

In the Supreme Court of the State of Nevada

Jemar Matthews,

Appellant

v.

State of Nevada,

Respondent

Electronically Filed  
Supreme Court Case No. 84339  
Jul 13 2022 12:34 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Appeal from Judgment of  
Conviction of Eighth Judicial  
District Court, Clark County, in  
Case No.: 06C228460-2

**Appellant's Appendix  
Volume 6**

/s/ Todd M Leventhal

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## CERTIFICATE OF SERVICE

The undersigned, an employee of Leventhal and Associates, hereby certifies that she served the foregoing on the State by delivering a true and correct copy of it on July 13, 2022, to the following persons via electronic service through the Nevada Supreme Court electronic filing system.

Steven S. Owens

Chief Deputy District Attorney

Adam Paul Laxalt

Attorney General / Carson City

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Jemar Matthews

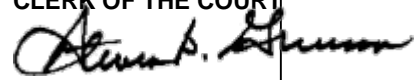
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An Employee of Leventhal and Associates



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff(s),

vs.

JEMAR MATTHEWS  
(AKA) JEMAR DEMON MATTHEWS,

Defendant(s).

Case No. 06C228460-2

DEPT. XII

BEFORE THE HONORABLE MICHELLE LEAVITT,  
DISTRICT COURT JUDGE

FRIDAY, NOVEMBER 12, 2021

***TRANSCRIPT OF PROCEEDINGS RE:***  
**JURY TRIAL – DAY 6**

(Appearances on page 2.)

RECORDED BY: SARA RICHARDSON, COURT RECORDER



1 APPEARANCES:

2 For the State: JOHN L. GIORDANI, III, ESQ.  
3 (Chief Deputy District Attorney)  
4 AGNES M. BOTELHO, ESQ.  
(Chief Deputy District Attorney)

5 For the Defendant(s): TODD M. LEVENTHAL, ESQ.  
6 RICHARD E. TANASI, ESQ.

7 Also Present:  
8 Samantha Goett, State's intern  
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**EXHIBITS**

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No Exhibits Offered.

1 **LAS VEGAS, NEVADA, FRIDAY, NOVEMBER 12, 2021**

2 [Proceeding commenced at 9:26 a.m.]

3  
4 [Outside the presence of the jury.]

5 THE COURT: Okay. Is there anything outside the  
6 presence?

7 MR. LEVENTHAL: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. LEVENTHAL: Your Honor, I don't know if you have  
10 what I presented to the Court, but my investigator was looking into  
11 some of the jurors to see whether or not they were texting or  
12 e-mailing or any texting or doing any social media. And Juror  
13 Number 10, Mr. Minami, we found out that Mr. Minami had posted  
14 what I presented to --

15 THE COURT: Can I have the jury list? Sorry.

16 MR. LEVENTHAL: That's okay.

17 THE COURT: Misplaced my jury list. So.

18 Well, the record will reflect that the hearing's taking place  
19 outside the presence of the jury panel.

20 But go away, Juror Number 10?

21 MR. LEVENTHAL: Correct. Juror Number 10, Mark  
22 Minami -

23 THE COURT: Tell me he isn't posting about this trial.

24 MR. LEVENTHAL: He is not posting --

25 THE COURT: Okay.

1 MR. LEVENTHAL: -- however, there were some prior  
2 posts that were of concerning to us.

3 THE COURT: Okay.

4 MR. LEVENTHAL: The first post has a Fox News report  
5 talking about illegal immigration on the rise. And Mr. Minami then  
6 commented on that, stating:

7 Before deporting them, make them do 100 hours of labor  
8 towards the construction of the wall, that'll cut the bill, if not  
9 eliminate it.

10 THE COURT: Okay.

11 MR. LEVENTHAL: The next post we have --

12 THE COURT: In 2017?

13 MR. LEVENTHAL: That's correct. In 2017.

14 THE COURT: Okay.

15 MR. LEVENTHAL: And then he went -- apparently, he  
16 went silent, according to my investigator after he found this, and so  
17 everything else is sort of private right now.

18 Then again in 2017, he wrote:

19 Dreamers, fine the fuck out of the parents for breaking the  
20 law, then make them pay the appropriate immigrant fees to let  
21 them stay.

22 THE COURT: Whoo.

23 MR. LEVENTHAL: If they can't or refuse to pay these fines  
24 and fees, then they choose to have their children deported, hold  
25 the parents responsible.

1                   It then says:  
2                   Trigger finger sucks, can't close my hand without pain and  
3                   have a hard time opening too.  
4                   The most disturbing one is the following one where he  
5                   posted again October --  
6                   THE COURT: So these were all four years ago? Okay.  
7                   MR. LEVENTHAL: Right.  
8                   It says here:  
9                   Black extremists domestic terror threats. FBI --  
10                  Again, Fox News.  
11                  FBI cites Black identify extremists as new domestic  
12                  terrorists.  
13                  He writes:  
14                  Who opened this can of worms? Brink of new war.  
15                  That's sort of the most disturbing, because it identifies as,  
16                  you know, Black, African-American.  
17                  THE COURT: Who opened --  
18                  MR. LEVENTHAL: I'm sorry?  
19                  THE COURT: Who opened this can of worms? Brink of  
20                  new war?  
21                  MR. LEVENTHAL: Yeah. That --  
22                  THE COURT: Okay.  
23                  MR. LEVENTHAL: -- and then I provided the Court --  
24                  THE COURT: What does that even mean?  
25                  MR. LEVENTHAL: I don't -- I'm not here to interpret. I'm

1 just --

2 THE COURT: Oh, okay. I'm just wondering --

3 MR. LEVENTHAL: I don't know.

4 THE COURT: -- because you said that was so disturbing.

5 MR. LEVENTHAL: It was, it's disturbing if there's a brink

6 of new war and then you couple that with what I've shown the

7 Court is a bump stock article out of the *Review-Journal*.

8 THE COURT: Okay.

9 MR. LEVENTHAL: And it's -- Mark Minami was  
10 interviewed and he goes on in the first -- this was after the  
11 Mandalay Bay shootings --

12 THE COURT: Okay.

13 MR. LEVENTHAL: -- where he bought some bump stocks  
14 and trigger shooter finger for quicker firing, and you know that the  
15 Mandalay Bay shooting had the whole issue of bump stocks came  
16 into play. So you couple that with the war, the African-Americans,  
17 and I -- I'm just bringing it to the Court's attention.

18 I would ask that at this stage of the game, we're into  
19 closings now, we've got two alternates now, and just in the  
20 abundance of caution, Mr. Tanasi on voir dire asked if anybody  
21 could be not influential or could be -- what is the word?

22 MR. TANASI: If anybody could not be fair to  
23 Mr. Matthews based upon the color of his skin, was the question.

24 MR. LEVENTHAL: You remember, we saw one --

25 THE COURT: I asked --

1 MR. LEVENTHAL: I saw one person --  
2 THE COURT: I asked it too.  
3 MR. TANASI: You did. Yes.  
4 THE COURT: Uh-huh.  
5 MR. LEVENTHAL: I saw one person halfway raise his  
6 hand and he did not raise his hand. So I will -- I'm asking that he be  
7 removed, but, obviously, I'll leave it at that.  
8 THE COURT: Okay. So let me just ask a question. Is this  
9 Facebook stuff? I mean, if I'm on Facebook, could I see it? Or did  
10 your investigator friend him? Is it private or is this just open to the  
11 public?  
12 MR. LEVENTHAL: Open to the public.  
13 THE COURT: Okay. So --  
14 MR. LEVENTHAL: My investigator did not friend him.  
15 THE COURT: -- you could have seen it before he was  
16 selected?  
17 MR. LEVENTHAL: I could have.  
18 THE COURT: Okay.  
19 MR. LEVENTHAL: I -- had I ran everybody, you know, at  
20 that time, yeah, I could have. Anybody who's public, I guess my  
21 investigator -- I don't do those searches, so I --  
22 THE COURT: Okay.  
23 MR. LEVENTHAL: -- assume that it would have -- could  
24 have been seen.  
25 THE COURT: I'm just curious why -- I mean, did you do

1 every juror's Facebook?

2 MR. LEVENTHAL: No, he didn't do every juror. He's -- he  
3 did Juror Number -- I think he did a few of them. I can check with  
4 who he did.

5 THE COURT: Okay.

6 MR. LEVENTHAL: And we can find out from him who he  
7 did. But this is what he found on it.

8 THE COURT: Okay. I'm just curious why this specific  
9 juror. I mean, I would assume -- okay.

10 Anything from the State?

11 MR. GIORDANI: Yes, Your Honor.

12 We are not taking a request -- or a position on their  
13 request and here's why.

14 THE COURT: Okay.

15 MR. GIORDANI: Accusations such as these with regard to  
16 kind of racism are, obviously, very, very serious. This man,  
17 Mr. Minami, made it through jury selection, said he could be fair.  
18 He's a -- I believe an Air Force veteran. And his name is now in the  
19 public record forever. Right?

20 THE COURT: Right.

21 MR. GIORDANI: I mean, he's a seated juror in this case.

22 This is a sensitive issue, and I know the defense throws  
23 these accusations around quite a bit. I mean, I think that this man  
24 should have an opportunity to defend his good name -- before we  
25 walked into court here, we had the -- we had this Batson argument,



1 and it's, you know, fair game. They want to make a Batson  
2 challenge, they certainly are entitled to do so.

3 Before we walked into court today, I looked both these  
4 men in their eyes and asked them, do you think I am a racist? And,  
5 of course, both of them said no. Absolutely not.

6 MR. LEVENTHAL: No, I would tell you.

7 MR. GIORDANI: Absolutely not. And so --

8 MR. TANASI: That's correct, Your Honor. We've never  
9 thought for one minute that Mr. Giordani is a racist.

10 MR. GIORDANI: So -- and I only bring that up because,  
11 look, they can interpret those posts and, look, if that guy has a racist  
12 bone in his body, he shouldn't be on this jury. The State agrees  
13 with that 100 percent. But I'm not going to just accept their  
14 interpretation of those posts.

15 And this man should have an opportunity to at least be  
16 questioned by the Court outside the presence of the other jurors as  
17 to that accusation. Like, his name is in the public record forever.  
18 So if the Court's inclined to release him --

19 THE COURT: These quotes were five years ago. I mean,  
20 this, to me, would be probably a big deal if you told me you looked  
21 at his Facebook over the weekend and he did this on Friday or  
22 Monday. I mean, this isn't even -- it isn't even current. So -- and  
23 I'm, you know, this stuff does look, you know -- seems a little crazy  
24 to me, you know, that people would put this in the public domain.  
25 But --

1 MR. LEVENTHAL: You know, Judge, I understand the  
2 Court's -- first of all, I didn't interpret this. I just bring it to the  
3 Court's attention. I'm not --

4 THE COURT: I totally agree.

5 MR. LEVENTHAL: I'm not trying to get into his mindset  
6 or -- but I bring it to the Court's attention, because, you know, to  
7 me, you know, the leopard doesn't change its skins even if it's 2017.  
8 The fact that my investigator indicated that everything has been  
9 closed down or shut down I don't think takes away from this. I -- if  
10 he had these issues in 2017, I mean, obviously, he's going to have  
11 to cop to it and then maybe he's going to say to Your Honor that,  
12 oh, he doesn't have those anymore. I mean, I don't know.

13 It's just, to me, when you start posting these things -- and  
14 Mr. Giordani makes a point that says, well, that he's now in the  
15 public -- this is already in the public. So he has openly already put  
16 it out there for himself to be, you know, questioned on his racial  
17 views, I guess, if you will.

18 So I don't see a difference between if it was last week, a  
19 week -- a month ago to -- racism is racism. And if you feel that way  
20 and you think that way, well, I don't necessarily know that people  
21 can always change and all of a sudden he's not a believer that this  
22 is all bad. If it was bad, I would assume he would have taken it  
23 down, but he didn't and he chose not to.

24 So he's still -- whether it's in 2017 or a week ago, I think  
25 that, you know, you can assume that he -- because he didn't take

1 this down, that he still harbors these feelings. And that infiltrates  
2 into this trial. And we can't -- like Mr. Giordani said, that is not --  
3 this is not the forum for that. Whether you harbor those views, I  
4 honestly, the gentleman that spoke in voir dire who came out and  
5 was very racist and was -- like, for no reason other than being a  
6 victim, you know, I respected him more --

7 THE COURT: His mother being a victim.

8 MR. LEVENTHAL: Right. I respected him more for coming  
9 out with that than I do these people who harbor these things and lie  
10 to the Court if they are, and not bring them up. That's the whole  
11 purpose behind voir dire. So I actually -- you know, sat here going,  
12 wow, that's -- I respect that. I don't respect your position,  
13 obviously, but I respect that you have those -- if you have those  
14 feelings, tell us.

15 And so I just bring this to the Court's attention. Again,  
16 whether it was a week ago or five year sago or 20 years ago, those  
17 feelings are still the same, and if that influences his decision in any  
18 way, shape, or form and it has nothing to do with the evidence  
19 that's been presented to us, then we have a real issue here,  
20 obviously.

21 THE COURT: Okay. You're asking me to remove  
22 somebody, basically, the last day of trial.

23 MR. LEVENTHAL: I think that, you know, if we were at the  
24 first day of trial, maybe it would be more problematic. But we have  
25 two alternates. It is the last day. We've got two alternates. It's the

1 last day and I think in the abundance of caution, that's what I'm  
2 asking for, yes.

3 THE COURT: Okay. Is this the juror, when we were doing  
4 jury selection, that you thought you excused, but you hadn't?

5 MR. LEVENTHAL: Correct.

6 THE COURT: Okay. And the State is taking no position?

7 MR. GIORDANI: Absolutely not. I'm not going to get in  
8 the mud on this argument. I mean, I can't look at that and interpret  
9 that -- it would be inappropriate for me to do so. I think -- and, for  
10 the record, our intern just pulled this thing up, this page, I believe  
11 it's -- what is it?

12 MS. GOETT: Facebook.

13 MR. GIORDANI: It's Facebook. It is public record, so she  
14 can access it right here in court. Again, look, if he's a racist, we  
15 don't want him on the jury either. Mr. Matthews deserves a fair  
16 trial, no one's disputing that. So I'm going to defer to the Court  
17 entirely on this. I just think the man should have an opportunity to  
18 defend his name if he's being called a racist on the public record.

19 THE COURT: I mean, does the defense want me to bring  
20 him in and ask him about these comments?

21 MR. LEVENTHAL: I leave that to the Court's discretion on  
22 how you feel. I mean --

23 THE COURT: Because I don't think I can just remove a  
24 juror based on this.

25 MR. LEVENTHAL: Okay.

1 THE COURT: After, under oath, he has made all this  
2 statements that he can be fair, fair and impartial, he's not going to  
3 be influenced by race, gender, national origin.

4 Well, bring him in.

5 MR. GIORDANI: You're bringing him in?

6 THE COURT: Yeah.

7 MS. BOTELHO: Okay. Perfect.

8 THE COURT: Mr. Minami, Juror Number 10.

9 [Juror Number 10 entered courtroom at 9:40 a.m.]

10 THE COURT: Okay. The record will reflect that  
11 Mr. Minami, Juror Number 10, is present in the courtroom and he is  
12 present outside the presence of the other jurors.

13 Thank you very much for being in here. I do appreciate  
14 your willingness to be here and the fact that you sat through all  
15 these days of trial. I just want to thank you first.

16 It has come to the Court's attention that on Facebook, you  
17 may have made statements that are questionable. And so I'm just  
18 going to ask you about that. Please do not be offended, I'm not  
19 trying to offend you, I'm just trying to figure out what you mean,  
20 what you meant, and whether that would interfere with your ability  
21 to be fair and impartial in this case.

22 JUROR NO. 010: Okay.

23 THE COURT: Okay? And they were in 2017, so they were  
24 quite a few years ago. But one of them was about deporting people  
25 and having them do some sort of community service regarding

1 building a wall before they're deported; does that sound familiar?

2 JUROR NO. 10: Vaguely.

3 THE COURT: Okay. Well, I mean, obviously, you know  
4 what your opinions are on that particular issue. Would they  
5 interfere with your ability to be fair and impartial in this case?

6 JUROR NO. 10: No, they don't.

7 THE COURT: Okay. All right. And then there was,  
8 actually, in September of 2017, a comment about dreamers and  
9 fining the parents for breaking the law, then making them pay  
10 appropriate immigrant fees to let them stay.

11 JUROR NO. 10: Uh-huh.

12 THE COURT: Do you remember that?

13 JUROR NO. 10: Yes.

14 THE COURT: Okay. Anything about that that would affect  
15 your ability to be fair and impartial in this case?

16 JUROR NO. 10: No.

17 THE COURT: Okay. And then one trigger finger sucks,  
18 can't close my hand without pain. Would you just, like, explain that  
19 to me?

20 JUROR NO. 10: Trigger finger is when your fingers lock  
21 up. So I close my hand --

22 THE COURT: Okay.

23 JUROR NO. 10: -- and open, and all of a sudden, would it  
24 pop open. I've since had surgery done to correct that condition. So  
25 that's what trigger finger is. It's a --

1 THE COURT: Why do you call it trigger finger?

2 JUROR NO. 10: That's what the orthopedic surgeons are  
3 calling it.

4 THE COURT: Oh, okay. It's a medical term.

5 JUROR NO. 10: Yes, ma'am.

6 THE COURT: Okay. All right. Thank you. And thank you  
7 for explaining that.

8 And then there's a post, and it appears to be a Fox News  
9 clip, you know, I only have it on black and white. I didn't actually go  
10 on your Facebook, but it says:

11 FBI cites Black identity extremist as new domestic terrorist  
12 threat.

13 Do you remember that? I mean, it's hard for me to  
14 remember what was going on in 2017.

15 JUROR NO. 10: I believe I remember that. Vaguely.

16 THE COURT: Okay. And then above it, it says:

17 Who opened this can o' worms? Brink of new war?

18 JUROR NO. 10: I believe that was reference to the riots  
19 in -- was it Michigan? Just that the country might have been on a  
20 brink of a another civil war because of the movement.

21 THE COURT: In Michigan in 2017 you maybe --

22 JUROR NO. 10: I believe.

23 THE COURT: I -- explain more?

24 JUROR NO. 10: What was his name? Mr. Floyd was in  
25 the news at that time.

1 THE COURT: Who?

2 PROSPECTIVE JUROR NO. 010: I don't know his name. I  
3 mean, the whole -- the caption is I can't breathe. Was it Floyd? It  
4 was when he was in the news because the law enforcement officer  
5 was on his chest and he passed away, and then the movement and  
6 the rise at that situation.

7 THE COURT: Okay. So you're talking about in  
8 Minneapolis?

9 JUROR NO. 10: Okay. I can get it.

10 THE COURT: Well, I don't know, that's why I'm asking  
11 you.

12 JUROR NO. 10: Yes. Yes.

13 THE COURT: Okay. So the police officer that was leaning  
14 on the neck of the gentleman?

15 JUROR NO. 10: Correct. It was that situation. And that  
16 was, I believe, the post that I was referencing to as being on the  
17 brink of possible -- another civil war, because of the uprising, the  
18 rioting, the conflict, if you will, between law enforcement and the  
19 population.

20 THE COURT: Okay. So who would the civil war be with?

21 JUROR NO. 10: Just everybody amongst themselves. I  
22 mean, mostly between law enforcement and whoever didn't like  
23 them.

24 THE COURT: Okay. Who opened this can of worms? Can  
25 you explain that to me? What does that mean?



1 JUROR NO. 10: I don't know. I'd have to reference that  
2 post. I'd have to see that posting to get the context of the  
3 comment.

4 THE COURT: Officer Hawks, you want to approach and  
5 you can --

6 JUROR NO. 10: Okay.

7 THE COURT: Okay. Does that refresh your recollection?

8 JUROR NO. 10: A little bit. I mean, my -- it was a while  
9 ago, so opinions and --

10 THE COURT: For sure.

11 JUROR NO. 10: Yes.

12 THE COURT: I said that, that it was a while ago.

13 JUROR NO. 10: Right. And then as more information was  
14 uncovered, obviously, opinions have changed. But can of worms  
15 was referencing to probably the FBI, because that's the title of the  
16 caption, the FBI -- I know it was just in front of me, but I already  
17 forgot what it said.

18 THE COURT: So the FBI opening up a can of worms?

19 JUROR NO. 10: Correct. It's identify the new extremists.

20 THE COURT: Okay. Well, you know, that incident you just  
21 described to me, that didn't happen in 2017. That didn't happen till  
22 May of 2020.

23 JUROR NO. 10: Okay.

24 THE COURT: So do you know what this was referenced  
25 to? I mean, and it looks like -- okay. The clip -- I mean, I'm looking

1 at in the clip says Ferguson, Missouri, August 2014. But the date  
2 is -- I mean, so I don't know how old this was. It's yours. The date  
3 says October 10th, 2017. However, there's a date on the clip from  
4 Fox News that says August 2014. So posting this in October 2017,  
5 do you remember what this was relevant to?

6 JUROR NO. 10: Just the post that was -- that is in that  
7 caption. Nothing of that time period, no.

8 THE COURT: Okay. Anything about this that would affect  
9 your ability to be fair and impartial in this case?

10 JUROR NO. 10: No.

11 THE COURT: Okay. And you can be fair and impartial to  
12 the State?

13 JUROR NO. 10: Yes.

14 THE COURT: And can you be fair and impartial to the  
15 defendant?

16 JUROR NO. 10: Yes, I can, definitely.

17 THE COURT: Okay. Thank you, Mr. Minami. I'm just  
18 going to ask you -- thank you very much for answering my  
19 questions.

20 JUROR NO. 10: No problem.

21 THE COURT: When you go back, please do not discuss  
22 with your fellow jurors anything that we have discussed in here.  
23 And if anyone insists on speaking to you about what we spoke  
24 about in here, I ask that you not respond, but that you make that  
25 fact known to me by immediately telling the court marshal.

1 JUROR NO. 10: Yes, ma'am.

2 THE COURT: And you'll comply with that order, correct?

3 JUROR NO. 10: Yes, ma'am.

4 THE COURT: Okay. Thank you, sir. And thank you very

5 much for being here.

6 [Juror Number 10 exited courtroom at 9:49 a.m.]

7 THE COURT: Okay. The record will reflect that Juror

8 Number 10 has left the courtroom and this hearing is continuing to

9 take place outside the presence of the jury panel. And the Facebook

10 posts are going to be marked as Court's Exhibit --

11 THE COURT CLERK: Number 7.

12 THE COURT: -- Number 7.

13 I don't know if the defense wants to be heard further?

14 MR. LEVENTHAL: No, Your Honor. I think we've made

15 our argument and we stand to it. So it's --

16 THE COURT: And you're satisfied with the record that the

17 Court made?

18 MR. LEVENTHAL: Yes, Your Honor.

19 THE COURT: Okay. Anything else from the State?

20 MR. GIORDANI: No, we will submit it to the Court.

21 THE COURT: Okay. At this point, I'm going to leave him

22 on the jury panel and we will -- is there anything else?

23 MR. GIORDANI: Oh, yes. There's one other thing.

24 Mr. Leventhal and Mr. Tanasi have brought retired gang

25 detective Andre Carter in to testify today.

1 THE COURT: Okay.

2 MR. GIORDANI: We all -- the attorneys here have all had a  
3 discussion. I had mentioned and put on the record, but also talked  
4 off the record about disclosures we've made about his receiving a  
5 benefit from the DA's office in his own case, but it had to do with  
6 his testimony in the trial of Antwon Jones.

7 MS. BOTELHO: Nicholas Owens.

8 MR. GIORDANI: Nicholas Owens' benefit received in his  
9 case in the trial of Antwon Jones that the AG handled and that he  
10 received the benefit of probation via Judge Barker.

11 THE COURT: Okay.

12 MR. GIORDANI: So we have --

13 THE COURT: And the attorney general gave that benefit?

14 MR. LEVENTHAL: No.

15 THE COURT: Is that correct?

16 MR. GIORDANI: No, no.

17 MR. LEVENTHAL: No. Linda --

18 MR. GIORDANI: No, the --

19 MR. LEVENTHAL: Sorry. Go ahead.

20 MR. GIORDANI: The AG's office handled the murder case.

21 THE COURT: Okay.

22 MR. GIORDANI: Nicholas Owens' case was handled by  
23 our office.

24 THE COURT: Okay.

25 MR. GIORDANI: The AG came to, I guess, an agreement

1 with Detective Carter and we've all discussed that. So we had a  
2 discussion that clearly they want to impeach Nicolas Owens.

3 THE COURT: Okay.

4 MR. GIORDANI: And we don't necessarily have any  
5 objection to that. The only thing that we had a discussion about is  
6 in the event they make the question phrased in such a way that  
7 would say Nicholas Owens received a benefit in this case, that's  
8 where we have a major disagreement.

9 THE COURT: Received a benefit in -- for the testimony  
10 that he provided in this case.

11 MR. GIORDANI: Correct.

12 THE COURT: So the benefit that was provided was  
13 provided, I'm assuming, years ago?

14 MR. GIORDANI: I think it was 2006, '07, '08, somewhere --

15 THE COURT: Oh, okay. So many years ago.

16 MR. GIORDANI: Many, many years ago.

17 But so I'm just making the record now, because we won't  
18 be raising a stink or objecting, really, if they impeach Nicolas  
19 Owens through Detective Carter --

20 THE COURT: Sure.

21 MR. GIORDANI: -- about getting a benefit in his other -- in  
22 his own case back then.

23 THE COURT: That's fine.

24 MR. GIORDANI: But if there's some inference that he  
25 received a benefit for his testimony here today, then we're going to

1 have a big argument and start objecting. So I think we're on the  
2 same page and I think Mr. Leventhal is going to question him in  
3 that vein --

4 MR. LEVENTHAL: Correct.

5 MR. GIORDANI: -- so that we are not really going to  
6 have --

7 THE COURT: Okay.

8 MR. GIORDANI: -- a basis to object.

9 THE COURT: All right. And he's going to be the next  
10 witness?

11 MR. LEVENTHAL: Correct. He's going to be our next  
12 witness. And I'm just going to be brief with him. There's only two  
13 subjects, the report that he wrote and the benefit that he received in  
14 that hearing and that's it. That's all I want to talk to him about.

15 THE COURT: And then any other witnesses after that?

16 MR. LEVENTHAL: Well, whether or not --

17 THE COURT: Okay.

18 MR. LEVENTHAL: Based on what his testimony is --

19 THE COURT: I got it.

20 MR. LEVENTHAL: -- then we may need to take a break  
21 and talk to my client. Because I've talked -- we've talked about it  
22 whether or not he's going to take the stand, so I think we need to do  
23 that outside the presence of the jury, depending on what Mr. Carter  
24 says.

25 THE COURT: Well, we need to do that regardless of what

1 the detective says.

2 MR. LEVENTHAL: Right.

3 THE COURT: Because if he's your last witness, we have to  
4 canvass Mr. Matthews regardless.

5 MR. LEVENTHAL: Right. And I would just ask the same,  
6 that the State received when they were asking detectives,  
7 obviously, he's been -- Mr. Carter's been informed not to discuss  
8 gangs. He was with the gang unit.

9 THE COURT: Oh, sure.

10 MR. LEVENTHAL: So I'd ask the same leeway to lead him  
11 so that we stay away from the gangs or how he knows these people  
12 or any connections, I would just ask for that, as well.

13 MR. GIORDANI: You made that clear to him, right?

14 MR. LEVENTHAL: Yes.

15 MR. GIORDANI: Okay.

16 MR. LEVENTHAL: I've made that clear and I think you've  
17 made that clear. I think.

18 THE COURT: Okay.

19 MR. LEVENTHAL: Anyway, it's been made clear, because  
20 he was here --

21 THE COURT: So he's just going to say, I've worked with  
22 Metro --

23 MR. LEVENTHAL: Correct.

24 THE COURT: -- I've been a detective, he's just not going  
25 to be specific about what unit.

1 MR. LEVENTHAL: I'm going to lead him --  
2 THE COURT: Perfect.  
3 MR. LEVENTHAL: -- through that, if that's okay.  
4 THE COURT: Absolutely.  
5 MR. LEVENTHAL: I just -- I don't want to be -- I just want  
6 that out there right now.  
7 THE COURT: No. Absolutely.  
8 MR. GIORDANI: One other thing, and this is really about  
9 scheduling. So if Mr. Matthews does take the stand, we will likely  
10 call at least two rebuttal witnesses.  
11 THE COURT: How do you even know if you don't even  
12 know what he's going to testify to?  
13 MR. GIORDANI: Well, there's some statements made on  
14 jail calls and --  
15 THE COURT: Okay.  
16 MR. GIORDANI: -- about an alibi or getting an alibi for  
17 him for the 29th.  
18 THE COURT: Okay.  
19 MR. GIORDANI: There's some other things about  
20 influencing the jury that we want to get into. And then there's also  
21 some things that I think he may say that may open the door to the  
22 relationships he had in the gang and a whole bunch of different  
23 things. So I'm telling you now, because I have not heard from at  
24 least one of those witnesses as to their availability for today.  
25 THE COURT: Okay.



1 MR. GIORDANI: I don't know if we told the jury that they  
2 would need -- they -- I don't know if we qualified them for next  
3 week at all, but I can't promise that we can get our rebuttal  
4 witnesses here today --

5 THE COURT: Okay.

6 MR. GIORDANI: -- if he testifies. So just putting that out  
7 there.

8 THE COURT: All right.

9 MR. LEVENTHAL: Can I have one minute to just double  
10 check that he knows not to talk about gangs?

11 THE COURT: Absolutely.

12 MR. LEVENTHAL: Thank you.

13 [Pause in proceedings.]

14 [Jury reconvened at 9:57 a.m.]

15 THE COURT: Good morning. Does the State stipulate to  
16 the presence of the panel?

17 MR. GIORDANI: We do, Your Honor.

18 THE COURT: And the defense?

19 MR. LEVENTHAL: Yes, Your Honor. Thank you.

20 THE COURT: Okay. You may call your next witness,  
21 Mr. Leventhal.

22 MR. LEVENTHAL: Thank you.

23 THE MARSHAL: Sorry, ma'am, could you give me one  
24 sec? I forgot to put their books back out.

25 THE COURT: Yeah, of course. No problem.

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[Pause in proceedings.]

