

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY BROWN

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 81962

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Valerie Adair, District Judge
District Court No. C-17-326247-1

APPELLANT'S APPENDIX VOLUME 14 OF 18

Navid Afshar
State Bar #14465
Deputy Special Public Defender
JoNell Thomas
State Bar #4771
Special Public Defender
330 South 3rd Street
Las Vegas, NV 89155
(702) 455-6265
Attorney for Larry Brown

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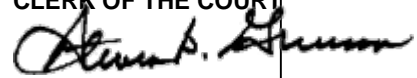
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff(s),

vs.

LARRY DECORLEON BROWN,

Defendant(s).

Case No. C-17-326247-1

Department XXI

BEFORE THE HONORABLE VALERIE ADAIR,
SENIOR DISTRICT COURT JUDGE

THURSDAY, DECEMBER 19, 2019

TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL – DAY 8 of 9

APPEARANCES:

For the Plaintiff(s):

JOHN L. GIORDANI, III, ESQ.

Chief Deputy District Attorney

MICHAEL DICKERSON, ESQ.

Deputy District Attorney

For the Defendant(s):

MONICA R. TRUJILLO, ESQ.

W. JEREMY STORMS, ESQ.

Chief Deputy Special Public Defenders

RECORDED BY: ROBIN PAGE, COURT RECORDER

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None offered.

1 **LAS VEGAS, NEVADA; THURSDAY, DECEMBER 19, 2019.**

2 [Proceeding commenced at 12:01 p.m.]

3
4 [Outside the presence of the jury.]

5 THE COURT: All right. We're now on the record out of
6 the presence of the jury. And, Ms. Trujillo, you had some things
7 you wanted to place on the record.

8 MS. TRUJILLO: Yes, Judge. So after thinking about it
9 more, sleeping over it, and looking at the evidence this morning,
10 yesterday we objected to the State's question of Mr. Brown, which
11 I believed was, you know, assuming facts in evidence. But as I
12 thought about it more, you know, the Court mentioned they're
13 going to bring the records and the State has, I believe, three
14 witnesses they are going to bring with regard to those records.

15 But it's my position that, one, it wasn't an appropriate
16 cross-examination question, based on my direct, so it was outside
17 of the scope.

18 Secondly, I don't think it's appropriate rebuttal material
19 based on the questions that Mr. Brown answered. He said
20 nothing about knowing what Angelisa does, what she did on her
21 phone, what, if anything, he told her.

22 It's my position that the State injected a problem in the
23 trial and is now being allowed to rebut their own problem that
24 they injected, which is a violation of Mr. Brown's rights. So at this
25 point I need to move for a mistrial.

1 THE COURT: Okay. Well, first of all, in terms of the
2 question, the objection was sustained by the Court.

3 MS. TRUJILLO: Understood.

4 THE COURT: So I don't see what the harm is in the
5 question in terms of granting a mistrial right now, because the
6 objection was sustained, and that's really all the Court can do at
7 that point. So --

8 MS. TRUJILLO: Understood. And I --

9 THE COURT: -- I don't see grounds at this point. I mean,
10 maybe if he blurted something out or whatever. But I sustained
11 the objection.

12 The next issue is whether or not they should be allowed
13 to present a rebuttal case, right?

14 MS. TRUJILLO: Correct.

15 THE COURT: Do you want to be heard on that,
16 Mr. Giordani?

17 MR. GIORDANI: Oh, yeah. Absolutely.

18 As I said yesterday, the analysis for whether the question
19 was proper is whether the State had a good-faith basis to ask the
20 question. The State certainly did. I don't think Ms. Trujillo will or
21 can dispute that that evidence that I asked about does exist. So
22 that's the first thing.

23 The second thing is, while we were at the bench, I
24 suggested, based upon their Motion for a Mistrial, that the Court
25 just sustain it because I didn't know if that witness was going to

1 be available, because he resides out of state. Your Honor
2 suggested we could Skype him in and I said, Okay, well, we're
3 going to try. And based upon that and because of the dynamics
4 of cross, why don't you just sustain it for now and then we'll make
5 efforts. I don't want to insert an issue into this if there isn't one --
6 or shouldn't -- doesn't need to be one.

7 So then you did sustain it. I don't believe he even
8 answered the question.

9 THE COURT: He didn't.

10 MR. GIORDANI: So as to that issue, the question was
11 appropriate, no grounds for a mistrial or, frankly, even an
12 objection, but it is what it is.

13 As to this next issue, the defendant is the one who
14 provided this version of events. We are entirely entitled to rebut
15 his version of events with other evidence in the case. This
16 witness was properly noticed, the defense has known all along
17 this evidence exists. We are within our right to call him as a
18 rebuttal witness and we do have him scheduled to come in. And
19 there's no valid basis for a legal objection based upon our rebuttal
20 case.

21 MS. TRUJILLO: Okay. Well, a couple of things. I'm
22 going to start with I understand the Court's position that you
23 sustained an objection. But it's still our position -- and I
24 understand the Court says we have to believe that the jury listens
25 and, you know, when the Court sustains, they disregard.

1 However, it is a pretty important issue. And while there is
2 evidence that there was searches of news, the way the question
3 was framed was, Would it surprise you that she searched this
4 murder the day after? That's not true. It was a series of searches
5 of different news articles and multiple murders.

6 So now you have imputed to my client that his girlfriend,
7 who he lived with, which is -- that's the only evidence about this
8 girl in this trial at this time, and that she drove a Jeep, now they're
9 thinking that she specifically searched this murder. So they're
10 going to impute that to my client that he either directed her to or
11 that she knew about it because of him, which is a problem.

12 Secondly, how is the State going to lay a foundation
13 about this issue? We still have the authentication, the
14 authorship problem. Angelisa hasn't testified. She's not going to
15 testify unless they decided they're going to call her now. But I
16 think I have a right to cross-examine her on that issue, especially
17 if they're going to impute it to my client.

18 Although my position is it's not appropriate rebuttal
19 evidence. The State had the decision to call her as a witness in its
20 case in chief and did not do so. My client said nothing about what
21 she did on her cell phone, about what she knew, about what she
22 said. I think it's inappropriate rebuttal material.

23 THE COURT: I don't think rebuttal has to be that specific
24 that I didn't tell her to search her phone. I mean, he's the one that
25 provided the narrative or the version of events or the testimony, I

1 guess that would be the best word, about, you know, dropping
2 her off at the hospital, and then coming back to the hospital. And
3 I might have -- I think it was -- I can't remember who asked the
4 question, but at some point he testified about -- I think it was
5 Mr. Giordani's question that -- I'm uncertain, you know, she, I
6 guess, bandaged him up --

7 MS. TRUJILLO: Uh-huh.

8 THE COURT: -- and treated his wounds or something like
9 that. So you have this whole version of events now introduced of
10 him going to the hospital, getting his girlfriend, she's ministering
11 to his needs, and, you know, in terms of his injuries, and this and
12 that.

13 So I don't think rebuttal has to be so narrow in scope that
14 it's -- I didn't tell her to search for a murder, or I didn't know what
15 she was searching for. I mean, he's created -- that might not be
16 the right -- and I don't mean to -- and by saying created, he has
17 introduced -- is a better way to say this -- this portion of events,
18 going to the hospital, getting his wounds tended to by her, not
19 wanting to seek medical care officially and all of this.

20 And so I think, you know, the scope of that, you know,
21 what interaction occurred between the two of them, I think now
22 that is fair game for rebuttal. Like I said, I don't think it has to be
23 so specific, you know, did you tell her to search your phone? or
24 whatever.

25 Now, in terms of her search, when is she searching and

1 what is she searching for?

2 MR. GIORDANI: The crime was February 21st, 2017. And
3 if you'll recall Mr. Brown's testimony -- and it's our position he
4 inserted her as a co-conspirator, because as the Court knows, you
5 don't -- you're -- the conspiracy isn't over until the defendant or
6 the perpetrator has gotten away with the offense and successfully
7 concealed his crime. I mean, she's either an accessory after or
8 co-conspirator.

9 And he said --

10 THE COURT: Well, if -- well, okay, first of all, if --
11 according to his version of events, she's not a co-conspirator. I
12 mean, if she -- if he really did go in and say, Oh, I got beat up, and
13 she's tending to his wounds or whatever, she doesn't know
14 what's going on, so I don't see her as a co-conspirator. Maybe, at
15 the very most, an accessory after the fact. But that's only if she
16 knew about the murder.

17 MR. GIORDANI: Right.

18 THE COURT: She knew about the attempt robbery --
19 attempted robbery or whatever, with him as the perpetrator, not
20 the victim. But if she didn't know that, then she's just helping
21 him. Do you see what I'm saying?

22 MR. GIORDANI: Yeah, that was the next step to the
23 analysis, the content of the searches. If you'll recall, Mr. Brown
24 indicated he went up there, he told her what happened to him, he
25 left immediately from where he was allegedly robbed and went to

1 the hospital.

2 THE COURT: Right.

3 MR. GIORDANI: Told her what happened to him, and
4 then stayed throughout the evening until she finished her shift.

5 Ms. Ryder's phone -- and again, this has been in the
6 discovery forever and has been referenced -- shows searches of
7 this exact murder, not some robbery, this exact murder --

8 MS. TRUJILLO: In addition to other murders. Let's be
9 clear.

10 MR. GIORDANI: No, it's the same link, but we'll talk
11 about that.

12 MS. TRUJILLO: It's the news.

13 MR. GIORDANI: The link that she has searched is the
14 KTNB news article of this homicide the morning after allegedly he
15 just told her, I was robbed by three random people. So there's no
16 causal way she could get to that article -- that homicide article, by
17 the way, not a robbery article, the homicide article -- unless he's
18 disclosed to her what happened.

19 MR. STORMS: Judge, just so we're clear, you know, we
20 have this extraction report and we have, you know, web history.
21 And he's -- and these reports are in a web history. But there's
22 also a section that's searched items, which is Internet searches of
23 searches on all sort of stuff. And there's nothing about a
24 homicide search there.

25 So whenever the State's saying that -- I mean, I don't --

1 we're not sure where that evidence comes from. Because --
2 THE COURT: Okay. Can you --
3 MR. GIORDANI: Can I show --
4 THE COURT: Can you point it out to them? Obviously, I
5 don't have the evidence, so --
6 MS. TRUJILLO: No, no, no.
7 THE COURT: -- can you show them what you're --
8 MS. TRUJILLO: The exact link from the --
9 MR. GIORDANI: I know.
10 THE COURT: -- talking about.
11 MR. GIORDANI: Yes, can I approach?
12 THE COURT: Sure. Do you have it for me?
13 MR. GIORDANI: Well, these are the exhibits I've marked.
14 This is the search history.
15 THE COURT: Okay.
16 MR. GIORDANI: Yeah, towards the back, see the big links
17 there? Those link to an article, you go online and check it right
18 now, Man identified in northwest Las Vegas shooting.
19 THE COURT: Okay.
20 MR. GIORDANI: You see how it says, Homicide
21 detectives investigating or something?
22 THE COURT: I can't read the small print.
23 MR. GIORDANI: Oh. Okay.
24 THE COURT: I'm just going to be honest. It's faint and
25 it's very tiny, so I can't see it. I'll just tell you the truth, I cannot

1 see it.

2 MR. GIORDANI: Okay. Well, on this --

3 THE COURT: I can see this big, bold print, however.

4 MR. GIORDANI: This is the article. This one includes the
5 web link at the top. They --

6 THE COURT: Okay.

7 MR. GIORDANI: I had the experts go back and verify
8 today.

9 MR. STORMS: This is web history.

10 MR. GIORDANI: Yes, it's that --

11 MR. STORMS: These are searches --

12 MS. TRUJILLO: Okay. There is a difference --

13 MR. STORMS: -- and then there's a web history.

14 MS. TRUJILLO: -- between actually searching an article --

15 MR. STORMS: So let's be clear about that, that it's not --

16 MS. TRUJILLO: -- specifically --

17 THE MARSHAL: Okay. Hold on. Hold on. Too many
18 people are talking at once.

19 MS. TRUJILLO: There is a difference between actually
20 searching an article specifically typing it into the search area and
21 clicking on a news article that we all do all the time.

22 MR. GIORDANI: Absolutely.

23 MS. TRUJILLO: And that's web history. That's not a
24 search history.

25 MR. GIORDANI: Absolutely. I'm not saying it's search

1 history.

2 MS. TRUJILLO: Okay. And that's why I'm saying it's
3 problematic. There are other links to other murders. There was a
4 Lake Mead murder on there that she also clicked at.

5 THE COURT: Did she click on the Lake Mead murder?

6 MS. TRUJILLO: Yes. It -- from what we had from the
7 State, yes. And along with other news items.

8 THE COURT: Okay. I guess he --

9 MR. GIORDANI: It's great cross-examination.

10 THE COURT: I guess the other --

11 MS. TRUJILLO: Not in front of the jury.

12 THE COURT: My only issue is this: If she's just searching
13 murders in general, it still is indicative of knowledge that there's
14 been a murder.

15 MR. STORMS: Okay.

16 THE COURT: But does she -- I search murders all the
17 time for obvious reasons.

18 MR. STORMS: But, Judge, they --

19 THE COURT: Does she -- is she -- do we have enough of
20 her back history to know, is this a woman who's always reading
21 about murders, or is this a woman who, for the very first time,
22 after her boyfriend was maybe involved in a murder, starts
23 reading about murders?

24 MR. GIORDANI: They have her entire phone. Yes.

25 THE COURT: Okay. So if she -- I mean, that, to me, is

1 what's indicative, is does she -- is she reading about crime
2 constantly? I'm always reading about crime for obvious reasons.
3 I like to know what's coming up.

4 MR. STORMS: To be clear, Judge, this --

5 THE COURT: But, you know, if she's just -- some people
6 are just interested in murders. Then it doesn't indicate anything.
7 If this is the first time she's reading about murders or clicking on
8 news sites, then I think it may indicate something.

9 MR. GIORDANI: And --

10 MR. STORMS: This is not a search for a murder, though.
11 It's --

12 THE COURT: I get it.

13 MR. STORMS: -- clicking on a news site.

14 THE COURT: She went to the news station, which some
15 people might do.

16 MR. GIORDANI: Yes.

17 MR. STORMS: We're talking about on this --

18 THE COURT: What we want to see, is it on the news.

19 MR. STORMS: We have that -- we have all the searches
20 in her phone on the -- on February 22nd, 2017, and there's no
21 search for murder.

22 THE COURT: Right.

23 MR. STORMS: There was just these --

24 THE COURT: She didn't type in the word murder --

25 MR. GIORDANI: No. Right.

1 THE COURT: -- into Google, which probably wouldn't
2 produce anything. She went to the news and say, Oh, is there any
3 news about a murder? Just like, you know, in the old days we
4 would, you know, go buy the *Review-Journal* or the Las -- if you
5 really want to go old, the Las Vegas *Sun* at a news stand to see if
6 there were any murders.

7 MR. GIORDANI: And just to add to this, just so the
8 record's clear, Ms. Trujillo inserted this clicking on a link for
9 another murder. Well, that says shooting in the title. And
10 Mr. Brown didn't say he was shot, he said he was robbed. So,
11 again, it's indicative of her with that information.

12 THE COURT: All right. I think it goes to the weight in
13 terms of, you know, she's looking for a murder.

14 MS. TRUJILLO: Okay, Judge. But other than the fact that
15 they're saying it's her phone, how is there a foundation that she
16 actually did it? Which is another *Rodriguez v State* problem with
17 authorship, with actually doing something. It's not a statement,
18 but it's something that they're alleging she did. She hasn't
19 testified.

20 MR. GIORDANI: It's either her or him. He's the one that
21 inserted this issue.

22 MS. TRUJILLO: Okay. But you need to present --

23 MR. GIORDANI: He's the one that's with her.

24 MS. TRUJILLO: -- evidence. You can't ask the jury to
25 speculate.

1 THE COURT: Well, but there's no --

2 MR. GIORDANI: They would be asking, not me.

3 THE COURT: Well, okay. But what evidence is there that
4 she or he -- I mean, there's a reasonable inference that one of
5 them had the phone.

6 MR. GIORDANI: Yeah, and I can keep going on about the
7 rest of the evidence in the phone. I mean, in the phone itself,
8 which, again, they've had all along, her phone has text messages
9 to contact: Brown, Larry. Okay? 404-808-2233. She texts him
10 later that evening:

11 You okay, babe?

12 And then later, on the 25th, he changes his number. And
13 the phone contact in there is still, Brown, Larry, but it's a different
14 phone number. So the -- again, this is the same argument we had
15 about his phone, Mr. Brown's phone. It's self-authenticating in
16 that way. It's also her phone number, she gives that phone
17 number during an interview. And we're going to have the
18 detective who impounded it from her come in and testify and lay
19 a foundation. There's nothing inappropriate about what we're
20 doing here. He inserted this issue; we're rebutting him.

21 THE COURT: All right.

22 MS. TRUJILLO: First of all, by inserting the issue, just
23 that the State's saying, they knew all along that he went to
24 Summerlin Hospital afterward and talked to her, because
25 detectives interviewed Angelisa, she gave a statement. So

1 they've known that all along. It's not a new story, as they're trying
2 to say. It's been the evidence all along from the statement from
3 Angelisa.

4 MR. GIORDANI: Not even close to the way Mr. Brown
5 said it in front of the jury. That's what makes a rebuttal case. He
6 inserted this issue. We are entitled to rebut it.

7 MS. TRUJILLO: Judge, I mean, obviously, we disagree.
8 It basically was the State testifying, giving that fact to the jury, and
9 now we have an issue.

10 THE COURT: Well, okay. I think -- like I said, I don't think
11 it needs to be so specific. You know, I think it's -- I think there
12 were enough discussion about this individual and his contact with
13 her following his purported victimization in a robbery, to allow
14 them to present rebuttal evidence.

15 I think the records are admissible, it goes to the weight. I
16 think there's sufficient indicia, reliability, that either Mr. Brown or
17 the girlfriend utilized the phone. So I think we've all said
18 everything we need to say to complete the record.

19 And let's turn to the jury instructions.

20 MS. TRUJILLO: Just the ruling on the mistrial, Judge.

21 THE COURT: Oh. I thought that was clear. It was
22 denied.

23 MS. TRUJILLO: I know, but I need you to say it. Thank
24 you.

25 THE COURT: It was denied, because again, I sustained

1 the objection. All right.

2 Moving on, I reviewed your memorandum relating to the
3 defense's proposed jury instructions.

4 MR. STORMS: Our objections to the State's, you mean?

5 THE COURT: Yes. Yes.

6 MR. STORMS: Yes.

7 THE COURT: Well, and you'd offered some alternatives.

8 MR. STORMS: That's right. I thought maybe --

9 THE COURT: That's why I used the term proposed.

10 MR. STORMS: -- the way we would do this is if the
11 Court, with the objections that we made, Your Honor, are there
12 any of those issues that we raised that you're willing to entertain?

13 THE COURT: No. I mean, the way I read it -- and I know
14 that sounded flippant. But the I read it is the defense is
15 conceding, that the instructions in question are part of the
16 instructions that are generally utilized and in all or most cases
17 have been approved by the Supreme Court. But that the defense
18 objects to them and either would like them rewritten at this point,
19 or wants to preserve the objection.

20 MR. STORMS: If I could just -- if I --

21 THE COURT: Is that a fair synopsis?

22 MR. STORMS: Other than there's one -- the conspiracy
23 instruction that we talked about on page 5 of our objections about
24 where they get into general intent and specific intent crimes, I
25 think that with our other instructions, that one is unnecessary and

1 confusing, given that there aren't instructions about general intent
2 and specific intent crimes. Otherwise, really, in that -- in the
3 instructions --

4 THE COURT: You're looking at page 5?

5 MR. STORMS: Of my objections, yes, Your Honor.

6 THE COURT: Right.

7 MR. STORMS: The conspiracy one.

8 THE COURT: So conspiracy, and you're complaining
9 about a conspiracy to commit a crime does not end upon --

10 MR. STORMS: Hold on just a second. I might be looking
11 at the wrong page.

12 THE COURT: That's the bottom of 5.

13 MR. STORMS: I apologize.

14 THE COURT: Are you talking about page 6? You're
15 talking about 6, the bottom of 6.

16 MR. STORMS: Yes, I am. I apologize. I was on the
17 wrong page.

18 THE COURT: Conspirators also legally responsible for a
19 general intent crime that follows as one of the recently
20 foreseeable consequences --

21 MR. STORMS: Uh-huh.

22 THE COURT: -- blah, blah, blah. That's what you're
23 objecting to?

24 MR. STORMS: That's right. The State has an instruction
25 later on their -- in their packet that I wrote a couple of *Crawford*

1 instructions off of.

2 THE COURT: Uh-huh.

3 MR. STORMS: That goes through the intent requirement
4 that, you know, and I think that covers it best. And the inject as
5 general and specific intent in this instruction just kind of confuses
6 the issue.

7 THE COURT: State?

8 MR. GIORDANI: This particular instruction is a correct
9 statement of the law. If I'm understanding what the complaint of
10 issue is, if you want to put an extra sentence that says, A
11 conspiracy is a specific intent crime, robbery is a general intent
12 crime, you know, first-degree murder is a specific intent crime --

13 THE COURT: You're fine with that?

14 MR. GIORDANI: Well, that's fine, except for we have the
15 problem of robbery is general intent. Felony murder is -- you
16 have to have the intent to commit the underlying offense.

17 THE COURT: Right. So it might be more confusing.

18 MR. GIORDANI: So it might be confusing, that's why we
19 proposed the instructions that we did.

20 MR. STORMS: And, you know, in my view, their felony
21 murder instruction that explains the specific intent requirement,
22 that conspiracy builds into that, it does a lot better job and this
23 just kind of muddies the water.

24 THE COURT: Well, okay. I agree with you. I think
25 whenever we're talking about specific intent and general intent, I

1 think it starts getting confusing, frankly. However, if we don't do
2 it this way, then they may get confused about a conspiracy, and
3 well, what is your conspiracy have to be?

4 So to me, notwithstanding the fact that I would agree
5 with you it's confusing, sometimes when I think things are
6 confusing, I have a good idea of ow to rewrite them, or at least an
7 idea, maybe not good. In this case, I really don't. So I'm going to
8 rely on this that's been utilized. It's a correct statement of the law.
9 And I think to the extent they may have a question, Well, how
10 does this go with a conspiracy? At least it's addressed here.

11 So -- all right. So these -- the requests are denied. The
12 objection has been filed with the court.

13 MR. STORMS: Thank you.

14 THE COURT: And it's part of the record.

15 Now, how do you want to do this?

16 MR. STORMS: I'm not sure -- has the State had a chance
17 to decide if we --

18 MR. GIORDANI: Yeah. I've looked through them. I do
19 have objections to several of the defense proposed --

20 THE COURT: Okay. Do you want me to just run through
21 the defense's first, then?

22 MR. GIORDANI: Sure.

23 MR. STORMS: Let me -- with -- as far as his go, other
24 than those objections --

25 THE COURT: Okay. All right.

1 MR. STORMS: -- we're fine.

2 THE COURT: So you're good with the packet as-is,
3 except for the objections that are memorialized in your -- I called it
4 a memorandum, but it's Defendant's objections to State's
5 proposed jury instructions.

6 MR. STORMS: That's right.

7 THE COURT: Which, if it's not already filed in Odyssey,
8 should be filed in Odyssey. Did you file it?

9 MR. STORMS: I have not filed it as of yet.

10 THE COURT: Do you want me to file it in open court?

11 MR. STORMS: Would you please?

12 THE COURT: All right. I had a copy. And if you like, we
13 can file this with the clerk right now.

14 MR. STORMS: Please, Your Honor.

15 THE COURT: Has a cover sheet, so it's appropriately filed
16 in Odyssey.

17 MR. STORMS: Thank you.

18 THE COURT: All right. Turning to, then, the stack -- the
19 stack, now, do you want this filed in Odyssey? Or normally we
20 just make a court's exhibit of the proposed instructions that are
21 not accepted. But we -- you did provide a cover sheet, so we can
22 do it either way.

23 MR. STORMS: The Court's pleasure, honestly.

24 THE COURT: I like to do it -- I actually think it's easier if
25 we make a court's exhibit of whatever instructions are not given,

1 and then the ones that are given are just included into the packet.

2 MR. STORMS: That's fine.

3 THE COURT: Okay.

4 MR. STORMS: I would also ask that the packet that I've
5 had with the instruction and then the law supporting it would be
6 made a court's exhibit as well --

7 THE COURT: Okay.

8 MR. STORMS: -- just to make it easier --

9 THE COURT: Okay. That'll be a court's exhibit, but it's
10 also filed officially.

11 MR. STORMS: Okay. Thank you.

12 THE COURT: And then, as I said, the ones not given are a
13 court's exhibit. The ones give, obviously, you can't -- you're not
14 going to be appealing those.

15 MR. STORMS: No.

16 THE COURT: So -- all right.

17 MR. STORMS: Okay.

18 THE COURT: So starting argument among two or -- oh,
19 I'm sorry, agreement; I really need to wear glasses -- among two
20 or more persons.

21 MR. GIORDANI: And I do have an objection, but simply
22 because this is included in our stock or in our proffered mere
23 association conspiracy instruction. That would be the seventh in
24 order in our packet.

25 THE COURT: Why do we need this one too?

1 MR. GIORDANI: And, Judge, just to save time, I have the
2 same objection for the next one, two, three, four --

3 THE COURT: Okay. Did we have an accomplice?

4 MR. GIORDANI: No, I was going to get to that too.

5 THE COURT: Okay.

6 MR. GIORDANI: But these ones about -- oh, I'm sorry.
7 Those are moving onto accomplice.

8 THE COURT: Right.

9 MR. GIORDANI: So, I'm sorry, the mere association
10 objection goes to just this instruction -- Proposed Instruction A.

11 MR. STORMS: Judge, you know, for us, given -- we've
12 got that, you know Carnell Cave, and now interjection of Angelica
13 Ryder --

14 MS. TRUJILLO: Angelisa.

15 MR. STORMS: Angelisa, excuse me, Ryder into the case,
16 you know, I think it's important the jury understand kind of at the
17 baseline here for what constitutes a conspiracy. Because
18 otherwise --

19 THE COURT: I'm fine giving this instruction. But if it's
20 already written in another instruction, why do we have to give it
21 twice?

22 MR. GIORDANI: Yeah. Ours says:

23 Evidence that a person was in the conspiracy --

24 I'm sorry.

25 -- in the company or associated with one or more other

1 persons alleged or proven to have been members of a
2 conspiracy is not, in itself, sufficient to prove that such person
3 was a member of the alleged conspiracy. However, you are
4 instructed that presence, companionship, and conduct before,
5 during, and after the offense or circumstances from which --

6 MS. TRUJILLO: Okay.

7 MR. GIORDANI: -- one's participation in the criminal
8 intent may be inferred.

9 MR. STORMS: This essentially the -- our instruction is a
10 much clearer state -- is an accurate statement of the law and it's a
11 much clearer statement of our theory of the evidence and it
12 presents our perspective of the law on this issue.

13 THE COURT: All right.

14 MR. STORMS: So it's not a reverse instruction, like
15 *Crawford*, but it's a clear -- I mean, so many --

16 THE COURT: I don't know that we need --

17 MR. STORMS: -- in so many defense instructions get
18 stuck in a second or third paragraph of a State's instruction, and it
19 just -- it's important for us --

20 THE COURT: Okay.

21 MR. STORMS: -- for us that this is highlighted.

22 MR. GIORDANI: The problem --

23 THE COURT: Mr. Giordani, do you have a -- I mean, it's a
24 correct statement of the law. Are you --

25 MR. GIORDANI: Well, yeah. The only problem I have is:

1 And mere association is insufficient to support a charge
2 of conspiracy.

3 THE COURT: How about mere association alone?

4 MR. GIORDANI: That's what ours says. That's why I'm --

5 THE COURT: Oh. Yeah, because mere association isn't --
6 association's an element that they -- I mean, or factor, not an
7 element, they can consider. So --

8 MR. GIORDANI: Right. That's why I think ours covers it.

9 THE COURT: What number is yours?

10 MR. GIORDANI: It's the seventh in our packet, but I --

11 THE COURT: Okay.

12 MR. GIORDANI: -- we didn't number them yet. Evidence
13 that a person was in.

14 THE COURT: Oh. Kind of says the same thing.

15 MR. GIORDANI: And it combines in, you know, the first
16 sentence of theirs:

17 Agreement among two --

18 THE COURT: Well, mere association means association
19 alone.

20 MR. GIORDANI: Of itself, yeah. In itself.

21 MR. STORMS: But their instruction of the first -- you
22 know, the first sentence says that, essentially, but then the second
23 sentence seems to somehow kind of characterize association.
24 And it -- this is -- this makes it clear that it has to be something
25 more than association, our instruction does. It gives a baseline to

1 the issue.

2 THE COURT: I'm fine giving it. I don't think it, frankly,
3 matters.

4 MR. GIORDANI: In addition to ours?

5 THE COURT: Yeah, in addition, not in lieu of.

6 MR. GIORDANI: Okay. Just plop it in after?

7 THE COURT: Yeah, I just plopped it in, literally, after.

8 MR. STORMS: Thank you.

9 THE COURT: Okay. What accomplice did we have?

10 MR. GIORDANI: Well, we did not --

11 THE COURT: I'm moving on.

12 MR. GIORDANI: -- and that was our objection.

13 THE COURT: Yeah. We didn't have an accomplice,
14 because Carter -- Mr. Anthony Carter did not testify.

15 MR. STORMS: Judge, you know, this is -- I just quoted
16 the NRS here.

17 THE COURT: No, it's a true statement of the law --

18 MR. STORMS: My --

19 THE COURT: -- but how does it apply?

20 MR. STORMS: Well:

21 An accomplice is hereby defined as someone who's
22 liable for prosecution for the same offense.

23 I know that the statute says accomplice. But I -- but my
24 reading of that would be that it would include something like a
25 co-conspirator too. I should have maybe changed the language

1 there. But an accomplice, co-conspirator, someone -- would be
2 someone who would be liable for the same offense.

3 THE COURT: First of all, you didn't have a
4 co-conspirator. We didn't have an accomplice. So I don't think it
5 pertains in this case.

