

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
CASE NUMBER CRC2014CF005586CFAXWS

STATE OF FLORIDA,

Plaintiff,

vs.

VOLUME XIII

ADAM MATOS,

Defendant.

PROCEEDINGS: JURY TRIAL

BEFORE: THE HONORABLE MARY M. HANDSEL
Circuit Court Judge

DATE: November 14, 2017

PLACE: Courtroom 3-A
West Pasco Judicial Center
7530 Little Road
New Port Richey, Florida 3465

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I N D E XPAGEWITNESSES CALLED BY THE STATE OF FLORIDA:

CHET COUGILL (Continuation)

Cross by Mr. Michailos

Redirect by Mr. Sarabia

1966

1983

RYAN MCCANN

Direct by Mr. Sarabia

Cross by Mr. Michailos

1985

2023

STATE RESTS

2032

MOTION FOR JUDGMENT OF ACQUITTAL

2033

INQUIRY OF DEFENDANT

2064

EXHIBITS

633 (Photo pack)

2022

641 (Bill from Skinny's)

2019

1 (Continued from Volume XII.)

2 P R O C E E D I N G S

3 * * * * *

4 MR. MICHAÏLOS: May it please the Court.
5 Counsel.

6 CROSS-EXAMINATION

7 BY MR. MICHAÏLOS:

8 Q Good afternoon, Detective Cougill.

9 A Good afternoon, sir.

10 Q Nice seeing you again.

11 A You too.

12 Q Detective Cougill, you were the chief
13 investigator regarding this case, correct?

14 A Yes, sir.

15 Q So you've read all the Sheriff's Office
16 reports, right?

17 A Yes, sir.

18 Q And anything conducted as far as investigation
19 went through you, correct?

20 A Correct.

21 Q Now, obviously there's several witnesses and
22 different people that were called into law enforcement
23 regarding this case, right?

24 A Yes, sir.

25 Q Is it true that many witnesses have called up

1 reporting gunshots at different times?

2 A I believe so, yes.

3 Q So there's been a number of witnesses that
4 called up thinking that perhaps these gunshots were
5 related to this case?

6 A Yes, sir.

7 Q And many times their reports related anywhere
8 between August 27th to September 4th, right?

9 A Yes, sir.

10 Q And is it your understanding that gunshot
11 sounds are very common in this area?

12 A That's correct.

13 Q And gunshots are heard in this area day and
14 night, right?

15 A I don't know how often. I just -- I've been
16 told that that has occurred in the past, yes.

17 Q All right. Now, let me show you the -- what's
18 been marked as State's Number 256. I think Mr. Sarabia
19 showed you this map (indicating), right?

20 A Yes, sir.

21 Q This is 7719 Hatteras Drive (indicating),
22 right?

23 A That's correct.

24 Q Would you agree with me that this is north
25 (indicating), right?

1 A No. That's to the -- that's to the west.

2 Q Right. But up here is north (indicating),
3 right?

4 A Yes.

5 Q This is west (indicating)? North
6 (indicating)?

7 A Yep.

8 Q North of Hatteras, there's only one more
9 street, right?

10 A Yes.

11 Q And what's that called, Gulf Way or something?

12 A Gulf Way.

13 Q And north of that is just empty wilderness,
14 right?

15 A For a little ways. And then there's a mine, a
16 lime rock mine.

17 Q Right. But we're talking about a number of
18 square miles of emptiness, right?

19 A Yes.

20 Q Would you agree with me that --

21 A I think there's a residence somewhere in there
22 north of that location. I don't know if he's homeless
23 or not. There's a guy that lives somewhere up there.

24 Q Mostly empty?

25 A Yeah. Mostly.

1 Q And east of here is mostly empty too, right?

2 A For a little bit, yeah.

3 Q Except for the northeast neighborhood that you
4 said the villas or something?

5 A Yes. Along the roadway there's residences.

6 Q All right. So if you're on Old Dixie -- this
7 is Old Dixie, right?

8 A Yes.

9 Q And you hear a gunshot in that direction,
10 right, it could be anywhere in this wilderness that
11 gunshot is heard from, correct?

12 A It could be, yes.

13 Q Okay. And you've been with the force -- with
14 the Sheriff's Office several years, right?

15 A Yes, sir.

16 Q Would you agree it's hard to gauge the
17 distance of a gunshot with any accuracy?

18 A Yeah.

19 Q Okay. Thank you, sir.

20 Now, you did testify that at one point you drove
21 from the Wawa that Margaret worked at to 779 (sic)
22 Hatteras Drive?

23 A Yes.

24 Q And you did that on to gauge approximately how
25 much time it would have taken her to get home from the

1 commute from there, correct?

2 A Yes.

3 Q And you made sure to do so in August of 2016,
4 right?

5 A Yes.

6 Q So you picked a similar month that this --
7 from the time this had happened. Because this was the
8 end of July beginning of August, right?

9 A Yes.

10 Q So you could gauge that traffic on an August
11 night, right?

12 A Correct.

13 Q And you left there and you clocked yourself as
14 being -- taking 15 minutes, right?

15 A Yes.

16 Q And I'm assuming you followed the speed limit,
17 right?

18 A Yes. I actually did go a little over.

19 Q All right. But 8.8 miles, right?

20 A Yes.

21 Q Okay. And we talked about some phone calls.
22 Nicholas Leonard had called 911 the morning of August
23 28th of 2014, correct?

24 A Yes.

25 Q Do you recall if his call was around 9:00 AM?

1 Do you remember the time?

2 A It was somewhere around there, yes.

3 Q It was after Megan's call, right?

4 A Correct.

5 Q And his number -- he called from, isn't it
6 (727) 488-8804?

7 A I believe so, yes.

8 Q And that's a number you have for him under the
9 pedigree as his mobile number, right?

10 A Yes.

11 Q Okay. Now, on direct you testified with
12 regarding -- with regard to bullets found in this case,
13 right?

14 A Yes.

15 Q And you did some theorizing, right? You're
16 not sure of a lot of things, but you have some theories,
17 right?

18 A You would have to be more specific on what
19 you're talking about.

20 Q Okay. For instance, we know that one bullet
21 was found -- was retrieved from Gregory Brown, right?

22 A Yes.

23 Q Another one was from Megan Brown?

24 A Yes.

25 Q There was a third bullet that -- it's your

1 theory came from the southeastern bedroom and was found
2 in the driveway, correct?

3 A Yes.

4 Q Okay. And there's a fourth bullet that was
5 found in a bag in a trashcan in the west garage,
6 Correct?

7 A Yes. That's correct.

8 Q And you're thinking there may have been a
9 fifth bullet; is that -- is that -- am I understanding
10 your testimony correctly or no?

11 A Only in regards to what Dr. Palma had
12 mentioned about possibly being fragments in Gregory
13 Brown that we maybe -- at least maybe he was shot twice.

14 Q So perhaps there's a missing bullet, right?

15 A Yes.

16 Q Okay. With regard to the master bedroom, you
17 testified with regard to a bullet hole through a corner
18 bead, correct?

19 A Yes.

20 MR. MICHAIILOS: And because I might not be
21 able to find the State's exhibit -- if I can
22 approach, Judge, and show the detective what's been
23 identified as Defense Exhibit Number 2?

24 THE COURT: That's fine.

25 MR. LABRUZZO: May we see it first?

1 MR. MICHAILOS: Of course.

2 THE COURT: State, you good?

3 MR. SARABIA: Yep.

4 THE COURT: All right. You may approach.

5 Q (By Mr. Michailos) Is that the room -- is
6 that the -- does that picture capture the bullet hole
7 where you were discussing on direct examination?

8 A Yes, sir.

9 Q Okay. Is that bullet hole consistent with a
10 .38?

11 A Could be, yes.

12 Q Okay. Do you have any idea or any theory or
13 any -- as to which direction this bullet was traveling?

14 A Can I see the photograph?

15 Q Sure. Of course.

16 A Yes, I do.

17 Q And what is that?

18 A My theory, if you're looking at this
19 photograph, it would have been traveling from this
20 direction this way (indicating).

21 Q Okay. And would you agree with me that that
22 direction is from where the master closet is? The
23 master bedroom walk-in closet.

24 A Yes.

25 Q You would agree with me that if it was coming

1 the other way, somebody would have to be nudged in that
2 little corner, right?

3 A Yes.

4 Q And there's only like two feet there, right?

5 A That's correct.

6 Q So logically it's your opinion the bullet came
7 from the walk-in closet area?

8 A Yes.

9 Q Do you believe that this bullet is one of the
10 bullets found in the trash bag or no?

11 A No, sir. I do not.

12 Q Okay. With regard to the phone records -- do
13 you have them in front of you by any chance?

14 A Are you talking about Adam Matos's phone
15 records?

16 Q Yes. The Sprint records. Do you have those
17 with you?

18 A Yes.

19 Q I know the State pointed some out things out
20 to you.

21 How many pages do you have there, 36?

22 A I have -- mine starts at 19, but it's 19 of
23 36.

24 Q Okay. Would you turn to Page 21, if you
25 could.

1 A Okay.

2 Q About half-way down, I'm at 0:56, all right,
3 as a time, August 28th. Are you there?

4 A Yes.

5 Q Would you agree with me that that's a phone --
6 that looks like a text message, I believe. Would you
7 agree with me that's a text message from (727)488-8804
8 to (484)951-2687?

9 A The direction you're saying, yes.

10 Q So --

11 A I'm just looking to see if it was --

12 Q It shows zero duration right?

13 A Right. I don't know if it's a text.

14 Q Yeah. You wouldn't know --

15 A Or just a non-answer and there was no
16 conversation.

17 Q Right. I think the expert testified that a
18 zero denotes a text?

19 A Okay.

20 Q But you would agree that would be coming from
21 Nicholas's phone toward Mr. Matos's phone, correct?

22 A Yes, sir. That's correct.

23 Q If you follow down with me just one, two,
24 three, four spaces to a time period of 1:56 in the early
25 morning of the 28th; do you see that?

1 A Yes, sir.

2 Q That looks like a phone call, doesn't it? And
3 that originated from Adam's number, (484)951-2687, and
4 it was a call to Nicholas Leonard's, (727)488-8804; am I
5 correct in assuming that?

6 A Yes, sir.

7 Q And the duration of that call was 13:40
8 seconds, right?

9 A Yes.

10 Q And my math isn't that great, but I think I
11 divide it by 60 and I think I get 22 minutes; does that
12 sound right to you?

13 A Sounds right.

14 Q Okay. So we have a call from Adam to Nicholas
15 that lasts 22 minutes. Okay. And then -- so that
16 conversation would be over, according to this, 2:19 AM,
17 right?

18 A Yes.

19 Q Okay. And then if you go all the way down to
20 time period -- another call -- 2:28 to 2:50. Do you see
21 that by any chance?

22 A Yes, sir. I do.

23 Q Okay. That originated from Nicholas Leonard,
24 right, (727)488-8804?

25 A Yes.

1 Q And he called Adam at (484) 951-2687, right?

2 A Yes.

3 Q And that phone call took place for another 22
4 minutes, right?

5 A Roughly, yes.

6 Q And it was a conversation between Nicholas
7 Leonard -- Nicholas Leonard calling Adam, right?

8 A Their phones, yes.

9 Q Okay. Is it common for men to talk on the
10 phone for 44 minutes if they're not discussing sports?

11 MR. LABRUZZO: Objection. Calls for
12 speculation.

13 THE COURT: Sustained.

14 Q (By Mr. Michailos) Now, I'd like to turn your
15 attention to the doorknob in [REDACTED] room.

16 A Okay.

17 Q The State Attorney showed you two photographs.

18 MR. MICHAIILOS: And for the record they would
19 be 152 and 155.

20 Q (By Mr. Michailos) And they capture the door
21 of [REDACTED]'s room, right?

22 A Yes.

23 Q Would you agree with me that these pictures
24 capture the part of the lock that the key goes in?

25 A Yes.

1 Q Okay. Would you agree with me that that lock
2 would be facing the outside of the room?

3 A Yes.

4 Q All right. So do you have any photographs
5 capturing the inside of this door so we could see what's
6 on the other side of that lock?

7 A I don't recall.

8 Q You don't recall.

9 Were you ever at this residence at 7719 previous to
10 September 4th of 2014?

11 A No, sir.

12 Q So is it fair to say that you cannot compare
13 what lock was on this door before that date?

14 A No.

15 Q Okay. Would you agree with me that it is
16 common to have a turn knob on the other side of such
17 deadbolt lock?

18 A On the inside?

19 Q On the other side of the lock. On the key
20 side, right?

21 A Yes.

22 Q There would be a turn knob, right?

23 A Could be, yes.

24 Q Logical?

25 A Should be.

1 Q Would you agree with me you cannot lock a boy
2 in a room when the turn knob is on the inside, correct?

3 A Well, yes. I guess so.

4 Q Okay. That type of lock could only keep
5 people secure on the inside from outsiders, correct?

6 A From the outside to get in?

7 Q Right. If you're in this room and you turn
8 the turn knob, you'd lock yourself in the room to
9 protect yourself from outsiders, right?

