

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

KODY HARLAN

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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**APPELLANT'S APPENDIX  
Volume XVIII**

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**Harlan v. State Case No. 83552**

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1 Q Okay. There was some conversation by Mr. Pesci and you  
2 just now about the Xanax? Do you remember that talk about --

3 A Yes.

4 Q -- the Xanax?

5 Okay. Now you had said that when Matthew showed up  
6 there was more Xanax that was brought over, right?

7 A Yes.

8 Q Okay. Now you had your interview with the police, right?

9 A Yes.

10 Q And you wanted to be truthful with them, right?

11 A Yes.

12 Q You wanted to tell them everything you could to help their  
13 investigation, right?

14 A Yes.

15 Q Okay. Did you tell them anything about Matthew coming  
16 over with Xanax or -- in general Kody and Jaiden coming over with  
17 Xanax when they had Matthew?

18 A Yes.

19 Q You did?

20 A Yes.

21 Q Now I know this is lengthy and I recognize obviously this  
22 was a year ago, right?

23 A Yes.

24 Q And so I understand that it may be -- you would agree that  
25 your memory was fresher when you had this interview, right?



1 A Yes.

2 Q With regard to the events in this case, right?

3 A [No audible response - nods head yes].

4 Q Okay. So I'm just going to have you just briefly look  
5 through this and I want you to point out to me where you said that  
6 they came with Xanax, okay?

7 A Okay.

8 Q Okay.

9 MR. HELMICK: May I approach?

10 THE COURT: Yes.

11 BY MR. HELMICK:

12 Q Now you had an interview with police, right?

13 A Yes.

14 Q And you know it was being recorded, right?

15 A Yes.

16 Q Okay. And that recording was transcribed, right?

17 A Yes.

18 Q Okay. I'm going to show you your transcribed statement  
19 to the police. Just briefly look through that. I know it's lengthy but  
20 take your time because this is important.

21 [Witness complies]

22 BY MR. HELMICK:

23 Q And what we're looking for is Xanax, right?

24 A Yes.

25 Q Okay.

1 [Witness continues reading through statement]  
2 BY MR. HELMICK:  
3 Q Let me ask you this, Ghunnar, has it been awhile since  
4 you've -- have you ever read this statement?  
5 A Yeah, I did -- I have.  
6 Q Has it been a while since you've read it?  
7 A Four or five days maybe.  
8 Q Oh four or five days ago?  
9 A Yeah.  
10 Q I mean, do you recall anything about them coming over  
11 with Xanax?  
12 A [No audible response - shakes head no].  
13 I don't see.  
14 Q That's okay. Thank you.  
15 Okay. So let's talk about this robbery and lick talk that Mr.  
16 Pesci was talking to you about, okay? You said that Jaiden was the  
17 only one talking about wanting to rob someone or do a lick on  
18 someone, right?  
19 A Yes.  
20 Q Okay. And Kody was laying down on the couch, he was  
21 not involved in that conversation at all, isn't that right? +  
22 A Yes.  
23 Q Thank you. Okay.  
24 So you leave, you go to your house from the Uber, right?  
25 A Yes.

1 Q Okay. And Jaiden ends up calling you a little while later,  
2 multiple times, right?

3 A Yes.

4 Q Okay. And you didn't want to answer the phone because  
5 you were scared of what just took place in that house, right?

6 A Yes.

7 Q Yeah. And that's understandable. And so you handed the  
8 phone to Kymani, right?

9 A Yes.

10 Q And he answered the phone and he put it on FaceTime.  
11 You were in the living room of your house, right?

12 A Yes.

13 Q Okay. And when you were on FaceTime, you could hear  
14 the conversation that Jaiden was having, right?

15 A No, I couldn't actually.

16 Q You couldn't hear it?

17 A No, the volume was turned all the way down because my  
18 mom was in the kitchen.

19 Q Your mom was in the kitchen.

20 A Yes.

21 Q Okay. But you're aware that Jaiden said he killed Matt, he  
22 shot him, bro?

23 A Yes.

24 Q Okay. nothing about doing a lick on him or robbing him,  
25 isn't that right?

1 A Through the call.

2 Q On that phone call.

3 A No.

4 Q Okay. And also nothing about Kody's name ever being  
5 mentioned at all on that phone call, right?

6 A He said that he was with Kody.

7 Q Okay. So now you're saying the phone call, he says he  
8 was with Kody?

9 A Yes.

10 Q Okay. Did you tell the police anything about that in your  
11 interview? Because that's a new fact that we just received.

12 A No.

13 Q Okay. So you never said that Matt called -- I mean, sorry,  
14 Jaiden called and he said he was with Kody. You never told the  
15 police that, right?

16 A No, he never said he was with Kody, but they were  
17 together.

18 Q Okay. So they were -- yeah, I mean, I agree with you,  
19 Kody was at the house, right?

20 A [No audible response - nods head yes].

21 Q Okay. But I'm asking you specifically, when Jaiden called  
22 you and you handed the phone to Kymani, he didn't say we killed  
23 Matt, right?

24 A No, he said I killed Matt.

25 Q Okay. In fact Kody's name was never mentioned at all,

1 isn't that right?

2 A Yes.

3 Q Okay. And again, in regards to this lick, you said the  
4 reason that you didn't tell the police, although you knew this was  
5 an ongoing investigation, was because they never asked you, right?

6 A Yes, they did not ask me those questions.

7 Q But you wanted to -- they -- when they interviewed you,  
8 they wanted to know what happened in that house, isn't that right?

9 A Yes.

10 Q Yeah. And you wanted to help your investigation because  
11 of this unfortunate incident, right?

12 A Yes.

13 Q You wanted to do everything you could, right?

14 A Yes.

15 Q And that was never mentioned to them, right?

16 A No, it wasn't.

17 Q All right. Thank you, Ghunnar.

18 THE COURT: Mr. Yampolsky?

19 MR. YAMPOLSKY: Thank you.

20 **CROSS-EXAMINATION**

21 BY MR. YAMPOLSKY:

22 Q When you went to the house that we're all talking about,  
23 you brought some weed, correct?

24 A Yes, I did.

25 Q Approximately how much weed did you have?

1 A Two grams.  
2 Q You only had two grams?  
3 A Two grams.  
4 Q So that's what, enough for one joint?  
5 A Yes.  
6 Q Okay. And then Matthew brought some?  
7 A Yes, he did.  
8 Q Okay. Now you originally interviewed with the police on  
9 June 12th of 2000 -- wait --  
10 MR. PESCI: I think that's a typo.  
11 MR. YAMPOLSKY: Court's indulgence.  
12 BY MR. YAMPOLSKY:  
13 Q Did you -- when you interviewed with the police for the  
14 first time, it was about four days after this happened, correct?  
15 A Yes.  
16 Q Okay. And you wanted to help the police.  
17 A Yes.  
18 Q You wanted to be truthful?  
19 A Yes.  
20 Q You wanted to be accurate?  
21 A Yes.  
22 Q You wanted to be complete as possible?  
23 A Yes.  
24 Q Okay. And on that day, you never said anything about  
25 Jaiden wanting to kill someone, correct?

1 A Yes.

2 Q And you didn't think that was important?

3 A Well, I was very shaken up.

4 Q Excuse me.

5 A I was very shaken up after the incident.

6 Q Okay. But you gave them all these other details about  
7 what happened, correct?

8 A Yes, I did.

9 Q You said that Jaiden shot the gun into the ceiling, correct?

10 A Yes, I did.

11 Q Said he pointed the gun at you and everyone else except  
12 Kody --

13 A Yes.

14 Q -- correct?

15 And you said Kody pointed the gun -- his gun at people  
16 also?

17 A Yes.

18 Q Okay. But you never mention -- you know what a lick  
19 means?

20 A Yes.

21 Q Okay. And you never mentioned a lick to that detective  
22 when you were interviewing with him, correct?

23 A Yes.

24 Q Is that a yes?

25 A Yes.



1 Q Okay. And prior to testifying today, you interviewed with  
2 law enforcement, correct?

3 A Yes.

4 Q Okay. And who'd you interview with?

5 A They were two Henderson detectives.

6 Q And do you remember their names?

7 A I do not.

8 Q At that time did you tell the Henderson detective about  
9 this lick that you heard?

10 A No, I did not.

11 Q Okay. When's the first time you mentioned about this  
12 lick?

13 A When I ran it with Mr. Pesci.

14 Q So when you spoke to Mr. Pesci. And when was that?

15 A A week or two ago.

16 Q Okay.

17 A A week ago.

18 Q And you told him oh by the way --

19 A Not --

20 Q -- Jaiden said something about doing a lick?

21 A I didn't say by the way. I told him that's what he said.

22 Q Okay. And you told him that Jaiden also said he wanted  
23 to kill someone.

24 A Yes.

25 Q Okay. And when you spoke to Mr. Pesci, that was over a



1 year from the time that this happened.

2 A Yes.

3 Q Yes? Okay.

4 MR. YAMPOLSKY: I have nothing further.

5 THE COURT: Mr. Pesci?

6 MR. PESCI: Thanks.

7 **REDIRECT EXAMINATION**

8 BY MR. PESCI:

9 Q So Ghunnar, in June of 2018, how old were you?

10 A I was 16.

11 Q Okay. So June of 2018 is when you gave this statement,  
12 correct?

13 A Yes.

14 Q So as a 16-year old kid you didn't know what the police  
15 wanted or didn't want, did you?

16 A No, sir.

17 Q You weren't a homicide detective with the police  
18 department, were you?

19 A Sir, will you repeat that?

20 Q Well when you were a 16-year old in June of 2018, you  
21 weren't a homicide detective for the Henderson Police Department?

22 A No, sir.

23 Q You didn't know all the ins and outs of this case.

24 A No, I did not.

25 Q You didn't know what the police would want.

1 A I did not know what they would want.

2 Q So they just asked you about meeting with the District  
3 Attorney's Office and talking to us about what occurred, do you  
4 remember that?

5 A Yes, I do.

6 Q Did we ask you to tell us what happened?

7 A Yes, you did.

8 Q And when you were telling us what happened, is that  
9 when you mentioned what it was that Jaiden said?

10 A Yes, it was.

11 Q Did I tell you to make that up?

12 A No, you did not.

13 Q Did I tell you I need to this, this, and this information; give  
14 it to me when you get on the stand?

15 A No, you did not.

16 Q Talking about killing somebody, let's go to your  
17 statement, page 13. Take a moment to review what it is you said  
18 on that page.

19 Just read it to yourself.

20 [Witness complies]

21 BY MR. PESCI:

22 Q Did you get a chance to read that?

23 A Yes, sir.

24 Q Okay. And did you actually mention to the police, back in  
25 June, a few days after this concept of somebody getting killed?

1 Did you say: I felt like it was like a y'all guys need to leave  
2 before I kill somebody shot?

3 A Yes.

4 Q Like it was not an accident.

5 A Yeah.

6 Q Like I really felt like he was like planning on doing  
7 something to somebody in that house that day.

8 A Yes, I did say that.

9 Q All right. So you said that to police in June of 2018, just  
10 days after.

11 A Yes.

12 Q Thank you.

13 THE COURT: Mr. Helmick?

14 MR. HELMICK: Thank you.

15 **RECROSS-EXAMINATION**

16 BY MR. HELMICK:

17 Q Just to touch on that Ghunnar, the statement that you just  
18 read, Mr. Pesci mentioned the word he, right? The person that  
19 invited you over was Jaiden, right?

20 A Yes.

21 Q Okay. And when you said the word, he, you're referring  
22 to Jaiden, right?

23 A Yes.

24 Q Thank you. Okay.

25 Now let's talk about the interview for a second. I

1 recognize that you were 16 at the time, right?

2 A Yes.

3 Q Okay. But you weren't in that interview alone, right?

4 A No, I was not.

5 Q You had your mother there with you, didn't you?

6 A Yes, I did.

7 Q Okay. And you felt comfortable having your mother there  
8 with you, right?

9 A She was there because it was in my house.

10 Q Sure. But my question was --

11 A No.

12 Q -- you felt comfortable with having your mother there with  
13 you?

14 A No.

15 Q You didn't feel comfortable?

16 A No.

17 Q Okay. Did you ask your mother to leave?

18 A No, I did not.

19 Q Okay. You could have, couldn't you?

20 A I don't remember.

21 Q Okay. The interview was in your house your said, not at a  
22 police station, right?

23 A Yes.

24 Q Okay. Now you're friends with Kymani, isn't that right?

25 A Yes.

1 Q And certainly -- I mean, you're still friends to this day?

2 A Yes.

3 Q And certainly you and Kody have had conversations about  
4 this case after the incident, right?

5 A Yes.

6 Q Yeah. And you've talked about, you know, maybe what  
7 you thought had happened that day, right?

8 A Yes.

9 Q Okay. And he offered his opinion to you and likewise you  
10 offered your opinion to him, right?

11 A Yes.

12 Q Okay. Thank you very much.

13 THE COURT: Anything, Mace?

14 **RECROSS-EXAMINATION**

15 BY MR. YAMPOLSKY:

16 Q When Mr. Pesci was questioning you, he said that you  
17 said I felt like it was like a y'all guys need to leave before I kill  
18 somebody shot, correct?

19 A Yes.

20 Q And that was in answer to a question, so -- and if you  
21 don't remember, I'm happy to come up and refresh your  
22 recollection but that was in answer to a question: So when he fires  
23 a warning shot, we did see it in the roof.

24 Did you get the impression that that was an accident or  
25 it's deliberate watch this?

1 Right?

2 A Yes.

3 Q And then you said I felt like all you guys need to leave  
4 before I kill someone shot, correct?

5 A Yes.

6 Q That was your perception.

7 A Yes.

8 Q He didn't say y'all guys need to leave before I kill  
9 someone shot, right?

10 A No.

11 THE COURT: He?

12 MR. YAMPOLSKY: He didn't --

13 THE COURT: He meaning --

14 MR. YAMPOLSKY: -- say that, that was your perception?

15 THE COURT: When you say he, you're meaning Mr.

16 Caruso?

17 MR. YAMPOLSKY: I'm reading --

18 THE COURT: I know but you're asking --

19 THE WITNESS: Jaiden.

20 MR. YAMPOLSKY: Yes, I am referring --

21 THE COURT: -- the witness that --

22 MR. YAMPOLSKY: -- to Mr. Caruso.

23 THE COURT: -- Mr. Caruso didn't say that, the --

24 MR. YAMPOLSKY: Correct.

25 THE COURT: -- witness is saying that's what the witness

1 felt.

2 MR. YAMPOLSKY: Right.

3 THE COURT: Okay.

4 BY MR. YAMPOLSKY:

5 Q Mr. Caruso didn't say y'all guys need to leave before I kill  
6 someone shot, correct?

7 A No.

8 Q And you said like I really felt like he was planning on  
9 doing something to somebody in that house that day, correct?

10 A Yes.

11 Q He never said I'm planning on doing something to  
12 somebody in this house today?

13 A Yes, he said he was --

14 Q He said that.

15 A -- going to kill somebody.

16 Q Okay. So he said I feel like I -- I'm planning on doing  
17 something to somebody in that house today? He said that?

18 A No.

19 Q Right. So that's your perception?

20 A Yeah.

21 Q Okay.

22 MR. YAMPOLSKY: I have nothing further.

23 THE COURT: Mr. Pesci?

24 MR. PESCI: Thank you.

25 ...



1 **FURTHER REDIRECT EXAMINATION**

2 BY MR. PESCI:

3 Q I'm just going to follow up on the things that they just  
4 said. Your perception ended up being correct, right?

5 A Yes.

6 Q And then as far as --

7 MR. YAMPOLSKY: Objection, that misstates the  
8 testimony. Correct in what?

9 THE COURT: Well overruled. Go ahead.

10 BY MR. PESCI:

11 Q Speaking specifically about what was just asked you by  
12 Mr. Helmick about you having a conversation with Kymani about  
13 this case, do you remember those questions?

