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IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL SAMUEL SOLID,

NO. 85189

Appellant,

vs.

STATE OF NEVADA,

Respondent.

**FILED**

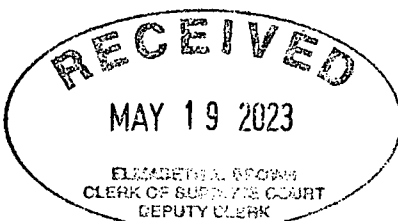
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APPELLANT'S APPENDIX

VOL 6

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1           A     Yes.

2           Q     And she gets a dollar; correct?

3           A     Yes.

4           Q     Okay. And at some point you all get back or Brianna  
5 gets in the vehicle, right, with you?

6           A     Yeah. The store manager kicks her off.

7           Q     They kick her out?

8           A     Uh-huh.

9           Q     Okay. And you don't recall which gas station this  
10 is?

11          A     Somewhere like Far Hills. I can't remember exactly  
12 the location.

13          Q     Okay. Okay. And so you all decide to look for a  
14 different place to panhandle?

15          A     To be honest with you, we was waiting on a phone  
16 call from my sister. I called my sister, which is right  
17 behind you. I called her to ask her if she had any money  
18 because she lived close to that neighborhood. But she didn't  
19 answer, so we was waiting on her text. So in the meanwhile,  
20 waiting on her text, we was kind of driving around aimlessly  
21 and that when Jake said just pull in this gas station. Yes.

22          Q     Okay. So you burn more gas driving around aimlessly,  
23 as you were talking about, so that you could figure out a way  
24 to replace the gas that had been used while you drove around  
25 aimlessly waiting for money?



1           A     Yeah.  You're making it seem as if we was driving  
2 far across town.  No, this is in the same vicinity.

3           Q     Okay.

4           A     You know, it's boxed up, you know.

5           Q     Okay.

6           A     It wasn't too far.

7           Q     Okay.

8           A     And we wasn't trying to make it rich off of it.  We  
9 was trying to just accumulate like five dollars, she said.

10          Q     Okay.

11          A     Yes.

12          Q     All right.  And so, but my question now is, you  
13 continue to go about the day still trying to get money for  
14 gas; correct?

15          A     Yes.

16          Q     Okay.  And so to a point where you all end up at the  
17 gas station that we've been talking about on the corner of  
18 Charleston and Torrey Pines; right?

19          A     Yes.

20          Q     Okay.  And I just want to talk briefly about how it  
21 is that you guys get there, okay.  Did you just drive right  
22 into the gas station?  You saw the exits and the entrances.

23          A     Uh-huh.

24          Q     Is that right?  Yes?

25          A     Yes.

1 Q Okay. Did you drive -- you were driving by that  
2 time; correct?

3 A Yes.

4 Q Okay. So when this SUV is first seen in the gas  
5 station surveillance, as you acknowledged on direct  
6 examination --

7 A Yes.

8 Q -- that was you driving; correct?

9 A Yes.

10 Q Okay. And so how is it that you actually enter that  
11 gas station?

12 A Okay. So we entered the gas station through the  
13 back. There's like a car wash back there or whatnot. So as  
14 we get right there, the plan was for Brianna to get out and  
15 panhandle at that gas station. Mind you, we didn't want to  
16 pull up to the gas pump and everybody see us get out, you  
17 know, so I pulled in through the back entrance. Again,  
18 Brianna was supposed to get out and panhandle. She just got  
19 kicked off the first gas station, so she was like, no. She  
20 protested, no, I'm not -- I'm not panhandling. She said no,  
21 I'm not doing it. Jake said, all right, Mike, you gotta do  
22 it. I said, come on, bro, I got this chain on, a do-rag on.  
23 And, yes, I did pull the race thing, I said I'm black. No one  
24 is going to give me no money. I said you do it. So Jake, he  
25 took the initiative and he did it.

1 Q Okay. So, Jake took the initiative to panhandle for  
2 money that you were going to use to pay him for the gas that  
3 he was burning --  
4 A Yes.  
5 Q -- driving you around looking for places to  
6 panhandle?  
7 A No, we wasn't looking for places to panhandle. He  
8 was basically just trying to accumulate a little bit of money  
9 to go to a park, go anywhere, just go wherever. We wasn't --  
10 Q Okay. So now Jake is also trying to get money?  
11 A Yes.  
12 Q Okay. So the purpose of this panhandling now is to  
13 get money for who, exactly?  
14 A For Jake. Again, he just came into some money.  
15 Mind you, this day, May 16th, happened on Thursday. He didn't  
16 get his little weekly allowance until the following day,  
17 Friday. So he told us whatever money -- like, whatever gas  
18 he burned, he wanted, you know, to try to -- us to reimburse  
19 it or whatnot.  
20 Q Okay. But this is my question, okay.  
21 A Yes.  
22 Q Initially Brianna panhandled --  
23 A Yes.  
24 Q -- because the whole purpose of panhandling was to  
25 pay Jake back the money for the gas; correct?

1           A     Yes.

2           Q     Okay. But at some point once you get to the second  
3 gas station, it's decided that Jake, as shown in Exhibit  
4 Number 78, is now the one that's going to panhandle --

5           A     Yes.

6           Q     -- to get money?

7           A     Yes.

8           Q     Okay. Still for gas so you guys can keep going out?

9           A     Yes.

10          Q     Okay. And so when you pull into the gas station,  
11 as shown -- let's just say in State's Exhibit Number 26, is  
12 this you driving on the way to pump number 6?

13          A     Yes.

14          Q     Okay. Now, you say Jake -- where is it that Jake  
15 gets out? By that car wash?

16          A     Yes.

17          Q     Okay. So he gets out and you continue on?

18          A     Yes.

19          Q     Okay.

20          A     He told me to put the dollar in.

21          Q     Okay. All right. And so did you see where Jake was  
22 panhandling?

23          A     No.

24          Q     Okay. And so where did you -- where did he  
25 physically open the door? He was sitting in the passenger

1 seat, correct, front passenger seat?

2 A Yes.

3 Q Okay. Where did he physically open the door, get  
4 out of the car and leave you and Brianna and your eight month  
5 old to go panhandle?

6 A Okay. So the gas station has, as you can see right  
7 here, this is the front entrance of the gas station. Towards  
8 where the car is coming from, back that way, is a back  
9 entrance and there's a car wash back there. So he gets out  
10 in the back entrance, you know. It's like behind.

11 Q Is it by the McDonald's?

12 A Yes, I believe so.

13 Q Okay. So he gets out right there?

14 A Yes.

15 Q Okay. And you're going to put the gas?

16 A Yes. He says put the dollar on.

17 Q Okay. And you do just that?

18 A Yes.

19 Q Okay. You're not paying attention to what Jake is  
20 doing at this point?

21 A No.

22 Q Okay. You're paying so little -- you're paying so  
23 little attention to what Jake is doing, you know, supposedly  
24 panhandling, that when you two cross paths right at the  
25 front --

1 A Yes.

2 Q -- and we'll show you in State's Exhibit Number 139.

3 A You mean when he asked me did you put the dollar on  
4 and I said I was about to?

5 Q We're just going to play it. Okay. So for the  
6 record, this is State's Exhibit Number 139. This is the  
7 composite video that we've been, you know, watching. All  
8 right. And I'm waiting for a specific camera angle where the  
9 two of you cross paths. Okay. Now just wait for the next  
10 angle. Okay. So at 15:47:07, you literally are walking to  
11 the front; right?

12 A Yes, ma'am.

13 Q And you indicated on direct examination that you  
14 were not even aware that Mr. Dismont was behind you; correct?

15 A Not at that moment.

16 Q Did you not say on direct examination that you  
17 didn't know that Jake was behind you?

18 A Yes.

19 Q Okay. So at this moment right here, did you know  
20 that Jacob Dismont was behind you?

21 A Jacob Dismont, when he walked -- as he walks past me  
22 and he looks over at me briefly, he says, Did you put the gas  
23 in? I say about to.

24 Q Okay. But at no time during the surveillance as  
25 we've seen, right --

1           A     Uh-huh.

2           Q     -- do you like turn to him as he's addressing you;  
3 correct?

4           A     I'll have to see the video, but yeah.

5           Q     Okay.  You're not --

6           A     See --

7           Q     No, I'm sorry, sir.

8           A     Yes.

9           Q     There's not a question pending, okay.  So at no  
10 time, though, as you're walking up towards the entrance of  
11 this gas station and he is behind you, okay, do you ever turn  
12 to this person that's your friend that you've known for a  
13 month, that you hang out with multiple times, that you knew to  
14 be panhandling, at no time did you turn to him and say, Yes,  
15 I'm putting that gas, that dollar of gas, I'm doing that right  
16 now.  Did you turn to him?

17          A     You know why?  No.

18          Q     Did you physically turn to him and address him?

19          A     I turned my head slightly.

20          Q     Okay.

21          A     Because he's panhandling.  We didn't want people to  
22 know that we knew each other, so of course --

23          Q     You've watched the video, sir; haven't you?

24          A     Yeah.

25          Q     Multiple times now?

1 A Yes.

2 Q Okay. At any point in time do you see Mr. Dismont  
3 approaching a single person asking for money?

4 A Because Brianna just got kicked off.

5 Q Did you see Mr. Dismont at any point in time during  
6 this entire surveillance footage that has been played over  
7 and over and over again, approach an individual?

8 MR. LEVENTHAL: Judge, I'm going to object.  
9 Foundation. Are we talking about in 2013 or are we talking  
10 about when he's watching the video in court? I don't have a  
11 foundation as to --

12 MS. BOTELHO: Okay, I can clarify.

13 THE COURT: If you could orient us to time.

14 MS. BOTELHO: Yes.

15 BY MS. BOTELHO:

16 Q During the entire time here at trial or even before  
17 where you've watched this surveillance footage from the  
18 Terrible's Gas Station showing you purchasing gas,  
19 repositioning your car, etcetera, etcetera, did you ever see  
20 Mr. Dismont approaching a single person in this parking lot  
21 asking for money?

22 A Yes. I did actually see Mr. Dismont. You could see  
23 one person walking and he follows behind him to -- like I  
24 said, to more than likely ask him off the store premises to  
25 ask for money. He didn't want to be on the gas station



1 premises asking for money because previously Brianna just got  
2 kicked off the last gas station for panhandling on the store  
3 property.

4 Q Was that on video?

5 A Who? Brianna?

6 Q No. You said he actually approached someone and  
7 asked them for money. Was that on video?

8 A I believe so. I believe it shows a person walking  
9 and it shows him walking behind them.

10 Q Okay.

11 A So then it shows a group of people at the top and  
12 him walking in that direction. So I believe --

13 MS. BOTELHO: Okay. Mr. Palal, can we please  
14 continue on with Exhibit Number 139. And we're carrying on  
15 from 15:47:10.

16 (Video continues playing)

17 MS. BOTELHO: And for the record, we're just letting  
18 it play.

19 BY MS. BOTELHO:

20 Q Mr. Solid, if you see the part that you're talking  
21 about, please feel free to get my attention.

22 A I believe it's at the beginning. Yeah, I believe  
23 it's at the beginning. As you're aware, your video is edited  
24 in numerous places.

25 Q Okay. We can start back from the beginning.

1           A     Yeah, your beginning is not the beginning. This is  
2 the beginning where you want it to start.

3           Q     Okay. Specifically which video -- which one would  
4 it be?

5           A     Do I name the list of videos that I've seen prior  
6 with my counsel that --

7           Q     Which part of this whole interaction did you see  
8 him?

9           A     There's a lot of the video that you're showing that  
10 I haven't seen.

11          Q     That you've never seen?

12          A     No, that I haven't seen. There's a lot of video  
13 that me and my counsel has seen that you're not showing or  
14 your video edited that part out.

15          Q     Okay. So --

16          A     You and detective -- was it Sanborn?

17          Q     So all of the video, for the record, is admitted  
18 into evidence, not just this composite. And so we can go back  
19 and look at all of that. But is it your testimony that it's  
20 in the beginning of this video, all of the video, the raw  
21 footage, not the one that's compiled --

22          A     I don't know if it's this --

23          Q     -- Mr. Dismont is seen asking -- approaching people  
24 and asking them for money, panhandling?

25          A     I didn't make it plural. It was singular. I said

1 he approached. I seem him trail behind an individual.  
2 Q Okay, trail behind.  
3 A Yes.  
4 Q Okay. All right. State's Exhibit Number 66. Sir,  
5 is this how you appeared on May 18th of 2013?  
6 A Yes.  
7 Q Okay. And so I notice you have headphones on right  
8 now. Is that to assist you with hearing?  
9 A Yes. I can't hear in my left ear.  
10 Q Okay. At the time Exhibit Number 66, you know, May  
11 18th of 2013, were you able to hear properly?  
12 A Yes.  
13 Q Okay. And State's Exhibit Number 67, is this how  
14 you appeared on May 18th of 2013?  
15 A Yes.  
16 Q Okay. And I notice you're wearing glasses now, but  
17 did you wear glasses back on May 16th, 2013?  
18 A No, I didn't need glasses at that time.  
19 Q Okay. So no vision issues, either?  
20 A That was almost ten years ago.  
21 Q So that's a yes? No vision issues?  
22 A Back then, no.  
23 Q Okay. All right. And as you indicated in the  
24 surveillance, you didn't know where the gas cap was; correct?  
25 A Correct.

1 Q It was on the passenger side?  
2 A Correct. On the -- yes.  
3 Q Okay. And so you repositioned?  
4 A Correct.  
5 Q Okay. And when you repositioned -- State's Exhibit  
6 Number 151, your car was now right where this red and white  
7 SUV is but facing the other direction towards the right;  
8 correct?  
9 A Yes.  
10 Q Okay. And so your vehicle -- State's Exhibit Number  
11 145, was parked right here? Number 6?  
12 A This is a new picture, huh? It's not from almost  
13 ten years ago?  
14 Q No. This is State's Exhibit Number 145.  
15 A Is it current?  
16 Q It's 2018, so --  
17 A Yes. It looks different from 2013.  
18 Q Okay. But does the gas pump look the same?  
19 A I can't see the gas pump.  
20 Q The layout of the gas station?  
21 A Not to what I -- I remember it being more trees,  
22 like bushes.  
23 Q So do you see that right there on State's Exhibit  
24 Number 151? Do you see it, the vehicle that you said --  
25 A Yes.

1 Q -- that's where your vehicle would have been?  
2 A Yes.  
3 Q Yes? Okay.  
4 A Jacob's vehicle. Yes.  
5 Q Okay. State's Exhibit Number 45 -- 145 -- do you  
6 see that Chevron sign?  
7 A Yes.  
8 Q Bring you back to the second exhibit, which is  
9 State's Exhibit Number 145, there's the Chevron sign, okay.  
10 Would your car have been right here, Number 6, but this time  
11 facing out towards the parking lot, not towards Charleston?  
12 MR. LEVENTHAL: Judge, I'm going to object. She's  
13 trying to --  
14 THE WITNESS: I don't -- yeah, I don't --  
15 MR. LEVENTHAL: Hold on, hold on. She's trying to  
16 get him to acknowledge this and he said he doesn't recognize  
17 this because this picture was taken sometime after. So if he  
18 doesn't understand or know this picture, he can't verify that  
19 this is where his car was. So anything further would be  
20 asking him about a picture that he doesn't know about.  
21 THE COURT: Overruled. I think he can answer.  
22 MS. BOTELHO: Thank you.  
23 THE WITNESS: Your Honor, that whole thing looks --  
24 like, it was more bushes.  
25 THE COURT: Okay.

1 BY MS. BOTELHO:  
2 Q Okay. And so you don't -- you recognize State's  
3 Exhibit Number 151 as being pump number 6 where you're looking  
4 now towards the parking lot and not towards Charleston; right?  
5 I mean, you just testified to that.  
6 A Yes.  
7 Q Okay.  
8 A That's the video, yes.  
9 Q Okay. And so -- but it's just State's Exhibit  
10 Number 145 that you're not familiar with; right?  
11 A Like I said, it doesn't look the same at all.  
12 Q Okay. So you don't know about 151?  
13 A This picture looks all super new and super clean and  
14 -- yeah, it looks different.  
15 Q Okay. Sir, my question really was just you don't  
16 know what this is showing, correct, 151?  
17 A No.  
18 Q Okay.  
19 A I know it shows the gas pump.  
20 Q Excuse me?  
21 A You said it shows the gas pump.  
22 Q Okay. So it does show the gas pump?  
23 A It shows a gas -- yeah, it shows gas pumps. Yes.  
24 Q Okay. You can't say that that was gas pump number 6,  
25 though; right?

1           A     I can't even say -- that picture you're showing, I  
2 can't even say that that's the same location, for all I know.  
3           Q     Oh, okay.  
4           A     It looks different, like they rebuilt it or  
5 remodeled it or something.  
6           Q     Okay. Okay. I mean, if you can't, you can't. So  
7 let's just go back to State's Exhibit Number 26, then, because  
8 at some point you park right there; right?  
9           A     Yes.  
10          Q     Okay. And then at some point you're facing up  
11 towards, you know, Charleston, and you reposition the vehicle  
12 such that now you're pointing out towards --  
13          A     You're going too fast.  
14          Q     Okay.  
15          A     Can you slow down just a little?  
16          Q     Okay, yeah.  
17          A     Thank you.  
18          Q     So at some point we see in the surveillance that  
19 you're parked right here?  
20          A     Yes.  
21          Q     And your vehicle is facing -- the front of your  
22 vehicle is facing towards Charleston; right?  
23          A     Yes, the front of Jacob's vehicle. Yes. When it  
24 was wrongfully positioned, yes.  
25          Q     Yes. And then you repositioned such that now you

1 can see the parking lot, you know, and --

2 A No. I positioned -- repositioned so I can properly

3 pump the gas.

4 Q Right.

5 A Not to see anything.

6 Q But in doing so, now it's facing towards this area;

7 correct?

8 A Yes.

9 Q Okay. And you actually go in and pay for that

10 dollar of gas, as we've seen in the surveillance; right?

11 A Yes, I pay for it and pump it. Yes.

12 Q Okay. And at some point in the surveillance Mr.

13 Dismont goes around and then comes back towards the vehicle;

14 correct?

15 A Yes.

16 Q Okay. And then you reposition; correct?

17 A See, that's what I'm saying. On your video -- play

18 your video. Can you play the video one more time?

19 Q Sure.

20 A So I can show you something.

21 Q Sure.

22 A Where you can see the --

23 Q But answer my question first, okay?

24 A I think the video explains exactly what you're

25 saying.



1 Q Can you answer my question?  
2 A Yes. Yes, ma'am.  
3 Q Okay. So, Mr. Dismont, when you're first walking  
4 back towards pump number 6 after you've put the dollar gas in,  
5 okay --  
6 A Yes.  
7 Q -- Mr. Dismont goes back towards the vehicle;  
8 correct?  
9 A From what I see in the picture, yes.  
10 Q Yes. And then you get in the car and you  
11 reposition; correct?  
12 A Uh-huh.  
13 Q Is that a yes?  
14 A Yes.  
15 Q Okay, that was the question.  
16 A Oh.  
17 Q You indicated that you hadn't ever seen the victims  
18 before?  
19 A Never.  
20 Q Didn't know them from Adam?  
21 A Never.  
22 Q And you didn't recognize or even see this  
23 composition cover of the iPad?  
24 A How can I know it's an iPad and it's composition?  
25 Q Is the answer no, you did not see it?

1 A I didn't even see them.

2 Q And you didn't recognize it?

3 A I didn't even see them. No, I did not. No.

4 Q Okay.

5 A I don't think no one in this room noticed it was an  
6 iPad until you pointed it out.

7 Q Okay. Well, I'm not asking people in this room, sir,  
8 I'm asking you.

9 A Yes, ma'am.

10 Q State's Exhibit Number 31. This is you in the gas  
11 station; correct?

12 A Yes, ma'am.

13 Q Okay. And you identified your Batman pendant?

14 A Yes.

15 Q Okay. What happened to that Batman pendant?

16 A It should still be at -- it should have been at  
17 Brianna's house.

18 Q Okay. You didn't toss it?

19 A I left it. Left that there, left my phone there.  
20 No, I didn't toss it.

21 Q Okay. Did you have your phone, the one that you  
22 didn't bring to turn yourself in, did you have that phone on  
23 with you on May 16th of 2013?

24 A I'm pretty sure I did, yes.

25 Q Okay. But you testified on direct examination that

1 when Mr. Dismont called you the first time, right?

2 A Called Brianna. Yes.

3 Q Oh, called Brianna?

4 A Yes.

5 Q Okay. But it was you on the phone that picked up;

6 correct?

7 A No. I'm -- in the video you could see me with

8 nothing in my hand at the time the first phone call was

9 placed. So, no, he didn't call me, he called Brianna's phone.

10 Q Okay. And what about the second time that he

11 called?

12 A The second time, that's when I got into the vehicle

13 and Brianna says, Babe.

14 MS. BOTELHO: Objection. You cannot say what other

15 people have said, okay.

16 THE WITNESS: Then how do I answer the question?

17 MS. BOTELHO: And so my question was --

18 THE COURT: Okay, rephrase your question --

19 MS. BOTELHO: Okay.

20 THE COURT: -- so that it doesn't open that

21 possibility.

22 BY MS. BOTELHO:

23 Q Who answered the phone the second time?

24 A Brianna.

25 Q Okay. And at some point she tells you something

1 that causes you to get from the passenger seat of this SUV;  
2 right?

3 A Yes.

4 Q And we don't see you coming out, so what did you do,  
5 hop over to the driver's side?

6 A No. She's in the back making my daughter a bottle.

7 Q Yeah.

8 A So when we got word -- can I say it? When she got  
9 word to come pick him up from the Jack-in-the-Box across the  
10 street when he called, she told him, give me a minute, I'm  
11 making my daughter's bottle. We're going to be there, like,  
12 when she's finished making it. So when she finished making  
13 it, that's when I jumped over from the passenger seat to the  
14 driver's seat. Yes.

15 Q Oh, okay. So as of the second call, right --

16 A Yes.

17 Q -- you guys actually wait one minute before actually  
18 taking off?

19 A No. From the -- they said the first call was placed  
20 at 2:08. The second one, what, 2:13; so in that time frame.

21 Q No, actually not the times, but.

22 A What was the time?

23 Q These are four. We're talking about four o'clock,  
24 okay. 4:09; 4:11.

25 A 4:09, 4:11.

1 Q Okay. So --  
2 A Okay, 4:09, 4:11. Excuse me.  
3 Q So within two minutes there are two phone calls made  
4 from Mr. Dismont to --  
5 A Uh-huh.  
6 Q -- now you're saying that it's to Brianna?  
7 A Yes.  
8 Q Okay. And after the first phone call -- what was  
9 the first phone call about?  
10 A I tried to answer and you told me I couldn't --  
11 Q What was it about?  
12 THE WITNESS: Can I -- Your Honor, can I?  
13 THE COURT: Go ahead. She's asking you.  
14 BY MS. BOTELHO:  
15 Q What was it about?  
16 A Okay. So, like I said, when I got into the car,  
17 Brianna said, Babe, Jake said he's not having no luck at Jack-  
18 in-the-Box, to come pick him up.  
19 Q Okay.  
20 A Mind you, again, she's making my daughter's bottle.  
21 Q Okay. Now onto the second call, okay?  
22 A Yes. He calls back.  
23 Q Okay. And it's to her phone?  
24 A It's to her phone.  
25 Q Okay.

1           A     And he asked, Where are you guys at? And that's  
2 when she tells him I'm finishing up making my daughter's phone  
3 (sic), we're going to be right over there. Yes.

4           Q     Okay. And then you proceed to get from the  
5 passenger seat, the front passenger seat --

6           A     Yes.

7           Q     -- and you hop over to the driver's seat; right?

8           A     Yes, ma'am.

9           Q     Was it an easy hop? I mean, we don't see you coming  
10 out and around?

11          A     No, no, no. I'm -- I was -- look at me, 129 pounds,  
12 5'5". Yes, it was a pretty --

13          Q     So the answer is yes?

14          A     Yes. Yes.

15          Q     Okay. You just hopped on over?

16          A     Yes.

17          Q     Okay. And then drove onto Charleston towards the  
18 area where you were going to pick up Jacob; right?

19          A     West up Charleston, yes.

20          Q     Okay. And so when you see him, though -- State's  
21 Exhibit Number 131 -- when you see him and he is over -- do  
22 you see where the Jack-in-the-Box is on this map?

23          A     The Jack-in-the-Box is right here. Correct?

24          Q     Okay. All right. So the intersection of Charleston  
25 and Torrey Pines, the northwest corner; right?

1 A Yes.

2 Q Okay. And you testified on direct examination that

3 you were initially on the right lane --

4 A No.

5 Q -- and that at some point you look over and --

6 A I didn't say I was on the right lane.

7 Q Okay. When you pull out on Charleston, what lane

8 are you on?

9 A When I pulled out I believe I'm in the middle lane.

10 Q Okay.

11 A Yes.

12 Q And so you were going to exit out of this gas

13 station right here?

14 A Yes.

15 Q And you're in the middle lane and you're going down

16 Charleston, going west; right?

17 A Yep.

18 Q And you were supposed to pick him up at this Jack-

19 in-the-Box --

20 A Yes.

21 Q -- that you just pointed out for the jury; correct?

22 A Yep.

23 Q And when you see that he's not there, right --

24 A Uh-huh.

25 Q -- what did you do?

1           A     Okay.  So I'm -- if you can -- so I'm driving.  I  
2 pull out of the gas station driving on West Charleston.  Like  
3 you mentioned, he was supposed to be at this Jack-in-the-Box.  
4 But as I'm coming up Charleston -- mind you, Jacob is 6'5",  
5 almost 6'6", so as I'm coming up I see him on the left-hand  
6 side.  He's got a tank top on.  He stands out.  So I get in  
7 this turn lane right here to flip around to come and pick  
8 him up.

9           Q     Okay.  Did it strike you as odd that he asked you  
10 all to pick him up at the Jack-in-the-Box but he's on the  
11 other side of the street now walking up towards a gas station?

12          A     Yes.

13          Q     I mean, towards a car wash?

14          A     It would strike anybody in here as odd.  Yes.

15          Q     Okay.  I'm not asking about anybody else or what you  
16 thought anybody else would think is odd.

17          A     Well, yes, I did.

18          Q     I'm asking about you.

19          A     Yes, I did.  Yes.

20          Q     Okay.  It struck you as odd?

21          A     Yes.

22          Q     Okay.  Did you see as he was -- you saw him walking  
23 up Charleston, meaning west towards the gas station or towards  
24 the car wash, did you see Marcos and Gacory, the people that  
25 you now know as Marcos and Gacory, ahead of him?



1           A     No.

2           Q     Okay.  When Mr. Dismont first picked you up on May  
3 16th of 2013, did he have an iPad with him?

4           A     No.

5           Q     Okay.  And when Mr. Dismont was calling Brianna's  
6 phone, 4:09 and 4:11, okay, you were made privy to whatever  
7 it was that, you know, Mr. Dismont told Brianna; correct?  
8 You were told what it was that he said on the phone; correct?

9           A     Yes.  She told me that he said --

10          Q     Okay.

11          A     -- pick him up.  Yes.

12          Q     Okay.  And you were present in the car when that  
13 conversation was occurring; correct?

14          A     Not the first conversation, as again, I'm seen on  
15 video with nothing in my hand.  So unless I'm a telepath,  
16 I wouldn't have known that.

17          Q     Okay.  You are saying that just -- you don't see  
18 yourself with a phone in the video; correct?

19          A     The time that the call was made.

20          Q     Okay.

21          A     Come on, Agnes.  You know this.

22                MS. BOTELHO:  Your Honor, I would ask --

23                THE COURT:  Stricken.

24                MS. BOTELHO:  Thank you.

25                THE COURT:  Please.

1 THE WITNESS: I'm sorry. I'm sorry, Your Honor.

2 THE COURT: Please.

3 THE WITNESS: I'm sorry.

4 BY MS. BOTELHO:

5 Q You actually characterized your interaction with  
6 Mr. Dismont when you were entering the gas station. You said  
7 on direct examination that the kids, you know, were in your  
8 blind spot and so was Mr. Dismont, when you were telling the  
9 jury how you didn't -- you were just looking straight forward  
10 and you weren't realizing where Jake was and where the victims  
11 were.

12 A I said --

13 Q Do you remember that?

14 A Yes. I remember saying the kids was in my blind  
15 spot. I don't remember saying and so was Jake Dismont, no.

16 Q Okay.

17 MS. BOTELHO: Okay. Brief indulgence.

18 BY MS. BOTELHO:

19 Q Okay. So the whole purpose of Jacob going to the  
20 Jack-in-the-Box was for him to continue to panhandle; correct?

21 A If I'm being completely honest, I didn't even know  
22 Jacob went to the Jack-in-the Box.

23 Q Okay. But the whole purpose of him being out of the  
24 vehicle was to get money; correct?

25 A Yes.

1 Q Okay. Jake needed money that day? Did Jake need  
2 money that day?

3 A I don't know if Jake need money. I don't know.

4 Q Okay. Were you with Brianna about 3:30, you know?  
5 What time is it, do you think, that you got in the car with  
6 Jacob the first time initially when he picked you up? What  
7 time was it?

8 A I don't -- it was probably noon, somewhere around  
9 1:00 or something. I can't recall exactly.

10 Q And so from that time until you all leave each  
11 other, whenever that is, and we'll get to that, the evening  
12 of May 16th, you and Brianna are in the same place; correct?

13 A If this helps out, from the time we left Brianna's  
14 house to the time we arrived to the gas station, it had to be  
15 a matter of, give or take, 30, 40 minutes.

16 Q Okay. That includes dropping off your friend,  
17 Anthony --

18 A Yes.

19 Q -- or whatever his name is?

20 A Yes.

21 Q Okay. So just 30 to 40 minutes?

22 A Somewhere in that time frame, yes.

23 Q Okay. And you all -- were you with Brianna that  
24 entire day?

25 A Yes.

1 Q Okay. She didn't leave your side?  
2 A No.  
3 Q Okay. Particularly leading up to you picking up  
4 Mr. Dismont at that turn lane, she didn't leave your side?  
5 A She wasn't at my side, she was in the back seat,  
6 but yes. Yes.  
7 Q Yes. So you were with her the whole time?  
8 A Yes.  
9 Q And she had her phone with her the whole time?  
10 A Yes.  
11 Q Okay. You needed money; correct?  
12 A Yes.  
13 Q Brianna needed money; correct?  
14 A For gas.  
15 Q Yes. Correct?  
16 A Five dollars, give or take. Yeah.  
17 Q Yes. So that's a yes?  
18 A Four dollars. Four dollars more.  
19 Q Was that a yes? Forty dollars?  
20 A Four. Four dollars.  
21 Q Four. Okay. Brianna needed money; correct?  
22 A It's not that we necessarily needed money.  
23 Q Sir, that is a yes or no question.  
24 A Well, you're trying to --  
25 MR. LEVENTHAL: Judge, I'm going to object. It's

1 asked and answered. We've been over the money I think three  
2 times now. These are not new questions.

3 MS. BOTELHO: Well, he's not being very responsive.

4 THE COURT: Okay. Ask one more time. Please answer  
5 yes or no.

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: And then stop with the comments.

8 BY MS. BOTELHO:

9 Q Brianna needed money; correct?

10 A Yes.

11 Q Jake needed money; correct?

12 A I wouldn't necessarily say Jacob needed money.

13 Q Okay.

14 A Because he could easily have took us home and just  
15 called it -- left it at that.

16 Q Right. But that's not what happened; is it?

17 A No.

18 Q You all decided to panhandle; correct?

19 A Yes.

20 Q He could have easily taken you all home, but that's  
21 not what happened.

22 MR. LEVENTHAL: Objection. This is speculation.

23 MS. BOTELHO: I don't know what's speculating.

24 MR. LEVENTHAL: He could have.

25 MS. BOTELHO: We know that that's not what happened.

1 THE COURT: He could have taken them home.  
2 MR. LEVENTHAL: He could have.  
3 MS. BOTELHO: But he said that.  
4 MR. LEVENTHAL: No, he's speculating on what another  
5 person can or can't do.  
6 THE COURT: Sustained. You can rephrase as to what  
7 Jake -- what his beliefs were about Jake.  
8 BY MS. BOTELHO:  
9 Q Let me ask you this from your point of view, okay.  
10 Instead of you all going from gas station to gas station to  
11 panhandle, Jake could have just brought you home; correct?  
12 A Yes.  
13 Q But that's not what happened; is it?  
14 A Mind you --  
15 Q Excuse me. But that's not what happened; is it?  
16 I'm sorry, what are you looking at?  
17 A What am I looking at? I'm looking at you.  
18 MR. MARCHESE: Judge.  
19 THE WITNESS: I'm looking at you.  
20 MS. BOTELHO: I mean, he's not answering my question.  
21 He's looking over.  
22 THE WITNESS: No, because I'm looking at you because  
23 your question --  
24 THE COURT: Okay. Just answer the question.  
25 THE WITNESS: You can't answer the question just

1 straight up, like head on. Like, the way you're implying the  
2 question --

3 THE COURT: Okay. And remember, your attorney will  
4 get a chance to clear up some of this.

5 THE WITNESS: Okay.

6 THE COURT: So just answer her questions as best  
7 you can.

8 THE WITNESS: Yes.

9 THE COURT: And if you don't understand it, ask for  
10 clarification. Okay?

11 THE WITNESS: Yes, ma'am. Yes.

12 MR. LEVENTHAL: Judge, I'm going to ask that you  
13 strike Ms. Botelho's comment that he's looking somewhere sort  
14 of insidiously or something, because we're just here and I'm  
15 not sure what that comment was about --

16 THE COURT: Okay.

17 MR. LEVENTHAL: -- where he's looking at. He's  
18 allowed to look.

19 MS. BOTELHO: It was in context as he was hesitating  
20 and not answering my question.

21 THE COURT: Okay. I understand the record. It's  
22 okay if he looks over at his attorneys. Please just move on.  
23 I'm not going to strike it.

