

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JURGEN MARKU,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

**On Petition for Writ of Certiorari
to the Florida Fifth District Court of Appeal**

**APPENDIX TO
PETITION FOR WRIT OF CERTIORARI**

MICHAEL UFFERMAN
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345
FL Bar No. 114227
Email: ufferman@uffermanlaw.com

COUNSEL FOR THE PETITIONER

TABLE OF CONTENTS

Document	Page
1. January 2, 2024, opinion of the Florida Fifth District Court of Appeal . . .	A-3
2. February 2, 2024, order of the Florida Fifth District Court of Appeal	A-5
3. October 13, 2022, Judgment and Sentence of the Fourth Judicial Circuit Court of Florida	A-6
4. Excerpts from the transcript of the October 12, 2022, trial, pages 321-322 and 587-588	A-12
5. Excerpt from the transcript of the October 13, 2022, trial, pages 784-788	A-20

FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 5D23-377
LT Case No. 2021-CF-10250

JURGEN MARKU,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Adrian G. Soud, Judge.

Michael Ufferman, of Michael Ufferman Law Firm, P.A.,
Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Daren L. Shippy, Assistant
Attorney General, Tallahassee, for Appellee.

January 2, 2024

PER CURIAM.

AFFIRMED.

WALLIS, LAMBERT, and EISNAUGLE, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JURGEN MARKU,

Appellant,

v.

CASE NO. 5D23-0377
LT CASE NO. 2021CF10250

STATE OF FLORIDA,

Appellee.

/

DATE: February 02, 2024

BY ORDER OF THE COURT:

ORDERED that Appellant's "Motion for Rehearing/Issuance of Written Opinion," filed January 17, 2024, is denied.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*

Sandra B. Williams



SANDRA B. WILLIAMS, CLERK

Panel: Judges Wallis, Lambert and Eisnaugle

CC:

Daren L. Shippy

Michael Ufferman

Tallahassee Attorney
General

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NUMBER: 16-2021-CF-010250-AXXX-MA
DIVISION: CR-A

STATE OF FLORIDA

vs.

JURGEN MARKU, DEFENDANT

- Probation Violator
- Community Control Violator
- Retrial
- Resentence

JUDGMENT AND SENTENCE

The defendant, JURGEN MARKU, being personally before this Court, represented by

D. GALNOR RT'D, the attorney of record, and the State being represented by
L. CAMPBELL, and having:

- been tried and found guilty by ~~by court~~ of the following crime(s)
- entered a plea of guilty to the following crime(s)
- entered a plea of nolo contendere to the following crime(s)

Count	Crime	Offense Statute Number(s)	Degree Of Crime
1	<u>MURDER IN THE FIRST DEGREE</u>	<u>782.04(1)(a)</u>	<u>L 1</u>
		<u>775.087(1)</u>	
2	<u>ARMED ROBBERY</u>	<u>812.13(2)(a)</u>	<u>10F, PBL</u>

and no cause being shown why the defendant should not be adjudicated guilty; IT IS ORDERED that the defendant is hereby ADJUDICATED GUILTY of the above crime(s).

being a qualified offender pursuant to F.S. 943.325, the defendant shall be required to submit a DNA sample as required by law.