MR. LEVENTHAL: Oh, sorry. The defense calls Andre  
Carter.

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

THE COURT CLERK: You may be seated. Please state and  
spell your first and last name for the record.

THE WITNESS: Andre Carter, A-N-D-R-E, C-A-R-T-E-R.

THE COURT: You may begin.

MR. LEVENTHAL: Thank you.

**DIRECT EXAMINATION**

BY MR. LEVENTHAL:

Q Good morning, Mr. Carter.

A Good morning.

Q My name is Scott Leventhal and I represent Mr. Matthews.  
What do you do for a living?

A I'm a retired police officer and I currently work court  
security at the federal courthouse for the U.S. Marshals.

Q Okay. And you retired when?

A July 2014.

Q And prior to that, you were with Metro?

A That's correct.

Q And, specifically, you were in the Bolden area?

A Prior to retirement, I was a detective.

1 Q Okay. And then how many years were you a detective?

2 A I want to say nine years.

3 Q And then prior to that you were in the Bolden area?

4 A I was a patrol officer in Bolden.

5 Q Okay. And how long did you spend in the Bolden area?

6 A Approximately 15 years.

7 Q 15 years? Did you, during your time with Metropolitan  
8 Police Department, come in contact with a Nicholas Owens?

9 A Yes.

10 Q And were you also one of the lead detectives regarding a  
11 murder that occurred on September 29th of 2006, that being the  
12 victim of Marty Williams?

13 A That's correct.

14 Q Was he also known as Marcus or just Marty?

15 A Marty [indiscernible], yep.

16 Q Marty? Now, you came in contact with Nicholas Owens  
17 on February 27th of 2007; is that correct?

18 A That's correct.

19 Q And during that time, Nicholas Owens made some  
20 statements to you, correct?

21 A Yes.

22 Q Okay. And, actually -- you actually wrote a full report  
23 regarding those statements, correct?

24 A That's correct.

25 Q Now, just to be clear, you were not -- you were

1 investigating Marty Williams' case, correct?

2 A Correct.

3 Q Okay. You had nothing to do at the time regarding  
4 Mersey Williams, correct?

5 A That's correct.

6 Q Okay. So anything that had to do with this case, you  
7 weren't at all a part of it as a detective, but sometimes things spilled  
8 over, correct?

9 A That's correct, yes.

10 Q And so your report would indicate that spillover effect of  
11 different players and different people for different cases, correct?

12 A Right.

13 Q Okay. Now, Nicholas Owens told you that he was at 900  
14 Doolittle, correct?

15 A Correct.

16 Q And he told you that at 900 Doolittle, on the 29th day  
17 of 2006, he came in contact with Pierre Joshlin, correct?

18 A Correct.

19 Q And he also indicated, as you indicated in your report, that  
20 he also said that Jemar Matthews was there, correct?

21 A Yes.

22 Q Okay. Now, in your -- your report details all the  
23 information that he told you that time, correct?

24 A That's correct.

25 Q Okay. So anything that's not in your report either wasn't

1 said or wasn't done, correct? You made details reports, correct?

2 A That would be correct.

3 Q Okay. Now, Mr. Owens told you that it was Pierre Joshlin  
4 and only Pierre Joshlin that was speaking to him regarding killing  
5 Lil Swole?

6 A Yeah, Antwon Jones, correct.

7 Q Antwon Jones. Okay. But your report does not indicate,  
8 other than Jemar Matthews being there, that Jemar Matthews said  
9 anything, correct?

10 A That's correct.

11 Q Okay. And as a matter of fact, Nicholas Owens told you  
12 that it was only Pierre Joshlin that was looking for guns, correct?

13 A Correct.

14 Q Jemar Matthews wasn't looking for guns according to his  
15 statement to you, correct?

16 A That would be correct.

17 Q And only Pierre Joshlin said he was going to go out and  
18 kill Antwon, correct?

19 A That's correct.

20 Q And Jemar Matthews was there and everyone's heart was  
21 heavy, I guess, there was condolences, but it -- only he was there  
22 physically, like everybody else; is that correct? Jemar Matthews,  
23 correct?

24 A Yes.

25 Q I want to talk about, again, and I want to make sure you

1 understand we're only talking about the case of Mr. Nicholas  
2 Owens, any kind of benefit that he received, he later testified,  
3 correct?

4 A That's correct.

5 Q Okay. He testified at a grand jury on the case that you  
6 were involved with, correct?

7 A That's correct.

8 Q Okay. And there was a benefit that -- there's a number of  
9 ways that a person who testifies benefits from that, right?

10 A That's correct.

11 Q Okay. One of those ways is that they get a reduction in  
12 their sentencing, correct?

13 A Correct.

14 Q So there's a strong -- you could maybe -- that benefit  
15 could lead to problems with their testimony, correct?

16 A I could say yes.

17 Q Okay. So you were in talks with, at the time, the district  
18 attorney on the case, I believe her name was Ms. Linda Lewis, you  
19 don't remember?

20 A For the case that, yeah, Nicholas Owens had, correct.

21 Q Yeah. She was the lead prosecutor, the DA?

22 A On his case, correct.

23 Q And at some point you went up to -- and the judge that  
24 was hearing that case back then was Judge Barker?

25 A Either Barker or Baker, but --

1 Q Okay.

2 A -- one of those.

3 Q And you remember going up to Judge Barker's chambers  
4 and sitting down with him as well as Linda Lewis, correct?

5 A That's correct.

6 Q And you requested from Judge Barker that Mr. Owens  
7 receive a benefit for his testimony, correct?

8 A That's correct.

9 Q And that benefit entailed he received -- he was -- he  
10 received a minimum of 12 years based upon the case that he had  
11 going, right?

12 A It was a lot of time. Not sure about how many years, but  
13 it was quite a bit.

14 Q Okay. If I told you it was 12 to 30 years on the minimum  
15 side?

16 A That would sound good.

17 Q Okay. And you requested that Judge Barker wipe that all  
18 out and give him probation, right?

19 A Not sure how we came to the probation part. Not sure if  
20 we were recommended that. That part I'm not 100 percent sure  
21 about. But I think that was the reason why it was requested that we  
22 meet with Judge Baker to explain to him everything that occurred  
23 that Mr. Owens did.

24 Q Okay. Were you aware whether or not Mr. Owens had  
25 this deal in writing to him?

1           A     No.

2           Q     This was something that he had as a future benefit if he  
3 did it? Let me ask you this way, I don't mean to confuse you:

4                   He had already testified at the grand jury, correct?

5           A     That's correct.

6           Q     He had already done what he was asked to do by the  
7 State, correct?

8           A     That's correct.

9           Q     That benefit didn't come until after that, correct?

10          A     Right.

11               MR. LEVENTHAL: I'll pass the witness. Thank you.

12               THE COURT: Thank you.

13               Cross-examination?

14               MS. BOTELHO: Yes, Your Honor.

15                               **CROSS-EXAMINATION**

16          BY MS. BOTELHO:

17               Q     Good morning, Mr. Carter.

18               A     Good morning.

19               Q     Mr. Carter, I just kind of want to clarify some of the  
20 questions that Mr. Leventhal asked you. Okay?

21               A     Okay.

22               Q     Specifically, you were involved in the investigation  
23 concerning the September 29th, 2006, murder of Marcus Williams,  
24 correct?

25               A     Yes, Marty Williams.



1 Q Okay. Marty. And you spoke with Nicholas Owens on  
2 February 27th of 2007 concerning what he knew about the murder  
3 of Marty Williams?

4 A That's correct.

5 Q And who may have perpetrated that murder?

6 A That's correct.

7 Q Specifically, Mr. Owens talked to you about involvement --  
8 the involvement of Mr. Antwon Jones in the murder of Marty  
9 Williams?

10 A That's correct.

11 Q Okay. Fair to say that was the purpose of that -- your  
12 interview with him February 27th of 2007?

13 A Yes.

14 Q Okay. Now, when you -- that particular interview was not  
15 reported, correct?

16 A No, it was not.

17 Q Okay. And so you spent a majority of your time with  
18 Mr. Owens talking about his knowledge of the  
19 September 29th, 2006, of Marty Williams in front of 900 Doolittle?

20 A Correct.

21 Q Towards the end of your interview, Mr. Owens mentioned  
22 the involvement of -- or a conversation that he had with Pierre  
23 Joshlin; is that correct?

24 A That's correct.

25 Q And that was concerning Mr. Joshlin wanting to kill

1 Antwon Jones for murdering Marcus Williams, correct?

2 A That's correct.

3 Q Okay. Now, when this interview was occurring, as I  
4 indicated, it was towards the end of the interview, correct?

5 A I would have to say so, because I took notes. So if I  
6 documented it at the end, that's when it was provided.

7 Q Okay. And, as a matter of fact, you put together a report  
8 with a synopsis of your interview of Mr. Owens on February 27th  
9 of 2007; is that right?

10 A That's correct.

11 Q Okay. And fair to say that, you know, there were multiple  
12 paragraphs involving your investigation of the 929 murder and one  
13 paragraph involving Mr. Owens' statement concerning Mr. Joshlin?

14 A That's correct.

15 Q Okay. And so defense counsel asked you about the  
16 statements that Mr. Owens made to you on February 27th, 2007,  
17 concerning Pierre Joshlin; I'd like to talk about that, okay?

18 A Okay.

19 Q All right. So Mr. Owens told you that when Marty, Marcus  
20 Williams, was killed, Pierre Joshlin and Jemar Matthews were  
21 at 900 Doolittle, correct?

22 A That's correct.

23 Q And that Mr. Owens at that time stated to you that he had  
24 a conversation with Mr. Joshlin and Mr. Joshlin told him he was  
25 going to knock off Antwon Jones for killing Marty or Marcus

1 Williams?

2 A Correct.

3 Q And Mr. Owens then told you other statements by  
4 Mr. Pierre Joshlin about, you know, other people who may have  
5 been in the car during -- or who helped with the murder of Marcus  
6 Williams?

7 A Correct.

8 Q And at that point in time, Mr. Owens told you that  
9 Mr. Joshlin indicated he was also wanting to knock them off, those  
10 other people in the car?

11 A Correct.

12 Q Okay. At that time, based on what he said, did you note  
13 on your report whether or not Mr. Jemar Matthews was also  
14 present during this conversation that Mr. Owens was telling you he  
15 had with Pierre Joshlin?

16 A In this report, he stated that Mr. Matthews was at 900  
17 Doolittle. I can't say for sure if he said he was present during the  
18 conversation with Joshlin.

19 Q Okay. And at some point in time, did the district  
20 attorney's office contact you concerning this report?

21 A Yes.

22 Q Okay. Would that have been a few weeks ago in  
23 anticipation of trial?

24 A That's correct.

25 Q Okay. And did we attempt to clarify or at least ask you

1 about your recollection of the specifics involving Mr. Owens'  
2 statements concerning this case?

3 A Yes.

4 Q Okay. And you were not able to recall specifically, you  
5 know, from 2007, the context and exactly what it was that  
6 Mr. Owens said at the time, correct?

7 A That's correct.

8 Q Okay. But you did indicate that this was not your focus  
9 and you were not asking any follow-up questions or anything like  
10 that, because this case was not your case?

11 A That is correct.

12 Q Okay. And so you indicated that you just put a brief  
13 synopsis of your conversation with Mr. Owens concerning the  
14 statements by Pierre Joshlin and the defendant being at 900  
15 Doolittle, you just put that in a report and submitted it, correct?

16 A That's correct.

17 Q So someone, whoever it was that was taking care of that  
18 case, had that information?

19 A That is correct.

20 Q Okay. Or at least knowledge of that statement?

21 A That's correct.

22 Q Okay. At some point in time, after you met with the  
23 district attorney's office and we clarified that you didn't know, you  
24 know, the specifics of that statement, did you come to the  
25 courthouse just this past Tuesday?

1       A     Yes.

2       Q     And did you at that time have contact with Mr. Owens?

3       A     Yes.

4       Q     And did I join that particular meeting with you and  
5 Mr. Owens?

6       A     Yes.

7       Q     Okay. And were you present when we -- when I asked  
8 Mr. Owens about --

9               MR. LEVENTHAL: Your Honor, I'm not sure -- counsel's  
10 getting near her own testimony now on what she did and what she  
11 asked.

12              THE COURT: Can I have the attorneys approach.

13                     [Bench conference transcribed as follows.]

14              THE COURT: This sounds like hearsay if you're going to  
15 ask him whether Mr. Owens said something, correct?

16              MS. BOTELHO: That's true.

17              THE COURT: Okay.

18              MS. BOTELHO: But it's a consistent statement at this  
19 point. They're attacking his statements and the credibility of his  
20 statements. Now, the fact that he clarified it with Detective Carter  
21 before he took the stand and clarified it with me as well, and then  
22 said that story to the jury --

23              THE COURT: Okay. So you believe they're attacking his  
24 credibility because he may receive -- I'm not even sure that they  
25 have done that.

1 MR. LEVENTHAL: I am --

2 THE COURT: I mean, are you contending through this  
3 witness that Mr. Owens has a reason to fabricate the testimony of  
4 this matter?

5 MR. LEVENTHAL: None whatsoever. I wouldn't have  
6 called them or I would have asked to take him under -- no, not at all.  
7 I don't have any reason to believe otherwise. I wasn't at this  
8 conversation that she was at. But it's hearsay and she's indicating  
9 that she's testifying -- Ms. Botelho is testifying that she heard it and  
10 what she heard. I'm not questioning his competency or character at  
11 all.

12 THE COURT: Okay.

13 MS. BOTELHO: Okay.

14 THE COURT: Here's the problem. You can't go into a  
15 prior consistent statement unless there's a recent allegation of  
16 fabrication.

17 MS. BOTELHO: Your Honor --

18 THE COURT: I don't know that they are contending  
19 through this witness that Mr. Owens was fabricating his testimony.

20 MS. BOTELHO: I think that's exactly what they're doing. I  
21 mean, they're basically getting from Mr. Carter that Mr. Owens  
22 didn't say those things during the interview, but now all of a  
23 sudden, when he testified yesterday or the day before, that now  
24 he's saying all of thee things to implicate the defendant. They are  
25 calling into question Mr. Owens' credibility and the statements that

1 he made. I understand they're not calling into question Detective  
2 Carter's -- or former Detective Carter's statements, but they're using  
3 Detective Carter to undermine and attack Mr. Owens' statement  
4 from, you know, Wednesday.

5 THE COURT: Because it wasn't written down in the  
6 report --

7 MS. BOTELHO: Correct.

8 THE COURT: -- anything that he said.

9 MS. BOTELHO: Correct.

10 MR. LEVENTHAL: That's correct. It was written down in  
11 his [indiscernible] what Owens said back in '07, and now they want  
12 to bring in a conversation that the hearsay in -- just before he came  
13 out, which would be prior consistent statement, I would assume,  
14 because he got up there and he said something completely  
15 different than what he said in '07. I don't think you can impeach  
16 him on that.

17 THE COURT: Well, I think this is important, so I'm going  
18 to excuse the jury panel and allow you to make arguments.

19 MS. BOTELHO: Okay. Thank you.

20 [End of bench conference.]

21 THE COURT: Okay. At this time, ladies and gentlemen,  
22 we're going to take a recess.

23 During this recess you're admonished not to discuss or  
24 communicate with anyone, including your fellow jurors, in any way  
25 regarding the case or its merits either by voice, phone, e-mail, text,

1 Internet, or other means of communication or social media, read,  
2 watch, or listen to any news or media accounts or commentary  
3 about the case, or do any research, such as consulting dictionaries,  
4 using the Internet, or using reference materials or make any  
5 investigation, test a theory of the case, recreate any aspect of the  
6 case, or in any other way investigate or learn about the case on  
7 your own or form or express any opinion regarding the case until  
8 it's finally submitted to you.

9 We'll be in recess and Officer Hawks will let you know  
10 when we're ready. Thank you.

11 [Jury recessed at 10:18 a.m.]

12 THE COURT: Okay. The record will reflect that this  
13 hearing is taking place outside the presence of the jury panel.

14 I mean, do you want me to excuse the witness? It's up to  
15 you all.

16 MR. LEVENTHAL: I have no problem with -- if he wants to  
17 be excused, he can. If he wants to sit, he can.

18 THE COURT: Do you want --

19 THE WITNESS: I'm fine.

20 THE COURT: Okay. Sometimes they want the witness to  
21 leave, so that's fine. Okay.

22 So the State wants to get into what you're contending is a  
23 prior consistent statement.

24 MS. BOTELHO: Yes, Your Honor.

25 THE COURT: That he made, I guess, prior to testifying in



1 court.

2 MS. BOTELHO: Correct, Your Honor.

3 THE COURT: Okay.

4 MS. BOTELHO: The allegation has been made through  
5 Detective Carter. Primarily, this is how I understand the situation.  
6 The defense called Detective Carter to undermine Nicholas Owens'  
7 testimony yesterday. I mean, the line of questioning by defense  
8 counsel -- or, I'm sorry, Wednesday -- the line of questioning by  
9 defense counsel was, you know, if it wasn't said, wasn't done, then  
10 it's -- that's, you know --

11 THE COURT: If it's not in the report --

12 MS. BOTELHO: -- then it wouldn't be in the report.

13 THE COURT: -- if it's not written down, it wasn't said.  
14 Okay.

15 MS. BOTELHO: Correct. And things like that. Report  
16 doesn't say anything about Jemar Matthews saying anything. It  
17 was only Pierre Joshlin that was looking for guns. Only Pierre  
18 Joshlin was going out to kill Antwon Jones. Jemar Matthews was  
19 there just physically when Pierre Joshlin said that.

20 And so, you know, they are attacking Mr. Owens'  
21 credibility through Detective Carter. And so I think the prior  
22 consistent statements that, ultimately, once this was clarified --  
23 because, I mean, I think we've all said it, the one paragraph was not  
24 clear and the State even said on the record the very first day of trial,  
25 we're not sure when, who, what, concerning this paragraph, so we

1 wanted to talk to Mr. Owens first to clarify that before we would put  
2 him on the stand. Detective Carter was present when that was  
3 done. And Mr. Owens will have made the same statements that he  
4 testified to, you know, under oath that he told Detective Carter back  
5 on Tuesday.

6 And so it is a prior consistent statement being introduced  
7 to rebut this allegation of express or implied fabrication or  
8 improper motive to testify.

9 THE COURT: Okay. Because he did testify. You're telling  
10 me it would be consistent with his testimony and it has to be  
11 offered to rebut an express or implied charge against him of recent  
12 fabrication or improper [indiscernible]. So, basically, that  
13 Mr. Owens, although he testified he didn't get any benefit, he may  
14 get one in the future for this testimony?

15 MS. BOTELHO: That's one -- no. The benefits is a  
16 completely different story, I think. Or it's a different topic, I'm sorry.  
17 It's a different topic. I think they're just attacking his credibility and  
18 his motive. And they're accusing him of fabricating all of the stuff  
19 about Jemar's involvement, because it wasn't in the initial report by  
20 Detective Carter.

21 THE COURT: Okay. Mr. Leventhal?

22 MR. LEVENTHAL: Judge, we'll submit it to the Court.

23 THE COURT: Okay. I'm going to overrule the objection  
24 and you'll be committed to question him.

25 You can bring them in.

1 MR. LEVENTHAL: I think just, clarity, I think that  
2 Ms. Botelho sort of testifying as to what she heard or what she said,  
3 she can ask --

4 THE COURT: Oh, no, I agree with that.

5 MR. LEVENTHAL: That was my -- I guess that was my  
6 initial problem with it is that she's up there saying, and I was there  
7 and I heard. I don't think that's proper question-and-answer, Your  
8 Honor.

9 THE COURT: Right. I agree.

10 MR. LEVENTHAL: Okay.

11 THE COURT: Because you don't want to make yourself a  
12 witness --

13 MS. BOTELHO: That's --

14 THE COURT: -- in the matter.

15 MS. BOTELHO: I'll phrase it differently.

16 THE COURT: So it's okay to say you were present, but we  
17 need the witness to testify.

18 MS. BOTELHO: Definitely.

19 THE COURT: Okay. Thank you.

20 [Jury reconvened at 10:24 a.m.]

21 THE COURT: Does the State stipulate to the presence of  
22 the panel?

23 MR. GIORDANI: We do, Your Honor.

24 THE COURT: And the defense?

25 MR. LEVENTHAL: Yes, Your Honor.

1 THE COURT: Okay. You may continue with your cross.

2 MS. BOTELHO: Thank you.

3 **CROSS-EXAMINATION (CONT.)**

4 BY MS. BOTELHO:

5 Q Detective Carter, this past Tuesday, was Nicholas Owens  
6 asked about the statement that you wrote in your report talking  
7 about your interview from February 27th of 2007?

8 A Yes.

9 Q And was he asked to clarify some of the statements or all  
10 of the statements in that paragraph?

11 A Yes, he was.

12 Q Isn't it true that Mr. Owens confirmed that the defendant  
13 was present at the September 29th, 2007, murder of Marcus  
14 Williams at 900 Doolittle?

15 A Yes, he did.

16 Q And isn't it true that Mr. Owens confirmed that he had a  
17 conversation with Pierre Joshlin about Pierre Joshlin wanting to  
18 take out Antwon Jones and others who killed Marty Williams?

19 A Yes.

20 Q Isn't it true that Nick Owens or Nicholas Owens confirmed  
21 that the defendant, Jemar Matthews, was present during that  
22 conversation?

23 A Yes, he did.

24 Q And isn't it also true that Nick Owens confirmed that the  
25 defendant participated in that conversation?

1           A     Yes.

2           Q     Isn't it also true that Mr. Owens confirmed that they,  
3 meaning Pierre Joshlin and the defendant, Jemar Matthews, were  
4 looking for guns to use as soon as possible?

5           A     Yes.

6           Q     And isn't it true that Mr. Nicholas Owens indicated to you  
7 that the conversation that he was telling you about Pierre Joshlin  
8 and Jemar Matthews occurred after -- immediately after or soon  
9 thereafter, after the murder of Marty Williams?

10          A     Yes.

11          Q     Isn't it true that he also confirmed that Jemar Matthews  
12 and Pierre Joshlin are close friends who are often together?

13          A     Yes.

14          Q     Now, I would like to talk to you a little bit about Mr.  
15 Nicholas Owens' involvement in the September 29th, 2007 case --  
16 or September 29th, 2006 case, just so this is clear, okay?

17          A     Okay.

18          Q     Now, the benefit, the receiving probation and things like  
19 that that Mr. Leventhal discussed with you, that was for his help  
20 and testimony in the case involving the murder of Marty Williams,  
21 correct?

22          A     That's correct.

23          Q     Okay. So that -- getting probation, talking to a judge,  
24 anything like that, for him to get probation, that had nothing to do  
25 with any kind of testimony or any kind of help he would have

1 provided in this case 15 years later?

2 A No.

3 Q And, certainly, did you, when you were speaking with  
4 Mr. Owens on Tuesday, did you promise him anything in exchange  
5 for his testimony in this case?

6 A No.

7 Q To your knowledge, has he been offered any kind of  
8 benefit?

9 A He hadn't that I'm aware of.

10 MS. BOTELHO: I have no more questions. Thank you.

11 THE COURT: Redirect?

12 MR. LEVENTHAL: Thank you.

13 **REDIRECT EXAMINATION**

14 BY MR. LEVENTHAL:

15 Q Mr. Carter, going back during your time with Metro, you  
16 knew how important it was to document reports, right?

17 A That's correct.

18 Q Reports are used not only for your investigation, but if  
19 there's another investigation simultaneous then you know another  
20 detective would utilize that report for their case as well, right?

21 A That's correct.

22 Q As well as other detectives who write reports, you would  
23 utilize their reports for your cases, right?

24 A That's correct.

25 Q So when you write reports, you want to be as detailed as

1 possible, correct?

2 A Yes.

3 Q Okay. And you want to get down what that person said to  
4 you with as much detail on who, on what, where, why, and how so  
5 that even if it's not your case, the detective who's looking at it, his  
6 case, it's important to him, correct?

7 A Correct.

8 Q Okay. And so when you wrote this report back in  
9 February of '07, you met with Nicholas Owens, everything he said  
10 was in this report, correct?

11 A I believe so, because I took notes.

12 Q Okay. So when he says that just Jemar was just merely  
13 present or just present, that's what you wrote, correct?

14 A Correct.

15 Q And when he says that, specifically, Jemar -- Pierre  
16 Joshlin was going to kill Mr. Antwon or -- that it was -- you would  
17 have put it in your report that it was Jemar saying that as well as  
18 Pierre Joshlin, correct?

19 A That would be correct.

20 Q Okay. So the fact that you just put in Pierre says that,  
21 back in at least '07, he never mentioned to you that Mr. Matthews  
22 was talking about killing anybody, correct?

23 A No, he did not.

24 Q And he never talked to you about, specifically, Jemar  
25 Matthews asking for guns or weapons, correct?

1           A     That's correct.

2           Q     Okay. You were asked on cross whether or not you  
3 promised anything to Mr. Owens for his testimony, correct?

4           A     That's correct.

5           Q     You're retired now, aren't you?

6           A     Yes.

7           Q     Do you have any ability to give any benefits or promises  
8 to anybody at this point?

9           A     No.

10          Q     You're a marshal now over at the federal building, right?

11          A     Correct.

12          Q     Okay. So even if you were to say to somebody, listen,  
13 we're going to take care -- you have no ability or power to do that,  
14 correct?

15          A     That's correct.

16          Q     Okay. Thank you, Mr. Carter.

17               MR. LEVENTHAL: Nothing further.

18               THE COURT: Thank you.

19               Any recross?

20               MS. BOTELHO: No, Your Honor. Thank you.

21               THE COURT: Okay. Detective, thank you very much for  
22 your testimony here today. Thank you for being here. You may  
23 step down and you are excused.

24               And at this time, we're going to take a recess.

25               During this recess you're admonished not to discuss or



1 communicate with anyone, including your fellow jurors, in any way  
2 regarding the case or its merits either by voice, phone, e-mail, text,  
3 Internet, or other means of communication or social media, read,  
4 watch, or listen to any news or media accounts or commentary  
5 about the case, or do any research, such as consulting dictionaries,  
6 using the Internet, or using reference materials or make any  
7 investigation, test a theory of the case, recreate any aspect of the  
8 case, or in any other way investigate or learn about the case on  
9 your own or form or express any opinion regarding the case until  
10 it's finally submitted to you.

11 We'll be in recess for 15 minutes. If it's going to be  
12 longer, Officer Hawks will let you know. Thank you very much.

13 [Jury recessed at 10:32 a.m.]

14 THE COURT: Okay. The record will reflect that this  
15 hearing is taking place outside the presence of the jury panel.

16 Mr. Leventhal, do you have any further witnesses?

17 MR. LEVENTHAL: No, Your Honor.

18 THE COURT: Okay. Mr. Matthews, you understand that  
19 you have heard all of the testimony that will be admitted in this  
20 matter against you; do you understand that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And you understand on the Constitution of  
23 the United States and the Constitution of the State of Nevada, you  
24 cannot be compelled to testify in this matter; do you understand  
25 that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: And you may, at your own request, give up  
3 this right and take the witness stand and testify. If you do, you'll be  
4 subject to cross-examination by the deputy district attorney and  
5 anything that you may say, be it on direct or direct examination will  
6 be the subject of fair comment when the deputy district attorney  
7 speaks to the jury panel in his or her final argument; do you  
8 understand that?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: If you choose not to testify, I will not permit  
11 the deputy district attorney to make any comments to the jury  
12 because you've decided not to testify; do you understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And if you elect not to testify, I will instruct  
15 the jury, but only if your attorney specifically requests, as follows:

16 The law does not compel a defendant in a criminal case to  
17 take the stand and testify, and no presumption may be raised and  
18 no inference of any kind may be drawn from the failure of a  
19 defendant to testify; do you understand that?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Okay. And you're further advised that if you  
22 have a felony conviction and more than 10 years has not elapsed  
23 from the date that you have been convicted or discharged from  
24 prison, parole, or probation, whichever is later, and the defense has  
25 not sought to preclude that from coming before the jury, and you

1 elect to take the stand and testify, the deputy district attorney in the  
2 presence of the jury will be permitted to ask you the following:

3 Have you been convicted of a felony?

4 What was it?

5 When did it happen?

6 However, no details may be gone into.

7 Do you understand that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And you understand that the right to testify  
10 and the decision to testify is your decision and your decision alone;  
11 do you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: I mean, obviously, that decision should be  
14 made after consulting and getting advice from your attorney; and  
15 you understand that?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And have you had that opportunity to seek  
18 that advice with your attorney?

19 THE DEFENDANT: No, ma'am.

20 MR. LEVENTHAL: We needed the break to talk to him, if  
21 the Court remembers, we asked the Court.

22 THE COURT: Okay. You haven't talked about his  
23 testifying at all?

24 MR. LEVENTHAL: No, we've talked about it, but --

25 THE COURT: Okay.

1 MR. LEVENTHAL: -- then we were waiting for Mr. Carter's  
2 testimony. If the Court remembers, I brought that up earlier and  
3 that --

4 THE COURT: That's fine. I just want to make sure the  
5 record's clear.

6 You have spoken to your attorneys --

7 MR. LEVENTHAL: Oh, yeah.

8 THE COURT: -- about whether to testify or not?

9 THE DEFENDANT: Yes. But I need to speak --

10 THE COURT: Okay.

11 THE DEFENDANT: -- to them farther.

12 THE COURT: All right. And, of course, you wanted to wait  
13 until you had heard all the evidence, including --

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: -- Detective Carter, before you made that  
16 decision, correct?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: What we're going to do now is we're going  
19 to clear the courtroom with the exception of the court marshal and  
20 the COOs. Everyone's going to be ordered to leave the courtroom.  
21 We'll turn off all the recording, and you can have that discussion  
22 with your attorneys.

