

Eight Principles for Effective Closing Arguments

Kimberly Gordon
Gordon & Saunders, PLLC
kim@gordonsaunderslaw.com

1. **KNOW YOUR FOCUS – THE JURY** – It is a jury centered process.

Most of the time we are focused on our clients, who did not choose to be here. The jurors did not ask for the task either. They were summoned. Their lives are on hold. They are panicked about the work that is building up, or the hourly pay that is not being earned. Unlike you, this is not what they do for a living.

Andrew Ferguson, is a law professor and the author of *Why Jury Duty Matters: A Citizens Guide to Constitutional Action*. His companion article titled “The Joy of Jury Duty” starts like this:

How can one appreciate an obligation? This is a question approximately 30 million Americans don’t ask every year when they receive their jury summons because they are too busy grumbling about this core constitutional responsibility of citizenship.

See [Attachment A](#). And yet they have climbed the same mountain as you. They have sat through the same trial. Most importantly, they hold your client’s fate in their hands.

2. **KNOW YOUR AUDIENCE.**

Speak to them in words they can understand.

Consider their belief systems, attitudes, life experiences and backgrounds, values, education, and training. Jurors will take your arguments and measure it against these things. These are the things that will determine if your arguments are persuasive, not whether your fellow lawyers think it is clever.

Slowly unpack what is in your pack and put it on their back.

Be sensitive to the specific task that they have been given. A DUI case may (or may not) need a different tone and theme than a homicide. Adjust accordingly.

But consider one thing universal. You need your jurors to be able to return to their friends and family and explain to them how they corrected injustice, protected someone, or righted a wrong. I truly believe that this is not hokey or corny. You win when they win. Just like in the marketplace, the buyers get what item they want or need and the seller gets the profit. At the end of a criminal case, you are not going to win if the jurors have to explain to loved ones that they did something because of a jury instruction. A juror needs to be able to explain to her family, with her head held high, how she worked justice.

3. **USE THE ELEMENTS OF PERSUASION.**

- [Legalese](#) isn’t powerful to jurors.

- A persuasive view is not a legal pad. Get out from behind it. Make eye contact. Be in the moment. Not reciting something you tried to memorize.

Keep in mind, you know this case backwards and forwards. You've lived it. Now talk about it. Make it live for them as it has lived for you. What has bugged you at night? What made you say "enough" and set the case for trial? What have you been dying to say to the prosecutor? You know what it is. So, check your notes if you need to, but then put them down and say it.

- Keep your focus sharp.

If you ramble, they will punish.

If you are vague, they will punish

If you are self-indulgent, they will punish.

If you just summarize the evidence for them, they'll wonder why you are wasting their time.

If your theory is too complex or chaotic, they'll tune you out.

- Bring order to chaos.

Organize around the salient points – lumping together the facts that give your points color and weight and truth. The inferences from those facts that give them meaning.

Persuasion in closing will not always come from the law. That is for appeal. It comes from rhetoric, verbal and nonverbal communication, the use of language, speech, and drama. Think of all of the things that go into a good play. From the writing of the script to the performance itself.

Think of the things that go into a good story. Organization. Unity. Coherence. Characters.

Consider your chapters. One chapter per page. One page per issue. Make your point. Support your point. Restate your point. Organize them so each one leads up to the finish line.

I have a transcript from a closing that **Aimee Sutton** did in which it seems apparent to me that she used this technique. Flows. It grows. It builds. It walks through the entire case while focusing on one theme: Her client was not the shooter. See Attachment B.

Consider your transitions – how can you unite them under one theme?

- Use lists.

One thing I love is making lists during closing. It is a simple way to unify and add power. Make lists of why a witness is not believable. Lists of "what it would look like if my client were innocent?" Lists of "why there is reasonable doubt."

Name a couple things on the list. Then say “but members of the jury, there is more.” Name a couple more things. “And there is still more.” Name other things. “Members of the jury, that is way more than one reason to doubt. A reason to doubt. But there are still more.”

- Rely on Primacy and Recency.

We tend to remember best what we hear first and last. Make it count. You’re not going to win if you spend those precious first moments thanking the jury for their attention or commiserating about what a long trial it has been. Hit them with your theory right out of the gate.

- “Three is the magic number. Yes, it is.” Items presented in groups of three are inherently more interesting, memorable, and enjoyable. In closing, group things in threes.
- Prepare.

I said be in the moment, but the best advocates do not do this extemporaneously. They don’t find the process instinctual or come to a persuasive closing naturally. It takes hard work, organization, brainstorming, and creative thinking.

They draw from art, literature, music, movies or T.V.

- They don’t use qualifiers like “I think,” “I believe,” “the evidence shows,” or (heavens forbid) “we submit.” These are needless words that deprive your argument of power.

4. USE WHAT YOU’VE HEARD.

Mick Woynarowski has three good examples of this –

1. In an emotionally charged case, he reminds the jury about the potential juror that was juror struck for cause after admitting an inability to be fair. He reminds them that they said they could be fair and only decide the case on the facts before them, not their emotions.
2. If the prosecutor concedes something, he reminds the jurors of that. *“Even Mr. Bales told you in opening statement that Mr. Thurman did not know that Mr. Nimaga had a knife when he started fighting with him.”*
3. He knows that every trial has its “A-HA! Moment.” He makes note of the date and time it happens, so he can reference it to the jury:

“In every trial, there are those moments where the truth reveals itself. You can feel it. I know you felt it last Thursday when Jose testified about the fight.

Jose told us how he “saw blows” and “hear punches – knuckles to the face “is how he put it. He did not see any knife.

Then, at 3:20 PM on Thursday, then Jose told you a key truth. He said that Mr. Nimaga “must have taken it out.” He “must have taken it out then.” After Mr. Nimaga had been punched in the head and the face. He “must have taken it out” because he then knew he was fighting for his life.”

My favorite “use what you heard” moment came from a murder trial against Chief Criminal Deputy, Mark Larsen. During his opening, he likened the case to a house, and suggested that, just as a house has load bearing walls, the trial would have “load-bearing facts.”

In Closing I told the jury, that I’d been thinking about the state’s suggestion. I agreed.

- *“I thought about this and realized that ... really, the state’s burden in a criminal trial can be likened to the state having to build and sell a house. And you, the jury, are the prospective buyer. The state has put together this story – built this house – the State is now trying to get you to believe that story – to get you to buy that house. To get you to buy the idea that Mr. Client should be found guilty.*

Well, you know that when you first find out about a house – it is through these flyers – usually made by the real estate agent for the seller. The flyer shows you a sweet little picture of a charming house on a little hill. It tells you the good stuff. They want to entice you to come look at it. To buy it. In this case, the seller’s real estate agent is the prosecutor. That flyer – that was their opening statement.

During this trial – you got to tour that house – to see for yourself if it is really what is pictured in the flyer. To decide for yourself, is this really what I want to buy?

...

You know, a house is only as good as the land that it is built on. So you want to know. What is the structure’s foundation? Is it stable? Solid? Will it support the house without shifting? Without deteriorating? Remember the mantra ... “location, location, location!”

...

I got to talk about the “foundational” witness that kept shifting her story. The house the state wanted to sell them was built on shifting sands, and a huge fault line ran underneath.

I got to talk about the witness who was addicted. I suggested that state’s house had been built on a superfund site. I found one of those “Mr. Yuk” stickers and put it on the house.

I got to talk about how detailed we would want any house inspection to be, before we paid money and moved our family inside. Then I talked about whether the investigation done by the police came close to that standard.

5. USE VISUAL AIDS.

Bob Butler – Starts closing with the “TO CONVICT” instruction already filled out, with big permanent marker, and projecting it on the wall. Talks about evidence as an eraser that never completely gets rid of the marker. The presumption of innocence. First time he did it in trial, the prosecutor did not take it down. During rebuttal, it was projected on the wall behind her.

Bob Goldsmith transitioned from legal pads to PowerPoint for his felony closings. I’ve included his slides from a state fraud trial in which his client acquitted was charged with theft of property and, largely, acquitted after asserting an adverse possession defense. Two I particularly like are the slide he used to discuss the concept of Adverse Possession and the final slide raising questions about the role of banks. Notice the photo used and the message it sends about the impersonal and overwhelming power of the banks.

When Bob sent his PowerPoint to me he commented “the beauty of a PowerPoint is that there is no limit to creativity, that is, what you can put in it.” He is right. See Attachment C.

I’ve attached other slides from a murder case. We used these in opening, throughout the trial, and in closing. See Attachment D.

6. USE THE COURTROOM.

Bob Butler described one of his most memorable moments from closing. He moved the clients chair to the middle of the courtroom in front of the jury box. Gave his closing standing behind me. Stressed that the focus of the case was about him. His conduct or lack thereof.

When it came time for **Todd Maybrow**n to discuss the testimony of a witness who took the stand and lied, he gave this portion of his closing while sitting in the witness box.

I saw **James Bible** effectively talk about the Presumption of Innocence and Reasonable Doubt during a closing. He walked to the state’s counsel table, placed his hands on it, and said “the Burden of Proof lies here.” He walked to the table where his client sat, placed his hands on it, and said, “the Presumption of Innocence lies here.”

This is how I used the courtroom in one trial. It took some measuring, some experimenting, and practice.

- *“This is what Alex Coble saw through his front door when she came for him, late at night, banging and yelling, drunk and aggressive, and promising that they were there to “fuck him up!”*

(POUND ON THE PODIUM 3 TIMES to mirror the pounding on the door.)

“We’re going to beat his ass!” Is what he heard as he stood in the entryway of his own home, and he realized his little girl, who was not yet four years old, was right behind him.

And they were this close. (Use stick, approach the jury box within a few feet – pretty close.) Andre Ross was right in Alex Coble’s face (look at several jurors in the front row.) This stick is 82 inches long – Kyle Ross never got further away than this (retreat to near the end of the stick.) For jurors in the back row, that means that Andre Ross was about as close to you as the row in front of you. And Kyle Ross never stepped back even as far as this foot rail right here.