and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

FILED

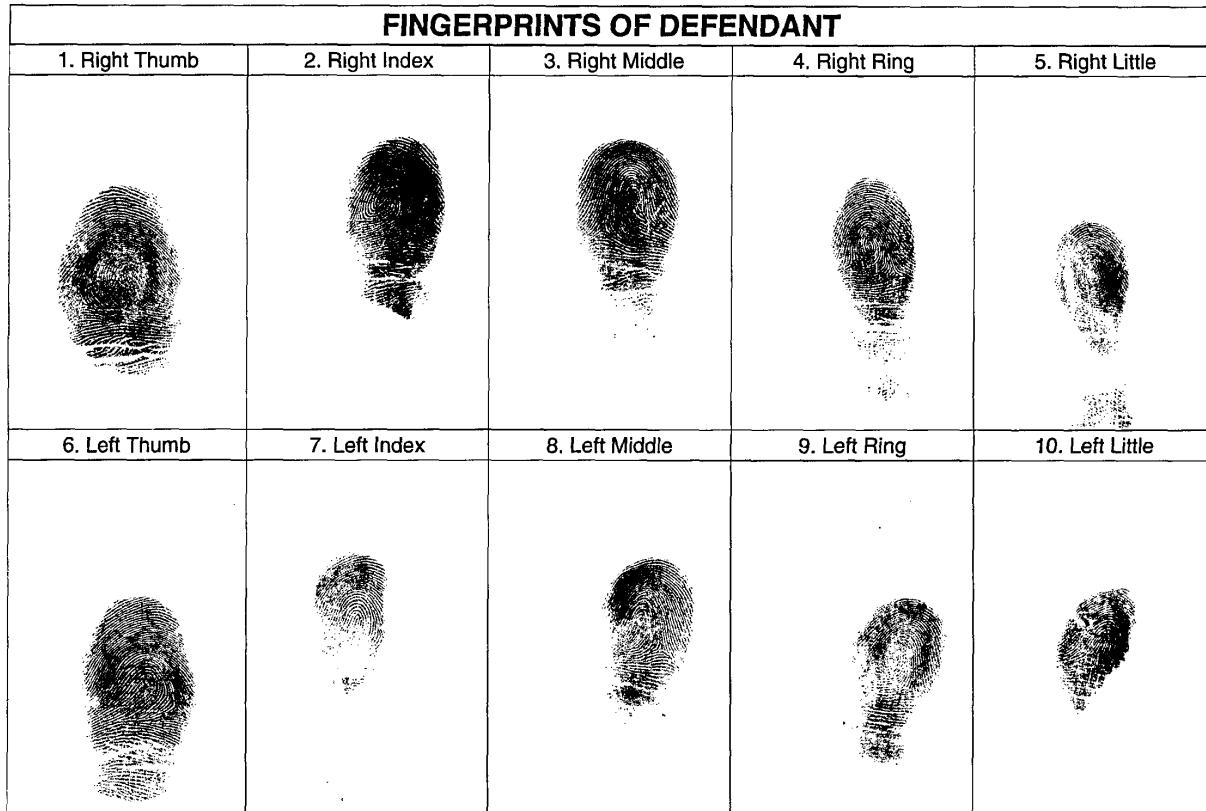
OCT 13 2022

Page 1 of 6

DUVAL CLERK OF COURT

STATE OF FLORIDA
vs.
JURGEN MARKU, DEFENDANT

CASE NUMBER: 16-2021-CF-010250-AXXX-MA
SSN:



Fingerprints taken by: Name: Fickel 84192 Title: J.O

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant, **JURGEN MARKU**, and that they were placed thereon by the defendant in my presence in open court on this date.

DONE AND ORDERED in open court in Jacksonville, Duval County, Florida, this _____ day of
OCT 13 2022, 20 _____.
John S. Scott
Judge

Page 2 of 6

STATE OF FLORIDA

vs.

JURGEN MARKU, DEFENDANT

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NUMBER: 16-2021-CF-010250-AXXX-MA
DIVISION: CR-A

COURT ORDERED COSTS/FINES/FEES

The defendant is hereby ordered to pay the following sums if checked:

A sum of \$3.00 as a court cost pursuant to section 938.01, Florida Statutes, (Additional Court Cost Clearing Trust Fund).

A sum of \$50.00 pursuant to section 938.03, Florida Statutes, (Crimes Compensation Trust Fund).

A sum of \$225.00 pursuant to section 938.05, Florida Statutes, (Local Government Criminal Justice Trust Fund).

A sum of \$3.00 pursuant to section 938.19, Florida Statutes, and section 634.108, Ordinance Code, (Assessment of Additional Court Costs-Duval County Teen Court Trust Fund).

A sum of \$65.00 pursuant to section 939.185(1)(a), Florida Statutes, and section 634.102(c) Ordinance Code, (Assessment of Additional Court Costs to be used for innovations, legal aid, law library, teen court programs).

