

1 IN THE CIRCUIT COURT OF THE
2 FOURTH JUDICIAL CIRCUIT, IN
3 AND FOR DUVAL COUNTY, FLORIDA
4 CASE NO: 16-2015-CF-007825-AXXX-MA
5 DIVISION: CR-E

6 STATE OF FLORIDA

7 -vs-

8 MICHAEL RAY HAIM,

9 Defendant.

10 -----

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12 STATE OF FLORIDA)

13 COUNTY OF DUVAL)

14

15 Trial before the Honorable Steven B. Whittington,
16 Judge of the Circuit Court, Division CR-E, as cause in
17 this matter came to be heard on the 12th of
18 April, 2019, before Karen Waugerman, a Notary Public in
19 and for the State of Florida at Large and Registered
20 Professional Reporter.

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2

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5 appearing on behalf of the State of Florida.

6

7 THOMAS GEORGE FALLIS and JANIS MARGARET WARREN,
8 Esquires, Private Attorneys, appearing on behalf of the
9 Defendant.

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

2 (April 12, 2019) (8:35 a.m.)

3 (Defendant present.)

4 THE COURT: Are we ready for our charge
5 conference?

6 MR. MIZRAHI: Yes, sir. State's ready,
7 Your Honor. I've provide copies. I've
8 already made the change to indicate that it's
9 not Tatiana but Your Honor, on the first
10 page.

11 THE COURT: But the original copy you
12 sent me did have my name on it.

13 MR. MIZRAHI: It was -- long story
14 short, my computer crashed. Brian Hughes, my
15 paralegal, had to print it for me. He
16 printed the copy that he sent to me. And I
17 saw that and I already made that change when
18 I sent it to Your Honor. Very simple.

19 THE COURT: Okay. All right. Let's go
20 through it then. Statement of the charge,
21 any objections? I'll just go page by page,
22 so if either side has an objection, say so or
23 say you have no objection. So statement of
24 the charge?

25 MR. FALLIS: I have no problem with

1 that, Your Honor.

2 THE COURT: All right. Introduction to
3 homicide?

4 MR. FALLIS: I want to read it again,
5 Judge.

6 I don't know if justifiable is
7 applicable in this case.

8 THE COURT: Well, doesn't sound like it
9 is but that is the standard. I've given it
10 even in cases where it doesn't make a lot of
11 sense.

12 MR. MIZRAHI: I agree. I'll defer to
13 defense. If they want it out, we'll take it
14 out. If they want it in, we'll leave it in.

15 MR. FALLIS: I would ask that it be
16 taken out because I don't want to confuse
17 this jury. I want to keep it simple, stupid.

18 THE COURT: The middle section, the
19 middle paragraph that says justifiable
20 homicide under the page that we begins with
21 introduction to homicide, do you want that
22 paragraph taken out?

23 MR. FALLIS: I do, Your Honor.

24 THE COURT: Okay. Excusable homicide,
25 leave in?

1 MR. FALLIS: I want to make sure it's
2 correct, Judge.

3 THE COURT: Sure, go ahead.

4 MR. FALLIS: Yes, sir, that's fine.

5 THE COURT: Leave it in?

6 MR. FALLIS: Yes, sir.

7 THE COURT: Okay. So now on to the
8 definition of murder the second degree.

9 MR. FALLIS: That's correct, Judge.

10 THE COURT: No objection. Then the
11 lesser-included is manslaughter. We all
12 agree that's the lesser-included offense in
13 this case?

14 MR. FALLIS: I do.

15 MR. MIZRAHI: Yes.

16 THE COURT: Definition of manslaughter.

17 MR. FALLIS: Well, I'm going to read it,
18 make sure it's correct.

19 THE COURT: Yes, sir. Please take your
20 time.

21 MR. MIZRAHI: On manslaughter, there is
22 an extra period, looks like, between one and
23 two. I've deleted that.

24 MR. FALLIS: I'm sorry?

25 MR. MIZRAHI: There's an extra period

1 between one and two. You see that little
2 mark? I've deleted that, not a big deal.

3 MR. FALLIS: I'm looking at manslaughter
4 now, Judge.

5 MR. MIZRAHI: Brian made a great catch
6 on the -- after Numeral 2 of the elements.
7 It does say the definition of explaining
8 manslaughter -- the last line says the
9 killing was either justifiable or excusable
10 homicide, as I've previously instructed you.

11 THE COURT: Right. Take out
12 justifiable.

13 MR. MIZRAHI: I think we need to take
14 out justifiable.

15 See that, Tom?

16 MR. FALLIS: Yeah.

17 THE COURT: So it should read a merely
18 negligent act or if the killing was excusable
19 homicide, as I have previously instructed
20 you, right?

21 MS. WARREN: And the next paragraph
22 also, Judge.

23 THE COURT: That's right.

24 MR. MIZRAHI: Yes. I have made those
25 changes. Taken out justifiable in both those

1 paragraphs.

2 Good job, Brian.

3 THE COURT: All right. Manslaughter,
4 are you good on that, Mr. Fallis?

5 MR. FALLIS: I am.

6 THE COURT: Okay. Date of crime, any
7 objection?

8 MR. FALLIS: To what?

9 THE COURT: To the date of crime?

10 MR. FALLIS: Oh, no, Judge. Venue and
11 that --

12 THE COURT: Venue, that's good.

13 All right. Plea of not guilty,
14 reasonable doubt, burden of proof, that's
15 standard.

16 Weighing the evidence, all ten factors
17 are listed.

18 MR. FALLIS: Your Honor, I want to be
19 sure there's no mistakes.

20 THE COURT: All right. Go ahead. Tell
21 me when you're at weighing the evidence.

22 MR. FALLIS: I'm at weighing.

23 THE COURT: You are?

24 MR. FALLIS: I'm at the weighing.

25 THE COURT: Okay. So we've got the

1 standard five. I'm going to include those.
2 And 6, 7, 8, 9 or 10, any party wish to have
3 any of those removed?

4 MR. MIZRAHI: Your Honor, my analysis is
5 No. 10 should be deleted. I think the rest,
6 there's some argument.

7 THE COURT: Mr. Fallis, do you agree?

8 MR. FALLIS: I don't recall -- well --

9 THE COURT: I don't recall hearing any
10 testimony about general reputation for
11 honesty or dishonesty.

12 MR. MIZRAHI: Right. And that's why I
13 don't think that applies. Certainly, if the
14 defense wants to give it, I don't have any
15 objection to it.

16 Mr. Fallis?

17 MR. FALLIS: Just leave it in, Judge.

18 THE COURT: Leave it in?

19 MR. FALLIS: Yes, sir.

20 THE COURT: So all ten?

21 MR. FALLIS: Yes, sir.

22 THE COURT: Okay. No objection from the
23 State then?

24 MR. MIZRAHI: Yeah. That's fine.

25 THE COURT: Okay.

1 MR. MIZRAHI: I think they should all be
2 given in every case.

3 THE COURT: Okay.

4 The following page that begins with
5 whether the State has met its burden of
6 proof, number of witnesses, all the way down
7 to you may rely on your own conclusion, any
8 objection to that page?

9 MR. MIZRAHI: No objection. We have
10 included the you should consider the
11 testimony of some witnesses with more caution
12 than others.

13 MR. FALLIS: I'm reading that as we
14 speak.

15 That page is fine.

16 THE COURT: All right. Take out
17 defendant not testifying.

18 MR. FALLIS: Right.

19 THE COURT: Defendant's statements, any
20 objection?

21 MR. MIZRAHI: Not from the State. I
22 mean, it's marginally relevant. There were
23 some -- although I don't believe there's any
24 testimony they were custodial interviews, but
25 there were interviews with the police.

1 THE COURT: Right. That's not what that
2 is generally about but I usually include it.

3 MR. FALLIS: I would ask that be
4 included, Judge.

5 THE COURT: Okay. We'll include it.

6 Eyewitness identification, I don't
7 recall there being anything about that.

8 MR. MIZRAHI: No. And I don't have it
9 in mine. Do you have --

10 THE COURT: I do have it in mine.

11 MR. FALLIS: I have it in mine.

12 MR. MIZRAHI: I took it out in mine.

13 Okay. Never mind. Again, we're going with
14 what I corrected. Yeah. I -- I removed
15 eyewitness identification from mine, so I
16 don't think there's any evidence to support
17 giving that instruction.

18 THE COURT: I agree.

19 Mr. Fallis, you have any objection to
20 taking it out?

21 MR. FALLIS: It's two pages, right?

22 THE COURT: Almost three.

23 MR. FALLIS: Three pages, okay. Yeah.
24 Take it out, Judge.

25 THE COURT: Okay. Take out eyewitness.

1 Then rules for deliberation, that's
2 standard. Any objection?

3 MR. FALLIS: I'd like to read it, make
4 sure.

5 THE COURT: Okay.

6 MR. FALLIS: If they can call you
7 Tatiana, then I'd better read that.

8 THE COURT: Mr. Fallis, take your time.
9 This is important.

10 MR. FALLIS: That's fine, Judge.

11 THE COURT: Okay. Then cautionary
12 instruction?

13 MR. FALLIS: That's fine.

14 THE COURT: That's standard. Leave that
15 in.

16 Notes. I have allowed them to take
17 notes.

18 MR. FALLIS: I'd like to read that. I
19 know, Judge, I've seen this before.

20 THE COURT: Sure.

21 And for the record, I've noted that most
22 of the jurors have been actively taking
23 notes.

24 MR. FALLIS: They have been. That's why
25 I wanted to make sure it's correct.

1 That's fine, Judge.

2 THE COURT: Okay. Then the page titled
3 "Verdict."

4 MR. MIZRAHI: The verdict instruction,
5 it should say lesser-included crime as
6 opposed to crimes.

7 THE COURT: Correct.

8 MR. FALLIS: Okay. That's singular, not
9 plural, correct?

10 That's fine, Judge.

11 THE COURT: All right. Then the verdict
12 form itself.

13 MR. FALLIS: That's fine.

14 THE COURT: Okay. No objection.

15 Okay. And then the page titled "Verdict
16 and submitting the case to the jury," that
17 middle paragraph about devices, I do not let
18 them keep them in the courtroom. Obviously,
19 they won't be having them in the jury room
20 either. So you can take that paragraph out.

21 MR. FALLIS: Which one, Judge?

22 THE COURT: It says give if judge has
23 allowed jurors to keep devices during the
24 trial. I have not allowed them to do that.
25 They've been collected before they come into

1 the courtroom.

2 So it should be -- "In closing" should
3 be the last paragraph on that one page, I
4 hope.

5 MR. MIZRAHI: It is.

6 The next paragraph on the next page will
7 be the last paragraph. It just moves up.

8 MR. FALLIS: I agree, Judge.

9 THE COURT: Okay. So that concludes the
10 charge conference with respect to the guilt
11 phase of the trial.

12 MR. FALLIS: Your Honor, we also
13 included a supplemental, but I don't know if
14 we're going to get into that or not.

15 THE COURT: Well, let's -- let's not get
16 into it completely. I will do this part now.
17 I want to hear everything before I make a
18 final decision. That includes closing
19 arguments. But I have made a decision as to
20 whether or not there will be a bifurcation if
21 there's a conviction. And it's this:
22 Mr. Fallis, you correctly noted at the
23 beginning of the trial that we have to take a
24 time capsule back to 1993 in order to try
25 this case.

1 MR. FALLIS: Correct.

2 THE COURT: And I think you're correct.
3 That's absolutely right. There is, I think,
4 a slight exception to that, and that
5 exception is going to work to the defendant's
6 advantage. In 1993, the law provided by rule
7 and case law that a judge could, under
8 limited circumstances, both depart downward
9 and depart upward from either the recommended
10 sentencing range or the permitted sentencing
11 range. And back then, as we all know, the
12 judge would make that decision solely.

13 Subsequent case law, specifically
14 Apprendi in 2000 and Blakely in, I think,
15 2004 -- I'm not positive on that -- has said
16 those type of decisions of upward departures
17 have to be submitted to the jury and have to
18 be found beyond a reasonable doubt. That
19 makes it, again, to the defendant's benefit.

20 As I understand the defense's argument,
21 you object to me allowing the jury to make
22 those determinations because there's no
23 statutory mechanism in place that would give
24 me the authority to do that, which is true.
25 There's nothing in the statutes that says the

1 judge can do that as I could clearly in a
2 death penalty case.

3 So if I didn't do that, then I'd be left
4 making the decision myself. And you would
5 rightly object, saying you can't do that
6 because of Apprendi and Blakely and all the
7 cases that come from that line of cases. So
8 if I were to follow the defense's argument,
9 it would essentially and for all intents and
10 purposes abrogate the rule that was in place
11 in 1993 that allowed me to do that if I found
12 it to be appropriate.

13 So I'm not going to interpret this case
14 law and the law that existed in 1993 in such
15 a way as to eliminate that provision. So I
16 think the best thing I could do is to allow
17 the jury to decide whether or not these
18 factors have been made.

19 Now, I'm holding off on whether or not
20 I'm going to let any of them go back to the
21 jury or some of them go back until I've heard
22 all the evidence, including the closing
23 arguments. But if I find that some of them
24 are sufficient to allow the jury to consider,
25 then I'm going to allow the jury to consider

1 them. They have to find those -- if they
2 find any of them at all -- of course, this is
3 only depending on whether there is a
4 conviction or not -- then they would have to
5 find by unanimous vote that one or all of
6 those factors have been met.

7 But even then, I still have to make an
8 independent decision whether or not I find
9 that those factors exist and whether or not,
10 even if I do, it's appropriate under the
11 total facts of the case to depart, which is a
12 totally separate decision.

13 So at this point, if there is a
14 conviction and if I find at least one of
15 those factors are sufficient under the law;
16 that is, they're not inherent in the crime
17 and they've been at least established
18 sufficiently with the evidence that the jury
19 should consider it, I do plan on allowing
20 there to be a separate bifurcated penalty
21 phase, if you will, of the trial. That's my
22 ruling.

23 MR. FALLIS: I understand.

24 May I remain seated, Judge, while I
25 speak?

1 THE COURT: Sure. You can remain
2 seated. Save your energy, Mr. Fallis.

3 MR. FALLIS: Thank you. I'm 75, Judge.

4 THE COURT: Yes, sir.

5 MR. FALLIS: All right. I understand
6 your ruling, Judge, and I understand the
7 predicament -- okay? -- quandary because of
8 Apprendi and Blakely. However, I would like
9 to know before closing arguments if we could
10 so I can perhaps deal with them in some way
11 or fashion -- okay? -- whether or not this
12 Court has found any of these so-called
13 aggravators, which I believe are not
14 aggravators. I think they're all inherent in
15 the crime. I don't think recognized
16 aggravators exist at all, and I would like to
17 have -- know that before my closing.

18 THE COURT: Sure. I haven't found any
19 of them. I haven't found a single thing yet.

20 MR. FALLIS: Well, you said you're going
21 to look to see later.

22 THE COURT: I'm going to wait until I
23 hear all the evidence, including the
24 argument.

25 Now, I would say -- I'll do this at

1 least: I want to hear -- specifically, I
2 wanted to hear some evidence or argument
3 about heinous, atrocious and cruel. That is
4 obviously a well-known aggravating factor
5 that is not inherent in the nature of the
6 crime. That's why it's so well developed. I
7 want --

8 MR. FALLIS: Heinous, atrocious and
9 cruel, Judge, apply only to first-degree
10 murder.

11 THE COURT: No, it doesn't. It applies
12 actually in sexual batteries. We don't
13 usually see it outside of a first-degree
14 murder but it can be used.

15 My -- what I'm saying to you, what I'm
16 saying to the State is I'm interested to hear
17 the argument about that in this case.

18 MR. MIZRAHI: And, Your Honor, I assume
19 that -- we haven't talked about it. Since we
20 already have a penalty phase, I don't --
21 depending on what the Court rules will be
22 able to go back to the jury, I don't
23 anticipate a lot of evidence being presented
24 subsequent to a potential guilty verdict, but
25 I would assume that both parties will be

1 afforded the opportunity to make arguments
2 about whether those aggravating factors apply
3 or don't apply. So Mr. Fallis will be given
4 the opportunity to argue why those
5 aggravating factors don't apply.

6 THE COURT: Yeah. We're -- we're going
7 to do closings. We're going to charge them.
8 We're going to send them back. And we can
9 talk more about -- we're going to have time,
10 at least some amount of time, to discuss this
11 further. And as the instructions have
12 already been written in this supplemental
13 stage of the trial, the jury will be
14 instructed that they have to find these
15 factors beyond a reasonable doubt. I added
16 some language already about it being
17 unanimous, just so there's no confusion.
18 They all have to agree, just like they did
19 with the first verdict.

20 MR. FALLIS: Well, Your Honor --

21 THE COURT: And you're going to hear
22 argument -- evidence from the State. The
23 defense could present evidence if you chose
24 and then argue it. You'll both get a chance
25 to argue like you would in a closing

1 argument. It would be a closing argument.

2 MR. FALLIS: Well, Your Honor, I would
3 object on the grounds because there has been
4 no evidence of that. It's death by
5 indeterminate means. Okay? So I don't think
6 it even applies because there has not been
7 any evidence of how this murder -- State got
8 in in opening and they said, we will grant
9 you that something to the effect that we
10 can't prove that this was a bullet hole
11 beyond a reasonable doubt. Okay? Now, the
12 actual means of death aren't even charged in
13 the information.

14 THE COURT: Right.

15 MR. FALLIS: There's no evidence to say
16 how she died. I mean, except the snitch is
17 saying strangulation, but, I mean, that in
18 itself, Judge, if you want to say limited to
19 what they say 'cause that's the only evidence
20 that came in as to the means, then I think by
21 definition, that is not heinous, atrocious
22 and cruel.

23 THE COURT: Mr. Fallis, you may -- you
24 may be right. I'm not disagreeing with you
25 right now. I'm just reserving a ruling on

1 it.

2 MR. FALLIS: I thought you said that was
3 the one that -- the one that you agree you
4 were going to read. I'm sorry.

5 THE COURT: No, no. That's the one I
6 said I want to hear what the State has to
7 say.

8 MR. FALLIS: Oh, okay.

9 THE COURT: You can -- I won't be vague
10 about it. I don't know if that one exists.
11 So I'm clear, it may. I haven't decided nor
12 do I have to decide at the moment.

13 MR. FALLIS: Only --

14 THE COURT: There's not going to be
15 any -- okay. And there's some -- I suspect
16 there's going to be some evidence that
17 Mr. Mizrahi wants to present that would not
18 be admissible in the guilt phase, we'll call
19 it, right?

20 MR. MIZRAHI: Potentially, based on
21 which aggravators come in, correct.

22 THE COURT: Right. I mean, he's not
23 going to be able to call, for example, one of
24 these family members to talk about all the
25 trauma that it's been causing them in the

1 guilt phase. That would be inappropriate.
2 But it would be different in the next phase.

3 MR. FALLIS: Well, you see, the problem
4 I have is this: He's going to say that it
5 was committed in the presence of Aaron. Now,
6 Judge --

7 THE COURT: Well, again, Mr. Fallis, I
8 hear all that. I'm not disagreeing with you
9 but I'm not going to decide it now. I'd
10 rather reserve that time for argument once
11 everything's completed in this part of the
12 trial.

13 MR. FALLIS: Okay. Are you
14 anticipating, in the event there is a guilty
15 verdict, postponing and bringing the jury
16 back at another time?

17 THE COURT: No.

18 MR. FALLIS: Well, this is a problem
19 then, Judge, because if I'm going to be able
20 to have them argue that this child never saw
21 it, I have to bring in some of the evidence
22 because we kept all that out. Okay? And I
23 didn't go into it 'cause we don't want to
24 open any doors in our case.

25 THE COURT: You can go into it during

1 the next phase. There's going to be a chance
2 to present evidence.

3 MR. FALLIS: Yeah. I understand. But
4 that evidence, I mean, I'm not prepared to
5 present today.

6 THE COURT: Well --

7 MR. FALLIS: I'll have to go back and
8 get the depositions of, you know, this whole
9 Daddy hurt Mommy kind of thing. Then I will
10 have to argue that to the jury. And I -- if
11 you're going to say, okay, fine, we'll bring
12 them back Monday, Tuesday or whatever next
13 week, then I would be in a better position,
14 if you decide that it's applicable.

15 THE COURT: I'm not going to bring them
16 back next week. We're going to do it --
17 if -- if there's a conviction, we're going to
18 do it this afternoon, unless we're way out,
19 you know, really late at night. Then we're
20 going to do it maybe tomorrow.

21 MR. FALLIS: Okay. I just want to make
22 the record clear that I was not prepared to
23 address that, quote, end quote, aggravator
24 this morning or right now until I can go back
25 and get the impeachment material, which I did

1 not bring today, not anticipating that.

2 THE COURT: I don't know why you
3 wouldn't have anticipated it. It's been on
4 the table for a while now.

5 MR. FALLIS: Well, because I didn't get
6 a ruling, Judge, until now. Okay? I can't
7 anticipate something that was, you know, not
8 ruled upon at the time. And, you know, you
9 can try to anticipate as much as you can, but
10 this is something that's so unique in that
11 I've never done it before in a second-degree
12 or a manslaughter or any other kind, have
13 this bifurcated thing. And I don't know
14 where else it's been done, except he said he
15 had one case.

16 But I understand the ruling. I respect
17 your ruling. But I want to be prepared to
18 address that, especially if he's going to say
19 that it was in the presence of the child.

20 THE COURT: Okay.

21 MR. FALLIS: There was no evidence that
22 it was in the presence of the child. If you
23 want to even think about it that way, Daddy
24 hurt Mommy, then we went into it. When? You
25 know, was it last night, last year. I mean,

1 you remember that, Judge? I think that they
2 would need more than just that statement,
3 Daddy hurt Mommy, to prove that Aaron
4 witnessed it. And I don't think there was
5 any evidence introduced other than that one
6 statement, which, of course, we objected to.

7 So I think I'm certainly prepared to
8 show that Aaron, quote, did not witness this.

9 THE COURT: Okay. Well, like I said,
10 we're going to make decisions and hearing --

11 MR. FALLIS: Bring Brenda Medders back
12 and he'll have to bring Brenda Medders back
13 as well.

14 THE COURT: If this becomes an issue,
15 he's going to have to prove it, like he does
16 everything else.

17 MR. MIZRAHI: I'm not bringing her back.

18 MR. FALLIS: Well, he says he's not
19 bringing her back.

20 THE COURT: It's his case to present,
21 just like the first part will be. If he
22 doesn't prove it, then --

23 MR. MIZRAHI: You win.

24 THE COURT: And that's it. I can't
25 independently find it absent a jury verdict.

1 Even with a verdict, I still may not rely on
2 it. Or I may find that it's existing, but
3 it's not sufficient to justify 'cause the
4 case law and the rule at the time says this
5 should be done rarely, departing from the
6 permitted guidelines.

7 MR. FALLIS: You're making my arguments
8 for me, Judge.

9 THE COURT: I'm just stating what the
10 law is.

11 MR. FALLIS: I appreciate it and I
12 appreciate your sharing that because these
13 are the fears that I have. Okay?

14 THE COURT: Okay. Is the jury here?

15 We're a couple minutes early. Y'all
16 ready for -- do you have anything to do to
17 get ready for closing arguments?

18 Mr. Heavener, are you --

19 MR. HEAVENER: I'll do the first one.

20 THE COURT: Okay. Mr. Fallis, you're
21 doing the closing?

22 MR. FALLIS: Yes, sir.

23 THE COURT: Okay. Maybe get your
24 exhibits out, get the computer on, if you
25 want to use it, so it's all set up.

1 (Pause.)

2 THE COURT: All right. Y'all ready for
3 the jury?

4 MR. HEAVENER: We are, Your Honor.

5 MR. MIZRAHI: Yes, Your Honor.

6 THE COURT: Bring in the jury.

7 (Jury present.)

8 THE COURT: Welcome back, folks.

9 You-all can have a seat.

10 Good morning. Y'all have a good restful
11 night last night?

12 A JUROR: Yes, sir.

13 THE COURT: Good.

14 And, again, able to follow the
15 instructions not to have any communication
16 about the case or watch any media coverage?

17 THE JURORS: Yes, sir.

18 THE COURT: Very good.

19 All right. Well, it's our last day. As
20 you heard yesterday, the both parties have
21 rested their cases, which means now we're
22 going to hear closing arguments from both
23 sides. Now, what the lawyers say in their
24 arguments is not evidence. It's not to be
25 considered as such. But you should listen

1 carefully to the arguments because they're
2 designed to help you understand the facts and
3 the law.

4 At the conclusion of the arguments,
5 that's when I'll give you the final
6 instructions on the law. I'll read those to
7 you and then you'll have a written copy of
8 those instructions to take back to the jury
9 room along with all the evidence in the case.

10 Because the State has the burden of
11 proof in a criminal case, they're obligated
12 to go first, and they're also entitled to
13 divide their argument from a first closing
14 argument and then a rebuttal closing argument
15 after the defense gets its closing argument
16 in the middle.

17 And with that, we'll hear from the State
18 first. Mr. Heavener, you may give your
19 close.

20 MR. HEAVENER: May it please the Court?
21 Counsel.

22 THE COURT: Yes, sir.

23 MR. HEAVENER: No. I would not give you
24 false hope on this strange and mournful day,
25 but the mother and child reunion is only a

1 motion away. Paul Simon, Mother and Child
2 Reunion.

3 In 1992, Aaron Haim would play in his
4 backyard as a three-year-old child with a
5 dump truck. You see it in the photograph in
6 front of you. By 2014, the boy became a man.
7 The dump truck became a shovel. And the
8 backyard became a clandestine grave. And the
9 mother and child reunion was only a motion
10 away.

11 That motion took place when Aaron Fraser
12 took that shovel, and it made contact with
13 the skull of his long lost mother. The
14 sutures on that skull separated, and Aaron
15 began to unearth what has now been revealed
16 to you in full over the last four days. On
17 that day, that mother and child reunion was
18 not a happy event. On that day, that mother
19 and child reunion brought Aaron Fraser
20 face-to-face with the product of this
21 defendant's ill will. It brought him
22 face-to-face with the product of this
23 defendant's hatred. And it brought him
24 face-to-face with the product of this
25 defendant's spite and evil intent.

1 Ladies and gentlemen, this is an
2 emotional trial. It's entirely human to feel
3 mad and angry that a three-year-old child was
4 separated from his mother. It's entirely
5 human to feel deep sadness that that little
6 boy grew up, made his way in the world
7 without the guidance, comfort and nurture of
8 his mother.

9 But His Honor is going to tell you that
10 we don't decide cases based on emotions like
11 that. We don't decide cases because we're
12 angry at someone. We don't decide cases
13 because we feel sorry for someone. We try,
14 as juries and as our system, to make legal
15 and wise decisions.

16 So how do you do that? How do you make
17 a wise and legal decision? Picture it as a
18 stool and it has three legs.

19 The first leg is a gift from His Honor.
20 He is going to give you the law that applies
21 to the case, and I'm going to do my best to
22 try to explain it.

23 The second leg of that stool, that legal
24 and wise decision stool, is the facts, the
25 evidence that we have presented to you over

1 the last several days, the evidence that
2 consists of what people said from the witness
3 stand, documents, photographs, things that
4 were introduced into evidence, the opinions
5 of expert witnesses and even the testimony of
6 the guy who's really good, really
7 accomplished at burying the truth. So that's
8 the second leg of the stool.

9 The third leg of the stool that's a
10 legal and wise decision you bring. Every one
11 of you brings your God-given common sense to
12 this process.

13 Your God-given common sense tells you
14 that when a wife going through marital
15 difficulties is last heard from at 8:30 p.m.,
16 crying, talking about an argument, when her
17 car is located at an airport with her
18 husband's sandy footprint sitting on the
19 floor mat and when her body is located with a
20 gunshot impression buried in her own
21 backyard, your common sense tells you exactly
22 what happened. That evidence in and of
23 itself is all you need to return a verdict of
24 second-degree murder.

25 But the evidence is so much more in this

1 case.

2 So let me begin with the law in the case
3 that His Honor's going to give you. The
4 first thing I want to talk about, we talked a
5 lot about this during jury selection. And we
6 use this phrase "reasonable doubt." It is
7 the State of Florida's burden to prove this
8 crime to you beyond a reasonable doubt. But
9 let's talk about that word for a second,
10 "reasonable" doubt. The only way any of us
11 can have absolutely no doubt is if we were
12 there. And if we were there, we're not a
13 juror; we're a witness.

14 So what does the law say about
15 reasonable doubt? The law says -- tells us
16 what a reasonable doubt is primarily by
17 telling us what a reasonable doubt is not.
18 So what is a reasonable doubt not? It's not
19 a mere possible doubt.

20 It's not saying that because Bonnie Haim
21 had a relationship with Curt Jolicoeur, oh,
22 there's a possibility it could have been Curt
23 Jolicoeur. It's not saying that there's a
24 possibility when there's absolutely no
25 physical evidence that ties Curt Jolicoeur to

1 this crime. There's no testimonial evidence
2 that ties him to this crime. There's nothing
3 but that possibility, despite the fact that
4 he was interviewed and that he cooperated
5 readily with law enforcement.

6 A reasonable doubt is not a speculative
7 doubt. A speculative doubt would be, oh, no,
8 there was this man on the second floor of the
9 Red Roof Inn where Bonnie's purse was
10 discovered, and he was staring off into the
11 woods. That's a speculative doubt. Again,
12 there's no evidence whatsoever that this
13 individual had anything to do with Bonnie's
14 disappearance or her murder.

15 A reasonable doubt is not an imaginary
16 or forced doubt. You can't imagine or force
17 yourself to believe that despite all of the
18 scientific evidence, Bonnie's body was buried
19 someplace and then moved to her final resting
20 ground next to her home. It just isn't
21 there. You'd have to force yourself to
22 believe that someone actually went to the
23 trouble of taking off a dead woman's shoes
24 and moving her body. That just doesn't make
25 sense, ladies and gentlemen.

1 So let's talk about what does make
2 sense. I suggest to you that you should ask
3 yourself three questions and they will guide
4 you. Who had the motive? Who had the
5 opportunity? And who had the ability? Who
6 had the motive? Who had the opportunity?
7 And who had the ability?

8 Let's talk about who had the motive for
9 a little bit. This defendant knew several
10 things. He knew that his wife was moving
11 out. You've seen it in evidence and you'll
12 see it. You'll have it back there. You'll
13 have State's Exhibit No. 153, Blanding Place
14 security deposit agreement, signed on
15 January 2nd of 1992. It was probably 1993.
16 But you'll see that. Bonnie Haim was moving
17 out. She'd had it. And you've also got the
18 postcard from the police, and you'll have it
19 back with you.

20 What else do we know about what was
21 going on with Bonnie Haim? Well, she had
22 started seeing Curt Jolicoeur. She had
23 started some kind of a relationship with Curt
24 Jolicoeur. And how do we know that the
25 defendant knew about that? Because suddenly,

1 he starts trying to develop his own
2 relationship with Curt Jolicoeur. Hey, Curt,
3 you want to drive over from Orange Park to
4 the north side? Let's work out. Where did
5 that come from? He's never asked me that
6 before. The defendant himself started
7 developing his own interest in Curt
8 Jolicoeur.

9 What else do we know about Bonnie? We
10 know that the night she disappeared, that
11 January 6th night, the last person that ever
12 spoke with her on the face of this earth
13 other than him was Eveann Haim. And what did
14 Eveann tell you? Bonnie was crying. Her
15 voice was raspy. She was upset. And she
16 said they had a discussion. I'm not going to
17 make it to your house tonight Eveann. I'll
18 talk to you about it in the morning when I
19 get to work in the morning.

20 That's a very telling comment because it
21 tells us two things. It tells us that this
22 defendant and Bonnie Haim were having marital
23 difficulties. They were arguing. The
24 argument had reached such a level that Bonnie
25 was crying on the telephone to her best

1 friend, Eveann Haim. And the argument was
2 something that had caused her to cancel her
3 plans for the night. But the other thing
4 that Eveann told us that was extremely
5 important -- and you may have missed it in
6 the testimony -- is Eveann said Bonnie told
7 her, I'll tell you in the morning. That
8 gives every indication that Bonnie was
9 planning to do what she always did, get up
10 the next morning, take Aaron to day care and
11 go in and do her job as a working mother.

12 So who had the motive? Mr. Ill Will,
13 Mr. Spite, Mr. Evil Intent.

14 Who had the opportunity? Let's talk
15 about that. Did Curt Jolicoeur have access
16 to Bonnie Haim's car? Did he have access to
17 her home? Did he know where that perfect
18 burial spot would be right under that movable
19 pallet, the pallet that practically every
20 witness -- in fact, every witness other than
21 one told you was a movable pallet? Go back
22 into your recollection of the one witness
23 that told you that was not movable and it
24 wasn't a pallet. He even had to correct his
25 own lawyer. Quit calling that a pallet. It

1 wasn't a pallet. It was a deck. Every
2 witness to a person that had access or
3 involvement with that shower area said it was
4 movable except him.

5 So who had the opportunity when it came
6 to the burial site? Who had the opportunity
7 when it came to Bonnie's car? Who had the
8 opportunity when it came to Bonnie's keys?
9 Who knew his own property? Who had the
10 unbridled access to Bonnie Haim?

11 Here's all we know about a time line.
12 We know that 8:30 p.m. was her last call to
13 Eveann Haim, and we know that at 9:22 a.m.
14 the next morning, he got a call from the
15 police that they had just located his wife's
16 purse. That's your time line, 8:30 a.m.
17 to -- 8:30 p.m. to 9:22 a.m.