23 MR. LEVENTHAL: Thank you.

24 THE COURT: Do you have any questions of the Court  
25 before that?

1 THE DEFENDANT: No, ma'am.  
2 THE COURT: Okay. Thank you, Mr. Matthews.  
3 [Court recessed at 10:3 a.m., until 11:08 a.m.]  
4 [Outside the presence of the jury.]  
5 THE COURT: Okay. The record will reflect that the  
6 hearing is continuing to take place outside the presence of the jury  
7 panel.  
8 So, Mr. Matthews, have you had an opportunity to speak  
9 to your attorneys?  
10 THE DEFENDANT: Yes, ma'am.  
11 THE COURT: And they have answered all your questions?  
12 THE DEFENDANT: Yes, ma'am.  
13 THE COURT: Do you have any questions of the Court?  
14 THE DEFENDANT: No, ma'am.  
15 THE COURT: Have you made your decision?  
16 THE DEFENDANT: Yes, ma'am.  
17 THE COURT: And what are you going to do?  
18 THE DEFENDANT: I'm not going to get on the stand.  
19 THE COURT: Okay.  
20 MR. TANASI: Judge, thank you for that time too.  
21 THE COURT: Of course. Of course.  
22 MR. GIORDANI: One other issue, Your Honor.  
23 The attorneys have spoken about this over the break.  
24 We -- the State have consulted with kind of the victim's family that's  
25 been sitting in the courtroom and observing everything. And with

1 total respect to the Court's prior decision about Mr. Minami, and I  
2 completely understand your prior decision, I think that the parties  
3 are in agreement at this point that we can let him go if the Court is  
4 okay with it. Just to ensure as clean a record and as fair a trial for  
5 Mr. Matthews as possible.

6 And we're not conceding in any way that he, you know,  
7 he --

8 THE COURT: I mean, if you both agree to it, I don't have a  
9 problem. I just did not believe I had a basis to remove that juror.

10 MR. GIORDANI: Understood.

11 MR. LEVENTHAL: Understood. But --

12 THE COURT: Okay. All right. So that --

13 THE MARSHAL: Do you want him first?

14 THE COURT: No. I want you to tell him.

15 THE MARSHAL: Yes, ma'am.

16 MR. LEVENTHAL: He almost loved -- he relished that.

17 THE COURT: So Monica Takashima will become -- she'll  
18 become Juror Number 10. So I'll have her seated in Seat  
19 Number 10.

20 So if you could bring him out, speak to him private, like,  
21 don't do it in front of the other jurors.

22 THE MARSHAL: Yes, ma'am.

23 THE COURT: And just thank him for his service and  
24 excuse him. And then, you know, get all his stuff. And I don't know  
25 if you're going to have to walk him down or --

1 THE MARSHAL: I can let him out the front.  
2 THE COURT: Okay. So he -- you can let -- okay.  
3 THE COURT CLERK: Judge, Seat 13 is going to be open,  
4 correct?  
5 THE COURT: Yeah, so Seat 13 will be open. Monica  
6 Takashima will become Juror Number 10.  
7 THE COURT CLERK: Okay.  
8 THE COURT: And so when they come in, if you can tell  
9 Ms. Takashima she'll be in Seat Number 10, but I want the record to  
10 be clear, the parties are stipulating that the Court remove Juror  
11 Number 10 from the panel; is that correct?  
12 MR. GIORDANI: Correct, Your Honor.  
13 MR. LEVENTHAL: Correct.  
14 MR. TANASI: It's correct, Your Honor.  
15 THE COURT: Yep. Okay.  
16 And then we're done, then, with testimony, correct?  
17 MR. GIORDANI: Yes, ma'am.  
18 MR. LEVENTHAL: Yes, Your Honor.  
19 THE COURT: Okay. Pam has been working on the jury  
20 instructions. So she was done and she was going to make a packet  
21 of them. So we can settle them informally first back in chambers  
22 and then we'll come out here. I don't know -- they won't -- it  
23 probably won't take us that long, but when we get back and get  
24 situated and get set up and then we'll do jury instructions.  
25 But Mr. Matthews has to stay here, you know, in the

1 courtroom or wherever. So he'll be here when we come back to  
2 formally settle.

3 MR. GIORDANI: Can we have permission for our interns  
4 to join us?

5 THE COURT: Absolutely.

6 MR. GIORDANI: Thank you.

7 THE MARSHAL: Judge, are we going to bring the jury  
8 back in and the defense rest or?

9 THE COURT: They will rest in front of the jury when we  
10 bring them back in. But no -- I don't want to bring them in just to  
11 do that and excuse them.

12 THE MARSHAL: Yes, ma'am.

13 THE COURT: When they come in, they can rest, and then  
14 we'll start instructing them.

15 THE MARSHAL: Yes, ma'am.

16 THE COURT: But the State's not going to call any rebuttal,  
17 right?

18 MR. GIORDANI: No, no. Not at this time.

19 THE COURT: Okay. I just wanted to make sure we were  
20 done with witnesses.

21 [Court recessed at 11:12 a.m., until 1:29 p.m.]

22 [Outside the presence of the jury.]

23 MR. GIORDANI: Your Honor, what's the language you  
24 were going to use for the stip?

25 THE COURT: Exhibit 13 that has been admitted into



1 evidence is a reenactment by Sergeant Cupp made for homicide. It  
2 is not real dash cam video.

3 MR. GIORDANI: Perfect. Thank you.

4 THE COURT: You bet.

5 MR. LEVENTHAL: Can we also add that the audio in that  
6 is also not live, that it was -- what do you call it?

7 MR. TANASI: Dubbed over.

8 MR. GIORDANI: It was laid over the video.

9 MR. LEVENTHAL: Just because there might be a timing  
10 issue on that and I don't want them to think that exactly where the  
11 car is is what was heard on the audio.

12 MR. GIORDANI: I think that's fair.

13 THE COURT: So Sergeant Cupp narrated it later?

14 MR. GIORDANI: In other words --

15 MR. LEVENTHAL: No, they took a copy of the -- I'm sorry.  
16 They took a copy of their voice to dispatch.

17 THE COURT: Oh. Okay.

18 MR. LEVENTHAL: And it was back and forth. And I don't  
19 know if the timing, when they hit, like, let's say, Jimmy Street, is  
20 what they heard at that time and place.

21 THE COURT: Okay. So they used actual radio traffic?

22 MR. LEVENTHAL: Correct.

23 MR. GIORDANI: Correct.

24 THE COURT: And overlaid it on the reenactment? Okay.

25 MR. GIORDANI: I think their intent was to make it correct

1 time-wise. But I don't -- that's not in evidence. And so we don't  
2 want that to be --

3 THE COURT: Okay.

4 MR. GIORDANI: -- suggested to them.

5 [Pause in proceedings.]

6 THE COURT: Are both sides ready?

7 MS. BOTELHO: Yes.

8 THE COURT: Okay. Let's bring them in.

9 MR. LEVENTHAL: Yes.

10 MR. TANASI: Yes, Judge.

11 [Jury reconvened at 1:33 p.m.]

12 THE COURT: Does the State stipulate to the panel as now  
13 empaneled?

14 MR. GIORDANI: We do, Your Honor. Thank you.

15 THE COURT: And the defense?

16 MR. LEVENTHAL: Yes, Your Honor. Thank you.

17 THE COURT: Okay. Mr. Leventhal, Mr. Tanasi, do you  
18 have any further witnesses --

19 MR. LEVENTHAL: No, Your Honor.

20 THE COURT: -- you intend to call?

21 MR. LEVENTHAL: No, Your Honor.

22 THE COURT: Defense rests?

23 MR. LEVENTHAL: Yes, thank you, Your Honor.

24 THE COURT: Anything in rebuttal?

25 MR. GIORDANI: No, Your Honor. Thank you.

1 THE COURT: Okay. Before I do read you the instructions,  
2 the parties have entered into a stipulation as to Exhibit 13.  
3 Exhibit 13 that has been admitted into evidence is a video. It is a  
4 reenactment video that was made by Sergeant Cupp at the request  
5 of homicide. It is not dash-cam video, it is not live, it's a  
6 reenactment.

7 And also, the audio is not live audio. That audio was laid  
8 down on the reenactment at a later time.

9 We just wanted to make sure you knew that it wasn't  
10 dash-cam video.

11 So at this time, you have heard all of the evidence. The  
12 court marshal has passed out the jury instructions to you. Each of  
13 you have a copy of them. You can follow along and you'll also be  
14 able to take these instructions with you when you go back to  
15 deliberate upon your verdict. I am required to read them to you by  
16 law, so I will read them to you. Don't be concerned if you don't get  
17 every word or hear exactly each instruction, because, like I said, all  
18 of you will have your own copy, and when you go back to  
19 deliberate, you will be able to read them and discuss them with  
20 your fellow jurors.

21 [Jury instructions read.]

22 THE COURT: And the State of Nevada may open and  
23 close the arguments.

24 MS. BOTELHO: Yes, Your Honor.

25 ///

1                                   **CLOSING ARGUMENT FOR THE STATE**

2                   MS. BOTELHO: On September 30th, 2006, the defendant,  
3 Jemar Matthews, and his close friend, co-conspirator, partner in  
4 crime, Pierre Joshlin, and two unidentified men convened  
5 upon 1271 Balzar Avenue under the cover of darkness, around the  
6 side of the house, armed with enough ammunition to take out a  
7 small army, dressed in similar clothing, fired 39 shots and  
8 ambushed the individuals at 1271 Balzar Avenue.

9                   Ladies and gentlemen of the jury, in every criminal case,  
10 the State has to prove two things: First, that crimes were  
11 committed, and second, that the defendant committed the crimes.

12                  And I'm going to apologize ahead of time, because I am  
13 tasked during this first close to explain the law and apply it to the  
14 evidence that you've heard during this case. And as you can  
15 imagine, there are so many charges, there are lots of different  
16 things that we need to go over, so I would just ask you to bear with  
17 me.

18                  So what are the charges that the State is alleging, but now  
19 have proven beyond a reasonable doubt that the defendant Jemar  
20 Matthews committed? He is charged with conspiracy to commit  
21 murder; murder with use of a deadly weapon for killing Mersey  
22 Williams; attempt murder with use of a deadly weapon for  
23 attempting to kill Maurice Hickman, Michel'le Tolefree, and Myniece  
24 Cook.

25                  He is also charged with possessing a short-barreled rifle;

1 conspiracy to commit robbery; robbery with use of a deadly  
2 weapon for Geishe Orduno Bolden, as well as Melvin Bolden.

3 In addition, he is charged with two counts of assault with  
4 use of a deadly weapon for assaulting Officer, now Sergeant  
5 Bradley Cupp and Officer, now Detective, Brian Walters.

6 Now, you've heard evidence from many of the witnesses  
7 that more than one individual was involved in committing these  
8 crimes. Okay. You've heard testimony concerning Pierre Joshlin  
9 and perhaps two or three other individuals who may have been  
10 with the defendant on September 30th of 2006.

11 But there is a jury instruction that says you are here to  
12 determine whether the State of Nevada has met its burden of proof  
13 from the evidence in the case. You are not called upon to return a  
14 verdict as to any other person. So if the evidence in the case  
15 convinces you beyond a reasonable doubt of the guilt of the  
16 defendant, you should so find, even though you may believe one or  
17 more persons are also guilty.

18 Let's get the easy stuff out of the way first. Okay. And a  
19 lot of these charges, there's a deadly weapon charged. While  
20 you've heard Judge Leavitt indicate that a firearm is a deadly  
21 weapon. There's an instruction also in your jury packet defining  
22 deadly weapon. But this isn't easy. Okay. This is:

23 Deadly weapon is any instrument which, if used in the  
24 ordinary manner contemplated by its design and construction,  
25 will or is likely to cause substantial bodily harm or death.

1 Firearm can do that. These are the three firearms in  
2 question that you've heard all of this evidence about. Okay. The  
3 testimony of James Krylo, which was read in by someone in our  
4 office, indicates that these three weapons are firearms. So any  
5 charge that involves a deadly weapon we've proven beyond a  
6 reasonable doubt with this testimony.

7 What I'd like to call your attention to is there is a jury  
8 instruction that explains the use of a deadly weapon. It says:

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

13 An unarmed defender uses a deadly weapon when the  
14 unarmed defender is liable for the offense, another person liable  
15 for the offense is armed with and uses a deadly weapon in the  
16 commission of the offense, and the unarmed offender had  
17 knowledge of the use of the deadly weapon.

18 Now, even if you were to believe that the evidence has  
19 ferreted out that Jemar Matthews did not himself have any of these  
20 deadly weapons, he is liable under this jury instruction if he had  
21 knowledge of the use of the deadly weapon.

22 Now, what has the evidence shown? Well, the evidence  
23 has shown that Jemar Matthews is one of those individuals who  
24 crept up on 1271 Balzar Avenue. There were people in a line,  
25 multiple people, at least four to five people, according to our

1 witnesses.

2 Now, did he have knowledge of the use of a deadly  
3 weapon? Well, you would think so, if he's standing right there  
4 as 39 shots are being fired at the home and at the individuals  
5 outside that home.

6 Doesn't matter if Mr. Matthews had the firearm that struck  
7 Myniece Cook in the wrist. Doesn't matter if Mr. Jemar Matthews,  
8 the defendant, didn't have the firearm or didn't actually use the  
9 firearm that he -- that was fired upon Michel'le when Michel'le was  
10 running across the street for her life. And it didn't matter whether  
11 or not Mr. Jemar Matthews himself had the weapon or fired the  
12 weapon that ultimately killed Mersey Williams. He had knowledge  
13 of the -- of what was going to occur when he engaged in the  
14 behavior, in the acts and in the conduct when he crept up 1271  
15 Balzar and fired the rounds or watched his co-conspirators and  
16 partners in crime shoot 39 times.

17 The defendant is also charged with assault with a deadly  
18 weapon. An assault with a deadly weapon is an intentional placing  
19 of another person in reasonable apprehension of immediate bodily  
20 harm by or through the use of a deadly weapon.

21 In this case, we have testimony from then-Officers Cupp  
22 and Brian Walters, who indicated to you during their testimony that  
23 when they were at 1915 Lexington Avenue, this church where the  
24 car that they had just car-jacked from the Boldens, crashed into a  
25 fire hydrant. Okay. Both officers told you that as that door swung

1 open, that driver-side door swung open, they saw a red glove on  
2 the left hand -- the left-hand-side glove open the door, and at some  
3 point the defendant is turning back looking at the both of them as  
4 they are -- as they're making their way to where the defendant's  
5 vehicle -- or the Bolden's vehicle is.

6 And at that time, both officers will tell you the defendant  
7 comes out of the driver side driver seat with a 22-caliber  
8 short-barrel rifle. They have told you during both of their testimony  
9 that at that time, as the defendant made his way coming towards  
10 them with this short-barrel rifle in his hand, they were in fear for  
11 their lives. That's an assault with a deadly weapon. Okay.

12 Sergeant Cupp -- or Officer Cupp at the time -- told you  
13 that he felt like they were sitting ducks as he came out with that rifle  
14 in his hand. He -- Officer Cupp indicated they had not had, at that  
15 time, time to actually take off their seat-belts and remove their  
16 weapons from their holster. So they were in such fear for their life  
17 that, Officer Cupp testified, they were kind of playing this peeking,  
18 you know, peering in, pulling back, peeking in before he ultimately  
19 made the decision to tap him, the defendant, with the unmarked  
20 patrol vehicle, which had its lights and sirens on. Okay. And so  
21 they were in such fear for their lives that they actually engaged in  
22 this type of maneuver.

23 Officer Cupp will also tell you that they were still in fear  
24 for their lives after they tapped him, the defendant, with the vehicle,  
25 so much that at some point, he didn't know where this firearm was,



1 they didn't know where the short-barrel rifle was, but the defendant  
2 ended up on the hood of their car, three to four feet away, as  
3 they're still sitting in their patrol car -- unmarked patrol car, just  
4 waiting, just observing.

5 The evidence has shown, beyond a reasonable doubt, that  
6 the defendant committed assault with use of a deadly weapon,  
7 against Officers Cupp and Walters.

8 The defendant is also charged with possession of a  
9 short-barreled shotgun. You heard the testimony of firearms and  
10 tool mark examiner James Krylo. This was the testimony that was  
11 read in. Okay. This particular charge says:

12 It is unlawful to knowingly possess, manufacture, or  
13 dispose of any short-barrel rifle or shotgun. Short-barreled rifle  
14 means a rifle having one or more barrels, less than 16 inches in  
15 length, or any weapon made from a rifle, whether by alteration,  
16 modification, or other means, with an overall length of less  
17 than 26 inches.

18 Okay. James Krylo's report is also admitted into  
19 evidence. You would have an opportunity to see it just like you  
20 would any other piece of evidence that's been admitted. And  
21 concerning the Ruger rifle, it indicates, the Ruger rifle was  
22 examined and test-fired and determined to be functional. This rifle  
23 was received with the barrel and the stock cut off, leaving a barrel  
24 length of 11-5/8ths inches, and an overall length of 19-1/2 inches.  
25 The trigger pull this rifle, so on and so forth, and submitted

1 magazine has a capacity of 30 cartridges.

2           So the law says the barrel less than -- it's a short-barreled  
3 shotgun if the barrel is less than 16 inches in length. Here, the  
4 evidence has shown through the report and -- through the report  
5 authored by James Krylo, that the barrel length of this particular  
6 short-barreled rifle is 11-5/8ths inches. So that's less than the 16  
7 inches in length.

8           Also, the law says the overall length is less than 26 inches  
9 in length. And here, we have an overall length of 19-1/2 inches, so  
10 that's less than. Meaning the defendant had the short-barreled  
11 shotgun, rifle, is guilty of possessing that particular short-barreled  
12 rifle.

13           The defendant is also charged with robbery with use of a  
14 deadly weapon for car-jacking the Boldens. Okay.

15           Robbery is the unlawful taking of personal property from  
16 the person of another or in his or her presence against his or  
17 her will by means of force or violence of fear of injury,  
18 immediate or future, to his or her person or property.

19           What evidence have you heard concerning this  
20 car-jacking? Well, it occurred at 1284 Lawry Avenue. Geishe  
21 Orduno, now Bolden, as well as Melvin Bolden and their friends  
22 Steve and Betty, were just coming back from a night out. Okay.  
23 They were in that silver Town Car owned by the Boldens. They  
24 heard gunshots nearby coming from the direction of Balzar of  
25 Lexington.

1           When they heard the gunshots, they were attempting to  
2 park the Lincoln Town Car when four young Black males  
3 approached. They were wearing black shirts and gloves. One had  
4 a red glove. And you heard that testimony from Geishe Orduno  
5 Bolden. She indicated one had red gloves and said, Get out of the  
6 car.

7           Mr. Melvin Bolden indicated, well, he saw some red and  
8 black gloves. So he testified about gloves as well. And both of  
9 them told you that one of them had a short-barrel rifle or a  
10 sawed-off shotgun. And one had a handgun, and one fired a round  
11 in the air to get them to give up the car, get out of the car, to get  
12 these armed -- to comply with the demands of these armed  
13 robbers.

14           The evidence will show, especially from the testimony of  
15 Officers Bradley Cupp and Officer Walters, that it was the  
16 defendant, they identified the defendant, Jemar Matthews, as the  
17 individual they saw coming out of that driver seat of that Lincoln  
18 Town Car, the one that had just been car-jacked from the Boldens.  
19 Okay.

20           Now, there's some testimony from the Boldens that may  
21 have some -- put some details in question into your mind. Okay.  
22 And let's talk about that. Mr. Bolden indicated, hey, the person with  
23 the handgun was the one who told me to get out of the car. He  
24 thinks that's the person who got in the driver seat. Geishe Bolden  
25 said, hey, I saw the person with the red glove, with the short-barrel

1 rifle, and he was on my side, the passenger side. So how is it that  
2 Jemar Matthews could have possibly been in the driver seat? Okay.

3 We'll talk about conspiracy and aiding and abetting in a  
4 little bit. But let me suggest to you there is nothing to preclude the  
5 events happening as the Boldens remember it. Okay. Meaning the  
6 person with the short-barrel rifle could have been on the passenger  
7 side. The person with the handgun could have been the one on the  
8 driver side. Okay. Nothing -- nothing would have stopped these  
9 individuals from changing seats before they took off. Geishe  
10 Bolden was already hiding in the driveway. Mr. Melvin Bolden was  
11 looking out, trying to see -- also trying to hide and get out of harm's  
12 way. They didn't particularly see where each of those individuals  
13 ended up sitting before this vehicle took off at a high rate of speed.

14 So the evidence that you have, though, is Officers Bradley  
15 Cupp and Brian Walters will tell you the defendant, Jemar  
16 Matthews, is the individual they saw coming out of that stolen  
17 car-jacked gray Lincoln Town Car, and he's the individual with the  
18 red glove. And the defendant was the one who had the short-barrel  
19 rifle in his hand. It was the defendant that put them in such fear  
20 that they tapped him with the car. That's the evidence that you  
21 have.

22 And based on that, we have proven beyond a reasonable  
23 doubt that the defendant committed two counts of robbery with use  
24 of a deadly weapon against the Boldens.

25 Attempted murder with use of a deadly weapon.

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

5           Well, the victims are Myniece Cook, Maurice Hickman, and  
6           Michel'le Tolefree. These are the individuals that Jemar Matthews,  
7           Pierre Joshlin, and their two other buddies are charged with trying  
8           to kill when they fired between that blue car and the porch on  
9           September 30th of 2006.

10          Based on the conduct, and we'll talk more about that  
11          evidence at length in a little bit, the defendant is guilty, and we've  
12          proven beyond a reasonable doubt of attempting to kill Myniece  
13          Cook, Maurice Hickman, Michel'le Tolefree when they fired those 39  
14          rounds in their direction.

15          The defendant is also charged with what's called open  
16          murder. In this case, the defendant is accused, in an amended  
17          information, alleging an open murder. This charge may include  
18          murder of the first degree, murder of the second degree. The jury  
19          must decide if the defendant is guilty of any offense, and if so, of  
20          which offense.

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

25          That's the definition. But we're going to go through it.

1 But first we're going to do a process of elimination. Okay.  
2 This was not a second-degree murder. Mersey Williams was not  
3 killed under the second-degree murder. Okay. That's because  
4 second-degree murder means:

5 All murder which is not murder of the first degree is  
6 murder of the second degree. Murder of the second degree is  
7 murder with malice aforethought, but without the admixture of  
8 premeditation and deliberation.

9 I submit to you that the evidence in this case has proven  
10 beyond a reasonable doubt that the defendant, Jemar Matthews,  
11 Pierre Joshlin, and these other individuals committed this offense,  
12 killed Mersey Williams, in a premeditated and deliberate fashion.  
13 That's why it's not second-degree murder. Second-degree murder  
14 says there was no premeditation, there was no deliberation. That's  
15 not what we have here.

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

21 So let's talk about these three things: Willfulness,  
22 deliberation, premeditation. Well, willfulness is the intent to kill.  
23 There need be no appreciable space of time between a formation of  
24 the intent to kill and the act of killing.

25 Deliberation is the process of determining upon a course

1 of action to kill as a result of thought. That means someone's  
2 weighing the reasons for and against the action and considering the  
3 consequences of the action.

4 A deliberate determination may be arrived at in a short  
5 amount of time. Okay. And I say this, because a lot of times, if you  
6 watch movies, you know, the example of premeditation and  
7 deliberation seems to be, well, husband thinks that his wife is  
8 cheating on him, so he pretends to go to work. No one knows that  
9 the day before, he had secured a handgun, he's hoping to find his  
10 wife in bed with this other person. He hides. He waits until he sees  
11 this other man go into his home, and rushes in and shoots them  
12 dead. Okay. That's not all. That's not the only fact pattern where  
13 you can find premeditation and deliberation. Okay.

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

16 Premeditation need not be for a day, an hour, or even a minute.

17 It may be as instantaneous as successive thoughts of the mind.

18 It's that quick. Okay. You know how quickly a thought  
19 can run through your head? That's how quickly premeditation can  
20 be formed.

21 For if the jury believes from the evidence that the act  
22 constituting the killing has been preceded by and has been the  
23 result of premeditation, no matter how rapidly the act follows  
24 the premeditation, it is premeditated.

25 Let me give you an example. I hate to admit this, but I am

1 an individual who often runs late. Not a lot -- not by a lot. Okay.  
2 Sometimes a few minutes here and there. And sometimes we have  
3 court cases on calendar. Sometimes, as I'm coming down Sahara,  
4 running late, not wanting to be late to court, okay, I come across the  
5 intersection of Sahara and Decatur, and I know that particular  
6 intersection to have police officers sometimes hiding, you know,  
7 traffic traps.

8 And I know this, and I expect it, and as I'm driving  
9 through, try to keep a considerable distance away from other  
10 vehicles. But immediately as I'm approaching, I'm about three car  
11 lengths away from the actual intersection, and the light turns  
12 yellow, now, at that point in time, as I see the light turn yellow, I am  
13 having successive instantaneous thoughts, immediate, just like that.  
14 And I decide after I look behind me to see if there's a car that's  
15 going to crash into me if I come into an immediate stop, as I look  
16 around for police officers, as I look around for other traffic that I  
17 might run into, I decide, as quickly as that, I'm going to run that  
18 light, because I need to make it to court. Okay.

19 But by the time I've made that decision and I've entered  
20 the actual intersection, okay, I have deliberated, I have  
21 premeditated, and I have the intent to actually cross the intersection  
22 and run that yellow light. Okay. That's how quickly one can  
23 deliberate, premeditate, and have formed the intent to do  
24 something. That's what the law says.

25 Intent to kill: The law does not undertake to measure in



1 units of time the length of the period during which the thought  
2 must be pondered before it can ripen into an intent to kill, which  
3 is truly deliberate and premeditated. The time will vary with  
4 different individuals and under varying circumstances.

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

11 The intention to kill may be ascertained or deduced from  
12 the facts and circumstances of the killing, such as the use of a  
13 weapon calculated to produce death, the manner of its use, and  
14 the attendant circumstances characterizing the act.

15 Now, we don't have the luxury, okay, of having a  
16 recording, say, of the defendant and Pierre Joshlin recording their  
17 mind and telling you what their intent was. You know, there's not a  
18 recording that I can -- Mr. Giordani and I can just press play that  
19 would say, you know, in Jemar Matthews' voice, When I walked up  
20 Lexington, stopped at the corner of Lexington and Balzar with my  
21 friends lined up with three semiautomatic weapons, extended clips,  
22 I intended to kill. There's not going to be a recording of that.

23 There's not going to be a recording when -- that says, hey,  
24 when I was getting out of that stolen car that I just car-jacked from  
25 the Boldens, I meant to scare the bejeezus out of those police

1 officers when I came out of that car with a short-barrel rifle in my  
2 hand.

3 We're not going to be able to produce that for you. We  
4 don't have that ability. But there is a jury instruction that tells you  
5 you can use your common sense when you're thinking about  
6 deliberation, premeditation, and an intent to kill. There's actually a  
7 jury instruction on it. It says:

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

16 You can use your everybody common sense and  
17 judgment as reasonable men and women when you are looking at  
18 this evidence.

19 1271 Balzar. The evidence is the defendant, Pierre  
20 Joshlin, two other unidentified individuals walked up Lexington and  
21 ambushed the people at 1271 Balzar Avenue. This particular photo  
22 shows the path that the defendant and his buddies walked up. The  
23 cones in this photograph show the cluster of cartridge cases.

24 Now, as you've heard from the testimony of James Krylo,  
25 the cartridge cases typically fall near or a few feet away from where

1 the firearm is discharged. So this particular photo can show you  
2 the general area upon which the defendant and his friends stood by  
3 as they fired the 39 shots into this area. And it was just as Michel'le  
4 and Myniece told you when they testified. They were near the  
5 corner of Balzar and Lexington when they unloaded the barrage of  
6 bullets.

7 So from this area, the top of the cluster of cartridge cases,  
8 this is the view that the defendant, Pierre Joshlin, and his friends  
9 would have seen from where they stood in that corner as they just  
10 fired into the house. Maurice Hickman, those three young women,  
11 perfect view of their intended targets.

12 What else can you consider when you're thinking about  
13 premeditation, deliberation, and intent to kill? You heard the  
14 testimony concerning the three firearms, the three semiautomatic  
15 firearms that were recovered and linked to the 1271 Balzar Avenue  
16 scene. You know that the rifle, the short-barreled rifle, was  
17 equipped with a 30-round magazine. Concerning the Colt .45  
18 millimeter [sic], that was equipped with a 10-round magazine. The  
19 Glock 45-caliber, equipped with a 28-round magazine.

20 Using your everyday common sense and judgment, what  
21 does this indicate to you? Someone had enough deliberation and  
22 premeditation to make sure they had this many rounds and the  
23 capacity to fire this many rounds. Someone had enough  
24 deliberation, premeditation, and an intent to kill to use a majority of  
25 those rounds to shoot at people. You can consider this, along with

1 your everyday common sense and judgment, to determine  
2 premeditation, deliberation, and an intent to kill.

3 Also, you've heard testimony 39 shots were fired. At  
4 least, you know, by count, depending on the cartridge cases that  
5 were found. But this is from a semiautomatic firearm. Now, the  
6 testimony has been, to those of you who are not familiar with  
7 firearms, when you fire a semiautomatic firearm, you have to pull  
8 the trigger each time to fire a shot. Okay. It's not fully automatic,  
9 like in those, you know, action movies, where it's just -- brrr, you  
10 know, and you just hold it down, and next thing you know you have  
11 an empty clip.

12 This is 39 rounds. Okay. Individuals were continuously  
13 pressing and pulling the trigger. So when you see this cluster of  
14 cartridge cases to signify the shots that were fired, you can surmise  
15 this cluster, look at the amount, you can surmise, well, all of this  
16 was aimed towards people outside of this home, maybe people  
17 inside the home, and certainly, with each pull of the trigger, they  
18 had the opportunity and they formed premeditation, deliberation,  
19 and an intent to kill. This is how many times someone, the  
20 defendant and his friends, would have had to pull the trigger. 39  
21 times, just as I clicked on my clicker 39 times, that's what they had  
22 to do. All while they aimed towards people.

