

IN THE SUPREME COURT OF THE STATE OF NEVADA

COLE DUANE ENGELSON

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 82691

Appeal From A Judgment of Conviction (Jury Trial)
Fifth Judicial District Court
The Honorable Robert Lane, District Judge
Court No. CR9226

APPELLANT'S APPENDIX VOLUME 20 OF 22

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No. CR-9226

Dept. No. 2

FILED
FIFTH JUDICIAL DISTRICT

FEB 05 2021

Nye County Clerk
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

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ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

vs.

COLE D. ENGELSON,

Defendant.

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 8

NOVEMBER 16, 2020

9:00 A.M.

PAHRUMP, NEVADA

APPEARANCES:

For the State:

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DISTRICT ATTORNEY
KIRK D. VITTO, ESQ.
CHIEF DEPUTY DISTRICT ATTORNEY
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The Defendant:

COLE D. ENGELSON

Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

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1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, NOVEMBER 16, 2020

2 9:00 A.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 (The proceedings commence outside the
7 presence of the jurors.)

8 THE COURT: All right. We're on the
9 record. We're outside the presence of our 15 jurors.

10 We've met in chambers. The attorneys are
11 familiar with the Court's proposed jury instructions
12 numbered 1 through 50. Does either side have any
13 objection to any of these instructions?

14 MR. MARTINEZ: No, Judge.

15 THE COURT: Kirk?

16 MR. VITTO: My only objection is that --
17 and I made this reference last night, or I don't know
18 when it was. It was in an email where I thought that
19 Daniel's proposed verdict form was better.

20 MR. MARTINEZ: And I will fill Mr. Vitto
21 in.

22 MR. VITTO: Okay.

23 MR. MARTINEZ: This is my proposed verdict
24 form with one difference, they put the "not guilty" at
25 the top, and at the end they put, "If not, then check

1 not guilty at the top."

2 THE COURT: That was my idea. I've had
3 cases in the past where the Supreme Court has frowned
4 if we don't put not guilty first.

5 MR. VITTO: I mean --

6 (Counsel for both sides confer.)

7 MR. VITTO: Okay, Judge.

8 THE COURT: All right. The parties have
9 talked with each other about the verdict form and have
10 stipulated that it's fine. The parties -- any other
11 objections to Jury Instructions 1 through 50.

12 MR. MARTINEZ: No, Judge.

13 THE COURT: Any other additional
14 instructions that you wanted in that we need to make
15 part of the record and throw in the file that I didn't
16 allow in?

17 MR. MARTINEZ: Not from me, Judge.

18 THE COURT: All right. We're going to
19 invite the jury in, in a moment. And when we bring
20 them in, the first thing we're going to do is draw the
21 numbers of our three alternates. Then I'm going to
22 explain to the jury because of Covid, our two jury
23 rooms that we've been having them break are too small.
24 So they're going to deliberate in the courtroom.

25 If the attorneys need a point of order, we

1 will meet in chambers with Cecilia and make a record
2 of the point of order. If there's something that you
3 need to argue and the defendant needs to be present,
4 it's more than a point of law or order, then we will
5 ask the jury to take a break and we'll all meet back
6 in the courtroom.

7 My bailiff is going to be stationed outside
8 the front door to make sure nobody is eavesdropping on
9 the deliberation. My staff will make sure nobody is
10 eavesdropping at these doors. We'll make sure that
11 the cameras are turned off so we won't hear the jury
12 deliberate. And whenever they need -- they have a
13 question for me and the attorneys, or if they need a
14 break, they will just pop open the front door and tell
15 the bailiff who will be stationed there.

16 We're going to bring all of the exhibits
17 into the courtroom for the jury to look at while
18 they're deliberating, except the box of blood which is
19 in the refrigerator. But we will inform them if they
20 need that, we'll get that and bring it to them. I
21 don't think the box was even open; so they may not
22 need to peruse it.

23 Anything else that you guys would like me
24 to talk about or do before we bring the jury in?

25 Okay. You can bring the jury in then, and

1 we'll get started.

2 (The jurors are brought into the
3 courtroom.)

4 THE COURT: Please be seated. Good
5 morning.

6 Welcome to Week 3, Day 10 (sic) or
7 something. I don't know; I lost track. I have it
8 written down over here.

9 Yeah. That's a good question. My staff
10 and I actually talked about that. It says, "Why don't
11 we ask if any jurors want to be one of the three to be
12 a substitute or an alternate before drawing the
13 numbers, in case -- I believe one of you said that you
14 had to go on a trip to see your kids or something and
15 the deadline was fast approaching.

16 So let me check with the attorneys. Do it
17 the right way, the official way, or do you want to
18 find out if one of the jurors wants to be an alternate
19 and get excused. And the way it works, ladies and
20 gentlemen, in the last 27 years I've been doing this,
21 on a number of occasions we've had to use alternates
22 because of people getting sick or car accidents or
23 their spouse dies or some reason that pops up. So
24 what we do is the jury will be deliberating, and
25 something will happen. We'll bring the jury in, sit

1 the alternate with them, and ask them to go in and
2 start over, start deliberating all over again.

3 And we usually will send the 12 jurors to
4 deliberate, and the alternates we let them go home.
5 We'll call you if we need you. So the attorneys have
6 had a chance to think about it. If there's a juror
7 that would like to be an alternate and you want to
8 stipulate to that --

9 MR. ARABIA: Your Honor, we'll defer to
10 whatever the Defense wants to do.

11 MR. MARTINEZ: I prefer we keep it random,
12 Judge.

13 THE COURT: All right. We're going to ask
14 the clerk of the court to draw three numbers. No
15 numbers are taped to the side of the bowl. That's how
16 I win drawings at Rotary. So we'll ask the clerk of
17 the court to draw three random numbers for our
18 alternates.

19 THE CLERK: No. 15.

20 THE COURT: No. 15 is Diane -- no, is
21 Diane Kennedy. Okay.

22 THE CLERK: No. 14.

23 THE COURT: Helene Campton.

24 THE CLERK: No. 1.

25 THE COURT: No. 1, Jeffrey Ranowel.

1 Those are totally random. I knows it seems
2 like they're close to each other, but it's kind of
3 like the California lottery where my numbers are
4 always so close. It happens all the time.

5 All right. Now, in a moment we're going to
6 read the jury instructions to you and the closing
7 arguments. First, though, I want to explain how the
8 things work. We don't think that the two rooms that
9 you've been taking breaks in are big enough for all 12
10 of you to go in and deliberate without violating the
11 Covid rules. So we're going to have you deliberate in
12 the courtroom.

13 Our bailiff is going to be seated outside
14 the front door to make sure nobody is eavesdropping.
15 We'll make sure the cameras are turned off so nobody
16 is eavesdropping. My staff will make sure nobody is
17 at the chamber doors. So your deliberation will be
18 private like it's supposed to be.

19 We're going to leave all of the exhibits in
20 the courtroom for you, except one. The blood is in a
21 box which is in the refrigerator. During the course
22 of the trial, we didn't even open the box to show you
23 the blood vial. If you feel that you need to see it,
24 you just let the bailiff know, and we'll bring the
25 blood vial in for you to look at.

1 If the attorneys and I need to talk about
2 something on the record with the court reporter and
3 the defendant present, the bailiff will ask you guys
4 to take a smoke break or whatever and go back to your
5 rooms. And we'll come in here and argue out the legal
6 issue, and then bring you back in to continue
7 deliberating.

8 What else? Anything else you can think of
9 I need to tell the jury about the procedure before we
10 get started with the jury instructions. I think I
11 covered it all. But knowing me, I missed something.

12 (Jury Instructions read to the jurors.)

13 Ladies and gentlemen of the jury, I am
14 about to instruct you upon the law as it applies in
15 this case. I would like to instruct you without
16 having to read these jury instructions to you.
17 However, they are of such importance that almost every
18 word has some significance.

19 Therefore, it is necessary for me to read
20 to you these carefully prepared written instructions.
21 They are long, and some are complicated. If they're
22 not especially clear to you when I read them to you,
23 please bear in mind that when you go into the jury
24 room you'll be able to take these written jury
25 instructions with you so that you can read and

1 consider them carefully there.

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

7 You must not be concerned with the wisdom
8 of any rule of law stated in these instructions.
9 Regardless of any opinion you may have as to what the
10 law ought to be, it would be a violation of your oath
11 to base a verdict upon any other view of law than that
12 given in the instructions of the Court.

13 If in these instructions, any rule,
14 direction, or idea is repeated or stated in different
15 ways, no emphasis thereon is intended by me and none
16 may be inferred by you. For that reason, you are not
17 to single out any certain sentence or any individual
18 point of instruction and ignore the others, but you
19 are to consider all the instructions as a whole and
20 regard each in the light of all the others.

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

24 The function of the jury is to try the
25 issues of fact that are presented by the allegations

1 in the Information filed in this court and the
2 defendant's plea of not guilty. This duty you should
3 not perform influenced by pity for the defendant or by
4 passion or prejudice against him. You must not allow
5 yourselves to be biased against the defendant because
6 he has been brought before the Court to stand trial.
7 None of these facts are evidence of his guilt, and you
8 are not permitted to infer or to speculate from any or
9 all of them that he is more likely to be guilty than
10 innocent.

11 You are to be governed solely by the
12 evidence introduced in this trial and the law as
13 stated to you by the Court.

14 If during this trial, I have said or done
15 anything which has suggested to you that I am inclined
16 to favor the claims or position of any party, you will
17 not be influenced by any such suggestion.

18 I have not expressed, nor intended to
19 express, nor have I intended to intimate, any opinion
20 as to which witnesses are or are not worthy of belief,
21 what facts are or are not established, or what
22 influence should be drawn from the evidence. If any
23 expression of mine has seemed to indicate any opinion
24 relating to any of these matters, I instruct you to
25 disregard it.

1 An Information is but a formal method of
2 accusing of a person of a crime and is not of itself
3 any evidence of a defendant's guilt.

4 In this case, it is charged in an
5 Information that on or about July 15, 2017, the
6 defendant committed the following offense:

7 FIRST DEGREE MURDER, in violation of
8 NRS 200.010, 200.030, committed in the following
9 manner, to wit: That on or about July 15, 2017, in
10 Pahrump Township, Nye County, Nevada, said defendant,
11 without authority of law, did willfully and
12 unlawfully, and with malice aforethought, either
13 express or implied, kill and murder a three-year-old
14 female child (date of birth: January 6, 2014), said
15 murder being committed during the perpetration of
16 child abuse, to wit: by beating the child on the head
17 and/or neck and/or body;

18 To this charge, the defendant has pled not
19 guilty.

20 You are instructed that defendant's plea of
21 not guilty constitutes a denial of each and every
22 element as set forth in each count.