Andre Ross and Kyle Ross came to Alex Coble’s home. They confronted him in a tiny porch area. (Use stick again.) When you walk out of Alex Coble’s front door and onto his porch, for the first 3 feet, there are walls that are only 58 inches apart. (Show them where this is marked on the stick.) 82 inches by 58 inches is the space in which this whole drama played out. 82 inches long (flip the stick) 58 inches wide.)

7. CONSIDER SETTING IT UP EARLY IN THE TRIAL.

Included in my CLE materials are two Motions in Limine used by Sheri Pewitt. The first seeks permission to discuss the concept of “Proof Beyond a Reasonable Doubt” in *voir dire*. The second seeks to build on it by continuing that discussion in Closing. See Attachment E.

Robert Perez set up for closing in a case in which he had affirmative defense. He successfully argued that he should get the final closing argument since he had the burden of proof on the defense. Snohomish County Judge Farris granted the motion over the prosecutor’s vehement objection.

8. BE YOURSELF.

Persuasion does not have to be about great words. It is words said with great conviction. Know what you mean. Say what you mean. Mean what you say. Take confidence in being yourself. You will fail if you try to be someone else.

Bob Butler – Have fun. If you are having fun, you are not projecting fear. Fear is a thing that will lead the jury to doubt you and your case.

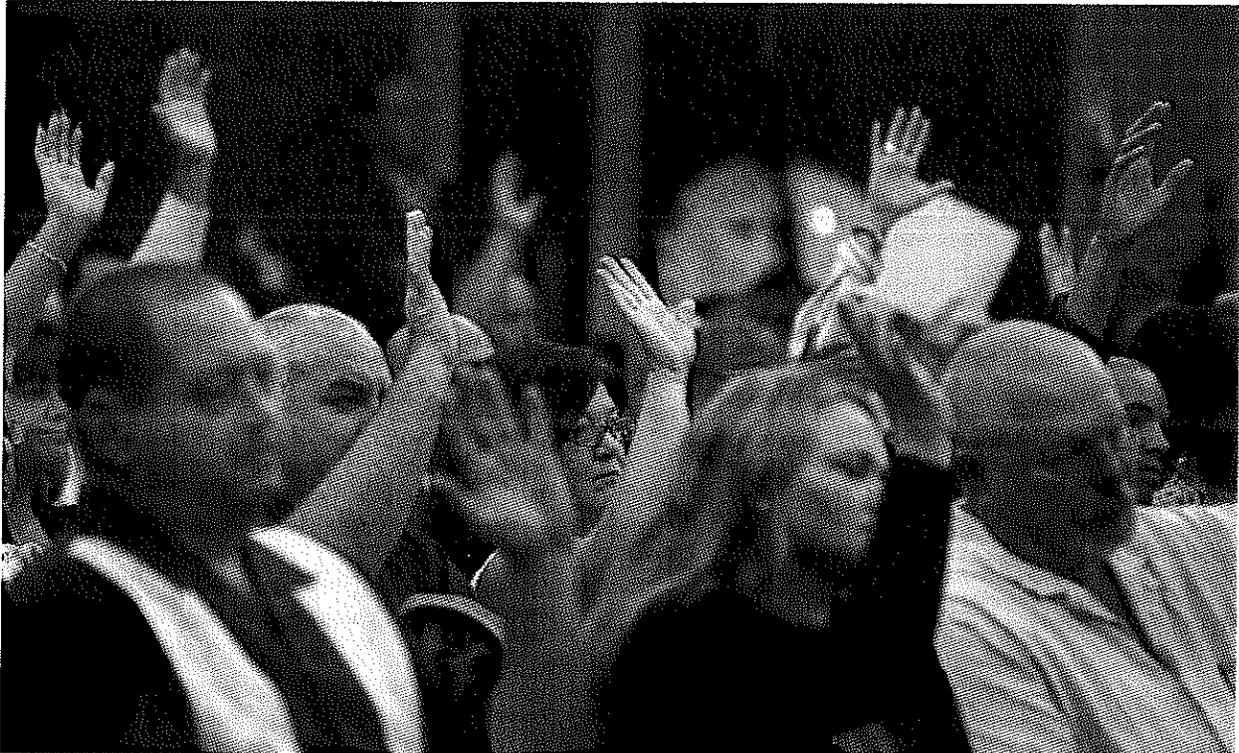
ATTACHMENT A

The Joy of Jury Duty

Why Americans should stop complaining and learn to appreciate this constitutional obligation

- ANDREW GUTHRIE FERGUSON

MAY 3, 2013



Americans who did not show up for jury duty as mandated raise their hands in response to a question from Circuit Judge Gregory Holder, at a lecture on civic responsibility in Tampa, Florida on November 4, 2011. (Skip O' Rourke/AP)

How can one appreciate an obligation? This is a question approximately 30 million Americans don't ask every year when they receive their jury summons because they are too busy grumbling about this core constitutional responsibility of citizenship. This is also a question of growing importance as courts are struggling to find enough jurors for trials.

It all begins with a letter in the mail. "Dear Citizen," it reads. You hold in your hand an invitation. Sure, it uses the word "summons," and is

probably not the kind of invitation you look forward to receiving. Yet, it is still an invitation -- an invitation to participate in the American experiment of self-government. And you can feel flattered that you have been invited. It means that you have not committed a felony (that anyone knows about), that you are mature enough to judge others, and that your community needs you. It's only polite to accept. And, it's even better to think about how you might enjoy the experience.

Turning the dread of jury duty into a form of enjoyment begins with understanding why jury duty matters. Simply put, it may well be the closest you ever come to the Constitution -- not just exercising a right it gives you, but participating in the process through which constitutional rights and values come alive in practice. In a country formed from a single founding document, it is amazing how disconnected most of us are from its meaning and purpose. Jury duty changes that reality - it is a day of constitutional connection. It is also a government-provided free pass from your normal family and work responsibilities. It is the law of the land that you cannot complete your workaday routine. Jury duty thus provides an opportunity (with plenty of waiting time) to reflect on our shared constitutional values.

What are these constitutional values? Participation, deliberation, fairness, equality, accountability, liberty, and the common good - these are constitutional values, and they are embedded in jury service.

A jury summons is an invitation to participation. Jurors are asked to involve themselves in some of the most personal, sensational, and terrifying events in a community. It is real life, usually real tragedy, played out in court. Jurors confront disturbing facts, bloody images, or heart-wrenching testimony. A jury may have to decide whether a man lives or dies, or whether a multimillion-dollar company goes bankrupt. A jury will have to pass judgment in a way that will have real-world effects on both parties before the court. This active role was not accidental. Participation in jury service teaches the skills required for

democratic self-government. Being a juror lets you develop the habits and skills of citizenship.

What are these "democracy" skills? Think about what is required for a politically active nation. As a juror, you are asked to "vote" based on contested facts. You must debate issues framed by contesting parties. This involves listening to others and tolerating dissenting views (as well as expressing your own opinions). Jurors necessarily expand their social interaction with different types of people, broadening perspectives, contacts, and sources of information. To apply the law jurors must understand the law, the rights of the parties, and the legal rules guiding the decision. Each of these participatory skills--deliberation, debate, tolerance, cooperation, civility, legal decision making--is what we need for a democracy to work. The participatory aspect of jury duty shapes our constitutional character. Those habits and skills, our civic education, helps define who we are as Americans.

Or, as another example, take the value of deliberation. In the very first sentence of *The Federalist Papers*, a collection of essays and arguments in favor of the U.S. Constitution, Alexander Hamilton invited Americans to this different way of deciding, "You are called upon *to deliberate* on a new Constitution," he wrote (emphasis added). It was a call that perfectly fits the thinking of a democracy. Deliberation involves collective decision making--a willingness to think together using reason and informed discussion to come to a final decision.

Why is deliberation important? Because the process of deliberating--of sitting down and hashing out a problem with others--creates better thinkers and better decisions. As thinkers you become invested, informed, and connected. Such dynamic thinking forces you to consider different ideas and reason your way to a final decision. Through the process of deliberation, jurors are made aware of different viewpoints, sometimes even new worlds, as they are asked to judge life choices, industries, and realities that they may never have encountered before. Through jury instructions, jurors necessarily inform themselves about

the legal system and the legal rules at play. Throughout the trial process, jurors develop the social mores necessary for success in other group activities. After all, if you can work with twelve people to agree on a verdict, you might be able to work together in a democracy.

Or as a final example, take the principle of equality. Throughout your jury service, you are known by a number--a juror number. You respond to that number. There are no nicknames or familiarities on jury duty. In the same way there are no titles. Whether you are a soccer mom or a Senator (or both), you are simply a number to the jury system. The number is not meant to insult, but to equalize. It provides the anonymity of being a citizen, one of millions who are doing exactly what you are doing in court: waiting for his or her number to be called.

Jury service allows you to see equality in action. In a world that is anything but equal, we tend to forget what equality feels like. You know your presidential vote counts as much as anyone else's, but you also know that the lobbyists, interest groups, and activists have more influence in the political process than your single vote. But in the jury room those differences become irrelevant. Whether you are a rocket scientist or rock guitarist, a linguist or laborer, jurors are given the same facts. Jurors see the same witnesses, hear the same arguments, and get an equal voice in the decision. Thus, the principle of one person, one vote, is actually observable on jury duty. This leveling mechanism strips away the divisions of our normal, unequal society. For a brief moment you see how democracy is supposed to work.

The invitation to jury service is thus an invitation to understand our most basic national principles. The simple fact is that jury duty is one of the few constitutional rights that every citizen has the opportunity to experience. It remains an American bond. It connects people across class, national origin, religion, and race. Jury experience exists as one of the remaining connecting threads in a wonderfully diverse United States. It links us to our founding principles and challenges us to live up to them. Every time you serve as a juror, you become closer to this

constitutional spirit; and every time you reflect on and appreciate these principles, you strengthen our constitutional character. That is the joy of jury duty.