A sum of \$100.00 pursuant to section 938.055, Florida Statutes, (FDLE Operating Trust Fund).

A sum of \$100.00 pursuant to section 938.27(1), Florida Statutes, (Sheriff's Office Investigative Cost).

A sum of \$100.00 pursuant to section 938.27(8), Florida Statutes, (Cost of Prosecution).

A sum of \$20.00 pursuant to section 938.06, Florida Statutes, (Assessment of Additional Court Costs for Crime Stoppers Trust Fund).

A sum of \$____ pursuant to section 938.29, Florida Statutes, (Court Appointed Counsel Fees).

A sum of \$____ pursuant to section 27.52, Florida Statutes, (Application for Court Appointed Counsel Fees).

A sum of \$151.00 pursuant to section 938.10, Florida Statutes, (Crimes Against Minors).

A sum of \$201.00 pursuant to section 938.08, Florida Statutes, (Funding Programs in Domestic Violence).

A sum of \$151.00 pursuant to section 938.085, Florida Statutes, (Rape Crisis Trust Fund).

A sum of \$50.00 pursuant to section 775.083(2), Florida Statutes, (Cost).

A fine in the sum of \$____ pursuant to section 775.0835, Florida Statutes, (This provision refers to the optional fine for the Crimes Compensation Trust Fund and is not applicable unless checked and completed. Fines imposed as a part of a sentence to section 775.083, Florida Statutes, are to be recorded on the sentence page(s)).

A sum of \$____ pursuant to section 938.04, Florida Statutes, (additional cost 5% of fine).

A sum of \$2.00 as a court cost pursuant to section 938.15, Florida Statutes, (Criminal Justice Education by Municipalities and Counties).

A sum of \$15.00 pursuant to section 938.13, Florida Statutes, (Misd. convictions involving drugs or alcohol).

A sum of \$135.00 pursuant to section 938.07, Florida Statutes, (EMS - DUI/BUI cases).

A sum of \$30.00 pursuant to section 318.18(13), Florida Statutes, and section 634.102, Ordinance Code, (CHT - State Court Facilities).

A sum of \$3.00 pursuant to section 318.18(17), Florida Statutes, (State Radio System (SRS)).

A sum of \$____ for the cost of collecting the DNA sample required by section 943.325, Florida Statutes.

Restitution in accordance with attached order.

Other _____.

DONE AND ORDERED in open court in Jacksonville, Duval County, Florida, this _____ day of
Oct 13 2022, 20 _____. 

Judge

JURGEN MARKU, DEFENDANT

CASE NUMBER: 16-2021-CF-010250-AXXX-MA
OBTS # 1607063436

SENTENCE

(As to Count (s) 182)

The defendant, being personally before this court, accompanied by the defendant's attorney of record D. GALINOR, RT'D, and the adjudication/withhold having been determined, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown:

and the court having on _____ deferred imposition of sentence until this date.
 and the court having previously entered a judgment in this case on _____ now resentence the defendant.
 and the court having placed the defendant on probation/community control, and having subsequently revoked the defendant's probation/community control;

It Is The Sentence Of The Court That (check all that are applicable; unmarked sections are inapplicable):

The defendant pay a fine of \$ _____, pursuant to section 775.083, Florida Statutes, plus \$ _____ at the 5% surcharge required by section 938.04, Florida Statutes.
 The defendant is hereby committed to the custody of the Department of Corrections.
 The defendant is hereby committed to the custody of the Sheriff of Duval County, Florida.
 The defendant is sentenced as a Youthful Offender in accordance with section 958.04, Florida Statutes.

To be Imprisoned (check one; unmarked sections are inapplicable):

For a term of natural life.
 For a term of _____.
 Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.
 Youthful Offender Sentence:

Pursuant to the Florida Youthful Offender Act, the defendant is hereby sentenced to _____, of which _____ shall be served by incarceration followed by _____ in a Community Control Program according to the terms and conditions set forth in a separate order.

