

IN THE CIRCUIT COURT IN THE  
EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY,  
FLORIDA

CASE NUMBER: 05-2012-CF-035337-AXXX-XX

Case # 05-2012-CF-035337-AXXX-XX  
Document Page # 425

STATE OF FLORIDA,

Plaintiff,

versus

BRANDON LEE BRADLEY

Defendant,



\*23131297\*

**ORIGINAL**

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BREVARD CO. FL.

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SCOTT ELLIS

VOLUME X OF XV

TRANSCRIPT OF DIGITAL RECORDED JURY TRIAL,  
SPENCER HEARING AND SENTENCING

The transcript of the Digital Recorded Proceedings taken in the above-styled cause, at the Moore Justice Center, 2825 Judge Fran Jamieson Way, Viera, Florida, on the 18th, 19th, 20th, 21st, 26th, 27th, 28th and 31st day of March, the 1st, 3rd, 4th and 8th day of April, 2014 (Trial), the 5th day of June, 2014 (Spencer Hearing), and the 27th day of June, 2014 (Sentencing), before the Honorable Morgan Reinman.

RYAN REPORTING  
REGISTERED PROFESSIONAL REPORTERS

1670 S. FISKE BOULEVARD

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THOMAS BROWN, ESQ.,  
and  
JAMES MCMASTER, ESQ.,  
Assistant State Attorneys  
State Attorney's Office  
2725 Judge Fran Jamieson Way  
Building D.  
Viera, Florida 32940

Appearing for  
Plaintiff

J. RANDALL MOORE, ESQ.,  
MICHAEL PIROLO, ESQ.,  
and  
MARK LANNING, ESQ.,  
Assistant Public Defender  
Public Defender's Office  
2725 Judge Fran Jamieson Way  
Building E  
Viera, Florida 32940

Appearing for  
Defendant

Brandon Lee Bradley, Defendant, present

\* \* \* \* \*

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\* \* \* \* \*

1           Q       Okay. And you indicated, you made reference to  
2 the data that was gained by Dr. Olander in her  
3 face-to-face interview with Mr. Bradley and that was an  
4 opportunity to, among other things, do an objective  
5 assessment through the Paul House and the other testing  
6 components which indicate deception and malingering and  
7 also do a face-to-face and evaluate the way the person  
8 responds, whether the person's attentive to the testing to  
9 see if a person is actually giving his best effort, she  
10 had that data as well.

11           A       So, what is the question?

12           Q       The face-to-face interview and the information  
13 that Dr. Olander gained from that, she -- that's something  
14 you also did not have if you didn't interview Mr. Bradley?

15           A       I wasn't there for her interview of Mr.  
16 Bradley.

17           Q       Or your own?

18           A       Correct, or my own.

19           Q       And you did not see the approximately seven  
20 hours of Mr. Bradley sleeping or being passed out on the  
21 floor before the police came in, police officers came in  
22 and woke him up and put him in the chair?

23           A       Correct, I did not.

24           Q       And if in assessing the effects of the drugs on  
25 Mr. Bradley, is that something that you would not look at

1 if you had it?

2 A No, I believe that information is in my report,  
3 I took into consideration the timeline. If he's just --  
4 if there's nothing active going on on the video, then  
5 there really isn't need for me to watch seven hours of him  
6 sleeping.

7 Q What if he's falling out of a chair, would you  
8 consider that to be active or maybe informative of the  
9 extent to which he may be under the influence of drugs?

10 A To some extent perhaps, but I calculated  
11 timelines. So, that's typically how it's done.

12 Q You really have to see it before you can assess  
13 what it is I would guess before you decide whether it's  
14 significant or not?

15 A See what? See him --

16 Q See Mr. Bradley's behavior, if he is having  
17 trouble with motor control, falling out of a chair, that  
18 sort of thing, is that something that you would have to  
19 see before you could assess what value to place on it?

20 A It depends when it occurs, I'm evaluating  
21 competency to waive Miranda so right at that time.

22 Q Do you consider a face-to-face interview to be  
23 an important component of a mental evaluation?

24 A Yes, I do.

25 Q And would you consider that to be a component

1 of this assessment of Mr. Bradley?

2 A For my purpose it would have been nice to see  
3 Mr. Bradley to interview him but I had the benefit of  
4 having all of Dr. Olander's testing and all of the records  
5 that I could review so.

6 Q Now, with respect to her testing, you had all  
7 the data which included the Paul House Deception scales  
8 and the standard -- advanced clinical solutions?

9 A Correct.

10 Q Which both are instruments to gage malingering  
11 or lack thereof?

12 A The Paul House Deception scale is a response  
13 style instrument that's gaged to give you information  
14 about how someone presents, and then the clinical  
15 solutions, those are other tests but they have validity  
16 scale components to them which speak to someone's level of  
17 effort.

18 Q So, they both -- they basically address more or  
19 less a broad area of whether the person is giving his best  
20 effort and giving an accurate response, a truthful  
21 response or deceptive response?

22 A Level of effort, yes, accurate truthful  
23 responses not typically wit those instruments, that would  
24 be the symptom validity testing that I spoke about.

25 Q Dr. Olander's conclusion was that there was no



1 deception or malingering or lack of effort indicated in  
2 either of those tests?

3 A Yes, that was her conclusion.

4 Q And you didn't indicate in your report that you  
5 disagreed with her?

6 A No, I don't disagree with that, I would not  
7 have submitted a report that didn't have symptom validity  
8 testing when the symptoms are the issue.

9 Q And there were no indication in her notes which  
10 you also had which indicated her concern about his giving  
11 his best effort?

12 A Correct, no indication of concern about that.  
13 I noticed a number of instances throughout her notes where  
14 he was able to complete all of the testing as required but  
15 didn't meet the time limits so that was why he would fall  
16 shorter on the scoring for those instruments.

17 Q And there's also a, for lack of a better word,  
18 a malingering or deception component in the Miranda, the  
19 SAMA?

20 A The SAMA has a component, it's a new instrument  
21 relatively recently published that is the validity scaled  
22 component, there's not, there's not a lot research on  
23 that.

24 Q Okay. But it's a tool which is recognized as  
25 useful in making that assessment on whether the person is

1 giving their best effort?

2 A It's not used to determine whether someone's  
3 giving effort.

4 Q Or being deceitful?

5 A It's looking for inconsistencies in their  
6 statements.

7 Q Same sort of thing, you can look and see if the  
8 test results are valid because the person -- or invalid  
9 because the person is maybe -- because of inconsistencies,  
10 not being honest or not being truthful and not trying?

11 A Yeah, I think of inconsistencies in terms of  
12 just inconsistent responding because they're careless or  
13 not paying attention or randomly responding, that's what  
14 it typically gets at.

15 Q The other -- the Grisso which was an older  
16 version that Dr. Olander used?

17 A Yes.

18 Q And you had no problem with that, her using  
19 that?

20 A No, no problem.

21 Q But you indicated that SIRS is a gold standard?

22 A The SIRS looks at psychiatric symptomatology so  
23 when someone's claiming to have hallucinations or  
24 delusions or being paranoid, whatever those symptoms are,  
25 the SIRS is what looks at the validity of those symptoms.

1 Q Is there a rule or a guideline which says that  
2 SIRS is preferable to the SAMA?

3 A They look at two different things.

4 Q Or Grisso?

5 A So, the SIRS is looking solely at the validity  
6 of someone's symptoms and the SAMA and the Grisso's  
7 instruments are looking at understanding, appreciation and  
8 reasoning abilities within the context of waiving your  
9 Miranda rights.

10 Q Okay. Which were the essential components that  
11 both of you looked at in determining whether he knowingly,  
12 voluntarily and intelligently waived?

13 A Correct, he was unimpaired on all of those  
14 instruments.

15 Q You don't just rely exclusively on those  
16 written tests, you consider the whole -- the global  
17 presentation which would include whether he was under the  
18 influence of controlled substances, whether, as you  
19 pointed out, you know, there was any external pressure  
20 from the police, you don't just stop with the test results  
21 of the Grisso and the SAMA?

22 A Correct, totality of the circumstances.

23 Q Now -- and also the circumstances of the  
24 defendant's life that may come to bear on such issues as  
25 voluntariness, you'd want to have that information as

1 well, would you not?

2 A To some extent although really looking at that  
3 particular point in time that the defendant waived his or  
4 her rights.

5 Q Right, but if the defendant goes into the  
6 interrogation room with all of that -- all those  
7 circumstances with him and they have some -- they  
8 potentially could have some effect, would you want to know  
9 what effect it may have on his -- whether he is  
10 acquiescing, for example, to authority figures.

11 A Yeah, typically when I watch an interrogation  
12 video if something comes up that raises a red flag for  
13 them, then I'll seek out other information. So, if  
14 something came up that would raise a red flag about life  
15 circumstances or whatever, then I might.

16 Q On the issue of voluntariness, if the defendant  
17 in his history indicated a fear of police and had  
18 experienced in his life a number of friends who were  
19 killed or murdered, would that -- and if that came into  
20 play and had an effect on his acquiescence to authority  
21 figures, is that something you would want to know about  
22 and take into consideration?

23 A If that were the situation I might want to  
24 consider that but there didn't appear to be anything in  
25 this situation that raised that in the interrogation

1 video.

2 Q Right, but not in the video itself but it was  
3 information that was derived from the face-to-face  
4 interview that Dr. Olander had with Mr. Bradley?

5 A Dr. Olander mentioned information in her report  
6 about Mr. Bradley witnessing or having several people  
7 close to him die.

8 Q And that the -- his fear of being shot as well?

9 A I don't have any information on fear of being  
10 shot.

11 Q And he mentioned in fact as he was sitting in  
12 the interrogation room he was showing the deputies tattoos  
13 that he had on his body, I guess his arm, of friends who  
14 had been murder victims because he was showing -- when  
15 they're asking him if he knew anybody that had been  
16 killed, do you recall that?

17 A Not specifically.

18 Q Okay. Now, an absence of mental health records  
19 doesn't mean that there's no mental health history?

20 A Correct.

21 Q And for a number of reasons a person could have  
22 health issues life long and not come to the attention of  
23 anybody who would keep a record of it?

24 A Unusual but possible.

25 Q It could have something to do with

1 socioeconomic status, where a person lives, cultural types  
2 of factors, could it not?

3 A It's possible.

4 Q People who don't have a great deal of money or  
5 have to seek out mental health services or if they don't  
6 have education and know of these services they're not  
7 going seek them out either, right?

8 A I don't know that there's any research that  
9 explicitly makes that connection but I heard Dr. Olander  
10 say it.

11 Q You don't disagree?

12 A I don't have an opinion on the issue.

13 Q Okay. And also there would be a reluctance in  
14 some instances even to admit to having mental health  
15 issues in some situations or circumstances, would there?

16 A Of course, some people do, yes.

17 Q And so they, you know, they want people not to  
18 know that they have issues?

19 A Yes.

20 Q And they may think the problems that they have  
21 are normal and there's not a problem at all?

22 A When you're hearing voices I don't know -- I  
23 think I would make take issue with thinking that that's  
24 normal, so. Typically when you have psychotic symptoms,  
25 then it comes to the attention of someone like I know

1 Dr. Olander mentioned in his report, or her report that  
2 teachers would, you know, comment to Mr. Bradley who are  
3 you talking to, who are you listening to, you know, sort  
4 of seeing him have auditory hallucination which is very  
5 unusual, very atypical, and then to not have any mental  
6 health records also very unusual, quite atypical.

7 Q The term auditory hallucinations, you don't  
8 have any reason to believe that that's a term Mr. Bradley  
9 used?

10 A Oh, no, I wouldn't expect that he used that  
11 term.

12 Q And you think it would be unusual for a kid to  
13 be talking to himself and a teacher comment on that and it  
14 not appear on a child's school records?

15 A My understanding was that Mr. Bradley was  
16 claiming that he had auditory hallucinations from the age  
17 of twelve or thirteen. So, it would be very unusual to  
18 not have any mention of that in any sort of record, mental  
19 health, school or otherwise.

20 Q Well, you know, put in more kind of realistic  
21 terms, he wasn't -- as far as you know, he wasn't claiming  
22 that he was -- I, Brandon Bradley, I'm having auditory  
23 hallucinations from the age of twelve? I mean, those  
24 weren't the words coming out of his mouth?

25 A No, I believe the words coming out of his mouth

1 were that he heard voices, saw UFOs, saw his grandfather  
2 speaking to him who had passed. So, those types of  
3 things. Hearing voices would be the auditory  
4 hallucination part of that.

5 The visual hallucinations are even more unusual  
6 than auditory hallucinations so that again would raise a  
7 red flag for me especially with the absence with a lack of  
8 mental health records, it would be quite atypical to have  
9 that severe of symptomatology and not have any record of  
10 it.

11 Q Well, we don't know about number or frequency  
12 or the situations in which these auditory hallucinations  
13 occurred, you don't have that information?

14 A I don't have that information.

15 Q Correct. So, we don't know how frequently --  
16 if they're happening all the time you might expect to find  
17 it in records but if it just happens infrequently then  
18 maybe less so.

19 A It's unusual for it to happen infrequently.

20 Q You -- do you know for a fact the Cobb County  
21 School Board and Brevard County School Boards keep  
22 psychiatric records or mental health records of the  
23 children who go through the school systems in those  
24 respective counties?

25 A I don't know that for a fact if they keep those



1 types of records.

2 Q Or for how long, you don't know that?

3 A I don't know that.

4 Q Okay. And so if the records don't exist, it  
5 could be a function of, if there are any records at all,  
6 of the school just not keeping them?

7 A Well, the school probably wouldn't have the  
8 mental health records, like the school would have records  
9 of their referral to mental health or problems.

10 Q Now, on the appreciation of rights, Dr. Olander  
11 indicated that Mr. Bradley had, under the testing that he  
12 was given, an understanding of rights and however had some  
13 difficulty in applying them, do you recall her saying  
14 that?

15 A I recall her saying that, yes.

16 Q And when you were talking about seeing the DVD  
17 and coming to the conclusion that he had an appreciation  
18 of the significance of giving a confession, what you  
19 pointed to was Mr. Bradley saying I have a concern for my  
20 baby mama, for my girlfriend, and I don't want her getting  
21 in trouble?

22 A Within the context of --

23 Q Of this case?

24 A -- being very specific about the gun and how  
25 the gun was obtained and whose gun it was, so.

1           Q       But he didn't express any concern about his  
2 own -- himself getting in trouble, he didn't express that  
3 same concern with respect to the criminal difficulties  
4 that he may be in?

5           A       No, he didn't express concerns about  
6 incriminating himself, he kind of talked about twenty  
7 years versus thirty years like if he gives this  
8 information, you know, it may add to his time.

9           Q       Would that suggest that if he knew that he had  
10 been there for shooting and killing a law enforcement  
11 officer that maybe he doesn't have a handle on the trouble  
12 that he's in if he's thinking well, thirty years, twenty,  
13 thirty years, does that suggest maybe he doesn't have a  
14 complete appreciation of the criminal problems that he may  
15 be facing?

16          A       No, not at all, just the opposite to me, it  
17 suggests that he has a handle on it. If he thinks that  
18 he's going to be out or he's going to get off or it's  
19 going to be a short period of time, that would raise a red  
20 flag for me, twenty, thirty years.

21          Q       Don't you think if somebody, you know, was  
22 faced with a charge like that he might be thinking death  
23 penalty and then really have a more realistic grasp of the  
24 trouble he's in?

25          A       I don't know, I can't.

1 Q You don't know.

2 And -- I don't know if I asked you this but the  
3 other item, items that you -- one of other items you did  
4 not consider was the toxicology report of Dr. Skolly?

5 A Correct, I did not.

6 Q You did not consider that?

7 A I am not a toxicologist.

8 Q That's -- you know, the fact that there may be  
9 controlled substances in his blood at the time of the  
10 waiver of Miranda would not be something that you would  
11 consider?

12 A Right, I did consider, you saw in my report I'm  
13 sure, that I mentioned I sort of put together the  
14 timelines that he had been taken into custody around noon,  
15 that he was interrogated, waived his Miranda rights around  
16 7:30. So, I assume -- I making the assumption that he  
17 didn't take any substances while he was in police custody.  
18 He had been in police custody for about eight hours before  
19 the waiver of Miranda so any substances that were in his  
20 body were in there for at least eight hours unless somehow  
21 he took substances during that time.

22 He's also a chronic substance user as  
23 documented by all of the paperwork which to me then in  
24 terms of totality of the circumstances chronic drug users  
25 metabolize quicker, it leaves their system quicker, the

1 effects don't last as long or aren't as signature. So,  
2 all of that kind of was taken into consideration in making  
3 my final opinion.

4 Q Well, that's, you know, indicates quite a bit  
5 of knowledge of toxicology I would think that you would  
6 want to have that report to consider it?

7 A I'm not a toxicologist so I don't really  
8 understand necessarily the amounts of times and, you know,  
9 whether bloods were taken at various points in time. I  
10 know about how long substances last, you know, in terms of  
11 the intoxicating effects and that's basically the extent  
12 of my knowledge.

13 Q And in fact, while Mr. Bradley has been in  
14 jail, and you've indicated you would look for  
15 corroboration, you would like to see corroboration of  
16 hallucinations, auditory and visual hallucinations, the  
17 fact is while he's been in jail he has been given  
18 psychotropic medications, doxepin and Risperidone,  
19 correct?

20 A Yeah, offenders are given psychotropic  
21 medication all the time and don't necessarily have the  
22 symptoms. So, my job as a forensic psychologist is to  
23 tease apart what's going on with, you know, other stuff  
24 like --

25 Q You reviewed the Polk County -- the Polk

1 Correctional Institute records?

2 A I did, yes.

3 Q And there was an indication in there of  
4 statements of hallucinations and delusions?

5 A No delusions. September 11th, 2012,  
6 Mr. Bradley claims to have auditory hallucinations, hear  
7 voices, is the first time it's ever come up and he's  
8 automatically given a diagnosis of psychosis not otherwise  
9 specified which means that they don't really have a good  
10 handle, that there's some psychotic symptoms that are  
11 being claimed, there's no indication in the record of  
12 anyone observing him reacting to internal stimuli, and  
13 then he's prescribed medication for those psychotic  
14 symptoms that's he claiming.

15 Q You're familiar with those two medications,  
16 Risperidone and doxepin.

17 A I know that they are antipsychotics and I know  
18 doxepin is an antipsychotic use to treat insomnia which I  
19 know that the records indicate Mr. Bradley had been  
20 suffering from.

21 Q And doxepin is also a treatment for depression  
22 and anxiety, right?

23 A I believe so.

24 Q And Risperidone for treatment of schizophrenia,  
25 hallucinations, would that be voices and images, delusions

1 which would be untrue beliefs, disorganized thinking, that  
2 would also be treatment for which that medication is  
3 prescribed?

4 A Yes, it's an atypical antipsychotic.

5 Q That's prescribed for those symptoms, correct?

6 A Correct.

7 Q And he was on those?

8 A Well, he was prescribed those medications, yes.

9 Q And that was prescribed by a medical doctor?

10 A Yes.

11 Q A psychiatrist?

12 A I'm not sure.

13 Q Not sure?

14 A MD of some sort.

15 Q Somebody who is qualified to make a diagnosis  
16 and prescribe medication?

17 A Yes.

18 Q Who had contact with Mr. Bradley, presumably?

19 A Hopefully more than minimal which is typical in  
20 the jail.

21 Q But you don't know?

22 A I don't know.

23 Q You didn't confer with the doctor who  
24 prescribed this?

25 A I did not.

1 Q you don't know how long he spent or what  
2 informed his decision to prescribe these medications?

3 A Correct, I do not.

4 MR. MOORE: No further questions.

5 THE COURT: Okay. Redirect on behalf of the  
6 State.

7 REDIRECT EXAMINATION

8 BY MR. BROWN:

9 Q Doctor, during your career have you had an  
10 opportunity to review school records?

11 A Yes, I have.

12 MR. MOORE: What records?

13 MR. BROWN: School. School records.

14 BY MR. BROWN:

15 Q And the school records that you reviewed, do  
16 they typically contain comments and/or referrals when  
17 there's been claims of any psychotic episodes?

18 A Yeah, the records typically don't contain PHI,  
19 I personal health information, there's a log that kind of  
20 keeps that separate. So, typically you wouldn't see those  
21 records in there but you would definitely see referrals  
22 and notes by the school board teachers, whatever,  
23 indicating that the child has, you know, some sort of  
24 problem, is being referred to a psychologist,  
25 psychiatrist. So, you typically see those type of

1 referral notes. And typically when a court order is made  
2 for requesting school records they'll indicate, you know,  
3 please also include any other psychological assessments or  
4 records that are included and then when that happens  
5 typically those psychological records that are kept  
6 separate are also sent.

7 Q And in this particular case did you review all  
8 the records from Florida as well as Georgia school  
9 records?

10 A Yeah, Brevard County and Cobb County, Cobb  
11 County, Georgia and Brevard County, Florida school  
12 records.

13 Q And did you see anything in there, any  
14 indication, any comments, any referrals whatsoever?

15 A No.

16 Q For any psychotic history?

17 A No indication at all.

18 Q Now, concerning the defendant's prescription at  
19 the jail, that occurred after he made these the first time  
20 claim of the hallucinations?

21 A Yes, he first made a claim of auditory  
22 hallucinations on September 11th, 2012, and then in  
23 December he's prescribed those two antipsychotic  
24 medications.

25 Q So, that's December of 2012?



1           A        Correct. My understand is that he refused  
2 medication in September when he first started claiming  
3 auditory hallucinations.

4           Q        Now, concerning your review in this case, you  
5 did review the DVD of the defendant's interview?

6           A        I did.

7           Q        And that's listed on your report on page 2 that  
8 you have reviewed it?

9           A        Yes.

10          Q        And is that one of the key things that you --  
11 in this case that you've looked at to determine the  
12 defendant's voluntariness of his waiver of Miranda?

13          A        Yeah. Typically when you conduct an interview  
14 of a defendant for purposes of, you know, their competence  
15 to waive Miranda, you're conducting the interview right  
16 now and looking at their competency at some earlier point  
17 in time when they waive Miranda. In this circumstance  
18 there's actually an interrogation DVD. So, instead of  
19 using the interview for a proxy of what was going on at  
20 the time, you actually get to see what was going on at the  
21 time. So, I paid close attention to that and outlined it  
22 in my report. So, if that was missed somewhere, I  
23 apologize.

24          Q        And among the facts that you talked about early  
25 on direct examination looking at that interview on his

1 ability to recall times, lengths of time from the motel to  
2 the shooting, his discussion of the gun, where the gun  
3 came from and all sorts of things, does that all come into  
4 play in your decision on whether he's knowingly and  
5 voluntarily waiving his Miranda rights?

6 A Yeah, every statement that he makes I'm trying  
7 to tie it back to understanding, appreciation which is the  
8 application of understanding factual information to his  
9 own circumstance and then reasoning or rational ability,  
10 if he's weighing information, if he's using any  
11 information that's not based in reality, that's delusional  
12 or incorrect. So, I'm trying to look at all of that to  
13 make a determination of whether he has an understanding,  
14 whether he has an appreciation, whether he is able to make  
15 decisions and weigh information in a rational manner.

16 Q And did you see anything on that video that  
17 would indicate to you that due to drug intoxication he was  
18 unable to make those types of decisions?

19 A No. At the beginning of the video he's placed  
20 in his chair, he's just being woken up. So, he's groggy  
21 and, you know, there's -- he's kind of not stumbling  
22 because he's sitting but he's kind of, you know, groggy,  
23 he's coming to, but when I look at the words, when I look  
24 at his words and when I pay close attention to the content  
25 of what he's saying and then tie it to abilities in terms

1 of understanding or appreciation or rational decision  
2 making or higher order reasoning, I don't have any  
3 concerns about impairment in any of those abilities at  
4 all, no.

5 Q And is your opinion to a reasonable degree of  
6 medical certainty?

7 A It is.

8 MR. BROWN: Nothing further, Your Honor.

9 THE COURT: Recross by the Defense.

10 RECCROSS EXAMINATION

11 BY MR. MOORE:

12 Q Dr. Zapf, I believe you indicated although you  
13 didn't see anything in his school records from Brevard  
14 County or Cobb County, you do not know what their record  
15 retention policy is either county?

16 A I don't know what their record retention policy  
17 is.

18 Q You don't know what they keep or how long,  
19 whether they just keep academic records or for what period  
20 of time?

21 A Well, typically seven years is the like legal  
22 requirement for keeping records so I would estimate that,  
23 but I do not know. I didn't look at the policies for Cobb  
24 County, Georgia or Brevard County.

25 Q Seven years for academic records?

1 A Seven years for most records.

2 Q But you don't know what their requirements are?

3 A No, I don't.

4 Q Or practices are?

5 A I don't.

6 Q All right. And you split your time between  
7 Tampa and New York?

8 A Yes.

9 Q And where is the bulk of your practice, is it  
10 in New York?

11 A Practice in terms of?

12 Q Clinical practice. You teach there, right?

13 A I teach in New York, yeah, and then I travel  
14 all around the country and other countries to train mental  
15 health professionals and legal scholars. So, in terms of  
16 practice if you're talking about like evaluation practice  
17 and testifying, I'm licensed in three states and I work  
18 all across the country.

