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Respondent.

Electronically Filed
Mar 28 2016 09:46 a.m.
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Clerk of Supreme Court

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Case No. 68710

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1 BY MR. BATEMAN:

2 Q -- 127. Is this the pill bottle that was -- the
3 methamphetamine was found in?

4 A Can you lower it down just a little? There's two of
5 them. Yes, that's the one where the methamphetamine was
6 found.

7 Q And the label outside of the pill bottle was whose
8 name?

9 A Mr. Pimentel's.

10 Q Thank you. 128, is this the contents of the pill
11 bottle?

12 A Yes, it is.

13 Q All right. And more closely up 129, is that the
14 baggie that was in the pill bottle?

15 A Yes, it is.

16 Q And what was that -- that was the methamphetamine?

17 A Yes.

18 Q Okay. And in what form is that methamphetamine?

19 A Crystal meth.

20 Q You have a background in I think you testified as a
21 detective in narcotics?

22 A Yes, I do.

23 Q Okay. And you referred also to some paraphernalia,
24 140, what do we see in 140?

25 A There you're looking at a -- in the center of all

1 those burners is a small digital scale. In front of it on the
2 side, there's some small baggies. The baggies I referred to.

3 Q Closer-up version, 150; is that correct?

4 A Yes.

5 Q And the scale and the baggies are for what?

6 A You see those where methamphetamine dealers use
7 those to weigh out their product and then package it for sale.

8 Q And Exhibit No. 130; is that a close-up of the
9 baggies?

10 A Yes, that is.

11 Q Okay. And the -- these -- appears that there's two
12 sets of baggies; is that correct?

13 A It's hard for me to see from that photo, but yes.

14 MR. BATEMAN: May I approach the witness real quick?

15 THE COURT: Yes.

16 BY MR. BATEMAN:

17 Q Showing you 130. Is there two different sets of
18 baggies?

19 A Yes.

20 Q Okay. And one of them have -- have what type of
21 picture on them?

22 A One looks like a cougar, the other looks like an ice
23 cream cone.

24 Q Okay. You said these are -- are commonly used,
25 these types of baggies, this size, for sale of

1 methamphetamine?

2 A Yes.

3 Q And this search warrant was executed when?

4 A On the 22nd of December.

5 Q So sometime after the shooting, but on the same day?

6 A Yes. Just several hours that morning.

7 Q That was part of the -- overall investigation that
8 you conducted; is that correct?

9 A Yes.

10 Q Okay. And those items were impounded and ultimately
11 taken to the evidence vault?

12 A Yes.

13 Q Okay.

14 MR. BATEMAN: I'll pass the witness, Your Honor.

15 THE COURT: All right. Cross?

16 MS. LEMCKE: No cross, Your Honor.

17 THE COURT: May this witness be excused?

18 MR. BATEMAN: Yes, Your Honor.

19 THE COURT: Thank you very much for your testimony.

20 MR. BATEMAN: May I approach your clerk just to give
21 these photos back?

22 THE COURT: Yes.

23 MR. BATEMAN: Thank you.

24 THE COURT: Do you have any further witnesses?

25 MR. BATEMAN: We do not, Your Honor.

1 THE COURT: So the State's resting its rebuttal
2 case?

3 MR. BATEMAN: It is.

4 THE COURT: Okay. Counsel, approach for scheduling.
5 (Off-record bench conference.)

6 THE COURT: All right. Ladies and gentlemen, we're
7 just trying to figure out whether to have you come back
8 tomorrow or to give you a long weekend, because we are -- we
9 are not probably -- you're probably not going to be done by
10 tomorrow. And so we've opted to give you a four-day weekend.
11 Because I know you're tired.

12 And so, ladies and gentlemen, over this extended
13 recess, of course, as usual, you are not to discuss the case
14 or converse among yourselves with anyone else on any subject
15 connected with the trial or to read, watch, or listen to any
16 report of or commentary on the trial by any person connected
17 with the trial or by any medium of information, including,
18 without limitation, newspaper, television, radio, or Internet,
19 and you're not to form or express an opinion on any subject
20 connected with this case until it's finally submitted to you.

21 And I want you here on Tuesday at 10:00. That way
22 you don't get caught in the rush hour traffic. So I'll see
23 you on Tuesday. And have a wonderful weekend.

24 (Jury recessed at 4:23 p.m.)

25 THE COURT: All right. The record will reflect the

1 jury has departed the courtroom. Are there any matters we
2 want to make a record of concerning any bench conferences that
3 you wish to --

4 MR. SLIFE: No, Your Honor.

5 MS. LEMCKE: Oh, yeah.

6 THE CLERK: I have something real quick. Mr.
7 Bateman, did you have more exhibits?

8 MR. BATEMAN: No.

9 THE CLERK: Then I --

10 MR. BATEMAN: What are you missing?

11 THE CLERK: I misnumbered them. So they probably
12 will go to 146, not 156.

13 MR. BATEMAN: That's fine.

14 THE COURT: All right. So it'll be --

15 THE CLERK: Or 140 --

16 THE COURT: -- 124 to 140?

17 THE CLERK: Once I'm -- once I get it straightened
18 out, I'll -- I'll let them know the bottom line.

19 THE COURT: Okay.

20 THE CLERK: I think...

21 THE COURT: All right. Ms. Lemcke?

22 MS. LEMCKE: Your Honor, just with respect to Ms.
23 Salazar's testimony, we objected to her being called as a
24 rebuttal witness. Two things. One is some of the -- the F-U
25 Bobby comments that came out in the State's case in chief,

1 Amanda testified to the contrary. So it's not rebuttal if
2 they already put it in. That's No. 1.

3 And No. 2 is with respect to the, you know, if Bobby
4 -- or if Lorenzo doesn't take care of Bobby, my uncle will,
5 it's our position that No. 1, that it is a collateral matter
6 that to the extent that the State wants to bring that in as a
7 prior inconsistent statement after they asked Amanda about
8 that, it is collateral because there was no showing that Mr.
9 Pimentel was in on -- or was aware of Amanda's thoughts in
10 that regard or was in on some grand scheme or plan to get
11 Bobby.

12 And so it was of limited relevance -- well, it was
13 irrelevant, and it certainly was collateral to the issues in
14 this case and to that end, even if it was a prior inconsistent
15 statement, they couldn't have proven it up by extrinsic
16 evidence. So on those bases, we objected.

17 MS. DiGIACOMO: Your Honor, during our case in
18 chief, the witness did get out the fuck Bobby comment, and
19 then when I tried to correct -- and they didn't object to that
20 as hearsay. And then when I tried to use her statement to get
21 out the -- what she had told the police, they objected to
22 hearsay, I wasn't allowed to do it.

23 I did ask -- what I asked Shannon, I did ask Amanda,
24 and she denied -- she denied saying that comment. She denied
25 saying that if Lorenzo doesn't get Bobby tonight, then my

1 uncle will tomorrow.. And I can't remember what the third
2 thing I -- I asked her was. But she denied that, as well.

3 All of those are important and they're prior
4 inconsistent statements, they are not collateral evidence, and
5 you've mentioned before that we should have been bringing
6 Motions in Limine. That comment about if Lorenzo doesn't get
7 Bobby tonight, my uncle will tomorrow, has been in the
8 recorded statement that the defense has had for probably close
9 to a year and a half now.

10 And it is relevant, because it's what's going on at
11 that time. We established with Amanda that she picks Lorenzo
12 over her -- over Bobby, the guy she'd only known for a couple
13 days she picks over her friend, her best friend that she said
14 she was inseparable to for five years. So if there's an
15 insinuation that possibly Amanda and Lorenzo had talked about
16 what course of action they were going to take tonight, that's
17 what it -- it infers. And there's evidence to support it. So
18 it's not collateral evidence.

19 THE COURT: All right. Well, I -- I would agree --
20 well, first of all, it is -- it was an inconsistent statement
21 that had been asked to Amanda when she was on the stand in the
22 defense's case. She denied making the statement. Believe it
23 is relevant. There was testimony in the case in chief by the
24 State that there had been whispering by -- between Amanda and
25 the defendant in the back seat while they were driving to the

1 Siegel Suites. Both of them denied that. Both the defendant
2 in his testimony and Amanda, both witnesses being in the --
3 the defense case.

4 And so the State's also charged this -- State's
5 charged this as open murder. And if they want to argue that
6 there was premeditation, then it goes to, theoretically that,
7 whether or not, you know, it -- the jury believes it is up to
8 the jury. But I think that -- that potentially goes to that.
9 It also goes to the credibility of Amanda and the defendant.
10 So for those reasons I allowed it in.

11 And, you know, the issue about it being collateral
12 and extrinsic evidence, I think you're maybe thinking about
13 the rules concerning character evidence and opinion testimony
14 regarding witnesses. And then yes, you cannot bring in
15 extrinsic evidence to impeach a witness regarding opinion
16 testimony, you know. But this is not -- this was not opinion
17 testimony. There was never any opinion testimony. This
18 wasn't extrinsic evidence. So that's why I denied your
19 objection.

20 You'd also asked for recess, you could go look it up
21 in the -- the statutes. I gave you my statute book. I think
22 actually the sections you're thinking of are probably in
23 Chapter 48. I have Volume 4 here on my bench, which starts
24 with Chapter 49, which is privilege and the character evidence
25 is in another -- the other section. I believe it's 48.

1 So anyway, the time to be remembering the rules of
2 evidence are not -- it's not -- you know, you don't get to
3 research rules of evidence when we're in the midst of trial
4 and it just had come in off a 20-minute recess. So that's why
5 I did not allow you to have another recess.

6 I think that covers it.

7 MS. LEMCKE: And I just make -- just want to make
8 the record that to the extent that we're not allowed time --
9 to have time. I -- I didn't know that -- and we had had a
10 prior recess, I didn't know that the full extent of her
11 testimony necessarily before the recess to have thought to go
12 research it. So that's why I asked for the additional time.

13 THE COURT: I understand. Trial counsel's expected
14 to know the rules of evidence, however.

15 All right. Thank you. How about jury instructions
16 settling tomorrow morning. Can you meet with me?

17 MR. BATEMAN: Absolutely.

18 MS. LEMCKE: Uh-huh.

19 THE COURT: All right. What time is good vis-à-vis
20 any children responsibilities?

21 MS. DiGIACOMO: Well, I can get here by 9:00.

22 THE COURT: Okay.

23 MS. DiGIACOMO: Because I have to take my kids to
24 school in the morning.

25 MS. LEMCKE: And I have to take my daughter -- yeah,

1 same with me, Your Honor. I have to drop her off by 8:15
2 tomorrow, so I can be here by 9:00.
3 THE COURT: Okay. I'll see you at 9:00.
4 MS. DiGIACOMO: We're not leaving.
5 THE COURT: Okay. You can -- well.
6 MS. DiGIACOMO: Do you want to just do it here?
7 MS. LEMCKE: Yeah, let's do it now.
8 MS. DiGIACOMO: Okay.
9 THE COURT: Well, you can only stay here how long,
10 Marshal? How long --
11 MS. DiGIACOMO: You know what, let's just go down
12 the [indiscernible].
13 MR. BATEMAN: Well [indiscernible].
14 MS. LEMCKE: Yeah, that's fine.
15 MS. DiGIACOMO: Go down to [indiscernible].
16 THE COURT: It's -- you really can't stay here past
17 5:00.
18 MS. LEMCKE: Well, how about the conference room
19 right down here?
20 MS. DiGIACOMO: Well, he has to lock everything up.
21 But our conference room, we -- we can go stay in there.
22 MS. LEMCKE: Oh. Okay.
23 MS. DiGIACOMO: Yeah, we've got one on the third
24 floor.
25 MS. LEMCKE: Okay.

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1 THE CLERK: Those exhibits ended up being to 137. I
2 just jumped a whole 10 whatever.

3 THE COURT: Okay. 124 to --

4 THE CLERK: 137.

5 THE COURT: Okay. And those were admitted with
6 Detective Williams.

7 THE CLERK: Yes.

8 THE COURT: All right. Thank you.

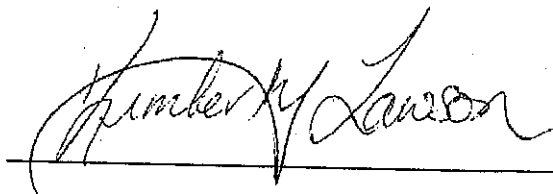
9 MR. BATEMAN: Thank you.

10 THE COURT: Off the record.

11 (Court recessed for the evening at 4:32 p.m.)
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ACKNOWLEDGMENT:

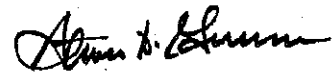
Pursuant to Rule 3C(d) of Nevada Rules of Appellate Procedure, this is a rough draft transcript expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON
TRANSCRIBER

UNCERTIFIED ROUGH DRAFT

TRAN



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C296234-1
)	DEPT NO. V
vs.)	
)	
LUIS PIMENTEL, AKA,)	TRANSCRIPT OF
LUIS GODOFREDO PIMENTEL, III)	PROCEEDINGS
)	
Defendant.)	

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 10

FRIDAY, MAY 22, 2015

APPEARANCES:

For the State:	SANDRA K. DIGIACOMO, ESQ. SAMUEL G. BATEMAN, ESQ. Chief Deputy District Attorneys
For the Defendant:	NANCY L. LEMCKE, ESQ. CONOR M. SLIFE, ESQ. Deputy Public Defenders

RECORDED BY LARA CORCORAN, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

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1 LAS VEGAS, NEVADA, FRIDAY, MAY 22, 2015, 11:23 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 MS. LEMCKE: Is this the complete set with the
5 inserted?

6 THE COURT: All right. We are on the record in Case
7 No. C14296234, State of Nevada vs. Luis Pimentel. Defendant
8 is not present. And are you awaiting his presence for purpose
9 of just putting on the record the instructions to the jury?

10 MS. LEMCKE: Yes, Your Honor.

11 THE COURT: All right. Thank you. And we are, of
12 course, outside the presence of the jury. And both counsel
13 for defense are here, both the prosecutors are here, all
14 officers of the court. And are counsel familiar with
15 Instructions numbered 1 through 37? Yes?

16 MS. DiGIACOMO: Yes.

17 MR. BATEMAN: Yes, Your Honor.

18 MS. LEMCKE: Yes, Your Honor.

19 THE COURT: Does the State object to giving of any
20 of those instructions?

21 MR. BATEMAN: No, Your Honor.

22 THE COURT: Does the State have any additional
23 instructions to propose?

24 MR. BATEMAN: We just have the -- I think the only
25 two that we had kind of proposed, Your Honor, was one that

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1 addressed mental health and capacity as it relates to first,
2 second, and manslaughter. Our proposal was to try to address
3 the PTSD issues that were brought up in this case and how they
4 might be utilized in argument. And our position was that they
5 can only be utilized from first to second. And we're trying
6 to clarify that they can't be utilized for manslaughter.

7 I think the Court found our instruction to be a
8 little bit confusing. And so we did try to incorporate some
9 of those elements into other instructions that are in the
10 packet that we're not objecting to, so I just want to make a
11 record of that.

12 THE COURT: Okay. But if you want to make a record
13 as to an additional instruction you want to propose, then you
14 need to tell me what exactly it is. We need to mark it.

15 MR. BATEMAN: Do you want me to mark that one that
16 we just had?

17 THE COURT: Yes.

18 MR. BATEMAN: Okay. May I approach?

19 THE COURT: Yes.

20 MR. BATEMAN: Want me to -- are you going to mark
21 them as Court exhibits?

22 THE CLERK: She signs them.

23 MR. BATEMAN: I just want -- just to have that.

24 THE COURT: Okay. So I'm -- this is the instruction
25 that read, "In the crime of first degree murder of which

1 defendant is accused in Count 1 of the information, a
2 necessary element is the existence in the mind of defendant
3 the specific intent to wilfully, with premeditation and
4 deliberation, kill. You may consider evidence of defendant's
5 mental condition as to whether at the time of the offense
6 defendant acted with the requisite intent to commit the crime
7 charged. You are not to consider whether the defendant had
8 the capacity to form such intent, only whether the defendant
9 had such intent in commission of the acts that constitute the
10 offense.

11 "The conclusion as to whether defendant acted with
12 such intent is a question for the jury and you should
13 disregard any opinions as to whether defendant acted with or
14 such intent or had the capacity to form that intent. You are
15 to decide whether defendant acted with such intent, evidence
16 of defendant's mental condition may not be considered to
17 reduce murder to manslaughter."

18 And I'm not going to give this instruction, because
19 I thought it was not only confusing, but in part, not an
20 accurate statement of the law. That obviously intent does
21 have a bearing of the different degrees of -- of murder in
22 this case with the exception of challenge to fight where the
23 only intent that's required is intent to do the challenge.

24 MR. BATEMAN: We -- and we --

25 THE COURT: And so --

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1 MR. BATEMAN: -- we were just concerned, as we said
2 the other day, we weren't sure exactly how the PTSD was going
3 to play in.

4 THE COURT: Correct. And I think that we have now
5 through discussions and settling the instructions come up with
6 other instructions that do address that. But if you want to
7 offer this as -- to be given, I'll note that it's not being
8 given.

9 MR. BATEMAN: Thank you, Your Honor.

10 THE COURT: So it'll be part of the record. Okay.
11 I'm going to sign it, I've noted offered by State but not
12 given, and I'm signing it. All right. And it'll be filed.

13 And does the defendant object to giving of any of
14 the instructions 1 through 37?

15 MS. LEMCKE: We do, Your Honor.

16 THE COURT: Go ahead and tell me which ones.

17 MS. LEMCKE: Okay. Let's -- let's see here.
18 Instruction -- on Instruction No. 8, the definition of
19 premeditation, it's our position -- and I understand that this
20 definition is authorized by Nevada authority -- but it's our
21 position that the definition as currently constituted does not
22 adequately distinguish between first and second degree murder
23 to the extent that it allows for premeditation to be formed as
24 quickly as successive thoughts of the mind, if there needs to
25 be some other reflective process that occurs similar to what

1 we now have in deliberation, such that there is a -- a clear
2 distinction between first and second.

3 So based on that, I would submit it, Your Honor.

4 THE COURT: All right. And the State's response?

5 MR. BATEMAN: We'll just -- I think the existing
6 case law, this tracks existing case law.

7 THE COURT: Okay. And that was the reason I elected
8 to give Instruction No. 8.

9 Okay. And what's the next one you're objecting to?

10 MS. LEMCKE: Again, just for the record, on 11, you
11 know, going back to our Mandamus petition on the challenge to
12 fight language, just again, for the record, it was our
13 position that challenge to fight is -- does not amount to
14 felony murder as -- is not one of the felonies that is
15 delineated in the felony murder component of the first degree
16 murder statute. And to that end, I just wanted to make sure
17 that the record was clear that we were waiving any prior
18 objections with respect to that liability theory.

19 So we would just object to the challenge to fight --

20 THE COURT: All right. And --

21 MS. LEMCKE: -- foundation and that -- be -- the
22 jury being instructed accordingly, I guess. Does that makes
23 sense?

24 THE COURT: Sure. And the Court's -- the reason the
25 Court's giving this is that it does accurately define the

1 challenge to fight, which can be treated as first degree
2 murder pursuant to NRS 200.450. It is its own -- while it
3 does certainly have the same components of the felony murder
4 rule in that, like the felony murder rule, malice is implied,
5 by virtue of the challenge of the intent to challenge, and the
6 resulting death, it's not incorporated in the same statute.
7 It's a separate statute. But that doesn't mean that it is
8 without merit. So it's still -- I believe this is a proper
9 instruction and that's why I'm giving it.

10 What's your next one?

11 MS. LEMCKE: And, Your Honor, just -- let me just
12 make the record clear, just so I don't get yelled at by our
13 appellate deputies, of which I was one not too long ago. And
14 -- and on Instruction No. 11, we also specifically object to
15 the incorporation of that language regarding that you just
16 mentioned that talks about the class of murder carrying with
17 it conclusive evidence of premeditation, deliberation, and
18 malice aforethought. We also specifically object to that
19 language, as well as just the jury being instructed on
20 challenge to fight in and of itself. Because, again, as Your
21 Honor pointed out, that language does apply to the felonies
22 enumerated in the felony murder statute of which this simply
23 is not one. I just wanted to make it clear that the --

24 THE COURT: Okay.

25 MS. LEMCKE: -- objection encompasses that language,

1 as well.

2 THE COURT: All right. So that's fine that for --
3 further clarification on that. Just wanted to say that the
4 same -- the analysis that -- misplaced the case, but in the
5 Nay case -- here it is -- which is Nay vs. State, 123 Nev.
6 326, 167 P.3d, 430 (2007) case where they talk about the
7 rationale behind the felony murder rule and the legal fiction
8 involving that rule, that the intent to commit the felony
9 supplies the malice for the murder.

10 I think the same -- of course, the statute itself
11 defining murder and -- which incorporates the felony murder
12 rule doesn't say any of that. That's a matter of common law.
13 And that is, I believe, the same analysis that you have to go
14 through when -- in analyzing the challenge to fight. That the
15 legislature decided that they were going to create a crime
16 where if a death arose as a result of a challenge to fight,
17 either making the challenge or receiving the challenge, or for
18 that matter, involving yourself as an agent of people who make
19 or receive a challenge to fight, and ultimately the fight
20 results in a death, that the people are involved -- who are
21 involved will be guilty of first degree murder, and that they
22 did that specifically.

23 And so I think like the felony murder rule, like
24 similar statutes where they have expanded the -- the felony
25 murder rule by statute, that the same analysis carries

1 through. And so that's just to further expand the Court's
2 reasoning and so why I gave that instruction.

3 What's your next instruction? N-A-Y.

4 MS. LEMCKE: And then on No. 12, Your Honor, and I
5 know that there is prevailing United States Supreme Court
6 authority that authorizes an instruction that allows the jury
7 to return a -- a verdict of first degree murder, even though
8 there's no unanimity as to the liability theory, it's our
9 position that in the wake of more recent Supreme Court
10 jurisprudence that talks about -- that speaks to the nature of
11 the proof beyond a reasonable doubt requirement as to elements
12 of criminal offenses, that this -- that there should be
13 unanimity as to any one liability theory before a jury can
14 convict on a first degree murder.

15 And so I would submit it on that.

16 THE COURT: Okay. And, of course, this is the -- a
17 correct statement current law and so that the trial court
18 isn't -- does not feel at liberty to change that at this time.

19 What's your next one?

20 MS. LEMCKE: And then just on Jury Instruction No.
21 18, it just remove the definition of a deadly weapon from the
22 statute and to the extent that they have to find those
23 elements, it would -- it was our position that they should
24 have been included. The statutory definition of deadly weapon
25 should have been included.

1 And submit it on that.

2 THE COURT: All right. Okay. So here's my
3 question, though. When we were settling instructions, I asked
4 if you wanted the elements of the crime of -- or -- or the
5 definition, I should say, the statutory definition of deadly
6 weapon. I was fine with giving that. But I -- it didn't make
7 any sense to me to say you were instructed that a firearm is a
8 deadly weapon. And I believe the defense conceded that there
9 is no -- they have no dispute that a firearm is a deadly
10 weapon. If a firearm is a deadly weapon and we're going to
11 put language in that says, You're instructed that a firearm is
12 a deadly weapon, it seems superfluous to give the jury the
13 definition of a deadly weapon.

14 MS. LEMCKE: Right. And -- and what I meant to say,
15 and maybe I did it very inartfully, is that I understand Your
16 Honor's point and I think the point is very well taken.
17 However, in a case as serious as this, I don't want to do
18 anything that might be seen as removing the jury's
19 consideration of the elements as they are defined by statute.
20 So that was just the basis of my request, that it be left in.

21 That said, I -- I certainly understand the point,
22 the Court's position. I'm not saying that I think it's
23 unreasonable. I just have to make my record.

24 THE COURT: But you concede that it -- that a
25 firearm is a deadly weapon?

1 MS. LEMCKE: Well, yes, to the extent that it is
2 defined by statute as such, yes.

3 THE COURT: All right. Next one?

4 MS. LEMCKE: And this one, again, we're objecting to
5 challenge to fight -- that that liability theory should even
6 go to the jury. And then secondly, I object to the language
7 that tells them as a matter of law that self-defense is not
8 available under that liability theory.