□ Split Sentence (complete the appropriate paragraph):

Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order.
 However, after serving a period of _____ imprisonment in _____, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control or a period of _____ under the supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

Imposition of Sentence Stayed and Withheld (check one; unmarked sections are inapplicable):

The court hereby stays and withholds the imposition of sentence and places the defendant on:
 Probation/community control for a period of _____ under the supervision of the Department of Corrections with a special condition that the defendant serve _____ in Duval County Jail, with credit for _____ days.
 Unsupervised probation for a period of _____ with the special condition that the defendant serve _____ days in Duval County Jail, with credit for _____ days. Unsupervised probation will terminate upon completion of special condition.

(All other general/special conditions of probation/community control shall be set forth in a separate order.)

JURGEN MARKU, DEFENDANT

CASE NUMBER: 16-2021-CF-010250-AXXX-MA
OBTS # 1607063436

OTHER PROVISIONS

(As to Count (s) 182)

Current Jail Credit Time:

It is further ordered that the defendant shall be allowed a total of 352 days as credit for time incarcerated on this case / count before imposition of this sentence.

0 DAYS AS TO
CT. 2

**Credit for Time Served
on Violation of Probation /
Community Control:**

(check one)

It is further ordered that the defendant shall be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on count(s) _____.
(Offenses committed on or after January 1, 1994.)

It is further ordered that the defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on count(s) _____.
(Offenses committed before October 1, 1989.)

It is further ordered that the defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served on count(s) _____. (Offenses committed between October 1, 1989, and December 31, 1993.)

Prior Prison Credit:

It is further ordered that the defendant shall be allowed _____ days time served between date of the original sentence being vacated to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served on count(s) _____.

Forfeiture of Prior Gain/Good Time:

(check one)

The court deems the unforfeited gain time previously awarded on the above count(s) forfeited under section 948.06(7)

OR

The court allows unforfeited gain time previously awarded on the above count(s)
(Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1))

**Consecutive/
Concurrent As To
Other Counts:
(if Applicable)**

It is further ordered that the sentence imposed for count(s) 2 shall run
(check one)

consecutive to concurrent with the sentence set forth in count 1
of this case.

**Consecutive/
Concurrent As To
Other Sentences:
(if Applicable)**

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run (check one) consecutive to concurrent with the following: (check one)

any active sentence being served.
 specific sentences: _____

Retention of Jurisdiction:

The court retains jurisdiction over the defendant pursuant to section 947.16(4), Florida Statutes.

JÜRGEN MARKU, DEFENDANT

CASE NUMBER: 16-2021-CF-010250-AXXX-MA
OBTS # 1607063436

In the event the defendant is sentenced to a period of incarceration in state prison, the Sheriff of Duval County, Florida, is hereby ordered and directed to deliver the defendant to the Florida Department of Corrections at the facility designated by the Department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

In open court, the defendant was advised of the right to appeal from this sentence by filing a notice of appeal with the clerk of this court within 30 days from this date and the right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

In imposing the above sentence, the court further recommends / adjudges:

DONE AND ORDERED in open court in Jacksonville, Duval County, Florida, this 10 day of OCT 13 2022, 2022.

Judge

Official Reporters, Inc.

1 APPEARANCES:

2

3 ALAN SETH MIZRAHI and LATESHA M. CAMPBELL,
4 Esquires, Office of the State Attorney, appearing on
5 behalf of the State of Florida.

6

7 DARCY DANENE GALNOR and GARY S. SHUMARD, Esquires,
8 Private Attorneys, appearing on behalf of the
9 Defendant.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Official Reporters, Inc.