19 MR. MOORE: No further questions.

20 THE COURT: Okay. Ma'am, thank you for your  
21 testimony, you're free to step down.

22 THE WITNESS: Thank you.

23 (Thereupon, the witness exited the witness  
24 stand.)

25 THE COURT: Okay. Other witnesses on behalf of

1 the State.

2 MR. MCMASTER: No additional witnesses. We do  
3 have a matter to approach the Court on.

4 THE COURT: Okay. We'll have a bench  
5 conference.

6 (Thereupon, a benchside conference was had out  
7 of the hearing of the jury as follows:)

8 MR. MCMASTER: Judge, it's the State's  
9 intention at this time to enter three certified  
10 copies of the judgments of conviction for Mr. Bradley  
11 for the offenses of burglary of a conveyance, grand  
12 theft, possession of cocaine and robbery. It's based  
13 on the introduction of testimony through the Defense  
14 witnesses, exculpatory information that they obtained  
15 from the defendant, Mr. Bradley, directly and present  
16 it to the jury.

17 MR. MOORE: What statements were those  
18 specifically?

19 MR. MCMASTER: In particular there was the  
20 information about his drug use that the doctors who  
21 testified for the Defense got directly from  
22 Mr. Bradley who's not testified in this matter and  
23 his credibility is subject to attack just like any  
24 other witness and I believe that this would be the  
25 appropriate method for doing it.

1 MR. MOORE: We -- I would agree that under  
2 90.608 that once a statement's introduced it can be  
3 used but I would contest the authentication of those  
4 convictions. If the State, you know, if State can  
5 establish that they are in fact Mr. Bradley's, then  
6 they would be able to impeach him with those.

7 MR. MCMASTER: Judge, we already have in  
8 evidence copies of the warrants that were issued for  
9 the violation of probation he was on in each of those  
10 three cases with the case number on each of the  
11 warrants that will match the three certified copies  
12 that we have of the convictions with the name of  
13 Brandon Lee Bradley.

14 In addition, we have the dates of birth and  
15 driver's license number I believe, Social Security  
16 number also, and a copy of his David photograph with  
17 his photograph with that date of birth and Social  
18 Security number and his face on it. So, all of them  
19 match up together.

20 THE COURT: Mr. Moore, do you want to take a  
21 chance -- you want to take an opportunity to look at  
22 those?

23 MR. MOORE: I do.

24 THE COURT: You want me to move this so you set  
25 it up here?

1 MR. MOORE: I'm move over.

2 THE COURT: That will be fine.

3 (Thereupon, a pause was taken in the  
4 proceedings.)

5 MR. MOORE: Judge, I would object to the entire  
6 package on each. I would object to all the sheets go  
7 in because they reflect various violations of  
8 probation and other conditions of probation which --  
9 I mean, it goes beyond what the State is authorized  
10 to prove. I would suggest that the first page of  
11 each -- I can't object to the first page of each of  
12 those three convictions, the cases go into evidence  
13 because it shows an adjudication, shows what the  
14 charges are and that's all the State's allowed to  
15 introduce and that's all they should be -- the jury  
16 should be able to consider.

17 THE COURT: Mr. McMaster, any objection to just  
18 the first pages?

19 MR. MCMASTER: I would ask that the fingerprint  
20 cards also go, Judge. And with respect to the first  
21 conviction, the with the burglary of conveyance and  
22 grand theft, the original conviction and judgment  
23 shows a withholding of adjudication which would not  
24 be proper impeachment. He was adjudicated on the  
25 VOP, there's a second judgment from March 2nd of

1           2009. So, I would request that both of those be  
2 submitted on that particular one.

3           MR. MOORE: All three, unless I missed it, all  
4 three of them show an adjudication and the charges  
5 and what the degree of felonies are.

6           MR. LANNING: Wait a minute.

7           MR. MOORE: You say it.

8           MR. MCMASTER: We want the burglary of a  
9 conveyance and grand theft doesn't show a withhold.

10          MR. LANNING: Judge, I believe it goes beyond  
11 what the rule -- or what the law authorizes and that  
12 the Court should -- that the State could fashion an  
13 instruction that says Brandon Bradley has been  
14 convicted of X numbers of felonies or crimes of  
15 dishonesty or false statement but they're wanting to  
16 go further with identifying specific crimes without  
17 establishing any predicate to do that.

18          THE COURT: Okay. I've read this case before.  
19 We've had this argument before. I may even have it  
20 with me, I have to look, but my understanding the  
21 certified copies of convictions can come in and that  
22 there's specific cases that allow the certified copy  
23 of convictions to come in. If you want me to look to  
24 have them present those, I'll do that.

25          MR. MOORE: That condition is met with the



1 first page showing an adjudication. In the packet  
2 which says a withhold in the front there's a --

3 THE COURT: He's asking for the fingerprints.

4 MR. MOORE: There's no need for that. At this  
5 point, you know, if the State --

6 THE COURT: What more would the fingerprints  
7 show?

8 MR. MCMASTER: The fingerprint cards have date  
9 of birth and stuff on them.

10 THE COURT: I mean, if they're not disputing  
11 that it's him. I mean, this would be appear to  
12 satisfy what you're trying show.

13 MR. MCMASTER: That's fine, as long as it shows  
14 an adjudication.

15 THE COURT: That's shows adjudication, that  
16 shows the crime, that shows the degree. There's that  
17 one. Let's put this on top of it. And then we'll  
18 look at this one.

19 MR. MCMASTER: Put that separate so we don't  
20 get them mixed up.

21 THE COURT: Okay. That shows the crime, that  
22 shows the adjudication. So, that would satisfy that.

23 And then let me look at this one. This is a  
24 little different format. This is the old format.

25 MR. MOORE: Adjudicated.

1 THE COURT: It says be withheld. Count III  
2 he's adjudicated of the misdemeanor. So, you want  
3 another page that shows?

4 MR. MCMASTER: Go down to the judgment entered  
5 March 2nd.

6 THE COURT: I have to --

7 MR. MCMASTER: That's all you have to do for  
8 that one, Judge. You don't even need to do that.

9 THE COURT: Go to March 2nd?

10 MR. MCMASTER: I think that one's an amended  
11 one, there should be an old one in there. They give  
12 us everything when we ask for the judgments nowadays.  
13 I think you might have just went a little too far.

14 THE COURT: This one? I think you need both  
15 pages. That's the judge's signature and March 2nd.

16 MR. MCMASTER: Two counts, burglary and grand  
17 theft.

18 THE COURT: You want to look at that?

19 MR. MCMASTER: Yes, please.

20 THE COURT: Okay. They're going to do that and  
21 they're going to rest and then I'm going to tell both  
22 the -- I'm going to tell the jury that the State and  
23 the Defense have now rested and that there's some  
24 matters that we need to address outside their  
25 presents and then we'll release them for today and

1           then we'll discuss jury instructions.

2           MR. MOORE:   Okay.

3           THE COURT:   Okay.   Thank you.

4           (Thereupon, the benchside conference was  
5 concluded and the proceedings were had as follows:)

6           THE COURT:   Okay.   Mr. McMaster.

7           MR. MCMASTER:  Your Honor, at this point the  
8 State would move into evidence what has been marked  
9 for identification as State's GK, GL and GM,  
10 certified copies of four felony convictions for the  
11 defendant, Brandon Lee Bradley.

12          THE COURT:   Okay.   Response from the Defense?

13          MR. MOORE:   Objections as previously stated.

14          THE COURT:   The objections have been addressed  
15 by the Court, they have been overruled based on the  
16 Court's ruling during bench conference.  GK will be  
17 State's Exhibit 181, GL will be State's Exhibit 182  
18 and GM will be State's Exhibit 183.

19          (Thereupon, State's Exhibit Numbers 181, 182  
20 and 183 were marked and received in evidence.)

21          MR. MCMASTER:  Request permission to publish to  
22 the jury.

23          THE COURT:   Yes, you may.

24          (Thereupon, State's Exhibit Numbers 181, 182  
25 and 183 were published to the jury.)

1 MR. MCMASTER: Judge, while they're looking at  
2 that, may we approach?

3 THE COURT: Yes, you may.

4 (Thereupon, a benchside conference was had out  
5 of the hearing of the jury as follows:)

6 MR. MCMASTER: Judge, I wanted to  
7 (unintelligible). I think the Defense is entitled to  
8 an instruction at this time about certain crimes  
9 (unintelligible) as part of the preliminary  
10 instructions. It's instructions 2.5. I know they  
11 didn't request it but (unintelligible).

12 THE COURT: Okay. Do you all have an  
13 opportunity to look at it? Can you look at his?

14 MR. MCMASTER: It's right here.

15 (Thereupon, a pause was taken in the  
16 proceedings.)

17 MR. MOORE: We're not asking for it.

18 THE COURT: You're not asking for it. Okay.  
19 Okay. Thank you.

20 (Thereupon, the benchside conference was  
21 concluded and the proceedings were had as follows:)

22 MR. MCMASTER: State rests, Your Honor.

23 THE COURT: Okay. Ladies and gentlemen of the  
24 jury, both the State and the Defense has now rested  
25 their case. There are some matters that we need to

1 address your presence and so we're going to go allow  
2 you to recess for the rest of the day so we can  
3 address those matters. We should expect to go into  
4 closing and then I'll give you the jury instructions  
5 and commence deliberations tomorrow.

6 During this recess until tomorrow, you're going  
7 to recess until 8:30 in the morning, have you been  
8 back here at 8:30 a.m. Report to the jury assembly  
9 room. During this recess you must continue to abide  
10 by the rules governing your service as a juror. Do  
11 not discuss this case among yourselves or with anyone  
12 else. Avoid reading newspaper headlines and/or  
13 articles. Avoid seeing or hearing television, radio  
14 or Internet comments about the trial, and do not  
15 conduct any independent research. For the jury court  
16 will be in recess.

17 (Thereupon, the jury was escorted out of the  
18 courtroom by the court deputy and the proceedings were had  
19 as follows:)

20 THE COURT: Please be seated. I think the  
21 Defense was asking for a copy of this case. They  
22 gave me that and they wanted a copy. So, if you  
23 could make them that copy so they can have that back.  
24 They can have the original, you can give me a copy if  
25 you like.

1           Okay. There are any motions to be heard on  
2 behalf of the Defense?

3           MR. MOORE: We would renew our previously made  
4 motions for directed verdict judgment of acquittal as  
5 to Count I, first degree premeditated murder,  
6 (unintelligible) -- can we have a moment?

7           THE COURT: Yes, you may.

8           (Thereupon, a pause was taken in the  
9 proceedings.)

10          MR. MOORE: Your Honor, we would renew our  
11 previously made motions for judgment of acquittal  
12 directed verdict on all counts on the same grounds as  
13 previously made.

14          THE COURT: Okay. Response from the State.

15          MR. MCMASTER: Same argument as before, Judge,  
16 we've submitted plenty of evidence to go to the jury.

17          THE COURT: Okay. The defendant's motion for  
18 judgment of acquittal is overruled.

19          Okay. We ready to start reviewing the jury  
20 instructions?

21          MR. MOORE: We're going through them now,  
22 Judge. May I have a moment?

23          THE COURT: If the State could give me a copy.  
24 Mr. Lanning?

25          MR. LANNING: May I approach with Mr. McMaster

1 on a hot topic?

2 THE COURT: Yes.

3 (Thereupon, a benchside conference was had out  
4 of the hearing of the audience as follows:)

5 MR. LANNING: We've got Sheila Grahm Trot  
6 scheduled for a calender call tomorrow and I'm not  
7 available.

8 THE COURT: He's not available.

9 MR. LANNING: He's not available. And  
10 Mr. McCarthy is going to cover it. What we were  
11 going to request was that if this could be reset for  
12 a few weeks out.

13 THE COURT: Can he do it with -- Mr. McCarthy  
14 cover it with Judge Johnston? He's going to be there  
15 in the morning.

16 MR. MCMASTER: Samantha Barret's covering it  
17 from my office and she's been (unintelligible)  
18 survivors.

19 MR. LANNING: We're simply not a posture of  
20 being ready.

21 THE COURT: Oh, I think they'll understand.  
22 They're not even going to have enough to try it so.  
23 And I think that --

24 MR. MCMASTER: I doubt seriously Ms. Barret's  
25 going to be announcing ready, I'm the lead counsel on

1           it and she knows I've been tied up. I'm asking it to  
2           be put off, I just don't know what Ms. Barret's going  
3           to represent to the Court tomorrow about the  
4           survivors position. I know that the survivors have  
5           been contact with the office about trying to move the  
6           case forward. The Court may recall, they have their  
7           own attorney, Mr. Eisenmenger, at one of the earlier  
8           things. I'm not prepared at this point to stipulate  
9           to anything but.

10           THE COURT: Yeah, I can't really -- Judge  
11           Johnston was going to address that tomorrow.

12           MR. LANNING: Yeah, I just hate seeing  
13           Mr. McCarthy possibly walk into a hornets nest that  
14           he has no idea. I need to give him a call.

15           MR. MCMASTER: He can blame it all on you.

16           THE COURT: I mean, I can't tell you what's  
17           going to happen, I haven't heard the arguments. You  
18           know, with all due respect I can't really rule on  
19           that because the victim has a right -- I mean the  
20           victim's family has a right to be present if they  
21           want during the calender call so.

22           MR. LANNING: I understand.

23           THE COURT: So, I can tell you that he's only  
24           going to be available -- I think that will be longer  
25           than a week and he's only going to be available for a



1 week. So, if it got set it has to be set after I  
2 came back even if it got set.

3 MR. LANNING: I mean, I'm still in the posture  
4 of needing to do a few depos. I'd like to give him a  
5 call.

6 (Thereupon, the benchside conference was  
7 concluded and the proceedings were had as follows:)

8 THE COURT: Okay. Are the ones these right  
9 here we're working on? Can I start? The Defense  
10 okay if I start?

11 MR. MCMASTER: Give me just a second, Judge, so  
12 I can print out the revisions.

13 THE COURT: Okay.

14 (Thereupon, a pause was taken in the  
15 proceedings.)

16 THE COURT: Since I had the clerk read the  
17 witness list, do you think I can have the clerk read  
18 the jury instructions?

19 MR. MCMASTER: I just saw a case on that,  
20 Judge, where it was reversed.

21 THE COURT: Ahh. Better take my Wheaties  
22 tonight. This is a long packet -- this is a big  
23 packet of jury instructions. We will be ready.  
24 Thank you. Some other judge had that same idea.

25 (Thereupon, a pause was taken in the

1 proceedings.)

2 THE COURT: The headings on these aren't bolded  
3 and the headings on the other ones are bolded. So,  
4 when we get to those you may have to change that.

5 MR. MCMASTER: We're going through those,  
6 Judge.

7 THE COURT: Okay. We'll go through those.

8 MR. BROWN: Judge, the instruction that  
9 (unintelligible). This I typed up at home so we'll  
10 retype it tomorrow or at least try to do it here but  
11 it's going to take us a few minutes.

12 THE COURT: Okay. We'll try to do it here. If  
13 we could get -- do you want me -- the one you have --  
14 I thought the State had the standard instructions on  
15 their computer.

16 MR. BROWN: Well, the voluntary intoxication  
17 one is a standard. This one would be  
18 (unintelligible), it's not a statement but we're  
19 going to be asking it be included in the packet.

20 THE COURT: Okay. I have to copy these before  
21 I can -- I have to make copies of this and give them  
22 to the jury. So, I like to get them so that I can  
23 have those copies made.

24 MR. BROWN: Judge, we'll do it before we leave.

25 THE COURT: Yeah, if we can. If not if I get

1           them in the first thing in the morning I can have my  
2           JA come in and put it where it goes and grab it and  
3           do it while you're doing closing statements, I would  
4           have that opportunity.

5           MR. BROWN: We can do it tonight.

6           THE COURT: We'll talk about where it goes,  
7           yeah. Just don't forget that the top thing all  
8           capped and bolded.

9           MR. MCMASTER: For the titles.

10          THE COURT: For the titles. I mean, they've  
11          got to all be consistent. And then tell me where you  
12          want that so I can save a space for it.

13          MR. MCMASTER: We've got several of them we  
14          need to place but let's go through the packet that we  
15          have and see if there are any objections. I know  
16          that there are going to be some corrections on the  
17          packet on the previous revisions that Mr. Brown and I  
18          did.

19          THE COURT: Are we ready? I'm going to go  
20          through them one at a time.

21          MR. MCMASTER: State's ready.

22          MR. MOORE: I'm about halfway through these so  
23          we didn't get to this point. I think we can go  
24          ahead.

25          THE COURT: Okay. The first one is closing

1 argument, I don't include that in the packet but I  
2 always give that instruction.

3 MR. MOORE: Right.

4 THE COURT: Okay. The second one is  
5 instruction to final instructions. I always give  
6 that instruction as well, I don't include that in the  
7 packet.

8 MR. MOORE: Okay.

9 MR. MCMASTER: Did you say you do or you don't,  
10 Judge?

11 THE COURT: I always give that and I don't  
12 include it in the packet.

13 Okay. The packet starts with -- I want them to  
14 think I am thanking them without having to read that  
15 I'm thanking them. The statement of charge, we start  
16 with that. Any objection -- since these are proposed  
17 objections by the State, I normally ask the Defense  
18 if they have any objection. Any objection by the  
19 Defense to the instruction entitled statement of  
20 charge?

21 MR. MOORE: No, no objection.

22 THE COURT: Introduction to homicide, that's  
23 the next instruction, any objection by the Defense?

24 MR. MOORE: No.

25 THE COURT: Justifiable homicide, any objection

1 by the Defense?

2 MR. PIROLO: Judge, we would have to correct  
3 the last portion of that any dwelling house in which  
4 the defendant was at the time of the killing. We  
5 would have to put vehicle.

6 MR. MCMASTER: You want to stop after attempted  
7 murder upon the defendant?

8 MR. PIROLO: Commit a felony in a vehicle that  
9 the defendant was at the time of the killing.

10 THE COURT: You say vehicle and then it says  
11 was at.

12 MR. PIROLO: Which the defendant was in at the  
13 time.

14 THE COURT: What's the State's response to  
15 that?

16 MR. MCMASTER: Judge, I think the standard  
17 instruction that the Court normally gives in pretty  
18 much in all murder cases and it would appear we can  
19 take out dwelling house and substitute vehicle.

20 MR. MOORE: What are we talking about?

21 MR. MCMASTER: Justifiable homicide.

22 THE COURT: Say that --

23 MR. MCMASTER: The last sentence after the  
24 sentence felony in any vehicle in which the defendant  
25 was at the time of the killing.

1 THE COURT: So, what -- are you saying that you  
2 agree with that or you disagree with that?

3 MR. MCMASTER: The standard instruction just  
4 says dwelling house, it doesn't occur in a vehicle  
5 but I think under the facts of our case it would be  
6 appropriate to substitute dwelling house for vehicle  
7 under the current law of self-defense.

8 THE COURT: Okay. I'll take out dwelling  
9 house, we'll substitute it for vehicle and  
10 grammatically, to be grammatically correct in which  
11 the defendant do we say was in at the time of the  
12 killing?

13 MR. MCMASTER: I think just the way it is.

14 THE COURT: Was at --

15 MR. MCMASTER: In which the defendant was at  
16 the time of the killing.

17 THE COURT: Okay. I'm okay with that. Do you  
18 want to make these changes as we go or are you going  
19 to make them at the end or make them tonight?

20 MR. MCMASTER: I'll make them tonight, Judge.

21 THE COURT: Okay. We can do that as well.

22 MR. MCMASTER: I don't want to keep everybody  
23 waiting here.

24 THE COURT: Okay. Excusable homicide, any  
25 objection to that by the Defense?

1 MR. MOORE: No objection.

2 THE COURT: Okay. Murder first degree, any  
3 objection to that instruction by the Defense?

4 MR. MOORE: No.

5 THE COURT: Felony murder first degree, any  
6 objection to that by the Defense?

7 MR. MCMASTER: Only thing I can see different  
8 from some of the other ones are the names capitalized  
9 in all caps and some of the other ones are not. I  
10 don't know how consistent the Court wants to be.

11 MR. MOORE: We also would ask that the  
12 instruction (unintelligible) A or B factually it was  
13 during the escape or fleeing, escaping from the  
14 immediate scene of a robbery.

15 THE COURT: Okay. I see Barbara Pill's named  
16 capitalized twice and no other names are capitalized.  
17 So, if we can uncapitalize that.

18 Now, you're saying you only want 2(c)? Is that  
19 correct, Mr. Moore?

20 MR. MOORE: Yes, that's what I'm saying.

21 THE COURT: Any objection to A and B coming  
22 out?

23 MR. MCMASTER: That's fine, Judge.

24 THE COURT: So, it won't be -- we take out A, B  
25 and C.

1 MR. MCMASTER: Just the letter C.

2 THE COURT: The letter C so it will just have  
3 the C language.

4 MR. MCMASTER: I would just suggest we delete  
5 or an accomplice.

6 THE COURT: Do you want -- does the Defense  
7 agree?

8 MR. MOORE: Right.

9 THE COURT: And then you'll take out that  
10 comma. Or an accomplice, comma. So, it will just  
11 read the death occurred as a consequence of and while  
12 Brandon Lee Bradley was escaping from the immediate  
13 scene of a robbery. It says a robbery. I don't know  
14 why a is capitalized like it is.

15 MR. MCMASTER: I wrote it on handwritten on the  
16 other one to put small caps.

17 THE COURT: So, make that a little A so it just  
18 says robbery.

19 MR. MCMASTER: you want the robbery in small  
20 also?

21 THE COURT: Does the Defense object to robbery  
22 being all caps or do you want robbery small?

23 MR. MOORE: It doesn't need to be capitalized.

24 THE COURT: So, just make it not capitalized.  
25 Okay. Then we're done with that. We'll move to



1 robbery. I see names all caps. If we can make the  
2 names not all caps just to make it consistent with  
3 everything else. Any -- does the defense have any  
4 other objections, any additional objections?

5 MR. MOORE: No, no objection.

6 THE COURT: Okay. Then fleeing to elude a law  
7 enforcement officer siren and lights activated with  
8 high speed or reckless driving. I see down below  
9 under operator.

10 MR. MCMASTER: I would suggest we removing the  
11 section or at least exercising control over or  
12 steering a vehicle being towed by a motor vehicle.

13 THE COURT: Any objection to that?

14 MR. MOORE: No objection.

15 THE COURT: So, it will be a period before that  
16 and that will be deleted. Any other objections by  
17 the Defense?

18 MR. MOORE: No.

19 THE COURT: Okay. Then we're on resisting an  
20 officer with violence. I see names capped. So, if  
21 you'll just make those not capitalized. It's a shame  
22 we started one way because I think they're more the  
23 other way, either all capped or not capped.

24 I see Brevard County sheriff's office deputies  
25 too, take those out too. Make them all caps. Any

1 objections -- other objections by the --

2 MR. MOORE: No.

3 THE COURT: Okay. Okay. When they are lesser  
4 included crimes or attempts, what does the Defense  
5 say to this?

6 MR. MOORE: Third degree felony murder and  
7 third degree murder reflect that's what it is.

8 THE COURT: Third degree felony murder?

9 MR. MOORE: Yes.

10 THE COURT: Does the State agree?

11 MR. MCMASTER: That's fine.

12 THE COURT: So, the word felony has to be  
13 added. Anything else with regard to this instruction  
14 by the Defense?

15 MR. MOORE: No.

16 THE COURT: Okay. Murder second degree I see a  
17 couple things. Barbara Pill, that has to be not  
18 capitalized. Under number two there's no period at  
19 the end of the sentence. Did you get that  
20 Mr. McMaster?

21 MR. MCMASTER: I did.

22 THE COURT: Okay. Anything else by the  
23 Defense?

24 MR. MOORE: No, that's all right.

25 THE COURT: Okay. On felony murder third

1 degree we've got to take out 7.6.

2 MR. MCMASTER: And the statute.

3 THE COURT: And the statute number.

4 MR. MCMASTER: And we have Barbara pill  
5 capitalized and the font on Brandon Lee Bradley is  
6 smaller than the rest of them, I'll see if I can fix  
7 that. Grand theft needs to be --

8 THE COURT: Oh, I see that. Oh my gosh, the  
9 font is different definitely. Okay.

10 MR. MCMASTER: At the very bottom I have to  
11 delete the instructions about define the crime  
12 alleged, define attempt.

13 THE COURT: So, the one and the two are out?

14 MR. MCMASTER: Should we delete B.

15 THE COURT: Delete B?

16 MR. MCMASTER: I don't think there's any  
17 evidence that there was an attempted theft.

18 MR. BROWN: Grand theft, the definition  
19 includes the attempt so we really don't need to have  
20 B in. It's just attempting a theft is theft, it's  
21 one of those statutes that (unintelligible).