6 MR. STORMS: Anthony Carter?

7 THE COURT: He didn't testify.

8 MS. TRUJILLO: But the State's going to argue that he
9 was a co-conspirator.

10 MR. STORMS: I mean, all of the --

11 MS. TRUJILLO: And now Angelisa.

12 MR. STORMS: All of the hearsay that came in --

13 THE COURT: Yeah, but that's this -- but what this --

14 MR. STORMS: -- was because it's under the
15 co-conspirator --

16 THE COURT: Yeah, but that's -- but this is accomplice
17 testimony, someone who's cooperating and testifies as a witness.

18 MR. STORMS: I --

19 THE COURT: Not a co-conspirator.

20 MR. STORMS: Judge, I actually sent in a second one
21 when I realized -- statements -- just needs to be -- say statements.
22 The statements of a co-conspirator accomplice.

23 THE COURT: Okay.

24 MR. STORMS: But you can change the word accomplice.

25 THE COURT: I think --

1 MR. STORMS: I just -- it wasn't going to change -- put
2 co-conspirator in there and then have it be that I was somehow
3 muddying what the statute said.

4 THE COURT: Okay. Well, first of all, there wasn't
5 accomplice testimony in this case. This directly pertains to
6 accomplice testimony. I don't think it pertains in this case.

7 MR. STORMS: The -- if I can --

8 THE COURT: So you want to say:

9 A conviction shall not be had on the statements of a
10 co-conspirator unless corroborated by other evidence, which in
11 itself, and without the aid of the co-conspirator statements,
12 tends to connect the defendant with the commission of the
13 offense.

14 MR. STORMS: That's correct.

15 THE COURT: Where are you getting that?

16 MR. STORMS: NRS 175.292.

17 THE COURT: Which is what?

18 MR. STORMS: The statute that says that exactly, of the
19 admission or the reliance on a accomplice's testimony.

20 MR. GIORDANI: Right, an accomplice.

21 THE COURT: Yeah, but that's the accomplice statute.

22 MR. STORMS: But it's defined in a way that would
23 include conspirator --

24 THE COURT: I don't -- well, because if you're an
25 accomplice, you're a co-conspirator. But this pertains to

1 testimony. So --

2 MR. STORMS: But his statements are in lieu of his
3 testimony, right, that it is under our hearsay statute, a statement
4 by a co-conspirator is admissible as if it was testimony. And then,
5 of course, we -- this is all about these texts. They're -- a large part
6 of their case are these texts between Anthony Carter and Larry
7 Brown's phone.

8 THE COURT: Right. But the whole point is that those --
9 the indicia of reliability of the co-conspirator statements are that
10 they're making them during the conspiracy. So they're not
11 thinking about being considered. So that's the indicia of
12 reliability, because they're making them during a conspiracy, not
13 to get a benefit from the prosecution, not to --

14 MR. STORMS: So are you --

15 THE COURT: I'm not going to give this. I don't think it
16 pertains.

17 MR. STORMS: So the Court does not -- is saying that this
18 statute doesn't apply to co-conspirator statements?

19 THE COURT: I am saying that.

20 MR. STORMS: Okay. Thank you.

21 THE COURT: I think it's clear from the statute. Okay.

22 Next up: One who has participated criminally in a given
23 criminal venture.

24 MR. GIORDANI: Same objection.

25 MR. STORMS: These are quotes from --

1 THE COURT: Yeah.

2 MR. STORMS: -- two different Supreme Courts cases --

3 THE COURT: Yeah, I think this, again, belongs to --

4 MR. STORMS: -- on this issue.

5 THE COURT: -- an accomplice. And we didn't hear from

6 an accomplice here.

7 MR. STORMS: And again, I understand it still -- it's under

8 this theory -- under my theory that NRS 175.291 would cover both

9 accomplice and co-conspirator statements --

10 THE COURT: I think the rationale for --

11 MR. STORMS: -- because it covers the same sort of

12 issue.

13 THE COURT: -- the accomplice corroboration is different

14 than the rationale from -- for why co-conspirator statements are

15 admissible. So I don't think it pertains in this -- certainly in this

16 case. All right.

17 This is the circumstantial evidence.

18 MR. GIORDANI: Yes, we definitely object to this. Are --

19 you're talking about --

20 THE COURT: Yeah.

21 MR. GIORDANI: -- a finding of guilt as to any crime?

22 MR. STORMS: And, Judge, the *Supranovich* one --

23 THE COURT: Yeah. I don't think this is true.

24 MR. STORMS: -- that:

25 Before you may rely on circumstantial evidence to

1 conclude that a fact necessary to find the defendant guilty.

2 That's the one that I would be admitting. I submitted a
3 number and then I realized that the *Supranovich versus State*
4 case, 2018, Nev., unpublished, that case which Giordani knows
5 well --

6 MR. GIORDANI: I'm sorry, I don't -- are you -- so you're
7 not --

8 THE COURT: I don't think this is true. And I know it's
9 people get it from a case, but here's the thing, it's up to the jury
10 how to interpret the evidence. And Mr. Giordani is going to argue
11 the evidence one way and you folks are going to argue the
12 evidence a different way. And both of you may be reasonable in
13 how you're arguing it, but that doesn't mean they have to accept
14 the defenses. They can accept that the State's inferences are
15 more -- is what they believe. So I don't really think the way this is
16 written it's right. I disagree.

17 MR. STORMS: This -- and the one --

18 THE COURT: I mean, I don't think they have to accept the
19 conclusion that points to acquittal, because there's always a way
20 to spin evidence that could be explained away, and --

21 MR. STORMS: Well, this is a -- I mean, it's a reasonable
22 doubt proposition that if there's two reasonable ways to --

23 THE COURT: Yeah, I get it. But I don't think it's right. I
24 mean, if they have a reasonable doubt, they have to acquit him,
25 obviously. But I don't like the way this is written. I think it's

1 confusing. And I think it's sort of a misstatement of the jury's
2 role, in my opinion. I never give it --

3 MR. STORMS: And again --

4 THE COURT: -- for that reason.

5 MR. STORMS: -- in this case, it's a circumstantial case.
6 We have, you know, no eyewitness identifying Mr. Brown as the
7 perpetrator of this offense. All the evidence is circumstantial.

8 THE COURT: It's a circumstantial case as presented,
9 because you don't have Mr. Carter testify.

10 MR. STORMS: And that's what we deal with as the case
11 presented --

12 MR. GIORDANI: DNA at the scene?

13 THE COURT: Still circumstantial.

14 MR. GIORDANI: Okay.

15 THE COURT: I mean, you don't have anybody saying, I
16 saw Mr. Brown --

17 MR. GIORDANI: Sure.

18 THE COURT: -- shoot --

19 MR. STORMS: Yes.

20 THE COURT: -- Mr. Kwame Banks.

21 MR. GIORDANI: Sure.

22 THE COURT: That's why it's circumstantial. Now, if you
23 had a Anthony Carter say, We acted together and I -- and he shot
24 him, then --

25 MR. STORMS: But that's not the case we have.

1 THE COURT: Right. Okay. So I agree. But I don't think
2 this -- I don't like that.

3 A finding of guilt as to any crime.

4 This is kind of the same thing, right?

5 MR. STORMS: Yes.

6 THE COURT: Okay. I don't know that we need
7 additional --

8 MR. STORMS: That was a CALJIC instruction that covers
9 the same issue as that recent Supreme Court, the *Supranovich*.
10 *Supranovich* says that if you're going to give an instruction, you
11 need to give the one that the Supreme Court gave in that case. I
12 had these in the packet prior to realizing that case said that and
13 just submitted that case, as well.

14 THE COURT: Okay. Let me -- the next on is -- this is
15 the -- looks to be exactly the instruction that the Court reads at the
16 beginning of the case direct and circumstantial.

17 MR. STORMS: That's right.

18 THE COURT: It's -- it looks exactly the same.

19 Does the State have an objection to this one?

20 MR. GIORDANI: I don't know if I have that in my packet.
21 Are you saying that there are two kinds of evidence?

22 THE COURT: Evidence --

23 MR. STORMS: Yes.

24 THE COURT: -- direct and circumstantial evidence, direct
25 evidence is testimony -- I read this at the beginning.

1 MR. GIORDANI: Oh, yeah. Yeah, no objection.
2 THE COURT: Okay. We'll include that in the packet
3 somewhere with -- where we talk about the evidence.
4 MR. GIORDANI: That's the same thing you read exactly?
5 THE COURT: Looks the same.
6 MR. GIORDANI: I just didn't see this one.
7 MR. STORMS: Yeah, this is from *People versus*
8 *Anderson*, and it's -- the heart of it is definitely the same. Maybe
9 the first or second paragraph might be slightly different, but --
10 THE COURT: It looks the same to me.
11 MR. STORMS: Okay. You would know.
12 THE COURT: I mean --
13 MR. STORMS: You've read it a million times.
14 THE COURT: Yeah. All right. The next one is: If the
15 evidence relating to any or all of the circumstances of the case
16 is susceptible to reasonable interpretations.
17 MR. STORMS: So that's the same as that other --
18 THE COURT: Right. It's kind of the same --
19 MR. STORMS: -- *Supranovich* one.
20 THE COURT: All right. That's rejected.
21 The next one: Benefit of the doubt.
22 That's a good instruction. What's your objection on this
23 one?
24 MR. GIORDANI: I don't have one.
25 THE COURT: So you don't have this in your packet

1 already?

2 MR. GIORDANI: No, I don't have an objection.

3 MR. STORMS: He doesn't have an objection.

4 THE COURT: Oh. But you don't have this one in your --

5 MR. GIORDANI: I do. I don't believe I have it in my
6 packet.

7 THE COURT: Okay. So we'll include that.

8 You are instructed that attempts to cover up a crime.

9 MR. GIORDANI: That's -- this I have an objection to. It's
10 just pure argument and not a basis for an instruction. I don't
11 know where --

12 MR. STORMS: Judge, this case comes from *People*
13 *versus Anderson*, which is a case that our Supreme Court has
14 relied on many, many times. And *Biford versus State*, *Longoria*
15 *versus State*, *Givens versus State*, *Ogden versus State* for issues
16 related to murder and evidences in murder.

17 This essentially explains the limit of what consciousness
18 of guilt from a flight could entail, that it's not something that
19 would show something like the specific intent to commit the
20 crime, but just gives the jury a better understanding of how they
21 can use that evidence if they are going to use that evidence.

22 MR. GIORDANI: And, again, I think that's all great for
23 argument, but it's not appropriate for instruction.

24 THE COURT: I'm not -- what's your basis for the
25 objection?

1 MR. GIORDANI: I think it's misleading. Evasive conduct
2 shows fear? Like, tell them that --

3 THE COURT: Yeah, I would like this -- I would be
4 willing -- because I think there are circumstances where evidence
5 of how you dispose of -- evidence of how you dispose of evidence
6 can be indicative of intent. For example, if you've already got a
7 flight plan set up, you've bought your plane ticket, or if you, you
8 know, have a can of kerosene or something and you're going to
9 burn the evidence, or you dug a big hole in the backyard to hide
10 the body. I mean, those can all indicate premeditation. So I think
11 that the -- that makes this instruction somewhat incorrect.

12 Now, evidence of flight alone is not evidence of
13 premeditation.

14 MR. GIORDANI: Right. Which --

15 THE COURT: I think that's true. So if you want me to add
16 something like that to the flight instruction, I'd consider adding --

17 MR. STORMS: Please.

18 THE COURT: -- something like that, that evidence of
19 flight alone is not evidence of premeditation. It can be if the
20 tickets were bought ahead of time or something like that. Do you
21 see what I'm saying?

22 MR. STORMS: Yes.

23 THE COURT: I mean, some circumstances it might be. If
24 somebody bought plane tickets, goes out and commits a murder
25 and then hops on a plane, clearly, the fact that they'd already

1 bought the plane tickets is evidence of premeditation and
2 deliberation.

3 MR. STORMS: I would agree, but that's not the
4 circumstance here, right?

5 THE COURT: So I don't know that this generally is a
6 correct statement of the law.

7 MR. GIORDANI: Yeah, I agree with the Court. I'm just
8 looking at our flight instruction to make sure that's not already
9 kind of -- flight of a person after the commission. Says right there
10 in the first sentence. So:

11 Flight of a person after the commission of a crime is not
12 sufficient in itself to establish guilt; however, if flight is proved,
13 it is circumstantial evidence in determining guilt or innocence.

14 THE COURT: Would you have an objection to adding
15 something like evidence of flight alone does not show
16 premeditation?

17 MR. GIORDANI: I think it could.

18 THE COURT: Well, it can. Like I said, if you buy the plane
19 tickets or something like --

20 MR. STORMS: Yeah, the plane -- there's other evidence
21 besides just the leaving --

22 THE COURT: Right.

23 MR. STORMS: -- that would suggest a premeditation.

24 THE COURT: Right.

25 MR. STORMS: But flight alone, not so.

1 THE COURT: Right.

2 MR. GIORDANI: Well, maybe -- what if it just said: The

3 flight of a person after the commission of a crime is not sufficient

4 in itself to establish guilt or premeditation.

5 THE COURT: Great.

6 MR. GIORDANI: I'm fine with that.

7 THE COURT: Okay. You okay with that? And that's

8 true -- I mean, I like what you said about the plane tickets.

9 Because that's other evidence, it's not just the flight.

10 MR. STORMS: Can we get an instruction that says:

11 Flight if not evidence of premeditation?

12 THE COURT: Well, I like something better, like, evidence

13 of flight alone --

14 MR. GIORDANI: Yeah.

15 THE COURT: -- is -- does -- is not sufficient to establish

16 premeditation.

17 MR. STORMS: I think that's fine.

18 MR. GIORDANI: After guilt, you just say or

19 premeditation, right?

20 THE COURT: Yeah.

21 MS. TRUJILLO: And we would prefer the reverse --

22 MR. GIORDANI: Are you --

23 MS. TRUJILLO: -- premeditation or guilt.

24 THE COURT: Well, okay. So we'll add that. Okay. I'm

25 fine with that.

1 MR. GIORDANI: Do I need to be --
2 THE COURT: Oh.
3 MR. GIORDANI: Do I need to be telling my secretary or
4 are you just going to plug that in back there?
5 THE COURT: I'm just going to plug it in --
6 MR. GIORDANI: Okay.
7 THE COURT: -- and have Susie make the corrections. It's
8 so much faster.
9 MR. GIORDANI: Okay.
10 THE COURT: If you find that the State has not proven.
11 MR. GIORDANI: This one I have an objection to, and kind
12 of the next two are -- or the next one is the same objection. So
13 back to what we were talking about with specific in general.
14 Robbery is a general intent crime. So this instruction is
15 completely misleading. This --
16 MR. STORMS: Not under a conspiracy theory.
17 THE COURT: Under a conspiracy theory.
18 MR. STORMS: And, Judge, I'd like -- if you could, this is
19 in response to and to help frame the State's felony murder
20 instruction, which is really kind of in the middle of their packet.
21 We don't have this numbered. It starts out: Felony murder's a
22 different theory of first-degree murder.
23 There -- the last sentence -- well, the last two sentences
24 of their instructions say:
25 The intent to perpetrate or attempt to perpetrate a

1 robbery must be proved beyond a reasonable doubt. A
2 defendant cannot be liable for felony murder under a
3 conspiracy an/or aiding-abetting theory of liability for acts
4 committed by co-conspirator unless the defendant also has the
5 specific intent to commit the robbery.

6 And so --

7 THE COURT: Which is saying the same thing as you're
8 saying.

9 MR. STORMS: Yes. I've just -- this is an important
10 aspect of that -- of the law for us, for our arguments, for our
11 theory. And so we want to highlight that with this, that both the
12 robbery and the murder charge would require showing of a
13 specific intent if they're going to convict or consider convicting
14 him under a co-conspirator aider-abettor theories.

15 MR. GIORDANI: And, again, I think our felony murder
16 instruction covers this, and framing it this way is misleading and it
17 would potentially cause the jury to be confused on the robbery
18 instruction. So I don't understand why we would add to
19 something or -- if it ain't broke, don't fix it. The felony murder
20 instruction covers this as it applies to felony murder specifically.

21 THE COURT: What if we add -- does it say in the felony
22 murder the defendant -- the State must prove beyond a
23 reasonable doubt that the defendant had the specific intent to
24 commit a robbery?

25 MR. GIORDANI: It says: The intent to perpetrate or

1 attempt to perpetrate a robbery must be proven beyond a
2 reasonable doubt. A defendant cannot be liable for felony
3 murder under a conspiracy and/or aiding and abetting theory
4 of liability for acts committed by a co-conspirator unless the
5 defendant also had the specific intent to commit the robbery.

6 So it's covered and it's --

7 THE COURT: I think it's pretty clear.

8 MR. GIORDANI: -- correctly in context there. Just
9 plopping this in is going to confuse --

10 MR. STORMS: I would -- my proposal would be that
11 these run directly behind this felony murder instruction as a
12 defense instruction to help the jury understand --

13 THE COURT: Okay. So that's the felony -- what if we
14 add, and I'm just thinking out loud here, another of this paragraph
15 to that same instruction.

16 Therefore, if you find that the State has not proven
17 beyond a reasonable doubt that the defendant had the specific
18 intent to perpetrate or attempt to perpetrate a robbery, then he
19 cannot be liable for felony murder under a conspiracy and/or
20 an aiding and abetting theory.

21 MR. GIORDANI: No, because that's not what it says. It
22 says: Cannot be liable for robbery.

23 MR. STORMS: There's two --

24 THE COURT: No, I moved to the second one.

25 MR. STORMS: There's two --

1 THE COURT: There's two.

2 MR. STORMS: Two instructions, one about robbery, one
3 about felony -- about murder under the -- those theories.

4 THE COURT: Right.

5 MR. STORMS: So we would like both of them.

6 THE COURT: I'm talking about the second one. I mean,
7 to me, it's already pretty clear on the felony murder.

8 MR. GIORDANI: Yeah, it's literally repeating twice what
9 is --

10 THE COURT: It's just turning it.

11 MR. GIORDANI: It's adding emphasis -- yeah. I mean,
12 it's covered.

13 THE COURT: All right. Turning to the first one, the
14 robbery. If they didn't have the specific intent to perpetrate a
15 robbery, then he can't be liable for robbery. Is that -- is this
16 covered anywhere?

17 MR. GIORDANI: No. But the problem with that is
18 robbery's a general intent crime.

19 MR. STORMS: We're talking about the conspiracy under
20 aiding-abetting theory.

21 MR. GIORDANI: Yeah, and that's why it's confusing. I
22 mean, it's --

23 MR. STORMS: It is confusing. That's what -- this helps
24 explain that. Otherwise, it is -- how are they going to understand
25 that?

1 MR. GIORDANI: Okay. I need to go back to our
2 conspiracy instructions.

3 THE COURT: You've got this a couple of times. What
4 does our robbery instruction say?

5 MR. GIORDANI: The robbery instruction?

6 THE COURT: Yeah. What if we say we're -- what if we
7 say something like, Robbery is a general intent crime, however, in
8 order to find the defendant guilty of robbery under a conspiracy
9 and/or aiding and abetting theory for acts committed by a
10 co-conspirator, he must have the specific intent to perpetrate or
11 attempt to perpetrate a robbery.

12 MR. STORMS: I'm fine with that, Your Honor.

13 THE COURT: Okay. I forget what I just said. So robbery
14 is a general intent crime. However, in order to find the defendant
15 guilty under -- for robbery under a conspiracy and/or an aiding
16 and abetting of liability or acts committed by a co-conspirator, he
17 must have -- he must -- the State must prove beyond a reasonable
18 doubt that the defendant had the specific intent to perpetrate or
19 attempt to perpetrate a robbery.

20 MR. STORMS: Thank you.

21 MR. GIORDANI: Sure.

22 THE COURT: I think that's pretty clear. Now watch, this'll
23 be the one they ask the question about.

24 MR. GIORDANI: I -- Judge, even with your suggested
25 language, I mean, I know where you're going with that, but

1 robbery's still a general intent crime.

2 THE COURT: Well -- okay. Robbery is a general intent
3 crime, however, in order to find the defendant guilty of robbery
4 under a conspiracy and/or an aiding and abetting theory of
5 liability for the acts committed by a co-conspirator, the State must
6 prove beyond a reasonable doubt that the defendant had the
7 specific intent to commit a robbery or --

8 MR. GIORDANI: Is a reasonably -- foreseeable
9 consequence -- that's all covered. It's not -- the way we're now --

10 THE COURT: Oh, I see what you're saying.

11 MR. GIORDANI: You know?

12 THE COURT: All right. Let's just table this one for right
13 now.

14 MR. GIORDANI: Okay.

15 THE COURT: All right. Moving on.

16 To establish chain of custody and competent
17 identification evidence, Nevada law requires.

18 MR. GIORDANI: Yeah. This is a question of
19 admissibility. It's not a jury question.

20 MR. STORMS: Judge, it goes to -- I mean, it --

21 MS. TRUJILLO: No, they argued it goes to weight before.

22 THE COURT: Where are you getting this?

23 MR. STORMS: I'm getting this from --

24 THE COURT: I now you sent over --

25 MR. STORMS: -- *Carter and Oliver* -- *Carter versus*

1 *State*, 84 Nev. 592, and then 446 P --

2 THE COURT: Isn't this something the Court determines --

3 MR. STORMS: Judge, this --

4 THE COURT: -- on admissibility, and then if you think I'm
5 wrong, you -- the remedy is appellate, not to ask the jury?

6 MR. STORMS: This is a -- I mean, whenever all these
7 things were being admitted, they were arguing that this chain of
8 custody goes -- stuff goes to weight, not admissibility. And here
9 we are, now wanting to have an instruction on that. And then
10 they're saying this is a -- something that the Court determines.
11 And instead of --

12 THE COURT: Well, I said --

13 MR. STORMS: -- something goes to the jury. So I think
14 the jury does get to evaluate this. That was the theory under
15 which the Court allowed all these things in earlier in the case, and
16 we objected under ideas like authentication and verification.

17 THE COURT: Yeah, but you weren't objecting on the
18 grounds that, oh, it had been altered. You were objecting on the
19 grounds that we don't know that Mr. Brown authored these things
20 or Mr. Carter Anthony here --

21 MR. STORMS: Well, we've --

22 THE COURT: -- Anthony Carter authored these things.
23 So, to me, you can argue that anyway. You can say, Look, what
24 proof did we have that Mr. Brown even still had the phone?

25 MR. STORMS: This also goes to the issues of Cellebrite

1 getting the phone once -- you know, the one time before where
2 they didn't actually give you any sort of paperwork for chain of
3 custody. Right? There are -- we have drawn up all these issues
4 with chain of custody throughout the trial, through -- with the
5 different identification numbers of the phone versus the data
6 that's pulled from it. All that sort of stuff are things that we've
7 been attacking throughout the case. And they -- and our attacks
8 have been parried by the idea that all these things go to weight,
9 not admissibility.

10 THE COURT: Well, you can --

11 MR. STORMS: So we'd like to be able to be in a position
12 to argue that now, since that's the reason why it all came in.

13 THE COURT: All right. Here's the thing.

14 Mr. Giordani?

15 MR. GIORDANI: The -- like the Court said, the argument
16 they were making at the time was that he -- the defendant,
17 specifically with regard to that phone, he didn't author those texts,
18 there's no way to prove he authored those texts. That's the
19 argument that we were talking about.

20 MR. STORMS: I -- I mean, that's not the argument we
21 were trying to make. I'm sorry if that was misunderstood. We
22 were challenging Cellebrite about whether or not what they are
23 saying is the contents of the phone, these are the contents of the
24 phone, what their chain of custody is to show that they -- that this
25 phone data is from the phone that they say is Mr. Brown's. We

1 went through that with all of those folks.

2 THE COURT: Right. Well, here's what I think. I don't
3 know that this is an appropriate instruction for the jury. I mean, I
4 think the threshold is done by the Court. We obviously have
5 appellate issues on all of the admissibility of the evidence.

6 Having said that, you're certainly free to argue without
7 the instruction that we don't -- look, Mr. Brown told you he was
8 robbed and he didn't even have this phone, and we don't know
9 who sent these texts, and we don't know, you know, the phone's
10 going back and forth across the country and they didn't even tell
11 you who first had the phone. I mean, you can still argue all of
12 those things without the instruction. But I don't know that this is
13 really a question for the jury.

14 MR. STORMS: But this goes to our -- this is our -- part of
15 our theory of defense. We've been push -- fighting this issue with
16 all of these witnesses and, you know, it goes to the idea that we
17 opened on, that the investigation's sloppy --

18 THE COURT: That's using a term of art, chain of custody.
19 I know what that is. I think, to me --

20 MR. STORMS: We've had multiple witnesses testify to
21 that idea, the jury's aware of what chain of custody is.

22 THE COURT: Why don't -- okay. I would be willing to
23 give something like this, which you may or may not want: Certain
24 evidence has been, you know, admitted for your consideration. It
25 is -- I mean, we kind of have this already. It is up to you to

1 determine how much weight or value to give to any evidence and
2 to determine the reliability of such evidence, or something like
3 that.

4 MR. STORMS: I mea, that's -- that's, essentially, in their
5 packet. I -- we want something specific to our theory like this,
6 though.

7 THE COURT: Okay. Well, like I said, I'd be willing to give
8 something like that. If you wanted something more pointed, like
9 just the evidence has been admitted, it's still up to you to
10 determine how reliable the evidence is. Or physical and various
11 items of physical evidence have been admitted. It is up for you to
12 determine the authenticity of such evidence and whether or not --
13 and give it the weight to which you deem it entitled, or something
14 to that effect. I'm willing to give something like that if you want it.
15 If you don't --

16 MR. GIORDANI: We wouldn't be objecting to something
17 like that.

18 THE COURT: That's fine.

19 MR. STORMS: And I just -- that doesn't cure our issue.

20 THE COURT: Okay. You've offered your own reasonable
21 doubt instruction.

22 MR. GIORDANI: Hold on. I don't see that in my packet.

23 THE COURT: A defendant in criminal action is presumed
24 to be innocent.

25 MR. GIORDANI: Oh, yeah.

1 MR. STORMS: It's just straight from the statute.
2 MR. GIORDANI: Yeah. I mean --
3 THE COURT: It we've got it.
4 All right. Every person charged. I think this one we've
5 already got in the second-degree murder instruction that we've
6 added. Because it's saying if there's two or more degrees, we've
7 already go that. We added the second-degree murder.
8 MR. GIORDANI: You added that already.
9 THE COURT: Yeah.
10 MR. GIORDANI: Yeah. I agree.
11 THE COURT: I don't know that this adds anything
12 beyond that. And then that's it. Right?
13 MR. GIORDANI: Yeah, but we need to go back --
14 MR. STORMS: Yes.
15 MR. GIORDANI: -- to the issue that you tabled.
16 THE COURT: Right. Let's go through and number them,
17 and when we get to the robbery instruction, I'll make a decision.
18 Okay. Does the State like the order they're in?
19 MR. GIORDANI: Yes.
20 THE COURT: All right. And we're adding -- I've agreed to
21 add the first degree, if it's not, you've got to give him the benefit
22 of the doubt on the murder.
23 I've added the evidence of flight alone.
24 MR. STORMS: The agreement among two or more
25 persons, the very first one. The direct and circumstantial

1 evidence.

2 THE COURT: Yeah. I'm adding that. Okay. So, okay.

3 Number 1. It is my duty.

4 2. If in these instructions.

5 3. An indictment is but.

6 4. And now we go into the substantive instructions.

7 4. [Sic] Conspiracy is.

8 5. It is not necessary.

9 6. Each member of a criminal conspiracy.

10 7. Evidence that a person.

11 8. Agreement among.

12 MR. GIORDANI: Wait. 8 is the proposed defense.

13 THE COURT: It's in there. Agreement among two or
14 more persons is an essential --

15 MR. STORMS: That's 8 now?

16 MR. GIORDANI: Got it. Okay.

17 MR. STORMS: Okay.

18 THE COURT: 9. When two or more persons.

19 10. Wherever there is slight evidence.

20 11 is: A defendant cannot be criminally liable.

21 While a guilty verdict must be.

22 MR. GIORDANI: So robbery is --

23 THE COURT: 13. Robbery is the unlawful taking.

24 14. You're instructed that.

25 Okay. So --

1 MR. STORMS: Judge, were you wanting to do the
2 robbery --

3 THE COURT: That's what I'm looking at.

4 MR. STORMS: This note that that Instruction 11 does --
5 also has a similar concept that would be good to have it in this
6 area of the instructions.

7 THE COURT: I'm just looking ahead in the State's packet
8 to see what they've got on this.

9 So this was where I was considering putting in:

10 Robbery is a general intent crime, however, in order to
11 find the defendant guilty for robbery under a conspiracy and/or
12 an aiding and abetting theory of liability, the State must prove
13 beyond a reasonable doubt that the defendant had the specific
14 intent to perpetrate or attempt to perpetrate a robbery.

15 MR. GIORDANI: This is the problem. With Instruction 6,
16 it says:

17 A conspirator is also legally responsible for a general
18 intent crime that follows as one of the reasonably foreseeable
19 consequences of the object of the conspiracy, even if it was not
20 intended as part of the original plan and even if he was not
21 present at the time of the commission.

22 So --

23 THE COURT: Right. This is --

24 MR. GIORDANI: -- I understand where you're going with
25 that, but --

1 THE COURT: Right.

2 MR. GIORDANI: -- it's going to then confuse and
3 completely undermine Instruction Number 6.

4 MR. STORMS: And then Instruction 11 says:

5 A defendant cannot be criminally responsible under an
6 aiding or abetting theory of murder for the first degree for acts
7 committed by an accomplice unless the defendant also had:

8 1. The willful deliberate, and premeditation, intention to
9 kill, and/or

10 2. The specific intent to commit the robbery and the
11 killing was a reasonably foreseeable consequence of the crime.

12 MR. GIORDANI: Right. So it's already included in two
13 different places.

14 THE COURT: Yeah, that was one we weren't going to
15 give. And I was considering adding this robbery one.

16 MR. STORMS: I the -- this is the -- 11 is the State's
17 instruction. I mean, you could add this -- add our instruction there
18 into that one or right behind it.

19 THE COURT: Well, what Mr. Giordani is saying is it's
20 wrong, because if you intend to commit, say, some other crime,
21 but the robbery's a foreseeable outcome --

22 MR. GIORDANI: Yeah. Like, if they intend to commit a
23 burglary --

24 THE COURT: Residential burglary --

25 MR. GIORDANI: Right.

1 THE COURT: -- let's just say.

2 MR. STORMS: But, I mean, the --

3 MR. GIORDANI: Someone --

4 MR. STORMS: Aren't the instructions tailored to the case
5 itself? I mean, that's not the evidence in this case; why would
6 that -- how would that be confusing to a jury? It's confusing to the
7 jury to interject some legal theory that has nothing to do with
8 evidence of the case. I mean, their case has always been, Hey,
9 this is a conspiracy to commit robbery, this is not an accident, this
10 is planned.