23 It is the duty of the jury to apply the
24 rules of law contained in these instructions to the
25 facts and evidence of the case and determine whether

1 the defendant is not guilty or guilty of the offense
2 charged, and to state, by means of your verdict, what
3 your conclusion is.

4 The defendant is presumed to be innocent
5 until the contrary is proved. This presumption places
6 upon the State the burden of proving beyond a
7 reasonable doubt every material element of the crime
8 charge and that the defendant is the person who
9 committed the offense.

10 A reasonable doubt is one based on reason.
11 It is not mere possible doubt, but it is such a doubt
12 as would govern or control a person in the more
13 weighty affairs of life. If the minds of the jurors,
14 after the entire comparison and consideration of the
15 evidence, are in such a condition that they can say
16 they feel an abiding conviction of the truth of the
17 charge, there is not a reasonable doubt. Doubt to be
18 reasonable must be actual, nor mere possibility or
19 speculation.

20 If you have a reasonable doubt as to the
21 guilt of the defendant, he is entitled to a verdict of
22 not guilty.

23 You are here to determine the guilt or
24 innocence of the defendant from the evidence in this
25 case. You are not called upon to return a verdict as

1 to the guilt or innocence of any other person. So if
2 the evidence in this case convinces you beyond a
3 reasonable doubt of the guilt of the defendant, you
4 should so find.

5 To constitute the crime charged, there must
6 exist a union or joint operation of an act forbidden
7 by law and an intent to do the act.

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

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

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

19 At times throughout the trial, the Court
20 has been called upon to pass on the question whether
21 or not certain offered evidence might properly be
22 admitted. You are not to be concerned with the
23 reasons for such rulings and are not to draw any
24 inference from them. Whether offered evidence is
25 admissible is purely a question of law. In admitting

1 evidence to which an objection is made, the Court does
2 not determine what weight should be given to such
3 evidence; nor does it pass on the credibility of the
4 witness. As to any offer of evidence that has been
5 rejected by the Court, you, of course, must not
6 consider the rejected evidence. As to any questions
7 to which an objection was sustained, you must not
8 conjecture as to what the answer might have been or as
9 to the reason for the objection.

10 The evidence in a case consists of the
11 sworn testimony of the witnesses, all exhibits which
12 have been received in evidence, all facts which have
13 been admitted or stipulated, and all applicable
14 presumptions stated in these instructions. Any
15 evidence ordered stricken by the Court must be
16 entirely disregarded.

17 You are to consider only the evidence in
18 the case, but in your consideration of the evidence,
19 you are not limited to the bald statements of the
20 witnesses. On the contrary, you are permitted to
21 draw, from the facts which you find have been proved,
22 such reasonable inferences as seem justified in the
23 light of your own experience.

24 In considering the case, you should not
25 indulge in any mere conjecture, surmises, or

1 suppositions as to what may or may not have occurred,
2 but you must decide the case upon the evidence offered
3 and admitted in open court.

4 You also must not consider statements of
5 counsel for either side which are unsupported by the
6 evidence, if any such statements have been made.

7 You, as jurors, are not to conduct any form
8 of independent research, investigations, or
9 experiments prior to or during jury deliberations.
10 You should not: (1) communicate with anyone in any
11 way regarding the case or its merits -- either by
12 phone, email, text, Internet, or other means; (2)
13 read, watch, or listen to any news or media accounts
14 or commentary about the case; (3) do any research,
15 such as consulting dictionaries, using the Internet,
16 or using reference materials; (4) make any
17 investigation, test a theory of the case, re-create
18 any aspect of the case, or in any other way
19 investigate or learn about the case on your own.

20 There are two types of evidence: direct
21 and circumstantial. Direct evidence is the testimony
22 of a person who claims to have personal knowledge of
23 an incident or event, such as an eyewitness.
24 Circumstantial evidence is the proof of a chain of
25 facts and circumstances which tend to prove whether or

1 not an incident or event occurred or a fact exists.
2 The law makes no distinction between the weight to be
3 given either direct or circumstantial evidence.
4 Therefore, all of the evidence in the case, including
5 circumstantial evidence, should be considered by you
6 in arriving at your verdict. You may return a verdict
7 based upon direct evidence, circumstantial evidence,
8 or a combination of both direct and circumstantial
9 evidence.

10 Every person who testifies under oath is a
11 witness. You are the sole and exclusive judges of the
12 credibility or believability of the witnesses and the
13 weight to be given to their testimony.

14 In determining the believability of a
15 witness, you may consider anything that has a tendency
16 and reason to prove or disprove the truthfulness or
17 accuracy of his or her testimony, including but not
18 limited to any of the following:

19 The extent of his or her opportunity and
20 ability to see and/or hear, to remember or to
21 communicate any matter about which he or she
22 testifies;

23 The character and quality of his or her
24 testimony;

25 The demeanor of the witness while

1 testifying, and the manner in which he or she
2 testifies;

3 The existence or nonexistence of a bias,
4 interest, or other motive;

5 A statement previously made by him or her
6 that is consistent or inconsistent with his or her
7 testimony;

8 Evidence of the existence or nonexistence
9 of any fact testified to by him or her;

10 His or her attitude toward the action in
11 which he or she testifies or toward the giving of
12 testimony;

13 The reasonableness of his or her statements
14 and the strength or weaknesses of his or her
15 recollections.

16 If you believe that a witness has lied
17 about any material fact in this case, you may
18 disregard the entire testimony of the witness or any
19 portion of his or her testimony which is not proved by
20 other evidence.

21 A witness maybe discredited or impeached by
22 contradictory evidence. If you believe any witness
23 has been impeached and thus discredited, it is your
24 exclusive province to give the testimony of that
25 witness such credibility, if any, as you may think it

1 deserves.

2 However, discrepancies within a witness's
3 testimony or discrepancies with other witnesses'
4 testimony, if there were any, do not necessarily mean
5 that the witness should be discredited. Failure of
6 recollection is a common experience, and innocent
7 misrecollection is not uncommon. It is a fact also
8 that two persons witnessing an incident or transaction
9 will see or hear it differently. Whether a
10 discrepancy pertains to a fact of importance or only
11 to a trivial detail should be considered in weighing
12 its significance.

13 Neither side is required to call as
14 witnesses all persons who may have been present at any
15 of the events disclosed by the evidence or who may
16 appear to have some knowledge of these events or to
17 produce all objects or documents mentioned or
18 suggested by the evidence.

19 It is a constitutional right of a defendant
20 in a criminal trial that he may not be compelled to
21 testify. Thus, the defendant as to whether he should
22 testify -- the decision as to whether he should
23 testify is left to the defendant on the advice and
24 counsel of his attorney. You must not draw any
25 inference of guilt from the fact that he does not

1 testify, nor should this fact be discussed by you or
2 enter into your deliberations in any way.

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

13 Your decision should be the product of
14 sincere judgment and sound discretion in accordance
15 with these rules of law.

16 In your deliberations, you may not discuss
17 or consider the subject of punishment. Your duty is
18 confined to the determination of guilt or innocence of
19 the defendant.

20 You are not bound to decide in conformity
21 with the testimony of a number of witnesses which does
22 not produce conviction in your mind, as against the
23 declarations of a lesser number of witness, or of a
24 presumption or other evidence which appeals to your
25 mind with more convincing force. This rule of law

1 does not mean that you are at liberty to disregard the
2 testimony of the greater number of witnesses merely
3 from caprice or prejudice or from a desire to favor
4 one side as against the other. It does mean that you
5 are not to decide an issue by the simple process of
6 counting the number of witnesses who have testified on
7 the opposing sides. It means that the final test is
8 not in the relative number of witnesses but in the
9 relative convincing force of the evidence.

10 While a homicide is the act by which one
11 human being kills another human being, and a homicide
12 can be a murder, a homicide is it not always a murder.

13 "Murder" is the unlawful killing of a human
14 being, with malice aforethought, either express or
15 implied.

16 "Murder of the First Degree":

17 (1) For the purposes of this case, murder
18 of the first degree is murder which is: committed in
19 the perpetration or attempted perpetration of sexual
20 assault, kidnapping, arson, robbery, burglary,
21 invasion of the home, sexual abuse of a child, sexual
22 molestation of a child under the age of 14 years,
23 child abuse, or abuse of an older person or vulnerable
24 person.

25 (2) Murder of the second degree is all

1 other kinds of murder.

2 "Express Malice" is that deliberate
3 intention unlawfully to take away the life of a fellow
4 creature, which is manifested by external
5 circumstances capable of proof.

6 Malice shall be implied when no
7 considerable provocation appears or when all the
8 circumstances of the killing show an abandoned and
9 malignant heart.

10 In this case an express, specific intent to
11 kill is not essential to the crime of First Degree
12 Murder.

13 "To Establish First Degree Murder." Based
14 on child abuse, the prosecution need not prove that
15 the defendant intended to kill or seriously injure the
16 child, or that the killing was premeditated or
17 deliberate.

18 The elements of the crime of First Degree
19 Murder by Child Abuse are only that: (1) The
20 defendant did willfully and unlawfully, (2) commit or
21 attempt to commit an act of child abuse, (3) which
22 resulted in the death of the child.

23 There is a kind of Murder which carries
24 with it conclusive evidence of premeditation and
25 malice aforethought. This class of murder is murder

1 committed in the perpetration or attempted
2 perpetration of child abuse.

3 Therefore, a killing which is committed in
4 the perpetration of child abuse is deemed to be Murder
5 of the First Degree, whether the killing was
6 intentional or unintentional. This is called the
7 "Felony Murder Rule."

8 The Felony Murder Rule makes a killing
9 committed in the course of certain felonies murder,
10 without requiring the State to present additional
11 evidence as to the defendant's mental state, i.e.,
12 premeditation and/or any deliberation.

13 Nevada's Legislature has specified certain
14 enumerated felonies that constitute First Degree
15 Murder, including Child Abuse. The felonious intent
16 involved in child abuse is deemed, by law, to supply
17 the malicious intent necessary to characterize the
18 killing as a murder; and no other proof of the
19 traditional factors of willfulness, premeditation, or
20 deliberation are required for a First Degree Murder
21 conviction.

22 The prosecution does not have to prove
23 premeditation or deliberation, and malice is implied,
24 if the prosecution proves the killing occurred during
25 the commission of child abuse.