9 MR. BATEMAN: That was No. 19?

10 THE COURT: Right.

11 MS. LEMCKE: Oh, I'm sorry, No. 19. Forgive me.

12 THE COURT: That was No. 19.

13 MS. LEMCKE: I said 18, I meant 19.

14 THE COURT: Okay. And of course, you've already
15 discussed the reasons for why I think that the statute is
16 valid. But additionally, the -- the language of the right of
17 self-defense is not available to someone who engages in a
18 challenge to fight and a death results. There is case law
19 that indicates that provisions of the statute in that regard
20 could not be considered ambiguous with -- with respect to the
21 unavailability of defense of self-defense on the facts of the
22 case.

23 So if, in fact, the jury does find first degree
24 murder under the challenge to fight theory, assuming that the
25 State proves beyond a reasonable doubt to the satisfaction of

1 the jury, each of the elements of challenge to fight, then the
2 self-defense is not a -- it is not a defense to that.

3 Those cases, Wilneth [phonetic] vs. State, 96 Nev.
4 403, also cited in Princess C. Industries, Inc., vs State.
5 There's Carlisle vs. State, 98 Nev. 128, Sheriff vs. Washoe
6 County vs. Martin -- Sheriff of Washoe County vs. Martin, 99
7 Nev. 336, Sheriff vs. Luqman, L-U-Q-M-A-N, 101 Nev. 149,
8 Sheriff vs. Vlasak, V-L-A-S-A-K, 111 Nev. 59, Williams vs.
9 State 118 Nev. At 536, and potentially also Gallegos vs.
10 State, 123 Nev. 289.

11 So that's why I'm giving that instruction. Were --
12 was there any other case citations you wanted to --

13 MR. BATEMAN: No, I was mostly concerned with the
14 first one you stated, which you already stated for the record,
15 Your Honor.

16 THE COURT: Okay. All right. Any others?

17 MS. LEMCKE: Okay. No. 20. Again, and I understand
18 that this language is authorized by Runion vs. State.
19 However, the last paragraph in particular, "An honest but
20 reasonable belief in the necessity for self-defense does not
21 negate malice and does not reduce the offense from murder to
22 manslaughter." I -- that is, No. 1, it's superfluous, and No.
23 2, I -- I think it's just flat wrong. They -- it absolutely
24 could negate malice and reduce an offense from murder to
25 manslaughter if somebody honestly, genuinely believes that

1 they are acting in the right, even if, you know, it turns out
2 that what they did did not legally amount to self-defense, it
3 certainly could negate malice and reduce an offense from
4 murder to manslaughter.

5 So I understand again it's authorized by current
6 prevailing authority. I just -- it's out position that that's
7 an inaccurate statement of the law.

8 THE COURT: And, of course, the -- the difference is
9 the unreasonable language that -- so it's only if it's an
10 unreasonable belief using the reasonable person standard. So
11 that is the law as it's currently stated, so that's why I'm
12 giving it.

13 And next one?

14 MS. LEMCKE: And then No. 21, I would object to this
15 original -- oh, wait. Hang on, I want to make sure this isn't
16 the standard -- this is the standard -- okay.

17 Court's indulgence. Because I messed this up when
18 we were going through.

19 Yeah. Okay. So I see where I was with this last
20 time. So that last -- the second sentence of this -- the
21 stand your ground component of it, I don't have a problem with
22 it. It's just the -- the preparatory language that talks
23 about the right of self-defense is not generally available to
24 an original aggressor. Generally available and original
25 aggressor are kind of vague terms. And, you know, the right

1 of self-defense is available if somebody -- if somebody were
2 to attack an individual, regardless of how the attack started
3 through an exchange of words or whatever, and then somebody
4 has the right to defend themselves once they are confronted
5 with a, you know, a threat of serious bodily injury or death.

6 So this language, again, I know while authorized, I
7 think this comes out Runion, I just don't think it is a
8 correct statement of what the law should be, you know, at
9 least in terms of that first sentence.

10 MS. DiGIACOMO: Your Honor, with regards to this,
11 I'll make a record, her objection to the original aggressor
12 language generally not being available, if you recall, there
13 was a middle paragraph that was deleted where it talked about
14 an original aggressor when that person could use self-defense,
15 and then another instruction that followed this that was taken
16 out. So she wanted that out. So for her to object to this
17 language that's still left in seems disingenuous.

18 THE COURT: Okay. What was the language that was
19 taken out?

20 MS. DiGIACOMO: It was the language that you found
21 that wasn't in Runion and it talked about the original
22 aggressor.

23 THE COURT: Right.

24 MS. DiGIACOMO: When they could get the
25 self-defense. I forgot the exact.

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(Pause in proceedings.)

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THE COURT: Oh. Okay. So the language was, "The original aggressor is only entitled to exercise self-defense if he makes a good faith endeavor to decline any further struggle before the mortal blow was given."

MS. DiGIACOMO: And then there's the -- the instruction that came after, the -- the next one we took out, as well. The next-in-order.

THE COURT: Yeah. That's the one that said, "If a person kills another in self-defense, it must appear that the danger was so urgent and pressing that in order to save his own life or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary, and the person killed was the assailant, or that the slayer had really and in good faith endeavored to decline any further struggle before the mortal blow was given." Those are both those -- okay.

Does -- would that change the defense argument? The reason I did not give these was this -- the State couldn't prove me -- provide me with any authority as to where that came from. And --

MS. DiGIACOMO: And it was our position it wasn't applicable to the facts here.

MS. LEMCKE: Is it -- okay. Is this the one -- so this -- this stand your ground originally had that language that was in it -- okay. Then that's right. She's right.

1 I'll withdraw that, Your Honor.

2 THE COURT: Okay.

3 MS. LEMCKE: I just didn't -- I had them confused.
4 I didn't realize that this was the stand your ground one that
5 we took the language out of. Forgive me. That's -- I'll just
6 withdraw it.

7 THE COURT: All right. So you withdraw the
8 objection to 21?

9 MS. LEMCKE: Yeah.

10 THE COURT: Okay.

11 MS. LEMCKE: Yeah. Yeah, she -- that's correct.

12 THE COURT: Okay. What's your next?

13 MS. LEMCKE: Again, just for the record, on 25, I
14 know that prevailing authority authorizes the flight
15 instruction. It's our position that it unduly highlights one
16 component of all the evidentiary presentation to that. And we
17 would object to it.

18 THE COURT: All right. And I think that the -- the
19 instruction does accurately state the law and the fact that it
20 indicates whether or not evidence of flight shows a
21 consciousness of guilt and the significance to be attached to
22 such circumstances or matters for your deliberation. And so
23 that then, basically, I think, ameliorates against any
24 unnecessary -- unnecessary highlighting, makes it clear to the
25 jury that it's just a fact that they can consider. So that's

1 why I'm giving that one.

2 What's next?

3 MS. LEMCKE: I think that's it. I'm flipping
4 through, but I think that's it.

5 THE COURT: And does the defendant have additional
6 instructions, any additional instructions?

7 MS. DiGIACOMO: Oh, my gosh.

8 MS. LEMCKE: Oh, my God, you guys, I'm scared.

9 MS. DiGIACOMO: That's an earthquake.

10 MS. LEMCKE: That's an earthquake. I'm scared.

11 THE MARSHAL: It's still going right now.

12 MS. LEMCKE: You guys, I'm scared.

13 THE COURT: All right. We're on the 16th floor. So
14 it's just probably --

15 MS. LEMCKE: So we'll be on top of everyone else.

16 THE COURT: No, it'll be swaying longer.

17 (Pause in proceedings.)

18 MS. LEMCKE: Yeah, the swaying motion was just --
19 and then all I kept thinking about was how, you know, all of
20 the construction litigation.

21 MS. DiGIACOMO: Do we have to be here for this?

22 THE COURT: We're back on the record after a brief
23 earthquake. So does the defendant have any additional
24 instructions to propose?

25 MS. LEMCKE: Yes, Your Honor. Okay. Do you -- did

1 you number the additional ones? I got clean copies of them,
2 but they're not numbered. Do you want to just ---

3 THE COURT: No, I did not number them. But ---

4 MS. LEMCKE: I mean, I can --- do you want me to
5 argue them or do you want to just submit them? I mean, I
6 guess I need to say something?

7 THE COURT: I think we need to put on the record why
8 you want them ---

9 MS. LEMCKE: Okay. Can we go --- may I approach
10 and ---

11 THE COURT: That won't take --- yeah.

12 (Pause in proceedings.)

13 MS. LEMCKE: Okay. Defense Proposed No. 1 is
14 Justifiable Homicide as defined by statute. It's our position
15 that's a slightly separate concept from self-defense, even
16 though there is some incorporative language in there regarding
17 self-defense. So to the extent that the statute avails him of
18 -- our client of the right to proffer this, Hicks vs.
19 Oklahoma, which is a U.S. Supreme Court case, says that the
20 deprivation of any statutorily creative liberty interest
21 amounts to due process violation.

22 So it's our position, one, we're entitled to it by
23 statute, and two, by not giving it, there's a due process
24 violation that's occasioned.

25 THE COURT: Okay. And did the State want to have ---

1 MS. DiGIACOMO: Your Honor, was that 12 -- 120?

2 MS. LEMCKE: Yeah, this is -- here. Justifiable
3 Homicide. It's a statutory definition.

4 MS. DiGIACOMO: And, Your Honor, our -- our issue --
5 issue with this is it's the no due duty of retreat when you're
6 in your dwelling. These facts don't even apply here. Plus,
7 what, you know, does apply with regard to that has already
8 been incorporated into Runion.

9 THE COURT: In the Runion instructions that have
10 been given, yes.

11 MS. DiGIACOMO: That -- that are in your packet.

12 THE COURT: Yes. Correct. Okay. All right.

13 MS. DiGIACOMO: And then --

14 THE COURT: And that's why the Court didn't give it.

15 MS. LEMCKE: Same argument with respect to Defense
16 Proposed No. 2.

17 THE COURT: Okay. And that same reasoning for --

18 MR. BATEMAN: Yes.

19 MS. DiGIACOMO: Yes, on 160. Yeah.

20 THE COURT: Correct.

21 MS. DiGIACOMO: Yeah. Because it's already --

22 THE COURT: It's got --

23 MS. DiGIACOMO: -- been incorporated.

24 THE COURT: That's a statutory definition, as well.

25 And it's incorporated in the Runion.

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1 MS. LEMCKE: And same argument as No. 3.

2 MS. DiGIACOMO: Yeah, right.

3 MS. LEMCKE: That's statutory.

4 MS. DiGIACOMO: Right.

5 MS. LEMCKE: That's -- that's one something -- I
6 don't -- I don't have my copies.

7 MS. DiGIACOMO: Actually, No. 3 is -- it's based on
8 -- I think this is 150, it's "All other instances which stand
9 upon the same footing of reason and justice as those
10 enumerated shall be considered justifiable or excusable
11 homicide." And we objected to that, because they've already
12 been instructed as to what's relevant here.

13 THE COURT: Right.

14 MS. DiGIACOMO: And we don't have excusable homicide
15 in this case. We just have the justify with the self-defense
16 hit.

17 THE COURT: Yes. And, well -- and additionally, the
18 -- the Supreme Court has said time and again that it's up to
19 trial courts to give jury instructions that are clear and not
20 confusing. And just giving the statutory definition,
21 especially when the language of the statute is very
22 antiquated, can be that confusing and not helpful. And so
23 that statute -- that instruction wasn't given for that reason,
24 either.

25 MS. LEMCKE: And then skipping to -- I would ask

1 Your Honor to skip to Defense Proposed 6 and 7, because they
2 pertain to the proceeding instructions. Defense Proposed
3 Exhibit 6 says, "You are instructed that assault with a deadly
4 weapon, battery with use of a deadly weapon, battery
5 substantial, and attempt murder and murder are all felonies."
6 The reason we put that in there is because, you know, the
7 statutory language of one other proceeding that we offered
8 references, you have the right to, you know -- you know,
9 attack your assailant, basically, if they're trying to
10 perpetrate a felony on you.

11 So this was just to delineate what felonies might
12 apply in that situation. So that's what this was.

13 MS. DiGIACOMO: Yeah. And for the record, that goes
14 back to Defense Proposed Exhibit No. 1, which is the no due
15 duty --

16 MS. LEMCKE: Correct.

17 MS. DiGIACOMO: -- in your habitat -- in your
18 dwelling.

19 THE COURT: Correct. And that's why it wasn't
20 given. Because we weren't giving --

21 MS. LEMCKE: Let me just make sure --

22 THE COURT: -- the other instruction, either.

23 MS. LEMCKE: Okay. And then there was one more that
24 related to that. Oh, yeah, and then defense Proposed No. 7,
25 this is again the one that -- this is articulating the State's

1 burden to disprove self-defense beyond a reasonable doubt. I
2 had added that self-defense or justifiable homicide to the
3 extent that the justifiable homicide instructions had been
4 given. So No. 7 kind of relates back to the justifiable
5 homicide instructions that we proffered.

6 Then Instruction No. 8, which was two reasonable
7 interpretations, I'll call it for the record. You know, it's
8 our position that it's a correct statement of the law. Nevada
9 Supreme Court said it's not error to give it. And
10 particularly in this case, where you have, you know, issues
11 regarding, you know, how the offense occurred and whether or
12 not it amounts to self-defense and/or first degree versus any
13 of the lesser forms. This is particularly compelling, so we
14 would ask Your Honor to give it.

15 THE COURT: Okay.

16 MS. DiGIACOMO: And, Your Honor, actually, our --
17 our Supreme Court here said it's not error not to give it.
18 Doesn't say it's error to give it. But -- oh, I'm sorry.
19 Sorry.

20 Our Supreme Court here said it's not error not to
21 give it. And I'm looking for the Bales -- Bales [phonetic]
22 vs. State, which is 92 Nev. 95. And our biggest issue with
23 this, this is a CALJIC instruction, 2.01. It is based upon
24 sufficiency of circumstantial evidence at trial. Nowhere in
25 their proposed instruction does it even mention circumstantial

1 evidence.

2 Furthermore, they don't include the second paragraph
3 that comes with this instruction. And this is specifically
4 regarding circumstantial evidence, whether those permit two
5 reasonable interpretations, which they've left out. So it's
6 -- in our position, an improper statement of the law. It also
7 comments on reasonable doubt, which our Supreme Court has made
8 clear here how to instruct on that. So we'll submit it on
9 that.

10 THE COURT: And for all those reasons recited by the
11 State, that's why I don't give that instruction in cases.

12 MS. LEMCKE: And then I think we're done.

13 MS. DiGIACOMO: Did you get -- did you state which
14 the other proposed were just your proposed Runion which were
15 already in there?

16 THE COURT: Yes.

17 MS. DiGIACOMO: Okay.

18 THE COURT: I think she's --

19 MS. LEMCKE: Yeah.

20 THE COURT: -- has covered all the additional
21 instructions that defense wanted to propose. And do either
22 counsel request the Court instruct the jury before closing
23 arguments?

24 MS. DiGIACOMO: Yes.

25 THE COURT: All right. We'll do that. Okay. We're

1 off the record. Thank you.

2 (Court recessed for the evening at 11:59 a.m.)

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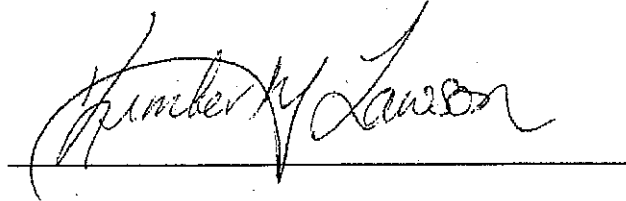
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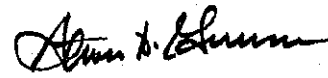
ACKNOWLEDGMENT:

Pursuant to Rule 3C(d) of Nevada Rules of Appellate Procedure, this is a rough draft transcript expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON
TRANSCRIBER

UNCERTIFIED ROUGH DRAFT



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
LUIS PIMENTEL, AKA,)
LUIS GODOFREDO PIMENTEL, III)
)
Defendant.)

CASE NO. C296234-1
DEPT NO. V

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 11

TUESDAY, MAY 26, 2015

APPEARANCES:

For the State:

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SAMUEL G. BATEMAN, ESQ.
Chief Deputy District Attorneys

For the Defendant:

NANCY L. LEMCKE, ESQ.
CONOR M. SLIFE, ESQ.
Deputy Public Defenders

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I N D E X

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1 LAS VEGAS, NEVADA, TUESDAY, MAY 26, 2015, 10:00 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: Good morning.

5 MR. SLIFE: Good morning, Your Honor.

6 THE COURT: You all had a good weekend? We've got
7 all our jurors.

8 Is there anything outside the presence before we
9 bring them in?

10 MS. LEMCKE: No, Your Honor.

11 MR. BATEMAN: No, Your Honor.

12 THE COURT: All right. Okay. Let's bring the jury
13 in.

14 (Jury reconvened at 10:00 a.m.)

15 THE COURT: Thank you. Please be seated. And this
16 is the continuation of State of Nevada vs. Luis Pimentel, Case
17 No. C296234. The record will reflect the presence of the
18 defendant with his counsel, the deputies district attorney
19 prosecuting the case, all officers of the court, all 12
20 members of the jury, and the two remaining alternates. Will
21 counsel so stipulate?

22 MR. BATEMAN: Yes, Your Honor.

23 THE COURT: All right. How's everybody doing?
24 Good? All right.

25 So ladies and gentlemen, I'm going to now read you

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1 the jury instructions. Of course, I think I told you before
2 we started that I would like to instruct you orally on these
3 things. But every word of instructions are important. The
4 lawyers and I have worked very hard on putting these
5 instructions together for you and so they have to be read.

6 Please do not worry about taking notes, because you
7 will have the written jury instructions with you in the
8 deliberation room.

9 (Jury instructions read.)

10 THE COURT: And it is the State's opening argument.

11 MR. BATEMAN: Thank you, Your Honor.

12 STATE'S CLOSING ARGUMENT

13 MR. BATEMAN: Good morning, ladies and gentlemen.
14 As I stated some two weeks ago, this case, again, was about a
15 relationship between Bobby and Amanda. And you heard a lot of
16 information about that convoluted somewhat complicated
17 relationship that had gone on for five years. She called him
18 her best friend. At times he was her boyfriend, ex-boyfriend.
19 It was a long and involved relationship that lasted all the
20 way up until the fateful night of December 22nd, 2013.

21 And ultimately, all of the evidence you heard in
22 this case was that the relationship was the cause of all the
23 trouble that night. Bobby at all times was directing his
24 attention to Amanda. He was at all times having a discussion
25 with Amanda. And at all times he was arguing with Amanda up

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1 until the point where she said she'd had enough of him. This
2 at all times during the course of this trial, all of the
3 evidence you heard was that this beef was about and between
4 these two individuals.

5 And it wasn't until the defendant inserted himself
6 into this relationship -- you heard testimony that the
7 relationship between the defendant and Amanda had only been
8 going on for a couple of days, three or four days. It started
9 out with the sale of methamphetamine, and ultimately you heard
10 that the testimony in this case was that the defendant knew
11 about this relationship and chose to insert himself on this
12 particular night into the relationship.

13 And when it became a competition for the defendant
14 -- and that's what this was -- when it became a competition
15 for the defendant, that's when things turned. That's what
16 turned this case into one of murder.

17 Murder is the unlawful killing of a human being with
18 malice aforethought. Malice aforethought, ladies and
19 gentlemen, is defined by the intentional doing of a wrongful
20 act without legal cause or excuse, or what the law considers
21 adequate provocation. The condition of mind described as
22 malice aforethought may arise from anger, hatred, revenge, or
23 particular ill will, spite, or grudge towards the person
24 killed.

25 And the definition of malice in this particular case

1 is that second shot to the butt while Bobby was laying
2 face-first on the ground. He had already had a gunshot wound
3 to his aorta, he was instantaneously dying. And the defendant
4 walked up and shot him while he was on the ground in the butt.
5 It is the definition of anger, hatred, revenge, or particular
6 ill will that forms the very definition of malice.

7 He was shot face-down on the ground. Second shot.
8 And then the defendant ran off. This is a murder case because
9 of that malice. The defendant ultimately ended up having that
10 particular night as the events went on, as he didn't want to
11 be punked, that he didn't want to be embarrassed by the fact
12 that Bobby hit him first. He wanted to be able to, in this
13 competition for Amanda, be the one that prevailed.

14 Your decision in this case starts with the degrees
15 of murder that are presented to you. There are two degrees.
16 There's first degree murder and second degree murder.

17 There's two types of first degree murder in this
18 case that you are going to hear about in the -- and you've
19 heard about in the instructions, and when you look at the
20 facts how it relates to these particular theories is where
21 we're going to start.

22 The first is if, in fact, you find that the State
23 proves beyond a reasonable doubt that this killing was
24 pursuant to a challenge to fight and those instructions of
25 law, it is first degree murder.

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1 If you find that there -- that the murder in this
2 ~~case the defendant committed against Bobby was wilful,~~
3 premeditated, and deliberate, that's first degree murder. Six
4 of you can agree on challenge to fight, and six of you can
5 agree on wilful and premeditated and deliberate murder. It
6 doesn't have to be unanimous. It's first degree murder.

7 So let's start with challenge to fight. If the
8 defendant -- and I kind of pared down the instruction, you'll
9 have it with you when you go back to deliberate -- if the
10 defendant challenged Bobby to a fight, that there was an
11 agreement to fight, that the fight occurred, and that Bobby
12 died during the fight, it's first degree murder. And that
13 makes sense. The law decides that we don't want to promote
14 people choosing to get into fights together, because we know
15 that the potential for killing can occur during the course of
16 an agreement to fight.

17 In this particular case, self-defense is not
18 available. You don't have to consider self-defense at all.
19 Because once you've agreed to get into a fight, you don't then
20 get to say, Well, wait a second, I acted in self-defense when
21 he punched me first or when he did this or he did that.

22 Why is this first degree murder by challenge to
23 fight in this particular case? I put a photograph of the
24 surveillance video at the Arizona Charlie's, where the
25 defendant comes out after Amanda enters the bedroom and she

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1 goes into the bathroom. And there's the -- the back-and-forth
2 between the defendant and Bobby, who's out to the right. The
3 security guards, you can kind of see the bike tire on the
4 right side of that photograph, are over there on the right.

5 And you'll hear from a number of witnesses in this
6 particular case, Tim and Shannon both say that the defendant
7 says, I'll be at my house, meet me in 30 minutes. And Tim
8 testified that defendant said this at least three times.

9 The security guards, both Howard and Knight, said
10 that the defendant said that the defendant said something
11 along the lines of, You know where I'm at, or You know where
12 I'll be. Javon Howard said he took that to mean, you know,
13 you'll be at -- I'll be at my home. Those are the kind of
14 words that make sense when you look at the totality of what
15 happened in this case, that this was a challenge to fight back
16 at the Siegel Suites. In fact, the defendant even on the
17 stand says, Come -- if you're going to hit a woman, come hit a
18 man, you want to kill me, you know where I'll be, you want to
19 be a big killer. So the defendant even admits to saying, Come
20 hit me.

21 So when you put all of these together and you take
22 all of this conversation that went on at the Arizona Charlie's
23 and these witnesses who are telling you, basically, the
24 defendant saying come fight me at my Siegel Suites house, that
25 is the challenge to fight that begins this process.

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1 Ultimately, defendant says Bobby says, I'll kill you
2 if I see you. So defendant admits that you know where I'll
3 be. The defendant -- this is what the defendant words were
4 what Bobby said, I'll kill you if I see you. It wasn't, I'll
5 kill you back at your Siegel Suites house. This is where the
6 defendant admits he says, You know where I'll be. And that's
7 where -- when Bobby knows that he needs to go back to the
8 Siegel Suites if he wants to encounter the defendant and
9 Amanda.

10 And again, why leave the Arizona Charlie's? This is
11 particularly relevant to the challenge-to-fight theory,
12 because if, in fact, the defendant had not engaged in this
13 conversation back and forth and challenged Bobby to go back to
14 the Arizona Charlie's, Bobby had been removed from the
15 property, there were security guards out there in the parking
16 lot. The problem had been resolved. The defendant had won
17 the attention at this point of Amanda. There's literally no
18 reason to go back to the Siegel Suites and to leave the
19 Arizona Charlie's, which he said he was there for a
20 "staycation."