14 A Yes.

15 Q Ghunnar, is your testimony here today your own  
16 testimony?

17 A Yes, it is.

18 Q Are you saying something because Kymani told you to  
19 say it?

20 A No.

21 Q Are you saying it because you saw it and you heard it?

22 A Yes.

23 MR. PESCI: Thanks.

24 THE COURT: Do you have anything further?

25 MR. HELMICK: Nothing further. Thank you.



1 THE COURT: Mr. Yampolsky?

2 **FURTHER RECROSS-EXAMINATION**

3 BY MR. YAMPOLSKY:

4 Q So the statement about needing to leave before I kill  
5 someone, you never heard Mr. Caruso say that?

6 A No.

7 MR. YAMPOLSKY: I have nothing further.

8 THE COURT: Anything from our jurors?

9 Yes?

10 Just sit tight for --

11 THE WITNESS: Oh.

12 THE COURT: -- just a second.

13 THE WITNESS: Sorry.

14 [Bench conference transcribed as follows.]

15 MR. HELMICK: Yes, please. No objection.

16 MR. PESCI: No objection on Juror 13's question from the  
17 State.

18 THE COURT: [Indiscernible] or was he meaning the  
19 African American boy?

20 MR. YAMPOLSKY: Who's he?

21 THE COURT: [Indiscernible] talking about the African  
22 American boy [indiscernible] kind of the question or it's referring to  
23 Ghunnar himself, but I'll ask.

24 MR. PESCI: I don't know, you'll just have to ask him.  
25 objection from the State.

1 MR. HELMICK: No objection.  
2 MR. YAMPOLSKY: No objection.  
3 THE COURT: Okay. Thank you.  
4 [End of bench conference.]  
5 THE COURT: All right. Ghunnar, I have a couple  
6 questions for you.  
7 THE MARSHAL: One more, Your Honor.  
8 THE COURT: Oh, okay.  
9 THE MARSHAL: Sorry.  
10 THE COURT: Hold on guys, come back.  
11 Thank you.  
12 [Bench conference transcribed as follows.]  
13 MR. PESCI: Can anybody read that?  
14 THE COURT: It's very small.  
15 MS. OVERLY: [Indiscernible] Jaiden say he wanted to do  
16 a lick. He didn't mention [indiscernible].  
17 MR. YAMPOLSKY: But he already said he didn't hear him  
18 say that.  
19 MR. HELMICK: What's the question?  
20 THE COURT: What do you mean?  
21 MR. YAMPOLSKY: Well --  
22 THE COURT: Didn't hear him say what?  
23 He did say --  
24 MR. YAMPOLSKY: Okay.  
25 THE COURT: He said he heard that.

1 MR. YAMPOLSKY: All right.

2 THE COURT: Okay.

3 MR. PESCI: No objection from the State.

4 [End of bench conference.]

5 THE COURT: Okay. I got a couple questions for you, if I  
6 could, Ghunnar.

7 **EXAMINATION BY THE COURT [JURY QUESTIONS]**

8 BY THE COURT:

9 Q Do you know -- there was reference made to another  
10 young man that was at that house and he was simply described as  
11 an African American young man. Do you recall anybody being  
12 there other than the folks you've mentioned?

13 A There was one kid I didn't know that was there.

14 Q Okay. Was he an African American boy?

15 A He was light skinned. No, he wasn't Black.

16 Q Okay. You weren't sure?

17 A No, I was -- I guess no, I wasn't sure on that one.

18 Q Okay. Do you know what his name was?

19 A I do not know.

20 Q Okay. Do you know was --

21 THE COURT: Well let me just clarify. What the bottom  
22 part of this question references was he there at the house when  
23 Jaiden shot into the ceiling. Are you asking about was the African  
24 American boy?

25 Okay.

1 BY THE COURT:

2 Q Was this other boy, that you don't know the name of, was  
3 he there at the time that shot went into the ceiling?

4 A Yes, he was.

5 Q Okay. Got it.

6 How long before Jaiden and Kody left to get Matthew did  
7 you hear Jaiden say he wanted to kill someone and do a lick?

8 A Not even 20 minutes.

9 Q Okay.

10 THE COURT: And did he, meaning Mr. Caruso?

11 UNKNOWN JUROR: Yes.

12 BY THE COURT:

13 Q Did Mr. Caruso mention Matt's name when he was saying  
14 these things?

15 A No, he did not.

16 Q Okay. Did you ever hear Kody speak about a lick or killing  
17 someone?

18 A No, I did not.

19 Q And where was Kody when Jaiden talked about a lick and  
20 killing someone?

21 A Sitting down on the couch.

22 THE COURT: Okay. Mr. Pesci, any questions based on  
23 mine?

24 MR. PESCI: No. Thank you, Your Honor.

25 THE COURT: Mr. Helmick?

1 MR. HELMICK: Let me see here.  
2 Your Honor, the second question in regards to -- was it in  
3 regard to Matt being picked up?  
4 THE COURT: Okay.  
5 MR. HELMICK: What was that question again, I'm sorry?  
6 THE COURT: The second part of that question was did he,  
7 meaning Mr. Caruso, mention Matt's name when saying this.  
8 MR. HELMICK: What was the first part of that question?  
9 THE COURT: How long before Jaiden and Kody left to get  
10 Matthew did you hear Jaiden say he wanted to kill someone and do  
11 a lick.  
12 MR. HELMICK: Yeah, okay.  
13 THE COURT: And the gentleman answered about 20  
14 minutes.  
15 MR. HELMICK: Yeah, okay.  
16 THE COURT: Not even 20 minutes, correct?  
17 THE WITNESS: Yes.  
18 THE COURT: Okay.  
19 MR. HELMICK: Yeah. No questions. Thank you.  
20 THE COURT: Mr. Yampolsky?  
21 MR. YAMPOLSKY: No questions.  
22 THE COURT: All right. Mr. Methvin, you are excused, sir.  
23 Thank you very much for your time, okay?  
24 THE WITNESS: Okay.  
25 THE COURT: The State have any further witnesses?

**EXHIBIT "B"**

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1 **CLOSING ARGUMENT BY THE STATE**

2 BY MS. OVERLY:

3 Ladies and Gentlemen, approximately a week ago I stood  
4 before you and I explained why we're here. And I explained that it  
5 is because on June 8th of 2018, Matthew Minkler was murdered.  
6 And the people responsible for that are the Defendants Jaiden  
7 Caruso and Kody Harlan.

8 So now I stand before you to explain what that really  
9 means. And that means that the State must do two things; that -- to  
10 prove that a crime was committed and that the Defendants are the  
11 individuals responsible for committing that crime.

12 We already know that the Defendants are responsible.  
13 This isn't a whodunnit. We already know that Jaiden Caruso  
14 possessed the firearm that shot and killed Matt Minkler on June 8th.  
15 We know that Kody Harlan was with him in that house and  
16 proceeded to clean up the scene and go with him about town after  
17 that murder.

18 So what we're really here to establish is what crimes were  
19 committed. The Defendants in this case are both charged with  
20 murder with use of a deadly weapon and robbery with use of a  
21 deadly weapon. Additionally, Defendant Kody Harlan is charged  
22 with accessory to murder with use of a deadly weapon.

23 And you're instructed on what accessory to murder with  
24 use of a deadly weapon is; essentially that every person who after  
25 the commission of a felony destroys or conceals or aids in the



1 destruction or concealment of material evidence, or harbors or  
2 conceals such offender with the intent that the offender may avoid  
3 or escape from arrest, trial, conviction or punishment, having  
4 knowledge that such offender has committed a felony or who is  
5 liable to arrest is an accessory to that felony.

6 And we already know that Kody Harlan is an accessory to  
7 murder with use of a deadly weapon. We know that by his own  
8 admission. He tells police, he tells Detective Nichols that he in fact  
9 helped assist in cleaning of the scene. In fact, he even indicated  
10 that it was his idea where to move Matt Minkler in the house. We  
11 know that this information is corroborated by Traceo Meadows,  
12 who testified and indicated that he saw Kody Harlan participate in  
13 cleaning up the house.

14 So the next thing to establish is whether or not a deadly  
15 weapon was used. You'll notice that in all of the charges here,  
16 deadly weapon is added to the charge. So what is a deadly  
17 weapon? You'll be instructed on the actual jury instruction on what  
18 a deadly weapon is, but you're also instructed that a firearm is in  
19 fact a deadly weapon. And what do we know here? That a firearm  
20 was used.

21 We know that there were actually two firearms that keep  
22 coming up throughout this trial but specifically in regards to the  
23 one that killed Matt Minkler was this .357 revolver possessed by  
24 Jaiden Caruso. We know that that occurred because we've seen  
25 photos of it, we've seen videos of it, we've heard from the coroner



1 in this case that Matt Minkler suffered a gunshot wound to the  
2 head. We've heard from a firearms examiner that this gun was  
3 operational and working. So we already know that a deadly  
4 weapon was used.

5 So let's go to Count 1, Murder with Use of a Deadly  
6 Weapon. As the Judge previously instructed you, the charge may  
7 include various degrees of murder; murder of the first-degree,  
8 murder of the second-degree, and that of manslaughter. So in  
9 order to establish what this is, let's first talk about what it isn't.

10 Manslaughter, the unlawful killing of a human being  
11 without malice, express or implied, and without any mixture of  
12 deliberation. It can include voluntary and involuntary.

13 Specifically, involuntary is the killing of a human being  
14 without any intent to do so. In the commission of an unlawful act  
15 or a lawful act which probably might produce such a consequence  
16 in a unlawful manner where the involuntary killing occurs in the  
17 commission of an unlawful act, which in its consequences naturally  
18 tends to destroy the life of a human being or is committed in the  
19 prosecution of felonious intent, the offense is murder.

20 So with regards to involuntary manslaughter, you'll also  
21 be instructed that this does not include the conscious use of a  
22 deadly weapon. You cannot commit involuntary manslaughter and  
23 simultaneously consciously use a deadly weapon. And what do we  
24 know about the evidence here? That Jaiden Caruso pointed the  
25 firearm at Matt Minkler's head and pulled the trigger. That's a

1 conscious use of a deadly weapon. So involuntary manslaughter  
2 does not apply in this case.

3 That's evidenced by the coroner photos that we saw in  
4 this case. Again, let's talk about what this isn't. Voluntary  
5 manslaughter, which is defined as a killing upon a sudden heat of  
6 passion, caused by a provocation apparently sufficient to make the  
7 passion irresistible. The provocation must either consist of a  
8 serious and highly provoking injury inflicted upon the person  
9 killing, sufficient to excite an irresistible passion in a reasonable  
10 person.

11 And what do we know about the facts of this case? We've  
12 heard testimony from the various witnesses that came in here, from  
13 Charles, Alaric, we've heard from Ghunnar, Kymani. We heard that  
14 prior to the Defendant, Jaiden Caruso, standing up, walking over to  
15 that kitchen, he was sitting on this very loveseat. We've seen him  
16 in videos sitting there.

17 We also hear from witnesses that there was no quarrel  
18 beforehand, there was no argument, there was no fist fight, there  
19 was no yelling. But the Defendant calmly stood up, walked over to  
20 where Matt Minkler was standing in the kitchen, picked up that  
21 firearm, pointed at Matt Minkler, and fired. There was no heat of  
22 passion, there was no provocation here.

23 So when you get your verdict form in the jury room, it's  
24 clear that any option that lacks a deadly weapon and that involves  
25 any form of manslaughter does not apply in this case. And why is

1 that? Because let's talk about what this actually is. And this is first-  
2 degree murder, Ladies and Gentlemen. There's no ifs, ands, or buts  
3 about it.

4 Murder's the unlawful killing of a human with malice  
5 aforethought, either express or implied. Malice aforethought is the  
6 intentional doing of a wrongful act, which would be the killing,  
7 without legal cause or excuse or what the law calls adequate  
8 provocation, which is what we just talked about involuntary  
9 manslaughter.

10 Malice aforethought can arise in various ways. It can arise  
11 from anger, hatred, revenge, ill will, spite, grudge, any unjustifiable  
12 or unlawful motive or purpose to injure another. It denotes an  
13 unlawful purpose or design, as opposed to an accident or a  
14 mischance.

15 Now there are two ways that you can reach the conclusion  
16 of first-degree murder. The first is willful, deliberate, and  
17 premeditated killing. The second is otherwise known as felony  
18 murder, which is a murder committed in the perpetration or the  
19 attempted perpetration of a robbery.

20 So let's first talk about the willful and deliberate and  
21 premeditated killing, which is also a specific intent crime. It's a  
22 specific intent crime because there needs to be an establishment of  
23 intent behind the killing. So let's talk about what willful is. Willful  
24 is pretty straightforward. It's an intent to kill. How do we know that  
25 there was an intent to kill in this case? Again, we heard evidence.

1 Jaiden Caruso walked over to Matt Minkler, pointed a loaded  
2 firearm at his face and pulled the trigger.

3 Deliberation is the process of determining upon a course  
4 of action to kill as a result of thought, including weighing the  
5 reasons for and against the action and considering the  
6 consequences of the action. A deliberate determination may be  
7 arrived in a short period of time. This isn't a situation where  
8 somebody needs to think about it for days, for hours, or even  
9 minutes. We know that Jaiden Caruso on June 8th, 2018, knew that  
10 this firearm was operational, that it was loaded. In fact, he was the  
11 one that would load it.

12 And we know that that was actually the case because  
13 when he fired that shot at Matt Minkler, it went off.

14 And what do we know about premeditation? It's a design,  
15 a determination to kill distinctly formed in the mind by the time of  
16 the killing. It need not be for a day, an hour, or even a minute. It  
17 can be as instantaneous as successive thoughts of the mind.

18 Oftentimes an example of that would be you're driving  
19 down the road and the light turns yellow and it's about to turn red.  
20 And in the moment that you decide whether or not you're going to  
21 rush through that yellow light or you're going to stop for that red  
22 one, that can be as instantaneous as successive thoughts of the  
23 mind. So if the formulation to kill and an intent to kill was derived  
24 within that instantaneous successive thoughts of mind, it's  
25 premeditated.

1 [Video playing]

2 BY MS. OVERLY:

3 And we know, like I said before, that Jaiden Caruso was  
4 operating that gun all day. Taking the bullets in, putting the bullets  
5 out, firing it. At one point he even shot it into the ceiling. And we  
6 heard evidence from other witnesses that Matt Minkler in fact was  
7 somewhat stunned by this and he even said to him at some point  
8 man, you almost shot me. You're lucky you're my friend.

9 And how do we know that that actually happened?  
10 Because Matt Minkler then posted simultaneously of that video, this  
11 photo: Lucky I fw with him.

12 And I'd submit to you that Matt Minkler in this post is  
13 referring to Jaiden Caruso. And the State's not required to  
14 establish motive in this case, but I would submit to you that if there  
15 was going to be one, it was right here.

16 And you've -- you're going to be instructed and you've  
17 heard a lot of evidence on this idea of voluntary intoxication. But  
18 it's important to note that when you're discussing voluntary  
19 intoxication, it may be a defense to a specific intent crime, which in  
20 this case would be willful, premeditated and deliberate murder.

21 The person's intoxication can be taken into consideration  
22 when you're thinking about the person's motive and intent. It  
23 doesn't negate the crime, but you can consider it.

24 So with regards to the state of mind and the intent, the  
25 State is not required to present direct evidence of a Defendant's



1 state of mind as it existed during the commission of the crime.  
2 Meaning the State does not have to prove that Jaiden Caruso stood  
3 up and said I'm going to kill you Matt Minkler; that we can  
4 determine that based off of the circumstances.

5           You can infer the existence of a state of mind of a party or  
6 a witness from the circumstances disclosed by the evidence. And  
7 as I indicated, the State's not required to establish that Jaiden  
8 Caruso stood up and said he's going to shoot Matt Minkler and kill  
9 him, but we did in fact hear from Ghunnar when he testified that  
10 Jaiden Caruso was talking before Matt Minkler even got there that  
11 day saying he wanted to kill somebody.

