

State v. Drljic/Suttles

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

File No. 62-CR-10-1464

State of Minnesota,

and 62-CR-10-1465

Plaintiff,

vs.

JURY TRIAL - DAY 7

Pages 382 - 532

Daniel Drljic and
Tamika Latoi Suttles,

Defendants.

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for Jury Trial before the Honorable Gail Chang Bohr, Judge of said Court, on the 2nd day of December, 2010, at the Ramsey County Courthouse, 15 W. Kellogg Boulevard, St. Paul, Minnesota.

APPEARANCES:

Elizabeth Lamin, Assistant Ramsey County Attorney, appeared on behalf of the Plaintiff;

Jill Clark, Attorney at Law, appeared on behalf of the Defendants; and

Susan D. Montpetit, Court Reporter.

INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Closing Argument

By Ms. Lamin.....	409
By Ms. Clark.....	426
By Ms. Lamin.....	559

Final Jury Instructions by the Court..... 463

Record after Jurors sent to deliberate..... 492

Verdict..... 524

Reporter's Certificate..... 532

State v. Drljic/Suttles

1 (In Open Court - Morning Session. An off-the-record
2 discussion was had. The following proceedings commenced
3 outside the presence of the Jury.)

4 THE COURT: All right. We are getting copies
5 for you and then we are going to get through this, zippo.

6 MS. CLARK: Copies of?

7 THE COURT: The jury instructions, so you will
8 have them, too.

9 MS. CLARK: Well, we're still going to talk
10 about them, right?

11 THE COURT: We are going to talk about them,
12 but we're not going to spend an enormous amount of time
13 on it.

14 MS. CLARK: Well --

15 THE COURT: But, you can talk about them.

16 MS. CLARK: Well, I thought we were doing jury
17 instructions at 8:30. I did a lot of work from 3 to 5
18 this morning.

19 THE COURT: Well, good to hear that. So,
20 let's -- we're going to go through the ones that we have
21 here. Since you have some you proposed, I guess we're
22 just going to have an open discussion and let's focus on
23 these.

24 MS. CLARK: Well, Your Honor?

25 THE COURT: Yes.

1 MS. CLARK: I just don't know what to say.
2 This is the most important part of the case for my
3 clients.

4 THE COURT: I understand that, but --

5 MS. CLARK: I will note that this morning I
6 brought in physical hard copies of it. If the court
7 doesn't have it, please let me know. I was very
8 organized.

9 THE COURT: I understand that, but here's what
10 we're going to do, Ms. Clark. We are using the ones that
11 I put together. And we'll go from there and if there are
12 any things that you want to put in, we can talk about it,
13 but we're not to go through everybody's own copy -- own
14 individual --

15 MS. CLARK: I need to make objections on the
16 record before the Jury is charged.

17 THE COURT: You can do that.

18 MS. CLARK: For anything that the court is not
19 doing that we have asked the court to do.

20 MS. LAMIN: Are we doing this, right now, on
21 the record?

22 THE COURT: Yes, we are going to do this on the
23 record. And Ms. Harms is bringing copies for you. Okay.

24 THE CLERK: They are still printing.

25 THE COURT: It's taking forever.

State v. Drljic/Suttles

1 THE CLERK: It's long. It's 40 pages.

2 THE COURT: Well, the exhibits took enough,
3 so --

4 MS. CLARK: Well, I know. But, you know, I
5 guess I have an issue with that. Ms. Lamin -- if Ms.
6 Lamin had helped, it could have gone quicker.

7 THE COURT: Well, you know, Ms. Clark, she did
8 help some. You know what, you're near the point --

9 MS. CLARK: But, I am requesting that the court
10 define theft for the Jury.

11 THE COURT: All right. You can make that
12 request.

13 MS. CLARK: All right. Have you already
14 decided that you are not doing that?

15 THE COURT: No. No. No. You can -- we will
16 go through your requests and then we will make a
17 decision.

18 MS. CLARK: All right. I'll just wait until
19 you tell me -- oh, it looks like this is slightly
20 different.

21 THE COURT: Okay. So, should we go from the
22 beginning and see if there are any objections?

23 We have 3.01. I think we're fine.

24 So, 3.02 is good.

25 MS. CLARK: Yep.

1 THE COURT: And 3.02 is good?

2 MS. CLARK: Yep.

3 THE COURT: And 3.03 is good?

4 MS. CLARK: Yep.

5 THE COURT: 3.04 is good?

6 MS CLARK: Yep.

7 THE COURT: 3.05 is good?

8 MS. CLARK: Yes.

9 THE COURT: 3.06 is good?

10 MS. CLARK: Yes.

11 THE COURT: 3.07 is good?

12 MS. CLARK: Yes.

13 THE COURT: 3.09 is good?

14 MS. CLARK: Yes.

15 THE COURT: 3.11 is good; 3.12 is good; 3.15?

16 MS. CLARK: I looked at that last night. That
17 looks fine.

18 THE COURT: Right. 3.18, that's the accomplice
19 after the fact?

20 MS. CLARK: Yep. We worked on that last night.
21 That's fine.

22 THE COURT: We'll do that. 3.23, Multiple
23 Offenses Considered Separately. I took out 3.28 because
24 as I looked at it, it was not helpful and it was in fact
25 more confusing.

State v. Drljic/Suttles

1 MS. CLARK: Which one was that?

2 THE COURT: That was the statement of one
3 defendant can be used against the other; that kind of
4 thing. But, in fact, there weren't any statements that
5 were done and I looked at it again and it tended to
6 confuse. And that was one that I put in and I'm taking
7 it out.

8 MS. CLARK: All right.

9 THE COURT: All right. Definition of words;
10 liability for crimes of another.

11 MS. CLARK: After 4.01, there is some fours
12 that we have asked for: 4.02 and 4.03.

13 THE COURT: Okay. And those were effective
14 withdrawal, even if they did, including abandoned the
15 purpose. Tell me why you want that in.

16 MS. CLARK: Which one?

17 THE COURT: 4.02.

18 MS. CLARK: Because even if the jury believes
19 that Daniel Drljic went into the building, having
20 conspired with English to commit a burglary, if he
21 withdrew from the conspiracy, then he's not guilty if he
22 made a reasonable effort.

23 THE COURT: Okay.

24 MS. LAMIN: And Your Honor, there is absolutely
25 no evidence that there was any reasonable effort to

State v. Drljic/Suttles

1 prevent anything, Your Honor. At most, Mr. Drljic talked
2 about how he saw the police, was scared, ran inside.
3 There is nothing -- he, himself, there is no testimony he
4 withdrew.

5 THE COURT: Okay. All right. But, I am not
6 granting that. I didn't see that, either. 4.03 --

7 MS. CLARK: Can I say why I think there is
8 evidence on that -- on 4.02?

9 THE COURT: Okay.

10 MS. CLARK: Because he went in and had a
11 problem with what Jermaine was doing, would not assist
12 him, and in fact said, I'm getting out of here. We need
13 to get out of here. And he was the one, Drljic was the
14 one who took the laboring oar in contacting the police
15 through the cell phone and getting people to, you know,
16 surrender and come out with their hands up.

17 There is evidence of it. I think it would be
18 reversible error if it was not given.

19 THE COURT: Okay. I'm fine. Reversible error
20 is fine with me. I've been reversed before. It's not
21 the end of the world. I can deal with that. Let the
22 Court of Appeals make that decision, then. I'm not
23 putting it in.

24 MS. CLARK: Then what about 4.03? The reason I
25 think that's important here is because for his own

State v. Drljic/Suttles

1 reasons, Jermaine English pled guilty. But the fact that
2 he pled guilty should not be used as evidence that these
3 people are guilty of aiding and abetting a crime.

4 THE COURT: Okay. Ms. Lamin.

5 MS. LAMIN: (Brief pause) Your Honor, if
6 that's -- that's fine, Your Honor, if that's --

7 THE COURT: If the defendant aided, advised,
8 hired, counseled or conspired with another or otherwise
9 furthered the commission of a crime by another person
10 when the crime was committed, the defendant is guilty of
11 that crime. You are not to concern yourself with what
12 action, if any, was taken against the other person. I
13 think that's fine. 4.03, please.

14 THE CLERK: Add it?

15 THE COURT: Add it.

16 THE CLERK: Okay.

17 THE COURT: Okay. All right. Now, I'm going
18 straight into the Crim. JIG 7.10. Let's take these in
19 order. We figured that already. That's fine. All
20 right. We get to the definition of burglary. That's at
21 17.05. And what the Statutes provide and Burglary in the
22 Second Degree; 17.09, elements.

23 MS. CLARK: We can take "to know" out of 7.10,
24 I think, Your Honor.

25 THE COURT: I thought we did already. Is it

State v. Drljic/Suttles

1 still in?

2 MS. CLARK: Well, no, we waited until the end.
3 Hillary, to know, out of 7.10.

4 THE CLERK: Take it out?

5 MS. CLARK: Yep.

6 THE COURT: In fact, only that -- believe that
7 specified fact exists. We ended up not having that?

8 MS. CLARK: We ended up not having it anymore.
9 I didn't see it anywhere. Did you?

10 COURT REPORTER: This is kind of difficult to
11 make a record. I don't know if I'm supposed to be making
12 a record now.

13 THE COURT: Yes. Sorry.

14 COURT REPORTER: Thank you.

15 THE COURT: All right. 17.05, the definition.
16 I think that's straight from the JIGs. Okay. Crim. JIG
17 17.09, Burglary in the Second Degree, elements; with
18 regard to Daniel Drljic, elements of Burglary in the
19 Second Degree are: First, the Defendant Daniel Drljic, or
20 an accomplice entered and then Count I, II --

21 MS. CLARK: Well, I don't agree with or an
22 accomplice.

23 THE COURT: That's straight from the JIG and
24 it's going to go in.

25 MS. CLARK: Oh, if that's straight from the --

State v. Drljic/Suttles

1 there was one place I thought it ended up being added.
2 I'm sorry. But, if that's straight from JIG, that's --

3 THE COURT: That is straight from the JIG,
4 yeah.

5 THE CLERK: No, I believe it's straight from
6 the Statute, Judge.

7 THE COURT: It's straight from the Statute.
8 Okay.

9 MS. CLARK: Then I do want to lodge an
10 objection to Daniel Drljic or an accomplice, because I
11 think it is a double advising the jury on the aid and
12 abet theory and it ends up with the risk that they'll
13 think aiding and abetting can be aiding an abettor which
14 is two steps removed from a crime and not criminal.

15 THE COURT: So, what it is now? You're
16 objecting to what?

17 MS. CLARK: I'm objecting to the words in the
18 first element, Page 9, or an accomplice.

19 THE COURT: The defendant or an accomplice.

20 MS. CLARK: Right.

21 THE COURT: Okay.

22 MS. LAMIN: And Your Honor, I guess I would
23 also second that. I'm concerned it's going to be
24 confusing because we say English is the accomplice.

25 THE COURT: Okay.

State v. Drljic/Suttles

1 MS. LAMIN: And it's not sufficient for Drljic
2 to be convicted just because English did it.

3 THE COURT: Right.

4 MS. LAMIN: So, I would either, at least for
5 Drljic, leave it just the Defendant Drljic entered.

6 THE COURT: Okay. So take out or an
7 accomplice?

8 MS. LAMIN: Yes, for him for sure.

9 THE COURT: All right. That's coming out.

10 MS. LAMIN: And I noticed one -- and then in
11 the second, it also says or an accomplice. And in the
12 third --

13 THE CLERK: So, take out all the "or an
14 accomplice"?

15 THE COURT: Yes.

16 MS. LAMIN: Yes, for Drljic. And I noticed one
17 significant thing.

18 THE COURT: Yes.

19 MS. LAMIN: It's actually for the third, it's
20 the second sentence: It is not necessary that the
21 intended crime was actually completed or attempted, but
22 it is necessary. We have it is not. But, it is
23 necessary.

24 THE CLERK: Say that one more time.

25 MS. LAMIN: That second line.

1 THE CLERK: The intended crime was actually
2 completed, but it is -- take out not.

3 THE COURT: Yes.

4 MS. LAMIN: And that somehow slipped into a
5 couple of these.

6 MS. CLARK: Or an accomplice. There is another
7 or an accomplice.

8 THE CLERK: Yep. I have that, also, in the
9 middle of that paragraph. So, I'll just take out all of
10 the or an accomplice.

11 THE COURT: For Mr. Drljic:

12 THE CLERK: All right.

13 THE COURT: All right. Is there another error
14 that you spotted?

15 MS. CLARK: You know what I think we should do,
16 since we have theft in the element, third element, should
17 we put it up in burglary defined?

18 THE COURT: What?

19 MS. CLARK: The crime is identified in the
20 third element. Wouldn't it be less confusing for the
21 jury if in Second Degree Burglary defined, rather with
22 intent to commit a crime or commits while in the
23 building. We mirror that.

24 THE COURT: So, say, commit the crime of theft?

25 MS. CLARK: Intended to commit theft; right.

1 THE COURT: So, with intent to commit the crime
2 or commit -- say with intent to commit theft.

3 MS. CLARK: What do you think?

4 MS. LAMIN: That's fine. I mean it's not the
5 standard, but that's what we're saying.

6 THE CLERK: So, I'll read this back. With
7 intent to commit a theft or commit a theft while in the
8 building.

9 MS. CLARK: Yes.

10 THE CLERK: Okay.

11 THE COURT: All right. Okay, fourth, the
12 defendant's act took place, and then if you find each of
13 these elements -- Okay. All right. Burglary Second
14 Degree elements, Tamika Suttles.

15 MS. LAMIN: And I see that you put in that
16 aided and abetted.

17 THE COURT: Aided and abetted.

18 MS. LAMIN: And I would ask that we add
19 intentionally, just to clarify that. First, the
20 Defendant Tamika Suttles intentionally aided and abetted
21 Daniel Drljic or Jermaine English.

22 MS. CLARK: No. I don't think it should be in
23 there at all. And I have a case for that.

24 THE COURT: What, intentionally?

25 MS. CLARK: No, the aided and abetted. It

State v. Drljic/Suttles

1 should be the same language as Burglary in the Second
2 Degree for Daniel Drljic. Unless the state wants to
3 dismiss it's burglary charges, there is no crime, free
4 standing crime, of aiding and abetting. And I have
5 pulled a case on that.

6 THE COURT: Okay.

7 MS. CLARK: It is on the second to the last
8 page of what I submitted to the court. There is no
9 separate charge of aiding and abetting. And I have a
10 quote from a case. It is -- and then it's -- there is no
11 separate offense of aiding and abetting because it is not
12 a substantive offense. State v. Kramer. That's
13 Minnesota Court of Appeals, 1989, citing to Minnesota
14 Supreme Court, 1985. And the case, itself, that I pulled
15 the quote from is State v. Geno (phonetic), 1995,
16 Minnesota Court of Appeals. That's why 4.01 stands
17 alone, telling the jury here's the crime. They either
18 committed the crime or they aided and abetted someone who
19 committed the crime; but, you don't insert aided and
20 abetted into the burglary jury instruction. I think that
21 it's -- well, that's it.

22 THE COURT: All right. Ms. Lamin.

23 MS. LAMIN: You know, Your Honor, I think it's
24 appropriate to leave intentionally aided and abetted
25 Drljic and English to clarify. I don't think that at

State v. Drljic/Suttles

1 all. My concern is -- and I, more than anything, if we
2 do remove that aiding and abetting is that I want to make
3 clear that the defense cannot argue that the state has to
4 prove that Ms. Suttles entered the building. And that is
5 definitely not what the law says. And the law says,
6 someone who is standing outside as look out is just as
7 liable. And so, that's why that instruction is, you
8 know, that language is helpful because it clarifies that
9 she doesn't have to enter and do these things. It's her
10 aiding and abetting these people who are doing it.

11 So, if we're all clear that defense -- that
12 that would be improper defense argument, misstatement of
13 the law and would require a curative instruction by Your
14 Honor, then that's okay, Your Honor. But, in this case,
15 I'm concerned that in fact the defense will stand and
16 argue Ms. Suttles wasn't in the building. Well, that's
17 misstatement. And because of that confusion, especially
18 given the fact that we have two defendants who played
19 slightly different roles here, Your Honor, I think it's
20 important to clarify their different roles.

21 THE COURT: Yes.

22 MS. CLARK: And I disagree with that and I
23 would like to make a record. The problem with putting
24 aided and abetted in the charge, itself, is this is not a
25 proper statement of a crime. And if my client is

State v. Drljic/Suttles

1 convicted under it, we will be making a motion for
2 judgment of acquittal. The risk, Your Honor, is that the
3 jury will do two degrees of separation from the crime;
4 one is aided and abetted someone else who was in the
5 building; and then that she could have aided and abetted
6 someone else who aided and abetted someone else who was
7 in the building. That's the risk, that there will be two
8 removed from the crime. And that's why we always, in the
9 JIGs -- and the JIGs do this very well -- just lay out
10 crimes of another in 4.01.

11 The -- it is a fact that Ms. Suttles was not in
12 the building. It is a fact that the evidence shows she
13 was not in the building. Of course I can say that to the
14 jury. The state can argue what it wants to about --

15 THE COURT: Okay.

16 MS. CLARK: -- about the building. But --

17 THE COURT: All right. I understand where
18 you're going with that. I'm going to leave it in. We'll
19 put in intentionally aided and abetted. I think this
20 clarifies it. And we'll move right along here. So,
21 we're going to add intentionally aided and abetted in
22 each of those. Okay.

23 All right, 17.10.

24 MS. CLARK: I just want to put on the record
25 the objection to having three separate counts, because

State v. Drljic/Suttles

1 the evidence is that there is only one building as
2 building is defined under the law. It's misleading and
3 has a tendency to have my clients have a triple chance of
4 getting convicted to have the three separate charges.

5 THE COURT: All right. Okay. Moving along.
6 Crim. JIG 17.10, Burglary in the Third Degree defined.

7 MS. CLARK: I'm not ready to leave second
8 degree yet.

9 THE COURT: Oh, okay.

10 MS. CLARK: Because I would like to have the
11 court -- it will apply both to second and third. But,
12 I want to state that I am requesting that the court
13 define theft. I have cited a case for the proposition
14 that stealing, which is a word that's used in third
15 degree, means theft. That's at the bottom of the second
16 page of my submission to the court. The case, itself, is
17 Shaw v. State and it's a 2009 Minnesota Court of Appeals
18 case. And what it does is to take the definition of
19 steals from Black's Law Dictionary. And then conflates
20 with -- or equates it with the definition of theft in
21 609.52, Subd. 2(1), defining theft is intentionally and
22 without claim of right taking movable property of another
23 without the others consent and with intent to deprive the
24 other person permanently of possession of the property.

25 What I have also provided to the court, and I'm

State v. Drljic/Suttles

1 sure your clerk has readily available, is 16.01, Theft,
2 taking property of another defined. So, the court can
3 either take it straight from the 2009 Court of Appeals
4 case or take the JIG. But, we have to have in there,
5 without claim of right.

6 In other words, because there is an instruction
7 in here, Your Honor, that says, if the court does not
8 define a term, then use your common sense. But, lay
9 jurors do not have the knowledge, with common sense, to
10 understand that there must be -- this whole issue of
11 claim of right. In other words, you're not stealing if
12 you think you have a right to take it.

13 THE COURT: All right.

14 MS. LAMIN: Your Honor, this is simply not
15 true. When we tried to -- when I just tried to look up
16 some of the law, first of all, in terms of -- well, I
17 guess this is -- the defense can argue that they didn't
18 have the intent. This is really what they're going at,
19 that they didn't have the intent to steal. That they
20 didn't have the intent to take it. That's already in
21 there, Your Honor. And in fact number three tells you
22 how you do it, you know, what the defendant intended must
23 be determined from all the circumstances. That is how
24 you examine it.

25 And Your Honor, this completely inverts and

State v. Drljic/Suttles

1 undermines that exact JIG. That, apparently, if the
2 defendant says, I didn't mean to do it, that's
3 sufficient, Your Honor, that I thought I could. And
4 that's not even exactly what the defense is saying.
5 Because they're not claiming that they took anything.
6 Right? Their theory of the case has never been that they
7 actually removed anything. They were just there. And
8 so, Your Honor, I think the defense is free to argue. I
9 don't think that it is appropriate to put in something
10 regarding claim of right when there is no basis for that
11 here.

12 THE COURT: All right. Okay. I'm making my
13 decision. It's not going in.

14 MS. CLARK: Then I would like to make a record,
15 Your Honor.

16 THE COURT: Make a record, but we need to keep
17 moving on.

18 MS. CLARK: All I'm asking is to have a word in
19 the jury instruction defined. Just like we defined
20 intent, we're defining theft.

21 THE COURT: Well --

22 MS. CLARK: May I make a record?

23 THE COURT: Go ahead.

24 MS. CLARK: We're requesting a definition of
25 theft. And we're requesting a definition of claim of

State v. Drljic/Suttles

1 right. It is a different concept from intent to commit
2 burglary.

3 THE COURT: Right. And this is, the charge is
4 burglary. This is what we have been arguing. And that
5 is -- your request is denied. I think it confuses the
6 jury.

7 MS. CLARK: May I argue it?

8 THE COURT: No.

9 MS. CLARK: I cannot argue the definition of
10 theft or claim of right at all with regard to theft?

11 THE COURT: No.

12 MS. CLARK: How is the jury supposed to know
13 what theft means, then? And is the prosecutor going to
14 argue what she thinks theft is?

15 THE COURT: No. Nobody gets to argue what
16 theft is it. It's a common sense definition.
17 Otherwise -- it's going to come out of this. I'm going
18 to just keep crime. We don't need to put theft in. And
19 maybe that's what we should just do is say -- I'm going
20 back on my word here. I'm sorry. If you're going to get
21 hung up on that word, 17.05, intent to commit, we're
22 going back to a crime. Take theft out. Or commits a
23 theft. It's a crime. That's out. That's the element of
24 burglary. All right.

25 MS. CLARK: Third Degree, we have stealing,

State v. Drljic/Suttles

1 though, so would we just have crime in there, too?

