IN THE SUPREME COURT OF THE STATE OF NEVADA

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CLEMON HUDSON, Appellant, vs. THE STATE OF NEVADA, Respondent.	S.C. CASE NO. 82231

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Clerk of Supreme Court

APPEAL FROM A JUDGMENT OF CONVICTION PURSUANT TO LOZADA V. STATE AND DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) EIGHTH JUDICIAL DISTRICT COURT THE HONORABLE JUDGE CARLI KIERNY, PRESIDING

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APPELLANT'S APPENDIX TO THE OPENING BRIEF VOLUME IX

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IN THE SUPREME COURT OF NEVADA

CLEMON HUDSON, Appellant, vs. THE STATE OF NEVADA Respondent.	CASE NO. 82231

APPELLANT'S APPENDIX

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 6th August, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff(s), vs. STEVEN TURNER AND CLEMON HUDSON, Defendant(s).	Case No. C-15-309578-1 and Case No. C-15-309578-2 DEPT. XVIII

BEFORE THE HONORABLE MARK B. BAILUS,
DISTRICT COURT JUDGE

WEDNESDAY, APRIL 25, 2018

TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL - DAY 8

(Appearances on page 2.)

RECORDED BY: ROBIN PAGE, COURT RECORDER

APPEARANCES:

For the Plaintiff(s):	LEAH C. BEVERLY, ESQ. (Deputy District Attorney) JOHN L. GIORDANI III, ESQ. (Deputy District Attorney)
For the Defendant Steven Turner:	TEGAN C. MACHNICH, ESQ. (Deputy Public Defender) ASHLEY L. SISOLAK, ESQ. (Deputy Public Defender)
For the Defendant Clemon Hudson:	CLAY PLUMMER, ESQ.

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W I T N E S S E S

FOR THE STATE:

No witnesses called.

FOR THE DEFENSE:

No witnesses called.

E X H I B I T S

Page #

No exhibits offered.

LAS VEGAS, NEVADA, WEDNESDAY, APRIL 25, 2018

[Proceedings commenced at 1:20 p.m.]

[Outside the presence of the jury.]

THE COURT: This is continuation of the trial in Case No. C-15-309578-1 and -2, *Plaintiff, State of Nevada vs. Defendants, Steven Turner and Clemon Hudson.* The record will reflect the presence of counsel for the State, counsel for the defendants, and the presence of the defendants.

MS. MACHNICH: Your Honor, I do have something outside the presence, if I may at this time.

THE COURT: Go ahead.

MS. MACHNICH: Your Honor, based on the last witness's testimony yesterday with regard to the stippling word that was discussed ad nauseam up at the bench and in our argument, at this time I would request on behalf of my client that Your Honor take judicial notice pursuant to NRS 47.130 of the medical dictionary definition of stippling. And if I may, I do have reasoning for this.

I believe what counsel had noted and why information regarding stippling was being elicited was because the word stippling is referenced in the medical records in I believe one or two location. It's referenced as a medical term and is not explained further to my knowledge in those and to my reading of the medical records. These are medical records that are currently in evidence.

Because of that and because of the legal pathological

definition that we received yesterday from the witness with regard to what stippling means in relation to firearms, I would request that Your Honor take judicial notice of the medical definition, because I do not believe that there will be a medical expert coming in to testify and I believe that pursuant to NRS 47.130:

> This is something that is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

I brought a hard copy of a medical dictionary and I do have some additional case law to support my position that this is proper for judicial notice.

THE COURT: State, what's your position? I mean, what it would be is I would read to the jury that the Court takes judicial notice that the medical definition of stippling is as follows.

MR. GIORDANI: Right, and --

MS. MACHNICH: And my understanding would be further that you would have -- during a criminal case, which is similar to federal law, it would be that the -- the jury is not -- that the Court wants to instruct -- so in -- under criminal -- under federal law, the jury may or may not accept the noticed fact as conclusive. So I think that that is the proper way to do it. The jury's does not have to accept it.

THE COURT: If I -- what I'm going to make you do, counsel, is again, I -- this is coming up last second. I'm not even sure the State was aware of it. So what I'm going to make you do, counsel, is provide me with a proposed instruction, provide it to the State, provide me with

your case authority. Also provide to the State. And when you settle instructions, this will be a matter that we'll resolve at that time.

MS. MACHNICH: Okay. So it would not be judicial -- you would not just state it to the jury, we would take care of it in instructions?

THE COURT: Well --

MS. MACHNICH: Either way is fine with me.

THE COURT: What -- when the Court takes judicial notice, and quite frankly, counsel, I've had it occur in civil case ad nauseam. We usually just -- usually the jury's just instructed that the Court has taken judicial notice. But I'm not going to resolve the issue right now --

MS. MACHNICH: Okay.

THE COURT: -- because the State should have an opportunity to at least review what you want happening.

So like I said, you -- I'll let you make your argument, but I'm going to need to see what exactly you want me to take judicial notice of. You provided a hard copy, but I don't know what the actual definition is that you want. So you need to do what it is that you want the judicial notice to say, provide it to the State, provide them with some authority for your position.

MS. MACHNICH: Okay.

THE COURT: And then we can make argument tomorrow.

MS. MACHNICH: Okay. I will do that.

MS. SISOLAK: Thank you, Your Honor.

MR. GIORDANI: Just --

MS. MACHNICH: That's all.

MR. GIORDANI: -- for the record, I'm reading this medical definition. Unless it's somewhere else, it says:

Stippling is a spotted condition in the retina in some diseases in the eye or in basophilic red blood cells.

So -- unless I'm missing it.

MS. MACHNICH: No, it says, For Example, *e.g.*

MR. GIORDANI: Yeah.

MS. MACHNICH: So it's really just three words.

MR. GIORDANI: Okay. So it says a spotted condition.

MS. MACHNICH: Yes.

MR. GIORDANI: Example, in the retina and some --

THE COURT: All right. I wouldn't give the example.

MS. MACHNICH: Right. That's --

THE COURT: Or whatever the definition is is what she's asking me to take judicial notice of.

MS. MACHNICH: That's exactly right.

MS. BEVERLY: Well --

MR. GIORDANI: It's -- right. It's different in this context. This is a medical term. We're talking about a firearm.

THE COURT: No, but that's not what she's talking about. What she is talking about is that in the medical records, it references stippling in medical terms. And so what she wants me to do is take judicial notice, and it would be in the context of medical terms. Not in context of what your expert testified to.

MR. GIORDANI: I understand that.

THE COURT: And that's what she is asking me to do. And what I am advising counsel is prepare the judicial notice, what she wants me to take judicial notice of, and case authority in support of her judicial -- position, provide it to you to give you an opportunity to make a determination if it's something you want to object or not, or want to provide me with -- I mean, I know what judicial notice is. You don't have to give me case law --

MS. MACHNICH: Okay.

THE COURT: -- on what constitutes judicial notice.

MS. MACHNICH: Right. I just have -- just for Your Honor's -- I was looking in Nevada law. Most of the case law on judicial notice is federal. And because the Nevada rule is --

THE COURT: It can be instructed. You can provide me with federal case law, because Nevada law -- and so I can take it is federal law is being instructed.

MS. MACHNICH: Perfect. And that's -- and that's what I do have, so I can provide those cites to the State right now.

THE COURT: And maybe you and the State can work something out. It's --

MR. GIORDANI: Sure, I --

THE COURT: -- judicial notice. It's judicial notice.

MR. GIORDANI: Right. And we'll probably ask that you take judicial notice of the definition of stippling as it regards to firearms, gunshots. So we'll -- we'll probably have a competing definition.

THE COURT: Okay. I think her concern, quite frankly, is

stippling in the context -- in the medical context may be different than stippling as it relates to firearms.

MR. GIORDANI: Right.

THE COURT: I think that's her concern.

MR. GIORDANI: Right. And --

MS. MACHNICH: And --

MR. GIORDANI: -- and --

THE COURT: Again, if this --

MS. MACHNICH: -- we have no opposition to that.

MR. GIORDANI: To?

THE COURT: All right. You know what?

MS. MACHNICH: To your --

THE COURT: Let's get the jury in.

MS. MACHNICH: Okay.

MR. GIORDANI: Well, this is the -- I'm sorry to interrupt you, but --

THE COURT: No, go ahead.

MR. GIORDANI: -- if this is going to happen, we might -- we have medical doctors noticed, so we might need to call somebody now. This is brand new to us. So, I mean, I'm sorry, but we can't --

THE COURT: Don't --

MR. GIORDANI: -- just have --

THE COURT: Don't be sorry. It's -- it's -- all right. So what's happening today?

MR. GIORDANI: Well --

THE COURT: Are you presenting any additional witnesses?

MR. GIORDANI: We did not intend to. And what we expected to do was everyone was going to rest or we presumed so. And then we were --

THE COURT: Are we hearing any witnesses today, Defense?

MS. MACHNICH: No.

THE COURT: You're not presenting any witnesses?

MS. MACHNICH: Mr. Turner is not.

MR. PLUMMER: None for Mr. Hudson, Your Honor.

MR. GIORDANI: So we had planned that -- we brought all our instructions to settle and then we figured we would close tomorrow, because it's going to take a good four hours to get through all of these closings in my rebuttal. And if we do that on Friday, then we're going to lose jurors --

THE COURT: No, I understand, counsel.

MR. GIORDANI: I mean, I can do quick research on that issue if you want to try to get it resolved today.

THE COURT: All right. Here's what I'm going to do then. I'm going to bring the jury in. I'm going to ask the State is there any additional witnesses. And you're going to say there's no additional witnesses. Correct?

MR. GIORDANI: Well, no. With the caveat that if this -- if something comes up with this, that's -- we feel is misleading or doesn't help --

THE COURT: All right. Here's what we're going to do. Tell

the jury that we're not going to convene till 2:30. We're going to settle it now.

MR. GIORDANI: Okay.

THE COURT: I'm going to give 15 minutes. I want -- I want the proposed judicial -- whatever you want me to advise the jury, I want it now. And I want your case law.

MS. MACHNICH: Okay.

THE COURT: And we'll -- I intend to reconvene on this argument at 2:00.

MS. MACHNICH: Okay. Thank you, Your Honor.

MR. GIORDANI: Okay.

THE COURT: We'll be in recess.

[Court recessed at 1:30 p.m., until 2:21 p.m.]

[Outside the presence of the jury.]

THE COURT: This is the continuation of the trial in Case No. C-15-309578-1 and -2, *State of Nevada vs. Steven Turner and Clemon Hudson.* The record will reflect the presence of counsel for the State, counsel for the defense, and the presence of the defendants.

Counsel, I have been provided with the proposed -- what the defendant have proposed as the judicial notice. Have you received a copy of that?

MS. BEVERLY: Yes.

MR. GIORDANI: Yes.

THE COURT: In addition, they have provided me with case law that supports their position.

State?

MR. GIORDANI: We don't have an issue with the idea of judicial notice. Obviously, that -- that happens, I've had it happen in my cases before. What we do have an issue with is the definition that they've provided. We believe it's misleading in the context in which it's used.

And I've written out, number one, we spoke with Dr. Amy Urban who is one of the treating physicians of Mr. Turner there, and she indicated the definition of stippling as it applies to a gunshot or fragment ricochet is different from what is said in the instruction that they've provided.

So I've written out alternative or in addition to that. We don't have an issue with a spotted condition, as long as it's provided in context with gunshot wounds or ricochet wounds.

THE COURT: What is that that's --

MR. GIORDANI: I didn't have time to type it, but I've written it.

THE COURT: That's fine. Have you provided it to opposing counsel?

MR. GIORDANI: No, I've showed Ashley -- Ms. Sisolak.

MS. SISOLAK: I saw it, Your Honor.

MS. MACHNICH: We are obviously not agreeing with this. This is argument. Additionally, when we're speaking of the evidence that's been presented in the case, we're obviously speaking about the expert who testified, who testified to specifically stippling in the firearms context. We provided a medical definition. Obviously, the State is able

to bring their medical expert if they want to today, right -- I mean, if they -- they called her.

But this is -- this is argument and this basically completely changes what judicial notice is. It's crafted language by the State, it's not a definition.

THE COURT: Okay. State, do you have a medical expert available?

MR. GIORDANI: She's not available right now.

THE COURT: When would she be available?

MS. BEVERLY: She's working. So, I mean, I could --

THE COURT: I mean, I'm not saying today. When would she be available? Could she come in tomorrow and testify?

MS. BEVERLY: I can ask her if she can come tomorrow. But I -- I want to note, there actually is a definition regarding gunshot. Let me just go back to find it.

MS. MACHNICH: And they did not show me this, so --

MS. BEVERLY: This is the book that she gave us.

MS. MACHNICH: I -- I did not read the entire medical dictionary, candidly, Your Honor. I looked up the word that I was looking for.

MS. BEVERLY: So --

MS. MACHNICH: What is it, I guess, is all I'm asking.

MS. BEVERLY: Well, it's talking about --

MS. MACHNICH: Gunshot. Okay.

MS. BEVERLY: Uh-huh.

MS. MACHNICH: And I think that this is appropriately defined as a gunshot wound. And I would not be opposed to this definition being taken -- Your Honor taking judicial notice of this definition. I don't think that it is properly on the same piece of paper. I don't think that it necessarily -- and maybe I'm -- at no point in here, and please correct me if I'm reading this incorrectly, does this say stippling at all in it. But this does say gunshot.

THE COURT: Okay. But they may want --

MS. MACHNICH: If they want it, this is fine. I'm happy to have that --

MR. GIORDANI: But that's not all we want.

MS. BEVERLY: That's not -- what we're saying, Judge, is that --

THE COURT: Ladies and gentlemen, this is judicial notice of a definition in a dictionary. Whatever it may or may not be. Okay. That's what I'm being ask to take judicial notice of. I receive -- if -- if there something that you want me to take judicial notice of out of a medical dictionary, I will consider it.

MS. BEVERLY: That -- that's fine, Judge. But --

THE COURT: No, I'm just stating, this is just judicial notice of a definition from a medical dictionary.

MS. BEVERLY: I -- I understand that. But I think it needs to be in the context of this particular case. I mean, I could ask for judicial notice of -- of anything in a -- in a dictionary. But I think it needs to be in the context of this particular case. And in this particular case, what the

records are talking about when they're referring to stippling, which is I can read directly from the records or with a gunshot wound. Literally -- that's exactly what it says in the record, or fragment. And I believe just to say -- I mean, I could pick out any term in this dictionary and say take judicial notice of it.

THE COURT: Let me ask you a question, counsel. Is anybody presenting any witnesses today?

MR. GIORDANI: Well, we can't answer that. The problem is if you just accept this definition, then we don't have a chance to respond to that in any way, because we don't have a forensic pathology dictionary in front of us, because we've been given 30 minutes of notice to get this done.

THE COURT: I agree, counsel. I agree.

MR. GIORDANI: So we're not going to rest until this issue is resolved. We can't rest. We -- we have our doctor, she's noticed. So if this is going to be an issue, then we'll call our doctor.

MS. MACHNICH: Okay. They should call their doctor.

MR. GIORDANI: Okay. So I guess we're going to resume on Friday, because she's not available right now, she's at work.

MS. BEVERLY: And she just told me that she's not -- she's working today and tomorrow. Because I didn't know this was happening.

THE COURT: I understand, counsel.

MS. BEVERLY: So --

THE COURT: What is the other definition that you're looking

at that you've provided to counsel?

MS. BEVERLY: The other definition --

THE COURT: Let -- let me see it.

MR. GIORDANI: The other -- okay. The other definition is a gunshot wound. The problem is, is that we don't have a forensic pathology dictionary. What we're dealing with here is not a gunshot wound. I think everyone will agree it's a fragment. I can show you the x-ray, it's not a gunshot, it's a fragment. And it's from a -- a ricochet.

So what the jury would be misled on is that Ms. Machnich or whoever does their closing can get up and say, He wasn't even shot, so stippling doesn't matter. It's a ricochet. You wouldn't have stippling.

Well, the science, forensic science, says the opposite. Forensic science says pseudo stippling is particularly associated with ricochet incidents. So if it goes -- if it -- if it comes in as is, it's misleading to the jury. And it's going to tell the jury, you know, the argument --

THE COURT: But where did you get that from, counsel?

MR. GIORDANI: From -- in the 30 minutes, for the record, that I had --

THE COURT: Yeah, I --

MR. GIORDANI: -- to look this up, it's a published medical record -- I mean, published medical article called *A Systematic Review on Ricochet Gunshot Injuries*, published 2017 in Tokyo, Yong Ye Leg Med.

THE COURT: When you talk to your doctor, is she under

subpoena?

MR. GIORDANI: No. We can put her under subpoena right now.

MS. BEVERLY: Because this is now at this point rebuttal. So -- it is. It is rebuttal.

THE COURT: I understand.

MS. BEVERLY: So I can give her a subpoena. But --

THE COURT: Okay. But my question is when she says she's working today and tomorrow, I would work around her schedule if -- if they give you an opportunity to present her as a witness. And I'm just curious what her work schedule is tomorrow. This cannot be that lengthy of testimony.

MS. BEVERLY: I will text her right now.

THE COURT: See if she could be available tomorrow at 1:00.

MR. GIORDANI: And, you know, frankly, this -- this might not be an issue if we had a forensic pathology, you know, dictionary in front of us. But we just didn't have time to do it. So.

THE COURT: Counsel, I understand. I mean, this is trial. This happens in trials. Things occur. I want to give both sides the opportunity to make their best argument.

[Pause in proceedings.]

THE COURT: And counsel, if necessary, we will go the full day on Friday. I don't believe I have any matters on Friday. But I would like to move this problem along.

MS. MACHNICH: Your Honor, just to note, there is a juror

who's flying out Friday night. I don't know if that affects anybody's calculus. But I do recall one of the jurors --

THE COURT: All right. Counsel, the State will have an opportunity, if I give this as judicial notice, to present an additional witness.

[Pause in proceedings.]

MR. GIORDANI: You know what, I could try -- I didn't even think of -- I could call the forensic scientist who was here yesterday and see if she has a copy of the forensic textbook, I guess.

THE COURT: Okay. Here's what I'm going to do, counsel. I'm going to excuse the jury for today.

MR. GIORDANI: Okay.

THE COURT: Okay. I don't want to have them just keep sitting out there. Rather than -- we'll go through as much of the jury instructions as we can.

MR. GIORDANI: Okay.

THE COURT: And also -- but I want to know by the end of today if you're going to present an additional witness. I'm inclined to give -- to take judicial notice of what's contained -- what I probably would say, something along the lines that with the -- did you have a problem with it -- I understand you have a concern, but did you have a problem with how this is worded?

MR. GIORDANI: Well, yes. Because it's not in the context of --

THE COURT: Right. Then what I would say, then, is

something along this line. That the Court is taking judicial notice that the definition of stippling in the *Cyclopedic Medical Dictionary* is as follows: A spotted condition. You and the jury may not -- may or may not accept this notice fact as conclusive of any fact at issue in this case.

In other words, I'm just going to say, this is what the dictionary says. That's why I'm asked to be taken -- not put it in the context, just that -- and that would be it.

MR. GIORDANI: Right. And then in our -- in response, we would be asking to take judicial notice of definitions in the forensic pathology --

THE COURT: Which I can do.

MR. GIORDANI: Yeah. I just don't have it.

THE COURT: If it's a dictionary. If it's a dictionary, I can do that.

MR. GIORDANI: Right.

THE COURT: So that would be something along the lines that I would state as judicial notice.

MR. GIORDANI: And if --

THE COURT: Just straight out.

MR. GIORDANI: Yeah. And if we find that, what we're looking for, it's just we didn't have time, but if we find that, we wouldn't need to call the doctor.

THE COURT: Okay. But what I'm saying is tomorrow at 1:00, I want -- I mean, before we leave today, I want to know if you're going to present any additional witnesses, if I'm going to give that judicial notice.

Before we leave today. We're -- you have -- we're going to go over jury instructions if I excuse the jury.

MR. GIORDANI: Okay. I'll -- Ms. Beverly will go through instructions and I'll work on this.

THE COURT: Okay. All right. So at this time, counsel, what I'm going to do is I'm going to bring the jury in and advise them that there's some matters that have to be resolved, and I'm going to excuse them for today. Then I'm going to reconvene tomorrow at 1:00. I have a 40-page calendar tomorrow. So I should be done hopefully by noon. Shouldn't run past -- through the lunch hour.

So I'm going to reconvene tomorrow at 1:00, at which time, depending on what happens today, you'll either rest or present additional -- I'll do the judicial notice, and you either give me a judicial -- a dictionary that you want me to take judicial notice of, or present an additional witness at your discretion.

MR. GIORDANI: Okay. And then tomorrow, say we get our instructions settled, which I expect we will today, tomorrow should we expect to close if we don't call that witness?

THE COURT: I -- I would expect to close tomorrow.

MR. GIORDANI: Okay.

MS. BEVERLY: Thank you.

THE COURT: All right. So does the parties have any objection to what I'm going to do today?

MR. GIORDANI: No.

MS. MACHNICH: No questions, Your Honor.

MR. PLUMMER: No, Your Honor.

THE COURT: I'll let you bring the jury in.

[Jury reconvened at 2:36 p.m.]

THE COURT: You may be seated.

Will the parties stipulate to the presence of the jury?

MS. BEVERLY: Yes, we will.

MS. MACHNICH: Yes, Your Honor.

MR. PLUMMER: Yes, Your Honor.

THE COURT: Ladies and gentlemen, a matter has come up that needs to be resolved and we're not going to be taking any testimony today. So I'm going to excuse you for today. I intend to start tomorrow at 1:00, resume the trial, and if necessary, I intend to go all day on Friday. I'll be more specific tomorrow depending on what occurs tomorrow. But again, I have to resolve some matters and we won't be taking any testimonies -- any testimony today.

So if you could return tomorrow at 1:00, and that's when we'll begin. Thank you.

And just so you know, I have to admonish you. I'm required to admonish you.

During this recess you're admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial, or read, watch, or listen to any report of or commentary on the trial, or any person connected with this trial by any medium of information, including, without limitation, newspapers, television, radio, or Internet, or form or express any opinion on any subject connected

with the trial until this case is finally submitted to you.

We'll be in recess till 1:00 tomorrow.

[Jury recessed at 2:38 p.m.]

THE COURT: Counsel, Mr. Giordani, again, if either advise me of the definition that you want me to take judicial notice of or the availability of your witness.

MR. GIORDANI: Okay.

THE COURT: My preference would be if you're not going to give me a definition, a dictionary definition, that the witness testify tomorrow.

MR. GIORDANI: Okay.

THE COURT: I mean, I can accommodate -- I mean, I don't know what her -- is it a male or female? I apologize.

MS. BEVERLY: I can tell you just right now she said the earlier the better. She's trying to move some things around in the morning. I don't know if she's going to be available at 1:00 tomorrow.

THE COURT: All right.

MS. BEVERLY: So I'm asking her now about Friday morning.

MR. GIORDANI: Hold on. I'm sorry. I just got what I'm looking for from Ms. Lester, who is the expert who testified yesterday. And that definition -- can I just hand the Court my phone?

THE COURT: Sure.

MS. MACHNICH: May we see it as well?

THE COURT: Show it to opposing counsel.

Mr. Plummer, if you want to look at it?

MR. PLUMMER: Your Honor, don't have a dog in the fight.

THE COURT: All right.

[Pause in proceedings; colloquy between counsel.]

THE COURT: Why don't you put it on the record --

MR. GIORDANI: Okay.

THE COURT: -- that you want to put --

MR. GIORDANI: Okay. My proffered definition would be starting with the words that Ms. Machnich used, a spotted condition. In the context of gunshot wounds and/or bullet fragments, stippling is characterized by small pieces of soot and/or gunpowder and/or metallic fragments striking the skin, leaving small abrasions and/or discoloration. A bullet ricocheting off a hard surface can generate secondary fragments that may produce stippling of the skin. These marks can be due to fragments of wood or stone from the surface from which the bullet ricocheted or to metal fragments of the bullet itself.

THE COURT: Counsel, do you have any objection to that?

MS. MACHNICH: I -- I don't believe so. But I would like to see -- I saw that Mr. Giordani, I'm not necessarily objecting to this, he read off his piece of paper as well as the phone. And so I wanted to see what --

THE COURT: Okay. Here's the --

MS. MACHNICH: -- the additions.

THE COURT: Here's what I'm going to take judicial notice of, counsel. Whatever is the dictionary definition. Whatever --

[Pause in proceedings; colloquy between counsel.]

THE COURT: All right. Here's the deal, counsel. We're going to take our recess. I'm going to give this as judicial notice tomorrow. Like I said, I'm going to make it very generic. This is what the *Cyclopedic Medical Dictionary* states as. If you have a dictionary definition as to stippling that you want me to give, I will give that definition also.

MR. GIORDANI: Okay.

THE COURT: All right. We're going to be in recess --

MS. MACHNICH: Are we meeting back for jury instructions?

THE COURT: We're going to go to the back and start settling jury instructions.

MS. MACHNICH: Perfect.

THE COURT: So I will meet you in the jury room.

MS. MACHNICH: Thank you, Your Honor.

THE COURT: We'll be in recess.

[Court recessed at 2:44 p.m., until April 26, 2018, at 1:00 p.m.]