10 A The way that appears to me, if you're outside
11 and that door is shut and you lock it, --

12 Q Right.

13 A -- the person on the inside cannot open it and
14 get out.

15 Q Well, not if there's a turn knob on the
16 inside.

17 A Well, at my house, if I lock my door -- I
18 mean, I -- you're saying -- okay. I got what you're
19 saying. It looks to me like you can lock that door and
20 the knob on the other side won't turn.

21 Q But there's no doorknob on this door, right?
22 It's just a lock.

23 A Right. There's no knob on the outside.

24 Q Right. And there's no knob on the inside as
25 well. There's only one hole.

1 A I'm not sure of the inside of the door.

2 Q Well, you would agree if there was one hole,
3 it would be on both sides?

4 A Honestly, I didn't put a key in and test it,
5 so I wouldn't know.

6 Q You mentioned your house. You would agree
7 with me that most houses on the front door, there's a
8 doorknob on the inside of the deadbolt and there could
9 be a key on the other side, right.

10 A And there's a doorknob on the outside as well.
11 This one didn't have that.

12 Q Right. I understand that.

13 A Right.

14 Q You're the chief investigator in this case,
15 right?

16 A Yes.

17 Q And you understand that Megan called 911 the
18 morning of August 28th, right?

19 A Yes. That's correct.

20 Q You know that. And you know that there was a
21 911 call, right?

22 A Yes.

23 Q And I'm sure you've played that 911 call,
24 right?

25 A Yes.

1 Q It was actually introduced into evidence in
2 this case.

3 A Yes.

4 Q Okay. Would you be surprised if I told you
5 that in that 911 one call Megan Brown is heard saying to
6 the 911 dispatcher, "I'm locking my son into my room
7 because there's actually when we moved in here there's a
8 lock on the outside"?

9 A Would I be surprised at is that? No.

10 Q Right. So your theory isn't that this lock
11 was changed after August 28, 2014, is it?

12 A I don't know what she meant by locking the
13 door. So --

14 Q Well, on direct exam I thought -- it sounded
15 to me like you had a theory that this deadbolt lock came
16 from the garage; did you not?

17 A That's a theory, yes.

18 Q That is just a theory, correct?

19 A Yes.

20 Q And you would agree with me that this house
21 was very unfinished, right?

22 A Parts of it, yes.

23 Q Okay. You don't think that Adam Matos removed
24 tile from the southeastern bedroom, do you?

25 A I don't know.

1 Q Okay. And with regard to the missing lock in
2 the garage door on the eastern garage, sir, would you
3 agree with me that usually those -- when you have a lock
4 in the garage, it's to secure so nobody can enter from
5 inside the garage to enter the actual private -- the
6 domicile, right, the house, correct?

7 A I wouldn't know how they would have their door
8 set up.

9 Q Okay. That's fair.

10 MR. MICHAILOS: If I could just have a moment,
11 Your Honor?

12 THE COURT: Certainly.

13 MR. MICHAILOS: Thank you, Detective.

14 THE WITNESS: Thank you, sir.

15 THE COURT: Are you all done?

16 MR. MICHAILOS: I am. I am.

17 THE COURT: Redirect?

18 MR. SARABIA: Judge, can I have a moment to
19 get photographs?

20 THE COURT: Sure.

21 Detective, you don't have any over there, do
22 you? Any left?

23 THE WITNESS: No, ma'am.

24 THE COURT: Okay.

25 THE WITNESS: There's one piece of evidence --

1 one piece of evidence over here and no photographs.

2 THE COURT: Okay.

3 REDIRECT EXAMINATION

4 BY MR. SARABIA:

5 Q Detective Cougill, I'm going to show you
6 what's been introduced as State's Exhibit 13. Do you
7 recognize the doorway to that room?

8 A Yes, sir.

9 Q And whose room do you understand that to be?

10 A Megan's room.

11 Q And when you got there on September 4th, 2014,
12 did Megan's bedroom have a door lock on the outside like
13 a little deadbolt so that somebody could be locked in
14 that room?

15 A Yes, sir.

16 Q And so when Megan is referencing locking my
17 son in my room on the 911 tape, would you assume that
18 she's referencing her room and the deadbolt that was on
19 the outside of that door?

20 A That's sounds what she's saying.

21 Q In fact, does she also say in that 911 tape
22 things about the deadbolt was there when she got there
23 when they moved in?

24 A Yes.

25 Q And you would agree that she clearly can't be

1 talking about the lock that we see on [REDACTED] door on
2 the 4th because Deputy Heidgerken wasn't there yet to
3 take a picture where there was no lock?

4 A Correct.

5 MR. SARABIA: I don't have any more questions,
6 Judge.

7 THE COURT: All right. Detective, thank you
8 very much. You may step down. I'm sure you'll
9 remain under subpoena.

10 THE WITNESS: Yes, ma'am. Thank you.

11 THE COURT: You're welcome.

12 THE WITNESS: Still a piece of evidence.

13 THE COURT: Mr. Sarabia?

14 MR. SARABIA: Yes, Judge. The State would
15 call Ryan McCann.

16 THE COURT: No. Not that. You left some
17 evidence over here. Can you give it to my clerk.
18 Anything else over there?

19 All right. The State's calling Ryan McCann.

20 Good afternoon, Mr. McCann. If you want to
21 step to the podium for me. If you'd stop right
22 there. Right raise your right hand and be sworn by
23 my clerk.

24

25

1 THEREUPON,

2 RYAN MCCANN,

3 the witness herein, having been first duly sworn, was
4 examined and testified as follows:

5 THE WITNESS: I do.

6 THE COURT: Please have a seat in the witness
7 stand and speak in a loud and clear voice for me.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: State, you may proceed.

10 MR. SARABIA: Thank you, Judge. Defense.

11 DIRECT EXAMINATION

12 BY MR. SARABIA:

13 Q Could you please turn and introduce yourself
14 to the jury.

15 A Ryan McCann.

16 Q And, Mr. McCann, what do you do for a living?

17 A I'm a Merchant Marine.

18 Q What does that do?

19 A I'm a ship's captain. I command ships for the
20 oil and gas industry.

21 Q How long have you been doing that for?

22 A Almost eight years.

23 Q So back in 2014, you were doing that as well?

24 A Yes, sir.

25 Q And what bodies of water do you transport

1 ships through?

2 A Mainly through the Gulf of Mexico.

3 Q And what kind of time periods does that take
4 you to do?

5 A At the time 28 days on. I work 20 days on, 28
6 off. So it's an even time rotation.

7 Q Okay. And back in August of 2014, where were
8 you living?

9 A 7711 Hatteras Drive.

10 Q And is that right next-door to 7719 Hatteras
11 Drive?

12 A It is.

13 Q I'm going to hold you up State's Exhibit 254.
14 Do you recognize your residence in that photograph?

15 A Yes, sir. On the left side.

16 Q Point it out for us.

17 A (Indicating.)

18 Q Is your vehicle in this photograph?

19 A It is.

20 Q Could you please point that out as well?

21 A It's the white F-250.

22 Q Is that a boat in the back of your house?

23 A It is.

24 Q Is that yours as well?

25 A Yes, sir.

1 Q And that red covered area, is that your back
2 dock?

3 A It's my dock, yes, sir.

4 Q Okay. Were you aware prior to the events
5 we're here to talk about today, that people had moved
6 into the residence next door to you?

7 A Yes, sir.

8 Q Had you met the people who had moved in at
9 some point?

10 A I had.

11 Q Who were you aware of that was living there?

12 A It was an older couple, Greg and his wife, and
13 then younger couple which was Megan, Adam and a small
14 child.

15 Q Okay. Did you have a lot of contact with them
16 or more in passing?

17 A No, sir. More in passing because they're
18 right next door.

19 Q Now, was there an event back in July or early
20 August where you came home and you had locked yourself
21 out of your house?

22 A Yes, sir.

23 Q Can you describe what you did for the jury and
24 how you resolved that situation?

25 A Yes, sir. I locked myself out. I stepped

1 outside and the bottom door had locked. I was looking
2 around the house trying to get through my window and
3 couldn't find a way in.

4 Q And how were you eventually able to get in?

5 A Adam was outside and asked what I was doing.
6 I said I was trying to get into my home. I locked
7 myself out and he said he could help.

8 Q Okay. And did he help?

9 A He did. With a couple bobby pins he was able
10 to get me into the bottom lock.

11 Q So he was able to pick the locks so that you
12 could get back into your house?

13 A Yes, sir.

14 Q Now, moving towards August 28th of 2014. Had
15 you recently been out on the boat or the ship prior to
16 that time?

17 A Yes.

18 Q When had you come back? What was your first
19 day back?

20 A Wednesday, August the 27th.

21 Q Okay.

22 A That evening. Sorry.

23 Q Was August 28th, the Thursday, was that your
24 first full day back at your residence?

25 A Yes, sir.

1 Q And on that day were you expecting visitors?

2 A That day, yes.

3 Q Who were you expecting?

4 A My brother Allen and his wife Lori.

5 Q And Allen is your older brother?

6 A That's correct.

7 Q Does he take that position pretty seriously?

8 A He does.

9 Q And that day, what were you doing in
10 preparation for them to be coming to visit?

11 A Well, I had been gone for the month so I was
12 cleaning the house, just cleaning everything up before
13 they got there, of course.

14 Q Okay. Over the course of the day, did you
15 come into contact -- well, in the daylight hours, did
16 you come into contact with any of the people next door
17 at 7719 Hatteras Drive?

18 A I did.

19 Q Okay. Who did you come into contact with?

20 A With Greg.

21 Q And Greg is the approximately 50, 52 years of
22 age man that lived next-door?

23 A Yes. That's correct.

24 Q When you -- what approximately do you think
25 was the first time you came into contact with him on the

1 28th?

2 A About 10:00 AM.

3 Q And what were the circumstances of that?

4 A I was running around getting the boat ready,
5 getting the top up, getting the seats in and he was on
6 the back porch.

7 Q Okay. Was there any subsequent contact that
8 you had with Greg that same day?

9 A Yes, sir. He asked to borrow a ratchet to fix
10 something on his RV.

11 Q Okay. Did you have any understanding what he
12 was doing with the RV?

13 A He said he was fixing -- changing a spark plug
14 in the generator.

15 Q Approximately what time did you lend him a
16 ratchet?

17 A Approximately 4:00 in the afternoon.

18 Q 4:00 in the afternoon. And did you ever get
19 that ratchet back?

20 A No, sir.

21 Q Did you ever see Greg again?

22 A No, sir.

23 Q Now, I want to draw your attention more to the
24 evening hours. Was it your understanding that your
25 brother Allen and sister-in-law Lori were delayed in

1 their trip?

2 A They were, sir. They had a flat tire.

3 Q Were you in phone contact with them as they
4 were traveling?

5 A Yes, sir.

6 Q During the later hours of that day prior to
7 Allen arriving, what about were you doing?

8 A Prior, I was cleaning again. Yes, sir.

9 Q Okay. Cleaning, did that involve vacuuming?

10 A Yes.

11 Q Were you doing else while you were cleaning?

12 A Well, I had the music up pretty loud. Yeah.

13 Q Okay. Was it loud enough so you'd be able to
14 hear the music over the vacuum?

15 A Absolutely, yes. Yeah. It was pretty loud.

16 Q Because that's the way guys vacuum, right?

17 A That's right.

18 Q If there had been loud nosies next door, based
19 on what you were doing and the noise that you were
20 generating doing it, would you have expected to have
21 heard that?

22 MS. NIXON: Objection. Speculation.

23 THE COURT: I'm sorry?

24 MR. VIZCARRA: Objection.

25 MR. MICHAIILOS: Speculation.

1 THE COURT: Sustained. If you want to reask
2 the question.

3 Q (By Mr. Sarabia) If there had been loud
4 nosies next door, because of the music and the
5 activities you were going about, would you think you
6 would have been able to hear the noises over what you
7 were doing.

8 MR. VIZCARRA: Objection. Speculation.

9 THE COURT: Overruled.

10 A It was very loud. I wouldn't hear anything
11 besides what was inside my house.

12 Q (By Mr. Sarabia) And were you trying to pay
13 attention to things that were going on next door?

14 A No, sir.

15 Q Now, when Allen and Lori finally did arrive,
16 do you know what time it was?

17 A It was after midnight, 12:30.

18 Q Now, 12:30, is that a time that after all this
19 happened you were able to go back in your phone and
20 check your phone log with regards to when you spoken to
21 Allen in order to nail down that time?

22 A Yes. I spoke to him and also he texted me.
23 So, yeah, I knew what time he arrived.

24 Q And did he text you to indicate that he had
25 arrived?

1 A Yes.

2 Q And when he did that, do you go outside and
3 greet him?

4 A I did.

5 Q When you went outside to greet him, was Lori
6 with him?

7 A Yes.

8 Q And did the two of them come alone?

9 A Yes, sir.

10 Q And real quick, at that time, back at your
11 residence, was their anybody living at your residence
12 with you?

13 A No, sir.

14 Q It was just you at 7711 Hatteras Drive?

15 A That's correct.

16 Q When you go out and you meet with Allen and
17 Lori, did anybody else show up?

18 A Adam, the next-door neighbor showed up.

19 Q Did he come from the general direction of 7719
20 Hatteras Drive?

21 A Yes, sir.

22 Q How did he appear?

23 A He was sweaty.

24 Q Did you find that unusual based on the weather
25 that night?

1 A Yes, sir. I mean, it was a winter -- I mean,
2 it was a summer night, but it wasn't very hot you know.

3 Q Okay. Was Adam fully clothed?

4 A Shorts and a T-shirt, yes.

5 Q So he had a shirt on?

6 A Yes.

7 Q And were you helping Lori and Allen get their
8 luggage in so they could stay?

9 A Yes, sir.

10 Q And as you're doing that, what did Adam Matos
11 do?

12 A He was -- I mean, he was there. And he --
13 like I said, he showed up and so we were getting things
14 out so I introduced him to my brother and my
15 sister-in-law.