11 To say that having this foreseeable consequence
12 language, not having that would be confusing is really the
13 opposite of the case, because the case is, is that their theory is
14 that this is a planned robbery. So let's make it clear what they
15 need to show to establish that under a conspiracy liability.

16 MR. GIORDANI: No, but this is wrong. This proposed
17 instruction is wrong. The State does not need to prove beyond a
18 reasonable doubt that the defendant had a specific intent to
19 perpetrate a robbery in order to prove him guilty under a
20 conspiracy or aiding and abetting theory. It's not accurate.

21 THE COURT: It's --

22 MR. GIORDANI: We have to --

23 THE COURT: My -- in this case, you do, because those
24 are the facts. However, I agree with Mr. Giordani that it's kind of
25 generally a misstatement of the law, because they're -- say they

1 wanted to commit some other, I don't know --

2 MR. STORMS: Yeah. If we were talking about some
3 other case --

4 THE COURT: -- a larceny --

5 MR. STORMS: Sure.

6 THE COURT: -- from the person, would that --

7 MR. GIORDANI: I think they might -- I think they wanted
8 what was in the car, frankly. Not -- but --

9 THE COURT: Right.

10 MR. GIORDANI: I just think it's misleading, it's covered
11 by other instructions, and it could --

12 THE COURT: So say their plan was to commit a larceny
13 from the person. Would it then -- right? This would be wrong.

14 MR. STORMS: It wouldn't be robbery, then.

15 THE COURT: Well, but that was --

16 MR. STORMS: It wouldn't be under felony murder.

17 THE COURT: That was foreseeable, that it could turn into
18 a robbery, like they hoped it wouldn't. But I don't know.

19 I think you're right in this instant, but I think it's sort of
20 an -- kind of an incorrect statement. So I'm not going to give it.

21 Having said that, I've written all over your instructions.
22 So can you provide clean ones to be made a court's exhibit?

23 MR. STORMS: Sure. I've e-mailed --

24 THE COURT: Because I've been writing on these.

25 Actually, I think we have -- my law clerk can print it out.

1 MR. STORMS: Yes.

2 THE COURT: Yeah, I've been writing on these as we've
3 been going. Okay. So I'm not going to give it. I think we've made
4 the record.

5 13 was robbery. 13 -- okay.

6 15 now is deadly weapon means.

7 MR. GIORDANI: And we didn't add on here a firearm is a
8 deadly weapon under Nevada law, which is usually the last
9 sentence on it. So I --

10 THE COURT: Do you want me to add a firearm is a
11 deadly weapon?

12 MR. GIORDANI: Yeah, I apologize.

13 THE COURT: Any objection?

14 MR. STORMS: That's the law.

15 THE COURT: I don't know why we just don't give an
16 instruction a firearm is a deadly weapon. Why do we have to go
17 through all this? It has to be dangerous.

18 MR. STORMS: I think I've seen that in other cases where
19 that's just all it is. I mean --

20 THE COURT: Right, I know. All right. So that's 15.

21 16. The State is not required to recover.

22 17. In this case.

23 And then let me know where you want this benefit of the
24 doubt instruction.

25 18. Murder is the -- wait. Oops. Yeah, 18, murder is the

1 unlawful killing.

2 19. Malice aforethought.

3 20. Express malice.

4 21. Murder of the first degree.

5 22. The law does not undertake.

6 23. Felony murder.

7 24. All murder which is not murder in the first degree.

8 MR. STORMS: Can we do our instruction as 25, and then
9 the next -- right after this: All murder which is not murder of the
10 first degree is murder of the second degree?

11 THE COURT: Don't we already have that?

12 If you are convinced beyond a reasonable doubt that the
13 crime of murder has been committed by the defendant, but
14 you have a reasonable doubt whether such murder --

15 MR. GIORDANI: Yes.

16 THE COURT: -- was of the first or of the second degree,
17 you musts give the defendant the benefit of that doubt and
18 return a verdict of murder of the second degree?

19 MR. GIORDANI: Correct. That's included in our
20 already 25.

21 THE COURT: I think we've already got this.

22 MR. GIORDANI: Yeah.

23 THE COURT: I didn't see it before, but I think we already
24 have it.

25 MR. GIORDANI: It's the entire last paragraph of 25.

1 MR. STORMS: Yeah. Again, this is just -- it's our defense
2 theory. We have the right to propose instructions that highlight
3 the law that we find important we'll argue with. And that's why
4 we ask this to stand alone.

5 THE COURT: Okay. I think it says exactly the same thing.

6 MR. GIORDANI: Yeah, I -- I mean, I understand they want
7 to highlight it, but it's not appropriate to duplicate an instruction
8 twice.

9 THE COURT: I don't see that -- I mean, I think it's the
10 same thing. So --

11 MR. STORMS: I mean, one of the instructions say if you
12 see things repeated, don't -- you know, don't give -- I mean,
13 there's not --

14 THE COURT: Right. Oh, I'm not -- I don't have a problem
15 with that. I just don't -- I think it says the exact same thing. So I
16 think it's included in 25, which is:

17 You are instructed that if you find.

18 26. Although your verdict must be unanimous.

19 27. You are instructed that if you find.

20 28. To constitute the crime charged.

21 29. The defendant's presumed innocent.

22 30. You are here to determine.

23 They have their accomplice one.

24 MR. GIORDANI: Yeah, we --

25 THE COURT: I'm going to take that out.

1 MR. GIORDANI: Yes.

2 THE COURT: 31. The evidence which you are to
3 consider.

4 We have the direct and circumstantial one. But you want
5 me to add --

6 MR. STORMS: Yes. The one that's -- that mirrors what
7 the Court instructs at the beginning of the case. It's easier for
8 people to grasp, they've heard it before. It allows them to digest
9 this concept better.

10 THE COURT: I'm going to -- so you would rather have it
11 exactly the way I'd previously done it?

12 MR. STORMS: I would ask for them both, just -- this is an
13 important issue in this case, direct and circumstantial.

14 THE COURT: Okay. I'll just give a second one.

15 MR. STORMS: Thank you.

16 THE COURT: 32 is the redundant there are two kinds of
17 evidence. All right.

18 33. The flight of a person.

19 And then I was going to add: Evidence of flight alone.

20 MR. GIORDANI: I thought --

21 THE COURT: Oh, okay.

22 MR. GIORDANI: It was already: The flight of a person
23 after the commission --

24 THE COURT: To establish premeditation or guilt.

25 MR. GIORDANI: Correct.

1 THE COURT: I would take out the however, put a period,
2 and say: If flight is proved, it is circumstantial evidence in
3 determine guilt or innocence.

4 Or, if you like: In determining whether or not the
5 defendant is guilty or not guilty.

6 MR. STORMS: I would prefer the latter.

7 THE COURT: Right.

8 MR. GIORDANI: No objection.

9 THE COURT: Okay. And then, let's see, 34. The
10 credibility or believability.

11 35 is the expert witness instruction.

12 36 doesn't apply. That's the constitutional right one.

13 MR. STORMS: Yes.

14 THE COURT: 36 is although you are to consider.

15 37. In your deliberation.

16 38. During the course of this trial.

17 39. When you retire.

18 40. If, during your deliberations.

19 And 41. Now you will listen.

20 And then are you -- any objection to the verdict form?

21 [Pause in proceedings.]

22 THE COURT: All right. That's it on the jury instructions,
23 right? Are you fine with the verdict form?

24 MR. STORMS: I believe so, Your Honor. Let me just
25 send this quickly to my appellate people to make sure I didn't

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mess up.

THE COURT: Okay.

MR. STORMS: I don't think I did, but --

THE COURT: And then --

MR. STORMS: -- I just want to double check that.

THE COURT: -- we're going to -- if anyone needs to use the restroom, do it now, because we're not going to take a break for maybe --

MR. STORMS: Can I --

THE COURT: And then Robin's going to set up the equipment.

MR. GIORDANI: Okay.

MR. STORMS: And then can we -- on the record for -- you know, we've already made our arguments about this text message information coming in.

THE COURT: Right.

MR. STORMS: About the State's reopening their case. But I, you know, objecting to it coming in under the authentication grounds in *Rodriguez*, grounds that we've already argued about before, just to make that clear on the record, that we believe we would -- that this is hearsay, that it is not admissible under any exception, that they haven't authenticated it, that *Rodriguez* would say they need to in order to introduce it into evidence.

MS. TRUJILLO: And there's not an appropriate

1 foundation.

2 THE COURT: Well, I don't know what foundation they're
3 going to be -- I mean, we'll see what they present. And you can
4 make an objection if don't authenticate the records or whatever.

5 MR. STORMS: Okay.

6 THE COURT: I don't know what they're going to put on.

7 In terms of, you know, hearsay, okay, it's her doing a
8 search, so we don't know what's in her mind. But that is
9 circumstantial evidence that somebody gave her information that
10 there had been a murder that occurred. Obviously, we don't care
11 what's in the articles, the point is the search. So they're not --
12 that's not being offered for any kind of truth of anything. It's just
13 the fact she did a search. Again, we don't know what was in her
14 mind, but a reasonable inference is somebody told her that a
15 murder had happened, presumably Mr. Brown. And -- or said
16 something and now she's worried, has a murder happened? Is --
17 you know, and she's trying to figure out what's on the news and
18 find out, do they have a suspect? You know, what's going on
19 here? That's when I think she'd doing it. But, you know, that's an
20 inference.

21 And so objection's overruled. Again, if anyone -- use the
22 restroom now so that we can go straight through.

23 [Court recessed at 1:11 p.m., until 1:22 p.m.]

24 [In the presence of the jury.]

25 THE COURT: All right. Court is now back in session. The

1 record should reflect the presence of the State through the deputy
2 district attorneys, the presence of the defendant, Mr. Brown, along
3 with his counsel, the officers of the court, and the ladies and
4 gentlemen of the jury.

5 Ms. Trujillo, Mr. Storms?

6 MS. TRUJILLO: The defense --

7 THE COURT: Any additional evidence for the defense?

8 MS. TRUJILLO: No, Judge. The defense rests at this
9 time.

10 THE COURT: All right. Thank you.

11 State, the defense has rested. Does the State have any
12 rebuttal evidence?

13 MR. GIORDANI: Yes, briefly, Your Honor.

14 THE COURT: All right.

15 MR. GIORDANI: And the State would call Damon
16 Barringer via BlueJeans.

17 THE COURT: Okay. And he is in another state; is that
18 correct?

19 MR. GIORDANI: Correct. California, sir.

20 MR. BARRINGER: Yes, sir.

21 THE COURT: All right. Sir, can you hear me? This is the
22 judge speaking.

23 MR. BARRINGER: Yes, Your Honor.

24 THE COURT: Okay. Would you please rise and raise
25 your right hand, and our court clerk will administer the oath to

1 you.

2 **DAMON BARRINGER,**

3 [having been called as a rebuttal witness and first duly sworn,
4 testified via BlueJeans as follows:]

5 THE COURT CLERK: Thank you. Please be seated. State
6 and spell your first and last name for the record.

7 THE WITNESS: Damon Barringer, D-A-M-O-N,
8 B-A-R-R-I-N-G-E-R.

9 THE COURT: All right. Thank you, sir.

10 Mr. Giordani, you may proceed.

11 MR. GIORDANI: Thank you.

12 **DIRECT EXAMINATION**

13 BY MR. GIORDANI:

14 Q And, sir, back in May of 2017, were you employed
15 with the Las Vegas Metropolitan Police Department's digital
16 forensics lab?

17 A Yes, sir.

18 Q Have you since left Metro and gone onto a private
19 work?

20 A Yes, sir.

21 Q Back when you were a -- with the digital forensics lab,
22 were you a detective?

23 A Yes.

24 Q How long were you in the digital forensics lab in
25 total?

1 A Approximately two years.

2 Q Within the digital forensics lab, did you conduct
3 analyses on digital investigation, such as cell phones and
4 computers?

5 A Yes, sir.

6 Q And back in May of 2017, were you tasked with
7 conducting a digital forensic download of a phone associated
8 with a person by the name of Angelisa Ryder?

9 A Yes, sir.

10 Q And was that under Event 1702214563?

11 A Yes, sir.

12 Q That digital forensics exam that you conducted on the
13 phone, was it done using the Cellebrite software that was -- is
14 typically used in the DFL lab?

15 A That's correct.

16 Q And I want to show you a few exhibits. This morning,
17 did you and I Facetime and did I show you and send to you
18 several exhibits that I'm about to show you now?

19 A Yes.

20 Q Can you see me, sir?

21 THE COURT: If you stand --

22 THE COURT CLERK: Stand by the podium.

23 THE WITNESS: Partially. If you --

24 THE COURT: If you stand at that podium, I think he can
25 be seen, you can be seen. But it's maybe the back of you.

1 MR. GIORDANI: Can you see me?

2 THE WITNESS: Now I do.

3 BY MR. GIORDANI:

4 Q Okay. I'm holding what's marked as Proposed
5 Exhibit 309; can you see the disc?

6 A Yes, sir.

7 Q And did you and I open this disc via Facetime on a
8 laptop and did you confirm the contents of this disc?

9 A That is correct.

10 Q And the contents of this disc, is that your entire digital
11 forensic examination on that phone that I have referenced
12 previously?

13 A Yes, it is.

14 Q And when we removed this disc just to confirm, did I
15 ask you to pick a shape, and then did I -- you picked a square?

16 A Yes, that is correct.

17 Q And then did I draw a purple square on this disc in
18 order to make sure we're talking about the same thing here?

19 A Yes, you did.

20 Q That being the entirety of the contents, did you also
21 conduct what are referred to as extraction reports?

22 A Yes, sir.

23 Q Did we go through that same process with the little
24 purple square and walking through all these exhibits with
25 these paper documents that represent your extractions?

1 A That is correct.

2 Q Okay. I'm showing you now State's 310; does this
3 appear to be the -- kind of the cover page of your extraction
4 report printed out on paper?

5 A It's pretty far away, but I believe it is, sir.

6 Q Okay.

7 MR. GIORDANI: Can you keep it locked if I move up
8 here?

9 Q Is this getting closer?

10 THE COURT RECORDER: No. I can lock it on a --

11 THE WITNESS: I believe, move to your right.

12 THE COURT: Oh, you know what? If he sat at the
13 witness stand?

14 THE COURT RECORDER: That was actually --

15 THE COURT: Okay. Sit at the -- is that --

16 THE COURT RECORDER: Yes.

17 THE COURT: Any objection?

18 The reason is because the camera shows a really clear
19 picture of the person at the witness stand as opposed to standing
20 at the podium, and it's a long shot of the --

21 THE COURT RECORDER: Okay.

22 THE COURT: And so maybe just for the purposes of
23 showing exhibits, I'm going to ask Mr. Giordani to sit up there.
24 And then when he's done showing the exhibits, I would like him
25 to return to the podium. Is that fine?

1 MR. STORMS: That's fine, Your Honor, for those
2 purposes.

3 THE COURT: Okay. And then, obviously, the defense
4 can do the same thing.

5 MR. GIORDANI: Can you see this?

6 THE WITNESS: I apologize. It's difficult to see. I see the
7 badge. But I can't see the square.

8 MR. GIORDANI: Okay.

9 THE WITNESS: It's just too far away.

10 MR. GIORDANI: Okay. And that's why we did the
11 square. So I'm going to ask if the Court can represent there's a
12 purple square on the top of that.

13 THE COURT: All right. I do see a purple square.

14 MR. GIORDANI: And these have been shown to the
15 defense.

16 THE COURT: And I accept Mr. Giordani's representations
17 as an officer of the court, that he made a purple square. Is that
18 acceptable with the defense?

19 MS. TRUJILLO: Yes, Judge.

20 MR. GIORDANI: Thank you.

21 THE COURT: All right.

22 BY MR. GIORDANI:

23 Q State's 311, did you do a extract on the phone where
24 you tagged certain items that you searched for and found?

25 A That is correct.

1 Q And this is a six-page document we went through
2 earlier, did the little purple square on the top; you remember
3 that?

4 A Yes, I do.

5 Q This particular tagged extract represents searched
6 items and there are five of them, and then web history that
7 goes on for the next five pages; is that accurate?

8 A Yes, sir.

9 THE COURT: Yeah, he's -- I -- and I think, probably, you'll
10 have to return that to the podium. I don't think he can see the
11 exhibits any better --

12 MR. GIORDANI: Okay.

13 THE COURT: -- from there. I thought maybe he could.
14 He can see your face very well, I'm sure. But.

15 BY MR. GIORDANI:

16 Q There are -- on those web history entries, there are
17 links to an --

18 MR. STORMS: Judge, can we approach?

19 THE COURT: Sure.

20 [Off-record bench conference.]

21 BY MR. GIORDANI:

22 Q Sorry about that, sir.

23 These next two exhibits I'm going to show you we're
24 not going to talk about, I'm just going to make sure that these
25 are what we looked at. And they're State's 312 and 313, with

1 the purple square on them. Do those look accurate?

2 A Yes, sir.

3 Q Okay. In addition, you conducted an extract on -- an
4 extraction report on searched items; do you recall that?

5 A Yes, sir.

6 Q And is that a nine-page document we went through,
7 did the same thing with the little purple square this morning?

8 A That is correct.

9 Q You also conducted a -- an extract on the SMS
10 messages associated with that phone that we just discussed;
11 is that right?

12 A That is correct.

13 Q And that's 222 pages of SMS messages?

14 A That is correct.

15 Q And we went through and did the little purple square
16 again?

17 A Correct, we did.

18 MR. GIORDANI: 315 for the record.

19 Q The -- when you conduct a DFL examination on a
20 phone, you're able to access and determine the phone number
21 associated with that phone, correct?

22 A That is correct.

23 Q And in this particular case, the phone we've been
24 referencing had phone number 678-760-3664?

25 A That is correct.

1 MR. GIORDANI: And, Your Honor, at this time with this
2 witness, I'm going to move to admit 309, 310, 311, and 314.

3 MR. STORMS: Can we approach, Your Honor?

4 THE COURT: Sure.

5 [Off-record bench conference.]

6 MR. GIORDANI: So we reserve until the next?

7 THE COURT: Right. The Court will reserve until another
8 witness testifies regarding those items.

9 Any additional questions for this witness, Mr. Giordani?

10 MR. GIORDANI: No, Your Honor.

11 Thank you, sir.

12 THE COURT: All right. Cross?

13 **CROSS-EXAMINATION**

14 BY MR. STORMS:

15 Q Mr. Barringer, how are you?

16 A Good, sir. Thank you.

17 Q I just have a couple of questions for you, okay?

18 A Yes, sir.

19 Q When you're talking about searched items that you
20 pull from a phone, it's fair to say these are items -- these are
21 things searched in an app like Chrome?

22 A Correct. Typically, by a browser of some sort.

23 Q So it can be a web browser, it can be also like a
24 Google Play store?

25 A Correct.

1 Q So these are searches conducted via Internet via the
2 phone; is that fair to say?

3 A The ones that were tagged I believe were mostly
4 Chrome.

5 Q So whenever -- but your report also has a section
6 that's strictly searches, correct?

7 A Correct.

8 Q And the searched items can be items searched on
9 something like Chrome or other Internet applications?

10 A That is correct.

11 Q And then when you talk about web history items,
12 those are simply websites that were looked at?

13 A That is correct.

14 Q So web history is a web site looked at, and search
15 history is something manually put into something like Google
16 to pull up things like web pages?

17 A Correct.

18 Q And these tagged items are things that you culled and
19 put in a separate folder that you thought might be of
20 evidentiary value?

21 A Not necessarily put into a separate folder, but they
22 were just tagged.

23 Q Okay. But they're organized in a separate tagged
24 folder from the -- from wherever source they come from from
25 the data; is that fair to say?

1 A Correct.

2 MR. STORMS: Court's indulgence.

3 THE COURT: Uh-huh.

4 BY MR. STORMS:

5 Q And you were tasked with looking at information from
6 a homicide investigation; isn't that right?

7 A That phone, yes, sir.

8 Q And that was -- and when you do that, you're given
9 some -- you're given direction by a search warrant that's
10 issued?

11 A Correct.

12 Q And then by detective to -- who you might speak to
13 about what they're looking for in their case?

14 A Yes.

15 Q And in this instance, you were looking for information
16 during a set period of time; isn't that right?

17 A That is correct.

18 Q And do you know those dates off the top of your
19 head?

20 A No, I don't recall, sir.

21 MR. STORMS: Court's indulgence.

22 Q I'm looking here at a copy of the report you authored.
23 And you would agree with me that you were looking for
24 information between the dates of February 21st, 2017, and
25 March 20th, 2017?

1 A That sounds correct.

2 Q Thank you.

3 MR. STORMS: No more questions.

4 THE COURT: Any redirect?

5 **REDIRECT EXAMINATION**

6 BY MR. GIORDANI:

7 Q The download you did was of the entire phone,
8 correct?

9 A Yes, sir.

10 Q The disc?

11 A Correct.

12 Q Okay. The extracts are separate? I mean, just tailored
13 information, but the entirety of the information from the
14 phone is on the disc?

15 A The entirety of the extracted data is on the disc, yes.

16 Q Thank you, sir.

17 THE COURT: Anything else from the defense?

18 MR. STORMS: No, Your Honor.

19 THE COURT: Thank you.

20 Any juror questions for this witness? All right.

21 Sir, I see no additional -- I'm sorry, is there?

22 MR. GIORDANI: No.

23 UNIDENTIFIED SPEAKER: No, that was me, sorry.

24 THE COURT: Oh, okay.

25 UNIDENTIFIED SPEAKER: I was just clearing my throat.

1 THE COURT: All right. Sir, thank you for your testimony.
2 Please don't discuss your testimony with anyone else who may be
3 a witness in this case. And you are excused. Thank you.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: I'll disconnect you in a moment. There you
6 go.

7 All right. The State may call its next witness.

8 MR. GIORDANI: Ryan Jaeger.

9 **RYAN JAEGER,**
10 [having been called as a rebuttal witness and first duly sworn,
11 testified as follows:]

12 THE COURT CLERK: Thank you. Please be seated. State
13 and spell your first and last name for the record.

14 THE WITNESS: My first name is Ryan, R-Y-A-N, last
15 name of Jaeger, J-A-E-G-E-R.

16 THE COURT: All right. Thank you.

17 You may proceed.

18 MR. GIORDANI: Thank you.

19 **DIRECT EXAMINATION**

20 BY MR. GIORDANI:

21 Q And what do you do for a living, sir?

22 A Currently, I'm a detective with the Las Vegas
23 Metropolitan Police Department homicide section.

24 Q How long have you been at the homicide section?

25 A I've been with the homicide section three years.

1 Q And where were you before homicide?

2 A Before homicide, I was in the force investigation
3 section. We were responsible for the criminal investigation
4 into all officer-involved shootings.

5 Q Prior to that?

6 A Prior to that I spent eight years in the sex crimes
7 detail.

8 Q Been with Metro a significant amount of time?

9 A 23 years.

10 Q Were you tasked with assisting in the investigation of
11 a homicide that occurred on February 21st, 2017?

12 A I was.

13 Q Under Event Number 1702214563?

14 A That's correct.

15 Q Was detectives -- were Detectives Darren Cook and
16 Mitchell Dosch the lead investigators on the case?

17 A They were.

18 Q But in a homicide, fair to say that multiple other
19 homicide detectives will assist in the investigation?

20 A That's correct.

21 Q Did you respond to the execution of a search warrant,
22 after SWAT executed it, at 2520 Sierra Bello, Unit 203 -- I'm
23 sorry, 103, on March 20th of 2017?

24 A Yes, I was.

25 Q Did you come into contact with a woman by the name

1 of Angelisa Ryder on that day?

2 A I did.

3 Q And did you speak to her and impound her phone
4 number -- I'm sorry, her phone, physical phone, with phone
5 number 678-760-3664?

6 A I collected the phone, yes.

7 Q One other question for you, a bit of a different topic.
8 Are you familiar with when the very first 911 call came out on
9 this case?

10 A Off the top of my head, I can't recall it. But if we look
11 at -- we have what's called a computer automated dispatch, or
12 the CAD, every time a 911 call comes in, it's automatically
13 recorded. And it would be posted in the CAD records.

14 Q Perfect. Would looking that refresh your recollection?

15 A Yes. So per the CAD records, the time of the 911 call
16 is 2247 hours, or 10:47.

17 Q 10:47 p.m.?

18 A P.m.

19 Q On February 21st, 2017?

20 A That's correct.

21 Q Thank you, sir.

22 MR. GIORDANI: And I'll pass the witness at this time.

23 THE COURT: All right. Cross?

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25 ///

1 **CROSS-EXAMINATION**

2 BY MR. STORMS:

3 Q Detective Jaeger, is this a situation where you
4 impounded this phone at the scene independent of the
5 forensic --

6 A I don't think I impounded the phone. I think I
7 collected it from Ms. Ryder and would have surrendered it to
8 the case agents. And the case agent -- the standard is we put
9 them in secure storage at our office before they're surrendered
10 to the digital forensics detail.

11 Q And you say case agent, what do you mean by that?

12 A So the case agent is the lead detective or the case
13 manager for the case, which, in this case, would be Darren
14 Cook.

15 Q So you took the phone and did what with it?

16 A I would have collected the phone from Ms. Ryder and
17 then gave it to Detective Cook.

18 Q Did you fill out any reports to that effect?

19 A I did not.

20 Q So your testimony is you took the phone from her
21 and gave it to Detective Cook?

22 A That's correct.

23 Q So you didn't impound this phone in any way?

24 A No.

25 Q You didn't create any chain of custody documents for

1 this phone?

2 A I did not.

3 Q You just handed it to the detective that was the lead
4 detective on the case?

5 A That's correct.

6 Q So you wouldn't know that the chain of custody
7 documents that the people at the computer forensics labs may
8 or may not have received -- you don't know what those
9 contained or not?

10 A I don't get your question.

11 Q Do you -- have you reviewed the chain of custody
12 documents related to this phone?

13 A I have not.

14 Q So you wouldn't know what they say whatsoever?

15 A I would not.

16 Q Thank you.

17 THE COURT: Any redirect?

18 MR. GIORDANI: Yeah, briefly, please.

19 **REDIRECT EXAMINATION**

20 BY MR. GIORDANI:

21 Q So to be clear, you physically took the phone that I
22 just referenced from the person by the name Angelisa Ryder?

23 A That's correct.

24 Q You then turned it over to a -- the leading homicide
25 detective in order to have them do what they're going to do

1 with it at the lab?

2 A That's correct.

3 Q Okay. That's common practice, right?

4 A So when we serve a search warrant, there's some
5 items that our CSAs will impound. But when the CSAs
6 impound evidence, there's a several-day lag. They have to be
7 all impounded at the crime scene analyst's office. From there,
8 they have to wait, be transported down to the evidence vault,
9 and then they have to be issued what's called an Ace number
10 of evidence ID number.

11 To speed up that process, we take the phones and we
12 put them in secure storage at our office. And then they are
13 hand-delivered to the CFL detectives.

14 Q Understood. So when Mr. Storms is referencing
15 chain of custody reports, do you know what he's referring to?

16 A There wouldn't be a chain of custody report. I think
17 he's -- what he's referring to is a property report.

18 Q Okay.

19 A Or evidence impound report.

20 MR. GIORDANI: May I approach the witness?

21 THE COURT: Yes.

22 BY MR. GIORDANI:

23 Q I'm showing you a property report with this event
24 number on the top; does that look familiar to you?

25 A Yes, this is a property report.

1 Q Okay. And you see towards the bottom there the
2 phone with the phone number that I referenced previously?

3 A That's correct. It's Package Number 4, Item
4 Number 4.

5 Q Okay. And then the event number, the address that
6 the search warrant was executed on, all of that is consistent
7 throughout this crime?

8 A That's correct.

9 Q No reason for you to think that this phone went
10 anywhere else other than where the paper says it went?

11 A That's correct.

12 Q Okay. All right. Thank you, sir.

13 MR. GIORDANI: I'll pass the witness.

14 THE COURT: All right. Anything else from the defense?

15 MR. STORMS: No, thank you.

16 THE COURT: All right. Any juror questions for this
17 witness? All right.

18 Detective, I see no additional questions. Thank you for
19 your testimony. Please don't discuss your testimony with anyone
20 else who may be a witness in this case.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Thank you. You are excused.

23 MR. GIORDANI: Judge, we have one more quick witness,
24 but can we approach just on scheduling?

25 THE COURT: Yes.

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[Off-record bench conference.]

MR. GIORDANI: With that, the State would call Mike Mangione, Michael Mangione.

And while the witness is coming in, I forgot to ask to move those exhibits in to evidence. And that would be 309, 310, 314, 311.

MICHAEL MANGIONE,

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

THE COURT CLERK: Thank you. Please be seated. State and spell your first and last name for the record.

THE WITNESS: It's Michael Mangione, M-I-C-H-A-E-L, M-A-N-G-I-O-N-E.

MR. GIORDANI: I'm sorry, before we begin, Your Honor, after the last witness testified, I failed to seek for the admission of 310, 314, and 311.

THE COURT: All right. Subject to the record, those will be admitted.

[State's Exhibit Numbers 310, 311, and 314 admitted.]

DIRECT EXAMINATION

BY MR. GIORDANI:

Q Good afternoon, sir?

A Good afternoon.

Q Thank you for coming back on short notice. I appreciate it.

1 A No problem.

2 Q Did you have an opportunity this morning to review
3 several proposed exhibits with me over Facetime?

4 A Yes.

5 Q I'm going to start with 310; recognize that?

6 A Yes.

7 Q And do you recognize the purple square drawn on
8 there?

9 A Correct.

10 Q 314, you recognize that along with the purple square?

11 A Yes.

12 Q 311, do you recognize that along with the purple
13 square?

14 A Yes.

15 Q 315, do you recognize that along with the purple
16 square?

17 A Yes.

18 Q 312 and 313, do you recognize those along with the
19 purple squares?

20 A Yes.

21 Q Okay. Now, you've previously testified in this case
22 that you're a detective with the -- or you were a detective with
23 the digital forensics lab, and I believe now you're a
24 supervisor?

