

Closing Arguments

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R E P O R T E R ' S R E C O R D
VOLUME 41 OF 53

Trial Court Cause No. 380-80047-01

THE STATE OF TEXAS * IN THE 380TH DISTRICT COURT
 *
V. *
 *
IVAN ABNER CANTU * OF COLLIN COUNTY, TEXAS

REPORTER'S RECORD
VOLUME 41 - GUILT/INNOCENCE
CAPITAL MURDER JURY TRIAL

COPY

On the 16th day of October, 2001, from 9:15 a.m. to 5:00 p.m. the Capital Murder - Trial on the Merits proceedings came on to be heard in the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the Honorable Charles F. Sandoval, Judge Presiding, held in McKinney, Collin County, Texas:

Proceedings reported by Computerized Stenotype Machine; Reporter's Record produced by Computer-Assisted Transcription.

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PROCEEDINGS

THE COURT: We're on the record in Ivan Cantu's case. He's here with his attorneys. The State is here by its attorneys. Have both sides taken a look at the charge?

MR. SCHULTZ: State has.

MR. GOELLER: Yes, Your Honor, we've had an opportunity to review the charge.

THE COURT: I tell you what I've done. If you look at page 12, the only thing it says is "judge presiding." I am taking that out of the charge, and I've whited out the bottom of the next page and made it page 12. So we have a 12 page charge right now. The last page is page 12 of the verdict form.

Okay. Is there anything from the State at this time?

MR. SCHULTZ: Just formally, for record purposes, the State at this time abandons the submission of burglary as a theory of culpability in this case, and actually make's its oral motion to strike that theory of submission.

THE COURT: All right. It's ordered stricken.

And is there anything from the Defense?

MR. GOELLER: Yes, Your Honor, at this time comes now the Defendant and would request that the State elect as to which theory of capital murder it will proceed on, either murder in the course of committing burglary or murder

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of two people.

MR. SCHULTZ: Did you mean robbery?

MR. GOELLER: I'm sorry, robbery. So we'd ask for an election at this time.

THE COURT: All right. What says the State?

MR. SCHULTZ: No, thank you.

THE COURT: All right, sir. They decline to make the election, apparently.

MR. GOELLER: Yes, Your Honor. I'd ask the Court to order the State to make an election at this time.

MR. SCHULTZ: We'd rather you not.

THE COURT: I will not do that.

MR. GOELLER: Yes, Your Honor.

Judge, in -- regarding the charge of the court in this Cause Number 380-80047-01, the Defendant objects to this charge -- this proposed charge that will be read to this jury. I previously tendered to the court Defendant, Ivan Abner Cantu's, proposed jury instructions, two separate documents. One document entitled Defendant's Requested Instruction Regarding Verdict Form. At this time -- and additional instructions for the jury at this time. I'd ask the Court to grant our requested instruction in that document and to order the charge of the court's verdict form be changed to reflect the requested instructions in that document.

THE COURT: All right. I'll decline to do

1 that, but I tell you what, I am at this time file-marking both
2 of the proposed instructions tendered to the Court by the
3 Defendant and ordering that they be made a part of this file.

4 MR. GOELLER: Yes, Your Honor.

5 THE COURT: All right.

6 MR. GOELLER: And for the record, Judge, the
7 second document we filed, Defendant, Ivan Abner Cantu's,
8 Proposed Jury Instructions, in that document we have 11
9 requested special charges. We object to the Charge of the
10 Court unless those requests are incorporated into the Charge
11 of the Court and would ask the Court to order that its charge
12 be drafted to incorporate those 11 special requested jury
13 instructions.

14 THE COURT: All right. The -- Charge Number
15 One has been incorporated in the charge verbatim.

16 MR. GOELLER: Yes, Your Honor.

17 THE COURT: And some of the other charges have
18 been incorporated, not in the same language, but have been
19 requested by the Defense. But the Court will decline to
20 charge the jury with regard to Proposed Self-Defense, Hearsay,
21 Lesser Included Offenses and Provoking Difficulty.

22 MR. SCHULTZ: Judge Sandoval?

23 THE COURT: Yes.

24 MR. SCHULTZ: One issue for clarification, we
25 have included in the Court's proposed charge, and the Court

1 has what we believe to be a standard accomplice witness
2 charge, and I know that one of Mr. Goeller's specially
3 requested instructions dealt with the issue of accomplice
4 testimony and the availability to the jury of the opportunity
5 to find that Amy Boettcher was an accomplice.

6 As a matter of fact, when last we left it, I believe
7 I'd asked Mr. Goeller was there an objection to the submission
8 of accomplice witness testimony that is in the Court's
9 proposed charge; stated another way, is there something in his
10 special requested instruction that was different from what
11 we'd offered? And at the time that we talked, I don't think
12 Mr. Goeller had the opportunity to review what was in the
13 Court's proposed charge, but I don't want us -- I don't want
14 us missing something, because I'll be honest with you, I've
15 not really considered or contemplated his special requested
16 instruction on accomplice testimony. It's probably just about
17 exactly the same, but I want to make sure we don't
18 accidentally omit something that he could point to, to the
19 Court. That's in his special requested instruction that's not
20 in the Court's proposed charge because that's -- I'm sure
21 that's not going to be a problem for us if there's not any
22 difficulty.

23 Does the Court understand what I'm saying? I want
24 to make sure that his proposed instruction isn't (sic) good
25 and different from what's in the Court's charge because I just

1 need clarification on that.

2 MR. GOELLER: Judge, the State has in their
3 paragraph number 6 an accomplice witness charge. It's not
4 exactly the same as my Special Requested Instruction Number 9,
5 accomplice witness instruction. I guess the Court has already
6 dealt with whether the State's language gets in there or my
7 language. I would request that my language in Special
8 Instruction Number 9 be included, and I'd also request my
9 language, based on the State's theory of the case, and that
10 they're going to proceed with the robbery paragraph, as I
11 could say, robbery -- murder in the course of attempting to
12 commit robbery.

13 Based on the evidence in this case, I specifically
14 request not only my accomplice witness instruction, but my
15 accomplice witness as a matter of law instruction, included in
16 my Special Requested Instruction Number 10.

17 THE COURT: I figured that's what you
18 requested.

19 MR. GOELLER: Yes, sir.

20 THE COURT: And I'll deny the request.

21 MR. GOELLER: And, Your Honor, is the Court --
22 I know the Court has stated both these documents regarding
23 special requested instructions have been file-stamped. Will
24 the Court order those part of the record in this case?

25 THE COURT: Yes, I will do so.

1 MR. GOELLER: Thank you, sir.

2 (Discussion off the record.)

3 THE COURT: Do you have any other objections
4 to the charge?

5 MR. GOELLER: None, other than those stated in
6 my two special requested instructions.

7 THE COURT: All right.

8 MR. SCHULTZ: We had a stray reference in
9 paragraph one of the proposed charge to burglary. I believe I
10 understand the court is going to just white that out, and
11 that's acceptable to the Defense?

12 THE COURT: Are you objecting to paragraph one
13 where it refers to "or burglary"?

14 MR. GOELLER: Yes, Your Honor, I object. I
15 forgot to mention that when I spoke to the Court earlier. I
16 object to the mention of the word "burglary." I don't have a
17 problem if the Court deletes that -- those two words there.

18 THE COURT: All right. Then I have done so at
19 this time, so the sentence will read, "Or attempt to commit
20 the offense of robbery, or a person murders more than one
21 person." So I've deleted the words "or burglary."

22 All right. With that, is there anything else from
23 either side?

24 MR. SCHULTZ: Only to be sure, I'm not quite --
25 as I recall yesterday, as we left it, we weren't sure who was

1 going to be representing the accused, and I've not heard
2 anything different. So my assumption is that we're still
3 going to continue with his court-appointed attorneys
4 representing him, but if that isn't the way it is, or if that
5 isn't the way it's wanted to be by the party in interest,
6 we're still willing to hear if they've got some other idea.

7 THE COURT: All right. Mr. Goeller?
8 Mr. Cantu, what's your desire?

9 MR. CANTU: Can I have a moment, Judge?
10 THE COURT: Yeah, sure.

11 Also, while they talk, was the Rule invoked in this
12 case?

13 MR. SCHULTZ: Yes, sir.

14 THE COURT: Are there witnesses that should be
15 excluded?

16 MS. FALCO: Yes, there are witnesses in the
17 case.

18 THE COURT: If there are any witnesses in this
19 case, the Rule is still in effect so I'm going to ask those
20 who have been subpoenaed as witnesses to leave the courtroom
21 at this time.

22 MR. GOELLER: I'll -- we'll proceed as we have
23 been, Your Honor.

24 THE COURT: All right.

25 MR. HIGH: Judge, I have -- excuse me, I'm

1 sorry, Judge. I notice that some of the family was excused
2 from summation, and I don't believe this is an evidentiary
3 part of the trial and would request that they be allowed to
4 witness the summation at this point.

5 MR. SCHULTZ: Well, our position on that is
6 that if it's necessarily the final argument, it should be
7 based upon the evidence, and these are still potential
8 witnesses hearing lawyers make representations about the
9 evidence, and the Court making rulings on objections about
10 what if something is or is not in the evidence. It seems to
11 me to be tantamount to allowing them to hear evidence
12 discussed prior to their testimony, so we want them out of
13 here. That's our position.

14 THE COURT: All right. I will deny the
15 request.

16 Both sides ready to bring in the jury?

17 MR. SCHULTZ: Yes, sir.

18 THE COURT: All right. Let's bring the jury
19 in.

20 MR. GOELLER: Judge, so the record is clear,
21 were you denying Mr. High's request or Mr. Schultz's request?

22 THE COURT: Mr. High's request because I think
23 if the Rule has been invoked, I think that includes the whole
24 trial. That's the way I've always seen it, so..

