

Office of Paula S. O'Neil
Clerk & Comptroller
Pasco County, Florida

ON APPEAL TO THE DISTRICT COURT OF APPEALS OF FLORIDA
SECOND DISTRICT

Shannon Stephen

Appellant

VS.

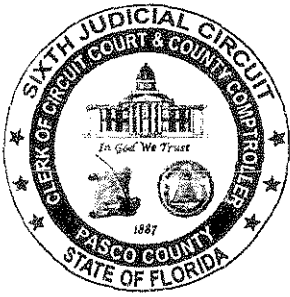
State of Florida

Appellee

Case: 06-1591CFAWS

Appeal: 10-4018

Supplemental
Transcript of Record on Appeal
Volume XXI



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ON APPEAL TO THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

Shannon Stephen,
Appellant,

vs.

State of Florida,
Appellee.

FIRST SUPPLEMENTAL

Transcript of Record in the case of State of Florida, Plaintiff(s) vs. Shannon Stephen, Defendant(s). Circuit Criminal Number(s) 06-1591CFAWS in the Circuit Court of the Sixth Circuit in and for the County of Pasco, State of Florida, prepared for use on appeal to the District Court of Appeals, Second District.

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Presiding Judge: Honorable Shawn Crane

SHANNON STEPHEN
VS.
STATE OF FLORIDA
CT.CR.NO. 06-1591
APPEAL NO. 10-4018
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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CIRCUIT CRIMINAL DIVISION

STATE OF FLORIDA, :

Plaintiff, : CASE NUMBER 06-1591CFAWS

vs. :

SHANNON STEPHEN, :

Defendant. :

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 Clerk & Comptroller
 Pasco County, Florida

FILED FOR RECORD
 PASCO COUNTY, FLORIDA

PROCEEDINGS: JURY TRIAL
 VOLUME VIII (Pages 1414-1613)

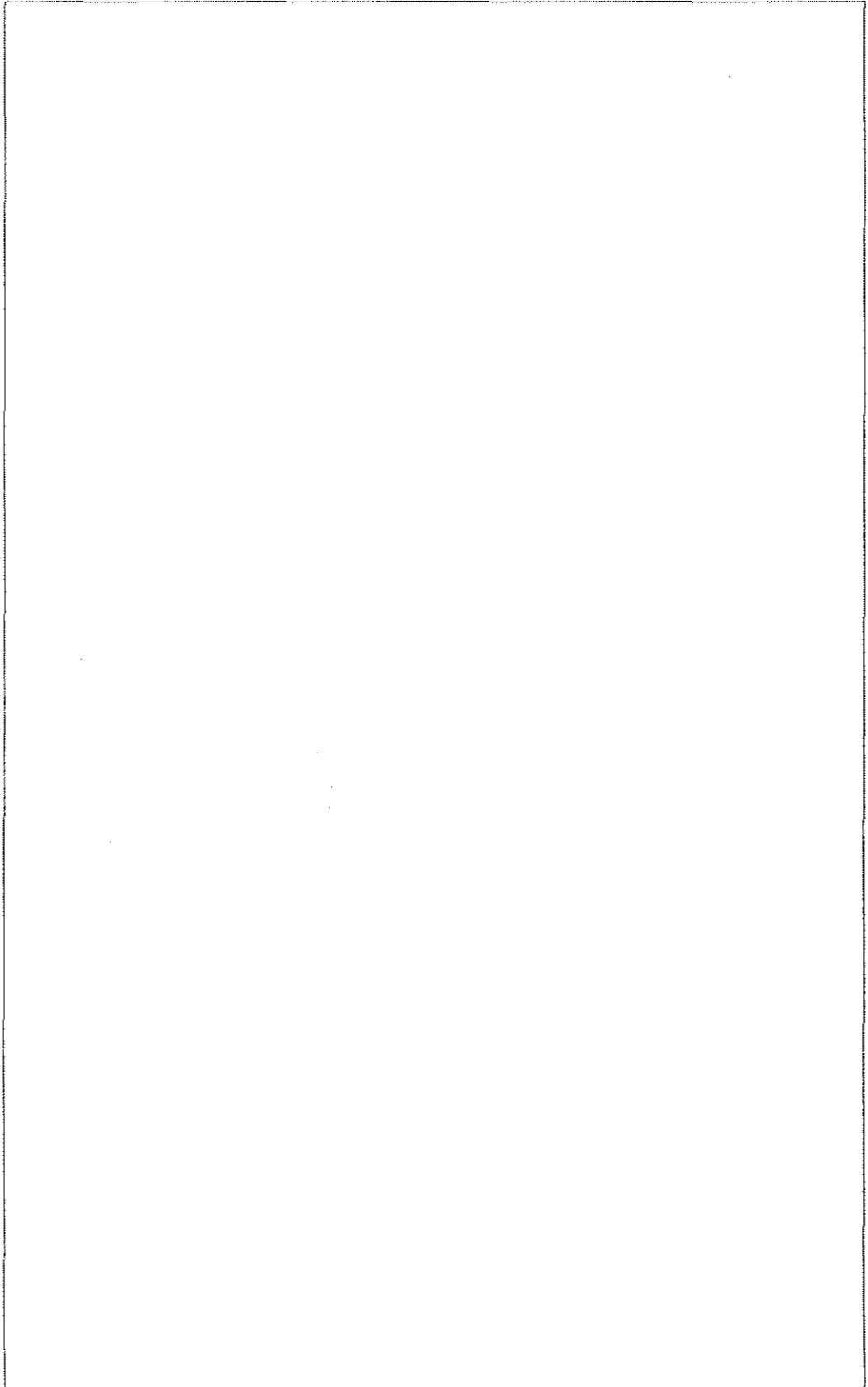
DATE: May 27-29, 2010

BEFORE: HONORABLE SHAWN CRANE
 CIRCUIT JUDGE

PLACE: West Pasco Judicial Center
 7530 Little Road
 New Port Richey, Florida

REPORTED BY: Dana L. Stockton, RPR
 Notary Public
 State of Florida at Large

JUDY G. MOUKAZIS & ASSOCIATES, INC.
 8630 Government Drive
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 (727) 817-1268



IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
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STATE OF FLORIDA, :
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 Plaintiff, : CASE NUMBER 06-1591CFAWS
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 vs. :
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 SHANNON STEPHEN, :
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 :
 Defendant. :

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PASCO COUNTY, FLORIDA

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 VOLUME VIII (Pages 1414-1613)

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 CIRCUIT JUDGE

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1 VOLUME VIII

2 A. Yes.

3 MR. ROSARIO: Objection, leading.

4 THE COURT: Overruled.

5 Q. (By Mr. Foote) Would you have done
6 something about that?

7 A. Yes.

8 Q. Would it appear that everything was under
9 control?

10 A. Yes.

11 Q. All right. Did you see anything else that
12 Shannon was doing that evening in the bar?13 A. Playing pool, just generally having a good
14 time with his friends.15 Q. Did you observe or were you able to
16 determine whether or not he was drinking?

17 A. Yes, he was drinking.

18 Q. While you were at the bar let's talk about
19 what time did you arrive roughly?

20 A. Right around 10:00, 10:30.

21 Q. 10:00 or 10:30. Did you observe any
22 altercations or fights in the bar?

23 A. No.

24 Q. Did you observe Shannon Stephen fighting or
25 being involved in any altercation?

1 MR. ROSARIO: Objection, leading.

2 THE COURT: Overruled.

3 THE WITNESS: No, I did not.

4 Q. (By Mr. Foote) Okay. So while you're
5 there at the evening at some point do you have to
6 make a phone call at all?

7 A. Yes.

8 Q. Okay. Tell the jury about that.

9 A. I was selling a digital camera that I had.
10 One of my friends, Crystal, wanted to buy it off me.
11 She lived right down the street. She had told me to
12 call her when I got up there.

13 MR. ROSARIO: Objection.

14 THE COURT: Sustained as to what anyone
15 else said.

16 Q. (By Mr. Foote) Do you recall what your
17 cell phone number was back then?

18 A. I'm pretty sure it was (727) 267-4594.

19 Q. Okay.

20 MR. FOOTE: Judge, may I approach the
21 witness?

22 THE COURT: You may.

23 Q. (By Mr. Foote) Mr. Schubart, I'm showing
24 you what's been premarked as Defense Exhibit G for
25 Identification and ask you to take a look at it and

1 tell me if this looks familiar.

2 A. That is my cell phone bill.

3 Q. Okay. And what is the bill date on that
4 telephone bill?

5 A. March 26th, 2005 or six.

6 Q. Can you see it?

7 A. 2006.

8 Q. Okay. And looking at these documents can
9 you identify around the time that you may have made
10 that phone call in the evening of March 25th or the
11 early hours of March 26th?

12 A. Right around 1:00.

13 Q. Okay. There were calls before that where
14 it appears you may have checked your voicemail?

15 A. Yes.

16 Q. What time were those calls?

17 A. My voicemail was at 12:45.

18 Q. Do you recall where you were when you --

19 MR. FOOTE: May I approach to retrieve?

20 THE COURT: You may.

21 Q. (By Mr. Foote) Do you recall where you
22 were when you made these phone calls?

23 A. I was standing outside.

24 Q. Why were you outside?

25 A. So I could hear.

1 Q. While you were outside did you observe
2 Shannon Stephen?

3 A. Yes.

4 Q. Okay. Tell the jury what you observed
5 while you were outside on the phone.

6 A. I observed him urinating right next to me
7 and being loud, obnoxious with his friends and
8 stumbling around. He ended up falling down.

9 Q. Let me stop you there. Did he just step
10 outside for a break or did it look like he was on his
11 way to go home?

12 A. He looked like he was on his way home.

13 Q. Was he with anyone else?

14 A. He was with two other gentlemen.

15 Q. Okay. You said he was urinating. Was he
16 was loud?

17 A. Yes.

18 Q. He appear to be violent to you at all?

19 A. No.

20 Q. What did you observe after he urinated on
21 the pole or wall whatever was there?

22 A. Him and his friends proceeded to walk to
23 their car where he fell. They tried helping him up.
24 He was resisting, but they eventually -- he
25 eventually let them --

1 Q. Did he need assistance in walking?

2 A. Yes.

3 Q. Have you seen people under the influence of
4 alcohol before?

5 A. Oh, yeah.

6 Q. Have you seen people drunk before?

7 A. Yes.

8 Q. All right. Did it appear to you that
9 Shannon Stephen was drunk that evening?

10 A. Yes, sir.

11 Q. When you saw Shannon Stephen fall to the
12 ground, what else happened?

13 A. He fell to the ground, started yelling at
14 his friends, they went over to try to help him up,
15 he didn't want no help but he couldn't get up on his
16 own and finally he gave in and let his friends help
17 him up.

18 Q. Did you see Shannon jump on anyone's back?

19 A. No.

20 Q. Did you see him throw punches and start a
21 fight?

22 MR. ROSARIO: Objection, leading.

23 THE COURT: Sustained.

24 Q. (By Mr. Foote) Did you observe any fights

25 --

1 A. No.

2 Q. -- in the parking lot?

3 A. No.

4 Q. What happened after that?

5 A. Then they proceeded to his truck.

6 Q. When you say his truck, how do you know it
7 was his?

8 A. From later.

9 Q. Okay. Well, tell the jury what type of
10 vehicle you actually saw.

11 A. He proceeded to a newer truck where his two
12 gentleman friends walked over to the passenger side
13 with him. One hopped in, the other one helped
14 Shannon in the truck, the last one ran around the
15 back of the truck into the driver's seat and then
16 they drove off.

17 MR. FOOTE: May I approach the witness,
18 Judge?

19 THE COURT: You may.

20 Q. (By Mr. Foote) I'll show you what's
21 previously been marked Defendant's Exhibit J for
22 Identification and ask you to take a look at that;
23 does that look familiar?

24 A. I wasn't looking at the back of it, but,
25 yes.

1 Q. Okay. Can you tell what that is in the
2 photograph?

3 A. That is a Chevrolet Silverado pickup truck.

4 Q. All right. Is that the vehicle, to the
5 best of your recollection, that looks like the three
6 got into?

7 A. Yes.

8 Q. Okay. And so how do you know -- did you
9 know who the two other individuals were?

10 A. No.

11 Q. How did you know who Shannon Stephen was?

12 A. From later the next day it was on the news
13 and it was the talk of the bar.

14 Q. Okay. How certain are you that Shannon
15 Stephen did not get into the driver's seat and drive
16 his vehicle out of that parking lot?

17 A. Pretty sure.

18 MR. FOOTE: May I have a moment, Judge?

19 THE COURT: You may.

20 Q. (By Mr. Foote) Are you familiar with the,
21 I guess area where the Sevens Bar is?

22 A. Yes, sir.

23 MR. FOOTE: Judge, may I have the witness
24 step down?

25 THE COURT: The witness may stand down.

1 Q. (By Mr. Foote) I want to show you what's
2 been entered into evidence as State's Exhibit 22 and
3 ask you to take a look at that and see if it looks
4 familiar to you.

5 A. Yes, it does.

6 Q. All right. Can you determine where Little
7 Road is?

8 A. Right there (indicating).

9 Q. Okay. And where would the Sevens Bar be?

10 A. Right there (indicating).

11 Q. Okay. Point. Is that like a strip mall?

12 A. Yeah, in a little plaza.

13 Q. Are these all the parking spots?

14 A. Yes.

15 Q. Are there -- how many entrances into this
16 parking lot are you aware of?

17 A. Three.

18 Q. All right. Can you point those out?

19 A. One right here (indicating).

20 Q. Where's that enter out to?

21 A. Enters out to Little Road. Another one
22 right around here that enters out to Little Road and
23 another one right here that enters out to Little
24 Road.

25 Q. Is there a side entrance up top?

1 A. Yeah, up there onto Villa Entrada.

2 Q. Correct. Okay. Now, when you say you
3 observed the three individuals get into this truck
4 and drive away; which way did that vehicle leave the
5 parking lot?

6 A. It pulled out and came up here headed
7 towards Little Road and then made a right on Little
8 Road.

9 Q. I'm going to show you Defendant's Exhibit
10 KK for Identification and ask you to take a look at
11 that; does that look familiar?

12 A. Yes.

13 Q. What is that?

14 A. That's looking out from Sevens.

15 Q. Okay. On the big board can you tell me
16 what entrance that is?

17 A. That would be this entrance right here
18 (indicating).

19 Q. That's the main entrance?

20 A. (Nods head.)

21 Q. Does it accurately depict the entrance as
22 you're familiar with it?

23 A. Yes.

24 Q. Okay. Have a seat.

25 MR. FOOTE: May I have a moment, Judge?

1 THE COURT: You may.

2 Q. (By Mr. Foote) Now at some point you and
3 Lisa Toronto broke up?

4 A. Yes.

5 Q. Would you say it was close to or shortly
6 after this incident, March of '06?

7 A. It was shortly after.

8 Q. Did you continue to have contact with her?

9 A. Here and there.

10 Q. Did you go out and hang out and date with
11 her?

12 A. No.

13 Q. Did there come a time where you saw her at
14 a wedding subsequent?

15 A. Yes.

16 Q. Did there come a time when you saw her in
17 Tampa at Channelside?

18 A. Yes.

19 Q. Was that after this event?

20 A. Yes.

21 Q. About how long after this event roughly?

22 A. Probably three years.

23 Q. Okay. 2009?

24 A. Yeah.

25 Q. What was your relationship status at that

1 time?

2 A. I was engaged.

3 Q. Okay. So the young lady that you were
4 still engaged to?

5 A. Yes.

6 Q. Tell me about that incident at Channelside
7 when you saw Lisa Toronto.

8 A. She approached me and asked me about this
9 whole thing and I didn't say one word to her. I gave
10 her a funny look and I turned around with my fiancé
11 and left.

12 Q. So your fiancé was with you?

13 A. Yes.

14 Q. And you saw your ex-girlfriend?

15 A. Yes.

16 Q. Were you drinking that evening?

17 A. Yes.

18 Q. Is that -- well, tell me, what is
19 Channelside?

20 A. Channelside, the location I was at was a
21 bar, Banana Joe's.

22 Q. All right. Was this daytime or evening
23 when you saw her?

24 A. Evening.

25 Q. And so you're with your current fiancé and

1 you saw your ex-girlfriend?

2 A. Yes.

3 MR. ROSARIO: Objection, asked and
4 answered, Judge.

5 THE COURT: Sustained as to the form.

6 Q. (By Mr. Foote) Did you hear what she was
7 saying?

8 A. Roughly.

9 Q. Okay. Did she talk to you about any
10 information that you stated at a prior hearing?

11 A. She tried to.

12 Q. All right. Did you hear the statement?

13 A. Yes and no. It was loud in there.

14 Q. Okay. Did you give any response to what
15 she told you?

16 A. No.

17 Q. All right. If she were to -- did you shake
18 your head no or yes to her at all?

19 A. I believe I gave her a funny look, like a
20 shocked look that she approached me with my fiancé,
21 and then I grabbed my fiancé and turned around and
22 left.

23 Q. What were you thinking or feeling when you
24 saw your ex-girlfriend when you were with your
25 fiancée?

1 A. Nothing good, like oh, gees.

2 Q. Okay. So did you want to talk to Lisa
3 Toronto?

4 A. No.

5 Q. And did you continue on your way then?

6 A. Yes.

7 MR. FOOTE: That's all I have at this time,
8 Judge.

9 THE COURT: All right. Cross?

10 MR. ROSARIO: May I have a moment, Judge?

11 THE COURT: You may.

12 CROSS-EXAMINATION

13 BY MR. ROSARIO:

14 Q. Good evening, Mr. Schubart.

15 A. Evening.

16 Q. You understand you're sworn to tell the
17 truth today, right?

18 A. Yes, sir.

19 Q. And you know that it's important to tell
20 the truth, right?

21 A. Absolutely.

22 Q. And our whole system is built on telling
23 the truth, right?

24 A. Correct.

25 Q. And the night back on March 25th, 2006

1 going into March 26th, 2006, the defendant was drunk,
2 wasn't he?

3 A. Yes.

4 Q. And he urinated in public, didn't he?

5 A. Yes.

6 Q. You're tall; you're six-foot-five, aren't
7 you?

8 A. Yes, sir.

9 Q. And back on March 26th, 2006, you had a
10 mohawk?

11 A. That is correct.

12 Q. A big spiky one, didn't you?

13 A. Yes.

14 Q. And your girlfriend was Lisa Toronto,
15 right?

16 A. Yes.

17 Q. And when you got to the bar you really
18 didn't sit with her; you went and sat up at the bar
19 with Bo Mayhew, right?

20 A. He was hanging around. I didn't
21 specifically sit with him.

22 Q. He was the bartender though, right?

23 A. He was one of them.

24 Q. He was one of the ones serving the
25 defendant that night, right?

1 A. Yes.

2 Q. And he is one of your friends; he was one
3 of your friends?

4 A. He was one of my friends.

5 Q. And you were friends with the owners of the
6 bar?

7 A. Yes.

8 Q. Lisa sat down at one of the tables down the
9 way with her friends?

10 A. That is correct.

11 Q. And it didn't bother you at all that he was
12 going over and buying her drinks or anything like
13 that?

14 A. No, I didn't see any harm.

15 Q. Okay. And Lisa left the bar before 12:00
16 that night, right?

17 A. I don't recall, no.

18 Q. Well, she didn't leave with you, correct?

19 A. No.

20 Q. You guys arrived separately; you left
21 separately?

22 A. Correct.

23 Q. So are you telling the jury you don't know
24 when she left that night?

25 A. That is correct, I don't.

1 Q. But would you -- would it be correct to say
2 she left before you that night?

3 A. Yes.

4 Q. And at 12:51 you missed a call from Crystal
5 Sizemore, didn't you?

6 A. That is correct.

7 Q. You were in the bar?

8 A. Yes.

9 Q. And you went outside the bar to call her at
10 1:00 a.m., didn't you?

11 A. Yes.

12 Q. And you were trying to sell a digital
13 camera to Crystal Sizemore at 1:00 in the morning?

14 A. That is correct.

15 Q. For how much?

16 A. I believe it was \$50.

17 Q. And at 1:00 in the morning you saw Shannon
18 Stephen urinate on that column next to you, didn't
19 you?

20 A. It was right around that time, yes.

21 Q. And you saw he was drunk and belligerent,
22 and I believe the Defense counsel cut you off; he was
23 drunk, belligerent and what else were you saying?

24 A. Obnoxious, loud, drunk.

25 Q. And you were talking to Crystal at this

1 point?

2 A. Yes, or checking my voicemail.

3 Q. Or checking your voicemail?

4 A. Yes.

5 Q. So it would be fair to say that you were
6 focusing on listening to your voicemail, weren't you?

7 A. That would have been my main focus, yes.

8 Q. And --

9 MR. ROSARIO: Your Honor, may I have the
10 witness step down?

11 THE COURT: The witness may stand down and
12 utilize the exhibit.

13 Q. (By Mr. Rosario) You're standing out in
14 front of Sevens where again?

15 A. Right here (indicating).

16 Q. Okay. And you see Shannon Stephen and his
17 two friends walking towards a vehicle?

18 A. Yes, sir.

19 Q. Where was that vehicle parked?

20 A. That vehicle parked was right round in this
21 area.

22 Q. Okay. So that would have been 50 to 70
23 feet away from you?

24 A. Roughly, yes.

25 Q. And you were on the phone?

1 A. Yes.

2 MR. ROSARIO: Thank you. You can take your
3 seat.

4 THE WITNESS: All right.

5 Q. (By Mr. Rosario) And you noticed at some
6 point that Shannon Stephen is on the ground?

7 A. Yes.

8 Q. Are you telling this jury today that you
9 were completely focused on what he was doing walking
10 down the road or were you listening on that phone?

11 A. I was listening in on that phone.

12 Q. You saw him resisting with his friends
13 after he was on the ground?

14 A. Yes.

15 Q. But eventually he let them help him up?

16 A. Yes.

17 Q. And the defendant that night was much
18 heavier than he is today, wasn't he?

19 A. I don't recall.

20 Q. He had a goatee?

21 A. I don't recall that either.

22 Q. He was clean shaven?

23 A. I don't recall. Like I said, my intention
24 was on the phone, it wasn't --

25 Q. What color -- was his hair the same color

1 as it is now?

2 A. Maybe a little less gray.

3 Q. And it's your testimony that you saw all
4 three of these men get into the front seat of that
5 truck, correct?

6 A. I saw them get into the truck.

7 Q. You saw them get into the front seat,
8 correct?

9 A. Correct.

10 Q. The front row seat, correct?

11 A. Correct.

12 Q. Hey didn't get in the back, they got in the
13 front, all three of them in the front of the truck?

14 A. As far as I can recall, yes.

15 Q. And then it's your testimony that after
16 1:00 a.m. that truck, do you really recall what the
17 color of that truck was?

18 A. No, sir.

19 Q. So when he showed you that picture, there
20 was a moment of hesitation; you really weren't sure
21 that was the truck, correct?

22 A. It's a Chevy Silverado, sir, you know,
23 there's thousands of them out on the road. I don't
24 know if that was his specific truck.

25 Q. Are you sure you didn't see a silver truck

1 going out towards north on Little Road?

2 A. I don't recall what color it was, sir.

3 Q. And your testimony is that that vehicle
4 exited out past Amscot?

5 A. Yes.

6 Q. And went north on Little Road?

7 A. That is correct.

8 Q. After 1:00 a.m.?

9 A. Yes.

10 Q. You didn't get the tag number of that
11 vehicle?

12 A. No.

13 Q. Now, back then you were dating Lisa
14 Toronto?

15 A. Yes.

16 Q. And as you stated it was like a fling?

17 A. Yes.

18 Q. You trusted her; you talked to her about
19 things, didn't you?

20 A. Of course; she was my girlfriend.

21 Q. You brought her places; you did things with
22 her, right?

23 A. (Nods head.)

24 Q. Is that a yes?

25 A. Yes, sir, I'm sorry.

1 Q. And you'd tell her the truth back then
2 before you got engaged, right?

3 A. Yes.

4 Q. And isn't it a fact that the next day you
5 spoke with her on the phone and you said --

6 MR. FOOTE: Objection, calls for hearsay.

7 THE COURT: You're eliciting what he said,
8 not what she said?

9 MR. ROSARIO: What he said, yeah.

10 THE COURT: The objection's overruled.

11 Q. (By Mr. Rosario) And you said to Lisa
12 Toronto, hey, remember that guy that was buying you
13 drinks last night, remember that conversation?

14 A. Yes, sir.

15 Q. You told her he ran over two people and
16 killed two people last night, didn't you?

17 A. Yes, sir.

18 Q. And then you told her that he didn't have a
19 designated driver, that he got into a fight with his
20 friends and took his keys, ran off and drove off on
21 his own, didn't you tell her that?

22 A. I did not say that.

23 Q. You've given testimony numerous times in
24 this case, haven't you?

25 A. Once before.

1 Q. And the Defense attorney talked to you
2 about the --

3 THE COURT: Excuse me. Can you approach?

4 MR. ROSARIO: Yes, sir.

5 BENCH CONFERENCE

6 THE COURT: Once again, no talk about the
7 prior trial. He's been warned about that?

8 MR. FOOTE: I did, but I don't know where
9 Mr. Rosario's going about previous testimony.

10 THE COURT: What he's going to talk about
11 that trial?

12 MR. ROSARIO: No. No. He referred to a
13 hearing. I was going to refer to it as a hearing as
14 well, when they met at Channelside.