16 Q Okay. When you guys go in the house what did
17 he do?

18 A He followed in behind.

19 Q Did you specifically invite him in?

20 A No, sir. I was just carrying stuff in.
21 So ...

22 Q Did anyone say, "Hey, Adam. Come hang out
23 with us in the house or in the back"?

24 A No, sir.

25 MR. VIZCARRA: Objection. Hearsay.

1 THE COURT: Overruled.

2 Q (By Mr. Sarabia) But did he follow you into
3 the house and go with you towards the back dock area?

4 A Yes, sir.

5 Q Did you guys hang out for a period of time
6 that night?

7 A We did. Show my brother the house and then
8 the dock mostly, yes.

9 Q Okay. And did there come a point in the
10 evening where -- well, do you know approximately how
11 long do you think you and Allen and Adam Matos were
12 hanging out in the back area of your residence?

13 A We were there probably until -- my brother and
14 I were out there until probably 1:30, 2:00 in the
15 morning maybe.

16 Q And of that time, was Allen there the whole
17 time -- I mean, was Adam Matos there the whole time?

18 A No, sir. He was --

19 Q Approximately when did he leave?

20 A Probably about 45 minutes -- 30, 45 minutes.

21 Q And when he left, what direction did he go?

22 A Towards 7719 Hatteras.

23 Q Now, I want to -- you said you and your
24 brother are out on the dock. After that, you go to
25 sleep?

1 A Yes, sir.

2 Q Wake up the next morning, probably a little
3 later in the morning?

4 A Not that morning, no. Probably about 10:00.

5 Q Okay. Okay. And so the next day, that would
6 be Friday, August 29th?

7 A Yes, sir.

8 Q And did you have to do anything with Allen's
9 car that day?

10 A Yeah. Yes, sir. We went to Wal-Mart to get
11 the tire fixed.

12 Q Did you go out to eat for lunch?

13 A We went to grab some lunch while it was
14 getting done and grabbed some bait.

15 Q And you grab some bait, why did you grab some
16 gate?

17 A Going fishing.

18 Q When did you go fishing?

19 A Right after we got back, probably around 1:00.

20 Q Did you catch anything?

21 A Of course. Always.

22 Q Okay. How, approximately, long were you out
23 fishing on that Friday with Allen and Lori?

24 A I'd probably say until about 7:30.

25 Q And when you come back, where do you go? You

1 go somewhere to eat?

2 A On the way back from there, yes, sir, we went
3 somewhere to eat.

4 Q And do you happen recall where you went to
5 eat?

6 A At that point it may have been The Cove.

7 Q Okay.

8 A Actually that was Saturday. I'm sorry.

9 Q The Cove was Saturday?

10 A Yes, sir.

11 Q Do you remember where you were on Friday
12 night? Did you eat in?

13 A No, sir. I'm not sure what we ate on Friday.

14 Q Okay. But did you get back to your residence
15 for Friday night?

16 A Yes.

17 Q And were you hanging out in the back Friday
18 night with your brother Allen?

19 A Yes, sir.

20 Q And at some point did Adam Matos show up
21 again?

22 A He did.

23 Q Did he come from the direction of 7719
24 Hatteras Drive?

25 A Yes.

1 Q And did he hang out with you for a period of
2 time?

3 A Briefly.

4 Q Okay. And now, both the early morning hours
5 of Friday, shortly after 12:30 in the morning, and later
6 Friday night going into Saturday, when you saw Adam
7 Matos, did he appear distressed?

8 A No, sir.

9 Q Did he appear upset?

10 A No, sir.

11 Q Did he say, "Help. Help. There's a bunch of
12 dead people next door"?

13 A No, sir.

14 Q Is that something you would have taken note of
15 if he said that?

16 A Absolutely.

17 Q Did he give you any indication that there was
18 anything wrong?

19 A No. Not at all.

20 Q Did he say anything about an argument or a
21 fight with his girlfriend Megan or ex-girlfriend?

22 MR. VIZCARRA: Objection, Your Honor. Hearsay
23 and leading.

24 THE COURT: Approach.

25 (BENCH CONFERENCE.)

1 THE COURT: It's not leading. When someone
2 said, "did he", that's not leading. Just because
3 he's talking about a subject doesn't make it
4 leading. So your objection to leading is denied.

5 Your objection to hearsay is denied because
6 we're talking about statements against interest of
7 your client. So it's not leading and it's not
8 hearsay.

9 MR. VIZCARRA: Judge, for the record it sounds
10 like cross instead of direct. That's my objection.
11 Thank you.

12 THE COURT: Okay. Just -- what do you mean,
13 "it sounds like"? What do you mean by that?

14 MR. VIZCARRA: Are you saying this; are you
15 saying that. He's not --

16 THE COURT: Yeah.

17 MR. VIZCARRA: The right question should be,
18 "What did he say?"

19 THE COURT: They don't tell you how to ask
20 questions and you don't tell them how to ask
21 questions. The questions are not leading. They do
22 not lead the defendant. He can say, no, that's not
23 what happened. It's not a given question, so it's
24 not leading. It will be overruled and it's against
25 interest. So it's overruled. All right?

1 MR. VIZCARRA: Thank you.

2 (OPEN COURT.)

3 THE COURT: Are you ready?

4 The objections are overruled on both counts.

5 And you may reask the question if you wish.

6 MR. SARABIA: Sure.

7 Q (By Mr. Sarabia) Did Adam Matos say anything
8 about having an argument with Megan Brown?

9 A No, sir.

10 Q Or any kind of tension or disagreement with
11 Megan Brown?

12 A No, sir.

13 Q So from Friday night, you and Allen turn in
14 eventually, go to sleep, wake up the next morning,
15 August 30th, 2014, which would have been Saturday; is
16 that fair?

17 A Yes, sir.

18 Q What do you do on Saturday?

19 A Back on the boat.

20 Q Back on the boat again?

21 A I'm a captain, yes.

22 Q Don't you work on a boat?

23 A Right. But I love it, so, yeah, back on the
24 boat.

25 Q I'm happy for you. You love what you do.

1 A That's right.

2 Q Where did you go on the boat on Saturday?

3 A We just went cruising around at that time. We
4 went to Anclothe sandbar and just kind of waded and had a
5 few drinks.

6 Q All right. While you were getting ready to go
7 out on the boat, were there things that you were doing
8 to bring things onto the boat?

9 A Right. Yes. I was bringing stuff on the boat
10 as far as I take my safety gear off every night, taking
11 that depth finder. We have to bring ice and supplies to
12 go on the boat.

13 Q Okay. As you're doing that, are you going in
14 between your residence and 7719 Hatteras Drive?

15 A Yes, sir. It's the shortest way to go between
16 the two houses that way.

17 Q Okay. And as you're passing down that path,
18 did you notice any odors?

19 A I did.

20 Q Could you describe what the odor smelled like?

21 A It was a smell of something dead.

22 Q And smelled of something dead, like your
23 brother Allen, have you been hunting before?

24 A I have before, yes, sir.

25 Q Have you encountered dead animals before?

1 A Yes.

2 Q Is it a smell you're familiar with?

3 A It is.

4 Q Was it a good smell?

5 A No, sir.

6 Q But it was a strong enough smell you could
7 smell it while you're walking between the houses?

8 A Yes, sir.

9 Q But you do go on the boat. You guys go to --
10 I call it Anclothe Island, but sandbar is probably more
11 appropriate. And what did you do after you got done
12 with an Anclothe sandbar?

13 A After that, we ran into Skeleton Key to The
14 Cove restaurant.

15 Q Okay. And are you able to do that on your
16 boat?

17 A Yes. It's by water, yes, sir.

18 Q And did you guys eat there?

19 A We did.

20 Q And based on eating there, did you have plans
21 to come back there later that night?

22 A Yes, sir. There was a band playing so we were
23 going to come back see if we could see the band play.

24 Q Okay. So did you go back to take your boat
25 back to your residence?

1 A I did.

2 Q And did you and Allen and Lori get ready to go
3 back out to The Cove for the band?

4 A Yes, sir.

5 Q Do you happen to remember the band?

6 A Gypsy Rain or something.

7 Q Your brother remembers the name really well.
8 Was he really taken with the band?

9 A I believe he was.

10 Q Him and Lori had a good time?

11 A They did.

12 Q And this was a local band?

13 A Yes.

14 Q Okay. You don't have any of their CDs, do
15 you?

16 A No, sir.

17 Q Okay. And were you guys out late that night
18 watching the band?

19 A We were.

20 Q And when you got back that night, did you end
21 up going to sleep pretty quick after that?

22 A We did.

23 Q And so now moving into Sunday, August 31st,
24 the next day, would this be the last full day that Allen
25 and Lori are going to be present?

1 A It was.

2 Q And on Sunday, you guys wake up. What do you
3 do that day?

4 A Back on the boat.

5 Q What did you do on the boat this time?

6 A Going fishing again. Going fishing.

7 Q Caught something, I hope?

8 A Absolutely. Yeah.

9 Q All right. And were you out on the boat most
10 of the day?

11 A We were.

12 Q Following the boat, do you bring the boat back
13 and go out to eat?

14 A We did. Yes, sir.

15 Q Do you remember where you went to eat that
16 time?

17 A At that time we went to Sam's.

18 Q Sam's Beach Bar?

19 A Beach Bar, yes.

20 Q And when you go to Sam's, does there come a
21 point your brother wants to go back to your house
22 because he needs to use the facilities?

23 A Yes, sir.

24 Q He didn't want to use the facilities at the
25 Beach Bar?

1 A He wasn't keen on it, no.

2 Q Okay. And once you got back to your
3 residence, is that -- approximately what time is that
4 going to be?

5 A Oh, I'd probably say 7:30, 8:00 maybe.

6 Q Okay. Did you guys decide to stay there or go
7 back out?

8 A We decided to stay there afterwards.

9 Q All right. And that night, were you guys
10 hanging out on your back dock again, you and Allen?

11 A Yes.

12 Q And did anybody else join you?

13 A Adam came over after a while, yes.

14 Q And what direction did he come from?

15 A From the direction of 7719 Hatteras.

16 Q And did he hang out with you guys?

17 A He did.

18 Q Was he there for a long period of time?

19 A Yes. A few hours.

20 Q Did he appear distressed in any way or upset
21 or talked about any relationship woes?

22 A No, sir. No, sir.

23 Q During the conversation, was there a point
24 where you brought up anything unusual?

25 A My brother and I were talking just of old

1 days, teen angst and he broke in asked if I had security
2 cameras.

3 Q Did you find that an odd thing to do based on
4 what you were talking about?

5 A Yes, sir.

6 Q Were you talking about how back in the old
7 days you guys had been caught on a security camera for
8 something or anything of that nature?

9 A No, sir.

10 Q Was there any -- did there appear to be any
11 transition from what you guys were talking about to
12 security cameras?

13 A No, sir.

14 Q And when he asked you that, what did you tell
15 him?

16 A I told him I had cameras everywhere.

17 Q Did you at that time have cameras everywhere?

18 A No, sir.

19 Q Why did you tell him you did if you didn't
20 actually have cameras?

21 A Because I didn't know him. That's a strange
22 question to ask.

23 Q Okay. And once you told him that you did have
24 security cameras, did he ever follow up with any
25 questions regarding, "Well, can I see them" or "Can I

1 borrow them" or "Do you have camera angles that capture
2 certain areas of my house" or anything of that nature?

3 A No, sir.

4 Q Did he follow up with any questions about the
5 security cameras at all once you told him you had them?

6 A No, sir.

7 Q Now, that Sunday, you guys are on the back
8 dock, did you notice any odors on that day?

9 A Sunday? Yes, sir.

10 Q What kind of odor did you notice on Sunday?

11 A It was a stronger odor.

12 Q And what did it smell like?

13 A The same thing, smelled like something dead.

14 Q Good smell or bad smell?

15 A Bad smell. Worse smell.

16 Q And had you brought up to your brother Allen
17 at this point?

18 A Had I brought it up to Allen?

19 Q Had you guys discussed that there was a bad
20 smell?

21 A Again. Yes, we mentioned it again. Yes, sir.

22 Q And while you guys were on the back dock, did
23 you say anything to Adam Matos about a smell?

24 A I did.

25 MR. VIZCARRA: Objection, Judge. Hearsay.

1 THE COURT: Overruled. Go ahead.

2 Q (By Mr. Sarabia) Can you describe for the
3 jury what you said and how he acted?

4 A I just told him, I said, "Smells like
5 something's dead between the houses. Just smells bad."

6 Q And what did he do?

7 A He didn't say anything.

8 Q Did he just kind of --

9 A Looked at me.

10 Q What?

11 A Just looked at me. Yes, sir.

12 Q Okay. And how did you respond to that?

13 A I said, "Well, I mean, I guess maybe it's a
14 dead armadillo or something", just kind of laughed it
15 off.

16 Q All right. You know, during the course of
17 these conversations that you had with him up until this
18 point on Sunday, August 31st, did you ever ask him about
19 all the other people that you knew to reside at 7719
20 Hatteras Drive?