25 MR. GOELLER: Okay.

1 THE BAILIFF: All rise.

2 (The jury enters the courtroom at 10:00 a.m.)

3 THE COURT: Please be seated.

4 Let the record reflect that the Defendant and his
5 attorneys and the attorneys for the State are present in the
6 courtroom. All the Members of the Jury are present and
7 seated. At this time, Ladies and Gentlemen, I will read you
8 the Charge of the Court containing the law applicable to this
9 case. In continuing to discharge your responsibilities as
10 jurors, you will continue to observe all the instructions that
11 have been previously given to you. These instructions are
12 given to you because your conduct is subject to review the
13 same as that of the witnesses, the parties, the attorneys and
14 myself. If it should be found that you have disregarded any
15 of these instructions, it will be jury misconduct, and it may
16 require another trial by another jury. If any of you observe
17 one or more of your number violating any of my instructions,
18 you shall immediately warn the violator and caution him or her
19 not to do so again.

20 Please listen carefully as I read the charge to
21 you. The original will be placed on the table in the jury
22 room when you retire to begin your deliberations.

23 Members of the Jury.

24 (Charge of the Court read at this time.)

25 THE COURT: Ladies and Gentlemen, that

1 concludes the reading of the charge, and so I would ask the
2 State, Ms. Falco, are you ready to proceed?

3 MS. FALCO: Yes, Your Honor.

4 THE COURT: All right. Go ahead.

5 MS. FALCO: Defense counsel.

6 MR. GOELLER: Ma'am.

7 MS. FALCO: Ladies and Gentlemen of the Jury,
8 you've listened to a lot of evidence. You've heard a lot of
9 evidence over the past several days, and I thank you for your
10 time and attention that you've paid to the case. But all the
11 evidence shows beyond a reasonable doubt that this Defendant
12 is guilty of capital murder. Go through the elements, and
13 we've talked to you about why it shows that.

14 We'll talk about the issues that are not contested.

15 It's not contested that this offense happened in Collin
16 County, Texas. It's not contested the identity of the
17 victims. James Mosqueda and Amy Kitchen are the deceased.

18 It's not contested the date of this offense. We know that it
19 happened on or about November 4th of 2000. We know it
20 happened sometime after 11:30 p.m., November 3rd, and sometime
21 prior to 12:18 a.m. on November 4th of 2000, and in the
22 charge, in the instructions it says, as long as the offense
23 happens prior to the date of the case being indicted, which
24 was January 23rd, 2001, the date is not an issue, so that's
25 not at issue.

1 The cause of death. We know the cause of death was
2 gunshot wounds. That's not contested. Both James and Amy
3 were shot to death. We know that it was done by shooting with
4 a firearm. You heard Dr. Rohr. It's not contested. They
5 were shot with a firearm.

6 So the first issue that we get to is how do we know
7 this Defendant killed James Mosqueda and Amy Kitchen? First
8 of all, you have his fingerprints on the murder weapon.
9 His fingerprints are on the magazine of the gun, which we
10 know to be the murder weapon. His fingerprints are on the
11 Mercedes. Amy Boettcher told you he drove the Mercedes home
12 from the crime scene, from the murder. That's how his
13 fingerprints are in the Mercedes.

14 We know that's the murder weapon because every
15 single bullet and every single casing found in this case was
16 fired out of that gun. Every bullet retrieved from the
17 bodies; the two from James Mosqueda, four from Amy Kitchen,
18 three casings found at the crime scene. The projectile found
19 at the crime scene, and the bullet taken out of the wall at
20 the Defendant's apartment, every single one of those came out
21 of that gun, the murder weapon.

22 Defendant was seen in the Corvette on the night of
23 the murder. We know that he went out. He was ready to go
24 party, and he was ready to go kick it at 7. His neighbor sees
25 him changing out CD's in the Corvette. Fernando Longoria sees

1 him at Harlon Hill's house in the Corvette. And, of course,
2 Amy Boettcher tells you that's how they got down to Club 7.
3 That's how they got to Harlon Hill's house. That's how they
4 were driving around. And, of course, the Corvette is found at
5 the Defendant's apartment. That's where he left it, a couple
6 of yards away from his front door.

7 He's wearing James Mosqueda's bracelet, the bracelet
8 introduced into evidence. The one that his sister said, yes,
9 that's James' bracelet. Amy said he put that bracelet on when
10 he came home. That's the bracelet that Dick Kramer found in
11 Arkansas where this defendant had been spending the night.
12 He's wearing James' jewelry. You have Amy Boettcher's
13 testimony. She told you, Defendant calls the victims and says
14 I need to come over to talk. He then leaves about 11:30
15 saying I'm going over there to kill James and Amy.

16 He comes back. He's covered in blood. He's driving
17 Amy Kitchen's car. He has James and Amy's ID's, he has their
18 keys. He then takes her over there and says, I'm going to
19 show you what happens when you mess with me. He shows her the
20 bodies, and while he's in there, while he's looking for more
21 money or drugs, whatever he's looking for, he's getting mad
22 saying I ought to shoot them again because I can't find it.
23 She told you he did it.

24 You've got the phone call. You've got the phone in
25 evidence, the phone retrieved from the victim's house showing

1 on Caller ID Defendant called first at 9:59 on that Friday,
2 November 3rd, and they're not home, so he didn't go over there
3 when they're not home. He waits until they're get home. He
4 waits until they get home. He calls back at 11:13 p.m. again,
5 Friday, November, 3rd. That corroborates what Amy tells you,
6 that's him calling to go over to his cousin's house.

7 You've got the jeans and the socks found in the
8 Defendant's garbage in the kitchen. Both of those have the
9 victim's blood on it. Amy Boettcher told you she put those
10 jeans and those socks in the trash can. Those were the jeans
11 and the socks he was wearing when he came home from the
12 murder. It's got James Mosqueda's and Amy Kitchen's blood on
13 it. You've got the gun found at Tawny's house. That gun had
14 James

15 Mosqueda's blood on it. We know that's the murder weapon.
16 Same gun the Defendant had; he had it before the murder, he
17 had it after the murder.

18 You've got the Defendant lying. He's telling this
19 pizza man story, that some pizza man came, and he shot a hole
20 in the wall and that's the pizza man that's after James.
21 Well, you know that's a lie. You know it's a lie because Amy
22 Boettcher told you it was a lie. She said, no, it was the
23 Defendant. It was Ivan Cantu that shot at me. Ballistics
24 tell you that's right because that bullet that was taken out
25 of the wall matches that gun. Even Carlos said, when he

1 started talking about that pizza guy story, I knew he was
2 lying. It's nothing but a bunch of lies. Why do you have to
3 lie if you don't have anything to cover up? He's obviously
4 lying because he's guilty. I mean, he even told Carlos, James
5 had coming. He wanted James dead. There's no doubt that it
6 was this defendant, Ivan Cantu, that killed James Mosqueda and
7 Amy Kitchen.

8 How do we know he intentionally caused the death?
9 First of all, you've got the phone call. If he just wanted to
10 take their property, if he just wanted to steal the drugs and
11 steal the money, the first phone call at 9:59, they weren't
12 home, and we know they were at dinner still with Amy's dad.
13 He
14 could have just gone over there and did that, but he didn't.
15 He waited until they got home. He waited when he called back
16 at 11:13. They were home. That's when he decides to go over
17 there.

18 You've got Jeff Boettcher's testimony, and Jeff told
19 you he'd been talking about this a week or two before the
20 murder. Hey, Jeff, there's dope over there. There's money
21 over there. You help me clean up, you get some. I'm going to
22 kill my cousin, James. He planned it. He knew he was going
23 to do it.

24 He goes to the victims with a loaded gun. This is
25 his cousin. Why does he need to take a loaded gun to his

1 cousin's house if they were on friendly terms, or if he didn't
 2 intend to kill them? But he goes over there with a loaded gun
 3 to his cousin's house, and when he left, he told Amy Boettcher
 4 I'm going over there to kill them. He shot James Mosqueda
 5 twice, both times in the head, both times at close range. If
 6 you're going to intend to kill someone shooting them at close
 7 range in the head is going to do it, and we know he wanted to
 8 make sure that James was good and dead because Dr. Rohr told
 9 you the second shot, the shot to the temple, there was very
 10 little hemorrhaging. James' heart had already stopped
 11 beating. He was dead when he got that gunshot.

12 He shot Amy Kitchen four times, once in the head,
 13 and Dr. Rohr told you two of those were after her heart had
 14 stopped beating. Very little hemorrhaging in the one in the
 15 top of her head, very little hemorrhaging in the one that went
 16 in and out of her arm and into her breast, meaning those were
 17 after she had already been dead. He wanted to make sure she
 18 was dead. Shot her four times to make sure.

19 We know that he hit or kicked one of the victims.
 20 He wanted to torture them before he killed them, and I think
 21 it's a reasonable inference from the evidence that it was Amy
 22 Kitchen that he hit or kicked before he finally killed her. I
 23 think we can assume that, first of all, he told Amy Boettcher,
 24 Amy told me what I wanted to know, indicating he was trying to
 25 get some information out of her. Secondly, Carlos, told you

1 this defendant has absolutely no respect for women, so it
 2 would be more like him to torture the woman. Thirdly, we know
 3 that Amy Kitchen had blood in her airways. She had blood in
 4 her lungs. Paulette sat and told you that all the blood
 5 spatter on the walls and on the ceiling looked like it came
 6 out of the mouth, like somebody was hit and that came out of
 7 the mouth, which would explain -- or be reasonable that that
 8 was Amy Kitchen's blood. She was being kicked in the head.