18 So who had the ability? Who had the
19 ability to shoot Bonnie Haim? Well, he
20 certainly had some firearms in his house.
21 Who had the ability to strangle Bonnie Haim?

22 Look at his stature. The defense
23 entered a photograph that you'll have with
24 you. Take a look at it. It's a photograph
25 that apparently is showing that the defendant

1 participated in at least a search with
2 Bonnie's father. And he's wearing a tank top
3 or a shirt that shows his musculature, shows
4 his build. Look at the kind of man he is
5 back then, not now, not as he's sitting in a
6 suit, wearing his glasses. But look at the
7 way he looked back in 1992 when he covered
8 everything up. If you look at that picture,
9 you'll see a stark contrast between his
10 demeanor, his stature and what we know about
11 Bonnie.

12 Bonnie was five-foot, one inches tall.
13 She weighed about 115 pounds. And we've
14 heard testimony about that. But you also
15 heard from Dr. Walsh-Haney, who said she was
16 a very small person. She was so small that
17 he was able to fit her into a grave that was
18 20 inches wide, three and a half inches long
19 and two feet deep. Did he have the ability
20 to overpower a woman of that stature? You
21 bet he did.

22 So let me -- let me take you through
23 what I think is some very important evidence
24 in this case and that is the physical
25 evidence. Let's review it. Let's start with

1 that shoe print. Let me -- let me first say,
2 I got ahead of myself because the physical
3 evidence in this case is so compelling, and
4 I'm so excited to talk about it. I
5 completely forgot to tell you what the judge
6 is going to tell you about the elements of
7 the crime. So what are those elements?

8 The judge is going to tell you that to
9 prove the crime of second-degree murder, the
10 State must prove the following three elements
11 beyond a reasonable doubt. I've stopped the
12 slide there because this language is very
13 important. You-all agreed in jury selection
14 that you would hold the State to its burden.
15 And you should. We should meet our burden of
16 proof.

17 But it's very important to know what our
18 burden of proof is. These three elements
19 that I'm going to show you are the only three
20 things the State has to prove beyond a
21 reasonable doubt. There may be disagreements
22 about insignificant facts, insignificant
23 times, insignificant dates, pieces of
24 evidence that don't really matter. That's
25 not what beyond a reasonable doubt means.

1 It's to the elements and the elements
2 themselves that it applies.

3 So let's look at what they are.

4 Number one, Bonnie Haim is dead. What's
5 the evidence of that? Well, that's so
6 established, the parties have stipulated to
7 it. So that's proved beyond a reasonable
8 doubt. Even if they didn't stipulate to it,
9 Dr. Walsh-Haney explained to you why those
10 bones were Bonnie's bones, because it had the
11 same fracture she had. It had the same
12 build, the ancestry, the same sex. So Bonnie
13 Haim is dead.

14 Number two, the death was caused by the
15 criminal act of Michael Ray Haim. Okay?
16 This is where most of my comments are going
17 to be directed. This is where you're either
18 going to hear Michael Ray Haim did this, or
19 you're going to hear it was some complete
20 stranger that killed Bonnie, got her car,
21 buried her in one place, brought her back to
22 another place, and somehow, somebody sent an
23 anonymous letter in '96.

24 Okay. The death was caused by the
25 criminal act of Michael Haim. And then

1 finally, this is talking about what kind of
2 criminal act this is. This is what we're
3 talking about. This is the intent. There
4 was an unlawful killing of Bonnie Haim by an
5 act imminently dangerous to another and
6 demonstrating a depraved mind. I'm going to
7 come back to that in a moment. But let's
8 focus on that second element for a while.
9 The death -- Bonnie Haim's death was caused
10 by the criminal act of Michael Ray Haim.

11 So I get to talk to you about the
12 physical evidence now. Let's start with that
13 footprint. What do we know? Well, you heard
14 from Ernie Hamm. He is an outstanding expert
15 witness, was an outstanding expert witness
16 during his career. He worked for the Army
17 crime lab. He worked for FDLE. And he told
18 you that he saw not one, not two, but three
19 different class characteristics in the print
20 that you see in that floor mat. He didn't
21 see pebbles lodged in the shoe. He didn't
22 see anything that would make it an
23 individualized characteristic.

24 But he was so confident that Michael
25 Haim shoes from that living room made that

1 print that he said it definitely could have
2 made that print because he's seeing multiple
3 class characteristics. He's seen the herring
4 bone. He's seeing the outer edge of the
5 shoe. And then he's seeing the groove. And
6 you'll see the pictures of the shoe. There's
7 a groove between the herring bone print and
8 that outer edge. He's saying he's seeing all
9 three of those class characteristics in that
10 print.

11 And take a look at those prints when you
12 go back. We know it's a Size 10 Nike. We
13 know his shoe was a Size 10 Nike. We also
14 know that -- from Allen Miller's testimony
15 that there were only 8,000 Size 10 Nikes of
16 that particular model placed into circulation
17 in the world and that he said, I think there
18 was only about 3,000 in the United States.

19 So what does that mean? Well, it means
20 it's either this defendant's shoe or one of
21 those other people that bought a pair of
22 these pretty unique Nike tennis shoes.

23 But look at that print, ladies and
24 gentlemen. I want you to compare the print
25 from the floor mat of Bonnie Haim. Look at

1 the way it looks. Does that look like the
2 shoe print of someone who may have spent some
3 time digging a 20-inch by three-and-a-half
4 foot by 24-foot grave? Does that mess, all
5 on her -- you see it up at the top. You see
6 it over to the side. And then you see the
7 print here. You see sand all over that floor
8 area. How does that compare with the way his
9 truck floor mat is there? You'll have the
10 pictures back there. Bonnie Haim's floor
11 mat, his floor mat. Bonnie Haim's floor mat,
12 his floor mat. Do your own comparison and
13 you'll see the truth scream from those floor
14 mats.

15 But what does he say? We heard from
16 Sergeant Justice. Sergeant Justice told you,
17 my primary goal there was to see if there
18 were shoes and to see if I could get a time
19 line down on this car to see if we could
20 establish that -- if he had said recently
21 been in the car or he said I hadn't been
22 there for a while.

23 Well, because Michael Haim's really good
24 at covering things up, he took Sergeant
25 Justice's bait. Sergeant Justice says when's

1 the last time you were in that car? Huh.
2 Let me try to cover this one up. I was last
3 in that car on January 1st.

4 He tried to -- you saw an in-court
5 demonstration of him trying to back that up
6 yesterday because yesterday, he told
7 Mr. Mizrahi, well, it may have been
8 January 4th. We may have taken her car to
9 the funeral in Georgia that he told you
10 about.

11 But let's say -- let's give him the
12 doubt. Let's say that he's not trying to
13 cover up. He's realizing what all the
14 evidence is against him now. But let's say
15 that he did go on the 4th. What do we know
16 about Bonnie Haim? You've heard the --
17 you've heard her routine on January the 6th.
18 So I want you to count with me.

19 The morning of January 6th, she wakes
20 up, gets Aaron ready for day care, leaves her
21 home and gets into her car, No. 1.

22 She drives to the day care, gets out of
23 her car, No. 2.

24 She takes Aaron into the day care, drops
25 him off, comes back to her car and gets back

1 in, No. 3.

2 She drives her car from the day care to
3 Bernie's Tool and gets out to begin her
4 workday, No. 4.

5 Let's give him the benefit of the doubt.
6 We didn't hear anything about what she did
7 for lunch. So let's say that she brought her
8 lunch to work that day. She finishes her
9 work. She goes back out to her car, gets
10 inside, No. 5.

11 She drives her car to Walmart -- we
12 heard that testimony -- gets out of the
13 car -- I'm sorry. She drives her car to the
14 day care and picks her beloved son up. I
15 forgot Aaron but Bonnie never would. So she
16 picks Aaron up. So it means she gets out of
17 the car, No. 6.

18 She gets Aaron from the day care, comes
19 back and gets into the car, No. 7.

20 She drives the car to Walmart, gets out
21 of the car, No. 8.

22 Goes in and buys the things that she's
23 going to buy at Walmart, comes back to the
24 car, gets in, No. 9.

25 We know that at some point, she went to

1 McDonald's with Aaron, but let's assume she
2 went to the drive-through. Let's give him
3 the benefit of the doubt.

4 She goes to the dry cleaners. He told
5 us that, gets out, No. 10.

6 She gets back in the car from the dry
7 cleaners, No. 11.

8 Drives to her home, gets out, No. 12.

9 Okay. We know definitively that he
10 said -- he told Sergeant Justice he was last
11 in that car on January the 1st. He told you
12 yesterday it was January 4th. And then he
13 tried to even back off of that and say, well,
14 I may have gotten Aaron out of the car seat
15 when Bonnie came home from Walmart. And then
16 you remember that discussion.

17 And you can -- because he's taken the
18 stand, the judge is going to tell you you
19 should treat this testimony just like anybody
20 else's. So he told you yesterday, I may have
21 gotten into the drivers seat, sat down so I
22 could get my son out of the car. Aaron's car
23 seat's in the passenger side. That makes no
24 sense. If I was going do get my child out of
25 the passenger seat, I'd go to the passenger

1 seat door, open the door and get my child
2 out. I would never sit down in the driver's
3 seat.

4 So what do we know? Bonnie Haim was in
5 and out of that car at least 12 times from
6 the last time he said, I was in it. So those
7 prints would not be there if -- if the last
8 time he was in it was that January 1st date
9 or January 4th.

10 The shoe prints speak volume in this
11 case. Look at the color of the sand.
12 Remember Dr. Walsh-Haney's testimony. And
13 you can see the striations in the pictures
14 that you have in evidence. The amount of the
15 sand, it's not what he would normally bring
16 in and out of his car from work. He had just
17 finished digging that grave.

18 So let's talk a little bit about some
19 more physical evidence, the car itself.
20 Where was the car parked? It was parked at
21 the airport. You see, his plan all along was
22 going to be, I'm going to say that Bonnie
23 left. She left me. There will probably be
24 some kind of search for her. They'll find
25 her car at the airport and thereby think, hey

1 she left town. I don't know. I don't know
2 what happened to her, but I haven't seen her
3 since she left. And her car is at the
4 airport.

5 His plan got a little foiled because he
6 wasn't planning on people finding Bonnie's
7 purse the very next morning at the Red Roof
8 Inn.

9 But he takes her car to the airport.
10 What's the significance of the airport?
11 Well, it's part of his plan, but it's also
12 significant that the car is parked so close
13 to where the purse is found. Okay? The
14 parking at the Red Roof Inn looked like it
15 was pretty -- pretty available. You'll have
16 the photographs. I mean, why not leave the
17 car there? Well, because I needed to make it
18 look like Bonnie was leaving town. So the
19 location of the car is extremely important.

20 The condition of the car, Mr. Fallis, I
21 anticipate, will try to make some argument
22 that the seat is closer to the steering wheel
23 than the child seat is. I would suggest to
24 you it's very reasonable to assume that the
25 child care seat -- the car seat in the

1 passenger side, that seat's probably pushed
2 all the way back because people, when they
3 get their child out of the car, they usually
4 do use the passenger seat when the car seat's
5 in the passenger side. So I would not -- I
6 don't think much can be made of the seat
7 position.

8 But the location of the car is
9 indicative of planning.

10 How about this fact, the keys to the
11 car? We know of only two car keys that
12 Bonnie Haim had. One of those keys was found
13 in her purse at the Red Roof Inn. Now,
14 here's what you need to pay attention to on
15 this key. This looks like the kind of tag
16 that might be attached to a key when you're a
17 car from a dealership. It's got an inventory
18 and things like that.

19 But here's what's really significant
20 about this key that was found in Bonnie's
21 purse in the dumpster. There's only one key.
22 There's not a house key on here.

23 But then if we look at the key that we
24 know somehow made its way back to Dolphin
25 Avenue, the key with Aaron's picture on it,

1 it's got two keys. So not only -- we're
2 going to talk about Bonnie in a minute. But
3 not only are you going to have to accept that
4 Bonnie, if his story is to be believed,
5 walked out of her house without her most
6 treasured and beloved thing in this world,
7 her son, Aaron, that she also leaves by
8 taking a key that has no house key. That's a
9 pretty odd circumstance, isn't it? Pretty
10 odd to think that a woman is going to leave
11 her son, abandon her job and that she's going
12 to leave her house with a set of keys she
13 normally uses, leaving all of her earthly
14 belongings inside and leaving that house key
15 in there. 'Cause we know definitively that
16 these keys were not recovered from Bonnie
17 Haim's Toyota Camry. Even though
18 definitively, you have pictures of the
19 contents of her purse, this is the key that
20 was in her purse. Pay attention to the keys.

21 Just to review that shoe print, you can
22 see it on your screen. I think you can see
23 it. The herring bone pattern, the groove and
24 the outer sole, Mr. Hamm said. And you see
25 his shoes. The conditions of the shoes are

1 also a pretty important factor. Does the
2 stand on the bottom of those shoes look
3 similar to or different from all of that sand
4 in Bonnie Haim's car mat? Looks pretty
5 similar.

6 The location of the Red Roof Inn,
7 another very important fact, not far from the
8 airport.

9 And then we get to her purse. What does
10 Bonnie Haim's purse tell us about this crime?
11 If a person -- a stranger is going to abduct
12 and kill Bonnie Haim, they're going to
13 probably -- if we use our common sense, that
14 God-given common sense that we talked about,
15 that third stool of a legal and wise
16 decision, we're not going to have credit
17 cards, money, things of that nature.

18 And how -- how does the person get to
19 the car to the airport when the only other
20 key that we know about is in Bonnie's purse?
21 That's a problem.

22 So what this shows us is this murder was
23 committed by somebody that knew Bonnie Haim's
24 because they did not have a robbery motive.
25 They did not have a stealing-her-stuff

1 motive. They had a motive of getting rid of
2 her stuff because they needed it to look like
3 she had left. That's entirely consistent
4 with the defendant being the one that killed
5 her.

6 Let's talk about some more physical
7 evidence. You've heard a lot about cows in
8 this case, the crumpled up cow rug. You saw
9 the little exercise. There's multiple cows.
10 You can count them if you want to. But
11 everybody knows that Bonnie Haim liked cows.
12 You simply have to look at her kitchen decor.
13 That cow rug was given to her on Christmas.
14 So less than two weeks after that Christmas
15 gift, it's wadded up with all those other
16 towels, people smelling chlorine bleach.
17 That's a fact that you can consider.

18 Do I have an expert that can tell you
19 what was on that cow rug? I don't. But I
20 have my common sense, and I think your common
21 sense will tell you that if you get a
22 Christmas gift, you're not wadding it up and
23 putting it with a bunch of bleach less than
24 two weeks after you get it.

25 I want to talk a little bit about the

1 shoes, going back to that shoe print. Look
2 at where those shoes are recovered. You've
3 seen pictures and you've got pictures.
4 There's closets with shoes in them, but these
5 are right under -- they're right under his
6 coffee table. That -- and these are
7 recovered on January 8th. That's less than
8 48 hours from the time he murdered her. The
9 recovery of these shoes under the coffee
10 table, that tells us that they were worn
11 recently.

12 There's another thing that this picture
13 tells us. Allen Miller was not intentionally
14 documenting this. This is not what -- he was
15 taking the picture to show us how those shoes
16 were recovered.

17 But I would submit to you, ladies and
18 gentlemen, that you can tell a whole lot
19 about a person by what they put on their key
20 chain. If you go to the trouble of putting a
21 memento on your key chain, it usually tells
22 you that it's something that you value very
23 deeply, that's a part of you. And so what's
24 on Bonnie's key chain is her son, Aaron.

25 But there's some other things that tell

1 us a lot about people. One of the things
2 that it can tell us about people is what kind
3 of magazines do they read? And look at the
4 magazine on Bonnie's coffee table. I tried
5 to ask Sergeant Justice to read it.
6 Hopefully, some of you will have better eyes
7 than he did. But if you look at it closely,
8 the magazine that Bonnie Haim was reading, it
9 captured her entire life. The name of the
10 magazine, Working Mother, the two things that
11 meant so much to Bonnie Haim that she would
12 actually purchase a magazine about both those
13 topics. Working Mother.

14 But yet we're to believe that she left
15 in the middle of the night with no house key,
16 no earthly belongings, no son to abandon the
17 work that she established, becoming the IT
18 person and the controller at Bernie's Tool.

19 What's some more physical evidence?
20 We're just getting started. The grave site.
21 You've seen the pictures, these pictures that
22 disclose what everybody else says is a
23 moveable pallet but what he says is a
24 built-in deck. Every witness who had
25 knowledge of this area of the house before

1 January 8th and every witness that had
2 knowledge after he leaves the house tells you
3 that those chlorine jugs, that's not
4 something that was kept in that area.

5 Bernie Haim told you when he had the
6 house, they kept the chlorine in the shed.

7 Miss Bruton, the tenant, when we were
8 shown the house, the chlorine was in the
9 shed. That's not how it looked when we got
10 there.

11 But lo and behold, there's a bunch of
12 chlorine jugs on top of a clandestine grave
13 site. That's intentional, ladies and
14 gentlemen. And we know it's intentional
15 because we saw him caught in a lie yesterday.
16 You saw it unfold before your very eyes.
17 Mr. Mizrahi asked him, what's -- what's with
18 that? And he said, oh, that's chemicals. I
19 don't keep chemicals in my shed. Oh, really?
20 Well, let's take a look at your shed. What's
21 that? I think it's pesticides. Oh, so
22 pesticides are not chemicals now? Is there
23 some reason our common sense tells us that
24 only chlorine would be a chemical and all
25 these other liquid substances in his shed are

1 not chemicals? Why is he saying, I don't
2 keep chemicals in my shed unless he
3 understands how incriminating it is that you
4 keep bleach and chlorine over the site where
5 you're keeping a body?

6 Why is he keeping that there? Because
7 he doesn't want dogs to come to that site.
8 Now, fortunately for him, they never came.
9 And, ladies and gentlemen, that's -- that was
10 a defect in the crime scene investigation.
11 Mr. Miller told you it happens all the time.
12 He wishes he could have processed a perfect
13 crime scene in his multi-year career at FDLE
14 but you never do. Nobody knew at the time
15 they were searching that Bonnie Haim was
16 buried there. He picked the perfect spot in
17 his yard to hide and conceal.

18 So should you trust the guy that's
19 really good at covering things up, covering
20 things up for nearly a quarter century? When
21 he tells you, no, we didn't keep chemicals
22 out there. What possible reason could there
23 be for not keeping chemicals in a shed? Is
24 it a health hazard? Were people living in
25 that shed? There's no -- use your common

1 sense. There's no -- there's no reasonable
2 reason for that testimony other than he knows
3 that those jugs are incriminating.

4 Let's talk a little bit about the grave
5 site itself. We've all heard the phrase
6 "location, location, location." Usually when
7 we hear that phrase, it's talking about the
8 value of real property. Real property value
9 increases or decreases based on its location.
10 The incriminating nature of a clandestine
11 grave is the same principle. Location,
12 location, location.

13 Why is the defense taking such lengths
14 to try to tell you that this is a secondary
15 grave site? Location, location, location.
16 Because, number one, if this is where Bonnie
17 Haim was initially buried, it convicts him.
18 And then, number two, if this is where Bonnie
19 Haim was initially buried, it tells you he
20 lied to you yesterday because if it's where
21 she was initially buried, the only way his
22 story makes any sense is if somebody else
23 came up there and buried her in his own yard
24 while he was there. Makes no common sense,
25 ladies and gentlemen.

1 So what does the evidence show with
2 regard to that grave site? The size of the
3 grave shows us that whoever dug it was in
4 some level of haste, 20 inches by three and a
5 half feet, 20 inches wide, three and a half
6 feet long and two feet deep. Somebody that
7 had to get their deed done between 8:30 p.m.
8 and 9:22 a.m. or if you believe his mother,
9 between 8:30 p.m. and about 3:00 or 3:15 a.m.
10 We'll talk about his mother's testimony in a
11 moment. But understand the size of that
12 grave is a key fact.

13 What else do you need to know -- or what
14 else does the grave site show us? First,
15 that grave site shows us that it was the
16 primary site. The defendant, in opening and
17 in questioning Dr. Walsh-Haney, they have
18 tried repeatedly to suggest that this was not
19 the primary grave site. Again, the reason is
20 because it convicts him if it is. But the
21 evidence is not consistent with what they're
22 suggesting to you. Dr. Walsh-Haney said --
23 and she told you, she reviewed the whole idea
24 that you have spongy bones, that they
25 compensate quicker, and then she told you

1 that that area of the body, the torso area,
2 is the area that you have to be the most
3 careful with when you do an excavation like
4 this.

5 And so what did we hear in terms of the
6 excavation that was done? We heard Evidence
7 Technician Watson tell us that he dug for
8 three days and could never locate the torso.
9 Is the lack of those torso bones evidence of
10 a secondary grave site? Or is it evidence
11 that he didn't really understand what he was
12 doing? And you heard Dr. Walsh-Haney. She
13 told you, it's not that the bones are not
14 there. It's that they are so decomposed,
15 that they are in such fragments that I cannot
16 put them all back together. But I did see
17 rib bones. I did see back bones, vertebrae.

18 And so this whole notion of this is a
19 secondary grave site, that somebody moved the
20 body after they had killed Bonnie to bury her
21 a second time, that makes no sense at all.
22 It makes no sense in terms of the motivations
23 of people. It makes no sense in terms of the
24 scientific evidence and the scientific
25 opinions of an established expert like

1 Dr. Haney.

2 And His Honor's going to tell you that
3 you can consider a person an expert if you
4 believe that they are an expert at what
5 they're testifying about. I would suggest to
6 you that Dr. Walsh-Haney, her résumé, her
7 credentials, her knowledge, her expertise is
8 impeccable. And when she tells you that this
9 was not -- there -- you should not be reading
10 anything into the fact that there are not rib
11 bones and vertebrae there. You should take
12 that to the bank.

13 The other thing that we know about the
14 grave in addition to the scientific reason
15 why some of the bones are not there is the
16 clothing. I want to spend a little bit of
17 time on the clothing that was found in that
18 grave because it's very important. If you
19 recall Sergeant Japour, he told you a very
20 important fact from his first interview -- or
21 his interview of the defendant, Mr. Haim. He
22 told you that Mr. Haim told him that when
23 Bonnie came home, he didn't -- he didn't --
24 he didn't tell Sergeant Japour that Bonnie
25 was painting her nails and sewing something.

1 He said that she worked out on a stair
2 climber. Okay?

3 One of the things that His Honor is
4 going to tell you that you should do when
5 you're comparing, evaluating, sifting
6 testimony is you should try to determine if
7 the testimony agrees with other evidence in
8 the case.

9 So when Sergeant Japour tells you that
10 on January 8th, Mr. Coverup tells him that
11 his wife has come home and was working out on
12 a stair climber, is there any evidence of
13 that? Look at what's in one of the rooms of
14 their home. Right in the middle of the
15 photograph, there's the stair climber.

16 So let's go to what Bonnie -- what we
17 know Bonnie was wearing and that is those
18 pink sweatpants. Is that consistent with
19 somebody who's just worked out on a stair
20 climber, or is that consistent with somebody
21 who's left her house without her pride and
22 joy son, without her house key, without any
23 earthly belongings to abandon her job the
24 next day? What makes more sense? Probably
25 what he told Sergeant Japour on January 8th,

1 that she had worked out on a stair climber.

2 The other thing we know from that grave
3 site, this is -- we've got a Fruit of the
4 Loom all cotton T-shirt. But you've got the
5 pictures. Go back, weigh it, sift it. And
6 you will see that this ball of thread is
7 sitting on top of the poncho in the pictures
8 that we observed. And you've got those
9 photos. This is the way it looked when they
10 recovered it. What does that tell us? All
11 that's left of that shirt is this synthetic
12 thread. But look at the way it appears in
13 the photo. It's not laid out like a shirt.
14 It's laid out like somebody wadded it up.
15 The cotton decomposed over time so all that's
16 left is that wadded-up thread.

17 But you've got to ask yourself, now, why
18 would you -- why would you bury a body
19 wearing the pants that the body probably was
20 wearing when working out on a stair climber,
21 wrap it in a Mickey Mouse poncho and then
22 throw a shirt wadded up on top of it and a
23 spent shell casing? One of the reasonable
24 inferences that I think you can make this
25 from evidence is -- and -- and you're

1 right -- the defense is right. There's not a
2 bullet hole in the pants. I think
3 Dr. Walsh-Haney explained that she saw the
4 hip bone above the pants line. So that's not
5 a defect in the case. But wadding up a shirt
6 and throwing it on top of a body that you
7 just buried might be indicative of the fact
8 there was a bullet hole in the shirt, and
9 there may have been some blood on the shirt.
10 It's a pretty reasonable explanation for why
11 you'd want to be getting rid of a T-shirt,
12 had no part of the body itself.

13 All right. So what -- what else does
14 the grave tell us? The cartridge casing.
15 The defense has tried to say that cartridge
16 casing came from the eight-foot-by-eight-foot
17 area. It didn't. It came from the pedestal
18 area that Evidence Technician Watson
19 delivered to the medical examiner, and
20 that -- that material was then delivered to
21 Dr. Walsh-Haney. So that -- that cartridge
22 case is an important piece of evidence from
23 the grave site.

24 There is no evidence of any nature
25 whatsoever that supports this being a

1 secondary grave site. There were no dirt
2 patterns. There was no evidence of insect
3 activity. Dr. Walsh-Haney explained to you
4 that that's what she would expect to see,
5 even in the little bit that she did have.

6 And then you have no evidence of any
7 animal activity. That's kind of important,
8 that not any evidence of any animal activity.
9 You don't have to be Dr. Heather Walsh-Haney
10 to understand that animals like to eat
11 things.

12 And so we've got to ask ourself, why is
13 there a lease agreement -- number one, why
14 does this lease agreement have something that
15 was so important that not only did you check
16 it, but you had to put an asterisk? But all
17 of a sudden, it's not on the copy anymore.
18 Why is that? Ask yourself that question. It
19 was something that was so important to this
20 document that not only did I check the box,
21 but I put an asterisk next to it.

22 Now, Miss Bruton, she told you that
23 there were three things that were very odd.

24 Thing No. 1 was Aaron's room was left
25 fully furnished, and they weren't allowed to

1 go in there. Well, you'll have evidence of
2 that in the lease itself because it lists out
3 as bunk beds and a dresser and things like
4 that.

5 No. 2, she told you that there was this
6 requirement that if we left the house, we had
7 to keep our dog in the master bedroom. Okay?
8 She didn't have this lease agreement. She
9 was just testifying from her memory. Well,
10 lo and behold, she's right about that,
11 handwritten. And, again, this lease
12 agreement, what's important to him are the
13 things that he puts a star next to.

14 So let's go through the lease agreement
15 and see what's important to him. He doesn't
16 put a star next to the amount -- the due date
17 or the amount of rent. He doesn't put a star
18 next to where to pay his father. He doesn't
19 put a star next to all the financial terms.
20 He -- oh, wait, the first star we see,
21 Paragraph No. 14, pets. And it reads in his
22 handwriting, dog will be in back master
23 bedroom when tenant has gone away. That
24 fully corroborates what Miss Burton said.
25 It's in the lease. It's in black and white.

1 So let's keep going. Is there
2 anything -- so the one paragraph he's put an
3 asterisk next to so far deals with dogs.

4 Okay. We see another asterisk. And
5 it's the paragraph that reads, tenant
6 acknowledges receipt of and have read a copy
7 of tenant rules and regulations which are
8 attached to and incorporated into this
9 agreement by reference. That's the only
10 other asterisk you see in this.

11 Now, I'm suggesting to you that
12 Miss Bruton, when she tells you there was
13 another document that said we weren't allowed
14 to dig in the backyard, that that was the
15 document. And it just so happens that the
16 document -- he can't get rid of the pet
17 paragraph because that's part of the lease.
18 We would have been too on our toes to see
19 that it was missing Page 4 of 6. I mean,
20 that's easy to see, if it's missing that
21 page. But it's missing that one attachment
22 page, the one that's asterisked. I'd suggest
23 to you she was entirely truthful when she
24 told you that. That they weren't allowed to
25 dig.

1 But we also know that she was entirely
2 truthful because of what happened in front of
3 you yesterday. He testified and you know
4 he's got to have an explanation for this
5 bizarre language about keeping your pet in
6 the master bedroom. That bedroom is the
7 furthest away from where he had buried that
8 body. And we know that he doesn't want dogs
9 running around that yard digging up. That's
10 why he put bleach down, chlorine down.

11 And so what does he come up with
12 yesterday? He tells Mr. Mizrahi the reason
13 that paragraph is in the lease is because we
14 had just put new carpet and new tile in the
15 house in 1992. Really? New carpet and new
16 tile in 1992.

17 But he forgot something. He forgot that
18 this lease -- and you'll have it. You'll see
19 that this lease, if you look at the date,
20 it's from June 10th of 2000 to June 10th of
21 2001. There's no way that carpet was new
22 eight years later. I'd suggest to you that
23 that's indication that what Miss Bruton told
24 you is true, that what Miss Bruton told you
25 is incriminating to him, and the reason he's

1 making up this story about the new carpet,
2 which we know now is eight years old, is
3 because -- the same reason he asterisked the
4 paragraph that dealt with pets and he
5 asterisked the rules and regulations that
6 Mr. Coverup doesn't have on his lease
7 agreement anymore.

8 So we've talked a little bit about how
9 Bonnie Haim, her character, tells us that
10 this didn't happen the way he told you it
11 happened. Every witness, including the
12 defendant, has testified about what a
13 wonderful, loving and caring mother Bonnie
14 Haim is -- was. You see the magazine,
15 Working Mother. There's just no
16 common-sense, reasonable explanation about
17 why Bonnie Haim would leave her home without
18 a house key, without any clothing, without
19 the daily necessities of life and without her
20 pride and joy, Aaron, only to abandon
21 everything she had worked for.

22 We kind of got a glimpse into what
23 Bonnie did when she did want to do something
24 with Curt Jolicoeur. That wasn't I'm going
25 to leave my husband in the middle of the

1 night. What she did was she got her husband
2 tickets to the Gator Bowl, and then she had
3 her one -- one-time intimate moment with Curt
4 Jolicoeur. But see the steps she took to do
5 it in a way that he didn't know what was
6 going on?

7 Does it make any sense at all that she
8 would leave at 11:00 or 12:00 o'clock at
9 night on a Wednesday night, knowing she's got
10 to go to work the next day and leaving her
11 son behind?

12 But we don't just have to look at Bonnie
13 Haim's character and who she was. Let's look
14 at his behavior. How did he behave if she
15 walked out at 11:00 o'clock or 12:00 o'clock
16 that night? Well, first of all, he didn't do
17 anything, if you credit his testimony and his
18 mother's testimony, until about 3:00 a.m.

19 He's -- if you believe his testimony,
20 he's so concerned that he's up at 3:00 a.m.,
21 and he's so concerned that he's going to call
22 and wake up his mother. He's going to tell
23 her, Mom, Bonnie left she hadn't come back.
24 Can you go next door and see if her car is at
25 her parents' house? Sure, son. Mom goes

1 next door. Car's not there, son. Mom, can
2 you come back to the house? Can you drive --
3 can you get out of your bed at 3:00 in the
4 morning? Can you come with your car? Can
5 you drive to my house? And can you watch
6 Aaron so I can go look for Bonnie? If you
7 credit her testimony, she did that.

8 And what did she say? Even his mom said
9 he was only gone for about 30 or 45 minutes.
10 He's going to have you believe that he was so
11 concerned about his wife that he wakes his
12 mother up in the middle of the night, has her
13 come to his house, leaves, and he's only gone
14 30 minutes, looking for his wife. That makes
15 no common sense.

16 But it's even worse when he tells you
17 where he went. He says, I went to her
18 parents' house to see if she was there. Now,
19 what's wrong with that story? He had just
20 asked his mother to look and see if Bonnie
21 was there. And she told him she wasn't. So
22 he's going to spend all the 30 minutes he
23 does spend going to her parents' house and
24 looking, and then he said he rode down Dunn
25 Avenue. And he didn't see anything so he

1 came home. Does that sound like the actions
2 of a man who's desperately seeking his wife,
3 who he's afraid, because she's depressed;
4 she's upset; she's talking about leaving him?
5 Does that sound like the actions of a man
6 who's so concerned that he spends 30 minutes?
7 It doesn't.

8 What did he not do? He didn't call any
9 of Bonnie's friends. He -- he made the trek
10 over to her parents' house but he didn't call
11 them. He didn't knock on the door. He
12 didn't go to Eveann Haim's house and call and
13 talk to her, even though he knew his own wife
14 had just been on the phone with her at
15 8:30 that night. He didn't call her
16 coworkers, didn't call her parents.

17 And then we know this about the next
18 morning. We know Mike Robson, who's worked
19 at Bernie's Tool for 30-some odd years said,
20 I was there at 7:00 o'clock, and Michael
21 called and said, I'm not coming in today.
22 Didn't say a word about Bonnie. Didn't say,
23 hey, did Bonnie show up early? Did Bonnie --
24 have you seen Bonnie's car? Nothing like
25 that.

1 And then what do we know? We know that
2 Bernie showed up at the office a little early
3 because he was getting an insurance physical.
4 And he called Mike and he said, hey, Mike can
5 I talk to Bonnie? Well, she's not here,
6 Bernie. Really, where is she? Well, she
7 left last night. Okay. End of discussion.

8 Between that call and 9:22, when he
9 learns his wife's purse is in the dumpster,
10 you don't hear him calling -- you don't hear
11 any testimony about him calling Bernie's Tool
12 and saying, hey, did Bonnie show up? That's
13 not the actions of a man who's deeply
14 concerned about his missing wife.

