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Pretrial Publicity and Juror DecisionMaking: Effects of Inadmissible Evidence and Coverage of Its Exclusion from Trial

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**Pretrial Publicity and Juror Decision-
Making: Effects of Inadmissible
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Honors Thesis

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Department: Psychology

Advisor: Dario Rodriguez, Ph.D.

May 2019

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Abstract

The courts have long been concerned that exposure to media coverage regarding a case making its way through the judicial process (i.e., pretrial publicity [PTP]) may influence jurors' decision-making in court. Indeed, empirical research over the past two decades has shown that PTP can influence juror decisions. PTP often contains descriptions of evidence or factors that are ultimately deemed inadmissible at trial (e.g., confession evidence), but no research to date has examined what occurs when confessions are reported to the public but later deemed inadmissible. We examined these issues using a 2 (Interrogation Quality: High vs. Low) x3 (Exclusion: Technicality vs. Cause vs. Not Specified) +1 (No Confession PTP Control) +1 (No PTP Control) mock juror experiment. Undergraduate students were randomly assigned and read various forms of PTP. In a second session conducted two days later, participants read a trial transcript that omitted any mention of the critical evidence contained in some versions of the PTP. Participants evaluated the evidence and rendered a verdict. Participants who were exposed to PTP were not significantly more likely to find the defendant guilty than those who received no PTP. Among PTP conditions, when participants were not told the reason for the exclusion of the confession, they were more likely to convict the defendant. This may reflect a tendency of jurors to fail to disregard inadmissible evidence unless convinced of a rationale for its exclusion.



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With trials in America, it is very common to see the media cover the case from before the trial, throughout the trial, and even after it has ended. It is common for the media coverage of these cases to include detailed information, including offense details, potential suspects, and victim testimonies. For example, media coverage regarding the Scott Peterson trial included information such as graphic details of the crime, potential suspects, Peterson's reaction to the crime, victim statements, and other important information meant only for trial (Land, 2017). Similarly, in the Steven Avery trial, both the prosecutor and the police frequently updated the public via press conferences and interviews with news outlets; during these exchanges, the public was informed of various crime details, such as when and where the victim's body and car were found, how interrogations were going, and why they believed the suspect was guilty (Ricciardi & Demos, 2015). In both cases and many more across the United States, media coverage allows the public to know important issues that would be discussed in the trial, and frequently disseminates information that is excluded from trial (e.g., a defendant's criminal record). Because the jurors who ultimately may make verdict decisions are drawn from the communities where such media coverage is so prevalent, it begs the question whether jurors are biased from the start of the trial, making them more likely to convict. If the jurors are biased before they enter the courtroom, the defendant's Sixth Amendment right to a fair trial is violated. If the jurors are more likely to convict due to this pretrial publicity, this could also lead to an increased risk of wrongful convictions. Specifically, it is important to research whether jurors are influenced in their verdict decisions by inadmissible confession evidence, even if they are told through PTP that it is excluded from trial for a variety of reasons.

Pretrial Publicity and Juror Decision-Making

Pretrial publicity (PTP) refers to any information released through the media (e.g., television news programs, newspapers, online articles) about a case leading up to and during a trial. PTP can be either negative or positive. Negative pretrial publicity would focus on negative aspects regarding the defendant, portraying him or her unfavorably. This could include a discussion of a suspect's criminal history, their attitude towards police when arrested or interrogated, or graphic details of the crime. Positive PTP presents the suspect or defendant favorably, highlighting the good qualities of the defendant such as family life, education level, or other positive characteristics.

In the United States, numerous judicial decisions and opinions have highlighted the potential biasing influence of media exposure on trial outcomes (*Irvin v. Dowd, 1961; Sheppard v. Maxwell, 1966; Nebraska Press Association v. Stuart, 1976; Skilling v. United States, 2010*). The influence of PTP on juror decisions, specifically, is an empirical issue that social scientists have studied for decades. These studies usually follow a similar mock juror methodology in which participants read or view some sort of PTP and then later read or watch a mock trial to render a verdict. In each study, the purpose is to see if the PTP affected the jurors' verdict decisions.

In one important meta-analytic summary of the existing literature to that point, Steblay, Besirevic, Fulero, and Jimenez-Lorente (1999) found that jurors were more likely to convict a defendant when they were exposed to negative pretrial publicity before trial. For example, when the PTP discussed multiple points of negative information, contained realistic PTP, or mentioned crimes such as murder, sexual abuse, or drug use, the PTP had more of an effect on the juror's verdicts (Steblay et al., 1999). These results

were furthered even more in another study conducted by Daftary-Kapur, Penrod, O'Connor, and Wallace (2014). In this study, it was found that proprosecution PTP results in more punitive verdicts than prodefense PTP (Daftary-Kapur et al., 2014). Further, this study found that the more exposure that one has to PTP, the more biased these jurors are (Daftary-Kapur et al., 2014). Lastly, Daftary-Kapur et al. (2014) found that PTP is not only detrimental in experimental situations, but also in naturalistic situations, as the participants in the study were actual jury-eligible citizens in New York and Boston who were seeing PTP on the news and in the papers as a real criminal trial was unfolding.

More recent research has focused on identifying the mechanisms underlying PTP effects. Ruva and Guenther (2015) found that memory distortion mediates the relationship between PTP exposure and verdict preferences; that is, jurors exposed to PTP had difficulty distinguishing the source of crime-relevant information (i.e., trial evidence that should inform verdict decisions vs. PTP, which should not), ultimately leading to increased conviction rates. Further, Ruva, Guenther and Yarbrough (2011) found that PTP can also bias verdict decisions via a process called “predecisional distortion.” PTP affects a jurors’ emotions going into trial, weighing in on their decisions. If a juror is angry going into trial due to the PTP they were exposed to, they may be more likely to convict the defendant (Ruva et al., 2011). That is, PTP can threaten jurors’ impartiality prior to trial. Additionally, recent research has begun focusing on the specific content of PTP. For example, Zimmerman, Rodriguez, Bergold, and Penrod (2016) found that jurors were more likely to convict if the PTP focused on community outrage or the

victim hardships, further suggesting that emotional appeals can influence verdict decisions.

Most of the research up to this point has focused on admissible evidence. However, PTP is not always limited to admissible evidence; quite often it also mentions evidence that is later deemed inadmissible and is excluded from trial. PTP may or may not explain what evidence is deemed inadmissible or, further, any reason for the exclusion of the evidence. There is currently no research regarding the influence of media coverage of evidence exclusions on jurors' decisions. If the PTP is simply focusing on all types of trial information—both admissible and inadmissible evidence—it becomes evident why there may be a problem concerning juror bias. If the PTP covers the reason for the exclusion, it could potentially mitigate any bias that may have occurred (by convincing jurors that the information was incorrect or not relevant to the case). However, even if the reason is explained in other PTP, some jurors might miss this important PTP or they may confuse where they heard the information, allowing this outside information into the courtroom even when it is deemed inadmissible. Since the coverage of this exclusion could go either way, it is important to conduct research to see the actual result that occurs when inadmissible evidence is covered and then excluded in PTP.

Current Research

PTP often contains information that is deemed to be inadmissible, or not to be brought up in court; it is therefore important to see the effect that this type of pretrial publicity has on jurors. Because the jurors are not supposed to make use of any knowledge of this inadmissible evidence when rendering their decisions, it is clear that

knowing about it prior to trial could lead to major biases. Because there is not any research currently conducted on this issue, I decided to conduct research to find if there is any effect between inadmissible evidence before trial and a juror's verdict. This research was set up like many other previous studies, using a mock juror study to see how the coverage and exclusion reason affect a juror's verdict. To test this, the participants were split into three groups at random—no PTP, PTP without inadmissible evidence (i.e., no description of the suspect's inadmissible confession), and PTP with inadmissible evidence; this last group was then divided into six groups based on the quality of the evidence (high or low quality interrogation) and the reason for exclusion (for cause, for a technicality, or no mention the reason for exclusion). After being assigned a group and reading newspaper articles containing the PTP manipulations, participants read a trial that never mentioned the inadmissible evidence and returned a verdict of either guilty or not guilty.

Hypotheses

Hypothesis 1

I predicted that PTP that mentions a confession would increase guilty judgments over PTP that does not mention a confession. This was hypothesized because it was expected that, if jurors knew that a defendant confessed, many of them would use this confession against the defendant in trial, even if they were told that it was inadmissible. Further, I predicted that both PTP conditions would yield more convictions than the no-PTP control condition (cf. Steblay et al., 1999).

