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IN THE CIRCUIT COURT, OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA  
CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA,

PLAINTIFF,

VS.

WAYNE EDWARD SPENCER,

DEFENDANT./

CASE NO.: 48-2011-CF-005398-A-O

DIVISION NO.: 11

VOLUME VI OF VI

 ORIGINAL

JURY TRIAL

BEFORE

THE HONORABLE HEATHER PINDER RODRIGUEZ

APRIL 20, 2012  
ORANGE COUNTY COURTHOUSE  
ORLANDO, FLORIDA 32801  
CATHY L. MATTA, RPR

**A P P E A R A N C E S :**

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April 20, 2012 (1:21 p.m.)

The Court: All right. State, are you -- you want me to call it on the record?

The Court Reporter: No, that's okay, Judge.

The Court: You're good? All right.

State, you want to go ahead with the remainder of your response to the JOA motion?

Mr. George: Sure, Judge. Good afternoon. Frank George on half of the State. Your Honor, after the -- or during the lunch hour, Mr. Schmer and I had a chance to talk. I had a chance to go back to my office and look at his case law, as well as pulling some of my own. And though I believe an argument can be made for leaving in the felony murder instruction, for appellate reasons, I'm not going to object to the felony murder being struck. So we'll go forward strictly on the premeditated first degree murder. So that should take out a chunk of the argument.

The Court: Okay.

Mr. George: As it relates to the JOA argument of murder in the first degree, certainly, Your Honor, taking the evidence in the light most favorable to the State, the State has proven all three acts that it needs to prove to the jury. Certainly the State has presented evidence that the finder of fact could find the

1 defendant guilty as charged.

2 Certainly the victim is dead. I'm sorry, Richy  
3 rich is dead. The death was caused by the criminal act  
4 of Mr. Spencer, and there was a premeditated killing.

5 As to the third element, certainly the jury can  
6 find four strikes to the man's head after the first  
7 strike, the jury could easily find that Mr. Spencer did  
8 exactly what he set out to do, that he had the conscious  
9 intent to end the life of Richy Rich, either consecutive  
10 blows or as we heard on the tape, that after Mr. Spencer  
11 left, he came back. Mr. Rich said some words to him;  
12 and because of those words, Mr. Spencer finished him  
13 off. So, certainly, Your Honor, enough evidence has  
14 been presented to this jury that a finder of fact can  
15 make the ultimate conclusion. I ask that you deny the  
16 motion.

17 Mr. Schmer: I would also make the additional  
18 argument, which I didn't make on my first part of my JOA  
19 argument as to the identity of the decedent. The  
20 indictment lists Richy Rich, AKA -- I'm sorry Raymond  
21 Lynch, AKA, Richy Rich as the decedent. I would argue  
22 that there's not been competent evidence presented to  
23 establish identity of the deceased. Obviously, I  
24 objected when Detective Newton testified that the  
25 deceased was, in fact, Richy Rich based on a DAVID



1 photo. I objected. I wanted to incorporate that into  
2 my JOA argument.

3 The Court: State, what's your response to that  
4 specific argument.

5 Mr. George: Sure, Judge. Obviously, as Mr. Schmer  
6 has stated, the document came into evidence, the DAVID  
7 photograph, identifying the man as Richy Rich.  
8 Identification was made. A visual identification was  
9 made by Detective Newton on that picture comparing it to  
10 the person at the morgue.

11 In addition, Your Honor, there were Mr. Spencer's  
12 own words in the course of his interview with the  
13 police, referred to the person that he had struck as  
14 Richy Rich and Richy. So I believe that the identity  
15 issue is really a nonissue at this point.

16 The Court: What about the names on the indictment?

17 Mr. George: Your Honor, I believe there was  
18 testimony during the course of the -- through Detective  
19 Newton's first trip up to the witness stand. He  
20 mentioned the name of Raymond Lynch as part of his  
21 investigation into determining the identity.

22 I believe the medical examiner in the very  
23 beginning of her testimony -- I may be mistaken but I  
24 believe she testified in the very beginning of her  
25 testimony referring to this man by Raymond Lynch as

1 well.

2 If there's any cause for concern, we can certainly  
3 strike the Raymond Lynch out but Richy Rich has  
4 certainly been established.

5 Mr. Schmer: But for the fact that Mr. -- the  
6 evidence of identity can't simply be introduced solely  
7 through the testimony of the defendant. It has to be  
8 somebody -- evidence independent of his confession and  
9 so I would argue that no competent testimony exists.

10 Somebody who knew the decedent could testify that  
11 this is the guy whose name is Raymond Lynch, otherwise  
12 known as Richy Rich. Joshua Kitchens knew him as  
13 Mouthwash.

14 Detective Newton did not know who this guy was. My  
15 argument was it was improper for the detective to make  
16 the I.D. because it invades the province of the jury.  
17 Again, also, Mr. Spencer never mentioned Richy Rich. He  
18 said one time Raymond -- I'm sorry, Reverend Rich or  
19 Rich is what he referred to in the statement but never  
20 said the word Richy Rich or Raymond Lynch.

21 The Court: All right. Court's going to deny the  
22 motion for JOA at this time.

23 Mr. George: Thank you, Judge. I have asked my  
24 secretary -- I'm sorry. Over the lunch hour, Mr. Schmer  
25 and I had a very brief conversation about the jury

1 instructions. I'd asked my secretary to complete a  
2 revised copy, which she said that she has sent to me and  
3 to you.

4 The Court: I've already been working on the one  
5 that you sent. I don't want to duplicate efforts.

6 Mr. George: It may be two minutes ago. Some of  
7 them are simply not necessary --

8 The Court: Right.

9 Mr. George: -- when it talks about dwellings and  
10 things of that nature.

11 Mr. Schmer has asked for a justifiable use of  
12 deadly force instruction. He has also asked for  
13 justifiable use of nondeadly force instruction. I said  
14 sure. So I believe those instructions have also been  
15 added to the e-mail that I believe you should have  
16 received.

17 The Court: Well, if she'll send it over I can  
18 insert it into the document I have. Once you finish  
19 closing arguments, we'll send the jury out make and sure  
20 you guys are okay with the jury instructions. I hate to  
21 do that because it slows us down? But I don't see a way  
22 around it, unless one of you do.

23 Mr. George: No, that's fine, Judge.

24 The Court: I can e-mail it to you guys so you can  
25 look at it during closing argument, but I know you want

1 to give your full attention to what's being said in the  
2 courtroom.

3 Mr. Schmer: That's fine.

4 The Court: Ma'am, I'm so sorry. I don't mean to  
5 be difficult but in our courtroom we can't have food and  
6 we can't have soda, only water because I can't afford  
7 the carpet cleaning bills because of budget cuts. So  
8 your soda needs to go outside. I'm so sorry.

9 All right. Let the record reflect the presence of  
10 the defendant at counsel table. He continues to be  
11 dressed appropriately for court. He has shackles at his  
12 feet but does he have a privacy desk to the front and to  
13 the sides. His hands are free and he's able to  
14 communicate freely with his attorney.

15 Mr. Spencer, are you ready to go?

16 The Defendant: Yes, ma'am.

17 The Court: Okay.

18 Mr. Schmer: May I step outside to get water real  
19 quickly?

20 The Court: Yes. As soon as Mr. Schmer comes back,  
21 we'll bring in the jury.

22 The Court Deputy: Yes, ma'am.

23 The Court: If you'll have your secretary --  
24 Mr. George, as soon as you get those instructions from  
25 your secretary, would you please e-mail it to me and I

1 can cut and paste them into this.

2 Mr. George: Yes, Your Honor. I'm sorry. It was  
3 my impression she had sent them to you. Let me check.

4 The Court: Let me double-check. Yes, you are  
5 correct. I'm very sorry. You can see I wasn't reading  
6 my inbox. We will remain seated for the jury.

7 (Whereupon, at 1:31 p.m. the jury entered the courtroom,  
8 after which the following transpired:)

9 The Court: Welcome back, everyone.

10 The Jury: Thank you.

11 The Court: Did you have a good lunch?

12 The Jury: Yes.

13 The Court: Okay. When we last left, the State had  
14 just rested.

15 Defense.

16 Mr. Schmer: The defense rests.

17 The Court: Okay. At this point, we will proceed  
18 to closing arguments. I'm going to read the standard  
19 instructions for closing arguments before we commence.

20 Ladies and gentlemen of the jury, both the State  
21 and the defendant have now rested their case. The  
22 attorneys will now present their final arguments.

23 Please remember what the attorneys say is not  
24 evidence or your instruction on the law. However, do  
25 listen carefully to their arguments. They are intended

1 to aid you in understanding the case. Each side will  
2 have equal time, but the State is entitled to divide  
3 this time between an opening argument and a rebuttal  
4 argument after the defense has spoken.

5 Each party will have the same amount of time for  
6 their presentation. The State will proceed first,  
7 followed by the defense. The State will then have the  
8 argument to present any rebuttal or response to the  
9 defense's argument.

10 With that, State, you may proceed.

11 Mr. George: Thank you, Judge. Ladies and  
12 gentlemen, good afternoon. I know that there were a few  
13 times that you were asked to leave our presence and for  
14 whatever delays that occurred and I may have played a  
15 part in that, I certainly apologize for that.

16 As I stated to you yesterday, there's opening  
17 statements and closing arguments and we're at the point  
18 now where I'm going to argue a little bit. One of the  
19 benefits of doing the trial somewhat quickly is that a  
20 lot of the information should be relatively fresh in  
21 your head. A lot came at you in a short period of time  
22 but I noticed that you all were taking notes and that  
23 shouldn't be much of a problem.

24 As we stated in the opening statements, if I say  
25 anything to you during the course of my talk about what

1 a witness said, what a witness didn't say that doesn't  
2 jive with your notes or your memories, please go with  
3 yours. What I tell you up here, what I say to you up  
4 here is not evidence. It's not to be considered as  
5 evidence. Just as when Mr. Schmer has his opportunity,  
6 what he says to you is not evidence either.

7 I thought a little bit about how I wanted to start.  
8 I started thinking about the fact that what we were  
9 dealing with here was a homeless case. And I wondered  
10 if that was going to make any difference to anybody or  
11 if it changed the way people thought about the case or  
12 how people should act towards one another.

13 And when I thought about that, I thought about you  
14 have blue collar crimes that they call it and white  
15 collar crimes; and our society as a whole is usually  
16 broken into segments. Even with homeowners  
17 associations, there's a group of people. A country club  
18 has a group of people. A city has a group of people. A  
19 state has a group of people. A nation has group of  
20 people.

21 They may all go about doing things differently.  
22 Your group of friends may act completely different than  
23 other groups of friends but how you act and interact  
24 with them is how you have decided as a group to do that.

25 And I found that interesting because we heard some

1 testimony during the course of the trial about these  
2 folks that have been forced to or due to circumstances  
3 or whatever it may be find themselves without a home and  
4 how they gravitate from place to place and how they find  
5 themselves in the woods, not two minutes away -- not a  
6 two-minute drive from this courthouse or from downtown  
7 or from these luxury condominiums, less than a  
8 five-minute -- call it a five-minute drive away from  
9 here.

10 It could be a wooded area behind or next to a Frito  
11 Lay plant where people set up camps and where they live  
12 and they have their own way of dealing with each other.  
13 They have their own way of how they go about their  
14 lives. But one of the things that struck me, that it  
15 doesn't matter where or how.

16 There's a sign over the Judge's bench that says:  
17 Equal justice under the law. And that's not lip  
18 service. That shouldn't be words. Everybody is  
19 entitled -- wherever you come from or whatever you do --  
20 and maybe I sound like a Hallmark card but the fact  
21 remains that equal justice under the law and that means  
22 whether you are Bernie Madoff or whether you are a  
23 homeless guy that is living off of West Colonial, you  
24 are entitled to equal justice under the law and that  
25 certainly applies to Mr. Spencer.



1           But it also certainly applies to Richy Rich.  
2           Because Richy Rich was homeless, because he liked to  
3           drink, because he didn't have a place to go doesn't mean  
4           that his life had no value. The fact that there is --  
5           you can look in the audience and there's nobody watching  
6           this trial, other than us and we have no idea of knowing  
7           who really cares about Richy Rich. Well, the law does,  
8           because it's equal justice under the law.

9           And I'm not intimating or trying to insinuate that  
10          any of you at this point really don't care that Richy  
11          Rich, he's just a homeless guy. I know that's not true.  
12          But it's merely one of the things I thought about as I  
13          was trying to prepare to talk to you this afternoon.

14          The State had the burden of proof in this case, and  
15          the state has charged Mr. Spencer with one count of  
16          premeditated first degree murder with a weapon. In  
17          order for you to find Mr. Spencer guilty as charged, the  
18          State needed to prove to you three things: Obviously,  
19          number one, that Mr. Rich is dead and there certainly  
20          seems to be no question about that.

21          Element number two, the death was caused by the  
22          criminal act of Wayne Edward Spencer. There's no  
23          question about that.

24          There was a premeditated killing of Richy Rich,  
25          AKA, Raymond Lynch. Let's talk about that. I talked to

1           you yesterday when we did opening statements or maybe it  
2           was the day before that this really wasn't a  
3           who-done-it. This was not a question of who did it but  
4           whether or not the act was going to be found excusable  
5           by you, and we'll talk a little bit about that as we go  
6           along.

7                     But we charged him with premeditated killing and  
8           one of the things you have to consider is, what does  
9           premeditation mean? A lot of folks think of  
10          premeditation -- if they watch enough movies, they think  
11          the bank robbers that are sitting in somebody's basement  
12          or they're sitting around a kitchen table and they have  
13          their plan on how they're going to rob a bank and who's  
14          going to be the get-away driver and which guy is going  
15          to go to which teller and they think about premeditation  
16          in terms of a plan and it can be that but it doesn't  
17          have to be.

18                    Under the law -- and the judge is going to give you  
19          these instructions that killing with premeditation is  
20          killing after consciously deciding to do so. The  
21          decision must be present in the mind at the time of the  
22          killing. The law does not fix the exact period of time  
23          that must pass between the formation of the premeditated  
24          intent to kill and the killing. The period of time must  
25          be long enough to allow reflection by the defendant.