25 A Correct.

1 Q Okay. Did you have an opportunity this morning to
2 review these contents of the digital forensics examination
3 conducted by Damon Barringer back in 2017?

4 A Yes.

5 Q And did we go through these all together as I've
6 referenced the exhibits numbers at the stand?

7 A Yes.

8 Q Okay. After reviewing all these exhibits, would you
9 agree with me that the phone associated with Angelisa Ryder
10 has a phone number 678-760-3664?

11 A Yes.

12 Q Okay. I want to start with State's 310; do you
13 recognize that, sir?

14 A Yes.

15 Q And is this four-page document, essentially, the
16 extraction report on that phone?

17 A Yes.

18 Q This has general parameters of what's included in the
19 extract?

20 A Yes.

21 Q On page 4, for example, I'll use data files; you see
22 that?

23 A Yes.

24 Q And then over here, the 7079, what does that mean?

25 A That's the number of data files that categorize.

1 Q Included in the report?

2 A Yes.

3 Q And then next to it, 1796 deleted; what does that
4 mean?

5 A That's how many it detected were deleted files.

6 Q Okay. It detected that it had been deleted from the
7 phone?

8 A Yes.

9 Q I want to start with 311; does this appear to be an
10 extract report that's nine pages with Searched Items?

11 A Yes.

12 Q What does Searched Items mean, sir?

13 A Searched items is a compiled list of different places
14 that you can search on the device. So, like, for example, as
15 you saw there, it said the source of several of those searches
16 was Google Chrome. So what the program does is it'll -- it
17 groups together any Internet searches that it found on the
18 device into one category. So instead of looking at a gigantic
19 thing of web history, it pulls that history, looks for search
20 engines that it's -- that are known, and it puts them over there,
21 so you can quickly go through and see what kind of searching
22 was conducted on the device.

23 Q Showing you page 3 of that same exhibit; see where
24 it says Page 3 of 9 there?

25 A Yes.

1 Q And I'm going down to Entry 41; you see that, sir?

2 A Can you push it up a little bit? There you go. Yes.

3 Q Entry 41, February 18th, 2017; do you see that?

4 A Yes.

5 Q 9:12 a.m., and this is already adjusted away from

6 UTC, correct?

7 A Yes. Are we talking about 42?

8 Q Yes. Did I say something else?

9 A You said 41.

10 Q I'm sorry. Let's go with 41. February 18th, 2017, 407?

11 A Yes.

12 Q And it's -- says, Play Store?

13 A Correct.

14 Q As opposed to Chrome, what does that mean?

15 A That's the Google Play Store.

16 Q Okay. And then what is this? Is this, like, the content

17 of the search?

18 A Yes. Most likely.

19 Q What do you mean?

20 A That's most likely what was entered into the search

21 bar at the top of the Google Play Store.

22 Q Okay. Next entry, this goes in reverse order, from

23 February 18th, 2017, is February 22nd, 2017, at 9:33 a.m.; is

24 that --

25 A Correct.

1 Q -- accurate?

2 A Yes.

3 Q And does that say: Booking hotel with debit card?

4 A Yes.

5 Q Next entry up, line 39, 9:34 a.m., is that entry:

6 Booking hotel with debit card in Vegas?

7 A Yes.

8 Q Line 38, 2/22/17 at 9:35 a.m.: Hotels that don't require
9 a credit card?

10 A Yes.

11 Q Line 37, 2/22 and 9:35 a.m., Hotels in Las Vegas with
12 no deposit?

13 A Yes.

14 Q 2/22/17, 9:36 a.m., Hotels in Las Vegas with no
15 deposit?

16 A Yes.

17 Q Move on now to State's 311; my horrible purple
18 square up there?

19 A Yeah.

20 Q This is six-page document? Would you agree with
21 that?

22 A Yes.

23 Q Okay. And here in the top left, it says: Tags 21. What
24 does that mean?

25 A So tags are, essentially, items that were located inside

1 of the device that might be of evidentiary value or some kind
2 of relevance to the case. So as the investigators within our lab
3 go through devices, they can -- we call it tagging items. And
4 it, basically, is a quick way to give a overview of what they
5 found when they did their search of the phone to the
6 investigator, who then gets the report.

7 Q Okay. Now, just back up briefly. So we're on the
8 same page here, the very bottom of the page, Line Item 6 says:
9 Web History. Do you see that?

10 A Yes.

11 Q But the first five of these said Searched Items; do you
12 see that?

13 A Yes.

14 Q And this -- oops -- say the first one: Hotels in Las
15 Vegas with no deposit?

16 A Yes.

17 Q That's a mirror of what we just looked at in the last
18 exhibit, correct?

19 A Yes.

20 Q That's actual items that were searched?

21 A Yes.

22 Q As opposed to web history, which is what?

23 A So the difference between what you're looking at up
24 top and down here at the bottom, searches that don't just
25 compile -- the search category within the program doesn't just

1 compile web search history, it also compiles, as you guys saw,
2 the inside of Google -- I'm sorry, not Google -- inside of the
3 Play Store, it's -- there's a search for hangouts. It'll categorize
4 those as being a search. It'll also categorize -- you don't
5 always necessarily have to use a search browser -- I'm sorry,
6 search engine -- when you go into your web browser to do
7 searches. You can actually just type things into the browser
8 and then it'll search with whatever your default search engine
9 is.

10 So the reason those are showing as Chrome searches
11 is those terms were typed in Chrome, not necessarily into
12 Google.

13 Q Got it. So I'm going to draw your attention into
14 Entry 6 here. And since the jury will have these in the back, I
15 want to clarify something. 5/30/17, 2:25, that's when the dump
16 on the phone was done; the search was done where it says,
17 Last visited, correct?

18 A Yes.

19 Q Okay. So the date we're dealing with with this web
20 history is February 22nd, 2017, at 11:06 a.m.?

21 A Yes.

22 Q Okay. And can you see the words there?

23 A Yes.

24 Q Is that big enough for you?

25 A Yes.

1 Q On the site, detectives investigating man's death in
2 northwest Las Vegas?

3 A Yes.

4 Q And that was a web history entry
5 February 22nd, 2017, at 11:06 a.m.?

6 A Yes.

7 Q Going to Entry 7; could you see that?

8 A Yes.

9 Q There's another link to KTNB; is that right?

10 A Yes.

11 Q Through Google?

12 A Correct. That's the result of a Google search.

13 Q Okay. And then it appears there are multiple articles
14 referenced within this one URL entry?

15 A Correct.

16 Q Okay. Going down to -- oh, and again, the date,
17 February 22nd, 2017, 11:18 a.m., correct?

18 A Yes.

19 Q And then going down, we're back to what appears to
20 be the same exact URL entry as the one previously, correct?

21 A Correct.

22 Q Okay. And I want to now show you State's 312
23 and 313; you recognize those?

24 A Yes.

25 Q Okay. This morning, did you check this URL entry on

1 the Internet?

2 A Yes.

3 Q And did what's contained in 312 and 313 pop up as a
4 result?

5 A Yes.

6 MR. GIORDANI: I'd move for the admission of those.

7 THE COURT: Subject to the record, those items will be
8 admitted at this time.

9 MR. GIORDANI: Thank you.

10 MR. STORMS: Thank you.

11 [State's Exhibit Numbers 312 and 313 admitted.]

12 BY MR. GIORDANI:

13 Q All right. So I'm showing you 312. This is a
14 single-page document. Oops, there we go. Big Walker
15 Furniture ad on the top there?

16 A Yes.

17 Q And you can see the web bar, sir?

18 A Yes.

19 Q And is this the same web bar that you entered --

20 MR. STORMS: Judge, I'm going to object at this point.
21 Can we approach?

22 THE COURT: Sure.

23 [Off-record bench conference.]

24 THE COURT: All right. Mr. Giordani, you need to
25 rephrase your question.

1 MR. GIORDANI: Thank you.

2 BY MR. GIORDANI:

3 Q And Mr. Storms is right, I apologize. If you could look
4 at this, I think what I --

5 THE COURT: Are you able to -- it's really small.

6 THE WITNESS: I can see it now.

7 THE COURT: Okay.

8 MR. GIORDANI: You can see that?

9 THE WITNESS: Yes.

10 BY MR. GIORDANI:

11 Q Okay. Going back to the exhibit, I think I asked you
12 about page 2 of 311. I think I asked you about this link here.
13 And let me correct myself. I'm talking about: Homicide
14 Detectives Investigating Man's Death In Northwest Las Vegas.
15 Is this the one that we're about to get into with the article you
16 checked on?

17 A Yes.

18 Q Okay. I apologize. So just for the record, that is the
19 link that you double checked?

20 A Yes.

21 Q And then this is the headline of that article?

22 A Yes.

23 Q Update: Man Identified In Northwest Las Vegas
24 Shooting, posted 11:55 p.m., February 21st, 2017; see that?

25 A Yes.

1 Q That's when it's posted? Is that right?

2 A Yes.

3 Q Okay.

4 A Good.

5 Q And then I'm showing you now State's 313. This is
6 the same kind of cover or headline?

7 A Yes.

8 Q And it has the posted 11:55, February 21st, 2017?

9 A Yes.

10 Q And then there's reference to the crime that, you
11 know, we're here discussing; is that right?

12 A Yes.

13 Q Fair to say there was a whole lot of text messages
14 that we -- 222 pages' worth here?

15 A Yes.

16 Q Okay. I want to draw your attention to some specific
17 dates.

18 MR. GIORDANI: For the record, Your Honor, I
19 referenced -- or I'm going to be referencing pages 75, 79, and 80
20 from this document.

21 Q And you've reviewed these prior to coming in to
22 testify, right?

23 A Yes.

24 Q Showing you State's Proposed 316; does that appear
25 to be page number 80 out of the text message extract from the

1 phone we've been referencing?

2 A Yes.

3 Q Showing you State's 317; does that appear to be
4 page 79 of the text message extract that we've been
5 referencing?

6 A Yes.

7 Q 318, does that appear to be page 75 of the text
8 message extract of what we've been referencing?

9 A Yes.

10 MR. GIORDANI: And I'd move for the admission of
11 those.

12 THE COURT: Subject to the record, those will be
13 admitted.

14 MR. GIORDANI: Thank you.

15 [State's Exhibit Numbers 316 through 318 admitted.]

16 BY MR. GIORDANI:

17 Q Showing you State's 316; just for the record, the far
18 left column shows a line item, and the next column says Sent
19 or Inbox?

20 A Yes.

21 Q Okay. And then this column here that says 2 and then
22 a phone number, Brown, Larry, in red; do you see that?

23 A Yes.

24 Q Does that mean that this phone number is saved as a
25 contact under Brown, Larry?

1 A Yes.

2 Q And then next column, that's the date adjusted away
3 from UTC to our normal time?

4 A Yes.

5 Q And then the content?

6 A Yes.

7 Q On the far right? Okay. So Line Item 1098, the phone
8 number, you'd agree, is 404-808-2233?

9 A Yes.

10 Q Okay. That's to contact Brown, Larry, at 220 –
11 on 2/21/17 at 8:30 p.m.?

12 A Yes.

13 Q It says:
14 You good, babe?

15 A Yes.

16 Q Then moving up to Line Item 1096, that's an inbox,
17 received text, from Brown, Larry, 404-808-2233, on
18 February 21st, 2017, at 8:33 p.m.?

19 A Yes.

20 Q Says: Yes, indeed.

21 A Yes.

22 MS. TRUJILLO: Judge, may we approach?

23 THE COURT: Sure.

24 [Off-record bench conference.]

25 BY MR. GIORDANI:

1 Q All right, sir, let me ask the question again. Were --
2 we were on Line Item 1096. There's an inbox text from Brown,
3 Larry, at the 404 number, 8:33 p.m.: Yes, indeed?

4 A Yes.

5 Q You agree with that? Then there is a 1092 sent text to
6 Brown, Larry, 2/21/17, with -- what is this?

7 A Question marks.

8 Q And that was page 8. So moving to the next page --
9 and these are in reverse order, correct?

10 A Yes.

11 Q So the next page would be page 79. If this is page 80,
12 the next page in order would be 79?

13 A Yes.

14 Q I'm going to go to the bottom, because they move
15 upward, correct? 838, 840, 842?

16 A Yes.

17 Q Oops. Do you agree there?

18 A Yes.

19 Q Okay. You agree there's no other text -- oops --
20 between Angelisa's phone and Brown, Larry, in the contacts
21 until the top one, correct?

22 A Yes.

23 Q So we have this exchange at 8:30 or so previously?
24 The one I was referencing previously?

25 A Yeah, the previous one, yes.

1 Q And then until 5:18 a.m., there's no other text
2 between the two phones, correct?

3 A Correct.

4 Q And at Line 1077, this text is sent to 404-808, Brown,
5 Larry, 5:18 a.m.: You okay? I'm in the telly room right across
6 from Room 303 or 330.

7 A Yes.

8 Q And that's at 5:18 a.m. on February 22nd, 2017?

9 A Yes.

10 Q Showing you State's 318, and you'd agree this is
11 page 75 of 222?

12 A Yes.

13 Q Based upon your review, did the contact saved in the
14 phone for Brown, Larry, change to a new number
15 February 25th, 2017?

16 A Yes.

17 Q And that phone number -- the words are the same,
18 right? Brown, Larry?

19 A Yes.

20 Q And the phone number now is 1-678-412-8290?

21 A Correct.

22 MR. GIORDANI: Before -- I don't have any further
23 questions, but just so I'm clear, we've already admitted 310, 318,
24 317, 316, 314, 313, 312, and 311.

25 THE COURT CLERK: And 309.

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MR. GIORDANI: 311?

THE COURT CLERK: I have 309 and 311.

MR. GIORDANI: And 309. Thank you.

And I'll pass the witness.

THE COURT: Mr. Storms, cross?

MR. STORMS: Thank you.

CROSS-EXAMINATION

BY MR. STORMS:

Q Hello again.

A Hi.

Q So this extraction was not done by you?

A No.

Q This was done by another detective entirely?

A Yes.

Q So you didn't look at this phone itself?

A No.

Q Or do any of the physical extracting?

A No.

Q Or review any of the chain of custody?

A No.

Q Or anything along those lines?

A No.

Q You just reviewed the reports that were written by the other detective?

A Correct.

1 Q And then the contents of the download that you've
2 been speaking about?

3 A Yes.

4 Q Other than that, you didn't have anything to do with
5 this extraction?

6 A That's correct.

7 Q Okay. I wanted to turn your attention to the searched
8 items that you had talked about. Okay. We talked about the
9 searched items being things would be entered into the --
10 words entered into the phone to search under the Internet or
11 Google Store or something to that effect; is that right?

12 A Correct.

13 Q And those are the terms that someone enters into the
14 phone itself?

15 A Yes.

16 Q To get on the Internet and look for something,
17 correct?

18 A Correct. Yep.

19 Q And you also talked about the web history also,
20 correct?

21 A Yes.

22 Q And the web history is a documentation of what
23 websites were looked at?

24 A Yes.

25 Q And we're talking about these search terms here, this

1 is State's 314 that's been previously admitted. You went
2 through this page earlier with the State, correct?

3 A Correct.

4 Q And we looked at the search terms that were entered
5 on February 22nd, 2017?

6 A Yes.

7 Q That's -- the search terms are about booking hotel
8 rooms, correct?

9 A Correct.

10 Q And then -- and those -- all the search terms on
11 the 22nd are with regard to booking hotel rooms; is that fair to
12 say?

13 A Yes.

14 Q On the search term that was entered on
15 February 18th, four days before, was hangouts, right?

16 A I can't see it on there, but --

17 Q Oh, sorry.

18 A Sorry.

19 Q There you go. Is that better?

20 A Yes.

21 Q And then when we look past the 22nd, we look to
22 February 25th, the search term is the word Sprint?

23 A Yes.

24 Q And then again on the 26th, the search term is the
25 word Sprint?

1 A Yes.

2 Q And you've reviewed all the search terms that were
3 entered into this phone before testifying today?

4 A Not all of them.

5 Q You reviewed all of the search terms that were tagged
6 by your fellow detective before testifying today?

7 A Yes.

8 Q Nowhere in these search terms is there a search for
9 the word murder?

10 A Not that I'm aware of.

11 Q Nowhere in these search terms is it searched for the
12 word homicide?

13 A Not that I'm aware of.

14 Q Nowhere in these search terms is there -- are any of
15 the address that -- addresses related to this offense we're here
16 today for searched into the phone?

17 A No.

18 Q So when we look at these web pages that were
19 viewed that were in the extraction report under the tags, you
20 reviewed all of those, correct?

21 A Yes.

22 Q The websites that were reviewed by that phone; is
23 that right?

24 A Correct.

25 Q I'm going to -- then this is State's 311, looking at --

1 here, we can just go to this very top one. This particular web
2 page also had information about products, quarantine, and
3 nutrition rush; is that fair to say?

4 A Yes.

5 Q And then also had information about reports of Las
6 Vegas Valley ranking at the bottom of the list for safety for
7 kids?

8 A Correct.

9 Q And then there's also this web page about a shooting
10 at Lake Mead and Martin Luther King that was looked at?

11 A Correct.

12 Q Again, there's no search of this phone -- by this phone
13 for murder?

14 A No.

15 Q And you don't know who made these searches by
16 looking at what is recorded on the phone in the data, correct?

17 A Correct.

18 Q And you, obviously, don't know who entered it?

19 A No.

20 MR. STORMS: Court's indulgence.

21 Thank you, no more questions.

22 THE COURT: No further questions?

23 MR. GIORDANI: No.

24 THE COURT: All right. Ladies and gentlemen of the jury,
25 do you have any questions for this witness? All right.

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Counsel approach.

[Off-record bench conference.]

THE COURT: All right. Detective, we have several juror questions here.

A juror asks: Does the current news, if you know, on the KTNB website automatically pop up on the cell phone?

THE WITNESS: That would depend on if they have some kind of a news application installed on the device. I can't really answer that question without speculating a lot, but it is possible you can have news alerts set up to give you, like, breaking news stories.

THE COURT: All right. And then another juror asks: There was a search after March 5th for Larry Brown Atlanta.

Can we review that information? And maybe Mr. Giordani can assist the witness.

MR. GIORDANI: Yes, Your Honor.

Showing State's 314 at line 29. Do you see this Chrome search --

THE WITNESS: Yes.

MR. GIORDANI: -- conducted March 10th, 2017, 3:04 p.m.?

THE WITNESS: Yes.

MR. GIORDANI: And it says, Larry Brown Atlanta?

THE WITNESS: Yes.

MR. GIORDANI: That's the -- is that the words that were

1 searched in the phone?

2 THE WITNESS: That was probably typed directly into
3 Chrome.

4 MR. GIORDANI: Okay. All right.

5 THE COURT: All right. And then a similar, I think,
6 question, is: On March 9th, I saw a search for Larry Brown. Can
7 we see that again?

8 MR. GIORDANI: This is --

9 THE COURT: I thought that was the March 5th one.

10 MR. GIORDANI: Oh.

11 THE COURT: A juror asked about March 5th and another
12 juror asked about March 9th.

13 MR. GIORDANI: I'm not seeing March 5th. I'll ask.

14 THE COURT: And, ladies and gentlemen, just to remind
15 you, you'll have all those exhibits back in the jury deliberation
16 room with them -- with you. So you can study those throughout
17 your deliberations.

18 MR. GIORDANI: Just, I think both of the parties agree
19 there's this line item 29 that shows a March 10th search, Larry
20 Brown Atlanta; you see that?

21 THE WITNESS: Yes.

22 MR. GIORDANI: And then there's a -- on the next line
23 item, it's not March 5th, right? That's March 9th, 2017?

24 THE WITNESS: Yes.

25 MR. GIORDANI: Okay. And Larry Brown on that?

1 THE WITNESS: Yes.
2 MR. GIORDANI: Okay.
3 THE COURT: All right. That's it for the juror questions.
4 Does the State have any follow-up to those questions?
5 MR. GIORDANI: Court's brief indulgence.
6 Just -- I'll be very brief.

7 **FURTHER EXAMINATION**

8 BY MR. GIORDANI:

9 Q Showing you State's 311; do you see this at the
10 bottom, this web history entry?

11 A Yes.

12 Q This includes that headline that we referenced earlier:
13 Homicide Detectives Investigating Man's Death in Northwest;
14 you agree there?

15 A Yes.

16 Q 2/22/17, 11:06; is that right?

17 A Correct.

18 Q Web history entry Number 7, the long one. It's a very
19 long URL, correct?

20 A Correct.

21 Q And that includes Homicide Detective Investigating
22 Man's Death?

23 A Yes.

24 Q And down, this one, Web History 8, says, One Dead in
25 Shooting Near Lake Mead, MLK Boulevards?

1 A Yes.

2 Q Okay. Doesn't say anything about a robbery, it says

3 shooting, correct?

4 A Correct.

5 Q Okay. Entry 9, once again, Homicide Detectives

6 Investigating Man's Death in Northwest; see that?

7 A Yes.

8 Q February 22nd, 11:17 a.m.

9 A Yes.

10 Q Web Entry 10 starts on this page and then goes onto

11 this large URL address here?

12 A Yes.

13 Q Homicide Detectives Investigating Man's Death In

14 Northwest; see that?

15 A Yes.

16 Q Entry 11, web history, another URL, Homicide

17 Detectives Investigating Man's Death; see that?

18 A Yes.

19 Q Line 12 -- or Entry 12, Homicide Detectives

20 Investigating Man's Death; see that?

21 A Yes.

22 Q Line 13, another URL, Homicide Detectives

23 Investigating Man's Death?

24 A Yes.

25 Q And it continues on from that last page?

1 A Yes.

2 Q Entry 14, Homicide Detectives Investigating Man's
3 Death; you see that?

4 A Yes.

5 Q 15, Homicide Detectives Investigating Man's Death;
6 see that?

7 A Yes.

8 Q 16, very long URL, but the Homicide Detectives
9 Investigating Man's Death; you see that?

10 A Yes.

11 Q Line 7 -- or Entry 17, Homicide Detectives
12 Investigating Man's Death; see that?

13 A Yes.

14 Q Line 18, Homicide Detectives Investigating Man's
15 Death; see that?

16 A Yes.

17 MS. TRUJILLO: Judge, may we approach?

18 THE COURT: Sure.

19 [Off-record bench conference.]

20 THE COURT: And once again, ladies and gentlemen,
21 you'll have all of this, and you can study all of this in your
22 deliberations as you, you know, wish to. All right.

23 Based on Mr. Giordani's questions and the juror
24 questions, does the defense have anything?

25 MR. STORMS: No, thank you.

1 THE COURT: Nothing? Any other juror questions for the
2 witness? No?

3 All right. Detective, I see no additional questions. Thank
4 you for your testimony. And you are excused at this time.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you, sir.

7 All right. Ladies and gentlemen, I understand we might
8 need a break. Let's take just about 15 minutes for the break.

9 And during the recess, you're all reminded you're not to
10 discuss the case or anything relating to the case with each other
11 or with anyone else. Do not read, watch, or listen to any reports
12 of or commentaries on the case, person, or subject matter relating
13 to the case. Don't do any independent research by way of the
14 Internet or any other medium. And please do not form or express
15 an opinion on the trial.

16 Notepads in your chairs, and follow the bailiff through
17 the double doors.

18 [Jury recessed at 2:32 p.m.]

19 THE COURT: All righty then. Okay. Oh, your people
20 can -- I know, they kick everybody out, but the family and the
21 other people can stay for arguments. It's just the jury.

22 MR. GIORDANI: They're just kids watching.

23 MS. TRUJILLO: I don't know who they are.

24 THE COURT: Oh, okay. I'll save them the pain and the
25 suffering. All right. I'm just kidding.

1 Mr. Brown, you can sit down, you don't need to stand for
2 the arguments. All right.

3 So Ms. Trujillo, you had a number of objections made at
4 the bench. And so I'll let you put your objections on the record at
5 this time.

6 MS. TRUJILLO: Thank you, Judge.

7 THE COURT: I didn't even try to remember them all, so
8 I'm going to let you do it, and Mr. Giordani also had some
9 argument at the bench. And so put your objections on the record,
10 then we'll hear from Mr. Giordani, and then I'll state what my
11 rulings were and the basis for my rulings.

12 MS. TRUJILLO: Okay. So the first objection was during
13 Detective's -- Barringer's testimony, it was about an objection to
14 foundation. And the State said they were not moving to admit
15 any information in -- through that witness.

16 The second objection was to -- prior to Mangione's
17 testimony, we also objected to foundation and lack of chain of
18 custody. Basically, the phone was transferred, I guess, from
19 Barringer to Detective Cook to Detective Mangione, at some point,
20 put in a safe and taken out. Not really sure what order that was.
21 That was my second objection.

22 My third one, during Mangione's testimony, I objected to
23 the double hearsay of the text messages for Angelisa. She's not a
24 co-conspirator. And I don't see any other exception.

25 My fourth objection was we put on the record that

1 Mr. Mangione lacked personal knowledge of the information
2 contained in the report and the extraction reports that he was
3 referring to. He didn't personally do it. He testified that another
4 detective did it, and he reviewed the information. Then, of course,
5 followed up on the news links that were referenced during the
6 testimony. But the report was written by another detective.

7 And then, finally, we objected to the State going beyond
8 the scope of the last -- well, one of the juror questions that was
9 about whether or not the news articles popped up on the cell
10 phone. And then the State went back in, went through all the web
11 history relative to the search of the northwest incident.

12 THE COURT: Okay. I'm going to just address that one,
13 because it's kneading in my mind. At that point, the Court kind of
14 said, well, what's the point of this? And, you know, back and
15 forth. And Mr. Giordani said he wasn't going to ask anymore
16 questions. So at the point of the objection, there were no further
17 questions asked on that issue. So, essentially, it was sustained, I
18 think, based on the Court's questions up here at the bench,
19 Mr. Giordani agreed not to proceed with the additional questions,
20 because I felt like it was getting outside the scope of the juror
21 questions, which, to me, was more -- I don't really think the
22 detective answered what the question was.

23 To me, I thought they were asking, like, when you go to
24 the website, do all the news articles pop up? Or do you have to
25 search for the news articles? But it could be -- he interpreted it,

1 Do you get, like, news flashes if it's an app on your phone? I think
2 that's how he answered the question. But I interpreted it
3 differently, like, when you go to the web page, all of the -- say you
4 want to look for an old news story, you would have to do the
5 search. But a current news story immediately pops up. That's
6 how I took it.

7 But in either event, I was concerned you were getting
8 afield of that. You stopped asking the questions at the point of
9 the objection.

10 MR. GIORDANI: That is correct, Your Honor. And as I
11 said at the bench real briefly, I think I have a different
12 interpretation than everyone. I thought what they were asking is
13 were those news stories not web history, but automatic pop-ups.
14 And what I was showing is this is a web history where you're
15 actually going to a web site with a different URL each and every
16 time what I was going through them. But I did stop once we
17 discussed it in order to save time and to honor the Court's
18 admonishment to just stop with it.

19 In addition, the other objections, we laid proper
20 foundation for the admission of the phone. The -- I can't even
21 remember the other one. I'm sorry.

22 MS. TRUJILLO: Which one? There was five.

23 MR. GIORDANI: I know. I can't remember the --

24 MS. TRUJILLO: You want me my Post-it?

25 THE COURT: You know, I was -- can we go off the

1 record?

2 [Off the record at 2:37 p.m., until 2:38 p.m.]

3 THE COURT: On the chain of custody, a perfect chain of
4 custody would have included Detective Cook. But under the
5 circumstances, I felt like there was sufficient evidence for this
6 Court to find that there was no indicia of tampering, that based on
7 the content of the messages, there was sufficient indicia of
8 reliability that it was, in fact, her phone. And that Detective Cook,
9 again, that would have been a perfect chain of custody, I felt that
10 it wasn't really required in this instance.

11 So, you know, yeah, it would have been a better chain,
12 but, you know, again, there was nothing to suggest that there had
13 been anything to occur to this phone.

14 Yeah, we went on the record.

15 MR. GIORDANI: Ms. Trujillo handed me her other two
16 Post-its, and now I recall. Just real briefly, with regard to the
17 double hearsay objection, as I indicated at the bench, Mr. Brown's
18 statements are not hearsay. The statements of Angelisa Ryder
19 were provided not only to provide context between the
20 conversation between her and Larry Brown, but also not offered
21 for the truth. They were offered in order to show, obviously,
22 based upon Mr. Brown's testimony yesterday, that he conveyed
23 information to her. And that's why she's doing what she's doing
24 on the phone.

25 And also, the text message from, like, 5:30 or whenever it

1 was in the morning, that was offered to show, obviously, to
2 contradict what Mr. Brown was saying yesterday. Not for the
3 truth, but that this text never would have been made had what he
4 said was the truth. Also --

5 THE COURT: Right. I allowed them in to give context to
6 Mr. Brown's texts, which are admissible by the State. So.

7 MR. GIORDANI: Thank you.

8 And just to the record of Mr. -- Detective Mangione's lack
9 of personal knowledge, I didn't admit the exhibits through him; I
10 had him explain the exhibits as they were already admitted,
11 because he's another DFL detective who can say this is what this
12 category is, this is what this category is.

13 MS. TRUJILLO: And, Judge, just to respond, the point
14 that Mr. Giordani just made was the entire reason that I said this
15 was inappropriate rebuttal evidence. He said, so that they could
16 see that Mr. Brown told her to do that search. If that's going to be
17 an argument, that's going to be improper. I still -- I have the same
18 argument that I made earlier, that it's improper rebuttal evidence.
19 I understand the Court's ruling. So I would just reserve my
20 continuing objection to that argument.

21 THE COURT: Okay. That is noted for the record. Your
22 continuing objection to the argument that we know they're going
23 to make it noted. So I don't know that you need to make the
24 objection. You can if you want to. But you don't have to make
25 the objection during the argument if you don't want to. Because

1 it -- your -- it's noted --

2 MS. TRUJILLO: Right.

3 THE COURT: -- and you don't want them to argue it, but
4 they, I'm certain, will.

5 And as I already said, I think you can draw a reasonable
6 inference from the content of the search, that she had received
7 information, presumably from Mr. Brown, that there was some
8 kind of a murder or shooting. Whether it was from Mr. Brown
9 telling her that or because she saw a gun in the car or a big bag of
10 marijuana or anything, there's an inference that's -- there was
11 something that gave her concern that there had been a murder.
12 So --

13 MS. TRUJILLO: And, for the record, those presumably
14 and all those suggestions are improper in our view, obviously.
15 And prejudicial to Mr. Brown.