12           And we know with this regard to voluntary intoxication,  
13 that despite consuming alcohol, marijuana, and Xanax, which  
14 you've heard a lot about, that Jaiden Caruso that day was capable  
15 of rising from that loveseat, he was capable of grabbing that gun,  
16 he was capable of pointing a loaded gun at Matt Minkler's face, he  
17 was capable of shooting Matt Minkler.

18           He was then capable of filming and uploading videos of a  
19 deceased Matt Minkler on the ground. He was then capable of  
20 cleaning up that scene consciously. And then he was also capable  
21 of texting and calling his friends hours later, bragging about  
22 catching a body. We know that he was capable of going to the mall  
23 and shopping. And we know that he was even capable of going to  
24 a party afterwards.

25           So this concept of consuming alcohol, weed, and Xanax

1 didn't prevent him from doing all of these things after shooting  
2 Matt Minkler in the face.

3           So Ladies and Gentlemen, this is straightforward. This is  
4 murder of the first degree. But there's also another means by  
5 which you can find the Defendant is guilty of first-degree murder. If  
6 you don't find that it's willful, premeditate, and deliberate, he can  
7 be found guilty of first-degree murder by means of the felony  
8 murder rule. And that is that a killing is committed in the  
9 perpetration or attempted perpetration of a robbery. And that is  
10 first-degree murder, whether that killing was intentional or  
11 unintentional or accidental.

12           The intent to commit the robbery has to have arisen  
13 before during the conduct resulting in the death. However, in  
14 determining whether the Defendant had the requisite intent to  
15 commit that robbery before or during the killing, you can infer that  
16 intent from the Defendant's actions during and immediately  
17 thereafter of the killing.

18           You're also instructed on these various theories of  
19 liability; the first being that the individual directly committed the  
20 crime. Directly committed a robbery. Directly shot Matt Minkler.  
21 Or that they aided and abetted in the commission of that crime. Or  
22 that it was done pursuant to a conspiracy to commit the crime.

23           Aiding and abetting is when a person commits -- if he  
24 knowingly and with a criminal intent aids, promotes, encourages, or  
25 instigates by act or advice. Or by act and advice the commission of

1 such crime with the intention that the crime be committed.

2 Conspiracy is simply an agreement or mutual  
3 understanding between two or more persons to commit a crime. A  
4 Defendant must intend to commit or aid in the commission of the  
5 specific crime agreed to and the formation and existence of that  
6 conspiracy can be inferred from all the circumstances tending to  
7 show the common intent and can be proved by direct or  
8 circumstantial evidence.

9 And what's important to note about this is that there may  
10 not be an agreement on the theory. So what does that mean? That  
11 means that your verdict must be unanimous as to the charge,  
12 meaning it must be unanimous as to first-degree murder. It must  
13 be unanimous as to robbery with use of a deadly weapon.

14 But what that does not mean is that you need to come to  
15 an agreement on the theory of it. Meaning that if some of you  
16 because that Jaiden Caruso committed the crime of first-degree  
17 murder by means of willful, deliberate, premeditated murder and  
18 another portion agree that he committed first-degree murder but  
19 pursuant to the felony murder rule, then it's first-degree murder.

20 If half of you believe that a robbery was committed  
21 because he directly did it or half of you believe that he merely aided  
22 and abetted in it, regardless the crime is robbery.

23 And you'll get the robbery instruction for you and it's the  
24 unlawful taking of personal property of another in the person's  
25 presence, by means of force or violence or fear of injury. And that



1 it must be used to obtain or retain possession of the property to  
2 prevent or overcome the resistance and to facilitate escape with the  
3 property.

4 And again, in determining whether the Defendants have  
5 the requisite intent to commit robbery before or during the killing,  
6 that can be inferred from the intent by the Defendant's actions  
7 during and after the killing.

8 Now with regards to voluntary intoxication, we talked  
9 about how voluntary intoxication can be considered when you're  
10 looking at a specific intent crime. Meaning you're looking at a  
11 crime of willful, deliberate, and premeditated murder because there  
12 needs to exist an intent to kill.

13 But it's important to note that when we're talking about  
14 voluntary intoxication, it does not apply to general intent crimes.  
15 And general intent crimes consist of robbery and first-degree felony  
16 murder committed through the perpetration or attempted  
17 perpetration of robbery.

18 So what that means is if you believe the Defendants  
19 intended to rob Matt Minkler and his death resulted in furtherance  
20 of that robbery, no level of intoxication is a defense to that. It's  
21 first-degree murder.

22 So we know that Jaiden Caruso is responsible and liable  
23 for first-degree murder, either through the premediated, deliberate,  
24 and willful or by means of felony murder. Meaning that he had an  
25 intent to rob Matt Minkler that day and his death resulted in

1 furtherance of that.

2 So how is Kody Harlan liable for murder? Same way.  
3 Under the theory of felony murder.

4 [Video playing]

5 BY MS. OVERLY:

6 And how do we know about the evidence of the robbery  
7 here? We know that Matt Minkler posted that video to his Snapchat  
8 on June 7th. That would have been a day before his murder.

9 We know that we've heard a lot about Snapchat in this  
10 case. That's the way of life. That's the way they're communicating,  
11 that's the way they're keeping tabs on each other. And that's  
12 exactly what was posted to Matt Minkler's Snapchat the day before.  
13 A whole lot of cash that looked very similar to the cash that we see  
14 Kody Harlan in a video later.

15 What else do we know about evidence of this idea and  
16 conspiracy to commit robbery by both Jaiden and Kody? We know  
17 that from the witnesses' testimony that on June 8th, the Defendants  
18 are the only two people in that house with guns. You don't hear  
19 evidence about Alaric having a gun, you don't hear evidence that  
20 Charles has a gun, you don't hear evidence that Kymani does, that  
21 Ghunnar, that Traceo does.

22 We hear from Kymani that both Jaiden and Kody  
23 mentioned wanting to rob someone and wanting to do a lick. We  
24 hear from Kymani that they kept talking about it. That Matt's name  
25 was brought up in this idea of committing a robbery or getting

1 more weed.

2 We also know that Ghunnar testified that he didn't hear  
3 Kody talking about it, but he heard Jaiden talking about it; that  
4 Jaiden wanted to commit a robbery, do a lick, and he wanted to kill  
5 someone. And we know that Ghunnar indicated that Kody was  
6 sitting right there on the couch as this conversation is happening.

7 We also know that Ghunnar told us that within 20 minutes  
8 of that conversation is happening, the Defendants leave, Kody  
9 driving and they go and they pick up Matt Minkler and they bring  
10 him back to the house. You didn't hear any other evidence about  
11 the Defendants picking up anybody else. There were several  
12 people that came and went from that house that day. They all  
13 found their own ride. Matt Minkler didn't.

14 We also know that Ghunnar and Kymani that their  
15 testimony's corroborated by the phone logs that we see. Kymani  
16 indicated and Ghunnar indicated that after they fled the house that  
17 day, after that shot to the ceiling that the Defendant was calling  
18 them, come back, come back, come back and smoke weed with us.  
19 And this I corroborated when you look at the phone records.

20 We also heard from Charles that he fled after the killing.  
21 That's corroborated because you see here that the Defendant  
22 attempted to call Charles after.

23 We know that the Defendants went, picked up Matt  
24 Minkler, drove back. And we know that at 6/8 of 2018, at 12:32 there  
25 is a text message -- SMS message from Matt Minkler to Jaiden

1 Caruso where he says I got you on some when you get here.

2 And we know that Jaiden Caruso had all these contacts in  
3 his phone. He had Ghunnar in his phone, he had Nate in his phone,  
4 he had all these people, but he certainly didn't have Matt as a  
5 contact in his phone. And we see here that like the -- Detective  
6 Spangler indicated when he testified that Jaiden Caruso had to be  
7 the one to text Matt because Matt had a Samsung and Kody was  
8 only equipped with doing iMessages.

9 So this contact was between Jaiden Caruso and Matt  
10 Minkler. And we know that at 12:32, Matt Minkler was waiting to  
11 get picked up.

12 [Video playing]

13 BY MS. OVERLY:

14 We know that this video was created at 12:59. Matt sent  
15 that text to Jaiden Caruso at 12:32 and waited to be picked up. This  
16 video is created at 12:59, approximately 30 minutes after that. We  
17 know that Matt's not in this video, which makes sense because  
18 Matt's waiting at home, waiting to get picked up.

19 We know that there's clearly bullets in the gun, we see  
20 that in the video. We see Jaiden Caruso's beginning of what  
21 appears to be this obsession with carrying this gun and pointing it  
22 at people.

23 We know that Kymani testified that he had a bad vibe  
24 from the second he showed up at that house. And we know that  
25 Ghunnar said when he was over there that there was something

1 about the situation that made him uneasy. Like he felt like he was  
2 invited there to be killed.

3 [Video playing]

4 BY MS. OVERLY:

5 We know that that video, now Matt's at the house. We  
6 know that both Defendants still have guns. We know Kody's awake  
7 on the couch. In fact, he's waving around that gun and pointing it  
8 at Matt Minkler.

9 We know that at this point Jaiden shot into the ceiling.  
10 And we know that the only two people to have fled the house that  
11 day after the shot to the ceiling were the same two people that had  
12 an uneasy feeling and the same two people that heard a  
13 conversation about a lick.

14 We also know that Kymani even came back -- he testified  
15 that he came back and he retrieved that lighter. When asked why  
16 he did that, he said he didn't even want to leave a trace of him  
17 being at that house.

18 He anticipated something was going to go down. This  
19 wasn't just a vibe anymore, it was corroborated because shortly  
20 thereafter, Matt Minkler was killed.

21 And what do we know at the time that this happened? We  
22 heard some evidence that Kody Harlan was asleep on the couch or  
23 falling asleep on the couch, that he had taken some Xanax and, you  
24 know, was, you know, kind of out of it. But Ladies and Gentlemen,  
25 that doesn't matter because if you believe that Jaiden Caruso and



1 Kody Harlan had agreed to rob Matt Minkler, then anything done by  
2 Jaiden Caruso in furtherance of that is felony murder. And Kody  
3 Harlan is liable for felony murder.

4           You'll be instructed on the concept of a conspiracy which  
5 means each member of a criminal conspiracy is liable for each act  
6 of every member of the conspiracy, even though the acts may have  
7 occurred in the absence and without the knowledge of that  
8 Defendant, provided they were knowingly made and done during  
9 the continuance of such conspiracy and in furtherance of some  
10 object or purpose of the conspiracy.

11           And I'd submit to you that when Jaiden Caruso and Kody  
12 Harlan went to go pick up Matt Minkler in that car that day and  
13 bring him back to the house that this agreement was already  
14 established, they were moving forward with it, that they were both  
15 well aware that they had firearms on them that were loaded, and  
16 that any act done by either or after that in furtherance of that  
17 conspiracy makes the other liable for it. And that's the concept  
18 behind felony murder.

19           So what acts in furtherance? So like I said even if Kody  
20 was asleep when Matt Minkler was shot by Jaiden Caruso, even if  
21 he was unaware, if it's in furtherance of the robbery, he's liable for  
22 first-degree murder.

23           And how do we know the killing of Matt was in  
24 furtherance of that robbery? Well like we said, we can infer the  
25 intent to commit the robbery from the actions during and after the

1 killing? And what do we know about the killing of Matt Minkler and  
2 what the Defendants did immediately thereafter? We know that the  
3 video Jaiden Caruso filmed of I caught a body was filmed at 2:44.  
4 We know that Matt Minkler was still waiting to get picked up around  
5 12:30 or so. So by 2:44 Matt Minkler's dead.

6 We know that at this point in time, after Jaiden Caruso  
7 shot Matt Minkler, Charles fled, Alaric fled, Kymani and Ghunnar  
8 were already gone. Who doesn't flee? He just woke up off the  
9 couch, he's out of it, he's just taken, you know, all this Xanax and  
10 he wakes up and his buddy's dead on the ground. He doesn't flee.  
11 He doesn't follow suit like Charles, like Alaric. Doesn't call police.  
12 Doesn't render aid. Doesn't drive back to Matt Minkler's house,  
13 same place he had just picked him up from.

14 And we see in this video that Matt is on his side and his  
15 pant pockets are tucked in. And who's standing by him?

16 [Video playing]

17 BY MS. OVERLY:

18 And if you slow down that video, you'll see that that was  
19 Kody Harlan standing right there. Not bent down trying to render  
20 aid to his friend, not rushing to call anyone, not fleeing out of panic.  
21 Standing there while Jaiden Caruso films and documents this.

22 We know that this second video, which was sent as  
23 attachment was at 2:50 p.m. We know that now in this video Matt's  
24 body's been moved. We know that at this point in time Traceo  
25 Meadows has arrived at the house, he's come upon this, we hear



1 from Traceo that Matt, again, doesn't render aid to his friend,  
2 doesn't call police. His next step is to remove his shoes, check his  
3 pockets, pull out his wallet, pull out his phone.

4 [Video playing]

5 BY MS. OVERLY:

6 No effort to wipe any blood off Matt Minkler because it  
7 was more important for Jaiden Caruso to wipe the blood off of his  
8 shoes.

9 We also know that Kody Harlan and Jaiden Caruso  
10 cleaned up the scene. We know that based off of Kody Harlan's  
11 own statements and we know that based off of Traceo Meadows  
12 testifying. We also know that because it's corroborated by the  
13 photographic evidence in this case. And again, we see that Matt  
14 Minkler's pockets have been turned out.

15 We heard from Detective Spangler that Matt Minkler's  
16 phone, which was recovered from on top of that tarp that Kody  
17 Harlan tossed over his dead body that that phone wasn't just spray  
18 painted. That phone, the charger was irreparable. We heard that  
19 he had to replace the digitizer. It had been burned. It had been  
20 water damaged. It had been cracked. There were several attempts  
21 to destroy that phone.

22 We know that efforts were made to clean up the blood.  
23 Traceo Meadows testified that Jaiden Caruso took this nozzle here  
24 from the kitchen and sprayed the floor with water. We know that  
25 there were Clorox wipes that were out and open. We know that

1 Matt Minkler originally was shot in that kitchen and that it was Kody  
2 Harlan's idea to then move him, his buddy, to this hallway closet  
3 here.

4 We know that he was then tossed into this hallway closet,  
5 a tarp was thrown over him, his phone had been damaged, was  
6 tossed on top. And we can see here, again, that his pockets had  
7 been turned out.

8 And what do we know about Kody Harlan's statement to  
9 police. He said Matt was friend, this was his homie. He wouldn't  
10 want to just leave him there. He tried to help him. He didn't know  
11 he was dead. He never had a gun. Repeatedly said he never had a  
12 gun. And he doesn't really know how Matt got there, he must have  
13 just popped up. And he also said that he was never driving that  
14 Mercedes.

15 And what do we know is in direct contrast of all of this?  
16 That this is exactly how Kody Harlan left his homie, his friend, the  
17 one he tried to help, the one he didn't know was dead. And this is  
18 how he left his homie, his friend for dead inside of a closet while he  
19 proceeded with Jaiden Caruso to drive around town and shop, and  
20 socialize, and hang out.

21 Because we know that shortly after this, they drive to the  
22 Galleria Mall. Not to a police station, not to Matt's house, not to a  
23 hospital; nowhere but the Galleria Mall. We see them with Traceo  
24 Meadows walking throughout the food court. And you'll see that  
25 this timestamp of this video is at 3:30.

1           We know that that video attachment where Matt's body  
2           had been moved and his pockets had been turned out was at  
3           2:50 p.m. So by 3:30 that crime scene has been cleaned up, he's  
4           been tossed in a hallway closet, and it's time to get shopping  
5           because now they've got money.

6           So what do we know about intent? Like I said within 45  
7           minutes of tossing him in a closet, throwing a tarp over him, they're  
8           now shopping. It's time to get some food, it's time to shop for  
9           shoes.

