

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 21 OF 22

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1 remember.

2 He told detectives multiple times, "I take
3 responsibility." He told them, "It's my fault." And
4 he told them that for the same reason everyone else
5 has put the blame on Cole in this case. Not because
6 anybody knows what happened, not because Cole knows
7 what happened, but because he was the only one home
8 with her.

9 Cole told detectives that Yessenia, while
10 they were outside and he was smoking a cigarette, she
11 climbed up on the camping chair and she tumbled out of
12 it. Cole didn't remember seeing any injuries to her
13 at that point, not a single bump, bruise, or scratch.
14 The State wants us to take that as absolute gospel
15 truth. At that point she tumbled out of the chair,
16 she had no injuries to her.

17 But when Cole told detectives that he never
18 remembered seeing any bruises or injuries on her, he
19 never even remembered striking her one time, well,
20 that's not helpful to the State's case. So that's
21 when we need to jump in and say, "No. He's lying
22 there. That's the time when he's lying." Is it
23 possible that when Yessenia tumbled out of the chair,
24 she scraped her elbow, she bruised her hand.
25 Absolutely. Those are minor injuries, the type of

1 injuries you typically -- that can occur in a thousand
2 different ways around a house when a three-year-old is
3 playing.

4 Drs. Roquero and Haddix both testified and
5 told us the injuries that Yessenia suffered were all
6 recent, that they occurred within three hours of her
7 death. All of those injuries occurred during the
8 majority of that four hours where Cole and Yessenia
9 were home and we do not know what happened.

10 Dr. Haddix told us that Yessenia was alive
11 for 15 to 30 minutes following the injury to her head
12 and brain. Perhaps it's possible, she told us, that
13 she was conscious during that time. Could Cole, in
14 his drunken stupor, not realize how serious and how
15 grave the injuries were to Yessenia and simply taken
16 her, laid her down for a nap. Possible. After all,
17 Dwight told us that when he first went in to check on
18 Yessenia, the shower wasn't running, and she was under
19 the covers, tucked in for a nap.

20 Dr. Roquero determined Yessenia's cause of
21 death to be multiple blunt force injuries. But when
22 he testified, he couldn't pinpoint one specific injury
23 that caused her death. He also couldn't eliminate any
24 specific injury to say it didn't cause her death.
25 That's because when he received Yessenia, he could

1 only work with the condition that she was in. And he
2 had to evaluate the totality of the circumstances. He
3 could only tell us that all of the bruises and all of
4 the injuries occurred within three hours prior to her
5 death. He couldn't tell us how much time occurred
6 between each injury. He couldn't tell us which injury
7 occurred first. And he couldn't precisely tell us how
8 much time occurred between the first injury and her
9 death.

10 Does that mean that it's possible that Cole
11 abused Yessenia, that he struck her multiple times,
12 causing a majority of bruising to her that ultimately
13 didn't cause her death; that the injury that caused
14 her death happened an hour or two hours after that?
15 That's possible. And if you feel that that's what
16 happened, you have that option on your verdict form.
17 You can find Cole Engelson guilty of Child Abuse in
18 that situation. You can find him guilty of Child
19 Neglect for deciding to drink and get drunk instead of
20 caring for the three-year-old in his custody.

21 Dr. Roquero could not tell us which of the
22 injuries were not lethal. But we can use our common
23 sense. We know that the circular injury to her thigh,
24 the circular bruise, that didn't cause her death. The
25 scrape to her elbow, that didn't cause her death. The

1 bruises on her butt, that did not kill Yessenia. The
2 injury, the event that killed Yessenia was the one
3 that fractured her skull, caused bleeding to her
4 brain, caused her brain to swell, caused the bleeding
5 to her brain stem.

6 Dr. Haddix told us that it's possible all
7 of those injuries could have happened from one major
8 traumatic event. That fracture to the occipital bone,
9 thickest, the densest skull bone in the skull. It's
10 the hardest bone to break in the skull, made even
11 harder by the fact that Yessenia was only three years
12 old so her bones were still pliable. Dr. Roquero told
13 us that injury is one that is often seen when a
14 pedestrian is hit by a car or when there's a great
15 fall, somebody falls from a sixth story of an
16 apartment complex. It's an injury that requires a
17 tremendous amount of force.

18 So what evidence was found at the house
19 that an event with that much force took place? None.
20 The house wasn't in disarray. Nothing was destroyed.
21 There's no broken glass. No holes in the walls.
22 Again, this is where we use our common sense. What do
23 we always find when there's a car accident, when
24 there's an event with that much force? There's
25 damage. There's dents. There's scratches. There's

1 broken glass. There's injuries.

2 If Yessenia was hit with a wine bottle with
3 that much force, what would we expect to happen to the
4 wine bottle? It would shatter. It would explode into
5 a million tiny pieces. Yessenia would have been
6 covered in cuts. Cole would have been covered in cuts
7 if he hit her with a wine bottle with that much force.
8 The same is true with a pint glass. The PAW Patrol
9 cup would have cracked and broken into a bunch of
10 pieces as well.

11 The State brings up the picture of Cole's
12 hands. If he had hit Yessenia with that much force,
13 we'd see bruises, we'd see swelling. Not a dry mark
14 on his hand. There would be much more evidence that
15 that event took place. Even the walls in the house,
16 if drywall is hit with that much force, it's going to
17 bend, it's going to crack, there's going to be a hole.
18 Same with the plastic siding in the shower. There's
19 going to be evidence that an event with that much
20 force took place, and we have nothing.

21 Dr. Roquero told us that there was no
22 pattern of bruising to the back of Yessenia's head,
23 which tells us that whatever event caused that skull
24 fracture, caused her death, her head hit a broad,
25 flat, hard object. Again, that eliminates the wine

1 bottle. That eliminates the glass, Dave and Buster's
2 glass. That eliminates the PAW Patrol cup. It
3 eliminates a fist, eliminates a hair brush. What does
4 it leave us with? Questions and doubt. What could
5 have caused the fracture to Yessenia's skull? Could
6 it have been a fall from a height onto a hard tile
7 floor? We've heard something similar happen before.
8 After Yessenia took a shower, she and Cole were
9 playing the jump game. Cole didn't catch her. She
10 fell and she cut her chin open.

11 Could something similar have happened in
12 this case where she went to jump into Cole's arms
13 after a shower and in his drunken state he didn't
14 catch her, she rotated, and fell head first onto the
15 tile floor? I don't know. No one does. No one knows
16 what happened in that four-hour window.

17 Llywelyn the Great was the Prince of Wales
18 in the 12th Century. Like most during that time, he
19 lived in a castle with his wife, his infant son, and
20 his acres of land. He had half a dozen dogs that
21 lived with him because his favorite thing to do was
22 hunt. Of all of his dogs, he had one favorite,
23 Gelert. Gelert was his favorite because he was a gift
24 from the King of England, he was the most loyal of the
25 dogs, and he was the best hunter.

1 Every morning, Llywelyn would go to the
2 front of his house, blow his horn, and his dogs would
3 come from all over the property, and they would go on
4 their daily hunt. One morning, he did that, but
5 Gelert didn't come, only the other five did.

6 So Llywelyn went on his morning hunt, but
7 cut in short because he was concerned about why his
8 most loyal companion hadn't answered the call. When
9 he went back home, Gelert was waiting for him at the
10 front door of the house, just like he normally did
11 when Llywelyn returned home. But Gelert was covered
12 in blood. Gelert put his head down, his tail between
13 his legs, and he (inaudible) towards the child's room.

14 Llywelyn hurried into the room to make sure
15 his child was okay, but he couldn't find his son. The
16 cradle had been overturned, the room was a mess, and
17 there was blood everywhere. Llywelyn reached the only
18 conclusion that he could. At some point something
19 happened that set Gelert off, and he killed and ate
20 his infant son. Llywelyn took Gelert, held him close,
21 pulled out his sword, and plunged it into the belly.
22 When he did, Gelert let out a long enchanted howl,
23 dying in agony. And at the same time, Llywelyn heard
24 the wail of a child.

25 He went to find where it came from, and in

1 the corner of the room under the bedding from the
2 cradle, he found his son alive and unharmed. Just
3 next to his son was a body of a wolf that had broken
4 into the castle and had been slain in a bloody battle
5 with Gelert.

6 Stricken and overcome with grief and
7 regret, he went and picked up the body of Gelert, took
8 him to the center of town, buried him there. He later
9 erected the plaque telling the story of Gelert's
10 bravery so anyone who walked by knew that Gelert died
11 a hero. Like Llywelyn, every single person in this
12 case rushed to judgment. But unlike Llywelyn, we have
13 never figured out what happened on July 15th of 2017.

14 When you deliberate and you find out, no
15 one's going to erect a statue or plaque for
16 Cole Engelson in the middle of town. No one is asking
17 for that; no one is expecting that. Cole Engelson
18 will receive one thing and only one thing, justice.
19 Cole Engelson is not guilty of First Degree Murder.

20 Thank you.

21 THE COURT: Thank you, sir.

22 Counsel?

23 MR. VITTO: So the defendant is Yessenia's
24 Big Hero 6? There's no unknown stranger in this case.

25 "What happened?

1 "I don't know." That's what we just heard.
2 We don't know what happened. I don't know what
3 happened. Could have been this. Could have been
4 that. Could have been this. Could have been that.
5 Possibility? Speculation, which cannot by definition
6 be reasonable doubt.

7 The skull fracture? How about her head
8 reverberating off the shower stall like he told
9 David Boruchowitz. These injuries were the result of
10 violence, force, injected into this trial during the
11 cross-examination of Dr. Roquero, "What kind of force,
12 Doctor? Car accident? Fall from a six-story
13 building?

14 "Yeah. That's the kind of force I'm
15 talking about, the kind of force that would cause
16 injury to one plane." Not every single plane across
17 this little girl's body -- front, back, side to side,
18 top to bottom, inside and outside.

19 The defendant neglected the care and safety
20 of Yessenia and chose instead to get drunk. Four-hour
21 window. We just don't know what happened. Not one of
22 those 32 or 33 witnesses told you what happened.
23 Remember, you don't have to see the rain fall to know
24 it rained. You don't have to see the snow fall to
25 know it snowed. That's circumstantial evidence, every

1 single bit as good as direct. That's what the law is,
2 as the Judge just read it to you.

3 When did this happen? How did this happen?
4 We don't know. Sure, we do. The defendant as a
5 reliable witness, he's a great historian of
6 everything. Did you -- does anybody really expect him
7 to tell the detectives what these circular bruises,
8 what could have caused them? Duh? He bit her.
9 Hello.

10 He remembers virtually everything.
11 Remember the testimony of Detective Boruchowitz, he
12 was clearly minimizing his involvement in the death of
13 this little girl. He said, "I did it," and
14 Detective Alexandra Fernandes cuffed him. The Defense
15 says, "Leave no stone unturned." Oh, please, leave no
16 stone unturned. You look at those lab reports. You
17 look at the evidence in this case.

18 Ladies and gentlemen of the jury, here we
19 are. When I finish, the matter will be yours to
20 decide. As I said in opening statement, this is an
21 extremely important matter. Both sides to this
22 dispute very much appreciate the time you've invested
23 so far, and the time you're going to invest.

24 I have a lot to say about the evidence and
25 what we've heard. Bear with me. This is going to be

1 a little while. There's an old radio show. It's
2 become an idiom. "Who knows what evil lurks in the
3 hearts of men? The Shadow knows." But he's not here
4 to tell us. There is no shadow; however, there is the
5 specter of that little body on the autopsy table.

6 As I told you in opening statement, and I
7 will reiterate now, I will not be asking you to judge
8 what you cannot see. I will not be asking you to
9 judge the heart of the defendant. But I will be
10 asking you to weigh his conduct, his actions, based on
11 the evidence alone, and true justice rendered. You
12 decide if his hands, literally his hands, he was the
13 murderer of Yessenia.