16 THE COURT: Anything the State wants to add?

17 MR. GIORDANI: No, Your Honor.

18 THE COURT: All right. I think -- just, I have to say
19 something else. I think the point is she just didn't, you know,
20 willy-nilly off the top of her head start coincidentally searching to
21 read about murders.

22 MS. TRUJILLO: Understood. But who would --

23 THE COURT: I mean, that, to me, is the --

24 MS. TRUJILLO: -- who would have the best witness to
25 say that? Angelisa Ryder. Not these other people, who just got

1 the phone and went through the searches and now we don't even
2 know what she said, what she did, what she heard. We have no
3 effective cross-examination on these issues, because the person
4 who would know best was not called by the State, which is why
5 it's improper rebuttal evidence.

6 THE COURT: Well, it's -- you know, maybe she didn't
7 want to cooperate, you know, it -- look, they can put it on how
8 they want to. And for whatever reason, they chose not to call her.
9 We can all conjecture as to why, but like I said, I think it's unlikely
10 that just coincidentally, she starts wanting to read about murders.

11 So -- okay. So, Kenny --

12 MR. STORMS: And just to be -- it's a *Crawford* objection,
13 just to be clear on our part. Okay? Just to say the right case.

14 THE COURT: Okay. Well.

15 MR. STORMS: To use the magic words.

16 THE COURT: Kenny, did you talk to the jurors?

17 THE MARSHAL: I asked them to look before I bring them
18 back in, Judge.

19 THE COURT: Okay. So we're going to see if they'll --
20 they can stay late and finish up with the closings. If not, I'm
21 reading them the instructions and then sending them home,
22 because we can't -- I don't interrupt the closings.

23 MR. GIORDANI: Okay.

24 THE COURT: And then we'll start right at 9:00 with the
25 State's opening closing. And like I said, I'll at least read them the

1 instructions tonight. So.

2 MR. GIORDANI: Okay.

3 MS. TRUJILLO: Understood, Judge.

4 THE COURT: And then we'll send them home tonight.
5 We're not going to keep them deliberating. Either way, they're
6 going to have to come back tomorrow.

7 MR. STORMS: Correct.

8 THE COURT: All right. If anyone needs to take a quick
9 break.

10 MS. TRUJILLO: How long do we have, Judge?

11 THE COURT: Like, five -- as soon as you can come back.

12 MS. TRUJILLO: Okay.

13 [Court recessed at 2:44 p.m., until 2:52 p.m.]

14 [In the presence of the jury.]

15 THE COURT: All right. Court is now back in session. The
16 record should reflect the presence of the State, the presence of
17 the defendant, along with his counsel, the officers of the court,
18 and the ladies and gentlemen of the jury.

19 And everyone can be seated.

20 And does the State have any additional rebuttal
21 evidence?

22 MR. GIORDANI: No, not at this time, Your Honor.

23 THE COURT: All right. Does the defense have any
24 surrebuttal evidence?

25 MS. TRUJILLO: No, Judge.

1 THE COURT: All right. Ladies and gentlemen, that
2 concludes the presentation of evidence in this case. As I told you
3 at the outset, that is followed by the instructions on the law, which
4 I shall read to you in a moment. Following the instructions on the
5 law, the attorneys have the opportunity to make their closing
6 arguments. Because the State has the burden of proof in this
7 case, they both open and close the closing arguments.

8 And it is important that I read these written jury
9 instructions exactly as they are written. I am precluded from
10 trying to clarify them or expound upon them in my own words in
11 any way. You will have a number of copies of these written jury
12 instructions back in the jury deliberation room with you so that
13 you can refer to them throughout your deliberations.

14 Also, each instruction has been numbered for your ease
15 of reference.

16 [Jury instructions read.]

17 THE COURT: Ladies and gentlemen, that concludes the
18 instructions on the law.

19 Is the State ready to proceed with their closing
20 argument?

21 MR. DICKERSON: We are, Your Honor. Thank you.

22 **CLOSING ARGUMENT FOR THE STATE**

23 MR. DICKERSON: Ladies and gentlemen, in every
24 criminal case, whether it be a traffic ticket or a murder, the State
25 has to prove two things, that being were crimes committed, and if

1 so, who committed those crimes? Those are the two questions
2 that we have to answer here.

3 The instructions that you just heard, don't worry, you're
4 going to get a packet. You're going to all be able to look at those
5 in the back, you don't just have to rely on your memory here.
6 Same thing with the evidence. So the instructions are your guide
7 in interpreting the evidence, and the evidence is back there for
8 you to view, every single piece of it.

9 First, we're going to look at what crimes were committed.
10 The crimes that are charged here are conspiracy to commit
11 robbery, robbery with use of a deadly weapon, and murder with
12 use of a deadly weapon. As we've charged them, Count 1 being
13 conspiracy to commit robbery, charged it on the 21st day
14 of 2017 -- February of 2017, the defendant conspired with Anthony
15 Carter to commit robbery. And that is referencing the next two
16 crimes that we're seeing here.

17 Robbery with use of a deadly weapon committed that
18 same day. The victim being Kwame Banks taking U.S. currency,
19 vehicle keys or vehicle from Kwame Banks. You'll see in here as
20 we've charged it, that the defendant either directly committed that
21 crime, committed it pursuant to a conspiracy to commit the crime,
22 or aided and abetted in commission of a crime. We'll talk about
23 what that means in a bit. I submit to you that we know the
24 defendant directly committed it given the evidence in this case,
25 but there are other people involved. Those other people being

1 Anthony Carter and, I submit to you, likely Carnell Cave as well,
2 are also involved in this crime and would also be culpable for
3 these crimes under these other theories that we're talking about.

4 Murder with use of a deadly weapon,
5 February 21st, 2017, killing Kwame Banks. Here, same thing,
6 we're looking at the crime committed either directly, pursuant to
7 conspiracy, or by aiding and abetting.

8 You'll see that this was a crime that was committed
9 during a robbery. The conspiracy was to rob Kwame Banks, and
10 during that robbery, Kwame Banks was killed. This is important.
11 This is extremely important in this case, given the fact that what
12 we're looking at here is a crime of felony murder. We're going to
13 talk about that in a bit. But that's the most important part of this
14 case and I cannot stress it enough.

15 There's multiple theories of liability, those being when
16 two or more persons are accused of committing a crime together,
17 their guilt may be established without proof they each did each
18 act constituting the offense charged. So all persons in the
19 commission of the crime who either directly or actively commit
20 the acts constituting the offense, or who knowingly and with
21 criminal intent aid or abet in its commission, whether or not --
22 who would advise and encourage in its commission with the
23 intent that the crime be committed, are, under the law, principals
24 in the crime and shall be punished deeply.

25 The person who aids and abets in commission of a

1 crime, if he knowingly and with a criminal intent aids, promotes,
2 encourages, or instigates the act or advice by act and advice the
3 commission of such crime with the intention of the crime be
4 committed. Now, we're not required to prove to you specifically
5 which person here, which -- the defendant here, what he did, or
6 the other involved persons, what, specifically, they did in aiding
7 and abetting. The evidence does show that we are looking at both
8 conspiracy and aiding and abetting.

9 As to conspiracy, the act of one conspirator in pursuant
10 to the furtherance of the common design of a conspiracy is the act
11 of all, as I've mentioned earlier. Anthony Carter no doubt set up
12 this robbery. He was the middle man. He is liable for everything
13 that Mr. Brown did in this case. But that's not who is on trial here.
14 And you're also going to be instructed on that and we'll go over it.

15 The person who's on trial here today is Mr. Brown. So
16 while other people are liable for these crimes, and Mr. Brown is
17 liable for these crimes too, his -- he's also -- not only did he
18 directly commit the crime by shooting Kwame Banks, but he's
19 also on the hook for everything that Anthony Carter did.

20 So will a guilty verdict must be unanimous? It need not
21 be unanimous on the theories of liability that you find individuals
22 are guilty of. So in finding the defendant guilty of this crime,
23 some of you may believe he directly committed it. Some of you
24 may believe he was just part of the conspiracy to commit it.
25 That's fine. Either way, he's guilty. You do not need to be

1 unanimous on that point. But I do submit to you he is involved in
2 directly committing this crime.

3 So let's look at the first crime, conspiracy to commit
4 robbery. Conspiracy is an agreement between two or more
5 persons for an unlawful purpose. To be guilty of conspiracy,
6 Defendant must intend to commit or to aid in the commission of
7 the specific crime, that being the crime here of robbery. The
8 crime is the agreement itself. So there's a point here to make that
9 conspiracy is both a theory of liability that makes somebody liable
10 for the crimes that occurred during that conspiracy, as well as an
11 independent crime. So you need to take a look at it for both of
12 those purposes.

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

19 Here, we have a lot of it. Those text message between
20 Mr. Brown and Mr. Carter being the primary source of it. And
21 we'll get into that in a bit. But it tells you exactly what they're
22 thinking and what that agreement is.

23 So coming off conspiracy and adding to that, the crime
24 here that was agreed to commit was robbery. Robbery is the
25 unlawful taking of personal property from the person of another,

1 or in his presence, against his will, by means of force or violence
2 or fear of injury, immediate or future, to his person or property or
3 of anyone in his company. That force or fear must be used to
4 obtain or retain the property to prevent or overcome resistance to
5 the taking or to facilitate their escape.

6 So here, the force that was used in throwing Mr. Banks
7 around, throwing him onto the vehicle, onto the ground, and then
8 ultimately shooting him in the chest, that force is -- constitutes a
9 robbery when this taking is occurring, because, number one, it's
10 being used to overcome Mr. Banks' resistance; number two, it's
11 absolutely being used to facilitate escape. And these things are
12 the heart of a robbery.

13 Now, we know that the overcoming of the resistance
14 occurred because, ultimately, Mr. Banks was killed right then.
15 And he, after that point, no longer resisted. And we know at that
16 point in time, the property was taken. So we have a robbery,
17 without a doubt.

18 Deadly weapon, there's no dispute in this case, it's not up
19 for debate, a firearm is a deadly weapon. So every crime that
20 we're looking at is going to have what we call a deadly weapon
21 enhancement on it. That's just robbery with use of a deadly
22 weapon, murder with use of a deadly weapon. The crimes are all
23 committed with a deadly weapon, given the fact that a firearm
24 was involved.

25 We're not required to have recovered that firearm or

1 produce it here in court, which is a concept that really makes
2 sense when you think about it. Because just because an
3 individual's able to throw away the gun or throw it in the landfill
4 or into the lake doesn't mean that they're not liable for the crimes
5 that they commit. So just because we don't have a weapon
6 recovered in this case and there hasn't been one produced in
7 court makes no difference. We all know that beyond a reasonable
8 doubt a firearm was used here.

9 Murder is the unlawful killing of a human being with
10 malice aforethought that's either express or implied. The
11 unlawful killing may be affected by any various means, which
12 death would be occasioned.

13 So there's several parts of this, and really, what we look
14 to is the malice aforethought up front. Express malice is the
15 deliberate intention to unlawfully take away the life of a human
16 being. That's manifested by external circumstances that are
17 capable of proof. That's like committing a act where he shoots
18 somebody in the chest, that's express malice.

19 Malice may be implied when no considerable
20 provocation appears or when all the circumstances of the killing
21 show an abandoned or malignant heart. It's different. At times,
22 there could be an act that is just so reckless that somebody gives
23 no regard for the safety of others. That can be implied. Here in
24 this case, shooting somebody in the chest, malice is express.
25 There is absolutely malice.

1 Murder of the first degree is murder which is committed
2 in either one of these two ways. So it's either perpetrated by any
3 kind of willful, deliberate, and premeditated killing. The second
4 way -- and this gets to the point that I wanted to make earlier and
5 that I told you was the most important part of this case -- it's
6 committed in perpetration or attempted perpetration of a robbery
7 or attempted robbery. That's the felony murder rule.

8 We'll go over both these different theories of murder.
9 First, premeditated and deliberate. Willfulness is the intent to kill.
10 There need be no appreciable space of time between the
11 formation of the intent to kill and the act of killing. Just a willful
12 intent to kill.

13 Deliberation, that's the process of determining up on a
14 course of action as a result of thought, including weighing the
15 reasons for and against the action and considering the
16 consequences of that action.

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

23 Deliberation, here we don't have a passion that's
24 inflamed or anything like that. It's -- we don't have that sort of
25 issue. And it's important to note that when looking at this theory

1 of murder, the deliberation may be arrived at in a short period of
2 time. That's as short as it would take driving down the street,
3 approaching a long yellow light. Late for work, you know it's
4 going to turn, that deliberation occurs in that split second,
5 thinking, well, yeah, I'm going to go through that light. Yeah,
6 there could be a cop down the street to pull me over. Yeah,
7 something might happen, but I'm going to go through it. Light
8 turns red, you're through the light, just deliberated. That's that
9 short period of time. That's what it takes.

10 Premeditation is a design and a determination to kill. It's
11 distinctly formed in the mind at the time of the killing.
12 Premeditation need not be for a day, an hour, or even a minute. It
13 may be as instantaneous as successive thoughts of the mind. Or
14 if you believe that the evidence that the acts of constituting the
15 killing has been preceded by and has been the result of
16 premeditation no matter how rapidly the act follows the
17 premeditation, it is premeditated.

18 So I think in this case, you can find that there was a
19 premeditated killing of Kwame Banks. The mere fact that the
20 defendant set out that day with rubber gloves to commit this
21 crime, with the firearm, knowing what he was getting into, you
22 could find that there was premeditation that killing would have to
23 occur or it would be very likely, and that that thought crossed the
24 mind.

25 But the second theory of murder, the felony murder rule,

1 is the heart of this case. Felony murder is that different theory of
2 first-degree murder. There's certain kinds of murder, murder in
3 the first degree, which carry with them inclusive evidence of
4 malice aforethought. One of these classes of first-degree murder
5 is the killing, committed in perpetration or attempted perpetration
6 of certain felony crimes, including robbery. Therefore, a killing
7 which is committed in the perpetration of or attempted
8 perpetration of a robbery is deemed to be first-degree murder.
9 Whether the killing was intentional, unintentional, or accidental, it
10 doesn't matter. This is the felony murder rule.

11 The intent to perpetrate or attempt to perpetrate robbery
12 must be proof beyond a reasonable doubt. A defendant cannot
13 be liable for felony murder under the conspiracy and/or
14 aiding-abetting theory of liability for acts committed by a
15 co-conspirator unless the defendant also had the specific intent to
16 commit the robbery.

17 Here, that would go more towards Anthony Carter, as the
18 case here shows that the lone gunman out on the scene with
19 Kwame Banks was the defendant, given the evidence that we'll go
20 over. So he has actually committed the robbery and shot Kwame
21 Banks.

22 Now, the other folks that are involved here, Anthony
23 Carter being the other one, he would also be on the hook for
24 felony murder, given that he did have the specific intent to
25 commit the robbery, which is clear from the evidence in this case.

1 But that really goes more to him that -- that end there. We know
2 the defendant has the specific intent to commit a robbery, without
3 a doubt. Just given the set-up that he had, the communications
4 that he had.

5 Can't stress it enough, any murder committed during the
6 course of a robbery is first-degree murder. That's whether the
7 killing was intentional, unintentional, or accidental. So although
8 your verdict must be unanimous, again, it does not need to be
9 unanimous on the point of whether you believe that this was a
10 premeditated and deliberate murder of Kwame Banks, that the
11 defendant set out, premeditated and deliberated, to kill Kwame
12 Banks, or that it's felony murder, Defendant set out with the
13 specific intent to commit a robbery and killed Kwame Banks
14 during the process. You don't need to be unanimous on that
15 point. Thus, if you all come to that conclusion, one or the other,
16 individually, some -- five feel premeditated and deliberate, seven
17 feel that this is felony murder, this is first-degree murder. Either
18 way, you do not need to be unanimous on that point.

19 So were crimes committed? First, it's worth noting when
20 we're going to take a look at the evidence of whether these crimes
21 were committed is that when there's slight evidence of a
22 conspiracy, that there is here, at more than slight, we go way
23 beyond that, but all you need is slight evidence, and at that point
24 in time, the statements and acts by any person who's a member
25 may be considered by the jury in the case to -- the defendant

1 found to also have been a member. Even though those
2 statements and acts may have occurred in the absence and
3 without the knowledge of the defendant, prove such statements
4 and acts were knowingly made and done during the continuance
5 of such a conspiracy and in furtherance of the objective of the
6 purpose of the conspiracy, they can be considered by you. And
7 they should. Because that's the heart of what this law, the
8 conspirator liability, aider, abettor liability, those theories of the
9 law are meant to prevent people coming together to commit
10 crimes.

11 And here, people coming together to commit violent
12 crimes. Crimes like robbery, which are so inherently violent and
13 have such an inherent risk to the community that the law has
14 deemed that any death, intentional, unintentional, or accidental
15 that occurs during that robbery or in the attempted robbery is
16 first-degree murder.

17 So when we look at the conspiracy in this case, we look
18 back. We're looking to the beginning in February 14th, 2017. And
19 what we're looking at here is the text logs that are on Mr. Brown's
20 phone as it was dumped. First -- and also call logs. So first we
21 have a call late in the evening on February 14th, 2017. Later on,
22 we have an incoming text, this is from Anthony Carter, following
23 up that call about less than an hour later, sends in a.m., in the
24 morning -- or just 10 minutes later, Mr. Brown sends Anthony
25 Carter: Okay, before 10 or after?

1 Anthony Carter says: After.

2 And then early in the morning, after he's responded,
3 After, the defendant says that.

4 Throughout that day, it becomes clear in looking at the
5 communications between Mr. Carter and Mr. Brown that they are
6 talking on the phone and they're also talking about an individual.
7 And individual that they're talking about the same exact way that
8 we see them talking about that individual on February 21st, 2017.

9 Be on the way to me at APT, apartment. That's sent from
10 Anthony Carter to Mr. Brown at 12:57 p.m.

11 Again, 12:58: He coming from the airport.

12 They have a phone call just a couple of minutes later,
13 incoming from Anthony Carter. This is after this has already been
14 acknowledged by Mr. Brown: Okay.

15 And then Anthony Carter is the one who calls Mr. Brown
16 after that.

17 Then shortly thereafter, 20 minutes later, approximately,
18 at the end: He 10 minutes away from me, it will take -- he 10
19 minutes away from me. It will the akey about 10 minutes to
20 handle this.

21 So we have an outgoing text from Mr. Brown: Ready.

22 That occurs at 1:20 p.m.

23 They're going through it: I'll be here for about 15
24 minutes, then make the drop, then back here.

25 That's coming into Mr. Brown, Mr. Brown says: I'm on it,

1 take a pick.

2 They have an incoming call session from Anthony Carter
3 to Mr. Brown, and then a text message to follow up from Anthony
4 Carter.

5 Anthony Carter updates Mr. Brown 2:14 p.m.: Fam, go to
6 Lake Mead and Rock Springs. Go to Cane's Restaurant.

7 And then: Go now, not apartments.

8 And then says: Can't talk, riding with my other boy.

9 Anthony Carter continues to text him: He behind us, fam.
10 Go to Cane's. I will meet you there. Good news. Fam, call me, go
11 to Cane's.

12 Call outgoing from Brown to Carter at 2:20 p.m., they talk
13 for 47 seconds on that call and then another incoming call, one
14 minute and 43 seconds, coming from Carter to Brown.

15 A similar-looking text arrives February 15th, 2017. This
16 one coming in from Anthony Carter to Brown: Pullin' up. I'm
17 here.

18 Outgoing call by Mr. Brown for one minute and 28
19 seconds. That's at 2:35 p.m. One minute later, we have some sort
20 of incoming call, doesn't register any time. And then about half
21 an hour after that, there's an outgoing call. This is an outgoing
22 call from Mr. Brown to Anthony Carter, and it's important to note
23 what we see here. On this far right-hand side. We don't have any
24 time associated with this call, we don't have any other data
25 associated with this call. But what we do have is the indication

1 within these records that that call was specifically deleted with --
2 or that text message, I'm sorry, was specifically deleted. So that
3 text message is specifically deleted in the phone and we're unable
4 to retrieve data for it, but we know that it was deleted,
5 the 3:14 p.m. text.

6 Immediately after that: No show yet?

7 That's coming from Mr. Brown to Carter, 3:49 p.m.

8 Text coming in from Mr. Carter: Okay, I'll hit him and
9 play it off and see what's up.

10 Outgoing call immediately thereafter, seven minutes
11 later, from Mr. Brown to Anthony Carter, one minutes and 35
12 seconds.

13 And then follow that up just less than half an hour later:
14 Still no go?

15 That's coming in from Anthony Carter to Brown.

16 That's followed up immediately by an outgoing call from
17 Brown for one minute. So that's at 4:30 p.m.

18 4:30 p.m., what can we tell from these messages? Still
19 no go. Still hasn't happened.

20 So then what happens a couple of hours later? 8:44 p.m.:
21 Fam, he going to meet me at the apartment between 9:30
22 and 10:00.

23 That's coming from Anthony Carter to Brown.

24 9:20, incoming from Carter to Brown: He five minutes
25 away, tomorrow cool?

1 Outgoing call from Brown to Carter, one minute and six
2 seconds.

3 Nine minutes later, we got a text coming in from Carter
4 to Brown: I can keep him here, how long you think?

5 And then we have an exchange of calls right after that,
6 between Carter and Brown.

7 He's still going on. We're hours into this. It's now 10:02:
8 Apartment, fam, apartment.

9 Those are texts coming in from Carter to Brown.

10 Another one coming in right after that: Come to the --
11 come to apartment, he's still sleep.

12 Then we got a text going out from Brown to Carter,
13 responding to the asleep text: All right.

14 And an incoming call for 23 seconds. Followed by, 12
15 minutes later, text: Out here.

16 That's Brown texting Carter: Out here.

17 Incoming, two minutes later: K, still sleep. OMW -- on
18 my way -- out.

19 Incoming text message from Carter to Brown: That
20 n-word still sleep.

21 That's at 10:48 p.m.

22 Immediately thereafter, outgoing text from Brown to
23 Carter: To you right up against the wall by the dealership when
24 you first come in.

25 To you right against the wall by the dealership when you

1 first come in. Where was he? That's February 15th, 2017.
2 10:42 p.m., that's Larry Brown's phone.

3 MS. TRUJILLO: Judge, may we approach?

4 THE COURT: Sure.

5 [Off-record bench conference.]

6 MR. DICKERSON: So ladies and gentlemen, this is all
7 part of the mapping data that you've received. Well, we didn't go
8 over it at the time. Obviously, it became much more relevant after
9 Mr. Brown testified that he'd never been to 5850 Sky Pointe Drive
10 before. On February 15th, 2017, we have him saying, Right when
11 you pull in, back up by the dealership.

12 You heard from Detective Gino Basilotta about the area
13 around there, and where that cell phone tower was. He indicated
14 that there's an old, I believe he said, Dodge dealership right there,
15 backed up next to the apartment complex. This is right where the
16 defendant was during that time period when those texts were
17 being sent.

18 And then the response after that by the defendant,
19 at 10:50 p.m., to Anthony Carter: That's good, he tired.

20 If there's any doubt about what was happening there, if
21 there's any thought that this could have been some sort of drug
22 deal that they're just working on since the early morning hours
23 just to set up some drug deal, that right there tells you that's not
24 the case. Nobody needs a tired drug dealer unless you're going
25 to rob him.

1 It continues through the evening. 11:00 p.m. still: He
2 was talking to a girl, said he might come over.

3 On him, is what Mr. Brown's response is. On him. That's
4 it. 11:09 p.m.

5 They go back and forth, calls back and forth, ultimately,
6 we're at 11:30 p.m.: Fam, you should come get me and look with
7 you, that's -- that would help.

8 Calls going back and forth. We have a seven-minute
9 outgoing call from Brown at the end there, 11:37 p.m. And then
10 after that, 11:45 p.m., not too late for Anthony Carter to text
11 Mr. Brown the address for sure, so we know where that is, 5850
12 Sky Pointe Drive, February 15th, 2017, and then Mr. Brown calling
13 him immediately thereafter.

14 So then we get forward to what's going on on
15 February 21st of 2017 between 9:00 a.m. and 11:40 a.m. The
16 green messages that you see up here, these are going to be the
17 culled data that we have from Anthony Carter's phone that was
18 provided from the phone company. You'll remember that that is
19 all in the UTC time, which is eight hours ahead. So minute eight
20 hours from Anthony Carter's phone records puts us here
21 at 9:26 a.m. to begin.

22 This is in the early morning of February 21st, the day the
23 Kwame Banks died. And this is Kwame Banks' cell phone being
24 contacted by Mr. Carter's phone. This is an outgoing text
25 message at 9:26 a.m. You'll also recall that Detective Lomas

1 testified that he had actually dumped Mr. Banks' phone and in
2 getting the text messages off those -- off that phone, the 9:26 a.m.
3 text message from Anthony Carter said: Fam, bro's called me for
4 bags, still should I tell him today or tomorrow, my dog?

5 Very shortly thereafter that, eight minutes later, we have
6 another outgoing text from Mr. Carter to Mr. Banks that
7 is 9:43 a.m., that text message, as you heard from Detective
8 Lomas, said: Bro me, he just text me, he get off at 7:30, then he
9 ready.

10 So what was the contact after that? Mr. Carter to
11 Mr. Brown. Incoming text message from Carter to Brown:
12 Tonight the night, my brother.

13 That's at 9:37 a.m. That's less than three minutes after
14 he had just begun texting Mr. Banks to set up this drug deal.

15 As far as Mr. Banks knew, his boy wanted bags, but
16 Mr. Carter, much too excited, and so is Mr. Brown. Mr. Brown
17 ultimately responds at 11:39 by calling Mr. Carter, 17 seconds,
18 probably didn't have contact at that time.

19 But follows up immediately with a text message: Just
20 seen yo text. Okay. Cool.

21 In that time, Mr. Carter and Mr. Cave begin coordinating.
22 That's, of course, this is going to be at Apartment 2003 where
23 they're going to set up, that's Mr. Cave's apartment, at 5850 Sky
24 Pointe. And we have another outgoing call at the end of that, that
25 Mr. Brown reaching out, and then ultimately, we have an

1 outgoing text. This is outgoing from Mr. Banks at 7:10 p.m.,
2 incoming to Mr. Brown's phone. This is a call for one minute
3 and 38 second. 7:11 p.m. is the operative time.

4 What's going on in that moment? Well, we know that
5 Kwame Banks has been contacted by Mr. Carter in a phone call
6 that lasted 41 seconds, immediately before. And then right after
7 that, we have the call from Mr. Carter incoming to Mr. Brown.
8 Mr. Carter is contacting both of them. Once again, right after --
9 one after another. This is within one minute. It's a 41-second call
10 at three minutes -- I mean, at 7:10:12, and then at 7:11:08, that is
11 not even enough time to pick up your soda and finish it.

12 In that moment, as soon as hanging up the phone with
13 Mr. Banks, Mr. Carter calls Mr. Brown. So we know where
14 Mr. Brown was at that time, because we have mapping. What
15 does that mapping show us? Immediately after that 7:11 call,
16 Mr. Brown goes from Summerlin Hospital, where he is, where you
17 heard that his girlfriend, Angelisa Ryder, works. And then he goes
18 down towards his house. Goes to his house because, well, I
19 submit to you he probably didn't bring his rubber gloves, his work
20 gloves, as well as his gun, with him to go drop his girlfriend off at
21 Summerlin Hospital.

22 He's not there long at all, and then immediately
23 thereafter, he makes his way towards 5850 Sky Pointe. This is
24 within an extremely short amount of time. We're looking at a
25 period of time between 7:10 p.m. and 7:57 p.m. So while

1 Mr. Brown came up here and told you, Yeah, I was at home for a
2 while just hanging out, so that was enough time
3 from 7:10 -- 7:11 p.m. to go from Summerlin Hospital all the way
4 across town and then back over across town on the other side of
5 town to the northwest in just 47 minutes. There was no time to
6 hang out at the house. Just enough time to grab the supplies.

7 7:58 p.m., incoming call from Anthony Carter, 22
8 seconds. Ultimately, right after that, we have another call. What
9 do we know about this call? Again, we have a yes next to it,
10 which indicates that it was deleted. We don't have any other data
11 about this call, we don't know anything else about it except that it
12 was deleted. The 7:58 call was deleted.

13 But that's not all we have at 7:58. This is why I told
14 you 7:57 was the timeframe, between 7:10-7:11 to 7:57, is because
15 at 7:58, that is the first moment that we have Mr. Brown in the
16 crime scene with the cell phone tower records showing him right
17 there, in the same place that he was on February 15th, he's there
18 again, same area. And how long is he going stay there? All night.

19 9:38 p.m., we have an outgoing to -- from Brown to
20 Carter: How we looking?

21 Again, what do we have there? We have a yes next to
22 that text. It was deleted. That's in Mr. Brown's phone, that was
23 deleted from his phone, but recovered.

24 Incoming right after that: He's supposed to be pulling
25 up, my man. That went -- he's supposed to be pulling up, my

1 man that want the bags not here.

2 Right after that, incoming again, from Carter to Brown: I
3 told him be here 9:30.

4 Outgoing, Brown to Carter: Okay.

5 And then: On standby.

6 That text too was deleted.

7 Incoming from Anthony Carter to Brown: K.

8 February 21st, 2017, 9:50 p.m. He's been there for two
9 hours. Same place. Mr. Brown's phone hasn't moved. He's been
10 there that whole time.

11 And so has Anthony Carter, same time, 9:50 p.m.,
12 Anthony Carter's right there. That entire text stream that we just
13 looked at during the 9:00 hour, they are right there in the same
14 area, because their phones are hitting right on top of each other
15 and they're texting each other.

16 10:06 p.m., incoming call from Carter to Brown, 25
17 seconds. One minute later, we got a call registered as a zero.
18 Right after that, couple minutes, we have an incoming text
19 message from Carter: His girl be having problems with work at
20 UMC Medical.