15 THE COURT: You need to be more careful.
16 That was kind of a general brush there.

17 MR. ROSARIO: Yes, sir.

18 THE COURT: So you need to be more specific
19 with regard to, that Mr. Foote was when he
20 specifically said hearing.

21 MR. ROSARIO: Yes, sir, I'll do that.

22 MR. FOOTE: May I ask, so I don't have to
23 run back up here, where are we going with a prior
24 impeaching or refreshing recollection regarding the
25 prior hearing?

1 MR. ROSARIO: I'm going exactly where you
2 went on the prior hearing and what happened at
3 Channelside, that's where I'm going.

4 THE COURT: You're going to ask him about
5 what happened after?

6 MR. ROSARIO: Yeah, at Channelside.

7 THE COURT: Let's get to that.

8 MR. FOOTE: Okay. Wait. You preface it by
9 saying you were speaking to the Defense attorney and
10 I think he might think you were talking about a
11 deposition.

12 MR. ROSARIO: I don't think I said Defense
13 attorney.

14 MR. FOOTE: You said the Defense attorney
15 was questioning you --

16 MR. ROSARIO: Right. Okay.

17 THE COURT: -- at the prior trial. So
18 let's, you know, get more specific and to the point
19 away from where it -- testimony about a trial.

20 MR. ROSARIO: Okay.

21 THE COURT: Unless it's part of your
22 questioning, tell me now.

23 MR. ROSARIO: Yes, sir. I'll get right to
24 it.

25 OPEN COURT

1 MR. ROSARIO: May I proceed, Your Honor?

2 THE COURT: You may.

3 Q. (By Mr. Rosario) The Defense attorney
4 asked you about an event that occurred over at
5 Channelside.

6 A. Yes.

7 Q. And Lisa Toronto came up and spoke to you,
8 didn't she?

9 A. Yes.

10 Q. And your testimony today was she talked to
11 you but a prior hearing, correct?

12 A. That's correct.

13 Q. And isn't it a fact that she confronted you
14 as to whether you were lying at that hearing?

15 A. Yes.

16 Q. And you acknowledged with a shrug and a
17 nod?

18 A. No, sir.

19 Q. You said you gave a funny look.

20 A. I gave a funny look because she was my
21 ex-girlfriend approaching me with my fiancée.

22 Q. Not because she confronted you over lying
23 at a prior hearing?

24 A. No.

25 MR. ROSARIO: I have nothing further,

1 Judge.

2 THE COURT: Okay. Any redirect?

3 MR. FOOTE: Yes.

4 REDIRECT EXAMINATION

5 BY MR. FOOTE:

6 Q. With regard to this Channelside event, did
7 you actually even say any words to Lisa Toronto?

8 A. No, sir.

9 Q. Okay. Were you surprised to see her?

10 A. Yes.

11 Q. Although you heard what she said, you
12 didn't respond to her?

13 A. No.

14 MR. FOOTE: Judge, may I have the witness
15 step down?

16 THE COURT: The witness may stand down to
17 analyze the exhibit.

18 Q. (By Mr. Foote) Showing you what's been
19 previously marked as Defendant's GG; do you recognize
20 this document?

21 A. Yes.

22 Q. What is it?

23 A. It's my cell phone usage.

24 Q. All right. And what's the date?

25 A. March 26th, 2006.

1 Q. Is this just a bigger page than what you
2 just looked at before?

3 A. Yes, sir.

4 Q. On the dates of March 26th in the early
5 morning hours, if you could explain to the jury what
6 was going on here; you said that it was 1:00, 12:00.
7 If you could clarify the time of what you were doing
8 with these calls around 12:45.

9 A. At 12:45 I received a voicemail from
10 Crystal. I went outside and checked it. I proceeded
11 to call her back at around 1:00.

12 Q. Well, let's -- okay. Read each of one of
13 the calls that lead up to that point.

14 A. Okay. 12:45 a.m. I checked my voicemail.
15 12:48 I called Crystal. 12:51 she calls me back.
16 And then at 1:00 I called her again.

17 Q. Okay. Thank you have a seat. Now, when
18 you were outside at that time did you have any reason
19 to take down any license plates?

20 A. No, sir.

21 Q. And you said that the vehicle's about 50 to
22 60 feet away?

23 A. Roughly.

24 Q. Okay. What was the only reason that you
25 were even looking in that direction?

1 A. Because they were the only people in the
2 parking lot and they were making a scene.

3 Q. All right. Now, there are different phone
4 calls that you just showed the jury at this time; are
5 you certain as to exact time that you saw the vehicle
6 drive out. Could it be possible that it was the
7 earlier calls or the later?

8 MR. ROSARIO: Objection, leading.

9 THE COURT: Overruled.

10 THE WITNESS: I don't recall what time the
11 vehicle left.

12 Q. (By Mr. Foote) Okay. So because the State
13 Attorney was saying 1:00, 1:00 that call; do you know
14 specifically which one of the calls that you actually
15 saw the individuals in the parking lot?

16 A. No, sir.

17 Q. Were you checking your watch at that time?

18 A. No.

19 Q. And with regard to --

20 MR. FOOTE: Actually, may I have a moment,
21 Judge?

22 THE COURT: You may.

23 MR. FOOTE: May I approach the witness?

24 THE COURT: You may.

25 Q. (By Mr. Foote) I'm showing you what's been

1 put into evidence as the State's Exhibit 8. Why
2 don't you take a look at that. Now, earlier I showed
3 a picture of a truck during the daytime; does that
4 more accurately depict --

5 MR. ROSARIO: Objection, leading.

6 THE COURT: Sustained.

7 Q. (By Mr. Foote) Do you recognize that
8 photograph?

9 A. I recognize it's a truck.

10 Q. Okay. Does it look like the vehicle that
11 you saw?

12 MR. ROSARIO: Objection, leading.

13 THE COURT: Overruled.

14 Q. (By Mr. Foote) Does it look like the
15 vehicle that you saw that evening in the parking lot?

16 A. I seen a truck. You know, I don't know if
17 this is the specific truck or not.

18 Q. All right. Fair enough.

19 MR. FOOTE: May I approach, Judge?

20 THE COURT: You may.

21 Q. (By Mr. Foote) But are you certain that
22 three people got into that truck?

23 A. Yes, sir.

24 Q. More importantly?

25 MR. ROSARIO: Objection, argumentative,

1 more important.

2 THE COURT: Rephrase.

3 Q. (By Mr. Foote) As you sit here and look at
4 this jury, how certain are you that Shannon Stephen
5 got in the passenger seat of that truck?

6 A. I'm certain he got in the passenger seat.

7 MR. FOOTE: That's all I have, Judge. One
8 moment.

9 Q. (By Mr. Foote) At a previous time you had
10 given a statement with regard to the color of the
11 truck; do you recall saying it was dark in color?

12 A. It seemed dark, yes.

13 Q. So it wasn't a light-colored vehicle?

14 A. Not that I can recall.

15 Q. That statement was back in April of 2006.
16 Is it fair to say that your memory was fresher back
17 then?

18 A. Absolutely.

19 Q. Okay.

20 THE COURT: Anything else?

21 MR. FOOTE: Nothing further.

22 MR. ROSARIO: Real quick, Judge.

23 THE COURT: Only as to the new things
24 raised on redirect.

25 MR. ROSARIO: Yes, sir.

1 changed that to, I am certain; is that correct?

2 A. That's correct.

3 Q. And that was based upon you seeing the
4 three people get into the front seat of that
5 dark-colored truck?

6 MR. FOOTE: Objection, asked and answered.

7 THE COURT: Overruled.

8 Q. (By Mr. Rosario) Correct?

9 A. Correct.

10 MR. ROSARIO: I have nothing further.

11 May this witness be excused or do you wish
12 this witness remain to the call of the Court?

13 MR. FOOTE: Excused.

14 THE COURT: State?

15 MR. ROSARIO: Excused.

16 THE COURT: Sir, you may be excused.

17 THE WITNESS: Thank you.

18 MR. FOOTE: Judge, may we approach?

19 THE COURT: You may.

20 BENCH CONFERENCE

21 MR. FOOTE: Judge, that's as far as the
22 Defense is prepared to go for this evening. We have
23 no other witnesses that we would be calling at this
24 time outside of the defendant, but we're not prepared
25 to rest at this time.

1 THE COURT: I'm not sure what that means.

2 MR. FOOTE: I have no other witnesses
3 besides the defendant.

4 THE COURT: All right. And is the
5 defendant testifying?

6 MR. FOOTE: We have not -- I haven't
7 decided that yet.

8 THE COURT: When will you make that
9 decision?

10 MR. FOOTE: Well, I didn't know we would be
11 here at this point this late, but tomorrow morning I
12 would pretty much like to speak to him about that and
13 go over some of that testimony. That's the only
14 witness we have left.

15 THE COURT: State has a potential rebuttal
16 witness?

17 MR. ROSARIO: She's been sitting out there
18 since 4:30, Judge; it's now 8:42.

19 MR. FOOTE: Judge, we're going to bring up
20 that motion in limine at that time. I do not believe
21 at this point it's reached the level where she needs
22 an impeachment witness.

23 THE COURT: Can she come back tomorrow
24 morning?

25 MR. ROSARIO: I'll talk to her.

1 THE COURT: How much testimony?

2 MR. ROSARIO: It's going to be very simple.
3 It's two issues, the one is the phone call the next
4 day where he says he did not make that statement and
5 she will come and say he did make that statement.

6 And the other is the Channelside where she
7 confronted him over lying at the hearing and he gave
8 an expression that she has seen before as an
9 expression of acknowledgement of yes. It's an
10 adoptive issue.

11 MR. FOOTE: And, Judge, that is going way
12 far.

13 THE COURT: That issue is a little --

14 MR. FOOTE: It has to be a statement or --

15 THE COURT: Well, you can have a past
16 admission.

17 MR. FOOTE: Correct.

18 THE COURT: Okay. We sense, you know,
19 that's what sort of thing I'll give you all time and
20 maybe do some research on that. It's 8:43 and this
21 jury's probably had enough.

22 MR. FOOTE: Okay.

23 THE COURT: So let -- the jury's had
24 enough, although you all may not. You all are going
25 to need at some point in time to go over the

1 potential jury instructions. Let me just get this
2 jury out.

3 MR. ROSARIO: I think the air-conditioning
4 is now cut off.

5 THE COURT: All right. I'll send the jury
6 home.

7 OPEN COURT

8 THE COURT: Members of the Jury, this is a
9 good time for us to break for the evening. We've all
10 had a long day. I do appreciate your attention.

11 I'm going to ask you to be back here
12 tomorrow morning at -- I'll give you a little extra
13 time. I'd like you to be back here about quarter
14 till 9:00, tomorrow morning.

15 We'd like to get started anywhere between
16 quarter till and 9:00. So. We will see you back
17 here, once again back in the central jury room.
18 Please remember my admonitions, no Internet, no
19 talking to one another, no talking to any other
20 individuals about the case. Certainly don't read the
21 newspaper. You're all pros at it by now and we'll
22 see you back here tomorrow morning.

23 Once again, thank you for your time and
24 attention here today.

25 JURY ABSENT

1 MR. FOOTE: Judge, at this time we would
2 like to move our evidence in.

3 THE COURT: That's what I was getting at
4 when you say move everything that was previously
5 identified. Well, let's wait for Mr. Rosario to come
6 back.

7 All right. Mr. Rosario, at this point in
8 time Mr. Foote has moved everything in that was
9 previously marked.

10 MR. FOOTE: No, we are going to.

11 THE COURT: I apologize, not everything
12 that was previously marked, but he accepted certain
13 items previously, that being a receipt and I think
14 there may have been some other cell records maybe. I
15 apologize. I know it was a receipt; I can't remember
16 what else.

17 MR. ROSARIO: The receipt. The EMS records
18 I was objecting to. And I object of course to Mr.
19 Stephen's cell phone records. I still don't believe
20 that's been established yes.

21 THE COURT: We can talk about that.

22 MR. ROSARIO: But it looks like, if you
23 want to go through it, Judge, I believe the phone
24 records of Walter Schubart.

25 THE COURT: Let me interrupt just a moment.

1 Once again, let's make sure we're clear on that. I'm
2 worried I'm going to forget this. Number 1 is still
3 going to be that disk.

4 MR. ROSARIO: Yes, sir.

5 THE COURT: You already have a 2.

6 THE CLERK: We have a 2 and a 3; that's all
7 I have.

8 THE COURT: Okay. I just wanted to make
9 sure we're all on the same page. So that once we do
10 the disk, there's a 2 and a 3. What is 2?

11 THE CLERK: 2 was the photo of the truck
12 interior and 3 was the --

13 THE COURT: One was a GPS and one was -- so
14 I do recall that. So what needs to be moved in?

15 MR. FOOTE: The phone records of Walter
16 Schubart.

17 THE COURT: All right. Do you have any
18 objection to that?

19 MR. ROSARIO: No, sir.

20 THE COURT: Do you want to call that 4?

21 MR. FOOTE: K, that can be 4. Judge, we
22 had a larger version that he just testified to. I
23 don't know if I want to do it as a composite, the
24 small records and the big board or do you want to do
25 it separate?

1 THE CLERK: I need to know what you're
2 marking things.

3 THE COURT: Do you have a reference either
4 way?

5 MR. ROSARIO: Composite is fine.

6 THE COURT: Okay. 4(a) for the small, 4(b)
7 for the blowup. Do you want a composite of that?

8 MR. FOOTE: I'll go through the phone
9 records of Walter Schubart previously identified as
10 G, that would be 4. Phone records of Jim Wallace
11 previously marked as N for Nancy --

12 THE COURT: 5.

13 MR. FOOTE: -- 5.

14 THE COURT: Any objection to that?

15 MR. ROSARIO: No, sir.

16 MR. FOOTE: Phone records of Joe Dalzell
17 previously K.

18 MR. ROSARIO: No objection.

19 MR. FOOTE: Phone records of Kara Wallace M
20 as in Mary.

21 MR. ROSARIO: No objection.

22 THE COURT: Okay. 7.

23 MR. FOOTE: 7. Toxicology records of Sara
24 Gleason previously Q.

25 MR. ROSARIO: I would object to that.

1 THE COURT: All right. I've already ruled
2 that's coming in, that will 8.

3 MR. FOOTE: Toxicology of Swish, R.

4 MR. ROSARIO: Again, I would object to
5 that.

6 THE COURT: Objection's noted. That will
7 be --

8 MR. FOOTE: 9.

9 THE COURT: -- 9.

10 MR. FOOTE: The letter was R.

11 The nighttime photograph of the pickup
12 truck which was previously F, as in Frank.

13 MR. ROSARIO: No objection.

14 THE COURT: Okay.

15 MR. FOOTE: Photo daytime of the back of
16 the truck, J.

17 MR. ROSARIO: No objection.

18 THE COURT: All right. That's 11.

19 MR. FOOTE: The raw data from the CDR
20 report was W.

21 MR. ROSARIO: No objection.

22 THE COURT: That's 12.

23 MR. FOOTE: On the big crime scene diagram
24 BB.

25 THE COURT: Is there a smaller version or

1 just the larger version?

2 MR. FOOTE: That's part of Trooper Styers
3 report; we just blew up the page.

4 THE COURT: His report isn't coming in, so
5 it's just that.

6 MR. FOOTE: Just that big one.

7 THE COURT: It's just the big one.

8 THE CLERK: That will be 13 then?

9 THE COURT: 13. No objection to that, I'm
10 assuming, correct, Mr. Rosario?

11 MR. ROSARIO: I'm sorry, Judge, I was
12 listening to a conversation behind me. What is it?

13 MR. FOOTE: Crime scene diagram.

14 MR. ROSARIO: No objection, Judge.

15 MR. FOOTE: Google map CC and DD.

16 THE CLERK: DD as David?

17 MR. FOOTE: Correct.

18 THE COURT: Were those talked about?

19 MR. FOOTE: Excuse me?

20 THE COURT: Were those talked about?

21 MR. FOOTE: We stipulated to the use of
22 Google. We showed it on Monday whenever we started.

23 THE COURT: It was used by a witness?

24 MR. FOOTE: The AB -- well, showed it in
25 opening as a demonstrative shown as scene A, B.

1 THE COURT: Well, I guess that's the issue.
2 Were they utilized by a witness?

3 MR. ROSARIO: No, they weren't utilized by
4 a witness, Judge. I have no objection to them being
5 used in closing but I don't think they should be
6 admitted into evidence.

7 THE COURT: I guess that's the issue if
8 they were utilized by a witness.

9 MR. FOOTE: Judge, my understanding was we
10 had stipulation and agreement of all that stuff. If
11 I knew that we were going to have arguments after I
12 was close to closing my case, I would recall
13 witnesses to utilize all this stuff.

14 MR. ROSARIO: I'll acquiesce, Judge. I'll
15 allow it.

16 MR. FOOTE: CC would be number 14. DD
17 number 15. Google map X-ray.

18 MR. ROSARIO: Judge, the difficulty I have
19 the language at the top, Valerie Herbert 911 call
20 1:05 a.m. I don't know if that's been --

21 MR. FOOTE: Valerie Herbert's tape was
22 played. All cell phone communications we stipulated
23 to. The call came in at 1:05.

24 MR. ROSARIO: It's misleading as to --

25 THE COURT: If you all stipulated to the

1 maps, that's one thing. But did you all stipulate as
2 to the titling on these things?

3 MR. ROSARIO: No, I didn't stipulate to the
4 titling. The 2.7 miles about five minutes. I have
5 no objection -- if they just want to cut the tops off
6 of each one of these, it's appropriate.

7 MR. FOOTE: Judge, we've already agreed on
8 distances. We've used it throughout the trial. We
9 didn't type that on there. That's Google maps as far
10 as the mileage and the distance. We can rerun it if
11 we need to.

12 THE COURT: What is the distance you have
13 from the point of impact at the crash site to the
14 intersection of 54 and Grand? I can tell you that
15 when I ran it, it was .8 miles.

16 MR. ROSARIO: This .9 here, about two
17 minutes.

18 MR. FOOTE: Depending on exactly where --
19 the trooper measured it 5,000 to 280 something feet.
20 Corporal Styers measured and testified and said that
21 it was a mile.

22 THE COURT: I know but you keep saying this
23 is right from Google maps. I'm just telling you, I
24 checked it and it's different.

25 MR. FOOTE: Depends on which search term

1 you actually put in.

2 THE COURT: But, once again, the issue is
3 the stuff on top. Now, I mean, you know, is that --
4 is that critical, you know, is that going to be a
5 critical issue? Presumably they could write it on
6 there during their close, I guess.

7 MR. FOOTE: The mileage is the mileage that
8 is there. There's no give or take.

9 THE COURT: Well, I don't think he's
10 objecting to the mileage.

11 MR. FOOTE: The time, when we played the
12 tape which has already been stipulated to, Roberta
13 Penix or whoever certifies it and the CAD notes that
14 we stipulated to, the call comes in at 1:05.

15 MR. ROSARIO: Well, actually we're looking
16 at a different one. At this point we're looking at
17 the final resting spot of Shannon Stephen's truck.

18 Judge, this is a very simple fix. I would
19 just ask that the top get cut off.

20 THE COURT: Well, what's it saying?

21 MR. ROSARIO: Each one of them -- this one
22 says direction to, quote, final resting place of
23 Shannon's truck. Not even Shannon Stephen, Shannon's
24 truck, which I think is more -- we're naming him by
25 first name and handing this back to the jury.

1 MR. FOOTE: That's fine. We'll take it
2 off. We'll take it off.

3 MR. ROSARIO: Take it off on all three of
4 them?

5 MR. FOOTE: I'm going to take off where it
6 says directions of Shannon Stephen's truck and just
7 argue it for what it is.

8 THE COURT: All right. What's the next one
9 then?

10 MR. FOOTE: Are we good on that one?

11 MR. ROSARIO: Judge, the difficulty I'm
12 having here also is it says about two minutes, about
13 five minutes and about six minutes. There's been no
14 testimony from witnesses that it's about this, about
15 that. This is testimony -- this is going back to the
16 jury. It's giving testimony to the jury that I think
17 needs to be extracted.

18 THE COURT: Okay. All right. Mr. Foote,
19 where does that come from?

20 MR. FOOTE: Well, it --

21 THE COURT: I mean, about doesn't come from
22 Google maps.

23 MR. FOOTE: It does, Judge. We didn't put
24 any of that stuff. The search term prints the page.
25 We took that page to the printer and they just blew

1 the page up.

2 THE COURT: But these about times, where
3 does that come from? I mean, Google maps says it
4 takes about six minutes.

5 MR. FOOTE: Judge, if you put the terms in,
6 as an Officer of the Court I did not type this in.
7 It goes into the search.

8 THE COURT: Once again -- okay. So you're
9 saying because you've all agreed to use Google maps
10 that all the information exacted from Google maps was
11 going to be admitted as well, like times and that
12 sort of thing?

13 MR. FOOTE: We put that on, Judge, so that
14 we would know the distance so people are not just
15 guessing as to what it is.

16 THE COURT: Well, I don't think he's
17 objecting to the distance part. I think he's
18 objecting to about six minutes, about four minutes.
19 Isn't that what you just said?

20 MR. ROSARIO: Yes, Judge.

21 MR. FOOTE: That objection never came up
22 when we stipulated to the use of Mapquest and Google
23 maps traveling at a normal rate of speed with
24 traffic.

25 THE COURT: Like I said, I would never even

1 thought that and we talked about that. I mean, it
2 would have never come into my mind that, oh, now
3 you're going to put in about distance, it will take
4 about this long. I mean, I can understand you would
5 say the map is good. It is what it is. It shows the
6 place, even that it shows distances. Now we're
7 getting into it shows times.

8 MR. FOOTE: Judge, we'll take it out.

9 MR. ROSARIO: Thank you.

10 THE COURT: What else?

11 MR. FOOTE: 16. S as in Sam is 17.

12 MR. ROSARIO: I have no objection to 17,
13 that's the intersection of 54 and Grand Boulevard.

14 MR. FOOTE: The phone records, the large
15 version of Joe Dalzell's phone record, V as in
16 Victor, 18.

17 THE COURT: That's already been agreed to,
18 correct, Mr. Rosario?

19 MR. ROSARIO: Yeah, I have no objection to
20 that, Judge.

21 MR. FOOTE: Large of Walter Schubart is GG,
22 19.

23 THE COURT: All right.

24 MR. ROSARIO: No objection, Judge.

25 MR. FOOTE: Large of Kara Wallace HH will

1 be 20.

2 THE COURT: All right. That one's already
3 been agreed to.

4 MR. ROSARIO: Actually the one you brought
5 is James Wallace. Okay. That is hers.

6 MR. FOOTE: Jim Wallace's large phone
7 records.

8 THE COURT: Okay. Agreed to correct, Mr.
9 Rosario?

10 MR. ROSARIO: Yes, Judge.

11 MR. FOOTE: 21.

12 MR. FOOTE: Judge, the dots that are on
13 records, I don't know if that's --

14 THE COURT: They were put on by the
15 witnesses.

16 MR. ROSARIO: Okay. That's fine, Judge.

17 THE COURT: I mean, that's my recollection.

18 MR. ROSARIO: It was.

19 THE COURT: They're part of the record.

20 MR. ROSARIO: Okay.

21 MR. FOOTE: Large version of Bartlett's
22 cell phone records EE, 22.

23 THE COURT: Any objection to that?

24 MR. ROSARIO: Yes, Judge. This is not a
25 complete cell phone record. This is the -- is this

1 the cell phone record or is this -- these are Mr.
2 Bartlett's. No objection.

3 THE COURT: All right. That's what he
4 said, Mr. Bartlett.

5 MR. ROSARIO: I'm getting punchy at 9:00.

6 MR. FOOTE: Judge, the only thing remaining
7 is the records of Shannon Stephen, which would be --
8 KK is the photograph of --

9 THE COURT: Looking out from -- all right.
10 Any objection to that one, that's looking out from
11 the bar?

12 MR. ROSARIO: Do we have a better version
13 of this? This is all water damaged.

14 MR. FOOTE: That's what I have.

15 THE COURT: That's what the witness
16 identified.

17 MR. ROSARIO: That's fine.

18 THE CLERK: 23.

19 MR. FOOTE: 23, correct.

20 THE COURT: Where to next.

21 MR. FOOTE: That leaves the cell phone
22 records of Shannon Stephen.

23 THE COURT: Did you wish to address that?

24 MR. FOOTE: Judge, with Kara's phone
25 records and Jim's phone records, Kara testified she

1 called Shannon Stephen around 5:00 for a boys' night
2 out. Jim doesn't have the kids, why don't you go
3 out. Although she can't recall the number itself
4 from whatever time it was. The records which have
5 already been entered of Carol Wallace, exhibit, the
6 cell phone number, the certified records we received
7 of Shannon Stephen.

8 THE COURT: Okay. Response?

9 MR. ROSARIO: Judge, I again renew my
10 objection. There was no testimony from any witness
11 that they actually called and spoke to --

12 THE COURT: She said that -- I think it's
13 a little different, isn't it now? She said, I called
14 him around 5:00, or sometime prior going to work.
15 And he testified -- and on the phone bill, on his
16 phone bill, it shows a call from a number -- that
17 shows a call from any number between 5:00 and 5:30 --

18 MR. FOOTE: 5:25. Actually her bill is
19 calling his at 5:25.

20 THE COURT: That's right. Right. Her --
21 well, his shows a call. Her shows a call. And Mr.
22 Wallace testified that was her number calling -- him
23 calling her and her calling him early on.

