent of any other conspirator in this case, that's an
12 issue for Job-Loc.

13 But that's not really an issue in this case. We can
14 all probably agree or you can all agree that he gave the gun
15 to these two yahoos to go out there and commit the crime.

16 Job-Loc's consequences. You're right, these are
17 Job-Loc's friends, who -- or Job-Loc, however you say it.
18 These are Job-Loc's friends that she's going to be giving up.
19 She's going to be giving up Job-Loc, who's got his warrant out
20 of California, that she's in a very short period of time gone
21 from a middle-aged woman who has a regular job to now identity
22 theft, prostitution, selling drugs, and ultimately driving
23 somebody on an armed robbery as a middle-aged -- middle-aged
24 woman.

25 He's her pimp. She's out there prostituting herself

1 to give him money. Of course, the prostitute's going to be
2 concerned about the consequences from her pimp should she rat
3 -- should he -- she rat out him or his friends with the crime.
4 That doesn't make Job the shooter.

5 Two weeks ago in her car, it's much like what Monica,
6 being the driver in this case. Right. He doesn't need her to
7 drive if he's capable of driving the car. The fact of the
8 matter is he's not capable of driving the car. That's why she
9 goes over to pick them up.

10 They're stressed for money. They are stressed for
11 money. It's why she's going to prostitute herself. It's why
12 she's willing to drive these guys on armed robbery. And what
13 do you think Job's going to get from it? Some of the money,
14 because it's his gun. He brought these guys up there. And he
15 -- of course, he's going to be -- he's involved. But what
16 about that fact makes him in the car or makes him the shooter?

17 Disposal of the murder weapon. Well, it's his gun
18 and he now knows it's been used in a murder. Of course, he's
19 going to get rid of it. Of course he's charged with that
20 fact. He's charged currently as an accessory to this murder
21 for getting rid of that gun. Of course, you're going to get
22 rid of the gun. It's -- if you believe Monica, it's his gun.

23 I found it interesting that they want you to believe
24 Monica about certain facts and reject her about others. The
25 only way to establish that he's the owner of the gun or that

1 he even disposed of the gun is Donovan Rowland and Monica
2 Martinez. They like that fact, they want you to rely on that
3 fact, but reject everything else they have to say.

4 He's wanted in California for a serious offense.
5 That's true. But it's not quite like being involved in the
6 execution of Derecia Newman and the shooting of a 12-year-old
7 girl. Everybody involved in this case is getting on that bus
8 using a false name and getting the hell out of town. No
9 question about it.

10 Baby Job-Loc. Once again, the suggestion that he's
11 associated with Baby Job-Loc, how is that relevant? Is there
12 any evidence whatsoever that Baby Job-Loc could possibly even
13 be the shooter in this case? He doesn't match the physical
14 description in the least bit, he's not on any video, his cell
15 phone records don't seem to be connecting with -- with Job-Loc
16 at the time that the crime committed. There's no connection
17 whatsoever to him other than Ulonda Cooper. Oh, wait, we
18 didn't hear from Ulonda Cooper. She's not a witness in this
19 case. Did you assess Ulonda Cooper's credibility?

20 MR. ORAM: Objection. Burden shifting. That's
21 burden shifting. We didn't hear from Ulonda Cooper is
22 implying that we have a duty to call a witness. So I object.

23 THE COURT: You don't have a duty to call witnesses.

24 MR. DiGIACOMO: They don't have a duty. But they
25 certainly want them to rely upon Ulonda Cooper's statement

1 that's relayed by Detective Bunting --

2 THE COURT: All right.

3 MR. DiGIACOMO: -- in a police report.

4 THE COURT: Objection -- go ahead.

5 MR. DiGIACOMO: Thank you. How do you assess that
6 woman's credibility? How do you know if she was telling the
7 truth or not telling the truth? She got parts of it right,
8 she got parts of it wrong. It was \$400 versus \$4,000. It was
9 a thousand dollars. He implied he was involved. What about
10 that made him the shooter? There's a knife being grabbed, as
11 I recall, that she was -- reported. Does it turn out that Mr.
12 Rowland was attempting to sell a gun? Yeah. That fact is --
13 seems to be corroborated. But what about the rest of it
14 somehow makes him the shooter in this case?

15 Flight. My recollection is all three people got on
16 that bus using fake names. So what about his flight makes it
17 more likely that he's the shooter versus Mr. Burns or Mr.
18 Mason? See, because everybody has a role in this case, right?
19 Job's the OG, Job's the El Capitan, as Mr. Burns like to put
20 it in his letters. He's the guy. He's the guy who provides
21 the weapon, gets the transportation, that's his role. And Mr.
22 Mason, he's the guy who gets Stephanie Cousins to get the
23 target.

24 So what's Mr. Burns's role in this case? What about
25 his involvement means that Mr. Burns would be the person who's

1 leaving town? Because he's got the single role in this case.
2 And that role is to be the executioner, owner of the murder
3 weapon.

4 Once again, straight from Monica. But ultimately
5 whether or not that makes him the shooter or not, we know the
6 murder weapon was inside of Job-Loc's apartment. What's to
7 say Mr. Burns or Mr. Mason -- although I would suggest to you
8 that facts don't indicate that, but certainly they had access
9 to the weapon as much as anybody else in this particular case.
10 But what about that makes Job the shooter?

11 Perhaps my favorite, the grand jury testimony. And
12 Mr. Sgro actually referenced this at the end of his. That on
13 September 30th of 2010, Stephanie Cousins -- suspect, by the
14 way, so if somebody once again, who has some serious
15 credibility issues -- says, But wait, they were calling this
16 guy Job-Loc. And -- well, the cops told her his real name is
17 D-Shot.

18 The part they're missing out is the day before they
19 go and interview Mr. Burns in -- in California that you heard
20 on September 12th of 2010, they show Stephanie Cousins a photo
21 lineup saying, Who's the shooter? And she picks out David
22 Burns. Whether or not she thinks his nickname is Job-Loc or
23 she thinks his nickname is D-Shot, the facts are Stephanie
24 Cousins identifies this man as being the shooter. That's what
25 she says.

1 The text messages. I don't see anywhere in those
2 text messages where Job-Loc says that he did the shooting.
3 More importantly, as we all know, D-Shot liked to use
4 Job-Loc's phone. So who knows who's sending those text
5 messages back and forth? But either way, I don't know what
6 about that makes him the shooter.

7 So then there's the letter. What does Job-Loc write?
8 Well, you can't really say anything about me. I mean, who
9 knows what Job knows about conspiracy to aiding and abetting
10 law? But then he says, And either can Stephanie -- I think he
11 uses a more colorful term for her. And, you know, even if she
12 knows my name, she can't pick me out of a photo lineup.

13 And now we know what that all means, right? Because
14 they're getting discovery back and forth and they're finding
15 out about what the witnesses said. And she's saying, Hey,
16 this guy, the shooter, might have the name of Job-Loc.

17 Well, she can't pick him out of a photo lineup. Why?
18 Because Tamika tells you, or Christine Pierce, Stephanie
19 Cousins' daughter, who by the way, buries Willie Mason, right?
20 Because Willie's threatening to kill Stephanie if he tells --
21 if she tells anybody about what happened here. But --

22 MR. LANGFORD: Objection. That's not the evidence,
23 Your Honor.

24 THE COURT: I'm confused.

25 MR. DiGIACOMO: Christine Pierce says that Willie

1 Mason threatened to kill her mother if she told anybody about
2 what happened in the crime.

3 THE COURT: Okay.

4 MR. LANGFORD: That's absolutely not correct.

5 THE COURT: We'll let the jury decide what the
6 evidence is.

7 MR. DiGIACOMO: Oh. Okay. If you didn't hear that
8 on the 911, you let me know. Or, I guess --

9 THE COURT: No.

10 MR. DiGIACOMO: -- if you -- I -- I apologize, Judge.
11 If you didn't hear that on the 911, then that's your
12 determination. But that 911, she says it. She says Willie
13 Mason threatened to kill her if she told anybody about what
14 they'd done.

15 MR. LANGFORD: I'm -- I'm going to continue to
16 object, Judge.

17 MR. DiGIACOMO: But more importantly --

18 MR. LANGFORD: He's still making the same argument.
19 It's not in evidence.

20 THE COURT: All right. He says it is. I -- we'll
21 let the jury decide what the evidence is.

22 MR. LANGFORD: Thank you.

23 THE COURT: I don't remember one way or the other.

24 MR. DiGIACOMO: Listen to Christine Pierce's 911.
25 Well, what else do you know from Christine Pierce?

1 Her mom doesn't know Job-Loc. She knows Job-Loc, but
2 her mom never met Job-Loc. So she would have no idea who
3 Job-Loc is.

4 So that leaves you with two things. They left up
5 there, "Science," which I'd like to call more technology than
6 science, because there's certain things that can't be
7 manipulated, it can't lie.

8 And then Job's opportunity. So let's look at this.
9 Who's in the car. I think we can all establish that if Monica
10 Martinez is driving on a robbery and Stephanie Cousins is
11 setting up the dope deal, and Willie Mason finds Stephanie
12 Cousins and they're all in agreement to go up there and rob
13 the dope man, that whoever else is in that back seat's guilty,
14 whether the shooter or they're not the shooter, they've
15 certainly now all conspired to commit this crime.

16 So let's start with the facts. The facts show, just
17 like Christine Pierce testified, that Mr. Mason has been
18 contacting her for a period of time. And eventually she gives
19 up her mother's phone number. When does that happen? Well,
20 if you look at Willie Mason's phone records, the last call to
21 Christine before the first call to Stephanie is about 10:00 at
22 night on the 6th.

23 Then there's the suggestion that Job-Loc could be at
24 our scene. Because the cell phone records don't alibi him.
25 The cell phone records do alibi him. No question about it.

1 If you think I'm lying to you about that, go ahead and find
2 these two not guilty. Because he's alibi'd by those cell
3 phone records. It's not solely by his cell phone records,
4 it's all of the cell phone records. You can't take a single
5 piece of evidence and go, What about this evidence can we
6 fight about? No, you take it as a whole. You take every
7 single one of these cell phone records and tell yourself how
8 it's humanly possible Job-Loc's at the scene.

9 Why? Because at 2:00 in the morning Job-Loc's
10 pinging off his apartment. And what do you know from
11 surveillance video? That's 1:51 in the morning. There's
12 Willie, there's Monica, and notice Mr. Burns with his hands in
13 both pockets.

14 (Audio/Video played.)