14 Mr. Pullen was asked, "Why are you speaking
15 today?" And he testified, page 36 of the interview,
16 "Because I'm speaking for a little girl who can't
17 speak for herself." He testified that the defendant
18 talked to him because -- pages 28 and 29 of the
19 transcript -- because it was welling up inside of him,
20 the guilt was eating him. And he had been in jail for
21 sometime. And he said some things to Mr. Pullen,
22 didn't he? Guess what he wasn't when he said what he
23 said to Mr. Pullen? He wasn't drunk.

24 This will be scattershot at times, my
25 comments to you, but I'm going to try to cover

1 everything in support of why this is more than just a
2 child abuse case and why it is First Degree Murder. I
3 also told you in opening statement, the critical to
4 this determination would be Yessenia's injuries and
5 what he said about those injuries. And remember, you
6 have the entire interviews. I'm not taking anything
7 out of context here. This isn't a "My Cousin Vinny"
8 moment, "I shot the clerk." No, this isn't that, when
9 he says, "I did it. I'm responsible. My hand." You
10 look. It's there in context.

11 This was no accident, not by the time
12 element involved, and not by both the severity of the
13 injury and the fact, as I just said, that the injury
14 was to every plane inside and out of this little
15 girl's body. This was a beating.

16 Amanda Senger, coupled with Tracy Bish,
17 told you that she used the swabs in the Sexual Assault
18 Kit marked bite marks to swab her body and provide
19 those for the purposes of analysis.

20 Let's get right into his comments. You've
21 heard a lot about what the defendant said. He spoke
22 for hours to at least six different officers about
23 what happened -- Burke, Fernandes, Cox, Gibbs,
24 Fancher, Boruchowitz. We have his transcribed
25 conversations with Victoria. Interesting, Burke did

1 testify, "It was dry. His shower wasn't running when
2 he showed it to me." Well, we know the shower was
3 running when he talked to Fernandes. So who turned it
4 on, and why would you turn it on?

5 You also have conversations of the
6 defendant as he spoke to the people closest to him in
7 his life. Guess what he wasn't when he talked to
8 them? Drunk. He spoke to his mom. He spoke to his
9 dad. He spoke to his friends. Spoke with some best
10 friends, Alexa, the mother of his only child.

11 Consider this based on the evidence.
12 Knowing he had to be to work, knowing he had to drive
13 over an hour to get there, why would he then get so
14 drunk? What happened? What event? What
15 life-changing event happened that he had to get so
16 drunk hours before he knew he had to leave. If he
17 never does that -- and that's what Victoria testified
18 to -- why would he do it now? Why would he get drunk
19 for no reason if nothing was wrong?

20 Based on the evidence and common sense, a
21 reasonable inference, he beat Yessenia to death. He
22 kicked her. He pushed her. He hit her until she
23 died. Then, he didn't know what to do.

24 He chooses when to drink. He chooses how
25 much to drink. Remember what Victoria said. He knew

1 exactly when he could go off his medication and drink.
2 The answer, based on the evidence, reasonable
3 inference, common sense, he did what he did, what the
4 evidence undeniably, unmistakably shows, then he began
5 to drink. He turned to an old and trusted friend. He
6 began to talk to somebody with whom he could relate,
7 one he definitely knew was better than the one he
8 didn't. He knows alcohol.

9 And I said that the way I did because at
10 one point during the Fancher interview, at page 138
11 referring to booze, the defendant said, "It's the
12 devil." He didn't know what to do with the dead child
13 of the woman he loves. Do you want to tell a former
14 girlfriend, your best friend, your mother, your
15 father, the mother of your only child that you beat a
16 three-year-old little girl to death? Is that high up
17 on your list of things I want to do in my life? I'm
18 thinking no. Or would you say, "Man, I was so drunk.
19 I don't know. Not me." Isn't that what happened?

20 He presents his defense to Alexa, the
21 mother of his only child. It's all in the recorded
22 phone calls. You've got them. You heard them once.
23 You've got a transcript. You can hear them again.
24 His best friend Greg, his mom and dad. Tells them
25 he's being railroaded. "I'm being railroaded. The

1 detectives railroaded me." Think about that video
2 he's talking about what happened. Pictures of this
3 massacred little body right in front of him. "Hey,
4 man, can you put those away? Hey, man, I don't" --
5 no. Looking at them, touching them, even when he's
6 left alone. You saw it.

7 The comments he made, apparently without
8 emotion, he had a photograph of Yessenia's broken,
9 bloody, beaten body right in front of him, barely
10 flinched. It's funny, during Fernandes's interview on
11 page 26, he tells her, "I don't really drink that
12 much."

13 Remember people that were in very close
14 proximity to him throughout that evening, people that
15 actually came into close contact, actually padding him
16 down, photographing him; people that routinely,
17 regularly as part of their job, day in and day out,
18 come into contact with intoxicated people saw no
19 reason to think he was heavily intoxicated. You can
20 look at Detective Fancher's interview -- I will give
21 you a page number, No. 5 -- "Hey, man, are you
22 suicidal?

23 "No.

24 "That's just what they put you in?

25 "Yeah."

1 He told Fancher, page 139, "I'm the one who
2 did this." Page 143, he acknowledged the four- or
3 five-hour gap. This person who's so intoxicated that
4 his memory can't be trusted at all remembers there was
5 a four- to five-hour gap, and he remembers more
6 detail.

7 And oh, believe me, we're going to talk
8 about it. He wasn't so drunk, he lost track of time.
9 We're going to touch on that when we get to his phone
10 call with Kristin Greene. He said that he didn't
11 think the falls he described Yessenia taking in the
12 shower caused the injury. Page 132, he said that.
13 "Yeah, she fell, but it didn't cause this."

14 Page 138, you've heard this made reference
15 to, Yessenia, quote, is gone because of my hands,
16 literally my hands. If you're gonna say, "I don't
17 know," stick with I don't know.

18 Page 144, it was obvious to him that
19 Yessenia wasn't breathing. "I better call emergency.
20 Well, I don't know. I'll just let her lie there for
21 four or five hours."

22 Page 161, he explains that she was crying
23 and screaming and trying to get away, so he just kind
24 of put his hand on her head, "Well finish up, honey.
25 We've got to wash your hair." Remember he had to just

1 kind of nudge her with his toe. It wasn't a midget
2 kick back in the shower against the back wall.

3 On page 163, he acknowledges the bruise on
4 his toe as he's being asked. And he says, "I could
5 have hit it." Fancher ask him, "Do you believe you
6 struck the girl?" Page 163. "I do. Cause I don't --
7 nobody else was there." Okay. So, well, that's good,
8 at least we've eliminated the unknown stranger, the
9 person nobody knows that snuck in the window, beat
10 Yessenia to death, vamanos. Whew, got rid of that
11 one.

12 Page 169, Fancher asked him if any of the
13 bruises were old. The defendant said, "No. I think
14 that's all new stuff." Well, you would know better
15 than anybody.

16 170, in reference to what caused the
17 bruise, he says, "Maybe it's a fist. Maybe I punched
18 her." Who talks like that? The defendant. Look at
19 her body.

20 Page 172, he acknowledges that the beating
21 was, quote, so extreme. He acknowledges, page 173, he
22 knew she wasn't sleeping. Quote, I just -- I kind of
23 just remember the dead look. Is that when he called
24 for help? No. Fancher asked him, "The what?" And he
25 continued, "The dead look in her eye, you know. The

1 half eye open so I knew she wasn't asleep." I know,
2 let's call for help. No, let's wait five hours. I've
3 got to figure out what to do. I'm going to talk to my
4 old friend and his two toddys. "Not me," and "I don't
5 know."

6 He told Alex Cox looked like he gave her a
7 good spanking, like he went too far. Page numbers 34
8 and 35 of that interview. Page 52, he said he shook
9 her and that could potentially explain why, frankly,
10 if he did. But to be fair, you can look at the
11 interview. He was describing like a little, "Hey,
12 hey, wake up honey." But like so much of what he
13 said, you have to run that through the filter of
14 scrutinization if you decide whether he's simply
15 minimizing his involvement. But shaking could explain
16 whiplash. So much of what was seen if the skull was
17 shaken and bounced off of a hard object. The eyes,
18 the neck, the injury to the chest, as explained by
19 Dr. Roquero, the injury to the lungs.

20 Page 95, he said he never would have done
21 anything like that sober. Well, that's comforting.
22 I'm glad you would only do it when you're drunk. That
23 helps Yessenia a lot. Yessenia was fine, and then she
24 wasn't. I mean, what's the alternative here? "Yeah.
25 Well, I beat a little girl to death." Thanks for

1 coming down. "Yeah, I hit her so hard you could hear
2 her skull crack against that shower stall." Is that
3 how he admits that? Or you get a lot of what you got.
4 You could either say that, or you could say what he
5 said, "I don't know."

6 Jury instruction 14 talks about if you
7 believe that a witness has lied about any material
8 fact in the case. It talks about innocent
9 misrecollection. So there's a difference between
10 lying and innocent misrecollection. Let me give you
11 an example of what could be innocent misrecollection,
12 but all of this stuff is stuff that you can decide.
13 This is all solely within your province, your call.

14 Dwight said Yessenia was wearing a diaper.
15 Victoria said, no, she wasn't. Everybody else
16 described Yessenia as being completely naked. And
17 Victoria explained it because Yessenia had been potty
18 trained for two months; she was out of diapers. You
19 can decide. I mean, it doesn't appear to be a motive
20 for him to lie. Nobody is saying that. I'm certainly
21 not. Is that innocent misrecollection, as opposed to
22 what the defendant was saying over the course of his
23 interviews?

24 You get to decide whether Dwight's psyche
25 was shattered when he realized he touched the dead

1 body of his little sister and he didn't even know it.
2 You remember that screaming in the background of that
3 911 call? If someone is lying, you get to determine
4 who that person is.

5 Call No. 3 in the jail calls, there's a
6 phone call with his father. Tells his dad he wakes
7 up, he doesn't know why Victoria isn't there. How
8 many times did he tell different people exactly why
9 Victoria wasn't there? So why did he tell his dad, "I
10 don't know, man. I woke up and Victoria wasn't
11 there." He just told half a dozen officers why she
12 wasn't there.

13 Call No. 5, he tells his dad -- this is a
14 good one -- "I think she was out to dinner with her
15 effing old boss who I don't really care for." He
16 knows that's not true. But it's really interesting,
17 and we'll be getting more into that as well later.
18 Discrepancies? He told Victoria he remembered nothing
19 after taking Yessenia to the shower, "Took her to the
20 shower. That's all I remember." But he told
21 Alexandra he dried her off after the shower.

22 He told Victoria she fell from a chair in
23 the dirt where she continued to play. Told Alexandra
24 she was sticky. We'll be talking about that one too.
25 Told Alexandra she took a shower before her nap.

1 Detective Fernandes testified there came a time when
2 he began to cry and breathe heavy, and you get to
3 decide whether at that point in time the gravity of
4 the situation in regard to what he had done began to
5 fall on him like a ton of brick. A ton of brick used
6 to build a wall around him by his own statements that
7 becomes inescapable. You alone are trusted with
8 deciding who, if anyone, is lying or otherwise being
9 deceptive. Who would have motive to minimize or save
10 face with the people closest to you in your life?

11 What did he tell complete strangers, law
12 enforcement officers that he owes nothing, has never
13 seen before, and will never see again? Law
14 enforcement just asked him questions and recorded what
15 he said. They weren't there. That's fact. Based on
16 the evidence, the defendant murdered the only one that
17 could tell you what happened in the house that day.

18 What did the defendant tell the people
19 closest to him, and why did he say what he did? What
20 does common sense tell you? What is a reasonable
21 inference to draw? This isn't just an officer saying,
22 "Yeah, this is what he told me." These are recorded
23 interviews and the recorded jail calls that you heard.

24 How about Call No. 7 -- who was Call No. 7
25 to. Call No. 7 was to Greg Ash, his best friend, best

1 friend. "After the autopsy comes out, I will start
2 showing a little better." And interestingly, he
3 references speaking with his cellmate in that call.

4 Call No. 9, he then goes over the facts of
5 the day. And surprisingly not, identical to what he
6 told every officer, went into the Nugget for
7 breakfast, went to the Thrift store, doctor
8 appointment, liquor store. Victoria said no. Went
9 home, and that's all we did that day. Uneventful,
10 same ol', everything fine, everybody is fine.