24 So with her saying that, that's kind of --
25 although it's a rather-lengthy chain, that kind of

1 adds it all together.

2 MR. ROSARIO: The difficulty I have, Judge,
3 is that a cell phone was taken into evidence by
4 Florida Highway Patrol in the defendant's possession.

5 Two days later it was taken -- it was given back to
6 the defendant's mother as personal property. And we
7 are relying on -- the actual phone exists and the
8 fact that the phone that was in his hands --

9 THE COURT: Who gave it back, FHP?

10 MR. ROSARIO: FHP gave it back to the
11 defendant's mother as personal property. That phone
12 actually exists and it was one that was found on him
13 at the time, that's not being introduced into
14 evidence. We're using his phone records. I don't
15 think it's a substantial tie to show that the phone
16 that was used -- that was in defendant's hand that
17 night is the phone that was being utilized in these
18 cell phones, these cell phone records.

19 THE COURT: I understand that argument.
20 But that issue is kind of -- that doesn't negate now
21 that that other -- that link has been established,
22 that doesn't negate that link.

23 Now, from your prospective, yeah, maybe it
24 would have been very nice to have that phone.

25 MR. ROSARIO: Yeah.

1 THE COURT: That doesn't mean that this
2 record is not admissible.

3 Once again, I think now there is sufficient
4 connection. I mean, your witness said, this is my
5 phone number. This was my wife's number. She was
6 calling me. I was calling her. This is the number.
7 Mrs. Wallace gets on and says, yes, I called the
8 defendant and I called him in this timeframe. She
9 looked at her bill and his bill and getting her
10 number -- she doesn't remember, but Mr. Wallace said
11 that was her number. Then she said, I did call him.

12 MR. ROSARIO: Okay.

13 THE COURT: There's the link --

14 MR. ROSARIO: Okay.

15 THE COURT: -- to the phone records, like I
16 said, that was missing before. I think it's been
17 supplied now.

18 MR. ROSARIO: I would still object but I
19 understand your ruling.

20 THE COURT: I know your objection. But I
21 think now it has been connected up, where before it
22 had not.

23 MR. FOOTE: The smaller records of Shannon
24 Stephen previously as O, would be 24.

25 MR. FOOTE: A large version F as in Frank,

1 F as in Frank, FF, 25.

2 THE COURT: Is that it?

3 MR. FOOTE: Except for the 911 tape.

4 THE COURT: That's going to be 1.

5 MR. ROSARIO: As an expert, I believe I get
6 \$250 an hour to make these?

7 MR. FOOTE: That's all we have, Judge.

8 THE COURT: Okay.

9 THE COURT: Mr. Stephen, I need you to
10 raise your right hand.

11 (Whereupon, the defendant was sworn.)

12 THE COURT: Sir, you have been present
13 throughout this entire proceeding, correct?

14 THE DEFENDANT: Yes.

15 THE COURT: You can put your hand down,
16 sir.

17 THE DEFENDANT: Thank you.

18 THE COURT: And -- actually state your full
19 name.

20 THE DEFENDANT: Shannon Leland Stephen.

21 THE COURT: And you've been present
22 throughout this entire proceeding obviously from very
23 early Monday until now late Thursday evening,
24 correct?

25 THE DEFENDANT: Correct.

1 THE COURT: And you understand, we had this
2 conversation earlier, that at some point in time you
3 and I were going to have a discussion as to whether
4 or not you wanted to testify in your own behalf?

5 THE DEFENDANT: Correct.

6 THE COURT: And that decision I'm going to
7 give you the evening to think about that and discuss
8 that with your lawyer. But my intent now is to give
9 you, for lack of a better phrase, the heads-up on
10 that that.

11 We will be having that discussion and we
12 will discussing whether or not you wish to testify on
13 your behalf or not.

14 THE DEFENDANT: Okay.

15 THE COURT: Correct?

16 THE DEFENDANT: Right.

17 THE COURT: And that you will -- you
18 understand at this point in time as we will discuss
19 later, that this decision is yours and yours alone to
20 make.

21 THE DEFENDANT: Right.

22 THE COURT: In other words, your lawyer and
23 family members and friends and everybody else can
24 make suggestions to you and give you counsel with
25 regard to that and give you their best advice. But

1 the ultimate decision on whether or not to testify is
2 yours and yours alone.

3 THE DEFENDANT: Correct.

4 THE COURT: Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: And it's critical. It's
7 critical that you understand that. So, once again,
8 if you wish to testify, then you do. If it isn't
9 then you don't. The jury will obviously be instructed
10 accordingly, as I'm sure Mr. Foote has already told
11 you and will continue to advise you, but it's
12 important for you to understand it's your decision,
13 you have the night to sleep on it, and then you can
14 make that decision because Mr. Foote has asked not --
15 for that decision not to be made this evening.

16 He wants to give you more time, correct,
17 Mr. Foote, to think about it, to talk about it, to
18 sleep on it, make sure everybody's clear-headed in
19 making a decision?

20 MR. FOOTE: That's correct, Judge.

21 THE COURT: And you understand that's what
22 we're going to do tomorrow morning?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. And you are at this
25 point -- and you understand you can have the entire

1 evening and then whatever part of tomorrow morning
2 you want to discuss that with your lawyer, correct?

3 THE DEFENDANT: Correct.

4 THE COURT: And discuss it with anyone else
5 you feel appropriate to discuss that with?

6 THE DEFENDANT: Yes.

7 THE COURT: And you feel that's going to
8 give you enough time to make that decision?

9 THE DEFENDANT: I think so, yeah.

10 THE COURT: All right. And you are at this
11 point in time, and you haven't finished the trial
12 yet, but certainly at this pint in time you're
13 satisfied with your lawyer's representation here
14 today and Monday and Tuesday and Wednesday up through
15 this very moment in the trial, correct?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. Sir, we'll have
18 this discussion again tomorrow morning and then there
19 will be a time when you'll have to actually make that
20 decision, okay?

21 THE DEFENDANT: Okay.

22 THE COURT: Thank you very much, sir.

23 THE DEFENDANT: Thank you.

24 MR. ROSARIO: Judge, a deposition of Lisa
25 Toronto was filed on Monday. I have not received a

1 doing is verifying it?

2 MR. FOOTE: And, yes, we submitted it in.

3 THE COURT: All right. Anything else we --
4 well, we to need address some new issues, I guess,
5 don't we.

6 Mr. Foote, whether or not your client is
7 testifying, I think probably will be first on the
8 agenda; is that correct?

9 MR. ROSARIO: I'm sorry. I didn't hear
10 you, Judge.

11 THE COURT: I asked Mr. Foote if I thought
12 the first thing would be agreed the first thing we
13 probably needed to take up at this time was his
14 client's desire to testify or not.

15 MR. FOOTE: That's correct, Judge.

16 THE COURT: Mr. Stephen, sir, if would
17 please, raise your right hand.

18 (Whereupon, the Defendant was sworn.)

19 THE COURT: Please state your full name.

20 THE DEFENDANT: Shannon Leyland Stephen.

21 THE COURT: Mr. Stephen, sir, you had the
22 opportunity to consider what we spoke about last
23 night, that being your decision to testify or not to
24 testify and that you've had the opportunity to
25 discuss that with your lawyer and anyone else that

1 you chose to discuss that with?

2 THE DEFENDANT: Yes, I have.

3 THE COURT: And do you feel you've had
4 sufficient time to consider that decision?

5 THE DEFENDANT: Yes.

6 THE COURT: And is it your intent to
7 testify in your own behalf or not to testify in your
8 own behalf here today?

9 THE DEFENDANT: Not to testify.

10 THE COURT: All right. You understand that
11 that decision not to testify is your decision and
12 your decision alone, correct?

13 THE DEFENDANT: Yes.

14 THE COURT: And, in other words, that
15 decision is not your lawyer's decision, not a
16 friend's decision, not a family member's decision,
17 but your decision and you feel comfortable with that
18 decision; is that correct?

19 THE DEFENDANT: Yes.

20 THE COURT: All right. Okay. And has
21 anybody forced you or threatened you or coerced you
22 or promised you anything at all to get you to make
23 that decision?

24 THE DEFENDANT: No.

25 THE COURT: Are you under the influence of

1 drugs, alcohol, narcotics or medication here today?

2 THE DEFENDANT: No.

3 THE COURT: So you feel that you're
4 clear-headed?

5 THE DEFENDANT: Yes.

6 THE COURT: And you have had sufficient
7 time to consider that decision?

8 THE DEFENDANT: Yes.

9 THE COURT: And you feel comfortable in
10 that decision?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. That being the
13 case, Mr. Foote, what would the Defense's intent be
14 at this time?

15 MR. FOOTE: Judge, we're going to rest, but
16 before we do that I would presume in the presence of
17 the jury.

18 THE COURT: Well, what I was thinking about
19 doing is, one, why don't you rest now so we can do
20 the arguments, bring them back in and you can rest in
21 front of the jury. And, also, this gives us the
22 opportunity to address those issues you wished to
23 address yesterday --

24 MR. FOOTE: That will be fine.

25 THE COURT: -- with regard to --

1 MR. FOOTE: That will be fine, Judge. At
2 this point given all witnesses that the Defense
3 intends to call, the Defense would rest.

4 THE COURT: All right. What says the
5 Defense upon resting, a motion?

6 MR. FOOTE: Judge, we would renew our
7 motion for Judgment of Acquittal. Judge, we renew
8 our motion based on the previous case law that was
9 cited, now that all evidence that has come in, we
10 believe that this is a circumstantial case. No
11 witnesses are able to identify the defendant as the
12 person that caused the death of these two people and
13 neither of them were able to identify the defendant
14 as the person leaving the scene of the accident
15 causing injury or death.

16 As the Court is well aware that the only
17 evidence that has come forward linking Mr. Stephen to
18 this allegation, or these allegations, is that his
19 vehicle is found a mile or so south of where the
20 crime occurred. There's discrepancies as to the
21 identification of that person. He is found to be
22 behind the wheel of pretty much an inoperable vehicle
23 next to the Sevens -- or the Club 54 as State Road 54
24 and Grand.

25 Based on this, Judge, we believe that the

1 burden would shift to the State to dispel any
2 reasonable hypothesis of innocence as this goes to
3 one of the elements of the crime.

4 Each of the crimes that the defendant had
5 to be a driver that caused the deaths of these two
6 people, as well as the person that would have left
7 the scene knowingly, wilfully, without rendering
8 aide, whether he knew or should have known, no
9 evidence to that fact has come before this jury.

10 So even viewing that evidence in the light
11 most favorable to the State, we believe that that
12 burden has not been met and, therefore, the burden
13 would shift to the State because it is a purely
14 circumstantial case.

15 THE COURT: All right. Thank you.

16 MR. FOOTE: Judge, may I have a moment?

17 THE COURT: You may. All right.

18 MR. FOOTE: Judge, I don't know if we had
19 submitted State V. Law to the Court, 559 So.2d 187.

20 THE COURT: I believe you did. As a matter
21 of fact, I'm almost positive.

22 MR. FOOTE: That was a 1989 case. I just
23 wanted to put on the record, Judge, that that stands
24 where the only proof of guilt in circumstantial, no
25 matter how strongly the evidence may suggest guilt, a

1 conviction cannot be sustained unless the evidence is
2 inconsistent with any reasonable hypothesis of
3 innocence.

4 We would rely on *Boyd V. State*, 910 So.2d
5 167, Supreme Court of Florida, 2005. Redmond,
6 R-E-D-M-O-N-D, 731 So.2d 77, it's a 1999 Second DCA
7 Case. We cited *C.E. Versus State*, 665 So.2d 1097,
8 Fourth DCA, 1996. Those are the cases that we rely
9 on for the Judgment of Acquittal, Judge.

10 THE COURT: And you did cite and provide me
11 with a copy of all that, Mr. Foote, so I do have
12 that. You did provide me the records which show a
13 copy of the cases you just cited in addition to the
14 cases you previously cited in which were the Lynn,
15 which included the Lynn case as well.

16 So you have cited those cases previously
17 and the record should reflect that, and you have
18 provided those to me as well as the Trazedo case, you
19 cited that.

20 MR. FOOTE: Correct.

21 THE COURT: And you argued that yesterday
22 and provided me a copy of that as well and I
23 appreciate that. All right. Thank you.

24 What says the State?

25 MR. ROSARIO: Judge, even with the Defense

1 now putting on a case, there is enough evidence to go
2 to a jury. I do not believe that there's been even a
3 reasonable hypothesis of it not being him that has
4 been placed before the jury.

5 The witnesses, Styers and Glenny, put a
6 fluid trail from approximately the scene of where the
7 two people were killed, it followed straight to the
8 defendant's vehicle.

9 We have witnesses the vehicle was still
10 rolling to a stop and the defendant getting out of
11 the vehicle. He's been positively identified. He
12 was the last person seen driving the vehicle just
13 prior to the crash. And I believe that the JOA
14 argument should be denied.

15 THE COURT: All right. Thank you.

16 MR. FOOTE: May I briefly respond to the
17 State?

18 THE COURT: You may.

19 MR. FOOTE: Judge, with reference to the
20 last person seen driving the vehicle just before the
21 crash, I mean, there was a witness, and independent
22 witness, that testified for the Defense, Walter
23 Schubart, that stated he saw three individuals,
24 including Shannon Stephen get into one vehicle and
25 specifically noted Shannon Stephen who recognized him

1 earlier from that evening and specifically stated
2 that Mr. Stephen was the passenger of that vehicle
3 when it left.

4 Also, with regard to the straight fluid
5 trail, the vehicle stopped just north on Grand of
6 State Road by this utility box. It's there where
7 this supposed positive ID was made.

8 It would be the Defense's position that no
9 positive ID was made and there were statements with
10 regard to fitting the same form or shape or
11 silhouette by one witness and the other witness
12 identifies a person wearing something totally
13 different than what we saw the defendant was wearing
14 even in the video. So we contend that's not a
15 positive ID as far as that's concerned.

16 We would concede that at some point later
17 crossing 54 Mr. Stephen is found in the driver's seat
18 on the side of Club 54 at that point. But there's a
19 break in between there with no witnesses that
20 observed anything with regard to Mr. Stephen driving
21 the vehicle.

22 So with regard to the element of the
23 defendant driving the vehicle at the time of the
24 crash and what he's charged with, there are no
25 witnesses and we believe that is circumstantial at

1 best as to the key element; therefore that burden
2 should shift to the State and hat they do have the
3 burden now to dispel any reasonable hypothesis of
4 innocence.

5 THE COURT: All right. Thank you. I
6 understand and appreciate the arguments of both
7 counsel; however, I feel that based on the totality
8 of the evidence presented, I feel that there is
9 sufficient evidence that this case can go before the
10 jury. So that motion will be denied.

11 MR. FOOTE: Judge, can we ask that the
12 Court put on the record whether or not it has found
13 that the State -- has the burden shifted to the State
14 to dispel that?

15 THE COURT: Once again, based upon the
16 totality of the evidence that has been presented and
17 based upon the testimony that I've heard during the
18 course of the trial, there is a sufficient basis for
19 it to go to the jury based upon the standard applied
20 at this time and based on the case law being applied.

21 MR. ROSARIO: Judge, as an additional
22 matter, the Court asked if we could, and the Defense
23 agreed, that we could burn the Robert Bartlett 911
24 call onto something that could be played on a boom
25 box or something back in the jury room.

1 THE COURT: That's that I asked Mr. Foote
2 about.

3 MR. FOOTE: We've taken care of it.

4 MR. ROSARIO: Well, it was sitting in front
5 of my desk. I just wanted to give it to the clerk.
6 This is the one that will be able to be played by the
7 jury.

8 MR. FOOTE: Are we switching out -- is
9 there something else that --

10 THE COURT: What we will do is the original
11 one that was placed before the jury will be -- will
12 remain with the clerk, understanding that that was
13 one that was played in court.

14 Now, do we want to call this maybe a
15 composite exhibit A and B; B being the version by
16 agreement or stipulation of the parties that that can
17 be sent back because that's the one the jury can
18 utilize with a regular player as opposed to needing a
19 computer to play it?

20 MR. ROSARIO: I'm fine with that, Judge.

21 MR. FOOTE: We can do that.

22 THE COURT: A will be the one that can stay
23 in the record and if anybody wants to listen and is
24 prepared, you've already done that. In the future if
25 that ever became an issue and someone wanted to see

1 what was played A versus B, we can do that. So A
2 will be the one that was played in front of the jury.

3 What number was that?

4 THE CLERK: Evidence Number 5.

5 THE COURT: Number five. So 5(a) will be
6 the computer one that was played in court; however,
7 that cannot be played on the regular boom box or
8 player. B, 5(b) will be the agreed-upon stipulated
9 by counsel to be an exact copy of that, with the
10 exception that that copy can be played in a regular
11 player or boom box and that gives the jury an
12 opportunity to utilize that during deliberations.

13 MR. ROSARIO: With that, Judge, I believe
14 we'll probably be real close to bringing the jury
15 back. I've been running around trying to get the
16 jury instructions working on my computer. I've got
17 them now. I gave a rough copy to the Defense last
18 night. I made some basic changes removing chemical
19 substances, controlled substances.

20 But it's here when we need to do the jury
21 charge, I have it. We can do the changes here. I've
22 just been running around and I need to use the
23 restroom.

24 THE COURT: All right. We'll let you use
25 the restroom.

1 MR. ROSARIO: Thanks.

2 MR. SARABIA: Do you want to start the jury
3 instructions now?

4 THE COURT: Let's wait for Mr. Rosario to
5 get back from the restroom for that.

6 MR. ROSARIO: Thank you, Judge.

7 THE COURT: All right. Do you each have a
8 rough copy of the jury instructions?

9 MR. ROSARIO: Yes, Judge.

10 MR. FOOTE: I was given a copy of what we
11 had last night. I don't know if you changed it.

12 MR. ROSARIO: I have a rough copy here,
13 same as the Defense did. I have a second copy here
14 that I started making changes on.

15 THE COURT: Okay. And I just wanted to
16 make sure that we're making the changes and you're
17 reviewing and the Defense is reviewing, you're using
18 the most up-to-date Supreme Court website instruction
19 there are correct.

20 MR. ROSARIO: Yes. Judge, the -- under DUI
21 manslaughter, did we provide you with a copy, Judge?

22 THE COURT: I do not have a copy of that.
23 That was my next question. I can go to the website as
24 well.

25 MR. ROSARIO: If you want to go to the

1 website, that's fine, Judge.

2 THE COURT: If you have an extra copy, I'd
3 like to see it. All right. Is that the one you made
4 your changes to, 7.8, DUI, driving under the
5 influence, manslaughter?

6 MR. ROSARIO: I believe it is, Judge. You
7 know, unfortunately when I printed it out I don't
8 recall what the number was.

9 THE COURT: Right. Normally it doesn't
10 have the number on the printout to the jury.

11 MR. ROSARIO: Mine reads to prove the crime
12 of DUI manslaughter the State must prove the
13 following three elements beyond a reasonable doubt.

14 Number one, Shannon Stephen drove or was in
15 actual physical control of a vehicle.

16 Number two, while driving or while in
17 actual physical control of a vehicle Shannon Stephen,
18 A, was under the influence of alcoholic beverages or
19 chemical substances or controlled substances to the
20 extent that --

21 THE COURT: That's what I'm reading.

22 MR. ROSARIO: Right. And to make sure that
23 I have the most up-to-date one, I believe I have --
24 this Statute has the language about if you find from
25 the evidence the defendant had a blood or breath

1 alcohol level of .08 or more, that evidence would be
2 sufficient by itself to establish the defendant was
3 under the influence of alcohol to the extent his
4 normal faculties were impaired; however, such
5 evidence may be contradicted or rebutted by other
6 evidence.

7 And then it finally finishes with the last
8 paragraph; however, if you're convinced the vehicle
9 was operable at the time of the alleged offense then
10 you should find the defendant guilty if all other
11 elements of the charge have been proven beyond a
12 reasonable doubt.

13 The new Statute, Judge, there is an
14 enhancement that occurred before or has occurred
15 after 2006.

16 THE COURT: Okay. That's the .15?

17 MR. ROSARIO: Right. .15, correct.

18 THE COURT: So that, in fact, committed --
19 prior to October 1st of '08 was .20, substantive to
20 that is .15. My instruction gives applicable
21 offenses committed prior to October 1st, 2008,
22 alcohol level of point .20 or higher.

23 MR. FOOTE: Is that under 7.8?

24 THE COURT: That's under 7.8.

25 MR. ROSARIO: Judge, I must stand

1 corrected. Now that I've reviewed this, I believe I
2 took the jury instructions from the last trial and I
3 believe these are the same jury instructions from the
4 last trial from 2006.

5 THE COURT: I guess then that's the issue.

6 MR. ROSARIO: I'm sorry. The trial was
7 2008.

8 THE COURT: Right. But I guess the issue
9 then becomes do we use the instructions from '08 that
10 were in effect in '06. Obviously we don't use the
11 changes that occurred after October 1st of '08, but
12 if there's -- is there any other language that's in
13 there that was not in the '06?

14 MR. ROSARIO: Yeah, well, in the new one,
15 Judge, there is the -- there was an enhancement to
16 DUI manslaughter. It's DUI manslaughter with leaving
17 the scene of an accident with death. That did not
18 exist in 2006.

19 THE COURT: So that enhancement would not
20 apply to your client?

21 MR. FOOTE: Correct, Judge. And I think
22 maybe in the abundance of caution, we have the
23 instructions from that time that that may be more
24 applicable so that we don't --

25 THE COURT: I think you may be right.

1 MR. FOOTE: -- miss something or put
2 something in that --

3 THE COURT: It's a very good point.

4 MR. ROSARIO: I agree. As a matter of fact
5 the charging document doesn't have that language in
6 there as far as DUI manslaughter with leaving the
7 scene of an accident with death. It would be
8 completely inappropriate to give.

9 THE COURT: Okay. Are there any other
10 parts that you all see being familiar with what you
11 all did before obviously previously with Judge Day?
12 Are there any other substantive changes to that that
13 would be applicable?

14 It looks like really it's just the
15 enhancement that would not be applicable with what
16 we're looking at here; am I correct?

17 MR. ROSARIO: That's correct, Judge. I
18 believe they have also added unborn child, that
19 wasn't in there and that's not in my jury
20 instructions.

21 THE COURT: All right. Anything else, Mr.
22 Foote, that -- you think we ought to pretty much go
23 and track the instructions you gave last time?

24 MR. FOOTE: Yes, I'm just trying to see if
25 we have the presumption language. Yeah, okay.

1 Yeah, I would pretty much say track the
2 language. I guess the only difference is the last
3 instruction on the DUI manslaughter with regard to
4 the descriptions after alcoholic beverages one and
5 three with the presumptions and the instruction
6 regarding the vehicle being either inoperable -- that
7 wasn't in the last one under the main charges.

8 MR. ROSARIO: It wasn't.

9 MR. FOOTE: It was after the lesser
10 included but not -- I don't see it after it being --

11 MR. ROSARIO: It should have been.

12 MR. FOOTE: We would just assert hat
13 inoperable and all that after the two main charges of
14 DUI manslaughter.

15 MR. ROSARIO: Which is what I have under
16 what I've given.

17 MR. FOOTE: Right. It is on the current
18 one that was given to me. So we just want to add
19 that language.

20 We would also ask obviously for the lesser
21 of driving while under the influence.

22 THE COURT: All right. Any objection to
23 that?

24 MR. ROSARIO: No, Judge, I believe it's
25 appropriate.

1 THE COURT: Okay.

2 MR. FOOTE: Judge, I think if I could just
3 bring this up at this point, that we would be asking
4 for a special instruction with regard to
5 circumstantial evidence. As the Court may be aware
6 that at some point previously that could be included
7 but --

8 THE COURT: Many years ago.

9 MR. FOOTE: -- there was case law that
10 stated that the courts do not have to give it. It's
11 the discretion of the trial court. It is not
12 reversible error if the Court fails to put it in
13 there. But we would be asking for that instruction
14 in light of the evidence and the denial of the JOA is
15 clearly even by the State's own admission as they
16 were picking the jury has stated that and explaining
17 circumstantial evidence that it's a circumstantial
18 case that we would be -- it would be appropriate to
19 be placed in.

20 Citing, and of course the case law, Jackson
21 V. State 25 So.2d 518, 2009 Supreme Court Case states
22 Belcher V State nine --

23 THE COURT: Do you have a copy?

24 MR. FOOTE: Of the cases?

25 THE COURT: Yes.

1 MR. FOOTE: May I approach, Judge?

2 THE COURT: Yes. Thank you.

3 MR. FOOTE: Belcher V. State 961 So.2d 239,
4 2007 Supreme Court case. And Parker V. State 873
5 So.2d 270, 2004 Florida Supreme Court case.

6 Judge, as was previously stated the Court's
7 well aware that this was an instruction that can be
8 given in these types of cases; however, with the
9 change that has come across in the instructions, it's
10 not precluded from being given in these type of
11 cases, but the Supreme Court on appeal has stated
12 that it would leave it to the trial court's
13 discretion and that it would not result in reversible
14 error for its failure to give it.

