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IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

State of Ohio, : CASE NO: 2017-CR-403
Plaintiff, :
 :
-vs- : TRANSCRIPT OF PROCEEDINGS
Austin Taylor Burke, :
Defendant. : VOLUME V - JURY TRIAL

Be it remembered, that at the Jury Trial of the above-entitled cause, in the Court of Common Pleas, Trumbull County, Ohio, beginning on the 5th day of March, 2018, and continuing thereafter, as hereinafter noted, before the Honorable Andrew D. Logan, the following proceedings were had:

Official Court Reporter: Lori J. Rittwage

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March 9, 2018

THE COURT: Ladies and Gentlemen of the Jury, as we concluded yesterday's proceedings, the state had finished presentation of evidence. We resolved any matters regarding the conclusion of the state's case. I then addressed the defendant. The defendant has elected not to put any further witnesses on. We resolved any issues with regard to the conclusion of defense case. The defense has now rested; correct, Mr. Olson?

MR. OLSON: That is correct, Your Honor.

THE COURT: So we come to the final part of the case which are the closing arguments of counsel and the charge. The state will have an opportunity to address you first in closing arguments. They will have an opportunity for rebuttal. The defense will address you one time during closing arguments.

Mr. Becker, you may proceed.

MR. BECKER: Thank you, Your Honor.

CLOSING ARGUMENT

MR. BECKER: May it please the Court, Mr. Olson, Mr. Hartwig, and most important, Ladies and Gentlemen of the Jury. First off, I want to say thank you so much for your time this week, your patience with some of the

1 snafus that I've had with modern technology, your time, and
2 being away from your jobs, your loved ones, your families and
3 for serving our community.

4 If you'll recall back on Monday when you were all
5 seated in here, we had a number of jurors throughout the
6 courtroom, we talked about a lot of things. But one of the
7 most important things we talked about was reasonable doubt.
8 And each and every one of you are going to use reasonable
9 doubt to find the defendant not guilty [sic] of each and every
10 one of these counts and each and every specification.

11 Let's talk about the most simple of the elements of
12 each of these crimes. The Court will instruct you in a few
13 minutes about the elements of every crime. Every crime has
14 four or five elements. Venue is an element in every single
15 offense. And almost every witness that testified throughout
16 the week to all of the events, whether it was the murder, the
17 aggravated robbery, the having weapons under disability, the
18 tampering with evidence, or the robbery at Pizza Joe's, and
19 the having weapons under disability on June 20th, except for a
20 few of the kids that they're 14, 15, but even some of them
21 knew they lived in Trumbull County and these events happened
22 in Trumbull County. So venue has been proven beyond any and
23 all doubt in this case.

1 So let's talk about the charges. June 12th, 2017,
2 there are four charges. Aggravated murder with a firearm
3 specification, aggravated robbery with a firearm
4 specification, tampering with evidence, and having weapons
5 while under a disability.

6 On June 20th at Pizza Joe's in Cortland, Ohio, there
7 are two counts; aggravated robbery, again with a firearm
8 specification, and having weapons under disability. You
9 remember, the Court is going to instruct you it's not that
10 he's disabled. It's the disability of him having that
11 adjudication.

12 So let's talk about Counts 4 and 5 first. Counts 4
13 and 5 are having weapons while under a disability. Count 4,
14 on or about June 12th, the date that Brandon Sample was
15 murdered, and having weapons while under a disability on or
16 about June 20, 2017, the Pizza Joe's robbery. And we'll talk
17 about the evidence relating to those two counts.

18 First of all, venue. Like I said, venue has been
19 proven beyond a reasonable doubt. The officers from Cortland
20 on June 20th testified, Trumbull County. And you had a
21 plethora of witnesses say that on or about -- that's the key,
22 on or about, it doesn't have to be exactly that day -- on or
23 about June 12th, this defendant was seen by Rickey Roupe,

1 Hayle Roupe, Deidre Keener, Jessica Simms, Nathan Moats, and
2 his girlfriend was kind enough and you will have with you a
3 video of him shooting a gun which she said was about June 8th.
4 She went on her trip, if you'll recall, out of the country on
5 June 9th she went on a cruise. So thank you to Meredith Loges
6 for recording that for us.

7 And it's not just any gun that they describe. It
8 wasn't a black gun or a 9-millimeter or a revolver or a rifle.
9 What kind of gun was it? Every witness was very specific that
10 it was a small -- small silver gun with marbled handles.

11 So let's talk about his girlfriend Meredith Loges.
12 Well, she was nice enough to record that video of him shooting
13 a gun in early June. You have that video. It's State's
14 Exhibit 12. We played it on the screen. You can go back and
15 watch it when you deliberate.

16 The defendant himself said he had a gun during
17 June 12th. If you'll recall, he had a text message from his
18 phone on June 12th, 2017 at 12:20 a.m. when he texted Brittani
19 Merten, "See if my clip for the 9-millimeter is out there,
20 Bae." And you'll recall Brittani Merten testifying, "Oh,
21 yeah, he had a gun and they were playing with it and somehow
22 the clip fell out of it and they looked in the pond or the
23 lake or something."

1 The defendant himself had a gun. That text message
2 was retrieved by JoAnn Gibb, the computer expert that
3 testified here. That text message is on the extraction
4 report. It's marked State's Exhibit 48. It's line 31. So
5 his own phone tells you he had a gun on June 12th.

6 The defendant was also kind enough for us to take
7 pictures with himself and his two baddest bitches. Those are
8 State's Exhibit 11 and 13. Pay particular attention to
9 State's Exhibit 13A which also has his hand which was
10 identified by a number of witnesses with those tattoos and
11 that marble handled gun and some gray Nike tennis shoes. And
12 we'll talk about those tennis shoes in a moment. Those photos
13 were on his phone, and witnesses identified his tattoos in
14 those photographs. One of them, his face is on it, the one
15 with his two baddest bitches.

16 Counts 4 and 5, State's Exhibit 11 and 13. Those
17 photographs have him holding that small silver handgun with
18 marble grips. Again, use your reason and common sense. The
19 witnesses said it was a small silver handgun with marble
20 grips. Wasn't a 9-millimeter. It wasn't a black gun. It
21 wasn't a blue gun. Heck, today my girlfriend has a pink gun.
22 And those of you that have guns know that's a pretty
23 distinctive looking handgun.

1 You have the gun itself, State's Exhibit 1. Rickey
2 Roupe, Hayle Roupe, Deidre Keener, Jessica Simms, and Nathan
3 Moats all identified that gun when I held it up here for them
4 to look at. It's a .22-caliber handgun with marble grips.
5 And guess what? It's registered to his mother and was found
6 in the very apartment he was arrested in the day after the
7 Pizza Joe's robbery in Cortland.

8 What does your reason and common sense say about a
9 gun that's registered to the defendant's mother ending up
10 hidden in an apartment where he was arrested at with people
11 who barely knew him? Think of the testimony of the young lady
12 who lived there who said, "Yeah, I do flower arrangements.
13 That's one of my hobbies." And I asked her. "Did you put
14 this bag of bullets and marble handled .22 registered to this
15 defendant's mom in your pots?" "No."

16 You have the ATF records. Remember the quirky little
17 guy from West Virginia that came here and wanted to talk about
18 1968? He really loves his job. I'm not going to hold that
19 against him. But he was real happy to tell you about how the
20 transactions were recorded, how when a business closes and
21 it's sold and they're an ATF dealer they have to come down to
22 West Virginia and they microfilm them. Great guy. And you
23 will have those records, State's Exhibits 9 and 10, showing

1 Jamie Sell, this defendant's mother, purchased that gun in
2 July of 2009.

3 You have his own mother asking him on the phone on
4 June 27, 2017 after he was indicted, that's State's Exhibit
5 29, we played that here in the courtroom and you'll have that
6 with you back in the jury room, and she asked if the firearm
7 was registered. And the defendant said, "No, I don't think
8 so." Well, guess who knew it was registered? His mother.
9 Because she registered it in July of 2009 which you'll have
10 that exhibit.

11 And the defendant told his mom later on, "You're
12 talking too much about the case." Well, again, using your
13 reason and your common sense, what does your reason and common
14 sense say about what he said? If I didn't commit a crime and
15 my mother asked me -- my mother, for god's sakes. There's a
16 lot of people I may have told some half truths to and that
17 I've done some things, but I learned at a very young age not
18 to mess around with my mother. So when my mother asks me, "Is
19 that gun registered?" what is it the response should be?
20 "What gun are you talking about, mom? There was no gun, mom."
21 Instead, he told her, "You're saying too much, mom. And I
22 don't think it's registered."

23 You have a certified copy of his adjudication as a

1 delinquent child. It is State's Exhibit Number 21. You will
2 see on that document that he was convicted or sentenced for an
3 aggravated burglary with a firearm specification which is a
4 felony of the first degree. The Court will instruct you in
5 its closing argument -- or I'm sorry, in its jury
6 instructions -- that aggravated burglary, a felony of the
7 first degree, is, in fact, a felony offense of violence which
8 he has been adjudicated of.

9 The defendant is guilty beyond all -- any and all
10 possible doubt regarding Counts 4 and 4 of having weapons
11 under a disability on both June 12th which is Count 4 and June
12 20 which is Count 5.

13 Tampering with evidence is Count 3. Well, let's talk
14 about what tampering with evidence is. Now, the Court is
15 going to give you some definitions as to what tampering with
16 evidence is. But basically it's knowing that a proceeding or
17 an investigation will begin, he did alter, destroy, conceal,
18 or remove any record, document, or thing to impair its value
19 or availability in the investigation. Well, let's talk about
20 that.

21 Let's start with his own phone. His own phone that
22 JoAnn Gibb got on this very witness stand and extracted the
23 extraction report which you will have as State's Exhibit 47

1 shows that there were 11 deleted text messages which she was
2 able to recover. And not just any 11 text messages. They
3 were 11 text messages on June 11th in the evening hours around
4 10:00 between him and Brandon Sample. Brandon Sample texted
5 him, which was deleted from his phone but recovered by the
6 analyst, "Shit, just at this chick's house swimming. I'm
7 gonna have to take J White back to Akron in a bit, but do you
8 still want to link up when I get back?" Now, I don't care how
9 he gets -- we spent, painstakingly, three hours here the other
10 day talking about, you know, who knew what, what did you look
11 at, when did they meet? They may have run into each other two
12 weeks ago and said, "I'll get hold of you. We'll get together
13 next week or Saturday or Friday." It doesn't matter. That
14 was a painstaking effort in futility if you ask me. "Just at
15 this chick's house swimmin'. Gotta drop J White back to
16 Akron. Wanna hook up?" That was on June 11th at 10:05. You
17 have those text messages which were deleted.

18 What's his response? "Damn. Ha ha. That's crazy.
19 I'll be in Warren on the west side." 6-11-17 at 10:23. You
20 will have those phone records. And you'll also see the
21 extraction report that shows you that message was deleted and
22 when it was sent.

23 The defendant, though, never told Detective Greaver

1 he had any deleted text messages. He, like most people, and
2 until I got involved in doing this, I had no idea. I thought
3 if I deleted something off my phone it's off my phone. Well,
4 guess what? Wrong.

5 Brandon Sample's phone was never found after June
6 12th, 2017. It was never even used after 4:40 a.m. Where did
7 that go?

8 Brandon Sample's wallet was never found. Do you
9 recall there was some testimony in cross examination about
10 where was his wallet? It wasn't in the car down in Niles. It
11 wasn't at the scene.

12 Brandon Sample's car was on the bike path in Niles.
13 We know that. So that was taken or moved.

14 Brandon Sample's keys to his car were never found.
15 There was testimony about that.

16 And most importantly, Brandon Sample himself wasn't
17 found for four days. Did the fact that they couldn't find
18 Brandon Sample for four days impact this investigation? You
19 heard the coroner testify about the rotting flesh, about there
20 was possibly a second bullet but so much was chewed off he
21 couldn't tell. He thought he had a fragment. The body had
22 maggots in it. He's cleaning it off, maggots, and
23 unfortunately fragments are going down the drain as he's

1 trying to clean the badly decomposing body of Brandon Sample.
2 Well, who left him there?

3 And where was Brandon Sample's body found? The exact
4 location that this defendant a few weeks earlier had taken his
5 girlfriend Meredith Loges and Rickey Roupe to. Meredith Loges
6 and Rickey Roupe both testified that they were swimming out
7 at -- out in Hiram, or out that way, Nelson Ledges, and he
8 said, "You want to see a scary place?" And he took them to a
9 place called what other? Hatchet Man Road. That's the exact
10 location where Rickey Roupe, Hayle Roupe, Deidre Keener,
11 Jessica Simms, and Nathan Moats all testified that the
12 Defendant told them he killed him at. Hatchet Man Road. Now,
13 I want you to use your reason and common sense and think
14 again. Each and every one of you were out there on Monday
15 afternoon. I want you to think of Trumbull County and how big
16 this county is. And think about going down that road and
17 where that road was.

18 Ladies and Gentlemen, the defendant is guilty beyond
19 any and all possible doubt of tampering with evidence. The
20 car, the keys, the phone, the wallet, the body of Brandon
21 Sample. He hid them. You remember that testimony? The body
22 was drug over the hill. There was a shoe there. They walked
23 all around and couldn't find it until they smelled it.

1 Let's talk about Count 6, the Pizza Joe's robbery on
2 June 20th at Pizza Joe's in downtown Cortland. You have the
3 video. You see the robber run, literally run from the house
4 where he was arrested from. You'll see from -- on one of the
5 videos he runs right in the door directly across the street
6 that was identified by the police officers as 241C West Main
7 Street. That's State's Exhibit 30. Play it. Watch it.
8 Watch all the videos. You were there on the jury view. And
9 the testimony is that the apartment where the robber came from
10 was right there. You saw it. You went out there Monday
11 afternoon. Witnesses testified that the apartment where the
12 defendant was arrested within the hour after the robbery was
13 right across the street. The video shows the robber at the
14 tail end of it after he sort of swings around in that parking
15 lot. Where does he go? Right back across the street. The
16 video shows pretty much exactly what Shawn Marx said. The
17 robber went across the street and was about 20 feet from him
18 when he was at the corner of that building. Shawn, as you'll
19 recall, will say he was further down.

20 Look at the video and see that the robber is covering
21 his left hand with the bag, the defendant's tattooed hand,
22 with a plastic bag. Remember the voir dire questioning? And
23 do you remember sometimes I asked you about the differences

1 and the age of Judge McKay. And I don't remember if the
2 jurors are still here that we questioned, but you were all
3 here. At one point, the young lady that was seated at Number
4 6 there -- and I think someone who may or may not be here -- I
5 asked them, "How long were you here at orientation?" And
6 every one of you was here. One person said an hour and a
7 half. Somebody else said three hours. Well, does that make
8 them liars? Does that change the fact that they were wrong?
9 I lose track of time. Thank goodness I have a clock here.
10 Thank goodness I can look at my phone. But when I'm not doing
11 anything or when I'm just hanging out or when I'm just sitting
12 doing something, I don't write down, "Well at 10:05 I did
13 this. At 12:13 I did that." It's hard to remember. We all
14 lose track of time. And none of those people had a gun
15 pointed at them. Or none of those people that testified.
16 Those clerks did. So is it within your reason and common
17 sense that the young lady who was the clerk there didn't see
18 any tattoos? The whole thing lasted about 30 seconds.
19 Somebody has a gun at me, I'm not saying, "Well, let's see,
20 he's got a tattoo there. He's got this. He's about 6'3",
21 blue eyes. Could you turn around so I can get a better
22 description of your clothes?"