/ / /

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Shawna Ortega

Shawna Ortega, CET*562

Electronically Filed
9/25/2018 9:23 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff(s), vs. STEVEN TURNER AND CLEMON HUDSON, Defendant(s).	Case No. C-15-309578-1 and Case No. C-15-309578-2 DEPT. XVIII

BEFORE THE HONORABLE MARK B. BAILUS,
DISTRICT COURT JUDGE

THURSDAY, APRIL 26, 2018

TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL - DAY 9

(Appearances on page 2.)

RECORDED BY: ROBIN PAGE, COURT RECORDER

APPEARANCES:

For the Plaintiff(s):	LEAH C. BEVERLY, ESQ. (Deputy District Attorney) JOHN L. GIORDANI III, ESQ. (Deputy District Attorney)
For the Defendant Steven Turner:	TEGAN C. MACHNICH, ESQ. (Deputy Public Defender) ASHLEY L. SISOLAK, ESQ. (Deputy Public Defender)
For the Defendant Clemon Hudson:	CLAY PLUMMER, ESQ.

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FOR THE STATE:

AMY URBAN

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No exhibits offered.

LAS VEGAS, NEVADA, THURSDAY, APRIL 26, 2018

[Proceeding commenced at 1:03 p.m.]

[Outside the presence of the jury.]

THE COURT: All right. This is the continuation of the trial in Case No. C-15-309578-1 and -2, *Plaintiff, State of Nevada vs. Defendants, Steven Turner and Clemon Hudson.* The record will reflect the presence of counsel for the State, counsel for the defense, and the presence of the defendants.

Counsel, the defense has requested that I take judicial notice of the definition of stippling. I intend to give that judicial notice.

It's my understanding that the State has one additional witness; is that correct?

MR. GIORDANI: Yes, Your Honor. Yes, Your Honor.

THE COURT: I'm going to give the judicial and then allow you to call your witness.

MR. GIORDANI: Understood.

MS. BEVERLY: Thank you.

THE COURT: After that, counsel, however long the witness takes once we conclude testimony, I'm going to inquire the State, if you rest. I'm going to inquire the defense, if you rest, if that's the situation, then I'm going to excuse the jury for a half-hour recess and we're going to settle instructions. And once the instructions are settled, then I intend to read the instructions and go into closing argument.

MS. BEVERLY: Great.

THE COURT: Also, counsel, do you need to request that instruction on the record? Or you can do it right now.

You'll waive your self-incrimination instruction?

MS. BEVERLY: Do you request it?

MS. MACHNICH: Yes. We agree --

THE COURT: The defense has to actually request it on the record.

MS. MACHNICH: And, Your Honor, we would request that you give the defense Fifth Amendment instruction.

THE COURT: Thank you.

Counsel?

MR. PLUMMER: The same, Your Honor.

THE COURT: Thank you.

MS. BEVERLY: No objection.

THE COURT: All right. Let's bring the jury in.

Counsel for the defendants -- for the State, approach.

[Pause in proceedings.]

[Jury reconvened at 1:05 p.m.]

THE COURT: You may be seated.

Do the parties stipulate to the presence of the jury?

MR. GIORDANI: Yes, Your Honor.

MS. MACHNICH: Yes, Your Honor.

MR. PLUMMER: Yes, Your Honor.

MS. SISOLAK: Yes, Your Honor.

THE COURT: Thank you.

Ladies and gentlemen, this court has taken judicial notice that the definition of stippling as defined in Taber's Cyclopedic Medical Dictionary is a spotted condition. You, the jury, may or may not accept this noticed fact as conclusive of any fact at issue in this case.

State, do you have any additional witnesses?

MR. GIORDANI: Yes. One briefly.

The State would call Dr. Amy Urban.

THE COURT: Thank you.

AMY URBAN,

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

THE CLERK: Please be seated. Would you please state and spell your name for the record.

THE WITNESS: It's Amy Urban, A-M-Y, last name is U-R-B-A-N.

MR. GIORDANI: May I? May I, Judge?

THE COURT: You may.

DIRECT EXAMINATION

BY MR. GIORDANI:

Q Ma'am, what do you do for a living?

A I am an emergency medicine physician.

Q And where at?

A University Medical Center.

Q How long have you been at UMC?

A 13 years.

Q What did you do prior to going to UMC?

A I was an emergency medicine resident in Detroit.

Q As an emergency medicine resident in Detroit and with your employment with UMC, have you come across, treated, or diagnosed or observed several gunshot wound-type injuries?

A Yes, many.

Q Can you estimate how many --

A Probably several hundred.

Q Okay. I want to draw your attention back to September 4th of 2015; were you working on that date?

A Yes.

Q And did you have an opportunity to treat a person by the name of Steven Turner?

A Yes.

Q Do you recall around what time that treatment was?

A I do not recall.

Q Okay.

MR. GIORDANI: Can I approach the witness, Your Honor.

THE COURT: You may.

BY MR. GIORDANI:

Q Showing you State's already admitted 401. This is several pages, but I just want to show you the first page of the document; does that look like a set of UMC medical records to you?

A Absolutely.

Q Does this indicate when the treatment date, admit date, and

admit time were?

A Yes.

Q And what were those dates?

A It's 9/4/2015 at 8:28.

Q Okay. And where did you treat -- where in the hospital did you treat Mr. Turner?

A In the trauma center.

Q Did you observe any apparent injuries to Mr. Turner?

A Yes. There was an open wound on the leg that looked like a laceration or open wound, and then there was stippling around it.

Q Okay. What does stippling mean to you?

A Stippling is little black marks that go around the skin of a wound from a gunshot wound. It's from high-pressure gas and debris.

Q Okay. I want to -- well, before I move on, did you observe that with your naked eye?

A Yes, I did.

Q And in the medical records, there's another doctor with the last name Turner, actually, who's referenced.

A Correct.

Q Who is that in relation to treating Steven Turner?

A He was my emergency medicine intern.

Q Okay. So at the time, was he a doctor or an intern?

A He's a doctor. But they always work under an attending.

Q Understood. And were you the attending that evening?

A That's correct.

Q And did you observe those -- that wound and what appeared to be stippling around that wound on Mr. Turner yourself?

A Yes, I did.

Q Did you or other medical staff conduct an X-ray examination of Mr. Turner's leg?

A Yes.

Q And was that his left leg?

A Yes.

Q Showing you the last page of Exhibit 401; does that look familiar to you, ma'am?

A Yes.

Q Does that appear to be Mr. Turner's left leg?

A Yes.

Q And would the calf be in the top-right portion of the exhibit?

A Yes.

Q And zoom in a little bit; what are we looking at there?

A A piece of metal shrapnel.

Q Okay. Was that piece of metal shrapnel near where you described that laceration was --

A Yes.

Q -- with the stippling around it? Is that a yes?

A Yes.

Q Okay. Thank you, ma'am.

MR. GIORDANI: I'll pass the witness, Your Honor.

THE COURT: Thank you, counsel.

Any cross-examination?

MS. MACHNICH: Yes, Your Honor.

CROSS-EXAMINATION

BY MS. MACHNICH:

Q All right. Doctor.

A Yes.

Q Okay. So you said you've been doing this, emergency medicine, for 13 years?

A I've been an attending for 13 years.

Q Fantastic. So how many patients did you say you see a year?

A On average, as I see -- if I work a 12-hour shift, I see about 40 patients per shift. So it's about a 108 to 140 hours a month; so a significant amount.

Q Okay. And we're talking about a treatment that you did or were involved in in September 2015?

A Correct.

Q So we're talking over two and a half years ago?

A Correct.

Q Would it be fair to say you don't have any independent recollection of this?

A I actually do.

Q Okay.

A I actually specifically remember this patient.

Q Okay. So when you do medical records and type out what -- do you personally type out medical records?

A No. We dictate.

Q Right. And within medical records, you indicate who dictates or who puts in what section, correct?

A Correct.

Q And that's indicated by either initials or a designation or a full name in different locations?

A Correct.

Q Okay. Now, prior to your testimony today, would it be fair to say that you reviewed the medical records associated with this case?

A Yes.

Q And you also spoke with the deputy district attorneys who are present in court?

A Yes.

Q And did you speak with them over telephone or in person?

A Telephone.

Q Okay. And did you spoke to them via text or via phone, like, voice?

A Both of those yesterday.

Q Okay. And they asked you specifically to come in because you're here to discuss something about stippling?

A Correct.

Q All right. Now, as the attending or attending physician, you were the supervisor to the person --

A Correct.

Q -- who was doing, like, the day-to-day stuff?

A Correct.

Q Okay. And the person who was doing the day-to-day stuff is a Dr. Turner?

A Correct.

Q Okay. Is it fair to say that at the time you saw Mr. Turner, the wound area has been cleaned?

A No. We actually saw it together.

Q Okay. So from the beginning you did see it together?

A Uh-huh.

Q Okay. And so you saw it when there was dried blood?

A Yes.

Q Okay. And just --

[Phone ringing interruption; pause in the proceedings.]

THE COURT: I apologize ladies and gentlemen. I'm not taking the call, by the way.

Proceed.

BY MS. MACHNICH:

Q So you were saying that -- and I'm showing you what has been marked and admitted as State's Exhibit 27. Whoo, that's zoomed in. Let's look at the larger area here.

Okay. This is the wound as you remember it?

A Yes.

Q And it's fair to say that there's also some dried blood in the area?

A Absolutely.

Q And, additionally, some darker hair follicles?

A Correct.

Q Okay. Now, and just so I know that we're discussing the same thing, stippling is something that doesn't wipe off, correct?

A Correct.

Q It's actually a physical abrasion or burn or scratch into the skin?

A Correct.

Q Okay. So that's notable, because it actually does affect the surface of the skin?

A Correct.

Q Okay. So let's go to the medical records just very briefly. We are talking about --

MS. MACHNICH: The Court's brief indulgence.

Q Okay. So we're talking about stippling. Stippling was mentioned -- in these 40-some pages of medical documents, the word stippling was used two times.

A Okay.

Q Is that -- would you have any reason to dispute that?

A No.

Q Okay. So the first time -- and I am referencing part of State's Exhibit 401 that's previously admitted. And this is indicated as part of a confidential medical record, page 3 of 8. There's not a master page numbering on this to my knowledge; so this is going to have to be -- it's part of the files? All right. We will use those numbers. That's great. All

right.

So page 6, which is at the upper right-hand side. And I'm going to show you the section of it. And I will actually zoom in a little bit so we can read it.

We're saying when we refer to stippling, we're looking right about in the center of the musculoskeletal section, correct?

A Correct.

Q Okay. And so areas of the stippling on the dorsal foot, ankle, and distal left lower leg, correct?

A Correct.

Q And that was something that was input or dictated by Dr. Turner?

A Correct.

Q Okay. Then, you're also speaking of -- let me pull them from my copy. Okay. So this would be -- okay.

And so this also is from State's Exhibit 401, which is the confidential medical record, page 8 at the upper right-hand corner. I'll place this used in the middle here. And you can see on this page, there appears to be some reference to stippling of the left lower extremity?

A Yes.

Q Okay. And so that's what we're referring to. And this was also dictated or entered otherwise by Dr. Turner?

A Correct.

Q All right. You actually yourself dictated a part of this report as well, correct?

A Correct.

Q Okay. And that would consist of what appears to be a two-page -- I guess, I don't want to say summary, but what would you call --

MS. MACHNICH: May I approach the witness, Your Honor?

THE COURT: You may.

BY MS. MACHNICH:

Q I'm showing you what has previously been marked as the exhibit we've been discussing, medical records pages 38 and 39; what would you call these?

A A teaching physician addendum.

Q Okay. Fantastic.

A Okay.

Q I want to refer to it as the right thing.

A Okay.

Q Okay. So we are looking at the teaching addendum. And would it be fair to say that in a teaching addendum, you strive to be as complete and thorough as possible?

A We try to just say that we oversaw the resident. We try to give the big findings and a summary of the care.

Q Okay. So I will direct your attention to page 38 of the medical documents, specifically the bottom where we start discussing the lower extremities.

It's fair to say this goes into a fair amount of detail. Right lower extremity, unremarkable -- so that would be the other leg?

A Correct.

Q Okay. Left lower extremity, the medial aspect -- so we start going to the details of what was going on with his left leg?

A Uh-huh.

Q Okay. And this goes into a fair amount of specificity when we're talking about medial aspect of the calf. There is a puncture wound, correct?

A Correct.

Q And a little bit of underlying swelling, right?

A Correct.

Q And there was no knee tenderness, correct?

A Correct.

Q And there was no fluctuants, correct?

A Correct.

Q There is dried blood in the area, correct?

A Correct.

Q But no active extra -- extravasation?

A Uh-huh.

Q Did I pronounce that right?

A Extravasation.

Q Extravasation. Okay. There is no tenderness, palpitation over the tibia or the fibula?

A Correct.

Q Okay. There is no tenderness, palpitation over the knee, yes?

A Correct.

Q And it goes on from there?

A Yes.

Q It's all written out. And, additionally, you noted that at the top -- and this is page 2 -- Skin unremarkable?

A Yes. Otherwise unremarkable, because it had already been documented in the musculoskeletal system.

Q Okay. So everything that wasn't documented on the prior page was documented -- if there had been something else, it would have been documented there?

A Correct.

Q All right.

MS. MACHNICH: I have no further questions.

Thank you, Doctor.

THE COURT: Thank you.

Is there any -- Mr. Plummer, any questions?

MR. PLUMMER: No, Your Honor.

THE COURT: Thank you.

State, any redirect.

MR. GIORDANI: Very briefly.

REDIRECT EXAMINATION

BY MR. GIORDANI:

Q Stippling's actually mentioned more than two times in these records, right?

A It may be. I did not count, I have to be honest.

Q Ms. Machnich referenced page 6.

MR. PLUMMER: And I'm using my copy. If there's any issue with this, I'm sure it'll be raised.

Q I'll be very brief here. Ms. Machnich mentioned page 6, and that's where it says:

Exam revealed some stippling of the left lower extremity.

Correct?

A Yes.

Q The bottom, it says:

Dr. Amy Urban agrees with my assessment and plan; etcetera?

A Correct.

Q So that would have been Dr. Turner?

A Correct.

Q Does Dr. Turner now work in Michigan or something?

A I think he's in the Pacific Northwest.

Q Okay. So you're here today, ma'am --

A Uh-huh.

Q --- and I want to ask you a couple more questions.

A Okay.

Q I just showed you page 6. Now I'm going to show you page 8. It says, again:

Exam revealed some stippling of the lower left extremity.

On page 8; is that right, ma'am?

A Yes.

Q And I want to go to page 15. Stippling is referenced twice on

this page. Do you see here where it says:

Summaries of stippling on the dorsal foot, ankle, and distal left lower leg.

A Yes.

Q And then you go down to:

Exam revealed some stippling of the lower left extremity and a small laceration over the posterolateral calf.

A Correct.

MR. GIORDANI: I'll pass the witness, Your Honor.

THE COURT: Thank you.

Any recross by the defense?

MS. SISOLAK: Court's indulgence just one moment, Your Honor.

RECROSS-EXAMINATION

BY MS. MACHNICH:

Q Okay. And just to --

MS. MACHNICH: I almost took yours. Perfect, thank you.

Q And, Doctor, just to reference the page 15 that State just discussed with you, the entry references, basically, the exam note from 1925 hours, correct?

A Uh-huh.

Q Okay. And that's the same exam note as page 6, same time?

A It's around the same time. I'm not sure that that's the exact same note. I think one might be medical decision making, and one might be physical exam.

Q And they're all --

A But they're --

Q -- based on the same --

A Correct.

Q The --

A Absolutely.

Q Based on the same analysis?

A Correct.

Q Okay. And you documented in your teaching addendum all of the big findings associated with this case?

A Yes. Because I base mine on whatever the resident says. I review theirs and I see the patients with them.

Q Okay.

A And so I review their dictation, and then I add my addendum.

Q Fantastic. Thank you, Doctor.

THE COURT: Any redirect by the -- by the State?

MR. GIORDANI: No, Your Honor.

THE COURT: Thank you. May this witness be excused?

MR. GIORDANI: Yes, Your Honor.

THE COURT: Thank you.

Ma'am, you are excused.

THE WITNESS: Thank you.

THE COURT: Thank you.

Does the State have any additional witnesses?

MS. BEVERLY: Your Honor, if I can just confirm that all of the

State's exhibits have been admitted.

[Pause in proceedings.]

MS. BEVERLY: With that, Your Honor, the State will rest.

THE COURT: Thank you.

Defense, do you have any witnesses to present in your case in chief?

MS. MACHNICH: Your Honor, on behalf of Mr. Turner, we have no -- no witnesses to present. So we'll rest.

THE COURT: Thank you.

Mr. Plummer.

MR. PLUMMER: Your Honor, on behalf of Mr. Hudson, we rest.

THE COURT: Thank you, counsel.

Ladies and gentlemen, that concludes the evidentiary portion of this trial. At this time, we're going to take a half-hour recess, at which time the jury instructions will be read to you. And we'll go on to closing argument.

Ladies and gentlemen, we are going to take a 30-minute recess. During this recess, you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial, or read or watch or listen to any report of or commentary on the trial or any person connected with this trial by any medium of information, including, without limitation, newspapers, television, radio, or Internet, or form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

We'll be in recess for 30 minutes.

[Jury recessed at 1:25 p.m.]

THE COURT: Let the record reflect that the present -- that the jury is no longer present.

At this time, we are going to settle jury instructions.

Counsel, I've been provided a -- several packets of proposed jury instructions. The first packet I'm going to go over was the packet that was submitted by the State and labeled as undisputed.

Counsel for the defense --

MS. MACHNICH: Yes, Your Honor?

THE COURT: -- have you had an opportunity to review that packet that was labeled as undisputed?

MS. MACHNICH: Yes, Your Honor.

THE COURT: Mr. Plummer?

MR. PLUMMER: Yes, Your Honor.

THE COURT: And does -- does either party have any objection to the giving of the undisputed jury instructions?

MS. BEVERLY: Not from the State.

MS. MACHNICH: Not from Mr. Turner.

MR. PLUMMER: Not from Mr. Hudson.

THE COURT: Actually, Mr. Plummer, I think you had an objection to one of them --

MR. PLUMMER: And then you modified it.

THE COURT: -- and I modified it. For the record, that was the -- the instruction said:

The intention to kill may be ascertained or deduced from the facts and circumstances of the attempted killing, such as the use of a weapon calculated to produce death in the manner of its use and the intended circumstances characterizing the act.

That instruction was modified to read:

The intention to kill may be ascertained or deduced from the facts and circumstances of the attempt killing, such as the use of a deadly weapon, the manner of its use in the intended circumstances characterizing the act.

Is that correct?

MS. BEVERLY: Yes.

THE COURT: Is that correct, Mr. Plummer?

MR. PLUMMER: Yes, Your Honor.

THE COURT: Okay. Absent that, is there any objections to the Court giving the -- what we've termed the undisputed jury instructions?

MS. BEVERLY: Not from the State.

MS. MACHNICH: Not from Mr. Turner.

MR. PLUMMER: Not from Mr. Hudson.

THE COURT: Thank you, counsel.

Also, I received some packets entitled, Disputed. I'm going to start with the State's proposed jury instructions, disputed.

The first one begins:

A conspiracy is an agreement between two or more persons for an unlawful purpose.

Counsel, is there any objection to giving that instruction?

Defense.

MS. MACHNICH: Oh. No. I guess I'm -- is this one of the --

THE COURT: This is -- counsel, actually, in your proposed instructions --

MS. MACHNICH: Ah. It's that one.

THE COURT: -- you had offered an instruction in lieu of that instruction.

MS. MACHNICH: Ah. Okay.

THE COURT: So why don't we use -- we'll compare them side by side --

MS. MACHNICH: Okay.

THE COURT: -- so that we make it faster.

MS. MACHNICH: It is -- so this is, like:

A conspiracy is an agreement between two more persons.

I know that Your Honor has made the decision to give the State's in lieu of the defense proposed one. We believe that the defense proposed one is a more direct version of saying the same concept, and therefore we proffered that. But beyond that, we'll submit to Your Honor's discretion.

THE COURT: Mr. Plummer?

MR. PLUMMER: Same, Your Honor.

THE COURT: Okay. I'm going to give the State's instruction. In looking at Defendant's attorney proposed jury instructions disputed as to the definition of conspiracy, in lieu of the State's instruction, I'm not

going to give Mr. Turner's jury instruction.

MS. BEVERLY: Thank you.

THE COURT: The next one is:

Each member of a criminal experience is liable.

It's my understanding that -- and then Mr. Turner also had a instruction in lieu of the State's instruction. It's my understanding both instructions were withdrawn.

MS. BEVERLY: Correct.

MS. MACHNICH: Correct.

THE COURT: Thank you.

The next instruction is during -- the State's instruction is:

During an attack upon, a group of defendants intent to kill may not be directed at any one individual. It is enough is if the intent to kill is directed at the group.

Defense, what's your position on giving that instruction?

MS. MACHNICH: Your Honor, on behalf of Mr. Turner, we would object. I believe that those are not -- it's not the factual scenario of this case. There was not a large group of people that was shot into. That's not particularly the factual scenario and therefore the instruction itself is confusing.

Additionally, we believe that transferred intent is covered by other instructions given by the State and given by the Court, ultimately, in the instructions. And thus, we would object to it and submit to the Court's discretion.

THE COURT: Thank you, Counsel.

Mr. Plummer?

MR. PLUMMER: Your Honor, we have the same objection. It's not the factual scenario in this case. In the *Ewell* [phonetic] case, the defendant shot into a group of people, and there was two named individuals as targets, in essence, attempted murder. In this case, there's two named individuals. There is no other side group that was shot into. We don't believe the factual scenario supports the instruction, and, again, would -- though, if it supported it -- the case law says under the other factual scenario, notice is given. We don't believe proper notice is provided -- provided in this instruction. And with that, Your Honor, again, the facts aren't the same. We object.

THE COURT: State, what's your position?

MS. BEVERLY: I mean, I know it's the State's position that this is -- case is extremely similar to the *Ewell* case that we cited. In this particular case, there's more than one person, more than one person is a group. We're forgetting about the homeowners, who were actually right in the back of the house as well. The defendant shot into that house. The two officers were up at the door.

So I think given that, Your Honor, that this case, it's squarely within your allowance to have that instruction.

THE COURT: And my recollection of the testimony from the homeowners is they could actually see the molten -- I can't remember if he said molten bullet or molten lead go by his head, I believe was the testimony. I'll stand corrected, but I do remember him testifying. So I am going to give this instruction. I do think the facts support this

instruction.

And then I believe the State had an additional instruction that they submitted to me, and that was -- oh, I'm sorry, that was the instruction that -- that -- where they cited *Ewell v. State,* 785 P.2d 1020, the 1989 case.

Did the State have any additional proposed instructions?

MS. BEVERLY: No.

THE COURT: Thank you.

All right. Now, as to Defendant Turner's proposed instructions, Turner had proposed an instruction -- Mr. Turner had proposed an instruction:

There is no such criminal offense as an attempt to achieve an unintended result.

State, what -- what's your position on giving that instruction?

MS. BEVERLY: The State's objection to that was that I believe that is -- that instruction is covered by other instructions, specifically, the specific intent instruction, and, specifically, the instruction dealing with the fact that attempt murder and attempt burglary are specific intent crimes and how someone can be guilty under aiding and abetting a conspiracy liability. So we believe it's covered by other instructions. Additionally, there are three different theories someone can be convicted of. So with that, we'll submit.

THE COURT: Thank you, counsel.

Mr. -- counsel?

MS. MACHNICH: Your Honor, I believe this is the *Sharma*

instruction. And we submitted this because we believe that as a defense theory, it was appropriately written with more of a factual scenario of this case.

However, pursuant to discussions in chambers in the settlement of instructions, Your Honor suggested that we put in a third section, because conspiracy is charged in this case, and additionally requested that the exact language from *Sharma* be used. And that that is what we did submit per -- per the Court's order, and I believe that is being given. And we'll submit on that.

THE COURT: And that's correct. I -- I am going to give a modified version of this instruction. My ruling was that I would give that I would give this instruction, I needed to track the language of *Sharma*. And I believe that has some been -- that has been submitted. So I will give a modified version of this instruction.

MS. BEVERLY: Thank you.

THE COURT: As to Mr. Turner's next instruction:

Before you may rely on circumstantial evidence to prove that a fact necessary.

State, what's your position on this instruction?

MS. BEVERLY: The State's objection to that, Your Honor, is that per the instruction regarding direct and circumstantial evidence are to be treated exactly the same, this instruction is confusing and makes it seem like you -- it actually is not treated equally, despite the fact that they are. So with that, we object to that instruction.

THE COURT: Counsel, what's your position?

MS. MACHNICH: Your Honor, our position is that pursuant to *State v. Supranovich*, which was cited in our authorities presented to the Court, and I know that the Court has reviewed, we believe that it is a correct statement of the law. And the Supreme Court stated that giving it in its full form is appropriate. It is not required, as is noted in that decision.

However, we believe given the facts that have come out in this case, that this is not only a correct statement of the law, but is -- along with the theory of defense.

That being said, we will submit to Court's discretion on the issue.