22 THE COURT: Does the Defense agree with taking  
23 out B and making C B.

24 MR. MOORE: Yeah, that's -- we agree.

25 THE COURT: So, we'll take out B and C will

1           become B.

2           MR. MCMASTER: Judge, although the instruction  
3           itself says the crime alleged which is grand theft,  
4           grand theft is in fact one of the lesser instructions  
5           that's given. So, we would suggest we don't repeat  
6           it twice.

7           THE COURT: Okay. Does the Defense agree we  
8           can stop it after it's not necessary for the State to  
9           prove the killing was premeditated with a design to  
10          effect death, stop it after that?

11          MR. MOORE: We agree.

12          THE COURT: Okay. All right. Then I'm going  
13          to move on to manslaughter. I see where Barbara Pill  
14          that's all capped. So, make that regular.

15          MR. MCMASTER: I can do that, Judge. And there  
16          should be after 2(a) and 2(b) should be a comma or.

17          THE COURT: Oh, a comma or and then comma or.

18          MR. MCMASTER: Three different ways of being  
19          able to establish the second element.

20          THE COURT: Okay.

21          MR. BROWN: Judge, the next thing is you have  
22          paragraphs that the killing of a human being is  
23          justifiable homicide and the next one is excusable,  
24          they put this in the standard for manslaughter though  
25          manslaughter's always a lesser for first degree and

1 we've already been through that. So, I would suggest  
2 taking that out because they already have that all in  
3 the introduction to homicide that includes  
4 manslaughter.

5 THE COURT: Any objection by the Defense?

6 MR. MOORE: I think we should leave it in if we  
7 can. You know, jury's have trouble with an  
8 instruction as part of this and then  
9 (unintelligible).

10 MR. BROWN: My only concern is it's not in any  
11 of the others so. I've always made this motion on  
12 this basis. Typically manslaughter you're not going  
13 to do introduction to homicide, you do first or  
14 second. So, I think that's why they stick it in here  
15 but to have it in just this one and not in the second  
16 and not in the third I think cause confusion where  
17 it's in the overall general instruction that includes  
18 manslaughter if the Court goes back to the  
19 introduction of homicide.

20 THE COURT: I think it should be consistent.  
21 It's more consistent if we take it out.

22 MR. BROWN: Right, I agree.

23 MR. MOORE: No objection.

24 THE COURT: Okay. We'll take it out and so it  
25 will go from that the violation is negligence to in

1 order to convict.

2 MR. BROWN: Right.

3 THE COURT: Okay. Okay. I see a couple on the  
4 second page, Barbara Pill and then the Brevard County  
5 Sheriff's Office, those need not be capitalized.  
6 Anything else in this instruction?

7 MR. MOORE: No.

8 THE COURT: Okay. Okay. I think theft we need  
9 to work on. I see capitalize of names so we'll take  
10 those out.

11 MR. MCMASTER: And also the parenthesis around  
12 the obtained or used or endeavored to obtain or use  
13 and the parenthesis on the values.

14 THE COURT: Right, I see that under A, B, C and  
15 D. I see some capitalized in then next under  
16 tangible or intangible.

17 MR. MCMASTER: Yes, need to remove the  
18 parenthesis on those.

19 THE COURT: Do you need to say -- does it  
20 need -- see how it has the semicolon or colon, it  
21 says property means anything of value and includes.  
22 Can't you just make that all one sentence?

23 MR. BROWN: I think we can just do property of  
24 value. We really don't have any (unintelligible).  
25

1 THE COURT: You mean you can just say property  
2 means anything of value, period. Is the Defense okay  
3 with that? Because the rest of it is really not  
4 applicable.

5 MR. MOORE: No problem with that.

6 THE COURT: So, we'll stop of it after value.

7 MR. BROWN: Judge, back on the first page.

8 THE COURT: Yes. Seems like you've got a lot  
9 you could take out here.

10 MR. BROWN: That's why I wanted to go back.  
11 What we've charged is Three Hundred Dollars or more  
12 and -- judge, I think we can just have it whether the  
13 value of the property taken was Three Hundred Dollars  
14 or more.

15 THE COURT: Is Defense okay with that?

16 MR. MOORE: That's fine.

17 THE COURT: Okay. So, take out all the rest.

18 MR. BROWN: And just make that a -- take out  
19 the semicolon. And then for obtains or uses, we'll  
20 just make that -- eliminate B, C and D, just go with  
21 A and make that one sentence.

22 THE COURT: Okay. Any objection by the  
23 Defense?

24 MR. MOORE: No objection.

25 THE COURT: Okay. Anything else? I heard you

1 say something else, Mr. Brown.

2 MR. MCMASTER: If the Court would look at the  
3 next to the last paragraph on the second page, if you  
4 cannot determine the minimum value you must find the  
5 value was less than Three Hundred Dollars.

6 THE COURT: So, it would be Three Hundred  
7 instead of One Hundred.

8 MR. MCMASTER: Yes.

9 THE COURT: That's what I thought you said but  
10 I wanted to make sure. Any objection by the Defense?

11 MR. PIROLO: No, Your Honor.

12 THE COURT: Okay. Then I'm on fleeing to elude  
13 a law enforcement officer siren and lights activated,  
14 any objection to that instruction by the Defense?

15 MR. PIROLO: No, Your Honor.

16 THE COURT: Okay fleeing to elude a law  
17 enforcement officer, any objection to that  
18 instruction by the Defense?

19 MR. PIROLO: No.

20 THE COURT: Okay. Mr. McMaster, just so you  
21 know, I'm going to ask you to give me a whole new set  
22 of instructions.

23 MR. MCMASTER: That's fine.

24 THE COURT: Because these instructions have --  
25 I think the printer came out kind of bad. So, if we



1 could get a better set.

2 Okay. Resisting an officer without violence,  
3 it has a statute number in there. So, if we could  
4 take that out. And then --

5 MR. MCMASTER: Capitals.

6 THE COURT: Yeah, see the capitals. Okay.  
7 Anything else by the Defense?

8 MR. PIROLO: No.

9 THE COURT: Okay. That looks good. And  
10 principal we'll take out the numbers and the  
11 statutes. Anything else by the Defense?

12 MR. PIROLO: No, Your Honor.

13 THE COURT: And then voluntary intoxication  
14 we'll take out the number.

15 MR. MCMASTER: That one should be taken out all  
16 together, Judge. That's one we agreed to.

17 THE COURT: Okay.

18 MR. MCMASTER: We'll submit it separate.

19 THE COURT: Okay. Would the one that's  
20 submitted separately, is that where this would go?

21 MR. MCMASTER: Yes.

22 THE COURT: Okay. I'll throw this one away.  
23 We'll put this one in. I see some --

24 MR. MCMASTER: Parenthesis. I would say we  
25 delete out the all four and just put in controlled

1 substance.

2 THE COURT: I think that's what we did before.  
3 Does Defense agree?

4 MR. PIROLO: Yes.

5 THE COURT: Done forget to bold voluntary  
6 intoxication.

7 MR. MCMASTER: Yes.

8 THE COURT: And then it says he or she. It  
9 would be he.

10 MR. MCMASTER: Or she. The next sentence, he  
11 or she twice.

12 THE COURT: Okay. The more you can take out,  
13 the better.

14 MR. BROWN: Judge, right after that instruction  
15 I think the abnormal condition instruction should go.

16 THE COURT: Okay. That's where the diminished  
17 capacity instruction?

18 MR. BROWN: Yes.

19 THE COURT: And you're going to retype that?

20 MR. BROWN: We're going to retype it and put  
21 the term knowingly in. Is there a suggested title  
22 from the Defense?

23 MR. MOORE: We need a title?

24 THE COURT: Because everything else has a  
25 title.

1 MR. MOORE: Well, I mean, I don't see a need to  
2 have a title on that.

3 THE COURT: What if we just put defendant's  
4 capacity instead of diminished capacity? Do you  
5 object to the word diminished?

6 MR. BROWN: (Unintelligible) since that's in  
7 the instruction.

8 THE COURT: You want to put mental. I don't  
9 want it to look special or different from the other  
10 instructions. Just say mental condition?

11 MR. MOORE: Yeah.

12 MR. BROWN: I'm good with that.

13 THE COURT: Okay. Just make sure that's bold  
14 and on the top and put that instruction in.

15 MR. BROWN: And Judge, I would suggest after  
16 that the justifiable use of deadly force instruction.

17 MR. MOORE: I'm looking.

18 THE COURT: Looks like we'll have to make some  
19 changes. We have to bold the front and take out  
20 the -- bold the top title, take out the -- I see  
21 Brandon Lee Bradley bolded -- I mean all caps,  
22 Barbara Pill all caps.

23 Mr. Moore, let me know when you're ready to  
24 address this.

25 (Thereupon, a pause was taken in the

1 proceedings.)

2 THE COURT: Applicable law or the person,  
3 that's bolded.

4 MR. BROWN: Actually the person is not.

5 THE COURT: Yeah, just but or the. I see  
6 Barbara Pill after that too. I see two twos when you  
7 go to one, two and three, the very first paragraph.

8 MR. MCMASTER: Yes.

9 THE COURT: Okay. And they've got -- I don't  
10 see where everything else has those big paragraphs in  
11 them. Oh, I guess they do. Okay. You're okay with  
12 that.

13 MR. MCMASTER: The font's different on the  
14 third page from the first one all the way down to the  
15 bottom.

16 THE COURT: Okay.

17 MR. MCMASTER: Make that bigger.

18 THE COURT: Second paragraph, second page, all  
19 the hers can come out, it can be only him.

20 MR. MCMASTER: That's on justifiable use?

21 THE COURT: In determining whether the  
22 defendant was justified, yes, him, he.

23 MR. MCMASTER: Yeah, I'll get that. That's in  
24 the second paragraph?

25 THE COURT: Yes. Second to the bottom I see

1 Barbara Pill. Do I need to define applicable  
2 forceable felony or presumption of fear? Can those  
3 come out?

4 MR. MCMASTER: I would say they can come out  
5 because they're included in the what the Court's  
6 already defined (unintelligible.)

7 MR. MOORE: Okay. Now, what part are we  
8 talking about?

9 THE COURT: Page two kind of near the bottom,  
10 second half, in the middle kind of second half. Just  
11 trying to go through this.

12 MR. BROWN: Judge, I would suggest because the  
13 way it's written obviously forceable felony is any  
14 number of and they're asked to make a selection, I  
15 assume based upon the defendant's statement that  
16 presumption would be murder. So, I think we can put  
17 murder in there and not have to define. Take out the  
18 term first degree felony and put the murder in.

19 MR. MOORE: Well, it could be an aggravated  
20 battery, it could be an aggravated assault. There  
21 are a number of forceable felonies. Just one  
22 (unintelligible). I say just leave it as forceable  
23 felony.

24 MR. BROWN: The jury is not going to know if  
25 they're considering this as a forceable felony.

1 MR. MOORE: We can list everyone of them if we  
2 want, I don't know that we have to define any of  
3 them. Forceable felony is common sense.

4 THE COURT: Does the State agree or is the  
5 State requesting that a forceable felony be listed?

6 MR. BROWN: If that's what they want, we'll go  
7 with it.

8 MR. MOORE: I think first degree, second degree  
9 murder, aggravated battery, aggravated assault,  
10 shooting into an occupied dwelling.

11 THE COURT: You mean we're going to have to  
12 define everyone of those?

13 MR. MOORE: They're all forceable felonies, you  
14 have to give the jury a working definition  
15 (unintelligible).

16 THE COURT: It says that you have to -- kind of  
17 have to tell us what you want in there. You have to  
18 tell -- the Defense has to tell me what they want.

19 MR. MOORE: Limited to one.

20 THE COURT: No, I don't think you're limited to  
21 one but.

22 MR. MOORE: Okay. Then all of them. Why limit  
23 to one and if we have to -- you know, I'm fine with  
24 naming them, but if the State, they want to have them  
25 all defined then --

1 THE COURT: I don't think the State has said  
2 that. Does the State want them all -- if we name  
3 them all, does the State want them defined?

4 MR. MOORE: That would be tedious. I would  
5 suggest we just include the ones that I named, first  
6 degree, second degree, third degree.

7 THE COURT: Okay. Hold on. First degree,  
8 second degree. What else?

9 MR. MOORE: Third degree and that's defined in  
10 the (unintelligible) instructions. And agg. battery  
11 and agg. assault and shooting to an occupied  
12 (unintelligible), those should be (unintelligible).  
13 Otherwise, it appears to be the instruction for  
14 aggravated.

15 THE COURT: Okay. I'm still on this, I just  
16 want to make sure because they're going to have to  
17 make these changes.

18 MR. MOORE: Sure.

19 MR. MCMASTER: We're just putting in the titles  
20 of the crimes that they're claiming is supposed to  
21 involve?

22 THE COURT: That's what they're suggesting but  
23 are you asking -- is the State asking that they be  
24 defined?

25 MR. MCMASTER: No, Your Honor.

1 THE COURT: Okay. I have first degree, second  
2 degree, third degree, agg. battery, agg. assault,  
3 shooting into an occupied vehicle?

4 MR. MOORE: Yes.

5 MR. BROWN: First degree wouldn't  
6 (unintelligible). third degree.

7 MR. LANNING: Any murder or manslaughter. Any  
8 murder or manslaughter.

9 MR. MCMASTER: So, instead of first, second,  
10 third just say murder and manslaughter?

11 THE COURT: He's saying any agree of murder.

12 MR. MCMASTER: Or manslaughter.

13 THE COURT: So, you're going to say a forceable  
14 felony is and then rest of it's -- are you okay with  
15 the rest of it?

16 MR. MCMASTER: Yes, ma'am.

17 MR. MOORE: Expect for where the names are  
18 capitalized.

19 THE COURT: Right, and there's one bold thing,  
20 we're going to change that. Okay. Is the State with  
21 us?

22 MR. MCMASTER: Yes.

23 MR. BROWN: The other instruction we've  
24 provided them this afternoon is the firearm  
25 instruction. Since we didn't have the potential



1 enhancement if they come back as a lesser, we have to  
2 determine where we're going to put that.

3 THE COURT: Okay. I have two instructions up  
4 here, they appear to be the same. I haven't looked  
5 at them that closely, are they the same?

6 MR. BROWN: Which two?

7 THE COURT: I have possession of a firearm with  
8 discharge causing death and I have possession of a  
9 firearm --

10 MR. MCMASTER: One is just the basic  
11 instruction, the other one I took out a lot of the  
12 stuff already.

13 THE COURT: Okay. So, you want me to just look  
14 at this one?

15 MR. MCMASTER: Yes.

16 THE COURT: Okay. And what does the Defense  
17 say to this?

18 MR. MOORE: Well, I don't know what you're  
19 talking about. I have an instruction for one the  
20 Court just read but it's got statutory language in  
21 here.

22 MR. MCMASTER: It still that but there's a lot  
23 more other stuff that I've already edited out.

24 THE COURT: Does he have this copy? Give him  
25 the... Okay. First we have to decide where we want

1 to put this.

2 MR. MOORE: My response is it's okay, the  
3 firearm.

4 THE COURT: I see a lot in it that needs some  
5 work so.

6 MR. MCMASTER: The caps removed. I would  
7 suggest we eliminate the including starter gun and  
8 the third paragraph.

9 THE COURT: Okay. Including starter gun.  
10 Defense agree?

11 MR. MOORE: Yes.

12 MR. MCMASTER: And then give A or B or both.

13 THE COURT: Take that out.

14 MR. MCMASTER: And the comment.

15 THE COURT: Okay. Where do we put possession  
16 of a firearm?

17 MR. MCMASTER: It only applies to Count I. It  
18 actually would apply to (unintelligible) Count I or  
19 any of its lessers. So, I would suggest if you find  
20 Brandon Bradley committed first degree murder or any  
21 lesser included offense.

22 THE COURT: You're saying on the top if you  
23 find that Brandon Lee Bradley committed first degree  
24 murder you're saying or any?

25 MR. MCMASTER: Lesser included offense of first

1 degree murder.

2 THE COURT: Okay. Any objection by the  
3 Defense?

4 MR. MOORE: No.

5 THE COURT: You think it would come after  
6 manslaughter, is that what you're requesting?

7 MR. MCMASTER: Yes, Your Honor.

8 THE COURT: Any objection by the Defense?

9 MR. MOORE: No objection.

10 THE COURT: Looking where manslaughter is.

11 MR. MCMASTER: I'll have to add that language  
12 several times in the course of the instructions about  
13 any lesser included offenses.

14 THE COURT: Okay. So, I'll put it after  
15 manslaughter and before theft.

16 Okay. The next one I have is defendant's  
17 statement.

18 MR. MOORE: No objection.

19 THE COURT: It needs to be all bolded. Let me  
20 go through it real quick.

21 MR. BROWN: It shouldn't come in at that point  
22 yet.

23 THE COURT: Come in at what point?

24 MR. BROWN: Reasonable doubt, weighing the  
25 evidence.

1 THE COURT: No, I'm just saying I'll put  
2 that -- you want that later.

3 MR. BROWN: Right.

4 THE COURT: Okay. Plea of guilty -- plea of  
5 not guilty, reasonable doubt and burden of prove, any  
6 objection by the Defense?

7 MR. MOORE: No.

8 THE COURT: Okay. Weighing the evidence.

9 MR. MOORE: It's okay.

10 THE COURT: You want everything in there? You  
11 want six, seven, eight, nine and ten?

12 MR. MOORE: Yes.

13 THE COURT: Okay.

14 MR. BROWN: I don't think ten applies.

15 THE COURT: So, we can take out ten. Okay.  
16 Any other changes to this being requested? Okay.

17 Okay. Defendant testifying, we can take that  
18 out. Defendant not testifying.

19 MR. MOORE: Okay.

20 THE COURT: Okay.

21 MR. MOORE: Yes.

22 MR. BROWN: And then according to the  
23 (intelligible), defendant's statement should come in.

24 THE COURT: Come after that.

25 MR. BROWN: Yes.

1 THE COURT: Any objection to that other than  
2 the title needs to be bolded?

3 MR. MOORE: No objection.

4 THE COURT: I want to make sure knowingly is in  
5 there. The word knowingly is not in there. Don't  
6 you want that word?

7 MR. BROWN: We told them we'll put that in.

8 THE COURT: I want to do it according to this  
9 instruction because it's in there a couple of times.  
10 Okay. It's got it up above, was knowingly,  
11 voluntarily and freely made, that's in the second  
12 paragraph.

13 MR. MCMASTER: Freely and voluntarily in the  
14 first and then it goes back to freely and voluntarily  
15 again, that is the standard instruction. That's the  
16 new one.

17 THE COURT: That is the new one. That's  
18 interesting.

19 MR. MCMASTER: I wish they would make up their  
20 minds.

21 MR. MOORE: The separate (unintelligible) in  
22 there it doesn't make sense to take it out of the  
23 paragraphs the standard stuff.

24 THE COURT: So, what is the Defense requesting?

25 MR. MOORE: That that word in all three is

1 fine, knowingly.

2 THE COURT: Any objection by the State before  
3 freely adding the word knowingly?

4 MR. MCMASTER: I'll rearrange them so they all  
5 three read the same.

6 THE COURT: Okay. Because I think the way they  
7 do it is knowingly, freely and voluntarily. No, I  
8 see it up here it's changed around some. We'll do it  
9 at same as the second paragraph all the way through.  
10 Okay. Is -- and the Defense is okay with that? Are  
11 you okay with that?

12 MR. MOORE: Yes.

13 THE COURT: Okay. Then we go To Eyewitness  
14 identification, any --

15 MR. MOORE: No objection.

16 THE COURT: Okay. Any objection to rules for  
17 deliberation?

18 MR. MOORE: No objection.

19 THE COURT: Cautionary instructions?

20 MR. MOORE: No objection.

21 MR. PIROLO: Judge, number five in the second  
22 sentence, it is the judge's job to determine a proper  
23 sentence. If you convict him of first degree murder.

24 MR. BROWN: It's still your job to determine a  
25 proper sentence.

1 MR. MOORE: That kind of goes against the  
2 other.

3 MR. PIROLO: This also applies  
4 (unintelligible).

5 MR. MOORE: But it doesn't reflect the jury's  
6 role. There's no need to discuss this. It really is  
7 an accurate statement. In a death sentence it's  
8 still up to the judge. They get a whole penalty  
9 phase instruction that portion is the responsibility  
10 for the judge and the jury.

11 THE COURT: They're not supposed to consider  
12 that in the guilt phase.

13 MR. BROWN: Right, at this point they shouldn't  
14 be considered at all with potential sentence.

15 THE COURT: For purposes of the guilt phase.  
16 Unless I hear more, I'm going to overrule the  
17 objection. We'll leave that in.

18 Okay. Cautionary instruction? Everyone okay  
19 with that?

20 MR. MOORE: Yes.

21 THE COURT: Verdict. I know, it is -- I think  
22 it's the way the instruction is. Mr. Lanning?

23 MR. LANNING: I'm looking at the verdict form.

24 MR. PIROLO: He's referring to the verdict  
25 form.

1 THE COURT: Okay. Verdict. Okay. Then we'll  
2 go to the verdict form.

3 MR. PIROLO: Judge, on the top part the letter  
4 C (unintelligible).

5 THE COURT: Okay. Any objection by the State?

6 MR. MCMASTER: No, Your Honor, third degree  
7 felony murder's what they want.

8 THE COURT: Okay. For a special interrogatory  
9 we delete check only one?

10 MR. BROWN: It should read if you find the  
11 defendant guilty because --

12 THE COURT: Yeah. So, take out check only one.

13 MR. BROWN: But also take out the first degree  
14 murder.

15 THE COURT: Don't you take out those little  
16 lines right here too?

17 MR. BROWN: Before the A, B and C?

18 THE COURT: Yes. They're going to think they  
19 have to check something.

20 MR. BROWN: Right.

21 THE COURT: Okay. I've got something up above.  
22 Under C it needs -- there needs to be a period at the  
23 end. Under D there need to be a period and under E  
24 there needs to be -- at the end of the sentence needs  
25 to be a period.



1 MR. MCMASTER: Right.

2 THE COURT: Okay.

3 MR. BROWN: If you find the defendant guilty of  
4 any offense you must answer the following.

5 THE COURT: Okay. It should be instead of  
6 first degree murder any offense? Yes?

7 MR. LANNING: No.

8 THE COURT: Is offense the right word?

9 MR. PIROLO: Not any offense, A, B, C or D.

10 MR. MCMASTER: Any offense in this count.

11 MR. PIROLO: Or up above.

12 MR. BROWN: Yeah.

13 MR. MCMASTER: Only as to Count I.

14 MR. BROWN: We didn't carry the interrogatories  
15 on to --

16 THE COURT: Do you want to do A, B, D or C? Or  
17 any offense above?

18 MR. MCMASTER: Judge, Mr. Bradley's name is  
19 capitalized in the special interrogatories and I  
20 can't find anywhere else.

21 THE COURT: Okay. And Barbara Pill under D.

22 MR. MCMASTER: Yes.

23 THE COURT: I think after following don't you  
24 think it should have a semicolon or a colon? That's  
25 a colon, not a semicolon.

1 MR. MCMASTER: I have a colon.

2 THE COURT: Okay. Do we want if you find the  
3 defendant guilty, do you want A, B, C or D or do you  
4 want any offense above?

5 MR. MOORE: It's either or. The offense above  
6 is fine.

7 THE COURT: Okay.

8 MR. MCMASTER: If you find the defendant guilty  
9 of any offense above.

10 THE COURT: Comma.

11 MR. MCMASTER: You must answer the following  
12 question.

13 MR. BROWN: Question A you should start with  
14 did the defendant.

15 THE COURT: Okay. Did the defendant, Brandon  
16 Lee Bradley, actually possess a firearm during the  
17 commission of the offense and if yes --

18 MR. BROWN: That should come out.

19 THE COURT: Pardon me? Yeah. If yes -- I  
20 think it's supposed to be a comma. If yes to A,  
21 comma, did the defendant, Brandon Lee Bradley,  
22 discharge a firearm during the commission of the  
23 offense. Yes. No. I think you're right, there's no  
24 D. I here you whisper over there but.

25 MR. MCMASTER: We're obviously not whispering

1 very well.

2 THE COURT: No, because I can hear you but I'm  
3 with you. If yes to B, did the defendant, Brandon  
4 Lee Bradley.

5 MR. MCMASTER: Cause.

6 THE COURT: Cause the -- oh, cause death.  
7 Okay. Just death is right. Cause death as a result  
8 of discharging a firearm during the commission of the  
9 offense. Was Barbara pill a law enforcement officer.

10 MR. PIROLO: Judge, that's -- I don't think  
11 (unintelligible).

12 MR. MCMASTER: Kind of left specifically that  
13 she was a law enforcement officer in Count I and I  
14 think the jury needs to make that determination.