23 And what else do we have regarding the aggravated

1 robbery in Cortland? Well, at that point on June 20th, we
2 already know this detective filed a warrant for his arrest on
3 the aggravated murder. They're pinging his phone. You'll
4 recall Detective Greaver saying, "We chased him around all
5 day. We were always a step behind." And the defendant's
6 phone was pinging at the dog grooming store that you folks saw
7 on the jury view which is right in front of and connected,
8 basically, to that apartment.

9 When the police go to identify people in the
10 apartment, what happens? "Hey, who are you?" "Oh, I'm
11 Melanie Engle, I live at blah, blah, blah, blah, blah." What
12 does this guy say? "I'm Nathan Novicky." Now, once the
13 police confirmed the pings were still coming from his phone
14 and confirmed he was there, they went back and said, "You're
15 not Nathan Novicky. You're Austin Taylor Burke, wanted for
16 aggravated murder."

17 What's found in the apartment that the defendant ran
18 from the robbery at Pizza Joe's and back to where he was
19 arrested at when he was using his false name? Well, there's a
20 pair of gray Nike tennis shoes with writing on the back heel.
21 That's State's Exhibit 4. Compare that to State's Exhibit 13
22 and 13A which are gray Nike tennis shoes. And what you'll
23 notice about those gray Nike shoes and I realized -- I could

1 run in flip flops if I had to. But if you look at those,
2 they're laced like in circles. They're not laced crisscross.
3 They're gray. They're Nikes. And there's a picture of him --
4 I think one of the witnesses said, "Oh, yeah, he was wearing
5 gray Nikes. He always had his gray Air Jordans on." Compare
6 those to the shoes that are seen on the robber as he exits and
7 goes right towards Shawn Marx in that video. Again, compare
8 those shoes with all of those -- particularly the picture
9 with -- I'm sorry. Compare those shoes in State's Exhibit 4
10 and the shoes in 13 and 13A. One of those pictures with his
11 baddest bitches, the marbled handgun that was registered to
12 his mother is in there. I want you to look at the laces and
13 how they're looped and not crisscrossed.

14 The sweat pants. Let's talk about the sweat pants,
15 State's Exhibit 7. They're also depicted on the video from
16 the counter inside. And just like one of the officers, I
17 don't remember if it was Weston or one of the officers from
18 Cortland said, "When he came in, he pulled the gun out of his
19 right pocket and the pocket came out." And he's, you know,
20 got the gun. And look at the gun too. Look very closely.
21 Kid is pretty big. That gun is barely in his hands. It's a
22 very small gun. The right pocket was pulled out. Well, when
23 they grabbed the gray sweat pants in State's Exhibit 7, the

1 pocket was pulled out. Right pocket pulled out inside out
2 when it was found in the apartment.

3 The white Sparkle bag, State's Exhibit 8, was found
4 in the laundry basket. It was under that Bob Marley record
5 that was covering that. It was in the same room where the
6 gray sweat pants and the gray tennis shoes were found.

7 The money, \$545 found out of 775. Does it surprise
8 you, using your reason and common sense, that in that pig sty
9 of an apartment the police didn't find everything? You'll
10 recall the testimony of Melanie Engle's mother who came in
11 here and said, "Well, I asked the police the next day if I
12 could start cleaning and I just started dumping stuff in the
13 trash." Well, where was the \$545. In the trash. Thank god
14 she didn't throw that away.

15 And think about where the money was found. It was in
16 the trash in a box the very next day. I want you to use your
17 reason and common sense and think about that money for a
18 moment. If anybody else in that apartment had stolen that
19 money and after the police checked 'em out and after they gave
20 their written statements and the next day when Melanie is over
21 there cleaning and running errands and her mom said she
22 tracked her down at Giant Eagle and she's doing errands, would
23 any of those kids have gone back the next morning and said,

1 "Hey, Melanie, I left something here at your house. Can I go
2 get it?" But the one person who wasn't able to do that
3 because he was arrested was already gone.

4 Think about the phone call the defendant made for one
5 minute at 10:50 p.m. to Deidre Keener and Hayle Roupe. The
6 defendant told them, "I came into some money." And Deidre
7 Keener screen shotted it and kept it on her phone, State's
8 Exhibit I think it's 54 or 55, the screen shot. It's got his
9 picture on it as the contact. "You missed a call from
10 Austin." She called him back. "Did you mean to talk to me?"
11 One minute. Just like she said. What does your reason and
12 common sense say about that money? The others who weren't
13 arrested didn't rob the store. Why wouldn't they take the
14 money. They're free to go. They gave a good statement. They
15 checked out. They gave a great name, social, date of birth.
16 All checked out. Get out of here. No warrants for you.

17 And finally in that apartment is State's Exhibit
18 Number 1. Once again, this defendant's mother's firearm, one
19 of his two baddest bitches. So proud of this gun. The same
20 gun that when he was indicted a week later on all these
21 charges, on June 27th he told his mom, "I don't think it's
22 registered." It's the same silver gun that Rickey Roupe,
23 Hayle Roupe, Deidre Keener, Jessica Simms, Nathan Moats, all

1 identified and gave statements about. And guess what?
2 Remember that three-hour exercise we went through? Well, they
3 gave all those statements and identified that firearm before
4 the police even had it. Rickey Roupe, Hayle Roupe, Deidre
5 Keener, Jessica Simms, they all described that gun long before
6 June 20th. He met with 'em -- in fact, you'll see Jessica,
7 Deidre and Hayle gave statements, you know, 15th -- remember
8 they said they went down on the 15th to the Niles Police
9 Department. They gave statements on the 16th, 17th, 18th.
10 You'll have three exhibits on June 18th where they gave their
11 photo lineup and circled this defendant as the one who had the
12 gun and told people that he killed Brandon Sample on Hatchet
13 Man Road. There's no doubt that he committed the aggravated
14 robbery with a gun spec of Pizza Joe's. They all described
15 that gun long before it was ever even traced to this
16 defendant's mother.

17 And guess what? Rickey Roupe, Hayle Roupe, Deidre
18 Keener, Jessica Simms, Nathan Moats, they were all right. He
19 did have a gun that was small, silver, and marble handled.

20 Ladies and Gentlemen, the defendant is guilty beyond
21 all possible doubt of the aggravated robbery and firearm
22 specification of Pizza Joe's on June 20th, 2017.

23 Let's talk about the last two charges, aggravated

1 murder and the aggravated robbery of Brandon Sample with a
2 firearm specification as to each of those counts.

3 First of all, it was established many times in this
4 case they knew each other. Brandon was a guard at DYS when
5 the defendant was an inmate for his aggravated robbery with a
6 firearm adjudication. The Court will instruct you right in
7 the jury instructions motive doesn't matter. I can't prove
8 motive. There could be a thousand reasons why somebody did
9 something. Think of a robbery. Maybe they did it for thrill.
10 Maybe they did it for money. Maybe they did it, you know,
11 because they like to do those kinds of things. You heard in
12 this case from various witnesses, drugs, there might have been
13 an incident at DYS where Brandon got this defendant in
14 trouble. Brandon molested a child. You'll recall the
15 testimony of Rickey Roupe saying, "I was real mad because he
16 told me he molested a child and that's why I put that on
17 Facebook." But it doesn't matter. Motive doesn't matter.
18 The Court is going to instruct you, we don't have to prove
19 motive.

20 Now, let's talk the most important piece of evidence
21 in this entire case. The body of Brandon Sample. Where was
22 it found? I want you to use your reason and your common
23 sense. And I want you to think of all of the places in

1 Trumbull County where a body could be found. We have Mosquito
2 Lake. Gotta be ten miles long and a mile wide in some places.
3 We have the Mahoning River that probably cuts through this
4 county for 20 miles I'll bet. There are dumpsters, abandoned
5 houses and buildings. Good Lord, unfortunately Warren has
6 become a playground of empty buildings and homes
7 unfortunately. You've got Warren, Niles, Kinsman, Mecca,
8 Brookfield, Hubbard, there's fields, Newton Falls, bridges.
9 Think of all those places. Think of Trumbull County as a huge
10 stack of hay. And now think of Hatchet Man Road. That's a
11 needle in a haystack, Ladies and Gentlemen. A giant haystack.
12 What does your reason and common sense tell you about Hatchet
13 Man Road? Of all the places in Trumbull County where a body
14 could be found, not just any body, the body of Brandon Sample,
15 why did John Greaver, Detective John Greaver, go to Hatchet
16 Man Road on June 15th, 2017? Why? Why did he go there? I
17 can't remember. Oh, yeah. In fact, Detective Greaver didn't
18 even know where it was. Remember he told you he went down
19 Oakdale Road or some other road and it wasn't the right road?
20 He had to talk to the Department of Natural Resources
21 officers. He went to that needle in the haystack because
22 Hayle Roupe, Jessica Simms, Rickey Roupe, Nathan Moats and
23 Deidre Keener were telling Makayla Egbert who was telling him.

1 And who was telling them? He was. Austin Taylor Burke told
2 his friends and his acquaintances and the people he hung out
3 with where they could find Brandon Sample. The same Austin
4 Taylor Burke that just a few weeks prior to that directed his
5 own girlfriend and took 14-year-old Rickey Roupe to where
6 again? Oh, yeah, pardon my sarcasm, Hatchet Man Road.

7 And how did Hayle Roupe, Jessica Simms, Rickey Roupe,
8 Nathan Moats and Deidre Keener say the defendant was killed?
9 He shot him. What does your reason and common sense say about
10 that, how someone was killed? There's lots of ways you can
11 kill somebody. You can stab them. You can beat them. You
12 can strangle them. You can run them over with a car. I'm
13 sure you folks could come up with a few more. But
14 Dr. Humphrey Germaniuk testified that he was shot. And not
15 just shot anywhere. He was shot in the head. State's
16 Exhibits 18 and 19. You'll see those fragments.
17 Unfortunately Dr. Germaniuk is a very long time serving
18 coroner. He's done thousands of autopsies. He couldn't get
19 the fragments. Cleaning those maggots off, they went down the
20 drain. You saw the x-ray, though, of the fragments that he
21 testified to. We brought the little board over and he put
22 that on there. And where did Hayle Roupe, Jessica Simms,
23 Rickey Roupe, Nathan Moats, and Deidre Keener say he shot

1 Brandon? In the head. And, again, what does your reason and
2 common sense and logic tell you about where you could be shot
3 at? Well, you could be shot in the chest. You could be shot
4 in the heart. You could be shot in the stomach. You could be
5 shot in the back. You could be shot on the side. That's not
6 what the evidence was in this case. That's not what the
7 testimony was. They said he was shot in the head on Hatchet
8 Man Road. Where did they get their information? Oh, yeah,
9 this guy. Dr. Germaniuk confirmed what Hayle Roupe, Jessica
10 Simms, Rickey Roupe, Nathan Moats, and Deidre Keener all said
11 the defendant told them.

12 And how many times did the defendant tell Hayle
13 Roupe, Jessica Simms, Rickey Roupe, Nathan Moats, and Deidre
14 Keener the defendant had been shot? One or two times. What
15 does your reason and common sense tell you about that?

16 Mike Roberts testified. He was the expert from BCI
17 that said the gun worked. It held what? I think he said,
18 what, nine rounds it could hold? The body of Brandon Sample,
19 he could have been shot three, four, five, six, seven, eight,
20 nine times with that gun. There were extra bullets found in
21 the place in Cortland where he was arrested with the mother's
22 gun. Dr. Germaniuk confirmed what Hayle Roupe, Jessica Simms,
23 Rickey Roupe, Nathan Moats, and Deidre Keener said the

1 defendant told them. He shot him one or two times in the head
2 on Hatchet Man Road.

3 Where did this defendant tell the detective that --
4 John Greaver -- where he was, not one time, but two times on
5 the night of the murder? "Oh, Detective Greaver, I was home.
6 I'm a good boy."

7 One time was before he was arrested and both times
8 were before his phone was searched. And is it true that he
9 was home all night on June 12th, 2017? Nope. And you know
10 how I know it? He proved it. He proved it with the search of
11 his own phone. Look at extraction report State's Exhibit 48,
12 line 37. Remember the text between him and Brittani Merten,
13 that girl that got up here? The first thing she said was,
14 "Oh, I just kissed him. I didn't have sex with him. I just
15 kissed him." Remember her? June 12th, 2017 at 2:08 a.m.,
16 there is a text message from this defendant to Brittani
17 Merten, "Out in Nilew, N-i-l-e-w." Well, if you all look at
18 your cell phone or a typewriter, the W, I believe, is above
19 the S. Common mistake, typo. Out in Nilew. Well, what does
20 your reason and common sense say? It doesn't say I'm at home.

21 Cell phone records and the mapping. The records are
22 22. The mapping is 50 and 51. You'll have those maps. I put
23 them up there. You'll have them here in this exhibit. Show

1 what? At 2:08 a.m. his phone was using a cell tower in guess
2 where? Niles, Ohio. So at 2:08 he texted Brittani Merten and
3 said he was in Nilew. And at 2:08 his cell phone records, his
4 texts and calls, that AU report, State's Exhibit 51, show his
5 phone was in Niles. Niles is where Deidre Keener and Nathan
6 Moats say they saw him with Brandon Sample that night.
7 Brandon Sample's white car. Remember there was a big question
8 about Deidre said, "I looked out the kitchen window and I
9 could see him." "Well, wasn't the headlight shining in your
10 face? You couldn't see. You don't know who it was." And she
11 said, "Well, I didn't know who it was, but later on I found
12 out it was Brandon Sample." And his phone was using towers in
13 Niles, just where he said he was, just where he told the girl
14 he likes to kiss, Brittani Merten, he was there until 3:07.

15 And then what happened? Well then his phone starts
16 to move in a northerly direction. You will see in that report
17 at 3:46 a.m. his phone starts to move through Warren and
18 eventually near Hatchet Man Road where the body was found.
19 His phone is now up there at 4:51 a.m. And the last time that
20 anyone ever heard from Brandon's phone was the text message
21 that his father got at 4:40 a.m. You have those phone
22 records. They're State's Exhibit 23.

23 Then at around 5:30 in the morning his pings start

1 moving across 305 and then to Niles where his phone is pinged
2 at 5:45 a.m., 9:57 a.m. and 10:57 a.m. That's State's
3 Exhibit 50. Is that consistent with Rickey Roupe and those
4 guys says he was here in the morning? It absolutely is. And
5 is that consistent with Brandon's white Chevy Malibu being
6 found at 7:34 a.m. on the bike path in Niles? Yeah.

7 Ladies and Gentlemen, this defendant is guilty beyond
8 every possible imaginary doubt of the aggravated murder and
9 aggravated robbery, the car, the wallet, the keys, of Brandon
10 Sample on June 12th, 2017.

11 Now, the Court is going to talk about relying on
12 things in the most important of your affairs as reasonable
13 doubt. They may get up here and say, "Well, why should you
14 rely on Hayle Roupe and Jessica Simms and Rickey Roupe? And
15 all these guys, couple of them lied the first time." Well,
16 Jessica never lied. Hayle certainly didn't lie. She was the
17 little girl that testified the second day almost in tears up
18 there when we were talking about that. She didn't lie. In
19 fact, her and her girlfriend Jessica, they went to the police
20 as soon as they put things together at 2 something in the
21 morning at Niles and said, "We think we know something about
22 killing Brandon Sample."