9 And it's also a reasonable inference because the
 10 Defendant has Amy Kitchen's blood on his sock, and if you look
 11 at that sock it's got blonde hair on it consistent with Amy
 12 Kitchen's hair. Paulette sat and told you when that person is
 13 getting hit or kicked, they were back against the headboard
 14 probably in a kneeling position. It was probably Amy Kitchen
 15 trying to get away from this Defendant. He was standing
 16 between her and the door. She just saw him kill her fiance.
 17 The only thing she can do is back away as far as she can.
 18 She's against that headboard. He shoots her, she starts
 19 bleeding, he hits her or kicks her. We know she probably went
 20 in the kneeling position because she's got no blood on the
 21 back of her legs, no blood on her socks. Paulette sat and
 22 said that would be consistent with somebody kneeling, with her
 23 kneeling back by the headboard.

24 We know he fired a seventh round. We've got two
 25 rounds in James, we've got four rounds in Amy, and then there

1 was the additional round, the one that went through the
 2 mattress and box spring that was found at the crime scene.
 3 That was probably used while he was torturing Amy, trying to
 4 get information out of her, because that gunshot is up there
 5 close to the headboard.

6 And we know he had motive to kill them. He was
 7 jealous of Amy Kitchen. He was jealous of James Mosqueda. He
 8 called Amy an arm piece and jealous she was getting a free
 9 ride from James. He was jealous of James having a nice car
 10 and nice home. He wanted what they have, and we know he
 11 resented James because his own mother gave James a bunch of
 12 business in the real estate business. Sylvia Cantu -- you
 13 heard Carlos. It was a land mine, the amount of business she
 14 was giving James Mosqueda. When her own son is in the same
 15 business, but she didn't want her son to have the business,
 16 Ivan Cantu. She trusted James, and he resented him for
 17 getting that business. Carlos told you they had numerous
 18 conversation about that.

19 And then you have absolutely no remorse on the part
 20 of the Defendant. Carlos told you that. Never once did he
 21 have any remorse for James. James had it coming. He wasn't
 22 sad; he didn't care. Dick Kramer said the Defendant sat down
 23 in front of him in Arkansas and said, don't think I'm a bad
 24 man, but I didn't really care too much for my cousin. I'm not
 25 really upset that he's dead.

1 Harlon Hill, Fernando Longoria saw them out that
 2 night. Said it was just like any other night. They're doing
 3 drugs. They were fine, acted like they had no cares in the
 4 world. Didn't act like he had just come from slaughtering his
 5 cousin and his cousin's fiance.

6 And then Tuesday, we know before he got arrested, he
 7 was still out. He was still loose. There's the family
 8 visitation, family viewing of the bodies. Ivan Cantu wasn't
 9 there. He wasn't there to pay his respects. He wasn't there
 10 to show any remorse. So we know he intentionally killed them
 11 and he didn't care..

12 How do we know it was in the course of committing
 13 robbery? Again, he talked to Jeff Boettcher about it. He
 14 told Jeff, there's money over there, there's dope over there,
 15 I'm going to kill them, and if you help me clean up the bodies
 16 you get some. I mean, other than the fact there's two phone
 17 calls, the first phone call being at 9:59. If you wanted to
 18 just go rob -- if you just wanted to take the property, take
 19 the dope, take the money, and not hurt James and Amy, he could
 20 have gone over there when they weren't home, but he didn't.
 21 He waited until they got home, and then he went over there
 22 with a loaded gun. And he shot them, and he killed them, to
 23 get the Corvette. We know he took the Mercedes (sic). We
 24 know all the money in their wallets was gone. We know they
 25 had a

1 substantial amount of money in their wallets that night. Took
2 the keys to the car and the house, took jewelry, took his
3 necklace, took his watch, took his bracelet. He was still
4 wearing the bracelet in Arkansas. And the engagement ring
5 that he took off Amy Kitchen's finger and put on his own
6 girlfriend's finger.

7 And we know he did it in the course of intentionally
8 killing Amy Kitchen. We already talked about the fact we know
9 he intentionally killed them. We know they were killed
10 during the same criminal transaction. They were both alive at
11 the same time, both found dead at the same time, same gun to
12 have put the bullets in their body, and the Defendant's
13 statement when he left the apartment "I'm going over there to
14 kill James and Amy." So we know they were killed at the same
15 time, same criminal transaction. He intended to kill both of
16 them.

17 Now, in the charge it talks about accomplice witness
18 testimony, and that's a fact issue for you as a jury to
19 decide, whether or not Amy Boettcher is an accomplice. And
20 the significance of that is if you don't think she's an
21 accomplice, and that's our position, she's not an accomplice
22 to any offense, then you can just consider all the evidence,
23 and if you find -- you can convict him based on her testimony
24 alone. You can convict him based on her testimony and other
25 evidence, and if you find beyond a reasonable doubt, then you

1 find him guilty. If you find that she is an accomplice, you
2 can still convict the Defendant, you just can't convict him
3 based upon her testimony alone, if you find she's an
4 accomplice. The only way -- you can still convict him by
5 finding that her testimony is true, if she's an accomplice,
6 that it shows that he's guilty, and that it's corroborated by
7 other evidence that tends to link this defendant to the
8 crime. But to be an accomplice you have to have the same
9 criminal intent as the person doing the killing, and Amy
10 Boettcher did not have the criminal intent to kill James
11 Mosqueda and Amy Kitchen. There's absolutely no evidence that
12 she intended for them to be dead, that she intended for them
13 to be killed. She did not have the intent that's necessary to
14 make her an accomplice, to make her a party to this offense.

15 In fact, there's no evidence she was even there
16 during the murders. She told you the Defendant left, said I'm
17 going to kill them, she stayed there. She said she called her
18 friend, Melanie, and Melanie got on the stand and said, yeah,
19 she called me. It was around midnight. She said she called
20 her stepfather in Arkansas. The phone records show that. Her
21 stepfather said, yes, the last time I heard from Amy before.
22 she got there was about 11:30 that Friday night. There's no
23 evidence she was there during the murders.

24 The only thing you have is you have her going to the
25 crime scene after the murders had been committed, and her

1 wearing the engagement ring. But all of that is explained
2 because she was scared. She was scared to death of the
3 Defendant, because the night before he had shot at her. And
4 you already know that the Defendant was in control of this
5 relationship before that Thursday night before he shot at
6 her. Carlos told you that. I mean, this is a man that
7 doesn't respect women. He's going to get someone he can
8 easily control. You saw Amy Boettcher. You saw her
9 demeanor. She's easily controlled. Carlos was like, yeah,
10 the Defendant was in control of that relationship. The
11 apartment that they lived in, one-bedroom apartment in Amy's
12 name, he didn't let her have a key to her own apartment. He's
13 the only one that had a key. He was in control.

14 As far as her drug habit, by that point -- by the
15 time she hooks up with the Defendant, she's doing drugs daily,
16 but she's not working. She's getting all her drugs from the
17 Defendant. He's keeping her doped up, an easy way to keep her
18 controlled. You saw her; she's weak. Carlos called her weak.
19 She's quiet. Carlos called her a mouse. That's her demeanor.
20 And all that, prior to her getting shot at the night before.
21 The night before the murder, the Defendant shoots at her head,
22 holds a gun to her head, nearly breaks her hand in the door,
23 and the very next night when he comes home and he's covered in
24 blood and he's driving Amy Kitchen's car and she knows he's
25 killed them, she's scared to death, because he almost killed

1 her, and she knows he's capable of killing. Now she's going
2 to do whatever it takes to stay alive. She's not going to
3 argue with him. She's not going to disagree with him. She
4 did not voluntarily go inside that house. The Defendant still
5 had the gun. She did not voluntarily wear that ring. She was
6 afraid she'd be killed if she tried to argue with him or
7 disagree with him.

8 THE COURT: Ms. Falco, you've used about 15
9 minutes at this point.

10 MS. FALCO: Thank you, Your Honor.

11 And even if you decide, well, we still think she's
12 an accomplice based on what she did, you still can convict the
13 Defendant because her testimony is corroborated in so many
14 ways. First of all, you've got the Toll Tag records, and we
15 start out with -- if you look at Friday, November 3rd,
16 approximately 10:00 at night, you see the Corvette going
17 northbound on the Tollway. That's James and Amy coming home
18 from dinner with Mr. Kitchen. The next Toll Tag activity is
19 the Mercedes going eastbound on George Bush. That's what Amy
20 Boettcher told you, when we got in the Mercedes we went to
21 Smiley's house. We took George Bush to 75 to go to Smiley's.
22 That's about -- almost 1 a.m.

23 The next activity is the Mercedes coming back
24 westbound on George Bush. And she said we came back on George
25 Bush, and we went to the victim's house. And then the next

1 Toll Tag activity is the Corvette, which she says he got -- he
 2 parked the Mercedes, he got the Corvette, we went home, and
 3 then we went down to Club 7. It was approximately 3 a.m.
 4 That's the next Toll Tag activity is the Corvette going
 5 southbound on the Tollway at approximately 3 a.m. She said we
 6 were at Club 7. We went to Harlon's, we went to some other
 7 guy's house. We were out until early morning, and the next to
 8 Toll Tag activity is going northbound on the Tollway at about
 9 6:00 in the morning. You also had -- the last activity of the
 10 Toll Tag is Sunday, November 7th. Detective Winn told you
 11 that's when they got the car. They had possession of the car,
 12 and they were towing it down the Tollway.

13 You have prints on the Mercedes. She said the
 14 Defendant came home driving the Mercedes, and low and behold
 15 there are his fingerprints on the driver's side door inside.
 16 That corroborates her testimony. You've got his prints on the
 17 gun. She said that's the gun. That's the gun he used to
 18 shoot at me. That's the gun he came home with after the
 19 murder, and he was messing with at the sink. That's the gun.
 20 His fingerprints are on the gun.

