

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA

CASE NO. 06-019906 B - (TSR)

vs.

KEMAR MANLEY JOHNSTON

EXCERPT TRANSCRIPT OF CLOSING ARGUMENTS

Before the Honorable Thomas S. Reese,
Circuit Judge, at a hearing in the above-
styled action, held at the Lee County
Justice Center, Fort Myers, Florida, on
January 28, 2010.

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I N D E X

CLOSING ARGUMENTS

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(FOR PURPOSES OF THIS TRANSCRIPT THE PRECEDING PROCEEDINGS
WERE NOT TRANSCRIBED.)

THE COURT: State may proceed.

MS. DOERR: Thank you, Your Honor.

Good morning.

THE JURY: Good morning.

MS. DOERR: I want to start out by saying we all
thank you very much for this tremendous commitment that
you've made over the last few weeks, and we all
understand that this is not easy to give up your lives
and your families and your friends and your jobs and
whatever other commitments that you may have in your
lives, and we all do really thank you.

As you probably have heard throughout the trial,
there have been other trials in this case with other
defendants, and I've done several closing arguments, and
when I started to write out my closing argument for this
case, I started to proceed the same way, but I heard
something in this case that I had not heard in any other
one --

MR. LENAMON: Objection, Judge.

THE COURT: Sustained.

MS. DOERR: -- William Arciszewski took the stand
and he called himself and his friends a reject
orphanage - remember that phrase, reject orphanage.

1 All of these people, all of these friends who come
2 in and out are all looking for some place, someone, some
3 direction, they all want to be part of something. And
4 this is a group of Mr. Johnston's friends who really
5 does not much more than drink all day and take drugs all
6 day and sell drugs all day. They're looking for
7 direction.

8 This case, as you probably heard, has just about
9 everything in it, every component you can think of, and
10 all of them awful. If you take just one act that was
11 done to just one of these victims, I mean, it's enough
12 to make you cringe. But when you look at the whole
13 picture of what happened to these two individuals that
14 night at Mr. Johnston's house and then, later, in the
15 industrial park, it's almost uncomprehensible.

16 The Defense, in their opening statement, said - he
17 told you, This was to be a celebration of life -
18 remember that phrase, a celebration of life, which,
19 apparently, was going to be celebrated by seeing who
20 could drink the most, smoke the most, and pop the most
21 pills. But, nevertheless, this celebration of life
22 starts out at a 20th birthday party at Kemar Johnston's
23 and it leads to a torture session and a double murder of
24 two young people.

25 And, remember, nine people were indicted on first

1 degree murder charges in this case as a result of what
2 happened that night starting out at Mr. Johnston's
3 birthday party. And most people think of a birthday
4 party as a happy occasion. And, if you recall, due to
5 the continuing police work, a tenth suspect was
6 arrested, Michael Balint, about a year and five months
7 later, a year and a half later. The police had been
8 looking for the red-haired Mikey that tied the boys up
9 and they eventually found him.

10 But let's go over what we know. We know Alexis Sosa
11 is dead and we know Jeffrey Sosa is dead. And it's
12 almost impossible to comprehend how their young lives
13 could come to such a violent end at the hands of people
14 that they know and people that they didn't know.

15 I mean, look at Melissa Rivera. She gets a taser
16 out - she doesn't even know these boys - she gets a
17 taser out and she tasers them and she re-carves an F
18 into one of their backs. Well, why?

19 Michael Balint stops by to buy drugs and, the next
20 thing you know, he's hogtying these boys. He doesn't
21 know them. Why?

22 Alexis Fernandez, he doesn't know these guys. He
23 shows up and, the next thing you know, he's driving them
24 in his trunk to an industrial park and helping transfer
25 them from one area to another location where they're

1 eventually killed. Why?

2 I'll tell you why. Because the Defendant is telling
3 everybody what to do and when to do it. Remember,
4 everybody gets a piece of this action? Everybody needs
5 a piece of the action? That's where this peer pressure
6 comes in. Peer pressure at it's ugliest. This reject
7 orphanage. And usually when you think of peer pressure,
8 you think of kids are going to smoke cigarettes or they
9 may vandalize something or write some graffiti on
10 something. But here, they have such a need to fit in.

11 And remember, it was Mr. Johnston's place. He's the
12 one who had the cars, he had a job, he had the money,
13 he's the one letting them sell drugs out of his place;
14 they're trying to get his approval.

15 No one of these kids on their own, these young
16 people on their own would have done this that night. It
17 took this group mentality, this mob mentality. They
18 were being encouraged and they were being egged on by
19 Mr. Johnston until things escalated and escalated and
20 got completely out of control and ended up with two
21 people dying.

22 Remember, there was punches thrown; there was pistol
23 whipping; they were searched; they were tied up; they
24 were tortured; knives came out; guns came out, all by
25 people who know them and who didn't know them.

1 There was even some testimony that, perhaps, the
2 Defendant, himself, didn't know these people. Well, I
3 ask you this, why didn't somebody just ask them to
4 leave? I mean, if these people are coming uninvited to
5 your celebration of life, why not just tell them to get
6 out? And if you think they're armed or you think you
7 have a problem with them, they're frisked, they're not
8 armed, tell them to leave. Instead, the exact opposite
9 happened; they were prevented from leaving. They were
10 frisked and their cell phones were taken, their means of
11 communication to the outside world. They are
12 surrounded. They're out-numbered. They're tied up.
13 And why? How can you make sense of all this?

14 Was the Defendant - if he didn't know these people -
15 trying to help his friends out? Well, remember what he
16 said, Do you know who you're messing with; Don't mess
17 with me. He made it personal to him.

18 Jeffrey Sosa, if you remember, was off to the side,
19 oftentimes praying or pleading for his life, to no
20 avail.

21 And after all this punching and kicking and pistol
22 whipping by the Defendant and his friends and they're
23 tied up and the knife comes out and several of them
24 carve into these boys' backs after taking their shirts
25 down, bleach is poured on them. At one point, if you

1 remember, the Defendant says, Somebody bring him his
2 last cup of water. Does it get any more premeditated
3 than that?

4 You'll also remember a shot's fired in the kitchen,
5 and when Mr. Nunes comes out of the bedroom, what does
6 he see? He sees the Defendant with a gun leaning over
7 Alexis Sosa checking to see if he's been shot or not.
8 Bags, at some point, are placed over their heads and
9 they're loaded into the trunk of a car like garbage and
10 they're driven to another location. They're not being
11 driven to another location so that they can be let go -
12 no, they're still tied up and they have a bag over their
13 head and bleeding. They're taken to another location so
14 that they can be killed. Again, premeditation.

15 Why are they taken to another location? Maybe there
16 was too many witnesses to finish them off in
17 Mr. Johnston's kitchen? But what we do know is they
18 were driven to another location. And if that's not
19 enough, two of them go back and decide to burn the car,
20 maybe to destroy evidence, maybe to make sure they're
21 really dead.

22 And all the while that this is going on at
23 Mr. Johnston -- in Mr. Johnston's kitchen, they're still
24 a party going on. No one's leaving; they're there,
25 they're staying there. No one's calling on their cell

1 phones. And we asked some of them, Did you have a cell
2 phone; Did you call even after you left? No; No; Didn't
3 do any of that.

4 So let's look at what we have here. Let's look at
5 what we really have here. We have a young group of
6 self-absorbed people doing lots of drugs and lots of
7 drinking at this party - one even brought their mother.
8 They're all on alcohol. They're all on drugs. They're
9 continuing to drink. They're continuing to drug.
10 They're moving from room to room, which explains why
11 some people see some things and others see other things.
12 That's why their stories don't match up perfectly.
13 That's to be expected.

14 You also heard some talk about how messed up
15 Mr. Johnston was; how many drugs he had taken, pills he
16 had popped at his party. At one point, it was testified
17 to he was speaking in a Jamaican accent. Well, let's
18 think about this Jamaican accent. If he has somebody
19 down on the ground, isn't speaking in a different
20 language maybe a control thing; they don't understand?
21 Maybe to put fear in him? Start talking in a different
22 language with a gun and a knife?

23 What the evidence showed here was that everything
24 happened was at Mr. Johnston's house and at
25 Mr. Johnston's direction. And when they left the house

1 he told them what cars to go in, who to go with who and
2 where to go to this industrial park a short distance
3 from his home.

4 And it's true that the witnesses gave different
5 versions. As the police start to close in on them,
6 they're getting nervous, more witnesses are coming
7 forward saying what happened, they're going to try to
8 protect themselves; that's human nature. They know
9 they're about to be caught or they have been caught, of
10 course they're going to minimize their involvement.

11 And the police, Detective Grau told you told you
12 that this was not your typical case, fortunately. In a
13 lot of cases there is - whether it's a robbery case or a
14 murder case or any kind of case, there is generally one
15 victim and one defendant, whether they knew the victim
16 or not - could be a stranger, could be an acquaintance,
17 family member. In this case, you had 10 defendants, 30
18 to 50 partygoers, four possible crime scenes - you had
19 Mr. Johnston's kitchen; you had Lex Fernandez's trunk;
20 you had the Lexus, itself, that they were found in or
21 about, and you have the industrial park. And some were
22 strangers and some were not.

23 As Mr. Brener, himself, said, when he was talking to
24 Justin Greenwell - and I wrote it down - You received a
25 large amount of evidence in this case. And there was a

1 large amount of evidence in this case, and we showed it
2 to you. There was all those casings. There were
3 bullets. There were two blankets. There were three
4 guns. There were two dead bodies; one they were able to
5 identify and then you heard how Alexis Sosa had to be
6 identified because of the condition of his body.

7 And I only want to touch briefly on this one issue.
8 A lot was made of a Dr. Pepper can. And Dr. Pepper cans
9 are all over the place. Is everyone who drinks
10 Dr. Pepper a double murderer? Of course not. And
11 remember, this was a clearing ground, a dumping ground,
12 and it had been used such for a long time. We don't
13 know.

14 I'm going to ask you not to get distracted from the
15 evidence and the things that we do know and to focus on
16 the elements and the facts as you decide them when you
17 go through the evidence.

18 And then another thing, if you remember, these guns
19 were all sold right after this crime. Roderick
20 Washington sold one; he sold one to Brian Peters, that
21 was the .22 found in the canal. Lex Fernandez sold the
22 .380 that he found in his glove box to a man named Adam
23 Frederick. And Kemar Johnston sold the Glock to Alex
24 Suarez.

25 And if you remember when Alex Suarez took the stand,

1 I asked him, Did you have to talk to anybody else about
2 buying that gun? No; I just talked to Mr. Johnston.
3 Did he have to ask anyone's permission to sell that gun?
4 No. Did you deal with anybody else? No; He just sold
5 it to me for - I gave him some money and, you know,
6 promised to do some future tattoos on him. I submit to
7 you he's not going to sell a gun he doesn't own. They
8 all knew that this gun had been used in this crime.

9 And I'm going to put something up on the screen. I
10 want to go over the witness list for you. And you saw
11 the witnesses, and we didn't try to dress them up - I
12 mean, they came in their jail uniforms and their
13 shackles and took the stand. But I want you to remember
14 this one very important fact as we go through this
15 witness list, and that's this: When the Defendant
16 decided who his guest list was going to be for his
17 party, he decided who his witness list was going to be
18 for his trial. Think about that. These are his
19 friends. If the Defendant had invited the Chief of
20 Police to his party, you would have been hearing from
21 the Chief of Police. If the Defendant had invited Miss
22 Stacey Defenbaugh from Channel 7, she would have been up
23 on the stand. But he didn't. He invited the people
24 that you heard from. He invited his friends.

25 And I want to go over -- this is Alexis Sosa, the

1 older victim of the two. There's Jeffrey Sosa, the
2 younger one, his nephew. He had - also indicted, you
3 had Ashley Toye, the girlfriend of Kemar Johnston;
4 Iriana Santos, the girlfriend of Roderick Washington;
5 Melissa Rivera, who you heard from, she has children by
6 Mr. Johnston's brother; Lex Fernandez, who you also
7 heard from, he was the owner of the red Contour; Cody
8 Roux, you heard from him, too; Kenneth Lopez; Roderick
9 Washington; Paul Nunes, you heard from him, and
10 Mr. Johnston.

11 Here's a picture of Mr. Johnston's duplex as it
12 looked a couple of days after this all happened, and you
13 can see the garage area where the two Sosas would have
14 entered and come in through that kitchen, and you can
15 see the opening that some of the witnesses talked about
16 that faced into the kitchen. There's the pantry area
17 where some of the witnesses said Jeffrey had been over
18 by, he had been sitting there watching everything going
19 on initially. That's another view of the kitchen that
20 looks out into the living room. That's the floor area
21 where the two Sosas spent hours getting hit and tortured
22 and even, perhaps, one of them being shot. This is the
23 living area, and I think you can even see a balloon in
24 the picture where some of the partygoers just stayed and
25 hung out. Here's another view of the kitchen and, if

1 you recall, there was people -- it was testified to that
2 some of the girls had done some cleaning up with some of
3 the bleach. If you look at that counter top, can you
4 see how clean that is, the reflection of the toaster in
5 that counter top? Look how clean that is. And,
6 remember, there was a party going on there that had 30
7 to 50 people. Clothes that were found that had been
8 washed. The trunk of the car at the industrial park
9 with Alex Sosa in it. There's Jeffrey. And you can see
10 all the markings that crime scene did with all the
11 casings and the bullets. You can see when they were
12 firing into the back which is on the left-hand side
13 there, all those casings that ejected. You can see the
14 area behind it, how they pulled the car in there.

15 Now, this is Jeffrey Sosa's back, and, if you
16 recall, Melissa and some of the other ones talking about
17 the C and the F, the Cash Feenz that's carved in there.
18 We don't know what was carved into Alexis Sosa's back,
19 obviously, but this is Jeffrey. And, as you will
20 recall, he was found next to the car, and there was
21 testimony that Ashley Toye had carved a star or an
22 asterisk into the back.

23 Finally, here's a tee shirt that, apparently, that
24 they had made up, Free Whizzo, with a C and the
25 backwards F, and Whizzo is Mr. Johnston's brother, the

1 father of Melissa Rivera's children.

2 Now, these are the people that you heard from. And
3 like I said before, yes, there was some statements
4 given; yes, they tried to minimize their involvement;
5 yes, not everybody saw everything that was going on as
6 they're moving around the kitchen and while all this is
7 going on, but I want to go through, and I want to ask
8 you to focus on the consistencies of this statements of
9 what they tell you.

10 First, there's Michael Taylor. We know he was at
11 the party - in fact, he was the one who came with his
12 mother. He knows both the Sosas. He sees the Defendant
13 with a gun. He sees the Defendant pistol whip Alexis
14 Sosa. He sees Rod Washington and Kenneth Lopez with
15 guns. He sees Rod Washington guarding Alexis and
16 Jeffrey Sosa with the rifle. He heard the cell phone
17 message that we heard testified to by several of these
18 people, allegedly Alexis Sosa's voice on there. He sees
19 Jeffrey and Alexis Sosa hogtied by a red-haired guy who
20 we later learned was Michael Balint. He sees the Sosas'
21 shirts ripped. We know that at least Jeffrey was found
22 without a shirt on. He sees the Defendant with a knife.
23 He sees the Defendant carve that CF for Cash Feenz into
24 Alexis Sosa's back. He sees Washington pour bleach on
25 Alexis Sosa and he hears Jeffrey praying.

1 Next, you heard from Andrew Touchstone. He was part
2 of that Chico Unit, a group of guys who want to call
3 themselves something. He's also at the party. He hears
4 an argument in the kitchen, which is consistent with the
5 fight that started in the kitchen that the others heard.
6 He sees the Sosas arrive into the kitchen, and we know
7 that everyone testified they didn't go from room to
8 room, the Sosas were put in that kitchen and they stayed
9 in there until they were carried out. He sees either
10 the Defendant or Washington holding a gun on Alexis
11 Sosa. He sees Cody Roux hit Alexis Sosa and the fight
12 begins. And, if you remember, even Cody Roux testified
13 himself that he started to fight with Alexis Sosa, but
14 Alexis Sosa was getting the better of him so he backed
15 off. He sees Mr. Johnston, Lopez, Washington and Roux
16 with guns - again, Cody Roux admitted he had a gun;
17 Iriana Santos, Melissa Rivera and Ashley Toye in the
18 kitchen - I think there was all the testimony that those
19 girls were in the kitchen, whether they were partaking
20 what was going on or cleaning; sees Alexis Sosa on the
21 floor with Jeffrey Sosa next to him; sees Alexis Sosa
22 with his hands and legs tied up, and we know he was
23 hogtied. Again, he also sees Alexis Sosa's upper back
24 with that C and the F for the Cash Feenz; Cody Roux
25 guarding the door with a gun - Cody Roux told you he

1 guarding the door with a gun; the bleach that's poured
2 on Alexis Sosa, he can hear him screaming, he hears him
3 talking some sort of jibberish. There was some
4 testimony that Touchstone, did he get involved in this,
5 he told you he didn't, that's for you to determine the
6 facts, determine all what the witnesses say and you
7 determine what you think happened.

8 Cody Roux went to the party, he was providing the
9 music - I think he had to provide it a couple of times,
10 there was some malfunction or something. He knows the
11 Sosas; sees them in Mr. Johnston's kitchen; gets into
12 the fight with Alexis Sosa; sees Michael Balint, the
13 red-haired guy, buy the drugs, which he testified he
14 went there to buy drugs. He also sees Mr. Johnston with
15 a gun and says Mr. Johnston gives him a gun and tells
16 him to guard the door while the fight continues. He
17 goes back the next day with his friend Tyler Cox, I
18 think, to retrieve a cell phone charger and Fernandez,
19 Nunes, Lopez and Washington are all still there, and I
20 think there was testimony that corroborated that, as
21 well, that they were all still there.

22 Michael Balint. He goes to the party to buy drugs
23 because, apparently, he didn't have enough drugs that
24 day. He doesn't know the Sosas. He sees them in the
25 kitchen. He's told by the Defendant to tie him up - Who

1 knows how to tie; I do, and he's provided laces, and he
2 sees Mr. Johnston with a gun. He tells you he also
3 kicks him and hits him while Alexis Sosa was somewhat
4 resisting. And he also said he saw Rod Washington poke
5 Alexis Sosa in the ribs with his gun, with Washington's
6 gun.

7 Melissa Rivera, who you heard from, she was at the
8 party. She sees the Sosas in the kitchen. She hears
9 the voicemail. She's present when the fight breaks out.
10 She also sees Mr. Johnston and Mr. Washington with guns.
11 Sees the Sosas tied up in the kitchen - that's pretty
12 consistent throughout everybody's testimony. She sees
13 Cody Roux with a gun - that's pretty consistent, as
14 well. The Defendant tells her to get a taser because,
15 apparently, they keep a taser - he has a taser and she
16 tasers people for fun - and she does; she goes and gets
17 the taser and she tasers Alexis Sosa - someone she
18 doesn't know. She sees the Defendant with a knife, and
19 what does he tell her? He hands her the knife and tells
20 her to do the F over on one of the Sosas' backs. She
21 sees the Sosas' with bags over their heads - again,
22 pretty consistent. She hears a shot fired in the
23 kitchen. And then she goes to go outside but she's
24 stopped because Mr. Johnston tells her to get into a
25 car - to get into his car and drive with Iriana Santos

1 and Rod Washington to this industrial park. She's
2 following them. He tells her to get in the car and
3 drive his car and she does. She hears shots fired at
4 that industrial park. And she identified the two
5 comforters - or one bed skirt and one comforter that was
6 found at this industrial park as belonging to
7 Mr. Johnston with Mr. Alexis Sosa's DNA on it. And she
8 told you while she was at the industrial park, she was
9 with the two other girls, Santos and Toye, and Rod
10 Washington and Paul Nunes were by her. What she doesn't
11 see is Mr. Johnston, Lex Fernandez or Ant Lopez when the
12 shots are being fired. And she said the Sosas did not
13 return with them when they all returned back to
14 Mr. Johnston's house.

15 Alex Fernandez, he went to the party with Jose
16 Medina, Mike Taylor and Mike Taylor's mother, and they
17 also left at some point to go a liquor store where they
18 ran into the Sosas. Lex Fernandez wasn't even invited
19 to this party by Mr. Johnston, he was invited by his
20 friends. He sees the Sosas in their Lexus. He sees
21 Alexis Sosa tied up on the floor and Jeffrey sitting
22 down on the floor. And, then, at some point, he's asked
23 for his car keys, which he thinks is just to move his
24 car, but he's actually told by Mr. Johnston to drive the
25 car. And when he looks in the trunk of his car, which

1 has been backed up into Mr. Johnston's garage, the trunk
2 is open and he can see the Sosas in his trunk. He can
3 see the trash bags over their heads. He doesn't know
4 where he's going, but Mr. Johnston's in the car with him
5 and he's the lead car, and they go to the industrial
6 park - again, a short distance away from Mr. Johnston's
7 house. He and somebody else - because, remember, he's
8 really not friends with these people - help move one of
9 the Sosas into the trunk of their own car, the Lexus,
10 and he sees the Defendant and someone else shooting -
11 and there was something made about at one trial he
12 testified it was Lopez and the Defendant, and then he
13 said, It was -- And now I can -- It was the Defendant;
14 I'm not sure of the second person. He only told you
15 something that he was 100 percent sure of. He wasn't
16 going to make it up. He wasn't going to -- he didn't
17 want to mislead anybody, and maybe it's due to the
18 passage of time or the drugs or the alcohol, but he told
19 you what he was 100 percent sure of - not even beyond a
20 reasonable doubt but 100 percent sure of. And who was
21 in the passenger seat as he drives home to Kemar
22 Johnston's house? It's Kemar Johnston. And what's
23 found in his glove box? The .380 that we know was used.

24 Paul Nunes, who you heard from, he went to the party
25 with Anthony Lopez and Rod Washington. He sees the

1 Sosas walk in through the garage and into the kitchen,
2 and he sees Kemar Johnston close the garage door behind
3 them. He sees the Defendant and Washington pull guns on
4 the Sosas - in fact, he told you he sees the guns being
5 passed around, and that goes back to this peer pressure
6 thing I talked to you about earlier. He sees the
7 Defendant with what? A .380 handgun, the one found in
8 Mr. Fernandez's glove box. He sees Washington search
9 the Sosas, which is pretty consistent. He sees the
10 Defendant pistol whip Alexis Sosa. And he hears the
11 Defendant ask, Who knows how to hogtie? And then he
12 sees Balint - Red-Haired Mikey - hogtying the kids up -
13 the Sosas up. He hears the Defendant telling Ashley
14 Toye to get a knife, and we know he's seen with a knife
15 in his hand; sees the Sosas with their shirts off -
16 again, consistent. He sees Jeffrey Sosa on the floor
17 with a star carved into his back, and we know that's
18 true, we have photographs of that; sees and smells
19 bleach; sees Melissa Rivera taser Alexis Sosa; hears
20 gunshots in the kitchen; another one who sees them with
21 the bags over their head. The Defendant tells him which
22 car to get into. I think he said he heard seven to ten
23 gunshots at the industrial park. And he can see others
24 that he came with firing into the trunk of that Lexus
25 and into something on the ground.

1 Jennifer Dunning was also at the party. She was not
2 one of the co-defendants. There's no indication she did
3 any - had any involvement in what was going on in the
4 kitchen. She sees the Sosas walk in and she sees them
5 get searched. She also hears the voice message played.
6 She also sees Kemar Johnston with a gun. She sees him
7 hit Alexis Sosa. She sees Ashley Toye cleaning up
8 blood; Washington pour bleach, and she sees Kemar
9 Johnston with a knife. She also told you she could hear
10 Alexis Sosa screaming and that they never left the
11 kitchen area.

12 And, finally, you heard from William Arciszewski.
13 He testified that he thought he was best friends with
14 the Defendant. He was part of the Cash Feenz. He knew
15 the Defendant's brother. He went to the birthday party.
16 He knew a lot of these people. He lived with the
17 Defendant on and off, as did some of these other
18 people - Rivera, Toye, Lopez and Washington. And
19 remember when he saw the Sosas arrive, he described the
20 mood of the party as now becoming electric. Everybody
21 crowded around them in the kitchen. He's moving around,
22 too. He hears them getting beat up. He knows a fight's
23 going on. He also hears the cell phone messages played.
24 And he told you that the more that the Defendant drank,
25 smoked and ate pills, the more he became like a rabid

1 dog. He sees Cody Roux with a gun guarding the front
2 door; free for all; black shoestrings brought out - if
3 you recall the photograph of Jeffrey's feet what he was
4 tied with, black shoestrings - and all the pictures are
5 in evidence and the video that we showed you early on,
6 the weapons, the casings, everything is in evidence.
7 And if you go back in your deliberations and you want to
8 see everything - the Judge is not going to send the guns
9 back or the bullets back, but you can come out and look
10 at them, but, certainly, all the photographs will go
11 back with you. He also saw Red-Haired Mike tie up the
12 Sosas; saw the Defendant - another one who saw the
13 Defendant with a handgun and Washington with a rifle;
14 Alexis Sosa with the CF, Jeffrey Sosa with the asterisk;
15 the smell of bleach; gunshot in the kitchen; the bags
16 over the head. He hears the Sosas being put in a trunk.
17 He hears Jeffrey Sosa saying, Please don't kill me. He
18 sees the Defendant leave in the cars with Washington,
19 Lopez, Rivera, Toye, Santos and an unknown male, but he
20 sees the Defendant; he sees the kids - I'm sorry - the
21 girls cleaning up the kitchen; they're wiping things
22 down, throwing things in the trash. And he also told
23 you that he slept there. And when you think about it, a
24 number of people, after all this went on, spent the
25 night there.

1 Now, most of these people that testified, if not all
2 of these people, were called a liar by the Defense -
3 that word was tossed around quite a bit. But I submit
4 to you that the word "liar" is an opinion and it's not
5 the attorneys' opinions that count. There's only 12
6 peoples' opinion that count in this case, and that is
7 the 12 jurors who are going to go back and deliberate
8 and reach a verdict in this case. And I anticipate that
9 the Judge is going to instruct you that you can believe
10 some, all or none of a witness' testimony, and that's
11 your prerogative, and that's what you're going to be
12 asked to do. And that's why I point out the consistent
13 statements throughout. It's your job to decide the
14 credibility of these witnesses. It's not what we think
15 that matters.

16 Here's the ballistics in this case - and, if you
17 recall, it was quite a bit, I think 22 in all. We had
18 Item 80 fired from the Glock; 81, fired from the Glock;
19 82, fired from the Glock; 83, fired from the .380; Item
20 86, fired from the Glock; Item 87, fired from the Cobra,
21 the .380; Item 88, extracted from the Cobra - at some
22 point it had been in the .380, if you'll recall the
23 testimony of Mr. Greenwell - Item 89, fired from the
24 Cobra; Item 90, 91, 92, 93, 94 and 95, all fired from
25 the Glock, the .9 mm.