1 And the premeditated intent to kill must be formed  
2 before the killing.

3 So, of course, the Court can't say or the law does  
4 not say that ten seconds have to go by or 15 seconds  
5 have to go by or an hour has to go by, just enough time  
6 for you to find that the defendant had a conscious  
7 thought. He stepped back. He reflected. He decided  
8 this is what I want to do and that he went ahead and did  
9 it.

10 So let's talk about what we know about what  
11 happened. We know that Mr. Rich was struck at least  
12 four times. All of those blows were to the head. There  
13 was a blow to the left -- to the left temple around the  
14 ear. There was a blow up here. There was one back  
15 here; and there's one on the heavy top of the skull,  
16 four hits.

17 And I would submit to you after the first strike  
18 when Mr. Spencer hit Mr. Rich on the side of the head --  
19 and I'll explain why that makes sense -- that would have  
20 been the first blow. When Mr. Rich is staggering  
21 around bleeding profusely from the ear that almost had  
22 been torn off, that moment Mr. Spencer had a choice. He  
23 had a choice to stop and walk away. He had a choice to  
24 stop and run away, or he had the choice to continue  
25 doing what he did.

1           And I would submit to you that the evidence is  
2 after he took that first strike, he hit him again and  
3 again and again. And I would submit to you, ladies and  
4 gentlemen, that is premeditation. This is not an act of  
5 passion. It certainly isn't an act of self-defense, and  
6 we'll talk about that in a little bit.

7           One, two, three, four. If it happened that -- even  
8 if it happened that fast, he knew exactly what he wanted  
9 to do. Every time he had to pick up -- by his own  
10 definition to the police officer -- that three-foot  
11 heavy log, every time he raised it over his head and  
12 crushed Mr. Rich's skull, every time that piece of wood  
13 hit his head, he had the opportunity to stop and maybe  
14 Mr. Rich would still be alive. But no, bang again.

15           What makes this even more egregious is the fact  
16 that the evidence is pretty clear that at least the last  
17 blow that was struck against Mr. Rich occurred while he  
18 was on the ground. He wasn't defending anything. When  
19 that last blow came on top of his skull -- and you saw  
20 the pictures. I could throw them back up there, but  
21 you'll have them in evidence.

22           When that last blow hit the top of that man's head,  
23 Mr. Rich was already on the ground. He was already  
24 bleeding profusely. How do we know this? We know this  
25 two ways. We know this from the testimony of Chewey,

1 who came in here yesterday, Mr. Kitchen, who told you  
2 that he didn't hear anything beforehand. He didn't hear  
3 any yelling and screaming. He didn't hear any  
4 arguments.

5 He came out and he saw this man with both hands  
6 raised over his arms(ph.) taking that club and swinging  
7 it down, that there was nobody standing in front of him.  
8 There was nobody standing next to him. He saw this lump  
9 on the ground.

10 And when we talk about credibility, let's think  
11 about this. If Mr. Kitchen really came in here with  
12 some sort of agenda, he would say: Yeah, I knew that  
13 was -- that was Mouthwash. I saw him laying there. But  
14 he didn't tell you that. All he said was he saw this  
15 man in the same exact area where the body was later  
16 discovered and he told you he saw this man swinging that  
17 club down and hearing a thud, which scared him, which  
18 made him leave.

19 We also know that Mr. Rich was on the ground and  
20 defenseless when this fatal blow came to the top of the  
21 skull based upon the medical examiner's testimony. The  
22 medical examiner told you that, based on the location of  
23 the wounds and the blood splatter that was found on the  
24 ground, that it was most indicative of this man being  
25 down.

1           We saw drops of blood. Mr. Schmer was very quick  
2           to point out that there were drops of blood away from  
3           where the body was found. Okay. Now, this cuts both  
4           ways.

5           It cuts to the act that Mr. -- to the series of  
6           events that Mr. Spencer tried to explain to police, of  
7           striking the victim -- I'm sorry, striking Mr. Rich and  
8           he's being around doozy -- woozy with blood dripping.  
9           It made sense medically and scientifically to the  
10          medical examiner because of the blood drips, his ear is  
11          bleeding.

12          Then he falls on the ground and the rest of the  
13          blood that is found is all coagulated in the hair and  
14          the neck. It's nowhere else.

15          The third way we know that this man murdered  
16          Mr. Rich after he was already down was the stuff that we  
17          heard throughout the course of the trial. We kept  
18          hearing the fact that Mr. Spencer is a small guy. I'm a  
19          small guy, five-seven, five-six, whatever he said he  
20          was, five-seven.

21          Okay. We also heard testimony from the medical  
22          examiner and from other witnesses that Mr. Rich was very  
23          tall, maybe six-three, six-four. Now, let's think about  
24          this logically. You have a guy who's six-three,  
25          six-four with a three foot -- let me just call it a log.

1           How is he going to -- how is he going to -- a short guy  
2           like Mr. Spencer, how is he going to get a direct shot  
3           in the very top of this man's head if he's only  
4           five-seven. He's got to reach to six-three. And not  
5           only does he have to hit, he has to come down flush to  
6           create the damage that he did.

7           The only way he could have done that -- only way he  
8           could have done that is if Mr. Rich is already on the  
9           ground and completely defenseless. He's already  
10          bleeding out. Maybe he's drunk. Maybe he's not. But  
11          after he got hit two or three times with this log, he's  
12          done.

13          But he's not done -- Mr. Spencer is not done. One  
14          more time, the very top of the skull, splitting him like  
15          a melon. That's how you know this is premeditation.

16          Mr. Schmer is, in all likelihood, going to get up  
17          here and start talking you to about self-defense and how  
18          you need to consider this.

19          Okay. The Judge is going to give you instructions  
20          on that, and she's going to give you two different types  
21          of instructions. She's going to give you instructions  
22          on the -- they call it the justifiable use of deadly  
23          force and the justifiable use of nondeadly force.

24          I want you to pay attention to all of it, and  
25          you've sworn to listen to the instructions and to follow

1 the law. So, of course, you need to read them.

2 Deadly force means force likely to cause death or  
3 great bodily harm. A person is justified in using  
4 deadly force if he reasonably believes that such force  
5 is necessary to prevent imminent death or great bodily  
6 harm to himself or the imminent commission of some sort  
7 of offense, maybe battery against himself or another.

8 Okay. What do we know from what Mr. Spencer told  
9 the police? What he told the police was that, number  
10 one, he got hit. He couldn't be clear about how many  
11 times. It was a couple. Although, there were no  
12 visible injuries to him a few hours later, he wants you  
13 to believe he got hit by this man and because of that he  
14 had to pick up -- with a fist, with no other weapon.  
15 He's not justified under the law under these  
16 instructions after being hit once or even being hit  
17 twice to pick up a log and just start beating him to  
18 death.

19 In deciding whether the defendant was justified in  
20 the use of deadly force, you must judge him by the  
21 circumstances by which he was surrounded at the time.  
22 The danger facing the defendant need not have been  
23 actual. However, to justify the use of deadly force,  
24 the appearance of danger must have been so real that a  
25 reasonably cautious and prudent person under the same



1           circumstances would have believed that the danger could  
2           be avoided only through the use of that force.

3                   Now, what do we know? What made Mr. Spencer  
4           finally kill Richy Rich. By his own words, what finally  
5           made him kill Mr. Rich are nothing more than words,  
6           nothing more than words. He'd already been hit.

7                   And what did Mr. Spencer tell the police?  
8           Mr. Spencer told the police that the last thing that  
9           Mr. Rich said while he was laying down was: I'm going  
10          to get you, mother fucker. Excuse my language. Words.  
11          And when he heard that, Mr. Spencer said oh, yeah?  
12          Boom, bang, again, done. That is not the justifiable  
13          use of deadly force under any circumstances, under any  
14          definition.

15                   Now, you also have -- you're also going to be read  
16          the instruction as to the justifiable use of nondeadly  
17          force. Nondeadly force means force not likely to cause  
18          death or great bodily harm.

19                   It's going -- the Judge will read to you that Wayne  
20          Spencer would be justified in using nondeadly force  
21          against Richy Rich if the following two facts are  
22          proved: One, that Mr. Spencer -- Wayne Edward Spencer  
23          must have reasonably believed that such conduct was  
24          necessary to defend himself against Richy Rich. The  
25          imminent use of unlawful force against Wayne Spencer or

1 the unlawful use of force by Richy Rich must have  
2 appeared to Wayne Spencer to be ready to take place.  
3 You've heard none of that.

4 The only way this is going to make sense to you  
5 legally is if you want to entertain the theory that  
6 after Mr. Spencer took this three-foot log and beat Mr.  
7 Rich over the head with it twice, he took his stuff. He  
8 took his five dollars, took his card and walked away;  
9 and then somebody else came and finished the job. That  
10 is the only way justifiable use of nondeadly force is  
11 going to work; and I'd submit to you, ladies and  
12 gentlemen, that's simply not supported by any evidence  
13 that you heard.

14 Okay. The idea that somebody else in the dead of  
15 night -- after Mr. Spencer took care of Mr. Rich,  
16 somebody else came along and finished it. It's not  
17 before you. You have no evidence to support that theory  
18 at all.

19 So what you're left with is whether or not Mr. Rich  
20 actually did anything to Mr. Spencer; and the only  
21 evidence you have that Mr. Rich provoked, threatened,  
22 assaulted, hit Mr. Spencer are his own words. So let's  
23 look at those.

24 Okay. The first time he met with the police the  
25 day of the murder, not only was he in a fine mood, he

1           wasn't acting stressed. He wasn't acting threatened.  
2           He didn't look hurt, didn't complain of being hurt. Not  
3           only did he lie to the police about what he knew, he  
4           actually tried to throw the police two other suspects.

5                     Instead of saying: Jesus, it happened so fast.  
6           The man attacked me. I had to do it. No. He flat out  
7           lied. Not only does he -- not only did he have nothing  
8           to do with it; but two other guys probably did, a guy  
9           and another female. And the police, needing a suspect,  
10          wanting to find out who did this, they actually buy into  
11          it a little bit. They investigate the people that he  
12          tells them. They continue their investigation.

13                    When they interview him on April 22<sup>nd</sup>, almost a  
14          month later -- and you just heard the interview this  
15          morning and you'll have it in evidence and you're free  
16          listen to them all over again if you'd like. What's the  
17          first thing he does? He, again, denies having any  
18          knowledge. He denies having anything to do with this  
19          death.

20                    It's only when Detective Newton says: Look, I've  
21          been doing this for a month and talked to the medical  
22          examiner. We know how it happened. We've been talking  
23          to these people. You're the guy. Just tell us what  
24          happened.

25                    And according to Detective Newton, he tries to

1           sweeten the pot a little bit. He knows the man doesn't  
2           want to admit what he did because he's already denied it  
3           to him twice. So he said: Well, he's a big guy.  
4           You're a small guy. Maybe you had to defend yourself.  
5           Maybe he wasn't liked. And he buys into it.

6                        That's when the first time Mr. Spencer decides  
7           yeah, it was self-defense. I had to do it.

8                        And I'd submit to you, ladies and gentlemen, it  
9           wasn't until Detective Newton gave him that hint that he  
10          had already thought of it. So all of a sudden, yep,  
11          self-defense. You're right.

12                      Okay. How did it happen? Well, he attacked me.  
13          He came at me, him and another guy and he punched me a  
14          couple times and so I had to hit him. Okay. Well, that  
15          doesn't make a whole lot of sense.

16                      And Detective Newton goes through it with him; and,  
17          you know, he was consistent with what the testimony you  
18          heard: Mr. Spencer, that doesn't make any sense. What  
19          the injuries are on this man doesn't jive. The physical  
20          evidence doesn't jive with how you say it happened.

21                      So he has to change it a little bit. He has to  
22          change it a little bit: Okay. What did you take from  
23          him, Mr. Spencer? Wayne, what did you take from him?

24                      Nothing.

25                      You didn't take anything from him?

1           Nope.

2           Wayne -- and it's on the disc. You hear Detective  
3           Newton saying: Wayne, what did you take from him? So  
4           he denied that, until, again, he's pressed. Yeah, I  
5           took his stuff. I went through his pockets. I went  
6           through his shopping cart or his bike. I took five  
7           bucks.

8           It wasn't until he was -- until he is put in a  
9           corner, it wasn't until he's confronted with the facts  
10          that the physical evidence doesn't match what he says,  
11          until he's confronted with the facts that there's --  
12          that Ms. Williams had already been interviewed and said:  
13          Look, I saw the guy. I saw him dump the stuff in the  
14          sewer. Up until then he denied, denied, denied and as  
15          soon as he finds out he can't: Okay, I did it. That's  
16          what I did. I took the stuff. I took five dollars off  
17          of him.

18          Not only does he murder this man, he takes the only  
19          five dollars he can find off of him and buys himself  
20          some beer. This is not something else. This is nothing  
21          more than a cold murder.

22          I'm going to allow Mr. Schmer to come up here and  
23          talk to you for a little bit. I trust that you'll give  
24          him your same attention that you've given me. I thank  
25          you very much.

1           Your Honor, I have no further comments at this  
2 time.

3           The Court: Thank you, sir.  
4 Defense.

5           Mr. Schmer: Wayne Spencer is presumed to be  
6 innocent under the law of this serious charge. Her  
7 Honor is going to tell you the jury instructions in this  
8 case and what you're going -- what you intuitively know,  
9 because we talked about it in jury selection, is when  
10 somebody comes in this courtroom and is charged with an  
11 offense, you have to presume him to be innocent. That's  
12 not something that that you wink at: Yeah, right, he's  
13 innocent. You have to presume him to be innocent.

14           One thing Her Honor is going to tell you is at  
15 issue in this case is whether or not Wayne Spencer acted  
16 in self-defense; and if, in fact, you find that he acted  
17 in self-defense, he has to be innocent of this charge.  
18 Her Honor will tell you that if there's a reasonable  
19 doubt in your mind about whether or not Mr. Spencer  
20 properly used self-defense, you have to find him not  
21 guilty.

22           And by the way, the defense is not conceding,  
23 unlike Mr. George's closing argument, that Mr. Spencer  
24 killed the decedent, because for you to make that  
25 finding, you essentially have to have a leap of faith;

1 and you have to assume, without relying on any concrete  
2 evidence, that Wayne Spencer killed the decedent. And I  
3 say that because the State has no eyewitnesses to this  
4 killing.

5 They have a guy named Joshua Kitchens who says that  
6 while I may have seen part of what happened, and they  
7 have Wayne Spencers' own statement. Wayne Spencer  
8 adamantly denied killing Richy Rich.