21 You've got the neighbor, Michael Gatchalian, the
 22 upstairs neighbor who heard the fight on Thursday night. He
 23 said he heard what crossed his mind, sounded like a gunshot,
 24 and then he heard male and female voices. He heard a female
 25 crying, a female saying, I'm bleeding. That's exactly what

1 Amy Boettcher said after her hand got slammed in the door.
 2 She was crying. She was saying, I'm bleeding. That's
 3 corroborated.

4 They're seen in the Corvette. She tells you they
 5 take the Corvette out that night to go to Club 7, and to go to
 6 Harlon Hill's house. Stephen Mullins, the neighbor, sees them
 7 changing out the CD's in the Corvette. Fernando Longoria sees
 8 them in the Corvette. That's corroborated.

9 The bracelet. She says when he comes home, he puts
 10 on James' watch, James' bracelet, James' necklace. She
 11 tells you he chunked the watch out the window. We don't know
 12 where the necklace or the ring is, but the bracelet that she
 13 said he was wearing was found at her stepfather's house in the
 14 same room where the Defendant had been staying. We have that
 15 bracelet. That corroborates what she told you.

16 The jeans and the socks. She said he came home.
 17 His jeans were bloody, his socks were bloody. He gave them to
 18 me, and I put them in the trash can, and that's where they
 19 were found in the trash can. They were bloody. They've got
 20 the victim's blood on it. That corroborates what she told
 21 you.

22 She said the Defendant called James and Amy before
 23 he went over there. Again, you've got the phone with the
 24 Caller ID. It shows he called before he went over there.

25 She said, he shot at me the night before.

1 Ballistics -- again, that bullet out of that wall was fired
 2 out of the Defendant's gun, and again you have the neighbor
 3 corroborating that. And when she said he shut her hand in the
 4 door, Melanie saw her hand and said her hand was messed up.
 5 You saw pictures of her hand several days later to show it was
 6 messed up.

7 She said we went to Harlon Hill's house, and Harlon
 8 Hill said, yeah, that night they did, they showed up at my
 9 house, they hung out. And most importantly she was never
 10 cross-examined on the facts. What she told you factually
 11 about what she saw and where they went and what they did, she
 12 was never cross-examined on. She's given four different
 13 statements, and don't you know if she had been inconsistent or
 14 said anything different that that would of been brought out
 15 during cross-examination? They would have been saying, well,
 16 didn't you tell this officer this, and didn't you tell this
 17 officer that? You saw Amy Boettcher. She's not bright enough
 18 to concoct a story and stick with it. It's consistent because
 19 she's telling the truth, and if she had been inconsistent that
 20 would have been brought out, and it wasn't.

21 She was cooperative. From the moment she felt safe
 22 at her parents' house. They called the police, let them know
 23 where she was. Any police officer that came to take a
 24 statement, she gave them a statement and a lengthy one. She
 25 was willing to come testify without any kind of deal, just to

1 say here is what happened. She's telling you the truth.
 2 She's not an accomplice, and all the evidence shows, beyond a
 3 reasonable doubt, that on or about November 4th of 2000, this
 4 Defendant intentionally killed James Mosqueda and Amy Kitchen,
 5 and he did it in the course of robbing them. And I ask that
 6 you go back there and find him guilty.

7 THE COURT: Thank you, Ms. Falco.

8 Mr. Goeller, would you like to close?

9 MR. GOELLER: Yes, Your Honor. Thank you, sir.

10 May it please the Court, Mr. High, Ivan, Ms. Falco,

11 Ms. Lowry, Mr. Schultz.

12 MR. SCHULTZ: Yes, sir.

13 MR. GOELLER: "In a Government of laws,
 14 existence with the Government will be imperiled if it fails to
 15 observe the law scrupulously. Our Government is the potent,
 16 the omnipresent teacher. For good or for ill it teaches the
 17 whole people by its example. Crime is contagious. If the
 18 Government become a law breaker, it breeds contempt for the
 19 law. It invites every man to become a law unto himself. It
 20 invites anarchy. To declare that in the administration of the
 21 criminal law, the ends justify the means, to declare that the
 22 Government may commit crimes in order to secure the conviction
 23 of a private criminal would bring terrible retribution."

24 And why do I start off with that? Those are words
 25 by a very, very famous and brilliant Supreme Court Justice

1 many, many years ago. The State told you this was the
 2 ultimate crime. Do you think they conducted themselves in the
 3 ultimate manner with integrity? Did they bring you all the
 4 evidence? Has any of you thought why in the middle of trial,
 5 when at least eight of you were already selected for jury
 6 service, they're running down and doing more investigation.
 7 They told you themselves, folks. They all but came out and
 8 said it, we've got a reasonable doubt. And if you don't
 9 believe that, think about how they picked and chose how they
 10 went about putting in evidence before you. The things they
 11 wouldn't tell you. The things I had to drag out of their
 12 witnesses.

13 September 12th of 2001, most of you were already
 14 picked on this jury. No analysis was performed on Items 9,
 15 10, 11, 12 by the forensic biology unit per DA Gail Falco.
 16 Now, you've got to ask yourselves, what do they know that you
 17 don't and we don't? Why, in the middle of trial, is the lead
 18 prosecutor telling their forensics people to back off?
 19 Anybody thought about that?

20 This jury charge, folks, it will test you. It will
 21 test you. It will test your resolve, and it will test your
 22 oath of office. Back on October 3rd, and I suppose long
 23 before that, I stood up -- and there's a charge in here, and
 24 it says the Defendant doesn't have to testify and he hasn't
 25 and you will not hold that against him in any way, but in a

1 sense he has. I stood up and I said, Ivan Cantu is not guilty
 2 of capital murder. I didn't say he was innocent. I said he's
 3 not guilty of capital murder.

4 The judge has given you an instruction about
 5 illegally seized evidence, if you so find, and that's my theme
 6 when I talk about the Government breaking the law. I think
 7 it's really important because as you folks sit in that jury
 8 box, if anything else, you are the conscience of our society.
 9 If that Constitution, the U.S. or the State Constitution, has
 10 any meaning whatsoever, it's only by a jury giving it meaning.

11 There's an issue there about Officer Junger and as
 12 it turns out, he had a partner named Officer Iliff, who they
 13 didn't put on the witness stand, and you can ask yourselves
 14 why. A typical response will be, well, you could have put her
 15 on. I don't have the burden of proof, folks. So don't let
 16 anybody start shifting the burden. It's a clever, clever, but
 17 wrong tactic for the Government to do. You've got this
 18 officer who's been at the crime scene for quite some time,
 19 upwards of four hours. Everybody knows there's a Corvette
 20 missing, and then we finally hear testimony, it's within 30
 21 feet of the front door.

22 He goes in that apartment, and I would submit to
 23 you, and the Court has properly instructed you, that his
 24 initial entry in that apartment was legitimate. It's to look
 25 for people and help, or bodies, period. And he talked about

1 it being a typical 400-square foot, one-bedroom apartment.
 2 Certainly would fit within the confines of this courtroom.
 3 And he testifies he's in there five to ten minutes before they
 4 let Sylvia Cantu in there to check the Caller ID, or whatever
 5 she was doing. Five to ten minutes. Now, where is he going
 6 to err? If he's going to err at all, where do you think he's
 7 going to err; on the low end or the high end? But he gave us
 8 five to ten minutes.

9 You've got to think about the questions to Detective
 10 Winn. Did you make a sworn statement that you had probable
 11 cause in that apartment you would find bloody clothes, yes.
 12 You would find a .38 round in the wall, yes. You would find
 13 all these other things. Yes, I did. Hadn't talked to Amy
 14 Boettcher yet, and how does that get into that probable cause
 15 affidavit? Well, you've got to go back and think about -- and
 16 I'll tell you folks something, when you get back there in the
 17 jury room, you think about a one-bedroom apartment, 400
 18 square-foot apartment, and you think about going through that
 19 to find a person or a body. And I would ask the presiding
 20 juror on this jury to just sit in silence for five minutes.

21 Somebody look at your watch and you think about that. Go
 22 five minutes. Go ten minutes, and you think about if the
 23 Government shot straight with you?

24 But all of the sudden Detective Winn knows exactly
 25 what's in that apartment, doesn't he? Five to ten minutes.

1 You think about laying out a bedroom, a bathroom, a living
 2 room and a kitchen in this courtroom. I mean, you saw
 3 pictures of the size of the kitchen. Four seconds to figure
 4 out there's nobody there. And you sit back there in that jury
 5 room and you go five, ten minutes, and you figure out if he
 6 shot straight with you. You figure out if Winn had some other
 7 knowledge because he couldn't have gotten it from anywhere
 8 else.

9 That's what we're talking about. Maybe there are
 10 issues that are bigger than what's really on trial here.
 11 Maybe there are issues of is the Government shooting straight
 12 with you, and are they playing by the rules because they make
 13 the rules. I don't make the rules, that kid don't make the
 14 rules. The Government makes the rules, and they've got to
 15 play by it.

16 And the charge tells you, if you have a reasonable
 17 doubt about whether they shot straight with you, you consider
 18 nothing, nothing that was derived from the search of that
 19 residence, first or second time, or third time I suppose in
 20 the way you look at it. Again, we've got to play by the
 21 rules. The Constitution means something. Like I said, he's
 22 not guilty of capital murder. I'm not saying he's innocent.
 23 He's not guilty of capital murder, and the Court gives you
 24 very explicit instructions about how to look at that
 25 Junger/Winn predicament.