15 However, given the facts of this particular
16 case that's at trial, we believe that it would be
17 appropriate to give and we would request that.

18 The elements to prove obviously that the
19 circumstances themselves must be proved beyond a
20 reasonable doubt, the circumstances must be
21 consistent with guilt and inconsistent with innocence
22 and the circumstances must be of such a conclusive
23 nature and tendency that you're convinced beyond a
24 reasonable doubt of the defendant's guilt or the fact
25 that it should be proved.

1 If the circumstances are susceptible of two
2 equally reasonable instructions, one indicating guilt
3 and the other innocence, you must accept that
4 construction indicating innocence that would be
5 circumstantial evidence instruction and we would
6 request this.

7 THE COURT: What says the State?

8 MR. ROSARIO: Judge, I would object to
9 giving any special jury instruction. The
10 circumstantial evidence instruction was removed a
11 long time ago for a reason by the Supreme Court. It
12 has not been re-initiated by the Legislature or the
13 Supreme Court.

14 And further in looking at Belcher when the
15 Court denied the use of the instruction the evidence
16 that was produced was that the State's theory of
17 guilt -- basically I have proven enough to get this
18 to a jury and the Defense's -- it's pure speculation
19 as to what occurred, and that's on Page 10.

20 The trial Judge also stated that although
21 circumstantial, the evidence was consistent with the
22 State's theory of guilt and inconsistent of any
23 reasonable hypothesis of innocence that did not
24 venture into the realm of pure speculation.

25 And, Your Honor, the Defense testimony is

1 at this point, even if we do accept Walter Schubart's
2 testimony, which I believe has been impeached and
3 will be impeached further that somebody else may have
4 been driving, we have all the other evidence that is
5 consistent with our theory and inconsistent with any
6 reasonable hypothesis of innocence; therefore, to
7 give this instruction would be inappropriate and I
8 would ask that you not give this jury instruction.

9 MR. FOOTE: And, Judge, in all candor, we
10 provided the cases to the Court and given the
11 appropriate standing arguments so the Court can make
12 an appropriate decision for that purpose so the cases
13 were cited for that very purpose to guide the Court
14 in making its decision; however, as to the State's
15 agreement we're in disagreement with that it is clear
16 that the defendant, Shannon Stephen, was the driver
17 of the vehicle. There is opposition there is no
18 direct evidence of such and it is circumstantial at
19 best.

20 And as the Court has heard the evidence,
21 although the Court may believe and has ruled that it
22 is sufficient to go to a jury, and is therefore
23 denying a Judgment of Acquittal, that doesn't change
24 the nature of the evidence, it's just viewing the
25 evidence in the light most favorable to the State.

1 And in doing so it doesn't change the evidence that
2 not one witness has placed --

3 THE COURT: And actually that standard is
4 different because we know at the end of the Defense
5 case as opposed to the end of the --

6 MR. FOOTE: State's.

7 THE COURT: -- well, at the end of the
8 State --

9 MR. FOOTE: Correct.

10 THE COURT: -- is the Defense.

11 MR. FOOTE: Correct. And so that being
12 said and the Court being apprised of what the current
13 State of the law is. It is not forbidden, it is
14 within this Court's discretion based on the
15 individual facts of this particular case.

16 I believe it's a blanket rule precluding,
17 and in fact the cases that I've given to the Court
18 which the Court is probably well familiar with, leave
19 it within this Court's discretion. And, therefore,
20 based on the facts that have come before this jury,
21 we would request that instruction.

22 THE COURT: All right. And, once again, I
23 appreciate the argument. And, you know, courts are
24 always careful in whether or not special instructions
25 are given in that the Supreme Court has pretty much

1 told us what we need to do and, you know, they
2 instructed us not to change them in any material way
3 and not to alter them and to present the instructions
4 as they have crafted them and accepted them.

5 And I think specifically certainly the
6 reason that circumstantial was removed, I'm kind of
7 looking back my recollection of that this was in the
8 80s.

9 MR. FOOTE: 1981, Judge.

10 THE COURT: Yeah, that I'm really reluctant
11 to give it. So based upon that, that request will be
12 denied. But I appreciate the case law you've
13 presented and as required presented both sides and I
14 appreciate that both sides candor to the Court.

15 MR. ROSARIO: Judge, Mr. Sarabia has
16 arrived and we've provided defense counsel with the
17 most recent version of the jury instructions I'm
18 working on.

19 THE COURT: I think --

20 MR. ROSARIO: Did we give it to you
21 already?

22 THE COURT: The clerk just sat it over
23 here. I didn't a chance to see it, but she was very
24 efficient in doing that.

25 MR. FOOTE: And it includes everything

1 except the lesser instruction and the lesser DUI.

2 MR. ROSARIO: So you want the lesser of DUI
3 put in?

4 THE COURT: And then obviously the language
5 about lessers in the instructions with regard to
6 lessers.

7 MR. ROSARIO: Let me get to that in one
8 second, Judge. I know there are some simple changes
9 that can be done. If we go to weighing the evidence
10 there's some things on there that I think should be
11 removed.

12 MR. FOOTE: I was just reviewing that. I
13 just see 9 and 10.

14 MR. ROSARIO: I think number 6 does not
15 apply.

16 MR. FOOTE: Judge, I think we've had
17 experts and different persons here and that would be
18 applicable.

19 THE COURT: I would give it in the
20 abundance of caution.

21 MR. ROSARIO: 77 I don't think would apply.

22 THE COURT: Doesn't seem like there was any
23 of that.

24 Mr. Foote, what do you think? I don't
25 think we had anybody that anybody was threatened, did

1 we?

2 MR. FOOTE: No. No.

3 MR. ROSARIO: 7 would be out.

4 MR. FOOTE: Yes.

5 MR. ROSARIO: I believe 9 would be out.

6 THE COURT: Correct.

7 MR. ROSARIO: And I believe 10 would be

8 out.

9 THE COURT: You agree with that, Mr. Foote?

10 MR. FOOTE: 9 and 10 would come out. I'm

11 going back to 7 with regard to the word pressure in a

12 sense and that pretty much goes to the testimony of

13 Mr. Farrow who came in who was originally a State's

14 witness.

15 THE COURT: If you feel --

16 MR. FOOTE: I would leave 7 in. Request

17 it.

18 THE COURT: I can leave that in.

19 MR. ROSARIO: I will remove defendant

20 testifying.

21 MR. FOOTE: Correct.

22 MR. ROSARIO: Leave in defendant's

23 statements or take it out?

24 MR. FOOTE: No, leave it in.

25 THE COURT: Okay. You wanted that left in,

1 Mr. Foote?

2 MR. FOOTE: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. ROSARIO: And I believe everything else
5 is --

6 THE COURT: He standard rules for
7 deliberation.

8 MR. ROSARIO: -- standard.

9 THE COURT: Single defendant, multiple
10 counts obviously.

11 MR. ROSARIO: Judge, the -- I don't know.
12 I haven't researched the issue on this. Mr. Sarabia
13 asked me if DUI serious bodily injury would be a
14 lesser of DUI manslaughter. It's a category II.

15 MR. FOOTE: Judge, I guess based on the
16 evidence and everything that came out, this involved
17 two deaths, there is no evidence of any injury from
18 anyone, there's no medical doctors or anything like
19 that that there was a medical exam. The case
20 obviously involved the death of two people, that
21 instruction.

22 THE COURT: So do you not want that lesser
23 serious bodily injury?

24 MR. FOOTE: Let me speak to my client one
25 second, Judge.

1 THE COURT: All right.

2 MR. FOOTE: Judge, after conferring with my
3 client, we would ask it remain out, that the lesser
4 -- the only lesser be DUI.

5 THE COURT: All right. Once again, Mr.
6 Stephen, your having had an opportunity to consult
7 with your attorney in regard to that and the other
8 instructions and agree with the instruction that's
9 proposed?

10 THE DEFENDANT: Yes.

11 THE COURT: And you've had sufficient time
12 to do that; do you feel you need more time?

13 THE DEFENDANT: No.

14 THE COURT: Thank you.

15 MR. ROSARIO: Judge, what we're doing since
16 we don't have access to the lesser instruction and
17 the DUI instruction, we're attaching it to an Email
18 over to our transcriptionist over there and hopefully
19 she'll be able to take our jury instruction and
20 insert what we need and hen email it back to us.

21 THE COURT: And I don't believe there's
22 been a change in that, but we need to verify from the
23 instructions that you all have agreed apply, that
24 that hasn't changed from the new instruction. I
25 don't believe it has for lesser included, that

1 language. I do not believe it has -- Mr. Foote, are
2 you aware that that's changed?

3 MR. FOOTE: Not offhand of any changes.
4 But actually I have the one from last time.

5 THE COURT: Oh, you've got it?

6 MR. FOOTE: Oh, yeah.

7 THE COURT: So is it from last time?

8 MR. FOOTE: The lessers are, but the
9 presumption language and inoperability wasn't under
10 the main charges.

11 THE COURT: Okay.

12 MR. ROSARIO: When we get it back, we'll
13 see what's there and we can address it. Then we can
14 change it here once we get into the document.

15 MR. SARABIA: Do you anticipate lesser for
16 each DUI.

17 MR. FOOTE: That would not apply, a lesser
18 to each DUI manslaughter.

19 MR. ROSARIO: Technically it would.

20 MR. FOOTE: Well, under --

21 THE COURT: Yeah, I think you would have to
22 have that.

23 MR. FOOTE: As far as a conviction or
24 sentence category you get --

25 THE COURT: That may be an issue, but I

1 don't think you can give a lesser of one and not the
2 other.

3 MR. FOOTE: Correct.

4 THE COURT: It will be read twice. I would
5 read it after each one.

6 MR. ROSARIO: DUI manslaughter, lesser DUI
7 manslaughter, lesser.

8 THE COURT: Correct. Correct.

9 MR. ROSARIO: And to be clear, on the
10 copies that we have before us now on DUI
11 manslaughter, under 2(a) under the rule under the
12 jury instruction the case law's clear it's A and B
13 are there, but for some reason the or has been left
14 off. I inserted the or because that is a true
15 statement of the law.

16 THE COURT: Correct. I don't believe that
17 that's -- I think or is the correct -- used
18 correctly. Do you agree with that, Mr. Foote?

19 MR. FOOTE: Judge, if I were to stay with
20 the Court's ruling on the previous about staying with
21 the strictness of what the jury instruction would
22 say, I would say go with the jury instructions as
23 provided by the Supreme Court. That would be my only
24 statement to that.

25 THE COURT: Okay. But I believe in

1 reviewing the case law and everything else indicates
2 you can prove it either way. You can prove it either
3 by being impaired or blood alcohol level in excess of
4 .08 or higher. And even on the new one it says give
5 2(a) or 2(b) or both as applicable.

6 All right. Anything else?

7 MR. FOOTE: Judge, I don't know if this
8 falls under the category, I'm just looking with
9 regards to the other whether reckless driving would
10 be an applicable lesser.

11 THE COURT: I don't believe that's a
12 category I or category II.

13 MR. FOOTE: I'm looking under -- I don't
14 see on the vehicular homicide.

15 THE COURT: Vehicular homicide is reckless
16 driving.

17 MR. ROSARIO: I know it's a lesser under
18 vehicular homicide. I don't believe it's a lesser
19 under DUI manslaughter. And I don't believe it's a
20 lesser under leaving the scene of an accident with
21 death.

22 THE COURT: Correct. You wouldn't
23 necessarily have to be driving reckless to leaving
24 the scene.

25 MR. FOOTE: To leave the scene. Although

1 it's a lesser of DUI every day in this courthouse.

2 MR. ROSARIO: Well --

3 THE COURT: I understand what you're
4 saying. Because there is some case law that suggests
5 if that under the proper circumstances, especially
6 for a plea, that can be a lesser.

7 MR. FOOTE: So it does not fall under the
8 category of the allegations the reckless?

9 THE COURT: Well, it's not a category I,
10 category II, correct?

11 MR. FOOTE: Where's the Court referring?

12 THE COURT: I have to look where it talks
13 about lessers. Look at 7.8 and look at the very end
14 of the instruction.

15 MR. FOOTE: Lesser-included offenses.

16 THE COURT: See the chart?

17 MR. FOOTE: Serious bodily injury damage,
18 vehicular homicide?

19 THE COURT: Driving under the influence of
20 manslaughter, correct. Driving under the influence
21 is a category I lesser, meaning it should be given in
22 all cases.

23 II, depending upon the circumstances if
24 requested. And that's why we had that discussion and
25 you spoke to your client. That shows category I and

1 category II lessers.

2 And, you know, if you all have the '06 '08,
3 which indicated were the same, then I imagine that's
4 the same. I imagine that has not changed.

5 MR. FOOTE: I don't have that.

6 THE COURT: I mean, that's kind of the --

7 MR. FOOTE: Judge, we'll try to look into
8 that just to please my conscience.

9 THE COURT: Okay.

10 MR. ROSARIO: I'm sorry?

11 THE COURT: He's going to look into that if
12 something comes up with regard to that, that's
13 something that we can address later. But it's not
14 something necessarily that's going to hold up what
15 we're doing right now.

16 MR. FOOTE: No. No.

17 MR. ROSARIO: Does Mr. Foote request the
18 leaving the scene of an accident as a lesser of
19 leaving the scene of an accident with death?

20 I'm sorry. We'll withdraw that, Judge.
21 It's not a lesser actually.

22 THE COURT: Okay. All right. So does that
23 shape up the jury instructions from the State's
24 perspective?

25 MR. ROSARIO: I believe it does, Judge.

1 MR. FOOTE: May I inquire?

2 MR. ROSARIO: We just sent it to our
3 transcriptionist.

4 THE COURT: And obviously they're not
5 carved in stone.

6 MR. FOOTE: Sure. What instruction, what
7 number is for the leaving the scene? Indicating no
8 lesser for the offense.

9 THE COURT: No lessers. All right. So
10 everybody satisfied, at least at the present time,
11 with the jury instructions that are at least going to
12 be proposed and worked out?

13 MR. ROSARIO: Judge, yes. Judge, our main
14 transcriptionist is out and it would be our back-up
15 transcriptionist. I haven't worked with her as
16 often.

17 We are sending it to her now. Where do we
18 stand at this point, Judge, I'm sorry?

19 THE COURT: I'm making sure we're good with
20 that?

21 MR. FOOTE: The instructions?

22 THE COURT: Correct.

23 MR. FOOTE: Fine as they have been proposed
24 at this point.

25 THE COURT: Right.

1 MR. FOOTE: Subject to me checking into the
2 '06 lessers.

3 THE COURT: Okay. And that's -- and I
4 appreciate you doing that.

5 And, once again, Mr. Stephen, you're
6 satisfied with the instruction as proposed subject to
7 kind of looking into that other '06 lesser, right?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. Now the issue
10 becomes the rebuttal witness, I think we talked about
11 last night, correct?

12 MR. ROSARIO: Yes, Judge. The rebuttal
13 witness I've researched. I am going to forego my
14 attempt at the adoptive admission. I'm not going to
15 go with that. I am going to go with the direct
16 impeachment of the statement.

17 THE COURT: In other words, there's no
18 testimony about the shrug and the funny look and all
19 that sort of thing.

20 MR. FOOTE: So what's the rebutting
21 testimony.

22 MR. ROSARIO: The statement Mr. Schubart
23 said that he never made a statement saying that he
24 saw the defendant fight with his friends, grabbed his
25 keys and run off and get into a vehicle and drive

1 off.

2 MR. FOOTE: And that would be the purpose
3 of rebuttal or impeachment?

4 THE COURT: Mr. Rosario?

5 MR. ROSARIO: It would be for both rebuttal
6 and impeachment, Judge.

7 MR. FOOTE: Would that affect how that
8 argument and the substance of the statement would be
9 utilized?

10 THE COURT: Well, it's impeachment,
11 correct? Once again, statements used for impeachment
12 are different than the statement of substantive
13 evidence and I think we've already all talked about
14 that.

15 All right. So it would be for that limited
16 purpose; so that will be a quick witness?

17 MR. ROSARIO: Yes, Judge, it will be. Are
18 you about ready to return the jury?

19 THE COURT: Well, that's what I wanted to
20 get a lead from you all because if that's at least
21 going to be 10 minutes, then we would be ready to go
22 into closings and we wouldn't necessarily need the
23 jury instructions in hand unless that was going to be
24 a big part of your closing arguing that reckless. So
25 that would be --

1 MR. FOOTE: Well, I would like to have at
2 least whatever the draft, if this is the one we're
3 going to use here, that's the -- that's not going to
4 have the lesser and the lesser language before we
5 start closing.

6 THE COURT: Sure.

7 MR. FOOTE: And to get all this stuff
8 arranged.

9 THE COURT: Okay. And how much time do you
10 all think you need for closings?

11 MR. ROSARIO: Two hours, Judge. Probably
12 as -- my birdie on my shoulder tells me, and I agree
13 with him, probably less, but I wouldn't want to be
14 hamstrung --

15 THE COURT: Let me ask -- I was asking what
16 you were asking for, not what I was going to give.

17 Mr. Foote, what do you think?

18 THE COURT: The State gets first and last,
19 correct?

20 MR. FOOTE: Judge, I mean in an abundance
21 of caution I don't want to be shut down all of a
22 sudden if it's an hour and a half. I don't think it
23 should take two hours. It is a lot of evidence, a
24 lot of witnesses.

25 THE COURT: I guess the question is do you

1 both believe that the jury's going to endure four
2 hours worth of closing argument?

3 MR. FOOTE: I can't endure four hours of
4 closing argument.

5 MR. ROSARIO:

6 THE COURT: I mean you all are the trial
7 lawyers. I mean, four hours of closing argument
8 approximate will be a long time.

9 MR. ROSARIO: An hour and a half, Judge.

10 THE COURT: I mean, just to let you know,
11 you both know this I think already, I don't throw
12 anything at you. I'm not going to grab you and drag
13 you, you know, if you're close to finishing up and
14 you do an hour and 35 or whatever. In other words,
15 I'm not going to say, Counsel, stop right there. I'm
16 not going to do that. But historically what the
17 clerks have been nice enough to do is give you kind
18 of a heads-up with about 10 minutes so that gives you
19 about 10 or 15 to wrap it up. I mean, an extra
20 half-hour even at that, you know --

21 MR. ROSARIO: Realistically, I don't think
22 that our closing arguments should take over an hour
23 and a half.

24 THE COURT: All right. I guess we need to
25 get that rough copy. That gives you both time to get

1 the stuff how you want it.

2 MR. FOOTE: Do you want to do that before
3 you bring the jury in and just go straight in?

4 THE COURT: I was kind of thinking if this
5 is going to be literally a 10-minute witness, I don't
6 see bringing them in for 10 minutes, send them back
7 somewhere else and then, you know, bring them right
8 back. And my suspicion is this witness is going to
9 be very quick, am I wrong about that?

10 MR. FOOTE: I don't think you're wrong.

11 THE COURT: I mean, literally let's say 10
12 minutes. I mean, we can trot them up here and put
13 them in here for 10 minutes and send them away for
14 another 20 minutes.

15 MR. FOOTE: Do we want to work on getting
16 that draft and start organizing --

17 THE COURT: That's what I was thinking.

18 MR. FOOTE: -- now and bring the witness in
19 and go straight forward.

20 THE COURT: That's kind of what I was
21 thinking. I mean, do you all think that would be a
22 good way to go?

23 MR. FOOTE: Yeah.

24 MR. ROSARIO: That's fine, Judge.

25 THE COURT: I think that's kind of better

1 time for you all. 20 minutes, 30 minutes? Mr.
2 Rosario agree with at least 30 minutes of rebuttal?

3 MR. ROSARIO: Yes.

4 THE COURT: 30 minutes to get all that
5 done. We'll stand in recess. If anything comes up
6 with regard to the jury instructions, just let Deputy
7 Flanagan know.

8 MR. FOOTE: That will be fine.

9 THE COURT: How we should proceed time-
10 wise? RECESS

11 THE COURT: Did you guys wish to be heard?

12 MR. ROSARIO: Yes, Judge. Lisa Taranto,
13 she's involved in the horse business and she has to
14 leave at 12:00 to go to a horse show of sorts and
15 that's why I need to get her on before 12:00.

16 THE COURT: So your suggestion is put her
17 on then send the jury to lunch and then come back and
18 do closings?

19 MR. ROSARIO: Yes, Judge.

20 THE COURT: All right. Mr. Foote, any
21 objection to doing that?

22 MR. FOOTE: My only thing is bringing them
23 up and down. I mean, my thing is that they all start
24 at one time. Mrs. Taranto is supposedly in Idaho,
25 now she's scheduled for a show that she wouldn't have

1 been here before.

2 I think the jurors have been very patient,
3 that's my only concern. Then we get into hours of
4 closing and then they may start throwing things at
5 us. I don't know. They're going to actually get
6 lunch at 2:00, 3:00 or something.

7 MR. ROSARIO: Well, if you really look it,
8 Judge --

9 MR. FOOTE: If we go all the way straight
10 --

11 THE COURT: Yeah, I don't think we can do
12 that. I think that would be unfair. I think you're
13 right to the jury. I think the best we can do is put
14 this witness on then I send them to lunch and then we
15 do the closings back to back and obviously they'll
16 get a break sometime before closings and that sort of
17 thing, especially how long you all go. But I can't
18 really tell if they're going to start throwing things
19 at you or not.

20 MR. FOOTE: They may.

21 THE COURT: The clerk has told me now that
22 you sorted out all your evidence. If we take a break
23 for lunch it all has to be combined back and put back
24 in the boxes.

25 THE CLERK: I can have someone bring me

1 lunch up here.

2 THE COURT: The clerk is being very
3 gracious and agreed to kind of sit and watch you
4 all's evidence during our lunch break. I'm sure the
5 lawyers will thank her for that, as I will thank you.
6 That's very gracious.

7 THE CLERK: It will be easier.

8 MR. ROSARIO: Judge, I've gotten a draft of
9 the final jury instructions back.

10 THE COURT: Well, we're going to have some
11 time to work on it. Let's get the jury up here and
12 we'll just put this one witness on and send them to
13 lunch. I may give them like an hour and 15 minutes
14 for lunch just because I know we're going to be here
15 for a long time and be ready for closings and that
16 sort of thing.

17 JURY PRESENT

18 THE BAILIFF: The jury's entering the
19 courtroom. Your Honor, the jury is present and
20 seated in the courtroom.

21 THE COURT: Good morning.

22 THE JURY: Good morning.

23 THE COURT: Once again, thank you for your
24 patience this morning. Anything happen during the
25 evening break or this morning that I need to know

1 about as far as all the admonitions and everything
2 else we talked about?

3 THE JURY: No, sir.

4 THE COURT: Great. Thank you very much.

5 All right, Mr. Foote?

6 MR. FOOTE: Judge, at this time the Defense
7 would rest its case.

8 THE COURT: All right. The Defense having
9 rested; what says the State?

10 MR. ROSARIO: Your Honor, at this time the
11 State would call Lisa Taranto.

12 THE COURT: You may inquire.

13 THEREUPON,

14 LISA TARANTO,

15 the Witness herein, being first duly sworn, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. ROSARIO:

19 Q. Would you please state your name for the
20 record.

21 A. Lisa Taranto.

22 Q. And can you spell your last name for the
23 court reporter?

24 A. T-A-R-A-N-T-O.

25 Q. And, Ms. Taranto, how are you employed?

1 A. I'm a trainer at Country Lakes Acres.

2 Q. And, Mr. Taranto, directing your attention
3 back to March 25th, 2006, specifically around 10:00
4 or 11:00 in the evening, what bar were you at?

5 A. Sevens.

6 Q. And that night did a gentleman come up to
7 you and buy you some drinks?

8 A. Yes.

9 Q. Also that night was your boyfriend at that
10 bar?

11 A. Yes.

12 Q. Who was your boyfriend back then?

13 A. Walter Schubart.

14 Q. And about what time did you leave that bar?

15 A. A little before midnight.

16 Q. Sometime after March 26th -- or on March
17 26th, 2006, or sometime thereafter, did you receive a
18 phone call or did you make a phone call to Walter
19 Schubart?

20 A. Yes.

21 Q. And did you speak about what occurred at
22 the bar at Sevens that night?

23 A. Yes.

24 Q. What did Walter Schubart tell you as far as
25 remembering what happened that night?

1 MR. ROSARIO: Objection as to hearsay.

2 THE COURT: Overruled.

3 THE WITNESS: He said -- he asked me if I
4 remembered the guy that bought me drinks the night
5 before and I said yes. And he said that he had
6 killed two people that night.

7 Q. (By Mr. Rosario) And what was your
8 response to that?

9 A. I asked him how. He said that he had run
10 them over in his car. And I asked I thought that he
11 had a designated driver. He said, no, he did not.
12 That he left the bar and got into a fight with some
13 friends, got his keys back and left in his vehicle.