23 But why should you believe them in the most important

1 of your affairs? I'll tell you why. Because he did. He
2 relied on 'em. He's a big shot. Remember he told 'em, "I'm
3 in a gang. I'm in the 38s or the 86s" or whatever. Hayle
4 said he was laughing about it. He wants to be Mr. Big.

5 Why should you rely on them? I'll tell you a second
6 reason why you should rely on them in the most important of
7 your affairs. Because Detective John Greaver, in the most
8 important of his affairs, solving crimes, solving the most
9 serious of crimes in this county and in this city, aggravated
10 murder, he relied on them. Thank goodness he relied on them.
11 Because if Detective Greaver had not relied on the information
12 that they gave him from this defendant's mouth and where they
13 said the defendant was and told them that he killed Brandon
14 Sample on Hatchet Man Road, Brandon Sample would have probably
15 been long gone to the elements. We may still be looking for
16 Brandon Sample to this day.

17 Ladies and Gentlemen, this defendant is guilty beyond
18 any and all possible doubt of each and every count and each
19 and every specification.

20 Ladies and Gentlemen, I'll get to speak to you one
21 last time. But, again, I want to reiterate my thanks for your
22 service, your time, and your dedication. Thank you so much
23 for this service you are performing for your fellow citizens

1 here in Trumbull County.

2 THE COURT: Mr. Olson.

3 CLOSING ARGUMENT

4 MR. OLSON: Thank you, Your Honor.

5 May it please the Court, Mr. Becker, Ladies and
6 Gentlemen of the Jury. First, before I begin, I would like to
7 thank this jury panel for its service on behalf of Mr. Ed
8 Hartwig and myself and Austin Taylor Burke. As the
9 prosecution indicated in his opening, you know, we recognize
10 the sacrifices that you people make to come here and sit for a
11 week listening to the testimony, taking the time out of your
12 personal affairs, taking time away from your family. And we
13 really appreciate that. Because we honestly believe that this
14 is one of the most important functions that we have in this
15 country. Without you, there's tyranny. And, again, we thank
16 you.

17 Giving closing arguments is always one of the most
18 nerve-racking times for me. And the reason is is I go back
19 through my notes and I look at the examinations that were done
20 on the witnesses and the notes that I took. I look and say,
21 "Did I ask all the questions that this jury wanted to hear?
22 Did they get all the information that each one of these
23 witnesses that came up on this stand and able -- to enable

1 them to make a determination as to the facts of this case?"

2 I know at times -- and Mr. Becker identified the
3 cross examination of Detective Greaver as grueling. Well,
4 Ladies and Gentlemen, that's my job. My job is to make sure
5 that you are well-informed of all the information, to make
6 sure that you are well informed of the investigation that was
7 performed and the things that could have been performed. So,
8 again, I recognize at times things may get long. But, again,
9 it's necessary.

10 Mr. Austin Burke, he sits here today scared because
11 his fears are, is this jury going to judge me on my
12 appearances? Is it going to judge me on my past? Because
13 there's no denying, Austin Burke had some trouble as a youth.
14 He was in trouble. He was punished. He went -- he went to a
15 place, a facility, to be punished. But that does not mean
16 that Austin Burke committed the crimes that he is being
17 accused of. And we cannot judge Austin Burke on the crimes
18 that he is being accused of because of his past.

19 He also is nervous because we recognize this is a
20 very tragic event that we're addressing. But as I stated in
21 my opening, the process that we're in in our judicial system
22 right now, sympathy plays no role. Because sympathy blinds
23 you to facts. If we allow sympathy to enter into our criminal

1 justice system, we become blinded and improper convictions
2 happen. Innocent people go to jail on sympathies. But after
3 the jury selection process, I am confident that this jury will
4 not allow prejudices or sympathies and emotions to determine
5 their decision. Because we went through all of this. We
6 learned all this from you and we selected you because you
7 indicated in your answers that you could remain fair and
8 impartial. That you could listen to all the evidence. And
9 that you could make a decision based upon that evidence. You
10 told us when you were being examined that you want to know all
11 the evidence and what could have been done in this
12 investigation to make sure that an innocent man is not going
13 to jail.

14 So we look, again, what is reasonable doubt? It is
15 the highest standard of proof. Why is it the highest standard
16 of proof? Because in a civil action, we may lose money.
17 Money can be made up. But in a criminal action, we are
18 actually looking to take away somebody's liberty. Put them in
19 jail. And, therefore, we have to require the state to prove
20 the highest degree of proof to take away this man's freedom.

21 And when we look at what reasonable doubt is, we must
22 look at the most important affairs in our own lives. What
23 would we rely on in those most important affairs in our lives?

1 That's the standard that you have to provide to Austin Taylor
2 Burke. You don't provide him with a lower standard because he
3 was in trouble as a youth or because people came in and made
4 accusations against him. People can make accusations against
5 any of us. But, again, that's why we place a burden on the
6 state to prove beyond a reasonable doubt that Austin Burke is
7 guilty of these crimes. So that's the threshold that you must
8 maintain when you review this evidence. What would you be
9 willing to rely and act upon without hesitation in the most
10 important of your own affairs?

11 Ladies and Gentlemen, this case comes down to
12 credibility. As the evidence came through, we know that there
13 is no direct evidence. There is no firearm. There is no
14 blood stained clothing. There is nothing that links Austin
15 Burke to this crime other than some accusations of five kids
16 that came in here and testified. And we'll get into their
17 testimony here in just a minute.

18 The state did bring in some expert testimony to
19 attempt to assist you in making your determination. And we
20 got -- we had the pleasure of listening to Dr. Germaniuk who
21 has done thousands of autopsies. And I'm not going to get up
22 here and say Dr. Germaniuk doesn't know what he's doing, that
23 he was incompetent in being able to perform these types of

1 investigations. However, when we look at his testimony and we
2 look at the evidence, we learn very quickly this wasn't his
3 best work. Let's look at it. He lost photographs of the
4 autopsy. He lost bullet fragments that could have been
5 tested, that could have helped us determine what type of
6 firearm that this -- that Brandon Sample was killed by. We
7 don't have that.

8 We don't have a firearm. We have pictures of Austin
9 Burke at some unknown time prior to this crime with a .22
10 pistol. What did Dr. Germaniuk tell us, though? Could have
11 been a small-caliber weapon that caused this injury. Well,
12 what's a small-caliber weapon? Anything under a .32. So a
13 .32, a .25, a .22. Very popular types of guns. Any of these
14 could have caused the death of Brandon Sample. Nothing links
15 the injury that was inflicted upon Brandon Sample to the .22
16 firearm that was pictured in the state's evidence that was put
17 up on that big screen throughout the course of this trial.
18 Nothing. Not one iota of evidence.

19 And what did Dr. Germaniuk tell us about that?
20 Dr. Germaniuk told us that there is a method that you can
21 determine the gunshot wound and see if it links back to a gun
22 that was recovered. You fire the gun into some barrels. You
23 test what the hole size is in the barrel and compare it to the

1 gunshot wound in the victim. Was that done? It wasn't. That
2 wasn't done. How hard would it be for the detective or for
3 somebody on this investigation crew to go out, take the gun
4 that they recovered, it was in their possession, and fire it
5 into the water barrels and compare?

6 Now, the state may want to get up and say, "Well, we
7 knew it was a gunshot wound. We had the evidence." So just
8 let's not test it. Let's just let it go. Is that how we want
9 to rely on our criminal justice system, is to just make
10 conclusions without looking at the evidence?

11 He also told us that it was very -- it's normally
12 part of the process to maintain the clothing, to test the
13 clothing, to see if there's gunshot residue on the clothing.
14 To see -- because if you recall on the video, when Brandon
15 Sample's body was located, his shirt was pulled up over his
16 head. Now, we don't know how many gunshot wounds that
17 Dr. Germaniuk is now saying Brandon Sample suffered. One,
18 possibly two. But we don't know if those gunshot wounds were
19 inflicted with the shirt pulled up over his head or not. And
20 the state may say, well, what does it matter? Brandon Sample
21 is dead. Well, the reason that it matters is because maybe
22 that can confirm to us how this injury occurred. The
23 recreation of the crime scene. The testing to see if it was a

1 close-range shot. We were getting statements coming in from
2 witnesses. They did nothing to confirm those statements. Is
3 that how we want our criminal justice system to be? That we
4 make conclusions without testing the evidence, without testing
5 the reliability?

6 We also had Mr. Mike Roberts come in. And, again,
7 Dr. Germaniuk when he did his initial autopsy, he takes a
8 fragment off the scalp of Brandon Sample's head and he makes a
9 conclusion that that is a bullet fragment. That fragment is
10 then sent off to the crime lab. And what's the results? It's
11 not a bullet fragment. So, once again, I'm not up here to
12 tell the Ladies and Gentlemen of this Jury that Dr. Germaniuk
13 is not qualified to be the coroner of Trumbull County. But I
14 am up here to say maybe this wasn't his best work. Maybe this
15 wasn't the best investigation that he's ever performed.

16 We also -- when Dr. Germaniuk came in yesterday to
17 testify about this possible second bullet fragment, he
18 indicated on cross examination that he discovered that this
19 second fragment may have been in Brandon Sample's neck region
20 the night before he came in to testify as he was prepping. He
21 went back and he looked at the x-rays and noticed that there
22 was this, what appeared to be a fragment.

23 However, as he testified on cross examination, he

1 indicated that he attempted to recover that fragment so it
2 could be tested. Well, my question becomes, how do you try to
3 retrieve something that you didn't know was there during the
4 initial autopsy? And again, let's go back to his autopsy
5 report. You'll have that available to you. There's no
6 reference to a gunshot wound to the neck region. In his
7 testimony he tells us there is no entry wound that he could
8 identify. Maybe that was the fragment that he thought he lost
9 when he was trying to recover it. We don't know. We don't
10 know if his x-rays were taken before or after he attempted the
11 retrieval of that fragment. He didn't testify to it. We
12 can't speculate to when those x-rays were taken. But what we
13 do know is what he initially concluded was a bullet fragment
14 was not.

15 Linda Eveleth. She came in and she testified that
16 she tested the DNA on the firearm. And on the majority of
17 this testing she was unable to reach any conclusion as to who
18 handled that firearm. Am I going to get up here and tell the
19 Ladies and Gentlemen of this Jury that Austin Burke never
20 handled that firearm? Absolutely not. Absolutely not. We
21 have pictures. I'm not going to get up here and tell you that
22 those pictures are self-imposed or they're lies. They're not.
23 He had handled that firearm in the past. When was the last

1 time he handled it? What witness came in here and told you
2 that he handled it or had it on June 12th of 2017? Not one.
3 No one told us that they saw Austin Burke with a firearm on
4 June 12th of 2017. Or June 11th. Because depending on which
5 witness you believe, Austin may or may not have been at Rickey
6 Roupe's house on June 11th of 2017 hanging out with those
7 kids.

8 But not one of them told us Austin Burke had a
9 firearm. Now we did have some witnesses that on June 12th
10 said that they woke up in the morning and Austin was still
11 there at Rickey Roupe's grandmother's house as they were
12 leaving. And that Rickey -- or Austin woke up somewhere
13 around 9:00 a.m. and he left. Again, it was questioned. "Did
14 you see a firearm on him that day?" "No." No one sees this
15 firearm on him. Not one person. Not one witness came in here
16 and said the day that they're accusing my client of committing
17 a homicide that Austin Burke had a firearm. Well, they said,
18 "Well, he carried it in a bag. We wouldn't know." Well,
19 Ladies and Gentlemen, Detective Greaver recovered that bag.
20 He testified to it. Was there a firearm in that bag when he
21 recovered it? No. Was there bullets in that bag when he
22 recovered it? No. Were there clothing contained within that
23 bag? There were. Did any of them have gunshot residue or

1 link anything to the crime? No. They want you to believe the
2 words of these witnesses that came up on this stand and said,
3 "Austin Burke told me that he committed this crime." But
4 let's think about how that went down. None of these witnesses
5 came forward until the news hit -- the media took hold of
6 these claims and began running these stories. Missing person
7 reports came out. People were in contact with family members
8 of Brandon Sample's family. Of course the Sample family is
9 going to do whatever it takes to find where their son is.
10 They're going to publish this stuff all over the world. Put
11 it on Facebook. And what do these witnesses tell us? Austin
12 Burke was making mention and then they saw it on Facebook and
13 put two and two together and that's how they reached these
14 conclusions. But, again, it wasn't -- it wasn't accurate
15 stories. They said Austin Burke came back and he was covered
16 in blood. Where are these clothes? Where are these clothes
17 covered in blood?

18 "Austin Burke came back and he told us he set the
19 body on fire. He set the kid's head on fire." We asked
20 Dr. Germaniuk when he investigated this and did the autopsy,
21 "Was there any burning on this body? Was his clothes burned?"
22 "No." It's not until after the body is discovered and after
23 the news media reports that Brandon Sample has been found and

1 where he's been located that all of a sudden these other
2 individuals start coming forward.

3 We heard testimony about the report that was made by
4 Hayle and Jessica Simms to the Niles Police Department on
5 June 14th at approximately 2 a.m. Did they go in and say,
6 "Austin Burke told us that he killed Brandon Sample"? No.
7 That's not the evidence. They said he had a firearm at Pamela
8 Roupe's house and there was indication that he was holding
9 Brandon hostage for a drug debt.

10 And I asked Detective Greaver, "Given the condition
11 of that body that you found on June 14th, was it possible that
12 it would be in such a decayed state in that short period of
13 time? And he said, "Well, I'm not an expert, but in my
14 experience, no." They didn't go in and say, "Austin Burke
15 told us that he killed Brandon Sample." And the Niles Police
16 Department, when they followed up on the lead that was given
17 by Jessica Simms and Hayle Roupe, what did we learn?
18 Conveniently, Austin wasn't there. They stated -- they
19 immediately reported to the Niles Police Station. As soon as
20 they left. Austin Burke is not there.

21 We also had JoAnn Gibb. She came in. She did the
22 extraction report of Austin Burke's telephone. And, yes, it
23 did show that there was some communication between Austin

1 Burke and Brandon Sample on June 12th -- or June 11th and into
2 June 12th of 2017. Did Austin Burke deny that? No. He told
3 the detectives, "Brandon Sample picked me up at 7:30 p.m. as I
4 was walking home from Willow Lake." Now let's think about
5 that. Detective Greaver himself said he looked -- he did
6 somewhat of an analysis of Austin Burke's cell phone records.
7 And he learned and noted that at one point in time, at a time
8 that Austin said he was at Willow Lake, he was at Willow Lake.

9 I asked Detective Greaver, "Is it reasonable to
10 believe that Austin Burke lived close enough that he would
11 walk home from Willow Lake?" He said, "Yes, it's within a
12 couple miles."

13 Let's look at the text message that was exchanged and
14 sent by Brandon Sample at 10:00 p.m. on the night in question.
15 What does he say? "I'm with J White." Why would he tell
16 Austin Burke "I'm with J White" if Austin Burke didn't know
17 who J White is? Why wouldn't he say, "I'm with a friend at a
18 chick's house"? Why would he give a name?