24 But please just answer the question. Look right at  
25 Ms. Botelho.

1 BY MS. BOTELHO:  
2 Q But that's not what happened; is it? He didn't  
3 bring you home; correct?  
4 A He was supposed to. That's why we -- he said pick  
5 him up from the Jack-in-the-Box.  
6 Q He didn't bring you home; correct? Instead, you all  
7 decided to panhandle and continue to panhandle; correct?  
8 A Yes, because our luck -- his luck wasn't paying out.  
9 Yes.  
10 Q Okay. I'm sorry.  
11 MS. BOTELHO: Your Honor, I would ask to strike the  
12 non-responsive portions. This is why this is being so  
13 difficult because he is not answering the questions.  
14 MR. LEVENTHAL: No.  
15 THE COURT: He just answered yes, his luck did not  
16 pan out.  
17 MS. BOTELHO: Thank you.  
18 THE COURT: That's your answer. Move on.  
19 MR. LEVENTHAL: Judge, just for the record, he is  
20 answering the questions. She just doesn't like the answer,  
21 but he's answering.  
22 THE COURT: That is his answer. We've gotten it.  
23 Let's move on.  
24 BY MS. BOTELHO:  
25 Q Okay. So when you drove out of the vehicle (sic) --



1 when you drove the white SUV onto Charleston, that was you  
2 driving; right?

3 A Yes. Yes, ma'am.

4 Q I just wanted to make sure. And so at some point  
5 you see Jacob walking towards this gas station as shown on  
6 State's Exhibit Number 131; correct?

7 A Can you say that one more time?

8 Q You saw Jacob walking west on Charleston --

9 A Yes.

10 Q -- on the sidewalk towards the gas station. Or,  
11 excuse me, towards the car wash. Correct?

12 A Yes.

13 Q Right here, the car wash.

14 A Yes.

15 Q Yes? Okay. And you just told the jury --

16 A Right.

17 Q -- you didn't see the boys, Marcos or Gacory, in  
18 front of him; correct?

19 A I was not paying attention to them.

20 Q Okay.

21 A My objective was --

22 Q And so --

23 A Oh, I'm sorry. My objective was to pick up Jake.

24 Q I'm sorry. You were not paying attention. You  
25 didn't see Marcos or Gacory; correct?

1           A     Correct.

2           Q     Okay. Then you park right here; correct? And

3     that's the turn lane, the left turn lane on Scholl and

4     Charleston; correct?

5           A     Yes.

6           Q     Okay. When you were parked there, did you notice

7     other vehicles on the street?

8           A     Yes.

9           Q     Okay. It's four o'clock, 4:12 on a Thursday, so

10    there were other vehicles going in and out of traffic;

11    correct?

12          A     Yes.

13          Q     Okay. Did you notice a vehicle behind you?

14          A     No.

15          Q     Okay. And so your testimony is as you're sitting

16    at this turn lane -- how long would you say you were waiting

17    there?

18          A     Like a minute and a half, if that.

19          Q     Okay. And so you're waiting just to pick him up?

20          A     No, I'm waiting to flip a U-turn but there's

21    oncoming traffic coming this way. So I'm sitting in the turn

22    lane waiting for the appropriate time to flip a U-turn and

23    pick him up but there's a flow of traffic coming.

24          Q     Okay. So there's actually traffic going eastbound

25    on Charleston?

1           A     Yes.

2           Q     And so you're just sitting there for a minute and  
3 a half?

4           A     Waiting. Yes.

5           Q     Waiting to make that turn --

6           A     Yes.

7           Q     -- to pick him up at the car wash?

8           A     No, not at the car wash. Just -- I was going to  
9 just flip over. I believe there was like a bus lane and I was  
10 going to flip over and just turn in the bus lane and pick him  
11 up.

12          Q     Okay. But as you're waiting for a minute and a half  
13 in that left turn lane, you testified for the jury that Mr.  
14 Dismont ran up to the car; correct?

15          A     Yes.

16          Q     From the -- to the front passenger seat; correct?

17          A     Can you say that one more time?

18          Q     He ran up to the car and into the front passenger  
19 seat; correct?

20          A     He came from the back. Yes.

21          Q     Oh, he came from the back?

22          A     Yes.

23          Q     Okay. And at some point as he's coming through the  
24 back, okay, of the SUV, right --

25          A     Yes.

1           Q     -- when you saw this, or how did you see that, that  
2 he came from the back?

3           A     Because I didn't see him come in front of the car,  
4 so it's only right that he came from the back, you know.

5           Q     Okay.

6           A     He didn't run in front of the car and jump in. He  
7 came through the back and opened the door.

8           Q     Were you, like, looking around?

9           A     No. I was focused on the traffic.

10          Q     Okay. So you were looking straight ahead?

11          A     Yes.

12          Q     Okay. And did you at any point in time prior to him  
13 actually opening the car and getting in, did you hear honking,  
14 like just honking?

15          A     No.

16          Q     Okay. Did you hear boys screaming?

17          A     No. The windows was up, music playing. No, I did  
18 not.

19          Q     Okay. The windows were up?

20          A     Air conditioning. Yep. Music playing. No, I did  
21 not.

22          Q     Oh, okay. Okay, such that you just had it -- like,  
23 you were just looking straight ahead?

24          A     Yes.

25          Q     Looking at traffic?

1           A     Yes.

2           Q     But -- so you're not paying attention to where your  
3 friend, the one that you're supposed to pick up, where he  
4 goes; right?

5           A     I'm paying attention to the traffic. Mind you, like  
6 I said, I just got my license a couple months earlier.

7           Q     Okay. You're not -- you're just paying attention  
8 to traffic; correct?

9           A     I'm watching the traffic --

10          Q     Okay.

11          A     -- waiting for the appropriate time to flip a U-  
12 turn.

13          Q     Yes. And while you're doing that, you're not paying  
14 attention to where your friend is, Jacob Dismont --

15          A     No.

16          Q     -- where he is?

17          A     No.

18          Q     Where you're going to pick him up; right?

19          A     That -- [indiscernible].

20          Q     You're paying no attention, so you wouldn't have  
21 seen him continue to go up Charleston, you know, past the car  
22 wash. You wouldn't have known where he was; correct? You  
23 weren't paying attention.

24          A     If I'm right here and they're walking up this way,  
25 it's going to take a minute for him to even get past me. So

1 as I'm waiting for the traffic to stop so I can flip around  
2 and pick him up.

3 Q Did you receive any kind of indication that Mr.  
4 Dismont was aware that you were in the left turn lane waiting  
5 for him?

6 A I don't know.

7 Q Did he, like, nod at you --

8 A No.

9 Q -- say, hey, yeah, I'll be right there? No?

10 A No, he didn't.

11 Q Okay. So you waited there just paying full  
12 attention just to traffic; right?

13 A Yes.

14 Q Okay. Waiting to make that turn?

15 A Yes.

16 Q And you didn't see them coming up the front, but you  
17 see Mr. Dismont. Does he open the door or did you have it  
18 open for him?

19 A He opened the door.

20 Q Okay. So he opens the door and he makes it inside?

21 A Yes.

22 Q Okay. And immediately -- tell us -- immediately  
23 upon getting inside that vehicle, how soon after he gets in  
24 and shuts the door do you hear what you characterized as  
25 banging on the door?

1           A     Maybe -- I'll say seven seconds later.  
2           Q     Okay.  
3           A     So he hops in yelling, go, go, go, go, go, go, go.  
4           Q     Okay.  
5           A     And as he's yelling go, go, go, go, go, you're  
6 right, I hear -- (bangs on jury box) -- on the window.  
7           Q     And you -- okay. And you saw someone --  
8           A     And then my daughter is in the back seat screaming.  
9           Q     Excuse me?  
10          A     And my daughter, she's in the back screaming.  
11          Q     Okay.  
12          A     And then Brianna started screaming, Mike, just go,  
13 just go, just go, just go. So, yes, I panicked and I left.  
14          Q     Okay.  
15          A     You would have did the same thing.  
16                MS. BOTELHO: Excuse me. I move to strike that  
17 because I'm not the one at trial.  
18                THE COURT: All right.  
19                THE WITNESS: But you're the one fixing the evidence  
20 for this trial. You know the truth.  
21                THE COURT: Stop, both of you. I'm going to have  
22 the jury out.  
23                THE MARSHAL: Stand for the jury.  
24                THE COURT: During the recess you are admonished not  
25 to talk or converse amongst yourselves or with anyone else on

1 any subject connected with this trial, or read, watch or  
2 listen to any report of or commentary on the trial of any  
3 person connected with this case by any medium of information,  
4 including without limitation newspapers, television, the  
5 Internet and radio, or form or express any opinion on any  
6 subject connected with the trial until the case is finally  
7 submitted to you.

8 We'll be back in ten minutes. It will be 2:45.

9 (Jury exits the courtroom)

10 THE COURT: The jury has exited the room. You may  
11 be seated.

12 Ms. Botelho, I understand that there are issues that  
13 he's not answering the question, but your asides have gotten  
14 excessive at this point. You cannot interact with him like  
15 that.

16 Mr. Solid, she's not your friend. Don't call her  
17 Agnes. Don't talk to her like she's somebody that you know.  
18 You don't know her. This is inappropriate.

19 THE DEFENDANT Yes, Your Honor.

20 THE COURT: And you guys aren't supposed to be  
21 fighting each other. You're supposed to be answering  
22 questions so this jury can make a decision about your life.  
23 And this is how you want to behave?

24 THE DEFENDANT: It's just emotional.

25 THE COURT: I get it's emotional.



1           THE DEFENDANT: My life is on the line for trying to  
2 protect my family.

3           THE COURT: I get that, sir, but you can't be  
4 fighting back and forth with the prosecutor. This looks  
5 terrible.

6           THE DEFENDANT: I know. I was just trying to  
7 protect my family and she knows this.

8           THE COURT: She doesn't know that. She doesn't know  
9 you.

10          THE DEFENDANT: All the evidence. But the evidence  
11 that's been covered up for nine years. And what, for election  
12 or something?

13          MR. LEVENTHAL: Michael.

14          THE COURT: Michael.

15          THE DEFENDANT: I'm sorry, I'm sorry, I'm sorry.  
16 I'm sorry, I'm sorry, I'm sorry. I'm sorry, I'm sorry, I'm  
17 sorry.

18          MR. LEVENTHAL: Stop.

19          THE DEFENDANT: I'm sorry. I'm sorry. I'm sorry.

20          THE COURT: All right.

21          THE DEFENDANT: I'm sorry. I'm sorry, Your Honor.  
22 I'm sorry Agnes Botelho. I'm sorry, court.

23          MR. LEVENTHAL: Can I have a word with my client?  
24 I need to talk to him.

25          THE COURT: It's okay.

1 MR. PALAL: Your Honor, I would object to having  
2 defense counsel speak to the defendant mid cross-examination.  
3 MR. LEVENTHAL: That's fine. I was just going to  
4 calm him down. I'm not going to talk about anything else.  
5 THE COURT: All right.  
6 MR. LEVENTHAL: But I agree with that. I shouldn't  
7 be talking to him mid cross-examination.  
8 THE COURT: All right.  
9 MR. LEVENTHAL: But I can talk to him maybe in front  
10 of everyone.  
11 Michael, you need to calm down.  
12 THE DEFENDANT: Yes. Yes.  
13 MR. LEVENTHAL: You need to take a deep breath,  
14 okay.  
15 THE DEFENDANT: Yes.  
16 MR. LEVENTHAL: You got it?  
17 THE DEFENDANT: I do.  
18 MR. LEVENTHAL: Okay.  
19 MR. MARCHESE: Listen to the judge.  
20 THE DEFENDANT: It won't happen again, Your Honor.  
21 MR. MARCHESE: Michael, listen to the judge. It's  
22 not helping.  
23 THE DEFENDANT: Yes. Most definitely.  
24 MR. LEVENTHAL: Okay.  
25 THE DEFENDANT: Sorry, Your Honor.

1           THE COURT: Okay. I'm trying to get this case tried  
2 fairly for everyone, okay?

3           THE DEFENDANT: Thank you.

4           THE COURT: That includes you. That includes the  
5 State. Everyone is trying to get in the way of that happening  
6 right now. So we're going to take some time. I need you to  
7 drink some water, take a break.

8           THE DEFENDANT: Yes.

9           THE COURT: And when we resume, this is not -- it's  
10 not going to be as combative. Okay?

11          THE DEFENDANT: Yes, Your Honor.

12          THE COURT: Okay. You agree, Ms. Botelho?

13          MS. BOTELHO: Yes.

14          THE COURT: All right. Thank you, everyone. I'll  
15 be back in a few minutes.

16          THE MARSHAL: Court is in recess.

17          (Court recessed from 2:35 p.m. until 2:45 p.m.)

18          THE MARSHAL: Stand for the jury.

19                 (Jury enters the courtroom)

20          THE COURT: Do the parties stipulate to the presence  
21 of the jury?

22          MS. BOTELHO: The State does.

23          MR. LEVENTHAL: Yes, Your Honor.

24          THE COURT: Okay. You may be seated. Welcome back.  
25 We're back on cross. Go ahead.

1 CROSS-EXAMINATION (Continued)

2 BY MS. BOTELHO:

3 Q Okay, Mr. Solid, we'll pick back up with State's  
4 Exhibit Number 144. You had just told the jury in State's  
5 Exhibit Number 131 that you were waiting at the intersection,  
6 the turn lane of Scholl and West Charleston. Do you remember  
7 that?

8 A Yes, ma'am.

9 Q For about a minute and a half?

10 A Yes, ma'am.

11 Q Okay. And Mr. Dismont comes in from the back of  
12 the SUV. You didn't see that, but went to the back of the  
13 SUV, opened the door, came in and was screaming, Go, go, go;  
14 right?

15 A Yes, ma'am.

16 Q Now, on direct examination do you remember telling  
17 the jury that as this was occurring, after he shut the door,  
18 you saw a figure approach the front passenger area. Do you  
19 remember saying that?

20 A Not approach, but banging. Yes.

21 Q Yes.

22 A Yes.

23 Q You saw a figure banging on what part of the SUV?

24 A The window, door, everything. Yes.

25 Q And that's State's Exhibit Number 144. So we're

1 talking about now this, you know, front passenger area; right?  
2 A Yes.  
3 Q Okay. And this person, could you see like the shape  
4 of this person? Could you see anything out of what you are  
5 saying -- was the window closed?  
6 A Yes, it was rolled up.  
7 Q Okay. So closed window on the passenger side.  
8 Could you make out the person that was banging?  
9 A I just seen a dark figure.  
10 Q Okay. And -- but how close was this person? Close  
11 enough to be banging; right?  
12 A Yes.  
13 Q Okay. And they were saying, Go, go, go, go, go;  
14 right?  
15 A Yes.  
16 Q Okay. And you said you panicked; correct?  
17 A Yes, ma'am.  
18 Q Okay. Now, correct me if I'm wrong, but you're in  
19 a vehicle; correct?  
20 A Yes.  
21 Q Okay. And at this point when you take off, all of  
22 the doors are shut; correct?  
23 A Yes.  
24 Q And according to your own testimony, the windows are  
25 all rolled up, too?

1           A     Yes, ma'am.

2           Q     Okay. So your panic was due to this figure

3 approaching your car and banging on the passenger side?

4           A     No. My panic was to Jacob and everybody, my baby

5 screaming and Brianna, everybody yelling, go, go, go. Then

6 I'm hearing (bangs on jury box). For all I know, it could

7 have been anything, a gunshot; anything.

8           Q     Okay.

9           A     Like I said, it all happened like that.

10          Q     Okay.

11          A     One don't have time to sit and analyze the

12 situation.

13          Q     Okay. The windows are rolled up.

14          A     Yes.

15          Q     The doors are shut; correct?

16          A     Yes.

17          Q     You're in a two ton vehicle; correct?

18          A     I don't know the proper weight.

19          Q     Okay. You're in a large SUV?

20          A     Yes.

21          Q     Okay. And you see a figure approach and you hear

22 banging on the shut and rolled window; correct?

23          A     No. I just see a figure approach. I just see a

24 figure on the passenger side banging.

25          Q     Okay. And everybody is so panicked that you just

1 take off; right?

2 A Yes.

3 Q Okay. Do you take off quickly or slowly?

4 A Quickly. Yes.

5 Q Okay. Do you floor it?

6 A Yes, I -- yes, I had to.

7 Q Okay. And did you have to like swerve to the right

8 a little bit to actually get out onto Charleston?

9 A I believe so.

10 Q Okay. As you are flooring it and you're pulling

11 away, do you hear or feel this car running over a boy?

12 A No.

13 Q And it was your testimony on direct examination,

14 right, that you make it up to, what, the first turn?

15 A Yes.

16 Q And you can't recall the street; correct?

17 A Yes.

18 Q And you make it somewhere and you immediately get

19 out of the car?

20 A Yes.

21 Q Right?

22 A I did.

23 Q And Brianna and your eight month old are still in

24 the car; correct?

25 A Yes.

1           Q     Okay.  And -- wait.  When does Jake raise up his  
2 shirt and say -- you know, show you the iPad?  
3           A     That was the reason for me pulling over.  
4           Q     Okay.  
5           A     So as he --  
6           Q     Okay.  So he showed it to you before you pulled it  
7 over?  
8           A     Yes.  
9           Q     Okay.  
10          A     So as I'm leaving, I look over to him, I'm like,  
11 What the fuck going on?  And he just sits there and he raised  
12 up and he got the iPad right there.  And I look at him --  
13          Q     Okay.  So it's your testimony that Jake, as he was  
14 running up to the car, had this iPad concealed under his  
15 shirt?  
16          A     Yes, it had to be.  Yes.  
17          Q     Okay.  And it was after you pulled off, okay, that  
18 he raises his shirt and shows you this iPad?  
19          A     Yes.  His tank top.  
20          Q     Was the cover on?  Was that black and white cover on?  
21          A     I don't recall that.  
22          Q     Okay.  You knew it was an iPad, though, immediately;  
23 right?  
24          A     Yes, I did.  Once he -- yes.  
25          Q     Okay.  And you realized that he didn't have an iPad



1 when he first picked you up; correct?

2 A Yes.

3 Q Okay. So when you say, Are you fuckin' serious,  
4 you knew that he had just committed a robbery; correct?

5 A Yes.

6 Q Okay. To get that iPad?

7 A Not necessarily. I just knew -- I just put two and  
8 two together, so yes. Yes.

9 Q Right. But the robbery was getting that iPad;  
10 correct?

11 A Yes.

12 Q And that's why you said, Are you fuckin' serious?

13 A Yes, ma'am.

14 Q And you testified on direct examination you were  
15 pissed; right?

16 A Yes.

17 Q Because the baby was in the car; correct?

18 A No, I was pissed because he did a dumb ass thing  
19 such as that.

20 Q Okay. With your baby in the car and your girlfriend  
21 in the car; correct?

22 A With me in the car. With all of us.

23 Q And you in the car. Okay.

24 A Yes.

25 Q You were so pissed, right --

1           A     Yes.

2           Q     -- that this happened. Did you call 9-1-1?

3           A     No.

4           Q     To report the fact that you had just driven someone  
5 who had committed a robbery, that you had just driven them  
6 away. Did you call 9-1-1?

7           A     No.

8           Q     Okay. Now, you were a so-so friend; right?

9           A     Uh-huh.

10          Q     Okay. While you were in this car. You testified  
11 before the ladies and gentlemen of the jury that the windows  
12 were up. At no time then did you see Marcos's body actually  
13 leaning inside the window area?

14          A     Yes, I couldn't have.

15          Q     No?

16          A     Definitely not.

17          Q     Not at all?

18          A     Not at all.

19          Q     Okay. You didn't see Jake and Marcos while Jake is  
20 seated on the passenger seat, you don't see them struggling  
21 for this iPad?

22          A     No.

23          Q     Okay.

24          A     Jake gets in the car, closed the door.

25          Q     Okay. And so you heard the testimony of Rebecca

1 Shanahan; correct?

2 A Yes.

3 Q Okay. You didn't hear her honking the horn, though;

4 right?

5 A Yes, I did.

6 Q Okay. You just testified previously, like before

7 this break, that you did not hear any honking.

8 A No, I testified -- you asked if I heard any yelling

9 or screaming. No.

10 Q And we'll just have to let the record stand. But

11 did you hear Rebecca honking?

12 A Yes.

13 Q Oh, okay. All right.

14 A She was honking to put the U-turn --

15 Q Oh, okay. Okay.

16 A -- and I'm looking at --

17 Q But you didn't hear screaming?

18 A No.

19 Q Okay. Even as, you know, there was an individual

20 standing right there with their arms inside --

21 A No.

22 Q -- struggling for an iPad, you didn't hear that?

23 A Honest, the windows was raised.

24 Q Okay.

25 A And Rebecca stated herself she didn't hear

1 screaming.

2 Q Okay. Did you also hear the testimony of Alejandro  
3 Romo?

4 A No, he was speaking in Spanish.

5 Q Yeah. Yeah. He was translated, though, to English;  
6 right?

7 A Yes.

8 Q Okay. And so when he testified that he saw this  
9 boy's body inside the front passenger window in the car  
10 struggling, he was mistaken; right?

11 A If you can pull up the --

12 MR. LEVENTHAL: Judge, I'm going to object as to  
13 improper testimony. Testifying as to what other witnesses  
14 have already testified to is improper. I wouldn't be able  
15 to have an officer up here and ask him about everybody's  
16 testimony and ask him what he thinks, so it's improper  
17 questioning.

18 MS. BOTELHO: It's impeachment. It's cross-  
19 examination. It's his version versus the eyewitnesses.

20 THE COURT: So asking him to weigh in on -- as long  
21 as you stay away from the credibility of other witnesses,  
22 it's allowed.

23 MS. BOTELHO: Yes. Okay.

24 BY MS. BOTELHO:

25 Q So you heard the testimony of Alejandro Romo, right?

1           A     Yes.

2           Q     The guy who worked at the car wash?

3           A     Yes.

4           Q     So when he would testify before this jury that this

5 little boy had his body inside the front passenger area, okay,

6 struggling over something, he was mistaken?

7           A     Yes.

8           Q     Okay.

9           A     There's no --

10          Q     I'm sorry. The answer was a yes or no. And you

11 heard the testimony from Rebecca Shanahan; correct? Did you,

12 as she sat here and testified?

13          A     Testified to what?

14          Q     Okay. When she testified that she also saw a

15 struggle right at the front passenger area, there was a

16 struggle for something with Marcos's body leaning in --

17          A     No, she did not.

18          Q     -- she was mistaken; right?

19          A     She did not say that.

20          Q     Okay.

21          A     She did not say that.

22          Q     Okay.

23          A     I have her transcripts.

24          Q     Okay.

25          A     She did not say that.

1 Q Okay.

2 A She actually corroborates my story.

3 Q Okay. When Christine Bullard testified that she saw  
4 a struggle, okay --

5 A Wait. Was that the lady who said a blue Escalade?

6 Q When -- can you just listen? You don't -- I guess  
7 you don't remember Ms. Christine Bullard's testimony. She was  
8 the one driving past you, past your vehicle.

9 A Oh, the one who said she witnessed everything  
10 through her side-view mirror?

11 Q Yes. Yes.

12 A Okay. Yes.

13 Q So when she testified that she saw the struggle  
14 going on near the front passenger seat as she was, you know,  
15 driving away, thinking she had to swerve because this front  
16 passenger door was open, she was mistaken, too, because there  
17 was no struggle, according to you, right there; was there?

18 A No, there was not.

19 Q Okay.

20 A There was not.

21 Q Okay.

22 A Definitely was not.

23 Q Okay. So you indicated you didn't know that you  
24 had hit Marcos; right?

25 A Yes.

1 Q Okay. And so windows were up, doors were closed,  
2 so you didn't realize that you were dragging this kid for  
3 90 feet across Charleston; did you?

4 A No, I did not.

5 Q Okay. When did you realize that you had killed and  
6 run over a boy?

7 A When Brianna's stepdad woke us up on the 18th and  
8 told us -- well, told me that I was on the news. And that's  
9 when I got in contact with my mom to come and take me down to  
10 the detention center.

11 Q Okay. So --

12 A Up until then, I never knew nothing about it.

13 Q Okay. So at no time did you find out prior to that,  
14 then, that you had run over and killed a boy?

15 A No, I did not.

16 Q And so it's your testimony that you first found out  
17 from Brianna's stepdad because it was on the news on the 18th;  
18 correct?

19 A Yes. He woke us up and he said, Mike, Mike, you're  
20 on the news.

21 Q Okay.

22 A I didn't believe him.

23 Q Okay. Now, you realize that, you know, the press  
24 release actually came out May 17th with your photo; right?

25 A I wasn't aware of that.

1 Q Okay. Do you know someone by the name of Robert  
2 Taylor?  
3 A Yes.  
4 Q Okay. And also Desirie Jones?  
5 A Yeah, the one who got upset because I wouldn't hook  
6 up with her. Yes.  
7 Q Okay.  
8 A Yes.  
9 Q I'm sorry, my question was do you know them?  
10 A Yes.  
11 Q Okay. Were they your former neighbors?  
12 A Yes.  
13 Q Okay. And were you friends with Mr. Taylor?  
14 A I wouldn't say friends, but I -- yes, I know him.  
15 Q Okay. Okay, and so you're aware that they had seen  
16 you on the news the day before?  
17 A I wasn't aware until --  
18 Q Okay.  
19 A Yes.  
20 Q Showing you State's Exhibit Number 140, okay. Now,  
21 you're aware that this is kind of the dictionary portion of  
22 your phone, right, after it was forensically analyzed?  
23 A Brianna's phone, not my phone.  
24 Q Oh, okay. Okay. You were with Brianna a lot,  
25 though?



1           A     Yes. We lived together.

2           Q     And she was with you when you ran over and killed  
3 this boy?

4           A     I didn't ran over --

5                 MR. LEVENTHAL: Judge, objection as to the  
6 characterization. That's for the --

7                 THE COURT: Overruled.

8                 MS. BOTELHO: Thank you. I thought that was  
9 established. Okay.

10          BY MS. BOTELHO:

11          Q     And so you were with her, though; right? You were  
12 with her --

13          A     When?

14          Q     -- when Marcos was -- when you ran him over?

15          A     He was never ran over.

16          Q     Okay. You were with him when --

17          A     What is so funny? I'm sorry.

18          Q     You're saying he wasn't run over?

19          A     Yes. He was not.

20          Q     Okay. Okay, what happened to him, then?

21          A     From what Dr. Dutra said and the medical file, he  
22 was holding on, let go and I guess apparently hit his head.  
23 Or from what Rebecca Shanahan said, who was directly behind  
24 me, she said that she seen it and he kind of clipped the back  
25 tire as he hit the pavement. And when his best friend Gacory

1 was asked did he ever see the car bump or anything, he  
2 testified to no, the car never ran him over. If the car would  
3 have ran him over, I would have stopped immediately. Again,  
4 Dr. Dutra --

5 Q Do you remember seeing the photos --

6 A Yes.

7 Q -- of the tire marks across his face? Do you  
8 remember that?

9 A No. And if you --

10 Q Do you remember that portion of Dr. Dutra's  
11 testimony?

12 A If you look at the SUV, you can see there's a ramp  
13 that you step into. Can we pull up pictures?

14 Q Okay. Mr. Solid --

15 A And can the doctor --

16 Q -- this is the dictionary search from your phone,  
17 140; correct?

18 A Brianna's phone again.

19 Q Okay. And so there's some words on here; right?  
20 Yahoo News today. Stolen iPad. Fox News stories of today.  
21 Stolen iPad, Las Vegas. Buses have cameras. Mike not here.  
22 Whatever. So on and so forth; right?

23 A Mike's not here. So apparently I wasn't there  
24 whenever this happened.

25 Q Okay. So this is the dictionary search from

1 Brianna's phone; right?

2 A I'm not -- I mean, I'm not aware.

3 Q Okay.

4 A From Brianna's phone, it could be. I don't know.

5 Q Okay. So when you found out, as you just testified,

6 May 18th, early morning hours, that your conduct had killed a

7 child, did you call 9-1-1?

8 A Like I said, my mom was present to turn me in.

9 Q Did you call 9-1-1?

10 A I was turning myself in.

11 Q Did you call 9-1-1?

12 A No.

13 Q Okay. And so you made arrangements, then, to get a

14 ride to turn yourself in; correct?

15 A Yes.

16 Q Turn yourself in for what? What did you do?

17 A Apparently the death of a teenage boy was the

18 outcome of Jacob's stupidity.

19 Q Okay.

20 A So instead of trying to go on the run or something,

21 I turned myself in to answer questions.

22 Q Okay. So you turned yourself in or you were on your

23 way to turn yourself in, what time?

24 A Like I said, it was somewhere in the afternoon.

25 Q Okay. So you watched the news early morning hours

1 of the 18th and then that afternoon you make arrangements to  
2 go turn yourself in?

3 A I didn't actually catch the news. Her stepdad told  
4 me, he said, Mike, you're all over the news. I got up to try  
5 to see it. That episode already or that segment already was  
6 gone.

7 Q Okay. So right when he told you that in the morning  
8 you didn't call the police; right?

9 A No.

10 Q Okay. And you didn't try to figure out what all was  
11 happening; right?

12 A As far as --

13 Q You instead made arrangements to go turn yourself  
14 in; right?

15 A Yes.

16 Q Okay. So after you're taken into custody as you  
17 were, you know, on your way to turn yourself in, when you were  
18 going to turn yourself in you were going to tell the police,  
19 right, what exactly happened?

20 A No. To best honest, I was turning myself in for  
21 questioning. Like I said, Jake --

22 Q Okay. You were turning yourself in for questioning?

23 A Yes. To turn myself in.

24 Q Okay. Questioning about the boy getting killed and  
25 your involvement; correct?

1           A     Yes.

2           Q     Okay. And so you were given that opportunity when  
3 you were taken into custody; correct?

4           A     Yes.

5           Q     Okay. And you give a taped video and audio recorded  
6 interview to the police; correct?

7           A     Yes.

8           Q     Okay. And during that interview when they asked  
9 you, hey, tell us what happened on Charleston and Torrey Pines  
10 Thursday night --

11          A     I couldn't.

12          Q     -- isn't it true that your answer was, "All I --  
13 like, all I can say is that, uh, me and my girl got into an  
14 argument and I walked down there. I saw an SUV pull up to  
15 the gas station. Well, I don't know if he was already there,  
16 like, but anyways, it was a black guy in the driver's seat and  
17 he asked me, uh, he asked -- he said, We broke down, can you  
18 spare some -- do you have a couple buck? And I say, Yeah.  
19 And I didn't want to pull out all my money right in front of  
20 him, so I went in the store and I just put a dollar on for  
21 him. So then -- then I left." Do you remember giving that  
22 statement to the police?

23          A     Not word for word, but yes, I do remember.

24          Q     Okay.

25          A     Yes.

1 Q You're aware that that was subsequently transcribed,  
2 right, your statement to the police?

3 A Yes.

4 Q Okay. And that we admitted into evidence --

5 A It was -- yes.

6 Q -- the audio-video?

7 A Yes.

8 Q Okay. Okay. And during that same interview, which  
9 was conducted at 4:55 p.m. on May 18th, you even offered to  
10 draw, right --

11 A Yes.

12 Q -- the person that was driving State's Exhibit  
13 Number 144 when it struck and killed Marcos Arenas. You  
14 offered to draw that person for the police; correct?

15 A Yes.

16 Q Okay.

17 A I couldn't tell them the truth.

18 Q And when the police, you know, continued to express  
19 some kind of incredulousness, you know, at the story that you  
20 were giving, did you tell them, "I'm dead, dead serious"? And  
21 do you remember kind of chuckling?

22 A No. I couldn't tell them the truth.

23 Q Okay. And so do you also remember saying, "Yeah" --  
24 this is, you know, describing the person who was driving the  
25 vehicle that killed Marcos, "Yeah, they really -- yeah, they

1 were short on -- they were short. He say he broke down,  
2 short on gas."

3 A No, I don't remember that.

4 Q You don't remember that?

5 A No.

6 Q Okay. And then do you remember the detective  
7 saying, "Hey, don't waste our time."

8 A Yes.

9 Q "A 15-year-old boy got killed."

10 A Yes.

11 Q And then they mentioned someone by the name of  
12 Patrick Deluise, okay. And do you remember at that time  
13 laughing?

14 A Yes.

15 Q Okay. And telling the detectives -- and this is  
16 after they just mentioned a 15-year-old getting killed, and  
17 then they mentioned, the detective says, "We -- if that's  
18 the -- if that's the story you're going to stick with, then  
19 things ain't going to go well for you. A 15-year-old kid got  
20 killed." And you say, "Uh-huh." "Over his iPad because you  
21 and Patrick wanted to take it, okay, so." And then you laugh  
22 while you say, "Me and who?"

23 A Yeah, 'cause they said Patrick.

24 Q Do you remember laughing?

25 A Not at the situation, but at them.

1 Q But do you remember laughing?  
2 A That they mistaked Dismont for Patrick, yes.  
3 Q Yeah. Okay.  
4 A Yes.  
5 Q You found that funny?  
6 A No. Like I said --  
7 Q But you laughed?  
8 A I couldn't tell them the truth.  
9 Q Okay. You found it funny enough to laugh?  
10 A About them mistaking Dismont for Patrick?  
11 Q Yeah.  
12 A Yeah. Again, I couldn't tell them the truth.  
13 Q Okay. So then you say, "All right. Naw-hah, I'm  
14 sorry. No. No, nobody was with me. Pat definitely was not  
15 with me. He -- I was by myself, me and my girl." "You got  
16 in a fight and you walked all the way from your house on Hawk  
17 Shadow all the way to Charleston and Torrey Pines?" And you  
18 say, "Yeah, uh, 'cause my -- my sister live over there." Do  
19 you remember saying that?  
20 A Again, I fabricated the whole story.  
21 Q Okay. So you lied to detectives?  
22 A To protect my family.  
23 Q Okay. Everything in here, this taped statement that  
24 you gave was a lie.  
25 A To protect my family.



1 Q To protect your family. Okay, and we'll talk about  
2 that in just a minute, okay? So the detectives say, "Did you  
3 make it over there," blah, blah, blah. And they ask you,  
4 "Where did you walk from when you walked into the gas station  
5 parking lot then?" And you say, "I'm not good with this.  
6 Like, this street; no streets." And then do you remember  
7 saying to the detective, "I been -- I promise you, I'm not  
8 lying. Promise you." Do you remember saying that?

9 A Yes, I've seen the video. Yes.

10 Q Okay.

11 A To protect my family.

12 Q But you were lying?

13 A To protect my family.

14 Q Okay. Is that a yes or no? Were you lying?

15 A Yes.

16 Q Okay. Because that was you driving the car?

17 A Yes.

18 Q That killed Marcos Arenas; right?

19 A Yes.

20 Q And you bought that dollar of gas for the SUV that  
21 was used to kill him, not for some other guy who was broken  
22 down at the gas station; right?