1 "Child Abuse" means physical injury of a
2 nonaccidental nature to a child under the age of 18
3 years.

4 The injuries and the false explanations to
5 witnesses, should you find the explanations for the
6 injuries suffered to be false, may satisfy the
7 necessary proof of child abuse. The death could have
8 been intentional, unintentional, or accidental, but
9 the child abuse must have been nonaccidental. False
10 explanations by themselves are insufficient.

11 A person may be presumed to intend all the
12 natural, probable, and unusual (sic) consequences of
13 his actions.

14 You, the jury, are not required to reach
15 unanimity -- unanimity --

16 MR. MARTINEZ: Judge, I apologize to
17 interrupt. I believe you got to word wrong on
18 Instruction 31.

19 THE COURT: Thank you, sir.

20 MR. MARTINEZ: Thank you.

21 THE COURT: A person may be presumed to
22 intend all the natural, probable, and usual
23 consequences of his actions.

24 MR. MARTINEZ: Thank you, Judge.

25 THE COURT: I'm glad you're following

1 along.

2 You, the jury, are not required to reach
3 unanimity regarding the means or the theory of
4 criminal liability used in arrive at a verdict. In
5 other words, you may disagree on exactly how the crime
6 was committed, only your verdict -- in other words,
7 you may disagree on exactly how the crime was
8 committed, only your verdict, whether the defendant is
9 guilt or not guilty, must be unanimous.

10 Intoxication alone cannot reduce Murder to
11 Manslaughter.

12 You are instructed that the crime of Child
13 Abuse is a general intent crime. Thus, the fact that
14 the defendant was voluntarily intoxicated is not a
15 defense and does not relieve him of responsibility
16 from the crime alleged. Whether the defendant was
17 intoxicated, to any extent, does not excuse him of
18 being guilty of the murder of the victim should you
19 conclude beyond a reasonable doubt that she died as a
20 result of child abuse.

21 When it is impossible to commit a
22 particular crime without committing, at the same time
23 and by the same conduct, another offense or lesser
24 grade or degree, the latter is, with respect to the
25 former, a lesser-included offense.

1 The crime of Murder in the First Degree
2 necessarily includes the lesser offense of murder in
3 the second degree, the lesser still offense of
4 voluntary manslaughter, and the lesser still offense
5 of voluntary manslaughter.

6 The law permits the jury to find the
7 accused guilty of any lesser offense which is
8 necessarily included in the crime of Murder of the
9 First Degree, whenever such a course is consistent
10 with the facts found by the jury from the evidence in
11 the case, and with the law as given in the
12 instructions of the Court.

13 If you are not satisfied beyond a
14 reasonable doubt that the defendant is guilty of a
15 First Degree Murder, he may, however, be found guilty
16 of any lesser-included offense, if the evidence is
17 sufficient to establish his guilt of such lesser
18 offense beyond a reasonable doubt.

19 If, after fully and carefully considering
20 the charge of Murder in the First Degree, the jury
21 either (1) finds the defendant not guilty, or (2) is
22 unable to agree whether to acquit or convict on that
23 charge, the jury may consider the charge of Murder in
24 the Second Degree.

25 If, after fully and carefully considering

1 the charge of Murder in the Second Degree, the jury
2 either (1) finds the defendant not guilty, or (2) is
3 unable to agree whether to acquit or convict on that
4 charge, the jury may consider the charge of voluntary
5 manslaughter.

6 Voluntary manslaughter is a lesser-included
7 offense of both first- and second-degree murder.
8 Thus, you may only return a verdict of voluntary
9 manslaughter if you first rule out both first- and
10 second-degree murder.

11 If, after fully and carefully considering
12 the charge of voluntary manslaughter, the jury either
13 (1) finds the defendant not guilty, or (2) is unable
14 to agree whether to acquit or convict on that charge,
15 the jury may consider the charge of involuntary
16 manslaughter.

17 To be voluntary manslaughter, there must be
18 a serious and highly provoking injury inflicted up the
19 person killing, sufficient to excite an irresistible
20 passion in a reasonable person, or an attempt by the
21 person killed to commit a serious personal injury on
22 the person killing.

23 Involuntary Manslaughter is the killing of
24 a human being, without any intent to do so, in the
25 commission of an unlawful act, or a lawful act, which

1 probably might produce such a consequence in an
2 unlawful manner, but where the involuntary killing
3 occurs in the commission of an unlawful act, which in
4 its consequences, naturally tends to destroy the life
5 of a human being or is committed in the prosecution of
6 a felonious intent, the offense is murder.

7 After the killing has been satisfactorily
8 established, the burden of proof to reduce the crime
9 from murder to manslaughter is the defendant's.

10 If, after fully and carefully considering
11 the charge of Murder in the First Degree, the jury
12 either (1) finds the defendant not guilty, or (2) is
13 unable to agree whether to acquit or convict on that
14 charge, AND if, after fully and carefully considering
15 the charge of Murder in the Second degree, the jury
16 either (1) finds the defendant not guilty, or (2) is
17 unable to agree whether to acquit or convict on that
18 charge, the jury may consider the charge of Child
19 Abuse or Neglect Causing Substantial Bodily Harm
20 and/or Battery Which Constitutes Domestic Battery
21 Cause Substantial Bodily Harm.

22 If, after fully and carefully considering
23 the charge of Murder, the jury finds that the
24 defendant is guilty of First or Second-Degree Murder,
25 the jury should not further deliberate whether the

1 defendant is also guilty of Child Abuse or Neglect
2 Causing Substantial Bodily Harm and/or Battery Which
3 Constitutes Domestic Battery Cause Substantial Bodily
4 Harm.

5 Child Abuse, other than the child abuse
6 associated with First Degree Murder defined in Jury
7 Instruction 29, is the result of a person willfully
8 causing a person less than 18 years of age to suffer
9 unjustifiable physical pain or mental suffering as a
10 result of abuse or neglect, or to be place in a
11 situation where the child may suffer physical pain or
12 mental suffering as the result of abuse or neglect.

13 As it pertains to the Child Abuse described
14 in Jury Instruction 40, abuse or neglect means
15 physical or mental injury of a nonaccidental nature,
16 sexual abuse, sexual exploitation, negligent treatment
17 or maltreatment of a child under the age of 18 years,
18 under circumstances which indicate that the child's
19 health or welfare is harmed or threatened with harm.

20 As it pertains to the Child Abuse described
21 in Jury Instruction 40, "physical injury" means: (1)
22 permanent or temporary disfigurement, or (2)
23 impairment of any bodily function or organ of the
24 body.

25 As it pertains to the Child Abuse described

1 in Jury Instruction 40, "substantial mental harm"
2 means an injury to the intellectual or psychological
3 capacity or the emotional condition of a child as
4 evidenced by an observable and substantial impairment
5 of the ability of the child to function within his or
6 her normal range of performance or behavior.

7 "Substantial bodily harm" means: (1)
8 Bodily injury which creates a substantial risk of
9 death or which causes serious, permanent disfigurement
10 or protracted loss or impairment of the function of
11 any bodily member or organ, or (2) prolonged physical
12 pain.

13 In this case, you are instructed as a
14 matter of law that the victim suffered substantial
15 bodily harm. It is your job to determine whether that
16 harm was caused by the defendant.

17 "Battery" means any willful and unlawful
18 use of force or violence upon the person of another.

19 "Domestic violence" occurs when a person
20 commits battery against or upon the person's spouse or
21 former spouse, any other person to whom the person is
22 related by blood or marriage, any other person with
23 whom the person has had or is having a dating
24 relationship, any other person with whom the person
25 has a child in common, the minor child of any of those

1 persons, the person's minor child, or any other person
2 who has been appointed the custodian or legal guardian
3 for the person's minor child.

4 Evidence of other crimes, wrongs, or acts
5 is not admissible to prove the character of a person
6 in order to show that he acted in conformity
7 therewith. It may, however, be admissible for other
8 purposes, such as proof of motive, opportunity,
9 intent, preparation, plan, knowledge, identity, or
10 absence of mistake or accident.

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

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

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

23 If, during your deliberation, you should
24 desire to be further informed on any point of law or
25 hear again portions of the testimony, you must reduce

1 your request to writing, signed by the foreperson, and
2 present the question to the bailiff. If ordered by
3 the Court, the officer will then return you to court
4 where the information sought will be given to you in
5 the presence of, and after notice to, the district
6 attorney, the defendant, and his or her counsel.

7 Readbacks of testimony are time consuming
8 and are not encouraged unless you deem it a necessity.
9 Should you require a readback, you must carefully
10 describe the testimony to be read back so that the
11 court reporter can arrange her notes. Remember, the
12 Court is not at liberty to supplement the evidence.

13 Now you will listen to the arguments of
14 counsel who will endeavor to aid you to reach a proper
15 verdict by refreshing in your minds the evidence and
16 by showing the application thereof to the law. But
17 whatever counsel may say, you will bear in mind that
18 it is your duty to be governed in your deliberations
19 by the evidence as you understand it and remember it
20 to be and by the law as given to you in these
21 instructions, with the sole, fixed, and steadfast
22 purpose of doing equal and exact justice between the
23 defendant and the State of Nevada.

24 Signed "Judge Lane." Given this -- what's
25 the date? 16th. 16th day of November 2020.

1 All right. We are now going to begin
2 closing arguments, and we will start with the State of
3 Nevada.

4 MR. ARABIA: Your Honor, may I approach the
5 clerk briefly.

6 THE COURT: Thank you, sir.

7 MR. ARABIA: Your Honor, may I approach
8 again?

9 THE COURT: Yes, sir.

10 MR. ARABIA: Thank you.

11 She's gone. Her name was Yessenia Camp,
12 known in certain circles as "My Little Tiny" and
13 described during this trial as "a little ray of
14 light." She was a beautiful three-year-old girl, and
15 now she's dead. Dead. Gone. Her family will never
16 be the same.

17 Yessenia Camp will never have a first day
18 of school or a first kiss because the defendant,
19 Cole Engelson, killed her. Yessenia Camp will never
20 have a career or a marriage because the defendant,
21 Cole Engelson, murdered her. Yessenia Camp will never
22 have a daughter of her own or be able to give her
23 mother a grandchild because the defendant,
24 Cole Engelson, massacred her. He massacred her with a
25 savagery that frankly shocks the conscience.

1 Now, you've been here a while. You've been
2 here for eight days. You've heard a lot. You've seen
3 a lot. A lot of it was unpleasant, I realize. The
4 truth is, though, that you can boil this entire case
5 down to a very simple formula.