19 And what else does he say? "Do you still want to
20 link up?" Now, again, as we confirmed in the phone records,
21 the only prior conversation that is seen in those phone
22 records was a two-second telephone call at 7:30 p.m. on
23 June 11th. Isn't it funny that that phone call, that two

1 second phone call which everybody that testified confirmed,
2 you can't have a conversation on a telephone for two seconds.
3 Everyone that testified said that. Comes up two-second phone
4 call at the same time that Austin Burke says, "Brandon Sample
5 picked me up and brought me home." Ladies and Gentlemen, I
6 would ask you, if Austin Burke did this and he wanted to
7 conceal the killing of Brandon Sample as they are suggesting
8 by his deleting of text messages, why would he have ever told
9 the detectives he was with Brandon Sample? He had no reason
10 to. He could have said, "I haven't seen that kid since I was
11 in DYS." He didn't. He came forward, said, "I was with
12 Brandon Sample at 7:30."

13 Here's the other thing. The phone records. See, the
14 prosecution only presented phone records from midnight on the
15 12th to approximately 9:00 a.m. the next day. Why didn't they
16 look at the records prior to that when Austin was saying,
17 "Hey, I was home," to confirm, in fact, Austin Burke was in
18 Bristolville. At the very times that Austin Burke said he was
19 in Bristolville.

20 Did they track the days before or days after on
21 Brandon Sample -- or on Austin Burke's phone to see if that
22 was a regular routine of Austin, of where he was on June 12th?
23 They didn't.

1 Another important thing about these phone records
2 when you look at them. And Mr. Moskal confirms this. Not one
3 of those cell data logs shows Austin Taylor Burke in the area
4 of the body at any point in time. It shows him in the
5 location of his house. Now, the prosecution on examination,
6 they just wanted to say, "Well, maybe they just didn't ping
7 the phone at that time." So we have this long track of
8 records and it just so happens that the times that Austin
9 Burke would have been in the location where Brandon Sample's
10 body was recovered, his phone didn't ping. But all the other
11 times it did. And it showed in the area of his home. I asked
12 Mr. Moskal. If he made a call, a call from his house, would
13 those records be consistent with that? He said yes.

14 The investigation into this case. Ladies and
15 Gentlemen, this case was the first time I had the opportunity
16 to meet Detective Greaver. And Detective Greaver has been an
17 officer in this community for 18 years. I am not going to get
18 up here and tell you that Detective Greaver is incompetent in
19 his job. Absolutely not. I don't believe that Detective
20 Greaver would have given us misinformation as he testified.

21 But what I believe in this case is that Detective
22 Greaver, because of his experience with Austin Burke, as he
23 testified he knew Austin Burke from his past, once he learned

1 that Austin Burke was identified as a possible person who was
2 last seen with Brandon Sample, he became the sole target. And
3 what he did after that was instead of conducting an
4 investigation to gather evidence, he began collecting evidence
5 to support a conclusion. A conclusion that Austin Burke did
6 it. And anything that was inconsistent with that or anything
7 that would disprove that was ignored. Was it intentional, or
8 was it just below his normal standards? I can't answer that.
9 But we saw it. We saw it. We listened to every single
10 witness that came up here that is the one that provided
11 Detective Greaver with statements. Would you say they were
12 consistent? Your memories will serve to make the judgment in
13 this case. Not Mr. Becker's. And not mine. But I would
14 suggest to you that as you go back and recall the testimony of
15 each one of these kids that came in here, they are completely
16 inconsistent with one another. They completely show different
17 people who were at different places at different times. This
18 isn't did he come at 8:30 or 9:00 and did he stay for an hour
19 or an hour and a half? No. This is, who was present when he
20 was there? Was Brandon Sample there? We heard Jessica Simms
21 saying that Austin Burke was planning to rob him on June 11th
22 in the morning. Nobody else came in and said that. If you
23 had believed Jessica Simms or Rickey Roupe who said that at

1 some point in the earlier evening before he supposedly came
2 back, Brandon Sample accompanied Austin Burke to Rickey
3 Roupe's house, then you'd have to disbelieve the testimony of
4 Josh White, you'd have to disbelieve the information that
5 Detective Greaver gathered to confirm that Brandon Sample did,
6 in fact, go swimming until 11:00 in Warren, Pennsylvania -- or
7 in Warren, Ohio.

8 During this investigation, we also had confirmation,
9 as Detective Greaver testified to, that a friend of Austin
10 confirmed that he was picked -- he picked up Austin at his
11 home at 9:30 p.m. and they went to Cody's house, Cody Snyder.
12 Again, it was very simple for Detective Greaver to map out the
13 phone logs of Austin Burke and see what time he was actually
14 there till. What you will see is at midnight, 1, 2:00 -- up
15 until 2:00 in the morning he was in Bristolville.

16 We go back and we look at, again, the forensic
17 evidence not only from the gym bag but there was also a
18 backpack that Detective Greaver recovered from Austin's
19 girlfriend's mom. They tested that. Again, no evidence that
20 Austin Burke was involved in a crime. They recovered no
21 forensic evidence from that bag.

22 Nothing that links Austin Burke to having any contact
23 with Brandon Sample at any time after the phone call at 1:18.

1 And, again, he admitted to the phone call at 1:18 a.m. He
2 didn't delete that. He didn't delete the contact of Brandon
3 Sample. So the prosecution is telling you he's trying to hide
4 his involvement with Brandon Sample because he was deleting
5 messages at 10:00 p.m. However, he keeps the phone call at
6 1:18 and he keeps the contact in his phone. He doesn't try to
7 conceal that. So if he's trying to conceal his contact with
8 Brandon Sample, why would he not delete the contact itself?

9 We heard testimony from these kids that come in that
10 say Austin Burke drives to Bristolville, kills Brandon Sample,
11 drives back to Niles and dumps the car off on a bike path
12 because he ran out of gas. Did Detective Greaver check to see
13 if the car was out of gas? We heard no testimony about that.

14 Also, the needle in the haystack. We're up in
15 Bristolville. Hatchet Man Road. Let's think back to the
16 first time that we hear about checking the woods for Brandon
17 Sample's body. Where did that come from? Did that come from
18 one of these witnesses, Hayle Roupe or Jessica Simms or Rickey
19 Roupe or Deidre Keener? No. The first contact that Detective
20 Greaver gets to check the woods by grandma's house was
21 information he received that was passed along by Josh White.
22 Where did grandma live? Bristolville. Does Detective Greaver
23 do any follow up on that? Does he go and talk to Josh White

1 and say, "Why would you tell us to check the woods?" At this
2 point, it's a missing person. It's not a homicide. Why is he
3 telling him to check the woods? Maybe he knew that he was in
4 the woods by grandma's house. Hatchet Man Road, only a few
5 miles from where grandma lives. We went -- we went and viewed
6 Hatchet Man Road. We went through Bristolville. Bristolville
7 is basically the abutting town of Hatchet Man Road. Just a
8 few miles from grandma's house.

9 Let's also listen to the testimony of Josh White.
10 Josh White indicates to us he had no idea who Austin Burke
11 was. Never met him. Never picked him up. Never had any
12 contact with him. Yet when Detective Greaver interviews
13 Austin Burke, Austin Burke is able to give a description of
14 the kid. Says his name is Josh or Tyler or something like
15 that, that he lived in Akron, and that he had a beard. How
16 would Austin Burke know this information about Josh White
17 unless he met Josh White? And, again, we go back to that text
18 message that Brandon Sample sent. Why would Brandon tell
19 Austin, "I'm bringing J White home." Why would he refer to
20 his name? He could have just said "a friend."

21 We also hear through Detective Greaver that during
22 his interview Josh White offers that, "Hey, there was some
23 muddy clothing, some muddy shorts that were left in the back

1 seat of Brandon Sample's car." Now, those shorts were never
2 recovered, but why would Josh White offer that information?
3 He wasn't questioned about it. Why would he offer it? What
4 we come to learn is, and we saw it on the video, or on the
5 pictures, and it was confirmed through the witness, the area
6 where Brandon Sample's body was found was bone dry. The bike
7 trail where Brandon's car was found was bone dry. But they
8 identified mud on the tire and the wheel well. Did they
9 compare the mud on the pants to the car? No. Because they
10 never even attempted to get the pants from Josh White.

11 Why did Josh White change his appearance when he went
12 in for the interview? He had a beard. Went in shaven. Why?
13 Is this somebody that's trying to conceal themselves? Is this
14 somebody that's trying to make Austin look like he's lying
15 when he says he met him, just in case he gave a description of
16 him?

17 None of this was followed up on. We are talking
18 about an aggravated murder case. And none of this was
19 followed up on. I suggest to you, these are things that we
20 have to demand to not send an innocent man to jail. You need
21 to follow up on this type of evidence. This is what -- this
22 is what an investigation is. You receive information and you
23 see if it holds water. None of that was done. It was discard

1 anything that would show that Austin Burke may have been
2 telling the truth and only look at the information that is
3 showing that he did this. Whether it's consistent or
4 inconsistent with the evidence that they recovered or with
5 what other witnesses said to them. We have to demand more.

6 Cell phone records. The records show that a request
7 was made for Austin Burke's records on July 1st. Very early
8 on in this investigation. They were able to get Austin
9 Burke's records so they can track him through this GPS data
10 that we saw on those pie charts. Did they get Brandon
11 Sample's? They requested it. In December. Six months -- or
12 seven months -- because he said December, January timeframe.
13 Six or seven months after they find the body, they file the
14 charges, and their investigation has been going on. I asked
15 Detective Greaver, "Did you follow up to see where they were?"
16 "No, it didn't come through my e-mail." "Did you call the
17 company?" "No, I would probably have been on an automated
18 system for ten minutes." Ten minutes? Ten minutes? We had
19 an investigation going on for seven months. He can't sit on
20 the phone for ten minute to see if Brandon Sample's phone
21 records would correspond and correlate with where Austin Burke
22 was at that time? Because I tell you, Ladies and Gentlemen,
23 that that is a missing key to this case. If we had Brandon

1 Sample's phone records, we could compare them to Austin
2 Burke's and see if they were ever together. We could see if
3 Austin Burke -- or Brandon Sample ever left Trumbull County
4 and made it to Summit County and to Akron. We could see if he
5 ever left Summit County. We don't know.

6 Also, we get the generic phone records from data. He
7 sends Detective Greaver over these generic phone records that
8 just show the listing of the numbers and some text messages
9 that had gone out.

10 There were two telephone calls made after the
11 telephone call by Austin Burke. One was at 2:14 a.m., and one
12 was at 2:15 a.m. And the records will show you that they were
13 made to a telephone number that is identified as Akron.
14 Ladies and Gentlemen, we didn't hear any testimony that Austin
15 Burke had any connections to Akron, Ohio. Did we hear of any
16 other person that had contact in Akron, Ohio? Josh White.
17 Josh White had a contact -- he lived in Akron, Ohio. This
18 information was made available to Detective Greaver. And it
19 wasn't followed up on. Call the number. How long does it
20 take to make a phone call to say, "Hey, this number came up in
21 an investigation. Can you please identify? Do you mind
22 coming in to talk with us? We'd like to know what your
23 relationship is with certain individuals." A minute phone

1 call. Never made. Is this the type of investigation that we
2 want to use to convict somebody of aggravated murder?

3 When we -- when Detective Greaver interviewed Josh
4 White, Josh White's family was there. His mom, his dad, and
5 his brother. And what we knew through the interview of Josh
6 White, as confirmed by Detective Greaver, is that he would
7 have come in contact with each one of these individuals that
8 night. Did he interview any of them? Not one. Not one
9 person did he call in. They're there. Bring them in to the
10 interview room. "What time did Josh call you? What time did
11 Josh arrive at the house? What time did you unlock the door
12 for Josh?" They're there. They don't even attempt. You know
13 why? Because it would not be any evidence against Austin
14 Burke. It was irrelevant to them at that point.

15 Yes, there was evidence missing. The car keys, the
16 wallet, and the cell phone. There was one witness that was
17 able to testify to everything in the wallet. Who was that?
18 Josh White. Maybe it was just some innocent ability to know
19 what was in your buddy's wallet because he lost it a few weeks
20 prior and it was dropped off at some gas station. Maybe it
21 wasn't. We have absolute confirmation that Josh White was
22 with Brandon Sample on the date he disappears. That's not
23 cause to want to search his house, to demand his phone

1 records, to ping his phone? They didn't even make an
2 application for it. Why not? Because it's not evidence that
3 would put our client and convict our client. So it's
4 irrelevant. Move on. Is this the evidence that we're going
5 to allow to convict a man of first degree -- or aggravated
6 murder?

7 Ladies and Gentlemen, we heard what we often refer to
8 as the jailhouse snitch, Tim Cook, come in. And he says, "I
9 heard Austin Burke admit to this." Is he reliable? What did
10 he tell us on the stand? He was in jail. He was going
11 through drug withdrawals and he was looking for a way to get
12 out. And when the state said they weren't gonna help him, he
13 wasn't coming back in. He was forced here. That was his
14 testimony. He was forced to be here. Is that somebody that
15 is honest, wanting to come forward with reliable information?
16 I say to you he's not. He is not somebody to be relied upon.
17 He is not somebody that confirms the state's case. He is not
18 somebody that gets them beyond a reasonable doubt. Is that
19 somebody you would rely upon in the most important of your
20 affairs?

21 Few more things about the murder investigation. We
22 did learn real early on that in the interview with Josh White
23 he had bruising on his hands. No pictures taken. Cut on his

1 finger that he said happened 30 days prior. That's a pretty
2 long-lasting cut. No pictures. Did you go to the employer
3 and say, "Hey, Josh show up for work on the 12th? What time
4 did he show up? Was he acting different?" All simple things
5 that could be done. Very simple things. Phone calls.
6 Probably wouldn't even take ten minutes. None of this was
7 done.

8 On June 20th of 2017, Austin Burke was accused of
9 committing a robbery of the Pizza Joe's in Cortland. The
10 testimony that came in was that Austin was across the street
11 from the Pizza Joe's that was robbed hanging out in an
12 apartment with several other people. These several other
13 people that came in and testified all lied. They all said
14 that they knew Austin Burke as Nate. But there were -- there
15 are messages that you can see from Facebook that shows that
16 they were exchanging back and forth. Melanie Engle, Donavon,
17 the Borawiec kid. They were all talking back and forth. They
18 knew exactly who Austin Burke was.

19 And what else do we learn from this robbery
20 investigation? Yes, the robbery lasted a very short period of
21 time. 30 seconds. If that. And, yes, it's a heart-racing
22 event if you're a cashier. Somebody comes in waving a gun
23 around, flashing it in front of you. But at the same time,

1 there were descriptions provided by each one of these
2 witnesses. And they testified what they recalled. Not one of
3 them said, "I saw tattoos on his face." Okay, his face was
4 partially covered. Not one of them said, "I saw a tattoo on
5 his hand." Ladies and Gentlemen, it's very obvious, the
6 tattoos that Mr. Burke has on his hands. They're very
7 obvious. Very obvious. They say a bag was wrapped around
8 them. Well, was there tattoos on knuckles? Did they ask
9 about that?

10 The one witness that did come forward -- and I
11 suggest to you was honest -- was Stacie Cassidy. Stacie
12 Cassidy is the one witness that did not lie to her -- about
13 not having prior knowledge of Austin Burke. We don't see any
14 communications between Stacie and Austin prior to that day.
15 And what was her testimony? They went outside to look for
16 cats. And the remainder of the time Austin Burke was at the
17 apartment.

18 Now, we heard from Melanie Engle that said they went
19 outside to look for the cats while Nick sat up in the
20 apartment. Nick leaves when they return from getting the
21 cats. Or from finding the one cat. So Stacie would confirm
22 the only time that she didn't really know where Austin was was
23 when they were looking for the cats. And through Melanie's

1 own testimony, that was before the robbery of the Pizza Joe's.