15 His statements -- you should compare and
16 contrast his statements before the purse was
17 discovered with his statements after the
18 purse was discovered. Before the purse was
19 discovered, he tells Mike, I'm not coming in
20 this morning, says nothing about Bonnie. He
21 tells Bernie, Bonnie's not here. She left
22 last night.

23 But then the purse is discovered. And
24 that was kind of a mistake. He wasn't
25 planning on that one. He was planning on a

1 little bit of time. Purse gets discovered.
2 And you heard from Officer Faulk. Officer
3 Faulk tells you that he talked to the
4 defendant on the phone that morning, and this
5 was an interesting piece of testimony. The
6 defendant claimed that he had been to work
7 events at the Holiday Inn up by the airport
8 but that he had to ask directions to where
9 the Red Roof Inn was. And this is a man that
10 lives on the north side and told us how he'd
11 been out scouring the streets for his wife,
12 driving up and down Dunn Avenue, but he tells
13 us that he needed directions to the Red Roof
14 Inn.

15 But he told Officer Faulk that his wife
16 was depressed; they had an argument; she left
17 around midnight. He kind of made a mistake.
18 You see, he thought that, well, she's buried,
19 so I'll tell Officer Faulk she was wearing
20 blue jeans. We know she wasn't wearing blue
21 jeans. She was wearing those pink pants.
22 And then he tells Officer Faulk -- after he
23 gets down to the hotel, they take him to the
24 police station, and while they drive him to
25 the police station, he asks this very unique

1 question, says, hey, Officer Faulk, how long
2 does it take them to find a car?

3 Now, why in the world would you be
4 asking that question? Think about the time
5 line, Bonnie's car. Nobody knew where it was
6 right then. The car wouldn't be found until
7 later that night. So why is he asking
8 Officer Faulk? Officer Faulk, how long does
9 it take them to find a car? That was his
10 plan, that they would find the car, thinking
11 maybe Bonnie left town.

12 But that's the first unique statement he
13 gives.

14 Then you heard from Sergeant Japour. On
15 January 8th, what about does he tell Sergeant
16 Japour? We've been having difficulties for a
17 month. She got home around 8:00 o'clock.
18 She put the stuff away from Walmart.
19 Yesterday, he told you he helped and did it.
20 Then she worked out on a stair stepper. And
21 you've seen the picture of the stair stepper.
22 It's in the house.

23 He then says he put Aaron -- or they put
24 Aaron to bed around 10:00 p.m. She didn't
25 have much to say. But she did say -- or at

1 least he told Sergeant Japour that she said,
2 you can keep the house. I'm going to take my
3 son and I'm going to leave.

4 And then he told Sergeant Japour, I went
5 to bed about 11:30. Went to bed. Told
6 Sergeant Japour that he's in bed when Bonnie
7 leaves. Told us that he was awake.

8 So what are his statements here? He
9 told you this story about Bonnie leaving,
10 leaving her house key, leaving her son,
11 leaving her belongings, going to abandon her
12 job. She left about 11:00 o'clock. That
13 story's just not credible. But we know that
14 he's not a reliable source of information
15 'cause of what he said about pool chemicals,
16 what he said about that new carpet that's
17 eight years old in 2000.

18 What about this? He said that -- he
19 told Sergeant Japour that Bonnie had been
20 working out on a stair climber. Yesterday,
21 he changed that. Now he says Bonnie was
22 doing her nails. But what do we know about
23 Bonnie's nails? Apparently, in addition to
24 caring about working and caring about being a
25 very good mother, Bonnie cared about her

1 nails. She cared so much that she had
2 acrylic nails. They survived the
3 decomposition process. But he said that she
4 was painting them. I submit to you, ladies
5 and gentlemen, that you don't paint acrylic
6 nails. There's a reason people go to get
7 their nails done.

8 Then he said -- he told you this story
9 about his mother coming over and him spending
10 30 minutes trying to find her.

11 So, ladies and gentlemen, I think when
12 you evaluate all of the physical evidence,
13 everything we know about Bonnie Haim, all the
14 statements he gave before she was -- her
15 purse was discovered, the statements he gave
16 after her purse was discovered and then the
17 statements he gave here, remembering, when
18 you evaluate his testimony, one of the things
19 His Honor is going to tell you you can
20 consider, whether the person has an interest
21 in the outcome of the case. The biggest
22 interest in the outcome of this case is by
23 the guy that buried his wife in his backyard.

24 So you need to weigh his testimony, and
25 you need to weigh it the way you would weigh

1 other individuals' testimonies.

2 So let me -- let me get to that final
3 element. So the last element -- and if I go
4 back to the -- just show you the element.
5 The last element, there was an unlawful
6 killing of Bonnie Haim by an act imminently
7 dangerous to another and demonstrating a
8 depraved mind without regard for human life.
9 So I'm going to spend a little bit of time.
10 The judge is going to tell you what that
11 means. This act, imminently dangerous, the
12 thing to focus on, it is -- it is an act or a
13 series of acts.

14 So let me tell you what that means. If
15 you think that he shot her, you're thinking
16 he's guilty. If you think that he strangled
17 her, you're thinking he's guilty. If you
18 think that he did either of those, you're
19 thinking he's guilty, or if you think that he
20 did both of those -- and that's very
21 possible. It's very possible that he shot
22 her and then finished it off by strangling
23 her to death. If you're thinking both of
24 those, then you're thinking he's guilty.

25 But if it's an act that a person of

1 ordinary judgment would know is reasonably
2 certain to kill or do serious bodily injury,
3 that's -- certainly shooting someone
4 qualifies. Strangling someone qualifies.

5 Is done from ill will, hatred, spite or
6 an evil intent. This is what distinguishes
7 second-degree murder from manslaughter.
8 Manslaughter is doing something and you're
9 doing it intentionally. But you're not doing
10 it out of this ill will, hatred, spite or
11 evil intent. So why is he doing things out
12 of ill will? Why is he doing things out of
13 hatred? Why is he doing things out of spite
14 or evil intent?

15 That one's pretty obvious, ladies and
16 gentlemen. His wife was looking at
17 apartments. She told him she was leaving
18 with her son, and he knew she was having an
19 affair. Those are the things, unfortunately,
20 that caused Bonnie Haim's demise.

21 And then finally, it's such of a nature
22 that the act itself indicates an indifference
23 to human life. You can use your common sense
24 here. You can say -- or you can think that
25 because Bonnie's dead, the act itself is

1 something that would cause her death. So
2 what did you hear?

3 First of all, you heard what I would
4 suggest is compelling testimony, and let's
5 talk about back in 1993. What did Aaron say?
6 You know, there were three people in that
7 house -- Michael Haim, Bonnie Haim and Aaron
8 Haim. Bonnie can still speak to us through
9 her bones, but she can't tell us what
10 happened. He can tell us what happened, but
11 he has an interest in how this case turns
12 out. And we know that he shades the truth
13 when it comes to things that make him guilty.
14 So what did Aaron say?

15 Let's talk about Aaron for a minute. He
16 was three and a half years old. Three and a
17 half years old, and he's interviewed at the
18 Child Protection Team. And it wasn't a
19 six-hour interrogation. It was a
20 child-friendly room with Miss Medders. You
21 got to observe and you can evaluate
22 Miss Medders, if you think she's an
23 interrogator or a social worker. What did
24 she tell you? Well, we gave him some food to
25 eat, McDonald's. Apparently, Aaron liked

1 McDonald's a lot because you heard he had
2 McDonald's two days in a row.

3 But what did she tell you? She said,
4 did -- did -- what happened? Well, somebody
5 hurt Mommy. And who? Who hurt your mom?
6 Daddy. Daddy hurt Mommy. Daddy hurt Mommy.
7 That's probably all you need to hear.

8 Mr. Fallis, in cross examination, he
9 attempted to elaborate that statement. Did
10 you find out when it happened? Well, he said
11 it was nighttime. Yeah. But did you find
12 out when it happened? Like, you know, did
13 you pull the calendar out in front of this
14 three-year-old? A three-year-old is --
15 three-and-a-half-year-olds, they don't have a
16 concept of days, weeks, months. Your common
17 sense tells you that a
18 three-and-a-half-year-old child is not going
19 to be able to say, well, it happened on
20 January 6th. I was sitting in the living
21 room and at 11:35 p.m. My dad shot my mom
22 and then he strangled her. No. What did he
23 say? Daddy hurt Mommy. He's not able to
24 evaluate those time frames the way Mr. Fallis
25 was suggesting.

1 The other thing Mr. Fallis asked was,
2 did you try to figure out if he was being
3 coached? Ladies and gentlemen, I don't even
4 know how you ask a three-and-a-half-year-old
5 that kind of question. Probably doesn't even
6 know what it means. But what he told
7 Miss Medders is Daddy hurt Mommy.

8 So, ladies and gentlemen, I would
9 suggest that that statement is highly
10 reliable.

11 Then you heard from some cooperating
12 individuals. And let's be frank. They are
13 cooperating. They don't have agreements with
14 the State, but they certainly hope to gain
15 something by their testimony. And His Honor
16 is going to tell you that you should weigh
17 their testimony carefully.

18 He's going to tell you that you must
19 consider the testimony of some witnesses with
20 more caution than others. For example, a
21 witness who hopes to gain more favorable
22 treatment in his or her own case may have a
23 reason to make a false statement in order to
24 strike a good bargain with the State. This
25 is particularly true when there is no other

1 evidence tending to agree with what the
2 witness says about the defendant. Okay? So
3 you need to pay attention to each of the
4 parts of this instruction.

5 It also goes on to say that while a
6 witness of that kind may be entirely truthful
7 when testifying, you should consider his
8 testimony with more caution than testimony of
9 other witnesses. But if the testimony of the
10 witness convinces you beyond a reasonable
11 doubt of the defendant's guilt or the other
12 evidence in the case does so, then you should
13 find the defendant guilty.

14 Hey, what all that's saying is weigh
15 that evidence. There's no secret that these
16 two individuals, [REDACTED] [sic] and
17 [REDACTED] [sic] came in here in jail
18 uniforms and handcuffs. They're facing
19 charges. That -- the testimony was
20 abundantly clear that they do not have an
21 agreement with the State, that they hope to
22 get some benefit as a result of the
23 testimony. And it is what it is. But let's
24 talk a little bit about them.

25 [REDACTED] he knew very little

1 details. He met the defendant one time in
2 the clinic line. And he said that the
3 defendant told him that he was mad with
4 his -- at his wife over money. He beat her
5 and he choked her. Okay? [REDACTED] had
6 no interaction whatsoever with [REDACTED]
7 [REDACTED] comes in and tells you
8 pretty much the same story. But here's
9 what's different about [REDACTED] [REDACTED]
10 knew all kinds of details about this
11 defendant's life. He knew that he
12 subsequently had a girlfriend named Charlene.
13 They talked a lot about cars. He even knew
14 that they had used luminol when they
15 processed his house initially. Now, that's
16 something that -- that's a detail that you
17 would not know unless it came from the this
18 defendant.

19 He knew his current wife's name. He
20 knew where she was from and where they lived.
21 He was close enough with the defendant where
22 he was able to record conversations.

23 So these are two very different
24 cooperating individuals, but they both said
25 the same thing, that he strangled her and he

1 buried her.

2 What you need to remember is these two
3 cooperating individuals, they did not add
4 anything to the State's charges. They
5 elaborated on them. The reason these
6 conversations took place in jail was because
7 he had already been arrested. He had been
8 arrested because at 8:30 at night, his wife
9 was crying on the phone with one of her best
10 friends. At 9:22 the next morning, her purse
11 was found in a dumpster. Her car was soon
12 located with his sandy footprint in the floor
13 mat. And then 21 years later, her remains
14 were found with what looked to be a bullet
15 wound in her hip. He was already in cuffs
16 when he made these statements.

17 Now, is it possible -- is it possible
18 that this was a shooting and a strangulation?
19 You bet it was. Look at where the bullet
20 wound is. And that's -- the other part of
21 this -- this act, you have this evidence, and
22 you have Dr. Walsh-Haney's explanation of
23 this evidence. This is the back left hip
24 bone. And she tells you that this is a
25 perimortem injury. And she went through

1 detail. I'm not going to explain it all
2 again.

3 But what she's able to tell you is
4 because she sees the radiating fractures; she
5 sees the broken edge pieces and she sees the
6 coloration are all the same as the
7 decomposition of the bone around it, it's
8 not -- it's not white like this. So it's not
9 a fresh post-death break. And it's not --
10 she sees no healing process going on, so it's
11 not a pre-death or pre-time-of-death break.
12 So this is perimortem. And that's science.
13 It's science and that's why we rely on expert
14 witnesses.

15 So is this consistent with a spent
16 .22-caliber casing being found next to her
17 body? You bet it is. Does it agree with the
18 other evidence in the case? You bet it does.

19 But is it -- is it the case that maybe
20 that gunshot wound didn't kill her, and maybe
21 he finished her off by strangling her? You
22 bet it is.

23 But the bottom line is he should not
24 benefit from his own coverup job. He
25 shouldn't do such a good job burying a body

1 that it doesn't get discovered until a
2 quarter century later and then be able to
3 say, well, you can't show what I did to her.
4 We can show what he did to her. You've got
5 competent testimony. You've got individuals
6 who he told the same story to at different
7 times who didn't know each other. And you've
8 got scientific evidence that shows what
9 happened.

10 So, ladies and gentlemen, Paul Simon
11 song says the mother and child reunion is
12 only a motion away. Justice for Bonnie Haim
13 is only a motion away. And that motion is
14 when you go back and deliberate, you're going
15 to have the judge's instructions, and you're
16 going to have a verdict form. And I brought
17 a copy. That motion we're asking you to take
18 is to check that he's guilty of second-degree
19 murder.

20 That will be my last time talking with
21 you. But Mr. Mizrahi will have some
22 follow-up comments. Thank you.

23 THE COURT: All right. Let's take a
24 short comfort break before we continue on
25 with the arguments.

1 Don't even now consider the case or talk
2 about it amongst yourselves because we're not
3 done. But we're getting close.

4 We'll see you back at 10:40.

5 (Jury excused.)

6 THE COURT: All right. Let the record
7 reflect the jury has left the courtroom.

8 My plan is to hear from Mr. Fallis and
9 then Mr. Mizrahi. Depending how long that
10 takes, we may go straight to the charge
11 conference. We may take another short break
12 and then come back and charge them and send
13 them back. They've already ordered lunch.
14 That's the plan.

15 Okay. See you at 10:40.

16 (Short recess.)

17 (Defendant present.)

18 THE COURT: Ready for the jury?

19 MR. FALLIS: Yes, sir.

20 THE COURT: Bring in the jury.

21 (Jury present.)

22 THE COURT: Welcome back, folks. Please
23 take your seats.

24 Continue on with the trial. We're going
25 to hear from the defense and their closing

1 argument.

2 Mr. Fallis, you may give your closing.

3 MR. FALLIS: Thank you, Your Honor. May
4 it please the Court?

5 Counsel.

6 MR. MIZRAHI: Yes, sir.

7 MR. FALLIS: Good morning, ladies and
8 gentlemen.

9 Michael Haim is not guilty. That's not
10 what -- not because I say he's not. Because
11 that's what the law is in this case. We'll
12 go over the law in a little bit, and I'll
13 tell you why and how you will find reasonable
14 doubt, a lot of reasonable doubt, in this
15 case.

16 But what I want to do, while it's still
17 fresh in your minds and my mind, is to go
18 over some of the things that the -- that
19 Mr. Heavener just told you, which I suggest
20 to you are completely inaccurate. Let me
21 tell you what I'm talking about.

22 He told you now that, quote, she was
23 probably shot and strangled. Now, I don't
24 know if you were listening to Mr. Mizrahi in
25 his opening statement. And he told you right

1 up front, ladies and gentlemen, we cannot
2 prove beyond a reasonable doubt that Bonnie
3 Haim was shot. I hope you-all recall that
4 and hopefully, you're going to have it in
5 your notes. But he told you that right in
6 opening.

7 And now they're coming back and telling
8 you, quote, she was maybe shot. I have no
9 idea why they're making that argument, how
10 they can make that argument, when they
11 already told you they can't prove that.

12 As a matter of fact, the two experts you
13 heard from, Haney, Dr. Haney, and the ME told
14 you they can't tell you that, quote, that is
15 a bullet hole. They cannot tell you that. I
16 don't know how they can argue that. I just
17 want to get that straight first before we
18 start talking about any other possibilities
19 and some of the other evidence that you
20 heard.

21 I always ask bottom line. In the end, I
22 ask -- say let's get to the bottom line
23 because there's a whole bunch of trees, and
24 sometimes we need to get back to the forest.
25 I said, bottom line, can you say, to

1 Miss Haney, that that is a bullet shot? No.
2 But I can say that it is not consistent with
3 it. She started using some terms of art.
4 Okay?

5 And truthfully, I mean, she was a great,
6 great witness because that's what she does.
7 And she was very well practiced and --
8 however, she did tell you that she works --
9 testifies strictly for law enforcement. And
10 I suggest to you, there's some bias there.
11 And she will -- if I tell you, quote, a lie,
12 she could stretch the truth a little. Okay?
13 'Cause that's what she's wanting to do. And
14 she said, perfect example, that I cannot tell
15 you that is, quote, a bullet hole.

16 Now, they tell you, well, that .22
17 casing, that absolutely means nothing.
18 Because we don't really know where it came
19 from, that whole -- and how old it was. And
20 they try to put it -- a piece of metal when
21 their own witness says, that's not lead; that
22 doesn't come to a bullet.

23 But not only that, if you look at that
24 ischium -- and by the way, the ischium is not
25 the hip bone, as you were just told. Ischium

1 is in the pelvic area. Even Haney said,
2 well, it's up here in the hip bone. It's
3 not. You heard testimony from the ME,
4 telling you it's the pelvic area, not the hip
5 bone.

6 In any event, a .22 is the smallest
7 caliber. I think that's their -- what you
8 heard from -- the FDLE told you as well.

9 And he only had a .22 rifle. Now, if he
10 were going to shoot his wife -- and he had
11 handguns. You heard about that, one handgun.
12 You think he was going to go get a rifle,
13 a .22, which is the least -- the smallest
14 caliber you could possibly use and intend to
15 kill somebody with that? I mean, that's
16 really stretching it.

17 But you know what? They're going to
18 stretch a lot because they don't have the
19 evidence that they need to prove this case
20 beyond a reasonable doubt. They want you to
21 make inferences that are just bizarre. And I
22 think that's one of them.

23 Another inference. Okay? They're
24 trying to tell you -- I mean, really stretch.
25 Let me get to these keys because this is

1 really bothering me. Okay? They showed you
2 a picture of the contents of the purse that
3 they laid out, not as it was at the -- at the
4 hotel that night. No. It was given to
5 Michael Haim. You-all heard that. He took
6 it home. And then Hayes, I believe it was,
7 went to the house and said, well, you know,
8 we need -- we need the key for Bonnie's car.
9 And he said, there's one on the refrigerator.
10 That's the one that t came from the purse.
11 And there was one on the refrigerator, and
12 that's the extra valet spare key, whatever
13 you want to call it. That's the one that
14 appears in the picture.

15 So it was put in the purse, and then he
16 delivered back to wherever he goes. And then
17 they laid it all out. This key was never in
18 the purse at the Red Roof Inn, and that's
19 what they're telling you it was, that the
20 testimony is that it's not. It is absolutely
21 not. This key came from the refrigerator,
22 was put in the purse either by Mr. Haim or
23 Hayes and brought back to FDLE. Then they
24 took that picture. There's no evidence that
25 this was in the purse at the time.

1 Now, this is the real mystery. Okay?
2 And they have not explained this. They said,
3 this is Bonnie keys. Okay? And they implied
4 that Michael Haim had them. That is totally,
5 totally inaccurate. We know where these keys
6 came from. Their own -- McCallum, you
7 remember McCallum? He's the one who got the
8 call from Japour. Go over to CPT and see
9 Miss Pasciuto -- that's Bonnie mother -- and
10 see if she has a set of keys. Now, what are
11 you doing?

12 As a matter of fact, that's the day they
13 went down at CPT. He went. He went --
14 first, he went to Miss Pasciuto's house, and
15 he told her, we're going to go down to CPT.
16 Then he goes to Carol Haim's home. Eveann
17 was there. And she had her own Jeep. Two
18 separate places. He told you the address
19 where Pasciuto lives. He went there. He
20 spoke to Patty Pasciuto. And then after
21 that, he gets a page while he's at CPT and
22 asks, can you get the keys from
23 Miss Pasciuto? See if she has them.

24 And he does. That's where these keys
25 came from. They didn't come from Michael

1 Haim. You have testimony and that testimony
2 was under oath from McCallum. Yeah, I did.
3 So he knew where Miss Pasciuto was 'cause he
4 had just been to her home. There was no
5 confusion there. That's where these keys
6 come from. They're trying to tell you they
7 came from Bonnie Haim, when you heard that
8 testimony yourself, where they came from.
9 Why would they do that?

10 Once again, they do not have what it
11 takes to make this case, so they've got to
12 bring in inferences that don't exist. You
13 will hear, if there's any conflict in the
14 evidence, that's reasonable doubt. I just
15 gave you two examples right now. There are a
16 lot more examples to give you on the issue of
17 reasonable doubt.

18 Hopefully -- and I -- this is not the
19 way I wanted to start my closing argument
20 but, I couldn't let that sit when you,
21 yourselves, were witnesses as to what
22 happened here in this courtroom. They can
23 have their own opinions, but they can't make
24 up their own facts. Okay? Opinion or maybe
25 they wish it was that way, but that's not the

1 way it happen, absolutely not. The way it
2 happened is the way you saw it.

3 Now, there was also a big deal made --
4 and you had it on the big screen. But I
5 like -- sometimes I'm maybe old-fashioned. I
6 touch things -- about what a coverup, putting
7 chlorine on that -- they keep calling it a
8 "pallet." Bernie Haim told you it was made
9 of pressure -- that treated wood and stuff
10 like that. It wasn't a pallet that you see,
11 things at the grocery store or Home Depot or
12 something. No. It was built in, laid in,
13 whatever you want to call it. And it was
14 there from 1987. All right?

15 Now, they're saying that this pallet,
16 you know, was so easily movable. No. Bernie
17 himself said, you would have to pry it. And
18 that makes sense. It's been there for how
19 many years? '87 to -- to '90, at least -- at
20 least six, seven years or even -- even
21 longer. You had to pry it out.

22 And not only that, what's really
23 interesting is -- now this was taken, don't
24 forget, on the search on the 7th, I believe
25 it was. There were two searches. Okay?

1 Either the 7th or could have been the 8th.
2 But in any event, if you look really closely,
3 you'll see -- no. I'm sorry. This was taken
4 in March. You'll see the grass coming
5 through the pallets, which tell you they've
6 been there. This, quote, pallet -- we'll
7 call it a "pallet" or a "deck," whatever you
8 want to call it hadn't been moved, or else
9 you wouldn't have grass growing up out of it.
10 Don't forget, this is January in
11 Jacksonville. We're not in Miami. We're not
12 in California. We're in Jacksonville in
13 January. Grass doesn't grow that fast. Your
14 common sense tells you that. They keep
15 telling you to use your common sense. Please
16 use your common sense. More reasonable
17 doubt.

18 Let me give you some more. Mr. Heavener
19 made a big, big deal about this shoe print.
20 Now, I even got their -- actually, Mr. Hamm
21 to agree that he could not conclusively say
22 that is, in fact, Mr. Haim's shoe, the exact
23 shoe. He even said -- he was quite honest.
24 No. He says, it had the same outer
25 characteristics. But you want to know

1 something? It doesn't matter. A husband's
2 footprints in his wife's vehicle -- we call
3 it his wife's vehicle, common vehicle. But
4 in the front and in the back is not a big
5 deal. I don't know who -- family that has a
6 car would have any issue in finding any --
7 their own footprints in their spouse's car.
8 It happens all the time. You're in there.
9 You leave footprints.

10 But this is another thing they try to
11 tell you. Okay? I thought they were trying
12 to imply that this had to have been put on on
13 January -- excuse me -- on January 6th or
14 7th. No, it didn't. Could have been there
15 for a week. I asked the last time he drove.
16 I know for sure I drove New Year's. We were
17 over at Bernie's house. We had a barbecue.
18 I think he mentioned that he had played
19 basketball there.

20 And there's sand there, right? They're
21 trying to tell you that that impression came
22 from somebody who was, quote, digging a hole
23 with mud. Now, you saw it from these
24 pictures. That's not a sandy hole. That's
25 mud. If somebody was digging a home and they

1 got mud on their shoes, you're not going to
2 find sand. It's a whole different thing.
3 Sand and dirt leave different impressions.
4 And this is sand. So it's not -- it's more
5 logical -- okay? -- that it didn't come from
6 his backyard.

7 But besides, they went back the next day
8 and they said, well, look at those chlorine
9 bottles, you didn't see any shovel there. I
10 don't recall seeing a shovel even in the
11 shed. If somebody just dug a hole, they're
12 not going to dig with their hands. They're
13 going to dig with a shovel. There was no
14 shovel there.

15 But that's how far they want you to go
16 to stretch it, take whatever small evidence
17 and see it a different way than it really
18 exists and that's what's happening here.
19 Because they know unless they can get you to
20 think that way, they won't get a conviction.
21 So they'll take anything and stretch it to
22 get that conviction 'cause that's what --
23 that's what they feel their job is. So once
24 again, all of a sudden now, even after an
25 admission that we can't prove a shooting --

1 let's say this was a shooting here. Okay?
2 Because she didn't say definitely it wasn't,
3 but she did say, I definitely cannot say it
4 was. Okay? And she used the term of art
5 "isn't inconsistent with" or something like
6 that. All right? And experts do that.

7 But in any event I asked the bottom
8 line. No, I cannot.

9 And the ME, medical examiner, Dr. Stroh,
10 says, nope, I cannot tell you that's the
11 cause of death. And that's the whole thing
12 in this case. Okay? This actually is a
13 mystery to a certain degree, an unsolved one.
14 But it's not one that we, meaning the
15 defense, has to solve. If it's solvable,
16 they're the ones that have to solve it and to
17 the extent beyond a reasonable doubt, not us.
18 And they haven't done that. They can't tell
19 you how she died for sure. They're going to
20 guess.

21 Unless you want to believe the two great
22 Americans that took that stand. Ladies and
23 gentlemen, I suggest to you that was
24 insulting. When you have those two people
25 come in here from jail -- let's take

1 [REDACTED]. [REDACTED] told you he
2 meets him once while they're in line or in a
3 holding cell, going for medical. And
4 Mr. Haim, who doesn't know him from Adam --
5 okay? -- decides that he's going to, quote,
6 confess to the murder of his wife. He has
7 never told anybody in 20 years he ever did
8 anything like that 'cause he didn't do it.
9 But he's going to tell this complete
10 stranger, who he doesn't know, oh, by the
11 way, I killed my wife. You know something?
12 They didn't get it right either.

13 And what did you hear? Both those men
14 have a history of either fabricating and
15 selling evidence and continuing to fabricate
16 and sell evidence to save themselves and it's
17 worked for them. Whether they were being
18 truthful or not, I suggest to you
19 absolutely not.

20 And the second guy, he was really
21 smooth. Okay? [REDACTED] he was the one who
22 said he was Good Samaritan and he was afraid.
23 He was afraid of my client. Did you see him?
24 He didn't want to be in the same cell because
25 he was afraid of him. Please, what an act.

1 But he didn't get it right. And he admitted,
2 he was getting the media. Anybody can read
3 the media and get certain facts.

4 And to make himself credible to the
5 State, he has to tell them something about
6 the case. Okay? But what he told them about
7 the case was completely wrong. Some of it
8 was fabricated. What did he say? The body
9 was found under the pool. Well, we know that
10 is not true. But that's what the press at
11 that time wrote, so he took that bit of
12 information. I've got this and he had the
13 papers with him in the cell that -- that he
14 was describing. He was reading them. Yeah,
15 under the pool.

16 And then he says that he -- let me make
17 sure I got it right 'cause I remember him
18 saying that -- like I said, I was going to
19 use them, but I have to go back right now.
20 So I'll do it in the order they did. Okay?

21 Just a moment, please.

22 And then he says that my client told him
23 they luminol'd the whole garage. Also, we
24 know he doesn't have a garage. But that was
25 also something that he picked up that was

1 incorrectly reported.

2 So you understand what he's doing? He's
3 taking some bit of information to convince
4 them that he knows something about this case
5 to make himself credible to them. Do they
6 care? I don't think so. That's why I
7 found -- and what was his history? He's
8 another one looking at life. And he was --
9 at one time, he was looking at life and he
10 got five years. Because he told you -- well,
11 the first guy told you he might have worked,
12 like, eight or ten cases. This guy told you
13 he's worked, I think, four or five. He sold
14 his testimony on lives for his own benefit.
15 On and on and on.

16 You know, why -- if you're going to
17 measure their credibility, ladies and
18 gentlemen, I'll give you a way how to do
19 this. Okay? You met those two men here.
20 Think about your most valuable possession,
21 cherished possession. Would you trust that
22 to them, give them yours to hold, one of your
23 most valuable possessions, no matter what it
24 is? I suggest after listening to their
25 history and watching them that would never

1 happen.

2 By the same token, ladies and gentlemen,
3 you cannot -- if you won't let them hold your
4 special possession, you cannot let them
5 have -- convince you of my client's life,
6 which is -- which is something you need to
7 think about. If they're not good enough to
8 hold whatever possession, they're not good
9 enough to be believed for my client's life.
10 That's something you cannot allow to happen.

11 So I suggest to you you have to take
12 that testimony and just toss it. There's
13 absolutely no -- no credibility to it.

14 One guy said, well, he didn't shoot her,
15 because there would be blood. That's -- he
16 told you my client said that. So I strangled
17 her. Okay. Now, the State's telling you
18 that she -- she was probably shot too and
19 strangled. Come on. They want to have --
20 they want to have it every way they can but
21 they're not allowed to. The facts and the
22 truth speak to themselves. You can't -- you
23 can't allow yourself to be misled here,
24 ladies and gentlemen, by anybody, them, those
25 witnesses or even the State. I suggest to

1 you that is what's happening before your
2 eyes.

3 Once again, we have some more conflict
4 in the evidence. Okay? And I want to try to
5 go through it, if I can, in some orderly
6 manner. Let's go through lay witnesses.
7 Okay?

8 Eveann gets a call from Bonnie that
9 morning. That's uncontroverted. And she
10 says Bonnie was crying. Well, or appeared to
11 have been crying. Unfortunately, that also
12 there's conflict in because Bernie Haim, he's
13 the one who answered the phone. And as you
14 recall, he had told Hinson way back when and
15 he even said he had to say under oath in the
16 depo, she seemed okay. And he had -- he
17 didn't just hand the phone over. They had a
18 conversation. What are you doing? Well,
19 we're eating dinner. He said, well, have
20 your dinner and call me after dinner. No.
21 You can speak to her now. If she was crying,
22 Bernie Haim would have picked it up. Ladies
23 and gentlemen, I suggest she was not crying
24 when she made that call and saying she wasn't
25 coming.

1 Okay. She said Michael and she were
2 having a discussion. Well, they were. Okay?
3 But that wasn't a heated discussion,
4 argument, something like that. It's
5 something that was brewing.

6 And you heard what set Miss Haim off.
7 When Michael told her that he'd been talking
8 to her parents about their marriage and the
9 difficulties in their marriage, she got very
10 annoyed, very annoyed, and that's when she
11 decided to just get up and get out. I don't
12 suggest she was planning on going away for
13 months or weeks or anything else like that,
14 no. I suggest to you she was going to go --
15 she was aggravated. Who knows? She just
16 wanted to blow off some steam. She got in
17 the car and she left.

18 And she had her keys with her, not the
19 ones from the refrigerator. Her keys? I
20 don't know but they -- somehow they wound up
21 in Miss Pasciuto -- without a doubt,
22 Miss Pasciuto's purse, although even Haim
23 told you that Carol Haim gave the keys to
24 McCallum. McCallum didn't say that.

25 So these keys are still a mystery that

1 hasn't been solved. I suggest to you there
2 is probably a third set of keys somewhere and
3 God only knows where. And whoever drove that
4 vehicle probably has them or threw them away.
5 Now, were they in the dumpster with that
6 purse? We know they weren't in the dumpster
7 in the purse. 'Cause when that purse was
8 taken out of the dumpster, there was no keys
9 in it. Maybe they were thrown in the
10 dumpster as well and they were never
11 recovered.

12 Don't forget, I asked Miller, who was
13 out there at the Red Roof Inn, if -- when you
14 emptied the dumpster, looking for evidence,
15 what did you do? Well, we took out all those
16 bags, and we just threw them out and put them
17 into another dumpster, whatever. Did you
18 open the bags? No. They were just looking
19 for a body. Okay? That's what they are
20 looking for. Well, who knows?

21 Maybe those keys were in there too, the
22 third set. 'Cause obviously had to be a
23 third set. 'Cause Miss Pasciuto had one set,
24 and the only other set, which is not used
25 every day, which she's trying to tell you

1 that Michael Haim somehow or another had
2 the -- had the original keys. Who knows?
3 Those keys were given to Hayes when he came
4 to the house.

5 Now, another thing I find a little
6 confusing and also called "stretching it" is
7 the fact that they're telling you -- oh, and
8 also bringing in this woman who came in
9 here -- I think her name was Abbey -- who
10 supposedly six or eight years later -- I
11 forget when it was -- talks to Hinson and
12 says -- or to someone and says, I believe
13 that he had scratches on his arms. What
14 brought that in? Did you listen to her cross
15 examination? She says -- at the end, she
16 says, no, I can't say it was scratches. I
17 mean scratches are scratches. Could have
18 been abrasions. I don't know. I don't know.
19 I don't remember.