23 Now, you will have into evidence this crime scene  
24 diagram. And this basically shows the home and where the bullets  
25 struck. Okay. So 1271 Balzar, well some of those bullets truck this

1 window. This window -- that was from the outside, this is the  
2 window from the inside. Now, you know from Michel'le -- or,  
3 excuse me, from Myniece, that there were people in this home.  
4 Okay. Look at those shots coming from outside in, into this  
5 occupied home.

6           You've also heard evidence that the vehicle, as shown by  
7 the red circle, it was that vehicle between 1271 and 1261 Balzar.  
8 Okay. I would like to note your attention to just where that vehicle  
9 is in relation to the area where Michel'le and Myniece both  
10 described where they, along with Mersey, were standing. Michel'le  
11 and Myniece told you that they were standing between that blue car  
12 and the porch of that house.

13           Now, the car that's directly behind them, in their  
14 background, is struck multiple times. What can you use that  
15 evidence to show? They were aiming for Maurice Hickman,  
16 Michel'le Tolefree, Myniece Cook, and Mersey Williams. There's  
17 the blue car. There's the red car that was struck. What does this  
18 tell you, using your everyday common sense and judgment? The  
19 defendant and his friends meant to kill.

20           The evidence will also show that that car at the end of the  
21 arrow, that was also struck. Well, how is that significant? Well, that  
22 just happened to be in the background of where Michel'le and  
23 Maurice Hickman were crossing the street. And remember,  
24 Michel'le told you she fell? She was running so hard she fell out of  
25 her shoes, came out of her shoes? And she fell down on the

1 ground and she said she was so scared, because she could feel the  
2 strikes coming in their direction.

3 Well, the fact that this car in her background, in Maurice  
4 Hickman's background, was struck, what does that show you? It  
5 shows you that the defendant, Pierre Joshlin, and two other  
6 individuals with them meant to strike Michel'le, meant to strike  
7 Maurice, and went after them as they tried to hide, as they ran for  
8 their lives. That's what this scene is telling you.

9 This was a picture of Balzar where Michel'le identified that  
10 shoe that she came out of.

11 Premeditation, deliberation, and an intent to kill. These  
12 individuals, Jemar Matthews, his close friend Pierre Joshlin, these  
13 two other individuals, acted in such a manner, planned, deliberated,  
14 executed.

15 They showed up with gloves. The end of September.  
16 They were dressed in similar clothing. Premeditation, deliberation,  
17 intent to kill. What else? They were armed. And not just armed,  
18 we're talking armed-armed.

19 Transferred intent. This is important.

20 During an attack upon a group, a defendant's intent to kill  
21 need not be directed at any one individual. It is enough if the  
22 intent to kill is directed at the group.

23 This is telling you, this particular instruction is telling you,  
24 look, even if the defendant and his friends didn't mean or didn't  
25 want to kill Mersey or Michel'le or Myniece, okay, maybe they were

1 after Maurice Hickman, okay, does not matter. Because that intent  
2 to want to kill Maurice transferred to those girls when they fired at  
3 that group of people.

4 The view that they would have had, even as Maurice  
5 Hickman was running away, the shots continued. They attacked  
6 this group. Doesn't matter -- doesn't matter if Maurice was the  
7 person they were after. Doesn't matter. They're just as responsible  
8 for what happened to those girls.

9 If an illegal, yet unintended act results from the intent to  
10 commit a crime, that act is also considered illegal. Under the  
11 Doctrine of Transferred Intent, original malice is transferred  
12 from one against whom it was entertained to the person who  
13 actually suffers the consequences of the unlawful act.

14 It transfers to Michel'le, who had to run for her life and  
15 hide. It transfers to Myniece, who had to play dead next to her  
16 cousin. It definitely transfers to Mersey, who suffered the ultimate  
17 consequence of that unlawful act.

18 For example, if a person intentionally directs force against  
19 one person wrongfully, but instead hits another, his intent -- his  
20 intent is said to be transferred from one to the other, though he did  
21 not intend it in the first instance. That's what the law says. That's  
22 what you have been instructed.

23 Maurice Hickman was probably the intended target. Does  
24 not matter. He is on the hook for what he did to those girls.

25 There are different theories of liability, that the defendant,

1 Jemar Matthews can be found guilty under. Okay. There's that he  
2 directly committed crimes, and in this instance, we charged him as  
3 directly committing the assault with a deadly weapon. Right? He's  
4 the one that put Bradley Cupp and Officer Brian Walters in  
5 immediate apprehension of injury when he came out of that  
6 car-jacked car and had that short-barrel rifle in his hand. Okay. So  
7 he directly committed that.

8 He also is charged with directly committing, possessing  
9 the short-barrel rifle. We're asserting he had that short-barrel rifle,  
10 he was in possession of it, that's why he was guilty.

11 But there are two other theories of liability that he can be  
12 found guilty under for the other charges. There's that he aided and  
13 abetted in the commission of those crimes, or that he acted  
14 pursuant to a conspiracy. So what is a conspiracy? Okay.

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

20 Key word is there was an agreement to do something  
21 unlawful. Now, a co-conspirator is a person who knowingly does  
22 any act to further the object of the conspiracy or otherwise  
23 participants therein is criminally liable as a co-conspirator.

24 The evidence has shown these individuals are all  
25 co-conspirators, because they had an agreement do something



1 unlawful: Shoot at people in front of 1271 Balzar.

2           Each member of a criminal conspiracy is liable for each  
3 act and bound by each declaration of every other member of the  
4 conspiracy if the act or the declaration is in furtherance of the  
5 object of the conspiracy. The act of one conspirator pursuant to  
6 or in furtherance of the common design of the conspiracy is the  
7 act of all conspirators.

8           So when they all crept up 1271 Balzar dressed like that,  
9 armed like that, shot like that, they're co-conspirators. And they are  
10 liable for the actions of each of the others, because they all had the  
11 common agreement and intent that the attempted murders, that the  
12 murders occur.

13           Under the conspiracy law, the act of one is the act of all.  
14 It's like the four musketeers of law. The act of one is the act of all.

15           How is a conspiracy proven, though? You know, just like  
16 Mr. Giordani and I can't present to you this recording, hey, I meant  
17 to do this with Pierre. I agreed to this, there was that agreement.  
18 How is it proven? Well, the law takes our inability to play a video  
19 for you into account. It tells you:

20           It is not necessary in proving a conspiracy to show a  
21 meeting of the alleged conspirators or the making of an express  
22 or formal agreement. The formation and existence of a  
23 conspiracy may be inferred -- may be inferred from all  
24 circumstances tending to show the common intent and may be  
25 proved in the same way as any other facts may be proved,

1       either by direct testimony or the fact or by circumstantial  
2       evidence or by both direct and circumstantial evidence.

3               You can infer from all circumstances tending to show  
4       common intent, like creeping up the side, armed, dressed the same,  
5       extended clips on their firearms, running away together, car-jacking  
6       together, running away together. Trying to get away together.

7               Key here is there is a common intent. They all shared  
8       that. That's what the evidence has borne.

9               We are not required to show you a contract, right?  
10       Because how often does that happen? Okay. People who mean to  
11       do illegal things, like, kill other people, they're not going to be, like,  
12       hey, sign this, I do this, you do that, you provide this, you run. No  
13       one's going to do that. We're not expected to produce that for you.  
14       You have to infer this common intent and this conspiracy based on  
15       the evidence.

16               We are not going to be able to show you like they do in  
17       bank heist movies or whatever it is that these individuals who are at  
18       the Denny's discussing what was about to occur. It's always some  
19       breakfast place. But, you know, the discussions, you know, we're  
20       not going to be able to show you that. We're not going to be able  
21       to say, hey, you be the getaway driver, I'm going to have the gun.  
22       Hey, nobody gets hurt, right? Nobody gets killed. Okay.

23               We're not going to be able to show you that. You are  
24       going to have to use your common sense as reasonable men and  
25       women to decide, to infer from the circumstances whether this

1 conspiracy existed. And there is more than evidence -- certainly  
2 evidence beyond a reasonable doubt that it did.

3 Conspiracy is seldom susceptible of direct proof and is  
4 usually established by inference from the conduct of the parties.

5 Look at the conduct.

6 In particular, a conspiracy may be supported by a  
7 coordinated series of acts -- coordinated series of acts in  
8 furtherance of the underlying offense sufficient to infer the  
9 existence of an agreement.

10 Everything in this case shows a coordinated series of  
11 facts. It is not a coincidence that these four armed men converged  
12 upon 1271 Balzar like they did, armed like they were, dressed like  
13 they were, running away as they did. It is not a coincidence; it is a  
14 coordinated series of acts.

15 When does a conspiracy end? Well, it ends upon the  
16 completion of the crime. It does not end upon the completion of  
17 the crime, I'm sorry. The conspiracy continues until the  
18 co-conspirators have successfully gotten away and concealed their  
19 crime. Well, we know from the evidence Jemar Matthews didn't  
20 successfully get away with the crime. Remember, he was found  
21 hiding in that mulch by the K-9?

22 Pierre Joshlin didn't get away successfully with the crime.  
23 He was found hiding in that dumpster.

24 Two other individuals did. Not these two.

25 The third theory of liability is called aiding and abetting.

1 Okay.

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

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

10 This is the instruction that tells you it does not matter who  
11 did what. Doesn't matter if Jemar Matthews was the one who  
12 pulled the trigger on the shot that killed Mersey. If he, Pierre  
13 Joshlin, and those two other individuals aided and abetted each  
14 other, helped each other, they are all equally guilty.

15 Aiding and abetting says the State is not required to prove  
16 precisely which defendant actually committed the crime and which  
17 defendant aided and abetted. If they aided and abetted, they are  
18 equally guilty.

19 It does not matter who actually car-jacked the Boldens,  
20 who actually got in that driver seat, does not matter. They are all  
21 equally guilty of that robbery with use of a deadly weapon.

22 All persons concerned in the commission of a crime who  
23 either directly and actively commit the crime constituting the  
24 offense, or who knowingly and with criminal intent aid and abet  
25 in its commission, or whether present or not, who advise and

1 encourage its commission with the intent that the crime be  
2 committed are regarded by the law as principals in the crime,  
3 thus committed and are equally guilty thereof.

4 If you find that Jemar Matthews and his close friend,  
5 Pierre Joshlin, and their other two friends helped each other with  
6 the common intent to shoot at and kill those individuals in the front  
7 of that house, car-jacking the Boldens, they're equally guilty. That's  
8 what the law says. That's what aiding and abetting is.

9 So Mr. Matthews can be found guilty for directly  
10 committing, acting pursuant to a conspiracy, or by aiding and  
11 abetting the other individuals in committing the crimes.

12 You all don't have to agree on the theory of liability. You  
13 all don't have to agree, at least as it pertains to all of the counts  
14 besides the assault with a deadly weapon and the possession of the  
15 short-barrel shotgun, because we're alleging he actually did that, he  
16 himself, not pursuant to a conspiracy or aiding and abetting, but all  
17 of the other charges.

18 Let me give you an example. People, four individuals  
19 decide they're going to commit a bank robbery. Okay. One person  
20 thinks, a-ha, less likely that I'm going to get in trouble, so I'll just  
21 agree to be the getaway driver. So this person pulls up to the bank,  
22 lets the other three scurry in, commit the bank robbery, come out.  
23 Lo and behold, he doesn't know what happened in there. Well, a  
24 security guard got brave, tried to take these armed robbers into  
25 custody or stop them from committing the bank robbery, and the

1 security guard gets shot and killed by one of them.

2 That getaway driver, under conspiracy and aiding and  
3 abetting theories of liability is just as guilty and is on the hook for  
4 the first-degree murder that occurred at that bank. Because that  
5 getaway driver conspired, had an agreement to commit that  
6 unlawful act, that bank robbery, and acted to further that by  
7 providing the getaway vehicle. That's what the law says.

8 Another example, same set of facts, one guy thinks, I'm  
9 going to be even smarter, I don't want to be anywhere near that  
10 bank when you all are robbing it. What I can do as my part, though,  
11 is provide you with a gun. Here you go. That person who provided  
12 the gun, who may or may not even be on the same street as this  
13 bank when the robbery is occurring, that person is on the hook for  
14 the first-degree murder that occurred at that bank under conspiracy  
15 and aiding and abetting theory of liability. That person helped,  
16 encouraged, gave advice, and acted in such a way to encourage  
17 these other individuals to perpetrate the crime that they agreed  
18 would be committed. That's what the law says.

19 It doesn't matter if Jemar Matthews directly committed --  
20 fired the shots towards these girls, whether he did it by agreement,  
21 simply aided and abetted, he is on the hook for what happened to  
22 those three girls. He's on the hook for what happened to the  
23 Boldens. Conspiracy and aided -- aiding and abetting.

24 So those were the crimes that we have charged.

25 The second part that we have to talk to -- again, I

1 apologize, this is so long -- is whether the defendant committed the  
2 crimes. Okay. Second part, crimes were committed and the  
3 defendant, Jemar Matthews committed the crimes. So let's discuss  
4 this. Okay?

5 You have an instruction that actually tells you what  
6 evidence you are to consider in this case. So it consists of the  
7 testimony of the witnesses, the exhibits, and any facts admitted or  
8 agreed to by counsel.

9 Then it tells you direct or circumstantial evidence,  
10 statements and arguments and opinions of counsel are not  
11 evidence. If the attorneys stipulate to the existence of a fact, you  
12 must accept the stipulation as evidence and regard that fact as  
13 proved.

14 So now we're going to discuss all of the evidence that  
15 should prove to you beyond a reasonable doubt that the defendant  
16 committed these offenses. Okay. But I want to discuss evidence  
17 first.

18 Because you'll see some defense exhibits. And this was  
19 discussed during opening statements, which is not evidence. Okay.  
20 But you're going to see these documents, these exhibits, they're  
21 considered evidence. Okay.

22 There's going to be talk that the defendant had a  
23 stay-away order or was ordered away from 1301 Jimmy Avenue.  
24 And that's why he was hiding, because he was near this place  
25 where he was ordered to be away from. But I would ask you,

1 because this hasn't been discussed, but it's in evidence, to look at  
2 these defense exhibits very carefully.

3 Because you have -- there's an exhibit, it's considered one  
4 exhibit, but there are two TPOs, okay, within those exhibits. The  
5 first one actually shows a date issued of April 8th, 2005, with it  
6 expiring April 8th of 2006. And at that time, that particular order  
7 says he was excluded and ordered to stay at least 100 yards away  
8 from the following place, which applicant and/or minor children  
9 frequent regularly listed as, described as a residence, located in.  
10 And instead of confidential being clicked, it says 1301 Jimmy, Las  
11 Vegas. Okay. That's what it says. You'll have that to look at.

12 But notice the expiration date if 4/8 of '06. This crime  
13 occurred September 30th of 2006. So you have to look at the top  
14 part of this exhibit, which shows it was issued April 25th of 2006,  
15 set to expire 4/25 of 2007. So this one covers September 30th  
16 of 2006, which was the day Mersey Williams was killed. So it  
17 shows, well, you have to look at this, though, because the number  
18 one shows the defendant is excluded and ordered to stay at least a  
19 hundred yards away from the applicant's residence located in Clark  
20 County, Nevada. No more address. Confidential.

21 Number nine, you are excluded and ordered to stay at  
22 least a hundred yards away from the following places, which  
23 applicant and/or minor children frequents, regularly listed, and  
24 described as confidential.

25 The TPO that was in effect September 30th, 2006, does not



1 order him to stay away from 1301 Jimmy.

2 Now, could there have been some miscommunication?  
3 Well, if you look at the first page of Defense Exhibit A, it shows the  
4 Court having considered the filings, testimony, and evidence  
5 presented in hearing and the Court having found that the adverse  
6 party in this case, Jemar Matthews, received actual notice of the  
7 hearing at which such person had an opportunity to participate, and  
8 the adverse person -- and look at where it was clicked, or where the  
9 x is, he was present. He was present, so he knew. He wasn't  
10 directly ordered to stay away from 1301 Jimmy. Those addresses  
11 were confidential.

12 So at the time of Mersey's murder, there was no order  
13 ordering him to stay away from 1301 Jimmy. That's the evidence  
14 as it exists. That's what you are to consider. You will have this  
15 exhibit to more closely look at.

16 What else do we have? Well, at 2152 p.m., Officer Bradley  
17 Cupp and Officer Walter hear the shots ring out at 1271 Balzar while  
18 they are near the circle park. They make their way and as they  
19 indicated to you, they pass Balzar, they're looking -- they don't see  
20 anything out of the ordinary, the shots had stopped, it was eerily  
21 quiet. And they go down Lexington towards Lawry.

22 And the defendant, after they had car-jacked the Boldens,  
23 actually gets in the driver seat, takes off at a high rate of speed, as  
24 the officers had placed their lights and sirens on. Okay. The  
25 defendant drives this vehicle towards 12 -- I think it's 1915

1 Lexington, where that church is. You heard testimony from Officers  
2 Cupp and Walter about this.

3 So 1284 Lawry, that's the location. Okay. This is evidence  
4 of the defendant having committed the crime. Okay. Because 1284  
5 Lawry, okay, where he takes off driving the car in the path that we  
6 just discussed, to Lexington, okay, when Officers Cupp and Officer  
7 Walter saw the defendant and his co-conspirators get into that  
8 vehicle, they didn't lose sight of them. Okay. They were not able to  
9 drive as crazy or run lights like the defendant was -- did, however,  
10 they maintained visual on the defendants -- the car-jacked vehicle  
11 the entire time. Okay.

12 And they will tell you and the officers did testify that they  
13 saw three people come out of that vehicle total. Okay. One person  
14 came out of the passenger side and ran through the church parking  
15 lot. That person didn't have a gun. Okay. So none -- neither  
16 Officer Cupp or Officer Walter chased after that person when they  
17 could.

18 One person, though, headed towards Doolittle. And as  
19 Officer Cupp testified, he chased after that individual. Okay. That  
20 individual he saw with a firearm, took off towards Doolittle Avenue.  
21 And Officer Cupp testified this individual went down Doolittle and  
22 actually at some point turned around during this foot pursuit,  
23 turned around and pointed the firearm at Officer Cupp. He told you  
24 that. Okay. He was in such fear for his life that he fired three  
25 rounds towards this individual, later identified as Pierre Joshlin.

1           And there are the placards to notate or to show where the  
2 cartridge cases were found from Officer Cupp's firearm. Officer  
3 Cupp fired back. There are the three shots. Officer Cupp will testify  
4 or did testify, excuse me, that at this point in time, when the  
5 defendant, or, excuse me, when Pierre Joshlin turned back at him  
6 with the firearm, he got a good look at Pierre Joshlin. Okay. He  
7 recognized him as someone; he didn't know his name, but he  
8 recognized him as someone. And he saw him hop the fence to that  
9 church and head towards 1701 North J Street.

10           Pierre Joshlin was found in this dumpster with a pair of  
11 gloves and the firearm, the Glock, linked to the scene, the 1271  
12 Balzar. Bradley Cupp positively identified Pierre Joshlin as the  
13 individual he saw coming out of that car-jacked -- the car that had  
14 just been car-jacked, and taking off down Doolittle. He identified  
15 him as the individual who turned towards him that the had to fire  
16 at, the person who jumped the wall, made their way to 1701  
17 North J.

18           What other evidence do you have? Well, gunshot residue.  
19 Pierre Joshlin had gunshot residue on the palm of his right hand  
20 and on the back of his left hand. Okay. That means Pierre Joshlin,  
21 when he was with the defendant Jemar Matthews and these two  
22 other people, may have discharged a firearm, handled a discharged  
23 firearm, or was in close proximity to a discharged firearm.

24           There was also gunshot residue on the gloves found in  
25 the dumpster where Pierre Joshlin was hiding. Those gloves at

1 gunshot residue on the right back area of the right hand of the  
2 glove, the right palm area of the right hand of the glove, and the left  
3 back area of the left glove.

4 That means the black gloves may have come into contact  
5 with a discharged firearm or was in close proximity to a discharged  
6 firearm.

7 A gun, the Glock Model 21 45-caliber semiautomatic  
8 handgun with a 28-round magazine that was found in the dumpster  
9 with Pierre Joshlin, well, 11 of the cartridge cases fired at 1271  
10 Balzar were linked to that gun.

11 Officer Brian Walters will testify, as did Officer Cupp,  
12 concerning the individual who came out of the passenger side of  
13 the -- the other passenger side of the vehicle that we discussed,  
14 who ran through the parking lot. He'll also testify about Jemar  
15 Matthews coming out of the -- out of that front driver side or the  
16 driver side. But you also have to consider that there was another  
17 firearm found in that car-jacked vehicle. It was a Colt model  
18 Officer's attorney-client privilege 45-caliber semiautomatic pistol  
19 that was found in the front passenger board of that vehicle. That  
20 didn't belong to the Boldens or Betty or Steve.

21 But what we do know is that one cartridge case found  
22 at 1271 Balzar Avenue was fired from this gun. So now you have  
23 two weapons coming from individuals who came out of the same  
24 car as the defendant having firearms that had been fired at 1271  
25 Balzar. This is all evidence of identification. Evidence that the

1 defendant committed these crimes.

2           There was also evidence, though, you know, to explain  
3 why there were so many rounds fired by the Glock, so many rounds  
4 fired by the Ruger, the 22-caliber rifle, but not necessarily this one.  
5 And perhaps why the person who just ran out of the vehicle  
6 through that parking lot didn't bother to bring it with him, well,  
7 because look at that, it was jammed. But for that, who knows.

8           Judge Leavitt instructed you about State's Exhibit  
9 Number 13, which is the reenactment video that had been put  
10 together by Officer Cupp at the request of homicide. And we didn't  
11 play that for you during the duration of the trial. However, I am  
12 going to play that video for you right now or in a few slides. Okay.

13           But what I want you to note from this particular picture --  
14 it's a still shot from that reenactment video, okay, the lights, the  
15 headlights show the positioning of Officer Cupp's and Officer  
16 Walters' vehicle. And there have been many -- there's been a lot of  
17 testimony concerning, you know, how lit up was this place? Could  
18 they have had a good opportunity to view the defendant --

19           MR. LEVENTHAL: Judge, I'm going to object to this. This  
20 is a demonstrative and we never saw during the trial where that car  
21 stopped. And so it's just a demonstration that doesn't show exactly  
22 where that car stopped or where it should have been. So I'm going  
23 to object to this as being misleading.

24           THE COURT: Okay. Overruled.

25           You may continue.

1 MS. BOTELHO: Thank you.

2 So there was a lot of testimony concerning the location of  
3 this church and whether or not Officers Cupp and Walter had the  
4 opportunity to view Jemar Matthews as he came out of that car, the  
5 red glove out, Jemar Matthews looking back at them, trying to see  
6 where they were at. Jemar Matthews with that short-barrel rifle,  
7 could they have seen him when they got -- when he got on the  
8 hood of that car after that tap to try to stop him from advancing at  
9 these officers who were still in their vehicle, seat-belted in? Look at  
10 this. You heard testimony that that light at that church was lit up.  
11 The headlights on this vehicle lit up the area.

12 The defendant was three to four feet away from their  
13 faces as they sat in the vehicle scared for their life. Face to face  
14 with this individual, they saw advancing towards them, coming out  
15 of that car, with the short-barrel rifle. Sure they had every  
16 opportunity to recognize the defendant. Both Officers Cupp and  
17 Walter positively identified Jemar Matthews.

18 They identified the red glove that he wore. Officer Cupp,  
19 Mr. Giordani showed him the 22-caliber short rifle. He identified it  
20 as that gun that he didn't really know how to describe but for it was  
21 a weird shape. He identified that.

22 Now, you've heard from a defense expert, Mark  
23 Chambers, not yesterday but the day before, concerning  
24 identification, right? And there are all these things that could affect  
25 the person's ability to identify someone. Okay. So I want to take a

1 moment to talk to you about recognition versus identification.

2 Okay.

3 Now, Officer Cupp and Officer Walters both told you  
4 during their testimony, as they sat on that witness stand, they told  
5 you they did not know Jemar Matthews by name, but they  
6 recognized him. They had worked at Bolden Area Command and  
7 had interactions with him. They recognized him. We're not talking  
8 about someone identifying. We're talking about someone  
9 recognizing. Okay.

10 So, Cindy Crawford, world famous model, I hope you all  
11 know about her, has a mole. Which side? Just say it to yourself.  
12 Now, even though you didn't guess right which side her mole was,  
13 did that prevent you from identifying the person in this picture as  
14 Cindy Crawford? No, you recognize her. So the detail of where is  
15 this mole, what is the hairstyle? Isn't in as much -- isn't as relevant  
16 because you're recognizing, you're not identifying.

17 There was also a lot of talk about, oh, well, why are the  
18 descriptions being given by these officers so vague? Why just  
19 Black male adult? How dare you, Officer Cupp, not know his  
20 hairstyle? Jemar Matthews' hairstyle when he came out. Why  
21 didn't you broadcast that? You know, Officer Walter was asked the  
22 same thing. I mean, let me ask it, how would that have helped?  
23 They would be describing someone they recognize. Someone they  
24 didn't know by name. How would that have assisted the other  
25 officers in locating this person that they were looking for? Okay.

1           Now, as big as that is, identification is very different from  
2 recognition. Say I was to give a description of a Black male adult.  
3 Okay. Both these individuals would be described as a Black male  
4 adult. But you recognize Denzel Washington when you see him,  
5 you recognize Former President Barack Obama as you see him.  
6 [Indiscernible] and describe the same way, black male adults.

7           Not so vague when you recognize the person. You're not  
8 just identifying.

9           Another thing that you have to take into account as ladies  
10 and gentlemen of the jury in this case, is the credibility or  
11 believability of a witness should be determined by his manner up  
12 on the stand, his relationship to the parties, his fears, motives,  
13 interests, or feelings, his opportunity to have observed the matter  
14 to which he testified, the reasonableness of his statements and the  
15 strength or weakness of his recollection.

16           Is this other instruction that tells you, basically, you can  
17 take all of these things into account. Okay. Capacity and  
18 opportunity of the eyewitness to observe the offender; the length of  
19 time, you know, the conditions, we talked about that; lighting and  
20 distance; whether the identification was the product of the  
21 eyewitness's own recollection or whether they were subsequently  
22 influenced or suggest -- there was some sort of suggestiveness; any  
23 inconsistent identifications, which I submit to you there are none.

24           Mr. Giordani asked Officer Cupp, all the times that he  
25 positively identified the defendant. The eyewitness's familiarity



1 with the subject identified. Recognize, not identify. The strength of  
2 earlier and later identifications, lapses of time between the event  
3 and the identification, and the totality of the circumstances  
4 surrounding the eyewitness's identification. You can take all of this  
5 into account. Okay.

6           Lighting, the timing, the opportunity to observe. Officer  
7 Brian Walters' opportunity to observe as the defendant either fell or  
8 ended up near his front passenger side before he got out. And then  
9 Mark Chambers, the defense ID expert, said the same thing through  
10 cross-examination by Mr. Giordani. You have to take into account  
11 the corroborating evidence. Other people identifying the same  
12 individual. Here both officers taught that officers -- and Officer  
13 Walters identified him. You have to take corroboration into  
14 account, corroborating evidence, because it strengthens the  
15 identification of the individuals who did.

16           So what type of corroborating evidence is there? Well,  
17 Officers Cupp -- Officer Cupp testified that he saw the defendant run  
18 off in this direction. So did Officer Walter. And what did they find  
19 in this particular grassy area? The short-barrel shotgun or rifle,  
20 along with a cup holder. This is the area -- the direction that he was  
21 traveling, the direction that he ran. The path, Eleanor to Jimmy.  
22 Remember, Officer Cupp told you he saw him jump the fence  
23 over 1200 Eleanor. Guess what was found there? A glove.

24           And he was found hiding at 1116 Jimmy, in this mulch, by  
25 a K-9 unit. He had sustained injuries, even on his hands, from the

1 K-9. But despite that, gunshot residue was found on the palm of his  
2 right hand, the back of the left hand, and the palm of the left hand,  
3 despite all that running, all that sweating, all of that. Jumping  
4 walls, hiding in mulch, gunshot residue was found on him. It  
5 means he may have discharged a firearm, handled a firearm or was  
6 in close proximity to a discharged firearm. The red knit glove?  
7 Gunshot residue was found on that. He may have come into  
8 contact with it -- it may have come with -- into contact with a  
9 discharged firearm or was in close proximity to a discharged  
10 firearm.

11 A Ruger 22-caliber short-barrel rifle with a 30-round  
12 magazine, 25 of the cartridge cases found at 1271 Balzar were fired  
13 from this short-barreled rifle that he was seen running away from,  
14 ditching in the direction that he was fleeing. That's corroboration.

15 What else is corroboration? Well, the shots are fired,  
16 Mersey is killed at 1271 Balzar, he car-jacks the Boldens at Lawry,  
17 and it's 181 feet away. So within a matter of seconds from hearing  
18 the gunshots and coming down, they were already at 1284 Lawry to  
19 car-jack the Boldens just in time for the officers to see.

20 All of the cartridge cases, everything that happened  
21 at 1284 Lawry, the red gloves, the short-barrel rifle, the handgun,  
22 the shots fired in the air, the description, four Black males with  
23 black shirts and gloves, consistent corroborate the identification by  
24 both officers.

25 Now, the State is not required to prove motive. There is

1 an instruction that says this. Motive is not an element of the crime  
2 charged and the State is not required to prove a motive on the part  
3 of the defendant in order to convict. However, you may consider  
4 evidence of motive or lack of motive as a circumstance in this case.

5 What do you have? You heard from Nicholas Owens and  
6 he told you that the defendant and Pierre Joshlin were together,  
7 were at 900 Doolittle the night before this murder, when their  
8 friend, Marcus Williams, was killed. Nicholas Owens told you that  
9 shortly after Marty Williams was killed at Doolittle, he had a  
10 conversation with not just Pierre Joshlin, but also with the  
11 defendant. They were looking for guns, they were upset, they were  
12 angry, and they wanted those guns to take out the individuals  
13 responsible for the death of Marcus Williams.

14 And not just Pierre Joshlin; the defendant wasn't just  
15 there during this conversation, he actively participated. He too  
16 wanted the guns ASAP.