15 A little after 1:52 in the morning, then 2:06 as
16 she's holding her cell phone in her hand, she walks out of the
17 Golden Nugget.

18 (Audio/Video played.)

19 So Job-Loc is not with Monica at 2:00 in the morning.
20 The question is, is there an opportunity for Job-Loc to get
21 into Monica's car before the crime occurred. Right? Because
22 we all know Job doesn't have a car, and unless he can somehow
23 jump on a Greyhound bus or -- or a CAP bus and get somehow
24 over there in some manner, the only motive of transportation
25 that he has, like when Tyler would drive him around --

1 testified to by Monica's friend Samantha -- is that he'd be in
2 the passenger seat of the vehicle.

3 Which also tells you something, a little something
4 about the DNA in that vehicle. Right? There's one thing of
5 unknown DNA in the vehicle. It's Unknown Male No. 2. It's
6 not Unknown Male No. 4. And where is it found? It's on a
7 seat belt latch. And let me ask you this. You think the two
8 people who committed this murder or the four people that
9 committed this murder are such law-abiding citizens that
10 they're going to follow the seat-belt law, so they must have
11 grabbed the seat belt when they got in and out of this
12 vehicle? No. None of the suspects, including Job-Loc, who we
13 know has been in the car, DNA has shown up inside the car.

14 What happens? Well, let's go to Mr. Mason's cell
15 phone records. You could do these with Monica's, as well.
16 But if you go to Mr. Mason's cell phone records at 2:00 in the
17 morning, where is he? He's downtown. So's Monica. And I'm
18 going to suggest to you that -- you've got to remember that
19 Mr. Mason and Ms. Cousins use Metro PCS, and T-Mobile uses --
20 is -- is Job-Loc and Monica.

21 And why is that important? Because everybody --
22 every company sets their own clock. Sort of like the Las
23 Vegas Metropolitan Police Department. When you hear these
24 911s, they have their clock.

25 So when you put these records together, and I -- I

1 guess maybe there's a dispute about the one-hour off one, if
2 you want to start on August 5th and go through the first 175
3 entries thereafter and see if they match up between the two
4 records, go ahead. I'm going to suggest to you if you do
5 that, that 175 is where I gave up. At 175, if you want to
6 keep going, you can. But you can go on for days and match up
7 the two records by that one hour.

8 But if you were to take Monica's and match them up to
9 Mason's, there's three hour -- there's approximately three
10 minutes off between the records. And if you were to take
11 Mason's to Job-Loc's, they're about three minutes off. But if
12 you take Monica's to Job-Loc's, they match. You take
13 Stephanie's to Mason's, they match. And that's important when
14 you get to the 911 call and how it is you know that the killer
15 is still in the house while -- while Mr. Mayo is using -- or
16 is calling 911.

17 But at 2:25, Mr. Mason's phone is hitting downtown.
18 And then at 2:32, surprisingly, he's hitting off Jerry's
19 Nugget. That phone call -- well, let me do this first.

20 (Audio/Video played.)

21 2:37, Job-Loc doesn't get out of the car. I find it
22 interesting that Mr. Mason has a white shirt and there is some
23 orange on his hat and the letter D, or what appears to be a
24 letter D.

25 (Audio/Video played.)

1 2:57, those individuals exit together from the Opera
2 House Casino. So notice 2:03 to 2:25 to 2:32, Job-Loc's way
3 over here. So the car didn't go way over here.

4 2:32 is the phone call to Stephanie, Hey, are you
5 ready yet? And then if you really wanted to do an analysis of
6 the cell phones, you could actually go back and find out
7 something that Monica Martinez is wrong about. It's in her
8 statement, as well, I think, as on the stand. She says, I
9 don't remember. I know I went to Stephanie's twice, but I
10 can't remember the sequencing of events.

11 If you actually were to tape Mr. Mason's phone
12 records, and then Monica has a single phone call at 1:32, you
13 could see that before they actually go downtown, they drive
14 over to Stephanie's apartment. And there's contact between
15 Stephanie and Mason. And then they go driving downtown. But
16 it doesn't matter, because you know that Job-Loc's at home at
17 2:00.

18 So 2:32, you have the call to Stephanie, Hey, I'm not
19 ready yet. So they go up to the Opera House. And then as
20 they're leaving the Opera House, 2:57, which I'm going to
21 suggest to you, because it was Mason's phone, was actually
22 3:00 in the morning. But 2:57, 2:58 to Stephanie, 3:07 to
23 Stephanie. And as they're driving south, 3:10, 3:11, 3:13.
24 Not heading over here to pick up Job-Loc. And at 3:13, he's
25 actually calling Job-Loc. Same as 2:57. And guess what?

1 Job-Loc's not answering the phone.

2 3:24, which I'm going to suggest to you is actually
3 3:27, 3:24 he's all the way down here by Stephanie's. So 11
4 minutes later, he's able to get basically from the Opera House
5 down to Stephanie's apartment in a vehicle, which we know to
6 be Monica's vehicle, because her cell phone records track down
7 there, too.

8 And then there's these calls right here. His records
9 show at 3:29, 3:29, and 3:30, between his phone and Monica's
10 phone. Well, what do you know? They were separated two times
11 during that evening. One time when Mr. Mason and Mr. Burns go
12 inside the residence at Stephanie's residence, and one time
13 when Mr. Mason and Mr. Burns go up to the failed robbery
14 attempt because there was a gun.

15 They'll -- you'll -- you will see that at least at
16 some point in time there was a reason for some of them to try
17 and call each other back.

18 Then you just keep following these records. You'll
19 see 2:58, 3:07, 3:24, 3:24, 3:24. Who's calling Stephanie's
20 phone back and forth? Willie Mason. Then they get together
21 and what happens?

22 3:37, which I'm going to suggest to you is 3:40 in
23 the morning, Derecia Newman's being called. Hey, you got any
24 stuff? Can we come up there and get some stuff?

25 And where are they? They're all the way down by

1 Stephanie's house.

2 Flip forward. This is why I'm going to tell you that
3 it's three minutes off and go back to -- here's Mr. Mason's
4 contacts, 3:29, 3:29, 3:30. Here's Ms. Martinez's contacts,
5 3:22:24, 3:33:29, 3:33:59. Those numbers are slightly off,
6 but the contact is there. And look where Monica Martinez's
7 car is.

8 And then I'm going to suggest to you that her time is
9 right at 4:40 -- at 3:45, as she's heading north on Nellis, to
10 go to where? Derecia Newman's house. And then follow the
11 phone records. These are Cousins' phones. And I'm going to
12 suggest to you these are three minutes off.

13 Why do I say that these are three minutes off versus
14 the time period of -- of maybe that they're three minutes
15 early? Well, that would mean that this -- this crime happened
16 way before or that T-Mobile was off by six minutes as opposed
17 to three minutes. But more importantly, if you add three
18 minutes to this phone call right here, approximately some time
19 between two and a half and three minutes, you'd hit about
20 exactly the same time as the 911 call. And if you actually
21 were to use Monica's phone for the time, she gets the first
22 phone call from Willie Mason as she's running out of the house
23 saying, Hey, where are you? Where are you? And then Mr.
24 Mayo's phone connects to 911.

25 But more importantly on her phone, Stephanie's phone,

1 what happens? 3:47, she has this weird kind of, I don't know,
2 seven-star-one. It's not answered, but it hits the tower. It
3 hits that tower that you would expect it to be hitting on the
4 northwest part of town.

5 And then the weird one is 3:47:52, which I'm going to
6 suggest to you is about 3:51 in the morning, what happens? It
7 hits this tower. Why? She's calling Derecia. Why is she
8 hitting this tower when she's up here and then down there?
9 You only have to ask yourself, remember the guy from T-Mobile,
10 the expert that talks about you don't always hit the closest
11 tower if there's obstructions? Well, what do you know, she
12 calls from right outside that door. She calls from right
13 outside the door, Hey, I'm here. She has a blockage to that
14 cell tower. She has a blockage to that cell tower. So what
15 cell tower is she going to hit? That's why she hits that cell
16 tower right before she goes through the front door.

17 Now what do you know from Mason's phone? Well, at
18 3:51:09 he makes a phone call and he hits the tower to the --
19 to the east of the crime scene to Monica -- to Stephanie
20 Cousins' phone. All right. And then he makes another phone
21 call to Stephanie Cousins' phone at 3:51:25 and it starts on
22 that east tower, but somehow ends on that west tower.
23 Suggestive of what? Sort of like what Monica said, I pulled
24 out, I hung a left, I started driving towards the east, I then
25 had to do a U-turn to get back to Christy Lane and to pick up

1 Stephanie.

2 There is no opportunity either for David Burns --

3 MR. ORAM: Judge, I object to that.

4 MR. DiGIACOMO: -- to not be in the car --

5 MR. ORAM: The Supreme Court has said that you cannot
6 do what he has just done. In fact, that's why I didn't call
7 it a circle of guilt.

8 Put it back up there, Mr. DiGiacomo, so the judge can
9 see it.

10 He's called it a circle of guilt. The Supreme Court
11 just reversed a case for saying "guilt" like that over the
12 defendant. That's why I specifically called it circle of
13 coincidences, because I didn't think I could do that. So I
14 object to that and ask that it be removed.

15 MR. DiGIACOMO: That was in opening. The Court said
16 it was argumentative and it shouldn't have been done. This is
17 now closing. I certainly can say that he's guilty and this is
18 a circle of guilt.

19 MR. ORAM: If I refrain --

20 THE COURT: I'm not familiar with the case you're
21 talking about.

22 MR. ORAM: If I refrain from it based on that, I -- I
23 am shocked that a prosecutor could do that.

24 THE COURT: I'm not -- I'm not familiar with it. I
25 know Mel Harmon used -- that was Mel Harmon's --

1 MR. ORAM: That's right.

2 THE COURT: -- argument.

3 MR. DiGIACOMO: Classic Mel Harmon.

4 THE COURT: He was never reversed for it.

5 MR. DiGIACOMO: Yes. He was never reversed for it.

6 THE COURT: That I'm aware of.

7 MR. ORAM: No, he wasn't. But the Supreme Court
8 overturned a case in the last -- in the last few months saying
9 that the prosecutor --

10 THE COURT: I'm not familiar with the case.

11 MR. DiGIACOMO: And that was in opening.

12 THE COURT: In opening?

13 MR. DiGIACOMO: Not in closing. This is argument.

14 THE COURT: Okay.

15 MR. DiGIACOMO: That was opening.

16 THE COURT: All right. Let's go.

17 MR. DiGIACOMO: Thank you. So what do you have left?
18 Your science and your technology gives you one person with the
19 opportunity to be the fourth person in the car. And that's
20 him.