14 MR. ROSARIO: Thank you. I have nothing
15 further for this witness, Your Honor.

16 THE COURT: Cross?

17 MR. ROSARIO: I'm sorry.

18 Q. (By Mr. Rosario) Left alone in his
19 vehicle?

20 A. Yes.

21 MR. ROSARIO: Nothing further, Judge.

22 CROSS-EXAMINATION

23 BY MR. FOOTE:

24 Q. Good morning, ma'am.

25 A. Good morning.

1 Q. You used to -- you were involved in a
2 relationship where Mr. Schubart?

3 A. Yes.

4 Q. It only lasted a couple of months?

5 A. Right.

6 Q. Right. And you guys broke up?

7 A. Yes.

8 Q. And you know that he's currently engaged?

9 A. Yes.

10 Q. All right. And you learned that through
11 one of your friends that works at phone store, right?

12 A. Yes.

13 Q. That friend saw Walter and he let her know
14 that he's engaged and you had found out, right?

15 A. Yes.

16 Q. Now, this version of events that you're
17 telling me here today, you've never told this story
18 to any police officer, have you?

19 A. No.

20 Q. That was never told to anyone in any type
21 of report at all, correct?

22 A. No.

23 Q. This is the first time that you're actually
24 telling that story that you actually got a phone
25 call?

1 MR. ROSARIO: I'm going to object. That's
2 a compound question, Your Honor.

3 THE COURT: Overruled.

4 THE WITNESS: I've told the State Attorney.

5 Q. (By Mr. Foote) Not just before today
6 coming in here, but there was no formal report or any
7 statements like that regarding this phone; is that
8 right?

9 A. No, sir.

10 MR. FOOTE: Thank you. That's all I have.

11 THE COURT: All right. May the witness be
12 excused or anything else?

13 MR. ROSARIO: She may be excused, Your
14 Honor.

15 MR. FOOTE: She may, Judge.

16 THE COURT: Thank you. You may be excused.
17 All right.

18 MR. ROSARIO: Your Honor, at this time the
19 State would rest its rebuttal.

20 THE COURT: Members of the Jury, what we
21 have had the opportunity to discuss here -- well, let
22 me just see the lawyers real quick at the bench.

23 BENCH CONFERENCE

24 MR. FOOTE: Maybe it will change my luck on
25 rulings.

1 THE COURT: Is there any objection to me
2 telling them that we're going to give them an early
3 lunch and they can anticipate approximately three
4 hours or so of closings and we'll speak to them about
5 that's what they can inspect?

6 MR. FOOTE: Did you inquire of them as to
7 what they would prefer?

8 THE COURT: I think to give them lunch. I
9 thought you didn't want to start closings

10 MR. FOOTE: Correct. I'm just thinking
11 about what they're thinking.

12 THE COURT: I don't know if I can hold
13 them.

14 MR. ROSARIO: Just, it's just now 11:00.

15 THE COURT: On at a time. You really want
16 them to seriously know? What I mean --

17 MR. ROSARIO: I have no objection with you
18 instructing the jury that we have been trying to make
19 everything, get everything set up so that we can do
20 one consistent closing argument, we're going to send
21 you to lunch. That's what we've been doing this
22 morning. We're going to send you to lunch and please
23 come back at 12:15 or 12:30 or whatever time you said
24 and we will go straight into closing arguments at
25 that point.

1 And I don't think you need to tell them how
2 long it's going to take. That will give them an idea
3 of what's going on and they'll be able to know where
4 we stand.

5 THE COURT: All right. I was just going to
6 let them know anticipate it for this afternoon and if
7 they want to eat a little bigger lunch.

8 MR. FOOTE: I don't know about an exact
9 time, I agree. Because if when we come back and go
10 into closings, it may be several hours.

11 THE COURT: What if I say closings in this
12 case are going to be several hours; makes it sound
13 like not such a long time.

14 MR. ROSARIO: I don't think we need to tell
15 them that. I would say we've been working this
16 morning --

17 THE COURT: We're going to have closings
18 this afternoon and it's going to take some time.

19 MR. ROSARIO: Great.

20 MR. FOOTE: I agree.

21 THE COURT: Okay.

22 OPEN COURT

23 THE COURT: All right. Members of the
24 Jury, what we're going to do is we are going to be
25 preparing for closing arguments. That is going to

1 take some time for those closings to you. So what we
2 intended to do is take a break and give you kind of
3 an early lunch, understanding that this afternoon
4 will be closing arguments.

5 And so we'd like to give you about an hour
6 -- about 12:15, maybe give you a little extra time,
7 understanding even if you need until 12:20 that will
8 be fine, you know, if you want to kind of prepare
9 accordingly.

10 Because what happens is, there are the
11 closing arguments, the jury instructions and then
12 deliberations begin. So I just want to kind of give
13 you an idea of what we've been kind of working on
14 this morning and where we're going this afternoon so
15 I figure I'd let you all continue that.

16 So at this point in time please remember my
17 prior admonitions; and Deputy Flanagan will escort
18 you out. Like I said, it will be about an hour and
19 15 minutes for your lunch break. That will give you
20 enough time do some things before we go into closings
21 and deliberation. All right.

22 JURY ABSENT

23 THE BAILIFF: Your Honor, the jury's out of
24 the hearing of the Court.

25 THE COURT: All right. Anything else you

1 want to take up now before we come back and get ready
2 -- have you all had the chance to review that rough
3 copy?

4 MR. ROSARIO: We're going to print it out
5 in a few minutes. If Mr. Foote wants to come up to
6 the office, I'll provide him a copy of it.

7 THE COURT: That will give you time to work
8 on the other issue as well. Can you do me a favor,
9 if we need to reconvene a bit early, just let Deputy
10 Flanagan know that. And if not, then we'll be ready
11 to come back and then get started with closings,
12 correct?

13 MR. FOOTE: That's correct, Judge. The
14 only thing is that there is a Google Earth animation.
15 We're having a little IT problem with it coming up.
16 The State have an opportunity to review that. I
17 don't think there's a problem. I anticipate there'll
18 be any problem with that but that's something I'd
19 have to review. But their technical guy is going to
20 assist them.

21 THE COURT: Okay. That's just something
22 we'll have to see and have to work through it.
23 Obviously with any technology you have to be ready to
24 go with that or without that.

25 MR. FOOTE: I understand. I just wanted to

1 let the Court know.

2 THE COURT: If you need to work with that
3 and work with the folks. I'm glad they're trying to
4 help you all out and be responsive to that request.

5 All right. Anything else?

6 MR. FOOTE: No, Judge.

7 THE COURT: All right. Anything else, Mr.
8 Rosario?

9 MR. ROSARIO: No, sir.

10 RECESS

11 OPEN COURT

12 JURY ABSENT

13 THE COURT: All right. During the course
14 of the break when Deputy Flanagan was organizing the
15 jurors to come back up, one of the jurors mentioned
16 to Deputy Flanagan that they were trying to, I guess,
17 get his attention yesterday or make it known to him
18 that they believed that during the testimony of Mrs.
19 Wallace that she was texting or doing something on
20 her phone and they wanted to bring that to his
21 attention, or one of the jurors wanted to bring that
22 to his attention, I should say.

23 Deputy Flanagan then advised me that there
24 is capability to, apparently on one of these cameras
25 here, videotape. So he went and checked the

1 videotape and indicated that although he can't say
2 for sure, but he can tell there was something
3 happening with that phone in her lap.

4 But that's about -- is that about accurate?

5 THE BAILIFF: Yes, sir.

6 THE COURT: So I need to bring that to you
7 all's attention.

8 MR. ROSARIO: Judge, I believe that's
9 consistent with what she said. She was messing with
10 the phone because she got those two phone calls that
11 came in. I don't think there's anything that would
12 be inconsistent with that or do anything more than
13 that.

14 THE COURT: Let me hear from Mr. Foote.

15 MR. FOOTE: Judge, I think there were
16 conflicting stories because she told the Court that
17 she was -- she got two missed calls and that's what
18 she was doing.

19 THE COURT: She was checking her messages.

20 MR. FOOTE: Deputy Flanagan at that time
21 said she was adjusting the clock in the courtroom, so
22 it's a different testimony. And it becomes a concern
23 to me now that a juror -- it's different when it's
24 just us, but now it's a juror.

25 THE COURT: That's why I thought it was

1 important even though discussed it yesterday, that's
2 exactly why I thought it was important to bring to
3 you all's attention.

4 MR. FOOTE: Judge, I mean, at this time --

5 THE COURT: I guess the question becomes --
6 well, let me hear you finish and then maybe I can
7 figure out kind of where we go from there.

8 MR. FOOTE: It's so highly unusual, Judge.
9 It is a first for me. And as the Court stated
10 yesterday about technology and everything else like
11 that, that just the demeanor of that particular
12 witness and who she is and who she may have been
13 talking to or contacting, I mean just that appearance
14 itself is, you know.

15 And in speaking with my client yesterday
16 when this came up, he thinks that affects his ability
17 to have a fair trial. That this witness is there
18 testifying so we can address it in court outside the
19 presence of the jury.

20 I have some heightened concerns hat now a
21 juror who's about to deliberate in this case has now
22 brought that to the Court's attention as well.

23 THE COURT: And I guess then the issue
24 becomes how -- if that's prejudicial, how it is
25 prejudicial. And I think that's the issue that needs

1 to be addressed. Because merely something happens
2 and there has been an explanation now, but I think
3 that based upon a juror seeing that, what may make
4 this different now is the fact that at the very least
5 -- maybe not at the very least, but one possible
6 thought, I'm kind of thinking out loud here, is to
7 give you the opportunity to address that with that
8 witness in front of this jury.

9 Were you contacting someone. What were you
10 doing. If the jurors saw it, then you have the right
11 to -- at this point in time I'd let you cross-examine
12 with regard to that issue.

13 MR. FOOTE: Judge, my first inclination is
14 to request the Court to declare a mistrial.

15 THE COURT: I understand that.

16 MR. FOOTE: In an abundance --

17 THE COURT: Well, I need to know merely
18 upon the fact that that occurred.

19 MR. FOOTE: Judge --

20 THE COURT: The difficulty I have with that
21 is she concedes that she was messing with her phone,
22 but why she said she was messing with it.

23 MR. FOOTE: Judge, the way she was
24 contacted by the State to return to the courthouse.
25 Okay. She gets to the courthouse and at this point

1 she comes upstairs and she gives the Court one
2 explanation. She gave a law enforcement officer
3 another explanation.

4 THE COURT: I'm not sure that's --

5 MR. FOOTE: Judge, I heard two different
6 stories as to what she was doing on the phone and I
7 believe the Court may have heard that as well and
8 that's why we called the witnesses.

9 At that point we were prepared to move
10 forward and then, you know, because it's outside the
11 presence of the jury. I have some high concerns that
12 this juror --

13 THE COURT: I understand, and I appreciate
14 the fact that you want to reiterate that. And I
15 understand that and you can repeat that two or three
16 times.

17 MR. FOOTE: What is the Court requesting,
18 Judge?

19 THE COURT: I guess what I'm looking for is
20 how -- you keep saying I have concerns. Specifically
21 how does that prejudice your client?

22 MR. FOOTE: That the witness is on the
23 stand possibly contacting someone, possibly her
24 husband who had testified earlier to make sure that
25 the testimony is consistent with what he said.

1 THE COURT: Okay. And then that's the -- I
2 understand.

3 MR. FOOTE: That's my first thought as to
4 what she was doing, you know, at that point.

5 THE COURT: All right. Anything else?

6 MR. FOOTE: Judge, the fact that a jury --
7 a juror saw it at that point and where that goes from
8 there. And I don't know which juror and how that was
9 discussed with the rest of the jurors. Does it come
10 up? Does that juror be quiet?

11 THE COURT: Now, do you want to have the
12 opportunity, if I were not to grant your motion, to
13 address that with that witness in front of this jury?

14 MR. FOOTE: At a minimum for appellate
15 purposes, yes, Judge. If the Court does not grant a
16 mistrial, at a minimum that's what we would like to
17 do at that point.

18 THE COURT: Okay. Mr. Rosario?

19 MR. ROSARIO: Judge, I don't believe it
20 rises to the level of a mistrial. One of the jury
21 instructions that you'll be reading to the jury is
22 how a witness acted on the stand and they saw that as
23 well. So if somebody was up there doing crossword
24 puzzles or got onto their phone, that's something the
25 jury could consider how they acted on the stand.

1 So I don't believe that if a juror did see
2 that, it rises to the level of prejudice that would
3 cause a mistrial.

4 The second issue is is the issue was
5 addressed here in court. She came in and she gave a
6 sworn testimony as to what she said. She stated that
7 she got the two voice messages. She pressed whatever
8 button it was to ignore. And hen as she was leaving
9 she said the clock was wrong. Okay.

10 But that's the way I remember what occurred
11 yesterday. And I don't believe that there would be
12 any need to go into this any further. We might want
13 to bring in the jury or the juror and -- well, I
14 don't know if we want to pull the juror.

15 If you want to try to attempt to get Kara
16 Wallace back the difficulty is is remember the
17 discussion about 12:00.

18 THE COURT: I understand that. But then
19 let's keep in mind that this is all being occasioned
20 by her conduct while she was sitting on the stand.
21 You cannot lose sight of that.

22 MR. ROSARIO: All right. And of course she
23 was a Defense witness, Judge. But I would ask that
24 you deny the motion for a mistrial and it's in the
25 court's discretion.

1 THE COURT: Well, why don't you try to see
2 what you can do as far as getting her in here and see
3 what you can do as far as -- and there's a question
4 as to whether or not she was contacting Mr. Wallace,
5 and see if we can get Mr. Wallace in here and see if
6 we can do some sort of testimony with regard from him
7 with regards to what sort of contact.

8 MR. ROSARIO: Mr. Wallace will take at
9 least 45 minutes to get here; I know that. But do
10 you want me to leave now in an attempt to do that,
11 Judge?

12 THE COURT: I think, yeah, we'll stand in
13 recess and give you time to do that and let Deputy
14 Flanagan know when we can reconvene. The Court's in
15 recess.

16 MR. FOOTE: Judge, prior to that, is the
17 Court ruling on my motion or reserving?

18 THE COURT: No, reserving.

19 MR. FOOTE: Thank you, Your Honor.

20 RECESS

21 OPEN COURT

22 JURY ABSENT

23 THE COURT: All right. What sort of
24 updates do you have for me?

25 MR. ROSARIO: Judge, at 10 of 2:00 I placed

1 a call to Mrs. Wallace and hung up and she returned
2 my phone call. And in the presence of, well, pretty
3 much everyone in the courtroom including your
4 bailiff, I had her on speakerphone and she stated
5 that she was being dropped off by her mother and
6 she's between 20 and 30 minutes away.

7 THE COURT: Okay. So we will get at that
8 point in time to address that issue.

9 And the issue with regard to the juror
10 bringing that to Deputy Flanagan's attention, did you
11 wish me to bring that juror and the other jurors
12 individually into the courtroom to inquire as to if
13 they -- the one who made the statement, if that was
14 going to affect their ability to be fair and
15 impartial.

16 Two, ask the other ones who may have heard
17 the statement, if that -- hearing that statement
18 would affect their ability to be fair and impartial.

19 Do you wish me to make that inquiry of the jurors,
20 Mr. Foote?

21 MR. FOOTE: Judge, may I have a moment?

22 THE COURT: Sure.

23 MR. FOOTE: Judge, I guess procedurally I'm
24 trying to understand what the Court wants to do with
25 regard to that prior discussion.

1 THE COURT: In other words, if that
2 statement -- what I can do is I can bring in that
3 juror who said that to Deputy Flanagan. That is
4 something you observed, do you believe that in and of
5 itself is going to affect -- and you indicated that
6 to the bailiff, do you believe that that is something
7 in and of itself that's going to affect your ability
8 to be fair and impartial, that you believe that a
9 person may have been texting on the stand.

10 And that way we can address the issue with
11 regard to any possibility that the jury in some way
12 may be -- I know there was a concern that somehow
13 that would prejudice your client, the fact that that
14 occurred. So this is the way to directly ask the
15 jury that question, do you think that's going to
16 affect your ability to be fair and impartial.

17 MR. FOOTE: Judge, that would be done
18 individually?

19 THE COURT: Individually. It would be done
20 here in the courtroom, obviously, but I wouldn't
21 bring everybody in at once.

22 MR. FOOTE: Right.

23 THE COURT: But then what I'd have to do
24 then is bring in -- if there was anyone else, bring
25 in each juror individually and say did you hear that

1 statement made; if you did, will that affect your
2 ability to be fair and impartial.

3 In other words, if they heard that juror
4 tell Deputy Flanagan that. Once again, that will
5 directly address the issue I think was your concern,
6 that's why I suggested it.

7 MR. FOOTE: Are you intending to add Mrs.
8 Wallace to testify again as to the incident?

9 THE COURT: Well, that would be an issue we
10 can address. I would -- if that is something you
11 wanted to do, I would give you the opportunity to
12 request that. And my impression is I'm not sure the
13 State's going to object to that.

14 MR. FOOTE: As to the first question, Judge
15 -- Judge, we would follow the suggestion of the Court
16 to have the jurors polled individually.

17 THE COURT: I'm just going to leave that
18 available to you if you want it.

19 MR. FOOTE: I know we had a few options.
20 I'm not sure -- we discussed a few things, so I
21 didn't know.

22 THE COURT: That's the one I'm just giving
23 you the option right. I guess giving you that option
24 if you would like that done that's something --

25 MR. ROSARIO: Judge, now I'm a little

1 confused s to what we're doing here. My
2 understanding is we're bringing Kara Wallace back to
3 put her in front of the jury.

4 THE COURT: Well, that's the issue. If
5 that's agreed to, we can do that. And if that's
6 going to be done, then it's going to be up to you to
7 decide whether or not you want that second set done.

8 In other words, have her just like any
9 other witness come and give you the opportunity once
10 again to question her about it in front of the jury,
11 whatever explanation is given is given.

12 Maybe first do a proffer make sure where we
13 are on that and then bring the jury in. Allow you to
14 ask the question. I will allow you to cross-examine
15 with regard to that.

16 In other words, treat that witness as a
17 hostile witness and then if you don't feel it's
18 necessary to take that other step, then we can do
19 that. If you feel it's necessary to take that other
20 step, I just want to give you that opportunity.

21 What's the State's position as far as
22 allowing the Defense to reopen to recall her with
23 regard to that issue?

24 MR. ROSARIO: I think they're entitled to
25 it, Judge. I think they can call her and ask her

1 that question. That's fine. I don't think they can
2 go and call additional witnesses to impeach her,
3 that's now collateral. So whatever answers they get
4 are the answers they get. That's where --

5 THE COURT: I don't necessarily disagree
6 with that. They can certainly ask her that and then
7 the jury can take it as, you know, any other sort of
8 issue with regard to the witnesses.

9 I noticed when I asked you that question
10 you were smiling. No, I wasn't. And the jury even
11 may have seen her smiling or laughing. You see what
12 I'm saying? Does that make sense? No.

13 MR. FOOTE: Can we approach, Judge?

14 THE COURT: Sure.

15 MR. ROSARIO: My understanding is Kara
16 Wallace is here.

17 MR. FOOTE: I'm way out in left field with
18 this. You know, even as far as just even speaking to
19 colleagues or to research. I don't know pretty much
20 -- you know, and I can see myself off -- can we go
21 off for a second?

22 OFF THE RECORD

23 ON THE RECORD

24 THE COURT: Mr. Foote, do you have an
25 objection to if Mr. Rosario goes out and advises the

1 other witness to stand by and to -- Mrs. Wallace just
2 to stand by?

3 MR. FOOTE: Oh, she's here?

4 MR. ROSARIO: She's been here.

5 MR. FOOTE: Sure.

6 THE COURT: We can have the bailiff do
7 that.

8 MR. FOOTE: That would be good or any --

9 THE COURT: Just ask her if she could stand
10 by for a few more minutes.

11 THE BAILIFF: Yes, sir.

12 MR. ROSARIO: Judge, we're ready to
13 proceed.

14 THE COURT: How do you conclude that we
15 proceed?

16 MR. FOOTE: Judge, in speaking with my
17 client he's going to request that the jurors be
18 polled individually as to that subject matter
19 regarding the possible phone usage at that point.
20 And based on what the jurors say, then determine
21 which way we will be going forward at that time.

22 And the Court would be inquiring of each of
23 the jurors with regard to --

24 THE COURT: Well, we'll do one juror who
25 brought it to the attention of the bailiff that saw

1 it. The other jurors if they heard the statement --

2 MR. FOOTE: Correct.

3 THE COURT: -- made and if that -- okay.

4 Did you want, prior to that, to address the proffer
5 since the witness who's here --

6 MR. FOOTE: Based on what the juror --
7 probably not, Judge. Based on what the jurors say,
8 it's not a definite, but probably not based on that
9 depending on what the jurors say.

10 THE COURT: Okay.

11 MR. FOOTE: And we would request that the
12 Court, I guess, with each of the jurors that it was
13 brought to the Court's attention or something like
14 that.

15 THE COURT: That's what I'm going to say.

16 MR. FOOTE: I think that would be
17 sufficient at this time, Judge.

18 THE COURT: Okay. Any objection to me
19 inquiring into the jurors at this time, Mr. Rosario?

20 MR. ROSARIO: Yes, Judge. Actually, I
21 think that the jury instruction covers they're going
22 to get to judge the credibility of these witnesses.
23 Questioning them as to whether it's going to make
24 them fair or impartial --

25 THE COURT: No, if it's going to affect

1 their ability to be fair and impartial.

2 MR. ROSARIO: Affect their ability to be
3 fair and impartial, it goes into -- it's vague as to
4 whether it's going to -- they can completely forget
5 this witness' testimony or they can accept all of it.
6 Asking them whether it's going to affect their
7 ability to be fair and impartial is basically asking
8 them, because this witness did this, does this change
9 the whole game to you, which that's not what this
10 really stands for.

11 If the person's up there picking their
12 nose, the jury can say I didn't like that guy. If
13 the person's up there texting, the jury can say I
14 didn't like the fact that that guy was texting. But
15 that doesn't change the fact that it's going to
16 affect their ability to be fair and impartial and
17 disqualify them as a juror. That's where I'm having
18 the difficulty.

19 If you want to inquire as to whether they
20 observed it and, you know, or I have -- I think it's
21 appropriate --

22 THE COURT: Well, the issue is whether
23 they're fair and impartial, not whether or not they
24 can apply the law as instructed by the Court.

25 I mean -- I mean, not being able to be fair

1 and impartial means you cannot apply the law as
2 instructed by the Court. Meaning, is that conduct
3 going to be such that it's going to overcome your
4 ability to apply the law.

5 MR. ROSARIO: Okay. I see where you're --

6 THE COURT: I mean, that's what not being
7 fair and impartial means.

8 MR. ROSARIO: And I understand that. But
9 you're going to say, and you're going to get to judge
10 the credibility of each of these witnesses.

11 THE COURT: Well, you'll be instructed
12 later on with regard to factors and considerations
13 with regard to weighing the testimony and weighing
14 the evidence that's been presented to you.

15 I can do that right, Mr. Foote?

16 MR. FOOTE: Yes, Your Honor. And the only
17 issue that has been established that was utilizing
18 the phone, we've already gone through that. There is
19 no, at this point, evidence of actual texting, per
20 se.

21 If the jurors have observed that, that
22 should be something that would be able to be argued
23 in closing as part of the observations if they saw it
24 or not. And as the Court readily always instructs
25 the jurors, they should rely on their own

1 recollection. If they don't know that or they didn't
2 observe that, that's something different. And with
3 that, I think that would be satisfactory.

4 I think this goes above, you know, the
5 observations in the jury instructions. This is a
6 possibility of whether or not these jurors believe
7 that this person may have been contacting someone
8 else here or there.

9 And in the abundance of caution --

10 THE COURT: Well, and that's where, you
11 know, that can be actually addressed with the witness
12 who's returned to the courtroom to testify.

13 MR. ROSARIO: Okay. I understand that.

14 MR. FOOTE: Judge, we've discussed a few
15 ways of actually handling it. The Court, and we are
16 asking that the jurors as the Court suggested --

17 THE COURT: Let me do that for right now
18 and kind of see where we are.

19 Do you recall which juror brought that to
20 your attention?

21 THE BAILIFF: Yes, sir.

22 THE COURT: Can we ask that juror to step
23 into the courtroom?

24 THE BAILIFF: They're all downstairs.

25 THE COURT: Oh, they're all downstairs.

1 Can we bring them up and put them into the jury room
2 and then bring --

3 THE BAILIFF: Bring them out one at a time.

4 THE COURT: -- them out with that person
5 being the first one?

6 THE BAILIFF: Yes, sir.

7 THE COURT: Mr. Foote, while we're waiting
8 to review the instructions with your client, if you
9 haven't already done so, the proposed jury
10 instructions.

11 MR. FOOTE: Have I?

12 THE COURT: I'll just ask you to review
13 those with your client.

14 MR. FOOTE: Oh --

15 THE BAILIFF: Your Honor, the jury's
16 entering the courtroom. Your Honor, the jury's out
17 of the hearing of the Court.

18 Are you ready for the first one?

19 THE COURT: Yes. They can sit pretty much
20 in any seat.

21 Mrs. Watson.

22 THE BAILIFF: Juror Watson is entering the
23 courtroom.

24 THE COURT: Mrs. Watson?

25 JUROR WATSON: Yes, Your Honor.

1 THE COURT: It's come to my attention that
2 you made a -- or told the bailiff that there was some
3 issue with regard to one of the witnesses testifying
4 yesterday, perhaps utilizing their phone; is that
5 correct?