17 What else did Nicholas Owens' testimony prove to you?  
18 Premeditation, deliberation, and intent to kill? Trying to obtain  
19 weapons? Hours before Mersey was killed?

20 I want you to remember, ladies and gentlemen of the jury,  
21 the act of one is the act of all. Does not matter who did what.  
22 Doesn't matter who fired the lethal shot. Doesn't matter who  
23 technically shot Myniece, shot at Michel'le, or killed Mersey, does  
24 not matter who did what; they are all equally guilty thereof.

25 I'd also like to point out that the 22-caliber -- that the bullet

1 that was recovered from Mersey's head was consistent with  
2 a 22-caliber bullet. That's another piece of corroborating evidence.  
3 That's another piece of evidence that shows the defendant  
4 committed these crimes. Shot from the 22-caliber rifle that he was  
5 holding.

6 Mr. Giordani and I, we have proven all of the charges in  
7 this case to you beyond a reasonable doubt. The defendant, his  
8 close friend Pierre Joshlin, and two other people, committed these  
9 crimes.

10 We're going to ask you to find him guilty of each and  
11 every charge. Thank you.

12 THE COURT: Okay. At this time, we're going to take a  
13 recess. During this recess you're admonished not to discuss or  
14 communicate with anyone, including your fellow jurors, in any way  
15 regarding the case or its merits either by voice, phone, e-mail, text,  
16 Internet, or other means of communication or social media, read,  
17 watch, or listen to any news or media accounts or commentary  
18 about the case, or do any research, such as consulting dictionaries,  
19 using the Internet, or using reference materials or make any  
20 investigation, test a theory of the case, recreate any aspect of the  
21 case, or in any other way investigate or learn about the case on  
22 your own or form or express any opinion regarding the case until  
23 it's finally submitted to you.

24 And we'll take a 10-minute recess. Thank you.

25 [Court recessed at 3:34 p.m., until 3:55 p.m.]

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[In the presence of the jury.]

THE COURT: Does the State stipulate to the presence of the jury panel?

MR. GIORDANI: We do, Your Honor.

THE COURT: And the defense?

MR. LEVENTHAL: Yes, Your Honor. Thank you.

THE COURT: Thank you.

The defense may address the jury panel in their closing argument.

MR. LEVENTHAL: Thank you, Your Honor.

**CLOSING ARGUMENT FOR THE DEFENDANT**

MR. LEVENTHAL: Your Honor, may it please the Court?

THE COURT: Of course.

MR. LEVENTHAL: Counsel, ladies and gentlemen of the jury.

September 30th of 2006, Mersey Williams tragically and needlessly and innocently lost her life. It's horrible. We all agree with that. It was a tragedy.

And now, 2021, 15 years later, Mr. Matthews sits here in front of you, and now it's your job, this courtroom and your job here is to set emotions aside and look at facts and look at evidence. You've listened to witnesses, you've listened to their testimony. And Jemar Matthews sits here, and as the Court indicated, only Jemar Matthews sits here on trial.

I want to walk through a few jury instructions. I'm not

1 going to go through all of them, but particularly Number 31 talks  
2 about the defendant is proved -- presumed innocent until the  
3 contrary is proven. As he sits here today, he's innocent. The State  
4 has the burden to prove beyond a reasonable doubt. This  
5 presumption places upon the State that burden of proving beyond a  
6 reasonable doubt each and every element of the crime charged,  
7 and that the defendant, Mr. Matthews, is the person who  
8 committed the offense.

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

17 Key in on that word speculation. Because as I go through  
18 my closing, what you're going to see is a lot of my closing is based  
19 on fact, and a lot of what I heard from the State was based on  
20 speculation. If you have a reasonable doubt as to the guilt of  
21 Mr. Matthews, he is entitled to a verdict of not guilty.

22 Another jury instruction I'd like you to take a look at is  
23 Number 33, which says that you ar here to determine whether the  
24 State of Nevada has met is burden of proof from the evidence, you  
25 are not called upon to return the verdict as to any other person.

1 You've heard stuff about Joshlin Pierre, you've heard stuff about  
2 these other two people that may have gotten into a car. Jemar  
3 Matthews is the only person here today who you need to decide.

4 And I want to just briefly go through Number 27. I think  
5 it's an important instruction.

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

11 As I look through this case, obviously, you're well aware  
12 of this, there were three scenes here. We have a shooting scene  
13 at 1271 Balzar, we have a car-jacking scene at 1284 Lawry, and  
14 we've got these -- I'll call it the stop of Lincoln at Lexington and  
15 Eleanor. And at each one of those scenes, every one of them, a lot  
16 of information was gathered, a lot of evidence was collected, and a  
17 lot of evidence was analyzed.

18 I want to first start out with the shooting at 1271 Balzar.  
19 You heard from Ms. Tolefree and Ms. Cook, there were hundreds of  
20 officers out there at that scene. The word was saturated. They  
21 saturated that scene. There were multiple crime scene  
22 investigations, crime scene analysts, and a number, as you heard,  
23 of multiple homicide detectives out there. Pretty quickly, as a  
24 matter of fact.

25 And all of these people had their roles when they went out

1 there. They were either gathering evidence, talking to witnesses, or  
2 both. But all of this evidence gathering, witness talking to, was to  
3 find out what had happened and to get the perpetrators that did  
4 this. All of it was to collect and gather facts. And that's what we  
5 need to do, is separate the facts from the speculation that the State  
6 would have you believe.

7 Not one of those individuals that you heard from came in  
8 here an identified Mr. Matthews as being there. They had -- one of  
9 them, I think it was Ms. Tolefree, who identified Joshlin Pierre or  
10 knew of him. Not one indicated that Jemar Matthews was there.

11 Now, as I lay this out, evidence is like a building block,  
12 right? There's not one thing you may be able to point to that says  
13 he's guilty or he's not guilty, but it's a block of evidence that builds  
14 up a wall of not guilty. And so, again, this is one fact that you have  
15 before you to show that he's not guilty and he wasn't there.

16 So the identification that did come out was pretty generic.  
17 It was black males, 5-foot-6, 5-foot-7, 15 or 16 years old, in dark  
18 clothing. Pretty generic. And so when you look at these  
19 identifications, I also give weight to the fact that, yes, people were  
20 being shot at, and how much time do they have to process these  
21 thing. And people do the best that they can to identify, and we'll  
22 get to more of the identification later. But we take that into  
23 consideration, right? That people are in a situation where they're in  
24 a -- running for their lives as opposed to looking directly at who's  
25 who and what's what.



1           So in terms of the identification, we've got this generic  
2 identification, but no one see Jemar Matthews there, because he  
3 wasn't there, and no one says he was there.

4           So what else do we rely on other than identifications?  
5 What's almost more important intrinsically in a investigation is the  
6 scientist -- scientific or forensic that goes on in any crime scene.  
7 That's fingerprints, that DNA, that's things of that nature. You  
8 heard nothing that linked Mr. Matthews with fingerprints to  
9 anything that occurred at the Balzar address. There were shell  
10 casings, there was a lot of things that could have been done, but  
11 nothing was offered to you. The DNA, again, no information was  
12 offered to you regarding DNA or anything else at that scene.

13           So the question becomes is that doubt? And is it  
14 reasonable?

15           Looking at the car-jacking scene, 1284, you remember  
16 having Mr. and Mrs. Bolden here, and then we also had two  
17 passengers that you didn't hear from. But, ladies and gentlemen, I  
18 submit to you that Mr. Bolden was probably the most credible  
19 witness that you heard from. Mr. Bolden came up here, he lived in  
20 that area all his life. He knew the locals. He was African-American.  
21 And he told you that when he got out of his car, and I don't know if  
22 you remember, but I asked him specifically, the person who got into  
23 the driver seat had a handgun. He also told you that the driver that  
24 got into that seat had two gloves on. And you're going to hear a lot  
25 of different one glove, two gloves, red, black. Lot of different things

1 with the gloves. But he said two gloves, both hands. And he was  
2 pretty specific about that.

3 He also said, when I asked him, did the driver -- the  
4 person who got into the driver seat, have cornrows. You  
5 remember. And he said, oh, braids? No. He also said there was no  
6 mention of any goatee.

7 But the most important thing that I think Mr. Bolden stated  
8 out of everybody was the height of the driver. Mr. Bolden indicated  
9 that the height of the driver was 5-foot-7 or shorter, which was his  
10 height. There is no guessing in his height. Understand this, when  
11 you have -- when you're watching someone run down the street,  
12 you can sit back and guess, are they 5-foot-8? 5-foot-7? 5-foot-6?  
13 5-foot-4? But when you walk up to someone and you're eye to eye  
14 with them, and you're basing their height, according to what you  
15 know is your height, you're estimation of the height gets much  
16 better. It has to.

17 So when he gets out of the vehicle and the driver walks --  
18 the person who gets in the vehicle as the driver, walks up to him  
19 and he stands up and he's 5-foot-7 or shorter, that's what he knows.  
20 That's pure, that's simple, that's not a lot of guesswork, because he  
21 knows his height and he can base his height on the person that was  
22 getting into the car.

23 As you know, 5-foot-7 is a big difference than Jemar, who  
24 is 5-foot-11. 5-foot-11. And I asked Mr. Bolden point blank, When  
25 you got out of the car, you were eye to eye, correct? Yes, eye to

1 eye or a little bit shorter. Okay. Did you have to look up at the  
2 person? No.

3 Now, the State on direct indicated that now we don't  
4 know if there was some movement with the driver in the back seat,  
5 because I think they have a problem with that fact, right? The  
6 problem with that fact is Jemar's 5-11, that's a fact, and the fact is,  
7 is that Mr. Bolden said it was 5-foot-7 and shorter. So the person  
8 who got into the car was 5-foot-7. But then the person that,  
9 according to Cupp and Walters, and we'll talk about their  
10 verification, got out, was 5-foot-11.

11 So now we've got -- and the fact is, is that when Cupp and  
12 Walters saw the car-jacking, they never took their eyes off of it. So  
13 nobody pulled off the side and they all switched around. None of  
14 that was happening. So you have to -- logic dictates that the person  
15 that got into that car as the driver, at 5-foot-7, was the same that got  
16 out of the car when the Lincoln was pulled over. That's logical,  
17 right? It has to be.

18 When we get to the scene at -- the third scene at  
19 Lexington and Eleanor, now we have Walters and Cupps, two  
20 officers at the time, and if you notice what they're wearing, they're  
21 wearing sort of the dark t-shirts as well. They've got -- and blue  
22 jeans. They told you, I guess through both of their testimony, well,  
23 I'll break them down later, that they went down MLK, they left --  
24 turned left on Jimmy and right on Lexington. And again, they  
25 never lost sight of the Lincoln.

1           They indicated that the doors opened, left hand came out,  
2 and a right hand was on the chest, holding a gun. But yet the  
3 windows were tilted, so they really couldn't see much.

4           Now, Officer Cupp testified that he saw red gloves on both  
5 hands, while Officer Walters indicated there was no glove on the  
6 left hand. So the left hand is actually touching the door, right foot  
7 is actually touching the door, and I guess you've got to question  
8 maybe why? Did they just see two different things or is it a  
9 problem for them when they come to court and they have to sort of  
10 put it together for you? Because I don't see them winning either  
11 way. That's the problem. And so maybe they want to confuse or  
12 maybe they are confused.

13           The problem is, is you follow Walters' theory that there  
14 was one glove, well, then, you would expect that the driver, if they  
15 think it was Jemar, his DNA would be in here before you, right? But  
16 no information came before you regarding DNA. Because if he  
17 doesn't have a glove on, he's touching.

18           In addition to fingerprints, he's touching. Right?

19           If there were two gloves and that's the theory, then the  
20 question becomes, okay, we won't have fingerprints, we won't have  
21 DNA maybe, but where's the other glove? I mean, we have  
22 hundreds of crime scene people out there going out there day,  
23 going out there -- you heard that they went out there the next day,  
24 they searched that area. Where they found Mr. Walters -- or  
25 Mr. Matthews was, obviously, not very far -- we'll go into that -- far

1 from the Lincoln. But that perimeter that they talk about, that  
2 wasn't a big perimeter. That -- they had the path of the driver and  
3 then they found Mr. Matthews. And so to not locate a couple of  
4 pieces of key evidence, logic dictates it wasn't there.

5 Cupp, his testimony was that the driver bailed out, the  
6 Lincoln was going 15 to 20 miles an hour, as the driver bailed out of  
7 the vehicle, he rolled onto the asphalt one or two times, he jumped  
8 up, and Cupp, being the driver, swerved into him and hit his legs.  
9 With a vehicle going 15 to 20 miles an hour, his legs were taken out.  
10 As a matter of fact, he went onto the hood and off.

11 I think what's kind of disturbing about Cupp's statement  
12 was what he said then versus he's saying now, 20 years later.

13 MS. BOTELHO: Objection, Your Honor.

14 THE COURT: It's not 20 years.

15 MS. BOTELHO: That misstates the time.

16 MR. LEVENTHAL: 15, sorry. 15 years later.

17 We heard from Detective Wildemann that when  
18 somebody does a report, whether it's an officer, whether it's a  
19 layperson, that he expects all relevant information, all of it, full  
20 disclosure, even if somebody recognizes somebody, but they don't  
21 have a name, he would want to know that as a homicide detective.  
22 That's what he said, he expects that.

23 But yet Cupp, four hours after the stop, he doesn't say  
24 anything. He doesn't say anything, he never even mentions Jemar  
25 Matthews' name. Now we're going to fall back on recognizing

1 versus identity? There should believe no difference of recognition  
2 and identity to saying something to somebody if, in fact, you did  
3 recognize him, to a homicide detective who's trying to solve a  
4 homicide.

5 Cupp's statement to the homicide detectives, here, his  
6 statement to you was: It was Jemar Matthews, I knew it right off  
7 the bat. He had him all over town. Yet, when he was asked the  
8 question on whether he knew who it was, his answer:

9 You know, all the suspects involved were wearing, like,  
10 black or dark-colored gray shirts, um, I would say all of them  
11 were Black male juveniles, late teens, probably early 20s.

12 Very generic. But yet here, when he gets up to you, he  
13 tells you that he, in fact, saw or recognized that it was Jemar  
14 Matthews, but at the interview, four hours after this occurred.

15 Then they say okay. And his answer then is:

16 The, uh, driver I knew had red gloves. I could see his  
17 gloves when he opened -- opened the door.

18 He was almost 100 percent sure it was Jemar now, and  
19 yet then, four hours on one of the most important homicide  
20 interviews that could possibly happen right after the event, he just  
21 says, uh, the driver in particular I knew had red gloves. Not, oh, by  
22 the way, I recognize the driver, I can't ID him right ow, but I  
23 recognize him. Doesn't say that, but says that here in front of you.

24 What's more, I guess, and equally disturbing about Cupp's  
25 testimony was the right quarter panel versus the left quarter panel.

1 And why is that important? This is the Sebring that was driven  
2 last -- that night by Officer Cupp. And Officer Cupp clearly told you  
3 that in testimony, that he hit the driver on this left side, right here.  
4 Why is that important for him to say that? Whether he's lying or  
5 not, I'll tell you the words he used, because he had -- after he was --  
6 indicated that the hit the driver here, the driver, then, rolled over his  
7 hood and while the driver was on the hood, his testimony is, he  
8 was able to see the driver's face like this, right up close and  
9 personal. That's why it's important for Officer Cupp to testify that it  
10 was left.

11 And when I tested it on him, in fact, he had told back then  
12 that it was the right quarter panel, which then makes no sense that  
13 the driver is rolling over his hood, because, in fact, the driver rolled  
14 off.

15 And so when we confronted him on that, I know you  
16 remember, his words were:

17 Well, I misspoke.

18 Misspoke. You misspoke now or did you misspoke back  
19 when you gave the detectives, the homicide detectives, an  
20 interview? It was then he misspoke, because now, 15 years later,  
21 he's 100 percent. 100 percent. But four hours after the event, that's  
22 what he's stuck with.

23 You, as jurors, are also judges of the witnesses and their  
24 characters. And there's a jury instruction hat indicates that if you  
25 don't believe one of the witnesses, you can disregard any or all of

1 their testimony. So you've got Cupp there talking about the lack of  
2 Jemar or not seeing Jemar or, as the State puts it, doesn't  
3 recognize Jemar, or identifies Jemar at any time during that  
4 interview. Never even mentions his name.

5 Let's look at what Officer Walters has to say. Officer  
6 Walters, at the stop of the Lincoln, to where Jemar --  
7 Mr. Matthews -- was brought over for the show-up, one hour had  
8 occurred. One hour. And during that one hour, Officer Walters  
9 never tells anybody that he recognized, identifies, or any of the  
10 above when it comes to Jemar. Doesn't say a word to anybody for  
11 one hour during a homicide investigation.

12 Now, I understand there was a lot going on around that  
13 time. But, obviously, you heard from Detective Wildemann, who  
14 said that it's crucially important to get that information. These are  
15 officers, they should know that. But he doesn't say anything. It's a  
16 problem. It's a problem, because he didn't know. He didn't know  
17 until after the fact. After the fact, when Jemar was put in cuffs, after  
18 the fact that when Jemar was bit up and chewed and his clothes  
19 torn by that dog, after the fact that he was put in the back of a  
20 police car, after the fact that they drove Jemar over to where  
21 Walters was at, the most suggestive show-up possible, he identifies  
22 Jemar. Not real hard, the only person in the car is right there; that's  
23 him. But for one hour before that, nothing. Not a word to anybody.  
24 His identification to everyone, Black male, black shirt, blue jeans.

25 Cupp and Walters' identification is very different than



1 Mr. Bolden's identification. Cupp had been in that area or on PSU,  
2 the problem solving unit, for three months when he was there.  
3 Walters had been in the area for three months. That's it. Three  
4 months.

5 90 to 95 percent of the people in that area are  
6 African-American versus Melvin Bolden, who's been there all his  
7 life, he's 5-foot-7 or shorter, and he didn't recognize any cornrows  
8 or any braids. I asked him: Did the person who get in have  
9 cornrows? Oh, the braids? No.

10 Let's look at the lighting that you were shown that Officer  
11 Cupp and Walters saw that night. As you can see, whether or not  
12 this is a big light, it's very dark around the light. As a matter of fact,  
13 it's so dark that I took one of the pictures that you have, this one,  
14 and if you see how dark it is back here, you can't see anything on  
15 the grass, right? But yet, interestingly, those guns were found right  
16 there, and look at all the light flooding it.

17 So when we had the crime scene analyst came up, she did  
18 indicate that there was other light that was possible. So I would  
19 submit there was not a lot of light there.

20 To continue on with the identification, you've got  
21 Dr. Chambers who showed up, who told you that show-ups versus  
22 six-packs or lineups or any of the other identifying ways that people  
23 identify is not only the least reliable test reliable test, the show-up  
24 that occurred with Jemar Matthews, it's not on the most -- the least  
25 reliable, it's the most suggestive test out of all of them. And that's

1 logical, because there's a lot of things that impact that test and that  
2 link-up that make it so prejudicial. The lighting, weapons, time to  
3 observe, and cross-racial identification. If you remember that  
4 Dr. Chambers spoke about all those factors that make those -- that  
5 test the least reliable, most suggestive.

6 He also talked about ways of minimizing that, and the  
7 biggest way that you minimize that suggestivity is that somebody  
8 does a test or IDs the person before they see them. Not after they  
9 see them. It's -- that's logical. You have an officer there that's only  
10 been in the area for three months who's now just saying, that's  
11 him, and doesn't give any indication who him was, other than a  
12 generic him prior to that identification.

13 But what's kind of, I guess, blatant with cops is Detective  
14 Wildemann, who indicated that cops don't need to do that, when I  
15 pushed him on it. They don't need to, they already know. Well, this  
16 is a -- you know, they've been in that field not very long.

17 So you've got to do that pre-ID interview. And had that  
18 been done, you know, you've got Jemar out there, he had cornrows  
19 on at the time, nobody identified this man specifically. He had a  
20 goatee, you don't hear that. You don't hear the cornrows or the  
21 braids. You don't hear 5-11, which is what he was. You don't hear  
22 anybody identifying this man or the man that they saw as the driver  
23 with his pants down to his knees. You don't hear where anybody  
24 said they saw his underwear, which is what we've got here. And,  
25 obviously, the no shoes. As a matter of fact, Walters said: The

1 person I saw running had shoes. This was Jemar when he was --  
2 after the dog bit him, no shoes.

3 Now, a couple of things on recognition and identity. First  
4 of all, I appreciate the State trying to differentiate recognition and  
5 identity by using a picture of Cindy Crawford. The issue I have is  
6 that if you were walking down the street and maybe you didn't see  
7 her mole, but if you saw Cindy Crawford or you were sitting at a  
8 restaurant next to her, you'd get on the phone and you'd tell your  
9 friends, wouldn't you? You'd probably say, hey, I'm sitting next to  
10 somebody, I don't know who it is, but she was in this movie or she  
11 was in this cover of this magazine. I mean, you would want to  
12 know. I guess Walters and Cupp didn't want to know.

13 And when it comes to President Obama or Denzel  
14 Washington, we're talking about Obama was our president for eight  
15 years. You can't equate those two. You could recognize Obama all  
16 day long, that's fine, but if you only saw Obama maybe one time,  
17 you're not going to recognize him.

18 So I want to break down some of the evidence that's come  
19 before you. I want to look at each one of them. That's the red  
20 glove. Now, you heard that the driver was hit by Cupp and Walters.  
21 You heard that he rolled out of the vehicle on asphalt, concrete. He  
22 then jumped up. He then was hit by that vehicle on the passenger  
23 quarter panel right -- I believe the quarter panel I asked, the Taurus,  
24 has about two feet, right? Above the knees, on the knees, enough  
25 momentum at 10 to 15 miles an hour to make that person then roll

1 off the hood, bounce back onto the concrete, jump back up, run  
2 down the street, and as he's running down the street, apparently,  
3 where these skid marks are of the police car, while he's -- this  
4 person's being chased, this glove falls, leaving an exposed, at least  
5 one, maybe two hands, if there was one glove or two gloves,  
6 holding onto that fence, thereby leaving DNA, potential fingerprints,  
7 jumping over that fence, now that we know for sure that that  
8 person would have at least maybe one glove or two. But leaving all  
9 this evidence behind, running down and then running and jumping  
10 over another fence. Yet we have -- no information has been  
11 brought before you by the State regarding DNA or fingerprints.

12 Let's talk about the vehicles that were involved. Sebring.  
13 We know by these marks here, this tape here, there were prints on  
14 that Sebring. Those prints were lifted. Nobody came in, no witness  
15 came in and testified that any of these prints belong to Jemar  
16 Matthews. Not one person.

17 Mr. Bolden's Lincoln. We know that Mr. Bolden's Lincoln  
18 was tested for prints right there. No information, scientific  
19 information, forensic information, came in that identified that  
20 Jemar Matthews was in that car. None. There were no fingerprints  
21 in that car, there was no hair samples in that car; nothing to suggest  
22 that Jemar Matthews was in that car.

23 We've heard about gunshot residue. You've heard that 39  
24 shots rang out, each round that was fired, you heard exponentially  
25 increases the amount of gunshot residue. So if you fire one shot,

1 you'll get so much residue, if you fire 10 shots, it's 10 times that  
2 residue. There was so much residue that whoever was shooting  
3 should have been bathed in it with their shirts, with their pants,  
4 with their hands.

5 Jemar had, when he was arrested and he was  
6 processed -- and remember when he was processed, he was  
7 processed after cuffs go on, after he was put in the back of a police  
8 vehicle, after he was at the police station, he was processed and  
9 they found it. And you heard that transfer from both -- both  
10 witnesses said that, and they agree, transfer occurs. Does it get  
11 less and less over time? Sure, it could. But there's no evidence that  
12 that -- to the contrary.

13 You head about K-9 injuries that occurred. You heard that  
14 Lasso [sic] jumped in the bushes and Jemar was there. You also  
15 heard that the only injuries to Jemar that night, that day were dog  
16 bites. That was s picture of Jemar that day, you see his socks, they  
17 pulled up his pants, you see his knees. No injuries. The only  
18 injuries he had were the dog bites on his shoulder and the dog bites  
19 on the hand.

20 Remember, this is the man that they say jumped out of a  
21 car at 10 to 15 miles an hour, rolled on concrete, was hit by another  
22 car, rolled again off the hood. If you look at even just the damage  
23 that occurred to Mr. Bolden's vehicle, the car was not going five  
24 miles an hour. That kind of damage -- Jemar has no -- had no  
25 bruises, no scrapes, no scratches, and no bleeding other than

1 where the dog, Lasso, had bit him.

2 We talked a little bit about the shoes and the shoes are  
3 important. The shoes are important, because, again, if you look at  
4 the perimeter, that perimeter that they set up, it's not a big  
5 perimeter. You've got the line from the Lincoln to where the person  
6 who was driving jumped over and you can corner that off and you  
7 can find a glove, you can find shoes. It's not difficult. If they want  
8 to say that, well, this was a big -- we had three different places, we  
9 had Balzar, we all the different places that we need to go look at,  
10 well, once they saw that Jemar Matthews, when they pulled him  
11 out, had no shoes, and they heard that Walter said he had -- the  
12 person he was chasing had shoes, that's kind of -- it's a very small  
13 area to actually go into and to look for those shoes. They never  
14 found them though.

15 Now, Nicholas Owens came in. And Nicholas Owens told  
16 you that everything that he was in the report from Officer Carter, he  
17 basically just brought in Jemar Matthews now, so many years later.  
18 Because in '07, when the report was given and Officer Carter took  
19 that report, you heard Officer Carter today say that he only spoke  
20 about Joshlin other than Jemar Matthews was present.

21 Remember, mere presence is not enough.

22 MR. GIORDANI: Objection. I believe that misstates  
23 Detective Carter's testimony.

24 THE COURT: Right. And the jury is the finder of fact and  
25 it's their memory that will prevail.

1 MR. LEVENTHAL: When I went through with Officer  
2 Carter today, the only thing in his report was that Jemar Matthews  
3 was present on -- at Doolittle during that meeting. When Nicholas  
4 Owens spoke to you, you can remember this, he had Jemar  
5 Matthews asking for guns, he had Jemar Matthews talking about  
6 killing, he had a whole host of things that brought in Jemar  
7 Matthews, but none of that was said to Officer Carter when he took  
8 the report years ago, in 2007.

9 We talked about a little bit of a benefit that Nicholas  
10 Owens got. It wasn't a little benefit. A huge benefit. And I want to  
11 be very clear that that is not the case that we're on today. He did  
12 not receive a benefit on this case today. Let's be clear. But why do  
13 I think it's important? Because Mr. Owens was looking at 14 to 40  
14 years, 14 to 40 years in custody. He ended up getting probation.  
15 That's a huge incentive to say whatever it is you want to say. 14  
16 to 40 down to probation. Mr. Owens received that benefit after he  
17 spoke.

18 Now, I want you to be mindful of something. And again,  
19 we know that there was no offer or incentive or benefit that the  
20 State gave Mr. Owens in his testimony today. But we also know  
21 that back then, when he received the probation from a 14-to-40  
22 years down, he spoke first and was given the benefit later. I'm not  
23 saying he's going to get one. I'm saying maybe in his mind he's  
24 looking for one. Might be an incentive to say what he said.

25 The question is, is why was Jemar Matthews in that area?

1 Well, Jemar Matthews lived in that area. It's not surprising that a  
2 young man who lives in that area is in that area. And at the time,  
3 you heard from the State, there was a TPO. You heard there were  
4 two TPOs. That's correct.

5 In the first TPO kept him away from 1301 Jimmy Street,  
6 right here. The second one was confidential. You could take that  
7 what you want from that, confidential. Whether it meant another  
8 address or incorporated that 1301 Jimmy, that's where he was. He  
9 was with his baby that was there and his baby's --

10 MS. BOTELHO: Objection, Your Honor. There's --

11 THE COURT: Sustained. The objection is sustained.

12 MR. GIORDANI: Zero evidence of that.

13 MR. LEVENTHAL: Okay. You can logically adduce that he  
14 had a TPO -- well, you know he had a TPO there, and right from  
15 Jimmy down here, this is where he was found by Lasko, right there.  
16 Just down the street. Mr. Matthews lived over here at 1801 North J  
17 Street, in between the TPO and where he lived is where he was  
18 found, right in the middle.

19 So he heard the commotion that night, he heard the  
20 sirens, he heard the vehicles, and he ran and he hid. And that's  
21 why there's no forensic evidence, scientific evidence.

22 This is Mr. Matthews' identification card, shows his  
23 address, shows his height of 5-11. His address on J Street. Now,  
24 the State, because they have the burden of proof, they go first. We  
25 have our chance, and then the State comes up next. So I believe



1 that Mr. Giordani is probably going to address you and talk about  
2 some of the things that I talked about. He's going to ask you to  
3 almost dismiss most of the scientific evidence, and I get that. I  
4 understand why he would ask you to do that. Because he doesn't  
5 have it, so I understand that. Because this, basically, comes down  
6 to the identification of Cupp and Walters, and if you believe him,  
7 you believe him, if you don't, you don't. I think that, you know,  
8 we've made a case on why you shouldn't, how they, you know,  
9 they've gotten better and better over time.

10 He's going to rely, Mr. Giordani is going to rely heavily on  
11 them, because there's nothing else to tie Mr. Matthews into  
12 anything. He's also going to say that the glove, we didn't find it, it's  
13 not a big deal, who knows where it's at? It may be up on some roof  
14 somewhere. Who knows? We didn't find it. No big deal. It is a big  
15 deal.

16 The shoes, he's going to dismiss that as no big deal. It is  
17 a big deal. Because when you couple the identification, he doesn't  
18 even -- he's not even the person that they identify. The person that,  
19 again, went into the driver's, walked out -- came out of the driver's,  
20 two different heights, big disparity. The person that they say went  
21 into the backyard and came out, again, disparity. The guy that  
22 came out had cornrows, the guy that went in did. The guy that  
23 came out had his pants down to his knees, the guy that went in did.  
24 The guy that went in had shoes on, the guy that came out didn't.

25 The guy that went in probably, logically had a lot of

1 bruises, scrapes, scratches, and marks on his knees from where he  
2 was hit by a vehicle and rolled on concrete, the guy who came out  
3 only had a few dog bites.