11 He said he was fine that day, until she was
12 alone with the defendant. She was uninjured, she was
13 unmarked, and that's the only evidence before you.
14 Everything, anything else is speculation. And
15 speculation, by definition, cannot be reasonable
16 doubt. This was a healthy kid, up until the time she
17 was dead. She went into the shower unbruised,
18 uninjured, unharmed, and she came out of that shower
19 dead or dying. She was fine and then just went limp,
20 and he was drying her off on the counter before
21 "lathering her up," as he liked to say. That's what
22 he remembered.

23 He put her to bed naked. How often does
24 that happen according to Victoria? Never. Based on
25 the evidence, he didn't dress her because he knew she

1 was dead. He felt the back of her head, saw one eye
2 half open, knew she wasn't breathing. He knew she was
3 dead. He knew he did it. He didn't know what to do
4 about it. That shower is the transitional event, an
5 event that forever changed all of their lives and
6 ended Yessenia's.

7 Call 10 to his dad, quote, Something
8 happened in that shower. Well, duh. We figured that
9 out. Consider this: worked all night, got home
10 early, it was after lunch now, he wanted to get some
11 sleep. You have to drive to work for a full shift.
12 You know -- and we know he knows -- we know Yessenia
13 doesn't like to get her face wet. Why shower at all?
14 Why was the shower so necessary at 2:00 in the
15 afternoon, 1:00 in the afternoon? Why be so
16 determined to wash her hair? She's crying. She's
17 screaming. She's trying to get away. "You get back
18 in there and wash your hair."

19 Think about that when you consider why the
20 shower was still running. Think about that when you
21 consider whether those are bite marks and what water
22 would do to saliva, that the wounds were swabbed for
23 by Amanda Senger, and the potential for blood in the
24 running water of that shower five hours after the
25 event, according to him.

1 As my boss pointed out, the last call that
2 you have here, he asked his friend to get a book on
3 alcoholism and blackouts. Listen to that call again.
4 Listen to what isn't being said in conjunction with
5 what's being said in that conversation between the two
6 of them. The effects, he needs to know. He needs to
7 know. You need to know what? What do you need to
8 know? That's what he said, "I need to know." Well,
9 you either did or you didn't. But based on the
10 evidence, you already know. So what do you need to
11 know?

12 This phone call, it's all going to be in
13 his favor once the autopsy and all that comes through.
14 Everything is going to be better for him. Well, how'd
15 that work out? Not real well. In fact, it could
16 hardly have been worse. According to the autopsy,
17 Yessenia died as a result of multiple blunt force
18 trauma. That was the cause of the death. The manner
19 of death, homicide. One human being kills another
20 human being, a deliberate act.

21 There are only two people in that house
22 during that shower. One of them is dead. The other
23 is on trial for that homicide, and the evidence says
24 it's a murder. And not just any murder -- we talked
25 about this in opening statement -- First Degree Murder

1 because it was child abuse. Dreams and reality have a
2 quality all their own. Individual. Nightmares the
3 same. When one wakes from a nightmare, they're
4 relieved. Everybody knows the difference. That's an
5 experience common to man. It's common sense. No one
6 wakes from a dream and wonders for very long whether
7 it actually happened.

8 Would he like to say it just happened,
9 hence the water returning? But he knows that is not
10 going to fly because Dwight has been home for a couple
11 of hours, hour-and-a-half. Why was the water running?
12 Is it a reasonable inference to draw that he was
13 flushing evidence down the drain? You get to decide.

14 If he woke to find Yessenia dead with no
15 idea what happened, and if there was a free-for-all
16 within the shower, why take the time to clean up the
17 shower? We'll get to that in one second. I'm going
18 to show you some pictures.

19 Through the fog, from his perspective --
20 and we'll talk a lot about that -- he was able to
21 decide it would look better for him if the shower was
22 recent; so he turned it on. If the shower wasn't on
23 when Burke was there, he turned it on so that he could
24 asked Fernandes for permission to turn it off. It's
25 right there in black and white. If I'm not mistaken,

1 we actually played that as an interview excerpt. Why?
2 Why would you want to create that illusion? What's a
3 reasonable inference? How do you explain letting her
4 lie there and die? And how do you explain letting her
5 lie there for four or five hours by his own admission?
6 That's brutal, man.

7 We know that he was calling around making
8 nail appointments from roughly 12:45 to 12:50; that's
9 my recollection. It's in evidence. You've got the
10 exhibit. It's DeFonseka's report. Something like
11 that. I think there are about five calls to nail
12 appointments right around that time frame, just
13 shortly before 1:00.

14 He told Boruchowitz, going over it, going
15 over it, that Victoria left the house about 1:00 p.m.
16 He was outside with Yessenia playing in the dirt for
17 about ten minutes. The shower was about 1:30. Based
18 on the evidence, Yessenia was dying when she left that
19 shower. Based on the evidence, she was dead before
20 2:00 p.m., and he let her lie there until 7:00 p.m.

21 He told Detective Fernandes she was sticky.
22 Not dirt eye, sticky. She's the only one that he said
23 that to. That was his first contact, other than
24 Burke, with law enforcement, and he used that word.
25 Jury Instruction 17: "Although you are to consider

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

10 Between blood and dirt, what's sticky? He
11 beat her. Using, according to him -- this is his
12 word -- using his "retard" strength -- that's the word
13 he used in his phone calls, "I'm retarded strong."

14 He dried her off. He said he dried her
15 off. He always dries her off. Her blood is on that
16 towel. Why is her hair wet five hours later? Why was
17 the shower running? This is interesting. Page 16 and
18 21 of the Pullen transcript. And remember, he wasn't
19 drunk when he was talking to Christopher Pullen. We
20 even get a new story about what happened that day.
21 She was on the dresser. So what do you do? Well, you
22 smack her off the dresser. That's what he said he
23 did. "Fell forward and hit her chin, and then fell
24 backward and hit her head." That's what he said, and
25 he wasn't drunk.

1 According to the defendant and the
2 testimony of Christopher Pullen, after he smacked her
3 and she hit her head, after seeing her with one eye
4 open, dead, he tried to revive her with a cold bath.
5 Bye-bye saliva. If any saliva was present, gone. Why
6 was no saliva found on what many felt were bite marks?
7 Why did that shower stall look so neat and tidy? It's
8 a reasonable inference to draw using your common
9 sense.

10 Talking to your best friend alcohol,
11 "Sanitized the scene, man." He washed that body off,
12 fixed up the shower, put everything back in place.
13 You got the pictures 27A through C of that shower
14 stall. The scene that he described in that shower, "a
15 cat thrown in a bathtub." We know they were going at
16 it, according to him. That's what he told Victoria,
17 "We were going at it." He certainly had plenty of
18 time to clean up. He could have driven to Las Vegas
19 and back; he had plenty of time. Plenty of time to
20 clean her up. Her eye was open when he went to lay
21 her in bed. He repeatedly made that remark. And
22 little Yessenia was dead or dying. He won the fight.
23 He merged the victor from their shower stall cage
24 match, because that's what he described.

25 If you don't remember, it's just, "I don't

1 remember." But he doesn't just not remember. The
2 only thing he doesn't remember and say is what he
3 actually did. He admits hitting her, kicking her,
4 fighting her. He said the same thing in his jail
5 call -- oh, and he's not drunk. Jail Call No. 3 to
6 his dad. "All I remember is one of her eyeballs was
7 half open, and I knew something was wrong." Amazing
8 how the non- drunk phone calls match up to certain
9 details with what he said to investigators. Amazing.
10 It was obvious to him that she was no longer
11 breathing; he did nothing.

12 Based on the evidence, common sense,
13 reasonable inferences, the testimony we heard, he bit
14 her some half a dozen times, while able to shower away
15 potentially some of the evidence. There was nothing
16 that he could do about the swelling, the skull
17 fracture, the bleeding from soft tissues surrounding
18 internal organs, bleeding from the brain, and a
19 massive amount of bruising he inflicted on a little
20 baby girl, and he knew it. What were his choices in
21 that moment based on the evidence? That's when he
22 began to drink. What am I going to do? What am I
23 going to tell? Because, you see, at that point, it's
24 all about him, based on the evidence. "What's going
25 to happen to me? Everybody hates me. I'm going to

1 have a really bad day."

2 He told Detective Fernandes he had two
3 drinks, shows her the glasses. (Inaudible) fills them
4 up this far. Told Victoria he was hitting the jug of
5 vodka. He interjected that into the conversation.
6 Maybe figured that wasn't good enough, because he told
7 his baby mama in Call 4 that he had 20 shots. But he
8 told Christopher Pullen on page 22 that he had 30
9 shots. Common sense, two drinks, 20 drinks, 30
10 drinks, hitting a gallon of vodka through his
11 blackout, which by the way, Victoria, the person who
12 lived with him everyday for a year and had seen him
13 drink heavily over the course of that time, never saw
14 once, "Never saw that man have a blackout." She
15 remembers the details of how much he had to drink.
16 But then maybe that's a super power, like his retard
17 strength.

18 Call No. 4, this is his call to the mother
19 of his child. "Yeah. I drank too much hundred-proof
20 vodka too fast. You know what I mean. Had at least
21 20 shots. But, you know, I've been known to
22 roughhouse Cole when I've been drunk, you know. I've
23 never hurt him. I was just playing around. But I
24 don't know my strength. I've got retarded strength
25 when I'm that way."

1 He calls his friend Kristin Greene, tells
2 her he doesn't remember anything. Calls 9 and 13,
3 doesn't remember anything. But he says this. They
4 took his blood. They took my blood, quote, five hours
5 after I got up, ten hours after I started drinking; so
6 what's it going to show? What do we know from that
7 little quote about what he remembers. Well, he
8 remembers when he started drinking, he remembers when
9 he went to sleep, he remembers when he woke up. He
10 remembers when he stopped drinking, and he remembers
11 when he was tested, but he has no memory of anything
12 else. Well, isn't that convenient?

13 Doesn't remember anything else, except
14 everything he told law enforcement, which was a lie.
15 He's doing exactly what Captain Boruchowitz said he
16 was doing. He's doing what Christopher Pullen knew he
17 was doing. We've heard excuses. Frankly, we've heard
18 whining, "It's already going to be a really bad day."
19 It's going to be a bad day for humanity. Are you
20 kidding me? With this beautiful, little baby girl
21 beaten to death, your focus is on your bad day? I'm
22 thinking hers is a little worse. It's all about you,
23 and you didn't do anything wrong. "I don't know."
24 Who did it? "Not me." Everybody is mad at him all of
25 a sudden. Call No. 8, the whole town hates him all of

1 a sudden. We've heard excuse for what was proven is
2 inexcusable, and that's the point. Anybody knows this
3 is inexcusable.

4 Call 8 -- Calls 8 and 10, the detectives
5 railroaded him. They was railroading him. Is that
6 what you heard? Is that what you saw is him being
7 railroaded? I shot the clerk. That's not what
8 happened here. We heard the defendant talk, and the
9 bottom line is, just like Christopher Pullen
10 recognized, he's sorry he's in trouble. That's what
11 he's sorry about.

12 Pullen wasn't picking up what he was laying
13 down. Pullen called him out, page 30, "You don't have
14 to lie to me." This is his quote. "You don't have to
15 lie to me. If you don't want to keep it real, then
16 don't talk to me about it." The defendant got called
17 out. His story wasn't adding up. He's not
18 (inaudible) Yessenia.

19 Crystal Barajas listened to 1700 phone
20 calls for over 140 hours, and he never once explained
21 how much he missed her or how sorry he was at the
22 snuffing of her little light. Call No. 10, as I've
23 already stated, "Something happened in that shower."
24 Call No. 11, "I already know what happened." That's a
25 quote. "I already know what happened." Based on the

1 evidence, you can bank on that. You can bank on the
2 fact that he knows exactly what happened.