6 JUROR WATSON: Yes, sir.

7 THE COURT: All right. And does that in
8 and of itself, that issue in and of itself, do you
9 think that is going to affect your ability to be a
10 fair and impartial juror in this case?

11 JUROR WATSON: No, sir.

12 THE COURT: All right. And that was Mrs.
13 Wallace, I believe; is that correct?

14 JUROR WATSON: Kara.

15 THE COURT: Kara Wallace?

16 JUROR WATSON: Yes, sir.

17 THE COURT: Okay. And you indicated that
18 to the bailiff that that was something you felt that
19 should be brought to his attention?

20 JUROR WATSON: I mentioned it in passing.
21 To be honest, I thought that the bailiff and yourself
22 had seen it so it really didn't stand out in my mind
23 too much until today when we were just chatting.

24 THE COURT: Okay. And once again, does
25 that situation or that conduct in any way affect your

1 ability here today to be a fair and impartial juror?

2 JUROR WATSON: No, sir.

3 THE COURT: And to apply the law as I
4 instruct you to the facts as you and the jury can
5 collectively determine them to be?

6 JUROR WATSON: No, it does not.

7 THE COURT: And have you discussed that
8 testimony with any of the other jurors or that
9 concern with regard to that conduct?

10 JUROR WATSON: With what I observed
11 yesterday?

12 THE COURT: Uh-uh, yes.

13 JUROR WATSON: The only discussion we had
14 was the one that happened in the downstairs jury room
15 today in the presence of the bailiff.

16 THE COURT: Okay. In other words, when you
17 told Deputy Flanagan?

18 JUROR WATSON: Yes, sir.

19 THE COURT: All right. Anything else?

20 MR. ROSARIO: No, sir.

21 MR. FOOTE: No.

22 THE COURT: All right. Thank you very
23 much, Mrs. Watson.

24 JUROR WATSON: You're welcome.

25 THE BAILIFF: Mrs. Jones is next juror,

1 Judge.

2 THE COURT: Mrs. Jones, it has been brought
3 to our attention that you may have overheard a
4 discussion or a statement made by one of the other
5 jurors to Deputy Flanagan with regard to a witness
6 potentially utilizing their phone at some point in
7 time yesterday in court; did you hear any statement
8 made about that?

9 JUROR JONES: No, sir.

10 THE COURT: All right. So you didn't hear
11 any discussion or statement made about the
12 possibility of some juror possibly utilizing their
13 phone in court?

14 JUROR JONES: No, sir. I was home for
15 lunch.

16 THE COURT: Okay. So obviously that isn't
17 going to have any affect on your ability to be a fair
18 and impartial juror?

19 JUROR JONES: Not at all.

20 MR. FOOTE: Judge, I believe you asked her
21 if some juror was using their phone.

22 THE COURT: No. No. No. If one of the
23 jurors mentioned that someone in court yesterday
24 during their testimony was utilizing the phone. I
25 may not have made that clear. I apologize.

1 JUROR JONES: No, sir.

2 THE COURT: Okay. In other words, that a
3 witness who was here in court was using or
4 potentially using their phone for some reason and you
5 didn't hear any conversation about that?

6 JUROR JONES: No, sir.

7 THE COURT: Anything else?

8 MR. FOOTE: No, Judge.

9 THE COURT: State?

10 MR. ROSARIO: I have nothing.

11 THE COURT: Thank you very much, Mrs.
12 Jones.

13 JUROR JONES: You're welcome.

14 THE COURT: Mr. Stephenson, sir, it's been
15 brought to our attention that one of the other jurors
16 may have made a comment to Deputy Flanagan about a
17 juror potentially -- not a juror. A witness
18 potentially utilizing their phone during court
19 proceedings yesterday.

20 Did you overhear that comment made to
21 Deputy Flanagan?

22 JUROR STEPHENSON: Yes, Judge.

23 THE COURT: Okay. And does that comment,
24 in and of itself, do you believe that that would
25 affect your ability to be a fair and impartial juror

1 in this case?

2 JUROR STEPHENSON: No, Judge.

3 THE COURT: Do you feel that even the
4 substance of that comment, in other words, the
5 conduct described in that comment, do you feel that
6 that would be such that that would affect your
7 ability to be a fair and impartial juror in this
8 case?

9 JUROR STEPHENSON: No, Judge.

10 THE COURT: Do you feel that you can still
11 take the facts as you and the jury collectively
12 determine them to be, apply those facts to the law as
13 I instruct you?

14 JUROR STEPHENSON: Yes, Judge.

15 THE COURT: So you're sure that that
16 comment or that conduct would have no affect on your
17 ability to be fair and impartial?

18 JUROR STEPHENSON: That's correct.

19 MR. ROSARIO: That's fine, Judge.

20 MR. FOOTE: That's fine, Judge.

21 THE COURT: Thank you very much, Mr.
22 Stephenson.

23 THE BAILIFF: Mrs. Sheeley is next, Your
24 Honor.

25 THE COURT: Mrs. Sheeley, good afternoon.

1 JUROR SHEELEY: Good evening.

2 THE COURT: Mrs. Sheeley, it's come to my
3 attention that one of the other jurors made a comment
4 or may have made a comment to Deputy Flanagan with
5 regard to a witness who was in court testifying
6 yesterday and may have utilized their phone in some
7 manner while in court here testifying. Did you hear
8 that comment made to Deputy Flanagan here today?

9 JUROR SHEELEY: Yes, I did.

10 THE COURT: All right. And does the fact
11 that that comment was made in your presence, do you
12 believe that that's going to affect your ability to
13 be a fair and impartial juror in this case?

14 JUROR SHEELEY: No.

15 THE COURT: Do you believe that even if the
16 content of that comment was correct, in other words,
17 in the event that that was occurring, do you believe
18 that that would affect your ability to be a fair and
19 impartial juror in this case?

20 JUROR SHEELEY: No, sir.

21 THE COURT: Do you believe that you could
22 still take the facts as you and the jury collectively
23 determines them to be and the law as I instruct you
24 and apply those two things together in a fair and
25 impartial manner?

1 JUROR SHEELEY: Yes.

2 THE COURT: All right. Anything else?

3 MR. FOOTE: No, Your Honor.

4 MR. ROSARIO: No, sir.

5 THE COURT: All right. Thank you very
6 much.

7 THE BAILIFF: Mrs. Brown.

8 THE COURT: Mrs. Brown, good afternoon.

9 JUROR BROWN: Good afternoon.

10 THE COURT: Mrs. Brown, it's come to my
11 attention that one of the jurors may have made a
12 comment to Deputy Flanagan with regard to a witness
13 potentially utilizing their phone yesterday during
14 court time and during the court proceedings. And I
15 was wondering if you heard that comment made to
16 Deputy Flanagan?

17 JUROR BROWN: Yes, I did.

18 THE COURT: And does hearing that comment,
19 in and of itself, do you believe that that would
20 affect your ability to be a fair and impartial juror
21 in this case?

22 JUROR BROWN: Not at all.

23 THE COURT: Do you believe that even if you
24 believe the content of that comment to be true, do
25 you believe that that, in and of itself, will affect

1 your ability to be a fair and impartial juror in this
2 case?

3 JUROR BROWN: Pardon?

4 THE COURT: Even if you believe the content
5 of that statement. In other words, if you believe
6 that someone was indeed doing that, does that in and
7 of itself do you think that's going to affect your
8 ability to be a fair and impartial juror?

9 JUROR BROWN: No, not at all.

10 THE COURT: In other words, do you believe
11 that you can take the facts as you and the jury
12 collectively determine them to be in this case and
13 apply that to the law as I instruct you?

14 JUROR BROWN: Yes, sir.

15 THE COURT: So, once again, do you not
16 believe that that in any way would affect your
17 ability to be a fair and impartial juror, either the
18 comment or even assuming the content of that comment?

19 JUROR BROWN: No, it will not affect one
20 judgment call.

21 THE COURT: Okay. Anything?

22 MR. ROSARIO: No, sir.

23 MR. FOOTE: No, Your Honor.

24 THE COURT: Okay. Thank you very much,
25 Mrs. Brown.

1 THE BAILIFF: Mrs. Shambeau.

2 THE COURT: Mrs. Shambeau, good afternoon.
3 It's come to my attention that one of the other
4 jurors may have made a comment this after to Deputy
5 Flanagan about the fact that a witness during court
6 yesterday giving their testimony may have utilized or
7 used their phone in some manner during the course of
8 the proceedings. Did you hear that comment made to
9 Deputy Flanagan?

10 JUROR SHAMBEAU: I did not hear that
11 comment. I was just walking into the room and then I
12 said, what happened. I thought it was a personal
13 problem and then she told me.

14 THE COURT: That she had made that comment
15 to him?

16 JUROR SHAMBEAU: Yes.

17 THE COURT: All right. Does the fact that
18 that comment was made to Deputy Flanagan in any way,
19 do you believe that in and of itself will affect your
20 ability to be fair and impartial juror in this case?

21 JUROR SHAMBEAU: No.

22 THE COURT: Do you believe that even if the
23 content of that is correct, meaning that that did
24 indeed occur, do you believe that that in and of
25 itself would be sufficient to make it so you could

1 not be a fair and impartial juror? In other words,
2 do you believe that that's going to affect your
3 ability to be fair and impartial in any way?

4 JUROR SHAMBEAU: I don't believe that would
5 affect me.

6 THE COURT: You don't believe it or you
7 know it?

8 JUROR SHAMBEAU: I don't believe that it
9 would affect my ability to be fair.

10 THE COURT: And when you say you don't
11 believe, are you sure it wouldn't affect your ability
12 to be fair or do you think it might affect your
13 ability to be fair and impartial?

14 JUROR SHAMBEAU: It would not.

15 THE COURT: Remember we talked about it in
16 voir dire how --

17 JUROR SHAMBEAU: Yes.

18 THE COURT: -- and I apologize if we kind
19 of pushing you a little bit on that. But like we
20 talked about in voir dire, there are very few
21 questions that I need absolutes on. If you feel
22 comfortable with that, that's fine. If you tell me,
23 no, I don't feel comfortable, that's fine. There are
24 no right answers or wrong answers. Just however you
25 feel is a correct answer.

1 JUROR SHAMBEAU: I can be fair and
2 objective.

3 THE COURT: Okay. And do you feel that you
4 can still take the facts as you and the jury
5 collectively determine them to be and apply them to
6 the law as I instruct you?

7 JUROR SHAMBEAU: Yes.

8 THE COURT: All right. So in short you
9 don't think in any way that either the comment or the
10 content of that comment, do you feel that that's
11 going to affect your ability to be fair and
12 impartial?

13 JUROR SHAMBEAU: I do not.

14 THE COURT: All right. Anything else?

15 MR. ROSARIO: No, sir.

16 MR. FOOTE: No.

17 THE COURT: Thank you very much.

18 THE BAILIFF: Mrs. Goss.

19 THE COURT: Mrs. Goss, good afternoon.

20 JUROR GOSS: Good afternoon.

21 THE COURT: Mrs. Goss, it's come to our
22 attention that one of the jurors may have made a
23 comment to Deputy Flanagan today about the fact that
24 a witness who was testifying may have utilized their
25 phone during the course of the proceedings yesterday

1 and during the course of their testimony. Did you
2 hear that comment made to Deputy Flanagan?

3 JUROR GOSS: I was outside. I walked in
4 and I overheard some of the conversation.

5 THE COURT: Okay. So you heard that
6 comment being made to Deputy Flanagan?

7 JUROR GOSS: Yes.

8 THE COURT: Do you feel that that is going
9 to affect your ability hearing that comment to be a
10 fair and impartial juror in this case here?

11 JUROR GOSS: No. No. Because I didn't see
12 her do anything.

13 THE COURT: Do you feel that even the
14 content of that, do you think that merely the fact
15 that that comment was made and about something like
16 that occurred, do you believe that even if that
17 occurred do you think that would affect your ability
18 to be a fair and impartial juror?

19 JUROR GOSS: No.

20 THE COURT: Do you think it would have any
21 affect on your ability to take the facts as you and
22 the jury collectively determine them to be and apply
23 them to the law as I instruct you?

24 JUROR GOSS: Yes.

25 THE COURT: So you think you can still do

1 that?

2 JUROR GOSS: Yes.

3 THE COURT: Or do you think it's going to
4 affect your ability to do that?

5 JUROR GOSS: I don't think that's going to
6 affect it.

7 THE COURT: Okay. Ma'am, when you say --
8 and that was my fault. I said do you think. Do you
9 know, I mean, can you tell me, remember we talked
10 about this in voir dire that there are a few
11 questions I need absolutes, I need to know. And if
12 you're not sure, that's fine. And if you're sure,
13 obviously that's fine as well because as we talked
14 about there are no right or wrong answers. Do you
15 feel that that's going to affect your ability to be a
16 fair and impartial juror here today?

17 JUROR GOSS: No.

18 THE COURT: In other words, you can take
19 the law as I instruct you and take the facts as you
20 and the jury collectively determine them to be?

21 JUROR GOSS: Yes, sir.

22 THE COURT: And apply the two together?

23 JUROR GOSS: Yes, sir.

24 THE COURT: Anything else?

25 MR. FOOTE: No, Your Honor.

1 MR. ROSARIO: No, sir.

2 THE COURT: All right. Thank you very
3 much, Mrs. Goss.

4 Anything else I need to inquire of the jury
5 about?

6 MR. FOOTE: No further inquiry of the jury,
7 Judge.

8 THE COURT: Okay. And, Mr. Stephen, you've
9 already been placed under oath. Mr. Stephen, you are
10 under oath presently, correct?

11 THE DEFENDANT: Yes.

12 THE COURT: And you have had the
13 opportunity to consult with your lawyer with regard
14 to that issue and with regard to the inquiries being
15 made at this hearing. And are you satisfied with the
16 inquiry made of this jury at this time?

17 THE DEFENDANT: Not really.

18 THE COURT: All right. If you wish I'll
19 give you a moment to discuss with your lawyer what
20 other inquiry you wish to be made of this jury.

21 All right. Mr. Foote, you've had an
22 opportunity --

23 THE DEFENDANT: I'm fine.

24 THE COURT: All right. You feel that the
25 inquiries have been sufficient, Mr. Stephen?

1 THE DEFENDANT: Yes.

2 THE COURT: And you've had the opportunity
3 to obviously consult with your lawyer with regard to
4 that?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you feel like you need any
7 more time to consult with your lawyer?

8 THE DEFENDANT: No.

9 THE COURT: All right. And does that, Mr.
10 Foote, affect your ability of where you want to go
11 with regard to the other issue that you requested.
12 You requested that Mrs. Wallace to return to the
13 courthouse. She has returned. She is outside.

14 MR. FOOTE: Judge, we will proceed forward
15 without any further inquiry of any witness.

16 THE COURT: Okay. What says the State?
17 Does the State wish there to be an inquiry? I'm kind
18 of half-tempted now that she's here to do a little
19 further inquiry myself even, if it's not in front of
20 the jury.

21 MR. ROSARIO: I thought yesterday's was
22 sufficient, Judge. I'm sorry. I was on a different
23 page. I wanted to make sure you inquired of Mr.
24 Stephen.

25 THE COURT: I'm going to inquire whether or

1 not he wishes. I guess I'll do that right now.

2 Mr. Stephen, sir, do you understand that
3 Mrs. Wallace is outside and she's available. I've
4 offered the option to you and your lawyer obviously
5 to require or to allow him to cross-examine her and
6 we will reopen your case, cross-examine her with
7 regard to that issue and do that in front of the
8 jury.

9 So that is an option that is available.
10 You've had the opportunity to discuss that option as
11 well with your lawyer?

12 THE DEFENDANT: I was -- with the jury
13 being present I thought. But can I talk to him?

14 THE COURT: No, the jury would be present
15 during that.

16 THE DEFENDANT: Not with just you -- just
17 Kara without the jury.

18 THE COURT: No. No. For right now the
19 option I want to give you is to do that in front of
20 the jury, too, so if you had a concern about that
21 that's an option for your lawyer as well. I mean, so
22 there's --

23 THE DEFENDANT: I'm ready to go, to
24 proceed.

25 THE COURT: I know you laugh; I'm not sure

1 what that means.

2 THE DEFENDANT: We don't need to call her.

3 THE COURT: Okay. In other words, you'd
4 rather not have her called and have your lawyer
5 reopen the case, have her called in front of the jury
6 and have her examined with regard to these issues?

7 THE DEFENDANT: Correct.

8 THE COURT: Okay.

9 MR. FOOTE: Judge, for the record, just so
10 that we're clear. We were discussing a few options
11 since this was not a frequent occurrence.

12 THE COURT: I think that is -- and I'm glad
13 it's not.

14 MR. FOOTE: And all the parties, including
15 the Court, were trying to decide the best way to
16 handle that for all apparent legal reasons. The jury
17 being polled or questioned about it was not an
18 original option that came up; therefore, we wanted to
19 inquire of her directly. However, with the
20 suggestion of speaking with them individually, I
21 believe that satisfies at this point.

22 As far as her testimony yesterday with
23 regard to her use or none use of the phone, that is
24 on the record and we'll leave that be as it is. We
25 would have preferred to have it happened in the front

1 of jury.

2 THE COURT: All right. Let me -- why don't
3 we take a moment. The court stands in recess for
4 about five minutes.

5 RECESS

6 OPEN COURT

7 JURY ABSENT

8 MR. FOOTE: Judge, if the Court is inclined
9 to go right into closings, may we approach on one
10 matter on the records?

11 BENCH CONFERENCE

12 MR. FOOTE: Judge, in speaking with my
13 client during the break with regard to the issues
14 with jurors and the Kara Wallace cell phone, he's
15 requested I make a motion to the Court to issue a
16 subpoena for exigent circumstances to obtain her
17 phone records from yesterday's date to determine
18 definitively if there were any messages during the
19 time of her testimony.

20 THE COURT: State want to be heard with
21 regard to that?

22 MR. ROSARIO: I would object. I believe
23 there's no legal basis to issue it.

24 THE COURT: Any response?

25 MR. FOOTE: Relevance.

1 MR. ROSARIO: Relevance is a collateral
2 issue.

3 THE COURT: I think there was an issue.
4 Also your client had the opportunity, if you wished,
5 to ask or review that cell phone yesterday. She
6 tendered that. He didn't ask you to go ahead and go
7 through his text messages or her cell phone
8 yesterday.

9 MR. FOOTE: If I can respond to that,
10 Judge? The witness was called back to the courthouse
11 by the State and for whatever reason she was told to
12 come back to the courthouse, I don't know what that
13 reason was. From my understanding and what I've
14 heard, whether or not it's true or not, the Defense
15 Attorney was angry with you or something to that
16 effect and whether or not she knew the nature and the
17 substance. The possibility that those messages can
18 be deleted within a second.

19 THE COURT: The difficulty of that, once
20 again, supposition or supposition or supposing she's
21 lying under oath or supposing believing although she
22 did tender to you her phone number, her carrier and
23 the name of the account before coming forth coming
24 with that as well. That, you know, certainly that's
25 best in the future but for me to issue that order.

1 Once again, presuppose -- that presupposes, you know,
2 both of those facts there's really nothing to
3 substantiate that.

4 Now what I can do is I can call her in and
5 put her under oath and ask her if everything she told
6 us was correct yesterday and ask you if your client
7 has any other questions of her, ask the State if they
8 have any other questions of her or you and move on
9 from there.

10 The only other issue I would then think we
11 would need to address is we had the opportunity to
12 discuss with your client the fact that you had the
13 opportunity to review that videotape. I was going to
14 put that in just kind of a Court's exhibit. It's
15 obviously not going to go back with the jury; it will
16 just be in the court file for appellate purposes.

17 MR. FOOTE: I did advise my client that I
18 reviewed the video of Kara Wallace. From the camera
19 that was overlooking the witness stand in the
20 courtroom. It is a delayed tape, not a live time
21 video. You can see hand movements during the bench
22 conferences, which I think there were at least three
23 or four bench conferences. You cannot make out her
24 fingers but you can see hand movements. So I have
25 had the opportunity to review it, but I cannot say

1 conclusively yes or no that anything has occurred.

2 THE COURT: And you're agreeing?

3 MR. ROSARIO: I agree with that.

4 THE COURT: That assessment, I think that
5 was the assessment of one of the supervisors as well.

6 MR. FOOTE: You can't see the fingers, but
7 you can see a little bit of hand movement.

8 THE COURT: Anything going on. Obviously I
9 didn't see this, that was what was relayed to me.
10 Okay.

11 MR. FOOTE: Is the Court going to rule on
12 our previous motion for mistrial?

13 THE COURT: Correct. The previous motion
14 for mistrial will be denied. I am, like I said
15 though, I'm going to bring her in because we brought
16 this lady back. I'll ask her -- place her under oath
17 again. I'll ask her questions I indicated that I
18 would ask her. Give the State and the Defense to ask
19 any other questions that they have. And, once again,
20 excuse her at this time. We need to excuse her for
21 good.

22 Now, if you're going to go into closings,
23 now we're talking, what 4:00? Have you had a chance
24 to review --

25 MR. ROSARIO: The jury instructions, yes.

1 THE COURT: -- the jury instructions? Did
2 you get a chance?

3 MR. FOOTE: I have, Your Honor, in between
4 back and forth of the other issues. They appear to
5 be correct in order as far as the charges and the
6 items that we requested. I was going to go over them
7 prior to the court reading them. But I believe they
8 that they are.

9 THE COURT: Do you feel comfortable and
10 have you had a chance to read them with your client
11 as well?

12 MR. FOOTE: I started halfway and then we
13 were called to chambers back and forth.

14 THE COURT: Okay. Well, at some point in
15 time I need you to do that.

16 MR. FOOTE: Well, we went back and forth
17 with a number of drafts. And when we had the final
18 one with multiple copies, I believe there was a word
19 or something that was misplaced. I was told what the
20 word was at that point. But in dealing with the --

21 THE COURT: So this is not the final?

22 MR. ROSARIO: No, the final copy's been
23 down for the last hour.

24 MR. FOOTE: However, for the last hour
25 we've been dealing with the issue that is before the

1 Court.

2 THE COURT: So you need more time to go
3 over this with your client? I mean, he's got to go
4 over it and approve it.

5 MR. FOOTE: Yes, Judge.

6 THE COURT: Okay. It's 4:00 now. If we do
7 three hours worth of closings, we're at 7:00. Where
8 do we go from there? Do we send them out at 7:00,
9 before instructions, 7:30 quarter till 8:00 after
10 instructions? Where do we go; any suggestions?

11 MR. FOOTE: What are the options?

12 MR. ROSARIO: Well, we can --

13 THE COURT: We were here until 9:30 last
14 night and one of the jurors has a dog they have to
15 let out.

16 MR. FOOTE: We can allow them to
17 deliberate. If it gets later in the evening, I don't
18 believe that they have to be sequestered, I think
19 they can be sent home.

20 THE COURT: I don't think -- you know, I
21 guess what I would be more inclined to do is say we
22 do closings and then don't charge them or either
23 charge them and send them out until they reach a
24 verdict; or if we get it to them by 8:30, you know,
25 8:30 -- or well, 7:00ish. We were here until 9:30

1 last night, as pointed out by Mr. Sarabia. So, I
2 mean, does that mean that I bring them back tomorrow
3 morning at 8:30 and charge them?

4 MR. ROSARIO: I think we should just go,
5 let them make the decision tonight. I think they're
6 willing to --

7 THE COURT: What's that?

8 MR. SARABIA: Juries have here much later
9 than that on cases.

10 MR. ROSARIO: So I think we should just --

11 THE COURT: As a lawyer I took a verdict
12 once at 2:00 in the morning and I wasn't real excited
13 about it.

14 MR. FOOTE: I did too in Clearwater, Judge.
15 My only concern is that because we've done -- not to
16 say we've done nothing, they've really done nothing
17 all day. The inclination that it's Friday. And
18 whether there's some rush one way or the other.

19 THE COURT: These people I think they have
20 been pretty patient with us and been pretty
21 conscientious about discharging their duty. I don't
22 think there's any question about that. Whatever
23 decision we make we can put our faith in them more.
24 What I can say is, look, we're at the end of
25 closings. This is where we are. Do you want me to --

1 would you like to come back tomorrow morning and
2 begin your deliberations or would you like for me to
3 read you the jury instructions now and you begin your
4 deliberations.

5 MR. ROSARIO: I think that's fine.

6 MR. FOOTE: I think we can do it that way
7 and then see what they say.

8 MR. ROSARIO: That's fine.

9 THE COURT: We're too tired.

10 MR. ROSARIO: That's fine.

11 MR. FOOTE: That will be fine.

12 THE COURT: Okay.

13 MR. SARABIA: One thing, Flanagan said he
14 had an issue.

15 OPEN COURT

16 THE COURT: Any objection if we get started
17 with the procedure I indicated with regard to Mrs.
18 Wallace, asking her just to step in briefly and the
19 Court's going to inquire, give you two an opportunity
20 to ask any questions if you may want to and then
21 excuse her?

22 MR. FOOTE: No objection.

23 MR. ROSARIO: No objection.

24 THE COURT: Mrs. Wallace, please step to
25 the podium, please.

1 THEREUPON,

2 KARA WALLACE,

3 the Witness herein, being previously sworn, was
4 examined and testified as follows:

5 THE COURT: Mrs. Wallace, please state your
6 full name for the record.

7 THE WITNESS: Kara Wallace.

8 THE COURT: Mrs. Wallace, first of all,
9 thank you for your patience with us here today. I
10 just wanted to make sure that when we spoke to you
11 yesterday you understood the importance of what you
12 told us. And is there anything with regard to
13 whether or not you were actually texting on the
14 stand, okay?