2 What else do we know about the robbery of the Pizza
3 Joe's? At the time that it occurred, we know there were two
4 people not at that residence at that time. Nick Goett and
5 Melanie. Melanie testified that she gets a text message from
6 her sister at 9:58 that Nick was at the Burger King looking
7 like a crack head. And we questioned her. "How far was
8 Burger King?" Minute drive. She said, "I got there about
9 10:04." Now, of course she explained he sat there and ate and
10 then, "I brought -- I brought Nick home." It's a minute drive
11 away from the Pizza Joe's.

12 And what do we hear? We heard about a dog that was
13 brought in that began tracking the scent of the perpetrator.
14 And it goes up past the house in a direction and then it
15 starts coming south and the scent is lost. Consistent with
16 somebody maybe getting in a car?

17 Now, we heard from Mr. Marx. And they say, the
18 prosecution says, "Oh, he told us exactly how it was. You saw
19 it on the video. Runs right past him. Within 20 feet." Is
20 that what Mr. Marx testified to? No. Mr. Marx told us that
21 this man ran right up on him, stopped, had no mask on, had no
22 sweatshirt on, was wearing a red shirt and took off and was
23 wearing blue jeans. And he did not notify the police of the

1 tattoos on his face because it was readily apparent. That
2 doesn't even make sense, I tell you. Wouldn't that be the
3 first description that you provide, is the appearance of the
4 man's face? The distinguishing characteristic that most
5 people do not have. Most people do not have facial tattoos.
6 You can immediately identify who he is by identifying the
7 facial tattoos.

8 Missing mask. Missing money. \$250. So we saw how
9 they found the money. Remember it was in the hair dye box and
10 it was folded and placed in a box that was then placed in a
11 garbage bag? Now, today, it's the state's suggestion to you
12 that maybe he hid \$240 elsewhere. So he removed a portion of
13 the money and put it elsewhere and then folded up \$540 and put
14 it in there? And isn't it convenient that a bunch of police
15 officers arrive at that apartment on the night of the robbery
16 and perform a complete search of that residence and at that
17 point in time no gun is found and no cash is found? It's not
18 found until the next day when Melanie and her parents are
19 cleaning out the apartment. Did Austin have access to that
20 apartment the next day? No. Melanie did. And it just so
21 happens that the bag that she takes out of her bathroom and
22 brings into the kitchen that day had the box with the cash in
23 it. And it just so happens that they're cleaning off plants

1 that she does for a hobby and a bullet packet -- or a package
2 of bullets and a firearm is uncovered.

3 Ladies and Gentlemen, the firearm does go back to the
4 ownership of Jamie Sell who is Brandon -- or excuse me, who is
5 Austin Burke's mother. Am I going to sit here and tell you
6 there was no way that Austin Burke handled that firearm at any
7 point in that day? I'm not. Am I going to tell you that it
8 is reasonable to believe that somebody else handled that
9 firearm that day? Absolutely. And you know why I can tell
10 you that? Because we have confirmation from the lab. Another
11 male individual's prints were on the clip. Was it that
12 individual that refused to come in to give a statement when he
13 was contacted by the police? Because if we remember the
14 testimony, Mr. Goett refused to come in and provide any
15 statement to the police. The only one that refused to go and
16 look for the cats and left when they returned. Is it possible
17 that a gun was sitting upstairs and Mr. Goett leaves? Does
18 anybody ask the other witnesses what Mr. Goett was wearing
19 when he left? Do we get the Burger King video that shows how
20 long they sat there? Once again, no. All of this stuff
21 readily accessible to the investigating police officers, and
22 none of it was done.

23 The tennis shoes. We have a tennis shoe that did not

1 have a shoelace in it. But we very clearly see the
2 perpetrator of that robbery running. And, yes, I've run in
3 flip flops, just as Mr. Becker indicated if he had to run in
4 flip flops he could. Is it a different style of running?
5 Would there be a unique characteristic if I'm running with a
6 shoe that does not have a shoelace in it? Would it be
7 flopping off my foot? Where is the shoelace? Where is the
8 mask? Where is the sweatshirt?

9 Ladies and Gentlemen, when you take all of this
10 evidence and you look at it with the threshold that you are
11 required to look at it with, whether it would be believable
12 when you're making the most important decisions of your own
13 affairs, when you look at the credibility of these witnesses
14 and weigh their credibility just as you would in your own
15 affairs when you're talking to another person about an
16 important affair and determining whether that person is
17 believable or not, are these the people that you are going to
18 believe? Are these the people that remove my client's
19 presumption of innocence? I tell you, after you fairly weigh
20 the evidence that has been presented in this case, there is
21 only one verdict that can come back on the aggravated murder
22 and the aggravated robbery counts. And that's not guilty.

23 Thank you.

1 THE COURT: Mr. Becker.

2 MR. BECKER: Thank you, Your Honor.

3 FINAL CLOSING ARGUMENT

4 MR. BECKER: I'll be very brief.

5 Ladies and Gentlemen, this is the last chance I have
6 to speak to you. And I would like to thank each and every you
7 one of you very much for your time, patience and service. I
8 will try not to be boring, but I think there are some points I
9 need to make.

10 First of all, none of us are perfect. I'm not
11 perfect. If I did anything that misrepresented the state, the
12 witnesses, this detective, in this investigation at my office,
13 please don't hold that against them and the work that they
14 did.

15 Well, let's talk about the robbery, first of all, in
16 Cortland. First of all, is there ever an answer why this guy
17 lies to the police in Cortland and doesn't say, "I'm Austin
18 Burke, here's my date of birth?" Using your reason and common
19 sense, the reason he's lying is because he's wanted for
20 aggravated murder. They're looking for him. He's been
21 questioned. There's no doubt why he lies to the police.

22 And if Melanie Engle and her friend Nick Goat --
23 Goett -- first of all, is he a time traveler? You have in

1 these exhibits a picture of her cell phone from her sister
2 Makayla saying, "Why is Nick here looking like a crack
3 addict?" at 9:58 p.m. Well, the robbery, according to the
4 police -- and I know the time stamp is off about an hour --
5 didn't occur until after 10:00 p.m. So how does Nick Goett go
6 from Burger King back to the Pizza Joe's and then back to
7 Vienna with his girlfriend or his friend there, Melanie Engle?
8 And how does the money end up back in the apartment? And why
9 would Melanie Engle, if she was anyhow involved in it or
10 anyone else involved in it, call the police and say, "We found
11 some money and we found a gun here"? She wouldn't tell the
12 police that.

13 Let's talk about the robbery and the possibility of
14 the money being -- some of the money being in another bag, one
15 of those bags that Melanie's mother said she just started
16 throwing away. Well, what do we know was in three different
17 places? We know the gun was in one flower pot. We know the
18 bag of bullets was in another flower pot. And we know \$545
19 was in a hair dye box in the trash. Using your reason and
20 common sense, is it reasonable to think that there might have
21 been 200 and some dollars in another bag or another location
22 that was never found? Maybe with the mask. Maybe with the
23 hoodie that were never found. Absolutely. And I like the

1 poo-poo'ing of the, "Well, yeah, his mom's registered gun was
2 there. It means nothing." This case ought to be entitled
3 "Poor poor Austin Burke." He just can't catch a break.
4 Everyone is out to get poor Austin Burke.

5 Now, let's talk about the murder. Who cares who was
6 swimming at Willow Lake at 3:00 on Sunday, the 11th of June?
7 What difference does that make? Who cares? He says, "Well,
8 Austin told you he had contact." Everybody knows he had
9 contact. They said they knew each other. They knew each
10 other from DYS. But he didn't delete the phone call. No. We
11 don't know what was said on the phone call. We don't know if
12 anything was said. What did he delete? He deleted the
13 evidence from his phone that said he was going to meet Brandon
14 Sample after 12:15 and after he dropped off Josh White. Now
15 it's been implied and infringed -- or I'm sorry, implied and
16 assumed and sort of hinted around, oh, Josh White, look out
17 for that Josh White. He said, "Sometimes I wear a beard.
18 Sometimes I don't wear a beard. I shave it sometimes." Using
19 your reason and common sense, what witness, what piece of
20 evidence links Josh White to any of this? What link does he
21 have, connection. Who did he tell, "I killed Brandon Sample
22 with a gun on Hatchet Man Road"? Who did he tell that to?
23 What witness?

1 They talk about his friend Cody. Well, Cody said he
2 was there at 9:30 that night up in Bristolville. Okay. So
3 what? Why do I care where he was at at 9:30? We know for a
4 fact that Josh and Brandon were swimming at Billie Holness's
5 house. We believe he was taking him back to Akron. What
6 difference does that make?

7 And what about the car? "Well, they didn't do this.
8 They didn't do that." Well, this defendant admits to being in
9 the car. Why do you think he tells this investigator, "Oh,
10 yeah, I was in the car with him at 7:45." Well, let's think
11 about that. Detective Greaver didn't talk to him until
12 June 14th. At that point, the car had been found on the bike
13 path in Niles. It was found literally that morning at 7:30.
14 So Detective Greaver, if you listen to one of his statements
15 on the recorded statement, says, "There's some things in that
16 car, Brandon." "Oh, well, yeah, I was in the car. You'll
17 probably find my" -- of course implying, "You'll find my
18 fingerprints and my DNA. Of course I was in the car. I went
19 on a ride with Josh that day." Of course. So there's no need
20 to search the car for fingerprints and DNA.

21 And what about the last two phone calls made? So
22 what? He called somebody in Akron. Maybe he called -- who
23 knows. It doesn't matter.

1 They want you to believe -- to believe this
2 defendant's story, you have to believe that someone who told
3 six people about killing Brandon Sample and shooting Brandon
4 Sample in the head, and leaving his body and doing it on
5 Hatchet Man Road, a place where he had taken one of the
6 witnesses, actually two of the witness, including his
7 girlfriend, who had a .22-caliber handgun which he took
8 pictures of and his girlfriend made videos of with him and for
9 which he was arrested with in the same location, and for which
10 he had conversation -- and was registered to his mother. And
11 when his mother asked, "Is the gun registered," which she
12 registered when this kid was 11 years old and he says, "Oh no,
13 I don't think so," and he says, "Well, you're saying too much
14 on the phone, mom," and to believe a kid who told this
15 detective, "I was home all night" and then finds deleted phone
16 records and phone pings showing that he wasn't home all night.
17 And in fact at 2:08 a.m. in Niles, Ohio where he texted
18 Brittani Merten, where witnesses say he was, where witnesses
19 said they saw him with Brandon White, where his phone then
20 left and pinged all the way to Bristolville. And they want to
21 made a big deal about, "Well, it didn't ping." Well, look at
22 those records. Sometimes that phone didn't ping for an hour
23 or two, three or four hours at some points. And is it

1 reasonable to assume that -- if what he says is true -- and I
2 believe every word because this Detective relied upon it and
3 found Brandon Sample's needled body in that haystack of
4 Trumbull County. And I'll tell you. Does it make any sense
5 to say, "Hey, get on your knees. Hey, I'm out here on Hatchet
6 Man Road. I'm gonna blow this guy's head off. Okay. I'll
7 talk to you later." Really? Does that make any reasonable
8 common sense to you?

9 And to believe all of that, to show his phone
10 records, they want you to disbelieve every bit of evidence
11 that says he did it. It's just poor Austin. Everybody is out
12 to get him. Oh, the police didn't do their job. Warren
13 Police didn't do their job. The coroner didn't do his job.
14 Cortland Police didn't do their job. We didn't do our job.
15 Poor, poor Austin.

16 Ladies and Gentlemen, all you need in this case is
17 your reason and your common sense.

18 The DNA on the magazine. I've got firearms at home.
19 I guarantee you, my brother, my father's DNA, my family's DNA
20 is on there. There's probably strangers' DNA on some of those
21 magazines.

22 And the BCI expert in DNA, Linda Eveleth, just said
23 there wasn't enough. Sometimes there is not enough. There's

1 insufficient. And you can fire that gun. You can carry that
2 gun around for months and never touch the magazine.

3 Ladies and Gentlemen, I know it's been a long
4 morning. You have been extremely patient. Extremely
5 attentive. You have been a wonderful jury. I thank you for
6 your time and service.

7 I'm going to sit down now, but I want you to think of
8 this one thought. Use your reason and common sense. And if
9 you find that this defendant didn't commit any of these
10 crimes, then by all means, acquit him and give him back one of
11 his baddest bitches. But if you do, and I submit to you that
12 there is overwhelming evidence of his guilt on each and every
13 count, then I ask you to do what you promised and what you
14 took an oath to do and to go back into that jury room and
15 return verdicts on all counts and specifications of guilty.

16 Thank you very much.

17 THE COURT: All right. Ladies and
18 Gentlemen, the balance of the case now would be the charge of
19 the Court. It's somewhat lengthy. In order to avoid any
20 incidental contact while we have our break here, I'm going to
21 ask everyone to remain seated here now until the jury leaves.
22 We'll take 15 minutes of a break. When the jury leaves -- if
23 the deputies will keep everyone in the courtroom until the

1 jury makes their way down to the second floor. And then
2 everyone else can take their break at this point in time.

3 Do not discuss this case among yourselves, nor with anyone
4 else. Do not form or express an opinion.

5 (Whereupon, a recess was had commencing at
6 10:59 a.m. and concluding at 11:16 a.m.)

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1 carefully considered and compared all of the evidence, you
2 cannot say you are firmly convinced of the truth of the
3 charge. Reasonable doubt is a doubt based on reason and
4 common sense. Reasonable doubt is not mere possible doubt,
5 because everything relating to human affairs or depending on
6 moral evidence is open to some possible or imaginary doubt.
7 Proof beyond a reasonable doubt is proof of such character
8 that an ordinary person would be willing to rely and act upon
9 it in the most important of his or her own affairs.

10 Now, you must determine the issues in this case based
11 on the evidence. Evidence is all of the testimony received
12 from the witnesses, the exhibits that are admitted into
13 trial -- or admitted during the trial, and facts agreed to by
14 counsel.

15 Now, evidence may be direct or circumstantial or
16 both. Direct evidence is the testimony given by a witness who
17 has seen or heard the facts to which or she testifies, and it
18 includes exhibits admitted during the trial.

19 Circumstantial evidence is proof of facts or
20 circumstances by direct evidence from which you may reasonably
21 infer other related or connected facts which naturally and
22 logically follow according to the common experience of
23 mankind.

1 Now, to infer, or to make an inference, is to reach a
2 reasonable conclusion or deduction which you may but are not
3 required to make from other facts which you find have been
4 established by direct evidence. Whether an inference is made
5 rests entirely with you. Direct and circumstantial evidence
6 are of equal weight and probative value.

7 Now, the evidence does not include the indictment or
8 the opening statements or closing arguments of counsel. The
9 opening statements and closing arguments of counsel are
10 designed to assist you. They are not evidence.

11 Now, statements or answers that were stricken by the
12 Court or which you were instructed to disregard are not
13 evidence and must be treated as though you never heard them.
14 You must not speculate as to why the Court sustained an
15 objection to any question or what the answer to that question
16 might have been. You must not draw any inference or speculate
17 upon the truth of any suggestion included in a question that
18 was not answered.

19 The things that you saw during the jury view are not
20 evidence, but they may help you to understand the evidence.
21 Now, the phone records, including subscriber information, call
22 and text detail, and the historical cell phone data from the
23 victim's phone and the defendant's cell phone shall be

1 admitted as business records and without the need for
2 authentication testimony from the actual phone companies and
3 keeper of records.