21 And like I said before, once you put David Burns in
22 the car, once he's there, once he's there and Willie's there
23 and Monica's driving them on a robbery, they're both guilty of
24 murder. This guilt phase is over.

25 But this is about the truth. Don't we want to know

1 who executed Derecia Newman? Who's the person with that big
2 gun in their pocket? Who is that person? Because that's what
3 this whole trial's about, right?

4 Let's talk about Mr. Burns. What do we know? Well,
5 Stephanie Cousins identifies him as a shooter. Whether or not
6 that's real relevant or not, she's a codefendant, she didn't
7 testify, much like Ulonda Cooper.

8 Okay. Well, maybe Derecia Newman. Maybe Derecia
9 Newman at 10:45 in the morning on August 7th of 2010, when
10 Cornelius Mayo is inside that room as she's just gone through
11 an operation, her first of many operations, to try and save
12 her life, some five hours or six hours after this crime
13 occurs, as she's got the high levels of Versed, and Cornelius
14 Mayo says she's sleeping, which seems to be very reasonable at
15 10:45 in the morning after the operation that she had to
16 receive, somehow he was able to convey with her -- to her
17 every single fact that happened in this case that matches
18 every single piece of physical evidence inside the crime
19 scene. Is that a reasonable conclusion? Is that honestly a
20 reasonable conclusion?

21 Or that the overalls here were somehow made up by an
22 individual. Really? Because when they talk to her, they
23 don't have the video. They have no idea what the video is
24 going to say or who it's going to be. She hits on he's tall.
25 She says 6'2". He's African-American. He's skinny. He's got

1 curly hair that goes about halfway down his ear, but he had a
2 hat on. He's got a little bit of a -- of a shadow, dark
3 shadow for a mustache that's on his lip. Every single fact
4 she gives about the case, not just about the perpetrator, is
5 corroborated by the evidence with the exception of some
6 colors.

7 But who is the tall skinny guy wearing overalls?
8 What else do we know? Mom was executed coming through the
9 door. There's no if, ands, or buts about it. Stephanie
10 Cousins is there trying to fake a dope transaction for \$20.
11 The \$20 is still in Derecia Newman's hands, for God's sake.

12 She does run down the halls, because the shots follow
13 her down the halls. She does go in the bathroom and there's a
14 shot through the bathroom door. And then the door opens and
15 ultimately she gets shot in the stomach. And her dad is in
16 the shower. All of those facts are corroborated by every
17 single piece of evidence in the case.

18 Whether or not she makes a photo identification or
19 not, he's the only person in the car that matched that
20 description. He's got to be the shooter. You can never get
21 away from the overalls in this case. They can't get away from
22 it. That's why they tried to suggest to you that Cornelius
23 Mayo had to give her that information. That somehow Stephanie
24 Cousins related to Cornelius Mayo, who's capable of relaying
25 to Derecia -- or Devonia, the 12-year-old girl, who could

1 repeat that story. That's reasonable?

2 But you don't even need to know that. Look at Mr.
3 Burns as he's got his hands in his pockets, the -- both hands
4 in his pockets, actually, at the Binions. Well, there's a lot
5 of video, though, in this night, and we haven't really talked
6 about it.

7 Any time this guy is standing -- any time he is
8 standing in any one of the videos, his left hand is in his
9 pocket. And funny, really kind of weird about the whole
10 situation, is this is the back, because there's a camera
11 there, that's the front. His hand's barely in his pocket, but
12 from looking at the front, when you watch that video -- and
13 watch it live on the video -- there is something big and heavy
14 in his front left pocket. And the only time he ever takes his
15 hand out of his pocket is when he sits at that machine. Now
16 his hand is out and that big, heavy, hog-heel of a revolver is
17 sitting in that left pocket.

18 The video establishes it. Watch him as he walks out
19 of that casino and he's got his left hand in his pocket.
20 There's something in the left side of his pants as he's
21 walking out like this. Just watch the video. He's the
22 shooter.

23 And if that didn't convince you, how about what he
24 tells you? What he says in his writings?

25 "What it zoom, my Loc. I got my paperwork. Goat

1 mouth is not the culprit. Willie Mason is not the guy who
2 ratted me out. It's actually the black fuckin' ho or hope.
3 We went to court today, the Loc brought all his paperwork.
4 The fuckin' bay west put your name all through the shit. I
5 seen it with my own eyes."

6 Go look at West's statement. Why is West put on the
7 stand? So you could admit his statement and listen to his
8 statement in consideration of what Mr. Burns is telling you.

9 "They added the battery with the deadly resulting in
10 substantial bodily harm count, that's the eighth count. The
11 stupid pinche hina [phonetic], somehow her daughter taking the
12 stand along with that black piece of shit. Who's put in the
13 bullshit. They have something, some T-Mobile shit and Metro
14 PCS. I don't know all details, I'm just keeping you up to
15 date."

16 Who's he updating? He's updating Job-Loc about the
17 crime.

18 "Donovon Rowland is the bitch-ass nigger name he got
19 in detail, which is all a lie, but bitch keep hisself out of a
20 firearms charge so-called. The alpha bitch boys, Greyhound
21 pictures of us really just don't mean shit, but our weekend
22 was over in Vegas."

23 He's not saying to you he ain't here in Vegas, like
24 he's telling the police, I don't ever remember going to Vegas.

25 "I got a new copy of charges." And then go look at

1 some of these other ones. "I should have got my transcripts
2 before I got to accusing the Dogg. They spooked my young ass.
3 I'm not going to lie."

4 "That only shows what I was wearing, though,
5 basically, and that the three of us were together on the
6 Strip."

7 "Smoker got gang a different stories." The Smoker
8 being Stephanie Cousins. "Which all points to me as El
9 Capitan," which I actually think may very well be a reference
10 or -- let me rephrase -- the evidence suggests may actually be
11 a reference to the Smoker calling him Job-Loc, "that had on
12 blue overalls and curly hair. The Dogg says it's possible
13 together to get her statement ruled out because she got five
14 of them. Little Mama," the victim, "says I had on blue
15 overalls, orange hat, white shirt under with curly hair. I
16 would even feed" -- "feel a little more relaxed if you all
17 wasn't in this shit with me. Not going to get in detail, but
18 a nigga love the Locs and don't want to see you all sink in my
19 boat."

20 He's not accusing Job-Loc of putting him in this
21 situation. He's apologizing to Job-Loc.

22 But probably most spectacularly, who's he -- who's he
23 apologizing to? He's apologizing to Monica Monroe, the woman
24 who allegedly manufactured the story to put him in that seat
25 as the shooter in this case. He's apologizing to her. And

1 there's a suggestion to you that he's not the guy.

2 But maybe what was subtle and was lost on everybody
3 was how particularly disgusting and despicable the crime
4 itself was. That it was -- got to be something horrific for
5 most human beings on Earth. And when you're in an interview
6 room with detectives and you get told about it, your behavior
7 of humming and singing and whistling is really kind of
8 offensive, to be honest with you. And you can't really blame
9 the cops for using the kind of terms that they used with him.

10 But it's also relevant for something else. Because
11 Cornelius Mayo's inside that shower when the shots ring out.
12 And he calls 911. And if that matches the clock at T-Mobile,
13 that means it's while the shooter's still in that house. And
14 he's not obviously the person whistling on that 911. So
15 whoever shot Derecia Newman and then put a bullet in Devonia
16 Newman --

17 (Audio/Video played.)

18 -- whoever that shooter is, he's whistling as he's
19 going through the crack cocaine and the drugs inside that
20 residence as Cornelius Mayo, in that very small bathroom in
21 that shower, is calling 911. Listen to that 911 over and over
22 and over again. Cornelius Mayo doesn't see Devonia until
23 after the whistling ends.

24 And when you get to walking to a -- someone's
25 apartment here, whether they're a drug dealer or they're not a

1 drug dealer, when you walk in and you place a .44-caliber
2 revolver against their head and blow half their face off,
3 chase down their 12-year-old daughter, shoot her in the
4 stomach, rifle through her pockets, and then get up and
5 whistle, that is a cold, calculated murder. That is first
6 degree murder.

7 Because this case is about the truth and the truth is
8 undeniable. It is undeniable that David Burns is the shooter.
9 And I'd ask you to hold him accountable.

10 Thank you.

11 THE COURT: All right. Ladies and gentlemen, this
12 matter is now submitted to you for your determination. You're
13 going to have with you in the jury room the exhibits that were
14 marked and admitted during the trial. You'll have all the
15 exhibits. You're going to have a computer so that if you wish
16 to play any of the discs that are in evidence, you can do so,
17 and, I think, speakers to go with the computer. And -- and I
18 checked the computer myself and it's -- it's -- it's going to
19 work, I'm pretty sure. So somebody among you I'm sure knows
20 how to work a computer.

21 And you'll have the instructions that I read to you
22 and you'll have forms of verdict, which we have prepared for
23 your convenience. Now, I'm aware sometimes jurors start
24 marking on the instruction -- on the forms of verdict. If you
25 mess them up and you need more forms, we've got lots of

1 copies. So just ask the marshal for another copy. You can
2 have as many copies of the forms of verdict as you want.

3 All right. The clerk will swear in the officers.

4 (Officers sworn.)

5 THE COURT: All right. The 12 regular members of the
6 jury will follow the officers out here. Ms. Petty, you have
7 to stay where you are for a minute.

8 (Jury recessed to deliberate at 12:49 p.m.)

9 THE COURT: All right. The record reflect that the
10 jury and the alternate have left the courtroom. We'll be in
11 recess until subject to the call of the marshals.