15 THE WITNESS: Yes, sir.

16 THE COURT: And it's your -- it was your
17 testimony yesterday, I believe, that you were not; is
18 that correct?

19 THE WITNESS: Correct.

20 THE COURT: And can you explain to me, once
21 again, what was going on. I know you were utilizing
22 or manipulating your phone or something?

23 THE WITNESS: I was told that I have to
24 treat somebody that I have serious distaste for with
25 respect. So me flipping through pictures on my phone

1 was actually allowing me to do so. There's a picture
2 of surf boards on it, there's a picture of balloons
3 on it. And my phone when it goes into default, I
4 don't have voicemail. My phone goes into default and
5 it sends a text saying hat I am in court, I will call
6 you later.

7 THE COURT: Was that the ignore part of
8 that you said you were pushing the ignore button?

9 THE WITNESS: Ignore.

10 THE COURT: As far as texting, as far as
11 sending messages, as far as communicating with anyone
12 outside of this courtroom, was any of that going on?

13 THE WITNESS: No.

14 THE COURT: And so if you were pushing
15 buttons, it was just pictures?

16 THE WITNESS: I can show them to you. It's
17 standard wallpaper and what it is is one of them has
18 air balloons; the other one has surf boards.

19 THE COURT: And how come you didn't tell me
20 about the surf boards or balloons yesterday?

21 THE WITNESS: That's all I was doing with
22 my phone was going back and forth and checking the
23 time. I wasn't texting.

24 THE COURT: So, once again, do you
25 understand the importance obviously of that whether

1 or not somebody's on the stand testifying --

2 THE WITNESS: Yes, sir.

3 THE COURT: -- whether they're texting a
4 person outside of the courtroom?

5 THE WITNESS: Yes, sir.

6 THE COURT: And that's why you were, I
7 guess, offering your phone up to show that there were
8 no texts?

9 THE WITNESS: Correct. And they could have
10 checked my phone. It doesn't have a lock on it, if
11 that's what they wanted to do at that time.

12 THE COURT: And do you understand that at
13 some point in time in the future someone may very
14 well pull those phone records just to make sure there
15 was no texting or anything going on?

16 THE WITNESS: Yes, sir. I think I gave
17 permission to do that yesterday.

18 THE COURT: I think you gave the number and
19 the provider.

20 THE WITNESS: Yes, I did.

21 THE COURT: All right.

22 THE WITNESS: And there's only two numbers
23 on my phone line.

24 THE COURT: All right. Any further
25 inquiries wish to be made by either the Defense or

1 the State?

2 MR. FOOTE: If I may, Judge.

3 Mrs. Wallace, you said a default text was
4 sent out when you pressed ignored?

5 THE WITNESS: After so many times of
6 somebody calling.

7 MR. FOOTE: So the default text goes out to
8 whom?

9 THE WITNESS: Whoever is calling. It's the
10 missed call button.

11 MR. FOOTE: What missed calls did you
12 receive?

13 THE WITNESS: I missed three from Jim and I
14 missed one from my mom. I can give you my phone and
15 you can see the times. It was at 5:24, 5:25, 5:25.
16 My mother's missed call was at 6:00.

17 MR. FOOTE: So when you pressed ignore, a
18 text message went out from your phone saying that you
19 were in court?

20 THE WITNESS: It says, I'm in court, I'll
21 call you back. It's a template.

22 MR. FOOTE: It's an automatic template that
23 comes with your phone --

24 THE WITNESS: Uh-uh.

25 MR. FOOTE: -- that has --

1 THE WITNESS: It says I'm in court. I will
2 call you later. I can show it to you.

3 MR. FOOTE: Does that phone come with that
4 version with those words in it or is that something
5 that you do yourself?

6 THE WITNESS: It's something that -- it's
7 an original template and you edit it in order to put
8 what you need to. And my template says, I'm in
9 court. I will call you later.

10 MR. FOOTE: Yesterday when you were asked
11 about this you stated that you were looking at missed
12 messages; is that correct.

13 THE WITNESS: What do you mean I was
14 looking at messages?

15 MR. FOOTE: Missed calls, missed messages?

16 THE WITNESS: Yesterday I was looking at
17 the wallpaper and comparing my time to that time,
18 just like I told you just now. Would you like to see
19 the wallpapers?

20 MR. FOOTE: No. No.

21 THE WITNESS: Would you like to see the
22 template?

23 MR. FOOTE: No.

24 MR. ROSARIO: Mrs. Wallace --

25 THE COURT: One second.

1 Mr. Foote, do you want to take a moment to
2 speak with Mr. Stephen to see if there's any other
3 inquiry you wish to inquire about?

4 MR. FOOTE: Mrs. Wallace, you would agree
5 with me that yesterday when we asked about this and
6 your use of the phone you never mentioned wallpaper
7 or looking at pictures; is that true?

8 THE WITNESS: It was I playing with my
9 phone. The bailiff did come to me and say something
10 about my phone. At that time I put it under my leg
11 because I had it out playing with it.

12 MR. FOOTE: My question was, when you were
13 asked about this yesterday, you didn't mention
14 anything about playing, you know, looking at
15 wallpaper and photographs.

16 THE WITNESS: Yesterday it was if I was
17 texting back and forth with my phone, which I wasn't.

18 MR. FOOTE: And then when you explained
19 what you were doing --

20 THE WITNESS: And I also told you that I
21 missed calls. And the only thing I was doing was
22 hitting the ignore button with it.

23 MR. FOOTE: Did you not tell Deputy
24 Flanagan that you were looking at the time and
25 comparing the time with the phone.

1 THE WITNESS: Yes, I was doing that also.

2 MR. FOOTE: But you would agree with me you
3 never brought up balloons or wallpaper and default
4 texts yesterday?

5 THE WITNESS: Correct.

6 MR. ROSARIO: I just have a couple.

7 THE COURT: Is that the end of your
8 inquiry?

9 MR. FOOTE: Yes.

10 MR. ROSARIO: Mrs. Wallace, it might be
11 helpful for the Court. What do you do for a living?

12 THE WITNESS: I work in the courts for four
13 different counties. I do paternity testing.

14 MR. ROSARIO: So you're in courtrooms a
15 lot?

16 THE WITNESS: Five days a week. If I'm not
17 in courtrooms, I'm in jails.

18 MR. ROSARIO: So when you refer to the
19 default text that goes out, that's one that's been
20 there for a long time?

21 THE WITNESS: Yes sir.

22 MR. ROSARIO: It's not something that was
23 set up for yesterday?

24 THE WITNESS: Yes, sir.

25 MR. ROSARIO: Because you're in court down

1 in Pinellas County and all the other counties?

2 THE WITNESS: Hernando, Pasco, Pinellas,
3 and Hillsborough counties.

4 MR. ROSARIO: So if somebody calls you, you
5 hit ignore --

6 THE WITNESS: I keep hitting ignore and it
7 defaults back. The only time I get a text message
8 back is if it's from a landline because it doesn't
9 receive messages.

10 MR. ROSARIO: Thank you.

11 THE COURT: Anything else? No.

12 All right. Ma'am, thank you very much. I
13 have no further questions of you at this time.

14 And may this witness be released once
15 again; is that correct?

16 MR. FOOTE: Yes, Judge, as far as inquiry,
17 yes.

18 THE COURT: As far as any desire for her to
19 testify?

20 MR. FOOTE: Testify any further in this
21 matter.

22 THE COURT: Right.

23 MR. FOOTE: Judge, no further inquiry of
24 the witness.

25 THE COURT: In other words, what we talked

1 about before, it's not your desire to have this
2 witness testify to the same substance of what we've
3 done here today in front of a jury; is that correct.

4 MR. FOOTE: It's not necessary, Judge. She
5 may be released.

6 THE COURT: All right. And you're in
7 agreement with that Mr. Stephen, correct?

8 THE DEFENDANT: Yes.

9 THE COURT: State?

10 MR. ROSARIO: She may be released, Judge.

11 THE WITNESS: Sir, if they need to inquire
12 with me any further, can they please do it by phone?
13 I am going out of town.

14 THE COURT: I think that's why I asked this
15 question just to make sure --

16 THE WITNESS: It was asked yesterday also.

17 THE COURT: Believe me, I understand

18 THE WITNESS: I was an hour out.

19 THE COURT: I'm very sensitive to that. I
20 understand that, that's why I made that inquiry once
21 again. You are released and actually we are now past
22 the taking of testimony stage, that's why I inquired.
23 I understand your concern on that. I do thank you
24 very much, ma'am.

25 All right. Are we ready to -- well, you

1 still need a moment to review the jury instructions?

2 MR. FOOTE: Yes, Judge, and based on the
3 testimony of Mrs. Wallace since we finished with
4 that, I'll renew my motion at the bench with regard
5 to the documentation for subpoena.

6 THE COURT: As to the phone records, that
7 request will be denied.

8 MR. FOOTE: Thank you, Judge. I will need
9 a few more moments to go over the jury instructions.

10 THE COURT: All right. And you have not
11 printed copies?

12 MR. ROSARIO: We have seven copies up
13 there. So there's more than enough. As a matter of
14 fact, Judge, since there's seven, Mr. Sarabia and I
15 have been sharing one. May I have one back?

16 THE COURT: No, all the jurors -- all seven
17 jurors need to get one.

18 MR. ROSARIO: That's right. I'm sorry.

19 THE COURT: Many times it's nice to make an
20 extra one for the court reporter because they would
21 like one, too.

22 MR. SARABIA: I'm sorry.

23 THE COURT: Step up with regard to the
24 verdict form. Is there a requested change?

25 MR. ROSARIO: Yes, Judge, there is an

1 enhancement for DUI having an over a .20 blood
2 alcohol content and that's why that's there.

3 THE COURT: All right. Mr. Foote, have you
4 had the opportunity to review with your client the
5 proposed jury instructions?

6 MR. FOOTE: Yes, Your Honor.

7 THE COURT: And, Mr. Stephen, sir, you've
8 had the opportunity to review those with your
9 attorney; is that correct?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And that includes the proposed
12 instructions as they were -- as they are here, you
13 agree we those instructions, correct?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: And as they relate to
16 lesser-included offenses, you agree with the
17 lesser-included offenses that have been included as
18 well; is that correct?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And you've had sufficient time
21 to discuss that with your attorney?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And do you feel like you need
24 any more time to discuss that with your attorney?

25 THE DEFENDANT: No.

1 THE COURT: So are you sure you're
2 satisfied with the instructions as proposed as it
3 relates to the substantive instructions as well as
4 the lesser-included offenses, correct?

5 THE DEFENDANT: Yes, that's correct.

6 THE COURT: Okay. Is everybody ready to go
7 for closings?

8 MR. ROSARIO: Yes, sir.

9 MR. FOOTE: Yes.

10 THE COURT: And the State's going to have
11 the opportunity to divide their time. Do you have an
12 idea of how that was going to occur, did you want any
13 warning from this clerk or anything like that or
14 self-police yourself?

15 MR. SARABIA: I can get a warning at 35
16 minutes.

17 THE COURT: I'm sorry?

18 MR. ROSARIO: If I can get a warning at 35
19 minutes.

20 THE COURT: And she'll -- I don't know,
21 some of them tap on the desk, some of them slam the
22 desk and it kind of scares me when it happens. Do
23 you have a preference?

24 MR. SARABIA: Tapping is fine, that would
25 be perfect.

1 THE COURT: All right. Mr. Foote, are you
2 ready?

3 MR. FOOTE: 60 seconds, Judge.

4 THE COURT: All right. Are we ready to
5 proceed now, ready for closings?

6 MR. SARABIA: Yes, sir.

7 MR. FOOTE: Yes, Your Honor.

8 THE COURT: All right. Thank you.

9 Mr. Stephen, you've -- Mr. Foote, you've
10 had the opportunity to review the verdict form with
11 your client as well; is that correct?

12 MR. FOOTE: One second, Judge.

13 MR. FOOTE: Judge, we've reviewed it.

14 THE COURT: Mr. Stephen, have you reviewed
15 the form with your lawyer as well?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And you've all seen the verdict
18 forms. The only one I did not see is the leaving the
19 scene. I'm assuming it's a leaving the scene and not
20 guilty?

21 MR. ROSARIO: Correct.

22 MR. FOOTE: Correct.

23 THE COURT: All right. Can we return the
24 jury?

25 JURY PRESENT

1 THE BAILIFF: The jury's in the courtroom.
2 The jury's present and seated in the courtroom, Your
3 Honor.

4 THE COURT: All right. Members of the
5 Jury, both the State and the Defense have now rested
6 their case.

7 The attorneys will now present their final
8 arguments. Please remember that what the attorneys
9 say is not evidence or your instruction on the law;
10 however, do listen closely to their arguments,
11 they're intended to aid you in understanding the
12 case.

13 Each side will have equal time, but the
14 State is entitled to divide his time between an
15 opening argument and a rebuttal argument after the
16 defendant has spoken.

17 State?

18 MR. SARABIA: Thank you. May it please the
19 Court, Defense counsel?

20 Good afternoon, Ladies and Gentlemen.
21 First I'd like to thank you on behalf of the State
22 for paying attention in this case obviously. You've
23 heard a lot of testimony. You've been here through a
24 lot of hours. And we appreciate that.

25 Now, at the beginning of this case Mr.

1 Rosario told you that the State would prove to you
2 beyond a reasonable doubt that this defendant,
3 Shannon Stephen, is guilty of DUI manslaughter for
4 killing Sara Gleason and guilty of DUI manslaughter
5 for killing Joe Swish, and guilty of leaving the
6 scene of a crash with death. And, Ladies and
7 Gentlemen at this point the State has done that.

8 Now, the Judge is going to instruct you on
9 the law in the law in just a moment. And he's going
10 to tell you that in order to prove the crime of DUI
11 manslaughter the State has three things to prove.

12 Now some of you may remember in jury
13 selection we discussed elements. There are three
14 elements to the crime of DUI manslaughter. There are
15 only three things to prove that crime, the State
16 needs to prove. I see some of you writing. You're
17 actually going to get a copy of the jury
18 instructions.

19 The first one is that Shannon Stephen, this
20 defendant right here, drove or was in actual physical
21 control of a vehicle.

22 The second one, while driving or in actual
23 physical control Shannon Stephen was under the
24 influence of alcohol to the extent his normal
25 faculties were impaired, or had a blood or breath

1 alcohol level of .08 or more.

2 Now, notice that second one, there's two
3 ways to prove that. Either one, under the influence
4 of alcohol to the extent his normal faculties are
5 impaired, or .08 or higher. One or the other. Both
6 are not necessary. Although in this case the State
7 has done both.

8 And the third thing we have to prove is as
9 a result this defendant caused or contributed to the
10 cause of the death of Sara Gleason for the one count,
11 Joe Swish for the second count. Those are the only
12 three things for the crime of DUI manslaughter.

13 Now, the judge is also going to instruct
14 you on what's called lesser-included crimes. I just
15 want to briefly tell you about that so there's no
16 mystery there.

17 Included in that crime is the crime of DUI.
18 If for instance you find that third element that the
19 defendant caused the death of Joe Swish or Sara
20 Gleason is not present, the first two elements still
21 compose the crime of DUI. And so you're going to be
22 instructed on that.

23 Now, it's your job as the jury to find the
24 defendant guilty of the highest charged crime that
25 the State has proven to you beyond a reasonable

1 doubt, which in this case clearly is DUI
2 manslaughter.

3 Now, the other, the third charged crime
4 leaving the scene of a crash involving death there
5 are four elements.

6 Shannon Stephen was the driver of the
7 vehicle involved in a crash resulting in the death of
8 any person. Okay. One.

9 Two, Stephen Shannon knew or should have
10 known that he was involved in the crash. Should have
11 known.

12 Three, Shannon Stephen knew or should have
13 known the death of the person.

14 And, four, there's two ways to prove four.
15 Four, Shannon Stephen wilfully failed to stop at the
16 scene of the crash or as close to the crash as
17 possible and remain there until he had given
18 identifying information and that is defined as name,
19 address, vehicle registration number, and if
20 requested, the defendant's license or permit to drive
21 and giving identifying information to the injured
22 person driver or occupant or the person attending the
23 vehicle and to any police officer investigating the
24 crash.

25 Or Shannon Stephen wilfully failed to

1 render reasonable assistance to the injured person if
2 such treatment appeared to be necessary or was
3 requested by the injured person.

4 Now those are the elements of the crimes
5 that this defendant is charged with. Those are the
6 only things that the State has to prove to you.

7 So we've learned to now four days worth of
8 testimony, several witnesses. Let's look and see
9 what the facts show and what the State has proven.

10 You heard from Joe Wallace and Marvin
11 Dalzell and Frank Figliozzi. They all told you they
12 went out drinking at Sevens Bar with the defendant on
13 March 25th, 2006.

14 Sevens Bar, right in this shopping center
15 along Little Road and Old County Road 54. They told
16 you that the defendant drank a lot while he was
17 there. Everybody -- all the witnesses agree who came
18 into contact with the defendant that night said that
19 the defendant had drank a lot and the defendant was
20 clearly intoxicated.

21 He drinks a lot. He's obnoxious. And to
22 the point that Francis Figliozzi, who you've heard
23 from, had to leave. He didn't want to be there
24 anymore. He left long before any of the events that
25 are really important here and began to happen.

1 Wallace and Dalzell stay there with this
2 defendant and eventually getting towards 1:00 in the
3 morning decide we need to get this defendant, we need
4 to get him out of here. He's getting too obnoxious.
5 It's not going well.

6 So they take him outside of this bar where
7 the defendant urinates on the pole. Now you heard at
8 about that time Walter Schubart was passing through
9 there, the defendant offered him some money. He was
10 the guy with the mohawk that you heard testify about
11 to beat up Jim Wallace.

12 And they passed Walter Schubart who is
13 concerned with selling a camera at 1:00 in the
14 morning on a -- at a bar. He's focusing on the call.

15 Now, you know when that occurred because
16 you have Walter Schubart's in the form of the defense
17 exhibit, Walter Schubart's phone records. You see,
18 and this was brought out in testimony, Walter
19 Schubart checked his voicemail at 12:45 and then made
20 three calls to the person who was trying to contact
21 him in regards to the camera.

22 The last call is at 1:00 a.m., that's when
23 he's out there in the parking lot here to see the
24 defendant, Wallace and Dalzell. Wallace and Dalzell
25 are trying to get him to go with them. They don't

1 want him to drive. The defendant breaks away, starts
2 to get in his own vehicle. He drives up this way.
3 I'm sorry, this way right here, and out and then
4 down County Road 54. Both Dalzell and Jim Wallace
5 told you that.

6 Now, he doesn't get very far before he
7 comes into contact with Valerie Herbert. Now County
8 Road 54, Old County Road 54, right here, Little Road
9 here, you see the same shopping center. He crosses
10 through this light, the last place Wallace and
11 Dalzell see him. And the bowling alley right here,
12 Valerie Herbert ends up getting behind him. That's
13 not a lot of distance.

14 He goes approximately this far. The car
15 between them turns this way, the defendant then takes
16 off this way with Valerie Herbert behind him.

17 Now, she will eventually call law
18 enforcement or call 911 to report the defendant. And
19 you have the CAD report from the Pasco County
20 Sheriff's office showing you about what time that
21 happened.

22 Now, remember you heard testimony, anytime
23 a 911 call is dialed it goes first to a fire rescue
24 hub and then gets transferred out to the appropriate
25 agency. It got transferred out after that initial

1 call that you have a tape of in evidence to the Pasco
2 County Sheriff's agency. They then begin to make
3 that record at 1:06 and they begin to take notes.

4 So Valerie Herbert actually called a little
5 bit before this and called, and you recall the
6 testimony, in the neighborhood of Rowan Road. So
7 she's already been following the defendant for a
8 couple of minutes, probably three to four minutes by
9 the time she makes that call at 1:05.

10 Valerie Herbert follows the defendant, sees
11 him weaving wildly in between the lanes like a
12 ping-pong ball until they get to 54 and 19.

13 At that point she's turning south. The
14 defendant appears to be turning left south and then
15 suddenly turns north in this direction. And the CAD
16 report completes at approximately 1:07, 1:08 when the
17 vehicle speeds up in the other direction.

18 Now, we know that the defendant will end up
19 in the neighborhood of Grand and Dahlia. We don't
20 know exactly what route he takes to get there. Most
21 likely Marine Parkway, Pasadena, Grand and Dahlia are
22 right there. Cuts over, ends up, and we all know
23 what happens then.

24 The defendant travels south on Grand. In
25 the meantime you heard from Robert Bartlett. Now you

1 remember, he was the very first witness you heard
2 from in this case. It was a while ago now, I
3 understand.

4 He told you that he was out with Joe Swish
5 and Sara Gleason. They were at the Chasco Fiesta.
6 They were drinking; they were having a good time.
7 They did the responsible and decided we better not
8 drive; we're going to walk home.

9 They get to Grand and Dahlia and Grand and
10 Pasadena, right in there. And a little bit before
11 that Robert Bartlett decided, walking's too much, I'm
12 going to call Rick Scott who you also heard from and
13 have him come pick us up.

14 Now, you also have Robert Bartlett's phone
15 records. They show a call at 1:05 in the morning
16 lasting 245 seconds. At the conclusion of that call
17 Robert Bartlett told you he turns to Sara Gleason who
18 was next to him and Joe Swish who was next to her on
19 his left walking south and they got hit, mowed down
20 by the Chevy Silverado that this defendant was
21 driving.

22 And you know that Joe Swish was killed
23 instantly. You had Dr. Thogmartin come and testify
24 to you that they were both internally decapitated.
25 Joe Swish's injuries were more serious. Sara Gleason

1 lied there gurgling blood for a little while before
2 she passed, but it wasn't long. The defendant's
3 vehicle keeps going.

4 Now, Robert Bartlett then contacts
5 emergency personnel as quickly as he can, reasonably.

6 Now, you see from his call at 1:09 in the morning
7 there's a call lasting 326 seconds. He actually
8 dials 411.

9 You can assume since 911 there's zero
10 seconds; he gets transferred to 911 there. You have
11 copies of those calls. There doesn't seem to be any
12 dispute that he got connected to 911. In fact, you
13 have the CAD report, the Pasco County Sheriff's
14 office documents showing notes from Robert Bartlett's
15 calls.

16 And you recall that 911 call. He didn't
17 actually get transferred over there immediately. He
18 spoke with fire rescue for a while obviously. They
19 were the more important for him to speak to because
20 they were going to try to respond and see if there
21 was anything they could do. Of course there wasn't,
22 but that was the more important thing. Then they
23 eventually transferred him to the Sheriff's office so
24 he could describe what was going on.

25 You know that that vehicle that hit Joe

1 Swish and Sara Gleason was traveling at 47 miles per
2 hour from the CDR report that was pulled from the
3 black box on the Silverado. It didn't hit the
4 brakes, just kept on going, two people hanging off
5 the front. And that this is where Joe Swish ended
6 up.

7 Joe Swish, the one who died instantly,
8 clearly off the road. And that he was to the left
9 most of the two. Sara Gleason of course would have
10 been to this side of him.

11 Now you get to Rick Scott and Jim Ramsey.
12 They're coming to pick up Sara Gleason, Joe Swish,
13 Robert Bartlett. They're driving north on Grand
14 Boulevard.

15 Now, as they pass through this intersection
16 here they see the defendant's Chevy Silverado and you
17 have pictures of that vehicle. We've done that to
18 death.

19 They see the defendant and Rick Scott told
20 you same shape, same appearance, same hair, looked
21 like the same guy we pulled out later. And Rick
22 Scott told you, no, it was definitely that guy. I
23 was focused on his face. It was that guy that got
24 out of the driver's seat of that Chevy Silverado as
25 there was emergency lights.

1 He ran towards the electrical box that
2 wasn't far away. And they didn't think much of it,
3 they kept going to pick up their friend. Thankfully
4 they get to Robert Bartlett and they discover what
5 happened. They realize that they just passed the
6 killer in the intersection on their way there and
7 they go back, they speed back to Grand and 54.

8 In the meantime, let's consider what the
9 testimony shows was going on with Jim Wallace and
10 Marvin Dalzell. And you recall Jim Wallace and
11 Marvin Dalzell came in the same vehicle in Jim
12 Wallace's truck to Sevens Bar.

13 After the defendant left, they then left
14 and went to Jim's residence on Sagamore Court. And
15 here you see Little Road and you see that this
16 antennae, this cell phone antennae is at 5,000 Little
17 Road in Port Richey and you see the locations of the
18 other ones. One over here on Grand Boulevard, one
19 over here on Floramar Terrace. And you see State
20 Road 54.

21 And this is the same map with different
22 labels. You see the cell phone tower numbers.
23 Again, Little Road, Sagamore Court where Jim Wallace
24 lives, State Road 54 and Grand Boulevard.

25 So you also have the Sprint record. You

1 had a custodian of those records come to you from
2 another state to tell you these are the records, this
3 is what happened. And he told you that they did a
4 search between certain times, obviously the relevant
5 times in the case, for Jim Wallace's number which was
6 (727) 642-1236. And that was going to pull up all
7 the Sprint information for that number between those
8 relevant times, it includes information calls he had
9 from non-sprint customers, calls he had to non-sprint
10 customers and also calls to Sprint customers.