15 MR. BROWN: It's an enhancement.

16 MR. MOORE: As a law enforcement officer.

17 MR. BROWN: Right, for second, third or  
18 manslaughter it enhances it.

19 MR. MOORE: Is that a reclassification or an  
20 enhancement?

21 MR. MCMASTER: It's a reclassification and  
22 (unintelligible).

23 THE COURT: I don't mean to be picky but are  
24 these supposed to be question marks at the end of  
25 this or is it supposed to be periods?

1 MR. MCMASTER: Question marks.

2 THE COURT: Okay.

3 MR. MCMASTER: Why not be picky, Judge.

4 THE COURT: I mean, it just didn't sound right  
5 to me but I was thinking why is it all periods.  
6 Okay.

7 All right. Anything else with regard to this  
8 verdict form?

9 All right. I'm moving to the next verdict  
10 form. Any objection by the defense to the next  
11 verdict form?

12 MR. MOORE: No objection. No objection.

13 THE COURT: Okay. I didn't see any. I'm on  
14 the third verdict form. I'm on Count III. Let me  
15 see if that says Count II. Yes.

16 On Count -- on the second verdict form, Count  
17 II, we the jury find as follows as to Count II, it's  
18 supposed to be a comma after Count II on the very  
19 first sentence.

20 MR. MCMASTER: Okay.

21 THE COURT: Okay. Now we're on Count III.  
22 There's supposed to be periods at the end of each one  
23 of these. Okay. Other than that, any objection?

24 MR. PIROLO: No.

25 THE COURT: Okay. Count IV periods at the end

1 of A, B and C.

2 MR. MCMASTER: There is one on C.

3 THE COURT: Oh, there is on C? Yes. Just put  
4 the period at the end, that works. Okay. Any  
5 objection to this by the Defense?

6 MR. PIROLO: No.

7 THE COURT: Okay. All right. Single  
8 defendant, multiple counts or informations, any  
9 objection?

10 MR. MOORE: No objection.

11 THE COURT: Submitting case to jury. Normally  
12 there's some things at the end of this. Did we fix  
13 all that? Okay. Where it says A and B, it should  
14 say these exhibits will be sent to the jury room with  
15 you when you begin to deliberate. It says if you  
16 wish to see any exhibits, please request that in  
17 writing.

18 MR. MCMASTER: Don't we have different  
19 positions on different exhibits. Most of them are  
20 going back but I don't think the deputies want the  
21 firearm and the live ammo to go and I don't know if  
22 we're sending back the DVD of the defendant's  
23 interview.

24 THE COURT: It can go back. Normally what we  
25 say is these exhibits will be sent into the jury room

1 with you when you begin to deliberate except for  
2 exhibits --

3 MR. MOORE: The firearm.

4 MR. BROWN: Just put the firearm and live ammo  
5 will not go back with you.

6 THE COURT: Do you want to say the firearm and  
7 ammunition?

8 MR. BROWN: Will not go back together.

9 THE COURT: We'll just no -- just say firearm  
10 and ammunition. If you wish to see these exhibits,  
11 please request them in writing and then we can not  
12 send them back together.

13 MR. MCMASTER: How about we just not send the  
14 live ammo to them. If they request to see the live  
15 ammo, we'll ask to bring the firearm out and send the  
16 live ammo in.

17 MR. BROWN: Keep the live ammo out and the  
18 firearm goes back.

19 THE COURT: So, just say these exhibits will be  
20 sent into the jury room with you when you begin to  
21 deliberate except for the firearm.

22 MR. BROWN: Except for the live ammunition.

23 THE COURT: Okay. You say live ammunition,  
24 with all due respect, I don't know what live means  
25 and not live. So, does live have to be in there?

1 MR. MCMASTER: Unfired, previously unfired.

2 THE COURT: I'm like what does that mean. I  
3 don't think people know what live ammunition means.

4 THE COURT DEPUTY: Your Honor, can we have --  
5 we'd rather not have the firearm go back as well. If  
6 they want to see it we'll take it back.

7 THE COURT: Doesn't it have the safety in it?

8 THE COURT DEPUTY: Yes.

9 THE COURT: And don't you have the key?

10 THE COURT DEPUTY: I do.

11 MR. BROWN: It should be okay as long as  
12 there's no live ammo.

13 THE COURT: They're going to probably want to  
14 see the firearm I would think.

15 THE COURT DEPUTY: We don't usually let it go  
16 back.

17 THE COURT: Well, they have pictures of it too.

18 MR. BROWN: I've never had it not go back as  
19 long as you don't send the live ammo back.

20 THE COURT DEPUTY: It's just our preference.  
21 That's what we have done. We don't take it back. If  
22 they want to see it we'll take it back to them.

23 MR. MCMASTER: How about if we do this. Except  
24 for the firearm and the live ammunition, if you wish  
25 to see those exhibits please request that in writing

1 THE COURT: All right. We'll do that.

2 THE COURT DEPUTY: Thank you, Your Honor.

3 THE COURT: Okay. This is probably be a good  
4 time to talk about if they want to view the DVD, how  
5 we're going to do that.

6 MR. MOORE: We don't -- they can have it back  
7 there.

8 THE COURT: Well, they have it back there,  
9 we're going to send it back there, but they have  
10 nothing to play it on. So, in the past when they've  
11 requested something to play it on, what we have done  
12 is we've taken the machine back and one of the court  
13 deputies plays it for them and does whatever they  
14 want him to do, play it, stop it, does whatever, but  
15 he stays with them and plays it, he doesn't -- he's  
16 not there while they're deliberating and then he  
17 leaves the room with the equipment.

18 MR. MOORE: Fine. That's acceptable.

19 THE COURT: And we've -- one occasion we've  
20 sent back a computer.

21 MR. LANNING: Is there a reason that they can't  
22 just -- I guess it's a computer, right? Is that  
23 why --

24 THE COURT: Well, because it's such -- it's  
25 such -- there's so much stuff to it. You know, one



1 time we did send it back just in a computer and we  
2 left the computer back with them.

3 MR. MCMASTER: Is there wifi capability?

4 THE COURT: Yes.

5 MR. MCMASTER: Is that a computer with wifi?

6 THE COURT: Well, we sent the computer back and  
7 supposedly it was a computer that was cleared, didn't  
8 have much on it, but with all due respect, they can  
9 probably -- who knows what they can pick up.

10 MR. MCMASTER: That's why I'm just saying, if  
11 we just send the computer back and it's got wifi  
12 capability and if the courthouse is wired with wife  
13 then they have access to the Internet.

14 THE COURT: Yes.

15 MR. MCMASTER: I would prefer that not happen.

16 THE COURT: Just out of an abundance of  
17 caution, we've sent someone back there to view it,  
18 help them view it, they didn't stay there while they  
19 deliberated, they just did whatever they wanted them  
20 to do with the video and then they came out.

21 MR. MOORE: How about the TV that they saw it  
22 on in the first place, can that go back?

23 THE COURT: Yeah, that can go back. That's  
24 what we've done in the past, we just wheeled that  
25 whole thing only if they've requested it.

1 MR. MOORE: Right.

2 THE COURT: And then they've sat there and done  
3 whatever they want with them and then they bring the  
4 machine back out when they're done. Any objection to  
5 that process?

6 MR. MOORE: No.

7 THE COURT: Okay. Okay. Anything else with  
8 regard to this instruction?

9 Okay. Instructions upon discharge of the jury,  
10 I give that but I don't include that in the packet.

11 MR. MOORE: Okay.

12 THE COURT: All right. I'll keep these here.

13 MR. MCMASTER: Judge, I will try to get a whole  
14 new packet done this evening, I can e-mail a copy of  
15 it to your JA and I'll give copies to Defense  
16 counsel.

17 THE COURT: Well, you know what, I'll probably  
18 be here. She doesn't get here until 9:00. So, if  
19 you'll just give me a packet at 8:30 in the morning.

20 MR. MCMASTER: I'll do that also.

21 THE COURT: I can give it to her.

22 MR. MOORE: You want us here at what time?

23 THE COURT: I said 8:30, that's what time I  
24 told the jury to be here. All right. Court is in  
25 recess until 8:30 in the morning. Thank you.

1           (Thereupon, court was in recess for the day,  
2     3/31/2014. Thereafter, court was reconvened on 4/1/2014  
3     and the proceedings were had as follows:)

4           THE COURT: We can bring out Mr. Bradley.

5           (Thereupon the defendant was escorted into the  
6     courtroom by the court deputy.)

7           THE COURT: Okay. One of the things that we  
8     did not talk about yesterday was the length of  
9     closings. Who's doing the closing on behalf of the  
10    Defense? Mr. Lanning, how long do you anticipate  
11    that closing to be? I mean, I'm not one that likes  
12    to limit closings but, you know, we can't go all day  
13    so I thought it was appropriate to ask this question.

14          MR. LANNING: I've never been (unintelligible).

15          THE COURT: No, I don't think it's going to be  
16    an issue but I thought it would be somewhat  
17    appropriate to address that. And I presume you're  
18    saying you don't think it will be --

19          MR. LANNING: I certainly don't intend to go  
20    all day.

21          THE COURT: Okay.

22          MR. LANNING: And I can't imagine it's going to  
23    be more than an hour.

24          THE COURT: Okay. I just needed some idea.  
25    Then with that representation, I'm not going to limit

1 anybody's closing. I don't like to do that, that's  
2 not my preference but I thought it was appropriate to  
3 have some sort of conversation with regard to that.  
4 Mr. Moore?

5 MR. MOORE: Is the Court expecting counsel to  
6 remain at the podium?

7 THE COURT: Not -- you know, I'm not really --  
8 I don't really limit that either but with all due  
9 respect, you know, I don't want you to get too close  
10 to the jurors.

11 MR. MOORE: I'm thinking the State will likely  
12 walk over to the Defense table and pointing and  
13 waving arms and faces. So (unintelligible).

14 THE COURT: I haven't really had an issue with  
15 that either, I don't -- who's doing the closing on  
16 behalf of the Defense?

17 MR. BROWN: Judge, the State will be  
18 splitting --

19 THE COURT: I mean on behalf of the State, I'm  
20 sorry.

21 MR. BROWN: Judge, we'll be splitting. I'm not  
22 going to walk over, I may from the podium obviously  
23 point to the Defense table but I'm not going to walk  
24 over and stand right in front of him and point at  
25 him. My expectation is, you know, I don't

1 necessarily stay right behind the podium, I'll move  
2 off to the side a little bit. I'm not going to be,  
3 you know, walking to the jurors.

4 THE COURT: Okay. Okay. I mean, I've had  
5 Mr. McMaster in my courtroom frequently, I don't  
6 anticipate he's going to do that, I really don't  
7 anticipate Mr. Brown having an issue with that, but  
8 it's been brought to the attention, they said they're  
9 not going to do walk over to the Defense table. They  
10 may point but not walk over to the Defense table. If  
11 they go like that, I don't have a real issue with  
12 that.

13 Okay. Anything else? Anything that we need to  
14 address on behalf of the State?

15 MR. BROWN: No, Your Honor.

16 THE COURT: Anything that we need to address on  
17 behalf of the Defense?

18 MR. MOORE: Do we want to talk about the  
19 instructions? I think we at this point have all  
20 reviewed them and stated our objections.

21 THE COURT: What I'm going to do is during your  
22 closing I'm going to review them with mine, make sure  
23 that there's not any issues. If I find no issues  
24 over with what we talked about yesterday and I'll go  
25 ahead and copy them, if I find an issue -- I assume

1 we're going to take some sort of break between now  
2 and then but if I find an issue I'll talk to you  
3 about it during the break. I'll compare them with my  
4 notes from what we talked about yesterday.

5 Okay. Unless I hear something else, we'll go  
6 ahead and bring the jury into the courtroom.

7 (Thereupon, the jury was escorted into the  
8 courtroom by the court deputy and the proceedings were had  
9 as follows:)

10 THE COURT: Please be seated. Good morning,  
11 ladies and gentlemen of the jury.

12 THE JURY PANEL: Good morning.

13 THE COURT: Has anyone read or been exposed to  
14 reading newspaper headlines and/or articles relating  
15 to this trial or its participants?

16 THE JURY PANEL: No.

17 THE COURT: Has anyone seen or heard  
18 television, radio or Internet comments about this  
19 trial?

20 THE JURY PANEL: No.

21 THE COURT: And have you read any news  
22 headlines or articles relating to this trial or its  
23 participants?

24 THE JURY PANEL: No.

25 THE COURT: Has anyone conducted or been

1 exposed to any research regarding any matters  
2 concerning this case?

3 THE JURY PANEL: No.

4 THE COURT: And have you discussed this case  
5 among yourselves or with anyone else or allowed  
6 anyone to discuss it in your presence?

7 THE JURY PANEL: No.

8 THE COURT: Okay. Ladies and gentlemen of the  
9 jury, both the State and the Defense have now rested  
10 their case. The attorneys now will present their  
11 final arguments. Please remember that what the  
12 attorneys say is not evidence or your instruction on  
13 the law. However, do listen closely to their  
14 arguments, they are intended to aid you in  
15 understanding the case. Each side will have equal  
16 time but the State is entitled to divide their time  
17 between an opening argument and a rebuttal argument  
18 after the Defense has spoken. Okay. Closing  
19 argument on behalf of the State.

20 MR. BROWN: Please the court, counselors.

21 Members of the jury, what this case is on March  
22 6th, 2012, when Deputy Pill walked up to the vehicle  
23 being driven by this defendant, Brandon Bradley, and  
24 she was within two feet of him, he pulled out his  
25 loaded gun and shot her dead. Eight shots. One to

1 the head, the fatal wound.

2 As we told you in opening statement, this is  
3 about what she didn't know, what Deputy Pill didn't  
4 know when she made the stop of Brandon Bradley. She  
5 didn't know who was the driver, you hear that on her  
6 video. She didn't know because the car, that SUV  
7 that he bought a few weeks ago he never transferred  
8 the title so that tag doesn't come back to him.

9 You saw in the pictures the last information  
10 that she has that she looked at before she died,  
11 before she was murdered. Her in camera screen  
12 telling her stolen property. That's what she knew.  
13 What she didn't know was that Brandon Bradley was a  
14 wanted man. You've seen the warrants, the VOP  
15 warrants, the bench warrants, she didn't know this  
16 because the car is not in his name. She didn't know  
17 he was a wanted man but he knew. He knew it. You  
18 heard all the evidence that he knew.

19 She didn't know that he had said he's not going  
20 back to prison. She didn't know that he said he  
21 would do whatever it takes not to go back to prison.  
22 She didn't know that he's telling Andria Kerchner she  
23 saw my tag, she saw my face, I've got to kill the  
24 cracker. She didn't know he was having that  
25 discussion or argument with Andria Kerchner. She



1 didn't know Andria Kerchner was begging for her life,  
2 for Deputy Pill's life telling Brandon Bradley you  
3 don't need to do this, baby, you don't need to do  
4 this. Deputy Pill didn't know that.

5 What Deputy Pill sadly didn't know most  
6 importantly was that Brandon Bradley had a loaded  
7 gun, ten shot magazine into this firearm, locked and  
8 loaded. She didn't know he had this within his reach  
9 ultimately having it in his hand and was ready to  
10 fire, ready to kill the cracker to avoid going back  
11 to prison. Those were the facts that sadly Deputy  
12 Pill did not know walking up to that vehicle.

13 You got to see the last steps that she took in  
14 her life before this defendant pointed that firearm  
15 and fired eight shots from the distance of less than  
16 two feet striking her numerous times and once in the  
17 head killing her.

18 Members of the jury, the facts and evidence in  
19 this case I submit to you overwhelmingly and beyond  
20 any reasonable doubt this defendant is guilty of  
21 first degree murder, the robbery, the fleeing or  
22 eluding and resisting with violence.

23 I'm going to go through the facts ladies and  
24 gentlemen with you. I'm going to cover first what  
25 you're going to see in the instructions, the laws in

1 this case and kind of through the facts with you and  
2 hopefully demonstrate to you how the Stat's proven  
3 each and every element of the charges that we've  
4 charged this defendant with. As I go through these  
5 instructions, I have a stack of them I'm going to  
6 cover with you, but as the Court told you early on,  
7 these are in printed form and she's going to give a  
8 set to you for you each have when you go back to the  
9 jury room and I believe perhaps when she reads them  
10 to you, but you're going to have them with you in the  
11 jury room so you don't need to furiously take notes,  
12 write down the elements and do this as I'm speaking  
13 or the Judge is speaking to you.

14 The things she's going to tell you will be  
15 towards the end is the verdict form and there's going  
16 to be a verdict instruction. What she's going to  
17 tell you on this is if you return a verdict of  
18 guilty, it should be for the highest offense which  
19 has been proven beyond a reasonable doubt. And  
20 there's a reason for that instruction because we have  
21 what's called lesser included instructions. We  
22 talked a little bit about this in voir dire.

23 She's going to tell you in considering the  
24 evidence you should consider the possibility that  
25 although the evidence would not convince you the

1 defendant committed the main crimes of which he is  
2 accused, there may be evidence that he committed  
3 other acts which would constitute a lesser included  
4 crime. Therefore, if you decide the main accusation  
5 has not been proven, you will next decide if the  
6 defendant is guilty of any lesser included crime.  
7 The key about both of those is that the verdict  
8 instruction says if you return a verdict of guilty,  
9 it should be for the highest offense which has been  
10 proven beyond any reasonable doubt. You don't have  
11 to compromise simply to reach a verdict. You don't  
12 compromise down because, well, this sounds good,  
13 return the verdict that the evidence speaks to,  
14 return the verdict that the evidence proves. Don't  
15 compromise down simply to compromise.

16 What you're going to see on the verdict forms,  
17 each one, there will be four for each count, each one  
18 will have what are known as lesser included offenses.  
19 If you think about it, they simply are offenses that  
20 are a lesser charge but are included within the main  
21 offense.

22 We've charged first degree murder, the lesser  
23 charges to that are second degree murder, third  
24 degree felony murder and manslaughter.

25 We've charged robbery, the lesser included of

1 robbery are grand theft, theft and assault, which  
2 (unintelligible) theft with an assault or some type  
3 of use of force it makes it a robbery.

4 Fleeing and eluding is charged with lights and  
5 sirens activated and with the defendant either going  
6 a high speed or -- and/or wanton reckless disregard,  
7 reckless driving. The lessers to that are with high  
8 speed and reckless driving you just have lights and  
9 sirens or just a regular fleeing.

10 They're named lesser for a reason on the  
11 verdict form, the main charge will be the first one  
12 and then the lessers are the ones below. And on the  
13 murder verdict forms you can see, you can't read it  
14 from this distance but there's some questions down  
15 below. If you return a verdict of guilty you answer  
16 the questions below which A, did Brandon Lee Bradley  
17 actually possess a firearm during the commission of  
18 the offense? If yes answer B. Did he discharge the  
19 firearm? If yes answer C. Did Brandon Lee Bradley  
20 cause death as a result of discharging the firearm  
21 during the commission of the offense? And then B you  
22 answer about regardless which is is Deputy Pill a law  
23 enforcement officer? You have to answer those  
24 questions if you return a verdict of guilty.

25 We talked in voir dire about the burden of

1 proof, weighing the evidence. You're going to get a  
2 burden of proof instruction. The Court's going to  
3 read to you the reasonable doubt instruction. We  
4 talked about in jury selection the difference between  
5 a reasonable doubt versus a possible doubt,  
6 speculative, forced or imaginary doubt, there's that  
7 (unintelligible).

8 We talked about weighing the evidence, Court's  
9 going to give you an instruction on that, give you  
10 some guidelines to look at. Couple of things I want  
11 to remind you and cover with you right off the bat,  
12 second sentence in this instruction you should use  
13 your common sense in deciding which is the best  
14 evidence. When you go back to that jury room you  
15 don't suddenly leave behind your life experiences and  
16 common sense, your history that makes up who you are,  
17 (unintelligible) decisions in your life and use that  
18 life experience to go back and evaluate the  
19 testimony.

20 Court's going to tell you you decide, you may  
21 believe or disbelieve any or all part of any witness.  
22 You can believe everything a witness said, none of  
23 what they had to say or some of what they had to say,  
24 it's your choice and I urge you use your common  
25 sense.

1           The Court also gave you a couple of  
2 instructions during the trial, she's going to read  
3 those to you again. Voluntary intoxication and the  
4 defendant's condition and the defendant's statement.  
5 What she told you voluntary intoxication, voluntary  
6 intoxication resulting from the use of a controlled  
7 substance is not a defense to a crime, period. It is  
8 not a defense to say hey, I was doing too many drugs,  
9 I didn't know what I was doing, I didn't form an  
10 intent because I was just too impaired, that's not a  
11 defense. You don't get to go out and do all the  
12 drugs you want to do and then suddenly say this is a  
13 shield, I'm not guilty, I didn't have an intent.  
14 Evidence of the defendant's voluntary intoxication  
15 may not be taken into consideration to show that he  
16 lacked a specific intent of any crime. It's not a  
17 defense, you cannot consider it for a defense at all.  
18 It only goes to considering the voluntariness of the  
19 defendant's statement, that's it.

20           Mental condition. Evidence of an abnormal  
21 mental condition is not a defense to a crime.  
22 Evidence of a defendant's abnormal mental condition  
23 may not be taken into consideration to show that he  
24 lacked the specific intent to commit any crime, not  
25 just first degree murder, any crime for both of these

1 instructions. Such evidence is to be considered by  
2 you only for the purpose of determining whether the  
3 defendant's interview was knowingly, voluntarily and  
4 freely given, that's it.

5 All the evidence that you heard from  
6 Dr. Skolly, from Dr. Olander, the State's rebuttal  
7 with Dr. Zapf and Dr. Goldberger, all that evidence,  
8 all of that goes solely to the defendant's statement,  
9 to whether you should consider that statement, that's  
10 it. You should not and must not enter into your  
11 discussions or thought process in determining whether  
12 or not he's guilty with the exception of whether  
13 you're going to consider his statement. That's all  
14 it goes to, determining whether his statement was  
15 knowingly, voluntarily and freely made.

16 Ladies and gentlemen, take his statement for a  
17 minute. You go back to that jury room and ask  
18 yourselves before I even consider that statement,  
19 before I even consider or discuss the testimony from  
20 those doctors, if the State of Florida has proven  
21 this case to you beyond any reasonable doubt before  
22 you even consider this statement, I would suggest to  
23 you you don't even have to consider it. You don't  
24 even have to discuss the testimony of those four  
25 doctors. If you're -- if we've proven to you beyond

1 any reasonable doubt through all the other evidence  
2 in this case, and I would submit to you even without  
3 this statement the evidence is overwhelming, you  
4 don't have to consider their testimony. So, let's  
5 take that portion of the instructions, let's take his  
6 statement and set it aside. Set it aside and look at  
7 all the other evidence in this case for a minute and  
8 I'm going to come back to that and argue to you later  
9 on why you ought to consider it, but if the evidence  
10 has convinced you beyond any reasonable doubt  
11 independent of that statement, you don't even have to  
12 consider, discuss or talk about Dr. Olander,  
13 Dr. Zapf, Dr. Skolly-Danziger and Dr. Goldberger.

14 What are the elements the State of Florida has  
15 to prove to you in these counts. I'm going to start  
16 first, I'll refer to them as the simpler counts, the  
17 fleeing county and resisting with violence count.

18 Fleeing to elude, the instruction on that.  
19 Fleeing to elude a law enforcement officer siren and  
20 lights activated, high speed or reckless driving.  
21 You've see the camera, both the one in-dash camera,  
22 the helicopter video, you heard the descriptions of  
23 all the officers involved, the elements here, and  
24 this is what the State has to prove, it's the  
25 elements of each crime beyond any reasonable doubt.



1 The State must prove the following four elements  
2 beyond a reasonable doubt. Brandon Lee Bradley was  
3 operating a motor vehicle, Brandon Lee Bradley  
4 knowingly -- knowing that he had been directed to  
5 stop by a duly authorized law enforcement officer  
6 willfully fled in the vehicle or in an attempt to  
7 elude a law enforcement officer, the law enforcement  
8 officer was in an authorized law enforcement patrol  
9 vehicle with agency insignia and other jurisdictional  
10 markings prominently displayed on the vehicle and  
11 with sirens and lights activated, during the course  
12 of the fleeing or attempt to elude, Brandon Lee  
13 Bradley drove at a high speed or in any manner  
14 demonstrating a wanton disregard for the safety of  
15 persons or property.

16 Remember the testimony you had from Sergeant  
17 Shaffer, the initial officer, first one behind the  
18 defendant, Officer Cooper, second patrol car, the one  
19 that had the video, the helicopter, the Star video,  
20 Officer Rau, Officer Amneus, put all of their  
21 testimony together you know the defendant was  
22 driving. Clearly Sergeant Shaffer, Officer Cooper  
23 both had their lights and sirens activated. High  
24 speed, they described to you the speed he was going,  
25 the reckless driving, the wanton disregard running

1 stop signs, almost going into oncoming traffic,  
2 driving town the road at a high speed forcing the  
3 other vehicles off the roadway, I submit to you,  
4 ladies and gentlemen, without any question fleeing  
5 and eluding is proven in this case.