2 THE COURT: Yes. It remains within -- with
3 intent to steal is guilty of a crime. I think that's
4 straight from the JIG.

5 MS. CLARK: So steal stays in; but theft comes
6 out?

7 THE COURT: Yes.

8 MS. CLARK: Can we get a definition of steal?

9 THE COURT: It's the common sense definition.
10 We don't need any -- I'm serious about this -- that's why
11 we have a jury. That's why we say use your common sense.

12 MS. CLARK: Then, am I allowed to say it's
13 common sense that if the person doesn't think they're
14 stealing that then they don't have the intent to steal
15 it?

16 THE COURT: You can make whatever argument you
17 want on that, but I don't think it gets into the
18 definition of steal. Burglary in the Third Degree,
19 elements, Daniel Drljic.

20 THE CLERK: Take out accomplice?

21 THE COURT: Yes.

22 THE CLERK: Okay.

23 THE COURT: On the first. And in the second
24 paragraph it comes out. And in the third paragraph it
25 comes out and that of an -- is not here, is it? No. No,

State v. Drljic/Suttles

1 it is -- Burglary in the Third Degree.

2 MS. CLARK: I am just going to ditto my
3 objections to aided and abetted when we discussed it in
4 second.

5 THE COURT: Okay. Thank you.

6 MS. LAMIN: And I would just ask that
7 intentionally --

8 THE COURT: Intentionally be added. All right.
9 So intentionally would be added to all -- you did that
10 already?

11 THE CLERK: I did.

12 THE COURT: All right.

13 MS. CLARK: I am free to argue, I take it, Your
14 Honor, that because aided and abetted is in this
15 instruction that they don't look to 4.01?

16 THE COURT: 4.01 is -- no. It's liability for
17 crimes of another. It's going to stay in. Is that your
18 question?

19 MS. CLARK: Well, I'm not asking to remove it
20 because it clearly applies to Drljic. But, because aided
21 and abetted is the theory selected by the state with
22 regard to Tamika Suttles, then I assume that I am free to
23 argue that the remainder of 4.01 doesn't apply to Ms.
24 Suttles. That they are not making that argument.

25 MS. LAMIN: I guess, Your Honor, the defense is

State v. Drljic/Suttles

1 free to argue whatever they want as long as it's not
2 contradicting the law as you state it. I mean, this is
3 what the law is. 4.01 is the aiding and abetting. It's
4 the liabilities for crime of another. So, that's --

5 THE COURT: Yeah, right. You can argue that.
6 All right. The final instruction -- and I am -- I know
7 there was a request from the state to add another part.
8 And I have denied that request. And if I can find it, it
9 had to do with not to use sympathy or -- do you have that
10 language? It's not coming in. I just want to make a
11 record that it's not in.

12 MS. LAMIN: Okay.

13 THE COURT: Okay.

14 MS. LAMIN: I have it right here, Your Honor.

15 THE COURT: I'm sorry?

16 MS. LAMIN: I have it right here.

17 THE COURT: Okay. So, what is not coming in on
18 request of the state, is when your deliberating there is
19 certain things you must not consider, these are feelings
20 of prejudice, bias or sympathy to either the defendant or
21 the state. You are to take a neutral position and decide
22 the case on the evidence and the law. And the court has
23 denied that request. Okay.

24 Verdict of -- the verdict forms. Can we go to
25 that? Do we need to do anything on that?

State v. Drljic/Suttles

1 THE CLERK: They're in there.

2 THE COURT: There are a lot of them, but I want
3 to make sure that we haven't --

4 MS. LAMIN: You close first and then you read?

5 THE COURT: Yes, I read. I get the last word.
6 And the exhibits are fine. Do I need to let them know
7 what's missing, right? That's not used.

8 MS. CLARK: I think we should.

9 THE CLERK: Just for your guy's information, on
10 your crim. JIG 4.03, you don't have the heading, so I put
11 in the heading from the JIG which is effect of non
12 conviction of another person.

13 MS. CLARK: Yes, that's fine. I saw that.

14 MS. LAMIN: The effect of non conviction of a
15 person.

16 THE COURT: That's what that says.

17 (Off-the-record discussion had.)

18 MS. LAMIN: Okay. I believe we're talking
19 about 4.03, in giving it a heading of -- I'm sorry.
20 Hillary, what is the heading again?

21 MS. CLARK: Your Honor --

22 THE CLERK: Effect of non conviction of other
23 person.

24 MS. LAMIN: And that's inaccurate. I believe
25 the defense and the court wants to do effective

State v. Drljic/Suttles

1 conviction of other person. I just want to note that I'm
2 a little uncomfortable with that. I don't want to
3 overemphasize Mr. English's conviction. I don't think
4 that's necessarily relevant to the status of Ms. Suttles
5 and Mr. Drljic in proving the case. And I would also
6 just note that the only reason the state ever brought out
7 the fact that he pled guilty in his situation is because
8 the defense sought to impeach Mr. English with the
9 burglary conviction. And the court had ruled that they
10 would be able to and that was the only reason that was
11 ever brought out by the state. And I don't intend to
12 focus on it or mentioning it at all because I don't want
13 any implication that he pled guilty; therefore, they must
14 be guilty.

15 THE COURT: It goes both ways, doesn't it, Ms.
16 Clark?

17 MS. CLARK: What does?

18 THE COURT: That -- to keep that in.

19 MS. CLARK: Well, I'm not sure what the court
20 is saying.

21 THE COURT: Well, if we keep the effective
22 conviction.

23 MS. CLARK: Yes.

24 THE COURT: It does tend to -- and we're
25 looking at the fact of Ms. Suttles aiding and abetting

State v. Drljic/Suttles

1 Jermaine English, that --

2 MS. CLARK: Yeah, but our theory of the case is
3 that English did the burglary, along with someone else.

4 THE COURT: All right. Well, I just want to
5 make sure that we're clear that that's what you want to
6 do and that we're not putting in something that could
7 backfire.

8 MS. CLARK: And then I just want to quickly put
9 on the record, I would ask that the court remove statute
10 numbers from the verdict forms. I think they're
11 confusing to the jury.

12 THE COURT: And the court has denied that
13 request. All right. So, let's get them in.

14 MS. CLARK: I'm going to need 10 minutes to set
15 up for my closing. And then the state should have a
16 video or a lap top for the digital evidence it put in to
17 review it by the jury in the jury room.

18 THE COURT: No. We never do that. No. No. No.

19 MS. CLARK: Wait a minute. Wait a minute.

20 THE COURT: No. No. No.

21 MS. LAMIN: They review it in open court if
22 they want to review it.

23 (The Jury returned to the courtroom at this
24 time and the following proceedings continued.)

25 THE COURT: All right. Good morning, please be

State v. Drljic/Suttles

1 seated. And we're going to finish the trial. And we'll
2 start with closing arguments.

3 CLOSING ARGUMENT

4 BY MS. LAMIN:

5 Burglary interrupted. It's Daniel Drljic and
6 it's Jermaine English and Tamika Suttles were in the
7 middle of burglarizing three businesses. They were
8 caught. They were caught on December 6th, 2009 when
9 Officer Glisky responded to a silent alarm from
10 Sharrett's Liquor Store. About 4:13 a.m., early Sunday
11 morning hours, Officer Glisky responded when Daniel
12 Drljic ripped off the wall between the art studio and the
13 basement at Sharrett's Liquor Store where the copper
14 wires were, setting off the silent alarm that sent
15 Officer Glisky to the scene.

16 Officer Glisky arrived through an alley and
17 immediately saw Tamika Suttles' vehicle parked there.
18 The vehicle was parked. It had no frost on it. She was
19 standing next to her vehicle in a dark parking lot with
20 closed businesses. And once she saw Officer Glisky, she
21 immediately turned away. When he approached her, she was
22 nervous. She told him, my car broke down. I just have
23 to pee. Let me go. I'll just walk away. I'll leave
24 right here. She also had something bulging out of her
25 jacket.

State v. Drljic/Suttles

1 Officer Glisky, because he's here on a
2 burglary, finds Ms. Suttles acting suspiciously, pat
3 searched her, found gloves and duct tape, put her in the
4 squad and went to investigate the scene.

5 And there is Ms. Suttles. That's what she was
6 wearing that night, 4 o'clock in the morning, closed
7 businesses. Ms. Suttles' vehicle was here. Officer
8 Glisky walked to this area. On the way, an eye witness,
9 Thomas Nolan, yelled that there was someone else still in
10 the building. Officer Glisky went to investigate and
11 started checking doors and immediately saw pry marks on
12 this door. Saw that this door appeared locked, but was
13 open. Called for back up. And as he walked back to his
14 squad car to wait -- closer, of the pry marks -- he saw
15 Jermaine English pop out of that door. And as soon as
16 Jermaine English saw Officer Glisky, Officer Glisky
17 yelled, stop. Jermaine turned around and ran back into
18 the building through this door and closed the door shut.

19 Officer Glisky waited for back up. And then,
20 once back up arrived, 10, 15 minutes, surrounded the
21 building and they made entry. Officer Glisky went in, he
22 said, with a K-9 officer and another officer. And then
23 he could see more of the damage done from the pry marks
24 to break into the art studio. And the K-9 and their
25 search of the building followed the path that Mr. Drljic

State v. Drljic/Suttles

1 and Mr. English took.

2 They went, first, through the art studio on the
3 main floor, not lit, very dusty. Then they went down
4 into the basement of the art studio. Again, dusty, not
5 lit. And then went to the Edge Coffee House through the
6 hole in the wall. At one point it may have been a door;
7 but, it had been boarded up with two-by-fours, covered
8 and broken. They went through that hole and went and saw
9 the office had been rummaged through.

10 They went upstairs to the Edge Coffee House and
11 saw things had been scattered about, the till opened, saw
12 the money till there on the ground where Ms. Y had hid
13 it. Officers then went back into -- back downstairs into
14 the basement, back through the hole in the wall that Mr.
15 Drljic had made, back to the art studio and then into the
16 liquor store where the alarm had originally gone off.
17 From the basement of the liquor store the officers went
18 upstairs and apprehended Mr. Drljic and Mr. English at
19 the front of the liquor store.

20 While Officer Glisky searched the building,
21 what was Mr. Drljic and Mr. English doing? I jumped
22 ahead. There they are. This is the first sign of them
23 coming up, 4:35. So, this is about 10 minutes, 15
24 minutes after the police were called to the scene. And
25 there they are coming out from where the back stairs are,

State v. Drljic/Suttles

1 where Mr. Rose's office is.

2 And who is leading the way? Who is in front?
3 Mr. Drljic, with Mr. English following behind. And there
4 you see -- this is 4:36 a.m., Mr. Drljic dressed. How is
5 he dressed? He's got gloves on, a coat, looks like
6 another coat underneath, a face mask, a head lamp,
7 walking through the building, walking through the top
8 floor of Sharrett's Liquor. And there, again, Mr. Drljic
9 leading Mr. English. Throughout the store, Mr. Drljic
10 leads Mr. English. He doesn't seem angry at him. You
11 watch the video. There is no fighting between them.

12 And here he is, the dark jacket again, gloves.
13 You can clearly see it better here, the gloves on Mr.
14 Drljic's hands. The dark coat. Again, Mr. Drljic with
15 the face mask, the gloves, the coat. You will see how
16 many coats is Mr. Drljic wearing. A close up of his head
17 lamp, face mask, his gloves and now this is 4:40 a.m.
18 The police are inside other portions of the building,
19 searching while Mr. Drljic comes up with a plan. There
20 he's walking to the front. You see his gloves. You also
21 see Mr. English's gloves. And there you see, now 4:46,
22 Mr. Drljic is starting to change, starting to hide
23 things, move things around, figuring out his story.

24 You see he's unbuttoned that zipped up coat,
25 taking off his gloves. You see his hand doesn't have

State v. Drljic/Suttles

1 gloves on anymore. He still has the face mask. And you
2 see his coat, which was previously zipped up and it's
3 unzipped and you see what looks like another coat
4 underneath. And there you see an even clearer picture of
5 the other coat underneath. A good picture of both Mr.
6 English's gloved hands and Mr. Drljic continuing to take
7 off groves, stuff things in his pockets and take things
8 out.

9 And then, 4:49, Mr. Drljic finally takes off
10 his mask. And you see he clearly is wearing another coat
11 underneath. He has his face mask. He still has his
12 light. He has removed his gloves. And you see Mr.
13 English's glove in his hand. And there are Mr. Drljic's
14 gloves that he removed. That's where the police found
15 them in the liquor store.

16 And there is Mr. English's glove that you can
17 clearly see, it's that simple, in his hand and there it
18 is lying on the ground. And now you see 4:51, what is
19 Mr. Drljic doing? Again, leading the way. What is he
20 doing? He is taking off this outer coat, hiding it to
21 recreate himself into what he's going to tell the police.
22 And here it is where he put the coat, right back here,
23 across from Mr. Rose's office, is where the coat is
24 found. And here it is, the coat. And here you can see
25 this coat. The tags are matching.

State v. Drljic/Suttles

1 And there you see, now, Mr. Drljic. You can
2 clearly see him. This is 4:53. His mask is gone. He's
3 completely changed himself. His headlight is gone. His
4 mask is gone. His gloves are gone. His outer black coat
5 is gone. This is how he looked just a few minutes
6 earlier. See that outer coat. And there is the inner
7 one. And that's all he's wearing now.

8 There is no panic. There is no trauma. Again,
9 Mr. Drljic leading the way, hiding, moving stuff around,
10 figuring what to explain to police when he got caught in
11 the middle of a burglary.

12 And now you see Mr. Drljic sticking his
13 hands -- sticking his hand in an area where a manager at
14 the liquor store finds his ID card. Not just any ID
15 card. His ID card which clearly indicates that he is not
16 a citizen. Why would that be concerning to Mr. Drljic?
17 That's important to Mr. Drljic because he could get in
18 much more trouble than merely a crime.

19 MS. CLARK: Objection.

20 THE COURT: Overruled.

21 MS. LAMIN: He's concerned. This is
22 methodical. He's concerned. He talked about where he
23 came from. He's concerned that ICE, if he is caught
24 committing a crime, in the middle of a burglary. And
25 this is the only evidence that he is somehow not a

State v. Drljic/Suttles

1 citizen.

2 MS. CLARK: Objection.

3 THE COURT: Overruled.

4 MS. LAMIN: And now, here's Mr. Drljic again.

5 And there, a headlight. That was on his head just a few
6 minutes ago. He removed that, as well. And there he is,
7 a completely different individual. Mr. English still has
8 his face mask on. Didn't discard any clothing, didn't
9 remove any IDs, kept a glove, discarded a glove. He's
10 kind of the follower, mixed up guy; clearly not in
11 charge. And this is Drljic. Look at Mr. Drljic when he
12 enters and look at Mr. Drljic when police come. He
13 thinks this through. This is how Mr. Drljic came to the
14 scene. This is how he entered all three buildings. And
15 this is how he transformed himself when police came.

16 In this case, the state has presented both
17 direct and circumstantial evidence. The judge will
18 instruct you that both of that evidence is treated
19 equally under the law. The law doesn't prefer one to the
20 other. Just a quick example to illustrate the
21 difference. In a direct evidence case, you walk into a
22 room and you see a child coloring on the wall with
23 crayon. That's direct evidence. You walked in. You saw
24 that child coloring on the wall.

25 Circumstantial evidence is when you're standing

State v. Drljic/Suttles

1 outside of the room and you hear a child inside. You
2 walk in. The child is gone. There is crayon on the
3 wall. Crayon on the floor. That's circumstantial
4 evidence. You are permitted to make reasonable
5 inferences based on the evidence. And when you make
6 those reasonable inferences, there is no difference
7 between direct or circumstantial evidence.

8 Burglary in the Third Degree. Mr. Drljic is
9 charged -- I'm sorry, with Burglary in the Second Degree.
10 Mr. Drljic, and again, the judge will instruct you when
11 we're done, exactly on the law. The state's merely
12 paraphrasing and shortening to clarify. But,
13 essentially, as the state said, there are four elements
14 that the state has to prove. First, that Mr. Drljic
15 entered the art studio, a building without consent.
16 Well, he didn't have consent of anyone in that area to be
17 there. He didn't have consent of Mr. Brown. The
18 building was closed. It was four in the morning. No
19 lights were on. So the state has to prove that he
20 entered the building without consent.

21 And definition of building is that it's a
22 structure suitable for human shelter. That's clear.
23 This is a building, four walls, suitable for human
24 shelter.

25 Second, that he possessed a tool with intent to

State v. Drljic/Suttles

1 use it to gain access to money or property. Well, we
2 have those tools, right. Our clanky tools, as Mr.
3 English said. So it's clear, how did Mr. Drljic get into
4 the art studio? He pried open the door. How did he get
5 from the art studio to the coffee shop? He pried open
6 the door. What tools did Mr. Drljic use? He used these.
7 Mr. Drljic entered these businesses with tools and with
8 intent to use the tools. Mr. Drljic entered with intent
9 to commit theft.

10 And fourth, that this happened on December 6,
11 2009, Ramsey County.

12 Let's go to the intent to commit theft. Mr.
13 Drljic entered with intent to commit theft. The judge
14 will again instruct you on the law. And the law in this
15 area will say that you have to look at all the
16 circumstances to determine why was he in there. You look
17 at the manner, matter and time of entry. Well, this is
18 the middle of the night. The businesses are closed. And
19 these doors were pried open and broken.

20 The nature of the building. Again, these are
21 businesses. There is no reason for anyone to be in there
22 during that hour. Anything Mr. Drljic had with him,
23 well, what did we see he had with him? He had gloves.
24 He had two coats. He had a face mask. He had a light.
25 And then we found tools in Ms. Suttles' car. All other

State v. Drljic/Suttles

1 evidence that might support that he had intent. There
2 was no other reason to go into those businesses but to
3 steal. It is not reasonable that he was there to help
4 anyone move. There was stuff stacked up to steal. There
5 was stuff that had been removed from these businesses.
6 There is no other reason that Mr. Drljic is there like
7 this, at that hour, but to commit burglary.

8 The state has to prove reasonable doubt.
9 Reasonable. There is no reasonable explanation for him
10 being at those businesses besides burglary.

11 Now, let's look at the businesses. Here we
12 have three separate businesses. We have Sharrett's
13 Liquor Store. We have the art studio. And then we have
14 the Edge Coffee House. Three separate addresses,
15 separate insurance. And the state has charged three
16 separate burglaries for Second Degree Burglary; one for
17 each business. As I said a minute ago, building is
18 defined as a structure suitable for affording shelter for
19 human beings. The point of that definition is so
20 burglaries are not pursued for someone who set up a tent
21 outside. So, it's a real structure. But, it doesn't
22 mean that if the structures are somehow set up more like
23 town houses, that this is more akin to, then it's one
24 burglary.

25 The defense is arguing that there is just one

State v. Drljic/Suttles

1 burglary because there is one big over arching business.
2 But that is not what the law says. Each one should be
3 viewed separately. These were three distinct burglaries.
4 He had to break into each building.

5 Now, if they were all connected, if this was a
6 department store with three floors, it would be a
7 different argument. But, Mr. Drljic and Mr. English,
8 they broke through walls to get from one to the other.
9 They share nothing in common that would make it one
10 building. And to do otherwise, ladies and gentlemen,
11 would even allow Mr. Drljic -- what if he had had more
12 time? He might have turned the corner and gone into Keys
13 Cafe, turned the corner gone upstairs to all the
14 apartments and other businesses. And he would still face
15 one count? He should be convicted for the three separate
16 businesses, distinct, that he burglarized.

17 MS. CLARK: Objection.

18 THE COURT: Overruled.

19 MS. LAMIN: Now, Mr. Drljic is also charged
20 with three counts of Burglary in the Third Degree. And
21 you will hear a definition of that. That's essentially a
22 subset of Burglary in the Second Degree. It has the same
23 elements, minus the tools. So, if you find Mr. Drljic
24 guilty of Burglary in the Second Degree for using tools
25 to break into these buildings, then you must find him

State v. Drljic/Suttles

1 guilty, also, of Burglary in the Third Degree because it
2 has all the same elements. The only difference is
3 Burglary in the Second adds tools.

4 So it's -- now, let's turn to Ms. Suttles. Ms.
5 Suttles is also charged with Burglary in the Second
6 Degree. And she is charged under the theory of aiding
7 and abetting. She conspired. She helped Mr. Drljic and
8 Mr. English. She knew what was going on. She's the
9 fiancée of Mr. Drljic. They spent their nights together.
10 Their days together. They're engaged. They had been
11 spending the night together that night. Of course, she
12 is going to be there to help Mr. Drljic. Mr. Drljic
13 isn't working independently of her. She's the look out.
14 And under this theory, whatever Mr. Drljic does and Mr.
15 English, if she's working with them, conspiring with
16 them, playing an active role, she is as guilty as they
17 are.

18 She intentionally aided and abetted Mr. Drljic
19 and Mr. English to enter the art studio without consent.
20 The state does not have to prove that she was physically
21 inside the art studio. If she worked with them, which
22 she did here, that is sufficient.

23 Next, that Ms. Suttles intentionally aided and
24 abetted Mr. Drljic and English to possess tools with
25 intent to use it to gain access to money or property.

State v. Drljic/Suttles

1 Again, the same elements as Mr. Drljic. But, here, it's
2 again she is helping him, working together. They went
3 there together. She came to help him. She even sat in
4 the car. She collected -- she had the burglary tools.
5 She had some of the stolen property in her car. She had
6 some of the gloves of Mr. English and Mr. Drljic in her
7 car. All three worked together to burglarize these three
8 businesses, that she aided and abetted Mr. Drljic and Mr.
9 English to enter with intent to commit theft.

10 Again, look at the time. What was Ms. Suttles
11 doing there? How was Ms. Suttles behaving? What did she
12 have in her possession? If she worked with them, she is
13 as guilty as Mr. Drljic is.

14 Finally, December 6, 2009. Again, like Mr.
15 Drljic, Ms. Suttles is charged with three counts of
16 Second Degree Burglary, one for each business. Because
17 if he burglarized and she helped, she's responsible for
18 that, as well. And also, like Mr. Drljic, she's charged
19 with three counts of Third Degree Burglary, one for each
20 business, which is again burglarizing the businesses
21 without using tools.