6 And that formula is this: Yessenia Camp
7 plus the defendant Cole Engelson equals Yessenia Camp.
8 This entire case, eight days of a jury trial, can be
9 boiled down to eight words, two photographs, and one
10 Cole Engelson.

11 Now, Judge Lane told you on the first day,
12 and he just told you again, we're here to do equal
13 justice between the State of Nevada and the defendant
14 Cole Engelson. And it's worth remembering that
15 although Yessenia was clearly the victim and her
16 family are victims and her -- everyone in her orbit,
17 really, the truth is that we're all victims; obviously
18 on a much lesser scale, but we're all the victims
19 because our community has been diminished because we
20 are in a lesser place because this happened in our
21 community, and that's worth remembering.

22 What we have is the very sad story of
23 Yessenia Camp, a little ray of light, who got sucked
24 into a black hole named Cole Engelson, and then she
25 got massacred.

1 Our story begins on Friday, July 14th,
2 2017. Yessenia is at home with her family, and it's
3 bath time. She's in the tub. Her mom's giving her a
4 bath. Her brother Dwight is there, and at one point
5 mom steps out and Yessenia sees her chance. She sees
6 the opportunity, and she squirt her brother with a
7 rubber ducky. And she was quite pleased by that, you
8 remember the testimony, and rightfully so when you're
9 three years old and you successfully execute that
10 maneuver on your big brother. You know, she
11 accomplished something. That was something that she
12 wanted to get accomplished, and she did. Good for
13 her.

14 As you recall, Dwight testified that she
15 wasn't battered, she wasn't bruised, there was nothing
16 to indicate that she had impaired vision or that she
17 was in any kind of distress. She was just a happy
18 baby who squirted her brother with a rubber ducky. At
19 that moment, her life expectancy was about 80 years,
20 and it turned out to be about 18 hours.

21 We also heard testimony from
22 Nickole Robinson, her big sister, that when -- now,
23 Nickole spent a typical summer night for a 14-year-old
24 basically video games, talking to her boyfriend, the
25 phone, that kind of thing, stayed up too late. But

1 when she went up, she shared a bedroom with Yessenia
2 when she was there. When she went up there, there was
3 no indication to her that there was anything wrong.

4 So now we switch to July 15th. And in the
5 morning, Dwight goes with family friend Steve Kafton
6 to Vegas, go-karts, Toys "R" Us, that sort of thing.
7 The rest of the family, which consisted on that day of
8 Yessenia, Nickole, mom Victoria, and the defendant's
9 son, and the defendant, went to a casino to have
10 breakfast.

11 You saw the video. You saw the picture.
12 Yessenia looked fine. She was walking along. There
13 was nothing to indicate any kind of severe distress.
14 And then they went to the thrift store, and they got
15 home 11:00-ish. Nickole went to take a nap. And
16 after she got up around 1:30, maybe 1:45, somewhere in
17 there, she and her mother went to have a girl's night
18 out in the middle of the day. They went to get their
19 nails done, get something to eat, get some ice cream,
20 you know, all that kind of good stuff.

21 And this is the key timeline that's about
22 to open up, because we're talking from about 1:45 when
23 they left, at which point the defendant's son had gone
24 with I think it was his grandmother on a camping trip
25 so he wasn't there. When Nickole and Victoria left,

1 now the defendant Cole Engelson is alone with
2 Yessenia Camp. Let's just say that's around 1:45 p.m.

3 We know that Dwight got home at 5:30.
4 There were no commotions or anything. And not too
5 long after Dwight got home, he went in and checked on
6 his sister at the request of the defendant and found
7 that she was cold to the touch. And there was never
8 anything after that point that would suggest any signs
9 of life whatsoever. And the chances are that whatever
10 happened, happened much earlier than that, but the
11 point I'm making is that's the key time.

12 Yessenia is not here to testify,
13 unfortunately; but she did leave behind evidence. So
14 what we need to do is focus on that time frame. And
15 so one way to do that is to discuss what the defendant
16 Cole Engelson told some of the police officers about
17 what went on. The first one that he spoke to at any
18 kind of length was Detective Fernandes, and he told
19 her that he gave Yessenia a bath because she was
20 sticky, sticky. She was not happy about having water
21 in her face. And she was okay going in, but she was
22 limp coming out.

23 And the other thing that was interesting is
24 the level of details in the recollection right up to
25 the point where the main piece of information, which

1 is exactly what happened to Yessenia at that point,
2 doesn't remember.

3 Detective Fancher spoke to the defendant at
4 some length, as you're aware. You watched the entire
5 portion of the interview where it was just Fancher and
6 the defendant, excuse me. And what the defendant told
7 Detective Fancher was a little bit disturbing. She's
8 slipping and sliding all over the place. She hit the
9 riser on the floor that separates the shower from the
10 rest of the floor to keep the water from spreading,
11 and she slammed the backside of the shower. And then
12 the defendant took a nap. He told Detective Cox that
13 it was, quote -- it was a, quote, hell of a nap.
14 Well, it certainly was. Yessenia never woke up.

15 Next, we come to when he speaks to
16 Captain Boruchowitz, who was then a lieutenant, and
17 he's talking about this whole shower scene and that
18 they were, quote, going at it. They were going at it.
19 So there's a picture that I want to show you. It
20 was --

21 Your Honor, may Kassie approach?

22 THE COURT: Yes.

23 MR. ARABIA: I apologize to the Court. I
24 didn't time this very well. I'm sorry.

25 THE COURT: Mr. Arabia, we had plans for

1 this trial to take to the end of this week; so you
2 take as long as you want; two or three days is fine.

3 MR. ARABIA: All right. So they were going
4 at it. That's a direct quote, "going at it." In the
5 left corner, as you see in the picture, that's the
6 defendant weighing in at about 350 pounds when that
7 photo was taken. And in the right corner, standing,
8 as you look at the picture, just to the right of the
9 defendant, that would be Yessenia Camp weighing in at
10 approximately 37 pounds. So there's a fair question
11 for you: Does that look like a fair fight?

12 Some of the play by play, the defendant
13 told Captain Boruchowitz that she was screaming the
14 whole time and that she went face first into the
15 shower riser on the floor; That she got slammed
16 violently into the backside of the shower; and that he
17 still wouldn't let her out of the shower because she
18 was still dirty and pushed her by the head back into
19 the shower. Well, that's all wonderful.

20 The result of the fight -- the result of
21 the fight was a knockout win for the defendant. And
22 to go through some of the highlights from that fight,
23 some of the legacy from that whole struggle in the
24 shower, I want to read to you. This comes from the
25 testimony and report of Dr. Roquero, the Medical

1 Examiner -- I will try to do this quickly, but these
2 are Yessenia's injuries: skull fracture to the
3 occipital bone; hemorrhage in both eyes; severe blunt
4 force head injury; spinal cord nerve root whiplash
5 type injury; abrasions on head, neck, eyelid, upper
6 lip, left ear, chin, eyebrow, other eyelid, cheek,
7 right side of face, jaw, and neck. Brain swollen;
8 hemorrhage; hemorrhages to the scalp and skull.
9 Abrasions to the left chest, right upper back;
10 contusions to the chest, back, and hip; abrasion and
11 contusions to the buttocks and thigh.

12 Internal injuries: Hemorrhages to the
13 upper back, blunt force to the torso, contusions to
14 both lungs meaning pressure applied to both while she
15 was alive. More abrasions: left elbow, forearms,
16 knees; abrasions and contusions to the left ankle;
17 contusions to arms, forearms, back, left hand and
18 third knuckle, right body, slash, hip, knees, legs,
19 feet. Internal hemorrhaging left elbow and left knee.
20 We're getting there.

21 Several bruises right, upper, and middle
22 back; left shoulder, right arm, right thigh; curved or
23 curvilinear bruises to left buttocks, left buttocks
24 near the intersection with the buttocks area where the
25 middle of the buttocks is I guess, back of right

1 forearm. So did I leave anything out? I don't know.
2 I hope not.

3 That was the after action report, I suppose
4 you could say. And so the defendant said that he knew
5 something was wrong after she had got out of the
6 shower. I guess he graduated from the top of his
7 class. She became limp. This was 2:30, possibly
8 earlier, per the defendant's statements to
9 Detective Cox. And so what does he do? Nothing.
10 Doesn't call 911. Got an unresponsive, limp
11 three-year-old child. Doesn't -- takes a nap; doesn't
12 call 911.

13 And we know that he's aware of 911, and
14 that it's a thing that you can call them if it's an
15 emergency. And he knows how to call it, because he
16 did that at 7:12, what, four-and-a-half hours later
17 after Victoria called. There was no point, and he
18 knew it.

19 Now, finally at 5:30, we get some other
20 people who can help out with how things went. We know
21 from the testimony of Steve Kafton and Dwight Camp
22 that Dwight got home at around 5:30. And he's a
23 ten-year-old kid so he goes to the video games. Some
24 minutes after that, the defendant comes out and gets a
25 drink and goes back in the bedroom. He said hello.

1 And then some minutes after that -- the times were not
2 exact; it was like 25, 30, and one of them was 25-40,
3 but you figure somewhere in the neighborhood of an
4 hour went by total.

5 At that point he comes out the second time,
6 says "I can't wake up Yessenia," or words to that
7 effect. And Dwight goes in, and he tries. I remember
8 he kind of poked or touched her to try to wake her up.
9 She was cold to the touch. He did not want to persist
10 because she was a heavy sleeper, and he did not want
11 to wake her out of a heavy sleep and have her be upset
12 and cranky, and so he went back out. He went back out
13 into the living room and played with his phone. And
14 he has to go through the rest of his life knowing that
15 he did that while his little sister was in the bedroom
16 with her murderer. And that's not his fault; it's
17 just how it worked out.

18 That takes us out to somewhere in the 6:30
19 area. Sure. We also have evidence, we heard
20 testimony that at some point a second shower was given
21 with the idea that apparently a cold shower will
22 revive a fractured skull and numerous blunt force
23 trauma injuries and all of the injuries that I listed.
24 That's a theory, I suppose. I'm not aware of it, but
25 whatever.

1 The other thing that a shower will do,
2 though, is it will wash saliva off a person, and we
3 had testimony to that effect. We also had testimony
4 that there were bite marks on Yessenia; so I'm just
5 saying.