This article is adapted from the author's 2013 book Why Jury Duty Matters .

ATTACHMENT B

1 law enforcement officers in this case reach, and they
2 book him into the jail. They think he had something to
3 do with this. His stories don't stick together, and his
4 name sounds like, and there is some vague description.
5 And yeah, maybe stories have changed but let's put him in
6 jail. Let's book him on this charge.

7 And Mr. Mandefero makes some calls from the jail. The
8 very first day he is in there, and he calls his sister,
9 and his sister puts him up on a three way with Danavian
10 Hunter, his friend, and he says, call Kev. Call Kev.
11 You got to get me out of this situation. And Danavian
12 does that. Calls Kev. And we don't hear the
13 conversation, but interestingly enough Danavian comes
14 back on the phone, and he says kind of what we thought he
15 would say, right? You heard the conversation. Stick to
16 the script. You got nothing to hide. They got nothing
17 on you. I have way too much at stake here. Did you hear
18 when he said that? I can't take the rap for this. Stick
19 to the script. Don't say anything and it's going to be
20 okay. Sit it out and wait. So Mr. Mandefero did that.

21 Now, the prosecutor played another jail call for you,
22 another jail call that happened much later in time, and
23 she said that Mr. Mandefero was talking to his friend,
24 and he was -- and his friend said nobody's going to mess
25 with Hailu anymore. Nobody's going to yank Hailu's

1 chain. And Mr. Mandefero laughed and said on the hood.
2 Now, I guess we are to take that -- we are to take a few
3 steps, logically speaking, and assume that he meant when
4 he said on the hood, yeah, I got JaeBrione Gary and
5 nobody's going to yank my chain anymore. But instead I
6 just want you to think about an alternative explanation
7 for that little bit of dialog between Mr. Mandefero and
8 his friends. And his friend. You saw Mr. Mandefero's
9 rapping abilities. Kind of on that little video, and saw
10 his Facebook photos, and some of the claims he made on
11 his Facebook page, and I think it's fair to say that
12 Mr. Mandefero's part of the hip hop urban youth. Just
13 that whole culture of we got to brag about stuff. Well,
14 we might not find that particularly palatable or feasible
15 or desirable as a way to be. As a way to go about the
16 world bragging, but it's sort of critical to keeping up
17 your credit. To keeping up your street credit, right?
18 So when somebody says nobody going to mess with you
19 anymore, but, well, but I didn't really do it. Well,
20 that doesn't come naturally. Yeah, nobody going to mess
21 with me because Kev will shoot them. And he didn't say
22 that, but he easily could have meant that.

23 And just to go way back to the very beginning of this
24 saga and the chain yanking, let's just say that day after
25 Mr. Gary yanks Mr. Mandefero's chain, and he presents it

1 to Jerod Marks, and he says, look, dude, look what I did
2 for you last night. Here's Mr. Mandefero's chain. And
3 it's his pride. And it's a big deal to him. And I got
4 your back, and I yanked it off of him, and here it is.
5 It's like a trophy for you, right? Do you think somebody
6 could have come up to Mr. Marks and said nobody goes --
7 going to beef with you about Money anymore. Right?
8 Mr. Marks would have said, yeah, because my cousin got my
9 back, and he is going to yank your chain if you mess with
10 me. Nobody going to mess with you anymore because you
11 got your protectors. Not because you shot somebody.
12 Mr. Mandefero never said he shot somebody. He said he
13 was there with his friend at the hospital. He's not
14 charged with not being a good liar to Deputy Barden.
15 He's not charged with having bad taste in friends. He's
16 charged with assault one. Assault two. And unlawful
17 possession of a weapon.

18 And, ladies and gentlemen, the prosecutor told or the
19 judge instructed you earlier today in instruction one she
20 said you have nothing to do whatever with punishment
21 except insofar as it may make you careful, and those are
22 crimes that should make you very careful. They should
23 make you stop, pause, and focus on the evidence. And
24 remember that we are not here today because Mr. Mandefero
25 told internally and externally inconsistent stories at

1 the hospital or because he called Cody Wade five times or
2 99 times or ten thousand times. We are here today
3 because JaeBrione Gary told a story, a vague and
4 inconsistent story within itself to Deputy Glasgow, and
5 in the ambulance a story that he has never repeated.
6 Never. Ever. Ever. Ever.

7 And finally, under oath, when he came in here he told
8 another different story. Now, I don't know if oath means
9 anything to him noteworthily, but when he took the oath
10 he told a different story. I know that the judge told
11 you, talked to you before you even met anybody, and
12 before you even came to this courtroom, she went down and
13 she gave you welcoming remarks in that jury room, and I
14 think she told you some quotes of Thomas Jefferson. And
15 I don't know if she told you this one, but I want to tell
16 you my favorite Thomas Jefferson quote, and what he said
17 was trial by jury is the greatest anchor ever yet
18 imagined by man by which a government can be held to the
19 principles of its constitution. Well, he said that more
20 than two hundred years ago, and in my humble opinion I
21 don't think in that intervening two hundred years we have
22 ever yet exceeded his statement on that day. We have
23 never come up with a system better than the one in which
24 you are participating at this very moment.

25 Twelve of you are going to hold the State to its

1 burden to prove this case beyond a reasonable doubt. You
2 are going to presume Mr. Mandefero innocent, and he is
3 going to be innocent until the State overcomes its burden
4 to prove their case beyond a reasonable doubt. And that
5 is the principle for which our constitution stands.

6 I have to sit down in a minute, and I promise you I
7 will, but Ms. Kline gets to get back up here and the
8 prosecutor gets to rebut what I have said. And I don't
9 get to speak to you again. So I'm going to ask you when
10 you do go back in that jury room, and you start talking
11 amongst yourselves that you say prosecutor got the last
12 word. What would Ms. Sutton have said in response to her
13 last word? What would her arguments have been? And
14 after you complete this whole process, and you take out
15 your microscopes, and you examine the evidence, and the
16 lack of evidence in this case, I am confident that you
17 will find Mr. Mandefero not guilty. Not guilty on any of
18 the counts. Not guilty on assault one, assault two or
19 unlawful possession of a weapon. Thank you.

20 THE COURT: All right. Ladies and gentlemen, the
21 State has the burden of proof. That burden never ever
22 shifts to Mr. Mandefero and the defense. So State has
23 one last chance to address you. Please give your
24 attention again to Ms. Kline in closing rebuttal
25 argument.



1 in about 15 minutes.

2 (A 15-minute recess was taken.)

3 THE COURT: Be seated everybody. Anything to take up
4 from the State?

5 MS. KLINE: No, your Honor.

6 THE COURT: From the defense?

7 MS. SUTTON: No, your Honor.

8 THE COURT: Okay. Let's bring in the jury.

9 (Jury present.)

10 THE COURT: Be seated everybody. Welcome back, ladies
11 and gentlemen. Please give your attention to Ms. Sutton
12 on behalf of Mr. Mandefero in closing argument for the
13 defense.

14 MS. SUTTON: They got the wrong guy. Hailu Mandefero
15 did not shoot JaeBrione Gary on May 1st. Kevin Hubbard
16 shot him. Kevin Hubbard shot at JaeBrione Gary as he sat
17 parked in his gold Cadillac in front of Ezell's at
18 approximately nine o'clock that evening. We know it.
19 The prosecutor knows it. Everybody in this courtroom
20 knows it. That's what happened. And we know it because
21 when Mr. Gary pulled up in his Cadillac he and his cousin
22 sat there for a few minutes, hanging out, him in the
23 front seat, his cousin in the back seat, and then he had
24 a feeling, it wasn't a good feeling, it was an intuition,
25 a sense, and when he felt that he turned around. He

1 rotated over his right shoulder, and he saw a burgundy
2 SUV type truck approach. Approach in the back of that
3 parking at -- of Ezell's headed nose out towards Renton
4 Avenue South. Mr. Gary came into this courtroom and told
5 you I saw one person. I saw one person in that burgundy
6 SUV in the front passenger seat and it was Kevin Hubbard.

7 But that's not where this story starts. This story
8 starts back in time. Back a little bit further. We have
9 to rewind to the night of the Waka Flocka concert. Waka
10 Flocka concert near Seattle Center. Mr. Gary told you
11 what he had been doing that day. He told you he had been
12 drinking some Hennessey. He told you he had been smoking
13 some weed. And he told you he popped an E pill. When
14 the prosecutor asked him what that was he explained it
15 was ecstasy. All that happened between Rainier Beach
16 where he was coming from, and the Seattle Center where he
17 was going to. Well, we all know Mr. Gary never actually
18 made it to the Waka Flocka concert because he and his
19 friends proceeded instead to a parking lot right next to
20 the venue where the concert was happening, and with his
21 friends he just so happened to see Hailu Mandefero
22 driving his own car right out in front of the concert.

23 Now, they weren't strangers to each other. This
24 wasn't the first time they had met. In fact, when
25 Mr. Gary, on the stop, he told you he kind of went way

1 back with Hailu. 2006. 2007. They had known each other
2 from around the way. The south end. And, in fact, not
3 only had they known each other, but they had had a pretty
4 decent relationship. They never had a problem between
5 the two of them. They had always gotten along. Never
6 any rifts. Never any beefs. But on this night amped up
7 on that combination of liquor and marijuana and exctasy,
8 JaeBrione Gary became on guard as he told you. Feeling a
9 little paranoid. And when he saw Mr. Mandefero in the
10 car he took on his cousin's beef with Mr. Mandefero.