10          We see them walk into Shoe Palace. We see that Jaiden  
11          Caruso originally walks in with black sneakers, but we know those  
12          have got to go because now they've got Matt Minkler's blood on  
13          them. So it's time to get new shoes, which is exactly what he does.  
14          He buys new shoes at Shoe Palace which he then changes into.

15          Then we see Kody Harlan at Foot Locker, again, buying  
16          some new shoes. I mean, he wouldn't just leave his homie and his  
17          friends in a hallway closet.

18          And he conveniently has a ton of cash on him. Cash that  
19          has been used to purchase shoes, cash that seems to be in several  
20          denominations, similar to that very Snapchat that we saw from  
21          Matt Minkler the day before.

22          We know that when they leave, they've now gotten  
23          themselves a drink, they've done a little shopping, and it's time to  
24          leave. And the only person who didn't shop for anything was  
25          Traceo Meadows. There's been some insinuation that Traceo

1 Meadows is the one that might have stolen the money from Matt  
2 Minkler but if he had money, why wouldn't he just shop with it.  
3 Why feel the need to steal something. The people who had money  
4 were the Defendants because they were the ones who took the  
5 money from Matt Minkler.

6 And we know that after this, they decided to go to an  
7 apartment complex pool party because now, in addition to  
8 shopping, they needed to socialize.

9 So when they do, we hear from Angie Knox who testified  
10 that she was there with her friend Patrick and her other friend Jacy  
11 and that she overheard Kody Harlan bragging about catching a  
12 body. Not Jaiden Caruso; Kody Harlan.

13 We also know that Jaiden Caruso then sent that video of  
14 Matt dead on the floor to his buddy Nate at 4:32, well after going to  
15 the mall. Now they're at a party. So this convenient accident is  
16 something that he's continued to now brag about to other  
17 individuals. Having posted these videos on Snapchat, sending  
18 them to friends. All the while Matt Minkler lie in this house in a  
19 closet.

20 You'll also be instructed on flight and the flight of a  
21 person after the commission of a crime isn't itself sufficient to  
22 establish their guilt, but you can use it as circumstantial evidence of  
23 that guilt. And what do we know about the flight in this case? We  
24 know that had Officer Cochran not stopped the Defendants in that  
25 car, who's to say what they would have done next.

1           They stopped because they crashed. And after crashing,  
2 they fled. You head Jaiden Caruso fled towards the Chevron,  
3 Officer Cochran had to chase after him and that finally upon  
4 apprehending him, his response to her was well this will all just  
5 wash away.

6           We also heard that Kody Harlan fled in the other direction,  
7 conveniently towards Jaiden Caruso's house at the Villas  
8 Apartments. And we heard from Detective Condratovich that  
9 pursuant to some investigation, they discovered they wanted to do  
10 a search warrant at Jaiden Caruso's Villas Apartments.

11           And why? Because Jaiden Caruso had received a text  
12 shortly after this crash and there had been some other  
13 conversations indicating that Kody Harlan might have stopped by  
14 that Villa Apartment. It might have been the place where that gun  
15 was ditched. So they executed a warrant approximately a week  
16 later and they didn't find anything.

17           We know that inside that very vehicle were the shoes that  
18 were purchased by Kody Harlan, that those shoes were purchased  
19 with cash. We see the Shoe Palace shoe bag that Jaiden Caruso  
20 purchased. We see the shoes that originally had blood on them,  
21 and he switched out of. We see the shirt that he was wearing at the  
22 scene of the crime and at the mall has now been thrown in the back  
23 and taken off.

24           We know that the firearm that was used was now in the  
25 passenger side seat compartment where Jaiden Caruso fled from.



1 And we know that Matt Minkler's wallet was found in the very back  
2 seat. And a day before Matt Minkler was posting a Snapchat about  
3 all the money he had. And conveniently, a day later this wallet is  
4 now in the backseat and the only thing left in it is his Silverado high  
5 School ID card.

6 Now Ladies and Gentlemen, you were instructed a lot on  
7 the law and you're given an enormous amount of it. However, one  
8 of the most important things you will be instructed on is to provide  
9 and allow for your common sense. You are reasonable men and  
10 women and you're allowed to make reasonable inferences from the  
11 evidence.

12 Mr. Helmick stood before you during opening statements  
13 and indicated that injustice anywhere is a threat to justice  
14 everywhere. And I'd submit to you that that is very true. And I  
15 would submit to you that the only justice in this case is to find the  
16 Defendants guilty of first-degree murder with use of a deadly  
17 weapon, robbery with use of a deadly weapon, and accessory to  
18 murder with use of a deadly weapon.

19 Thank you.

20 THE COURT: Mr. Yampolsky, on behalf of Mr. Caruso.

21 MR. YAMPOLSKY: Thank you, Your Honor.

22 **CLOSING ARGUMENT FOR THE DEFENDANT CARUSO**

23 BY MR. YAMPOLSKY:

24 There is no justice, just us. No matter what happens, is  
25 there justice for Matt? Should that have happened? Absolutely not.

1 MR. HELMICK: No, Your Honor.

2 MR. YAMPOLSKY: No, Your Honor.

3 THE COURT: Okay. You can go get them. Thank you.

4 [In the presence of the jury]

5 THE MARSHAL: All rise for the jury.

6 THE COURT: You all can be seated. Thank you.

7 We will be back on the record. Mr. Harlan, Mr. Caruso are  
8 present, all the attorneys and our jurors are present.

9 Ladies and Gentlemen, we'll continue on with our closing  
10 arguments. Mr. Harlan, on behalf of Mr. Harlan.

11 MR. HELMICK: Thank you very much.

12 **CLOSING ARGUMENT FOR THE DEFENDANT HARLAN**

13 BY MR. HELMICK:

14 Good afternoon, everybody.

15 You know I was sitting in my office last night, going over  
16 what I was going to say here today and I'm sitting there and I'm  
17 thinking to myself, have I done everything I could for this young kid.  
18 And the fear begins to kind of sit in, I'm driving home, still thinking  
19 that stuff. And even now I'm standing here and my heart's  
20 pounding through my chest, everything's going on in here; that fear  
21 is still there. And I'm glad it is because it motivates me to talk to  
22 you about this case.

23 The Prosecution has asked the question why are we here.  
24 They've asked that over and over. It's a great question. We're here  
25 because some drugged-up reckless kid wanted to play a deadly



1 game with his gun. We're here because he bragged about it  
2 afterwards. We're here to -- and I'm flattered that they used the  
3 quote by we're here to provide justice to prevent injustice. We're  
4 not here because of some alleged robbery. We're not here because  
5 of some lick.

6 And we're certainly not here because of Kody Harlan's  
7 actions in anyway, other than being an accessory after the fact.  
8 Every single kid that got up here and testified in this case said that  
9 Kody was asleep at the time that Jaiden fired into the ceiling and  
10 that Kody was asleep at the time that Jaiden killed Matt.

11 They said it doesn't matter but that's wrong. It does  
12 matter. We heard that he was laying down on the couch the  
13 majority of the time, that he was out of it, that he wasn't saying  
14 much, that he wasn't -- he didn't indicate his thoughts on getting  
15 more drugs. All those things. There's not a single piece of  
16 evidence that has been provided in this case by them that can test  
17 those facts. Not one.

18 But let's talk about this robbery allegation for a minute.  
19 Let's talk about the robbery allegations. And let's look at -- let's  
20 look closely at the Prosecution's story here. Let's look at the facts.  
21 Matt calls Jaiden three times. They say that well he's the only one  
22 who got picked up, well because he asked to get picked up. He calls  
23 Jaiden three times so that he can get picked up from his house.

24 They -- nobody called him first in an effort to lure him  
25 over to that house to get robbed. He said I got you on some when

1 you get here, right? I got you on some marijuana. All the kids said  
2 when he showed up, he had marijuana on him. If there was plan --  
3 and Mr. Yampolsky talked about this. If there was some plan to rob  
4 him, why didn't they do it then when they picked him after they got  
5 him from his house when he was all alone, when he had the brand-  
6 new bag of marijuana on him? Wouldn't that have been the time to  
7 do it? It doesn't make sense. And then when he gets there, he's  
8 sharing it with everybody. It also doesn't make sense to rob  
9 somebody of something that they are giving away.

10 But let's look though -- let's look at what all the kids in this  
11 case said. I want to go over each one of these. Let's start with  
12 Kymani. So when Mr. Pesci was questioning Kymani at first, he  
13 said he didn't remember anything about the lick. Mr. Pesci went  
14 through every single person and he said he didn't remember and  
15 then what does he do, he grabs his police statement, he refreshes  
16 his memory. Okay, now he remembers that it came from Kody and  
17 Jaiden, okay?

18 When I get up to question him on the stand, what does he  
19 say? Now he vaguely remembers the mentioning of the word lick.  
20 At the preliminary hearing, I talked to him about his testimony  
21 there. He said he didn't remember any conversation about the lick  
22 and that wasn't my question at the preliminary hearing, that was  
23 Mr. Pesci's questioning. And again, same thing that happens, what  
24 does he do? He refreshes his memory; okay, now he remembers  
25 again.

1           You know what hasn't been mentioned and one of the  
2 jurors actually asked about this in one of their questions. What  
3 about this unknown African American kid that was there with the  
4 spray paint can when Kymani showed up? Nobody's ever said  
5 anything about him, where'd he go? Why haven't they talked about  
6 him at all? So we have another person who's there that they  
7 haven't taken away from the scene at all; who had the spray paint in  
8 his hand.

9           More of my questioning to Kymani Thompson. Never  
10 heard any talk about wanting to rob Matt while he was there.  
11 Directly contradicts what Mr. Pesci was saying to him on direct  
12 examination or what they were talking about. Nothing about  
13 wanting to do a lick on Matt. Never heard -- well, who was the  
14 target of this lick? What was to be taken? When was it to be taken?  
15 Why? All of those important facts. None of that stuff.

16           And here's the most important thing, he only came up  
17 with this robbery opinion based off of what he read on the news  
18 articles and comments. And you remember him saying that. Can  
19 you imagine if I were to make an argument to the Judge and he  
20 says to me, well, Mr. Helmick, where'd you get that argument from?  
21 How'd you come up from that? If I say, Judge, I read it off the  
22 News -- read about the comment, can you imagine what would  
23 happen to me if I said that?

24           Then what about a juror? What if a juror based their  
25 decision to convict somebody -- or their verdict off of what they

1 read on the News or some comment? They would be disqualified.  
2 Shouldn't the same be for Kymani Thompson? Shouldn't his  
3 testimony in regard to any talk about a robbery or a lick, shouldn't  
4 that be disqualified by you?

5 More of my questioning to Kymani Thompson. It's  
6 important he wasn't there when Matt was shot. We know that he  
7 left -- him and Ghunnar left right after that shot into the ceiling. So  
8 he didn't know for sure what happened. He was just guessing. And  
9 you saw me asking that. He was just guessing.

10 Okay. Let's talk about another kid. Let's talk about  
11 Ghunnar. And he was a -- he said some interesting stuff. You know  
12 what has really frustrated me this case is when kids get up here,  
13 when they talk to the police, when they've had lengthy formal  
14 interviews and all the sudden they get up here and they say  
15 something totally different.

16 He was Kymani's friend. Kymani and him shared opinions  
17 as to what happened after this case. He said he heard talk about a  
18 lick but like I mentioned to you he didn't tell the police one year ago  
19 when he had that formal interview with the detective. Didn't tell the  
20 police two weeks ago when he had another interview with the  
21 detective. And even so, even what he said when he testified, he  
22 said any conversation that he heard about a lick or a robbery was  
23 only in regard to Jaiden only. That's what he said.

24 Now this was actually an answer to one of your guy's  
25 questions, which I thank you because listen I make mistakes and

1 stuff. I can't get it all right and sometimes you guys point that out  
2 by your questions, and I appreciate that. And this is one of the  
3 answers that was given by one of your questions to Ghunnar.

4 Kody was asleep on the couch. Didn't say anything about  
5 a robbery or a lick.

6 That was his answer.

7 Okay. Let's talk about Charles for a second. Consistent  
8 theme here, Kody was asleep on the couch at the time Jaiden shot  
9 to the ceiling. He was asleep on the couch when Jaiden killed Matt.  
10 No testimony from Charles who was there the whole time, we saw  
11 him in the videos -- no testimony about hearing anything about a  
12 robbery or a lick.

13 Okay. Let's talk about Trae for a minute here. When he  
14 walked up to the house that day after Matt had already been shot,  
15 Charles told him, Jaiden shot Matt. It was an act -- and then Jaiden  
16 walks in, it was accident, he was playing Russian Roulette and  
17 accidentally shot him.

18 If these things are being said, why are they lying to their  
19 own friends? This is right after this event happened. It's fresh in  
20 his mind. Never heard any talk about killing Matt so that he could  
21 be robbed. Nothing like that from Traceo.

22 And then we get to Trae's new stuff, another kid who got  
23 up here and said some stuff that I was totally taken back by because  
24 he didn't say anything like that before. In fact, he said quite the  
25 opposite. And so I hope I did a good job by showing you guys that



1 he said a bunch of other stuff. And how many times did I have to  
2 get up here and grab the documents and say Trae, does this refresh  
3 your memory? How many times did I have to impeach him on all  
4 those things that he said?

5 He said now, when Mr. Pesci was questioning him, Kody  
6 spray painted Fuck Matt. Kody went through Matt's pockets. Well,  
7 what was his incentive? He walked in here with shackles on his  
8 ankles and on his hands. These charges -- he was an accessory to  
9 murder, malicious destruction of property, everything's on  
10 probation, it's all stayed. He's up on the mountain, I'm sure he  
11 wants to get off. He said that himself. Of course he's going to do  
12 anything he can to get out of this jam. And he's definitely not going  
13 to admit to what he did.

14 And then we get to his statement to the police. Well, the  
15 statement to the police, Kody wasn't spray painting. Didn't even  
16 know at first what was spray painted but then tells the police later  
17 in the interview that he actually did know what was spray painted.  
18 Why? I mean, why lie? Either you do or you don't now. Why are  
19 you lying about that? Kody never touched Matt's pockets. That's  
20 what he told the police, but in here he said something totally  
21 different.

22 Then here's interesting -- here's an interesting thing. How  
23 is Kody doing all these things that he said that he was doing now  
24 but when he talks to the police, he says that Kody was out of it.  
25 Wasn't really even talking. Awful to the point to where he couldn't

1 even comprehend what was going on. He was just standing there.  
2 Jaiden doing all the talking.

3 Does that sound like someone who's going to be able to  
4 go through pockets and spray paint and all kinds of stuff like that?

5 Here's some stuff that I want you to think about when  
6 you're deliberating. Trae lies about sending the photos of the  
7 bloody towels and his feet being wet to Kristin Prentiss. When she  
8 testified, I asked her about that, and she said that Trae sent her the  
9 bloody towels in the photo. So he was there, he was sending  
10 photos too. Trae was standing next to Matt after the body was  
11 moved. They showed you the first video of Kody standing there  
12 and then after the body was moved, who was standing right next to  
13 him? That was Trae.

14 Trae admits to spray painting both on Thursday and that  
15 day. After Matt was already killed, he was spray painting, but he  
16 didn't -- he wasn't the one who wrote Fuck Matt.

17 And then here's an interesting thing, he says that he just  
18 waits outside after he helps move the body into the closet, middle  
19 of the summer; you guys do your thing, I'm just going to sit outside  
20 and sit in the hot sun, where there's no chairs, nothing but rocks.  
21 That doesn't make any sense for five minutes. Why wouldn't he  
22 just watch out with the kids that he was with, Jaiden and Kody  
23 already in the house? Why wouldn't he just walk out together?

24 Trae steals. Yeah, he didn't buy stuff at the mall because  
25 he didn't feel the need to buy stuff, he'd just rather steal it. And so



1 we already know that he's a thief. We know that somebody took  
2 Matt's wallet, okay, and so we know that Trae was a thief. We  
3 talked about what he was on probation for and so forth. Malicious  
4 destruction of property, consistent with spray paint.