21 So why is he leaving the Arizona Charlie's? Because
22 he said, Meet me back at the Siegel Suites in 30 minutes.
23 It's totally consistent with what Tim Hildebrand said.

24 When they get back to the Siegel Suites, of
25 particular relevance to this continued challenge-to-fight

1 theory, Tim asks Amanda if she can drive and sends them away.

2 Tim and Shannon are still in that vehicle. Tim -- excuse me.

3 Shannon and Amanda are still in that vehicle.

4 So Tim's the one that actually asks Amanda to drive.

5 And Tim says he doesn't want there to be a fight, but there

6 appears that there could very well be a fight. So sending

7 Amanda and Shannon away and Tim getting out is the

8 understanding and the corroboration of this challenge-to-fight

9 that's continuing at the Siegel Suites when they see Bobby up

10 on the -- on the third floor.

11 And, in fact, the point very -- the point is why

12 send Amanda and Shannon away if there wasn't actually going to

13 be some sort of altercation that Tim was concerned about their

14 having after this conversation at the Siegel Suites?

15 You remember James Tabele, he testified he heard the

16 words, You want to get into it? Yes, I want to get into it.

17 Again, signifying that ongoing challenge-to-fight concept that

18 we were talking about. This is what he heard. And so it's

19 very consistent with this -- the testimony that led up to this

20 particular place whether the fight is going to occur.

21 So in all -- in total, the challenge-to-fight is

22 proven by all of these lay witnesses to include the defendant

23 himself, and how this ended up at the particular Siegel

24 Suites. And you have first degree murder. You don't even

25 have to consider self-defense at this particular case. In

1 fact, the law says you can't.

2 There's also, in this case, however, wilful,
3 premeditated, and deliberate murder. Murder of the first
4 degree is murder which is perpetrated by means of any kind of
5 wilful, deliberate, and premeditated killing. And there's
6 some instructions of law with regard to the definitions of
7 wilful, deliberate, and premeditated.

8 Wilfulness is the intent to kill. There need be no
9 appreciable space of time between formation of the attempt to
10 kill and the act of killing. The intent to kill in this
11 particular case is evidenced by the use of a firearm and the
12 fact that there were two shots. When you use a firearm and
13 you shoot directly into someone's chest and certainly into
14 their butt, obviously, the intent is there to kill someone.
15 This doesn't talk about later issues it's self-defense or --
16 or heat of passion. This gun is evidence of wilfulness to
17 kill. And so it is the definition of wilfulness.

18 Deliberation is the process of determining upon a
19 course of action to kill as a result of thought, including
20 weighing the reason for and against the action and considering
21 the consequences of the action. Importantly, a deliberate
22 determination may be arrived at in a short period of time.

23 I'm going to suggest the deliberation in this case
24 starts a little bit earlier. The deliberation in this case
25 begins when the competition began in the defendant's mind.

1 And we can kind of see from the video and all the testimony of
2 all the witnesses how we end up back at the Siegel Suites
3 where the defendant has determined to set upon a course of
4 actions to shoot the defendant and to deliberate this process.

5 You'll see when you start the Arizona Charlie's
6 video from inside, when Bobby's walking up to Amanda on the
7 left, you'll see the defendant kind of getting up from his
8 chair and taking his coat. And he's putting -- not putting on
9 kind of like a normal person might put it on. He's putting it
10 up over his head. Because, basically, he's been caught at
11 this point. He even said, I think, on the stand, this was
12 like an Oh, boy, moment, or an uh-oh moment.

13 The defendant -- Bobby keeps walking towards Amanda
14 and then the defendant leaves this particular area as he gets
15 his coat on and kind of hides or walks below or is kind of to
16 the bottom of the video. And you'll remember the defendant
17 saying at this particular point he leaves to go to the
18 bathroom. He comes back and he says to the -- Bobby and
19 Amanda, he's going to be around in the casino. If she wants
20 to come back, he'll be at the bar or whatever it is. And he
21 said if she didn't come back, at this point he was onto the
22 next one. I think he was referring to the next woman who
23 would date him.

24 And so at this point he isn't engaged necessarily
25 very deeply in the competition. But you'll remember from the

1 video that the defendant and Amanda, they have words for some
2 period of time. They ultimately exit the Arizona Charlie's
3 and they go out of sight.

4 At some point the defendant -- Bobby's not allowed
5 to come back into the Arizona Charlie's and what ends up
6 happening is Amanda does go back into the Arizona Charlie's
7 and meets back up with Lorenzo. She's made her choice for the
8 evening that she wants to be with Lorenzo.

9 At this point Lorenzo's now aware of the fact that
10 Amanda has chosen him for the evening. And Tim Hildebrand
11 comes in. You'll remember the testimony of Tim Hildebrand and
12 Shannon, that they arrive at the Arizona Charlie's and that
13 Bobby's outside, and that he says, Hey, will you go in and
14 talk to Amanda? Now, remember, he doesn't say, Will you go in
15 and talk to Lorenzo. He didn't say, Go in and get Lorenzo, I
16 want to beat Lorenzo up. He says, Will you go in and find
17 Amanda for me so that I can talk to her. He even gives his
18 dad -- or he -- he -- his dad goes in and tries to give Amanda
19 the cell phone so that Bobby can talk to Amanda.

20 So Tim goes in and confronts the defendant while
21 Amanda has her legs on him. Remember Amanda saying that's
22 what she was doing, they were being flirty. Amanda had her
23 legs on him. And the defendant says, Fuck Bobby.

24 At this point the defendant, like I said, has
25 decided he's probably going to win this situation and win the

1 affection of Amanda. So remember that Tim tells the defendant
2 that Amanda's Bobby's girlfriend and that's off-limits. So
3 there's no question at this point that -- that the defendant
4 knows that he's interfering with this ongoing relationship and
5 that he's still there with Amanda. And, in fact, he leaves,
6 there's a blurry picture over there on the left, you can see
7 the defendant and Amanda heading back to the room. And Amanda
8 on the right in this particular clip, is when Amanda's
9 entering defendant's room and the security guards are out with
10 Bobby out in the parking lot.

11 And so at this point, Amanda's in his room, the
12 defendant has no reason to come out of his room. Amanda's in
13 the bathroom. But the defendant still comes out and engaged
14 with Bobby. And you'll remember Juan Knight even said Bobby
15 said, This ain't about you, to -- to the defendant. It's not
16 about him. The defendant's making it about him.

17 And the defendant says, She doesn't want to be with
18 you. So now the new boyfriend's telling the old boyfriend,
19 She wants me, she doesn't want to be with you. As though
20 that's not going to aggravate the situation.

21 And again, while all this is going on, Bobby leaves.
22 The defendant stays there with Amanda. And then decides again
23 to leave Arizona Charlie's. So he knows at this point the
24 fight's on, he knows where Bobby's going to be, and yet he's
25 choosing deliberately to engage in this confrontation with

1 Bobby's five-year girlfriend who Amanda said she had told the
2 defendant about.

3 So the deliberative process is starting. He's
4 thinking about consequences. He's thinking about consequences
5 and has time to think about the consequences of what he's
6 engaging in as he's going to head back to the Siegel Suites
7 after he's just told Bobby, Meet me there in 30 minutes, you
8 know where I'll be, you know where I'll be at.

9 Premeditation is a design, a determination to kill
10 distinctly formed in the mind by the time of the killing.
11 Premeditation need not be for a day, an hour, or even a
12 minute. It may be as instantaneous as successive thoughts of
13 the mind. Meaning it can happen quickly, but you can
14 premeditate, if you're thinking clearly and you are in the
15 moment. The true test is not the duration of time, but rather
16 the extent of the reflection. You can reflect quickly, it
17 means. A cold, calculated judgment and decision may be
18 arrived at in a short period of time. Again, we're talking
19 about a relatively longer period of time where things are
20 going on that are building up towards this confrontation that
21 the defendant continues to make choices to engage in.

22 So back at the Siegel Suites. Shannon says
23 defendant and Amanda are whispering in the back seat as
24 they're driving down Boulder Highway, back to the Siegel
25 Suites. She can't hear them. And that after this -- after

1 they drive away, after Tim and the defendant have gotten out
2 of the car, Amanda says to Shannon, if defendant doesn't take
3 care of Bobby, my uncle will. So there was discussion that
4 would leave a reasonable inference that defendant was prepared
5 to do something to Bobby based upon Amanda's statement after
6 this whispering in the back seat.

7 So defendant gets out of the car with Tim. And they
8 engage at the bottom of the stairs, if you'll remember. And
9 Tim's there. And Tim kind of puts himself by the tree. And
10 this is where ultimately defendant tells Bobby, I'm going to
11 fuck her tonight and show her what a real man is like.
12 Further engaging in this confrontation, telling a man who
13 obviously over the course of the night is very frustrated with
14 Amanda, and now sees -- and you'll remember the testimony is
15 when these -- when the defendant and Tim and Shannon and
16 Amanda arrive at the Siegel Suites and they see Bobby up on
17 the staircase, he's asking for where Amanda is. He's still
18 wondering where Amanda is.

19 But in this particular case, then, the -- Bobby
20 punches the defendant in the eye after the defendant says, I'm
21 going to fuck her tonight, which he didn't need to say. And
22 the defendant pulls out his firearm. Now, this is according
23 to Tim Hildebrand who the defendant says Tim got out of the
24 car, he's there, he's watching this go on. And Bobby begins
25 backing up saying, What are you going to do, shoot me?

1 First of all, there's that statement, reflects that
2 Bobby and -- and the defendant know each other, based upon the
3 type of statement it is. Almost as if Bobby's in disbelief
4 that this is going to occur by somebody who he knows. But
5 when he says, What are you going to do, shoot me? This is
6 that period of time where you've looked at the definition of
7 premeditation that says cold, calculated judgment. There's
8 plenty of time here where Bobby's backing up for the defendant
9 to start calculating about actually shooting Bobby or not
10 shooting Bobby. The decision-making process going on in his
11 head.

12 And, in fact, Robert Holland corroborates what Tim
13 says, because he sees talking and arguing, and then sees Bobby
14 punch defendant in the eye, and then sees Bobby backing up and
15 the defendant follow. So while Tim says Bobby's backing up,
16 Robert, the father, says, Bobby's backing up. Again, the
17 defendant pursuing Bobby at this point, after he said what he
18 said about Bobby's girlfriend. Intentionally moving towards
19 Bobby. This is the kind of, again, of premeditation and
20 deliberation, thinking about consequences, and engaging in a
21 design and -- to kill Bobby.

22 You'll remember that Tim Hildebrand testified that
23 when defendant pulled the -- the gun -- and this is where he
24 testified, he pulled his shirt up -- defendant pulls his shirt
25 up and out comes the gun that Tim couldn't see until he pulled

1 the shirt up. You'll remember there's a carrying concealed
2 weapon charge? Well, that's the definition of carrying
3 concealed weapon. You're carrying a weapon on your person
4 that can't be seen.

5 And so Tim Hildebrand explains how he pulls this gun
6 out and points it at -- at the defendant and it misfires. And
7 he said something along the lines of the defendant giggled.
8 This would again make sense, because the defendant was
9 surprised, despite his training with firearms, that he almost
10 embarrassingly didn't have a round chambered in the chamber.
11 And then he manages to rack the round. Remember Angel Moses
12 told you about how that operates. And then points the gun
13 again at Bobby.

14 Again, think about the amount of time that this is
15 going on, that -- that Bobby -- that the defendant gets out of
16 the car, that he engages Bobby, that they have this
17 communication, that he tells Bobby he's going to have sex with
18 his girlfriend, that he, you know, pulls out a gun and goes
19 forward to Bobby, that he's pulling the trigger, it's
20 misfiring, he's racking a round. This is quite a bit of time
21 to start developing that design and premeditation. Not to
22 mention all of the things that had taken place prior to
23 getting to the Siegel Suites.

24 Eventually, the defendant chases, according to Tim,
25 the defendant -- excuse me, the defendant chases Bobby around

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1 these cars out in the parking lot. Again, think of the
2 additional time where Bobby's backing up, he's trying to get
3 away, and the defendant is, after all of this going on, again,
4 pulling the gun out, misfiring, racking it, pointing it again,
5 chasing them around -- chasing Bobby around the car after
6 Bobby said, What are you going to do, shoot me?

7 And ultimately getting into the position where,
8 according to Tim, Bobby was at least 9 feet -- 9 to 10 feet
9 away, and the defendant shooting him.

10 Remember Sean Nelson testifying that he heard from
11 his apartment, You want to fuck with me? And then a shot, and
12 then a pause, and then he heard, Then fuck you. And then a
13 second shot. Obviously, the type of language that's being
14 used is being used by the type of person who would have had
15 the firearm. This is the type of language of animosity,
16 resentment, anger, and ultimately consistent with premeditated
17 murder. Especially the delay in the shots.

18 And as noted, the first shot into Bobby Holland is
19 in his upper right chest in a downward motion. You remember
20 Tim testifying that the defendant had pointed the gun like
21 this, kind of sideways. Not straight on, but up high, which
22 would have accounted for that downward shot.

23 It also could have accounted for that downward shot
24 that Bobby, who said, What are you going to do, shoot me? and
25 who is being chased around the car, may have been ducking or

1 moving backwards in order to put himself in a downwards
2 fashion. Because you remember that Bobby's about 6'3", he's
3 taller than the defendant.

4 But again, he shoots him in the chest and then
5 ultimately walks over to, according to Tim, walks over on top
6 of Bobby as he's laying face-first on the ground, and shoots
7 him in the butt, which is not consistent with anything other
8 than a premeditated murder.

9 Then you have, on top of that, flight after the
10 crime. You'll have an instruction in the jury packet that
11 says whether or not evidence of flight shows a consciousness
12 of guilt and the significance to be attached to that or such
13 circumstance that are matters for your deliberation. There's
14 actually an instruction that says if you flight -- you know,
15 could be consciousness of guilt. And, in fact, in this
16 particular case, the defendant quickly does the, I'm out
17 nigga, and then throws his gun down, according to Tim, and
18 walks off relatively calmly. You'll remember Sean Nelson
19 talking about seeing the person walking by him with a face of
20 satisfaction as though, I'm smart and you're dumb, I think was
21 what he testified to.

22 And then Mr. Verwey, who was on his way back from
23 the -- the bar, actually sees person matching the defendant,
24 the sole person coming from the Siegel Suites in his
25 direction, says acting, you know, overly formal, thank -- you

1 know, thank you -- or hello, sir, excuse me, sir, and then
2 taking off running down to the -- the bus stop. And you saw
3 from Tina Archangel, who was the bus driver, how she was going
4 to pull off, but had to remain at that particular bus stop
5 just south of the Siegel Suites as the defendant ran to get on
6 the bus, and then calmly sat on that bus until it was pulled
7 over at Fremont and Bruce Street. Again, signifying this
8 consciousness of guilt, that he did something that he
9 shouldn't have done.

10 And then finally, I think this was interesting,
11 Amanda's utter lack of concern or surprise is consistent with
12 the defendant's actions, when other witnesses are behaving
13 consistent, you heard the testimony of both Shannon and Tim
14 that first -- specifically, Shannon, that she pretended to not
15 having heard the shots, when asked, she said, I don't give a
16 fuck about Bobby. It says, Fuck Bobby -- Bobby to Tim. And
17 then that same day, when the detectives try to track her down
18 -- remember this, Bobby is her five-year best friend, she's
19 hostile to detectives Williams and Barry Jensen. They had
20 such a hard time getting in touch with her and then getting
21 her to speak to them.

22 If you go back to that statement to Shannon about
23 Bobby, if -- if defendant doesn't get Bobby, the uncle will,
24 this -- at this behavior afterward is very consistent with the
25 knowledge that something bad was going to take place and it

1 was going to be at defendant's hands.

2 So first degree murder in this particular case,
3 challenge-to-fight, all those statements by lay witnesses, by
4 Tim, by Shannon, and even by the defendant, demonstrate a
5 challenge-to-fight which is a first degree murder, proved
6 beyond a reasonable doubt, you don't have to take into account
7 self-defense.

8 Premeditation and deliberation. If you look again,
9 through all of the acts that go on from the Arizona Charlie's
10 through the defendant running away down to get to the bus,
11 premeditated, deliberate, and wilful murder. Tim told you
12 exactly what happened, word for word, down to second by
13 second. And if you parse through what he says, there is no
14 doubt that there was premeditation, plenty of time to
15 deliberate, and act wilfully with that firearm.

16 So this is a first degree murder whether you believe
17 premeditation and deliberation, or whether you believe
18 challenge-to-fight.

19 Second degree murder is basically murder that malice
20 aforethought, that ill will, anger, hatred, without -- so it's
21 an unlawful killing with that malice, without the either
22 challenge-to-fight or the premeditation and deliberation.
23 Certainly a second degree murder at a minimum has been proven
24 beyond a reasonable doubt, in addition to the premeditation
25 and deliberation and challenge-to-fight. But if you don't

1 find premeditation and deliberation or challenge-to-fight,
2 then your verdict should be second degree murder.

3 The third option you have is voluntary manslaughter.
4 And the quintessential example of voluntary -- what voluntary
5 manslaughter is in Nevada is the husband of 20 years who comes
6 home at lunch from work and his -- and his -- presumes his
7 wife to be home. And he -- and he comes in to surprise her,
8 and he finds that she's in bed with the neighbor. And he just
9 spins out, goes into who knows where, has this sudden heat of
10 passion of anger as a result of seeing his wife with the
11 neighbor, pulls out his, you know, gun from the bedside or
12 from the table or whatever, and shoots his wife and her lover.

13 Doesn't have malice, but it's not entire -- and it's
14 without deliberation, but it's not totally excusable. And
15 there's that sudden heat of passion that would cause an
16 irresistible passion in a reasonable person to do that very
17 thing. We don't let them off, but we say it's a voluntary
18 manslaughter. In fact, hang on -- neither slight provocation
19 nor an assault of a trivial nature will reduce a homicide,
20 meaning a murder, from murder to manslaughter. So it can't be
21 a -- a slight trivial assault that impassions this -- this
22 heat of passion in someone to -- to engage in an unlawful
23 killing, and there must not have been an interval between the
24 assault or the provocation -- provocation in the case of the
25 example I gave you was seeing the wife and the neighbor in

1 bed. And the killing sufficient from the voice of reason and
2 humanity to be heard. Meaning there can't be some amount of
3 time between the provocation and the killing for the person
4 who does the killing to kind of calm down and -- and regain
5 their senses.

6 In this particular case, the heat of passion must be
7 such an irresistible passion as would naturally would be
8 aroused in the mind of an ordinarily reasonable person in the
9 same circumstances. The only potential in this particular
10 case of provocation is a punch to the eye. But that would be,
11 again, voluntary manslaughter can't be an assault of a trivial
12 nature. And certainly, if you're making a statement like, I'm
13 going to have sex with your girlfriend tonight and show her,
14 you know, a good time, you can't very well say, then, a
15 reasonable person after being punched in the eye by the
16 boyfriend would be so enflamed with heat of passion that I'm
17 okay now shooting the boyfriend down. In fact, that's really
18 a trivial assault by this punch in the eye. So this is not a
19 case of voluntary manslaughter, ladies and gentlemen.

20 And again, with regard to murder, you'll have a
21 decision on the verdict form that has first degree murder with
22 use of a deadly weapon, and then for instance, first degree
23 murder without the use of a deadly weapon. So you have to
24 decide in this particular case whether a deadly weapon was
25 used. You're instructed by the Court that a firearm is, in

1 fact, a deadly weapon, and so therefore your verdict in this
2 case should be murder with use of a deadly weapon. Because,
3 in fact, that .9mm was used.

4 Now, there's some instructions you received on
5 self-defense. And just briefly, for self-defense to be
6 appropriate in the case, and the State has the obligation to
7 prove beyond a reasonable doubt that this is not a
8 self-defense case, for self-defense to be something you should
9 consider, there must be imminent danger that the assailant
10 will either kill him or cause him great bodily injury.

11 In other words, imminent danger that the person
12 shooting is either going to be killed or get great bodily
13 injury. And that it is absolutely necessary under the
14 circumstances and to justify the taking of a life of another
15 in self-defense, the circumstances must be sufficient to
16 excite the fears of, again, hear that term with voluntary
17 manslaughter. A reasonable person placed in a similar
18 situation. Take the reasonable person in Clark County and
19 say, Can they -- would they have felt it absolutely necessary
20 under the facts that we have in front of us to engage in a
21 killing? And it can't be -- it has to be under the influence
22 of those fears and not in revenge.

23 So in this particular case, I think we need to also
24 look about -- when we're talking about self-defense, we need
25 to factor in the credibility instructions. Because at the end

1 of the day, ladies and gentlemen, you're going to make a
2 decision in this case regarding self-defense based upon the
3 credibility of the witnesses that came in and testified.
4 You're the arbiter of credibility, you're the ones that decide
5 who's telling the truth and who's not telling the truth.
6 You're the ones who decide who to believe and not to believe.

7 The credibility or believability of a witness should
8 be determined by his manner upon the stand, his relationship
9 to the parties, fears, motives, interests or feelings, his
10 opportunity to observe the matter to which he testifies, and
11 the reasonableness of his statements and the strength or
12 weakness of his recollection. This is one part of the
13 credibility instruction that was provided you.

14 The second is if you believe that a witness has lied
15 about any material fact in the case, you may disregard the
16 entire testimony. If you believe that a witness has lied, you
17 can disregard their entire testimony or any portion of that
18 testimony which is not proved by other evidence. So the not
19 proved by other evidence means corroborated. There's other
20 evidence that's consistent with what that witness is telling
21 you.

22 So in this particular case, you heard the defendant
23 get up on the stand and testify. And I put this slide up
24 where Bobby punched the eye first. And -- and I note this,
25 because being -- again, being punched in the eye with no

1 attendant circumstances other than you said something to cause
2 Bobby to punch you in the eye, someone who you know and have
3 known for some period of time is not sufficient provocation
4 for self-defense. It's an assault of a trivial nature.

5 And so the other point I put up for this Bobby
6 punching the defendant in the eye, this -- this information
7 came first and foremost from Bobby's father Robert, and from
8 Tim, who had known Bobby for some period of time. And so
9 we're talking about credibility of witnesses.

10 The point I make is there's no reason not to believe
11 Tim and -- Tim Hildebrand and Bobby's father, Robert Holland,
12 when in fact there's -- they're actually the first ones that
13 come in and say Bobby punched the defendant first. Now,
14 that's not enough to entitle him to shooting Bobby under the
15 law. But they didn't -- if they're going to lie, if Tim's
16 going to lie, if Bobby's dad's going to lie, and, in fact, the
17 way things go down or the way that the defendant testified to
18 them going down, why not lie about Bobby punching the
19 defendant first? What -- why say, you know -- why not say,
20 Bobby didn't punch him first. If I'm going to lie about the
21 whole thing. If you're his dad, if you're -- if you're Tim.
22 If I'm going to lie about how this whole thing goes down, I'm
23 not going to admit that Bobby punched him first. I'm going to
24 say Bobby got hit second. Or -- I'm sorry, that Bobby didn't
25 punch him first at all and that I'm going to say the defendant

1 did the whole thing, start -- start to finish.

2 Why lie? I mean, why not lie about Bobby punching
3 the defendant first? The reason they didn't is because
4 they're not lying. It's because that's what happened. They
5 told you the truth. It doesn't make Bobby look good that
6 Bobby punched the defendant first. But that's what happened.

7 And so I think inherently in the fact that they're
8 coming in here and saying that Bobby punched the defendant
9 first in the eye after the defendant said what he said, gives
10 credibility to -- to what they told you overall.

11 Now, the defendant got on the stand and he said some
12 things, quite frankly, that were just not consistent with the
13 evidence in the case. And that's why I put up those
14 credibility instructions for you to evaluate. You evaluate
15 the witnesses. But some of these things just weren't
16 consistent at all.