Hypothesis 2

When the interrogation was considered a high-quality interrogation, I predicted that there would be higher conviction rates than when it is considered a low-quality interrogation (i.e., a main effect of Interrogation Quality). I predicted this because a high quality interrogation is more trustworthy, making it harder to disregard. Because jurors have trust in the way that the confession was obtained, they will be more likely than those exposed to a bad interrogation to use this information when reaching a verdict.

Hypothesis 3

The last hypothesis was that a confession excluded for technicality would lead to higher guilt judgments than if the confession is excluded for cause (i.e., a main effect of Exclusion). This hypothesis was based off of the fact that if a confession is excluded for cause, meaning it was found to be a coerced confession, the jurors will not regard this confession as probative. Oppositely, if the confession is simply disregarded due to a technicality, many jurors will still see the confession as probative and use it when determining their verdict.

Method

Participants and Design

Data collection is ongoing. Participants were 116 students at the University of Dayton currently enrolled in a psychology course. Students who signed up were randomly assigned to conditions in a 2 (Interrogation Quality: High vs. Low) x 3 (Exclusion: Technicality vs. Cause vs. Not Specified) +1 (No Confession PTP Control) +1 (No PTP Control) factorial design. Thirty-five participants were excluded because they failed attention checks, resulting in a sample of 81 participants. Seventy-eight

percent of participants were female and 22% were male. Most participants were eighteen years old (47%) and the oldest participants were twenty-two years old (4%). Participants received course credit for participating in the study.

Materials

PTP. All participants read two articles in an online session two days prior to receiving the trial transcript. The newspaper articles were randomly selected out of eight different options. The PTP articles are presented in Appendix A. In seven of the PTP condition articles, the participants read relevant information to the mock murder trial they would be exposed to during the second session (which was based on that used by Rodriguez & Berry, 2019). The first article describes that an arrest has been made in a murder trial and that a pretrial hearing has been set. Those in the six fully crossed confession conditions also read that the defendant confessed to the crime after being interrogated. Embedded in this first article was the interrogation manipulation. Half read that the confession contained coercive tactics (Low quality interrogation), and half read that the confession did not contain coercive tactics (High quality interrogation). The second article described that the pretrial hearing is over and a trial date had been set. Those in the 6 fully-crossed confession conditions further read that the defendant's confession had been ruled inadmissible and would not be presented against him in court. Embedded in this second article was the Exclusion manipulation. One third read that the judge excluded the confession for cause (due to the pressure of a lengthy interrogation), one third read that the judge excluded the confession on a technicality (due to an error on a Miranda waiver form), and a one third did not read any reason for the exclusion. Participants in the no PTP control condition read two newspaper articles completely

unrelated to the case on climate change. Articles were based on those used in a prior study (Zimmerman et al., 2016), but adapted for case used in this study.

Manipulation check. After reading the two newspaper articles, participants answered six multiple-choice questions as a manipulation and attention check. Those that received the control articles answered six questions regarding climate change.

Participants in the no confession PTP control condition answered six questions about the case (e.g., attorney names). Participants in the six fully-crossed conditions answered two questions randomly-drawn from the pool of six general PTP questions, as well as four questions as an attention/comprehension check for the interrogation and exclusion manipulations. We excluded those who answered more than 2 questions incorrectly.

Trial transcript. The trial transcript for the second session was the same for all participants, regardless of what articles they read for the first session. The trial transcript was based off of an actual case, but modified for this study (see Wilford et al., 2018, & Rodriguez & Berry, 2019). In the case, a woman was shot in an alley and an eyewitness called the police after witnessing the shooting. The case included judicial instruction (including an admonition for jurors to base their decision only on the evidence presented in court), opening and closing arguments, prosecution witnesses (an eyewitness and police officer), defense witnesses (a character witness and an eyewitness), and a cross-examination of each witness. See Appendix B for the full transcript.

Dependent measures questionnaire. Participants, after reading the trial transcript in full, were asked to complete a brief questionnaire. Participants answered several questions concerning their overall evidence evaluations, verdict, and verdict confidence. The verdict decision was dichotomous (guilty or not guilty), and the rated

confidence used a 100-point scale (zero indicating ‘not at all confident’ and 100 indicating ‘completely confident’). Additionally, the participants rated the defendant’s likelihood of guilt on a 100-point scale (zero indicating ‘zero likelihood’ and 100 indication ‘definite likelihood’). The scaled verdict-confidence measure and likelihood of guilt measure yielded the same pattern of results as the dichotomous verdict, so I only report analyses of verdict (the most ecologically valid outcome) in this report.

Procedure

Participants signed up online for a two-part study entitled, ‘Evaluating Articles’. Participants were informed that the study was about a criminal trial in which they would be asked to read brief newspaper excerpts, recall what they read, evaluate the excerpts, and fill out demographic information. They were also informed that they would not be linked with their data in order to make the results confidential. For the first session, participants were emailed a link to the survey site, which containing informed consent, two articles (randomly assigned according to PTP condition), and the manipulation check questionnaire. In the second session two days later, participants received another link to the survey site, which included the trial transcript as well and dependent measures. After completing these items, participants were debriefed.

Results

Data collection is ongoing; therefore, these results are preliminary and should be treated with caution. Table 1 displays the conviction rates for all conditions in the experiment.

Hypothesis 1

I conducted a chi square test to examine the prediction that the confession PTP conditions would report the highest conviction rates compared to the non-confession PTP and no PTP conditions. Contrary to predictions, conviction rates did not significantly differ across the three condition, $\chi^2(2, N = 81) = 2.92, p = .232, V = .19$. Conviction rate in the no-PTP control condition was 53.8%, and was slightly lower in the no-confession PTP condition (50%). Participants who read PTP describing the confession produced a conviction rate of only 32%.

Hypotheses 2 & 3

Among participants who read PTP that mentioned the confession, I predicted a main effect of Interrogation quality and a main effect of Exclusion. Specifically, I predicted that convictions would be higher when the interrogation was of high (vs. low) quality, and when the PTP explained that the confession had been excluded for a technicality (vs. for cause or no explicit mention of inadmissibility). I evaluated these hypotheses using logistic regression. The Exclusion factor was dummy coded with the “No Mention” condition as the reference level. The overall regression model fit the data well, accurately predicting 71.4% of verdicts, $\chi^2(5, N = 81) = 6.31, p = .277, \text{McFadden } R^2 = .09$. Results of this analysis are presented in Table 2.

There was a significant effect of Interrogation Quality on convictions. Contrary to Hypothesis 1, however, conviction rates were higher in the low quality condition (38.4%) than the high quality condition (24%). There was no significant main effect of Exclusion on convictions (no mention: 36.3%, technicality: 33.7%, cause: 33.3%).

However, there was a statistically significant interaction, such that the effect of Exclusion (specifically, PTP mentioning a “for cause” exclusion vs. no mention of an exclusion) depended on Interrogation Quality (see Table 1). When participants read that the confession was excluded for cause, their conviction rates were similar. Declining to mention a reason for exclusion increased conviction rates in the Low Interrogation Quality condition, but decreased conviction rates in the High Interrogation Quality condition. This means that, when the interrogation was deemed to be “bad” and the jurors were not told as to why it was excluded in court, they still used this outside knowledge when deciding on a verdict, as the guilty verdicts were much higher than in every other condition.

Discussion

Overall, this research was conducted to fill an important gap in current PTP research. By examining the influence of PTP coverage of inadmissible evidence and the reason for its exclusion, I hoped to better understand just how much PTP and its content affects jurors during trial, specifically when they are deciding on a verdict. Though these are preliminary results, they suggest some interesting potential effects that should be investigated in future research.

When jurors knew about a confession prior to the trial, it was surprising to find that they were less likely to return a guilty verdict. This finding is inconsistent with meta-analytic evidence of the effect of negative PTP (see Steblay et al., 1999). The reason for this null effect is unclear. Although one possibility is low power (data collection is ongoing), it is also possible that jurors may have put much more faith in the judge than originally anticipated. Since the judge ultimately decided that the confession was to be

inadmissible in court, jurors could have trusted that the judge made the decision for a specific reason, acting in the role of gatekeeper (keeping information out of trial that needs to be excluded). Even if the jurors did not know or understand this reasoning, they could have put their faith in the judge that he was doing what was best and ultimately chose to disregard the information from PTP.

Among confession PTP conditions, Interrogation Quality exerted a significant effect on convictions, but opposite to what I predicted. Specifically, jurors were more likely to convict when the interrogation was coercive rather than conformed to “best practices.” The reason for this effect is unclear. One possibility is that jurors may have interpreted a “bad” confession as police confidence in guilt. Since the defendant was questioned for eighteen hours, jurors may have assumed this to mean that police were so confident they had the guilty perpetrator that they were willing to spend this much time and resources on one individual. If they were not sure, they would have spent more time going after other possible leads instead of focusing everything on one person. This is speculative, however, and it remains to be seen how this trend may change in the full dataset.