23 A Yes.

24 Q The detectives say, "Well, you totally are."  
25 Meaning you're totally lying. "But I'm going to go along with

1 it because this -- this is all going to come out when you say  
2 your statement and how -- how you don't care about what  
3 happened and you're going to come in here and lie about it.  
4 So I want to hear." And you tell the detectives during this  
5 taped interview two days after this boy was killed, you say,  
6 "I'm definitely not lying to you." And they say, well, I want  
7 to hear how it's going to play out for you, so go ahead." And  
8 you say, "Look, you know." And you never tell them exactly  
9 what happened; did you?

10 A I couldn't. No.

11 Q You never told the detectives when you had this  
12 opportunity, when you were going to turn yourself in, you  
13 never told them, hey, I was driving that vehicle. You never  
14 told them that; did you?

15 A I couldn't.

16 Q Okay. Was that a yes or a no?

17 A No. I couldn't.

18 Q Okay. And you never told them, hey, this was an  
19 accident. I didn't even know it was happening. You didn't  
20 tell them that; did you?

21 A I couldn't.

22 Q Okay. Is that a yes or a no?

23 A No. I couldn't.

24 Q Okay. And, you know, you did indicate on direct  
25 examination that you had received some threats?

1           A     A lot of threats.

2           Q     Okay. Okay.

3           A     And my mom read it.

4           Q     And the threats, were they before or after you found  
5 out that you all had killed someone during this robbery?

6           A     After.

7           Q     It was after? Okay. So you would have received the  
8 threats when, then? The morning of the 18th?

9           A     No. Right before I was turning myself in. Like I  
10 said, my mom read them, too.

11          Q     Okay. I'm sorry, focus on my question, okay. You  
12 found out that you had killed a boy, correct, May 18th, as you  
13 just testified to this jury, correct, the morning?

14          A     Yes.

15          Q     Okay. Then you said you received some threatening  
16 messages; correct?

17          A     Phone calls and messages.

18          Q     Okay. And you do nothing. You don't report the  
19 threats to the police?

20          A     I couldn't.

21          Q     Okay. And you actually were just going to go turn  
22 yourself in just about your involvement; right? Because  
23 you're scared; correct?

24          A     Yes.

25          Q     Okay. Now, if you didn't implicate Jacob Dismont

1 during this interview with police, what were you so afraid of?  
2 A That if I did --  
3 Q Right? You were threatened not to implicate him;  
4 correct?  
5 A Yes.  
6 Q And did you implicate him during this statement?  
7 A No.  
8 Q Did you at any point in time say, hey, it was Jacob  
9 Dismont? No, you didn't; did you?  
10 A I couldn't.  
11 Q Okay. Did you? Yes or no?  
12 A No, I couldn't.  
13 Q You did not. Okay. And so what was it exactly that  
14 you were in danger of? You didn't snitch on him. What were  
15 you afraid of?  
16 A That was the reason for me giving that frivolous  
17 testimony --  
18 Q Oh, okay. Okay.  
19 A -- is because if I did tell the truth --  
20 Q Okay.  
21 A -- they was going to harm my family.  
22 Q Okay.  
23 A They texted me the address of --  
24 Q Okay.  
25 A -- my family's house, of Brianna's house.

1           Q     Now, that had already occurred before this interview  
2 and at no time, you know -- I mean, would you agree with me  
3 that most people when they're being threatened can go to the  
4 police?  
5           A     No.  
6           MR. LEVENTHAL:  Objection.  Speculation as to most  
7 people.  
8           THE WITNESS:  No.  
9           MR. LEVENTHAL:  Argumentative.  
10          THE WITNESS:  No, definitely not.  
11          THE COURT:  Sustained.  Move on.  
12          THE WITNESS:  Who's going to protect your family  
13 when you --  
14          THE COURT:  I sustained the objection --  
15          THE WITNESS:  Oh, I'm sorry.  I'm sorry.  
16          THE COURT:  -- so you don't have to answer it.  
17          THE WITNESS:  Sorry, Your Honor.  
18          THE COURT:  Thank you.  
19 BY MS. BOTELHO:  
20          Q     You were already in custody; correct?  You were in  
21 custody, so.  
22          A     When?  
23          Q     When you gave the statement --  
24          A     Yeah.  
25          Q     -- they had already taken you in?

1 A No, I was at the headquarters.

2 Q Okay. But the police were with you?

3 A Yes.

4 Q Okay. Let's go back to, you know, what happens

5 after you got out of the vehicle pissed, telling Mr. Dismont,

6 Are you fuckin' serious? Let's go back to that, okay. You

7 were so pissed. You were, Are you fuckin' serious. That's

8 what you tell him; right?

9 A Yes.

10 Q Okay. But you get back in the car; don't you?

11 A After trying to contact Brianna's mom, Brianna's

12 stepdad, my mom.

13 Q Did you get back in the car?

14 A Ultimately I did, yes.

15 Q With Mr. Dismont?

16 A Yes.

17 Q Okay. And did your baby get in the car, too, or

18 stay in the car?

19 A Her and Brianna stayed in the car.

20 Q Okay. So you all drive where after this

21 conversation off to the side of the road?

22 A I mean, he dropped us back off.

23 Q Where?

24 A At her house.

25 Q Okay. And then what happened?

1           A     That's it.

2           Q     Okay. So he just --

3           A     He dropped us off.

4           Q     No, wait. I'm sorry. He just dropped you guys off?

5           A     Yes.

6           Q     Okay. And so when you told the ladies and gentlemen

7 of the jury during your direct examination that that same

8 night you, Brianna, the baby and Jacob Dismont went to Matthew

9 Nicholas's house, you were lying?

10          A     No. I don't remember.

11          Q     You don't remember saying that on direct

12 examination?

13          A     No.

14          Q     Okay.

15          A     No.

16          Q     Okay. State's Exhibit 147. Do you know this guy?

17          A     Matthew Nicholas.

18          Q     That's the guy we've been talking about; right?

19          A     Yes.

20          Q     That's the guy you don't remember going to his

21 apartment --

22          A     No.

23          Q     -- with Jacob Dismont, Brianna and your eight month

24 old; right?

25          A     Nope.

1 Q Okay. Do you recall making phone calls to Mr.  
2 Nicholas?  
3 A No.  
4 Q Now, Brianna is with you this entire time; right?  
5 A With -- yeah.  
6 Q Right? I'm sorry.  
7 A Yes. Yes.  
8 Q Okay. So from the time that you all went to the  
9 first gas station and where you guys were picked up, you and  
10 Brianna are together; right?  
11 A Yes.  
12 Q Okay. And do you recall seeing the text -- or,  
13 excuse me, the phone records showing calls being made from  
14 Brianna's phone, okay, to Mr. Nicholas?  
15 A I don't remember that.  
16 Q Okay. Do you remember calling Mr. Nicholas several  
17 times --  
18 A No.  
19 Q -- before going to his apartment?  
20 A I never went to his apartment.  
21 Q You never went to his apartment?  
22 A No.  
23 Q Okay. Did you drive to that apartment?  
24 A No.  
25 Q Did you sell the iPad, you know, the one that you



1 said Jacob Dismont lifted his shirt to show, did you sell that  
2 to Matthew Nicholas?

3 A No.

4 Q Okay.

5 A I never went to Matthew Nicholas' house.

6 Q Did you get \$80 for it?

7 A No.

8 Q Okay.

9 A No.

10 Q Okay. So there were just phone calls from Brianna's  
11 phone while you were with her to Matthew Nicholas. The iPad  
12 that was stolen, that was shown to you by Jacob lifting up his  
13 shirt, okay, that gets sold to him but you had nothing to do  
14 with that?

15 A No.

16 Q Okay. Because Jacob had dropped you and Brianna and  
17 the baby off --

18 A Yep.

19 Q -- at your house?

20 A Yep.

21 Q Okay. You don't recall saying on direct examination  
22 that Jacob Dismont went to Matthew Nicholas' house or  
23 apartment and sold the iPad?

24 A That's what I believe, yes, because he obtained it.

25 Q You don't remember telling Mr. Leventhal during

1 direct examination that you and Brianna and your baby and Mr.  
2 Dismont all went there together?

3 A No. Mr. Dismont did.

4 Q Because you were at home?

5 A Yes.

6 Q With Brianna --

7 A Yes.

8 Q -- and the baby?

9 A Yes.

10 Q What time would it be that you got home? Was it  
11 like right after -- like, you were pissed, you drove off to  
12 the side of the road, you were fuckin' pissed, get back in  
13 the car, then you guys just get dropped off right away?

14 A Like I said, nine years ago, yes, but I believe so.

15 Q You would agree with me that this is a pretty  
16 important day; huh?

17 A Besides my daughter's first words, yes.

18 Q Okay. And so you don't remember, though, what  
19 happened immediately after this very panicked incident when  
20 you got home?

21 A Not the exact time, no. I just remember being  
22 pissed. He took us home, dropped us off.

23 Q Okay. No contact with Matthew Nicholas?

24 A No. No contact.

25 Q Okay. You said you were so very scared of Jacob

1 Dismont; right?

2 A After the numerous threats, yes.

3 Q Because he would have whooped your ass; right?

4 A If you would have -- well, I'm pretty sure you did

5 see the text messages. It was from him and multiple of his

6 friends --

7 Q Okay. Now --

8 A -- that I don't even know.

9 Q Okay. Now, when you were giving that taped

10 interview for the police --

11 A Uh-huh.

12 Q -- and these threats had just happened, you didn't

13 tell the police or show them these texts; did you?

14 A I didn't have the phone on me. And again, I --

15 Q Okay, because you left that phone at home; correct?

16 A That was Brianna's phone.

17 Q You decided on your own to leave that phone;

18 correct?

19 A No. That was Brianna's phone. The threats were to

20 Brianna's phone.

21 Q Oh, okay. Okay. So the phone -- the records that

22 we have from Brianna; correct?

23 A Yes.

24 Q Okay. Okay, so they were on her phone?

25 A Yes.

1 Q But Brianna had her phone when you turned yourself  
2 in; correct?

3 A Yes.

4 Q Okay. And so at no time during your interview did  
5 you tell the police, hey, actually, you know, I'm being  
6 threatened. Those text messages are on my girl's phone, go  
7 check it out. You didn't do that; did you?

8 A I couldn't implement him.

9 Q Okay.

10 A I was scared.

11 Q That's a no?

12 A No.

13 Q Okay. Now again, you were with Brianna from the  
14 time he picked you up to the time Jacob Dismont dropped you  
15 off; right?

16 A Yes.

17 Q You don't recall what time you were dropped off,  
18 though.

19 A I don't.

20 Q Right?

21 A Yes.

22 Q But fair to say it was right after this incident,  
23 right after you pulled off the side of the road and confronted  
24 him; right?

25 A Around that time, yes. Around that time.

1           Q     Okay. So it would have been soon after 4:12 p.m.;  
2 right?  
3           A     I can't give you an exact. Nine years. I can't  
4 remember exactly.  
5           Q     Okay. But you weren't with him when, you know, the  
6 iPad was sold?  
7           A     No.  
8           Q     Okay. So you were already not with Jacob by that  
9 time?  
10          A     Yes.  
11          Q     Okay. All right. And so Brianna -- I just want to  
12 make sure I understand this correctly. Brianna had her phone  
13 the entire time; right?  
14          A     Yes.  
15          Q     That you were together May 16th; right?  
16          A     Yes.  
17          Q     And Jacob was communicating with Brianna on that  
18 phone; correct?  
19          A     Yes.  
20          Q     Now, were Jacob and Brianna friends independent of  
21 you?  
22          A     Yes. Brianna had a triplet. She had a twin brother  
23 and a twin sister. Jacob, he's known them since middle  
24 school.  
25          Q     Okay. Okay. So you would have been okay with your

1 friend just texting your girl without you knowing?

2 A Yeah. You know, we all had --

3 Q Okay. Okay. But you all were together May 16th,  
4 2013, though, from pick up to, you know, drop off; right?

5 A Yes.

6 Q Okay. And when you all were in the car talking  
7 about pandering (sic) and, you know, should Brianna do it,  
8 should you do it, should Jacob do it, the common purpose or  
9 the objective was for you guys to get money; correct?

10 A Yes.

11 Q Okay. And you had no knowledge -- or, you know,  
12 the plan was to get money because you all needed money; right?

13 A If we wanted to --

14 Q Somehow, some way?

15 A If we wanted to continue, yes.

16 Q Okay. And so you were privy or you were aware of  
17 the conversations that occurred at least inside of the SUV  
18 going from gas station to gas station; right? Like, you all  
19 talked. You all talked about getting money and how you were  
20 going to do that; right?

21 A Yeah. We was waiting for my sister to respond back.

22 Q Okay. My question is you all talked and discussed  
23 inside this SUV, State's Exhibit Number 144, you discussed  
24 when you went on your way to the first gas station and then  
25 on your way to the second gas station, you all discussed this

1 common plan to get money; correct?

2 A No. No.

3 Q Okay. You all discussed a plan to panhandle to get  
4 money?

5 A No. It was more -- it was more so, like I said,  
6 I was waiting for my sister to text. We was driving. Jake  
7 said, Hey, pull over to this gas station. We pulled over to  
8 there in the back. That's when he was assuming Brianna was  
9 going to get out at the second gas station to continue  
10 panhandling, but that's when she protested. So, no, during  
11 the ride there we wasn't oh, yeah, we're going to go panhandle  
12 here and there and there. No, that wasn't the discussion.  
13 Again, I was waiting for my sister to reply back.

14 Q Okay. Let's just talk about the first gas station,  
15 then; okay? Or, excuse me, the second gas station.

16 A Yes.

17 Q When Jake got out of that vehicle, okay, right  
18 before he got out of the vehicle you were at the car wash,  
19 as you testified, all three of you were discussing in the  
20 vehicle who was going to go out and get the money; right?

21 A Yes. Yes.

22 Q Get money by way of panhandling; right?

23 A Yes.

24 Q Okay. So that was the common objective, panhandle  
25 to get money; correct?

1 A Yes.

2 Q You all needed money; correct?

3 A Yes.

4 Q Okay.

5 MS. BOTELHO: May I approach with what's been marked  
6 as State's Proposed Exhibit 153?

7 THE COURT: Sure.

8 (Ms. Botelho shows exhibit to defense counsel)

9 MR. LEVENTHAL: Judge, can we approach?

10 THE COURT: Yes.

11 MR. LEVENTHAL: Thank you.

12 (Bench conference begins)

13 THE COURT: State, what are you seeking to admit?

14 MS. BOTELHO: It is not even seeking to admit it  
15 through him. I'm just seeking to confront him with the text  
16 message from this phone that is attributed to him where it  
17 says, Hey, Bebe -- "Hey, it's Babe, just keeping in touch.  
18 My friend Jake is trying to get \$40 before 5:00. If it's past  
19 5:00, is it still okay to bring it to you?" And that's time-  
20 stamped 3:46, which is, as he testified, he committed to p.m.

21 THE COURT: On the 16th?

22 MS. BOTELHO: On the -- yes. They were all  
23 together. I'm confronting him and impeaching him with the  
24 statement that, hey, they were just wanting to panhandle, they  
25 needed just gas money. He had no idea that this was going to



1 happen, what Jake was doing. But clearly in the vehicle is  
2 the defendant, his girlfriend, and she knows that Jake is  
3 trying to get 40 bucks. And by the way, the iPad sold for 80.  
4 THE COURT: Okay.  
5 MR. LEVENTHAL: So my objection is a couple things.  
6 One, it's a Tony Savage. I'm not sure if he's the sender or  
7 the receiver.  
8 MR. PALAL: You can see it on the left-hand side.  
9 I believe in the red.  
10 MR. LEVENTHAL: Oh, sorry.  
11 MR. PALAL: Green means sent, red means --  
12 THE COURT: And this is the phone that they used to  
13 get this, Brianna's phone?  
14 MR. PALAL: Yes.  
15 THE COURT: Okay.  
16 MR. LEVENTHAL: So that's -- is that Brianna's  
17 number there? I don't remember.  
18 THE COURT: Is that Tony Savage's number?  
19 MS. BOTELHO: That's Savage.  
20 MR. PALAL: That is Tony Savage's.  
21 MR. LEVENTHAL: So where would it show Brianna's  
22 phone number on this? That's, I guess, one of the big  
23 problems I'm having.  
24 THE COURT: [Indiscernible] that it's from Brianna's  
25 phone?

1 MS. BOTELHO: In rebuttal we're going to get Tate  
2 Sanborn to come up here and talk about it. Now, mind you,  
3 all of the records are in evidence.

4 MR. LEVENTHAL: But rebuttal -- I'm sorry. Rebuttal  
5 would be -- I mean, he needs -- you need to rebut something.  
6 You can't just offer in new testimony. You've already rested.  
7 So I don't -- if he doesn't see this or he doesn't say  
8 anything to the contrary, then --

9 THE COURT: Are you saying this is already in in  
10 another phone -- [inaudible].

11 MR. LEVENTHAL: It's not in.

12 THE COURT: It isn't?

13 MR. LEVENTHAL: No.

14 MR. PALAL: Your Honor, if I may. That -- the  
15 defendant has provided they're searching for a dollar. It's  
16 acknowledged. He says many times -- he says many times maybe  
17 five dollars is what I'm looking for. Maybe five dollars.  
18 And then I was surprised that Jake Dismont got out at that  
19 point to go panhandle for, you know, one to five dollars  
20 maximum. Well, in about 15 minutes before Jake Dismont gets  
21 out of the vehicle, there's a conversation going on about,  
22 hey, Jake is going to try and get \$40. That is absolutely  
23 rebutting the defendant's testimony. We don't need to  
24 confront him with it to get it in. We can get it in through  
25 Tate Sanborn, who reviewed all of the records. He can lay

1 the foundation for the text.

2 MR. LEVENTHAL: Not anymore. You can't get --

3 MR. PALAL: In rebuttal.

4 MR. LEVENTHAL: But he hasn't said anything to

5 rebut. That should have been brought in your case-in-chief.

6 MR. PALAL: No.

7 MR. LEVENTHAL: It wasn't. And so he hasn't rebutted

8 anything he doesn't know about.

9 MR. PALAL: He said Jake does not -- he got out for

10 one to five dollars and I had no idea that he was going to go

11 and do that until we got to the gas station.

12 MR. LEVENTHAL: That doesn't show that that he would

13 have known or should have known.

14 MR. PALAL: It absolutely does.

15 MR. LEVENTHAL: It does not. This is -- we don't

16 even know what phone number this is from. This is --

17 MR. PALAL: We do.

18 MR. LEVENTHAL: Where?

19 THE COURT: Where is it on here?

20 MR. PALAL: It's not on that document.

21 MR. LEVENTHAL: Well, that's --

22 MR. PALAL: I can have --

23 MR. LEVENTHAL: But that's my point.

24 MR. PALAL: I can get Tate Sanborn to come and

25 testify to it when I admit it.

1 MR. LEVENTHAL: But you can't because rebuttal means  
2 you can only rebut that which is contrary to what he's --  
3 MS. BOTELHO: No. I actually have case law where  
4 rebuttal is a lot more open than that. It's any time he puts  
5 a fact at issue in question, identity, intent, anything like  
6 that by taking the stand. He's putting that at issue.  
7 MR. LEVENTHAL: He hasn't put that at issue.  
8 MS. BOTELHO: Okay.  
9 THE COURT: He's not going to be able to know --  
10 [indiscernible]. He's just going to say I don't know what  
11 this is.  
12 MS. BOTELHO: Okay.  
13 THE COURT: It doesn't have any more information  
14 on it. You know he's going to do that.  
15 MS. BOTELHO: Yeah.  
16 THE COURT: So you need to have something that he  
17 can identify it as.  
18 MR. PALAL: I can put a digital copy on the screen  
19 and then make a printout of it.  
20 THE COURT: That's publishing to the jury without  
21 being admitted. I'm saying where on this -- is this from the  
22 phone that -- was this from Brianna's phone?  
23 MR. PALAL: This is from -- this is from her phone  
24 -- [indiscernible].  
25 THE COURT: Okay. You're telling me this, but how

1 do you show that?

2 MR. PALAL: I can get -- we're not trying to admit  
3 it. [Indiscernible]. If he doesn't know what it's about,  
4 we can admit it --

5 MS. BOTELHO: And if he denies it --

6 MR. PALAL: We can admit it to --

7 THE COURT: You can ask him the question that are  
8 relevant.

9 MS. BOTELHO: Yes.

10 THE COURT: You can't --

11 MR. PALAL: We can't admit it. We're not trying --

12 THE COURT: And then if you approach, it seems like  
13 you have it on something.

14 MS. BOTELHO: I'm just going to ask him if he sent  
15 a text message saying this. That's it.

16 THE COURT: All right. You can do it that way, but  
17 don't approach, don't show the jury.

18 MR. LEVENTHAL: Before we get there --

19 THE COURT: You can ask him the question if he sent  
20 the text.

21 MR. LEVENTHAL: Well, first of all, I think she  
22 should establish a foundation when she knows -- what's his  
23 name?

24 MS. BOTELHO: Tony Savage.

25 MR. LEVENTHAL: Tony Savage first.

1 THE COURT: All right. So ask if he knows a Tony  
2 Savage.

3 MR. LEVENTHAL: Tony Savage. And if he says no,  
4 then the inquiry stops there --

5 THE COURT: Okay.

6 MR. LEVENTHAL: -- because if they're going to get  
7 out, well, is it true you said or you saw the \$40, well, then  
8 you can't unring that bell again and you can't -- you know.  
9 And so I think that you need to establish that foundation --

10 THE COURT: Let's start with Tony Savage. Let's see  
11 where we get with him.

12 MR. LEVENTHAL: -- along the way. Right?

13 THE COURT: All right. You're stuck with -- answers  
14 on collateral matters, you're stuck with the answer. Let's  
15 see what he says about Tony Savage and about sending that text  
16 message. There you go.

17 MS. BOTELHO: Okay.

18 (End of bench conference)

19 BY MS. BOTELHO:

20 Q Mr. Solid, do you know an individual by the name  
21 of Tony?

22 A No.

23 Q And would you know whether or not your girlfriend,  
24 Brianna Licari, would know someone by the name of --

25 MR. LEVENTHAL: Objection. Speculation.

1 THE COURT: Overruled. You may answer.  
2 MS. BOTELHO: Thank you.  
3 BY MS. BOTELHO:  
4 Q Would you know whether or not Brianna Licari, your  
5 girlfriend at the time that Marcos was killed, whether she  
6 would know or have reason to know a person by the name of Tony  
7 Savage?  
8 MR. LEVENTHAL: Objection. Compound.  
9 THE WITNESS: I don't know.  
10 THE COURT: Overruled.  
11 Do you understand the question?  
12 THE WITNESS: Yes, I understand the question. But  
13 I don't --  
14 THE COURT: You don't know if Brianna knows a Tony  
15 Savage?  
16 THE WITNESS: Yeah, I don't know.  
17 THE COURT: All right.  
18 BY MS. BOTELHO:  
19 Q Prior to Jacob Dismont coming out of the vehicle,  
20 did you know that he was looking specifically for \$40?  
21 MR. LEVENTHAL: Objection. Speculation.  
22 THE COURT: Overruled. You may answer.  
23 THE WITNESS: Forty dollars?  
24 BY MS. BOTELHO:  
25 Q Did you know whether he was specifically looking

1 to get \$40?

2 A No.

3 Q Did Brianna Licari know Matthew Nicholas?

4 MR. LEVENTHAL: Objection. Speculation.

5 THE COURT: Overruled. If you know. If you can

6 answer.

7 BY MS. BOTELHO:

8 Q Did your girlfriend know State's Exhibit Number 147?

9 Did she know him?

10 A I don't know. I know she knew his girlfriend.

11 Q Okay. I'm sorry. My question was do you know if

12 your girlfriend at the time, Brianna Licari, knew Matthew

13 Nicholas?

14 A I don't know. I don't know if she knew him or not.

15 Q Do you recall meeting with or going over -- or

16 meeting with Jacob Dismont the day after Marcos Arenas was

17 killed?

18 A Meeting up with him where?

19 Q Him biking over to your house?

20 A Yes.

21 Q Do you remember that?

22 A Yes.

23 Q Okay. When was that?

24 A What do you mean? Like --

25 Q What time of day?



1           A     I don't recall.

2           Q     Okay. And so you had just -- you didn't know it was  
3 on the news yet; right? Right? You didn't know that a kid  
4 had been killed; right?

5           A     Can I be honest? I don't even --

6           Q     I mean, you should always be honest because you're  
7 under oath.

8           A     No, I'm saying -- I'm saying I don't recall Jacob  
9 Dismont coming over there. I just -- I'm just going off of  
10 what the detective said. I don't -- it's nine years ago.

11          Q     Okay. You don't have an independent recollection?

12          A     No, I don't. I don't.

13          Q     Okay. But you have no reason, because you don't  
14 remember, you have no reason to dispute Detective Abell  
15 testifying before the ladies and gentlemen of the jury that he  
16 saw Jacob Dismont biking on that little bike over to your  
17 house. You have no reason to dispute that; right?

18          A     I don't know. The detectives lied a lot, so --  
19 throughout this whole case.

20          Q     Oh, okay. Okay.

21          A     I don't know.

22          Q     Okay, sir. You -- you testified that you were not  
23 part of the whole changing the look of the SUV; correct?

24          A     Definitely not. No.

25          Q     Okay. And initially when you drove it you knew that

1 there were no license plates on it; right?

2 A Yes.

3 Q Okay. Now, were you and Jake the kind of friends  
4 where he could just go over to your house without you being  
5 there --

6 A Yes. Everybody --

7 Q -- to take things?

8 A Yes. Everybody came and went. Yeah.

9 Q Okay. And so he would just have access to your  
10 house?

11 A Brianna's house, yes.

12 Q Brianna's house.

13 A The garage is like a -- it's kind of like a hang out  
14 spot. Me, Anthony, Scooby. Yeah, so people did come and go.  
15 Like I said, she had a twin sister and a twin brother. They  
16 was triplets. So there was numerous people coming through --

17 A Okay.

18 Q -- you know. Yes.

19 A Okay. Now, Mr. Dismont, you know from the evidence,  
20 right, that a license plate belonging to Brianna's mother was  
21 actually found on the SUV that had stickers added to it and  
22 all kinds of stuff. You know that; right?

23 A I later -- later -- yes, I later learned that. Yes.

24 Q Okay. And it's your testimony that the detective --  
25 or, excuse me, that somehow Jake just got that without your

1 knowledge?

2 A Yes.

3 Q Okay. And would you have had any knowledge of Jake  
4 being at your house except for the time that you met up on May  
5 17th --

6 A I wouldn't --

7 Q -- the day after the robbery?

8 A I wouldn't know. Like I say, he's friends with her  
9 sister, Nicki, her brother, Joe. They've known each other  
10 since middle school.

11 Q Okay.

12 A If anything, I'm new to the picture.

13 Q Okay. But you have no reason to dispute that you  
14 two met on the 17th?

15 A I don't recall, but if that's the detective's --

16 Q Okay. But if the detective said it, then it must be  
17 okay?

18 A Apparently. That's how it seemed to be going this  
19 whole time.

20 Q Okay. Okay. And so you were so offended, right,  
21 that he had just robbed this kid of this iPad; right?

22 A Yes.

23 Q With you in the car; right?

24 A Yes.

25 Q That you got back in the vehicle with him after you

1 confronted him, What the fuck; right?

2 A Yes.

3 Q And you continued to have communications with him;

4 correct?

5 A Yes.

6 Q Okay. Communications that you subsequently deleted;

7 correct?

8 A No. No.

9 Q Okay. So you are denying deleting text messages and

10 phone call records between you and Jacob Dismont?

11 A Yes.

12 Q Okay.

13 A It wasn't my phone, like I sais.

14 Q Okay. Would Brianna Licari have any reason to

15 delete those calls?

16 THE WITNESS: I wouldn't know.

17 MR. LEVENTHAL: Objection. Speculation.

18 THE COURT: Sustained.

19 THE WITNESS: Like they said, them text messages --

20 MR. LEVENTHAL: Michael.

21 THE COURT: You don't have to answer.

22 THE WITNESS: Oh, okay.

23 THE COURT: Sustained.

24 BY MS. BOTELHO:

25 Q Did you get rid of that Batman necklace?

1           A     No. I left it there with my phone, like I said  
2 previously.

3           Q     Are you aware that the Batman necklace has never  
4 been found?

5           A     I'm not aware of that until they said it.

6           Q     And are you aware that your phone hasn't ever been  
7 found?

8           A     No. I didn't even know they was looking for it.

9           Q     Okay.

10          A     They've been trying to say Brianna's phone --

11          Q     I mean, you heard all of the testimony, though,  
12 right, from the detectives where, you know, they knew the  
13 phone that Brianna had to be one that you shared with her?

14          A     They was insinuating, yes --

15          Q     Okay.

16          A     -- that Brianna's phone was my phone.

17          Q     Okay.

18          A     So that probably gave them reason not to look for  
19 my phone --

20          Q     Okay.

21          A     -- because they were so busy not focusing on the  
22 evidence and trying to put together things to try to convict  
23 me.

24          Q     Okay. Now, do you recall the testimony of Desirie  
25 Jones and Robert Taylor where when they contacted the

1 detectives they gave the detectives your known phone number?  
2 Do you remember that?

3 A No. I actually have trial scripts --

4 Q Do you remember --

5 A I don't. No.

6 Q -- them testifying to that?

7 A No.

8 Q Okay.

9 A He said that was not my phone.

10 Q Okay. So is the answer you don't remember them  
11 testifying right here a few days ago, saying they gave the  
12 detectives your phone number --

13 A No.

14 Q -- which was Brianna Licari's number?

15 A No, they didn't say that.

16 Q You don't remember that?

17 A No.

18 Q Okay.

19 A They said Brianna's.

20 Q Okay.

21 MS. BOTELHO: Brief indulgence, Your Honor.

22 THE COURT: Okay.

23 BY MS. BOTELHO:

24 Q And, sir, you do have a 2013 -- August 30th of 2013  
25 conviction for theft; correct?

1           A     I believe my counsel brought that up, yes.

2           Q     Is that a yes?

3           A     Yes.

4           Q     And you also have a June 20th, 2013 conviction for

5 petit larceny; correct?

6           A     Yes.

7                 MS. BOTELHO: I have nothing further. Thank you.

8                 THE COURT: Mr. Leventhal.

9                 MR. LEVENTHAL: Just briefly.

10                         REDIRECT EXAMINATION

11 BY MR. LEVENTHAL:

12           Q     Michael, when you are at the gas station, did you

13 plan or organize or discuss with Jacob Dismont about stealing

14 anything from anybody?

15           A     Never. I never planned nor conspired with Jacob to

16 steal or rob from anybody that day. I was just trying to get

17 out of the house. That's it. And like I said, this could

18 have been any one of you guys. I did not conspire with him.

19           Q     Do we agree you made some stupid mistakes after all

20 of this, Michael?

21           A     Yeah. Yes. Yes, I did.

22           Q     For example, when you talked to the detectives --

23           A     Yes, I did.

24           Q     -- you lied to them, didn't you?

25           A     I did. But if you would have seen the threats --

1 again, anybody would have said the same thing. When you  
2 receive a text message with your known address on there, with  
3 your mom's known address on there, who in their right mind is  
4 going to go to the police and testify against that man, when  
5 his friends, people you've never even seen a day in your life  
6 said that they're going to harm the mother of your child, your  
7 daughter.

8 MS. BOTELHO: Objection, Your Honor, to this  
9 narrative. I mean, I think it's non-responsive at this time.  
10 I would move to strike.

11 THE COURT: Please stop asking jurors to put  
12 themselves in your shoes.

13 THE WITNESS: I'm sorry.

14 THE COURT: It's okay. Just answer the question.

15 THE WITNESS: Yes.

16 THE COURT: You may continue, Mr. Leventhal, if you  
17 want to direct the questioning a little more.

18 MR. LEVENTHAL: Thank you, Judge.

19 BY MR. LEVENTHAL:

20 Q I want to go back to, Michael, the gas station, and  
21 I'm just going to show you some still photographs real quick.  
22 Again, you were positioned, your vehicle was positioned or  
23 Jacob's vehicle was positioned heading -- the front end was  
24 towards Charleston?

25 A Yes.



1 Q Okay. And then eventually I think it was brought up  
2 on cross that you then turned around to put gas in; right?  
3 A Yes.  
4 Q Okay. And then again, when you went from that gas  
5 pump to the second gas pump, the vehicle was again towards  
6 Charleston; correct?  
7 A Yes.  
8 Q And do you recognize this as the interior?  
9 A Yes.  
10 Q And you talked about how you went into the vehicle  
11 -- when you went back into the vehicle on the second pump you  
12 were in the passenger seat; right?  
13 A Yes, I was.  
14 Q Then you jumped over to get into the driver's seat?  
15 A Yes.  
16 Q And that's while your daughter was being fed by your  
17 girlfriend?  
18 A Yes.  
19 MR. LEVENTHAL: Pass the witness. Thank you.  
20 THE COURT: Ms. Botelho, anything based on that?  
21 RE CROSS EXAMINATION  
22 BY MS. BOTELHO:  
23 Q Do you remember Mr. Leventhal asking you whether  
24 you, you know, conspired with Jacob Dismont to commit this  
25 robbery?

1 A Yes.

2 Q Do you remember him asking you just that?

3 A Yes.

4 Q And you indicated no; correct?

5 A Yes, I did.

6 Q That you didn't conspire; right?

7 A I did not conspire.

8 Q You didn't know what he was going to do when he

9 left --

10 A No, I did not.

11 Q -- the SUV; correct?

12 A I did not.

13 Q Okay. Had you ever known Jacob Dismont to do

14 something similar?

15 A No.

16 Q Were you ever present when Jacob Dismont committed a

17 similar offense?

18 A No.

19 MS. BOTELHO: Nothing further.

20 THE COURT: Anything?

21 MR. LEVENTHAL: Nothing further. Thank you.

22 THE COURT: Ladies and gentlemen of the jury, any

23 questions for this witness? Seeing none.