17 He said he doesn't do meth. His own psychologist
18 opined that it sure looked to her like he was doing meth. And
19 look at the photos, there was one put in from a few years
20 earlier. There's the way the defendant looks in the courtroom
21 today. And then there's the photo of how he looked on
22 December 22nd, 2013. He's selling methamphetamine, he's
23 hanging out with a bunch of people who do methamphetamine.
24 But the defendant gets up on the stand and says, I don't do
25 meth. Not -- not very credible.

1 Defendant claims he doesn't know anybody, he doesn't
2 now any of these people. His own witness, Amanda, who calls
3 him baby and who decided after this that she loved him, says
4 he does know everybody and that she got -- even got
5 defendant's phone number from Bobby's phone without Bobby
6 knowing about it. She says that they'd known each other for
7 about six months.

8 Bobby's mom Deborah says that Bobby knows the
9 defendant. Been to the house to pick Bobby up -- Bobby up.
10 For a couple of months she's known about it. Bobby's dad says
11 he does, hung out with the defendant and even told, if you
12 remember, when he called back up -- this is what he testified,
13 that he called Bobby at Arizona Charlie's and says, Amanda
14 left with Lorenzo at Arizona Charlie's. So how in the heck
15 would Dad -- how would the defendant not know Dad if Dad's
16 calling up Bobby and saying, She left with Lorenzo. And he
17 even said that they'd known each other for a longer period of
18 time and that the defendant had been over to the house.

19 Tim and Shannon says that the defendant knows
20 everybody. So why does the defendant say, I don't know
21 anybody. I don't know what's going on here. Is it to make --
22 who -- who at this point has the motive not to be truthful?

23 He doesn't know Bobby, but the photograph on the
24 left is the narcotics pipe taken out of Bobby's right front
25 pocket and the baggie where the meth goes in. Guess -- the

1 photograph on the right is the baggies that were found on the
2 Siegel Suites on the third floor, Lorenzo's, the defendant's
3 apartment. In addition to the baggies with the cat, you'll
4 notice it was also in the exact same baggie with the ice cream
5 cone.

6 Is that more likely that these two were somehow
7 getting meth from him and working with each other?

8 Defendant claims he has no idea how Bobby knows
9 where he lives. Well, I mean, you have the last slide that
10 had the photographs of the exact same baggies that they both
11 have. How in the heck does Bobby know which Siegel Suites
12 room to go to? He -- he could -- if he had been wandering
13 back and forth on the third floor, maybe somehow he'd gotten
14 some information that Bobby -- that the defendant was living
15 at the Siegel Suites on Boulder Highway, maybe he got some
16 information that the defendant is on the third floor. He knew
17 the exact room. And yet the defendant says, I don't know
18 Bobby. I don't know how he got here I was surprised that he
19 was on the third floor. How does he know where I live? And
20 yet Amanda says she's been there with Bobby. The defendant's
21 own witness, Amanda, says she's been there with Bobby.
22 Bobby's dad says he's been there with Bobby, where he's
23 dropped him off to go up there.

24 Defendant admits he says, You know where I'll be,
25 when he's at the Arizona Charlie's. So why's -- why is the

1 defendant saying, I don't -- I'm surprised, I don't know how
2 Bobby possibly could have known where I lived. Well, that's
3 not credible. That's not truthful.

4 And then the cause of this first punch, I asked him
5 specifically, explain to me what was specifically said that
6 caused Bobby to punch you. And he said, Bobby is asking where
7 Amanda is, and the defendant, you know, is -- claims to be
8 calming the situation down, says, Let's talk tomorrow. Well
9 that isn't -- well, that's not consistent. Where is Amanda,
10 let's talk tomorrow? Wouldn't you say Amanda's not here?
11 Amanda drove off to the Four Mile Bar, she's with Tim and
12 Shannon. You can find her if you want to go find her. That
13 isn't a consistent -- it -- it doesn't make sense to answer
14 the question with Let's talk tomorrow.

15 And then Bob -- when he says, then let's finish
16 this, that doesn't correspond with saying, Let's talk
17 tomorrow. It doesn't make any sense that Bobby goes from
18 Where's Amanda to punching him in the eye for no reason. And,
19 in fact, if you compare this with what tense of the version of
20 the conversation was, which was I don't want to fight you, but
21 you're not going to have sex with Amanda, which again, was
22 going on the whole night, this Amanda choosing the defendant
23 over Bobby. And then the defendant saying, Well, I -- I am
24 and I'm going to show her how it's going to be. How -- how --
25 what a good time is. That makes more sense of a type of

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1 comment that might cause Bobby to haul off and -- and punch
2 the person that he knows.

3 The defendant's version doesn't make sense. Tim's
4 version does make sense.

5 And then the defendant says, Well, he pulled --
6 Bobby pulls a gun out of his pants. This isn't consistent
7 with the physical evidence in the case. We put witnesses on,
8 and you were probably wondering at the time, Why do they keep
9 putting these crime scene analysts up to show photographs of
10 clothes? Well, you'll remember that night, this was from I
11 believe Crime Scene Analyst Charlton who had gone to Sunrise
12 Hospital. Unfortunately, Bobby had already passed and had
13 some medical intervention there. His shirt wasn't on. But he
14 did still have his pants on. I called them jammy pants. They
15 were like -- they were like sweatpants. He has two pockets,
16 looks like a string tie, elastic-type tie.

17 You also heard Dr. Gavin say he was overweight,
18 obese, large man, 300 pounds. Isn't consistent with -- is it
19 likely that this particular person, Bobby, had a -- and you've
20 got the gun, you can -- you can weigh it when you get back to
21 the room and feel how heavy it is, that somehow he had tucked
22 a .9mm Ruger in his jammy pants under his rather large belly.
23 And you'll remember the defendant saying that he was -- that
24 -- that Bobby was running down the stairs. So he's running
25 down the stairs with his jammy pants with a .9mm, which is

1 quite heavy, tucked in his elastic band? Highly unlikely.

2 And that he can pull it out from under his stomach very
3 easily.

4 In fact, you -- these are the photographs from
5 Szukiewicz, the CSA at autopsy, pulls off the pants and takes
6 a photograph. And you'll look at what was already in the
7 pockets. Because the defendant can't testify that it came out
8 of his pockets when he gets upon the stand. In the right
9 pocket is the pipe and the keys. And in the -- and in
10 addition to that, the cell phone. Whoops -- hang on. Cell
11 phone was also photographed by Charlton.

12 And in the left pocket was -- and you can see it
13 right there. It was -- it's a -- it's a -- basically a full
14 cup of almost \$19 in change, a light, a flashlight, actually
15 in full -- in a cup in his left pocket. I mean, \$19 is pretty
16 darn heavy to be putting in your jammy pants.

17 And when it's spread out, it was approximately \$18
18 and some Orajel. Is this the guy that's the gun-toting, .9mm
19 gun-toting guy? Also with his -- with his hoodie that has his
20 iPad -- iPod, it -- loose in his pocket, the gun didn't come
21 out of that right-hand pocket, and you heard he was
22 right-handed.

23 And in addition he had the hoodie on, he had an
24 undershirt, and then he had a shirt-shirt. So he had three
25 layers of shirts to go through to get this .9mm gun out of his

1 -- out of his jammy pants. And this kind of stuff looks more
2 like, Hey, I'm sitting at home relaxing until I find out
3 Amanda's over at the Arizona Charlie's with somebody and I've
4 got to throw on my hoodie. I don't even change off into some
5 normal pants, and I take off for the Arizona Charlie's.

6 Very unlikely that this is the guy with the .9mm.
7 And, in fact, isn't it much more likely that the guy with
8 the .9mm, besides the fact that the defendant testified he's --
9 or that there was testimony in the case that he was familiar
10 with .9mms, is the guy with the belt and the jeans, who could
11 actually cinch it up, stick it in his belt, he was 170 pounds,
12 he testified to, you saw the video, he was thin, much, much
13 easier to put it in his belt, and he was wearing one shirt.

14 And then the defendant says, Well, I didn't have the
15 gun, Bobby had the gun. You mean the guy on the right who's
16 got his -- his hoodie zipped up over his jammy pants and two
17 more layers? Or the guy on the left that has his hoodie open
18 and one shirt and some jeans with a belt? Inconsistent with
19 the evidence is the defendant's version of events.

20 Defendant claims that no one went around the cars.
21 He says he kind of went out, he kicked him -- he saw the --
22 you know, he had the opportunity to see the photograph of the
23 bruise on the leg, so he kicked him a little bit in the leg.
24 Says we never went back and around the cars. He says, We kind
25 of went out there, went back onto the sidewalk. Well, that's

1 inconsistent with what Tim told you. Tim said they went
2 around the cars. And James Tabele said they went around the
3 cars. The guy right there in the apartment.

4 So why does the defendant say I didn't go around the
5 cars? Because it doesn't look very good if you went around
6 the cars. It looks like you were chasing him down with a
7 firearm. So he's got to come up with that we didn't do that.

8 He says -- he gets into this fight, I'm sure the
9 defense will argue about the injuries to the hands. The
10 problem with this is there's one injury to the defendant, both
11 -- which both Tim and Bobby's dad says happened. And it's the
12 one that was documented by crime scene analyst Smink out at
13 the bus stop. The one that he saw as fresh, which was the
14 bruise to the eye. Where -- if all these injuries on -- on
15 Bobby's hands were as a result of fighting with the defendant,
16 where's all the injuries on the defendant? Not the one little
17 scrape on his hand that looked like it was scabbing?

18 Or is it actually consistent with what Dr. Gavin
19 said, which is these are type of injuries that happen from
20 falling face first on the ground after having your aorta blown
21 up.

22 Defendant claims that he gets into this fight with
23 Bobby where he -- he did the slapping motion, he's in close
24 range, he somehow gets this gun away from the 300-pound guy,
25 turns it around on the defendant -- or on Bobby, and says that

1 it's close range. He first says 12 inches, then he kind of
2 remembers what Dr. Gavin says, Well, it could be 18 to 24. He
3 first says 12 inches. That's when the shot took place. And
4 he actually said that Bobby charges him. So he says he gets
5 the gun away. But they're not so close that there's
6 apparently room for Bobby to charge now the defendant with the
7 gun. That's not likely.

8 And, in fact, it's not consistent with what Dr.
9 Gavin told you, when she said there was no soot or stippling.
10 There was nothing to suggest of a close-range shot. That the
11 -- the fight that the defendant tells you that he has with
12 Bobby is a close-range fight that would have resulted in a
13 close-range shot, assuming, you know, anybody but Bruce Willis
14 in a Die Hard movie could actually get the gun away from
15 another human being and turn it around on him and shoot him,
16 you would have expected to see soot on Bobby. And there was
17 none.

18 Not credible. Not credible. Not consistent with
19 the evidence in this case.

20 And then defendant says, I don't remember the second
21 shot. The worst possible evidence for him in the case is the
22 second shot that he doesn't remember now. Remembers every --
23 all these events that he finally decided to say today on the
24 stand, he remembers exactly what happens after the second
25 shot, but he just doesn't remember the second shot. The shot

1 where you're shooting an unarmed man, lying on the ground
2 probably dead, in the butt. He says he just reached out, he
3 remembers just reaching out.

4 Well, that's not consistent with the evidence,
5 either. Because James Tabele says he sees after the first
6 shot, the guy stumbling, kind of eastward, holding onto his
7 truck, which is right there on the left, and ultimately
8 falling. Well, if you look at the trajectory, the shot's
9 almost directly over, slightly -- slightly upwards. So, in
10 fact, it would be consistent with standing over someone. But
11 Tabele says, I see one person going down. The defendant's not
12 standing there next to him. He has to actually walk over,
13 take a few steps eastbound on that sidewalk in order to shoot
14 Bobby. Inconsistent with the evidence in this case, and not
15 credible.

16 And then finally, the defendant says, Well, I
17 remember everything about the fight. Don't remember the
18 second shot, which was terrible. But then I come to and I see
19 the defendant's -- or Bobby's dad, Robert Holland, come in and
20 walking up with a gun in his hand. Why is he saying that?
21 Because he's got to come up with a reason why he's running
22 away eventually. There's no evidence in this case that
23 Bobby's dad had a gun in his hand.

24 On the left is the video that Sean Nelson took, he
25 said he was out there quite quickly and Robert Holland, Dad,

1 was giving CPR to probably his already-dead son within seconds
2 of this encounter. You'll see the picture on the right where
3 he actually admitted he left his cell phone there because he
4 was calling 911. But there was no other guns found. There
5 wouldn't have been time for Robert Holland to go toss his gun
6 someplace. It's completely inconsistent with any of the
7 witness testimony, the timing of how this happens. It is
8 conveniently coming up with a reason for you running away.
9 Made up.

10 Then when he has the opportunity to say, Well, gosh,
11 this 300-pound meth addled guy who's been after me all night
12 pulled out a gun on me, he didn't even say that. Lies,
13 doesn't tell the truth about where he came from, who he was
14 with that night or where he was going.

15 Tim Hildebrand on the other -- other hand, ladies
16 and gentlemen, there's no reason to disbelieve what he told
17 you. If you look at -- yes, he was longer friends with Bobby.
18 But that particular night he was hanging out with the
19 defendant. The video showed that the -- that Tim was in the
20 defendant's room. Not Bob -- he wasn't with Bobby. He ride
21 there with Shannon. And the rest of the night he spends in
22 the defendant's room. He doesn't leave with Bobby. He
23 doesn't say, Boy, Bobby's having a rough go. You know,
24 Amanda's doing this to him, no good. I better take off with
25 Bobby to make sure he's okay.

1 He didn't take off with Bobby. Tim stays with the
2 defendant in his room. And then he drives the defendant and
3 Amanda -- and he said he didn't like Amanda, you remember he
4 said, Uh, I don't know -- tells Bobby, I don't know why you're
5 hanging out with her. Why do you care about her? He drives
6 them back to the Siegel Suites. He admits to getting out with
7 the defendant. And his version matches Tabele's version of
8 the delay in shots, of the running around the car. It matches
9 Robert Holland's version of events with Bobby backing up.

10 There's no reason in this case not to believe Tim
11 Hildebrand. There's a lot of reasons not to believe the
12 defendant. In fact, Tim's version of events matches the whole
13 video at Arizona Charlie's.

14 In self-defense, James Tabele hears I think a
15 particularly important statement. He hears, What did you do
16 that for? That came from Tim Hildebrand.

17 Who says, when you just watched a man pull out a gun
18 on another man, that that gun is somehow taken away by the
19 defendant, turned around in this -- this fight, this
20 life-or-death fight the defendant talked about, and ultimately
21 ends up in a -- in a shooting, do you say, What did you do
22 that for? You might say -- you aren't going to say anything,
23 perhaps. Perhaps it makes more sense.

24 But it sure makes a lot more sense to say, What did
25 you do that for with -- when what you just watched does not --

1 was not -- did not call for a shooting? Doesn't that -- that
2 statement makes more sense with what Tim Hildebrand said when
3 he's watching -- when he's watching the defendant pull a gun
4 out of his waistband, chase Bobby around the car while Bobby's
5 saying, What are you going to do, shoot me? Shoot him in the
6 chest, and then walk up and shoot him in the butt. That's
7 when you say, What did you do that for? It didn't make sense.
8 You didn't have to do that. That's what, What did you -- what
9 did you do that for? means. And that's what Tabele hears.
10 That's not even out of Tim's mouth.

11 PTSD, you heard a lot of testimony in this case.
12 You first heard from Michael Ortiz, who was a superior to the
13 defendant in the military. I would suggest that he displayed
14 more consistent signs of PTSD or what we heard about PTSD
15 while he was on the stand. And he said he's more guarded and
16 withdrawn, has to be aware of everything around him. Won't
17 put himself in situations in which he or his family could be
18 harmed. Entirely inconsistent with the defendant.

19 Now, PTSD is a matter of law, when you're -- if
20 you're considering it. And you'll see in the instructions, it
21 relates to the defendant's ability to premeditate and
22 deliberate, whether it's a first degree murder or a second
23 degree murder. It has no relation to self-defense, it has no
24 relation to voluntary manslaughter. If you believe that PTSD
25 played some role in this case in the defendant's thinking on

1 -- in the morning hours of December 22nd, 2013, it only
2 relates to his ability to premeditate and deliberate.

3 And you heard his expert say defendant's trauma
4 triggers, this is what causes his whatever -- that the result
5 is from PTSD. And no one's -- nobody -- the State's not
6 saying that he doesn't have PTSD. We never challenged that.
7 But it was potholes, loud noises, Middle Eastern men. And I
8 specifically kept asking Dr. Boyd, and she kept specifically
9 saying it's not general violence. It's inconsistent with what
10 Michael Ortiz says, but she's saying it's not general
11 violence.

12 And the only thing she said about PTSD for people
13 who have it is that your fight-or-flight is lengthened. She
14 didn't testify how much longer it is than a person, a normal
15 person without PS -- PTSD. She just said it was lengthened.

16 Dr. Piasecki said everyone has fight-or-flight for
17 some period of time after. That's consistent. We've all been
18 in situations where that fight-or-flight kicks in. And it
19 takes some time for us all to come down. Whether -- those of
20 us that don't have PTSD symptoms, and she even testified it's
21 in five minutes -- five-minute increments is how they measure
22 for the normal person without PTSD how long does
23 fight-or-flight, you know, feeling where you're -- remember
24 the -- the firefighters there, not the CEO. She said, five
25 minutes is normal for someone without PTSD. Well,

1 everything's occurring in five minutes. The -- the punch, the
2 defendant pulling out the gun, the chase around the cars, the
3 second shot, then the defendant running down to the bus.
4 That's still within the same five minutes that every normal
5 person would have fight-or-flight.

6 And she testified that she didn't see either under
7 the defendant's version of facts, which is inconsistent with
8 the facts in this case, which is inconsistent with the
9 evidence in this case, or Tim Hildebrand, what he related to
10 you, there's no PTSD related to any of these actions and, in
11 fact, the defendant, especially if you believe Tim Hildebrand
12 was the CEO the whole time going -- and I would argue going
13 back to Arizona Charlie's.

14 You heard Steve Verwey says -- he said excuse me or
15 hello, sir, as he's walking away, consistent with the CEO.
16 Sean Nelson said a satisfied look, I'm smart, you're dumb.
17 Consistent with the CEO.

18 PTSD did not play a role in this particular case,
19 ladies and gentlemen. I -- nobody -- nobody doesn't
20 sympathize with someone with PTSD, but it's not relevant in
21 this case.

22 So the CEO was on the whole time in this particular
23 case from Arizona Charlie's on. And that's why this is a
24 first degree murder with use of a deadly weapon case. The
25 defendant challenged Bobby to a fight and Bobby died, first

1 degree murder. Defendant premeditated and deliberated from at
2 the Arizona Charlie's all the way to the Siegel Suites where
3 he whispered with Amanda in the back seat. Amanda testified
4 that if Bobby doesn't -- if the defendant doesn't get Bobby
5 tonight, her uncle will later. The chase around the cars, the
6 misfire, the reracking of the gun, the two shots, the second
7 in Bobby's butt as he's laying face-down on the ground.

8 Ladies and gentlemen, it's a first degree murder,
9 whether it's challenge to fight, whether it's premeditated.
10 And he's also guilty of carrying that weapon, the weapon that
11 ultimately came from under his shirt and out of his belt and
12 that killed Bobby that particular night. State asks you to
13 return a verdict of first degree murder with use of a deadly
14 weapon and carrying concealed weapon. Guilty on both counts.
15 Thank you.

16 THE COURT: Defense?

17 MS. LEMCKE: Thank you, Your Honor.

18 DEFENDANT'S CLOSING ARGUMENT

19 MS. LEMCKE: When Bobby Holland said to Luis
20 Pimentel the night of December 13th -- or December 22nd, 2013,
21 I'll kill you, he meant it. You know, ladies and gentlemen,
22 they say that actions speak louder than words. So let me let
23 you be the judge.

24 When you watch this video, and I urge you to do so,
25 watch it very carefully. Watch how Bobby rears down and

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1 charges directly at Amanda. Puts the upper half of his body
2 down and charges full bore at her. What do you think he would
3 do if he was left to his own devices, as he was outside of
4 Luis's apartment that night?

5 Well, we know what he did. He punched Luis in the
6 face, and he probably felt comfortable doing so, because he
7 knew he had a gun on him.

8 Luis at that point goes into full fight-or-flight
9 mode and he punches Bobby back. You know this, because you
10 can see the bruise to Bobby's eye. Without hesitating or --
11 Bobby, as we know from what Luis told you, says -- and to use
12 Bobby's words, he's determined to "finish this." He then
13 pulls out a gun on Luis and Luis, without hesitating, without
14 thinking, he does what he trains -- what he has been trained
15 to do; he reacts.

16 He takes his -- he takes his left hand, smacks
17 Bobby's arm down, and then takes his right hand and punches
18 Bobby on the top of his hand to wrestle that gun away from
19 him. How do you know this? Look at the photos. Look at the
20 photos of Bobby's right hand. That's the hand that he had
21 that gun in.

22 Look at the cut that you see to the top of Bobby's
23 right forefinger. And then you look at this. Look at the
24 photo of Luis's hand that was taken right after this occurred.
25 You see a ring on his ring finger, on his right hand. That

1 ring, the location and -- the -- or that cut matches precisely
2 the location and the dimensions of that ring as it would hit
3 the top of Bobby's right hand when Luis struck Bobby on the
4 top of his right hand with Luis's right hand as he told you
5 under oath that he did. This is not a random abrasion like
6 the other bruises and scrapes that you see from Bobby, having
7 punched Luis and having struggled with Luis. It is the
8 perfect -- this cut is the perfect mirror of the dimensions of
9 Luis's ring.

10 During the struggle that ensues over the weapon,
11 Luis kicks Bobby's leg to kind of get him off balance, to
12 further be able to take that gun from him. And in the
13 process, he kicks his calf and he bruises it.

14 Finally, when Luis is able to wrestle that gun away,
15 Bobby does to Luis exactly what he did to Amanda in that clip
16 that I just showed you that you can watch. He charges at
17 Luis. We know he charges, because that's what he did with
18 Amanda. He puts the lower part of his body down and heads
19 head-first right into Luis. And that is why you see the
20 trajectory of that first shot the way that it is. It goes in
21 Bobby's upper-right shoulder. It heads left and down seven
22 inches. That is consistent with Bobby having charged Luis and
23 not consistent with Bobby standing straight up with his hands
24 up as Tim Hildebrand claims.

25 In the process, this first bullet hits Bobby's

1 aorta. And as Dr. Gavin told you, that when it does so --
2 when it does so, the aorta bleeds profusely. Bobby is close
3 enough, because of that -- because of the charging, he is
4 close enough that he bleeds onto Luis's pants. Remember the
5 crime-scene analyst told you that there was what appeared to
6 be blood stains on Luis's pants. Stains that are in the exact
7 precise location you would expected them to be if Bobby is
8 charging head-first, head down right at Luis.

9 Same thing with the shoes. Again, there's blood on
10 the top of the shoes, not blood on the bottom of the shoes.
11 Precisely with what you would expect with Bobby charging Luis
12 as Luis told you, and that first shot going off while he was
13 -- while he is in that charge.

14 Luis then, who is still in fight-or-flight mode, is
15 now acting on autopilot, as Dr. Piasecki even told you, the
16 prosecution's own expert, at this point, yes, he will be on
17 autopilot. He shoots that one more time, he drops the gun,
18 and oh by the way, when he does so, he leaves a mixture DNA
19 profile on that gun. Remember, the DNA expert that the
20 prosecution called told you there was not one person's profile
21 on that gun. There was a mixture DNA profile on that gun,
22 which is exactly -- and it got that -- to be that way, because
23 two people touched that gun that night, Bobby Holland and Luis
24 Pimentel.

25 Now, when we talk about the gun, I want to -- I want

1 to stop for a minute and have you all kind of think about that
2 what you heard about the gun. Nobody that morning of the 22nd,
3 that -- or that evening of the 21st, no one saw Luis with a
4 gun, never that night or that morning. Not ever for that
5 matter. No one ever heard Luis threaten Bobby or anyone else
6 for that matter with a gun. No one heard Luis even mention a
7 gun.