9 The police planted the idea in his mind towards the  
10 end of the interrogation several times and I know that  
11 tape is hard to listen to but it's in evidence and you  
12 can listen to it again. I suspect you may want to.  
13 They planted the idea in Wayne Spencer's mind that you  
14 killed this guy and Mr. Spencer consistently said: I  
15 did not. I did not.

16 The second detective, a guy named Monford who did  
17 not testify, said during the course of the questioning:  
18 When you went back afterwards and then you finished him  
19 off a second time. Count the number of times  
20 Mr. Spencer either said I don't remember doing that. I  
21 don't recall.

22 He constantly denied anything other than two blows  
23 to Richy Rich. That's all Mr. Spencer admitted to, not  
24 four fatal blows. Mr. Spencer said: I hit this guy  
25 twice. Mr. Spencer said, when he was questioned on that

1 tape that you heard: I hit this guy in the shoulder and  
2 in the head. I didn't smash him three, four times.  
3 Didn't do a number on this guy. I hit him twice in the  
4 shoulder and in the head. And what Wayne Spencer told  
5 the police was I acted in self-defense against a drunk  
6 bully.

7 Now, Mr. George says to us: Well, what evidence is  
8 there that Wayne Spencer was threatened by this guy?  
9 You know, there's collateral evidence in this case also.  
10 The detective said: Well, I lied to the defendant when  
11 I talked to him on interrogation. Well, he lied about  
12 supposedly there being other witnesses who gave sworn  
13 testimony they'd seen what happened. That's the lie.  
14 He sure as hell wasn't lying about Richy Rich as a  
15 person.

16 The detective said -- and it's also backed up by  
17 what Mr. Spencer said and what Joshua Kitchen said:  
18 This guy, Richy Rich, was not a nice guy. The detective  
19 said I talked to numerous people. A lot of them got run  
20 out of the area by this guy. This guy, Richy Rich, was  
21 a bully, and he used to intimidate people. That's part  
22 of this guy's character. He was an asshole is what the  
23 detective said, an asshole. He used to bully and  
24 intimidate people.

25 One of the people he tried to bully was a guy who



1 was nine inches shorter than he was. Wayne Spencer did  
2 not have any animus, didn't have any reason to hate this  
3 guy but, naturally, he was afraid because this guy,  
4 Richy Rich, had threatened Mr. Spencer to the point  
5 where he said: I'm going to you kill you, and I'm going  
6 to bury you in the swamp.

7 And that is something that you should consider in  
8 this case, because one of the self-defense jury  
9 instruction elements you're going to be read by Her  
10 Honor is, if you find that the defendant had prior  
11 difficulties in his encounters with the decedent, you  
12 can take that into account. Moreover, Her Honor is  
13 going to tell you that if you find that the defendant  
14 had the reputation for being a violent person, that's  
15 something you can also consider.

16 What I'm asking you to do is apply the law in this  
17 case, nothing short of that. When you look at the  
18 context of these threats by a bully, that is what's  
19 facing Mr. Spencer when he acted. He wasn't going out  
20 to try to hurt this guy. He wasn't looking for him.

21 What Mr. Spencer said was he came across this guy.  
22 They had some words. This guy gets up, lunges at him  
23 and he attacks Wayne Spencer and there's nothing,  
24 nothing to rebut that. There were no eyewitnesses that  
25 were going to come in here and say that didn't happen.

1           The only evidence you have are Mr. Spencer's own  
2 words. He said this guy tried to attack me. He punched  
3 me two times and only, only at that point did I pick up  
4 a branch to defend myself. What Mr. Spencer said was:  
5 I struck this guy twice. I'm not trying to kill this  
6 guy. I said to him: Get away from me. Stop  
7 threatening me. Get away from me. And he admitted to  
8 striking this guy twice, but those blows were not fatal  
9 blows.

10           The medical autopsy examiner, Dr. Hansen, said that  
11 of the skull fractures, they must be done with ferocious  
12 force. This wasn't just a little bruising. This  
13 decedent had numerous skull fractures to the point where  
14 he had subdural hemorrhaging, bleeding on the brain. He  
15 had internal injuries. Three of those wounds is what  
16 the doctor said would have been immediately  
17 incapacitating, to the point where this guy would not  
18 have been able to move around after he'd been struck.

19           And you know Mr. Spencer said that I hit this guy  
20 on the shoulder somewhere and he did move around a  
21 little bit. So obviously that wasn't the fatal blow.

22           It's a leap of imagination to somehow assume that  
23 with no eyewitnesses and no words of Mr. Spencer himself  
24 that Mr. Spencer did these fatal blows that ultimately  
25 killed the decedent. We're not conceding that the death

1 of the decedent was caused by Mr. Spencer.

2 After all, the decedent, when you look at the crime  
3 scene photos, you'll see was lying on his -- on a  
4 sleeping mat and he had a sleeping bag over him. The  
5 State's theory is correct that Mr. Spencer would have  
6 had to smack this guy on the ear causing him to bleed,  
7 having Mr. Rich walk around a little bit, then Mr. Rich  
8 decide to go back to the mat, lie down, put the sleeping  
9 bag over him and only at that point Mr. Spencer finishes  
10 him off. I mean, that's essentially what you have to  
11 believe happened in this case.

12 The evidence, I would submit to you, is equally  
13 susceptible, if not more, to the idea that somebody else  
14 came along and did a number on this guy after Wayne  
15 Spencer had left. Again, we've heard the testimony from  
16 Detective Newton, from Wayne Spencer, from Joshua  
17 Kitchen that this decedent was not somebody who was  
18 well-liked in the community, this bully who intimidated  
19 people, made enemies.

20 As a matter of fact, one of the persons he made  
21 enemies with was a person named Stephanie Saxton(ph.),  
22 AKA Gemini. And you heard the testimony from Detective  
23 Newton that something -- some altercation or something  
24 took place between Gemini and this Richy Rich guy in the  
25 hours before he got killed, and it was serious enough

1 for the police to be called to the scene by Gemini.  
2 That's a relevant factor when you considered that others  
3 had a motive to get this guy, unlike Wayne Spencer,  
4 because you didn't hear any testimony that Mr. Spencer  
5 had it in for the decedent.

6 So, again, it is a stretch of imagination to  
7 somehow assume without any evidence that Mr. Spencer  
8 did the actual killing. Certainly, he admitted to  
9 striking this guy in self-defense.

10 Again, I want you to please keep in mind the  
11 physical capacities of these two people. Common sense  
12 is going to tell you and the law tells you explicitly on  
13 the issue of self-defense you're allowed to consider the  
14 relative capacities or capabilities of both the person  
15 who used force and the person who had the force put on  
16 them. So, in other words, a smaller person facing a  
17 muscular, powerful guy is going to be given more leeway  
18 in fending off that strong person's force, as opposed to  
19 the opposite situation where a muscular, huge guy is  
20 being attacked by a midget.

21 The physical capabilities of these two people is at  
22 issue in this case. And, again, you're allowed under  
23 the law to consider that, to give the smaller guy more  
24 leeway in using force than a bigger guy. And the  
25 evidence of Mr. Spencer -- you've seen him in court --

1 is that he's five-feet-seven. The decedent in this case  
2 towered over him by nine inches. He's six-feet-four.  
3 So the relative size is a consideration.

4 And, again, there's the obvious. The decedent had  
5 a blood-alcohol level of .25 is what the medical  
6 examiner said. Didn't have one or two beers. This  
7 decedent was, at the time of his death, so impaired, to  
8 the point where he had three times the legal limit of  
9 alcohol in his system.

10 So I'll submit to you that this is a case of a  
11 drunk bully who went after a smaller defenseless guy.  
12 Nobody is happy that Richy Rich died but the bottom line  
13 he died because he unfortunately put himself in the  
14 situation where he was attacked by somebody else and  
15 Mr. Spencer had that right to use self-defense to ward  
16 off an attack on him.

17 The State hasn't mentioned these witnesses yet.  
18 They mentioned Joshua Kitchen in passing a little bit.  
19 But when you look at somebody's credibility, the Court  
20 is going to give you various factors you can choose  
21 yourself to apply. And what the Court is going to tell  
22 you, for instance, if someone had an interest in how the  
23 case is determined, a financial interest, for instance.  
24 Did the person give statements that are inconsistent?  
25 Did the person seem to be honest and straightforward?

1 Has the person been convicted a crime?

2 When you apply those factors in -- person applies  
3 it to Kenya Williams, she comes up here and she admits  
4 under cross-examination and you can assume she had a  
5 financial motive because, after all, she applied -- or  
6 called Crimeline in an attempt to get reward money.

7 I'll submit to you when she talks to the police on  
8 April 24, almost a month after the killing of Richy Rich  
9 and she's quoting a discussion that she had with Wayne  
10 Spencer the day after the killing, either she's hamming  
11 it up for the reward money or she's flat out wrong,  
12 because she said to the police, quoting Wayne Spencer,  
13 he said that well -- she asked him: Why do you have all  
14 the cuts and scratches on you? And he said well, I  
15 fought with somebody, had to beat this guy up. Then she  
16 claimed that Mr. Spencer told her -- told him (sic)  
17 that: I had to kill the mother fucker.

18 I mean, if you believe her version -- and I'm not  
19 conceding to you that her version is believable. If you  
20 believe her word saying: I had to kill the mother  
21 fucker, that suggests you had to do self-defense because  
22 there's no out. But I'll submit to you her story is not  
23 credible because of the context of what she's saying.

24 She says that -- imagine this. A guy she's seen  
25 around the streets around before but never really talked

1 to him. She claimed on direct testimony that I talked  
2 to him before a couple times but then when I  
3 cross-examined her in statements she gave, she admitted,  
4 yeah, that was the first conversation I ever had with  
5 this guy, this guy being at the Greyhound station about  
6 this killing.

7 Some guy walks up to her, who she's never talked to  
8 before, he sits down and says: Hey, do you want to have  
9 a little drink with me. Here's some Vodka. Oh, by the  
10 way, I just killed some guy.

11 After hearing that, she never asked him: Who did  
12 you kill? Why did you kill him? How did the fight  
13 start? Why were you fighting. She asked none of that.  
14 Some guy says I just killed somebody, and she lets it  
15 go?

16 You know, you don't leave your common sense on the  
17 courthouse steps when you come in here. I would ask you  
18 to use your common sense. Determine to yourself, is  
19 Kenya Williams either telling the truth or not? And  
20 I'll submit to you the evidence speaks for itself.

21 She also admitted on cross-examination that she is  
22 a two-time convicted felon and Her Honor will tell you  
23 that in judging the credibility of a witness, you can  
24 determine whether somebody has been convicted of a  
25 crime.

1           Now, Joshua Kitchen he is in the same situation.  
2           You know, it's for you to decide whether he's telling  
3           the truth or if he's simply mistaken or making  
4           assumptions. Joshua Kitchens admittedly has two felony  
5           convictions.

6           Look at his testimony. He says that Turnpike says  
7           that a guy named Mouthwash was gonna jump me, which he  
8           takes to mean to attack suddenly out of the blue and  
9           this guy never even asks Turnpike, as he calls him, why  
10          is he wanting to jump you, nothing. And he says that  
11          Turnpike says I'm going to take care of it.

12          What does that mean? Are you going to call the  
13          cops? You gonna get help with this guy or take care of  
14          business yourself? He doesn't ask him any of that  
15          stuff. He just goes into his tent and he gets his stuff  
16          and says that he leaves in a few minutes to go to the  
17          Howard Vernon Motel with his girlfriend.

18          As he's leaving, he's 20 yards away in a dark area  
19          full of trees and brush and he says that he sees  
20          Turnpike raising a branch and striking it down, not a  
21          log, a branch as he puts it, one time. Not three, four  
22          or five times, one time.

23          He doesn't think to ask: What the hell are you  
24          doing, Turnpike? He doesn't even ask, just keeps right  
25          on walking. First, he claims, well, I knew what was



1           happening, a murder was gonna take place. And then  
2           later on he admitted, no, I don't know. I didn't think  
3           anything of it.

4           He sees a guy take a branch one time. First, he  
5           says the guy he hit was Mouthwash and then when I  
6           cross-examined him, he admitted, well, I made the  
7           assumption it was Mouthwash because I had seen Mouthwash  
8           in that same general location.

9           But, yet, if the State's theory is correct that  
10          Mr. Spencer is using such ferocious force he's causing  
11          skull fractures, you have this guy not saying a word  
12          even the first time he gets hit with the branch when Mr.  
13          Kitchens is near his presence. Mr. Kitchen said I  
14          didn't hear anything from Turnpike, Mouthwash, nothing.  
15          When I walked right by to go out to the parking lot, I  
16          looked over. I didn't see a body.

17          So I'll submit to you that Mr. Kitchens did not see  
18          the killing of the -- of the -- of the decedent in this  
19          case. He may have thought he did. For all we know, he  
20          could have been drunk at the time. He did admit to you  
21          that anywhere from five to ten beers during that time  
22          span right before this. He didn't know what time span,  
23          an hour, four hours. I don't remember. I just don't  
24          know.

25          Again, I'll submit to you that he's not lying and

1 he certainly had the motive to deflect attention from  
2 him because he himself didn't like Mouthwash. He  
3 candidly admitted to that. He's not lying. At the very  
4 least, he's mistaken on what he saw.

5 For you to convict Mr. Spencer of this charge, you  
6 have to make certain assumptions. I'll submit to you  
7 it's not fair to make assumptions based on speculation.  
8 This is too serious of a case for everybody here for you  
9 to make assumptions. You have to rely on cold  
10 testimony, and what's been offered in testimony.

11 Mr. George made several comments I wanted to  
12 address with you. I only have one chance to talk with  
13 you. He indicated that the only evidence you have that  
14 Richy Rich assaulted the defendant was through his own  
15 words and, yet, I want to remind you what Newton and  
16 Kitchen said about the type of person that this bully --  
17 intimidating bully is.

18 He indicated that the only thing that made the  
19 defendant kill the decedent in this case were words, you  
20 know, words to the effect of: I'm going to get you,  
21 mother fucker. But, remember, Mr. Spencer with the  
22 evidence that's been presented was not shown to go out  
23 looking for this guy to hunt him down. Mr. Spencer  
24 indicated, unrebutted, that he picked up the branch in  
25 self-defense only after, after this guy attacked him.