20 But that's how weak this case is.
21 They've got to stretch so far to bring
22 somebody in here to tell you something they
23 can't swear to. Everybody knows what
24 scratches are. And besides that, you
25 remember for two days or whatever, Michael

1 Haim was with 10, 20 police officers around.
2 Don't you think if he had any kind of
3 scratches that that would be noticeable,
4 especially people that are trained for that
5 kind of thing? So we know that's not true.
6 Why was it there? Because they know they
7 don't have what it takes. So they'll throw
8 it all in there. That is other testimony
9 that is not to be believed and to be
10 factored.

11 What happened after that? Okay? Now,
12 we know Michael needed to get directions to
13 the Red Roof Inn. You heard testimony to
14 that effect. We found your wife's purse.
15 Where is it? Where is the Red Roof Inn?
16 Now, if somebody had been there the night
17 before, they wouldn't need directions, would
18 they? So you've got -- he needed directions
19 to Red Roof Inn.

20 Now, let's talk about Miss Medders. You
21 heard Daddy hurt Mommy; Daddy hurt Mommy.
22 Now, I don't know what context that came in
23 or when it came in, but that poor child was
24 there for about three and a half hours, maybe
25 up to six hours as Carol Haim told you

1 because they were there at noon, left when it
2 got dark. Okay? And we don't know how that
3 came in, in what part of that five, six
4 hours. Did they say it at the end, how the
5 interview was done?

6 I asked her and I said, you know, there
7 are certain protocols when you're
8 interviewing a child that you have to follow.
9 One of them, if anybody's had any experience,
10 you know you have to determine whether,
11 number one, a child knows the truth from a
12 lie or falsity. And I asked if she did that.
13 She goes, no. Okay. I said, well, you don't
14 know how to do -- I said, wait a minute.
15 Wouldn't you -- if you took a pen up and say,
16 is this yellow? If I tell you this is yellow
17 and it was actually black, would I be telling
18 you a truth or a lie? Well, I guess you
19 could but we didn't do that.

20 So we don't know. Really, nothing
21 videoed. Now, that would be pretty good,
22 wouldn't it, if we had that video and how
23 they got -- supposedly got that statement
24 about Daddy hurt Mommy?

25 I asked her, well, did he tell you,

1 quote, when -- how Daddy hurt Mommy or when
2 Daddy hurt Mommy? Nighttime. Who knows the
3 contents of that? We're taking about a
4 three-and-a-half-year-old child. Okay?
5 Wouldn't it help -- and actually, they're
6 supposed to be able to get those kind of
7 details without leading questions or
8 open-ended questions. She didn't tell you
9 how she got that. We have no idea how that
10 came out and in what context. Okay? Did
11 Daddy hurt Mommy's feelings? Did Daddy push
12 Mommy? I mean, who knows? Okay?

13 The other thing I said, well, did you
14 try to determine if anybody coached the
15 child? 'Cause don't forget, Eveann Haim
16 who -- and Bernie Haim accused Michael of
17 killing Bonnie that same day. And Eveann
18 Haim had been with that child. And who knows
19 what she might have told the child, and she
20 was at CPT as well. Who knows? You tell a
21 three-year-old, Daddy -- Daddy hurt Mommy;
22 Daddy hurt Mommy. And after nearly three
23 hours of third-degree drilling, he might
24 repeat that. Maybe he was told that Daddy
25 hurt Mommy, and then when Brenda Medders got

1 around to it, then he says, yeah, Daddy hurt
2 Mommy. But then again, that statement,
3 without more, telling you how Daddy hurt
4 Mommy, if he actually did, or when Daddy hurt
5 Mommy is of no use. It's of no use.

6 So you have to be very, very skeptical
7 in weighing that bit of evidence, which they
8 made a...

9 Now, let's talk about some of the
10 testimony from some of their police officer
11 witnesses. There's Japour. He was there on
12 the consent search. Okay? And he said they
13 did a thorough search. At one time, he said
14 that. And it was a consent search. Michael
15 said, yeah, go ahead, search. There's
16 nothing to find here. Search. Wouldn't have
17 to get a warrant. And they did. They went
18 through -- all through the house. Of course,
19 there's no evidence found.

20 And then he tells you another thing.
21 Okay? The dogs were called out. Now, he
22 said that way back when. Now they come in
23 and they say, we're not so sure the dogs were
24 called out. And that's just Japour.

25 And you've got others saying they had

1 the dogs out there. Detective Hinson said,
2 we ran -- under oath, said, we did a thorough
3 search. I was on my hand and knees. It was
4 a thorough search. Now when it comes to
5 trial, they're all using the term a "cursory
6 search." There's a big difference between a
7 cursory search and a thorough search. And he
8 said under oath not only that we brought the
9 dogs, plural, and we went -- ran that place
10 inside and out. Okay?

11 Then he gets on the stand in the State's
12 case, saying, well, we only had one dog and
13 we didn't use that dog. I made a mistake.
14 Really? At one time, for sure, there were
15 dogs.

16 And not only that, they ran the most
17 sophisticated system they had, the infrared,
18 several times over that property with no
19 results. That was state of the art back in
20 '93.

21 Dogs have always been around. Well, we
22 didn't find them too successful. Well, why
23 are they used all over the country and all
24 over the world? You know darn well they're
25 of use. But he pooh-poohed that too. From

1 prior statements to trial statements, things
2 changed. 'Cause they know they did a
3 thorough search.

4 Then they got that letter, late '95,
5 '96, saying, get to the house. The body is
6 buried in the back. Take the dog.

7 Hinson and the FDLE guy, Allen Miller,
8 had this conversation about this letter.
9 They said, what, are you kidding? Please.
10 This is a mutual conversation they had.
11 Here's the letter. It says Bonnie Haim,
12 2439 Dolphin Avenue. The body is buried in
13 the yard. Bring a dog with you. Hurry.

14 He said, wait a minute. I'm not going
15 to go back there. We were there with dogs --
16 that's their conversation -- infrared and
17 there was nothing there. So they disregarded
18 this.

19 And I suggest to you, ladies and
20 gentlemen, whoever sent this letter,
21 anonymous letter, knew the body was there.
22 Now, when the body was put there, it had to
23 have been placed there after '93, probably
24 closer to '96. Where it was, we don't know.
25 They're trying to tell you it was there all

1 the time. Ladies and gentlemen, that body
2 was not there in '93.

3 And even -- and we got both the ME,
4 Dr. Stroh, and even their very talented
5 witness, Miss Haney, to admit after -- on
6 cross examination, of course, not on direct
7 but on cross examination. If you remember,
8 Miss Warren told you in her opening, please
9 listen to cross examination 'cause that's
10 just as important or maybe more important --
11 okay? -- than direct. Direct examination's
12 first. Cross examination, nobody knows
13 what's coming.

14 They both said, we cannot rule out that
15 that is the -- that that is not the original
16 burial spot. 'Cause they both said after
17 cross examination, they cannot conclusively
18 say that that is a bullet. And that was the
19 bottom line again. Let's deal with the
20 bottom line and not what if, could. We're
21 going to deal with bottom line and that's the
22 bottom line. And that's what you should take
23 with you as far as evidence in the back.

24 Another thing, they try to make a big
25 deal about Michael Haim not joining them in

1 their searches. These are searches that were
2 done by Bernie and Eveann Haim and some of
3 the Sheriff's Office. First of all, on cross
4 examination, again, he was never invited or
5 notified. So they're trying to say he didn't
6 care, that he wasn't out on the searches.
7 Well, we know that's not true. We know he
8 wasn't invited because in their minds, he was
9 the killer. Either they didn't want him
10 around or whatever the purpose was. Okay?

11 But we also found out -- okay? --
12 from -- from Liz Peak -- that's Bonnie
13 sister -- that, in fact -- and we have
14 picture of it -- Michael was out searching
15 with his father-in-law and some other people.
16 Okay? That was even on video, on camera and
17 she saw that. She acknowledged it.

18 So they're saying he didn't do anything
19 with searches. He was. And he testified to
20 that too as well as Miss Peak telling you,
21 yeah, he was out on the searches -- okay? --
22 not on their searches but on their own. But
23 they're trying to tell you that this man
24 didn't go on a search. That didn't work. He
25 did go but he didn't go with them.

1 Why did they do that, say he didn't go
2 on searches? 'Cause not knowing that we were
3 going to come back and counter that 'cause
4 they wanted you to believe that he didn't
5 care. Okay? We know that's not true. He
6 was out there searching.

7 Now, Justice came in here, another one.
8 Okay? And I don't know if you took -- you
9 took good notes. He was in homicide and he
10 told you he didn't smell, quote, any bleach
11 or any chlorine. Ladies and gentlemen,
12 those -- that picture -- let me just get it
13 up for you right now. I think I can -- of
14 the clothing and the towels and the rug, the
15 area rug, you would call it, that was used in
16 the kitchen -- I believe what they were using
17 as a hamper, a laundry mat. That's where you
18 put dirty things. Okay? They were right by
19 the laundry room, where they do their
20 laundry. The other towels were right next to
21 the master bath. That's not unusual.
22 There's no -- and if a laundry room, a
23 laundry area, smells of bleach, that means
24 people were using bleach in there, not
25 necessarily using bleach to cover up any

1 evidence. That -- that didn't happen.
2 That's a natural thing. When you walk in
3 your house from the garage, some people --
4 like I have, the laundry room's right there.
5 You smell bleach before you even get into the
6 kitchen or wherever it is. And that's
7 common. They're trying to make that sound
8 like it's evil or something like that,
9 something out of the ordinary. No. It is in
10 the ordinary.

11 Ladies and gentlemen, another thing
12 that's going on here -- okay? -- that we need
13 to deal with. Because this also gives you a
14 conflict in the evidence. Now, you saw --
15 and I want to clear it up, for sure. When
16 that -- when that backhoe, whatever it was
17 was used and they uncovered the grave, there
18 was, quote, brick and some cement on top.
19 Okay? That's not something that Michael Haim
20 put on there. That was something that a
21 later tenant put on there when they --

22 MR. MIZRAHI: Objection, arguing facts
23 not in evidence, Your Honor.

24 MR. FALLIS: Michael Haim testified.

25 THE COURT: Ladies and gentlemen, you're

1 the finders of fact. So that's your
2 responsibility to rely on your own
3 recollection. Listen to the lawyers. Of
4 course, this is argument. But in the end,
5 you have to decide the facts.

6 You may continue, Mr. Fallis.

7 MR. FALLIS: Michael Haim testified to
8 you. That's evidence. He didn't do that.
9 It wasn't a condition as you saw it before.
10 Okay? So that is, in fact, in evidence.

11 Now, this poncho. We know from the
12 pictures they showed you of the FDLE truck
13 with the raindrops on it, it was raining that
14 night and the night before. They told you
15 Tim Deegan told you it was showers on and
16 off. That would be logical for somebody to
17 wear a rain poncho.

18 This Mickey Mouse rain poncho. And if
19 Bonnie left the house -- because Michael
20 wasn't really sure when she left. He thought
21 she had jeans on. Maybe she had the
22 sweatpants on. We don't know. But it
23 doesn't matter because he wasn't paying a lot
24 of attention to what she was wearing. All
25 right? However, a rain poncho, when

1 somebody's leaving and it's raining, that's
2 what they're going to wear. They're not
3 going to wear a rain poncho working out in
4 the house. They're going to wear a rain
5 poncho if they're going out and it's raining.
6 That makes more sense.

7 Now, we already discussed the bullet
8 hole. So alleged bullet hole -- okay? --
9 which is not a bullet hole 'cause they could
10 not tell you that. Okay?

11 We discussed the laundry, how odd it is
12 to have a basket of laundry that may have a
13 bleach smell to it by the laundry room.

14 All right. Now, this Miss Bruton, that
15 is the lady who tells you that there was a
16 second lease that said no digging. Well, I
17 don't know what you think about her
18 testimony, ladies and gentlemen, but this is
19 a lady who also sees ghosts -- you
20 remember? -- candles being lit on their own.
21 She mentioned one of her friends, relatives
22 or whatever sat on Aaron bed and got up and
23 he was blood-soaked. The bed was
24 blood-soaked. Then he went back and the
25 blood was gone.

1 Ladies and gentlemen, I don't know who
2 believes in the paranormal -- oh, and ghosts
3 walking through the house with a shovel. I
4 don't know what your opinion is of the
5 paranormal. Okay? But you need to weigh her
6 testimony and weigh it -- weigh it -- in that
7 in that vein.

8 I mean, she's swearing to you there is,
9 quote, another lease. Okay? This is the
10 only lease she acknowledges. It's the same
11 one. The prosecutor made a big deal about
12 not having the dogs in the house when they're
13 not home, that they should keep them in the
14 rear bedroom. And he told you why. He said
15 the carpeting is like new, that white
16 carpeting they had throughout the house. And
17 these people didn't have a dog. They had a
18 zoo. They had a -- I think she testified
19 they had lizards, snake, who knows, all that
20 stuff. And he didn't want these dogs being
21 un-minded and maybe soiling that. If they're
22 going to have an accident, let it happen in
23 the back room where the carpet is raggedy.
24 He said it was all raggedy. This was fairly,
25 in his mind, new. It might have been a few

1 years old but it was like new, pristine.

2 So what is the big deal? They're trying
3 to imply they didn't want the dogs outside
4 because they may be digging up graves or who
5 knows. Ladies and gentlemen, the dogs -- no
6 restrictions on the dogs going outside. They
7 just don't want them running around the house
8 when nobody's home and soiling -- and soiling
9 the house.

10 But this is where they want you to jump.
11 They need you to jump and accept this kind of
12 stuff, throw it all out there. No. They've
13 got to prove this case, ladies and gentlemen.
14 They've got to -- or solve this mystery
15 beyond a reasonable doubt with competent
16 evidence, and they've got to do it in such a
17 way that you have absolutely no reasonable
18 doubt that it happened this way. But they're
19 throwing all this out, innuendo,
20 hypotheticals that just don't exist and
21 throughout their whole case.

22 Once again, the next witness they
23 brought up, that was Miller from FDLE. Now,
24 he's the one who took out the -- the mat,
25 took a picture of it, the one that, you know,

1 makes it very incriminating to find your --
2 your spouse's footprints in your car --
3 okay? -- when they had been in the car.

4 Now, the fact is if -- even if those
5 footprints were put there on the 1st or maybe
6 even on the 4th -- oh, and by the way,
7 another thing you just heard -- okay? -- from
8 Mr. Heavener was that Michael said that he
9 drove the car to the funeral in Georgia. You
10 know that's absolutely not true. He never
11 said that. He said he went to the funeral in
12 Georgia with Bernie Haim and they took
13 Bernie's car. So that's just an untruth. He
14 might have got it wrong. I'm not saying he's
15 lying, just saying he got it wrong. Michael
16 never said he drove the car. He told you
17 Bernie Haim. We went with Beaver Haim in
18 their car to -- to the funeral. I don't know
19 where he got that from, that Michael said
20 that. He did not. He said, I can remember
21 for sure the last time I drove it was New
22 Year's. All right?

23 That was a few days ago. The car hadn't
24 been cleaned or gone to a car wash or
25 whatever. Footprints would still be on

1 there. And those footprints, by the way,
2 it's not footprints. It's sneaker prints.
3 It's just the heel. It's not the whole --
4 and he said that. It's not the whole shoe.
5 It's just the heel. They said, well, Bonnie
6 had to have driven it, you know, four, five,
7 six times or whatever he said. So what? She
8 can drive it, doesn't mean she's going to
9 disturb the heel print. She's not going to
10 step on the heel print. And obviously, she
11 was only five-one. My client is probably
12 around five-ten, five-eleven. So they're
13 going to be sitting in different positions.
14 So the way she sat in that vehicle, wasn't
15 disturbed, that print that goes on there in
16 January 1st. They're trying to imply that's
17 the last person to be in there. You heard no
18 evidence of that, none whatsoever. If they
19 had it, you would have heard about it.

20 But they want you to jump to that
21 conclusion. You're not permitted to jump to
22 that conclusion. Just they want you to bring
23 other things in that don't exist.

24 Now, there's Watson who did the
25 excavation. He said it was -- it took him a

1 few days to do it. Okay? Haney just
2 happened to do what she said was a fly-by at
3 that time, and she said, oh, my gosh. She
4 saw what was going on. And I asked her,
5 what -- you know, what did you think about
6 the way it was being excavated? And you
7 remember the face she made and she rolled her
8 eyes? And then we went into it, why -- well,
9 I don't mean went into argument, just went to
10 why she didn't think it was right.

11 Because they were supposed to -- she
12 suggested they -- they do the pedestal and
13 they did that. But I don't think he had much
14 experience. And not only that, he didn't do
15 the soil correctly because had he taken the
16 soil samples as he went down, as Haney told
17 you, that would give them an indication,
18 number one, how long the body had been there,
19 number two, also would be able to tell you
20 if, in fact, that was a primary or secondary
21 or tertiary grave.

22 But they messed it up. Not only did
23 they mess it up, the bones got broken up.
24 They were not in anatomical order. And that
25 also -- also ruins the final analysis as to

1 whether or not there was a primary or
2 secondary or tertiary.

3 So that part of the investigation was
4 wrong, but they still try to make the best of
5 it. But it is what it is. Okay? Can't go
6 back and undo it.

7 Then they brought Curt Jolicoeur. Now,
8 ladies and gentlemen, I'm not here to tell
9 you Curt Jolicoeur is the one who killed
10 Bonnie. I don't know. I don't know who did.
11 I don't know who -- I don't know any -- you
12 don't -- no one here knows who did. We don't
13 know how she died technically. Okay?

14 But we brought that up. And he also was
15 not very forthright. He said they had maybe
16 gone to lunch once, and they had one intimate
17 encounter when Bonnie -- when Michael went to
18 the Gator Bowl. And, of course, Bonnie was
19 coming on to him. And he asked her, don't
20 you know I'm married? Didn't matter.

21 But we know as far as Thanksgiving,
22 which is a few -- couple months before,
23 Bonnie is texting him, telling him, I want to
24 be with you. He said, I want to be with you.
25 He was only married a couple of months at the

1 time. I mean, that's the kind of character
2 he is. I don't know.

3 But in any event, so -- but they had met
4 all the time, and Hinson told you he had
5 information, number one, that Bonnie and he
6 had lunch that day that she went missing.

7 If Bonnie Haim ran out of the house and
8 she was at angry as we have to believe she
9 was, who's she going to call? I suggest to
10 you -- and don't forget, there are no phone
11 records. Nobody had cell phones back then.
12 It's just as likely she would have called
13 somebody like him. Who knows? Or she didn't
14 call him. I'm not saying that. All I'm
15 telling you is they did not follow up.

16 And he got on there and he did, in fact,
17 not tell the truth because he had told Hinson
18 things before that that weren't, you know,
19 about this -- and I'll call it an "affair."
20 They want to say it's a one-night stand.
21 This was an affair. They were meeting at
22 Orange Park, you know, for lunch and who
23 knows how many intimate encounters they had.
24 At this point, you know, we're not here to
25 try to dirty Bonnie Haim. It is what it is.

1 The woman was having marital problems. You
2 know, I'm not here to talk about that.

3 But the only thing I'm talking about is
4 Curt not being, quote, as forthright as
5 Hinson said he was.

6 Let's go back to Detective Hinson. I
7 asked him about that purse. Was it ever
8 processed? Oh, no, no, no. It was too
9 contaminated. I said, wait a minute. You
10 get evidence all the time being, quote,
11 contaminated. We're not talking about DNA.
12 We're talking fingerprints here. All right?
13 You still have to test it. Well, it would be
14 of no use. I said, wait a minute now. Not
15 my first rodeo. Okay? You can do prints and
16 do some eliminations, can't you? Well, I
17 guess you could.

18 All right. And then he told you when
19 they got that letter, they had that
20 discussion with Miller. Well, I wouldn't go
21 because I couldn't get probable cause. I
22 said, excuse me. How do you do that? Don't
23 you go to the State Attorney and ask them to
24 help you do an affidavit to bring to a judge?
25 Well, that's what we usually do. I said, you

1 didn't do it in this case, though, did you?
2 No. We just disregarded that. That's
3 because you said we had run to dogs. There's
4 no reason to go back. And that letter just
5 got tossed.

6 Also, Hinson knew there was, quote, a
7 sighting by a -- this Teddy Ivey, the
8 security guard out there, and there was one
9 by a shuttle driver. He never followed up.

10 And how about this thing about this Mary
11 Hogan? What did Hinson know? Well, he
12 didn't know. Okay? But the call came in. I
13 know that Haim girl. She's a niece-in-law.
14 And I saw her over -- I think she said by
15 Taco Bell over by Dunn Avenue. We looked at
16 each other. We smiled. We had just spent
17 Thanksgiving together. As it turned out --
18 you heard the testimony -- it was supposedly
19 Mary Hogan but they might have gotten that
20 wrong. You heard that Eveann Haim's mother's
21 maiden name was Hogan, Mary Hogan or Marion,
22 something like that.

23 And I asked, did you follow up? He
24 says -- and you know Bonnie was in that
25 neighborhood, and if she was there with a

1 25-year-old white male that night, you may
2 want to follow that up. Well, we didn't. I
3 don't know who that 25-year-old white male
4 is. Don't know if Bonnie had another
5 boyfriend but who knows. But it wasn't
6 followed up. You know why? Because Michael
7 Haim is the only one they were going after.
8 They wouldn't look at any other possibilities
9 other than my client, Michael Haim.

10 And that's, you know -- really, it's
11 that rush to judgment that is running through
12 this whole case. They're not out looking for
13 possibilities of other people doing
14 something. No. Let's just find out what we
15 can and throw in some of the stuff I just
16 told you about to make you think we've got
17 Michael Haim and only Michael Haim that did
18 this. Could have been a stranger. I don't
19 know that. You don't know that.

20 There were also prints in the car, in
21 the trunk and nail marks. They were never
22 processed. That is not -- not the way you do
23 this kind of work, ladies and gentlemen,
24 you've got to look at everything, everything.

25 And he got on the stand and that's --

1 what really bothersome -- okay? -- is that
2 Hinson would get on the stand, having said
3 under oath several times that we ran the dogs
4 through in and out of the house, along the
5 ditch line and then come on the stand and
6 say, I don't know if we had the dogs there.
7 That's because they want to make it sound
8 like a, quote, cursory search, where at one
9 time, they called it a thorough search. Or
10 in the trial, it was only cursory.

11 And they'll admit, we -- we didn't do
12 well. No. At that time, they were saying
13 how great it was. Now they're saying 'cause
14 we missed it.

15 And as I said, you heard from McCallum,
16 who -- who was absolutely definite that he
17 got those keys, the ones with Aaron's picture
18 on it from Miss Pasciuto, who probably had a
19 set of keys, and not from Carol Haim.

20 Now, when we talk about those snitches,
21 remember, I brought in a former State
22 Attorney who now does some criminal defense
23 work. And I asked him, how did [REDACTED] get
24 that disposition? And even the other guy,
25 you know, cases being passed, passed, passed,

1 passed. Said he was working. He would keep
2 working, you know, getting more cases or who
3 knows, truthful or untruthful testimony. And
4 we just keep passing until he gets enough --
5 enough points, I guess, you know, to give him
6 something reasonable. Now, of course, he was
7 not made any promises, but he had been
8 through this so many times, he knows darn
9 well what's going on in the end. Okay? And
10 he did -- he got five years instead of
11 something up to life.

12 And I said, why do they do that? He
13 says, well, he says, they like to encourage
14 that. You remember that? Imagine that. The
15 State Attorney wants to encourage jailhouse
16 snitching. There's something wrong with
17 that. There has to be. But that's why they
18 do it.

19 And I suggest to you they don't care
20 whether there's truth or not. If they
21 want -- and those two witnesses, if they
22 wanted them to say that -- that Michael Haim
23 shot Kennedy and he was in a grassy knoll,
24 they would have said that for him too.
25 They'll say anything to get themselves a

1 break. Like I said, that testimony,
2 absolutely, absolutely not worthy of belief.

3 Oh, and another thing about this
4 mystery, phantom gunshot that we have now
5 that was told to you didn't exist -- they
6 couldn't tell you it existed -- that -- Haney
7 also told you there was no fragmentation --
8 okay? -- that she could have picked up by
9 using her whatever it is, the instrument that
10 they use. Okay? And it could definitely be
11 caused by that. If it really existed, it
12 wasn't just a rotting -- it could have been
13 caused by something else other than a bullet.

14 So the thing about perimortem, I don't
15 know, ladies and gentlemen, if she could
16 really, really testify to that. Who knows.
17 Maybe another person will look at that
18 without an agenda and say, you know, there's
19 not a bullet hole.

20 MR. MIZRAHI: Objection, Your Honor,
21 calls for speculation.

22 THE COURT: Overruled.

23 MR. FALLIS: And once again, you've got
24 to use common sense. If somebody's going to
25 shoot somebody, they're going to shoot them

1 at close range. And as I suggested to you,
2 they're not going to take a rifle. Okay?
3 But let's say they took a rifle, close range.
4 That bullet is not going to go just through
5 some flesh or some intestine and stop at that
6 bone, that velocity. It's going to
7 penetrate. They say use your common sense.
8 Use your common sense. We don't know.

9 And that thing could have been damaged
10 in the excavation. It could have been part
11 of the damage at that time. It could have
12 been damaged even afterward. It's not
13 conclusive that it had to be done at the time
14 of death or shortly thereafter. But even
15 given that, it could have been done after
16 death. When it was burying, could have
17 punctured. Who knows. But that testimony is
18 very, very, very skeptical. Okay?

19 Like I said, we did the bottom line with
20 her as well.

21 And there were missing bones. There
22 were missing bones from the feet. I think
23 she said over 20 percent -- they only
24 recovered 80 percent of the bones out of 206
25 bones in the body or whatever. And that also

1 stands to a logical conclusion that that body
2 was moved. Those bones were left to wherever
3 they were left. They didn't make it to the
4 final burial grounds. It's just as logical.
5 And she said she couldn't rule that out
6 either. They didn't all dissolve. I mean,
7 common sense would tell you bones would
8 probably dissolve at the same rate. I mean,
9 you're telling me the feet, ankle bones are
10 going to dissolve faster than any other
11 bones? I don't know. We didn't see any
12 proof of that. But in any event, that is
13 also stretching it.

14 I mean, they stretched this thing all
15 the way throughout. All right? And that's
16 because they don't have what it takes to
17 prove this case. So they use anything they
18 can.

19 Oh, and then I asked Hinson, what's the
20 story about Eveann calling you and telling
21 you about two graves in Gainesville? He had
22 no idea what she was talking about. I know
23 they have a Gainesville office. But was she
24 trying to say that's where the body was, in
25 Gainesville? I don't know. I think that's

1 also bizarre.

2 I also asked Hinson, have they ever --
3 about this other fellow who was acting very
4 strange at the Red Roof Inn, this fellow Alex
5 Korbeck. People say he's acting strange.
6 He's staring in the woods. He was up -- he
7 had that room in 256 that was behind the
8 hotel by the dumpsters. They never checked
9 the room, his room. Who knows? Maybe Bonnie
10 was going to go there to stay there that
11 night. Maybe she was going to meet him.
12 Maybe she was going to go there. I don't
13 know.

14 But they never processed his car, his
15 camper. And for that matter, they never
16 processed Curt's car either, did they?

17 But they did do Michael's -- Michael's
18 truck, of course, with no results.

19 There's so many unresolved issues,
20 ladies and gentlemen, in this case, in this
21 what I call a "tragic mystery," one that they
22 need to solve but they haven't. Don't
23 forget, they are the producers here, not us.

24 Now, you heard also from Carol Haim.
25 That's Michael's mother. I'm sure they're

1 going to argue, well, you can't pay attention
2 to that testimony. That's his mother. She
3 told you exactly how things went that night,
4 what time she got there, what -- what Michael
5 did and makes perfect logical sense. And
6 it's consistent, what Michael Haim told you.

7 Michael Haim took the stand and you've
8 heard that a defendant has absolutely every
9 single right not to take the stand and not to
10 testify and subject himself to vigorous cross
11 examination by someone as talented as
12 Mr. Mizrahi. But he did that. No fear. And
13 what did -- and he testified exactly the way
14 he's been testifying all along. She had
15 left. They had a, quote, discussion,
16 argument, whatever. She left and that was
17 the end of it, everything the same. There
18 was no discrepancies.

19 On cross examination, Mr. Mizrahi didn't
20 get anything out of him as far as any, quote,
21 discrepancies or lies. Now, I'm not sure
22 what Mr. Heavener told you resulted from
23 that -- from that, quote, cross examination,
24 that he lied to them about -- something
25 about -- oh, not having chemicals. There's a

1 big difference, ladies and gentlemen, between
2 having -- and I think if you look at their
3 picture of the shed -- a spray -- looked like
4 a spray dispenser of weed killer than having
5 chlorine bottles in his shed. Chlorine is a
6 gas and it made sense. He doesn't want to
7 have chlorine bottles -- and there's reason
8 to have them in the shed. You could have
9 them closer to the pool. So that's -- I
10 don't think that's a, quote, lie. I don't
11 keep chlorine in the shed. Don't keep
12 chlorine in the shed. Like I said, it's a
13 gas. Bottle opens, it will be -- it's gases.

14 Now, the State once again -- and we're
15 going to go over what the instructions are
16 because it's really important. Because once
17 I'm finished here, ladies and gentlemen, I
18 can't get up again. That's what the rules
19 call for. They get the last shot.

20 But I think there are some other things
21 that may need to be considered as well.

22 Excuse me.

23 My co-counsel has reminded me of a
24 couple things that I'm glad I was reminded
25 of. So I'll be a bit longer. Okay?

1 All right. Getting back to Curt
2 Jolicoeur. They never searched his truck,
3 his house or checked -- or asked him for an
4 alibi. Hinson even told you that. Because
5 number one, he was cooperating, and they were
6 only interested in Michael and we know that.
7 And he never went around and showed pictures
8 of Bonnie or Curt to the people at the Texaco
9 station and the people out there by the Red
10 Roof Inn. And the point of those sightings,
11 they said they saw Bonnie at 1:00 o'clock to
12 1:30. They're exactly right. That's when
13 she would have been out there.

14 Another thing it makes perfectly clear,
15 the State is not going to get up there and
16 argue that -- that Michael put that cement
17 and brick down on that -- what was the,
18 quote, pallet. If he had, you know, they
19 would be jumping up and down because they
20 know that another tenant put it down. I
21 would never, ever suggest they would do that.

22 The seat in the Camry, the position of
23 the seat. Another question. We know that
24 the seat was closer up to the steering wheel.
25 That would suggest to you a shorter person

1 than Michael Haim would be the last one to
2 drive it as opposed to a shoe print that
3 could have been there for a week, two weeks
4 or whatever, if it -- if it hadn't been
5 cleaned.

6 And also, there was never any scraping
7 of those fingernails or any of the clothes
8 for what's called "trace evidence."

9 And also, the ME told you there was,
10 quote, tree bark in the grave site. How did
11 tree bark get in the grave site? Could have
12 been transferred from an original grave site,
13 if, in fact, the body was pulled up later and
14 then wrapped up in this black whatever it
15 was, plastic. They might have had some tree
16 bark in that original grave. You know there
17 was no tree bark in that backyard. So that
18 also leads you to the conclusion that it
19 could be, quote, a secondary grave site.

20 Why would somebody put it there? How
21 would they know to put it there? We know
22 this got a lot -- lot of media attention.
23 And in the media attention, they give you the
24 location, and they tell you where -- you
25 know, where the house was.

1 And another thing, Miller told you that
2 gate, which has no lock on it, is only a few
3 feet from where the grave site was. You can
4 get in that gate and you go in to the grave
5 site, two, three feet in there. Anybody
6 could have come while Mr. Haim wasn't home,
7 working, away, whatever it might have been
8 and put it there in '96. Because it was not
9 there in '93.

10 Now, why would somebody do that? I
11 don't know, except whoever it was really
12 wanted to cover their back and have it pinned
13 on somebody else. We don't know that but we
14 know that is absolutely a possibility.

15 And had the body been recovered in '96,
16 maybe some of this mystery would be solved.
17 But it isn't and like I said, that's a tragic
18 mystery that they need to solve.

19 You know, we -- as you came here -- in
20 here -- every time you came in and we saw all
21 stood -- okay? -- that's out of respect.
22 Now, we don't know you-all individually, but
23 I'm sure if we knew you individually, we'd
24 respect you as well. Okay? What we were all
25 standing for is you represent what we all

1 "respect." That's the laws and the
2 Constitution of this great country of ours.

3 Our forefathers were very, very
4 brilliant people. We had, as you well know,
5 just been under British rule, monarchy, where
6 everybody calls the shots, tells you what
7 you're going to do. So they put this
8 Constitution together.

9 Now, ladies and gentlemen, that
10 Constitution is the most negative document
11 you're ever going to read. You know why? It
12 says -- because they feared. You know who
13 they feared? They feared the government, our
14 forefathers, because they knew the immense
15 power they have. They said you shall not.
16 They don't say you shall. You shall not
17 abridge the freedom of speech, unreasonable
18 searches, all that stuff. That is in the
19 Constitution.

20 And not only that, it says if you want
21 to take a citizen's freedom from him, because
22 it's done all the time by the monarchy,
23 you're going to have -- you're going to have
24 a job. You're going to have to pick either
25 six -- it's going to have to be done by

1 either 6 or 12 people, depending on what the
2 case calls for.