1	PROCEEDINGS	
2	PROCEEDING	PAGE
3	PRELIMINARY JURY CHARGE	303
4	OPENING STATEMENT BY MS. CAMPBELL	314
5	OPENING STATEMENT BY MS. GALNOR	327
6		
7	STATE WITNESSES	
8	WITNESS	PAGE
9	ALBERT SHLLAKU	
10	DIRECT EXAMINATION BY MS. CAMPBELL	333
11	CROSS EXAMINATION BY MR. SHUMARD	350
12	AUREL SHLLAKU	
13	DIRECT EXAMINATION BY MR. MIZRAHI	353
14	CROSS EXAMINATION BY MR. SHUMARD	366
15	AHMAD KAWMAK	
16	DIRECT EXAMINATION BY MS. CAMPBELL	377
17	CROSS EXAMINATION BY MR. SHUMARD	386
18	REDIRECT EXAMINATION BY MS. CAMPBELL	389
19	JULIETTE OLIVEROS	
20	DIRECT EXAMINATION BY MR. MIZRAHI	391
21	D. U. SWANN	
22	DIRECT EXAMINATION BY MS. CAMPBELL	397
23	ANNMARIE GIBSON	
24	DIRECT EXAMINATION BY MS. CAMPBELL	405
25		

Official Reporters, Inc.

1	STATE WITNESSES (CONTINUED)	
2	WITNESS	PAGE
3	T. W. SELLERS, II	
4	DIRECT EXAMINATION BY MS. CAMPBELL	411
5	CROSS EXAMINATION BY MR. SHUMARD	436
6	ANDREW JOSEPH RAUCO	
7	DIRECT EXAMINATION BY MS. CAMPBELL	441
8	CROSS EXAMINATION BY MS. GALNOR	493
9	REDIRECT EXAMINATION BY MS. CAMPBELL	522
10	DAVID OSTERTAG	
11	DIRECT EXAMINATION BY MS. CAMPBELL	532
12	CROSS EXAMINATION BY MR. SHUMARD	548
13	B. H. ABBOTT	
14	DIRECT EXAMINATION BY MS. CAMPBELL	555
15		
16	EXHIBITS	
17	DESCRIPTION	PAGE
18	State's Exhibit No. 65	300
19		
20		
21		
22		
23		
24		
25		

Official Reporters, Inc.

1 learned that he's missing a bracelet.

2 So they try to attempt to figure out who
3 that phone belongs to. They do a search
4 warrant for that cell phone. And ultimately,
5 because it's locked with a pass code, police
6 cannot access the contents of that phone.

7 But what they do know is this phone has voice
8 mails, and it comes back to a guy by the name
9 of Andrew Rauco. And what they also later
10 find out is that that cigarette on the ground
11 had DNA for a guy named Lavonta Burrell and
12 later, Andrew Rauco.

13 So they begin to investigate Andrew
14 Rauco and Lavonta Burrell, the two
15 individuals who approach [REDACTED] during the
16 armed robbery and commit the armed robbery.
17 And they find out that these two are
18 coworkers at Chili's, and they don't belong
19 at this condo complex.

20 So as the investigation continues -- and
21 I want to get back to talking about
22 Mr. Marku -- they arrest Lavonta Burrell and
23 Andrew Rauco. And on that video, Lavonta
24 Burrell goes to the passenger side of [REDACTED]
25 vehicle and enters the center console,

1 ultimately taking his cell phone, and Andrew
2 Rauco goes to the driver's side, pulls out a
3 gun and engages in this armed robbery where
4 he shoots and kills [REDACTED]

5 They've been both arrested and pled
6 guilty in this case.

7 MS. GALNOR: Objection, Your Honor.

8 THE COURT: Legal basis?

9 MS. GALNOR: Relevance.

10 THE COURT: Overruled.

11 MS. CAMPBELL: So why are we here?

12 Because Jurgen Marku betrayed [REDACTED]
13 and set this entire thing into motion because
14 but for his plan, his setup, how he assisted,
15 Andrew Rauco doesn't know who to rob. He
16 doesn't go rob [REDACTED]

17 Now, you'll hear directly from Andrew
18 Rauco in this trial. And I don't expect you
19 to like him or -- or want to -- want to
20 listen to him because of what he's done. But
21 I want you to consider his motivation, the
22 details that he provides and the fact that
23 who else would know exactly what happened on
24 February 26 of 2020? And the details are not
25 pretty.

Official Reporters, Inc.