1           Mr. Spencer indicated that Wayne Spencer -- I'm  
2           sorry, Mr. George indicated that Wayne Spencer tried to  
3           throw the police off the trail and he flat out lied in  
4           his first statement. I'll submit to you when you hear  
5           that statement, you come to the conclusion he didn't  
6           lie. He just didn't tell the police what happened  
7           because he wasn't asked: Did you kill this guy or were  
8           you somehow involved?

9           Wayne Spencer told the police -- and, by the way,  
10          he didn't mention anything about being attacked and you  
11          heard a little bit about the culture of the homeless.  
12          Mr. George asked, you know, Kitchens -- Mr. Kitchens  
13          about, well, why didn't you go to the police, you know,  
14          come forward, as opposed to the police, you know, coming  
15          up to you to ask you? And Mr. Kitchen said, well, you  
16          know me and the homeless community tend to avoid the  
17          police. Nothing ever comes good out of it, as he puts  
18          it.

19          If you're going to accept that as a premise, you  
20          can't fault Mr. Spencer for not actively seeking out a  
21          police officer to tell him what happened. You heard  
22          Mr. Spencer tell you I was scared when I talked to the  
23          police. I thought even if I tell them that I did this  
24          charge, they're going to arrest me. I was scared is  
25          what he said.

1           On that second statement, he didn't lie, as  
2 Mr. George said, because Mr. Spencer -- he very well  
3 could have said: I was walking down the trail and lo  
4 and behold I look over and there I see Gemini killing  
5 Richy Rich and her friends are also helping her. He  
6 didn't say that.

7           What he said in his statement was that he heard of  
8 difficulties or problems or animosities that Gemini had  
9 and her friend had with Richy Rich. But he never once  
10 said you know look at these guys, they're the ones who  
11 killed him.

12           You know from Detective Newton's testimony that, in  
13 fact, Gemini and her male friend had problems with Richy  
14 Rich to the point where they called the police on him  
15 about some altercation or some incident in the hours  
16 before Richy Rich was killed.

17           Again, Mr. George got up here and talked about  
18 equal justice under the law. Now, certainly just  
19 because this guy is a homeless person does not mean this  
20 guy being Richy Rich -- does not mean that the police  
21 should have just mailed it in, basically. You know,  
22 they should have investigated this case just as  
23 intensively as if this were a guy in Isleworth or  
24 Windermere, a millionaire who was killed in this case.

25           I'll submit to you that their performance, if you

1 call it that, was about as lacking as you can get. You  
2 know, you have the detective tell us that, well, I'm the  
3 general, so to speak. I call the shots. I'm a lead  
4 detective. I tell people what needs to be done. Okay.  
5 That's fair enough.

6 What about the phone, you know, that was found off  
7 the decedent. You know, weren't you curious about that?  
8 What phone? Phone? I had to remind him. Look at the  
9 property receipt. You're the general. You're supposed  
10 to know what's in evidence, what's being processed and  
11 why it's being processed and he didn't even know there  
12 was a phone found next to the decedent.

13 I asked him about, well, did you do anything about  
14 the blood stained shirt and the pants that were found at  
15 the scene? What blood stained shirt and pants? You  
16 have to show him the picture. He doesn't do any of that  
17 stuff.

18 What about the phone in the sewer, did you check  
19 that out? I don't know. What are you talking about?

20 Well, how about the blood swabs? You remember  
21 those cones? You know, there were blood swabs all over  
22 the place? You know, did you, in fact, have them  
23 collected? Well, yeah, I had them blood swab for DNA.  
24 So I had the blood swab collected. Did you submit them  
25 to the FDLE. No, I didn't feel it was necessary.

1           You know, four days after the killing or after the  
2 body of Richy Rich was found, the police got buccal  
3 swabs from three of Gemini's friends, that they scraped  
4 their mouths to get DNA. That was on March 28.

5           The detective has no suspects because there are no  
6 eyewitnesses to the killing of Richy Rich. He admits  
7 candidly, after dancing around for half an hour it  
8 seemed, he finally admits that, yeah, I -- in the past,  
9 I've submitted samples to the FDLE when I don't know who  
10 the suspect is to do an analysis of who's DNA was on  
11 there.

12           And I'm asking him half sarcastically weren't you  
13 at all curious about whose blood was on -- was in that  
14 area. I mean, what if it was a mutual fight between the  
15 decedent and somebody else? Wouldn't you have wanted to  
16 test that blood to see whose blood was on there? If  
17 that was Timothy Schultz's blood, don't you think that's  
18 an interesting fact? Isn't that something you'd want to  
19 know? His flippant response -- and I'll submit to you  
20 it was flippant -- was, I didn't think I needed to do  
21 this stuff.

22           It's a murder investigation. And I know Richy  
23 Rich, some might say, is the dregs of society; but the  
24 bottom line is you got to treat all homicide cases the  
25 same because it impacts defendants also. Because if you

1 had the blood evidence at that scene -- if it was Wayne  
2 Spencer's blood evidence at the scene, this would be a  
3 lot more of a slam-dunk case for the State than  
4 Mr. George assert it is.

5 I mean, you can't just mail it in in this case; and  
6 that's exactly what the police did. They don't have a  
7 suspect and some guy comes forward and they start  
8 feeding him inferences. I don't know if it happened. I  
9 don't think so, but I don't know. And then they somehow  
10 take his answers and put words in his mouth and make him  
11 out to be a killer. I'll submit to you Wayne Spencer in  
12 our system deserves better than that kind of sloppy  
13 police work.

14 Again, when you hear the evidence, the Judge will  
15 tell you it's up to the State to prove Mr. Spencer's  
16 guilt beyond and to the exclusion of every reasonable  
17 doubt. If they don't do that, you're obligated under  
18 your sworn duty as a jury or juror to render a verdict  
19 of not guilty.

20 And what Her Honor is going to tell you is that  
21 reasonable doubt can come from the lack of evidence,  
22 conflict in the evidence or from the evidence itself.

23 I'll submit to you there's just not enough evidence  
24 to suggest Mr. Spencer is the killer in this case. He  
25 acted in self-defense when this guy attacked him. But

1 it does not mean that he later on, if he didn't do the  
2 four blows initially, he came back and finished him.  
3 It's complete speculation for you -- to suggest that he  
4 is the guy who later on came back and did the fatal  
5 blows.

6 Her Honor is going to tell you as to what  
7 reasonable doubt is and it's not for her or for the  
8 attorney to tell you what it is. It's something -- it's  
9 something that the law will, however, tell you.

10 Her Honor is going to tell you in order to get a  
11 conviction in this case each and every one of you has to  
12 have an abiding conviction of guilt. That's an  
13 important term, an abiding conviction of guilt. Abiding  
14 is something that you tightly hold onto like a moral or  
15 a religious belief. If there's an abiding conviction of  
16 guilt, you cannot under the law convict Mr. Spencer of  
17 this serious charge.

18 I'll submit to you that the evidence in this case  
19 is scant at best and evidence shows Mr. Spencer is not  
20 guilty of first degree murder.

21 I want to thank you for your attention in these  
22 last three days of doing your civic duty, for honoring  
23 your subpoena and for your willingness to serve as a  
24 juror in this case. Thank you.

25 **The Court:** Thank you, sir.



1 State.

2 Mr. George: You don't keep going back and forth.  
3 This is the last time you'll hear from me. And the  
4 purpose of my talking with you right now is I have the  
5 opportunity to -- what's called rebuttal, to rebut some  
6 of the things that Mr. Schmer has said to you and then I  
7 sit down. As I said before, this should be rather fresh  
8 in your head and I don't want to belabor some points.

9 Start off by telling you about the presumption and  
10 that you have to presume Mr. Spencer to be innocent.  
11 That is true. Evidence is at a close now. As soon as  
12 you go back into that room -- and the Judge is going to  
13 tell you pick yourself a foreperson. Once you go back  
14 into that room, that presumption is gone. You start --  
15 you start going through the instructions and you start  
16 talking about it is when Mr. -- when Mr. Spencer can  
17 lose that presumption.

18 I guess I was a little presumptive. Mr. Schmer  
19 told you that the defense is not conceding that his  
20 client killed Mr. Rich, that there are no -- there are  
21 no eyewitnesses. Well, that's not the standard. If  
22 that was the standard, anybody could kill anybody they  
23 wanted to, so long as nobody else saw it and oh, no case  
24 and we know that's not true. He did not -- he did not  
25 deny killing Mr. Rich.

1           Think about the interview. He didn't say I didn't  
2           kill him. He said I didn't know I killed him. I didn't  
3           know he was dead. What he told the police was I didn't  
4           know he was dead until the next day.

5           We know that's not true because he saw Ms. Williams  
6           that night. He saw Ms. Williams right after he murdered  
7           Mr. Rich. I just killed the mother fucker -- and I'm  
8           sorry to use the language. That's what he said: I just  
9           killed the mother fucker. He shared some Vodka.

10          Again, he didn't say anything about getting into a  
11          fight, didn't say anything about getting hit in the  
12          head, didn't say anything about getting hit in the  
13          shoulder. He shared some Vodka and dumped the stuff;  
14          and the last remnants of Richey Rich are erased from the  
15          earth, as far as he's concerned.

16          Note that during the course of the interview when  
17          Mr. Spencer said, I don't know, I don't remember --  
18          Mr. Schmer told you that he kept saying, I don't know, I  
19          don't remember, trying to insinuate that the police were  
20          basically force-feeding a confession from him. Notice  
21          when that happens. Mr. Spencer only comes up with this  
22          I don't know and I don't remember when he doesn't want  
23          to get to the ultimate fact. When he doesn't want to  
24          get to the ultimate fact of splitting this man's skull  
25          in two, all of a sudden it's I don't know.

1           What does he say? Maybe I did. During the course  
2 of the interview: Maybe I did. I just don't remember.  
3 He didn't say to the police: I hit that man. I hit  
4 that man two times. That's all I did.

5           Is it possible you hit him a third time? If he  
6 said something to me, yeah. If he said something to me,  
7 I probably would have done it again. That's what he  
8 told him.

9           He was asked whether or not he -- "he" being  
10 Mr. Rich -- deserved to die out there. No, no, died  
11 really, no; but he needed an attitude adjustment, let's  
12 put it that way. He gave him one.

13           Richy Rich was not a nice guy. It's not a license  
14 to kill. There are a lot of not nice people out there.  
15 Doesn't mean it's open season. Those old movies with  
16 the cliché that, why did you kill him? Some people just  
17 needed killing. That's not this case. It's not the  
18 law.

19           You can be the meanest, orneriest, worst person in  
20 the world. You don't have the right to take their life,  
21 unless your life is threatened; and there's no evidence  
22 before you, no competent evidence before you that this  
23 man's life -- where he had a reasonable belief that his  
24 life was in danger, none.

25           How does a five-foot-seven guy beat a

1 six-foot-three man with such ferocious force? That's  
2 one of the items or one of the points Mr. Schmer brought  
3 up. Well, it's not hard to do if your six-foot-three  
4 target is a stationary force, if it's a stationary  
5 object and it's just sitting there, it's just sitting  
6 there bleeding out of his ear. It's really easy to take  
7 that club and do it.

8 I'm a small guy. One of the things you're taught  
9 is that if you're going to get into a fight, you got to  
10 make it fair. One of the ways to make it fair is you  
11 got to bring that guy down to your level. That's what  
12 he did. He incapacitated him, and then he murdered him.

13 Dr. Hansen told you that the blow to the left side  
14 of the head where you saw the cut up ear probably in all  
15 likelihood may have not been a fatal blow. Provided  
16 Mr. Rich got some medical attention, it might not have  
17 killed him. It was the later blows that did.

18 So what do we know from the facts? You have the  
19 pictures. Mr. Schmer insinuated that the State doesn't  
20 really have a theory and the theory doesn't make sense.

21 This is what the evidence shows. Then I'll sit  
22 down. From the pictures that you have from the medical  
23 evidence that you have, Mr. Spencer struck Mr. Rich a  
24 couple of times in the head on the left side of the  
25 skull. Mr. Rich staggered around, which is evident from

1 the blood; and he laid down.

2 He left. He said he went to camp. He went to camp  
3 for 15, 20 minutes, maybe 30 minutes and he came back  
4 out. Mr. Rich is still alive. I'm going to get you,  
5 MF. He takes the stick -- takes the club, beats him to  
6 death one more time, bang.

7 He takes his stuff, takes his five dollars, the  
8 only five dollars the man had in the world, a card with  
9 his name on it, some other items and walked away. Not  
10 ten minutes later he's bragging about it: I just killed  
11 a MF. He has a couple drinks with a woman. What does  
12 he care? He's drunk, drinking. He did exactly what he  
13 wanted to do.

14 That theory is exactly what the evidence points to.  
15 I'm not asking you to guess. I'm not asking you to  
16 assume. I'm not asking you to stretch your imagination.  
17 I'm asking you to follow the evidence.

18 There's no evidence that the defendant killed  
19 anyone. Small problem with that. Mr. Spencer told  
20 Kenya Williams: I just killed somebody. He knew  
21 exactly what he did.

22 And the idea that Ms. Williams is out for reward  
23 that she never got, the idea that she's out for some  
24 sort of fame and fortune, I'm going to break this case  
25 wide open is ludicrous. If that was the case, she would

1 have come to the police the day after the killing.  
2 Nobody has an ulterior motive here for any gain, for any  
3 benefit, other than him.

4 That -- Mr. Schmer told you again a couple times  
5 that Mr. Rich was a drunk bully. Think about this.  
6 That blood-alcohol level, what type of threat would he  
7 really have been? I mean, we're not talking buzzed.  
8 We're not talking about having a six-pack. We're  
9 talking about a guy who was as close to a limit as you  
10 could possibly get and still be awake.

11 We've really got to think about this logically.  
12 What threat could this man really have been to  
13 Mr. Spencer? When you're this type of drunk, a slight  
14 push is going to throw him in three different  
15 directions. He's not going to be able to keep his  
16 balance. He's of no threat to Mr. Spencer.

17 Can't trust Kenya Williams. Is she wrong?  
18 Mr. Schmer needs her to be wrong. Mr. Schmer and  
19 Mr. Spencer need her to be not credible for you.