4 Listen, Jemar is here because he does, he trusts the  
5 system. He trusts you. His life is in your hands right now. We sort  
6 of have learned a lot, I guess, and I'm not going to say a lot about it,  
7 but what happens when -- why somebody would be hiding, a  
8 young Black man in that area would be hiding from the police. I  
9 don't think it's any surprise to anybody nowadays, today, that that  
10 happens.

11 Mersey's killing was a tragedy. No question about it. But  
12 making Jemar responsible is another tragedy. There's so much  
13 doubt in this case -- so much doubt in this case, and it's all based  
14 on a lack of evidence. And don't think that Jemar was so smart that  
15 he just got away with it, because you don't get away with these  
16 things. You just don't. Three crimes scenes, hundreds of cops out  
17 there, CSI out there, homicide detectives out there; you don't get  
18 away with this. You -- they would find something.

19 My grandmother always told me, she said, Toddy, she  
20 said, if you stand for nothing, you'll fall for anything. And don't fall  
21 for this. This is a pumped-up version of Jemar was there, Jemar  
22 was there, without any evidence. No evidence whatsoever. He's  
23 innocent.

24 The State has not proved their case, because they can't.  
25 Jemar Matthews is innocent of this. And I hope you find that way.

1 Thank you.

2 THE COURT: Thank you very much.

3 And the State may address the jury panel in your rebuttal.

4 MR. GIORDANI: Thank you, Your Honor.

5 **REBUTTAL CLOSING ARGUMENT FOR THE STATE**

6 MR. GIORDANI: The truth is like a lie. You don't have to  
7 defend it; I don't have to defend it. All you have to do is set it free  
8 and it will defend itself. The truth is that man right there killed  
9 Mersey Williams over some stupid beef and his friend getting killed  
10 the day before.

11 The truth is Mersey has been delayed justice for 15 years.  
12 She is gone now, she'll be gone 15 years from now, and 15 years  
13 after that. The truth is that defendant and Pierre Joshlin committed  
14 every single offense that we've charged them with.

15 There are two things that this really comes down to,  
16 frankly, and that's eyewitness credibility, right? And scientific  
17 evidence. And I don't know what Mr. Leventhal was saying, I'm  
18 going to hide from the scientific evidence. Actually, I'm going to  
19 embrace it. Because all of the scientific evidence in this case  
20 supports the fact that Jemar -- Mr. Matthews is guilty. Okay.

21 The crime scene itself supports his guilt. The gunshot  
22 residue all over his hands supports his guilt. The cartridge cases at  
23 the scene support his guilt. And the eyewitnesses support his guilt.  
24 And I'm going to go through them. I know you're exhausted and  
25 it's the end of the day, but this is important, this is the last change

1 we're going to have to speak to you, so I apologize. Keep you a few  
2 minutes over 5:00, it won't be that long.

3 I want to talk to you first about this idea that Mr. Matthews  
4 was just in the wrong place at the wrong time. Because, really,  
5 that's what they're telling you, right? They're telling you  
6 Mr. Matthews was in this area because of a temporary -- a  
7 restraining order for domestic violence is I think the title. A  
8 temporary protective order against domestic violence. Okay. That  
9 is in evidence, that document that Ms. Botelho talked to you about.  
10 And there is nothing else in evidence regarding that.

11 So when Mr. Leventhal slides in this fact or this -- I  
12 shouldn't say fact -- about where Mr. Matthews was and who he  
13 was with, that's not evidence. That's a defense lawyer making an  
14 argument to you; that is not evidence. The only evidence related to  
15 that temporary protective order against domestic violence is the  
16 TPO itself.

17 But, really, if you think about it, step back and use your  
18 common sense, look at this map. Look at this map. This is Jemar's  
19 home. 1801 J. Where did the guy who did the murder and the  
20 car-jacking, where did he decide to drive? He didn't hit the freeway,  
21 he didn't hit Lake Mead, he tried to go home. That's why he was in  
22 that neighborhood, that's why he jumped out of that car where he  
23 did. Well, the power steering was out, as Mr. Bolden told you, so  
24 that's why he lost control, or he would have made it all the way  
25 to 1801 J.

1           The reason he's in that neighborhood is because he's  
2 trying to flee to a neighborhood that he knows, his own. It's not  
3 because there's --

4           MR. LEVENTHAL: Judge, I'm going to object. Those facts  
5 didn't come out during the trial.

6           MR. GIORDANI: It's common sense.

7           THE COURT: Yeah, overruled. You may proceed.

8           MR. GIORDANI: I'm going to venture to say that this is an  
9 all-or-nothing case, because I didn't hear Mr. Leventhal get up here  
10 and ask you or argue to you in any way, shape, or form that there  
11 was a break in the chain of the people of the players involved,  
12 right? Like, the people who did the murder, did the robbery, and  
13 did the high-speed chase and jumped out of the car, what they're  
14 going to tell you or what they're trying to tell you is that  
15 Mr. Matthews was just in the wrong place at the wrong time.

16           So, logically, when you look at that verdict form that  
17 you're going to have in the back room, it's an all-or-nothing thing.  
18 It's guilty of first-degree murder, guilty of conspiracy to commit  
19 murder, robbery with use of a deadly weapon, assault with deadly  
20 weapon, possession of short-barrel rifle, all of them, or it's NG, not  
21 guilty all the way down.

22           And I would challenge you, take a step back. You want to,  
23 make that decision, take a step back, and think about the  
24 implications here. Okay. If you were to believe Mr. Leventhal's  
25 version of the evidence, you would have to presume or actually

1 completely buy into Officer Cupp getting on this witness stand,  
2 swearing an oath with his badge on his chest, looking you in your  
3 eyes, looking him in his eyes, and saying that's the guy, 100  
4 percent. You would have to set that aside, because there's some  
5 random TPO out there? Give me a break.

6 You would have to entirely ignore or reject Crystina  
7 Vachon's testimony, the gunshot residue analyst's testimony.  
8 Mr. Matthews and Mr. Joshlin, the devil was in the details, right?  
9 Mr. Joshlin has it on his right palm, because he's got a pistol.  
10 Mr. Matthews has it on both palms, because he's got the rifle.  
11 Okay. There's no reasonable explanation other than the fact that  
12 they were holding the guns who the cops say -- the guns that they  
13 were holding. Right? I mean, there was no getting around that.

14 Now, their expert can get up on this witness stand and  
15 stutter through his experience all he wants. And I don't mean to  
16 demean -- he's a -- he seems to be a very nice man, right? But he's  
17 not a scientist and I think he eventually ended up saying that after  
18 many different versions of experience, like watching a scientist do a  
19 gunshot residue kit, I guess. He's not a scientist.

20 The scientist got up and told you, during our case, that  
21 this is gunshot residue, it's the three -- barium, antimony and  
22 whatever it is --

23 MS. BOTELHO: Lead.

24 MR. GIORDANI: Lead, barium, and antimony. And that  
25 that was all over Mr. Matthews' hands. Now, there's some implicit

1 argument here that there was transfer. And I would ask you to just  
2 think about that for a moment. Unless Lasko is chewing on bullets  
3 before he bites Jemar on the hand, there's no transfer here.

4           Officer Cupp is the only law enforcement officer who  
5 discharged his firearm in the line of duty that night. Officer Cupp's  
6 not the guy who handcuffed Jemar Matthews. There is no transfer.  
7 The only reason there's gunshot residue on Mr. Matthews' hand is  
8 because he fired that weapon.

9           There are a few specific points that Mr. Leventhal made  
10 that I'd like to address. One of them has to do with the individual  
11 by the name of Nicholas Owens. I want you to really think about  
12 what it takes to get up in front of a room of strangers, a guy that  
13 you knew, a guy that you knew, look him in the eye, and say they  
14 were upset after Marty got killed, they came to me, we all -- we  
15 were all talking, they were talking about getting the choppas, which  
16 that came out and then it was kind of -- Ms. Botelho called them  
17 guns. But those were his words.

18           And the mood was somber, and they were talking about  
19 getting revenge quick, or ASAP, I guess. Getting guns so they can  
20 get revenge ASAP.

21           You saw what he was wearing when he testified, right?  
22 Do you think that man has intestinal fortitude? I mean, what it takes  
23 to get up and do that? And do you think some potential future  
24 benefit, as Mr. Leventhal just argued, is going to get him to get up  
25 there and lie? Because the credibility and believability of these

1 witnesses is really important. Right? Think about what motive he  
2 may have in this case. He told you -- now, Mr. Leventhal can make  
3 the argument all he wants that the guy thinks he might get some  
4 future benefit. He told you he's expiring his parole. He's not even  
5 going to a parole board, he has to expire his sentence. How is he  
6 benefit, ever?

7 Not to mention there's no evidence he's ever going to get  
8 a benefit. No one's said that, no one testified to that effect. But  
9 how do you get a benefit if you're expiring your sentence? There is  
10 no benefit. He's got to stay in till he finishes his parole violation.  
11 That's it.

12 Think about what it took for him to get up here and look  
13 Mr. Matthews in the eye and say what he said. Think about that.  
14 What other dogs does he have in this fight other than doing the  
15 right thing? None.

16 Talk about credibility a little bit. That is pretty bad here,  
17 but I want you to really think this Instruction 35. I don't know if  
18 you're going to get a chance to deliberate tonight, and I'm guessing  
19 probably not. But when you come back, whenever that may be, I  
20 believe Monday morning, look at Instruction 35. When you  
21 criticize -- and you should, you should always look at witnesses and  
22 determine their motives and reasons for saying the things they're  
23 saying.

24 Look at 35. What do you think Sergeant Cupp and  
25 Detective Walters' motive is to get up here and say 100 percent,



1 that's the guy? What is their motive? They don't get paid by  
2 conviction. Right? What is their motive? There is none. There is  
3 none.

4 Think about the strength of weakness of their  
5 recollections. You heard -- and this is an important point -- number  
6 one, in jury selection, you all promised me and this Court, when I  
7 asked you, you're not going to consider the 15-year time lapse  
8 because you'd be speculating if you did. But think about what you  
9 heard about the prior testimony in this case and the prior  
10 statements.

11 Four hours after the murder of Mersey Williams, four  
12 hours after Officer Cupp discharged his duty weapon, there is an  
13 investigation into the OIS that's concurrent with the homicide  
14 investigation. And Officer Cupp told you that was a compelled  
15 statement with my union rep, which compelled, you know what that  
16 means, right? He had to give it with his union rep, about the OIS --  
17 about the officer-involved shooting.

18 Jemar Matthews is sitting in custody right then. Pierre  
19 Joshlin is sitting in custody. For hours at that point. Think about  
20 the witness' mind set at that time. There is no we need to figure  
21 out who it was that ran from the vehicle; everyone knew who ran  
22 from the vehicle. He was sitting in cuffs. He's getting a historical  
23 rendition during that interview of suspect description.

24 And don't let Mr. Leventhal's recollection of the evidence  
25 govern when it comes to the statement he made about the

1 outstanding suspect. And by that, I mean, remember when Cupp  
2 was asked about a statement, uh, they, or uh, yeah, they. It was  
3 about the outstanding suspect. And the response -- the question  
4 was specifically about the outstanding suspect that jumped in the  
5 vehicle, and the response by Cupp was, Uh, they were all wearing  
6 black shirts, dark clothing, [indiscernible]. That was not a question  
7 about Mr. Matthews. Mr. Matthews had been in custody for hours.  
8 It was not a question about Pierre Joshlin; Pierre Joshlin had been  
9 in custody for hours.

10 Also, think about the number of times that Cupp has  
11 testified. And identified Mr. Matthews. There is a jury instruction  
12 that goes on to talk about identity -- eyewitness identification, and  
13 that's 36. I know, I'm not going to go through all these with you,  
14 you're going to have these when you deliberate.

15 But I want you to go through 1 through 7 together and  
16 think about which side are -- what they support and what they  
17 refute. The capacity and the opportunity of the witness to observe  
18 what he had seen. Well, you heard initially that Mr. Matthews  
19 popped out in front of the vehicle. And, by the way, that was when  
20 they were going -- the vehicle was going up on the curb, not when  
21 he hit the fire hydrant. He wasn't part of the fire hydrant accident.

22 He rolled up on the hood, they were face-to-face to him  
23 and they recognized him as a person they knew not by name. Now,  
24 Mr. Leventhal made a big deal about this Chrysler Sebring and  
25 which side of the vehicle Mr. Matthews was hit by. I just want to

1 point your attention to this, okay. Mr. Matthews had a big old red  
2 light shining right in his face. He was four feet away. How far --  
3 I'm, what 10 feet, 8 feet away from you? You can see my face,  
4 right? He had a big old red light pointing right in his face. They  
5 knew this guy, both of them. Both of them came in here and told  
6 you they are certain it was him. There is no doubt in this case and  
7 certainly not a reasonable doubt.

8 Those identifications by those officers cannot be viewed  
9 in a vacuum. You have to couple that with the testimony of  
10 Nicholas Owens. You may not like him, he may not be from the  
11 same walk of life as you, but he came in here and he told you that's  
12 the guy that was trying to get revenge for Marty's death.

13 You can't just look at Cupp and Walters identifications in a  
14 vacuum. Also look at Nicholas Owens. Also look at the scientific  
15 evidence in this case. The gunshot residue, the ballistics. And  
16 when you think about the ballistics and the forensics as a whole,  
17 think about what the cops' priority was then. They already know  
18 the two guys who did it; all they have to do to prove that it's the  
19 same people back up at 1271 Balzar is connect the guns to the  
20 scene. Because you know the girls aren't going to identify  
21 anybody, they were running for their lives. You know, the Boldens  
22 that just got home were caught off guard, ran off as soon as they  
23 were getting car-jacked. They're not going to identify anybody. All  
24 you have to do is put those guns at the scene and case closed as to  
25 these two, at least, as to Mr. Matthews and Mr. Joshlin.

1           And I want to address one other thing that Mr. Leventhal  
2 said about the forensics. Someone held the guns, right? He wants  
3 to claim it wasn't Mr. Matthews, that's his job, that's fine. Someone  
4 held the guns. There was no DNA that came back on the guns. You  
5 heard that testimony, right? It's not that someone else came back  
6 on the guns; there was no DNA on the gun. So that's no -- it's  
7 neutral evidence. Someone held the gun, we know that; they just  
8 didn't leave DNA on it. Whether it's Mr. Matthews or anybody else,  
9 there's no DNA.

10           And the same thing applies for the fingerprints. Someone  
11 rolled upon that hood, right? Just wasn't prints left behind,  
12 probably because the guy that did was still wearing his red gloves.  
13 Right? DNA, fingerprints, don't matter in this case.

14           What matters is the ballistics that link the guns to the  
15 scene and the guy holding the gun being identified by two  
16 individuals with no dog in this fight, cops just trying to do their job.

17           When I talk about those identifications, I don't mean to  
18 beat a dead horse, but you heard them both say they knew  
19 Mr. Matthews and Mr. Joshlin to be friends. You heard that they  
20 have identified Mr. Matthews several times in the past. And you  
21 have heard that they are certain about their identifications.

22           Showing you State's 37, because I very briefly want to  
23 address the defense's identification expert. Okay. Not  
24 Mr. Chambers, not the guy who's never done a scientific test on  
25 gunshot residue in his entire life, not that guy. The other one that

1 somehow still believes in this day and age that Black people and  
2 white people don't hang out with each other. I mean, I don't know  
3 what that was about. It was, frankly, offensive. But you all get to  
4 analyze his testimony for what it is.

5 That same man would have you believe that just because  
6 these cops are of a different race than Mr. Matthews, that they can't  
7 reliably identify him. Okay. But that same expert had to give me  
8 the truth when I asked him. That same expert that they called, that  
9 the defense called, had to agree with me when I said it's different to  
10 recognize and identify someone that you know than it is to identify  
11 a stranger? Yes.

12 It's more reliable if the person is closer-up, say three, four,  
13 five feet, as opposed to 10 feet? Yes.

14 It's more reliable if that identification is corroborated? He  
15 wouldn't give me that, but then I showed him the transcript of last --  
16 the last time I questioned him, and he finally agreed. Yeah,  
17 corroboration's important.

18 The only reason I bring that, and, again, I don't mean to  
19 beat a dead horse, but these are two different officers. These are  
20 two different individuals. They were partner 15 years ago,  
21 obviously, they're riding in the same car. But one's identify --  
22 identification is corroborated by another. That lends credence to  
23 each identification. Not to mention, it's identified by the gunshot  
24 residue -- or corroborated by the gunshot residue, the facts and  
25 circumstance of the case and everything else.

1           When I talk -- or when we talked earlier about common  
2 sense, no one's really mentioned this, but I think every reasonable  
3 person has heard of what cottonmouth is and kind of understands  
4 what -- how that is developed.

5           Now, if you would believe what the defense would have  
6 you believe, that Mr. Matthews was in this home at 1301 J, why  
7 does he have such a bad case of cottonmouth? If you would  
8 believe what the defense would have you believe, that he was just  
9 in the wrong place at the wrong time, 1301 J, or 1301 whatever --  
10 why leave that home when the cops are in the area? Why not just  
11 stay inside? Why run away from your home and hide in the  
12 backyard? It doesn't make logical sense. Right?

13           And if you do run from the home because you're so  
14 scared you're get arrested there, why run out to where all the police  
15 are? Why run out to the lights and sirens when you can just stay  
16 inside and avoid it. Go in the back room or something. It doesn't  
17 make sense, because it didn't happen. It's not reality.

18           The truth is like a lie. I don't need to defend it, nobody  
19 does. Set it free and it will defend itself. Look at that evidence, use  
20 your common sense and reasonable men and women, and give  
21 Mersey justice, after all of these years. Tell this man right here that  
22 he is accountable for his actions, and he's going to have to face the  
23 consequences, give his family -- give her family the justice that they  
24 so dearly deserve, find the defendant guilty of all counts.

25           Thank you for your time and attention.

1 THE COURT: Thank you very much.

2 At this time the clerk will now swear the officers of the  
3 court who will take charge of the jury panel.

4 [Officers sworn.]

5 THE COURT: Thank you.

6 At this time, Ms. Jenanie Schlotter, you have been  
7 selected to be our alternate juror. So I am going to allow you to  
8 leave the courthouse. However, I am not discharging you from  
9 your duty as a juror. I'm going to ask you -- Pam will walk out and  
10 she's going to get your information, she's going to get your  
11 notebook, your badge. She's also going to get your phone number  
12 from you. I just ask that you don't go -- I mean, the jury will most  
13 likely be back on Monday to deliberate, and so I just --

14 What's up?

15 I just ask that -- I mean, the jury will be coming back on  
16 Monday, so I just ask that on Monday, that you don't go further  
17 than 30 or 40 minutes from the courthouse, so that if we do need  
18 you to come back, you will be able to come back and you will  
19 comply with that?

20 JUROR NO. 14: Uh-huh.

21 THE COURT: Do you live further than about 45 minutes?

22 JUROR NO. 14: I live in the north part of -- northwest. But  
23 I work in Henderson. So I'll be going to work on Monday.

24 THE COURT: Okay. Here's the thing. If you go to work on  
25 Monday and you get a call from Ms. Pam and she tells you to come

1 to the courthouse, you'll need to come to the courthouse.

2 JUROR NO. 14: Okay.

3 THE COURT: Do you understand that? Okay. So you are  
4 still under the admonition not to discuss this case with anyone.  
5 And you understand that?

6 JUROR NO. 14: Yes.

7 THE COURT: Okay. And we will call you and let you  
8 know, number one, whether we need you to come back or we'll call  
9 you and let you know when you have been discharged from your  
10 duty. Until you have been discharged, I just ask that you not  
11 discuss the case with anyone.

12 And you can go right there and Ms. Pam will get your  
13 information from you.

14 So ladies and gentlemen of the jury, before I excuse you,  
15 now you'll be able to take your notebooks, your instructions, you'll  
16 be able to take everything with you. When you go back to the jury  
17 room tonight, I'm going to ask that you select one of your member  
18 to serve as your foreperson. After you've selected your foreperson,  
19 you'll be given further instructions about when to come back on  
20 Monday.

21 When you come back on Monday, you will have all of the  
22 evidence that's been introduced in this trial. So everything that the  
23 parties have talked about, we will take it back there and it will be  
24 made available to you.

25 I know -- you saw there was ammunition and firearms and



1 a lot of things that were admitted into evidence. I don't send that  
2 back with the jury when they deliberate, except if you ask for it.

3 So the foreperson, if the jury panel wants to look at that  
4 evidence, then the foreperson will make that known to me by just  
5 writing a note and giving it to one of the officers of the court. If you  
6 do want any of the firearms, what I will ask you to do is the court  
7 marshal will come back. When he comes in with the firearms, I just  
8 ask that you stop deliberating. He will stay in there, though, with  
9 the firearm, but you can't deliberate when he's in there. When  
10 you're doing reviewing whatever it is you want to review, he will  
11 take it out. If you want the -- anything that you want, we will make  
12 that available to you.

13 There a lot of bags and bags inside other bags. You're  
14 permitted to open that up and do whatever it is that you want. I just  
15 ask that before you do something like that, that you let us know that  
16 you're going to be opening up bags inside of bags.

17 And so the foreperson -- that's right, correct? Okay -- so  
18 the foreperson will be in charge of, obviously, communicating  
19 anything to the Court.

20 So, again, I want to thank you very much for being here. I  
21 want to thank you for your patience and your courtesy in hearing  
22 this case. You are now excused to go deliberate upon your verdict.

23 [Jury recessed for deliberations at 5:12 p.m.]


24 MR. TANASI: Judge, what time on Monday? I missed it,  
25 I'm sorry.

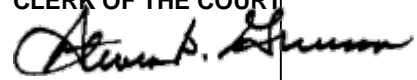
1 THE COURT: They'll come back probably 8:30 or 9:00.  
2 MR. TANASI: 8:30 or 9:00?  
3 THE COURT: Uh-huh. But if either side wants to call on  
4 Monday, Pam will tell you when they're all here and when they've  
5 begun deliberation.  
6 MR. TANASI: Great. Thank you.  
7 THE COURT: Uh-huh.  
8 [Court recessed for the evening at 5:13 p.m.]

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ATTEST: I do hereby certify that I have truly and correctly  
transcribed the audio/video proceedings in the above-entitled case  
to the best of my ability.

  
Shawna Ortega, CET\*562



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff(s),

vs.

JEMAR MATTHEWS  
(AKA) JEMAR DEMON MATTHEWS,

Defendant(s).

Case No. 06C228460-2

DEPT. XII

BEFORE THE HONORABLE MICHELLE LEAVITT,  
DISTRICT COURT JUDGE

MONDAY, NOVEMBER 15, 2021

***TRANSCRIPT OF PROCEEDINGS RE:***  
**JURY TRIAL – DAY 7**

(Appearances on page 2.)

RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 APPEARANCES:

2 For the State: JOHN L. GIORDANI, III, ESQ.  
3 (Chief Deputy District Attorney)  
4 AGNES M. BOTELHO, ESQ.  
(Chief Deputy District Attorney)

5 For the Defendant(s): TODD M. LEVENTHAL, ESQ.  
6 RICHARD E. TANASI, ESQ.

7 Also Present:  
8 Samantha Goett, State's intern  
9  
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1 **LAS VEGAS, NEVADA, MONDAY, NOVEMBER 15, 2021**

2 [Proceeding commenced at 2:15 p.m.]

3  
4 [Outside the presence of the jury.]

5 THE COURT: The record will reflect that that hearing is  
6 taking place outside the presence of the jury panel.

7 I'll just wait till your client comes in.

8 [Pause in proceedings.]

9 THE COURT: Okay. And the record will reflect that  
10 Mr. Matthews is present in the courtroom.

11 I did receive communication from the foreperson and it's  
12 been marked as Court's Exhibit Number 12. It says:

13 Count 8: Is Mrs. Bolden a co-owner of the car? And if not,  
14 can robbery still be charged based solely on the threat to her  
15 person as a passenger in the car? We are slightly unclear on  
16 Instruction 20, if she's still being robbed if it's not her property.

17 And it's signed by the foreperson.

18 I was going to respond by just telling them to refer to  
19 Instruction Number 20, because, obviously, I cannot answer that.  
20 And before I could respond, I was informed they have a verdict. So  
21 it will be marked Court's Exhibit Number 12.

22 Anything from the State?

23 MR. GIORDANI: No, Your Honor.

24 MR. TANASI: Nothing for the defense, Your Honor.

25 THE COURT: Okay. You said you have an issue?

1 MR. TANASI: No, Judge, that was it. I was just curious  
2 about the question and then where we're at procedurally now. But  
3 you clarified it, so --

4 THE COURT: How did you even know there was a  
5 question?

6 MR. TANASI: That was the information I received on the  
7 phone call to come over.

8 THE COURT: Oh, that's right. Well, that's why you were  
9 initially coming back.

10 MR. TANASI: Correct.

11 THE COURT: Yeah. So Pam -- I'm assuming Pam told  
12 you.

13 MR. TANASI: Yes. Yes, ma'am.

14 THE COURT: Okay. Can we bring the panel in now?  
15 Everybody ready?

16 MR. TANASI: No objection from the defense, Your Honor.

17 MR. GIORDANI: We're ready.

18 THE COURT: Okay. Bring them in.

19 [Jury reconvened at 2:20 p.m.]

20 THE COURT: Okay. Does the State stipulate to the  
21 presence of the jury panel?

22 MR. GIORDANI: We do, Your Honor.

23 THE COURT: And the defense?

24 MR. LEVENTHAL: Yes, Your Honor. Thank you.

25 THE COURT: Okay. Ms. Harbison, have you been

1 selected to be the foreperson?

2 JUROR NO. 9: Yes.

3 THE COURT: Has the jury reached a verdict?

4 JUROR NO. 9: Yes, we have.

5 THE COURT: Can you please hand the verdict form to  
6 Officer Hawks.

7 Okay. At this time, the clerk will read the verdict form out  
8 loud.

9 THE COURT CLERK: District Court, Clark County, Nevada,  
10 State of Nevada, Plaintiff, versus Jemar Matthews, Defendant, Case  
11 Number C-228460, Department Number 12 Verdict:

12 We, the jury, in the above-entitled case find the defendant,  
13 Jemar Matthews, as follows:

14 Count 1. Conspiracy to commit murder; guilty of  
15 conspiracy to commit murder.

16 We, the jury, in the above-entitled case find the defendant,  
17 Jemar Matthews, as follows:

18 Count 2. Murder with use of a deadly weapon, Mersey  
19 Williams; guilty of first-degree murder with use of a deadly weapon.

20 We, the jury, in the above-entitled case, find the  
21 defendant, Jemar Matthews, as follows:

22 Count 3. Attempt murder with use of a deadly weapon,  
23 Myniece Cook; guilty of attempt murder with use of a deadly  
24 weapon.

25 We, the jury, in the above-entitled case, find the

1 defendant, Jemar Matthews, as follows:

2 Count 4. Attempt murder with use of a deadly weapon,  
3 Michel'le Tolefree; guilty of attempt murder with use of a deadly  
4 weapon.

5 We, the jury, in the above-entitled case, find the  
6 defendant, Jemar Matthews, as follows:

7 Count 5. Attempt murder with use of a deadly weapon,  
8 Maurice Hickman; guilty of attempt murder with use of a deadly  
9 weapon.

10 We, the jury, in the above-entitled case, find the  
11 defendant, Jemar Matthews, as follows:

12 Count 6. Possession of short-barreled rifle; guilty of  
13 possession of short-barreled rifle.

14 We, the jury, in the above-entitled case, find the  
15 defendant, Jemar Matthews, as follows:

16 Count 7. Conspiracy to commit robbery; guilty of  
17 conspiracy to commit robbery.

18 We, the jury, in the above-entitled case, find the  
19 defendant, Jemar Matthews, as follows:

20 Robbery with use of a deadly weapon, Geishe Orduno;  
21 guilty of robbery with use of a deadly weapon.

22 We, the jury, in the above-entitled case, find the  
23 defendant, Jemar Matthews, as follows:

24 Count 9. Robbery with use of a deadly weapon, Melvin  
25 Bolden; guilty of robbery with use of a deadly weapon.



1           We, the jury, in the above-entitled case, find the  
2 defendant, Jemar Matthews, as follows:

3           Count 10. Assault with a deadly weapon, Bradley Cupp;  
4 guilty of assault with a deadly weapon.

5           We, the jury, in the above-entitled case, find the  
6 defendant, Jemar Matthews, as follows:

7           Count 11. Assault with a deadly weapon, Brian Walter;  
8 guilty of assault with a deadly weapon.

9           Do this 15th day of November 2021, signed by Foreperson  
10 Amy Harbison.

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

13           COLLECTIVE JURY: Yes.

14           THE COURT: Okay. Does the State wish to have the jury  
15 panel polled?

16           MR. GIORDANI: No, Your Honor.

17           THE COURT: Mr. Leventhal?

18           MR. LEVENTHAL: Yes, Your Honor.

19           THE COURT: Okay. At this time, ladies and gentlemen,  
20 the clerk is going to ask you a question, and I just ask that you  
21 respond yes or no.

22           THE COURT CLERK: Juror Number 1, is this your verdict  
23 as read?

24           JUROR NO. 1: Yes.

25           THE COURT CLERK: Juror Number 2, is this your verdict

1 as read?

2 JUROR NO. 2: Yes.

3 THE COURT CLERK: Juror Number 3, is this your verdict

4 as read?

5 JUROR NO. 3: Yes.

6 THE COURT CLERK: Juror Number 4, is this your verdict

7 as read?

8 JUROR NO. 4: Yes.

9 THE COURT CLERK: Juror Number 5, is this your verdict

10 as read?

11 JUROR NO. 5: Yes.

12 THE COURT CLERK: Juror Number 6, is this your verdict

13 as read?

14 JUROR NO. 6: Yes.

15 THE COURT CLERK: Juror Number 7, is this your verdict

16 as read?

17 JUROR NO. 7: Yes.

18 THE COURT CLERK: Juror Number 8, is this your verdict

19 as read?

20 JUROR NO. 8: Yes.

21 THE COURT CLERK: Juror Number 9, is this your verdict

22 as read?

