

1 the case. The defense responds with what they believe  
2 the evidence shows, and we have the last word. We  
3 have the rebuttal. That's what this is. It's not so  
4 that you can hear my argument I gave a while ago over  
5 again. And I am going to confine myself to what  
6 rebuttal is about, of addressing issues raised by the  
7 defense.

8 The defense suggests why is Mr. Mason's car not  
9 hit. He left. Mr. Thomas' car remained, where it  
10 could not only be shot from various angles, but damage  
11 was perhaps the butts of guns, or anything that was  
12 handy. That's why that car was pretty much destroyed.  
13 Mr. Mason got in his car and backed out as quick as he  
14 could or drove whatever way he had to to get away from  
15 there, because he sensed in the incident they don't  
16 appear to be shooting at me, I have a chance to get  
17 out of here. Sorry Anthony, hope you get wherever you  
18 gotta go, but this is every man for himself. He left.  
19 That's why his car isn't damaged. If they were  
20 focusing on Rob Mason, a person who is recognized in  
21 the community as a man who runs a record production  
22 facility or CD production facility, Play Style Studio,  
23 to do rap type music or whatever kind of music he  
24 might want to. He's a businessman. That's not a  
25 person we should mess with. But the answer is he

1 left. Thomas' car remained.

2 Defense says when Anthony Thomas was there, why  
3 didn't he see the window smashed out. He left his  
4 car. He went running. And whatever these mask gunmen  
5 and the defendant did to the car afterward is what  
6 happened and Anthony Thomas had fled for his life.

7 The defense says why are there no more casings or  
8 evidence of gunfire. I did mention in my closing  
9 argument that if we don't get guns there is not a lot  
10 of point because there is nothing to compare it to.  
11 The laboratory can't make the comparisons, nothing.  
12 If you hide the evidence, hide the guns, you can't do  
13 that test. If the fingerprints aren't sufficient for  
14 identification purposes or if somebody is wearing  
15 gloves you can't do that test. If there aren't, there  
16 aren't.

17 It is the effort of the defense perhaps to create  
18 so much smoke and tension over here to what isn't  
19 which could never be there unless we made -- unless  
20 Detective Sanchez and Agent Cowley were creating  
21 evidence, which I contend they are not based on this  
22 case certainly, if we focus on those things, then if  
23 that trick works, then we can forget about what Rob  
24 Mason and Anthony Thomas said here under oath about  
25 what he did to them. That's evidence. And that's

1 evidence that proves beyond a reasonable doubt that he  
2 did this crime. If he happens to be good at what he  
3 does and gets away and takes his guns, that doesn't  
4 mean he's not guilty.

5 It just means you have to look at the evidence  
6 that's there, because in life as in cards as in every  
7 jury trial, every hand is different. No two cases are  
8 identical. Every case will be an application in  
9 reality. It's always this way, because reality isn't  
10 a television show built in a half hour. Reality takes  
11 whatever length of time it takes to do something and  
12 leaves whatever evidence is left or not left. And  
13 witnesses who live to tell what they saw from their  
14 point of view, not from the calm way you are hearing  
15 me, and you heard the evidence, but from the pow, pow,  
16 pow, pow of that going off near your head, that's how  
17 his brain had to function under the highest stress.

18 Here we have an inconsistency in the position of  
19 the cars. Hum, he's not guilty, the cars are  
20 positioned wrong. That has more to do with the memory  
21 of human beings being different about details that  
22 didn't matter as much as getting away to safety. And  
23 the reason I say that is I think I heard the defense  
24 counsel correctly when he says it just doesn't make  
25 sense, maybe this didn't happen or words to that

1 effect. This didn't happen because the cars were  
2 positioned differently. Were the cars maybe more like  
3 this, or was this a little bit over here. We can play  
4 it until we're blue in the face. And exactly how they  
5 are positioned doesn't matter as much as the fact that  
6 one was in the position to get the damage and the  
7 other was probably in a position to get away because  
8 he realized they are not after me.

9 Counsel as soon as he said where is the firearms  
10 evidence, the casings, if there is automatic weapons.  
11 Well, he answered his own question, so he took away  
12 most of the thunder. I guess they could be revolvers,  
13 they don't leave the casings, they stay in the  
14 cylinder. He forgot Detective Sanchez, who has some  
15 familiarity with this, described you can set an  
16 automatic like a mag ten or uzi or whatever they call  
17 these automatics on single fire or you can hold the  
18 trigger and allow shots to be fired. The testimony  
19 from Kaylor was that, or Skabardis, if I am mistaken  
20 here, one of the two, I am not sure now because I am  
21 not perfect in my memory, was there was a slug that  
22 comes out of a shotgun. There is no evidence that  
23 shotgun casings are left, when a slug is fired at the  
24 end. There should bullets in the wall of the house,  
25 bullet damage, and there is no evidence the casings

1 fly out of those things. And there is the testimony  
2 of Skabardis that bullets can go a mile under the  
3 right circumstances, or at least a long distance.  
4 What about the bullets that are shot out of weapons  
5 that don't eject and that go three houses away. How  
6 far did the police search? And if we start putting  
7 metal detectors down in that area are we going to find  
8 enough metal to build a tank?