5 Now here's a very important witness, Alaric Oliver,  
6 because he was the only kid that was actually there the whole time,  
7 okay? He was in the house the whole time until Matt was shot.  
8 Never heard any talk about wanting to rob Matt. Never heard any  
9 talk about doing a lick. Nobody was angry or mean towards Matt,  
10 didn't think there was a plan to rob Matt at all.

11 What else does Alaric say? Let's see. Kody was asleep on  
12 the couch off and on. Called Kymani, told him that -- this is  
13 somebody who was there. Told him that Jaiden was clicking the  
14 gun, dry firing the bullets, but one of the times it didn't click no  
15 more and Matt fell to the ground. On that same phone call he says  
16 that Kody was asleep that after the loud bang he popped up. That's  
17 what Alaric said.

18 Okay. So I mean, here's the thing. Alaric was the only kid  
19 there who was awake at the time that Jaiden shot Matt, remember?  
20 Because Charles said he was asleep, and Kody was asleep on the  
21 couch as well. Therefore his story is direct evidence of exactly what  
22 really happened. He saw it, he felt it, he heard it. Just like His  
23 Honor said in his example about the rain at the beginning of this  
24 trial.

25 And, you know, what's interesting is that he was the only

1 kid that became emotional when he was up here testifying. This  
2 poor kid was the only -- because this poor kid was the only kid who  
3 had to see this horrific incident unfold right before his very eyes.  
4 The only kid. I ask that you give his testimony the most credit here  
5 because he really was the only kid who knew what happened -- who  
6 saw it all happen.

7 I want to talk to you about accountability because we had  
8 talked about that way back in jury selection -- sorry, I got to take a  
9 sip here. We had talked about that way back in jury selection and I  
10 had asked every one of you the question and every one of you  
11 raised your hand when I asked them about accountability, and you  
12 made a promise. You said that you would hold each person in this  
13 case accountable only for what they did.

14 Accountability is so important in this case for Kody Harlan  
15 because only one kid pulled the trigger. Only one kid was taking  
16 the bullets out of the gun, leaving one in and pointing it at the other  
17 kids. Only one kid was bragging about what he did. Taking a video  
18 of Matt laying in his own blood deceased. Awful videos. Only one  
19 kid tried to post that on social media. Therefore only one kid in this  
20 case is responsible for the death of Matthew Minkler. And we know  
21 what his name is. It's not Kody Harlan. But since we're talking  
22 about accountability, we got to talk about Kody's.

23 And I told you at the beginning of this case that he was no  
24 angel here. Kody did some bad stuff. He did some wrong and  
25 illegal stuff. Let's talk about what he was accountable for. I can't

1 stand up here and look at you in the eyes and try to pretend that  
2 Kody didn't do anything wrong. He helped move the body. He lied  
3 to the police about a gun. He ditched the gun, okay? He ran from  
4 the police. He didn't call the police when he saw Matt on the floor,  
5 dead after he woke.

6 What does he do? Yeah, he goes shopping, he goes to a  
7 pool party, all those things. He pointed the laser of the gun at  
8 people. He did all these wrong and illegal things in this case. And  
9 this is the real reason that he's sitting here in this trial with Jaiden.  
10 He made some bad and stupid mistakes. Mistakes that have severe  
11 consequences and he's willing to accept that. He's willing to be  
12 held accountable by you for that.

13 But, you know, all these things here that he did, all of  
14 these things that Kody did wrong and illegal, they don't equal  
15 murder. The law doesn't say that if you do all these things and you  
16 just so happen to be friends with the kid that pulled the trigger, that  
17 you too are guilty of murder. That's not what the law says. Nor do  
18 all these things equal robbery.

19 Let's talk about that for a second. Let's talk about Matt's  
20 wallet. Matt's wallet we know was taken in this case and we know  
21 that Trae was sitting in the right rear passenger seat of the car on  
22 the way to the mall; the exact spot where the police searched the  
23 car and found Matt's wallet. We know that.

24 We also know that there was an error in this case because  
25 the police did not test the wallet. It would have been nice if they

1 would have tested the wallet because then we would have our  
2 answer, right? We'd have the fingerprints, we'd hopefully have the  
3 DNA of the wallet, then we'd know who would have taken the  
4 wallet. But that was an unnecessary error in this case.

5 Unnecessary error.

6           The Prosecution tries to make it seem as though the  
7 robbery could have been done -- I mean, the taking of the wallet  
8 could have been done by Kody. Could have, right? And they base  
9 that off of Trae's testimony. Trae's inconsistent testimony. But  
10 could have is not the standard in a criminal case. You can't convict  
11 somebody for something you could have done. And I'll go over this  
12 in a second. It has to be done beyond a reasonable doubt. We'll  
13 talk about that in a second though.

14           The other thing is that -- I don't know if you all noticed this  
15 but when you watched the video of Kody at the cash register,  
16 buying the shoes, and maybe one of you guys caught this, I don't  
17 know, but the person to his left was Jaiden and what does he do?  
18 He walks up here, grabs a shoe cleaning kit, puts it in his bag, walks  
19 right out.

20           Another person that we know stole something. So Trae  
21 and Jaiden and the two people that we know who stole something  
22 in this case.

23           But let's talk about the most important thing here is this  
24 could not legally be considered a robbery -- and Mr. Yampolsky  
25 talked a lot about it. It cannot legally be considered a robbery

1 because -- and listen, sadly and respectfully Matt was deceased at  
2 the time that somebody took his wallet, therefore no force or fear  
3 could have been -- could have even been used.

4 Let me give you an example. Somebody's asleep, they  
5 have a hundred bill hanging out of their pocket. Another person  
6 walks up, they take the hundred dollar bill out of their pocket, they  
7 put it in theirs. That's not robbery. The person was asleep. That's  
8 a different type of crime. Larceny from a person, theft from a  
9 person. But there's no force or fear needed in this case, as I  
10 mentioned, because he was already deceased.

11 Now, there's one caveat. There could be a robbery and  
12 only by Jaiden if at the time that he pulled the trigger that killed  
13 Matt, he was doing so for the purpose of taking Matt's stuff. He  
14 was using the gun, the force, for the purpose of killing Matt to take  
15 his stuff. That's the only way there could be a robbery and that's to  
16 Jaiden only.

17 As we come to a close here, I want to just go back to  
18 Jaiden's words -- I want to just go back to Jaiden's words one more  
19 time. Because when we look at the words here -- when we look at  
20 the words, it tells us what happened, who did it. The crime is  
21 solved by just looking at the words that Jaiden wrote. Bro, I just  
22 caught a body. I killed Matt. I shot him. I shot him on accident. I  
23 just caught a body. Those are his words. Kody was asleep on the  
24 couch at the time that Jaiden killed Matt.

25 By your verdict and your verdict only, injustice can be



1 prevented here. And it would undoubtedly be an extreme injustice  
2 to convict someone of murder and robbery, the biggest crime there  
3 is, while they were sleeping. What an awful nightmare that would  
4 be to wake up to.

5 But by your verdict and your verdict only, you can also  
6 provide justice by holding Kody accountable for what he did. In  
7 regard to Kody Harlan's role, he was an accessory to this murder.  
8 For all the things that he did after Matt was killed, he was an  
9 accessory to this murder and he's willing to be held accountable for  
10 that by each one of you.

11 Let's talk about this poster board here for a second  
12 because I think this lays it out quite well. It's not -- if you think well,  
13 you know what, maybe he's -- maybe Kody's probably guilty.  
14 Maybe his guilt is highly likely. Maybe it's possible. All the way up  
15 here, maybe it's highly likely. But still not guilty. They have to  
16 show it beyond a reasonable doubt in your mind that there was this  
17 robbery.

18 And guess what, they want the robbery so bad because  
19 that's the only way that they pull Kody into this first-degree murder  
20 is by putting him into this robbery theory of theirs. That's the only  
21 way they get him. But that's not what he did. He was an accessory.  
22 Yes, he was. But there was no robbery and they have to prove that  
23 beyond a reasonable doubt in this case.

24 We talked about redwoods and palm trees and Mr.  
25 Yampolsky used that when he was talking to you guys and

1 everybody here -- almost everybody -- almost everybody here  
2 raised their hand and the said that they felt like they were a  
3 redwood. And -- an open-minded redwood but a redwood. And  
4 because of this they would not be peer pressured into doing  
5 something that they felt deep down that they did not want to do.

6 And we had talked about this again, during jury selection.  
7 I'll just go back to this. Every person's voice on this jury, no matter  
8 what the age, occupation, everything, it's just as important as the  
9 person sitting next to them. But that's the beauty of it that we  
10 talked about.

11 I want to show you one more quote actually before I tell  
12 you just the last couple sentences I wanted to tell you. Here's one I  
13 found last night when I was working on this. This is from a famous  
14 lawyer from the early 1900s. He says: You can only protect your  
15 liberties in their world by protecting the other man's freedom.

16 That's powerful. You can only protect your liberties in this  
17 world by protecting the other man's freedom. Myself, as well as  
18 my client Kody Harlan only ask that you take your time, that you  
19 think it all over, that you ponder the evidence.

20 And after all that is done, we ask that you hold Kody  
21 accountable for what he did, for being an accessory to this murder.  
22 But not for committing the murder, not for committing some  
23 alleged robbery, in any way, shape, or fashion that the Prosecution  
24 is trying squeeze Kody into; through all their theories, they're trying  
25 to squeeze him into. That's not what happened here. It's certainly



1 not what happened here beyond a reasonable doubt.

2 We ask that you find Kody Harlan not guilty of the murder  
3 and robbery in this case. Hold him accountable for what he did,  
4 being an accessory after the fact. Thank you.

5 THE COURT: Thank you.

6 Mr. Pesci, on behalf of the State.

7 MR. PESCI: Thank you, Your Honor.

8 [Colloquy between the Court and Counsel]

9 THE COURT: We're going to take a quick break, Ladies  
10 and Gentlemen. If you go ahead and step outside with the marshal  
11 and we'll see if we can get this figured out.

12 [Court recessed at 3:42 p.m., until 4:00 p.m.]

13 [In the presence of the jury]

14 THE MARSHAL: All rise for the jury.

15 THE COURT: You all could be seated. Thank you.

16 We will be back on the record. Mr. Caruso, Mr. Harlan, all  
17 of our attorneys and all of our jurors are present.

18 We're going to continue on with closing arguments. I  
19 patrol officer for the inconvenience. I think we have a workaround  
20 in place, so keep your fingers crossed.

21 Mr. Pesci.

22 MR. PESCI: Thank you.

23 **CLOSING ARGUMENT FOR THE STATE**

24 BY MR. PESCI:

25 Ladies and Gentlemen, we just had a technological snafu.

1 Don't hold that against anybody, please. Thank you for your  
2 patience, we're almost there. When I'm done, you will get the case  
3 and you will start to argue.

4           There are some things I need to go over because you  
5 heard a lot in this case, and we need to apply the law to the facts to  
6 come to the conclusion. The conclusion in this case is that the  
7 Defendants are guilty as we told you at the beginning. We're not  
8 trying to force something through some hole. We're trying to hold  
9 the people accountable who did what they did to Matthew.

10           We're here because Matthew's dead. That's why we're  
11 here. We're here because someone put a gun to Matthew's face,  
12 pulled the trigger, and then left him on the ground. And then  
13 videoed. That's why we're here. We're not here about some quote  
14 from somebody somewhere else, we're here because he's dead.  
15 And when you're asked to say that this is not a conviction because  
16 there is reasonable doubt, there is not reasonable doubt.

17           The instruction, Number 5, you have it in your packet, it's  
18 even numbered for you. Instruction Number 5 specifically says:  
19 Doubt to be reasonable must be actual, not mere possibility or  
20 speculation. Possibility and speculation do not equate to  
21 reasonable doubt. The evidence in this case shows you what  
22 happened. You were just told a moment ago that somehow some  
23 way you can't rob a dead person. That's dead wrong. The robbery  
24 instruction has this language. This is in the packet. I'm not making  
25 this up.

1           Such taking constitutes robbery whenever it appears that  
2 although the taking was fully completed without the knowledge of  
3 the person from whom taken.

4           That would be a dead person.

5           Such knowledge was prevented -- their inability to know  
6 what's happening was prevented by the use of force or fear.

7           Under the law, you can rob a dead person. When  
8 Matthew's shot in the face and killed and his money is taken, that's  
9 robbery.

10           Now, what's really important to know and to apply and is  
11 the law, in order for it to be a felony murder, in order for it to  
12 become murder of the first degree because of felony murder, the  
13 intent to commit the robbery has to predate the shooting.

14           So if there is intent to rob Matt before he is shot and killed  
15 then taking of the -- from him, the money after he's dead is robbery  
16 and is felony murder robbery. Keep that in mind when you're back  
17 there and you're going through this.

18           You were just told who is Jaiden Caruso and you were  
19 talked about how he's not a person who did some terrible shooting  
20 in some other area of the country or even here on the Strip, you  
21 know, eliciting this idea of these mass shootings. We're not saying  
22 he's a mass murderer. And he doesn't get out of his responsibility  
23 because the body count's not three, four, five, or fifteen. He's  
24 responsible. And this is the guy who he is.

25           You know, there's a lot about impugning the witnesses in

1 this case, the teenagers -- and we'll get into that in a minute. But  
2 there was an impugning of the witnesses in this case about what  
3 they said. Officer Cochran has no ax to grind. She isn't working off  
4 a case. She's not a teenager. What does she say the Defendant  
5 said? When I turn 18 this will all wash away.

6 So in answer to the question posed by Defense Counsel,  
7 who is Jaiden Caruso, there it is. He's someone who thinks this is  
8 going to wash away. It's not going to wash away. Matt's not  
9 coming home. And responsibility for what they did to him, it needs  
10 to be imposed. Under the law. Not emotion, the law.

11 Malice. You were talked about malice. You know, the  
12 instructions are really important. There's a Number 19 there for  
13 you so you can go back into it, right? You were talked about how it  
14 wasn't this and it wasn't that, so therefore it wasn't malice. What  
15 does the instruction actually say? Malice aforethought means the  
16 intentional doing, picking up a gun, walking up to a person, and  
17 pulling the trigger, to the face. A wrongful act without legal cause  
18 or excuse. It's not justified. It's not self-defense. It's not even  
19 voluntary manslaughter, what they're saying. We'll get into that in  
20 a minute.

21 Without the law considers adequate provocation. That's  
22 what malice is. It's intentional doing of a wrongful act that you  
23 don't have an excuse for. The instruction goes on to say it's really  
24 important in the law, may and shall. Those are really important  
25 concepts. And the concept of malice: The condition of mind

1 described as malice aforethought may arise from any hatred,  
2 revenge, or roommate percent ill will, spite, or grudge towards the  
3 person killed. It may also arise from an unjustifiable or unlawful  
4 motive or purpose to injure another.

5           It is not required. You don't have to have those things in  
6 order for it to be malice. Those are examples of how it could be.  
7 And my co-counsel explained how that fit in the context of when  
8 Matthew walked up and said hey, you almost hit me. And then  
9 time passed and then Jaiden picked up the gun and walked over.

10           That could be that he was angry about that. That's a  
11 possible way of showing that malice. You don't need that because  
12 malice is the intentional doing of a wrongful act without legal cause  
13 or excuse. He killed Matthew without a legal cause or excuse. That  
14 was a wrongful act. That's malice.

15           You were just told earlier about how it was error for the  
16 police to not have tested the wallet, right? Ask yourself this, what  
17 did the test of the spray can -- spray paint can yield? An  
18 inconclusive determination.

19           Do we know for a fact that DNA is going to be conclusive?  
20 It might have been, but we don't know, right? So it's not  
21 reasonable doubt just because something may have turned out one  
22 way or the other. Remember going back to what I read, Instruction  
23 Number 5, speculation's not reasonable doubt.

24           Voluntary manslaughter. It's the voluntary killing upon a  
25 sudden heat of passion caused by a provocation, apparently



1 sufficient to make the passion irresistible. That's what you have to  
2 have for voluntary manslaughter. Jaiden Caruso doesn't get  
3 voluntary manslaughter without that.