4 Now, you are the sole judges of the facts and the
5 credibility of the witnesses and the weight to give to the
6 evidence. To weigh the evidence, you must consider the
7 credibility of the witnesses. You will apply the tests of
8 truthfulness which you apply in your daily lives. These tests
9 include the appearance of each witness on the stand; his or
10 her manner of testifying; the reasonableness of the testimony;
11 the opportunity he or she had to see, hear, or know the things
12 concerning which he or she testified; his or her accuracy of
13 memory; frankness or lack of it; intelligence, interest and
14 bias, if any; together with all the facts and circumstances
15 surrounding the testimony. Applying these tests, you will
16 assign to the testimony of each witness such weight as you
17 deem proper. You are not required to believe the testimony of
18 any witness simply because he or she is under oath. You may
19 believe or disbelieve all or any part of the testimony of any
20 witness. It is your province to determine what testimony is
21 worthy of belief and what testimony is not worthy of belief.

22 Now, it is not necessary that the defendant take the
23 witness stand or make a statement. The defendant has a

1 constitutional right not to testify or make a statement. The
2 fact that the defendant did not testify or make a statement
3 must not be considered for any purpose.

4 Now evidence and testimony was received about the
5 commission of an aggravated robbery in Trumbull County Common
6 Pleas Court Juvenile Division which is a crime other than --
7 which is a crime other than the offenses with which the
8 defendant is charged in this trial. The defendant was --
9 evidence was received for a limited purpose. That was to
10 prove the element of having weapons while under a disability
11 in Counts 4 and 5. It was not received and you may not
12 consider it to prove the character of the defendant in order
13 to show that he acted in conformity or in accordance with that
14 character. If you find from the evidence that the -- if you
15 find that the evidence of the commission of an aggravated
16 robbery in Trumbull County Common Pleas Court Juvenile
17 Division is true and that the defendant committed it, you may
18 consider that evidence only for the purpose of deciding
19 whether it proves that the defendant had been convicted of an
20 offense involving a felony of violence.

21 Now, generally, a witness may not express an opinion.
22 However, one who follows a profession, such as the Bureau of
23 Criminal Investigation experts and the coroner in this case,

1 can and are allowed to express opinions because of their
2 education, knowledge, and experience that qualifies them to do
3 so. This testimony is admitted to assist you in arriving at a
4 just verdict. However, again, upon you alone rests the duty
5 of deciding what weight should be given to the testimony of
6 these experts. In determining what weight to give to the
7 testimony of experts, you can accept all, part, or none of
8 their testimony. You can consider all of the other factors
9 that I have mentioned in judging a witness's testimony and
10 also you can consider their education, their background in
11 general, and their familiarity with this case.

12 Now, the right of the Court to try the defendant
13 depends on proof that the offense was committed in Trumbull
14 County, Ohio. This is called venue. Venue is an essential
15 element of the offenses and the specifications charged in the
16 indictment and, as with the other elements, must be proven by
17 the state beyond a reasonable doubt.

18 Now, the defendant, Austin Taylor Burke, is on trial
19 in this case as a result of an indictment returned against him
20 charging Count 1, aggravated murder, with a firearm
21 specification; Count 2, aggravated robbery with a firearm
22 specification; Count 3, tampering with evidence; Count 4,
23 having weapons while under a disability; Count 5, having

1 weapons while under a disability; and, Count 6, aggravated
2 robbery with a firearm specification.

3 Now, although the counts are numbered in
4 chronological order, I feel it would make more sense to
5 instruct you on the second count, aggravated robbery with a
6 firearm specification, before I instruct you on the aggravated
7 murder count as to Count 1, as some of the terms that I'm
8 going to define for you relative to the charges will also be
9 used in the Count 1, aggravated murder, instructions.

10 Before you can find the defendant guilty of Count 2,
11 aggravated robbery with a firearm specification, you must find
12 beyond a reasonable doubt that on or about June 12, 2017, and
13 in Trumbull County, Ohio, the defendant, Austin Taylor Burke,
14 in committing a theft offense as defined in 2913.01 of the
15 Ohio Revised Code, or while fleeing immediately after the
16 offense, had a deadly weapon on or about his person or under
17 his control and either displayed the weapon, or indicated he
18 possessed it, or used it.

19 I'll define some terms for you now.

20 Theft offense is defined as purposely depriving
21 Kenneth Brandon Hayes Sample of property, to-wit: Chevrolet
22 Malibu and/or cell phone, knowingly obtain or exert control
23 over the Chevrolet Malibu and/or cell phone without the

1 consent of Kenneth Brandon Hayes Sample or any person
2 authorized to give consent.

3 Purpose to commit an offense -- a theft offense is an
4 essential element of the crime of aggravated robbery. A person
5 acts purposely when it is his specific intention to cause a
6 certain result. It must be established in this case that at
7 the time in question there was present in the mind of the
8 defendant a specific intention to commit the theft offense.

9 Purpose is a decision of the mind to do an act with a
10 conscious objective of engaging in specific conduct. To do an
11 act purposely is to do it intentionally and not accidentally.
12 Purpose and intent mean the same thing. The purpose with
13 which a person does an act is known only to himself, unless he
14 expresses it to others or indicates it by his conduct. The
15 purpose with which a person does an act is determined from the
16 manner in which it is done, the means and the weapon used, and
17 all the other facts and circumstances in evidence.

18 Proof of motive is not required. The presence or
19 absence of motive is one of the circumstances bearing upon
20 purpose. Whether an act is a crime -- where an act is a
21 crime, a good motive or purpose is not a defense.

22 A person acts knowingly, regardless of his purpose,
23 when he is aware that his conduct will probably cause a

1 certain result. A person has knowledge of circumstances when
2 he is aware that such circumstances probably exist.

3 Since you cannot look into the mind of another,
4 knowledge is determined from all the facts and circumstances
5 in evidence. You will determine from these facts and
6 circumstances whether there existed at the time in the mind of
7 the defendant an awareness of the probability that he would be
8 committing the offense.

9 Now, property. It is a question of fact for your
10 determination whether or not any property was taken or
11 controlled, regardless of the value. Property means any
12 property, real or personal, tangible or intangible, and any
13 interest or license in any property.

14 Owner means any person who is the owner of or who has
15 possession or control of or any license or interest in
16 property, even though the ownership, possession, control, or
17 interest is unlawful.

18 To deprive means to withhold property from another
19 permanently, or for such period as to appropriate a
20 substantial portion of its value or use or with purpose to
21 restore it only upon payment of a reward or consideration;
22 dispose of property so as to make it unlikely that the owner
23 will recover it; accept, use, or appropriate money, property

1 or services with purpose not to give proper consideration in
2 return therefore, and without reasonable justification or
3 excuse for not giving proper consideration.

4 Deadly weapon means any instrument, device, or other
5 thing capable of inflicting death and designed or specially
6 adapted for use as a weapon, or possessed, carried, or used as
7 a weapon.

8 Now, a weapon is an instrument, device, or thing
9 which has two characteristics. The first characteristic is
10 that it is capable of inflicting or causing death. The second
11 characteristic is in the alternative; either the instrument,
12 device, or thing was designed or specially adapted for use as
13 a weapon, such as a gun, billy club or brass knuckles, or it
14 was possessed, carried or used in this case as a weapon.

15 These are questions of fact for you to determine. You may but
16 are not permitted to infer the possession and operability of a
17 deadly weapon from the defendant's words or conduct.

18 Now, on or about his person or under his control
19 means that the deadly weapon was either carried on the
20 defendant's person or was so near the defendant's person as to
21 be conveniently accessible and within his immediate physical
22 control or physical reach.

23 If you find the state proved beyond a reasonable

1 doubt all of the essential elements of the offense of
2 aggravated robbery as charged in Count 2, then your verdict
3 must be guilty. If you find the state failed to prove beyond
4 a reasonable doubt all of the essential elements of the
5 offense of aggravated robbery as charged in the indictment,
6 your verdict must be not guilty.

7 Now, if you find the defendant guilty of aggravated
8 robbery, you will then separately consider the firearm
9 specification. You must decide whether the state proved
10 beyond a reasonable doubt that the defendant, at the time of
11 committing aggravated robbery, had a firearm on or about his
12 person or under his control and displayed the firearm,
13 indicated that he possessed it, or used it to facilitate the
14 offense.

15 Now, if your verdict as to aggravated robbery is not
16 guilty, you will then not decide these issues.

17 Some additional definitions.

18 Firearm means any deadly weapon capable of expelling
19 or propelling one or more projectiles by the action of an
20 explosive or combustible propellant. Firearm includes any
21 unloaded firearm and any firearm which is inoperable but which
22 can readily be rendered operable.

23 I have previously defined deadly weapon for you.

1 When deciding whether a firearm is capable of
2 expelling or propelling one or more projectiles by an action
3 of explosive or combustibile propellant, you may rely on
4 circumstantial evidence including, but not limited to,
5 statements, representations, and actions of the defendant.

6 On or about his person or under his control has been
7 defined for you.

8 Thus, if as to the firearm specification you find
9 that the state proved beyond a reasonable doubt all the
10 essential elements of the specification, your verdict must be
11 guilty as to this specification.

12 If, as to the firearm specification, you find the
13 state has failed to prove beyond a reasonable doubt any one of
14 the essential elements of the specification, then you must
15 find the defendant not guilty of the specification.

16 Now, before you can find the defendant guilty
17 regarding Count 1, aggravated murder, you must find beyond a
18 reasonable doubt that on or about June 12, 2017, and in
19 Trumbull County, Ohio, the defendant, Austin Taylor Burke, did
20 purposely cause the death of another, to-wit: Kenneth Brandon
21 Hayes Sample, while committing, or attempting to commit, or in
22 fleeing immediately after committing or attempting to commit,
23 aggravated robbery, all in Trumbull County, Ohio.

1 I'll define some additional terms.

2 Purposely has been previously defined.

3 Cause is an essential element of the offense of
4 aggravated murder. Cause is an act which directly produces
5 the death of another, without which it would not have
6 occurred.

7 Now, while committing or attempting to commit, or
8 while fleeing immediately after committing or attempting to
9 commit means that the death must occur as part of acts leading
10 up to or occurring during or immediately after the commission
11 of aggravated robbery and that the death was directly
12 associated with the commission or flight immediately after the
13 commission of the aggravated robbery. The term "while" does
14 not require that the death occur during the same instant as
15 the aggravated robbery or that the death must have been caused
16 by the aggravated robbery, nor does it mean that the
17 aggravated robbery must have been the motive for the death.
18 Rather, "while" means that the death must be directly
19 associated with the aggravated robbery as part of a continuous
20 occurrence. The term "while" means that the death must occur
21 as part of acts leading up to, or occurring during immediately
22 subsequent to the aggravated robbery. You may consider the
23 time, place, causal connection, and any other evidence to

1 determine if the death and aggravated robbery amounts to one
2 continuous occurrence.

3 Aggravated robbery is an essential element of the
4 offense of aggravated murder. Aggravated robbery is
5 attempting or committing a theft offense, or in fleeing
6 immediately after the attempt or offense, and the defendant
7 did have a deadly weapon on or about his person or under his
8 control and either displayed the weapon, brandished it,
9 indicated he possessed it, or used it.

10 And I have previously defined the essential elements
11 of aggravated robbery.

12 Now, if you find that the state proved beyond a
13 reasonable doubt all of the essential elements of the offense
14 of aggravated robbery as charged in Count 1 of the indictment,
15 your verdict must be guilty as to that charge.

16 If you find that the State failed to prove all the
17 essential elements of the offense of aggravated murder as
18 charged in the indictment then your verdict must be not
19 guilty.

20 Now, again, if you find the defendant guilty of
21 Count 1, you will then separately consider the firearm
22 specification. And it is the same as in Count 1. If your
23 verdict as to Count 1 is not guilty, then you will not discuss

1 the specification as to Count 1.

2 And I previously defined all the essential elements
3 of the firearm specification.

4 If you find as to the firearm specification as to
5 Count 1 that the state proved beyond a reasonable doubt all of
6 the essential elements of that specification, your verdict
7 must be guilty as to that specification.

8 If you find that the state failed to prove all the
9 essential elements of the specification, your verdict must be
10 not guilty as to the specification.

11 Now, before you can find the defendant guilty
12 regarding Count 3, tampering with evidence, you must find
13 beyond a reasonable doubt that on or about June 17th --
14 June 12, 2017, and in Trumbull County, Ohio, the defendant,
15 Austin Taylor Burke, knowing that an official proceeding or
16 investigation is in progress, or is likely to be instituted,
17 did conceal or remove any thing with purpose to impair its
18 value or availability as evidence in such proceeding or
19 investigation.

20 Purpose has been defined for you.

21 Knowingly has been defined for you.

22 Official proceeding means any proceeding before a
23 legislative, judicial, administrative, or other governmental

1 agency or official authorized to take evidence under oath and
2 includes any proceeding before a referee, hearing examiner,
3 commissioner, notary, or other person taking testimony or a
4 deposition in connection with an official proceeding.

5 Public official means any elected or appointed
6 official or employee or agent of the state or any political
7 subdivision thereof, whether in a temporary or permanent
8 capacity, and including without limitation legislators,
9 judges, and law enforcement officers.

10 Now, if you find the state proved beyond a reasonable
11 doubt all the essential elements of the offense of tampering
12 with evidence, your verdict must be guilty.

13 If you find that the state failed to prove beyond a
14 reasonable doubt all of the essential elements of the offense
15 of tampering with evidence, then your verdict must be not
16 guilty.

17 Now, before you can find the defendant guilty of
18 Count 4, having weapons while under a disability, you must
19 find beyond a reasonable doubt that on or about June 12, 2017,
20 and in Trumbull County, Ohio, the defendant, Austin Taylor
21 Burke, did knowingly acquire, have, carry or use a firearm
22 when Austin Taylor Burke has been adjudicated as a delinquent
23 child for the commission of the offense that, if committed by

1 an adult, would have been a felony of violence, to-wit:
2 aggravated burglary.

3 I have defined some terms for you.

4 Knowingly.

5 Have means to possess.

6 A person has possession when he knows that he has an
7 object on or about his person or places it where it is
8 accessible to his use or direction and he has the ability to
9 direct or control it.

10 Ownership is not necessary. A person may possess or
11 control property belonging to another.

12 Firearm has been defined for you.

13 Capable of expelling or propelling has been defined
14 for you.

15 A felony offense of violence. Aggravated burglary is
16 a felony offense of violence.

17 Now, if you find the state proved beyond a reasonable
18 doubt all of the essential elements of the offense of having
19 weapons under a disability, then your verdict must be guilty.

20 If you find the state failed to prove beyond a
21 reasonable doubt any one of the essential elements of the
22 offense of having weapons while under a disability, then your
23 verdict must be not guilty.

1 Now, before you can find the defendant guilty of
2 Count 5, having weapons while under a disability, you must
3 find beyond a reasonable doubt that on or about June 20, 2017,
4 and in Trumbull County, Ohio, the defendant, Austin Taylor
5 Burke, did knowingly acquire, have, carry, or use a firearm,
6 when Austin Taylor Burke has been adjudicated a delinquent
7 child for the commission of an offense that, if committed by
8 an adult, would be a felony offense of violence. Again,
9 to-wit: aggravated burglary.

10 And, again, the same definitions as in the prior
11 count.

12 If you find the state proved beyond a reasonable
13 doubt all of the essential elements of having weapons while
14 under a disability on that date, your verdict must be guilty.

15 If you find the state failed to prove beyond a
16 reasonable doubt any one of the essential elements of the
17 offense on that date, your verdict must be not guilty.