The Exclusion factor did not have the predicted effect on verdicts, but there was an unexpected interaction between Exclusion and Interrogation Quality. While it was not originally hypothesized, when an interrogation was deemed to be of bad quality and then excluded without mentioning why, jurors still used this evidence during trial to convict the defendant at much higher rates than every other group. Although the robustness of this effect is unclear, it is consistent with recent findings in basic social cognition. Dietvorst and Simonsohn (2019) recently found that biased individuals can successfully

disregard “to-be-ignored” information, but only if they are persuaded to do so. Perhaps media coverage of a reason for exclusion is an effective approach against the biasing effects of inadmissible PTP. Participants in the “no mention” category may never have been persuaded as to why this confession was excluded, and so they still utilized the confession when determining the verdict (in accordance with the speculated effect of Interrogation Quality). These results are preliminary, however, and should be treated with caution.

Taken together, these results indicate that the effects of PTP may be more nuanced than initially expected. That is, PTP effects may largely depend on the specific content and framing presented to the public. Since the content truly determines how much the public is affected, future research should explore this more in-depth, specifically looking beyond just simple “negative” or “positive” PTP. Lastly, future research should look to basic findings as to the information being given to the public, but also how the jurors process this information to form attitudes regarding the defendant.

Conclusion

So far, the research conducted shows hope for the criminal justice system. While it was originally predicted that jurors were easily biased by PTP and would use this to deprive a defendant of their right to a fair trial, the research up to this point has not supported that claim. The data so far suggests that there needs to be more research on the various ways in which the media actually discusses details of cases. However, the research has shown that, when deemed inadmissible, jurors must be persuaded as to why they cannot use the information they were already exposed to. Unless they are persuaded, jurors are likely to still use the information that is supposed to be disregarded, leading to

an unfair trial for the defendant. However, the First Amendment rights to freedom of speech cover PTP. Therefore, there needs to be more research on this issue to better understand the effects that PTP has, the ways in which it affects a defendant's right to a fair trial, and potential legal remedies to protect defendants' right to a fair trial by an impartial jury.

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Table 1: *Descriptive Statistics*

Exclusion	Interrogation	n	Conviction Rate (%)	Standard Error
No Mention	Bad	8	62.50	0.165
Technicality	Bad	8	37.50	0.165
Cause	Bad	15	26.67	0.120
No Mention	Good	10	10.00	0.148
Technicality	Good	10	30.00	0.148
Cause	Good	5	40.00	0.209
No Confession PTP Control		12	50.00	0.144
No PTP Control		13	53.80	0.138

Table 2: *Results of Logistic Regression Analyses*

Predictor	Estimate	SE	Z	p	Odds ratio	95% Confidence Interval	
						Lower	Upper
Intercept	0.51	0.73	0.70	0.48	1.67	0.40	6.97
INTERROGATION:							
good – bad	-2.71	1.28	-2.12	0.04	0.07	0.01	0.82
EXCLUSION:							
technicality – no mention	-1.02	1.03	-0.99	0.32	0.36	0.05	2.73
cause – no mention	-1.52	0.94	-1.63	0.10	0.22	0.03	1.36
INTERROGATION * EXCLUSION:							
(good – bad) * (technicality – no mention)	2.37	1.63	1.46	0.15	10.71	0.44	260.98
(good – bad) * (cause – no mention)	3.31	1.68	1.974	0.05	27.50	1.02	738.52

Note. Estimates represent the log odds of "VERDICT = Guilty" vs. "VERDICT = Not Guilty"

Appendix A

Article 1: Interrogation Quality Manipulation

[No confession PTP control condition will not see any bolded text; high quality condition text in italics, low quality interrogation condition text underlined in square brackets]

“An Arrest Made in the Andrea Lawrence Murder Case”

Cincinnati PD have arrested Samuel Thomas for the murder of Andrea Lawrence. Lawrence was found murdered in an alley way on the fifth of April. Police questioned Sam Thomas regarding his connection to the victim.

Sources indicate that Samuel Thomas confessed to the murder after 18 hours of interrogation. Thomas’s defense attorney, Richard Armato however, argues that police coerced him into confessing and Thomas is actually innocent of these crimes. It is not unusual for suspects who have confessed to later claim they were coerced. Although such claims are often dismissed out of hand, recent research on interrogations and confessions has revealed that many tactics that police regularly use in interrogating suspects can produce false confessions from innocent people. Some such tactics include: the false evidence ploy (lying to suspects about the existence of evidence that confirms their guilt, such as forensic evidence or witness statements), minimization (implying leniency if the suspect cooperates and confesses), social isolation, food deprivation, and denied bathroom breaks. The Channel 12 news team has obtained a copy of the video recording of Thomas’s 18-hour interrogation and verified it. Examination of the video indicates that *those problematic tactics that may produce false confessions are not visible in the tape* **several of those problematic tactics that may produce false confessions are visible in the tape. Thomas’s attorney will be contesting the trustworthiness and admissibility of the confession in a pretrial hearing.**

Investigators also interviewed two people who witnessed the murder. Prosecuting attorney Mike Kennedy tells Channel 12 that one eyewitness provides compelling reports pointing toward Samuel Thomas’s guilt. Defense attorney Richard Armato, however, tells Channel 12 that the other eyewitness provided reports that point away from Samuel Thomas. Whether the witnesses will testify at trial will be determined at a pretrial hearing next week. Both Kennedy and Armato are confident that their witnesses will be permitted to testify and will be persuasive to the jurors.

New articles will be published when there is any update in the case.

Article 2: Exclusion Manipulation

[No confession PTP control condition will not see any bolded text; technicality condition text in italics, for cause exclusion condition text underlined in square brackets; exclusion not specified condition will not see either italicized or underlined text, but will see remaining bolded text]

“Trial Date Set in Andrea Lawrence Murder Case”

A trial date has been set in the case of Andrea Lawrence’s murder. Jury selection in the case against Sam Thomas will begin on May 19th with an expected trial start date of May 26th. Samuel Thomas stands accused of murder. Police arrested him the 7th of April, two days after Lawrence was found dead.

A pretrial hearing in Thomas’s case was held earlier this week. Prosecuting attorney Mike Kennedy and defense attorney Richard Armato argued before presiding judge Dinkelacker to determine the forms of evidence to be presented at trial. Two eyewitnesses to the crime will be permitted to testify during the trial. One will testify on behalf of the prosecution, and the other will testify on behalf of the defense.

Thomas confessed to the murder after an interrogation by Cincinnati PD detectives that lasted 18 hours. At the pretrial hearing, however, Judge Dinkelacker decided to exclude Thomas’s confession on a technicality. The judge stated that the Miranda rights waiver form Thomas completed was filled out incorrectly. As a result, his Miranda waiver is invalid and his comments to police cannot be used against him. [At a pretrial hearing, however, the presiding judge, Judge Dinkelacker, decided to exclude Thomas’s confession for cause. The judge stated that the length of interrogation was unreasonable and placed undue strain and pressure on the suspect. As a result, his confession does not reach the standard of trustworthiness to be presented in court.]

Prosecuting attorney Mike Kennedy told the press today that although he is disappointed in Judge Dinkelacker’s decision to exclude the confession, he is confident that the jury will make the right decision and vote to convict Mr. Thomas after they hear the facts in court. Thomas’s defense attorney Richard Armato indicates that he and his client are happy with the judge’s decision, and that the exclusion of the confession will help ensure that Mr. Thomas receives a fair trial.

The twelve jurors and two alternates will be chosen by both prosecuting and defense attorneys during the jury selection process known as voir dire. Any progress regarding the case will be updated on Channel 12’s website.

Article 1: Control Condition

Recently, the United Nations has been studying climate change, finding that human activity has “very likely” been the driving force in the change over the last 50 years. Pollution from smokestacks, tailpipes, and burning forests has caused the surface temperature to rise by more than 1 degree Fahrenheit since 1900.

Further, effects of climate change can be seen in penguins. Scientists have begun to look at their fecal stains on the ice from space, seeing where the penguins stay for months at a time. From their observations, scientists have found that nearly six colonies of penguins have disappeared and ten new colonies have appeared.

Overall, the UN panel has used this and other evidence to shift the focus of climate issues from whether we are responsible (which research has proven to be correct) to how we can reduce human impact in the future.

Article 2: Control Condition

According to officials, Nepal’s cabinet will hold a meeting on Mount Everest to highlight the threat from global warming, which is causing glaciers to melt in the Himalayas.