1 And here's what was recovered from the bodies: Two
2 casings from Alexis Sosa - the body bag he was in was
3 too badly damaged, couldn't be ID'd, and Justin
4 Greenwell explained some of that, whether it was burned
5 up or hit something hard, and there were many reasons
6 why bullets can't be identified - Alexis Sosa, there was
7 a fired .22 - couldn't be identified to the .22, but,
8 nonetheless, there was a fired .22 lead bullet in his
9 bowel; 98, couldn't identify that, either, but that was
10 in his chest; 99, also in his chest; 100, in Jeffrey
11 Sosa's chest fired from the Glock; 101 from Jeffrey
12 Sosa's neck; there was two lead fragments and one fired
13 hollow point jacket that came from the Glock, and one
14 fired .38 hollow point bullet in his leg.

15 And I'm going to touch on the law that I anticipate
16 that the Judge is going to instruct you on in the
17 minute, but I also want to bring up the deals that some
18 of these people got. And if you look at their ages,
19 some of these deals that they got are for almost as long
20 or even longer than they've been alive. You had Cody
21 Roux who was 18 plead to 14 years in prison. Michael
22 Balint, also 18, plead to 14 years in prison. Melissa
23 Rivera, 19 years, plead to 20 years in prison. And Lex
24 Fernandez, 19 years old, plead to 26 years in prison.
25 These guys didn't receive probation. They didn't walk

1 out the door. They didn't get credit, time served.
2 They got a number of years that they're going to do in
3 prison as a snitch.

4 The Judge is going to read to you a packet like this
5 (indicating). It's about - I don't know - 50 pages
6 long - and he's going to send it back to you so you
7 don't have to worry about memorizing it or anything like
8 that, but he's also going to instruct you that the
9 standard used in a criminal case is beyond a reasonable
10 doubt. It's not all doubt - that would be impossible.
11 If you try to imagine things or force things, you're
12 always going to be able to do that, that's just how the
13 human mind works --

14 MR. LENAMON: Objection.

15 THE COURT: Counsel, approach, please.

16 (THEREUPON, THE FOLLOWING BENCH CONFERENCE WAS HAD OUTSIDE
17 THE PRESENCE OF THE JURY; THE DEFENDANT WAS NOT PRESENT.)

18 THE COURT: Objection's sustained.

19 No speaking objections. Come up to the bench.

20 MR. LENAMON: Yes, sir.

21 THE COURT: Thank you.

22 MR. LENAMON: I did say, "Objection." I didn't say
23 a speaking, I just said, "Objection." I didn't say
24 any --

25 THE COURT: Well, all right. But the next thing's

1 going to be --

2 MR. LENAMON: Oh, I didn't want to. Yeah. I
3 understand.

4 If I understand your ruling --

5 THE COURT: Thank you.

6 MR. LENAMON: -- it's sustained.

7 THE COURT: It's sustained.

8 MR. LENAMON: Thank you.

9 (THE BENCH CONFERENCE CONCLUDED.)

10 MS. DOERR: In courts of law in Florida, we use
11 reasonable doubt, and that's the standard the Judge is
12 going to tell you you have to follow.

13 I'm going to go over the elements of some of these
14 crimes in a minute, and if it's not an element, the
15 State doesn't have to prove it. There may be things
16 that you are curious about or you would like to know,
17 but if it's not an element, the State doesn't have to
18 prove it.

19 We talked, I think, a little bit in jury selection
20 about first degree murder. There's two ways to get to
21 first degree murder; one is the premeditation that,
22 pretty much, everybody's heard of - and I think a
23 Mosquito (Ph.) instruction was used, I'll go back to
24 that - the second one is for felony murder, which may
25 not be as common, but there's two ways to get to first

1 degree murder. And when you go back to deliberate, you
2 don't have to all agree that it's premeditation or
3 felony murder. If six of you think it's felony murder
4 and six of you think it's premeditated murder, it's
5 first degree murder.

6 So here's the elements that the State needs to
7 prove, and there's going to be one for Jeffrey Sosa and
8 one for Alexis Sosa because the Defendant is charged
9 with two counts. Tell me this is the premeditated
10 murder instruction. The following three elements:
11 Jeffrey Sosa is dead; the death was caused by the
12 criminal act of Kemar Johnston, and there was a
13 premeditated killing of Jeffrey Sosa. And the act
14 includes a series of acts, series of related actions
15 arising from and performed pursuant to a single design
16 or purpose. Now, remember the series of acts; they're
17 in that kitchen, they're driven to another location
18 where they're killed. And then there's another
19 instruction for Alexis Sosa, it's identical.

20 This is the first degree felony murder, and here are
21 the elements I anticipate the Judge will instruct you
22 on: Jeffrey Sosa is dead - and, again, there's going to
23 be an identical instruction for Alexis Sosa - 2-A, The
24 death occurred at consequence of and while Kemar
25 Johnston was engaged in the commission of a kidnapping

1 or, B, The death occurred as a consequence of, and while
2 Kemar Johnston was attempting to kidnap, and, 3, Jeffrey
3 Sosa was killed by a person other than Kemar Johnston,
4 but both Kemar Johnston and the other person who killed
5 Jeffrey Sosa were principals in the commission of the
6 kidnapping - and we're going to get into principal in a
7 moment. But he's also going to tell you that felony
8 murder does not require a premeditated design or intent
9 to kill.

10 Certain crimes, by their very nature, are so
11 inherently dangerous that if an individual participates
12 in that type of crime and somebody is killed, it's as if
13 they intended to participate in the murder - and the
14 Judge is going to instruct you that kidnapping is one of
15 those felonies, those dangerous crimes - it's so
16 dangerous and so foreseeable that a person who is
17 kidnap- --

18 MR. LENAMON: Objection, Judge.

19 THE COURT: Objection sustained.

20 Please proceed.

21 MS. DOERR: Okay.

22 For this, again, the State does not have to show a
23 premeditated design.

24 So next - and this is the one for Alexis - here's
25 the elements for kidnapping, three elements: Kemar

1 Johnston forcibly, secretly or, by threat, confined,
2 abducted or imprisoned Jeffrey Sosa against his will;
3 Kemar Johnston had no lawful authority to do so, and he
4 acted with the intent to inflict bodily harm upon or to
5 terrorize Jeffrey Sosa, and there's the identical one
6 for Alexis Sosa.

7 Here's the crime of aggravated battery with a deadly
8 weapon - he's charged with two counts, and here's the
9 elements: Kemar Johnston intentionally touched or
10 struck Jeffrey Sosa against his will and, in committing
11 the battery, he did intentionally cause bodily harm to
12 Jeffrey Sosa or he used a deadly weapon - we know that
13 he used a knife. And here's the same one for Alexis
14 Sosa.

15 And this is the law in Florida, this is the
16 principal instruction - and we talked a little bit about
17 this in jury selection, and I think an example was given
18 that in a basketball team is playing another team, and
19 in the final seconds a shot is made, the whole team
20 shares in the victory, or, if the shot is missed, the
21 whole team shares in the loss. This is the principal
22 instruction you're going to receive: If the Defendant
23 helped another person or persons commit a crime, the
24 Defendant is a principal and must be treated as if he
25 had done all of the things the other person or persons

1 did if the Defendant had a conscious intent that the
2 criminal act be done, and the Defendant did some act or
3 said some word which was intended to and did incite,
4 cause, encourage, assist or advise the other person or
5 persons to actually commit the crime. To be a principal
6 the Defendant does not have to be present when the crime
7 is committed - but we know he was.

8 And then, finally, voluntary intoxication is not a
9 defense, the Judge is going to instruct you. It's not a
10 defense to criminal conduct and cannot be used to show
11 that the Defendant lacked the specific intent to commit
12 a crime. That's the law in Florida, and everyone agreed
13 to follow the law.

14 Also in this packet are a number of lesser included
15 offenses - and I'm not going to read them all to you,
16 the Judge will read them to you and go over the
17 elements. But if you don't believe that the first
18 degree murder has been proved beyond a reasonable doubt
19 then you'll be asked to consider second degree murder,
20 and the instruction for second degree murder reads like
21 this - and, again, they'll be two - Jeffrey Sosa is
22 dead; 2, The death was caused by the criminal act of
23 Kemar Johnston, and, 3, there was an unlawful killing of
24 Jeffrey Sosa by an act imminently dangerous to another
25 and demonstrating a depraved mind without regard for

1 human life. It takes away the premeditated element.

2 And I ask you to consider these instructions very
3 carefully as the Judge gives them to you.

4 And, finally, you're going to be given a verdict
5 form that looks like this (indicating) it's three pages
6 long --

7 MR. BRENER: Judge, can we move the screen up?

8 THE COURT: Are you going to use this anymore?

9 MS. DOERR: No.

10 THE COURT: All right.

11 MS. DOERR: Here's the verdict form - it has the
12 case number and the Defendant's name on it, it says, We,
13 the jury, find as follows as to the Defendant in this
14 case, and it's check only one to each count, and there
15 are six counts on here because he's being charged with
16 six separate crimes. The first count is, A, The
17 Defendant is guilty as charged of first degree murder as
18 to Alexis Sosa; B, the Defendant is guilty of second
19 degree murder - and if you check B, you're going to be
20 asked to answer these three questions; the first
21 question is, Do you find that the Defendant actually
22 possessed a firearm during the commission of the second
23 degree murder, yes or no; Do you find that the Defendant
24 discharged the firearm during the commission of the
25 second degree murder, yes or no, and, Do you find that

1 the Defendant inflicted death or great bodily harm
2 during the commission of the second degree murder, yes
3 or no. And then it goes on to C, The Defendant is
4 guilty of manslaughter - which is one of these lessers
5 that I told you about the Judge will instruct you upon -
6 D, The Defendant is guilty of third degree murder -
7 another lesser - or, E, The Defendant is not guilty.
8 And Count II is the exact same, only for Jeffrey Sosa.

9 Count III, you'll be asked to check one; The
10 Defendant is guilty as charged of kidnapping to Alexis
11 Sosa; B, The Defendant is guilty of false imprisonment,
12 and, C; The Defendant is not guilty.

13 Count IV is the same; Check only one as to Jeffrey
14 Sosa.

15 Count V is the aggravated battery charge: The
16 Defendant is guilty as charged of aggravated battery
17 with a deadly weapon as to Alexis Sosa; The Defendant is
18 guilty of aggravated assault with a deadly weapon; The
19 Defendant is guilty of battery; D, The Defendant is
20 guilty of assault; E, The Defendant's not guilty, and
21 identical on Count VI as to Jeffrey Sosa.

22 And you're going to be asked to elect a foreperson
23 and have your foreperson sign it, date it and print
24 their name, as well.

25 After considering all the evidence, I submit that

1 the evidence in this case supports only one verdict, and
2 that is guilty as charged of two counts of first degree
3 murder, one each for Alexis Sosa and Jeffrey Sosa; two
4 counts of kidnapping, one each for Alexis Sosa and
5 Jeffrey Sosa, and two counts of aggravated battery, one
6 each for Alexis Sosa and Jeffrey Sosa.

7 And I want to close by pointing out something else
8 that William Arciszewski said when he took the stand,
9 and that was, I'll never forget that night; I'll never
10 forget that night.

11 I submit to you no one connected with this case ever
12 forget that night.

13 Thank you.

14 THE COURT: Counsel, approach, please.

15 (THEREUPON, THE FOLLOWING BENCH CONFERENCE WAS HAD OUTSIDE
16 THE PRESENCE OF THE JURY; THE DEFENDANT WAS NOT PRESENT.)

17 MR. LENAMON: I just need like five minutes to set
18 up.

19 THE COURT: Okay.

20 MR. LENAMON: And then I'd like to go until lunch so
21 we can get in at least an hour.

22 THE COURT: And I do, too, and that's what I --

23 MR. LENAMON: Okay.

24 THE COURT: I was going to recess at noon, and I
25 know it's going to break into the middle of what you're

1 doing --

2 MR. LENAMON: I know. That's fine.

3 THE COURT: -- do you have a problem with that?

4 MR. LENAMON: Not a problem at all.

5 THE COURT: Okay. We'll send the jury out for five
6 minutes and that will give you time to set up.

7 (THE BENCH CONFERENCE CONCLUDED.)

8 THE COURT: Five-minute recess.

9 Take the jury out, please.

10 (THEREUPON, THE JURY EXITS THE COURTROOM.)

11 (THEREUPON, AT ABOUT 11:00 A.M., A BRIEF RECESS WAS TAKEN.)

12 (THEREUPON, AT ABOUT 11:05 A.M., THE PROCEEDINGS RESUMED.)

13 THE COURT: Defense ready to proceed?

14 MR. LENAMON: Yes, Judge; one moment.

15 I'm ready, Judge.

16 THE COURT: Bring the jury in, please.

17 (THEREUPON, THE JURY ENTERS THE COURTROOM.)

18 THE COURT: Please be seated.

19 The Defense may proceed.

20 MR. LENAMON: Thank you, Judge.

21 Good morning.

22 THE JURY: Good morning.

23 MR. LENAMON: Where do we begin?

24 I want you to remember three numbers - we're going
25 to probably be talking to you for two or three hours,

1 but keep these three numbers in mind because we're going
2 to get back to them, 27, 9 and 3. And these numbers are
3 going to become very important in your deliberations at
4 some point. We'll discuss them later.

5 But first I want to take a little time to talk about
6 what we discussed in opening statement at the very
7 beginning of the case about two weeks ago and even
8 before then. We talked about how difficult your job was
9 going to be in this particular case. We talked about
10 your responsibilities as jurors. We talked both
11 individually and as a group and we went through, as I
12 had mentioned in opening statement, close to 200 jurors
13 to get to the point that we are at today, and you are
14 the chosen ones. You were chosen because myself and
15 Mr. Brener thought there was something unique about each
16 one of you as an individual juror. We thought that you
17 brought something to this process.

18 And I know it was spoken about yesterday or the day
19 before that there are concerns. There was a concern
20 about one of the jurors who mentioned that she appeared
21 on television and it's enough to put you in this
22 awkward - this position that is burdensome, not only the
23 great responsibility of having to deal with the life and
24 death of my client, Kemar Johnston, but also having to
25 answer to a community that we know has been outraged,

1 and should have been outraged by what happened on
2 October 6th and 7th of 2006, and I want to spend a
3 little bit of time talking about that before we get into
4 some other things. Because each of you promised me and
5 Mr. Brener and, more importantly, Mr. Johnston, that you
6 would not allow the things that had gone on in the news
7 and that had been talked about within this community,
8 the Southwest community within this small, at one time,
9 sleepy town, to influence you in a way that was
10 inconsistent with both the law and your individual
11 values. You all promised us that.

12 And after we spoke with you for some time
13 individually and we drew out the jurors that we thought
14 could listen to the evidence - and if you remember in
15 opening statement I told you I wanted to go on a journey
16 with you to try to reach the truth. And we're going to
17 talk about the truth. And we're going to talk about
18 what we believe happened, the events leading up to
19 October 6th, what we believe really happened. We're
20 going to talk about what we believe was motivating
21 factors behind what happened. We're going to talk about
22 all of these people, the nine people Miss Doerr talked
23 about and the inconsistencies of their statements.

24 We're going to talk about -- Judge if I could have a
25 moment?

1 THE COURT: Yes, sir.

2 MR. LENAMON: We're going to talk about the
3 thousands of pages of statements that were given by
4 these nine witnesses. We're going to talk about the
5 thousands of pages of depositions and the hundreds and
6 hundreds of inconsistencies of these witnesses and some
7 of the things that Miss Doerr forgot to bring up. And
8 we're going to talk about the importance of those
9 inconsistencies and we're going to talk about how they
10 support our theory of what happened and we're going to
11 go through each individual witness and discuss in
12 detail, like Miss Doerr did, a little differently
13 because we're going to talk about all the lies and
14 inconsistencies they gave and how you can't trust any of
15 the testimony that was given. We're going to talk about
16 the law and what we believe the law supports. We're
17 going to talk in some detail about the forensic evidence
18 that was introduced by the State and much of which was
19 not introduced by the State. And then I'm going to
20 spend a little bit of time telling you how I think you
21 should approach this and how you are going to have to
22 take a journey that is much more further, much more
23 complicated and is going to involve a lot of looking at
24 and detailed analysis of what we talk about. And then
25 at the end I'm going to sum up and talk about what I

1 think the just verdict is in this case. And then we're
2 going to talk a little bit about these numbers.

3 So let's talk about your journey, the journey that
4 you have to take. You know, over the last two weeks
5 basically 12 strangers have come together - 14, but 12
6 are ultimately going to be making the decision in this
7 case. And I know that some of you have formed
8 relationships. As a group it was clear after the Judge
9 had talked to you about what you wanted to do in regards
10 to the deliberation process, it was clear that there was
11 a great amount of respect that you shared amongst each
12 other and that was clear just by the way the chosen
13 person who had spoke in court - and I know you all know
14 what I'm talking about - had come out and kind of laid
15 out very clearly - very short or very clearly what the
16 position was and had actually said that the fellow
17 jurors have respect for these people and we're looking
18 to the Court for guidance. And to me that was not the
19 end of this journey but a very important part of the
20 journey because it affirmed my belief that I had when
21 Mr. Brener and myself spoke to you three or four weeks
22 past about who we thought would be the people that could
23 take this journey and represent the true interest of the
24 community, not the interest of anger and hatred and
25 frustration and sadness - because this is a very, very

1 sad situation, it's a horrible situation. We can all
2 imagine - or some of us can't - about losing children.

3 These two young men did not deserve to die and
4 that's what this is not about. This is not about making
5 them look like they're the ones who caused it because
6 that, I want to make very clear, is not my intent. My
7 intent is to try to present to you what I believe was
8 going on in the days and weeks leading up to this -
9 these horrible killings and what, ultimately, in my mind
10 makes clear the truly motivated and culpable people who
11 are responsible for these murders, some of which
12 testified before you under the guise that they were
13 making a deal and telling the truth for the State of
14 Florida - two of those people, one definitely - Alex
15 Fernandez is a killer. There's no question that Alex is
16 a killer. He stepped over the tied body of Alex Sosa
17 with no regard for life. You heard me question him on
18 that. He really didn't care. All he wanted to do was
19 get his liquor and get out of the kitchen. And even
20 after I said to him, Even today you really don't care, I
21 think his response was something like, Well, it
22 shouldn't have happened. He's one of the killers in
23 this case and we'll talk about that in a little while.

24 And we'll talk about Paul Nunes and how Paul had a
25 lot of motive and was probably, if not one of the

1 shooters, he was clearly in the group that was involved
2 in this killing.

3 But as you take this journey that we're going to
4 talk about over the next couple of hours, we're going to
5 talk about the law later on after lunch and about what
6 your responsibilities are. But this journey is not only
7 going to be as individuals and as a group, it's going to
8 be within your own group. There may be two of you who
9 have connected that share feelings and you may want to
10 share with two other people. And there are going to be
11 no definite rules that you follow in making this
12 ultimate decision. The only rule that I ask you that
13 you follow is that you seek the truth. And you may not
14 be able to find the truth because no one told the truth
15 from that witness stand, at least the nine people that
16 she pointed out.

17 The police officers are a different story, and we'll
18 talk about what motivated them and what predicament they
19 were in when this investigation began and, ultimately,
20 after many sleepless nights and pressure from the
21 community and pressure from within, did some very, very
22 bad things that have led us here, and we're going to
23 talk about why you're going to have to deal with those
24 as jurors.

25 And when it's all done, this may be the most

1 uncomfortable decision you have to make, but we have
2 confidence that each of you can make that decision. We
3 chose you to make that decision. And we know that you
4 know that there's a community here - there's a camera in
5 the courtroom; there are reporters sitting there; you
6 recognize faces; there are people from the families of
7 these two young men; there are people from my client's
8 family; there are observers from your community. You
9 know that all of that's going to be focused on you when
10 this is done, and that's why this life-altering decision
11 that you're going to have to make may be the most
12 important decision of your life and the life of my
13 client, Kemar Johnston.

14 So let's talk a little bit first about the law.
15 Because in opening statement and during jury selection
16 we had some discussions as individual jurors and as a
17 group of jurors a little about the law and your thought
18 process on the standard of proof that's required in a
19 criminal case. And if you remember, we spoke
20 specifically about the understanding that you may come
21 in here and not be able to say with absolute certainty
22 that someone is innocent. And that's kind of the
23 standard we were raised on. That's the standard outside
24 of the courtroom that we have been raised on and that
25 has been used as a moral compass for us as individuals

1 when we deal with people we love; when we deal with
2 people at work; when we deal with people in the
3 community; a black and white line that's drawn, either
4 it's true or it's not true, either you're innocent or
5 you're guilty. But the law makes a distinction, and the
6 reason the law makes a distinction, as the prosecutor
7 pointed out, there is no way that anybody in a situation
8 that involves the complicated nature of a criminal
9 case - and this is a very complicated case. The State
10 wants to make it look simple. They've tried to do the
11 best job they can given the circumstances of their
12 witnesses and the deals that they made over the years,
13 but this is a very complicated case. It's complicated
14 because each individual lies over and over and over
15 again and then changes their story and then lies some
16 more.

17 And there's maybe one witness that is not a
18 significant liar but we found out that she has
19 motivation because of her boyfriend and because of some
20 things that were brought up later on through witnesses
21 and some things that don't make sense, and that's Miss
22 Dunning and we'll talk about Miss Dunning later. But
23 everybody else in this case lie lot.

24 And because of the complication that's involved in
25 this kind of truth seeking, our lawmakers, our founders,

1 the people that we look to for the historical
2 understanding of how we got to this point decided that
3 instead of saying it was just either yay or nay, that
4 they were going to give jurors an opportunity to make a
5 decision based on all the evidence without having to
6 believe absolutely one way or the other and, therefore,
7 what evolved was what many over the years, and, of
8 course, even more so in recent years because of
9 injustices that we have seen ourselves on the daily
10 news, in the newspapers, we've read in history books
11 about how this standard of reasonable doubt has been
12 portrayed to be not something that is consistent with
13 our moral compass and how people who have probably done
14 it have gotten off because of this technicality.

15 But all that stuff you agreed with me that you would
16 leave outside this courtroom and keep an open mind when
17 we talked about the law. And the importance of the
18 reasonable doubt instruction is that it requires what I
19 spoke to you earlier in opening statement, an abiding
20 conviction of guilt. Those are the words that I told
21 you - and you may not have understood them then, I knew
22 what was coming. You can see I spent a lot of time
23 reviewing all that material, questioning all these
24 witnesses, working with Mr. Brener preparing this case
25 for the day when my client's life and liberty would be

1 judged by a group of people in his community.

2 So I knew that this case was a case, when I talked
3 to you in opening statement, that wasn't going to be
4 guilt or innocence. Because as I will tell you and I
5 will admit, Kemar did some stupid things. Kemar did
6 some illegal things. But when it comes to the things
7 that they say he did, you will not have an abiding
8 conviction of guilt after I sit down here and explain
9 why you cannot have an abiding conviction of guilt.

10 And we'll talk about this more at the end, but I
11 just want to spend a little bit of time talking about
12 some language that I think is important, something to
13 think about over lunch, or not, because you may just
14 want to shut off at lunchtime and then come back in and
15 start thinking about it again, because this is a very,
16 very tough situation you're in. This is a lot of
17 responsibility. If after carefully, considering,
18 comparing and weighing all the evidence - and the
19 evidence that we're talking about here is the testimony
20 that came from this witness stand, the demonstrative -
21 or the exhibits that were introduced by the State, the
22 exhibits that were introduced by myself and Mr. Brener,
23 that's the evidence here - there is not an abiding
24 conviction of guilt, or if you have a conviction -
25 meaning that it looks like he may be guilty based on

1 some of the things you see. I mean, he was there in an
2 area as we described - I described - the State never
3 actually laid it out, called any witnesses to really
4 describe it - I mapped it out during one of my
5 cross-examinations, this was a small area, maybe twice
6 the size of this board where there were 15 or 20 people,
7 many of which who weren't charged. And there were more
8 people in the other part of the house, the living room,
9 when this is happening. So you may say, well, if Kemar
10 was there, then, you know, he must have known what was
11 going on, and we'll talk about why you can't rely on
12 that kind of belief. If you have a conviction but it is
13 one which is not stable but one which wavers and
14 vacillates - that means as I speak to you, first about
15 what I believe happened, then about the witness
16 testimony and then about the inconsistencies and I go
17 through some of these inconsistencies and I know that
18 you guys have taken great notes and I want you clearly
19 to rely on your notes as opposed to what I say or Miss
20 Doerr or Mr. Lee says - that you - if you have an
21 abiding conviction, determine that it's not one which is
22 stable but one which wavers and vacillates, then what
23 the law says is that the charge is not proved beyond
24 every reasonable doubt and you must find the Defendant
25 not guilty because the doubt is reasonable. And the law

1 says that you're to look for that proof to three things;
2 the evidence, the conflict in the evidence or the lack
3 of evidence - and we're going to be talking about all
4 three of those sometime this afternoon.

5 So although when we talked about in opening
6 statement that we were hoping to seek the truth in this
7 case, we also knew that the law provides you a way to
8 make a determination based on something that doesn't
9 require absolute belief and it does so in a just and
10 fair way because it makes the burden of proof very high
11 because of the criminal nature in the matter, because of
12 the stakes of his life here are what we're talking
13 about, but it makes it clear that you are to look at
14 things like conflict in the evidence and lack of
15 evidence and the evidence, itself, to determine whether
16 there is an abiding conviction. And if there's not an
17 abiding conviction, then you're to find him not guilty.
18 But if there is an abiding conviction but you still have
19 a waver in your resolution of this.

20 When you look and you go back to the back and you
21 take a board like this and one of you become the
22 Foreperson and you start talking about, okay, let's talk
23 about Mr. Arciszewski. This is what the State said that
24 he said; Mr. Lenamon had him on the stand for four and a
25 half hours cross-examining him; he brought out hundreds

1 of lies; he told six or eight stories, and so forth and
2 so on. That's one witness. You have the responsibility
3 to deal with nine witnesses without even talking about
4 the Cape Coral Police and their investigative
5 techniques, which we'll talk about in detail in a little
6 while, we're talking about the forensic issues which
7 Mr. Brener spent a lot of time talking about. All of
8 those things, besides the witness testimony can lead to
9 a resolution.

10 And let me tell you why it can lead to a resolution.
11 Because I believe that the evidence shows that in the
12 months leading up to this party, Paul Nunes, who had
13 just been released from juvie jail, had continued a
14 relationship with Ant Lopez and Rod Washington. And you
15 heard how Kemar was just kind of like - and then I think
16 she talked about William's reflection on the people who
17 lived in the house, this dysfunctional orphanage - how
18 Kemar let people stay at his house. But just because he
19 let people stay at his house doesn't mean that they were
20 his good friends or he was the leader or the house
21 father. The opposite actually came out in this trial.