11 He all of a sudden decided he was going to avenge or
12 revenge this real or perceived slight that may or may not
13 have stemmed from some financial slight from
14 Mr. Mandefero. He walked in front of Mr. Mandefero's
15 car, and he reached in, and forcibly yanked the chain off
16 of Mr. Mandefero. And then he walked away. And as soon
17 as he walked away, he knew. He knew that he had set in
18 process a chain of circumstances from which he could not
19 control. And it turned out that that was exactly what
20 happened.

21 Just a few days after Mr. Gary forcibly yanked that
22 chain off Hailu Mandefero's neck. He was in Tukwila. He
23 was in Tukwila in his same gold Cadillac, but instead he
24 was in the passenger seat. He wasn't driving at that
25 time. It was late at night. They had been to who knows

1 however many parties they had been to already, and
2 Mr. Gary notices a car pull up next to him. And the
3 driver sort of alerts him, hey, look, there's Kevin
4 Hubbard in that car. Right next. Kevin Hubbard and
5 Kevin Hubbard alone, there was no one else in that car
6 with Kevin Hubbard at that moment. And what did Kevin
7 Hubbard do? He pulled out a gun and he shot at Mr. Gary.

8 Now, thankfully Mr. Gary wasn't injured at that point,
9 but we know when we look at those photos that
10 Detective Thompson took a few nights later at Ezell's
11 that what happened was Mr. Hubbard shot, did indeed make
12 contact with the Cadillac, and it shattered that window.
13 Mr. Gary told you as much on the stand. He said he
14 kicked it out because it was all shattered, and lots of
15 shards of glass there and you can see that. You can see
16 that as plain as day in the photos that
17 Detective Thompson took on the night of May 1st at
18 Ezell's later on.

19 Now, if Mr. Gary didn't know at that time exactly why
20 Kevin Hubbard pulled up next to him and shot him he
21 probably had a pretty good reason to suspect it had
22 something to do with the chain, because after all he knew
23 that Hailu Mandefero knew Kevin Hubbard. He knew
24 Hailu Mandefero was friends with Cody, Kevin's half
25 brother. He knew of the connections between these people

1 and he got it. He got taken on someone else's beef
2 because after all it's what started this whole thing. E
3 took on someone else's beef. He took on his cousin's
4 grudge with Mr. Mandefero.

5 So why is it not totally logical that Kevin Hubbard is
6 going to take on Hailu Mandefero's beef with JaeBrione
7 Gary for yanking his chain in front of all those people?
8 Forcibly pulling his chain off his neck.

9 So what happens next after that night in Tukwila? The
10 next relevant portion of events is what happens on May
11 1st. Now, we know from Mr. Gary's own testimony that he
12 spent that day kind of goofing off with his cousin.
13 Driving around. Smoking weed. Trying to figure out if
14 they should go to their drug court meeting. Not go to
15 their drug court meeting. Eventually once it starts to
16 get dark they pull up. They pull up into the Ezell's,
17 and they park in that very front stall right in front of
18 the front door at the Skyway Ezell's and they sit there
19 for a few minutes. Just chicken store closes.

20 It's a little bit after 9:00 p.m., and that's when the
21 red truck drives up. Drives up behind him, again, nose
22 out towards Renton Avenue. And he sees Kevin Hubbard.
23 He told you he saw Kevin Hubbard. Kevin Hubbard. And
24 not only did he see him, what did he do when he saw him?
25 He ducked. He ducked because he knew he was going to

1 shoot him. He had just been shot at by that same person
2 a few days earlier. So he ducked. And all of a sudden
3 the gunshots ring out. This gunfire -- shoot-out
4 gunfight. Probably didn't last that long.

5 We know from Detective Thompson's testimony that there
6 were indeed two different caliber weapons that were
7 probably used that night. Because there were .40 caliber
8 shell casings, and there were 9mm shell casings, and
9 those are generally attributed to semiautomatic handguns.
10 Small weapons that can be stowed in your belt or
11 wherever. And I think that the prosecutor has talked a
12 lot about the pattern of the shell casings, and why that
13 some magically, for some magic reason that means that we
14 have two shooters. Actually, I think the pattern of the
15 shell casings can lead us to a quite different
16 conclusion. Because they are in two different places.
17 And we all know, unfortunately we know this, that guns
18 are everywhere. There is no shortage of guns in our
19 society. So one person can have two guns. They can.
20 And what can happen is if one person jumped out of a car
21 and picks up his .40 caliber weapon, unloads the magazine
22 in a relatively short order as you do with a
23 semiautomatic handgun, and then picks up his 9mm
24 semiautomatic handgun, and unloads eight or nine rounds
25 around the side of the car. That makes total sense.

1 You're moving in a certain direction. Two shooters
2 aren't going to stand where they are in each other's line
3 of fire. One shooter instead more likely would access
4 two different weapons, and you can do it quickly with two
5 semiautomatic handguns.

6 Now, the thing about it is, I admit, it's probably a
7 little unwieldy to have two weapons that you are dealing
8 with in this brief quick minute, seconds, who knows how
9 long it transpired, but we know it's quick. But because
10 it's so unwieldy isn't it likely that when you go to stow
11 and shove that weapon back in your belt that it could
12 accidentally discharge? And based on the doctor from
13 Valley Medical Center who treated Kevin Hubbard, I think
14 we can all pretty much figure out that -- that that's a
15 self-inflicted wound. How else could you get up that
16 close and point down at that angle with an entry and
17 exit? Although I guess we don't know which way up and
18 which was out. Again, you can use your common sense to
19 figure that. Think about two semiautomatic weapons,
20 shoving it in your pocket. It can go off. Pocket or
21 your belt.

22 The other thing I want you to think about in terms of
23 where the single shooter theory makes a lot of sense in
24 this action is Detective Thompson testified about
25 cartridge capacities, and how they might differ according

1 to the caliber of the weapon. And he said that when you
2 have a .40 millimeter semiautomatic weapon the magazine
3 that you put the little bullets into the rounds into
4 could generally, probably depends on the make of the gun,
5 you probably fit about twelve-ish rounds in there. We
6 find five at the scene. So what happened was that .40
7 gets discharged. You spent all your shell casings. You
8 got to go to your next gun, and then you go to your 9mm,
9 and there's eight shell casings. We know again from
10 Detective Thompson's testimony that that magazine has a
11 capacity in excess of eight shell casings. So one
12 shooter, two guns, discharge the magazine. Well, except
13 for the one bullet that you accidentally discharge when
14 you're putting it back, and put it in your belt, and then
15 you're off.

16 What do we know about what happened next with respect
17 to the physical evidence that's littered about the scene
18 here. What we know is that the King County Sheriff's
19 deputies and detectives arrive in mass and in short
20 order. And I do want to get to what happened to Mr. Gary
21 as he sort of stumbled from the Ezell's parking lot to
22 the Skyway Bowl. But first I want to finish up with
23 discussing the shell casings and what happened to them.

24 So Detective Thompson comes, and he's been a detective
25 for many years, and he's conducting his investigation,

1 and the manner to which he has been trained and all the
2 careful evidence collection procedures that he's been
3 trained under, and he takes all those shell casings, and
4 he bags them up, and he puts them in evidence. And then
5 at the behest of the detective and the prosecutor
6 eventually they perform a forensic analysis on the shell
7 casings, and by forensic analysis I mean they asked the
8 fingerprint examiner to look at all the shell casings,
9 and see what they can find. And you know what they found
10 because the judge read the stipulation. They didn't find
11 anything. They found not fingerprints that they could
12 match up with Mr. Mandefero. Fingerprints that would
13 come on shell casings by pushing them into the magazine,
14 and then putting the magazine into the gun.

15 While they didn't stop there because in this case as
16 you well know the investigation has been thorough. They
17 took those same shell casings, and they sent them to the
18 crime lab and Denise Rodier came in here and told you
19 about what she did to them. It's a process that's
20 scientific and tested and peer-reviewed and
21 extraordinarily sensitive. We couldn't even see what she
22 was talking about. Less than a nanogram of DNA. And
23 that she couldn't find any DNA on one side of the shell
24 casings, but she did on the other set of shell casings.
25 She had a profile and she excluded Mr. Mandefero. She

1 tested a bunch of other stuff, but it really wasn't
2 relevant for purposes of this argument or this trial or
3 this situation. The relevant items that she tested were
4 the shell casings, and she excluded Mr. Mandefero from
5 that set. So no fingerprints. No DNA. And of course no
6 gun. We have no gun that has ever been associated with
7 Mr. Mandefero in this case. The only gun was that one
8 that was locked in Mr. Gary's car that the detective
9 found when he was searching the car pursuant to search
10 warrant later on.

11 But let's go back to the scene. Let's go back to May
12 1st when JaeBrione Gary is shot. He stumbles through the
13 parking lot, and gets to the Skyway Bowl where he sits
14 outside. You all saw that security footage. There is a
15 bench. It's outside. He -- he sits there. He is in
16 obvious pain, and he comes to people's attention pretty
17 quickly, and they call the sheriff's and the medics and
18 they come.

19 Deputy Glasgow is the first one to arrive and through
20 some sheer stroke of luck Deputy Glasgow actually is
21 trained as a medic, as an Army medic. So he puts on two
22 hats real quick like and starts to treat Mr. Gary. He
23 notices maybe more than you or I would or somebody who
24 wasn't trained as a medic that this is a serious
25 situation for Mr. Gary. Mr. Gary is losing color. He is

1 in intense pain. He says he may even be close to going
2 into shock.

3 So while Deputy Glasgow is rendering aid he is also
4 starting to think with his other cap I have got to
5 investigate this. I have to figure out what happened
6 here. Who did this to you? What happened? Who shot
7 you? I'm low tech. So I have to make sure that you can
8 see that. Okay. So what he says to Deputy Glasgow is,
9 according to Deputy Glasgow, he says Hailu and some
10 niggas shot me. And then he says something about Money
11 Gang, and then he says that Money Gang and somebody who's
12 a Blood shot him. And then he says he only saw one
13 person. Deputy Glasgow testified that he said all of
14 those things, and then Deputy Barnes comes along and he
15 overhears Mr. Gary say I was shot by Bloods. I was shot
16 by a Blood.