3 Interestingly, Victoria testified that they
4 were in a bit of -- they were bickering about
5 Steve Kafton showing more attention to her children
6 than him. And the defendant in his nonintoxicated
7 phone calls is complaining about her boss. He didn't
8 like Kafton coming around. He's talking about that in
9 his phone calls while he's in jail for the murder of a
10 baby girl. He mentions it on page 28. It's not only
11 his phone calls, he also mentioned it and it's in the
12 testimony of Christopher Pullen. "There was some guy
13 that was coming around, her ex-boss or somebody, that
14 was treating her kids better than he was treating his
15 kids." But that day he was specifically upset that
16 Victoria's nail appointment was taking as long as it
17 was? Yes. He wasn't drunk. "But where's Victoria?
18 She should have been here? I'll bet she's out with
19 her boss."

20 The point here is that based on the
21 evidence and reasonable inferences to draw, is after
22 doing what he did and not knowing what to do, again,
23 that's when he began to drink heavily. From a pressed
24 corner, trapped by the truth and the facts, he is
25 trying to find a way to survive what happened and what

1 he did. And the evidence will reflect that this
2 experienced, heavy drinker with a high tolerance for
3 alcohol that Victoria has never seen blackout is
4 changing and manufacturing a story on the fly.

5 And we could have had the sample sooner.
6 He chose not to volunteer that blood sample at
7 7:00 p.m. Page 32 of Alexandra Fernandes's interview,
8 "It's already going to be a bad day for me." Wow. He
9 told Fernandes he knew there was something wrong with
10 the back of her head. Alex Cox explained that by the
11 time he got called into this investigation, this was a
12 multitasking process for him. He had to go through to
13 get the three samples -- excuse me, the three search
14 warrants, the crime scene, the samples, delegating the
15 responsibility, waiting for the Judge, waiting for the
16 phlebotomist. Didn't have to be five hours later.
17 Victoria explained that he had the use of his
18 medication down to a tee. He chooses exactly when to
19 drink. He chooses exactly when to drink.

20 We've read your questionnaires. You've
21 been chosen as a panel. We've listened to a snapshot
22 of your education, your lives, and your
23 accomplishments. You've taken an oath to follow the
24 law and apply it to the facts. Voluntary intoxication
25 is no excuse. Legally, it is no defense to what the

1 State has alleged. Jury Instructions 33 and 34:

2 33, "Intoxication alone cannot reduce a
3 Murder to manslaughter. Instruction 34, "You are
4 instructed that the crime of Child Abuse is a general
5 intent crime. Thus, the fact that the defendant was
6 voluntarily intoxicated is not a defense and does not
7 relieve him of responsibility from the crime alleged.
8 Whether the defendant is intoxicated to any extent
9 does not excuse him from being guilty of the murder of
10 the victim, should you conclude beyond a reasonable
11 doubt that she died as a result of Child Abuse." It's
12 right there, as the Judge has instructed you.

13 Amazingly, as he sits here today, he's
14 cured. Cured of the disease of alcoholism. He'll
15 never drink again he says. Call 21, "I will never
16 drink again. No access. No choice. No disease."
17 Call 15 and 21, "It's all I've been doing, and that's
18 why I'm sure everything will work out in my favor
19 because that's the reason why I'm here, you know. To
20 save my life, I'm put in here." The State's going to
21 have to go through it. You can see it. It's in
22 evidence. "That's the only way I would ever lose the
23 weight, quit smoking, and quit drinking, and you
24 know."

25 Call 21, "How do you feel being like

1 completely sober now that don't" -- now that you know
2 you haven't had a drink in so long?

3 "Yeah. I'll never drink again. Got to
4 lose weight, quit smoking, quit drinking.

5 "So if you don't have access to alcohol, I
6 mean who knew. It's like a miracle cure."

7 Keeping this where it belongs is a simple
8 process really, based on the law and facts, alcohol is
9 not a defense. Two people were in the house. One
10 lived; one brutally died. One was 350 pounds; one
11 wasn't. Alcohol is not a defense, as I mentioned in
12 opening and as we just went over. You don't get to
13 say I was drunk and go home. He admits to everybody
14 he spoke with in law enforcement that he committed
15 child abuse. If commit child abuse and the child
16 dies, that's First Degree Murder. Those are the
17 facts. You don't have to conclude that he wanted her
18 to die.

19 Let's look at Jury Instruction 24. Jury
20 Instruction 24 in this case: "An express specific
21 intent to kill is not essential to the crime of First
22 Degree Murder." Not in this case, because we're
23 alleging child abuse.

24 Instruction 26: "There's a kind of murder
25 which carries with it conclusive evidence of

1 premeditation and malice aforethought. This class of
2 murder is murder committed in the perpetration or
3 attempted perpetration of child abuse. Therefore, a
4 murder committed in the perpetration of child abuse is
5 deemed to be Murder of the First Degree, whether the
6 killing was intentional or unintentional. This is
7 called the 'Felony Murder Rule.'

8 26A: "The Felony Murder Rule makes a
9 killing committed in the course of certain felonies
10 murder, without requiring the State to present
11 additional evidence as to the defendant's mental
12 state, i.e. premeditation and/or any deliberation."

13 Premeditation, we don't have to show.
14 Deliberation, we don't have to show. Twenty-eight;
15 there it is: "The prosecution does not have prove
16 premeditation or deliberation, and malice is implied,
17 if the prosecution proves the killing occurred during
18 the commission of child abuse."

19 Child abuse, you have different definitions
20 of child abuse given to you as jury instructions. The
21 child abuse associated with First Degree Murder is
22 Instruction 29, and only Instruction 29. If you find
23 this -- "Child Abuse means physical injury of a
24 nonaccidental nature to a child under the age of 18
25 years." The other instructions about child abuse

1 later on in this jury instruction packet are in regard
2 to the lesser-included offense of child abuse. That's
3 explained in these jury instruction. From my
4 perspective, because I'm trying to convince you that
5 this is a First Degree Murder charge, the only
6 instruction you need to be aware of is the definition
7 of Child Abuse in Instruction 29. That brings us to
8 First Degree Murder.

9 Instruction 30: "The injuries and the
10 false explanation to witnesses, should you find the
11 explanations for the injuries suffered to be false,
12 may satisfy the necessary proof of child abuse. The
13 death could have been intentional, unintentional, or
14 accidental, but the child abuse must have been
15 nonaccidental. False explanations by themselves are
16 insufficient." If you determine that he was lying or
17 minimizing or are otherwise false, they can rightly be
18 considered by you in that fashion. They can be. They
19 don't have to be. You're the body corporate that
20 makes that decision.

21 And remember, he didn't have to have the
22 intent to kill her. He didn't have to say in his
23 mind, "I'm going to kill you." The only intent
24 necessary is, "I'm going to hit you or kick you or
25 bite you or otherwise brutalize you." That's the only

1 intent necessary.

2 32: "You, the jury, are not required to
3 reach unanimity regarding the means or the theory of
4 criminal liability. In other words, you may disagree
5 on exactly how the crime was committed; only your
6 verdict, whether the defendant is guilty or not
7 guilty, must be unanimous. You can deliberate and
8 say, "I think he did it this way," or "I think he did
9 it this way. That doesn't -- all you have to be
10 unanimous about is your verdict. Not how he did it,
11 but whether he did it.

12 These are the elements. This is what the
13 State has to prove. This is an important instruction.
14 It's Jury Instruction No. 25. So here we are. "To
15 establish First Degree Murder based on child abuse,
16 the prosecution need not prove that the defendant
17 intended to kill or seriously injure the child or that
18 the killing was premeditated or deliberate. The
19 elements of the crime of First Degree Murder by child
20 abuse are only that" 1, 2, 3, three things. Three
21 things the State has to prove. The defendant did
22 commit, or attempt to commit, an act of child abuse.
23 The defendant did willfully and unlawfully; No. 2,
24 commit or intend to commit an act of child abuse; 3,
25 which resulted in the death of the child.

1 The defendant hit her, and she died. The
2 defendant intended to hit her or bite her or smack her
3 or kick her, and she died. Well, we know she did, and
4 we know she was beaten.

5 If you'll remember in opening, I told you
6 this is a little different than a murder. That's what
7 I was talking about, that the Judge would explain it
8 to you, and he did. Normally, a First Degree murder
9 requires proof of a mental state. In the law, we call
10 it the "mens rea." In order to commit a crime, there
11 has to be a physical act and an associated mens rea, a
12 mental state. We don't have to have that here. We
13 only have to prove that he committed child abuse and
14 that the child died.

15 And he said it over and over again. "I did
16 it, literally with my hands. I'm responsible. No one
17 else could have done that." These are quotes. "He
18 kicked her. He pushed her. They were going at it,"
19 and Yessenia was still alive, even if only
20 technically, when, based on the evidence, he bit her.
21 Victoria knew what she saw. She looked for him. She
22 found him. He had been able to, by himself. You saw
23 the driveway -- it's in evidence -- the long, winding
24 road down to the street and back. She was looking for
25 him. She found him. She told Chief Lewis -- she was

1 following the ambulance caring her baby girl -- "He
2 killed her." She knew. Even through the fog of the
3 tragedy, she became involuntarily embroiled within.
4 She attacked him like a she-bear unleashed, because
5 she knew. She knew what was terribly, painfully,
6 unbearably, and plainly obvious as she attacked him,
7 and he took it. "I don't want to press any charges
8 against her, you know. I just took my whoopin'."
9 Yeah, he took it. More than twice her size. He
10 didn't grab her hands. He didn't say, "What are you
11 doing?" He didn't say, "Why are you doing this?" She
12 attacked him. She said, "What did you do?" And all
13 he could muster was, "I don't know."

14 Common sense tells you she knew. Common
15 sense tells you he knew. And we know, because he told
16 five cops what he knew, and it was a lot more than "I
17 don't know." Based on the facts, the evidence, what
18 transpired that afternoon, he knew he was deserving of
19 her wrath, man. Her attack on him, both hands to the
20 chest, as she ran up, 155 pounds of her, pounding him,
21 hitting him in the face, dragging him around by his
22 beard, yanking his beard. This supposedly, wildly
23 intoxicated person didn't stumble. He didn't take a
24 step back. He didn't fall. He wasn't thrown off
25 balance. He just wasn't intoxicated the way he would

1 have someone, please anyone, believe.

2 Based on the evidence, don't believe it.
3 James Mercer knew what those marks were. Those were
4 human bite marks. He handles bodies for a living.
5 Those are bite marks. Dr. Ahmed Moussa said they
6 looked like bit marks to his trained, experienced
7 eyes. Dr. Leonardo Roquero would only go so far to
8 say he couldn't rule out bite marks, but he was able
9 to confirm that Yessenia was living when it happened.

10 Now, you saw Dr. Roquero. You heard him
11 testify. You saw and heard how exactly and meticulous
12 he is with his words. He was absolutely certain of
13 his conclusions. This was a homicide, a nonaccidental
14 death, death at the hands of another human being.
15 Those are his conclusions for which he was absolutely
16 certain. Multiple blunt force points of trauma so
17 numerous he had to quantify and characterize them by
18 regions, a constellation of injuries.

19 Yessenia was completely asymptomatic prior
20 to being left alone with the defendant. And that is
21 impossible, based on the expert testimony that we
22 heard. That is impossible with the injuries she
23 suffered. Based on the evidence, she was immediately
24 unconscious when she received that head wound, and she
25 was dead shortly thereafter. That's common sense.

1 That's not 672 septillion to 1. Yessenia was a
2 normal, healthy little girl who had just been beaten
3 to death.

4 Dr. Plowey corroborated both Dr. Haddix and
5 Dr. Roquero, seven retinal hemorrhages, acute, recent,
6 no time to begin to heal before death. Dr. Moussa
7 tried with everything he had to save an innocent
8 otherwise healthy little girl. She was in full
9 cardiac arrest due to trauma, and it was irreversible.
10 She would have been dying, not active, animated, and
11 capable of even trying to fight for her little life.
12 Think about how he describes her in that shower. She
13 is a cat thrown in the bathtub. She's scrambling
14 around like crazy. She's fighting to survive. That's
15 not -- that's not happening with that head injury.
16 That's the evidence and the testimony before you.