20 She was right about meeting the defendant because  
21 at least the defendant confirms that. She was right  
22 about drinking with him. The defendant confirmed that.  
23 She was right about seeing him dump these items into the  
24 sewer, number one, because the police found it there  
25 and, number two, because he said so.

1           Why wouldn't she be right? Why wouldn't she be  
2 right about what he actually said to her? And she  
3 was -- Mr. Schmer tried a couple times but Ms. Williams  
4 was adamant saying, I just killed -- I just killed the  
5 mother fucker, not I had to. I just killed. Why would  
6 she be wrong about that if she's right about everything  
7 else? And I'd submit to you she's simply not. She is  
8 correct.

9           She doesn't ask any questions: Why? Who? Where?  
10 Kitchen doesn't ask any questions: Who? What? Where?  
11 That's true. But, again, let's think about the culture  
12 of this community. We talked a little bit about it with  
13 Mr. Kitchen when he was on the stand.

14           This is a community where -- and even Mr. Spencer  
15 said in this interview with the police that you have to  
16 watch your back. You stay within yourself. You're  
17 always on guard. You're always worried.

18           Mr. Kitchen himself said he had no problem with the  
19 police but he certainly didn't want to talk to them.  
20 These are folks that if you get together and get  
21 together for a short period of time, at least for these  
22 particular people, have a couple drinks and move on.  
23 You're not going to share your life stories. You're not  
24 going to place them under oath and ask 400 questions  
25 like a reporter might or like a law enforcement officer

1           might: Why did you do that?

2           Does it make sense that somebody should have asked  
3           him that? Yeah. But, again, you have to judge these  
4           people by who they are and the circumstances in which  
5           they live, not by what I would have asked if somebody  
6           had said that to me or what Mr. Schmer might have asked  
7           somebody who had just said that to him. You have to  
8           take these people for who they are and from where they  
9           come from.

10          And, finally, Mr. Schmer talked about how his  
11          client didn't lie, he just didn't tell the truth. And  
12          I'll leave that for what it was. You can make of that  
13          what you will. You have one person who's dead and you  
14          have a man who confesses to the killing and, yet,  
15          Mr. Schmer wants you to believe that OPD completely  
16          dropped the ball. We didn't send out the cigarette  
17          butts. We didn't send everybody's blood to FDLE. We  
18          didn't -- I mean, this isn't a game show and this isn't  
19          a talk show. This is not a crime show. It's not CSI.

20          You have a vic -- you have a murder victim. You  
21          have somebody who has been killed. You have a suspect  
22          who has told you he did it, who has told you he was with  
23          him and struck the blows.

24          Why in the world are you going to send that Joshua  
25          Kitchen's buccal swab to FDLE? I would ask you just to



1 dismiss that, because a lot of that becomes, what if,  
2 could. Mr. Schmer said it numerous times during the  
3 course of his closing argument: What if? Maybe. It  
4 could have been.

5 And the Judge is going to recite to you reasonable  
6 doubt. What she's going to tell you -- we kind of  
7 talked about it. It's more about what it's not. It's  
8 not a speculative doubt. You're not assuming anything.

9 No case really can be proven beyond any doubt. In  
10 order for that to happen, you would have to have some  
11 sort of time machine to take you to the actual crime  
12 where you could witness it yourself. The standard is  
13 beyond all reasonable doubt, not beyond all doubt; and,  
14 again, you have to have an abiding conviction in that  
15 belief.

16 When you go back there and you decide -- if you  
17 decide that the State has proven its elements beyond and  
18 to the exclusion of every reasonable doubt, that  
19 conviction has to be strong. As Mr. Schmer said, it has  
20 to be an abiding conviction. I would submit to you the  
21 State has proven that case -- or proven this case beyond  
22 and to the exclusion of every reasonable doubt.

23 There's only one count for you to consider. I'm  
24 going to ask that -- I am asking that you find the  
25 defendant guilty of first degree premeditated murder.

1           The Judge will tell you that you have the option,  
2           if you find -- even though we talked about  
3           premeditation, you know, you guys are free to do what  
4           you will when you go back in the back. You can say,  
5           yeah, you know, Mr. Spencer is responsible for the  
6           killing; but I'm just not getting this or not accepting  
7           this premeditation. You have an option.

8           One of the options that you'll have is to consider  
9           what's called second degree murder and second degree  
10          murder is, in essence, the same as first degree murder,  
11          except you don't have the premeditation element.  
12          Basically, Mr. -- you would be finding that Mr. Spencer  
13          really didn't care what he did or what happened to Mr.  
14          Rich, the course of conduct that just shows a wanton  
15          disregard for human life, basically.

16          The third option you may have -- I'm sorry, not may  
17          have, that you will have --

18                 Mr. Schmer: I'll object.

19                 The Court: Please approach.

20                 (Whereupon, counsel approached the bench and the  
21          following transpired outside the hearing of the jury:)

22                 Mr. Schmer: I was just going to say that Mr.  
23          George is describing manslaughter, not second degree  
24          murder. Mr. George said he would go back and correct  
25          it.

1           **The Court:** Thank you.

2           (Whereupon, the bench conference concluded and the  
3 following transpired in open court:)

4           **Mr. George:** Second degree murder, Richy Rich is  
5 dead. The death was caused by the criminal act of Wayne  
6 Spencer. This was an unlawful killing of Richy Rich by  
7 an act imminently dangerous to another and demonstrating  
8 a depraved ask mind without regard to human life.

9           And the third option that you have or you will have  
10 is manslaughter, that Richy Rich is dead and Wayne  
11 Spencer intentionally committed an act or act that  
12 caused the death of Richy Rich.

13           The judge will also tell you that you should  
14 find -- if you find that the elements have been proven,  
15 you should find Mr. Spencer guilty of the highest degree  
16 crime charged, the highest crime charged. First degree  
17 murder here has been proven.

18           Ladies and gentlemen, thank you for your time and  
19 attention. On behalf of the State of Florida, we thank  
20 you for your work that you've done over the last few  
21 days.

22           And Your Honor I have no further comment to the  
23 jury. Thank you.

24           **The Court:** Thank you, sir.

25           All right. Ladies and gentlemen of the jury, we're

1 going to take a brief moment for us to attend to some  
2 court business. We'll invite you back in, and we'll  
3 read the jury instructions to you at that time.

4 (Whereupon, the jury exited the courtroom at 2:39 p.m.,  
5 after which the following transpired:)

6 The Court: Mr. Schmer, if you'll please approach.  
7 I do give the jury a copy of their own of the  
8 instructions. So I'd like you to review it. I'm  
9 printing up a copy for you too now, Mr. George.

10 Mr. George: Thanks, Judge.

11 The Court: My printer is just slow.

12 Mr. George: Your Honor, may I take this  
13 opportunity to excuse myself for a moment?

14 The Court: You may.

15 Ms. Abdelbary, as soon as these get approved, Joyce  
16 is going to start making copies for us. Are those the  
17 instructions you all wanted, Ms. Abdelbary? Sorry, just  
18 trying to get our jury going.

19 Ms. Abdelbary: This is it.

20 The Court: That's not the copy you e-mailed me.  
21 That's the copy I've cut and pasted. That's why I want  
22 you to check it, just because I like the font size  
23 bigger.

24 Mr. George: The what?

25 The Court: The font size bigger. I want you to

1 check it and make sure it's ready. Here's Page 14.

2 Ms. Abdelbary has the rest of this.

3 Mr. George: All right. Mr. Schmer has this?

4 The Court: Yes, he does.

5 Mr. George: Okay.

6 The Court: Do you have corrections?

7 Mr. Schmer: Yes, we need to wait until Mr. Spencer  
8 comes back, though.

9 The Court: Okay. All right. Mr. Schmer, why  
10 don't we start with you.

11 Mr. Schmer: Okay.

12 The Court: Tell me the page and number of the  
13 instruction.

14 Mr. Schmer: Trying to get them in order. On the  
15 justifiable use of deadly force, 3.6(f), Page 3, I'm  
16 objecting to the forceful felony instruction, which  
17 starts off with: However, the use of deadly force is  
18 not justifiable if you find -- then you have number one  
19 and number two with 2A and 2B. That's commonly known as  
20 a forcible felony instruction, and the reason it's  
21 inappropriate in this case is because Mr. Spencer is not  
22 charged with an independent felony apart from the  
23 murder.

24 The Court: Okay. State. Any response?

25 Mr. George: Standard jury instructions, Your

1 Honor. There are two ways that the jury can find that  
2 the use of deadly force was not justified.

3 Mr. Schmer: This instruction should only be given  
4 when the defendant is charged with -- actually, I  
5 brought some case law with me on this issue.

6 The Court: I concur with you, Mr. Schmer. We will  
7 strike starting with the word "however" until the end of  
8 B.

9 Mr. Schmer: Thank you. This is based on a  
10 precedent, *State versus Gibbs*, G-I-B-B-S.

11 The Court: Thank you, sir. Next one?

12 Mr. Schmer: As to 3.6(g), same argument.

13 The Court: What page?

14 Mr. Schmer: Page 5.

15 The Court: Hold on one second. 3.6(g), what line?

16 Mr. Schmer: Well, it's toward the end. Again, the  
17 exact same words: The use of deadly force is not  
18 justified if you find.

19 The Court: State, response?

20 Mr. George: I would have the same, Your Honor.

21 The Court: Okay. Court will strike and that will  
22 continue to the top two lines of Page 6; is that  
23 correct, Mr. Schmer?

24 Mr. Schmer: Yes.

25 The Court: Are there any others?

1           Mr. Schmer: Not on the self-defense jury  
2 instruction.

3           The Court: Okay. Any others throughout the  
4 instructions?

5           Mr. Schmer: Oh. On 7.2, which is at Page 7. The  
6 Court has the introduction of first degree murder.  
7 There's two ways to prove -- there's two ways in which a  
8 person -- first degree murder. One is premeditated  
9 murder. One is felony murder. I thought the State  
10 agreed with my argument that felony murder is  
11 inapplicable.

12           The Court: State, do you have any objection to  
13 removing the first two sentences of the 7.2 instruction.

14           Mr. George: No, ma'am.

15           The Court: Okay.

16           Mr. Schmer: The rest of the first degree murder  
17 instruction on 7.2, the last long sentence involves the  
18 transferred intent, which is not applicable here either.

19           Mr. George: Agreed.

20           The Court: Where does that start?

21           Mr. Schmer: If a person has a premeditated intent  
22 or design to kill one person and in attempting to kill  
23 that person actually killed another person, that killing  
24 is premeditated.

25           The Court: By stipulation of the parties, that

1 line is stricken. Next one, Mr. Schmer.

2 Mr. Schmer: On 3.9, weighing the evidence, Page  
3 11. I don't think ten is applicable.

4 The Court: State, response?

5 Mr. George: No objection to ten.

6 The Court: Being removed?

7 Mr. George: Being removed.

8 The Court: Okay. Ten is stricken.

9 Mr. George: While we're here, Judge, the State  
10 does think that six and seven should be deleted as well.  
11 There's no evidence that any witness had been offered or  
12 received any money or preferred treatment. As to number  
13 seven, there's been no received put before this jury  
14 that any pressure or threat had been used against any  
15 witness that affected the truth of their testimony.

16 The Court: Defense, response?

17 Mr. Schmer: Well, as to seven, the jury might well  
18 say that the police questioning, particularly by  
19 Munford, Detective Munford of Mr. Spencer, was to put  
20 some pressure on him to admit to the secondary striking  
21 the blows, in other words, when he came back.

22 The Court: Okay. As to six?

23 Mr. Schmer: Well, I don't think the jury is going  
24 to make or break its verdict on this. But there was  
25 some testimony that Kenya Williams called Crimeline in



1 an attempt to get money. I'm not quite sure that --  
2 well, I know from depositions she didn't get any money.

3 The Court: The court will allow six and seven to  
4 remain in.

5 Mr. Schmer: Okay.

6 The Court: Mr. Schmer, are there any others?

7 Mr. Schmer: On page -- I'm sorry, I skipped a  
8 page. On Page 10, which is 3.7, at the very last  
9 paragraph, the facts about reasonable doubt -- well, the  
10 language as written says: If you have a reasonable  
11 doubt, you should find the defendant not guilty. That's  
12 the second to last -- second to last sentence in that  
13 paragraph should be: You must find the defendant not  
14 guilty.

15 Mr. George: That's not correct, Your Honor.

16 Mr. Schmer: It's the law.

17 Mr. George: Standard instructions are as they are  
18 written. The defense requests these on a regular basis,  
19 but there's no --

20 Mr. Schmer: I agree these are the standard jury  
21 instructions.

22 The Court: I will grant the defendant's request to  
23 change it from a "should" to a "must."

24 All right. Moving onto Page 12.

25 Mr. Schmer: That's fine. Everything else is fine

1 too.

2 The Court: All right. State, turning to Page 1.  
3 I'm moving through the document. Are there any changes  
4 you would like that we have not already made?

5 Mr. George: I don't believe so, Judge. I believe  
6 Mr. Schmer brought up the point that I had.

7 The Court: Okay. Let me make those corrections  
8 very quickly.

9 Could you call Joyce and tell her I'm about to  
10 e-mail them to her?

11 The Clerk: All right.

12 The Court: Tell her we need five copies -- wait,  
13 14 and three, 17 copies.

14 Mr. Schmer: Judge, I'm sorry. I forgot. It's an  
15 oversight on my part. We forgot to define battery in  
16 3.6(f).

17 Mr. George: What page is that?

18 Mr. Schmer: Page 3.

19 The Court: You would like an instruction added for  
20 the language of battery?

21 Mr. Schmer: I think the jury needs to understand  
22 what a battery is legally.

23 The Court: State?

24 Mr. George: That's fine, Judge. Do you want me to  
25 add the battery instruction?

1           **The Court:** I guarantee you can get it faster than  
2 me. My goal is to get this to the jury or at least get  
3 the instructions to the jury by three.

4           **Mr. George:** Have we already received permission to  
5 stay past five?

6           **The Court:** No, we have not. It is not granted in  
7 advance.

8           Counsel, I'd like you to double-check my work. I  
9 have removed -- on Page 3, instruction 3.6(f), I have  
10 removed everything from "however" to the word "force,"  
11 Subsection 2B; is that correct, counsel?

12           **Mr. Schmer:** Yes.

13           **The Court:** State?

14           **Mr. George:** Yes, Your Honor. That's what you  
15 ruled.