21 And then, now, the text that Brown sends. And then:
22 Yes. Is the response from Carter.

23 But you on the way, right? That's what Brown asked
24 Carter.

25 Again, this text message was deleted.

1 Yes. Yes. I'm here. I been here, fam. Be on the way.
2 And then Brown says: Yeah, I saw you go in. Okay.
3 Incoming from Carter to Brown: If you need Nard, be on
4 standby.
5 What's Brown's response? I'm on it.
6 So he's told by Carter that Nard's on standby at the hou,
7 and Mr. Brown says: I'm on it.
8 And then right after that, this is where it -- anything else
9 was unclear as to what was going on here, this text message tells
10 us everything we need to know: He have money in the middle
11 console too sometime, mostly on him and in the trunk in bags, if
12 you riding heavy. He keep small pocket knife on right side.
13 Who's he talking about? Well, you heard from Tiffany
14 Seymour that when Kwame Banks left that day, he loaded the
15 trunk with bags of marijuana. You also saw the crime scene
16 photographs of Mr. Banks with small pocket knife on his right
17 side. It's clear who they're talking about. It's clear what the plan
18 it. This is not a plan to just buy drugs. This wasn't something
19 that was just an accident. They'd been planning this for a long
20 time. And this is the final intel that Carter's sending to Mr. Brown
21 right before the robbery supposed to occur. They've been in this
22 agreement for at least a week, and this entire day they've been
23 working on making it happen. And at 10:21 p.m., this text
24 message leaves not doubt to that.
25 Incoming from Anthony Carter: Okay, fam?

1 And the response from Larry Brown here: Okay.

2 Mr. Brown had testified that he got that text message and
3 Anthony Carter sends him weird stuff. And so he called him,
4 immediately called him, right? Immediately called him to clear it
5 up. Ladies and gentlemen, there are no calls at this time. What
6 we do have is a very clear affirmation and understanding from
7 Mr. Brown: Okay. Got it. Know what the agreement is.

8 And they're still both right there in the same place,
9 texting each other now an hour later still. Now, Mr. Brown has
10 been there since 7:58 p.m. 10:39 p.m., we look over to where
11 Kwame Banks is. Kwame Banks had been doing family stuff
12 throughout the day with Tiffany Seymour and their kids -- their
13 one child at the time. And it sounds like it was kind of a struggle
14 for Mr. Carter to ultimately get him over there.

15 Well, after everything's said and done, we have once
16 again what we're looking at in UTC time, so this is going to be
17 a 10:39 p.m., Pacific Standard Time, minus eight. So this is going
18 to be on February 21st, 2017, at 10:39 p.m. Kwame Banks is -- this
19 is going to be his last call that was outside of the area where his
20 phone ultimately ends up in the crime scene. This is a call which
21 would be -- have a cell tower sector that's pointed in the direction
22 of his house, that area generally. So if you were driving over to
23 the crime scene, it could probably pick this one up on the way in.

24 This is a call that is with Anthony Carter receiving the call
25 from Mr. Banks at 10:39 p.m.

1 And then we have the text message immediately
2 thereafter at 10:40 p.m. from Carter to Brown: Pulling in.

3 At that 10:40 time period, what we're seeing in the
4 bottom left-hand corner is Kwame Banks' phone now has
5 switched to the tower that is covering the crime scene, which is
6 where his phone would remain. That's 10:40 p.m., at the same
7 time what you also saw was surveillance footage that could - you
8 could see headlights coming in of the apartment complex at 5850
9 Sky Pointe. 10:40 p.m., we see those headlights coming in and
10 turning right at the apartment complex, indicating that the Pulling
11 in text was very clearly associated with Kwame Banks pulling into
12 the apartment complex.

13 And we know what happened after that. 10:40 p.m.
14 to 10:47 p.m., when the first 911 call comes in, ultimately, we have
15 our two witnesses, Dereka Nelson and Jokhai are up there in their
16 apartments which are next door to each other. They hear what's
17 going on downstairs. Both of them tell you there is a single
18 suspect.

19 Jokhai tells you that, yeah, it's the same guy that shot
20 him, left, came back. Dereka very clear on her description, Black
21 male adult, wearing black. They're throwing each other around,
22 but only one guy had a gun. It was the suspect in black. Jokhai,
23 same thing.

24 What Jokhai then also sees is that at this point in time,
25 after they -- Mr. Banks and the robber here has -- have fought over

1 the vehicle, Mr. Banks ends up on the ground. And at that point in
2 time, when he's on the ground on his back, reaching up for the
3 gun, is when he is shot in the chest. This is a moment where
4 everything changes. And this robbery now becomes first-degree
5 murder.

6 That bullet, as you heard, entered Mr. Banks' chest
7 through the aortic arch and he died extremely quickly. What
8 Jokhai saw happen from there is Mr. Banks roll over and attempt
9 to move, and that's when the robber, as we're going to talk about
10 in the second question, who did it, but we know it was Mr. Brown,
11 comes back and picks through Mr. Banks' pockets. That's not all.

12 So Jokhai tells you that he actually sees money being
13 taken out of Mr. Banks' pockets. It's the first property that was
14 taken during this robbery. Well, absent the cell phone that had
15 been tossed earlier, which would also tell you exactly why we
16 have the cell phone and gloves back at the front entrance.

17 Cell phone, gloves, ditched at the front entrance. It's not
18 the exit route. Comes back to Mr. Banks there on the ground,
19 grabs his property, and then heads to the right. The single
20 suspect heads to the right. And then what we have there are
21 those orange cones. The orange cones down by -- if you can kind
22 of see it in the frame, that blue car, the four of them, the five of
23 them you're going to have there, are all bloody footprints. And
24 those lead right to the empty parking space next to where the
25 broken mirrors ends up being located, and Mr. Banks' car is also

1 taken.

2 So the robbery has occurred. The conspiracy to commit
3 the robbery has occurred. And Mr. Banks was killed in the
4 process of that robbery. He was killed to overcome his resistance
5 and to escape with the property. That's a robbery. And once
6 again, any murder during the course of a robbery is first-degree
7 murder. Whether the killing was intentional, unintentional, or
8 accidental.

9 Well, some of you may believe that Mr. Brown
10 accidentally pulled that trigger when he was pointing it at
11 Mr. Banks' chest as he lay there on the ground on his back.
12 Doesn't matter if that's the case and that's what you believe. He's
13 guilty of first-degree murder.

14 But I'll tell you this: We have that first shot into the
15 awning. That was the first shot that says, Hey, look, I'm serious.
16 That shot meant something. That next shot, that meant
17 something too. I submit to you that it was intentional. But if
18 some of you believe it's intentional, some of you believe it's
19 unintentional, some of you believe it's accidental, doesn't matter.
20 It's first-degree murder regardless, because it is a murder
21 committed during the robbery.

22 Were crimes committed? Yes. First-degree murder with
23 use of a deadly weapon. Robbery with use of a deadly weapon.
24 And conspiracy to commit robbery.

25 So we turn to the next question: Who committed these

1 crimes? You're here to determine whether the defendant is guilty
2 or not guilty from the evidence in the case. You're not called
3 upon to return a verdict as to whether any other person is guilty
4 or not guilty. You're not here to determine whether Anthony
5 Carter's guilty, whether Carnell Cave's guilty, you're here to
6 determine whether Larry Brown is guilty.

7 So if the evidence in the case convinces you beyond a
8 reasonable doubt of the defendant's guilt, then you shall find him
9 guilty.

10 We heard from the defendant. He told you that that is his
11 phone, that those are his shoes, that this is the white SUV he was
12 driving, that Anthony Carter is his associate. But otherwise, he
13 told a wild story.

14 MS. TRUJILLO: Objection. May we approach?

15 THE COURT: Sure.

16 [Off-record bench conference.]

17 MR. DICKERSON: Thank you, Your Honor.

18 Told a wild story beyond that. He told a wild story about
19 being at a gas station that had a dinosaur on it and first being
20 there at 8:00 and maybe it's later and later and later and later and
21 later, and, ultimately, he says, Well, it was probably not now or it
22 was less than an hour, 30 minutes maybe he was there. And then
23 he had a car full of guys pull up, and at first he walked up to the
24 car full of guys and then he was robbed, and then he was in his
25 car and then he was robbed, and then he was getting out of his

1 car and then he was robbed. And ultimately, he didn't see
2 anybody's face, but one of them sure sounded like Anthony
3 Carter. But he's not saying Anthony Carter did it.

4 And, well, then at 10:40, when he's receiving texts from
5 Anthony Carter, yeah, he's definitely there and he hasn't been
6 robbed. And so that's the story that he told you.

7 The credibility or believability of a witness should be
8 determined by his manner upon the stand, his relationship to the
9 parties, his fears, motives, interests, or feelings, opportunity to
10 observe the matter to which he testified, the reasonableness of his
11 statements, and the strength or weakness of his recollection. If
12 you believe a witness has lied about any material fact in the case,
13 you may disregard the entire testimony of that witness or any
14 portion of his testimony which is not proved by other evidence.
15 That's the credibility instruction, ladies and gentlemen.

16 And it's also to be taken into consideration with this one,
17 that you must bring your consideration of the evidence your
18 everyday common sense and judgment as reasonable men and
19 women.

20 So coming into this, judging credibility, and using your
21 common sense and your reasonable judgment in doing it. And
22 looking at the evidence.

23 What does the evidence show? Well, the defendant told
24 us he has never been to 5850 Sky Pointe. The text messages and
25 location data on 2/15/2017, tend to indicate differently. He

1 claimed that he called Mr. Carter at 10 -- after the 10:22
2 or 10:21 p.m. text, the one that was providing intel that very
3 clearly showed that this is a conspiracy to commit a robbery, said
4 he called him because, you know, Anthony Carter texted him
5 weird stuff. There are no call records, there were not calls
6 after 10:07 p.m. So there were no calls. That did not happen.

7 He didn't learn about the murder of Kwame Banks until
8 after March 20th, 2017. Well, his girlfriend shows that the murder
9 was searched or viewed on KTNB's news website on
10 February 22nd, 2017. He never got a new phone number after the
11 murder. His girlfriend's phone shows differently, that there's a
12 Brown, Larry, number on February 25th, 2017, just four days after
13 his phone was left at the crime scene. And then also the -- his
14 witness, the other witness, Ms. Ford. She then testified, yeah, he
15 had got a new number at some point in time.

16 He also says that he went straight to Summerlin Hospital
17 after allegedly being robbed. And his girlfriend's phone shows
18 that he text him at 5:18 a.m. on February 22nd, 2017. So we have
19 hours where the defendant says that he was at Summerlin
20 Hospital right after he got robbed. And his girlfriend, who's
21 working there, is still texting his phone. This is somebody who,
22 undoubtedly would have known that Mr. Brown didn't have his
23 phone anymore. That Mr. Brown had, in fact, had contact with
24 her at Summerlin Hospital right after he was robbed.

25 That contact would have very quickly indicated to her,

1 yeah, I don't have my phone. But apparently, she didn't know
2 that, because at 5:18 a.m., she's texting him, are you okay? I'm in
3 the telly room in the hospital.

4 So where was Mr. Brown? Well, the other evidence in
5 this case is what tells us where he is. He also told us, well, he got
6 to the gas station early and he was there 30 minutes and that by
7 the 10:40 time, he had been robbed. Well, as you saw earlier, the
8 evidence shows that he was in the same spot from 10:58 p.m.
9 to 10:40 p.m., and then that phone remained there throughout
10 after that point. And that 7:58 p.m. to 10:40 p.m., those are all
11 times that he admits he hadn't been robbed yet. He also said that
12 he wasn't there.

13 You also heard that the evidence at the scene shows that
14 there was only a single firearm present. The single .40-caliber
15 firearm that was used to fire both the bullets, a single gunman, as
16 seen by Dereka and Jokhai.

17 And then right after that, a white SUV that is seen pulling
18 into the business park right after the vehicle is dumped there, and
19 then quickly leaving as the police arrive. That's on
20 February 21st, 2017. That's at 11:27 p.m. So that probably would
21 have been a time that the defendant would have otherwise been
22 at Summerlin Hospital, according to his story.

23 Then we have the vehicle fire that occurred just day and
24 a half later, February 23rd, 2017, approximately 2:43 a.m. Again,
25 at that point in time, we see that white vehicle. This time that

1 white vehicle is driving west on Azure up past the fire. Now, you
2 also remember that there were -- there was a shingle shadow
3 moving away from the vehicle that was on fire at certain points of
4 time. Just one.

5 And if you have any doubt about why that vehicle would
6 be coming from the east to the west, well, then the surveillance
7 footage that was admitted from the One Stop Auto down the way
8 would show you that at 2:47 a.m., there appears to be a figure
9 that's crossing Azure. That's at the end of the business park down
10 by the Discount Tire. You've heard where that was. And there's
11 that figure, that's at 2:47 a.m. on the 23rd, should you wish to look
12 at that when you go back for deliberations.

13 You heard that that One Stop Auto is located right there
14 where it's marked on the map. And right next to One Stop Auto is
15 that parking lot. And then the business park entrances come here
16 with Discount Tire at the end.

17 Just two minutes later, what's interesting about this is
18 that that same view, what we see is headlights that appear to hit
19 the dirt lot across the street from that parking lot and turn to the
20 right. Immediately thereafter, the vehicle that emerges is that
21 white SUV.

22 And then, ultimately, during the search warrant that was
23 served at Mr. Brown's home on Sierra Bello, there was the white
24 SUV that was located in the driveway and that he admits driving.
25 Ultimately located at the scene were the latex glove found right

1 next to Kwame Banks' pocket and the Hardy work glove just
2 above his body in front of the white vehicle.

3 You heard that the latex glove, the DNA comes back, you
4 heard the numbers, Larry Brown. In the Hardy work glove, inside
5 of the glove, not outside, Larry Brown.

6 And then you further heard about what Larry Brown did
7 after that. You're instructed that the flight of a person after
8 commission of a crime is not sufficient in itself to establish
9 premeditation or guilt, but if flight is proved, it is circumstantial
10 evidence in determining whether a defendant is guilty or not
11 guilty. The essence of flight embodies the idea of deliberately
12 going away with a consciousness of guilt for the purpose of
13 avoiding apprehension or prosecution.

14 You heard from FBI special agent who was part of the
15 team that was tasked with taking Mr. Brown into custody. You
16 heard about the chase that Mr. Brown led him on, lights and
17 sirens, through red lights, driving down the street, making
18 U-turns. And then you heard about what happened when
19 Mr. Brown shows up at Jamilah Miggins' house. Jamilah Miggins
20 is not expecting him, there's nobody else there besides Greg, her
21 boyfriend, who's just showing up, which is unusual. And then the
22 defendant comes in and he's apparently nervous. It's obvious.
23 And that's also unusual.

24 In that time, the defendant asks to go make a call in
25 private, goes upstairs, makes a call in private, and that's when

1 they hear -- Greg and Jamilah hear the helicopters swirling
2 overhead, getting louder. Very odd.

3 And the defendant comes down, Greg's there, and Greg
4 takes the opportunity to ask the defendant, Is that for you? What's
5 going on? Jamilah, as they're all standing in the kitchen, sees
6 police surrounding the house, and what is Larry Brown's response
7 to that? Larry Brown's response is, You don't have to open the
8 door. Greg, Jamilah say, I'm not having them kick open this door.
9 He says, I'll pay you for the door. Pay you 700. I'll pay you a
10 thousand.

11 It's clear, the defendant fled to Georgia, he was hoping to
12 avoid arrest in this case. Ultimately, on June 29th, 2017, the law
13 came for him and everything he was doing in that house at that
14 time was trying to prevent his arrest. Everything he was doing
15 before that or during the time that he was running from the FBI,
16 that was to avoid arrest. There's no two ways about it.

17 And so the evidence shows that, yes, there were crimes
18 committed. And the evidence also shows who committed those
19 crimes: Beyond a reasonable doubt, Larry Brown. Larry Brown is
20 guilty of conspiracy to commit robbery, robbery with use of a
21 deadly weapon, and first-degree murder with use of a deadly
22 weapon.

23 Ladies and gentlemen, after all of this is over and you go
24 back to deliberate, you'll receive your verdict form like this. And
25 when you come back out, check the appropriate verdicts.

1 Conspiracy to commit robbery, robbery with use of a deadly
2 weapon, first-degree murder with use of a deadly weapon. Thank
3 you.

4 THE COURT: All right. Thank you, Mr. Dickerson.

5 Before you move into the defendant's closing, does
6 anyone need a break? All right. Sounds good.

7 Let's go ahead and just take a quick break, just until 4:40.
8 During the break, you're all reminded you're not to discuss the
9 case or anything relating to the case with each other or with
10 anyone else. Do not read, watch, or listen to any reports of or
11 commentaries on the case, person, or subject matter relating to
12 the case. Do not do any independent research by way of the
13 Internet or any other medium. And please do not form or express
14 an opinion on the trial.

15 Once again, notepads in your chairs. And follow the
16 bailiff through the double doors.

17 [Court recessed at 4:27 p.m., until 4:34 p.m.]

18 [Outside the presence of the jury.]

19 THE COURT: Are we all ready?

20 MS. TRUJILLO: Yes, Judge.

21 MR. GIORDANI: Yes.

22 MS. TRUJILLO: I just want to be sure that you're not
23 going cut off and let them do rebuttal tomorrow, we're staying all
24 the way through everything.

25 THE COURT: No, no. We're staying.

1 MS. TRUJILLO: Okay.

2 THE COURT: You guys can bring the defendant out. I
3 want to finish with the jury and the we'll do everybody's
4 objections and record after the jury gets to go home.

5 MS. TRUJILLO: Sounds good.

6 [Pause in proceedings.]

7 [Jury reconvened at 4:37 p.m.]

8 THE COURT: All right. Court is now back in session.
9 And is the defense ready to proceed with their closing
10 argument?

11 MS. TRUJILLO: Yes, Judge, if I may.

12 **CLOSING ARGUMENT FOR THE DEFENDANT**

13 MS. TRUJILLO: Carelessness leads to wrongful
14 conclusions. And you've now had a chance to hear for yourself
15 why Metro was careless in this case, why they failed to follow up
16 on leads in this case, and why Larry sits here before you today on
17 trial.

18 But I'm going to walk you through the evidence that
19 we've heard the past two weeks just to be clear and to make sure
20 you understand had heard everything.

21 So I'm going to start in order, because, you know, that
22 was the furthest away. I want to start with Tiffany Seymour. You
23 heard from Tiffany Seymour that Kwame got his first call
24 around 8:00 p.m. After that call, she said that he went to the car,
25 put some marijuana bags in the trunk, but she didn't actually see

1 him. If you recall her testimony, she said that's where he typically
2 would put them. And then she testified that he left for 10 minutes.

3 MR. GIORDANI: Objection. That misstates the
4 testimony.

5 MS. TRUJILLO: It doesn't misstate the testimony.

6 THE COURT: All right. That's overruled.

7 Ladies and gentlemen, from time to time there will be
8 disputes in what the testimony was. I may not remember it, I may
9 remember it incorrectly. So it's your collective recollection as to
10 what the evidence was that should control in your deliberations,
11 not what I may say or what the lawyers may say. So if one of us
12 says something and it's different from what you remember, it's
13 what you remember that should control.

14 Again, the arguments from counsel are not evidence.
15 And like I said, I may remember the evidence incorrectly. So
16 overruled.

17 You can continue.

18 MS. TRUJILLO: Thank you, Judge.

19 She said that he left for 10 minutes. And if you recall,
20 when he came back, she didn't know where he went. He left
21 for 10 minutes, he came back, and he dropped the car seat off.
22 Then they ate together. Well, what did he do in that 10 minutes?
23 Was that the drug run? You can't assume because the State
24 wants you to that there was actually drugs in that car. Because
25 she told you herself she didn't actually see him put them in there.

1 She said that's normally what he would do. But she didn't see it
2 herself.

3 So what did he do in those 10 minutes? We know that he
4 came back after he dropped the car seat off. They ate. She said
5 they hung out for a little while. And then later on he left to meet
6 Anthony Carter.

7 We also heard from Dereka Nelson and Jokhai Smith,
8 two of the 13 people who spoke to officers that night at the scene.
9 Two or 13. Dereka told you despite what the State wants you to
10 believe and what they kept questioning on -- her on, listen to
11 the 911 call. You already heard it once before. What she actually
12 said was the person was wearing either black or gray. Replay
13 the 911 call. I know the State keeps saying black, black, black. But
14 listen to the call.

15 What else did she tell you? That it was one person going
16 southbound. Jokhai Smith told you that the person was wearing
17 black, but he didn't see anybody's shoes, and he saw a hoodie.

18 Two of the 13 people, but we know that when I
19 questioned Detective Dosch, he received differing information that
20 he failed to follow up on. Different description, different numbers
21 of suspects that he didn't follow up on. Two of the 13 people.
22 The State's showing you what they want to show you, because
23 they could have called all of those witnesses.

24 Detective Dosch wasn't the first to arrive, but he said
25 when he got there, he assumed investigatory responsibility, that

1 his job was to interview witnesses, that crime scene analysts jobs
2 were to collect evidence, that patrol officers, when they got there,
3 they were to secure the scene, identify witnesses, and then inform
4 detectives who they needed to speak with. That's where the 13
5 witnesses came in, the initial canvass; information relayed to the
6 lead detectives in this case.

7 I want to talk to you a little bit about the Nike pants that
8 he keeps talking about, that the State keeps talking about. We
9 saw multiple pictures of the pockets, Kwame Banks' pockets,
10 pulled out. You saw the pictures for yourselves. You can see the
11 money in that mesh. And even if you don't believe that the
12 person who was robbing Kwame Banks saw the money,
13 presumably, if they were rifling through his pockets, they would
14 have felt it.

15 But what do we know wasn't taken from him? That
16 yellow metal necklace with the lion head's pendant, the yellow
17 metal ring, two Visa debit cards, and an additional \$1,900 in
18 addition to the \$256. None of that was taken.

19 We also know from Tiffany Seymour that the fob to the
20 key to the car was lost in the car. She testified that the doors
21 remained unlocked and that anyone could get in and presumably
22 press start, and it would go.

23 We know that the detectives in this case, and the State
24 believe this was a robbery. Detective Dosch said Kwame's pants
25 were removed at the scene to preserve the evidence. He told you,

1 ironically, that's the first time you hear about the transfer of DNA.
2 He said, because the pockets were inside out, someone's DNA
3 could be inside those pockets. They believe this was a robbery,
4 so why didn't anyone swab the inside of those pockets? If it's that
5 important and the detective said there could be a transfer of DNA,
6 why wasn't that tested or swabbed? They pretty much swabbed
7 everything else in this case, except the inside of those pockets.

8 So let's talk about the video in this case. Detective Dosch
9 said part of his job was also to collect video. You heard that there
10 was video from the Sky Pointe apartment. And even though
11 Detective Dosch couldn't remember seeing an individual in there,
12 let me get the time right, you know that at 22:52:32 in the Sky
13 Pointe video, there was a man there walking in a hoodie.

14 And let me just refresh your memory, when I questioned
15 Detective Dosch about what the witnesses said that you didn't
16 hear from, several of them said they saw suspects go north,
17 multiple suspects.

18 MR. GIORDANI: Objection. Misstates the testimony.

19 MS. TRUJILLO: Absolutely not, Judge.

20 THE COURT: Overruled. And just, again, ladies and
21 gentlemen, remember it's -- regardless of what the lawyers say,
22 it's your recollection and the lawyers' comments are not evidence
23 in the case.

24 Go on, Ms. Trujillo.

25 MS. TRUJILLO: Thank you, Judge.

1 I asked him, What did you do to follow up with the
2 information that people went northbound? And what did he say?
3 We looked for evidence, didn't find any, and we moved on.

4 Then I asked CSA K. Thomas, You noted in your field
5 notes that a witness said suspect went north on cell phone. What
6 did you do with that information? She said they looked for
7 information northbound, they didn't find any, filed it away, and
8 moved on. That's what she told us.

9 Let me remind you, and you'll see it on the map, that that
10 building where that surveillance is is northbound. Not
11 southbound. It's directly across the parking lot northbound.

12 Who is that person at 22:52:32, 10:52 p.m., minutes after
13 the calls here at 10:47? Who is that person? Where did he come
14 from? Where did he go? It's not important enough to follow up in
15 a murder investigation of a guy with -- wearing a hoodie in a
16 video north of this incident?

17 Instead, the detective said nothing could be gleaned from
18 this video. But you decide for yourselves what's important and
19 what evidence should be gleaned from a video surveillance in a
20 murder case.

21 Who doesn't have a cell phone and whose cell phone
22 didn't you see here? The detective said Anthony Carter got rid of
23 his cell phone. You never saw it. Never saw Carnell's cell phone.
24 We saw Larry Brown's cell phone. We know that Anthony Carter
25 was at Carnell Cave's house that night, and we know that they

1 didn't answer the door when the police stopped to question
2 people in the area to see if anyone heard or saw anything. The
3 people at 2003, Anthony Carter and Carnell Cave, didn't answer
4 the door.

5 What did you hear repeatedly throughout this trial? That
6 Larry never had any communication with Kwame Banks, that
7 Larry never had any communication with Carnell Cave. But who
8 repeatedly had communication with everybody involved here?
9 Anthony Carter.

10 I'm going to go back to CSA Thomas a little bit. She's
11 one of the crime scene analysts in this case. She took the field
12 notes. She talked to you a little bit about footwear impressions.
13 She said she did a lift because there was footprints, if you
14 remember, going southbound to the right, as the State keeps
15 saying, there were footprints there. She took impressions. She
16 said she what's called a lift. She called it sticky plastic, if you'll
17 recall.

18 What did they do with that lift? She testified that there
19 was multiple ways to do comparisons. They didn't do any of that
20 here. They took pictures. They took photos of a fire department
21 employee who was there, also wearing boots. You should look at
22 those soles. She didn't compare any lifts. Even though she
23 testified I believe it was about three possible ways to do footwear
24 impression analysis, and they did none of those here.

25 But what did they do? The three little spots that she was

1 talking about, they did a presumptive blood test, and we know
2 that was negative. Now, when the State got back up to question
3 her, she tried to say, Oh, they can -- there can be false positives.
4 You better believe that if they thought it was a false positive, there
5 would have been the confirmatory test that we talked about, and
6 additional DNA testing. That -- there was none of that here,
7 because it's not the shoe.

8 And if they actually believed that they had the shoe that
9 walked through those bloody footprints, don't you think they
10 would have done a comparison with this so-called lift that they
11 got? You didn't hear any testimony about that. Instead, they filed
12 it away and moved on.

13 CSA Tufteland came and talked to you about the search
14 of Anthony Carter's house. And what was important to note there
15 is that CSA Tufteland took photos of the tennis shoes that were
16 outside, and didn't really do much else with those shoes. There
17 was a juror question about why didn't you collect the shoes? Why
18 didn't you test he shoes? You heard Detective Dosch say he
19 received information from at least one person that said he
20 believes the suspect was wearing shoes. Tennis shoes. And I
21 asked him, What did you do to follow up with that? He said they
22 looked for information, didn't find anything. So now you're
23 photographing tennis shoes at the place -- at the home of a
24 person you suspect to be a part of this, but you impound nothing,
25 you test nothing, you just take pictures. So the shoes aren't

1 important enough to do anything with there.

2 But when do Anthony Carter's shoes become important?
3 On March 20th, that same day the search of his residence,
4 detectives decided, okay, now let's take pictures of the shoes he's
5 wearing. You have access to presumably all of his shoes at his
6 house, do nothing with them, and then take pictures of shoes he's
7 wearing about a month after this incident? They just continuously
8 file away information and do nothing with it.

9 Carelessness. CSA Browning, that CSA testified about
10 impounding all the evidence from the burned Altima that we keep
11 hearing about with the assumption that everything was going to
12 be tested. But if you call, they'll say that's the detective's
13 decision.

14 So why was it that the detective decided only to test the
15 pedals? Two pedals were tested from the Altima. I believe they
16 impounded, and your memory will control, about 15 items of
17 evidence from the Altima, but only tested the two pedals. And,
18 obviously, the DNA found there could be tested, because we know
19 Larry Brown was excluded from it. But who was on there? A
20 crime scene analyst. Larry Brown was excluded.

21 The video analyst, Krnjeu. We saw a lot of video with
22 him. But I'm just going to refer you to a specific video at 23 -- I
23 believe the first time, and again, your memory controls, you have
24 the video, you can access it -- I believe at 23:56 was the first time a
25 lighter-color SUV was seen on that video. That's about an hour

1 after the murder.

2 He also testified and told you you couldn't see any
3 identifying information, couldn't tell the make, you couldn't tell
4 the model. You didn't hear him say there was a license plate on
5 there. You couldn't see anything. And you guys have the video
6 and you saw it with it; it's a lighter-color SUV. How many
7 lighter-color SUVs are in the valley? How many did you pass
8 along the road this week alone? Does it make logical sense that a
9 person committed a murder, left in the car of the person who
10 died, drove around for a while, came back to that area -- because,
11 if you'll recall, 7495 Azure is in that radius, it's in there, you've
12 seen it posted -- come back an hour later, hang out in the same
13 area, and then a few days later keep coming back; does that make
14 sense? Or does it make more sense that a lighter-color SUV just
15 happens to be passing by and they're different SUVs? I think that
16 makes a little more sense.

17 Mangione confirmed to you all -- that was the detective
18 who did some cell phone analysis -- he confirmed to you all again,
19 repeatedly, multiple State witnesses, Larry Brown never had any
20 contact with Kwame Banks.

21 Detective Basilotta, in his files, we pointed out, he noted
22 Carnell Cave as a suspect. But what did they do with that? We
23 know they didn't get cell tower records. Even one of you noticed
24 that and asked the question, Why didn't you get Carnell Cave's
25 cell phone tower records so that you could do this mapping with

1 his stuff? And what was the answer? They didn't get a search
2 warrant. So you bother to get a search warrant for his house, but
3 his phone's not important enough?

4 And as the State says --

5 MR. GIORDANI: Objection. Ms. Trujillo knows there's a
6 legal standard for getting a search warrant. That's inappropriate.

7 THE COURT: All right. The statement should be
8 attempted to obtain a search warrant.

9 MS. TRUJILLO: They should have attempted to obtain a
10 search warrant. But you didn't hear any testimony that they did.

11 We also know that the number that the State says is
12 associated with Kwame Banks, 277-4856, Mr. -- Detective
13 Basilotta, my -- excuse me -- testified that according to the cell
14 phone records, this is subscriber to that phone is actually a James
15 Patterson. Who's James Patterson? The phone that was found
16 under Kwame's body belongs to James Patterson. Who is he? He
17 didn't know who he was, he just knew that that's the subscriber to
18 that phone. Where did he come from? Where did he go? Is that
19 the other party to this incident? Carelessness.