22 And what was really going on leading up to October
23 6th of 2006 is that there was a small group of people,
24 actually three, three people that we heard testimony of,
25 that made up the Cash Feenz; there was Kemar's brother,

1 there was William Arciszewski and there was Kemar. And
2 really Kemar wasn't part of the Cash Feenz. He was a
3 weak part of the Cash Feenz because, as you heard
4 Mr. Arciszewski brag about, he was the beat man and
5 Keno, Kemar's brother, was the lyricist and that was
6 kind of the group. Now, that becomes important in this
7 story because ultimately - and we'll talk about the
8 intoxication and the level of drugs and the drug use and
9 kind of the way that - the affect, once Keno went to
10 jail, how that changed Kemar as a person and basically
11 put him in a situation where he was using and using more
12 and more and more all the way up to the time of the
13 party, and we'll talk about why that was important.

14 But, essentially, as you saw from Mr. Arciszewski,
15 who is a liar, an acknowledged liar - and, yes, Miss
16 Doerr, you are right, I am going to call these witnesses
17 liars, and I've supported that through my
18 cross-examination over and over and over again.
19 Mr. Arciszewski wanted a way out of the belly of the
20 beast, the place where crack cocaine is sold. He called
21 the place where he lived when he was talking about how
22 he was worried about the cops harassing him, that if he
23 didn't give - and we'll get to this in more detail - if
24 he didn't give the right story to the police, even
25 though he kept lying over, over, over and changing it,

1 that he would never be left alone from the police. And
2 unlike his testimony - and if you find Mr. Arciszewski
3 credible, then, you know, that may be the first part of
4 your journey to convicting my client. But I will
5 propose that he has no credibility and that he acted
6 from the stand. And all these words he used about the
7 horror, or whatever he said about this, he was in the
8 middle of this, he was part of this. He may not have
9 held a gun. He may not have thrown a punch. But he was
10 there. And when he got in trouble and the police
11 brought him in - and we'll talk about this in more
12 detail - it became clear that he was going to do
13 whatever he had to do to get out of the mess that he was
14 in and to not be harassed by the police anymore.

15 But this Cash Feenz group, this rap group, this
16 gangsta rap group, which some of you may have heard in
17 the news, which has been villainized by the press was
18 nothing more than a couple of people who were trying to
19 get out of the situation they were in. And as a matter
20 of fact, Arciszewski said that Keno had these ideas of
21 doing sneakers, I mean, these are wanna-be rappers. And
22 they don't say nice things, but, guess what, you know,
23 the people who grew up in the 60s and the 70s who
24 listened to rock n' roll, who grew their hair long,
25 their parents, you know, there was groups burning

1 records back then when Elvis was shaking his hips, when
2 the Beatles came to the United States. You know, this
3 is their generation, and we spent time talking about
4 that in jury selection and you promised me, each of you
5 promised me that you weren't going to let that affect
6 you. So, yeah, these people are different but it's
7 really three people and it's really two when you put
8 aside how involved Kemar was.

9 Now, you knew at the time that Kemar was working.
10 Now, I could just show you one thing that Arciszewski
11 says that makes it clear that you can't believe anything
12 he says and that he has exaggerated and twisted and
13 turned his story to try to satisfy - I don't know if
14 he's trying to satisfy these folks here, or he's trying
15 to satisfy some kind of new thing that he's following in
16 his life or trying to promote on, you know, MySpace page
17 with his lyrics, you know, he admitted that he wrote an
18 album but how he was treated after this happened, that
19 he was a snitch, blah, blah, blah. I don't know what
20 world he's in, but the world he's in is different from
21 the world we're in and the truth, because he got up
22 there and he told you with a straight face that my
23 client, Kemar Johnston, was working at Rib City, he was
24 working at Rib City as a dishwasher as a front for his
25 drug operation - do you remember that? That, in and of

1 itself, should make it clear to you that this guy is
2 full of it.

3 But more importantly than him - because he was a
4 deal maker, he was just trying to get himself out of
5 trouble - there was a group of people loosely connected
6 with each other who were drug dealers and the head of
7 that group - and I don't know if you can call him head
8 and whether it's an organized group or a group that's
9 just - that benefits from each other - was Ant Lopez.
10 You heard testimony that in 2005 Paul Nunes went to
11 jail - juvie jail for about six or eight months. He
12 gets out in like May or June of 2006. He's already
13 friends with Ant. He's already friends with Rod. He's
14 not friends with Kemar. He only knows Kemar loosely,
15 and it's questionable whether he even knew him when he
16 got out or to what extent he knew him. It is clear that
17 sometime in August or September, Rod moves into Kemar's
18 house, and then after that, Ant gets kicked out of
19 Wayne's house where he's living at and selling drugs out
20 of, and all those three boys or young men are hanging
21 out, and Ant moves because he's homeless into Kemar's
22 house, and that's in September, like a month before
23 this. And you heard how these guys like to talk about
24 girls and they like to smoke dope and, more importantly,
25 you heard that Ant Lopez bragged about being a cocaine

1 dealer and how much money he was making. That's
2 important because the story develops into a situation
3 where a very important event happens the night or two
4 before the party - and we'll talk about that in a little
5 bit - that leads to some violence by Alex Sosa.

6 But you have to understand the connections of these
7 people before and who these people are and what we know
8 about these people. We know that Alex or Ant Sosa - or
9 excuse me, Ant Lopez was drug dealing cocaine, crack,
10 and that one of his clients was Alex Sosa. We know that
11 Paul Nunes knew this, hung out with them, and even
12 despite the fact that he was on juvie probation and
13 could go back to juvie jail for another year or so if he
14 violated, he continued to hang out and break the law,
15 carrying a gun on him, smoking dope, taking an Ecstasy
16 pill, at least one we know of, and participating in
17 criminal activity.

18 And we know that, at some point, the interaction
19 between Ant Lopez and Bennie Vines crossed and that Paul
20 and Ant and Bennie all dealt drugs with each other,
21 specifically Bennie and Ant. Now, Paul claimed that he
22 wasn't working for Ant, but I suggest that he's lying.
23 I suggest that he was selling drugs out of his house
24 with Ant's brother Junie - remember we talked about
25 Junie - and that he was allowing this to take place in

1 the home where he lived with his two brothers - or a
2 brother and a sister, one brother which was three years
3 old, where he kept a gun in the garage, at first while
4 he went away to juvie jail, and then in his room, and,
5 ultimately, on the day or two before this incident where
6 Alex Sosa went to pick up the dope and drop off the
7 money. I would suggest the evidence supports that Paul
8 Nunes is a drug dealer and that he works for Ant or he
9 works with Ant. And I would suggest that Junie, being
10 that Ant's brother, was involved in this, too, and that
11 Rod was part of this.

12 And we heard testimony in the months leading up to
13 this incident that Bennie Vines and Ant Lopez did
14 business with each other. Now, why is this important?
15 It's important because this is leading to the point
16 where violence takes place and the question becomes, the
17 ultimate question, who has the motivation? Who is
18 responsible for this?

19 We know that in the weeks leading up to this
20 incident that Alex Sosa had some kind of disagreement,
21 something happened between Alex Sosa and Bennie Vines.
22 We know that because the night of this party it is
23 undisputed that Alex Sosa leaves a threatening message
24 on Bennie Vines' phone telling Bennie that he's going to
25 kill Bennie's mother.

1 We know that Alex Sosa used crack cocaine, he
2 carried a weapon and that he robbed people. Now, what
3 is the importance of that? You know, the State objected
4 continuously about how I was trying to assassinate the
5 character of Alex Sosa. Unfortunately, in a trial, when
6 you're trying to seek what the truth is, you have to
7 bring out what was really going on, not what just you
8 think you can try to show with a little dance tune and
9 say, Hey, guys, look; We've got nine guys that are going
10 to tell the truth; We're not going to talk about all
11 their inconsistencies, all the bad things they say, all
12 the bad things they did; We're not going to talk about
13 that; and, Look, here's some of the evidence; We're
14 going to just give you a little bit. That's not how a
15 criminal trial works. A criminal trial works by trying
16 to figure out what the truth is and what was going on at
17 the time.

18 Alex was using. Alex was doing violent things and
19 saying violent things to people. Ultimately Alex ends
20 up at a party where he's tied up, he's cut, he's beaten
21 and then, ultimately, he's transported somewhere where
22 he's killed. And the ultimate question you're here to
23 decide is who did it, who was responsible. And we'll
24 talk about in the police investigation how they decided
25 early on that because it was Kemar's party that Kemar

1 was going to be the person that was responsible.

2 But what we know leading up to this is that there's
3 this interaction between Paul and Bennie and that Carlos
4 was involved in this some way, and Carlos becomes
5 important. After all this happens, you'll see why
6 Carlos becomes important. But what we know is that in
7 the weeks leading up to this, all of these guys know
8 each other, the Chico Unit; Touchstone; Vines, who
9 happens to be Alex Fernandez's cousin - and that becomes
10 important - Vines; Jose Medina; Mike Taylor. All of
11 these people know each other and all of them interact
12 with each other. They all interact with Ant. They
13 interact with Paul. They interact with Junie. They
14 interact with Rod. And we know that the day or two
15 before this happens that something happens that causes
16 Ant to send Alex to Paul's house to drop off some money
17 and to pick up some drugs. Now, what was that about?

18 You know, there is no Perry Mason situation here.
19 These witnesses are not going to say, you know, Okay,
20 I'm going to tell you; This is what really - We were
21 going to sandbag him; We were going to rip him, but it
22 just didn't happen, my mom was there; It didn't happen
23 at the right time - who knows what was going to happen?
24 But what we do know is that Paul Nunes, who is one of
25 the witnesses who claimed to be at the shoot site who

1 claimed to see somebody - he doesn't know who - shoot at
2 this industrial park, the industrial park which he
3 figured out the name of through looking at police
4 reports - is having Alex Sosa, who is really not a
5 friend of his, not even an associate, someone who he
6 knows that purchases drugs off of his buddy Ant come to
7 his house in the early morning hours the day or two
8 before this party to drop off some money and pick up
9 some drugs. And we know at this time that it was Paul
10 who kept a gun in his house at that time and we know
11 that Ant - or Alex shows up at the house and that
12 there's a dispute that takes place outside of the house.

13 And now Paul claims not to be involved, Paul claims
14 to be an onlooker, but that he was told by Junie that
15 Alex was coming over to pick up drugs, even though Junie
16 said he didn't have drugs, and to drop off money, and
17 that Paul knew from his mother, or found out from his
18 mother - and it was unclear whether it was at that time
19 or before - that Alex had ripped off a drug dealer
20 across the street.

21 So why is that important? Because after this
22 confrontation, he takes a brick -- he walks across the
23 street, he takes a brick and he throws it through Paul
24 Nunes' window, the window of the car of his mother who
25 lives at that house, and he admits he is mad, he is

1 angry about that. And, interestingly, he also tells
2 you - which becomes important, not so much in the fact
3 of does it make sense or not, because it really doesn't
4 make sense but more important in weighing the situation
5 which we'll talk about, and the Bible, the proffer - is
6 that he tells you that after this happens he doesn't
7 call Ant up and say, Ant, what are you doing sending
8 this guy over; He threw a brick through my window. He
9 doesn't call him up, doesn't talk to him the next day
10 when Ant and Rod or the day after. And if it's the day
11 after that means he waits a whole day to see this guy,
12 and then the day after when he comes to his house, he
13 doesn't say - when he's at his house, I think he said
14 for 15 minutes, he doesn't say, Ant, what is going on;
15 Why did you send this guy through my house; He threw a
16 brick through my window; Look, come over here; I want to
17 show you something. He tells you he doesn't tell him
18 that. He tells you the first time he tells him that is
19 at the party in a room where it's just Ant and Rod.

20 And why is that important? Two reasons. Number
21 one, it doesn't make sense that he wouldn't tell him.
22 He probably did tell him. He probably told him a lot.
23 They may have done some things based on what had
24 happened that we don't know about. But, more
25 importantly - and this applies to him and it applies to

1 every of the witnesses who sold their testimony for
2 freedom -- now, she says 26 years and 14 years and 20
3 years is a lot? Well, listen, if you've got a bloody
4 gun that was used in a murder in your car, 26 years is a
5 pretty good deal. You've got blood on your shoes. You
6 had people the bodies of those people in your car. 26
7 years is a good deal.

8 Twenty years? Melissa Rivera's going to get out.
9 She'll see her children at some point. They may be
10 grown, but she'll see them. And she confessed to this.
11 She admitted to this after lying and lying and lying and
12 lying. And we never heard exactly what was in any of
13 those confessions, although they were videotaped and
14 recorded, we never heard from the police - and we'll
15 talk about that later.

16 But getting back to this, is, more importantly, or
17 as importantly it becomes important of why he's telling
18 the story that the first he has this conversation with
19 these guys is while he's in the room at the police
20 station - or not at the police station, at Kemar's, at
21 the party and he tells you, Because I swore to it in my
22 proffer; I swore to it in my proffer. Okay. Why did
23 you swear to it in your proffer?

24 And before you had even got to Nunes you had seen me
25 cross seven or eight of these people who had made deals.

1 You knew what I was going to say, it was the same thing;
2 that it's the State Attorney's Office that decides what
3 the truth is. They're the ones who decide whether
4 they're going to violate that person for making a
5 statement that's inconsistent with their proffer. It's
6 not this judge, it's not the Cape Coral Police officers,
7 it's the people who are prosecuting this case. If you
8 don't satisfy them, then you're not going to get the
9 deal and none of these people were sentenced.

10 So why is this so important in the context of the
11 big picture? It's important because he told you no
12 matter how many times I asked you - asked him - and I
13 think one time he started to kind of slide over, I may
14 have had a conversation, because he realized how stupid
15 it looked. He told you, The first time I had this
16 conversation was in the bedroom at the party. Are you
17 sure? I mean, you had this opportunity and you drove in
18 a car; they were there at your house for 15 minutes; a
19 day had passed, that doesn't make any sense. No; The
20 first time's the party. Because he knows if he goes
21 outside the bounds of this Bible, this proffer, this
22 box. If he goes outside this box, guess what, Paul
23 Nunes gets life, life in prison as opposed to 40 years.
24 Forty years means he's going to get out, he's going to
25 get out of prison. And where did they come up with

1 these numbers? Maybe Mr. Lee will explain that to you.
2 Maybe he could explain why some people got 14, why some
3 people got 20, 24, 26, 40. But what we know for sure is
4 that if he steps outside these boundaries he's going to
5 get 40 years if they decide he's not telling the truth.

6 So we know that he goes to the party and the party -
7 he gets there early, him, Ant and Rod. Ant and Rod come
8 pick him up with a girl, the girl drives them - we
9 didn't hear from the girl so we don't even know if
10 that's true because if she was at the party she wasn't
11 charged and she never testified - but they're taken to
12 the party, three, four o'clock, and then they had this
13 conversation. And then he admits that before he goes to
14 the party he puts a .40 which he has had in his garage
15 before he went to juvie jail in 2005 - because he hid it
16 when he went away to juvie jail. I mean, think about
17 that, folks. This is a man who's coming in that they
18 want you to rely on his testimony - and I'm sure Mr. Lee
19 Is going to get up there, and we'll talk about Mr. Lee,
20 who is a gentleman lawyer and a very fine lawyer, who's
21 going to tell you some folksy stories and how
22 consistency and inconsistency support truth. And I
23 don't know what kind of stories he's going to tell you,
24 but I can guarantee you - she's already talked about
25 consistency - he's going to talk about inconsistency,

1 and they're going to try to - well, if they're
2 consistent they're telling the truth; well, if they're
3 inconsistent then the police couldn't have put it all
4 together.

5 Well, I suggest you think about this - I was going
6 to save this towards the end, but since we're getting
7 ready to go to lunch - you know, the Honorable Judge
8 Reese has presided over this case from Day One, and at
9 some point during the trial we had a situation where we
10 would bring you guys in and something would happen and
11 we'd bring to you out, and Judge Reese said something -
12 I wrote it down, it was very telling to me because when
13 we're talking about the police conduct in this case and
14 the witnesses, Judge Reese said, you know, We want the
15 biscuits and gravy to come out at the same time, but the
16 biscuits and gravy don't always come out at the same
17 time.

18 Well, when we talk about the police investigation
19 and the inconsistencies in their statements, think about
20 that, think about that saying except, same time, replace
21 with, same story. The police had a theory in this
22 case, and we'll talk about after lunch their theory and
23 how they got to the point where they were actually
24 questioning witnesses who were lying to them over and
25 over again.

1 But you're going to hear Mr. Lee try to explain the
2 inconsistencies and the consistencies in his rebuttal
3 testimony and what you're going to find is that no
4 matter what he tells you he can't explain away the
5 hundreds of lies, he can't explain away the incredible
6 stories that these witnesses are telling, and he can't
7 explain away or discount what I'm about to tell you, and
8 that is that these boys went to that party - Ant, Rod
9 and -- Ant, Rod and - excuse me, I lost my thought -
10 Ant, Rod and Paul went to the party and when they got to
11 the party, at some point during the night, Bennie and
12 Andrew and Cody show up - and Cody's kind of not
13 tangentially involved - but Andrew and Bennie, who are
14 part of the Chico Unit with Mike Taylor, they all show
15 up. And, at some point, Bennie leaves the party with
16 Jose and Alex Fernandez and, somehow, lo and behold, the
17 Sosas are back at this party. The question becomes how
18 did they get there; did they come on their own; were
19 they drawn back to the party?

20 But what we know for a fact is the people who are
21 motivated in this case who have a reason to hurt the
22 Sosas are Paul because of the brick, Ant because of the
23 drugs and money, Bennie because of the threats and that
24 they are interrelated to each other. And we know that
25 Paul shows up with a .40 on him and that this .40 was

1 passed around.

2 Now, we've got about three minutes until we get to
3 lunch - and I'm going to go through the details of the
4 story when you get back, but here's the jump ahead so I
5 don't leave you hanging. The Sosas show up at the
6 party, these boys start beating on them - we're going to
7 talk about the details of who does what - but the
8 motivated parties here are Ant with the .9, Alex with
9 the .380, Paul with the .40 and Duntaveous Overmyer,
10 Mr. Dr. Pepper, has the .22. And you heard Balint say
11 Duntaveous had the .22 and you heard how the police -
12 well, you saw the photo, Duntaveous looks just like
13 Kemar. And what happens is there's a fight and there's
14 a beating and, at some point, Ant, who is running the
15 show here because he's the resident drug dealer, decides
16 that these boys have got to go, and that he kills them
17 and he kills them with the help of Paul, with the help
18 of Alex Fernandez, with the help of Duntaveous Overmyer.
19 They take him in Alex's car. Why use Alex's car? Why
20 use his car? Because Alex, who's a thug, he's a
21 sociopath, he's the real evil one here out of this whole
22 group, he's brought in by his cousin, Bennie Vines, to
23 take care of this problem, to take care of Alex Sosa.
24 And they stick him in the car and they drive him out to
25 this kill site and they're the ones who kill. This man

1 had nothing to do with it.

2 And, Judge, after lunch, if we can break for lunch,
3 I'll get into a little more detail about what supports
4 that, the evidence that supports it and the search and
5 journey that you are going to have to take to see for
6 yourself why that's the truth.

7 THE COURT: Thank you.

8 Members of the jury, we're going to recess until one
9 o'clock. You will, again, be escorted to lunch by the
10 Bailiff. Your lunch will be provided for you.

11 While you're outside the courtroom do not discuss
12 the case among yourselves. Don't start to deliberate
13 about the case. Don't let anyone say anything to you or
14 in your presence about the case.

15 I'll see you at one o'clock.

16 Thank you.

17 (THEREUPON, THE JURY EXITS THE COURTROOM.)

18 THE COURT: Okay. We're in recess.

19 (THEREUPON, AT ABOUT 12:00 P.M., A LUNCHEON RECESS WAS
20 TAKEN.)

21 (THEREUPON, AT ABOUT 1:04 P.M., RECONVENED PROCEEDINGS.)

22 THE COURT: Jury's back. So ready to proceed?

23 MR. LENAMON: Yes, sir.

24 THE COURT: Bring the jury in, please.

25 (THEREUPON, THE JURY ENTERS THE COURTROOM.)

1 THE COURT: Please proceed.

2 MR. LENAMON: Thank you, Judge.

3 Good afternoon.

4 THE JURY: Good afternoon.

5 MR. LENAMON: We were discussing what I believe -
6 what we believe occurred leading up to the killings of
7 these two young men, and we were talking about -- we
8 already discussed up to the point - and I kind of rushed
9 through a lot stuff so I want to go back and carefully
10 cover some of the issues so I can make it clear when you
11 go back and look at the evidence and start piecing this
12 together yourself that you will see that the evidence
13 supports what I'm saying.

14 But we know for a fact there's communication between
15 Alex and Bennie Vines and Ant prior to the night of Alex
16 showing up to the party. And we know that there were
17 threats made - and we already talked about the
18 interaction between the two of them, Bennie and Ant and
19 Paul and the group including Andrew Touchstone and some
20 of the other Chico members including Carlos Rivera.

21 We know for a fact that at some point the Lexus is
22 burglarized and it's burglarized by members of the Chico
23 Unit including Carlos Rivera. Now, it's interesting
24 that this Lexus is burglarized while these men are tied
25 up so we heard testimony - and we're going to talk a

1 little bit about the testimony of the injury to Alex
2 Sosa that was caused by Andrew Touchstone. But it's
3 clear that Andrew Touchstone bashes a bottle, a liquor
4 bottle, a hard liquor bottle over Alex Sosa's head, and
5 we believe that renders him unconscious. It doesn't
6 make sense otherwise. You heard several witnesses
7 testify that, besides dishes being broken over Alex
8 Sosa's head, that this bottle was broken over his head.

9 And what's important to know - which I'll get back
10 to a little later - is that there's significant blood
11 staining in one particular area of the blanket, and what
12 I suggest this blood staining is from is from a head
13 injury, because we all know that any time you have a
14 head injury that we bleed a lot from the head - from the
15 face, from the head, there's a lot of blood. And what
16 we suspect is that the injury was so significant, it
17 rendered Alex Sosa unconscious and, at that point, these
18 young men are in way over their head. I don't think --
19 I don't think there's evidence to support that it was
20 the intention of these - Ant or Paul or anybody to kill
21 these men, but I think things got out of control. And
22 when Andrew Touchstone bashed that bottle over his head,
23 they believed that this young man was dead and they had
24 to cover this up.

25 So how do they cover this up? Well, we know for a

1 fact that Andrew Touchstone and Carlos Rivera, after
2 this man is rendered unconscious, leave the party and go
3 outside and burglarize the Lexus vehicle. And you even
4 heard from Michael Balint, who doesn't really know these
5 guys, that Andrew Touchstone and Carlos Rivera had taken
6 stuff out and that he had even gotten a CD player from
7 them at some point.

8 So the question becomes, then, who drives the Lexus
9 to the kill site? It seems to make sense that it was
10 probably one of the Chico boys, we don't know for sure,
11 but this is what we do know. We know that Alex
12 Fernandez tells you that at some point during the
13 evening -- now, this is not what he tells you on direct,
14 this is what he tells the police, at some point during
15 the evening an unknown black male - he tells you he
16 knows Kemar from middle school, so it's not Kemar, but
17 an unknown black male approaches him and asks him for
18 the keys. Duntaveous Overmyer.

19 And why Duntaveous Overmyer? If you remember Cody
20 Roux's testimony, Cody Roux told you he got hired to
21 come to the party -- he's friends with Kemar, he gets
22 hired to come play music for the party, and he goes back
23 and forth and leaves the scene a couple times, and at
24 some point prior to this incident beginning, he's
25 outside in his truck; he's smoking dope outside; William

1 comes outside at some point and at some point Duntaveous
2 is there; Duntaveous leaves; Alex is there - Alex never
3 mentions this in his testimony - and we'll talk about in
4 consistencies a little later - but at some point
5 Duntaveous comes running out and says that the party is
6 being crashed.

7 Now, here becomes an important issue, whether the
8 Sosas were drawn or whether they crashed the party
9 because they ran into Vines and had some conversation;
10 whether their words were exchanged; whether they really
11 drove back to the party together as Alex Fernandez says
12 because we can't really believe anything Alex Fernandez
13 says because he's a cold-blooded killer.

14 But at some point Duntaveous comes out and he says,
15 They're crashing the party. Cody Roux says he goes in
16 and there's conflict going on there and he decides -
17 Cody decides that he's going to take this into his own
18 hands and he starts a fight because he just wants to get
19 this over with because they're crashing the party. So
20 we know that Cody Roux starts fighting with Alex and he
21 starts losing. Well, lo and behold, at some point,
22 Duntaveous takes a swing at Alex, and whether it's at
23 the same time or close in time -- this is the injury
24 that he suffered on his hand -- either close in time or
25 at the same time or near in time that Andrew Touchstone

1 breaks the bottle over his head, we know that Duntaveous
2 causes an injury to the face of Alex Sosa. Now, we
3 don't have any evidence because of the burned body to
4 talk about what injuries are supported by this, but we
5 do know that there are multiple people and he we have
6 documented evidence to show that he did punch Alex Sosa,
7 and at least two or three people testified that
8 Touchstone bashed a bottle over Alex's head.

9 So now Duntaveous is in the middle of it, and not
10 only is he in the middle of it with a punch, he's in the
11 middle of it with a gun, the same gun that was possibly
12 used to kill this man. And we know from Michael Balint
13 that he says at some point Duntaveous comes out with a
14 .22 stuck in his pants, the .22 rifle. That's the same
15 rifle that you saw -- that was testified that Rod
16 Washington had at one point and clearly Duntaveous had
17 it at one point. So now Duntaveous is stuck in the
18 middle of this. So then what happens is that at some
19 point after this, things just get out of control - and
20 we'll talk about the girls in this case. Melissa came
21 in here and testified. She's the only girl that
22 testified at this trial that was really in the middle of
23 this because Jennifer Dunning was just in the wrong
24 place at the wrong time - and we'll talk about her
25 testimony a little later. But she's in the middle of

1 this. She's hearing these threats are made. She does
2 these things that she claimed Kemar told her to do - and
3 we'll talk about how we believe that the police
4 basically pushed her into a corner on that issue and
5 made Kemar the bad guy and that's why he was made this
6 ringleader that was kind of the theme that permeated
7 throughout Miss Doerr and Mr. Lee's case - but that at
8 some point things get out of control and there's some
9 things that happen with knives and some cutting and,
10 obviously, beatings.