16           **The Court:** On Page 5, 3.6 -- instruction 3.6(g),  
17 I've removed everything from the bottom of the page  
18 starting with "the use," continuing on until the top two  
19 lines of page 5; is that correct?

20           **Mr. Schmer:** Yes.

21           **Mr. George:** Yes, Your Honor. That was your  
22 ruling.

23           **The Court:** On Page 7, instruction 7.2, I removed  
24 the first two sentences and the last sentence; is that  
25 correct?

1           Mr. Schmer: Yes.

2           Mr. George: Yes.

3           The Court: On Page 10, I changed the word "should"  
4 to "must," is that correct?

5           Mr. Schmer: Yes.

6           Mr. George: (Nods head.)

7           The Court: On Page 11, I removed instruction  
8 number ten under 3.9; is that correct?

9           Mr. George: Yes.

10          Mr. Schmer: Yes.

11          The Court: Are there any other changes that are  
12 not included, other than the battery?

13          Mr. Schmer: No.

14          Mr. George: That's being e-mailed to you now,  
15 Judge.

16          The Court: Where would you like the definition  
17 inserted?

18          Mr. Schmer: After that sentence of battery.

19          The Court: Is that under number one?

20          Mr. Schmer: No, under number two. Well, under --  
21 I'm sorry, yes.

22          The Court: Under the first number one or the  
23 second number one?

24          Mr. Schmer: The first number one, excuse me.

25          The Court: Okay. So it would read: The use of

1 deadly force is justifiable -- continues through the  
2 rest of that sentence -- number one, any attempt to  
3 commit battery upon him and then a definition of that  
4 term; is that correct?

5 Mr. Schmer: That's fine.

6 The Court: I received it. Do you want the full  
7 instruction or do you want just the verbiage with the  
8 number and everything?

9 Mr. Schmer: I'm sorry. I can't read. May I see  
10 it, please?

11 Mr. George: Actually, Judge, probably just going  
12 to dictate it.

13 The Court: I wasn't told dictation was part of the  
14 job. Did you send it?

15 Ms. Abdelbary: Yes.

16 The Court: Excellent. I haven't received it yet.  
17 As soon as I start, it will come out. All right. I  
18 received it.

19 Ms. Abdelbary: Okay.

20 The Court: All right. So you just want that  
21 phrase added?

22 Mr. Schmer: That's fine.

23 The Court: Counsel, please approach. Here are the  
24 verdict forms. Please approve them.

25 Mr. Schmer: Fine.

1           **Mr. George:** Excellent. "Count" is spelled wrong  
2 on the special finding.

3           **The Court:** Is that it? All right. Please print.  
4 Okay. I'll correct those and get this out.

5           Please call Joyce and tell her I just e-mailed the  
6 instructions to her.

7           All right. What did you want me to correct here?

8           **Mr. George:** Special finding, Your Honor. It says  
9 "county" instead of "count."

10          **The Clerk:** You want Joyce to bring them up here?

11          **The Court:** Yes, please.

12          **Mr. George:** On the special finding: We, the jury,  
13 find the defendant guilty of --

14          **The Court:** I see it. Okay. Here. Go ahead and  
15 take a look.

16          **Mr. George:** Thank you.

17          **The Court:** Should that be capitalized, Count 1?

18          **Mr. George:** It can be.

19          **The Court:** Do you want that? I must have already  
20 corrected that. It's not here.

21                 I guess as soon as we finish the jury instructions,  
22 send the jury back, the attorneys are here for the bond  
23 hearing. You can bring the inmate up.

24                 All right. We now have our copy of the jury  
25 instructions. We'll go ahead and invite the jury in.

1 Is that acceptable?

2 Mr. George: Yes, Your Honor.

3 Mr. Schmer: Yes.

4 The Court: Okay. Let the record reflect that  
5 Mr. Spencer is present and sitting at counsel table. He  
6 continues to be dressed very appropriately for court.  
7 He is able to communicate with his attorney. I'm  
8 waiting for the door to close. The door is closed.  
9 There's a privacy desk in front of him so the jury  
10 cannot see the shackles on his feet and his hands are  
11 not shackled.

12 (Whereupon, at 3:19 p.m. the jury entered the courtroom,  
13 after which the following transpired:)

14 The Court: Ladies and gentlemen of the jury, thank  
15 you once again for your attention. As you know, both  
16 sides have rested, and they have presented their closing  
17 arguments. Now is the time for me to read the jury  
18 instructions to you.

19 The deputy is going to hand you each a copy so you  
20 can follow along as I read these instructions. Does  
21 everyone have their copy? Are there any extra copies?  
22 Very good.

23 Members of the jury, I thank you for your attention  
24 during this trial. Please pay attention to the  
25 instructions I'm about to give you.

1           Wayne Edward Spencer, the defendant in this case,  
2           has been accused of the crime of first degree murder  
3           with a weapon. In this case, Wayne Edward Spencer is  
4           accused of first degree murder with a weapon. Murder in  
5           the first degree includes the lesser crimes of murder in  
6           the second degree and manslaughter, all of which are  
7           unlawful.

8           A killing that is excusable or was committed by the  
9           use of justifiable deadly force is lawful.

10           If you find Richy Rich, AKA Raymond Rich was killed  
11           by Wayne Edward Spencer, you will then consider the  
12           circumstances surrounding the killing in deciding if the  
13           killing was murder in the first degree or was murder in  
14           the second degree or manslaughter or whether the killing  
15           was excusable or resulted from justifiable use of deadly  
16           force.

17           I'll now read to you the instruction for  
18           justifiable homicide. The killing of a human being is  
19           justifiable homicide and lawful if necessarily done  
20           while resisting an attempt to murder or commit a felony  
21           upon the defendant or to commit a felony in any dwelling  
22           house in which the defendant was at the time of the  
23           killing.

24           I will now read to you the instruction for  
25           excusable homicide. The killing of a human being is



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

12                    Dangerous weapon is any weapon that, taken into  
13                    account the manner in which it is used, is likely to  
14                    produce death or great bodily harm.

15                    I now instruct you on the circumstances that must  
16                    be proved before Wayne Edward Spencer may be found  
17                    guilty of first degree murder or any lesser included  
18                    crime.

19                    Justifiable use of deadly force. An issue in this  
20                    case is whether the defendant acted in self-defense. It  
21                    is a defense to -- it is a defense to the offense with  
22                    which Wayne Edward Spencer is charged if the death of  
23                    Richy Rich, AKA, Richard Raymond Lynch resulted from the  
24                    justifiable use of deadly force.

25                    Deadly force means force likely to cause death or

1 great bodily harm.

2 The use of deadly force is justifiable only if the  
3 defendant reasonably believes that the force is  
4 necessary to prevent imminent death or great bodily harm  
5 to himself while resisting any attempt to commit battery  
6 upon him.

7 The definition of battery is the intentional  
8 touching or striking of another against their will.

9 A person is justified in using deadly force if he  
10 reasonably believes that such force is necessary to  
11 prevent, one, imminent death or great bodily harm to  
12 himself or, two, the imminent commission of battery  
13 against himself or another.

14 In deciding whether the defendant was justified in  
15 the use of deadly force, you must judge him by the  
16 circumstances by which he was surrounded at the time the  
17 force was used. The danger facing the defendant need  
18 not have been actual.

19 However, to justify the use of deadly force, the  
20 appearance of danger must have been so real that a  
21 reasonably cautious and prudent person under the same  
22 circumstances would have believed that the danger could  
23 have be avoided only through the use of that force.  
24 Based upon appearances the defendant must have actually  
25 believed that the danger was real.

1           If the defendant was not engaged in an unlawful  
2 activity and was attacked in any place where he had a  
3 right to be, he had no duty to retreat and had the right  
4 to stand his ground and meet force with force, including  
5 deadly force, if he reasonably believed that it was  
6 necessary to do so to prevent death or great bodily harm  
7 to himself or to prevent the commission of a forcible  
8 felony.

9           If you find that the defendant, because of threats  
10 or prior difficulties with Richy Rich, AKA, Raymond --  
11 Richard Raymond Lynch had reasonable grounds to believe  
12 that he was in danger of death or great bodily harm at  
13 the hand of Richy Rich, AKA, Richard Raymond Lynch, then  
14 the defendant had the right to arm himself.

15           However, a defendant cannot justify the use of  
16 deadly force if after arming himself, he renewed his  
17 difficulty with Richy Rich, AKA, Richard Raymond Lynch  
18 when he could have avoided the difficulty; although, as  
19 previously explained, if the defendant was not engaged  
20 in an unlawful activity and was attacked in any place  
21 where he had the right to be, he had no duty to retreat.

22           If you find that Richy Rich, AKA, Richard Raymond  
23 Lynch had a reputation of being a violent and dangerous  
24 person and that his reputation was known to the  
25 defendant, you may consider this fact in determining

1           whether the actions of the defendant were those of a  
2           reasonable person in dealing with an individual of that  
3           reputation.

4           In considering the issue of self-defense, you may  
5           take into account the relative physical abilities and  
6           capacities of the defendant and Richy Rich, AKA, Richard  
7           Raymond Lynch. If, in your consideration of the issue  
8           of self-defense, you have a reasonable doubt on the  
9           question of whether the defendant was justified in the  
10          use of deadly force, you should find the defendant not  
11          guilty.

12          However, if from the evidence you are convinced  
13          that the defendant was not justified in the use of  
14          deadly force, you should find him guilty if all of the  
15          elements of the charge have been proven.

16          I will now read you the instructions for the  
17          justifiable use of nondeadly force. An issue in this  
18          case is whether the defendant acted in self-defense. It  
19          is a defense to the offense with which Wayne Edward  
20          Spencer is charged if the death of Richy Rich, AKA,  
21          Richard Raymond Lynch resulted from the justifiable use  
22          of nondeadly force.

23          Nondeadly force means force not likely to cause  
24          death or great bodily harm.

25          Wayne Edward Spencer would be justified in using

1           nondeadly force against Richy Rich, AKA, Richard Raymond  
2           Lynch if the following two facts are proved: One, Wayne  
3           Edward Spencer must have reasonably believed that such  
4           conduct was necessary to defend himself against Richy  
5           Rich, AKA, Richard Raymond Lynch imminent use of  
6           unlawful force against Wayne Edward Spencer; two, the  
7           use of unlawful force by Richy Rich, AKA, Richard  
8           Raymond Lynch must have appeared to Wayne Edward Spencer  
9           to be ready to take place.

10                   Wayne Edward Spencer would be justified in using  
11           nondeadly force against Richy Rich, AKA, Richard Raymond  
12           Lynch if the following three facts are proved: If the  
13           defendant was not engaged in unlawful activity and was  
14           attacked in any place where he had the right to be, he  
15           had no duty to retreat and had the right to stand his  
16           ground and meet force with force, including deadly  
17           force, if he reasonably believed it was necessary to do  
18           so to prevent death or great bodily harm to himself or  
19           to prevent the commission of a forcible felony. A  
20           person does not have a duty to retreat if the person is  
21           in a place where he has the right to be.

22                   In deciding whether the defendant was justified in  
23           the use of nondeadly force, you must judge him by the  
24           circumstances by which he was surrounded at the time the  
25           force was used. The danger facing the defendant need

1 not have been actual.

2           However, to justify the use of nondeadly force, the  
3 appearance of danger must have been so real that a  
4 reasonably cautious and prudent person under the same  
5 circumstances would have believed that the danger could  
6 be avoided only through the use of that force. Based  
7 upon appearances, the defendant must have actually  
8 believed that the danger was real.

9           If you find Richy Rich, AKA, Richard Raymond Lynch  
10 had a reputation of being a violent and dangerous person  
11 and that his reputation was known to the defendant, you  
12 may consider this fact in determining whether the  
13 actions of the defendant were those of a reasonable  
14 person in dealing with an individual of that reputation.

15           In considering the issue of self-defense, you may  
16 take into account the relative physical abilities and  
17 capacities of the defendant and Richy Rich, AKA, Richard  
18 Raymond Lynch.

19           If in your consideration the issue of self-defense  
20 you had a reasonable doubt on the question of whether  
21 the defendant was justified in the use of nondeadly  
22 force, you should find the defendant not guilty.

23           However, if from the evidence you are convinced  
24 that the defendant was not justified in the use of  
25 nondeadly force, then you should find him guilty, if all

1 the elements of the charge have been proven.

2 I will now read to you the instructions for murder  
3 in the first degree. To prove the crime of first degree  
4 premeditated murder, the State must prove the following  
5 three elements beyond a reasonable doubt: Number one,  
6 Richy Rich, AKA, Raymond Lynch is dead. Two, the death  
7 was caused by the criminal act of Wayne Edward Spencer.  
8 Number three, there was a premeditated killing of Richy  
9 Rich, AKA, Raymond Lynch -- Richy Rich, AKA, Richard  
10 Raymond Lynch.

11 An act includes a series of related actions arising  
12 from and performed pursuant to a single design or  
13 purpose.

14 Killing with premeditation is a killing after  
15 consciously deciding to do so. The decision must be  
16 present in the mind at the time of the killing. The law  
17 does not fix the exact period of time that must pass  
18 between the formation of the premeditated intent to kill  
19 and the killing. The period of time must be long enough  
20 to allow reflection by the defendant.

21 The premeditated evidence -- it will be sufficient  
22 to -- sufficient proof of premeditation if the  
23 circumstances of the killing and the conduct of the  
24 accused convince you beyond a reasonable doubt of the  
25 existence of intent to kill must be formed before the

1 killing. The question of premeditation is a question of  
2 fact to be determined by you from the premeditation at  
3 the time of the killing.

4 I will now read to you the instructions for when  
5 there are lesser included crimes or attempts. In  
6 considering the evidence, you should consider the  
7 possibility that although the evidence may not convince  
8 you that the defendant committed the main crime of which  
9 he is accused, there may be evidence that he committed  
10 other acts that would constitute a lesser included  
11 crime. Therefore, if you decide that the main  
12 accusation has not been proved beyond a reasonable  
13 doubt, you will next need to decide if the defendant is  
14 guilty of any lesser included crime.

15 The lesser included crimes indicated in the  
16 definition of first degree murder are second degree  
17 murder and manslaughter.