3 That's what we're going to do. We're
4 going to make it very difficult 'cause the
5 theory was better one, quote, guilty
6 person -- I mean, one -- yeah, ten -- 1,000
7 guilty people go free than one innocent
8 person get convicted. They said, we're going
9 to put, quote, the burden of proof on you,
10 government, and we're going to put a very
11 heavy burden on you. We are going to give
12 you the burden of proof beyond a reasonable
13 doubt, not just a reasonable doubt, beyond a
14 reasonable doubt before you can take
15 somebody's liberty away.

16 We've lived with that for over 200-some
17 odd years. Unfortunately, it hasn't worked
18 in practice sometimes. As we all know,
19 unfortunately, there are people who have
20 been, later we found out, convicted of crimes
21 they had not committed. There's nothing you
22 can do about it. You can't, quote, undo.

23 This jury, if you decide tomorrow
24 whatever your verdict is and you decide
25 tomorrow if it's a guilty verdict that, you

1 know, after thinking of it again, I was
2 wrong, there ain't no coming back and
3 do-overs, no lawyers here. It is it.

4 So you have to -- have to appreciate the
5 burden.

6 And that falls on each of you
7 individually. Now, if you say well, all
8 right, I'll go along with some of the other
9 members because I really want to go home,
10 even though they haven't proved this to you
11 beyond a reasonable doubt, meaning the State,
12 then you haven't done your duty. You have
13 to -- have to be convinced, and you cannot
14 just go along to go along.

15 And I know there's a lot of pressure,
16 and certainly we appreciate your coming in
17 here and spending your time and taking on
18 this -- this kind of work and this pressure.
19 But you cannot do that. You can't just go
20 along to go along if you don't have that
21 abiding conviction of guilt that is required.
22 And I suggest to you that you won't.

23 You know, there are many reasonable
24 doubts and facts that lead to reasonable
25 doubts, and I'll go over what they were and

1 how they apply here. Okay? But it only
2 takes one reasonable doubt from one of you.
3 If that exists, there's no conviction.

4 I suggest to you, as you think about
5 this, you will find that there is a
6 reasonable doubt. There are a lot of
7 reasonable doubts. You know, we are, as I
8 said, finding out today mistakes that were
9 done by other jurors.

10 MR. MIZRAHI: Your Honor, I object to
11 this line of argument. I let it go for a
12 while.

13 THE COURT: Sustained.

14 MR. FALLIS: We -- if Michael Haim were
15 to be convicted, I would suggest to you that
16 this would be a miscarriage of justice. When
17 I say miscarriage of justice, it's because
18 the State is getting a conviction they're not
19 entitled to.

20 Now let's go over the jury instructions.
21 Okay? Like I said, you -- you are the most
22 powerful people in this courtroom. We
23 respect you. And I say most powerful because
24 you know something, ladies and gentlemen?
25 Even more powerful than the State. Okay?

1 Even the Court, as far as this case goes and
2 certainly a lot more powerful than the
3 defense. It's in your hands to determine the
4 outcome of this.

5 And you need to exercise that power but
6 your power is not unbridled. There is --
7 there are rules here -- and we're going to go
8 over them -- that you must follow as well,
9 given -- even given this enormous power.

10 They are telling you -- and you'll read
11 it when you get back in there -- okay? -- how
12 to weigh the credibility of a witness, how to
13 apply the facts, the facts that you've taken
14 in here. And this is how you do it. And
15 they're listed here. There are ten of them.
16 Okay? You must go over every single witness
17 in your mind and -- to see how this applies.

18 Did the witness seem to have the
19 opportunity to see and know the things about
20 which the witness testified? Well, I suggest
21 to you, ladies and gentlemen, there are
22 several witnesses in here that did not,
23 quote, have the opportunity to know. A lot
24 of investigations weren't done, completed so
25 they couldn't testify to that.

1 Did the witness seem to have an accurate
2 memory? Well, how many witnesses got up
3 there and told you, I don't remember? If you
4 find witnesses that said, I don't remember,
5 you need to consider that too.

6 Was the witness honest and
7 straightforward in answering the attorneys'
8 questions? Well, I'm not going to sit here
9 and suggest to you, other than maybe the
10 snitches -- okay? -- who I believe are
11 outright liars. Okay? But some of the
12 witnesses and even some of the police
13 officers were not quite as straightforward.
14 They waffled. They said at one time,
15 thorough search. No, just a cursory search.
16 We had dogs. Well, no, I'm not so sure we
17 had dogs. That is not straightforward. And
18 you must take their -- their testimony in
19 that vein and weigh it.

20 Did the witness at some time make a
21 statement that is inconsistent with the
22 statement given in court? I believe they
23 have. Anytime I had to get and take out a
24 deposition, which I had to do with a couple
25 witnesses, I said, did you testify this way

1 one way, and you testified that way another
2 time? That's inconsistencies. You take that
3 into consideration.

4 Now, I'm not saying, you know, because
5 they worked with law enforcement means that
6 they deserve more or less consideration than
7 any other witness. They don't. Okay?

8 Now, here's where the expert witnesses
9 are different. Here's what we're talking
10 about, Haney. She put herself out -- the
11 State put her out as a witness. Okay? I say
12 she was a very polished testifier. Okay? As
13 far as expert goes, just because she says
14 she's an expert, just like any other witness,
15 you can believe all, none or part of what she
16 says. And I suggest to you, that part about,
17 quote, this could be a bullet hole; it's not
18 inconsistent when it happens, I don't think
19 she gave you any -- any proof of that, how
20 she came to that conclusion other than it
21 might fit what they want to hear.

22 And you can toss some of her testimony
23 out. Just don't take it all to the bank just
24 because she holds herself out there being an
25 expert. Any expert, like any doctor or

1 anybody else, they make mistakes. I'm not
2 saying she's out and out, quote, liar but
3 they can make mistakes. And I suggest this
4 is a case, if she's going to say that's a
5 bullet hole -- well, she did -- they're
6 saying it -- okay? -- even though she said
7 she couldn't say it. But trying to get her
8 to say that it was yet admit that she can't
9 say it was. So I don't know what that means.
10 It means some reasonable doubt in their
11 theory is what it really means. Okay?

12 Now, there is a big, big cautionary
13 instruction, and that's the one about
14 weighing the testimony of the snitches. Our
15 court has put that in there for a darn good
16 reason 'cause they know what's going on and
17 you'll see that instruction. Great caution.
18 Put the brakes on, red light before you
19 accept any of that. Maybe the Courts are
20 trying to make up for some of those past
21 failures.

22 MR. MIZRAHI: Your Honor, objection.

23 THE COURT: Sustained.

24 MR. FALLIS: You have to put the brakes
25 on when you are weighing that kind of

1 testimony. That's what that rule -- that
2 instruction's all about. Like I said,
3 there's a special instruction to that and
4 only that.

5 Now, what does the State have to prove?
6 Number one, they have to prove, of course,
7 Bonnie Haim's dead. Of course, that's done.
8 But they haven't proved that Michael Ray Haim
9 is the one who did it. Okay?

10 Then there is some -- some things also.
11 Once you've decided, number one, that she's
12 dead and before you can decide that Michael
13 Ray Haim is the actual killer, you have to
14 decide whether or not this killing of this
15 human being is excusable under any of these
16 circumstances, any one of these
17 circumstances. When the killing occurs by
18 accident and misfortune in the heat of
19 passion upon any sudden and sufficient
20 provocation.

21 Now, in their argument, I believe, he
22 would fit this instruction. Bonnie Haim is
23 leaving him. She tells him, I'm taking the
24 kid. And then he went crazy and killed her.
25 Okay? If you accept that theory, then

1 truthfully, under the excusable homicide,
2 ladies and gentlemen, that's done in the heat
3 of passion. Not -- we're not saying that
4 happened. But if you find from the evidence
5 that it did happen -- we're saying Michael
6 Ray Haim didn't do any of this. Okay? But
7 if that's your conclusion, that's an
8 excusable homicide. If it's in the rage
9 somebody and it gets to that point, that's
10 what they're arguing, although there's no
11 proof of it other than they were having a
12 discussion, and she said she was going to
13 leave, and she was going to take the kid.
14 Well, could be.

15 And then they have to prove a dangerous
16 weapon was used. Ladies and gentlemen, if
17 they haven't proved that she was shot --
18 which they haven't, by their own admission,
19 and when they got -- in opening statement,
20 they admitted they couldn't prove it beyond a
21 reasonable doubt. So that's not an issue.

22 And certainly, if you want to go with
23 strangulation, that's not a dangerous weapon,
24 so it still could be excusable if you were to
25 find that under these facts.

1 Now, this is what he's charged with.
2 Okay? He's charged with an unlawful killing
3 by an act imminently dangerous to another and
4 demonstrating a depraved mind without regard
5 to human life. Now, that is, ladies and
6 gentlemen, more than, quote, getting upset
7 and maybe strangling somebody. A depraved
8 mind without regard for human life.

9 How do they prove that? The ME can't
10 tell you the cause of death. They have to
11 tell you cause of death, how she died, to
12 show a depraved mind was used in this case,
13 okay. They don't have evidence of that.
14 They don't. Undetermined means cannot give
15 you, quote, what's necessary for murder two,
16 a depraved mind. And then they have to prove
17 a person of ordinary judgment would know and
18 is reasonably certain to kill, whatever they
19 do, serious bodily harm.

20 But not only that, this is what really
21 counts, the second thing they have to prove.
22 And he kept saying it and pointing to my
23 client. It was done from ill will, hatred,
24 spite or an evil intent. Michael Haim told
25 you he loved his wife. Maybe -- and he was

1 trying to get this marriage to try to keep it
2 together. He loved his wife. He wasn't
3 doing this, quote, with any -- if he did it
4 at all -- I'm not saying he did it. But if
5 you buy that, they can't prove he did this
6 out of -- with evil intent, hatred or spite.
7 That's not what -- what happened here under
8 their theory, not at all. There is no
9 evidence of hatred. Just the opposite
10 exists. So you can never find second-degree
11 murder under the facts of this case as we --
12 as you know it.

13 Now, if you found things led up to show
14 that, quote, he was spiteful and he hated his
15 wife, then you could. But do you have any
16 evidence of that? You do not. So
17 second-degree murder is an absolute
18 impossibility in this case under these facts.

19 Now, once again, I've got to go over
20 these instructions, not that we are going to
21 agree that they exist -- these crimes exist.
22 However, murder two, I suggest to you is out
23 of the question.

24 Now you have to consider manslaughter.
25 Now, what is it they have to prove

1 manslaughter? Obviously, Bonnie is dead and
2 that Michael Haim intentionally committed an
3 act or acts that caused the death. Now,
4 we're not saying he did, but if you agree
5 that he strangled her -- you can't believe he
6 shot her because they already said that
7 didn't happen. They didn't prove that. Then
8 you have to determine whether or not -- how
9 it happened, which I don't think you can
10 under the facts of this case. You don't have
11 that. All right? But if you buy their
12 theory -- and believe me, it is nothing but
13 circumstantial, which I don't believe is
14 enough evidence.

15 But if you buy their theory and they say
16 that, quote, she was leaving him; he got
17 upset; he got angry and he choked her and
18 then she died, once again, ladies and
19 gentlemen, that would be done in the heat of
20 passion at worst, and that would be
21 manslaughter, not murder two. We're not
22 suggesting it happened but you have the right
23 to make that finding if you so find that.

24 But once again, that's what's called
25 "excusable homicide" as well. But you can

1 find him guilty of manslaughter if that is
2 your -- that's your prerogative. Okay?

3 Now, before I sit down, I've got to
4 remind you of something that the Court told
5 you. This is the last time either myself or
6 Miss Warren get to talk to you. And we have
7 been carrying the weight and the fate of our
8 client throughout this -- throughout this
9 trial. But we have to sit down now. That
10 doesn't mean that Michael Haim is
11 unrepresented after we sit down. We just
12 can't get up and talk again. Okay?

13 You, as jurors, have agreed that you are
14 going to keep that burden of proof on the
15 State until and unless they give you enough
16 evidence to allow you to convict, which we
17 suggest they haven't.

18 So, in effect, we are sitting down, but
19 Michael Haim is acquiring six new attorneys.
20 And I say that because when you go back
21 there, you have the discussion amongst
22 yourselves. If somebody asks a question,
23 well, what about this; what about that, your
24 job -- I think he's guilty because of this.
25 Your job would be -- wait a minute. What

1 would Fallis or Miss Warren say?

2 MR. MIZRAHI: Objection, Your Honor,
3 golden rule.

4 MR. FALLIS: That's not --

5 THE COURT: Overruled. Just --

6 MR. FALLIS: What would they say in
7 answer to that question? Because don't
8 forget. You're in the process of holding
9 them to their burden of proof. You're not
10 here to rubber-stamp what they've done.
11 You're here to do the opposite, to hold them
12 to that burden. You're the cops to them.
13 Okay? You don't let them get away with
14 whatever, quote, they want to get away with.

15 If somebody raises an issue, then you
16 have to say, well, what would the defense say
17 or what did the defense say? You've got to
18 check the government. Because don't forget,
19 like I told you, our forefathers were afraid
20 of them. They knew the immense power and the
21 only check on the power of this State is the
22 jury. And that happens to be you today. You
23 must, must keep that burden.

24 So as we sit down -- and I'm sure you're
25 glad to keep our mouths closed after hearing

1 all this all week -- we're confident if you
2 do what you are responsible for doing under
3 the facts of this case and the lack of
4 evidence in this case, you would return a
5 proper verdict, and that would be one of not
6 guilty.

7 Thank you.

8 THE COURT: Mr. Mizrahi, you may give
9 your rebuttal.

10 MR. MIZRAHI: May it please the Court?

11 THE COURT: Yes, sir.

12 MR. MIZRAHI: Counsel.

13 What would Tom Fallis and Janis Warren
14 say when you get back into the jury box?
15 Well, if I was listening carefully over the
16 last week, this is what Tom Fallis and Janis
17 Warren would say, that poor Michael Haim who
18 just wanted to keep his marriage together had
19 not a fight but just a slight discussion
20 about his marriage with his wife, who then,
21 not in fit of anger but in a fit of silence
22 and quietness, without crying or telling
23 anyone of her intentions, decided to leave
24 their home with their child, with no clothes,
25 no idea what's happening, leave, him not tell

1 a soul other than the only person in the
2 world he might be able to trust, his mother,
3 disappear, not tell anyone, bumped into
4 either Curt Jolicoeur or some stranger from
5 Virginia or Naples that was staying at the
6 Red Roof Inn or maybe some other bogeyman who
7 proceeds to kill her, gets away with it for
8 three years, is never even looked at as being
9 a suspect and says, you know what? I've got
10 away with this for three years. I haven't
11 even been looked at as a suspect.

12 But you know what I'm going to do? I'm
13 going to take her completely decayed body,
14 hoping I can find her ten fingernails that
15 have now slipped off of her skin and are
16 lying wherever I left her. I'm going to dig
17 her up. Hopefully, I won't be seen by
18 anybody. Hopefully, she hasn't been eaten by
19 raccoons. I'm going to take this impossible
20 thing to do, which is to carry a set of
21 bones, which you saw how hard it was for the
22 ET just to get it to the ME's Office. I'm
23 going to do the same thing, not leave
24 behind -- I mean, if he left anything behind,
25 it was very little. I'm going to get every

1 fingernail. I'm going to get most parts of
2 the body. I'm going to transport that to the
3 home that he lives in, and I'm going find a
4 perfect location to bury her, where he, for
5 the next -- what? -- seven or eight years
6 doesn't discover his wife's body. The
7 renters don't cover his wife's body. It
8 takes until a complete landscaping
9 transformation of the backyard for Aaron
10 Fraser to find his own mother.

11 Oh, but yeah. If that's not the best
12 story in the world, maybe -- maybe this was
13 just a fit of rage and maybe it's just
14 manslaughter. Okay? So I know you really
15 can't believe that that man's innocent so
16 come back with manslaughter. That's what
17 they told you.

18 Feel free to discuss that in the jury
19 room, ladies and gentlemen. Your God-given
20 common sense will tell you the truth
21 surrounding this case.

22 Now, I agree wholeheartedly with
23 Mr. Fallis's discussion about the beauty of
24 our country and especially in today's
25 climate, where everyone likes to yell and

1 scream but nobody gets to listen to the other
2 side, like these news channels or on social
3 media. There's a lot of yelling about your
4 position. There's no listening to the other
5 side. The beauty of this courtroom and the
6 beauty of America is we get to sit here and
7 decide that man's fate by listening to
8 everybody. We -- Mr. Heavener, Mr. Friedman
9 man and I -- have to sit there and we have to
10 listen. Occasionally, we object when there's
11 legal issues. We have to listen to the
12 arguments and let them fairly be presented to
13 you. Because we don't have the power. You
14 do.

15 But only in America does the
16 government -- the powerful State of Florida
17 government, with all of our resources, we
18 have to sit there and keep our mouths shut
19 while Mr. Fallis comes up here and stands
20 before you and says, there's a rush to
21 judgment on this case that took place on
22 January 6th of 1993.

23 We have to sit here and listen to
24 Mr. Fallis say, we don't know how she died,
25 quote, technically. Technically.

1 We have to sit here and listen to
2 Mr. Fallis say, you know what? You know what
3 set off Bonnie Haim that night? You know
4 what set her off? She was murdered that
5 night. It set him off. Not her. We have to
6 listen to that.

7 And I want to be very clear. My quarrel
8 is not with the human being Tom Fallis or
9 even the fact that Thomas Fallis can sit here
10 and zealously advocate for his client. He
11 should. That doesn't mean, just because we
12 have to listen to it, that it's true, right,
13 logical, fair.

14 And even a lot of what Mr. Fallis said
15 is not legal. I'm going to let the judge
16 tell you what the law is. I submit to you, a
17 lot of what Mr. Fallis said is not the law in
18 this case. It's not the law of second-degree
19 murder. It's not the law of reasonable
20 doubt.

21 But I have to quarrel -- I have to
22 quarrel with the logical arguments that he
23 tries to make to you about how his client is
24 innocent, that if he's not innocent, he's
25 only guilty of manslaughter or maybe

1 excusable homicide.

2 One of the key parts of our case is
3 obviously the location. That was the icing
4 on the cake. This case was close to an
5 arrest had significant evidence but we didn't
6 have the body. And once we found the body,
7 that gave us overwhelming proof beyond a
8 reasonable doubt that these logical truths,
9 that she was found in her own backyard,
10 whoever buried her killed her, the only
11 person reasonably capable of burying the
12 victim in her own backyard was the defendant.
13 Therefore, he's the killer. That is just
14 based on the location of the bones. This is
15 why the whole secondary, primary grave is so
16 important for the defense to try to dispute.

17 And mind, you the fact that we did not
18 employ the services of the forensic
19 anthropologist who lives in Naples and has a
20 Ph.D. to do all the excavation in
21 Jacksonville, maybe it's something that we do
22 in the future. It wasn't done in this case.
23 And guess what? That inured to his benefit.

24 And that's why we presented that
25 evidence to you. 'Cause everything that that

1 evidence technician, Detective Watson, did,
2 he tried his best, spent four days out there
3 trying to do it. All of that inured to his
4 benefit. It did. 'Cause now he can say,
5 well, she can't say definitively that this
6 was not the primary grave.

7 But you can. There's not a better piece
8 of evidence. The only mistake
9 Mr. Heavener -- at least I feel at this point
10 that Mr. Heavener and I made in this case is
11 we only introduced -- the defense actually
12 introduced the picture of the nails and this
13 picture is incomplete. I hope the evidence
14 is clear about this. We found all ten, all
15 ten of her acrylic nails. This picture only
16 captured nine. But I actually approached
17 Dr. Wendy Stroh and was very clear about the
18 fact, no, we collected ten.

19 And that's not in dispute. Actually,
20 defense was saying ten too. I think when
21 they introduced the picture, they thought
22 there was ten. So that was just a mistake of
23 counting the number of nails. And that's why
24 we wanted this. Both sides want this picture
25 in. But all ten of those acrylic nails were

1 found.

2 There is no way, with logic, reason that
3 this was a secondary grave site. It defies
4 logic that whoever got away with it would
5 have moved the body again. The only thing
6 makes logical sense is the defendant killed
7 her and buried her in the best location
8 possible, which was his backyard. He picked
9 a good location because he got away with it.

10 This was no -- and if -- and if it was
11 the primary grave site, he's guilty. It's
12 really that simple. If it is the primary
13 grave site, he's guilty.

14 But you don't just have to rely upon
15 that. You don't. Because we gave the
16 evidence too. Someone had to move the
17 victim's car to the airport. The defendant
18 left in the middle of the night and by his
19 own admission, had the opportunity to move
20 it. Oh, by the way, his mom did too, even
21 though the defendant was evasive about saying
22 how long at 3:00 a.m. it would take to drive
23 from the north side to the airport, Dolphin
24 Avenue, five miles north to the airport.
25 It's going to take -- you drive from Mandarin

1 to the airport in 30 minutes. At 3:00 a.m.,
2 if you speed, you can do it a little quicker.
3 Certainly, he could do it from near the Trout
4 River on the north side to get to the
5 airport. Isn't that interesting that Carol
6 Haim -- the defendant -- he has -- he gave
7 that story about leaving and driving around
8 in the middle of the night in case someone
9 saw him 'cause he had to get rid that car.

10 Now, whether he got a cab back after he
11 dropped off that car or whether someone else
12 in his family -- you know, it's interesting.
13 Carol Haim said, I was woken up in the middle
14 of the night. We didn't hear a word about
15 John Haim, her husband. Where was he all
16 night? No evidence of that. But regardless.

17 Somehow he had the perfect time frame
18 with which to get to that airport, dump that
19 purse and come home. Just so happens to be
20 in the middle of the night, where he claims
21 he's looking for her. Someone had to move
22 that car to the airport, and the defendant
23 was the person that had the ability to do it.

24 The sandy shoe print was left in the
25 driver's seat of the victim's car on the

1 floorboard. His sandy shoes matched the
2 impression. Whoever moved the victim's car
3 is responsible for her death. That is an
4 uncontroverted fact. Whoever moved that car
5 is responsible for the death. The defendant
6 was the person who moved the car, based on
7 the timing of it, based on the shoe print,
8 which they -- Mr. Fallis spent almost two
9 hours standing up here. He only spent a
10 couple of minutes talking about the shoe
11 print.

12 And I submit to you, there is no way
13 that fragile, sandy footprint that even
14 changed over times in the pictures you
15 have -- you have the picture from the
16 floorboard of the Camry, when they were just
17 taking pictures to when they took it out. It
18 had already started to go away. You'll see
19 that. It went away a little bit. There is
20 no way that Bonnie Haim got in and out of
21 that car all those times. That's why he has
22 to distance himself from that. It's his shoe
23 print.

24 He was responsible for her death.

25 Couple other pieces of evidence. I want

1 to talk about the location of the jugs.
2 You'll have all the photographs. I can spend
3 more time digging, but I just want to have
4 something visual to show you.

5 Mr. Fallis said it's not unusual to keep
6 the jugs where he kept them. You have the
7 picture of the shed. Could have kept them in
8 there. Well, let's say he did keep them in
9 the shed. The shed, by the way, was closer
10 to the pool, significantly closer to the
11 pool. The shed was right next to concrete,
12 so it would be easy to walk there. There's
13 all those rocks around the shed. So let's
14 say he doesn't want to keep them in the shed.
15 He's going to put the bottles of chlorine
16 right next to the shed where the pool brush
17 is. Oh, by the way, the pool pump is right.
18 All the pool toys and things that go in the
19 pool are over there. That's not where the
20 chlorine is.

21 The chlorine is covering and essentially
22 destroying your ability to use something that
23 is nice feature in an outdoor pool area.
24 He's a neat guy. He actually said on direct,
25 I wouldn't throw the towels on the ground.

1 I'm sure every wife in the world would like
2 to hear their husband say that. I'm very
3 neat.

4 Okay. The very, very neat guy -- and
5 you see all the pictures of how neat this
6 place is -- decides I'm going to cover up the
7 one location in my pool that has a function
8 with -- I mean, there's -- how many are
9 there? There's -- you can at least see four
10 in addition to everything else that's on that
11 pallet. And by the way, you have to walk
12 over grass to get there. Much easier to
13 leave it much closer to the pool, next to the
14 shed, next to the back door, where he kept
15 the brush, maybe behind the shed where the
16 wheelbarrow was. Huh. Very interesting.

17 The footprints -- and Mr. Fallis made a
18 big deal about the seat position. Let's be
19 clear about that and about -- in terms of
20 where your foot would be, that your foot
21 would be in a different position because of
22 the sizes of the individuals. That's why the
23 seat moves so your feet can be in the same
24 position because you have to be able to reach
25 the pedals.

1 The keys. Unfortunately, none of us
2 were there. But when you analyze the
3 evidence; you analyze what took place, this
4 is going to be incredibly clear to you. And
5 it hasn't been mentioned and it wasn't
6 mentioned by Mr. Fallis. But it was
7 mentioned briefly by Eveann Haim. Eveann
8 Haim said that it always kind of struck her
9 that when she was at the Child Protection
10 Team and Detective McCallum was there asking
11 Patty, Bonnie Haim's mother, where are
12 Bonnie's extra set of keys; I heard you might
13 have them, that Carol Haim said, oh, I have
14 them. I have them.

15 And Detective McCallum -- let's be very
16 clear. Tried to impeach him. But McCallum
17 took that witness stand and said under oath,
18 I was there to get them from Patty. She may
19 have given them to me, but one of those three
20 women gave them to me. I don't really know
21 which one. That's his sworn testimony. And
22 he was there to get them from Patty. But
23 Eveann said it was Carol. That's what the
24 testimony is. No matter what's whispering
25 over there, that's what -- the testimony.

1 You rely upon your own memory. John McCallum
2 took that witness stand and said, I got it
3 from one of those three women. I was there
4 to get it from Patty. And Eveann Haim said,
5 no, it wasn't from me and it wasn't from
6 Patty. It was from Carol.

7 And you know who took that witness
8 stand? Carol. What did she say about these
9 keys? Crickets. What does that tell you?
10 She had these keys and she can't say she had
11 these keys because saying she has these keys
12 implicates who? It implicates Michael.
13 Because every witness said --

14 MR. FALLIS: Objection, Your Honor.

15 THE COURT: Grounds.

16 MR. FALLIS: We'd ask for a mistrial and
17 ask for a sidebar.

18 THE COURT: What's the grounds?

19 MR. FALLIS: Shifting the burden.

20 THE COURT: Overruled.

21 MR. MIZRAHI: It implicates her son
22 because -- and let's be clear. Mr. Fallis
23 said it -- I think it was dozen times -- that
24 this key -- and I'll have to put back in the
25 envelope was on the refrigerator. I don't

1 believe that's what the testimony was. I
2 believe Sergeant Hayes, Buddy Hayes, said
3 that he got it out of the purse. I believe
4 that was the testimony. There was some talk
5 that the key could be on the refrigerator,
6 but when they looked, it wasn't there. It
7 was actually in the purse and hence why they
8 took the picture of the key with the purse
9 items. 'Cause that's where it was found.

10 And this was not what was used. The
11 defendant had those keys because they ended
12 up giving them and his mother had them. And
13 it was taken from them at the Child
14 Protection Team. Of course, the defense
15 wants to speculate about a third set of keys
16 but there's no evidence of that.

17 The defense also -- you know, in this
18 evidence, we have this great -- this great
19 shoe print. What a fascinating piece of
20 forensic evidence. And that's a great piece
21 of circumstantial evidence. But you know
22 what else is a great piece of direct evidence
23 is Aaron. And we haven't spent lot of time
24 in this trial talking about it, and even
25 Mr. Fallis didn't spend a lot of time talking

1 about it because it destroys his case. And
2 it's direct evidence and it's hard because as
3 Mr. Fraser sits here today, he has no memory
4 of it, which is completely normal and fair
5 for a grown man not to remember what happened
6 to him at three and a half years of age.

7 But Mr. Fallis's attacks on this
8 interview are really not as to what Aaron
9 said. He tries to say, well, we don't really
10 know the circumstances. And we do.
11 Nighttime. Wow, what perfect match, you
12 know. Nighttime is exactly when this
13 happened. Obviously, if the child any memory
14 of it, it would had to have been close in
15 time. That's reasonable. Three-year-old's
16 not going to remember what happened when he
17 was one. It had to be close in time to all
18 of this.

19 And he did know -- you know, he said
20 there was no going through the ability of a
21 child to discern truth from a lie. 'Cause at
22 that age, what do they really know? Once
23 kids are about five -- you have to rely upon
24 your own experience in life, but once kids
25 realize at five, they can get in trouble for

1 things, maybe that's when they start figuring
2 out, maybe they should lie. It's usually --
3 why do you lie? To get out of trouble.
4 That's why people lie. Aaron wasn't in
5 trouble for anything. Why would he lie about
6 this?

7 She did go over the colors. That came
8 out. That's really important. What better
9 piece of basic information to go over with
10 Aaron. Hey, what color is this? Yellow.
11 What color is this? Red. What animal is
12 this? A tiger. It gives credibility to the
13 fact that he knew what happened two nights
14 before. And he hadn't seen his mom and it
15 was because his dad hurt her.

16 But you can't take what he says by
17 himself. You know what Aaron had no idea
18 about when he's three and a half years old
19 and he's being interviewed? That his dad's
20 sandy shoe print was left behind on the
21 floorboard of that Toyota Camry. You know
22 what he has no idea about? Over 20 years
23 later that he will unearth his mother in this
24 very same backyard he shared with someone
25 that he used to call "Dad."

1 And so when you take what he says and
2 context of everything else, wow, what
3 overwhelming proof that we have.

4 The motive, it's so critical to this
5 case because that is really the core of why
6 crimes happen. And while we don't have to
7 prove motive, as we discussed in jury
8 selection, certainly the intent behind
9 actions is critical for your understanding of
10 what happened in this case. There is no way
11 this was random. There's no way. Any random
12 act here, the purse is taken and gone through
13 and they take the money. You don't throw it
14 in a dumpster. This was not a robbery. This
15 was not -- this was a personal crime.

16 And the victim was leaving the
17 defendant, and his wife and son were
18 destroying his family, in his own mind. And
19 minutes to hours after this all came to a
20 head -- and on the stand, he tried to back
21 off of that. If you noticed, I wouldn't let
22 him. But he kept saying, well, I thought she
23 was leaving me for a while maybe. It came to
24 a head that night. And that's -- 'cause a
25 lot of things the defendant says, he tries to

1 have it both ways. He says, well, it wasn't
2 that big of a deal, wasn't that big of an
3 argument. But she left in the middle of the
4 night. I mean, it had to be a big deal,
5 according to his own testimony, which is not
6 what happened. She never left. Let's be
7 clear about that.

8 Minutes to hours, they had a personal
9 argument, where she says, you know what? The
10 house is yours. Aaron and I are gone. He
11 had the only real motive, not some stranger
12 at the Red Roof Inn, not some guy that she's
13 flirting with and having sex with at her
14 work, who has his own family.

15 And let me -- one of the key
16 questions -- I want to make sure that y'all
17 picked up on this -- was I asked
18 Mr. Jolicoeur, Mr. Jolicoeur, once this case
19 came out that Bonnie was missing, once she's
20 missing, what did you do? Told my wife.
21 Told my wife what happened between the two of
22 us. The only potential motive that Curt
23 Jolicoeur could have -- and you have to force
24 yourself and imagine yourself -- is that
25 somehow this affair was going to be exposed.

1 I thought about this as a prosecutor. Gosh,
2 Curt's having an affair with her. Maybe he
3 did it and got rid of Bonnie because Bonnie
4 was going to tell his wife about the affair.
5 Yet when she disappears, he tells his wife
6 about the affair. That's an illogical
7 motive.

8 And even still, you'd have to believe
9 that somehow he's a Size 10 Nike Air
10 Advantage, sandy shoe print. He drives to
11 the airport and somehow gets her there.
12 Somehow Aaron misidentifies him as Daddy.
13 Somehow that he is able to bury her, get away
14 with it for three years and then three years
15 later, tried to frame him by taking the
16 decomposed skeletal remains and -- perfectly
17 and getting it into the backyard of the
18 person he's trying to accuse and not be
19 caught by that. The defendant had the
20 motive.

21 He had the best motive to kill and he
22 did so. Perspective, ladies and gentlemen.
23 Sometimes as prosecutors, we get so worried,
24 and we spend so much time, witness after
25 witness. And it's boring and it's tedious.

1 And this person says X and then this person
2 says A and this person says B. And we get
3 lost. Is A really true? Is B really true?
4 And we start overfocusing and overanalyzing
5 each piece of evidence, which is what he
6 wants you to do, rightfully so. I'm not
7 criticizing him for it. But the key part is
8 to understand that when you evaluate this
9 case that you have to take a step back and
10 put everything in perspective.

11 One of the best -- and you don't want to
12 get lost in the weeds. You don't want to not
13 see the forest for the trees. And a perfect
14 example, perfect illustration of this is the
15 poem as I was going to St. Ives, I met a man
16 with seven wives. Each wife had seven sacks.
17 Each sack had seven cats. Each cat had seven
18 kitts. Kits, cats, sacks, wives. How many
19 were going to St. Ives?

20 One. Who had the motive? Who had the
21 opportunity? Who had the ability?

22 Whether the key was in the purse or on
23 the refrigerator honestly doesn't matter.

24 Whether Detective McCallum remembers X
25 versus Y or whether Detective Hinson talked

1 to the -- Mr. Ivey, the security guard --
2 which he did, by the way. He did. Mr. Ivey
3 said, I didn't see Bonnie Haim that night.

4 But whether those things happened are
5 all kitts, cats and wives. The "I" in this
6 case, motive, opportunity, ability,
7 perspective. In the words of Tom Fallis, the
8 bottom line. The bottom line is the husband
9 killed his wife who was leaving him. He
10 panicked. He buried her in the backyard,
11 called his mother either to help him in some
12 way or to watch his son while he disposed of
13 the car at the airport, hoping people would
14 believe that she ran off and hoping and
15 praying that they would never find her in the
16 perfect location he had decided.