11 But after Alex Sosa is rendered unconscious, they
12 have to clean up this mess - Ant, Bennie, Andrew, Paul,
13 Rod, they have to clean this mess up. So we know that
14 Alex Fernandez says a black male comes up to him, an
15 unknown black male, who's Duntaveous, and asks him for
16 his keys, because, clearly, now, Duntaveous is committed
17 to doing what he has to do to resolve this issue of what
18 they think may be a killing because Alex is out cold.
19 So they proceed to load the bodies into Alex Fernandez's
20 car, not into the Lexus, not into Kemar's cars - you
21 heard he had two cars - but into Alex Fernandez's car
22 because Alex is in the middle of this. And who carries
23 the bodies? Rod and Ant. Rod and Ant carry the bodies
24 out and Ant ends up in the front seat, according to
25 Fernandez, with an unknown black male, Duntaveous, in

1 the back seat. Rod Washington is either going there
2 with Melissa and whoever - I believe the Chico - one of
3 the Chico boys drive the vehicle to the kill site. Paul
4 Nunes may have been involved in that.

5 What Jennifer Dunning sees at this party is pieces.
6 Now, Jennifer Dunning, we'll talk about, claims that she
7 had smoked three or four blunts with some people - it
8 wasn't just her smoking it - over a period of time, and
9 she testifies that she sobered up all of a sudden. Now,
10 I don't know how many people smoked marijuana before
11 when you were younger, but people just don't sober up
12 when they smoke multiple hits of marijuana, it just
13 doesn't happen that way and it didn't happen that way
14 with Jennifer Dunning. Jennifer Dunning sees some
15 things take place. She knows, at some point, she's in
16 the middle of this because her boyfriend at the time,
17 Carlos Rivera, burglarizes the car that was used to burn
18 the body of one of the victims, ends up with property,
19 leaving with property in the same vehicle that she is
20 in, she's in the middle of this. And you don't think
21 that's communicated to her by the police at some point?
22 So Jennifer Dunning sees pieces of this, she doesn't see
23 the whole thing.

24 But what happens at that point is that when they
25 decide to clean this mess up, they go and they drive to

1 the industrial park. And the guns, Duntaveous has the
2 .22 rifle, Alex has the .380 - Alex Fernandez, Ant Lopez
3 has the .9, and Paul Nunes or Andrew Touchstone has the
4 .40.

5 Now, the .40 becomes important in this because the
6 .40 circumstantially ties up what I'm saying in my
7 theory of my case in this - just like the police have
8 their theory, Mr. Lee has adopted the police's theory, I
9 have my theory and you may come up with a completely
10 different theory than us. The .40 becomes important
11 because we know a couple of things. We know that three
12 of these casings, projectiles that were found under the
13 body were never tested. FDLE firearms person said they
14 were never tested. So we don't know if they belong to
15 the .40 or the .380, we don't know what they belong to.
16 So if Paul fired into that trunk, too, and these were
17 from the .40, that would support that everything he's
18 saying is lying. And putting aside that he's already
19 not credible, this would even make him less credible.

20 But, more importantly, what happens is they go to
21 the kill site. Melissa's really messed up - and we
22 don't even know for a fact that we can trust that
23 Melissa was there, because what does Melissa tell you
24 that she sees there? She sees nothing. She sees
25 nothing at the site. She doesn't see who shoots, she

1 hears some shots. She sees nothing. So we don't even
2 know if she was truly there. What we do know is that
3 she was messed up and, at some point, there's an unknown
4 black male who looks like Kemar in the vehicle. Now,
5 she says she sees Kemar and that Kemar comes up to her -
6 and I'll tell you why you can't trust anything she says
7 when we go through her testimony - but we know that
8 Duntaveous is getting into Alex's car and she may have
9 mistook Duntaveous for Kemar and believe that he drove
10 there in the car that was carrying the bodies.

11 But they go in the Fernandez car. Somebody drives
12 the Lexus to the kill site. And when they're at the
13 kill site, we have two bodies in the back of Fernandez's
14 car and there's a transport from one of those bodies to
15 the back of the Lexus, and this is what I believe
16 happens. We know that the blankets end up outside of
17 the vehicle, so at some point they're taken either out
18 of the vehicle and tossed aside, or somehow they are
19 removed from the vehicle at some point, but we know for
20 a fact that the only blood on those sheets and the
21 comforter are that of Alex Fernandez --

22 JUROR: Sosa.

23 MR. LENAMON: Alex Sosa, I'm sorry.

24 So what happens is Fernandez tells you that him and
25 Ant take Alex out and put him in the trunk. He says he

1 only removes one body. Now, remember where we're at.
2 Imagine we turned off all the lights here and we only
3 had that exit sign and you're given the responsibility
4 of taking a body out of a trunk with no lights
5 anywhere - maybe some car lights, interior lights
6 shining, because you know they're trying to conceal that
7 they're there, they're there with two bodies. Imagine
8 it's dark. They take Alex out of the back of the
9 vehicle and they place him in the trunk.

10 Paul and Duntaveous -- Duntaveous has no clue what's
11 going on, he only knows what happened to Alex. Paul and
12 Duntaveous take Jeffrey and stick him in the back seat
13 of the Cadillac still alive - may have been unconscious,
14 but he's still alive, and they leave after the shooting
15 into the trunk. They're high. Duntaveous had a
16 Dr. Pepper with him. He dropped the Dr. Pepper at the
17 scene. It's the same Dr. Pepper can, remember, they
18 discovered in the trash when they executed the search
19 warrant. These photographs are for you to look at, and
20 we'll talk about them a little later. He leaves the
21 scene. He fires into the trunk. That's how Alex gets
22 shot. He's face up at the time. They pull the blankets
23 off. He remains there. He's been shot multiple times.
24 Jeffrey's in the back. They leave the scene. They go
25 back to the house. These guys are all high,

1 significantly high, significantly drunk. They have no
2 real comprehension of what's going on.

3 But at some point when they get back there at the
4 house, Ant realizes, in talking to Paul, that they stuck
5 Jeffrey in the back of the seat, he wasn't in the
6 trunk - because, remember, it's dark, so they're firing
7 in, Ant thinks that he's in the trunk when they're
8 firing in. So now they've got to go back and, guess
9 what, Ant says, You made this mess.

10 Now, I contend that Paul Nunes is the muscle for Ant
11 and for his drug dealing. What kind of evidence do I
12 have to support that? Well, let's talk about what kind
13 of guns Paul has access to, has used, has fired, I think
14 we went through 12 different type of weapons - 9 mm.
15 .38, a .40, .22, assault rifles. This guy has a
16 fixation with guns and violence. So I suspect that Paul
17 somehow may be Ant's muscle, but he gets dragged back
18 into this because Ant says to him, You made this mess;
19 We have to go clean this up.

20 Now, we know they end up back at the park, the
21 industrial park, and when they end up back at the
22 industrial park -- there's a claim that Bethany Toye
23 drove them. Well, Bethany was never charged, so you
24 think, really, the police -- Miss Doerr got up here in
25 her closing, and maybe it was her opening, We charged

1 everybody who went to the kill site. Guess what,
2 Bethany was never charged. So what that tells me is
3 they don't believe Bethany drove them to the kill site,
4 they believe either they drove themselves or somebody
5 else did.

6 They get back to the kill site and he's still
7 alive - Jeffrey's still alive, he's in the car. They go
8 there to set the car on fire. The doors open, they pull
9 him out and they kill him, they shoot him, and they drag
10 him out by his arms, and that evidence of the lividity
11 of the position he was in, which is inconsistent with
12 the position he ends up, is that he was shot while he
13 was laying down on his stomach from back to front, and
14 that if he was shot in the neck the first time it was
15 instantaneous that he was killed. Now, instant
16 instantaneous, the doctor told you, means seconds -
17 could be 10 seconds, could be 15 seconds, could be 30
18 seconds, a minute, he doesn't know. But at some point
19 while he's laying there before he stops breathing, they
20 light that fire. The fire's engulfed. Smoke goes into
21 his lungs - and there's testimony from Dr. Pfalzgraf
22 that his CO2 level was about three to nine times higher
23 than that of a normal person - so he breathes in the
24 smoke after they kill him and they kick him and turn him
25 over to make sure that he's dead. And that's why the

1 lividity was inconsistent as the medical examiner
2 technician testified with the position he was in, that
3 he had been moved, his body had been moved and he had
4 been killed somewhere other than the trunk.

5 They leave that -- they leave - and, up to that
6 point, remember, these guys are messed up - they go back
7 to the house - Paul and Ant go back to the house. The
8 next morning they get up, Ant contacts somebody and they
9 get a ride to leave - Paul and Ant leave the scene. And
10 this is what is telling. Ant believes in his mind that
11 it was the .40 that he had used when he kills Alex Sosa
12 and Jeffrey Sosa - the .40, not the .9. And we know now
13 that Carlos was in the middle of this because Carlos was
14 the one that ended up with the .40. And we know, based
15 on Paul Nunes' testimony, that Ant is really concerned
16 about that weapon, so concerned that he tracks down
17 Carlos Rivera to get the weapon back because he believes
18 in his mind that's the kill weapon. Because he knows
19 that Paul had shown up at the party with that weapon; he
20 knows that was passed around to Touchstone, to Bennie
21 Vines, to some of the other players; he knows that Paul
22 is his muscle and he knows that - he believes that
23 that's the gun that he used to kill these two young men.
24 So he is desperate to get it back. And you heard Paul
25 Nunes talk about how he did get it back and how Paul

1 never saw that gun again.

2 Meanwhile, the 9 mm. is at the house of Kemar
3 Johnston, the same place where Alex left it because he
4 was messed up, and, lo and behold, comes Mr. Suarez -
5 Alex Suarez - two or three days after this incident to
6 buy some pot. He's a tattoo artist, he does tattoos for
7 Kemar. And Kemar thinks nothing about this weapon - not
8 worried one bit because he doesn't know this weapon was
9 used to kill two young men. Why would he sell it to a
10 tattoo artist?

11 Now, Mr. Lee may get up here and try to offset Alex
12 Fernandez's gun selling to my client's gun selling, and
13 there's a huge difference. If you remember, Alex
14 Fernandez said that he thought he was getting away with
15 this. He thought -- because he didn't know anybody at
16 the party other than the chicos, and the chicos ain't
17 going to turn him in. He didn't know any of the blacks
18 at the party. He told you they were segregated, the
19 blacks and the chicos were segregated. And Ant Lopez,
20 you saw his photograph, he doesn't look black, he's
21 looks like a chico, and he was part of the chico group -
22 he may not have been an immediate part, but he did
23 dealings with Bennie Vines and Carlos Rivera and,
24 clearly, Carlos Rivera ended up with this gun where Ant
25 got back after the party.

1 So we know for a fact that my client is not involved
2 with this group and he knows nothing about it. So when
3 Alex Suarez comes to sell the gun, he doesn't think
4 anything about it. As a matter of fact, you heard Alex
5 Suarez say - and remember this when they - or
6 misidentification; oh, how can Duntaveous be mistaken
7 for Kemar? Look at the picture yourself. But, more
8 importantly, guess what? Guess who misidentified the
9 real killer in this case? The Cape Coral Police
10 Department because they thought Alex Suarez was Ant
11 Lopez. You have photographs. They look alike. They
12 look just alike. You saw the photographs. So if
13 Mr. Lee Gets up here in his closing and says, oh,
14 there's no way Duntaveous could have been mistaken for
15 Kemar; the Cape Coral Police Department sent a SWAT team
16 to Alex Suarez's girlfriend's friend's house - I wasn't
17 even sure if I following it - sent a SWAT team because
18 they thought he was Ant Lopez, they thought he was the
19 killer. Alex Suarez, Ant Lopez.

20 But going back to what I was talking about Carlos
21 Fernandez. Remember, Carlos Fernandez thought - or, I'm
22 sorry - Alex Fernandez thought he was free. He thought
23 that they didn't recognize him. As a matter of fact, he
24 lied to the police. He consciously, intentionally
25 misled the police about who he sold the gun to initially

1 because he knew it was the murder weapon. He knew
2 that - even though he's sociopathic and selfish and
3 self-centered and really didn't really care about
4 killing those boys, he knew for a fact that he could be
5 tied to that so he lied to the police when he sold that.

6 My client didn't even try to sell the gun; he was
7 sitting there getting high. And, listen - this is
8 something I need to talk about for a minute - this guy
9 ain't no angel. He smoked and sold dope. He hung out
10 with some bad people. He had guns in his house. But we
11 know from Paul Nunes that if you're not a convicted
12 felon there's nothing wrong with having a gun in your
13 house or two or three. Was it smart? Was it wise? Was
14 it something we want our children to do? No. But it
15 doesn't make you a murderer. It doesn't make you a
16 killer.

17 So he didn't even care about that gun because when
18 Alex Suarez said to him, Listen, is that gun for sale,
19 this pot-smoking, drinking, in his own world, his
20 brother's in jail, life's not going very well for him,
21 he's working as a dishwasher, he's got all kinds of
22 dysfunctional people around him - Yeah; Fifty bucks and
23 some tats. Does that seem like someone who knows that a
24 murder weapon was used to kill two young men three days
25 before by his cohort, Ant Lopez? Absolutely not.

1 Absolutely not.

2 So then, ultimately, the police start looking for
3 Ant. They talk to Paul. They come up with some lies.
4 And, lo and behold, we ultimately get here, which I will
5 talk to you in a little bit about. But how do we get
6 here? How do we get to the point where these young
7 people are brought or dragged into this horrible,
8 horrible situation and placed in a position of
9 compromise? We get there because there is this horrible
10 crime that takes place in October and the Cape Coral
11 Police Department, who has not conducted a lot of
12 homicide investigations, and Detective Grau, who
13 indicated this was only his second or third or fourth
14 homicide investigation, becomes the lead detective in a
15 horrible, horrible killing that enrages the community.
16 It sends fear throughout the community and anger and
17 frustration. And there's all these accusations because,
18 obviously, the police know that Paul - I'm sorry - that
19 Alex Sosa was involved and had criminal past, had been
20 involved in drugs. They find out that Jeffrey -- they
21 know Jeffrey because they take the prints and they know
22 he's had contact with the police department. So you
23 have these two kids who have had contact with the Cape
24 Coral Police Department who are murdered and now the
25 Cape Coral Police Department is involved in a murder

1 investigation. And what do they have, they have
2 nothing.

3 They go to the crime scene and they process the
4 crime scene - we'll talk about that a little later - and
5 they begin their investigation. And what happens when
6 they begin their investigation is the more they push,
7 the more they turn over, the less they get. Because you
8 know it was four or five days, 22 - at least one 22-hour
9 day that the detective worked. They were tired. They
10 were overworked. They were exhausted. They were short
11 on resources because you heard, people were - Miss
12 Lansky had to go on vacation, she's like the second
13 crime scene person in charge, she had to leave to go on
14 vacation right after the autopsy. So they're obviously
15 a little short on staff and they have pressure from the
16 public and, I'm sure, from themselves because they want
17 to do the right thing to solve this crime.

18 And you heard through my very short
19 cross-examinations that they had a theory; they sat down
20 and they talked about this case as a group and they came
21 up with a theory and they tracked down evidence and,
22 ultimately, the theory is that this happens at a party
23 and that Kemar Johnston is in the center of this and
24 that's their theory. Just like when you write a book,
25 you write a paper and you have a specific outline that

1 you're going to follow and your goal is to follow that,
2 that's what they did.

3 So they started talking to witnesses and, as Miss
4 Doerr admitted to you, these witnesses were
5 uncooperative - didn't see anything; didn't know
6 anything; didn't want to be involved; couldn't be
7 involved; denied being involved. And the first break
8 they got was Andrew Touchstone, who, we know today,
9 probably killed Alex Sosa by hitting him over the head
10 with a bottle, he was their first main guy, and that was
11 four or five days into the investigation. And we know
12 for a fact that he didn't tell the truth initially, but
13 Detective Grau didn't say that when I asked him
14 questions about that. That came out because what had
15 happened initially was that they had interviewed Andrew
16 Touchstone at the police station and they were supposed
17 to record their conversation and it ended up being that
18 the conversation that was supposed to be recorded was
19 never recorded.

20 Now, why is that important? Well, it's important
21 only to the extent that we don't know what was said or
22 suggested to him. And like the 4- or 500 hundred pages
23 of Melissa Rivera telling lies and being threatened, and
24 some of these other witnesses like Arciszewski, 3-, 4-
25 or 500 pages being threatened over and over, well,

1 that's documented. With Andrew Touchstone, Detective
2 Grau testified that he was truthful and came in and told
3 his story. But according to Andrew Touchstone, that was
4 absolutely not true. Because what Andrew Touchstone
5 said was when he went down to the police station
6 initially and gave a statement, he lied, he lied about
7 his involvement, and it wasn't until later when the
8 Detective went back and then recorded his interview that
9 Andrew Touchstone gave a different version, obviously
10 lying some more because he said, I didn't hit anybody; I
11 didn't hit anybody with any bottle; I didn't see this; I
12 didn't see that. But that begins the focus of where
13 this chico, this guy who's in the middle of this, this
14 guy that we know now probably, at the very least,
15 knocked Alex Sosa unconscious is pointing in the
16 direction of Kemar. And what we can take from that is
17 we can take that the police were directing their
18 questioning towards Kemar. And we know that because
19 when I cross-examined Arciszewski and Melissa - you
20 heard about this - you heard that they were suggesting
21 it and he kept denying it, they were suggesting it and
22 he kept denying, and I was impeaching him because he
23 told six or seven or eight different lies.

24 And the police were using the death penalty as a
25 tool with all of these witnesses, even the 14-year-old

1 boy, Duntaveous Overmyer, they threatened with the death
2 penalty because they had to solve this case at any cost.
3 And when you have it set in your mind something and
4 you're not willing to be flexible enough to make sure
5 that your vision is the truth and correct, that is
6 pretty scary. And we know that that's what was
7 happening and we know that because Detective Grau, who I
8 called as a witness - not Miss Doerr, not Mr. Lee - I
9 called as a witness, introduced -- I introduced 20 or 30
10 of these composites and I spent a lot of time talking
11 about these composites with the Witness and explaining
12 to you that these composites are directed at being
13 six-piece photo identification lineups with the intent
14 of putting one person in the photograph who is the
15 subject and five other people who are similar looking so
16 that there's no chance of misidentification.

17 Now, we know for a fact that Alex Fernandez told you
18 when he was interviewed, he called them black people -
19 there was a bunch of black people over there. He didn't
20 know their names. He admitted that Rod Washington's
21 name he discovered from the discovery. Is this an issue
22 of racism? Absolutely not. This is an issue of
23 misidentification and sloppy police work. This is an
24 issue of tunnel vision. They didn't want to conduct
25 this investigation the right way, they wanted to conduct

1 it the quickest way; that's what they wanted to do. And
2 this, in and of itself, screams waver and vacillation.
3 Because if the people who are running the show ain't
4 doing it the right way, guess what, folks, you know what
5 history says, you know what has happened in this county,
6 in this state, in this country, we know that. And this
7 is the kind of stuff, this is the sloppy police work,
8 the rush to judgment that begins this process.

9 Was it ill-intended? Probably not. These people
10 are people that we look to, we trust to protect us. So
11 to sit here and second-guess that this was some kind of
12 evil intent or some kind of conspiracy, I don't think
13 that was the case at all. I think this was a situation
14 where they were overworked; they were tired; they were
15 inexperienced; they didn't follow the rules; they had an
16 idea of where this was going to go and they pushed that
17 idea and they suggested and they threatened and they put
18 words in peoples' mouths, and those people came in here
19 and not only admitted that they lied originally, but
20 admitted that they made deals with the State that if
21 they changed the story that they're telling now, the
22 truth, that they're going to go away for the rest of
23 their life.

24 Now, let's talk about one other important issue.
25 The State Attorney has the burden of proof. Don't let

1 Mr. Lee try to say otherwise. They have the burden of
2 proof. It's their responsibility to assure you that
3 these witnesses are truthful; that they weren't coerced;
4 that they weren't threatened; that they weren't conjoled
5 into giving a certain story. It's their responsibility,
6 Mr. Lee's and Mr. Doerr's responsibility. They could
7 have put on those detectives to tell you that. But you
8 saw what happened when Catania and Walker, who were the
9 main interrogators in this case, took the stand, Miss
10 Doerr objected over and over and over again every time I
11 tried to ask them questions about their involvement in
12 this investigation because she didn't want to go there.
13 She didn't want to give me an opportunity. I'm a
14 seasoned cross-examiner. I'm experienced. I went to
15 law school. I've been trained. I've tried hundreds of
16 cases. She didn't want to give me the opportunity that
17 they had, these detectives, to question their seasoned
18 detectives, but she wanted not to excuse their behavior,
19 the unsolicited, no cameras, no reporters, nobody
20 watching, twelve jurors, a judge; nobody was in the
21 rooms with those young people, folks. And is it
22 despicable that they came in here and lied? Yes --

23 THE COURT: Counsel --

24 MR. LENAMON: -- but can you blame them?

25 THE COURT: Excuse me, Mr. Lenamon.

1 MR. LENAMON: Yes, sir?

2 THE COURT: Just use the podium.

3 MR. LENAMON: Yes, sir.

4 Can you blame them? Can you blame most of them,
5 except maybe Alex Fernandez, maybe Paul Nunes?
6 Definitely Alex Fernandez. They're trying to save
7 themselves, folks. That's what they were trying to do.

8 And when I wrote this down - and I still have a lot
9 and I was going to get to this at the end - when I wrote
10 this down, 27, 9, 3, I figured I spent 27 hours over the
11 last two weeks cross-examining the 9 main witnesses,
12 that's 3 hours a witness..

13 How much time did they spend, right here? How much
14 time? Again, unsolicited, unchecked. Nobody watching.
15 Nobody protecting. Nobody assuring. No cameras -
16 although we know there was cameras, but did they present
17 any of the video to you? Did they present any of the
18 transcripts to you? I had to go to the transcripts,
19 over and over, Objection; Objection; Objection; I don't
20 remember; I don't remember; I don't remember. Well, can
21 I show you it? Do you remember now? Well, no, I don't
22 really remember. How many times did we go through that
23 over the 27 hours that I cross-examined? Imagine what
24 was going on in the police station, and I'm not talking
25 about - there was no beatings, there's no - that's not

1 what's going on here. This is detectives who may not be
2 as experienced as I am at questioning, but clearly
3 they're controlling the direction of this investigation
4 and where it's going.

5 And let me give you an example. We talked about in
6 jury selection that voluntary intoxication is not a
7 defense; it is not a defense to murder, period. I
8 cross-examined Melissa Rivera on this issue. I put
9 words in her mouth that I knew weren't true. And she
10 said, Oh, yeah, my lawyer talked to me about that; Yeah,
11 that was a defense; I knew that; I knew that was going
12 to happen. I did that in front of you, in front of
13 them, in front of the camera; imagine what was done to
14 her behind the scenes.

15 And what about them asking for lawyers? Detective
16 Grau, very professional, someone we look to to protect
17 us, denied ever not allowing someone to invoke their
18 right to counsel. I asked him specifically on direct -
19 on cross-examination, Detective, is it true that Michael
20 Balint asked for a lawyer? No, he never asked for a
21 lawyer. You would have honored that, right, sir? Yes,
22 I would have honored that. Because you understand the
23 constitutional rights, that kind of thing. Denied it.
24 Michael Balint came in here and said he asked for a
25 lawyer, several times he asked for a lawyer, and it was

1 Detective Grau who changed the subject and said,
2 basically, Listen, if you don't speak now then, you
3 know, guess what, you're going to miss the train. Was
4 he twisting his arm? No, he wasn't twisting his arm,
5 but he was using subtle interrogation techniques to get
6 him to tell the story that Detective Grau wanted him to
7 tell; either that or Michael Balint is lying about that,
8 as is, I think, Cody Roux - there was one other witness
9 who said that - or Alex Fernandez, Alex Fernandez asked
10 for a lawyer and he wasn't honored. So they're either
11 lying about that or it happened. And if I remember
12 correctly, I think I impeached one of them with a
13 transcript or partial transcript there was a discussion
14 about that.

15 Let's talk about this witness testimony.

16 Rosie, bring Arciszewski up?

17 I, too, prepared some demonstratives going through
18 each of the witnesses' testimony. What I'm going to do
19 is I'm going to go through -- I wrote out what I think
20 was said based on my notes, and you can agree or
21 disagree with any of it, obviously you have notes of
22 your own. But we know for a fact that for them to get
23 to the place they are today, each of these witnesses, if
24 they were a cooperating witness, had to make a deal
25 where they agreed to stick to a certain story and if

1 they veered off that story, then they would be in
2 violation of a plea agreement, and the people at this
3 table were the ones who made the decision whether they
4 violated that plea agreement.

5 We know that these people at the time of the party,
6 most of them were significantly intoxicated or impaired,
7 that their stories differed significantly from the
8 original stories they gave the police to the stories
9 they gave after the police to the proffers and some to
10 the testimony, which some of which was inconsistent with
11 their proffer. We know for a fact that some of these
12 witnesses testified they feared the police.

13 Mr. Arciszewski, over and over and over again, kept
14 saying, Oh, I'm not afraid of Kemar; I'm not afraid of
15 anything; I'm afraid of you guys never leaving me alone.
16 And we know even for a fact that even Arciszewski said,
17 as some other witnesses said, that when the police
18 didn't believe them, that they modified their stories
19 based on either what they thought the police wanted to
20 hear or what the police told them.

21 Let's talk about Mr. Arciszewski. Mr. Arciszewski,
22 as I mentioned, is the individual who claimed that Kemar
23 was using his job at Rib City as a front for the
24 drug-dealing operation he ran out of the house selling
25 only pot. And he told you that over and over again he

1 lied to the police. As a matter of fact, Arciszewski
2 was probably the most lengthy cross-examination I had
3 out of that group, it was clearly more than the three
4 hours that is averaged out in my 27, 9, 3 demonstrative.
5 He told you that he lied six to eight different times;
6 the first time he told you he told the police he was
7 intoxicated and drunk on the couch, then he told them he
8 left the party with Darly (Ph.); he had been threatened
9 with the death penalty; that the police were trying to
10 expand the story; that he tried to play a manipulation
11 game involving the polygraph where, originally, he
12 agreed to be polygraphed, and that the police told him
13 that there was a message played even though he didn't
14 know about. Miss Doerr indicated that he knew about the
15 message but he told you, when I cross-examined and
16 impeached him, that he didn't know about the message,
17 the police told him about that. And that's just a small
18 example of the police suggesting their version of
19 events. He told you that, you know, he was slow at one
20 point, that he was smart at one point. He told he
21 didn't see Kemar hit anyone with a gun when he was
22 interviewed by the police, that Kemar had nothing to do
23 with this. And then you heard this hypothetical game
24 they played with him where they said to him, Who do you
25 think is responsible for this? Who is responsible for

1 this? And he tells them, Not Kemar; Kemar has no beef
2 with these people, that it was Ant or the chicos, that's
3 what he told the police and they didn't believe him.