22 Let's quickly take a look at Mr. English
23 versus Ms. Suttles and Mr. Drljic. You heard testimony
24 from all three. You, in fact, saw Mr. English's
25 demeanor. You saw him take the stand. You saw the state

State v. Drljic/Suttles

1 asked him a few questions, but then you saw him have a
2 lengthy conversation with defense counsel, where whatever
3 defense counsel asked, he would explain, answer, not hold
4 back. If he was unsure, he said he was unsure. He was
5 forthright. He explained everything he knew. He said,
6 quite frankly, what they were doing there.

7 Let's talk about the relationship between the
8 three of them. Mr. English said that he's been friends
9 with Mr. Drljic for three to four years. They're good
10 friends. He considered him a friend. They hang out a
11 few times a month. That's reasonable in light of this
12 evidence. Right? That's reasonable that if Mr. English
13 is friends with Mr. Drljic and they hang out pretty
14 regularly, that they would be hanging out on a Saturday
15 night at four in the morning.

16 Conversely, Mr. Drljic said that they are not
17 friends. It's a business situation and that he only met
18 Mr. English less than a year ago. And that it was
19 strictly a tattoo, a lucrative relationship for him.
20 That Mr. English would come in and have tattoos. And
21 that he only came in once every few months. So we're
22 talking about maybe four times they had seen each other
23 before this night. Is it reasonable that if Mr. Drljic
24 had only seen Mr. English four times before that night
25 that he would go somewhere at four in the morning to help

State v. Drljic/Suttles

1 Mr. English move some items? It's not reasonable, ladies
2 and gentlemen.

3 How did Mr. Drljic say he got there? He said
4 he walked. He was home in bed with his fiancée. He was
5 home in bed in the middle of the night, ready to go to
6 sleep, and he gets a call from someone he says he doesn't
7 know that well, but did change a tire for him and needs
8 help moving. He needs help moving and Mr. Drljic walks
9 there at four in the morning, in the wintertime.

10 Ladies and gentlemen, that's not reasonable.
11 What did Mr. English say? He said he was -- he got
12 picked up. He lives in Minneapolis. Suttles picked him
13 up in her car and it was Suttles, Drljic and English.
14 That's reasonable. All three of them were at the scene.
15 They got there together. That's also reasonable, given
16 the fact that when Ms. Suttles and Mr. Drljic wanted
17 anything from Mr. English, like to go to the police
18 department and tell them some sort of lie, as Mr. English
19 said, that they picked him up and drove him there.

20 So we have two incidents of the defendants
21 picking up Mr. English and driving him. And Mr. English
22 said he lived in Minneapolis. He doesn't know this area.
23 This isn't his part of town. And that makes sense that
24 he would be driven. As you can see, he's led throughout
25 this whole thing. He goes along, willingly.

State v. Drljic/Suttles

1 Ms. Suttles testified she drove alone. Ladies
2 and gentlemen, that's not reasonable in light of this
3 evidence.

4 Skip ahead for a second. This is University
5 and Raymond. This is the location of the burglary. This
6 is Ms. Suttles' house. It is less than a mile and a half
7 away. She said she's not familiar with the area. She
8 said she drove over to South Minneapolis to get gas. She
9 said she got lost. Said it took her an hour. A mile and
10 a half. And it's not reasonable that she is not
11 familiar, because this is 494 -- 94, ladies and
12 gentlemen, and this is University. Ms. Suttles must take
13 University on a regular basis. And she clearly knew
14 there was a billiard place across the street. And she
15 seemed very familiar with that area, even though saying
16 she had never been there before and that she went alone.
17 So, Mr. Drljic left on foot to help Mr. English move.
18 Ms. Suttles, who didn't want to go, stayed. And then
19 when she got a call from Mr. English she got in her car
20 and went. Mr. English, who she barely knows at all. And
21 both admitted that.

22 But again, she left her warm bed in the middle
23 of the night to go drive her car to an area a mile and a
24 half away for unclear reasons. But, she said she was
25 going to get money to help someone out committing a

State v. Drljic/Suttles

1 burglary. Mr. English was very clear about that. When
2 asked what were they doing there, he kind of, aw shucks,
3 we were committing a burglary. What else do you think?
4 And you saw that throughout his testimony. When he was
5 asked about the M & Ms. The state has to bring it up.
6 What did he say? Well, I don't remember, but I sure like
7 M & Ms, so maybe we did.

8 Mr. English knew what he was doing there. He
9 was there with his good friend, Mr. Drljic. And his good
10 friend's fiance, Ms. Suttles, and they were committing
11 three burglaries.

12 Ladies and gentlemen, there is no reasonable
13 evidence -- there is no reasonable conclusion. It's not
14 reasonable that they were there to help anyone move. I
15 ask and the state asks that now that you have heard all
16 of the evidence, that you deliberate and return a verdict
17 that truth dictates and justice demands; guilty, for Mr.
18 Drljic and Ms. Suttles, on all counts of burglary. Thank
19 you.

20 THE COURT: And before he we start with
21 defense closing, we need to take a break because we have
22 to set up some things. I'm sorry. I'll get my law
23 clerk. It's only going to be 10 minutes.

24 (Recess taken. Court reconvened and the
25 following proceedings resumed.)

State v. Drljic/Suttles

1 THE COURT: Please be seated and we'll continue
2 with closing argument. Ms. Clark.

3 MS. CLARK: Thank you, Your Honor.

4 CLOSING ARGUMENT

5 BY MS. CLARK:

6 Good morning, everyone. Nice to see you again.
7 This is my time to be able to talk to you about the
8 evidence and what we think it means. The prosecution has
9 called this burglary interrupted. And we think, perhaps,
10 the appropriate name is the muffin burglary.

11 You will be receiving some jury instructions to
12 take back with you. These are written instructions of
13 the court. The judge will also be reading these to you
14 before you retire to deliberate and I will be talking to
15 you about some of them, pulling out some of the key words
16 and talking about some of the key concepts. But, one of
17 the things the court will tell you, that if a word is not
18 defined, then you should use your common sense. And I
19 will come back to that term a number of times.

20 I did not hear the prosecution say the burden
21 of proof in this case. If I'm wrong, I stand corrected.
22 But, I would like to make sure that you know the burden
23 of proof in this case is the highest burden of proof we
24 require in any type of legal proceeding in this country;
25 and that is, proof beyond a reasonable doubt.

Staté v. Drljic/Suttles

1 The judge said it at the beginning, but I want
2 to emphasize it now, as well. The defendants are not
3 required to prove innocence. It is the opposite in this
4 country. The government must prove guilt. And they must
5 do that by making a case beyond a reasonable doubt. And
6 if you take that a part a little bit, if you have a
7 reasonable doubt, then the verdict must be not guilty.

8 So, the job of the defense is not to prove
9 Officer Glisky is lying; although, you may come to that
10 conclusion. But, that's not our job. We don't have to
11 prove things like that. Our job is to raise doubts.
12 Just as an example. You heard, as a corner stone of the
13 state's case against Tamika Suttles, she went to
14 Minneapolis to buy gas. If Sergeant Strickland had done
15 one thing, obtained the video from the Super America to
16 put an end to that argument.

17 And the state's unwillingness to gather
18 evidence, the sloppiness or weirdness of the state's
19 investigation of this case is something you can consider
20 in deciding if there is reasonable doubt. How could the
21 prosecution, for example, convince you beyond a
22 reasonable doubt that driving to Minneapolis to get gas
23 is evidence of guilt when the state has not presented you
24 with a videotape of Super America?

25 One interpretation, camera picture, of Daniel

State v. Drljic/Suttles

1 Drljic walking over to this building that night from the
2 multiple cameras in St. Paul city proper, would have
3 disproved both of the allegations of Thomas Nolan that
4 two African American people came together in a car; and
5 Jermaine English, that all three came together in a car.

6 In other words, if Sergeant Strickland had done
7 that one thing, it could have disproved the entire corner
8 stone of the state's case. That, we submit, is
9 reasonable doubt. Just using it as an example. And I'll
10 talk you through a number of different ways of looking at
11 that concept.

12 Now, the defense submits to you that sometimes
13 the best evidence is the most contemporaneous evidence
14 before people have time to think too much, plan, meet
15 with the prosecution to prepare their testimony. Exhibit
16 22 is in evidence. I have just blown up the front page
17 here. I would like to talk about a couple of points.
18 And did you notice that the state's witnesses tended to
19 align on certain factual assertions? Glisky and Nolan
20 both said that they didn't see Daniel Drljic come out of
21 the door and rush back in.

22 Now, Nolan had to take that back when it was
23 pointed out to him that at 4:26, this is Officer Glisky,
24 Squad 111, doing a radio call back to the dispatcher in
25 the second, in the moment. A witness saw someone run

State v. Drljic/Suttles

1 back into the building. And we submit to you that's
2 Daniel Drljic. And that when Officer Glisky testified
3 later, he either had poor recall, which is possible; or
4 bad recall in order to align his testimony with the
5 state's case.

6 Now, it is true that credibility is the same
7 for all human beings; that is the way the face looks.
8 You know, human beings' common sense can tell it at
9 times. Not always, but at times, if someone is looking
10 them in the face and telling them an untruth. Witnesses
11 do observe things differently and they have different
12 experience testifying. So, lay witnesses may be less
13 able to cover up their ability to tell you an untruth;
14 more professional witnesses may be better at it. But, a
15 police officer trained to observe a human being running
16 probably gives you a much different description from a
17 lay person.

18 So, look at 4:27, this is Glisky radioing his
19 own police observation, black male, black coat, dark
20 jeans, red stocking, five eight, medium build, hundred
21 fifty to a hundred and sixty pounds. A very good
22 description of Jermaine English. These entries are
23 consistent with what Daniel Drljic told you.

24 Now Tamika Suttles. First of all, there is no
25 evidence at all that she went into the building, except

State v. Drljic/Suttles

1 Jermaine English saying he believed she went there. And
2 we'll come back to Mr. English. But, Tamika Suttles told
3 you a story that started with an earlier time frame. And
4 I just want to point out a couple of these.

5 First of all, this is the alarm. Officer
6 Glisky told you multiple alarms. That's not totally
7 accurate, depending on how you define multiple. But, at
8 4:18, police dispatch is notified by Electro-Watchman
9 that there is an alarm, covers AUD west basement lacing
10 and window.

11 Now, if you start to break apart the time frame
12 and you look at how long things took, the defense submits
13 to you that this timing of this alarm is consistent with
14 Jermaine English ripping the wall, then coming upstairs
15 to the front and needing to get out quickly. And in
16 other words, someone like Jermaine English might well
17 understand that ripping a wall is going to trigger an
18 alarm. Now, it's not totally clear that the wall
19 triggered the alarm. If you recall, the person most
20 knowledgeable about that alarm, Dana Rose, said he wasn't
21 really sure what this means. It's possible that a
22 window -- that Jermaine English was at a window earlier.
23 It's not totally clear. But, there is one other alarm.
24 And only one. That's down here at 4:23. Additional
25 alarm, side window. Notify that officers are out.

State v. Drljic/Suttles

1 In other words, by the time that second alarm
2 goes, the police are already there. The first officer
3 arrives, Squad 111; Glisky 4:19. Very shortly after that
4 you see Menton, who we didn't hear testimony from, but
5 his name appears here, 4:19. And then 4:20, it says Dana
6 Rose, estimated time of arrival, 20 minutes. There is a
7 female officer here on the scene dispatching and then on
8 the scene early.

9 Now Officer Glisky indicated to you that he saw
10 an open back door -- oh, I'm sorry. I told you I was
11 going to talk to you about Tamika Suttles. This is at
12 4:24, Officer Glisky radios out with, someone in rear,
13 code four. In other words, he's out in the back with one
14 person, code four, everything is under control. So, it's
15 not totally clear, but this certainly could be the time
16 Tamika Suttles is already now in his squad car. So, if
17 Tamika -- excuse me, if Officer Glisky arrived by 4:19
18 and by 4:24, Ms. Suttles is in the back of his squad car,
19 that is consistent with what she told you and it doesn't
20 leave a long amount of time for varying discussions.

21 A couple more points I want to make for you
22 about this contemporaneous incident recall report -- and
23 I didn't blow up the other pages, but they'll go back to
24 the jury room with you. 4:32, K-9 is entering the
25 building. 4:43, suspect is on the first floor, doesn't

State v. Drljic/Suttles

1 have any guns, wants to come out. Phone went dead. Then
2 it indicates 4:44 is in the basement. By 4:47, they are
3 slowly walking to the front entrance on Raymond. 4:48,
4 both of them have their hands up at the inside front
5 entry door. 4:49, making contact. 4:49, the suspects
6 are on the ground. 4:50, both suspects are in custody.

7 So, even from the point that the police saw
8 Mr. Drljic and he saw them and they communicated through
9 the glass, it took all that time to actually have police
10 enter and have Mr. Drljic go on the ground. So, the
11 contemporaneous record helps us understand the timing.
12 The state had argued earlier that Mr. Drljic was in the
13 building all this time after the police arrived. And if
14 you look at the contemporaneous entries, it all fits. If
15 he, first of all, ducked back in after seeing the guns.

16 And by the way, do you think that a
17 photocopied, still frame of a video, can tell you whether
18 or not someone is in trauma? But, if he ducked back in
19 at 4:26 and already by 4:43 there is not only telephone
20 contact, but the dispatcher has been told by police that
21 the suspects want to come out.

22 By the way, the state indicated that Mr. Drljic
23 was leading. He was leading at that point. He was
24 leading the surrender. He was leading, coming out with
25 hands raised. He was leading that part of it. He sure

State v. Drljic/Suttles

1 was.

2 With regard to Jermaine English. And as you'll
3 notice, the state's case, in closing, rested almost
4 entirely on Jermaine English. You can ponder why that is
5 and the defense has some ideas for you later. It's
6 certainly possible the state's police case did not come
7 in as it intended. But, there are some important things
8 to consider when it comes to Mr. English.

9 First of all, the court will tell you that the
10 fact that Mr. English pled guilty does not mean that
11 either of these defendants are guilty. It seems clear
12 from Mr. English's own story that he had his own reasons
13 for pleading guilty. He is, however, under the law,
14 known as an accomplice, whether he had not yet had a
15 trial, whether he had not yet pled guilty, been
16 convicted; any of those things, it doesn't really matter.
17 Because under the law, he is known as an accomplice. And
18 this is a vital theory of the defense; and one, with all
19 due respect, the state completely ignored.

20 It is the defense's position -- and I'm going
21 to break this o you know for you -- but, it is the
22 defense position that there is no evidence in the record
23 to corroborate Jermaine English's testimony against these
24 defendants; and therefore, that testimony cannot be
25 considered by you as evidence of guilt.

State v. Drljic/Suttles

1 And let's talk about why. Of course, you know,
2 you have two defendants. You have to decide each case
3 differently. You have to decide each count differently.
4 But, for purposes of talking through this jury
5 instruction, the law says and the court will tell you
6 later, you cannot find the defendant guilty of a crime
7 on the testimony of a person who could be charged with
8 that crime or in this case who was already charged and
9 convicted, unless that testimony is corroborated by other
10 evidence that tends to convict the defendant of the
11 crime.

12 And what I would like to do is walk through,
13 not everything, but some examples and show you what this
14 means, under the law. First of all, the state relied
15 heavily on the "relationship". It is only Jermaine
16 English who testified that the relationship was long and
17 friendly. So, I'm going to put here, JE only. There
18 simply is no other evidence of that because it's JE only.
19 It's out.

20 The evidence that Daniel Drljic broke through
21 the wall with tools -- and I'll come back and talk about
22 the tools separately -- is JE only. Right? No police
23 saw that. So that's out.

24 By the way, did you think it was curious that
25 Jermaine English did not know how the back door got

State v. Drljic/Suttles

1 opened? When he was asked, he said he saw this and he's
2 an eye witness; yet, he didn't seem to know how the back
3 door got opened. And yet, he says he arrived with Mr.
4 Drljic. Now, the tools, only Jermaine English said the
5 tools were Daniel Drljic's. There is obviously a little
6 bit of additional evidence on this one. There is the
7 duffel bag in Ms. Suttles' car. But, it's the jury's
8 prerogative to determine what testimony corroborates.

9 In other words, some are easy. If it's JE
10 only, boom. It's out. If there is more evidence --

11 MS. LAMIN: Objection, Your Honor, misstating
12 the law.

13 THE COURT: And I'm going to sustain that
14 objection.

15 MS. CLARK: The judge will tell you precisely
16 what the jury instructions say. For sake of argument,
17 you cannot consider the evidence if there is no
18 corroboration of what Jermaine English said. I was
19 simply short handing that.

20 Now, let's take a look at the tools. Yes,
21 duffel bag was in his Ms. Suttles' car -- trunk, at some
22 point. Unclear exactly when it went in there. And the
23 pictures don't really help us that much because the
24 police, themselves, admitted, well, we moved things
25 around before we took the pictures. But, when you look

State v. Drljic/Suttles

1 at the other surrounding evidence of that duffel bag, the
2 police, themselves, put Jermaine English's name on it and
3 his address. And Sergeant Strickland told you that he
4 associated that bag with Jermaine English.

5 You can also then consider all the other things
6 you know about Jermaine English. Fascinating thing about
7 Jermaine English is that when he got talking, he was
8 showing how it was done. He was the guy that knew to
9 look on the floor under the bakery to find the extra cash
10 the next day. And he told you that he found it. And he
11 seemed a little bit proud of himself. So, based on all
12 of the evidence, you may decide it's not reasonable to
13 determine that the duffel bag evidence corroborates
14 Jermaine English's story.

15 What about stacking things? Another big part
16 of the state's case. Jermaine English told you, oh,
17 Daniel -- he says Daniels -- Daniels stacked those
18 things. But, only Jermaine English testified that way.
19 There is no evidence at all, and your notes are better
20 than mine, so rely on your own memories. But, the
21 defense's best recollection at this time is that there is
22 no evidence by anyone, not even English, that Daniel
23 Drljic found the hole in the wall, what Patricia Y calls
24 the tunnel. Patricia Y, herself, had a business there.
25 Didn't know it was there. That's an evidence of a guy

State v. Drljic/Suttles

1 with some experience and some skill to find that hole,
2 move those boxes, pry those boards off and go in.

3 But, Jermaine English told you, quite honestly,
4 he was in there. He was in the Edge Cafe. There is no
5 evidence that Daniel Drljic was ever in the Edge Cafe or
6 did anything with this hole.

7 With regard to the masks. Who had the mask?
8 Again, Jermaine English, only, says he had one mask and
9 Daniel had his own mask. Only. That's the only
10 testimony on that point.

11 Now, with regard to why the mask was put on,
12 Jermaine English may have made a conclusory statement, a
13 kind of general statement; but for the most part the
14 record has what Mr. Drljic told you. And with all
15 respect to the state, you observed Mr. Drljic as he was
16 telling you the story, as he was talking about, just a
17 little bit, not a lot, but a little bit about what it's
18 like to be in a war. To be a survivor of a war. It's
19 perhaps not with the common experience of people on the
20 jury; but, you did hear from him. And it changed his
21 life. And it changed the way he viewed the world as we
22 would expect it would.

23 And so, when he came out of the open door, in
24 the contemporaneous record from Officer Glisky to the
25 dispatcher, shows it was open, not locked as Jermaine

State v. Drljic/Suttles

1 English said. But, when he came out the open door and
2 saw a police officer out there with guns, he reacted.
3 And he made a really good choice. Because, if you look
4 at the -- some of these you didn't see as they were being
5 put in, some of these exhibits. But, I'll show them a
6 little bit to you now. And obviously, you'll have them
7 in the jury room. This is Exhibit 95. And it shows
8 almost a little tunnel like alley at the end of this
9 building, dark even when this picture was taken in the
10 day. The risk known to someone who has been shot and
11 shot at is to come out of a dark space at four in the
12 morning to some pointed guns is extremely risky. The
13 movement in the tunnel, alone, may have been enough for
14 police to shoot. Because remember, at that point, the
15 police don't know that no one inside has no weapons.
16 They may react on instinct. And he reacted on instinct
17 and he went and did the best he could under, admittedly,
18 strange circumstances.

19 There is a little bit of evidence from English.
20 But, really, it never got flushed out from him. And with
21 all due respect to Mr. English, it's easy to memorize a
22 paragraph and to know that you can please the state by
23 saying Daniel Drljic did this or Daniel Drljic did that.
24 But the devils in the details. And when -- and I always
25 do that, Jermaine English was asked, he said, oh, well,

State v. Drljic/Suttles

1 we talked about it in the car ahead of time. Well, who
2 said what? Well, I don't recall that. There just
3 weren't details behind his story, except when he was
4 talking about him committing the burglary.

5 Now, when you look at the picture evidence from
6 the police, which the state chose largely to ignore in
7 it's closing, there are times that Jermaine English
8 seemed credible. That is to say, when he was explaining
9 the details of what he did and how he did it and he, a
10 little bit, seemed to enjoy that. He seemed credible.
11 So he told you -- he told you that he hauled boxes out of
12 that back room, in the back, where the plywood had been
13 pulled across. That he pulled out cases. And yet, the
14 police pictures, 27, for example, has these high end
15 single bottles and gift packs. I'm holding up 28, as
16 well. So English could be wrong. He could have a faulty
17 memory or it's possible that there is evidence that
18 someone took it upon themselves to stage some pictures
19 before they were taken.

20 Now, some are clearly staged and admittedly
21 staged. If you look at Exhibit 49 and 50, in one of them
22 there are three tools associated with the black duffel
23 bag. And in another one, there are four. I might -- you
24 can count them yourselves, but clearly the blue one isn't
25 here. And so you have to wonder was the blue one found

State v. Drljic/Suttles

1 downstairs and brought up and put on the duffel bag?
2 Could be some combination of sloppiness or maybe someone
3 had a motive to try and make Suttles and Drljic look bad.
4 We'll come back to that in just a little bit. But, on
5 some of these points, it is certainly possible -- and we
6 encourage you to look at the video evidence that you
7 weren't shown in court. It's certainly possible that
8 some things were staged.