21 A I did.

22 Q Can you describe for the jury what you asked
23 Adam Matos and how you responded?

24 A I asked him where everybody else in the house
25 was and he said that they had gone to West Virginia to

1 visit family.

2 Q Okay. And did you inquire any further about
3 that?

4 A I did ask because that RV in the driveway. I
5 asked, "How did he they get there? They didn't take the
6 RV?" And they said that, "No. They flew."

7 Q Did he indicate how they got to the airport?

8 A He said they took a taxi and he had to stay
9 because he had to work.

10 Q Okay. And in terms of your conversation with
11 him, was he indicating that he was alone at that
12 residence, 7719 Hatteras Drive?

13 A Yes, sir.

14 Q About what time do you think Adam Matos split
15 off from you guys that Sunday night, if you know?

16 A I'm not sure. He stayed a few hours. Maybe
17 around 1:00 or something.

18 Q So well into the early, early morning hours of
19 Monday, September 1st, 2014?

20 A I'm sure into it. Perhaps. Yes.

21 Q Okay. And so moving into September 1st, 2014.
22 Was that Labor Day?

23 A Yes, sir.

24 Q And I assume you and Allen and Lori, you all
25 go to sleep and then wake up the next day?

1 A Correct.

2 Q And how long did Allen and Lori stay that day?

3 A They left that morning, around, say, 10:00,
4 11:00.

5 Q Okay. After they left, did you still notice
6 the smell?

7 A I did. Yes.

8 Q Okay. Same smell that you described before?

9 A It seemed to ease a little bit. It wasn't as
10 bad.

11 Q And after Allen and Lori left, did you have
12 any more contact that day with Adam Matos?

13 A I did.

14 Q Can you describe for the jury when did that
15 happen approximately?

16 A Early that afternoon he asked me to come by.
17 He came by and asked if I would bring him to cash a
18 paycheck.

19 Q Okay. Did you ask him why he needed a ride to
20 do that?

21 A I did. I knew that he -- they had a car, a
22 GMC Jimmy. He said that it had a flat tire.

23 Q Okay. And did you agree to take him out to
24 cash the check?

25 A I did.

1 Q Where did you guys end up going?

2 A Started towards the bank, but it was Labor Day
3 so it was closed so we went to the Winn Dixie right
4 next-door.

5 Q Okay. And who drove?

6 A I did.

7 Q What vehicle did you drive?

8 A A white Ford F-250.

9 Q And what -- who did you take with you?

10 A Just myself and Adam.

11 Q There wasn't any four-year-old child that went
12 with you guys?

13 A No, sir.

14 Q There wasn't any other people that went with
15 you guys?

16 A No, sir.

17 Q Now, up until this point, September 1st, 2014,
18 you guys go to Winn Dixie, since the time that Allen and
19 Lori had arrived, had you seen anybody else next-door at
20 7719 Hatteras Drive?

21 A No, sir.

22 Q And did you go to Winn Dixie in the
23 mid-afternoon to late afternoon hours?

24 A Yes, sir. Probably -- roughly 3:00. Around
25 there.

1 Q Did you go into Winn Dixie with Adam Matos or
2 did he go in by himself?

3 A No, sir. I stayed in the truck.

4 Q Okay. Did he come back with groceries of some
5 sort?

6 A Yes, sir.

7 Q And did he make you aware whether or not he
8 was able to cash his check?

9 A He said they would not cash it because it was
10 a third party.

11 Q All right. So is that the last -- when you
12 get home to your house, where does Adam Matos go?

13 A He went to his house.

14 Q Back to 7719 Hatteras Drive?

15 A Yes, sir.

16 Q And was that the last point you saw him that
17 day?

18 A Yes, sir.

19 Q Now, turning your attention to September 2nd,
20 2014, which we're now moving into Tuesday, did you see
21 Adam Matos at all that day?

22 A I did.

23 Q When approximately do you think was the first
24 time you saw him that day?

25 A I would say probably 11:00 or so.

1 Q And what was the nature of your contact?

2 A I was outside cleaning stuff up and he asked
3 again if I would take him to cash his check.

4 Q And did you do that?

5 A I did later that afternoon, yes, sir.

6 Q Approximately what time did you take him to
7 cash the check?

8 A I got back from running around, probably
9 around -- about 4:00 it would have been.

10 Q Okay. And did you drive?

11 A I did, sir.

12 Q Take your white truck again?

13 A Yes, sir.

14 Q And did you go into the bank with Mr. Matos?

15 A No, sir.

16 Q You stayed in your car?

17 A I did.

18 Q Did anybody else go to the bank with the two
19 of you?

20 A No, sir.

21 Q There's no four-year-old child that went with
22 you?

23 A No, sir.

24 Q I'm going to try to display this as soon as it
25 comes up. Was he able to cash his check this time?

1 A I believe so. I was not in the bank.

2 Q Okay. I want to -- can you see that screen
3 right behind you?

4 THE COURT: We're going to turn the lights
5 down just a little. If you need to step down and
6 look at it to be able to --

7 THE WITNESS: I can see from here, ma'am.
8 Thank you.

9 THE COURT: Okay. Great. No problem.

10 Q (By Mr. Sarabia) Do you recognize the
11 individual pictured there?

12 A Yes, sir.

13 Q Who is that?

14 A That's the defendant, Adam Matos.

15 Q All right. Is that the way he appeared to you
16 on September 2nd, 2014?

17 A Yes, sir.

18 Q Now, this truck that's backing in right here
19 in the parking spot as Mr. Matos is entering, do you
20 know whose truck that is?

21 A That's mine, sir.

22 MR. SARABIA: For the record I'm displaying
23 State's 24.

24 THE COURT: Okay.

25 Q (By Mr. Sarabia) And the last photograph on

1 the second to last page, do you recognize the white
2 truck in that photograph?

3 A Yes, sir.

4 Q And does the -- do you have a specific license
5 plate number, vanity plate? What does it say?

6 A It says WR.

7 Q You agree with me that the photo depicts that?

8 A Yes. I can see the little golfer in the
9 middle, yes.

10 Q Now, after you go to Wells Fargo, did you go
11 back home?

12 A Yes, sir.

13 Q And where does Adam Matos go?

14 A He goes to his house.

15 Q 7719 Hatteras Drive?

16 A Yes, sir.

17 Q And do you see Adam again on September 2nd,
18 the Wednesday?

19 A No, sir. Wednesday?

20 Q No. I'm sorry. September 2nd, Tuesday?

21 A No.

22 Q Turning your attention September 3rd, 2014,
23 Wednesday, what were you doing that day?

24 A I was getting things ready. I had more family
25 coming into town.

1 Q Who did you have coming into town this time?

2 A My mother -- my parents. Pretty much my
3 mother.

4 Q Did you see Adam Matos at all on September
5 3rd?

6 A I did.

7 Q And approximately what time do you think you
8 first had contact with him?

9 A Roughly 1:30 in the afternoon.

10 Q And what was the nature of that contact?

11 A I was cleaning the pool deck and the pool and
12 he came by to see if I wanted to go out and have a beer.

13 Q All right. Did you take him up on that at
14 that point?

15 A No, sir. I had too much cleaning to do and
16 things to get ready.

17 Q Okay. Did he come back again later?

18 A He came about three or four more times and
19 asked.

20 Q Okay. How frequently do you think?

21 A I'd said about ever hour.

22 Q Okay. And each time was it the same thing?

23 A Yes. He just wanted to go out and get a beer,
24 had no ride and didn't know anybody.

25 Q Okay. And eventually what did you do?

1 A Roughly around 6:00 in the afternoon, I was --
2 I had been working all day, hadn't eaten lunch. He came
3 by again, asked if I wanted to go out. I said, "Yeah.
4 I'm hungry." I said, "Yeah. I know a place up the
5 street. I can get something to eat and have a beer."

6 Q And where did you guys go?

7 A It was Skinny's Bar and Grill.

8 Q And did you take your white truck?

9 A I did.

10 Q And you drove?

11 A Yes, sir.

12 Q Anybody else go with you and Adam Matos?

13 A No, sir. Just us.

14 Q And approximately how long were you at
15 Skinny's Bar?

16 A I'm sorry. Say again.

17 Q I'm sorry. Approximately how long were you at
18 Skinny's Bar?

19 A Oh, at Skinny's, roughly five hours.

20 Q And what were you guys doing while you were
21 there generally?

22 A Generally, I ate a wrap; we played a little
23 pool when there were some other people that wanted to
24 play a game.

25 Q While you were there was there a fairly

1 significant rain storm?

2 A Yes, sir. A big thunder storm came, that's
3 why we stayed later. It was pouring rain.

4 Q Did there come a point you got Adam in your
5 car and you took him back home?

6 A Yes, sir.

7 Q Approximately what time would you say was
8 that?

9 A Maybe 11:30.

10 Q 11:30 at night?

11 A Yes, sir.

12 MR. SARABIA: And, Judge, I'm showing Defense
13 Counsel what's been marked as 641 for
14 identification.

15 THE COURT: Okay.

16 Q (By Mr. Sarabia) Mr. McCann, I want to show
17 you State's 641. Do you recognize that?

18 A It looks like a bill from Skinny's.

19 Q And do you recognize it as your bill and your
20 order?

21 A Yes.

22 Q Does it appear to be a fair and accurate copy
23 of the transaction that you gave to them while you were
24 there at Skinny's Bar on September 3rd, 2014?

25 A Yes, sir.

1 MR. SARABIA: Judge, at this time the State
2 would like to move State's Exhibit 641 into
3 evidence.

4 THE COURT: Any objection?

5 MR. MICHAİLOS: No objection.

6 THE COURT: It will be so entered, 641.

7 Q (By Mr. Sarabia) So, approximately -- I think
8 you already indicated the time that you left. Where do
9 you go after you leave Skinny's Bar?

10 A Went back home.

11 Q And did you take anyone with you?

12 A Adam that came with me, yeah.

13 Q Okay. And when you got back to your house,
14 where did Adam Matos go?

15 A He went to his house, 7719 Hatteras.

16 Q Did he go up the stairs towards the front
17 door?

18 A I did see him go up towards the stairs, yes.

19 Q All right. Was that the last point that you
20 saw Adam Matos?

21 A No, sir. Not that night.

22 Q When did you see him again that night?

23 A About 30 minutes later I forgot something in
24 my truck, so I went out to go grab it and he came out.

25 Q Okay.

1 A And he asked if I wanted to go back out.

2 Q And when he came out, did you have any
3 conversation with him?

4 A He asked -- he wanted to go back out to go
5 drinking. I said, "No. I had family coming so I had
6 things to do the in the morning."

7 Q Okay. And then you go back into your
8 residence?

9 A Yes, sir.

10 Q And did he go anywhere or was he still
11 wondering around outside?

12 A He went back towards 7719 and I went into my
13 house.

14 Q And is that the last time you ever saw Adam
15 Matos?

16 A Yes, sir.

17 Q Now, the next day, did there come a point
18 where some law enforcement officers were next door?

19 A Yes.

20 Q And then later in the day leading into the
21 afternoon, late afternoon, were there a lot of law
22 enforcement officers next door?

23 A Yes, sir.

24 Q And at some point did one of them have contact
25 with you?

1 A Yes, sir.

2 Q And then did they show you a group of photos?

3 A They did.

4 Q I'd like to show you what's been previously
5 marked as State's Exhibit 633. If you could look at
6 that.

7 Is that your signature there on the second page?

8 A Yes, sir.

9 Q And did you look through the photos and pick
10 out the person you knew to be Adam Matos?

11 A I did.

12 Q And did you indicate on the second page of the
13 photo you were picking out?

14 A Yes, sir.

15 Q And which photo did you pick out?

16 A Number four.

17 Q And you signed and dated each page of this
18 particular packet?

19 A Yes, sir.

20 Q Would you agree with me that's Page Number 4?

21 A Yes, it is.

22 Q Is that the one that you selected as the
23 person that you had seen just about everyday between
24 August 29th, at 12:30 and September 3rd?

25 A Yes, sir.

1 MR. SARABIA: And, Judge, I'd like to move
2 State's Exhibit 633 into evidence.

3 THE COURT: Any objection?

4 MR. MICHAÏLOS: No objection.

5 THE COURT: All right. 633 will be admitted.

6 MR. SARABIA: Judge, may I have just a moment?

7 THE COURT: You may.

8 Q (By Mr. Sarabia) And, Mr. McCann, the person
9 that you saw come from the direction of 7719 Hatteras
10 Drive on August 29th, at 7:30 -- in the early morning
11 hours and that you subsequently saw just about everyday
12 after that until late night of September 3rd, 2014, that
13 you've been speaking about as Adam Matos, do you see him
14 in the courtroom day?