4 And you heard about how he went in and out, he was
5 smoking cigarettes, and he conversations outside off the
6 record, and when he came back in his story changed, and
7 what do you think happened outside? What do you think
8 was said? What do you think was suggested? Can we rely
9 on his testimony at all in any way?

10 And he told you that Ant Lopez, who he had no
11 allegiance to, admitted to shooting these boys. And,
12 more importantly, consistent with our theory, Ant Lopez
13 came back after the second departure to the industrial
14 site and admitted to killing Jeffrey. Arciszewski told
15 you that.

16 Now, the State's going to get up here and say, Well
17 he was consistent with so and so and they were
18 inconsistent and because they're inconsistent you can
19 trust them and because there's inconsist-... This is
20 what's going on, folks, and I tried to explain this
21 through cross-examination, these guys have
22 off-the-record discussions, they have on-the-record
23 discussions. I have the on-the-record discussions. In
24 those on-the-record discussions, they all lie. They say
25 they lie. They say they deny, they don't know anything;

1 they know a little bit. They tell one story, second
2 story, third story. That's what's memorialized. Then
3 they get charged or they don't get charged and,
4 depending on where they fall into this, at some point
5 they come to the State and say, Please, give me a deal;
6 I'll give you the story, the truth. And then when we
7 have the truth, ultimately it ends up here. And this is
8 the truth that Mr. Lee is going to rely on in his
9 rebuttal argument - Well, they all told the truth; They
10 said they told the truth; Duntaveous is not on trial.
11 How many did he ask the witness, Is Dontaveous on trial;
12 Is Ant on trial; Are you on trial? No, he's on trial.
13 But aren't we supposed to seek justice here, the truth?
14 Aren't we supposed to be confident and have an abiding
15 conviction?

16 And when they get to that point on the stand and
17 they're testifying, their testimony becomes unreliable.
18 And a lot of the testimony that she said was reliable in
19 her slides have nothing to do with Kemar. Yes, there
20 was a fight. Yes, they were tied up. Yes, there was
21 bags placed over them. Yes, they were cut. There's a
22 whole bunch of things that happened, but Kemar wasn't
23 involved in those things. Yeah, Kemar had a gun at some
24 point. Maybe he did something stupid with the gun. You
25 know, maybe he was -- you know, remember what Jennifer

1 Dunning said; he's there, he's the least likely guy.
2 She said he didn't know these people, he's like, Who are
3 you? And he's the most messed up guy there. The one
4 who's least functional, least able to connect A and B.
5 He is totally fried. And what is he doing? Just
6 imagine this party, this small scene - let's all get up.
7 Everybody over here, get up. Come on, let's all walk in
8 this one area, and this is what we're doing.

9 And Jennifer Dunning is having small talk.
10 Remember, she's probably the most credible witness, and
11 I use credibility loosely because I have great concerns
12 when she says that she told a story that everybody was
13 hitting, but she didn't include her ex-boyfriend Carlos
14 Rivera's name and admitted she never sold him out and
15 admitted and told you that she knew nothing about
16 nothing about a burglary that had taken place of the
17 Lexus and that they had taken property and they all left
18 together. Because we know that happened. So, what,
19 Carlos left her in the party, went outside with
20 Touchstone and Balint and burglarized this vehicle and
21 then came back in after he put them in the trunk of his
22 car and said, Okay, Jennifer, let's go. He left her in
23 there with all these people with guns and stuff like
24 that? That doesn't make sense. She's not being
25 completely truthful. Can you blame her? Who would be

1 completely truthful when you've got a hammer over your
2 head that's going to change your life? She's got a
3 little kid. Carlos Rivera obviously didn't stick around
4 because they're not together anymore. But she's got a
5 little kid. What are you going to do? Would you lie
6 for your children? How many people are not going to lie
7 for their children, their own children, to protect
8 themselves to make sure that they don't get taken away
9 from their children, just like Melissa Rivera tried to
10 do. Because, remember, they don't come to you with a
11 number until you give a proffer. So you give a proffer,
12 you say, Okay, I can tell you this; I'll tell you that;
13 I'll tell you this. Okay, when we see your proffer then
14 we'll tell you what plea offer we'll make you, and if
15 you want it take it, you can take it, if you don't, too
16 bad, and that's what happened here.

17 Melissa Rivera went to them with her original plea
18 offer, the same plea offer that she admitted - or the
19 same proffer she admitted that she had to read, she had
20 to read to remember. Because she said, I don't know,
21 how many times; 20, 30, 50, 100? How many times did
22 Melissa Rivera say, I don't remember? And I asked her
23 nicely, Miss Rivera, did you say, I don't remember,
24 because you were so afraid that if you went outside that
25 Bible, that little proffer area, that you were going to

1 get hammered and get life in prison? And she said yes.
2 But she went to them originally hoping she would get a
3 better deal, I guarantee you. All these kids went to
4 them hoping they were going to get a better deal. Did
5 they deserve a better deal? I don't know; that's not
6 what we're here about. We're here to seek the truth and
7 make sure that one is not wrongfully convicted. That is
8 your responsibility.

9 So we know for a fact that Arciszewski lied to the
10 police over and over and over again until he got to the
11 point where he decided that whatever he was going to
12 tell the police was going to allow him to walk out that
13 door and not let the police bother him anymore because
14 he didn't want to be bothered by the police, so he told
15 them whatever he had to tell them to not get charged.

16 Michael Balint. Now, Michael Balint, he's the
17 epitome of Blackoutsville. This is a guy who admitted
18 that he started drinking and drugging at four o'clock in
19 the afternoon and ended up at Emerald Hill - Emerald
20 City Strip Club in Port Charlotte until sometime before
21 two a.m. and through that whole process, he was drinking
22 and drugging. And he admitted that he smoked a lot, he
23 took pills, took all kinds of things.

24 And, interestingly, I tried to talk to him about
25 this whole process of how he got to the party because

1 he's not getting to the party, really, folks, according
2 to his testimony until like 2:30 in the morning. Now,
3 think about that. Jennifer Dunning says she gets to the
4 party at ten. So he's showing up at 2:30, 2:45, and
5 that's when the tying takes place - because, remember,
6 he's the tier. He claimed that he tied himself. Nobody
7 directed him to tie; that he did this himself and he
8 didn't know why. But Michael Balint puts a time frame
9 which is kind of inconsistent with some of the other
10 witnesses. 2:30, 2:45, that means that Jennifer Dunning
11 was there for almost four and a half hours before
12 anything really started happening, at least before the
13 tying, and she claimed to be there when the tying took
14 place. He tells you that his memory probably was
15 affected. He tells you that he was arrested 15 months
16 after this. He had never contacted the police between
17 the time that this happened and the time he got
18 arrested. That the police came to his house and that he
19 wanted a lawyer and he kept saying that he wanted a
20 lawyer and Grau convinced him that a lawyer was not his
21 best interest. And he told you, Michael Balint, that he
22 was 19 years old at the time, 19 year old when he was
23 placed in the interrogation room and that he ultimately
24 plead out to 14 years pleading to two counts of
25 kidnapping and aggravated battery, and that he was told

1 and threatened with the death penalty. And he's the one
2 who told you that Donny came out. And, remember, he
3 said he was associates with these people. But he knew
4 Donny and Donny's the one who came out with the rifle.

5 And most important about Michael Balint was that I
6 caught him in a lie, a material lie that may end up with
7 him getting a life sentence because he admitted that he
8 lied in his proffer and he admitted that he lied in his
9 proffer because he told the State Attorney - this is not
10 lying to the police, this is his lawyer goes to the
11 prosecutor, Let's make a deal; Okay; We'll make you a
12 deal, but you give us a proffer; We want to hear what
13 you've got to say; We're willing to listen to what you
14 have to say, and based on what you say, if you say what
15 we think is the truth, then we're going to make you a
16 plea offer.

17 Well, they came in -- he came in and he gave them
18 what they thought was the truth because they gave him a
19 15-year deal. But he admitted that he lied and that he
20 told them that he never saw -- that he saw Nunes -- he
21 lied in his proffer, he testified that Nunes and Lopez
22 did not have guns. In his proffer, he told them, Nunes
23 and Lopez did not have guns, and he said that that was a
24 lie, that they did have guns. That was a material lie
25 of his proffer, and that he never told the State

1 Attorney up to the time he was testifying, because I
2 asked him, Is this the first time they're hearing it?
3 He said yes, he never told the State Attorney that he
4 lied in his proffer. And that clearly shows you that
5 you can't trust -- in conjunction with the inconsistent
6 statements, the contradictions and all the things that
7 are going on in each of these versions of the truth why
8 you can't trust anything any of these people were
9 saying, especially when it comes to determining that you
10 have an abiding conviction of guilt.

11 Jennifer Dunning. We talked about most of what
12 Jennifer Dunning testified to already, but one thing
13 that's telling is that she tells you that Rod Washington
14 searched -- if I misspoke, I think Balint got 14 years -
15 I was just handed a note by Mr. Brener. I said 15. And
16 that Mr. Arciszewski was never charged.

17 And I think I talked to you about what Miss Dunning
18 told you about Kemar's state of mind and that he was so
19 messed up he was speaking Jamaican. And we don't
20 dispute that; we do not dispute that he was messed up
21 and we do not dispute that he did some messed up things.
22 We are disputing that he was involved in these crimes,
23 these criminal acts. Because the evidence -- the only
24 evidence that his involvement of these criminal acts are
25 these witnesses whom we've talked about over and over

1 again.

2 And what do we know about Jennifer Dunning? We know
3 that Jennifer Dunning was at the party and, as we spoke
4 about, that she was somehow tied into what was going on
5 with her ex-boyfriend and that there was testimony that
6 he had a gun at some point; they clearly burglarize the
7 Lexus and that she denied ever having knowledge of any
8 of that.

9 Alex Fernandez. Alex Fernandez was probably the
10 second-most messed up person at that party because he
11 talked about how he had been abusing drugs in the days
12 before the incident; that -- and remember this
13 conversation I had with him as I was cross-examining
14 him, remember the conversation I had with him - and
15 there was a reason for this is because most of these
16 kids had this same state of mind at the time. This was
17 their state of mind; I get up in the morning and I get
18 as high as I possibly can get; I want to reach the
19 pinnacle of highness; I want to get to the point where
20 I'm almost unconscious because that's where I want to
21 be, it makes me forget my problems; it make me forget
22 all the things that are going on in my life, my
23 dysfunctional life. So they do everything they can to
24 try to reach this point.

25 And he admitted that, on numerous occasions, he had

1 been to Blackoutsville - remember we talked about
2 Blackoutsville? That's when these people forget what
3 was really going on. And I would suggest that one of
4 the things as you look at this case when you go back
5 there and start to deliberate and start to talk about
6 this case that you significantly consider how many of
7 these people really remember what actually happened and
8 how many of these people actually had to reconstruct
9 through some kind of source some of the things that they
10 testified or most of the things that they testified, and
11 I would suggest that Alex Fernandez is that perfect
12 example. I think that he put some of the stuff together
13 from his memory and I think some of the stuff he made up
14 and I think some of the stuff he didn't remember. But
15 it's clear that he was so high that when he got back
16 from the liquor store, at some point, that he went into
17 the wrong garage, he went into the neighbor's garage.
18 And he admitted to you that he's the one who told you he
19 was not familiar with a lot of people who were at the
20 party; that he knew Jose, Bennie, Carlos and Andrew;
21 that he didn't know many of the African Americans; that
22 he knew Kemar by name, and he's the one who told you
23 about this guy, this black male who came up to him who
24 we believe is Dontaveous who asked him for the keys to
25 his car. He told he never heard a gunshot at the house.

1 He told you how he minded his own business when Alex was
2 hogtied; he said he didn't care; he stepped over Alex's
3 body to get to the liquor trying not to get blood on his
4 shoes.

5 And we know for a fact that Alex Fernandez gets up
6 the next day, gets into the car, the car that
7 transported the bodies of these young men to the
8 industrial site, the red Ford Contour, and that he
9 helped take at least Alex Sosa out of the back of his
10 car and that he admitted that the next day his trunk
11 smelled and that there was stains in his trunk and that
12 he had to get rid of his trunk liner because he knew, he
13 remembered that he had stuck these two people in the
14 back, or Ant and Rod had stuck these two people in the
15 back. He didn't know who had carried the other person,
16 Jeffrey. And we're not even sure if Jeffrey was stuck
17 in the back there because the only blood on the blanket
18 is the blood from Alex. And if you think about it,
19 since there's evidence to indicate that Jeffrey was cut
20 on his back, you would think that he would be bleeding,
21 you would think that they would have found blood on the
22 blanket if he was on that trunk, as well. I can't piece
23 all of this together, folks, you're going to have to do
24 that.

25 But we know for a fact that Alex Fernandez drove his

1 car out of there and that the next day he consciously
2 made a decision to get rid of this blanket - or to get
3 rid of the trunk liner and that, at some point, lo and
4 behold - and remember I crossed him on this issue, I
5 said -- because, folks, I don't go into my glove
6 compartment every day - I don't know how many of you do,
7 but I don't go into my glove compartment every day. But
8 for some reason he was drawn to the glove compartment.
9 He said he did that because he had his lighters in the
10 glove compartment - now, that may be true, but guess
11 what was also in that glove compartment, that .380
12 murder weapon that Miss Doerr referred to which was a
13 shooter weapon, it was one of the two weapons that was
14 identified, although none of the slugs were pulled out
15 of the body of either Alex or Jeffrey, but there were
16 casings matching at the kill site, at the industrial
17 site, to that .380. That was the gun that was in his
18 glove compartment when he opened it that morning. And
19 what did he do, did he call up anybody? Did he call the
20 police? Did he say, Oh, look, I got this gun? No. He
21 went and sold it to Adam Fredericks. And then when he
22 was questioned to the police about this he lied about
23 who he sold it to because he knew he had fired that
24 weapon into, at least, Alex Sosa.

25 He told you how he had blood on his shoes and that

1 his friends, who were probably the ones who alerted the
2 police - we didn't hear from those, the State didn't
3 call those witnesses - that his friends saw blood on his
4 shoes the next day and that he was worried about that
5 fact in conjunction with the gun and the liner, and he
6 had good reason to worry about that fact. And he told
7 you how the police caught up to him finally on October
8 17th and that he had lied, he was pressured with the
9 death penalty - he was one of those individuals who was
10 pressured with the death penalty. And at some point the
11 police told him, If you remember certain things and you
12 cooperate and you play the game, we're going to help you
13 out. And he told you that Ant Lopez also told him -
14 Ant, Ant Lopez, that he had shot the young men.

15 And, interestingly, enough the dynamics that I was
16 trying to paint about the desperation about these
17 people, and maybe you didn't understand at the time and
18 maybe you did and I'm going to try to explain it to you,
19 is that there's a transition that takes place in the
20 criminal justice system in this case. All the way up to
21 Rod Washington's trial in May of last year there were
22 nobody who could place anybody with a hand - a gun in
23 their hand at the industrial park. Alex Fernandez was
24 the first person to make a deal right before, on the eve
25 of Rod Washington's trial, placing guns in peoples'

1 hands at the industrial park. And that's important
2 because Paul Nunes does the same. In the months before
3 this trial, Paul Nunes cut a deal. So when they're
4 desperation - the State Attorney, in their desperation,
5 made deals with at least one possible killer, Alex
6 Fernandez, and at least one individual who was clearly
7 in the middle of that whose gun may have been used in
8 this killing, the .40, and who was clearly good friends
9 or at least much better friends with Ant than with
10 Kemar.

11 And Alex Fernandez told you he was willing to do
12 anything to get a deal, and that after the Washington
13 trial he changed his story about Ant Lopez. Remember,
14 he said in his proffer he had originally said that Ant
15 was one of the shooters, but after that his memory
16 became less clear. And I will suggest to you that that
17 was done because Ant Lopez has something on Alex
18 Fernandez; he knows he was one of the shooters, and
19 there was some interaction between the two of them as
20 cell mates that convinced him to change his story.
21 Because he admitted he was in the cell with Ant Lopez.
22 And he told you that he knew if he changed his proffer
23 about Kemar he could spend the rest of his life in
24 prison.

25 Paul Nunes. Let's talk about Paul. We know that

1 Paul was in the middle of this, and we talked in detail
2 about what had happened at the house and we talked about
3 the brick being thrown. We know for a fact that Paul
4 came in here and said that he does not know who did the
5 shooting at the scene. He claimed to have placed Kemar
6 at the scene but he does not know, does not recall who
7 did the shooting. He clearly remembers - and there was
8 this whole issue about the gunshot to Alex Sosa being
9 done at the house, and I think there were two people who
10 testified, including Nunes, I think Melissa was the
11 other one who claims she was in a room when she heard a
12 shot. All the witnesses testified that Alex Sosa was
13 placed on his stomach. And we know from the medical
14 examiner that the shot was from front to back. So it
15 would have been impossible, unless they turned him over
16 and shot him, that he was shot at the house. And I
17 would suggest he was shot at the house, that he was shot
18 in the trunk of the car and that the bullet remained in
19 him because the medical examiner testified it remained
20 in him, and that that shot was fired by Duntaveous
21 Overmyer.

22 He told you that he had been drinking and drugging
23 all that night. As a matter of fact, he said he gave
24 the gun away. He talked about Alex Sosa and what he
25 knew about Alex, and that he carried a gun to protect

1 himself from people like Alex. He had seen Alex with a
2 gun and had a glove on his hand, that he thought - it
3 really didn't come out that clearly, but he thought that
4 it was used to disguise himself, the identity of
5 himself, like a fingerprint on the gun. And he told you
6 over and over again that he knew Alex Sosa was crack
7 smoking, was violent, was a robber. And all of that's
8 important because there was a heightened sense of fear,
9 frustration, whatever you want to call what they felt
10 when Alex Sosa appeared at that party. Clearly anger.
11 Clearly this was fueled in part, as even the State
12 agrees, by excessive amounts of drugs and alcohol and
13 intoxicants. But besides that, there was a heightened
14 fear of this individual because of who he was and what
15 he had done in the past.

16 And we know for a fact that Paul Nunes changed his
17 story numerous times. We know for a fact that he made a
18 deal for 40 years. Now, think about it, folks. Forty
19 years, 40 years, and they're not even saying that he was
20 a shooter. Why would they give him 40 and Alex 26 and
21 Melissa 20? What is the difference between his
22 culpability and Melissa's or Alex's? I mean, Alex drove
23 the car with the bodies, helped unload the bodies.
24 According to Paul, he didn't do any of that. All Paul
25 did was go back to the scene -- well, he went to the

1 scene the first time but he claimed that he may have
2 gotten out of the car for a little bit but he didn't
3 have a gun on him. But the second time he went back and
4 he stayed in the car. Why would he get 40? Why would
5 they give him 40? Do they know something they're not
6 sharing with you?

7 I suggest to you that he is in the middle of this
8 with Ant and with Rod and with Touchstone and the rest
9 of the Chico Unit, and that they know that and that's
10 why he ended up with 40 years. Forty years. I would
11 strongly recommend you discard his entire testimony.
12 This is a person who lied to you over and over again;
13 gave inconsistent statements, and admitted to you that
14 he was in the middle of this drug dealing and had the
15 motive to want Alex Sosa dead.

16 Melissa Rivera. Melissa Rivera was drinking shots
17 that night. She plead to an accessory after the fact,
18 she got 20 years. And we talked about, in detail, her
19 testimony and the inconsistencies she gave. But the most
20 telling thing about Melissa Rivera next to William
21 Arciszewski, she gave 5- or 600 pages of testimony where
22 she lied over and over and over again. And when she was
23 on the stand, she couldn't even remember. She said, I
24 don't remember 30, 40, 50 times, you folks were
25 listening. And over and over again she kept saying that

1 she didn't have any memory because it happened so long
2 ago. And over and over again she testified that the
3 police had harassed her; that they said that she was
4 playing games. And that over and over again she told
5 you that she had to rely on the proffer and that if she
6 went outside the proffer then she would get life in
7 prison. And she testified how she saw Bennie and
8 Orlando punch Alex. And she saw Alex and Rod and Paul
9 and Cody all with guns. Remember, Nunes said he didn't
10 have a gun at all. Melissa said he did. Melissa said
11 Alex Fernandez had a gun. Melissa said Cody had a gun.
12 Melissa said Rod had a gun. And she told you how
13 everyone had access to that room where Kemar lived.

14 Cody Roux. Fourteen years, plead to second degree
15 murder, kidnapping, aggravated battery. Now, he told
16 you how he was good friends with Kemar and how Kemar had
17 this conversation with him at the party that documents
18 how messed up Kemar was, he's, like, Man, I want you to
19 live with me; he had taken him in because he was
20 homeless; he was upset that he was living with Tyler,
21 and that he was extremely messed up because Melissa was
22 giving him Xaney bars. And he told you how that he came
23 into the party and that he's the one who started the
24 fight with Alex and how Touchstone had hit -- Touchstone
25 had hit Alex in the head with a bottle and dishes. And

1 that Alex Fernandez was so messed up, he had never seen
2 him as messed up as he was that night. And he told you
3 how small this room was and that Carlos Rivera and his
4 friends had taken the stuff from the Lexus. And he told
5 you how he lied to the police and he had changed his
6 story and that he had also given a proffer, and that if
7 he went anywhere from that proffer then he would get
8 life in prison, as well. And he told you tellingly that
9 he was accused of being the killer recall at one point.
10 Now, do we think Cody Roux was one of the shooters? No.
11 But, clearly, his name came up in the community and,
12 clearly, he was motivated to try to protect himself when
13 he was interviewed by the police because he was being
14 called out as a killer. And he told you also that Ant
15 Lopez, and I think while he was in jail, told him that
16 he had shot those boys.

17 Mike Taylor. Mike's the one who showed up to the
18 party with his mom who never testified. Mike was on
19 probation for a felony prior conviction. He told you he
20 was concerned he might be viewed as a suspect. He had
21 heard people were snitching on him. I think Mike was
22 the one that was in the halfway house at the time they
23 went and interviewed him, and that he had told the
24 police originally - because he came in here and
25 testified that Kemar pistol whipped Alex Sosa, but he

1 told the police originally that it was a black male -
2 even though he knew who Alex Sosa was, that it was a
3 black male that had pistol whipped Alex Sosa and not
4 Kemar. And he told you how mad Bennie was and that half
5 the people that were beating Alex had problems with Alex
6 Sosa. And he told you that Alex Fernandez was one of
7 the individuals that hit him.

8 Andrew Touchstone -- and Cody Roux - going back to
9 Cody Roux, he not only says that Lopez shot him he told
10 him up, he told him he shot him in the head, which is
11 consistent with the evidence presented by the medical
12 examiner.

13 We talked about, in detail, Andrew Touchstone. He
14 was the one who walked out of here when I would
15 cross-examine some of these witnesses who were doing
16 significant time, although he may have killed, with that
17 bottle, Alex Sosa. He told you that he's been to
18 Blackoutsville; that he was extremely messed up; that he
19 lied to the police originally, although Grau denied
20 that, and that he only changed his story until he had
21 the opportunity to talk to some of his friends and he
22 was promised that he wouldn't be involved. He knew that
23 Alex carried a pistol; that Bennie had been robbed by
24 Alex Sosa and that he had heard that Paul had problems
25 with Alex Sosa. And he told you tellingly that Kemar

1 took the gun away from Rod at one point when this
2 violence started to begin.

3 We talked about the people who testified but we
4 haven't talked about all the people who were there, you
5 know some of them - Bethany Toye, Brandon Dickey,
6 Victoria Lopez, Barbara Araujo - there was countless
7 others who were never charged but were there while this
8 was going on; some unknown black male, black males, some
9 unknown other partygoers.

10 Now, let's talk about the law a little bit because I
11 have a responsibility to talk about the law. This is
12 going to be brief. In addition, we know, I think it
13 was - was it Touchstone? Somebody said that at some
14 point Kemar stopped Brandon Dickey from hitting Alex
15 Sosa.

16 Rosie, do you want to take this down?

17 THE COURT: Mr. Lenamon, you want to take a moment?

18 Let's take a five-minute recess.

19 Please step in the jury room.

20 (THEREUPON, THE JURY EXITS THE COURTROOM.)

21 (THEREUPON, AT About 2:30 P.M. A BRIEF RECESS WAS TAKEN.)

22 (THEREUPON, AT ABOUT 2:37, RECONVENED PROCEEDINGS.)

23 THE COURT: All right. Bring the jury in, please.

24 (THEREUPON, THE JURY ENTERS THE COURTROOM.)

25 THE COURT: Please proceed.

1 MR. LENAMON: Thank you, Judge.

2 I was handed a note after our break that I may have
3 misspoke about where Jeff was placed. And I just want
4 to make sure it's clear, when I was referring to Jeff
5 being placed in a vehicle, it was a Lexus vehicle at the
6 scene, at the industrial site. If I misspoke about any
7 other vehicle, I apologize.

8 I want to talk a little bit about the law, and first
9 I want to talk about two important instructions that you
10 can use in determining the credibility, besides the
11 reasonable doubt instruction that we talked about. One
12 of those instructions you'll be given is what's called
13 the Accomplice instruction, and this is how it reads -
14 it will be read by Judge Reese - You should use great
15 caution in relying on the testimony of a Witness who
16 claims to have helped the Defendant commit a crime.
17 This is particularly true when there is no other
18 evidence tending to agree with what the Witness says
19 about the Defendant. However, if the testimony of such
20 a Witness convinces you beyond a reasonable doubt of the
21 Defendant's guilt or the other evidence in the case does
22 so, then you should find the Defendant guilty.

23 Now, when you look at that instruction it's
24 important that you use that in conjunction with the
25 reasonable doubt instruction and the language we talked

1 about early in the closing argument about abiding
2 conviction of guilt, the waver and vacillating language
3 we talked about and also the conflict or lack of
4 evidence issues that we talked about.

5 The second instruction that's very important is the
6 weighing the evidence instruction. The Judge is going
7 to read this to you, as well. And, essentially, it
8 gives you nine different areas that you should consider,
9 including how the Witness acted, as well as what they
10 said; Did the Witness seem to have an opportunity to see
11 and know the things about which the Witness testified;
12 Did the Witness seem to have an accurate memory; Was the
13 Witness honest and straightforward in answering the
14 attorneys' questions; Did the Witness have some interest
15 in how the case should be decided; Does the Witness'
16 testimony agree with other testimony and other evidence
17 in the case.

18 Now, I imagine Mr. Lee is going to get up there and
19 try to intertwine the testimony of these individuals who
20 made deals and say, Oh, this person is consistent with
21 this because they said there was tying, and this person
22 is consistent with that. And we talked already in
23 detail about how they use inconsistencies and
24 consistencies in conjunction with each other to try to
25 kind of distance the truth from what these witnesses are

1 saying. But most tellingly what you need to look at
2 when we're talking about the evidence and when we're
3 talking about whether it agrees with other evidence
4 that's been offered - other evidence in the case,
5 whether it agrees, I want you to go to the forensics.