24 Mr. Solid, you are excused. You may take your seat.

25 Does defense have any additional witnesses?

1 MR. LEVENTHAL: No, Your Honor.  
2 THE COURT: Does defense rest at this time?  
3 MR. LEVENTHAL: Yes, Your Honor.  
4 THE COURT: State, any rebuttal witnesses?  
5 MR. PALAL: Yes, Your Honor.  
6 THE COURT: Okay.  
7 MR. PALAL: The State calls Tate Sanborn.  
8 THE COURT: Okay.

9 **TATE SANBORN**

10 [having been recalled as a witness and being first duly sworn,  
11 testified as follows:]

12 THE CLERK: Thank you. Please have a seat. State  
13 and spell your first and last names for our record.

14 THE WITNESS: Tate Sanborn. T-a-t-e S-a-n-b-o-r-n.

15 THE COURT: Welcome back, Detective Sanborn.  
16 Your witness..

17 MR. PALAL: Thank you, Your Honor.

18 **DIRECT EXAMINATION**

19 BY MR. PALAL:

20 Q Detective Sanborn, as part of your job as the lead  
21 investigator in this case, did you have access to the phone  
22 downloads of both Michael Solid's phone and Jacob Dismont's  
23 phone?

24 A Yes.

25 Q And on the Michael Solid phone, you testified

1 earlier that they had been known to share that phone; is that  
2 correct?

3 A Correct.

4 Q And you got that information from other witnesses;  
5 is that fair?

6 A Yes.

7 THE COURT: Counsel, who is "they"?

8 MR. PALAL: I'm sorry?

9 THE COURT: You had said they were known to share  
10 the phone.

11 MR. PALAL: Oh, I apologize. I apologize, Your  
12 Honor.

13 THE COURT: I just want to make sure that we're  
14 clear on the record what we're talking about.

15 BY MR. PALAL:

16 Q That Michael Solid and Brianna Licari were known to  
17 share the phone that you had recovered?

18 A Correct.

19 Q And you had heard -- and you had learned that from  
20 other witnesses that you had spoken to; correct?

21 A Yes.

22 Q And in particular was that the two witnesses that  
23 reported recognizing Michael Solid on March 17th, 2013?

24 A That was one of the sources, yes.

25 Q But that wasn't the only source?

1           A     Correct.

2           Q     Okay. Now, when you reviewed the cell phone  
3 download that belonged to Michael Solid and Brianna Licari,  
4 did you ever see any conversations from that phone to another  
5 phone to indicate that defendant Solid had another phone?

6           A     I'm sorry? I'm sorry, can you say that again?

7           Q     I probably -- I phrased that poorly. So you're  
8 aware that Michael Solid and Brianna Licari shared a child;  
9 correct?

10          A     Correct.

11          Q     And it's fair to say that if somebody shares a child  
12 with somebody, there will be a lot of -- there's probably  
13 going to be a lot of communications between the two; right?

14          A     Correct.

15          Q     Like, hey, pick up some baby formula. Hey, we're  
16 out of, you know, those mashed potatoes or the sweet mashed  
17 potatoes that the kids like; right?

18          A     Correct.

19          Q     Did you see anything on the phone that you recovered  
20 belonging to Michael Solid and Brianna Licari that indicated  
21 that the owner of that phone was communicating to the father  
22 of their child at all?

23               MR. LEVENTHAL: Objection. Leading.

24               MR. PALAL: I asked did he. I didn't suggest the  
25 answer.

1 THE COURT: Overruled. You can answer.

2 THE WITNESS: No.

3 BY MR. PALAL:

4 Q So there was nothing -- so is it fair or unfair to  
5 say that there was nothing on the phone that indicated that  
6 Mr. Solid had another phone?

7 A Correct.

8 Q Now, with regard to -- the other phone that you  
9 reviewed is Jacob Dismont's; is that true?

10 A Yes.

11 Q And one thing that you had talked about in your  
12 original testimony, I think it was Friday -- it seems like a  
13 long time ago but I think it was Friday, that you had observed  
14 successfully eight phone calls from Solid and Licari's phone  
15 to this gentleman right here; is that correct?

16 A Yes.

17 Q Matthew Nicholas?

18 A Yes.

19 Q Did you also review Jacob Dismont's phone to see if  
20 there were any contacts between Jacob Dismont and Matthew  
21 Nicholas?

22 A Yes. I reviewed Jacob Dismont's phone and searched  
23 the number that belonged to Mr. Nicholas through Dismont's  
24 phone, but was unable to find any communication between  
25 Dismont and Nicholas.

1           Q     So if I understand it, of the two phones, Solid/  
2     Licari's phone contacted Matthew Nicholas, but Jacob Dismont's  
3     never contacted Matthew Nicholas?

4           A     Correct.

5           MR. PALAL:   Okay.  And, Your Honor, we're going to  
6     get to the rebuttal issue.  Do you want us to approach?

7           THE COURT:   Okay.  Did you guys want to approach?

8                     (Bench conference begins)

9           THE COURT:   So let's start -- I will let Mr. -- I'll  
10    let you guys make the record.  My first question is how is  
11    this not impeachment on a collateral matter?

12          MR. PALAL:   It's statements in furtherance of a  
13    co-conspiracy --

14          THE COURT:   Okay.

15          MR. PALAL:   -- because they are co-conspiring at  
16    this point to rob, to obtain money, \$40; right?  That's the  
17    conspiracy.  And so this is --

18          THE COURT:   So when you say "they," you're talking  
19    about Jacob Dismont and --

20          MR. PALAL:   Michael Solid and Brianna Licari,  
21    because at this point Michael Solid has implicated Brianna  
22    Licari as part of -- they're all in agreement to get money.  
23    And they're saying for one dollar or five dollars, but they're  
24    all in agreement to get money.  So, Brianna Licari is an  
25    uncharged co-conspirator at this point.

1 THE COURT: For panhandling, not for the robbery.  
2 MS. BOTELHO: That's their argument.  
3 MR. PALAL: Well, that's what they admitted, but  
4 this is evidence to the contrary that they are co-conspiring  
5 to obtain \$40.  
6 THE COURT: Let me look at these messages.  
7 MS. BOTELHO: And I specifically asked him -- Agnes  
8 Botelho. I specifically asked him on cross-examination did  
9 he know, you know, whether Jacob was trying to get a specific  
10 amount of money, \$40, and he said no.  
11 MR. PALAL: And lastly, Your Honor, it's not a  
12 collateral issue. It's the actual heart of the issue whether  
13 or not Michael Solid knew that Jacob Dismont -- what Jake  
14 [inaudible] when he got out of the car. Was he panhandling  
15 or was he trying to obtain -- was he trying to rob? This goes  
16 to the heart of that matter.  
17 THE COURT: What is the \$40 for? What is he trying  
18 to get from Tony Savage?  
19 MR. PALAL: Because I think --  
20 THE COURT: I couldn't tell from this.  
21 MR. PALAL: So what it's for, respectfully, Your  
22 Honor, I don't think it is relevant. He's trying to get --  
23 I think the timing is what's relevant. We're talking about  
24 3:46.  
25 THE COURT: Okay, 3:46.



1 MR. PALAL: 3:46, the robbery --  
2 MS. BOTELHO: Marcos -- the 9-1-1 call occurs at  
3 4:12.  
4 THE COURT: Okay.  
5 MR. PALAL: So we're talking about --  
6 THE COURT: About a half hour.  
7 MR. PALAL: -- literally a half hour, a half hour  
8 before.  
9 THE COURT: Okay.  
10 MR. PALAL: They had just arrived. They arrive --  
11 they just arrive in the area. The phone pings this in the  
12 area at 3:50.  
13 THE COURT: Okay.  
14 MR. PALAL: They're trying to get \$40. Jake is  
15 trying to get \$40 and they ultimately steal. You can't  
16 panhandle for \$40.  
17 THE COURT: Right.  
18 MR. PALAL: And Jake -- or Michael Solid ultimately  
19 sells the iPad for \$80. What's 80 divided by 2?  
20 MR. LEVENTHAL: Are you serious? You're going to  
21 get into this on a rebuttal witness? This is not rebuttal.  
22 This is so improper.  
23 MS. BOTELHO: It actually is.  
24 THE COURT: Well, let Mr. Leventhal make his record  
25 and then I'll hear from you. Mr. Leventhal.

1 MR. LEVENTHAL: This is so improper on rebuttal,  
2 from a rebuttal witness. A rebuttal witness is there to rebut  
3 or to prove what anybody has said to the contrary. That's  
4 rebuttal. This is real communicates that they've already --  
5 have rested on. They're introducing brand new testimony that,  
6 again, I'll just put on the record, we have no idea where it's  
7 coming from. We never heard -- I mean, you want to confuse  
8 the jury? You want to confuse the jury right now and start  
9 talking about Tony Savage? I mean, we already have with  
10 Scooby. I have no idea who that is.

11 THE COURT: Regarding the rebuttal issue, it seems  
12 to me it's rebutting Mr. Solid's story that he told us today  
13 about the panhandling. So I don't think that's such an issue.  
14 I think it's -- there is some money and it's about who is this  
15 and what's the \$40 for and what's -- is it a bad act?

16 MS. BOTELHO: But it's not a bad act as to Mr.  
17 Solid, you know. I mean, so it's not implicating him.

18 THE COURT: But this is from Solid's phone.

19 MS. BOTELHO: Yeah, but talking about --

20 THE COURT: -- saying to somebody for \$40 for an  
21 unknown thing.

22 MS. BOTELHO: Right. Showing knowledge that he knew  
23 Jacob was out to get money and not just panhandle money.  
24 We're talking a larger amount of money. And that's why the  
25 \$80 is so important.

1 MR. PALAL: And the last thing is --  
2 MS. BOTELHO: The \$40 is so important.  
3 MR. PALAL: -- it's ten minutes before Jacob gets  
4 out of the car. He testifies it's ten minutes before Jacob  
5 gets out of the SUV. The defendant testified that I only knew  
6 that Jacob was going to go panhandle the second he got out of  
7 the vehicle.  
8 MS. BOTELHO: And I asked that over and over to get  
9 him to commit to it, you know.  
10 THE COURT: Okay.  
11 MS. BOTELHO: I mean, it's the heart of their  
12 defense because their defense is he did not know a robbery  
13 was occurring.  
14 MR. LEVENTHAL: Are you reading it? Can I read it?  
15 THE COURT: Yeah.  
16 MS. BOTELHO: He didn't know that Jacob was going to  
17 be committing a robbery. And here we have knowledge from a  
18 phone that he is known to use.  
19 (Mr. Palal speaking to Mr. Leventhal; inaudible)  
20 THE COURT: So you are saying it's relevant to show  
21 that he needed money, that Jacob needed money?  
22 MR. PALAL: No.  
23 MS. BOTELHO: No.  
24 MR. PALAL: It's relevant to show that the defendant  
25 knew --

1 MS. BOTELHO: Had knowledge.

2 MR. PALAL: -- that Jacob was going out to get money  
3 well before he says he knew that Jacob was planning to do  
4 that. And that it's a greater quantity than he admitted on  
5 the stand, because you're not going to panhandle for --  
6 there's no world -- it's common sense that he's not going to  
7 be panhandling for \$40. So it goes to his knowledge of what  
8 Jacob was going to do; his knowledge that Jacob was going to  
9 commit a robbery.

10 THE COURT: That Jacob wants \$40? I mean, everyone  
11 wants -- I want \$40 right now. I'd rather have \$40 than a  
12 dollar.

13 MR. PALAL: Yeah, but he says --

14 MR. LEVENTHAL: And how are you going to turn an  
15 iPad into \$40 cash?

16 MR. PALAL: He turned it into 80.

17 MS. BOTELHO: He turned it into 80.

18 MR. LEVENTHAL: The next day.

19 MS. BOTELHO: That same day, Todd. Three hours  
20 later.

21 MR. PALAL: Your Honor, but it's not just that he  
22 needs money. It's that he needs money thirty minutes before  
23 committing a robbery, and a larger quantity that he admitted  
24 to.

25 MS. BOTELHO: It goes directly to rebut the

1 assertion that he didn't know what Jacob was coming out of  
2 that car for.

3 MR. PALAL: Bebe says, "It's me." So it's not to  
4 Bebe, it's from Bebe.

5 THE COURT: So this is from --

6 MR. PALAL: The phone that --

7 MR. LEVENTHAL: Bebe, I guess.

8 THE COURT: Brianna?

9 MR. LEVENTHAL: Yeah, Brianna. Yes.

10 THE COURT: So Brianna is trying to get money for  
11 Jake?

12 MR. PALAL: No. Brianna says --

13 MS. BOTELHO: No.

14 MR. PALAL: Brianna says Jake -- my friend Jake is  
15 trying to get \$40.

16 THE COURT: My friend Jake is trying to get \$40  
17 before 5:00.

18 MR. PALAL: Yeah, before 5:00.

19 THE COURT: If it's past 5:00, is it still okay to  
20 bring it to you?

21 MR. LEVENTHAL: What he needed was for Bebe --  
22 [inaudible].

23 THE COURT: So who does he owe -- does he owe the  
24 money to Tony?

25 MR. PALAL: It doesn't matter.

1 MS. BOTELHO: It doesn't matter.

2 MR. PALAL: It doesn't matter. Maybe he's trying  
3 to buy --

4 MS. BOTELHO: We're introducing it solely for --  
5 to show that he has knowledge.

6 MR. PALAL: And I'll redact that last part.

7 THE COURT: Okay. This is going to be a terrible  
8 record. You're both talking.

9 MR. PALAL: Okay, sorry.

10 THE COURT: One of you talk. Go ahead.

11 MS. BOTELHO: So what Mr. Solid's entire defense is,  
12 when Jacob Dismont left the SUV, okay, he didn't know what he  
13 was going to do.

14 MR. LEVENTHAL: Yes, he did know. Sorry.

15 MS. BOTELHO: He didn't know what he was going to  
16 do in terms of that he was going to try to rob anybody of  
17 anything, okay. He was panhandling to get money. This  
18 directly contradicts that, okay. This is the phone that's  
19 attributed to Mr. Solid. This is the phone that's attributed  
20 to him. He testified Bebe is with him the entire time.  
21 They're talking. And he testified on direct and cross,  
22 anytime Bebe got a call or something, she would tell him.  
23 Now, this is just his own version. She would tell him, hey,  
24 you know, he said pick him up at Jack-in-the-Box, or hey, he  
25 did this; okay? So either way any kind of communication on

1 this phone lends credence to the fact that he had knowledge  
2 that when Jacob got out of that SUV, Judge, he was out to get  
3 more than panhandle money. He was out to get the 40.

4 THE COURT: He owed Tony \$40.

5 MR. PALAL: It doesn't say he owes Tony.

6 MS. BOTELHO: It doesn't say he owes.

7 THE COURT: Yes, it does.

8 MR. PALAL: Does it really?

9 THE COURT: He's trying to get \$40. I'll text you  
10 when he does, so I can tell you on the way. What's your  
11 address? And your girl can pick up the money later on. We're  
12 trying to get that money for you. [Inaudible]. My friend is  
13 trying to get that \$40 before 5:00. If it's past 5:00, is it  
14 still okay bring it to you? So he owes this money to Tony.

15 MR. PALAL: Or he could be trying to complete a  
16 different transaction before 5:00.

17 MR. LEVENTHAL: Nowhere in here does it say Michael  
18 Solid. It says, Bebe. We don't know who owes. There's so  
19 many more questions than answers at this point.

20 THE COURT: Sustained. I don't know. I can't -- you  
21 can't get there with this. There's just not enough specifics.

22 MR. LEVENTHAL: Thank you.

23 (End of bench conference)

24 BY MR. PALAL:

25 Q All right. So, Detective Sanborn, when you were

1 able to download or when you received the downloads on the  
2 phones, the phones recovered deleted messages; is that  
3 correct? Or the download recovered some deleted messages;  
4 is that correct?

5 A Correct.

6 Q And in those deleted messages did you see any  
7 message from Jacob Dismont threatening Michael Solid?

8 A I don't recall so, no.

9 MR. PALAL: Okay. The State will pass the witness.

10 THE COURT: Mr. Leventhal or Mr. Marchese.

11 MR. MARCHESE: Just briefly, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. MARCHESE:

14 Q So, Detective, I know you were just here a couple  
15 days ago, but in reference to the phone dump, you don't  
16 actually do that particular task; correct?

17 A Correct.

18 Q You were just given the information that -- I  
19 believe it was Detective Berghuis, I think it was?

20 A Correct. Detective Berghuis. Yes.

21 Q That Detective Berghuis gets from his report. Is  
22 that accurate?

23 A Correct.

24 Q And throughout your looking at it, his report, you  
25 found certain text messages that we all went over on direct



1 examination last week?

2 A Yes.

3 Q Now, in reference to the Solid/Licari phone, the one  
4 that was in Ms. Licari's name but you had found that Mr. Solid  
5 sometimes used it, in reference to that there were some  
6 deleted messages; correct?

7 A Correct.

8 Q But you were also able to recover some deleted  
9 messages as well?

10 A Correct.

11 Q And when I say you, I mean Detective Berghuis;  
12 correct?

13 A Correct. Correct.

14 Q And so obviously we don't know what those deleted  
15 messages say; correct?

16 A The ones --

17 Q The ones that you were unable to recover?

18 A Correct. The ones that we weren't able to recover,  
19 no. The ones that were recovered, yes.

20 Q And again, how far back were the records for the  
21 Licari/Solid phone?

22 A That phone that we recovered for the Solid/Licari  
23 phone I think came online or active on May 15th.

24 MR. MARCHESE: Okay. Thank you.

25 THE COURT: Anything based on that?

1 MR. PALAL: No, Your Honor.

2 THE COURT: Any other questions for the detective  
3 at this time based on his rebuttal testimony, ladies and  
4 gentlemen of the jury? Seeing nothing.

5 You are excused again.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you.

8 Does the State have additional witnesses?

9 MS. BOTELHO: We need a few moments outside the  
10 presence to discuss.

11 THE COURT: Okay. Ladies and gentlemen, let's take  
12 a break and have you come back here at 3:10.

13 During the recess you are admonished not to talk or  
14 converse amongst yourselves or with anyone else on any subject  
15 connected with the trial, or read, watch or listen to any  
16 report of or commentary on the trial of any person connected  
17 with the trial by any medium of information, including without  
18 limitation newspapers, television, the Internet and radio,  
19 or form or express any opinion on any subject connected with  
20 the trial until the case is finally submitted to you.

21 Please stand for the jury. 4:10. Sorry, not 3:10.  
22 We can't time travel.

23 (Jury exits the courtroom)

24 THE COURT: All right. The jury has exited the  
25 room. We can be at ease. Is there anything we need to

1 discuss or do you just need a few minutes to talk?

2 MS. BOTELHO: There is something that we would like  
3 to bring to the Court's attention.

4 THE COURT: Yes.

5 MS. BOTELHO: The State believes based on Mr. Solid's  
6 testimony today, particularly his answer to the last two  
7 questions, and really his entire defense in general of not  
8 having knowledge concerning Mr. Dismont's actions on this  
9 particular day, warrant and would allow the State to introduce  
10 evidence of other bad acts.

11 THE COURT: Okay.

12 MS. BOTELHO: And they are the same bad acts that  
13 were testified to under oath during penalty at the last  
14 hearing, Your Honor. They involve a robbery wherein -- it  
15 occurred on March 23rd of 2013. Mr. Dismont is actually  
16 arrested and charged with robbery and battery with intent to  
17 commit robbery, and that's March 23rd, 2013. The victim's  
18 name is Abdelkader Zalyaul. And this is the SuperPawn incident  
19 that we talked about during penalty. And he testified; he was  
20 subject to cross-examination. And basically I can give these  
21 reports to you, Your Honor, to look at.

22 THE COURT: I did review them already.

23 MS. BOTELHO: Okay. And they did -- just so the  
24 record is clear, it did involve Mr. Dismont shortly -- like  
25 a month and a half before the robbery committing a robbery

1 with two black males, one of which is -- both of which are  
2 captured on surveillance, one of which is Mr. Dismont -- or,  
3 excuse me, Mr. Solid.

4 THE COURT: My understanding is -- and if I'm wrong  
5 about this, maybe I have it wrong, please correct me on that  
6 -- is that Mr. Solid was not charged with this and a witness  
7 did not identify him in a lineup.

8 MS. BOTELHO: The witness did not identify him in  
9 a lineup, but he was captured on surveillance with this  
10 individual.

11 THE COURT: Okay, maybe let me see the report, then.

12 MS. BOTELHO: And there's a larger photo in the  
13 back.

14 THE COURT: Thank you. And so it's your belief that  
15 he opened the door with the last questions when you asked him,  
16 You're not aware of Mr. Dismont committing these type of  
17 offenses. He said no. And I guess that's kind of where it  
18 was left.

19 MS. BOTELHO: Yes, but also his entire defense,  
20 putting his character at issue when he testified and took the  
21 stand and asserted the defense of I had no knowledge that  
22 Jacob Dismont, when he left the vehicle, was going to steal an  
23 iPad is directly contradicted by the facts of this particular  
24 case, which shows Jacob Dismont again being the muscle. He's  
25 the one that's actually robbing the individual while Mr. Solid

1 and another black male adult are kind of in the cut initially.  
2 I think they made contact with the victim at the SuperPawn.  
3 They're captured on surveillance. And at some point the  
4 victim follows the vehicle containing Mr. Dismont and the  
5 others to an apartment complex, where he receives a phone call  
6 from Michael Solid saying, you know, hey, hurry up, what's  
7 taking so long. Meanwhile, you know, Jacob Dismont, who's  
8 with the victim, actually robs him of money. But it's all  
9 under the guise of selling an iPad. And they're together at  
10 the scene.

11 It is another crime charge, but it goes directly to  
12 rebut. And it's not offered for propensity. It's not offered  
13 to prove conformity therefrom. What it's being offered for is  
14 to rebut the express defense that he asserted on the stand  
15 under oath. He said I had no idea Jacob Dismont was going to  
16 do this. How can you have no idea that this person was going  
17 to do this when you were with him when he committed this  
18 robbery a month and a half before? And so the State would be  
19 making a motion to be allowed to introduce this evidence based  
20 on that.

21 THE COURT: Okay.

22 MR. MARCHESE: So we probably should have objected  
23 that they were -- and I guess we dropped the ball on that,  
24 that they were asking about bad acts of Mr. Dismont. So it's  
25 my understanding that the State is attempting to bring in bad

1 acts of Mr. Dismont.

2 THE COURT: No, no. They're saying it's Mr. Solid.

3 MR. MARCHESE: Okay.

4 THE COURT: Do you want to see the report?

5 MR. MARCHESE: All right. Well, this is way too  
6 late. This should have been done years ago. To say that they  
7 didn't know, that this is a new defense that he was unaware of  
8 what was going on, I believe it was even somewhat proffered in  
9 the last trial. This should have been litigated way before  
10 closing arguments are about to take place.

11 THE COURT: I don't think we're closing today.

12 MR. MARCHESE: Well, but that was the goal and that  
13 was -- for whatever reason we had, you know, breaks and  
14 whatnot and the direct and the cross took a little bit longer  
15 than I think than everyone had anticipated. But I would argue  
16 that this should have been noticed, we should have briefed it,  
17 had hearings, etcetera. We were expecting this to maybe come  
18 up in penalty if we got there, but for it to come up in the  
19 middle of the State's rebuttal is -- I mean, this is basically  
20 -- I can't think of anything else other than prosecution by  
21 ambush.

22 MS. BOTELHO: If I may, Your Honor. I was actually  
23 trial counsel the first time.

24 THE COURT: Yeah.

25 MS. BOTELHO: We agreed not to introduce this

1 evidence in our case-in-chief because he didn't testify. The  
2 difference here is that he did. And he asserted this defense  
3 and he said --

4 THE COURT: Was there motion work on this then,  
5 previous that I'm not aware of?

6 MS. BOTELHO: I don't believe so. But the problem  
7 is is that everyone knew about the existence of this  
8 particular case or these cases because it was testified to at  
9 length during penalty. And so it was invoked and the door is  
10 essentially open now that this defendant took an oath, took  
11 the stand and put his character and his version of events  
12 directly contradictory to what we have in terms of evidence.  
13 And so --

14 MR. LEAVITT: Briefly, Your Honor, one of the --  
15 oh, sorry.

16 THE COURT: Understood. Okay. My view on this is  
17 that this defense has not changed. From reviewing the  
18 transcripts of the prior trial, this is essentially the same  
19 defense. The State was on notice of this. The State should  
20 have brought a motion regarding this. So then if it's just  
21 purely a bad acts motion, it's untimely. So if I'm looking at  
22 this from opening a door, was the door opened by Mr. Solid's  
23 testimony, I think it was opened by the State when they tried  
24 to open their own door, but that's not how bad acts are  
25 allowed in. And so I'm not going to allow this bad act to

1 come in for this purpose at this time.

2 MS. BOTELHO: And just so the record is clear, Your  
3 Honor --

4 THE COURT: Of course.

5 MS. BOTELHO: -- and I understand your decision, I'm  
6 not asserting at all that the bad act was opened just by those  
7 questions. I'm saying that the bad act -- or the facts of  
8 this case, the door was opened when he took the stand and said  
9 this particular day I had no knowledge -- you know, it was  
10 panhandling, it was this, it was that, versus, you know, just,  
11 yeah, I knew because, hey, he had committed a robbery in front  
12 of me before, you know. And so it's not just the questions.  
13 The State wasn't just trying to open the door on its own.

14 THE COURT: Sure.

15 MS. BOTELHO: It's his very defense. And truth be  
16 told, we did not ever try to assert it in our case-in-chief  
17 because we wanted to keep it clean until and if he testified.  
18 And they were not trial counsel previously, but that was  
19 always the understanding. We would take it into penalty  
20 unless and until it became so relevant during the course of  
21 trial, particularly if he testified. He didn't testify last  
22 time. But, I mean, you know, I understand the Court's ruling.  
23 I just wanted that to be clear. The State is not moving to  
24 admit it just for -- you know, because we opened our own door.

25 THE COURT: Sure. I think ultimately the defense



1 here -- the only defense that's really available in this case  
2 is that he didn't know a robbery was going to occur. And that  
3 was the defense last time. And ultimately if this had been,  
4 you know, motioned earlier maybe we would have been able to  
5 address it more fully and had a hearing. There are some  
6 issues -- although I agree this picture leaves no doubt --  
7 there's some issues within the report regarding clear and  
8 convincing, but that's something we would have addressed if  
9 we had a hearing. I just don't think that this -- that his  
10 testimony was so divergent or so different or really  
11 introduced a new facet to anything that would allow opening  
12 the door to this bad act, when it hadn't previously been  
13 motioned.

14 And so I'm going to deny the request. I will return  
15 -- do you want me to save this as a court exhibit or --

16 MS. BOTELHO: No. I mean --

17 THE COURT: You want me to just leave it there?

18 MS. BOTELHO: We're not getting it, so, yeah.

19 THE COURT: Okay. And so with that being said, do  
20 you guys want -- do you guys have additional witnesses?

21 MS. BOTELHO: If we could just take the break to  
22 confer?

23 THE COURT: Of course.

24 MS. BOTELHO: And, Your Honor, I would like to  
25 request a JAVS of the defendant's testimony.

1 THE COURT: Okay.

2 MS. BOTELHO: In anticipation of closing and  
3 rebuttal tomorrow.

4 THE COURT: And, Jessica -- Okay, we got it.

5 MS. BOTELHO: Thank you so much.

6 THE COURT: All right. I'm going to give you a  
7 couple minutes and you let me know.

8 MR. PALAL: Perfect. Thank you.

9 THE MARSHAL: Court is in recess.

10 THE COURT: Anything else from the defense at this  
11 point?

12 MR. MARCHESE: No, Your Honor. Thank you.

13 MR. LEVENTHAL: No, Your Honor. Thanks.

14 (Court recessed from 4:07 p.m. until 4:16 p.m.)

15 (Jury is not present)

16 THE COURT: ... And then I was going to read them  
17 the jury instructions, just so we could save a little time  
18 tonight, and then dismiss them and have them come back for  
19 openings -- closings tomorrow at noon. Does that work?

20 MR. PALAL: That's fine with the State.

21 MS. BOTELHO: Yes, Your Honor.

22 MR. MARCHESE: Yeah.

23 THE COURT: Okay.

24 MR. MARCHESE: Judge, you're the judge.

25 MR. LEVENTHAL: Judge, you're the judge.

1 MR. MARCHESE: I mean, come on.  
2 MR. LEVENTHAL: Thanks, Jess.  
3 THE COURT: I understand. I'm just -- it doesn't  
4 make a lot of sense to keep you guys here --  
5 MR. LEVENTHAL: No. I agree.  
6 MR. PALAL: Yeah, agree.  
7 THE COURT: -- when we're going to have to  
8 deliberate -- we might have to have additional -- you know,  
9 this trial is not done.  
10 MR. MARCHESE: Yeah. How does your calendar look  
11 tomorrow?  
12 THE COURT: I have a homicide calendar. Do you want  
13 to try to get here at 11:00?  
14 MR. MARCHESE: Oh, I don't care.  
15 THE COURT: I can try to push everyone along. My  
16 only thing was I was trying to remember which -- I told one of  
17 the jurors she could go to her ultrasound.  
18 MR. PALAL: Yeah.  
19 THE COURT: And was that tomorrow?  
20 MR. PALAL: Your Honor, I think noon is fine.  
21 THE COURT: Noon is fine?  
22 MR. PALAL: Noon is fine.  
23 THE COURT: Okay. We'll get it done?  
24 MR. PALAL: We'll be done. We'll give it to them --  
25 THE COURT: And we'll figure it out from there.

1 MR. PALAL: Yes.

2 THE COURT: Okay. We'll stick with that plan. I

3 don't want to have her miss her first ultrasound if I told her

4 she could go to it.

5 Okay. Anything else before we bring the jury in?

6 MS. BOTELHO: No.

7 MR. MARCHESE: No, Your Honor.

8 MR. LEVENTHAL: No. Thank you.

9 THE MARSHAL: Ready to go?

10 THE COURT: Yes.

11 THE MARSHAL: Stand for the jury.

12 (Jury enters the courtroom)

13 THE COURT: Do the parties stipulate to the presence

14 of the jury?

15 MR. PALAL: The State does, Your Honor.

16 MR. MARCHESE: Defense does.

17 THE COURT: You may be seated.

18 Ladies and gentlemen of the jury, at this time I'm

19 going to read the instructions, the instructions on the law to

20 you. Remember I keep saying I'll instruct you on the law.

21 Well, this is the time. I might go a little fast. Don't

22 worry, you will get copies of these instructions back with you

23 when you go deliberate. Also, don't worry, we're not going to

24 roll into closing arguments. We're going to have you come

25 back tomorrow to start those.

1 MS. BOTELHO: And, Your Honor, I don't mean to  
2 interrupt. Have we rested on the record?

3 THE COURT: Oh, I'm so sorry. Thank you for the  
4 reminder. State, do you have a motion at this time, or did  
5 you want to rest at this time?

6 MS. BOTELHO: The State would rest.

7 THE COURT: Okay. And I think -- was there anything  
8 else that needed to be moved in?

9 MS. BOTELHO: No.

10 THE COURT: We're good. Okay.

11 MS. BOTELHO: Thank you.

12 THE COURT: All right. So the State has rested.  
13 At this time I'm going to move into jury instructions.

14 (The Court reads Jury Instructions 1 through 38 aloud)

15 THE COURT: Parties approach.

16 (Bench conference begins)

17 THE COURT: We do not have the mandatory instruction  
18 about --

19 MR. LEVENTHAL: I'm sorry, what's the question?

20 THE COURT: We do not have the mandatory instruction  
21 about what they're supposed to read, watch or listen to  
22 because this was pre that case being decided. It's close to  
23 my recess admonishment, but it's NRS 175.401. Should I just  
24 make it --

25 MR. PALAL: Yeah, just read it and then we'll add it.

1 THE COURT: Let me see if I can find it real quick.  
2 Do you know what I'm talking about?

3 MS. BOTELHO: I know exactly what you're talking  
4 about. Let me see if I can find it in my [inaudible] from  
5 another case from October while you look for it. Can I look?

6 THE COURT: Okay. I'm going to look.

7 MR. LEVENTHAL: We'll stand out here and pretend  
8 like we're doing something while she's looking.

9 THE COURT: Okay, I appreciate it. I'm going to  
10 also look --

11 MR. LEVENTHAL: No problem.

12 THE COURT: -- so you guys make it look like I'm  
13 doing something.

14 (Colloquy among counsel)

15 THE COURT: I have the *Bowman* -- on the *Bowman*  
16 instruction. I have it. Do you want me just to read it?

17 MR. PALAL: Yes, please.

18 THE COURT: I'm going to read it as 39 and then  
19 we'll renumber these before we give them, okay?

20 MR. PALAL: Okay.

21 THE COURT: All right.

22 MR. LEVENTHAL: And we'll get a clean copy of these  
23 tomorrow?

24 THE COURT: Once I fix it. I was going to give it  
25 to you now, but I have to add one.

1 MR. LEVENTHAL: Okay. Thank you.

2 (End of bench conference)

3 (The Court reads Jury Instructions 39 through 41 aloud)

4 THE COURT: All right. So those are the instructions  
5 on the case. You will get a copy for yourselves when you go  
6 to deliberate.

7 For tonight we are adjourned. I'm going to read  
8 the recess admonition and then have you guys back here at noon  
9 tomorrow. During the recess you are admonished not to talk or  
10 converse amongst yourselves or with anyone else on any subject  
11 connected with the trial, or read, watch or listen to any  
12 report of or commentary on the trial of any person connected  
13 with this case by any medium of information, including without  
14 limitation newspapers, television, the Internet and radio,  
15 or form or express any opinion on any subject connected with  
16 the trial until the case is finally submitted to you.

17 You are excused. Please rise for the jury.

18 THE MARSHAL: Stand for the jury.


19 (Jury exits the courtroom)

20 THE COURT: All right. The jury has exited the  
21 room. Just to make the record clear, we had almost forgotten  
22 the *Bowman* instruction, which is mandatory, so I threw that in  
23 on the fly. That's now going to be Instruction 39. Any  
24 objection to that being offered in that manner?

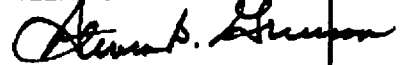
25 MS. BOTELHO: No.