17 Sometimes cases are just that simple.
18 And if you use perspective and you analyze
19 it -- sometimes we like the concept of the
20 grand conspiracy 'cause it's more
21 interesting. It's sometimes more interesting
22 in real life that the jealous husband who was
23 leaving with his wife and kid -- his wife and
24 kid were leaving that he killed her and
25 buried her in his own backyard and she's

1 found 21 years later. Okay. I mean, it's
2 awful. But we've heard that story.

3 The -- in the '50s and '60s, there was a
4 space race between the United States and the
5 Soviet Union. And although this story is not
6 100 percent true -- it's more of an urban
7 myth and an urban legend -- it does
8 crystallize the concept of simplicity.
9 Sometimes we overanalyze things to the point
10 where like, wait a second. Of course, it's
11 him.

12 NASA was having a real tough time
13 figuring out how its astronauts were going to
14 write in zero gravity. It's very important
15 to keep accurate notes, measurements, dials,
16 temperatures. You've got to write these
17 things down. You've got to do mathematic
18 equations and make sure you're thrusting
19 right. You've got to be able to write this
20 stuff down. How in the world are our
21 ballpoint pens and things going to work in
22 zero gravity? NASA dumped millions and
23 millions of dollars into scientists in order
24 to develop what is now known as the Fisher
25 Space Pen, the ultimate technology for a

1 writing instrument and it works in zero
2 gravity. You don't need to have the gravity
3 push the ink down. We fixed it. Millions of
4 dollars later, we're great.

5 The Russians just used a pencil.

6 And sometimes cases can be just that
7 simple. When you analyze it, you take a step
8 back, and you get your perspective in this
9 case. You can have zero doubt much less a
10 reasonable, logical, well-founded doubt.
11 That's what reasonable doubt is, not
12 possible. Mr. Fallis must have said
13 possible -- this is possible; this is
14 possible a dozen or more times in his closing
15 argument. And that's why I say what he says
16 is not the law. It's what he says. And what
17 the judge will say is a possible, imaginary,
18 speculative or forced doubt should not
19 influence you to return a verdict of not
20 guilty if you have an abiding conviction of
21 guilt. Sometimes simplicity.

22 So I'm going to spend a little bit more
23 talking about what this case is really about.
24 You heard it in the last ten minutes of his
25 closing argument. Because this isn't about

1 who did it. It wasn't the bogeyman. It
2 wasn't Curt Jolicoeur. It was always this
3 defendant. It was this defendant when Bernie
4 Haim knew it and confronted him a day later
5 and knew that his biological nephew that --
6 the son of his brother, had killed his wife,
7 who -- by the way, Bonnie to him was his
8 employee, his niece-in-law. His allegiance
9 should have been to him. But instead, Eveann
10 and Bernie's allegiance was to the truth.
11 They knew it. The police knew it. This rush
12 to judgment was -- guess what? They knew
13 what they had from the very beginning, and
14 21 years later, it was proven.

15 This case is really about whether this
16 case is a murder or manslaughter. That's
17 really what it's about.

18 So let's examine a little bit.
19 Mr. Fallis said a dozen times -- I'm sorry --
20 if it was misinterpreted, what I said in
21 opening statement. I said the State cannot
22 prove to you beyond a reasonable doubt that
23 the gunshot wound killed and is the cause of
24 her death. That's the truth of it. We can't
25 'cause we don't know the wound track. And

1 that defect in the back of her pelvis, you
2 know, everyone knows basic anatomy. That's
3 not going to be hitting things that instantly
4 kill you, not your heart, not your brain, not
5 your liver. It's going to be down. That's
6 intestines and stuff. It's not a very quick
7 death, if it's a death at all.

8 The medical and anthropological experts
9 cannot medically and scientific say that she
10 was shot. But we have a circular defect that
11 can only be explained by a gunshot wound.
12 That's the only logical, reasonable thing.

13 There was another thing. I think it was
14 on cross examination that Heather
15 Walsh-Haney, Dr. Haney, Walsh-Haney, said.
16 Yeah, if you shot a pebble through a gun, you
17 know, maybe that could happen. But, you
18 know, if it's perimortem, she was -- it was
19 100 percent she was strong on that, that you
20 have this circle in the back of the pelvis.
21 There's nothing else that's going to cause
22 that. There's nothing else that's going to
23 cause it.

24 And it just so happens, he has a bunch
25 of guns, and just so happens we found a .22

1 casing not eight feet away. We found it in
2 the area that we had Heather Walsh-Haney
3 going through to examine for bones.

4 Mr. Fallis says, why wouldn't it go
5 through the bone? Remember, .22-caliber --
6 little velocity .22-caliber, little velocity,
7 that's a low velocity weapon. .22-caliber's
8 a small bullet. It's the exact kind of
9 bullet that wouldn't go through your pelvis
10 if it had gone through the rest of your body
11 first. I get it. He shot her. We found the
12 casing. I think there's pretty good
13 evidence, evidence that you can find beyond a
14 reasonable doubt that this victim was shot.

15 And you know why I can say that with
16 such confidence? You don't need a weather
17 man to know which way the wind blows.
18 Sometimes we get caught up on expert
19 witnesses trying to tell us everything from
20 their expertise. Sometimes you just say, oh,
21 you have a circular defect inside of her
22 pelvis that was done at the time of her
23 death. That's got to be a gunshot wound.
24 You don't need the weatherman to tell you
25 which way the wind is blowing.

1 The jailhouse inmates, which the defense
2 likes to call "snitches" -- and I'm fine to
3 use that because, you know, there's a benefit
4 that those guys are looking at. There's also
5 a detriment. Snitches get stitches. It's
6 not like this is only a one-way street. To
7 come before and testify on fellow inmates is
8 a dangerous business. Okay? You heard some
9 of that from [REDACTED]

10 Mr. Heavener indicated that that's not
11 our case and it's not. This guy was in jail,
12 charged with this crime when he spoke to
13 those people. And it's interesting. Mr. --
14 we want to downplay [REDACTED] because
15 it's a short period of time, but he was in
16 the infirmary with him. How did he know --
17 how did [REDACTED] know that he was in
18 the infirmary in? Because they were there
19 together. Okay?

20 But those guys were never, ever
21 mentioned out of my mouth in opening
22 statement. Didn't say a word about them.
23 Did that intentionally. I didn't miss it. I
24 wanted each and every one of you to know that
25 we are not standing up here asking you to

1 convict him because of those convicted
2 felons. We're not. Okay? I'm not going to
3 do that. We have plenty of evidence without
4 it.

5 But I do want to share a couple things
6 that are striking about their testimony and
7 why we presented it to you. Independently
8 they said that this was not a shooting but a
9 beating and a strangulation. And Tom Fallis,
10 Mr. Fallis, over and over again keeps saying
11 somehow there's some unwritten wink-wink.
12 Hey, tell me what I need and we'll give you a
13 deal. Well, everything in the media and
14 everything in the police reports leading up
15 to those two men coming forward had nothing
16 to do with the strangulation or even a
17 beating.

18 What did it have to do with? A gunshot
19 wound. That's what we thought we had.
20 .22-caliber casing, circular defect. This is
21 what we thought we had. We -- it would have
22 been heck of a lot easier to present this
23 case to you if those two guys independently
24 came in and said, yeah, you know what he did?
25 He took his .22-caliber rifle and shot her.

1 And then he buried the shell casing with it.

2 And I'm sorry. [REDACTED] a bright
3 guy. There's no way in the world
4 [REDACTED] would have been clever enough
5 to figure out, maybe I should tell them
6 something that hasn't been reported that I
7 know nothing about and make it up and they'll
8 believe me. Because they're trying to have
9 cake and eat it too. These guys are getting
10 fed all the information, yet the information
11 they provide is not consistent with what the
12 evidence is. I submit that to you as
13 evidence that maybe this defendant told them.
14 He may not have told them the truth. These
15 guys don't know. They weren't there. But I
16 submit to you he told those two guys what
17 they testified to.

18 I also want to use their testimony and
19 the gunshot wound to be very clear about the
20 concept that this is a second-degree murder.
21 Forgetting completely the shell casing and
22 the circular defect and forgetting what they
23 said entirely -- okay? -- all we have is a
24 fight, where she is going to take her son and
25 leave him, her disappearance and burial in

1 the backyard. For 21 years, he conceals it.
2 Okay? I submit to you you have enough
3 evidence just on that to convict of
4 second-degree murder.

5 Intent is not a process that we can
6 prove by direct evidence. You can prove a
7 person's intent by what they say and by what
8 they do. You don't bury an accident in your
9 backyard and that's what manslaughter is.
10 Manslaughter is a push, is a shove, is an act
11 that is not likely to cause great bodily harm
12 but is done intentionally and eventually
13 leads to death.

14 The best example is one punch, a push,
15 the throw down. The person hits their head
16 on the concrete and dies. I didn't mean --
17 mean for that to happen. I was in a fight
18 with the person and I punched him, forgetting
19 the whole self-defense concept. Let's say I
20 pushed him from behind, and they fell and hit
21 their head.

22 That's not ill will, hatred, spite.
23 That's not a depraved indifference. That's
24 an act that leads to death. That's a
25 manslaughter and you don't bury that in your

1 backyard after fighting with your wife about
2 her leaving you and taking her son with you.
3 That is ill will, hatred, spite. That is the
4 depraved indifference. And that is
5 second-degree murder.

6 But we give you so much more. We gave
7 you the fact that there is a reasonable
8 belief -- beyond reasonable. There is beyond
9 a reasonable doubt proof that she was shot,
10 which is, again, act of ill will, hatred,
11 spite and evil intent. It may or my not have
12 killed her.

13 And there was also proof to you that I
14 submit to you has credibility as to
15 strangulation and beating. And I asked
16 Dr. Wendy Stroh about strangulation, and she
17 talked to you about how this is not
18 immediate, how there would have to be
19 constant pressure over the areas of the
20 throat in a manual strangulation that would
21 have to be constant over time, that would
22 take seconds to minutes in order to
23 accomplish unconsciousness and death. Of
24 course, we don't have experience experiments
25 where we have stop watches to time this

1 stuff.

2 But she says it's very different from
3 hanging, when your neck breaks and your
4 spinal cord severs and things like that
5 happens immediately, that a manual
6 strangulation requires effort. That effort
7 is cruel to the victim. And it is evidence
8 of ill will, hatred, spite and evil intent.
9 It's evidence of a depraved indifference in
10 regard to human life.

11 So the combination of that with the
12 gunshot wound, with the surrounding evidence
13 showing the fight and the burial, all of
14 which can leave no reasonable doubt that this
15 is a murder, not a manslaughter.

16 By the way, Mr. Fallis says the
17 defendant -- and this trouble -- Mr. Heavener
18 and Mr. Friedman and I -- you know, this guy
19 is pleading not guilty. We haven't found
20 anyone that he's told up until now, and then
21 these two guys in jail are coming forward.
22 Is he really talking about his case? Is he
23 really confessing? He said he didn't tell
24 anyone in the world about this, except
25 whoever wrote that letter in 1996. 'Cause

1 whoever wrote that letter in 1996 he told.
2 That's not the first time in jail he ever
3 admitted these things.

4 A reasonable doubt in this case is not a
5 conflict of a piece of evidence. A
6 reasonable doubt in this case is a logical,
7 well-founded doubt as to the three elements
8 that we've charged, not to a piece of
9 evidence, to the elements that we've charged.
10 Death, that the act was caused by the
11 criminal act of the defendant and it was done
12 with a depraved mind without regard for human
13 life. That is what a reasonable doubt is.

14 Mr. Fallis said that we stand to respect
15 you. And it reminds me of the quote that to
16 the living, we owe respect, but to the dead,
17 we owe the truth. The truth of this case was
18 always out there. It was buried in a shallow
19 grave in his yard. And the truth about this
20 case is justice, and we cannot ignore the
21 fact that the truth is he's guilty. Can't do
22 it. There is no way around that fact.

23 Bonnie Haim cannot get justice. It's up
24 to us, the living, to find justice for her.
25 And then the saddest part is that there's

1 nothing that happens this week and nothing
2 will happen with your verdict that will undo
3 what Aaron Haim/Fraser has been through. It
4 won't change it. He's had a wonderful mother
5 that's raised him. But nothing we do here
6 will change the fact that he never got to
7 know Bonnie Haim, his biological mother.

8 But what we can do -- what we can do is
9 we can define his conduct. We can forever
10 state collectively that he's responsible.
11 Hold him responsible. Let your verdict speak
12 the truth. Let your verdict speak justice
13 and find him guilty as charged.

14 Thank you.

15 THE COURT: All right, ladies and
16 gentlemen. I'm going to read the jury
17 instructions to you. It may take about 15 or
18 so minutes. Do you want to stand up first,
19 maybe stretch a little bit before I start
20 doing that? And while I'm reading the
21 instruction, I'm going to have the lunch
22 ordered, so by the time I get through and you
23 get back to the jury room, it should be
24 there, or shortly thereafter, your lunch will
25 be there. So when you begin to deliberate,

1 you'll have that to enjoy.

2 Court is not in recess. Everybody get
3 settled. I'll start with the instructions.

4 Members of the jury, I thank you for
5 your attention during this trial. Please pay
6 attention to the instructions I'm about to
7 give you.

8 Michael Ray Haim, the defendant in this
9 case, has been accused of the crime of murder
10 in the second degree.

11 Introduction to homicide. In this case,
12 Michael Ray Haim is accused of murder in the
13 second degree. Murder in the second degree
14 includes the lesser crime of manslaughter,
15 both of which are unlawful. A killing that
16 is excusable or was committed by the use of
17 justifiable deadly force is lawful. If you
18 find Bonnie Lynn Haim was killed by Michael
19 Ray Haim, you will then consider the
20 circumstances surrounding the killing in
21 deciding if the killing was murder in the
22 second degree, manslaughter or whether the
23 killing was excusable or resulted from
24 justifiable use of deadly force.

25 The killing of a human being is

1 excusable and, therefore, lawful under any
2 one of the following three circumstances:
3 One, when the killing is committed by
4 accident and misfortune in doing any lawful
5 act by lawful means with usual ordinary
6 caution and without any unlawful intent or,
7 two, when the killing occurs by accident and
8 misfortune in the heat of passion upon any
9 sudden and sufficient provocation or, three,
10 when the killing is committed by accident and
11 misfortune resulting from sudden combat if a
12 dangerous weapon is not used and the killing
13 is not done in a cruel or unusual manner.

14 Dangerous weapon is any weapon that
15 taking into account the manner in which it is
16 used is likely to produce death or great
17 bodily harm.

18 I now instruct you on circumstances that
19 must be proved before Michael Ray Haim may be
20 found guilty of murder in the second degree
21 or any lesser-included crime.

22 To prove the crime of second-degree
23 murder, the State must prove the following
24 three elements beyond a reasonable doubt:
25 One, Bonnie Lynn Haim is dead; two, the death

1 was caused by the criminal act of Michael Ray
2 Haim; three, there was an unlawful killing of
3 Bonnie Lynn Haim by an act imminently
4 dangerous to another and demonstrating a
5 depraved mind without regard for human life.

6 An act includes series of related
7 actions arising from and performed pursuant
8 to a single design or purpose.

9 An act is imminently dangerous to
10 another and demonstrating a depraved mind if
11 it is act or series of acts that, one, a
12 person of ordinary judgment would know is
13 reasonably certain to kill or do serious
14 bodily injury to another and, two, is done
15 from ill will, hatred, spite or an evil
16 intent and, three, is of such a nature that
17 the act itself indicates an indifference to
18 human life.

19 In order to convict of second-degree
20 murder, it is not necessary for the State to
21 prove the defendant had an intent to cause
22 death.

23 In considering the evidence, you should
24 consider the possibility that although the
25 evidence may not convince you that the

1 defendant committed the main crime of which
2 he is accused, there may be evidence that he
3 committed other acts that would constitute a
4 lesser-included crime. Therefore, if you
5 decide that the main accusation has not been
6 proven beyond a reasonable doubt, you will
7 next need to decide if the defendant is
8 guilty of any lesser-included crime. The
9 lesser crime indicated in the definition of
10 murder in the second degree is manslaughter.

11 To prove the crime of manslaughter, the
12 State must prove the following two elements
13 beyond a reasonable doubt: One, Bonnie Lynn
14 Haim is dead; two, Michael Ray Haim
15 intentionally committed an act or acts that
16 caused the death of Bonnie Lynn Haim.

17 Every person has a duty to act
18 reasonably toward others. If there is a
19 violation of that duty without any conscious
20 intention to harm, that violation is
21 negligence.

22 The defendant cannot be guilty of
23 manslaughter by committing a merely negligent
24 act or if the killing was excusable homicide,
25 as I have previously instruct you.

1 In order to convict of manslaughter by
2 act, it is not necessary for the State to
3 prove the defendant had an intent to cause
4 death, only an intent to commit an act that
5 was not merely negligent or excusable and
6 which caused death.

7 The State must prove that the crime was
8 committed on or before -- or on or between
9 January 6th, 1993, and January 7th, 1993.

10 It must be proved only to a reasonable
11 certainty that the alleged crime was
12 committed in Duval County.

13 The defendant has entered a plea of not
14 guilty. This means you must presume or
15 believe the defendant is innocent. The
16 presumption stays with the defendant as to
17 each material allegation in the information
18 through each stage of the trial unless it has
19 been overcome by the evidence to the
20 exclusion of and beyond a reasonable doubt.

21 To overcome the defendant's presumption
22 of innocence, the State has the burden of
23 proving if the crime with which the defendant
24 is charged was committed and the defendant is
25 the person who committed the crime. The

1 defendant is not required to present evidence
2 or prove anything.

3 Whenever the words "reasonable doubt"
4 are used, you must consider the following: A
5 reasonable doubt is not a mere possible
6 doubt, speculative, imaginary or forced
7 doubt. Such a doubt must not influence you
8 to return a verdict of not guilty if you have
9 an abiding conviction of guilt.

10 On the other hand, if after carefully
11 considering, comparing and weighing all the
12 evidence, there is not an abiding conviction
13 of guilt or if having a conviction, it is one
14 which is not stable but one which wavers and
15 vacillates, then the charge is not proved
16 beyond every reasonable doubt, and you must
17 find the defendant guilty because the doubt
18 is reasonable.

19 It is to the evidence introduced in this
20 trial and to it alone that you are to look
21 for that proof. A reasonable doubt as to the
22 guilt of the defendant may arise from the
23 evidence, conflict in the evidence or the
24 lack of evidence. If you have a reasonable
25 doubt, you should find the defendant not

1 guilty. If you have no reasonable doubt, you
2 should find the defendant guilty.

3 It is up to you to decide what evidence
4 is reliable. You should use your common
5 sense in deciding which is the best evidence
6 and which evidence should not be used -- or
7 not be relied upon in considering your
8 verdict. You may find some of the evidence
9 not reliable or less reliable than other
10 evidence. You should consider how the
11 witnesses acted as well as what they said.

12 Some things you should consider are:
13 One, did the witness seem to have an
14 opportunity to see and know the things about
15 which the witness testified? Two, did the
16 witness seem to have an accurate memory?
17 Three, was the witness honest and
18 straightforward in answering the attorneys'
19 questions? Four, did the witness have some
20 interest in how the case should be decided?
21 Five, does the witness's testimony agree with
22 the other testimony and other evidence in the
23 case? Six, has the witness been offered or
24 received any money, preferred treatment or
25 other benefit in order to get the witness to

1 testify? Seven, had any pressure or threat
2 been used against the witness that affected
3 the truth of the witness's testimony? Eight,
4 did the witness at some other time make a
5 statement that is inconsistent with the
6 testimony he gave in court? Nine, has the
7 witness been convicted of a felony or
8 misdemeanor involving dishonesty or false
9 statement? Ten, does the witness have a
10 general reputation for dishonesty or
11 truthfulness?

12 Whether the State has met its burden of
13 proof does not depend upon the number of
14 witnesses it has called or upon the number of
15 exhibits it has offered but instead, upon the
16 nature and quality of the evidence presented.

17 The fact that a witness is employed in
18 law enforcement does not mean that his or her
19 testimony deserves more or less consideration
20 than that of any other witness.

21 Expert witnesses are like other
22 witnesses with one exception. The law
23 permits an expert witness to give his or her
24 opinion. However, an expert's opinion is
25 reliable only when given on a subject about

1 which you believe him or her to be an expert.
2 Like other witnesses, you may believe or
3 disbelieve all or any part of an expert's
4 testimony.

5 You must consider the testimony of some
6 witnesses with more caution than others. For
7 example, a witness who hopes to gain more
8 favorable treatment in his or her own case
9 may have a reason to make a false statement
10 in order to strike a good bargain with the
11 State. This is particularly true when there
12 is no other evidence tending to agree with
13 what the witness says about the defendant.

14 So while a witness of that kind may be
15 entirely truthful when testifying, you should
16 consider his testimony with more caution than
17 the testimony of other witnesses. However,
18 if the testimony of such a witness convinces
19 you beyond a reasonable doubt of the
20 defendant's guilt or the other evidence in
21 the case does so, then you should find the
22 defendant guilty.

23 The defendant in this case has become a
24 witness. You should apply the same rules in
25 consideration of his testimony that you apply

1 to the testimony of the other witnesses.

2 It is entirely proper for a lawyer to
3 talk to a witness about what testimony the
4 witness would give if called to the
5 courtroom. The witness should not be
6 discredited by talking to a lawyer about his
7 or her testimony.

8 You may rely upon your own conclusion
9 about the credibility of any witness. A
10 juror may believe or disbelieve all or any
11 part of the evidence or the testimony of any
12 witness.

13 A statement claimed to have been made by
14 the defendant outside of court has been
15 placed before you. Such a statement should
16 always be considered with caution and be
17 weighed with great care to make certain it
18 was freely and voluntarily made. Therefore,
19 you must determine from the evidence that the
20 defendants alleged statement was knowingly,
21 voluntarily and freely made. In making this
22 determination, you should consider the total
23 circumstances, including but not limited to,
24 one, whether when the defendant made the
25 statement, he had been threatened in order to

1 get him to make it and, two, whether anyone
2 had promised him anything in order to get him
3 to make it. If you conclude that the
4 defendant's out-of-court statement was not
5 freely and voluntarily made, you should
6 disregard it.

7 These are some general rules that apply
8 to your discussion. You must follow these
9 rules in order to return a lawful verdict.

10 One, you must follow the law as it is
11 set out in these instructions. If you fail
12 to follow the law, your verdict will be
13 miscarriage of justice. There is no reason
14 for failing to follow the law in this case.
15 All of us are depending upon you to make a
16 wise and legal decision in this matter.

17 Two, this case must not -- must be
18 decided only upon the evidence that you have
19 heard from the testimony of the witnesses and
20 have seen in the form of the exhibits in
21 evidence and these instructions.

22 Three, this case must not be decided for
23 or against anyone because you feel sorry for
24 anyone or are angry at anyone.

25 Four, remember, the lawyers are not on

1 trial. Your feelings about them should not
2 influence your decision in this case.

3 Five, your duty is to determine if the
4 defendant has been proven guilty or not in
5 accord with the law. It is the judge's job
6 to determine a proper sentence if the
7 defendant is found guilty.

8 Six, whatever verdict you render must be
9 unanimous; that is, each juror must agree to
10 the same verdict.

11 Seven, your verdict should not be
12 influenced by feelings of prejudice, bias or
13 sympathy. Your verdict must be based on the
14 evidence and on the law contained in these
15 instructions.

16 Deciding a verdict is exclusively your
17 job. I cannot participate in that decision
18 in any way. Please disregard anything I may
19 have said or done that made you think I
20 preferred one verdict over another.

21 During this trial, I permitted you to
22 take notes. You will be allowed to take
23 those notes into the jury room during
24 deliberations. You are instructed that your
25 notes are a tool to aid your individual

1 memory. You should not compare your notes
2 with those of other jurors in determining the
3 content of any testimony or in evaluating the
4 importance of any evidence. Notes are for
5 the note-taker's personal use in refreshing
6 his or her recollection of the evidence.
7 They are not evidence. Above all, your
8 memory should be your general -- your
9 greatest asset in your recollection of the
10 evidence.

11 You may find the defendant guilty as
12 charged in the information or guilty of such
13 lesser-included crime as the evidence may
14 justify or not guilty. If you return a
15 verdict of guilty, it should be for the
16 highest offense which has been proven beyond
17 a reasonable doubt. If you find that no
18 offense has been proven beyond a reasonable
19 doubt, then, of course, your verdict must be
20 not guilty.

21 The verdict must be unanimous; that is,
22 all of you must agree to the same verdict.
23 Only one verdict may be returned as to the
24 crime charged. The verdict must be in
25 writing, and for your convenience, the

1 necessary verdict form has been prepared for
2 you. And it is as follows.

3 You can't see it from this far but it's
4 one page. It's titled "Verdict." It has
5 three choices. They read as follows: We,
6 the jury, find the defendant guilty of murder
7 in the second degree as charged in the
8 information or we, the jury, find the
9 defendant guilty of manslaughter, a
10 lesser-included offense or we, the jury, find
11 the defendant not guilty.

12 So say we all, done at Jacksonville,
13 Duval County, Florida, and then a place for
14 the foreperson to sign it and date it.

15 In just a few moments, you will be taken
16 to the jury room by the bailiff. The first
17 thing you should do is choose a foreperson
18 who will preside over your deliberations.
19 The foreperson should see to it that your
20 discussions are carried on in an organized
21 way and that everyone has a fair chance to be
22 heard. It is also the foreperson's job to
23 sign and date the verdict form when all of
24 you have agreed on a verdict and to bring the
25 verdict form back to the courtroom when you

1 return.

2 During the deliberations, jurors must
3 communicate about the case only with one
4 another and only when all jurors are present
5 in the jury room. You are not to communicate
6 with any person outside the jury about this
7 case.

8 Until you have reached a verdict, you
9 must not talk about this case in person or
10 through the telephone, writing or electronic
11 communication, such as a blog, Twitter,
12 e-mail, text message or any other means. Do
13 not contact anyone to assist you during
14 deliberations.

15 These communication rules apply until I
16 discharge you at the end of the case. If you
17 become aware of any violation of these
18 instructions or any other instruction I've
19 given in this case, you must tell me by
20 giving a note to the bailiff.

21 If you need to communicate with me send
22 a note through the bailiff signed by the
23 foreperson. If you have voted, do not
24 disclose the actual vote in the note. If you
25 have questions, I will talk with the

1 attorneys before I answer so it may take some
2 time. You may continue your deliberations
3 while you wait for my answer. I will answer
4 any questions, if I can, in writing or orally
5 here in open court.

6 During the trial, items were received
7 into evidence as exhibits. You may examine
8 whatever exhibits you think will help you in
9 your deliberations. These exhibits will be
10 sent into the jury room with you when you
11 begin to deliberate.

12 In closing, let me remind you that it is
13 important that you follow the law spelled out
14 in these instructions in deciding your
15 verdict. There are no other laws that apply
16 to this case. Even if you do not like the
17 laws that must be applied, you must use them.
18 For two centuries, we have lived by the
19 Constitution and the law. No juror has the
20 right to disregard or violate the rules that
21 we all share.

22 That does conclude the reading of the
23 instructions. I'm going to have y'all go
24 back to the jury room in just a moment except
25 for Miss Robinson and Mr. Paulson.

1 You are our two alternates so you work
2 must now end.

3 Is there anything back in the jury room
4 that y'all need to get out?

5 JUROR ROBINSON: My purse.

6 THE COURT: Your purse? Well, you go
7 with Miss James real quick to get that and
8 come back. I've got a few more things to say
9 to you-all.

10 JUROR PAULSON: Our phones, they took
11 our phones.

12 THE COURT: They'll give it back to you.
13 I'll make sure she brings that back out to
14 you. Okay?

15 Do you have Mr. Paulson's phone,
16 Miss James?

17 All right. Now, ladies and gentlemen of
18 the jury, if you would follow Miss James back
19 to the jury room. We'll have the
20 instructions and exhibits brought back to you
21 in just a moment.

22 (Jury excused to begin deliberations at
23 1:29 p.m.)

24 THE COURT: Let the record reflect the
25 jury has left the courtroom and they have the

1 case.

2 Miss Robinson and Mr. Paulson, my least
3 favorite part of the trial is this part. I
4 have to tell y'all -- and we always have at
5 least one. Sometimes we have more. It's
6 been a long case. They can't go back. I
7 always hate that part because you guys have
8 been here participating and giving up your
9 time for a whole week, but you don't get to
10 decide the case. So I'm sorry about that.

11 We have to have alternates, however,
12 because the law requires six jurors to decide
13 a case, not five or seven. Sometimes it has
14 actually happened that somebody has gotten
15 sick; somebody's been in a car crash and they
16 can't make it. Well, we'd have to start the
17 whole case over again. And you can imagine
18 that would be a big expense and -- to
19 everybody and a time-consuming way to do it.
20 But if somebody had that happen to them,
21 y'all would have stepped right in, and we
22 wouldn't have missed a beat.

23 So you served a very important role in
24 this case, and I hope for a second -- not for
25 a second you think you've wasted your time

1 because you haven't. Because we've not been
2 concerned at all about having everybody being
3 able to finish this trial because you have
4 been here.

5 We do have your lunch coming too. So
6 it's the least I could do, right?

7 Actually, one more thing. We've got
8 little buttons. I know it's a very small
9 token.

10 Miss James, if you could hand these
11 buttons to our two alternates.

12 It just says "Distinguished Juror, Duval
13 County." Again, it's a small token, that
14 with the lunch.

15 Now, those rules about not talking about
16 the case, those are lifted. You can talk
17 about the case as much as you would like.
18 You're also free not no talk about the case.
19 There actually may be people who want to ask
20 you questions about this case. As you heard
21 all along, it's been in the news a lot. You
22 don't have to talk to anybody about the case
23 if you don't want to.

24 And if you're curious about what the
25 verdict would be, you're welcome to stay and

1 wait. We have no idea how long that will
2 take. You just never know. Or you're free
3 to go home now or wait for your lunch and
4 then go home. And I usually say, call my
5 judicial assistant to find out what the
6 verdict is, but I can guarantee, if it's on
7 the news, you'll find out. Okay?

8 And with that, do y'all have any
9 questions?

10 JUROR ROBINSON: No, sir.

11 THE COURT: All right. Why don't you
12 have a seat in the jury room over here while
13 waiting for your lunch? That way you're
14 comfortable. Maybe those chairs are a little
15 bit more comfortable than those.

16 If everybody would stay put and wait
17 until we get Mr. McCallister back, our clerk,
18 with the exhibits.

19 So are you taking those in now, sir?

20 THE CLERK: Yes, sir.

21 THE COURT: All right. Wait for him to
22 come back and then we'll be in recess.

23 Mr. Heavener, do y'all have a laptop?

24 MR. MIZRAHI: We'll get one, Your Honor.

25 THE COURT: Well, tell them it's coming.

1 Go ahead and get that back so they can get to
2 work.

3 THE CLERK: Yes, sir.

4 THE COURT: Mr. McCallister has
5 returned.

6 And the jury has the exhibits and
7 instructions, sir?

8 THE CLERK: Yes, sir.

9 THE COURT: All right. The jury has the
10 case. We are in recess until we -- we're in
11 recess. I know we want to talk about the
12 other instructions. Let's take at least a
13 few minutes break. Okay? Y'all want to do
14 that soon? I think we probably should.

15 MR. MIZRAHI: Do you want to meet back
16 here in 30 minutes?

17 THE COURT: 30 minutes. That sounds
18 good.

19 All right. We're in recess till
20 2:00 o'clock.

21 (Recess from 1:35 p.m. until 2:32 p.m.)

22 (Defendant present.)

23 THE COURT: All right. We're here on
24 the charge conference for the bifurcated part
25 of the trial, if that becomes necessary.

1 The copy you sent me last week, is that
2 the copy we're working from?

3 MR. MIZRAHI: We can work from that
4 copy, yes, Your Honor.

5 THE COURT: Let's talk about the four
6 factors.

7 MR. MIZRAHI: That is what the State
8 gave notice of.

9 THE COURT: All right, Mr. Fallis. Any
10 argument as to the four factors that are
11 listed?

12 MR. FALLIS: I'm looking.

13 Yes, Your Honor. I don't believe the --
14 I'm obviously objecting to this whole
15 procedure and that there's a bifurcated
16 trial. And I think we have to have a
17 separate sentencing hearing.

18 In addition, my client is also entitled
19 to a PSI.

20 THE COURT: Well, none of that is in
21 dispute. Again, let me be clear as to what I
22 think is the law, and I'll tell you what I'm
23 going to do, if it becomes necessary.

24 MR. FALLIS: Okay.

25 THE COURT: If there is a guilty

1 verdict, then we're going to tell the jury
2 that -- well, I'm going to read this
3 introduction, that they have to find certain
4 aggravating factors, to find whether or not
5 the State has proven those four aggravating
6 factors, either one of them or all of them or
7 some number in between.

8 The State will be allowed to present
9 some evidence on that and argument as will
10 the defense, if it chooses, though there's no
11 requirement or burden for the defendant to
12 prove anything.

13 Assuming there's a guilty verdict,
14 assuming the jury find at least one of those,
15 with the exception -- well, just one of
16 those, that's the end of the jury's job.

17 We're going to have a sentencing hearing
18 in the future. And if you want a PSI,
19 certainly I will order one to be prepared.
20 Then we'll have a hearing where both sides
21 will present evidence and argument, and I'll
22 have to make a decision about whether or
23 not -- this is assuming there's a guilty
24 verdict. Assuming the jury has found at
25 least one of those four factors proven, I'll

1 have to make a decision about to whether or
2 not one of those factors would justify an
3 upward departure and if so, how much. So
4 we're going to have a separate and complete
5 sentencing hearing in the future, if that
6 becomes necessary.