20 I'm going to move on to Ms. Davidovic. She did the DNA
21 testing in this case. What's interesting about her is that when she
22 was up here and the State was questioning her, when she first got
23 on the stand, and she was teaching us all about DNA, she gave
24 you two examples of how touch DNA could be transferred. She
25 started with the collar of her jacket, if you'll recall. She said that if

1 I touch it, some of my cells could be transferred to it. Then she
2 talked about the straps of her purse. She said her DNA could be
3 transferred to it.

4 But when I started questioning her, using her same
5 examples, and asked her about the transfer of DNA, the answer
6 changed from that's what happened to it's unlikely. Now it's
7 unlikely, right?

8 What do we know for sure? That secondary transfer
9 actually happened in this case. In the laboratory, in a sterile
10 environment. There was a corrective action report written in this
11 case, because the DNA of a CSA was found on evidence in this
12 case. They had to write that report, because it's an issue. It's a
13 quality control issue. That CSA didn't process the Altima. That
14 CSA never came in contact with the Altima. And that CSA was
15 never in the garage while it was being processed. But her DNA
16 was on there, on the pedal. So, obviously, secondary transfer is
17 possible.

18 What else do we know? And I'm going to read these to
19 you, because I don't want to get them wrong. Ms. Davidovic
20 testified that Item 4.1, the swabbing from the torn glove in the
21 parking space, was most likely touch DNA, because no blood was
22 detected.

23 Item 5.1, the torn nitrile glove at the exit, was from a
24 single source, Kwame Banks, and that was blood.

25 Item 6.1, swabbing from the inside of the Hardy

1 Mechanix, most likely touch DNA, not blood.

2 Item 6.2, swabbing from the outside of the Hardy
3 Mechanix, most likely touch DNA, because no blood was
4 detected.

5 And what else did we learn from her? Larry Brown was
6 excluded as a contributor to the Nike pants, he was excluded as a
7 contributor to the zippered part of the Nike pants, he was
8 excluded as a possible contributor to the cell phone under
9 Kwame, he was excluded as a possible contributor to the Verizon,
10 he was excluded as a possible contributor to the shattered glass
11 of the Verizon phone, he was excluded as a possible contributor
12 to the pedal of the Nissan Altima. And presumably, there would
13 have been DNA everywhere if a person actually got into the car
14 and took it, right? Presumably, but nothing else was tested of all
15 those about 15 items.

16 And we also know that there was inconclusive results to
17 he fingernail clippings of Kwame. What we also know is that
18 there are multiple unknown contributors to all those things tested.
19 And I'll let your memory control on that.

20 But we do know that there was no testing, no further
21 testing on the Polo boots, because Ms. Davidovic told you herself
22 she never did testing on that. Not a confirmatory test, not
23 additional DNA testing.

24 What do we know about Larry? We know that he got up
25 here on the stand and told you that he didn't kill Kwame Banks.

1 He told you that he was robbed. And let's just think about it for a
2 minute. Anthony Carter, the person who was in contact with
3 every other person in this case, did he set up multiple people that
4 night?

5 Larry told you that he was robbed at a gas station. And
6 when the State put it up on that radius, you'll recall he said it was
7 in that area, the 95, which would make sense about the cell phone
8 tower pinging in that area, because remember, it's not a precise
9 location, it's a range of area. That's why they had all the blobs
10 that they were talking about. So he was in that area.

11 He was robbed by people wearing masks, a hoodie, and
12 gloves. So a secondary transfer DNA happens in the controlled
13 environment of a lab, why can't it happen if someone's getting
14 robbed?

15 And Larry Brown didn't flee to Georgia. You heard
16 multiple witnesses say that he regularly visited Georgia, even for
17 extended periods of time. His children are there, his family is
18 there. Does it sound like a person in hiding would go out with
19 their family in public, take pictures, make posts, go to events, go
20 to regular family dinners? He was informed about this case, you
21 heard him say that. You heard from the attorneys' office too, he
22 was out of the state when he found out that the police were
23 looking for him and wanted to speak with him. And he contacted
24 a lawyer, because he was out of state to communicate on his
25 behalf. Does that sound like a person who was hiding?

1 Anthony, Carnell, and James Patterson. Are those the
2 multiple suspects that witnesses saw that Metro never followed
3 up on?

4 The presumption of innocence, the burden of proof, and
5 reasonable doubt. Larry sits here before you presumed innocent.
6 And the State is the only person, the only two people who have
7 the burden to prove that he committed this -- these crimes that
8 they're alleging beyond a reasonable doubt. The only two people.
9 How many times did you hear, before you were even selected to
10 this jury, Judge Adair told you the defense has no obligation to
11 present witnesses, and Mr. Brown has the right, the constitutional
12 right, to not testify. But what happened? We called witness and
13 he testified. And he told you that he didn't kill Kwame Banks.

14 Careless investigation, failure to follow up on leads, and
15 they all led to wrong conclusions in this case. Detective Dosch,
16 interestingly enough, answered one of his questions by saying,
17 We do the things we do so we don't rush to judgment. But isn't
18 that exactly what happened here? They chose the person who
19 had zero communication with Kwame. Zero communication with
20 Kwame. This is the person that they're accusing of this murder.
21 And just -- let's just file away all the rest of the leads that we've
22 heard.

23 And then the State presents you with the version that
24 they want you to hear.

25 During jury selection, we talked a lot about credibility,

1 and about people telling things that happened to them.
2 Mr. Williams said -- and told us about a very personal incident
3 that he believed what he saw. Well, what did you see? You saw
4 Mr. Brown get up here and testify on his own behalf. Mr. Davis
5 talked about stories are subjective, and that's why you have to
6 look at everything. You look at demeanor, you look at body
7 language, you use your common sense and listen to what is said.
8 And then you take into consideration what isn't said or what isn't
9 done.

10 The State has not met its burden of proof beyond a
11 reasonable doubt. And I'm confident that after you consider all of
12 the evidence in this case, you will find Larry Brown not guilty.

13 THE COURT: All right. Thank you, Ms. Trujillo.

14 Rebuttal?

15 MR. GIORDANI: Thank you.

16 **REBUTTAL CLOSING ARGUMENT FOR THE STATE**

17 MR. GIORDANI: Now I'd like to talk to you folks about
18 reality. Do not speculate --

19 MS. TRUJILLO: Objection, Judge.

20 THE COURT: Rephrase. That's sustained.

21 MR. GIORDANI: Okay. I'd like to talk to you about the
22 evidence in this case. And the evidence in this case -- and I don't
23 mean to be flippant in any way, but it's absolutely overwhelming.
24 So let's just -- I like to speak frankly. My mom says sometimes
25 she should have named me Frank for this reason.

1 The defendant's DNA was on rubber gloves that are quite
2 literally surrounding the victim's body, whose pockets were pulled
3 out, his phone is at the scene of the crime in a pile of rocks, and
4 this defendant got up here and told you that, literally, seven
5 minutes later, he's blocks away getting robbed by a bunch of
6 unknown ninjas or folks.

7 MS. TRUJILLO: Objection.

8 THE COURT: Overruled.

9 MR. GIORDANI: I'm not going to --

10 THE COURT: Rephrase.

11 MR. GIORDANI: Sure.

12 Unidentified individuals.

13 Now, you'll remember yesterday, before I hit on -- I need
14 you -- this is the rebuttal argument, right? So I've got to address
15 all the points that Ms. Trujillo said. But first I want to just talk
16 about Mr. Brown. Okay. You'll remember, he got up here, he
17 swore that oath, he gave his version to his attorney, and then I got
18 a chance to question him.

19 And there's a portion of that questioning that I think
20 speaks volumes. And that was towards the end when we went
21 through text messages. Those text messages come from the
22 defendant's phone. He ultimately admitted that, he admitted to
23 sending each and every one of them, he admitted to receiving
24 each and every one of them. So assume that portion of his
25 testimony is true. Assume that part.

1 He put that phone, which allegedly was stolen during the
2 course of this robbery, in his hands until after 10:40 p.m.
3 Because, remember, I was -- Mr. Brown, I want to be very clear
4 here, you received this Pulling up text, and that's when you
5 thought it's Carter pulling up, I'm going to meet these guys. You
6 see the vehicle pull up, et cetera.

7 After that text is received, he takes the time to get out of
8 his car. Those guys back in, presumably put the vehicle in park,
9 get out, do this horrific violent robbery where Mr. Brown, I think
10 there was Freudian slip there when he was describing how he
11 tried to fight back, but decided that wasn't a good idea. I think he
12 was talking about Mr. Banks, but I'll submit that to your discretion.

13 He then gets beat up, gets his property stolen, lies on the
14 ground and fakes like he's dead or out of it or knocked out or
15 whatever it is. These guys take his stuff, get into this vehicle, then
16 drive onto Sky Pointe -- and by the way, Sinclair Gas -- everyone
17 probably knows the brontosaurus at the Sinclair Gas Station. I
18 mean, why does he throw that in? Because it's a nice little detail.
19 The best lies are half-truths. Kernels of truth. He knows that area,
20 he knows there's a Sinclair. I mean, it's not within the cell service
21 area, but he knows there's one in that area, so that's what he
22 provides to you.

23 Now, back to our timeline. 10:40, then all this stuff
24 happens, he gets his cash taken, he gets his phone taken, these
25 guys get back into their car, they leave, they drive, they then

1 would have to have found Mr. Banks, beat him, fought with him,
2 robbed him, shot him, warning shot, shot him in the chest, taken
3 his car, fled, all within a seven-minute window. Remember
4 the 911 calls, the seven-minute window. He screwed himself.
5 Excuse my word. But when he gave you that timeline, it spoke
6 volumes. Impossible. Absolutely impossible what he got up here
7 and told you. Absolutely impossible.

8 Reasonable doubt is defined in the instruction for you,
9 and I want to go through it. This is the crux of this, and I asked
10 every one of you, I looked every single one of you in your eye
11 during the course of jury selection and talked to you about this,
12 and said, Can you follow the law? That's what I care about. Can
13 you be fair to us? Can you be fair to him? Can you follow the
14 law?

15 This is the law: A reasonable doubt is one based on
16 reason. It is not mere possible doubt, like, ooh, it is a possibility
17 that within seven minutes these unidentified guys did this? I
18 guess maybe in the -- on Mars, maybe that's a possibility.

19 MS. TRUJILLO: Objection.

20 MR. GIORDANI: It is not mere --

21 THE COURT: It's sustained.

22 MR. GIORDANI: It is not mere --

23 THE COURT: Counsel approach for a second. Sorry.

24 [Off-record bench conference.]

25 MR. GIORDANI: And let me be very clear here, I'm not

1 trying to change your qualify or quantify this. This is the law. As I
2 was saying, a reasonable doubt is one based on reason. It is not
3 mere possible doubt, but it such a doubt as would govern or
4 control a person in the more weighty affairs of life. If the minds of
5 the jurors, after the entire comparison and consideration of all the
6 evidence, are in such a condition they can say they feeling -- feel
7 an abiding conviction of the truth of the charge, there is not a
8 reasonable doubt. Doubt, to be reasonable, must be actual, not
9 mere possibility or speculation.

10 And, of course, if there is a reasonable doubt, he's
11 entitled to that. Okay. He's not guilty if there's a reasonable
12 doubt. There ain't. Excuse my flippance. There isn't.

13 The other important instruction, and I'm not going to
14 read the whole thing to you, but -- because Mr. Dickerson had it
15 up, is Instruction Number 36. You're not to look at this evidence
16 in a vacuum. You get to bring your common sense. This is why
17 you were selected and all those other folks were eliminated.
18 Because you demonstrated common sense and normal thought
19 process.

20 You're not to check that at the door when you go back
21 and talk amongst yourselves. You're supposed to bring that with
22 you. And with that, you're allowed to draw reasonable inferences
23 from the evidence. Reasonable inferences. Remember the judge
24 gave you the rain example, right? You're not always going to
25 witness the rain. In this case, no one witnessed the actual -- or no

1 one identified the defendant as the person who shot him,
2 Mr. Banks. Now, his DNA did. I mean, that's beside the point.

3 But you are allowed to look at the entirety, and you are
4 encouraged to look at the entirety of the evidence and not look at
5 it in a vacuum.

6 I just want to show you a couple of photos and talk to
7 you about the entirety of evidence, once that's up.

8 [Pause in proceedings.]

9 MR. GIORDANI: Okay. The crime scene here, just
10 looking at that, screams robbery. Right? I mean, it doesn't get
11 any more obvious than that. His pockets are turned out, there's
12 stuff scattered about. And it clearly indicates that there was a
13 struggle before this robbery.

14 And I will submit to you, ladies and gentlemen, that if it
15 weren't for Kwame fighting back, we would have never caught
16 Larry Brown. And that's because Kwame's fighting back caused
17 that glove that Larry was -- that the defendant was wearing to be
18 torn and left at the scene. That fight caused the defendant to drop
19 his phone in the middle of the rocks. That fight that Kwame put
20 up is what's going to convict Mr. Brown.

21 He fought, he tried, he lost. This defendant got away
22 with his property. Now, I don't think that he got away with
23 everything he wanted to get away with. I think that when you
24 are -- have just murdered someone, just shot someone, that
25 you're in a rush. And I think that Mr. Brown really would have

1 liked that wad of cash that was stuffed in that hidden pocket, and I
2 think he really would have liked that cash that was stuffed in the
3 jacket pocket that was found later folded up at the autopsy.

4 But he shot somebody in a crowded apartment complex.
5 He didn't have the time to dig and unzip and go through every
6 single pocket on Mr. Banks. What he knew, and we know from
7 the text message, is that Mr. Banks carried weight. And Mr. Banks
8 carried weight in his trunk. The top priority for Mr. Brown was
9 getting that vehicle with the weed in the trunk. That's the money
10 maker.

11 And you'll remember the text that Mr. Dickerson showed
12 you. They were going to flip this weed really quickly. They had a
13 buyer for it. They knew what they were going to do.

14 Now --

15 MS. TRUJILLO: Objection. That was not testified to at
16 all.

17 THE COURT: Overruled.

18 MR. GIORDANI: It's argument.

19 THE COURT: Go ahead.

20 MR. GIORDANI: What -- they knew what they were going
21 to do. Okay? When Mr. Brown pulled that trigger, it changed the
22 plans a bit. Now, sometimes, you know, State's attorneys, we get
23 two shots at this, because we have the burden, and sometimes we
24 agree entirely on the evidence, sometimes we disagree a little bit
25 on little things.

1 I agree that there is evidence that this was premeditated
2 and a deliberated act. When Kwame started fighting, he wanted
3 that property. He made that decision to pull the trigger, which
4 would be premeditated and deliberate.

5 Where I disagree slightly is I think the evidence shows
6 the felony murder more. And I think the scene shows this is a
7 felony murder. I think what happened is when Kwame started
8 fighting, the defendant struggled with it. And you'll remember
9 what Jokhai said. Jokhai said, I heard, Don't move, n-word. I
10 heard that from the guy in the sweats that was manhandling the
11 other guy. That's a robbery. I think he moved. He fought back.

12 During the course of that, I'm -- think the evidence shows
13 that gun went up, and that's the first time the trigger gets pulled.
14 And Kwame keeps fighting.

15 And why do I say that? Well, look at his shoes. Look at
16 the blood. If you look at the photos from the other side of his
17 body, you see there's blood smears on his shoes and on his pants
18 a little bit. It's because this was a fight. This was really a fight, a
19 scrap. And this -- he was fighting for his life. He had a gun
20 pointed at him.

21 I think that second shot, based upon the evidence that
22 went through his chest and because of the way the cart case is
23 stuck to his chest, I think that was a struggle over the gun and it
24 went off.

25 So don't make the mistake to think that we're getting up

1 here and pitching you that this was some massive, elaborate
2 scheme to murder Kwame Banks and steal his weed. No one's
3 saying that. No one is saying that here.

4 What we're saying is this was a massive elaborate scam
5 to rob him and he died. And that's felony first-degree murder. No
6 two ways about it.

7 And I would submit to you this is a all-or-nothing case.
8 This is not one where you look at the conspiracy and say, Okay,
9 the State proved that, the robbery, eh, there was, you know,
10 maybe, I don't know. And then you get him on the first-degree
11 murder. This is all or nothing, folks. You either believe what the
12 defendant got up here and pitched you or you don't. And all of
13 the other evidence set aside the defendant's own statement, says
14 conspiracy to commit robbery, man died during the course of that
15 robbery, first-degree murder. That's it.

16 And Ms. Trujillo made a big point about the pockets.
17 And I just want to remind you that there are close-up photos and
18 you can see that as a hidden pocket. And there's a zipper in
19 addition to that.

20 During the course of that struggle that I described, the
21 glove ripped. Now, this is his back-up glove. He has gloves on
22 the outside of the latex gloves. Okay. So something happened,
23 that gun maybe, if it's left or right, we don't know. And again, one
24 of the jurors asked a good question, is -- can you tell if that's the
25 outside or the inside? You can't. Because it's a latex glove, by

1 nature, you can't.

2 But you can tell the other glove is a lefty. Okay. So
3 something happened during that struggle where the glove ripped
4 and it ultimately came off. And then when Mr. Brown's digging
5 through Kwame's pants, that portion is left behind. When he
6 flees, and I'll get to that in a moment, that other portion is ditched
7 on the driver's side of where the vehicle left the apartment
8 complex.

9 Just to address a few points, because this is the last time
10 we get to speak to you, Ms. Trujillo indicated, and I objected, that
11 Kwame usually put the bags in the trunk. She didn't see any of
12 this. Well, I'll remind you. When Tiffany testified, remember I
13 asked her, What do the bags look like? Or what was the size?
14 And she held up her hands. She saw the large amount of
15 marijuana going into the car. Whether she saw it go into the
16 trunk, use your memory, what ever she said is what she said. She
17 saw the bags. The weed existed. And you saw the photographs
18 of the trunk of the vehicle after Mr. Brown burnt it. And that was
19 empty of the bags of weed. And, obviously, there's no marijuana
20 anywhere else inside the car. That's the proceeds of the robbery
21 that was stolen. That constitutes robbery, first-degree murder.

22 In addition, you saw the \$10 bill out at the front. You
23 remember what Jokhai said, that was a long time ago, but what
24 Jokhai said was, I saw the cash come out of his pocket. That was
25 probably whatever loose cash he had in his pocket. But let me

1 just be clear: Legally, the robbery is done. Even if he doesn't
2 steal the car, set that aside, once you take that \$10 by force or
3 by -- to prevent using the force to prevent the overcoming of the
4 taking, that \$10, whether it's moved 10 feet, 20 feet, 30 feet, that's
5 a robbery. It's complete once the property is taken from the
6 victim.

7 Ms. Trujillo talked about the 911 call, and I agree with her
8 here, I urge you to listen to it and listen to everything and look at
9 everything. Dereka was freaked out. She just witnessed a murder
10 outside her window. And when she says black or gray sweats,
11 she's doing her best. Okay. She's doing her best in that stressful
12 situation. What she's very clear about and what can't be disputed
13 is it's one guy doing the killing and doing the robbing. Okay.

14 She doesn't see what's happening down by the vehicle,
15 but she sees the defendant, or let's go with the killer, going in the
16 direction of the vehicle. Here's the vehicle turned on. Sees the
17 vehicle -- sees the tires of the vehicle leave. Okay. So she saw
18 this one man acting in concert, was acting throughout that portion
19 of what went on.

20 I want to address, though, this Anthony Carter and
21 Carnell Cave thing. Mr. Dickerson talked about it a lot. Probably,
22 say, the first three days of the trial you were thinking, Oh, wow,
23 Anthony Carter did this. But did Larry? And that's for a reason.
24 Anthony Carter is the reason all this happened. Anthony Carter
25 knew Kwame. Anthony knew Kwame. Okay. You think he's the

1 one that's going to rob him? Of course not. It's the friend who
2 hasn't met Kwame.

3 So when Ms. Trujillo gets up here and makes this big
4 deal about no contacts in the phone with Kwame, well, of course
5 not. You think these guys are really going to pick the one who
6 Kwame can identify his face? No. They picked the guy who
7 doesn't know Kwame. And that's where the description comes in.
8 You know, he's leaving -- or he carries weight here. He kicked --
9 they're providing him intel. He's the guy who's going to do it.
10 They are certainly on the hook, just like he is. They are certainly
11 liable for first-degree murder under the felony murder rule. But
12 they're not in front of you.

13 And let me just make this abundantly clear and I'll move
14 on from those two. Carnell Cave and Anthony Carter aren't your
15 problem. They are my problem. I will deal with them. You are
16 instructed Larry Brown is on trial, he's the one you worry about.
17 Whether you think those two are guilty or not or whether we
18 proved it or not is not up to you. Focus on Mr. Brown.

19 I'll mention this briefly, Ms. Trujillo inserted this -- there
20 are witnesses out there who said this XYZ. The questions that
21 were asked of the detective were asked in order to see, Hey, what
22 did you do next? Did you follow up on this, did you follow up on
23 that? Those witnesses of, I guess, 11 out of 13, you heard
24 Detective Dosch with regard to their canvass. Some of the were
25 earwitnesses, some of the, you know, heard, saw, didn't see,

1 whatever.

2 You heard from the two witnesses with the birds eye
3 view that you saw the photographs of. Those two witnesses were
4 very clear and Jokhai, don't forget, said, Yeah, after he killed
5 him -- or after he shot him, he did go that way. And then
6 someone hollered to him and he went this way. Whether that
7 person that hollered was Anthony Carter from Cave's apartment,
8 or whether it's Cave saying, Yo, wrong way, dude, this car's right
9 here, it doesn't matter. It doesn't matter. Doesn't matter at all.
10 You can't speculate what 11 other people would say. You're not
11 allowed to speculate. You're not supposed to for good reason.
12 The law instructs you not to speculate.

13 And, again, I'll just briefly address these points
14 Ms. Trujillo made about the -- not swabbing the pockets and not
15 testing the swabs taken from the bottles in the vehicle.

16 Mr. Brown made a real solid effort to destroy the
17 evidence. He lit the car on fire. Okay. He did that for a reason.
18 Maybe -- you know, you can see why someone would do that,
19 right? To destroy evidence. Now, if you think that looking at
20 those photos, that you're going to get some touch DNA off a burnt
21 bottle, great. What -- where does that leave us?

22 So Kwame's had Mom in the car, Dad in the car, there's
23 an unidentified female and an unidentified male. And we'd be up
24 here having this same argument. Right? This -- was it transfer?
25 What's this? It doesn't matter who's on the 13 bottles in his car.

1 Because if it's some unidentified person, we'd still be in the same
2 situation. It's Mr. Brown on the gloves surrounding the victim's
3 body. That's the DNA that matters.

4 And this idea that, oh, well, transfer happened in this
5 case, this case -- so you don't know if the transfer happened on
6 the gloves. Well, you do know. You know for certain, and here's
7 why. You'll remember the DNA testimony. She got up here, she
8 told you, the initial profiles from the gloves, the major, right? And
9 then the other one from the interior of the cloth glove, they were
10 developed with her August DNA report.

11 It isn't until a month later and all this evidence has been
12 sent back to the lab and all that that they get the buccal swab from
13 Mr. Brown. They're not even in the lab at the same time. So any
14 idea that they could be transferred is ridiculous. Some CSA who
15 didn't even work on this case sneezed in the CSA garage and
16 someone stepped in it and put it on the pedal, and you're going to
17 acquit Mr. Brown? Give me a break. This is gold stand forensic
18 evidence on these gloves surrounding his body, hanging out of
19 his pocket.

20 And one other point about Mr. Carter and Mr. Brown.
21 Ms. Trujillo asked you this question: Does it make sense that the
22 killer, if it's Mr. Brown, took the victim's car, left, drove around,
23 came back, and got his car and then went and dumped the other
24 car? No one's saying that. You don't remember me saying that,
25 right? You don't remember Mr. Dickerson saying that. We don't

1 know who the figure is at the vehicle. We can't prove who the
2 figure is at the vehicle with direct evidence, because it's grainy. I
3 mean, it's video that's grainy.

4 But what we can prove is that Mr. Brown is the guy who
5 did the killing and then went from the body over to the vehicle
6 and left it in there. Now, maybe he drove around, hit the gas
7 station, call Carter's, like, Yo, my car is there, get my car, it's, you
8 know, at the dealership and the next block. I'll be over, I'll drive
9 up somewhere and ditch it. Come pick me up. Whatever it is.
10 Maybe it's Cave, I don't know and I don't care. Doesn't matter.
11 What matters is the evidence in its entirety. Not looking at
12 individual pieces of evidence in a bag. So does it make sense?
13 Yeah. It does.

14 And Mr. -- I'm sorry, Ms. Trujillo asked you who's James
15 Patterson? I'll tell you who James Patterson is. He's one of my
16 favorite authors. And I'll tell you who Kwame Banks is. Kwame
17 Banks is a drug dealer. No offense. He's not going to put his
18 name on the phone. Right? He's a little smarter than Mr. Carter
19 apparently.

20 He put James Patterson on --

21 MS. TRUJILLO: Objection. Judge, there was absolutely
22 no testimony except that he was a subscriber.

23 MR. GIORDANI: Yeah, and it's argument, saying who
24 James Patterson is.

25 THE COURT: Well, and there's probably many James

1 Pattersons.

2 MR. GIORDANI: Sure.

3 THE COURT: That's a very common name. There's a
4 famous James Patterson, and I'm sure numerous not-famous
5 James Pattersons. So, you know, it's argument, but it's also a
6 little bit of speculation. Is it his or is it a fake name or not? I
7 mean, that's essentially your argument.

8 MR. GIORDANI: I mean --

9 THE COURT: Move on.

10 MR. GIORDANI: Thank you.

11 THE COURT: But, again, there's more than one James
12 Patterson in the world.

13 MR. GIORDANI: Absolutely. Absolutely.

14 And, again, you're allowed to draw reasonable inferences
15 from the evidence. Mr. Banks sells drugs. He probably isn't going
16 to subscribe his multiple burner phones to his own name. I'm just
17 going to throw that out there.

18 And, in addition, Ms. Tiffany confirmed that number. So
19 it is Kwame's number. Not only is it right next to the body, but his
20 child's or children's mother confirmed that.

21 I talked about DNA transfer and I'll just leave you with
22 this. When Ms. Trujillo asked about this idea that potentially
23 these robbers, these alleged robbers could have robbed Mr.
24 Brown and then transferred, remember where the locations of the
25 DNA is. The location of the -- Mr. Brown's DNA on the cloth

1 glove. It's on the inside.

2 Another thing Ms. Trujillo made an issue about was the
3 confirmatory test on the boots. This one I don't have much
4 rebuttal for that. I would say Ms. Trujillo's probably right. Should
5 they have followed up and gotten the DNA -- tried for a DNA test
6 on the boots? Yeah. I think they should have. Did they need to
7 when they Defendant's DNA on the latex glove? No. Would have
8 been nice? Yes. Does that mean he's not guilty? Of course not.

9 And remember this: Mr. Brown told you these are his
10 shoes. Okay. That's the bloodstain, like, inches from the victim's
11 body. This is where your common sense comes in. This is where
12 looking at the evidence as a whole comes in, as opposed to in a
13 vacuum. Would it have been nice to test those little red stains for
14 dan? Absolutely. I'm not going to argue it wouldn't have been.

15 But can you look at that as reasonable men and women
16 and say that's not Larry Brown's shoe in the middle? I'll let you
17 make that determination.

18 Remember the numbers. I hate to repeat myself, but this
19 DNA evidence is the gold standard. It doesn't get better. But you
20 don't just look at that in a vacuum, as I said. Look at it along with
21 everything else we presented to you.

22 Finally, the point about -- Ms. Trujillo made about
23 Mr. Brown didn't flee to Georgia, you know, he had planned on
24 moving or whatever it was. He planned on moving there or he
25 was already in the process or whatever it was. I'll remind you,

1 Special Agent Fitzgerald testified and Jamilah Wiggins [sic]
2 testified. And Jamilah Wiggins doesn't have a dog in this fight.
3 And Jamilah told you the choppers were swirling. He -- the
4 defendant is nervous. They say what's going on? He says, Oh,
5 you know how it goes, and, you know, when people are kind of
6 after you? And then she says, Well, get out. And he's, like, No,
7 no, no, no, you don't have to let them in.

8 Okay. She doesn't have a dog in this fight. This is one of
9 these situations where you can contrast and make a
10 determination on Mr. Brown's testimony in and of itself, right
11 there. You either believe him or you don't. You either believe
12 him that he had a beer with this guy, or you believe Ms. Wiggins
13 who says, It was pretty quick, he asked to use the phone, I let him.
14 Then we were, like, hit the door, because there's a cop with a gun
15 outside of our window. You either believe her or you believe him.
16 This is as clear as it gets.

17 And I'll remind you about that instruction that says you
18 can disregard someone's version or testimony in its entirety if you
19 believe that they lied or said one thing that was not true.

20 MS. TRUJILLO: Objection, Judge. That misstates the
21 instruction. It says as to a material fact.

22 THE COURT: Right. And ladies and gentlemen --

23 MR. GIORDANI: That's pretty material to me.

24 THE COURT: -- you're directed to, again, the instructions,
25 which must be read verbatim, and just like I can't, you know,

1 paraphrase them, it's the written instruction that controls. And I
2 think it says the credibility or believability of a witness should be
3 determined by his manner upon the stand, if you believe that a
4 witness has lied about any material fact in the case. Not the first
5 time I've read it.

6 Then you may disregard the entire testimony of that
7 witness or any portion of his testimony.

8 If you have it, you could just put it up on the screen.

9 But ladies and gentlemen, once again, you're directed to
10 follow the instructions as written.

11 MR. GIORDANI: I completely agree. And to me, that's a
12 material fact. To you, it may not be. You're the determiners of
13 fact here. I just want to give you a couple more examples where
14 it's believe it all or don't believe any of it.

15 A juror asked, and I forget which one it was, you said
16 you've always -- well, I can guess which one it was. You said
17 you've always had the same phone number, why did you change
18 it?

19 Mr. Brown's response, "I've never changed my phone
20 number." It's another fact right there. You either believe
21 Mr. Brown or you don't.

22 There -- another juror asked: Who is he when talking
23 about the knife in pants? His response? I don't know. I called, I
24 clarified. It was -- he said crazy things. You either believe him or
25 you don't.