18 Now, as to Count 6 --

19 MR. BECKER: Your Honor, can we approach?

20 THE COURT: You can.

21 (AT sidebar:)

22 MR. BECKER: Your Honor, Count 6 is a cut
23 and paste that I did not correct from Brandon Sample. You

1 could just say you previously defined, but the only difference
2 is it's Pizza Joe's and U.S. currency. I don't know if you
3 just -- and then from here you can probably just say, "I've
4 already defined all of the terms for you." And it's just
5 going to say "U.S. currency" here. And then you can probably
6 go all the way to page 17 because you've previously defined
7 all those terms. And then you must go to the -- if they
8 find --

9 THE COURT: Is that acceptable to defense
10 counsel?

11 MR. OLSON: Yes.

12 MR. HARTWIG: One other correction. On
13 page 4, when indicating the juvenile delinquency adjudication,
14 they put -- on just this page, not on 13 or 14 -- but they put
15 agg robbery when it's an agg burglary. And that was
16 represented in closing on the PowerPoint as agg robbery. And
17 then a little further down.

18 THE COURT: We'll make those changes.

19 MR. HARTWIG: Would we be able to let the
20 jury know that it was mentioned in closing as an agg robbery
21 as an oversight?

22 THE COURT: I'll just mention it right now.

23 MR. HARTWIG: Okay, Your Honor. Thank you.

1 (End of sidebar.)

2 THE COURT: Ladies and Gentlemen, we've
3 caught a couple of typos here.

4 Number one, earlier on when I was indicating the
5 prior underlying offense for having weapons while under a
6 disability, it was at one point in time indicated it was an
7 aggravated robbery. It is an aggravated burglary. I want to
8 make sure you're aware of that. It might have been mentioned
9 that way in closing also.

10 And other than that, we have some typos that we'll
11 fix before it gets to you here.

12 But in the robbery on June 20th, you must find that
13 in Trumbull County, Ohio, the defendant, Austin Taylor Burke,
14 in committing a theft offense, or in fleeing immediately after
15 the offense, had a deadly weapon on or about his person or
16 under his control, and he displayed the weapon, indicated he
17 possessed it, or used it.

18 The theft offense is defined as purposely depriving
19 Pizza Joe's of property, to-wit: U.S. currency.

20 And knowingly obtain or exert control over the U.S.
21 currency without the consent of Pizza Joe's or a person
22 authorized to give consent.

23 And I've already defined purpose, knowingly,

1 property, owner, deprive, deadly weapon, capability of deadly
2 weapon, and on or about his person or under his control.

3 MR. BECKER: And the firearm specification.
4 That's missing.

5 THE COURT: That comes next.

6 If you find the state proves beyond a reasonable
7 doubt all of the essential elements of aggravated robbery,
8 your verdict is guilty.

9 If you find they failed to prove the essential
10 elements, then your verdict is not guilty.

11 And again, if it's guilty, then you address the
12 firearm specification.

13 If they prove beyond a reasonable doubt all of the
14 essential elements of the firearm specification, they're
15 guilty of the firearm specification.

16 If they fail to, then you're not guilty of the
17 firearm specification.

18 Now, the charges set forth in each count of the
19 indictment constitute a separate and distinct matter. You
20 must consider each count and the evidence applicable to each
21 count separately, and you must state your findings as to each
22 count uninfluenced by your verdict as to any other count. The
23 defendant may be found guilty or not guilty of any one of the

1 offenses charged.

2 You must not discuss or consider the subject of
3 punishment. Your duty is confined to a determination whether
4 the defendant is guilty or not guilty of the charges.

5 You must not be influenced by any consideration of
6 sympathy or prejudice. It is your duty to carefully weigh the
7 evidence, to decide all disputed questions of fact, to apply
8 the instructions of the Court to your findings, and render
9 your verdict accordingly. In fulfilling your duty, your
10 efforts must be to arrive at a just verdict. Consider all the
11 evidence, and make your findings with intelligence and
12 impartiality and without bias, sympathy, or prejudice so that
13 both the state of Ohio and the defendant will feel that this
14 case was fairly and impartially tried.

15 Now, if during the course of this trial the Court
16 said or did anything that you consider an indication of the
17 Court's view as to the facts, you are instructed to disregard
18 it.

19 Now, your initial conduct upon entering the jury room
20 is a matter of importance. It is not wise to immediately
21 express a determination to insist upon a certain verdict
22 because if your sense of pride is aroused, you may then
23 hesitate to change your opinion, even if you later decide you

1 are wrong. Consult with one another, consider each other's
2 views, and deliberate with the objective of reaching an
3 agreement if you can do so without disturbing your individual
4 judgment. Each of you must decide this case with your fellow
5 jurors. Do not hesitate to change an opinion if you are
6 convinced it is wrong. However, you should not surrender an
7 honest opinion in order to be congenial or to reach a verdict
8 solely because of the opinion of the other jurors.

9 Now, you will have with you these verdict forms. I
10 will go through them with you at this time. They're fairly
11 self-explanatory. These are in the order that the indictment
12 reads. Count 1, "We the jury, duly impaneled and sworn or
13 affirmed, find the Defendant, Austin Taylor Burke," and
14 there's an asterisk and the instructions are down below, you
15 fill in with an ink pen, "did" or "did not," at the time of
16 committing aggravated -- no, that's the specification. I have
17 it mixed up here. First count is "guilty" or "not guilty of
18 aggravated murder, did purposely cause the death of another,
19 Kenneth Brandon Hayes Sample, while committing or attempting
20 to commit, or while fleeing immediately after committing or
21 attempting to commit aggravated robbery on June 12, 2017, in
22 the manner and form he stands charged in the indictment." And
23 there's a date line and 12 signature lines. Again, it's a

1 criminal case. There have to be 12 signatures for a proper
2 verdict.

3 Count 2 is the specification. Again, only if you
4 found him guilty of Count 1 do you address the specification.
5 And you insert "did" or "did not" have a firearm on or about
6 his person at the time of the offense. Again, we need a
7 unanimous 12 people.

8 Count 2 is aggravated robbery. Guilty or not guilty
9 of aggravated robbery. Again, dated and signed by all 12.

10 The specification as to Count 2. Again, as to the
11 firearm.

12 Count 3 is tampering with evidence. Again, guilty or
13 not guilty of tampering with evidence. Fill it in
14 accordingly.

15 Count 4 is having weapons while under a disability.
16 And this is for the June 12th offense. Guilty or not guilty.

17 Count 5 is having weapons while under a disability
18 for the June 20th allegations. Again, all 12 signatures.

19 And Count 6 is aggravated robbery regarding Pizza
20 Joe's. And that is on June 20th, 2017. Again, we need guilty
21 or not guilty and 12 signatures on that.

22 And then the firearm specification as to Count 6.

23 So those are the various verdict forms that you have

1 with you. Now, from this time on, you will be in the charge
2 of my bailiff. My court reporter will assist. You will
3 follow their instructions in every regard. If you desire to
4 communicate with the Court, you should do so only in writing
5 and only after careful consideration of the language used so
6 that the same does not unnecessarily disclose the status of
7 your deliberations and making sure that your inquiry was clear
8 and unambiguous. The request must be signed in writing and
9 signed by the foreman or forelady.

10 Now, oftentimes we're requested a copy of a
11 transcript, especially in a confusing case like this. You
12 won't get a copy of the transcript. It takes a long time to
13 put that together. You must rely upon your collective
14 recollections.

15 Now, during all breaks, you will follow the
16 instructions of the bailiff, but do not discuss this case with
17 her or among yourselves during any breaks. Again, if you are
18 released for a luncheon break, which is a likely option here,
19 you can't discuss this in groups less than the 12 of you. The
20 12 of you have to be together in the jury room before you can
21 discuss any part of the case.

22 The Court will place in your possession the exhibits
23 and the verdict forms. The foreman or forelady will retain

1 possession of these records and return them to the court. The
2 foreman or forelady will see that your discussions are orderly
3 and that each juror has an opportunity to discuss this case
4 and cast his or her vote. Otherwise, the authority of the
5 foreman or forelady is the same as with the other jurors.

6 Until the verdict is announced in open court, you are
7 not to disclose to anyone else the status of your
8 deliberations or the nature of your verdict.

9 Now, the two alternate jurors that we chose, in this
10 case Mr. Hardval and Miss Frantz, it will not be necessary --
11 as long as the other 12 jurors are ready to proceed, seeing no
12 reasons that they can't -- you will be excused when the jury
13 goes in to start deliberations. You can leave then or stay as
14 our guest until a verdict is reached, but I ask you not to
15 indicate to anyone what your verdict might have been until one
16 is delivered by the other jurors.

17 Counsel have anything else at this time?

18 MR. HARTWIG: Not from the defense, Your
19 Honor.

20 MR. BECKER: Nothing from the state, Your
21 Honor.

22 THE COURT: All right. Again, your first
23 duty upon entering the jury room is to choose one of yourself

1 as foreman to lead your deliberations. I wish you luck in
2 your deliberations. My bailiff will get your schedule sorted
3 out. You will have with you copies of these instructions that
4 should answer most of your questions.

5 Good luck to you.

6 (At 11:52 a.m., the jury retired to the
7 jury room to commence deliberating upon its verdict.)

8 (Whereupon, a recess was had, commencing at
9 3:55 p.m. and concluding at 4:05 p.m.)

10 (Whereupon, the following proceedings
11 occurred in open court at 4:54 p.m.)

12 * * *

13 VERDICT

14 THE COURT: Ladies and Gentlemen of the
15 Jury, it's my understanding you've reached a verdict.
16 Mr. Zatvarnicky, it appears you have the verdict forms. I'm
17 assuming you are the foreman. If you'll hand the verdict
18 forms to my bailiff so that I can review them.

19 (Whereupon, the verdict forms were
20 delivered to the Court.)

21 THE COURT: The verdict forms all appear to
22 be in order. The defendant rise and face the jury. I'll read
23 them at this time.

1 Count 1, regarding aggravated murder, "We, the jury
2 in this case, duly impaneled and sworn or affirmed, find the
3 Defendant, Austin Taylor Burke, guilty of aggravated murder,
4 did purposely cause the death of another, Kenneth Brandon
5 Hayes Sample, while committing or attempting to commit, or
6 while fleeing immediately after committing or attempting to
7 commit, aggravated robbery, on or about June 12, 2017, in the
8 manner and form he stands charged in the indictment.

9 As to the specification as to Count 1, the jury finds
10 that he did, at the time of committing the aggravated murder
11 as charged in Count 1, have a firearm on or about his person
12 or under his control, displayed the weapon, indicated he
13 possessed it, used it to facilitate the offense.

14 As to Count 2, indictment for aggravated robbery, the
15 jury finds the defendant guilty of aggravated robbery, in
16 attempting or committing a theft offense, or in fleeing
17 immediately after the attempt or offense.

18 And did have the deadly weapon on or about his person
19 or under his control. Either displayed the weapon, brandished
20 it, indicated he possessed it, or used it. All on June 12,
21 2017. Again, signed by all 12 jurors. Dated this date.

22 Count -- specification as to Count 2, the jury finds
23 that he did have a firearm on or about his person or under his

1 control. Again, signed by all 12 jurors and dated this date.

2 Count 3, tampering with evidence, the jury finds the
3 defendant guilty of tampering with evidence. Again, signed by
4 all 12 jurors, dated this date.

5 Having weapons while under a disability as to the
6 June 12, 2017 offense, the verdict is guilty. Again, signed
7 by all 12 jurors and dated this date.

8 Having weapons while under a disability as to the
9 June 20th, 2017 incident, the jury finds the defendant guilty.

10 As to aggravated robbery as to the June 20th, 2017,
11 event, the jury finds the defendant guilty.

12 And as to the firearm specification, the jury finds
13 that he did have a firearm on or about his person or under his
14 control.

15 Guilty as to all charges and specifications. Did I
16 properly read your verdict, Mr. Zatvarnický?

17 JUROR NO. 8: Yes, sir.

18 THE COURT: Anything further from the
19 state?

20 MR. BECKER: No, Your Honor.

21 THE COURT: Anything further from the
22 defense?

23 MR. HARTWIG: No, Your Honor.

1 THE COURT: Bond will be revoked. The
2 defendant will be remanded into the custody of the Trumbull
3 County Sheriff for sentencing which will be tentatively set
4 for March 27th. Thank you very much, Ladies and Gentlemen of
5 the Jury. We can't resolve this matter without you. Again,
6 I'll have a few words with you back in the jury room.

7 MR. BECKER: Your Honor, do you want to set
8 that on the regular criminal day?

9 THE COURT: No, it will be set at 11:00.
10 We are adjourned.

11 (Whereupon, the hearing concluded at
12 5:01 p.m.)

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1 * * *

2 March 27, 2018

3 SENTENCING

4 THE COURT: The Court calls case
5 2017-CR-403, which is State of Ohio versus Austin Taylor
6 Burke.

7 Counsel, if you'll come forward with your client.

8 MR. OLSON: Good morning, Your Honor.

9 THE COURT: All right. Again, the
10 defendant is in court, along with his counsel, Mr. Olson. The
11 state is represented by Mr. Becker.

12 On March 9th, 2018, a Trumbull County jury returned a
13 verdict of guilty as to all counts and specifications
14 presented to them, to-wit: Count 1, aggravated murder with a
15 firearm specification in the death of Brandon Sample; Count 2,
16 aggravated robbery with a firearm specification; Count 3,
17 tampering with evidence; Count 4, having weapons while under a
18 disability; Count 5, having weapons while under a disability;
19 Count 6, aggravated robbery with a gun specification for the
20 robbery of Pizza Joe's on June 20th.

21 The matter was set for sentencing this day, and the
22 Court has ordered and received a presentence investigation
23 which I have reviewed.

1 Now, prior to sentencing, on Friday, March 23, 2018,
2 the Court received a Rule 29 Motion for Acquittal and a Rule
3 33 Motion for a New Trial. The state filed an expedited
4 response on March 26, 2018. The Court has reviewed the
5 motions, memoranda, relevant applicable law, and has denied
6 both motions by judgment entry filed this date.

7 We are now here for the purposes of sentencing.
8 Prior to sentencing, Mr. Burke, is there anything you or your
9 attorney on your behalf would like to say to this Court prior
10 to sentencing?

11 MR. OLSON: Your Honor, on behalf of
12 Mr. Burke, may it please the Court, Attorney Bradley G. Olson.

13 As the Court has gone through today, my client stands
14 convicted of several serious offenses. And we recognize that
15 in the overarching principles of the sentencing code is the
16 punishment of the offender. However, that is a qualified
17 statement or principle, as the statute directs that the trial
18 court is to impose the minimum sanctions that accomplishes the
19 purposes and principles of sentencing.

20 And when crafting the sentence, there are a few
21 issues that I would like the Court to take into consideration.
22 First, Your Honor, this morning I did provide three written
23 statements from people that are quite familiar with Mr. Burke

1 and the character that he possesses.

2 The family is also here that has shown support of
3 Mr. Burke throughout this process, and I believe that that is
4 very important when it comes to the rehabilitation abilities
5 of the offender.

6 Another thing that I would ask the Court to consider
7 is the youthful age of Mr. Burke. At the time that Mr. Burke
8 was charged with these offenses, he was 18 years old. The
9 high court of this country has recognized as recently as 2012
10 in matters such as *Miller versus Alabama* and *Graham versus*
11 *Florida* that human development and the greater ability of
12 youthful offenders demonstrates their ability to rehabilitate
13 better than people of more advanced age. While I recognize
14 that those cases did address minors, it's not like there's a
15 magic switch that turns on when you turn 18 years of age.
16 Again, he was still a very young individual when he was
17 charged with these offenses, and I suggest that these cases do
18 suggest that he would be less deserving of the most severe of
19 punishments that could be imposed.