6 Resisting an officer with violence. Brandon  
7 Lee Bradley knowingly and willfully resisted,  
8 obstructed or opposed Deputy Barbara Pill by offering  
9 to do violence to her, at the time Deputy Barbara  
10 Pill was engaged in the lawful execution of a legal  
11 duty. That means simply, ladies and gentlemen,  
12 making a traffic stop. You've heard the information,  
13 you heard the 911 call, information is put out, tag  
14 number related back to the theft of the property from  
15 the hotel, striking the maintenance man, she makes  
16 the stop, she's pursuing, she's in the execution of a  
17 legal duty doing what she's supposed to be doing,  
18 investigating a crime, making the traffic stop. At  
19 the time Barbara Pill was an officer. There's no  
20 debate about that, you've seen the individual, she  
21 was in the patrol car lights on in uniform. At the  
22 time Brandon Bradley knew Barbara Pill was an  
23 officer. You've seen the video, there's no way not  
24 to know. He knew, he was having a conversation with  
25 her. I submit to you, ladies and gentlemen, that's

1           been proven.

2           We go next into the robbery and then into first  
3           degree murder. Robbery leads into one of the two  
4           theories for first degree murder, that being a  
5           felony. What robbery is you're going to get, it's a  
6           two page instruction, the elements, that Brandon Lee  
7           Bradley took the property from the person or custody  
8           of Andrew Jordan, Mohammad Malik. Remember the  
9           principal applies, really doesn't matter between  
10          Brandon Bradley and Andria Kerchner which one took  
11          the property, the principal theory applies. And also  
12          it's from the custody of Andrew Jordan, Mohammad  
13          Malik, the instruction's going to tell you that the  
14          taking does not have to be from the person, from the  
15          body or from the actual owner, it's just from the one  
16          who's in control.

17          Andrew Jordan is the maintenance man, he tries  
18          to stop them. Mohammad Malik is the owner of the  
19          hotel, the property is certainly within his control,  
20          he owns the property.

21          Force, violence, assault or putting in fear was  
22          used in the course of the taking. The property taken  
23          was taken was of some value. You heard the  
24          testimony, the value, we put the list in with the  
25          values attached. Taking was with the intent to

1 temporarily or permanently deprive Andrew Jordan,  
2 Mohammad Malik of their right to the property or  
3 benefit from it, or appropriate the property to  
4 somebody else's use. What that simply means is they  
5 intended to take the property. I believe that's been  
6 shown. They actually left with the property. So,  
7 the key, ladies and gentlemen, element two, force,  
8 violence, assault, putting in fear was used in the  
9 course of the taking.

10 In the course of the taking means that the act  
11 occurred prior to or contemporaneous with or  
12 subsequent to the taking of the property and that the  
13 act and the taking of the property constitute a  
14 continuous series of events. What does that mean?  
15 The act occurred prior to, contemporaneous with or  
16 subsequent to the taking. The act, of course, being  
17 the force, violence, assault, putting in fear was  
18 used in the course of the taking. So, that act, it's  
19 the force, violence, assault or putting in fear can  
20 occur before you take the property, as somebody is  
21 getting their hands on the property or subsequent to  
22 actually taking the property. It's not a defense for  
23 a person who's stealing property to say, well, hey, I  
24 had my hands on the property before I had to use  
25 violence, before I had to put fear in somebody to get

1 away. Doesn't matter whether you have to use that  
2 fear before, while you're getting your hands on the  
3 property or actually after you've already taken it as  
4 long as the act and the taking of the property  
5 constitute a continuous series of acts or events.

6 Let's go over the robbery. What testimony did  
7 you hear concerning that. You heard from  
8 Mr. Montesano, the person who was staying in the  
9 hotel, whose car was parked right next to the  
10 defendants white SUV in the parking lot, he was  
11 actually switching rooms that day so he's getting  
12 ready to move his stuff. What did he tell you? He  
13 saw both defendants taking the property out to the  
14 white SUV. He saw Andria Kerchner, the white female,  
15 and saw this defendant, Brandon Bradley, and  
16 identified him, saw them both taking the property  
17 from the second floor down the staircase out to the  
18 SUV parked right next to his vehicle.

19 You heard from Tammy Brown, one of the cleaning  
20 ladies, she sees the property behind the SUV. You  
21 see the pictures of it. Picture, the nightstand, the  
22 drawer, she sees that property, she goes up to the  
23 blank male and she told you he was getting into the  
24 vehicle, his face was away, I didn't get a good look  
25 at him, but she says, hey, what's this property doing

1 here. What's he say? Oh, it's mine and he gets in  
2 the vehicle. She knows it's not.

3 You heard from Vanessa McNerney, you also heard  
4 from Andrew Jordan and Mohammad Malik as each of them  
5 arrived to that vehicle and you heard Andrew Jordan  
6 tell you and the other witnesses he went to the front  
7 of the vehicle because he wanted to stop them. He's  
8 right in front of that hood, the front of the vehicle  
9 hands on the hood yelling give us back the property,  
10 give us back the property or we're calling the  
11 police. He's told you he yelled that several times.  
12 The defendant the length of that hood away makes eye  
13 contact with him, says I'm looking right at him,  
14 that's who he's focused on. He's not paying much  
15 attention to the girl. In fact, if you look, his  
16 photo ID he got her wrong. He got the defendant  
17 right but he got Andria Kerchner wrong because that's  
18 not who he's worried about, he's worried about the  
19 ones behind that driver's wheel in this vehicle that  
20 probably weighs five thousand pounds, this SUV. He's  
21 trying to stop them and ultimately pulls out his cell  
22 phone, hands it to Mr. Malik and 911 is called and  
23 you heard that phone call.

24 But what happens while he's in front of that  
25 vehicle? What does he tell you? He's standing

1 there, Brandon Bradley starts it and then comes  
2 forward a few inches, little forward motion after he  
3 started, puts it in gear and goes forward. What does  
4 Andrew Jordan tell you at that point? He was afraid.  
5 He's afraid of getting run over. Whether that SUV  
6 runs him over when he's going two miles an hour or it  
7 ran him over if it was going twenty, it's still five  
8 thousand pounds running over you. So, he puts his  
9 hands on the hood and pushes himself off to get out  
10 of the way to avoid being hit, to avoid being run  
11 over, he's in fear. Right then and there is when  
12 this theft escalated to a robbery. Force, violence,  
13 assault or putting in fear was used in the course of  
14 the taking because if Andrew Jordan doesn't move,  
15 they don't get away unless they're going to run right  
16 over him. If he doesn't move they're stuck there.  
17 So, when this defendant had that car go forward,  
18 lurch forward, that put Andrew Jordan in fear which  
19 caused him to jump out of the way so this defendant,  
20 Brandon Bradley, could drive away, could escape to  
21 could get away.

22 They know the police are called, they told them  
23 they were calling the police, they're on the cell  
24 phone calling them, on the phone with the 911  
25 operator, Mr. Brandon Bradley has to get away

1 because he knows if he's still there when the police  
2 arrive he has these warrants, he's stealing property,  
3 he's going to jail. So, what does he do? He puts  
4 Mr. Jordan in fear. As Mr. Jordan is pushing out of  
5 the way he doesn't get quite out of way in time and  
6 the vehicle brushes his side. You heard that from  
7 Mr. Jordan, you heard that from Mr. Malik, no  
8 question it brushed him. Certainly that's the use of  
9 force to get away, but the robbery is already  
10 occurred. If Mr. Jordan had been lucky enough to get  
11 completely out of the way it would still be a robbery  
12 because he still used fear, that threat of force,  
13 putting Mr. Jordan in fear, that is what a robbery  
14 is. It's a theft with that threat. He's guilty of  
15 the robbery. That leads right into the murder case.

16 Court's going to tell you there are two ways to  
17 prove first degree murder, premeditated murder or  
18 first degree felony murder, either one leads you to  
19 the result of guilty of first degree murder. We can  
20 all be unanimous on one theory, you can all be  
21 unanimous on the other theory or you can be split.  
22 As long as everybody agrees the defendant's guilty of  
23 first degree murder, your verdict is guilty of first  
24 degree murder. Half can say State's proven  
25 premeditated murder to me, half can say the State's



1 proven felony murder, as long as all agree on first  
2 degree murder, that's your verdict. In this case I  
3 would submit the evidence proves either theory.

4 I'm going to go over those with you but I want  
5 to cover with you as the Court reads to you the  
6 homicide instruction. She's going to cover a couple  
7 of defenses. First is what's called excusable  
8 homicide. Killing of a human being is excusable and  
9 therefore lawful under any of the following three  
10 circumstances:

11 The killing was committed by accident and  
12 misfortune in doing any lawful act by lawful means  
13 with usual ordinary caution without any unlawful  
14 intent. It's not accident and misfortune, the  
15 defendant's not doing a lawful act.

16 When the killing occurs by accident and  
17 misfortune in the heat of passion upon any sudden and  
18 sufficient provocation. None of that here. The  
19 killing is not accident or misfortune. You don't  
20 fire eight shots by accident withing two feet of  
21 somebody. There's no heat of passion.

22 When the killing is committed by accident and  
23 misfortune resulting from sudden combat if a danger  
24 weapon is not used and the killing is not done in a  
25 cruel and unusual manner. It doesn't apply. It's

1 not by accident. It's not -- the killing was not by  
2 misfortune and there's no sudden combat. Excusable  
3 homicide doesn't apply.

4 Court's going to read to you justifiable  
5 homicide, one sentence, and then go into the lengthy  
6 explanation of justifiable use of deadly force, which  
7 is what people commonly know as and refer to as  
8 self-defense. It's a three page instruction, I'm  
9 going to cover a couple of paragraphs with you that  
10 will explain to you what I would submit common sense  
11 tells you that you already know, there is no  
12 self-defense in this case, period.

13 I'm going to cover this what's required for it  
14 and then there's going to be two paragraphs.  
15 However, the use of deadly force is not justified if  
16 you find Brandon Lee Bradley was attempting to  
17 commit, committing or escaping after the commission  
18 of a robbery. When you're a fleeing felon, you don't  
19 get to use self-defense, period. It doesn't matter  
20 who's there. He's a fleeing felon, he's fleeing from  
21 that scene of that robbery. Self-defense wouldn't  
22 apply no matter who was killed.

23 A person is not justified in using force to  
24 resist an arrest by a law enforcement officer or to  
25 resist a law enforcement officer who is engaged in

1 the execution of a legal duty if the law enforcement  
2 officer was acting in good faith and he or she is  
3 known or reasonably appears to be a law enforcement  
4 officer. And what was Deputy Pill doing? Executing  
5 her legal duty, doing what she's paid to do, what  
6 she's sworn to do. Was she acting in good faith?  
7 Absolutely. You had the tag number, you had the  
8 vehicle, it's fled from that motel, the EconoLodge,  
9 York Inn, she's acting in good faith, she's doing  
10 what she's supposed to do, stopping that vehicle.  
11 Does she reasonably appear to be a law enforcement  
12 officer? No question about that. In the car, siren,  
13 lights, uniform. Self-defense does not apply,  
14 period.

15 First agree murder. I'm going to start with  
16 felony murder first, then I'm going to go into the  
17 premeditated murder. Remember, the Court is going to  
18 tell you two ways that we can prove this, they're  
19 both first agree murder.

20 Felony murder. To prove the crime of first  
21 degree felony murder, the State must prove the  
22 following three elements beyond a reasonable doubt:  
23 Barbara Pill is dead, the death occurred as a  
24 consequence of and while Brandon Lee Bradley was  
25 escaping from the immediate scene of a robbery, and

1 Brandon Lee Bradley was the person who actually  
2 killed Deputy Pill. In order to convict of first  
3 degree felony murder, it is not necessary that the  
4 State prove that the defendant had a premeditated  
5 design or intent to kill.

6 So, let's look at these elements. No question  
7 Barbara Pill is dead, that the defendant is the one  
8 who did the killing. I submit principal theory  
9 applies here regardless, but in this case the  
10 evidence overwhelmingly I would submit proves to you  
11 Brandon Bradley's the one that pulled that trigger  
12 eight times.

13 Who's the driver? Look at the evidence of who  
14 did the killing the first question is who's driving.  
15 Every witness from that hotel told you who was in the  
16 driver's seat, every employee of that hotel, the  
17 owner Mr. Malik, to a T, everyone told you which one  
18 got behind the driver's wheel, which one got into the  
19 passengers seat. Brandon Bradley in the driver's  
20 wheel, behind that wheel in the driver's seat, the  
21 black male, Andria Kerchner into the passengers seat,  
22 the white female. Everyone told you that.

23 What does Trista Lowman tell you? Remember,  
24 she's the neighbor. She pulls in during the traffic  
25 stop, parks her vehicle and is getting her young

1 child out of the back seat, kind of paying attention  
2 to what's happening because she's got a traffic stop  
3 right there next to her house, she hears those shots  
4 ring out. What does she tell you? The black male is  
5 the driver. Not in a position she can make an  
6 identification but she knows black male in the  
7 driver's seat, white female in the passengers seat.

8 What does Barbara Pill tell you? What do you  
9 hear from her on her video statement, the tape? What  
10 is she telling you through her radio traffic when she  
11 has a black male driver. And you can hear her as she  
12 walks up to that white SUV as she gets to the  
13 position where she can now see the passengers side  
14 and that passengers seat, what does she radio in? I  
15 have a white female passenger as well. There is  
16 no -- I submit no question who is behind that  
17 driver's wheel and who is on the passengers seat.

18 Look at the chase, look at the testimony from  
19 Officer Rau and Officer Amneus when they're throwing  
20 out their stop sticks who's the driver, who's the  
21 passenger. Again, they're not in a position where  
22 they could make an ID but they're in a position where  
23 they can tell it's a black male in the driver's seat,  
24 white female in the passengers seat. Every witness  
25 tells you that, including Andria Kerchner, that it's

1 this defendant, Brandon Bradley, who was driving.

2 You saw the video, you didn't see a passenger  
3 moving over, didn't see any of that in the video, but  
4 what you did see is that firearm, that door with that  
5 door open. And you saw the slow motion video and the  
6 still photographs are in evidence and if you sit  
7 there and you watch that slow motion video again, go  
8 back and control it and slow it down even more, when  
9 you slow it down you can actually see the hand, the  
10 arm and the firearm. Not the greatest of quality  
11 because it's just a fast cam video, but you can  
12 actually see it and you can see the recoil over and  
13 over eight times. When you look at that video in  
14 slow motion and you look at the still photographs,  
15 we've put them all in, the key six seconds, and you  
16 can look and go through them one at a time, you can  
17 see the one that's listed 014 you can see the gun.  
18 You can go through these when you look at it them in  
19 slow motion and you can see that's the movement.  
20 When you look at number thirteen, look at number  
21 fourteen, if you look at these, ladies and gentlemen,  
22 you're going see a little sliver of him shooting.  
23 What you can see is not only firearm being black and  
24 dark but you can see below where the firearm would be  
25 the portion (unintelligible) and you can see it and

1 you can see Barbara Pill's skin. When you look at  
2 the rest of that, when you look at this in  
3 conjunction with the slow motion video, you can  
4 actually see dark just below is also a weapon, that  
5 tells you without any question Brandon Bradley's hand  
6 is on that gun. Brandon Bradley's hand and fingers  
7 that's pulling that trigger. The video shows you  
8 without any question I would submit what you already  
9 know from all the other evidence, that Brandon Lee  
10 Bradley is the shooter.

11 You know that from Jeffrey Dieguez and you know  
12 that from Andria Kerchner, from their testimony.  
13 Andria Kerchner told you Brandon -- it was Brandon  
14 Bradley's gun, he's the one who always possessed it,  
15 he's the one who shot and killed Deputy Pill.

16 Jeffrey Dieguez told you from what he could  
17 hear, remember he's the one on the open line, that  
18 it's Brandon Bradley saying I've got to kill her.  
19 His words were I've got to kill the bitch, she's seen  
20 my face, she's scene my tag. That's Andria Kerchner  
21 he says the voice that he knows that's pleading with  
22 him begging him not to do it.

23 How else do you know who it is? Who's gun is  
24 it. You heard the evidence, he bought the gun back  
25 in December. He bought the gun, you heard the

1 identification through the photograph, we put the  
2 defendant's DL photo in, it's his gun.

3 What also do you have? We have the prints, BP2  
4 and BP5 taken off plastic ammo tray that's inside the  
5 ammo box with three rounds of live ammunition forty  
6 caliber in it. Whose prints are on this plastic  
7 tray, on the tray that holds the live ammo? You  
8 heard from Virginia Casey without any question this  
9 defendant's prints on the box with the live ammo.

10 You heard Stephannie Cooper, the person who  
11 took those prints also swabbed the firearm and what  
12 she did say? She swabbed those areas, one swab the  
13 trigger and textured area, the grip, right where a  
14 person who's holding the gun you would expect to find  
15 his DNA.

16 And what did Cory Crumbley tell you whose DNA  
17 is on the trigger? It's not Andria Kerchner's, she's  
18 excluded, impossible, cannot be hers. Whose DNA is  
19 on the trigger, this defendant, Brandon Lee Bradley.  
20 What are the odds another black male who happened to  
21 be there in that vehicle, a random black male who has  
22 the same DNA, one in thirty five quadrillion. That's  
23 a one with fifteen zeros to follow. I submit to you  
24 there aren't even close to that many people in the  
25 world. Brandon Bradley's DNA is on the trigger, he's



1 the shooter, all the evidence tells you that.

2 Element two, the death occurred as a  
3 consequence of and while the defendant was escaping  
4 from the scene of the robbery. Go back and look at  
5 the evidence, look at the timeframe of what the  
6 witnesses told you concerning that. You heard the  
7 911 call, the call for the police. You heard from  
8 Deputy Troup saying he responded there as soon as the  
9 call came in he was there within a few minutes and  
10 he's only there for a couple of minutes, didn't even  
11 make it into the hotel room when he hears the call  
12 from Deputy Pill that she's spotted the vehicle and  
13 Deputy Pill turns around and is going to go stop the  
14 vehicle.

15 All the hotel witnesses told you this was right  
16 at checkout time, 11:00 o'clock, right close to that  
17 hour, you saw from Deputy Pill's camera that it comes  
18 on at 11:07. If you recall from the testimony that  
19 when the lights are activated the camera records the  
20 prior thirty seconds. So, when it kicks on at 11:07,  
21 that's thirty seconds before she's turned on her  
22 lights to stop the vehicle.

23 Deputy Troup told you that he went to assist  
24 her as soon as he heard that she had spotted the  
25 vehicle so he's already leaving and is on his way.

1 He says once Deputy Pill radios in that the vehicle's  
2 not stopping right away, that's when he tells you I  
3 upped my response. That's when he kicks on his siren  
4 and his video starts recording. And you saw through  
5 his video the traffic, the lights he had to go  
6 through, the construction that was in the area.

7 You heard from Agent Reynolds that he measured  
8 it and the distance from the hotel to Elena Way 3.5  
9 miles. You know by the time Deputy Pill spots this  
10 white SUV it's not travelling 4.5 miles, it's a  
11 little bit less, she hasn't made it to Elena Way  
12 quite at that point. This is all happening within  
13 minutes of their fleeing from that hotel, from the  
14 York Inn, from the scene of the robbery.

15 Andria Kerchner told you they hadn't stopped  
16 anywhere. They hadn't reached any safe haven, they  
17 were still in the act of fleeing. They were still in  
18 the act of escaping from the scene of that robbery.  
19 That's what felony murder is, they're still in the  
20 act of that robbery, they haven't gotten away yet.  
21 This is not something that happened a day or two days  
22 later or even hours later, it's minutes after.  
23 They're still fleeing, escaping from the scene of  
24 that robbery. The death occurred as a consequence of  
25 and while Brandon Bradley was escaping from the

1 immediate scene of the robbery.

2 Barbara Pill is dead because she's the one who  
3 stopped them. She's the one who stops him from  
4 fleeing from that robbery scene. I submit whatever  
5 officer was going to stop him he was going to kill  
6 whatever officer stopped him. First degree felony  
7 murder. No question Barbara Pill is dead, no  
8 question Brandon Lee Bradley is the person who pulled  
9 the trigger and no question I would submit to you  
10 that the death of Barbara pill occurred as a  
11 consequence of and while the defendant was escaping  
12 from the York Inn.

13 Remember, you've seen the aerial photographs  
14 and the maps. The York Inn, the EconoLodge, it's  
15 right there on 192. You go out of there, make the  
16 right and right there's the left for John Rodes  
17 Boulevard. Then it's a straight shot down John Rodes  
18 Boulevard to where Elena Way is at and that's the  
19 road that they're seen. That's the road that Deputy  
20 Pill sees the vehicle as they're leaving away  
21 escaping from that hotel.

22 Premeditated murder. To prove the crime of  
23 first degree premeditated murder, the State must  
24 prove the following three elements beyond a  
25 reasonable doubt: Barbara Pill is dead, the death

1 was caused by the criminal act of Brandon Lee  
2 Bradley, and there was a premeditated killing of  
3 Barbara Pill. We've shown you Barbara Pill is dead.  
4 We've already went over the evidence, the death was  
5 caused by the criminal act of Brandon Lee Bradley.  
6 There was a premeditated killing of Barbara Pill.

7 So, what is killing with premeditation.  
8 Court's going to tell you on this instruction the  
9 killing with premeditation is killing after  
10 consciously deciding to do so. The decision must be  
11 present in the mind at the time of the killing. The  
12 law does not fix an exact period of time that must  
13 pass between the formation of the premeditated intent  
14 to kill and the killing. The period of time must be  
15 long enough to allow reflection by the defendant.  
16 The premeditated intent to kill must be formed before  
17 the killing. What does that mean? It means  
18 premeditated intent does not have to be done the day  
19 before or hours before. There's no exact time or  
20 exact period of time that must pass between having  
21 the intent and doing the killing, all it has to be is  
22 enough time to allow reflection. Enough time I would  
23 submit reflection is to know what you're going to do.  
24 You have a thought to decide I'm going to kill with  
25 enough time to think, yes, I am, that's reflection.

1 There's no planning of hours in advance, lying in  
2 wait, that certainly would be premeditation, but it's  
3 not the bar. It's not what is required. Have the  
4 intent before the killing, before pulling that  
5 trigger having that intent and having enough time to  
6 have reflection, that's premeditation.

7 What shows you the premeditation in this case.  
8 First the defendant acquired a gun. If I said Meeks  
9 earlier, it's actually Robert Marks. You heard the  
10 testimony, he got that firearm, the murder weapon  
11 back in December. You heard the testimony from  
12 Robert Marks who took it out of his brother-in-law's  
13 car, out of the glove box. You heard the testimony  
14 that that's where it was kept at when it came up  
15 missing. You've seen the paperwork IDing it up as  
16 the same serial number. You heard from the agent who  
17 interviewed Robert Marks and actually showed him a  
18 picture of Brandon Bradley, you've got that picture  
19 into evidence, you got a copy of Mr. Bradley's  
20 driver's license photo in evidence. You also have  
21 the photo lineups in evidence. Remember the agent  
22 told you, Agent Carson, used the one that we had  
23 released, used the one, you can look at it, looks  
24 pretty darn similar if not exact to the one in the  
25 photo lineups. You look at the defendant's driver's

1 license photo, there's no question that's him.

2 That's who Robert Marks said that's who I sold the  
3 gun to.

4 You have Amanda Ozburn, I submit to you, ladies  
5 and gentlemen, certainly reluctant, from the  
6 testimony still cares about the defendant, what did  
7 she tell you. She told you that he had the gun. She  
8 knew him to carry a gun. She told you she was with  
9 him in late 2012 when she saw several police officers  
10 and the defendant got all nervous. She told you that  
11 he told her he knew about his warrants and what he  
12 would do.

13 You heard the evidence from Charles Colon, the  
14 defendant's probation officer, and that he put  
15 violation of probation warrants out. That the  
16 defendant had stopped reporting to his probation  
17 which obviously he's going to get a warrant out for  
18 your arrest. You have to report, that's one of the  
19 elements of probation. So, when somebody doesn't  
20 report and stops going in, they know. Even if you  
21 had no other evidence that he knew, that fact alone  
22 would tell you that he knew he had warrants out for  
23 his arrest, but you have the testimony from Amanda  
24 Ozburn the defendant knew about his warrants. You  
25 also have the other warrants out for his arrest,

1           you've seen those. All evidence of premeditation.  
2           He knows he has those warrants out. He knows that  
3           they're there, that if the police make contact with  
4           him as he said he's going back to prison and what  
5           does he say to Andria Kerchner and what does Jeffrey  
6           Dieguez hear, I'm not going to prison. I have to  
7           kill this bitch. She saw my tag, she saw my face,  
8           I'm not going back to prison.