1 A Yes.

2 Q And did he agree to speak with you?

3 A Yes.

4 Q And did you collect his DNA during that
5 meeting?

6 A I did.

7 Q How did you get his DNA?

8 A I drafted a search warrant to take it.

9 Q Okay. In that meeting, did he confess to
10 being involved in this crime?

11 A He did not.

12 Q Okay. Did he try to distance himself from
13 the phone?

14 A Yes.

15 Q What did he tell you?

16 A He said that he had lost it. Somebody broke
17 into his car while he was having a seizure and took the
18 phone.

19 Q Okay. And was this the first time anyone
20 from law enforcement was speaking to Andrew Rauco about
21 his items being found at the scene of the homicide and
22 armed robbery?

23 A Yes.

24 Q After getting the DNA on the cigarette, did
25 you speak with Lavonta Burrell?

1 A Yes, I did.

2 Q Okay. And when did you speak with Lavonta
3 Burrell?

4 A I talked to him on December 20th, 2020.

5 Q And was he advised of his constitutional
6 rights?

7 A He was.

8 Q And did you get to speak with him as well?

9 A Yes.

10 Q And did you arrest Lavonta Burrell in
11 connection with this homicide and armed robbery?

12 A I did.

13 Q And do you know the status of Burrell's case?

14 A He's already pled guilty.

15 MR. SHUMARD: Objection, relevance, Your
16 Honor.

17 THE COURT: Overruled.

18 MS. CAMPBELL: Your Honor, may I
19 approach?

20 THE COURT: You may.

21 BY MS. CAMPBELL:

22 Q I'm showing you State's Exhibit 52. Do you
23 recognize the individual in this photograph?

24 A Yes. That's Lavonta Burrell.

25 Q And is this how he appeared to you on

Official Reporters, Inc.

1 APPEARANCES:

2

3 ALAN SETH MIZRAHI and LATESHA M. CAMPBELL,
4 Esquires, Office of the State Attorney, appearing on
5 behalf of the State of Florida.

6

7 DARCY DANENE GALNOR and GARY S. SHUMARD, Esquires,
8 Private Attorneys, appearing on behalf of the
9 Defendant.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Official Reporters, Inc.

1	PROCEEDINGS	
2	PROCEEDING	PAGE
3	STATE RESTS	742
4	MOTION FOR JUDGMENT OF ACQUITTAL	743
5	JURY CHARGE CONFERENCE	751
6	MOTION FOR JUDGMENT OF ACQUITTAL RENEWED	768
7	DEFENSE RESTS	770
8	CLOSING ARGUMENT BY MS. CAMPBELL	771
9	CLOSING ARGUMENT BY MR. SHUMARD	803
10	CLOSING ARGUMENT BY MR. MIZRAHI	824
11	JURY CHARGE	838
12	JURY QUESTION	878
13	VERDICTS	882
14	SENTENCING	890
15	CERTIFICATE OF REPORTER	894
16		
17	STATE WITNESSES	
18	WITNESS	PAGE
19	B. H. ABBOTT	
20	CROSS EXAMINATION BY MR. SHUMARD	674
21	REDIRECT EXAMINATION BY MS. CAMPBELL	718
22	ROBERT BUCHSBAUM, M.D.	
23	VOIR DIRE EXAMINATION BY MR. MIZRAHI	726
24	DIRECT EXAMINATION BY MR. MIZRAHI	730
25		

Official Reporters, Inc.

1 role as a principal, he doesn't have to be
2 there. He was there and he left early enough
3 to be able to say, well, I wasn't there when
4 he was killed, and know exactly what time he
5 left before the victim was killed. But he's
6 still a principal because he had an intent
7 that this be done, that this armed robbery be
8 done, and that he did some act or said some
9 words -- he did multiple acts and he said
10 multiple words for it to be done.

11 This defendant is, in fact, a principal
12 to Andrew Rauco's actions. He's the
13 mastermind. He's the blueprint. He's
14 assisting him before, during, after, and he
15 must be treated the same as -- as if he did
16 all the other things the other person did, as
17 the law says.