THE COURT: Thank you. And I did review *State v. Supranovich*, which is an unpublished opinion, which, basically, stood for a proposition. If I do give this instruction, I'm going to give the complete version. However, we're relying on *State v. Neill*. I believe other instructions in the packet that's going to be provided to the jury sufficiently cover this. And therefore, I'm not going to give this instruction.

MS. BEVERLY: Thank you.

THE COURT: The next one is a conspiracy -- a conspirator:

A conspirator can withdraw from the conspiracy by taking definite, decisive, and positive steps to associate himself from the conspiracy.

State, what's your position on this instruction?

MS. BEVERLY: Your Honor, I believe this was from the *Fox*

case. The *Fox* instruction gave multiple ways. So we were just objecting to the language in the proposed instruction. But it's my understanding that that has been modified to quote the *Fox* language. So with that, we'll submit.

THE COURT: Okay. Counsel, your position?

MS. MACHNICH: Our position is that while we did submit this version, we were happy to submit the ordered revised language, which is the language mirroring the *Fox* decision, in addition to the added sentence, which was from the State's proposed version of this instruction:

The State has the burden to prove beyond a reasonable doubt that the defendant did not withdraw from the conspiracy.

So that was also added in the edited version that was provided to the Court, and it is our understanding that that is being given. So we will submit.

THE COURT: Thank you, counsel.

This instruction will be given as modified.

As to Defendant Hudson's proposed instructions, the first one is justifiable battery.

State, what's your position on this?

MS. BEVERLY: Just for the record, the State's position on this justifiable battery, as well as the self-defense instructions we'll talk about soon, is that there is zero evidence of either justifiable battery or self-defense in this case. So that's pretty much our objection. So we'll submit for -- that's my whole argument for all of them, just FYI.

THE COURT: Thank you, counsel.

Mr. Plummer?

MR. PLUMMER: Your Honor, we believe that this is a proper instruction under *Davis v. State*. The facts at trial came out that the officers may have shot first.

Also, I believe there was testimony that Officer Grego-Smith, when the door opened, moved forward with his gun shining in the doorway, which could put somebody in a reasonable apprehension of fear. And I believe the instruction is warranted.

THE COURT: Is this mainly offered as a theory of defense instruction, counsel?

MR. PLUMMER: It is, Your Honor.

THE COURT: All right. And as counsel is aware, under theory of defense, if there is weak or incredible evidence, the Court is still inclined to give it.

So I am -- I do not believe this instruction was the correct statement of the law. I ask that it be modified. I am going to give the modified version of this instruction.

MS. BEVERLY: Thank you.

THE COURT: The next one offered by Mr. Hudson:

The defendant may assert a viable claim of justifiable battery or self-defense against a law enforcement officer.

State, what's your position on giving this instruction?

MS. BEVERLY: I object to that instruction. I don't think it's a statement of law. I think it's just a statement regarding facts. I don't

think it's a proper statement of any law. And so with that, I would object to that.

THE COURT: Thank you.

Mr. Plummer?

MR. PLUMMER: Your Honor, I believe that the law is clear, that police officers don't have a special status in certain circumstances. And because the information is that they tried to attempt murder on a police officer and substantial bodily harm on police officers, that in the jury's mind that they will have some special status. And we believe the Court should instruct that they don't.

THE COURT: Thank you, counsel.

I reviewed the authority that you cited and supported this instruction, *Rosas v. State* and *Walker v. State*, and this does not appear to be -- this instruction does not appear to be a correct statement as indicated in those cases. The cases were more fact-based, dealing with a law enforcement officer. Therefore I'm not going to give this instruction. I feel other instructions sufficiently cover this aspect.

As to Mr. Hudson's next instruction:

Actual danger is not necessary to justify self-defense.

State, what's your position on this?

MS. BEVERLY: Well, as I noted earlier, I object to those in general, but especially this particular instruction. I don't believe it is an accurate statement of the law. *Runion* has made clear what the self-defense instructions are. They can be modified for battery or for attempted murder situations. However, *Runion* is very clear as to what

the instructions should be.

So as we talked about in chambers, if those instructions were going to be given, I was going to ask that they be given directly from *Runion*.

THE COURT: Mr. Plummer?

MR. PLUMMER: Your Honor, we also believe that the Nevada Supreme Court has made it clear that the instructions are to be tailored to each case and we are not to take specific instructions right out of the cases as gospel. And because there's no model instructions here in Nevada, we believe that the modification that we have submitted was proper and that it should be given.

THE COURT: Thank you, counsel.

I reviewed the R*union v. State* case. And while the proposed -- while the instructions in Runion are sample instructions, and other *Runion*, the Court is to -- is to tailor the instructions to the case, I find that the more accurate statement of self-defense is to provide the jury with the -- all the proposed samples as contained in *Runion*. Therefore, I am going to give this instruction as modified.

MS. BEVERLY: Thank you.

MR. PLUMMER: Thank you, Your Honor.

THE COURT: The next one is:

If the injuries of what they are justified are excusable, the person then guided shall upon his trial be fully acquitted and discharged.

State, what's your position on this?

MS. BEVERLY: Just that I don't think we necessarily believe that's an accurate statement, though I think it's the -- the self-defense instructions should be the ones given by *Runion*, not something made up that's outside of the scope of *Runion*.

THE COURT: Mr. Plummer?

MR. PLUMMER: Your Honor, I believe the instruction is warranted under *State v. Milosevich*, and we'll submit on that.

THE COURT: Thank you, counsel. I actually read *State v. Milosevich*, a 1918 case. I could find this proposition within that case. Similar to my ruling dealing with the -- where I reviewed *Rosas v. State* and *Walker v. State,* where I couldn't find the language in that instruction and in either of those cases, I could not find this language or even this proposition, necessarily, in *State v. Milosevich*. Therefore, I'm going to not give the instruction.

Is there any other instructions which I have not covered that were proposed by either party?

MS. BEVERLY: Not from the State.

MS. MACHNICH: Not from Mr. Turner.

MR. PLUMMER: No, Your Honor.

THE COURT: All right. So does -- do the parties have a copy of the instructions to be given to the jury?

MS. BEVERLY: Yes, they do.

MS. MACHNICH: Yes, Your Honor.

MR. PLUMMER: Yes, Your Honor.

THE COURT: Okay. I will advise counsel, I've numbered the

instructions. And the last two had the number of 24 at the bottom of the instructions. I had my law clerk just recopy and then fill out the number 24 on the bottom.

MS. BEVERLY: Perfect. Thank you.

THE COURT: According to my numbering, there's 50 instructions; is that correct?

MS. BEVERLY: I believe so, Your Honor.

THE COURT: All right. Let's go through them.

All right. These will be the instructions I'm going to give to the jury.

Instruction No. 1: It is now my duty.

Instruction No. 2: If in these -- I'm sorry -- if in these instructions.

Instruction No. 3: An amended indictment. And Instruction No. 3 is multiple pages.

Instruction No. 4: In this case.

Instruction No. 5: To prove that a defendant.

Instruction No. 6: A conspiracy is an agreement.

Instruction No. 7: It is not necessary.

Instruction No. 8: Evidence that a person.

Instruction No. 9: A conspirator can withdraw.

Instruction No. 10: The defendant aids and abets.

Instruction No. 11: Mere presence at the scene.

Instruction No. 12: The elements of attempt to commit a crime.

Instruction No. 13: Every person who.

Instruction No. 14: Every person who commits.

Instruction No. 15: Attempt murder is the performance.

Instruction No. 16: The intention to kill may be ascertained.

Instruction No. 17: The defendant's state of mind.

Instruction No. 18: In this case, the defendant are accused.

Instruction No. 19: Battery means any wilful.

Instruction No. 20: You are instructed that if you find either defendant guilty.

Instruction No. 21: Substantial bodily harm means.

Instruction No. 22: You're instructed that if you find the defendant guilty of attempt murder or battery.

Instruction No. 23: A deadly weapon is.

Instruction No. 24: If more than one person commits a crime.

Instruction No. 25: Attempt burglary and attempt murder are specific intent crimes.

Instruction No. 26: Specific intent.

Instruction No. 27: You're instructed that the doctrine of transfer of intent.

Instruction No. 28: If you believe at the time of the shooting.

Instruction No. 29: During an attack upon a group.

Instruction No. 30: Justifiable battery.

Instruction No. 31: The battery of another.

Instruction No. 32: A bare fear or death.

Instruction No. 33: The right of self-defense.

Instruction No. 34: Actual danger.

Instruction No. 35: If the evidence of self-defense.

Instruction No. 36: Although your verdict.

Instruction No. 37: In this case.

Instruction No. 38: The right of a person.

Instruction 39: To constitute the crime.

Instruction 40: The defendant is presumed innocent.

Instruction 41: Is the constitutional right of the defendant.

Instruction No. 42: You are here to determine if each defendant.

Instruction 43: The evidence which you are to consider.

Instruction No. 44: The credibility or believability of a witness.

Instruction 45: A witness who has special knowledge.

Instruction 46: Although you are to consider only the evidence.

Instruction 47: In your deliberation, you may not discuss.

Instruction 48: When you retire to consider your verdict.

Instruction 49: If during your deliberation.

Instruction 50: Now, you will listen to argument of counsel.

Are those all the instructions that the parties have submitted?

MS. BEVERLY: Yes, Your Honor.

MR. PLUMMER: Yes, Your Honor.

THE COURT: And, counsel, the self-defense instructions you just asked, those were the instructions out of *Runion*, correct?

MS. BEVERLY: Correct.

THE COURT: Thank you.

All right. Ladies and gentlemen, we're going to take a very short recess. And then I'm going to read the instructions to the jury, and then we're going to go into closing argument.

Oh, one last thing. I apologize. Counsel, approach.

These are the verdict forms that have been submitted. Are they the ones that I'm giving to the jury?

MS. BEVERLY: Yes.

MR. PLUMMER: Yes, Your Honor.

MS. MACHNICH: Yes, Your Honor.

THE COURT: No objection?

MS. BEVERLY: No objection.

MS. MACHNICH: No objection.

MR. PLUMMER: No objection.

THE COURT: Thank you. All right. We're going to be in a short recess for about five minutes, and then I'm going to bring the jury back in.

[Court recessed at 1:49 p.m., until 1:56 p.m.]

[Outside the presence of the jury.]

THE COURT: Counsel ready?

MS. BEVERLY: Yes.

MS. MACHNICH: Yes.

MR. PLUMMER: Yes, Your Honor.

THE COURT: This is the continuation of the jury trial in Case No. C-15-309578-1 and -2. *Plaintiff, State of Nevada, vs.*

Defendants, Steven Turner and Clemon Hudson. Record will reflect the presence of counsel for the State, counsel for the defense, and the presence of the defendants.

Counsel, at this point, I'm going to bring the jury back in, read them the jury instructions, and we'll proceed directly into closing arguments.

I do want just to notify you, my clerk advised me on the verdict forms, because they don't have -1 and -2, then when he files them, he's going to have to correct them. But as far as sending these forms back to the jury, he says that will not be an issue.

MS. BEVERLY: Okay, thank you.

MS. MACHNICH: Thank you, Your Honor.

And, Your Honor, just briefly. It is our understanding that after the jury comes in, in the gallery, there's going to be a lot of law enforcement officers into the courtroom. And I believe that that is going to be extremely intimidating to the jury that is considering a police officer shooting case.

I realize this is an open courtroom, and anyone who can be here -- I know that there have been family members here from both of the defendants throughout this case. But the idea that numerous, numerous officers are going to come into this gallery and stare at this jury immediately before a case involving an officer-involved shooting and an officer that was shot goes to the jury is extremely prejudicial. I need to make a record on that at this point. And, obviously, we'll submit to Your Honor's discretion on any remedy thereof.

But I anticipate this is going to be very apparent very shortly that an extreme number of officers are going to come and sit in here based on people who are outside, and that is very troubling to us.

THE COURT: Are the officers in uniform?

MS. BEVERLY: Yes. Judge, this is an open courtroom.

THE COURT: I understand.

MS. BEVERLY: The same way his family's been here the whole two weeks we've been here, that multiple family members, and we haven't said anything about that. This is an open courtroom. There is no rule preventing them from being here.

THE COURT: All right. My only concern, quite frankly, is not that they're here, that the jury is going to think that this is a security issue.

MS. BEVERLY: Well, Judge --

THE COURT: That we're going to have multiple officers in the courtroom because of some security issue that the defendants are -- so --

MS. BEVERLY: Judge, there hasn't been any security in here the last two weeks.

MR. GIORDANI: There's no --

MS. BEVERLY: This is --

THE COURT: Okay. Counsel, I'm going to allow them in. I will tell the jury, if you request, that this trial is a public forum and anybody that -- can attend. And if there's any family members or police officers in attendance, they're not here for security, but just to witness

the case.

MS. MACHNICH: Your Honor, the idea and the perception of security is not our concern. It's the intimidation factor.

THE COURT: Okay. Then, I'm not going to give that instruction then.

MS. MACHNICH: Correct. Yes. I would not request it.

MS. BEVERLY: Thank you.

THE COURT: Okay.

MR. PLUMMER: Your Honor, this is the first I'm hearing about it also as far as a courtroom packed with police officers. I would also make an objection. I believe this is a huge intimidation factor with a courtroom packed with police officers with guns.

MS. BEVERLY: Judge --

MS. MACHNICH: Given the subject matter.

MS. BEVERLY: -- there is zero rule -- this is an open courtroom. There are named victims in this case. I can bring who -- anybody who wants to come -- if my daughter wants to come, she can come and sit in this courtroom.

THE COURT: All right.

MS. BEVERLY: It is irrelevant.

THE COURT: I -- again, this is a trial. It's a public forum that can be attended by the public. We have transparency regarding trials. So if the parties aren't concerned about the security issue, I'm going to allow it. Thank you.

Bring the jury in, please.

Counsel, approach.

[Bench conference transcribed as follows:]

THE COURT: If the State would -- if one of the State attorneys would go and advise the police officers of the concern of the defense and just make them aware that the defense is concerned that somehow they're going to be intimidating and --

MS. BEVERLY: That's fine. Just can you just make sure that they tell their clients' family not to do the same thing.

THE COURT: Can you tell your people too --

MR. PLUMMER: Yeah.

THE COURT: -- that they know --

MS. MACHNICH: Of course. Absolutely.

THE COURT: -- there are to be no --

MS. MACHNICH: And also --

THE COURT: -- intimidation by either side.

MS. MACHNICH: -- we'll inform ours. But if we can also inform everybody else, no clapping.

THE COURT: Okay.

MS. MACHNICH: I've actually had someone clap in the gallery.

MS. BEVERLY: That's not normal. That's not normal.

THE COURT: Okay. All right. Go -- both parties go -- go and inform them.

MS. MACHNICH: Just nothing.

THE COURT: You -- both parties.

MS. MACHNICH: I appreciate that. Oh, yes. No, she's -- she's going right now.

THE COURT: Thank you, counsel.

MS. SISOLAK: Yes, thank you.

[End of bench conference.]

THE COURT: Can I bring -- oh, no. Mr. Plummer went outside.

Hold -- hold off for one second.

Is the jury outside?

MR. GIORDANI: Shouldn't the jury be brought in before we all start talking?

THE COURT: Yeah, let's do that. Bring -- let's do that. Thank you. Bring the jury in.

Tell Mr. Plummer to come in.

[Pause in proceedings.]

THE COURT: Okay. Mr. Plummer, I'm bringing the jury in. Then you can -- then you can -- I'm going to bring the jury in.

MR. PLUMMER: Yes, Your Honor.

MS. MACHNICH: Understood, Your Honor.

[Jury reconvened at 2:03 p.m.]

THE COURT: You may be seated. Let the record the presence of counsel for the State, counsel for the defendants, and the presence of the defendants.

Will the parties stipulate to the presence of the jury?

MS. BEVERLY: The State --

MS. MACHNICH: On behalf of Mr. Turner, we would Your Honor.

MR. PLUMMER: Yes, Your Honor.

MS. BEVERLY: Yes from the State.

THE COURT: All right. Are the parties prepared to go forward with closing arguments?

MS. BEVERLY: Yes, we are.

THE COURT: Thank you.

[Jury instructions read.]

THE COURT: Counsel, approach.

[Bench conference transcribed as follows:]

THE COURT: Will counsel stipulate that all the jury instructions were given to the jury?

MS. BEVERLY: Yes.

MR. PLUMMER: Yes, Your Honor.

MS. SISOLAK: Yes, on behalf of Mr. Turner, Your Honor.

THE COURT: Thank you.

MS. MACHNICH: Thank you, Your Honor.

[End of bench conference.]

THE COURT: The State -- is the State ready to proceed with closing argument?

MS. BEVERLY: Yes, Your Honor.

THE COURT: You may proceed.

CLOSING ARGUMENT BY THE STATE

MS. BEVERLY: On September the 4th of 2015, Steven

Turner and Clemon Hudson attempted to break into the residence of Willoughby Grimaldi and Eric Clarkson, and attempted to kill Officer Grego-Smith and Officer Robertson by shooting directly at them with high-powered weapons. And as a result of that, the defendants -- defendants in this case are charged with various crimes.

And we appreciate your time and your consideration here over the last couple of weeks. You've heard a lot of evidence, you've heard a lot of testimony, and we ask that you bring all of the exhibits back with you to the jury deliberation room to give them careful consideration. And the State is confident that by the time you finish deliberating, you will find both Mr. Hudson and Mr. Turner guilty of all crimes.

Now, in every criminal case, the State has to always prove two things: That a crime was committed, and that the defendant was the person who committed those crimes.

In this particular case, we have five crimes: Conspiracy to commit burglary; attempt burglary while in possession of a firearm; Counts 3 and 4 are the attempt murder with a deadly weapon; and Count 5, battery with use of a deadly weapon resulting in substantial bodily harm.

And now, Judge Bailus just read to you a lot of jury instructions. Okay. You will have that packet of information to take back with you to the jury deliberation room to look through it as you need to during deliberations. Okay. But it's important that we go through some of those instructions as we're going through the crimes in this case to make sure that we all have an understanding of the various theories of

criminal liability, how they apply in this case, as well as the actual crimes in this case. Okay.

Under criminal law, a person can be liable for a criminal offense under one or more theories of criminal liability. And there's three of them. There's directly committing a crime, conspiracy theory, and aiding and abetting.

And you heard all those instructions, but sometimes they seem a little complicated. So as we go through those, I'm going to try to give you some examples to hopefully make it simpler for all of us, including myself. Okay.

So first way is directly committing a crime. I take a gun, I point it at you, I fire; I'm directly liable for committing that particular crime.

The next one is conspiracy theory. That's an agreement to commit a crime between two or more people.

And then lastly, aiding and abetting the commission of a crime.

Okay. So let's talk about -- we'll talk about those theories, but let's talk about, first, this instruction regarding specific and general intent, because this becomes important as we talk about the crimes in this case.

Specific intent is the intent to accomplish -- to accomplish the precise act which the law prohibits. Okay. So what that means is that when I do an action, I have to have -- intend a specific result.

So let's use the example in this particular case, which is attempt murder and attempt burglary. I have to do something with the

intent to kill. Kill is the end result that I'm intending to do. Okay. I can't do something with an intent to scare or intent to intimidate, because that wouldn't be attempt murder.

Same thing with attempt burglary, I have to enter, which is the act, with the intent to commit a felony, larceny steal, robbery, for example. Okay. So you're intending the -- the end result.

In contrast, general intent is the intent to do that which the law prohibits. But it's not necessary that we prove the intent to commit a specific result. Okay. In this particular case, we're talking about battery, Count 5, being the general intent crime. In a general intent crime such as battery, all the State has to prove is that you have to intent to do the actual act, not a particular result.

So if I punch you, all I have to prove is that I intended to punch you. If somehow, you break your nose in that process, that's substantial bodily harm, I'm still liable for battery with substantial bodily harm, because I intended to hit you and there was additional results. Okay.

So in this case, Counts 1 through 4, conspiracy to commit burglary, attempt burglary, and the two counts of attempt murder are specific intent crimes, and Count 5 is our general intent crime.

So what is a conspiracy? Basically, it sounds complicated, but it's just an agreement between two or more people to commit a crime. Okay.

So as an example, and I'm going to use this example as we go throughout, Mr. Giordani and I decide that we're going to rob a bank. Okay. Now, unfortunately, it's not like TV, where there's going to be all

these notes or text messages or e-mails between Mr. Giordani and I saying, Okay, this is -- we're going to rob the bank on this day. We're going to go at this time, etcetera, etcetera. Okay. If it was that easy, I mean, that would be every case. Okay.

So what the law says is that it's not necessary in proving a conspiracy to show some making of an express or formal agreement. Okay. The formation of a conspiracy can be inferred from the facts and circumstances of a crime. Okay.

I wish that we could open up people's minds and see what they're thinking in the exact time period, but that's simply not possible. So the law takes that into consideration and says, Look at the circumstances, look at people's conduct, look at their work, look at their behavior to infer the making of this agreement. Okay.

And let's use an example of that. Mr. Giordani and I decide that we're going to rob a bank. No notes, no e-mails, nothing like that. But the facts that you do have is that Mr. Giordani and I get in a vehicle, we drive over to the bank on First Street, we walk in there together with a couple of guns. Mr. Giordani goes to the teller and says -- demands the money. I tell people, Get on the ground. He gets the money. He gives it to me. We run out of the bank, get in the car, take off. Okay.

Those facts and circumstances and conduct demonstrate that we had an agreement to rob this bank. Okay. We don't have any notes, we don't have any e-mails, but what we have is our coordinated series of acts showing our conduct, and that proves a conspiracy. Okay.

One other thing to know about conspiracy is that mere

knowledge or approval of a criminal act doesn't make you liable as a coconspirator. Okay. Again, we look at the conduct of the parties.

Using that same example, Mr. Giordani tells me, You know, Ms. Beverly, I'm going to rob a bank tomorrow. And I'm like, Well, sounds like a good idea, go for it. Okay.

That's it. I don't do anything else. I don't make an agreement with him. I don't try to help him in any way. I don't want to participate whatsoever. I just think it's a good idea to rob a bank. Okay.

I'm not going to be liable as a coconspirator. Okay. Only he's going to be liable for committing that act.

So again, what the law says is that we look at the coordinated series of acts, we look at conduct, to help determine that conspiracy.

Going back to that specific intent, this instruction sounded a little confusing, but really, what this means is that for the specific intent crimes in this case, both coconspirators have to have the required intent. So for the attempt murder, the attempt burg, both Mr. Hudson and Mr. Turner have to have the intent to kill and they both have to have the intent to commit a felony or a larceny or robbery for the burglary. Okay.

However, for general intent crimes, as long as the crime that's committed is a probable and natural consequence of the original plan, you're liable for that. Okay.

Best example I can use in that is -- let's go back to this bank robbery. Mr. Giordani and I, we go over to that bank. The plan is to rob the bank. The robbery starts. Somebody who's in the bank, the customer, decides to fight back. Okay. And I shoot that customer in the

leg. That's a battery with substantial bodily harm. Okay.

Mr. Giordani is still liable for me shooting that customer. And the reason for that is because it is a natural and probable consequence of a robbery that someone's going to get hurt. Okay. Because the general nature of our original plan, which was a robbery, the general violent nature of that, the likelihood of someone getting hurt, is very possible; so he's going to be liable for that even if that wasn't part of the original plan. Okay. Does that make sense to everybody? Okay.

So let's talk about aiding and abetting and what that means. Again, it sounds complicated, but it's really not. You assist somebody in committing a crime by advice, by words, by actions, with the specific intent that that crime be committed. Okay.

Using an example of our bank robbery, Mr. Giordani tells me, Ms. Beverly, I want to rob a bank. And I say, Okay, that sounds like a good idea. I'm not necessarily making an agreement to -- with you, but I'm going to help you rob that bank. Okay. Because actually, I used to work at that bank and they just recently fired me. So I don't really like that bank, and I think that that bank should be robbed.

So I'm, like, Hey, Mr. Giordani, you know, since I used to work there, I know when the money is going to be dropped off, and I know what teller it gets dropped off to. I know what time the bank opens. I know the blueprint of the bank. Here's all this information. Go rob the bank, because I want the bank robbed too. Sure enough, he goes out and robs the bank. Okay.

I am liable as if I directly committed the crime. Okay.

Because I helped him by advice, by words, because I wanted the bank robbed too. And that's what the law tells us is that an aider and abettor in a crime is treated the exact same as if you directly committed a crime. Same thing with a coconspirator. Okay.

One other thing to know about aiding and abetting is that you can't just be a mere spectator. You have to actually do something to aid in the commission of the crime. All right.

As an example -- excuse me -- Mr. Giordani are driving down the street. He tells me, Hey, I want to -- I'm going to rob the bank. Pulls over to the side of the road, and I'm kind of like, I don't know what's happening. He just told me he's going to rob the bank. I'm sitting in the car. He goes in and robs the bank, hops in, and takes off. Okay.

I have literally done nothing to help him other than being present and knowing he was going to be the bank. Okay. There has to be more than that.

But what the law tells us is that we look to the surrounding circumstances to see what someone's intent is, to see if they were an aider and abettor. Their conduct before and after the crime, their presence at the scene, all those factors that you can take back and look at when you're looking through your jury instructions. Okay.

Let me go back for one second.