The cabinet will meet at the Everest base camp this month, just before an international climate change conference in December in Copenhagen, said Deepak Bohara, the forest and soil conservation minister.

The high profile meeting reflects growing concern among governments about global warming, and comes on the heels of a United Nations report issued last week that urged governmental action to prevent drastic consequences of climate change.

Prime Minister Madhav Kumar Nepal and other cabinet members will fly by plane to the 17,400-foot camp, the starting point for mountaineers trying to climb the world’s highest mountain.

Appendix B

TRIAL TRANSCRIPT

THE COURT:

Members of the jury, it is important that you listen carefully and diligently to try to determine the facts and remember what you hear and see. Your determination of the facts must be based upon all the testimony that you hear from the witnesses and the other evidence that is submitted. You are the sole judges of the facts and neither I nor anyone else can interfere with you. On the other hand, you must accept the rules of law that I give you at the close of the trial, whether you agree with them or not.

You should keep an open mind throughout the trial, reaching your conclusion only after all the evidence is in, and you have heard the attorneys' closing arguments and my instructions to you on the law. To withhold making a decision until all the evidence is in is difficult to do, so keep reminding yourselves and don't make up your minds until all the evidence is in.

This is a criminal case instituted by the State of Ohio and presented by the Assistant District Attorneys. The case is based on an Indictment which charges as follows:

"The grand jurors of the State of Ohio present that: One, Samuel Thomas on or about the 5th day of April in the Year of Our Lord Two Thousand Fifteen, with force and arms did commit first degree murder of Andrea Lawrence."

Ladies and gentlemen, Samuel Thomas will have been shown to commit first-degree murder if the State can prove all of the following elements:

1. On or about the 5th day of April, 2015, the defendant shot Andrea Lawrence.
2. Andrea Lawrence died as a result of being shot.
3. The defendant acted with malice aforethought.
4. The defendant acted willfully, deliberately, premeditatedly and with a specific intent to kill Andrea Lawrence.

If the State has proved all of the elements, the defendant is guilty of Murder In The First Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Murder In The First Degree.

The terms of these elements should be defined as follows: "Willful" means intentional or by fixed design or purpose and not accidental. "To deliberate" is to weigh in one's mind, to consider, to contemplate, or to reflect. "Premeditate" is to think or ponder upon a matter before acting.

It should be noted that deliberation and premeditation need not exist for any particular length of time before the act.

"Malice" is a state of mind, which leads one to intentionally do a wrongful act [to the injury of another] [in disregard of the rights of another] out of actual hatred, or with an evil or unlawful

purpose. It may be established by evidence of actual hatred, or by proof of a deliberate or fixed intent to do injury. It may be found from the acts and conduct of the defendant, and the means used in doing the wrongful and injurious act. Malice requires only such deliberation that would make a person appreciate and understand the nature of the act and its consequences, as distinguished from an act done in the heat of passion.

"Malice aforethought" is a fixed purpose or design to do some physical harm to another, which exists before the act is committed. It does not have to exist for any particular length of time.

If a person has the opportunity to deliberate and uses a dangerous weapon against another resulting in death (as was used in this case), you may, but are not required to, infer that the weapon was used with malice, premeditation and specific intent to kill.

The trial will proceed in the following order: First, the District Attorney is required to make an opening statement. The Defendant may, but is not required to make an opening statement. Second, the State will introduce evidence intended to support the charges against the defendant. Third, after the State has presented its evidence, the Defendant may present evidence, but is not required to do so. The burden is always on the State to prove each element of the offense charged, beyond a reasonable doubt. The Defendant does not have the burden of calling any witnesses or introducing any evidence. Fourth, if the Defendant does put on evidence, the State may present evidence in an attempt to rebut the Defendant's Evidence. Fifth, at the conclusion of the evidence, the District Attorney and Defense Counsel have the opportunity to present oral argument in support of their cases. What the lawyers say, either in the opening statements or in the closing arguments, are designed to present the contentions of each side as to what the evidence has shown and what inference may be drawn. Sixth, I will then instruct you on the applicable law and you will then retire to consider your verdict.

Is the State prepared to give its opening statement?

MR. KENNEDY: Yes, Your Honor.

Good afternoon. This is the case of Samuel Thomas, but it's also the case of Andrea Lawrence. On April 5th, 2015, at about 8:00 or 8:30 in the evening, Andrea Lawrence was walking home from work. Unfortunately for Andrea, Samuel Thomas had already determined that Andrea would not make it home that night. Samuel Thomas had formulated a plan to corner Andrea before she entered her residence, and shoot her repeatedly until death. In order to ensure a quick getaway from this act, Samuel enlisted the help of another to drive his getaway vehicle.

The evidence will show that Samuel Thomas waited for Andrea Lawrence on the corner of 5th and Hogan Ave. Once Andrea had turned the corner to Hogan, a low-traffic alley, Samuel Thomas confronted her and shot her repeatedly. Samuel Thomas ran toward a waiting car being driven by another person he had enlisted to aid his getaway.

You will hear testimony that a young man named Brett Cheramie was driving by the corner store, and he witnessed Samuel Thomas jumping into the waiting car. Brett Cheramie will testify that the person he saw in that car is the Defendant, Samuel Thomas. Brett was able to give the police a description of the color and make of the getaway vehicle, which led to the apprehension of Samuel Thomas later that evening. David Croft, the police officer assigned to the case, will also testify that his investigation shows that the suspect he ascertained in this case, Samuel Thomas, is indeed guilty as charged.

The evidence, all together, will show you that Samuel Thomas tried to go out with Andrea Lawrence, and at some point after she rejected his advances, he formed the specific intent to kill her—not just inflict great bodily harm. He formed the intent to kill her, at that point, by shooting numerous times into the body of Andrea Lawrence. All this evidence will be presented to you and, at the conclusion of our case, you will see that Samuel Thomas is guilty as charged of first degree murder, and we will ask you to return that verdict. Thank you very much.

THE COURT: Thank you, Mr. Kennedy. Mr. Armato, would the Defense care to give an opening statement, at this time?

MR. ARMATO: Yes, Your Honor, we would.

MR. ARMATO: Good afternoon. I appreciate your patience and thanks for being here. As we've told you many times already, this is a very serious case. The stakes are high for everybody involved. A very serious crime was committed, nobody disputes that. What is disputed is who committed the crime. The D.A. has laid out his version of the evidence. The Defense has a very different view of that evidence, and especially the strength of that evidence. The evidence that the State intends to present to you is not sufficient to find anyone guilty of first-degree murder.

The concept of reasonable doubt is very important here, and I remind each and every one of you that you must hold the State to its burden of proof, which is that they have to prove each and every element of the crime beyond a reasonable doubt. The most important element in this particular case is who committed the crime and whether the Defendant is the person who did it. That is where the reasonable doubt will lie at the end of this case. I'm going to ask you to listen to all of the evidence very carefully, to weigh all the evidence, and to not make up your mind until you have heard all the evidence. The Defense is not required to prove anything here. What is required in this case is for the State to prove beyond a reasonable doubt that the Defendant conspired to commit this murder.

First of all, we don't believe the evidence will show beyond a reasonable doubt that Samuel Thomas was waiting for Andrew Lawrence at the street to her apartment. A witness is going to walk into this courtroom and say that Samuel Thomas is the person who committed this crime. This witness is going to be believable and likeable. You will think this witness has no reason to lie. But this is a well-intentioned witness who is mistaken. So, that's why I ask you to wait until the end of all the evidence before you make up your mind. Wait until you've heard all the witnesses before you weigh them all against each other. Wait until the end of the case before you decide whether the Defendant is guilty or not. And, I would submit to you that, at the end of the case, you will find that there is definitely a reasonable doubt as to whether or not Samuel Thomas committed this crime. Thank you very much.

THE COURT: Is the State prepared to call its first witness?

MR. KENNEDY: Yes, your Honor. The State calls Brett Chermie to the stand.

Q. Hello Mr. Chermie. I want to take you back to the night of April 5th of 2015. What were you doing on that evening around 8:30pm?

A. I was driving around. I was taking Hogan Avenue to visit my cousin.

Q. Did you witness anything unusual while you were on Hogan Avenue?

A. Yes, sir.

Q. Okay. I'd like for you to take your time and tell the jury exactly what you recall about that evening?

A. Well, I was about to turn onto Hogan Avenue from 5th Street when I heard gunshots. From the corner, I saw a man holding a gun over a woman who looked like she'd been the victim of the shots I heard. The man then took off running down the street to a car waiting for him some distance down the street. The gunman jumped in the car and it sped off toward 6th Street away from my car.