7 MR. FALLIS: But you asked me about
8 my -- about my position. Your Honor, I
9 believe that the -- first of all, these
10 aren't recognized statutory -- okay? The
11 Court says HAC but I don't think these others
12 are recognized statutory factors. I haven't
13 seen any -- any law that said that these --
14 in 1993, these were recognized statutory
15 factors for departure.

16 HAC has always been one for first-degree
17 murder, but committing in the presence of
18 victim's family member, Your Honor, I don't
19 think that was a recognized aggravating
20 factor statutory back in '93.

21 THE COURT: All right. Mr. Mizrahi?

22 MR. MIZRAHI: This is the way I've
23 analyzed it. I agree actually that the
24 statute said that the Court can depart for
25 any reason as long as it's written. And it's

1 subject to appellate review. The statute
2 then goes on to name basically two specific
3 methods of departure in addition to the fact
4 that the Court can do it for any reason.

5 THE COURT: What's the last thing you
6 said?

7 MR. MIZRAHI: In addition to the fact
8 that the Court can do it for any reason. So
9 it's supplemental.

10 So what the statute says -- and this is
11 1988 guidelines -- I mean, guidelines, which
12 would apply to this case. It's 921(5).
13 Sentences imposed by a trial court judge must
14 be in all cases within relevant minimum and
15 maximum sentence limitations provided by
16 statute and must conform to all statutory
17 provisions. The failure of a trial court to
18 impose a sentence within the sentencing
19 guidelines shall be subject to appellate
20 review pursuant to 924. However, any person
21 sentenced for a felony committed after
22 October 1st, 1998, presumptive sentence is --
23 which doesn't apply.

24 However, before imposing such a
25 sentence, the Court shall give due

1 consideration. The extent of the departure
2 from the guideline sentence shall not be
3 subject to appellate review. A departure
4 sentence shall be based on the circumstances
5 or factors which reasonably justify the
6 aggravation or mitigation of the sentence.
7 The level of proof necessary is a
8 preponderance of the evidence, which has been
9 abrogated by Blakely.

10 So I don't think that that part of it is
11 correct, but the first part of it is correct.
12 It says: A departure sentence shall be based
13 on circumstances and factors which reasonably
14 justify the aggravation and mitigation.

15 When multiple reasons exist, a
16 departure -- to -- to support a departure
17 from a guideline sentence, the departure
18 shall be upheld if at least one circumstance
19 or factor -- or factor is found regardless of
20 the presence of the other factors.

21 So they're not dependent upon each
22 other.

23 So then -- then the sentencing structure
24 goes on to say that -- Paragraph 6, that any
25 sentencing guidelines outside the range shall

1 be explained in writing.

2 Then it says: The Court may impose a
3 sentence outside the guidelines when credible
4 fact proven by a preponderance of the
5 evidence demonstrated that the victim
6 suffered excessive physical or emotional
7 trauma at the hands of the defendant. Such a
8 departure is not barred because a victim's
9 injury has been utilized in the calculation
10 of the guideline sentence.

11 Paragraph 8 says: The trial court may
12 impose based on escalating conduct, which
13 we're not going really seeking.

14 Then Paragraph 9 says: The
15 sentencing -- the sentencing commission
16 should update basically on aggravators and
17 mitigators.

18 MR. FALLIS: I'm sorry. May I address
19 the Court?

20 THE COURT: Yeah.

21 MR. FALLIS: Once again, Your Honor,
22 they have to be statutory like any other
23 aggravating factors in any other kind of case
24 and these are not statutory factors. You
25 can't get around that 'cause this is such a

1 novel proceeding, Your Honor. I think, you
2 know, we're open to some severe reversible
3 error if we have to go forward with this.

4 THE COURT: Where does it say it has to
5 be statutory?

6 MR. FALLIS: That's what I heard.

7 THE COURT: No. He's reading from the
8 statute.

9 MR. FALLIS: Correct.

10 THE COURT: They're not posted statutory
11 factors.

12 MR. FALLIS: Well, and anytime you want
13 to depart, Judge -- well, let's use
14 first-degree murder? Okay. They have to be
15 statutory aggravating factors and they're
16 enumerated. There are no enumerated 1987
17 statutory factors that are on this list. The
18 only one would be -- and that would be
19 first-degree murder -- would be heinous,
20 atrocious and cruel. All these others do
21 not -- did not exist back then.

22 You can say -- what he's trying to say
23 is you can do it for any reason. Your Honor,
24 you don't have that -- I don't think you have
25 that kind of liberty. I think you have to

1 find factors that are recognized by law, and
2 these are not ones, especially at that time,
3 that are recognized by law.

4 And I just -- you know, I'm really
5 concerned that, you know, we are trying --
6 well, State's trying to make law
7 retroactively, and that absolutely goes
8 against the factor.

9 THE COURT: Let me ask you this
10 question: Let's go back to that time
11 capsule, 1993. Let's try the case then. At
12 the end of the case, there's a conviction or
13 a guilty verdict. And State says, I want you
14 to depart from the recommended guidelines and
15 from the permitted guidelines, either one.
16 State's going to ask me to base that on what?
17 You said it has to be statutory. Where would
18 I find those statutory reasons in 1993 to
19 depart on a second-degree felony,
20 third-degree felony, first-degree felony?

21 MR. FALLIS: They don't exist that's my
22 point.

23 THE COURT: Well, then how could a judge
24 depart in 1993 if they didn't exist?

25 MR. FALLIS: I would think that you --

1 at that time, you probably could -- and I'm
2 not saying for sure -- okay? -- go with the
3 HAC but none of these other factors, Judge.
4 These are things he's just taking out of thin
5 air, you know, out of a cloud. And, I mean,
6 who -- God, who -- what -- you can make any
7 kind of factors if this is what you're going
8 to.

9 The law recognizes certain things that
10 are aggravation and only one at that time
11 because it was only to the first degree was
12 aggravating factors. So I just think this
13 whole procedure, Judge, is illegal,
14 bifurcation.

15 THE COURT: I understand your argument
16 on that.

17 MR. FALLIS: Okay.

18 THE COURT: There's also a rule. In
19 3.701, it talks about departures, and says
20 based on -- it should not depart unless
21 there's circumstances or factors that
22 reasonably justify aggravating or mitigating.

23 MR. FALLIS: Correct.

24 THE COURT: So clearly, the law as it
25 existed in 1993 contemplated a trial judge

1 having the ability, though it is much more
2 limited then than it would be today. I'm
3 only limited now on how I can depart below.
4 I have no limitations on how to depart above
5 today. But then, I would have. I was
6 restricted both ways. And it did have to be
7 reasonable justifiable reasons found by
8 credible evidence. Now it has to be proven
9 beyond a reasonable doubt to depart upward.
10 I don't have to submit -- you don't have to
11 submit any mitigating factors to the jury
12 obviously to justify a downward departure,
13 nor do those factors have to be proven by --
14 beyond a reasonable doubt obviously.

15 So I think that any reasonable
16 justification for a departure that existed in
17 1993 could be used today.

18 MR. FALLIS: Even though it's not
19 recognized as a statutory aggravator is what
20 you're saying.

21 THE COURT: Unless you can point to me
22 where in the law it says -- under that
23 section that we just read from 921.001, we're
24 applying -- this is a 1988 supplement. I
25 think this is the 1983 guidelines 'cause in

1 1994, there were new guidelines and then
2 again in 1995. And then, of course,
3 October 1, '98, the code came into effect.

4 MR. FALLIS: That's correct, Judge.

5 THE COURT: All right.

6 MR. FALLIS: So in the event of a guilty
7 verdict -- and that would be (inaudible)
8 you're saying, if you would apply -- I'm
9 sorry.

10 THE COURT: It's all right.

11 MR. FALLIS: You're saying even if it
12 were manslaughter, you would --

13 THE COURT: I think even under
14 manslaughter. I mean, it could be a
15 third-degree felony we're talking about.
16 Now, practically -- you couldn't do that
17 today because we're not having this issue on
18 a third-degree felony from 1993 because the
19 statute of limitations would have run. These
20 are going to come up in very limited
21 circumstances, whether it's sufficient
22 evidence to prosecute a cold case, one, and
23 it would have to be a certain type of cold
24 case, no statute of limitations. Otherwise,
25 none of this would ever come up again.

1 But back then, yeah, you could depart on
2 a third-degree felony. If a range was, you
3 know, whatever it would be for a third-degree
4 felony, you could depart up to five. But
5 you'd have to have really good reasons, and
6 I'd have to put them in writing.

7 MR. FALLIS: And he talked about the
8 preponderance of the evidence.

9 THE COURT: It's beyond a reasonable
10 doubt and they have to tell me I have --
11 those things are going to be found. If they
12 don't find any of them, that's the end of the
13 story. If they find one of them, that's not
14 the end of the story. I still have to make a
15 decision about whether or not it's justified.

16 MR. FALLIS: I appreciate that. The
17 question I have, Your Honor, is that some of
18 these are automatically inherent in the
19 actual charge that you've got on here.

20 THE COURT: Well, tell me which one that
21 is that's inherent -- 'cause you're right.
22 If it's inherent to the element of the crime,
23 I cannot depart upward for something that's
24 already been accounted for.

25 MR. FALLIS: A crime inflicting severe

1 physical or emotional trauma upon the
2 victim -- okay? -- that would be inherent in
3 any type of homicide -- okay? -- unless
4 you're going to put them to sleep, you know.
5 And then to the victim's family. Now, Judge,
6 I don't believe it's the same sentence. If
7 he wanted to separate it out, that would be
8 something else, but I think a crime
9 inflicting severe physical or emotional is
10 absolutely inherent in the charge.

11 Emotional trauma upon the victim and
12 members of the family. I don't know how he's
13 defined members of the family, Judge, but I
14 don't think that's applicable. That also
15 would be inherent as well.

16 THE COURT: Let me have Mr. Mizrahi
17 address that point, and while you're
18 addressing that point, also address the
19 question that I had as to tampering with
20 evidence. Am I limited to the extent of
21 departure if the jury were to find that and
22 if so, how much?

23 MR. MIZRAHI: I'll begin first with I
24 think Mr. Fallis does make a good point. I
25 think the better course is to parse out the

1 particular injury. And I think -- although I
2 think we instruct the jury as one, I think we
3 should have supplemental findings. And I'm
4 turning this way so Mr. Hughes can hear me.

5 We can separate it out and say we -- I
6 think it should read that we, the jury, have
7 found the defendant guilty of murder. We
8 further find the crime inflicted severe
9 physical or emotional trauma upon. And it
10 should be -- one should be the victim. One
11 should be Aaron. And the other should be the
12 victim -- members of the victim's family. I
13 do think it would be intelligent to have
14 three separate verdicts on that particular
15 issue, and then there is no bleeding over as
16 to who the harm was.

17 THE COURT: Still under whatever Roman
18 numeral that is.

19 MR. MIZRAHI: Right.

20 THE COURT: Two additional findings for
21 that same --

22 MR. MIZRAHI: So we would parse it out.

23 THE COURT: I understand.

24 MR. MIZRAHI: So that was a good catch
25 by Mr. Fallis to bring that up.

1 The tampering with evidence is a little
2 unclear. There is case law that supports
3 what the Court is asking about in that
4 subsequent record can be scored as -- and can
5 be the basis of the -- excuse me -- it cannot
6 be scored. Subsequent record to the crime
7 cannot be scored in the guidelines. However,
8 that subsequent record can be a means of
9 departure. It doesn't have to have a jury
10 finding, frankly, because those convictions
11 are a matter of law. But the Court can only
12 exceed those guidelines to the extent that
13 the score lets it.

14 Am I making myself clear?

15 THE COURT: I understand.

16 MR. MIZRAHI: This is not that situation
17 because it's actually the crime itself. It's
18 not just the fact that he was convicted of
19 it. So my argument would be that the nature
20 of the tampering with evidence creates an
21 aggravating factor that makes this crime more
22 heinous than it normally would be, forgetting
23 heinous, atrocious or cruel, the separate
24 aggravating factors.

25 I have done the score on the tampering

1 with evidence, and it would leave us with the
2 same guideline score so the Court knows. It
3 would increase it a very nominal amount. But
4 I do think it's a little bit different than
5 subsequent record because it's inherent in
6 the crime itself as opposed to some
7 subsequent crime.

8 For example, if you had a subsequent
9 armed robbery, well, the nature that armed
10 robbery is not what makes the aggravating
11 factor it's the fact that he's been convicted
12 of it. So it's -- the nature of it's
13 irrelevant because it doesn't have to do with
14 what the Court is sentencing on.

15 Because this tampering with evidence is
16 part of the nature of what the Court is
17 considering, I think there's at least
18 argument to be made to exceed the guidelines,
19 but I have to acknowledge that the safe way
20 to do it would be to exceed only to the
21 extent that had the tampering with evidence
22 been a conviction, then the Court could
23 exceed to that extent.

24 THE COURT: You can't charge that
25 because of the statute.

1 MR. MIZRAHI: I can't charge that
2 because of statute of limitations. So, you
3 know, I've made the argument, but I think the
4 Courts feeling is well-founded.

5 THE COURT: Well, it's not a decision
6 one has to make today.

7 MR. MIZRAHI: Right.

8 THE COURT: Because that's the
9 sentencing hearing.

10 MR. MIZRAHI: Right.

11 THE COURT: It may have no effect.

12 MR. MIZRAHI: Right.

13 MR. FALLIS: Well, the question --

14 THE COURT: Go ahead.

15 MR. MIZRAHI: Unless the Court had any
16 other questions.

17 THE COURT: Go ahead, Mr. Fallis.

18 MR. FALLIS: Your Honor, as the Court
19 bore out, that is, quote, a separate crime in
20 and of itself -- okay? -- even though it
21 wouldn't change the guidelines. However,
22 Judge, given this novel procedure we're
23 having, I think in the abundance of caution,
24 that should not be given because it was also
25 something that happened after the fact.

1 He's -- I think he's referring to the burial
2 is what I'm thinking, is that correct?

3 THE COURT: What's that?

4 MR. FALLIS: He's referring to the
5 burial as tampering with evidence.

6 THE COURT: Okay.

7 MR. FALLIS: I mean, I don't know what
8 other --

9 THE COURT: No. I assume you're talking
10 about --

11 MR. MIZRAHI: In large part, of course.
12 There are other things that I believe the
13 evidence supported that I introduced, but
14 obviously, in large part is the burial.

15 MR. FALLIS: And, Your Honor, that is
16 after the fact of a -- of a homicide, and I
17 don't think that's applicable here, Judge.
18 Because first of all, I think what we
19 heard -- I'm not saying Mr. Mizrahi is trying
20 to do anything improper. But it was --
21 circular reasoning is what I listened to here
22 basically, and I don't think we should base
23 any decision on this circular reasoning that
24 we're doing. Obviously, the decision --
25 that's why we're going through this and it's

1 not clear. And if it's not clear, anything
2 in Florida law, statute, if the -- if you're
3 going to err, you have to err on the side of
4 the defense.

5 THE COURT: Sure. No. I agree. I
6 don't think it's unclear that non-scorable
7 offenses may be taken into account. The
8 question is what -- to what extent. And --
9 in other words, I may be limited only to how
10 that tampering charge would otherwise
11 increase the sentence, which apparently not
12 at all. And I don't know that but I think --
13 I think that's probably right, frankly.

14 Now, talk to me, Mr. Mizrahi. Unless
15 you had something else to say, talk to me
16 about heinous, atrocious and cruel.

17 MR. MIZRAHI: Now, the heinous,
18 atrocious and cruel, Your Honor, the evidence
19 that's already been presented in -- by the
20 testimony of [REDACTED] and [REDACTED]
21 and then also by Dr. Stroh with regard to
22 what a strangulation death is like. And then
23 both of those witnesses indicated the
24 defendant admitted that. And then Dr. Stroh
25 indicated that the strangulation death would

1 take some time. It would not be immediate.
2 It would require constant pressure around the
3 neck to the point where the blood and/or air
4 was cut off, resulting in the victim's death,
5 that the victim would be aware of that. And
6 all of those factors would be sufficient
7 evidence to present HAC.

8 There is ample case law. I'm sure the
9 Court is aware, death penalty cases talk
10 about strangulation almost essentially being
11 per se HAC. So I do think there's ample
12 evidence.

13 I would also point out that there is
14 some evidence of this gunshot wound, and I
15 think the area of the gunshot wound at least
16 gives a reasonable inference that the victim
17 may have not died as a result of that. It
18 may have been painful, while I do -- I would
19 agree that the State can't establish what
20 effect that gunshot wound had on Miss Haim.

21 So the primary evidence would be in the
22 form of [REDACTED] and [REDACTED] and
23 Miss Stroh.

24 THE COURT: Okay. You can argue that,
25 Mr. Fallis, but I think I know what the

1 argument is. There's no way I should find
2 that beyond a reasonable doubt nor should a
3 jury. But is that your argument?

4 MR. FALLIS: That you could not find
5 that beyond a reasonable doubt.

6 THE COURT: That the jury shouldn't be
7 able to.

8 MR. FALLIS: Jury should not be able to
9 find that beyond a reasonable doubt. I
10 believe, sir, that's why it shouldn't even be
11 here.

12 THE COURT: All right. Anything else?

13 MR. MIZRAHI: No.

14 THE COURT: All right. I'm going to let
15 the four factors go back. I'll see what the
16 jury says about it. If that was going to be
17 the ultimate determining factor, maybe I'd
18 feel differently, but in the end, I'm going
19 to have to make this decision. And I can
20 give it the appropriate weight it deserves.
21 I can't consider any of these factors until
22 or unless -- better stated, unless the jury
23 so finds.

24 So make the change on the parsing out
25 under that one, and then print out a new

1 copy. We'll proof it.

2 Oh --

3 MR. MIZRAHI: Yeah. There's another
4 correction I think Your Honor had indicated.

5 THE COURT: Yeah. It's not so much a
6 correction, but I think it needs to be in
7 there and -- let me find it.

8 MR. FALLIS: I do have another question.

9 THE COURT: Well, let me do this while
10 I'm thinking about it.

11 MR. MIZRAHI: Your Honor, may Mr. Hughes
12 come up, my paralegal?

13 THE COURT: He may.

14 Well, I thought I wrote this down on the
15 instruction but I cannot find it. But what I
16 want to include is an instruction that it
17 needs to be unanimous. And I wrote it where
18 I thought it would best fit but can't find it
19 so...

20 MR. MIZRAHI: I think we could do at the
21 end before we do rules for deliberations. We
22 could have a paragraph. This is a reminder
23 that each one of the aggravating factors I
24 just described must be found unanimous by
25 you, which means each and every one of you

1 must agree to the same aggravating factor.

2 MS. WARREN: It's on No. 6. It's on --
3 it's on rules for deliberation already,
4 No. 6.

5 MR. MIZRAHI: Okay. We could just
6 elaborate it there, just put more information
7 on it there.

8 THE COURT: That's true. That's true.

9 (Brief interruption.)

10 THE COURT: See what the jury wants.

11 But you're right. It is there. So I
12 don't think there's any confusion. Nobody's
13 going to argue to the contrary.

14 MR. FALLIS: The other question I had,
15 Judge, is that since once again, this is a
16 novel situation, if -- can we, on a separate
17 hearing, put on mitigating circumstances that
18 don't have to be...

19 THE COURT: They have a verdict.
20 Let's -- I want to bring the jury in and hear
21 the verdict. And if there's some conviction
22 or a guilty verdict, then I'm going to tell
23 them there's a few more things they need to
24 do. I'm going to send them back out and
25 finish this discussion then. And if it's, of

1 course, not guilty, then it's the end of the
2 story, and we don't need to spend any more
3 time on this.

4 MR. MIZRAHI: Your Honor, just make sure
5 that we can get everyone here, family.

6 THE COURT: We'll take a few minutes.
7 Tell me when you're ready.

8 And you as well, Mr. Fallis, if there's
9 somebody else that you need to be here.

10 All right. We do have a verdict. Are
11 we ready for the jury to come back in?

12 MR. MIZRAHI: Yes, Your Honor.

13 MR. FALLIS: Yes, sir.

14 THE COURT: Bring in the jury.

15 (Jury present.)

16 THE COURT: Welcome back, ladies and
17 gentlemen. You can take your seats.

18 I understand the jury has reached a
19 verdict. Is that true?

20 A JUROR: Yes, sir.

21 THE COURT: You've provided the verdict
22 form to Miss James who provided it to me.

23 Finding no errors or omissions in the
24 verdict form.

25 Mr. McCallister, would you please

1 publish the verdict.

2 THE CLERK: In the Circuit Court of the
3 Fourth Judicial Circuit, in and for Duval
4 County, Florida, Case No. 2015-CF-7825 for
5 Division CR-E, State of Florida versus
6 Michael Ray Haim.

7 Verdict: We, the jury, find the
8 defendant guilty of murder in the second
9 degree as charged in the information.

10 So say we all, done in Jacksonville,
11 Duval County, Florida, signed by the
12 foreperson on April 12th, 2019.

13 THE COURT: Does either party wish the
14 jury to be polled?

15 MR. FALLIS: Yes, sir.

16 THE COURT: Mr. McCallister, please poll
17 the jury.

18 THE CLERK: Yes, sir.

19 Juror No. 1, is this your true and
20 correct verdict?

21 JUROR JENKINS: Yes, sir.

22 THE CLERK: Juror No. 2, is this your
23 true and correct verdict?

24 JUROR ROOS: Yes, sir.

25 THE CLERK: Juror No. 3, is this your

1 true and correct verdict?

2 JUROR LOIACONO: Yes, sir.

3 THE CLERK: Juror No. 4, is this your
4 true and corrected verdict?

5 JUROR MONTGOMERY: Yes, sir.

6 THE CLERK: Juror No. 5, is this your
7 true and corrected verdict?

8 JUROR SHOEMAKER: Yes, sir.

9 THE CLERK: Juror No. 6, is this your
10 true and correct verdict?

11 JUROR LEATHERBARROW: Yes, sir.

12 THE COURT: All right. Ladies and
13 gentlemen, there's one more thing that I'm
14 going to have to ask you to do in this case.
15 It's not going to take that long. There's
16 another decision that you have to make.

17 I'm going to have you go back to the
18 jury room for just a brief moment and let us
19 finish what we were doing. When you come
20 back out, we'll explain it to you, but,
21 again, it's not something -- it's important
22 but it's not something that's going to take
23 another whole week to try, of course.

24 So if you would please go back to the
25 jury room. We'll be back with you in just a

1 minute. Okay?

2 (Jury excused.)

3 THE COURT: All right. Mr. Haim, a jury
4 of your peers, having found you guilty of
5 murder in the second degree, I'm going to
6 revoke your bond and remand you into custody
7 of the Sheriff's Department until we have a
8 sentencing hearing.

9 He's not to leave the courtroom but
10 don't shackle him yet because we need to have
11 this next proceeding, and I want him to be
12 sitting at counsel table, ready to work.

13 So let us finish our instructions.

14 MR. MIZRAHI: Your Honor, Mr. Hughes is
15 indicating he's e-mailed it to
16 Mr. McCallister. So we do have a corrected
17 copy with the parsing out of the particular
18 verdict form.

19 THE COURT: Mr. Fallis, I understand
20 your objection to the procedure and to those
21 factors being considered. Is there anything
22 else about the instructions that you object
23 to?

24 MR. FALLIS: I haven't seen them, Judge.

25 THE COURT: Okay. Well, I'm going to

1 have you take a look at it.

2 And, Mr. Mizrahi, you have witnesses
3 available?

4 MR. MIZRAHI: Yes, I do, Your Honor.
5 They're sitting in the courtroom. If I may
6 have a moment to prep them, we'll be ready to
7 go in about two minutes.

8 THE COURT: You may.

9 MR. MIZRAHI: That's good from the
10 State.

11 MR. FALLIS: Can we have another copy?

12 THE COURT: What's that, sir?

13 MR. FALLIS: Can we have one more copy?

14 THE COURT: One more copy? Certainly.

15 MR. MIZRAHI: You can have my copy.

16 MR. FALLIS: Your Honor, before we bring
17 them back, there's another issue I have with
18 this procedure that you're going through. I
19 have no idea who the witnesses are going to
20 be. However, Your Honor, I would -- and I
21 think they should have been disclosed. I
22 have no way of -- I'm not sure if I want to
23 cross, but I have no means of having
24 preparation for cross examination of these
25 witnesses that I think we would be entitled

1 to do. But that would be confrontation of
2 the witnesses.

3 So like I said, given the novel
4 circumstances here, I don't think we're
5 prepared to go forward right now, Judge, with
6 this procedure.

7 THE COURT: Who are the witnesses,
8 Mr. Mizrahi?

9 MR. MIZRAHI: Your Honor, the State has
10 two witnesses. They both testified in this
11 case previously. It's Aaron Fraser, Liz
12 Peak, both of which have been listed and
13 deposed by the defense counsel in this case
14 and cross examined in this case. The only
15 purpose of their testimony is to talk about
16 the resultant harm this crime has done to
17 them and their family.

18 MR. FALLIS: I don't think, Your Honor,
19 they could -- first of all, when I deposed
20 them, Judge, we didn't get into the issues
21 that -- we were even aware that this was
22 going to be a -- another -- another hearing.
23 And obviously we weren't prepared to depose
24 them on those issues, so this is something
25 that's been sprung on us. And as far as the

1 other issues too, having to -- we don't
2 have -- we will have to bring the medical
3 examiner back to talk about what needs to be
4 talked -- she can be cross examined on that
5 because we didn't ever cross examine her on
6 that.

7 You know, all the work that we have done
8 in this case was before they filed this
9 motion for departure. We were never put on
10 notice of that, Judge, and that's why I
11 believe that we're not prepared to go
12 forward. And if the Court insists on
13 bifurcating this, then you will have to pass
14 it. We have an opportunity to prepare for
15 it, depose the witnesses on the issues that
16 we expect the prosecutor to go forward on.

17 Judge, I think we're -- we're really on
18 thin ice here with this procedure, and I have
19 not done anything except for a first-degree
20 murder case, you know, and I don't know --

21 THE COURT: Second-degree.

22 MR. FALLIS: I've never had this other
23 than a first-degree murder case.

24 THE COURT: I see.

25 MR. FALLIS: So I think, Judge, we are

1 putting reversible error here, and I want the
2 Court to reconsider going forward on this
3 right now because we are absolutely -- and I
4 need to give him effective assistance of
5 counsel, Judge, and I can see this coming
6 back on a freight train. Okay? And I want
7 to continue to render effective assistance of
8 counsel, which I won't be prepared to do at
9 this hearing that the Court has planned for
10 today.

11 And as I said, we had no notice until
12 eve of trial this was going to happen, so if
13 the Court insists on having this jury hear
14 it, then, Judge, I suggest that we take maybe
15 a week -- I don't think more than that --
16 have to bring them back. But I think it's
17 going to be pretty difficult for them to
18 avoid the media for a week.

19 So, I mean, we're in a quandary here,
20 Judge. And I think this is one that we --
21 the State is actually initiating and we are
22 caught in here. I mean, the Court and
23 defense as well with no -- I don't see any
24 remedy for it.

25 THE COURT: Well, Mr. Fallis, I'm not

1 caught in a quandary. I was prepared for
2 this because the State filed their notice. I
3 looked into this. I was anticipating this
4 could happen if there was a guilty verdict.

5 MR. FALLIS: Well, Judge, yeah. But
6 you're not the one who has to give effective
7 assistance of counsel. Okay? And I'm not --
8 I was certainly wasn't prepared for this,
9 Judge, and -- at the time when I deposed
10 these witnesses. So, I mean, your function
11 and my function are completely different. I
12 understand you can go forward, absolutely.
13 But I can't.

14 THE COURT: All right.

15 MR. FALLIS: Not when I'm sprung with
16 this new procedure and at trial actually,
17 just given notice of it, not knowing who they
18 were going to call. They didn't list anybody
19 separate for this procedure, which I believe
20 I was entitled to know.

21 And I'm not -- Judge, I'm not prepared
22 to go forward and cross examine if need be,
23 and I think they need to bring other
24 witnesses if they're going to say -- if he's
25 going to use the testimony of the ME, then I

1 sure as heck want to talk to her about what
2 it is, you know, they're going to say she
3 said.

4 THE COURT: He's not doing that. He
5 just said the two witnesses are Mr. Fraser
6 and Miss Peak.

7 MR. FALLIS: No. But to prove the
8 heinous -- the HAC, they're going to need the
9 ME for that.

10 THE COURT: Well, if they don't prove
11 it, that's on them.

12 MR. FALLIS: Well, Judge, they would
13 have to --

14 THE COURT: If your argument is they're
15 not prepared to prove their case, then I'd go
16 forward.

17 MR. FALLIS: What I'm trying to say,
18 Judge, is that they're going to ask this jury
19 to make that determination -- all right? --
20 that it was HAC, and they can probably do it
21 just because it is what it is and based on
22 their argument but with not any evidence,
23 though, to do it. They need to bring
24 evidence to prove that aggravator.

25 THE COURT: I agree.

1 Mr. Mizrahi?

2 MR. FALLIS: Well, you're still
3 submitting it to the jury when they don't
4 have any evidence.

5 THE COURT: I'm not going to tell them
6 how to try their case. If they don't have
7 any evidence, they don't have the evidence.
8 That's on them.

9 Mr. Mizrahi?

10 MR. MIZRAHI: Right. We did submit what
11 I -- the State feels is sufficient evidence
12 with regard to the HAC, as I argued before
13 the jury verdict, and we will rely upon that
14 evidence. And defense counsel certainly had
15 an opportunity to cross examine the witness
16 on that since it was brought up before this
17 trial.

18 Your Honor, I find it interesting that
19 Mr. Fallis says he needs time to prepare and
20 perhaps depose the witnesses. This -- the
21 testimony the State intends to elicit is very
22 akin to victim impact testimony, and, you
23 know, this is essentially the impact that
24 this crime had upon them. I can't imagine
25 what possible cross examination questions

1 Mr. Fallis would have on Aaron Fraser and Liz
2 Peak about how this -- Bonnie's death
3 affected them.

4 So we think if there is ineffectiveness,
5 there's no prejudicial effect upon them and
6 we're ready to go forward.

7 MR. FALLIS: There absolutely is, Judge,
8 because if they're going to get up there --
9 and I don't know this yet -- okay? -- and say
10 they needed to go therapy or that kind of --
11 I need to know what their testimony is going
12 to be, Judge. Under Florida law, we're
13 entitled to depose our witnesses. Okay? And
14 I am being deprived of that right now, and I
15 think it's completely unfair that we go
16 forward at this time. If you insist on doing
17 this procedure, Judge, come back in a week.
18 Tell the jury, come back in a week. We'll go
19 through it.

20 But I am absolutely not prepared for
21 this, and I'm not -- I don't want to sit
22 there and knowingly give ineffective
23 assistance of counsel because if that is ever
24 filed, Judge, I will concede it. And I don't
25 want to have to be there in that situation.

1 But I feel that I am being put in that
2 situation now by the State. And I just --
3 and my client obviously is prejudiced. He
4 said no there's no prejudice. Of course,
5 there's prejudice, Judge.

6 THE COURT: You stood up, Mr. Mizrahi?

7 MR. MIZRAHI: Only if the Court was
8 going to consider a continuance.

9 THE COURT: I'm not. We're going to go
10 forward.

11 MR. MIZRAHI: We're ready to go forward.

12 THE COURT: Ready for the jury?

13 MR. MIZRAHI: Yes, Your Honor.

14 THE COURT: Bring in the jury.

15 MR. FALLIS: Your Honor, at this time, I
16 would also move for a mistrial, given your
17 ruling.

18 THE COURT: A mistrial on what part of
19 the trial?

20 MR. FALLIS: On this part.

21 THE COURT: Well --

22 MR. FALLIS: Do it at any time but I
23 intend to move for a mistrial.

24 (Jury present.)

25 THE COURT: Welcome back in and please

1 take your seats.

2 All right. Members of the jury, you
3 have found the defendant guilty of murder in
4 the second degree. Sometime in the near
5 future, I will impose sentence on the
6 defendant as a result of that conviction.
7 And let me emphasize, this is not a death
8 penalty case, so there's no possibility that
9 this will be a death sentence. You would
10 have been told that already.

11 In imposing an appropriate sentence, the
12 law permits me to consider certain
13 circumstances about the crime for which the
14 defendant was convicted. Accordingly, during
15 the second phase of the trial, the State will
16 seek to establish the following aggravating
17 circumstances about the crime for which the
18 defendant was found guilty.

19 One, the crime was committed in the
20 presence of a victim family member, to wit,
21 her son, Aaron.

22 Two, the crime was committed during the
23 commission of tampering with evidence.

24 Three, the crime was committed in a
25 heinous, atrocious and cruel manner.

1 Four, the crime inflicted severe
2 physical and/or emotional trauma upon the
3 victim, Aaron and members of the victim's
4 family.

5 In a moment, I will permit the State to
6 offer any evidence relevant to the
7 aggravating circumstances I just mentioned.
8 The defendant may cross examine any witness
9 the State presents. Additionally, the
10 defendant may present any evidence he wishes
11 to present.

12 Remember, however, the defendant does
13 not have any burden to prove or disprove
14 anything. Instead, it is the State who bears
15 the entire burden to prove one or more of
16 these circumstances beyond a reasonable
17 doubt.

18 It is up to you to decide which evidence
19 is reliable. You should use your common
20 sense in deciding which is the best evidence
21 and which evidence should not be relied upon
22 in considering your verdict. You may find
23 some of the evidence not reliable or less
24 reliable than other evidence.