4 Does that fit in our case? The killing upon a sudden heat  
5 of passion. What was the sudden heat of passion? The evidence  
6 from the witnesses was that time had passed between the shot to  
7 the ceiling and the shot to the face. And we know that because  
8 Ghunnar left, Kymani, left and we have actual video evidence from  
9 Matt showing the shot to the ceiling and then panning out across  
10 the room. Time has passed. There's no ill will, anger, screaming,  
11 provocation. There's none of that. And even if there was, that  
12 provocation apparently sufficient to make the passion irresistible.

13 Do you know what voluntary manslaughter is? I go home  
14 and find my wife in bed with another man, I get my gun and I shoot  
15 them both. That's voluntary manslaughter. That's -- the idea on  
16 the law is like look that's still criminal, we're not going to condone  
17 killing somebody, it's just less serious -- that's not the right word.  
18 It's less criminally responsible than a premeditated killing because  
19 the idea is the heat of passion. I lost my mind when I saw them in  
20 bed. And it's the kind that's going to make it irresistible; that I just  
21 knee jerk react to it. There is absolutely, positively none of that in  
22 this case. That's why you cannot come back with voluntary  
23 manslaughter. It does not apply.

24 Involuntary manslaughter. So I -- I mean, we got the  
25 instruction, being told it's not involuntary. I'm a little confused why



1 we got the instruction if it wasn't. But let's go through it  
2 nonetheless. It's a very long instruction, right, about what it could  
3 be; what it's not? Look at that comma where it says but and pick it  
4 up from there.

5 But where at the involuntary killing occurs in the  
6 commission of an unlawful act which in its consequence it naturally  
7 tends to destroy the life of a human being or is committed in the  
8 prosecution of a felonious intent, the offense is murder.

9 Translation, you don't get involuntary manslaughter when  
10 you take a gun and you point it at a person's face and then you pull  
11 the trigger. There's nothing involuntary about that.

12 The fact is but where the involuntary killing occurs in the  
13 commission of an unlawful act which in its consequences naturally  
14 tends to destroy the life of a human being, pointing the gun at a  
15 person's face and pulling the trigger, that naturally tends to destroy  
16 the life. You've seen that. You've seen the video.

17 And then the added instruction, the added paragraph to  
18 this instruction, Number 31: Involuntary manslaughter does not  
19 involve the conscious use of a deadly weapon in the commission of  
20 a crime.

21 If it is the conscious use of a deadly weapon, it cannot be  
22 involuntary. We know it's a conscious use because he picked it up,  
23 he walked over there, and he pulled the trigger. But even if you  
24 somehow think oh well, you know, he's not really sure how a gun  
25 works. Really? There's the shot to the ceiling that predates in time

1 the shot to the face. He knows that gun works. He knows what  
2 happens when you pull the trigger. You've literally seen the  
3 evidence of that, the hole in the wall.

4           You've heard about them being so high or drunk that  
5 somehow this is not going to be a premeditated murder and you  
6 have to assess that. You know, the interesting thing, where does  
7 the evidence come in that they were so high or drunk? Who  
8 provides that evidence? Who are some of the witnesses that  
9 provide that?

10           Could it be, no, you're kidding Ghunnar? Could it be  
11 Kymani? So let me get this straight, they want you to believe  
12 Ghunnar and Kymani when it's good for them because they relied  
13 on Ghunnar and Kymani's testimony about how everyone's  
14 smoking weed, taking Xanax, and drinking. They are credible  
15 witnesses there but somehow not later on. Keep that in mind when  
16 you're assessing their credibility.

17           What is it that they did that shows you their capacity to  
18 deliberate? They're able to drive. I mean, get in a car, work the  
19 transmission, drive to a location. Now this is to go get Matt. This is  
20 at the beginning of the drinking, the taking of the drugs. So maybe  
21 they're not just that high yet.

22           What about the trip to the Galleria mall? You have an  
23 exhibit. It's 10.7 miles. There are multiple ways to get from Cool  
24 Lilac, you'll see it in the exhibit, to the Galleria Mall. There's a  
25 capacity take the highway responsible surface street to go one way

1 or the other. Or better yet, when we get inside and we see the  
2 actual purchasing of items.

3           Able to pull a trigger. Capable of doing that. By the way  
4 there is evidence of premeditation; shot to the face after the shot to  
5 the ceiling. Again, this showing what he knows a gun can do.  
6 Knowing that it can do this and then walking up and pull the trigger  
7 is evidence of the premeditation. Knowing the design, a  
8 determination to kill, that's the instruction. You know that gun does  
9 that because it's been shot into the ceiling.

10                           [Video playing]

11 BY MR. PESCI:

12           Is he falling down? Is he stuttering? Is he stammering?  
13 And do not confuse premeditation with a good decision. You can  
14 premeditate and make a horrific decision to kill somebody and then  
15 to post about it afterwards. You got to get out the phone, you've  
16 got to pull up Snapchat. And if that's on the phone, which we know  
17 it is, then you've got to utilize the application to upload that and  
18 send it on its way.

19           And you can do all that but somehow you're so high or so  
20 drunk you can't premeditate? What about that? How is it possible  
21 to have the capacity to move that body and not just move that  
22 body, to cover it. To cover it with a tarp and then take that phone  
23 and burn it, put it in water, smash it, and spray paint it. But  
24 somehow there's an inability of capacity to premeditate or  
25 deliberate?

1           How about spelling? How's your spelling when you're  
2 high and drunk? It seems to work. There's the phone. Just talked  
3 about all that damage. Why do that to the phone? Ask yourself  
4 that. Why do that to the phone? If this is an accident, if this is not a  
5 robbery, why on earth burn it, put it in water, smash it, and spray  
6 paint it?

7           We talked about able to drive. There's the map. Look at  
8 the different routes. I mean, this is Google search, right?  
9 Everybody's got that in their phones. You can go one way, you can  
10 go another way, make a determination, I'm going to get to the  
11 Galleria Mall, I'm going to utilize the car to get there. This is being  
12 shown to you for a reason. It's to show you how they're acting,  
13 walking, moving at this very time shortly thereafter.

14           And remember what Ms. Overly said, what's the purpose  
15 of going to Shoe Palace? Who gets some shoes? Jaiden. And we  
16 know from the video he's got blood on his black shoes. Got to  
17 change those out.

18           And they were successful in all those purchases. Look at  
19 the bags that Jaiden and Kody are carrying. And Traceo doesn't  
20 have anything. No bags. And there's been this argument about  
21 Traceo being the person who really stole, so maybe there is a  
22 robbery? Wait a minute, am I confused? If he took it, could that be  
23 a robbery?

24           Well if there is a robbery, Traceo didn't take it and these  
25 guys did, that's a problem for them, right? So let's blame Traceo.

1 Let's partner Traceo on the hook. You saw that video, there's not  
2 anything on him. He admitted he stole because he had no cash. If  
3 he stole Matt's money, he uses his cash to buy those things. He  
4 had no cash. You have literal video evidence to confirm that.

5 [Video playing]

6 You have to be able to select your item, bring it to the  
7 counter, and wow, look at that cash. Look at how much cash. But  
8 somehow it can't be premeditated or deliberate.

9 Remember something, when it comes to the context of  
10 voluntary intoxication, when it comes to robbery -- because for  
11 Kody he's a first-degree murder via felony murder. Voluntary  
12 intoxication is not a defense to a general intent crime. The Court  
13 has specifically told you that robbery is not a general -- that robbery  
14 is a general intent crime. So voluntary intoxication does not negate  
15 or get you out of robbery because you're so high or drunk.

16 But there's still more evidence of their ability to do things  
17 because the car crash, he's able to run. You remember the very  
18 beginning of this case, Officer Cochran chases him. He's able to  
19 figure out to run down this back alley, go along this other wall,  
20 jump over it, go past the side of the building, head south, and then  
21 go inside and try to hide inside. That's what Jaiden's able to do.

22 What about Kody? And then Kody takes off beats feet  
23 right way, goes in the opposite direction. He's able to leave that  
24 area, head south and go to the Villas Apartment, where he's taken  
25 into custody by the police. He's capable of doing that all the while



1 so high apparently he can't figure anything out.

2 And -- oh by the way, got rid of the gun. The gun. We'll  
3 come back to that in a minute.

4 Corroboration. Ghunnar and Kymani. You remember the  
5 Defense says that they're okay as witnesses when it comes to  
6 establishing their clients having used alcohol, marijuana, or Xanax.  
7 But somehow they're not good when it comes to talking about the  
8 lick. They're being called into question. And they rely on them to  
9 get in that voluntary intoxication. And you heard that. That's what  
10 they told you. But they're not believable in the context of a lick.

11 Now remember, Ghunnar was 16 years old when he's  
12 interviewed by police. He's not a homicide detective, I asked him  
13 that. He doesn't know all the facts of the case. He's just a 16-year  
14 old kid answering the questions he's being asked by the detective.

15 And this is important, I asked Detective Nichols this and it  
16 might have seemed like it was out at left field. Ghunnar was  
17 interviewed on June the 12th, 2018. Kymani was not interviewed  
18 until June the 13th. Kymani mentions the lick. The first time the  
19 police hear the word lick is on the 13th.

20 That's why it doesn't come up in Ghunnar's on the 12th  
21 because they don't even know anything about it yet. Ghunnar's just  
22 answering the questions. Ghunnar doesn't know what the police  
23 are looking for other than the questions being asked. And the  
24 police don't know yet to ask Ghunnar about a lick because they  
25 haven't heard that yet. That doesn't happen until the next day.



1           You know, Ghunnar -- think about it, I mean, you can  
2 assess the credibility from a person's demeanor on the stand.  
3 Ghunnar's not working off any charges. Ghunnar has no ax to  
4 grind. Ghunnar was scared. He was answering the questions.

5           And I asked him specifically after he'd been cross-  
6 examined, after they were trying to say that he was making this up  
7 about the lick and hearing that before they went to pick up Matthew  
8 and I asked him are you saying this because you're making it up or  
9 someone else told you? And his response was no, because that's  
10 what he saw and he heard.

11           Speaking of working off charges, right? Traceo was  
12 charged with accessory to murder. You have an instruction that  
13 specifically says you're only an accessor to the charge that the  
14 other person is charged with, right? So he -- this only needs to be  
15 corroborated as to the charge of accessory to murder. That's the  
16 only application of that instruction and it talks about how you have  
17 to have independent corroboration. Well they just told you he  
18 didn't. So it's established. Don't confuse what Traceo says about  
19 the robbery and the murder as having to be corroborated, it's as to  
20 the accessory charge.

21           We talked about Traceo didn't take anything from them.  
22 Traceo -- you were told that this was crazy how he said he went and  
23 sat outside. He didn't testify that he sat outside, he testified that he  
24 went outside. He said it was only a few minutes, why is he going to  
25 sit down if it's just a few minutes. He didn't say he say out there, he

1 said he went out there and waited. Because he's not calling the  
2 shots at this place, Ladies and Gentlemen. He's just being utilized  
3 to put a body in a closet. And then apparently being utilized as the  
4 scapegoat as to who really committed a robbery event.

5 Kymani -- switching from Ghunnar to Kymani -- heard a  
6 conversation between the Defendants about doing a lick.  
7 Defendants wanted to rob someone for weed, they kept talking  
8 about it, that's how Matt's name was brought into it. And there's  
9 back and forth about what he said in his statement to police.

10 By the way, in the statement to the police he's with police,  
11 as opposed to when he's in court. And then they're cross-  
12 examining him about how in court he says this, then he says that.  
13 He never backs off from the fact that he said that to the police, back  
14 on June 13th, right? There's back and forth but he acknowledges  
15 yep, that's my statement. And even at the preliminary hearing,  
16 again, not with detectives, but in a courtroom, he acknowledges  
17 that he said that. He was shown his statement.

18 Again, Ghunnar and Kymani talking about before Matt's  
19 picked up, right? What's the corroboration? Why should you  
20 believe Ghunnar and Kymani?

21 Ms. Overly went through some of this. They told you he  
22 shot in the ceiling. Well there's actual video evidence to support  
23 that.

24 They told you that they left after the shot to the ceiling.  
25 There's actual video evidence to support that. Matt's video shows

1 the shot to the ceiling corroborating, confirming what Ghunnar and  
2 Kymani said. Additionally, Matt's video shows Ghunnar and  
3 Kymani are gone. There's the hole to the ceiling and they ran.  
4 That's what they told you. And other evidence is showing that  
5 that's true. That video evidence corroborates them.

6 [Video playing]

7 BY MR. PESCI:

8 You don't see those two kids.

9 You even have Charles coming into this, Charles talking  
10 about phone calls happening. Ghunnar and Kymani told you  
11 Jaiden called the after they left the house, after he shot into the  
12 ceiling. Charles testified that Jaiden called him after he left the  
13 house. The phone evidence corroborates that. You have video  
14 evidence; you have phone evidence corroborating these two young  
15 men -- and including Charles. Because there's the call to Ghunnar.  
16 You can literally see his name. That's to Ghunnar.

17 If he's making it up and he's a liar because he's making up  
18 something about a lick that didn't happen, then why on earth is the  
19 phone evidence actually proving him truthful? And it's not just  
20 Ghunnar, it's also Charles. Charles said that he called.

21 Now listen, Ladies and Gentlemen, we don't pick our  
22 witnesses. The witnesses that are in the case, those are the  
23 witnesses I -- the people that they chose to do this crime in the  
24 presence of, those are the witnesses. Would it be better if they  
25 weren't teenagers? Absolutely. Would it be better if they weren't

1 also doing drugs? Absolutely. But those are the witnesses. That's  
2 why they call -- we call them in because they're the ones that see it,  
3 hear it, and know what happened.

4 Traceo said Kody Harlan when into Matt's pockets and  
5 took Matt's wallet. Big to do about how Traceo said that. Traceo  
6 said he didn't take Matt's wallet, right? And video evidence  
7 corroborates Traceo. There it is. He's got nothing. Whatever he  
8 stole has got to be in his pocket somewhere. He's not walking out  
9 with bags of merchandise. If Traceo stole the money in the wallet  
10 of Matt, Traceo would have stuff in his bags. He wouldn't have  
11 stolen it if he'd had money to be able to purchase it. There's  
12 nothing.

13 [Video playing]

14 BY MR. PESCI:

15 That's shown to you because that was posted on  
16 Snapchat on June the 7th. That's out there. Because kids today  
17 they just think oh, you know, I just post it and nothing happens. It's  
18 out there for anybody to see. Who subscribes or sees or is a part of  
19 his Snapchat. And ask yourself, it's amazing that flush cash that  
20 Matt had on June 7th, look at the flush cash in Kody's hands.

21 We're not saying Kody shot Matt, we're saying that Kody  
22 was a part of the robbery and he took steps in furtherance of that by  
23 literally taking a wallet. And the evidence of that is what you just  
24 watched.

25 Remember that gun? Remember how adamant he was

1 that he didn't do it? Detective Nichols talked about that.  
2 Repeatedly, I didn't have a gun, I didn't have a gun, I didn't have a  
3 gun. Well, who's got a gun? The picture on the left is to help you  
4 realize who it is that's on the couch. I mean, pay attention to this.  
5 We've got these torn jeans right there. The shirt, the red yellow up  
6 at the top left. That's Kody with a gun. But he's adamant he didn't  
7 have a gun. He didn't have a gun. Why be untruthful about that?  
8 Ask yourself that.

9 I mean, Defense Counsel said, put it up there on the board  
10 that his client lied about that, right? So why lie about that? Ask  
11 yourself that. If he didn't commit a crime, if he wasn't a part of a  
12 robbery, and this was just an accident, why on earth lie about it?  
13 Especially when there's evidence to prove that it's not true.

14 We was just trying to help him out, trying to tell him to get  
15 up and stuff. Or like -- we didn't know he was dead.