12 (Court recessed at 12:49 p.m.)
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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**KARR REPORTING, INC.
Aurora, Colorado**


KIMBERLY LAWSON

1 INST

2 ORIGINAL

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

FEB 17 2015

3
4 BY Linda Skinner
LINDA SKINNER, DEPUTY 4:33pm

5
6 DISTRICT COURT
CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,)

9 Plaintiff,)

10 -vs-)

11 WILLIE DARNELL MASON and)
12 DAVID JAMES BURNS,)

13 Defendants.)
14

CASE NO: C267882-1, 2

DEPT NO: XX

15 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

16 MEMBERS OF THE JURY:

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

20 You must not be concerned with the wisdom of any rule of law stated in these
21 instructions. Regardless of any opinion you may have as to what the law ought to be, it
22 would be a violation of your oath to base a verdict upon any other view of the law than that
23 given in the instructions of the Court.
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If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

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

A Superseding Indictment is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in a Superseding Indictment that on or about the 7th day of August, 2010, the Defendants committed the offenses of CONSPIRACY TO COMMIT ROBBERY (Felony - NRS 199.480; 200.380); BURGLARY WHILE IN POSSESSION OF A FIREARM (Felony - NRS 205.060); ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380, 193.165); MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165), ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Felony - 200.010, 200.030, 193.330, 193.165), and BATTERY WITH A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Felony - 200.481) at and within the County of Clark, State of Nevada, as follows:

COUNT 1 – CONSPIRACY TO COMMIT ROBBERY

did then and there meet with each other and/or STEPHANIE JEAN COUSINS and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS aka JOB-LOC and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: robbery, and in furtherance of said conspiracy, Defendants and/or their co-conspirators committed the acts as set forth in Counts 3 thru 8, those acts incorporated by reference as if fully set forth herein.

COUNT 2 – CONSPIRACY TO COMMIT MURDER

did then and there meet with each other and/or STEPHANIE JEAN COUSINS and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS aka JOB-LOC and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: murder, and in furtherance of said conspiracy, Defendants and/or their co-conspirators committed the acts as set forth in Counts 3 thru 8, those acts incorporated by reference as if fully set forth herein.

COUNT 3 - BURGLARY WHILE IN POSSESSION OF A FIREARM

did then and there wilfully, unlawfully, and feloniously enter, while in possession of a

1 firearm, with intent to commit larceny and/or assault and battery and/or a felony, to-wit:
2 robbery and/or murder, that certain building occupied by DEREZIA NEWMAN and/or
3 CORNELIUS MAYO and/or DEVONIA NEWMAN, located at 5662 Meikle Lane,
4 Apartment A, Las Vegas, Clark County, Nevada, the defendants being responsible under the
5 following principles of criminal liability, to-wit: 1) by directly or indirectly committing the
6 acts constituting the offense; and/or 2) by engaging in a conspiracy to commit larceny and/or
7 assault and/or battery and/or robbery and/or murder and/or burglary whereby Defendants had
8 the specific intent to commit burglary; and/or 3) by aiding or abetting each other in the
9 commission of the crime by Defendant WILLIE DARNELL MASON aka G-DOGG
10 accompanying Defendant STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES
11 BURNS aka D-SHOT to the residence while MONICA LOUISE MARTINEZ drove the
12 getaway vehicle and/or acted as a lookout, Defendant STEPHANIE JEAN COUSINS
13 creating a ruse for DEREZIA NEWMAN to open the door, Defendant WILLIE DARNELL
14 MASON aka G-DOGG and/or Defendant STEPHANIE JEAN COUSINS and/or Defendant
15 DAVID JAMES BURNS aka D-SHOT entering the residence with the intent to commit
16 larceny and/or assault and/or battery and/or robbery and/or murder, Defendant WILLIE
17 DARNELL MASON aka G-DOGG and/or Defendant DAVID JAMES BURNS aka D-
18 SHOT possessing the firearm, the Defendants and/or MONICA LOUISE MARTINEZ
19 and/or JEROME THOMAS aka JOB-LOC offering counsel and encouragement to each
20 other throughout.

21 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

22 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
23 cocaine and/or lawful money of the United States, from the person of DEREZIA
24 NEWMAN, or in her presence, by means of force or violence or fear of injury to, and
25 without the consent and against the will of the said DEREZIA NEWMAN, said defendant
26 using a deadly weapon, to-wit: a firearm, during the commission of said crime, the
27 defendants being responsible under the following principles of criminal liability, to-wit: 1)
28 by directly or indirectly committing the acts constituting the offense; and/or 2) by engaging

1 in a conspiracy to commit larceny and/or assault and/or battery and/or robbery and/or murder
2 and/or burglary; and/or 3) by aiding or abetting each other in the commission of the crime by
3 Defendant WILLIE DARNELL MASON aka G-DOGG accompanying Defendant
4 STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES BURNS aka D-SHOT to
5 the residence while MONICA LOUISE MARTINEZ drove the getaway vehicle and/or acted
6 as a lookout, Defendant STEPHANIE JEAN COUSINS creating a ruse for DEREZIA
7 NEWMAN to open the door, Defendant WILLIE DARNELL MASON aka G-DOGG and/or
8 Defendant DAVID JAMES BURNS aka D-SHOT possessing the firearm, Defendant
9 WILLIE DARNELL MASON aka G-DOGG and/or Defendant DAVID JAMES BURNS
10 aka D-SHOT shooting DEREZIA NEWMAN in the head, Defendant WILLIE DARNELL
11 MASON aka G-DOGG and/or Defendant STEPHANIE JEAN COUSINS and/or Defendant
12 DAVID JAMES BURNS aka D-SHOT taking money or cocaine, the Defendants and/or
13 MONICA LOUISE MARTINEZ and/or JEROME THOMAS aka JOB-LOC offering
14 counsel and encouragement to each other throughout.

15 COUNT 5 - MURDER WITH USE OF A DEADLY WEAPON

16 did then and there wilfully, feloniously, without authority of law, and with malice
17 aforethought, kill DEREZIA NEWMAN, a human being, by shooting at and into the head
18 and/or body of said DEREZIA NEWMAN, with a firearm, the actions of defendants and/or
19 MONICA LOUISE MARTINEZ resulting in the death of the said DEREZIA NEWMAN,
20 the killing having been (1) done with premeditation and deliberation, and/or (2) committed
21 during the perpetration or attempted perpetration of robbery and/or burglary; the defendants
22 being responsible under one or more of the following principles of criminal liability, to-wit:
23 1) by directly or indirectly committing the acts constituting the offense; and/or 2) by
24 engaging in a conspiracy to commit robbery and/or murder and/or burglary; and/or 3) by
25 aiding or abetting each other in the commission of the crime with the intent a killing occur
26 by Defendant WILLIE DARNELL MASON aka G-DOGG accompanying Defendant
27 STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES BURNS aka D-SHOT to
28 the residence while MONICA LOUISE MARTINEZ drove the getaway vehicle and/or acted

1 as a lookout, Defendant STEPHANIE JEAN COUSINS creating a ruse for DEREZIA
2 NEWMAN to open the door, Defendant WILLIE DARNELL MASON aka G-DOGG and/or
3 Defendant STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES BURNS aka
4 D-SHOT entering the residence with the intent to commit larceny and/or assault and/or
5 battery and/or robbery and/or murder, Defendant WILLIE DARNELL MASON aka G-
6 DOGG and/or Defendant DAVID JAMES BURNS aka D-SHOT possessing the firearm,
7 Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant DAVID JAMES
8 BURNS aka D-SHOT shooting DEREZIA NEWMAN in the head resulting in her death,
9 Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant STEPHANIE
10 JEAN COUSINS and/or Defendant DAVID JAMES BURNS aka D-SHOT taking money or
11 cocaine, the Defendants and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS
12 aka JOB-LOC offering counsel and encouragement to each other throughout.

13 COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON

14 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
15 cocaine and/or lawful money of the United States, from the person of DEVONIA
16 NEWMAN, a twelve (12) year old child, or in her presence, by means of force or violence or
17 fear of injury to, and without the consent and against the will of the said DEVONIA
18 NEWMAN, said defendant using a deadly weapon, to-wit: a firearm, during the commission
19 of said crime, the defendants being responsible under the following principles of criminal
20 liability, to-wit: 1) by directly or indirectly committing the acts constituting the offense;
21 and/or 2) by engaging in a conspiracy to commit larceny and/or assault and/or battery and/or
22 robbery and/or murder and/or burglary; and/or 3) by aiding or abetting each other in the
23 commission of the crime by Defendant WILLIE DARNELL MASON aka G-DOGG
24 accompanying Defendant STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES
25 BURNS aka D-SHOT to the residence while MONICA LOUISE MARTINEZ drove the
26 getaway vehicle and/or acted as a lookout, Defendant STEPHANIE JEAN COUSINS
27 creating a ruse for DEREZIA NEWMAN to open the door, Defendant WILLIE DARNELL
28 MASON aka G-DOGG and/or Defendant DAVID JAMES BURNS aka D-SHOT possessing

1 the firearm, Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant
2 DAVID JAMES BURNS aka D-SHOT shooting DEVONIA NEWMAN in the stomach,
3 Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant STEPHANIE
4 JEAN COUSINS and/or Defendant DAVID JAMES BURNS aka D-SHOT taking money or
5 cocaine, the Defendants and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS
6 aka JOB-LOC offering counsel and encouragement to each other throughout.

7 COUNT 7 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

8 did then and there, without authority of law, and with malice aforethought, willfully
9 and feloniously attempt to kill DEVONIA NEWMAN, a twelve (12) year old child, by
10 shooting at or into the body of the said DEVONIA NEWMAN, with a deadly weapon, to-
11 wit: a firearm, during the commission of said crime, the defendants being responsible under
12 the following principles of criminal liability, to-wit: 1) by directly or indirectly committing
13 the acts constituting the offense; and/or 2) by engaging in a conspiracy to commit assault
14 and/or battery and/or robbery and/or murder and/or burglary with the specific intent to kill;
15 and/or 3) by aiding or abetting each other in the commission of the crime with the intent a
16 killing would occur by Defendant WILLIE DARNELL MASON aka G-DOGG
17 accompanying Defendant STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES
18 BURNS aka D-SHOT to the residence while MONICA LOUISE MARTINEZ drove the
19 getaway vehicle and/or acted as a lookout, Defendant STEPHANIE JEAN COUSINS
20 creating a ruse for DERECA NEWMAN to open the door, Defendant WILLIE DARNELL
21 MASON aka G-DOGG and/or Defendant DAVID JAMES BURNS aka D-SHOT possessing
22 the firearm, Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant
23 DAVID JAMES BURNS aka D-SHOT shooting DEVONIA NEWMAN in the stomach, the
24 Defendants and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS aka JOB-
25 LOC offering counsel and encouragement to each other throughout.