Now, I want to be clear about this particular case. In this case, all of the evidence supports that Mr. Turner and Mr. Hudson directly committed these crimes. Okay. But you can find them guilty under any theory of liability. I submit to you they both had guns, they

both directly committed this crime; but just so you know, you can find them guilty under either of these three theories that we just talked about.

I also want to direct your attention to the transferred intent instructions. Okay. And what that says is that if you have the intent to kill, it doesn't matter who you actually injure. Okay.

An example, Mr. Giordani and I decide we're going to go over to Suzy Q's house. Okay. We bring our weapons. We go up to Suzy Q's door. The door opens. We fire at her, because we're intending to kill her. Turns out it's actually not Suzy Q behind that door, it's Suzy's poor 90-year-old grandma who's visiting. She goes down. She doesn't die. Okay. But she's injured. We are both liable still for attempt murder on Grandma, because it doesn't matter who you intend to kill as long as you intend to kill someone. Okay.

Lastly, you all do not have to agree on the same theory of liability. Maybe one person believes they directly committed the crimes, maybe another person believes it's a conspiracy or aiding and abetting, as long as you find them guilty under one theory or more. Okay.

So let's start talking about the crimes in this case. The first one would be conspiracy to commit burglary. I don't think that anyone is going to get up here and tell you that they are not guilty of conspiracy to commit burglary. In fact, both Mr. Hudson and Mr. Turner's attorney, when they got up in opening statements, said find them guilty of conspiracy to commit burglary. Okay.

But just a quick review of the testimony regarding that from the homeowner, remember Eric and Willoughby. It's 3:30 in the morning.

There was more than one person out there casing the house, running around. There's noise on the back patio.

And I refer you to that 911 call. You'll have that to take back with you and play it if you so desire. This is going on for a period of time before the officers even being there. So this whole time, Mr. Turner and Mr. Hudson are back there trying to figure out how to get into this house. They're jumping over walls, it's the middle of the night, and they're bringing high-powered weapons. The only reason you go to someone's house at 3:30 in the morning with guns is because you're intending to burglarize them. Okay. That's just logic.

What does Mr. Hudson say about this? The plan was to go to the house to rob the people of some weed. He meets up with someone, Mr. Turner. They go to the house together. They've checked out this house the week before.

What does Mr. Turner say? He went to that house to do a dope -- he knows the homeowner. He knows the homeowner has marijuana there. He's with Mr. Hudson riding in that car. They hop in the backyard. Okay.

All of those acts, those coordinated series of acts, all show this agreement to go over there for an unlawful purpose. All right. So I ask on your jury verdict form that you check guilty for both defendants of conspiracy to commit burglary.

Then we have the attempt burglary while in possession of a firearm. Okay. Again, I don't think that anyone is going to come in here and tell you that they are not guilty of attempt burglary. All right. But just

to be clear, because we have another attempt crime later on, the elements of an attempt to commit a crime are the intent to commit the crime, performance of some act towards it, and, basically, it fails to be completed. All right. That's why it's called an attempt.

Burglary is just entering any building with intent to commit larceny or robbery. A lot of people think that burglary -- in order for there to be a burglary, you have to break something in someone's house or take the door off the hinges or do something to actually break into the house. That's not what the law says. Breaking is not an element. All you have to do is enter with the intent to commit a crime. Okay.

And lastly, if you get a firearm or possession of a deadly weapon at any point during the commission of the burglary or attempt burglary, you're now liable for attempt burglary while in possession of a firearm.

So where's the attempt to enter to commit larceny or robbery in this case? Well, we know that Mr. Hudson and Mr. Turner, based on the evidence, are back on that patio trying to get into the house. Okay. They're moving stuff around, they're checking doors, they're checking windows, trying to figure out how to get into this house at 3:30 in the morning. There's metal chairs moving around. They're close to that back door when the door opens.

And remember that 911 call. They're back there for a significant period of time trying to figure out how to get in the house. Remember, some of the doors are locked. The windows, if you can see in those photos, have kind of bars on them; so they're trying to figure out

how to get in there.

Both Mr. Turner and Mr. Hudson say the plan was to go over to the house to rob them of marijuana. Okay. That's an attempt burglary. They just didn't get in the house, because they decided to fire into the house.

Mr. Hudson admits to twisting the side door of the house, but it was locked. He admits to checking out particular areas of the house.

Mr. Turner -- remember, Mr. Clarkson, the homeowner, knows Mr. Turner. Okay. And remember he testified last week that nobody called him and told him they were coming over. Nobody sent them a text saying it was coming over. Mr. Turner was there to do a dope raid.

So how do we know that Mr. Turner and Mr. Hudson had weapons during this attempt burglary? Well, let's start with Mr. Hudson. Okay. He told you he had both this little gun and this shotgun. His fingerprints are on that shotgun. His DNA is on the hat that's found in the backyard.

And again, you'll have all of the exhibits to take back with you. It's a lot. Flip through them as you see fit, but you have all of that to take to look at.

And remember Willoughby's testimony that the person cocking the shotgun in the backyard had on a hat. Sure enough, there's that hat with Mr. Hudson's DNA on it.

And remember the canine officer's testimony that Mr. Hudson is laying right there, there by that shotgun, when he ends up being taken into custody. Okay.

Let's talk about Mr. Turner for a second. How do we know he had a gun? Well, he told you, conveniently, that gun belonged to his uncle. I don't know how Mr. Hudson would possibly have access to Mr. Turner's uncle's gun. Okay. So the only logical conclusion is that Mr. Turner brought that gun as part of this conspiracy to break in this house. Okay. He knew that gun was in the car. He's on the patio when those shots come out, same place where those rifle casings are found. And, remember, he has that wound to his left calf with that fragment. Okay.

The plan is, Mr. Hudson, you bring that shotgun. Mr. Turner, you bring that SKS. And that's what the evidence supports.

This is an instruction I really ask you to pay attention to, and it talks about coconspirators and use of a deadly weapon. Okay. And what the law says is that each person who's part of conspiracy can be convicted of using a deadly weapon, even though he did not personally himself use the weapon, if you find that he aided and abetted or conspired to commit the offense. An unarmed defender uses a deadly weapon when the unarmed defender is liable for the underlying offense under aiding and abetting or conspiracy, another person who's liable uses a deadly weapon, and the unarmed person has knowledge of the deadly weapon. Okay.

Again, I submit to you that each of them had a gun; Mr. Turner had the SKS and Mr. Hudson had the shotgun.

But even if, for some reason, let's just say for the sake of argument, you believe that one of them didn't have a gun, they are both

still liable for attempt burglary while in possession of a firearm.

MS. MACHNICH: Wait. Your Honor, may we approach just briefly? I apologize.

THE COURT: You may.

[Bench conference transcribed as follows:]

MS. MACHNICH: I don't think that that's the correct application of this. This is while in possession of a firearm and not uses a deadly weapon. It's not the same terminology used in both instructions.

THE COURT: I'm sorry, I can't hear you.

MS. MACHNICH: Oh, sorry. I don't believe that it's the same terminology used. The instruction that was proffered by the State and given to the jury is -- what's up there is an unarmed defender uses a deadly weapon.

This is not use of a deadly weapon. This is while in possession of a firearm. It is an attempt burglary while in possession of a firearm, and those are specific intent offenses.

I don't believe that the uses coconspirator liability applies to this.

MS. BEVERLY: I believe it absolutely does apply to this, Your Honor.

THE COURT: Is that the instruction that was given to the jury?

MS. BEVERLY: Yes.

THE COURT: That's the instruction that was given to the

jury?

MS. BEVERLY: That is the exact instruction.

MS. MACHNICH: Yes.

THE COURT: And what's your position?

MS. MACHNICH: Uses -- this is not a -- with use of a deadly weapon charge, the battery and the attempt murder are.

THE COURT: But that was the instruction that was given to the jury.

MS. MACHNICH: Correct.

MS. BEVERLY: Yes.

THE COURT: Which you have stipulated to.

MS. MACHNICH: But this is not correct. Uses a deadly weapon. This is not with use of a deadly weapon; this is while in possession of a firearm. It's different wording in the charge. It's not the same wording. It's not the same intent from the statute. It's possession of a firearm, not use. I agree that that is correct with the other three charges, but I don't believe that that's correct for while in possession of a firearm.

MS. BEVERLY: I mean, it's the State's position that it absolutely applies. It's coconspirator liability. It applies. And I can move on, but it's our position --

THE COURT: All right. Why don't you move on, counsel.

MS. BEVERLY: Okay.

THE COURT: Thank you.

MR. PLUMMER: I agree with your objection.

[End of bench conference.]

MS. BEVERLY: So we're going to ask that you find both Mr. Hudson and Mr. Turner guilty of the attempt burglary while in possession of a firearm. Okay. They both had those guns.

Let's talk about attempt murder for a second -- well, not for a second -- for a little while. Okay.

Attempt murder is the performance of an act which tends but fails to kill a human being when someone has the specific intent to kill. Okay.

Again, we can't open up people's minds and figure out what they're thinking at a particular point in time. So the law allows us to use facts and circumstances, including the type of weapon used, and all other circumstances produced by the evidence. Okay.

MR. PLUMMER: Your Honor, may I approach?

THE COURT: Yes.

[Bench conference transcribed as follows:]

MR. PLUMMER: You've ruled that that language to calculate or to produce death in the instruction was removed. It's not removed on this slide.

THE COURT: That's correct.

MS. BEVERLY: I'm sorry. I've changed the slide. I'm sorry.

THE COURT: Okay.

MS. BEVERLY: That was a clerical error.

THE COURT: I agree. The objection is sustained.

MS. BEVERLY: Okay.

THE COURT: I'm going to tell them to disregard that last comment.

MS. BEVERLY: Okay.

MR. PLUMMER: Thank you, Your Honor.

[End of bench conference.]

THE COURT: Ladies and gentlemen, I'm instructing you to disregard the last comment by the deputy district attorney.

MS. BEVERLY: Ladies and gentlemen, I submit to you we can -- well, the law says you can infer intent from the facts and circumstances of the crime. Okay.

I submit to you that at 3:30 in the morning, when you go over to someone's home in the darkness of night, in the undercover blackness of night, with a high-powered weapon, and you see the door open and you fire directly at the people behind the door, that is attempt murder with use of a deadly weapon. There is no other conclusion that is possible. Okay.

Let's talk about all the facts that talk about attempt murder. We know three guns involved in this case, first one being that small pistol. Mr. Hudson had that. Okay. Loaded. Remember the testimony of the firearms expert: Loaded gun.

Next gun, shotgun, loaded. Fully loaded, one in the chamber. Okay.

Third gun, that SKS. Loaded, one in the chamber.

There is no reason that you bring loaded firearms unless you are intending violence. Okay.

If, really, the plan was just to go over there and steal some marijuana, you don't bring loaded firearms. Okay. Mr. Turner, let's not forget, knows who lives in that house. I don't believe that Eric Clarkson or Willoughby Grimaldi are in any way intimidating where you need to bring weapons to their house at 3:30 in the morning. Okay. If they were just there to simply steal some weed, it's not necessary. Okay. The only reason you do that is because you're intending to hurt someone.

What else do we know? That shotgun, an SKS, are fired as soon as that door opens. Okay. And what that means is that those guns are being aimed at that door, because when that door opens, there is no, Hey, put your hands up, I'm here to steal weed from you. There's no time of racking, because someone's not cooperating inside and giving you their weed.

Instant. Okay. Because they're ready. The guns are loaded and they're ready to be fired upon on whoever is behind that door. Okay. And in this case, it's Officer Robertson, and it's Officer Grego-Smith. And poor Willow and Eric are back hiding. Okay. Trying to get out of the way.

And where do those rounds go? Well, the first round goes into the house, through Officer Robertson's leg. And you'll have his medical records. They're huge. You can take them back with you. But I submit to you that it's a through-and-through shot from a high-powered rifle. Okay.

And where does it go? Right across the living room after coming out of his leg, through that metal door, and outside. And you

have that picture where that bullet went through.

Where does the shotgun blast go? Through that house, into that window by the front door, exploding. Okay. Shattering that glass. Pellets all over the floor -- so many, CSA Robbie Dahn couldn't even count them. Tons of them, all over that living room.

And what do we know? Those guns go through that small area of the doorway. Okay. There's no damage to the walls. There's no damage to the side patio walls. They go straight through. And what does that mean? That means those guns are aimed at that doorway, and they're aimed at whoever's coming to open that door.

If you remember how Willow and Eric, who are standing in their home and are watching this unfold, describe this incident, okay, two different caliber of bullets coming through, inches from their head. Okay. Even closer to Officer Robertson and Officer Grego-Smith, because they happen to be behind that door.

Willow says one of them is like a shooting star, straight through my living room. The other one was like fireworks exploding in my living room. And remember, it's dark in there; so they can see what this is looking like.

But that doesn't end there. Two more shots from that SKS rifle. Okay. And you'll have these diagrams to take back with you, and what I have circled is where the cartridge cases from that SKS were located. Okay.

Mr. Turner is firing as he's backing up and then away. So one shot wasn't enough. He continues to fire. And where do those shots

go? That's the casing, one of them. There's three of them. You have those photos to take back with you.

Let's go back. Where do those shots go? One into the TV, one into the back of the chair. Okay. We know those shots came from the SKS, and we know that because all of Officer Grego-Smith's bullets went through that spining. Okay. 12 holes, 12 casings, 12 shots from Officer Robertson.

So Mr. Turner, one shot wasn't enough. He continues to shoot. Why? Because he's trying to kill. It wasn't enough that that first shot already went into Officer Robertson. Okay.

So again, both of them directly committed the crime of attempt murder. Okay. Because there is no other explanation for why you would be shooting into a house.

What else do we know? There's a car outside the residence, parked in front of the house. Okay. Let's not forget Mr. Turner has been over to this house. He claims it's a couple of times. You heard Eric's testimony. He was over there multiple times throughout the year. Okay. Sometimes a couple times a week. So he knows what's going on with this house. He knows the people that live there.

It's 3:30 in the morning. The people are at home. There's a car in the driveway. Yet still, those guns are brought into the backyard of that house, loaded, ready to be fired. And the only explanation for that is because they intended to kill and they intended violence. They know someone is home. Mr. Turner told you there's someone home. There's a car in the driveway.

And Mr. Hudson says, Oh, when I checked out the house the week before, didn't go in, because there was someone home. There was a car in the driveway. Yet on September 4th, there's also a car in the driveway. Okay. He knows somebody's home. Yet still, they go back there.

How do we know it's Mr. Turner and Mr. Hudson back there? Okay. All of the evidence in this case supports two people. Okay. Let's start with that radio traffic, which you will also have to take back with you. What does Officer Robertson say seconds within getting shot by this high-powered rifle? I saw two people, and I was shot with a rifle.

What else do we know? Remember that diagram? You'll have this map to take back with you as well. Two stars right up against that window. Two people.

And who were those two people? Mr. Turner and Mr. Hudson. Okay. That window, right up there, right up against that window, when they start firing.

What did Mr. Turner say? When I got to the point where the patio and the TV is, the shots started. What does Mr. Hudson say? Both are standing by the window when the shots come out, when they start shooting. Okay.

During both of their interviews, they are given multiple opportunities to put the blame on somebody else. Okay. Let somebody else deal with the fact that you guys opened fire into a structure and intended to kill someone. And they both adamantly denied there being any third person involved in that backyard.

What else do we know? Again, Mr. Hudson has that firearm. He fires the one shot. His prints are on the gun. He's wearing that beanie. That shotgun is cocked. Okay. Mr. Turner -- again, the gun belongs to his uncle. He described that gun to a tee. There is no one else involved.

Let's not also forget that when this 911 call -- or, actually, the radio traffic comes out that there's shots fired, remember that the Las Vegas Metropolitan Police Department began to swarm the area. Okay. They set up a huge perimeter as you heard described. Over 200-plus officers. And yet, only two people are apprehended: Mr. Hudson in the backyard, and Mr. Turner less than half a mile from that house. You have that surveillance video too, tracking his path. Okay.

Two people, two cell phones in that car you heard described earlier this week, two guns fired, two people. Who are they? Mr. Turner and Mr. Hudson. And let's not forget that fragment that comes from the SKS round exploding in Mr. Turner's leg.

Officer Grego-Smith and Officer Robertson survived because of a miracle, not because of some lack of trying by Mr. Hudson and Mr. Turner. Okay.

We ask that you find -- check on your box on the verdict form guilty of attempt murder with use of a deadly weapon for both Officer Grego-Smith and Officer Robertson, because they are the people that were behind the door.

Last but not least is battery with substantial bodily harm -- or

deadly weapon resulting in substantial bodily harm. Okay. Battery is an unlawful -- excuse me -- willful and unlawful use of force or violence upon the person of another.

I don't think anyone's disputing that a battery occurred on Officer Robertson. He was, obviously, struck by that bullet. I don't think anyone's going to dispute that substantial bodily harm occurred in this case. I mean, his medical records are voluminous. He said on the stand, I think it was last Friday, talking about for over 10 minutes his injuries and how even today he has lasting injuries. Okay. You know, there is a picture of him, unfortunately, how badly he was injured.

And we know that the bullet that struck him was that round from the SKS. Okay. From Mr. Turner.

Now, again, the only reason that you fire at someone when the door opens is because you're intending to use unlawful force against them, right? And as a result -- remember this is a general intent crime -- he had suffered substantial bodily harm.

Remember we talked about this instruction earlier, that a coconspirator is liable for the natural and probable consequences of the outcome of the conspiracy. Again, we already talked about how there was this conspiracy to commit burglary. It is a natural and probable consequence of that, that someone's going to get injured.

So Mr. Hudson, while his shotgun blast didn't actually hit Officer Robertson, he's still liable for the battery with a deadly weapon resulting in substantial bodily harm. Number one, it's just a miracle his shot then didn't hit Officer Robertson. It wasn't because of a lack of

trying on his part. Okay. It just so happened to miss -- miss him. But he's still liable, because Officer Robertson actually was hit by his coconspirator, Mr. Turner, firing that gun.

And again, this -- an unarmed person can still be convicted of using a deadly weapon if they have knowledge of it and they're liable for the underlying events. He's definitely liable for the battery, because it's a natural and probable consequence, and he knew they had those guns back there.

I mean, this is not some, like, secret where this happened and they just kind of showed up at the same time. They rode over there together. They had guns in the back of the car. I mean, they had been over there the week before. This is not some, you know, quickly put-together plan. All of this was -- was planned out.

Mr. Turner and Mr. Hudson opened fire on September the 4th of 2015 because they intended to kill. There is no other conclusion. The State has proved this beyond a reasonable doubt. The evidence in this case is overwhelming, and we ask that you convict both of them of all five charges. Thank you.

THE COURT: Defense, are you prepared to go forward with your closing argument?

MS. MACHNICH: Yes, Your Honor. Although we do need to connect to the wireless presentation software.

[Pause in proceedings.]

MS. MACHNICH: The software is working, Your Honor.

[Pause in proceedings.]

THE COURT: Counsel, do you need the lectern moved towards the jury?

MS. MACHNICH: I don't. I won't use a demonstrative.

THE COURT: Thank you.

MS. MACHNICH: Thank you, Your Honor. May I proceed?

THE COURT: You may.

REBUTTAL CLOSING ARGUMENT BY DEFENDANT TURNER

MS. MACHNICH: Thank you.

All right. Good afternoon, ladies and gentlemen of the jury.

Steven Turner goes along for the ride. That night, Steven was in to steal some weed. But as soon as things got violent, both literally and figuratively, Steven was out.

So let's consider what Steven did in this case. Just as the State said, he did conspire to burglarize that house. That's absolutely true. And as we said in opening, it's not something that he contests.

Additionally, he did attempt to burglarize that house. Either directly or under an aiding-and-abetting query, as the State directed, he didn't have to actually physically be the one trying to get into the house or have gone that close. But he certainly went over there to do that. And because of that, he is guilty of attempt burglary.

So the close of evidence and after all of the closing arguments you're going to hear, we're going to ask that you correctly find him guilty of conspiracy to commit burglary and guilty of attempt burglary.

So what happened that night? First, as you heard, Steven was at home with his family when Hudson calls, and they go out to take

some weed.

MR. GIORDANI: Objection. That misstates the testimony. Hudson didn't call him.

THE COURT: Counsel, approach.

[Bench conference transcribed as follows:]

MS. MACHNICH: Hudson did call him. Your Honor, my --

THE COURT: What is the stated evidence? Did Hudson call him, or did he call him?

MS. MACHNICH: I believe they each say the opposite.

THE COURT: Huh?

MS. MACHNICH: I believe they each say the opposite.

THE COURT: Okay. It's argument, I'm going to allow it.

MR. GIORDANI: Okay. They don't say [indiscernible].

MS. MACHNICH: They do. He doesn't even --

THE COURT: It's argument, counsel.

[End of bench conference.]

THE COURT: Overruled.

MS. MACHNICH: Thank you, Your Honor.

Then Mr. Hudson comes and picks Steven up, and he drives that night. How do we know that? Well, we know that Hudson drives and Steven rides, because we have a car that's parked in front of that house. And that car is a car that is registered to Hudson's mom.

We know that he came in that car. We also have his own ID. He drove it there that night. That's why it was still sitting there after the police arrived.

We also know that Steven rode with Mr. Hudson, because there are three videos of Steven walking that night. And you're going to see these. There are three videos with multiple views each, and they show him walking away from the house.

Now, you can use your common sense. If he had driven in a different car or something like that, he would have gone to that car. He wouldn't have walked across the neighborhood and stayed in the area.

Additionally, Steven is found on foot. He's found walking with -- a couple hours later within about that mile radius that the police talk about. He's there. He's not able to leave, and that's why he doesn't leave.

Okay. There we go.

Additionally, Steven's phone was in Hudson's car. And you heard the officers testify to that, or CSAs, about they found two cell phones within Hudson's car when they did execute a search warrant on it, and one of those returned to a relative of Mr. Turner.

Now, we know that Hudson had the guns and he brought the guns. How do we know that? You heard testimony that Steven saw them in the back of the car and that he recognized his uncle's gun in the back of the car. Hudson admits to having the shotgun and the Beretta.

And let's look at the pictures from the search warrant of Hudson's car, because in the glove box, there's actually a magazine belonging to a firearm. The Beretta, an unidentified firearm, perhaps carried by one of Hudson's coconspirators? I don't know. And a bullet, a round that, as you will note when you have all of the evidence, looks

very similar to the rounds that were found in the SK -- sub-high-powered rifle that the State was talking about.

And just how we go to recognizes his uncle's stolen gun, that was in the statement that was made, a gun that had gone missing. You can infer that someone who would come over and pick someone up to go steal some weed might also know where someone's uncle lives, if they live in the immediate area.

Additionally, when they find Hudson in the backyard, the Beretta is found there at Evidence Marker 3, and the other two weapons are found within close proximity to where Hudson is found. This is 1 and 2, and you'll see these.

And right there, right where Hudson is located on the patio where Loki first attaches is a round of the SK or a spent shell from a round of the SK.

One second.

And we also know that no one sees Steven. No one sees -- no one sees Steven.

Now, this is what Steven was wearing that day. Mr. Clarkson saw one African-American man with an afro.

I love technology.

Clearly, as you can see, this picture, same as this picture, Mr. Turner does not have an afro. He has maybe a one, maybe a two, probably a one shave on his hair. Clearly never going to be shown as an afro, certainly not in moderate darkness, which is -- we'll talk about that more a little bit later.

Next, we have Mr. Grimaldi. He saw three men. And again, we will come back to this as well. But he saw three distinctly different men. He saw one at the door who left. He saw one on the side who was around that side wall. And he saw one in the back on the patio. And he described all three of them.

The first man, the man at the front door, was tall, either white or light-skinned African-American man. He was shirtless. He had a two-inch afro, and he had black basketball shorts. And this man, as Mr. Grimaldi testified, ran across the cul-de-sac, down the street shortly, and turned on Nunca, which was a nearby adjacent street. So he turned down that street, and that's when he lost visual on him.

Number two, which is more on the side, on the wall, a African-American man with a wild, spiky, one-to-two-inch afro. And this man was in this area along the side, and he ran in the general direction of the wall and was on the wall, and you remember his testimony.

Clearly, under no circumstances, is this a wild one-to two-inch afro. This is a photograph of Mr. Turner from that day. He didn't have time to cut his hair, redo his hairstyle. There's no slicking it back. This is what he looked like, and he's clearly not Person No. 2, both by his hair and by the description of what he is wearing.

Number three, we have an African-American man who's shirtless, who has a shotgun or long gun, wearing a cap. And you'll have all of the photographs that we've been referring to in the back with you. Take a look. There's actually a hat found on the patio, and the evidence show that some of Mr. Hudson's DNA was on that hat.

And this is the man back here.

So Mr. Grimaldi testified that this night was burned into his memory. His memory was not faltering. There was no medication that was affecting how he perceived or how he remembered. He was specific. And he told you about all three of these men.

He also told you about gunshots. He told you exactly how many gunshots, exactly how they appeared to him, where he was, his perception at the time. He was extremely specific. He gave those descriptions we talked about.

And he also said that he had a great view. And why did he have a great view? Because despite the fact that it was ambiently dark out -- it was nighttime -- and despite the fact that the patio light was technically off, there was plenty of ambient light in the area, because there's 15 to 20 giant streetlights along Rainbow that backs up to the house.