9 We know from the time line that both suspects
10 were in custody at 4:50. Officer McGinn, who Mr. Drljic
11 said was a nice officer who drove him to the jail, didn't
12 even arrive on scene until 4:51. Obviously the video is
13 one hour off; 4:54, perimeter can clear, says Squad 107.
14 So 4:54, six minutes later, you see a blond female police
15 officer in the video at the front door of the liquor
16 store picking things up off the floor and putting them on
17 the counter. And the defense did not see any pictures
18 taken in that process. Then a male police officer walks
19 in from off camera, walks up with a pile of gloves and
20 plops them on the counter.

21 And then you have Exhibit 38 and Exhibit 37.
22 The defense did not see any pictures taken in any of the
23 video provided to the defense by the state. Doesn't make
24 any sense. If Dana Rose left and the police left with
25 him and all the video was provided, when were these

State v. Drljic/Suttles

1 pictures taken? Something is amiss.

2 The gloves, even Glisky said, Exhibit 52, is
3 staged after Exhibit 39 was found. But, look in the
4 video of any finding of these gloves. The defense
5 submits to you that it is not there.

6 The black jacket. Dana Rose testified this is
7 the location it was found, Exhibit 45, in response to a
8 leading question from the state. Now no, I'm sorry, it
9 was found over here. Both things cannot be true. It's
10 clear that things got moved around. It's not totally
11 clear when. It's not totally clear who. And it's not
12 totally clear why. And it's possible that there was more
13 than one motivation. It's possible some of it is simply
14 sloppy police work. It's possible that several officers
15 at the scene decided they wanted to make Ms. Suttles look
16 guilty.

17 Back to Exhibit 44. And there is a slightly
18 different copy with 43. And this is a weird picture.
19 It's kind of hard to figure out how it goes. But, you
20 can look at the picture, yourself, and consider whether
21 there is a jacket here and a black duffel bag that is
22 dirty and quite used right alongside of it. It is
23 unclear exactly where the duffel bag was located.

24 Now, it is certainly possible -- oh, one more
25 thing before I move on to Mr. Nolan. Exhibit 122 put in

State v. Drljic/Suttles

1 by the state. This, Mr. Rose said, he totaled up all of
2 the booze that had been set out and made a list. And
3 when Sergeant Strickland was asked to look at some of the
4 video -- and by the way, the earliest video in time is
5 Exhibit 91; the next video in time is Exhibit 100. And
6 it starts at approximately 6 o'clock, which we know is
7 five. And then the next segment of time, until about
8 6:35, is Exhibit 101. But when Strickland was asked by
9 the defense, well, why would an officer be walking in a
10 front door with a bottle of Gray Goose? He didn't know.

11 When he was then, after the lunch break,
12 questioned by the state, he seemed to think that they
13 were bringing it upstairs to count it. It doesn't make
14 sense. Mr. Rose said, bring some of the cases upstairs
15 to count them and leave others in the basement? Just
16 bring the single bottles up so that you can bring them
17 back down again? Where was the counting done? There is
18 no counting by Mr. Rose in the video.

19 And you can count the booze on this list and
20 compare it to later when police officers, more police
21 officers, bring more booze up and set it on the counter
22 inside the liquor store at approximately -- it's in the
23 Exhibit 101. And you can compare what's on the counter
24 to the list. And respectfully, the defense asserts, that
25 they do not match. So, it's unclear exactly what was

State v. Drljic/Suttles

1 going on, but very clear that the investigation was
2 sloppy, at best. The investigation by the on scene
3 officers.

4 Now, with regard to Mr. Nolan. The defense
5 hopes it does raise a doubt in your mind as to whether he
6 was involved. And a reasonable doubt. There were a
7 couple of strange things that happened that don't seem to
8 have explanation. Sergeant Strickland said, yeah, I
9 talked to Ms. Suttles and Mr. Drljic. By the way, talked
10 freely to him in jail. Told him a lot of details. Mr.
11 English did not. And you can, in your common sense,
12 consider that Mr. English, being a professional in the
13 criminal justice system, so to speak, knew not to talk.
14 Knew not to talk then, knew he had to get his story
15 straight, decide how he was going to play it and say
16 something later.

17 Sergeant Strickland talked to both of these
18 people, Mr. Drljic and Ms. Suttles, and gave them back
19 over \$16,000. And just by common sense, why would an
20 experienced police sergeant give these people back
21 \$16,000 if he thought they had had anything to do with
22 it? And in fact, he did acknowledge that he had stated
23 to Ms. Suttles -- and she indicated that she trapped it
24 on tape and made a transcript. When she's talking about
25 the money, Sergeant Strickland said, oh, I understand.

State v. Drljic/Suttles

1 That's why I gave it back to you. I didn't think you
2 were really involved in it.

3 MS. LAMIN: Objection, Your Honor. I ask that
4 be stricken. Counsel is reading from something not in
5 evidence.

6 MS. CLARK: Your Honor, it's in evidence, the
7 exact words.

8 THE COURT: Strike that. Sustained.

9 MS. CLARK: Your Honor, ask the court to
10 reconsider. These precise words were read into the
11 record during Ms. Suttles' testimony.

12 THE COURT: The jury can rely on their memory.

13 MS. CLARK: Thank you.

14 So within the first several days, Sergeant
15 Strickland read the police reports. He goes out to the
16 scene. He talks to some of the business owners or
17 renters, talks to Ms. Suttles, Mr. Drljic. They told you
18 they brought some documentation in, showed him receipts.
19 Showed him a client form that Jermaine English was a
20 client, not a buddy. And that that's what it took for
21 Sergeant Strickland to say, okay, I get it. I'm giving
22 you your money back. I don't think you did it. I'm not
23 saying he said exactly those words at that time, but his
24 actions, perhaps, speak louder than words.

25 He said that he saw the video. He said he knew

State v. Drljic/Suttles

1 from Ms. Suttles that after she arrived, popped her
2 trunk, assuming someone would put things in the car,
3 white male, early 20s, came and put something in the
4 trunk. And then he does due diligence. He's an
5 investigator. He goes out to the scene. He says, hey,
6 give me a list of the renters in the building. He gets a
7 list of the renters. And only one of them fit the
8 description given to him by Ms. Suttles. It's a name Ms.
9 Suttles did not know at the time. Later, Jermaine
10 English called him Joe. But, the one person from the
11 renter's list, according to Sergeant Strickland, that fit
12 the description was Thomas Nolan.

13 And then when Thomas Nolan was brought into
14 court by the state, which the defense very much
15 appreciates, Ms. Suttles was able to look at him and say,
16 that's the guy. So, why did Sergeant Strickland stop
17 investigating Joe? He said some of the business owners
18 got pissed, threatened to call the county attorney. It's
19 not really clear. But, at that point, the investigation
20 stopped.

21 Again, the defense submits, a reasonable doubt.
22 Because the state did not do a proper investigation of
23 what Ms. Suttles' said; that she saw a young white man
24 come put things in her trunk. There is no evidence in
25 the record that Thomas Nolan was wearing gloves. The

State v. Drljic/Suttles

1 presumption by Officer Glisky, oh, everyone was wearing
2 gloves.

3 By the way, Officer Glisky wasn't wearing
4 gloves. Officer Glisky touched metal objects and maybe
5 other objects, as well. So, Officer Glisky's decision
6 not to trap any fingerprint evidence can be viewed a
7 couple of different ways. But, at a minimum, there is no
8 evidence that Thomas Nolan was wearing gloves. One
9 fingerprint on the T square of Thomas Nolan and the state
10 would not be able to stand before you and argue what it
11 argued in this case. One fingerprint. Officer Glisky,
12 when shown a thumb print on the -- it's either the
13 printer or the scanner; and you can look at that picture
14 closely for yourselves. First, he says that's not a
15 fingerprint and then admits that he didn't even try to
16 trap it.

17 Now, the objects in the trunk. As Alice said,
18 curious er and curious er. So this is a police picture
19 taken when they say the car was at the scene. Ms.
20 Suttles -- and Strickland agrees he drove her over to the
21 impound lot and released her car.

22 By the way, the defense submits, another
23 indication Sergeant Strickland didn't think she was
24 involved. And yet, what happened to a number of these
25 things? Remember the details that Jermaine English gave

State v. Drljic/Suttles

1 you. Yeah, found a power tool in a box. The one power
2 tool that's been talked about in this case is this blue
3 drill. So, how did it get out of the box? Now, Glisky
4 said, or -- and I'm sorry, it could have been Peter
5 Brown. But, someone said the drill was given back to
6 them that night. Officer Strickland said, Joseph Brown
7 came down to the property room and got the blue drill and
8 that's when it got scratched off the property sheet.
9 This is a police investigation?

10 By the way, if that Kenwood face plate belonged
11 to Joseph Brown, why didn't he pick it up when he was in
12 the property room? Why would he pick up the drill and
13 not the face plate? Clearly reasonable doubt that that
14 Kenwood face plate had been stolen by Ms. Suttles. But,
15 look over here, on the right side. This is 10-A, for the
16 record. What is this? What is this box? What is this
17 thing here, this black case, plastic case thing? And
18 what happened to it? This, here, in the middle looks
19 kind of like a light box, like maybe an artist would use
20 it. Where is that? There is no picture of it by police,
21 later. There is nothing in the property record. There
22 is no indication that it was given back to the owner or
23 that Joseph Brown picked it up. Is it still on the floor
24 at the garage of the impound lot? I mean, how much of
25 this stuff was just kind of ignored over at the impound

State v. Drljic/Suttles

1 lot? What are these boxes?

2 The T squares. Now Glisky said he gave those
3 back that night to Peter Brown. This looks like a
4 printer. There is a picture of a printer and Strickland
5 said he gave it to Peter Brown over at the western
6 district. And this could be the scanner, here. So that
7 could explain these two things. What happened to the M &
8 Ms? Where are the M & Ms? Why are there no M & Ms in
9 the property and evidence room? Which is why we call
10 this the muffin burglary.

11 Now, you know Sergeant Strickland said in his
12 many, many, many years as a burglary investigator, he has
13 not seen someone try to heist a big ol tray of muffins.
14 Now, the muffins were in the state's final presentation
15 because they had to show the muffins to show the door.
16 But, the muffins, according to the police pictures, are
17 sitting outside on a bucket, staged; staged to be stolen.
18 That's the implication by police, wasn't it? These are
19 here, staged to be stolen. But, there is a number of
20 problems with the muffins. There is no evidence of what
21 kind of fence you need to sell muffins.

22 There is also, Patricia Y saying, I didn't even
23 know the muffins were missing and that she never got them
24 back. Now, there is clearly no evidence that was given
25 to Sergeant Strickland about the muffins. No property

State v. Drljic/Suttles

1 record of any muffins. But, the question then becomes,
2 what happened to the muffins? And the defense submits to
3 you, with all due respect to the numerous, numerous
4 wonderful officers in blue, that it is possible that some
5 lines were crossed on this day and in this case.

6 And the defense asks you to consider, when you
7 deliberate, only the evidence in this case. Because it
8 is the evidence in this case that will impact Ms. Suttles
9 and Mr. Drljic. And isn't it a shame that there are some
10 officers who will cross the lines? But, please don't
11 base your verdict on what you want the world to be and
12 that you wish we didn't live in a world like that; base
13 it on the evidence in this case. And ask yourself where
14 the muffins are. Where's the bag of marijuana, clearly
15 found at Sharrett's Liquor, clearly picked up by a police
16 officer. Never made it back to headquarters. Lines
17 crossed. And what you know from common sense is one day
18 you put one toe over the line and if nobody catches you,
19 another day you might put two toes over the line. And if
20 nobody catches you one day --

21 MS. LAMIN: Objection, improper closing.

22 THE COURT: I am sustaining that and you are to
23 strike that.

24 MS. CLARK: Your Honor, with all due respect,
25 the defense respectfully disagrees.

State v. Drljic/Suttles

1 There is evidence in this case that Tamika
2 Suttles, when they came there that night, had over
3 \$17,000. That is the evidence in this case. And it is
4 un rebutted. The only evidence from police, how much was
5 there when they counted it back at headquarters -- excuse
6 me, across the street from headquarters to be taken over
7 to headquarters. There is no other evidence from the
8 police. And the defense, respectfully, asks you to
9 consider it, if it's possible that some of the staging
10 was designed to deflect from conduct of certain officers
11 and not to Ms. Suttles and/or Mr. Drljic.

12 The state argued that when he's in the liquor
13 store trying to come out so that he's not shot, that Mr.
14 Drljic took, not his wallet; but, one ID out of his
15 wallet and put it on the shelf. The defense,
16 respectfully, disagrees with the way in which the
17 prosecution discussed the law of immigration. The judge
18 is not going to charge you on the law of immigration.
19 There is no evidence that Mr. Drljic is not a citizen.
20 The only evidence comes from him. The evidence is that
21 he came to this country when he was 17. Being under 18,
22 at that time, the law was he is automatically a citizen.
23 And that now there is a dispute, a legal dispute, which
24 he said was being handled. So, there simply isn't the
25 evidence that he had this grit fear of ICE. By the way,

State v. Drljic/Suttles

1 ICE would not be at the front door.

2 The evidence is that he was allowed to work in
3 this country. Worked. Worked hard. Worked three jobs
4 at a time. Got involved in doing some murals, culinary
5 arts and worked for his mother's business. But, there is
6 another big flaw in the state's argument. And that is,
7 Mr. Drljic told you this -- and you can see if for
8 yourself. This is expired. This expired in March, 09.
9 And he told you he had a current one. So, why would the
10 guy, the master mind that the state is presenting this to
11 be, go into his wallet and take out one of his two
12 employment authorization cards, just the old one, and put
13 it on a shelf.

14 There is no record evidence disputing that when
15 Mr. Drljic is face down and cuffed, that police took his
16 wallet. That's undisputed in the record. And they had
17 control over it until he got some things back at the
18 jail. And with all due respect to the state, the state
19 has made some mighty powerful allegations against Ms.
20 Suttles and Mr. Drljic. And they do believe,
21 respectfully, that they are entitled to scrutinize their
22 government and it's conduct.

23 Now, the Exhibit 97 is Ms. Suttles' drawing.
24 And you'll recall, Exhibit 92 was also the drawing by Mr.
25 Nolan. And I wanted to just say a couple things about

State v. Drljic/Suttles

1 this. There is a dispute in the record about where Ms.
2 Suttles parked when she first got there. And according
3 to Officer Glisky and then Nolan matched his testimony,
4 she first parked out here. Although, Glisky then
5 admitted later, I don't know if it was after the car was
6 moved. Ms. Suttles told you she parked here. We gave
7 you these close up pictures of this weirdly shaped
8 building, these are 94 and 95, to indicate a couple
9 things. One, if you were going to help someone move some
10 things, would you park in the next parking lot over or
11 would you back up close to the door like they gave you
12 directions for? I mean, regardless, even if you take the
13 state's theory that Ms. Suttles was there to take the
14 booty out, why wouldn't she park a parking lot over?
15 That sounds like a good burglary plan. Let's all run
16 across the parking lot carrying a bunch of stuff.

17 But, there is another problem with the idea
18 that Ms. Suttles was parked over in the parking lot. If
19 you look at Exhibit 93, you see this row of cars that
20 Nolan did talk about. Between the strange little back
21 parking lot, alcove area and the parking lot that police
22 say she was in, and then Ms. Suttles told you that there
23 is in fact a barrier there. Exhibit 127 shows what she
24 was talking about. That there is actually some signs
25 with like a metal cord. Some type of thick wire cutting

State v. Drljic/Suttles

1 the two parking lots apart.

2 Now, it may seem like a little detail and you
3 may wonder why it is important. Well, perhaps, because
4 the state called Thomas Nolan. And he lives, Exhibit 9,
5 shows you where he circled himself. He lived in an
6 apartment that faced that farther parking lot. And as he
7 told you in his own words, he couldn't, from his
8 apartment, see around the corner and see what was
9 happening. Remember, his story is he just can't sleep,
10 so he's at his computer. He's not up like people walking
11 around, according to him. He's in his own apartment and
12 sees these things.

13 But, if you look at Exhibit 95 that Nolan
14 circled the stairwell windows. Now, that's where Officer
15 Glisky said he first saw Nolan. And the defense submits
16 to you that Nolan was up, and that he was up and down
17 those stairs, which is consistent with what Ms. Suttles
18 told you.

19 Jermaine English thought it was silly to wear
20 light colored pants to a burglary. Look at what Mr.
21 Drljic is wearing in Exhibit 24. Surely, he had darker
22 pants than that. If burglary was the plan, why wouldn't
23 he dress better than that? Now, the state also said, oh,
24 here he's taking off this trying to change his
25 appearance. Look at the video, though. And if you want

State v. Drljic/Suttles

1 to see the video, let the court know and the court will
2 bring you back into the courtroom. But, look at the
3 video, which is in color and live motion. The stills
4 kind of washed out the color of what was going on. But,
5 why would a guy take off -- here's Mr. Drljic in Exhibit
6 24, black jacket. Why would Mr. Drljic take off a black
7 jacket, so that he had a black jacket on? I mean, it
8 just doesn't fit. Ms. Suttles -- and again, the
9 projected picture was not as good, but was wearing a
10 brown jacket. Jermaine English -- and I'm sorry, that
11 was Exhibit 20. Jermaine English, Exhibit 15, is dressed
12 all in black.

13 Now, the court will charge you exactly as to
14 the law of burglary. There is a concept in the law
15 called liability for crimes of another. And again,
16 obviously, the defendants are individuals, to be
17 considered individually. The defense did not hear an
18 argument from the state in this case that Mr. Drljic was
19 liable for the crimes of another. They put Mr. Drljic at
20 the scene doing the burglary things. It's clear,
21 however, that the state's theory with regard to Ms.
22 Suttles is that she aided and abetted a burglary.

23 It's important to remember that aiding and
24 abetting is an intentional crime. Intent is something
25 from inside the brain. Doesn't mean you have to have an

State v. Drljic/Suttles

1 admission to prove it. You can look at lots of different
2 evidence to prove it or to consider it. But, it is an
3 intent crime. Intended to be there to aid the commission
4 of the crime; intended, in her own mind to be there to
5 aid the commission of the crime. It does not appear that
6 the state is indicating that she conspired with others or
7 that she was hired or counseled. You can certainly look
8 at those terms. But, for all those, the accomplice
9 testimony rule still applies and it must be proven with
10 intent.

11 Now, with regard to the burglary -- excuse me.
12 Here's the intent definition, which you'll find separate
13 from the burglary count. And the defense just wants to
14 point out to you, intentionally is a word we use in
15 English. Obviously, look at the court's definition
16 carefully. But, in addition to intent, meaning the
17 purpose, the actor must have knowledge of those facts
18 that are necessary to make the actor's conduct criminal.
19 In other words, there has to be some evidence that Tamika
20 Suttles knew what Jermaine English was doing.

21 And the defense submits to you there really
22 isn't any. The one piece of evidence you have or could
23 be viewed as two; Jermaine English said, well, we were in
24 the car talking. We didn't have any details. And when
25 he was asked, well, was Ms. Suttles in the building? He

State v. Drljic/Suttles

1 said, I believe she was. But no description of her being
2 in any room doing anything. So, the defense would submit
3 that the state's case is doubtful on the issue of what
4 knowledge was known.

5 Now, obviously, the same concepts apply to Mr.
6 Drljic. What has the state proven that he knew? What
7 knowledge did they prove that he had that would allow him
8 to inform the intent to commit a crime?

9 Now, with regard to Second Degree Burglary,
10 it's the defense position that it's one building; not
11 three. One building. Do you remember who is asked that?
12 Peter Brown. He owns the building. How many buildings?
13 One. One building. So, the defense respectfully submits
14 that you could only find guilty on one count. Obviously,
15 the defense would like you not to find any guilties on
16 any counts; but that with regard to this element alone,
17 that there was only one building.

18 Second, the state has to prove that Mr. Drljic
19 possessed a tool. Again, only evidence in the record is
20 Jermaine English and he was an accomplice. The defense
21 submits that cannot be considered. The only other tie
22 between Mr. Drljic and a burglary tool is the notion that
23 they were in Ms. Suttles' trunk; not his trunk, but Ms.
24 Suttles' trunk. And you'll recall the two little objects
25 in the back that Officer Glisky opined were burglary

State v. Drljic/Suttles

1 tools -- looking at Exhibit 61 -- Jermaine English,
2 himself, said, oh yeah, that's for tattooing. And Mr.
3 Drljic, the only record evidence of who this belonged to,
4 is that in fact it belonged to Mr. English, who was
5 fancying himself as a tattoo artist.

6 So, reasonable doubts with regard to possession
7 of the tools. Now, obviously, the word intent comes into
8 play here, as well. The state must prove beyond a
9 reasonable doubt, that Mr. Drljic intended to use the
10 tool to gain access to money or property; or Ms. Suttles,
11 whichever one you're considering. And that the defendant
12 entered or remained in the building with the intent to
13 commit a crime. The state has selected the crime for you
14 and they have chosen theft. And what you know from
15 common sense is it can't be stealing, if you think it's
16 okay to have it. So, the defense submits to you that the
17 state must prove beyond a reasonable doubt that Mr.
18 Drljic did not think that he was there to pick up some
19 things for a person.

20 The Third Degree Burglary charge has some
21 similarity to second degree. Second degree only deals
22 with the tools, burglary tools. Here, the actual
23 language of it is, intent to steal. Stealing is theft.
24 Same idea. Common sense, you aren't stealing something
25 if you think you have a right to pick it up. Just a

State v. Drljic/Suttles

1 little example: You go to a friend's house and he's
2 moving between apartments. And he says, here's my 10
3 boxes. Take these down to the car. You take 10 boxes
4 down to the car. Later, you find out one belongs to the
5 neighbor next door who had just set it out to be picked
6 up by a delivery person. Well, did you have the intent
7 to steal that box? No. Common sense tells you, I did
8 not form the intent. I didn't know that it wasn't my
9 friend's box.