17 May I have the Court's indulgence just a
18 moment?

19 THE COURT: Yes.

20 MR. VITTO: Here's the verdict form.
21 You're going to get this. It's got a lot of choices
22 here, a page-and-a-half. First one says: "We, the
23 jury in the above-entitled case, find as follows:
24 (Select only one)." You've got a lot of lines. You
25 only have to select one. Based on the evidence, We,

1 the jury in the above-entitled case, find as follows:
2 (Select one) Not guilty or Guilty of First Degree
3 Murder. Based on the evidence, you don't have to go
4 any farther. That's it. You have a jury instruction
5 that says if you can't decide, then you can go ahead
6 and look.

7 Have we answered all of your questions?
8 Probably not. Thirty-two, 33 witnesses. You know how
9 long we've been here. Having proved the case beyond a
10 reasonable doubt? Most certainly, and absolutely.

11 Consider whether -- and I want to remind
12 you of this; touched on it in opening statement I
13 believe, touched on it here today -- it's very
14 possible that most or many of any outstanding
15 questions resolve around why? You have a jury
16 instruction that says the State doesn't have to prove
17 why, not even a little bit. Evidence of why can be
18 zero, no more, not responsible for proving motive.
19 Why? We can't see inside his head or his heart.

20 Jury Instruction No. 8: "Motive is not an
21 element of the crime charged, and the State is not
22 required to prove a motive on the part of a defendant
23 in order to convict." There is evidence of why, as
24 you parse, contemplate, compare all of the evidence,
25 as I've pointed out earlier, with what you have that

1 includes hard science, empirical science, and common
2 sense. Yessenia was not injured the day before. She
3 wasn't injured the night before. She wasn't injured
4 that morning. By everyone's account, everyone's, she
5 was fine. Then she was dead.

6 Yessenia had a good, healthy, normal
7 relationship with her big brother Dwight, the
8 defendant's son Cole, her big sister Nickole, and her
9 mother Victoria. They were all gone or leaving.
10 According to Victoria, Yessenia pleaded to go with
11 her. "Please don't leave me here alone." How many
12 times has Victoria replayed that in her mind over the
13 last three-and-a-half years? But she was left alone
14 with the defendant. And according to the defendant,
15 Cox interview, page 16, she became quite hysterical,
16 quite hysterical.

17 The experts all told you, without
18 equivocation, based on hard science, Yessenia could
19 not have lived more than three, on the outside of four
20 hours. Could have been seconds, to minutes, to hours
21 with the injuries she had. And her life between the
22 injury and death would have been noticeable for its
23 symptomology. And what we have here is an utter and
24 complete lack of noticeable symptomology.

25 Jury instruction No. 6, a reasonable doubt.

1 Here's what is. It's this, and it's nothing else. "A
2 reasonable doubt is one based on reason. It is not
3 mere possible doubt, but is such a doubt as would
4 govern or control a person in the more weighty affairs
5 of life. If the minds of the jurors, after the entire
6 comparison and consideration of all of the evidence,
7 are in such a condition that they can say they feel an
8 abiding conviction of the truth of the charge, there
9 is not a reasonable doubt. Doubt to be reasonable
10 must be actual, not mere possibility or speculation.
11 If you have a reasonable doubt as to the guilt of the
12 defendant, he is entitled to a verdict of not guilty."

13 Complementing that is Jury Instruction
14 No. 11. "In considering the case, you should not
15 indulge in any mere conjecture, surmises, or
16 suppositions as to what may or may not have occurred,
17 but you must decide the case on the evidence offered
18 and admitted in open court."

19 During Defense Counsel's closing, it's
20 speculation, man. We gave you hard science, expert
21 testimony that details exactly what happened to this
22 little girl. The injury must have happened before
23 breakfast. If that were true, she would have been
24 lethargic, nauseated, in pain, visual impairment, and
25 dead; dead before Victoria went to get her nails done.

1 Breakfast was a nay due to math. Three hours; that's
2 noon. Four hours, one o'clock. And during that time,
3 they had gone shopping and Yessenia picked something
4 out. The testimony was that all of the kids picked
5 something out. She was fine. If that were true,
6 there's no playing in the dirt, and there's no
7 fighting him off in the shower as bravely and as
8 determinedly as she tried.

9 Christine Whittle from the Las Vegas
10 Metropolitan Police Department Crime Lab provided you
11 with a startling example of the value of common sense.
12 People create computers that do remarkable things, but
13 nothing compares to the human brain, your brain; and
14 your experience, wisdom, and application of common
15 sense. Everyone is born with a level of intelligence.
16 As we grow, we gain knowledge. As we mature, we
17 develop wisdom, which is the correct application of
18 knowledge using our intelligence and experience.
19 Christine Whittle's Lab Report. Amanda Shum testified
20 about it. Brianne Huseby testified about. They used
21 Tracy Bish's findings from the Sexual Assault Kit to
22 match stuff up, tested all these items. Then we have
23 conclusions.

24 Christine Whittle said, quote, The
25 probability of observing this DNA profile is

1 approximately 672 septillion -- that's 672 times ten
2 to the what power? Ten to the 24th power times more
3 likely if it originated from Yessenia Camp than if it
4 originated from an unknown random contributor. I
5 asked her, "Can't you just say it's Yessenia's blood?"
6 Do you remember her response? Use your common sense.
7 That's what she said right there. But she couldn't
8 say that was Yessenia's blood. She had to say this
9 long, complicated drawn out sentence. That's the
10 value of common sense. We have amazing brains.
11 Yessenia's brain stopped working based on the
12 evidence, because the defendant, Cole Duane Engelson,
13 beat her to death. That's her blood on the towel and
14 the pillowcase.

15 To his credit, look at Calls 6 and 10. He
16 knew better than to say that Yessenia died because she
17 was sick, as his dad seemed to be wanting to suggest.
18 Look at the calls, Calls 6 and 10. "Wasn't she taking
19 some kind of treatment?

20 "That wasn't the case. That's not what
21 happened." That's the defendant speaking. "So I
22 can't get much into it." Well --

23 "Well, didn't she quit breathing?

24 "No, no. There was more to it I guess.

25 "Wasn't that the problem? You said she

1 wasn't breathing?

2 "That's what I thought. I can't get into
3 it with you, Dad, I'm sorry, because you know how this
4 phone works. Something tragic happened."

5 Call 10: "She's supposed to be taking
6 that," he says, "dialysis. She's supposed to be
7 taking that twice a day?

8 "That had nothing to do with it, Dad. I
9 know what happened. I know the truth now, because
10 everything finally came out, you know."

11 His friend Kristin in Call 16. See what
12 happened here. His friend Kristin -- no, I'm sorry,
13 Alexa, the mother of his child, she suggests that he
14 blame it on Victoria. "I was going to ask you -- I
15 know you don't talk about your case on the phone --
16 but can't you request that she have to take a lie
17 detector test?" The defendant, "I don't know. I
18 can -- you know, the information will come out.

19 "Well, yeah, but I'm saying if she's
20 guilty, that's the easiest way to get to the truth.

21 "Yeah, but I think her out running around
22 with her daughter, I don't -- I don't think she's part
23 of it. I think it was an accident?

24 "So you don't think she did it physically?

25 "No, no. I don't think that." You see

1 what's happening here? As he's trying to save face to
2 the people that still care for him. He didn't tell
3 his mom, his dad, his best friends, or the mother of
4 his child that he kicked Yessenia into the shower,
5 pushed her into the shower, threw her into the shower;
6 that he and Yessenia were going at it, and she cried
7 and screamed and fought to survive like a cat thrown
8 in a bathtub. He didn't tell any of those people any
9 of that. He didn't tell him he bit her, and there's
10 evidence to support that. He told people the autopsy
11 would help him. I don't think that worked out the way
12 he thought it might.

13 He's trying on -- he's trying on stories
14 for size. Look at the story with Pullen. Let's see,
15 so I've gone over the shower with half a dozen people.
16 I'll tell my cellmate that she fell off the dresser,
17 except she didn't fall off the dresser, according to
18 the defendant. The defendant smacked her and she hit
19 her chin and then her head. He mentioned that she was
20 getting into pills. Like what? She died of a drug
21 overdose?

22 You have the toxicology report, because as
23 medical science was forced to take her little body
24 apart to try to figure out what happened, they also
25 ruled out anything in her body. Tox, negative. The

1 defendant desperate. He's never been in this
2 position. He's trying on different stories for size.

3 Call 24, the jail call, listen to that
4 call. Listen to the way he and his friend are talking
5 about this book on alcoholism and blackouts. Listen
6 to the nature of that conversation.

7 Pullen, the conwise, convicted felon that
8 he is, he saw right through it. And consistent with
9 what Christopher Pullen said, Alex Cox told you that
10 Pullen told him things that he could not have known.
11 Pullen told him things only the defendant could have
12 known. And again, the defendant references his
13 cellmate, I believe in Call 7.

14 I asked a couple of witnesses, taking into
15 consideration minimization, some of the other things
16 that we heard about different things. Was the
17 defendant sleepy? No. Drunk? Wasn't sleepy, wasn't
18 drunk, wasn't suicidal, wasn't hungry. He was having
19 rational conversation, and he clearly wasn't, contrary
20 to any thought otherwise -- you've got all the
21 transcripts; you've got the video -- contrary to any
22 thought otherwise, the defendant was not dealing with
23 the remotest semblance of a ferocious hangover. Make
24 believe. You won't see or hear anything to make you
25 think the defendant provided any interview while being

1 extremely intoxicated. Make believe. Fake news. The
2 evidence frankly shows he may have even had a decent
3 night's sleep. He was falling asleep while he was
4 being booked. The interview wasn't until 5:30 the
5 next morning. This will help you accomplish the
6 obligation you have taken an oath to undertake,
7 discern what's true and real and what isn't, and true
8 justice rendered.

9 One of the first things he said to
10 Detective Fernandes was that Yessenia was fine going
11 into the shower. Coming out, dried her off on the
12 counter like he always does, lotioning -- "lathering
13 her up," as he put it. Fernandes says, "I don't see
14 any sign of that." She confronts him with that,
15 "Right here? Is this where you put her?"

16 "Yeah. That's where I always put her.

17 "I mean, there's nothing wet here. I don't
18 see any sign of that." Remember, the water was still
19 running. When Fernandes tells him there's no evidence
20 to support his saying she came out of the shower fine
21 and went limp while he was drying her off on the
22 counter, his memory started containing a lot more "I
23 don't know's," and "I don't remember's."

24 Detective Fernandes called him out.

25 Through the I don't knows and I don't

1 remembers, he remembers quite bit. He wanted
2 somebody, anybody, to believe that whatever happened,
3 happened during an alcoholic blackout. Listen to the
4 evidence as you deliberate. His blackout,
5 quote-unquote, is selective and self serving. He
6 remembers when he thinks it might help, and what he
7 thinks might help and he remembers detail, fine detail
8 of the struggle taking place within the confined
9 shower stall, his 350 pounds and a three-year-old baby
10 girl. So the point specifically, this is interesting.
11 You look for things. You sift through the evidence.

12 He brings that direct subject up with then
13 Lieutenant, now Captain Boruchowitz. Page 40 of his
14 interview, he brings to Boruchowitz's attention,
15 through the fog of being arrested, so intoxicated, he
16 says, interrogated, saying he's blacked out. "Oh, my
17 gosh, what happened? I don't know." The next day, he
18 remembers and points out to Boruchowitz what the
19 female detective who he told he had two glasses of
20 vodka with, and more water than vodka, he tells
21 Detective Boruchowitz what the female detective said
22 about the lack of wet footprints on the counter.
23 Isn't that amazing? All this time goes by, all this
24 "I don't know, I don't remember," and the next day, he
25 remembers that conversation with Detective Fernandes.

1 He remembers because she called him out.

2 He knew that he got called out because what
3 he was saying right then wasn't adding up. This is
4 about as bad as it gets, and he knows it. The
5 defendant told Boruchowitz that he would use water to
6 discipline Yessenia. He would give her advance notice
7 so that when it happened, she would be ready.

8 Victoria told you that, "Yeah, he did that. I told
9 him don't do that no more." She said it didn't sit
10 well with her, what she saw. She'd be told how long
11 to count. She would count, and she would cower into a
12 little ball and she would endure it. Without getting
13 into whether that is appropriate or good or bad,
14 Victoria tells him don't do it.