17 When he got up on the stand he changed his story. And
18 he said I only saw one person. It was Kev. When he got
19 up on the stand he admitted that he stood here in this
20 very courtroom days before the trial started, and said he
21 did not shoot me. And then he also told you in his
22 testimony that somebody named Little Rue did it. And
23 that what he was attempting to do was sort of create a
24 straw man. Somebody who would -- to whom he could divert
25 attention. He didn't want to tell the deputies who

1 really did this to him. He just told you that. And
2 somehow -- oh, one other thing I forgot is the very next
3 day when Detective Johnson called him in the hospital he
4 was not copping to any of these stories. No one shot me.
5 I don't want to talk to you. Nothing.

6 So somehow we're supposed to say that's the right one.
7 Or maybe that's the right one. (Indicating.) We are
8 supposed to take a surgical scalpel and slice and dice
9 this and say we believed Mr. Gary on that one little
10 moment on that one little night when he was in the back
11 of the ambulance safe away from the crying voices and the
12 peering ears of the neighborhood. And, in fact, the
13 prosecutor said he had no reason to lie when he was in
14 the back of the ambulance. That's not true. He had so
15 many reasons to lie. And I will just remind you what we
16 talked about a second ago. He was going into shock. He
17 was in intense pain. He had a positive tox screen for
18 THC and opiates. We don't know where the opiates came
19 from. They could have been from the ambulance, but we
20 don't know because the EMT didn't testify to exactly what
21 he administered him. He was doped up. He was going into
22 shock. And we're supposed to believe that he could
23 clearly, and coherently, and he had no ability to lie
24 about what he's going to say when he did lie. He said a
25 Blood did it. That's a lie. Mr. Mandefero's not a

1 Blood. Nobody's ever told you anybody related with this
2 case is a Blood. That's a lie. So he lied and
3 Deputy Glasgow said he lied in the ambulance.

4 Mr. Gary told you all he wanted was meds. He had
5 known a lot of people that was shot and he knew that's
6 what happened. All he wanted was meds. And
7 Deputy Glasgow said, no, no, don't give him the meds now.
8 Wait a minute. I have to find out this story. So he's
9 bleeding out. He's lying in the back of the ambulance,
10 and he's -- there is just no way he could lie about this.

11 That's just even only part of the story. Because he
12 has his own motive to lie. He actually has a motive.
13 Because do you remember what happened about a week
14 earlier? He yanked Mr. Mandefero's chain. He admitted
15 that he did it. He came in here and he admitted that he
16 did it pursuant to an immunity agreement that promised
17 that he would not be prosecuted for yanking the chain.
18 He didn't have the immunity agreement when he was back in
19 that ambulance. So do you know what he did? He invented
20 his own immunity agreement. He said or he could have
21 thinking along these lines, Hailu Mandefero, I just
22 yanked his chain. He and his people are possibly out to
23 get me. So if I point the finger at him, done and done.
24 Or maybe we don't think Mr. Gary actually was that
25 calculating. After all, I did just get finished with a

1 litany of reasons why he was so out of his mind he maybe
2 couldn't even be coherent. Maybe it was something more
3 vague. Like this definitely has something to do with me
4 yanking Hailu's chain. So I'm going to say his name
5 because he's involved for sure. I didn't see him there.
6 He probably wasn't the one who shot me. I only saw Kev
7 but Hailu was -- Hailu and some niggas because he knows
8 just as he had his cousin's back when his cousin was
9 nowhere to be found that some other people who felt like
10 they needed to take on Mr. Mandefero's beefs could be the
11 ones who on that night did indeed shoot him. So he had a
12 ton, a ton of reasons to lie.

13 The other couple that I think -- I think I haven't
14 gotten to yet on this slide is he has every reason to be
15 afraid of Kevin Hubbard. Every reason in the world,
16 because after all Mr. Hubbard just shot at him two days
17 before. Not only did Mr. Hubbard shoot at him two days
18 before, but Mr. Gary told you that as soon as he was
19 released from Pierce County on March 29th, 2012, just a
20 few months earlier, I knew because the word was out, the
21 streets talk, Kevin Hubbard was assumed or discussed in
22 conjunction with three assault ones with firearms that
23 had happened earlier in the year in Seattle that we all
24 know now that eventually has been charged with. So he
25 had good reason to be afraid of Mr. Hubbard which even

1 though we know he shot at him the prosecutor told you
2 herself, he didn't mention him.

3 And lastly but not least Mr. Gary on the stand admits
4 that he's been convicted of crimes that involve
5 dishonesty. He told you he had a 2006 conviction, and he
6 told you he had a 2008 conviction for theft and robbery.
7 The prosecutor makes a lot out of the fact that Mr. Gary
8 never said anything about Kevin Hubbard. He had an
9 opportunity to. We all know he had the chance to meet
10 various law enforcement officials at various times in
11 conjunction with this case. Deputy Glasgow,
12 Deputy Barnes, Detective Johnson on the phone the day
13 after the hospital. Officer Beseler in the patrol car.
14 Detective Johnson once he is arrested and being
15 interviewed here. And he never mentions Kevin Hubbard,
16 and I think the prosecutor brings it up to put the idea
17 out there. Put the notion out there that this was a last
18 minute inspiration on Mr. Gary's part. I will take the
19 stand. Kevin Hubbard's booked. I'm safe. I will get on
20 the stand, and this is a brilliant, brilliant stroke of
21 luck for me, and now I can point the finger at somebody
22 different. Now I can say that Kevin Hubbard did it. But
23 that can't possibly be the explanation because we know
24 that Kevin Hubbard was there. We know Kevin Hubbard was
25 a shooter. That's not in dispute.

1 So don't, ladies and gentlemen, think that the reason
2 why throughout all of these opportunities to confess that
3 Mr. Gary had with the law enforcement officers it was
4 because Kevin Hubbard didn't do it. No. It was because
5 he knew. He knew what happens when you are a snitch, and
6 when the really bad guy finds out you are a snitch, and
7 that really bad guy is not afraid to shoot people that's
8 why you don't mention Kevin Hubbard to the police. The
9 one thing that I think was interesting that he did
10 mention to Officer Beseler and Officer Beseler kind of
11 saying like, well, you know, he was in the car, and he
12 seemed like he could have been afraid or he didn't want
13 to testify, and he was going to tank the State's case,
14 but do you remember what else Officer Beseler said?
15 Officer Beseler said that at the end of the day what
16 Mr. Gary said was how much would you pay me to be a
17 snitch? So, what, he's afraid of being a snitch but not
18 if you pay him? Mr. Gary's interest and concerns and
19 biases are all encompassed with each other yet we are
20 supposed to be able to put on some lens and look at this,
21 and say, but we know the one moment in which truer words
22 have never been spoken from Mr. Gary's mouth was what he
23 said in the ambulance. Well, that defies common sense
24 and logic.

25 We know that we as human beings cannot make this case

1 that simple. Because it's not that simple. I agree with
2 the prosecutor about one thing. Actually, I agree with
3 about a lot of things. This actually happened in the
4 state of Washington. Mr. Gary was definitely shot.
5 Sandra Torres was in that office.

6 I don't want to waste your time getting bogged down in
7 those details. I want to talk about why we know that
8 Mr. Mandefero was not with Mr. Hubbard when this shooting
9 occurred, and it comes from the cellphone records. It's
10 all there. Now, those exhibits have been admitted, and
11 we don't want to get into this on testimony even though
12 you probably think we got into everything on testimony.
13 We don't want to get into all the call detail records,
14 but I want you to look at them when you are back there.
15 You will see every single call. Incoming, outgoing that
16 was made by Mr. Mandefero and Kevin Hubbard on those two
17 days. The May 1st and the early morning hours of May
18 2nd. And what you will see is this, you will see that
19 there's no way that anyone could possibly argue that
20 Mr. Mandefero and Kevin Hubbard were together before
21 8:31. We know that because Mr. Hubbard called
22 Mr. Mandefero at 8:31, and you wouldn't call somebody you
23 were with. That doesn't really make any sense. Then we
24 know that -- well, we know that both of these callers
25 used the T-Mobile system. Right? So that's sort of

1 lucky for us. We are not worried about times and
2 coordinating and making sure this clock is synced up with
3 that clock. These are all on the same system. So that
4 all happened and Mr. McDonald testified about their
5 records and how accurate they are. So we can look and
6 see at May 1st, 8:43:36 made call to Mr. Hubbard's cell,
7 site 22185 cell site. You will look -- see
8 Detective Rogers testified he had not -- his phone was
9 not accessed before that time on those days. So this is
10 the first time that Kevin Hubbard is where Kevin Hubbard
11 is 5913 Rainier Avenue South. 30 seconds before that
12 Mr. Mandefero's phone goes through a cell tower on Monter
13 Road Southwest. 22116. And I went through a very boring
14 admittedly recitation with Detective Rogers. Look at the
15 cellphone records starting at midnight on that day, and
16 let's count how many times Mr. Mandefero's phone went
17 through that same cell tower. 25 times. Mr. Mandefero's
18 where Mr. Mandefero always is. He is using that same
19 cellphone tower.

20 Then we know what happens after that, right? Because
21 we have the records for the next hour. And we see that
22 once again Mr. Mandefero's calls are not going through
23 any of the same towers that Mr. Hubbard's are going to
24 until they have a tower in common at 9:20 and Mr. Hubbard
25 shows up there at 9:33. The trajectory and the

1 directional things that the cellphone map tells you, that
2 may very well be true, but if you look at the call detail
3 record you will see that it will tell you not only the
4 first cell site, which is what I have up here that the
5 phone went through, you will see the second cell site.
6 People who are (Indicating.) hell bent on some trajectory
7 or Seattle or Renton or whatever they will be handed off
8 from cell tower to cell tower. And they are not. Most
9 of those calls start and end at the same cell tower.
10 None of these are the same.