16 You've seen the video. It's clear as day he's dead.

17 Me and Jaiden were there trying to like clean it up like --  
18 not like clean it up to hide it type shit.

19 Whoa. I said clean it up, whoa, I got to like explain that  
20 away so it's not like I'm trying to hide it. Because what does hiding  
21 it show? You hide something that you did wrong, you don't hide an  
22 accident. You don't hide a mistake.

23 I just put a tarp over him and left him there. I cleaned up  
24 the blood around his face and made sure like -- you know, like I  
25 don't know -- I tried to help him out the best I -- because that was a



1 homie to me.

2 Really? That was a homie?

3 I want to help you all find it because that's my friend, you  
4 know, like I just don't want to leave him sitting there.

5 When he says that to the detective, the shooting has  
6 already occurred, shopping has already occurred, a pool party has  
7 already occurred and then a chase with Officer Cochran has already  
8 occurred, and then running from the scene has already occurred.  
9 But, you know, I don't want to leave him sitting there? That's  
10 exactly what they did, left him sitting there.

11 Like everything I've been telling you has been 100 percent  
12 truth? No, no it hasn't. And knowing that you have to assess the  
13 evidence, put it into context, and make a determination as to the  
14 guilt of these Defendants.

15 The felony murder rule here: A killing which is committed  
16 in the perpetration or attempted perpetration of a robbery is  
17 deemed to murder of the first degree.

18 That's how Kody gets there. We've already talked about it  
19 as far as Jaiden and shooting, right?

20 Whether the killing was intentional or unintentional or  
21 accidental.

22 If you believe that Kody was on the couch sleeping, if you  
23 believe that, that does not save him from the felony murder rule.  
24 Because the evidence establishes that the idea of robbing them  
25 predates the shooting. It happened earlier, it happened when the



1 conversation about the lick occurred, when they went and got him  
2 and brought him back; Matt that is.

3 So when the force, the shooting occurred, he could be  
4 asleep. As long as he was a part of the idea and a part of the acts in  
5 furtherance of the conspiracy to commit the robbery by going and  
6 getting him and then the acts -- as Ms. Overly explained, the acts  
7 after -- you take into consideration taking his cash, taking his wallet  
8 is evidence of that earlier intent. That's felony murder. So even  
9 though he was asleep from the time the shot occurred, it still  
10 applies.

11 We've already gone through this afterthought. You can  
12 rob someone who's dead, but you have to intend to rob them  
13 before they're killed in order for felony murder to apply.

14 Now you're being told repeatedly it's not a robbery. Okay.  
15 Let's snapshot. I showed you some torn jeans and some black  
16 shoes just a moment ago of Kody on purpose, to show he was the  
17 person with the gun and also to show you look who's right next to  
18 the body. Those -- that pocket, it's not turned out. That didn't  
19 magically happen on its own.

20 That's the person next to him. That is Kody Harlan.  
21 There's the ripped jeans, the black shirt. That's the person next to  
22 that body before all that money comes out, right? Those are the  
23 facts. They're unbending. You can't get away from that right there.  
24 His pants have the pockets pulled out.

25 And to add insult to injury, I mean, you really have to be

1 motivated to go get someone's wallet when you're digging in all  
2 that blood. You just saw the video. He, Matthew did not have his  
3 pockets turned out after he was shot.

4 But now when he's being taken from the scene and you  
5 heard from Crime Scene Analyst Proietto, he said I stay with that  
6 body from when I get there until the coroner's investigator takes it  
7 away in that body bag. That blue around the body's the body bag.  
8 He didn't touch those pockets and nobody else touched those  
9 pockets. Those pockets were turned out before police got there and  
10 after he was shot. Because his money's taken and it's used to buy  
11 some clothes.

12 The police asked Kody how Matthew got to the house and  
13 Kody said -- I'm almost done. Here's what I want you to keep in  
14 mind, when you're back there and you're going to make your  
15 determination as to the guilt of these Defendants and if for some  
16 reason you're thinking that okay, Kody didn't actually play a part in  
17 this robbery so therefore he's not a part of the murder, ask yourself  
18 this, the police asked him how Matthew got to the house and Kody  
19 said: He walked -- I guess, he -- I'm honestly -- I don't know how he  
20 got there. He just popped up.

21 Why be untruthful about that? The evidence from all the  
22 witnesses, all the witnesses whether they're allegedly credible or  
23 not credible is that the Defendants left and got Matt. He didn't just  
24 pop up. Think about that. Why did he tell the police he just popped  
25 up? Because you want to know something, Ladies and Gentlemen,

1 you can tell a lot about the truth by what people lie about.

2 I asked at the beginning of this case during jury selection  
3 if some of you maybe as parents or teachers ever have to figure out  
4 what happened between two people, usually kids we're talking  
5 about. You know, who stole the cookie from the cookie jar?  
6 Whatever. Fill the blank as to the thing that happened.

7 And I talked about in the face of people giving you  
8 different stories, could you come to a conclusion as to what really  
9 happened and people said yes. And think about it, when you're  
10 making that analysis, when you're trying to figure out who are the  
11 people that are talking to you and telling the truth, sometimes it's  
12 the lies that lets you know the truth.

13 You know, if my son stole those cookies and he's adamant  
14 he never came downstairs, never came downstairs, and he throws  
15 his sister completely under the bus. But when I go to my son's  
16 room there's all kinds of cookies on the floor. How'd that happen,  
17 son? If you're so adamant about never being downstairs, that's a  
18 big key. You now know he's been downstairs. And the fact that  
19 he's lying so much about it, brings into question whether he did it.

20 So keep that in mind. Why say he just popped up? Why  
21 distance himself from giving Matt a ride? Because the ride is the  
22 beginning of the robbery. The ride is the plan to rob put in action.  
23 That's where it starts. There's a conversation about a lick, but then  
24 there's action. And the action is these two going to pick up  
25 Matthew.

1 Lying about that also helps you know that Ghunnar and  
2 Kymani heard about it. Why should he distance himself from just  
3 getting a ride if there wasn't a conversation about a lick? Why do  
4 that? You lie about the things that hold you responsible.

5 Truth and justice, you've heard about those things.  
6 You've heard quotes, I'm not going to mess with those things.  
7 Truth and justice leads to first-degree murder convictions with use  
8 of a deadly weapon for both Defendants. Truth and justice leads to  
9 a robbery with use of a deadly weapon charge for both Defendants.  
10 And additionally, the accessory murder with use of a deadly  
11 weapon for Kody.

12 Thank you very much.

13 THE COURT: Thank you, Mr. Pesci.

14 All right. We're going to swear our jury -- or our officers  
15 to take charge of our jurors, please.

16 [The Clerk swore in the officers to take charge of  
17 jury during deliberations]

18 THE COURT: All right. Gather all your belongings, take  
19 your notepads with you. You can leave your clipboards here in  
20 court and we'll get you back to the deliberation room, except Ms.  
21 Sepulveda, Seat Number 5, was randomly chosen to be our  
22 alternate seat before we seated.

23 So you're not going to go back to the deliberation room  
24 right now, you're going to kind of peel off with Jackie once you get  
25 back there and she's going to get some information from you and

**EXHIBIT "C"**

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CASE NO.

**Affidavit of J. Dwight McNiel**

COMES NOW affiant, J. Dwight McNiel, and states as follows:

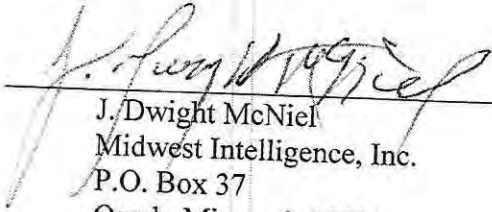
1. My name is J. Dwight McNiel. I am a licensed private investigator located in Ozark, Christian County, Missouri. I have been a private investigator since 1989. From 2008 to 2019, I served on the State of Missouri Board of Private Investigator and Private Fire Investigator Examiners which is responsible for the licensing and disciplining of private investigators and private fire investigators in the State of Missouri. I served as a deputy sheriff and a four-year term as sheriff of Christian County, Missouri, from 1981 through 1988. I also served as the interim sheriff of Christian County in 2015;
2. I am over the age of eighteen and not a party to this litigation;
3. I was retained by Attorney Ryan Helmick to conduct investigation to locate and interview Ghunnar Methvin who was believed to live in the Osage Beach or Lake Ozark, Missouri, area;
4. On October 1, 2020, I made contact in person with Ghunnar Methvin in Miller County, Missouri. I questioned Mr. Methvin about a homicide which had taken place in Henderson, Clark County, Nevada, on June 8, 2018. Ghunnar Methvin has some recollection of the events of that day and told me the following:



- a. When Ghunnar arrived at the residence, Jaiden Caruso, Kody Harlen, Kymani, an African-American male who was unknown to Ghunnar, and a man known only to Ghunnar as "Alaric" were at the home;
- b. Shortly after arriving, Jaiden Caruso asked Ghunnar what was in his backpack, to which Ghunnar replied, "Nothing's in my backpack. I don't have anything;"
- c. Shortly after Ghunnar and Kymani's arrival at the home, Ghunnar stated that Jaiden Caruso and Kody left to pick up another person he identified as Matthew [Minkler];
- d. On this day, Ghunnar Methvin believed that Jaiden Caruso was under the influence of "a lot of drugs," and was smoking marijuana;
- e. Ghunnar stated that Kody had taken a substantial amount of Xanax and was "pretty much zonked out on the sofa;"
- f. Ghunnar stated that he never heard Kody and Jaiden discussing a robbery; he never heard Kody say the words "hit a lick;"
- g. Ghunnar recalled that Kody was asleep most of the time he was at the house and he (Ghunnar) left the house after the first gunshot;
- h. Ghunnar stated that when he was interviewed by the district attorney, the district attorney asked the question as to whether or not someone had stated they were looking to "hit a lick."
5. On October 22, 2020, I interviewed Shannon Pait, the mother of Ghunnar Methvin, at her home at 1392 Gerrard Lane, Osage Beach, Missouri. Ms. Pait told me the following:

- a. Ms. Pait stated that at approximately 11:00 a.m. on the date of the incident, she drove Ghunnar Methvin and his friend, Kymani, to the house in Henderson where the homicide occurred, believing that they were going there to attend a pool party;
- b. According to Ms. Pait, at approximately 2:00 p.m., Ghunnar Methvin and his friend returned to her home. She thought it was strange at the time that Ghunnar had called an Uber for a ride instead of calling her to pick him up;
- c. At 6:00 p.m., Ghunnar received a call on his cell phone in her presence and commented as he handed the telephone to Kymani that he did not want to answer the after the call. According to Ms. Pait, Jaiden Caruso was calling Ghunnar's phone at that time. Later in the evening, Ghunnar and Kymani were on Facetime with Jaiden, and Jaiden said that he just "caught a body." Ms. Pait stated that Jaiden also wanted to know if Ghunnar and Kymani wanted to come out and smoke pot with him, and both of the boys said no;
- d. Ms. Pait did not ask any questions when her son got off the phone; however, later that night, Ghunnar told her that Jaiden killed someone that day. Ms. Pait saw a news story the following Monday and learned that a murder had occurred at the house where she had driven the previous Friday;
- e. Ms. Pait stated she confronted her son and asked if he was there when the murder occurred, and he stated that he was not, but that a gun had been fired near his head into the ceiling and he suspected that he might be killed so he and his friend Kymani left;
- f. Ms. Pait felt obligated to contact authorities;

- g. Following the interview with the Henderson, Nevada Police detectives, Ms. Pait allowed her son to be interviewed by Gian Carlo Pesci at the District Attorney's Office in downtown Las Vegas, Nevada;
- h. Ms. Pait stated that at no time did her son state or tell her that Kody engaged in conversation about "hitting a lick" or robbing someone.
6. Further affiant sayeth not.

  
J. Dwight McNiel  
Midwest Intelligence, Inc.  
P.O. Box 37  
Ozark, Missouri 65721

Subscribed and Sworn to before me on this 19<sup>th</sup> day of FEBRUARY, 2021 by the affiant who is personally known to me.

  
NOTARY PUBLIC



**EXHIBIT "D"**

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**Affidavit of Yadira Ramirez**

COMES NOW affiant, Yadira Ramirez, and states as follows:

1. My name is Yadira Ramirez, and I am a paralegal for Attorney K. Ryan Helmick, Esq.;

2. I am over the age of eighteen and not a party to this litigation;

3. That on Tuesday December 1, 2020, I was present during a phone conversation that K. Ryan Helmick Esq. was having on speaker phone with a Shannon Pait, who is the mother of Ghunnar Methvin, who was a witness used by the State of Nevada in their prosecution of Kody Harlan. During that phone call Ms. Pait made the following statements:

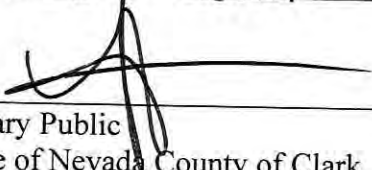
a. She recalled only meeting with the Henderson detectives one time in her home shortly after the killing occurred and meeting with District Attorney Giancarlo Pesci at an office in downtown Las Vegas shortly before the trial started. Ghunnar Methvin was present with her at both meetings.

b. She further stated that she never heard her son Ghunnar say anything about Kody Harlan wanting to "do a lick" or rob anyone during the interview with District Attorney Giancarlo Pesci.

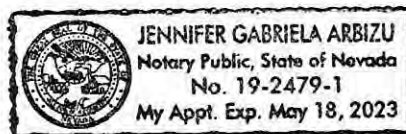
4. Further affiant sayeth not.

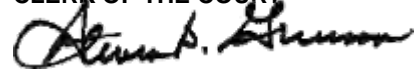
Subscribed and sworn to before me

This 29 day of June, 2021.

  
\_\_\_\_\_  
Notary Public  
State of Nevada County of Clark

 6/29/2021  
\_\_\_\_\_  
Yadira Ramirez





**OPPS**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
GIANCARLO PESCI  
Chief Deputy District Attorney  
Nevada Bar #007135  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KODY HARLAN,  
#5124517

Defendant.

CASE NO: C-18-333318-2

DEPT NO: X

**STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR NEW  
TRIAL BASED ON NEWLY DISCOVERED EVIDENCE**

DATE OF HEARING: JULY 12, 2021

TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion For New Trial Based On Newly Discovered Evidence.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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**AA1791**



## **POINTS AND AUTHORITIES**

### **STATEMENT OF THE CASE**

On July 17, 2018, Defendant Kody Harlan (“Defendant”) and co-defendant Jaiden Caruso (“Caruso”) were charged with Count 1 – Murder with Use of a Deadly Weapon (Category A Felony); and Count 2 – Robbery with Use of a Deadly Weapon (Category B Felony); and Count 3 – Accessory to Murder with Use of a Deadly Weapon (Category C Felony).

On April 8, 2019, Defendant filed a Motion to Sever or in the Alternative Motion to Deem Statements of the Co-Defendant Inadmissible (“Motion to Sever”). On April 11, 2019, the State filed an Opposition to Appellant’s Motion to Sever.

On April 18, 2019, Defendant filed a Motion in Limine Regarding Prior Bad Acts and Photo/Videographic Evidence (“Motion to Preclude Prior Bad Acts”). On April 25, 2019, the State filed an Opposition to Defendant’s Motion to Preclude Prior Bad Acts. On April 23, 2019, the District Court denied the Motion to Sever.

Defendant’s and Caruso’s jury trial began on July 29, 2019. On August 7, 2019, the jury found Appellant guilty of all counts. The jury found Caruso guilty of First-Degree Murder with Use of Deadly Weapon as to Count 1, Robbery with Use of Deadly Weapon as to Count 2.