15 This time it was different. He told
16 Detective Boruchowitz, "This time it was different."
17 He said so. He didn't prepare her. He just went at
18 it. He just went at it. He just went at it. He
19 didn't prepare her. She didn't cower into a ball and
20 complain this time. She bolted like a cat thrown in a
21 tub and got pummeled by the defendant as a result when
22 he kicked her back into the shower, when he pushed her
23 back into the shower by her head. Based on the
24 evidence, any falls he described were caused by him.
25 As he used his 350 pounds to keep a desperate and

1 determined three-year-old little girl in the shower.

2 You can find him guilty of Child Abuse.

3 The problem is that if he's guilty of child abuse and
4 the child dies, that's First Degree Murder. When she
5 came out of that shower, obviously in need of
6 emergency medical attention, the answer wasn't to let
7 her lie in bed for four or five hours. The answer was
8 to immediately call for medical help.

9 Who doesn't immediately call for help? The
10 defendant didn't immediately call for help, and based
11 on the evidence, we know why. And we know he knows
12 how to do the right thing, even when drinking. We
13 know.

14 Kassie, can you put that first picture up
15 there?

16 MS. WARD: Which one?

17 MR. VITTO: The previous chin injury.

18 (Photo shown to the jurors.)

19 MR. VITTO: All right. We know the
20 defendant knows how to do the right thing even when
21 he's drinking. How do we know that? The reason he
22 didn't in our case is because he was afraid and he
23 didn't know what to do. This picture and the
24 accompanying UMC meds, testimony from Victoria, in
25 conjunction with the testimony from David Boruchowitz,

1 both times -- this incident and the incident that
2 we're here for to decide, you're here for to decide,
3 happened when the defendant was alone with Yessenia,
4 he had been drinking, and he gave her a shower in the
5 middle of the day. Both times, he was drying her off
6 on the counter. According to him, in this incident
7 they were playing the jump game. That's why Victoria
8 believed that it was an accident and Yessenia hurt her
9 chin.

10 The time we're here for today, while she
11 was on the counter, she went limp and was dead. So
12 the first time was an accident. Let's take that path
13 together. This picture -- nope, not yet. That
14 picture and the UMC meds was an accident. That
15 picture -- bring that one back up again. That
16 picture, this is what an accident looks like. Bloody
17 gash, butterfly Band-Aid, and a scar. You can see the
18 scar in Teter's DVH photograph next to the big bruise
19 on her chin. You can see the scar. This is an
20 accident.

21 Let's think about what that means to this
22 trial. It means he knows what to do when he's home
23 alone with Yessenia, drinking, giving Yessenia a
24 shower, and she gets hurt and is bleeding
25 accidentally. What did he do? He immediately took a

1 picture. Mom got home. Immediate medical attention.
2 Problem solved. He knows what to do. So why didn't
3 he do it this time? This is what an accident looks
4 like.

5 Show me the other picture.

6 (A different photo is shown to the jurors.)

7 MR. VITTO: Do you see any difference? One
8 is an accident, and one ain't.

9 Go ahead and take that picture off.

10 Both times alone, both times drinking, both
11 times gave her a shower. One time, he did the right
12 thing. And he would have you believe this is some
13 kind of accident. After four or five hours goes by.
14 After she emerges from the shower nonresponsive.
15 After he can tell something is wrong with the back of
16 her head. After he sees that she has only one eye
17 open and one closed. He does nothing. Nothing.
18 Except probably drink more, based on the evidence.

19 Thank you.

20 And then asks Dwight to wake his sister up
21 sometime around 5:30, four hours from the shower from
22 which Yessenia emerged nonresponsive. That autopsy
23 report, if you'll ever in your life see something that
24 isn't an accident, that isn't. A body bruised from
25 head to toe, stem to stern, front and back, top to

1 bottom. She frustrated him in his attempt to shower
2 her, and he killed her. He abused her, she's a child,
3 and that's First Degree Murder.

4 This is so interesting. Call 17: The
5 defendant, "But I said, you know, I told her why don't
6 you wait until the evidence comes out before you just
7 let me go like that, you know?" His friend TJ says,
8 "Yeah." And then the defendant says, "And she's like,
9 'You're the only one there.'" What the F does that
10 even mean? His friend TJ says, "Right." The
11 defendant says, "Why does it have to be an effing
12 murder?

13 "Yeah," his friend says. And he says, "Why
14 couldn't it be something else? Why does it have to be
15 a murder? Why can't it be something else?"

16 Based on the evidence you will hear -- you
17 have heard -- it needs a Murder because, based on the
18 evidence, he beat a three-year-old child to death.
19 That's why he needs a murder. And he says, "Why
20 couldn't it be something else?" Well, you know what?
21 It can. It can. You, as a body, have the power and
22 authority. You can let him go. You can just let him
23 go.

24 You decide whether it's impossible to
25 believe he truly doesn't remember. Because he

1 remembers everything leading up to the shower, he
2 remembers after the shower, and he remembers what he
3 wants to remember in between. Like Pullen told him
4 basically, "If you want to say you don't remember,
5 fine. That's your story." But he remembers so much
6 detail. I threw her in the shower, we were going at
7 it. She was fighting to get out like a cat in the
8 bathtub. Maybe I punched her. Maybe I choked her.
9 Maybe I whipped her. I did push her head back. I did
10 nudge her with my toe. Maybe I spiked her with a
11 bottle.

12 Based on the evidence, reasonable
13 inference. He didn't push her head back. He slammed
14 her head into that shower stall. He didn't nudge her
15 with his toe. He kicked her back into that shower.
16 He said she was falling and flopping all over the
17 shower. Well, I'll bet she was. He remembers she was
18 screaming and crying as she fought to live. Those
19 aren't maybe's. Maybe I did this. Who talks like
20 that? Maybe I did this.

21 Let's talk about the circular pattern
22 bruising on her body, the fact that they are present
23 on her little body -- circular, semicircular,
24 curvilinear. That completely obliterates this being
25 any kind of accident. Based on the evidence, it was

1 more systematic than can ever be considered
2 conceivably accidental or random. It was thought --
3 it was methodical, it was a weapon used against her
4 little body. Whether it was his teeth or something
5 else. She was struck with something with enough force
6 to bruise her body, and it was more than one time --
7 half-a-dozen or so or more, and she was alive when it
8 happened.

9 You took an oath to perform, to match the
10 facts and the evidence to the law, and true justice
11 rendered. It is your sole, fixed, and steadfast
12 purpose to render equal and exact justice between the
13 defendant and the State of Nevada. Justice for
14 Yessenia. Justice for the defendant. Justice for
15 all.

16 His hands, "literally my hands." This
17 matter will very shortly be in 12 pairs of hands, 24
18 hands. Her life was in his hands based on the
19 evidence. Her life was taken by his hands. Her hands
20 were tiny and helpless. This case will shortly be in
21 your hands. And based on the evidence, there is only
22 one verdict to return.

23 I'm going climb up a little ladder in case
24 you guys go here, which is fine. That's why we have
25 jury instructions. Because if you determine that this

1 is not First Degree Murder, Jury Instruction 38 tells
2 you that you can consider whether it's involuntary
3 manslaughter. Let's look at that -- nope, it's not
4 38. I will find it. 35. 37. Anybody else?

5 Thirty-seven. Thank you very much.

6 "Involuntary manslaughter is the killing of
7 a human being, without any intent to do so, in the
8 commission of an unlawful act, or a lawful act which
9 probably might produce such a consequence in an
10 unlawful manner, but where the involuntary killing
11 occurs in the commission of an unlawful act" -- like
12 child abuse -- which, in its consequence, naturally
13 tends to destroy the life of a human being" -- which
14 in this case it did -- or is committed in the
15 prosecution of a felonious intent, the offense is
16 murder.

17 So as you're on that ladder, if you're at
18 the Involuntary Manslaughter rung and you read that
19 instruction, you clearly see that it can't be
20 involuntary manslaughter. So let's look at voluntary
21 manslaughter.

22 "To be voluntary manslaughter, there must
23 be a serious and highly provoking injury inflicted
24 upon the person killing" -- I don't remember an injury
25 to the defendant, except his bruised toe and his

1 knuckles -- "sufficient to excite an irresistible
2 passion in a reasonable person, or an attempt by the
3 person killed to commit a serious injury on the person
4 killing." That didn't happen. It can't be
5 involuntary manslaughter. It can't be voluntary
6 manslaughter.

7 Could it be second-degree murder? It could
8 be. Second-degree murder is any murder that isn't
9 first. The problem is that because it's child abuse,
10 it can only be First Degree Murder. Murder 1,
11 Instruction 25. The elements of First Degree Murder
12 by Child Abuse are only that the defendant did
13 willfully or unlawfully, commit or attempt to commit
14 an act of child abuse, which resulted in the death of
15 a child.

16 A couple of weeks ago, this Nation went to
17 the polls to chart a course going forward. Each vote
18 has consequences. Choices have consequences. The
19 defendant made choices. He was entrusted with a
20 little three-year-old baby girl. Today, you will
21 vote. You have a choice. You can vote to acquit him.
22 Make no mistake about it, you have the power and all
23 the authority.

24 However, based on the evidence, using your
25 common sense to draw every reasonable inference

1 necessarily and undeniably established by the great
2 weight of the evidence that you have seen and heard
3 over the course of this trial, render justice. True
4 justice rendered for the great State of Nevada, this
5 community, Yessenia Camp, and the defendant. And I am
6 asking to you find the defendant guilty of First
7 Degree Murder. Check in that box right there, guilty
8 of First Degree Murder. That's what the evidence
9 supports.

10 The cloak of innocence covering and
11 protecting the defendant rightfully, appropriately has
12 been righteously rendered (inaudible) by the dagger of
13 evidence exposing and laying the defendant bare before
14 you. And the verdict, the evidence demands, as loudly
15 as Yessenia wounds echo from that autopsy table as a
16 stark, naked reality to the beating to which she
17 succumbed as an innocent little girl.

18 Nobody here would notice -- you didn't even
19 know I was wearing cufflinks, but I am. This one
20 right here in the corner, there's a little, a little
21 sparkle. There's one little sparkle missing. Nobody
22 could tell because of my jacket. It's obscured from
23 view. Don't -- don't let your verdict be obscured.
24 Because the great weight of the evidence demonstrates
25 beyond a reasonable doubt that the defendant,

1 Cole Duane Engelson, snuffed a little sparkle from the
2 world three-and-a-half years ago. Gone, but not
3 forgotten.

4 The State is asking you to find the
5 defendant guilty of First Degree Murder. Thank you
6 very much, ladies and gentlemen of the jury.

7 THE COURT: Thank you, sir.

8 I'm going to instruct you in a moment,
9 bailiff, what to do. But first, we'll have the clerk
10 of the court swear you to take charge of the jury.
11 Whereupon,

12 THE BAILIFF,
13 is sworn to keep the jurors together in some private
14 and convenient place, and to permit no person to speak
15 with them, nor to do so himself unless it be by order
16 of the Court or to ask them if they have agreed upon a
17 verdict, and that he will return them to the court
18 when they have so agreed upon a verdict.

19 THE BAILIFF: So help me God, I do.

20 THE COURT: Thank you.

21 From this point forward, you have to be
22 seen by the bailiff. For example, if one of you wants
23 to go out and smoke, all 12 of you have to go out and
24 smoke. Well, not smoke, but go out.

25 And the alternates, I'm going to ask you to

1 write down your juror number, your name, and your
2 phone number, and hand it to the bailiff before you
3 leave. He's going to -- during this, while you're
4 out, out and about town, don't discuss the case with
5 anybody. We may have to call you back in to serve on
6 the jury.

7 So don't converse among yourselves or with
8 anyone else on any subject connected with the trial;
9 or read, watch, or listen to any report of or
10 commentary of the trial by any person connected with
11 the case or any medium of information, including
12 without limitation, newspapers, television, radio, and
13 Internet.