Q. Can you describe this vehicle to us?

A. It was gray.

Q. And was anybody else in that car?

A. Yes, sir.

Q. Alright. And how far away were you from the getaway vehicle?

A. I was at least 100 feet or so away.

Q. And how good was your view of the passengers?

A. I got an okay view. It was getting dark out so I couldn't see everything, but I could see pretty well.

Q. How close were you to the gunman?

A. Not too close, he was about thirty feet from the front of my car.

Q. All right. What happened next?

A. After I was sure the two men in the car had cleared out, I pulled onto Hogan Avenue to help the woman who was shot.

Q. And what was the condition of the victim who we can now name as Andrea Lawrence?

A. She looked like she was already dead—I was too stunned to check thoroughly, and I wouldn't really know how to for sure. I called 9-1-1 and when the paramedics arrived they announced her officially dead at the scene. It looked like she had been shot several times.

Q. Okay. When you called 9-1-1, what did you report to authorities?

A. I recounted everything I could remember seeing including descriptions of the car, the shooter, and what I could make out of the driver.

Q. Okay. Did there come a time that you spoke to a police officer about this case?

A. Yes, I gave him descriptions of the car, the shooter, and the driver.

Q. And did the police officer ask you to look at anything at the station?

A. Yeah, he gave me a couple of vehicle books to look at.

Q. Were you able to find any sort of vehicle that looked like the vehicle that fled from Hogan Avenue toward 6th Street?

A. Yes. An '85 Monte Carlo.

Q. You pointed out an '85 Monte Carlo?

A. Yes, sir.

Q. Okay. And did that best fit the body style of the vehicle that you saw on Hogan Avenue?

A. Yes.

Q. After giving your statement and looking through that book with the police officer, did you leave the station?

A. Yeah. I went to a bowling alley where I was DJing.

Q. When you got to the bowling alley, were there police officers waiting for you?

A. Yes.

Q. Did you have a conversation with them at that time?

A. They said, "We have something we'd like you to look at."

Q. All right. And where did you go then?

A. They brought me down to the police station again and showed me a lineup that had a bunch of photos. They asked me if I saw anybody in the lineup that looked like the shooter.

Q. Okay. And could you identify anyone?

A. Yeah. In the lineup, I saw a photograph of the shooter.

Q. In the lineup, were you positive it was the shooter in that photo?

A. Yes.

Q. Did you recognize his photo immediately?

A. Not immediately. I had to study him for a while, but I recognized him.

Q. Okay, that person that you identified from the lineup, do you see him in court today?

A. Yes, sir, it is the Defendant, Samuel Thomas.

Q. Okay, Mr. Cheramie. Are you absolutely positive that the Defendant you identified at the police station in the lineup is the man that you saw running on Hogan Avenue and jumping into that car after attacking Andrea Lawrence?

A. Yes. I am absolutely positive. There is not a doubt in my mind. Samuel Thomas was the shooter that I saw on the day of the crime.

Q. Alright. Do you recall what the lighting conditions were like that evening?

A. It was pretty dark outside. There is a streetlight on the corner of 5th and Hogan Avenue, but they were standing in the shadows a bit. But I could make out what was going on.

Q. And this streetlight provided sufficient light to see a man thirty feet in front of your car?

A. Oh, yeah.

Q. All right. Can you tell this jury that on that night, when you identified the Defendant Samuel Thomas, that you were absolutely positive in your identification?

A. Yes, sir.

Q. And as you look at that face today in Court, are you absolutely sure that this is the person you saw? (*indicates defendant*)

A. Positively.

Q. All right. Thank you, Mr. Cheramie. Please answer the Defense attorney's questions.

* * * * *

CROSS-EXAMINATION

BY MR. ARMATO:

Q. Thank you for coming, Mr. Cheramie. You are interested in giving accurate testimony today, right?

A. Yes, sir.

Q. Alright. And you said your car was thirty feet away from the shooter who attacked Andrea Lawrence?

A. Yes.

Q. Now, you testified earlier today, that you looked straight ahead from your front window at the shooter who attacked Andrea Lawrence?

A. Yeah.

Q. But you also testified that you had been turning onto Hogan Avenue but stopped when you heard shooting, correct?

A. Yeah.

Q. So, if you didn't complete the turn onto Hogan Avenue, were you looking to your right or were you looking forward, when you saw the shooter, when you saw his face?

A. I really -- you know, it was right up on me. That's all I can really tell you, you know. I'm not sure exactly how I was looking.

Q. The shooter was supposedly thirty feet away from the front of your car, is that correct?

A. Yes.

Q. Thirty feet is pretty close, much closer than 50 feet at least. How do you know you were thirty feet away?

A. It's an approximation.

Q. Of course, don't you think it may be just as likely then that you were 50 feet away?

A. I don't think so.

Q. Well, if your car had not actually turned onto Hogan Avenue as you testified earlier, then it seems likely that you were farther than 30 feet from the shooter, doesn't it?

A. Maybe, but I was close enough to get a good look.

Q. Okay, I want to ask you about when the officers picked you up at the bowling alley and you went to Marsden Boulevard and saw the car and some people, okay?

A. Yes.

Q. What did the officers tell you about where you were going and what you were going to do?

A. They said they caught the shooter and they wanted to see if I recognized him or his car.

Q. Okay, now you get to the parking lot on Marsden Boulevard. What did they ask you first?

A. First, they pointed to the Monte Carlo and asked if I recognized that car from anywhere. I said it was the car I saw the shooter get in and drive away.

Q. Were there any other cars they wanted you to look at? Or just the Monte Carlo.

A. Just the Monte Carlo.

Q. They didn't have any other cars for you to look at?

A. No, sir.

Q. Now, after the officers asked you to look at the car, then what happened?

A. They took me to the police station and asked me to look at a lineup with some pictures in it.

Q. Okay, I'd like to ask you some questions about the lineup. Officer Croft showed you the lineup, correct?

A. Yes, sir.

Q. What did Officer Croft say before they showed you the lineup?

A. He said that he wanted to show me some pictures to see if I could pick out the shooter.

Q. Did anything the officers said lead you to believe the shooter was in the lineup you were about to see?

A. Well, they said they caught the guy. So I expected that I'd recognize him from whatever pictures they showed me.

Q. So did you expect to see the shooter in the lineup?

A. Yeah, pretty much.

Q. Okay, how many pictures did you see in the lineup.

A. Four.

Q. Four. Did all the pictures in the lineup generally resemble each other?

A. Well, they were all males, and all the same race. But they had different hair colors and hair styles. And some looked older than others.

Q. Did any individual person immediately stand out from the others?

A. Two of them immediately stood out as not being the shooter. They didn't look like the man I saw at all.

Q. How about the pictures themselves? Were any of them different from the others?

A. Three of them were printed on photo paper, kind of like a matte finish. But the photo of Samuel Thomas was printed on glossy paper, that caught my eye.

Q. All right. And you made one positive identification from the lineup you were shown, right?

A. Yeah.

Q. And who had you identified?

A. I identified Samuel Thomas as the shooter.

Q. Why did you identify Samuel Thomas from the lineup you were shown?

A. I knew he was the shooter.

Q. You knew?

A. Yeah.

Q. How did you know? How did you make your decision?

A. I eliminated the two who obviously weren't the shooter immediately, so then I had narrowed it down to two pictures. And then I studied Samuel Thomas' face for a bit and thought he looked the closest.

Q. Is there a possibility that Samuel Thomas' face just seemed familiar to you and that is what caused you to choose his picture?

A. I guess anything is possible.

Q. Okay, so after you made a selection from the lineup, what did Officer Croft say to you?

A. He said, great, thank you, you've been a helpful witness.

Q. Did Officer Croft's comments to you influence how you felt about your choice.

A. I felt reassured that I made the right choice.

Q. Okay. Back to the incident again, did you look at your watch any time around that time, to see what time it was?

A. Not that I could recall. It was around 8pm.

Q. Some witnesses have said 8:00 to 8:30; do you have any problem with that?

A. No.

Q. All right. Was it basically dark at that time?

A. Basically.

Q. So viewing conditions for witnessing a crime were not at their best?

A. I guess not their best.

Q. I don't have any other questions.

THE WITNESS: Okay.

MR. ARMATO: Thank you.

MR. KENNEDY: Judge, the State calls Officer David Croft.

Q. Officer Croft, you said you're a police officer with the Street Crimes Division?

A. Yes, sir.

Q. About how long have you been doing that?

A. About four years with this division but I've been a police officer for 8 years.

Q. Okay. So, that's where you were assigned in April of 2015?

A. Yes, sir.

Q. Now Officer, I want to take you specifically to the night of April 5th of 2015, some time around 9:00 in the evening. At that time, had you received any information about a homicide that had occurred on the corner of 5th and Hogan?