9                     What does Jeffrey Dieguez tell you that's going  
10           on? Andria Kerchner's begging with him, pleading  
11           with him baby, don't do this, you don't have to do  
12           this, don't do it. And what does he tell you the  
13           defendant says over and over? I have to kill her,  
14           I'm not going back to prison, several times. Whether  
15           you want to classify it as an argument or a  
16           discussion, Andria Kerchner is pleading with him  
17           telling him you don't have to do it. How much more  
18           evidence of reflection can you have than a discussion  
19           about it, a discussion about the killing. That's  
20           reflection. She saw my tag, she saw my face, I got  
21           to kill her.

22                     The Defense is going to argue, well, you can't  
23           believe Mr. Dieguez. You can't believe him at all.  
24           He's done drugs. He's got prior felony convictions.  
25           That's real a surprise there? People who are going

1 to be involved in drugs you'd certainly expect them  
2 to have felony convictions. It would be shocking if  
3 he didn't. That's a factor you look at as we talked  
4 about in voir dire. But the other things the Court's  
5 going to tell you weighing the evidence is does the  
6 witness' testimony agree with the other evidence. Do  
7 they appear to be in a place or in a spot where they  
8 can see and hear the things that they testified to.

9 What do we know about Mr. Dieguez. He's on the  
10 other end of that phone and that phone -- that call  
11 was not terminated, it was not ended at the time of  
12 the traffic stop and at the time of the defendant's  
13 killing Barbara Pill. The phone records show you  
14 that. The phone call happened at 10:48 and went on  
15 for thirty-two minutes. It is an open line occurring  
16 the time of the killing. Mr. Dieguez is in a place  
17 where he can hear the things he testified to. He's  
18 on the other end of that phone line.

19 What did he tell the Defense on cross  
20 examination, all of his other issues and all of his  
21 other problems I am never going to forget this as  
22 long as I live. You know he's listening to it, the  
23 phone line is open, but what does he tell you, some  
24 of the little details. He hears the burp, burp of  
25 the siren, a classic siren would whoo, just that



1 little burp. What do you hear on the video? That's  
2 what you hear. That's what you hear and that's what  
3 Mr. Dieguez told you that he heard. Those are the  
4 things that you can look to say that testimony is  
5 reliable. Compare it to all the other evidence,  
6 compare it to the phone line, he's able to hear it.

7 What does Andria Kerchner tell you. She tells  
8 you the defendant had the gun, that he had the gun  
9 the timeframe she was with him, that he usually kept  
10 it on him in his pocket or like close in the vehicle  
11 but it's his gun. How do you know that? How can you  
12 believe her? Look at the other evidence. Look at  
13 the testimony from Robert Marks, look at the prints  
14 that are on that tray holding the live ammunition and  
15 look at whose DNA is on that firearm.

16 She tells you the same, the defendant says I'm  
17 not going back to prison. I will do whatever I have  
18 to do. I'm going to kill that cracker. And what  
19 does Andria Kerchner tell you that she does, she  
20 pleads with him not to do it, that he didn't need to  
21 do it consistent with what Jeffrey Dieguez has told  
22 you. They're choice of words may differ slightly but  
23 they're telling you the same thing that this  
24 defendant is saying and what Andria Kerchner is  
25 saying back to him, you don't need to do it. Baby,

1 don't do it. That lays out premeditation to a T.  
2 That's reflection. That's time to reflect. That's  
3 all that's needed is time to reflect. When you're  
4 having a discussion about it, when you have somebody  
5 trying to talk you out of doing it, that's  
6 premeditation.

7 Finally, what do the shots tell you of  
8 premeditation, of his intent. Is this one shot to  
9 the leg, one shot to the foot. Well, I'll just wound  
10 her, that will give me time to get away? Or is this  
11 just two shots to the leg to try to wound her and  
12 maybe have some freak ricochet but I'm just trying to  
13 do it to get away, just going to wound her. No,  
14 these are eight shots. You know it's eight because  
15 you have all the spent casings, seven at the scene,  
16 one found in the vehicle. You have the ten round  
17 magazine, one round still in it, one round is still  
18 in the firearm when it's recovered. You have eight  
19 shots. You have two in the door. You have the one  
20 that went over to the grass area. You have the one  
21 that looks like it hit the vest. And then you have  
22 as Dr. Qaiser testified to the five entrance wounds  
23 what appeared to be from four shots. Eight shots.

24 You heard from the ballistics expert from FDLE  
25 all those casings are fired from that weapon, the

1 projectiles could be matched, came from that weapon  
2 and that weapon you heard her talk about the trigger  
3 pull, over six pounds, I think she said six and a  
4 half to six and three quarters if I remember  
5 correctly, normal trigger pull. It's not a light  
6 trigger, it's not an easy trigger, it's not a feather  
7 trigger, it's not something that you're just going to  
8 accidentally touch the trigger and it goes off, it's a  
9 normal trigger pull. And it's not a gun where you  
10 pull the trigger once and every shot comes out, you  
11 have to keep pulling that trigger time and time again  
12 and what does this defendant do, not once, not twice,  
13 not three times but eight times. And you can see it  
14 in that still video and the slow motion video and in  
15 those still photographs, it's got the recoil, his  
16 hand is coming up and each time it's back down,  
17 pulled again eight times. That screams to you  
18 intent.

19 And where are all those shots fired? Where is  
20 Deputy Pill hit? We know from the autopsy she's  
21 within two feet. Dr. Qaiser pointed out the  
22 stippling on her forehead, that only comes from  
23 what's the unspent powder coming out of the barrel of  
24 that gun. You only get that if you're within two  
25 feet. She's two feet away from him when he pulls

1 that gun up and points and pulls the trigger. And  
2 you saw the wound, the depth wound on the top of the  
3 head. Dr. Qaiser talked to you about it and he says  
4 well, it's back to front but downward, may have been  
5 slightly confusing, but if you think about it all  
6 he's trying to tell you is back to front means the  
7 path of that bullet went from the back portion to the  
8 front portion and if you look at the side of the head  
9 you can see where the wound is on the top of the  
10 head, all back to front means is that's at an angle  
11 where the travel goes more towards the front and the  
12 back. (Unintelligible) back of the head and he  
13 showed you the pictures, you've seen where it's at  
14 both from this picture and the other one, the angle  
15 from the top, all that means is the path is on a path  
16 that goes towards the forward part of the body,  
17 downward and back to front.

18 And where are the other wounds? Where is  
19 Deputy Pill hit? Entrance wound upper arm, entrance  
20 wound high back, low neck, entrance wound high back.  
21 As she's spinning, turning, falling she's being hit  
22 and she's being wounded. Where were these wounds  
23 being fired at? They're not at the leg, they're not  
24 at the foot, they're not at the knee, they're at the  
25 head and high part of the body. These are shots to

1 kill. These aren't shots to warn, these aren't shots  
2 to wound, these are not shots to just put somebody  
3 down by shooting them in the foot, these are shots to  
4 kill. The old saying actions speak louder than  
5 words. What is his intent? What does he intend to  
6 do? What is his premeditation? Look at the shots,  
7 eight times from a distance within two feet at the  
8 head and into the chest. The evidence screams to you  
9 premeditation. Screams to you premeditation that's  
10 intended to kill her and he's not going back to  
11 prison.

12 Ladies and gentlemen, we talked about early on  
13 the defendant's statement, I submit to you the  
14 evidence that I went over I would submit proves  
15 beyond any reasonable doubt both theories of first  
16 degree murder, felony murder and premeditated murder,  
17 and if the evidence independent of his statement  
18 proves that to you, I state you don't even need to  
19 consider it. You don't even need to look at the  
20 statement and consider and evaluate the testimony  
21 from those doctors. I'm going to go over his  
22 statement with you but again as I told you, the  
23 evidence I submit overwhelming, you don't even have  
24 to get to this step.

25 What's the key thing from the instruction the

1 Court's going to tell you, a statement claimed to  
2 have been made by the defendant outside of court has  
3 been placed before you. Such a statement should  
4 always be considered with caution and weighed with  
5 great weight to make certain it was knowingly,  
6 voluntarily and freely made. Therefore, you must  
7 determine from the evidence that the defendant's  
8 alleged statement was knowingly, voluntarily and  
9 freely made. In making this determine you should  
10 consider the total circumstances, including but not  
11 limited to, whether when the defendant made the  
12 statement he had been threatened in order to get him  
13 to make it and, two, whether anyone had promised him  
14 anything in order to get him to make it. If you  
15 conclude the defendant's out of court statement was  
16 not knowingly, voluntarily and freely made, you  
17 should disregard it. This is the only area that the  
18 condition of voluntary intoxication applied to at  
19 all, that's it, just to whether you're going to  
20 consider his statement.

21 Was it freely, voluntarily and knowingly made.  
22 Were any threats made against him? You heard from  
23 all the officers involved. Once they took him into  
24 custody out of that vehicle, up the embankment, the  
25 one who transported him to the sheriff's office, you

1 heard from the one who interviewed him, you saw the  
2 interview, no threats made, never mistreated, never  
3 threatened, never threatened with any physical harm.  
4 No promises made, no coercion. You saw the  
5 interview, officers were polite. No yelling, no  
6 raised voices, no towering standing over him yelling  
7 at him trying to intimidate him. As Dr. Zapf told  
8 you, they were polite, cordial.

9 You've heard about the blood draw and the urine  
10 draw from the defendant. In the blood marijuana and  
11 Xanax, in the urine the hydrocodone, the cocaine.  
12 What did the experts from -- toxicologists from  
13 Wuesthoff, even Dr. Danziger, and certainly  
14 Dr. Goldberger told you what's in the urine can be  
15 there for up to days. No way you can look at any of  
16 that what's in the urine, take that leap that somehow  
17 was causing him to be impaired. Can't make the leap  
18 from what's in the urine, period.

19 You have the marijuana and you have the Xanax.  
20 Look at the qualifications of Dr. Skolly-Danziger  
21 versus the qualifications of Dr. Goldberger. Who's  
22 Board certified? Who spent his entire career in  
23 forensic toxicology? Who's the head of the  
24 Department of Forensic Medicine, the toxicology at  
25 University of Florida? Dr. Goldberger. Who's the

1 one who's published some seventy or eighty articles  
2 in peer review journals, lectures all over the globe  
3 in his field? Dr. Goldberger.

4 Dr. Skolly-Danziger initial report, well,  
5 there's the codeine, there's the promethazine. What  
6 does she do second report testimony? Well, I backed  
7 off of that, must have misread the report or  
8 something, backing off her opinions, making those  
9 errors. What does she tell you about the Xanax.  
10 Well, eleven hours is the half-life and I'm able to  
11 do the retrograde examination and go back in time and  
12 I put his result at two hundred and sixteen or two  
13 hundred and fifteen, whatever her account number was,  
14 that's what it was at the time of the interview and  
15 his waiver, but in the report she said she can't do  
16 it exactly. When questioned I didn't say that.  
17 Well, I guess I did but I used the term exact here,  
18 that's not what I'm doing, I'm doing a rough  
19 estimate. Down to an actual number, that's one heck  
20 of a rough estimate.

21 What did Dr. Goldberger tell you? It's not  
22 valid, you can't do it. It's not valid science to do  
23 that for a number of reasons. First, is that the  
24 half-life ranges anywhere from six to I believe he  
25 said twenty-six hours. The most common in somebody



1 is eleven but you have no idea what a person actually  
2 is. Such a wide range. Indeed multiple tests over  
3 and over to try to measure what the person's  
4 metabolic rate is. You can't do it.

5 On top of that, different people are affected  
6 in different ways. Different people have different  
7 level of usage of drugs. They became more adapted to  
8 the drug, better able to handle the effects.

9 Dr. Danziger said, oh, the defendant told me he  
10 did twelve pills early in the morning and then twelve  
11 pills at the time of the crash, twenty-four pills,  
12 two milligram pills, forty-eight. What did  
13 Dr. Goldberger tell you about that? Because Dr.  
14 Danziger, defendant told me, I'm just running right  
15 with it. Dr. Goldberger, that's an unbelievable  
16 amount. Unbelievable.

17 What did Dr. Goldberger tell you, he's watched  
18 the statement, defendant's not slurred. Mumbles his  
19 words, not slurred. He's not lethargic, not in a  
20 coma like state he would expect to see him if he had  
21 taken twenty-four Xanax, normal dosage one to two.  
22 He's clear in his answers, no confusion.

23 What difficulty in answering the questions.  
24 You've seen the videotape, you've heard from the  
25 agent who interviewed him, his answers were in

1 response to the questions. He's answering on the  
2 same subject matter of what he's being asked.  
3 They're not asking about something and his answer  
4 just comes out of left field on a totally different  
5 subject matter. He's able to answer the questions.  
6 Doesn't have the confusion or difficulty in doing  
7 that. Dr. Goldberger, no signs of impairment.

8 You heard the testimony of Dr. Olander and  
9 Dr. Zapf, they're the ones that focused on voluntary,  
10 knowing and intelligently. Voluntary, no threats, no  
11 promises, no coercion, talked about that, you saw the  
12 video, you heard from all the officers. There isn't  
13 any of that.

14 Knowing is an understanding. Even with  
15 Dr. Olander, well, understanding you implicate  
16 yourself? Yes. Did you understand that by talking  
17 to me it you could implicate yourself or implicate  
18 others.

19 Intelligent, that you're able to weigh the  
20 information, that you appreciate what you're doing.  
21 Look at the interview itself, look at the specifics  
22 of the interview, look at the things and use your  
23 common sense, and look at what the defendants saying  
24 in that video.

25 Miranda. They go through it line by line, step

1 by step. The officer's right there, he has the  
2 sheet, the defendant's able to look at it. We know  
3 he has a high school graduation, we confirm he can  
4 read. He had a 2.6, 2.7 GPA, a high C, almost a B  
5 minus average. Probably is a B minus average.  
6 Graduated at seventeen, never had to repeat a grade.  
7 And what does he tell them going through step-by-step  
8 right by right, um-hmm, um-hmm, um-hmm. You  
9 understand? Yeah, I understand. I understand.

10 Look at what happened during the interview  
11 itself. There were times, several times the officer  
12 would go to repeat back what he said and he would  
13 clarify. Multiple times, and Dr. Zapf talked about  
14 that, clarifying his position, clarifying things that  
15 the officers state to him because he knows and  
16 understand the importance of his words, of what he's  
17 saying. Shows the level of understanding of that  
18 importance. Shows the appreciation of his rights.

19 Indicates at one point he can incriminate  
20 himself over the. Gun talks about other times he  
21 doesn't want to get his girlfriend and baby mama into  
22 trouble. Understands that he could incriminate  
23 himself or others when he's talking.

24 Approximately 8:21, the timeframe on the  
25 interview, goes to the officers now don't put words

1 into my mouth. Understands the importance.

2 One point during the interview, Dr. Zapf talked  
3 about this, the defendant says -- they talk to him  
4 about the timeframe, they said from the hotel to the  
5 shooting, approximately twenty minutes. He has a  
6 concept of time. We're talking at this point now  
7 some nine hours after the shooting.

8 Interview starts at 7:30, at 7:34 or so, 7:33,  
9 somewhere in that timeframe. The shooting happened  
10 at about 11:10. I believe that's the time reflected  
11 in Deputy Pill's camera. The interview goes for over  
12 an hour at various stages. So, this many hours  
13 afterwards he still is able to give them an accurate  
14 estimate of the time. Does that sound like someone  
15 who's so impaired, who has no idea what's going on.

16 Look at his physical actions throughout the  
17 day. Look at the testimony from the people at the  
18 hotel. Mr. Montesano, he was able to carry things,  
19 able to navigate the stairs. Knew enough to flee  
20 from the hotel when they're on the phone with 911  
21 calling the police, he knows enough I've got  
22 warrants, time to get out of dodge. Not so impaired  
23 to not realize, hey, I ought to get out of here.  
24 He's able to drive. Not in such a coma like stance  
25 that he can't drive. Leaves not wandering around the

1 parking lot, not figuring out how the heck do I get  
2 out of here because he's so messed up, goes right out  
3 towards the entrance to the front of the hotel, makes  
4 a turn, heads on John Rodes Boulevard going north  
5 getting away from that motel.

6 Look at the testimony from the officers in  
7 which you saw in those cams. After the shooting he  
8 knows enough to get the heck out of there. And then  
9 he's going down the one road, I think it was  
10 Carolwood and the other officers, the one officer  
11 goes past that intersection and sees him, makes a  
12 quick turn around, goes back to the road, the  
13 defendant's already off the road. Can't find him.  
14 Why? See's him I presume in the rearview mirror and  
15 says oh, no, I got to get out of here. Again, knows  
16 enough to try to hide to get away.

17 And you've seen the pictures, the aerial  
18 photographs where Mr. Weber's house is at. You saw  
19 the pictures of the driveway, the tire tracks. You  
20 can see the pond where they told you coming from this  
21 driveway area that's right off after that road,  
22 Carolwood, around the pond up to Mr. Weber's house.

23 He has enough wits about him to get the heck  
24 off the road knowing the officers just passed,  
25 they're probably coming back. Has enough wits to go

1 down that little driveway off of that, navigate  
2 through that grass, navigate around the pond and get  
3 to the house that has an open garage door because  
4 they know they're going to need gas. You heard from  
5 Stephannie how low the truck was in gas. He's able  
6 to do all of that.

7 Then when they finally go to stop him, remember  
8 Officer Cooper, I parked my car to block the road and  
9 I threw the stop sticks down and what does he do, the  
10 defendant drives around the grass around my stop  
11 sticks and around the car. Got enough wits to be  
12 able to do all of that.

13 Then you saw on the Star camera and Officer  
14 Coopers video more stop sticks are being thrown by  
15 various officers every chance they get, he's trying  
16 to maneuver around them, fortunately there's enough  
17 of them out there on enough sides that he can't miss  
18 all of them, but you see him driving around them,  
19 trying to.

20 Yet suddenly eight hours later Dr. Danziger and  
21 Dr. Olander tell you he's just too impaired to waive  
22 Miranda. He's able to do all those things, up and  
23 down stairs, drive, avoid stop sticks, avoid the  
24 officers, get out of dodge, he's just too impaired to  
25 waive Miranda. He can't do that knowingly. He's

1 doing everything else knowingly. He knows he has the  
2 warrants.

3 What does Dr. Olander tell you. He acquiesces  
4 to authority. That's why he waived. He acquiesces  
5 to authority because that's an authority figure in  
6 there in that room with him and he just acquiesces to  
7 authority. How much acquiescing did he do to Barbara  
8 Pill. The officer in the room cordial, polite with  
9 him asking him you understand these rights, will you  
10 speak with us.

11 Deputy Pill is ordering him out of that vehicle  
12 over and over and over, come out of the vehicle, step  
13 out of the vehicle, come out and talk to me over and  
14 over and over. When does he acquiesce to authority  
15 in that video. Never. Instead what he does when she  
16 gets within two feet from her he shoots her dead.

17 This video, his interview, freely, knowingly,  
18 voluntarily. A person that can do all of that  
19 understands his Miranda just like he said.

20 And what does this interview tell you? What  
21 does he say on this interview? He doesn't say  
22 anything more than what I submit you already know.  
23 He doesn't tell you anything more than what all the  
24 evidence has already proven to you. His gun, he got  
25 it from a baser. You heard the testimony from Robert

1 Marks.

2 He tells you he has warrants out for his  
3 arrest. You heard the testimony from all the  
4 witnesses, Charles Colon, Amanda Ozburn, Andria  
5 Kerchner and you've even the warrants, you know he  
6 knows, he tells you that he knows.

7 He tells you that he's the shooter, you already  
8 know that. You heard it from Andria Kerchner, you  
9 can see it in the video. And you know his DNA is the  
10 one on the trigger. And he tells you he purposely  
11 shot Deputy Pill. He claims, well, I did it in  
12 self-defense, I thought she was trying to shot me.  
13 You know there is no self-defense here in this case.

14 You know from the testimony from Deputy Troup  
15 that Barbara Pill, you can see it on the video as  
16 well, she never took her gun out of her holster and  
17 Deputy Troup, the holster wasn't even unsnapped.

18 The video tells you what you already know.  
19 This defendant is the one on Elena way on March 6th,  
20 2012, that gunned down Deputy Pill. He did it  
21 because she saw his tag, she saw his face and she was  
22 going to take him back to jail and he wasn't going.  
23 He told people he's not going back. He told people  
24 right then and there, Andria Kerchner, I'm not going  
25 back to jail, I will do whatever it takes, I'm going



1 to kill the cracker.

2 Ladies and gentlemen, we ask that you hold this  
3 defendant accountable, that you hold him responsible  
4 for his actions, for his choices, for his decision to  
5 pull that trigger eight times and murder Barbara  
6 Pill. We ask that you find this defendant guilty on  
7 all counts, fleeing and resisting with violence,  
8 guilty on the robbery, and ladies and gentlemen,  
9 return a verdict as the evidence proves to you, this  
10 defendant is guilty of murder in the first degree.  
11 Thank you.

12 THE COURT: Okay. Ladies and gentlemen of the  
13 jury, at this time it would be appropriate for us to  
14 take a fifteen minute break. We're going to take a  
15 break until 10:35. During this recess you must  
16 continue to abide by the rules governing your service  
17 as a juror. Court will be in recess for fifteen  
18 minutes.

19 (Thereupon, the jury was escorted out of the  
20 courtroom by the court deputy and the proceedings were had  
21 as follows:)

22 THE COURT: Okay. Please be seated and we'll  
23 be in recess as well.

24 (Thereupon, a short recess was taken in the  
25 proceedings.)

1 THE COURT: Okay. We can bring in Mr. Bradley.

2 (Thereupon, the defendant was escorted into the  
3 courtroom by the court deputy.)

4 THE COURT: On the jury instructions there was  
5 one page where the heading was down here instead of  
6 on the top of the next page. So, I just switched it  
7 out with another page, but otherwise they were good  
8 to go.

9 Okay. With regard to the seating arrangements,  
10 we're going to -- we are making an effort to get  
11 everyone in here that wants to observe in here that  
12 can. So, if we ask you to scoot over, I'm going to  
13 ask you to do that. The deputy, you know, says -- is  
14 trying to fit someone in, if you'll make  
15 accommodations, I would appreciate it. You know, I  
16 really am trying to make an effort that if somebody  
17 wants to observe the trial that they get to. I've  
18 made the accommodations for both families and so I  
19 think we're set, haven't had any issues with regard  
20 to that, but there's been some other people today  
21 that's tried to come in and so we are making  
22 arrangements. So, you may have to sit clothes so  
23 that people can come in and observe. We might not be  
24 able to make arrangements for everyone but we had a  
25 few more seats and so I wanted to try it get a few

1 more people in.

2 Okay. Anything that we need to address before  
3 we bring the jury into the courtroom? Okay. We're  
4 ready to bring them in.

5 (Thereupon, the jury was escorted into the  
6 courtroom by the court deputy and the proceedings were had  
7 as follows:)

8 THE COURT: Please be seated. Okay. Closing  
9 argument on behalf of the Defense.

10 MR. LANNING: Good morning. On behalf of the  
11 Defense, we appreciate your attentiveness during the  
12 course of this trial, the Pill Family and Bradley  
13 family.

14 Shortly the Judge will instruct you on the law  
15 that you're to follow in this case and it's within  
16 these instructions that you'll find the law. It  
17 doesn't come from Mr. Brown, it doesn't come from me,  
18 it's in here. If I say something that doesn't match  
19 up with these instructions, call me on it. I expect  
20 you to do the same for anything that the State has  
21 instructed you on, call them on it.

22 This will be our opportunity, our only  
23 opportunity, to speak with you and at the conclusion  
24 of this case when you're back in the jury room to  
25 thinking -- actually be thinking about it during the

1 State's final argument, be thinking about  
2 Mr. Lanning's not going to have a chance to respond,  
3 what would he say to that and when you're in the jury  
4 room stand in my shoes, say now wait a minute, this  
5 happened, that happened.

6 One of the instructions the Court will read is  
7 the weighing the evidence instruction and it tells  
8 you how to consider the evidence that you've heard  
9 during the course of the trial and it gives you a  
10 nonexclusive list of things to consider in debating  
11 the evidence. Did the witness have the opportunity  
12 to see and know the things about which the witness is  
13 testifying. Did the witness have an accurate memory.  
14 Was the witness honest and straightforward in  
15 answering the attorneys questions. Did the witness  
16 have some interest in how the case was to be decided.  
17 Did the witness at other times make inconsistent  
18 statements from their courtroom testimony. Has the  
19 witness been convicted of certain crimes. There's  
20 other matters, it's a nonexclusive list, but the  
21 instruction does the witness have a case -- have an  
22 interest in how the case is to be decided. Central  
23 theme of this entire case. Certainly Brandon Bradley  
24 has an interest, it's his life. Andria Kerchner  
25 certainly has an interest but something that hangs

1 over this case maybe more than any I've ever done is  
2 the interest of law enforcement, Brevard County  
3 Sheriff's Department and all of its witnesses.