15 A I do.

16 Q Please point him out and identify something
17 he's wearing.

18 A Yes, sir. The gentleman over there in the tan
19 coat.

20 MR. SARABIA: Judge, may the record reflect
21 the witness has indicated the defendant?

22 THE COURT: It will so reflect.

23 MR. SARABIA: I don't have any more questions,
24 Judge.

25 THE COURT: Okay. Go ahead and give the

1 evidence back to the clerk.

2 Defense, cross.

3 MR. MICHAÏLOS: Yes, Your Honor. Thank you.

4 CROSS-EXAMINATION

5 BY MR. MICHAÏLOS:

6 Q Good afternoon, Mr. McCann. How are you
7 doing?

8 A Good afternoon. Well. Yourself?

9 Q All right. Let's talk about Thursday, August
10 28, 2014. You were expecting company, right?

11 A That's correct.

12 Q It was your brother Allen and sister-in-law
13 Lori, right?

14 A Yes, sir.

15 Q And they were coming in to spend Labor Day
16 weekend with you, right?

17 A Yes, sir.

18 Q And they were running a little bit late,
19 weren't they?

20 A Yes, sir.

21 Q Because of a flat, I think?

22 A That's correct.

23 Q They arrived 12:30 in the morning?

24 A That's correct.

25 Q But they were about an hour-and-a-half late,

1 right?

2 A They were late, yes, sir. Roughly that.

3 Q About an hour-and-a-half?

4 A I would say. I don't recall exactly what time
5 they left. They arrived late.

6 Q Okay. You were expecting them around
7 11:00 PM?

8 A Around that time 11:00, 11:30.

9 Q All right. Sir, are you saying you never did
10 your vacuuming before your brother and sister-in-law
11 were supposed to be there?

12 A I'm sorry?

13 Q Are you saying you never got around to do your
14 vacuuming before your sister-in-law and brother were
15 supposed to be there?

16 A No, sir. I did not.

17 Q Good thing they were late?

18 A If they would have came, it would have been
19 just be a dirty house. Have to deal with it.

20 Q Right. Isn't it possible, sir, that you were
21 done vacuuming before 11:00 PM?

22 A I actually don't have a timer on my vacuum.
23 It could have been before 11:00 PM.

24 Q It could have been. Okay.

25 And when you were waiting for your family, would

1 that have been out on your dock?

2 A Yes, sir.

3 Q And it's a nice dock. It's covered, right?

4 A That's correct.

5 Q You have a table out there and chairs?

6 A I do.

7 Q And it's probably hot in August. You probably
8 get the nice breeze off the water, right?

9 A Sometimes, if I'm lucky.

10 Q Do you know if, by any chance, the AC was
11 working 7719 Hatteras Drive?

12 A I'm not aware if it was or not, sir.

13 Q Now, I think earlier in the day you had
14 seen -- you testified you had seen Gregory Brown, right?

15 A Yes, sir.

16 Q And you let him borrow a ratchet wrench,
17 right?

18 A Yes, sir.

19 Q Do you know what time that was?

20 A Roughly around 4:00 in the afternoon.

21 Q It could have been later? Could have been
22 5:00?

23 A I think more around 4:00.

24 Q Okay. And you think you testified he was
25 changing a spark plug in the RV generator, right?

1 A Yes, sir.

2 Q It wasn't the actual spark plugs because of
3 the engine; it was the generator in the back, right?

4 A Yes, sir.

5 Q That controls the electronic inside the RV?

6 A Yes, sir.

7 Q Now, during the day getting ready for your
8 brother and sister, did you run some errands, go grocery
9 shopping?

10 A The day that they came?

11 Q Yeah.

12 A No, sir.

13 Q Any reason to go in and out or you remember
14 being there the whole day?

15 A I wasn't -- I was there the whole day cleaning
16 up the property, putting stuff out. I've been gone a
17 month, sir. I had to get my house in order.

18 Q Okay. Do you know if for any reason you had
19 gone out between let's say the time you saw Gregory
20 Brown and 11:00 at night for any errands?

21 A I did not.

22 Q Now, from your dock, you could see the dock at
23 7719 Hatteras Drive, right?

24 A Yes, sir.

25 Q And you could see the back of that house,

1 right?

2 A If I was outside of my house, outside of my
3 screen porch, yes.

4 Q And isn't -- is that where you first met Adam
5 and Megan and you guys were there on their deck, you on
6 your deck and working on the pool; that's how you
7 introduced yourselves?

8 A Yes.

9 Q Did you have your dock lights on at 11:00 PM
10 on August 28th?

11 A No, sir.

12 Q And you never heard any gunshots between 11:00
13 and 12:30 AM, did you?

14 A No, sir.

15 Q And is it true that there's no house across
16 the street from 7719 Hatteras Drive?

17 A That's correct.

18 Q It's an empty lot, right?

19 A It is.

20 Q Did you ever notice an old blue pickup truck
21 parked there on the night of August 28, 2014?

22 A No, sir.

23 Q Did you ever see a truck at the -- at that
24 address on August 28, 2014?

25 A No, sir. Not that I noticed. An old truck

1 you said, old blue truck?

2 Q Old blue F-150.

3 A I don't recall. No, sir.

4 Q When you took Adam to Winn Dixie, that was a
5 quick errand, right?

6 A Yes, sir.

7 Q You were not out all day, right?

8 A No.

9 Q Same thing when you went -- when you gave him
10 a ride to take him to cash his check, right?

11 A Correct.

12 Q Isn't it true that the most of the times you
13 spent with Adam he wasn't much of a talker?

14 A Not much. No, sir.

15 Q Quiet?

16 A Quiet, I would say. Yes, sir.

17 Q Kept to himself?

18 A Yes.

19 Q Polite, for the most part?

20 A Yes, sir.

21 Q And when he visited when Allen was there, when
22 you guys were on the back dock, isn't it true he was
23 hanging around and pretty much drank some beer?

24 A He did.

25 Q He didn't participate that much in your

1 conversations, right?

2 A No.

3 Q Most of the time it was you catching up with
4 Allen, right?

5 A That's correct.

6 Q Now, when you went to Skinny's Bar with Adam,
7 you didn't mind his company, obviously?

8 A No. He didn't smell or anything. No, sir.

9 Q Huh?

10 A He's fine. He wasn't a slob or anything. No,
11 sir.

12 Q You played some pool with him, right?

13 A Yes.

14 Q At some point he got drunk though, right?

15 A He did have a bit to drink. Yes, sir.

16 Q Is it true he was so drunk that he passed out
17 in the ladies restroom?

18 A Yes, sir.

19 Q And actually even when you got there, isn't it
20 true he had to use the bathroom that he went to the
21 ladies restroom?

22 A He did.

23 Q Which you found it to be odd because the door
24 was pink, right?

25 A Yes. That's correct.

1 Q Now, you said something about him helping you
2 get in your front door when you locked yourself out,
3 right?

4 A I did.

5 Q I assume you locked yourself out by just
6 pulling the door and it was locked, right?

7 A Yes, sir.

8 Q This was a knob lock, it wasn't a deadbolt?

9 A Correct.

10 Q You'd agree with me it's hard to lock yourself
11 out of a deadbolt because you have to turn the key,
12 right?

13 A Yes, sir.

14 Q And you went over his residence to ask for
15 help, right?

16 A I was outside of my home and he was outside as
17 well and asked what I was doing because I was trying to
18 find a way into the house, right.

19 Q All right.

20 A Yes.

21 Q And then he volunteered to help, right?

22 A Yes, sir.

23 Q And you said something about bobby pins,
24 right?

25 A Yes, sir.

1 Q Did you see him open the door with the bobby
2 pins?

3 A I did.

4 Q Okay. Do you remember, it was Megan who gave
5 him the bobby pins, right?

6 A That's correct.

7 Q All right. So she was aware you had locked
8 yourself out as well?

9 A Yes.

10 Q And she knew Adam was trying to help you,
11 right?

12 A Yes.

13 Q She went and got a bag of bobby pins and gave
14 them to Adam, right? She was aware of that?

15 A Yes.

16 MR. MICHAÏLOS: One moment, Your Honor.

17 THE COURT: All right.

18 MR. MICHAÏLOS: No further questions. Thank
19 you, sir.

20 THE WITNESS: Okay.

21 THE COURT: Any redirect?

22 MR. SARABIA: No, Judge.

23 THE COURT: All right. Sir, you may step
24 down. Thank you very much.

25 State, call your next witness.

1 MR. LABRUZZO: One moment, Your Honor. We're
2 just double checking something.

3 THE COURT: Okay.

4 MR. SARABIA: The State rests, Judge.

5 THE COURT: All right. Ladies and gentlemen,
6 the State has rested their case. At this time it
7 would be a good time to let you go for the evening.
8 I have some matters to address with the lawyers
9 that will take 30 or 40 minutes, so we'll probably
10 be close to 6:00 anyway. If you had you go out,
11 did it, and had you come back, it would be 6:00.
12 So there's no reason for you to do that.

13 Again, I'll remind you, although the State has
14 rested their case, the case is not over. No
15 talking, tweeting or texting about the case.

16 We'll have you back tomorrow morning at 9:30
17 and we'll start up right on time tomorrow. I
18 filled in for another judge this morning briefly so
19 that's why I was late, but we'll be on time
20 tomorrow morning. Okay?

21 So 9:30, we'll see you and you all have a nice
22 evening. All right?

23 I'm sorry. The jury pool room, yes. Jury
24 pool room again. Is that warmer than my --

25 THE JURY PANEL: (Responding.)

1 THE COURT: While we're discussing things,
2 we'll leave the door open. That usually regulates
3 the temperature in there a little better.

4 You all have a nice evening.

5 THE JURY PANEL: (Responding.)
6 (Jury absent.)

7 THE BAILIFF: Jurors of out of the presence of
8 the Court, Your Honor.

9 THE COURT: All right. Defense, State having
10 rested, what say you?

11 MS. GARRETT: Your Honor, at this time the
12 Defense would move for a judgment of acquittal.

13 If I may approach, Your Honor? I have some
14 case law I previously provided to the State.

15 THE COURT: You may.

16 Go ahead.

17 MS. GARRETT: I didn't know if Your Honor
18 wanted a moment to review.

19 THE COURT: No. I've read most of this. So
20 as you go along, I can read.

21 MS. GARRETT: Your Honor, when the evidence in
22 a case is circumstantial, a special standard
23 applies whereby the evidence relied upon by the
24 State must be inconsistent with every other
25 reasonable inference that can be drawn. I'm citing

1 to *Norton*, which is one of the cases I provided,
2 709 So.2d 87. That citation is at 92. And that
3 cites to *Holton versus State*, 573 So.2d at 289.

4 The evidence in this case, in the light most
5 favorable to the State is briefly as follows:

6 On the early morning of August the 28th, Megan
7 Brown called law enforcement saying that Adam Matos
8 had assaulted her by holding a knife to her throat.
9 In an interview he denied that.

10 Officer Heidgerken met with her, took a
11 picture of an injury to her thumb. Noted that she
12 had been drinking and that she had no injury to her
13 throat and told her to call him if she saw Adam
14 Matos again. No other witnesses corroborate that
15 except she told people at work and Nicholas Leonard
16 she called him upset.

17 During the day of August the 28th, Adam Matos
18 called Megan Brown a number of times. People who
19 saw or spoke -- people saw or spoke with Megan
20 Brown, Margaret Brown, Greg Brown and Nicholas
21 Leonard at various points on August the 28th, the
22 latest being Margaret Brown after 11:00, when she
23 left her shift at Wawa.

24 Just before midnight on August the 28th,
25 people walking their dogs heard four gunshots in

1 the general area of 7719 Hatteras Drive. After
2 about 12:30, Adam Matos came over to Ryan McCann's
3 house.

4 On August the 29th, he began selling some
5 items on Craigslist and bought a shovel at Wal-Mart
6 later that evening.

7 On August the 30th, people began to notice an
8 odor coming from the house. During that time
9 period from August the 30th, there was some pizza
10 deliveries to the house that saw Mr. Matos and also
11 the child [REDACTED] there.

12 On September the 4th to the 5th, Mr. Matos and
13 [REDACTED] traveled to Tampa.

14 On September the 4th, deputy Silva did a
15 welfare check and bodies were found that day.
16 Mr. Matos later made statements denying his
17 involvement.

18 The circumstantial evidence in this case
19 involves the fact that there are no admissions, no
20 physical evidence linking Adam Matos to any of the
21 deaths of the four victims in this case. And the
22 State, I'm certain, is going to argue during their
23 closing point to Mr. Matos and say it's because
24 that man got rid of the evidence due to the trash
25 bags, the items in the canal, but at this point,

1 I'd say that's putting the cart before the horse
2 and the Court must not speculate on what might have
3 been in the trash bags, any physical evidence, and
4 the Court would -- needs to present to refute
5 what's been presented by the State.

6 There's no time of deaths. There's an
7 approximate time frame. There's no order of the
8 four deaths. There's, again, just approximation.
9 All weapons that are said to have been used have
10 been accounted for as items from the house,
11 including a firearm belonging to Nicholas Leonard.

12 The case law that I've provided to the State,
13 again there are four cases. The first one being
14 *Hodgkins versus State*, 175 So.3d 731, that's a
15 Florida Supreme Court 2015 case.