8 And you heard testimony of the police officers went
9 right after this happened, got a search warrant. What were
10 they looking for in that search warrant? They were looking
11 for nothing else other than instrument -- any kind of anything
12 that would show that Luis owned a firearm. What did they
13 find? Nothing. No bullets, no holsters, no carrying cases,
14 no magazines, paper, or bullet container otherwise. They
15 found no indication that Luis Pimentel owned a gun. Because
16 he didn't have a gun on him or with him that night. And if
17 you don't believe me, then I would urge you to watch for
18 yourselves. Watch this video. You can see very clearly what
19 Luis was wearing, and you can see very clearly that he did not
20 have a gun on his person. You cannot even see what would be
21 the outline of a gun.

22 (Video played.)

23 Then watch the clip of Bobby. Now, we know that
24 Amanda saw Bobby with a gun at some point prior to this
25 shooting. And she told you it wasn't a revolver. It was a

1 semi-automatic handgun that was at least in part black, and
2 Bobby pulled it out -- when she saw it, Bobby pulled it out
3 from in between the seats of the car that he was riding in,
4 and then he stuck it in his pocket. And he kept it in his
5 bedroom closet.

6 Now, there is no way to say, because we weren't --
7 none of us did a pat-down search of Bobby, whether or not he
8 had that gun at Arizona Charlie's or whether or not he got it
9 after. But watch the clips of him. Watch his hands. Watch
10 his hands gesture in and out of his pockets over and over a
11 gun -- again, and I ask you when you see that, this. Was
12 there something in those pockets that he was touching? Was
13 there something in those tie-up jammy pants that happened to
14 carry a full cupful of change that he was trying to secure?
15 Was there something on his person, in his pockets, in his
16 waistband or otherwise, that he was trying to keep from the
17 security guards at Arizona Charlie's?

18 Aside from the gun, who was the aggressor throughout
19 this entire night? It certainly wasn't Luis. Bobby is the
20 one, as you can see from the surveillance video, you know it
21 from the testimony, but you also can see it for yourselves on
22 the surveillance video, he's the one who stalks Amanda,
23 following her to the Arizona Charlie's. And he refuses to
24 leave her alone despite the presence of not one, not two, but
25 three security officers who begin hovering around him as he

1 makes a scene.

2 What does Luis do? Does he get into it with Bobby?

3 You can watch for yourselves.

4 (Video played.)

5 In fact, he does just the opposite. He comes up, he
6 checks on Amanda, as she told you he did. And when Bobby
7 sends the very clear message, watch his body language and
8 watch it closely. When Bobby sends the very clear message
9 that Luis is not welcome, he immediately backs off. He puts
10 his hands up --- up almost as if to say, all right, no problem,
11 I'm out of here.

12 Even after Bobby hits Amanda, which we know he did,
13 even after Bobby hits Amanda, Luis is still not looking for a
14 confrontation with him. After Bobby sends in his dad and Tim
15 into the casino to get Amanda, Luis's response is just to
16 leave and head back to his room.

17 Now, he does make it abundantly clear to both Tim
18 and Bobby's father that he's got no use for a guy who's
19 hitting women. And he's not going to do Bobby any favors by
20 abandoning -- abandon -- by abandoning Amanda. But he's not
21 looking for some fight with Bobby, either. He never asked
22 Tim, Hey, where's Bobby? I want to go out and kick his ass.
23 All that he does, the one thing he asked Tim or the one thing
24 that Amanda asked Tim is for a ride home that night so that
25 Luis can leave.

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1 But you know what, as it turns out, leaving for Luis
2 and Amanda is just not all that easy. Because Bobby, despite
3 the fact that he had been criminally trespassed from the
4 property for hitting Amanda, he is not done yet. And what
5 does he do? He goes out to that parking lot outside of
6 Arizona Charlie's and he's pacing around, lying in wait.

7 He's still itching to get at Amanda. And even
8 though you see Amanda on that video try to run from him when
9 she initially walks out to that hotel room and she sees him,
10 and she returns only after hotel security is present and there
11 to protect her as she walks to that room, Bobby charges again
12 full throttle right at her.

13 (Video played.)

14 He tries to attack her. And even then Luis doesn't
15 take off after Bobby. Instead, when you watch that other
16 video clip, you see very clearly Luis staying behind that
17 pillar as security forces Bobby now again off the property.
18 Again, Luis staying behind that pillar while security forcibly
19 removes Bobby from the property, while Bobby continues to yell
20 at Luis, continues to threaten Luis, calling him names, again,
21 hurling threats, just as the security guards and Amanda and
22 Luis told you he did.

23 Now, speaking of the security guards. I want to
24 digress for just a second. Javon Howard and Juan Knight,
25 neither of whom -- neither of whom were interviewed by police

1 after this happened, told you that they thought during this
2 entire confrontation or that -- this exchange at Arizona
3 Charlie's, because remember, you can't hear the sound; you can
4 see what's happening, but you can't hear it. So your ears are
5 Juan, your ears are Javon. And what did they tell you? They
6 said that throughout this entire episode, Luis remained calm.
7 That he was very respectful of the officers. That even after
8 Bobby tried to attack Amanda, Luis came out and he stands by
9 that pillar and he's like, What the heck, dude? What are you
10 doing? You trying to hit a woman?

11 He appeared, according to Javon, who was there, who
12 witnessed this entire thing, he appeared not as though he was
13 trying to engage Bobby, as Mr. Bateman just told you, but
14 rather as though he was just trying to protect Amanda. And it
15 was only after Bobby was screaming and screaming and screaming
16 at him, hurling insults and hurling threats, calling him
17 names, that that's when Luis said, All right, you know where
18 I'd be.

19 As Mr. Howard made it very clear to you, this was
20 not Luis challenging anyone to a fight. This was not Luis
21 antagonizing someone or threatening them. This was Luis
22 simply saying, Look, I'm not afraid of you.

23 And hitting women, by the way, is not acceptable.
24 That is exactly what Juan Knight told you, that's exactly what
25 Javon Howard told you, that's precisely what Luis and Amanda

1 told you, because that is precisely what happens.

2 Interestingly enough, Tim Hildebrand -- the only
3 version of that exchange that differs from what the security
4 guards, Amanda, and Luis told you comes from Shannon and Tim,
5 the two people upon which the prosecution's entire case
6 hinges.

7 Comes from Shannon and Tim, who apparently don't use
8 methamphetamine now, then, or ever, but hang out at Arizona
9 Charlie's at 3:00 a.m. driving around in cars that don't
10 belong to them, going to a casino, as Shannon said, to gamble,
11 but never getting out of the car, who after huddling together
12 for almost two weeks and talking on and off about the
13 shooting, give accounts of this altercation that are
14 consistent with each other, but nobody else who was there.
15 But of whom, interestingly enough, only hear Luis yelling.
16 They don't hear Bobby yelling. They hear Luis yelling.

17 Tim, it appears, was in the hotel room for at least
18 part or all of this, and Shannon was in the car, maybe the
19 windows were up, maybe the windows were down, maybe she was
20 smoking, maybe she wasn't. And the radio was on. Sometimes
21 paying attention, sometimes not. Again, hearing only --
22 hearing only Luis yelling even though Bobby, as you can see
23 from the video, is the one who was closer to her.

24 By all accounts, everybody agrees that after this,
25 Luis and Amanda leave. Now, Mr. Bateman just told you he left

1 to go fight. But the truth is what Javon Howard told you,
2 what Juan Knight -- what Juan Knight told you, what they were
3 very, very clear about is that Luis says to them, I'll leave,
4 I don't want any trouble.

5 Because Luis knew that trouble knew that his body
6 knew now where his hotel room was. And that hotel room was
7 accessible from the outside. Trouble knew where Luis's hotel
8 room was. And trouble, by the way, ladies and gentlemen, as
9 you can see throughout the entirety of this video
10 surveillance, was refusing to leave that property, even though
11 he had been forced off and told repeatedly and warned with a
12 criminal trespass by security officers. So Mr. Pimentel did
13 exactly what any reasonable person in that situation would do;
14 he packed up his stuff and he left.

15 Now, think about it, if there was this
16 challenge-to-fight, as Mr. Bateman just told you that there
17 is, and you had specifically intended -- you had specifically
18 challenged someone to a fight with the specific intent that
19 you were going to meet them at some specified time and
20 location afterwards to fight, and you are then getting in your
21 car and you're driving to that location with your three
22 friends, wouldn't you say something about that in the car?
23 Wouldn't have some conversation about what -- what is about to
24 take place? Nobody, not Tim, not Shannon, not Amanda, no one
25 says that Luis is talking or even thinking about Bobby on that

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1 ride home. No discussion of him, no thoughts of him, no thank
2 -- no talk about a fight, certainly no talk about using a
3 weapon.

4 And when he gets home, what does Luis do, the guy
5 who now they want you to believe has challenged someone to a
6 fight and he's rearing up and ready to go? Well, the
7 undisputed testimony was as soon as they pull, he thanks Tim
8 for his ride home. And he gets out.

9 Now, oddly, Tim, a guy who's been convicted of
10 possessing methamphetamine but is not using on or about
11 December 22nd of 2013, is the only one who after they get out
12 of the car says he doesn't hear Bobby yelling. Nope. He
13 doesn't. But Shannon does. And Amanda does. And Luis does.
14 And James Tabele, who lives right below Luis's apartment,
15 does.

16 And despite Mr. Bateman's attempts to tell you that,
17 well, you know, Bobby was, to use Mr. Bateman's words just a
18 few minutes ago, just asking where Amanda was. He wasn't
19 asking. He was screaming. And he was pounding on that door.
20 And that is exactly what James Tabele heard when it woke him
21 up in the early morning hours of December 22nd.

22 And interestingly enough, James Tabele then sees the
23 very thing that Javon and Juan kind of described back at
24 Arizona Charlie's. He sees a guy with dark hair who's just
25 trying to calm down whoever it is that's yelling. The same

1 thing that Luis had been doing all night, pleading, saying,
2 Can't we just talk about this tomorrow? Which is exactly what
3 Amanda told you when she says that she gets out of the car,
4 she hears Bobby pounding and screaming, and she sees Luis walk
5 up with his hands up, just like he did in that video, with his
6 hands up, gesturing as if to say, Dude, seriously, can you
7 chill out? Followed by the comment that James Tabele heard,
8 which was Luis trying to get Bobby off the ledge.

9 Again, it's interesting, because Tim Hildebrand,
10 conspicuously, he says nothing about this. If you believe Tim
11 Hildebrand, Bobby -- or Luis gets right out of that car,
12 marches right over to the bottom of those steps, and gets
13 right into an -- a confrontation with Bobby over Amanda, by
14 the way, the girl that he's known for four days, that
15 according to Mr. Bateman, now he wants to do battle over.
16 Four days.

17 But Tim doesn't hear anything about this, doesn't
18 say anything about this. But keep in mind, Tim also admits
19 that during this initial part of the conversation between
20 Bobby and Luis, what's Tim doing? He's over chitchatting with
21 the ladies, right? Telling them Hey, you guys, why don't you
22 guys get in the car, Amanda, do you drive? Because if you --
23 Shannon doesn't. So if you do, can you come out and get in
24 the driver's seat and take off. His attention is turned to
25 the girls, not to the guys.

1 Interestingly enough, Mr. Bateman just argued to you
2 that Tim tells -- Tim tells the girls to leave, because he
3 knows there's a fight that's going to go down. But Tim also
4 said he was surprised when he got to Luis's apartment and
5 there was Bobby outside banging on the door.

6 Tim doesn't tell those girls to leave, because he
7 knows there's some stuff that's going to go down. He tells
8 them to leave because Bobby had just been beating the
9 you-know-what out of Amanda at Arizona Charlie's and then
10 tried to attack her. So Tim tells the girls to leave and
11 that's what the girls do.

12 But keep in mind that Bobby, at this point, is not
13 having any of Luis's attempts to calm him down. And again,
14 Amanda, James Tabele both tell you that that's what Luis is
15 trying to do. He's not having any of it. And what does he do
16 -- what does he do? He does exactly what Amanda described for
17 you, he rushes down those stairs. Remember what she said, the
18 detail. He didn't just rush down the stairs; he came down
19 every second step, moving, moving, moving, to get at her, to
20 get at Luis.

21 And at some point he says to Luis, You know what,
22 we're going to finish this. And that's exactly what he does.
23 He punches Luis. Luis fights back. And that's when Bobby
24 pulls out that gun. And when you think about it, it makes
25 infinitely more sense that Bobby would have the gun, because

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1 he knew -- he knew when he went to that Siegel Suites that
2 night he was going to stop at nothing -- at nothing, at all
3 costs to get at Amanda.

4 Luis, on the other hand, think about this, he only
5 had with him what he brought to Arizona Charlie's. Because he
6 wasn't thinking about Bobby Holland when he checked into
7 Arizona Charlie's. And he was only trying to get away from
8 him when he checked out.

9 Now, let's talk for a minute about this chase around
10 the car. First, Tim's version of the chase is patently false.
11 According to Tim, the gun misfires. But the testing, as you
12 heard, showed that the gun fired fine. There wasn't any
13 problem. Mr. Bateman now says, Well, you know what, it was
14 embarrassing to Luis because he didn't know that there -- he
15 had forgotten or didn't know that there was a round -- there
16 wasn't a round in the chamber. So now we've gone from Tim
17 says it misfires to there's just not a round in the chamber.
18 Well, he didn't know there was a round -- there wasn't a round
19 in the chamber because it wasn't his gun. He hadn't loaded
20 it.

21 Now, Tim has Bobby running backwards like NFL
22 combine style around the trucks, or around the cars. Not
23 running to his dad, who's only a few feet away. He is running
24 backwards with his hands up, not even having to steady himself
25 as he runs backwards around the cars. And he's got Luis

1 leaning forward, chasing him face forward, but somehow or
2 another unable to catch him while he's chambering one or two
3 rounds into the gun.

4 James Tabele tells you that he looks out that
5 window, and what is the one thing that he is looking at? He's
6 looking at their hands. Because it's his car that they're
7 around. And he's worried about whether or not something's
8 going to happen to his car.

9 So unlike anyone else, his eyes are trained on their
10 hands. And he sees zero -- no weapon in Luis's hands. Tim
11 has Bobby standing straight up with his hands up at the time
12 of the shooting. We know from Dr. Gavin that not -- that this
13 is not only just inconsistent with the trajectory of that
14 first bullet, it's impossible. It could not have happened
15 that way.

16 Well now, knowing that, Mr. Bateman gets up and
17 says, Well, yeah, you know, Luis, even though he's a few
18 inches shorter than Bobby, he must have fired gangsta-style
19 with his right hand, because Luis is right-handed, must have
20 fired gangsta-style into somehow or another Bobby's right
21 shoulder and hits a trajectory that's downward.

22 Well, in order for that to be possible, he'd have to
23 be right up on Bobby and somehow or another have his right
24 hand over to Bobby's right side in a way that somehow or
25 another the bullet trajectory can go left to right and

1 downward. Well, we know that, from Dr. Gavin, that there was
2 no soot or stippling right on Bobby, so there was no close
3 enough contact wound for that to have happened.

4 And you've got Hildebrand who's saying, Oh, yeah,
5 well, depends on which version. Version A is they were 15 to
6 20 feet away, Version B at trial was they were 8 to 10 feet
7 away. This gangsta-style shooting 8 to 20 feet -- or 15 --
8 even 8 to 10 feet, with a downward trajectory, is absolutely
9 impossible. It's not what Tim saw, it's not possible. And
10 interestingly enough, shooting gangsta style is not how the
11 Army trains our military.

12 There is a struggle over that weapon. And again,
13 Mr. Bateman stood up here and he tells you, Well, you can't
14 carry a weapon in your jammy pants. That's impossible.
15 Really? Well, the jammy pants had a string. And that string
16 was hold -- was strong enough to hold a big old cup full of
17 change. It was big enough and strong enough to hold a meth
18 pipe.

19 And what about Bobby's jacket? What about the
20 pockets on his jacket? And again, what about the video? You
21 can watch it yourselves where you see Bobby time and time
22 again, hands in the pockets, hands out of the pockets, hands
23 in the pockets, hands out of the pockets. What was he doing,
24 what was he holding, what was he steadying?

25 Luis manages -- oh. Let me go back for just one

1 second to the struggle over the weapon. And again, this chase
2 around the car. You know that there's the struggle over the
3 weapon, as Luis tells you. Because you've got James Tabele
4 and Robert Holland, Bobby's father, who say that they see this
5 movement on the side of the car. It's clear that James Tabele
6 says nobody had a weapon. The -- the guy, the second guy who
7 was there did not have a weapon in his hands, and he was
8 looking at his hands.

9 But he sees somebody touching his car. Because
10 during this struggle, somebody, most likely Bobby, was
11 touching that car to steady themselves when there was this
12 back-and-forth and this tussle over the weapon.

13 They are moving to the back of the car, at least
14 alongside of the car, which is exactly what Bobby's father
15 sees. And it explains why he never mentioned to police that
16 he actually sees them go all the way around the car. He only
17 told police that he saw them on that one side of the car. And
18 James Tabele, while he assumes that they go all the way round
19 the car, again, he makes it abundantly clear that he really
20 only sees them on that one side of the car and then after he
21 sees them touching the car on that side, that he loses sight
22 of them, and then only hears them again afterwards.

23 During this struggle that occurs right there, Luis
24 manages to get the gun. And Bobby, who's jacked up on meth --
25 again, lethal quantities of methamphetamine -- who's fearless

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1 of nothing, including two security officers who are uniformed
2 at Arizona Charlie's, he charges Luis, and Luis shoots. He
3 hits Bobby in the chest.

4 Luis at this point is in full fight-or-flight mode.
5 And without thinking, without hesitating, he just
6 automatically, as Dr. Piasecki told you, he goes onto
7 autopilot, he automatically shoots again just as Dr. Boyd told
8 you he would, just as Dr. Piasecki told you again that he
9 would once he's triggered into fight-or-flight.

10 But interestingly enough, Luis does not unload that
11 whole clip. He only does what he has been trained to do, and
12 that is to neutralize his target. He doesn't unload the
13 entire clip, because he doesn't know that there's anymore
14 bullets in the clip to unload.

15 He neutralizes his target, he drops the gun and he
16 leaves the scene. And as both Dr. Piasecki and Dr. Boyd told
17 you again, he is still given his PTSD, still in this prolonged
18 fight-or-flight mode. Now, when you get to deliberating this
19 case, you know, Mr. Bateman went through all the different,
20 you've got first degree murder, you have second degree murder,
21 you have manslaughter, and then you have self-defense. And
22 self-defense plays into most of that, but not all of that.

23 The easiest way when you go to deliberate this case
24 is to do this. To consider self-defense first. Because
25 self-defense negates first degree murder, second degree murder

1 -- or first degree murder by premeditation, deliberation,
2 second degree murder, and voluntary manslaughter. If you
3 think about it this way, this visual makes it kind of easy for
4 you to wade through.

5 The prosecution has to build a house, almost. They
6 have to prove beyond a reasonable doubt each element of each
7 level that they're building. If one element, just one, is not
8 proven to you beyond a reasonable doubt, you have to find Luis
9 not guilty. But that's not really what this case is about.

10 When you look at self-defense, self-defense negates
11 first degree murder by premeditation and deliberation, which
12 is this here. Second degree murder, which is the unlawful
13 killing with malice, and voluntary manslaughter, which is a
14 killing in the heat of passion.

15 The only thing it doesn't negate is
16 challenge-to-fight murder. We're going to talk about that in
17 a second. But if you find self-defense -- and bearing in mind
18 the State has to disprove self-defense beyond a reasonable
19 doubt -- they have to disprove it beyond a reasonable doubt.
20 If you find self-defense or that the State has failed to
21 disprove it beyond a reasonable doubt, then you can no longer
22 consider any of these. You're done. You don't need to
23 consider first degree premeditation, second degree malice, or
24 voluntary manslaughter. You are done.

25 So what is self-defense as Nevada law defines it?

1 Self-defense is the idea that somebody has both an actual and
2 reasonable belief of imminent danger or great injury and that
3 it's absolutely necessary to use deadly force to avoid that
4 great injury.

5 Now, let me talk to you for just one second about
6 reasonable. Because reasonable is kind of critical here.
7 Reasonable does not mean right, it does not mean perfect. And
8 the best way one of the guys in my office illustrates this
9 concept is -- and it kind of applies to us, because my husband
10 works out in Henderson and we live in Summerlin. There's two
11 ways for him to drive to work on any given day. He can take
12 95, he can take the 215. Either one of those ways is
13 reasonable. If on any day he takes 215 and there's a car
14 accident and it makes him 45 minutes late to get to work and
15 he gets to work and he looks back and he says, Well, I
16 certainly didn't take the right way. But he took a reasonable
17 path to get to his office.

18 When you consider the reasonableness of self-defense
19 or even manslaughter for that matter, you're not looking to
20 determine whether or not the course of conduct was right.
21 You're looking simply to determine if under the circumstances
22 it was reasonable.

23 So self-defense means that you have to have -- there
24 has to be an imminent danger of substantial bodily harm, there
25 has to be an actual and reasonable belief in that, and there

1 has to be an actual and reasonable belief in the absolute need
2 to use deadly force to avoid that great injury.

3 Imminent danger of substantial bodily harm. Well,
4 let me ask you this. If you have a 300-pound 6'3" guy
5 pounding on your door who's been riled up and violent all
6 night long, you've hopped out of your car, you've tried to
7 calm him down and he's not having any of it, he's screaming
8 for the woman he's just beaten and tried to attack, even in
9 the face of two uniformed security officers, he's high on
10 lethal quantities of meth, rushing down the stairs at you,
11 still screaming, and in the verbal back and forth he punches
12 you, he's already threatened to kill you, he pulls out a gun
13 and even after you wrestle it away, he does exactly what he
14 did earlier and he charges directly at you, ladies and
15 gentlemen, this is more -- this is more than a reasonable
16 belief that there is life-threatening danger imminent.

17 How about deadly force being absolutely necessary?
18 Well, this 6'3" 300-pound guy just landed a blow on you. And
19 he's made it abundantly clear to you that the next step is a
20 bullet. Is deadly force absolutely necessary? The answer to
21 this, without any doubt, is yes.

22 Now, actual danger, interestingly enough, is not
23 necessary for self-defense. The appearance of danger is more
24 than sufficient. There just needs to be, as the jury
25 instructions tell you, you just need to have an honest and

1 reasonable belief that there exists the threat of great bodily
2 injury. Even if it turns out -- even if it turns out and the
3 instructions tell you this -- even if turns out that that
4 belief in hindsight is wrong.

5 And again, as I indicated before -- and this is
6 critical -- the prosecution must disprove self-defense beyond
7 a reasonable doubt once it's raised, once there's some
8 evidence of it. And at a minimum there is with that first
9 punch. Once it's raised, the prosecution is tasked -- I don't
10 have to prove it to you. They have to disprove it beyond a
11 reasonable doubt. If you harbor any doubt as to whether or
12 not Luis acted in self-defense that night, you must find him
13 not guilty.

14 And I ask you this, any one of these things, any one
15 of them gives you doubt as to whether or not Luis acted in
16 self-defense. It tells you that he did act in self-defense,
17 but at the very least, each one of those things either
18 singularly or in combination tells you that there is doubt as
19 to whether or not he acted in self-defense, that the
20 prosecution has not, because they cannot establish beyond a
21 reasonable doubt that Luis didn't act in self-defense.

22 So where does that leave you? Again, self-defense
23 and the prosecution's abject failure to disprove it beyond a
24 reasonable doubt leaves you with one thing left. Because
25 self-defense, again, negates first degree murder by

1 premeditation, second degree, and manslaughter. The only
2 ~~thing then that you're left with is this challenge to fight.~~
3 Because the instructions tell you that self-defense is not a
4 defense to challenge-to-fight.

5 What is challenge-to-fight? There are at least --
6 at least three main elements that the prosecutors must prove.
7 And again, I can't harp on this enough, they have to prove
8 each element beyond a reasonable doubt or that house fails.
9 The charges cannot stand if even one element is missing.

10 What is the first element of challenge-to-fight?
11 Well, it's the specific intent to challenge. So let's look.
12 What is the evidence of a specific intent to challenge? This
13 -- this has to come from the Arizona Charlie's, it cannot come
14 from the Siegel Suites, because the way the prosecutors have
15 alleged it, the way it's charged in the charging document, is
16 that challenge has to have come from Arizona Charlie's; cannot
17 have developed later.