10 I would like to close by talking, just briefly,
11 about the evidence that the state did not gather.

12 Sergeant Strickland was quite honest about what the state
13 did not do. He did not obtain any cameras from streets,
14 Super America, no fingerprints, no cell phone records.

15 Again, cell phone records of Jermaine English showing
16 that he called Tamika Suttles, showing he called Daniel
17 Drljic. The state would not be able to argue what it had
18 argued. And we hope it raises a reasonable doubt. Now
19 obviously, there is more detail about all of those
20 things. The defendants talked to you in a lot of detail.

21 We close by asking you to recall that the
22 defendants are not required to prove guilt. They are not
23 required to prove a police officer was lying, for
24 example. That Mr. English's testimony can only be
25 considered for certain purposes, if corroborated. That

State v. Drljic/Suttles

1 the state's sloppy, so to speak, investigation is
2 sufficient to raise reasonable doubt. And that's all
3 that's required. A reasonable doubt that a reasonable
4 person would have after looking at all of the evidence.

5 If you went to your cardiologist and he said, I
6 think you should have surgery tomorrow. And you say, I
7 think I'll get a second opinion on that. It's that not
8 quite sure, that the defense submits is consistent with
9 the jury instruction for reasonable doubt.

10 We know you listened very carefully. We know
11 that this is a long trial. Ms. Suttles and Mr. Drljic
12 thank you very much for your time and attention. And we
13 do ask you, when you consider all of the evidence, to
14 find the not guilty verdicts forms. You will receive a
15 number of verdict forms. Find the not guilty verdict
16 forms and whoever you select as a foreperson, mark the
17 spot for not guilty. Thank you.

18 THE COURT: Okay. Ms. Lamin.

19 MS. LAMIN: Thank you, Your Honor.

20 CLOSING ARGUMENT - REBUTTAL

21 MS. LAMIN:

22 Ladies and gentlemen, I know it's been a long
23 morning and I'll be brief. The state will submit that we
24 have watched the videos, the other two videos. And if
25 you're inclined, rather than force you to do it now, if

State v. Drljic/Suttles

1 you feel the need, you're free to do it. But, it clearly
2 shows the officer taking photos and a flash. And after
3 the photos are taken, picking up the items to collect for
4 evidence. But, if you request, we can play it. But, at
5 this point, we won't drag this out any longer.

6 The defense talked about intent at the end.
7 Talked about, if you're at a friend's house to help move
8 and you're taking boxes to the car. Well, ladies and
9 gentlemen, Mr. Drljic was at a closed business at 4
10 o'clock in the morning in the middle of a burglary. And
11 ladies and gentlemen, all three of them acted together;
12 Mr. Drljic, Mr. English and Ms. Suttles. They all worked
13 together on this.

14 That's the theory of the case. That they all
15 did this together. That Ms. Suttles drove them,
16 possessed -- so, let's go through with the driving and
17 the camera. Sergeant Strickland did say he asked for
18 cameras and there weren't any photos. These aren't
19 cameras that are recorded. These aren't cameras that
20 are there. These are cameras that move and may or may
21 not catch items. And they didn't. And they frequently
22 do not, unfortunately.

23 They arrived together; yet, Mr. Nolan said that
24 he saw two people. Well, it is more likely than not that
25 Mr. Drljic left first, because Mr. English said him and

State v. Drljic/Suttles

1 Ms. Suttles were the initial look outs while Mr. Drljic
2 went first to the building. He's the muscle, right?
3 Isn't that why he was there? He was the muscle. You saw
4 Mr. English is not the muscle.

5 And you saw the testimony of Mr. Nolan. He's a
6 young, 20-year-old kid, at his computer awake. He sees
7 something suspicious and he just watches. Look at this
8 picture. This is the photo that was taken that night.

9 And ladies and gentlemen, I submit, Officer
10 Glisky never said the car was moved and staged. He said
11 the car was moved so the tow truck could come. That was
12 it. The defense counsel asked him, repeatedly, over and
13 over again. But he just said, it was in that spot until
14 the tow truck came and moved it. And here's a photo from
15 Mr. Nolan's apartment. And look at it. It's hard to see
16 on display; but, look at it. Look at how you can see
17 multiple cars. Look how it looks like. You can clearly
18 have two squad cars, plus other vehicles. And why -- and
19 why was Ms. Suttles parked in that spot? We don't know.
20 It's probable because she thought she would be even less
21 suspicious there, parked in a legitimate spot, in a
22 legitimate parking lot, as opposed to just parked in the
23 alley, outright, where it's completely obvious that she's
24 committing a burglary.

25 Ladies and gentlemen, the state has to prove

State v. Drljic/Suttles

1 beyond a reasonable doubt the elements of the crime.
2 That's it. The four things for burglary and reasonable
3 doubt, is based on reason and common sense. It's not
4 fanciful or capricious. It's not, oh, where are the
5 muffins? Well, here is a theory of where the muffins
6 were. They were outside in sub zero weather for a couple
7 hours. Where do we think they ended up? In the garbage.
8 Ms. Y didn't even come back until 10, 11 o'clock in the
9 morning. Mr. Brown was there. Mr. Rose was there,
10 cleaning up, going through things. That's where the
11 muffins went. Her accountant was there. Ms. Y said she
12 didn't know; but, more likely than not, muffins outside
13 for five hours, six hours, December 6th, where are they
14 going? The garbage.

15 You saw and heard Mr. Drljic's testimony. You
16 heard Mr. Drljic in one sense say, I'm an accomplished
17 businessman. I own two successful businesses, make
18 \$1,600 in a day. I work hard. But, in the same vein, he
19 went with someone he doesn't really know at four in the
20 morning, dressed as a burglar and just to help this guy
21 out and didn't realize what was happening.

22 Ladies and gentlemen, that's not reasonable.
23 And that he walked there. That's not reasonable. Ladies
24 and gentlemen, the state has proven beyond a reasonable
25 doubt that Mr. English, Mr. Drljic and Ms. Tamika Suttles

State v. Drljic/Suttles

1 were burglarizing three businesses and were caught and we
2 ask that you return a verdict of guilty for all of them.
3 Thank you.

4 JURY INSTRUCTIONS

5 BY THE COURT:

6 All right. I am now going to give you the
7 final instructions. And to help you, we have prepared
8 individual copies; but, I would recommend that you also
9 listen. You don't have to read as I'm telling you your
10 instructions. But, you'll have these with you so you can
11 refer to them again in the jury room.

12 So, members of the jury, now that the evidence
13 has been presented, it is time for me to instruct you on
14 the law that you must apply to this case. My
15 instructions will be in three parts.

16 First, I will give you the Rules that define
17 and control the jury's duties in a criminal case.

18 Second, I will define the offenses charged by
19 the Complaint and I will outline the essential elements
20 that the state must prove.

21 And third, I will give you some guidelines and
22 rules for your deliberations.

23 So, the duties of the judge and jury. It's
24 your duty to decide the questions of fact in this case.
25 It is my duty to give you the Rules of Law you must apply

State v. Drljic/Suttles

1 in arriving at your verdict. You must follow and apply
2 the Rules of Law as I give them to you even if you
3 believe the law is or should be different.

4 Deciding questions of fact is your exclusive
5 responsibility. In doing so, you must consider all the
6 evidence you have heard and seen in this trial. And you
7 must disregard anything you have heard or seen elsewhere
8 about this case. I have not, by these instructions, nor
9 by any ruling or expression during the trial intended to
10 indicate my opinion regarding the facts or the outcome of
11 this case. If I have said or done anything that would
12 seem to indicate such an opinion, you are to disregard
13 it.

14 Presumption of innocence. The defendants are
15 presumed innocent of the charge made. This presumption
16 remains with the defendants unless and until the
17 defendants have been proven guilty beyond a reasonable
18 doubt. That the defendants have been brought before the
19 court by our ordinary processes of law and are on trial
20 should not be considered by you as in any way suggesting
21 guilt. The burden of proving guilt is on the state. The
22 defendants do not have to prove innocence.

23 Proof beyond a reasonable doubt is such proof
24 as ordinarily prudent men and women would act upon in
25 their most important affairs. A reasonable doubt is a

State v. Drljic/Suttles

1 doubt based upon reason and common sense. It does not
2 mean a fanciful or capricious doubt, nor does it mean
3 beyond all possibility of doubt.

4 The duties of the jurors is selection of your
5 foreperson, unanimous verdict, deliberation, return of
6 the verdict and advising of additional issues. When you
7 return to the jury room to discuss this case, you must
8 select a jury member to be foreperson. That person will
9 lead your deliberations.

10 In order for you to return a verdict, whether
11 guilty or not guilty, each juror must agree with that
12 verdict. Your verdict must be unanimous. You should
13 discuss the case with one another and deliberate with a
14 view toward reaching agreement, if you can do so without
15 violating your individual judgment. You should decide
16 the case for yourself, but only after you have discussed
17 the case with your fellow jurors and have carefully
18 considered their views. You should not hesitate to
19 re-examine your views and change your opinion if you
20 become convinced they are erroneous. But, you should not
21 surrender your honest opinion simply because other jurors
22 disagree or merely to reach a verdict.

23 The foreperson must date and sign the verdict
24 form when you have finished your deliberations and
25 reached a verdict. When you agree on a verdict, notify

State v. Drljic/Suttles

1 the bailiff. You will return to the courtroom where your
2 verdict will be received and read out loud in your
3 presence.

4 So now, direct and circumstantial evidence. A
5 fact may be proved by either direct or circumstantial
6 evidence or by both. The law does not prefer one form of
7 evidence over the other. A fact is proven by direct
8 evidence when, for example, it is proven by witnesses who
9 testify to what they saw, heard or experienced or by
10 physical evidence of the fact, itself.

11 A fact is proven by circumstantial evidence
12 when it's existence can be reasonably inferred from other
13 facts proven in the case.

14 Rulings on objections to evidence. During this
15 trial I have ruled on objections to certain testimony and
16 exhibits. You must not concern yourself with the reasons
17 for the rulings since they are controlled by Rules of
18 Evidence. By admitting into evidence testimony and
19 exhibits as to which objection was made, I did not intend
20 to indicate the weight to be given such testimony in
21 evidence. You are not to speculate as to possible
22 answers to questions I did not require to be answered.
23 You are to disregard all evidence I have ordered stricken
24 or have told you to disregard.

25 You must consider these instructions as a whole

State v. Drljic/Suttles

1 and regard each instruction in light of all the others.
2 The order in which the instructions are given are of
3 no -- is of no significance. You are free to consider
4 the issues in any order you wish.

5 You have been allowed to take notes during the
6 trial. You may take those notes with you to the jury
7 room. You should not consider these notes binding or
8 conclusive whether or not they are in your notes or those
9 of another juror. The notes should be used as an aid to
10 your memory and not as a substitute for it. It is your
11 recollection of the evidence that should control. You
12 should disregard anything contrary to your recollection
13 that may appear from your own notes or those of another
14 juror. You should not give greater weight to a
15 particular piece of evidence solely because it is
16 referred to in a note taken by a juror. And again, you
17 cannot take your notes home.

18 Statements of judge and attorneys. Attorneys
19 are officers of the court. It is their duty to make
20 objections they think proper and to argue their client's
21 case -- their client's cause. However, the arguments or
22 other remarks of an attorney are not evidence. If the
23 attorneys or I have made or should make any statement as
24 to what the evidence is which differs from your
25 recollection of the evidence, you should disregard the

State v. Drljic/Suttles

1 statement and rely solely on your own memory. If an
2 attorney's argument contains any statement of law that
3 differs from the law I give you, disregard this
4 statement.

5 Evaluation of testimony and believability of
6 witnesses. You are the sole judges of whether a witness
7 is to be believed and of the weight to be given a
8 witness' testimony. There are no hard and fast rules to
9 guide you in this respect. In determining believability
10 and weight of testimony, you may take into consideration
11 the witness' interest or lack of interest in the outcome
12 of the case; relationship to the parties; ability and
13 opportunity to know, remember and relate the facts; their
14 manner, age and experience; frankness and sincerity or
15 lack thereof; reasonableness or unreasonableness of their
16 testimony in the light of all the other evidence in the
17 case; any impeachment of a witness' testimony and any
18 other factors that bear on believability and weight. You
19 should rely, in the last analysis, upon your own
20 experience, good judgment and common sense.

21 Impeachment. In deciding the believability and
22 weight to be given the testimony of a witness, you may
23 consider; one, the evidence of the witness that's been
24 convicted of a crime. You may consider whether the kind
25 of crime committed indicates a likelihood the witness is

State v. Drljic/Suttles

1 telling or not telling the truth. Two, evidence of
2 statement or conduct of the witness on some prior
3 occasion that is inconsistent with present testimony.
4 Evidence of any prior inconsistent statement or conduct
5 should be considered only to test the believability and
6 weight of the witness' testimony. In the case of the
7 defendants, however, evidence of any statement he or she
8 may have made may be considered by you for all purposes.

9 Accomplice testimony. You cannot find the
10 defendants guilty of a crime on the testimony of a person
11 who could be charged with that crime, unless that
12 testimony is corroborated by other evidence that tends to
13 convict the defendant of the crime. Such a person who
14 could be charged with the same crime is called an
15 accomplice.

16 In this case, Jermaine English is a person who
17 has been charged with the same crime as the defendants.
18 You cannot find the defendants guilty of a crime on the
19 testimony of the accomplice unless the testimony is
20 corroborated. The evidence that can corroborate the
21 testimony of an accomplice must do more than merely show
22 that a crime was committed or show the circumstances of
23 the crime for the corroborating evidence need not
24 convince you by itself that the defendants committed the
25 crime. It is enough that it tends to show that the

State v. Drljic/Suttles

1 defendants committed a crime and that taken with the
2 testimony of an accomplice, you are convinced beyond a
3 reasonable doubt, that the defendant committed the crime.
4 The testimony of one accomplice does not corroborate the
5 testimony of another accomplice. Accomplice testimony
6 must be corroborated by evidence other than the
7 accomplice testimony before you may find the defendants
8 guilty. But such other evidence may corroborate the
9 testimony of each accomplice.

10 Multiple offenses considered separately. In
11 this case, multiple defendants have been charged and each
12 defendant has been charged with multiple offenses. You
13 should consider each offense and defendant and the
14 evidence pertaining to it separately. The fact that you
15 may find one defendant guilty or not guilty as to one of
16 the charged offenses should not control your verdict as
17 to any other offense or other defendant.

18 Definition of words. During these
19 instructions, I have defined certain words and phrases.
20 You are to use those definitions in your deliberations.
21 If I have not defined a word or phrase, you should apply
22 the common ordinary meaning of that word or phrase.

23 Liability for crimes of another. The
24 defendants are guilty of a crime committed by another
25 person when the defendants have intentionally aided the

State v. Drljic/Suttles

1 other person in committing it or has intentionally
2 advised, hired, counseled, conspired with or otherwise
3 procured the other person to commit it.

4 The defendants are guilty of a crime, however,
5 only if the other person commits a crime. The defendants
6 are not liable, criminally, for aiding, advising, hiring,
7 counseling, conspiring or otherwise procuring the
8 commission of a crime, unless some crime, including an
9 attempt is actually committed.

10 Effect of conviction of other persons. If the
11 defendant aided, advised, hired, counseled or conspired
12 with another or otherwise procured the commission of a
13 crime by another person and the crime was committed, the
14 defendant is guilty of the crime. You are not to concern
15 yourselves with what action, if any, was taken against
16 the other person.

17 Intentionally with intend, defined.
18 Intentionally means that the actor either has a purpose
19 to do the thing or cause the results specified or
20 believes that the act performed by the actor, if
21 successful, will cause the result. In addition, the
22 actor must have knowledge of those facts that are
23 necessary to make the actor's conduct criminal and that
24 as set forth after the word intentionally. With intent
25 to or with intent that means that the actor either has a

State v. Drljic/Suttles

1 purpose to do the thing or cause the results specified or
2 believes that the act, if successful, will cause that
3 result.

4 Burglary in the Second Degree, defined. The
5 Statutes of Minnesota provide that whoever enters a
6 building without the consent of the person in lawful
7 possession with intent to commit a crime or commits a
8 crime while in the building or while entering or while in
9 the building, the person possesses a tool to gain access
10 to money or property, is guilty of a crime.

11 Burglary in the Second Degree, elements.

12 Daniel Drljic. The elements of Burglary in the Second
13 Degree are:

14 First, the Defendant Daniel Drljic entered, in
15 Count I, 2397 University Avenue West, which is the art
16 studio, a building; Count II, 2399 University Avenue
17 West, Edge Coffee House, a building; Count III, 2389
18 University Avenue West, Sharrett's Liquor Store, a
19 building, without the consent of the person in lawful
20 possession.

21 A building is a structure suitable for
22 affording shelter for human beings, including any
23 connected structure.

24 Second, the Defendant Daniel Drljic possessed a
25 tool with intent to use it to gain access to money or

State v. Drljic/Suttles

1 property when entering the building, 2397 University
2 Avenue West, 2399 University Avenue West, and 2389
3 University Avenue West or while remaining in the
4 building.

5 Third, the Defendant Daniel Drljic entered or
6 remained in the building with intent to commit theft. It
7 is not necessary that the intended crime was actually
8 completed or attempted, but it is necessary that the
9 defendant had the intent to commit that crime at the time
10 the defendant entered or remained in the building.
11 Whether the defendant intended to commit theft must be
12 determined from all the circumstances including the
13 manner and time of entry or remaining in the building,
14 the nature of the building and it's contents, anything
15 the defendant may have had with the defendant and all the
16 other evidence in the case.

17 Fourth, the defendant's act took place on
18 December 6th, 2009 in Ramsey County, State of Minnesota.

19 If you find that each of these elements have
20 been proven without a reasonable -- beyond a reasonable
21 doubt -- I'm sorry. I'll read that over. If you find
22 that each of those elements have been proven beyond a
23 reasonable doubt, the defendant is guilty. If you find
24 that an element has not been proven beyond a reasonable
25 doubt, the defendant is not guilty.

State v. Drljic/Suttles

1 Burglary in the Second Degree. The elements
2 with regard to Tamika Suttles. The elements of Burglary
3 in the Second Degree are:

4 First, the Defendant Tamika Suttles,
5 intentionally aided and abetted Daniel Drljic or Jermaine
6 English as they entered in Count I, 2397 University
7 Avenue West, the art studio, a building; Count II, 2399
8 University Avenue West, the Edge Coffee House, a
9 building; count III, 2389 University Avenue West,
10 Sharrett's Liquor Store, a building, without the consent
11 of the person in lawful possession.

12 A building is a structure suitable for
13 affording shelter for human beings, including any
14 connected structure.

15 Second, the Defendant Tamika Suttles
16 intentionally aided and abetted Daniel Drljic or Jermaine
17 English to possess a tool with intent to gain access to
18 money or property when entering the building, 2397
19 University Avenue West, the art studio; 2399 University
20 Avenue West, Edge Coffee House; and 2389 University
21 Avenue West, Sharrett's Liquor Store or while remaining
22 in the building.

23 Third, the Defendant Tamika Suttles
24 intentionally aided and abetted Daniel Drljic or Jermaine
25 English to enter or remain in the building with intent to

State v. Drljic/Suttles

1 commit theft. It is not necessary that the intended
2 crime was actually completed or attempted, but it is
3 necessary that the defendant had the intent to commit
4 that crime at the time the defendant or an accomplice
5 entered or remained in the building. Whether the
6 defendant intended to commit theft must be determined
7 from all the circumstances, including the manner and time
8 of entry or remaining in the building, the nature of the
9 building and it's contents, anything the defendant may
10 have had with the defendant and all the other evidence in
11 the case.

12 Fourth, the defendant's act took place on
13 December 6th, 2009 in Ramsey County, State of Minnesota.

14 If you find that each of these elements has
15 been proven beyond a reasonable doubt, the defendant is
16 it guilty. If you find that any element has not been
17 proven beyond a reasonable doubt, the defendant is not
18 guilty.

19 Burglary in the Third Degree, defined. The
20 Statutes of Minnesota provide that whoever enters a
21 building without the consent of the person in lawful
22 possession, remains within the building without the
23 consent of the person in lawful possession with intent to
24 steal is guilty of a crime.

25 Burglary in the Third Degree, elements, Daniel

State v. Drljic/Suttles

1 Drljic. The elements of Burglary in the Third Degree
2 are:

3 First, the Defendant Daniel Drljic entered, in
4 Count IV, 2397 University Avenue West, art studio, a
5 building; count V, 2399 University Avenue West, Edge
6 Coffee House, a building; and Count VI, 2389 University
7 Avenue West, Sharrett's Liquor Store, a building.

8 A building is a structure suitable for
9 affording shelter for human beings including any
10 connected structure.

11 Second, the Defendant Daniel Drljic entered a
12 building without the consent of the person in lawful
13 possession or remained in the building without the
14 consent of the person in lawful possession. The entry
15 does not have to be made by force or by breaking in.
16 Entry through an open or unlocked door or window is
17 sufficient.

18 Third, the Defendant Daniel Drljic entered the
19 building with the intent to steal. It is not necessary
20 that the intended crime was actually completed or
21 attempted, but it is necessary that the defendant had the
22 intent to commit that crime at the time the defendant
23 entered or remained in the building with the intent to
24 steal. Whether to commit a crime is intended must be
25 determined from all the circumstances including the

State v. Drljic/Suttles

1 manner and time of entry or remaining in the building,
2 the nature of the building and its contents, anything the
3 defendant may have had with the defendant and all the
4 other evidence in the case.

5 Fourth, the defendant's act took place on
6 December 6th, 2009, in Ramsey County, State of Minnesota.

7 If you find that each of these elements has
8 been proven beyond a reasonable doubt, the defendant is
9 guilty. If you find that any element has not been proven
10 beyond a reasonable doubt, the defendant is not guilty.

11 Burglary in the Third Degree, elements. Tamika
12 Suttles. The elements of Burglary in the Third Degree
13 are:

14 First, the Defendant Tamika Suttles
15 intentionally aided and abetted Daniel Drljic or Jermaine
16 English as they entered, in Count IV, 2397 University
17 Avenue West, art studio, a building; Count V, 2399
18 University Avenue West, Edge Coffee House, a building;
19 Count VI, 2389 University Avenue West, Sharrett's Liquor
20 Store, a building.