16 In that case, the Supreme Court found the
17 evidence insufficient to sustain a conviction.
18 Some time in that case -- just briefly the facts.
19 Some time between 2:33 PM on September the 27th and
20 5:30 AM on September the 28th, the victim in that
21 case, Teresa Lodge, suffered 32 injuries including
22 stab wounds and strangulation.

23 The defendant in that case, Mr. Hodgkins' DNA
24 was found under her fingernails. He was
25 interviewed multiple by times because by law

1 enforcement in the case. There were three
2 different stories about his last contact with
3 Ms. Lodge. First predating it to several months
4 earlier and then moving it closer to the time frame
5 during each subsequent interview.

6 Based on his inconsistent statements, the
7 listed victim's hand-washing habits, including her
8 coworkers testifying she constantly washed her
9 hands, she had done so on the 27th, and the
10 condition of the DNA, the jury convicted.

11 The Court reversed stating, where the only
12 proof of guilt is circumstantial, no matter how
13 strongly the evidence may suggest guilt, a
14 conviction cannot be sustained unless the evidence
15 is inconsistent with any reasonable hypothesis of
16 innocence. That's on physical Page 5 of the case
17 at Page 746 citing to 351 So.2d 972.

18 The Court went on to note in *Hodgkins* that
19 even a deep suspicion the appellant committed the
20 crime charged is not sufficient to sustain a
21 conviction, citing to *Lindsey versus State*, 14
22 So.3d at 216.

23 I've also provided the Court with *Dausch*
24 *versus State*, 141 So.3d 513, that's a 2014 Supreme
25 Court case where the defendant's fingerprints were

1 found in the car, but it was not found -- it was
2 found not to be inconsistent with the theory that
3 he hitchhiked with the person who actually
4 committed the offense.

5 In *Long versus State*, that's a Florida Supreme
6 Court 1997 case which is actually out of Pasco.
7 That's 689 So.2d 1055. There's also information --
8 I'll just skip to *Norton versus State*. The Court
9 has a copy of *Long versus State*.

10 But in *Norton versus State*, at 709 So.2d 87,
11 that's again a Florida Supreme Court case. Where
12 the circumstantial evidence was sufficient to
13 sustain a murder conviction, it was not sufficient
14 to sustain premeditation.

15 In that case, the defendant and the victim
16 dated and had been seen together on the night the
17 victim was killed. The victim's blood was found in
18 the defendant's car. A spent casing was also found
19 in the defendant's car. The victim was shot in the
20 back of the head. The defendant bought cleaning
21 supplies on the morning the victim's body was found
22 and also removed the carpet from the vehicle.

23 In that case, the Court specifically noted
24 that the fact that the appellant may have taken
25 steps to conceal evidence of the crime does not

1 establish that he committed the murder with a
2 preconceived plan or design. That citation is Page
3 93 which is physical Page 6 of the case I provided.

4 In this case, Your Honor, the haphazard
5 actions, even in the light most favorable to the
6 State, would negate premeditation. There is no
7 evidence that Mr. Matos went to the house with a
8 weapon. All the weapons recovered were dumped in
9 the same place, right outside the door of the home.
10 The gun that was used that was traced back to the
11 two gunshots was Nicholas Leonard's.

12 An unknown blunt object used was per the
13 State's inference a hammer, there's no evidence
14 that Mr. Matos was ever seen with a hammer previous
15 to this, that he was seen buying a hammer, he had a
16 hammer in his possession. There's a hammer that
17 was located along with a number of other tools, but
18 there's nothing that would indicate that that
19 belonged to or was ever in the possession of
20 Mr. Matos.

21 Because the State can't establish a timeline.
22 They can't say that this didn't happen in a single
23 incident, in a single struggle where everyone was
24 involved at the same time in a short time period
25 where there would have been no time for reflection.

1 The fact that the weapons were dropped right
2 by the house, that the bodies were barely concealed
3 just up the road, right outside a burn, just off
4 where they almost visible from the road.

5 The fact that Mr. Matos used his own name for
6 the cab; that he cashed his own paycheck in the
7 timeline coming up; that he was in the house; that
8 he used his own name when he checked into the
9 hotel; the fact that he and this child remained in
10 the house for several days prior to going to Tampa,
11 all of those would be indications that, at best, of
12 a hasty after-the-fact action rather than any
13 premeditated plan.

14 There's no indication of any altercation, ill
15 will or motive with regards to Gregory Brown,
16 Margaret Brown or Nicholas Leonard prior to August
17 the 28th.

18 The only indication of any possible
19 premeditation, again in the light most favorable to
20 the State, was the statements made by Megan Brown
21 on the 911 call regarding the incident that
22 happened earlier in the day. That was a
23 self-reported statement to 911 and to her friends
24 made while she was under the influence of alcohol.

25 In the manners of death:

1 Megan Brown was shot with a single shot from
2 enough distance that it didn't penetrate to the
3 back of the skull as there was no exit wound.

4 Gregory Brown was shot -- the only wound that
5 they were able to identify was a single shot to the
6 pelvis. There were possible but unclear whether
7 there were any other injuries.

8 On Nicholas Leonard, there were indication of
9 multiple blows; however, the medical examiner was
10 not able to say with any degree of certainty
11 whether it was a single blow or repeated blows that
12 would have been the cause of death or when they
13 would have occurred and what order.

14 Margaret Brown obviously is the most difficult
15 one in regards with the fact that the medical
16 examiner did testify that the ligatures on her neck
17 could possibly have been prior to death with an
18 indication of the plastic bag being placed over her
19 head prior to the death; however, he also said that
20 it's possible that it was placed there afterwards
21 based on the fact that the brain matter was found
22 inside of the bag and that cumulated with the blood
23 spatter which was outside and was on the wall would
24 indicate that there's a good possibility that the
25 bag was placed post mortem. And so on that, the

1 injuries, there were skull fractures, which again,
2 the medical examiner was unable to say with any
3 degree of certainty exactly which one or how many
4 had caused the actual death.

5 The bottom line here is that establishing
6 exactly what happened and when is a puzzle the
7 State has tried to put together, but they are
8 missing the key pieces to overcome the
9 circumstantial --

10 THE COURT: Counsel, I'm listening, but you're
11 not getting it typed down if you're keep talking as
12 fast as you're going.

13 MS. GARRETT: Yes, Your Honor.

14 THE COURT: Okay? I'm having a hard time
15 following you so I know no she can't type it. So
16 if you just slow down, I'll give you all day. So I
17 got your argument, but you're going to have to slow
18 down. Okay?

19 Go ahead.

20 MS. GARRETT: Well, based on that, Your Honor,
21 again, we would just ask that the Court consider
22 granting a judgment of acquittal as to each count
23 in this case.

24 If the Court does not find that it's
25 sufficient to grant the judgment of acquittal at

1 this time based on the highly circumstantial nature
2 in this case, we would ask the Court to consider
3 granting a judgment of acquittal down to a
4 second-degree murder based on the fact that they're
5 unable to have -- the State has been unable to
6 establish any evidence of premeditation.

7 If I could just have one moment, Your Honor?

8 THE COURT: Certainly.

9 MS. GARRETT: That's all.

10 THE COURT: State?

11 MR. LABRUZZO: Judge, in reviewing these
12 cases -- and I'll just start with the *Hodgkins*
13 case -- the courts point out that in these
14 circumstantial cases what is really missing from
15 the State's case that allows it to be inconsistent
16 with the Defense's reasonable hypothesis of
17 innocence.

18 And the things that these courts point out are
19 things that are evident in this case, primarily,
20 that this is a very tight window of the events. We
21 have evidence that place the victims alive at
22 various points throughout the day on August the
23 28th of 2014, and then it isn't until the early
24 morning hours of August the 29th, when the
25 defendant is beginning to sell the property of

1 these individuals that are now deceased.

2 So we're talking about a time frame that is
3 fairly tight and is something that the Court should
4 consider in the circumstances of this case.

5 In addition to that, there are witnesses that
6 place Mr. Matos at the residence in close proximity
7 to the times in which this murder occurred.

8 If the Defense is correct and we can't lay out
9 the exact timeline, we can say that Mr. Matos is
10 there pretty much everyday, all day except for when
11 he's away at stores where we can prove where he's
12 at or when he's with neighbors at the next-door
13 neighbor's house.

14 So Mr. Matos's eyewitnesses put him there
15 during all relevant time frames of this case. He's
16 the only person that is placed there during the
17 relevant time periods of this case. In addition to
18 that, the only other person inside the residence is

19 ██████████ In fact, the evidence suggests that
20 Mr. Matos was not allowing any other person in or
21 near that residence during the relevant time frame
22 due to the horrific odor emanating from this
23 residence.

24 So as to the placing him there at the scene
25 through all relevant time periods, that is

1 something that the *Hodgkins* case lays out. I think
2 that the evidence is fairly substantial as to his
3 presence there.

4 A lack of motive is one of the things or the
5 lack of ill will, hatred and spite or a lack of
6 motivation to commit these killings. Well, the
7 law -- the Court has accepted evidence as it
8 relates to the 911 call. And now that is a very
9 clear indication of motive and ill will, hatred and
10 spite, animosity towards at least Megan Brown in
11 this case. That animosity could easily extend
12 through the transfer intent theory to Nicholas
13 Leonard. And though -- so there is motivation for
14 him to commit this crime. There's very clear
15 evidence of that, although he will deny and
16 downplay and say he doesn't remember the nature of
17 that disturbance. The testimonial evidence by way
18 of the call clearly paints a different picture than
19 what Mr. Matos's memories of the events are, you
20 know, just a few days after the 911 call is placed.

21 So there's a very clear indication of motive
22 in this -- in this house. And it's not too far of
23 a stretch to say, as you look at the evidence in
24 this case, that he kills everyone in the house.
25 And so there is a very clear indication that he's

1 not going to leave any witnesses behind as to the
2 events that unfolded in the residence.

3 There is very clear evidence that Mr. Matos
4 concealed, disturbed, removed evidence inside the
5 residence, which is inconsistent with any theory
6 that's been -- that has been pushed forward by the
7 Defense as to his innocent behavior that's he's in
8 the residence. The evidence is actually to the
9 contrary.

10 We've had testimonial evidence that there were
11 a number of trash bags removed from the residence.
12 The trash bags that are found remaining at the
13 residence is a very clear indication that he is the
14 person throwing away the property. There's a shirt
15 that he was wearing in one of the videos that's
16 later found in one of the trash bags. The property
17 had been moved inside of the residence during the
18 time frame for which he's in the residence.

19 So this -- to try to spin that there is a --
20 that there's some sort of -- that this evidence is
21 inconsistent with a reasonable hypothesis of
22 innocence is correct. There is -- a person would
23 not act in that manner.

24 Let me look at the other things. I'm going to
25 step back. Stepping back to this time line of

1 events that I've indicated, that if the Court
2 recalls that on the August the 28th, 2014, there
3 were a number of witnesses that indicated that
4 these individuals did not return phone calls and/or
5 show up for work during the time frame that's been
6 espoused.

7 And I just point that out because a number of
8 these cases indicate that they're with such a wide
9 time frame of events that innocent behavior could
10 have occurred. I'm going to indicate to the Court
11 that the fact that these individuals, these victims
12 do not show up for work or respond to calls from
13 friends or family is an indication that this is a
14 very close time frame of events.

15 The fact that the defendant is selling the
16 property of the deceased is a clear indication that
17 he's aware that these individuals are no longer
18 alive and he is aware of what had gone on in this
19 house. The fact that he's selling their property
20 as recent in time as August the 29th is a clear
21 indication of his knowledge of the events. And the
22 fact that Margaret Brown and Gregory Brown are
23 still wearing the clothes when they're found on
24 September the 4th that they were seen wearing on
25 August the 28th.

1 So it really indicates that -- that evidence
2 really indicates that these homicides occurred in
3 conjunction with the testimony from Mr. Okins on
4 that -- in that late evening hours of August the
5 28th into August the 29th.

6 And before this tight time frame, the fact
7 that the defendant has disturbed, cleaned, removed
8 items from the residence, the fact that there is a
9 clear indication of motive on behalf of the
10 defendant as to these individuals, that this is a
11 circumstantial case that does clearly wipe away any
12 reasonable hypothesis of innocence.

13 As to their argument as to the premeditation
14 or the lack thereof, I would indicate to the Court
15 that there is a fairly high level of premeditation
16 in this case.

17 The defendant was not welcome at the
18 residence. There was a 911 call where it indicates
19 that they asked him not to come back. He indicates
20 that he was asked not to come back to that
21 residence, and that his entry into that house had
22 to be without any welcome amongst the parties that
23 were there.

24 The injuries first sustained as to Gregory --
25 I'm sorry -- Nicholas Leonard -- I'll start with

1 him. We're talking about 21 distinct injuries to
2 his head. Clearly that indicates an intent to kill
3 based on the repeated nature of the injuries. The
4 fact that they're localized on the head of
5 Mr. Leonard is a clear indication that there was an
6 intent to kill.

7 Same can be said for Margaret Brown. The
8 injuries sustained to her head were a number of
9 distinct injuries to her head. She was bound. She
10 was gagged and he placed two trash bags over her
11 head. There was an injury that was sustained to
12 the side of her head which Dr. Palma opined had to
13 have occurred after the bags were placed on her
14 head. And at this time, the suggestion that that
15 would have happened otherwise clearly doesn't make
16 sense in conjunction with the other evidence in
17 this case.