14 Don't form or express an opinion on any
15 subject until the case is submitted to you.

16 We will call you -- if a verdict comes in,
17 we'll call you and let you know that you're released
18 and you can talk about the case with people.

19 The remaining 12, the bailiff is going to
20 escort you out to the jury room in the hallway so that
21 you can gather up your doughnuts and belongings, and
22 so forth. Then he's going to escort the 12 of you
23 into chambers so you can gather your stuff up from
24 this jury room. Then you will come into this
25 courtroom where we will supply the exhibits to you and

1 the evidence, and you can begin deliberating.

2 During that time frame that he's escorting
3 everyone, the attorneys will gather up all of their
4 items, and the public and you guys can all leave.
5 And, Attorneys, leave phone numbers with us so we can
6 get in touch with you.

7 Is there anything we need to do outside the
8 presence of the jury?

9 All right. We'll ask the bailiff then to
10 go ahead and escort the 15 out the front door.
11 Everybody else remain in the courtroom until they're
12 out and about.

13 (The jurors are excused to gather their
14 belongings, and will then return to the
15 courtroom to deliberate.)

16 THE COURT: All right. We're going to give
17 the bailiff a couple of minutes to get situated out
18 there, and then you guys can gather up your stuff and
19 we'll all take off in just a minute. On the other
20 hand, I don't see any need for me to hang out with all
21 you people. So give me an "All rise." I've got my
22 stuff gathered up already.

23 And we'll have a lunch recess. We're going
24 to provide the jury with pizza.

25 MR. MARTINEZ: Great. Thanks, Judge.

1 THE COURT: Thank you.

2 (Lunch recess and jurors sent to
3 deliberate at 1:20 p.m.)

4 (A verdict is reached at about 4:00 p.m.,
5 and the jurors are returned to the courtroom.)

6 -oOo-

7
8 THE BAILIFF: All rise.

9 THE COURT: Thank you. Please be seated.

10 MR. VITTO: Thank you, Your Honor.

11 THE COURT: All right. We're in the
12 presence of our 12 jurors. We have the State. We
13 have the Defense. We have defendant. Everybody is
14 here.

15 Who is the presiding juror?

16 All right. Has the jury reached a verdict?

17 FOREPERSON RICHARD A SANDOVAL, JR.: Yes,
18 we have.

19 THE COURT: Hand the verdict forms over to
20 the bailiff. I will review them, make sure they were
21 done correctly, and then we'll have the clerk of the
22 court read the verdict out loud and inquire if it's
23 the verdict of the jury. If it's done correctly.

24 Let's see. We got the instructions too.
25 Okay. We'll give that to the clerk of the court.

1 We'll ask her to read the verdict out loud and inquire
2 if this is the verdict of the jury.

3 THE CLERK: In Case CR-9226, in
4 Department 2, The State of Nevada, Plaintiff, versus
5 Cole Engelson, Defendant. In the Justice Court (sic)
6 of Pahrump Township, Nye County, State of Nevada,
7 filed on November 16th, 2020.

8 VERDICT COUNT I: We, the jury in the
9 above-entitled case find as follows: Guilty of First
10 Degree Murder. Dated this 16th day of November,
11 signed by the foreperson.

12 Ladies and gentlemen of the jury, is this
13 your true verdict as read, so say you one, so say you
14 all?

15 THE JURORS: Yes.

16 THE COURT: Before the verdict is recorded,
17 do either of the parties desire to have the jury
18 polled?

19 MR. MARTINEZ: Yes, Your Honor.

20 THE COURT: All right. We'll ask the clerk
21 of the court to poll the jury.

22 THE CLERK: Do you want it by name, because
23 I think all the numbers are mixed up.

24 THE COURT: Numbers are fine.

25 THE CLERK: Juror No. 2, is this your true

1 verdict as read?

2 JUROR NO. 2: It is.

3 THE CLERK: Juror No. 3, is this your true
4 verdict as read?

5 JUROR NO. 3: Yes, it is.

6 THE CLERK: Juror No. 4, is this your true
7 verdict as read?

8 JUROR NO. 4: Yes.

9 THE CLERK: Juror No. 5, is this your true
10 verdict as read?

11 JUROR NO. 5: Yes.

12 THE CLERK: Juror No. 6, is this your true
13 verdict as read?

14 JUROR NO. 6: Yes.

15 THE CLERK: Juror No. 7, is this your true
16 verdict as read?

17 JUROR NO. 7: It is.

18 THE CLERK: Juror No. 8, is this your true
19 verdict as read?

20 JUROR NO. 8: Yes.

21 THE CLERK: Juror No. 9, is this your true
22 verdict as read?

23 JUROR NO. 9: Yes.

24 THE CLERK: Juror No. 10, is this your true
25 verdict as read?

1 JUROR NO. 10: Yes.

2 THE CLERK: Juror No. 11, is this your true
3 verdict as read?

4 JUROR NO. 11: Yes, ma'am.

5 THE CLERK: Juror No. 12, is this your true
6 verdict as read?

7 JUROR NO. 12: Yes, it is.

8 THE CLERK: And Juror No. 13, is this your
9 true verdict as read?

10 JUROR NO. 13: Yes.

11 THE COURT: Very good. You have been one
12 of the nicest, most patient jurors I have ever seen in
13 the 20-some years I've been doing this. Good job.

14 On behalf of the Defense and the State and
15 myself, we want to thank you for doing your civic duty
16 in such an important case, and we're very happy that
17 you served. We hope we get to serve with you again.
18 Any time you want to come serve with us, you let us
19 know.

20 The question may now arise as to whether
21 you may now talk to people regarding this case. You
22 can. Sometimes the attorneys hope that you stick
23 around so they can ask you, "What did I do good? What
24 did I do bad? How could I do better?" and so forth.
25 So if you want to stick around and talk to them, you

1 can. If you want to talk to the media, you can;
2 however, you're not required to do so. The law says
3 that if anybody comes to you and asks you about the
4 case and wants to talk to you about it with you, and
5 you say, "I don't want to talk about it," and they
6 persist and bug you, you just let us know. And we'll
7 talk with them gently about contempt and stuff.

8 I think the check is in the mail. I heard
9 my staff tell one of the alternates on the phone. And
10 sentencing is February 1st at 0900. So we're going to
11 thank and excuse the jury, and then I'm going to stick
12 around and talk to the attorneys about the case.

13 So Mr. Bailiff, you can take the jury.
14 We'll excuse. Thank you so much for serving. You did
15 a great job.

16 And you attorneys did a great job for the
17 Defense and the State. In the 20-some years I've been
18 doing this, one of the best jobs that I've seen,
19 sincerely.

20 February 1st, 0900. We're going to remand
21 the defendant into custody.

22 Counsel, is there anything else we can do?

23 MR. MARTINEZ: Not today, Judge.

24 THE COURT: No? All right. Then we'll go
25 ahead and adjourn and see you February 1st.

1 (The proceedings concluded at
2 4:05 p.m.)
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1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
3) ss
4 COUNTY OF NYE)

5 I, Cecilia D. Thomas, official reporter of
6 the Fifth Judicial District Court of the State of
7 Nevada, in and for the County of Nye, do hereby
8 certify:

9 That I reported the taking of the
10 proceedings at the time and place aforesaid;

11 That I thereafter transcribed my said
12 shorthand notes into typewriting, and that the
13 typewritten transcript of said proceedings is a
14 complete, true, and accurate record of statements
15 provided by the parties at said time, to the best of
16 my ability.

17 I further certify that I am not a relative,
18 employee, or independent contractor of counsel of any
19 of the parties involved in said action; nor a person
20 financially interested in the action; nor do I have
21 any other relationship with any of the parties or with
22 counsel of any of the parties involved in the action
23 that may reasonably cause my impartiality to be
24 questioned.

25 IN WITNESS WHEREOF, I have hereunto set my
hand in the County of Nye, State of Nevada, this 5th
day of February 2021.

Cecilia D. Thomas

Cecilia D. Thomas,
RPR, CCR No. 712

FILED
FIFTH JUD

NOV 16 2020

CLERK
Deputy

IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP

COUNTY OF NYE, STATE OF NEVADA
FIFTH JUDICIAL DISTRICT

NOV 16 2020

Nye County Clerk
Deputy

THE STATE OF NEVADA,

Plaintiff,

vs.

COLE D. ENGELSON,

Defendant.

VERDICT COUNT 1

We, the jury in the above-entitled case find as follows: (*Select only one*)

☐ Not Guilty

☒ Guilty of First Degree Murder

If not, then

☐ Guilty of Second Degree Murder

If not, then

☐ Guilty of Voluntary Manslaughter

If not, then

☐ Guilty of Involuntary Manslaughter

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If not, then

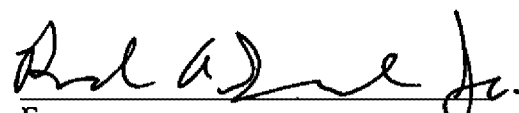
_____ Guilty of Child Abuse or Neglect with Substantial Bodily Harm

If not, then

_____ Guilty of Battery Domestic Violence with Substantial Bodily Harm

If not, then check not guilty at the top.

DATED this 16th day of November, 2020.


Foreperson

No. CR0009226

Dept. No. 2

FILED
FIFTH JUDICIAL DISTRICT

MAR 03 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

-oOo-

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

vs.

COLE DUANE ENGELSON,

Defendant.

TRANSCRIPT OF PROCEEDINGS
SENTENCING HEARING -
(CONTINUED)

FEBRUARY 1, 2021
10:40 A.M.
PAHRUMP, NEVADA

APPEARANCES:

For the State:

CHRIS ARABIA, ESQ.
DISTRICT ATTORNEY
KIRK D. VITTO, ESQ.
CHIEF DEPUTY DISTRICT ATTORNEY
Nye County Courthouse
Pahrump, Nevada 89060

For the Defendant:

DANIEL MARTINEZ, ESQ.
DEPUTY PUBLIC DEFENDER
552 East Charleston Boulevard
Las Vegas, Nevada 89104

RONNI BOSKOVICH, ESQ.
DEPUTY PUBLIC DEFENDER
3190 South Highway 160, Ste. H
Pahrump, Nevada 89048

The Defendant:

(via Video - Jail)

COLE DUANE ENGELSON

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

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, FEBRUARY 1, 2021

2 10:40 A.M.

3 -oOo-

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

5
6 THE COURT: Okay. Mr. Martinez, do you
7 want to start with your Cole one together, or do you
8 want to do other cases?

9 MR. MARTINEZ: We can do Mr. Engelson,
10 Judge. That way, Ms. Boskovich can get on the road.

11 THE COURT: All right. Let's do Engelson.
12 Case No. 9226, State versus Engelson. Time and place
13 set for sentencing.

14 MR. VITTO: Your Honor, if I may be excused
15 to retrieve the Nye County District Attorney. I think
16 there were a couple of other people who wanted to
17 participate in the sentencing today. It will just
18 take me a moment.

19 THE COURT: Yeah. And, Kirk, are you
20 asking for a couple of minutes to get organized?
21 Should I recess?

22 MR. VITTO: No. This is just boom-boom.

23 THE COURT: Okay. You got it.

24 (A brief pause in the proceedings.)

25 THE COURT: All right. This is Case

1 No. 9226, State versus Engelson. It's the time and
2 place set for sentencing.

3 We have a PSI report dated January 14th in
4 which the Division notes this is a conviction for
5 category A, First-Degree Murder with the possibility
6 of life without, or life with 20 years, or 50 to 20
7 years, if I'm reading it correctly, the eligibility.

8 We're going to hear from the Defense
9 counsel and then Mr. Engelson and then the State.

10 MR. MARTINEZ: Thank you, Judge.

11 Your Honor, this morning, the Defense is
12 moving to continue the Sentencing Hearing. We are
13 still working on our mitigation efforts, collecting
14 character letters and the like, so we can submit a
15 Presentence Memorandum to the Court with our position
16 prior to making our argument.

17 I did have contact with the State prior to
18 today to let them know our request. As I would always
19 do at the sentencing, I asked if they'd be willing to
20 sign a Stipulation to Continue given all the
21 circumstances. They were not willing to sign the
22 Stipulation to Continue, but I'm making the Motion to
23 Continue at this time, Your Honor.