A. Yes, sir.

Q. And what information had you received?

A. Earlier that night there was a broadcast over the radio of an armed assault occurring on the corner of 5th and Hogan. My partner and I proceeded to the area to render assistance. While traveling there, we heard a description of a gray Monte Carlo sedan, which was last seen fleeing toward 6th Avenue. At that time we drove over to the 6th Avenue area.

Q. Do you know about what time this was, that you were looking in that area?

A. I can't really pinpoint the exact time, it was, you know, shortly after 9:00.

Q. Okay. So, it was a little while after the shooting had occurred. And were you able to find this car at that time?

A. Not at that time. No, sir.

Q. And Officer, did you stay in that area at that time or did you leave?

A. We left the area, just to do more patrolling. And also we kept an eye open in case the car happened to come along.

Q. Okay. And as part of your regular patrolling, did you end up back in the Gretna area?

A. Yes, sir.

Q. And did there come a time, about 10:00, when you noticed anything unusual?

A. Yes, sir. Roughly around 10:00, maybe a little bit after, my partner and I were stopped at the red light at Marsden Boulevard and Westbank Expressway. And about that time we saw a gray Grand Prix, which was similar to the Monte Carlos, pass in front of us with one white male inside.

Q. Okay. So, you knew that a Grand Prix looks like a Monte Carlo?

A. Yes, sir.

Q. Okay. And could you describe the occupant?

A. One white male. He appeared to be wearing a plain, grey t-shirt and dark jeans.

Q. And did you, in fact, have an opportunity to go through the intersection and catch up to this car?

A. Yes. We pulled up along side him and the other car slowed down.

Q. Did you have an opportunity to look over to your right at that time and see that car?

A. Yes, sir.

Q. What did you decide to do at this point?

A. We observed the state inspection sticker was expired, and so we decided to make a stop at that time. I illuminated the emergency lights and hit my siren just to let him know that we were behind him, and that we needed him to pull over. And at that time, he pulled over in a convenience store parking lot.

Q. Okay. And what happened at that time?

A. We asked the individual to step out of the car by using the PA system, and he stepped to the rear of the vehicle. We conducted a pat down frisk for any kind of weapons for our safety, and I began conducting a field interview of the individual while my partner did a visual check of the interior for weapons or any occupants that might be hiding. We requested a license and registration, which were produced by the individual and identified him as Samuel Thomas who was the owner of the car.

Q. Samuel Thomas owned the car in which he was pulled over?

A. Yes, sir.

Q. And at the point that you made the stop, did you feel as though this car and this person matched the description that you had received over the police radio?

A. Yes, sir.

Q. And as a result of that, did you notify anybody?

A. We notified our sergeant.

Q. What happened after you notified your department?

A. The suspect was arrested and taken to the station along with the car.

Q. And what did you do next Officer Croft?

A. At that point, the eyewitness was brought down to the police station to look at the photographic lineup that I had created. The lineup contained 4 photographs: one of the suspect and three “filler” photos.

Q. Okay, did the witness, Brett Chermie, identify the suspect?

A. Yes, the witness identified the shooter, Samuel Thomas.

Q. Did he seem confident in his identification?

A. Fairly confident. After studying the lineup, he said “That is the guy. I recognize this one as the gunman”.

Q. Did Brett also positively identify the car you brought in with Samuel Thomas?

A. Yes.

Q. So, Brett positively identified Samuel Thomas and the Grand Prix after seeing each?

A. Yes.

Q. Did you have a chance to talk to Samuel Thomas after Brett Chermie identified him?

A. Yes, I questioned him after he was positively identified.

Q. And what did you question him about?

A. Primarily, his relationship with the victim.

Q. And what did he say about that relationship?

A. He admitted that he had known the victim and that he had shown romantic interest in her—He denied being upset when she rejected his advances though. He looked very agitated and anxious at the mere mention of her name.

Q. And, based off your previous experience as a police officer, what did his body language tell you?

A. That he was clearly upset by her rejection of him.

Q. Did he tell you what he claimed to have been doing the night of Andrea Lawrence's murder?

A. Yes. He claimed he was alone watching TV at his apartment.

Q. But he has no evidence in support of that claim.

A. None.

Q. Now, Officer, did you have the opportunity to gather any of the physical evidence that was found on the scene itself?

A. Yes, sir, I did. I gathered several spots of blood that could have belonged to the victim or the attacker and submitted loose clothing on the victim's body that could possess tissue samples from her attacker.

Q. And Detective, did you have an opportunity to submit those items, or at least a couple of those items for testing?

A. Yes, sir, I did. I submitted them for DNA analysis. Unfortunately the samples were contaminated so no DNA analysis could be conducted on them.

Q. So there were no DNA analysis results that could implicate the Defendant?

A. No, sir.

Q. But also no results that clearly eliminated him from consideration, either?

A. Correct.

Q. Despite the lack of DNA evidence, did you still believe that you had a strong enough basis on which to seriously consider Samuel Thomas was the murderer?

A. Yes, sir. Even though there was no DNA evidence, we were believed Mr. Cheramie's identification was a strong foundation for a case.

Q. Thank you. I have no more questions.

* * * * *

CROSS-EXAMINATION

BY MR. ARMATO:

Q. Okay, let's talk about the DNA evidence for a minute. You submitted the sweater and the blood samples for DNA analysis, right?

A. Yes, sir.

Q. And no analysis could be conducted because the samples were contaminated, correct?

A. That's what the lab told me.

Q. So as far as you know, there is no physical evidence from the crime scene that directly links Samuel Thomson to this murder.

A. No physical evidence, not as far as I know.

Q. Did anybody else ID the gray car that Samuel Thomas was driving as the getaway car of the shooter, other than Brett Cheramie?

A. No, sir.

Q. After the Grand Prix was seized, you also searched it, right?

A. Yes, sir, I did.

Q. And was there any physical evidence in the car that indicated that the occupants of that car committed that crime?

A. No, sir.

Q. Okay. So, as far as you know, there is no physical evidence from the car that links Samuel Thomas to the murder.

A. Not as far as I know.

Q. So no physical evidence from the crime scene or the Grand Prix directly ties Samuel Thomas to this murder?

A. No physical evidence, as far as I know.

Q. Okay, let's talk for a minute about the lineup you showed Mr. Cheramie. You are the one who created the lineup, correct?

A. Yes, sir.

Q. This lineup contained the suspect, Samuel Thomas, and three "fillers" as you called them.

A. Yes, sir.

Q. How did you select the fillers to be shown in this lineup?

A. I picked three photos that looked somewhat like the suspect.

Q. Did you check the chosen photos against the one you had of Samuel Thomas to see if they differed in any way?

A. Not directly, no.

Q. What did you say to Mr. Chermie before you showed him the lineup?

A. I told him that we had a suspect and I'd like him to see if he could identify him.

Q. How did you present these pictures to Mr. Chermie?

A. We have a folder that you can put the pictures in and each picture can be seen through its own window.

Q. Okay so you give Mr. Chermie the folder, and then where are you standing when he's looking at the pictures?

A. I was standing next to him. So he was to my right, facing in the same direction as me, looking down at the photos.

Q. Could you see the lineup as Mr. Chermie was looking at it?

A. Yes, sir. I could see the lineup as he held it next to me.

Q. So you knew that Mr. Thomas was the person you were looking at for this murder, you created the lineup, and then you presented it to Mr. Chermie to look at. Do you think it's possible that you may have influenced Mr. Chermie's choice?

A. No, I don't think so. Well, I suppose anything is possible, but I doubt it.

Q. Did you take notes about the outcome of the lineup at the time the lineup occurred?

A. Not immediately, no sir. I made a record of the lineup after we dropped him off at the bowling alley, about an hour later.

Q. What did you say to Mr. Chermie after he identified Samuel Thomas?

A. I asked him if he was sure. He said he was. So I said, great, thank you, you've been a big help, and we'll take you back to the bowling alley.

Q. Did you provide any indication that Mr. Chermie had identified the person you suspected committed the crime?

A. Not to my knowledge.

Q. Turning briefly to your interview with Samuel Thomas. You said that Mr. Thomas seemed agitated and anxious when talking with you about the victim, correct?

A. Yes, sir.

Q. Was this before or after you informed him that the victim had been murdered?

A. Well, we informed him at the beginning of our conversation that the reason we were talking to him was that we were investigating her murder. So, I suppose I noticed his agitation afterward.

Q. So Samuel Thomas learned that someone he was in a relationship with has just been murdered, and then he was immediately questioned by police about their relationship in the context of a criminal investigation. Is that correct?