1 Certainly the State, throughout most of the trial,
 2 was trying to pull the wool over your eyes. I guess their
 3 theory of the case was that James Mosqueda and Amy Kitchen
 4 were just totally innocent, regular people. The fact that
 5 they're drug dealers -- you know, Mr. Schultz, I believe said,
 6 if our cause is just. Wouldn't that mean giving you all the
 7 facts? Wouldn't that mean really telling you what was going
 8 on here between all these (sic) cast of players, not what did
 9 it take for me to do with Winn and the rest of all the
 10 witnesses to establish that Mosqueda was not just a drug
 11 dealer, he was a major trafficker in narcotics with lots of
 12 people working under him. They wouldn't tell you that. They
 13 wouldn't tell you that he's a woman -- you know, she wants to
 14 point the finger at him, no respect for women, okay. Well, we
 15 finally heard evidence that Mr. Mosqueda would beat on his
 16 significant other to the point police would have been called.
 17 Why don't they tell you those things? Why don't they tell you
 18 he's a major drug dealer? Why did Winn? Why wouldn't he say?
 19 Why did I have to get up there?

20 And that's another thing, the lead detective,
 21 capital murder case, the ultimate crime. You would think the
 22 ultimate investigation. Thirty-four times, I do not recall.
 23 I don't recall. I don't recall. I don't know if Detective
 24 Winn -- I don't know what else he knows, but it sure seemed
 25 like everybody was trying to hide the ball from the State on

1 this one. We're not going to tell you about dope.
 2 I finally asked -- I finally come out and asked
 3 Winn, anything in that house give you suspicion to maybe
 4 explain what happened here? Well, we found a little bag of
 5 pot. He didn't tell you about the scales. He didn't tell
 6 you -- and you know that -- the second detective -- really the
 7 crime scene detective, not Winn, but the other investigator,
 8 you know none of that was written down. None of that was
 9 documented, and none of that was put on paper. I just took a
 10 shot in the dark that maybe one of these guys would come clean
 11 with me and tell me the truth.

12 If I said, yeah, I used to work vice, I used to
 13 work narcotics. What do you say if there was a gross of those
 14 type of drug bags we found in the house? Detective Winn,
 15 never heard of it. Nope, a little bag of pot, but I guess
 16 that was it. And then finally, finally I got out of Winn, I
 17 had to keep approaching him with documents from his big, fat
 18 two three-ring binders he was a major narcotics trafficker.
 19 Your own people know it; is that true? Uh, well, yes. I
 20 don't think that's shooting straight with you folks. I think
 21 that's hiding the ball. I think that's professional
 22 dishonesty is what I think.

23 One of the most -- one of the things that concerned
 24 me the most was this bit about the polygraph. I don't know.
 25 They all denied there was any deal cut with her. I don't know

1 what they know about Amy Boettcher that they're not telling
 2 you. I've got some pretty good ideas, though. We know
 3 they've intervened on her behalf with her probation officer.
 4 We know that somehow she was allowed to leave the State of
 5 Texas. We know that for the last year she has continually
 6 violated her probation, yet not one thing is done about it.
 7 Now, what does that have to do with anything? It
 8 has to do with the credibility of her, and it gets back into
 9 that other charge "accomplice," okay. Now, Ms. Falco says I
 10 didn't cross-examine her. I recall cross-examining her quite
 11 extensively about the four different statements; the statement
 12 to stepdad, the statement to Sheriff Joe; the statement to
 13 Sergeant Mark; the statement to Detective Winn when he goes up
 14 to Arkansas, and then finally -- we find out there's another
 15 statement. There's one more at the end of it all. Okay?

16 And she talked about -- I asked her this, in all
 17 your statements you say that when Ivan came back, his face was
 18 swollen and James had hit him with a baseball bat, except for
 19 one statement. There's only one statement in which she
 20 doesn't put that in, and that's the statement on November 22nd
 21 to Detective Winn when he's up in Arkansas, okay? The wheels
 22 are turning, don't have much, we're not going to charge this
 23 girl one bit. There are no deals cut. My goodness, she
 24 confessed to a federal felony on the witness stand, but
 25 nothing has been done about it. She's gone. She's back in

1 Arkansas, I assume.
 2 She's not out there, that's for sure. What deal did they
 3 make with the Devil? Why is her testimony so incredible?
 4 Now, Ms. Falco would have you believe she's this
 5 poor, innocent thing. Well, I don't know. I would guess that
 6 most topless dancers are pretty wise to the ways of the world.
 7 They're used to clubs, they're used to bouncers, they're used
 8 to being protected. They're masters at manipulation because
 9 that's what it's all about. That's how you make money in that
 10 business. Now, here's a girl doing dope every day, and she's
 11 the main witness against Ivan. Is she an accomplice? You
 12 read that accomplice witness charge, I think she sure is.
 13 She's -- the State, I guess and the Defense, both concede
 14 she's a -- she's quite a liar, okay? But her testimony is
 15 just so incredible. Some of it probably could be believed,
 16 and other of her testimony -- other parts have got to be an
 17 absolute lie.

18 Sometimes half the truth is the bigger lie. Think
 19 about that. Half the truth is the bigger lie. She's afraid.
 20 Eighteen million times she could have called. She could have
 21 done something.

22 What really went on over on Gibbons Drive that
 23 night, I don't know, and I don't know if Detective Winn -- I
 24 think he had some doubts. Four statements -- five. First one
 25 to Kramer, second one to Deputy Joe, Sergeant Mark of the

1 Arkansas Special Investigations, or whatever he was. The next
 2 one to Winn, the next one back to Kramer, five statements.
 3 And Winn wants to polygraph her? Now, I'm not an expert in
 4 polygraph, and, yeah, I can understand if someone is in their
 5 menstrual cycle, maybe you don't want to do the polygraph that
 6 week. But, folks, it's been a year. They knew how to get
 7 a hold of her. They know where she's been. They brought her
 8 back here for trial. No polygraph. No polygraph. Wonder
 9 why? What just happened? Did they have an epiphany, or did
 10 they think, hum, accomplice. Yugh. Probably be a charge from
 11 the Court on that in trial. Maybe we don't want to know the
 12 results of that polygraph.

13 And you know what? When did you learn about the
 14 polygraph? You didn't hear it from Detective Winn, did you?
 15 You didn't hear it from one law enforcement officer in this
 16 case. What are they worried about, folks? What are they
 17 trying to hide? That's not in one shred of document that was
 18 generated. Another one just -- I don't know. I don't think
 19 it was any great skill on my part, to be honest with you. I
 20 lucked out. In fact, I think Dick Kramer just blurted it out.
 21 I'd have ever known about. I don't think Detective Winn
 22 mentioned it. Certainly not in any of his documents I was
 23 given. What are they hiding? Why do they want a polygraph
 24 from this girl? Why are they cooperating with her probation
 25 officer? Why does a year go by and absolutely nothing has

1 been done? I don't know.

2 One very significant thing, when Ms. Falco had
 3 Ms. Boettcher on the witness stand, she made it absolutely
 4 clear Ivan didn't put that latex glove in the garbage can.
 5 When you look at those pictures, something is very odd. Those
 6 jeans look like they've been folded, and you look close,
 7 there's that latex glove. That apartment was searched.
 8 I don't know if it was Junger or Iliff, his partner. I don't
 9 know which -- they all have them. They carry them in their
 10 cars. Somebody screwed up and dropped a latex glove in that
 11 garbage because their own witness said it wasn't him. She
 12 apparently -- I guess she did it herself. Don't quite recall
 13 how it finally came out. She said, Ivan put the clothes in
 14 the garbage or I did it for him. No mention of a latex
 15 glove.

16 Well, I suppose in this day and age when any officer
 17 is picking through garbage or looking at clothes, they're
 18 going to have latex gloves on. I mean, that just makes
 19 sense. That's why that whole illegal search and seizure is an
 20 issue. A right. Again, you know, I understand -- I
 21 understand some of the concern. I understand my problem with
 22 standing up here and arguing things like that, but I argue the
 23 Constitution. I argue the laws because that's what I'm
 24 supposed to do, and that's what this courtroom is all about.
 25 It's not lifting up the carpet and sweeping the garbage

1 underneath it and not worrying about that. That's not what
 2 we're all about, folks. If you want to do that, crime is
 3 contagious. The Government will breed contempt for itself.
 4 That's why that's so important.

5 When you really look at this case, if that evidence
 6 is illegal and Ms. Boettcher's evidence, or her testimony as
 7 an accomplice is not corroborated -- and corroboration is very
 8 specific. The Judge gives you specifics. Doesn't matter that
 9 they're together. That's not going to corroborate it.
 10 Doesn't matter if it merely shows the commission
 11 of the offense. That won't cut it. That's not corroboration.
 12 That's why we have those laws. We have those laws to prevent
 13 people from being convicted with people like her,
 14 Ms. Boettcher, the one the Government has bent over backwards.
 15 She's judicially confessed to committing a felony, but not a
 16 thing has been done about it. Has the District Attorney's
 17 Office notified the U.S. Attorney for Arkansas or the
 18 Northeastern -- no. You received a Motion to Revoke your
 19 Probation because you've been using drugs and violating that
 20 judge's order in Tarrant County every single day? No. You
 21 using cocaine within weeks of this trial? Yes. Back to
 22 Arkansas, unscathed. What deal was cut? Couldn't get one out
 23 of anybody. Oh, there's no deal.

24 Her lawyer sits down with her and the prosecutors
 25 for five hours three days before this trial starts, and the

1 lawyer is sitting out there with a big old grin on his face
 2 like Chesire cat and no deal has been cut? Come on. I know
 3 you folks aren't going to buy that. Impossible.

4 Why is Mr. Cantu not guilty of capital murder? As
 5 the charge tells you -- there's two theories the State's come
 6 (sic) at you. The burglary theory is gone, by the way. It's
 7 not in the Court's charge. Murder in the course of attempting
 8 to commit or committing robbery. Now, if I'm going to rob
 9 somebody, kill them to rob somebody, I'm not going to call
 10 them and tell them I'm on my way. That's another thing, in
 11 three of her statements I asked her, you said, "I have to go
 12 over and kill Amy and James now." Three of her statements,
 13 she didn't say that. Detective Winn though, yeah, she did.
 14 November 22nd, she tells him that. Other times, never said
 15 it. Is Detective Winn already playing the game by the time
 16 November 22nd comes around? What has Detective Winn learned
 17 since November 4th and November 22nd of last year that he's
 18 got to start to play the game? Why mince words? I shouldn't
 19 say "play the game." I told you folks I was going to be
 20 honest with you. I think he's being untruthful. Half the
 21 truth is sometimes the bigger lie.