9 Rob Mason is attacked as a witness at the end.  
10 Counsel finished by really saying what he, I think the  
11 gist of the defense argument, he talked about the  
12 People's case being based on poor of quality witnesses  
13 or on the quality of those witnesses. Well, the  
14 quality of witnesses is not something managed or  
15 elected, it's who the people are that something  
16 happened to. Some of you disclosed, or maybe not you,  
17 but some other jurors who aren't in the group now, but  
18 during jury selection that some member of the family  
19 had been involved in some criminal activity or been  
20 convicted. In a group this large somebody is going to  
21 have some member of the family that has done something  
22 wrong and you know they have done something wrong.  
23 They might not have been caught or maybe they were or  
24 maybe they got a break or what have you. And we all  
25 know that every human being is capable of screwing up

1 and doing things wrong. But if it is a loved one of  
2 yours who has had a problem, does that mean that  
3 person never can't be relied upon to tell the truth or  
4 they can never be a victim? Aren't they a victim if  
5 somebody shoots at them and misses? Nobody checked on  
6 your quality as people to be jurors. In this case,  
7 Rob Mason produces rap music. Is that a musical style  
8 that talks about peace and tranquility and an  
9 appreciation for everything being done the right way?  
10 It's a type of music, occasionally it's filled with  
11 anger, social commentary, perhaps law enforcement or  
12 government or big business or oppression, and perhaps  
13 that's built in that man in a way that he speaks it,  
14 he lives it, he thinks like that, and his anger shows.  
15 He did get kind of, as he told you, Peter Rabbit  
16 should be punished for this, and he will be punished.

17 I hope you draw the line and stay on that side of  
18 the line as Mr. Mason did and let us do the justice as  
19 a jury. We know you are angry. We know this was  
20 senseless. But please stay on that side. It's our  
21 job to render a true verdict. You were victims of a  
22 crime, let us do the job we were appointed and sworn  
23 to do. The defense attorney did his job in our  
24 system. The defense attorney zealously represents the  
25 interests of the defendant and his story and his side

1 and his theory. It is a wonderful system because of  
2 the idea we're going to get at the truth by having two  
3 sides fight it out in front of a group you are of  
4 referees.

5 In this case, the only thing the defense can  
6 really say about Rob Mason and Anthony Thomas is that  
7 they are not the nicest people in the world, but  
8 that's about it. They are still victims of these  
9 crimes. If you have a reasonable doubt when all the  
10 deliberations are done and you have heard everybody  
11 and the conviction is in your own heart, not just  
12 because some other juror told you this, but because  
13 you have a reasonable doubt, the system works if you  
14 say not guilty. That's fine. Because cases are about  
15 truth.

16 The proof is here, and the People contend the  
17 only doubts that anybody can have are the doubts that  
18 exist in life, which is we would like it better, we  
19 would really like 100 percent. You were asked, you  
20 all had to consider that question, and you were asked,  
21 because the People cannot meet the burden of proof  
22 beyond all doubt or 100 percent. I am not trying to  
23 cut back on my duty. I am trying to highlight the  
24 fact that you made a commitment during jury selection  
25 to recognize, and the Court will give you the

1 instruction specifically, there is an impossible dream  
2 and impossible burden that we can't meet and we aren't  
3 required to meet.

4 The People have proven beyond a reasonable doubt  
5 the defendant is the man. He is identified. Please  
6 do your jobs. (CNS)

7 **MR. GUST:** May we approach, Your Honor?

8 **THE COURT:** You may.

9 (bench conference)

10 **THE COURT:** I am going escort the jury to the  
11 jury room for ten minutes, and then we will have you  
12 back for the instructions then.

13 (At 10:50 a.m., court recessed)

14 (At 11:10 a.m., court reconvened)

15 **THE COURT:** Please be seated.

16 We have come to that part of the case in which I  
17 will instruct you on the law as the evidence and  
18 arguments in this case are finished. That is, I will  
19 explain the law that applies to this case.

20 Remember that you have taken an oath to return a  
21 true and just verdict, based only on the evidence and  
22 my instructions on the law. You must not let sympathy  
23 or prejudice influence your decision.

24 As jurors, you must decide what the facts of this  
25 case are. This is your job, and nobody else's. You