18 There has to have been a specific intent to
19 challenge and what do you -- at that Arizona Charlie's. And
20 what do you know about what took place at that Arizona
21 Charlie's? Again, you have Javon Howard, you have Juan
22 Knight, you have Amanda and Luis all saying that Luis was calm
23 that he was just trying to protect Amanda saying that Hey,
24 hey, dude, hitting a woman is not cool. He's not threatening
25 anyone, and he only says -- and I'm quoting here, because this

1 came to you by both security guards -- it's not, You know
2 where I'll be; it's, "You know where I be." You know where I
3 be. Only comes after Bobby threatens him. And Javon Howard
4 made it abundantly clear that this was not a challenge that
5 Luis was making. It was just Luis letting Bobby know, Dude,
6 I'm not afraid of you and I'm not going to let you hit a
7 woman.

8 He never tells Bobby, Hey, meet me at my place in 30
9 minutes, as Tim Hildebrand likes to say. As Shannon Salazar
10 likes to say. And again, Tim says he says it nine times,
11 maybe three times, who knows? But oddly enough Tim Hildebrand
12 is the only person who hears this. There's never any
13 challenge to fight. Javon and Juan are very clear on that.
14 He never says to Bobby, Hey, meet me at my place. He never
15 says to Bobby, Hey, I want to fight you. He never mentions
16 fighting Bobby at all when they leave and go to Siegel Suites.
17 He never says anything about meeting up with him at his
18 apartment. There's never any talk of weapons.

19 And, in fact, as I said before, Tim says they were
20 surprised when they got to the Siegel Suites and lo and
21 behold, there's Bobby. No proof beyond a reasonable doubt of
22 a specific intent to challenge, because there was zero
23 specific intent to challenge.

24 The next element, again, the prosecution has to
25 prove beyond a reasonable doubt would an agreement -- there

1 has to be an actual agreement between Bobby and between Luis
2 to fight. Well, the only evidence -- the only evidence that
3 you heard, and the prosecution has pounded on this again and
4 again and again and again, is that Bobby was looking only for
5 Amanda. Now, that doesn't mean that Bobby wasn't willing to
6 attack her or anyone else who got in his way of her that
7 night. But it does not mean, when he's looking for Amanda, as
8 they have told you again and again that he was doing, it does
9 not mean that Bobby had agreed to some fight with Luis.
10 Indeed, every single witness who testified told you nothing
11 other than Bobby was looking for Amanda.

12 Well, you know what? The prosecution can't have it
13 both ways. They can't tell you that he was trying to find
14 Amanda, and that's the only thing that he was trying to do.
15 And then get up here and argue to you, have the audacity to
16 argue to you that there was actually some agreement to fight
17 if he was just looking for Amanda all night. No proof beyond
18 a reasonable doubt of an agreement to fight, because there was
19 no agreement to fight.

20 The third element of challenge-to-fight first degree
21 murder is the death resulting from the agreed-upon fight.
22 Again, the death has to directly result from whatever
23 agreement there was, if there was any agreement at Arizona
24 Charlie's. There was no earlier challenge-to-fight, there was
25 no agreement to do so.

1 This was a case about Bobby, irrationally and
2 violently obsessed with Amanda, and he was going to stop at
3 nothing to get at her. That's what he was doing at Arizona
4 Charlie's, that is what he was doing at the Siegel Suites, and
5 he died in the process of dealing with his obsession with
6 Amanda, not because he agreed to some throw down with Luis.
7 No proof beyond a reasonable doubt of death resulting from --
8 from an agreed-upon fight because that's not why Bobby Holland
9 died.

10 And that means, ladies and gentlemen, after you've
11 considered self-defense, the fact that Luis acted in
12 self-defense, the fact that the physical evidence supports the
13 fact that he acted in self-defense, the fact that at a minimum
14 the prosecution can't disprove his claims of self-defense
15 beyond a reasonable doubt, and because they cannot prove
16 beyond a reasonable doubt the elements of the only remaining
17 theory they have left, which is that challenge-to-fight,
18 because it simply didn't occur, you have to find Luis not
19 guilty.

20 Now, I want to just very briefly touch on murder and
21 -- and manslaughter. Because you only get there -- you would
22 only get there if you don't find self-defense and you don't
23 have beyond -- proof beyond a reasonable doubt of that
24 challenge-to-fight first degree murder felony murder.

25 The only way that you get here is if there's no

1 self-defense and if there's no challenge-to-fight first degree
2 murder. Again, there is self defense, if you don't get there.

3 But if you were to consider premeditation and deliberation, as
4 we have in first degree murder, let's look at the elements.

5 First degree murder by premeditation and deliberation. It has
6 to be wilful. And again, this is not -- you think it's
7 wilful; they have to prove it to you beyond a reasonable
8 doubt, each element, that it was wilful. Again, each element
9 holds up that charge. If one is missing, the charge fails.

10 They have to establish beyond a reasonable doubt
11 that the killing was wilful for first degree premeditated
12 deliberate murder. What is wilfulness? Well, it's an intent
13 to kill. Pretty simple.

14 Both experts tell you that once threatened, Luis is
15 in full fight-or-flight mode. That kicks in and he's on
16 autopilot; again, to use the words of Dr. Piasecki, the
17 prosecution's own expert. He's doing what he was trained to
18 do, of the course of several years, he neutralizes his target,
19 that's exactly what he did. He told you himself even that if
20 you want to kill someone, you don't shoot them in the butt,
21 you shoot them in the back or you shoot them in the head.

22 He didn't unload that clip, because again, his goal
23 was only to get away to neutralize his threat and to leave. I
24 would urge you to not confuse the outcome. That is the fact
25 that Bobby died, with what Luis's intent was at the time of

1 the shooting. Just because Bobby died does not mean that
2 Luis's intent at the time that this goes down is actually to
3 kill him. His intent is to neutralize whatever threat he
4 posed and get away. There is no wilful intent to kill.
5 There's certainly no proof beyond a reasonable doubt of an --
6 of a wilful intent to kill.

7 The second element of first degree premeditated
8 murder is deliberate. Deliberation, it is defined as you have
9 in the jury instructions as the process of determining a
10 course of action to kill as a result of thought. And this
11 language is critical. Including weighing the reasons for and
12 against the consequences of your action. In all cases -- the
13 law tells you in all cases determination must not be formed in
14 passion. If it is formed in passion, it must be carried out
15 after there has been time for the passion to subside and for
16 deliberation to occur.

17 A mere unconsidered and rash impulse is not
18 deliberate, even though it includes the intent to kill. So
19 Luis, like anyone else who's charged with first degree murder,
20 would have to actually deliberate, that is weigh the
21 consequences for and against the action, the course of
22 conduct, before he does it. He would have to weigh those
23 consequences. And again, once he's threatened and he's in
24 fight-or-flight, what did both experts tell you? He's on
25 autopilot. He's not weighing any consequences for and

1 against. He not bating -- debating the merits of what he
2 should or shouldn't do. That fire department is in charge.

3 He's acting on instinct, he's acting out of
4 self-preservation, and that's exactly what he did. There's no
5 deliberation. There's certainly no proof beyond a reasonable
6 doubt of any deliberations. Likewise, there's no proof beyond
7 a reasonable doubt of premeditation, because there isn't
8 premeditation, either. It is defined, as the judge just told
9 you again as a design, a determination to kill, that's
10 distinctly formed in the mind at the time of the killing, even
11 if it is instantaneous -- as instantaneous as successive
12 thoughts of the mind.

13 Yes, it can be fast, but yes, it must be a
14 determination to kill. This is the equivalent of concluding,
15 however quickly, that you want to kill someone. And again,
16 Luis had just been punched and attacked by a 6'3" 300-pound
17 methamphetamine addict who had been violent all night. He had
18 made it clear through his words and his actions that he was
19 going to stop at nothing -- at nothing -- to get at the woman
20 who was the object of his obsessions. At least the object of
21 his obsessions that night.

22 Luis had no design to kill when he reacted. He had
23 a design, ladies and gentlemen, to survive. There is simply
24 no evidence of premeditation and deliberation. Luis Pimentel
25 is not guilty of first degree murder.

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1 Second degree murder, it is defined as the unlawful
2 killing with malice aforethought. What is an unlawful
3 killing? Again, both of these elements must be present beyond
4 a reasonable doubt or that charge fails. What is an unlawful
5 killing? Killing someone without provocation or excuse, as
6 the law tells you. There has to be included with that malice
7 aforethought.

8 What is malice? I'm not going to tell you the
9 definition again. Mr. Bateman read it to you at length. It's
10 long, it's confusing. But suffice it to say it includes the
11 intentional doing of a wrongful act, again, without legal
12 cause or excuse, or what the law considers to be adequate
13 provocation.

14 Malice, as you will find out and you've heard in the
15 jury instructions, it can be either express or implied.
16 Express is when there's a deliberate intention to take away
17 the life of a human being, and implied is when there's no
18 considerable provocation that appears and when the
19 circumstances show an abandoned and malignant heart.

20 Again, there's no malice that occurs here, because
21 there's no thinking that occurs here at the time that these
22 shots are fired. There was no intent to do a wrongful act,
23 there was no intent to kill. There was only intent -- an
24 attempt to escape the harm that was very obviously, clearly,
25 and profoundly confronting Luis. Luis had the right, ladies

1 and gentlemen, to save himself that morning using whatever
2 means were necessary.

3 The law did not require him to retreat. In Nevada
4 you have the right to stand your ground. That law says the
5 right of self-defense is not generally available to an
6 original aggressor, that is a person who has sought a quarrel
7 in order to force a deadly issue, and through his fraud,
8 contrivance, or fault, create a real or apparent necessity for
9 making a felonious assault.

10 However, as the law says, where a person without
11 voluntarily seeking, provoking, inviting, or engaging in a
12 difficulty of his own free will is attacked by an assailant,
13 that person has the right to stand their ground and not
14 retreat when faced with a threat of deadly force. That is the
15 law in Nevada.

16 Is there any doubt, I ask you, who the original
17 aggressor was in this? Because it certainly wasn't Luis.
18 Regardless of what he may or may not have said at Arizona
19 Charlie's and the Siegel Suites, the one thing you know, if
20 you know nothing else, is that Luis was only ever -- ever --
21 throughout the course of this entire night or morning
22 responding when Bobby threatened him and responding when Bobby
23 attacked him.

24 Indeed, it was Bobby who took his irrational bizarre
25 obsession with Amanda to Arizona Charlie's that night and then

1 later to Siegel Suites. It was Bobby who then laid into Luis.
2 It was Bobby who then punched Luis. And it was Luis who, as a
3 result of Nevada's law, it was Luis who had the right to stand
4 his ground at his home without retreating and to use deadly
5 force to save his own life.

6 Now, I ask you also to think back for a minute to
7 all the questions that the prosecutors asked of Amanda, how
8 many times she'd slept with Bobby, how they were supposedly
9 boyfriend/girlfriend, even though we now know that Amanda was
10 living in another state and had been so situated for quite
11 some time, was coming only once a month.

12 I'm curious, were they kind of implying to you
13 somehow or another that Bobby was justified in stalking her
14 and terrorizing her, beating her? That somehow or another she
15 brought this on, that she brought on his obsessive behavior by
16 leading him on? Maybe that she somehow knew that this was
17 going to happen or should -- or that this would be his
18 reaction?

19 And I'd ask you also to consider how about the
20 questions that the prosecutors asked about Luis knowing Bobby?
21 All right. They traveled in the same meth circles. But how
22 about these questions about them knowing each other? Was this
23 meant somehow or another to imply that somehow or another it
24 was Luis's fault that Bobby became enraged, irrational,
25 abusive, and violent?

1 How about the question that they asked of Tim, Well,
2 ~~Mr. Hildebrand, you would agree that if Luis hadn't confronted~~
3 Bobby, none of this would have happened, right? Well, how
4 about -- how about this. How about if Bobby hadn't have
5 gotten himself jacked up on lethal quantities of meth and
6 stalked Amanda like she was his prey, abused her, attacked
7 her, and hunted her right to Luis's doorstep?

8 A Greek philosopher once said that, "The truth
9 always lags along last, limping along the arm of time." In
10 this case, the truth didn't just lag along, it hobbled along.
11 It was curtailed by the government's profound failure to
12 interview witnesses, to seek out witnesses, their dismissal of
13 certain witnesses. And the one side of accounting that they
14 have perpetuated, even with their own expert. Given her only
15 part, but not the entire picture.

16 But the truth always prevails in the end. And I say
17 to you now, ladies and gentlemen, that time has come. Luis
18 Pimentel's intent on the early morning hours of December 22nd,
19 2013, was not to fight. It was not to kill. It was just
20 merely to survive.

21 There is indeed only one verdict that speaks that
22 truth. And it is for that reason that I say to you now if you
23 do follow your oath to well and truly try this case at issue
24 before you, that is the verdict that you will render. Because
25 it is the sole, the singular verdict that justice demands.

UNCERTIFIED ROUGH DRAFT

1 Thank you.

2 THE COURT: Thank you. How's the jury doing?
3 Anybody need a bathroom break?

4 All right. Ladies and gentlemen, we're going to
5 take a 15-minute recess till 12:30.

6 During this recess it is your duty not to converse
7 among yourselves or with anyone else on any subject connected
8 with the trial or read, watch, or listen to any report of or
9 commentary on the trial by any person connected with the trial
10 or by any medium of information, including, without
11 limitation, newspaper, television, radio, or Internet, and
12 you're not to form or express an opinion on any subject
13 connected with this case until it's finally submitted to you.

14 Be at recess till 12:30.

15 (Jury recessed at 12:17 p.m.)

16 THE COURT: All right. The record will reflect the
17 jury has departed the courtroom. We'll be in recess till
18 12:30.

19 MR. BATEMAN: Thank you, Your Honor.

20 (Court recessed at 12:18 p.m., until 12:31 p.m.)

21 (In the presence of the jury.)

22 THE COURT: And the record will reflect that we are
23 back in the presence of all 12 members of the jury, as well as
24 the two alternates, defendant is present with his counsel,
25 deputies district attorney prosecuting the case are present,

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1 as are all officers of the court. Will counsel so stipulate?

2 MS. DiGIACOMO: Yes, Your Honor.

3 MS. LEMCKE: Yes, Your Honor.

4 THE COURT: Thank you. And this is the time for the
5 State's rebuttal closing argument.

6 MS. DiGIACOMO: Thank you, Your Honor.

7 STATE'S REBUTTAL ARGUMENT

8 MS. DiGIACOMO: Defense counsel just stated to you
9 that this -- that the State has presented you a one-sided
10 accounting. That's all the State has done. However, the
11 defense is completely incorrect. What the State has done is
12 presented you with the evidence, presented you with the
13 investigation that played out in December 2013 into January
14 2014.

15 What the State presented is exactly what the
16 detectives learned, exactly how the investigation played out.
17 And that is that the defendant murdered -- and I say that
18 again, murdered Bobby Holland. That's all it was.

19 Have you ever heard keep your eye on the prize?
20 Well, that's what the State would ask you to do in this case.
21 What the focus here is the fact of what happened at the Siegel
22 Suites, the fact of how Bobby Holland was murdered. That's
23 what is at the core of this case.

24 Everything else about the state -- Arizona Charlie's
25 and this victim, Bobby Holland, I mean, the defense did

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1 nothing but just muddy Bobby Holland. Told you he's obsessive
2 and he's stalking his girlfriend and he's beating her and he's
3 threatening to kill. I mean, he's out of control, right?
4 He's high on meth, lethal -- lethal doses, out of control.

5 And what did everybody do? Nothing. Nobody called
6 the police, nobody, you know, said Oh, my gosh, maybe we
7 shouldn't go home -- when they see him there -- maybe we
8 should get back in the car. Nothing. Because what's
9 happening is the defense wants you to be mixed up in all of
10 this, when really right here is what you need to focus on.
11 What you need to focus on is exactly what happened at the time
12 of the killing.

13 Now, I'm not going to say that what happened at
14 Arizona Charlie's isn't important, because it does put context
15 to what happened at the Siegel Suites when the defendant
16 murdered Bobby. And that's what it was. It was a murder.

17 What you have earlier in the night is -- is Bobby
18 Holland upset with Amanda? Heck yeah, he is. If you recall,
19 you heard testimony from his mom, dropped him off, everything
20 was fine. She said get out of the car, give me a hug and a
21 kiss. He thinks she's going to do business for about an hour
22 and a half and then she's coming back. But she doesn't.

23 So yeah, he goes to the Arizona Charlie's and he
24 finds her and he's upset. And if you see in the video he
25 actually holds up his cell phone when he's talking to her.

1 Yeah, he's upset. Most likely somebody texted him that she
2 was there and that's why he shows up. And, you know, he's not
3 dressed up. You could tell, he's clearly in the sweats, that
4 he was hanging out at home waiting for her to get there. But
5 yeah, he's clearly upset. Yes, things happen at the Arizona
6 Charlie's.

7 But what's important is he didn't know, before he
8 went to the Arizona Charlie's, that the reason Amanda didn't
9 come home to him -- and he clearly thought they were in a
10 relationship -- was because she was with Lorenzo, one of his
11 friends. And he was upset about that. Absolutely. You know
12 what? Think about it; a reasonable person who's not going to
13 be upset? They just caught their girl with their friend. It
14 is completely reasonable for him to be upset.

15 But don't believe the picture the defense is trying
16 to paint, that he's out of control and he's going nuts. If
17 you look at the video, if you look at what the testimony was,
18 he's acting like anybody would in that situation. He's upset.

19 And if you recall, he's the one that kept saying to
20 Lorenzo, This isn't about you. Want to talk to her. His
21 whole focus was on Amanda trying to figure out what's going on
22 with them, trying to get her back. That's his focus this
23 night.

24 Now, when you look at the evidence, you basically
25 have two versions. You have the defendant's version and you

1 have everyone else's version. Okay. And we call it

2 Hildebrand, you know, that's what he said. And the reason why
3 we use him as the core is because he was there. He saw it.
4 He is an eyewitness to the crime.

5 And the other eyewitnesses to the crime corroborate
6 what Tim told you. When you look at the defendant's version
7 of what happened, you have nothing to corroborate what the
8 defendant told you.

9 And you have to look at the motivations, too. Why
10 would all the other eyewitnesses say this? Why did the
11 defendant say this? Well, I suggest to you the reason
12 eyewitnesses said what they said is because that's what they
13 saw and that's what they remember. And you've got to
14 remember, no two witnesses are going to remember an incident
15 the exact same way, because everybody bring -- brings their
16 own perceptions.

17 But when you look at the defendant and why he told
18 you what he told you, you've got to remember his motivation.
19 If it's not self-defense, if you don't believe that he acted
20 in self-defense and his fight-or-flight was out of control,
21 then he's guilty of first degree murder with use of a deadly
22 weapon. It's as simple as that. And when you look at it,
23 there's nothing else that corroborates what the defendant
24 said.

25 Now, defendant's counsel showed you some pictures of

1 injuries to the victim's hands as well as his ring and, you
2 know, and he did that hand thing, smashing thing, that's how
3 that -- one of those injuries got there. Well, it doesn't
4 explain all the other injuries on the victim's hands. But it
5 does explain them when you look at the fact he's a 300-pound
6 man who's just had his aorta torn, and he falls, hard. 300
7 pounds, falls hard on that cement ground, and he gets scraped.
8 And he gets the abrasion or contusion above his eye, because
9 he fell on his face. That explains it.

10 Defendant's version, even if you want to believe it,
11 that they got into some sort of, you know, he punched Bobby
12 back and there was a scuffle, those injuries are not explained
13 by the defendant's version of the story. Just simply not.

14 And also, you know, the -- the DNA on the gun, that
15 supports the defendant's version. No, it doesn't. All it
16 tells you is there's a mixture of DNA on that gun. Can't tell
17 you when it got there, can't tell you how it got there, can't
18 tell you whose it was. You know, you're talking about a gun
19 in the Siegel Suites. There could have been a lot of people
20 that touched that gun. And so that also does not corroborate
21 the defendant's version.

22 The fact that there was blood on the victim's -- or,
23 excuse me, the defendant's pants as well as his shoes. Okay.
24 Defense counsel says that corroborates it was self-defense, my
25 guy's version, that corroborates it, that it was close, he was

1 lunging.

2 No, go back and look. First of all, it -- it's very
3 possible that there's some spatter on his pants, and it could
4 be the victim's, we don't know, because it wasn't tested. But
5 look at the shoes. That doesn't support that he's at close
6 range when the gun's fired. Because what you would expected
7 when somebody's shot is kind of blood to fly out and be like
8 droplets. If you look at what's on the shoe, it's, like,
9 white. So it doesn't support.

10 And the -- the defense also stated, Okay, well what
11 really does support, too, our guy's version is that he don't
12 have a gun at the Arizona Charlie's. You saw in the video,
13 you can't see it. And there's no outline of the gun under his
14 shirt. Well, first of all, he's wearing those tight pants
15 with the belt. And if the gun's tucked in, it could be tucked
16 in far enough that you might not see it with the shirt, and
17 he's got this big, baggy shirt. So how would you know?

18 And also, how do you know it's not back in his room
19 with his -- his backpack and his belongings? How do you know
20 it's on his person? You don't.

21 And, you know, defense counsel stated, well, it
22 makes sense that the victim was the one that had the gun that
23 night, not Luis. Because he had it previously, he had it
24 sometime before, Amanda said. And we'll talk about Amanda's
25 credibility. But clearly, she even admitted on the stand

1 she's in love with the defendant, she's supporting the
2 defendant, was talking to him up until a couple of months ago.
3 So of course she's going to say he had some gun.

4 And she described it differently than the gun in our
5 case. So you don't know that that actually had anything to do
6 with it. But the defense wants you to believe, well, Bobby
7 had this gun, Amanda saw it a year and a half ago. So that
8 must mean he brought the gun to the fight. No, it doesn't.
9 Think about it. He's rolling out of bed, he's at home, finds
10 out his girls's at Arizona Charlie's, he's just going to try
11 to find out what's up with her. He doesn't know he's going to
12 get into a fight. He has no idea before he gets there that
13 Lorenzo's even the reason she's there. He has no clue. He's
14 rolling basically out of bed and going and talking to her.

15 But look at the defendant; why does it support he's
16 the one that has a gun? He admitted to Dr. Piasecki, as well
17 as on the stand, he was at the Arizona Charlie's doing his
18 meth deals all day. So he's there meeting with clients. It
19 makes sense a meth dealer is going to have a gun with him for
20 protection. He's got a lot of drugs on him. People might
21 want to steal it. So it makes sense the defendant's the one
22 that brought the gun to this fight, not the victim.

23 And if you look through when we talk about his
24 actions, that makes sense he's the one that had the gun,
25 because he knew he had the gun. That's why he wasn't scared

1 of Bobby.

2 You know, defense counsel made a lot of talk about
3 he saw Bobby on the video and his hands are on his pockets
4 outside and inside. It's also a cold night. It's like,
5 3:00-ish in the morning. There's other reasons somebody could
6 put their hands in their pockets. And it actually shows he's
7 not that aggressive. No, the defense wants you to believe he
8 was, you know, wife -- a woman beater and he was high on meth
9 and out of control. And yet he's got his hands in his pockets
10 for the most time when he's trying to talk to Amanda. Clearly
11 contradicts their statements.

12 And you know all the talk about how Bobby was
13 clearly the aggressor? Well, it's clear, he wanted to talk to
14 Amanda. But it's the defendant that interjected himself into
15 the situation. And, you know, everybody told you his focus
16 was on Amanda. Bobby's focus was on Amanda. The defendant's
17 the one that started antagonizing him. The defendant himself
18 testified on the stand he told Bobby first, You want to hit a
19 woman? Come hit a man. Those were his words. He clearly was
20 antagonizing the situation.

21 And you heard people say Bobby was even saying, I
22 don't want to fight you. He just wanted to talk to Amanda.

23 Now, you know, defense counsel talked to you a lot
24 about Tim and Shannon. And you can't believe them. Can't
25 believe Tim and -- Tim and Shannon. Can't, can't, can't.

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1 Well, that's because if you believe Tim, it's first degree
2 murder. So they have to come up with that. And if you
3 believe Tim, defendant's version cannot have happened.