6 Mr. Brener spent a lot of time talking about
7 forensic testimony, and I know some of it was extremely
8 boring, and that's why he did it and not I because he's
9 much better at it. And there was a lot of photographs
10 and a lot of evidence that was presented to you that may
11 not have meant a lot to you then, but as you begin to
12 deliberate and dig through -- because you're going to
13 have access to all of this stuff, all of the
14 photographs, obviously your notes of the testimony of
15 these witnesses - and I'm going to cover some of that in
16 a moment - it's important that you compare the physical
17 evidence or the lack of evidence in conjunction with the
18 witness testimony. And I think what you will see is
19 that the bottom line here is that the State is relying
20 entirely on these cooperating witnesses, these witnesses
21 who have made deals or weren't charged, as their entire
22 evidence against Kemar Johnston. And those are the two
23 things that I want you to look at when you're looking in
24 conjunction with determining the witness' credibility.

25 There are two brief instructions I want to talk to

1 you about which I didn't blow up, but I think that are
2 important to your consideration. You can believe that
3 Kemar Johnston committed an act that you think is
4 illegal, a battery, or you can consider that he
5 committed any act. If it's not one of the acts charged,
6 and you don't believe that that was charged and it
7 convinces you beyond a reasonable doubt, have to find
8 him not guilty.

9 So there was testimony about guns being in his
10 house, that he had guns in his house. He's not charged
11 with that. He's not charged with possession of a
12 firearm. He's not charged with being a convicted felon
13 because he's not a convicted felon, otherwise they would
14 have charged him as a convicted felon. He's charged
15 with six separate crimes; two counts of first degree
16 murder, two counts of kidnapping and two counts of
17 aggravated battery, and the aggravated battery counts, I
18 think, really go to, you know, whether these beatings
19 were significant enough -- if you believe that he was
20 hit with a gun and Kemar hit him with a gun, you have to
21 determine whether the elements fit with that, and I
22 would suggest that that testimony is unreliable.

23 But if you believe that he was punching, that, you
24 know, he had pushed, that he had participated in some of
25 the beatings that didn't involve the significant things

1 that have been charged, then you have to find him not
2 guilty.

3 Now, there's an instruction called, Mere Presence,
4 and it's going to read like this: Mere presence or mere
5 knowledge that an offense is being committed is
6 insufficient to convict for a crime.

7 So just because it was his house, just because he
8 was there, just because he stood by while this happened
9 because he was in whatever daze he was in doesn't mean
10 that he can be convicted of these charges, and that's an
11 important thing.

12 The second important instruction that you're going
13 to be receiving in relation to these acts is the
14 principal instruction. And the principal instruction
15 basically says that if you had a conscious intent to
16 commit a criminal act and that you did some act or said
17 some word which was intended to and which did incite,
18 cause, encourage, assist or advise the other person or
19 persons to actually commit the crime, to be a
20 principal -- you could a principal to a crime.

21 And essentially what that means is that on each of
22 these charges, if he did something to participate, to
23 further these and you believe that it was proven beyond
24 a reasonable doubt, then he could be technically
25 convicted as a principal. Our position, obviously, our

1 theory is that he didn't have any involvement in these
2 ultimate crimes and the other people were motivated.
3 But in consideration of being the actual perpetrator,
4 the State, I imagine, is going to get up here and say,
5 Well, even if you don't believe Kemar did these
6 killings, if he said something to help produce these -
7 you're going to have to look at that very carefully
8 because this is a very stringent requirement when you
9 follow the principal, and I ask that you study that
10 instruction very carefully.

11 Now, I want to take a moment just to talk about the
12 crimes that have been charged, and I think I have an
13 obligation to do so and it's going to be brief. He's
14 been charged with two counts of premeditated murder.

15 As we spoke about - and I'm sure Mr. Lee is going to
16 get up here - this is a specific intent crime, which
17 means in Florida the law as it is today does not allow
18 voluntary intoxication - and I think you'll hear an
19 instruction about voluntary intoxication not being a
20 defense to a specific intent crime, and as you remember,
21 I was talking to Melissa Rivera about that. But there
22 are elements that killing with premeditation is
23 consciously deciding to do so. And you can look not
24 only at the drinking - you're really going to be told to
25 disregard the drinking, and that's legally correct, but

1 you can look at the other actions that are going on that
2 led to this mess. And if you decide somehow that it
3 doesn't fit into consciously deciding, you can actually
4 drop this down to a second degree murder and convict him
5 of second degree murder. And second degree murder is an
6 unlawful killing by an act imminently dangerous to
7 another demonstrating a depraved mind.

8 And the importance of a second degree murder is if
9 he's convicted of a second degree murder - and my
10 position is he's not guilty - but if he's convicted of a
11 second degree murder there will be no penalty phase.
12 The case is over. Your job is done. The Judge
13 sentences him there. Is no penalty -- second degree
14 murder is not a death penalty offense.

15 The other argument they're going to make is felony
16 murder, and the underlying felony murder count has to do
17 with kidnapping. And in kidnapping - this is also a
18 specific intent crime that he intended to inflict bodily
19 harm or to terrorize Alexis Sosa or Jeffrey Sosa. And,
20 again, going back to this there is a lesser included
21 offense called false imprisonment. So if you don't
22 think this applies you can disregard this and there is
23 no longer a first degree felony murder and, therefore,
24 it is not a death-eligible offense.

25 So if you determine he's not guilty of the first

1 degree premeditated murder or first degree felony murder
2 then you are to go to the second degree murder which is
3 a non death-eligible offense - and we talked about that
4 in detail with some of the witnesses in terms of what
5 they plead to and what the maximum sentences are - you
6 can consider second degree murder as a possible
7 sentence.

8 Now, one other thing that I want to talk about is
9 the independent act. Independent act basically says -
10 and this is what Mr. Brener spent a lot of time talking
11 about Jeffrey Sosa's death being separate from Alex Sosa
12 because the evidence supports that Jeffrey was killed
13 independently and apart from when Alex was killed, that
14 they went back and that he was killed at the industrial
15 site by Ant Lopez who admitted to doing that.

16 Now, Paul Nunes had testified - and this was very
17 loose testimony because he says that when he goes back
18 there's some conversation between Ant and Alex about
19 what had happened at the industrial site. And even
20 though I suggest strongly you can't believe anything
21 that Paul says, if you look at what he says, he's kind
22 of saying that Ant's kind of admitting that something
23 happened at the industrial site as opposed to saying
24 that he was there like the conversation that Kemar was
25 there when this happened. And, remember, my client was

1 extremely intoxicated at the time. And we know for a
2 fact that the second time that Lopez comes back, William
3 Arciszewski tells you that it was Lopez who said he did
4 the killing of Jeffrey Sosa.

5 So under this law, if you find that this law applies
6 that would be considered an independent act separate
7 from the other homicides dealing with both the first and
8 second degree murder.

9 Having said that, I want to talk about the forensic
10 evidence. Now, why is the forensic evidence so
11 important and why did Mr. Brener spend so much time
12 talking about it? Well, I mean, a summary of the
13 importance are this: Aside from the witnesses who
14 testified under these deals and under the circumstances
15 that I have exhausted beyond all means for the last two
16 or three hours, there was no fingerprints; no
17 footprints; no DNA; no soil comparison done; no tire
18 tracks from Kemar's car; no hair; no fiber; no bloody
19 clothing; no physical evidence that tied Kemar Johnston
20 to the industrial site at all, at all, there was nothing
21 there. And, more importantly, they had his standard,
22 they had his standard DNA to match to all of that stuff
23 which was never done on some cases and it was never
24 shown that anything at the industrial site matched Kemar
25 Johnston.

1 As importantly, there were a number of other
2 individuals who had their DNA taken that was never
3 compared to the items they collected. And you heard
4 from Crime Scene Technician Lansky and Stringham and the
5 fireman about, you know, how the scene was kind of
6 contaminated - and, obviously, that was something that
7 happened because of the circumstances - and they began
8 to make their best effort to try to contain that, but
9 there was a lot of mistakes made and there was a lot of
10 things that you guys didn't hear about. You didn't hear
11 from the footprint people. You didn't hear from all the
12 lab people. There's a lot of evidence that was not
13 given to you that you can consider in determining the
14 reliability of other evidence in this case.

15 But what's telling in this case was there a judge
16 who signed a search warrant to go to the home of
17 Duntaveous Overmyer who was the only person after this
18 incident happened that had physical evidence - there was
19 physical evidence, an injury to his hand, and some talk
20 between other people that he had actually participated
21 in the beatings. And based on that they went and
22 executed a search warrant of his home and they took all
23 kinds of things. They went into his garbage. You heard
24 Mr. Brener talk in detail about how they took mops and
25 cleaning material and, ultimately, one of the things

1 they took was a Dr. Pepper can.

2 And what is the importance of the Dr. Pepper can? I
3 mean, you know, there was a lot of laughter and fun from
4 the State side about this. But here it is, folks.
5 There's a Dr. Pepper can in Dontaveous Overmyer's
6 garbage. There's a Dr. Pepper can at the scene, the
7 crime scene. None of those were tested. The crime
8 scene wasn't tested. They didn't even get Duntaveous
9 Overmyer's standard. And you heard how careful and
10 considerate they are in obtaining standards for DNA
11 because they know they want to preserve the evidence and
12 test it at the lab. They didn't even do that. And had
13 they done that, we might not be sitting here right now.
14 And that's the importance of that piece of physical
15 evidence, the Dr. Pepper can.

16 You heard the testimony - and I went through this in
17 detail - about the forensic evidence and the issue of
18 the body being moved. If we didn't bring that out - if
19 Mr. Brener didn't bring that out on cross-examination,
20 you would have never heard it. You would have heard
21 they found two bodies and that was it. You know, the
22 arson investigator talked about the consistency of the
23 body being moved, the door being opened, the fact that
24 she took soil samples even though they had the car of
25 Kemar Johnston and they had taken soil samples from the

1 wheel base and they never compared the two although they
2 had the ability to compare the two. You heard
3 Mr. Brener talk in detail about that.

4 I mean, there was some stuff that raises a lot of
5 questions. I mean, Dr. Pfalzgraf. Dr. Pfalzgraf got up
6 here and testified that he testified differently at
7 several trials. Is that important to the ultimate
8 outcome? Well, maybe not that there were two dead
9 people, two young men, two lives that were wasted, and
10 the fact that they were murdered, there's no question
11 about that, but what about connecting that to Kemar
12 Johnston or connecting that to some of the other people
13 or the consistency or inconsistency what these
14 witnesses' story were? There are three untested
15 bullets - or three untested shots that were fired that
16 were taken from the trunk, somehow they ended up at the
17 Medical Examiner's Office and there's a demonstrative
18 aid - or, I'm sorry - there's a piece of evidence, the
19 property receipt, they sat in the property room at the
20 Medical Examiner's Office for like four months before
21 they were turned in, I mean, that's sloppy
22 investigation. And that's the kind of stuff you can
23 take into consideration when you're looking at the
24 evidence in this case.

25 I mean, we know for a fact that when Jeffrey showed

1 up Jeffrey looked like he was 18, so that kind of goes
2 to the state of mind of Ant and Paul and those guys.
3 You know, whether they showed and they were drawn there
4 or whether they showed up to commit an offense or
5 whether they showed up because they were tricked to be
6 there - who knows what happened - but this is two guys
7 that Paul said looked like they were 18 and the medical
8 examiner said that Jeffrey looked older than he was,
9 they're showing up at the party, one of those guys,
10 Alex, has a pretty bad reputation and has done some bad
11 things and then he had made threats to these guys and
12 this just breaks loose.

13 And we know that Duntaveous doesn't look like he's a
14 14-year-old. This is a kid that looks very close to
15 Kemar's size, weight, facial features, hairstyle at the
16 time, and he's the one who had the .22 in his pants and
17 a cut on his hand, and he's the one who never came in
18 here and testified nor was ever charged.

19 Now, Mr. Brener spent a lot of time talking about
20 the drag marks and going through with both Lansky and
21 Lauer and the medical examiner about how this was all
22 consistent with what we talked about that he was killed
23 at a separate time, so I'm not going to go through that.

24 Miss Strassel, actually, the Medical Examiner
25 investigator is the one who originally said, as

1 Pfalzgraf relied on this - and these are photographs you
2 can go back and look at. I mean, look at the position
3 of his body. They all said it was turned over. They
4 said that his body was not in that position and that
5 clearly his arms are locked, so he was dragged over
6 there and he was killed over there by Paul and Ant - and
7 I don't know if it was Ant who just shot him or it was
8 Paul. I think all the casings were consistent with the
9 .9 so it would seem it was Ant who killed him, but Paul,
10 clearly, was there.

11 And you heard Mr. Greenwell, when Mr. Brener was
12 cross-examining him, say how he thought that it was very
13 important that they test these three untested bullets
14 that were taken from the trunk of where Alex was shot.
15 That could tell us, that could tell us - I think
16 Mr. Brener - and Mr. Brener is much better at this, and
17 I know some of you have forensic backgrounds and were
18 taking very good notes, but I think Mr. Brener had
19 brought out that the .38 was a class, a certain class
20 which is consistent with not only being able to fire in
21 a .9 but you can also fire in a .40. So if these three
22 were consistent with the .40, guess what, who's the one
23 that admitted they had a .40. That would blow this
24 witness - the only other witness who claimed to see
25 shooting, although he didn't know who it was, and placed

1 Kemar at the scene, that would blow him out of the water
2 because, guess what, that would be consistent with a gun
3 match to his .40 and, guess what, he's the shooter.
4 These are the kinds of forensic things that you need to
5 look at when you're considering what we talked about,
6 the reasonable doubt instruction.

7 And you heard how they executed a search warrant on
8 Alex Fernandez's car and that there was positive for
9 Luminol. And they checked the trunk and there was a
10 receipt, a Good Will receipt where he had sold some
11 clothes - does that have anything to do this? I don't
12 know. Did he get rid of some bloody clothes he had? I
13 don't know. We know that he got rid of his bloody shoes
14 because the police don't have them, you never saw them
15 and he admitted he got rid of them. And that's
16 important because the forensic issue here is if he's
17 shooting and he's in close range, Greenwell talked about
18 something called blowback, and blowback is something
19 which he admitted he didn't test the guns for - I think
20 he was the last guy to get in the chain of the evidence
21 collection and testing, he's like the last guy to get
22 the stuff. So it's already probably unable to check for
23 blowback. But blowback is basically when you shoot
24 somebody and the blood spatter gets into the gun. And
25 there's evidence that you can check for DNA that would

1 have shown that that gun was used by Alex Fernandez and
2 that it had Alex's blood on it.

3 We talked about -- we called Dahowski - Mr. Brener
4 called Dahowski who did the search at the 9th Avenue
5 house which is Duntaveous Overmyer's house, and he told
6 you how they had, because they were using some old
7 Luminol testing that they had destroyed something - I
8 don't know if it was a paper towel or some item - and
9 that there was never - they drew some stuff from the
10 drain but that it was never sent to the forensic lab.
11 And we already talked about the wheel well samplings
12 done by Christy Ellis. And you heard testimony from
13 Miss Ordeman at the DNA lab that this Dr. Pepper can was
14 never tested, period. That's important stuff, folks.

15 I mean, this may not be a forensic case, but the
16 forensics is what supports their evidence. This is the
17 stuff where they said, Oh, guess what, he says Kemar was
18 there, and, Guess what, we have proof because the
19 samples from the soil match up with the soils from that
20 location, they're consistent with each other, and, guess
21 what, we have some other evidence that was found, you
22 know, that show that Kemar touched the gun because we
23 have his DNA from the gun, and we have some more
24 evidence; that's the kind of reliable evidence that you
25 want when you have a case like this, when you're talking

1 about life or death, when you're talking about this is
2 the end of the road, this is the final decision that you
3 have to make.

4 This is not the kind of case you want to call a
5 bunch of kids who were threatened; who were conjoled;
6 who had every motive in the world to lie; who admitted
7 to lying; who changed their story dozens and dozens of
8 times; who gave thousands and thousands of pages of
9 transcripts and, ultimately, came in here and, as you
10 judge their credibility - I'm assured that you have
11 great questions in your mind about their credibility -
12 that you're going to rely on this prosecutor getting up
13 here and saying, Guess what, you know, you put one, you
14 put two, you put three; Maybe not three of them were
15 telling the truth, but put all five of them, they're
16 telling the truth. Piece it together what he's actually
17 saying. Listen carefully to the argument he's going to
18 make, and then look at that in conjunction with what the
19 law says. It doesn't make sense. It doesn't come
20 together. But that's all they have. That's what they
21 have to do. And that's why it's important that you
22 really study the law in this case and think about what
23 their argument is and think about what has been shown to
24 you in this case.

25 Now, I want to talk a little bit about some of the

1 things Miss Doerr talked about in her closing argument.
2 First of all, I think my client was the only one who had
3 a job, so whatever she said disparaging about that, he
4 was the only one who was working as a dishwasher.

5 It was Rod Washington, who's Paul Nunes' good friend
6 and Ant's buddy who poured the bleach.

7 Unlike she said Kemar was leaning over this body
8 when Paul Nunes says he comes out of the room; he
9 doesn't say Kemar, he says there was three people, he
10 doesn't even identify those. And we don't even know if
11 we can believe what he's saying based on what all the
12 contradictions he gave, but, also, you heard the
13 testimony that if it was the .22 rifle that was being
14 fired, I think Greenwell said it would be kind of quiet,
15 not a whisper, but kind of quiet. So if there was music
16 going on or if he was in another room, he may not
17 necessarily hear it.

18 She told you Ashley Toye is one of the people who
19 carved the asterisk and it was Melissa who also carved,
20 two of the females.

21 And then, at some point, she said - and I don't
22 remember who she was talking about, but she says perhaps
23 being shot. I thought she had said Nunes said perhaps
24 he had shot. She used the word "perhaps." And I wrote
25 that down because I thought maybe she doesn't believe

1 her own witness. And I wouldn't believe these
2 witnesses. I've given you two and a half hours of
3 reasons not to believe these witnesses.

4 Now, I told you at the very beginning of this I was
5 going to make suggestions of what I think is important
6 as jurors for you to do, and, obviously, you can take it
7 with a grain of salt, you can not take it. But if I was
8 you, I would go back there and I would ask the Judge for
9 a big board and I would sit down and I would openly talk
10 about the witnesses that they are relying on in
11 conjunction with the law. And I would designate people
12 to look at the law and be the ones who help explain the
13 law, interpret the law, focus on the law. And the
14 people -- I think you all should put your notes together
15 because you've all been taking really good notes and
16 look at the facts. And I think when you start doing
17 that and looking closely at what all these witnesses are
18 doing you may come up with our own theory that has
19 nothing to do with neither Kemar or Ant. I would
20 suggest differently, but I think if you follow the law
21 and spend the time that is necessary to look closely at
22 this case it will become clear to you that when I
23 discuss this issue of abiding conviction - and that's
24 what we're talking about, it's talking about putting the
25 emotion aside; putting the anger aside; putting the

1 thoughts of, you know, what a waste, so tragic, I mean,
2 this kid, what was he doing in this situation; it's
3 horrible - putting all that aside and really focusing on
4 the issues at hand and being the kind of jurors that we
5 know that you are.

6 Because this is a man's life we're talking about.
7 This is the end of the road on a decision - a very
8 important decision in Kemar Johnston's life and it's
9 going to affect the life and, perhaps, the death of
10 Kemar Johnston. And you have to rely on only the real
11 concrete evidence; the evidence that you trust, the
12 evidence that you believe supports an abiding
13 conviction.

14 Now, I want to take a moment to talk about Mr. Lee.
15 I'm not going to have an opportunity to get back up here
16 and respond to Mr. Lee's rebuttal. So when I sit down
17 I'd ask that you respectfully listen to Mr. Lee as you
18 have done with me and pay the kind of attention that
19 you've given me, but I'd also ask you to conscientiously
20 think about what I would respond or how I would respond
21 to some of the things that he was saying based on my
22 last three hours' of argument because I'm not the going
23 to have an opportunity to come back here, I'm not going
24 to interrupt him and try to say, you know, a speaking
25 objection. That's just not what I do.

1 Mr. Lee is a very, very competent, experienced
2 lawyer. He has a different style. He's very folksy.
3 I'm sure he's going to tell you some stories that he's
4 going to try to tie into his argument. You know, he's
5 going to talk about the differences that we talked
6 about, consistencies and inconsistencies. I'm sure
7 he'll bring up, like he did with some of the witnesses,
8 that some of those people weren't on trial, this is all
9 you have to focus on, and he's going to try to take your
10 focus on the testimony at hand. And he's going to keep
11 going back to that this is what is they said. And I
12 want you to remember whenever he said, Well, this is
13 what this person said; Well, that's consistent with what
14 that person said. Think about everything that I argued
15 about how we got to this point. But just because you
16 say it, don't mean it's so. I mean, that's what we're
17 really talking about here. Just because a bunch of
18 people say something doesn't mean that it's so. And
19 that's what you've got to look at here.

20 I mean, we have a plethora of evidence in our
21 history that talks about how multiple people have, you
22 know, accused other people of doing things in our own
23 criminal justice system; in the historical perspective
24 criminal justice; in the witch hunts of, you know, the
25 Northeast where, you know, Witch; Witch; Witch;

1 Everyone's a witch, and you've got everybody on a
2 bandwagon because maybe one person's afraid they're
3 going to be because they're friends with them and that's
4 the way they save their skin.

5 I mean, we have to be really careful here, folks.
6 There is no returning from this. There is no returning
7 from your decision that you're going to make today,
8 tomorrow and the upcoming days.

9 I really appreciate the attention you've given me
10 over the last three hours. I thank you for your
11 dedication to the community and for agreeing to take the
12 journey that you've taken because it really begins in
13 about, you know, two or three hours when the Judge
14 instructs you on the law and then it will be in your
15 hands and then it will be your responsibility to make
16 the most important decision in my client's life.

17 I appreciate, respect the time you've put in. I
18 understand that this has been something that has
19 impacted this community directly and has caused a great
20 deal of pain for many, many people. And I know that you
21 are going to be the final say, the outcome as far as
22 Kemar is concerned, and I trust in your decision and I
23 thank you.

24 THE COURT: Could we --

25 MR. LEE: Could we, perhaps, take a moment, Your

1 Honor, to rearrange things?

2 THE COURT: Yeah. I think we need to move some
3 furniture around.

4 Step into the jury room, please.

5 (THEREUPON, THE JURY EXITS THE COURTROOM.)

6 (THEREUPON, THE JURY ENTERS THE COURTROOM.)

7 THE COURT: The State may proceed.

8 MR. LEE: Thank you, Your Honor.

9 Good afternoon.

10 JURY: Good afternoon.

11 MR. LEE: The starting point for my comments to you
12 is going to be the law. The standard in this case, like
13 every case, is reasonable doubt. Now, the Court is
14 going to instruct you - and you have seen some of this
15 already - that a reasonable doubt is not a mere,
16 possible doubt, it's not a speculative, imaginary or a
17 forced doubt. In fact, such a doubt, that is, a
18 possible doubt, a speculative doubt, an imaginary or a
19 forced doubt, should not influence you to return a
20 verdict of not guilty if you have an abiding conviction
21 of guilt. Now, that reasonable doubt standard is your
22 starting point, and that's your measuring stick, that's
23 the law in this case, and it's really important that you
24 keep that in mind because this is a serious case.

25 When I met with you the very first time and we had

1 our jury selection, I asked a juror, because this is
2 such a serious case, understanding that reasonable doubt
3 is the standard, wouldn't you want to have all doubt
4 removed? Wouldn't you want to make sure that there was
5 no doubt that you were absolutely certain? And then the
6 juror, of course, said yes, as would we all. But the
7 standard in this case, like every criminal case in the
8 United States for 200 years or more, is reasonable
9 doubt.

10 And I also asked you if you didn't like the law,
11 would you, nonetheless, follow it? And this is a
12 difficult law, at least in theory. But when you
13 consider the evidence, one of the tools that you have is
14 your good common sense. You're going to hear the Judge
15 instruct you that you are to apply your good, common
16 sense to the evidence.

17 Yes, you were chosen. You were chosen by both sides
18 in this case. And one of the things that the State
19 looked to was good, common sense and courage, and to be
20 on this jury and to deliberate, it's going to take both.

21 The common sense and the reasonable doubt that you
22 apply, though, is to the elements of the crime, and to
23 the elements of the crime only.

24 I mentioned to you when I first met you and we had
25 our jury selection process about the Mel's Diner

1 situation, okay, and I did that and I gave you that
2 example to try to understand or help you understand how
3 the elements of the crime apply to your deliberations.
4 Remember I said that, Let's assume you were on a jury
5 and you were called upon to determine if a particular
6 individual went to Mel's Diner and had a bacon, lettuce
7 and tomato sandwich, and then I purposely told you one
8 witness said it was a bacon, lettuce and tomato sandwich
9 and the individual had a Diet Coke and french fries, and
10 then another witness said clearly a bacon, lettuce and
11 tomato sandwich but they had it with chips and a milk
12 shake.

13 Now, I did that to help you understand that the
14 element in that case was bacon, lettuce and tomato and
15 that there would be, in this case, just like in that,
16 other issues out there that might puzzle you, that might
17 bother you, that you might want to know answers to. But
18 if you are to do your duty and follow the law as the
19 Judge instructs you, your focus has to be on the
20 elements of the crime charged against that Defendant.
21 It's not that complicated, really.

22 So when you go back there, you'll have all the
23 instructions, I would encourage you to follow that law,
24 look at it carefully, remember who's on trial here
25 today; it is Kemar Johnston, that's who you're to focus

1 on, and not Duntaveous Overmyer or a whole host of other
2 people, but the Defendant, that is what your duty is.

3 I was, admittedly, very troubled as I listened to
4 the Defense comments, and I was troubled because over
5 and over I heard labels affixed to people. I heard
6 labels; human beings called liars, dope dealers, thugs,
7 evil ones, during the trial I heard, deal with the
8 devil. And I was troubled when hurtful labels like that
9 are applied because labels that is classifying, grouping
10 people together into a bunch depersonalizes them and
11 discards them because they're part of this group,
12 they're one of them.

13 Common sense tells you human beings make mistakes.
14 Has every human being who's ever lived - with the
15 exception of you folks - ever said something that was
16 false at some time in their life? Of course. Does that
17 mean that every human being is a liar? Of course not.
18 And to simply start labeling people is an appeal to your
19 emotion so that you would then discard their testimony
20 and it is contrary to the law.

21 Now, hears what the law says about that. Under
22 Rules for Deliberations - and you'll get a copy of
23 these - the Judge is going to instruct you that this
24 case must not be decided for or against anyone because
25 you feel sorry for anyone or angry at anyone. Your

1 verdict should not be influenced by feelings of
2 prejudice, biased or sympathy. Your verdict must be
3 based on the evidence and on the law contained in these
4 instructions.