22 So did he say it or not? I don't know. I suppose
 23 the State could have brought down the Arkansas Special
 24 Investigator and Sergeant Joe Izard from Izard County or
 25 Joe -- I don't remember his last name. We didn't see those

1 folks because there's a problem with her statements.
 2 Detective Winn is manufacturing motive. I have to go kill
 3 James and Amy now. Didn't say it in the other four
 4 statements, did she?

5 And so if I'm going to go kill somebody and rob
 6 them, pretty unlikely I'm going to call them up and let them
 7 know I'm coming. I don't know what happened in there that
 8 night. There's so much dope. Mosqueda's whole life appears
 9 to be founded on dope. And remember when I finally pinned
 10 Winn down? I didn't want to say it, but I finally got it out
 11 of him. He's not just a dope dealer, folks. He's a major
 12 trafficker, large quantities, select individuals he deals to.
 13 I think it came out, if you show up ten minutes late, and you
 14 got the cash in your pocket, and we're not talking 20 -- we're
 15 talking thousands, major drug transactions, sky's the limit,
 16 tens of thousands, who knows? You're ten minutes late, you
 17 can flash the cash, but you're going home bye-bye without
 18 anything. That's what kind of guy we're dealing with,
 19 Mosqueda.

20 THE COURT: Mr. Goeller, you've used about 25
 21 minutes.

22 MR. GOELLER: Yes, Your Honor.

23 Again, I don't know where it started. It probably
 24 started November 22nd when we start having these different
 25 variations. But if he did not kill in the course of

1 committing or attempting to commit robbery, then I'd submit to
 2 you the evidence is not there. You don't call somebody and
 3 announce. Whatever problems they were having, whatever was
 4 going on, it wasn't to rob. I mean, think about it. What are
 5 you going to rob? Everybody knows -- everybody knows what
 6 everybody has apparently, so that's not capital murder under
 7 robbery.

8 In the course -- and the other alternative theory
 9 the State has is the intentional murder of two people. I
 10 don't know. You may have the intentional murder of one
 11 person. I don't know -- there's nothing I can tell you that
 12 the murder of Amy Kitchens (sic) was not intentional. I'm
 13 being honest with you. I don't have anything. I can't
 14 cross-examine any witnesses. I don't know who actually shot
 15 her. That gets back to that accomplice stuff, and I need to
 16 start with Detective Winn distancing myself from this whole
 17 thing. Well, I never called because I'm afraid, but I wasn't
 18 there.

19 Was there an intentional killing of James Mosqueda?
 20 I'd submit to you there's a self-defense issue there. The
 21 State told you, their evidence, he had a swollen face from a
 22 baseball --

23 MR. SCHULTZ: Judge, excuse me. I'd object to
 24 arguing self-defense. It's certainly outside any legal
 25 portions of the Court's charge.

1 MR. GOELLER: I'm not arguing from the Court's
 2 charge, Your Honor.

3 THE COURT: All right. I'll overrule the
 4 objection.

5 Ladies and Gentlemen, this is argument of counsel,
 6 and they can tell you how they heard the evidence and what
 7 they think it means. Ultimately, you must decide what the
 8 evidence is. Go ahead.

9 MR. GOELLER: We know there's a confrontation.
 10 We know that for a fact. The State sponsored that evidence.
 11 Swollen face hit with a baseball bat. In fact, not only did
 12 she swear to that from the witness stand, she testified -- it
 13 was in four of her other statements, except Detective Winn --
 14 there's a confrontation. There was no intentional killing,
 15 I'd submit to you.

16 Was it self-defense? Did he overreact to the use --
 17 now, when we talk about deadly force, if you get hit in
 18 the head with a baseball bat, that's deadly force. You
 19 couldn't (sic) find two people to agree with you that a death
 20 might not result from that. Was it an overreaction? I don't
 21 know. The State didn't bring you any evidence on that, but
 22 they do tell you there was a confrontation. And if there's a
 23 killing as a result of that, I would submit to you it's not an
 24 intentional killing. There was sudden passion, adequate
 25 cause, all those issues. So I would submit to you that that

1 is not capital murder.

2 As I stood up and -- I stood up and told you a long
 3 time ago, he's not guilty of capital murder. He's not
 4 innocent, but he's not guilty of capital murder.

5 Now, there's no statute of limitations, as the State
 6 told you, on murder. He's already been indicted in another
 7 indictment for another jury down the road to decide whether
 8 he's guilty of the capital murder of Amy Kitchen.

9 MR. SCHULTZ: Excuse me, Judge. We're going to
 10 object to Mr. Goeller arguing outside the record.

11 THE COURT: Sustained.

12 MR. SCHULTZ: Would you instruct the jury to
 13 disregard that last argument, please.

14 THE COURT: Yeah. I'll instruct the jury to
 15 disregard the last argument, and Mr. Goeller, you've used a
 16 little over 30 minutes.

17 MR. GOELLER: Yes, sir. I'll wrap it up.

18 There's no statute of limitation on murder or
 19 capital murder. It's a reasonable deduction from the evidence
 20 that the State can prosecute him for the capital murder of Amy
 21 Kitchen, but as far as James Mosqueda, he's not guilty of
 22 capital murder. May not be innocent of something, but he's
 23 not guilty of capital murder.

24 I don't know what else to tell you folks at this
 25 point, other than when a jury arrives at a verdict, beyond a

1 reasonable doubt, and you remember from voir dire we know
2 that's above and beyond a moral certainty, and if your
3 verdict -- you should have the utmost faith and confidence,
4 and in a criminal case because the State only has the burden
5 of proof, that's what you're putting your faith and confidence
6 in, or lack of it. Is this the way the Government goes about
7 it's business?

8 You know, think about all the little things. Well,
9 Mr. Kramer, you were a detective for how many years? You
10 would never coach a witness on what to put in her statement?
11 No. You didn't in this case? No. Ms. Boettcher, she didn't
12 see that one coming apparently. Oh, yeah, he told me what to
13 put in there. He coached me. I don't know if the conspiracy
14 really started in North Dallas, Texas or Izard County,
15 Arkansas. I haven't figured that one out yet.

16 Again, your verdict of not guilty -- you're not
17 saying he's innocent. You're saying for James Mosqueda, it's
18 not capital murder. Think about all that. Beyond a
19 reasonable doubt, beyond a moral certainty, all you know and
20 don't know about this case, why the State's ditching forensics
21 in the middle of trial? I don't know. I don't know, and I
22 don't get to ask them, why did you do that? I want to know
23 why you did that. This is the best they can do, and maybe it
24 is. I don't know. Can you put your soul into a verdict
25 they're asking for? I'd submit you wouldn't.

1 I'd ask you to find him not guilty of the capital
2 murder. Thank you, Your Honor.

3 THE COURT: Thank you, Mr. Goeller.
4 Mr. Schultz, you have 13 minutes remaining.

5 MR. SCHULTZ: May it please the Court?

6 THE COURT: Yes, sir.

7 MR. SCHULTZ: Defense counsel.

8 MR. GOELLER: Sir.

9 MR. SCHULTZ: Ladies and Gentlemen of the Jury.
10 Something I try to remember to do when I'm dealing with cases
11 involving alternates is take a moment to thank the alternates
12 for the time and attention you've put in. Very quickly you're
13 going to have perhaps the privilege of not being, or perhaps
14 the misfortune of not being involved in this case any longer.
15 It always reminds me of my dad who was in pilot training
16 during World War II when the war ended. I always ask him, how
17 did you feel about that? Probably saved your life. He said,
18 I'm mixed in my feelings. On the one hand, yeah, it got me
19 out of situations that could have been very tough, but on the
20 other hand, I've always felt like I didn't serve. And when I
21 talked to my dad about that, I said, yeah, you did. You
22 served as much as anybody else because you were there and
23 you're doing
24 it. And I mean that to the alternates.

25 You can keep up with the trial. The Judge will let

1 you talk to the lawyers as soon as you're released in probably
2 10 minutes, 15 minutes. If you want to, you can keep quiet
3 about it. That's your privilege, but I urge you to keep up
4 with the trial. I urge you to kind of think and watch for
5 signs of it. You can call up here. I'm sure the Judge
6 wouldn't mind, once you're (sic) an alternate to call and say,
7 what happened in the case? What's the verdict? Is the jury
8 back yet, those kinds of things. It's important, and you're
9 important, and I want to thank you for that.

10 My arguments during the trial would be directed to
11 the other 12 people, not because you're less important, but
12 unless somebody gets sick in the next 12 minutes that I have
13 now, you're done. But you go with our appreciation.

14 Ladies and Gentlemen, it's very easy, I suppose,
15 for Defense attorneys to point the finger at everybody else
16 with somehow the view that there's not a mirror of that finger
17 pointing to get right back to where they are. A couple of
18 quick observations, because this is just -- I respect
19 Mr. Goeller. Anything that I say is not contemptuous of him
20 personally or of his profession because it's important, and
21 the work he does is important. But I don't have to stand here
22 and take his abuse and take his finger-pointing and take his
23 derision. And on behalf of Ms. Falco, a woman of faith and
24 courage and decency and honor, and you've seen how she's tried
25 this case, she doesn't have to do it, either. And I'm going

1 to answer some of those remarks, but mostly I'm going to
2 concentrate on the evidence because I don't want to fall into
3 the idea this is just some type of finger-pointing.