4 And, you know, Tim and Shannon were the ones that
5 both told you they heard the defendant saying, Yeah? You
6 know, when the victim's, like, I'm going to kick your ass.
7 And he's, like, you want some of this? I'll be home in 30
8 minutes. You know where I live, I'm going to be there in 30
9 minutes; clearly instigating this, clearly asking or
10 challenging the victim to a fight.

11 And, you know, when Tim got to the Siegel Suites, he
12 told you he was surprised Bobby was already there. Not
13 because he was surprised Bobby accepted the invitation to come
14 to the Siegel Suites, but he was surprised because Bobby beat
15 them. You know, they drove -- Bobby's on foot. He had no
16 idea his dad drove him. That's why Tim was surprised. Not
17 because Bobby was there, but because he beat them.

18 And also, too, what Shannon and Tim told you about
19 how, you know, You know where I live, come to my house, I'll
20 be there in 30 minutes, come on, let's do this; that is the
21 only explanation in this case as to why Bobby was at the
22 Siegel Suites on the third floor banging on Lorenzo's door.
23 Think about it. What other evidence do you have to explain
24 that?

25 When Bobby was last seen on the video being kicked

1 off by security, jumping the wall going to 7-Eleven, Lorenzo
2 and Amanda were at Arizona Charlie's. Right? So why wasn't
3 he trying to bust back onto the property to try and talk to
4 them? He had no idea that they left but for the defendant's
5 words. The defendant told him where he'd be and come meet me.
6 And he did.

7 Think about that, there's no other reason why the --
8 the -- Bobby should have been at the Siegel Suites. None.
9 Because when he last saw the two of them, they were still at
10 Arizona Charlie's. So but for the defendant telling him, Hey,
11 you want to fight? Come to my house, you know where I live,
12 why would Bobby even have been there?

13 And you know all this talk about, Well, Luis, you
14 know, he -- he was afraid, defendant was afraid to stay at the
15 Arizona Charlie's, because Bobby knew where his room was.
16 Okay, that doesn't make sense. He knew that Bobby had been
17 86'd off the property, could not -- they made a big deal about
18 Bobby could not come back on property without criminal charges
19 ensuing. Right? So, actually, the defendant knew he was safe
20 on that property and if he was afraid that Bobby knew where
21 his room was, could have easily have asked for another room.
22 Okay.

23 So it doesn't make sense that defendant was -- you
24 know, felt he wasn't safe there. Absolutely he was. He --
25 but he left, because he knew he had already challenged Bobby

1 to a fight.

2 When they get to the Siegel Suites -- this is really
3 what's most important in this case -- when they get there and
4 they pull up, Tim gets out of the car, defendant gets out of
5 the car. And when he tells the girls to leave, both Shannon
6 and Tim testify that he was kind of right there on the
7 sidewalk by that maroon truck. Right? And that -- that
8 defendant was at the bottom of the stairs, and that Bobby came
9 down those stairs and met him there and that's where their
10 argument ensued.

11 Now, James Tabele said he looked out his window and
12 he saw somebody with dark hair telling him, Hey, guys, can't
13 we do this later? Trying to calm down the situation. Well, I
14 submit to you that that was actually Tim. I don't know if he
15 had a shadow on his balding head or what. But that was Tim.
16 Because Tabele told you he saw the calming person by his car
17 and he could hear argument, but he couldn't see it because of
18 the staircase.

19 So you have what Tabele says, it's corroborating
20 Tim's version. And Tim says that they argued and that it
21 wasn't until the defendant, you know, because Bobby's, like,
22 You're not going to fuck Amanda. And he goes, I'm going to
23 fuck her and I'm going to show her what a real man is.

24 And at that point Bobby punched him. But think
25 about what Tim said, he punched him one time and stopped.

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1 That's when the defendant kind of stumbled back, and then he
2 lifted his shirt, pulled up the gun, aimed it immediately, and
3 it went click. Okay.

4 When -- when it misfired, Tim even said he kind of
5 like giggled, kind of like, I can't believe that just
6 happened. And then at that point, you hear the -- Bobby
7 backing up, going, Why -- what are you going to do, shoot me?
8 As if he can't believe it. And then the defendant does shoot
9 him. Okay. It explains what Tim said and what Tabele said
10 about them going around the cars, because defendant's version
11 doesn't say that. And when he was shot, you know, Tim does
12 say he's kind of standing up with his arms up, but you don't
13 know, you know, or maybe Tim didn't see it, but either the
14 defendant kind of shot at a downward angle. But most likely
15 the victim, as unbelievable as it may seem, is trying to duck
16 from a bullet. Which you can't do.

17 And because of his ducking, that's what made it go
18 downward through his aorta. And then you heard, he would have
19 immediately collapsed, and he did.

20 And then at this point, defendant walked up and shot
21 him again in his butt, or in the back. He's face down, not
22 probably really even breathing. I guess Tim said there was
23 some gurgling. And he shot him again. Then he ditched the
24 gun and he took off. And, you know, that's when -- and, you
25 know, if you look at Sean Nelson's version, as well, he said

1 he heard something to the effect of, You want -- you want to
2 fuck with me? Boom. Then Fuck you. Boom. Okay. Does that
3 sound like self-defense? No. Sounds like somebody pretty
4 pissed off murdering somebody else.

5 If you -- also, with regard to the gun and, you
6 know, what we were trying to explain to you, if you looked at
7 all of the stuff that Bobby had in his pockets, okay, there's
8 no room for a gun in any of the pockets. Defendant
9 specifically said that the gun came from the waistband.

10 But think about it, even if Bobby's just jogging
11 down the stairs kind of at a normal pace, let alone running,
12 when you have a tie waist like that and a heavy gun, feel it,
13 you know, it's a couple of pounds in your waistband, and
14 you've got 18 pounds of change also kind of pulling your pants
15 down, do you think that gun is still going to be at your waist
16 -- in your waistband at the bottom of all those stairs?
17 Absolutely not. It's going to slide down. It's not going to
18 hold. It's not meant to hold a gun like a belt would that you
19 could cinch tighter.

20 You know what else corroborates, too, Tim's version,
21 as well as all the other witnesses, was the fact that Tim and
22 Shannon both heard the defendant and Amanda whispering in the
23 back seat. And then after the fact, Amanda's complete
24 disregard as to what just happened. She wasn't surprised, she
25 wasn't upset Bobby just gets shot; it's as if she knew there

1 was a plan. And just like she said, if Lorenzo doesn't take
2 care of him tonight, my uncle will tomorrow. That again shows
3 you this isn't self-defense. This was a plan when they got
4 over there.

5 So when you look at what the State has -- has put
6 up, we've got the challenge to fight, we've got the
7 premeditation and deliberation. And there's no self-defense
8 here. With the challenge-to-fight, you have Lorenzo saying,
9 Hey, want to hit a woman, come hit a man, you know where I'm
10 going to be, I'll be home in 30 minutes, I'll kick your ass,
11 you know, etcetera. And they're going back and forth. And
12 then lo and behold, there's acceptance, because you've got
13 Bobby showing up at his house. And lastly, you've got his
14 death resulting.

15 So it's a challenge-to-fight, it's first degree
16 murder.

17 With regard to wilful, premeditated, and deliberate.
18 Wilful, you have to have the intent, so let's just consider
19 Tim and other version -- other witnesses' version. With
20 wilful, you have to have the intent to kill. Well, I suggest
21 taking one step back, immediately pulling out a gun, pointing
22 it and it going click. There is an intent to kill. Maybe.
23 Maybe. Maybe not. I suggest there is.

24 But think about this. The minute it clicks, he has
25 to rack the gun to get the bullet into the chamber, then he

1 has to follow him around the car and point the gun again.

2 Absolutely, he has formed an intent to kill at that point. No
3 question about it. And when he fires that gun, that is his
4 intent.

5 With deliberation, you know, where you kind of weigh
6 the consequences, he had that chance. Think about it. When
7 he pulled the gun and it went click, right then he had that
8 chance to think about, Oo, what did I just do, oh my gosh,
9 come to my senses? No. What did he do? He deliberated and
10 he said, I'm going to do it. I'm going to kill him. He
11 cocked the gun and he pointed it again and shot. Had time for
12 wilful -- or it's wilful and it's -- there's deliberation.

13 And premeditation. It's your design to kill. And
14 it's as quick as successive thoughts of the mind. So how
15 quick can that be? Well, think about it. You're driving your
16 car. You're about 100 yards from a -- what do you call it --
17 traffic light. And as you're getting close, you can see it's
18 turning to yellow. And in those few seconds you decide, okay,
19 should I run it? Should I gun it? Should I stop and slam on
20 my brakes? Well, are there any cops around? Is there a car
21 next to me? Is he going to go or is he stopping? You know,
22 are there any people in the walkway?

23 And then you decide, Okay, I'm going to slam on my
24 brakes and I'm going to stop. In the matter of seconds you
25 have completely designed a plan and acted accordingly to it.

1 And it is just as easy when you've got the intent to kill
2 somebody. And I know we talked about it, but think about it.

3 He fires the first one and it's a click. He has to
4 cock the gun, he has to chase him around the car, he has to
5 fire again. And then that second shot into his back, that's
6 kind of like the, Screw you, I showed you, I'm the bigger man.
7 And that clearly shows his intent and that he premeditated and
8 he was deliberate.

9 This is not a self-defense case. But let's look at
10 if it was a self-defense case. Okay. Because we do have to
11 prove to you beyond a reasonable doubt it is not self-defense.
12 So looking at Tim and the other witnesses' versions of what
13 happened. When the defendant said to Bobby, Well, you know,
14 I'm going to fuck her tonight and I'm going to show her what a
15 real man's like, and Bobby punched that one time, does the
16 defendant have the right in that case to use self-defense,
17 pull a gun and use it? No. And here's why.

18 There's not that threat of immediate bodily harm.
19 Because remember, Bobby -- and Tim said it -- he punched one
20 time and stopped. He didn't jump on him, he wasn't pummeling
21 him, he punched once and stopped. And when the defendant
22 pulled the gun, he backed off. There was no need for
23 self-defense.

24 And you can't raise the stakes. Okay. If nobody's
25 -- if somebody punches you one time and they're not

1 threatening to take our life or to cause you imminent bodily
2 harm, you can't just raise the stakes and shoot somebody.

3 Kind of has to be an equal force. So in that scenario, there
4 is no self-defense.

5 With regard to the defendant's version of what
6 happened, he has to tell you self-defense, because that gets
7 him a not guilty. Okay. So keep that in mind. He has that
8 motivation.

9 So with what he's told you, is it enough for
10 self-defense? Sure. He says that Bobby punched him, he
11 punched him back. Bobby pulled a gun on him, he wrestled it
12 away, he lunged at him, I had to shoot. That little tight
13 scenario, could that be self-defense? Sure it could. But
14 we're going to prove it beyond a reasonable doubt that it
15 wasn't, because that's not what happened. And you know that's
16 not what happened, because one, there's no facts supporting
17 it.

18 Think about it, why would Tabele hear somebody go,
19 What did you do that for? if this killing was in self-defense?
20 Why would Tim be crying and upset when Shannon comes around
21 the corner seeing him, and what did -- what did she say she
22 heard him saying to Lorenzo? What did you do that for? Why
23 would you do that? Okay. He is your eyewitness to the crime.
24 And he saw nothing that led him to think this was
25 self-defense. Nothing.

1 Also, defendant's version of what happened, you
2 know, you've heard all this about the PTSD. But you also
3 heard Dr. Piasecki tell you anybody up until that moment of
4 the fight-or-flight kicking in is going to react the same way.
5 Normal person, person with PTSD. But you've got to think,
6 it's got to be that level 10 threat. Was the defendant ever
7 under this level 10 threat? Nope.

8 A punch, is that going to make you go into a level
9 10 threat? No. I mean, he lives at, you know, in the Siegel
10 Suites, he's a meth dealer carrying a gun. No, he's not going
11 to be that, Oh, my gosh, fight-or-flight, what do I do?
12 Especially if somebody's -- excuse me -- you're punched and
13 you know you've got a gun on yourself. You're not going to be
14 in that level 10 threat.

15 So the fact that the defendant's trying to use that
16 level 10 fight-or-flight, I've got PTSD, to explain that
17 second shot, doesn't work. And how do you know it doesn't
18 work? Because he -- you know, it's not self-defense if he
19 walks up and shoots somebody in the back when it's over.
20 Right? So he's got to explain away that shot. So they're
21 using the PTSD. But it doesn't make sense.

22 Something you never heard defense counsel talk about
23 was after -- what the defendant stated was after that second
24 shot, he kind of came to and he saw the victim's dad coming
25 towards him with the gun, right? And he said at that point he

1 put the gun down and he left, you know, because he didn't want
2 anymore. Well, clearly, he's not fight-or-flight anymore,
3 because he sees someone coming at him with a gun and he drops
4 the gun and takes off. So he's clearly, you know, his CEO is
5 acting. And what the State submits to you is his CEO never
6 went away. He was never in fight-or-flight, fire department
7 never came out and, you know, Sean Nelson, what he heard tells
8 you that, the whole, You want some of this? Boom. Fuck you.
9 Boom again. That's somebody who knows what they're doing.
10 It's not self-defense.

11 And another reason that, you know, let's do it this
12 way. There's a few things I want to talk to you about that
13 defendant's version of the facts cannot explain. If you think
14 about it, there's really no one to corroborate what he says
15 happened. And his version cannot explain why Bobby is at the
16 Siegel Suites on the third floor knocking on his door, right?
17 He said, I did not know him, I don't know how he knew where I
18 lived. That's his version, that's his own words. So he can't
19 even explain that, even though Amanda said, you know, she'd
20 been there before.

21 Because in -- in the defendant's mind, I guess, or,
22 you know, his version, he can't know the victim. So if he --

23 MS. LEMCKE: Your Honor, I'm going to object to the
24 repeated characterizations of defendant's version and the
25 burden shifting that's going along with it.

1 THE COURT: All right. Well, the -- I don't believe
2 it amounts to burden shifting, because it's commenting about
3 your version, your explanation, I should say, of the evidence.
4 And it appears that that's what she's trying to address.

5 The -- the jury, however, will recall that you've
6 been instructed that arguments of counsel's not evidence.

7 Proceed.

8 MS. DiGIACOMO: Thank you, Your Honor.

9 You know, in his version of facts, he cannot know
10 the victim. He cannot, because then he's, you know, has less
11 of a reason to fear him if he knew him, or less of a reason
12 for this fight-or-flight to kick in. So he can't know him.
13 Even though everybody says they knew each other. Even though
14 he's got the same baggies that's found in the victim's pocket,
15 even though his dad knew exactly where he lived. I mean, it
16 doesn't make sense.

17 And his version of the facts does not explain how he
18 doesn't know the victim, but everybody else says he does.

19 The defendant also cannot explain to you that second
20 shot in the butt. He goes, I don't remember. Glosses right
21 over it. Because that's a really crucial, crucial piece of
22 evidence showing it's premeditated and deliberate. And that
23 is part of the challenge to fight. He cannot explain that.
24 Tim saw it. Tim told you what happened. But the defendant
25 can't.

1 Also, the defendant can't tell you why he left after
2 the shooting. You know, think about it, if somebody's in
3 fight-or-flight mode and they just had to act in self-defense,
4 how would a person react? They'd be excited, they'd be, like,
5 telling everybody, Oh, my God, did you see just what happened?
6 That guy came at me, I had to shoot him, oh, my gosh. They'd
7 be calling the police, they'd tell somebody, you know, they --
8 and they'd still be in that kind of fight-or-flight kind of
9 panic mode.

10 But not the defendant. Defendant takes off. He's
11 running to the bus, he saw when he got on there, he's calm.
12 He even stated that, you know, he had thoughts that his CEO
13 was still in charge at that point as to why he didn't ask the
14 police, you know, what's going on or -- or talk to them. He's
15 trying to be cooperative.

16 That's clearly somebody who just killed somebody and
17 is trying to get away. And that's why you have that flight
18 instruction. And you can consider that as part of
19 consciousness of guilt. He's not acting like somebody who's
20 under fight-or-flight and had to just act in self-defense.
21 He's not acting like that. He's acting like somebody who's
22 trying to get away with murder.

23 Also, his version does not explain why he would
24 leave the Arizona Charlie's to go to Siegel Suites. It
25 doesn't. And I already talked about that. You know, it would

1 make more sense for him to stay there if he really was afraid
2 of the victim. But, you know what, he wasn't. Because he
3 knew he had a gun.

4 It doesn't explain defendant's version. Cannot
5 explain away Sean Nelson's statements as to what he heard and
6 what he saw when he saw the defendant walk by him kind of with
7 that smirk on his face or that look of pleasure, however Sean
8 described it. It's not somebody in fight-or-flight. Not
9 somebody who just had to kill somebody in self-defense.

10 His version cannot explain how on Earth Bobby had a
11 gun in his waistband and was able to run down those stairs and
12 it not come unjarred. In his waistband with the tie-waist and
13 knot. And it's kind of loose, with 18 -- \$18 in change
14 pulling the pants down. It doesn't. And you could think,
15 Okay, well theoretically maybe he had a -- a tie, because it
16 wasn't just elastic waisted, it was -- had a tie on the inside
17 to pull it tighter. Okay. Well, maybe the gun was stuck in
18 there. Well, if the gun was stuck in there and kind of caught
19 up in that string, he's not going to be able to just pull it
20 out in this fighting struggle. That doesn't make sense.

21 And just lastly again, defendant's version cannot
22 explain the comment, What did you do that for? Because the
23 people who were there and the people who saw it, Tim, who saw
24 it, even his dad who came up after, did not see anything that
25 amounted to self-defense.

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1 Just lastly, just when you go back in the room and
2 you're going through this, I know you've heard two weeks and
3 it's been a long two weeks. You've heard a lot of evidence.
4 But you know what, just focus. This case is not about Bobby
5 and Amanda. This case is about Bobby losing his life for no
6 justifiable reason. He was murdered, it's first degree
7 murder, and he was murdered by the defendant for no reason.
8 This isn't self-defense. The defendant murdered Bobby.

9 And keep that in mind when you go back there and you
10 deliberate. He's guilty. He's guilty of first degree murder,
11 whether it be premeditation and deliberation or it be
12 challenge-to-fight. That's what this case is about. Don't
13 get lost in all of the other, the PTSD, etcetera.

14 MS. LEMCKE: I'd object to characterization of
15 getting lost. That's disparaging the defense, Your Honor.
16 It's misconduct.

17 MS. DiGIACOMO: I'll rephrase.

18 THE COURT: All right, rephrase.

19 MS. DiGIACOMO: Thank you.

20 Stay focused on what this case is about, which is
21 the murder. And it's not about defendant being in war, it's
22 not about him suffering PTSD, it's not about his decline to
23 becoming a meth dealer. That's not what it's about. It's
24 about he had a gun, he intended to kill Bobby, and he did it.
25 Thank you.

1 THE COURT: All right. The clerk will now swear the
2 officers to take charge of the jury and the alternates.

3 (Officers sworn.)

4 THE COURT: Thank you. Now the jurors will go with
5 their respective officers, the jurors with the marshal and the
6 alternates with my executive assistant.

7 (Jury recessed for deliberation at 1:08 p.m.)

8 THE COURT: All right. Thank you. And if the
9 lawyers will give the clerk their telephone numbers where
10 they'll -- they can be reached. We did order the jury lunch
11 during closing arguments so they will be eating lunch.

12 (Court recessed for the evening at 1:09 p.m.)

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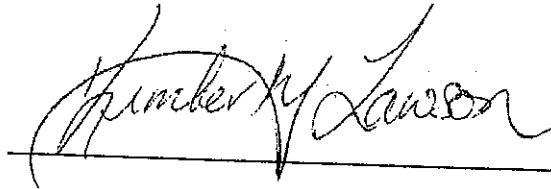
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ACKNOWLEDGMENT:

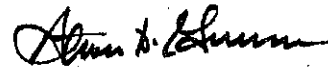
Pursuant to Rule 3C(d) of Nevada Rules of Appellate Procedure, this is a rough draft transcript expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON
TRANSCRIBER

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TRAN



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,

Plaintiff,

vs.

LUIS PIMENTEL, AKA,
LUIS GODOFREDO PIMENTEL, III

Defendant.

CASE NO. C296234-1
DEPT NO. V

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 12

WEDNESDAY, MAY 27, 2015

APPEARANCES:

For the State:

SANDRA K. DIGIACOMO, ESQ.
SAMUEL G. BATEMAN, ESQ.
Chief Deputy District Attorneys

For the Defendant:

NANCY L. LEMCKE, ESQ.
CONOR M. SLIFE, ESQ.
Deputy Public Defenders

RECORDED BY LARA CORCORAN, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

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1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 27, 2015, 11:54 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: Case No. C296234, State of Nevada vs.
5 Luis Pimentel.

6 MR. SLIFE: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. SLIFE: Connor Slife.

9 THE COURT: All right. So we got a note. May we
10 hear the testimony of James Tabele, or Table, or however you
11 say his name, or see the transcript. So there is no
12 transcript. We want to review it, whichever is easier, to
13 show us exactly what he testified to.

14 I'm not surprised, given how disjointed and
15 confusing his testimony was. I think we need to play the
16 entire testimony. It took place over I believe two different
17 days.

18 The Court Recorder has indicated that, you know,
19 she's got to get it, get the notes or the recordings together.
20 We've ordered lunch for them, so we'll have them do lunch,
21 then we'll -- and everybody can have lunch. Then we'll bring
22 them back, play them Mr. Tabele?

23 MR. SLIFE: Tabele.

24 THE COURT: Tabele's testimony. And we will try and
25 take any bench conferences out, so --

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1 THE COURT RECORDER: I don't record them, so it just
2 plays [indiscernible].

3 THE COURT: Right. Okay. Well, is it -- is there
4 dead time, though?

5 THE COURT RECORDER: There's no [indiscernible].

6 THE COURT: So we'll have to sit and -- hopefully
7 there are not 20-minute bench conferences.

8 MR. BATEMAN: I don't think that one, I don't think
9 you'll have a problem with that.

10 THE COURT: Okay.

11 THE CLERK: Okay. Do we need the defendant in
12 court?

13 THE COURT: Yes. We're going to have to have the
14 defendant here. So --

15 THE CLERK: What time?

16 THE COURT: 1:00?

17 THE CLERK: I don't think they have [indiscernible].

18 THE COURT: They haven't had lunch? Oh, they don't
19 -- all right. The jury doesn't have lunch? How about 1:30?

20 MS. DiGIACOMO: 1:30? Okay.

21 THE COURT: See you then.

22 MR. SLIFE: Thank you, Your Honor.

23 (Court recessed at 11:56 a.m., until 1:32 p.m.)

24 (In the presence of the jury.)

25 THE COURT: All right. Thank you. Please be

1 seated. And the record will reflect we are back on the record
2 in Case No. C296234, State of Nevada vs. Luis Pimentel. Mr.
3 Pimentel is present with his counsel, the deputies district
4 attorney prosecuting the case are present, as are all officers
5 of the court. Ms. Lemcke is not present. She had to attend
6 to some other business this morning.

7 However, the jury has sent a note in asking to hear
8 the testimony of James Tabele or see the transcript. Of
9 course, we don't have a transcript. We have the recorded
10 videotape and we will play that testimony for the jury in its
11 entirety at this time and I'll mark the note from the jury as
12 next in order court exhibit, please.

13 And the court recorder will go ahead and play the
14 testimony.

15 (Video played.)

16 THE COURT: All right. Marshal will return the jury
17 to the verdict -- the jury deliberation room, please.

18 (Jury recessed at 2:30 p.m.)

19 THE COURT: The record will reflect the jury has
20 once again departed the courtroom. I'll let you know --

21 MR. BATEMAN: Thank you.

22 THE COURT: -- if I hear anything more.

23 MR. SLIFE: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 (Court recessed at 2:30 p.m., until 3:05 p.m.)

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1 THE COURT: Thank you. Please be seated. The
2 record will reflect the presence of all 12 members of the
3 jury, defendant is present with his counsel, Mr. Slife, the
4 deputies district attorney prosecuting the case are present,
5 as are all officers of the court.