6 That kind of takes us up to the point where
7 Victoria and Nickole arrive, and they immediately
8 sense a problem clearly. You heard the 911 call.
9 That was Victoria doing -- she was trying to revive
10 Yessenia, but also getting help, something that the
11 defendant didn't bother to do for four plus hours.
12 And it might have been the hardest thing in this whole
13 trial was hearing the absolute terror of someone who
14 was beyond the terror of facing death; it was the
15 terror of facing her small child murdered.

16 On the other hand, the defendant finally at
17 long, long, long last calls 911 at 7:12 and sounds
18 like he's ordering pizza. And then Firefighter Snow
19 testified that when he got there, he just kind of
20 looked like he was just kind of waiting for the pizza
21 guy to arrive. And Firefighter Snow leads us into one
22 of the few positives, I suppose, that you can take out
23 of this case, which is the gallant and heroic efforts
24 of the first responders, the fire rescue team, and
25 also the team at Desert View Hospital.

1 The testimony from Firefighter Snow, they
2 were -- it was just a coincidence. They were pretty
3 much just driving down. They were right on 160, right
4 off Manse. They were practically down the street when
5 the call came in. That's why they ended up there so
6 quickly. And Firefighter Snow, they arrived. It was
7 a chaotic situation. He doesn't wait for the police.
8 He runs right in. He has no idea what's in the house
9 other than there's someone in distress that needs
10 help. He runs in. He picks up this little girl off
11 the floor. He immediately notices that her hair is
12 damp and that she is nonresponsive and she's cool to
13 the touch. He immediately starts -- he's cradling her
14 in his arm. He's doing the compressions, trying to do
15 everything that he can.

16 He made the decision to not do anything at
17 the scene, but to get her into the truck; so he
18 brought her out to Paramedic Kehoe who, as you heard
19 in his testimony, the guy's a pro. And they did
20 everything that they could. They even stopped on the
21 road to get some extra guys to try to help out because
22 CPR is a high stress thing to do. It puts a lot of
23 wear on the body, and the more people you have, the
24 better.

25 He administered epinephrine to try to start

1 the heart. They were -- never stopped the
2 compressions. They put a line into her leg to get the
3 meds into her system as quickly as possible. And both
4 Snow and Kehoe noticed the extensive bruising, the
5 devastation that had been brought upon this child.
6 And they both testified that at absolutely no time did
7 they ever see a sign of life. They're not going to
8 give up, though, because that's not what they do.
9 They try to save people. And they did everything they
10 could. And whether there was anything that could have
11 been done or not, no, probably not. But like I said,
12 they weren't going to give up.

13 So they delivered her to the team at
14 Desert View Hospital, the ER team. You heard the
15 testimony from Dr. Moussa. He brought 11 years of
16 experience to bear. It was such a bad scene. What
17 they saw when they saw Yessenia was so awful that you
18 had emergency room nurses who see injured and dead
19 people all the time were crying.

20 And they put it all on the line for her.
21 They rolled up their sleeves and dug down deep. They
22 did everything they could. He didn't want to let her
23 go. She came in showing no signs of life. And she
24 was in treatment for about 26 minutes and they kept
25 fighting for her. They administered the epinephrine,

1 they intubated her, and they did everything possible.
2 They brought all of their skill to bear. And
3 remember, Dr. Moussa did see signs of child abuse and
4 trauma. He thought that there was brain swelling
5 and/or bleeding. He thought that there were bite
6 marks. And he did not want to come to the conclusion
7 that he was eventually going to have to come to. So
8 you remember him talking about looking for anything.
9 Sometimes you can reverse it if the person is diabetic
10 or they have an infection.

11 I don't know. The medical stuff is above
12 my head, my understanding. But what wasn't above the
13 understanding was the obvious sincerity and regret
14 that I think that Dr. Moussa showed on the stand
15 because he wasn't able to pull off a miracle. And as
16 he said the brain suffered -- it was in his quote
17 "irreversible insult to the brain."

18 And so it would have been nice to have an
19 11th hour miracle, you know, have the little ray of
20 light flicker on and for Yessenia to survive, but it
21 wasn't to be. Dr. Moussa made the very difficult
22 decision, and he pronounced her dead at approximately
23 8:00 p.m.

24 At that point James Mercer came from the
25 mortuary to take custody of her, and he observed what

1 he -- this is the guy who sees dead bodies all the
2 time -- he observed what he thought to be bite marks.
3 And what I'm going to do at this point is go with the
4 aftermath in terms of the defendant speaking to the
5 police and maybe what happened at the scene, and then
6 get to the coroner and the medical experts next. It
7 was difficult to decide how to organize it. That's
8 what I decided.

9 Detective Fernandes arrived at the house on
10 Manse shortly after Yessenia left. She did not seem
11 to think that the defendant was especially
12 intoxicated. You heard the recording. You can make
13 your own determination. Listen to it again certainly.
14 Detective Fernandes was struck by the fact that the
15 defendant was claiming a blackout, but at the same
16 time had a very detailed memory of a lot, and then
17 some areas were blackout territory, including what
18 might have been the one that Fernandes wanted to know,
19 which is what did he do to this little kid.

20 He asked for permission to shut off the
21 shower. You heard that on the recording; so the
22 shower was on. That backs up the idea that there was
23 a second shower. He declined to have his blood drawn,
24 which would have been able to tell us a blood alcohol
25 content level, you know, four-and-a-half to five hours

1 sooner than the one that was then obtained. The
2 police had to get a search warrant, and that takes
3 time. They did their best to do it quickly, and they
4 found a judge on Saturday night, and they got it done,
5 but it took them a little while.

6 What was incredibly striking about that
7 exchange was in declining to have the blood alcohol
8 test, the defendant actually said to Fernandes -- this
9 is less than an hour or around an hour, somewhere in
10 there, of the time that they took Yessenia away --
11 actually said, in declining to give his blood, "It's
12 already going to be a bad day for me." That's a
13 direct quote. Quote, it's already going to be a bad
14 day for me. A bad day for me. A bad day for him. He
15 was the one having a bad day.

16 As an added note, it's worth mentioning
17 that Fowles -- Detective Fowles was also there --
18 didn't really find the defendant's behavior to be
19 consistent with that or to be typical of an
20 intoxicated person. And you heard the voice on the
21 911 call. You heard him talking to Fernandes. You
22 can make your own decision on that.

23 And the truth is, it really doesn't matter,
24 which I'm going to get into that a little bit later.
25 The idea that you can murder a three-year-old girl,

1 and if you're drunk, that gives you a pass. It's
2 absolute nonsense. It's not Nevada law. So keep that
3 in mind; okay. It doesn't matter.

4 We heard testimony from
5 Detective Logan Gibbs who was one of the people who
6 interviewed the defendant. And he testified that he
7 saw abrasions or marks on the defendant's knuckles and
8 he took pictures. That's consistent with procedure.
9 And I'll tell you about the picture, and then you can
10 look at it I guess.

11 According to Detective Logan Gibbs, the
12 long-time detective, the abrasions on the defendant's
13 hand or on his knuckles were consistent --

14 I'm sorry, Your Honor. And I'm sorry to
15 you the jury.

16 (Showing the picture on the display.)

17 MR. ARABIA: Okay. So those are the marks
18 on the knuckles. The picture was taken by
19 Detective Gibbs. It's consistent with hitting a
20 person or maybe hitting an object, who knows. You
21 know the edges of a shower are objects. Just for the
22 sake of comparison, we have pictures of Yessenia's
23 hand that were taken on the very same day that I think
24 are worth looking at. That's Yessenia Camp's hand.

25 When it came to the interview with

1 Detective Fancher, you heard the entire thing. We
2 weren't giving you the sports center highlights
3 version. And part of the reason for doing that was so
4 you could see the nature of the interview whether it
5 was coercive, whatever; whether the defendant was
6 complaining of hunger, hangover, thirst, drunkenness,
7 fatigue, anything. Whether he ever said, "Hey, I
8 don't want to talk to you. Let me go back to somebody
9 else," or "Let me leave," or whatever.

10 He never said anything like that, but he
11 did say a couple of interesting things. One of them,
12 the defendant said that this was, quote, the worst
13 thing that ever happened to me. The worst thing that
14 ever happened to me; that's him talking. Yessenia was
15 unavailable for comment. And now thinking that maybe
16 alcohol might provide some kind of a defense, he had
17 told Fernandes he had two drinks, now he told Fancher
18 that he's having five-ounce shots. All right.
19 Five-ounce shots. That's a big shot.

20 During the interview, the defendant never
21 suggested that anyone or anything else caused
22 Yessenia's injuries, but what he did say was that
23 Yessenia was gone, and it was because of, quote, it
24 was because of my hands, literally my hands. And then
25 perhaps the most revealing of all, quote, I'm the one

1 who did this.

2 The other thing that was interesting in
3 watching the footage of that interview is that the
4 interview went on for, I don't know, 90 minutes or so.
5 The defendant never asked Detective Fancher to take
6 the pictures away. He looked at them constantly. He
7 touched them. He moved them around. And never said
8 once to Detective Fancher anything like, "I really
9 don't want to look at those. Can you please remove
10 them?"

11 Now, a little bit about alcohol. The blood
12 alcohol content was 0.10, and that was about five
13 hours after the 911 call. As I said, it could have
14 been a lot earlier, but the defendant declined because
15 he was going to have a bad day. He, the defendant,
16 has told Fernandes it was two drinks, Fancher
17 five-ounce shots, other people it was blackout
18 territory. He told Pullen it was 30 shots. It's hard
19 to keep track, but those are the ones that lead to
20 memory.

21 Yet, you heard the 911 call. And you heard
22 him talking to Fernandes. And you have to apply your
23 common sense, because as Marlissa Collins said,
24 there's no way of knowing what the blood alcohol may
25 have been at the time he was talking to Fernandes or

1 at the time that he killed Yessenia. There's just no
2 way of knowing. But it's fair to say that that whole
3 issue was kind of a red herring. It's a scam. It's a
4 con.

5 You heard testimony from
6 DA Investigator Barajas who spent a long time
7 listening to about 1700 jail telephone calls, and
8 through that dedication was able to recover one that
9 had the defendant casually asking a friend to send him
10 a book on alcohol and blackouts. It's like something
11 out of "Law and Order," studying up on, you know, how
12 to proceed. "Amazon me one over," he says, like he
13 was asking for a Golden Knight's jersey.

14 The good thing is that it just doesn't
15 matter. It just it does not matter. In the State of
16 Nevada, if you're committing child abuse, and that was
17 clearly child abuse -- I mean, you have a fractured
18 skull leading into like the other 29 or 30 injuries;
19 so many injuries that Roquero had to put regions -- if
20 you commit child abuse and you kill a child, it's
21 First Degree Murder. That's it. It doesn't matter if
22 you were drunk. Child abuse, plus you killed the
23 child, it's First Degree.