26 COUNT 8 - BATTERY WITH A DEADLY WEAPON RESULTING IN SUBSTANTIAL
27 BODILY HARM

28 did then and there wilfully, unlawfully, and feloniously use unlawful force or violence

1 upon the person of DEVONIA NEWMAN, a twelve (12) year old child, with use of a deadly
2 weapon, to wit: by shooting into the body of DEVONIA NEWMAN with a firearm, causing
3 substantial bodily harm to the said DEVONIA NEWMAN; the defendants being responsible
4 under the following principles of criminal liability, to-wit: 1) by directly or indirectly
5 committing the acts constituting the offense; and/or 2) by engaging in a conspiracy to
6 commit assault and/or battery and/or robbery and/or murder and/or burglary; and/or 3) by
7 aiding or abetting each other in the commission of the crime by Defendant WILLIE
8 DARNELL MASON aka G-DOGG accompanying Defendant STEPHANIE JEAN
9 COUSINS and/or Defendant DAVID JAMES BURNS aka D-SHOT to the residence while
10 MONICA LOUISE MARTINEZ drove the getaway vehicle and/or acted as a lookout,
11 Defendant STEPHANIE JEAN COUSINS creating a ruse for DERECA NEWMAN to open
12 the door, Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant DAVID
13 JAMES BURNS aka D-SHOT possessing the firearm, Defendant WILLIE DARNELL
14 MASON aka G-DOGG and/or Defendant DAVID JAMES BURNS aka D-SHOT shooting
15 DEVONIA NEWMAN in the stomach resulting in substantial bodily harm, the Defendants
16 and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS aka JOB-LOC offering
17 counsel and encouragement to each other throughout.

18 It is the duty of the jury to apply the rules of law contained in these instructions to the
19 facts of the case and determine whether or not either or both of the Defendants are guilty of
20 one or more of the offenses charged.
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To constitute a crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

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

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

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

The Defendants are presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of each crime charged and that the Defendants are the persons who committed those offenses.

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

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

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

The statements, arguments and opinions of the attorneys are not evidence in the case. The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by the attorneys.

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

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

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

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

A conviction shall not be had on the testimony of an accomplice unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.

An accomplice is defined as one who is liable for prosecution, for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

To be an accomplice, the person must have aided, promoted, encouraged, or instigated by act or advice the commission of such offense with knowledge of the unlawful purpose of the person who committed the offense.

To corroborate the testimony of an accomplice there must be evidence of some act or fact related to the offense which, if believed, by itself and without any aid, interpretation or direction from the testimony of the accomplice, tends to connect the defendant with the commission of the offense charged.

However, it is not necessary that the evidence of the corroboration be sufficient in itself to establish every element of the offense charged, or that it corroborate every fact to which the accomplice testifies.

In determining whether an accomplice has been corroborated, you must first assume the testimony of the accomplice has been removed from the case. You must then determine whether there is any remaining evidence which tends to connect the defendant with the commission of the offense.

If there is not such independent evidence which tends to connect the defendant with the commission of the offense, the testimony of the accomplice is not corroborated.

The fact that a witness was given an inducement in exchange for his cooperation may be considered by you only for the purpose of determining the credibility of that witness. The existence of such an inducement does not necessarily destroy or impair the credibility of the witness. It is one of the circumstances that you may take into consideration in weighing the testimony of such a witness.

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it. If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of their testimony which is not proved by other evidence.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any other evidence that you believe.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. The testimony of one witness worth of belief is sufficient for the proof of any fact and would justify a verdict in accordance with such testimony, even if a number of witnesses have testified to the contrary. If, from the whole case, considering the credibility of witnesses, and after weighing the various factors of evidence, you believe that there is a balance of probability pointing to the accuracy and honesty of one witness, you should accept his testimony.

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

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

INSTRUCTION NO. 13

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

The flight of a person immediately after the commission of a crime, or after he is accused of a crime, is not sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in light of all other proved facts in deciding the question of his guilt or innocence. Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to such a circumstance are matters for your deliberation

A conspiracy is an agreement between two or more persons for an unlawful purpose. To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission of, the specific crime agreed to. The crime is the agreement to do something unlawful; it does not matter whether it was successful or not.

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

A conspiracy to commit a crime does not end upon the completion of the crime. The conspiracy continues until the co-conspirators have successfully gotten away and concealed the crime.

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

Whenever there is slight evidence that a conspiracy existed, and that the defendant was one of the members of the conspiracy, then the statements and the acts by any person likewise a member may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuance of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy.

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

Evidence that a person was in the company or associated with one or more other persons alleged or proven to have been members of a conspiracy is not, in itself, sufficient to prove that such person was a member of the alleged conspiracy. However, you are instructed that presence, companionship, and conduct before, during and after the offense are circumstances from which one's participation in the criminal intent may be inferred.

INSTRUCTION NO. 10

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

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

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

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

INSTRUCTION NO. 21

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

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

INSTRUCTION NO. 22

Any person, who by day or night, enters any house, room, apartment, tenement, shop, warehouse, store, other building, automobile or other vehicle with the intent to commit larceny, robbery and/or murder is guilty of burglary.

When two or more persons participate in the commission of a burglary, and one or more of them enters the structure, it is not necessary to prove the other individual actually entered because one who aids and abets another in the commission of a burglary is equally guilty as a principal.

INSTRUCTION NO. 24

The intention with which an entry was made is a question of fact which may be inferred from the defendant's conduct and all other circumstances disclosed by the evidence.

It is not necessary that the State prove the defendant actually committed a larceny, robbery, or murder inside the house after he entered in order for you to find him guilty of burglary. The gist of the crime of burglary is the unlawful entry with criminal intent. Therefore, a burglary was committed if the defendant entered the house with the intent to commit a larceny, robbery or murder regardless of whether or not that crime occurred.

Consent to enter is not a defense to the crime of burglary so long as it is shown that entry was made with the specific intent to commit a larceny, robbery, or murder therein. Moreover, force or a "breaking" as such is not a necessary element of the crime.

INSTRUCTION NO. 27

Larceny is the stealing, taking and carrying away of the personal goods or property of another, with the specific intent to permanently deprive the owner thereof.

Every person who, in the commission of a burglary, commits any other crime may be prosecuted for each crime separately.

INSTRUCTION NO. 29

Every person who commits the crime of burglary, who has in his possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure, or upon leaving the structure, is guilty of burglary while in possession of a weapon.

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. Such force or fear must be used to:

1. Obtain or retain possession of the property,
2. To prevent or overcome resistance to the taking of the property, or
3. To facilitate escape with the property.

In any case the degree of force is immaterial if used to compel acquiescence to the taking of or escaping with the property. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

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

Robbery may spread over considerable and varying periods of time. All matters immediately prior to and having direct causal connection with the robbery are deemed so closely connected with it as to be a part of the occurrence. Thus, although acts of violence and intimidation preceded the actual taking of the property and may have been primarily intended for another purpose, it is enough to support the charge of robbery when a person takes the property by taking advantage of the terrifying situation he created.

Murder in the First Degree is a specific offense crime. A defendant cannot be liable under a conspiracy and/or an aiding and abetting theory for First Degree Murder for acts committed by a co-conspirator unless Defendant also had a premeditated and deliberate specific intent to kill and/or the intent to commit a robbery and/or the intent to commit burglary.

Murder in the Second Degree and Robbery are general intent crimes. As such, a defendant may be may liable under a conspiracy theory and/or aiding and abetting for Murder of the Second Degree and Robbery for acts committed by a co-conspirator if the killing or taking of property by force is a one of the reasonably foreseeable consequences of the object of the conspiracy.

Where several parties join together in a common design to commit any unlawful act, each is criminally responsible for the reasonably foreseeable general intent crimes committed furtherance of the common design. In contemplation of law, as it relates to general intent crimes, the act of one is the act of all. Robbery and battery are general intent crimes. Second Degree Murder is a general intent crime.

Additionally, a co-conspirator is guilty of the specific intent offenses which he specifically intended to be committed. Burglary and Attempt Murder are specific intent crimes. First Degree Murder is a specific intent crime unless the Felony-Murder Rule applies.

In this case the defendants are accused in a Superseding Indictment alleging an open charge of murder. This charge may include murder of the first degree or murder of the second degree.

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

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

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

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

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

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

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

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

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

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

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

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

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

There are certain kinds of Murder in the First Degree which carry with them conclusive evidence of malice aforethought. One of these classes of First Degree Murder is a killing committed in the perpetration or attempted perpetration of a Burglary and/or Robbery. Therefore, a killing which is committed in the perpetration of a Burglary and/or Robbery is deemed to be Murder in the First Degree, whether the killing was intentional, unintentional, or accidental. This is called the Felony-Murder Rule.

The intent to perpetrate or attempt to perpetrate a Burglary and/or Robbery must be proven beyond a reasonable doubt. In order for the Felony-Murder Rule to apply under a robbery theory, the intent to take the property must be formed prior to the act constituting the killing.

Although your verdict must be unanimous as to the charge, you do not have to agree on the theory of guilt or liability. Therefore, even if you cannot agree on whether the facts establish the defendant is guilty of Premeditated and Deliberate Murder or Felony Murder or is liable as a principle, aider and abettor, or co-conspirator, so long as all of you agree that the evidence establishes the defendant's guilt of murder in the first degree, your verdict shall be Murder of the First Degree.

You are instructed that if you find that the State has established that the defendant has committed First Degree Murder you shall select First Degree Murder as your verdict. The crime of First Degree Murder includes the crime of Second Degree Murder.

The distinguishing feature between first and second degree murder is the presence or absence of premeditation and deliberation. If the unlawful killing is done with malice, but without deliberation and premeditation, that is, without the willful, deliberate and premeditated intent to take life which is an essential element of First Degree Murder, then the offense is Murder of the Second Degree.

In practical application this means that the unlawful killing of a human being with malice aforethought, but without a deliberately formed and premeditated intent to kill, is Murder of the Second Degree.

If you believe from the evidence beyond a reasonable doubt that a defendant is guilty of Murder, and there is in your minds a reasonable doubt as to which of the two degrees he is guilty, he must be convicted of the lesser offense which is Murder of the Second Degree.

Attempted murder is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate intention unlawfully to kill.

It is not necessary to prove the elements of premeditation and deliberation in order to prove attempted murder.

Battery with a Deadly Weapon means any willful and unlawful use of force or violence upon the person of another with the use of a deadly weapon. Any harmful or offensive unconsented touching with the deadly weapon, however slight, constitutes sufficient force or violence upon the person of another. If substantial bodily harm results to the victim of a battery, the crime committed is Battery with a Deadly Weapon Resulting in Substantial Bodily Harm.

"Substantial bodily harm" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any body member or organ, or prolonged physical pain.