21 A building is a structure suitable for
22 affording shelter for human beings including any
23 connected structure.

24 Second, the Defendant Tamika Suttles
25 intentionally aided and abetted Daniel Drljic or Jermaine

State v. Drljic/Suttles

1 English to enter or remain in a building without the
2 consent of the person in lawful possession or remained in
3 the building without the consent of the person in lawful
4 possession. The entry does not have to have been made by
5 force or by breaking in. Entry through an open or
6 unlocked door or window is sufficient.

7 Third, the Defendant Tamika Suttles
8 intentionally aided and abetted Daniel Drljic or Jermaine
9 English to enter or remain in the building with the
10 intent to steal. It is not necessary that the intended
11 crime was actually completed or attempted, but it is
12 necessary that the defendant had the intent to commit the
13 crime at the time the defendant or an accomplice entered
14 or remained in the building with the intent to steal.
15 Whether to commit a crime was intended must be determined
16 from all the circumstances, including the manner and time
17 of entry or remaining in the building, the nature of the
18 building and it's contents, any things the defendant may
19 have had with the defendant and all the other evidence in
20 the case.

21 Fourth, the defendant's act took place on
22 December 6th, 2009 in Ramsey county, State of Minnesota.

23 If you find that each of those elements have
24 been proven beyond a reasonable doubt, the defendant is
25 guilty. If you find that any element has not been proven

State v. Drljic/Suttles

1 beyond a reasonable doubt, the defendant is not guilty.

2 And finally, the juror's duty. In conducting
3 your deliberations and returning your verdict, there are
4 certain rules that you must follow. I shall list those
5 rules for you now.

6 First, when you go to the jury room you must
7 select one of your members as your foreperson. That
8 person will preside over your discussions and speak for
9 you here in court.

10 Second, it is your duty as jurors to discuss
11 this case with one another in the jury room. You should
12 try to reach agreement, if you can, because the verdict,
13 whether guilty or not guilty, must be unanimous. Each of
14 you must make your -- each of you must make your own
15 conscientious decision, but only after you have
16 considered all the evidence, discussed it fully with your
17 fellow jurors and listened to the views of your fellow
18 jurors. Do not be afraid to change your opinion if the
19 discussion persuades that you should. But do not
20 surrender your own honestly held conviction just to come
21 to a decision or simply because others think it is right
22 or simply to reach a verdict.

23 Third, if the defendant is found guilty, the
24 sentence to be imposed is my responsibility. You may not
25 consider punishment in any way in deciding whether the

State v. Drljic/Suttles

1 government has proved its case beyond a reasonable doubt.

2 Fourth, if you need to communicate with me
3 during your deliberations, you may send a note to me
4 through the bailiff, signed by one or more jurors. I
5 will respond as soon as I can respond, either in writing
6 or orally, in open court.

7 Remember that you should not tell anyone,
8 including me, how your vote stands, numerically.

9 Fifth, your verdict must be based solely on the
10 evidence and on the law which I have given to you in my
11 instructions. Nothing I have said or done is intended to
12 suggest what your verdict should be. That is entirely
13 for you to decide.

14 Finally, the verdict form is simply the written
15 notice of the decision that you reach in this case. The
16 order in which I read the form is of no importance. You
17 will take those forms to the jury room and when each of
18 you has agreed on the verdict, your foreperson will fill
19 out that form, sign it and date it and advise the bailiff
20 that you are ready to return to the courtroom.

21 I will read the verdict forms.

22 State of Minnesota, County of Ramsey, District
23 Court, Second Judicial District. State of Minnesota,
24 plaintiff, versus Daniel Drljic, Defendant. Court File,
25 62-CR-10-1464. Verdict of Not Guilty. We, the Jury,

State v. Drljic/Suttles

1 find the Defendant Not Guilty of the charge of Burglary
2 in the Second Degree, possess tool, Minn. Stat. 609.582,
3 Subd. 2(a)(4), Count I, occurring on or about December 6,
4 2009, time, dated December, 2010, Foreperson.

5 State of Minnesota, County of Ramsey, District
6 Court, Second Judicial District. State of Minnesota,
7 plaintiff, versus Daniel Drljic, Defendant. Court File
8 No. 62-CR-10-1464. Verdict of Guilty. We, the Jury,
9 find the Defendant Guilty of the charge of Burglary in
10 the Second Degree, possess tool, Minn. Stat. 609.582,
11 Subd. 2(a)(4), Count I, occurring on or about December 6,
12 2009, time, dated December 2010, Foreperson.

13 State of Minnesota, County of Ramsey, District
14 Court, Second Judicial District. State of Minnesota,
15 Plaintiff, versus Daniel Drljic, Defendant. Court File
16 No. 62-CR-10-1464. Verdict of Not Guilty. We, the Jury,
17 find the Defendant Not Guilty of the charge of Burglary
18 in the Second Degree, possess tool, Minn. Stat. 609.582,
19 Subd. 2(a)(4) Count II, occurring on or about December
20 6th, 2009, time, dated December, 2010, Foreperson.

21 State of Minnesota, County of Ramsey, District
22 Court, Second Judicial District. State of Minnesota,
23 Plaintiff, versus Daniel Drljic, Defendant. Court File
24 No. 62-CR-10-1464. Verdict of Guilty. We, the Jury find
25 the Defendant Guilty of the charge of Burglary in the

State v. Drljic/Suttles

1 Second Degree, possess tool, Minn. Stat. 609.582, Subd.
2 2(a)(4), Count II, occurring on or about December 6th,
3 2009, time, dated December, 2010, signed by the
4 Foreperson.

5 State of Minnesota, County of Ramsey, District
6 Court, Second Judicial District. State of Minnesota,
7 Plaintiff, versus Daniel Drljic, Defendant. Court File
8 No. 62-CR-10-1464. Verdict of Not Guilty. We, the Jury,
9 find the Defendant Not Guilty of the charge of Burglary
10 in the Second Degree, possess tool, Minn. Stat. 609.582,
11 Subd. 2(a)(4), Counsel III, occurring on or about
12 December 6th, 2009, time, dated December, 2010,
13 Foreperson.

14 State of Minnesota, County of Ramsey, District
15 Court, Second Judicial District. State of Minnesota,
16 Plaintiff, versus Daniel Drljic, Defendant. Court File
17 No. 62-CR-10-1464, Verdict of Guilty. We, the Jury, find
18 the Defendant Guilty of the charge of Burglary in the
19 Third Degree, possess tool, Minn. Stat. 609.582, Subd.
20 2(a)(4), Count III, occurring on or about December 6th,
21 2009, time, dated December, 2010, Foreperson.

22 I believe we have a typo. I think this should
23 be Count IV. This should say second degree, Count III.

24 I'm sorry. We're going to change this page,
25 19. This should be: We, the Jury, find the Defendant

State v. Drljic/Suttles

1 Guilty of the charge of Burglary in the Second Degree,
2 possess tool -- and we will give you the corrected page.
3 That's page 19. You can take that out right now.
4 Possess tool, Minn. Stat. 609.582, Subd. 2(a)(4), Count
5 III, occurring on or about December 6th, 2009, time,
6 dated December, 2010, signed by the Foreperson.

7 The State of Minnesota, County of Ramsey,
8 District Court, Second Judicial District. State of
9 Minnesota, Plaintiff, versus Daniel Drljic, Defendant.
10 Court File No. 62-CR-10-1464. Verdict of Not Guilty.
11 We, the Jury, find the Defendant Not Guilty of the charge
12 of Burglary in the Third Degree, steal or commit, Minn.
13 Stat. 609.582, Subd. 3, Count IV, occurring on or about
14 December 6th, 2009, time, dated December 2010,
15 Foreperson.

16 State of Minnesota, County of Ramsey, District
17 Court, Second Judicial District. State of Minnesota,
18 Plaintiff, versus Daniel Drljic, Defendant. Court File
19 No. 62-CR-10-1464. Verdict of Guilty. We, the Jury,
20 find the Defendant Guilty of the charge of Burglary in
21 the Third Degree, steal, commit, Minn. Stat. 609.582,
22 Subd. 3, Count IV, occurring on or about December 6th,
23 2009, time, dated December 2010, Foreperson.

24 State of Minnesota, County of Ramsey, District
25 Court, Second Judicial District. State of Minnesota,

State v. Drljic/Suttles

1 Plaintiff, versus Daniel Drljic, Defendant. Court File
2 No. 62-CR 10-1464. Verdict of Not Guilty. We, the Jury,
3 find the Defendant Not Guilty of the charge of Burglary
4 in the Third Degree, steal, commit, Minn. Stat. 609.582,
5 Subd. 3, Count V, occurring on or about December 6th,
6 2009, time, dated December, 2010, Foreperson.

7 State of Minnesota, County of Ramsey, District
8 Court, Second Judicial District. State of Minnesota,
9 Plaintiff, versus Daniel Drljic, Defendant. Court File
10 No. 62-CR-10-1464. Verdict of Guilty. We, the Jury,
11 find the Defendant Guilty of the charge of Burglary in
12 the Third Degree, steal, commit, Minn. Stat. 609.582,
13 Subd. 3, Count V, occurring on or about December 6th,
14 2009, time, dated December, 2010, signed by the
15 Foreperson.

16 State of Minnesota, County of Ramsey, District
17 Court, Second Judicial District. State of Minnesota,
18 Plaintiff, versus Daniel Drljic, Defendant. Court File
19 No. 62-CR-10-1464. Verdict of Not Guilty. We, the Jury,
20 find the Defendant Not Guilty of the charge of Burglary
21 in the Third Degree, steal, commit, Minn. Stat. 609.582,
22 Subd. 3, Count VI, occurring on or about December 6th,
23 2009, time, dated December, 2010, signed by the
24 Foreperson.

25 And State of Minnesota, County of Ramsey,

State v. Drljic/Suttles

1 District Court, Second Judicial District. State of
2 Minnesota, Plaintiff, versus Daniel Drljic, Defendant.
3 Court File No. 62-CR-10-1464. Verdict of Guilty. We,
4 the Jury, find the Defendant Guilty of the charge of
5 Burglary in the Third Degree, steal, commit, Minn. Stat.
6 609.582, Subd. 3, Count VI, occurring on or about
7 December 6th, 2009, time, dated December, 2010,
8 Foreperson.

9 State of Minnesota, County of Ramsey, District
10 Court, Second Judicial District. State of Minnesota,
11 Plaintiff -- Court File No. 62-CR-10-1465 -- versus
12 Tamika Latoi Suttles, Defendant. Verdict of Not Guilty.
13 We, the Jury, find the Defendant Not Guilty of the charge
14 of Burglary in the Second Degree, possess tool, Minn.
15 Stat. 609.582, Subd. 2(a)(4), Count I, occurring on or
16 about December 6th, 2009, time, dated December, 2010,
17 Foreperson.

18 State of Minnesota, County of Ramsey, District
19 Court, Second Judicial District. State of Minnesota,
20 Plaintiff, versus Tamika Latoi Suttles, Defendant. Court
21 File No. 62-CR-10-1465. Verdict of Guilty. We, the
22 Jury, find the Defendant Guilty of the charge of Burglary
23 in the Second Degree, possess tool, Minn. Stat. 609.582,
24 Subd. 2(a)(4), Count I, occurring on or about December
25 6th, 2009, time, dated December, 2010, signed by the

State v. Drljic/Suttles

1 Foreperson.

2 State of Minnesota, County of Ramsey, District
3 Court, Second Judicial District. State of Minnesota,
4 Plaintiff, versus Tamika Latoi Suttles, Defendant. Court
5 File No. 62-CR-10-1465. Verdict of Not Guilty. We, the
6 Jury, find the Defendant Not Guilty of the charge of
7 Burglary in the Second Degree, possess tool, Minn. Stat.
8 609.582, Subd. 2(a)(4), Count II, occurring on or about
9 December 6th, 2009, time, dated December, 2010,

10 Foreperson.

11 State of Minnesota, County of Ramsey, District
12 Court, Second Judicial District. State of Minnesota,
13 Plaintiff, versus Tamika Latoi Suttles, Defendant. Court
14 File No. 62-CR-10-1465. Verdict of Guilty. We, the
15 Jury, find the Defendant Guilty of the charge of Burglary
16 in the Second Degree, possess tool, Minn. Stat. 609.582,
17 Subd. 2(a)(4), Count II, occurring on or about December
18 6th 2009, time, dated December, 2010, signed by the
19 Foreperson.

20 State of Minnesota, County of Ramsey, District
21 Court, Second Judicial District. State of Minnesota,
22 Plaintiff, versus Tamika Latoi Suttles, Defendant. Court
23 File No. 62-CR-10-1465. Verdict of Not Guilty. We, the
24 Jury, find the Defendant Not Guilty of the charge of
25 Burglary in the Second Degree, possess tool, Minn. Stat.

State v. Drljic/Suttles

1 609,582, Subd. 2(a)(4), Count III, occurring on or about
2 December 6th, 2009, time, dated December, 2010, signed by
3 the Foreperson.

4 State of Minnesota, County of Ramsey, District
5 Court, Second Judicial District. State of Minnesota,
6 Plaintiff, versus Tamika Latoi Suttles, Defendant. Court
7 File No. 62-CR-10-1465. Verdict of Guilty. We, the
8 Jury, find the Defendant Guilty of the charge of Burglary
9 in the Second Degree, possess tool, Minn. Stat. 609.582,
10 Subd. 2(a)(4), Count III, occurring on or about December
11 6th, 2009, time, dated December, 2010, Foreperson.

12 State of Minnesota, County of Ramsey, District
13 Court, Second Judicial District. State of Minnesota,
14 Plaintiff, versus Tamika Latoi Suttles, Defendant. Court
15 File No. 62-CR-10-1465. Verdict of Not Guilty. We, the
16 Jury, find the Defendant Not Guilty of the charge of
17 Burglary in the Third Degree, steal, commit, Minn. Stat.
18 609.582, Subd. 3, Count IV, occurring on or about
19 December 6th, 2009, time, dated December, 2010, signed by
20 Foreperson.

21 State of Minnesota, County of Ramsey, District
22 Court, Second Judicial District. State of Minnesota,
23 Plaintiff, versus Tamika Latoi Suttles, Defendant. Court
24 File No. 62-CR-10-1465. Verdict of Guilty. We, the
25 Jury, find the Defendant Guilty of the charge of Burglary

State v. Drljic/Suttles

1 n the Third Degree, steal, commit, Minn. Stat. 609.582,
2 Subd. 3, Count IV, occurring on or about December 6th,
3 2009, time, dated December, 2010, signed by the
4 Foreperson.

5 State of Minnesota, County of Ramsey, District
6 Court, Second Judicial District. State of Minnesota,
7 Plaintiff, versus Tamika Latoi Suttles, Defendant. Court
8 File No. 62-CR-10-1465. Verdict of Not Guilty. We, the
9 Jury, find the Defendant Not Guilty of the charge of
10 Burglary in the Third Degree, steal, commit, Minn. Stat.
11 609.582, Subd. 3, Count V, occurring on or about December
12 6th, 2009, time, dated December, 2010, signed by the
13 Foreperson.

14 MS. LAMIN: Your Honor, could we approach for a
15 minute, please.

16 THE COURT: Yes.

17 (Counsel approached the bench and an
18 off-the-record discussion was had.)

19 THE COURT: All right. We will have to redo
20 Page 33. And bear with me. We are almost at the end.
21 Let me remove that page now and we will give you a new
22 page.

23 State of Minnesota, County of Ramsey, District
24 Court, Second Judicial District. State of Minnesota,
25 Plaintiff, versus Tamika Latoi Suttles, Defendant. Court

State v. Drljic/Suttles

1 File No. 62-CR-10-1465. Verdict of Guilty. We, the
2 Jury, find the Defendant Guilty of the charge of Burglary
3 in the Third Degree, and that should read, steal or
4 commit, Minn. Stat. 609.582, Subd. 3, Count IV, occurring
5 on or about December 6th, 2009, time, dated December,
6 2010, Foreperson.

7 All right.

8 State of Minnesota, County of Ramsey, Second
9 Judicial District. State of Minnesota, Plaintiff, versus
10 Tamika Latoi Suttles, Defendant. Court File No.
11 62-CR-10-1465. Verdict of Not Guilty. We, the Jury,
12 find the Defendant Not Guilty of the charge of Burglary
13 in the Third Degree, steal or commit, Minn. Stat.
14 609.582, Subd. 3, Count V, occurring on or about December
15 6th, 2009, time, dated December, 2010, Foreperson.

16 State of Minnesota, County of Ramsey, District
17 Court, Second Judicial District. State of Minnesota,
18 Plaintiff, versus Tamika Latoi Suttles, Defendant. Court
19 File No. 62-CR-10-1465. Verdict of Guilty. We, the
20 Jury, find the Defendant Guilty --

21 MS. LAMIN: Excuse me, Your Honor.

22 THE COURT: Is there another -- oh, are they
23 all like that? Okay. All right. Ms. Harms. All right.
24 Pages 35 and 37 have the same -- let me read this.
25 Please take out 35 and 37. All right. You will get the

RAMSEY COUNTY DISTRICT COURT

State v. Drljic/Suttles

1 corrected page. We will make sure you have the corrected
2 verdict forms because these are really important.

3 State of Minnesota, County of Ramsey, District
4 Court, Second Judicial District. State of Minnesota,
5 Plaintiff, versus Tamika Latoi Suttles, Defendant. Court
6 File No. 62-CR-10-1465. Verdict of Guilty. We, the
7 Jury, find the Defendant Guilty of the charge of Burglary
8 in the Third Degree, steal or commit, Minn. Stat.
9 609.582, Subd. 3, Count V, occurring on or about December
10 6th, 2009, time, dated December, 2010, Foreperson.

11 State of Minnesota, County of Ramsey, District
12 Court, Second Judicial District. State of Minnesota,
13 Plaintiff, versus Tamika Latoi Suttles, Defendant. Court
14 File No. 62-CR-10-1465. Verdict of Not Guilty. We, the
15 Jury, find the Defendant Not Guilty of the charge of
16 Burglary in the Third Degree, steal, commit, Minn. Stat.
17 609.582, Subd. 3, Count VI, occurring on or about
18 December 6th, 2009, time, dated December, 2010,
19 Foreperson.

20 State of Minnesota, County of Ramsey, District
21 Court, Second Judicial District. State of Minnesota,
22 Plaintiff, versus Tamika Latoi Suttles, Defendant. Court
23 File No. 62-CR-10-1465. Verdict of Guilty. We, the
24 Jury, find the Defendant Guilty of the charge of Burglary
25 in the Third Degree, steal, commit, Minn. Stat. 609.582,

State v. Drljic/Suttles

1 Subd. 3, Count VI, occurring on or about December 6th,
2 2009, time, dated December, 2010, Foreperson.

3 I would ask counsel to approach right now
4 because we have one other matter.

5 (Counsel approached the bench and an
6 off-the-record discussion was had.)

7 THE COURT: All right. At this time, Ms.
8 Heilman, you may -- Ms. Olson. I'm -- we have people --
9 okay. You're Ms. Olson, and you have a plane to catch
10 tomorrow; is that correct?

11 JUROR OLSON: Tomorrow, yes.

12 THE COURT: All right. I'm going to let you go
13 now. Okay. If you want to wait outside, I'll come and
14 talk to you.

15 THE CLERK: Would you like me to swear the
16 bailiff?

17 THE COURT: Yes. Please swear in the bailiff.

18 (Bailiff sworn)

19 THE COURT: All right. So, Members of the
20 Jury, you are now in the bailiff's hands. And please
21 grab all your personal belongings and I won't see you
22 until the Verdict.

23 (The Bailiff escorted to the Jury to the Jury
24 Room to begin deliberations at approximately 12:50 p.m.)

25

State v. Drljic/Suttles

1 (In Open Court - Afternoon Session. Approximately 2:40
2 p.m., the following proceedings were had outside the
3 presence of the Jury.)

4 THE COURT: All right. Are you ready, Ms.
5 Court Reporter?

6 COURT REPORTER: Yes, I am.

7 THE COURT: Okay. We wanted to put some things
8 on the record. And if you will start, Ms. Clark.

9 MS. CLARK: Thank you. Your Honor, I guess I
10 would like to be able to make a record without
11 interruption from the prosecutor.

12 THE COURT: Could you just start, Ms. Clark,
13 and then we'll go from there.

14 MS. CLARK: With all due respect, Your Honor,
15 the -- it is the defense position that we have not been
16 able to make a record in this case and not been able to
17 make argument without being interrupted by the
18 prosecution or stopped in mid sentence by the court on
19 numerous occasions.

20 I came in, the first day of trial -- or it was
21 the second day, at quarter to nine, hearing clearly that
22 we were to be here at quarter to nine so that we could
23 make a record. The prosecutor was not here until nine.
24 And when she arrived, she had brand new motions in
25 limine. Those should have been filed before trial. The

State v. Drljic/Suttles

1 defense had no opportunity to review them, to research
2 any of those cases. And the prosecution monopolized the
3 entire time so that the defense was not able to make a
4 record. That happened several days running.

5 There are legitimate issues defense attorneys
6 need to raise about arguments made by the state and the
7 conduct of the state. Those are time honored, supported
8 by the law and both constitutions.

9 With all due respect to everyone in the
10 courtroom, on a number of occasions when the defense
11 attempted to make those arguments, the defense was
12 interrupted by the prosecutor or not allowed to make a
13 record, not allowed even to finish a point by the court.

14 On the first day of trial, I understood that
15 everyone was wanting to get things going and so I
16 indicated that my record could wait. It is now after
17 trial. The case has been sent to the jury. I have not
18 made the record that I wanted to make on the first day of
19 trial. The reason that concerns me, Your Honor, is,
20 memories fade in the heat of trial. In my experience,
21 the best thing to do is to get it down in the record as
22 soon as possible because time to do it later is either
23 impossible or extremely difficult. So, it is the
24 defendant's position that the defense suffered from not
25 being allowed to make a record timely.