5 So to label people to try to appeal to your emotions
6 is to attempt to get your focus off of these individuals
7 as individuals, as human beings with the mistake they've
8 made. And I would encourage you to look at each one
9 carefully, each one that testified in this case.

10 Now, the Defense has asserted that this is a journey
11 to reach the truth. I would agree. But what is the
12 destination for this journey? That's what matters. The
13 destination for this journey is whether or not the
14 Defendant, Kemar Johnston, is guilty or innocent; that
15 is your goal --

16 MR. LENAMON: Objection as to -- objection, Judge.

17 THE COURT: Counsel, approach, please.

18 MR. LEE: I'm sorry, guilty or not guilty --

19 MR. LENAMON: Okay.

20 MR. LEE: -- perhaps that's the issue.

21 MR. LENAMON: That's the issue.

22 THE COURT: Go ahead.

23 MR. LEE: Guilty or not guilty.

24 Now, since it was suggested that I like folksy
25 tales, it's hard for me to resist. We have a river out

1 here, and one of the ways that a captain or a pilot in a
2 boat stays on a straight course is he looks at a marker
3 on the shore - could be a steeple, could be a tall
4 tree - and he focuses on that marker, and that's how he
5 stays on course.

6 This river, long before we had GPSs, they had
7 something called range markers out there, and what a
8 range marker is is when one of these ships that comes
9 across the state through the canal system comes down the
10 Caloosahatchee, at night, especially, they actually have
11 markers lined up and the captain then lines those
12 markers up in a straight line. And as long as he stays
13 and sees them lined up like that, he's know he's in the
14 channel.

15 Well, so, too, in this case, your range marker, your
16 marker, your goal should be is the Defendant guilty or
17 not guilty in accordance with the law. That is your
18 focus.

19 Now, there have been a lot of objections made in
20 this case - there was one made just a moment ago.
21 Please understand - and the Court, I believe, gave you
22 an instruction along these lines at the very beginning
23 of the case, and that is the lawyers are trained in the
24 rules of procedure, and we have rules of procedure
25 designed to make sure trials are fair. So the Defense

1 has made objections and so have we. To assert that
2 either side is hiding something is not accurate. So to
3 suggest that the State made objections when particular
4 witnesses were testifying to hide something is just not
5 in accordance with what the rules and the reality are of
6 a trial. We have rules so we have fair trials. There
7 are some things that are appropriate for a jury to see
8 and some things that are not, and that's not up to me,
9 it's not up to the Defense, that's up to the rules;
10 that's what we live within.

11 The Defense, in a very aggressive fashion, has put
12 forth their belief as to what happened, and Counsel said
13 that numerous times, he believes this is what happened.
14 Ladies and gentlemen, I don't want you to consider what
15 I believe, I want you to consider the law and I want you
16 to consider the evidence; that's what I want you to look
17 at, not my belief.

18 Now, there has been a belief presented to you that a
19 group of individuals known as the Chico Unit are the
20 real killers here, that they're the ones that actually
21 did all this, and it started, according to the Defense a
22 few moments ago, with testimony - excuse me - with the
23 belief of Counsel that Andrew Touchstone hit Alexis Sosa
24 over the head rendering him unconscious and probably
25 killing him, is the belief that was put before you, and

1 that he was then taken to the industrial site by the
2 Chico Unit and somehow, I guess, killed, Jeffrey Sosa
3 was also kil- - I don't know, I have a tough time
4 piecing it together because there's no evidence of any
5 of that. Consider what there is evidence of. The
6 medical examiner testified to the cause of death of both
7 victims, not blows over the head, gunshot wounds,
8 gunshot wounds.

9 So the belief of the Defense related to Andrew
10 Touchstone, who denied that he hit anyone over the head,
11 is not supported by the evidence. And the Chico Unit,
12 well, who do we know went there? Alex Fernandez, Paul
13 Nunes, they're not part of this Chico Unit. The ladies
14 who were there - Iriana Santos, Melissa Rivera, Ashley
15 Toye, his girlfriend, they're not part of the Chico
16 Unit. The evidence you have tells you who was there and
17 none of these other people, there's no evidence that
18 they were there, there simply is no evidence of that.

19 And understand, let's say - and I hate to go down
20 this road too far, but let's say Duntaveous Overmyer was
21 there - now, there's no evidence that he was ever there,
22 nobody ever testified that he was ever there, no
23 physical evidence puts him there, the witnesses who were
24 there do not put him there by their testimony, but let's
25 just assume for a moment that he was. This does not

1 eliminate the evidence against the Defendant. It may
2 add another person at the scene who has their own
3 criminal liability but, please understand, your focus,
4 your range marker is what did the Defendant do or what
5 didn't he do; not what other people did or did not do.

6 I heard testimony - excuse me - I heard beliefs
7 dealing with a .40 caliber that Ant - this is Kenneth
8 Lopez - believes his mind that he used the .40 caliber
9 to kill the Sosas. There was no evidence or testimony
10 about a .40 caliber. The bullets and all the shell
11 casings that we have are the .38 - or excuse me - the
12 .380 and the .9 mm. Now, that's a very different gun
13 than a .40. Those measurements - the .380 and the .40,
14 that sort of - that goes to the dimension, the size of
15 that opening of the gun. And there's no testimony from
16 the State's expert about the shell casings or the
17 bullets that were found there being compatible with a
18 .40.

19 MR. BRENER: Objection, Your Honor.

20 MR. LEE: What we --

21 MR. BRENER: May we approach?

22 THE COURT: Yes, sir.

23 (THEREUPON, THE FOLLOWING BENCH CONFERENCE WAS HAD OUTSIDE
24 THE PRESENCE OF THE JURY; THE DEFENDANT WAS NOT PRESENT.)

25 MR. BRENER: I apologize for having to object during

1 his closing argument, but there was testimony that .40
2 caliber is included in .38 caliber class bullets and
3 there were unmatched .38 caliber class projectiles found
4 at the scene that can neither be eliminated nor
5 identified to the Glock or the .380, so that's a
6 misrepresentation.

7 MR. LEE: My recollection of the testimony was that
8 the .38s can be fired in the .9 or the .380, but I
9 recall no testimony about a .40.

10 THE COURT: Objection's overruled.

11 MR. LEE: Thank you, Judge.

12 MR. BRENER: Judge, he's --

13 THE COURT: Your objection's overruled, Counsel.
14 Please be seated.

15 (THE BENCH CONFERENCE CONCLUDED.)

16 MR. LEE: A few moments ago the Defense asserted
17 just because you say it doesn't mean it's so. Well, I'd
18 agree 100 percent. Look at the evidence. The testimony
19 from the firearms expert was that the .9 mm. and the
20 .380, there were shell casings, there were bullets that
21 were compatible, nothing about a .40. A .40 is a much
22 larger diameter.

23 Now, I would encourage you to rely on your
24 collective memory of the evidence and your notes, not on
25 what I tell you, not on what the Defense tells you, and

1 that's partly because we're advocates, that's our job,
2 we advocate the position for our client - I represent
3 the people of the State of Florida, and so I'm an
4 advocate that way; they represent Kemar Johnston. You
5 folks are the experts in the evidence now - that's going
6 to be your role, and that is your role. So I would
7 suggest that you do that; put your minds together, look
8 at your notes.

9 Now, there was an issue about how the body of
10 Jeffrey Sosa was moved. Clearly the physical evidence
11 shows that that was not his resting place for at least
12 enough time for rigor mortis to set in. The medical
13 examiner, the investigator for the medical examiners
14 testified that because of the lividity, that is the
15 blood pooling within the body after death by gravity,
16 and the rigor mortis, that is the stiffness that you see
17 in the photographs, that that body had to have been
18 moved in some fashion from where it was ultimately found
19 with the hands, I think it was kind of like this
20 (indicating).

21 Well, again, if we move out of the realm of
22 speculation and we look at what the evidence actually
23 is, we have a witness testifying to the guns, the
24 Defendant firing into the trunk. We have testimony
25 about individuals firing into a body on the ground.

1 Candidly, that same witness doesn't say it was the
2 Defendant. He says there was a body on the ground and
3 they were firing into it.

4 What we also know is that before the firemen
5 discovered the body, they dumped high pressure water on
6 that car and that fire, and when you look at where the
7 body is, he's right behind the car, sort of between the
8 car and the slope, and the firefighters are all on the
9 other side because the slope is between - let's see, you
10 have the slope, you have the body and then you have the
11 car. So common sense tells you that as that pressure
12 from those fire hoses were there, there's a high
13 likelihood that that body rolled that way. That's the
14 explanation. Now, is that a common sense explanation?
15 Yes. Is it positive proof? No, it's not. But it is
16 consistent with what we know about that scene.

17 The Defense has repeatedly challenged me, one of the
18 assistant state attorneys in this case, to explain to
19 you why various individuals received the plea agreements
20 that they received - quote, Maybe Mr. Lee can explain
21 why some individuals got the numbers of years they got.
22 Now, that's a very safe challenge, and it's a very safe
23 challenge to the State for several reasons; one, he
24 knows that under the rules and under the Court's orders,
25 I can't discuss that with you. There's all kinds of

1 dynamics and reasons that go into that. I'm not
2 permitted to. Second, it's really not relevant to the
3 matter of Kemar Johnston. And if I went there, I would
4 be buying right into letting you move your focus on to
5 these other people and what they did or didn't do and
6 whether their sentence is fair or not. And you can
7 debate that, but that's not what your goal is in this
8 case, it is what the Defendant did or did not do. So I
9 wouldn't go there even if I could because it would take
10 the focus off of the Defendant. But I can't. So that
11 was a pretty easy challenge.

12 Now, the real central issue in all of this is the
13 credibility of the kind of witnesses that have come
14 before you; that's really the most important in this
15 case. And the State agrees with the Defense that, taken
16 individually, any one of those witnesses has credibility
17 issues. I mean, after all, they were involved in a
18 party using illegal drugs and alcohol. They are clearly
19 bias; there's no doubt about that. They are trying,
20 initially, to protect themselves. Some of them, because
21 of the plea agreements, are motivated throughout the
22 entire time to protect themselves. They're also trying
23 to help their friends. The event is two and a half
24 years ago. Most of the witnesses, but not all, were
25 involved in the very criminal activities that Kemar

1 Johnston is charged with. Using good, common sense, of
2 course there is a question about their credibility. But
3 I would recommend a couple tools for you as you look at
4 the various witnesses - and, again, I would encourage
5 you to look at them individually, don't group them
6 together, don't buy into labels, but look at each one as
7 a person and use your good, common sense as you assess
8 the testimony of them.

9 First, focus on those individuals who were not
10 co-defendants, who were not involved in the criminal
11 activities, that is, the beatings or the tying up, the
12 kidnapping, or the torture or the murder. The State
13 presented William Arciszewski and Jennifer Dunning. So
14 look closely at their testimony because, yes, there was
15 some alcohol and drugs involved with their recollection
16 and, yes, it's two and a half years, but the bias issue
17 is quite different for them than it is for some of the
18 others.

19 And then when you look at those people who were
20 co-defendants, that is those individuals who were
21 involved in the same behavior, the same criminal acts
22 that the State has charged this Defendant with, look
23 very carefully for corroboration.

24 When I met you the first time I was very candid with
25 the jury as a panel out here, How do you feel about the

1 fact that the State might have entered into a sweetheart
2 deal with somebody who was involved in the same kind of
3 activity and now they cut a deal and they come in and
4 testify? And the sense of the entire jury panel was
5 again, a very common sense reaction, and that reaction
6 was, you know, they weren't happy about it, they were
7 going to look carefully at that, but everyone agreed
8 they would consider it, but consider it cautiously, and
9 I, again, recommend you be very cautious. You've heard
10 the instruction on accomplices. That instruction that
11 you're going to hear again from the Judge that the
12 Defense read to you tells you you should be cautious,
13 and the State also would agree with that.

14 Many of these witnesses were attacked when they were
15 on the stand for making misstatements a lot. They were
16 rightfully attacked. Whenever they lied they should
17 have been challenged and applaud the Defense when they
18 did it. These individuals who involve themselves in
19 these kind of criminal activities when they didn't tell
20 the truth, when they varied, the Defense had every right
21 to challenge them, and I don't fault that for a minute.
22 The State of Florida does not defend these individuals,
23 we have prosecuted them, but that does not mean that you
24 cannot consider their testimony and when it lines up
25 with other witnesses' testimony and when it lines up

1 with the physical evidence that you have that you can
2 rely upon it, and that's what I would encourage you to
3 do.

4 Understand that the State of Florida did compromise
5 and did enter into plea agreements with many of these
6 individuals, but it was the only means that we could
7 present to you, the jury, what happened that night.
8 That's the only kind of testimony we had. As Miss Doerr
9 said, when this man made the party list, when he made
10 the list of the people coming to his party, he made the
11 list of potential witnesses the State could look to to
12 testify what happened. We would have preferred better
13 quality witnesses - Miss Doerr said that - but we're in
14 the real world and we have to work with what we've got.

15 The Defendant committed these awful crimes along
16 with and in front of his friends, his associates, his
17 partygoers. He committed these awful crimes in front of
18 them and, one by one, the State has prosecuted them.
19 Did we prosecute everyone? No. Is this a perfect
20 investigation and a perfect prosecution? Absolutely
21 not. We have to use what we have available. Using
22 20/20 hindsight, meaning if you look back at what
23 happened, you always have perfect vision. It's very
24 easy to second-guess the police in how they handled this
25 and the State Attorney's Office and how we've handled

1 it. It's very easy to do. And it's not a perfect
2 investigation or a perfect prosecution. We have done
3 the best we could with what we had available, thanks to
4 the Defendant and his co-defendants, to present the
5 truth to you and present the evidence in a fair way.

6 Think also about this. The Defense would like to
7 pick and choose what they want you to believe and what
8 they don't want you to believe. With these various
9 co-defendants, whenever they made statements that were
10 impeached or whenever they made statements that were
11 favorable to their beliefs, such as the one statement by
12 one person saying that they thought they saw Duntaveous
13 Overmyer with a gun, they want you to believe, now, that
14 witness. But whenever they say something damaging
15 against their client, they want you to disbelieve that.
16 For example, Mr. Nunes testifying to Andrew Touchstone
17 that there was a .40 caliber handgun at the party,
18 despite Mr. Touchstone saying he never had such a
19 weapon, well, they attack Mr. Touchstone repeatedly,
20 they attack Mr. Nunes repeatedly, but they want that one
21 to be believed by the jury.

22 Mr. Nunes' statements are highly, highly
23 questionable, there is no question about that, he is a
24 convicted murderer. And the State would never suggest
25 that you just take on faith everything the man said or

1 any of these witnesses. Look and trust his statements
2 only when it is corroborated by other witnesses and the
3 and the physical evidence, that is what I would
4 encourage to you do. And when he says something that is
5 not corroborated by other witnesses then, by all means,
6 look at it very skeptically.

7 It was suggested that Michael Balint lying in his
8 proffer and his admission to that means that you should
9 just disbelieve everything he said. Well, in his
10 proffer, he pointed out that he said Paul Nunes and
11 Kenneth Lopez may have had, may have gotten a handgun -
12 not did, but may. And then the Defense, very, very
13 appropriately, challenged him on it and he agreed that
14 he had lied about that. Now, I could play semantics
15 with you and I could suggest, well, he said, "may" in
16 the one and that doesn't mean that he was absolut- - no,
17 I'm not going to do that. He was rightfully challenged
18 over that. But despite an hour and a half of
19 cross-examination, he was not contradicted on his
20 testimony about what the Defendant and what he saw the
21 Defendant doing that night. No contradiction when
22 Mr. Balint said it was the Defendant who told him to tie
23 up Alexis Sosa, and that testimony of Mr. Balint is
24 confirmed by other witnesses. Should you believe
25 everything Mr. Balint says? No. But what he says, when

1 corroborated by other witnesses and the evidence -
2 because you've seen the black rope on the ankles of
3 Jeffrey Sosa, the shoestrings - you can rely on that.
4 But use your good, common sense and, please, be cautious
5 about this.

6 It is vital that you understand that the Defendant
7 and these co-defendants had an impact on the evidence
8 that is now being presented to you. The State entered
9 into plea agreements and they are tight contracts, there
10 is no doubt about it. And before we did that, we took
11 sworn statements from them, we wanted to know precisely
12 what they were going to say and we wanted to compare
13 that with the other evidence and the other statements,
14 and then we negotiated, entered into agreements, and we
15 brought them before the Court and, as Mr. Nunes
16 testified, the Court then reviewed it and accepted those
17 pleas --

18 MR. LENAMON: Objection.

19 MR. LEE: -- they are tight.

20 MR. BRENER: Objection, Your Honor.

21 THE COURT: Excuse me?

22 MR. BRENER: May we approach?

23 THE COURT: Yes, sir.

24 (THEREUPON, THE FOLLOWING BENCH CONFERENCE WAS HAD OUTSIDE
25 THE PRESENCE OF THE JURY; THE DEFENDANT WAS NOT PRESENT.)

1 MR. BRENER: Once again, Mr. Lee has suggested that
2 the Court, by accepting a plea, has somehow found the
3 Witness to be credible and we're going to renew our
4 motion for mistrial based on the cumulative error of
5 having suggested that, now, twice in this trial.

6 THE COURT: Your motion's denied.

7 MR. BRENER: May I ask the Court to --

8 THE COURT: Your objection's sustained.

9 MR. BRENER: We would ask the Court to instruct the
10 jury that by accepting a plea offered by a defendant,
11 the Court in no way makes any credibility determination
12 about the witness' subsequent testimony.

13 MR. LEE: This was testimony that came in after the
14 Defense opened this door and it was permitted in because
15 of that when they challenged --

16 THE COURT: No. No special instruction.

17 (THE BENCH CONFERENCE CONCLUDED.)

18 MR. LENAMON: Your Honor, the objection is
19 sustained?

20 THE COURT: Yes, the objection's sustained.

21 MR. LENAMON: Thank you, sir.

22 THE COURT: Request for special instruction is
23 denied.

24 MR. LENAMON: Thank you.

25 MR. LEE: Now, were these tight plea agreements that

1 the State entered into necessary? Absolutely, they were
2 necessary. Were they tight and did they provide that
3 they had to testify truthfully in accordance with their
4 proffers, their sworn statements? Absolutely. These
5 are his friends, his associates and, as has been pointed
6 out so clearly, they were motivated for a whole host of
7 reasons why they might change their testimony or lie.

8 And so, yes, I make no apologies for the tight plea
9 agreements that we have in this case, but were they
10 sweetheart deals? Michael Balint and Cody Roux got 14
11 years each; Melissa Rivera, 20, she'll every see her
12 little children grow up; Alex Fernandez, 26, and Paul
13 Nunes, 40, 40 years. These are not sweetheart deals,
14 these are stiff deals. And I make no apology on behalf
15 of the State of Florida for it. They were done to
16 present the evidence to you.

17 Also understand that the quality of the evidence has
18 been affected by the Defendant and his co-defendants in
19 another way. They eliminated or destroyed the potential
20 evidence that the State had available. Remember, it was
21 the Defendant's girlfriend, Ashley Towe, and Melissa
22 Rivera who used bleach to clean up the apartment after
23 these crimes occurred. So when the State -- when the
24 police come in and try to get DNA, that DNA isn't there
25 anymore because of that.

1 The next day, bags of garbage were thrown out.
2 That's why we brought Mr. Lynch in so you could hear
3 from somebody who saw these bags being taken out of the
4 apartment and dumped into the trash, so that, again,
5 when the police come in and forensically look, there is
6 no link because the evidence has been destroyed by the
7 Defendant and the co-defendants.

8 That night, what happens to our evidence at the
9 scene, the Lexus and the two bodies? Two of the
10 co-defendants go back out there and they set fire to it.
11 Fortunately, they forgot to put Jeffrey Sosa back in the
12 trunk and destroy that evidence there, so we were able
13 to show you his body, show you the shoestrings around
14 his ankles that corroborates the testimony of a number
15 of the witnesses, starting with Mr. Balint, and we're
16 able to show you the awful markings on his back. But if
17 they had put him in the trunk, put him back in there, we
18 would not have had that, either, to corroborate. We do
19 the best we can with what evidence is available. And
20 much of the reason that the Defense has attacked our
21 lack of physical evidence comes back to roost over
22 there, that's where the evidence was destroyed, but,
23 nevertheless, nevertheless, that evidence is compelling
24 against the Defendant.

25 I would ask you to consider and trust the

1 consistency, not of everything they said, but those
2 areas where there is consistency between more than one
3 witness and with physical evidence, you can trust that,
4 but I'd also suggest that you can trust the
5 imperfections. Now, the Defense commented on that
6 because they know when you apply common sense to the
7 kind of testimony that you heard, that common sense is
8 going to tell you that it wasn't fabricated, that it
9 was, in fact, truthful.

10 But let's first deal with the consistencies. Miss
11 Doerr went through all of that testimony and showed you
12 on the board here all of the consistent testimony and
13 how it lined up both with the various witnesses and with
14 the physical evidence. And there is a lot of evidence
15 in this case that is corroborated by different
16 witnesses, and I would encourage you to check your notes
17 and go through that.

18 The co-defendants' statements are often sketchy on
19 the details, but I would submit that that's a sign that
20 they're being truthful. Now, why do I say that? Well,
21 they're almost all intoxicated in some fashion that
22 night. The natural reluctance of a person is not to
23 admit to his misbehaviors or that of his friends, yet,
24 many, if not all of them, testified in a very, very
25 consistent fashion on these core issues that you saw

1 with the display by Miss Doerr. And, again, remember
2 that a number of these people were not under plea deals,
3 they were here subpoenaed, most of them didn't want to
4 be here, but Michael Taylor, Andrew Touchstone and, most
5 importantly, William Arciszewski, Jennifer Dunning and
6 Alex Suarez, none of those folks were under any plea
7 agreements and they weren't charged.

8 Now, why should you trust these imperfections?
9 Let's visit with that just a little bit, and I'm going
10 ask you to collectively gear up your common sense as I
11 go through this because this is really an important part
12 of why the State is suggesting to you that you can trust
13 some of what these witnesses say based upon your good
14 assessment of them as people and as you saw them
15 testify.

16 If their testimony was fabricated or planted by the
17 police or the State Attorney's Office - because that's
18 ultimately what the suggestion is is that the police
19 initially told these witnesses what to say or that,
20 perhaps, they got a hold of all their discovery - you
21 saw the big stack of depositions and everything and they
22 went through all of this, and so that then when they
23 entered into their plea agreements they filled in what
24 they thought the State wanted to hear, that's what the
25 suggestion is.

1 Well, common sense would tell you that the witnesses
2 would testify the same way to the same things in roughly
3 the same words if they had been told what to say. Why?
4 Because there's a common source, either the police or
5 the State Attorney. So we're going to tell them what to
6 say and you would expect that they would come in and,
7 almost like robots, repeat what they've been told to
8 say. But that is not what you heard. For example, how
9 many cell phones were played that night? I don't know
10 and I'm sure you don't know, either. What an easy thing
11 that would be to fabricate and to instruct witnesses on
12 what to tell you jurors. It would be an easy thing -
13 All right; Listen folks; We know there were two or we
14 know there was one or we know there were three - very
15 easy thing to fabricate. But that is not what you
16 heard. Why? Because some of these witnesses heard one;
17 some heard more - at least that's what it looks like -
18 but nobody coached them, that's the important thing.
19 They weren't told what to say. They were testifying to
20 what they heard. Some were there. Some were out back.
21 Some were in bedrooms. These people at this party were
22 all moving around.

23 If it was rehearsed or planted it would be very easy
24 to stage. For example, did certain people such as
25 Andrew Touchstone or Duntaveous Overmyer or Bennie Vines

1 or others punch Alexis Sosa or break bottles or plates
2 over their heads? Well, it would be easy to coordinate
3 that. It would be easy if the police or the State were
4 all trying to organize this case to get him. It would
5 be easy to do that; we'd tell them, Look, make sure you
6 remember - wink, wink - that it was Kemar Johnston who
7 did that. That's an easy thing to do. But you did not
8 hear that because that is not the truth and no one
9 coached or rehearsed them.

10 Virtually every partygoer lied to the police
11 initially; no doubt about it. Should that really
12 surprise us? No. No. These are self-absorbed, young
13 people focusing on their own life. They are involved,
14 many of them, very intimately involved in a terrible
15 thing. But even the ones who were there and did nothing
16 are going to try to distance themselves from it.

17 As the police progressed with various witnesses and
18 co-defendants, more details came out. This
19 investigation was not perfect but it was a good
20 investigation. The police used --

21 MR. LENAMON: Objection.

22 THE COURT: Objection sustained, Counsel.

23 MR. LEE: This was a thorough investigation. The
24 police used time-honored techniques; good cop, bad cop.
25 They got some details and they relentlessly pressed

1 witnesses for more details. And it evolved over time.

2 If the testimony had been planted you would expect
3 also this: You would expect these witnesses to come in
4 here and testify to what they remember, especially those
5 under plea deals. How many times did we hear Melissa
6 Rivera say, "I don't recall; I don't recall." Folks, if
7 I was rehearsing with her, I could have done a lot
8 better than that. That has a ring of truth to it that
9 she was not rehearsed. Does it affect her credibility
10 in terms of her memory? Absolutely. But when the
11 suggestion is made that the State Attorney's Office met
12 with her and rehearsed her testimony or had a proffer
13 Bible that she had to stay within, you would not have
14 expected to hear that kind of testimony, but she did,
15 and she did because either she didn't remember or she
16 was hiding information, but she clearly was not
17 fabricating what the State told her to say because she
18 didn't remember, she didn't say it.

19 Now, the Court's going to tell you that it is
20 entirely proper for a lawyer to talk to a witness about
21 what testimony the witness would give if called to
22 court. The witness should not be discredited by talking
23 to a lawyer about his or her testimony - the Judge has
24 already instructed you that way. So to suggest that
25 there's something wrong or inappropriate about meeting

1 with witnesses ahead of time is just not so; the law
2 provides for that, that's how we prepare for trials, and
3 both sides do, that's -- that's...

4 Now, you would also expect if this was rehearsed
5 that our witnesses would tell you everything that
6 happened, but consider also our firefighters, our police
7 witnesses and even the medical examiner often had to go
8 back into their notes, their reports to refresh their
9 memory about what happened. So if our professionals -
10 our police, our firefighters and even our medical
11 examiner have to go back and look at their notes, should
12 we be surprised that the partygoers, who have no such
13 notes, have that problem, too? Have memory lapses?
14 Don't testify to exactly the same thing? I think the
15 amazing thing is not how little they recalled but how
16 much they actually did.

17 And consider the fact that no one witness actually
18 told you the entire story. The partygoers were at
19 different levels of intoxication and some of them were
20 only there for part of the time. Mr. Balint and Cody
21 Roux -- for example, Mr. Roux were only there for a
22 part -- they left, both of them, before the actual
23 removal of the Sosas into the cars and taken out to the
24 site, they told you what they saw at that point.