1 MR. LEVENTHAL: No, Your Honor.  
2 THE COURT: Okay. And then we're going to renumber  
3 40 -- 39 is going to become 40; 40 is going to become 41.  
4 We'll get that renumbered and together and give you a copy of  
5 that. If you need it today so you can use it for closings,  
6 we can get that done right now if you want to hang out.  
7 MS. BOTELHO: Yeah.  
8 MR. PALAL: That sounds good. Thank you, Your  
9 Honor.  
10 THE COURT: Or I can --  
11 MS. BOTELHO: I'm waiting for JAVS anyway.  
12 THE COURT: Yeah. Okay.  
13 MS. BOTELHO: Thank you.  
14 MR. PALAL: Thank you.  
15 (Court recessed at 4:44 p.m. until the following day,  
16 Tuesday, May 24, 2022, at 12:10 p.m.)  
17 \* \* \* \* \*

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.

  
Liz Garcia, Transcriber  
LGM Transcription Service





TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL SOLID,

(AKA) MICHAEL SAMUEL SOLID,

Defendant.

CASE NO. C-13-290260-1  
DEPT NO. II

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE CARLI KIERNY, DISTRICT COURT JUDGE

TUESDAY, MAY 24, 2022

TRANSCRIPT OF PROCEEDING RE:

**JURY TRIAL - DAY 7**

APPEARANCES:

FOR THE STATE:

BINU PALAL, ESQ.

AGNES BOTELHO, ESQ.

Chief Deputy District Attorneys

FOR THE DEFENDANT:

TODD M. LEVENTHAL, ESQ.

JESS MARCHESE, ESQ.

RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER  
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**I N D E X**

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1       **LAS VEGAS, CLARK COUNTY, NEVADA, MAY 24, 2022, 12:10 P.M.**

2                               \* \* \* \* \*

3                               (In the presence of the jury.)

4               THE COURT: Do the parties stipulate to the presence  
5 of the jury?

6               MS. BOTELHO: The State does.

7               MR. LEVENTHAL: Yes, Your Honor.

8               THE COURT: All right. You may be seated.

9               All right. Ladies and gentlemen, welcome back. We  
10 are on to closing arguments in this case. Because the State  
11 has the burden of proof, they get to open first and last, and  
12 the defense goes in the middle.

13               So at this time we are moving to the State.

14               Are you ready to proceed?

15               MR. PALAL: Yes, Your Honor.

16               THE COURT: Okay. Go ahead, Mr. Palal.

17                               **CLOSING ARGUMENT FOR THE STATE**

18               MR. PALAL: On May 16th, 2013, Marcus Arenas was  
19 doing nothing more than trying to get lunch for him and his  
20 dad. He walked from his house to go to Chipotle. He runs into  
21 his friend Gacory. They go to the Chevron to grab some snacks,  
22 and then they're walking home.

23               And indisputably, Jacob Dismont takes the defendant's  
24 iPad -- Marcos's iPad, indisputably. And, ladies and  
25 gentlemen, but for the defendant conspiring with Jacob, but for

1 the defendant aiding and abetting Jacob, Marcos Arenas would be  
2 alive today.

3 Jacob Dismont took Marcos's iPad. Michael Solid took  
4 Marcos's life. This case is about first-degree murder. That's  
5 it. It's about first-degree murder, whether the defendant  
6 committed first-degree murder.

7 And you were read a lot of instructions at the end of  
8 the day yesterday. There are first two kinds of first-degree  
9 murder. There's willful, deliberate and premeditated murder,  
10 and then there's felony murder, killing during a robbery. And  
11 you were read instructions regarding premeditation,  
12 willfulness, deliberation. The State's not arguing that on  
13 that morning Mr. Solid got up and thought, hey, I'm going to  
14 kill somebody. The State is not arguing that. So you don't  
15 need to worry about the willful, deliberate and premeditated  
16 instructions.

17 What the State is arguing is throughout May 16th,  
18 2013, and particularly at the time the defendant pressed the  
19 gas in the vehicle that killed Marcos Arenas, the defendant  
20 knew he was part of a robbery.

21 So we're going to talk about the felony-murder rule,  
22 Rule Number 9. So you're going to get a packet with the  
23 instructions. I took the time to write what the instructions  
24 are in case you want to write them down for future reference,  
25 but here they are.

1           And it says with regard to the felony-murder rule,  
2 therefore a killing which is committed in the perpetration of a  
3 robbery is deemed murder in the first degree whether the  
4 killing was intentional, unintentional or accidental, or the  
5 product of provocation in the heat of passion. This is called  
6 the felony-murder rule.

7           The intent to take the property must be formed prior  
8 or during the act constituting the killing. So if the  
9 defendant had the intent to have property taken prior or even  
10 during the act where Marcos Arenas is killed, the defendant is  
11 guilty of first-degree murder.

12           The felony-murder rule, the law says again does not  
13 matter if the killing was intentional, unintentional or  
14 accidental. So Mr. Solid's intent as he pressed the gas as  
15 Marcos was holding onto that vehicle doesn't matter with  
16 regards to what happened to Marcos. That's not the intent you  
17 have to worry about. The killing.

18           And, you know, the felony-murder rule is something  
19 that's been around for a long time. And I'd like to give you  
20 just an example of what the felony murder is -- felony-murder  
21 rule is. The common example I use in the courthouse frequently  
22 if two guys decide to go rob a bank and one's going to be the  
23 getaway driver and the other one is going to go in armed and do  
24 the point the firearm at the teller and say, hey, give me your  
25 money, and as he's walking towards the teller a security

1 officer confronts him and maybe this is the -- that robber's  
2 first time robbing; he gets a little nervous. Let's say they  
3 had a firearm accidentally goes off killing the security guard.  
4 In that instance, under the felony-murder rule, both would be  
5 guilty of first-degree murder.

6 When I started this case with you guys during voir  
7 dire, I asked if you could do two things: Keep an open mind  
8 and follow the law.

9 If you keep an open mind and follow the law, there's  
10 no answer for this defendant other than guilty of first-degree  
11 murder.

12 The felony-murder rule applies to coconspirators and  
13 aiders or abettors, right, because in my example, I'm talking  
14 about the driver, even if he's responsible for the killing at  
15 all, the driver, as long as he was part of the robbery, is  
16 guilty of first-degree murder.

17 And there's a reason for that. The law discourages  
18 people from engaging in crimes that are inherently dangerous,  
19 and a robbery is an inherently dangerous crime. The  
20 felony-murder rule does not apply to every felony. It applies  
21 to a very strict and small subset, and robbery is one of those  
22 felonies where the felony-murder rule applies. If somebody  
23 dies during the course of a robbery, whether you are the actual  
24 person doing the robbing or a coconspirator or an aider or  
25 abettor, you are responsible for it.

1           So if you find that Michael Solid conspired with  
2 Jacob Dismont to rob Marcos Arenas, he's guilty of first-degree  
3 murder.

4           If you find that Michael Solid aided and abetted  
5 Jacob Dismont to rob Marcos Arenas and he intended the robbery  
6 be committed he's guilty of first-degree murder.

7           So let's talk about robbery, right. We got to  
8 understand what robbery is to understand whether or not he's  
9 guilty.

10          Okay. This is Instruction Number 18. It's the  
11 unlawful taking of personal property from the person through  
12 force or violence or fear of injury, and the robbery is going  
13 when to obtain or retain the possession of property to prevent  
14 or overcome resistance and to facilitate escape with the  
15 property. And there's no question that the defendant was  
16 facilitating the escape with the property.

17          Aiding and abetting is defined that where two or more  
18 persons are accused of committing a crime together their guilt  
19 may be established without proof that each person -- that each  
20 person personally did every act constituting the offense.  
21 Those who knowingly with criminal intent aid and abet its  
22 commission, whether present or not, and with the intent of the  
23 crime being committed is guilty, and you have to aid and  
24 promote, and encourage or instigate.

25          So if you're aiding, if you're helping, you're

1 guilty. You're aiding and abetting, and you're guilty of the  
2 crime. Everything when you're aiding and abetting is equally  
3 guilty. Jacob and the defendant equally guilty.

4 Conspiracy, a conspiracy is an agreement between two  
5 or more persons for an unlawful purpose. The defendant must  
6 intend to commit or to aid in the commission of a specific  
7 crime agreed to. The crime is actually the agreement.

8 And the law recognizes that conspiracy is seldom  
9 susceptible to direct proof and is usually established by  
10 inference from the conduct of the parties. In particular, a  
11 conspiracy may be supported by a coordinated series of acts in  
12 furtherance of the underlying offense sufficient to infer the  
13 existence of an agreement.

14 A conspiracy to commit a crime does not end upon the  
15 completion of the crime. Even when the crime is completed, the  
16 conspiracy does not end. The conspiracy continues until the  
17 coconspirators have successfully gotten away and concealed  
18 their conduct.

19 Each member of the conspiracy is liable for each act;  
20 the act of one is the act of all. The formation or existence  
21 of a conspiracy may be inferred from all the circumstances  
22 intending to show the common intent.

23 And this makes sense because we don't have thought  
24 bubbles over people's head; right? We don't know exactly what  
25 they're thinking when they do something. So the only way you



1 can know what somebody is doing is by their actions; right?  
2 When I came to court today, I put on a suit. I drove to the  
3 courthouse and started walking in the courthouse direction. At  
4 that point you don't know -- there's no way for you to know  
5 exactly what I'm thinking, but you can infer based on my series  
6 of actions that I'm going to the courthouse.

7 Finally, deadly weapon is any instrument which if  
8 used in the ordinary manner contemplated by design or  
9 construction will or likely to cause substantial bodily harm or  
10 death, but also if it's used under the circumstances in which  
11 it is used, attempted to be used or threatened to be used is  
12 readily capable of causing substantial bodily harm or death.

13 So we don't normally think of a car as a deadly  
14 weapon; right? Normally when we think of a deadly weapon we're  
15 thinking about a gun or a knife, but in the manner in which it  
16 is used in this case, it is. In fact, it's the instrument that  
17 kills Marcos.

18 So if you find that Michael Solid conspired with  
19 Jacob Dismont to rob Marcos Arenas, he's not just guilty of  
20 first-degree murder; he's guilty of first-degree murder with a  
21 deadly weapon.

22 Or if you find that he aided and abetted Jacob  
23 Dismont, he's not just guilty of first-degree murder. He's  
24 guilty of first-degree murder with a deadly weapon.

25 And again, in particular, conspiracy may be supported

1 by a coordinated series of acts in furtherance of the  
2 underlying offense sufficient to infer the existence of the  
3 agreement. Again, we're inferring the agreement from people's  
4 actions.

5           So let's see what the coordinated series of acts are.  
6 At 2:41 and 2:45, Michael Solid and Jacob Dismont are in  
7 contact. They have calls, and they originate from where they  
8 live. So if you take a look here, here is Oquendo. Here's  
9 Russell. Here's Tenaya. And then again you have Russell,  
10 Oquendo and Tenaya. So we're looking at right in this area,  
11 these towers. These calls were hitting off from where they  
12 live. They're calling each other, making a plan.

13           And then they proceed from where they live all the  
14 way down here, and the CS is our crime scene, as Agent Ryan  
15 Burke testified to. Agent Burke testified that these towers  
16 indicate the people were driving or someone who's driving.

17           Now, this is the curious part and part of what we  
18 heard yesterday. They're driving to panhandle for gas. Do you  
19 think there's some gas stations closer than here, I mean,  
20 closer than here from where they're starting? They're  
21 expending more gas to get to the place where they're going to  
22 panhandle for gas than the money that they could purchase the  
23 gas for. It doesn't make any sense whatsoever. It doesn't  
24 make any sense whatsoever.

25           Then you heard from Agent Burke that Solid's cell

1 phone pings off the tower at 3:50; right. And regardless of  
2 whether you believe it, Solid's phone or Licari's phone, he  
3 says they were all together; right. So they're all together.  
4 She's got the phone. She's right next to him at 3:50. 3:50 is  
5 the first time that telephone pings there, 3:50.

6 What's going on between 3:50 and 4:02? They arrive  
7 at the gas station. You see them on the camera at the gas  
8 station at 4:02. So what are they doing for the previous  
9 10 minutes? What's going on for the previous 12 minutes? We  
10 know something's going on. We know that Gacory and Marcos are  
11 in the Chipotle. During this time that they are in the area  
12 not at the gas station. So Solid arrives driving Dismont's  
13 SUV.

14 And remember, when you look at the video, the time is  
15 about 16 minutes fast, and we see it without the license plate.

16 And then Dismont shows up at 4:03. So they're in the  
17 area at 3:50, and Jacob shows up about 13 minutes later at the  
18 gas station. And again, they passed by each other, barely an  
19 acknowledgment, which is incredibly odd given that one is  
20 driving the other person's car. And we know that the boys are  
21 coming from Chipotle. And here you see Jacob Dismont, and here  
22 you see the boys coming from Chipotle. It's 4:03.

23 Solid pays for \$1 worth of gas. And again, ladies  
24 and gentlemen, in what scenario does it make any sense for a  
25 person to pay for \$1 of gas? It simply defies logic that you

1 would walk up and pay for \$1 worth of gas. And so why is the  
2 defendant telling you something that you know makes no sense at  
3 all? Because the alternative explanation is what actually  
4 happened. The defendant is here under the ruse to rob.  
5 Solid -- again, because if you need \$1 to pay for gas, why are  
6 you coming all the way from Summerlin to that area?

7 Solid crosses paths with Marcos and Gacory around  
8 4:03:28. And here's the thing. If he needs money, why doesn't  
9 he ask those kids; right? And it's not like he's asking for  
10 large amounts of money. Apparently a dollar will do. He's  
11 passing by those kids; he doesn't say one word, doesn't ask  
12 them for a single thing. If he's panhandling, or if their goal  
13 is to get money, why not ask these two kids?

14 And he says on the stand, Well, you know, being a  
15 black man, you know, people may not give me money. Well,  
16 Gacory is black. He might. If your goal is to get something  
17 so small as 1 dollar, why not ask these two kids? Why just  
18 ignore them as they pass you? Because that's not their goal.  
19 The goal isn't to get a dollar. You got your eyes on the  
20 prize. You're trying to get more than that.

21 So we're to believe that Dismont is there just  
22 panhandling, although, as you notice, he doesn't actually go to  
23 any cars where people are. In fact, he makes a big show of  
24 kind of going all the way around. For panhandling, he's doing  
25 a pretty poor job.

1 But what Dismont and Solid both do is they both go to  
2 the car. It's the most circuitous route that Jacob Dismont can  
3 take to the car, but they both go to the car, and they meet at  
4 the car.

5 At 4:03:50, Solid and Dismont get in the car.  
6 Fifteen seconds later, the boys leave, and then what we're to  
7 believe by sheer coincidence, as they're going to the Market &  
8 Smokes, Jacob leaves, again not asking anyone for money.

9 By the way, where's he going? We're told he's going  
10 to the Jack-in-the-Box. Is he going in the direction of the  
11 Jack-in-the-Box? Or is he going where the boys went, to the  
12 Market & Smokes?

13 And you'll see somebody else entering the screen, and  
14 again, not asking him for money either. And there was this  
15 statement made by the defendant that somehow the State is  
16 hiding video which actually shows where Jacob is going and  
17 asking people for money. And he says, well, him and his  
18 attorneys reviewed it together. Well, how come you haven't  
19 seen that video? How come you haven't seen that video? If he  
20 has it, certainly he should be playing it; right?

21 Now, they don't have a burden, to be clear, but if he  
22 says he has video of Jacob going around and asking people for  
23 money, don't you think that's important? Wouldn't that make  
24 sense? The reason why you folks haven't seen it is because it  
25 doesn't exist. It's a fiction, a fiction like basically

1 everything you heard yesterday.

2 Now, Dismont is not going to the Jack-in-the-Box.  
3 You can tell by the direction. He's right at the corner. The  
4 Jack-in-the-Box is right there for him to walk directly to.  
5 Why is he walking in the direction of the smoke shop? Because  
6 his goal isn't to go to the Jack-in-the-Box and panhandle.  
7 He's seen two young boys, a 14-year-old and a 15-year-old, and  
8 he knows what he's planning on doing, and he makes that plan  
9 after meeting with the defendant.

10 Now, the SUV reparks at the pump at 4:05:39, and he  
11 may have put a dollar in; he may not have, but he's certainly  
12 now in a better view to see exactly what's going on.

13 At 4:07:09, you can see the boys walking across the  
14 street. And this video will replay a couple of times just to  
15 kind of give you a view because it's kind of...

16 (Video played.)

17 You can see that the boys were walking across the  
18 street.

19 And less than a minute later, the SUV conveniently  
20 decides to reposition itself. The SUV reparks at a different  
21 gas pump. No gas is pumped.

22 Now, we've heard from the defendant that his daughter  
23 and his baby's mother were in the vehicle with him, and that's  
24 somehow a way to explain all his behavior. And he parks under  
25 the shade because he so concerned about his 8-month-old

1 daughter. I would submit to you if you're so concerned about  
2 your 8-month-old daughter you're not taking her across the  
3 valley to panhandle for a dollar. If you are such a concerned  
4 father, you're making sure your daughter gets back home. If  
5 you're such a concerned father, this never happens. She's in  
6 the -- if she's in the car with you, this never happens because  
7 in what world are you driving halfway across the valley to  
8 panhandle with your 8-month-old in the back?

9 It's not like he doesn't have a place to live; right?  
10 That would be different, right, if you didn't have a place to  
11 live. He is coming from his house to panhandle for a dollar  
12 with an 8-month-old in the back.

13 He's positioned instead, I would submit to you, you  
14 know, putting -- you know, the concerned father putting his  
15 daughter in the shade during this hunt for dollars and  
16 panhandling. He's positioning himself for the bigger score.  
17 And coincidentally, it puts him right in position to see the  
18 boys as they are walking on the other side of Charleston.

19 Now, Solid gets out of the SUV from about 4:09:21 to  
20 4:10. It's about 29 -- I guess 9 seconds.

21 And he tells you it's for a smoke.

22 Now, the 39 second smoke seems again, incredible,  
23 unbelievable, a 39 second smoke. What draws -- what makes it  
24 so short? And you can see just that part of the video. You  
25 can see the defendant get out of the vehicle, and he's obscured

1 by the little pillar area in the middle. And we know this is  
2 4:09:31 to 4:09:51, 20 seconds where he's obscured. He's  
3 looking in the area of where the boys are. He's looking in the  
4 area where Dismont is.

5 And then inexplicably, 20 seconds later, he decides  
6 to go back. Why is he going back for the 20 second smoke or is  
7 there a phone call at 4:09 p.m.? Well, we know for a fact  
8 there's a phone call at 4:09 p.m. We know for a fact that  
9 phone call comes from Jacob Dismont to the phone that Mr. Solid  
10 had access to. We know for a fact that that call lasted 13  
11 seconds.

12 Then it's followed by another call. Again, Dismont  
13 calls Solid, and it's 4:11 p.m., two minutes later, and again,  
14 it's an incredibly short call. And then on cue, the defendant  
15 goes on to Charleston to pick up Jacob Dismont, who has been  
16 stalking at this point the boys.

17 He doesn't -- what he told you on the stand was, hey,  
18 I got out, and I was going to go to Jack-in-the-Box, and then I  
19 realized that -- then I saw Jacob on the other side of West  
20 Charleston. Again, does that make any sense? Like, does his  
21 actions indicate that he's actually going to the  
22 Jack-in-the-Box? How does he end up in the left-hand turn  
23 lane?

24 Now, when talking about the actual struggle, we hear  
25 from -- we heard from a number of witnesses. I think it was



1 Wednesday, and right now let's talk about Gacory and Alejandro,  
2 because they have one (indiscernible) vehicle. Gacory both  
3 described Dismont as grabbing the iPad from behind. Both  
4 describe a struggle over the iPad. Both describe an awaiting  
5 white SUV.

6 Both say that Marcos was screaming, screaming, and  
7 both say the windows were open; right? The people say the  
8 windows were open. And one way you can know that is both  
9 describe the driver as black, and one way you can know that the  
10 windows were open is, like, look at the SUV. Now there's a  
11 slight tint. There's a slight tint if you look straight on to  
12 the SUV about who's in there if the windows were up. You can  
13 see, you know, from this angle, you know, you can probably  
14 see -- probably see who the driver was.

15 But remember, their angle is not a direct angle. In  
16 fact, their angle is from behind. (Indiscernible) the driver's  
17 is black if the windows are open? How would they know? And  
18 this is what they told the police on May 16th, 2013. The  
19 driver was black. How did they know? From their angle, from  
20 behind, how do they know? It's because the window was down.

21 And why is it important that -- to Mr. Solid to  
22 fabricate that part of the story? Because if Marcos is  
23 screaming and the windows are open, he knows what's going on.  
24 If he knows what's going on, he's guilty of first-degree  
25 murder.

1 Now, the other thing is you had the defendant say, I  
2 didn't run over Marcos. He didn't get run over by the vehicle.  
3 And why is that important? Because if he's running over a  
4 person and not stopping its (indiscernible) he knows what's  
5 going on. Who else would run over a person, under what  
6 circumstances would you run over a human being and not think to  
7 stop.

8 But for you, ladies and gentlemen, he has to tell  
9 you. He has to tell you. He has to tell you that I didn't run  
10 over him, that I didn't know what was going on. I didn't run  
11 over him. Because if he ran over him and didn't stop, what's  
12 the reasonable inference that you guys could draw? What's the  
13 only reasonable inference? He knows what's going on.

14           So what I submit to you is listen to the most  
15 contemporary version of the events that occur, not nine years  
16 later, not a fabricated story from nine years later. Listen to  
17 what happened, the recounting of it less than one minute after  
18 it happens.

19 (9-1-1 call played.)

20 MR. PALAL: They dragged him along the car. They ran  
21 over him. This is immediately afterwards. This is not with a  
22 sense of time. This is not with let's make up something for  
23 trial. This is immediately as it's happening, and you can hear  
24 she's genuinely traumatized by the events. Who wouldn't be?  
25 They dragged him along the car. They ran over him.

1           Of course, it's not just Rebecca that says that  
2 contemporaneous to the event occurring. Cristine Bullard calls  
3 9-1-1.

4                               (9-1-1 call played.)

5           MR. PALAL: Someone just got run over by a car. I  
6 think that a head got run over by a tire.

7           And then the other thing that's important for this  
8 case is she says, I hear sirens, right. This is an amazing  
9 response time. This has occurred -- that call's at 4:13. The  
10 first call is at 4:12. That's an amazing response time.

11           Well, what do we know about that response time?  
12 Well, you heard the paramedic on the scene. What she told you  
13 is she arrived almost immediately, not because she was  
14 dispatched to the call at that point. She just noticed traffic  
15 slowing. There was a commotion. So she did a turn. She got  
16 there, and she saw Marcos on the ground. And what did she say  
17 about Marcos? Do you remember? He had tire marks on him, tire  
18 marks on him. These aren't either immaculate tire marks or the  
19 defendant running him over.

20           But why would the defendant lie about that? Because  
21 the only way to explain running over somebody and not stopping  
22 is because you know what's happening. He knows. He knows  
23 that. So this is why he comes up with an incredible story of,  
24 oh, I didn't run him over. He may have kicked my car or  
25 something like that, but I didn't run him over.

1           And, in fact, we had testimony read in, and again,  
2 during the voir dire, I had to ask you guys about reading  
3 testimony. There are a couple of witnesses given the fact that  
4 this is nine years later that aren't available. They testified  
5 under oath at a previous hearing, and I asked you guys, would  
6 you be able to consider that and give it the weight that it  
7 deserves and you all said yes.

8           And this is what the reading from the fetal  
9 reconstructionist came back and said. He said that there is a  
10 scuff mark, a light indentation. It could be a sneaker or  
11 something rubbing against the road for about 55.72 feet, and  
12 then there's a significantly deeper mark for the next  
13 32.79 feet, for a total of 88.5 linear feet. For nearly  
14 90 feet Marcos Arenas is holding on for his iPad, for his life.  
15 And the defendant wants you to believe he had no idea that that  
16 was happening. And why? Because if he knows what's happening,  
17 and does nothing about it afterwards, it's because he's in on  
18 it.

19           And, in fact, how does Solid -- how does Dismont get  
20 away if Solid isn't in the right place at the right time? You  
21 heard everybody say that there was a struggle. They were  
22 struggling and that Marcos ran after Jacob. Jacob knew exactly  
23 where to run to, exactly where to run to, and Michael Solid was  
24 right where he needed to be in order to felicitate the escape  
25 with the property.

1 I want to touch very briefly on the defendant saying,  
2 oh, well, you know, Jacob had the iPad under his clothing,  
3 under his tank top. Does that make any sense? Now, if I'm  
4 going to go shopping someplace, if I'm going to steal something  
5 from an Albertson's or maybe a Best Buy, maybe taking an iPad  
6 from Best Buy, that makes sense to conceal it, right, because  
7 I'm not trying to be attention by anyone. I don't want  
8 security seeing me. I don't want the workers to see me. That  
9 makes sense.

10 When you're in the struggle in the middle of the  
11 street to get an iPad, why in the world would you then tuck it  
12 in to your pants and cover it up with your tank top? When does  
13 he even have the time to do it and why would he do it? In the  
14 course of a strong-arm robbery, that makes no sense at all.  
15 He's not trying to be sneaky about it. He grabbed it and is  
16 fighting with Marcos and then runs to his car.

17 Again, why does the defendant need you to believe  
18 that? Because the iPad is out; he knows what's happening, and  
19 he's guilty of first-degree murder.

20 But let's call Mr. Solid what he is. He's the  
21 getaway driver, and the getaway driver is guilty of  
22 first-degree murder when during the course of a robbery you hit  
23 and kill a 15-year-old boy.

24 There's another instruction. The flight of a person  
25 immediately after the commission of a crime or after he's

1 accused of a crime is not sufficient in and of itself to  
2 establish guilt but is a fact which if proved may be considered  
3 by you in light of all the other proved facts in deciding this  
4 question of guilt or innocence.

5 And basically what Instruction Number 30 says is,  
6 look, if you're fleeing a scene, if you're leaving, if you're  
7 trying to escape, you're trying to escape from something.  
8 People don't flee scenes for no reason. They flee because they  
9 know they've done something wrong. That's the law. And he  
10 does flee with Marcos attached. And you see where Marcos laid.

11 Significantly, while Mr. Solid is pressing the gas,  
12 the robbery is still going on. Remember our robbery  
13 instruction from earlier. To facilitate escape with the  
14 property, that's what Mr. Solid's doing. He's facilitating  
15 escape with the property. The robbery is still ongoing until  
16 the escape is complete.

17 And where does he go? Well, Mr. Solid told you, I  
18 was so offended by the actions of Jacob Dismont, I was so  
19 offended that I hopped out of the car, confronted him, and then  
20 immediately had us drive home. He was very adamant about that.  
21 And again, why does he need you to believe that? Because if  
22 he's still acting with Jacob, if he's still facilitating the  
23 escape, he's clearly in on it.

24 Well, the phone records do not lie. Mr. Solid said I  
25 was with Ms. Licari the whole time. So it doesn't matter if

1 it's Ms. Licari's phone or Mr. Solid's phone. That phone is  
2 not going back to Mr. Solid's home like he told you under oath.  
3 If anything, going further and further and further and further  
4 away.

5 And is Jacob with him? We find that out here.  
6 They're together on the other side of the Las Vegas Strip or on  
7 the Las Vegas Strip area, and we have the CS indicating our  
8 crime scene. He's in the opposite direction of his house  
9 together with Jacob Dismont. That's not Detective Sanborn  
10 coming in here and telling you that, making up lies against  
11 him, like the defendant accuses. That's not the State making  
12 stuff up, causing lies, you know, out to get Mr. Solid like he  
13 told you. That's just facts. Those are just phone records,  
14 immutable facts. Why is he lying about it? Because if he's  
15 continuing on with Jacob Dismont it's because he's not offended  
16 by what happened. He's in on what happened.

17 In determining whether the defendant had the  
18 requisite intent to commit the robbery before or during a  
19 killing, the jury may infer that intent from the defendant's  
20 actions during and immediately after the killing. His actions  
21 immediately after the killing, he's still rolling with Jacob.  
22 He lied about it, but he's still rolling with Jacob.

23 And, of course, what's the purpose of any robbery?  
24 The purpose of any robbery is to obtain money. And, in fact,  
25 the one thing he told you up here was they were all in

1 agreement to get money. How was it a common goal? I'd call it  
2 a conspiracy. You might say they were aiding and abetting each  
3 other to get money. But the goal of any robbery is to get  
4 money.

5 Let's talk about Matthew Nicholas. He was the  
6 testimony that was read in I believe on Thursday, and what did  
7 we learn from Matthew Nicholas? And again, I had asked you all  
8 would you be able to consider the evidence that was read in --  
9 that was given under oath at a previous hearing.

10 Well, Matthew Nicholas makes three claims to police  
11 relevant to this case, three claims. And he makes them on May  
12 22nd, 2013. One, that Solid called to sell the iPad. He  
13 says, It sounds like you know where it's at. So is that true?  
14 Did Solid bring that to you? When was that?

15 Like Thursday.

16 Thursday. About what time? Did he bring the iPad to  
17 you?

18 I don't know.

19 Daytime? Nighttime?

20 The sun was out.

21 Sun up. Did he call you first or on your cell phone?

22 Mmh.

23 He did?

24 Yeah.

25 What's your cell phone number?



1 503-3942, right.

2 That's what Matthew Nicholas told the police on May  
3 22nd, 2013, that the defendant called him -- he called him to  
4 set up the iPad sale.

5 Now, the defendant said, I didn't do that at all.  
6 That it was Jacob. It must have been Jacob. It was Jacob.  
7 Except again, the immutable fact is the phone records showed  
8 that that's not true. On May 16th, 2013, from 6:34 to 6:52,  
9 Marcos had just been hit and killed two and a half hours  
10 earlier. Two and a half later, two and a half hours later,  
11 well, he's got a -- he's got to reach the purpose of the  
12 robbery. The robbery is meaningless unless you get the money  
13 from the thing you stole, and why does the defendant lie about  
14 this immutable fact? Because if he's the one selling the iPad,  
15 the reasonable inference is that he's in on the robbery. So he  
16 has to lie about something. And you can see it in black,  
17 white, and yellow; it's simply untrue.

18 And again, you heard from Detective Sanborn. I asked  
19 him yesterday were there any calls between Jacob Dismont and  
20 Matthew Nicholas? His answer, no, never. Why is he lying  
21 about that? Because he has to because this shows his intent to  
22 be part of the robbery. And I would submit to you his lie only  
23 doubles down on his intent to be part of the robbery.

24 Nicholas, a second claim to police. He makes three  
25 claims on May 22nd, 2013. His second claim to police, Solid

1 actually gave you the iPad; right? So he called. He called to  
2 sell it. We know that that's true. Solid actually gave me the  
3 iPad. Why would he give him the iPad? Why would you  
4 (indiscernible).

5 He called me and asked me if he could borrow \$80, and  
6 then he told me if I let him borrow 80 he would give me an  
7 iPad. I told him to sell it to me. He said he didn't want to  
8 sell it. He said if I let him borrow \$80 that he would leave  
9 the iPad, and he'd come back the next day and give me a hundred  
10 dollars to get it back. And that's what he did? That's what  
11 he did. All right. Well, this could be proven also.

12 Remember when Ivan Arenas came and told you that he  
13 bought this iPad for his son's birthday. Remember there was --  
14 it was very early on in trial, but he provided a receipt, and  
15 the receipt you can see even Ivan's name on the receipt. So he  
16 told you he took a payday loan to get it. And the receipt,  
17 being the fact that he got it from a pawnshop, has a serial  
18 number on it; right? It's a common thing when you sell  
19 high-end electronics it has a serial number.

20 Well, what did Detective Sanborn tell you? Detective  
21 Sanborn told you that, yeah, well, I interviewed Matthew  
22 Nicholas. He said he knew where the iPad was. He didn't want  
23 to tell me who had it, who he gave it to. So he made a phone  
24 call. I looked at who he was calling. I wrote down the  
25 number. It was a landline. It was a landline, and then I was

1 able to trace down the address of the landline, talk to the  
2 person who lived there, David Doyle and said, hey, give me the  
3 iPad, and he gave -- turned over the iPad, and they documented  
4 that. He took photos of the iPad. And the iPad has the exact  
5 same serial number of the iPad that Ivan Arenas bought for his  
6 son's birthday.

7 How does that get there but for Michael Solid being  
8 in on it? Michael Solid is the one that makes the call.  
9 Michael Solid is the one that calls Matthew Nicholas. Matthew  
10 Nicholas now directs the police to where not just any iPad, but  
11 the iPad.

12 What's the third one?

13 So the first two claims are proven. The third claim  
14 is Solid admitted to robbing Marcos. And again, outside the  
15 extrinsic evidence, outside the buttressing it by the first two  
16 points, I don't have any other thing to show you that that's  
17 what he said except for there are some interesting things.

18 And the bottom line, it might not be the iPad, to be  
19 honest with you.

20 It is. How do you know?

21 Because I know.

22 Did he tell you or, yeah. Right after he got here he  
23 told me, he's like, I think I'm going to be on the news later.  
24 I'm, like, why? He's, like, man, because like I robbed this  
25 nigga and dah, dah, dah, dah, dah. But he didn't tell me like

1 what happened like that.

2 So on May 22nd, 2013, Matthew Nicholas told police  
3 that he was called by Michael Solid, immutably proven that he  
4 got the iPad from the robbery, immutably proven. And then he  
5 says Solid admitted to the robbery. And this isn't for trial.  
6 This isn't some time later. This is on May 22nd, 2013.

7 But there's another part of that statement during  
8 that testimony that's very interesting if you paid close  
9 attention to it. Because did he even have a conversation with  
10 Michael Solid? But he's like, oh, when I was leaving I seen  
11 hell of ambulances and police coming. I don't know how they  
12 came that fast. Well, that's not in the media that the  
13 ambulance came superfast; right?

14 We know the ambulance came superfast because the  
15 medic testified, oh, I was in the area. I wasn't dispatched to  
16 that call. I saw the commotion. I came there. I was  
17 basically on the scene right away. We know from the 9-1-1  
18 calls that they were on the scene right away, but how would --  
19 how would Matthew Nicholas know that the sirens were there  
20 right away? He wasn't there. You know who told him? The  
21 person he said told him: Michael Solid.

22 So the three claims to police all are true.

23 And, ladies and gentlemen, the coordination doesn't  
24 just end at getting the iPad, fleeing to retain the property,  
25 fleeing afterwards, getting rid of the iPad. The coordination

1 extends to (indiscernible). Solid and Dismont both deleted  
2 messages on their phone. Detective Sanborn, 38 deleted calls  
3 between Solid and Dismont from 5/16/13, calls were deleted the  
4 following days also.