24 THE COURT: Thank you. Motion to Continue?

25 MR. ARABIA: Your Honor, we're not going to

1 take a position one way or the other because we
2 realize whatever our personal feelings might be about
3 this, that it is a very grave proceeding for the
4 defendant as well. I would just point out that the
5 jury delivered its verdict I believe on November 16th,
6 and it is now February 1st, but I think I would be
7 best to leave it to Your Honor.

8 THE COURT: Thank you, sir.

9 MR. VITTO: Your Honor, I would like to add
10 that part of Counsel's and my conversation was that
11 the victims have now been waiting a better part of
12 four years, a full three-and-a-half. Defense Counsel
13 has no objections to victim impact testimony being
14 received today and at a continued sentencing date.

15 THE COURT: All right. Let me share my
16 thoughts with you so you guys know what's going on.
17 If you all follow the news regularly, you know that
18 when somebody gets convicted of murder, the appeals
19 and the writs go on forever with the Supreme Court.
20 And usually Defense attorneys will hire experts and
21 they'll find things, and then the ACLU will get
22 involved and other organizations, the university, and
23 so forth, finding reasons to reverse convictions, and
24 what has the Courts done wrong and the DA, and so
25 forth.

1 One of the things that they will point at
2 in the future to reverse a conviction on and send it
3 back down and so forth, is if the Judge doesn't grant
4 a Motion to Continue so that the Defense can properly
5 prepare their presentence report and mitigation
6 efforts. And attorneys are all aware that that's the
7 case; so I'm going to have to continue this matter to
8 give the Defense time.

9 Now, we don't have to give them prejudicial
10 time of course. They can't come back in, in three
11 months and say we need another six months, in six
12 months, another three months, and so forth. But we
13 have to give them a reasonable amount of time. I
14 believe this is their first request for a continuance;
15 so we'll give you a reasonable amount of time.

16 How much longer do you think you need to
17 prepare that sentencing report?

18 MR. MARTINEZ: Thirty days, Judge.

19 THE COURT: That's all, 30?

20 MR. MARTINEZ: Yes.

21 THE COURT: Oh, very good.

22 MR. MARTINEZ: We're working, Judge.

23 THE COURT: All right. I know you guys;
24 you're good attorneys. You've done a great job on
25 this case. We're looking at continuing it to

1 March 8th at 0900.

2 Now, Mr. Vitto indicated the victims were
3 here. He would like them to make a statement today,
4 and then if I understood him correctly, he said and
5 then to make another one March 8th, which I don't want
6 to do twice. If a victim traveled here from
7 somewhere, New York or something, and you can't afford
8 to come back again in another month and you want to
9 make your statement now, I will let you.

10 But if you can come back on March 8th, it
11 will be fresh in my head if you want to make the
12 statement right there, you can do it March 8th.

13 So, Mr. Vitto, find out if any of your
14 victims want to get up today, or if they want to wait
15 until March 8th.

16 MR. VITTO: And just so you know, Judge, we
17 wouldn't be anticipating something cumulative or
18 piling on. If someone were to testify again, it would
19 be perhaps in direct rebuttal. But let me see what it
20 is that --

21 THE COURT: Rebuttal is a different story.

22 MR. VITTO: Yes. Thank you, Judge.

23 (Mr. Vitto and victim's family confer.)

24 MR. ARABIA: Your Honor, we're going to
25 take kind of a hybrid approach on that. We're going

1 to have a couple of witnesses speak today and have
2 more speak on March 8th. That's what the family wants
3 to do, and I say we defer to them.

4 THE COURT: Can we get an offer of proof on
5 what you're going to have testify today?

6 MR. ARABIA: Dwight Camp, he's going to
7 share some of his own thoughts and also read some
8 thoughts I believe from his grandmother?

9 VICTIM IN AUDIENCE: That's right.

10 MR. ARABIA: And then Nickole Robinson is
11 going to share her own thoughts.

12 THE COURT: Okay. And Dwight is related to
13 the victim now?

14 MR. ARABIA: I'm sorry. Big brother, and
15 Nickole is big sister.

16 THE COURT: All right. So Dwight is the
17 big brother; Nickole is the big sister. And they both
18 would like to testify how this case has affected them
19 and what sentence they would like.

20 MR. ARABIA: Yes, and also Mr. Camp is
21 going to share his grandmother's thoughts. She
22 couldn't be here.

23 THE COURT: Any objection?

24 MR. MARTINEZ: No, Your Honor.

25 THE COURT: Okay. Go ahead and call the

1 witnesses..

2 MR. ARABIA: Okay. The State calls
3 Dwight Camp.

4 THE COURT: Okay. Dwight.

5 Dwight, we're going to have you come up
6 here to the witness stand. Before you sit down, we're
7 going to have you raise your right hand and be sworn
8 by the clerk.

9 Whereupon,

10 DWIGHT CAMP,
11 called as a witness on behalf of the State, was sworn
12 and testified as follows:

13 THE COURT: Now, Dwight, I tell people that
14 if they're nervous about Covid and they don't want to
15 take their mask off, they don't have to. But if
16 you're comfortable with taking it off so that people
17 can hear you better, you're welcome to do so. We'll
18 have you speak into the mike so everybody can here
19 hear you loud and clear.

20 And then we'll ask Mr. Arabia to ask you
21 some questions, and then the Defense.

22 THE WITNESS: All right. So today, I'm
23 going to be --

24 MR. ARABIA: Wait, wait.

25 / / /

DIRECT EXAMINATION

1
2 BY MR. ARABIA:

3 Q. Good morning, Dwight. Could you please
4 state your name and spell your last name for the
5 record?

6 A. Dwight, C-a-m-p.

7 Q. Okay. You know why you're here, and so I
8 guess I'm just going to ask you if you'd like to
9 speak, and if so, what you would like to say.

10 A. Okay. So today I'm going to be reading my
11 grandma's statement and my aunt's statement.

12 THE COURT: Mike up closer.

13 THE WITNESS: I'm going to be starting with
14 my grandmother.

15 "From the first day when I heard of
16 Yessenia's, my granddaughter's death, the way she
17 died, I kept asking myself this one question" --

18 THE COURT: Can you turn down the TV for
19 me? We'll see if that gets rid of that echo.

20 THE WITNESS: -- "I kept asking myself this
21 one question: What could she have done to commit such
22 a horrendous act? I come up with the same answer
23 every time. Nothing. Because of this act, I believe
24 Cole Engelson should get maximum sentence possible.
25 Mary Schlick."

1 "The passing of my niece was not natural.
2 Her life was what could be was wrong. Not only from
3 her, it was also robbed from those of us that were in
4 her life. She will never experience any of the first
5 acts that a child should experience. We will never
6 get to watch her grow up into her own person. All of
7 the questions of what could have been are what remain
8 with the memories that I have.

9 "I feel that the defendant should get
10 maximum possible sentence. Not only did he take a
11 life, he took the life of an innocent, three-year-old
12 child. The damage he has done is irreparable in the
13 lives that surround Yessenia. Amber Schlick,
14 Yessenia's Aunt."

15 I'm going to do my statement on March 8th.

16 THE COURT: That will be fine.

17 Did you have any other questions for this
18 witness, Mr. Arabia?

19 MR. ARABIA: No.

20 My understanding is you want to speak again
21 on March 8th to share your own thoughts?

22 THE WITNESS: Yes.

23 MR. ARABIA: Yeah. That's fine with us.

24 THE COURT: Any questions for the witness?

25 MS. BOSKOVICH: No, Your Honor.

1 THE COURT: You can step down. Thank you.

2 MR. ARABIA: All right, Your Honor. We
3 would now call Nickole Robinson.

4 THE COURT: All right. Nickole, before you
5 sit down we'll have you raise your right hand and be
6 sworn.

7 Whereupon,

8 NICKOLE ROBINSON,
9 called as a witness on behalf of the State, was sworn
10 and testified as follows:

11 THE WITNESS: I do.

12 THE COURT: If you want to wear your mask
13 because of Covid, you're welcome to. You can take it
14 off if you like. The attorneys will take turns asking
15 you questions.

16 THE WITNESS: Okay.

17 DIRECT EXAMINATION

18 BY MR. ARABIA:

19 Q. Good morning, Nickole. Could you please
20 state your name and spell your first and last names
21 for the record?

22 A. Yes. Nickole Robinson, N-i-c-k-o-l-e,
23 R-o-b-i-n-s-o-n.

24 Q. Nickole, I understand that you would like
25 to speak about your feelings; is that correct?

1 A. Yes.

2 Q. Okay. Please tell us.

3 A. Hello. My name is Nickole Robinson.

4 Yessenia was my baby sister. When she passed away, it
5 changed my life completely. Not only did it affect my
6 personal life, it also affected my school life. When
7 we read about a tragedy in English, and we have to
8 write a paper on how we can relate, I get to write
9 about the death of my little sister. My counselors
10 know me by heart because of how much I have been in
11 their office.

12 I have struggled with anxiety and
13 depression for eight years since I was in seventh
14 grade, but it was never this bad. I've had more panic
15 attacks in the last three years than I have in my
16 entire life. Every time I meet someone new or I have
17 a new relationship, I have to warn them about my
18 mental illnesses. My entire high school career I have
19 dealt with this, dealt with my sister.

20 I am the oldest out of all my siblings. It
21 is my job to protect my siblings. For the longest
22 time, I blamed myself for not being there. I blamed
23 myself for her death. I felt, as her big sister, I
24 should have been -- I should have been there to at
25 least hold her in her last moments on earth, just to

1 hold her and tell her everything is going to be okay.
2 I blamed everything on myself. I felt for the longest
3 time I had failed as a big sister. I failed to keep
4 my promise to her when she was born.

5 But it wasn't me who failed. It was the
6 hands who took her who are to blame, the hands that
7 beat the life out of her small body, the hands who
8 took "My Little Tiny" and ripped her out of this
9 world. My first funeral I ever had to go to was my
10 little sister's. I had to put -- I had to outlive my
11 sister, my mom had to outlive her daughter, my grandma
12 had to outlive her granddaughter, and my great grandma
13 had to outlive her great granddaughter. My great
14 grandma isn't here to talk, but I am so I will. She
15 outlived a lot of people in her life, but the one
16 funeral she should have never had to go to was the
17 funeral of her great granddaughter.

18 Also, her father, my father outlived one of
19 his child. It broke him so much, he stopped taking
20 care of himself. He had cancer, and the cancer got to
21 him because of this. Not only did this whole thing
22 take my sister, it took the man who raised me my whole
23 life. I had to bury two of the most important people
24 in my life because of this.

25 This has gone on for three-and-a-half

1 years, almost four. There should be no more
2 continuation, no more time. This should be done and
3 over with, and I want to move on with my life and move
4 on from this. I have to wear my little sister around
5 my neck for the rest of my life. No more time. No
6 more continuation. No more leeway. Let this be over
7 and done with.

8 Q. Nickole, if you're willing to offer an
9 opinion, what would you like to see done when the
10 Judge sentences?

11 A. Life with no parole.

12 Q. Do you have anything else you would like to
13 add?

14 A. (The witness shakes head.)

15 Q. Okay. Thank you, Nickole.

16 THE COURT: Any questions for this witness?

17 MS. BOSKOVICH: No, Your Honor.

18 THE COURT: All right. Thank you. You can
19 step down.

20 Did you have any other witnesses,
21 Mr. Arabia?

22 MR. ARABIA: Your Honor, not at this time.

23 THE COURT: All right. We'll continue the
24 matter then to March 22nd.

25 MR. ARABIA: You said the 8th before.

1 THE COURT: March 8th. March 8th at
2 eleven o'clock.

3 MR. VITTO: Thanks, Judge.

4 MR. MARTINEZ: Thank you, Your Honor.

5 MR. ARABIA: Thank you, Your Honor.

6 THE COURT: See you March 8th at eleven
7 o'clock.

8 -oOo-

9
10 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
11 PROCEEDINGS.

12
13
14 *Cecilia D. Thomas*

15 Cecilia D. Thomas
16 RPR, CCR No. 712
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