INSTRUCTION NO. 45

You are instructed that if you find a defendant guilty of Robbery, 1st or 2nd Degree Murder, and/or Attempt Murder you must also determine whether or not a deadly weapon was used in the commission of this crime.

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

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

"Deadly weapon" means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death, or, any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

A firearm is a deadly weapon.

The State is not required to have recovered the deadly weapon used in an alleged crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon was used in the commission of the crime.

INSTRUCTION NO. 48

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

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

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

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

At this point in the proceedings you may not discuss or consider the subject of punishment. Your duty now is confined to a determination of the guilt or innocence of one or more of the defendants. If, and only if, you return a verdict of Murder in the First Degree, you will, at a later hearing, consider the subject of penalty or punishment.

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

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

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

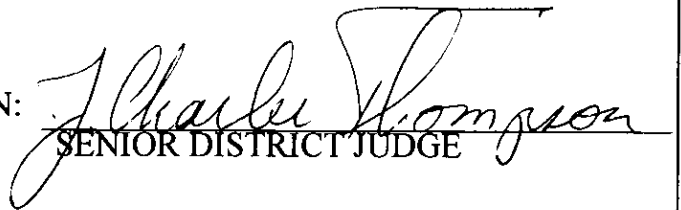
If, during your deliberations, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of the defendants and their attorneys.

The testimony in this trial was recorded. A playback of portions of the testimony is possible. However, playing back the testimony is time consuming and is not encouraged unless you deem it a necessity. Should you require a playback, you must carefully describe the testimony you want to hear so that the recorder can locate your request. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 53

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

GIVEN:


SENIOR DISTRICT JUDGE

FEB 17 2015

BY Linda Skinner
LINDA SKINNER, DEPUTY 4:33pm

ORIGINAL

VER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
-vs-
DAVID JAMES BURNS,
Defendant.

CASE NO: C267882-2
DEPT NO: XX

VERDICT

We, the jury in the above entitled case, find the Defendant DAVID JAMES BURNS
as follows:

COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

(please check the appropriate box, select only one)

- ☒ Guilty of Conspiracy To Commit Robbery
☐ Not Guilty

COUNT 2 - CONSPIRACY TO COMMIT MURDER

(please check the appropriate box, select only one)

- ☒ Guilty of Conspiracy To Commit Murder
☐ Not Guilty

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COUNT 3 – BURGLARY WHILE IN POSSESSION OF A FIREARM

(please check the appropriate box, select only one)

☒ Guilty of Burglary While in Possession of a Firearm

☐ Guilty of Burglary

☐ Not Guilty

COUNT 4- ROBBERY WITH USE OF A DEADLY WEAPON

(please check the appropriate box, select only one)

☒ Guilty of Robbery With Use Of A Deadly Weapon

☐ Guilty of Robbery

☐ Not Guilty

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COUNT 5 – MURDER WITH USE OF A DEADLY WEAPON

(please check the appropriate box, select only one)

☒ First Degree Murder with Use of a Deadly Weapon

SPECIAL VERDICT

(please check the appropriate box or boxes)

☐ The jury unanimously finds the murder willful, deliberate, and premeditated.

☒ The jury unanimously finds the murder was committed during the perpetration of a robbery and/or burglary

☒ The jury does not unanimously find the defendant guilty under a single theory of murder of the first degree.

☐ First Degree Murder

SPECIAL VERDICT

(please check the appropriate box or boxes)

☐ The jury unanimously finds the murder willful, deliberate, and premeditated.

☐ The jury unanimously finds the murder was committed during the perpetration of a robbery and/or burglary

☐ The jury does not unanimously find the defendant guilty under a single theory of murder of the first degree.

☐ Second Degree Murder with Use of a Deadly Weapon

☐ Second Degree Murder

☐ Not Guilty

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1 **COUNT 6** - ROBBERY WITH USE OF A DEADLY WEAPON (DeVonia Newman)

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

3 ☒ Guilty of Robbery With Use Of A Deadly Weapon

4 ☐ Guilty of Robbery

5 ☐ Not Guilty

6
7 **COUNT 7** - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

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

9 ☒ Guilty of Attempt Murder with Use of a Deadly Weapon

10 ☐ Guilty of Attempt Murder

11 ☐ Not Guilty

12
13 **COUNT 8** - BATTERY WITH A DEADLY WEAPON RESULTING IN SUBSTANTIAL
14 BODILY HARM

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

16 ☒ Guilty of Battery with Use of a Deadly Weapon Resulting in Substantial
17 Bodily Harm

18 ☐ Guilty of Battery with Use of a Deadly Weapon

19 ☐ Guilty of Battery with Substantial Bodily Harm

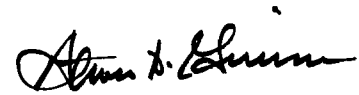
20 ☐ Guilty of Battery

21 ☐ Not Guilty

22
23 DATED this 17 day of February, 2015

24
25 

26 FOREPERSON



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 16
VERDICT

TUESDAY, FEBRUARY 17, 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.

RECORDED BY SUSAN DOLORFINO, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

AA 3358

1 **LAS VEGAS, NEVADA, TUESDAY, FEBRUARY 17, 2015, 4:29 P.M.**

2 *** * * * ***

3 (Outside the presence of the jury.)

4 THE COURT: On the record. State of Nevada vs. Burns
5 and Mason. The record will reflect the presence of the
6 defendants, their counsel and the district attorneys in the
7 absence of the jury. The marshal has informed me that the
8 jurors have now reached a verdict.

9 Before the jurors come into the courtroom, I wanted
10 to make a record on a couple of things that occurred while the
11 jury was deliberating. I had talked to counsel on the phone
12 and I just wanted to confirm their consent to what we did. On
13 last Friday, I believe, I had a note from the jurors
14 requesting the testimony of Monica Martinez, and after an --
15 and it was unclear as to exactly what they wanted.

16 I sent them a note which is now marked as Court's 16,
17 asking them to -- if what they wanted was the -- was a certain
18 day of testimony. They sent me back another note indicating
19 they wanted two days of testimony. I had the recorder prepare
20 disks with that testimony excluding any bench conferences and
21 comments to the Court out of the presence of the jury.

22 Those disks were provided to the jurors, I believe,
23 this morning. And as I'm advised that they spent all morning
24 seeing those disks, and they had a computer with a monitor and
25 they were able to listen and view the testimony of

1 Ms. Martinez.

2 MR. LANGFORD: Your Honor, I just want to inquire if
3 those disks will be made a court exhibit.

4 THE COURT: I believe that they are marked as --

5 THE CLERK: Eighteen.

6 THE COURT: They're court exhibits.

7 MR. LANGFORD: Okay. Thank you. Thank you, Your
8 Honor.

9 THE COURT: And then today I received a note from the
10 juror -- jury asking for clarification on the special verdict
11 section Count 5, which had multiple boxes to check. And I
12 gave them a clarification, a letter which counsel are aware of
13 which has been marked as Court No. 21. And I wanted to make
14 sure on the record that this was all done with the consent of
15 counsel.

16 MR. DiGIACOMO: That's correct, including the part
17 where the Court decided to give the JAVS video of the
18 testimony of Monica Martinez as opposed to bringing the jury
19 in to view that in the courtroom. All parties agreed that
20 they could receive the Court's exhibits and review that during
21 the deliberation process at their leisure.

22 MR. LANGFORD: That's correct, Your Honor.

23 MR. ORAM: That's correct, Your Honor.

24 THE COURT: All right. Anything further before the
25 jury comes in?

1 MR. DiGIACOMO: No, Your Honor.

2 MR. ORAM: No, Your Honor.

3 MR. LANGFORD: Nothing from Mr. Mason.

4 THE COURT: All right. You can bring the jury in.

5 (Pause in proceeding.)

6 (Jurors enter at 4:35 p.m.)

7 THE COURT: State of Nevada vs. Burns and Mason. The
8 record will reflect the presence of the defendants, their
9 counsel, the district attorneys, and all members of the jury.
10 And for the record, Mr. Sgro is excused, has another
11 commitment today, and he has been excused.

12 Good afternoon, ladies and gentlemen. I understand
13 Mr -- is it Aco is the foreman of the jury?

14 JUROR NO. 2: Aco, yes.

15 THE COURT: Aco, yes. Mr. Aco, has the jury reached
16 a verdict?

17 JUROR NO. 2: Yes, sir.

18 THE COURT: If you'd hand the verdict forms to the
19 marshal, please.

20 (Pause in proceeding.)

21 THE COURT: The clerk will read the verdicts out loud
22 and inquire of the jury if this is their verdict. We'll start
23 with Mr. Mason first.

24 THE CLERK: District Court, Clark County, Nevada.
25 The State of Nevada, plaintiff, vs. Willie Darnell Mason,

1 defendant. Case No. C267882, Department No. 20.

2 Verdict. We, the jury in the above-entitled case,
3 find the defendant, Willie Darnell Mason, as follows:

4 Count 1. Conspiracy to commit robbery; guilty of
5 conspiracy to commit robbery.

6 Count 2. Conspiracy to commit murder; guilty of
7 conspiracy to commit murder.

8 Count 3. Burglary while in possession of a firearm;
9 guilty of burglary while in possession of a firearm.

10 Count 4. Robbery with use of a deadly weapon; guilty
11 of robbery with use of a deadly weapon.

12 Count 5. Murder with use of a deadly weapon. First
13 degree murder with use of a deadly weapon. Special verdict.
14 The jury unanimously finds the murder was committed during the
15 perpetration of a robbery and/or burglary.

16 Count 6. Robbery with use of a deadly weapon,
17 Devonia Newman; guilty of robbery with use of a deadly weapon.

18 Count 7. Attempt murder with use of a deadly weapon;
19 guilty of attempt murder with use of a deadly weapon.

20 Count 8. Battery with a deadly weapon resulting in
21 substantial bodily harm; guilty of battery with use of a
22 deadly weapon resulting in substantial bodily harm.

23 Dated this 17th day of February 2015, Richard Aco,
24 foreperson.

25 Ladies and gentlemen of the jury, are these your

1 verdicts as read so say you one, so say you all?

2 (Jurors respond affirmatively.)