25 And there's a logical disconnect with this whole

1 argument that the State somehow bought and paid for,
2 with plea agreements, this testimony. Now, let me
3 explain what I mean by that. The personal involvement
4 of various witnesses differed, that is what they did
5 during this case, and, yet, there's no correlation to
6 the amount of the details that a witness gave you in
7 their testimony and the leverage that the police or the
8 State had over that witness.

9 For example, the Defense went to great lengths with
10 Mr. Roux and Mr. Balint about how they were facing the
11 death penalty and how they were facing life in prison if
12 they violated their plea agreements and, yet, those two
13 witnesses told you probably the least about what
14 happened that night - it was important testimony, but
15 probably the least. They both left before the Sosas
16 were removed, put in the trunks of the cars, taken out
17 to the industrial site and killed. We had tremendous
18 leverage if we were fabricating their testimony, but
19 they only testified to a little part. And using your
20 good, common sense, I would encourage you to think about
21 that. Because if this is somehow a plot by the police
22 or the State, there's a disconnect logically there.

23 Others, such as William Arciszewski and Jennifer
24 Dunning, who had little involvement in the criminal
25 activities - at most, their involvement was using

1 illegal substances that night, they told you, pretty
2 much, the most and the clearest.

3 So, again, if the suggestion is that the State or
4 the police fabricated this and forced witnesses to say
5 certain things, you would logically expect the ones that
6 had the most to lose would tell the most and those that
7 had the least, tell the least, but that is not how the
8 testimony went, and so I would suggest that as you use
9 your good, common sense, you can see that this is just
10 not so. There was no fabrication.

11 Now, I would also suggest that you can trust those
12 imperfections in terms of their recall. There are many
13 times with the witnesses that, if they were fabricating
14 and if they were out to get Mr. Johnston, they had
15 opportunities and didn't do it. Let me give you an
16 example of what I'm talking about. Paul Nunes didn't
17 recall seeing the Defendant with a knife, despite seeing
18 the symbol carved in the back of Alexis Sosa. Now, if
19 we had somehow put him up to testifying about the
20 torture aspect of this, since he testified that he saw
21 the marks, how easy would it be to say, Now, don't
22 forget, you've got to say you saw him do it. But the
23 fact that he testified to part and not all, actually
24 using your common sense should give you confidence he's
25 telling the truth and he's not out to get anybody. It

1 would have been easy to coach him, but he didn't, he
2 testified to what he actually saw, and, so, too, with so
3 many of the other witnesses as they tell you bits of
4 this but not the whole story.

5 Now, consider the testimony of William Arciszewski.
6 The Defense really attacked him a lot in their closing
7 and they did so because they know how damaging his
8 testimony is. He showed a progression, which is exactly
9 what you would expect in such an individual as him. He
10 was a young person. He didn't participate in any of the
11 activities but he was there, and it's his friends, by
12 his own admission, one of his best friends, Kemar
13 Johnston, who was in the middle of all of this. And so,
14 yes, when he first met with police, he lied; he denied
15 that he had any knowledge of what was going on or that
16 he was there. And as time went on the police used good
17 techniques with him and, eventually, he came clean, as
18 did many of these other young people.

19 I would encourage you to look at his demeanor, also,
20 as he testified. The Court's going to instruct you that
21 one of the things that you can do is not just listen but
22 use your good, common sense as you assess how they say
23 things. Mr. Arciszewski testified for hours through
24 cross-examination, and some of that cross-examination
25 was very aggressive, some of the language used at him

1 was very inappropriate and very aggressive --

2 MR. BRENER: Objection.

3 THE COURT: Overruled.

4 MR. LEE: -- and yet he was polite throughout. He
5 was forthright in what he had to say. He described his
6 own activities, and he was believable. And I would
7 submit to you look at his testimony very, very
8 carefully.

9 Now, the claim has been made that the most guilty,
10 the ones that got the biggest amount of time on their
11 sentences, had studied their discovery - these volumes
12 and volumes of discovery, and then made up their story
13 to fit in order to buy the plea agreement that they got.
14 But, again, consider what some of these people said,
15 like Mr. Roux and Mr. Balint; it just doesn't fit.
16 There is a disconnect logically between knowing
17 everything that went on and what they actually testified
18 to.

19 Alexis Fernandez is a good example of that same
20 principal. Mr. Fernandez testified to virtually nothing
21 that happened at the party. He, unfortunately for him,
22 went to that site. He's the one that the Defendant came
23 to and said, I need your car keys to move the car. And
24 then he sees the bodies placed into his trunk and he
25 then agrees to drive his own car with the bodies in the

1 back. Now, if he was fabricating, if he was so
2 desperate to get a plea agreement, you would have
3 expected him to add in, after studying the discovery for
4 a couple years, what happened at the party, but he
5 didn't. He told you that until Kemar Johnston came and
6 asked for the keys, he was drinking, he was in the back
7 lifting weights, and he didn't add any information to
8 you as jurors about what happened at the party; none,
9 basically. He saw them tied up at one point, and, yes,
10 he, very crassly, stepped across Alexis Sosa as he laid
11 on the floor. But when the suggestion is made that he's
12 not telling the truth, look at what he said and compare
13 it with the other witnesses and that evidence because
14 he's not the only one that saw the bodies moved out,
15 there were a number of witnesses that saw them taken out
16 with those bags over their heads. And then you heard
17 from a number of them that drove out to that scene.

18 And there is physical evidence that corroborates
19 what the witnesses say. Consider the physical evidence
20 of the mark on Jeffrey Sosa's back just as described by
21 witnesses, the shoelaces on his ankles. Alexis Sosa is
22 found in the trunk. Both of them are shot multiple
23 times, both of them with handguns. This physical
24 evidence is also corroborated by the bleach that police
25 smelled when they went into the unit even though there

1 was nothing they could link up. And the guns that were
2 there, the .22 used by Roderick Washington which you've
3 seen, the sawed-off .22 that ends up in a canal. You
4 also saw the 9 mm. that the Defendant sold, the .9 mm.
5 whose slugs were in the bodies. And you saw the .380
6 that was there right before him in the car.

7 Now, let's talk for a moment about some of the other
8 people that have been mentioned in this case such as
9 Duntaveous Overmyer, such as our Dr. Pepper can. Your
10 duty here is to determine if the Defendant is guilty and
11 not, under the evidence and the law, what other people
12 may have done or didn't do. Please don't get distracted
13 with this. Keep your focus on what the law requests you
14 to do, which is is the Defendant guilty or not guilty in
15 accordance with the elements of the crime.

16 What other people did or didn't do, whether the
17 sentences they're going to get under their plea
18 agreements are fair or not, whether other people should
19 have been arrested or not, I would submit to you that
20 these are, again, these are french fry versus chip
21 issues; these are Coke versus milk shake issues; these
22 are things that would be interesting to know but it does
23 not diminish the evidence against the Defendant. And
24 this Dr. Pepper can is right four-square on this whole
25 thing. This Dr. Pepper can was found in the general

1 area of the industrial site and it's suggested that,
2 somehow, this 14-year-old Duntaveous Overmyer was there
3 because of it and that the police, because we didn't use
4 the standard to check on that, somehow that that means
5 the Defendant's innocent.

6 Well, this 14-year-old at the party, what does the
7 evidence show? He did hit, apparently, Alexis Sosa
8 because there are witnesses that say that he was one --
9 there was a melee going on and you see his knuckles.
10 But there is no credible evidence that he was ever at
11 that industrial site, none. In fact, the testimony is
12 that he left when all the other partygoers pretty much
13 left. And the coincidence of the fact that the police
14 discover a Dr. Pepper can in his house does not --
15 there's no logical connect that that means that he
16 should have been at the site.

17 Now, it would have been good, it would have been
18 good that that DNA can was tested; absolutely, should
19 have been done. But that does the diminish or erase the
20 evidence against the Defendant. At most, it might lead
21 to another individual at the scene, but there's no
22 evidence that individual was ever there. The police
23 submitted the DNA swabs, the standards on all of the
24 individuals that the testimony and the various witnesses
25 said were out there. Was that a logical common sense

1 decision? Of course, it was. Should later they have
2 gone back just in case and submitted Duntaveous
3 Overmyer's? Yeah, they probably should. But, again, it
4 doesn't diminish or erase the evidence against the
5 Defendant and it could take your focus off him as this
6 Chico Unit stuff and all of that could. But your goal,
7 your journey, as the Defense has said, is to determine
8 what the Defendant did and whether he is guilty or not.

9 Now, the three projectiles that were not submitted
10 to FDLE, these projectiles were found in the Medical
11 Examiner's Office - by their personnel, rather, in the
12 truck and they were not turned over to the police until
13 December. Now, the way that happened, in case there's
14 some confusion, by the time the Medical Examiner's
15 personnel turned those projectiles over to the Cape
16 Coral Police Department, the bullets and casings and
17 guns and everything had already been sent off to the
18 lab. And, unfortunately, when they came in, no one then
19 forwarded them also on to the lab. It should have been
20 done, but it was not. Should it have been done? Yes.
21 But does it diminish the fact that the bullets and the
22 casings that were found at the site, that is the .380
23 Cobra and the 9 mm. Glock, that those bullets were
24 linked up to the guns, the .380 that is found in the
25 glove box right in front of the Defendant, and --

1 MR. BRENER: Objection, Your Honor. I think Counsel
2 misspoke. Only the casings were linked up to the .380.

3 MR. LEE: You Honor, I think we're now four-square
4 within the motion in limine that the State has
5 presented.

6 May we approach?

7 THE COURT: Counsel, approach, please.

8 (THEREUPON, THE FOLLOWING BENCH CONFERENCE WAS HAD OUTSIDE
9 THE PRESENCE OF THE JURY; THE DEFENDANT WAS NOT PRESENT.)

10 THE COURT: I asked you not to make speaking
11 objections. Why did you stand up and state your
12 objection like that?

13 MR. BRENER: I thought the Court was inviting me to
14 state the grounds for my objection. I stood up and
15 said, Objection, Your Honor.

16 THE COURT: I want you to come here and state your
17 objection.

18 MR. BRENER: Okay. I wasn't aware of that, Your
19 Honor.

20 THE COURT: Yes, you are. It was right here I
21 instructed you specifically --

22 MR. BRENER: Your Honor --

23 THE COURT: What is your objection?

24 MR. BRENER: The objection, Your Honor, is that
25 the - and I went into detail with Mr. Greenwell, the

1 firearms examiner - only the casings were linked to the
2 .380 firearm and that's why the .380 bullets were so
3 important, and he testified to that.

4 Counsel just misspoke and said that bullets were
5 linked to the .380 firearm when and there were no
6 bullets linked to the firearm.

7 It's a mischaracterization of the evidence.

8 MR. LEE: Well, with all due respect, I believe I
9 said that there were bullets found out at the scene that
10 matched up to the .380 and that matched up to the 9 mm.
11 and then I started to say that the .380 was found right
12 in front of him.

13 Bullet is a generic term that includes the casings
14 and --

15 THE COURT: It was found in front of the Defendant?

16 MR. LEE: The .380 was found where the Defendant was
17 sitting in Alexis Fernandez's car. That's what I was
18 starting to say.

19 MR. BRENER: My objection is to saying, bullets.

20 Counsel's well aware of the difference between a
21 casing and a bullet. No bullet was linked to that .380;
22 casings were.

23 Now, he may have simply misspoke.

24 THE COURT: Were there rounds?

25 MR. BRENER: There were no projectiles linked to

1 that .380, only casings.

2 THE COURT: No complete rounds.

3 MR. BRENER: Only casings. There was a round that
4 he can neither identify nor eliminate that he found in
5 the chamber, but he could not even determine if --

6 THE COURT: Okay.

7 Will you please correct that?

8 MR. LEE: I will.

9 And I would point out that the Defense, on numerous
10 occasions, made statements that violated not only the
11 motion in limine on the personal beliefs over and over,
12 and the State didn't object, but also there were factual
13 matters that the State disagrees with, but we didn't
14 object.

15 MR. BRENER: Well, they have rebuttal to deal with
16 that. We don't have any rebuttal to deal with that,
17 Your Honor.

18 THE COURT: Okay.

19 If you would, please, clarify that it was casings
20 and not expended rounds or slugs.

21 MR. LEE: I will, Your Honor.

22 MR. BRENER: Thank you.

23 THE COURT: Okay.

24 Thank you.

25 MR. BRENER: The objection is sustained?

1 THE COURT: Yes, sir.

2 (THE BENCH CONFERENCE CONCLUDED.)

3 MR. LEE: As I was saying, what the ballistics did
4 show is that there were shell casings that matched the
5 .380 that was found where the Defendant was sitting in
6 Alexis Fernandez's car; in that glove box the .380 is
7 found and those shell casings are found out there at the
8 scene, there are shell casings plus 9 mm. slugs in the
9 body from the gun that the Defendant sold. That is
10 physical evidence that is uncontraversial.

11 Now, I do want to talk for a moment in response to
12 the comments that were made about the lack of physical
13 evidence - I've just mentioned some of that physical
14 evidence. But I think it's important to understand that
15 the lack of physical evidence doesn't necessarily mean
16 that there was some evidence there. Now, here's what I
17 mean. Every time the police go to a crime scene and try
18 to discover evidence and submit it, when that comes back
19 as of no value, such as fingerprints that aren't
20 sufficient or don't match to anybody, admittedly, the
21 State has not come in and presented to you that negative
22 evidence. There's no reason to prolong a trial by
23 snowing you all the things that were attempted and
24 didn't succeed in producing evidence. There's nothing
25 unusual about that.

1 Next, I would like to talk about the voluntary
2 intoxication defense. Now, it was suggested that
3 although voluntary intoxication - and this is what the
4 Court's going to instruct you - that voluntary
5 intoxication is not a defense in criminal conduct and
6 cannot be used to show that the Defendant lacked the
7 specific intent to commit a crime, that somehow you
8 might be able to consider voluntary intoxication,
9 perhaps, for lesser included crimes. Well, let's just
10 talk about this for a moment.

11 There is testimony from Cody Roux, for example, that
12 when he took Xanax - these Xaney bars - the way it
13 affected him is he became violent. And numerous
14 witnesses, oftentimes at the Defense's questions,
15 testified as to how the Defendant acted crazy, how he
16 became a different person, how he began talking in a
17 different kind of Jamaican dialect to the victims and
18 how he became violent. And, yet, under the law
19 voluntary intoxication is no defense. The Defendant's
20 voluntarily taking alcohol or these Xaney bars - this
21 Xanax - or any other substance that he took that night
22 that contributed to his violent behavior and his
23 actions, no defense. The law could not be clearer,
24 folks. Voluntary intoxication cannot be considered by
25 you in any way and that's because the State of Florida,

1 as this law reflects, has determined that voluntary
2 intoxication is not a defense. People must be held
3 accountable for their actions. When an individual
4 voluntarily chooses to take alcohol or illegal drugs and
5 commit a hideous crime, he must be held accountable for
6 that. And as you see, the law is clear, this is no
7 defense and should not be considered by you in any way
8 including for the possibility of a reduction down to
9 some kind of a lesser included crime such as second
10 degree murder.

11 The way these --

12 MR. LENAMON: Excuse me, Judge. I have an
13 objection. Can I come side bar?

14 THE COURT: Okay. Please approach.

15 (THEREUPON, THE FOLLOWING BENCH CONFERENCE WAS HAD OUTSIDE
16 THE PRESENCE OF THE JURY; THE DEFENDANT WAS NOT PRESENT.)

17 MR. LENAMON: We filed a pretrial motion to preclude
18 the introduction of this jury instruction. Now that
19 he's arguing it, to preserve our issue, contemporaneous
20 with our prior objection, we would make an objection
21 based on that.

22 THE COURT: All right, sir. Your objection's
23 overruled.

24 Please proceed.

25 MR. LEE: Thank you, Your Honor.

(THE BENCH CONFERENCE CONCLUDED.)

MR. LEE: When an individual commits a crime like this because, perhaps, his inhibitions were reduced over alcohol or drugs, the law in the State of Florida is clear that is no defense and you are not to use it to consider whether he could form the premeditation, whether it might drop down to another. The law in Florida is it is no defense. And this portion that says, It cannot be used to show that the Defendant lacked the specific intent to commit the crime means lacked premeditation, means lack the intent to kill. In Florida, if you voluntarily take drugs or alcohol, you must be held accountable for your actions, and I would encourage you to follow that law.

Now, the Defense has suggested that other people had a motive but he had no motive in this case. It was this Chico Unit, other people. How can we make sense of these awful crimes? How can we understand such inhumanity? We may never completely understand. But I think if you consider the motive in conjunction with your good, common sense and what happens in peer pressure, you can see how this whole thing happened.

Common sense with peer pressure, especially with teenagers, tells us they want to fit in, they want to be cool, they want to part of a group, and that's a

1 powerful motivator with young people.

2 This started out as the Defendant and others being
3 involved in what was described as gangster rap. Now,
4 what is gangster rap? Well, I asked Mr. Arciszewski
5 that. It is music that glorifies violence, glorifies
6 violence. There's an old adage, garbage in, garbage
7 out. If you put garbage into your mind, don't be
8 surprised when you act in accordance with that. That's
9 what that saying means.

10 And then we have this group mentality that took
11 place here. The evidence is that there were a number of
12 people there who had problems with Alexis Sosa, and it
13 was not initially the Defendant, it was Anthony Lopez,
14 it was Paul Nunes and this situation with a brick being
15 thrown through his mother's window. But these were his
16 close friends. These were his associates. These were
17 his fellow partygoers at his birthday party. And the
18 testimony was that he's a person who cares about his
19 friends - do you remember that? Mr. Arciszewski said
20 how he stuck up for him and Jennifer Dunning talked
21 about how he cared about his friends. And it wasn't
22 just a matter of him stepping in here, the testimony
23 also was clear that he was upset that Alexis Sosa had
24 come and spoiled his birthday party, so he jumped in to
25 the front of the line here, and the testimony is clear

1 that he took over and he began directing his friends and
2 associates, and then you had this mob, this group
3 mentality that set in where people are trying to
4 literally outdo each other. And that's the motive.
5 That's what went on here. Does it make sense? No. But
6 can you understand those dynamics? Yes, and you can see
7 how they've played out in this evidence.

8 I have one folksy story left for you and then I'll
9 be done. I'm about to cut to the chase.

10 Now, I love word derivations, that is where words
11 come from, where phrases come from. And cut to the
12 chase is a phrase that actually goes back to the movie
13 industry when they first came out with what were called
14 talkies. And a good movie in those days when they first
15 came out ended with a chase scene at the end of the
16 movie. And that phrase, cut to the chase, meant that if
17 it was a good movie, we want to cut to the chase, or if
18 it was a bad movie, I suppose, they wanted to get to the
19 chase scene and they wanted to ignore the other.
20 Because now it means to get to the point, leaving out
21 unnecessary preamble, that's what it means now. But it
22 used to mean get to the chase, the actual chase scene.

23 So I'm going to get to the chase and I would
24 encourage you in your deliberations to make your job
25 simple, focus on these two things; felony murder and

1 principal. Felony murder and principal.

2 As Miss Doerr explained to you, murder can be
3 proven - first degree murder - two different ways;
4 premeditated murder and felony murder, and she went
5 through those elements and the State believes that both
6 of those theories have been proven to you. But under
7 first degree felony murder, your job will be simplified
8 and so I want to explain how that works.

9 The Court's going to instruct you that there are
10 three elements for first degree felony murder - and
11 remember, these are two roads to the same destination -
12 first degree murder can be proven by premeditation or
13 felony murder and, either way, it is first degree
14 murder. So as Miss Doerr said, if six of you believe
15 it's premeditated and six felony but you don't agree on
16 the other, it's still first degree murder; all 12 of you
17 have now agreed to first degree murder.

18 So I'm going to focus my last comments on felony
19 murder because I think when you see it in conjunction
20 with this instruction which is on principals, I think
21 your task will be simplified.

22 Now, the Court's going to instruct you that for
23 felony murder there are three elements that must be
24 proven - these are the BLT of your job, this is what
25 you're to focus on. Felony murder, first element is

1 that either Alexis or Jeffrey Sosa are dead - no
2 question about that - second, that the death occurred as
3 a consequence of and while the Defendant was engaged in
4 the commission of a kidnapping - that the death occurred
5 as a consequence of and while he was engaged in a
6 kidnapping - or that the death occurred as a consequence
7 of and while the Defendant was engaged in attempting a
8 kidnapping, and, third, that Alexis Sosa was killed,
9 perhaps, by another person, the instruction is killed by
10 a person other than the Defendant but both the Defendant
11 and the other person who killed Alexis Sosa were
12 principals. So those three elements.

13 The two critical ones are did the death occur as a
14 consequence of while the Defendant was engaged in a
15 kidnapping. And if the kidnapping is complete, the
16 Defendant's part of that is complete, then the fact that
17 the death occurs later or any actions occur later, if
18 he's involved in the kidnapping and the death occurs as
19 a consequence of him participating in it it is felony
20 murder.

21 Now, the instruction says, In order to convict for a
22 first degree felony murder it is not necessary for the
23 State to prove that the Defendant had a premeditated
24 design or intent to kill.

25 So you see why these are two roads to the same

1 destination but they're very different. Premeditation
2 requires that you are convinced beyond a reasonable
3 doubt he had a premeditated design to kill.

4 Now, the State would submit when an individual says
5 to his victim, Give him one last drink of water, and
6 when he stands at the back of a trunk of a car and
7 shoots into it, that's premeditation. But even if we
8 set that aside for felony murder, premeditation is not
9 necessary, rather, was there a kidnapping that the
10 Defendant participated in and as a consequence of him
11 engaging in the commission of it did the death occur,
12 and it doesn't have to be him that did the killing.

13 Now, this instruction is vital to understand if your
14 job on this felony murder is going to be to follow the
15 law, and it's going to simplify your task because listen
16 to what this says: If the Defendant helped another
17 person or persons commit a crime, the Defendant is a
18 principal and must be treated as if he had done all the
19 things the other person or persons did, if he had a
20 conscious intent that the criminal act be done - that
21 is, the kidnapping, if he intended the kidnapping to
22 occur, and he did -- the Defendant did some act - and
23 look here, singular, some act. The first time he does
24 something to assist in the kidnapping his participation
25 is done and if the death occurs, maybe later but still

1 in that consequence, still in the kidnapping, it's as if
2 he had done all of the things the other person did.
3 That is a powerful law, no question with about it. It
4 is a powerful tool for you as a jury because it does
5 simplify your work. You don't have to get into fine
6 distinctions in the evidence about who did what because
7 if he did an act, any act such as having a gun in the
8 kitchen, such as instructing someone else to tie him up,
9 such as any of those things that contributed to the
10 kidnapping, the minute he does that, if the death occurs
11 then while that kidnapping and ongoing and there's no
12 break in it, there's no independent act, then it's as if
13 he had done all of them, all of the actions. It's like
14 he's the only one. And that's the law. And, again,
15 even if you do not like the law, it is the law, and I
16 would encourage you to focus on that law.

17 Now, let me be very clear, you were chosen, just as
18 the Defense said, but you were carefully chosen by both
19 sides and you were chosen to be jurors on this case
20 because of your common sense, because of the way you
21 expressed your fairness and because of your courage. It
22 will take courage to be on this jury and that's why you
23 were chosen.

24 The Defense has suggested that that party started
25 out as a celebration of life, and maybe it was starting

1 as a celebration of life but, unfortunately, it turned
2 into a celebration of death. That party continued even
3 though those two young men had been tied up and bound,
4 the kidnapping was complete, then they were tortured,
5 then they were taken out to be executed with bags over
6 their head just like we used to when people were hung
7 and the hood was placed over their head.

8 MR. BRENER: Objection, Your Honor.

9 MR. LEE: It was a --

10 MR. BRENER: I'm going to object to the
11 characterization and ask to come to side bar.

12 THE COURT: Yes, sir.

13 (THEREUPON, THE FOLLOWING BENCH CONFERENCE WAS HAD OUTSIDE
14 THE PRESENCE OF THE JURY; THE DEFENDANT WAS NOT PRESENT.)

15 MR. BRENER: For the record, the manner and method
16 of death in this case was gunshot wounds to the head and
17 torso. It was not a hanging.

18 The Prosecutor just invoked the prospect of a
19 lynching. There is an African American woman on the
20 jury who I think he is purposely trying to appeal to her
21 emotions.

22 There simply is no reason --

23 THE COURT: You've made your objection. Thank you.
24 You can give the State an opportunity to respond.

25 MR. LEE: Your Honor, I'm simply characterizing the

1 bags on their head, that this was an execution-style
2 killing. And this is the very thing the State brought
3 up in the motion in limine that the Defense would
4 attempt to break the flow of the State's argument by
5 making objections like this, and that's just what he's
6 done.

7 MR. BRENER: I'm going to make an objection that --

8 THE COURT: Please don't make any reference to any
9 method of execution past or present --

10 MR. LEE: I will do that. You can be sure of that,
11 Your Honor.

12 MR. BRENER: Your Honor, I'd ask for a cautionary
13 instruction --

14 THE COURT: No, sir. No cautionary instruction.

15 MR. BRENER: I'd ask for a mistrial.

16 THE COURT: Denied.

17 (THE BENCH CONFERENCE CONCLUDED.)

18 MR. LEE: Your destination is just about done on
19 this journey. It is for truth. It is your duty now to
20 determine if the Defendant is guilty beyond and to the
21 exclusion of all reasonable doubt. It may not be a
22 pleasant job. It's certainly not an easy task. But if
23 we are to be a society ruled by the rule of law and not
24 by violence, it is a job that you must do.

25 It has been suggested that, perhaps, you consider a

1 lesser included crime to avoid the inconvenience of
2 returning for another phase. Please do not let
3 inconvenience or anything like that enter into your
4 deliberations. You've taken a sworn oath to abide by
5 the law whether you like it or not. Your duty must be
6 done in this case. It shouldn't be an easy job. It
7 should never be an easy job. But if justice is to be
8 more than just an empty word, it's a job that must be
9 done today.

10 Thank you.

11 THE COURT: All right.

12 Take the jury out, please.

13 (THEREUPON, THE JURY EXITS THE COURTROOM.)

14 (FOR PURPOSES OF THIS TRANSCRIPT, THE PROCEEDINGS FOLLOWING
15 WERE NOT TRANSCRIBED.)
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2 STATE OF FLORIDA)
3 COUNTY OF LEE)
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5

6 I, Lisa L. Rios, Court Reporter, do certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings, and that the typewritten transcript, consisting
9 of pages numbered 1 through 188, is a true record.
10

11 Dated this 1st day of February, 2010.
12
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14
15
16 Lisa L. Rios

17 Lisa L. Rios,
18 Court Reporter
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