So in front of the house, there's house lights. In the back of the house, there's all of these ambient streetlights. There was enough light to see descriptions of the people there and to see the people who were there, which is why everyone's been able to describe the people who were there.

We also heard from Officer Grego-Smith, who certainly did his best that night. And he saw one man with no shirt and basketball shorts.

Now, how important is this? Because that was not the man who was taken into custody. So the man who was taken into custody in that backyard, Mr. Hudson. So we're talking about this second person

that's referenced by Officer Robertson, who saw two men but couldn't provide descriptions, and no one faults him for that.

But consider this: The person with no shirt and basketball shorts is the only other person on that patio within a position to fire the rifle that we've been talking about. He was standing right in front, right there. The State has told you there are only two people, in their mind, that were there. Well, one, Hudson; two, no shirt and basketball shorts. Certainly not Mr. Turner.

And as an aside, you'll notice that it's not like he changed clothes or scrounged these from somewhere. If you'll check his lower leg in his bright orange pants, you'll see that there's plenty of blood. And there's also rips that very likely came from the razor wire that was on top of the wall that he would have had to jump; so there are holes in his pants.

The fragment and the razor wire affected these pants; so he was wearing these when he was in the backyard. He didn't change clothes. It couldn't have been him.

So where was Steven? He was backyard, by the wall of that seating area that you've seen pictures of, certainly adjacent to the patio, but it's farther back.

How do we know that? Well, no one saw him. They can't place him near the house. Everybody's been able to give these descriptions. Mr. Grimaldi gave those specific descriptions of the three men he saw near the house. Officer Grego-Smith described the man he saw right in front, even though it was quick and a blur. The man had no

shirt and basketball shorts. You're not going to mistake this for a -- for no shirt and black basketball shorts. You're not.

How else do we know? Mr. Turner didn't bleed on the wall; so it was a newer wound.

So you're allowed to take into account your common sense. And when you cut yourself or get injured, there takes a second for blood to start coming out and start coming out in such a volume as to the droplets or start dropping from your body and not just getting immediately absorbed by your clothing.

So I put to you that the fact that he was further back is evidenced by the fact that he did not bleed on the wall, because I believe the State asked, I think on redirect, the CSA who was testifying, Did they locate any blood on the wall?

And they said, We checked. We checked the top of the wall. We checked the front of the wall, that's the exterior. They found no blood. And that's why they didn't take any samples from there because of course they would have. It could have returned somebody involved in this, right?

Well, he did not bleed on the wall. And I put to you had he been on the patio and had he dashed from the patio immediately adjacent to the wall all the way across the backyard with his heart pounding, blood would have been coming out a greater rate by that point and would have gotten on the wall or on the razor wire. It didn't. He didn't.

Also, consider where the bullets were impacting. Now, we've

heard something in the State's closing and during the evidence that there was some ricocheting going on around the patio judiciary. And I believe the State has already said and will likely continue to say in their rebuttal that there was some ricocheting bullets, and that's how there became to be a fragment of a bullet in Mr. Turner's leg.

But there was another area where bullets were impacted: The back wall and seating area. Lots of bullet impacts. There was many of them, tagged them, described them in detail to you.

There was one bullet from a caliber that matched Officer Grego-Smith's weapon, because he was the officer who fired out from the house. There was one recovered that day. There was one recovered by Mr. Clarkson later. You heard testimony that another bullet was later impounded by one of the police officers, because the homeowner found it.

So 12 minus 2 equals 10. And we know that there were 12 shots both from the fact that 12 casings were found, but also because there are 12 holes in the screen.

Okay. So you heard from CSA Fletcher. Seven bullets hit the wall. Two penetrated into the wall. And so you can deduce that the two bullets that penetrated into the wall are likely still in that wall.

Five impacted the wall, but didn't penetrate it, and we did differentiate between those two. Where did those go? We don't know. Did part of them go in the wall, part of them bounce off the wall? The idea of ricocheting bullets and bullets fragmenting, it's very common.

And three are entirely missing. We have no idea where those

are based on the evidence we've seen in this case.

But I put to you that at least a piece of one of them is in Mr. Turner's leg. And just so we can be clear -- and this is actually a fragment, I believe, that was required -- recovered from inside the shotgun that Mr. Hudson had -- just to be really clear, 411D, the bullets that were fired by Officer Grego-Smith absolutely can turn into fragments that are of varying shapes, sizes, and contours.

So it's not just pieces of a larger caliber weapon. You see evidence, physical evidence, that Officer Grego-Smith's bullets could also fragment. They just happen to have a fragment from the shotgun that was recovered, and we know that that was hit by one of Officer Grego-Smith's rounds. So you'll have this back with you.

All right. And there's a fragment.

All right. So there's been a lot of talk over the last one to three days about stippling. Why do we care about stippling? Because it's the only possible way to place Steven on the patio area near the guns, because no one saw him, and they certainly can't put a gun in his hand through any sort of forensics.

And we also know that no GSR testing was done. We talked to the expert that testified in firearm comparisons two days ago now, and she testified that that was not done. So no one knows whether there was actually gunshot residue on anyone involved in this case, but specifically relevant to myself, Mr. Turner, who they're saying was right there.

So what is stippling with firearms? It's small scratches,

bruises, or burning. This was both from their expert, who testified a couple days ago, this -- the firearm expert. So that's what she said that meant. Additionally, we re-covered that this morning with that -- the doctor who testified. That's what it means to have stippling.

I put to you that there is no stippling on this leg. There are dark hair follicles, there is dry blood, and there is an apparent impact wound that you've heard about, but there is no stippling. And we certainly don't have any pictures after the blood is wiped away.

MR. GIORDANI: Objection. That misstates the testimony.

MS. MACHNICH: There are no pictures with all the blood wiped away.

MR. GIORDANI: No --

THE COURT: It's argument, counsel. Overruled.

MR. GIORDANI: Okay.

MS. MACHNICH: There are -- there are other pictures of Mr. Turner's leg. I believe that was from the scene. There's also pictures from the hospital.

I put to you, and you'll have a chance to look at it, that there is apparent dry blood on his leg, both at the hospital and at the scene. And the doctor even acknowledged that when she saw the wound, there was dried blood around it.

Okay. What is stippling in medicine? As His Honor took judicial notice from a medical dictionary, stippling in medicine is a spotted condition. And I put to you that is exactly what is apparent on Steven Turner's leg, and it is a spotted condition from either the dried

brood or his hair follicles or a combination thereof. You have the pictures, and you can look. But I put to you that there is no stippling there.

It's okay. Again, there's a slightly cleaner photograph that you'll have. But again, there is dried blood and no apparent stippling.

So let's talk about the medical records that we've touched on today. As we noted, Dr. Turner, who you did not hear from in this case -- sounds like he moved out of state, but again, the State's attempting to ask you to find these men guilty of attempt murder, so it's pretty important -- he was not here. And this Dr. Turner -- some areas of stippling. Okay. Again, a medical document.

Additionally, areas of stippling. So it does show up more than once. I put to you in the various places in the record, it was all based on one examination. And it's noted in a couple places, and you'll see the statement that's put in there. It almost looks like it was copied and pasted between a few other pages.

And again, that's Dr. Turner's initials right there, and you'll see that those are defined in the medical records as having been done by Dr. Turner and not from the wonderful ER doc that we saw today.

So let's look at what else is in the medical records. The nurse's notes -- this is from a nurse Paula Osborne around the same time period, and it looks like she actually saw him before the doctors did, which would make sense. She notes a total of one wound.

Why is this important? Because we covered with the doctor that actual stippling that we've been talking about with gunshot wounds

that she would anticipate to see would create actual scratches or burns up to the actual skin and leg itself. So the fact that there's only one wound, I put to you, means that there's only one wound, and it's the hole in his leg from the shrapnel.

And yet again, we see in the skin and soft tissue assessment -- and, again, this is done by Nurse Osborne, who is doing the initial assessment -- that there's a total of one wound.

We heard from Dr. Urban. She spoke with the DA yesterday and was asked to testify to stippling specifically. She told you that. So she came in here to talk about that. She created a two-page report at the time, which is over two and a half years ago. You'll have that. And the report itself was designed to include big findings, findings that matter.

There is no reference to stippling in that report. Not one reference to stippling.

I put to you if there was actual gunshot stippling surrounding a wound, being this important thing that matters to the State's case, it would have been a big finding and it would have been recorded.

You'll note -- and she also finds the skin unremarkable, and she specifically states on her report the skin was unremarkable. That makes sense. The skin, after the wound was cleaned, would have been completely unremarkable, and you can't wash stippling off. Stippling is actual damage to the skin when we're talking about a firearm context, something [indiscernible] talking in medical contexts.

You're going to see her two-page report. It's at the end of the

medical records. The second-to-last and third-to-last pages was dictated by Ms. Urban herself; so she was involved in it. Extremely thorough lower extremity description. You can, obviously, use your own experiences. Some of you have much more training in this than I do. There's no stippling mentioned in there. And it's very detailed. She, obviously, wanted to be thorough. She seems like a very thorough woman. And skin, unremarkable.

All right. And I also put to you, if you look at the pictures back there, and please do, that you're going to have pictures of a close-up of Mr. Turner's pants.

If there was stippling caused by a gunshot, there would be holes in the pants. Gunpowder, stuff that penetrates your skin doesn't magically go through your clothes and attach to skin without leaving something on your pants. You're going to see the holes in the pants put to you from the razor wire and from the actual bullet fragment that was in there. You'll see some blood discoloration.

But you'll actually have these back there. Take a look at them. This isn't the best quality on here, but you will see that there is no damage to that fabric otherwise. So this is some magic stippling.

No one sees Steven, because he's back here, sort of adjacent to the patio area, but further back. And I put to you he's further back, because he's not comfortable with the situation and he's taking definitive steps to separate from it.

So let's go to Count 2. Count 2, for the while in possession of a deadly weapon. The State has to prove that Steven knew Hudson

brought guns into the backyard. He had to have known they were there beyond a reasonable doubt. They would have had to prove that, and that he intended that a gun be taken into the house.

I put to you the State cannot put a firearm in the hands of Mr. Turner. I can't downplay that enough. There was none of his DNA on that gun that can be definitively matched to him. You heard a DNA expert come over here. They're able to find DNA. They're able to assess it. You heard testimony that she found DNA. There was DNA analysis in this case. Mr. Turner's DNA was not found on that gun -- high-powered rifle.

And I'm sorry for anyone who doesn't like the interchange between gun and rifle. I realize they're different.

So Mr. Turner had to have known that the guns were brought into the backyard beyond a reasonable doubt, and he had to intend that they be taken into the house. Where is the evidence of that?

So now we'll move on to -- so that first one was for Count 2. This is now for Count 5, and the State must prove that Steven -- and I will stop for a second in here and say we're not contesting that a bullet impacted the leg of an officer and that he was very severely injured in this case. That's not what we're considering. That happened. Okay.

But to prove that Steven did this, they have to prove that Steven shot a firearm or aided and abetted someone who shot or conspired with someone to shoot a firearm or it was a natural and probable consequence of the attempt burglary that he was involved in.

And I put to you that's not the natural and probable

consequence of an attempt burglary, when you don't know the firearms are even there and you certainly don't intend them to be taken anywhere, that someone gets shot. Because for someone to get shot, there has to be a firearm. And that is why we'll be asking that you find Mr. Turner not guilty of Count 5.

Let's move on to attempt murder. The State must prove that Steven had deliberate intention to unlawfully kill and that he shot a firearm or aided and abetted someone who shot or conspired with someone to kill.

There has been no evidence that there was some conspiracy to assassinate these poor homeowners. I will acknowledge that the police officers did tactically approach, so they likely did not know the police officers were there. But there's no evidence there was some conspiracy to kill anyone.

But moving back to the topic, they also can't prove that there was a gun in the hands of Mr. Turner, so they cannot prove he shot a firearm. And I put to you that if he didn't know the firearms were even in the backyard, which he didn't intend them to be there, he didn't aid and abet someone who shot.

But most importantly, and you will see this in the instructions, attempt murder is so serious that you actually have to have a deliberate intention to unlawfully kill. They have to establish that first, before you can even consider the second part, knowledge, what actions were taken. So if someone was scared and fired a gun, no intention to kill.

MR. GIORDANI: Objection. It's a misstatement of the law.

MS. MACHNICH: That's not accurate. It is a correct statement of the law.

THE COURT: Counsel, approach. We're not going to --

MR. GIORDANI: I'll withdraw.

THE COURT: Okay. That's fine then.

MS. MACHNICH: All right. But if someone's scared and fires a firearm, they did not have an intention to kill, I mean, unless they had some conspiracy to kill otherwise, which there's been no evidence of in this case.

Attempt murder is so serious that it requires that these things be proven. So it's not enough that someone thought that they might die. While that is extremely tragic and extremely scary, it's not relevant to the consideration of whether something was attempt murder because, as you see in the instruction with specific intent, we're talking about the intent in the mind of the people who are alleged to have committed the crime, not the intent of the person going through it.

That's a different circumstance and a different consideration that while as human beings we should certainly consider, as jurors considering attempt murder in a criminal case, it's not relevant. What is relevant is what is within the minds of the defendants at the time.

I put to you that Mr. Turner was actually in the process of leaving or backed -- backing off from this entire situation, but certainly had no intention that anyone get hurt, much less die.

To find Steven guilty of Counts 3 through 5, the State must prove beyond a reasonable doubt that Steven did not take definitive,

decisive, and positive steps to disassociate himself. They must prove that. And while it seems and might seem unfair at the moment to say, Well, why shouldn't he have to prove? There is no burden -- and you've said during jury selection that you respected the fact that there is no burden on the defense in this case.

But I put to you that Steven did take definitive, decisive, and positive steps to disassociate himself as is evidenced by the fact that he is further away, that he did not have a gun at the time -- a rifle, a shotgun -- he did not a firearm in that backyard. And there is no evidence that he signed up for any of this violence.

The state must prove beyond a reasonable doubt that he did not. There is no burden on the defense to prove that he did.

So at this point, the State is desperate to win, but they can't prove some very important things in this case. They cannot prove that Steven was on the patio. They simply can't do it. No one saw him. There are no forensics putting him there. And stippling -- it all, I guess, comes back to that -- and there's no stippling evidence because he was wearing pants, and certainly nothing penetrated that way.

They can't prove that he had a gun. They cannot put a gun in his hands. There's no fingerprints, there's no DNA, and there's no eyewitness testimony that puts that gun in his hands.

And they can't prove that Steven wasn't leaving when he was shot. They can't prove that he wasn't already disassociating himself when he was shot.

And then it comes down to this: The State can't prove there

were only two people. You heard discussion of that in the State's first closing. I put to you that the State argues that there were only two people, because those are the only people that were seen by the officers.

Officer Robertson, doing his very best that night in a very traumatic circumstance, saw two people. What two people did he see? Hudson and the man with the black basketball shorts and no shirt. Those are the two people he saw because you're not forgetting this. No one is.

Officer Grego-Smith was even able to give a description and it was nothing close to this. Steven was not on that patio.

But who was able to give descriptions, because they had a little bit more time and there was less trauma at the time, because there wasn't gunfire immediately upon opening the door? And you'll, obviously, determine the timing of that. But the people who had more time were the homeowners. And Mr. Grimaldi, as brave as he was, went around the house to see what was going on, to see who was where and what was happening, and he gave you very specific descriptions. Very specific descriptions. None of them are Mr. Turner.

So I put to you that there were likely four people involved in this: The man at the front door who ran away; the man on the patio with the black shorts, no shirt, the person with the rifle; Mr. Hudson; and Mr. Turner, who was farther of the back, withdrawn from the situation. There were four people.

And why would the State be desperate to say there were only

two? Possibly because they want to get the right people and they want to get all the people. But the actual evidence in this case shows that they haven't and that Mr. Turner didn't do any of these things that led to the wound on the officer.

Let's briefly talk about Mr. Hudson. He had been to the house before. You heard that testimony. So, yes, Mr. Turner had been to that house before as well on several to many occasions. But so had Mr. Hudson, at least once.

Mr. Hudson had the guns. You heard that testimony. He admitted to having two of them, and the other one was seen by Mr. Turner in the back of his car. We recognize that as looking like his uncle's missing gun.

Mr. Hudson shot a gun. He admitted to shooting a gun. He admitted to shooting that shotgun. And he was found in the backyard.

So in case it hasn't been clear yet, I'll make it right -- very clear right now. Mr. Turner is not associated with Mr. Hudson in this defense and hasn't been associated with Mr. Hudson since before this all turned violent, since before the situation became uncomfortable the night that this happened.

Reasonable doubt. You have an instruction on reasonable doubt, and none of the parties are allowed to define a percentage or anything more than that about reasonable doubt. His Honor has provided you with that definition and that is what was allowed under Nevada law.

But I put to you the following. Imagine that there's a cat and a

mouse and a box.

MR. GIORDANI: Objection. Can't quantify reasonable doubt, Your Honor.

MS. MACHNICH: I'm not. It's an analogy. It's allowed under Nevada law.

MR. GIORDANI: It's not.

MS. MACHNICH: It is.

THE COURT: Counsel, approach.

[Bench conference transcribed as follows:]

THE COURT: The reason I have you approach is because I don't want you arguing back and forth in front of the jury.

MS. MACHNICH: That's fair.

THE COURT: So I don't have any objection. But if you think there's going to be speaking objections, I would prefer to do it at the bench.

MR. GIORDANI: Understood.

MS. MACHNICH: Okay.

THE COURT: What's your objection, counsel?

MR. GIORDANI: That the analogy associated with reason -- any analogy associated with reasonable doubt is improper. The analogy can be associated with direct or circumstantial evidence, but not reasonable doubt.

MS. MACHNICH: That's not true.

MR. GIORDANI: It is.

THE COURT: Well, you can't quantify reasonable doubt.

MS. MACHNICH: I'm not going to. I promise.

THE COURT: What is the analogy you're trying to make, counsel?

MR. GIORDANI: And I'm sorry, Your Honor. I'm going to go ahead and withdraw it. I just -- I want to get my rebuttal done, so --

THE COURT: Let's get -- let's move on.

MS. MACHNICH: So do I. I just want --

THE COURT: And counsel, come here. Just so you know, can you represent your closing is going to be 20 minutes?

MR. PLUMMER: I'm guessing it will be approximately 20.

THE COURT: Okay. I was going to let him do his closing, take a break, and then finish with your --

MR. PLUMMER: Can you at least ask the jury if they need one?

MS. MACHNICH: Yeah. We may need to push through. I'm close.

THE COURT: Are you almost done?

MS. MACHNICH: Yes.

THE COURT: Almost? All right, then. We'll do it maybe now then. We've already been at this thing for over an hour, quite frankly.

MS. MACHNICH: Can we ask them after I finish?

THE COURT: After you finish.

MS. MACHNICH: Thank you.

THE COURT: All right. Let's go.

[End of bench conference.]

THE COURT: Counsel, you withdraw your objection?

MR. GIORDANI: I withdraw my objection.

THE COURT: Thank you.

MS. MACHNICH: I think we have and end.

THE COURT: Yes, ma'am.

MS. MACHNICH: Okay. So now --

THE COURT: Can we -- she's -- how much longer do you have on your closing, counsel?

MS. MACHNICH: Ten minutes. But if we're going to be break, this would be a good place.

THE COURT: All right. But you've got to use the -- okay.

MS. MACHNICH: Okay.

THE COURT: We'll take a break. We'll take a 10-minute break right now.

Okay -- wait. I have to admonish you.

Ladies and gentlemen, we are going to take a 10-minute recess. During this recess, you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial or read, watch, or listen to any report of or commentary on the trial or any person connected with this trial by any medium of information, including, without limitation, newspapers, television, radio, or Internet, or form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

We will be in recess for 10 minutes. Thank you.

[Jury recessed at 4:05 p.m.]

THE COURT: We'll be in a recess.

MS. MACHNICH: Thank you, Your Honor. Thank you.

[Court recessed at 4:06 p.m., until 4:15 p.m.]

[Outside the presence of the jury.]

THE COURT: This is the continuation of the trial in Case No. C-15-309578-1 and -2, *Plaintiff, State of Nevada vs. Defendants, Steven Turner and Clemon Hudson.* The record will reflect the presence of counsel for the State, counsel for the defendants, and the presence of the defendants.

Bring the jury in, please.

MS. MACHNICH: Thank you, Your Honor.

[Jury reconvened at 4:15 p.m.]

THE COURT: You may be seated.

Will the parties stipulate to the presence of the jury?

MS. MACHNICH: We will, Your Honor.

MR. GIORDANI: Yes.

MR. PLUMMER: Yes, Your Honor.

THE COURT: State?

MR. GIORDANI: Yes.

THE COURT: Thank you. You may proceed.

REBUTTAL CLOSING ARGUMENT BY DEFENDANT TURNER (CONT.)

MS. MACHNICH: Thank you, Your Honor.

Okay. To the topic of reasonable doubt, again, we're not -- it's not proper to quantify it, but I do put to you the following for your

consideration.

Imagine that there's a cat and a mouse and a box. Someone puts the cat and the mouse in the box, ties that box up with a nice little bow, leaves it in a dark room, comes back 20 minutes later, opens the box. There's a cat, no mouse. That's circumstantial evidence that the cat ate the mouse. Okay.

Also, now, let's consider that situation one more time. There's the cat and the mouse and the box. And you again put them in the box, tie them up in a pretty little bow, leave the room, come back 20 minutes later. Again, the mouse is gone. However, this time, there's a hole in the corner of that box. Not a huge hole; a hole that's just big enough.

I put to you that that hole is reasonable doubt. And in this case, the State has failed to prove beyond a reasonable doubt that Mr. Turner didn't withdraw from the situation, the conspiracy to burglarize the house, to break in. They haven't proved that Steven Turner had a gun in his hands, that he fired a gun, that he was on that patio. They certainly haven't proved beyond a reasonable doubt that he had an intention to kill.

Before I wrap up, just something briefly. Let me see here. The State mentioned in their first closing that intending violence, they suggested that that means the same as attempt murder. But those are two different concepts under the law. Intending violence -- and I'm not saying that Mr. Turner intended violence at all in the case. But just to be clear, intending violence is not the same thing as an intent to kill. It's a separate mindset in the mind of the defendant.

Additionally, the State gets together up here one more time to have a rebuttal closing, because the burden is on them. And that burden, beyond a reasonable doubt, is what it is, and the State gets a chance to come up here and prove their case last.

You heard from the judge that you don't have to agree on a theory of liability that some of your panel may decide that a defendant -- and Mr. Hudson, because Mr. Turner was not involved in those charges, did -- aided and abetted versus some of you believe there's direct liability here. There's different theories of liability as the State presented them, and you don't have to agree upon them, and that is the law in this case.

But I put to you that the State's going to get up here on rebuttal, you should hold them to having the same theory of liability. There's two of them, and if they want to ask you to find Mr. Turner guilty beyond a reasonable doubt on these serious charges, at least they should know what theory of liability they're asking, right? I put to you that.

Mr. Turner was along for the ride. Steven was in to steal some weed, but when things got violent, suggested to get violent, a gun maybe even peeked out, he was literally and figuratively out.

Because of that, we are going to ask you to find Mr. Turner not guilty of possession of a firearm in Count 2; of Count 3, attempt murder with use of a deadly weapon; Count 4, attempt murder with use of a deadly weapon; and Count 5, battery with use of a deadly weapon resulting in substantial bodily harm.

I thank you for your time and attention.

THE COURT: Mr. Plummer.

REBUTTAL CLOSING ARGUMENT BY DEFENDANT HUDSON

MR. PLUMMER: Thank you, Your Honor.

They spooked us as much as we spooked them. That's what this case is about. This case is about being startled, being scared, reacting when you're spooked and startled at 3:30 in the morning, not expecting anything.

This case is not about attempted murder. And we know it's not about attempted murder, because you're not -- it doesn't make any sense. It hasn't made any sense from the start of the case on why these two young men or a third young person would want to kill the people in the house.

What was the plan? Well, Mr. Hudson's idea and knowledge of the plan was that they're going over to this house, where Steven knew the resident. He knew the person that lived there. He knew that he had weed. Mr. Hudson, Clemon -- I don't actually -- as far as he understood, Steven bought weed from this house and that's that this was a dope dealer that they were going to steal weed from. That's his understanding.

What else is his understanding? His understanding is that no one is supposed to be home. The door was supposed to be open, unlocked.

They get to the house. What's one of the things they do? They ring the doorbell. They knock on the door. Why? To make sure

no one's home. When no one answers the door, turns a light on, they don't hear anything inside, they're in the backyard, figuring out how to get into the house.

Well, we know what happens during that time period. Eric calls 911. He's talking to 911.

They dispatch officers. And the two officers arrive. And we know what happens when they arrive. They park up the street. They tactically approach the house. Officer Grego-Smith hears them in the backyard, doesn't shine his flashlight back there, doesn't yell out. They tactically go into the house. They meet with the homeowners very briefly. I know Eric tells Officer Robertson about the key. Willow tells Officer Grego-Smith about the light. And then they go to the back door.

They get to the back door, and this is where everything goes south, where everything goes bad. Officer Robertson unlocks the door, and he opens the door.