3 THE COURT: Do -- does Mr. Mason require a poll?

4 MR. LANGFORD: No, Your Honor.

5 THE COURT: All right.

6 THE CLERK: District Court, Clark County, Nevada.

7 The State of Nevada, plaintiff, vs. David James Burns,
8 defendant. Case No. C267882, Department No. 20.

9 Verdict. We, the jury in the above-entitled case,
10 find the defendant, David James Burns, as follows:

11 Count 1. Conspiracy to commit robbery; guilty of
12 conspiracy to commit robbery.

13 Count 2. Conspiracy to commit murder; guilty of
14 conspiracy to commit murder.

15 Count 3. Burglary while in possession of a firearm;
16 guilty of burglary while in possession of a firearm.

17 Count 4. Robbery with use of a deadly weapon; guilty
18 of robbery with use of a deadly weapon.

19 Count 5. Murder with use of a deadly weapon. First
20 degree murder with use of a deadly weapon. Special verdict.
21 The jury unanimously finds the murder was committed during the
22 perpetration of a robbery and/or burglary. The jury does not
23 unanimously find the defendant guilty under a single theory of
24 murder of the first degree.

25 Count 6. Robbery with use of a deadly weapon,

1 Devonia Newman; guilty of robbery with use of a deadly weapon.

2 Count 7. Attempt murder with use of a deadly weapon;
3 guilty of attempt murder with use of a deadly weapon.

4 Count 8. Battery with a deadly weapon resulting in
5 substantial bodily harm; guilty of battery with use of a
6 deadly weapon resulting in substantial bodily harm.

7 Dated this 17th day of February 2015. Richard Aco,
8 foreperson.

9 Ladies and gentlemen of the jury, are these your
10 verdicts as read so say you one, so say you all?

11 (Jurors respond affirmatively.)

12 THE CLERK: [Inaudible.]

13 MR. ORAM: Yes. Poll the jury.

14 THE COURT: You do request that they be polled.

15 All right. Ladies and gentlemen, as you're aware,
16 the instructions require that the verdicts be unanimous. The
17 clerk is going to poll each of you now to inquire of you if
18 this is your verdict, and they're talking about the Burns
19 verdict right now. Counsel has requested that.

20 THE CLERK: Edward -- Edgar Nunez, are these your
21 verdicts as read?

22 JUROR NO. 1: Yes.

23 THE CLERK: Richard Aco, are these your verdicts as
24 read?

25 JUROR NO. 2: Yes.

1 THE CLERK: Rachael Schulte, are these your verdicts
2 as read?

3 JUROR NO. 3: Yes.

4 THE CLERK: Anh Rhodes, are these your verdicts as
5 read?

6 JUROR NO. 4: Yes.

7 THE CLERK: Edward Looney, are these your verdicts as
8 read?

9 JUROR NO. 5: Yes.

10 THE CLERK: Sharon Brown-Warren, are these your
11 verdicts as read?

12 JUROR NO. 6: Yes.

13 THE CLERK: Cindy Arnold, are these your verdicts as
14 read?

15 JUROR NO. 7: Yes.

16 THE CLERK: Shavonne Austin, are these your verdicts
17 as read?

18 JUROR NO. 8: Yes.

19 THE CLERK: Manuel Vizcarra, are these your verdicts
20 as read?

21 JUROR NO. 9: Yes.

22 THE CLERK: Teresa Korn, are these your verdicts as
23 read?

24 JUROR NO. 10: Yes.

25 THE CLERK: Cher Banks, are these your verdicts as

1 read?

2 JUROR NO. 11: Yes.

3 THE CLERK: Ibeth Bojorquez, are these your verdicts
4 as read?

5 JUROR NO. 12: Yes.

6 THE CLERK: The panel has answered affirmative, Your
7 Honor.

8 THE COURT: All right. The record will reflect that
9 all jurors have answered in the affirmative. The clerk will
10 record the verdicts in the minutes of the court.

11 Ladies and gentlemen, you'll recall at the beginning
12 of the trial during voir dire we explained to the jurors that
13 in a case such as this where the jury is -- where the
14 defendants are charged with murder, that it is the statute of
15 Nevada that if the jury finds the defendant guilty of murder
16 in the first degree, the jury must also determine punishment.
17 There are some cases where that does not occur, and the
18 parties of course can agree that it does not occur.

19 After this trial began and just not long before you
20 returned your verdicts, the parties all -- the district
21 attorney and both defendants entered into an agreement that in
22 the event the jury returned a verdict of murder in the first
23 degree as to one or both of the defendants, and you have, that
24 they would waive any penalty hearing and they would have me
25 decide penalty.

1 They were all -- the State is waiving any requests
2 that Mr. Burns be sentenced to death, and both defendants will
3 be sentenced by myself at a future date. That means there
4 will not be a second phase to this trial, and you will not be
5 asked to return. I know that probably it has been something
6 weighing on your minds. I was not allowed to tell you this
7 until now. But that means that this case is concluded insofar
8 as you're concerned.

9 It's particularly difficult being a juror. I know
10 that. I've had a lot of juries over the years. I want to
11 tell you how much we appreciate your service. Without this,
12 jurors like yourself, this system wouldn't work. So you are
13 released now from my previous admonition not to talk about the
14 case. You can talk about it with others if you want to. You
15 don't have to if you don't want to.

16 The lawyers like to talk to the jurors after
17 they've -- after you've been excused, because they learn from
18 talking to you. You're free to discuss it with them if you
19 want. You don't have to talk with anybody if you don't want
20 to. All I can tell you is this system wouldn't work without
21 you, and we thank you.

22 You're excused and discharged as jurors, and the
23 marshal, they've made arrangements for your vouchers to see
24 that you get paid. And the marshal is going to take you back
25 to the jury room for a few minutes, and I'll see you there

1 myself.

2 (Jurors dismissed at 4:44 p.m.)

3 THE COURT: The record will reflect the jury has left
4 the courtroom. The matter is referred to the department of
5 parole and probation for a presentence investigation and
6 report, sent over for entering judgment and imposition of
7 sentence.

8 THE CLERK: April 9, at 8:30.

9 THE COURT: Anything further on the record?

10 MR. ORAM: Do you think that's long enough, Judge?
11 April 9, is that standard?

12 THE CLERK: Yeah. They've moved it up from 60 to 50.

13 MR. ORAM: Okay.

14 THE COURT: How about that.

15 MR. DiGIACOMO: Thank you, Your Honor.

16 MR. ORAM: Thank you, Judge.

17 THE COURT: Have a good day. Off the record.

18 (Proceeding concluded at 4:45 p.m.)

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CERTIFICATION

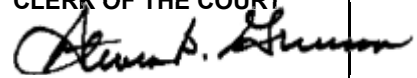
I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**KARR REPORTING, INC.
Aurora, Colorado**


KIMBERLY LAWSON



1 RTRAN
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE NO. C267882-2
DEPT. XX

10 vs.

11 DAVID JAMES BURN, aka D-SHOT,
12 Defendant.
13

14 BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT COURT
15 JUDGE

16 THURSDAY, APRIL 23, 2015

17 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**
18 **SENTENCING**

19 APPEARANCES:

20 For the State:

PAMELA WECKERLY, ESQ.
MARC DiGIACOMO, ESQ.
Chief Deputy District Attorneys
THOMAS MOSKAL, ESQ.
Deputy District Attorney

22 For the Defendant:

CHRISTOPHER R. ORAM, ESQ.
MELINDA M. WEAVER, ESQ.

24
25 RECORDED BY: PATTI SLATTERY, COURT RECORDER

1 Las Vegas, Nevada, Thursday, April 23, 2015

2
3 [Case called at 8:38 a.m.]

4 MR. MOSKAL: Actually we're waiting on Ms. Weckerly or Mr. DiGiacomo to
5 come in on that.

6 THE COURT: Well --

7 [Colloquy between the Court and the Clerk]

8 THE COURT: -- she better hurry up, because I'm going to proceed without
9 her if she doesn't.

10 [Case trailed at 8:38 a.m.]

11 [Case recalled at 9:00 a.m.]

12 THE COURT: Reflect the presence of the Defendant in custody with counsel
13 and the District Attorneys.

14 [Colloquy between the Court and the Clerk]

15 THE CLERK: Counsel, may I have your appearance please?

16 MR. DiGIACOMO: Marc DiGiacomo and Pam Weckerly for the State.

17 THE COURT: We've got a clerk that doesn't know all of you.

18 MR. DiGIACOMO: That's alright.

19 THE COURT: After five weeks most of the clerks know this group.

20 THE CLERK: Your bar numbers.

21 MR. DiGIACOMO: 6955 and --

22 MS. WECKERLY: 6163.

23 THE COURT: I'm surprised you remember.

24 MR. ORAM: Your Honor, Christopher Oram on behalf of Mr. Burns, 4349.

25 MS. WEAVER: Melinda Weaver on behalf of Mr. Burns, 11481.

1 THE COURT: Alright, by virtue of the jury's verdict the Defendant is adjudged
2 guilty of the following offenses: Count 1, conspiracy to commit robbery, Count 2,
3 conspiracy to commit murder, Count 3, burglary while in possession of a firearm,
4 Count 4, robbery with use of a deadly weapon, Count 5, murder with use of a deadly
5 weapon, Count 6, robbery with use of a deadly weapon, Count 7, attempt murder
6 with use of a deadly weapon and Count 8, battery with use a deadly weapon
7 resulting in substantial bodily harm. Does the State wish to address me?

8 MR. DiGIACOMO: Just very briefly. Obviously the parties have stipulated to
9 life without on the underlying murder. The only thing I would request from this Court
10 as it relates to the attempt murder count of Devonia is clearly that's a wholly
11 separate situation and certainly he deserves not only the maximum possible
12 punishment of 8 to 20 years with a consecutive 8 to 20 years on that count but it
13 should be consecutive to the murder. And I'll submit the rest of the sentencing to
14 the Court's discretion.

15 THE COURT: Mr. Burns, do you want to say anything to me or present any
16 information in mitigation of punishment before sentence is pronounced?

17 THE DEFENDANT: No, sir.

18 THE COURT: I've had a chance to read the memorandum that you sent me
19 along with much of the evaluation, although I didn't read every word in the, what, 24-
20 page evaluation, which is a good evaluation actually. I spent a lot of money on that I
21 guess and he does a pretty good job. I've had his stuff before. Anything you want
22 to say?

23 MR. ORAM: Your Honor, I'll be relatively brief. I did want to point out and I
24 know the Court has read all of this. With Mr. Burns he's receiving life without parole.
25 This is something where you know what the agreement was that he made. And so I

1 would ask that you run the other cases concurrent. This man, young man, had a
2 miserable, just miserable young life and he had no guidance. And what I thought
3 was interesting about the trial --

4 THE COURT: Well he had no chance really.

5 MR. ORAM: He had no chance. The man had no chance. And what causes
6 me some concern is the age of the co-Defendants. You remember they were older
7 people and he's a, what I consider just a kid.