4 This was a long time a law enforcement deputy  
5 who died and tragically and senselessly. Law  
6 enforcement is family and when Barbara Pill died,  
7 that was one of theirs. They enforce the laws here  
8 in this county as well as other local city agencies  
9 both at this table, the prosecutor, those are theirs  
10 and they work hand-in-hand throughout the course of  
11 this trial and any other case involving the sheriff's  
12 department and that interest hangs over this case and  
13 in some negative ways.

14 Did -- this case was investigated by long time  
15 colleagues of Barbara Pill and some questions that I  
16 would pose is did the sheriff's department take  
17 interest in how this case is to be decided. Did it  
18 affect the way records were gathered in this case.  
19 For instance, phone records, that were presented, a  
20 sliver of the actual records, and were they  
21 scrutinized for their accuracy by the sheriff's  
22 department or were the records that they wanted  
23 before you presented and then records that maybe  
24 weren't so accurate not.

25 Was there an interest in not producing the

1 Metro PCS worker who could testify to the accuracy of  
2 those records but instead a sheriff's department  
3 employee come in and tell us they're accurate. These  
4 are accurate, but these others kind of debatable.  
5 Yeah, they're not in evidence, they're not before you  
6 to consider.

7 Did the sheriff's department's interest affect  
8 the decision not to get a search warrant for his  
9 blood or urine, get a court order.

10 Detective Reynolds, he's out there at the  
11 Janewood address and his testimony when they find the  
12 phone getting it together to get that search warrant  
13 for those phone records.

14 Wuesthoff Labs, they're right there down the  
15 street, get the court order, we got him in custody,  
16 get your blood, Mr. Bradley give us buccal swabs.  
17 They didn't even ask for his blood.

18 About the decision not to have a drug  
19 recognition expert involved right up front. They had  
20 plenty of evidence of an indication that these people  
21 were trashed. They had witnesses from the hotel  
22 looked high to me, just vacant stare. Yeah, these  
23 people, they're carrying furniture out of a hotel in  
24 broad daylight at checkout time, plenty of  
25 indication. Pill bottles all over that vehicle. The

1 failure to have field sobriety tests done.

2 Did their interest affect their decisions in  
3 testimony of the deputies that questioned Brandon  
4 Bradley. They never even questioned him about drugs.  
5 Did they turn a blind eye. They purposely  
6 (unintelligible) going into that.

7 Did their interest affect their scrutiny of the  
8 witnesses. Did it affect how they dealt with Jeffrey  
9 Dieguez? Mr. Dieguez got a pile of pills found in  
10 the vehicle they're in. He's on probation.

11 Think about reasonable differences from the  
12 evidence. How did the deputies first approach  
13 Mr. Dieguez. Did they go down to the hospital and  
14 say, hey, pal, pills were in these fleeing felons  
15 vehicle, selling and buying, you can't do that on  
16 probation. You know, you can go to prison here. By  
17 the way, Mr. Dieguez, these phone records kind of  
18 indicate maybe you were on the phone and heard  
19 something, you might be able to help yourself.

20 Did their interest affect how they dealt with  
21 Andria Kerchner? Mr. Brown read you -- you heard  
22 about that principle theory, each person is liable  
23 for all the acts of the other in criminal enterprise.  
24 Miss Kerchner, she's going to walk out of prison in  
25 eight or ten years, still a very young woman, treated

1 the same? Did their interest include giving a woman  
2 who could quite possibly had years and years of  
3 reasons to lie on the witness stand. Did their  
4 interest affect putting Andria Kerchner, cutting a  
5 deal with her from the beginning or did they just  
6 walk Brandon Bradley (unintelligible).

7 Did it affect the officers testimony. Officer  
8 after officer, oh, it looked fine, no problem,  
9 answered questions clearly, had no problem walking,  
10 talking. You know from other witnesses that once he  
11 was taken into custody he's in a police department  
12 interview room and he's passed out sleeping for seven  
13 hours and the officers come in, tried to wake him up,  
14 weren't able to wake him up and eventually hours  
15 later bring him in, sit him up, plop him down in a  
16 chair.

17 Did their decision -- their interest affect  
18 their decision to bring in Amanda Ozburn a few days  
19 after a C section to put her on for the purpose of  
20 establishing that he had a gun, he's nervous around  
21 cops, knew he had a warrant, warrants, or was her  
22 real purpose, and what you can't consider, what the  
23 Court instructed you you can't consider, her prior  
24 statement as being true. Anything about holding  
25 court out in the street you've been instructed you're



1 not to consider it but during his closing that's  
2 exactly what he wants you to do. The only reason you  
3 can consider that statement is to cast doubt on her  
4 other testimony, with that self interest changes.  
5 They want you to use it against him, use her  
6 statement, her prior statement that she repudiates,  
7 has repudiated, was forced to come in here to say.  
8 Why did she repudiate it? Because she said it has no  
9 credibility. She was drugged out when questioned  
10 over a period of many hours by about I think she said  
11 half a dozen different agents, maybe nine over  
12 different offenses, facing charges of her own but  
13 they want to use that, want you to use it.

14 Did their interest affect the decision to  
15 charge him with premeditated first degree murder,  
16 robbery, felony murder instead of what this case  
17 actually is. This case is actually -- it's not a who  
18 done it, this case is a lesser degree homicide.

19 Premeditated murder instruction says three  
20 elements: Barbara Pill is dead, death was caused by  
21 the criminal act of Brandon Lee Bradley, there was a  
22 premeditated killing of Barbara Pill. An act  
23 includes a series of related actions from and  
24 performed pursuant to a single design or purpose.  
25 Killing after consciously deciding to do so, has to

1 be present in the mind at the time, period has to be  
2 long enough to allow for reflection by the defendant,  
3 and it has to be formed before the killing, and the  
4 question of premeditation is a question of fact to be  
5 determine by you from the evidence.

6 Mr. Brown's point going into the voluntary  
7 intoxication instruction says you can't consider  
8 voluntary intoxication as a defense, that does not  
9 take out the requirement that they prove that  
10 premeditated intent to kill and you have to  
11 consider -- the question of premeditation is a  
12 question of fact to be determined by you from the  
13 evidence.

14 Now, there's a tension between those two  
15 instructions because you do have to consider all the  
16 evidence and these are -- this is the saw, these are  
17 the instructions. If the question of premeditation  
18 is a question of fact to be determined by you from  
19 the evidence, if that weren't the law it would not be  
20 in these instructions and you must follow that. So,  
21 you have to consider evidence. The evidence is that  
22 this was a drug fueled crime.

23 What has the State presented in this case  
24 towards premeditation. Start with their witnesses.  
25 Let's start with my favorite, Mr. Dieguez. He has

1 stretch of felony convictions relating from the late  
2 eighties over in Hillsborough County way into the  
3 late 2000 -- or, you know, 2009, for sale of cocaine.  
4 There's robbery, aggravated assault in between.  
5 There are various crimes of dishonesty and false  
6 statement. He's a long time, since mid nineties, on  
7 pain medications, psychiatric medications. Depending  
8 on what day you ask, he heard a siren. Depending on  
9 what day you ask he knew the defendant and his voice.

10 Mr. Dieguez claims that when -- during this  
11 phone call he heard, and this applies to Andria  
12 Kerchner as well, she got my tag. Well, that's not  
13 true, the tag doesn't come back. The car hadn't been  
14 registered. They were still looking for the --  
15 trying to find out who the actual registered owner  
16 was later that day interviewing Mr. Bradley.

17 We know Mr. Dieguez is friends of the  
18 Kerchner -- of both Andria Kerchner and her sister  
19 who Miss Kerchner testified her sister, her sister is  
20 also a pill head, she likes roxies, not Miss  
21 Kerchner's cup of tea but her sister likes the roxies  
22 and Mr. Dieguez tells you he and Andria are friends,  
23 or he and -- yeah, Andria as well as the sister are  
24 friends and yeah, he's calling her at 6:30 in the  
25 morning thinking about going to the beach. His

1 description of who called who when and why but  
2 Mr. Lanning, I'll never forget that phone call. Why  
3 don't you remember your statement to the police,  
4 Mr. Dieguez? Because I had been stabbed and robbed  
5 but I'll never forget that phone conversation.

6 Mr. Dieguez truth is a river, just whatever,  
7 whatever part of the river (unintelligible) is the  
8 part of the truth you'll get. He's just a liar.  
9 He's a liar and they knew. They knew.

10 Did Jeffrey Dieguez get with Andria Kerchner's  
11 sister that afternoon and go ahead and work this all  
12 up? Phone records weren't obtained until shortly  
13 before his -- sometime before his interview five  
14 weeks later after the death. Did Andria Kerchner get  
15 with Jeffrey Dieguez. Did Andria Kerchner's lawyer  
16 get with Jeffrey Dieguez.

17 Andria Kerchner, their other premeditation  
18 witness, she testified Mr. Bradley saw the deputies  
19 car, was paranoid and made statements about not going  
20 back to prison and that she had seen his tag, and it  
21 dovetails so well with Jeffrey Dieguez.

22 She admitted in her testimony that she had lied  
23 repeatedly to the agents, had lied about everything  
24 from the beginning pointing the finger at a third  
25 person. She admitted and still says she had been on

1 a drug binge for weeks, said her memory's still fuzzy  
2 on an awful lot of stuff, can't tell what she learned  
3 from her lawyers or her discovery, her paperwork,  
4 tapes that she saw what is the actual truth.  
5 Can't -- has no memory of talking to Jeffrey Dieguez,  
6 but just in time two years later she remembers in  
7 return for a deal, a get out of jail card,  
8 (unintelligible) death penalty. What would people  
9 do, how far would Miss Kerchner go to get out and not  
10 die an old woman in jail.

11 Her statement I was begging, crying, upset.  
12 Jeffrey Dieguez statement claiming that was the same  
13 thing, that she was crying and begging, does that  
14 match up, does that jive in any way with a woman who  
15 conceded that during her interview with the police  
16 she made statements to them like the deputy, she came  
17 over there rude as fuck. If I shoot the bitch I'm  
18 going to tell you. I'm going to shoot all three of  
19 you. I don't like cops. I hate cops. I hate cops  
20 with a passion. You got old people that like you and  
21 that's it. I have no respect for cops. Does that  
22 testimony jive with that conduct.

23 One thing about Andria Kerchner's phone  
24 records, there's kind of a cheat sheet attached on  
25 top, you can look and see who called or the time of

1 the call the number that called, duration of the call  
2 and under those records for the thirty-two minute  
3 call it indicates call waiting. It doesn't -- all  
4 the other calls it will indicate call answered.  
5 Doesn't even indicate the call was even answered.  
6 So, I guess a Metro PCS person might be able to  
7 explain that, but didn't get that.

8 Their other premeditation witness, Amanda  
9 Ozburn, it's not premeditation. They want you to  
10 consider her testimony for something that you are  
11 obligated not to. You can consider her testimony he  
12 had a gun, he was nervous around police, he had  
13 warrants. The other statement you can only consider  
14 it to impeach those others as a negative.

15 I'm going to address a couple of the other  
16 instructions. The felony murder instruction -- if  
17 it's not premeditation, then they want you to go to  
18 that felony murder, is it felony murder. To prove  
19 the crime of first degree felony murder, the State  
20 must prove the following three elements beyond a  
21 reasonable doubt: Barbara Pill is dead, death  
22 occurred as a consequence of and while Brandon Lee  
23 Bradley was escaping from the immediate scene of a  
24 robbery. Number three, Brandon Lee Bradley was the  
25 person who actually killed Barbara Pill.

1           I would submit that what they've proven in this  
2 case is a mere theft of property by Andria Kerchner.  
3 It was reported as a theft, reported as a robbery,  
4 it's been overcharged to begin with. The only  
5 witness we've heard from that ever even put Brandon  
6 Bradley in possession of the property was  
7 Mr. Montesano. He doesn't remember what property.  
8 He said he saw it, Mr. Bradley told him at some point  
9 picked up a piece of property and tells Andria you  
10 can't take this, what is this shit. Didn't take the  
11 nightstand. And then Mr. Montesano said he went back  
12 to what he was doing, he closed his curtains and took  
13 a shower. So, Mr. Montesano may very well have seen  
14 Mr. Bradley having that conversation with Andria  
15 Kerchner.

16           We know from Mr. Jordan, Bradley -- he's in his  
17 car, it was just a vacant stair, not that he knew he  
18 was there or not that he acknowledged him in any way,  
19 all indications Andria Kerchner is carrying property  
20 but then she's also going down the stairs raising  
21 hell and yelling and screaming. There's no  
22 indication that Brandon Bradley had a conscious  
23 intent to steal property from that location.  
24 Certainly didn't have an interest in it.

25           Andria Kerchner, and it's in evidence, the

1 registration card from that motel her name, her  
2 driver's license number, parents address.

3 The second reason this is not a felony murder,  
4 no proof that Brandon Bradley was escaping from the  
5 immediate scene of a robbery. Mr. Brown several  
6 times when he told you that instruction he left out  
7 immediate scene of the robbery. The immediate scene  
8 of the robbery is the EconoLodge, if it's a robbery,  
9 it's a theft, but immediate scene is there, it's not  
10 three and a half miles away.

11 MR. MCMASTER: Objection, Judge. May we  
12 approach?

13 THE COURT: Yes, you may.

14 (Thereupon, a benchside conference was had out  
15 of the hearing of the jury as follows:)

16 MR. MCMASTER: That's an inaccurate statement  
17 of the law. The law is that if it's a continuous act  
18 from the scene of the robbery, I think the case law  
19 goes anywhere like ten, fifteen miles away and as  
20 long as a hour half, forty-five minutes and as long  
21 as the vehicle has not reached a safe haven. What we  
22 have has been stopped three and a half, four miles  
23 away from the scene of the robbery within ten or  
24 fifteen minutes and I think the case law is very  
25 clear that that is part of the continuing series.



1 Mr. Lanning is improperly attempting to suggest to  
2 this jury that they have to be caught right there  
3 where the robbery occurred and that's just not the  
4 law.

5 THE COURT: Response from the Defense.

6 MR. LANNING: It's from the instruction, the  
7 immediate scene of a robbery. That is the  
8 instruction, that is the law. On a C4 motion Mr. --  
9 that may be right that it's continuing event, but I'm  
10 going off the basis of the elements charged and the  
11 instructions of the law.

12 THE COURT: Okay. Wouldn't the immediate scene  
13 be subject to -- I mean, wouldn't that be a question  
14 for the trier of fact?

15 MR. MCMASTER: He's trying to suggest to them  
16 that the immediate scene is only there at the  
17 EconoLodge and that's what I'm objecting to. He's  
18 suggesting that they have to be caught there to be  
19 fleeing from the immediate scene and that's not what  
20 the law is.

21 THE COURT: Okay. I think it's a question for  
22 the trier of fact, but Mr. Lanning don't skate too  
23 close to that.

24 MR. LANNING: Yes, ma'am.

25 THE COURT: Okay.

1           (Thereupon, the benchside conference was  
2 concluded and the proceedings were had as follows:)

3           MR. LANNING: From the immediate scene of a  
4 robbery. You are the trier of fact that the State  
5 proved beyond a reasonable doubt that Elena Way three  
6 and a half miles away is the immediate scene of a  
7 robbery and I would submit to you that it is not.

8           As to -- if it's not premeditated murder, they  
9 haven't proven it, if it's not felony murder they  
10 haven't proved, what is it?

11           Another instruction I be want to address  
12 briefly, the instruction on justifiable use of deadly  
13 force, I'm not arguing that. Under the law any  
14 evidence comes before you, possible self-defense,  
15 that's an instruction you get, this is not. There's  
16 evidence in the record in the tape Brandon Bradley we  
17 heard are you going to shoot me, why are you going to  
18 shoot me for nothing, you going to shoot me for  
19 nothing. And while that indicates a fear of the  
20 deputy, it's by the instruction, and you'll see it,  
21 it's not reasonable self-defense. So, we're not  
22 arguing it and you don't need to consider it.

23           There's been a great deal of argument over  
24 intoxication but Brandon Bradley, you know, appeared  
25 wasted or on drugs and, of course, they were, we know

1 that from the testimony of the hotel witnesses,  
2 Mr. Jordan looked like he wasn't even there, the eyes  
3 wasn't even there, from Vanessa McNerney looked high  
4 to me. We know from Andria Kerchner we had been  
5 drugging pretty much continuously for two and a half  
6 weeks doing Xanax, weed, Ecstasy, pretty much  
7 whatever we could get our hands on.

8 We know from their acts, it's on its face,  
9 during checkout at a motel 10:30, 11:00 o'clock in  
10 the morning furniture being moved downstairs, not  
11 under cover of darkness, not in the middle of the  
12 night but in broad daylight. Everything, sheets,  
13 comforters, nightstand. Everybody needs a towel rack  
14 and we all need a plastic cover to an air  
15 conditioning unit.

16 The State said during their opening the  
17 evidence would indicate they were taking the air  
18 conditioner and as it turned out the evidence from  
19 the hotel people, no, they just took the cover.  
20 You've got the photos and you've got your own common  
21 sense, can you imagine those two getting an air  
22 conditioning unit or TV set down those stairs and  
23 wouldn't it have been done under cover of darkness in  
24 the middle of the night? Andria Kerchner, she didn't  
25 come across like an idiot on the witness stand. So,

1           what else would induce her actions other than drug  
2           induced.

3           We know from their -- we know from the bullets  
4           that he shot into the door. We know that he was  
5           intoxicated from the falling in the chairs during his  
6           statement as well as from the seven hours before when  
7           he couldn't be woken up, when he was falling from a  
8           chair during that timeframe as well, and we know from  
9           the video of the actual event. When he leaves that  
10          motel it's a straight shot, I would submit and -- he  
11          could be wasted and make their way straight at least  
12          for a while. Now, on the video, the first minute or  
13          so of the video is a driving pattern that Mr. Bradley  
14          overshoots the first curb and appears to be head  
15          straight, he goes into the other lane, then the Elena  
16          Way, turns and very nearly has a head on with an  
17          oncoming vehicle and then overshoots the  
18          intersection, does a u-turn, instead of turning  
19          directly down Elena Way, goes over into the egress  
20          lane from Elena Way, loops back around and then  
21          crashes in and knocks over a trashcan. Maybe he's  
22          just a crappy driver.

23          We know from Andria's testimony and the video  
24          from his statements why you going to shoot me, why  
25          you going to shoot me, and those statements you hear

1 at least twice on the tape and -- once at 11:00  
2 o'clock on the video, 11:10:58 and 11:11:04, you  
3 can't hear it real loud, but I found that ear buds or  
4 ear phones are the best way to hear that.

5 Now, if there's a question as to their  
6 intoxication or their impairment, if there's any  
7 question about that, why don't we know. We heard the  
8 sheriff's department didn't ask for blood, they  
9 didn't do it ten hours later, they didn't do it  
10 twenty hours later, they didn't do it at all. They  
11 did everything they could to avoid talking about  
12 drugs or finding drugs in Mr. Bradley's system and  
13 the reason they did that is they didn't want you to  
14 have that evidence and the reason they didn't want  
15 you to have that evidence I would submit is they  
16 wanted vengeance, so much more because Barbara Pill  
17 is one of their own. Thank you.

18 THE COURT: Rebuttal argument on behalf of the  
19 State.

20 MR. MCMASTER: Judge, please the Court,  
21 counsel, ladies and gentlemen of the jury. We're  
22 almost there.

23 The portion of the closing argument that I'm  
24 going to be giving is known as the rebuttal portion.  
25 As the name implies, I'm suppose to be addressing

1 those points raised by the Defense in their closing  
2 argument. I believe Mr. Brown did an excellent job  
3 of covering the basics and the facts and applying the  
4 facts to the various elements of the charges that the  
5 State has brought and I'm not going to try to cover  
6 what he has already done. I would like to respond to  
7 some of what it was that Mr. Lanning brought up.

8 Now, Mr. Lanning says that you can't rely on  
9 what the evidence in this case is because apparently  
10 the law enforcement folks, the State Attorney's  
11 Office, and the witnesses all have some ulterior  
12 motive to apparently put evidence before you that is  
13 not true, that somehow Mr. Bradley didn't do this.  
14 On the other hand, Mr. Lanning also says this is not  
15 a who done it. He's essentially conceding to you  
16 that Mr. Bradley is in fact the one who shot Deputy  
17 Pill and killed her. He is saying that it's not a  
18 self-defense case, you don't need to worry about  
19 that, that's not a reasonable defense, we're not even  
20 going to argue that. So, what is the real issue that  
21 Mr. Lanning is talking about in this case.

22 Last night when I sat and I taught about what I  
23 might be covering in the rebuttal argument, I do what  
24 I normally do for this portion of trial, I try to  
25 narrow down what are the issues in this case, what

1 really is the issue that we're all here on. Normally  
2 in my cases it's okay, you got the wrong guy. Yeah,  
3 the drugs were in my pocket, but I didn't know they  
4 were there. I mean, there is a real legitimate issue  
5 for a jury to resolve, there are different sides.  
6 One party takes one position, the other party takes  
7 the other, they all argue what the evidence shows and  
8 you all have to make the factual decision as to what  
9 in fact the facts were. In this case I don't see any  
10 issues.

11 As Mr. Brown covered with you in his closing  
12 argument, the facts are overwhelming. Even without  
13 the defendant's statement, the facts are  
14 overwhelming. The facts fit the elements for first  
15 degree murder. The facts fit the elements for  
16 robbery. The facts fit the elements for fleeing and  
17 eluding with the lights and sirens and the reckless  
18 driving. The facts fit resisting an officer with  
19 violence. What have we really heard during the  
20 course of this trial. The State has called witness  
21 after witness to testify for you in person from the  
22 witness stand about what they saw, what they heard,  
23 what they did and how each of those witnesses  
24 testified showed you what it was that Brandon Bradley  
25 did over the course of a one year period which led to

1 the shooting death by him of Deputy Barbara Pill on  
2 the morning of March 6th of 2012.

3 When there was cross examination of those  
4 witnesses, in the cross examination it was primarily  
5 as to either the witness' criminal history, the  
6 witness' use of drugs himself or herself, or the  
7 defendant's use of drugs with the witness. That's  
8 what all of the testimony in this case has been about  
9 so far in the area of cross examination, and  
10 primarily in the Defense case-in-chief, that's all it  
11 was. Two doctors who testified about the defendant's  
12 drug use and its effect on him.

13 I submit to you that is not an issue. That is  
14 not an issue in this case at this time because this  
15 is the guilt portion of the trial. In the guilt  
16 portion of the trial the Judge is going to instruct  
17 you, you guys will get the same instructions that  
18 we've got copies of, she's going to instruct you that  
19 voluntary intoxication resulting from the use of a  
20 controlled substance is not a defense to a crime.  
21 Evidence of a defendant's voluntary intoxication may  
22 not be taken into consideration to show that he  
23 lacked the specific intent to commit any crime. Yet  
24 Mr. Lanning is arguing to you, well, she's not  
25 exactly saying you have to all of that drug use and



1 the brain damage and all of the other concerns that  
2 they say Mr. Bradley has and consider it, but you're  
3 supposed to be making the determination about whether  
4 there was actually premeditation in this case,  
5 whether there was an opportunity to reflect before  
6 Mr. Bradley did what did he and he wants you to  
7 consider the defendant's voluntary intoxication. He  
8 want you to consider the experts testimony about how  
9 they believed he was under the influence such that he  
10 couldn't waive his Miranda rights on the issue of  
11 premeditation and the Judge says you can't do that.  
12 The law says you can't do that.

13 The Judge is going to tell you that evidence of  
14 any abnormal mental condition is not a defense to any  
15 crime. Brain damage, any of the other stuff that  
16 you've heard about. Evidence of a defendant's  
17 abnormal mental condition may not be taken into  
18 consideration to show that he lacked the specific  
19 intent to commit any crime. Such evidence is to be  
20 considered by you only for the purpose of determining  
21 whether the defendant's interview was knowingly,  
22 voluntarily and freely made. That's it. That's the  
23 only thing that type of evidence can be used for, yet  
24 Mr. Lanning says regarding voluntary intoxication not  
25 being a defense this was a drug fueled crime. So

1           what. It is a crime, it was a murder and his  
2           intoxication, whatever level it may have been, is not  
3           a defense.

4           He says Mr. Dieguez can't be believed, he's got  
5           felony convictions, he says he would never forget the  
6           phone call, he says that's not believable. But what  
7           is it about Mr. Dieguez that actually hits home. I  
8           mean, aside from the fact that his testimony does  
9           coordinate it does not dovetail because they don't  
10          say exactly the same thing but it matches in essence  
11          with what Miss Kerchner says was occurring in that  
12          vehicle while she was in there and he testifies  
13          about.