11 Now, Mr. McDonald came all the way out here from New
12 Jersey to tell us some stuff about how the T-Mobile
13 equipment operated. And he said you have your cellphone
14 tower, and there are various factors that are going to
15 influence its range, but what he said was the call will
16 go to the tower that can give it the best signal. And we
17 have to figure out without the help of engineers just
18 based on his testimony how one would come to some
19 conclusion about that. And he said here are the factors
20 that the cellphone networks take into consideration when
21 they are handling from cellphone towers. The height of
22 the tower. The terrain. The buildings. The weather.
23 The foliage. The trees. Whether you are inside or
24 whether you are outside.

25 Every single one of those factors with the possibility

1 except with the slight possibility that the cellphones
2 were different between Mr. Mandefero and Mr. Hubbard have
3 to be true for both of them. If you are going to believe
4 the State's theory, they are together. I'm over here.
5 You are over here. We are in a car. We are in a car
6 together. We are lock step traveling from south Seattle
7 to Renton to Valley Medical Center.

8 Well, if Mr. McDonald tells us that the cell site's
9 going to go -- that your phone is going to go to cell
10 site that can best handle your signal, and you are right
11 together off peak hour, not later than nine o'clock on
12 Tuesday night, how can you tell me that we are not going
13 to see any commonality of towers until way after the
14 shooting? And then it's not a mystery, right? We all
15 know eventually they wind up together. They wind up
16 together at the hospital.

17 I think that one thing that we should do before we
18 stop talking about the cellphone records is kind of
19 construct a more holistic timeline for this whole thing
20 that went down, and we already discussed the fact that
21 they couldn't have been together at 8:31 because
22 Mr. Hubbard calls Mr. Mandefero, and logic tells us that
23 you are not going to call somebody that you are standing
24 next to. That Hailu Mandefero and Kevin Hubbard both
25 placed calls within the 8:43, that minute. And that both

1 calls connected through separate cell towers. We know
2 that Hailu Mandefero takes an incoming call at 9:05.

3 Now, if you think about the fact that the 911 call
4 happened at 9:09 this is like smack dab in the middle of
5 a gunfight. Is he going to answer the phone even for
6 point 42 minutes? That doesn't make any sense. A few
7 minutes later Kevin Hubbard makes an outgoing call, and
8 Hailu Mandefero makes an outgoing call within about a
9 minute and ten seconds of that same call again obviously
10 through the same T-Mobile network, and they go to
11 separate cellphone towers. And again the first common
12 call at 9:20 from the Renton Road location. You see
13 Mr. Hubbard show up there at 9:33, but again not an issue
14 in controversy because we know that eventually
15 Mr. Mandefero takes his friend to the hospital.

16 Let's talk about the hospital. Valley Medical Center.
17 The prosecutor said in her argument everybody knows that
18 when a gunshot wound victim shows up at the hospital the
19 doctor, the nurse, the whoever is on the phone to the
20 police, right? Like if you've seen a movie about the
21 Mofia you wouldn't have a mob doctor. If you could go to
22 the hospital with, I believe, opportunity and just show
23 up there and say, look, I have all these gunshots, shh,
24 don't tell anyone. See a movie to know that when you
25 show up at the hospital with gunshot wounds someone's

1 going to alert the law enforcement. And so -- mob
2 doctor.

3 And so eventually he has to go to the doctor, and
4 right as he is thinking in his mind when he gets there,
5 but he reels Mr. Mandefero in. Why would Mr. Mandefero
6 go with him to the hospital knowing what we just
7 discussed, if he had something to hide. Why wouldn't
8 Danavian Hunter be called in or Cody Wade, one of these
9 people who we have already talked about, all these
10 interlocking associations between friends, Mr. Mandefero,
11 and the relatives of Kevin Hubbard, and the associates,
12 and the acquaintance, why couldn't one of those people
13 could have pulled this, and can you just take Kev to the
14 hospital, he got shot. No. Mr. Mandefero did. And it
15 doesn't make any sense that he would do that if he had
16 something to hide. It makes even less sense that he
17 would stay while the Renton police are arriving, and
18 stationing themselves, as you heard Deputy Barden say, in
19 very obvious locations in the main corridor of the
20 emergency room. There is three police officers standing
21 there, and they are not preventing Mr. Mandefero from
22 leaving. You didn't hear any one of them say I stood in
23 front of him, and I wouldn't let him go because that
24 didn't happen.

25 Mr. Mandefero stayed at the hospital with Kev. Kevin

1 Hubbard in treatment room 43. They got there at 11:37.
2 You heard Deputy Barden tell you that's what the nurse
3 told him, and then Deputy Barden gets there at 0020. 20
4 minutes after midnight. An hour later. Mr. Mandefero's
5 still there with his friend.

6 It wasn't until Deputy Barden found out through his
7 conversations with the Renton Police Department that this
8 person's name was Hailu Mandefero, and he puts two and
9 two together, and says, well, Deputy Glasgow said Hailu
10 was -- this is Hailu. And he says I'm going talk to him
11 as in Mandefero is on his way out the door, and
12 Deputy Barden -- did you see him? Do you remember what
13 he looked like? He's a big guy. And if that guy puts
14 himself between you and the doorway out of the medical
15 center you might get a little nervous. I might get a
16 little nervous. What's that guy doing standing in my
17 way? I'm trying to get out. But he said in his report
18 that Hailu Mandefero had no problems talking to him in
19 that very first encounter. He said he talked to me. He
20 said he picked him up at the 76 Station. My sister, she
21 called me. We went and got him. And then he started
22 changing his story. He came up with the Chuck E. Cheese
23 thing, and the girlfriend thing, and the I don't know her
24 name thing. Because why? Why did he change his story?
25 Maybe Kev did tell him what to say when they were in the

1 treatment room. After Mr. Mandefero picked Kev up and
2 took him to the hospital, maybe Kev did say here's what
3 happened. We were in Kent. There was a Chuck E. Cheese.
4 It was loud. Gunshots rang out. All of a sudden my
5 butt. I'm shot. That's all you know. Stick to the
6 script. But Mr. Mandefero just wants to leave the
7 hospital and forget the script in the face of a very
8 large, very powerful King County Sheriff's deputy. He
9 forgets his script. He goes off and then he remembers
10 oh, Kevin told me to stick to the script, and I screwed
11 it up already. So here's what Kev told me to say. Well,
12 he obviously doesn't say that. Deputy Barden isn't
13 having any of that at that point, and he takes
14 Mr. Mandefero says, uh-uh. Your name Hailu?
15 Deputy Glasgow said somebody named Hailu was -- did this.
16 And now you are telling stories. It doesn't stick
17 together. And he's directed to go in the room at the
18 emergency room area where he writes a report, and he goes
19 in the room and sits for an hour, hour and a half. Waits
20 for Detective Belford to show up, then Detective Johnson
21 shows up, and he sits there, and he has his cellphone,
22 and he doesn't call a bunch of people to say come and get
23 me out of here. He sits there patiently waiting.
24 Because he has nothing to hide. He didn't shoot anybody.
25 Well, unfortunately that's not the conclusion that the

ATTACHMENT C

Adverse Possession

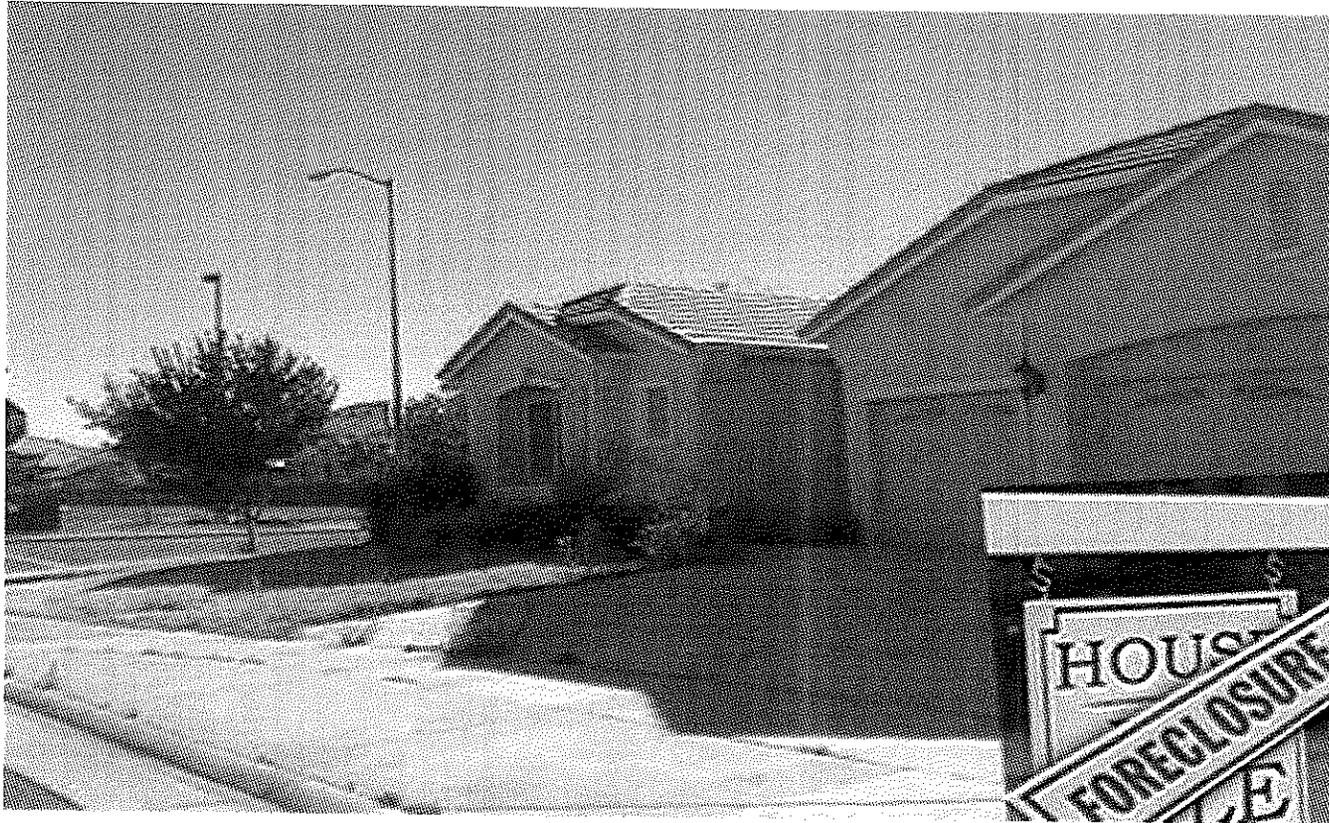
▶ Ancient Concept



- ▶ Open and Notorious
 - ▶ Without Permission
(hostile—no good faith required)
 - ▶ Exclusive
 - ▶ Actual & Uninterrupted
(10 yrs)
-