1 The evidence in this case is absolutely overwhelming.
2 Mr. Banks sold drugs. Mr. Banks made the mistake of trusting
3 Mr. Carter. Mr. Banks showed up, fought for his life, and this man
4 right here, Mr. Brown, took it. Your job is simple. Don't think
5 when you're back there, I feel bad, he has a daughter. Because
6 Mr. Banks has standing.

7 You are to look at the evidence. Make a determination
8 based upon the evidence. Clean, cool, steadfast, smart. Not
9 sympathy, prejudice, bias, or anything like that. Look at the
10 evidence, do your jobs, follow your oath. Hold him accountable
11 for taking Kwame Banks away. Thank you.

12 THE COURT: All right. Thank you, Mr. Giordani.

13 The clerk will now swear the officer to take charge of the
14 jury.

15 [Bailiff sworn.]

16 THE COURT: All right. Ladies and gentlemen, in a
17 moment, I'm going to have all 14 of you collect your belongings,
18 as well as your notepads, and follow the bailiff through the rear
19 door. Not yet.

20 As you may have already known or may have figured
21 out, a criminal jury is composed of 12 members. There are 14 of
22 you. Two of you are the alternates who were randomly selected.
23 And those are Jurors Number 4, Ms. Wallace, and Juror
24 Number 14, Mr. Campbell. You are the two alternates.

25 Before you leave, please provide numbers where you

1 could be reached tomorrow if, you know, God forbid, one of the
2 jurors becomes ill or something like that before a verdict is
3 reached, you may be called in to deliberate with the jury.

4 For that reason, the prohibition that I've been telling you
5 about talking about the case or doing anything about the case is
6 still very much in effect until you have been contacted by a
7 member of my staff and told that the jury in this matter has
8 reached a verdict. And to remind all of the jurors, when you leave
9 tonight, the prohibition that I've been giving you is still in effect.
10 The only time you are to discuss this case is when all 12 of you --
11 all 12 of you -- are in the jury deliberation with you.

12 So when you leave tonight, remember, you are not to
13 discuss the case or anything relating to the case with each other
14 or with anyone else. You're not read, watch, or listen to any
15 reports of or commentaries on the case, person, or subject matter
16 relating to the case. You're not to do any independent research
17 on the Internet or any other medium. Not to visit the location at
18 issue. And you're only to form or express an opinion on the
19 case when, again, all 12 of you are together deliberating.

20 If all of you would please follow Officer Hawks to the jury
21 room.

22 [Jury recessed for deliberations at 5:39 p.m.]

23 THE COURT: They're not going to have a verdict tonight.
24 So we'll send them home. But do you want to make your record?

25 MR. GIORDANI: Yes.

1 MR. STORMS: We objected to them showing the photo
2 from February 15th about a cell phone tower usage that wasn't
3 testified to in court. I understand this is --

4 THE COURT: Yeah, it was overruled, because it was part
5 of the exhibit that was already admitted. Although you were
6 right, the witness had not specifically gone over that specific
7 image, but it was part of the overall exhibit. So next.

8 MR. STORMS: We objected to their -- to the
9 characterization of Mr. Brown's testimony as a wild story. It's
10 disparaging his testimony, disparaging the defense.

11 THE COURT: I don't think it was disparaging the defense.
12 You know, they're allowed to say his story is incredible or
13 unbelievable or, you know, that's essentially what wild means. So
14 I didn't think it was disparaging Mr. Banks really or counsel.

15 There was a later time I thought they were disparaging
16 counsel. But I don't know that -- if that's why you objected.

17 MS. TRUJILLO: Which one, the Mars?

18 THE COURT: Where Mr. Giordani got up and said, Now
19 you're going to hear reality, not speculation.

20 MS. TRUJILLO: Oh, yeah. Yeah.

21 MR. STORMS: Yeah, yeah, we're getting there.

22 THE COURT: I sustained the objection because I felt like
23 it was maybe disparaging Ms. Trujillo. So that's why that
24 objection was sustained.

25 MR. STORMS: We're -- the next objection would be that

1 the legal standard to obtain a search warrant. I would be
2 objecting to him that speaking objection. The Court instructed us
3 to not make speaking objections other than misstates evidence
4 along the lines. So he's arguing in front of the jury about this
5 warrant issue in that objection. It's improper based upon the
6 instructions you gave us.

7 THE COURT: I don't know if the State wants to say
8 anything.

9 MR. GIORDANI: Yeah.

10 MS. TRUJILLO: We're not --

11 MR. GIORDANI: Is that all of it?

12 MS. TRUJILLO: No, we're not done.

13 THE COURT: Okay. We're going to do the whole thing
14 and then you're going to respond one by one? Is that what we're
15 doing?

16 MR. GIORDANI: Sure.

17 THE COURT: Okay, I guess.

18 MR. STORMS: Okay. And then whenever he got up to
19 rebut this, you know, let's talk about reality, is essentially what he
20 said.

21 THE COURT: Right. Well, I did sustain that objection,
22 because I felt like it could be construed as disparaging
23 Ms. Trujillo.

24 MR. STORMS: Yes.

25 THE COURT: And her legal performance, I guess. So I

1 sustained it. That's why.

2 MS. TRUJILLO: And the next one was when they said
3 that he was robbed by ninjas. And then there was one more --

4 MR. STORMS: James Patterson?

5 MS. TRUJILLO: Oh, and then I also objected when they
6 characterized it as the evidence could have only happened on
7 Mars. And then we approached. And I don't remember what the
8 Court said up there.

9 THE COURT: I think I kind of --

10 MS. TRUJILLO: Oh, you said it was more like quantifying
11 reasonable doubt and then the State moved on.

12 MR. STORMS: Well, there was actually -- he had started
13 reading the reasonable doubt instruction and then began arguing
14 in the middle of it.

15 THE COURT: Right.

16 MR. STORMS: And we objected, because that was very
17 much, you know, you can't comment on reasonable doubt outside
18 of that instruction, and to start arguing in the middle of it --

19 THE COURT: Right. Like what --

20 MR. STORMS: -- would imply that you -- we have the
21 ability to make this argument.

22 THE COURT: -- is reasonable. What is -- it was what is
23 speculation, I think. And so I called -- I agreed. I sustained the
24 objection. I called counsel to the bench to tell -- remind the State
25 don't paraphrase the reasonable doubt instruction and don't

1 provide examples, because I thought that could violate, you know,
2 the Supreme Court's order. So -- and then he moved on. He
3 didn't talk about it anymore after that.

4 MR. GIORDANI: Can I respond to what's been said so
5 far?

6 MS. TRUJILLO: And then the --

7 THE COURT: Sure.

8 MR. GIORDANI: Because I'm going to be forgetting half
9 this, there's so many.

10 When it comes to disparaging, I would never disparage
11 Ms. Trujillo. I think you've noticed that we get along pretty well.
12 What I was saying is I'm going to talk to you about the reality of
13 the evidence. I think that's perfectly appropriate. I think you
14 ended up sustaining the objection.

15 THE COURT: I did.

16 MR. GIORDANI: It is what it is.

17 The speaking objection about the search warrant, that's
18 where I didn't violate the Court's order. Okay. What I said was,
19 Ms. Trujillo knows, so the Court was aware of where I was going
20 with my objection.

21 THE COURT: Right, it's --

22 MR. GIORDANI: There's isn't a valid -- I mean, I title of
23 the objection for -- it requires probable cause to get a search
24 warrant and we didn't have probable cause for Carnell Cave,
25 which everyone here knows, which is why I said it the way I did.

1 THE COURT: Right. I don't think it was a speaking
2 objection. Frankly, I could have gone either way on that. I think it
3 was valid comment for you to say, you know, we haven't seen
4 Carnell Cave's phone records, where are those?

5 MR. GIORDANI: Yes.

6 THE COURT: Something like that.

7 MR. GIORDANI: I agree.

8 THE COURT: But the -- I think that's valid. You know,
9 that's why I said, well, say attempted, because if there's not
10 probable cause, they can't get a search warrant. So --

11 MS. TRUJILLO: And then I rephrased and said
12 attempted.

13 THE COURT: -- I think it was okay, but, I mean, I think
14 your comment of the, you know, like, we don't know anything
15 about Carnell Cave, why isn't that here, is certainly fair argument.
16 I think the whole thing was fine.

17 MR. GIORDANI: Okay. And then the robbed by ninjas
18 comment, I understand that that was not -- I shouldn't have said it
19 the way I said it. It came out, and I think the words that followed
20 were, Or unidentified suspects, as they were objecting. So I'll
21 submit it on that.

22 MR. STORMS: And then he got you to giggle now with
23 that, and he got you to giggle whenever he said it during his
24 argument too. I mean, it's the ninja --

25 THE COURT: I'm just happy someone woke me up. I'm

1 just kidding. That's not on the record.

2 MR. GIORDANI: Now, just --

3 THE COURT: I don't care if it is. I'm sort of joking. I
4 mean, I think, you know, this evidence was a little bit dry with all
5 of the phone records and the text messages back and forth and,
6 you know, the DNA. It wasn't the most exciting murder trial.
7 Okay.

8 And so I think maybe Mr. Giordani was trying to, you
9 know, kind of create some drama or make it a little more
10 interesting. I think I told them at the bench --

11 MR. STORMS: We -- we --

12 THE COURT: -- you know, don't -- try not to use those
13 words. And then he said some other term that was a little more
14 neutral.

15 MR. GIORDANI: Unidentified suspects, I believe.

16 THE COURT: All right.

17 MR. GIORDANI: The other one that I really want to
18 comment on is this idea that I was commenting on beyond a
19 reasonable doubt. That's absolutely not what I was doing. What I
20 did is permissible, although I understand why the Court would say
21 stay away from that, don't -- I get that. And that's because I'm
22 very familiar with the law in this and understand --

23 THE COURT: No, I'm not saying you're not. I just meant,
24 like, I'm getting nervous here, let's stay away from this --

25 MR. GIORDANI: I get it.

1 THE COURT: -- I don't want to create error.

2 MR. GIORDANI: I understand. I just want to say, I think,
3 for the record, I am perfectly permitted to read a line of an
4 instruction and then make argument. I don't have to read it
5 through. Now, I get where the Court was going again, but am I
6 allowed to say, Is it possible that XYZ? Sure, it's possible. But it
7 is reasonable? I mean, that is 101 argument on beyond a
8 reasonable doubt. I was not commenting, I was not quantifying,
9 qualifying reasonable doubt in any way. And I believe I followed
10 up with, And, ladies and gentlemen, I'm not commenting or
11 qualifying reasonable doubt, the instruction it what it is, and then I
12 read it.

13 MS. TRUJILLO: And the last objection was when he said
14 James Patterson. He said, Kwame wasn't using his real name,
15 basically, inserting facts not in evidence. I mean, obviously, we
16 only knew that the subscriber was James Patterson. No one
17 testified that he made that name up for that phone.

18 MR. GIORDANI: And that's argument and that's
19 reasonable inference from the evidence. I think the jury probably
20 came to that same conclusion, that it was a burner -- or
21 subscribed to under his name when Ms. Seymour, his baby's
22 mom, said that that was one of the phones that she recalled -- the
23 numbers that she recalls. So it's a reasonable inference from the
24 evidence. It's a burner -- I mean, a false name.

25 THE COURT: Yeah, I mean, it's a little bit speculation, but

1 it's also argument. And there was other evidence to establish that
2 notwithstanding the name James Patterson, that it was Mr. Banks'
3 phone. So there was other evidence of that. And, you know, he's
4 arguing, well, why is this Mr. Banks' phone in this other name?
5 Well, it's a famous writer. You know, that's one possibility.

6 All right. Anything else we need to put on the record by
7 either side?

8 MS. TRUJILLO: No.

9 MR. GIORDANI: I think I made some objections. But now
10 I can't --

11 MS. TRUJILLO: The search warrant one.

12 MR. GIORDANI: I know, I --

13 MS. TRUJILLO: And then you said misstate the
14 testimony as to Tiffany Seymour.

15 MR. GIORDANI: Yeah, I'll -- no, for the record.

16 THE COURT: All right. So, Kenny, what time are they
17 coming back?

18 THE MARSHAL: 9:00 a.m.

19 THE COURT: Okay. They wanted to come back at 9:00?

20 THE MARSHAL: Yeah.

21 THE COURT: No, I don't care. I give them a choice, like
22 they can go late, do they want to come back at 9:00 or 9:30?

23 MR. STORMS: Okay.

24 THE COURT: Did you give them a choice?

25 THE MARSHAL: I did.

1 THE COURT: All right. We'll let you know when they
2 have a verdict. Leave cell phones.

3 MS. TRUJILLO: Who do we give it to?

4 THE COURT: Athena.

5 [Court recessed at 5:49 p.m.]

6 ///

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

24

25


Shawna Ortega, CET*562

ORIGINAL

1 IND

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JOHN GIORDANI
6 Chief Deputy District Attorney
7 Nevada Bar #012381
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

DEC 20 2019

BY, 
SHANNON REID, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 LARRY DECORLEON BROWN,
13 #8376788

14 Defendant.

CASE NO: C-17-326247-1

DEPT NO: XXI

AMENDED FOURTH
SUPERSEDING
INDICTMENT

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 The Defendant above named, LARRY DECORLEON BROWN, accused by the Clark
18 County Grand Jury of the crime(s) of CONSPIRACY TO COMMIT ROBBERY (Category B
19 Felony - NRS 200.380, 199.480 - NOC 50147); ROBBERY WITH USE OF A DEADLY
20 WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138); MURDER WITH
21 USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 -
22 NOC 50001) and OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED
23 PERSON (Category B Felony - NRS 202.360 - NOC 51460); committed at and within the
24 County of Clark, State of Nevada, on or about February 21, 2017 as follows:

25 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

26 Defendant on or about February 21, 2017 willfully, unlawfully, and feloniously
27 conspire with ANTHONY CARTER to commit a robbery, by the defendants committing the
28

C-17-326247-1
SIND
Superseding Indictment
4883378



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002728

1 acts as set forth in Counts 2 and 3, said acts being incorporated by this reference as though
2 fully set forth herein.

3 COUNT 2 - ROBBERY WITH USE OF A DEADLY WEAPON

4 Defendant did on or about February 21, 2017 willfully, unlawfully, and feloniously
5 take personal property, to wit: U.S. Currency and/or vehicle keys and/or vehicle, from the
6 person of KWAME BANKS, or in his presence, by means of force or violence, or fear of
7 injury to, and without the consent and against the will of KWAME BANKS, with use of a
8 deadly weapon, to wit: a firearm, defendant using force or fear to obtain or retain possession
9 of the property, to prevent or overcome resistance to the taking of the property, and/or to
10 facilitate escape, the Defendants being criminally liable under one or more of the following
11 principles of criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by
12 aiding or abetting in the commission of this crime, with the intent that this crime be committed,
13 by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the
14 other to commit the crime, whereby Defendant ANTHONY CARTER lured and/or set up a
15 meeting with KWAME BANKS under the ruse of a drug deal, thereafter, Defendants LARRY
16 DECORLEON BROWN and/or ANTHONY CARTER robbed and/or attempted to rob the
17 said KWAME BANKS; and/or (3) pursuant to a conspiracy to commit this crime, with the
18 intent that this crime be committed.

19 COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON

20 Defendant did on or about February 21, 2017 willfully, unlawfully, feloniously and
21 with malice aforethought, kill KWAME BANKS, a human being, with use of a deadly weapon,
22 to wit: firearm, by shooting at or into the body of the said KWAME BANKS, the said killing
23 having been (1) willful, deliberate and premeditated, and/or (2) committed during the
24 perpetration or attempted perpetration of a robbery and/or attempt robbery, the Defendants
25 being criminally liable under one or more of the following principles of criminal liability, to-
26 wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission
27 of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring,
28 commanding, inducing and/or otherwise procuring the other to commit the crime, whereby

1 Defendant ANTHONY CARTER lured and/or set up a meeting with KWAME BANKS under
2 the ruse of a drug deal, thereafter, Defendants LARRY DECORLEON BROWN and/or
3 ANTHONY CARTER robbed and/or attempted to rob the said KWAME BANKS, thereafter
4 the said KWAME BANKS was shot in the chest and killed during the course of the robbery
5 and/or attempted robbery by Defendants LARRY DECORLEON BROWN and/or
6 ANTHONY CARTER; and/or (3) pursuant to a conspiracy to commit this crime, with the
7 intent that this crime be committed.

8 COUNT 4 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

9 Defendant LARRY BROWN did on or about February 21, 2017 willfully, unlawfully,
10 and feloniously own, or have in his possession and/or under his custody or control, a firearm,
11 the Defendant being a convicted felon, having in 2000, been convicted of Bank Robbery
12 (Federal), a felony under the laws of the State of Nevada.

13 DATED this 20th day of December, 2019.

14 STEVEN B. WOLFSON
15 Clark County District Attorney
16 Nevada Bar #001565

17 BY

18 
19 JOHN GIORDANI
20 Chief Deputy District Attorney
21 Nevada Bar #012381

22
23
24
25
26
27 17AGJ060A-B/17F07976X/17F09115X/saj/MVU
28 LVMPD EV# 1702214563; 1703200757
(TK2)

1 **GPA**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JOHN GIORDANI
6 Chief Deputy District Attorney
7 Nevada Bar #12381
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

DEC 20 2019

BY, 
SHANNON REID, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

CASE NO: C-17-326247-1

12 LARRY DECORLEON BROWN,
13 #8376788

DEPT NO: XXI

14 Defendant.

15 GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty, pursuant to North Carolina v. Alford, 400 U.S. 25
17 (1970), to: COUNT 4 - OWNERSHIP OR POSSESSION OF FIREARM BY
18 PROHIBITED PERSON (Category B Felony - NRS 202.360 - NOC 51460), as more fully
19 alleged in the charging document attached hereto as Exhibit "1".

20 My decision to plead guilty by way of the Alford decision is based upon the plea
21 agreement in this case which is as follows:

22 The State stipulates to concurrent time to Counts 1, 2 and 3. The Defendant is not
23 waiving any appellate rights as to Count 4. In the event of a reversal of Counts 1, 2 and 3,
24 the State agrees that the instant plea can be withdrawn.

25 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
26 and/or impounded in connection with the instant case and/or any other case negotiated in
27 whole or in part in conjunction with this plea agreement.

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C-17-326247-1
GPA
Guilty Plea Agreement
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1 I understand and agree that, if I fail to interview with the Department of Parole and
2 Probation (P&P), fail to appear at any subsequent hearings in this case, or an independent
3 magistrate, by affidavit review, confirms probable cause against me for new criminal charges
4 including reckless driving or DUI, but excluding minor traffic violations, the State will have
5 the unqualified right to argue for any legal sentence and term of confinement allowable for
6 the crime(s) to which I am pleading guilty, including the use of any prior convictions I may
7 have to increase my sentence as an habitual criminal to five (5) to twenty (20) years, Life
8 without the possibility of parole, Life with the possibility of parole after ten (10) years, or a
9 definite twenty-five (25) year term with the possibility of parole after ten (10) years.

10 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
11 plea agreement.

12 CONSEQUENCES OF THE PLEA

13 By pleading guilty pursuant to the Alford decision, it is my desire to avoid the
14 possibility of being convicted of more offenses or of a greater offense if I were to proceed to
15 trial on the original charge(s) and of also receiving a greater penalty. I understand that my
16 decision to plead guilty by way of the Alford decision does not require me to admit guilt, but
17 is based upon my belief that the State would present sufficient evidence at trial that a jury
18 would return a verdict of guilty of a greater offense or of more offenses than that to which I
19 am pleading guilty.

20 I understand that by pleading guilty I admit the facts which support all the elements of
21 the offense(s) to which I now plead as set forth in Exhibit "1".

22 I understand that as a consequence of my plea of guilty by way of the Alford decision
23 the Court must sentence me to imprisonment in the Nevada Department of Corrections for a
24 minimum term of not less than ONE (1) year and a maximum term of not more than SIX (6)
25 years. The minimum term of imprisonment may not exceed forty percent (40%) of the
26 maximum term of imprisonment. I understand that I may also be fined up to \$5,000.00. I
27 understand that the law requires me to pay an Administrative Assessment Fee.

28 I understand that, if appropriate, I will be ordered to make restitution to the victim of

1 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
2 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
3 reimburse the State of Nevada for any expenses related to my extradition, if any.

4 I understand that I am eligible for probation for the offense to which I am pleading
5 guilty. I understand that, except as otherwise provided by statute, the question of whether I
6 receive probation is in the discretion of the sentencing judge.

7 I understand that I must submit to blood and/or saliva tests under the Direction of the
8 Division of Parole and Probation to determine genetic markers and/or secretor status.

9 I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,
10 Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or
11 Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for
12 probation and may receive a higher sentencing range.

13 I understand that if more than one sentence of imprisonment is imposed and I am
14 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
15 the sentences served concurrently or consecutively.

16 I understand that information regarding charges not filed, dismissed charges, or
17 charges to be dismissed pursuant to this agreement may be considered by the judge at
18 sentencing.

19 I have not been promised or guaranteed any particular sentence by anyone. I know
20 that my sentence is to be determined by the Court within the limits prescribed by statute.

21 I understand that if my attorney or the State of Nevada or both recommend any
22 specific punishment to the Court, the Court is not obligated to accept the recommendation.

23 I understand that if the offense(s) to which I am pleading guilty was committed while
24 I was incarcerated on another charge or while I was on probation or parole that I am not
25 eligible for credit for time served toward the instant offense(s).

26 I understand that if I am not a United States citizen, any criminal conviction will
27 likely result in serious negative immigration consequences including but not limited to:

- 28 1. The removal from the United States through deportation;

2. An inability to reenter the United States;
3. The inability to gain United States citizenship or legal residency;
4. An inability to renew and/or retain any legal residency status; and/or
5. An indeterminate term of confinement, with the United States Federal Government based on my conviction and immigration status.

Regardless of what I have been told by any attorney, no one can promise me that this conviction will not result in negative immigration consequences and/or impact my ability to become a United States citizen and/or a legal resident.

I understand that P&P will prepare a report for the sentencing judge prior to sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. This report may contain hearsay information regarding my background and criminal history. My attorney and I will each have the opportunity to comment on the information contained in the report at the time of sentencing. Unless the District Attorney has specifically agreed otherwise, then the District Attorney may also comment on this report.

WAIVER OF RIGHTS

By entering my plea of guilty, I understand that I am waiving and forever giving up the following rights and privileges:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.
2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.
3. The constitutional right to confront and cross-examine any witnesses who would testify against me.
4. The constitutional right to subpoena witnesses to testify on my behalf.
5. The constitutional right to testify in my own defense.
6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and

1 agreed upon as provided in NRS 174.035(3). I understand this means I
2 am unconditionally waiving my right to a direct appeal of this
3 conviction, including any challenge based upon reasonable
4 constitutional, jurisdictional or other grounds that challenge the legality
5 of the proceedings as stated in NRS 177.015(4). However, I remain free
6 to challenge my conviction through other post-conviction remedies
7 including a habeas corpus petition pursuant to NRS Chapter 34.

8 VOLUNTARINESS OF PLEA

9 I have discussed the elements of all of the original charge(s) against me with my
10 attorney and I understand the nature of the charge(s) against me.

11 I understand that the State would have to prove each element of the charge(s) against
12 me at trial.

13 I have discussed with my attorney any possible defenses, defense strategies and
14 circumstances which might be in my favor.

15 All of the foregoing elements, consequences, rights, and waiver of rights have been
16 thoroughly explained to me by my attorney.

17 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
18 that a trial would be contrary to my best interest.

19 I am signing this agreement voluntarily, after consultation with my attorney, and I am
20 not acting under duress or coercion or by virtue of any promises of leniency, except for those
21 set forth in this agreement.


22 I am not now under the influence of any intoxicating liquor, a controlled substance or
23 other drug which would in any manner impair my ability to comprehend or understand this
24 agreement or the proceedings surrounding my entry of this plea.

25 My attorney has answered all my questions regarding this guilty plea agreement and
26 its consequences to my satisfaction and I am satisfied with the services provided by my
27 attorney.

28 DATED this 20th day of December, 2019.


LARRY DECORLEON BROWN
Defendant

1 AGREED TO BY:

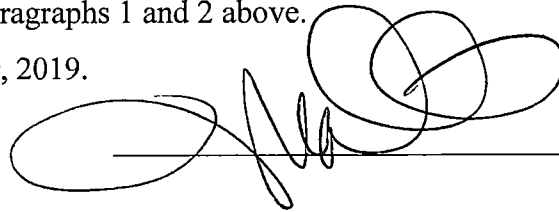
2 
3 _____
4 JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #12381

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of the
3 court hereby certify that:

- 4 1. I have fully explained to the Defendant the allegations contained in the
5 charge(s) to which Alford pleas are being entered.
- 6 2. I have advised the Defendant of the penalties for each charge and the
7 restitution that the Defendant may be ordered to pay.
- 8 3. I have inquired of Defendant facts concerning Defendant's immigration status
9 and explained to Defendant that if Defendant is not a United States citizen any
10 criminal conviction will most likely result in serious negative immigration
11 consequences including but not limited to:
- 12 a. The removal from the United States through deportation;
 - 13 b. An inability to reenter the United States;
 - 14 c. The inability to gain United States citizenship or legal residency;
 - 15 d. An inability to renew and/or retain any legal residency status; and/or
 - 16 e. An indeterminate term of confinement, by with United States Federal
17 Government based on the conviction and immigration status.
- 18 Moreover, I have explained that regardless of what Defendant may have been
19 told by any attorney, no one can promise Defendant that this conviction will
20 not result in negative immigration consequences and/or impact Defendant's
21 ability to become a United States citizen and/or legal resident.
- 22 4. All pleas of Alford offered by the Defendant pursuant to this agreement are
23 consistent with the facts known to me and are made with my advice to the
24 Defendant.
- 25 5. To the best of my knowledge and belief, the Defendant:
- 26 a. Is competent and understands the charges and the consequences of
27 pleading Alford as provided in this agreement,
 - 28 b. Executed this agreement and will enter all Alford pleas pursuant hereto
voluntarily, and
 - c. Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time I consulted with the Defendant as
certified in paragraphs 1 and 2 above.

29 Dated: This 20 day of December, 2019.



30 dd/MVU

1 **IND**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JOHN GIORDANI
6 Chief Deputy District Attorney
7 Nevada Bar #012381
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

DEC 20 2019

BY, 
SHANNON REID, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

CASE NO: C-17-326247-1

11 -vs-

DEPT NO: XXI

12 LARRY DECORLEON BROWN,
13 #8376788

14 Defendant.

**AMENDED FOURTH
SUPERSEDING
INDICTMENT**

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 The Defendant above named, LARRY DECORLEON BROWN, accused by the Clark
18 County Grand Jury of the crime(s) of CONSPIRACY TO COMMIT ROBBERY (Category B
19 Felony - NRS 200.380, 199.480 - NOC 50147); ROBBERY WITH USE OF A DEADLY
20 WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138); MURDER WITH
21 USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 -
22 NOC 50001) and OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED
23 PERSON (Category B Felony - NRS 202.360 - NOC 51460); committed at and within the
24 County of Clark, State of Nevada, on or about February 21, 2017 as follows:

25 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

26 Defendant on or about February 21, 2017 willfully, unlawfully, and feloniously
27 conspire with ANTHONY CARTER to commit a robbery, by the defendants committing the
28

EXHIBIT "1"

1 acts as set forth in Counts 2 and 3, said acts being incorporated by this reference as though
2 fully set forth herein.

3 COUNT 2 - ROBBERY WITH USE OF A DEADLY WEAPON

4 Defendant did on or about February 21, 2017 willfully, unlawfully, and feloniously
5 take personal property, to wit: U.S. Currency and/or vehicle keys and/or vehicle, from the
6 person of KWAME BANKS, or in his presence, by means of force or violence, or fear of
7 injury to, and without the consent and against the will of KWAME BANKS, with use of a
8 deadly weapon, to wit: a firearm, defendant using force or fear to obtain or retain possession
9 of the property, to prevent or overcome resistance to the taking of the property, and/or to
10 facilitate escape, the Defendants being criminally liable under one or more of the following
11 principles of criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by
12 aiding or abetting in the commission of this crime, with the intent that this crime be committed,
13 by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the
14 other to commit the crime, whereby Defendant ANTHONY CARTER lured and/or set up a
15 meeting with KWAME BANKS under the ruse of a drug deal, thereafter, Defendants LARRY
16 DECORLEON BROWN and/or ANTHONY CARTER robbed and/or attempted to rob the
17 said KWAME BANKS; and/or (3) pursuant to a conspiracy to commit this crime, with the
18 intent that this crime be committed.

19 COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON

20 Defendant did on or about February 21, 2017 willfully, unlawfully, feloniously and
21 with malice aforethought, kill KWAME BANKS, a human being, with use of a deadly weapon,
22 to wit: firearm, by shooting at or into the body of the said KWAME BANKS, the said killing
23 having been (1) willful, deliberate and premeditated, and/or (2) committed during the
24 perpetration or attempted perpetration of a robbery and/or attempt robbery, the Defendants
25 being criminally liable under one or more of the following principles of criminal liability, to-
26 wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission
27 of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring,
28 commanding, inducing and/or otherwise procuring the other to commit the crime, whereby

1 Defendant ANTHONY CARTER lured and/or set up a meeting with KWAME BANKS under
2 the ruse of a drug deal, thereafter, Defendants LARRY DECORLEON BROWN and/or
3 ANTHONY CARTER robbed and/or attempted to rob the said KWAME BANKS, thereafter
4 the said KWAME BANKS was shot in the chest and killed during the course of the robbery
5 and/or attempted robbery by Defendants LARRY DECORLEON BROWN and/or
6 ANTHONY CARTER; and/or (3) pursuant to a conspiracy to commit this crime, with the
7 intent that this crime be committed.

8 COUNT 4 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

9 Defendant LARRY BROWN did on or about February 21, 2017 willfully, unlawfully,
10 and feloniously own, or have in his possession and/or under his custody or control, a firearm,
11 the Defendant being a convicted felon, having in 2000, been convicted of Bank Robbery
12 (Federal), a felony under the laws of the State of Nevada.

13 DATED this 20th day of December, 2019.

14 STEVEN B. WOLFSON
15 Clark County District Attorney
16 Nevada Bar #001565

17 BY

18 
19 JOHN GIORDANI
20 Chief Deputy District Attorney
21 Nevada Bar #012381

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27 17AGJ060A-B/17F07976X/17F09115X/saj/MVU
28 LVMPD EV# 1702214563; 1703200757
(TK2)