Now, at that moment in time, what is the picture? The picture is that the inside of the house, all of the lights are off. It's completely dark. You can't see. Numerous officers have testified to the lighting that was at the house and outside. All of them describe it as being dark, even pitch-black, couldn't see.

So when the door is opened in, as it was described, unlocked, swings open the door, Officer Grego-Smith steps forward with his gun. And as the officers testified, a shot went off.

Well, let's think about that shot. If it was that fast, the door opens, gun comes out, and a shot goes off, Officer Robertson saw two

people out on the patio. If someone's standing there hearing nothing, thinking no one's home, the door swings open and they react, that's not attempted murder. That's being startled.

Now, how do we know that that initial shot was not attempted murder and was being startled? Look where the round went. If someone's holding a weapon and they are this close -- where did the round hit? It hit in the leg, which means it's pointed down. The first round fired is pointed down.

If you're trying to shoot a person, you have it aimed straight ahead. If you're really trying to, you put it to your shoulder. But you don't hold a weapon aiming down and pull the trigger if you're trying to kill someone. It doesn't work that way.

Let's talk about the next two rounds that came from this SK. They didn't go into the house. One went into a chair off to the side. The other one, not sure where that one really went. We got some rods going through holes. There's no way that the TV with that angle is anything but a ricochet. So it was somewhere on the patio down. So if you're aiming a gun down, you are not trying to kill someone. It doesn't work that way.

Four times I heard the prosecution say there's no other conclusion. There's no other conclusion possible, no other explanation. It's the only explanation. I was writing them down. Actually, there's no explanation for attempted murder, because none of it lines up. If you're trying to kill somebody, it doesn't work that way.

Now -- so those first rounds that go off on the SKS, we know

that they're not attempted murder because of just the angle and where the rounds are going.

Shrapnel -- well, when those SKS rounds are going off, shrapnel's going all over the place.

Well, what's the first thing that happens when the first round goes off? The first round goes off, and Officer Robertson's tragically hit in the leg, and he spins, and he falls. Two more -- one or two more rounds go off from the SKS. And at some point, the shotgun goes off.

Now, let's talk about the shotgun. The shotgun went off -- and I'm going to pull up an angle here in a little bit and show you -- is -- lines up perfectly where Clemon fell over the wall, where he fell over the wall. And you have the pictures and it's shown, the angle goes through the door and goes through the house.

So what other diagrams or whatever, you know, there's a handwritten statement during the interview with the detective, can't really tell if the detectives are the one that made all the marks. It was unclear. But where he fell over that wall was the angle where the shotgun was fired.

Now, the shotgun itself, we have the shotgun. Instead of the hole going through the hand guard, that hole, basically, inside was a piece of shrapnel. That shrapnel, I think everyone's going to agree, came from one of the SKS rounds, because I haven't -- the expert or the analyst that testified, if she thought that one of Grego-Smith's rounds hit that, she would have testified to that. Also, 12 holes, all 12 of his rounds, line up with the screen; so to my knowledge, I don't believe the

prosecution's going to argue that the shotgun was hit by one of Grego-Smith's rounds. They might, but it doesn't line up.

It lines up with one of the fragments from the SKS. In fact, it's right here. And counsel brought it out during their closing in the last one, and it's a pretty good piece of shrapnel that would have punched a hole right through a plastic case without completely shattering it to little bitty pieces.

Now, what's important about this shrapnel hitting the shotgun? Well, the damage that it did, that the analyst testified to, is you would not be able to rack another round into it. Well, what that damage on the Cartridge 2 does not do -- and the analyst didn't testify to this -- it would not prevent, if a live round was in that chamber, from going off.

So if you're holding the shotgun and one of those pieces of shrapnel comes up and punches a hole through the hand guard, it's -- it can still fire, and that would be startling. And -- and the firing of a shotgun with a piece of shrapnel hitting it, causing it to go off with a wall behind -- the little wall behind you, off-balance with no intention on firing the gun, is going to launch you over the wall. You're going to stumble and fall.

The -- one of the things here is -- I'm sure it's going to be addressed -- is why did the shotgun round go through the door? If a person is holding a weapon, it's going to go where their eyes go. So wherever their eyes are looking, that's where that barrel is going to point. This distance across this patio is no more, if you look at the diagrams, from here to the wall. That's -- and this is actually probably bigger

than -- when you look at the photos. It's not very far. Wherever the eyes are turned, the gun is going to go.

Also, the height -- a person with a gun, if they're intending on, no kidding, shooting at a person to shoot that person, they bring it up. It would not have been at the height that it hit the wall. It would not have -- the height does not match up. If you're holding a gun down not preparing to fire, the height matches up where the pellets hit.

What else do we want to know about this shotgun? It had birdshot in it. The majority of those pellets are scattered all over the floor, because it's just not powerful enough to go through the walls. Yes, it shattered the glass, but there was birdshot in it.

What else do we know about that scenario and the timing? We talked about timing. If those shots were fired in the way that it was described, as the SKS goes off and the shotgun immediately goes off and it's bang-bang, Officer Robertson would have birdshot through him, because the shotgun went through the door. If he was still standing up in that doorway, he would have been hit. But he wasn't standing up. He was on the ground. He had been hit already. He's on the ground.

As the SKS goes off two more times at the ground -- because the only explanation is the person has no idea what they're doing, because if they had any firearms training, this would not have happened because they wouldn't have their finger on the trigger and get startled and have their finger off the trigger. If they got startled, they wouldn't pull the trigger. So if they had any firearms training whatsoever, they would know that. But they don't, and they didn't, because it's obvious

from what -- what happened.

The -- how do we know that Mr. -- how do we know that Clemon doesn't have any firearms experience? He doesn't even know what rounds he's using when he's talking to the officer. And the officer's, like, Well, I'll tell you -- he's, like, I don't know, general buckshot? He has no idea what he has, because he has no idea what he's doing. And when you don't know what you're doing, you're not trained with firearms, you're not trained with gun safety, and you don't have any military or other training, these things are more likely to happen.

It's -- it's a shame we don't -- didn't have any body cams, because if one of the officers had a body cam on, then we would actually have a better understanding of how everything transpired. We could hear the speed at which things were happening. But we don't.

But what do we have? Well, we have lots of pictures, lots and lots and lots of pictures. We have discussions with witnesses. We have lots of witnesses. We have an understanding of what took place after the shooting, because it's on -- a lot of it's on tape.

Let's look at what happened after everything transpired, after this startling event, after the -- the rounds hit the ground, after the shrapnel went everywhere, after the shotgun went off, and after Officer Grego-Smith put 12 rounds through a screen and suppressed the fire.

Well, what did he -- what did he do? He yelled out. You know, he yelled out. And what was in the yard? Who was in the yard? Clemon was in the yard, lying down like a scared little child. Lying down like a scared little child.

He had three things he could have done with that fear that he was feeling, with that kind of fear: You can fight, you can flight, or you can freeze.

If he had murder on the brain, he would have fought. He didn't flee. Oh, I did something wrong; this is bad, I'm going to run. No. He didn't sign up for a gun battle. That's -- that's not what this was about. This was about going into an empty house to steal some weed.

And the question is, well, why do they have guns if it's an empty house? Well, Ms. Beverly put it best: Well, what if somebody came home, why do you have guns on a burglary? Attempt to intimidate, attempt to scare? That's a reason to have guns.

Clemon had clearly no idea what he was doing, had no idea what was going on. This was his first time ever doing something like this, not a thing that he has experience in, in his first time.

So what's important about him freezing? Well, him freezing is that it's a natural response to fear. And he was afraid, and he stayed afraid, from the moment that the gunfire started, from the moment that he went on the ground.

There was a handgun that -- you heard the testimony -- that was provided to him. The handgun was provided to him, and you heard that testimony. It could be -- if he wanted to kill something, if he wanted to fight, he could have used that handgun. He could have gone -- done his own suppressive fire. But he was a scared kid and he laid there.

And he answered officer commands. All of the officers testified that after the shooting, he was basically given commands. And

he complied with the commands, answered the commands. The air unit came by, could see him on the ground with his hands on his head, his hands above his head. Shotgun was down by his feet. Still not sure how the AK -- or the SKS got by, because the air unit saw the one and they're looking down. But somehow after the fact, this SKS wound up and all the guns wound up together in a nice pretty picture. Still haven't figured that one out.

The -- let's talk a little bit about the crime scene itself. I want to say this is a crime scene. You see officers sending the police dog out. Even the canine officer said that he knew that Clemon was responding to him, but he just couldn't understand what Clemon was saying, because his dog was barking too loud.

So rather than quiet the dog, let's just send the dog out there. We know he's communicating with us. He's been complying. The air unit says he's laid out and he's not moving. Well, we're going to send the dog in anyway.

One other interesting thing that Officer Bitsko mentioned was the -- because we're not -- you don't just rush into the backyard when there's a report of a gun. That's -- I think this would have been a much different evening had the announcement been a little different instead of a tactical clearing of the backyard. But it's -- in this tragedy, Officer Robertson probably would not be here right now.

I want to go back to Clemon being scared and why that's important. He froze. He complied with officer commands. He gets bitten by a dog. He goes to a hospital, and then he goes and gets -- sits

down with a detective.

And he spills his guts to the detective. What do you want to know? Detective asked him questions, he gave him answers. Told him why he was there; told him how he got there, what he was there for. He even volunteered that, yes, we went there a week earlier, but somebody was home so we left. Okay? Yes, I had the shotgun. Yep, my shotgun. I'm not quite sure -- if I fired it. I might have.

I just -- everything happened so fast that in a situation like that, when someone has that fear and they freeze and they're -- now you're trying to ask questions about what happened and what you did and what you saw; it can be difficult. I mean, you even hear from some of the witnesses at trial, he had a shirt or he didn't have a shirt. Prosecution put in a photo of a shirt, so I guess that shows that Clemon did have a shirt. They had to cut it off him after the dog bite.

The -- Willow and Eric -- Officer -- both cops had their guns out. Officer Robertson has it in its holster. I mean, there's so many little differences from witnesses. Nothing's ever -- because you're trying to piece things together after the fact on a traumatic and exciting event. When you -- someone could get shot at, everything blends in time and space. It just -- it's natural, the thought of war.

But this -- but unlike in war, where people are trying to kill people, that's not what these young men were trying to do, and that was not their intent. It makes no sense, because there's just no motive.

Real quick, the pictures and the scenes with all the little place cards and everything that were -- you know, that you have in evidence,

take them with a grain of salt. And the reason I say that is because when you have a dozen officers racing across a patio and then taking Clemon into custody and then, you know, taking him back through and taking him outside to the paramedics and all of that, that scene, whatever the next morning when photographs were taken is not like it would have been that night. Things would have got kicked around, moved around. So we don't know what was there, and there's no way to regroup that.

Again, I don't know exactly what Prosecution is going to argue in their final rebuttal, but if there's a specific piece of evidence sitting, like a shell casing at particular location, that thing could have been kicked one way or kicked another. It could be in the original spot.

There's been some discussions that you've had about instructions. And now I only have, like, five of them that I want to talk to you about, but they're five very important ones. Why? Because we talk about the law, because we're lawyers.

First, we talked about some of the facts and painted some scenarios.

Okay. First one, elements of an attempt. Basically, any attempt crime. You have to have intent. It's going to be a common theme here.

Express malice, namely with a deliberate intention to unlawfully -- to kill.

Deliberate intention. That's -- and it's not just deliberate intention to fire a gun or deliberate intention to -- to fire a gun. It's the

deliberate intention to actually take another's life.

There's -- these are riddled throughout your instructions. Why? Because they're so important. This -- we're here because of this attempted murder, because these young men, these kids, did not have it in their head. They weren't trying to kill police officers. None of it makes -- the facts do not line up.

Now, there's three theories. There's -- and the reason I have to talk about all these three theories is because they're confusing. They are very confusing. All right.

The first one is direct. No kidding, Clemon sees the police officer, sees a person, and he's trying to kill that person. That's direct. Like, I'm going to kill you. The facts aren't there. The evidence isn't there.

But now we have the second one: Aided and abetted. All right, so how do you aid and abet on an attempted murder? So that would mean that, basically, Clemon would be behind the other person with the SK and saying, Shoot him, shoot him, or somehow telling -- you know, he's going to aid him to commit that particular offense.

See, with this attempted murder, the rest of the offenses are irrelevant. And what I mean by irrelevant is they -- when you think of conspiracy, a conspiracy has to go with each individual crime separately.

So conspiracy to steal marijuana -- okay, that's one. Conspiracy to break into a house -- okay, that's two. Conspiracy to commit murder -- you can have conspiracy to commit one crime, but there's no conspiracy to commit the other. They're separate crimes.

And if the instructions were not clear through either of those counsel, hopefully, I'm being clear. They have to be separate conspiracies. So they would have to conspire to say, We're going to murder someone. That's not -- that's not here.

So the conspiracy theory doesn't fly. The aider and abettor doesn't fly, because they're not -- there's no -- how -- how is he aiding? I'm aiding this person, feeding him bullets and telling him -- there was no plan to commit murder; so there can't be an aid. It -- again, three theories.

Now, for the big one. And this I would consider probably one of the most important instructions that you were given, and that is what I'm referring to when I talk about attempted murder, specific intent crime. You can't be liable under conspiracy or aider and abettor -- right here -- you can't be responsible under those two other theories for attempted murder for acts committed by a coconspirator unless you yourself also had the requisite specific intent to commit the murder.

So if one person, his intent was to commit murder, and the other person is saying, I didn't sign up for this, I'm not here for this, I'm here to steal weed, the one that's there to steal weed is not guilty of the attempted murder. That's not how it works, and that's what this instruction is talking about.

Now, this instruction also talks about the probable and natural consequences when we're talking about general intent crimes. I believe that that has been covered with you. In essence, what we're talking about there is when we talk about the battery with substantial bodily

harm. We know that Clemon did not shoot Officer Robertson. We know that. Prosecution's not even going to argue that he did, because they know he didn't.

So if he didn't shoot Officer Robertson, he shouldn't be found guilty of shooting Officer Robertson.

Now, under conspiracy theory, did he conspire to shoot Officer Robertson? No. Did he aid and abet in shooting Officer Robertson? No. Was his -- any of his actions the natural and probable consequences -- in Clemon Hudson's mind, it's, Hey, we're supposed to be going over here to an empty house to steal weed? Police officer's going to get shot in the leg. It's probably going to happen. The probable consequences -- oh, it's probably going to happen. He's going to get shot.

Yeah, it's probably not going to happen after going to someone's house to -- an empty house to steal marijuana from a dope dealer. Chances are police officer's not going to get shot in the leg.

We're not allowed to quantify beyond a reasonable doubt. All we can do is tell little metaphors. You heard the cat and the mouse and the box. I wouldn't be doing my job if I didn't talk to you about reasonable doubt. Why? Because it's our standard, and there are some people who don't understand that presumption of innocence, don't understand the burden of proof, and think, oh, well, he was there with a gun, and police officer got shot, and I don't care about anything else. I'm going to find him guilty. That is not what we do.

We look at all the facts, we look at the elements as they apply,

and we determine whether or not you're convinced beyond a reasonable doubt that these young men had murder in their minds when those guns went off, trying to murder someone. If they were not -- which they were not trying to murder anyone and the facts don't support it, then they're not guilty of attempted murder.

The person is in a hospital and they're going for a blood transfusion. And this blood transfusion, bags of blood come in, and there's an issue with it. They're missing a label. But they came off the shelf where the type of blood that's needed for this blood transfusion comes from.

The doctor says, Okay, well, I'm pretty sure that this blood is the type that we need for this transfusion, even though the label has fallen off. But, hey, I'm pretty confident. The only -- the only blood that's on that shelf is this type, and we should be good to use it.

I don't think anybody would say that that blood is good enough to use. Why? Because they have some doubt. They have reasonable doubt. No matter what the doctor says, no matter where the blood came from, no matter what systems they have in place, that label's not on there, they're not going to use that.

At the end of all of this, we get to go home. The decision that you make needs to be the right one. These young men are going to be living with the results of your verdict for the rest of their life. It needs to be the right one.

We're not asking you to say, oh, they're saints, and they're innocent or everything, and send them on their way, and everything's

great. No. I don't think anyone is here for that. But what we are asking is that you only find them guilty of what they actually did. That's it. What they actually did, not --

Prosecution has their job to do. They do. They have their job. And you've seen the exhibits. You've seen the witnesses. These are prosecutors, and a police officer was shot. This case is going to be taken extremely serious, very serious. All cases should be taken serious. But when an officer is shot, you know, there's a bond there.

This is my last chance to talk to you. I'm not going to get to talk to you again. Prosecution's going to be able to perform a rebuttal, a rebuttal argument.

I would ask you during the rebuttal argument is to ask -- if I had an opportunity to respond to their next argument, what would I say? What would I say if I could respond to their next argument? And if you ask that question, then I know you're going to be fair. And that's all we're asking is that you be fair.

I don't want to keep repeating myself, but it's -- from day one at opening statements, we told you this case, we were here because of these young men did not commit attempted murder. There was no intent there.

I'm asking you to find Clemon not guilty, and the reason I'm asking you to find him not guilty is because he is not guilty. He didn't intend to kill anyone, and he didn't shoot Officer Robertson.

Thank you.

THE COURT: Counsel for. State rebuttal argument.

SURREBUTTAL CLOSING ARGUMENT BY THE STATE

MR. GIORDANI: Make no mistake, ladies and gentlemen: There are two victims in this room. They're sure as hell not those guys. It's those guys. Those men went there that day to do their jobs like they're supposed to, like they're trained to do. They did their jobs like they're trained to do. And these two opened fire.

Now, I'm not going to get up here and pitch to you that they went there with a plan to kill a cop that day. That's ridiculous. I don't think that was the case. I wouldn't argue that to you.

What they did do is they planned to go commit a violent robbery with some high-powered weapons. When they got there, the unexpected happened. Cops were there.

They didn't even need to know that they were shooting at police to be found guilty of attempt murder. All they -- all you need to believe is that they -- they were shooting at human beings. Whether it's Willow and Clarkson or whether it's these two officers, they're guilty of attempted murder.

Now, I don't want to go through all of the points that both these defense counsel just made, but I want to bring you back to reality for a minute. I want to talk to you about Instruction No. 46, and that's the common sense instruction. It's the instruction that says:

Don't check your common sense at the door. Bring it back with you and use that when you deliberate.

Now, if you heard this story at a bar, sitting and having a drink with somebody, and someone came up to you and said, Hey, I heard

about this officer-involved shooting today. There's -- two officers respond to a residence, and those two officers opened the door. High-powered rifle round comes flying through the door, hits officer in the leg. He goes down. Second round comes through. It's from a shotgun. Cops return 12 rounds. Guys split. One of them's caught in the backyard. The other one's caught with a shrapnel in his leg about two blocks away.

If I were to tell you that story over a glass of whiskey, you would look at me and go, Good. I'm glad you caught the two guys who shot the cops. That's what this is about.

There is a whole lot of detail that went into the defense in this case trying to create alternate suspects where there are none.

There are two people here. Two. Those people -- I mean the witnesses in this case gave varying descriptions of those two people, but they're giving varying descriptions of the same two people.

There is another instruction that I'd like to point out to you before I move on, and that's 43. This is what Ms. Beverly talked about, and I believe defense counsel did too.

Just a reminder, direct evidence and circumstantial evidence are given the same weight. Okay. Not every case has direct evidence. Not every case has forensics, that's for sure. And that's why the courts and the law of our country treat direct and circumstantial evidence equally.

There is -- talk about forensics for a second. Say Mr. Hudson was wearing gloves. Does that mean he didn't pull the trigger on the

shotgun? Of course not. That means his print wasn't on the shotgun, because he was wearing gloves.

There's no -- no DNA on the SKS. Who cares? There's -- it's not -- his DNA isn't conclusively matched to the SKS. Does that mean someone didn't hold the SKS and pull the trigger? Of course not. That doesn't matter, and that's why you look to the circumstances surrounding the offenses in order to determine whether they're guilty or not.

The evidence in this case is absolutely overwhelming, and it doesn't need to be direct evidence. It doesn't need to be someone -- one of these officers saying, Those are the guys that shot me. That's not how the law works. That's not how reality works.

Now, Ms. Beverly mentioned a couple of varying descriptions of -- that were given by witnesses, and I want to reiterate that. No one's hiding the ball here. We called the witnesses that the -- Clarkson and Willow -- to show that the crimes were committed, not who did it. No one in this case stood up and told you, It's them, because they couldn't. Okay. So what?

There are two people in that backyard. No one could see them clearly, obviously, because it's dark. They did their best. They all gave varying descriptions of people, and they said -- Robertson said two people, and he saw an assault rifle. Okay. Officer Grego-Smith said he thinks he saw one person. He didn't even see a gun. He thinks he might have had his shirt off. He remembers the color purple. The two homeowners are basically useless --

MS. MACHNICH: I'm going to object. That does misstate evidence.

MR. GIORDANI: Well, he said, purple shorts, so.

THE COURT: You said shirt.

MR. GIORDANI: I didn't say shirt.

THE COURT: I thought -- counsel, approach.

MR. GIORDANI: Well, I must have misspoke. Well, no, I'll clarify.

THE COURT: Okay, clarify. Counsel?

MS. MACHNICH: Can we approach?

THE COURT: You can.

MS. MACHNICH: Okay.

[Bench conference transcribed as follows:]

MS. MACHNICH: He -- Mr. Giordani said was he saw the color purple. That misstates the testimony. The officer testified to black shorts and then later purple shorts. He testified to two different colored shirts, but he did not just see the color purple. He saw black shorts or purple shorts. He didn't see a shirt at all. And that he's -- he -- the insinuation he's making is incorrect.

THE COURT: Did you mean to say shirt or shorts, counsel?

MR. GIORDANI: I meant to say shorts. I didn't say shirt, though. I said, He saw the color purple.

MS. MACHNICH: He saw the color purple, which --

MR. GIORDANI: That's what I said.

MS. MACHNICH: -- which misinterprets the evidence

completely. He did -- there is no talk of a shirt. He saw the color purple is an argument that he could have been wearing a purple shirt. That is absolutely what he said.

MR. GIORDANI: Okay. I have the trial testimony here that says:

What I recall is a black male with no shirt and purple -- purple basketball shorts.

MS. MACHNICH: That was the second time he said that, yes. And if you say that, though, that's correct.

THE COURT: So he can say purple shorts; is that correct?

MS. MACHNICH: Yes, that's fine.

THE COURT: Then that's not -- okay. Overruled.

MS. MACHNICH: That's fine.

THE COURT: Okay. Overruled. And say purple shorts.

[End of bench conference.]

MR. GIORDANI: Thank you.

He saw purple shorts. Okay.

Now, Ms. Machnich printed up a really nice exhibit and made a big issue of his description and said, How could no one have seen this? How could no one have seen this?

Remember there's two pieces of corrugated plastic? I mean, that's the backdrop. That's why no one mentioned the orange pants. I mean, they saw what they saw. It doesn't matter.

There are two people in that backyard. And you know why -- you know how you know that? They told you. The people on trial told

you, not their attorneys three years later. The people on trial, when it was close in time to the incident, told you.

I should have checked the brightness before I did that, but you get the point. Officer Grego-Smith accounts for the purple shirt. Maybe -- maybe Turner had his shirt off. Maybe he didn't. It doesn't matter. There are two people there. They told you that. Two people.

Mr. Hudson had basketball shorts, which accounts for that description you got from one of the officers of basketball shorts. Mr. Hudson had a camo shirt on. And if you look in that backyard -- I'm not going to dig through the photos -- but the whole backdrop other than the orange is green. It's camo. The camo worked.

So what they didn't give exact descriptions? No one could give an exact description of these people that night.

And think about this: Canine Officer Bitsko, Officer Russo, who ran up to that scene with the shotgun -- even though he was told to wait for SWAT -- who wanted to save these men's lives, and the air unit all gave different descriptions of Hudson. We know Hudson was there, and he was prone out on the ground. They all gave descriptions and they weren't being fired at. One said a gray shirt, one said no shirt, and one said a tank top. These guys are responding after the fact.

So what? Does that mean they're not guilty? Of course not. Guilty as sin.

Now, I don't mean to repeat this, but there's absolutely zilch, zero evidence, of a third person involved in this case. The only thing, the only way that idea came into anyone's head, including the defense

attorney's, is because --

MS. MACHNICH: Objection, Your Honor. That's disparaging counsel.

THE COURT: Objection is sustained. Disregard that last comment.

MS. MACHNICH: Thank you.

MR. GIORDANI: I don't mean in any way to disparage them. I'm saying they're doing their job. And there's this idea out there from the homeowners who, for 15 -- 14 minutes and 48 seconds were being terrorized and trying to peek out windows, that potentially we are talk about three different suspects. That's it. That's where this idea of a third person comes in.

Again, that's refuted by both of these guys. They told you that. There's two cell phones in the car, two fired guns, a massive perimeter, and two people captured. There's two confessions; both of them said two people. There's two stars on the diagram. Turner said it. Hudson said it. I could go on. But I know you want to get out of here, so I won't.

Let me talk about what we know about how we know it real quick. We know that Turner, Mr. Turner, is the link to that house. Mr. Turner had been over there weekly for years or whatever it was. We know that Turner knew those two guys are vulnerable.