State v. Drljic/Suttles

1 The defense does, with all due respect, object
2 to the repeated tactic of the prosecution to come in
3 at -- excuse me, but the very last minute and have
4 written motions in limine that had not been faxed to my
5 office or e-mailed to my office. I get up often, three,
6 four in the morning. Not once did the court ask the
7 prosecution to serve me in advance of trial so that I
8 could prepare. And when I objected that I had not even
9 had time to read them, the defense was asked to turn on a
10 dime and respond to them.

11 With all due respect to the court, a number of
12 them were granted without the defense even being able to
13 make oral argument. This became a big problem at a point
14 because it is the position of the defense -- and we have
15 the right to say this under both constitutions -- that it
16 was a tactic of the state. As soon as this new lawyer on
17 the case started to figure out what evidence might be
18 good for the defense, then we saw a motion in limine that
19 was given precedence, in time, by the court and often
20 taken extremely seriously by the court.

21 And I want to say I very much believe that the
22 court worked to be fair in this trial. That is my firm
23 belief. I will not waiver in that. I know Your Honor
24 worked extremely hard in this trial. But I do believe it
25 is my duty to make a record about some of the problems

State v. Drljic/Suttles

1 with some of what was done by the prosecution.

2 There were some bench conferences that we did
3 not have an immediate record of. In one of those, it was
4 during the testimony of Peter Brown, and I was trying to
5 ask him whether he had said something to Sergeant
6 Strickland. We came to the bench. It's my -- it's the
7 defense position, the prosecution didn't want the
8 evidence in because it was not good for the prosecution.
9 The ruling from the court, as I recall it, was that the
10 defense would have to recall Peter Brown in order to ask
11 him that question.

12 Later, when we made a bit of a record about it,
13 we were actually making a record about something else and
14 then the prosecution got it's side of the bench
15 conference record in. We never had an opportunity to at
16 that time. But, at that point, the state made a new
17 argument which the court did acknowledge had not been
18 made at the bench, which was that it was hearsay. It
19 cannot be hearsay to ask a person what they said. If no
20 one could ever say what they said, no evidence would ever
21 come in at trial.

22 We did spend a significant time, effort and
23 money issuing a subpoena to Peter Brown. I'm sure,
24 caused him great inconvenience. He then didn't know if
25 he needed to be recalled. And the practicality of it was

1 by the time we got to the defense case, there was extreme
2 pressure to make it extremely short and calling Peter
3 Brown would have just -- it wasn't a real option for us.

4 When the issue came up about the missing police
5 report, it is still our report that it is missing. And
6 it is our position that it's a Brady violation. We need
7 to be able to say words like that. The only way the
8 system works and continues with integrity is if we are
9 able to use these legal vehicles, time honored in the
10 law, to raise the issues. We will still work to get the
11 police report of Officer Menton. I don't know if there
12 will be a later Brady motion.

13 What the defense has an issue with is what we
14 saw numerous times in this case. In our humble and
15 respectful opinion, as soon as any commentary was made on
16 the prosecutor; it's not about her as a person, it's
17 about her function in the system. And if someone doesn't
18 want to be a prosecutor and sometimes have to be
19 accountable for certain conduct, they should not, with
20 all due respect, be a prosecutor. But, the only way
21 defendants have at raising a Brady issue is to say they
22 have a Brady issue.

23 And I watched over and over, as I was
24 interpreted, even in the middle of the sentence, when the
25 court rushed to the defense of the prosecutor, sometimes.

State v. Drljic/Suttles

1 even staff; and yet, when accusations were made about me,
2 not only was the prosecutor not interrupted, not told not
3 to make them; but, she gained traction with them. And
4 the court would say things to me like, oh, we have to
5 talk about these allegations about these police officers.
6 And I want to come back to that one.

7 When we did finally subpoena Officer Menton --
8 and I want to make a record that the St. Paul Police
9 Department, my assistant -- and this is of course
10 according to her, I was not personally present because I
11 was trying this case. When she went to the St. Paul
12 Police Department headquarters, where she successfully
13 served Sergeant Strickland, she was not allowed to drop
14 the subpoena off until St. Paul police ranking officials
15 knew who was subpoenaing the person. And when she said
16 Jill Clark, they would not take it. So then she had to
17 go back to her office -- it literally took her all day to
18 serve Peter Brown and Officer Menton. She had to go back
19 to my office and get a subpoena, write it out for Friday
20 because they said they would only take it for five days
21 in advance because Officer Menton is on vacation.

22 And so, although the remedy given by the court
23 was you can call Officer Menton and ask him about his
24 police report, it wasn't a real remedy. And I'm sorry,
25 but I have a First Amendment Right. And I'm going to say

State v. Drljic/Suttles

1 this. There is a pattern in cases that I try where
2 police conduct is at issue of police officers suddenly
3 being on vacation.

4 So, we have Officer Menton under subpoena for
5 Friday. Now it is Thursday. And the case, after a lot
6 of pressure from a lot of people for the defense to be
7 over very, very quickly, is over. And I cannot subpoena
8 Officer Menton. We are still going to pursue that police
9 report. We are, as American and Minnesota citizens
10 extremely; extremely disappointed in the conduct of the
11 police in this case. And we have a right to feel that
12 way. And we have a right to say it.

13 Yesterday, when we left -- and I know it was
14 late -- we were going to closing arguments -- or excuse
15 me, talking about jury instructions. We talked about
16 when to come in this morning. And my understanding from
17 the court -- and my understanding from the court and one
18 of the reasons that Juror Lee was dismissed -- and we
19 opposed that -- was so that we could get this case to the
20 jury right away this morning.

21 So I got up at 3 o'clock this morning and I
22 typed up my commentary and I researched cases and I wrote
23 it into a pleading. And I came in this morning early
24 enough to be here by 8:30. And at 8:30 I was told -- and
25 this is of course with all due respect to everyone --

State v. Drljic/Suttles

1 that we were not going to talk about jury instructions;
2 but, we were going to organize the exhibits. I objected
3 at the time. Of course Your Honor has the right to make
4 the decision. I respect that. We went in and did the
5 exhibits. But Ms. Lamin was on the telephone almost the
6 entire time. We could hear her talking to her fellow
7 prosecutors about burglary law. So, she was gaining an
8 advantage from not helping with the exhibits, to make
9 argument, which was heard by the court then, when we
10 talked about the jury instructions. And I was helping
11 with the jury instructions -- excuse me, I keep mixing
12 things up -- exhibits. I was helping with the exhibits.

13 So, we spent 45 minutes doing that. And then
14 when it came time to talk about what I do as the most
15 important time in the case for my clients, which is the
16 on-the-record charging session, the court did not want to
17 hear argument from me. The court -- the court, and I
18 don't remember the exact words, but it was something to
19 the effect of, if I had a proposal the court would
20 consider it; but, we weren't going to just talk about it
21 because now we have to get the jury.

22 With all due respect, the reason we didn't have
23 the jury was because we had done the exhibits before
24 closing argument. I did not, with all due respect, even
25 get an opportunity to make some of my requests on the

State v. Drljic/Suttles

1 record or to the court, such as a request for a lesser
2 included offense of trespassing. I had researched it. I
3 had briefed it. And I literally had no space to make the
4 request. At the very last minute, I had to very briefly
5 summarize some things in my written pleading. And I had
6 copied cases. I had taken quotes directly out of cases.
7 I had tried to make it as convenient as possible for the
8 court; but, with all due respect, there was not
9 sufficient time to discuss it.

10 We are seriously concerned about the claim of
11 right issue and seriously concerned that that could
12 impair these defendants. These two people have stood by
13 quietly, respectfully, showing up for court on time in
14 the face of what they view as outrageous allegations
15 against them, their reputations and their lives. My
16 client, Tamika Suttles, has had to bear up under this
17 prosecution while pregnant. And yet, when they, in their
18 own defense in this trial, shown the spotlight on the
19 conduct of police, there was alleged moral outrage by the
20 prosecution; Comments like, well, we all know it crossed
21 a line.

22 And then, with all due respect again, the court
23 seemed to agree with some of that commentary. We, as
24 American citizens have a right to criticize police
25 officers. And there are very good police officers, just

State v. Drljic/Suttles

1 like there are very good private citizens. And there are
2 very bad police officers, just like there are very bad
3 private citizens. And it's very hard for my clients to
4 listen to allegations about them that they view as false,
5 trumped up, for a year and then when it's finally their
6 chance, they're not really able to make the argument.

7 When I was setting up for my closing argument,
8 a couple of things happened. I was asked by the court to
9 not mess up any of the exhibits. I frankly have a right
10 to that evidence during closing argument. And I was very
11 hurt by that.

12 (Attorney Clark crying) I was very hurt at even
13 the suggestion that the tidiness of the exhibits might
14 take precedence over the rights of my clients to a
15 defense. I was very hurt by that; particularly, because
16 I had spent 45 minutes helping to organize them, giving
17 up the time to argue about the jury instructions. And
18 then I was being told I could not use them during my
19 closing argument if I mixed them up.

20 I also asked that the prosecutor not be allowed
21 to make verbal outbursts during any closing argument.
22 And when I tried to say I have seen this as a tactic of
23 prosecutors, again, mid sentence -- I mean, this happened
24 over and over and over to me -- mid sentence, basically,
25 be quiet, Ms. Clark. Don't say that now. Don't say it.

State v. Drljic/Suttles

1 Don't say it. It is a technique of prosecutors to stop
2 the flow of defense attorneys. It happens all the time.
3 And it's something that needs to be stopped. And I had
4 earlier objected to verbal outbursts in front the jury by
5 the prosecution; and yet, it was allowed to occur in this
6 oral argument. She made oral, verbal objections,
7 speaking objections, in front of the jury during my
8 closing argument. And I am objecting to it now. And I
9 believe it's reversible error if there is any conviction
10 in this case. And my clients are quite upset about it.

11 The court ruled on those objections before I
12 even got an opportunity to address them, granting every
13 single objection by the prosecution, in my recollection.
14 And yet, every single objection the defense had made
15 during closing argument, even ICE law, the prosecutor
16 gets to talk about her version of ICE law. But that
17 objection was overruled.

18 Very shocking to my clients was the
19 prosecutor's objection when I was arguing from evidence
20 that these officers crossed the line and the court
21 striking that commentary. It chopped the legs out from
22 under me in front of this jury for that to occur. And it
23 basically sent the message to this defense team that we
24 do not have First Amendment Rights in the courtroom. And
25 my clients are very upset about it.

State v. Drljic/Suttles

1 My client, Tamika Suttles, has been pregnant.
2 She had a letter from her doctor asking for frequent
3 breaks to be able to use the bathroom. Not once when I
4 requested a break for her was it granted. Not once when
5 I requested a break for her was it granted. And this is,
6 of course, in my memory. She was -- I watched her as she
7 sat here, holding her pee and her pregnant belly while
8 other things took priority.

9 We do object to the dismissal of Juror Lee.
10 The court asked us at a side bar whether we objected to
11 Hielman, Juror Hielman, being dismissed. And when we
12 said no, Juror Olson was dismissed. The defense didn't
13 have time to consider whether or not Juror Olson should
14 be dismissed.

15 The prosecution -- and I know I made a record
16 of this before. I know I did. But, in my experience, it
17 is both professional courtesy and fosters due process to
18 let the defense attorney know within 24 hours who will be
19 called the next day. With all due respect, I saw games
20 being played around that. I would ask Sergeant
21 Strickland, who is usually pretty straight up with me, is
22 the state going to call you? Well, I don't know, he
23 says. I just can't believe that on the final day of
24 trial, the state doesn't know if they are going to call
25 Sergeant Strickland. It just boggles my mind the way

State v. Drljic/Suttles

1 that I was treated.

2 I am an officer of the court, also. I am a
3 private person. I am not a public person, but I am an
4 officer of the court. And there comes a point where I
5 object to the treatment of me. And for many years in the
6 court system I have stood by and turned the other cheek.
7 And lately, I have decided that I am a valuable human
8 being and attorney and it is unfair to my clients if
9 people are allowed to attack me and gain ground with it
10 and so I have decided to stand up for myself.

11 The prosecution was allowed to call any witness
12 they want in any order that they wanted. We were going
13 to do Jermaine English on Wednesday. Then we didn't. He
14 was here all weekend. I don't know who paid for it. I'm
15 assuming the court. The prosecution went and met with
16 him. So in the delay that they caused, they gained an
17 advantage. When did we learn that they had met with him?
18 During trial when Jermaine English, himself said, well, I
19 met with the blond lady. When did we get the disclosure
20 of that meeting? The next day I got a writing put on the
21 table from the prosecution that they had met with
22 Jermaine English.

23 Why was the defense not allowed to meet with
24 Jermaine English? Why was the defense not notified there
25 was going to be a big meeting with Jermaine English? And

State v. Drljic/Suttles

1 why is it that Jermaine English was allowed to sit in
2 this courtroom and assert the Fifth Amendment and then
3 meet with the state? Does anyone see the irony there?
4 He asserted the Fifth Amendment. And during the time the
5 Fifth Amendment was asserted and before immunity had been
6 granted, the state met with him and interviewed him.
7 When Jermaine English was the topic in the courtroom, my
8 clients were rarely allowed to argue. They are the
9 defendants in this case; not Jermaine English. I very
10 much appreciate the court caring about his Fifth
11 Amendment Right. I really do. I think that that's
12 great. But my clients are the defendants in this case.

13 We still do not believe we have full disclosure
14 of all of the information that was delivered to Jermaine
15 English. That man knew things he would not have known on
16 his own. And it is our belief and it is our right as
17 Americans to say it, that the prosecution delivered
18 information to him. He was the only guy who said, even
19 Nolan didn't say, oh, I saw them putting things in the
20 back seat. I saw Tamika Suttles put things in the back
21 seat. That was part of the state's case. How did he
22 know that? What was happening in all those days that the
23 state was asserting it's right to delay calling him?
24 What information was being delivered to him? We think
25 that we still do not know.

State v. Drljic/Suttles

1 The state -- we started the trial on Monday,
2 the 22nd. The state rested late morning the following
3 Wednesday. Now, obviously, we had Thanksgiving weekend
4 in there. But that's Monday, Tuesday, Wednesday, with
5 Tuesday afternoon off. Then Monday, Tuesday, Wednesday.
6 And then I got a little part of Wednesday morning. And
7 then there was huge pressure on the defense to get done.
8 Well, the jurors are getting bored. I know those things
9 about trials. That's why the prosecution should also
10 have to move it along. But, what the prosecution did was
11 to come in with all these motions, take all this time,
12 make the jurors wait time and time again, so that by the
13 time we got to the state case -- excuse me, the defense
14 case, the jurors were tired of sitting and waiting and
15 they were bored. It's a terrible way to have to start a
16 case as a defense attorney.

17 Then I'm told that jurors are leaving. And now
18 I should -- I have two bad choices; one, put on a really
19 quick case so that we can try to catch some jurors. We
20 still lost Ms. Lee. Or put a case on until Friday. And
21 I don't even know what would have happened then.

22 I had called Ms. Suttles to the stand. She was
23 up for the first part of the afternoon. It was
24 approximately 3 o'clock when we came side bar and the
25 court said to me, are you looking at the time? And I'm

State v. Drljic/Suttles

1 not sure exactly what that was referring to; but, at
2 least the way I took it in the moment was you better
3 hurry it up and get your case done. It was my second
4 witness and it was the defendant in this case.

5 Then I put Mr. Drljic on and the prosecutor
6 comes side bar -- I don't know how many times, but I am
7 in the transcript, when we get it, I am going to count
8 how many times the prosecutor asked to go side bar --
9 then I'm told I can't even put on my client's background.
10 I mean, how long did the prosecutor take with Glisky's
11 background? A long time. I asked Mr. Drljic a couple of
12 questions about where he worked and the prosecutor says,
13 well, this is going to take all this time. And the court
14 agreed it was going to take too much time. Your Honor, I
15 could not believe my ears. I am so sorry to have to say
16 this; but, this is a defendant in this case and there is
17 not time for him to testify?

18 I very much appreciate all the hard work the
19 court did on the case. I really noticed it. And I
20 really want to say that. I could tell the court was
21 doing research and doing the research because Your Honor
22 really, really cared about doing the right thing. I very
23 much want to say that.

24 But, I do want to make a record of tactics by
25 the prosecution that we believe were successful. In

State v. Drljic/Suttles

1 taking all of the time and the patience of the jury,
2 making speaking objections in front of the jury, Madam
3 Prosecutor called me a liar in this courtroom loud enough
4 for the jury to hear it. And I want that on the record.
5 And by the end, the defense case was squeaked into a tiny
6 little box.

7 Did I call Peter Brown? How could I possibly
8 call Peter Brown under those circumstances? Do I want to
9 call Officer Menton? Yes, I do. And we may need to call
10 him at a Brady hearing after this case.

11 As an American and a Minnesotan, I was
12 extremely disappointed in the Ramsey County Attorney's
13 Office in this case. We got about 45 seconds of Ms.
14 Suttles' interview, audio interview, in this case. And
15 we hear from Sergeant Strickland it was about 10 minutes
16 long. And I am, right now, asking that even if it is
17 after this trial, that the Ramsey County Attorney's
18 Office give me the full version of Ms. Suttles' audio
19 statement. And we will make a Chapter 13 request for it
20 if we have it. She is the subject of the data and
21 entitled to it, even if it's non public.

22 I have to say that I had many notes over time.
23 I frankly can't even find the notes I had from the first
24 day of the things that I was going to say; and that is,
25 the injury to the defendants in not having an opportunity

State v. Drljic/Suttles

1 to make a faster record.

2 We want to also object to the prosecutor's last
3 minute objection to impeaching Sergeant Strickland with a
4 transcript they had since August. I have never heard of
5 such a thing in the middle of the trial. It's the duty
6 of the prosecutors, if they don't think the transcript is
7 accurate, to do something about it before the trial so
8 that we don't come into the trial in the middle of the
9 trial and allow the state to gain an advantage from not
10 being able to ask Sergeant Strickland questions. When I
11 personally, myself, hand delivered an audio tape to
12 Sergeant Strickland and a copy of both transcripts. And
13 he admitted to me at the time that he had the other audio
14 tape. I personally asked him to listen to those to see
15 if there were any issues and to find out the next day
16 that he had not listened to them. I am asking the
17 prosecution to disclose, if they told him not to listen
18 to them.

19 But, 24 hours for a police officer, even one
20 who works full-time -- I saw him over here bringing
21 things to the prosecution three, four times during the
22 trial. He must have spent well over four hours doing
23 that before he came here to testify. He can't spend a
24 half an hour listening to an audio tape? It was quite --
25 we were quite disappointed in that. We appreciate the

State v. Drljic/Suttles

1 way the court handled that. I think it was a last minute
2 adjustment. It was a good idea to put Ms. Suttles on the
3 stand and let her lay some foundation for the transcript
4 and we do appreciate that.

5 I want to say, as well then, that after my
6 closing argument, I knew that I had used some exhibits.
7 I'm the one who used them. I knew exactly where they
8 were and I was the one who had helped the court reporter
9 put them together the first time. In my head, I knew
10 almost exactly every single exhibit number, what it was,
11 what bag it went and what it looked like. And I asked if
12 I could have a couple of minutes to move my own exhibits
13 back into the exhibits. I was not allowed to do that. I
14 was barked at. I was interrupted until I finally just
15 stood back, because apparently, by that point in the
16 trial -- and I'm just going to be honest about this -- I
17 felt like no matter what I did, it was wrong.

18 So I stood here while the exhibits were, for
19 the second time, put together. And I answered questions
20 when I was asked them. I was not even allowed five
21 minutes to get my own desk in order before other people
22 decided they wanted to take control. And at the end, I
23 happened to say, I could have done this in five minutes.
24 And that retort to me was, well, then why didn't you?

25 And I am a human being. I am an American and

State v. Drljic/Suttles

1 I'm an officer of this court. And I resent the way
2 public attorneys appear -- it seems like whenever
3 anything is said by a public attorney, then everyone
4 jumps to their defense. But yet, I can be lobbed on all
5 the time. And when I even try to stand up for myself,
6 I'm cut off and can't say anything. And I am deeply
7 hurt. I am deeply hurt.

8 My client, Tamika Suttles, was streaming tears,
9 having contractions and not allowed to go to the
10 bathroom. And we, in the defense team, feel dehumanized.
11 Like all of the advantages -- no, I want to take that
12 back. Like there was a lot of time, energy, all these
13 listening to motions of the state, but we do not -- there
14 are some hurt feelings in the defense team. My
15 clients -- my client, Tamika Suttles, did such a good job
16 in this case, given her condition. And she didn't break
17 down crying until last night and then I sat here and
18 watched her sob for an hour. (Crying) And she started
19 sobbing, streaming tears, in closing argument. But it
20 was more important to fix a typographical error in a
21 verdict form than to let her go to the bathroom.

22 I really thank the court for working so hard on
23 this case. My hats off to Your Honor. I really do mean
24 that. I know how hard you worked for justice in this
25 case and I don't want you to think just by anything I

State v. Drljic/Suttles

1 said that I don't feel that. I feel that, deeply. But
2 there is a point that defense attorneys just get kicked
3 and kicked around and kicked around and if no one else
4 will break the code of silence, I guess it will be me.

5 The state gets all the advantages in the trial
6 and then we wonder why we're spending billions of dollars
7 in prisons in this country.

8 Thank you for that opportunity.

9 THE COURT: All right. Ms. Lamin, was there
10 other things you wanted to put on the record?

11 MS. LAMIN: Am I expected to respond to this?

12 THE COURT: You know, I don't think -- at this
13 point, there are a number of things. And I think right
14 now we'll just take what you wanted to put on the record.
15 Unless you want to respond, it's up to you.

16 MS. LAMIN: No, Your Honor. But, I do think at
17 some point you should make some sort of responses to
18 this. I would disagree with the way Ms. Clark has
19 characterized what has happened for the last two weeks.
20 I believe she, personally, has repeatedly violated most
21 of the Rules of Decorum and professional conduct and I
22 have looked the other way. She's been verbally abusive
23 to your staff, Your Honor; clearly, to me.