A. Yes, sir.

Q. So, it might be understandable for someone in Samuel Thomas' circumstances to be upset, even if he had nothing to do with the crime you were investigating. Do you agree?

A. I suppose it's possible.

Q. Thank you, Officer Croft. No further questions.

* * * * *

MR. KENNEDY: Your Honor, the State rests. We have no more witnesses to call.

BY MR. ARMATO: The Defense calls Veronica Meyers to the stand.

Q. Ms. Meyers, you are the ex-girlfriend of Samuel Thomas, correct?

A. Yes.

Q. And how would you describe your relationship with Mr. Thomas now?

A. We don't really have one. The breakup was hard on both of us so we don't really talk anymore.

Q. And why was the breakup difficult?

A. We were both just disappointed that we couldn't work it out.

Q. So though you were once in an intimate relationship with Samuel, you are no longer really in contact with him, right?

A. Correct.

Q. So your only motivation is to provide honest testimony to the jury today then, right?

A. Yes.

Q. How long were you in a relationship with Samuel Thomas?

A. Sam and I dated for a little over a year.

Q. And how well did you get to know him during that time?

A. I feel like I know Sam as well as myself.

Q. And do you think Samuel would be capable of shooting another human being to death?

A. Never. I could never imagine Sam doing anything like that.

Q. And why is that Ms. Meyers?

A. He's too sweet. Sam could never hurt a fly.

Q. Did Sam ever abuse you? Physically or emotionally?

A. No. Never.

MR. ARMATO: Thank you. I have no further questions.

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CROSS-EXAMINATION

BY MR. KENNEDY: Ms. Meyers, my name is Greg Kennedy. I just have a few questions for you Ms. Meyers.

Q. After having been in such an intimate relationship with Samuel, is the jury really to believe that you would have no reason to want to lie for Samuel Thomas?

A. I haven't spoken to Samuel since we broke up.

Q. But time doesn't necessarily cut our feelings of attachment to someone, does it?

A. Maybe not.

Q. And how long ago did you and Samuel break up?

A. Two years.

Q. Two years? Wow. That seems like a long time. A lot can happen in two years, can't it Ms. Meyers?

A. I suppose so.

Q. People can change drastically in a matter of weeks let alone two years—wouldn't you agree?

A. Some people.

Q. The type of people who would be capable of murder would be likely candidates for drastic personality changes in short periods of times, wouldn't you think?

A. Perhaps.

MR. KENNEDY: Thank you. I have no further questions.

* * * * *

THE COURT: Thank you, ma'am. You may step down.

MR. ARMATO: The Defense calls Janette Sawyer to the stand.

BY MR. ARMATO:

Q. Ms. Sawyer, where were you on the evening of April 5th, 2015?

A. I was in my apartment.

Q. And where is your apartment located?

A. On the corner of 5th and Hogan, on the ground floor.

Q. So you live in the same apartment building as Andrea Lawrence once did?

A. Yes, I do.

Q. And you were at your apartment after 8pm on April 5th, 2015?

A. Yes, I was.

Q. Can you tell the Court exactly what you saw that night?

A. I was watching my TV in the living room when I heard what sounded like gunshots. I ran to the window to see what was going on and saw a man with a gun standing over a woman who was bleeding. I was pretty sure I recognized her as someone who lived in my building because I'd seen her around the halls. I looked further down the alley and saw a car sitting a ways down the alley. My window was at a good angle to see the driver and I got a good look at him before the shooter jumped in the passenger side door and the car shot down Hogan toward 6th.

Q. And what did you do next?

A. I was a bit shocked after having witnessed something like that so I basically just froze by the window. Luckily someone else had called 9-1-1 and the ambulance and police arrived outside. I watched outside for a little while longer until I couldn't take it any more and had to lie down.

Q. When did you report what you saw to authorities?

A. The next morning I woke up and called the police to provide them with a statement of what I saw.

Q. And what did the police tell you?

A. They said they had already apprehended the shooter and that I could come down to the station to identify him.

Q. And did you?

A. I went to the station and they showed me a lineup suspect, but nobody looked familiar.

Q. So what did you say to the officers who were with you?

A. I told them I didn't recognize anyone. I said that I didn't get a good look at the shooter because he was farther from my window, but I didn't recognize anyone out of the lineup

Q. So you didn't identify the suspect?

A. No.

Q. And you were sure that the suspect was not the man you saw?

A. Well, like I said, the shooter was farther from my window but no, I at least didn't recognize anyone in the lineup as the shooter.

Q. And is one of the people you were presented but did not identify present in the courtroom today?

A. Yes.

Q. And who was that?

A. The Defendant, Samuel Thomas

Q. The defendant was not shooter you saw the night Andrea Lawrence was shot?

A. No.

Q. Are you sure?

A. Positive.

Q. Thank you Ms. Sawyer. Mr. Kennedy will question you now.

* * * * *

CROSS-EXAMINATION

BY MR. KENNEDY:

Q. Good afternoon, Ms. Sawyer. I just have a few questions.

Yes.

Q. So you waited an entire night before phoning authorities, is that correct?

A. Well, I was in shock over witnessing the murder so I waited to pull myself together.

Q. Do you think this shock or the amount of time that passed could have affected your memory of what you witnessed.

A. I don't think so.

Q. But you're not sure?

A. Well, I guess I couldn't be sure.

Q. So, from your window you said you had a good view of the car but not the shooter, correct?

A. Yes. My window was about 10 feet away from the car but it was at least double that from the shooter.

Q. But it was dark out already, right?

A. Yes.

Q. Don't you think your view was affected by the lack of light then?

A. I suppose so, but I still had a good view because of the light from my window.

Q. So the Defendant does not look at all familiar to you?

A. No.

Q. And for that reason you are sure in saying that he is not guilty?

A. I'm not sure—I just don't recognize him.

Q. If you aren't sure, why were you willing to say that Samuel Thomas was not the shooter you saw?

A. Because he did not look familiar to me.

MR. KENNEDY: Thank you. I have no further questions.

COURT: Ms. Sawyer, you are excused.

Defense: Your Honor, the Defense rests its case.

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CLOSING ARGUMENT

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MR. KENNEDY:

Ladies and gentlemen, we appreciate the time and the attention that you have given to this case. A first-degree murder is the killing of a human being when there is specific intent to kill or inflict great bodily harm. This murder took place when the offender had a specific intent to kill or inflict great bodily harm upon Andrea Lawrence. And, that's been proven to you beyond a reasonable doubt, and I don't think there's any doubt in your mind about any of that.

The State has presented strong evidence. The witnesses we submitted are very strong and very credible and they have proven our case beyond a reasonable doubt.

Brett Cheramie testified that he got a good look at the perpetrator and the getaway vehicle. Brett Cheramie testified that he sat at the corner of 5th and Hogan Avenue as the shooter finished off Andrea Lawrence. That shooter, ladies and gentlemen, was the Defendant, Samuel Thomas. Brett is positive about his identification of the defendant. I submit to you that he is a strong and credible witness. He positively identified Samuel Thomas, and he positively identified the car. I submit to you Brett Cheramie has no reason to lie or attempt to frame the Defendant, as he had no previous acquaintance with him.

The Defense presented a weak eyewitness in Janette Sawyer, who did not show the confidence that, our eyewitness, Brett Cheramie, expressed. Veronica Meyers was a character witness with clear personal motivations to defend Samuel Thomas, and no knowledge of what Thomas has been like in the last two years.

I submit the murder of Andrea Lawrence was clearly committed with the intention of murder or inflicting great bodily harm—that element has been proven beyond a reasonable doubt. Samuel Thomas had clearly demonstrated specific intent to kill when he shot Ms. Lawrence four times in the body.

This case is not about whether a first-degree murder took place. It's a case about who did it. You've got a strong witness, who comes in and says, "He did it." There is no doubt here, no doubt at all. The evidence is more than sufficient. We have proven our case beyond a reasonable doubt. Samuel Thomas is guilty of first-degree murder for killing Andrea Lawrence in cold blood. He is a cold-blooded killer and he should be held accountable for his actions. I ask you to return a verdict of guilty in the first degree because it's the right thing to do.

Thank you.

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MR. ARMATO:

Thank you very much for your attention and thank you very much for being here. Mr. Kennedy was right about one thing: this case is not about whether a first-degree murder crime was

committed. It is a whodunit. That's all we're talking about. I would ask you to consider, did they prove who did it?

Let's talk about the physical evidence, briefly. No reliable analysis could be conducted on any physical evidence recovered from the scene of the crime. There is no physical evidence that suggests Samuel Thomas is responsible for this murder. None. The state's case rests entirely on one eyewitness, Brett Cheramie, who the Defense has shown can very easily be mistaken.