8 THE COURT: 23.

9 MR. ORAM: Well and at the time just a kid. And unfortunately Mr. Burns has
10 always been a very gracious client of mine, very easy to work with. And it's sort of
11 sad that he just didn't have some guidance. If he had some guidance maybe surely
12 he wouldn't be standing where he is and it's just unfortunate to see that situation. I
13 hope there's something that comes of Mr. Burns' life that makes it better. I would
14 ask you not to run these consecutive. It just seems just to pile it up on him is just an
15 overload. And so --

16 THE COURT: The way the law stands now, unless it's changed, he will never
17 be released from prison.

18 MR. ORAM: That's correct.

19 THE COURT: Now I don't know what's going to happen 20-30 years from
20 now, long after we're all gone, but anything is possible.

21 I'll tell you how I feel about this and actually I -- Mr. DiGiacomo didn't
22 have to say that. I feel exactly the way he does. There are two separate offenses
23 here. The robbery and murder of the -- is one. And then the attempt murder of a
24 12-year-old girl is another one. And I consider that a separate offense and that
25 needs to be served consecutively just because that's the way I feel about these

1 kinds of cases.

2 For that reason I'm going to sentence the Defendant as follows: in
3 addition to the \$25 Administrative Assessment and the \$35 Domestic Violence Fee,
4 the Defendant is sentenced -- and I'm -- here's what I'm going to do, I'm going to run
5 Counts 1, 2, 3, and 4 concurrent with Count 5. I'm going to run Counts 6, and 8
6 concurrent with Count 7. I'm going to run Count 7 consecutive to Count 5.

7 For conspiracy to commit robbery, Count 1, the Defendant is sentenced
8 to a minimum of 12, maximum of 72 months.

9 Count 2, a minimum of 24, a maximum of 120 months.

10 Count 3, a minimum of 24, a maximum of 180 months.

11 Count 4, robbery with use of deadly weapon. He's sentenced for the
12 robbery to a minimum of 24, a maximum of 180 months and for the use of a deadly
13 weapon to a consecutive term of 24 to 180 months.

14 Again as I indicated, Counts 1, 2, 3, and 4 are to be served concurrent
15 with Count 5.

16 Count 5, for the murder he's sentenced to life in prison without the
17 possibility of parole. For the use of a deadly weapon in the commission of that
18 crime to a consecutive term of not less than 40 years and a maximum of 200 -- 40
19 months and a maximum of 240 months.

20 Count 6, robbery with the use of a deadly weapon, he's sentenced to a
21 minimum of 40, a maximum of -- strike that -- a minimum of 24, a maximum of 180
22 months. For the use of a deadly weapon to consecutive term of not less than 24 nor
23 more than 180 months.

24 Count 7, to not less than 48 nor more than 100 -- nor more than 240
25 months for the attempt murder. And for the use of a deadly weapon in the

1 commission of that attempt murder to not less than 40 nor more than 240 months.

2 Count 8, for the battery with use of a deadly weapon he's sentenced to
3 a minimum of 24, a maximum of 180 months. That was a battery with use of a
4 deadly weapon resulting in substantial bodily harm.

5 As I previously indicated Counts 6 and 8 are to be served concurrently
6 with count 7. Count 7 to be served consecutive with Count 8. Strike that. Count 7
7 to be served consecutive with Count 5. I'm misstating.

8 Now did I miss anything?

9 MR. DiGIACOMO: I do not believe so, Judge, other than his credit time
10 served.

11 THE COURT: If I did, I have it written down here but I don't know -- it was
12 notes.

13 MR. DiGIACOMO: I didn't calculate his credit for time served.

14 MR. ORAM: Your Honor, I --

15 THE COURT: The Clerk will know.

16 MR. ORAM: I note it as 1671 days, because he has -- it says 1657. That was
17 2 weeks ago. It's exactly 2 weeks, 14 days, 1671.

18 THE COURT: Give me that again.

19 MR. ORAM: 1671. That's my calculation.

20 THE COURT: 1671 credit for time served.

21 MR. ORAM: Yes, Your Honor.

22 MR. DiGIACOMO: Thank you, Your Honor.

23 MR. ORAM: Thank you, Your Honor.

24 MS. WEAVER: Your Honor, as a housekeeping matter we didn't file the
25 memorandum due to the -- all of the medical information, HIPAA concerns and the

1 DFS information. Did you want to file it under seal in open court today so that can
2 be part of the record?

3 THE COURT: Do you want it filed in open court?

4 MS. WEAVER: Well, sealed if possible.

5 THE COURT: Do you want it sealed?

6 MS. WEAVER: If -- yeah.

7 THE COURT: Okay, it may be filed in open court and it will be sealed.

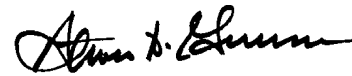
8 MR. DiGIACOMO: Thank you, Your Honor.

9 MS. WEAVER: Thank you.

10 [Proceeding concluded at 9:08 a.m.]
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video
22 proceedings in the above-entitled case to the best of my ability.

23 
24 _____
25 Jessica Kirkpatrick
Court Recorder/Transcriber



CLERK OF THE COURT

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAVID JAMES BURNES
aka D-Shot
#2757610

Defendant.

CASE NO. C267882-2

DEPT. NO. XX

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of
COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of
NRS 199.480, 200.380; COUNT 2 – CONSPIRACY TO COMMIT MURDER (Category
B Felony) in violation of NRS 199.480, 200.010, 200.030; COUNT 3 – BURGLARY
WHILE IN POSSESSION OF A FIREARM (Category B Felony) in violation of NRS
205.060; COUNTS 4 & 6 – ROBBERY WITH USE OF A DEADLY WEAPON (Category
B Felony) in violation of NRS 200.380, 193.165; COUNT 5 – MURDER WITH USE OF
A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.03;
COUNT 7 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B

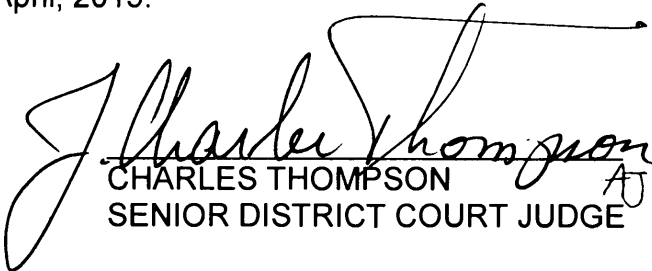
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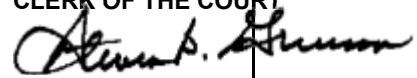
1 Felony) in violation of NRS 200.010, 200.030, 193.165, 193.330; and COUNT 8 –
2 BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of
3 NRS 200.481; and the matter having been tried before a jury and the Defendant
4 having been found guilty of said crimes; thereafter, on the 23rd day of April, 2015, the
5 Defendant was present in court for sentencing with his counsel, ANTHONY SGRO,
6 ESQ., and good cause appearing,
7

8 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
9 addition to the \$25.00 Administrative Assessment Fee, \$35.00 Domestic Violence Fee
10 and \$150.00 DNA Analysis Fee including testing to determine genetic markers, plus a
11 \$3.00 DNA Collection Fee, the Defendant is SENTENCED to the Nevada Department of
12 Corrections (NDC) as follows: AS TO **COUNT 1** - TO A MAXIMUM of SEVENTY-TWO
13 (72) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS; AS TO
14 **COUNT 2** - TO A MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a
15 MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS; AS TO **COUNT 3** - TO A
16 MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole
17 Eligibility of TWENTY-FOUR (24) MONTHS; AS TO **COUNT 4** – TO A MAXIMUM of
18 ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of
19 TWENTY-FOUR (24) MONTHS, plus a CONSECUTIVE term of ONE HUNDRED
20 EIGHTY (180) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24)
21 MONTHS for use of a deadly weapon; AS TO **COUNT 5** – LIFE WITHOUT parole, plus
22 a CONSECUTIVE term of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM
23 Parole Eligibility of FORTY (40) MONTHS for use of a deadly weapon; AS TO
24 //
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1 **COUNT 6** - TO A MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a
2 MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS, plus a CONSECUTIVE
3 term of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of
4 TWENTY-FOUR (24) MONTHS for use of a deadly weapon; AS TO **COUNT 7** - TO A
5 MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM Parole
6 Eligibility of FORTY-EIGHT (48) MONTHS plus a CONSECUTIVE term of TWO
7 HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of FORTY (40)
8 MONTHS for use of a deadly weapon; AND AS TO **COUNT 8** - TO A MAXIMUM of
9 ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of
10 TWENTY-FOUR (24) MONTHS; with ONE THOUSAND SIX HUNDRED SEVENTY-
11 ONE (1,671) DAYS credit for time served. COUNTS 1, 2, 3 & 4 to run
12 CONCURRENT with Count 5, COUNTS 6 & 8 to run CONCURRENT with Count 7;
13 and COUNT 8 to run CONSECUTIVE to Count 5.
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18 DATED this 7th day of April, 2015.

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22 CHARLES THOMPSON
23 SENIOR DISTRICT COURT JUDGE
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1 NOASC

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6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 DAVID BURNS aka D-SHOT,

13 Defendant,

Case No: C-10-267882-2

Dept No: XII

14
15
16 **NOTICE OF APPEAL**

17
18 Notice is hereby given that the Defendant above named, hereby appeals to the Supreme
19 Court of Nevada from the Judgment of Conviction (Jury Trial) entered in this action on May 5,
20 2015.

21 STEVEN D. GRIERSON, CLERK OF THE COURT

22 /s/ Heather Ungermann

23 Heather Ungermann, Deputy Clerk

24
25 CERTIFICATE OF E-SERVICE / MAILING

26 I hereby certify that on this 17 day of March 2020, I served a copy of this Notice of Entry on the following:

27 ☒ By e-mail:

28 Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

1
2 ☒ The United States mail addressed as follows:

3 David Burns # 1139521

Jamie J. Resch, Esq

4 P.O. Box 1989

2620 Regatta Dr., Suite 102

5 Ely, NV 89301

Las Vegas, NV 89128

6 ☒ This appeal was electronically submitted to the Clerk of the Supreme Court.

7 /s/ Heather Ungermann

8 Heather Ungermann, Deputy Clerk

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

Jamie J. Resch, Resch Law, PLLC d/b/a Conviction Solutions

By: 

Employee, Resch Law, PLLC d/b/a Conviction Solutions