24 Your Honor, there are -- defendants are
25 entitled to a vigorous defense. But, unfounded

State v. Drljic/Suttles

1 allegations, questions when it's stated exactly contrary
2 to your rulings, alleging things without any proper
3 foundation, repeatedly, making things personal is not
4 appropriate, Your Honor. And the state has done it's
5 best to comply with Ms. Clark's numerous demands.

6 Ms. Clark did, on multiple occasions, bring new
7 evidence, new photos to court and the state didn't object
8 unless they were foundational grounds, Your Honor.

9 Trials are organic things. The state felt it needed to
10 bring additional motions in limine, which does come up
11 and it is appropriate, if things develop, which things
12 did. So, the defense continues to make outlandish,
13 irresponsible, unprofessional claims against the state.
14 And as an officer of the court and as a member of the
15 state and my job is prosecution, we take that and we try
16 to respond as best we can. But, someone should also
17 speak up and stand up to Ms. Clark, who believes she has
18 the podium to say and do anything she wants, irrespective
19 of the Rules of Ethics, Rules of Evidence, Rules of
20 Decorum, Your Honor.

21 And Ms. Clark, you know, her allegations
22 against, thus far, have all been unfounded. And you
23 know -- so, there is -- Ms. Clark was free to subpoena
24 any witnesses she wants. Her claim that she was
25 prevented from subpoenaing witnesses, didn't have time.

State v. Drljic/Suttles

1 She knew that this trial was coming. She pushed for it
2 at this time. The state frankly was concerned about Ms.
3 Suttles' condition. It was over the state's vehement
4 objection that we continued and Ms. Clark pushed to
5 continue. Many of these issues Ms. Clark in one breath
6 would say one thing and then today, on the record, say
7 the opposite.

8 Your Honor, it is disturbing and it is hard to
9 respond to unfounded allegations in so many ways; but,
10 that is what I have personally witnessed is Ms. Clark
11 saying, I don't need to make a record now. Let's go on.
12 And then today, claim that she was prevented. Ms. Clark
13 never indicated she was rushed. I never saw her rushed
14 in presentation of defense. She said how much time she
15 needed and she was given as much time as she needed to
16 put on her defense. And now to make an allegation that
17 she was rushed is outlandish.

18 There is no missing police report.

19 Your Honor, Ms. Clark trying to confuse
20 witnesses and trying to get witnesses to say things in
21 terms of reports that isn't proper. Ms. Clark
22 repeatedly, I can tell you during my first witness,
23 objected probably every 30 seconds. I have never
24 professionally experienced that. And I have never heard
25 of anyone experiencing that. These objections, she

State v. Drljic/Suttles

1 objected to things, to every single exhibit on the first
2 day. If she wants to know why the trial ran on that
3 long, maybe she should look there. Your Honor, when the
4 state tried to -- and then she would take advantage of
5 voir dire to improperly cross-examine witnesses. And
6 that is why the state had to bring some of the motions in
7 limine, because of things that were occurring. So, the
8 state is not obligated to inform what order witnesses go
9 in because given Ms. Clark's conduct, thus far, I
10 guarantee you if a witness does not come in a specific
11 order, that will be raised as yet another objection to
12 ever calling a witness.

13 So, Your Honor, some of -- that, Your Honor, I
14 guess that's just a general response. I can respond to
15 more specifics; but, in terms of verbal objections, Ms.
16 Clark at the beginning of closing said the state wasn't
17 permitted to object and a request to go to the bench.
18 She demanded a verbal objection. And that's what the
19 state did. That's what Ms. Clark argued, verbal
20 objections, during the state's closing. So I guess the
21 state is unclear, yet again, we have an instance of Ms.
22 Clark indicating one thing, off the record, and then
23 later on taking the completely contrary position. It's
24 hard to account for this type of behavior; but, it does
25 impede the ability to, for everyone, for the state to

State v. Drljic/Suttles

1 seek justice when that is occurring. And that's what
2 clearly has occurred, repeatedly, in this case.

3 Thank you.

4 THE COURT: All right. Well, I just want to
5 say, I think Ms. Clark that you certainly had a lot of
6 things here and I'm not going to respond to everything.
7 And because, frankly, I would have to go back and look at
8 the record on some of those things. I don't think you
9 were expecting that, anyway. I do want to say, though,
10 that I did rule on Brady violations and I do think it was
11 improper to try and raise those again in the trial.

12 With regard to letting the juror leave
13 yesterday, Ms. Lee. She raised some legitimate issues.
14 And the court made the decision that given her conflict
15 that she was experiencing and the fact that there were,
16 as she said, a lot of people -- and in fact, I think she
17 said hundreds of people coming to this lecture and that
18 they had already taken time off from their work to be at
19 this lecture, that it was the Court's prerogative to let
20 her go. And that's what I did.

21 I have to be the one to apologize for looking
22 at the sheet and coming up with the wrong name of the
23 juror who was being let go. So that was my error. I had
24 the person down as Hielman. I guess Olson had taken that
25 seat. And she was the one, because she has to catch a

State v. Drljic/Suttles

1 plane tomorrow. And part of that, you should understand,
2 has to do with the court's view that the jurors should
3 not be rushed. And I did not want to have a juror
4 sitting here who was going to be concerned about catching
5 a plane and having that pressure put on her and the other
6 jurors. And that's the reason, in my view, that Ms.
7 Olson became the alternate who was let go. And it was my
8 mistake for the wrong name.

9 I do want to say with regard to the exhibits.
10 And I'm just going with different things here, because --
11 recent things. There wasn't -- I don't think anybody was
12 accusing you of messing up the exhibits. The unfortunate
13 thing that has happened, and I will take responsibility
14 for this, is my poor court reporter, who normally would
15 be in charge of the exhibits, would know exactly what
16 they were and know the order, et cetera, had not been
17 able to do that. No fault of anybody, but my fault. So
18 I'll take responsibility for not stopping people from
19 marking things without having the reporter mark them,
20 which would have, in fact, lessened some of the issues
21 later in terms of putting numbers and items together.
22 And given the number of exhibits and knowing that before
23 the case can go to the jury, the exhibits really do need
24 to be organized, it was the Court's prerogative to do
25 exhibits first this morning, not jury instructions;

State v. Drljic/Suttles

1 particularly, since we were still printing out jury
2 instructions. And we did have a chance to go through
3 them.

4 The claim of right issue, Ms. Clark, was one I
5 thought was not proper. And I did deny that request.

6 And I think the thing about trials sometimes is
7 that people's emotions get very tied up; and obviously,
8 for some very obvious reasons. But, the court does
9 intend to have a trial and have the conduct that has to
10 be professional. And it's the court's view that it did
11 try to conduct a professional trial in the best way that
12 it could. And if in fact people's feelings were hurt,
13 then the court is sorry. But that, unfortunately, was
14 not part of what the court's primary concern was. In
15 doing a trial, it's to make sure that we have evidence
16 that comes in in the proper way and that this court
17 manages a fair and impartial process.

18 So, it is the court's view that people who
19 wanted to be heard were heard. If we decided to put
20 things off later, on the record, that was with people's
21 agreement, both sides.

22 And I suppose the only other thing I want to
23 say, because I know we were trying to get through the
24 verdict forms. We were well almost -- and I apologize
25 that there were a lot of verdict forms to read. We did

State v. Drljic/Suttles

1 have an issues in terms of making a correction. This is
2 something that can impact how, what gets written down.
3 And the court was very concerned about making sure that
4 the jury understood that there were some errors on the
5 form that needed to be corrected. It is, in fact, to
6 protect everybody's rights. And it was at a point where
7 we were ready to actually give the case to the jury.

8 I apologize to Ms. Suttles if she needed to go
9 to the rest room. At that point, I think we continued
10 for about five minutes after that and that was it.

11 So I don't think that there is anything more I
12 need to respond to right now. If there are any
13 complaints that people want to make, there is the
14 standards of the Judicial Standard Board. That would be
15 one place. But, I believe the court has done it's best
16 in terms of conducting a fair trial.

17 MS. CLARK: Your Honor, I would like to speak
18 next, please.

19 THE COURT: Well, you may do that. I just want
20 to remind you that this is not going to be a free for
21 all, so we need to bring it to a close.

22 MS. CLARK: No, I understand. I just wanted to
23 thank the court for what it said just now. That was
24 helpful. And I just, I want to say that, of course I
25 understand that I said the first day I would defer my

State v. Drljic/Suttles

1 record. And then again I said at the end of the day that
2 I would defer my record. And then I said the next day I
3 would defer my record. The issue that I had was, it
4 seemed that I was trying to help move things along and
5 that back fired on me, then. Do you know what I mean?
6 That I was trying to help the court move things along.
7 But every time there was a space, it seemed like it went
8 to the prosecution's motion. So, I just want to make a
9 clear record on that so it didn't sound like that I was
10 saying anything inaccurate.

11 But, I do want to thank the court for the words
12 that it had just now. And I think that it's -- you know,
13 sometimes as criminal defense attorneys, we feel like we
14 just have to scrap to make sure that we get, you know,
15 get our client's case in and heard. And I think it's
16 fine for the prosecution to make whatever record she
17 wants. I get called names every day of the week, so I'm
18 not going to take it and I'm not going to take offense to
19 a couple names called to me by a prosecutor. But, I
20 do -- I really do take seriously my First Amendment
21 Right. I truly believe the system is better if we are
22 able to all look at it, talk about it.

23 I appreciate the Court's time.

24 MS. LAMIN: Your Honor, Ms. Clark had just
25 mentioned that she had asked for a lesser included of

State v. Drljic/Suttles

1 trespass. To my recollection and in the writings, that
2 wasn't clear to me in her motion she submitted. And I
3 never, informally or formally, did she ever mention she
4 sought a lesser included of trespass for this crime until
5 this very moment, Your Honor. So, Your Honor --

6 THE COURT: Right.

7 MS. LAMIN: She talked about a claim of right,
8 but there was never a lesser included request, to my
9 specific memory, of trespass. And that wasn't clear in
10 what she produced. And it -- she never mentioned it in
11 our several hours of conversations last night and then
12 again today where she was -- where she did request
13 additional instructions and received them.

14 THE COURT: Right. Okay. And I believe
15 whatever paperwork was submitted I did not see that
16 request, either, for the lesser included offense of
17 trespassing. So -- but, there is paperwork that was
18 submitted, so one can go back and look at that. All
19 right.

20 Anything else that we needed to do on the
21 record?

22 MS. LAMIN: No, Your Honor. Thank you.

23 THE COURT: Okay. All right.

24 MS. CLARK: Thank you.

25 THE COURT: Okay.

State v. Drljic/Suttles

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(Proceedings recessed.)

(The Jury returned to the courtroom at approximately 5:05 p.m. and the following proceedings commenced in open court.)

THE COURT: All right. Just have a seat. All parties are present. All I want to remind you is it's getting dark or getting late. I don't know if you want to continue deliberating. There would be arrangements made for you to have dinner and you can continue or you can stop and come back tomorrow, however you want to do this. So, that's why I wanted to have this opportunity to just check in with you and -- I'm sorry?

JUROR: We didn't know what the question was, so we have never had a chance to talk about what's going on.

THE COURT: Oh, okay. Well, do you want to have a chance to go talk about it and then let us know?

JURORS: We can -- we would prefer to keep going.

JURORS: Keep going.

THE COURT: Keep going. All right. Okay. Now, I think we will have actually a cut off time tonight, Hillary, is that correct? I'll ask the deputy, what, nine tonight -- cut off time, about nine? I told them nine. So that's going to be -- but, then you have

State v. Drljic/Suttles

1 the opportunity to come back tomorrow and finish. So
2 this is not designed to make you rush, it's just so that
3 you know that the building is going to close down. I
4 mean, security is around for you right now. And the
5 deputy is around for you right now and they will continue
6 to be in charge of you.

7 THE CLERK: And what time would you like them
8 to go eat dinner? I said, six, but?

9 THE COURT: I have to make that decision? I
10 think they can make that decision. What time would you
11 like to have dinner?

12 JURORS: We're pretty close. May not be an
13 issue; 7 -- 7 p.m.?

14 THE COURT: It's up to the group.

15 JURORS: Two of us are smokers.

16 THE COURT: I think you can check with the
17 deputy. So she's in charge. Okay. I don't want to be
18 in charge of breaks now. Okay. All right.

19 JUROR: So, if we come to a decision, are we
20 coming back to the courtroom to finish tonight?

21 THE COURT: Yes. We are here. We're not going
22 anywhere.

23 (The Jury was escorted back to the Jury Room at
24 this time to continue deliberations.)

25 (Proceedings recessed)

State v. Drljic/Suttles

1 (Court reconvened at approximately 7 p.m., the Jury
2 returned to the courtroom and the following proceedings
3 were had.)

4 VERDICT

5 THE COURT: Please be seated. Members of the
6 Jury, do you have a Verdict?

7 JURORS: Yes.

8 THE COURT: All right. Would you get the
9 Verdict, please.

10 (The Verdict was handed to the court and then
11 handed to the Clerk.)

12 THE CLERK: Members of the Jury, please listen
13 as I read your Verdict onto the record.

14 In the matter of State of Minnesota versus
15 Daniel Drljic, Court File No. 62-CR-10-1464. We, the
16 Jury, find the Defendant Guilty of the charge of Burglary
17 in the Second Degree, possess tools, Minnesota Statute
18 609.582, Subd. 2(a)(4), Count I, occurring on or about
19 December 6th, 2009, time 6:35 p.m., dated December 2nd,
20 2010. Signed by the Foreperson Andrew Michalski.

21 In the matter of State of Minnesota versus
22 Daniel Drljic, Court File 62-CR-10-1464. We, the Jury,
23 find the Defendant Guilty of the charge of Burglary in
24 the Second Degree, possess tools, Minnesota Statute
25 609.582, Subd. 2(a)(4), Count II, occurring on or about

State v. Drljic/Suttles

1 December 6th, 2009, time 6:35 p.m., dated December 2nd,
2 2010. Signed by the Foreperson Andrew Michalski.

3 In the matter of State of Minnesota versus
4 Daniel Drljic, Court File No. 62-CR-10-1464. We, the
5 Jury find the Defendant Guilty of the charge of Burglary
6 in the Second Degree, possess tools, Minnesota Statute
7 609.584(a)(4), Count III, occurring on or about December
8 6t, 2009, time 6:35 p.m., dated December 2nd, 2010.
9 Signed by the Foreperson Andrew Michalski.

10 In the matter of State of Minnesota versus
11 Daniel Drljic, Court File 62-CR-10-1464. We, the Jury,
12 find the Defendant Guilty of the charge of Burglary in
13 the Third Degree, steal, commit, Minnesota Statute
14 609.582, Subd. 3, Count IV, occurring on or about
15 December 6th, 2009, time 6:35 p.m., dated December 2nd,
16 2010. Signed by the Foreperson Andrew Michalski.

17 In the matter of State of Minnesota versus
18 Daniel Drljic, Court File No. 62-CR-10-1464. We, the
19 Jury, find the Defendant Guilty of the charge of Burglary
20 in the Third Degree, steal, commit, Minnesota Statute
21 609.582, Subd. 3, Count V, occurring on or about December
22 6th, 2009, time 6:35 p.m., dated December 2nd, 2010.
23 Signed by the Foreperson Andrew Michalski.

24 In the matter of State of Minnesota versus
25 Daniel Drljic, Court File No. 62-CR-10-1464. We, the

State v. Drljic/Suttles

1 Jury, find the Defendant Guilty of the charge of Burglary
2 in the Third Degree, steal, commit, Minnesota Statute
3 609.582, Subd. 3, Count VI, occurring on or about
4 December 6th, 2009, time 6:35 p.m., dated December 2nd,
5 2010. Signed by the Foreperson Andrew Michalski.

6 In the matter of State of Minnesota versus
7 Tamika Latoi Suttles, Court File No. 62-CR-10-1465. We,
8 the Jury, find the Defendant Not Guilty of the charge of
9 Burglary in the Second Degree, possess tools, Minnesota
10 Statute 609.582, Subd. 2(a)(4), Count I, occurring on or
11 about December 6th, 2009, time 6:35 p.m., dated December
12 2nd, 2010. Signed by the Foreperson Andrew Michalski.

13 In the matter of State of Minnesota versus
14 Tamika Latoi Suttles, Court File No. 62-CR-10-1465. We,
15 the Jury, find the Defendant Not Guilty of the charge of
16 Burglary in the Second Degree, possess tools, Minnesota
17 Statute 609.582, Subd. 2(a)(4), Count II, occurring on or
18 about December 6th, 2009, time 6:35 p.m., dated December
19 2nd, 2010. Signed by the Foreperson Andrew Michalski.

20 In the matter of State of Minnesota versus
21 Tamika Latoi Suttles, Court File No. 62-CR-10-1465. We,
22 the Jury, find the Defendant Not Guilty of the charge of
23 Burglary in the Second Degree, possess tools, Minnesota
24 Statute 609.582, Subd. 2(a)(4), Count III, occurring on
25 or about December 6th, 2009, time 6:35 p.m., dated

State v. Drljic/Suttles

1 December 2nd, 2010. Signed by the Foreperson Andrew
2 Michalski.

3 In the matter of State of Minnesota versus
4 Tamika Latoi Suttles, Court File No. 62-CR-10-1465. We,
5 the Jury, find the Defendant Guilty of the charge of
6 Burglary in the Third Degree, steal, commit, Minnesota
7 Statute 609.582, Subd. 3, Count IV, occurring on or about
8 December 6th, 2009, time 6:35 p.m., dated December 2nd,
9 2010. Signed by the Foreperson Andrew Michalski.

10 In the matter of State of Minnesota versus
11 Tamika Latoi Suttles, Court File No. 62-10-CR-1465. We,
12 the Jury, find the Defendant Guilty of the charge of
13 Burglary in the Third Degree, steal, commit, Minnesota
14 Statute 609.582, Subd. 3, Count V, occurring on or about
15 December 6th, 2009, time 6:35 p.m., dated December 2nd,
16 2010. Signed by the Foreperson Andrew Michalski.

17 In the matter of State of Minnesota versus
18 Tamika Latoi Suttles, Court File No. 62-CR-10-1465. We,
19 the Jury, find the Defendant Guilty of the charge of
20 Burglary in the Third Degree, steal, commit, Minnesota
21 Statute 609.582, Subd. 3, Count VI, occurring on or about
22 December 6th, 2009, time 6:35 p.m., dated December 2nd,
23 2010. Signed by the Foreperson Andrew Michalski.

24 Members of the Jury, is this your true and
25 correct Verdict, so say you one, so say you all?

State v. Drljic/Suttles

1 JURORS: Yes.

2 THE CLERK: Would you like the Jury polled?

3 MS. CLARK: Yes, please.

4 THE CLERK: Candace Foreman-Coley, is this your
5 true and correct verdict?

6 JUROR FOREMAN-COLEY: Yes.

7 THE CLERK: Mark Ronayne, is this your true and
8 correct verdict?

9 JUROR RONAYNE: Yes.

10 THE CLERK: Mary Studneck, is this your true
11 and correct verdict?

12 JUROR STUDNECK: Yes.

13 THE CLERK: Darren Bishop, is this your true
14 and correct verdict?

15 JUROR BISHOP: Yes.

16 THE CLERK: Deborah Lein, is this your true and
17 correct verdict?

18 JUROR LEIN: Yes.

19 THE CLERK: Andrew Michalski, is this your true
20 and correct verdict?

21 JUROR MICHALSKI: Yes.

22 THE CLERK: Paul Thompson, is this your true
23 and correct verdict?

24 JUROR THOMPSON: Yes.

25 THE CLERK: Thein Huynh, is this your true and

1 MS. CLARK: And then I would like to also say
2 that with regard to the list of qualified and potential
3 jurors, I did spend some time in the courthouse today
4 trying to obtain that. And I could not obtain it. I was
5 not allowed to obtain it. I was told by the woman in the
6 jury office that they automatically, every week, send it
7 to the County Attorney's Office. So, in advance, they
8 know the potential jurors. They have time to check their
9 backgrounds. They have time to check all kinds of things
10 about them. They even have, if they choose, I guess, the
11 opportunity to try to decide what week they want a
12 particular case to go to trial. I was not able to get
13 the same list from the jury office. I was told I had to
14 file an affidavit with the court stating the purpose for
15 which I need it. And I'm placing that on the record. We
16 believe that is a basis for a new trial.

17 And one thing I would like to talk to you about
18 is scheduling, Your Honor. As you know, the Rules of
19 Criminal Procedure say that post verdict motions I'm to
20 file in 15 days. The Rule still says they are to be
21 heard in 30 days, unless the court finds good cause. In
22 my experience, almost always, the judges do find good
23 cause because it's just in today's world, trying to get
24 that done within 30 days is very difficult. So, I'm fine
25 going ahead and filing the motion within 15 days. But,

State v. Drljic/Suttles

1 perhaps we could look at pushing out the hearing,
2 especially if the sentencing is February 22nd, we could
3 look at pushing out the hearing.

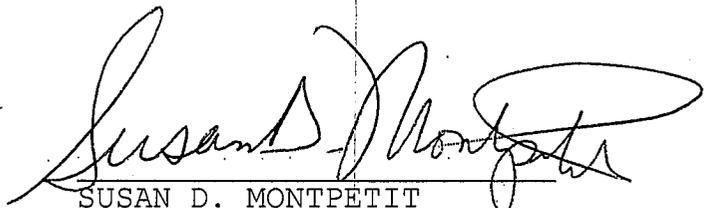
4 THE COURT: Okay. Thank you. All right.
5 Thank you.

6 (Proceedings concluded)

7 STATE OF MINNESOTA
8 COUNTY OF RAMSEY

9 I, Susan D. Montpetit, do hereby certify that a jury
10 trial was had in the cause styled in the caption hereto on
11 Page One hereof; that I was authorized to and did attend said
12 jury trial and reported the proceedings had therein fully and
13 accurately in shorthand and that the foregoing computer-aided
14 transcription numbered 382 through 532, inclusive, constitute
15 a true and correct transcript from my shorthand report of the
16 proceedings taken at said trial.

17 Dated: June 14TH, 2011.

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20 
21 SUSAN D. MONTPETIT
22 Official Court Reporter
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