20 Additionally, Your Honor, prior to the beginning of
21 trial, a plea offer was presented by the state which offered
22 15 years to life incarceration. Again, while I recognize that
23 my client did reject that plea offer and elected to proceed

1 with trial in which he was convicted, I believe that the offer
2 that was presented by the state shows that the state did
3 recognize some ability for his ability to reform and to
4 rehabilitate from these crimes. The information that was
5 presented in the state's memorandum for sentencing, that was
6 all available to the state at the time that the plea
7 recommendation was made to this Court. So I would ask the
8 Court to take that into consideration when it's crafting the
9 sentence for my client.

10 Your Honor, we've heard numerous testimony and
11 records concerning my client's prior crimes. These crimes are
12 all committed as a juvenile offender. None of the crimes that
13 he was sentenced for as a juvenile were crimes of violence
14 towards others. They were all resolved through the admission
15 of the -- of Mr. Burke. So he admitted to these offenses as a
16 juvenile.

17 And then during his incarceration at both JJC and
18 DYS, he did make positive decisions while incarcerated, which
19 included the completion of his GED, he completed trade
20 training, and he participated in numerous programs which
21 included life skill classes, AA classes, and numerous other
22 classes that were made available through the system.

23 Furthermore, Your Honor, while I recognize that the

1 state is requesting the imposition of a sentence of life
2 without the possibility of parole, I believe that the
3 rehabilitation reform offered through the Department of
4 Rehabilitation and Corrections cuts against that. You know,
5 there are programs and safeguards included within our criminal
6 justice system that will sufficiently evaluate and determine
7 the level of rehabilitation and whether he's met
8 rehabilitation requirements that reduce the recidivism risk
9 that he would pose to the community at large. We have to
10 believe in our criminal justice system and the ability of our
11 Department of Rehabilitation and Corrections to reform our
12 offenders, especially the youngest of our offenders who are
13 the most vulnerable in the system because if a sentence of
14 life without the possibility of parole is imposed against a
15 youth offender such as Mr. Burke, that is an extremely long
16 period of time being incarcerated. And while I recognize that
17 the system demands punishment, there is opportunity,
18 especially for a youthful offender, to demonstrate his ability
19 to reform.

20 Also, Your Honor, before this Court are multiple
21 convictions. And while I recognize that this Court has the
22 absolute discretion to run those sentences consecutive to one
23 another, I would suggest to the Court that if it is inclined

1 to allow Mr. Burke to demonstrate his ability to reform and
2 enter a sentence that is something other than life without the
3 possibility of parole, there is no need for a consecutive
4 sentence because if he reaches that level where he has
5 demonstrated his ability and rehabilitative needs that he can
6 be released, to include further punishment for other crimes I
7 do not believe would be necessary, as the goals of the
8 sentencing would have already been accomplished through the
9 initial sentence.

10 Also, in the sentences that are being imposed today,
11 there are at least two sentences before Your Honor that have
12 to be consecutive. Those are the gun specs. So with three
13 years on each of the gun specs, we're looking at six years
14 consecutive already there. Mr. Burke is also scheduled to go
15 before the Honorable Judge Rice for another offense today that
16 mandates another consecutive sentence, and the state has
17 recommended an additional three years on that offense. So
18 we're looking at 9 years of consecutive sentences already on
19 just the offenses that mandate under our sentencing code a
20 consecutive sentence.

21 So in conclusion, Your Honor, based upon all of the
22 foregoing, what I would ask the Court to impose is the life
23 sentence with the possibility of parole after 20 years on the

1 murder charge, with the aggravated robbery charges running
2 concurrent with that. And then recognizing that he will also
3 be serving at least a minimum of 9 years consecutive for the
4 gun spec and the other charge before Judge Rice, which would
5 mean that Mr. Burke would not be eligible for parole until
6 29 years have been served. Again, that would put him at the
7 age of 49 years old. And I do not believe that any man that
8 ever comes before this Court that is 49 years of age was the
9 same man that he was when he was 18 or 19 years of age.

10 Maturity does come into play. Human development and brain
11 development continues until 25. These are things that have
12 been recognized. So when we take that all into consideration,
13 I ask that the Court impose a sentence accordingly.

14 Thank you, Your Honor.

15 THE COURT: Mr. Burke, anything you want to
16 say?

17 THE DEFENDANT: No, sir.

18 THE COURT: Anything from the state?

19 MR. BECKER: Yes, Your Honor. First, I'd
20 note for the record that I did provide the Court with a
21 sentencing memorandum and a supplemental memorandum. And I'd
22 also note for the record, and I believe Mr. Olson will concur,
23 the state filed a motion to substitute photographs of the U.S.

1 currency that was admitted at trial, and I don't believe there
2 was an objection?

3 THE COURT: I haven't seen that.

4 MR. OLSON: That's correct, Your Honor.

5 MR. BECKER: Okay. So the Court -- if it's
6 all right, the Court will prepare an entry to substitute the
7 photographs for the U.S. currency that's currently in this
8 case.

9 THE COURT: That will be done.

10 MR. BECKER: All right.

11 Your Honor, just very briefly, I would note that
12 there was mention that the state did offer the defendant an
13 offer of murder with a three-year specification and an 18
14 years to life sentence. I think it's a little disingenuous to
15 say that the state believed he's a good character and could be
16 rehabilitated based on that. That was based upon the fact of,
17 like any trial, there are problems and offers. To rule
18 otherwise would be to say that the defendant and his attorneys
19 came to the state the first day -- or the morning of the
20 second day of trial and asked for flat time. So he must be
21 guilty because he asked and his attorneys asked for flat time.

22 And I would stand here and tell this Court that
23 Mr. Olson cited some Supreme Court cases dealing with

1 juveniles and, of course, life sentences are still permissible
2 for juveniles if the Court finds that they are irreparably
3 corrupt and permanently incorrigible. There is your poster
4 child for irreparably corrupt and permanently incorrigible.
5 He stands here before you.

6 To run any of these sentences concurrently with each
7 other is basically to acknowledge they're free crimes. And
8 the state has outlined in its memorandum separate victims,
9 separate times, separate incidences. And we would
10 respectfully, again, reiterate that if the Court does not
11 impose a life sentence with no parole to at least run those
12 consecutive from the June 12th date to the June 20th date.
13 I'll let the motion stand -- the prior memorandum that I filed
14 stand on its own merits.

15 And I would advise the Court that there are three
16 victims that would like to address the Court pursuant to 2930
17 of the Revised Code and their victims' rights and Marcy's law.

18 THE COURT: Very well. Move him to the
19 side so we can bring the victims up.

20 State your name for the record.

21 KENNETH SAMPLE: My name is Kenneth Sample.

22 Good morning, Your Honor. Thank you for allowing me
23 this time to speak.

1 Really don't know what I'm supposed to say. As a
2 parent, I don't think any parent should have to make this type
3 of statement due to the loss of their child through murder.
4 But since -- the last couple of weeks, I've thought about
5 things. I thought about what the prosecutor stated during the
6 case. That he didn't, he didn't have motive, didn't have to
7 prove motive. And I think there was no motive other than it
8 was done just because he could do it.

9 The defense brought up several times all the
10 witnesses had different testimonies as to why he did it, and I
11 think he just merely told them different things because he
12 wanted to make himself look bigger, tougher.

13 They had mentioned he did time in DYS. He did good
14 things in DYS. He did such good things that upon release he
15 has pictures and videos of him with guns that he's not
16 allowed, that his family should never even have allowed him to
17 have in his possession to cause this crime.

18 The defense said, you know, 49 years he won't be the
19 same man. But in 49 years, he'll still be alive. And my son,
20 Kenneth Brandon Sample, who was a goofy young kid, helped
21 special needs children, might have been a little naive, had
22 some problems of his own, but nothing that he wasn't trying to
23 work through, and if this hadn't have happened he would still

1 be alive in 49 years. So I just ask that the charges are all
2 run consecutively. I don't think he changed after DYS, and I
3 don't think he'll change after he's been incarcerated for any
4 amount of time.

5 Thank you, sir.

6 BRITTANY SAMPLE: Your Honor, my name is
7 Brittany Sample. Brandon was my brother. And on June 12th,
8 2017, he was murdered and left to lie alone for days as we
9 searched for him.

10 My brother was a gentle soul. He would have never
11 hurt anybody in his whole life. And, yes, he had his issues
12 that he was working through. But he was fearless. And so --
13 his smile was contagious and he just brought joy everywhere he
14 went.

15 Brandon wasn't the only victim of this crime. My
16 family, myself, and countless members of the community and his
17 friends are all victims. We are left with a hole in our heart
18 that was once filled by his spirit, and that hole will forever
19 remain. And in 49 years, I will still have that hole. Every
20 day I will think of my brother. And to me, allowing someone
21 to be free when they have taken the life of somebody that
22 could have done great things just isn't fair.

23 And I thank you for your time.

1 THE COURT: Thank you.

2 REGINA SAMPLE: Hi. My name is Regina
3 Sample, and Brandon was my grandson. My only grandson. I
4 will never have another grandson. I could count on Brandon
5 for anything I needed. All I'd do was call. He was one of
6 the sweetest kids. Had the biggest heart. Would help anyone.
7 And I don't have that anymore. I'll never hear his voice
8 again. I'll never see his face again. He just walked out of
9 the house and was never seen again.

10 I can't sleep. I can't function. This is -- this
11 has destroyed every one of us. It's touched every one of our
12 lives. And if he got 29 years, my grandson is not gonna come
13 back in 29 years. He's not gonna come back in a hundred
14 years. He's gone. And nothing can ever replace that. And I
15 don't think that he should be allowed to walk the street when
16 my grandson will never step foot out again.

17 I just wanted you to know that my grandson was a
18 terrific kid. He wasn't perfect. I mean, none of us are. We
19 all have problems. We all have faults. But he didn't do
20 anything to deserve to be murdered for.

21 His Army buddies took it so hard. They couldn't
22 believe that someone could murder a goofy kid with the biggest
23 smile on his face. That was my grandson. He touched so many

1 lives. And if he could have lived, how many more could he
2 have touched? That, we'll never know.

3 Thank you.

4 THE COURT: Thank you. Are you done?

5 MR. BECKER: Yes, sir. Thank you, Your
6 Honor.

7 THE COURT: Bring him back. Again, to make
8 sure that the record is correct, I have reviewed all of the
9 victim statements prior to this and the statements that were
10 submitted by the defendant.

11 Taking into consideration the principles and purposes
12 of sentencing, the Court notes that recidivism is quite likely
13 in this case.

14 In regard to the seriousness of the offense, the
15 Court finds that there's nothing more serious than murder.

16 The Court further finds the defendant has shown no
17 remorse.

18 As to factors that show his conduct is less serious,
19 the Court finds none. Generally, the age of the defendant
20 would be a mitigating factor, but his conduct and criminal
21 adjudications as a minor show that that's not the case.

22 With indications of likely recidivism and the more
23 seriousness conduct and no indicators of less recidivism and

1 less serious conduct, and viewing your record as a whole in
2 the light of the case, the Court finds that you are a danger
3 to society. A continuous line of felony adjudications,
4 including crimes of violence, gun charges, breaking into
5 houses, probation and parole violations, entering with an
6 aggravated burglary with a gun spec that resulted in an
7 extended commitment to DYS. It is necessary that you be
8 removed from society for the safety of society. Your sentence
9 is as follows: As to aggravated murder, I sentence you to
10 life imprisonment with parole eligibility after 30 years. As
11 to the firearm specification, three years mandatory, prior to
12 and consecutive with. As to aggravated robbery, 11 years,
13 concurrent -- 11 years concurrent, and the gun spec will
14 merge. As to tampering with evidence, 36 months, concurrent.
15 As to having weapons while under a disability as to the
16 aggravated murder, 36 months, concurrent. As to having
17 weapons while under a disability as to the Pizza Joe's,
18 36 months, concurrent. As to Count 6 -- now, this is a
19 separate offense of violence, holding a gun to two unarmed
20 young ladies at Pizza Joe's. This cannot go unpunished. I
21 will sentence you to 11 years for that and three years for a
22 gun specification, this to run consecutive to the 30 years to
23 life and gun spec. This will be served, again, consecutively

1 to Count 1.

2 It is necessary to punish the defendant and protect
3 the public and not disproportionate, as the offender's
4 criminal history shows that consecutive sentences are
5 necessary to protect the public. That's 33 years, plus 14.
6 Total of 47 years.

7 Nothing we can do can bring back Brandon Sample, but
8 removing you from society will keep other people safe.

9 He'll be remanded, then, for the purposes of this
10 sentence after sentencing down the hall.

11 Now, when you are released from -- when and if you
12 are released from prison, you have post-release control that's
13 mandatory. If you're released before serving your life
14 sentence as to Count 1 and the maximum possible post-release
15 period is equal to the length of the life sentence imposed on
16 the aggravated murder charge in Count 1, as well as the
17 consequences for violating conditions of post-release control
18 imposed by the Parole Board.

19 Now, further, as to Counts 2 and 6, you will have a
20 mandatory period of 5 years post-release control.

21 As to Count 3, 4, and 5, a 3-year optional period of
22 post-release control. There will be certain terms or
23 conditions imposed upon you. If you violate those conditions,

1 more strict conditions could be imposed, or the length of time
2 extended, or additional prison time imposed in increments of
3 up to 9 months, but not exceeding one-half your original term.

4 And if you commit a felony while subject to a period
5 of post-release control, you subject yourself to an additional
6 prison term which consists of the maximum amount of time
7 remaining on post-release control, or 12 months, whichever is
8 greater.

9 You are further instructed that most prison inmates
10 are eligible to earn days of credit against their prison
11 sentence for each completed month of productive participation
12 in an educational or employment program developed by ODRC,
13 with specific standards for performance by prisoners. Some
14 inmates, including those confined for sex offenses and the
15 most serious first- or second-degree felonies or homicides,
16 are not eligible to earn those days of credit.

17 Now, you have been convicted as a result of a jury
18 trial. You have an automatic right to appeal. If you do not
19 have the funds to employ an attorney, one would be appointed
20 at no cost. If you do not have the funds to have a record
21 supplied to the Court of Appeals, a record would be supplied
22 at no cost. Do you intend to appeal this?

23 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Olson, are you going to
2 take care of his notice of appeal?

3 MR. OLSON: He has retained appeals
4 counsel, Your Honor.

5 THE COURT: All right. He has retained
6 appeals counsel.

7 Anything further from the state at this time?

8 MR. BECKER: No, Your Honor.

9 THE COURT: Anything further from the
10 defense?

11 MR. OLSON: Nothing further, Your Honor.

12 THE COURT: He needs to go down to Judge
13 Rice to resolve that other case.

14 We're adjourned.

15 (Whereupon, the hearing concluded at
16 11:41 a.m.)

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REPORTER'S CERTIFICATE

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I HEREBY CERTIFY the above and foregoing is a true and correct transcript of all evidence introduced and proceedings had in the Jury Trial on the 5th day of March, 2018, of the within-named case as shown by my stenographic notes, taken by me during the hearing and at the time the evidence was being introduced.

LORI J. RITWAGE
Official Court Reporter

May 15, 2018