23 JUROR NO. 9: Yes.

24 THE COURT CLERK: Juror Number 10, is this your verdict

25 as read?

1 JUROR NO. 10: Yes.

2 THE COURT CLERK: Juror Number 11, is this your verdict  
3 as read?

4 JUROR NO. 11: Yes.

5 THE COURT CLERK: Juror Number 12, is this your verdict  
6 as read?

7 JUROR NO. 12: Yes.

8 THE COURT: Okay. At this time, the clerk's going to  
9 record the verdict in the official record of the court.

10 And at this time, ladies and gentlemen, I am going to  
11 discharge you as jurors. You're no longer under the admonition to  
12 not discuss the case with anyone, but you're under no obligation to  
13 discuss the case with anyone. You're going to be discharged to go  
14 back and be given further instructions from the officers of the court.

15 I do always like to give the attorneys for both sides an  
16 opportunity to speak to the jury panel, but again, I just want to  
17 make sure you understand it is up to you whether you speak to  
18 anyone about the trial and your deliberations.

19 Before I do excuse you, again, I just want to extend my  
20 gratitude and thanks to you. I know we went a little bit longer than I  
21 had told you and I very much appreciate your willingness to be here  
22 and your willingness to serve.

23 So at this time, you are discharged and you are excused.

24 [Jury panel discharged at 2:26 p.m.]

25 THE COURT: Okay. The record will reflect that the

1 hearing is taking place outside the presence of the jury panel.

2 At this time, the matter will be -- I'm assuming you're  
3 going to want me to refer it back to P&P?

4 MS. BOTELHO: Yes.

5 MR. GIORDANI: Yes.

6 THE COURT: Okay. For a PSI. And we will set it down for  
7 sentencing.

8 THE COURT CLERK: Sentencing is going to be  
9 February 2nd, 2022, at 8:30, [indiscernible] pandemic schedule,  
10 that'll be February 4th, 2022, at 11:00 a.m.

11 THE COURT: Anything else?

12 MR. GIORDANI: No, Your Honor. Thank you.

13 THE COURT: Okay. Thank you very much.


14 MR. TANASI: Thank you, Judge.

15 MR. LEVENTHAL: Thank you, Judge.

16 [Court adjourned at 2:27 p.m.]

17 ///

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20  
21 ATTEST: I do hereby certify that I have truly and correctly  
22 transcribed the audio/video proceedings in the above-entitled case  
23 to the best of my ability.

  
Shawna Ortega, CET\*562

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

NOV 12 2021

BY, HALY PANNULLO, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

JEMAR MATTHEWS,  
Defendant.

CASE NO: 06C228460-2

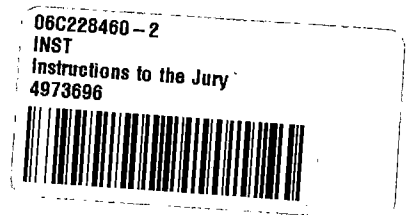
DEPT NO: XII

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

MEMBERS OF THE JURY:

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

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



INSTRUCTION NO. 2

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

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

An Amended Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Amended Information that on or about the 30<sup>th</sup> day of September, 2006, the Defendant committed the offense(s) of CONSPIRACY TO COMMIT MURDER (Category B Felony - NRS 200.010, 200.030, 199.480 - NOC 50038); MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001); ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031); POSSESSION OF SHORT BARRELED RIFLE (Category D Felony - NRS 202.275 - NOC 51435); CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147); ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138) and ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 50201).

COUNT 1 - CONSPIRACY TO COMMIT MURDER

did then and there meet with each other and between themselves, and each of them with the other, willfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: Murder, and in furtherance of said conspiracy, Defendants did commit the acts as set forth in Counts 2 - 5, said acts being incorporated by this reference as though fully set forth herein.

COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON

did then and there willfully, feloniously, without authority of law, and with premeditation and deliberation, and with malice aforethought, kill MERSEY WILLIAMS, a human being, by shooting at and into the body of the said MERSEY WILLIAMS, with a deadly weapon, to-wit: firearm, in the following manner, to-wit: Defendants being responsible under the following principles of criminal liability, to-wit: (1) by directly committing said crime; and/or (2) by the Defendants conspiring with each other and unidentified others to kill the said MERSEY WILLIAMS, whereby each Defendant is

1 vicariously liable for the acts committed in furtherance of said conspiracy if that Defendant  
2 intended that act to occur; and/or (3) the Defendants aiding or abetting in the commission of  
3 the crime, by accompanying each other to the crime scene where both of them repeatedly  
4 fired guns at the said MERSEY WILLIAMS and helped provide a getaway vehicle by  
5 assisting in the robbery of an automobile immediately after said shooting; the Defendants  
6 encouraging one another throughout by actions or words; the Defendants acting in concert  
7 throughout.

8 COUNT 3 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

9 did then and there, without authority of law, and malice aforethought, willfully and  
10 feloniously attempt to kill MYNIECE COOK, a human being, by shooting at the said  
11 MYNIECE COOK, with a deadly weapon, to-wit: a firearm, in the following manner, to-  
12 wit: Defendants being responsible under the following principles of criminal liability, to-  
13 wit: (1) by directly committing said crime; and/or (2) by the Defendants conspiring with  
14 each other and unidentified others to kill the said MYNIECE COOK, whereby each  
15 Defendant is vicariously liable for the acts committed in furtherance of said conspiracy if  
16 that Defendant intended that act to occur; and/or (3) the Defendants aiding or abetting in the  
17 commission of the crime, by accompanying each other to the crime scene where both of  
18 them repeatedly fired guns at the said MYNIECE COOK and helped provide a getaway  
19 vehicle by assisting in the robbery of an automobile immediately after said shooting; the  
20 Defendants encouraging one another throughout by actions or words; the Defendants acting  
21 in concert throughout.

22 COUNT 4 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

23 did then and there, without authority of law, and malice aforethought, willfully and  
24 feloniously attempt to kill MICHEL-LE TOLEFREE, a human being, by shooting at the said  
25 MICHEL-LE TOLEFREE, with a deadly weapon, to-wit: a firearm, in the following  
26 manner, to-wit: Defendants being responsible under the following principles of criminal  
27 liability, to-wit: (1) by directly committing said crime; and/or (2) by the Defendants  
28 conspiring with each other and unidentified others to kill the said MICHEL-LE TOLEFREE,



1 whereby each Defendant is vicariously liable for the acts committed in furtherance of said  
2 conspiracy if that Defendant intended that act to occur; and/or (3) the Defendants aiding or  
3 abetting in the commission of the crime, by accompanying each other to the crime scene  
4 where both of them repeatedly fired guns at the said MICHEL-LE TOLEFREE and helped  
5 provide a getaway vehicle by assisting in the robbery of an automobile immediately after  
6 said shooting; the Defendants encouraging one another throughout by actions or words; the  
7 Defendants acting in concert throughout.

8 COUNT 5 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

9 did then and there, without authority of law, and malice aforethought, willfully and  
10 feloniously attempt to kill MAURICE HICKMAN, a human being, by shooting at the said  
11 MAURICE HICKMAN, with a deadly weapon, to-wit: a firearm, in the following manner,  
12 to-wit: Defendants being responsible under the following principles of criminal liability, to-  
13 wit: (1) by directly committing said crime; and/or (2) by the Defendants conspiring with  
14 each other and unidentified others to kill the said MAURICE HICKMAN, whereby each  
15 Defendant is vicariously liable for the acts committed in furtherance of said conspiracy if  
16 that Defendant intended that act to occur; and/or (3) the Defendants aiding or abetting in the  
17 commission of the crime, by accompanying each other to the crime scene where both of  
18 them repeatedly fired guns at the said MAURICE HICKMAN and helped provide a getaway  
19 vehicle by assisting in the robbery of an automobile immediately after said shooting; the  
20 Defendants encouraging one another throughout by actions or words; the Defendants acting  
21 in concert throughout.

22 COUNT 6 - POSSESSION OF SHORT BARRELED RIFLE

23 did then and there willfully, unlawfully, and feloniously possess a short barreled rifle  
24 having a barrel less than 16 inches in length, to-wit: a Ruger Model 10/22 .22 caliber, with a  
25 barrel approximately 10 3/4 inches long and overall length of 20 inches.

26 COUNT 7 - CONSPIRACY TO COMMIT ROBBERY

27 did then and there meet with each other and between themselves, and each of them  
28 with the other, willfully, unlawfully, and feloniously conspire and agree to commit a crime,

1 to-wit: Robbery, and in furtherance of said conspiracy, Defendants did commit the acts as  
2 set forth in Counts 8 and 9, said acts being incorporated by this reference as though fully set  
3 forth herein.

4 COUNT 8 - ROBBERY WITH USE OF A DEADLY WEAPON

5 did then and there willfully, unlawfully, and feloniously take personal property, to-  
6 wit: a 1991 Lincoln Town Car, from the person of GEISHE M. ORDUNO, or in her  
7 presence, by means of force or violence or fear of injury to, and without the consent and  
8 against the will of the said GEISHE M. ORDUNO, said Defendant using a deadly weapon,  
9 to-wit: a firearm, during the commission of said crime, in the following manner, to-wit:  
10 Defendant JEMAR MATTHEWS, aka, Jemar Demon Matthews, directly committing said  
11 crime, PIERRE JOSHLIN aiding and abetting, by pointing said firearm at the said GEISHE  
12 M. ORDUNO.

13 COUNT 9 - ROBBERY WITH USE OF A DEADLY WEAPON

14 did then and there willfully, unlawfully, and feloniously take personal property, to-  
15 wit: a 1991 Lincoln Town Car, from the person of MELVIN BOLDEN, or in his presence,  
16 by means of force or violence or fear of injury to, and without the consent and against the  
17 will of the said MELVIN BOLDEN, said Defendant using a deadly weapon, to-wit: a  
18 firearm, during the commission of said crime, in the following manner, to-wit: PIERRE  
19 JOSHLIN, directly committing said crime, Defendant JEMAR MATTHEWS aiding and  
20 abetting, by pointing said firearm at the said MELVIN BOLDEN.

21 COUNT 10 - ASSAULT WITH A DEADLY WEAPON

22 did then and there willfully, unlawfully, feloniously and intentionally place another  
23 person, to-wit: BRADLEY CUPP, in reasonable apprehension of immediate bodily harm  
24 with use of a deadly weapon, to-wit: a firearm, by pointing said firearm at the said  
25 BRADLEY CUPP.

26 COUNT 11 - ASSAULT WITH A DEADLY WEAPON

27 did then and there willfully, unlawfully, feloniously and intentionally place another  
28 person, to-wit: BRIAN WALTER, in reasonable apprehension of immediate bodily harm

1 with use of a deadly weapon, to-wit: a firearm, by pointing said firearm at the said BRIAN  
2 WALTER.

3 It is the duty of the jury to apply the rules of law contained in these instructions to the  
4 facts of the case and determine whether or not the Defendant is guilty of one or more of the  
5 offenses charged.

6 Each charge and the evidence pertaining to it should be considered separately. The  
7 fact that you may find a defendant guilty or not guilty as to one of the offenses charged  
8 should not control your verdict as to any other offense charged.

INSTRUCTION NO. 4

In this case the defendant is accused in an Amended Information alleging a charge of open murder. This charge may include murder of the first degree, murder of the second degree.

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

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

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

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

1  
2 Murder of the first degree is murder which is perpetrated by means of any kind of  
3 willful, deliberate, and premeditated killing. All three elements – willfulness, deliberation,  
4 and premeditation – must be proven beyond a reasonable doubt before an accused can be  
5 convicted of first-degree murder.

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

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

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

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

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

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

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



1  
2 If an illegal yet unintended act results from the intent to commit a crime, that act is  
3 also considered illegal. Under the doctrine of "transferred intent", original malice is  
4 transferred from one against whom it was entertained to the person who actually suffers the  
5 consequences of the unlawful act. For example, if a person intentionally directs force against  
6 one person wrongfully but, instead, hits another, his intent is said to be transferred from one  
7 to the other though he did not intend it in the first instance.

8 Therefore, where a person unlawfully attempts to kill a person and, by mistake or  
9 inadvertence during such attempt, commits a battery against another person, the law  
10 nevertheless holds the assailant responsible for his felonious intent, merely transferring its  
11 direction from the original object to the person battered.

12 During an attack upon a group, a defendant's intent to kill need not be directed at any  
13 one individual. It is enough if the intent to kill is directed at the group.  
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The intention to kill may be ascertained or deduced from the facts and circumstances of the killing, such as the use of a weapon calculated to produce death, the manner of its use, and the attendant circumstances characterizing the act.

INSTRUCTION NO. 11

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All murder which is not Murder of the First Degree is Murder of the Second Degree.  
Murder of the Second Degree is Murder with malice aforethought, but without the admixture  
of premeditation and deliberation.

You are instructed that if you find that the State has established that the defendant has committed first degree murder you shall select first degree murder as your verdict. The crime of first degree murder includes the crime of second degree murder. You may find the defendant guilty of second degree murder if:

1. You have not found, beyond a reasonable doubt, that the defendant is guilty of murder of the first degree, and

2. All twelve of you are convinced beyond a reasonable doubt the defendant is guilty of the crime of second degree murder.

If you are convinced beyond a reasonable doubt that the crime of murder has been committed by the defendant, but you have a reasonable doubt whether such murder was of the first or of the second degree, you must give the defendant the benefit of that doubt and return a verdict of murder of the second degree.

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2       You are instructed that if you find the defendant guilty of First Degree or Second  
3 Degree Murder, Attempt Murder, Robbery and/or Assault you must also determine whether  
4 or not a deadly weapon was used in the commission of these crimes.

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

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

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2 “Deadly weapon” means:

- 3 a. any instrument which, if used in the ordinary manner contemplated by its design  
4 and construction, will or is likely to cause substantial bodily harm or death; or  
5 b. Any weapon, device, instrument, material or substance which, under the  
6 circumstances in which it is used, attempted to be used or threatened to be used, is  
7 readily capable of causing substantial bodily harm or death.  
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You are instructed that a firearm is a deadly weapon.

You are further instructed that a firearm, whether loaded or unloaded, operable or inoperable, is a deadly weapon, "Firearm" includes:

1. Any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion.
2. Any device used to mark the clothing of a person with paint or any other Substance; and
3. Any device from which a metallic projectile, including any ball bearing or pellet, may be expelled by means of spring, gas, air or other force.

INSTRUCTION NO. 16

In order to "use" a deadly weapon, there need not be conduct which actually produces harm but only conduct which produces a fear of harm or force by means or display of the deadly weapon in aiding the commission of the crime.



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

Malice aforethought means the intentional attempt to kill another human being without legal cause, legal excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may rise, not alone from anger, hatred revenge or from particular ill will, spite, or grudge toward the person killed, but may result from any unjustifiable or unlawful motive or purpose to injure another which proceeds from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intentions, but denotes rather an unlawful purpose and design in contradistinction to accident and mischance.

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2 It is not necessary to prove the elements of premeditation and deliberation in order to  
3 prove attempt murder.  
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Robbery is the unlawful taking of personal property from the person of another, or in his or her presence, against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person or property. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking, in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

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

It is unlawful to knowingly possess, manufacture or dispose of any short-barreled rifle or shotgun. Short-barreled rifle means:

1. A rifle having one or more barrels less than 16 inches in length; or
2. Any weapon made from a rifle, whether by alteration, modification or other means, with an overall length of less than 26 inches.

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An Assault With a Deadly Weapon is an intentional placing of another person in reasonable apprehension of immediate bodily harm, by or through the use of a deadly weapon.

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

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

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

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

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

In order to find a defendant criminally liable for first degree murder, and/or attempt murder, or assault with a deadly weapon under a theory of conspiracy liability, the State is required to prove that he had the specific intent to commit those offenses.



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

To aid or abet means to actively, knowingly or purposely facilitate or assist another individual in the commission or attempted commission of a crime with the intent that the crime be committed.

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

To aid and abet is to assist or support the efforts of another in the commission of a crime.

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

Those who aid and abet a crime, and those who directly perpetrate the crime, are principals and equally guilty of the commission of that crime, and therefore the finder of fact need not unanimously agree, nor individually determine whether a defendant is an aider and abettor or a direct perpetrator.

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

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

INSTRUCTION NO. 28

Your verdict must be unanimous as to the charge. You do not have to be unanimous on the principle of criminal liability. It is sufficient that each of you find beyond a reasonable doubt that the crime was committed under any one of these principles of criminal liability.

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2 The flight of a person immediately after the commission of a crime, or after he is  
3 accused of a crime, is not sufficient in itself to establish his guilt, but is a fact which, if  
4 proved may be considered by you in light of all other proved facts in deciding whether the  
5 State of Nevada met its burden of proof. Whether or not evidence of flight shows a  
6 consciousness of guilt and the significance to be attached to such a circumstance are matters  
7 for your deliberations.  
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2 To constitute the crime charged, there must exist a union or joint operation of an act  
3 forbidden by law and an intent to do the act.

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

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

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

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2 The Defendant is presumed innocent until the contrary is proved. This presumption  
3 places upon the State of Nevada the burden of proving beyond a reasonable doubt every  
4 element of the crime charged and that the Defendant is the person who committed the  
5 offense.

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

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a  
13 verdict of not guilty.  
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2 It is a constitutional right of a defendant in a criminal trial that he may not be  
3 compelled to testify. Thus, the decision as to whether he should testify is left to the  
4 Defendant on the advice and counsel of his attorney. You must not draw any inference of  
5 guilt from the fact that he does not testify, nor should this fact be discussed by you or enter  
6 into your deliberations in any way.  
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2       You are here to determine whether the State of Nevada has met its burden of proof  
3 from the evidence in the case. You are not called upon to return a verdict as to any other  
4 person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt  
5 of the Defendant, you should so find, even though you may believe one or more persons are  
6 also guilty.  
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The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

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

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

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

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

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

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2 The credibility or believability of a witness should be determined by his manner upon  
3 the stand, his relationship to the parties, his fears, motives, interests or feelings, his  
4 opportunity to have observed the matter to which he testified, the reasonableness of his  
5 statements and the strength or weakness of his recollections.

6 If you believe a witness has lied about any material fact in the case, you may  
7 disregard the entire testimony of that witness or any portion of his testimony which is not  
8 proved by other evidence.  
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2 You have heard testimony of eyewitness identification. In deciding how much weight  
3 to give this testimony, you may consider the various factors mentioned in these instructions  
4 concerning credibility of witnesses.

5 In addition to those factors, in evaluating eyewitness identification testimony, you  
6 may also consider:

- 7 1. The capacity and opportunity of the eyewitness to observe the offender based upon  
8 the length of time for observation and the conditions at the time of observation,  
9 including lighting and distance;
  - 10 2. Whether the identification was the product of the eyewitness's own recollection or  
11 was the result of subsequent influence or suggestiveness;
  - 12 3. Any inconsistent identifications made by the eyewitness;
  - 13 4. The witness's familiarity with the subject identified;
  - 14 5. The strength of earlier and later identifications;
  - 15 6. Lapses of time between the event and the identification(s); and
  - 16 7. The totality of circumstances surrounding the eyewitness's identification.
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2 A witness who has special knowledge, skill, experience, training or education in a  
3 particular science, profession or occupation is an expert witness. An expert witness may  
4 give his opinion as to any matter in which he is skilled.

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

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

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

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In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the State of Nevada has met its burden of proof as to the Defendant.

During your deliberations you are not to communicate with anyone, in any manner regarding the facts and circumstances of this case or its merits, either by phone, email, text messaging, internet, or other means.

You are admonished not to read, watch, or listen to any news or media accounts or commentary about the case. You are not permitted to do any independent research, such as consulting dictionaries, using the internet, or any other reference materials.

You are further admonished not to conduct any investigation, test a theory of the case, re-create any aspect of the case, or in any other manner investigate or learn about the case on your own.



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

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

Your verdict must be unanimous. As soon as you agree upon a verdict, the foreperson shall sign and date the verdict form and return with it to this room.

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

GIVEN:

  
DISTRICT JUDGE

1 VER

3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

4 THE STATE OF NEVADA,

5 Plaintiff,

6 -vs-

7 JEMAR MATTHEWS,

8 Defendant.

@ 2:25pm  
FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

NOV 15 2021

BY,  HALCY PANNULLO DEPUTY

CASE NO: 06C228460-2

DEPT NO: XII

06C228460-2  
VER  
Verdict  
4973696



9 VERDICT

10 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as  
11 follows:

12 **COUNT 1** - CONSPIRACY TO COMMIT MURDER

13 *(Please check the appropriate box, select only one)*

- 14 ☒ Guilty of CONSPIRACY TO COMMIT MURDER  
15 ☐ Not Guilty

16 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as  
17 follows:

18 **COUNT 2** - MURDER WITH USE OF A DEADLY WEAPON (MERSEY WILLIAMS)

19 *(Please check the appropriate box, select only one)*

- 20 ☒ Guilty of 1<sup>ST</sup> DEGREE MURDER WITH USE OF A DEADLY  
21 WEAPON  
22 ☐ Guilty of 1<sup>ST</sup> DEGREE MURDER  
23 ☐ Guilty of 2<sup>ND</sup> DEGREE MURDER WITH USE OF A DEADLY  
24 WEAPON  
25 ☐ Guilty of 2<sup>ND</sup> DEGREE MURDER  
26 ☐ Not Guilty

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1 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as  
2 follows:

3 **COUNT 3** - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (MYNIECE  
4 COOK)

5 *(Please check the appropriate box, select only one)*

- 6 ☒ Guilty of ATTEMPT MURDER WITH USE OF A DEADLY  
7 WEAPON  
8 ☐ Guilty of ATTEMPT MURDER  
9 ☐ Not Guilty

10 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as  
11 follows:

12 **COUNT 4** - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (MICHEL-LE  
13 TOLEFREE)

14 *(Please check the appropriate box, select only one)*

- 15 ☒ Guilty of ATTEMPT MURDER WITH USE OF A DEADLY  
16 WEAPON  
17 ☐ Guilty of ATTEMPT MURDER  
18 ☐ Not Guilty

19 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as  
20 follows:

21 **COUNT 5** - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (MAURICE  
22 HICKMAN)

23 *(Please check the appropriate box, select only one)*

- 24 ☒ Guilty of ATTEMPT MURDER WITH USE OF A DEADLY  
25 WEAPON  
26 ☐ Guilty of ATTEMPT MURDER  
27 ☐ Not Guilty

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1 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as  
2 follows:

3 **COUNT 6 - POSSESSION OF SHORT BARRELED RIFLE**

4 *(Please check the appropriate box, select only one)*

- 5 ☒ Guilty of POSSESSION OF SHORT BARRELED RIFLE  
6 ☐ Not Guilty

7 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as  
8 follows:

9 **COUNT 7 - CONSPIRACY TO COMMIT ROBBERY**

10 *(Please check the appropriate box, select only one)*

- 11 ☒ Guilty of CONSPIRACY TO COMMIT ROBBERY  
12 ☐ Not Guilty

13 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as  
14 follows:

15 **COUNT 8 - ROBBERY WITH USE OF A DEADLY WEAPON (GEISHE M. ORDUNO)**

16 *(Please check the appropriate box, select only one)*

- 17 ☒ Guilty of ROBBERY WITH USE OF A DEADLY WEAPON  
18 ☐ Guilty of ROBBERY  
19 ☐ Not Guilty

20 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as  
21 follows:

22 **COUNT 9 - ROBBERY WITH USE OF A DEADLY WEAPON (MELVIN BOLDEN)**

23 *(Please check the appropriate box, select only one)*

- 24 ☒ Guilty of ROBBERY WITH USE OF A DEADLY WEAPON  
25 ☐ Guilty of ROBBERY  
26 ☐ Not Guilty

1 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as  
2 follows:

3 **COUNT 10** - ASSAULT WITH A DEADLY WEAPON (BRADLEY CUPP)

4 *(Please check the appropriate box, select only one)*

- 5 ☒ Guilty of ASSAULT WITH A DEADLY WEAPON  
6 ☐ Not Guilty

7 We, the jury in the above entitled case, find the Defendant JEMAR MATTHEWS as  
8 follows:

9 **COUNT 11** - ASSAULT WITH A DEADLY WEAPON (BRIAN WALTER)

10 *(Please check the appropriate box, select only one)*

- 11 ☒ Guilty of ASSAULT WITH A DEADLY WEAPON  
12 ☐ Not Guilty

13  
14 DATED this 15<sup>th</sup> day of November, 2021

15  
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17 FOREPERSON

AJOC

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JEMAR MATTHEWS  
aka Jemar Demon Matthews  
#1956579

Defendant

CASE NO. 06C228460-2

DEPT. NO. XII

SECOND AMENDED JUDGMENT OF CONVICTION  
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT MURDER (Category B Felony) in violation of NRS 199.480, 200.010, 200.030; COUNT 2 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165; COUNTS 3, 4, 5 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 193.330, 200.020, 200.030, 193.165; COUNT 6 – POSSESSION OF A SHORT BARRELED RIFLE (Category D Felony) in violation of NRS202.275; COUNT 7 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 199.480, 200.380; COUNT 8 & 9 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 10 & 11 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – CONSPIRACY TO COMMIT

1 MURDER (Category B Felony) in violation of NRS 199.480, 200.010, 200.030; COUNT 2 –  
2 FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony), in  
3 violation of NRS 200.010, 200.030, 193.165; COUNT 3 – ATTEMPT MURDER WITH USE OF  
4 A DEADLY WEAPON (Category B Felony), in violation NRS 193.330,200.020, 200.030,  
5 193.165; COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B  
6 Felony), in violation of NRS 193.330, 200.020, 200.030, 193.165; COUNT 5 – ATTEMPT  
7 MURDER WITH USE OF A DEADLY WEAPON (Category B Felony), in violation of NRS  
8 193.330, 200.020, 200.030, 193.165; COUNT 6 – POSSESSION OF SHORT BARRELED  
9 RIFLE (Category D Felony), in violation of NRS 202.275; COUNT 7 – CONSPIRACY TO  
10 COMMIT ROBBERY (Category B Felony), in violation of NRS 199.480, 200.380; COUNT 8 –  
11 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony), in violation of NRS  
12 200.380, 193.165, COUNT 9 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B  
13 Felony), in violation of NRS 200.380, 193.165; COUNT 10 – ASSAULT WITH A DEADLY  
14 WEAPON (Category B Felony), in violation of NRS 200.471; COUNT 11 – ASSAULT WITH A  
15 DEADLY WEAPON (Category B Felony), in violation of NRS 200.471, thereafter, on the 9th  
16 day of July, 2007, the Defendant was present in court for sentencing with his counsel,  
17 DAYVID J. FIGLER, ESQ. and DANIEL BUNIN, ESQ., and good case appearing,  
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20 THE DEFENDANT WAS HEREBY ADJUDGED guilty of said offense(s) and, in  
21 addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee  
22 including testing to determine genetic markers, the Defendant SENTENCED to the Nevada  
23 Department of Corrections (NDC) as follows: AS TO COUNT 1 – TO A MAXIMUM of ONE  
24 HUNDRED TWENTY (120) MONTHS with a MINIMUM parole Eligibility of TWENTY-SIX (26)  
25 MONTHS; AS TO COUNT 2 – TO LIFE with a MINIMUM of Parole Eligibility of TWENTY (20)  
26 YEARS, plus an EQUAL and CONSECUTIVE term of LIFE with a MINIMUM Parole Eligibility  
27 of TWENTY (20) YEARS for the Use of a Deadly Weapon; AS TO COUNT 3 – TO A  
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1 MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM Parole Eligibility of  
2 FORTY-EIGHT (48) MONTHS, plus an EQUAL and CONSECUTIVE term of TWO HUNDRED  
3 FORTY (240) MONTHS MAXIMUM and FORTY-EIGHT (48) MONTHS MINIMUM for the Use  
4 of a Deadly Weapon; AS TO COUNT 4 – TO A MAXIMUM of TWO HUNDRED FORTY (240)  
5 MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS, plus an EQUAL  
6 and CONSECUTIVE term of TWO HUNDRED FORTY (240) MONTHS MAXIMUM and  
7 FORTY-EIGHT (48) MONTHS MINIMUM for the Use of a Deadly Weapon; AS TO COUNT  
8 5 – TO A MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM Parole  
9 Eligibility of FORTY-EIGHT (48) MONTHS, plus an EQUAL and CONSECUTIVE term of TWO  
10 HUNDRED FORTY (240) MONTHS MAXIMUM and FORTY-EIGHT (48) MONTHS MINIMUM  
11 for the Use of Deadly Weapon; AS TO COUNT 6 – TO A MAXIMUM of FORTY-EIGHT (48)  
12 MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS; AS TO COUNT 7 –  
13 TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of  
14 TWELVE (12) MONTHS; AS TO COUNT 8 – TO A MAXIMUM of ONE HUNDRED EIGHTY  
15 (180) MONTHS with a MINIMUM Parole Eligibility of FORTY (40) MONTHS, plus an EQUAL  
16 and CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS MAXIMUM and  
17 FORTY (40) MONTHS MINIMUM for the Use of a Deadly Weapon; AS TO COUNT 9 – TO A  
18 MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of  
19 FORTY (40) MONTHS, plus an EQUAL and CONSECUTIVE term of ONE HUNDRED  
20 EIGHTY (180) MONTHS MAXIMUM and FORTY (40) MONTHS MINIMUM for the Use of a  
21 Deadly Weapon; AS TO COUNT 10 – TO A MAXIMUM of SEVENTY-TWO (72) MONTHS  
22 with a MINIMUM Parole Eligibility of SIXTEEN (16) MONTHS; AS TO COUNT 11 – TO A  
23 MAXIMUM OF SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of SIXTEEN  
24 (16) MONTHS; ALL COUNTS TO RUN CONCURRENT; with THREE HUNDRED (300) DAYS  
25 credit for time served.  
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1 The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 –  
2 CONSPIRACY TO COMMIT MURDER (Category B Felony) in violation of NRS 200.010,  
3 200.030, 199.480; COUNT 2 – MURDER WITH USE OF A DEADLY WEAPON (Category A  
4 Felony) in violation of NRS 200.010, 200.030, 193.165; COUNT 3 – ATTEMPT MURDER  
5 WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010,  
6 200.030, 193.330, 193.165; COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY  
7 WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.330, 193.165;  
8 COUNT 5 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony)  
9 in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 6 – POSSESSION OF A  
10 SHORT BARRELED RIFLE (Category D Felony) in violation of NRS 202.275; COUNT 7 –  
11 CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380,  
12 199.480; COUNT 8 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in  
13 violation of NRS 200.380, 193.165; COUNT 9 – ROBBERY WITH USE OF A DEADLY  
14 WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 10 – ASSAULT  
15 WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; and COUNT  
16 11 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS  
17 200.471, and the matter having been **tried before a jury**, and the Defendant having been  
18 found guilty of the crimes of COUNT 1 – CONSPIRACY TO COMMIT MURDER (Category B  
19 Felony) in violation of NRS 200.010, 200.030, 199.480; COUNT 2 – FIRST DEGREE  
20 MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS  
21 200.010, 200.030, 193.165; COUNT 3 – ATTEMPT MURDER WITH USE OF A DEADLY  
22 WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.330, 193.165;  
23 COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony)  
24 in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 5 – ATTEMPT MURDER  
25 WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010,  
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200.030, 193.330, 193.165; COUNT 6 – POSSESSION OF A SHORT BARRELED RIFLE (Category D Felony) in violation of NRS 202.275; COUNT 7 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNT 8 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 9 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 10 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; and COUNT 11 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; thereafter, on the 5<sup>th</sup> day of December, 2018, the Defendant was present in court for **sentencing** with counsel TODD LEVENTHAL, ESQ. and RICHARD TANASI, ESQ., and good cause appearing,