24 Now, turning to Dr. Roquero, the Medical
25 Examiner, who performed the autopsy. He was on the

1 stand for a long time. My colleague Mr. Vitto
2 discussed with him at great length what he did, what
3 conclusions he came to, and how he came to them. This
4 was clearly a person who knew his stuff and knew how
5 to explain it. So I just want to touch on that
6 briefly. He -- I'm not going to read that list to you
7 again to you, but I want you to remember it. That was
8 me speaking as fast as I could, and it took quite a
9 while to list all of the injuries. The fractured
10 skull was sort of a headliner, but there was plenty of
11 other stuff -- the lungs being squeezed, the whole
12 thing.

13 Roquero had done a thousand plus autopsies,
14 more than a hundred on kids. He concluded with
15 absolute certainty, he said absolute certainty that
16 the cause of death was the blunt force trauma and that
17 it was all recent; and that the manner of death was
18 homicide. But the important thing is that he said
19 that, quote, Seconds to minutes to hours was the time
20 frame here. This was not a situation where she was
21 walking around for days or a week or even whatever.
22 The injuries happened pretty much right before she
23 died, and the other experts will confirm that as well.

24 But just to go back, the occipital bone
25 fracture, it's the hardest bone in the entire skull.

1 And children's bones are not as brittle as they are
2 when we get older. It's harder to break them, and
3 still we got a fractured skull. Lung hemorrhaging
4 with the squeezing. That happened while she was
5 alive, and it was absolutely not caused by CPR. He
6 could not rule out bite marks. And he was the most
7 qualified to offer an opinion on the subject of old
8 injuries, and he said no old injuries. And this is a
9 guy who -- I don't want to get into the details, but
10 as you saw, he did a very in-depth examination of this
11 child. And I'm just going to leave it at that, but
12 you know what I mean. And that was his conclusion;
13 there were no old injuries.

14 The eyes and the brain both showed signs of
15 trauma, but Dr. Roquero, perhaps because of the
16 victim's age, Yessenia's age, had experts provide
17 additional knowledge and wisdom on this, and that was
18 Dr. Plowey and Dr. Haddix. So Dr. Plowey examined
19 Yessenia's eyes. He found substantial hemorrhaging in
20 both. He concluded that it was nonaccidental and it
21 was inflicted. That was the most likely cause. It
22 was very unlikely that it would be an accident. And
23 it was severe trauma. She would have immediately had
24 impaired vision and other difficulties if this had
25 happened to her, you know, in the morning or

1 something, it would have been evident to people around
2 her. It wasn't something that was going to linger.
3 And Dr. Plowey, in fairness, did note that it was
4 possible that the injuries were accidental. But when
5 he was talking about that, he also mentioned
6 accidental in the sense of a being in a car accident
7 maybe without a seat belt or falling off a five- or
8 six-story building. There was no automobile traffic
9 in that bedroom and bathroom, and there certainly
10 wasn't a five- or six-story building for her to
11 accidentally fall off of. The injuries were simply
12 not accidental. And they were bad.

13 Dr. Haddix examined Yessenia's brain, found
14 multiple blunt force trauma instances, and it was
15 severe enough that she ultimately couldn't really
16 determine which of the traumas, blunt force traumas,
17 would have been the fatal one. She found that death
18 most likely came within three hours, maybe less, of
19 that trauma; and that she would have absolutely been
20 symptomatic and would have clearly been in obvious
21 distress to anyone around her after suffering that.
22 And her internal injuries all had external causes.

23 So as we head into the jury instructions, I
24 want to just go through very quickly. Yessenia was
25 fine at 1:45; let's face it. She was left alone with

1 the defendant. At 5:30 Dwight comes home. Some
2 minutes later, he's summonsed into the bedroom by the
3 defendant. He touches her. She's cold. He goes back
4 out, gets on his phone. The defendant was the only
5 person with Yessenia during that critical time. As my
6 colleague Mr. Vitto said in the opening, this is not a
7 who-dun-it; this is a he dun it, and that's the he.
8 He's the only one that could have done it. He said
9 that he did it, and the medical science backs up that
10 scenario.

11 So again, don't take my word for it. Take
12 the defendant's words for it. "Literally" -- "it was
13 literally my hands," he said, "that caused this," and
14 he said, "I'm the one who did this." And then he
15 asked Detective Fancher at one point, or told him, "I
16 don't know what's going to happen to me." Well,
17 that's something that needs to be discussed now.

18 What I would like to do is go over the jury
19 instructions if I could. You have copies so. We'll
20 start with Instruction No. 21, and this just tells you
21 that Murder, obviously, it is the unlawful killing of
22 a human being with malice aforethought, either express
23 or implied. There was certainly an unlawful killing
24 here. The malice, I think, is also obvious when you
25 look at -- we're talking about a three-year-old little

1 kid, and it took me -- I don't remember how long, but
2 it was quite a while just to read the list of injuries
3 going rapid fire and just describing them, not even
4 going into any type of detail. Additionally, child
5 abuse itself provides all of the malice that you need
6 for First Degree Murder, which we'll get to.

7 The next instruction I'm going to want to
8 talk about is 23, which talks about malice. The
9 deliberate intention to take away a life. That's
10 express malice. It can also be implied when there's
11 no considerable provocation. This one probably fits
12 both of those definitions, but it really doesn't
13 matter because child abuse automatically creates it.
14 But if that child provokes something by not wanting to
15 take a shower, is that a proportionate response? No,
16 it isn't, and that's obvious.

17 We don't know what was going on in the
18 defendant's mind. We could guess, and that might give
19 us some insight, but again, it wouldn't matter. It
20 doesn't matter.

21 And that leads us to Instruction No. 22,
22 which discusses First Degree Murder. The important
23 line in here is under No. 1. It's the second to last
24 line, child abuse -- there it is -- it's the second
25 and third words, second to last line, line 8 on the

1 page, No. 1. Murder which is child abuse is First
2 Degree Murder. It's just that simple.

3 Instruction No. 25. We don't need to prove
4 that there was an intent to kill or that it was
5 premeditated or deliberate, because there was child
6 abuse. Now, whether it was those things or not, yeah,
7 it probably was, but they're not needed. All we need
8 to show is that the defendant willfully and unlawfully
9 attempted to commit or committed an act of child abuse
10 which resulted in the death of the child. You've seen
11 his pictures. You've heard his statements.

12 We then discuss Instruction No. 24. And
13 that just kind of verifies the express, specific
14 intent to kill is not essential. There might have
15 been, and there might not have been a specific intent
16 to kill, but it just doesn't matter for the purposes
17 of these proceedings.

18 And then No. 28 is sort of related, but
19 it's worth having a quick look at. If the prosecution
20 proves the killing occurred during the commission of
21 child abuse, then we're good as far as First Degree
22 Murder. That's all we have to prove. You can debate
23 whether or not and how far we've gone beyond that, but
24 that's what's needed to be proved.

25 And No. 27 just kind of explains a little

1 bit about why the legislature decided to make it that
2 way. The legislature decided that First Degree
3 Murder, murder during child abuse is First Degree
4 Murder. And so the child abuse itself supplies
5 whatever intent or mental state or mens rea, whatever
6 you need. That's all that we have to show.

7 Now, going to Instruction 35. That's the
8 drop-down instruction. We certainly don't think you
9 need it, but just to say a couple of words about it.
10 If you find him guilty of First Degree Murder, that's
11 it; it's over. If he's not guilty of that or you're
12 unable to reach a decision, you would move to second
13 degree and apply the same standard. And if you're
14 finding guilty there, then you're finished. If it's
15 not guilty or no decision, you go to voluntary
16 manslaughter, and down to involuntarily manslaughter,
17 et cetera.

18 We, of course, are asking for First Degree
19 Murder. My colleague Mr. Vitto will elaborate on that
20 a little bit later.

21 No. 29, based on what I've been talking
22 about, is obviously a very crucial instruction. And
23 No. 29 provides that for the purposes of what I'm
24 talking about, "Child Abuse" means physical injury of
25 a nonaccidental nature to a child under the age of 18.

1 I read you a list that had about 30 something
2 injuries, so bear that in mind.

3 No. 30, it just talks about false
4 explanations. A false explanation of how a child got
5 hurt is not by itself proof, but that -- in a way, it
6 doesn't even really apply here, because we have a
7 severely injured child, and the defendant was the only
8 one who could have done it. He said he did it. The
9 medical science confirms that that's what happened.

10 So, and I guess the last thing is No. 34.
11 Intoxication, not a defense here. It just simply does
12 not matter. So the fact that the defendant refused to
13 have an early blood alcohol type test really doesn't
14 change anything.

15 And just to very briefly recap on a couple
16 of the key instructions. Twenty-one, as I mentioned
17 is unlawful killing with malice aforethought. Malice
18 can be expressed or intentional or a deliberate act or
19 implied, killing when there's no provocation.
20 However, certain murders, including those perpetrated
21 in the course of child abuse, are by definition First
22 Degree Murder. And there's really Murder plus Child
23 Abuse. It's that simple. That's First Degree. It's
24 First Degree; it's nothing else. The legislature
25 wanted it that way, the Nevada legislature who speaks

1 for all of the people in the state, including you.

2 Twenty-five deals with the -- that was 22,
3 First Degree Murder is murder during child abuse.
4 Twenty-five, if you willfully and unlawfully commit or
5 attempt to commit child abuse and the child dies, it's
6 First Degree. I know this is repetitive, but it's
7 important. And I want to make sure that I do what I
8 can to express that and articulate that.

9 No requirement of intention to kill;
10 specific intent also not required.

11 And 28, malice is implied by the act of
12 child abuse itself. So there's nothing else that's
13 needed to get to First Degree Murder.

14 And then the last thing, just to repeat,
15 child abuse, No. 29, physical injury to an abusive
16 situation to a child under the age of 19 (sic).

17 So I will repeat it. You're only going to
18 hear it one or two more times. Child Abuse plus
19 Murder equals First Degree Murder.

20 Now, after the black hole, known as
21 Cole Engelson, who sucked it in and massacred the
22 little ray of light Yessenia Camp, he said to
23 Detective Fancher, "I don't know what's going to
24 happen to me." That's a direct quote. And that's
25 actually up to you. We're asking you to find the

1 defendant, Cole Engelson, guilty of First Degree
2 Murder. He savagely and brutally massacred and
3 murdered this girl. He destroyed her while he was
4 abusing her. We've proven that. We've proven that
5 beyond a reasonable doubt. She was three years old.
6 Here in the State of Nevada, in Nye County, that's
7 First Degree Murder.