18 A single gunshot wound in this case as it
19 relates to Megan Brown is a clear indication again
20 of premeditation based on the nature and the events
21 that occurred in the residence and the location of
22 the injury being to the head. A gunshot wound to
23 the head is a clear indication of intent to kill as
24 compared to if you were to shoot someone in the
25 arm, the chest or the legs. A shot to the head is

1 with the intent to kill.

2 And in light of the injuries as it relates to
3 Gregory Brown, he was shot in the back. He was
4 shot likely as he was going to defend himself with
5 his weapon that there was an intent to kill because
6 there is also evidence of multiple gunshot wounds
7 as it was testified to buy Dr. Palma.

8 So with the evidence and the nature of the
9 injuries, the location of the injuries, the timing
10 of these injuries, that all of this occurred in a
11 very tight time frame is clear indication of an
12 intent to kill. You couple that with the
13 motivation and you couple that with the other
14 evidence in this case, and you have a
15 circumstantial case which does foreclose any
16 reasonable hypothesis of innocence in this case.

17 THE COURT: All right. Defense, anything
18 else?

19 State, do you have any cases you wanted me to
20 rely on?

21 MR. LABRUZZO: Judge, the cases that were
22 pointed out by the Defense do indicate a number of
23 cases that I think are important for the Court to
24 look at, specifically the *Hodgkins* case. It's the
25 most recent case. It points out *Washington v.*

1 *State* located at 653 So.2d 362, as well as the
2 *Thorp* case, which is located at -- forgive me I
3 wrote it down. I have to find the cite again,
4 Judge. Here it is -- 777 So.2d at 390.

5 Those cases indicate where the court engaged
6 in a comparison of circumstantial cases and where
7 they indicated that, you know, the record
8 established the defendant's proximity to the crime
9 scene and the evidence as to a tight timeline as to
10 the activities in those cases were strong
11 indications against a reasonable hypothesis of
12 innocence.

13 THE COURT: Okay. Anything else Ms. Garrett?

14 MS. GARRETT: No, Your Honor.

15 THE COURT: Okay. First of all, the Court
16 will find in the light most favorable to the State
17 that the State has proven that -- by circumstantial
18 evidence that the defendant committed the crime and
19 that specifically citing to the *Norton* case which
20 you gave me, 709 So.2d 87, it says that the State
21 in the *Norton* case introduced testimony of
22 eyewitnesses who saw the appellant and Norton
23 together between 10:30 and 11:00 the night she was
24 killed. The evidence directly contradicts the
25 appellant's version of the events that he was home

1 sleeping and the circumstantial evidence rule does
2 not require a jury to believe the defendant's
3 version of events where the State has produced
4 conflicting testimony.

5 In the *Norton* case, they stopped Mr. Norton in
6 his car. The victim was killed by a single gunshot
7 wound to the back of the head. The shell casing
8 was found in his car along with blood. And he
9 tried to clean it up by purchasing cleaning
10 supplies. And the court found that given the time
11 frame that the people were seen together, the fact
12 that blood was found in his car, the shell matched
13 the bullet that was found in her head, that -- and
14 that the tight time frame in that case that the
15 court found that the State had proved by
16 circumstantial evidence that an unlawful killing of
17 the victim had occurred.

18 So -- and I'm doing in two parts because
19 that's kind of how I have to do it in this case.
20 Most clearly in this matter, the three
21 individuals -- well, four individuals, three were
22 seen by the police and then the fourth was seen at
23 the Wawa, so -- I mean, you have Megan Brown on the
24 911 tape, you know, seen by law enforcement twice
25 before noon on the 28th of August.

1 There's video -- excuse me. There's audio of
2 her saying that he threatened to kill me. She's
3 obviously hysterical in the 911 tape. What she
4 says on the 911 tape is backed up by -- you know,
5 I'm not just taking the 911 tape. It's backed up
6 by the photographs of the injury to her hand where
7 she said he used a knife to threaten her, threaten
8 to kill her. The knife is there. She has injuries
9 to her hand. And the defendant is not there. And
10 he's gone.

11 They come back because Nicholas Leonard calls
12 911. So, again, you have him contacting law
13 enforcement on the 911 tape in the timeframe that
14 we're talking about, on 8/28.

15 You have dad at the two locations on the
16 video. He's also seen by the neighbor Mr. McCann
17 who just testified in the yard on the 28th.

18 So every person who was found in the pile a
19 week later is accounted for on August 28. The
20 defendant is not there. No one sees him there
21 after he leaves the early morning hours after the
22 911 tape is made. The defendant is seen again at
23 that location at 12:30 AM on 8/29.

24 And the Court will note that Mr. McCann, Allen
25 McCann, said that he actually went back to his

1 records of his phone and saw that because he had
2 texted and called because when he knocked, his
3 brother didn't answer. So he texted and called so
4 he went back to his records and he was able to
5 verify that time really accurately for the jury.
6 So they heard that, that he arrived at 12:30 AM on
7 August 29th, knocked on the door, no response. He
8 texted his brother, he called his brother, and his
9 brother came out. He's Ryan McCann who now
10 testified today. And while they're moving the
11 luggage into the house, up walks Mr. Matos, the
12 defendant in this case.

13 So he's not seen from 6:00 AM on the 28th
14 until 12:30 AM on the 29th. The victims are last
15 seen at about 4:00 PM, at least Greg Brown, on the
16 28th. And then we have Margaret Brown leaving the
17 Pennsylvania Wawa 11:00 PM, after her shift, on the
18 28th. So you have a very tight window there.

19 The evidence is not clear to the Court in
20 exactly what order or who was killed first. But it
21 is clear that Nicholas Leonard got his gun, which
22 is the gun that is found in the water behind the
23 house because it matches the box that's found at
24 his house, so you link those two up. So at some
25 point Nicholas Leonard's gun ended up in the water

1 behind the residence on Hatteras.

2 The bullet wound to both Megan Brown and Greg
3 Brown match the caliber of weapon that that -- that
4 that was Nicholas Leonard's.

5 The interesting thing in most of these cases
6 when we go to the premeditation part of this, is
7 that a single gunshot wound is not by itself
8 premeditation, even in the head. Because in the
9 Norton case, it's actually a gunshot wound to the
10 head and they said that's not premeditation.

11 However, what they did note is there was no
12 animosity before the incident. There was no
13 indication that there was any fighting, that there
14 was any heated discussion or any reason that the
15 defendant would want to cause harm to the victim.
16 It just ended up that he shot her in the head.

17 In this case, we have earlier in the day, at
18 least within the 24 hours, the fact that the
19 defendant allegedly had threatened the life of the
20 victim who ended up shot in the head. But more
21 important to me is, and from the evidence, is that
22 the firearm that was used to inflict that injury
23 had to have come from Nicholas Leonard. So that
24 means by circumstantial evidence that it had to be
25 obtained from Nicholas Leonard prior to it being

1 used. Because he went over there, I assume, to
2 protect his newfound girlfriend or significant
3 other or person he's dating and he brings his gun.
4 That gun is then used to kill her. He is 21
5 separate blows upon the head. By circumstantial
6 evidence, the jury could consider the fact that
7 they could believe that Nicholas Leonard was
8 attacked and incapacitated and his firearm then
9 taken and used against Megan Brown.

10 On top of that, there's testimony thanks to
11 the Defense that Gregory Brown never loaded his
12 weapons. Never, ever, ever loaded his weapons.
13 However, one of his firearms is found loaded in the
14 canal behind the house. So the idea is that he had
15 time after this attack began, Gregory Brown
16 attempted to get his own firearms, load a firearm
17 and did, in fact, load one to defend himself and
18 everybody in the house. So obviously we're talking
19 about a time frame that's not as short as the
20 Defense would like it, but must have occurred over
21 an extended period of time. It must have had
22 enough time for Nicholas Leonard to be beat about
23 the body, the head, he got -- I think there's
24 wounds on his arms from a knife. So there's a lot
25 of -- there's a lot of injuries to Nicholas Leonard

1 that must have occurred at some point with the
2 likelihood that it occurred prior to Mr. Matos
3 obtaining the firearm that he ultimately used to
4 shoot Megan Brown in the head.

5 So that shows that he had attacked for a very
6 long length of time these three individuals
7 upstairs. Now, the question becomes did he do it
8 before Margaret Brown came home or after he
9 attacked Margaret Brown in the garage. I don't
10 know. That's for the jury to decide. But it
11 doesn't at really matter to me in deciding whether
12 there was premeditated design. Whether he attacked
13 the three, Nicholas Leonard, Megan Brown and Greg
14 Brown upstairs first and then laid in wait for
15 Margaret Brown or whether he laid in wait for
16 Margaret Brown, attacked her, bound her, gagged her
17 with tape across her mouth, put a bag over her
18 head, taped that down and then beat her about the
19 head to cause her death and then went upstairs.
20 Somehow everybody upstairs didn't hear that, I
21 guess, and then started the prolonged attack
22 upstairs.

23 But notwithstanding which order it happened,
24 it most certainly shows a long attack. An attack
25 that took some length of time. Specifically as to

1 Nicholas Leonard, the doctor testified that he was
2 21 separate blows to his head, five to the top of
3 his head, four to the right side of his head, nine
4 to the left side of his head and a gaping slash
5 injury to his jaw. He also had injuries to one of
6 his -- a knife wound or sharp -- I'm calling it a
7 knife only because it was a sharp force wound to
8 his arm. So obviously the attack on Nicholas
9 Leonard was an extended attack using multiple
10 weapons causing death. It most certainly shows
11 some sort of long attack.

12 I know that the Defense tried to convince the
13 medical examiner that I guess he could have been
14 incapacitated on one blow and then sat there and
15 beat him repeatedly upon the head. I don't believe
16 Dr. Palma was opining that. And he basically said
17 he didn't believe that that was a reasonable way
18 that it occurred. But it wouldn't have accounted
19 for the sharp injuries to his arms or to his jaw.
20 So the beating upon the head obviously occurred
21 during the knife injuries and it had some length of
22 time. So it's not a single blow and then he just
23 sits there and beats him with the hammer, there was
24 other instruments used to attack Nicholas Leonard.
25 Again, that occurred -- that is a lengthy injury

1 with multiple blows which show premeditation
2 because it's going to take time. Every time he
3 uses the hammer to strike the victim -- and the
4 doctor couldn't say that any one blow would have
5 caused death; it was the multiple injuries to his
6 head.

7 Again, as to Megan Brown, the reason that I'm
8 finding premeditation is because the firearm that
9 was used to cause her death had to have come from
10 Nicholas Leonard. So the injury to Nicholas
11 Leonard had to occur at least parts of it prior to
12 him getting the firearm that he then turned on
13 Megan Brown.

14 As to Gregory Brown, again, there was
15 premeditated. He ran to his closet, obviously was
16 able to get a gun. He was able to load that gun
17 but he was shot from the back. So obviously there
18 was some premeditation to chase him down, to go
19 into the closet. Because that's the one other
20 thing is that these people were murdered in
21 different rooms. So obviously there was movement
22 across the house to get from one victim to the
23 other victim to the other victim which would
24 indicate that it was an extended length of time.

25 Now, Margaret Brown specifically with the

1 testimony of the blood spatter expert was obviously
2 attacked downstairs after she came in with her van.
3 Obviously she was attacked. Blood came off of her
4 injuries onto different locations throughout the
5 that garage and into that hallway. There's blood
6 up high, there's some down low. And then at some
7 point the plastic bag is put over her head and then
8 the fatal blow that caused her death occurs. And
9 that occurred after the bag was placed over her
10 head because Dr. Palma said that the brain matter
11 that was in there would have occurred after the bag
12 was put over her head. And she was bound and tape
13 was put over her mouth. You wouldn't do that.
14 There's no reason to do that if you were just
15 trying to incapacitate her. Obviously they were
16 trying to keep her from going into the house, which
17 would lead to the idea that they -- she was
18 attacked first. She was incapacitated and then the
19 person, Mr. Matos went upstairs and handled the
20 other four people.

21 Again, the fact that he attacked one
22 downstairs and then moved upstairs to all four
23 victims, putting together would show a premeditated
24 design based on the actions of the defendant. So
25 he didn't just attack one person and then, oh, I

1 don't know what's going to happen, he went from
2 person to person, from room to room based on the
3 blood spatter expert and caused the deaths in
4 different rooms. He then tried to clean it up. He
5 then disposed of the bodies, but that alone doesn't
6 show premeditation. What he did after cannot be
7 used to show the premeditation. But the physical
8 evidence does show that these people were murdered
9 in different rooms in a house which means he had to
10 move from room to room to cause the death which
11 shows premeditation in every case.

12 So as to a judgment of acquittal to a
13 second-degree murder, the Court will find that the
14 State has in the light most favorable to the State
15 proved a prima facie case to go to the jury on
16 murder in the first degree on all four victims
17 under a premeditated design.

18 Defense, any other argument?

19 MS. GARRETT: No, Your Honor.

20 THE COURT: State, anything else?

21 MR. LABRUZZO: No, Your Honor.

22 THE COURT: All right. So, Defense, you ready
23 to put your case tomorrow?

24 MR. MICHALOS: Yes, Your Honor.

25 THE COURT: All right. How many witnesses do

1 you think you'll be calling?