On August 13, 2019, Defendant filed a Notice of Motion to Place on Calendar to Set Aside Guilty Verdict and to Counts One and Two; in the Alternative Motion for a New Trial and to Request Additional Time for Supplemental Briefing (“Motion for New Trial”). On August 20, 2019, the State filed an Opposition to Defendant’s Motion for New Trial. On September 12, 2019, Defendant filed a Supplemental Briefing for Motion for New Trial. On September 26, 2019, the State filed a Supplemental Opposition to Motion for New Trial. On October 3, 2019, Defendant filed a Response to State’s Opposition to Supplemental Briefing for Motion for New Trial. On October 10, 2019, the District Court heard argument on Defendant’s Motion for New Trial and scheduled a limited evidentiary hearing on the sole issue of the jury discussing improper testimony.

On November 25, 2019, the District Court held an evidentiary hearing and denied Defendant's Motion for New Trial. On December 10, 2019, Defendant was sentenced to Count 1 – twenty (20) years to life, plus a consecutive forty-eight (48) to one hundred twenty (120) months for the deadly weapon enhancement; Count 2 – and forty-eight (48) to one hundred twenty (120) months, plus a consecutive term of forty-eight (48) to one hundred twenty (120) months for the deadly weapon enhancement, to run concurrent with Count 1; and Count 3 – eighteen (18) to sixty (60) months. Defendant's Judgment of Conviction was filed on December 12, 2019.

Defendant filed a Notice of Appeal on January 9, 2020 and filed his Opening Brief on March 17, 2021.

On June 29, 2021, Defendant filed the instant Motion for New Trial Based on Newly Discovered Evidence ("Motion for New Trial").

### **STATEMENT OF THE FACTS**

Throughout trial, the State called 21 witnesses to testify. Of these witnesses, 8 were lay witnesses, 12 were law enforcement, and 1 was a coroner. Additionally, the State admitted 155 exhibits. The relevant testimony of the State's witnesses is outlined below.

#### **Alaric Oliver**

Alaric Oliver was invited to a residence located at 2736 Cool Lilac in Henderson, Nevada, on June 7, 2018. Oliver stayed the night at that home and left early the morning of June 8, 2018, to walk to purchase food. When Oliver returned to the residence, Kymani Thompson, Ghunner Methvin, Charleston Osurman, Vince (last name unknown), and Defendant and Caruso were present. Oliver saw both Defendant and Caruso with firearms. Everyone was drinking and smoking marijuana from about noon to 2:30 PM.

Around 12:30 PM, Defendant and Caruso left to pick up Matthew Minkler ("Minkler"). Defendant, Caruso, and Minkler returned to the house around 1:00 PM with a bag of Xanax. Everyone continued smoking, drinking, and taking Xanax. Throughout the next hour and a half, Caruso would take all except one bullet out of his revolver, point it at different people

and locations around the house, and pull the trigger. At some point, Oliver saw Caruso fire his revolver into the ceiling.

Less than an hour later, Minkler was standing in the kitchen when Caruso stood up from a chair in the living room, walked over to Minkler, picked up the revolver, pointed it at Minkler's head, and pulled the trigger. Defendant was on the couch with his head on the headrest. Oliver immediately panicked and ran out the back door. Defendant and Caruso remained in the house. Oliver did not believe the shooting was accidental.

### **Kymani Thompson**

Thompson was invited to a party at the Cool Lilac residence on June 8, 2018 and arrived with his friend Methvin around 12:30 or 1:00 PM. Oliver, Osurman, Ghunnar, and Defendant and Caruso were present when they arrived and were drinking, smoking marijuana, and taking Xanax. When Thompson first arrived, he had a bad vibe and "something didn't feel right." Thompson saw Defendant with a semi-automatic pistol, Caruso with a revolver, and heard them planning a "lick"—slang for robbery—to obtain money for more marijuana. After Defendant and Caruso planned the robbery, they left to pick up Minkler. Defendant and Caruso returned with Minkler who brought more marijuana.

Over the course of the next couple of hours, Caruso would take all except one bullet out of the revolver, point it, and "dry click" the trigger. When Caruso shot his revolver into the ceiling, Thompson's bad feeling intensified so he and Methvin left.

Thompson returned to the house shortly after he left to retrieve his lighter because he did not want to leave a trace of being at the house. After leaving the house the second time, Methvin received a FaceTime call from Caruso. Methvin handed the phone to Thompson who saw and heard Caruso state he killed Minkler. When Thompson heard this, he hung up because he did not want anything to do with "that."

When Thompson spoke to detectives on June 13, 2018, he said that he believed Defendant and Caruso were trying to rob Minkler for money or marijuana, and Minkler resisted. While Thompson indicated that this theory was generated by what he heard in the media after the killing when questioned on cross examination; Thompson clarified during re-

direct examination that his robbery theory stemmed from hearing and seeing Defendant and Caruso talking about doing a “lick” and Minkler’s name coming up during that conversation.

### **Gunner Methvin**

Defendant and Caruso invited Methvin to the Cool Lilac home on June 8, 2018. Methvin arrived with Thompson and met Osurman, Defendant, Caruso, and Oliver who were smoking marijuana and drinking alcohol. Defendant and Caruso took Xanax.

Methvin saw Caruso with a revolver and Defendant with a pistol, and testified that both were pointing them at people, which made him nervous. Methvin also saw Caruso take all except one bullet out of the revolver, aim it at everyone in the house with the exception of Defendant, and pull the trigger.

Methvin felt uncomfortable at the house and believed Caruso was planning on doing something to someone in the house that day. While at the house, Methvin heard Caruso state he wanted to commit a “lick” and kill someone. Defendant was awake when Caruso made this statement. Within twenty (20) minutes of Caruso making this statement, Defendant and Caruso left to pick up Minkler. Defendant and Caruso returned with Minkler, who had Xanax.

When Caruso shot his gun at the ceiling, Methvin and Thompson panicked and fled the house. After they left, Caruso called Methvin and told him to come back to the house because the police were not coming. Methvin confirmed that he and Thompson returned to the house to get Thompson’s lighter before leaving a second time. When Caruso FaceTimed Thompson and Methvin, Caruso told Thompson he killed Minkler and asked them to hang out with him and smoke marijuana. Methvin and Thompson did not return to the house.

### **Charleston Osurman**

Osurman was at the Cool Lilac residence on June 8, 2018 when Defendant and Caruso arrived around 10:00 AM in a silver Mercedes. Defendant possessed a semi-automatic pistol, and Caruso possessed a 357 revolver. Osurman indicated that Defendant or Caruso invited Minkler over to the house and both drove to pick Minkler up, something they had not done for anyone else at the house.

Osurman testified that when Caruso shot into the ceiling, he almost shot Minkler. Minkler then grabbed the gun and told Caruso he was lucky he did not shoot someone. Osurman confirmed that Thompson and Methvin left the residence after Caruso the shot into the ceiling. Within fifteen (15) minutes of Caruso shooting into the ceiling, Osurman took a Xanax and fell asleep. Shortly thereafter, Osurman awoke to another gunshot and saw Minkler on the kitchen floor and Caruso standing in the kitchen. Osurman and Oliver then fled.

### **Kristin Prentiss**

Kristin Prentiss testified that Oliver and Osurman called him over FaceTime while at the Cool Lilac Residence. During that conversation, another man came onto the phone and asked how to dispose of a body and Osurman showed Prentiss Minkler's body on the floor. Prentiss said he did not know what to do about the body and hung up. Prentiss also testified that he knew Minkler was a drug dealer.

### **Detective Spangler**

Detective Spangler conducted a forensic analysis on Appellant's, Caruso's, and Minkler's phones. Spangler recovered three (3) videos from Caruso's phone. The first video was taken at 12:59 PM showed Caruso holding a revolver with one bullet in it and pointing the barrel of the revolver at the camera.

The second video was filmed at 2:44 PM showed Caruso stating that he "just caught a body," and with Minkler's bloody and crumpled up body lying on the floor in a pool of blood around his head. Appellant can be seen in that video. The third video filmed only eight (8) minutes later, also depicts Minkler's lifeless body with Appellant in the background asking, "are we just gonna leave this Nig\*\* here?" to which Caruso said he did not know whose home they were in and appeared more concerned with the blood on his shoes. These videos were filmed through Snapchat and at least one (1) video was posted to Snapchat. Caruso's phone also revealed calls to Osurman and Methvin the afternoon of June 8, 2018.

### **Traceo Meadows**

Meadows arrived the Cool Lilac residence on June 8, 2018, after receiving a phone call that there was a body there. Inside the house, Meadows saw Minkler's body on the kitchen

floor. Defendant and Caruso told Meadows that Caruso shot Minkler and they needed to move the body. Defendant removed Minkler's shoes and Minkler's wallet and phone from his blood-soaked pants pockets. Defendant threw Minkler's phone to the floor and destroyed it. Meadows helped Caruso move Minkler's body to the hallway closet. Caruso used the kitchen sink faucet to spray water on the floor in an attempt to clean up the blood on the floor. Meadows spray painted the walls in the living room and pool table-area while Defendant spray painted "Fuck Matt" above the closet where Minkler's body was stuffed and "RIP" on the floor. This all occurred in a thirty (30)-minute timeframe.

Appellant, Caruso, and Meadows got into a silver Mercedes and Appellant drove them to the Galleria Mall to shop less than one (1) hour after Minkler's murder. During the drive, Caruso boasted about killing Minkler. After they left the mall, Meadows felt uncomfortable and asked to be dropped off because of the way Caruso was acting after just killing someone, and because Appellant was looking at him in a strange way.

### **COR Footlocker**

Somridee McCasrey, a Regional Manager for Footlocker, authenticated video surveillance and a receipt from the store located inside the Galleria Mall. Defendant was depicted on video surveillance buying a pair of Air Force One sneakers with large amounts of cash at 3:52 PM.

### **Detective Calvano**

Detective Calvano recovered video surveillance from the Galleria Mall.<sup>1</sup> The surveillance documents the Defendant, Caruso, and Traceo Meadows walking into the mall at approximately 3:23 PM. All three enter Shoe Palace at approximately 3:30 PM and are seen leaving at 4:35 PM. Defendant is seen carrying a Footlocker shopping bag Caruso is seen carrying a Shoe Palace shopping bag.

### **Angelina Knox**

On the night of June 8, 2018, Angelina Knox went to an apartment complex party with two friends, Jacy and Patrick. At the party, Knox observed both the Defendant and Caruso

<sup>1</sup> This surveillance footage was admitted at trial as Exhibit 149.



with firearms. Knox either personally heard, or was told by Patrick, that Defendant said he “caught a body.” When the police broke up the party later that night, Knox and her two friends obtained a ride from the Defendant and Caruso. Defendant was driving the silver Mercedes and Caruso sat in the front passenger seat. While driving, police attempted to stop the Mercedes. Defendant drove erratically to flee and crashed the car into a pole. Defendant and Caruso fled from the vehicle in opposite directions.

#### **Officer Cochran**

Officer Cochran testified that a silver Mercedes sped away when she activated her lights and sirens to pull it over. Due to traffic volume, Cochran did not actively pursue the vehicle, but continued to drive in the same direction as the Mercedes. The Mercedes continued to speed through traffic and caused an accident. When Cochran stopped to aid to any injured people, she saw Caruso flee the scene and pursued him on foot. Cochran pursued Caruso through an alleyway, over a wall, and through a restaurant until he ultimately surrendered. After Caruso was placed in handcuffs, he spontaneously said that nothing mattered because everything would wash off his record when he turned eighteen (18).

#### **Officer O. Mancuso**

Henderson Officer Mancuso responded to the crash and received a description of Defendant who fled. Mancuso apprehended Defendant attempting to escape on a child’s bicycle at the Villas Apartments approximately one (1) mile from the crash.

#### **Detective Nichols**

Detective Nichols was the lead investigator on the case and obtained search warrants for Defendant’s, Caruso’s, and Minkler’s Snapchat accounts. Videos from Minkler’s Snapchat account included a video of Minkler holding a substantial amount of cash on June 7, 2018.

Nichols interviewed Defendant who admitted to helping clean up Minkler’s murder scene. Defendant claimed Minkler somehow “popped up” at the house that day and stated Defendant was not driving the Mercedes. Defendant stated Minkler was his “homey,” and he would not abandon Minkler at the house. Defendant stated that they were trying to help

Minkler and he did not know Minkler was dead. Defendant repeatedly denied possessing a firearm and claimed he was being 100% honest with police.

When detectives recovered the wallet from the back of the Mercedes, the only thing left in it was Minkler's school identification card.

### **CSAs Hornback, Newbold, and Proietto**

Crime Scene Analyst Hornback recovered a 357 revolver, Nike shoes, a Footlocker receipt dated June 8, 2018, iPhones, a laptop, and a Coach wallet with only Minkler's high school identification card inside from the Mercedes.

Crime Scene Analyst Proietto took photos and impounded items from the residence at Cool Lilac, which included Minkler's body found thrown in a closet with his sweatpants pockets turned out, the words "Fuck Matt" spray painted on the closet door, "RIP" on the floor outside the closet, bullet holes, blood stains and brain fragments, and bloody rags.

### **Kathy Geil**

Forensic Scientist Geil analyzed the revolver found in the silver Mercedes and matched it to cartridges recovered at Minkler's murder scene.

## **ARGUMENT**

Defendant argues that he is entitled to a new trial based on alleged "new evidence":

- 1) District attorney Giancarlo Pesci **brought up** the conversation about wanting to do a lick or robbery to Ghunnar **first** during his pre-trial interview of Ghunnar.
- 2) This information about Ghunnar telling Mr. Pesci about that he too heard conversation about wanting to do a lick or a robbery was never made known to the Defense prior to trial.

Motion for New Trial, at 10 (emphasis in original).

Defendant believes this was new evidence because Ghunnar did not tell detectives that he heard Defendant or Caruso planning a "lick." Id. at 11. Defendant argues that this entitles him to a new trial for three reasons: (1) this evidence was "new" and derailed Defendant's theory of defense; (2) the State's failure to provide this information to Defendant prior to trial violated the State's discovery obligations under Brady and Giglio; and (3) this statement about

what Ghunnar heard Defendant and Caruso discussing was a co-conspirator statement that should have been disclosed to Defendant pursuant to NRS 174.235. Id. at 11-16.

In support of Defendant's claim, he has provided two affidavits: one from an investigator who allegedly spoke with Ghunnar and Ghunnar's mother about the conversation Ghunnar had with Mr. Pesci; and one from his paralegal who was present during a phone conversation defense counsel had with Ghunnar's mother. Id. at 5-9. According to the investigator's affidavit, when the investigator spoke with Ghunnar in October 2020, Ghunnar informed him that Mr. Pesci asked Ghunnar if he heard anyone state they were looking to hit a "lick." Id. at 7. The investigator's affidavit further alleges that he spoke with Ghunnar's mother who stated that "at no time did her son state or tell her that [Defendant] engaged in conversation about 'hitting a lick' or robbing someone." Id. at 8. Next, the paralegal's affidavit states that she was present when counsel spoke with Ghunnar's mother who stated that Ghunnar never said anything to Mr. Pesci about hearing Defendant say he wanted to "do a lick." Id. at 9. Interestingly, Defendant has not provided affidavits from Ghunnar or his mother.

As an initial matter, the State would note that this is not the first time Defendant has filed a Motion for New Trial. Specifically, six days after the jury found Defendant guilty of all charged crimes, Defendant filed a Motion to Place on Calendar to Set Aside Guilty Verdict as to Counts One and Two; in the Alternative Motion for a New Trial and to Request Additional Time for Supplemental Briefing. In that Motion to Place on Calendar to Set Aside Guilty Verdict as to Counts One and Two; in the Alternative Motion for a New Trial and to Request Additional Time for Supplemental Briefing, Defendant claimed he was entitled to a new trial based on juror misconduct. In support of his claims, Defendant attached an affidavit from a single juror. After an evidentiary hearing, the district court correctly concluded that the claims raised in the affidavit were baseless and unsupported by any corroborating evidence.

Notably, that original motion filed after the verdicts made no mention of this alleged new evidence or of the alleged impropriety of asking about a "lick" during a pretrial meeting. This is suspect because, as explained below and as admitted by Defendant, the conversation Ghunnar and Mr. Pesci had prior to trial was admitted at trial. Accordingly, to just now raise