5 The text messages were also deleted.

6 And this notion of being threatened about what's  
7 happening, don't you think you'd want to preserve that at the  
8 very least (indiscernible)? Maybe not turn it over to the  
9 police, but at least have it in your back pocket in case for a  
10 day like this? Why are you deleting your communications?  
11 Because you're coconspirators and you're covering up an  
12 (indiscernible).

13 And the other thing about -- I want to talk briefly  
14 about the phone is Mr. Solid has created a new phone that he's  
15 supposed to be a part of, but what I -- and this is  
16 Ms. Licari's phone. But what I asked Detective Sanborn is, all  
17 right, they're sharing -- they have a daughter in common. They  
18 live in the same place. I don't know how, and I can't remember  
19 honestly how many people -- how many of you folks are married  
20 or how many of you have children, but if there were two phones,  
21 don't you think there would be outgoing messages, outgoing  
22 calls to this particular phone, hey, bring home the formula.  
23 Hey, why are you running home late? Hey, you better get here  
24 by 11. You know, the baby's still crying.

25 There are no shared messages. There are no messages

1 like that at all on this phone. Why? Because they're sharing  
2 the phone. I mean, this is, after all, is a man who apparently  
3 has to panhandle for \$1 for gas about 20 miles away from where  
4 he's going.

5 Solid and Dismont on May 17th, 2013, after  
6 Mr. Solid sold the iPad, they're still working together. You  
7 heard from Detective Abell that on May 17th, 2013, well,  
8 Detective Abell is not even looking for Jacob Dismont; right?  
9 He's looking for this passion character. But while he's in the  
10 area he sees Jacob Dismont get on that little bike and ride all  
11 the way to Michael Solid's place. And then he puts -- when the  
12 car is seized on May 18th, 2013, it now does have a license  
13 plate, and that license plate by all coincidences belongs to  
14 the defendant's baby mother's mom, the woman he's living with,  
15 a woman he's living with.

16 And why do you cold plate a car? We heard from  
17 Detective Sanborn, to prevent yourself from being discovered.

18 Now, if you're not involved, of course you have to  
19 deny that this came from your place or that all these people  
20 were coming in and out of your apartment or your house because  
21 if that license plate actually belongs, comes from you, it's  
22 because you know you're part of the robbery, and you know  
23 you're part of the cover-up.

24 These, ladies and gentlemen, from May 16th, 2013,  
25 when they meet up at around 2:30 to May 17th, 2013, are a

1 coordinated series of events and acts that demonstrate beyond a  
2 reasonable doubt that these two were working together.

3 I want to talk about the defendant's state of mind.  
4 A defendant's state of mind does not require the presentation  
5 of direct evidence as it existed during the commission of the  
6 crime. The jury may infer the existence of a particular state  
7 of mind acquired from the circumstances disclosed from the  
8 evidence.

9 And the circumstances demonstrate the defendant knew  
10 what was going on.

11 Another thing that demonstrates the defendant knew  
12 what was going on was Solid's statement to the police on  
13 May 18th, 2013; right? This is two days after the incident.  
14 And what's -- what was known to the public at that time? What  
15 was known to Mr. Solid at that time? Well, there's a photo of  
16 him on the news. There was a photo of a white man. And nobody  
17 knows anything else. The video wasn't disclosed. There was no  
18 video of the defendant walking into the Ford Explorer that  
19 you've now seen a number of times. There's no video of him  
20 driving around.

21 So what did Solid know and didn't know when he made  
22 his statement? Well, on May 16th, Solid, he didn't know that  
23 the LVMPD -- I'm sorry, on May 18th, he didn't know that Metro  
24 had a video of Solid driving the SUV. He didn't know that they  
25 would stumble upon that (indiscernible). He didn't know that

1 Solid's fingerprints would be on the SUV; right? He didn't  
2 know that. That's the reason why he denied it. Hey, man I  
3 wasn't driving the SUV. I wasn't parking the SUV.

4 I was never in the SUV. Why? He didn't know if  
5 there would be fingerprints from the SUV. Solid -- he didn't  
6 know his DNA would be on the SUV. He didn't know back in 2013  
7 when he was making the statement, hey, man, I wasn't in that  
8 car. He didn't know that his DNA would hit off the SUV.

9 And it didn't finish running, and I apologize for  
10 that, but interestingly, two things that his DNA hits often in  
11 the SUV are, I believe it was a Powerade and an Aquafina  
12 bottle. A water bottle and, like, a sports drink bottle. If  
13 this dude can't scrounge up a dollar, how is he affording these  
14 two drinks? Why is his DNA on these two drinks; right? If  
15 during this time he's driving around, I don't even have a  
16 dollar to my name, that's the reason why I'm putting a dollar  
17 on the -- I'm only paying a dollar for gas because that's all I  
18 got, then why is your DNA on the Aquafina bottle and the  
19 Powerade bottle? Those cost more than a dollar.

20 And I want you to listen to the -- I'm not going to  
21 have you listen to it all, but I want you to listen to this  
22 part of his statement.

23 (Video played.)

24 MR. PALAL: Sorry. He said I promise you, I'm not  
25 lying. I promise. That was the promise he made to the



1 detectives while he was lying to their face. Not much  
2 different than the promise somebody makes on the stand before  
3 they start talking.

4           The other thing he told you was I couldn't tell them  
5 the truth. Then why was he turning himself in? Of all the  
6 inexplicable, incredible, unbelievable things Mr. Solid said,  
7 that's the one that makes the least amount of sense. This is  
8 his recounting of it. So what happened was on May 18th, 2013,  
9 I heard on the news that, you know, what had happened. So I  
10 think it was my stepdad told me. So I decided I was going to  
11 go -- I decided I was going to go to turn myself in. And then  
12 in the meantime I got threats. Now, none of these threats are  
13 on either Jacob's phone or Mr. Solid's phone, but I got  
14 threats. And I decided I was going to turn myself in.

15           I was driving on my way to turn myself in, but then I  
16 got arrested, and then I had to lie to protect my family. What  
17 were you driving to do? The threats -- it goes I see what  
18 happened. I get sent threats. I've got to drive in to turn  
19 myself in. That's when I was arrested. But then I have to lie  
20 to protect my family. Well, if you're going to have to lie,  
21 why are you driving there anyway? It makes no sense at all.

22           He wasn't driving to turn himself in. But, of  
23 course, of course, he's got to come up with an explanation for  
24 these patented lies. Actually it's lies and laughter if you  
25 listen to it; right? 15-year-old kid is dead, run over by

1 Michael Solid and what he offers police, lies and laughter.

2 It's everyone's fault, but his. Everyone's fault but  
3 his. It's the State's fault. It's the detective's fault.

4 It's Jacob Dismont's fault. Brianna Licari is the one that  
5 tells him to go. Her fault. Everyone's fault but Mr. Solid's.

6 Whether the killing was intentional, unintentional or  
7 accidental, he's clearly part of the robbery. At the very  
8 least he knows it by the time he hits the gas, and at that  
9 point if he's -- if he knows by then, he's guilty of  
10 first-degree murder.

11 The last instruction I want to talk to you about is  
12 the common sense instruction. Although you're only to consider  
13 the evidence in the case in reaching your verdict, you must  
14 bring to your consideration the evidence of your everyday  
15 common sense and judgment as reasonable men and women.

16 And I'll submit to you what you've heard as the  
17 alternate explanation yesterday defies common sense. This case  
18 is about a 15-year-old boy who did nothing more than trying to  
19 get food for him and his father, carrying a prized possession,  
20 his iPad.

21 Jacob Dismont took that iPad. Michael Solid took his  
22 life. He's guilty of first-degree murder. Find him as such.

23 THE COURT: Thank you, Mr. Palal.  
24 Defense.

25 MR. MARCHESE: Thank you, Your Honor.

1 Can we take that exhibit down, please.

2 THE COURT: Of course.

3 MR. PALAL: Yes.

4 **CLOSING ARGUMENT FOR THE DEFENSE**

5 Good afternoon, ladies and gentlemen. This will be  
6 the last opportunity that you will hear from Mr. Leventhal and  
7 myself on behalf of Mr. Solid. I just wanted to thank you for  
8 being here for the last seven days or so.

9 This case is actually a series (indiscernible). It's  
10 very straightforward. I'm a very simple man, ladies and  
11 gentlemen. Don't let the suits fool you, okay. Mr. Leventhal  
12 and I, throughout the scope and course of this case, we didn't  
13 ask a lot of questions because there weren't a lot of things in  
14 dispute.

15 As you had heard when I gave the opening statement in  
16 this case, we actually admitted to a lot of things. The State  
17 and ourselves, we were actually in agreement on a lot of the  
18 facts and circumstances of this case with obviously some very  
19 big disagreements on what actually transpired with the Ford  
20 Explorer and Mr. Arenas in the intersection of Charleston and  
21 Scholl.

22 And our defense, has always been and always will be  
23 that this was all Jacob Dismont. On May -- or excuse me, back  
24 in 2013, Jacob Dismont was the one who destroyed lives. Jacob  
25 Dismont destroyed his own life. He destroyed Mr. Solid's

1 daughter's life and most importantly, the reason why we're  
2 here, he destroyed Marcos Arenas's life.

3 Now, before I get into things, you're going to --  
4 you'll hear from the State one more time, and you're going to  
5 go back and deliberate. And I just wanted to bring something  
6 up to you. Something to keep in mind. You're going to have  
7 the jury instructions, and follow all of them. They're all  
8 important. Some are more important or less important than  
9 others. And right on cue, the State is bringing up my point.

10 You see I watch this talk show, and at the end of the  
11 talk show they talk to whatever celebrity that there is, and  
12 that particular celebrity is called the speed round, and they  
13 ask them a myriad of questions. And one of the questions that  
14 they always ask is if you were in a foxhole, who would you want  
15 to be trapped there with, and I love my wife. My wife is  
16 amazing, and I always think I would initially that my answer  
17 would be my wife. And then I start thinking about it some  
18 more. I'm like actually, my wife is the last person I'd want  
19 in a foxhole because my wife is completely overemotional. She  
20 is not the calm, cool and collected individual that you would  
21 want in a foxhole where we're sitting there trying to think,  
22 hey, how the heck do we get out of here? What's our next move?

23 And why is that relevant to this? Because very  
24 tragically, very horrifically, we have a 15-year-old young boy  
25 who has passed away. There is not a person in this room,

1 defense included that isn't sympathetic to those facts, but  
2 those facts are not relevant to when you go back and  
3 deliberate. What is relevant is the law and the instructions  
4 that you will be given. Whether Mr. Arenas was a 15-year-old  
5 boy with a bright future ahead of him or whether he was a  
6 multiple time felon who has screwed over every individual in  
7 his life, and he never contributed one thing to society, it's  
8 all irrelevant. You need to look at the facts and the  
9 circumstances and whatever the evidence is and deliberate as  
10 such.

11 So as you are aware, the State has a burden. That is  
12 said from day one, and it is still true to day number seven.

13 So when you go back and deliberate, see if the State  
14 did, in fact, meet their burden.

15 Now, of course Mr. Leventhal and I, we submit to you  
16 they did not, and the State is going to get up, and they're  
17 also going to submit to you that they did. What we think, what  
18 they think and with all due respect even what the Judge thinks  
19 it's irrelevant. You, ladies and gentlemen are, in fact, the  
20 finders of fact. What is relevant here is what you think and  
21 what your memories and what the evidence has shown to you  
22 throughout the course of this trial.

23 Now, I was going to get up and show you the videos,  
24 but quite frankly I think that that's been played out enough.  
25 Right. You probably can all close your eyes at this point and

1 see the gas pumps and the inside of the store. So I'm not  
2 going to bore you with that, but I would like to bring up a  
3 couple of things that I would point to that are key points in  
4 time on those videos. Because really what this whole case  
5 generally is it boils down to it's mainly circumstantial  
6 evidence; right? Because in order for it to be direct evidence  
7 you'd have to be psychic; right? You'd have to crawl into the  
8 mind of Mr. Solid and see what in fact was going through his  
9 mind on the date in question.

10 So we saw the videos. Now, I'm not going to hear to  
11 argue if it was all the videos or not all the videos. The  
12 videos that are in front of you is not everything. It's not a  
13 100 -- or 360 degree view of the gas station. And I submit to  
14 you that it's not very -- that's a common thing; right? Not  
15 every single tree, every single rock is going to be shown on  
16 the periphery of the gas station or anywhere for that matter.

17 So the State talks about how that the robbery was  
18 allegedly being planned. We would submit to you that there was  
19 no plan in place. This was all Jacob Dismont on his own.

20 When you watched Mr. Solid, what does he do? Is  
21 there anything that you can see that is out of the ordinary?

22 Now, the State argues that he drove all this distance  
23 to go get a dollar of gas and whatnot. Well, if that was, in  
24 fact, true that he did, in fact with Mr. Dismont and Brianna if  
25 they all were spending more money in gas than it would to get

1 there to put in that dollar of gas, what would also have to be  
2 true is that they knew that Mr. Arenas and Mr. Exum were going  
3 to be there with in fact that iPad.

4 What is more believable, what is more plausible is  
5 the fact that Mr. Dismont was walking around looking for  
6 someone to panhandle with and saw this crime of opportunity for  
7 Mr. Dismont. That I would submit to you makes more sense than  
8 driving miles for \$1 worth of gas.

9 But if you look at Mr. Solid's actions, nothing out  
10 of the ordinary I would point to you. He gets out of the car,  
11 driving someone else's car, points it the wrong way. Turns it  
12 around. Goes in, no interaction whatsoever with Mr. Exum and  
13 Mr. Arenas when he's there.

14 We can argue all day long whether there was a look,  
15 whether there were words. I mean, unfortunately there is no  
16 audio on the video, which is not uncommon, but clearly  
17 Mr. Dismont and Mr. Solid walked by one another. Maybe there's  
18 is a look, maybe there's not. I'm not here to split hairs,  
19 okay. Kind of a small point, quite frankly I would argue to  
20 you.

21 Goes in, pays for his dollar of gas. Leaves. Again,  
22 no interaction with the boys. Gets in the car. Maybe there's  
23 smoking. Maybe he's not smoking. Who cares if he's smoking or  
24 picking his nose. Is that really what we're here about? Gets  
25 back in the car and leaves. Now that's where it gets

1 important; right?

2 That's where all of this boils down to whether or not  
3 Mr. Solid did in fact know that Jacob Dismont was about to  
4 commit this robbery.

5 Now, I would point out a few things. We heard from  
6 Mr. Solid yesterday. Again, I'm not going to go over all of  
7 this depending on what time it was yesterday. It's been about  
8 24 hours. You were all here. You'll all remember it. Some of  
9 you might have even taken notes as to what he said. It is up  
10 to you to value -- to evaluate his testimony, whether or not  
11 you think it's believable. Maybe you think some of it is  
12 believable. Maybe none of it.

13 Again, that is up to you, not up to myself or the  
14 State. So I'll leave it at that in reference to Mr. Solid's  
15 testimony. However, we do know that there was a call. We  
16 don't dispute that. I don't -- your memories would have to  
17 serve you better than my own. We don't even believe that we  
18 asked many questions, if any, of the State's cell phone expert.

19 We do know, and I think even the State would agree is  
20 that the phone was being used by both parties; right? It was  
21 being used by Ms. Licari and Mr. Solid at some point. There's  
22 been a lot of times where we keep calling it Solid's phone, but  
23 I don't think the facts in this case definitely support that  
24 fact.

25 So we have that phone. There's a phone call made.



1 Now, obviously we don't know what is made by that phone. The  
2 State makes a leap, says that that's how they were planning the  
3 robbery, and it is our contention that Mr. Solid was told to go  
4 to the Jack-in-the-Box.

5 Now, the State says, well, that doesn't make any  
6 sense because why was he in the left-hand turn lane? Why was  
7 Dismont away from the Jack-in-the-Box? And I think that  
8 there's a very logical explanation for that. The explanation  
9 is once again, Dismont, acting on his own saw this iPad, the  
10 one that's camouflage like a notebook, right, which looks like  
11 a -- one of those bound black-and-white notebooks that some of  
12 us might have had in elementary school, and he sees this crime  
13 of opportunity. He goes across the street. Dismont sees him  
14 across the street and is getting ready to pick him up. Has no  
15 idea what is about to transpire with Dismont and Mr. Exum and  
16 Mr. Arenas.

17 Now, we do have some witnesses to that. Generally  
18 speaking, all pretty much give the same accounts. We have  
19 Mr. Romo, the individual who is holding the sign. We have the  
20 other drivers, and I would submit to you the most important  
21 points of all their testimony is what they see, of course;  
22 right?

23 Now, I would submit to you common sense is going to  
24 tell you that you're not focused -- these people were focused,  
25 and the evidence shows that, these people were focused on the

1 fight, the struggle, whatever you want to call it of Mr. Arenas  
2 and Mr. Dismont. And I think that the testimony would even  
3 flush that out; right? It's very little specifics as to the  
4 driver; right? And I think the best that we got was a black  
5 male. Nobody was actually specific as to, you know, he had a  
6 mole. He had a tattoo. Nothing really along those points  
7 because everyone is focused on this fight.

8 I would argue to you the most important witness out  
9 of all of them is the person who is directly behind the alleged  
10 incident. And who was that? That was Ms. Shanahan; right? I  
11 think she was one of the State's first witnesses. Nice gal,  
12 got up here. I think she was picking up her kids, and she  
13 missed her turn, and she was doing the U-turn to go back to  
14 where she wanted to turn off.

15 Now, what did we hear about her testimony? She's  
16 the -- I think we even just heard her 9-1-1 call. She is  
17 behind Mr. Solid, and that was actually the witness where we  
18 asked a couple questions on because there were some important  
19 points to bring out there.

20 What did we hear from her testimony, that she's  
21 behind the white Explorer, can't identify Mr. Solid. She's  
22 behind the white Explorer in the left-hand turn lane getting  
23 ready to turn.

24 Now, we heard what she said, that she couldn't really  
25 hear anything. The boy had mouthed to her something which she

1 believed was help me. She's honking her horn trying to get  
2 attention, maybe stop what's going on.

3 But what didn't we hear; right? We've all been in  
4 that situation before. I've been on both sides of it where I'm  
5 just not paying attention, and you're yelling at your kid in  
6 the back, you know, texting when the person in front of you is  
7 not going when they're supposed to; correct. There was nothing  
8 like that. The testimony was is that the car. There was  
9 traffic. It was Charleston. I think we all know Charleston  
10 Boulevard can be, especially at 4:00 or 5:00 o'clock in the  
11 afternoon, is a busy road.

12 It wasn't as if the Ford Explorer was just sitting  
13 there and waiting. The testimony supported by -- well, the  
14 evidence supported by the testimony to you was that the Ford  
15 was just there doing a left-hand turn, nothing out of the  
16 ordinary until the boys ran behind it, and then it obviously  
17 the scuffle was underway, and then Mr. Arenas was tragically  
18 killed. That's an important point. There's nothing out of the  
19 ordinary about when the Ford was there. No testimony to that  
20 whatsoever.

21 So go back. Listen. Think. Look at your notes  
22 about all of those people who were there; right? Because once  
23 again, this really is, it's a circumstantial case that we need  
24 to put together. I believe that the example that the Judge  
25 used at the start of the trial circumstantial evidence is like

1 you go to sleep. Before you went to sleep the ground was dry,  
2 and when you wake up it's wet. You can make an inference that  
3 it was, in fact, raining.

4 To me, circumstances here, I would argue the  
5 inference that you can make is that Dismont acted on his own  
6 just as he was walking alone, just as if there was very little  
7 interaction. This was all Dismont.

8 Now, there are some arguments made by the State,  
9 rightfully so. If I was in their shoes, I'd probably argue  
10 similar things about the parties' actions after the robbery.  
11 What do we have? Once again, I would argue it's all Dismont.  
12 Who's the one putting the decals on the vehicle? Who's the one  
13 putting the baseball frame on the vehicle. We know that  
14 Dismont had some sort of background in baseball. Who's the one  
15 with all the text messages? Dismont, talking to his brother,  
16 got to get out of town. Don't drive the vehicle. All those  
17 sorts of things; right? We really don't have anything from  
18 Mr. Solid.

19 Now, there are these deleted text messages, and the  
20 State wants you to make a negative inference against my client  
21 that, oh, these are the text messages that show he knew what  
22 was going on. He was trying to get away, and he knew  
23 everything that went on with this robbery and that you should  
24 find him guilty, but just the opposite could be true, ladies  
25 and gentlemen. It could have easily just been saying, hey,

1 what did you have for breakfast? We don't know the answers to  
2 that, and no one will ever know the answers to that, and I ask  
3 you to use your common sense and to hold the State to their  
4 burden on that because, like I said, the door swings both ways,  
5 ladies and gentlemen.

6 The State wanted to talk about Matthew Nicholas. He  
7 wasn't here obviously; they had to read his testimony into  
8 evidence. They highlighted some of the portions that they  
9 thought as relevant, which is their right. They have every  
10 right to do so. But I would submit to you that Matthew  
11 Nicholas is nothing but a lying drug addicted felon. His  
12 testimony is all over the place. You can clearly tell that he  
13 wants to help, doesn't want to help. He's all over the place,  
14 ladies and gentlemen.

15 Unfortunately, and one of the jury instructions that  
16 you get is you can evaluate what someone looks like on the  
17 stand, is that you can evaluate the way that they answer  
18 certain questions; right? It's one thing to have someone read  
19 the testimony, but you don't get to look at him and see the  
20 cues that maybe you would look for for somebody who you think  
21 is believable or someone that you think is being unbelievable,  
22 that's not telling the truth.

23 And I will submit to you that, like I said, he's  
24 nothing but a lying, drug addicted felon, and you should take  
25 his testimony and give it the value of what it's worth. This

1 whole thing about the iPad and \$80, and I'll give you the iPad;  
2 you give me a hundred, and it doesn't even make sense. It's  
3 completely illogical, ladies and gentlemen.

4 Like I said, ladies and gentlemen, this is a  
5 circumstantial case. The two people in the vehicle  
6 unfortunately we never heard from, right? They were  
7 Mr. Dismont and Ms. Licari. Those were two individuals who  
8 would really be able to focus and tell you what transpired. So  
9 we're left with Mr. Solid and whatever other evidence has been  
10 proffered here throughout this trial.

11 So what I would ask you to do is to look at certain  
12 jury instructions. They're all important.

13 Instruction Number 25 is basically, in my opinion,  
14 the heart of our case.

15 Now, Mr. Palal talked to you about the felony-murder  
16 rule; right? If there's a robbery and there's a homicide that  
17 is in furtherance of the robbery, then Mr. Solid goes down on  
18 first-degree murder; right?

19 We think that that chain is broken. We would submit  
20 to you that the evidence shows that. Well, how was that chain  
21 broken? Well, first off, you have to show coconspirators;  
22 right? You have to show that somehow, some way Mr. Solid and  
23 Mr. Dismont were, in fact, in on it together. There's a few  
24 ways they can do it. He could be the getaway driver; right?  
25 That's one. It could be some sort of agreement. Whatever it

1 is that Mr. Solid allegedly did to further that robbery. And  
2 here the State will argue whatever facts they think, but I  
3 would submit to you the number one thing that they're arguing  
4 is that he was a lookout, getaway driver, something along those  
5 lines, and we obviously are doing the opposite.

6 But again, it goes down to his specific intent.  
7 Instruction Number 25 states that a defendant cannot be  
8 criminally responsible under the conspiracy theory of robbery  
9 for acts committed by a coconspirator. So when Mr. Dismont  
10 went and took the iPad and used force to do so, unless that  
11 defendant also had the specific intent to commit robbery. So  
12 that's really what it boils down to, ladies and gentlemen.

13 We've been here for seven days, and it's a serious  
14 case, but at the same time, you have to crawl into Mr. Solid's  
15 mind based on the facts and make a determination. Did he have  
16 the specific intent to commit robbery or did he not have the  
17 specific intent to commit robbery. We submit that he did not.

18 We submit to you that there was no plan, that this  
19 was a spur of the moment thing done by Mr. Dismont. And that's  
20 when you go back and deliberate, we're not saying Mr. Solid is  
21 completely innocent of these charges.

22 Instruction Number 14 in your verdict form gives you  
23 other options. That other option is to not vote guilty for  
24 first-degree murder based upon the State's theory. What we are  
25 asking you to do is find him guilty under this theory, which is

1 involuntary manslaughter, which is defined as the killing of a  
2 human being. We have not disputed that Mr. Arenas passed away,  
3 okay. Mr. Arenas. I believe that Dr. Dutra got up. I don't  
4 think we asked him one question.

5 Without the intent to do so, that's what I've been  
6 arguing for the last whatever, 10 minutes or however long I've  
7 been up here, in the commission of an unlawful act or lawful  
8 act which probably might -- excuse me, probably might produce  
9 such a consequence in an unlawful matter, but where the  
10 involuntary killing occurs in the commission of an unlawful act  
11 which in its consequences naturally tends to destroy the life  
12 of a human being or committed in the prosecution of a felonious  
13 intent, the offense is murder.

14 Now, I know that's a mouthful, okay. I barely could  
15 get it out, but that's Instruction 14. Please take a look at  
16 it, okay.

17 What we are arguing is that there was no robbery,  
18 that Mr. Solid was, in fact, the driver, and that when he took  
19 off that he did, in fact, take the life of Marcos Arenas, not  
20 because of a robbery, not because of his specific intent, but  
21 because of the driving conduct. So that is what we ask of you,  
22 ladies and gentlemen.

23 I want to thank you for your time, and I know you'll  
24 go back, and you'll do your jobs, and you'll be diligent and  
25 you'll think about this, and you'll do your best to keep your



1 emotions out of this very serious and difficult case.

2 And when you do go back, we are confident that you  
3 will find Mr. Solid guilty not under the felony-murder rule,  
4 but of the involuntary manslaughter.

5 Thank you once again for your time.

6 THE COURT: Thank you, Mr. Marchese.

7 Turning back to the State. Rebuttal.

8 **REBUTTAL ARGUMENT FOR THE STATE**

9 MS. BOTELHO: Let's start out with what we do agree  
10 on. There are facts that we agree on, facts that we don't  
11 agree on, but let's start with one that we can agree, okay.  
12 And that's the State does have the burden of proof in this  
13 case. The State has to prove each and every offense beyond a  
14 reasonable doubt. Reasonable doubt is defined as Instruction  
15 Number 31, and you're going to have copies of the jury  
16 instructions with you when you're deliberating.

17 But Instruction Number 31 says, The defendant is  
18 presumed innocent until the contrary is proved. This  
19 presumption places upon the State the burden of proving beyond  
20 a reasonable doubt every element of the crime charged and that  
21 the defendant is the person who committed the offense.

22 A reasonable doubt is one based on reason. It is not  
23 mere possible doubt, but it is such a doubt as would govern or  
24 control a person in the more weighty affairs of life. If the  
25 minds of the jurors after the entire comparison and

1 consideration of all the evidence are in such a condition that  
2 they can say they feel an abiding conviction as to the truth of  
3 the charges, there is not a reasonable doubt.

4 If you feel an abiding conviction as to the truth of  
5 the charges that he is facing, there is not a reasonable doubt.

6 Doubt to be reasonable must be actual, not mere  
7 possibility or speculation.

8 They're right. That's our burden, and I submit to  
9 you that is a burden that we welcome. It is a burden that is  
10 met in courtrooms across America every day.

11 The next important thing that I'd like you to  
12 consider is actually another jury instruction. And that's Jury  
13 Instruction Number 41. It actually says you will bear in mind  
14 that it is your duty to be governed in your deliberation by the  
15 evidence as you understand it and remember it to be and by the  
16 law as given to you in these instructions, with the sole fixed  
17 and steadfast purpose of doing equal and exact justice between  
18 the defendant and the State of Nevada. That's your purpose.  
19 Follow the law. Get justice.

20 And as jurors, as Mr. Palal indicated, you are the  
21 fact finders, but you're also the truth finders. Trials are  
22 all about the truth.

23 And in this case, Mr. Solid took the stand thinking  
24 his truth was going to set him free, but I submit to you his  
25 lies shouldn't set him free. They should convict him of

1 conspiracy to commit robbery, robbery and first-degree murder  
2 with use of a deadly weapon. Mr. Solid took the stand. So you  
3 have all of the evidence that the State presented you, and I  
4 would submit to you they all show a coordinated series of acts  
5 by the defendant.

6           If you were to imagine a movie, you know, not as  
7 sophisticated as Ocean's Eleven or whatever, you know, in terms  
8 of planning, but if you were going to, you know, think about  
9 how a street rip type of robbery, snatch and grab was going to  
10 occur on a busy intersection, busy side of town, school buses  
11 are passing, okay. It's 4:00 o'clock on a Thursday on  
12 Charleston and Torrey Pines, okay, how would you imagine that  
13 to go about? Well, you identify a victim. You identify  
14 something that you can take that is of value. You send the  
15 bigger guy, 6-5, the burly muscle to grab the item, and you get  
16 someone to make sure you can do a quick getaway. Easy peasy  
17 but for the fact that a 15-year-old boy got killed and was left  
18 to die in the street.

19           And as Mr. Palal indicated to you, the felony-murder  
20 rule is very strict, and it is strict for a reason.

21           I can imagine kind of being, you know, not knowing  
22 the law and being taken aback by it because it is very strict,  
23 but it is strict for a reason. There is conduct that is so  
24 offensive, so egregious and so dangerous that the people who  
25 make the laws, okay, decided if you take part in this type of

1 crime and someone dies, whether you intended it, whether it was  
2 an accident, you are guilty. You are guilty.

3 And I would submit to you Mr. Marchese talked a lot  
4 about, you know, coconspirators, and he has to have had the  
5 specific intent, you know. Do you know the reason why  
6 conspiracies are dangerous? Because you can play the blame  
7 game. They're also dangerous because it makes the likelihood  
8 that you can get away with the crime. Mr. Dismont, had he just  
9 snatched that iPad, you know, as they were getting all of this  
10 attention, some good Samaritan hopefully would have assisted  
11 Marcos. But that's not what happened.

12 They planned through a coordinated series of acts  
13 this perfectly executed, let me wait in this left turn lane so  
14 you can run up really quick with this iPad that's going to give  
15 us more than the \$5 that we were going to panhandle for.

16 That's why conspiracies are dangerous. It increases  
17 the likelihood that they will succeed, but it also increases  
18 the danger because while one is acting, even though it's a  
19 common plan, it's a common intent, while one is acting, the  
20 other is acting too.

21 But if you plan to do this very inherently dangerous  
22 offense, the law is so clear. You are just as guilty. It  
23 doesn't matter. You can switch sides, okay. You could make  
24 him -- you could say, Mr. Solid was the one who grabbed it, and  
25 Mr. Dismont was the one who drove away. They are equally

1 guilty because they engaged in a conspiracy, and they aided and  
2 abetted.

3           So Mr. Solid, you know, as Mr. Marchese testified or  
4 said, argued in closing, Mr. Solid took the stand, and the only  
5 thing that's really at issue here is his knowledge: Did he  
6 know there was a robbery occurring or going to be occurring or  
7 was occurring when he floored that SUV, running over Marcos?  
8 Did he intend that a robbery was going to be committed? Those  
9 are the questions; right?

10           And so Mr. Solid yesterday took the stand and tried  
11 to tell you his truth, okay. And he tried to convince you  
12 yesterday that nothing he did was out of the ordinary, as  
13 Mr. Marchese indicated. Nothing he did was out of the  
14 ordinary. Do you believe that? You probably do have this  
15 video memorized. Think back. Nothing out of the ordinary.

16           There's another instruction that really I want you to  
17 pay attention to and be aware of. It's Instruction Number 34.  
18 The credibility or believability of a witness should be  
19 determined by his manner upon the stand, his relationship to  
20 the parties, his fears, motives, interests or feelings as  
21 opportunity to have observed the matter to which he testified,  
22 the reasonableness of his statements and the strengths or  
23 weaknesses of his recollection.

24           And the second part is important as it pertains to  
25 Mr. Solid's testimony. If you believe that a witness has lied

1 about any material fact in this case, you may disregard his  
2 entire testimony or any portion of his testimony which is not  
3 proved by other evidence.

4 So the law, as you're instructed, Number 34, tells  
5 you if you find when he took the stand yesterday for several  
6 hours, if you find that he lied, you can disregard his  
7 testimony entirely. Because really, his testimony yesterday is  
8 the only indication that could even be argued that he didn't  
9 know what was going on. Because as circumstantial as they may  
10 claim it is, and I don't agree, you have eyewitnesses; you have  
11 Nicholas Owens. That's not circumstantial; that's direct  
12 evidence. You have his testimony.

13 Michael Solid, the defendant called me two and a half  
14 hours after this kid was run over, after he robbed this N-word,  
15 wanted \$80, came over to my house, told me this was the stolen  
16 iPad, got \$80 for it, told me he'd be on the news later.  
17 That's not circumstantial evidence. That's direct evidence,  
18 okay. You have someone telling you that this person who was  
19 claiming he had nothing to do with this robbery actually sold  
20 the very item that was stolen.

21 Mr. Solid, when he testified yesterday, he admits  
22 what he can't deny, and he denies what he can't admit. Okay.  
23 He admits what he can't deny, and he denies what he can't  
24 admit.

25 As Mr. Palal alluded to during his first close, of

1 course when he took the stand he's going to concede certain  
2 things. He was on surveillance. He's identified by people who  
3 know him. That's indisputable. He was at this gas station for  
4 an extended period of time moving around, pretending not to  
5 know one of his friends, okay. He has to admit that he was  
6 with Jacob Dismont, phone records, video. It's his car. He  
7 has to admit that. There they are. He had to admit he was  
8 driving his mom's SUV. He has to admit that was him driving  
9 because, guess what, he's the one seen -- he's the one seen  
10 coming out of this SUV.

11 He has to admit he was faced this way first, again,  
12 pump Number 6 because you can see him. It's all over the  
13 video. Dismont is on foot, and he's driving his car. Why is  
14 Dismont on foot? Oh, it's this very elaborate, very elaborate,  
15 very secret panhandling scheme, okay. This panhandling scheme  
16 involves the really secret or not even acknowledging each  
17 other, not really approaching people for money either, okay.  
18 But it's so secret they don't want people to know they're  
19 together.