2 MR. MICHAIILOS: Possibly three.

3 THE COURT: All right. Are they going to be
4 ready at 9:30?

5 MR. MICHAIILOS: Yes, Your Honor.

6 THE COURT: All right. And then do we know
7 whether the defendant -- what time do you think it
8 will take, 9:30, how long will each witness be? An
9 hour? Thirty minutes?

10 MR. MICHAIILOS: We were hoping we'll be done
11 by lunch.

12 THE COURT: With your entire case?

13 MR. VIZCARRA: Yes.

14 THE COURT: Okay.

15 MR. VIZCARRA: Yes.

16 THE COURT: All right. So if that is true,
17 then you all should be ready for closing arguments.
18 What I'll probably do, if the time frame goes the
19 way we're talking about -- now I'm not holding
20 anybody's feet to the fire. Believe me I know how
21 this goes -- that we'll be doing closing arguments
22 tomorrow, then I'll send the jury home. I'll bring
23 them back Thursday for instructions and for them to
24 start to deliberate. So we'll do closings, then
25 I'll send them home, then I'll have them come back

1 and do the instructions and deliberations begin on
2 Thursday.

3 Any questions from either side?

4 MR. VIZCARRA: No, Judge. But we'd ask you
5 to -- we'd ask you to inquire of the defendant now
6 and if he could give his response tomorrow morning.

7 THE COURT: Well, I talked to him a little bit
8 about the other day. I don't know if you were
9 here.

10 MR. VIZCARRA: I believe so, Judge.

11 THE COURT: Okay.

12 MR. VIZCARRA: I just want to make sure that
13 he's -- we've already talked to him and we've told
14 him definitely it's his decision. He's under -- we
15 cannot force him to testify, don't want to force
16 him to not testify either.

17 The other thing I would ask is that we go
18 ahead and, if possible, get the judgment and
19 sentences and prepare that just in case.

20 THE COURT: All right. State, do you have the
21 judgment and sentences?

22 MR. SARABIA: I believe I have them up here,
23 yes.

24 THE COURT: All right. Mr. Matos, if you can
25 stand up, sir. Raise your right hand.

1 (Defendant sworn.)

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. You may have a seat,
4 sir. Thank you.

5 Mr. Matos, how old are you?

6 THE DEFENDANT: I'm 32.

7 THE COURT: How far in school have you gone?

8 THE DEFENDANT: College.

9 THE COURT: All right. And are you currently
10 under the influence of any drugs, alcohol or
11 prescription medication of any kind?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Are you taking anything in the
14 jail?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: All right. And we talked a little
17 bit the other day that we were coming to the end of
18 the trial and that you, as the defendant, have an
19 absolute right to remain silent in this case. You
20 also have an absolute right to testify if you wish
21 to.

22 You understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: All right. And you've been here
25 throughout the trial. I read the jury the

1 instruction that says they're not to use the fact
2 that you did not testify against you. I read that
3 at the beginning. If you choose not to testify,
4 I'll read an additional instruction that will
5 remind them again that they're not to use that
6 against you.

7 You understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: I guess there is some prior record
10 that you have that we're going to go over. What
11 you need to understand about that is if we can
12 agree on your prior record the most the State can
13 ask you, if you choose to testify, is whether you
14 have ever been convicted of a felony. And if you
15 have, you say yes. And they can say, how many
16 times and you say the number that they all agree
17 on, and that's as far as that inquiry can go.

18 You understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: They can't ask you about it. They
21 can't ask you, isn't it true you did this on that
22 date. It's all done. They ask you, "Have you been
23 convicted of a felony and how many times?" As long
24 as you say, "Yes" and how many times right, that's
25 all they can ask you.

1 You understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: If you have any misdemeanors,
4 including like a petit theft or crimes of
5 dishonesty, they can further ask you if you have
6 those. Again, if the answer is yes and you say how
7 many times.

8 You understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: So that's as far as the
11 questioning can go if you choose to testify.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Do we -- are we in agreement on
15 how many judgment and sentences he has yet?

16 MR. SARABIA: We do, Judge. It's just
17 Pennsylvania, though. We're trying to interpret.

18 THE COURT: Okay. A felony in Florida is
19 considered anything that would have a maximum
20 penalty of over a year in jail, just so you know.

21 So, Mr. Matos, going further, you understand
22 that it's absolutely your right to testify or not;
23 is that correct?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And have you had an opportunity

1 through all these years to talk to your lawyers
2 about whether you should testify or not testify?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay. And you understand that you
5 can choose to testify or not, correct?

6 You understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: And you can do that over their
9 advice. So they can say, Look, Adam. You really
10 need to get out there on the witness stand and tell
11 them your side of the story." You can say, "No,
12 no, no. No thanks. I don't wish to." That's your
13 right. I read that instruction. We're done. The
14 State can't comment on you not testifying. We're
15 done. They can say, "Oh, don't take the witness
16 stand. It's not a good idea. We wouldn't suggest
17 it." And you can say, "No. I want to get up
18 there. I want to tell them my side of the story."
19 And they can't stop you.

20 You understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: They'll just go about their
23 business and ask you the questions that you go over
24 and, again, the State's only going to be able to
25 say you've been convicted of this many felonies and

1 you can testify.

2 You understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: The only part about that that's
5 very important for you to understand is if you
6 choose to testify, you answer the questions of your
7 lawyers, you have to answer the questions asked to
8 you by the State. You don't get to pick and choose
9 what you answer.

10 Are we clear about that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: So, you know, when you were read
13 Miranda with the police officers, they say that,
14 you know, you can stop talking at any time and that
15 doesn't occur anymore. You're in the trial. So if
16 you choose to testify, you're lawyers will get to
17 ask you questions, and just like all the other
18 witnesses, the other side gets to get up and, you
19 know, grill you on their questions and you have to
20 answer whatever they ask you as long as it's an
21 admissible question.

22 Okay?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right. Do you have any
25 questions of myself about that issue of whether you

1 testify or not testify?

2 THE DEFENDANT: I don't have any questions
3 right now, Your Honor.

4 THE COURT: Okay. And I will leave you for
5 the evening. We're going to talk about your
6 judgment and sentences to discuss the matter with
7 your lawyers. But when the time comes tomorrow,
8 I'm really going to need an answer.

9 Okay?

10 THE DEFENDANT: Okay.

11 THE COURT: I can't give you another day or
12 another week or another month to think about it.
13 We're at the time where tomorrow, when they're done
14 with their witnesses, we're going to take a break.
15 The jury's going to go out and I'm going to ask
16 you, "Hey. We had this conversation yesterday,
17 what's your answer?"

18 Okay?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: So you can change your mind
21 tonight, all tomorrow, all the way up until I ask
22 you. But once I ask and you make your decision and
23 we go into closings, you can't go back.

24 Okay?

25 THE DEFENDANT: Yes.

1 THE COURT: Fair?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. All right.

4 Defense, anything else you'd like me to
5 inquire with the defendant about?

6 MR. MICHAIILOS: No, Your Honor. That was
7 fine.

8 THE COURT: Okay.

9 Have we agreed on his judgment and sentences?

10 Do we want to think -- do we want to look at
11 it overnight?

12 MR. SARABIA: We do, Judge. We're up to six
13 crimes of dishonesty and maybe one would be a
14 felony here.

15 THE COURT: All right. And which one is that?

16 MR. SARABIA: I'm sorry. Potentially two
17 would be felonies here. One is a defiant trespass
18 in Pennsylvania, which is labeled and it was pled
19 down from a criminal trespass which was a felony
20 three Pennsylvania became an M-3, but appears to be
21 punishable by two years incarceration and it looks
22 equivalent to a burglary; however, I'd have to go
23 back and check that.

24 And then what they label as a simple assault
25 would be the equivalent of an aggravated assault

1 here or even an aggravated battery.

2 THE COURT: What's the level of crime?

3 MR. SARABIA: That one is an M-2 in
4 Pennsylvania. And that one has the allegation of
5 Adam Matos did negligently cause bodily injury to
6 Josh Boss (phonetic) with a deadly weapon by
7 throwing a pair nunchakus at the back of his head
8 causing a laceration.

9 MR. VIZCARRA: Judge, we're willing to stip to
10 six crimes of dishonesty. I know it's a different
11 jurisdiction. I did look at those certified copies
12 that the State has.

13 THE COURT: All right. It appears that in the
14 State of Pennsylvania, a first-degree misdemeanor
15 is punishable by up to five years -- excuse me.
16 Yes -- five years in state prison. And a
17 second-degree misdemeanor is up to two years in
18 state prison. And a third-degree misdemeanor is up
19 to one year in county jail.

20 So it appears from the sentencing guidelines
21 that the -- anything that would be first-degree
22 misdemeanor or a second-degree misdemeanor would be
23 considered a felony under our rules. We're kind of
24 getting into semantics.

25 MR. SARABIA: We'll do some research on that,

1 Judge, just to double check that overnight.

2 THE COURT: Let's see what Ehrhardt says.

3 I would suggest that you start with the
4 *Riechmann* case versus State, 581 So.2d 133.
5 Ehrhardt seems to say that if the State or the
6 Defense, whoever's asking the question, can show
7 that the punishment for that crime in that
8 jurisdiction is more than one year in jail, then it
9 would be considered a felony.

10 MR. VIZCARRA: 581 So.2d -- sorry, Judge. I'm
11 sorry.

12 THE COURT: Sorry. 581 So.2d 133. It's a
13 Supreme Court case, 1991. I'm sure it has a lot of
14 stuff since then, I'm just giving you the first
15 thing that Ehrhardt has there.

16 MR. VIZCARRA: I know that our client believes
17 that he was told by his counsel up there in
18 Pennsylvania that the -- they were all reduced to
19 misdemeanors.

20 THE COURT: That is the correct term in
21 Pennsylvania.

22 MR. SARABIA: It looks like five of them would
23 be considered -- five of them are punishable by
24 more than a year. So five of them would be
25 equivalent of five felony convictions and two

1 crimes involving dishonesty.

2 THE COURT: Well, now you all have more to do
3 tonight.

4 MR. SARABIA: At your suggestion, we'll
5 accept.

6 THE COURT: We accept what?

7 MR. VIZCARRA: Judge, we have proposed that
8 the language, the question being, you've been
9 convicted of five misdemeanors in Pennsylvania, but
10 that they would constitute five felonies in Florida
11 and two crimes of dishonesty.

12 THE COURT: Okay. That's fine if you all want
13 to agree to that. And then --

14 MR. SARABIA: At the Defense's proposition,
15 yes, we would agree to that.

16 THE COURT: So if the defendant testifies that
17 would be the question. They'll actually put it in
18 a leading manner like that, so you can just say,
19 "Yes" and then you don't get caught in some trap or
20 anything like that. They'll just say that, you'll
21 say "Yes" and that will be taken care of.

22 So it's misdemeanor in Pennsylvania which
23 would be considered a felony here and you say "Yes"
24 and we're done. Okay?

25 Any questions about that?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: All right. We're not trying to
3 trick you and we try not to do that. We try to be
4 up front on any defendant to make sure they
5 understand what the questions are going to be so
6 they can answer it properly so we don't get into
7 other things. Okay?

8 So -- but we'll talk about whether you're
9 going to testify for sure tomorrow. You don't have
10 to make that decision today. Okay?

11 Anything else that you want, Defense?

12 MR. MICHAIILOS: No, Your Honor.

13 MR. VIZCARRA: No.

14 THE COURT: All right. State, anything?

15 MR. SARABIA: No, Judge.

16 THE COURT: All right. And there's a
17 possibility of rebuttal, but you don't know what
18 they're putting on so you don't know yet.

19 MR. SARABIA: We have no idea what they're
20 putting on. They haven't given an opening.

21 THE COURT: Oh, that's correct. I forgot.
22 Thank you for that.

23 Are you giving an opening or are you going to
24 waive?

25 MR. MICHAIILOS: That all depends on our

1 client's decision. It's a distinct possibility we
2 will be giving an opening tomorrow.

3 THE COURT: Okay. Well, just remind me in the
4 morning because sometimes I just -- I'm not used to
5 people waiving, not that you can't do that. It's
6 completely right. No difference. But I'm just not
7 used to it. So they rested, I might just say,
8 "Defense, State rested. Call your first witness."
9 And I don't want you to say, "Hey -- " have to
10 remind me to give an opening.

11 So in the morning, tell me, I'm giving an
12 opening" so we can start there.

13 MR. MICHAIILOS: Okay. Yes, Your Honor.

14 THE COURT: Okay?

15 All right. We'll see you all in the morning.

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25 (Continued in Volume XIV.)

1 CERTIFICATE OF REPORTER

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3 STATE OF FLORIDA)4 COUNTY OF PASCO)
5
67 I, Victoria L. Campbell, Registered
8 Professional Reporter, certify that I was authorized
9 to and did stenographically report the foregoing
10 proceedings and that the transcript is a true
11 record.12 DATED this 3rd day of July, 2018.
1314 /S VICTORIA CAMPBELL
15 Victoria Campbell
16 Registered Professional Reporter
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