11 Now notice, too, Kara Wallace was on the
12 same plan and you can gather from the evidence, and
13 there are phone records, for (727) 417-9406, that's
14 Kara Wallace's number. She's on the same plan. Any
15 Sprint record for his number is going to have a
16 corresponding record for her number.

17 So you'll notice all the calls where the
18 two of them connect in the Sprint document have an
19 entry for her call and for his call, outgoing,
20 incoming, one and zero.

21 So at 1:09 in the morning Jim Wallace has
22 just sent Marvin Dalzell on his way. He's going home
23 and he's going to be going down Little Road and then
24 the same route that the defendant went with a
25 15-minute lag or so.

1 Jim Wallace places that call at 1:09 in the
2 morning and look at these records. They tell you
3 what cell tower it bounced off of. 1:09 in the
4 morning Kara Wallace (727) 417-9406, tower 121,
5 Sector 2. You remember them telling you this is
6 Sector 1, 2, 3. Cell tower 121, Sector 2 facing this
7 way.

8 Now you recall he told you, there is no way
9 that someone over here, that Jim Wallace was here
10 calling, that it would not bounce off of this tower,
11 not bounce off of this tower, not bounce off of this
12 tower, not bounce off of this tower, but go all the
13 way to the opposite side of antennae of a tower, the
14 furthest tower away from him. He told you there was
15 no way. Joseph Mohammad told you that.

16 So we know Jim Wallace is making that call
17 at 1:09 from his home at Sagamore Court. What
18 happens then? Now you have Dalzell traveling to his
19 home in Holiday down 54. He's traveling along
20 through that intersection, Grand and 54, and he sees
21 a badly-damaged truck. He's probably trying to call
22 Wallace at the time and say, hey, you know, I had a
23 good time despite, you know, the defendant being
24 obnoxious.

25 He sees the damaged car and decided

1 something funny's going on. Probably one of those
2 moments where doesn't realize everything's going on
3 at the time, sees the defendant get out of the
4 vehicle, he's getting on the phone with 911 to
5 describe what appears to be a very serious collision.

6 He pulls through the intersection and you
7 have a tape of that of him describing what he's doing
8 for that entire time. He pulls through the
9 intersection, ends up at a bus stop as the
10 defendant's vehicle is pulling ever closer to its
11 final resting point. He then makes an U-turn and
12 comes back, arrives behind the defendant while he's
13 on the phone with 911, it's all in the call, and does
14 so as Rick Scott and Joe Ramsey's Silverado is
15 pulling in front of the defendant's now
16 practically-disabled vehicle.

17 Now, you know from the cell records that
18 Marvin Dalzell makes that call to Jim Wallace because
19 you have at 1:20 in the morning and 48 seconds a
20 calling number, Marvin Dalzell's number, 271-5544.

21 In fact, you can see it on his cell phone
22 bill also in exhibit. Defense had him mark it for
23 you. And the Sprint time for that 1:20 in the
24 morning appears as 1:22 on his records, and we'll
25 talk about that in just a second.

1 But the numbers indicate it gets routed to
2 the voicemail, not very long. You don't see any
3 first cell phone tower, last cell phone tower for
4 that because this is not Sprint and he never makes a
5 connection with Jim Wallace, so there's not going to
6 be any corresponding antennae to show where Jim
7 Wallace was there. Jim Wallace never answers that
8 call. He gets he a missed call or a voicemail that
9 pops up.

10 Once he does that, as Defense counsel may
11 point out or did point out during the testimony, he
12 then attempts to call back Jim Wallace as is
13 reflected.

14 Now interesting thing about that is they
15 all bounce off the same cell phone tower, the same
16 side. Sector 2, cell tower 121. The one that would
17 make absolutely no sense. And if Joseph Mohammad
18 said it would be impossible for someone over to here
19 to bounce off of, placing Jim Wallace again right at
20 home where he testified that he was.

21 Now, notice for a second that Dan Jentzen
22 told you that the time on the cell phone is not
23 standard. Meaning, Sprint may document it at 1:20 in
24 the morning, another cell phone provider may document
25 it another time. And there's an easy way to

1 determine that. Don't get fooled by the fact that
2 this says 1:22 and Jim Wallace's first call out is at
3 1:21.

4 Anyplace that these two cell phone records
5 intersect, you'll notice this one is -- one's at two
6 minutes earlier than this one. And I give you as an
7 example the one at 1:26 for three minutes. At 1:26
8 there's a three-minute call to Marvin Dalzell. 1:26
9 appears here as 1:28. Same call for three minutes.

10 Again, let's go to the next call that
11 intersects between the two of them. 1:35,
12 four-minute call. Appears here 1:33, four-minute
13 call. This record is consistently a couple minutes
14 behind.

15 Now you have the detailed Sprint records
16 which show you Marvin Dalzell's call here actually
17 occurred before Jim Wallace's calls to him.

18 Now as Dalzell pulls in behind that vehicle
19 and Jim Ramsey and Rick Scott pull in front of it,
20 getting the defendant trapped, so to speak, Brian
21 Farrow is passing through the intersection.

22 You have Marvin Dalzell's 911 call that's
23 gone out. Now there's some confusion about where the
24 crash scene is. There's Rick Scott there holding the
25 defendant. It looks like it might be some sort of

1 bar-related thing.

2 Brian Farrow passes through the
3 intersection, doesn't see a smashed pickup truck. He
4 sees Rick Scott's truck. Keeps going. He's
5 concentrating on getting to the emergency. He gets
6 up there figures out, oh, there's no vehicle here,
7 just a couple of people who had been killed. Goes
8 back, realizes what he saw. Gets there when Rick
9 Scott and Jim Ramsey already have the defendant
10 sitting on the curb.

11 Now, at the end -- and you know why Wallace
12 wasn't getting through because you know that Dalzell
13 was on the phone with 911 for five minutes. At the
14 end of that 911 call Dalzell makes contact with
15 Wallace. They talk. He gets -- one of the calls from
16 Wallace gets through to Dalzell. They speak.
17 Wallace learns what happens and the defendant has
18 just killed two people.

19 The call lasts for 170 seconds. We know
20 that from the Sprint records, the more-detailed
21 records from which he is based.

22 Now you remember the testimony Wallace says
23 that he eventually goes down to the scene to see
24 what's going on. He's concerned for his, at the time
25 best friend, the defendant.

1 He goes down there. And the interesting
2 thing about the cell phone records is they reflect
3 that. You see that at 1:33 in the morning Jim
4 Wallace calls Marvin Dalzell and the call starts
5 bouncing off of Sector 2 of 121. The end of the call
6 bounces off of Sector 3. Jim Wallace is at that
7 point in transit and he hangs up.

8 Then by 1:43 in the morning Jim Wallace is
9 now on the scene and you see that it is now bouncing
10 off Sector 1 of 119 exactly where you expect it to
11 be.

12 There's a couple of calls made at that
13 point. And then again at 2:09 Jim Wallace makes a
14 call starting from here, ending in Sector 2 of 119.
15 Again indicating he's traveling back home.

16 And finally you see the calls eventually
17 that he makes that place him back in Sector 2, 121.
18 Clearly you have two witnesses, one of who's
19 testimony is corroborated by all this technical cell
20 phone information that says the defendant got in
21 that vehicle and went in that direction. He was the
22 only person in it, he was the only person driving.

23 Valerie Herbert getting behind that vehicle
24 shortly thereafter saying it didn't stop, it didn't
25 do anything. There was one head she saw that went

1 the other direct. Finally, when the vehicle -- after
2 the vehicle has killed Joe Swish and Sara Gleason
3 they pulled the defendant out of the driver's seat
4 exactly like everybody would expect.

5 Now, you get to 2:45 in the morning and FHP
6 has now responded and established what's going on,
7 marked off the crime scenes. The defendant has been
8 in sitting in the back seat of a patrol car for a
9 while. They get him out and at 2:45 they give him a
10 blood test.

11 An hour and a half -- more than an hour and
12 a half after he killed two people. The blood test
13 establishes he's at .240, well above the legal limit.
14 So now you have element one, the defendant was
15 driving a vehicle, while driving above a .08. A
16 .240, clearly above a .08. Under the influence to
17 the extent that his normal faculties were impaired,
18 clearly everybody, everybody said that.

19 And while driving contributed to the -- or
20 caused or contributed to the cause of the death of
21 Sara Gleason and Joe Swish. There's no doubt that
22 that truck killed those two people.

23 All three elements for the DUI manslaughter
24 with Joe Swish and the DUI manslaughter with Sara
25 Gleason are established. Proven beyond any

1 reasonable doubt.

2 Trooper Evans has the defendant do field
3 sobriety exercises, more confirmation of what we
4 already know, the defendant was intoxicated.

5 The defendant also tells Evans he was
6 driving, and that's an interesting point because you
7 heard from Brian Farrow that when he got there
8 shortly after and he asked what happened, what was
9 going on, the defendant says I was driving down the
10 road.

11 Do you remember that statement. So again,
12 two people say the defendant said he was driving that
13 night. Evans eventually arrests the defendant,
14 transports him to 52 and Suncoast Parkway for a
15 breath test. That gets done at approximately 5:17 in
16 the morning; the defendant is still in the .16 area.
17 No doubt the defendant was intoxicated.

18 So, Ladies and Gentlemen, there is no other
19 reasonable explanation as to what happened that
20 night. It is not reasonable that Jim Wallace was
21 driving the defendant's truck. We know where he
22 was.

23 In order for that scenario to even be
24 remotely possible, you have to assume that Jim
25 Wallace was lying, Marvin Dalzell was lying, Jim

1 Ramsey was wrong about identifying the defendant and
2 getting out of the driver's seat of the vehicle, that
3 Rick Scott was wrong about seeing the defendant get
4 out of the vehicle. That Dan Jentzen and Joseph
5 Mohammad from Sprint are wrong about the
6 impossibility of making a call from over here and it
7 hitting this tower by passing this one, this one,
8 this one, this one, this one and this one.

9 You have to assume that when the defendant
10 told Farrow he was driving down the road that he
11 didn't mean it, and that when the defendant told
12 Trooper Evans that he was driving that he didn't mean
13 it.

14 You have to assume that Lisa Taranto is not
15 telling you the truth in regards to what Walter
16 Schubart told her.

17 And, Ladies and Gentlemen, that is not
18 reasonable. That is just not reasonable. All the
19 witnesses and all the evidence in this case show very
20 clearly what happened.

21 The defendant got in that vehicle at Sevens
22 bar And kept on going until he had mowed down Joe
23 Swish and Sara Gleason. And after he it did so, he
24 didn't stay on the scene. Do you remember the
25 elements of leaving the scene of a crash involving

1 death?

2 Shannon Stephen was the driver of the
3 vehicle involved in a crash resulting in the death of
4 any person. It was actually two people. Either one
5 of which would suffice. He knew or should have known
6 that he was involved in that crash.

7 He knew or should have known of the death
8 of those two people who he just slammed into at 47
9 miles per hour and internally decapitated them. And
10 that he wilfully failed to stop at the scene of the
11 crash or as close to give identifying information and
12 he didn't stop.

13 He would have probably kept going if the
14 car hadn't given out and Rick Scott had pulled in
15 front of him. And those are all the elements that
16 the State needs to prove to you.

17 The DUI manslaughter for Sara Gleason. The
18 DUI manslaughter for Joe Swish. And leaving the
19 scene of the crash with death.

20 Ladies and Gentlemen, you all know that the
21 defendant is innocent until proven guilty. Well,
22 that's where we are. We are at the proving guilty
23 point.

24 The mountain of that evidence and testimony
25 proves that this defendant, Shannon Stephen, beyond a

1 reasonable doubt is guilty of DUI manslaughter for
2 killing Joe Swish and DUI manslaughter for killing
3 Sara Gleason and guilty of leaving the scene of a
4 crash involving death.

5 And we ask that you go back and deliberate,
6 feel free to look at all the evidence, it's all going
7 to go back with you, and find this defendant guilty.
8 Thank you.

9 THE COURT: Mr. Foote?

10 MR. FOOTE: Judge, may I have a few
11 moments?

12 THE COURT: You may.

13 MR. FOOTE: Please the Court?

14 Members of the Jury, once again, thank you
15 for your time and your presence. It's been a long
16 week.

17 Here we are at the end of this trial. In
18 the beginning of the trial when we were choosing you
19 in jury selection, we said that things are not always
20 as they seem.

21 I gave you an example of that. The
22 commercial with the lady on the airplane traveling on
23 the night flight that experienced turbulence and
24 fell. She was straddling a young man on the way to
25 the bathroom. And the first thing what people could

1 see is what they think.

2 Another analogy I'll give you is that
3 sometimes a Delicious Red apple, if you ever see
4 those in the store. Delicious red, shiny on the
5 outside. Sometimes if we don't look too close there's
6 a little hole in the bottom. And you bite into it,
7 there's a worm and something's wrong with it, but it
8 looks good on the outside.

9 And that's the State's case. That is the
10 State's case. This is a circumstantial case. And
11 first and foremost this involves a serious tragedy.
12 Two young people lost their lives. That is a
13 tragedy.

14 As we're here today, you as Members of the
15 Jury, have sworn to take an oath to listen to all the
16 evidence and to make a wise and legal decision about
17 the evidence as you've seen. To convict an innocent
18 man would add one more tragedy to this already tragic
19 event.

20 When we look at the evidence and we heard
21 the State, there's a lot of conflict numbers and
22 times. And in the beginning at opening I said you
23 might want to write down certain numbers. We've
24 heard a lot of numbers going to.

25 The easy thing here is to pretty much say

1 that two people are dead and Shannon Stephen's
2 vehicle was involved. Somebody needs to pay. That's
3 a human reaction, somebody needs to pay. But this is
4 the time when you're here to review all the evidence
5 and to deliberate with each other and look at some of
6 the reasonable doubt that's in this case, and there's
7 plenty of it, so that months from now you're not
8 wondering as you're shaving or doing your hair to
9 think about that trial, that experience I had as a
10 juror.

11 I wonder if I made the right decision.

12 MR. ROSARIO: Judge, I'm going to object.
13 That's improper closing argument.

14 THE COURT: Approach.

15 BENCH CONFERENCE

16 MR. ROSARIO: Referring to a buyer's
17 remorse at this point, Judge, is inappropriate. If
18 he wants to make sure and tell them, make sure your
19 decision's right, that's one thing. But, you know,
20 having them speculate, putting themselves into their
21 shoes where they're going to be 10 or 15 weeks or
22 whenever is inappropriate.

23 MR. FOOTE: Judge, it's totally not
24 inappropriate. I'm asking them to make a correct
25 decision so that later on when they think about it

1 make sure they spend their time and not rush through
2 these deliberations. That's all my inference is. I
3 don't know any of that to be improper.

4 THE COURT: Well, let me overrule the
5 objection. I understand it's not appreciative right
6 now.

7 OPEN COURT

8 MR. FOOTE: As I was stating, this is an
9 important decision that you have to make. It's a
10 serious decision. I need you to look at every piece
11 of evidence, but also look at the lack of evidence
12 and the conflict in the evidence.

13 The Judge will read you a whole set of
14 instructions and I'm going to talk about the
15 instructions as well.

16 Keep in mind as I'm doing this, I only have
17 one time to talk to you. As the Judge said, the
18 State's time is split up. So everything I say I will
19 tell you, but hold some of these things into your
20 mind, some of the questions that I'm going to ask and
21 I will show you with regard to some of the lack of
22 the evidence and the conflicts in the evidence.

23 With regard to the elements of the charge,
24 you'll be given a jury instruction and the Judge will
25 read the jury instructions. And as I told you in

1 jury selection, and as I asked you, that if there was
2 an element missing in those building blocks, then the
3 case is not proven beyond a reasonable doubt. That's
4 by direct evidence.

5 You're looking at evidence that has been
6 presented to you with regard to the State's case.
7 Now, if you remember in the beginning not only did
8 the Court tell you but the defense has not -- doesn't
9 have to prove anything. There is no burden on the
10 Defense to disprove or prove your innocence or none
11 of that, that is entirely the State's job, to prove
12 this case beyond and to the exclusion of every
13 reasonable doubt.

14 And we talked about, before you were
15 selected, was whether or not if one of the elements
16 was missing, then you know what your verdict should
17 be.

18 We talked about the jigsaw puzzle. Well,
19 even if you can get kind of what it is, under our
20 system of justice if there's a piece missing, one of
21 these elements, then your verdict should be not
22 guilty.

23 The first element, Shannon Stephen drove or
24 was in actual physical control of a vehicle. While
25 driving or while in actual physical control of a

1 vehicle was under the influence of alcoholic
2 beverages, controlled substances, to the extent his
3 normal faculties were impaired, or had a blood or
4 breath alcohol level of .08 or higher.

5 If you remember in opening I told you
6 that's the one thing that we agreed on, Shannon was
7 drunk that night. He was drunk. But as a result of
8 that driving and that activity Shannon caused or
9 contributed to the cause of the death of the victims
10 in this case, both Sara and Joseph. There's no
11 evidence of that, Members of the Jury.

12 Yes, two people are dead. And as the State
13 said as they started their argument, we know that the
14 truck was involved in this accident. And if that
15 truck was on trial, the truck definitely is guilty.
16 The truck.

17 But we're talking about this individual.
18 Is he guilty of DUI manslaughter? That has not been
19 proven that Shannon Stephen himself killed anybody.

20 And we talked about scene A and scene B.
21 And the State asked questions during trial and said,
22 oh, it's just one giant scene. But Grand Boulevard
23 and Dahlia Avenue where the young people lost their
24 lives, is a mile down to State Road 54 and Grand. A
25 mile.

1 And he testified, well, the trooper,
2 Trooper Styers, said it was a straight fluid line
3 down there, but it stopped just north on Grand before
4 crossing over. That's going to become a critical
5 point that we'll look at in a moment.

6 And I told you in the beginning, time is
7 very important in this case. So the State has to
8 show that at scene A Shannon Stephen was up there
9 operating that vehicle, operating that vehicle that
10 killed those two people. That is their burden.

11 You don't get to guess that one. Say,
12 well, it's kind of obvious the truck is there. He
13 must have been there listening to all the other
14 testimony. He must have been the one driving. So
15 we're going to tell you why that's not possible from
16 both the State's witnesses and the Defense witnesses.

17 The State has not proven this charge beyond
18 and to the exclusion of every reasonable doubt. The
19 identifications are very important in this case.
20 This is a case about identification.

21 Who saw Shannon Stephen in that vehicle?
22 We can talk about a few of the individuals, Joe and
23 Jim. Jim was Shannon's best friend, 14, 15 years,
24 best friends.

25 Joe and Frank, they all go to hang out for

1 a boys' night out on that evening. Shannon drives
2 up, parks his car and they're inside and they're
3 having drinks. And we know that he has consumed a
4 lot of alcohol.

5 But what happens when they come outside,
6 what is going on? Well, inside he's buying Lisa
7 Taranto and her friends shots. They're buying shots.
8 And we heard that Walter Schubart was there, he
9 observed that, and nothing happened. He wasn't upset
10 about that. Someone wants to buy my girlfriend
11 drinks, go ahead.

12 Shannon was being jovial. He may have been
13 a little loud, but you heard no other testimony about
14 fights or anything like that in a bar or anything
15 being knocked over.

16 When finding a reasonable doubt the Judge
17 will tell you that you have to look at conflicts in
18 the evidence or a lack of evidence, those are a
19 couple of things that you should look at. Conflicts
20 in the evidence.

21 We have two witnesses that were with
22 Shannon saying he was belligerent. He was knocking
23 things over. He was punching people in the stomach.
24 No one else saw that. He wasn't thrown out of the
25 bar. None of that happened.

1 Let's look at some of the things that if we
2 start off with Joe and Jim. Now, Joe stated that he
3 was getting punched and he saw, it may have been a
4 joke or something that Shannon was doing. But at
5 some point they both, Jim and Joe say, we're going to
6 go get some breakfast. They both testified to that.

7 It was time to go to get some breakfast and all of
8 them leave the bar at that time.

9 They had to escort Shannon out. And as the
10 evidence shows he was three times the legal limit.
11 Three times the legal limit at the time that they
12 tested him, that was at 2:30.

13 If you know anything about, and Dr.
14 Thogmartin also testified to this as well, the amount
15 of alcohol in his system, what can a person do at
16 that point? At time three times the legal limit an
17 hour and a half after the accident. It was higher at
18 the time of the crash.

19 Now the State wants you to believe two
20 things. He was sloshed, impaired, but he was doing
21 things that people that have that much alcohol in
22 their system cannot do. How do we know that?

23 MR. ROSARIO: Judge, calls for facts not in
24 evidence, Judge.

25 THE COURT: Approach.

1 BENCH CONFERENCE

2 MR. ROSARIO: Judge, he's saying he's up
3 here making argument so that a better than that blood
4 alcohol is doing things that people with that blood
5 alcohol level cannot do. There is no testimony on
6 that whatsoever and that's actually an improper
7 statement of the facts.

8 MR. FOOTE: First of all, any layperson can
9 give their person as to the level of impairment and
10 intoxication. There's no expert required. Second of
11 all, Dr. Thogmartin talked about levels of impairment
12 and levels of alcohol that in fact takes 12 hours, in
13 fact, with Shannon's level for it to come down.

14 THE COURT: Did he ever say what things
15 people can do? In other words, somebody at this
16 level they do this and somebody at that level they
17 can do that?

18 MR. FOOTE: This is argument. I'm making a
19 reasonable inference --

20 THE COURT: I think you have to be truthful
21 in representing what the evidence would be and
22 representing the -- I think you have to be careful --

23 MR. FOOTE: They can use their common
24 sense. They have all observed people under the
25 influence. That is not something that requires expert

1 testimony, Judge. That's a reasonable argument and
2 inference to the facts that have been presented.

3 THE COURT: Mr. Rosario, you would
4 obviously have the opportunity to respond, so I'll
5 overrule the objection.

6 OPEN COURT

7 MR. FOOTE: As I was stating, three times
8 is legal limit. There are certain things that you
9 can do and you can't do. And all of us have seen
10 people that are impaired or sloshed, and that was the
11 testimony from Jim and Joe. And we agree on the
12 testimony that Shannon Stephen was drunk. Not just a
13 little impaired, he was drunk. And at 2:30 in the
14 morning his blood showing three times the legal
15 limit.

16 And that's Dr. Thogmartin spoke about the
17 amount of alcohol in the system, it takes time for
18 that alcohol to leave your system. You don't just
19 sober up.

20 In fact at Shannon's level, Doctor, if you
21 recall, it would take about 12 hours for that alcohol
22 to go down to a regular level. We know that that's a
23 fact because when Trooper Evans took -- they did the
24 breath test at 5:00 in the morning, he was still at
25 twice the legal limit, twice the legal limit.

1 According to Jim and Joe, Shannon ran
2 through the parking lot, sprinted out, was able to
3 get his keys out, although they said they could
4 trying to take them, not trying to take them. He was
5 able to get his keys out, get away from two
6 individuals that were sober, get the keys out, get
7 the door open, get in the car, get the ignition key,
8 get it in the ignition, turn it, put the car into
9 gear and get away from the two individuals he was
10 just standing next to at over three times the legal
11 limit of alcohol.

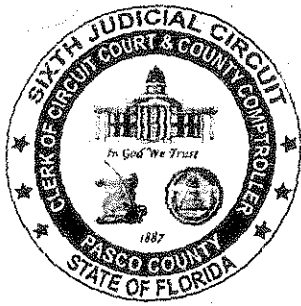
12 Use your anyone common sense, Members of
13 the Jury. These two individuals, Jim and Joe, they
14 said they attempted to stop Shannon. Now, if you
15 recall earlier in the bar Shannon didn't want to
16 leave. They had to kind of take him out. So would
17 it make sense that once they get him outside and he
18 wants to take off, where does he go, into his car to
19 take off? They were fighting to get him out of the
20 bar because he didn't want to leave, why didn't he
21 just go back into the bar.

22 If he's going to break away from them and
23 he wants to stay and continue drinking, why not go
24 into the bar? The only testimony that was what they
25 were getting ready to do was to go to breakfast. And

1 According to Jim and Joe, Shannon ran
2 through the parking lot, sprinted out, was able to
3 get his keys out, although they said they could
4 trying to take them, not trying to take them. He was
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20 bar because he didn't want to leave, why didn't he
21 just go back into the bar.

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25 (CONTINUED IN VOLUME IX.)



Office of Paula S. O'Neil
Clerk & Comptroller
Pasco County, Florida

STATE OF FLORIDA }
{
COUNTY OF PASCO }

I, Paula S. O'Neil, Clerk & Comptroller of Circuit Court for the County of Pasco, State of Florida, do hereby certify that the foregoing pages 328-1444 & 1-1085 & 1-1735, inclusive, contain a correct Supplemental Transcript of the Record in the case of State Of Florida, Plaintiff(s) vs. Shannon Stephen, Defendant(s), being Case Number(s) 06-1591, Circuit Criminal, and a true and correct recital and copy of all such papers and proceedings in said cause as appears from the records and files of my office that have been directed to be included in the record by the directions furnished to me.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court this 4 day of February, 2013.

By: Brenda M. O'Neil
Deputy Clerk