You saw Mr. Clarkson. You know, he started crying on the witness stand and I'll let his demeanor and everything speak for itself. He knew he was going over there to rob with firearms some vulnerable

people. He knew Eric didn't have a gun in his home, and he knew there was potentially --

MS. MACHNICH: And objection. That states facts not in evidence.

MR. GIORDANI: Do you want me to respond?

THE COURT: Yes. Approach.

MR. GIORDANI: Well, can I just withdraw the statement?

THE COURT: Withdraw it.

MR. GIORDANI: You can strike it or --

THE COURT: Disregard the last statement.

MR. GIORDANI: Okay.

THE COURT: Sustained.

MR. GIORDANI: We know that contact between Mr. Turner and the victim was cut off. We know that because Mr. Clarkson told you he stopped communicating, he erased his -- all of his stuff from his phone. Doesn't matter why it's cut off. There's some evidence that is admissible and some that doesn't matter. That's something that doesn't matter.

But what does matter is that Mr. Turner knew who was in that house, what he could get from that house, and that those victims were helpless. That's why they went over there, to rob them, to do a dope raid.

We know Turner and Hudson arrived in Hudson's car. There's two cell phones that come back to them in those -- in that car, and they said so. There's no third person ever in the car. There's two

defendants, they told you, they were that car. There's two long guns, a little pistol, and two big dogs in that car.

That in and of itself tells you there's not people in the backseat. I mean, don't even take Turner and Hudson's word for it. There's not two people in the back seat, because the dogs are sitting back there. Which, funny enough, they get left behind because of what happened. No one ran back to the getaway car, they just ditched out. Or one got caught, and one ditched out.

We know they were going over to do an armed robbery, because they brought guns. They told you they were going to do armed robbery. Hudson said so. Turner minimized. He kind of distanced himself from the gun when he realized that he put a round through an officer. We know both guns were taken over to that side wall, and we know it takes two people to do that. Okay. We got a big long shotgun and a big old SKS, and they're being handed over that wall, Hudson to Turner or Turner to Hudson, vice versa, acting in concert throughout.

We know Hudson banged on the front door, which eliminates this idea of a third suspect, and again explains the idea this third suspect. Hudson told you he banged on the door. He then went to the side of the house. Turner went to the side of the house. They tried the side door. Then they went around back.

And this is important. Mr. Turner, as much as he minimized when he realized the seriousness of what he just did, he put himself on that patio. I mean, he claimed that the minute he got there, shots just started being fired. But he put himself there. It's not just the stippling,

which clearly indicates he's on the patio. He put himself there.

He didn't say, I got to the patio and I saw two other people, two -- this random person who came out of nowhere. Wouldn't that have been the time to do it? Of course it would have, if that was true or if he had the presence of mind to think, Oh, if I insert this idea of a third person, maybe three years down the road I won't get convicted at trial. He didn't. He said he got up to the patio and shots just started coming out, and then he ran.

One more point about that third person. Now, again, there's absolutely no evidence of that whatsoever. But just for the sake of argument, if I'm understanding Ms. Machnich's argument, she's saying that Mr. Hudson called some of his buddies to join in or something. When did he do that? On the car ride, when Turner was sitting right next to him and then Turner had no idea about it? Makes no sense.

We know for a fact the officers opened the door. There's no bullets through the door, and both the officers told you that and the lay witnesses told you that. We know for a fact that both defendants opened fire without warning because there's two different guns.

All the witnesses said they opened fire without warning. Hudson claimed the other guy, who I submit to you is Turner, shot before him. We know there are two different caliber rounds. The witnesses described it in detail. Frankly, I thought it was a little dramatic, but pretty good descriptions of the shooting star and the -- and the fireworks.

I'm not going to -- try not to point this to you. But we know,

again, that there are two people, because this gun requires two hands to load. It's pretty heavy. You'll have this back there. You'll be able to hold it up yourself.

Mr. Hudson over there wasn't holding both of these guns and firing. There are two people on that patio discharging rounds into that home. There is absolutely no doubt of it. Forget reasonable doubt; there's no doubt of that whatsoever.

We know Robertson was hit by the SKS round that went through his femur and destroyed it. And then it came out his right buttock, and flew up to the top of that front screen door.

So as much as Mr. Plummer was trying to help Mr. Turner out a little bit, it wasn't pointed down. That gun was coming up when he hit Robertson in the leg, because the round continued up and hit the door. It then went out.

Officer Robertson dropped to the ground. Felt like 15 seconds to him, but it was almost instantaneous. His leg was pulverized. And when he dropped to the ground, thank God he did, because then Mr. Hudson took his turn.

If the order of the shots were different, Officer Robertson might not be here today. He took this round, and it probably oddly saved his life, because he dropped to the ground and that shotgun blast went over him.

We know that from the crime scene alone. Forget all the witnesses saying shooting star and then fireworks. Forget that. Look at the evidence at the scene. The shotgun blasts went through that narrow

door. No doubt about that, because it ended up in the front window, right? It could not have done that without striking him unless he was already down. That's the order of the shots. The evidence is clear.

We also know that both of them, both of those shots, were kill shots. And Ms. Beverly said this, so I'm not going to get too into detail, but if you look -- I'll use this bright orange thing that matches Mr. Turner's pants to show you -- from the patio to the front door, there is one area they were shooting, and that's right here. None of the buckshot hit the wall, and none of it hit on this side. Those were both kill shots.

Now, again, they didn't need to specifically intend to kill Officer J. Robertson and Officer Malik Grego-Smith. They just need to intend to kill human beings. So whether it's Willow and Eric opening that door or the officers opening that door, their intent to kill was a human being, and their intent to kill is obvious. When you fire a shotgun and you fire an SKS round at a human being, there is no other perceivable outcome.

That's why we're here, no secret. It's an attempt murder. That's what we're fighting over.

Now, they could have been charged with four counts of attempt murder based upon the transferred intent instruction. They could have been -- we could have charged them with four counts.

MS. MACHNICH: Objection, Your Honor.

MR. PLUMMER: Objection, Your Honor.

MS. MACHNICH: Relevance.

THE COURT: Objection. Sustained.

MR. GIORDANI: Okay.

THE COURT: Disregard that last comment. The jury is instructed to disregard that last comment.

MR. GIORDANI: Okay.

They are charged with two counts because we can't prove that they specifically shot -- intended to shoot at either the police officers or Willow and Eric. Okay. That's an important distinction.

We know they tried to kill two shapes in the door. Whether or not it's dark inside and they don't know who they're shooting at doesn't matter. I mean, that's the truth. That's the reality of it. Whether they thought it was Eric and Willow who finally had the, you know, whatever it's called to come to the door, or whether they know those two bodies are these two, they attempted to kill two human beings. That's all that matters.

And that instruction that says an attack on a group, you know, is sufficient -- the intent is sufficient for any member of that group, that is why it's charged the way it is. That instruction -- I apologize -- well, it's the attack-on-the-group instruction, and I don't need to find it. It's not that big a deal.

The point is they're shooting at two human beings. Doesn't matter if they can see the badges. Doesn't matter if they thought it was Eric and Willow. They're shooting at two human beings and the only, only result that comes from shooting a weapon like this is death.

MS. MACHNICH: Objection, Your Honor.

MR. GIORDANI: Unless --

MS. MACHNICH: That's a misstatement of the law. Shooting --

MR. GIORDANI: I wasn't talking about the law.

THE COURT: Counsel, approach. Huh? Counsel approach.

[Bench conference transcribed as follows:]

THE COURT: What is your objection, counsel?

MS. MACHNICH: The fact that they're misstating the law by stating that the only result of shooting is an intent to kill. That is not -- that's not how the law works. They have to have an intent to kill and then shoot. Those are two separate and distinct concepts, especially when we're talking about attempt murder.

MR. GIORDANI: That's where I'm going next, so.

MS. MACHNICH: But he just --

THE COURT: All right. Just say -- it's a specific -- they have to have the intent when they shoot. I understand.

MS. MACHNICH: Okay.

THE COURT: I think that's what he's arguing. To the extent that he's not arguing, I'll sustain it. The argue -- you have to have the specific intent to kill and then shoot.

MR. GIORDANI: That's exactly what I was about to say.

THE COURT: Okay.

MR. GIORDANI: All right.

THE COURT: Thank you.

MR. GIORDANI: Thank you.

[End of bench conference.]

MR. GIORDANI: What I was about to say was the intent to kill could have been formed the minute they heard the key being turned, or the minute -- the second the door opened, or the millisecond it took to go, That's a body, a human, and pull the trigger; that's the intent to kill. That's what you're deciding in that brief moment when you -- when you pull that -- decide to pull that trigger.

And real quickly, there's -- there's an example I'd like to give you. You've driving towards an intersection. The light turns yellow when you're about 50 feet away. You keep going. And in that instant where you're in that sweet spot, you could either stop or go. The thoughts that go through your mind are, Is my coffee going to spill? What's on the passenger seat? Were there cops over there? Is my backpack going to explode on the ground?

And you make that choice instantaneously within two thoughts -- successive thoughts of the mind, you decide I'm going to run this and risk it or I'm going to stop.

These guys did not go over there that day with the intent to murder a police officer. They didn't. They went over to rob, with high-powered weapons that were loaded, a couple of harmless people.

They formed the intent to kill when that door started to open. And instead of going, This is a bad idea, or, Oh, this is about to get crazy, or, Give me your weed, they chose to almost end that man's life. By the grace of God, they missed his artery. He fell. The shotgun blast missed him. Does not change their intent. Their intent was to kill. Both of those shots were kill shots, and both of those men made their

decisions.

Now you have to make yours. There's only one decision in this case.

And we know for a fact Officer Grego-Smith returned 12 rounds. We know for a fact he put his body and his life on the line for his partner and he got in the way of that -- that doorway and dropped to a knee and returned fire. We know that because it's corroborated by that screen. That's actually a really nice piece of evidence. It's kind of nice to have had that screen there, because it tracks his shots.

We know there were 12 casings in the living room. Those officers never crossed the threshold outside. We know that before Officer Grego-Smith could actually fire, or when he fired the higher rounds, that Turner fired two more rounds. We know that because there were two -- one round through the chair and then one round through the TV, through the thing that holds the TV.

We know that he fired those as he backed up because he was either trying to retreat and still fire or he was being pushed back. Either way, based upon the scene and the evidence as it was laid out and the casings -- even if they're kicked, they're -- the important ones up front and the last two move back along with the -- the rounds. And we know that because he had shrapnel in his leg.

Now, you obviously picked up on the fact that that's a big deal and that stippling's a big deal. It is.

You see that stack of Officer Robertson's medical records? Pretty big. And you saw earlier the little stack of Mr. Turner's records?

It's, like, this big. Stippling's referenced four times in there and not once in there. That's because the muscle was far enough away, more than 36 inches, to not leave stippling on Robertson.

Now, it was closer to Turner, because he was shooting it. When he fired into that chair and that piece of shrapnel that looks just like all the other shrapnel in that chair hit him in the leg. And that soot, the same way the shrapnel bounced off that chair, the soot ended up on his leg. And there are two medical doctors who concurred in that opinion in those medical records.

Now, I believe Ms. Machnich questioned Dr. Urban -- I can't recall exactly what she said about her, but unless those two officers are lying, that guy's up on that patio and firing that SKS. That's where the stippling comes from. It does not -- does not -- come from the rounds that struck the back wall that came out of Officer Grego-Smith's weapon. Common sense dictates that. Common sense tells you that the gunpowder only goes 36 inches. It can deflect off a surface just like the shrapnel can.

MS. MACHNICH: Objection. That states facts not in evidence.

MR. GIORDANI: No, that's common sense.

MS. MACHNICH: I -- I don't think it's --

THE COURT: Counsel, that's argument. Overruled.

MR. GIORDANI: Thank you.

Common sense dictates that flecks of gunpowder can bounce off a surface just like the shrapnel can. Common sense dictates that

from 25 feet away, the stippling -- the powder has dissipated by then. Common sense dictates that those hollow point rounds that Metro uses across the board, they mushroom instead of blowing up like these high-powered rifle rounds.

MS. MACHNICH: Again, Your Honor, states facts not in evidence.

MR. GIORDANI: Again, that's common sense. That's argument.

THE COURT: Okay. Counsel, there needs to be a reasonable inference.

Counsel, approach.

[Bench conference transcribed as follows:]

THE COURT: All right. How many more common senses do you have?

MR. GIORDANI: A lot.

THE COURT: All right. Well, it has to be a reasonable inference.

MR. GIORDANI: How is that not reasonable?

MS. MACHNICH: Because it's a specific firearm. It's -- yeah. So you've seen a mushroom bullet. That's in record. But no one testified that the bullets could only do that, and that's actually incorrect.

THE COURT: Okay. It's argument, counsel.

MS. MACHNICH: It is --

THE COURT: He can make reasonable inferences from the evidence that has been presented.

So somehow relate it to the evidence that's been presented.

MR. GIORDANI: I will.

THE COURT: If you're going to do common sense, all right, I don't have a problem with that. But you have to relate it to evidence that's in the record. So reference the evidence that's common -- that's common sense.

MR. GIORDANI: I will.

THE COURT: And make your reasonable inference therefrom.

[End of bench conference.]

MR. GIORDANI: Your Honor, I won't be much longer.

There is a photograph somewhere in there of one of the officer's rounds, and it's State's 404. It's called a mushroom round. Hollow points are made that way so they fold over. These aren't. These shrapnel, from 25 feet away or whatever that backyard is -- you'll have the diagram with the ruler on it -- there's no gunpowder left to go in -- on his leg. So that's why stippling is a big deal.

Again, I don't want to repeat myself, but I must: All of the rounds were fired. So what we know is there's two people on the patio, and all of the casings were found in this patio area. What we know is Hudson's gun, his shotgun, was hit as he ran away. Okay. There's 12 rounds through the screen. Mr. Hudson and Mr. Turner, when they started receiving return fire, they ran around the screen this way, or at least one of them did, and Mr. Hudson and his shotgun fell to the ground when it was struck.

And to clarify what Mr. Plummer was trying to get at, the shotgun, once it was hit, was rendered inoperable, so he couldn't clear that next round and put a new one in the chamber. Okay. It didn't set off the round in the gun; he pulled the trigger. It didn't make it so he could reload; it made it the opposite. It made it so he could not remove that cartridge.

Maybe it's then that he decides to run. Maybe he did intend to keep shooting. Maybe not. Doesn't matter. His first shot was the kill shot. That's the attempt murder, the intent to kill.

Mr. Plummer, I believe, or Ms. Machnich, said -- it was Mr. Plummer -- said the guns ended up together in a nice pretty picture. Well, we know why: Because when these guys started getting return fire, they ran. They ran to try to get back to the getaway car by going the same way they came in, around the wall. He got hit with a round in the rifle. He went down and he decided to stay there. Probably a wise choice, probably the only good choice he made in this case.

Turner didn't get hit other than the shrapnel from up on the patio, and he kept running. That's why the guns ended up there, they're going in the same direction. They're trying to get back to the getaway vehicle, which, mind you, had the keys left in the ignition.

We know, and I don't want to harp on it, but I'll repeat, both these guys made statements. Both of them did what we call admit what you can't deny, deny what you can't admit. Hudson got caught on scene. He's not denying he was there. Hudson got caught with a shotgun right next to him. He's not denying he had a shotgun. Hudson

got caught with a pistol next to him. He knew he had the pistol. He's not denying that, it's right there.

But what he can't admit is that he intentionally shot to kill. What he can't admit, because he knows -- I mean, anyone with common sense knows you can't admit you tried to kill a cop. That's not good. So he -- admit what you can't deny, deny what you can't admit. He distanced himself from the serious stuff or the most serious, and he admitted what he had to.

Turner did the same thing. Turner's in a different position, because he was able -- he was faster, I guess. He got away except that he got caught on the perimeter. He admitted what he couldn't deny and denied what he couldn't admit. He admitted he was up on that patio. But the minute we start talking about guns, no, no, no, no, I'm not going to admit that. Can't admit to getting in a shootout with a police officer.

That's what this is about. I mean, we know they were both there. There's no third suspect. They were both there. They both did it. That's why we're here, is because of the attempt murder. All the evidence supports attempt murder.

We know they went there to do violence. Again, they didn't go there with the intent to kill a cop. No one's going to say that to you. I'm not going to say that to you.

And I'm going to make a point here, I just remembered. Ms. Machnich had a little quote on the bottom of her PowerPoint that said, The State's desperate to win.

I gave up being personally offended a long time ago in this

job. It is what it is. We're not desperate to win. We're desperate, if anything, for justice. That's it. We're desperate for you to do what you're sworn to do, and that's follow the law and look at the facts and apply the facts to the law.

I need to -- I'll be brief. I'm almost done. I just want to hit a couple of points.

No single person fired both these weapons. Both of the people who fired those weapons had one intent when they pulled the trigger. Not the intent going to the house, not even the intent when they went into the backyard, maybe not the intent for the 15 minutes they tried to break into the house to rob people with guns; but when that door opened, the intent is clear: Rounds through the house, rounds at the bodies of human beings.

Two -- two people in this room are victims. They are not sitting at the defense table. Two people in this case attempted to kill Officer Robertson and Officer Grego-Smith, and it's Mr. Turner and Mr. Hudson. Follow your oath, follow the law, and you will come to that conclusion without a problem.

Thank you very much for your time.

THE COURT: Thank you.

Ladies and gentlemen, we're going to take our evening recess at this time.

During this recess, you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial or read, watch, or listen to any report of or

commentary on the trial or any person connected with this trial by any medium of information, including, without limitation, newspapers, television, radio, or Internet, or form or express any opinion on any subject connected with the trial until this case is finally submitted to you.

I share this courtroom with another judge. He has a hearing at 9:00 tomorrow. Hopefully, he'll be done by 9:30. I'm going to ask that you return at 9:30 tomorrow. And then I'll bring you in. And then afterwards, some preliminary matters, you can begin your deliberation.

So this evening, we're in recess until 9:30 tomorrow.

[Jury recessed at 5:37 p.m.]

THE COURT: We'll be in recess tomorrow -- until tomorrow at 9:30.

MS. MACHNICH: Thank you, Your Honor. Thank you.

[Court recessed at 5:38 p.m., until April 27, 2018, at 9:30 a.m.]

/ / /

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Shawna Ortega, CET*562

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff(s), vs. STEVEN TURNER AND CLEMON HUDSON, Defendant(s).	Case No. C-15-309578-1 and Case No. C-15-309578-2 DEPT. XVIII

BEFORE THE HONORABLE MARK B. BAILUS,
DISTRICT COURT JUDGE

FRIDAY, APRIL 27, 2018

TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL - DAY 10

(Appearances on page 2.)

RECORDED BY: ROBIN PAGE, COURT RECORDER

APPEARANCES:

For the Plaintiff(s):	LEAH C. BEVERLY, ESQ. (Deputy District Attorney) JOHN L. GIORDANI III, ESQ. (Deputy District Attorney)
For the Defendant Steven Turner:	TEGAN C. MACHNICH, ESQ. (Deputy Public Defender) ASHLEY L. SISOLAK, ESQ. (Deputy Public Defender)
For the Defendant Clemon Hudson:	CLAY PLUMMER, ESQ.

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LAS VEGAS, NEVADA, FRIDAY, APRIL 27, 2018

[Proceeding commenced at 9:39 a.m.]

[Outside the presence of the jury.]

THE COURT: Please be seated. Make sure my phone's off. All right.

This is the continuation of the trial in Case No. C-15-309578-1 and -2, *Plaintiff, State of Nevada vs. Defendants, Steven Turner and Clemon Hudson*. The record will reflect the presence of counsel for the State, counsel for the defense, and the presence of the defendants.

Counsel, obviously, what I'm going to do this morning is bring the jury in, swear in the officers, and we'll start jury deliberation. You need to stay within 20 minutes of the courthouse once the jury starts deliberation.

Anything that needs to be done outside the presence of the jury?

MR. GIORDANI: Not on behalf of the State.

MS. BEVERLY: No.

MS. MACHNICH: Your Honor, I have one concern is I know there's one juror who has a flight out tonight. No idea how long they're going to take to deliberate. And, obviously, it's up to Your Honor's discretion on this, but I guess we would request that in theory they be told from the onset that they do not need to hurry, that they should give a fair and honest deliberation.

THE COURT: I'm not going to do that, counsel. I've instructed them on the law and --

MS. MACHNICH: Okay.

THE COURT: -- if there's an issue, they'll bring it to my attention.

MS. BEVERLY: Thank you.

THE COURT: I understand your concern, counsel.

MS. MACHNICH: Okay.

THE COURT: But at this point I'm not going to give them additional instructions on deliberation.

MS. MACHNICH: Okay.

THE COURT: I provide the 50 instructions to them, which I expect them to follow.

MS. BEVERLY: It's a long instruction.

THE COURT: In any event, I'll bring the jury in.

MS. MACHNICH: Okay.

[Jury reconvened at 9:42 a.m.]

THE COURT: You may be seated.

Will the parties stipulate to the presence of the jury?

MS. BEVERLY: Yes, Your Honor.

MS. MACHNICH: Yes, Your Honor.

MR. PLUMMER: Yes, Your Honor.

THE COURT: Thank you.

The clerk now will swear the officers to take charge of the jurors and the alternate jurors.

[Officers sworn.]

THE COURT: Thank you. Officers, take charge of the jurors and the alternate jurors.

Mr. -- Marshal, just the jurors. I have the alternate jurors remain in the courtroom right now.

[Jury recessed for deliberations at 9:43 a.m.]

THE COURT: You may be seated.

MS. MACHNICH: Thank you, Your Honor.

[Alternate jurors recessed at 9:44 a.m.]

THE COURT: We'll be in recess.

MS. MACHNICH: Thank you, Your Honor.

MS. SISOLAK: Thank you.

[Court recessed at 9:44 a.m., until 9:45 a.m.]

THE COURT: We're going to go back on the record just for one second.

Counsel, just go back to your table for one second, please.

We're back on the record in State of *Nevada vs. Steven Turner and Clemon Hudson*. The record reflect the presence of counsel for the State, counsel for the defendants, and the presence of defendants.

Counsel, it's my policy when a weapon is involved that they -- I do not send the weapon back to the jury room. But if the jury requests to see the actual weapon, my marshal will take it back and remain in the -- within the presence of the weapon. Once they are finished reviewing the weapon, then he takes charge of it again.

Does anybody have any problem with that procedure?

MR. GIORDANI: No.

MS. MACHNICH: Just -- just a point of clarification, does that include all of the items that are in the box with there? Because I know that there's several --

THE COURT: If they want to keep the items in the box, I don't really have a problem with, like, the bullets or the cartridges. It's just the weapon itself.

MS. MACHNICH: Okay.

MS. BEVERLY: And live -- live rounds, obviously, shouldn't be left alone with the weapon.

THE COURT: And that's why the marshal maintains control of it. But again, if -- if they request to see the weapon, I don't automatically send it back in there with them.

MS. MACHNICH: Understood.

THE COURT: If they request to see it, then he'll bring it in. And then once they've reviewed it, he retrieves it.

MS. MACHNICH: Okay.

THE COURT: Does -- does -- is there any objection to that procedure?

MS. MACHNICH: Well, no -- no objection. No - if the marshal could inform them they -- if they would like it, they can see it. Because if it's not back there with them and they have no one --

THE COURT: That's fine. Does anybody have any problem with the marshal informing them of that?

MS. MACHNICH: No, that's --

MR. GIORDANI: No, Your Honor.

THE COURT: Okay. Then that'll be the procedure if all parties are in agreement.

MR. GIORDANI: Thank you.

MS. MACHNICH: Thank you, Your Honor.

THE COURT: Thank you, counsel.

Just let them know if they want to see the -- the -- we're off the record.

[Court recessed at 9:47 a.m., until 1:27 p.m.]

[Outside the presence of the jury.]

THE COURT: Please be seated. This is continuation of the trial in Case No. C-15-309578-1 and -2, *Plaintiff State of Nevada vs. Defendant, Steven Turner and Clemon Hudson*.

The record will reflect the presence of counsel for the State, counsel for the defendants, and the presence of the defendants.

Counsel, I've been informed that the jury has reached a verdict. At this time I'm going to bring the jury in.

[Jury reconvened at 1:30 p.m.]

THE COURT: Please be seated. Will the parties stipulate to the presence of the jury?

MS. BEVERLY: Yes, Your Honor.

MS. MACHNICH: Yes, Your Honor.

MR. PLUMMER: Yes, Your Honor.

THE COURT: Thank you. Has the jury elected a

foreperson? Who is that person? Please stand, please.

And your name and badge number? Or your name, please.

JUROR NO. 3: Beatriz Cruz.

THE COURT: I'm sorry?

JUROR NO. 3: Beatriz Cruz, and Number 3.

THE COURT: Thank you. Has the jury reached a verdict?

JUROR NO. 3: Yes.

THE COURT: Will you please hand the verdict to my marshal. You may be seated. Thank you.

Will the defendants and their attorneys please stand.

The clerk will now read the verdict out loud.

THE CLERK: District Court, Clark County, Nevada, State of Nevada Plaintiff, Case No. C309578-1, Steven Turner, verdict.