18 Again, the law the judge will instruct
19 you, you do not have to be there when the
20 crime is committed to be a principal. So he
21 did all of this in furtherance and left the
22 scene so he wouldn't be the person putting
23 the gun in the victim's face. But he sent
24 someone to do it for him, and he assisted him
25 in doing that.

Official Reporters, Inc.

1 He must be treated as if he had done all
2 the things the other person or persons did.

3 And I say persons because Andrew Rauco
4 didn't go alone. He went with Lavonta
5 Burrell. And during this, Andrew Rauco went
6 to the left side, to the driver, straight to
7 the victim, and Lavonta Burrell went to the
8 right to the passenger side, into the
9 vehicle, trying to see what property, what
10 all he could find. And we know the victim's
11 bracelet was missing and hadn't been
12 recovered. No one knows who has it. But we
13 know that Lavonta Burrell and Andrew Rauco,
14 when they got in that car and they drove away
15 from Sugar Mill, from Crown Point Road, they
16 did have the victim's cell phone. And that
17 cell phone is in evidence and it is property
18 and it does have value. And even if they
19 throw it out the window, it doesn't matter
20 what they did with it later. They took that
21 from the custody of the victim during the
22 commission of that armed robbery.

23 So, members of the jury, I submit to
24 you, all three elements of first degree
25 felony murder are met in this case. While

Official Reporters, Inc.

1 engaged in the attempted to commit a robbery,
2 Jurgen Marku's accomplice caused the death of
3 the victim. And he was killed by a person
4 other than Jurgen Marku, but both of them
5 were principals in the commission of this
6 robbery.

7 Now, the law will give you what's called
8 lesser-included crimes. And you will learn
9 that if you return a verdict of guilty, you
10 must return a verdict for the highest offense
11 that's been proven beyond a reasonable doubt.
12 So you think of lesser-included as, like, a
13 cheeseburger, a hamburger but you add some
14 cheese. So you go from a cheeseburger and
15 then it becomes a hamburger. You get how I
16 just took off one element?

17 But the law says you must return a
18 verdict for the highest crime that's been
19 proven beyond a reasonable doubt. So you'll
20 learn that the lesser-included to
21 first-degree felony murder is manslaughter.
22 And this is just subsumed within the larger
23 crime and it has two elements. But it's only
24 talking about procuring an act. So it's not
25 talking about going and committing an armed

1 robbery together, where I'm in on it just
2 like you are; we're all in this together. My
3 role is to get the description and tell you
4 where he's at, when he's going to be there,
5 what he's wearing, the words to say. Your
6 role is to actually go do it. And then
7 after, we're going to meet up together and
8 figure out what we're going to do to settle
9 this debt and how we're going to, you know,
10 spend this property or -- or use this
11 property.

12 But procure just means -- so that's a
13 full armed robbery. That's furtherance.
14 That's an act, a crime in and of itself. So
15 just procuring something would be, like, if I
16 told you to go punch someone in the face and
17 they died from the punch. You know, it was
18 just an unfortunate consequence from the act,
19 but it wasn't actually an intended crime. So
20 this -- what we have is armed robbery is an
21 intended crime. And it's not just
22 responsibility for an unfortunate act. It's
23 the crime that they intended.

24 So you must return a verdict for the
25 crime that has been proven -- the highest

1 crime that's been proven beyond a reasonable
2 doubt.

3 This is so different than manslaughter
4 because their intent here wasn't just some
5 act that went wrong. Their intention was to
6 rob the victim. And that is what Andrew
7 Rauco, Lavonta Burrell and this defendant
8 did.

9 Now, Count 2 in the indictment is
10 robbery. And it's armed robbery. And so
11 it's the same elements that I talked about
12 earlier, those four elements, where you're
13 taking property by force, violence, assault,
14 putting in fear. The property has some
15 value. And it's to temporarily or
16 permanently deprive the person of the
17 property.

18 And you're going to be asked, for armed
19 robbery, to make further findings. And the
20 further findings for both armed robbery and
21 manslaughter, you have to make further
22 findings about the carrying of a firearm or
23 carrying a weapon during the commission of
24 it. And I want to bring that up because of
25 the principal instruction, the further