20 So these are all of these admissions, okay, until you  
21 get to you know when Mr. Dismont and Mr. Solid cross paths.

22 And when I asked him, you know, hey, why didn't you  
23 guys acknowledge each other when you passed each other, friends  
24 who have conspired to panhandle, why wouldn't you acknowledge  
25 each other. Do you want to know what he said?

1 (Video played.)

2 MS. BOTELHO: He's panhandling. We didn't want  
3 people to know we knew each other. Is that out of the ordinary  
4 to you? Does that make sense?

5 There's actually an instruction that says you are to  
6 consider your common sense. Use your common sense when you're  
7 looking at the facts in evidence. The boys are walking from  
8 Chipotle. This is all admitted because we have this evidence,  
9 okay. But the defendant made sure when he testified yesterday,  
10 you know, he just he cannot admit, he has to deny that he was  
11 also keeping tabs on Marcos and Gacory. Why? Why would it be  
12 a bad thing, you know. You all go to gas stations, go into a  
13 convenience store. Is out of the ordinary to go out of your  
14 way not to see or acknowledge the people walking towards you?

15 (Video played.)

16 MS. BOTELHO: You know, I would submit to you that  
17 the reason they had to follow these boys from Chipotle through  
18 this gas station where they would inevitably make contact with  
19 them is because they needed to confirm that that was an iPad.  
20 Maybe he was right. You couldn't immediately tell, but you  
21 know the iPhone or the headphones kind of give it away, and  
22 he's holding it in such a way. I mean, I would venture and I  
23 would submit to you that this is them confirming, hey, we  
24 marked them. We've identified them. Let's make sure they have  
25 something that's worth stealing. Otherwise, let's go onto the



1 next place.

2           So the boys are in the store. Clearly there's this  
3 iPad. And what you have to -- and what you also have to take  
4 into account is he testified -- and Mr. Palal brought this up  
5 on first close as well, is that when Jacob Dismont got into the  
6 passenger seat of the car, you know, Mr. Solid made sure to  
7 tell you that he lifted his shirt up to show this iPad, and he  
8 couldn't remember whether the composition book cover was still  
9 on it or whether it was or wasn't, okay.

10           Do you want to know why that's important? Because if  
11 he had testified that, hey, the composition cover was on there,  
12 he would be admitting that he knew that that was an iPad that  
13 the boys had earlier when they were looking, when they were  
14 trying to make out whether there was something to steal, okay.  
15 And I would venture to you that that iPad still had the cover  
16 on because nowhere in the crime scene where the headphones was  
17 found, where Marcos's shoes were found, where the candy wrapper  
18 and trash was found, there's no cover.

19           So when they took possession, they, they, took  
20 possession of that iPad on the front passenger seat of that  
21 vehicle, that SUV that he was driving, that cover was on, and  
22 so any kind of argument that, oh, I didn't know until he lifted  
23 his shirt, you know, and said, hey, oh, my gosh, what the fuck  
24 are you doing, that goes out the door. He knew what that was.  
25 They confirmed it to make sure that it was worth going after,

1 to make sure it was worth the muscle, Jacob Dismont, going out  
2 to get. He didn't lift up his shirt and show the iPad after  
3 Solid drove away.

4 Okay. They reunite at the SUV, blah, blah, blah.  
5 You guys know about this. SUV moves. They meet up again.  
6 There's a reposition. He walks away from the pub, goes after  
7 these boys, continues to stalk them.

8 Mr. Solid switches positions in the car. Now, he has  
9 a better view. All this just so the gas tank, you know, the  
10 dollar of gas is filled. Okay. Maybe that's true. But it  
11 also gives you a better view what the boys are doing. The boys  
12 walk across the street. And when they're doing that he's still  
13 within here. I mean, he's on the driver's seat. He looks out.  
14 He sees those boys cross the street.

15 So then he drives off. He's here at the gas pump,  
16 the next gas pump where no gas is pumped, okay, and at some  
17 point here's his view. Yeah, there's an awning. Yeah, there's  
18 that middle median thing, okay, but still gives you a great  
19 view of the other side of Charleston where the boys have  
20 crossed, and lo and behold, here are these phone calls, okay.  
21 There are these phone calls that basically are timed in such a  
22 way where, hey, maybe asked if the boys are coming out of, you  
23 know, view, Jacob is telling him where he's going to be, where  
24 he's going to try to make, you know, where he's going to try to  
25 make good on this plan and grab this iPad. Perfectly timed

...

1 calls, okay.

2 And what does Mr. Solid do, okay? He doesn't even  
3 take the time. I know, you know, Brianna was making the baby's  
4 bottle and they might have had to wait a minute for that, but  
5 he was in such a hurry that he just, you know, pops over,  
6 passenger to the driver. I mean, as reasonable men and women  
7 using your common sense, that's a pretty (indiscernible), you  
8 know, thing to do.

9 I mean, yes, the SUV is small. Yes, he may be  
10 nimble, but why are you in such a hurry? She's making a  
11 bottle. Exit and come back in like a normal person, but, no.  
12 They were in a hurry because Jacob was on the phone telling  
13 them, hey, hey, hey, hurry up, hurry up. I'm about to grab it.  
14 Come. Get into position, which is exactly what he does. Look  
15 at him crossing Torrey Pines.

16 And I would submit to you, I'm not going to play the  
17 video, but if the plan was for him to pick up Jacob at the  
18 Jack-in-the-Box, you don't see any kind of slowing down at the  
19 Jack-in-the-Box. You don't even see him turn into the  
20 Jack-in-the-Box. He immediately makes and goes west on  
21 Charleston.

22 If someone tells you pick me up at the  
23 Jack-in-the-Box, your intention is at the Jack-in-the-Box. And  
24 I don't even understand that because the Jack-in-the-Box is  
25 within such a short walking distance for where he was parked.

1 It's actually within eyes' view, right where he was parked and  
2 where he was smoking a cigarette.

3 He could probably, as nimble as he is, just jog right  
4 on over there. Hey, Jacob, what are you doing? Come back.  
5 Why do you need me to pick you up? Look at this distance. Why  
6 do you need me to pick you up? Why doesn't he stop and turn at  
7 the Jack-in-the-Box? No. Play the video. He goes straight  
8 towards Charleston, and he says, oh. Then he spots the  
9 defendant, codefendant or Mr. Dismont when he's already up by  
10 the car wash, okay. So that's a little bit further up west.

11 So he looks at the Jack-in-the-Box, no, he's not  
12 there. I'm just going to continue driving. No, he knew where  
13 to meet him because Mr. Dismont told him, hey, I'm at this car  
14 wash. I'm about to do it. Get in position. That's exactly  
15 what he did, okay. West on Charleston. Right there. Hey, the  
16 Jack-in-the-Box is right there. You'll see. No brake lights.  
17 He just knew to keep going west on Charleston. You know, maybe  
18 he is telepathic.

19 So the boys reappear, you know, west on Charleston,  
20 and here's this car wash where he says he sees the defendant  
21 walking, but, you know, conveniently, he doesn't see the boys  
22 walking in front of him, same boys that he tried to ignore at  
23 the gas station, and I asked him, again, if you find that he  
24 lied about anything, you can disregard his entire testimony,  
25 and you can use that fact, the fact that he lied to you as a

1 way to evaluate his credibility. So something as, let's say,  
2 innocent as Jacob running towards the SUV, did you see that,  
3 Mr. Solid?

4 (Video played.)

5 MS. BOTELHO: But fast forward a little bit towards  
6 his testimony, and, you know, did you hear him say, yeah, I saw  
7 him running. I saw Jacob running, okay. How did he see him  
8 running if he came from the back? He saw him running towards  
9 the front with Marcos in tow struggling for that iPad, okay.  
10 Because then he corrects himself and says oh, you know what  
11 he's actually -- he came around the back, and so I didn't see  
12 it until the door opened and this figure appeared, okay.  
13 Because think about it. If Jacob ran towards the back, he's  
14 looking straight forward. Remember that testimony where he's  
15 just looking straight forward because he really needs to turn,  
16 you know, look at traffic. He wouldn't have seen him running  
17 in the back, okay, but on direct he says, yeah, I saw Jacob  
18 running. On cross, different story, okay.

19 Now, his testimony is directly contradicted by  
20 eyewitness testimony, okay. Mr. Palal went through all of the  
21 different people who testified. They saw the struggle; they  
22 saw the defendant come -- excuse me -- Jacob Dismont come  
23 around the front.

24 (Video played.)

25 MS. BOTELHO: I'm not going to play that again, but

1 the 9-1-1 call from Rebecca Shanahan, all of the same witnesses  
2 talk about a struggle. They talk about a struggle.

3 And let me tell you about Cristine Bullard, okay.  
4 She's the witness that saw everything from the rearview mirror,  
5 okay, and she was able to describe the struggle. This kid had  
6 been run over. Mr. Solid who allegedly did not know what was  
7 happening, don't know why this person would be banging on the  
8 door or on the whatever part of the SUV. He didn't tell you I  
9 looked back at all to see what that was all about. No, he  
10 floored it. Got the hell out of there, okay.

11 Now, someone who was acting like an ordinary,  
12 reasonable person, Cristine Bullard sees the struggle, looks  
13 back out of her rearview mirror and sees this whole  
14 interaction, sees Marcos actually get run over.

15 Did the defendant tell you anything about that? No.  
16 He can't tell you that because he would have to admit that he  
17 saw Marcos running for 90 feet next to this vehicle as he  
18 floored it, and Marcos fall into the ground and getting run  
19 over. He admits what he can't deny, and he will deny what he  
20 cannot admit. Look at this SUV. If he is in the driver's side  
21 of that vehicle, and he is looking this way, okay, towards the  
22 passenger, it's not tinted. I submit to you the door was open,  
23 and the window was open. But we'll talk about that in a  
24 second.

25 MR. LEVENTHAL: Judge, can we approach?

1 THE COURT: Yes.

2 MR. LEVENTHAL: Thank you.

3 (The bench conference began.)

4 MR. LEVENTHAL: So procedurally.

5 THE COURT: Told Leventhal for the defense. Go  
6 ahead.

7 MR. LEVENTHAL: So procedurally, a closing is a  
8 closing, and then you've got defense closing. You don't get  
9 two closings, and this is what this is. It's a rebuttal to  
10 what defense says. This is not a rehash of everything that's  
11 been done. That's procedurally and completely incorrect. I  
12 need to object for the record to save any kind of appellate  
13 issues, but this is just another closing. This is going and  
14 rehashing the same thing, way beyond anything that Mr. Marchese  
15 said. So that's my objection.

16 THE COURT: It's (indiscernible) Marchese's closing,  
17 that's (video interference), then the other trial. Is the  
18 standard towards that or -- I mean --

19 MS. BOTELHO: Yes. Absolutely. He said there was  
20 nothing out of the ordinary, he had no knowledge and no intent.  
21 Of course, I can go back through the evidence, particularly as  
22 Mr. Solid interpreted it and testified as such. That's exactly  
23 what I'm doing.

24 THE COURT: Okay. Overruled and your objection is  
25 noted for the record.

1 MR. LEVENTHAL: Thank you.

2 THE COURT: Thank you.

3 (The bench conference was concluded.)

4 MS. BOTELHO: So Mr. Solid testified yesterday. He  
5 said he looked over. He saw a figure. He heard some banging,  
6 but he was so scared, scared by this figure. He didn't really  
7 see though this person. How do you not see? How? How do you  
8 not see. Look. How do you not see? And I submit to you,  
9 looking at this testimony and the testimony from every person,  
10 oh, was Marcos dragged. Was he holding on? How is he dragged  
11 or holding on if the window is rolled up? What is he holding  
12 on to? What? It's because it's not. It's because it's rolled  
13 down, and every other witness who testified is talking about  
14 the struggle, and Marcos's body partially being in the vehicle.  
15 He can't admit that because you know what, there's actually --  
16 it's actually a very small interior. You look over you see the  
17 struggle. The window's down, you hear the screaming. You hear  
18 the honking. And speaking of honking, he did testify first it  
19 was did you hear the car honking.

20 (Video played.)

21 MS. BOTELHO: And then I don't know, 20 minutes  
22 later.

23 (Video played.)

24 MS. BOTELHO: Yeah, she didn't hear screaming. She  
25 told you her windows were up, and what she does remember very,



1 very clearly that she testified to you was Marcos making eye  
2 contact with her. Probably a vision that will haunt this woman  
3 for the rest of her life, and mouthing help. Help.

4 And so, yeah, she didn't hear it. She saw the  
5 motion, and there was enough of a struggle that it actually  
6 caught her attention.

7 Look at the interior of this vehicle. He gets in  
8 that passenger seat, and that man is alleging that he had no  
9 idea what was happening. That is out of the ordinary. People  
10 are screaming. Cars are honking. There's a struggle going on,  
11 and you're going to floor it. And as you watch a little boy  
12 being dragged 90 feet, 90 feet fall over, not attached to your  
13 vehicle anymore, you take off. You don't call 9-1-1. You  
14 don't render aid. You don't come back. You don't help. You  
15 continue along your way with your coconspirator, your partner  
16 in crime, the muscle, Jacob Dismont.

17 Look at this interior. Use your common sense, your  
18 reasonableness. Look at this car. How would you hang on? How  
19 are you dragged 90 feet unless that window was down? And this  
20 is a car that's flooring it. He testified so himself  
21 yesterday. He floored it. He was in such a panic he floored  
22 it.

23 Now, Brianna Licari. Doesn't matter whether it was  
24 her phone, his phone, whether she was in on it, not in on it.  
25 No, because it doesn't change what he knew. It doesn't change

1 his knowledge. It doesn't change his intent. It doesn't  
2 change his participation. So a lot to do about Brianna Licari  
3 doesn't change his liability one bit.

4 Whose phone was it? Well, you know, the defendant  
5 was no, not my phone. We were together the whole time, but she  
6 would get calls from Jacob, my friend, and she would just tell  
7 me what he said. Okay. But you heard the testimony from  
8 Robert Taylor, Desirie Jones, Matthew Nicholas that that was  
9 his phone number. When they are asked for Solid's phone  
10 number, they gave that phone number that we've been talking  
11 about with the deleted texts, the deleted phone calls, okay.  
12 They gave that number. That's evidence of whose phone it is.

13 Whether they shared it, whether they, you know --  
14 it's not disputed that he was there. That's what the phones  
15 do. It's not disputed that phone calls were made. That's what  
16 the phone does is it corroborates that. Okay.

17 9-1-1 call 4:12, the first call to unload the stolen  
18 iPad 6:34. He gets \$80 for this iPad from Matthew Nicholas.  
19 There were all these phone calls showing multiple calls shortly  
20 after the robbery, showing his intent and knowledge, his  
21 participation, okay.

22 Now, Matthew Nicholas didn't know Jacob Dismont. He  
23 testified as such, and there were no phone calls between them.  
24 Brianna Licari didn't know Matthew Nicholas. Reasonable,  
25 common sense would dictate Mr. Solid made those phone calls.

1 He's the one that showed up. He's the one that had that  
2 long-standing agreement with Mr. Nicholas where he would call  
3 before he would come. Okay. The text messages, deleted,  
4 whatever, but again, he took the stand expecting his lies to  
5 set him free, okay. Listen to what he has to say about  
6 Mr. Nicholas and how his story changes so conveniently.

7           You know, ladies and gentlemen of the jury, that's  
8 the thing about the truth. It doesn't change. It doesn't  
9 change depending on who's asking the question. It doesn't  
10 change depending on how you feel like answering at that  
11 particular moment in time. It doesn't change depending on your  
12 motivations or how you -- what did he tell me yesterday that I  
13 was doing? Fixing the evidence, okay. It doesn't. The truth  
14 doesn't change, but his does. You know his version, it changes  
15 within a matter of minutes. Listen to what he tells  
16 Mr. Leventhal during direct examination about Matthew Nicholas.

17                               (Video played.)

18           MS. BOTELHO: Okay. Yeah, he saw him later that day  
19 on the 16th, okay. Jacob left it with him, and all four, the  
20 same people who were in the car that ran over Marcos were there  
21 okay. Time stamp 1:01. By 3:12, history had changed.

22                               (Video played.)

23           MS. BOTELHO: Again, the truth doesn't change. It  
24 doesn't change. It's not convenient. It's not something that  
25 you forget an hour and a half later. It stays the same if it's

1 the truth.

2           You know, more facts. They were still together.  
3 Mr. Dismont and Mr. Solid were together after this incident,  
4 after Marcos was killed. As he lay -- as he was being  
5 transported to the hospital, as he was being put through  
6 surgery, okay. They were still together, as shown by the cell  
7 tower records, okay. Getting their 80 bucks. Is that out of  
8 the ordinary, for someone that had nothing to do with a crime?

9           The license plate, okay. And then this is kind of an  
10 example, the kind of weight that you should give Mr. Solid's  
11 testimony yesterday, okay, because despite having all of this  
12 evidence, you know, there are certain things that he maintains,  
13 but they are again things that he will deny because he can't  
14 admit them. If he had admitted that he ran Marcos over, okay,  
15 particularly with the evidence the way it was, he's guilty of  
16 first-degree murder, okay. But what does he tell you guys when  
17 he takes the stand, okay.

18                               (Video played.)

19           MS. BOTELHO: Yeah, he forgot this, and Dr. Dutra's  
20 testimony that said Marcos died from blunt force trauma,  
21 basilar skull fracture, which required significant amount of  
22 force being pushed upon his head like being run over by a car.  
23 Convenient. He forgot about Dr. Dutra's testimony where Marcos  
24 also suffered blunt force abdominal trauma and that there was a  
25 great amount of force needed to inflict that injury, like

1 getting run over by a car, getting run over by the car that he  
2 was driving. He admits what he can't deny, and he will deny  
3 what he cannot admit even in the face of indisputable evidence.  
4 He talked to you yesterday about turning himself in, okay.

5 (Video played.)

6 MS. BOTELHO: He was going to turn himself in, okay,  
7 but he lied to the police; right? He was in such fear of these  
8 text messages, but the text messages were in Brianna's phone  
9 which had been wiped of all contact with Mr. Dismont.  
10 Convenient, okay.

11 But he meets with Mr. Dismont the next day, and then  
12 he gives a taped statement to Detective Sanborn, and this first  
13 one, Mr. Palal played. I'm going to play the second one.

14 (Video played.)

15 MS. BOTELHO: Detective Sanborn gave him an out. If  
16 the truth was he didn't know what was happening, if the truth  
17 was he didn't intend for a robbery to be committed, if the  
18 truth was he had no knowledge that Jacob Dismont who is acting  
19 alone had stolen this iPad from a kid, okay, and he was as  
20 panicked as he was, and he was facing threats as he was, he was  
21 given that out. Detective Sanborn gave him an out, okay.

22 And do you know how much danger is he in in the  
23 interview room of Metro? And I ask you. Ask yourself. What's  
24 changed between then and now in terms of danger? Now it's  
25 safe? Now it's safe.

1           He said in the prior clip oh, he was going to turn  
2 himself in because he didn't want to implicate. He could not  
3 implicate Jacob Dismont. Actually he was turning himself in if  
4 that was really true, okay, to absolve himself. And absolve  
5 himself by lying, saying that wasn't him, it was some other  
6 person. He sat at that intersection and waited, okay, and he  
7 told you himself, okay.

8                                 (Video played.)

9           MS. BOTELHO: My objective was to pick up Jake, okay.  
10 Getaway driver. Nothing out of the ordinary. Who picks up  
11 someone or expects to pick up someone on the side of a busy  
12 road? I mean, it wasn't so busy that he had to sit at that  
13 intersection for, you know, several -- two minutes because when  
14 Jacob was pulling Marcos pass that intersection, in the  
15 eastbound lanes, they weren't run over. Car slowed, okay. So  
16 surely he had time to turn at that point, okay, but his  
17 objective was to pick up Jake, okay. He admits what he can't  
18 deny, and he will deny what he cannot admit.

19           To panhandle, to pick up on the side of the road, a  
20 busy road, you're just going to scoop somebody up, they both --  
21 they had cell phones. Why don't you call him? Hey, dude, I  
22 don't know why you went there, but maybe I could pick you up at  
23 the Walgreens. Maybe I'll pull into the car wash because  
24 you're acting weird. I'll pick you up at the car wash, and  
25 I'll just meet you there. It's safer because there isn't

1 ongoing traffic that I have to fight through. And I wouldn't  
2 have to stop my car in the middle of the road to get you.

3           You need to call him what he is. The truth is  
4 supposed to set you free, and the truth that he sold you is not  
5 the truth. They're lies and nothing more. Those lies should  
6 convict him because that is the only evidence that you have,  
7 and it's not even credible at that. It's the only arguable  
8 evidence that he didn't know what was occurring.

9           On the same vein as admit what you can't deny, deny  
10 what you can't admit, the defense is asking you to find him  
11 guilty of this involuntary manslaughter, as shown in  
12 Instruction Number -- I think it's 14.

13           Let me tell you why that's not the right verdict,  
14 okay. First of all, the most obvious reasons is because this  
15 is a first-degree murder under the felony-murder theory because  
16 this was during the commission of a robbery, which was death.  
17 But listen to what involuntary manslaughter is: It's the  
18 killing of a human being without any intent to do so in the  
19 commission of an unlawful act or a lawful act which probably  
20 might produce such a consequence in an unlawful manner, but  
21 where the involuntary killing occurs in the commission of an  
22 unlawful act which in its consequences naturally tends to  
23 destroy the life of a human being or is committed in the  
24 prosecution of a felonious intent the offense is murder. Okay.

25           Let me give you an example of an involuntary

1 manslaughter, okay. This just happened recently, but it's a  
2 variation. Car surfing. Sometimes teenagers, you know, are  
3 sad or they're bored, and they decide, hey, I know it's  
4 (indiscernible). I'm going to, you know, get on the hood of  
5 this car. You're going to drive around the neighborhood, okay.  
6 It just so happens the individual driving is a little bit  
7 intoxicated, okay. So the act of driving in and of itself is  
8 lawful, okay, but driving while intoxicated with someone on the  
9 hood of your vehicle, that is an act which naturally tends to  
10 destroy the life of a human being.

11 MR. MARCHESE: Objection, Your Honor. That's --

12 THE COURT: Sustained.

13 MR. MARCHESE: That's misstating the law.

14 THE COURT: It is. Sustained.

15 MS. BOTELHO: Where the involuntary killing occurs in  
16 the commission of an unlawful act, like illegal or drunk  
17 driving, okay, which in its consequences naturally tends to  
18 destroy the life of a human being or is committed in the  
19 prosecution of a felonious intent, the offense is murder, okay.  
20 So when that occurs, it's murder, okay.

21 Involuntary manslaughter is the killing of a human  
22 being without any intent to do so in the commission of an  
23 unlawful act or a lawful act which probably might produce such  
24 a consequence in an unlawful manner. That's the car surfing  
25 example. Okay. That's what involuntary manslaughter would be



1 where you are killing someone without the intent to do so while  
2 you're committing an unlawful act or a lawful act, driving  
3 drunk or driving.

4 MR. MARCHESE: I'm going to object. This is a  
5 complete misstatement of the law.

6 THE COURT: And I just sustained the objection.

7 MR. MARCHESE: Yeah.

8 MS. BOTELHO: Your Honor, that was to the second part  
9 of the instruction.

10 THE COURT: I've sustained. That's another offense.  
11 The driving under the influence is a felony other offense. So  
12 that's the part I've sustained.

13 MS. BOTELHO: It's not an unlawful -- it is not an  
14 involuntary manslaughter, okay. Because it doesn't meet this  
15 definition, okay. It's not something that's done without any  
16 intent in the commission of an unlawful act, okay. Or a lawful  
17 act which probably might produce such a consequence in an  
18 unlawful manner.

19 Driving, flooring away while you have a boy hanging  
20 on the side of your car, okay, dragging him for 90 feet and  
21 leaving him to die on the street is not involuntary  
22 manslaughter, okay. It's felony murder, first-degree murder  
23 all day --

24 MR. MARCHESE: Judge, objection. It's in the jury  
25 instructions. It's a choice for the jurors. It's completely

1 beyond --

2 THE COURT: Did you want to approach?

3 MR. MARCHESE: Yes.

4 (The bench conference began.)

5 THE COURT: I sustained the objection earlier because  
6 the drunk driving being another offense that adds this other  
7 element to it, which is (indiscernible).

8 What is your objection? Mr. Leventhal or Mr. --

9 MR. LEVENTHAL: Well, yeah.

10 MR. MARCHESE: Well, she just said that the driving  
11 away is felony murder. That's what I gleaned from the  
12 argument. So the felony-murder rule here would be robbery,  
13 larceny or whatever they did (indiscernible) felony is. I'm  
14 not seeing the argument there. What would delineate felony  
15 driving away?

16 THE COURT: Okay. (Indiscernible) previous  
17 (indiscernible).

18 MS. BOTELHO: I'm sorry. You want me to --

19 THE COURT: Yeah.

20 MS. BOTELHO: Okay.

21 THE COURT: Just let me know if you can make an offer  
22 of proof so I can rule.

23 MS. BOTELHO: I'm saying the driving away, flooring  
24 it, driving away while this boy is hanging off the side of your  
25 car being dragged 90 feet and leaving him to die on the side of

1 the road is felony murder, first-degree murder, not involuntary  
2 manslaughter.

3 THE COURT: As long as there's some tie to the  
4 robbery, that's (indiscernible) say it.

5 MS. BOTELHO: Okay.

6 THE COURT: So there's no mention of the robbery  
7 itself.

8 MS. BOTELHO: Okay. We've been talking about the  
9 robbery, but you know what I'll just reargue it.

10 MR. MARCHESE: Well, how long is this going to go on  
11 for? Because I went for maybe 10 minutes, and this is been  
12 what, over an hour now.

13 THE COURT: Understood. I think this is probably  
14 close to wrapping up.

15 MS. BOTELHO: It is.

16 THE COURT: As long as we stop --

17 MS. BOTELHO: It is, but, Your Honor, at the same  
18 time, just because they just barely, you know, generally raised  
19 an issue, such as, oh, there's nothing out of the ordinary,  
20 it's actually involuntary as opposed to first-degree murder,  
21 that doesn't give a time limit on to the State to rebut these  
22 allegations and these arguments that they made, as cursory as  
23 they may have been.

24 THE COURT: Understood. So with that how much longer  
25 do you have?

1 MS. BOTELHO: I don't know, five minutes.

2 THE COURT: Okay. Overruled. You can continue. Go  
3 ahead.

4 (The bench conference was concluded.)

5 MS. BOTELHO: He denies what he can't admit. He  
6 admits what he can't deny, okay.

7 The truth of the matter after looking at all of the  
8 evidence, and giving every piece of evidence, the due weight  
9 that you deem necessary and appropriate, there's no other  
10 interpretation. There's no interpretation of this evidence  
11 that will support the defendant's claims, his lies when he took  
12 the stand.

13 At the end of your deliberation, the evidence will  
14 show on that particular day, May 16th, 2013, Jacob Dismont and  
15 Michael Solid conspired to commit a robbery. They needed  
16 money. Dismont picked them up. They showed up to this gas  
17 station after they had identified the victim and his friend.  
18 He stayed and watched. There were phone calls to and from. He  
19 went to pick him up. He served his purpose, being the lookout  
20 and the getaway driver.

21 And whether that killing was intentional,  
22 unintentional or accidental, Michael Solid is guilty of  
23 first-degree murder with use of a deadly weapon under the  
24 felony-murder rule.

25 His lies should not set him free. They should

1 convict him. And that's what we're going to ask you to find.  
2 Find him guilty of conspiracy to commit robbery, robbery and  
3 first-degree murder with use of a deadly weapon. That's what  
4 the evidence shows.

5 Thank you for your time.

6 THE COURT: Thank you, State. At this time we do  
7 need my JEA to come in as well as my marshal to be sworn.

8 All right. The clerk will now swear in the officers  
9 to take charge of the jurors and the alternate juror.

10 (Officers sworn to take charge of the jurors.)

11 THE CLERK: Thank you.

12 THE COURT: All right. Ladies and gentlemen, as you  
13 know, a criminal jury is composed of 12 members. There are 13  
14 of you here. One of you will serve as an alternate. You are  
15 not discharged from jury service. You are still under oath,  
16 and you may not talk to anyone about the case, and no one may  
17 talk to you about the case.

18 Your service may still be needed if one of the jurors  
19 is no longer able to participate in deliberations.  
20 Additionally, you will have to come back for the penalty phase  
21 if there is one.

22 The alternate jurors in this case are 656, David  
23 Kenneally. Please leave your name and number with my judicial  
24 executive assistant so you can be contacted if you are required  
25 to continue the deliberation process.

1 Okay. Thank you, sir.

2 (Jury recessed to deliberate at 2:37 p.m.)

3 THE COURT: The jury has left the room. You may be  
4 seated.

5 If you guys can leave your numbers with the clerk,  
6 the attorneys, so that we can reach you when there's a verdict.

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

9 MS. BOTELHO: Not from the State.

10 MR. LEVENTHAL: No, Your Honor.

11 MR. MARCHESE: I guess depending on verdict,  
12 assumption, let's just say it doesn't go our way, what do we  
13 think for penalty timewise?

14 THE COURT: I would imagine if we had time today we  
15 would begin with that today.

16 We have the next two days only. So I've given you  
17 the schedule. That's what we have --

18 MR. MARCHESE: Yeah, I know that -- sure.

19 THE COURT: -- to work with. And so I'm sure the  
20 State is aware of that time. That's why I gave it to them up  
21 front. Okay. All right.

22 All right. We are in recess.

23 (Proceedings recessed at 2:39 p.m., until 4:56 p.m.)

24 THE COURT: Do the parties stipulate to the presence  
25 of the jury?

1 MS. BOTELHO: The State does.

2 MR. MARCHESE: Yes, Your Honor.

3 THE COURT: You may be seated.

4 Has the jury selected a foreperson?

5 JUROR NO. 04: We have.

6 THE COURT: And for the record, who is the  
7 foreperson?

8 JUROR NO. 04: I am.

9 THE COURT: What's your name and badge number?

10 JUROR NO. 04: My badge number -- sorry.

11 THE COURT: It's fine.

12 THE MARSHAL: It's underneath.

13 JUROR NO. 04: Oh, just this number? I don't think  
14 she means that number.

15 110508, Natasha Galperin.

16 THE COURT: Okay, perfect.

17 JUROR NO. 04: Sorry.

18 THE COURT: No, you're fine. Don't worry about it.

19 Ms. Foreperson, has the jury reached a verdict?

20 JUROR NO. 04: Yes, they have.

21 THE COURT: If you could pass it to my marshal.

22 Will the defendant and his attorney please stand.

23 The clerk will now read the verdict out loud.

24 THE CLERK: District Court. Clark County, Nevada.

25 The State of Nevada versus Michael Solid. Case Number C290260.

1 Department 2. Verdict.

2 We the jury in the above entitled case find the  
3 defendant Michael Solid as follows:

4 Count 1, Conspiracy to commit robbery. Guilty of  
5 conspiracy to commit robbery.

6 Count 2, Robbery. Guilty of robbery.

7 And Count 3, murder with use of a deadly weapon.  
8 Guilty of first-degree murder with use of a deadly weapon.

9 Dated this 24th day of May 2022.

10 Jury Foreperson.

11 Ladies and gentlemen of the jury, are these your  
12 verdicts as read, so say you one so say you all?

13 THE JURY: Yes.

14 THE COURT: Do either party wish to have the jury  
15 polled?

16 MR. MARCHESE: Yes, Judge.

17 MS. BOTELHO: The State does not.

18 THE COURT: Okay.

19 Juror Number 1, is this your verdict as read?

20 JUROR NO. 01: Yes.

21 THE COURT: Juror Number 3, is this your verdict as  
22 read?

23 JUROR NO. 03: Yes.

24 THE COURT: Juror Number 4, is this your verdict as  
25 read?



1 JUROR NO. 04: Yes.

2 THE COURT: Juror Number 5, is this your verdict as  
3 read?

4 JUROR NO. 05: Yes.

5 THE COURT: Juror Number 6, is this your verdict as  
6 read?

7 JUROR NO. 06: Yes.

8 THE COURT: Juror 7, is this your verdict as read?

9 JUROR NO. 07: Yes.

10 THE COURT: Juror 8, is this your verdict as read?

11 JUROR NO. 08: Yes.

12 THE COURT: Juror 9, is this your verdict as read?

13 JUROR NO. 09: Yes.

14 THE COURT: Juror 10, is this your verdict as read?

15 JUROR NO. 10: Yes.

16 THE COURT: Juror 11, is this your verdict as read?

17 JUROR NO. 11: Yes.

18 THE COURT: Juror 12, is this your verdict as read?

19 JUROR NO. 12: Yes.

20 THE COURT: And Juror 13, is it your verdict as read?

21 JUROR NO. 13: Yes.

22 THE COURT: The clerk will now record the verdict in  
23 the minutes of the court.

24 There is one more section of this trial that we are  
25 required to complete. There will be a sentencing portion of

1 the trial. We are going to start that tomorrow at 9:00 a.m.  
2 And so you are still under oath. You are still obligated not  
3 to talk to anyone about the case at this time, and we'll see  
4 you back at 9:00 a.m.

5 I'm going to read the admonition, maybe for the last  
6 time.

7 During the recess, you are admonished not to talk or  
8 converse amongst yourselves or with anyone else on any subject  
9 connected with this trial; or read, watch or listen to any  
10 report of or commentary on the trial of any person connected  
11 with the trial by any medium of information, including, without  
12 limitation, newspaper, television, the Internet and radio; or  
13 form or express any opinion on any subject connected with the  
14 case until we are back together in this room at 9:00 a.m.  
15 tomorrow morning.

16 You are excused. Thank you.

17 Please stand for the jury.

18 (Jury recessed for the evening at 5:00 p.m.)

19 THE COURT: Okay. The jury has exited the room. You  
20 may be seated.

21 So it sounds like we'll be going to the sentencing  
22 phase tomorrow.

23 Is that still what you want to do, Mr. Solid?

24 MR. LEVENTHAL: Is the Court still on a time frame  
25 here?

1 THE COURT: Yes.

2 MR. LEVENTHAL: I mean, five minutes, two minutes?

3 THE COURT: Oh, if you, for sure. We've gone past.  
4 You're okay.

5 MR. LEVENTHAL: Just five minutes just to --

6 MR. MARCHESE: I'm sorry. I know that -- is.

7 THE COURT: No, it's not you're fault. Everyone's  
8 fine. Go ahead. Take five minutes.

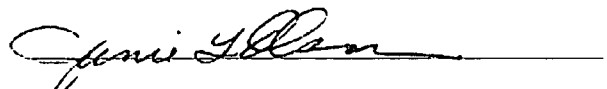
9 (Proceedings recessed for the evening at 5:01 p.m.)