18 I will now read to you the instructions for murder  
19 in the second degree. To prove the crime of second  
20 degree murder, the State must prove the following three  
21 elements beyond a reasonable doubt: One, Richy Rich,  
22 AKA, Richard Raymond Lynch is dead. Two, the death was  
23 caused by the criminal act of Wayne Edward Spencer.  
24 Three, there was an unlawful killing of Richy Rich, AKA,  
25 Raymond Lynch by an act imminently dangerous to another



1 and demonstrating a depraved mind without regard for  
2 human life.

3 An act includes a series of related actions arising  
4 from and performed pursuant to a single design or  
5 purpose. An act is imminently dangerous to another and  
6 demonstrating a depraved mind if it is an act or series  
7 of acts that, one, a person of ordinary judgment would  
8 know is reasonably certain to kill or do serious bodily  
9 injury to another and, two, is done from ill-will,  
10 hatred, spite or an evil intent and, three, is of such a  
11 nature that the act itself indicates an indifference to  
12 human life.

13 In order to convict of second degree murder, it is  
14 not necessary for the State to prove the defendant had  
15 an intent to cause death.

16 I will now read to you the instructions for  
17 manslaughter. To prove the crime of manslaughter, the  
18 State must prove the following two elements beyond a  
19 reasonable doubt: One, Richy Rich, AKA, Raymond Lynch  
20 is dead. Two, Wayne Edward Spencer intentionally  
21 committed an act or acts that caused the death of Richy  
22 Rich, AKA, Raymond Lynch.

23 The defendant cannot be guilty of manslaughter by  
24 committing a merely negligent act or if the killing was  
25 either justifiable or excusable homicide.

1           Each of us has a duty to act reasonably towards  
2 others. If there's a violation of that duty without any  
3 conscious intention to harm, that violation is  
4 negligence.

5           The killing of a human being is justifiable  
6 homicide and lawful if necessarily done while resisting  
7 an attempt to murder or commit a felony upon the  
8 defendant or to commit a felony in any dwelling house in  
9 which the defendant was at the time of the killing.

10           The killing of a human being is excusable and  
11 therefore lawful under any one of the following three  
12 circumstances: One, when the killing is committed by  
13 accident and misfortune in doing any lawful act by  
14 lawful means with usual ordinary caution and without any  
15 unlawful intent or, two, when the killing occurs by  
16 accident and misfortune in the heat of passion upon any  
17 sudden and sufficient provocation or, three, when the  
18 killing is committed by accident and misfortune  
19 resulting from a sudden combat, if a dangerous weapon is  
20 not used and the killing is not done in a cruel and  
21 unusual manner.

22           In order to convict of manslaughter by act, it is  
23 not necessary for the State to prove that the defendant  
24 had an intent to cause death, only an intent to commit  
25 an act that was not merely negligent, justified or

1           excusable and which caused death.

2           I will now read to you the instructions for  
3           aggravation of a felony by carrying a weapon other than  
4           a firearm. If you find that Wayne Edward Spencer  
5           committed first degree murder and you also find beyond a  
6           reasonable doubt that during the commission of the crime  
7           he used a weapon, you should find him guilty of first  
8           degree murder with a weapon.

9           A weapon is legally defined to mean any object that  
10          could be used to cause death or inflict serious bodily  
11          harm.

12          If you find that Wayne Edward Spencer committed  
13          first degree murder but you are not convinced beyond a  
14          reasonable doubt that he personally used a weapon, then  
15          you should find him guilty only of first degree murder.

16          I will now read to you the instructions for plea of  
17          not guilty, reasonable doubt and burden of proof. The  
18          defendant has entered a plea of not guilty. This means  
19          you must presume or believe the defendant is innocent.  
20          The presumption stays with the defendant as to each  
21          material allegation in the indictment through each stage  
22          of the trial, unless it has been overcome by the  
23          evidence to the exclusion of and beyond a reasonable  
24          doubt.

25          To overcome the defendant's presumption of

1           innocence, the State has the burden of proving the crime  
2           with which the defendant is charged was committed and  
3           the defendant is the person who committed the crime.

4           The defendant is not required to present evidence  
5           or prove anything.

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

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

19          It is to the evidence introduced in this trial and  
20          to it alone that you are to look for that proof. A  
21          reasonable doubt as to the guilt of the defendant may  
22          arise from the evidence, a conflict in the evidence or  
23          the lack of evidence. If you have a reasonable doubt,  
24          you must find the defendant not guilty. If you have no  
25          reasonable doubt, you should find the defendant guilty.

1           I will now read to you the instruction on weighing  
2           the evidence. It is up to you to decide what evidence  
3           is reliable. You should use your common sense in  
4           deciding which is the best evidence and which evidence  
5           should not be relied upon in considering your verdict.  
6           You may find some of the evidence not reliable or less  
7           reliable than other evidence.

8           You should consider how the witnesses acted, as  
9           well as what they said. Some things you should consider  
10          are: One, did the witness seem to have an opportunity  
11          to see and know the things about which the witness  
12          testified?

13          Two, did the witness seem to have an accurate  
14          memory?

15          Three, was the witness honest and straightforward  
16          in answering the attorneys' questions?

17          Four, did the witness seem to have some interest in  
18          how the case should be decided?

19          Five, does the witness' testimony agree with the  
20          other testimony and other evidence in the case?

21          Six, has the witness been offered or received any  
22          money, preferred treatment or other benefit in order to  
23          get the witness to testify?

24          Seven, had any pressure or threat been used against  
25          the witness that affected the truth of the witness'

1 testimony?

2 Eight, did the witness at some other time make a  
3 statement that is inconsistent with the testimony he  
4 gave in court?

5 Nine, was it proved that the witness had been  
6 convicted of a crime?

7 You may rely upon your own conclusions about the  
8 witness. A juror may believe or disbelieve all or any  
9 part of the evidence or the testimony of any witness.

10 I will now read you the introductions regarding  
11 expert witnesses. Expert witnesses are like other  
12 witnesses with one exception. The law permits an expert  
13 witness to give his or her opinion. However, an  
14 expert's opinion is reliable only when given on a  
15 subject matter about which you believe him or her to be  
16 an expert. Like other witnesses, you may believe or  
17 disbelieve all or any part of an expert's testimony.

18 I will now read to you the instructions regarding a  
19 defendant not testifying. The constitution requires the  
20 State to prove its accusations against the defendant.  
21 It is not necessary for the defendant to disprove  
22 anything, nor is the defendant required to prove his  
23 innocence. It is up to the State to prove the  
24 defendant's guilt by evidence.

25 The defendant exercised a fundamental right by

1 choosing not to be a witness in this case. You must not  
2 view this as an admission of guilt or be influenced in  
3 anyway by this decision. No juror should ever be  
4 concerned that the defendant did or did not take the  
5 witness stand to give testimony in the case.

6 I'll now read you the instructions for the  
7 defendant's statements. A statement claimed to have  
8 been made by the defendant outside of court has been  
9 placed before you. Such a statement should always be  
10 considered with caution and be weighed with great care  
11 to make sure certain it was freely and voluntarily made.

12 Therefore, you must determine from the evidence  
13 that the defendant's alleged statement was knowingly,  
14 voluntarily and freely made. In making this  
15 determination, you should consider the total  
16 circumstances, including but not limited to, one,  
17 whether when the defendant made the statement he had  
18 been threatened in order to get him to make it and, two,  
19 whether anyone had promised him anything in order to get  
20 him to make it.

21 If you conclude the defendant's out-of-court  
22 statement was not freely and voluntarily made, you  
23 should disregard it.

24 I will now read the rules for your deliberations.  
25 These are some general rules that apply to your

1 discussions. You must follow these rules in order to  
2 return a lawful verdict.

3 One, you must follow the law as it is set out in  
4 these instructions. If you fail to follow the law, your  
5 verdict will be a miscarriage of justice. There is no  
6 reason for failing to follow the law in this case. All  
7 of us are depending upon you to make a wise and legal  
8 decision in this matter.

9 Two, this case must be decided only upon the  
10 evidence you have heard from the testimony of the  
11 witnesses and have seen in the form of the exhibits in  
12 evidence and these instructions.

13 Three, this case must not be decided for or against  
14 anyone because you feel sorry for anyone or are angry at  
15 anyone.

16 Four, remember, the lawyers are not on trial. Your  
17 feelings about them should not influence your decision  
18 in this case.

19 Five, your duty is to determine if the defendant  
20 has been proven guilty or not in accord with the law.  
21 It is the judge's job to determine a proper sentence if  
22 the defendant is found guilty.

23 Six, whatever verdict you render must be unanimous,  
24 that is, each juror must agree to the same verdict.

25 Seven, it is entirely proper for a lawyer to talk



1 to a witness about what testimony the witness would give  
2 if called to the courtroom. The witness should not be  
3 discredited by talking to a lawyer about his or her  
4 testimony.

5 Eight, the jury is not to discuss any questions --  
6 the jury is not to discuss any questions that a juror or  
7 juror wrote that was or were not asked by the Court and  
8 must not hold that against either party.

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

13 Deciding a verdict is exclusively your job. I  
14 cannot participate in that decision in anyway. Please  
15 disregard anything I may have said or done that made you  
16 think I preferred one verdict over another.

17 You may find the defendant guilty as charged in the  
18 indictment or guilty of such lesser included crime as  
19 the evidence may justify or not guilty. If you return a  
20 verdict of guilty, it should be for the highest offense  
21 which has been proven beyond a reasonable doubt. If you  
22 find no offense has been proven beyond a reasonable  
23 doubt, then, of course, your verdict must be not guilty.

24 Only one verdict may be returned as to the crime  
25 charged. This verdict must be unanimous. That is, all

1 of you must agree to the same verdict. The verdict must  
2 be in writing; and for your convenience, the necessary  
3 forms of the verdict have been prepared for you. They  
4 are as follows. You'll receive one copy of the verdict  
5 form.

6 It reads: Verdict as to Count 1. First choice:  
7 We, the jury, find the defendant guilty of first degree  
8 murder as charged in Count 1 of the indictment.

9 Second choice: We, the jury, find the defendant  
10 guilty of the lesser included offense of second degree  
11 murder.

12 Third choice: We, the jury, find the defendant  
13 guilty of the lesser included offense of manslaughter.

14 Last choice: We, the jury, find the defendant not  
15 guilty. So say we all.

16 You also have a special findings verdict form on a  
17 second page. It states as follows: Special finding.  
18 We, the jury, find the defendant did use a weapon in the  
19 commission of Count 1; or we, the jury, find that the  
20 defendant did not use a weapon during the commission of  
21 Count 1.

22 We'll now read to you the instructions for  
23 submitting the case to the jury. In just a few moments  
24 you'll be taken to the jury room by the deputy. The  
25 first thing you should do is elect a foreperson, who

1 will preside over your deliberations like a chairperson  
2 of a meeting. It is the foreperson's job to sign and  
3 date the verdict form when all of you have agreed on a  
4 verdict in this case and to bring the verdict back to  
5 the courtroom when you return.

6 Your verdict finding the defendant either guilty or  
7 not guilty must be unanimous. The verdict must be the  
8 verdict of each juror, as well as of the jury as a  
9 whole.

10 During deliberations jurors must communicate about  
11 the case only with one another and only when all jurors  
12 are present in the jury room. You're not to communicate  
13 with any person outside the jury about this case. Until  
14 you have reached a verdict, you must not talk about this  
15 case in person or through the telephone, writing or  
16 electronic communications, such as, a blog, Twitter,  
17 e-mail, text message or any other means. Do not contact  
18 anyone to assist you during deliberations. These  
19 communication rules apply until I discharge you at the  
20 end of the case.

21 If you become aware of any violation of these  
22 instructions or any other instruction I have given in  
23 this case, you must tell me by giving a note to the  
24 deputy.

25 In closing, let me remind you that it is important

1 for you to follow the law spelled out in these  
2 instructions in deciding your verdict. There are no  
3 other laws that apply to this case. Even if you do not  
4 like the laws that must be applied, you must use them.  
5 For two centuries we have lived by the constitution and  
6 the law. No juror has the right to violate the rules we  
7 all share.

8 Do you need something?

9 Mr. Schmer: Yeah, just briefly.

10 The Court: One moment.

11 (Whereupon, counsel approached the bench and the  
12 following transpired outside the hearing of the jury:)

13 Mr. Schmer: On Page 4, there's actually something  
14 that you omitted none of us caught. I believe the Court  
15 hesitated when you were reading it yourself, use of  
16 nondeadly force. You began to talk about Mr. Spencer  
17 would be justified in -- Wayne Edward Spencer would be  
18 justified in using nondeadly force if the following  
19 three elements. That refers to the defense of property,  
20 which isn't applicable.

21 The Court: I'll strike it.

22 Mr. Schmer: We didn't catch it.

23 The Court: Okay.

24 (Whereupon, the bench conference concluded and the  
25 following transpired in open court:)

1           **The Court:** Members of the jury, we've come across  
2 an error in the instructions. If you'll please turn to  
3 Page 4 of your instructions.

4           We're finishing up the jury instructions. Could  
5 you please leave the courtroom. Thank you.

6           **The Court Deputy:** I thought you were done. I told  
7 them to come in.

8           **The Court:** All right. If you'll see under 3.6(g),  
9 justifiable use of nondeadly force, you'll see the  
10 numbers one and two. The sentence under line two that  
11 starts "Wayne Edward Spencer" and ends with the word  
12 "proved:", that was improperly included in this  
13 instruction. It applies to something else that is not  
14 relevant. If you could please take your pen and just  
15 scratch that out.

16           Counsel, is that sufficient?

17           **Mr. Schmer:** I'm sorry, yes.

18           **The Court:** Is that sufficient? State, is that  
19 sufficient?

20           **Mr. George:** Yes, Your Honor.

21           **The Court:** Okay. Members of the jury, you may  
22 return to the jury room for your deliberations. Thank  
23 you again for your service.

24           (Whereupon, the jury exited the courtroom at 3:51 p.m.,  
25 after which the following transpired:)

1           **The Court:** Oh, I'm sorry. There are two of you  
2 that could stay with me one second. Mr. Hand and  
3 Mr. Cox, if you could stay with us.

4           **The Court Deputy:** Come down to this front row  
5 right here.

6           **The Court:** Counsel, do I have the right ones?

7           **Mr. Schmer:** Yes.