4 He made reference to the fact, he would have you
5 believe rather than this Defendant is guilty of capital
6 murder, and that we've done our job, that somehow this is some
7 grand conspiracy by the police, the prosecutors and the
8 attorneys at law, and goodness knows who else, all some grand
9 conspiracy to frame or somehow disadvantage this defendant.
10 For example, how could Detective Winn possibly have suspected
11 that there might be bloody clothing when you've got this sort
12 of thing. How in the world? It had to be somehow nefarious.
13 That's -- he knew whose blood that is.

14 And by the way, on the issue of self-defense, I'm
15 only going to touch on that real quickly because it's
16 preposterous. I apologize for showing you this again, but
17 look at that. That poor man defending himself. He's probably
18 asleep. The truth of the matter is you look where that bullet
19 went, that man is probably asleep at the time. I don't know
20 how --

21 MR. GOELLER: I'd object to that, Judge.
22 There's absolutely no evidence. That's pure speculation.

23 THE COURT: Overruled.

24 MR. SCHULTZ: You do the reasonable deduction
25 of the evidence. He's in bed. I mean, if there's a baseball

1 bat, or whatever story that defendant was laying out to Amy,
2 where is the evidence of that? The fact of the matter is
3 interestingly, for all this frame-up, and we've got to be the
4 guardians of our society, and we're the lawbreakers instead of
5 the Defendant, at the same time he's conceding to you that
6 he's -- his client is the man. There isn't any doubt about
7 that. He's conceding. We're simple now on that part.

8 We've got some theory how we can lessen our exposure
9 in this case by getting the jury to move for something other
10 than capital murder. How would it be that way? What evidence
11 can Mr. Goeller point to, other than pointing fingers at the
12 State or pointing fingers at the police? What evidence can he
13 possibly point to that this isn't a double homicide? Look at
14 the pictures, look at the evidence, consider it all.

15 Is Amy Boettcher an accomplice? I don't know. I
16 mean, I honestly don't know, and that's a fact issue for
17 y'all. I don't understand from the evidence why she would
18 have had any intent to have done this. She barely knew these
19 people. She wasn't going to profit. She wasn't along.
20 That's all pretty clear, and to be an accomplice, first and
21 foremost, you have to have the same kind of intent as the
22 Defendant. That means the intent to do the robbery homicide,
23 or the intent to do the double homicide. Not intent to wear a
24 ring later on, not intent to drive a Corvette later on if he
25 asked you to do it. I don't know those things, and neither do

1 you.

2 But the fact of the matter is, it seems apparent, if
3 there was going to be somebody gullible enough to just go
4 along with the Defendant, not because of her intent but just
5 to go along, it has to be her. If you want any more evidence
6 of how weak and how gullible she is, she thinks he's
7 wonderful. It was a wonderful relationship. Now use your
8 common sense, and I think you can kind of get some idea of
9 just exactly how wonderful a relationship with this Defendant
10 is. But he's manipulative, and he's clever, and according to
11 his good friend, Carlos, he can do whatever is necessary,
12 according to the situation, to evoke sympathy, a response, or
13 pride or admiration or anything else.

14 Something else about the mirror of pointing fingers.
15 You know, it's one thing to talk about the decedent, James
16 Mosqueda, being a big-time dope dealer. I submit to you,
17 you've heard the evidence, and how big time, I guess, is
18 relative. We never hid that from you. If you remember, we
19 talked about that right at the very beginning of this trial on
20 voir dire, and we spent a lot of time. We're going to talk
21 more about it, depending upon circumstances that occur later.
22 And that is, if a person is a dope dealer does that person
23 somehow forfeit his life or forfeit the protections of our
24 criminal laws? But even more importantly, if James is so bad,
25 what kind of a creature admires him and is jealous of him and

1 his lifestyle, is jealous enough to go over there and take his
2 life? You know, you can't have it both ways. James can't be
3 bad, and then you somehow be worthy of some kind of
4 consideration because you admire the man. Think about that.
5 If you want to look at that physical evidence, does
6 that look like to you a crime of jealousy? It's more than
7 just going over there to steal stuff because you could do that
8 when they're not around. You could break into the place when
9 they're there, but instead you go over there and slaughter
10 them. You go over there and kick them when they're dead. You
11 go over there and make references to other people, I'm going
12 to shoot them again because you've got such a rage of
13 jealousy in you, not because of anything other than the fact
14 that James would work for a living and James would make money.

15 Now, you remember some of the things -- I guess we
16 get accused of hiding things from Mr. Goeller. It's real
17 interesting. Remember that whole routine we had to go through
18 about the fact that when he went over to get his rent that
19 night it was all some kind of a dope deal. We had to go to
20 the trouble of finding that tenant, bring him up, and put him
21 through that difficulty in his life of having to come up and
22 say, yeah, I really had a lease, and, yeah, I really am a
23 tenant, and, yeah, I really did pay him cash money, and, yeah,
24 I really do have a receipt. I mean, that's the kind of stuff
25 we've been fighting in this trial, and I don't mind doing it.

1 But I know, we've spent a lot of time with you people and
2 you're smart enough and intelligent enough and sophisticated
3 enough as human beings to see through what's going on.

4 MR. GOELLER: I object to that comment, Judge.
5 It's a misstatement of the evidence. Winn swore in his
6 affidavit there was 100, and that's why we did that.

7 THE COURT: Ladies and Gentlemen, as I said
8 before, ultimately you have to decide what the evidence is in
9 this case, and you'll have an opportunity to do that in about
10 five minutes. Go ahead.

11 MR. SCHULTZ: Thank you, Judge.

12 Now, I don't know how you're going to view the Amy
13 Boettcher situation. The evidence suggests she was not an
14 accomplice. It's funny, the police didn't think she was an
15 accomplice. Our office didn't think she was an accomplice,
16 but in the event that's some conspiracy between the
17 prosecutors and the police somehow, you had a sophisticated,
18 as Mr. Goeller pointed out, a former police officer, step-dad
19 who obviously didn't think she was an accomplice because he
20 took her to the Sheriff's office that was arranged. If he's
21 so sophisticated and thinks she's an accomplice, is he going
22 to take her down there to allow her to make statements to
23 incriminate her? Of course, not. But even if all of us got
24 together, and somehow we're so powerful in Collin County we
25 can lock in with Izard County, Arkansas, and we'll just get in

1 lockstep together, an independent attorney was appointed to
 2 represent her interest. Now, that didn't satisfy Mr. Goeller,
 3 either. Not only did he have to make reference to the fact
 4 she had an attorney appointed, but he had to make fun of the
 5 man. What did he say? He was out there grinning like a
 6 Chesire cat. I don't remember any grinning like a Chesire
 7 cat, but Mr. Goeller seems to see things in this trial the way
 8 he wants to see them.

9 Now, if there was a Chesire cat out there for a
 10 lawyer, I didn't see it. Maybe y'all did, but once again, I
 11 guess not only are we so powerful to get other counties
 12 involved and other states involved, we can get attorneys
 13 appointed by the Court to represent the interest of people
 14 involved, too. She's not an accomplice, Ladies and Gentlemen.
 15 She's a dooper, and I'm going to say this. I don't have any
 16 respect for her doing that. I understand how miserable her
 17 life must have been, and I understand the frailties of growing
 18 up with a dad that's mean to you and not around, and I
 19 understand all that. But she's a dooper, and if you ever want
 20 any lesson on why dope is so bad in our society and why we
 21 ought to prosecute so severely like we do, look at this case
 22 and look at these people.

23 By the way, these people drive around this way. You
 24 understand, it's not just like they get in their own house and
 25 do their own stuff, like in an opium den. They get out on our

1 highways. We're out there trying to live our own lives
 2 decently. People like Amy Boettcher, people like this
 3 defendant, people like the parade of dopers that I put up
 4 there on the board, not really for amusement. It was to give
 5 you some flavor of what's really going on here with this whole
 6 group of lawbreakers.

7 These people are dangerous as can be, and I make no
 8 apology, and I understand why she's a dooper, but I don't have
 9 any respect for her. But she's not an accomplice to this
 10 case. Even if you disagree with me based upon the evidence,
 11 nevertheless the truth is there's plenty of evidence
 12 independent of her that connects this Defendant to being
 13 the killer.

14 His own attorney concedes it. I mean, his own
 15 attorney argued -- it's already made him the killer. The
 16 question is why -- there's some reason why maybe it wasn't
 17 intentional. You look at the killing that Mr. Goeller has
 18 already conceded, and you find some way one of those cases is
 19 not intentional.

20 The instruction on the illegality of the search is,
 21 I'll be frank with you, none of us can figure a way to even
 22 draft it, so we just -- it's there. It's probably correct.
 23 I'm not disagreeing with the Court or his decision. I'm just
 24 saying it's probably a correct statement of the law, but it's
 25 hard to work through. It's hard for lawyers to work through

1 it.

2 But here's the basic proposition: Mr. Goeller tried
 3 and tried and tried to make that initial officer entering that
 4 residence somehow, some kind of lawbreaker, bad person, evil
 5 person, schemer, con artist. Once again, it's some big, grand
 6 conspiracy from the beginning.

7 Police officer gets called by the mother saying my
 8 son's cousin has been murdered, and I'm worried for my son
 9 because he's not here. Please go in, and let's assume it's
 10 somehow better. She already knew about the killing of the
 11 cousin. Whether this officer did or not, is a little bit
 12 unclear in the evidence, but the transmission was there for
 13 the police.

14 THE COURT: Mr. Schultz, you have about two
 15 minutes remaining.

16 MR. SCHULTZ: Thank you, Judge.

17 He goes inside and looks for -- looks for evidence
 18 of a body or injury and things like that, and he said he
 19 didn't do anything else. We went through this whole thing
 20 with Mr. Goeller about how long he was in there and how long
 21 he stayed, how small the apartment was. Big deal. Ladies and
 22 Gentlemen, he could have sat down and watched TV. He could
 23 have cooked him a dinner. He could have invited his friends
 24 over to party with him in this man's house. He could have
 25 taken a nap. He could have said, I like it here, I'm staying

1 here the next ten years. None of that has any effect on any
 2 subsequent search or subsequent issue in this case, unless he
 3 found something as a result of staying there longer than for
 4 an emergency purpose. Unless he found something as a result
 5 of staying there longer than the emergency purpose.