14          As Mr. Brown told you, the chirps, the two  
15          little chirps of the siren going off to pull the  
16          vehicle clearly heard in Deputy Pill's video. How  
17          would he have known that if he wasn't listening. How  
18          would he have known about the conversation between  
19          Miss Kerchner and a male which he identified as  
20          Mr. Bradley's voice, how would he have known about  
21          that conversation unless he heard it. And  
22          Mr. Lanning has the gall to suggest to you, well,  
23          maybe the State went and talked -- or maybe Miss  
24          Kerchner went and talked to Mr. Dieguez in that five  
25          week period, or maybe Miss Kerchner's lawyer went and

1 talked to Mr. Dieguez in that five week period before  
2 the detectives found him and spoke to him so maybe  
3 they asked him to testify to that. Folks, if someone  
4 had approached Dieguez and told him what to say,  
5 number one, they would have done a better job of it  
6 and getting the stories to match. I mean, what  
7 Mr. Dieguez says does not exactly match what Miss  
8 Kerchner says. This is not a rehearsed story that  
9 they're telling. And number two, why in the world  
10 would Mr. Dieguez sit back and wait for the cops to  
11 track him down. He didn't approach law enforcement  
12 with this story. He didn't go running to them and  
13 saying, hey, listen, I can build up some points with  
14 Miss Kerchner who I'd like to date some day even  
15 though she only dates the black guys, maybe I got a  
16 chance if I do something good for her. So, I'm going  
17 to go to the cops and I'm going to tell them some  
18 really good things that are going to be really  
19 helpful in her case so she'll really be happy with me  
20 and yet five weeks go by, he never approaches the  
21 cops, they have to track him down when they find the  
22 phone record that shows an open line and his phone is  
23 at the other end of it. And what happens when they  
24 go to talk to him, he's in the hospital. He's  
25 apparently so drugged out of it he does not even

1 remember meeting with the officers, does not remember  
2 what he told them, doesn't remember anything about  
3 it, but we know what he told the officers and what  
4 did he tell the officers. The exact same thing that  
5 he told you and that he told them in his deposition  
6 about what happened in that conversation. The one  
7 thing he has been absolutely consistent about from  
8 the day he was approached by the agents in April of  
9 2012 is that what he heard was Miss Kerchner arguing  
10 with the guy in the car and what was being said was  
11 she's got my tag, she saw my face, I got to kill that  
12 bitch, I am not going back to prison. Is that  
13 believable? I submit to you that is absolutely  
14 believable.

15 We had to hunt that witness down. And think  
16 about the circumstances of hunting that witness down.  
17 This is now five weeks after the shooting. Miss  
18 Kerchner has already been arrested and charged with  
19 murder. She's -- they are looking to put her in the  
20 electric chair, drugs, whatever the state is using  
21 nowadays, they are looking as Mr. Lanning says for  
22 vengeance, no question about it. A deputy, a member  
23 of our family has been killed and yes, they want  
24 vengeance. But do they go there to look for someone  
25 giving evidence helpful to the person that they have

1 charged? Absolutely not. They went there expecting  
2 to gather additional evidence to show that Miss  
3 Kerchner and Mr. Bradley acted together in killing  
4 Deputy Pill. And what did they find out? Something  
5 they really didn't want to hear. And Mr. Lanning  
6 says, well, the State jumped in right away and cut a  
7 deal with Miss Kerchner, cut a deal from the  
8 beginning.

9 You all heard the testimony, she was arrested  
10 on March 6th of 2012. She pled in January of 2014,  
11 the same day the Defense deposed her. Two years, two  
12 years after she was charged it took for us to be  
13 convinced that her participation in this case was as  
14 an accessory after the fact. Based on what  
15 Mr. Dieguez said, the other investigation that we did  
16 and the records, it is clear that Miss Kerchner  
17 attempted to talk that man out of killing Deputy  
18 Pill. And why did she do that? It's not because she  
19 loves cops. Mr. Lanning's absolutely correct, if you  
20 were able to hear or see the tapes of Miss Kerchner  
21 that day, you would hear her say those things, I hate  
22 cops, I'd shoot the three of you. She could give a  
23 rat's ass about the cops, she was trying to save her  
24 own rearend. She didn't want Deputy Pill shot  
25 because as she told you from the stand you don't come

1 back from that. I'm in a car with a crazy guy who is  
2 going to shoot a cop and that's going to put me in  
3 jail, I don't want that. You bet she tried to talk  
4 him out of it, not that that conversation took a long  
5 time.

6 And I'll submit to you that the way that  
7 conversation happened, because you only see the  
8 in-car video the portion from where Deputy Pill has  
9 actually caught up to Mr. Bradley's vehicle and turns  
10 on the lights and pulls it over as they pull into  
11 Elena Way, that's all captured on the in-car video,  
12 but you got to remember the testimony was that Deputy  
13 Pill was going southbound on John Rodes and passed  
14 the SUV as it was going northbound on John Rodes and  
15 the Kerchner and Bradley vehicle saw Deputy Pill's  
16 vehicle turn around and start to chase them. I  
17 submit to you what the evidence would show is that  
18 that's when that conversation started, that's when  
19 Mr. Bradley realized she saw my face. Because she's  
20 not going to see his face from behind, she could only  
21 see his face in that car as she was going toward him.  
22 Mr. Bradley knew from the moment that that police car  
23 started turning around after she saw his face behind  
24 the wheel of the car that they have the tag number.  
25 He knew that -- he knew they had the tag number at

1 the hotel. The hotel employees were telling them we  
2 got your tag number, we're going to call the police,  
3 just give us the property back, but no, he couldn't  
4 do that, he had to listen to Miss Kerchner saying go,  
5 go and he helped her leave the hotel with the  
6 property, participating in the robbery.

7 I don't care whether he personally carried  
8 anything down to the car, he says he knew that the  
9 property was stolen. Two witnesses say he actually  
10 did help carry it down, both Miss Kerchner and  
11 Mr. Montesano, but even if he didn't carry it down,  
12 even if he just realized it was stolen property when  
13 he got there, he nonetheless assisted Miss Kerchner  
14 from that point in escaping with the stolen property  
15 by getting behind the wheel of the car and driving  
16 away threatening Mr. Jordan in the process, if he  
17 doesn't run away, if he doesn't jump out of the way,  
18 if he doesn't move, I'm just going to run you over  
19 because I am leaving. That my friends is robbery,  
20 that is him participating in it whether he carried  
21 the property or not.

22 Mr. Lanning says it's not felony murder two  
23 reasons. One, there was no robbery, this is clearly  
24 overcharged, this a theft by Miss Kerchner that  
25 Mr. Bradley didn't even have any participation in.

1 As I just told you, that's just not accurate. If you  
2 believe the two witnesses that Mr. Bradley carried  
3 the property, he was actively involved in the taking  
4 the property out of the room. Even if you don't  
5 believe them, by the other testimony he assisted in  
6 being the classic wheel man if nothing else. You  
7 hear about bank robbery people, the guy never goes  
8 into the bank, all he does is drive the car to or  
9 from or whichever and that's participating in the  
10 bank robbery even though you're not in the bank.  
11 Same with Mr. Bradley in this case. Even under  
12 Mr. Lanning's theory of Miss Kerchner doing it all  
13 and taking it all, which doesn't make much sense and  
14 you have to disbelieve the witnesses, then still  
15 getting behind the wheel of the vehicle and doing  
16 what he did after that point constitutes the robbery.

17 He then argues that, well, it's not leaving the  
18 immediate scene, he's not fleeing from the immediate  
19 scene, he focuses on immediate scene of a robbery.  
20 That is element two in the felony murder instruction.  
21 You all have a package of these, you can look at them  
22 yourself, but the entire sentence reads the death  
23 occurred as a consequence of and while Brandon Lee  
24 Bradley was escaping from the immediate scene of a  
25 robbery. No question he was escaping from the



1 immediate scene of a robbery which is -- the  
2 immediate scene is the hotel but he was in the  
3 process of escaping from that location and he only  
4 made it three and a half miles and it was a  
5 continuous thing. As Mr. Brown said, he didn't stop  
6 anyplace, he never reached a safe have, he went  
7 basically essentially straight from the hotel down  
8 John Rodes where he was picked up by Deputy Pill, the  
9 stop ultimately occurred and they went to Elena Way.

10 So, I submit to you that -- and if you read  
11 that, you have to read that instruction in  
12 conjunction with the robbery instruction because the  
13 robbery instruction is going to tell you that the  
14 taking can be done in a number of different ways but  
15 as long as it can be a continuous series of acts, as  
16 long as this action is a continuing thing, if the  
17 taking of the property and the use of the force is a  
18 continuous thing until the apprehension, that is  
19 still in the course of the robbery. So, reading  
20 those two instructions together you will see that  
21 stopping the vehicle three and a half miles away from  
22 the hotel ten or fifteen minutes after the robbery  
23 occurred is clearly in the continuous action of the  
24 robbery, they're still in the process of fleeing  
25 during the robbery, they have not stopped anyplace,

1 haven't done anything else, that is all part of the  
2 evidence and establishes element number two on the  
3 felony murder.

4 Then he argues that there's no premeditation  
5 here, this is all just a drug fueled crime. Number  
6 one, drug fueled, forget about it, you don't need to  
7 consider that.

8 Is there premeditation here? Mr. Brown went  
9 through the long series of events with each witness,  
10 I'm not going to go over it again, but let's just  
11 think about this for a second. It started over a  
12 year before the shooting of Deputy Pill. I told you  
13 in my opening statements. February of 2011 three  
14 warrants for violation of probation were issued for  
15 the arrest of Mr. Bradley. He knew about it, the  
16 probation officer told you he knew about it because  
17 he wasn't reporting in where he's supposed to be.  
18 Amanda Ozburn told you when we called her as a  
19 witness, yes, the defendant absolutely was aware of  
20 the outstanding arrest warrants, he got nervous every  
21 time he saw the cops, said he would run, got really  
22 nervous around police, he did not want to go back to  
23 prison. Mr. Bradley has been thinking about what's  
24 going to happen to him and what he is going to do if  
25 he's pulled over by the police since February of

1           2011.

2           He knows in November of 2011 that he's got a  
3           gun, he buys it, buys it from Mr. Marks the fellow  
4           who's currently in prison for stealing it from his  
5           brother-in-law and selling it to the defendant. He's  
6           got ammo for the gun, he's carrying it with him.  
7           Amanda Ozburn says he carried it, Andria Kerchner  
8           says he carried it, and why is he carrying it? In  
9           his statement he says, well, because I live in the  
10          hood and it's a rough neighborhood and everybody  
11          carries a gun for protection and I had a beef with  
12          some guy and I'm carrying it for him. That may well  
13          be true, those may be reasons also why he's carrying  
14          a gun, but do not believe for a second that he's not  
15          carrying that gun in case he gets pulled over because  
16          he knows if he gets pulled over he's got to do  
17          something or he's going back to jail and there's one  
18          thing that Mr. Bradley knows beyond all evidence, he  
19          is not going back to jail.

20          What happens now on the morning of March 6th of  
21          2012 that really puts it all into focus for  
22          premeditation. He's at the hotel, they're getting  
23          ready to leave, whether he participates in the  
24          initial taking of the property or not, he knows that  
25          there is stolen property in his car, he knows he's

1 got outstanding warrants, he knows that they have  
2 been caught with the stolen property in his car and  
3 that the hotel folks are calling the police. This is  
4 now twenty minutes, fifteen, twenty minutes before  
5 the actual shooting. He knows the cops are coming,  
6 he knows he's got the warrants. He knows he's got  
7 stolen property in his car, he knows if the cops come  
8 and stop him he's going to jail. That's why he  
9 almost runs over Mr. Jordan. I don't think it was  
10 because he was that concerned about the property.  
11 Hell, if it's only property he could have taken it  
12 out and given it back to them. As Mr. Jordan said,  
13 they initially told him just give us our property,  
14 you can leave, we won't even call the cops, but he  
15 didn't do that. He's more worried about the cops  
16 coming than anything so he takes off almost running  
17 over Mr. Jordan. And you've got to believe when he  
18 leaves that hotel knowing that they've got his tag,  
19 knowing that they're on the line with 911, he knows  
20 they're going to be looking for him so he is thinking  
21 now what am I going to do.

22 Then he's driving down John Rodes. It's only  
23 three miles away, three and a half miles away, less  
24 than that actually because where he was first spotted  
25 was up the road, and he sees a police car coming at

1 him and he sees the polices officer looking at him,  
2 she saw my face, now she saw my face, she's got my  
3 tag and oh crap, she's turning around. Now she's  
4 coming after me, what am I going to do, what am I  
5 going to do to keep me from going back to jail and  
6 what does he say what, what does Miss Kerchner say he  
7 says, and what does Mr. Dieguez, Miss Kerchner, but  
8 does Mr. Dieguez say he heard? Give me the gun, give  
9 me the gun, I got to kill this bitch. He's saying  
10 that as he's driving down the road.

11 Mr. Lanning is talking about how he's driving  
12 erratically when the video first comes on. Well, he  
13 says it's because he's impaired. How do you know  
14 it's not because he's trying to get the gun out of  
15 his vest or his pants or in the car, out of the  
16 console, wherever it was he got it from. He's  
17 getting the gun out because he's preparing to kill  
18 the person who's about to put him back in prison.  
19 But now Deputy Pill is right behind him, now she's  
20 got her siren on, the little chirps of the siren and  
21 her lights are on and the video has started. What is  
22 he thinking now? And how long does he have to think  
23 about it.

24 The in-car video from Deputy Pill is in  
25 evidence. If you look at it, the first frame starts

1 at 11:07 and eighteen seconds. That's the first  
2 frame you see on her in-car video, maybe seventeen  
3 seconds if your eyes are faster than mine are, but  
4 that's the first one I saw. If you continue to watch  
5 it, you will see that the shots are fired at eleven  
6 minutes eleven -- I'm sorry 11:00 o'clock, 11:11:10  
7 is what it shows on the video. 11:11 in the morning  
8 and ten seconds. That is three minutes and fifty-two  
9 seconds from the time that the video comes on until  
10 the shots are fired and Deputy Pill is killed. Three  
11 minutes and fifty-two seconds for this defendant to  
12 reflect on what it is he's going to do, how he's  
13 going to do it and to make a decision about whether  
14 he's going to kill her or not as Miss Kerchner has  
15 begged him not to do. Three minutes and fifty-two  
16 seconds starting now. Deputy Pill just died.

17 THE COURT: Ladies and gentlemen of the jury,  
18 it would be appropriate now for us to break for  
19 lunch. I want to give you a heads up with regard to  
20 the schedule. When we come back I will read to you  
21 the final instructions. You will have a copy in  
22 writing for your review. You will -- you can write  
23 on those if you wish to. It will take approximately  
24 an hour for me to read those. You can follow along  
25 while I read those with your copy. And then after I

1 read the final instructions we will go into  
2 deliberations. It will be -- you will not be  
3 sequestered and it will be up to you how long you  
4 wish to deliberate. We have no preference, we're  
5 totally here at your disposal. If you wish to go  
6 pass dinner time, that will be -- that's appropriate  
7 as well, we will provide some food for you if you do  
8 that. If you wish to recess and come back the next  
9 day, you'll just have to let us know what is your  
10 preference with regard to deliberation and so that's  
11 why I tell you this now so if you need to make some  
12 phone calls. I don't know what your collective  
13 preference will be but we are at your disposal  
14 whatever you decide to do.

15 Now, during -- we're going to break until 1:30.  
16 During -- I'm going to give you a little extra time  
17 just in case you need to do something to prepare or  
18 what you need to do. During this recess you must  
19 continue to abide by your service as a juror. Do not  
20 discuss this case among yourselves. Do not discuss  
21 this case with anyone else or allow anyone to discuss  
22 it in your presence. Don't speak to the lawyers, the  
23 parties or the witnesses about anything. You must  
24 avoid reading newspaper headlines and/or articles  
25 relating to this trial or its participants. Avoid

1 seeing or hearing television, radio or Internet  
2 comments about this trial should there been any. Do  
3 not conduct any research yourself regarding any  
4 matters concerning this case. Okay. We'll be in  
5 recess until 1:30. Report to the jury assembly room  
6 at that time.

7 (Thereupon, the jury was escorted out of the  
8 courtroom by the court deputy and the proceedings were had  
9 as follows:)

10 THE COURT: Okay. Please be seated. Any  
11 matters that we need to address before recess?

12 MR. MCMASTER: Yes, Your Honor. During the  
13 Defense closing argument they've essentially conceded  
14 that Mr. Bradley is guilty of a lesser charge of  
15 murder and have told the jury that they're not  
16 arguing self-defense because it's not reasonable.  
17 State would like the Court to bar the defendant from  
18 (unintelligible) his attorneys.

19 MR. MOORE: And I can represent that I  
20 discussed this well in advance and I've explained  
21 everything to Mr. Bradley and he's in agreement.

22 THE COURT: Okay. Mr. Bradley, are you -- do  
23 you consent to the way that your attorneys have  
24 handled your case at this time?

25 THE DEFENDANT: Yes, ma'am.



1 THE COURT: Do you understand that they are not  
2 arguing self-defense at this time and you agree with  
3 that strategy?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: And do you understand that in their  
6 closing argument they have conceded a lesser offense  
7 with regard to the first degree murder charge? Do  
8 you understand that?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. And you agree with that  
11 strategy?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay.

14 MR. MCMASTER: Judge, I believe the Defense  
15 table mic is off, I just want the record to reflect  
16 that he answered yes to each of the Court's  
17 inquiries.

18 THE COURT: Actually they turned his mic on for  
19 that purpose. His mic was on.

20 MR. MCMASTER: Thank you, Judge.

21 THE COURT: Okay. Anything else we need to  
22 address on behalf of the State?

23 MR. MCMASTER: No, Your Honor.

24 THE COURT: Anything else on behalf of the  
25 Defense?

1 MR. MOORE: No, Your Honor.

2 THE COURT: Do we want to change the jury  
3 instructions with -- take out the self-defense or do  
4 we leave that in?

5 MR. BROWN: I think it ought to be left in, it  
6 was in the packet and while I'm going to say that  
7 there's any shred of evidence to support it, we  
8 discussed it.

9 THE COURT: Okay. I just wanted to make sure.  
10 One less page but, hey, I'll be happy to read it.  
11 Anything else on behalf of either party?

12 MR. MOORE: No.

13 THE COURT: Okay. We'll be here at 1:15 -- I  
14 mean 1:30. Be back here at 1:30. Courts in recess  
15 until 1:30.

16 (Thereupon, a lunch recess was taken in the  
17 proceedings.)

18 MR. MOORE: Your Honor, we need Mr. Bradley.

19 THE COURT: Can we bring out Mr. Bradley?

20 MR. MOORE: Well, he can -- I would like the  
21 psychotropic meds instruction (unintelligible) given  
22 during the trial.

23 THE COURT: Okay. I don't have it and it's not  
24 in the packet. We can bring out -- we need to bring  
25 out Mr. Bradley. I have a copy of it. It was filed

1 with the clerks and they gave me the copy. Before I  
2 continue, I want Mr. Bradley to be in the courtroom.

3 (Thereupon, the defendant was escorted into the  
4 courtroom by the court deputy.)

5 THE COURT: Mr. Moore, you're requesting that  
6 the instruction with regard to psychotropic  
7 medication, that that be read as well?

8 MR. MOORE: Yeah, and I think a reasonable  
9 please to put it would be after reasonable doubt  
10 instruction.

11 THE COURT: Okay. With all due respect, do you  
12 want me -- I mean, I have fifteen packets prepared  
13 with staples in them, do you want -- and I can't give  
14 it to them like this. So, it would have to be  
15 prepared in a different way. Do you want me to just  
16 read it and tell them that it's not part of their  
17 packet or do you want to --

18 MR. MOORE: Please do, that's fine.

19 THE COURT: If you want me to take a few  
20 moments, we can redo it but.

21 MR. MOORE: Read it and tell them it's not part  
22 of the packet but it is the law.

23 THE COURT: Okay. I'll tell them that.  
24 Response from the State.

25 MR. BROWN: Judge, I mean, it's appropriate to

1 read it, whether you want to read it right in the  
2 beginning, if you're not giving it in the packet I  
3 would hope you want to insert it in the order you'll  
4 be reading it.

5 THE COURT: You know, I can do it first thing.  
6 I can just read it first thing.

7 MR. MOORE: That's fine.

8 THE COURT: Okay. Okay. Any other matters on  
9 behalf of the State?

10 MR. BROWN: Judge, we're going to check on the  
11 family, they're not back yet.

12 THE COURT: They said they're on their way up.  
13 Anything else?

14 MR. BROWN: No, ma'am.

15 THE COURT: Anything else on behalf of the  
16 Defense?

17 MR. MOORE: No, Your Honor.

18 (Thereupon, a pause was taken in the  
19 proceedings.)

20 THE COURT: Okay. We can go ahead and bring  
21 the jury into the courtroom.

22 (Thereupon, the jury was escorted into the  
23 courtroom by the court deputy and the proceedings were had  
24 as follows:)

25 THE COURT: Please be seated. Good afternoon,

1 ladies and gentlemen of the jury.

2 THE JURY PANEL: Afternoon.

3 THE COURT: Has anyone read or been exposed to  
4 reading newspaper headlines and/or articles relating  
5 to this trial or its participants?

6 THE JURY PANEL: No.

7 THE COURT: Has anyone seen or heard  
8 television, radio or Internet comments about this  
9 trial?

10 THE JURY PANEL: No.

11 THE COURT: Have you read any news headlines or  
12 articles relating to this trial or its participants?

13 THE JURY PANEL: No.

14 THE COURT: Has anyone conducted or been  
15 exposed to any research regarding any matters  
16 concerning this case?

17 THE JURY PANEL: No.

18 THE COURT: And have you discussed this case  
19 among yourselves or with anyone else or allowed  
20 anyone to discuss it in your presence?

21 THE JURY PANEL: No.

22 THE COURT: Ladies and gentlemen, Brandon Lee  
23 Bradley currently is being administered psychotropic  
24 medication under medical supervision from a  
25 mental or -- for a mental or emotional condition.

1 Psychotropic medication is any drug or compound  
2 affecting the mind or behavior, intellectual  
3 functions, perception, moods or emotion and includes  
4 anti -- psychotic antidepressant, anti-manic and  
5 antianxiety drugs.

6 We will now proceed to final instructions. To  
7 assist you in following the law as I instruct you,  
8 the instructions have been reduced to writing. A  
9 copy of the written instructions -- we do have a copy  
10 of the written instructions for each of you. Also  
11 you may take those instructions with you to the jury  
12 room for use during your deliberations. You may  
13 write on them. After you deliberate and return your  
14 verdict, I will need all of your jury instruction  
15 packets back.

16 Members of the jury, I thank you for your  
17 attention during this trial, please pay attention to  
18 the instructions I am about to give.

19 Statement of charge. Brandon Lee Bradley, the  
20 defendant in this case, has been accused of the  
21 crimes of Count I, first degree murder of a law  
22 enforcement officer with a firearm, Count II,  
23 robbery, Count III, fleeing or attempting to elude a  
24 law enforcement officer siren and lights activated  
25 with high speed or reckless driving, Count IV,

1           resisting an officer with violence.

2           Introduction to homicide. In this case Brandon  
3 Lee Bradley is accused of first degree murder.

4 Murder in the first degree includes the lesser crimes  
5 of murder in the second degree, murder in the third  
6 degree and manslaughter all of which are unlawful.

7           A killing that is excusable or was committed by  
8 the use of justifiable deadly force is lawful.

9           If you find Barbara Pill was killed by Brandon  
10 Lee Bradley, you will then consider the circumstances  
11 surrounding the killing in deciding if the killing  
12 was first degree murder or was murder in the second  
13 degree, second degree murder, or in the third degree  
14 manslaughter or whether the killing was excusable or  
15 resulted from justifiable use of deadly force.

16           Justifiable homicide. The killing of a human  
17 being is justifiable homicide and lawful if  
18 necessarily done while resisting an attempt to murder  
19 or commit a felony upon the defendant, or to commit a  
20 felony in any vehicle in which the defendant was at  
21 the time of the killing.

22           Excusable homicide. The killing of a human  
23 being is excusable and therefore lawful under any one  
24 of the following three circumstances:

25           One, when the killing is committed by accident

1 and misfortune in doing any lawful act by lawful  
2 means with usual ordinary caution and without any  
3 unlawful intent or.

4 Two, when the killing occurs by accident and  
5 misfortune in the heat of passion upon any sudden or  
6 sufficient provocation or.

7 Three, when the killing is committed by  
8 accident and misfortune resulting from a sudden  
9 combat if a dangerous weapon is not used and the  
10 killing is not done in a cruel and unusual manner.

11 Dangerous weapon is any weapon that taking into  
12 account the manner in which it is used is likely to  
13 produce death or great bodily harm.

14 I now instruct you on the circumstances that  
15 must be proved before Brandon Lee Bradley may be  
16 found guilty of first degree murder or any lesser  
17 included crime.

18 Murder first degree. There are two ways in  
19 which a person may be convicted of first degree  
20 murder. One is known as premeditated murder, the  
21 other is known as felony murder.

22 To prove the crime of first degree premeditated  
23 murder, the State must prove the following three  
24 elements beyond a reasonable doubt:

25 (CONTINUED TO VOLUME XI)