8           **The Court:** Mr. Hand and Mr. Cox -- I'm going to  
9 wait until the door closes. Gentlemen, you were our  
10 alternate jurors. We're required to have 12 jurors for  
11 this type of proceeding and obviously you make 13 and  
12 14. So we greatly appreciate your service.

13           I know sometimes it can be frustrating being the  
14 alternate juror. It happens to my husband all the time.  
15 But your service is valued and had one of the other  
16 members of the jury not been able to perform their  
17 duties, I know you each one of you would have stepped up  
18 to the plate and performed. For that, we're very  
19 thankful for your time.

20           We have certificates for you with your name on it.  
21 You're welcome to stay with us for the remainder of the  
22 afternoon to see what happens or you are welcome to  
23 leave as well.

24           Please know that as a juror, you have a right to  
25 not talk about your thoughts about the case with anyone.

1 That is a privilege that you enjoy and you should  
2 consider carefully how you wish to exercise that  
3 privilege. Okay.

4 The Juror: Are we otherwise released?

5 The Court: Otherwise, you are released.

6 The Juror: These stay here?

7 The Court: Your notes will stay with us as well.

8 The Juror: So we may freely speak about this with  
9 family members and friends now if they ask questions?

10 The Court: Yes.

11 The Juror: Thank you, ma'am.

12 The Court: Do you have any other questions? Do  
13 you have anything that belongs to you back in the jury  
14 room okay. Thank you, gentlemen, for your service.

15 The Court Deputy: Do you have the certificates?

16 The Court: Here we are, Mr. Hand.

17 Deputy, if you could help them. I think you need  
18 to go out that way.

19 Counsel, is there anything further you need from  
20 me?

21 Mr. Schmer: No, your Honor.

22 The Court: Okay. I've got a bond hearing that's  
23 25 minutes late now.

24 Counsel, do you want the evidence to go back with  
25 them; or do you want to just wait and see if they ask?

1           Mr. George: Oh, no, they have to have it.

2           The Court: Okay. Do you want to review and make  
3 sure what goes back there?

4           Mr. George: We usually don't send the player out  
5 with the discs. If they ask to play it, we'll give it  
6 to them.

7           The Court: If we can go ahead and do the swap.  
8 Mr. Spencer, take care. We'll see you in a little  
9 while.

10          The Defendant: Thank you.

11          The Court: Deputy Lawing, we have evidence to go  
12 back.

13          (Whereupon, a recess was taken at 3:55 p.m.,  
14 after which at 5:24 p.m. the following transpired:)

15          The Court: All right. Probably handling this more  
16 formally than we need to. In an abundance of caution, I  
17 am. We received the following question from --  
18 actually, request from the jury. The jury would like a  
19 CD player to listen to one or both of the CDs.

20          Mr. George: Frank George on behalf of the state.  
21 No objection.

22          Mr. Schmer: Peter Schmer on behalf of Mr. Spencer.  
23 No objection.

24          The Court: I don't think we need to do a written  
25 response. We can just tell the deputy to take the tape



1 player back.

2 Mr. George: That's fine.

3 The Court: You want to check it out or anything?

4 Mr. Schmer: No.

5 The Court: All right. Let me give you some  
6 information on how we're going to handle the rest of the  
7 evening. You're lucky that I'm such a compelling  
8 advocate. I convinced Judge Perry to go until at least  
9 seven.

10 The jury will be getting menus in just a few  
11 minutes for dinner. It will take about, I would think,  
12 an hour for them to get their orders together and get  
13 the food delivered and then at 7:00 we'll see where we  
14 are. Okay. Questions, counsel?

15 Mr. Schmer: No.

16 The Court: Let record reflected that Mr. Spencer  
17 was here throughout the course of these discussions.  
18 All right.

19 (Whereupon, a brief recess was taken at 5:26 p.m.,  
20 after which at 7:35 p.m. the following transpired:)

21 The Court: Thank you. Please be seated. All  
22 right. In just a few minutes, I'm going ask the jury to  
23 come in. Before we do that, Mr. Spencer I wanted to  
24 confirm with you that you were satisfied with your  
25 attorney's services in this matter.

1                   **The Defendant:** Yes, ma'am.

2                   **The Court:** Okay. All right. Go ahead and bring  
3 the jury in.

4                   (Whereupon, the jury entered the courtroom, after which  
5 the following transpired:)

6                   **The Court:** Foreperson, I understand that you have  
7 reached a verdict.

8                   **The Foreman:** Yes, we have.

9                   **The Court:** I'm going to ask you to hand it to the  
10 court deputy. I will then review it for conformity and  
11 then have the verdict handed to the trial clerk to read.

12                   **The Clerk:** Case No. 2011-CF-5398, State of Florida  
13 versus Wayne Edward Spencer. Verdict as to Count 1:  
14 We, the jury, find the defendant guilty of the lesser  
15 included offense of second degree murder. So say we  
16 all, dated at Orlando, Orange County, Florida on this  
17 20<sup>th</sup> day of April, 2012, signed by the foreperson.

18                   **The Court:** Madam clerk, please poll the members of  
19 the jury.

20                   **The Clerk:** Juror number one, is this your verdict?

21                   **The Juror:** Yes, ma'am.

22                   **The Clerk:** Juror none two, is this your verdict?

23                   **The Juror:** Yes, ma'am.

24                   **The Clerk:** Juror number three, is this your  
25 verdict?

1           The Juror:    Yes, ma'am.

2           The Clerk:   Juror number four, is this your  
3 verdict?

4           The Juror:    Yes, ma'am.

5           The Clerk:   Juror number five, is this your  
6 verdict?

7           The Juror:    Yes, ma'am.

8           The Clerk:   Juror number six, is this your verdict?

9           The Juror:    Yes, ma'am.

10          The Clerk:   Juror number seven, is this your  
11 verdict?

12          The Juror:    Yes, it is.

13          The Clerk:   Juror number eight, is this your  
14 verdict?

15          The Juror:    Yes, ma'am.

16          The Clerk:   Juror number nine, is this your  
17 verdict?

18          The Juror:    Yes, it is.

19          The Clerk:   Juror number ten, is this your verdict?

20          The Juror:    Yes, ma'am.

21          The Clerk:   Juror number 11, is this your verdict?

22          The Juror:    Yes, ma'am.

23          The Clerk:   And juror number 12, is this your  
24 verdict?

25          The Juror:    Yes, ma'am.

1           **The Court:** One moment, counsel. Please approach.

2           (Whereupon, counsel approached the bench and the  
3 following transpired outside the hearing of the jury:)

4           **Mr. George:** They didn't consider the special  
5 verdict?

6           **The Court:** I don't think they thought it applied  
7 if it wasn't first degree.

8           **Mr. George:** It's still an enhancement.

9           **The Court:** Okay. I think they didn't think it  
10 applied. I'll send them back to address that issue.

11           **Mr. George:** Thank you.

12           **The Court:** Is that acceptable, Mr. Schmer?

13           **Mr. Schmer:** Yes.

14           (Whereupon, the bench conference concluded and the  
15 following transpired in open court:)

16           **The Court:** Members of the jury, you still need to  
17 make a finding as to the special finding as to Count 1.  
18 I'm going to hand this portion of the verdict papers  
19 back to you all. You can go back in the jury room,  
20 deliberate over that and let us know when you're ready.

21           (Whereupon, the jury exited the courtroom at 7:40 p.m.,  
22 after which the following transpired:)

23           **The Court:** All right. I'll be back. Does anyone  
24 need anything else before I go?

25           **Mr. George:** No, Your Honor.

1           **Mr. Schmer:** No.

2           (Whereupon, a brief recess was taken at 7:40 p.m.,  
3 after which at 7:44 p.m. the following transpired:)

4           **The Court:** Okay. Please bring in the jury.

5           (Whereupon, the jury entered the courtroom, after which  
6 the following transpired:)

7           **The Court:** Members of the jury, it's my  
8 understanding that you have reached a verdict on the  
9 special verdict form. Foreperson, have you reached such  
10 a verdict?

11           **The Foreman:** Yes, we have.

12           **The Court:** Please hand the verdict form to the  
13 deputy. The deputy will hand it to me. I'll review it  
14 for conformity and hand it to the trial clerk to read.

15           **The Clerk:** 2011-CF-5398, State of Florida versus  
16 Wayne Edward Spencer. The special finding as to Count  
17 1: We, the jury, find that the defendant did use a  
18 weapon during the commission of Count 1. So say we all,  
19 dated at Orlando, Orange County, Florida on this  
20 20<sup>th</sup> day of April, 2012, signed by the foreperson.

21           **The Court:** Madam clerk, please poll the jury.

22           **The Clerk:** Juror number one, is this your verdict?

23           **The Juror:** Yes it is.

24           **The Clerk:** Juror number two, is this your verdict?

25           **The Juror:** Yes, ma'am.

1            The Clerk: Juror number three, is this your  
2 verdict?

3            The Juror: Yes, ma'am.

4            The Clerk: Juror number four, is this your  
5 verdict?

6            The Juror: Yes, ma'am.

7            The Clerk: Juror number five, is this your  
8 verdict?

9            The Juror: Yes, ma'am.

10           The Clerk: Juror number six, is this your verdict?

11           The Juror: Yes, ma'am.

12           The Clerk: Juror number seven, is this your  
13 verdict?

14           The Juror: Yes, it is.

15           The Clerk: Juror number eight, is this your  
16 verdict?

17           The Juror: Yes, ma'am.

18           The Clerk: Juror number nine, is this your  
19 verdict?

20           The Juror: Yes, it is.

21           The Clerk: Juror number ten, is this your verdict?

22           The Juror: Yes, it is.

23           The Clerk: Juror number 11, is this your verdict?

24           The Juror: Yes, it is.

25           The Clerk: And juror number 12, is this your

1 verdict?

2 The Juror: Yes, ma'am.

3 The Court: Ladies and gentlemen of the jury, I  
4 wish to thank you for your time and your consideration  
5 of this case. I also wish to advise you of some very  
6 special privileges enjoyed by jurors. No juror can ever  
7 be required to talk about the discussions that occurred  
8 in the jury room, except by court order.

9 For many centuries our society has relied upon  
10 jurors for consideration of difficult cases. We have  
11 recognized for hundreds of years that a jury's  
12 deliberations, discussions and votes should remain their  
13 private affair as long as they wish it. Therefore, the  
14 law gives you a unique privilege not to speak about the  
15 jury's work.

16 Although you are at liberty to speak with anyone  
17 about your deliberations, you are also at liberty to  
18 refuse to speak to anyone. A request to discuss either  
19 your verdict or your deliberations may come from those  
20 who are simply curious, from those who might seek to  
21 find fault with you, from the media, from the attorneys  
22 or elsewhere. It will be up to you to decide whether to  
23 preserve your privacy as a juror.

24 Again, we are thankful that you stepped up to the  
25 plate when you were called and performed this most

1 important civic duty.

2 Please leave your notepads on your chairs. They  
3 will be collected by the deputies.

4 You may return to the jury room to gather your  
5 things, and I'll be there shortly to give you your  
6 certificates. Thank you.

7 (Whereupon, the jury exited the courtroom at 7:48 p.m.,  
8 after which the following transpired:).

9 The Court: Mr. Spencer, you've been found guilty  
10 as to Count 1 of murder in the second degree. You are  
11 herefor remanded to the custody of the Orange County  
12 Sheriff to go to the Orange County jail. I'd like to  
13 set sentencing out -- what would you say, Mr. Schmer, 30  
14 days?

15 Mr. Schmer: That's fine.

16 The Court: We'll set sentencing out 30 days.

17 Mr. George: I would ask to proceed to sentencing  
18 now. Mr. Spencer, as we indicated at the beginning of  
19 the trial, is a PR R. He's a prison releasee  
20 re-offender. I have the paperwork here. By statute  
21 he's required to be sentenced to the maximum. I don't  
22 know that there's a whole lot of discretion involved in  
23 it.

24 Mr. Schmer: I still want to talk -- if I may,  
25 Mr. George made that second degree murder offer before.



1 The sentencing was going to be up to the Court. That  
2 offer was turned down by us. Part of the reason, quite  
3 frankly, is because of Mr. Spencer's medical condition.

4 The Court: I understand. We'll set sentencing out  
5 30 days.

6 Mr. Schmer: Okay. Thank you.

7 The Court: So you can get what you need to get  
8 together.

9 Mr. George: Thank you, Judge.

10 The Court: Anything further?

11 Mr. Schmer: No.

12 Mr. George: Not from the State.

13 Mr. Schmer: No.

14 The Clerk: When are you doing sentencing?

15 The Court: What's 30 days from today? Our office  
16 will be in touch with you on the date. It will be at  
17 least 30 days out.

18 Mr. Schmer: Thank you.

19 Mr. George: Thank you. May counsel and I approach  
20 briefly?

21 The Court: Just quickly. I don't want to hold up  
22 the jury.

23 (Whereupon, court was adjourned at 7:50 p.m.)  
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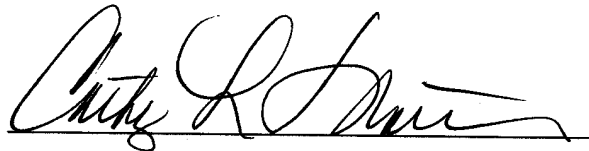
C E R T I F I C A T E

STATE OF FLORIDA:

COUNTY OF ORANGE:

I, CATHY L. MATTA, RPR, OFFICIAL COURT REPORTER  
OF THE NINTH JUDICIAL CIRCUIT OF FLORIDA,  
DO HEREBY CERTIFY, PURSUANT TO FLORIDA STATUTE 29,  
THAT I WAS AUTHORIZED TO AND DID REPORT IN  
STENOGRAPHIC SHORTHAND THE FOREGOING PROCEEDINGS  
AND THAT THEREAFTER MY STENOGRAPHIC SHORTHAND NOTES  
WERE TRANSCRIBED TO TYPEWRITTEN FORM BY THE PROCESS  
OF COMPUTER-AIDED TRANSCRIPTION AND THAT THE  
FOREGOING PAGES CONTAIN A TRUE AND CORRECT  
TRANSCRIPTION OF MY SHORTHAND NOTES TAKEN THEREIN.

WITNESS MY HAND THIS 29th DAY OF August,  
2012, IN THE CITY OF ORLANDO, COUNTY OF ORANGE,  
STATE OF FLORIDA.



CATHY L. MATTA, RPR  
OFFICIAL COURT REPORTER