25 At the conclusion of all the evidence, I

1 will give you further instructions, defining
2 each of the proposed aggravating
3 circumstances as well as your instructions on
4 the rules for your deliberation.

5 State, call your first witness.

6 MR. MIZRAHI: State calls Aaron Fraser.

7 (Witness sworn by the clerk.)

8 MR. MIZRAHI: May it please the Court?

9 THE COURT: Yes, sir.

10 AARON FRASER,
11 having been produced and first duly sworn as a witness
12 on behalf of the State, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MIZRAHI:

15 Q Mr. Fraser, can you describe for the jury how
16 your mother's death affected your life?

17 A It affected my life in many ways. Not only
18 did I lose my mother, I lost my father, both sets of
19 grandparents and the majority of my extended family.

20 Q Have there been occasions in your life that
21 your ability to function has been hurt by the loss of
22 those relationships?

23 A It's made many things difficult.

24 Q Would you describe a few of those for the
25 jury, please?

1 A I'm not sure if I can get into a lot of the
2 things. I don't --

3 Q Well, I don't want you -- let me ask you --
4 I'll ask you more pointed questions. Did you have to
5 undergo therapy as a result of this?

6 A Yes.

7 Q Do you have a memory of doing that?

8 A Yes. I continued to see my therapist from
9 when I was three and a half years old.

10 Q And have you had parts of your life made more
11 complicated because you didn't have those members of
12 your family to consult even though you still have a
13 loving, adoptive family?

14 A Yes.

15 Q Has there been trauma inflicted upon you when
16 you have had chance meetings with members of your
17 family that you didn't even really know?

18 A Yes.

19 Q Could you describe one of those moments for
20 the jury?

21 A I was at work. I was about 19 or 20 years
22 old. And my grandparents on the Haim side of the
23 family came in. It was a weekday. I was working at a
24 fish market. It was kind of slow. I was on the
25 counter. They came in and asked if I was Aaron.

1 Wasn't an unusual question. People come in ask if I
2 was Aaron. Like, someone would recommend them for me
3 to wait on them or something. I said, yes.

4 And they said, we're your grandparents.

5 I went outside and spoke with them for a
6 little bit. It was a very uneasy conversation. I
7 don't remember saying a whole lot. They told me they
8 loved me, and they also told me that I was brainwashed.

9 They came back later that week to pick up the
10 order. I have no idea what they ordered. I didn't
11 deal with them on the retail side of it. But -- and I
12 took John outside and told him I didn't want anything
13 to do with him. It was a very emotional event for me.
14 I was able to keep myself composed while I was in their
15 presence but afterwards, it's pretty tough.

16 Q Is it hard for you, Aaron, and fair to say
17 that you like to keep your emotions inside?

18 A Absolutely.

19 Q And try to be as stoic as you can?

20 A Yes, sir.

21 Q Describe a little bit more for the jury the
22 emotional harm you suffered as a result of
23 December 14th, 2014, discovery of your mom in your
24 home, in the ground.

25 A I mean, it was very tough. I mean, I think

1 everybody can imagine, even if it's not a loved one,
2 finding a skull and picking it up and just what that
3 would do to somebody, not to mention that it was your
4 mother.

5 Q And, Aaron, as you sit here today, is the
6 only real-life interaction that you remember with your
7 mother when you held her skull in your hand?

8 A Yes.

9 MR. MIZRAHI: That's all the questions I
10 have, Your Honor.

11 THE COURT: Any cross?

12 MR. FALLIS: No, Your Honor.

13 THE COURT: All right. Mr. Haim -- or
14 Mr. Fraser, you can return to your seat.

15 (Witness excused.)

16 THE COURT: State, call your next
17 witness.

18 MR. MIZRAHI: Your Honor, we'll call Liz
19 Peak.

20 (Witness sworn by the clerk.)

21 LIZ PEAK,
22 having been produced and first duly sworn as a witness
23 on behalf of the State, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. MIZRAHI:

1 Q Miss Peak, you saw the questions I asked of
2 Aaron.

3 Just breathe. Okay? We'll get through it.

4 Obviously, you were -- how old were you when
5 Bonnie went missing?

6 A I was 26.

7 Q Okay. Can you say -- just beginning first
8 with her disappearance, what emotional toll did that
9 take upon you and your family?

10 A We were -- we all grew up together and had
11 fun. It was hard the first couple of days, just not
12 knowing what happened. It became much harder the next
13 week. When Michael Haim and his parents decided to
14 work their salesmen magic on my parents and divide our
15 family, we had to decide if -- then if we wanted to
16 continue believing Aaron or believe Mike. When a
17 three-and-a-half-year-old tells you what happened, how
18 could you not believe him?

19 So for the past 26 years, Michael Ray Haim
20 and his parents have continued, continuous, their
21 manipulation on our family, on dividing us. I never
22 wavered. My sisters never wavered.

23 And it's hard missing Christmas. When we
24 finally started having Christmas again together, we
25 were okay as long as we didn't talk about Bonnie. And

1 we didn't talk about Aaron. As long as we stayed away
2 from certain subjects, we could be a family.

3 But in our hearts, we knew something was
4 wrong, and they caused it, not just that year but for
5 26 years. That day that Aaron speaks of, when John and
6 Carol got that picture with Aaron, they took it to my
7 parents and said that they had dinner and a
8 relationship with Aaron and they don't. This is not
9 just evil on Bonnie, but it's -- it's just evil in the
10 worst way.

11 Q Let me ask you one question. I hate to cut
12 you off 'cause I know --

13 A Sorry.

14 Q I want to make sure that it's clear. I want
15 to talk about the harm -- and I think you were trying
16 to say it at the very end there. Is the fact that the
17 body was never found and not knowing that, did have
18 additional trauma, different than greater than if the
19 body had been found in 1993?

20 A Oh, yeah. If Bonnie was found in 1993, we
21 wouldn't have had 26 years of this division. This
22 would have been over with. But it's compacted. Where
23 it was bad in '93, every year that this has continued,
24 it compounds and compound and compounds. Depraved
25 mind? Wow.

1 Q Okay.

2 A I'm sorry.

3 Q That's okay. That's okay. It's okay to get
4 emotional. That's fine.

5 Let me ask you a few questions just so we can
6 keep it a little bit on track. Thank you.

7 What about you personally? Did it affect
8 your ability to have relationships and live a
9 productive and full life?

10 A I'm sorry. Say the last part.

11 Q Did -- the loss of Bonnie and what you just
12 testified about, did it have a personnel effect on your
13 love life?

14 A I was only 26. Like many of these --
15 26 years old. I was so naive. I thought -- I just
16 didn't think bad things could happen. None of us
17 thought bad things to could happen to us. The trauma
18 wasn't only mental. We built these brick walls and
19 didn't want to have relationships with anybody. Ruined
20 my marriage. It ruined my -- but physically, the
21 physical harm on not just me and -- on all my family.
22 The physical -- a year after she died, I went into the
23 hospital with the whole body shutting down. It was
24 so -- everything. Yeah.

25 Q Okay. Thank you, Miss Peak.

1 Can you describe a little bit of what you saw
2 Aaron go through in those first days and weeks and
3 months up to years after the murder of his mother?

4 A Describe what?

5 Q Aaron. Directing it to Aaron as a child,
6 obviously he doesn't remember.

7 A Right.

8 Q But can you describe for the jury what his
9 life was like? We know he lived with you.

10 A Right.

11 Q We know he lived with other people. Can you
12 describe that?

13 A Well, we had visitation. I had to take Aaron
14 to visitations twice a week. So every Wednesday and
15 Saturday, we went to a visitation center. And he would
16 spend time with his father and his grandparents. And
17 he'll be fine. He's such a trooper until we walk in
18 the door of my house. And my kids were the same age as
19 Aaron. My daughter was three and my son was two. And
20 we'd walk in the house, and we could only make it as
21 far as the kitchen. That's only as far as -- every
22 single time we'd walk into the kitchen, and he would
23 just fall on the floor and start pounding his fists on
24 the floor until I grab him. And I have to hold him for
25 a good hour. After every visitation, he would -- and

1 he wouldn't say anything. He would just -- just be so
2 flustered. A three-and-a-half-year-old did not know
3 how to express his feelings, and that was just all he
4 could do until he finally wore himself out and took a
5 nap.

6 MR. MIZRAHI: Thank you, Miss Peak.

7 That's all the questions I have.

8 THE COURT: Any cross?

9 MR. FALLIS: No, Your Honor.

10 THE COURT: All right. You can return
11 to your seat, ma'am.

12 (Witness excused.)

13 MR. MIZRAHI: State has no other
14 evidence, Your Honor.

15 THE COURT: All right. Ladies and
16 gentlemen, I'm going to, since we concluded
17 that part of the case, have you go back to
18 the jury room, just for a few more minutes,
19 and then we'll bring you back out to finish
20 the case. Okay?

21 So don't talk about this part yet. Just
22 enjoy a short break, and we'll be back with
23 you in just a minute.

24 (Jury excused.)

25 THE COURT: All right. Mr. Fallis, do

1 you have any intention of calling any
2 witnesses?

3 MR. FALLIS: I do not, Your Honor. As I
4 told the Court, I -- as I expressed to the
5 Court before, I am not prepared for this
6 hearing, and at this time, I would also move
7 for a mistrial as to this issue of
8 sentencing.

9 THE COURT: I will deny that motion.
10 We ready to go to argument?

11 MR. MIZRAHI: Yes, Your Honor.
12 Obviously the State's will be brief. I'll
13 need probably five to ten minutes.

14 MR. FALLIS: Are we proceeding on the
15 other -- do you intend to proceed on --

16 MR. MIZRAHI: I intend on proceeding on
17 all four in asking the jury to rely on the
18 evidence that was presented in the trial as
19 well as the evidence that was just presented.

20 MR. FALLIS: No witnesses, though?

21 MR. MIZRAHI: I'm not calling any more
22 witnesses.

23 MR. FALLIS: I'm just asking, are you
24 calling any witnesses?

25 THE COURT: He's not calling any other

1 witnesses. There will be a chance to --
2 we're going to have a sentencing hearing
3 after a PSI is ordered.

4 MR. FALLIS: I appreciate that.

5 THE COURT: And you can present
6 evidence. You can present things that
7 address these factors that may influence my
8 decision ultimately on this as well as any
9 other factors of mitigation.

10 MR. FALLIS: However, not to a jury,
11 though. That's --

12 THE COURT: Not to the jury. The jury
13 isn't deciding this man's sentence. I will.
14 They're only going to tell me whether or not
15 there's some aggravating factors that I
16 could, if I choose to, consider at the
17 appropriate time. That's all they're doing.
18 Not that that's not significant. It is.
19 That's the end of their work.

20 We ready for jury to come back in?

21 MR. MIZRAHI: Yes, sir.

22 THE COURT: Bring in the jury.

23 (Jury present.)

24 THE COURT: Y'all can take your seats.
25 Thank you.

1 Had a very short break. We're going to
2 continue on now with the argument section,
3 and we'll hear from Mr. Mizrahi first, if he
4 wishes to make argument.

5 MR. MIZRAHI: May it please the Court
6 and counsel?

7 Your verdicts stated the truth of this
8 case. And that was a lawful and just
9 verdict.

10 The next step of your consideration has
11 to do with certain aggravating factors, which
12 you do have to find beyond a reasonable doubt
13 in order for the Court to consider them as
14 aggravating factors to weigh into the
15 possible sentence the defendant receives.
16 There are four of them. Some of the evidence
17 you just heard, and some of the evidence you
18 heard during the course of the trial. You
19 can rely upon both of those, the evidence you
20 heard on the witness stand during this --
21 what we refer to as a sentencing phase or
22 penalty phase and testimony you heard before.

23 The first factor is that the crime was
24 committed in the presence of a victim's
25 family member, specifically her son, Aaron.

1 And that's where you heard the testimony of
2 Aaron Haim at the time, Fraser now. He was
3 three and a half, said he saw, at nighttime,
4 Daddy hurt Mommy. And that is the evidence
5 we presented.

6 Additionally, I think you can use your
7 common sense and understand that the crime
8 took place in the home where Aaron was. So
9 he certainly would have been in a position to
10 see and know the things about which he told
11 the Child Protection Team, which is Daddy
12 hurt Mommy. That's a reasonable and logical
13 fact, and you can find that beyond a
14 reasonable doubt.

15 The second aggravating factor is the
16 crime was committed during the commission of
17 the tampering with evidence. The defendant
18 was not charged with tampering with evidence
19 because the statute of limitations had run.
20 But you can see very easily, the defendant
21 committed numerous acts of tampering with
22 evidence, including burial of the body, the
23 driving of the car to the airport, the
24 throwing away of the purse. All of these
25 things compromised the integrity of the

1 scene, and that tampering with evidence was
2 proven during the course of the prior phase
3 of this trial. In addition, chlorine
4 bottles, all of those things, all tampering
5 with evidence.

6 The crime was committed in a heinous,
7 atrocious and cruel manner. That evidence
8 was presented to you in the form of the
9 gunshot wound combined with the
10 strangulation, the testimony from
11 [REDACTED] and [REDACTED], combined
12 with the testimony from Miss Stroh --
13 Dr. Stroh, who indicated how difficult it
14 would be to strangle another human being.

15 Heinous, atrocious and cruel means that
16 it's something more than just killing
17 someone. The victim would have to suffer
18 during the course of that killing and
19 understand what was happening to the victim
20 and be aware of it. And that killing is
21 without pity for that particular victim in
22 this case, and I do think there is sufficient
23 evidence in the form of that testimony to
24 find that third aggravating factor.

25 The fourth and final aggravating factor

1 is the crime inflicted severe physical and
2 emotional trauma upon the victim, Aaron and
3 members of the victim's family. That was the
4 main purpose of the two witnesses, Aaron and
5 then Liz Peak, that came forward and talked
6 to you about that resulting harm, and I think
7 the evidence is overwhelming. It may be
8 intuitive but when it's expressed, it becomes
9 real, and you see the trauma that these kind
10 of crimes can inflict upon this family and
11 tear them apart and affect their lives not
12 only emotionally but physically as well.

13 The victim suffered obviously severe
14 physical harm, and this kind of merges or
15 dovetails a little bit with the heinous,
16 atrocious and cruel because of the evidence
17 of strangulation and a shooting were actually
18 combined to show that although every murder
19 victim would suffer from physical harm, this
20 is more than just a normal murder. This was
21 a vicious attack that ended her life.

22 And there's evidence to support those
23 four. We thank you for your time and
24 attention, and we request that you find all
25 four aggravating factors.

1 Thank you.

2 THE COURT: Mr. Fallis, any argument
3 you'd like to make, sir?

4 MR. FALLIS: I would.

5 Ladies and gentlemen, no one's going to
6 tell you that this is not a tragedy, and
7 anybody can understand the feelings of all
8 the parties involved. However, the law, we
9 have to discuss -- discuss these so-called
10 aggravators.

11 Now, the first one they're asking for is
12 saying that you need to find beyond and to
13 the exclusion of every reasonable doubt that
14 this was committed in the presence of Aaron.
15 You have no evidence to that. You've got one
16 statement, quote, that was admitted in the
17 trial that Daddy hurt Mommy. You don't know
18 the circumstances around that. That's
19 something that Miss Medders got up there,
20 didn't tell you anything. You didn't see a
21 copy of the interview or when that alleged
22 statement was made or even if it was made,
23 other than her saying that. There's nothing.
24 I mean, they don't have somebody to come up
25 here telling you that I saw it. No, they

1 don't and they never will and they can't.

2 But the point is you have to know beyond
3 and to the exclusion of reasonable doubt that
4 Aaron was -- actually witnessed this. You
5 can't get it from that statement. If you
6 remember, on the cross examination of
7 Medders, I said, well, you said Daddy hurt
8 Mommy. Well, when Daddy hurt Mommy? He
9 didn't say, Daddy hurt Mommy last night or
10 how he -- how she hurt -- he hurt Mommy. You
11 didn't hear any of that.

12 So you can't make that finding beyond
13 the exclusion of a reasonable doubt that he
14 actually witnessed it because they didn't
15 give you evidence, other than the statement,
16 maybe well out of context. At three and a
17 half hours, who knows when that statement was
18 made, in response to what kind of question or
19 questioning. I even asked her, here's a
20 three-and-a-half-year-old. And there's
21 procedures that she did not follow when you
22 interview. There are real procedures.

23 You're supposed to find out, number one,
24 does the child know the difference between a
25 truth and a lie? That sounds maybe

1 elementary here but it's not. That's the
2 procedure.

3 Second of all, you've got to find out
4 whether that child has been coached in any
5 way. You don't know that. And she didn't
6 follow that procedure.

7 They cannot prove that element right
8 there, Your Honor -- both Your Honor and
9 ladies and members of the jury, because they
10 don't have any proof of that, that Aaron was
11 there other than a statement that you
12 don't -- you have no idea how it was made and
13 under what conditions and whether Aaron even
14 knew at three and a half years old -- who
15 knows whether he was coached. We know there
16 were family members who were against
17 Mr. Haim, adverse to Mr. Haim who spoke to
18 the child. Maybe they put that in the
19 child's mind.

20 But you have to know what the basis of
21 that is of the so-called witnessing. And you
22 don't have that. You've got one statement
23 that doesn't tell you anything. So I suggest
24 to you, they have not proven this beyond and
25 to the exclusion of a reasonable doubt unless

1 they can tell you how or show you a video so
2 you can make a determination of both the
3 composure and the context that it was given
4 in and what happened and when it happened.
5 You don't have that.

6 They want you to assume that Aaron,
7 number one, did say it, and he said -- he was
8 alluding that it happened the night before or
9 the day before that. You don't have that,
10 ladies and gentlemen, certainly not to the
11 exclusion of a reasonable doubt.

12 So I would suggest that that cannot be
13 found under any circumstances.

14 I understand this an emotional trial,
15 very emotional testimony. But the same thing
16 holds that you heard before. You can't --
17 you can't express your feelings. That's not
18 what this is about. You're prohibited from
19 doing that. Your feelings towards someone,
20 feeling bad for someone, not -- disliking
21 someone, that's not -- that's not what it's
22 about.

23 You've got to base it on facts. Did
24 they bring facts in to show that -- that
25 so-called aggravator. So, ladies and

1 gentlemen, that's my argument on that.

2 Now, whether the defendant committed
3 this crime during the commission of a
4 tampering with evidence. Well, if you take
5 the State's theory that, quote, she was
6 murdered and then she later was buried -- and
7 that's what I think they're talking about,
8 tampering with evidence -- she was already
9 murdered. Okay? I suggest to you that
10 burying is also inherent in the murdering.
11 It's not -- it's not a separate thing that
12 needs to be considered. So I'd ask that you
13 not find that as well.

14 Third one they're asking is -- and this
15 is one you have absolutely no real testimony
16 for them to make that standard, that this was
17 committed in a heinous, atrocious and cruel
18 manner. If you accept that it was a
19 murder -- okay? -- that's not enough. It has
20 to be exceptional, heinous. It has to be --
21 they're talking about torture.

22 You have no evidence of any torture
23 here. Strangulation in itself is not
24 torture. The ME didn't say it was torture.
25 Just telling you how it happens. Everybody

1 knows how strangulation can happen. Okay?
2 But has to be more than just that. Or if
3 this were -- and I don't know how they could
4 ever find a shooting. Then you have to say
5 that that shooting was heinous and atrocious.
6 And that's just -- I hate to sound flippant
7 but a garden variety of a method of killing.
8 It's nothing especially heinous and cruel,
9 unless they can say, oh, yeah, she
10 suffered -- if you even believe it
11 happened -- okay? -- she suffered
12 excruciating pain for a long period of time.

13 You don't have that here and that's what
14 heinous atrocious and cruel means. That's
15 something more than just a killing. That
16 means it is exactly what it says, tantamount,
17 I suggest to you, of torture. You don't have
18 that in this case, and there's no way that
19 you can find that happened beyond and to the
20 exclusion of a reasonable doubt.

21 They haven't brought you any witnesses
22 in here to say that. All the ME said was,
23 yeah, we don't know, if it were
24 strangulation, how fast it took. The person
25 can be conked out before death occurs, so

1 that's not heinous, atrocious and cruel, any
2 torture. So I know they cannot find that
3 beyond -- and once again, beyond and to the
4 exclusion of a reasonable doubt.

5 Now, you-all have to agree on these
6 things, all of you, unanimously that this
7 occurred.

8 Now, we, the jury, have found the
9 defendant guilty of murder in the
10 second-degree murder. We further find the
11 crime inflicted severe physical and emotional
12 trauma. Ladies and gentlemen, there's no
13 argument there. Of course, every family's
14 traumatized by a death, especially, I would
15 imagine, one that they considered was
16 criminal, which in effect is what we're
17 talking about. And I don't think there's any
18 argument, and I think that they're probably
19 prepared to find that -- that aggravator.

20 I think I have covered all of them.

21 Yes. I have no further argument on
22 that, Your Honor.

23 THE COURT: All right. Thank you,
24 Mr. Fallis.

25 All right, members of the jury. Listen

1 carefully again as I give you the final
2 instructions on this phase of the case.
3 There's the four aggravators. I'm going to
4 define them one after the other.

5 One, the crime was committed in the
6 presence of a victim's family member, to wit,
7 her son, Aaron. In order to prove this
8 aggravating factor, the State must prove
9 beyond a reasonable doubt that Aaron Haim was
10 the victim's family member and present at the
11 time of the murder.

12 Family member means spouses, former
13 spouses, persons related by blood or
14 marriage. The family must be currently
15 residing or have in the past resided together
16 in the same single dwelling unit.

17 Two, the crime was committed during the
18 commission of tampering with evidence. In
19 order to prove this aggravating factor, the
20 State must prove beyond a reasonable doubt
21 that the defendant committed murder in the
22 second degree, for which you have previously
23 convicted him during the course of tampering
24 with evidence.

25 Tampering with evidence means knowing

1 that a criminal trial or proceeding or an
2 investigation by a duly constituted
3 prosecuting authority, law enforcement
4 agency, grand jury or legislative committee
5 of the state is pending or is about to be
6 instituted shall alter destroy, conceal or
7 remove any record, document or thing, the
8 purpose to impair its veracity or
9 availability in such proceeding or
10 investigation.

11 In the course of this case means that
12 the murder in the second-degree murder for
13 which you have previously found the defendant
14 guilty occurred prior to, contemporaneously
15 with or in the -- or subsequent to the
16 tampering with evidence and that the murder
17 in the second degree and the tampering with
18 evidence constitute a continuous series of
19 acts or events.

20 Three, the crime was committed in a
21 heinous, atrocious and cruel manner. In
22 order to prove this aggravating factor, the
23 State must prove beyond a reasonable doubt
24 that the second-degree murder for which you
25 have previously convicted him was a crime of

1 violence and was committed in a manner that
2 was especially heinous, atrocious and cruel.

3 Heinous means extremely wicked or
4 shockingly evil.

5 Atrocious means outrageously wicked and
6 vile.

7 Cruel means designed to inflict a high
8 degree of pain with utter indifference to or
9 even enjoyment of the suffering of others.

10 The kind of crime intended to be
11 included as heinous, atrocious or cruel is
12 one accompanied by additional acts that show
13 that the crime was conscienceless or pitiless
14 and was unnecessarily tortuous to the victim.

15 Four, the crime inflicted severe
16 physical and/or emotional trauma upon the
17 victim, Aaron and members of the victim's
18 family. Should be reading upon the victim,
19 comma, Aaron and the members of the victim's
20 family. To establish this aggravator, the
21 State is required to demonstrate that the
22 victim, Aaron and members of the victim's
23 family in this case suffered from
24 extraordinary emotional trauma during the
25 course of and/or as a result of the

1 second-degree murder for which you have
2 previously found the defendant guilty.

3 It is not enough that the State show
4 that the victim suffered some emotional
5 trauma because some emotional trauma to a
6 victim is inherent in any second-degree
7 murder. Instead, to prove this aggravator,
8 the State must show that the victim's
9 emotional trauma was extraordinary and
10 occurred as a result of circumstances that
11 are not clearly inherent in the crime
12 charged, such as excessive force or extreme
13 cruelty.

14 These are some general rules that apply
15 to your discussion. You must follow these
16 rules in order to return a lawful verdict.

17 One, you must follow the law as it is
18 set out in these instructions. If you fail
19 to follow the law, your verdict will be a
20 miscarriage of justice. There is no reason
21 for failing to follow the law in this case.
22 All of us are depending upon you to make a
23 wise and legal decision in this matter.

24 Two, this case must be decided only upon
25 the evidence that you have heard from the

1 testimony of the witnesses and have seen in
2 the form of the exhibits in evidence and
3 these instructions.

4 Three, this case must not be decided for
5 or against anyone because you feel sorry for
6 anyone or are angry at anyone.

7 Four, remember, the lawyers are not on
8 trial. Your feelings about them should not
9 influence your decision in this case.

10 Five, your duty is to determine if the
11 defendant has been proven guilty or not in
12 accord with the law. And in this sense,
13 we're talking about these sentencing
14 aggravating factors, not the original
15 verdict. And it is my job to determine a
16 proper sentence.

17 Six, whatever verdict you render must be
18 unanimous; that is, each juror must agree to
19 the same verdict.

20 Seven, your verdict should not be
21 influence by feelings of prejudice, bias or
22 sympathy. Your verdict must be based on the
23 evidence and on the law contained in these
24 instructions.

25 There's a separate supplemental verdict

1 and it addresses, by Roman numeral, each of
2 the four aggravating factors.

3 The first one reads: We, the jury have
4 the defendant guilty of murder in the second
5 degree, further find the crime was committed
6 in the presence of the victim's family
7 member, to wit, her son, Aaron or we, the
8 jury, have found the defendant guilty of
9 murder in the second degree, further find
10 that the crime was not committed in the
11 presence of the victim's family member, to
12 wit, her son, Aaron.

13 Two, we, the jury, have found the
14 defendant guilty of murder in the second
15 degree. We further find the crime was
16 committed during the commission of tampering
17 with evidence or we, the jury, find have
18 found the defendant guilty of murder in the
19 second degree, further find the crime was not
20 committed during the commission of tampering
21 with evidence.

22 Three, we, the jury, have found the
23 defendant guilty of murder in the second
24 degree, further find the crime was committed
25 in a heinous, atrocious and cruel manner or

1 we, the jury, find the defendant -- have
2 found the defendant guilty of murder in the
3 second degree, further find that the crime
4 was not committed in a heinous, atrocious and
5 cruel manner.

6 And four, we, the jury, find -- we, the
7 jury, have found the defendant guilty of
8 murder in the second degree, further find
9 that the crime inflicted severe physical
10 and/or emotional trauma upon. And there's
11 three choices. You can choose one or all --
12 the victim, Aaron or members of the victim's
13 family. Or we, the jury, have found the
14 defendant guilty of murder in the second
15 degree, further find that the crime did not
16 inflict severe physical and/or emotional
17 trauma upon the victim or Aaron or members of
18 the victim's family.

19 Then a place that has -- for the
20 foreperson to sign it and date it.

21 So I'll have you go back to the jury
22 room to deliberate these verdicts. I'll send
23 these instructions back in just a moment with
24 the clerk, and then we'll wait for your
25 decision.

1 (Jury excused to begin deliberations at
2 3:57 p.m.)

3 THE COURT: Let the record reflect the
4 jury has left the courtroom. We can just
5 stay in session until Mr. McCallister, our
6 clerk, comes back after he delivers the
7 instructions and verdict. Then we'll be in
8 recess.

9 MR. FALLIS: Your Honor, how much time
10 would you want us back after reaching a
11 verdict?

12 THE COURT: I'm not sure I understand
13 the question.

14 MR. FALLIS: How much time -- how much
15 of a leash are we on to be gone?

16 THE COURT: I don't know. However long
17 it takes them.

18 MR. FALLIS: Well, I understand but once
19 you get notice, when do you want us? How
20 long do we have?

21 THE COURT: Within five minutes.

22 MR. FALLIS: I'm sorry?

23 THE COURT: Within five minutes.

24 MR. FALLIS: That means stay here.

25 MS. WARREN: Yeah. They'll be out in

1 two minutes.

2 THE COURT: All right. The clerk has
3 returned. The jury has the case. We are in
4 recess.

5 (Recess from 3:58 p.m. until 4:49 p.m.)

6 (Defendant present.)

7 THE COURT: I understand we have a
8 verdict as to aggravated factors.

9 We ready to bring in the jury?

10 MR. MIZRAHI: We are, Your Honor.

11 MR. FALLIS: Yes, sir.

12 THE COURT: Bring in the jury.

13 (Jury present.)

14 THE COURT: All right. Welcome back,
15 folks. You can take your seats.

16 I understand you've reached a verdict on
17 the next phase.

18 A JUROR: Yes, sir.

19 THE COURT: You can provide that verdict
20 form to Miss James, the bailiff.

21 All right. Finding no errors or
22 omissions in the verdict form.

23 Mr. McCallister, if you would please
24 publish the verdict.

25 THE CLERK: Thank you, Judge.

1 THE COURT: Verdicts.

2 THE CLERK: In the Circuit Court of the
3 Fourth Judicial Circuit, in and for Duval
4 County, Florida, Case No. 2015-CF-7825,
5 Division CR-E, State of Florida versus
6 Michael Ray Haim.

7 As to Supplemental Verdict No. 1: We,
8 the jury, have found the defendant guilty of
9 murder in the second degree, further find the
10 crime was committed in the presence of a
11 victim's family member, to wit, her son,
12 Aaron.

13 As to Supplemental Verdict No. 2: We,
14 the jury, have found the defendant guilty of
15 murder in the second degree, further find the
16 crime was committed during the commission of
17 a tampering with evidence.

18 As to Supplement Verdict No. 3: We, the
19 jury, have found the defendant guilty of
20 murder in the second degree, further the
21 crime was not committed in a heinous,
22 atrocious or cruel manner.

23 As to Supplemental Verdict No. 4: We,
24 the jury, have found the defendant guilty of
25 murder in the second degree, further find the

1 crime inflicted severe physical and/or
2 emotional trauma upon the victim, Aaron and
3 members of the family.

4 So say we all, done in Jacksonville,
5 Duval County, Florida, signed by the
6 foreperson, April 12th, 2019.

7 THE COURT: All right. Does either
8 party wish to jury to be polled?

9 MR. MIZRAHI: No, Your Honor.

10 MR. FALLIS: No, Your Honor.

11 THE COURT: All right. Ladies and
12 gentlemen, let me thank you again for your
13 service to your community in this case. It's
14 been a long week and y'all have been
15 attentive throughout the entire trial as well
16 as punctual, which I certainly appreciate.

17 Let me tell you about some rights that
18 you have as jurors. You do not have to talk
19 about this case. There may be people who are
20 interested in talking to you about it. I
21 don't know that will -- if that will happen.
22 But you have every right to say you do not
23 wish to talk about it. For over 200 years
24 now in this country, we have recognized the
25 importance of maintaining the secrecy of what

1 happens in that jury room. And it should not
2 be public. That's why we make it secret. So
3 feel free to not talk about it.

4 Of course, if you want to go home to
5 your friends, family, et cetera, you are now
6 free to talk about this case, look up any
7 information about the case, if you so choose,
8 and go about the rest of your lives in that
9 respect. Okay?

10 I have a very small token of my
11 appreciation, this little pin that we have
12 that says "Distinguished Juror, Duval
13 County." So I'm going to give that to
14 Miss James to give to you so that you can
15 remember your experience this week.

16 And with that, I wish you a good day and
17 a good week. You are discharged. Thank you.

18 (Jury excused.)

19 THE COURT: All right. Let the jury --
20 let the record reflect the jury has left the
21 courtroom.

22 I think I said this. But just in case,
23 Mr. Haim, I will revoke your bond, hold you
24 in the Duval County Jail with no bond,
25 pending sentencing in this case.

1 We have discussed off the record,
2 counsel and I, a sentencing date of May
3 the 17th. That's Friday at 9:00 a.m.
4 Correct?

5 MS. WARREN: Yes, Your Honor.

6 THE COURT: Okay. And, Mr. Fallis,
7 would you like to order a presentence
8 investigation?

9 MR. FALLIS: Yes, sir.

10 THE COURT: Then we'll have one of those
11 ordered as well.

12 How long do you anticipate needing on
13 that day, Mr. Mizrahi, first, from you?

14 MR. MIZRAHI: Your Honor, we'll
15 obviously have some victim impact. There's a
16 lot members of the family. I'm relatively
17 sure it would accomplished in about 30 to
18 45 minutes.

19 THE COURT: Okay. Mr. Fallis, can you
20 give me an estimation? Here's where I'm
21 going. Do I block off a morning, or do I
22 block off the day?

23 MR. FALLIS: You said how long?

24 MR. MIZRAHI: I said 30 to 45 minutes
25 for my victim --

1 MR. FALLIS: I'll take the rest of the
2 morning.

3 THE COURT: Okay. All right. We'll see
4 you-all at 9:00 a.m., courtroom to be
5 determined. It may be 308. It may be in
6 here. But we'll get out an order or
7 something so y'all know where to go.

8 Friday May 17th. See you then.

9 (Whereupon the proceedings were concluded.)

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1 C E R T I F I C A T E

2 STATE OF FLORIDA)

3 COUNTY OF DUVAL)

4 I, Karen Waugerman, Registered Professional
5 Reporter, certify that I was authorized to and did
6 stenographically report the foregoing proceedings and
7 that the transcript is a true and complete record of my
8 stenographic notes.

9 DATED this 1st day of September, 2019.

10

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12

13 /s/ Karen Waugerman

14 KAREN WAUGERMAN, RPR

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