We, the jury, in the above entitled case find the defendant, Steven Turner, as follows:

Count 1, conspiracy to commit burglary, guilty of conspiracy to commit burglary.

Count 2, attempt burglary while in possession of a firearm or deadly weapon, guilty of attempt burglary while in possession of a firearm or deadly weapon.

Count 3, attempt murder with a -- correction -- Count 3, attempt murder with deadly weapon, guilty of attempt murder with deadly weapon.

Count 4, attempt murder with deadly weapon, guilty of attempt murder with deadly weapon.

Count 5, battery with use of deadly weapon resulting in substantial bodily harm, guilty of battery with use of a deadly weapon resulting in substantial bodily harm.

Dated this 27th day of April, 2018, Beatriz Cruz, Foreperson.

Case No. C-309578-2, Clemon Hudson, Defendant, verdict.

We, the jury, in the above entitled case find the defendant, Clemon Hudson, as follows:

Count 1, conspiracy to commit burglary, guilty of conspiracy to commit burglary.

Count 2, attempt burglary while in possession of a firearm or deadly weapon, guilty of attempt burglary while in possession of a firearm or deadly weapon.

Count 3, attempt murder with deadly weapon, guilty of attempt murder with deadly weapon.

Count 4, attempt murder with deadly weapon, guilty of attempt murder with deadly weapon.

Count 5, battery with use of deadly weapon resulting in substantial bodily harm, guilty of battery with use of a deadly weapon resulting in substantial bodily harm.

Dated this 27th day of April, 2018, Beatriz Cruz, Foreperson.

Ladies and gentlemen of the jury, are these your verdicts as read, so say you one, so say you all?

THE JURY: Yes.

THE COURT: Thank you. You may be seated.

MS. SISOLAK: Thank you, Your Honor.

MS. MACHNICH: Thank you, Your Honor.

THE COURT: Do either of the parties desire to have the jury polled?

MS. MACHNICH: We would, Your Honor.

THE COURT: Mr. Plummer?

Will -- go ahead.

THE CLERK: Juror No. 1, are these your verdicts as read?

JUROR NO. 1: Yes.

THE CLERK: Juror No. 2, are these your verdicts as read?

JUROR NO. 2: Yes.

THE CLERK: Juror No. 3, are these your verdicts as read?

JUROR NO. 3: Yes.

THE CLERK: Juror No. 4, are these your verdicts as read?

JUROR NO. 4: Yes.

THE CLERK: Juror No. 5, are these your verdicts as read?

JUROR NO. 5: Yes.

THE CLERK: Juror No. 6, are these your verdicts as read?

JUROR NO. 6: Yes.

THE CLERK: Juror No. 7, are these your verdicts as read?

JUROR NO. 7: Yes.

THE CLERK: Juror No. 8, are these your verdicts as read?

JUROR NO. 8: Yes.

THE CLERK: Juror No. 9, are these your verdicts as read?

JUROR NO. 9: Yes.

THE CLERK: Juror No. 10, are these your verdicts as read?

JUROR NO. 10: Yes.

THE CLERK: Juror No. 11, are these your verdicts as read?

JUROR NO. 11: Yes.

THE CLERK: Juror No. 12, are these your verdicts as read?

JUROR NO. 12: Yes.

THE COURT: The clerk will now record the verdict in the minutes of the court.

MS. MACHNICH: Thank you, Your Honor.

THE COURT: Ladies and gentlemen, ask you know, the right to trial by jury is one of our basic and fundamental constitutional guarantees. I firmly believe in this right, that is the right of every person accused of a crime to be judged by a fair and impartial jury.

We must have jurors, and unfortunately, jury service is something that many persons shirk from, they do not with to become involved. That's why I'm please that you 12 men and women have been willing to give your valuable time and have been most attentive and most conscientious.

On behalf of counsel, the parties, and the Eighth Judicial District Court, I wish to thank you for your careful deliberation which you gave to this case.

The question may arise as to whether you may not talk to other persons regarding this matter. I advise you that you may, if you wish, talk to other persons and discuss your deliberation, which you gave to this case. You are not required to do so, however.

I will be available shortly to speak to you if you so desire.

And if any person persists in discussing this case after you have indicated that you do not wish to do so or raises objections as to the result or as to how you deliberate, you will report that fact directly to me.

So what that means is you're going to be released at this point. If -- if sometimes the attorneys will want to come up and talk to you just to give your thoughts about your deliberation, they can use it as a learning tool sometimes. You can talk to them if you want to. But if you don't want to talk to anybody, that's completely your decision. And if somebody persists in talking with you or in any manner, please report it to me or the -- or contact my marshal and let me know.

What I usually do is I have you in there the same way you came in. I usually come back to the jury room afterwards. And if you want to speak to me for a few minutes, I'm more than willing to -- to meet with you and then you can just leave, or you can just leave after I discharge you. It's your decision.

So again, thank you so much for sitting as jurors in this matter. I know it's hard to make decisions regarding other individuals, but our whole system is based on jurors being willing to participate in it. So again, thank you so much.

You're discharged.

[Jury dismissed at 1:38 p.m.]

THE COURT: Okay. I'm going to -- the defendants will -- are remanded into custody and will remain in custody until -- we're going to set a sentencing date at this time.

MS. MACHNICH: Thank you, Your Honor.

THE CLERK: Sentencing, June 21, 9:00 a.m.

MS. BEVERLY: Thank you, Your Honor.

MS. MACHNICH: Thank you, Your Honor.

MR. PLUMMER: Thank you, Your Honor.

THE COURT: Is there anything further, counsel?

MR. GIORDANI: No. Thank you.

MS. BEVERLY: No, Your Honor.

MS. MACHNICH: No, Your Honor.

[Court adjourned at 1:39 p.m.]

/ / /

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Shawna Ortega

Shawna Ortega, CET*562

INST

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR 27 2018

1:36 pm

BY, _____
ALAN PAUL CASTLE, SR. DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

STEVEN TURNER
CLEMON HUDSON,

Defendant.

CASE NO: C309578

DEPT NO: XVIII

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

MEMBERS OF THE JURY:

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

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

C-15-309578-2
INST
Instructions to the Jury
4741919

INSTRUCTION NO. 8

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.

INSTRUCTION NO. 3

An Amended Indictment is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Amended Indictment that on or about the 4th day of September, 2015, the Defendants committed the offenses of CONSPIRACY TO COMMIT BURGLARY, ATTEMPT BURGLARY WHILE IN POSSESSION OF A FIREARM OR DEADLY WEAPON, ATTEMPT MURDER WITH USE OF A DEADLY WEAPON, AND BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada as follows:

COUNT 1 - CONSPIRACY TO COMMIT BURGLARY

did willfully and unlawfully conspire with each other and/or an unknown co-conspirator to commit a burglary, by the defendants committing the acts as set forth in Count 2, said acts being incorporated by this reference as though fully set forth herein.

COUNT 2 - ATTEMPT BURGLARY WHILE IN POSSESSION OF A FIREARM OR DEADLY WEAPON

did then and there willfully, unlawfully, and feloniously attempt to enter, with intent to commit larceny and/or a felony, to-wit: robbery, that certain residence occupied by ERIC CLARKSON and/or WILLOUGHBY GRIMALDI, located at 6729 Oveja Circle, Las Vegas, Clark County, Nevada, said Defendants did possess and/or gain possession of a firearm during the commission of the crime and/or before leaving the structure, by the Defendants being criminally liable under one or more of the following principles of criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring in the following

manner, to wit: by entering into a course of conduct whereby one or more of the defendants and/or unknown co-conspirator went to the residence of ERIC CLARKSON and/or WILLOUGHBY GRIMALDI to steal marijuana, repeatedly knocked on the front door of the residence, rang the doorbell and pounded on the security door to the residence, one or more of the defendants and/or unknown co-conspirators ran into the backyard of the residence, thereafter Defendant STEVEN TURNER shot at Las Vegas Metropolitan Police Department Officers J. ROBERTSON and M. GRECO-SMITH with an SKS rifle, striking Officer J. ROBERTSON in the right leg, Defendant CLEMON HUDSON fired one round from a shotgun toward said officers, striking the doorway of the residence, Defendants acting in concert throughout.

COUNT 3 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did willfully, unlawfully, feloniously and with malice aforethought attempt to kill J. ROBERTSON, Las Vegas Metropolitan Police Department, a human being, with use of a deadly weapon, to-wit: a firearm, by shooting at the body of the said J. ROBERTSON; the Defendants being criminally liable under one or more of the following principles of criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring in the following manner, to wit: by entering into a course of conduct whereby one or more of the defendants and/or unknown co-conspirators repeatedly knocked on the front door of the residence of ERIC CLARKSON and/or WILLOUGHBY GRIMALDI, rang the doorbell and pounded on the security door to the residence, one of more of the defendants and/or unknown co-conspirators ran into the backyard of the residence, thereafter Defendant STEVEN TURNER shot at Las Vegas Metropolitan Police Department Officers J. ROBERTSON and M. GREGO-SMITH with a SKS rifle, striking Officer J. ROBERTSON in the right leg, Defendant CLEMON HUDSON fired one round from a shotgun toward said officers,

striking the doorway of the residence, Defendants acting in concert throughout.

COUNT 4 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did willfully, unlawfully, feloniously and with malice aforethought attempt to kill M. GREGO-SMITH, Las Vegas Metropolitan Police Department, a human being, with use of a deadly weapon, to-wit: a firearm, by shooting at the body of the said M. GREGO-SMITH; the Defendants being criminally liable under one or more of the following principles of criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring in the following manner, to wit: by entering into a course of conduct whereby one or more of the defendants and/or unknown co-conspirators repeatedly knocked on the front door of the residence of ERIC CLARKSON and/or WILLOUGHBY GRIMALDI, rang the doorbell and pounded on the security door to the residence, one of more of the defendants and/or unknown co-conspirators ran into the backyard of the residence, thereafter Defendant STEVEN TURNER shot at Las Vegas Metropolitan Police Department Officers J. ROBERTSON and M. GREGO-SMITH with a SKS rifle, striking Officer J. ROBERTSON in the right leg, Defendant CLEMON HUDSON fired one round from a shotgun toward said officers, striking the doorway of the residence, Defendants acting in concert throughout.

COUNT 5 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM

did willfully, unlawfully, and feloniously use force or violence upon the person of another, to-wit: J. ROBERTSON, Las Vegas Metropolitan Police Department, with use of a deadly weapon, to-wit: a firearm, by shooting into the body of the said J. ROBERTSON with said firearm, resulting in substantial bodily harm to J. ROBERTSON, Las Vegas Metropolitan Police Department, by the Defendants being criminally liable under one or more of the following principles of criminal liability, to-wit: (1) by directly committing this

crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring in the following manner, to wit: by entering into a course of conduct whereby one or more of the defendants and/or unknown co-conspirators repeatedly knocked on the front door of the residence of ERIC CLARKSON and/or WILLOUGHBY GRIMALDI, rang the doorbell and pounded on the security door to the residence, one of more of the defendants and/or unknown co-conspirators ran into the backyard of the residence, thereafter Defendant STEVEN TURNER shot at Las Vegas Metropolitan Police Department Officers J. ROBERTSON and M. GREGO-SMITH with a SKS rifle, striking Officer J. ROBERTSON in the right leg, Defendant CLEMON HUDSON fired one round from a shotgun toward said officers, striking the doorway of the residence, Defendants acting in concert throughout.

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 each Defendant is guilty of one or more of the offenses charged.

Each charge and the evidence pertaining to it should be considered separately. The fact that you may find either defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other Defendant or offense charged.

INSTRUCTION NO. 4

In this case, the State has charged the defendants under three (3) theories of liability:

(1) By directly committing the crimes charged;

(2) By aiding or abetting in the commission of the crimes charged; or

(3) Pursuant to a conspiracy to commit the crimes charged.

If you do not find, beyond a reasonable doubt, that a defendant is guilty under any one of these theories for a specific count charged, you must find that defendant not guilty of that count. In other words, whether each defendant is guilty or not guilty of each individual count charged in this case is a separate determination for you to make.

INSTRUCTION NO. 5

To prove that a defendant directly committed a crime, the State must prove, beyond a reasonable doubt, each element of a charged offense.

INSTRUCTION NO. 16

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.

INSTRUCTION NO. 7

It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators or the making of an express or formal agreement. The formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other fact may be proved, either by direct testimony of the fact or by circumstantial evidence, or by both direct and circumstantial evidence.

INSTRUCTION NO. 8

Evidence that a person was in the company or associated with one or more other persons alleged or proven to have been members of a conspiracy is not, in itself, sufficient to prove that such person was a member of the alleged conspiracy. However, you are instructed that presence, companionship, and conduct before, during and after the offense are circumstances from which one's participation in the criminal intent may be inferred.

INSTRUCTION NO. 9

A conspirator can withdraw from a conspiracy by (1) disavowing the unlawful goal of the conspiracy; (2) affirmatively acting to defeat the purpose of the conspiracy; or (3) taking definite, decisive and positive steps to disassociate himself from the conspiracy. However, he remains liable for actions taken before withdrawing from the conspiracy.

The State has the burden to prove beyond a reasonable doubt that the Defendant did not withdraw from the conspiracy.

INSTRUCTION NO. 10

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

Every person concerned in the commission of a crime, whether he directly commits the act constituting the offense or aids or abets in its commission is guilty as a principal. Nevada law does not distinguish between an aider or abettor to a crime and an actual perpetrator of a crime; both are equally culpable.

The State is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

INSTRUCTION NO. 11

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

However, the presence of a person at the scene of a crime and companionship with another person engaged in the commission of the crime and a course of conduct before and after the offense are circumstances which may be considered in determining whether such person aided and abetted the commission of that crime.

INSTRUCTION NO. 18

The elements of an attempt to commit a crime are:

1) the intent to commit the crime;

2) performance of some act towards it commission; and

3) failure to consummate its commission.

INSTRUCTION NO. 13

Every person who, by day or night, enters any shop, warehouse, store or other building, with the intent to commit Larceny, and/or Robbery, therein is guilty of Burglary.

Force or a "breaking" is not a necessary element of the crime.

INSTRUCTION NO. 14

Every person who commits the crime of Burglary, who has in his possession or gains possession of any firearm at any time during the commission of the crime, at any time before leaving the structure, or upon leaving the structure, is guilty of Burglary While in Possession of a Firearm.

"Firearm" includes:

1. Any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion.
2. Any device from which a metallic projectile, including any ball bearing or pellet, may be expelled by means of spring, gas, air or other force.

A firearm is a deadly weapon whether loaded or unloaded, operable or inoperable.

INSTRUCTION NO. 12

Attempt murder is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate intention unlawfully to kill.

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.

INSTRUCTION NO. 16

The intention to kill may be ascertained or deduced from the facts and circumstances of the attempted killing, such as the use of a deadly weapon, the manner of its use, and the attendant circumstances characterizing the act.

INSTRUCTION NO. 17

A defendant's state of mind does not require the presentation of direct evidence as it existed during the commission of a crime. The jury may infer the existence of a particular state of mind of a party from the circumstances disclosed by the evidence.

INSTRUCTION NO. 18

In this case, the Defendants are accused of attempted murder under three theories of liability. In order to find either Defendant guilty of attempted murder, the State must prove beyond a reasonable doubt that:

(1) With the deliberate intention to unlawfully kill the victim, the Defendant committed an act which tended, but failed, to kill the victim; or

(2) With the deliberate intention to unlawfully kill the victim, the Defendant aided, abetted, counseled, or encouraged another person to kill the victim and that other person committed an act which tended, but failed, to kill the victim; or

(3) With the deliberate intention to unlawfully kill the victim, the Defendant conspired with another person to kill the victim and that the other person committed an act which tended, but failed, to kill the victim.

INSTRUCTION NO. 19

Battery means any willful and unlawful use of force or violence upon another person. As used in this instruction, the word "willfully", when applied to the intent with which an act is done or omitted, implies simply a purpose or mere willingness to commit the act or to make the omission in question. The word does not require in its meaning any intent to violate law, or to injure another, or to acquire any advantage.

INSTRUCTION NO. 20

You are instructed that if you find either defendant guilty of Battery, you must also determine whether or not substantial bodily harm resulted.

If you find beyond a reasonable doubt that substantial bodily harm resulted in the commission of such an offense, then you shall return the appropriate guilty verdict reflecting "Resulting in Substantial Bodily Harm".

If, however, you find that substantial bodily harm did not result in the commission of such an offense, but you find that it was committed, then you shall return the appropriate guilty verdict reflecting that substantial bodily harm did not result.

You must find a defendant not guilty of Battery, with or without resulting substantial bodily harm, if the State fails to prove each element of the offense beyond a reasonable doubt.

INSTRUCTION NO. 31

Substantial bodily harm means:

1. Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or

2. Prolonged physical pain.

"Prolonged physical pain" encompasses some physical suffering or injury that lasts longer than the pain immediately resulting from the wrongful act.

INSTRUCTION NO. 28

You are instructed that if you find the defendant guilty of Attempt Murder or Battery, you must also determine whether or not a deadly weapon was used in the commission of this crime.

If you find beyond a reasonable doubt that a deadly weapon was used in the commission of such an offense, then you shall return the appropriate guilty verdict reflecting "With Use of a Deadly Weapon".

If, however, you find that a deadly weapon was not used in the commission of such an offense, but you find that it was committed, then you shall return the appropriate guilty verdict reflecting that a deadly weapon was not used.

You must find a defendant not guilty of Attempt Murder or Battery, with or without use of a deadly weapon, if the State fails to prove each element of the offense beyond a reasonable doubt

INSTRUCTION NO. 23

A "deadly weapon" is either: 1) 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 2) 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.

A firearm is a deadly weapon.

INSTRUCTION NO. 24

If more than one person commits a crime, and one of them uses a deadly weapon in the commission of that crime, each may be convicted of using the deadly weapon even though he did not personally himself use the weapon if you find that he aided and abetted or conspired to commit the offense.

An unarmed offender "uses" a deadly weapon when the unarmed offender is liable for the offense under aiding and abetting or conspirator liability, another person liable for the offense is armed with and uses a deadly weapon in the commission of the offense, and the unarmed offender had knowledge of the use of the deadly weapon.

INSTRUCTION NO. 25

Attempt Burglary and Attempt Murder are specific intent crimes. A defendant cannot be liable under conspiracy and/or aiding and abetting theory for Attempt Burglary or Attempt Murder for acts committed by a co-conspirator, unless the individual Defendant also had the requisite specific intent.

Battery is a general intent crime. As such, a defendant may be liable under conspiracy theory for Battery for acts committed by a co-conspirator which are one of the probable and natural consequences of the object of the conspiracy.

Counts 1-4 of the Indictment are specific intent crimes. Count 5 of the Indictment is a general intent crime.

INSTRUCTION NO. 26

Specific intent is the intent to accomplish the precise act which the law prohibits. General intent is the intent to do that which the law prohibits. It is not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result which eventuated if a crime is a general intent crime. Counts 1-4 of the Indictment are specific intent crimes.

INSTRUCTION NO. 27

You are instructed that the doctrine of transferred intent provides that where a person unlawfully attempts to kill a person and, by mistake or inadvertence during such attempt, commits a Battery With Use of a Deadly Weapon against another person, the law nevertheless holds the assailant responsible for his felonious intent, merely transferring its direction from the original object to the person battered.

INSTRUCTION NO. 28

If you believe that at the time of the shooting in this case a defendant intended to kill any person, or to aid and abet his co-defendant with the deliberate intention to unlawfully kill any person, it is of no legal consequence that he or his co-defendant mistakenly injured a different person. His intent to kill transfers to the person actually harmed.

INSTRUCTION NO. 29

During an attack upon a group, a defendant's intent to kill need not be directed at any one individual. It is enough if the intent to kill is directed at the group. The State is not required to prove that a Defendant intended to kill a specific person in the group.

INSTRUCTION NO. 30

Justifiable battery is the battery of a human being, which does not result in death and is necessary for self-defense against one who manifestly intends to commit a felony by using violence or surprise, or when there is reasonable ground to apprehend a design on the part of the person injured to do some great personal injury to the person inflicting the injury.

INSTRUCTION NO. 31

The battery of another person in self-defense is justified and not unlawful when the person who does the battery actually and reasonably believes:

1. That there is imminent danger that the assailant will either batter him or cause him great bodily injury; and

2. That it is absolutely necessary under the circumstances for him to use in self-defense force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to himself.

INSTRUCTION NO. 38

A bare fear of death or great bodily injury is not sufficient to justify a battery. To justify battery of another in self-defense, the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person battering must act under the influence of those fears alone and not in revenge.

INSTRUCTION NO. 33

The right of self-defense is not available to an original aggressor, that is a person who has sought a quarrel with the design to force a deadly issue and thus through his fraud, contrivance or fault, to create a real or apparent necessity for making a felonious assault.

However, where a person, without voluntarily seeking, provoking, inviting, or willingly engaging in a difficulty of his own free will, is attacked by an assailant, he has the right to stand his ground and need not retreat when faced with the threat of deadly force.

INSTRUCTION NO. 34

Actual danger is not necessary to justify a battery in self-defense. A person has a right to defend from apparent danger to the same extent as he would from actual danger. The person battering is justified if:

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that he is about to be killed or suffer great bodily injury; and
2. He acts solely upon these appearances and his fear and actual beliefs; and
3. A reasonable person in a similar situation would believe himself to be in like danger.

The battery is justified even if it develops afterward that the person killing was mistaken about the extent of the danger.

INSTRUCTION NO. 35

If evidence of self-defense is present, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. If you find that the State has failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, you must find the defendant not guilty.

INSTRUCTION NO. 34

Although your verdict must be unanimous as to the charge, you do not have to agree on the theory of liability. Therefore, even if you cannot agree on whether the facts establish that the defendant is liable as a principal, aider and abettor, or co-conspirator, so long as all of you agree that the evidence establishes the defendant's guilt of the offense, you shall find him guilty of the offense.

However, if you do not find, beyond a reasonable doubt, that a defendant is guilty under any theory of liability for a charged offense, you must find that defendant not guilty of that charge.

INSTRUCTION NO. 31

In this case, you must decide separately whether each of the two defendants is guilty or not guilty. If you cannot agree upon a verdict as to all the defendants, but do agree upon a verdict as to one of them, you must render a verdict as to the one upon which you agree.

It is your duty to give separate, personal consideration to the case of each individual defendant. When you do so, you should analyze what the evidence shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely against some other defendant or defendants. Each defendant is entitled to have his case determined from his own acts and statements and the other evidence in the case which may be applicable to him.

INSTRUCTION NO. 38

The flight of a person immediately after the commission of a crime, or after he is accused of a crime, is not sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in light of all other proved facts in deciding the question of his guilt or innocence. The essence of flight embodies the idea of deliberately going away with consciousness of guilt and for the purpose of avoiding apprehension or prosecution. Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to such a circumstance are matters for your deliberation.

INSTRUCTION NO. 39

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. 40

The Defendant is presumed innocent unless the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every element of the crime charged and that the Defendant is the person who committed the offense.

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

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. 41

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 48

You are here to determine if each Defendant is guilty or not guilty based on the evidence in the case. You are not called upon to return a verdict as to the guilt of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty.

INSTRUCTION NO. 43

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

INSTRUCTION NO. 44

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

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

INSTRUCTION NO. 45

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

INSTRUCTION NO. 46

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

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 47

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the State has proven that the Defendant is guilty beyond a reasonable doubt.

INSTRUCTION NO. 48

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

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

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

INSTRUCTION 49

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of, and after notice to, the district attorney and the Defendant and his counsel.

Play backs of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a play back, you must carefully describe the testimony to be played back so that the court recorder can arrange her notes. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 50

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN: _____

DISTRICT JUDGE

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR 27 2018

1:36 p.m.

BY ALAN PAUL CASTLE, SR, DEPUTY

VER

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

STEVEN TURNER,
CLEMON HUDSON

Defendant.

CASE NO: C309578 – 2

DEPT NO: XVIII

VERDICT

We, the jury in the above entitled case, find the Defendant **CLEMON HUDSON** as follows:

COUNT 1 – CONSPIRACY TO COMMIT BURGLARY

(please check the appropriate box, select only one)

☑ Guilty of Conspiracy to Commit Burglary

☐ Not Guilty

COUNT 2 – ATTEMPT BURGLARY WHILE IN POSSESSION OF A FIREARM OR DEADLY WEAPON

☑ Guilty of Attempt Burglary While in Possession of a Firearm or Deadly Weapon

☐ Guilty of Attempt Burglary

☐ Not Guilty

COUNT 3 – ATTEMPT MURDER WITH DEADLY WEAPON

☑ Guilty of Attempt Murder with Deadly Weapon

☐ Guilty of Attempt Murder

☐ Not Guilty

C-15-309578-2
VER
Verdict
4741917

COUNT 4 – ATTEMPT MURDER WITH DEADLY WEAPON

☑ Guilty of Attempt Murder with Deadly Weapon

☐ Guilty of Attempt Murder

☐ Not Guilty

COUNT 5 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM

☑ Guilty of Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm

☐ Guilty of Battery with Use of a Deadly Weapon

☐ Guilty of Battery Resulting in Substantial Bodily Harm

☐ Guilty of Battery

☐ Not Guilty

DATED this 27 day of April, 2018

Beatriz Cruz
FOREPERSON