Housing Crash of 2007-08



C [REDACTED] B [REDACTED] >> "OK, we have a list. L [REDACTED] wants to go for the biggest houses possible >> (such a man, lol), I'm looking more at area and schools, etc. And the >> super expensive ones that are huge scare me because I know the banks will fight harder for those and even though I know there are laws, I'm still scared. I just don't want to get settled and then have to start all) over. LOL. That being said, here's our list....."

"Ok kool. I understand and like you said there are laws but they don't > always follow them. > You will want to drive by the neighborhoods to check them out and see if > they are vacant. All of the houses on the list have a Notice of Trustee > Sale but in many cases the family is still in and fighting for their home because the believe that they can find a way, or even modify their loans. > Point is to make sure that they are vacant."

Exhibit 32: 0432-0433



“then the sum of the value of all transactions” Instruction # 14

- ▶ CB: one aspect of program was saving money by not paying rent. . .
 - ▶ CB paid: \$7,000.
 - ▶ Lived rent free from late April 2013-August 2013
 - ▶ Was given \$1000 to move out
 - ▶ Lived rent free from August 2014-October 2014
 - ▶ ~ 17 months @ ~ \$1000 per month = \$17,000 saved
 - ▶ Plus \$1000 settlement = \$18,000
 - ▶ Minus what she paid NY - 7,000
 - ▶ Net gain = 11,000 in savings.
-



CS: Knew it was a gamble



The same applies to C [REDACTED] S [REDACTED]

- ▶ Paid NY \$2000
- ▶ Lived rent free from Jan-May 2014 (w/ Helen G.)
- ▶ Lived rent free from August – October 2014
- ▶ ~ 7 months @ ~ \$1000 in rent savings = \$7000
- ▶ Received in settlement = + \$3000
- ▶ Minus what he paid NY = - \$2000
- ▶ Net savings = \$8000

Blinded by jackpot potential



NO FREE LUNCH

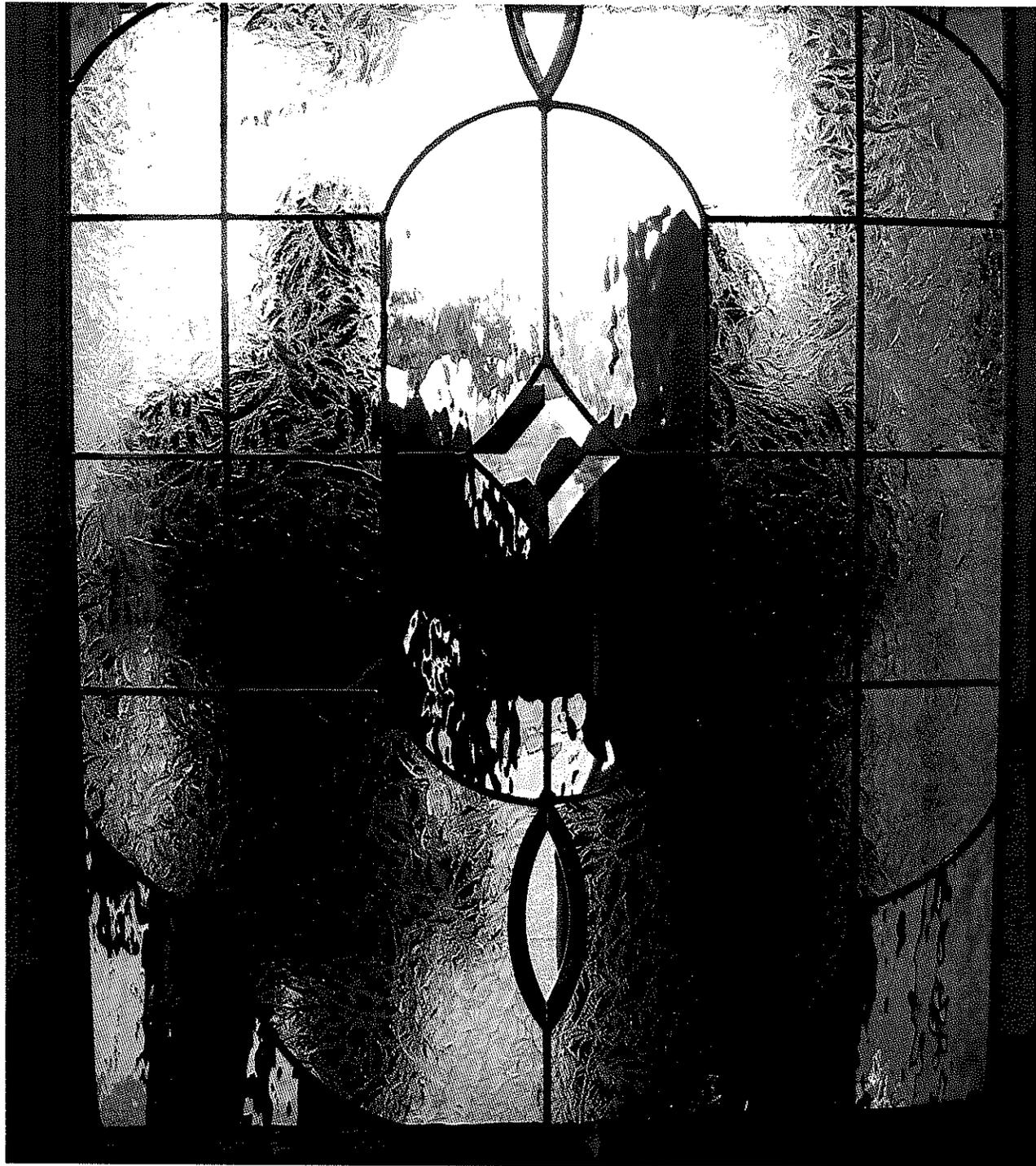
- ▶ Blame Game *after ARREST...*
 - ▶ No hard sell
 - ▶ People made their own decision to join
 - ▶ Encouraged to do own research
 - ▶ Tried to answer all questions
 - ▶ Responsible to check things out for themselves
 - ▶ NY DID NOT DECEIVE
 - ▶ HE MAY HAVE BEEN MISTAKEN
 - ▶ Mistakes are not a crime
 - ▶ May have been a bad ideathat is not a crime
-



Where are the Titleholders and Banks?