THE DEFENDANT WAS ADJUDGED guilty of said offense(s) and, in addition to the \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee including testing to determine genetic markers plus \$3.00 DNA Collection Fee, the Defendant sentenced to the Nevada Department of Corrections (NDC) as follows: **COUNT 1** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of TWENTY-SIX (26) MONTHS; **COUNT 2** – LIFE with the eligibility of parole after serving a MINIMUM of TWENTY (20) YEARS, plus a CONSECUTIVE term of LIFE with the eligibility of parole after serving a MINIMUM of TWENTY (20) YEARS for the Use of a Deadly Weapon, CONCURRENT with COUNT 1; **COUNT 3** – a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE term of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon; CONCURRENT with COUNT 2; **COUNT 4** - a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE term of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS for the

1 Use of a Deadly Weapon, CONCURRENT with COUNT 3; **COUNT 5** – a MAXIMUM of TWO  
2 HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48)  
3 MONTHS, plus a CONSECUTIVE term of TWO HUNDRED FORTY (240) MONTHS with a  
4 MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon,  
5 CONCURRENT with COUNT 4; **COUNT 6** - a MAXIMUM of FORTY-EIGHT (48) MONTHS  
6 with a MINIMUM parole eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 5;  
7 **COUNT 7** – a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility  
8 of TWELVE (12) MONTHS, CONCURRENT with COUNT 6; **COUNT 8** - a MAXIMUM of ONE  
9 HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of FORTY (40)  
10 MONTHS, plus a CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS with a  
11 MINIMUM parole eligibility of FORTY (40) MONTHS for the Use of a Deadly Weapon,  
12 CONCURRENT with COUNT 7; **COUNT 9** – a MAXIMUM of ONE HUNDRED EIGHTY (180)  
13 MONTHS with a MINIMUM parole eligibility of FORTY (40) MONTHS, plus a CONSECUTIVE  
14 term of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of FORTY  
15 (40) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 8; **COUNT 10** -  
16 a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of SIXTEEN  
17 (16) MONTHS, CONCURRENT with COUNT 9; and **COUNT 11** - a MAXIMUM of SEVENTY-  
18 TWO (72) MONTHS with a MINIMUM parole eligibility of SIXTEEN (16) MONTHS,  
19 CONCURRENT with COUNT 10; ALL COUNTS to run CONCURRENT with COUNT 2; with  
20 FOUR THOUSAND, FOUR HUNDRED FIFTY (4,450) DAYS credit for time served.  
21  
22

23 THEREAFTER, on the 17<sup>th</sup> day of September, 2019, pursuant to an inquiry of the  
24 Nevada Department of Corrections, COURT ORDERED; the Amended Judgment of  
25 Conviction reflects the following: The AGGREGATE TOTAL sentence of LIFE with the  
26 eligibility of parole after serving a MINIMUM of FORTY (40) YEARS is REMOVED from this  
27 sentence.  
28

1           THEREAFTER, on the 4<sup>th</sup> day of February, 2022, pursuant to Supreme Court Order  
2 filed on July 9, 2020, Reversed and Remanded back to District Court; COURT ORDERED,  
3 the following: The Defendant previously entered a plea of not guilty to the crimes of COUNT 1  
4 – CONSPIRACY TO COMMIT MURDER (Category B Felony) in violation of NRS 200.010,  
5 200.030, 199.480; COUNT 2 – MURDER WITH USE OF A DEADLY WEAPON (Category A  
6 Felony) in violation of NRS 200.010, 200.030, 193.165; COUNT 3 – ATTEMPT MURDER  
7 WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010,  
8 200.030, 193.330, 193.165; COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY  
9 WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.330, 193.165;  
10 COUNT 5 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony)  
11 in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 6 – POSSESSION OF A  
12 SHORT BARRELED RIFLE (Category D Felony) in violation of NRS 202.275; COUNT 7 –  
13 CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380,  
14 199.480; COUNT 8 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in  
15 violation of NRS 200.380, 193.165; COUNT 9 – ROBBERY WITH USE OF A DEADLY  
16 WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 10 – ASSAULT  
17 WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; and COUNT  
18 11 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS  
19 200.471, and the matter having been **tried before a jury**, and the Defendant having been  
20 found guilty of the crimes of COUNT 1 – CONSPIRACY TO COMMIT MURDER (Category B  
21 Felony) in violation of NRS 200.010, 200.030, 199.480; COUNT 2 – FIRST DEGREE  
22 MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS  
23 200.010, 200.030, 193.165; COUNT 3 – ATTEMPT MURDER WITH USE OF A DEADLY  
24 WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.330, 193.165;  
25 COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony)

1 in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 5 – ATTEMPT MURDER  
2 WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010,  
3 200.030, 193.330, 193.165; COUNT 6 – POSSESSION OF A SHORT BARRELED RIFLE  
4 (Category D Felony) in violation of NRS 202.275; COUNT 7 – CONSPIRACY TO COMMIT  
5 ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNT 8 – ROBBERY  
6 WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380,  
7 193.165; COUNT 9 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in  
8 violation of NRS 200.380, 193.165; COUNT 10 – ASSAULT WITH A DEADLY WEAPON  
9 (Category B Felony) in violation of NRS 200.471; and COUNT 11 – ASSAULT WITH A  
10 DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; thereafter, on the 4<sup>th</sup>  
11 day of February, 2022, the Defendant was present in court for **sentencing** with counsel  
12 TODD LEVENTHAL, ESQ. and RICHARD TANASI, ESQ., and good cause appearing,  
13

14 THE DEFENDANT IS ADJUDGED guilty of said offense(s) and, in addition to the  
15 \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee including testing to  
16 determine genetic markers plus \$3.00 DNA Collection Fee, the Defendant sentenced to the  
17 Nevada Department of Corrections (NDC) as follows: **COUNT 1** – a MAXIMUM of ONE  
18 HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of TWENTY-SIX (26)  
19 MONTHS; **COUNT 2** – LIFE with the eligibility of parole after serving a MINIMUM of TWENTY  
20 (20) YEARS, plus a CONSECUTIVE term of LIFE with the eligibility of parole after serving a  
21 MINIMUM of TWENTY (20) YEARS for the Use of a Deadly Weapon; **COUNT 3** – a  
22 MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of  
23 FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE term of TWO HUNDRED FORTY  
24 (240) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS for the  
25 Use of a Deadly Weapon; **COUNT 4** - a MAXIMUM of TWO HUNDRED FORTY (240)  
26 MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, plus a  
27  
28

1 CONSECUTIVE term of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole  
2 eligibility of FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon; **COUNT 5** – a  
3 MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of  
4 FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE term of TWO HUNDRED FORTY  
5 (240) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS for the  
6 Use of a Deadly Weapon; **COUNT 6** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a  
7 MINIMUM parole eligibility of TWELVE (12) MONTHS; **COUNT 7** – a MAXIMUM of  
8 SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of TWELVE (12) MONTHS;  
9 **COUNT 8** - a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM  
10 parole eligibility of FORTY (40) MONTHS, plus a CONSECUTIVE term of ONE HUNDRED  
11 EIGHTY (180) MONTHS with a MINIMUM parole eligibility of FORTY (40) MONTHS for the  
12 Use of a Deadly Weapon; **COUNT 9** – a MAXIMUM of ONE HUNDRED EIGHTY (180)  
13 MONTHS with a MINIMUM parole eligibility of FORTY (40) MONTHS, plus a CONSECUTIVE  
14 term of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of FORTY  
15 (40) MONTHS for the Use of a Deadly Weapon; **COUNT 10** - a MAXIMUM of SEVENTY-TWO  
16 (72) MONTHS with a MINIMUM parole eligibility of SIXTEEN (16) MONTHS; and **COUNT 11** -  
17 a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of SIXTEEN  
18 (16) MONTHS; ALL COUNTS to run CONCURRENT with COUNT 2; with FIVE THOUSAND  
19 SIX HUNDRED SEVEN (5,607) DAYS credit for time served.  
20  
21  
22  
23  
24  
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26  
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Dated this 24th day of February, 2022



6E8 E3C 64D6 C000  
Michelle Leavitt  
District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 The State of Nevada vs Jemar D  
Matthews

CASE NO: 06C228460-2

7 DEPT. NO. Department 12

8  
9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District  
11 Court. The foregoing Amended Judgment of Conviction was served via the court's electronic  
12 eFile system to all recipients registered for e-Service on the above entitled case as listed  
below:

13 Service Date: 2/24/2022

14 TODD LEVENTHAL leventhalandassociates@gmail.com

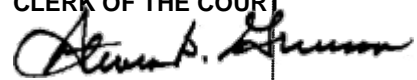
15 TODD LEVENTHAL todlev@yahoo.com

16 Estee Del Padre estee.delpadre@clarkcountyda.com

17 Marc Digiacommo marc.digiacommo@clarkcountyda.com

18 Eileen Davis eileen.davis@clarkcountyda.com





NTC  
TODD M. LEVENTHAL, ESQ.  
LEVENTHAL & ASSOCIATES  
Nevada Bar No: 8543  
California Bar No.: 223577  
626 S. Third St.  
Las Vegas, Nevada 89101  
leventhalandassociates@gmail.com  
(702) 472-8686  
Attorney for Defendant,

**DISTRICT COURT  
CLARK COUNTY NEVADA**

THE STATE OF NEVADA

Case No.: 06C228460-2

Plaintiff,

vs.

Dept No.: 12

JEMAR D. MATTHEWS

**NOTICE OF APPEAL**

Defendant.

TO: THE STATE OF NEVADA  
STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY NEVADA AND  
DEPARTMENT NO. XII OF THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK.

NOTICE is hereby given that Defendant, JEMAR D. MATTHEWS, presently  
incarcerated at Clark County Detention Center, appeals to the Supreme Court of the State of  
Nevada from the judgment of conviction entered against said Defendant on the 24 day of  
February, 2022, whereby he was convicted and SENTENCED to the Nevada Department of  
Corrections (NDC). The Judgment of Conviction is attached hereto as exhibit 1:

DATED this 1 day of March, 2022.

Respectfully Submitted,

TODD M. LEVENTHAL, ESQ.  
Nevada Bar No.: 8543  
626 South Third Street  
Las Vegas, NV 89101  
leventhalandassociates@gmail.com  
(702) 472-8686  
Attorney for Defendant

1  
2  
3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on 1st day of March 2022 a true and correct copy of the, **Notice of**  
5 **Appeal** was addressed to the parties below, to be served as follows:

6 ☒ By placing a true and correct copy of the same to be deposited for mailing in the U.S.  
7 Mail, enclosed in a sealed envelope upon which regular first class mail was fully prepaid.  
8

9 ☐ via facsimile; email and/or

10 ☐ by hand delivery to the parties listed below; and/or

11 ☒ by electronic service to all parties listed via ODYSSEY eFileNV.  
12

13 State of Nevada: estee.delpadre@clarkcountyda.com  
14 Marc.digiacomio@clarkcountyda.com  
15 Eileen.davis@clarkcountyda.com

16 Jemar Matthew: Clark County Detention Center  
17 Inmate # 01956579  
18 330 South Casino Center Blvd.  
19 Las Vegas, NV 89101  
20

21 /s/ Maribel Godinez  
22 Employee of Leventhal and Associates, PLLC.  
23  
24  
25  
26  
27  
28

# Exhibit 1

*Alvin L. Smith*  
CLERK OF THE COURT

1 AJOC

2  
3  
4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA  
6

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

CASE NO. 06C228460-2

DEPT. NO. XII

10 JEMAR MATTHEWS  
11 aka Jemar Demon Matthews  
12 #1956579

13 Defendant

14  
15 SECOND AMENDED JUDGMENT OF CONVICTION  
16 (JURY TRIAL)

17 The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 –  
18 CONSPIRACY TO COMMIT MURDER (Category B Felony) in violation of NRS 199.480,  
19 200.010, 200.030; COUNT 2 – MURDER WITH USE OF A DEADLY WEAPON (Category A  
20 Felony) in violation of NRS 200.010, 200.030, 193.165; COUNTS 3, 4, 5 - ATTEMPT  
21 MURDER WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS  
22 193.330, 200.020, 200.030, 193.165; COUNT 6 – POSSESSION OF A SHORT BARRELED  
23 RIFLE (Category D Felony) in violation of NRS202.275; COUNT 7 – CONSPIRACY TO  
24 COMMIT ROBBERY (Category B Felony) in violation of NRS 199.480, 200.380; COUNT 8 &  
25 9 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS  
26 200.380, 193.165; COUNT 10 & 11 – ASSAULT WITH A DEADLY WEAPON (Category B  
27 Felony) in violation of NRS 200.471; and the matter having been tried before a jury and the  
28 Defendant having been found guilty of the crimes of COUNT 1 – CONSPIRACY TO COMMIT

Statistically closed: E. USJR - CR - Jury Trial - Conviction (USCJTC)

Bates No. 1396

Bates no.

1 MURDER (Category B Felony) in violation of NRS 199.480, 200.010, 200.030; COUNT 2 –  
2 FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony), in  
3 violation of NRS 200.010, 200.030, 193.165; COUNT 3 – ATTEMPT MURDER WITH USE OF  
4 A DEADLY WEAPON (Category B Felony), in violation NRS 193.330, 200.020, 200.030,  
5 193.165; COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B  
6 Felony), in violation of NRS 193.330, 200.020, 200.030, 193.165; COUNT 5 – ATTEMPT  
7 MURDER WITH USE OF A DEADLY WEAPON (Category B Felony), in violation of NRS  
8 193.330, 200.020, 200.030, 193.165; COUNT 6 – POSSESSION OF SHORT BARRELED  
9 RIFLE (Category D Felony), in violation of NRS 202.275; COUNT 7 – CONSPIRACY TO  
10 COMMIT ROBBERY (Category B Felony), in violation of NRS 199.480, 200.380; COUNT 8 –  
11 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony), in violation of NRS  
12 200.380, 193.165, COUNT 9 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B  
13 Felony), in violation of NRS 200.380, 193.165; COUNT 10 – ASSAULT WITH A DEADLY  
14 WEAPON (Category B Felony), in violation of NRS 200.471; COUNT 11 – ASSAULT WITH A  
15 DEADLY WEAPON (Category B Felony), in violation of NRS 200.471, thereafter, on the 9th  
16 day of July, 2007, the Defendant was present in court for sentencing with his counsel,  
17 DAYVID J. FIGLER, ESQ. and DANIEL BUNIN, ESQ., and good case appearing,  
18

19  
20 THE DEFENDANT WAS HEREBY ADJUDGED guilty of said offense(s) and, in  
21 addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee  
22 including testing to determine genetic markers, the Defendant SENTENCED to the Nevada  
23 Department of Corrections (NDC) as follows: AS TO COUNT 1 – TO A MAXIMUM of ONE  
24 HUNDRED TWENTY (120) MONTHS with a MINIMUM parole Eligibility of TWENTY-SIX (26)  
25 MONTHS; AS TO COUNT 2 – TO LIFE with a MINIMUM of Parole Eligibility of TWENTY (20)  
26 YEARS, plus an EQUAL and CONSECUTIVE term of LIFE with a MINIMUM Parole Eligibility  
27 of TWENTY (20) YEARS for the Use of a Deadly Weapon; AS TO COUNT 3 – TO A  
28

1 MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM Parole Eligibility of  
2 FORTY-EIGHT (48) MONTHS, plus an EQUAL and CONSECUTIVE term of TWO HUNDRED  
3 FORTY (240) MONTHS MAXIMUM and FORTY-EIGHT (48) MONTHS MINIMUM for the Use  
4 of a Deadly Weapon; AS TO COUNT 4 – TO A MAXIMUM of TWO HUNDRED FORTY (240)  
5 MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS, plus an EQUAL  
6 and CONSECUTIVE term of TWO HUNDRED FORTY (240) MONTHS MAXIMUM and  
7 FORTY-EIGHT (48) MONTHS MINIMUM for the Use of a Deadly Weapon; AS TO COUNT  
8 5 – TO A MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM Parole  
9 Eligibility of FORTY-EIGHT (48) MONTHS, plus an EQUAL and CONSECUTIVE term of TWO  
10 HUNDRED FORTY (240) MONTHS MAXIMUM and FORTY-EIGHT (48) MONTHS MINIMUM  
11 for the Use of Deadly Weapon; AS TO COUNT 6 – TO A MAXIMUM of FORTY-EIGHT (48)  
12 MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS; AS TO COUNT 7 –  
13 TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of  
14 TWELVE (12) MONTHS; AS TO COUNT 8 – TO A MAXIMUM of ONE HUNDRED EIGHTY  
15 (180) MONTHS with a MINIMUM Parole Eligibility of FORTY (40) MONTHS, plus an EQUAL  
16 and CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS MAXIMUM and  
17 FORTY (40) MONTHS MINIMUM for the Use of a Deadly Weapon; AS TO COUNT 9 – TO A  
18 MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of  
19 FORTY (40) MONTHS, plus an EQUAL and CONSECUTIVE term of ONE HUNDRED  
20 EIGHTY (180) MONTHS MAXIMUM and FORTY (40) MONTHS MINIMUM for the Use of a  
21 Deadly Weapon; AS TO COUNT 10 – TO A MAXIMUM of SEVENTY-TWO (72) MONTHS  
22 with a MINIMUM Parole Eligibility of SIXTEEN (16) MONTHS; AS TO COUNT 11 – TO A  
23 MAXIMUM OF SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of SIXTEEN  
24 (16) MONTHS; ALL COUNTS TO RUN CONCURRENT; with THREE HUNDRED (300) DAYS  
25 credit for time served.  
26  
27  
28

1 The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 –  
2 CONSPIRACY TO COMMIT MURDER (Category B Felony) in violation of NRS 200.010,  
3 200.030, 199.480; COUNT 2 – MURDER WITH USE OF A DEADLY WEAPON (Category A  
4 Felony) in violation of NRS 200.010, 200.030, 193.165; COUNT 3 – ATTEMPT MURDER  
5 WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010,  
6 200.030, 193.330, 193.165; COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY  
7 WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.330, 193.165;  
8 COUNT 5 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony)  
9 in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 6 – POSSESSION OF A  
10 SHORT BARRELED RIFLE (Category D Felony) in violation of NRS 202.275; COUNT 7 –  
11 CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380,  
12 199.480; COUNT 8 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in  
13 violation of NRS 200.380, 193.165; COUNT 9 – ROBBERY WITH USE OF A DEADLY  
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15 WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; and COUNT  
16 11 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS  
17 200.471, and the matter having been **tried before a jury**, and the Defendant having been  
18 found guilty of the crimes of COUNT 1 – CONSPIRACY TO COMMIT MURDER (Category B  
19 Felony) in violation of NRS 200.010, 200.030, 199.480; COUNT 2 – FIRST DEGREE  
20 MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS  
21 200.010, 200.030, 193.165; COUNT 3 – ATTEMPT MURDER WITH USE OF A DEADLY  
22 WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.330, 193.165;  
23 COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony)  
24 in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 5 – ATTEMPT MURDER  
25 WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010,  
26  
27  
28

1 200.030, 193.330, 193.165; COUNT 6 – POSSESSION OF A SHORT BARRELED RIFLE  
2 (Category D Felony) in violation of NRS 202.275; COUNT 7 – CONSPIRACY TO COMMIT  
3 ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNT 8 – ROBBERY  
4 WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380,  
5 193.165; COUNT 9 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in  
6 violation of NRS 200.380, 193.165; COUNT 10 – ASSAULT WITH A DEADLY WEAPON  
7 (Category B Felony) in violation of NRS 200.471; and COUNT 11 – ASSAULT WITH A  
8 DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; thereafter, on the 5<sup>th</sup>  
9 day of December, 2018, the Defendant was present in court for **sentencing** with counsel  
10 TODD LEVENTHAL, ESQ. and RICHARD TANASI, ESQ., and good cause appearing,  
11

12 THE DEFENDANT WAS ADJUDGED guilty of said offense(s) and, in addition to the  
13 \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee including testing to  
14 determine genetic markers plus \$3.00 DNA Collection Fee, the Defendant sentenced to the  
15 Nevada Department of Corrections (NDC) as follows: **COUNT 1** – a MAXIMUM of ONE  
16 HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of TWENTY-SIX (26)  
17 MONTHS; **COUNT 2** – LIFE with the eligibility of parole after serving a MINIMUM of TWENTY  
18 (20) YEARS, plus a CONSECUTIVE term of LIFE with the eligibility of parole after serving a  
19 MINIMUM of TWENTY (20) YEARS for the Use of a Deadly Weapon, CONCURRENT with  
20 COUNT 1; **COUNT 3** – a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a  
21 MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE term of  
22 TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT  
23 (48) MONTHS for the Use of a Deadly Weapon; CONCURRENT with COUNT 2; **COUNT 4** -  
24 a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of  
25 FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE term of TWO HUNDRED FORTY  
26 (240) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS for the  
27  
28



1 Use of a Deadly Weapon, CONCURRENT with COUNT 3; **COUNT 5** – a MAXIMUM of TWO  
2 HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48)  
3 MONTHS, plus a CONSECUTIVE term of TWO HUNDRED FORTY (240) MONTHS with a  
4 MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon,  
5 CONCURRENT with COUNT 4; **COUNT 6** - a MAXIMUM of FORTY-EIGHT (48) MONTHS  
6 with a MINIMUM parole eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 5;  
7 **COUNT 7** – a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility  
8 of TWELVE (12) MONTHS, CONCURRENT with COUNT 6; **COUNT 8** - a MAXIMUM of ONE  
9 HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of FORTY (40)  
10 MONTHS, plus a CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS with a  
11 MINIMUM parole eligibility of FORTY (40) MONTHS for the Use of a Deadly Weapon,  
12 CONCURRENT with COUNT 7; **COUNT 9** – a MAXIMUM of ONE HUNDRED EIGHTY (180)  
13 MONTHS with a MINIMUM parole eligibility of FORTY (40) MONTHS, plus a CONSECUTIVE  
14 term of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of FORTY  
15 (40) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 8; **COUNT 10** -  
16 a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of SIXTEEN  
17 (16) MONTHS, CONCURRENT with COUNT 9; and **COUNT 11** - a MAXIMUM of SEVENTY-  
18 TWO (72) MONTHS with a MINIMUM parole eligibility of SIXTEEN (16) MONTHS,  
19 CONCURRENT with COUNT 10; ALL COUNTS to run CONCURRENT with COUNT 2; with  
20 FOUR THOUSAND, FOUR HUNDRED FIFTY (4,450) DAYS credit for time served.  
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23 THEREAFTER, on the 17<sup>th</sup> day of September, 2019, pursuant to an inquiry of the  
24 Nevada Department of Corrections, COURT ORDERED; the Amended Judgment of  
25 Conviction reflects the following: The AGGREGATE TOTAL sentence of LIFE with the  
26 eligibility of parole after serving a MINIMUM of FORTY (40) YEARS is REMOVED from this  
27 sentence.  
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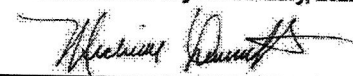
1       THEREAFTER, on the 4<sup>th</sup> day of February, 2022, pursuant to Supreme Court Order  
2 filed on July 9, 2020, Reversed and Remanded back to District Court; COURT ORDERED,  
3 the following: The Defendant previously entered a plea of not guilty to the crimes of COUNT 1  
4 – CONSPIRACY TO COMMIT MURDER (Category B Felony) in violation of NRS 200.010,  
5 200.030, 199.480; COUNT 2 – MURDER WITH USE OF A DEADLY WEAPON (Category A  
6 Felony) in violation of NRS 200.010, 200.030, 193.165; COUNT 3 – ATTEMPT MURDER  
7 WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010,  
8 200.030, 193.330, 193.165; COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY  
9 WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.330, 193.165;  
10 COUNT 5 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony)  
11 in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 6 – POSSESSION OF A  
12 SHORT BARRELED RIFLE (Category D Felony) in violation of NRS 202.275; COUNT 7 –  
13 CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380,  
14 199.480; COUNT 8 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in  
15 violation of NRS 200.380, 193.165; COUNT 9 – ROBBERY WITH USE OF A DEADLY  
16 WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 10 – ASSAULT  
17 WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; and COUNT  
18 11 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS  
19 200.471, and the matter having been **tried before a jury**, and the Defendant having been  
20 found guilty of the crimes of COUNT 1 – CONSPIRACY TO COMMIT MURDER (Category B  
21 Felony) in violation of NRS 200.010, 200.030, 199.480; COUNT 2 – FIRST DEGREE  
22 MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS  
23 200.010, 200.030, 193.165; COUNT 3 – ATTEMPT MURDER WITH USE OF A DEADLY  
24 WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.330, 193.165;  
25 COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony)

1 in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 5 – ATTEMPT MURDER  
2 WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010,  
3 200.030, 193.330, 193.165; COUNT 6 – POSSESSION OF A SHORT BARRELED RIFLE  
4 (Category D Felony) in violation of NRS 202.275; COUNT 7 – CONSPIRACY TO COMMIT  
5 ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNT 8 – ROBBERY  
6 WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380,  
7 193.165; COUNT 9 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in  
8 violation of NRS 200.380, 193.165; COUNT 10 – ASSAULT WITH A DEADLY WEAPON  
9 (Category B Felony) in violation of NRS 200.471; and COUNT 11 – ASSAULT WITH A  
10 DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; thereafter, on the 4<sup>th</sup>  
11 day of February, 2022, the Defendant was present in court for **sentencing** with counsel  
12 TODD LEVENTHAL, ESQ. and RICHARD TANASI, ESQ., and good cause appearing,  
13

14 THE DEFENDANT IS ADJUDGED guilty of said offense(s) and, in addition to the  
15 \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee including testing to  
16 determine genetic markers plus \$3.00 DNA Collection Fee, the Defendant sentenced to the  
17 Nevada Department of Corrections (NDC) as follows: **COUNT 1** – a MAXIMUM of ONE  
18 HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of TWENTY-SIX (26)  
19 MONTHS; **COUNT 2** – LIFE with the eligibility of parole after serving a MINIMUM of TWENTY  
20 (20) YEARS, plus a CONSECUTIVE term of LIFE with the eligibility of parole after serving a  
21 MINIMUM of TWENTY (20) YEARS for the Use of a Deadly Weapon; **COUNT 3** – a  
22 MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of  
23 FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE term of TWO HUNDRED FORTY  
24 (240) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS for the  
25 Use of a Deadly Weapon; **COUNT 4** - a MAXIMUM of TWO HUNDRED FORTY (240)  
26 MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, plus a  
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1 CONSECUTIVE term of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole  
2 eligibility of FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon; **COUNT 5** – a  
3 MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of  
4 FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE term of TWO HUNDRED FORTY  
5 (240) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS for the  
6 Use of a Deadly Weapon; **COUNT 6** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a  
7 MINIMUM parole eligibility of TWELVE (12) MONTHS; **COUNT 7** – a MAXIMUM of  
8 SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of TWELVE (12) MONTHS;  
9 **COUNT 8** - a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM  
10 parole eligibility of FORTY (40) MONTHS, plus a CONSECUTIVE term of ONE HUNDRED  
11 EIGHTY (180) MONTHS with a MINIMUM parole eligibility of FORTY (40) MONTHS for the  
12 Use of a Deadly Weapon; **COUNT 9** – a MAXIMUM of ONE HUNDRED EIGHTY (180)  
13 MONTHS with a MINIMUM parole eligibility of FORTY (40) MONTHS, plus a CONSECUTIVE  
14 term of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of FORTY  
15 (40) MONTHS for the Use of a Deadly Weapon; **COUNT 10** - a MAXIMUM of SEVENTY-TWO  
16 (72) MONTHS with a MINIMUM parole eligibility of SIXTEEN (16) MONTHS; and **COUNT 11** -  
17 a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of SIXTEEN  
18 (16) MONTHS; ALL COUNTS to run CONCURRENT with COUNT 2; with FIVE THOUSAND  
19 SIX HUNDRED SEVEN (5,607) DAYS credit for time served.  
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Dated this 24th day of February, 2022



6E8 E3C 64D6 C000  
Michelle Leavitt  
District Court Judge

1 CSERV

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 The State of Nevada vs Jemar D  
7 Matthews

CASE NO: 06C228460-2

8 DEPT. NO. Department 12

9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District  
11 Court. The foregoing Amended Judgment of Conviction was served via the court's electronic  
12 eFile system to all recipients registered for e-Service on the above entitled case as listed  
13 below:

14 Service Date: 2/24/2022

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