6 You know, the truth is, he said that -- he said the
 7 only thing I found in there, other than nobody being there,
 8 was that bullet hole in the wall that I saw on my way out, and
 9 whenever I left, whether it's 1990 -- whether it's 2000 or
 10 2010 that bullet hole would have been there and I would have
 11 passed by it.

12 Mr. Goeller, I suppose, wants you to speculate he
 13 lied. This police officer, this decent man. You saw him.
 14 What possible reason would he have to get up in front of 14
 15 people and lie? Mr. Goeller, I suppose, would have you
 16 believe he got up there and lied, but what he really did was
 17 rummage through the house looking for a bunch of evidence.
 18 Then he put it back, lied, and said I didn't find any
 19 evidence. And then he secretly tells Detective Winn, go look
 20 for some evidence that we're secretly knowing about that we're
 21 not going to tell you.

22 Well, I guess stuff like that could happen, but
 23 you'd sure want something more than the fantasies in
 24 Mr. Goeller's mind before you do that, and there isn't any
 25 evidence of that. And it's a pretty ugly thing to do to

1 police officers that put their lives on the line every day and
2 every night of their existence to somehow say that the
3 fantasies in Mr. Goeller's mind cause you to bring into
4 question whether or not they're telling the truth.

5 He did his job. He saw the bullet hole. He told
6 the detective about that. You've seen the bloody pictures.
7 You've seen the bloody clothing. That detective had a right
8 to expect to find bloody clothing in the Defendant's
9 residence. You say the -- the fact that the cartridge casings
10 were found were .38. He certainly had the right to be
11 looking for a .38 caliber handgun, and other evidence that he
12 looked for is reasonable.

13 When you look at the search warrants, you'll see the
14 judge made a recitation in there. This is a judge, a neutral
15 and detached magistrate decided there is probably cause for
16 these search warrants that are being --

17 MR. GOELLER: Objection. That's a
18 misstatement of the evidence. This Court has never made any
19 probable cause determination, and ask the Court to instruct to
20 jury to disregard what Mr. Schultz, the prosecutor's,
21 comments.

22 MR. SCHULTZ: That's not what I said, Judge. I
23 talked about the search warrant.

24 THE COURT: I'll overrule the objection, and,
25 Mr. Schultz, your time has expired.

1 MR. SCHULTZ: May I have 30 seconds?

2 THE COURT: All right.

3 MR. SCHULTZ: And would you not interrupt my
4 argument until I find the exhibit numbers?

5 (Brief pause in proceedings.)

6 MR. SCHULTZ: I can't find them. Conveniently
7 my time is up. Remember two numbers for me please. State's
8 Exhibits 105 and 109. They're determinations by a judge, by a
9 magistrate that probable cause existed for those search
10 warrants.

11 MR. GOELLER: Objection, not this judge, and
12 that was his statement earlier. He directed it to you.

13 MR. SCHULTZ: I never did, and look at the
14 record besides.

15 THE COURT: All right. Ladies and Gentlemen of
16 the Jury, at this time you've heard the evidence, the Court's
17 Charge and the closing arguments of counsel are before you.
18 I'm going to hand to the bailiff the charge, together with
19 the verdict form. They will be left with you in the jury
20 deliberation room. Once all the members of your jury are
21 present and assembled, the case is formally submitted to you,
22 and you may begin your deliberations. Please step down from
23 the jury box and accompany the bailiff into the jury room.

24 THE BAILIFF: All rise.

25 THE COURT: Say, would you-all hold on just

1 one moment? I also want to make sure that I make this clear.
2 With regard to the two alternates, as you know, you were our
3 insurance policy in case anybody couldn't serve, and at this
4 time your service is complete. And I want to thank you for
5 your service and wish you well. And if you're interested --
6 have any further interest in the case, feel free to call my
7 court, and we'll tell you what happens.

8 Thank you, folks very much. You are finally
9 excused.

10 (Jury exits the courtroom.)

11 THE COURT: All right. The time is 11:30, and
12 we'll get back to you when we have a message or response from
13 the jury.

14 (Proceedings recessed.)

15 THE COURT: Please be seated. Let the record
16 reflect that the attorneys for the State, the attorney for the
17 Defendant, and the Defendant are present. I received a note
18 that the jury has reached a verdict, so I'd ask the bailiff,
19 would you please bring the jury into the courtroom?

20 THE BAILIFF: Yes, Your Honor.

21 All rise.

22 (The jury enters the courtroom at 3:50 p.m.)

23 THE COURT: Please be seated. Let the record
24 reflect that the attorneys for the State, the attorney for the
25 Defendant, and the Defendant are present, and the jury is

1 seated. I would at this time ask the presiding juror, have
2 you reached a verdict in this case?

3 PRESIDING JUROR: Yes, we have, Your Honor.

4 THE COURT: Would you please hand the verdict
5 form to the bailiff to deliver to me for inspection?

6 (Complies.)

7 THE COURT: I would ask the presiding juror, is
8 this the unanimous verdict of all the Members of the Jury?

9 THE WITNESS: Yes, it is.

10 THE COURT: Mr. Cantu, I'm going to ask you to
11 please rise and receive the verdict.

12 (Defendant rises.)

13 THE COURT: The verdict reads as follows: We,
14 the Jury, find the Defendant guilty of capital murder as
15 charged in the indictment. And this is signed Thomas J.
16 Calhoun, presiding juror. Please be seated.

17 And I tell you what, I think I'll poll the jury with
18 regard to this verdict. If this is your verdict, please
19 respond this is my verdict, if it is.

20 I'll begin with Mr. Calhoun. Sir, is this your
21 verdict?

22 JUROR: This is my verdict.

23 THE COURT: Sir, is this your verdict?

24 JUROR: This is my verdict.

25 THE COURT: Ma'am, is this your verdict?

1 JUROR: This is my verdict.
 2 THE COURT: Ma'am?
 3 JUROR: This is my verdict.
 4 THE COURT: Sir?
 5 JUROR: This is my verdict.
 6 THE COURT: Ma'am, is this your verdict?
 7 JUROR: This is my verdict.
 8 THE COURT: Sir?
 9 JUROR: This is my verdict.
 10 THE COURT: Sir?
 11 JUROR: This is my verdict.
 12 THE COURT: Sir?
 13 JUROR: This is my verdict.
 14 THE COURT: Ma'am?
 15 JUROR: This is my verdict.
 16 THE COURT: Ma'am?
 17 JUROR: This is my verdict.
 18 THE COURT: Ma'am?
 19 JUROR: This is my verdict.
 20 THE COURT: All right. Then I tell you what,
 21 Ladies and Gentlemen, as you know this is -- well, in fact, I
 22 will say the Court receives and accepts your verdict, and
 23 makes it part of the record in this case, and this brings to
 24 close the first phase of the trial. We're going to proceed
 25 with the punishment beginning tomorrow morning at 9:00 in the

1 morning, and it will proceed as follows: If the State desires
 2 to make an opening statement they may do so at that time, and
 3 put on whatever evidence they want. And the Defense, of
 4 course, has a right to open at that time or later, and to put
 5 on whatever evidence they decide to put on, if they decide
 6 to. I want to thank you for your service at this point, and
 7 admonish you, once again as I have, and I always like to read
 8 the instruction because it is important. You are instructed
 9 that it is your duty not to converse among yourselves or with
 10 anyone else on any subject connected with the trial, or to
 11 form or express any opinion thereon as the case continues.
 12 All right. Then we'll see you at 9:00 tomorrow
 13 morning. Let me ask you to go ahead and be seated, and let me
 14 have the attorneys over here. Sorry about that.
 15 (Sidebar discussion had.)
 16 THE COURT: All right. Now, Ladies and
 17 Gentlemen, at this point you are released for the day, and I
 18 will see you at 9:00 tomorrow morning.
 19 THE BAILIFF: All rise.
 20 (Jury exits the courtroom at 3:55 p.m.)
 21 THE COURT: Please be seated. Is there
 22 anything else from either side at this time?
 23 MS. FALCO: No, sir.
 24 THE COURT: All right. Then we'll see you
 25 at --

1 MR. GOELLER: Motion for Verdict Non Abstante
 2 Verdicto.
 3 THE COURT: That is denied.
 4 MR. GOELLER: Thank you, sir.
 5 THE COURT: All right. Then we'll see you at
 6 9:00 tomorrow morning.
 7 (End of Volume 41.)
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1 REPORTER'S CERTIFICATE
 2 THE STATE OF TEXAS *
 3 COUNTY OF COLLIN *
 4
 5 I, Lisa M. Renfro, Official Court Reporter in and
 6 for the 380th District Court of Collin County, State of Texas,
 7 do hereby certify that the above and foregoing contains a true
 8 and correct transcription of all portions of evidence and
 9 other proceedings requested in writing by counsel for the
 10 parties to be included in this volume of the Reporter's
 11 Record, in the above-styled and -numbered cause, all of which
 12 occurred in open court or in chambers and were reported by me.
 13
 14 I further certify that this Reporter's Record of the
 15 proceedings truly and correctly reflects the exhibits, if any,
 16 offered by the respective parties.
 17
 18 I further certify that the total cost for the
 19 preparation of this Reporter's Record is contained in
 20 Volume 53 and was paid by Collin County.
 21
 22 WITNESS MY OFFICIAL HAND this the 14 day of
 23 January, 2003. *Lisa M. Renfro*
 24
 25 Lisa M. Renfro, Texas CSR #4534
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