8 And so now we come to the end of the story
9 of Yessenia Camp, the little ray of light, sucked into
10 the black hole called Cole Engelson. Yessenia was
11 pronounced on July 15th, 2017. She was pronounced
12 dead by Dr. Moussa at approximately 8:00 p.m. Out of
13 respect, the sun went down at 8:01.

14 Now, before we bring this home, I have
15 something I need to show you. You've seen it before.
16 I think you will like it. She's gone, but she's not
17 forgotten. Her name is Yessenia Camp, known to her
18 big sister as "My Little Tiny."

19 THE COURT: Counsel?

20 MR. MARTINEZ: Judge, I know we're going to
21 need to take a recess at some point during closing,
22 and I think now might be a good time to do it.

23 THE COURT: Ladies and gentlemen, we're
24 going to take a ten-minute recess.

25 During this recess, it's your duty not to

1 converse among yourselves or with anyone else on any
2 subject connected with the trial. Don't form or
3 express an opinion until you go in to deliberate.
4 We'll meet back here in about ten minutes or so.

5 THE BAILIFF: All rise.

6 (A short recess is taken.)

7 THE BAILIFF: All rise.

8 THE COURT: Thank you. Please be seated.

9 MR. VITTO: Thank you, Your Honor.

10 THE COURT: We will now hear from the
11 Defense, their closing arguments.

12 MR. MARTINEZ: Cole Engelson did not murder
13 Yessenia Camp. He was entrusted with her care and
14 with her safety. He neglected all of that because he
15 chose to get drunk instead.

16 On July 15th, 2017, in the early afternoon,
17 Victoria and Nickole left the house for their
18 mommy-daughter date. Cole and Yessenia stayed home
19 alone. There's a four-hour window there where we do
20 not know what happened. Over the last couple of
21 weeks, we've heard from 33 separate witnesses who have
22 all taken the stand, taken the oath to tell the truth,
23 and testified. Not one of them has been able to tell
24 us what happened in that four-hour window.

25 Dr. Roquero, Dr. Plowey, and Dr. Haddix

1 collectively performed the autopsy on Yessenia. They
2 told us she had bruises all over her body, head to
3 toe, injuries all over her body. Too many to name;
4 too many to count. But the overwhelming majority of
5 those injuries were not lethal. The overwhelming
6 majority of those injuries did not cause
7 Yessenia Camp's death.

8 There was one major traumatic event that
9 caused her death. It's the event, whatever that event
10 was, that fractured her skull and caused a bleeding to
11 her brain and her eyes and her spinal cord, and caused
12 the brain to swell, ultimately causing her death. We
13 don't know when or how that single event occurred in
14 that four-hour window.

15 We've spent a lot of time throughout the
16 course of this trial talking about Cole's alcoholism
17 and his drinking. It's not to relieve him of any
18 responsibility for what may have happened during that
19 four-hour window. We know that in the jury
20 instructions. It don't matter how drunk he was, it's
21 not a defense to anything that may have happened. But
22 it is important, and it does matter.

23 Whether or not Cole Engelson did black out
24 is important, because as the State has told you,
25 they're getting most of their details and most of

1 their arguments from the conversations that Cole later
2 had with detectives. So whether or not he did black
3 out, if he can recall, goes towards the reliability of
4 those conversations. The reliability of what he told
5 the detectives throughout the hours of interviews that
6 he gave to them. And we do have a lot of evidence
7 that Cole Engelson was very drunk. Victoria noted it
8 when she spoke to him on the phone, said it sounded
9 like he had been drinking and asked him if he had been
10 drinking. She told that to the emergency responders
11 when she called -- spoke to them on the phone, when
12 she spoke to them in person, he had been drinking.

13 Earlier in the day, she told us that she
14 noticed the door to the liquor cabinet was ajar.
15 Somebody had been in there. Detective Fernandes told
16 us that he seemed intoxicated. She could smell the
17 odor of alcohol on his breath. And that's compounded
18 by the fact that when Cole Engelson spoke to
19 Detective Fernandes and to 911, he's saying things
20 that indicate he was certainly very drunk. He's
21 making mistakes that he obviously wouldn't make if he
22 was sober.

23 When he called 911, he couldn't remember
24 his own address. In speaking to Detective Fernandes,
25 he misspelled Yessenia's name. He told

1 Detective Fernandes, "There's no bathtubs anywhere in
2 that house." There's clearly a bathtub to the house.

3 The State will rely on Deputy Burke who
4 said that he also had contact with Cole Engelson.
5 Deputy Burke was the first one on scene. He didn't
6 notice any signs of intoxication. Well, Deputy Burke
7 also told us that that shower was not running when he
8 got there; that shower was bone dry. We know from the
9 recorded conversation with Detective Fernandes that
10 that shower was definitely running. Detective Burke's
11 memory of what he observed when he arrived on scene
12 wasn't reliable.

13 Deputy Colton Williams testified -- the
14 State will rely on this -- that when you put Cole in
15 jail and he filled out that questionnaire, he marked
16 down "no signs of intoxication at all." State's
17 Exhibit 13 is that questionnaire, and it tells us that
18 that questionnaire was done the next day, July 16th,
19 after 10:00 in the morning, more than 12 hours after
20 Cole had been booked into jail and after Cole had went
21 through the majority of his interviews with
22 detectives. Of course he didn't show any signs of
23 intoxication at that point; he had sobered up.

24 Cole told every member of law enforcement
25 that he had been drinking. The only question was how

1 much. The State told you the first thing he told
2 Detective Fernandes, I only had two drinks. The most
3 common answers people give to law enforcement when
4 they're interrogated and they're asked, "How much have
5 you had to drink?"

6 They get pulled over for a DUI, "How much
7 have you had to drink today, sir."

8 "Just two drinks."

9 A majority of the time, it's way more than
10 that. Cole later told detectives it was two, it was
11 three, all the way up to 30 shots.

12 When Victoria confronted him at the
13 Detention Center, Cole told her, "I just wanted to
14 have a nightcap." She said, "So you drank a half a
15 gallon of vodka?" A half a gallon. That was after
16 she had been back to the house, and she saw the gallon
17 of vodka to see how much had been drank.

18 We know that Cole's blood was drawn just
19 after midnight on July 16th, 2017. We know that at
20 the time it was drawn, five hours after he first had a
21 conversation with Detective Fernandes, his blood
22 alcohol content was still 0.101. Five hours later, he
23 was still above the legal limit to operate a vehicle
24 in the State of Nevada.

25 Marlissa Collins testified and talked to us

1 a little bit about retrograde extrapolation and what
2 that process is. Trying to look back in time and find
3 out what someone's blood alcohol content was at an
4 earlier date. She couldn't do that in this situation;
5 she didn't have enough information. But she was able
6 to tell us and give us a range about what an average
7 person, how they expel that alcohol and how we would
8 expect their BAC to drop; how a heavy drinker, like
9 Cole, how we would expect their BAC to drop.

10 So when we use those numbers and we do that
11 math, when Cole spoke to Detective Fernandes, his BAC
12 was about a 0.25, more than three times the legal
13 limit to drive a vehicle in this state.

14 MR. ARABIA: Your Honor, I'm sorry. I have
15 to object to that. There's a conflation going on
16 between Collins' hypothetical and now applying it to
17 Cole, as if she was able to extrapolate with respect
18 to the defendant. And I'm sorry to interject.

19 MR. MARTINEZ: My interpretation of the
20 evidence, Judge.

21 THE COURT: You're going to hear from the
22 State what they remember of the evidence, and from the
23 Defense what they remember of the evidence. It
24 doesn't matter. It's what you remember of the
25 evidence.

1 Go ahead, Counsel.

2 MR. MARTINEZ: Thank you, Judge.

3 As drunk as we know Cole Engelson was, it's
4 not on only possible that Cole blacked out, it's
5 likely. They are going to continue to argue that
6 wasn't that drunk. "He's too big of a guy. He's too
7 experienced a drinker. He knows how to handle his
8 liquor. He didn't black out. He's using that as an
9 excuse. He's using that as an excuse so he doesn't
10 have to take responsibility. He's using that as an
11 excuse so he didn't have to tell detectives what
12 happened." Even if that's the case, though, even if
13 everything that Cole Engelson told was a lie, where
14 does that leave us? Same position we are right now:
15 a four-hour window that we don't know what happened.

16 The American criminal justice system is
17 admired all over the world. It's admired as a
18 protection that it gives to every single citizen. It
19 protects each and every one of us should we ever find
20 ourselves in Cole Engelson's position accused of a
21 crime we did not commit.

22 At the heart of this great system are all
23 15 of you, the jury. No one is more important than
24 you. You are the people who have been tasked with
25 ensuring that all of those protections are given to

1 Cole Engelson. That makes your job simultaneously
2 very difficult and very easy. It's difficult because
3 you're given a task that most people are not. You
4 hold the fate of another human being in your hands.
5 That makes it very hard.

6 But on the other hand, your job is very
7 easy. It's easy because we're not asking you to
8 determine what happened. You're only asked to
9 determine whether or not the State has convinced you
10 beyond a reasonable doubt that Cole Engelson did what
11 he is accused of.

12 If you have uncertainty, if you feel like
13 you are not sure, if there are unanswered questions
14 that keep you from feeling confident about what
15 happened, the job's easy. Cole Engelson gets a not
16 guilty verdict. The law in this case is
17 straightforward. Child Abuse is committed, and it
18 results in the death of the child, it is First Degree
19 Murder. That's what the State has had to prove in
20 this case, that Yessenia Camp, the injury to
21 Yessenia Camp that killed her was intentionally caused
22 by Cole Engelson.

23 Before I talk about the evidence more
24 closely, I want to take a second and talk about some
25 important legal principles. Judge Lane has already

1 read to you all of the law that implies in this case
2 in the jury instructions. But there are some
3 principles in there that are so important that they
4 deserve further discussion.

5 The first of those is obviously the
6 presumption of innocence. In our opening, my
7 Cocounsel Ms. Boskovich told you that the presumption
8 of innocence is like a cloak that we all wear and we
9 walk around with. It protects us so we can never be
10 falsely accused of a crime. That cloak can only be
11 removed when the State proves a case against someone
12 beyond a reasonable doubt. But I do want to clarify
13 that a little bit because the reality is that cloak of
14 innocence only comes into play right here, right now
15 when we are at trial.