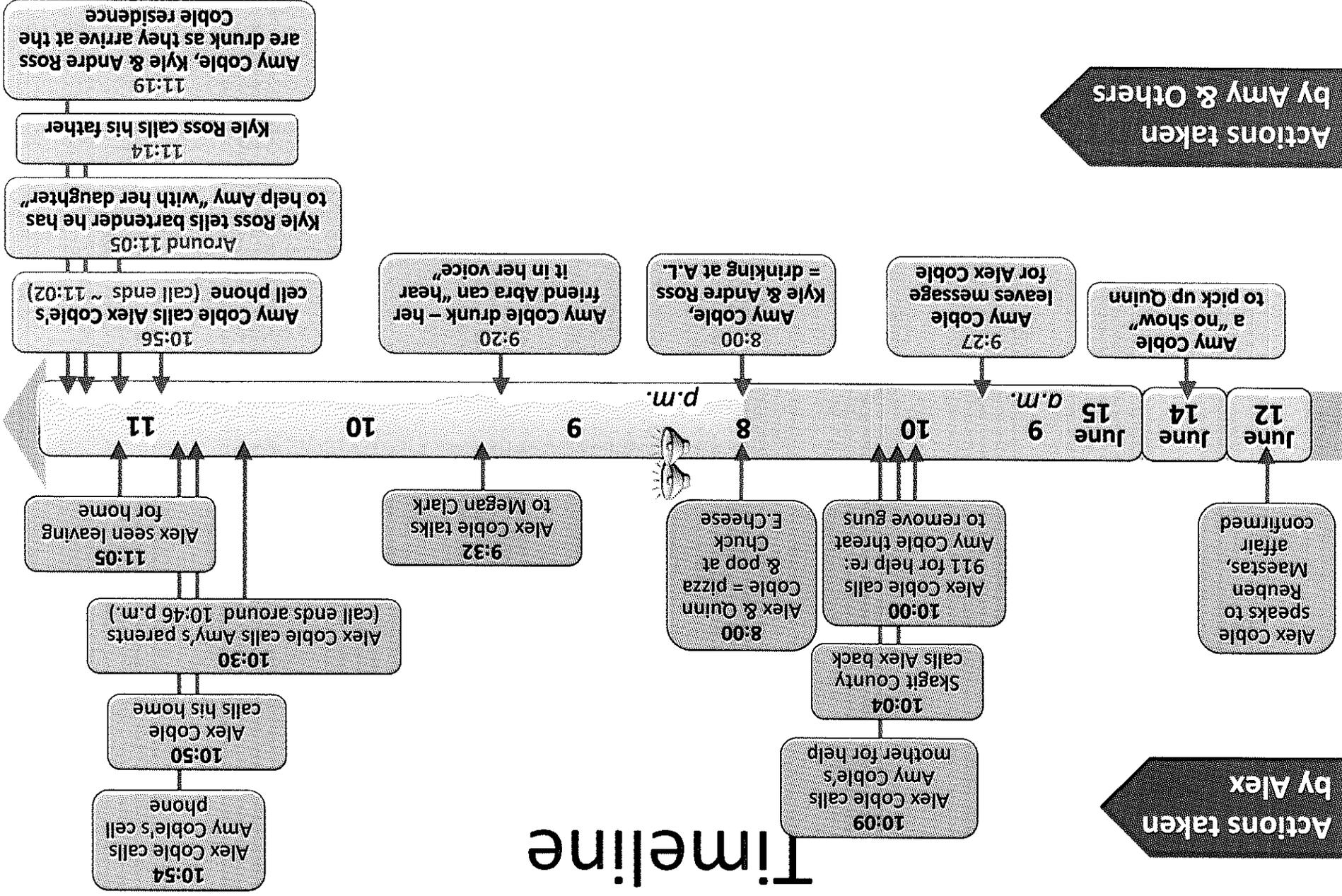


ATTACHMENT D



4110

Timeline



Actions taken by Amy & Others

Actions taken by Alex



1-78, 205



Rhue 792

ATTACHMENT E

1 **14. ALLOW DEFENSE INVESTIGATOR MORTENSEN TO**
2 **REMAIN IN COURTROOM:**

Granted
 Denied
 Reserved

3
4
5 Mr. NOTGUILTY moves to allow investigator Mortensen to remain in the courtroom
6
7 during presentation of the prosecutions' case. ER 615 allows a witness to remain in the
8
9 courtroom who is shown by a party to be reasonably necessary to the presentation of the party's
10
11 cause. ER 615(3). Because investigator Mortensen conducted defense interviews, she will be
12
13 called to challenge any testimony inconsistent with the answers previously provided during
14
15 defense interviews. As such, it necessary for her to remain in the courtroom to hear witness
16
17 testimony.
18

19
20 **15. PRECLUDE TESTIMONY REGARDING STATE OF MIND:**

Granted
 Denied
 Reserved

21
22
23 Mr. NOTGUILTY moves to prohibit prosecution witnesses from testifying regarding
24
25 his/her state of mind. Such testimony is speculative and an impermissible opinion on guilt. *State*
26
27 *v. Farr – Lenzini*, 93 Wn. App. 453, 970 P.2d 313 (1999) (Officer's opinion testimony regarding
28
29 the defendant's state of mind as to eluding police should not have been admitted at trial); *State v.*
30
31 *Easter*, 130 Wn.2d 228, 922 P.2d 1285 (1996) (Officer's testimony that defendant was being
32
33 evasive in response to questioning and was being a "smart drunk" was an impermissible opinion
34
35 on guilt)
36
37

38 **16. MOTION TO EXPLORE WITH VENIRE PANEL WHETHER**
39 **THEY UNDERSTAND THE CONCEPT OF PROOF BEYOND A**
40 **REASONABLE DOUBT.**

Granted
 Denied
 Reserved

41
42
43 Mr. NOTGUILTY moves the court to allow prospective jurors to be questioned about
44
45 their understanding of the Beyond a Reasonable Doubt standard. *Fuller v. Texas* 363 S.W.3d 583
46
47 (2012). In *Fuller*, immediately before the voir dire commenced at his trial, the appellant
48

49 Defense Trial Brief

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(206) 941-0009 PHONE
(206)467-3152FAX

1 requested that he be permitted to ask the members of the venire panel whether they understood
2
3 that the standard of proof beyond a reasonable doubt constituted a level of confidence under the
4
5 law that was higher than both the preponderance of the evidence and the clear and convincing
6
7 evidence standards. When the trial court denied his request, the appellant objected that he was
8
9 thereby denied the right to ask a "proper" question during voir dire, depriving him of the ability
10
11 to intelligently exercise challenges for cause and peremptory challenges. This objection was
12
13 expressly overruled. We granted the appellant's petition for discretionary review in order to
14
15 address whether the trial court erred in denying the appellant's request to propound his question
16
17 to the venire members. We hold that it did and will reverse. *Fuller v. Texas* 363 S.W.3d 583
18
19 (2012) The court observed that "[t]he State's burden of proof is an issue applicable to any
20
21 criminal case because the fact finder must apply that standard when determining guilt." From this
22
23 we concluded that Woolridge's question to the venire member whether her understanding of
24
25 proof beyond a reasonable doubt comported with the federal definition "was proper because it
26
27 sought to discover her views on an issue applicable to [Woolridge's] trial, was not repetitious,
28
29 and was not in an improper form." *Id.* The court's holding was in no way contingent upon the
30
31 fact that the law did not provide for a particular definition of proof beyond a reasonable doubt at
32
33 the time of Woolridge's trial. The court explained that "because the fact that no definition will be
34
35 provided for a term does not render a prospective juror's understanding of that term irrelevant.
36
37 To the contrary, that understanding becomes more crucial to the intelligent exercise of either the
38
39 State's or the defendant's peremptory challenges because there is no definition to guide what
40
41 could be a juror's skewed perception of the term." *Id.* The court held that the trial court abused its
42
43 discretion to disallow Woolridge's questions seeking to ascertain the venire member's
44
45
46
47
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1 understanding of proof beyond a reasonable doubt. The court has since reiterated that "[a] trial
2 court abuses its discretion if it refuses to allow the defendant to voir dire venire persons about
3 what they think reasonable doubt means." *Id.*
4
5

6
7 **17. COMPARE AND CONTRAST BURDENS OF PROOF IN**
8 **CLOSING**

Granted
 Denied
 Reserved

9
10
11 Mr. NOTGUILTY moves this Court for an order allowing defense counsel to refer to the
12 differing burdens of proof during closing argument. During closing argument, the defense would
13 like to compare the criminal stand of proof- beyond a reasonable doubt--- to other standards of
14 proof: probable cause. Preponderance, and clear and convincing evidence. This argument is an
15 accurate state of law and assists jurors in understanding the standard of reasonable doubt. It is
16 essential the jury understand the State's burden of proof in a criminal trial. Because of the
17 extraordinary high stakes in criminal trials, it is critical that the moral force of the criminal law
18 not be diluted by a standard of proof that leaves people in doubt whether innocent men are being
19 condemned *Victor v. Nebraska* 511 U.S. 1, 29, 114 S. Ct. 1239. 1254. 127 L. Ed. 2d 583
20 (1994)(Blackmun J. concurring in part and dissenting in part)(internal quotations and citations
21 removed). Reasonable doubt is the bedrock upon which the criminal justice system stands. *State*
22 *v. Bennet*. 161 Wn. 2d 303. 31 5 (2007). Reasonable doubt is difficult to define. *Id.* at 317.
23 Courts and jury instruction drafters have long struggled with the definition of reasonable doubt.
24 See. e.g.. *Victor v. Nebraska*. 511 U.S. 1, 29, 114 S. Ct. 1239. 1254. 127 L. Ed. 2d 583
25 (1994)(Ginsburg. J. concurring and dissenting in part) {noting that the difficulty of defining
26 reasonable doubt has led some court to avoid providing the jury with a definition. Indeed, studies
27 have shown that jurors are often confused about the meaning of reasonable doubt" when the term

1 is undefined. *Id.* (citing Note. Defining Reasonable Doubt. 90 Col u m. L. Rev. 1 716. 1723
2
3 (1990)). Reasonable doubt is not an undefinable concept. Comparing the criminal burden of
4
5 proof to the civil burden of proof is one--- if not the best--- way to define reasonable doubt. The
6
7 Federal Judicial Center's Pattern Criminal Jury Instructions reads:
8

9
10 [T]he Government has the burden of proving the defendant guilty beyond a reasonable
11 doubt. Some of you may have served as jurors in civil cases where you were told that it is
12 only necessary to prove that a fact is more likely true than not true. In criminal cases, the
13 government's proof must be more powerful than that. It must be beyond a reasonable
14 doubt.
15

16
17 **18. MOTION TO PRECLUDE WITNESS OPINIONS AS TO THE** **Granted**
18 **GUILT OF MR. NOTGUILTY:** **Denied**
19 **Reserved**
20

21 Because only the jury can decide whether a crime was committed, no witness should be
22
23 permitted to express an opinion as to the guilt of Mr. NOTGUILTY. Prior to the verdict, an
24
25 impermissible opinion as to Mr. NOTGUILTY's guilt and invades the province of the fact finder. It
26
27 is well settled that no witness, lay or expert, may express an opinion, directly or indirectly, as to a
28
29 criminal defendant's guilt. *State v. Far-Lenzini*, 93 Wn. App.453 (1999); *State v. Jones*, 71 Wn.
30
31 App. 798, 813 (1993); *State v. Black*, 109 Wn.2d 336, 348 (1987). Moreover, "[a]n opinion as to
32
33 the guilt of the defendant is particularly prejudicial and improper where it is expressed by a
34
35 government official, such as sheriff or a police officer." *State v. Sanders*, 66 Wn.App.380, 387
36
37 (1992) (citing *State v. Carline*, 40 Wn. App. 698 (1985)). For similar reasons, it is impermissible for
38
39 counsel, through questions or argument, to assert opinion on guilt or innocence. *State v. Reed*, 102
40
41 Wn.2d 140, 145 (1984).
42
43
44

45 **19. GENERAL MOTION RE: RIGHT TO IMPEACH :** **Granted**
46 **Denied**
47 **Reserved**
48

49 Defense Trial Brief
50

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