10 -oOo-

11 ATTEST: I do hereby certify that I have truly and correctly  
12 transcribed the audio/video proceedings in the above-entitled  
13 case to the best of my ability.

14

15



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Janie L. Olsen  
Transcriber

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<b>JUROR NO. 01: [1]</b> 80/20	<b>\$</b> \$1 [6] 11/23 11/25 12/1 12/5 30/3 39/8	<b>38 [1]</b> 29/2	<b>8</b> 2 24/2	50/6
<b>JUROR NO. 03: [1]</b> 80/23	<b>\$5 [1]</b> 52/15	<b>39 [2]</b> 15/22 15/23	<b>abettor [1]</b> 6/25	<b>actually [28]</b> 8/7 12/3
<b>JUROR NO. 04: [7]</b> 79/5 79/8 79/10 79/13 79/17 79/20 81/1	<b>\$80 [6]</b> 26/5 26/8 46/1 54/15 54/16 66/18	<b>3942 [1]</b> 25/1	<b>abettors [1]</b> 6/13	12/22 13/16 16/21 26/1
<b>JUROR NO. 05: [1]</b> 81/4	-	<b>3:12 [1]</b> 67/21	<b>abiding [2]</b> 50/2 50/4	26/2 30/21 33/24 35/9
<b>JUROR NO. 06: [1]</b> 81/7	<b>-oOo [1]</b> 83/10	<b>3:50 [4]</b> 11/1 11/4 11/5 11/17	<b>ability [1]</b> 83/13	35/16 35/17 35/19
<b>JUROR NO. 07: [1]</b> 81/9	<b>1</b>	<b>3:50 and [1]</b> 11/6	<b>able [6]</b> 20/6 24/8 27/1 46/8 62/5 77/19	36/18 42/5 42/17 50/12
<b>JUROR NO. 08: [1]</b> 81/11	<b>10 [1]</b> 81/14	<b>3:50 is [1]</b> 11/4	<b>about [82]</b> 4/4 4/5 4/15 4/21 5/17 6/14 7/7 9/15	50/13 54/19 56/5 60/1
<b>JUROR NO. 09: [1]</b> 81/13	<b>10 minutes [3]</b> 11/9 48/6 75/11	<b>4</b>	11/15 11/17 14/25 15/1 15/19 15/20 16/24 17/1	61/11 62/14 64/15
<b>JUROR NO. 10: [1]</b> 81/15	<b>100 [1]</b> 38/13	<b>41 [1]</b> 50/13	17/12 19/11 19/17	64/16 65/5 70/3 75/20
<b>JUROR NO. 11: [1]</b> 81/17	<b>11 [2]</b> 29/24 81/16	<b>4:00 [1]</b> 43/10	19/20 20/2 20/11 20/17	<b>adamant [1]</b> 22/20
<b>JUROR NO. 12: [1]</b> 81/19	<b>110508 [1]</b> 79/15	<b>4:00 o'clock [1]</b> 51/11	21/15 22/20 23/14	<b>addicted [2]</b> 45/11 45/24
<b>JUROR NO. 13: [1]</b> 81/21	<b>12 [2]</b> 77/13 81/18	<b>4:02 [2]</b> 11/6 11/8	23/22 24/5 24/16 25/13	<b>Additionally [1]</b> 77/20
<b>MR. LEVENTHAL: [11]</b> 3/7 62/25 63/2 63/4 63/7 64/1 74/9 78/10 82/24 83/2 83/5	<b>12 minutes [1]</b> 11/9 <b>12:10 [1]</b> 3/1	<b>4:03 [2]</b> 11/16 11/22	25/16 25/21 29/6 29/13	<b>address [2]</b> 27/1 78/7
<b>MR. MARCHESE: [14]</b> 34/25 72/11 72/13 73/4 73/7 73/24 74/3 74/10 75/10 78/11 78/18 79/2 80/16 83/6	<b>13 [4]</b> 16/10 29/3 77/13 81/20	<b>4:03:28 [1]</b> 12/8	29/14 30/3 31/3 34/11	<b>adds [1]</b> 74/6
<b>MR. PALAL: [6]</b> 3/15 3/18 18/20 19/5 32/24 35/3	<b>13 minutes [1]</b> 11/17 <b>14 [3]</b> 47/22 48/15 71/12	<b>4:03:50 [1]</b> 13/5	34/18 36/17 38/17	<b>admissions [1]</b> 55/20
<b>MS. BOTELHO: [31]</b> 3/6 49/9 56/2 56/16 61/5 61/25 63/19 64/4 64/21 64/24 67/18 67/23 68/19 69/6 69/15 70/9 72/15 73/8 73/13 74/18 74/20 74/23 75/5 75/8 75/15 75/17 76/1 76/5 78/9 79/1 80/17	<b>14-year-old [1]</b> 14/7 <b>15-year-old [7]</b> 14/7 21/23 33/25 34/18 36/24 37/4 51/17	<b>4:05:39 [1]</b> 14/10	39/24 40/3 40/7 41/15	<b>admit [17]</b> 54/22 54/24 55/5 55/7 55/7 55/8
<b>THE CLERK: [2]</b> 77/11 79/24	<b>16 [1]</b> 11/15	<b>4:07:09 [1]</b> 14/13	42/15 43/19 43/22	55/11 56/10 62/16
<b>THE COURT: [57]</b> 3/4 3/8 3/16 34/23 35/2 49/6 63/1 63/5 63/16 63/24 64/2 72/12 72/14 73/6 73/10 74/2 74/5 74/16 74/19 74/21 75/3 75/6 75/13 75/16 75/24 76/2 77/6 77/12 78/3 78/14 78/19 78/24 79/3 79/6 79/9 79/11 79/16 79/18 79/21 80/14 80/18 80/21 80/24 81/2 81/5 81/8 81/10 81/12 81/14 81/16 81/18 81/20 81/22 82/19 83/1 83/3 83/7	<b>16th [8]</b> 3/18 4/17 17/18 25/8 30/24 31/22 67/19 76/14	<b>4:09 [1]</b> 16/7	44/10 45/6 46/1 46/15	62/20 64/15 68/14 69/3
<b>THE JURY: [1]</b> 80/13	<b>17th [3]</b> 30/5 30/7 30/25	<b>4:09 p.m [1]</b> 16/8	48/25 50/22 51/8 51/13	70/18 71/9 71/10 76/5
<b>THE MARSHAL: [1]</b> 79/12	<b>18 [1]</b> 7/10	<b>4:09:21 [1]</b> 15/19	52/4 54/1 58/5 59/13	<b>admits [6]</b> 54/21 54/23 62/19 69/2 70/17 76/6
	<b>18th [4]</b> 30/12 31/13 31/23 33/8	<b>4:09:31 [1]</b> 16/2	60/14 60/24 61/13 62/2	<b>admitted [5]</b> 27/14 28/5 35/16 56/8 68/14
	<b>1:01 [1]</b> 67/21	<b>4:10 [1]</b> 15/20	62/2 62/3 62/9 62/15	<b>admitting [1]</b> 57/12
	<b>2</b>	<b>4:11 p.m [1]</b> 16/13	62/23 64/13 66/2 66/11	<b>admonished [1]</b> 82/7
	<b>20 [4]</b> 16/2 16/5 16/6 64/21	<b>4:12 [2]</b> 19/10 66/17	67/5 67/8 67/16 68/23	<b>admonition [1]</b> 82/5
	<b>20 miles [1]</b> 30/3	<b>4:13 [1]</b> 19/9	69/4 75/8 77/16 77/17 79/18 82/3	<b>affairs [1]</b> 49/24
	<b>2013 [19]</b> 3/18 4/18 17/18 24/12 25/3 25/8 25/25 28/2 28/6 30/5 30/7 30/12 30/24 30/25 31/13 32/6 33/8 35/24 76/14	<b>4:56 p.m [1]</b> 78/23	<b>above [2]</b> 80/2 83/12	<b>affording [1]</b> 32/13
	<b>2022 [3]</b> 1/12 3/1 80/9	<b>5</b>	<b>above-entitled [1]</b> 83/12	<b>after [23]</b> 14/9 18/17 20/22 21/25 21/25
	<b>22nd [5]</b> 24/12 25/3 25/25 28/2 28/6	<b>5/16/13 [1]</b> 29/3	<b>Absolutely [1]</b> 63/19	23/20 23/21 27/22 30/2
	<b>24 [3]</b> 1/12 3/1 40/8	<b>503-3942 [1]</b> 25/1	<b>absolve [2]</b> 70/4 70/4	30/5 31/13 44/10 49/25
	<b>24th [1]</b> 80/9	<b>55.72 feet [1]</b> 20/11	<b>access [1]</b> 16/10	54/14 54/14 57/25 58/2
	<b>25 [2]</b> 46/13 47/7	<b>5:00 o'clock [1]</b> 43/10	<b>accident [1]</b> 52/2	58/6 66/20 68/3 68/4
	<b>29 [1]</b> 15/20	<b>5:00 p.m [1]</b> 82/18	<b>accidental [4]</b> 5/4 5/14 34/7 76/22	76/7 76/17
	<b>2:30 to [1]</b> 30/25	<b>5:01 p.m [1]</b> 83/9	<b>accidentally [1]</b> 6/3	<b>afternoon [2]</b> 35/5 43/11
	<b>2:37 p.m [1]</b> 78/2	<b>6</b>	<b>account [1]</b> 57/4	<b>afterwards [3]</b> 18/21 20/17 28/25
	<b>2:39 p.m [1]</b> 78/23	<b>6-5 [1]</b> 51/15	<b>accounts [1]</b> 41/18	<b>again [35]</b> 5/12 9/25 10/3 10/9 11/18 11/23
	<b>2:41 and [1]</b> 10/6	<b>656 [1]</b> 77/22	<b>accused [2]</b> 7/18 22/1	12/5 13/8 13/14 15/22
	<b>2:45 [1]</b> 10/6	<b>6:34 [2]</b> 25/8 66/18	<b>accuses [1]</b> 23/11	16/12 16/13 16/20 20/1
	<b>3</b>	<b>6:52 [1]</b> 25/8	<b>acknowledge [3]</b> 55/23 55/24 56/14	21/17 22/21 24/7 25/7
	<b>30 [1]</b> 22/5	<b>7</b>	<b>acknowledging [1]</b> 55/16	25/18 27/14 39/21 40/6
	<b>31 [2]</b> 49/15 49/17	<b>8</b>	<b>acknowledgment [1]</b> 11/19	40/13 41/9 43/23 44/11
	<b>32.79 feet [1]</b> 20/13	<b>8-month-old [4]</b> 14/25 15/2 15/8 15/12	<b>acquired [1]</b> 31/7	47/6 49/5 55/11 58/5
	<b>34 [2]</b> 53/17 54/4	<b>80 [2]</b> 26/6 68/7	<b>across [8]</b> 14/13 14/17 15/2 15/7 41/13 41/14 50/10 58/12	60/23 61/25 67/4 67/23 68/13
	<b>360 degree [1]</b> 38/13	<b>88.5 [1]</b> 20/13	<b>act [21]</b> 5/8 5/10 7/20 8/19 8/20 8/20 48/7 48/8 48/10 71/19 71/19 71/22 72/7 72/9 72/16 72/23 72/23 73/2 73/2 73/16 73/17	<b>against [3]</b> 20/11 23/10 44/20
		<b>A</b>	<b>acted [1]</b> 44/5	<b>Agent [3]</b> 10/14 10/15 10/25
		<b>a.m [3]</b> 82/1 82/4 82/14	<b>acting [8]</b> 22/22 41/9 52/18 52/19 52/20 62/11 69/18 70/24	<b>AGNES [1]</b> 1/18
		<b>aback [1]</b> 51/22	<b>actions [9]</b> 9/1 9/6 10/4 16/21 22/18 23/20 23/20 39/9 44/10	<b>agree [6]</b> 40/19 49/9 49/10 49/11 49/11 54/10
		<b>abdominal [1]</b> 68/24	<b>acts [7]</b> 8/11 10/1 10/5 31/1 47/9 51/4 52/12	<b>agreed [1]</b> 8/7
		<b>Abell [2]</b> 30/7 30/8	<b>actual [3]</b> 6/23 16/24	<b>agreement [9]</b> 8/4 8/7 8/13 10/3 10/3 24/1 35/17 46/25 67/2
		<b>abet [1]</b> 7/21		<b>ahead [5]</b> 3/16 37/5 63/6 76/3 83/8
		<b>abetted [3]</b> 7/4 9/22 53/2		<b>aid [4]</b> 7/21 7/23 8/6 65/14
		<b>abetting [5]</b> 4/1 7/17		<b>aided [3]</b> 7/4 9/22 53/1 <b>aiders [1]</b> 6/24

<p><b>A</b></p> <p><b>aiders</b> [1] 6/13</p> <p><b>aiding</b> [6] 4/1 7/17 7/25 8/1 8/2 24/2</p> <p><b>AKA</b> [1] 1/8</p> <p><b>Albertson's</b> [1] 21/5</p> <p><b>Alejandro</b> [1] 17/1</p> <p><b>alive</b> [1] 4/2</p> <p><b>all</b> [85]</p> <p><b>allegations</b> [1] 75/22</p> <p><b>alleged</b> [1] 42/9</p> <p><b>allegedly</b> [3] 38/18 47/1 62/6</p> <p><b>alleging</b> [1] 65/8</p> <p><b>alluded</b> [1] 54/25</p> <p><b>almost</b> [1] 19/13</p> <p><b>alone</b> [2] 44/6 69/19</p> <p><b>along</b> [5] 18/20 18/25 42/6 47/4 65/15</p> <p><b>already</b> [1] 60/9</p> <p><b>also</b> [14] 9/10 26/11 29/4 29/5 37/17 39/1 47/11 50/21 52/7 52/17 56/11 57/3 58/11 68/24</p> <p><b>alternate</b> [4] 34/17 77/9 77/14 77/22</p> <p><b>alternative</b> [1] 12/3</p> <p><b>although</b> [2] 12/22 34/12</p> <p><b>always</b> [4] 35/22 35/22 36/14 36/16</p> <p><b>am</b> [1] 79/8</p> <p><b>amazing</b> [3] 19/8 19/10 36/16</p> <p><b>ambulance</b> [2] 28/13 28/14</p> <p><b>ambulances</b> [1] 28/11</p> <p><b>America</b> [1] 50/10</p> <p><b>amongst</b> [1] 82/8</p> <p><b>amount</b> [3] 33/7 68/21 68/25</p> <p><b>amounts</b> [1] 12/10</p> <p><b>angle</b> [4] 17/15 17/15 17/16 17/19</p> <p><b>another</b> [10] 16/12 21/24 28/7 31/11 39/17 50/12 53/16 63/13 73/10 74/6</p> <p><b>answer</b> [4] 6/10 25/20 36/16 45/17</p> <p><b>answering</b> [1] 67/10</p> <p><b>answers</b> [2] 45/1 45/2</p> <p><b>any</b> [29] 9/7 10/23 10/24 11/24 12/23 16/20 21/3 23/23 23/24 24/3 25/19 27/10 27/16 40/18 41/5 54/1 54/2 57/22 59/18 63/12 71/18 72/22 73/15 82/8 82/9 82/10 82/11 82/13 82/13</p> <p><b>anymore</b> [1] 65/13</p> <p><b>anyone</b> [5] 13/8 21/7 77/16 82/3 82/8</p> <p><b>anything</b> [9] 23/3 31/17 38/21 42/25 44/17 60/24 62/15 63/14 78/7</p>	<p><b>any</b> [1] 33/21</p> <p><b>anywhere</b> [1] 38/16</p> <p><b>apartment</b> [1] 30/20</p> <p><b>apologize</b> [1] 32/9</p> <p><b>apparently</b> [2] 12/10 30/2</p> <p><b>APPEARANCES</b> [1] 1/16</p> <p><b>appeared</b> [1] 61/12</p> <p><b>appellate</b> [1] 63/12</p> <p><b>applies</b> [3] 6/12 6/20 6/22</p> <p><b>apply</b> [1] 6/20</p> <p><b>approach</b> [2] 62/25 74/2</p> <p><b>approaching</b> [1] 55/17</p> <p><b>appropriate</b> [1] 76/9</p> <p><b>Aquafina</b> [2] 32/11 32/18</p> <p><b>are</b> [98]</p> <p><b>area</b> [10] 10/10 11/11 11/17 12/6 16/1 16/3 16/4 23/7 28/15 30/10</p> <p><b>aren't</b> [2] 19/18 20/4</p> <p><b>Arenas</b> [20] 3/18 4/1 4/19 5/10 7/2 7/5 9/19 20/14 26/12 27/5 35/20 37/4 39/2 39/13 41/16 42/1 43/17 48/2 48/3 48/19</p> <p><b>Arenas's</b> [1] 36/2</p> <p><b>arguable</b> [1] 71/7</p> <p><b>argue</b> [8] 38/11 39/14 39/19 42/8 44/4 44/9 44/11 47/2</p> <p><b>argued</b> [2] 53/4 54/8</p> <p><b>argues</b> [1] 38/22</p> <p><b>arguing</b> [6] 4/12 4/14 4/17 47/3 48/6 48/17</p> <p><b>argument</b> [9] 2/3 2/4 2/5 3/17 35/4 49/8 57/22 74/12 74/14</p> <p><b>arguments</b> [3] 3/10 44/8 75/22</p> <p><b>arm</b> [1] 21/14</p> <p><b>armed</b> [1] 5/23</p> <p><b>around</b> [13] 5/19 12/7 12/24 13/22 30/25 31/20 32/15 39/5 39/12 55/4 61/11 61/23 72/5</p> <p><b>arrested</b> [2] 33/16 33/19</p> <p><b>arrive</b> [1] 11/6</p> <p><b>arrived</b> [1] 19/13</p> <p><b>arrives</b> [1] 11/12</p> <p><b>as</b> [98]</p> <p><b>ask</b> [14] 12/9 12/11 12/13 12/17 20/2 35/13 36/13 36/14 45/2 46/11 48/21 69/23 69/23 77/1</p> <p><b>asked</b> [13] 6/7 20/5 24/7 25/18 26/5 29/16 40/18 42/18 48/4 55/22 58/22 60/23 66/9</p> <p><b>asking</b> [8] 12/9 13/8 13/14 13/17 13/22 47/25 67/9 71/10</p> <p><b>assistant</b> [1] 77/24</p> <p><b>assisted</b> [1] 52/10</p>	<p><b>assumption</b> [1] 78/12</p> <p><b>at</b> [106]</p> <p><b>attached</b> [2] 22/10 65/12</p> <p><b>attempted</b> [1] 9/11</p> <p><b>attention</b> [7] 21/7 28/9 43/2 43/5 52/10 53/17 65/6</p> <p><b>ATTEST</b> [1] 83/11</p> <p><b>attorney</b> [1] 79/22</p> <p><b>attorneys</b> [3] 1/18 13/18 78/6</p> <p><b>audio</b> [2] 39/16 83/12</p> <p><b>audio/video</b> [1] 83/12</p> <p><b>available</b> [1] 20/4</p> <p><b>awaiting</b> [1] 17/4</p> <p><b>aware</b> [3] 37/11 53/17 78/20</p> <p><b>away</b> [21] 8/17 20/20 23/4 28/17 28/18 28/20 30/3 36/25 41/7 44/22 48/2 52/8 52/25 56/21 58/3 58/6 73/19 74/11 74/15 74/23 74/24</p> <p><b>awning</b> [1] 58/17</p> <p><b>B</b></p> <p><b>baby</b> [1] 30/14</p> <p><b>baby's</b> [3] 14/23 29/24 59/3</p> <p><b>back</b> [38] 3/9 15/4 15/8 15/12 16/6 16/6 20/9 23/2 26/9 26/10 29/9 32/6 35/23 36/5 37/2 37/13 39/25 42/13 43/6 43/21 47/20 48/24 49/2 49/7 53/15 59/11 60/4 61/8 61/11 61/13 61/17 62/9 62/13 63/21 65/14 77/20 82/4 82/14</p> <p><b>background</b> [1] 44/14</p> <p><b>bad</b> [1] 56/12</p> <p><b>badge</b> [2] 79/9 79/10</p> <p><b>banging</b> [2] 62/7 64/5</p> <p><b>bank</b> [1] 5/22</p> <p><b>barely</b> [3] 11/18 48/14 75/18</p> <p><b>baseball</b> [2] 44/13 44/14</p> <p><b>based</b> [4] 9/5 47/15 47/24 49/22</p> <p><b>basically</b> [5] 13/25 22/5 28/17 46/13 58/21</p> <p><b>basilar</b> [1] 68/21</p> <p><b>be</b> [77] 3/8 4/1 5/7 5/22 6/4 7/6 7/19 8/11 8/21 9/11 9/11 9/25 13/20 13/21 15/10 18/24 20/6 20/10 20/24 21/7 21/15 22/2 24/8 25/22 25/23 26/11 27/18 27/18 27/23 29/15 29/21 32/1 32/5 32/6 35/5 35/22 36/15 36/17 37/4 38/6 38/7 38/15 39/1 39/3 43/10 44/24 46/8 46/24 46/25 47/7 48/24 50/6 50/6 50/14 50/15 53/6 53/8 53/17 53/18 54/8</p>	<p>56/11 57/12 58/23 59/9 62/7 69/17 72/25 74/12 77/7 77/18 77/24 78/3 79/3 81/25 82/20 82/21</p> <p><b>bear</b> [1] 50/13</p> <p><b>because</b> [89]</p> <p><b>been</b> [22] 5/19 16/15 25/6 25/9 35/22 37/24 40/7 40/22 43/3 43/4 44/25 46/9 47/13 48/5 48/7 62/6 63/11 66/10 69/9 75/8 75/11 75/23</p> <p><b>before</b> [7] 1/11 23/18 33/2 36/3 43/4 44/1 67/3</p> <p><b>began</b> [2] 63/3 74/4</p> <p><b>begin</b> [1] 78/15</p> <p><b>behalf</b> [1] 35/7</p> <p><b>behavior</b> [1] 14/24</p> <p><b>behind</b> [8] 17/3 17/16 17/20 42/9 42/17 42/21 42/22 43/16</p> <p><b>behold</b> [1] 58/20</p> <p><b>being</b> [30] 7/23 12/14 18/6 26/17 27/7 29/6 30/17 35/8 38/18 40/20 40/21 45/21 48/2 48/12 51/21 51/22 64/14 65/12 68/4 68/5 68/22 68/22 71/18 71/23 72/10 72/18 72/22 74/6 74/25 76/19</p> 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FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

MAY 24 2022

DISTRICT COURT  
CLARK COUNTY, NEVADA

BY *Jill M. Chambers*  
JILL M. CHAMBERS, DEPUTY

1 INST  
2  
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4  
5 THE STATE OF NEVADA,

6 Plaintiff,

7 -vs-

8 MICHAEL SOLID, aka  
9 Michael Samuel Solid,

10 Defendant.

CASE NO: C-13-290260-1

DEPT NO: XXI

11 INSTRUCTIONS TO THE JURY  
12 (INSTRUCTION NO. 1)

13 MEMBERS OF THE JURY:

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

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

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C-13-290260-1  
INST  
Instructions to the Jury  
4993741



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.

A Second Amended Indictment is but a formal method of accusing a person of a crime and is not of itself any evidence of the Defendant's guilt.

In this case, it is charged in a Second Amended Indictment that on or about the 16th day of May, 2013 the Defendant committed the offenses of CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147); ROBBERY (Category B Felony - NRS 200.380 - NOC 50137); and MURDER WITH USE OF A DEADLY WEAPON (FIRST DEGREE) (Category A Felony - NRS 200.010, 200.030.1, 193.165 - NOC 50006). It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the Defendant is guilty of the offenses charged.

**COUNT 1 - CONSPIRACY TO COMMIT ROBBERY**

Defendant MICHAEL SOLID, aka Michael Samuel Solid, did then and there meet with JACOB DISMONT and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: robbery, and in furtherance of said conspiracy, Defendant MICHAEL SOLID, aka Michael Samuel Solid, did commit the acts as set forth in Counts 2-3, said acts being incorporated by this reference as though fully set forth herein.

**COUNT 2 - ROBBERY**

Defendant MICHAEL SOLID, aka Michael Samuel Solid, did then and there willfully, unlawfully and feloniously take personal property, to wit: Apple iPad computer, from the person of MARCOS ARENAS, or in his presence, by means of force or violence or fear or injury to, and without the consent and against the will of the said MARCOS ARENAS, the Defendant MICHAEL SOLID, aka Michael Samuel Solid, and JACOB DISMONT being responsible under one or more of the following principles of criminal liability, to wit: (1) by the Defendant MICHAEL SOLID, aka Michael Samuel Solid, and JACOB DISMONT directly committing the crime and/or (2) by Defendant MICHAEL SOLID, aka Michael Samuel Solid, and JACOB DISMONT conspiring with each other to

1 commit the offense of robbery, whereby the Defendant MICHAEL SOLID, aka Michael  
2 Samuel Solid, and JACOB DISMONT are each vicariously liable for the reasonably  
3 foreseeable acts of their co-conspirator when the acts were in furtherance of the conspiracy,  
4 and/or by (3) the Defendant MICHAEL SOLID, aka Michael Samuel Solid, and JACOB  
5 DISMONT aiding or abetting in the commission of the crime by JACOB DISMONT  
6 providing a motor vehicle to be used in the commission of the crime and by Defendant  
7 MICHAEL SOLID, aka, Michael Samuel Solid, driving said vehicle to the location of  
8 MARCOS ARENAS, the Defendant MICHAEL SOLID, aka Michael Samuel Solid, and  
9 JACOB DISMONT accompanied one another to the crime scene near the intersection of  
10 Charleston and Scholl, Clark County, Nevada, wherein Defendant MICHAEL SOLID, aka,  
11 Michael Samuel Solid, acted as a lookout and getaway driver, while JACOB DISMONT  
12 exited the vehicle being driven by Defendant MICHAEL SOLID, aka, Michael Samuel  
13 Solid, and approached the said MARCOS ARENAS from behind and attempted to grab an  
14 Apple iPad from his person, wherein a struggle over said property ensued, and the said  
15 JACOB DISMONT took said property from the person and/or presence of MARCOS  
16 ARENAS, the Defendant MICHAEL SOLID, aka Michael Samuel Solid, and JACOB  
17 DISMONT left the crime scene together with the personal property taken from MARCOS  
18 ARENAS, the Defendant MICHAEL SOLID, aka Michael Samuel Solid, and JACOB  
19 DISMONT encouraging one another throughout by actions and/or words, and acted in  
20 concert throughout each with the intent to commit robbery.

21 COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON (FIRST DEGREE)

22 Defendant MICHAEL SOLID, aka Michael Samuel Solid, did then and there  
23 willfully, unlawfully, feloniously, and without authority of law, and with malice  
24 aforethought, kill MARCOS ARENAS a human being, using a deadly weapon, to wit: a  
25 motor vehicle, in the following manner, to wit; by driving into and/or over the body of the  
26 said MARCOS ARENAS with a motor vehicle, the actions of the Defendant MICHAEL  
27 SOLID, aka Michael Samuel Solid, and JACOB DISMONT resulting in the death of the said  
28 MARCOS ARENAS, the said killing having been committed during the perpetration or

1 attempted perpetration of a robbery, the Defendant MICHAEL SOLID, aka Michael Samuel  
2 Solid, and JACOB DISMONT being responsible under one or more of the following  
3 principles of criminal liability, to wit; (1) by directly committing the acts constituting the  
4 offense and/or (2) by Defendant MICHAEL SOLID, aka Michael Samuel Solid, and JACOB  
5 DISMONT conspiring with each other to commit robbery; and/or (3) by Defendant  
6 MICHAEL SOLID, aka Michael Samuel Solid, and JACOB DISMONT aiding or abetting  
7 each other in the commission of the crime, by JACOB DISMONT providing a motor vehicle  
8 to be used in the commission of the crime and by Defendant MICHAEL SOLID, aka,  
9 Michael Samuel Solid, driving said vehicle to the area where the said MARCOS ARENAS  
10 was walking, the Defendant MICHAEL SOLID, aka Michael Samuel Solid, and JACOB  
11 DISMONT accompanied each other to the crime scene where Defendant MICHAEL SOLID,  
12 aka, Michael Samuel Solid acted as a lookout and getaway driver, while JACOB DISMONT  
13 approached MARCOS ARENAS and attempted to grab property from the hands of the said  
14 MARCOS ARENAS, resulting in a struggle over said property, wherein JACOB DISMONT  
15 took the property of MARCOS ARENAS and retreated to the motor vehicle being driven by  
16 Defendant MICHAEL SOLID, aka, Michael Samuel Solid, who thereafter struck the said  
17 MARCOS ARENAS with said motor vehicle, the actions of the Defendant MICHAEL  
18 SOLID, aka Michael Samuel Solid, and JACOB DISMONT causing the death of MARCOS  
19 ARENAS, the Defendant MICHAEL SOLID, aka Michael Samuel Solid, and JACOB  
20 DISMONT left the crime scene together, Defendant MICHAEL SOLID, aka Michael  
21 Samuel Solid, and JACOB DISMONT encouraged one another throughout by actions and  
22 words, and acted in concert throughout, and each with intent to commit robbery.

INSTRUCTION NO. 4

In this case the defendant is accused in a Second Amended Indictment alleging an open charge of Murder with a Deadly Weapon. This charge includes and encompasses Murder of the First Degree, Murder of the Second Degree, and Involuntary Manslaughter.

The jury must decide if the defendant is guilty of any offense and, if so, of which offense.

INSTRUCTION NO. 5

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.



INSTRUCTION NO. 6

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding 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 intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

Malice as applied to murder does not necessarily import ill will toward the victim, but signifies general malignant recklessness of others' lives and safety or disregard of social duty.

Malice aforethought may be inferred from the intentional use of a deadly weapon in a deadly and dangerous manner.

INSTRUCTION NO. 7

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.

INSTRUCTION NO. 8

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

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the actions.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

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

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

INSTRUCTION NO 9

There are certain kinds of Murder in the First Degree which carry with them conclusive evidence of malice aforethought. One of these classes of First Degree Murder is a killing committed in the perpetration or attempted perpetration of Robbery. Therefore, a killing which is committed in the perpetration of a Robbery is deemed to be Murder in the First Degree, whether the killing was intentional, unintentional, accidental or the product of provocation or the heat of passion. This is called the Felony-Murder Rule.

The specific intent to perpetrate or attempt to perpetrate Robbery must be proven beyond a reasonable doubt. In order for the Felony-Murder Rule to apply under a robbery theory, the intent to take the property must be formed prior to or during the act constituting the killing.

To imply malice for the purposes of felony murder, the Defendant must intend to commit the robbery at the time of the killing.

INSTRUCTION NO. 10

All murder which is not First Degree Murder is Second Degree Murder.

Murder of the Second Degree is:

(a) An unlawful killing of a human being with malice aforethought, but without deliberation and premeditation; or

(b) Where an involuntary killing occurs in the commission of an unlawful act, not constituting robbery, which in its consequences, naturally tends to take the life of a human being or is committed in the prosecution of a felonious intent.

The unlawful act must be inherently dangerous, that is, the act must involve a high degree of probability and foreseeability that it will result in death, and there must be an immediate and direct causal relationship between the act and the death of the victim.

INSTRUCTION NO. 11

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 First Degree Murder, and

2. All twelve of you are convinced beyond a reasonable doubt that 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 Second Degree Murder.

INSTRUCTION NO. 12

When it is impossible to commit a particular crime without committing, at the same time and by the same conduct, another offense of lesser grade or degree, the latter is, with respect to the former, a "lesser included offense."

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the offense charged, he may, however, be found guilty of any lesser included offense, if the evidence is sufficient to establish his guilt of such lesser offense beyond a reasonable doubt.

The offense of Murder which actually charges the defendant with First Degree Murder necessarily includes the lesser offense of Second Degree Murder and Involuntary Manslaughter.

Involuntary Manslaughter is a lesser included offense of both First and Second Degree Murder. Thus, you may only return a verdict of Involuntary Manslaughter if you first rule out both First and Second Degree Murder.

**INSTRUCTION NO 13**

**Manslaughter is the unlawful killing of a human being without malice express or implied and without any mixture of deliberation.**

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INSTRUCTION NO. 19

Involuntary Manslaughter is the killing of a human being, without any intent to do so, in the commission of an unlawful act or a lawful act which probably might produce such a consequence in an unlawful manner; but where the involuntary killing occurs in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offense is Murder.

INSTRUCTION NO. 15 \_

If you find the defendant guilty of Murder, you must also determine whether or not a deadly weapon was used in the commission of this crime.

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INSTRUCTION NO. 16

Deadly weapon means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death or any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

INSTRUCTION NO. 17

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

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

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

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

INSTRUCTION NO. 18

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. Such force or fear must be used to:

1. Obtain or retain possession of the property,
2. To prevent or overcome resistance to the taking of the property, or
3. To facilitate escape with the property.

In any case the degree of force is immaterial if used to compel acquiescence to the taking of or escaping with the property. 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.

INSTRUCTION NO. 19

Robbery may spread over considerable and varying periods of time. All matters immediately prior to and having direct causal connection with the robbery are deemed so closely connected with it as to be a part of the occurrence. Thus, although acts of violence and intimidation preceded the actual taking of the property and may have been primarily intended for another purpose, it is enough to support the charge of robbery when a person takes the property by taking advantage of the terrifying situation he created.

INSTRUCTION NO. 20

In determining whether the Defendant had the requisite intent to commit the robbery before or during a killing, the jury may infer that intent from the Defendant's actions during and immediately after the killing.

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INSTRUCTION NO. 21

It is unnecessary to prove both violence and intimidation. If the fact be attended with circumstances of threatening word or gesture as in common experience and is likely to create an apprehension of danger and induce a man to part with his property for the safety of his person, it is robbery. It is not necessary to prove actual fear, as the law will presume it in such a case.



INSTRUCTION NO. 22

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, or to aid in the commission of, 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 an agreement.

A conspiracy to commit a crime does not end upon the completion of the crime. The conspiracy continues until the co-conspirators have successfully gotten away and concealed the crime.