16 The members of our community, law
17 enforcement, they don't presume our innocence when
18 we're out on the street. We see this every day in the
19 news or all over social media. The story hits, and it
20 says suspect arrested for a crime. No one presumes
21 their innocence. The response to that is they should
22 be locked up forever. They should be given the death
23 penalty. How are these people walking the street?
24 They're guilty. It doesn't just extend to people of
25 our own community, it extends to the President of the

1 United States. I can't tell you how many people I've
2 seen say, "He needs to be arrested in jail." No
3 presumption of innocence. Political rallies. Chants
4 of "Lock him up." No presumption of innocence. That
5 happened in this case as well.

6 Cole Engelson was never given a presumption
7 of innocence. Victoria showed up when she first got
8 back from the nail salon. She didn't ask Cole, "What
9 happened?" She said, "What did you do?" She told
10 Fire Chief Scott Lewis, "He killed her." When
11 detectives interviewed Cole, they didn't ask him what
12 happened. They said, "How did you kill her? What did
13 you use? What weapon did you use?"

14 The Sheriff's Office didn't complete their
15 investigation. They didn't have the autopsy report.
16 They didn't know the extent or the age of any of the
17 injuries on Yessenia, didn't have any of that. That
18 didn't stop Detective Boruchowitz -- or I'm sorry,
19 Captain Boruchowitz from walking into the interview
20 with Cole Engelson and telling him, "you're in a heap
21 of shit, and there's no way out." That cloak of
22 innocence really only applies when we get here, when
23 we get to trial. That's what makes all of your jobs
24 so important. You are the only ones upholding that
25 constitutional principle.

1 When we began this trial, you were all
2 sworn in, and you agreed you would put that cloak of
3 innocence on Cole Engelson, that you saw him at that
4 point as being innocent. And as you've heard all of
5 the evidence, you would continue to presume that he
6 was innocent. It was only if the State can prove
7 beyond a reasonable doubt that he committed this
8 offense, you would remove that cloak. As you listen
9 to the final arguments here, first from Mr. Arabia,
10 now myself, then Mr. Vitto will close up, you must
11 continue to presume that he is innocent. Still that
12 State's burden.

13 Why is it the State's burden? Because we
14 don't require an innocent person to prove their
15 innocence. Our system recognizes that an innocent
16 person may not have much to offer about an incident he
17 may not have anything to do with. Our system insists,
18 before we can take away a person's liberty, the State
19 must bear the entire burden of proving the accusations
20 against that person.

21 What that means is that if you have any
22 questions about what occurred on July 15th, 2017, in
23 that house, you cannot turn to Cole Engelson for
24 answers. It was the responsibility of the State to
25 answer those questions for you. And the State's

1 failure to answer those questions can be your basis of
2 a not guilty verdict. So if you're sitting there when
3 you deliberate and you're wondering why police didn't
4 go back and swab the carpet, if you're wondering why
5 they didn't take the two glasses Cole said he was
6 drinking out of into evidence, if you're wondering why
7 they didn't really search the upstairs of the house,
8 if you're wondering why we never got confirmation
9 about whether or not the circular bite mark on
10 Yessenia's thigh was actually a bite mark, you cannot
11 turn to Cole Engelson for those answers. That was the
12 State's responsibility to answer them for you. You
13 cannot hold those unanswered questions against
14 Cole Engelson.

15 As Judge Lane instructed you already, you
16 can also not hold it against Cole that he did not take
17 the stand and testify in this case. He has the right
18 to remain silent, and he has the right to force the
19 State to prove the case against him. We don't ask an
20 innocent person to explain why someone else would make
21 up a lie about them. We can't require someone who is
22 innocent to take the stand and simply say, "I am
23 innocent." Cole Engelson has made that statement loud
24 and clear by his decision to fight this charge against
25 him. Your scrutiny must be on the State, must be on

1 the evidence and on the lack of evidence presented by
2 the State.

3 Jury instruction No. 6 that you have
4 defines reasonable doubt. That's the burden that the
5 State has to meet in this case. That is the highest
6 burden, not just in the American justice system, but
7 in any justice system worldwide. That standard of
8 proof, that burden is higher than the burden required
9 to take your property from you, higher than the burden
10 required to strip somebody of their rights in a civil
11 context. It is higher than the burden required to
12 take your children away from you.

13 In a criminal case, you may think that the
14 accused probably committed the offense. That's not
15 enough. You may believe the accused likely committed
16 the offense. That's not enough. You may feel fairly
17 certain that the accused committed the offense. That
18 is not enough. If you find yourself in any of those
19 scenarios in this case, you must find Cole Engelson
20 not guilty. You may only return a verdict of guilty
21 if you have no reasonable doubt.

22 Once you begin your deliberations, I urge
23 you to carefully and thoughtfully to consider all of
24 the evidence in this case. Take your time. The
25 decision you make is going to be final and

1 irreversible. If you wrongly return a verdict of
2 guilty, then you return to your daily routines and you
3 think about some case some more, you will not be able
4 to call Judge Lane or call the State and say, "I would
5 like to reconsider. I want to change my vote." So
6 please, again, take your time, go through all of the
7 evidence, leave no stone unturned when you are
8 searching for doubt.

9 And there is doubt in this case. We know
10 that on July 15th, 2017, in the early morning hours,
11 Cole came home from work. He went to breakfast at the
12 Nugget with his son Little Cole, with Victoria, with
13 Nickole, and with Yessenia. Afterwards, they went to
14 Goodwill, and then they went home.

15 When they got home, Little Cole left to go
16 camping with his grandmother. Dwight had already left
17 earlier in the day to spend the day with a family
18 friend Steve Kafton. In the early afternoon, Victoria
19 and Nickole left for their mommy-daughter date. First
20 they went to Subway to eat lunch, then to Sonic for
21 ice cream, and then to get their nails done.

22 Now, as they were leaving, Yessenia got
23 upset. She began to cry because she wanted to go with
24 them. The State's going to argue to you that Yessenia
25 began crying because she was terrified of Cole, that

1 she didn't want to be left alone with him. That's not
2 borne out in any of the evidence or any of the
3 testimony that we have heard over the past couple of
4 weeks.

5 Victoria told us that Yessenia was a pretty
6 typical three-year-old. Like any three-year-old, she
7 had her moments where she misbehaved or she threw
8 tantrums. That wasn't the first time she had been
9 left with Cole when she started to cry, and it didn't
10 happen every time. She had been left with other
11 people and did the same thing and began to cry.

12 There's no reason to believe that Yessenia
13 was terrified or afraid of Cole. She was Cole's
14 "Little Minion." Cole loved her the most. She
15 followed him around. She imitated him. She picked up
16 his mannerisms.

17 Nickole told us that Yessenia was her best
18 friend. So of course, Yessenia would want to go with
19 her best friend and her mother for some girl time.
20 But one of the main reasons they decided against that,
21 Yessenia had been under the weather. They made an
22 appointment for her to go see the doctor because she
23 hadn't been feeling well. Nickole and Victoria
24 decided that fumes from the nail salon probably aren't
25 the greatest for her since she's not feeling well; so

1 she should stay home, and she did. And that's where
2 the timeline falls apart in this case.

3 It fell apart -- it falls apart there,
4 because when Cole got home from breakfast, he began
5 sneaking drinks. He wasn't supposed to be drinking.
6 He was supposed to be on his Antabuse. But he went
7 off of it the 4th of July because he wanted to party,
8 and he never went back on. Like a true alcoholic, he
9 started sneaking drinks and lied about it. Victoria
10 asked him multiple times if he had been drinking, and
11 he told her no. He just wanted a nightcap to help him
12 sleep. But like a true alcoholic, once he started
13 drinking, he could not stop.

14 The few details that we now have about what
15 happened over the next four hours come from Cole's
16 interviews with all of the detectives. When we look
17 at the details and the statements in those interviews,
18 when we compare them to what we know from other
19 testimony, it becomes clear Cole does not know what
20 happened in those four hours. That just like law
21 enforcement, he's trying to piece everything together.

22 No matter how many times he told the
23 detectives he did not know, he did not remember, just
24 was not an acceptable answer. When he first spoke to
25 Detective Fernandes while he's still drunk, he first

1 tells Detective Fernandes he was giving Yessenia a
2 shower, and that's when she went limp. But then only
3 maybe a couple of sentences later, he tells her, "I
4 put her in the shower. I put her on the counter to
5 dry her off, and that's when she went limp."

6 The next morning when he's speaking with
7 detectives, he tells them, "I laid down to take a nap,
8 and I woke up with an unconscious three-year-old with
9 one eye partially open." He told them that he found
10 Yessenia laying on the bed. But then he tells
11 Detective Fancher, "I'm not sure if I found her on the
12 bed. I'm not sure if that portion was a dream. Maybe
13 I found her on the floor."

14 He spent hours and hours with the
15 detectives going over the bruises to her. They spent
16 a lot of time on the circular bruise on her leg. What
17 could have done it? Could it have been a glass?
18 Could it have been the wine bottle? Could it have
19 been the PAW Patrol cup? Cole's response was always,
20 "Maybe. It looks like it. I don't know what could
21 have done it."

22 We know now, because Investigator Barajas
23 did those measurements, it wasn't any of those. But
24 that didn't stop Cole from engaging detectives and
25 trying to figure out what it was that could have

1 caused it, because he didn't know what happened.

2 Cole told Detective Fancher that when he
3 found Yessenia unconscious, he had first called
4 Victoria. Then he immediately called 911. Then he
5 picked Yessenia up in his arms, walked outside, sat on
6 the porch, held Victoria (sic) in his arms until the
7 paramedics arrived.

8 We know that is absolutely not accurate.
9 When Victoria and Nickole came home, Cole was sitting
10 on the front porch alone. When the paramedics
11 arrived, he was down the road pointing them down the
12 driveway. Cole did not know what happened. Like law
13 enforcement, like the State, and all of us, he had
14 been trying to piece together what happened during
15 that four-hours.

16 The State's already brought up some of
17 Cole's quotes from his interviews with detectives.
18 They want you to believe that every time during that
19 conversation, Cole was telling the truth about every
20 single statement so long as it helps the State's case.
21 But when he told the detectives he didn't remember or
22 he didn't know, or when he made a statement that would
23 have aided his defense showing that maybe he didn't
24 commit this crime, no, that's the when he lied.
25 That's the time and only the time that he didn't