Brett Cheramie is a well-intentioned young guy who made a mistake. Why would he make a mistake in his eyewitness identification? For a couple of reasons. He didn't have a lot of opportunity to see the gunman. He wants to tell you that he got a very clear look at the gunman for a long time, but think about what was going on and whether he really had a good opportunity to see that person. I asked him many times exactly where his car was when he saw the gunman's face. At first he said the gunman was directly in front of him, but when I pushed him- when I reminded him about what he said at an earlier hearing, he eventually said he had to look sideways to see the gunman. In all likelihood, contrary to what Mr. Cheramie recollects, he was likely more than 30 feet away from the shooter when he saw him.

He's got the car window -- we don't know exactly the angles here, but it's possible he has some obstruction with the post- the blind spot. And, he's looking sideways and, when he's looking back, he's probably looking through the windshield of the other car -- that's a big point -- where there might be glare. Now, while he's looking back to see this gunman's face, how long can he really look? He's worried about getting away. He's driving a car. This is a heated situation. There's no opportunity for him to see that face so clearly.

What was the lighting like on that day? At the time of the murder, the sun was below the horizon. It wasn't full dark. It just means that it's dusk, there's no direct sunlight. Light and shadows play tricks at that time of day. It's in between day and night, and it's a little difficult to see things. And the witness acknowledges that the shooter was standing in the shadows. That's an important point. That's very important when it comes to looking sideways at people in another car through their windshield.

Let's turn now to the identification procedure itself. Officer Croft spoke told Mr. Cheramie what was about to happen with the identification tasks, and that he wanted him to identify the car and the shooter. The lineup had only four members, and the fillers were chosen based on their match to Samuel Thomas's own appearance. Mr. Cheramie took a long time to make an identification, and says he made that decision by process of elimination, narrowing it down to Samuel Thomas after discarding those who probably weren't the shooter. Afterward, he had a conversation with Officer Croft, and Officer Croft said great, you've been a big help.

Put all these together, and the Defense believes that a witness with a shaky memory, expected to be able to make an identification from a lineup, made a mistaken identification of Samuel Thomas, and now appears confident because he received feedback saying he chose the right person. Mr. Cheramie initially appears to be a strong witness, but he is mistaken.

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THE COURT:

Ladies and gentlemen, it is my duty to instruct you on the law that applies to your deliberations.

It is your duty to follow these instructions in reaching your verdict. Although you are the sole judges of the law and the facts on the question of guilt or innocence, you have the duty to accept and apply the law as given by the Court. You must decide the facts from the testimony and other evidence and apply the law to those facts in reaching your verdict. You must not single out any of these instructions and disregard others. The order in which the instructions are given does not indicate that one instruction is more important than another.

The Defendant is presumed to be innocent until each element of the crime necessary to constitute his guilt is proven beyond a reasonable doubt. The Defendant is not required to prove that he's innocent. Thus, the Defendant begins the trial with a clean slate. The burden is upon the State to prove the Defendant's guilt beyond a reasonable doubt. In considering the evidence, you must give the Defendant the benefit of every reasonable doubt arising out of the evidence or out of the lack of evidence. If you're not convinced of the guilt of the Defendant, beyond a reasonable doubt, you must find him not guilty. While the State must prove guilt beyond a reasonable doubt, it does not have to prove guilt beyond all possible doubt. Reasonable doubt is doubt based on reason and common sense and is present when, after you have carefully considered all of the evidence, you cannot say you are firmly convinced of the truth of the charge.

You must determine the facts only from the evidence presented, and that includes the testimony of witnesses. As the sole judges of the credibility of witnesses and the weight their testimony deserves, you should carefully scrutinize the testimony given and the circumstances under which the witnesses have testified. In evaluating the testimony of a witness, you may consider the witness' ability and opportunity to observe and remember the matter about which the witness testified, the witness' manner while testifying, any reason the witness may have for testifying in favor or against the State or the Defendant, and the extent to which the witness' testimony is supported or contradicted by other evidence.

Evidence is either direct or circumstantial. Direct evidence is evidence, which, if believed, proves a fact. Circumstantial or indirect evidence is evidence, which, if believed, proves a fact, and from that fact you may logically and reasonably conclude that another fact exists. You cannot find Defendants guilty solely on circumstantial evidence, unless the facts proved by the evidence exclude every reasonable hypothesis of innocence. An Indictment is nothing more than a written, formal accusation against the Defendants, charging them with a crime. You are not to consider the Indictment as evidence against the Defendants. The mere filing of an Indictment creates no inference whatsoever that a Defendant is guilty. Statements and arguments made by the attorneys are not evidence. In opening statements, the attorneys are permitted to familiarize you with the facts they expect to prove. In closing arguments, the attorneys are permitted to present for your consideration their contentions regarding what the evidence has shown or not shown and what conclusion they think may be drawn from the evidence. The opening statements and the closing arguments are not to be considered as evidence. You are not to be influenced by sympathy, passion, prejudice or public opinion. You are expected to reach a just verdict. A defendant is not required by law to call any witnesses or produce any evidence. A defendant is not required to testify. No presumption of guilt may be raised and no inference of any kind may be drawn from the fact the Defendant did not testify.

We are now to consider the nature and character of the crime for which the Defendants are being tried, what are its ingredients and what are the essentials necessary to constitute it. Samuel Thomas is charged with first-degree murder of Andrea Lawrence the elements of which are as follows:

1. On or about the 5th day of April, 2015, the defendant shot Andrea Lawrence.

2. Andrea Lawrence died as a result of being shot.
3. The defendant acted with malice aforethought.
4. The defendant acted willfully, deliberately, premeditatedly and with a specific intent to kill Andrea Lawrence.

If the State has proved all of the elements, the defendant is guilty of Murder In The First Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Murder In The First Degree.

The terms of these elements should be defined as follows: "Willful" means intentional or by fixed design or purpose and not accidental. "To deliberate" is to weigh in one's mind, to consider, to contemplate, or to reflect. "Premeditate" is to think or ponder upon a matter before acting.

It should be noted that deliberation and premeditation need not exist for any particular length of time before the act.

"Malice" is a state of mind, which leads one to intentionally do a wrongful act [to the injury of another] [in disregard of the rights of another] out of actual hatred, or with an evil or unlawful purpose. It may be established by evidence of actual hatred, or by proof of a deliberate or fixed intent to do injury. It may be found from the acts and conduct of the defendant, and the means used in doing the wrongful and injurious act. Malice requires only such deliberation that would make a person appreciate and understand the nature of the act and its consequences, as distinguished from an act done in the heat of passion.

"Malice aforethought" is a fixed purpose or design to do some physical harm to another, which exists before the act is committed. It does not have to exist for any particular length of time.

If a person has the opportunity to deliberate and uses a dangerous weapon against another resulting in death (as was used in this case), you may, but are not required to, infer that the weapon was used with malice, premeditation and specific intent to kill.

Whoever commits the crime of first-degree murder shall be punished by death or life imprisonment at hard labor without benefit of parole, probation or suspension of sentence in accordance with the determination of the jury.

If the State has proved all of the elements, the defendant is guilty. If the State has failed to prove any one of the elements, the defendant is not guilty.

Specific criminal intent is that state of mind which exists when the circumstances indicate that the Defendant actively desired the prescribed criminal consequences to follow his act or failure to act. Whether criminal intent is present must be determined in light of ordinary experience. Intent is a question of fact, which may be inferred from the circumstances. Attempt is defined as follows: Any person, who, having a specific intent to commit a crime, does or omits an act for the purpose of intending directly toward the accomplishing of his object, is guilty of an attempt to commit the offense intended and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose. Mere preparation to commit a crime shall not be sufficient to constitute an attempt, but lying in wait, with a dangerous weapon, with the intent to

commit a crime or searching for the intended victim with a dangerous weapon with the intent to commit a crime, shall be sufficient to constitute an attempt to commit the offense intended.

In order to convict the Defendant of the offense charged, you must find, beyond a reasonable doubt that that State proved every element of each offense charged. If the State has failed to prove, beyond a reasonable doubt, that the Defendant is guilty of the offenses charged, you must find the Defendant not guilty.

You may render one of the following verdicts for Samuel Thomas: One, guilty of first-degree murder or Two, not guilty. When you enter the jury room, it is your duty to consult with one another, to consider each other's views and to discuss the evidence with the objective of reaching a just verdict. Each of you must decide the case for yourself, but only after discussion and impartial consideration of the case with your fellow jurors. You are not advocates for one side or the other. Do not hesitate to reexamine your own views and to change your opinion, if you are convinced you are wrong. But, do not surrender your honest belief as to the weight and effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

Ladies and gentlemen, I now order you to reach a fair and just verdict.