6 And do we have a foreperson of the jury?

7 JUROR NO. 1: I am.

8 THE COURT: Thank you. And has the jury reached a
9 verdict, ma'am?

10 JUROR NO. 1: We have.

11 THE COURT: All right. Would you please give it to
12 the marshal.

13 All right. The clerk will read the verdict and ask
14 the jury if this is their verdict.

15 THE CLERK: District Court, Clark County, Nevada,
16 State of Nevada, plaintiff, vs. Luis Pimentel, also known as
17 Luis Godofredo Pimentel, defendant, Case No. C14296234,
18 Department No. 5, verdict.

19 We, the jury in the above entitled case, find the
20 defendant, Luis Pimentel, aka Luis Godofredo Pimentel III, as
21 follows:

22 Count 1, Murder With Use of a Deadly Weapon, guilty
23 of first degree murder with use of a deadly weapon;

24 Count 2, Carrying Concealed Firearm or Other Deadly
25 Weapon, not guilty.

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1 Dated this 27th day of May, 2015, Samantha Seegars.
2 Ladies and gentlemen of the jury, are these your
3 verdicts as read, so say you one, so say you all?
4 THE JURY: Yes.
5 THE COURT: Would either side like the jury polled?
6 MR. SLIFE: Yes, please, Your Honor.
7 THE COURT: Thank you. Poll the jury.
8 THE CLERK: Samantha Seegars, is this your verdict
9 as read?
10 JUROR NO. 1: Yes, it is.
11 THE CLERK: Mercedes Smith, is this -- are these
12 your verdicts as read?
13 JUROR NO. 2: Yes, it is.
14 THE CLERK: Tina Baligad, are these your verdicts as
15 read?
16 JUROR NO. 3: Yes.
17 THE CLERK: Timothy Baxter, are these your verdicts
18 as read?
19 JUROR NO. 4: Yes.
20 THE CLERK: Russell Brown, are these your verdicts
21 as read?
22 JUROR NO. 5: Yes.
23 THE CLERK: Sherry Stiver -- Steever --
24 JUROR NO. 6: Stiver.
25 THE CLERK: -- Stiver, are these your verdicts as

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1 read?

2 JUROR NO. 6: Yes.

3 THE CLERK: Erin Malone, are these your verdicts as
4 read?

5 JUROR NO. 7: Yes.

6 THE CLERK: Dawn Davis, are these your verdicts as
7 read?

8 JUROR NO. 8: Yes.

9 THE CLERK: Shawna Sparks, are these your verdicts
10 as read?

11 JUROR NO. 9: Yes.

12 THE CLERK: John Courson, are these your verdicts as
13 read?

14 JUROR NO. 10: Yes.

15 THE CLERK: Lori Vasquez, are these your verdicts as
16 read?

17 JUROR NO. 11: Yes.

18 THE CLERK: And Patricia Salesky, are these your
19 verdicts as read?

20 JUROR NO. 12: Yes.

21 THE COURT: All right. Counsel, approach.

22 (Off-record bench conference.)

23 THE COURT: You know, we have a -- a penalty hearing
24 to do, as you were aware when you were voir dired. And so I
25 believe that we'll be able to start that at 9:00. Mr. Slife

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1 needs to call his co-counsel for a moment.

2 And so if you'd like to step out and see if you can
3 reach her, Mr. Slife?

4 MR. SLIFE: I will, Judge.

5 THE COURT: And that way we can let the jury know
6 what time to return tomorrow.

7 MR. SLIFE: I'll do that.

8 THE COURT: All right. Thank you. So just be at
9 ease. We'll go off the record while he makes that call.

10 (Pause in proceedings.)

11 THE COURT: Counsel, approach. Thank you.

12 (Off-record bench conference.)

13 THE COURT: Ladies and gentlemen, we're going to
14 take a 15-minute recess so that the lawyers can contact
15 potential witnesses for the penalty hearing tomorrow. And so
16 we can know what time to -- to get -- have you come in. We
17 certainly don't want to have you come in and then have you sit
18 around for two hours because the first witness isn't available
19 until then. All right. So we'll be in recess for the next 15
20 minutes.

21 And during this part, of course, you've already
22 discussed the underlying case, but please do not discuss
23 anything concerning the penalty hearing amongst yourselves or
24 with anyone else on any subject connected with that penalty
25 hearing, or by any medium of information, including, without

1 limitation, newspaper, television, radio, or Internet. And
2 you are not to form or ~~express an opinion on the penalty until~~
3 this case is finally submitted to you on that cause.

4 And so we'll be in recess for the next 15 minutes.

5 (Jury recessed at 3:17 p.m.)

6 THE COURT: All right. And so we're -- the jury has
7 departed the courtroom. We'll be in recess while you make
8 some calls.

9 MS. LEMCKE: Yeah. Let me see.

10 THE COURT: Okay.

11 MS. LEMCKE: Thank you, Your Honor.

12 (Court recessed at 3:17 p.m., until 3:57 p.m.)

13 (Outside the presence of the jury.)

14 THE COURT: All right. We're on the -- back on the
15 record outside the presence of the jury in Case C296234, State
16 of Nevada vs. Luis Pimentel. And I've been handed a
17 stipulation order to waive a separate penalty hearing; is that
18 correct?

19 MR. BATEMAN: It is, Your Honor. Also, the State
20 has agreed not to seek, obviously, three options, life without
21 the possibility of parole. So after the Division of Parole
22 and Probation does their presentence investigation report,
23 we've agreed that Your Honor would choose between, obviously,
24 the life with the possibility of parole, or the term of years
25 at -- at that future sentencing date. But the State would not

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1 be seeking life without the possibility of parole.

2 THE COURT: Okay. And -- and that's fine. And I'll
3 -- I just express my inclination that I wouldn't probably want
4 to sentence to life without, anyway. Are -- would you like a
5 penalty -- or a sentencing hearing separate?

6 MS. LEMCKE: Yes.

7 THE COURT: Where you can submit a -- anything you'd
8 like at that time to the Court?

9 MS. LEMCKE: That would be very nice, Your Honor.
10 Yes. Thank you.

11 THE COURT: Okay. So we'll set that down.

12 MS. DiGIACOMO: Let me find a date. It has to be
13 referred to P&P, Your Honor.

14 MR. BATEMAN: Yes.

15 THE COURT: Yes. And would you want to have
16 witnesses at such a hearing?

17 MS. DiGIACOMO: Yes. Your Honor, the State does,
18 for sure.

19 MS. LEMCKE: Yeah. And --

20 THE COURT: And you would, too?

21 MS. LEMCKE: Yeah. And -- and I might. So if you
22 want to set it on a special setting to accommodate that, that
23 would be -- really nice.

24 THE COURT: And I'm transitioning my civil calender
25 from Fridays to Thursdays, so we'll have special settings on

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1 Fridays. It was actually better for your calenders.
2 THE CLERK: Okay. I wasn't going to go there. I
3 was going to either do -- because I don't think we have any --
4 never mind. Do you want to do that on a Friday? Because we
5 don't know what kind of trials we'll --
6 MR. BATEMAN: That's fine.
7 THE CLERK: I'd like the 17th.
8 MS. DiGIACOMO: Wait, the 17th of July?
9 MS. LEMCKE: Of July?
10 MS. DiGIACOMO: That's fine with me.
11 MR. BATEMAN: That's fine.
12 THE COURT: Is that to clear your calenders?
13 MS. LEMCKE: Yes, Your Honor.
14 MS. DiGIACOMO: Okay. What time?
15 THE CLERK: Is 9:00 okay?
16 MR. BATEMAN: Yep.
17 MS. DiGIACOMO: Yep.
18 MS. LEMCKE: What day of the week is the 17th? Is
19 that a Friday?
20 THE COURT: Friday.
21 THE CLERK: Friday.
22 THE COURT: Should be Friday.
23 THE CLERK: Yes, Friday.
24 THE COURT: Okay.
25 MS. LEMCKE: I should have known that. I have a

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1 trial in here, actually, starting on Monday the 20th. I
2 should know.

3 MR. BATEMAN: Wait, what is that date?

4 MS. LEMCKE: It's a Friday, the 17th.

5 MR. BATEMAN: 17th?

6 MS. LEMCKE: Yeah.

7 MR. BATEMAN: Okay. Thanks. July 17th?

8 THE COURT: All right. So we'll bring the jury back
9 in, let them know and that, you know, that they're released.
10 And --

11 THE CLERK: Shall we call the alternates?

12 THE COURT: Yes. Yeah, let them know. And I'll ask
13 them also if they'd like to speak with you, and if they do,
14 you know, I'll -- would you prefer to do it in the courtroom,
15 in the jury room?

16 MS. LEMCKE: Oh, I don't know. Whatever Your
17 Honor's pleasure is.

18 THE CLERK: Does the defendant need to be canvassed?

19 THE COURT: Well, you know, I -- I think we need to
20 make sure.

21 So Mr. Pimentel, you understand now what's happening
22 with this stipulated order waiving the separate penalty
23 hearing?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: All right. And you're in agreement with

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1 that, as well?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. So we'll be referring the
4 matter to the Division of Parole and Probation. They'll do a
5 complete presentence investigation and -- as well, at the
6 hearing date for sentencing. You'll have that opportunity for
7 your lawyer and you'll, of course, have the opportunity to
8 speak, your lawyer will have the opportunity to speak and
9 present any witnesses they feel are important in any
10 materials. The State will likewise have that same
11 opportunity. All right. This is a very serious matter. All
12 right. Any questions?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Okay. All right. Let's bring the jury
15 back in.

16 (Pause in proceedings.)

17 (Jury reconvened at 4:02 p.m.)

18 THE COURT: Thank you. Please be seated. And the
19 record will reflect we're back within the presence of the
20 jury.

21 And, ladies and gentlemen, I'm sorry I kept you
22 waiting for longer. But actually the reason for doing that
23 was to save you time in the -- in the long run. And that is
24 because the parties have entered into an agreement to allow
25 the Court to sentence at a separate penalty hearing after

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1 investigation by the Division of Parole and Probation and the
2 -- there'll be no need for a separate penalty hearing then for
3 you.

4 Additionally, that the State has, you know, signed
5 that stipulation and also agreed that they will not be seeking
6 life without possibility of parole as the sentence, thereby
7 leaving to the Court the two remaining sentence options.

8 So, ladies and gentlemen, you are now released from
9 your obligation not to discuss the case with anyone else. So
10 you can do that. You don't have to do that, you can talk to
11 whomever you want to. The lawyers generally like to talk to
12 the jury because, as lawyers, which I consider myself one, we
13 practice all of our lives at our -- our craft of being a
14 lawyer, and so we learn all those years, whether you've
15 practiced five years or 40 years, you're always learning. And
16 the lawyers enjoy and appreciate the feedback that they get
17 from jurors on how to better present their cases on behalf of
18 their respective clients.

19 And so it's helpful to -- to them when you give them
20 some feedback, even if it's not always wonderful feedback,
21 it's helpful to them. So I don't just think you need to only
22 give them positive feedback. They hear that enough. They
23 need the -- the more -- the -- the feedback that will help
24 them know what they could possibly improve on. And, of
25 course, they like to hear when they're wonderful, too. So

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1 make sure you tell them that if they deserve that, as well.

2 But also any questions that you have of the lawyers,
3 anything you'd like to discuss with them, you are allowed to
4 discuss that at this time. And I want to thank you personally
5 on behalf of myself, but also of all of the -- the court.
6 Because this is the Eighth Judicial District Court. I just
7 merely occupy a seat on that court. And, of course, the court
8 itself is the more important larger part of our justice
9 system. So when I say I thank you on behalf of the Court,
10 it's that larger court in our system.

11 And personally I think you -- also, I could see that
12 you were a very diligent jury, that you were very attentive,
13 took your task very seriously, as it deserved, in such an
14 important and serious matter. And I appreciate that and I
15 know the lawyers do, as well. Because it was a long case and
16 now, as you know, of course, it is nothing like on television.
17 And it takes a lot longer. And they say the wheels of justice
18 grind slowly, but ever so finely in order to reach a just
19 verdict. So again, I thank you.

20 If you'd like to stay and speak with the lawyers, we
21 can either have you go back into the jury room to do that or
22 you can stay in here. Do you have a preference? Are you more
23 comfy in here or more comfortable in the jury room? If you
24 wanted to stay. You don't have to stay if you'd like to -- to
25 leave, then you need to go down to the third floor and check

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1 out so you can get your voucher. You do need to do that
2 before I would say --

3 What time is safe for them to --

4 THE CLERK: [Indiscernible.] They're -- they're
5 getting ready -- yeah, I think they're getting ready now.

6 THE COURT: They're getting your vouchers ready for
7 you. So just make sure you get down there before quarter to
8 5:00. All right. Thank you so much.

9 And court's in recess.

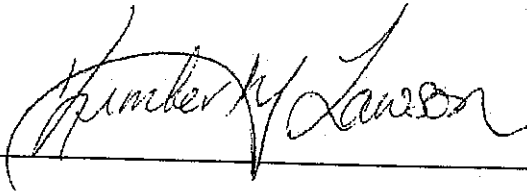
10 (Court adjourned at 4:07 p.m.)

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ACKNOWLEDGMENT:

Pursuant to Rule 3C(d) of Nevada Rules of Appellate Procedure, this is a rough draft transcript expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON
TRANSCRIBER

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Alma L. Quinn

CLERK OF THE COURT

1 RTRAN

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6

7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 LUIS PIMENTEL aka
11 LUIS GODOFREDO PIMENTEL, III

12 Defendant.

CASE NO. C296234

DEPT. V

Rough Draft Transcript

13
14 BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

15
16 FRIDAY, JULY 17, 2015

17 RECORDER'S TRANSCRIPT OF
18 SENTENCING: COUNT 1 ... NOT GUILTY COUNT 2

19 APPEARANCES:

20 For the State:

21 SAMUEL G. BATEMAN, ESQ.
22 SANDRA K. DI GIACOMO, ESQ.
23 Chief Deputy District Attorneys

24 For the Defendant:

25 NANCY L. LEMCKE, ESQ.
Deputy Public Defender

Court Recorder: LARA CORCORAN

Rough Draft

1 FRIDAY, JULY 17, 215; 9:05 A.M.

2
3 THE COURT: Good morning and this is Case Number C296234, State of
4 Nevada versus Luis Pimentel. The record will reflect presence of the Defendant
5 with his counsel. And this is the time set for sentencing.

6 MR. BATEMAN: Correct.

7 THE COURT: Mr. Bateman are you arguing?

8 MR. BATEMAN: Yes, Your Honor.

9 THE COURT: Okay.

10 MR. BATEMAN: Just briefly, Bobby's mom is here, she'd like to just address
11 the Court very briefly at the end if she can, she has just something very short to
12 read.

13 THE COURT: Okay.

14 MR. BATEMAN: Our position is and we've obviously reviewed the PSI, our
15 position is a life for a life. We were going to ask for a life sentence with parole
16 eligibility after 20 years. The Court will remember we signed a agreement to waive
17 penalty in this case and the State would not request life without. We certainly will
18 honor that agreement and I don't know that it's necessarily appropriate in any event.

19 But I think a life sentence is appropriate with parole eligibility beginning
20 after 20. I'd ask for an 8 to 20 consecutive on the weapons enhancement. The
21 Defendant did obviously serve his country. I think that's a mitigating factor in this
22 case. On the flip side, while he has no criminal history, he did admit that he was at
23 the time selling methamphetamine, which is obviously a crime. So this isn't entirely
24 a situation where someone wasn't doing some things that are questionable in their
25 life at the time. And I think much of why we were here today is as a result and I'm

1 guessing the Defendant would probably admit to some extent he's here in part
2 because of getting into methamphetamine and involving himself in selling
3 methamphetamine.

4 I think at the end of the day the most important evidence in this
5 particular case, the evidence that the Defendant simply couldn't escape despite
6 presenting a PTSD defense, which I think at the end of the day was pretty clear
7 didn't have much to do with the events that took place in this case, despite spending
8 a great deal of time on it. Is that the Defendant ultimately shot the victim in the butt
9 while he was face down on the ground, probably pretty much dead at that point.
10 And I don't know how – that's the piece of evidence I think that everyone has to kind
11 of hang their hat on, it's got to be the piece of evidence that the jury in this particular
12 case simply couldn't get around, despite arguments about who brought the gun and
13 how the fight went down.

14 The gunshot to the rear-end after a gunshot to the chest, dropped the
15 victim in this case on his face. To me, if you work back from that, it demonstrates
16 what's going through the Defendant's mind and what the more likely scenario is.
17 That kind of a shot was, as I argued, I think – showed a level of animosity and
18 malice that would not as easily have been argued in the case, had it been limited to
19 that one gunshot wound to the chest. I think it speaks volumes as to what was
20 going on at the time when this went down. And I think it's the reason that a first
21 degree murder was appropriate and I think it's the reason that a life sentence is
22 appropriate and that the maximum on the enhancement is appropriate. So I'll
23 submit it to the Court with that and just ask that if you could hear from Bobby's mom
24 at the end. Thank you.

25 THE COURT: And Mr. Pimentel I know you're – you have back issues that

1 you're not really getting much treatment for, so I'll let you remain seated.

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Would you like to address the Court?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: Not at all?

6 THE DEFENDANT: No.

7 THE COURT: Okay.

8 THE DEFENDANT: I'm sorry for the family's loss but really nothing I say is
9 gonna to matter with them, so I just stay silent and pray for them.

10 THE COURT: Okay.

11 Ms. Lemcke.

12 MS. LEMCKE: Your Honor, you know the legislature went they decided that a
13 term of years was appropriate as a potential sentence on first degree murder, I think
14 contemplated kind of the spectrum of cases and facts and defendants that might
15 come before a judge such as Your Honor on a charge as serious as first degree
16 murder. And still they saw fit to make a term of years one of the potential
17 sentencing options, along with life with the possibility of parole and life without.

18 And I think when you consider that spectrum and you put Mr. Pimentel
19 and his background and these facts on that spectrum, there's no more compelling
20 factual scenario nor is there any more compelling defendant deserving of that
21 minimal sentence for first degree murder.

22 In other words, quite frankly, if this gentleman doesn't deserve that term
23 of years, I'm not really sure who does. I mean there's no question. You know some
24 of the facts, you know, there was some dispute as to some of the facts; some of the
25 facts were not in dispute.

1 What was not in dispute was the fact that, you know, Bobby had
2 ingested, quite frankly, lethal quantities of methamphetamine, a substance that is
3 known to make people a little bit more irrational and aggressive. He then pursues
4 Amanda. He is physically abusive with Amanda. He then follows Amanda and Mr.
5 Pimentel to Mr. Pimentel's apartment and he punches Mr. Pimentel.

6 Now, I'm not saying that that necessarily – you know, at this point and
7 certainly at trial our position is, you know, his response was justified in defending his
8 life. I understand the jury disagreed with that and here we are. But the fact remains
9 that he didn't seek out this conflict. He didn't go looking for Bobby. He didn't go
10 looking for trouble. And it wasn't ultimately, you know, his goal that this death
11 ensue. This wasn't something that was planned or thought out or calculated in
12 some way. It was a response to the threatening situation that he – that Mr. Pimentel
13 ultimately found himself in.

14 I think Mr. Bateman does make a good point when he says, look at the
15 end of the day, all of this kind of stems from the fact that all these folks were using
16 and dealing and selling and involved with this methamphetamine nonsense. And
17 that's absolutely true.

18 I don't think you'd find Mr. Pimentel where he is today but for ultimately
19 his involvement with that. And I think what's interesting about the PTSD testimony
20 that we heard is that everybody kind of agrees that one of the symptoms of PTSD is
21 that the stressors and the flashbacks that these gentlemen have from combat are so
22 difficult to deal that one of the coping mechanisms is to kind of go off the rails.

23 And here you see a gentleman who, you know, up to the point that he
24 comes back after serving and starts becoming involved in this substance abuse
25 issue, you know, he had led a clean, healthy, very normal life. And you saw that,

1 quite frankly, from some of the pictures or the picture that we did admit at trial,
2 where you see him with his wife and his child and whatever.

3 But ultimately the stressors of his experiences became a little more
4 than he could deal with. You know he attempted suicide not once but twice. I mean
5 that is very telling as to how incapable he was of dealing with what was going on
6 with him after, you know, he experienced the two deployments and combat.

7 And so, quite frankly, as Dr. Boyd opined and I don't think Dr. Piasecki
8 really disagreed, it's not unusual to find someone who was not – doesn't have a
9 previous history of abusing substances and engaging in this kind of risky behavior.
10 You see them come back from combat and they kind of go off the rails. And they
11 can't maintain the life that they led before.

12 And so while I do think Mr. Bateman makes a good point about the
13 methamphetamine use and abuse, at the end of the day that you can tie back I think
14 with some certainty to his experiences in combat. And that's not an excuse for what
15 he did, it's just to give some context and some explanation. Because, again, context
16 is critical I think for Your Honor in this particular sentencing, because you do have
17 the legislature who has said we want courts to have all available – these three
18 options: life without, life with and the term of years.

19 And when you consider Mr. Pimentel's background, absolutely no
20 criminal history, nothing other than traffic citations. You know, I would ask Your
21 Honor to, you know, think about how many times you've sentenced individuals
22 where you've seen zero, zero, zero, zero, zero the way that you have on this
23 particular PSI. I would guess it's rare.

24 And his, you know, eight year service of his country and not just easy
25 service, combat service you know, in one of the most difficult deployments that, you

1 know, the U.S. Army has ever experience. I think that those factors definitely
2 mitigate and suggest that this Defendant, under these facts is deserving of that
3 minimum sentence.

4 And I do think that the author of the PSI recognized that as well and I
5 think that's why that author recommended the term of years. They, Parole and
6 Probation, obviously also saw that on that spectrum that's kind of where Mr.
7 Pimentel fits in, it's reasonable. And I would, quite frankly, ask you to give him that
8 minimal consecutive sentence for the use of a deadly weapon enhancement.

9 Certainly the jury did not believe beyond a reasonable doubt that Mr.
10 Pimentel brought that weapon to this particular conflict. And, you know, if nothing
11 else, you know, that together with the facts of this case I think warrants, I think the
12 appropriate sentence is the term of years with the minimum consecutive sentence
13 on the weapon enhancement.

14 THE COURT: Thank you.

15 And our victim speaker.

16 MR. BATEMAN: Where would you like? You want her to stand her
17 [indicating] or do you want [indicating].

18 THE COURT: Sure, it's best. We'll pick her up on the microphone.

19 **DEBRA BATTELINI**

20 [having been called as a speak and being first duly sworn, testified as follows:]

21 THE COURT CLERK: Please state your name and spell it for the record.

22 THE SPEAKER: Debra Battelini, D-e-b-r-a, Battelini, B-a-t-t-e-l-i-n-i.

23 THE COURT: You may proceed.

24 THE SPEAKER: Thank you.

25 **VICTIM STATEMENT**

1 **BY MS. BATTELINI:**

2 Your Honor, we have been told that you must forgive to begin to heal. I
3 guess that we will never heal because we'll never forgive him. And I don't care if I
4 ever heal. Because he took away our son, his father and I.

5 Bobby was only 29 years old when he was murdered. The Defendant
6 he's been here longer. Each day we wake up with a scar and our hearts ripped
7 open and bleed again. We will never heal, no.

8 Him family may see him in jail but they will see him. We have pictures
9 and memories that's all I have. We can't hug him, kiss him and talk to him. When
10 he was murdered – when you murdered Bobby you broke our hearts and the hearts
11 of our grandparents, his grandmothers, his brothers and sisters, nephews and
12 nieces.

13 Bobby will never meet his youngest nephew who now carries his name.
14 His oldest nephews still cry because they miss him so much and can't think of him
15 without tears. I cry every day for him. We hope this explains why we don't care if
16 we don't heal and why we would never forgive the Defendant.

17 Luis knew him and knew Bobby would never hurt him. Parents aren't
18 supposed to bury their children. We're supposed to be buried by them. There will
19 always be an empty chair at my table. Nothing can make our heartache go away or
20 lessen our pain not even time.

21 The Defendant murdered our son, broke our hearts and he can't murder
22 our memories. But he can't murder our memories of my son, of my wonderful son.
23 He meant so much to me,

24 **THE COURT:** Thank you.

25 Ms. Lemcke you have any questions?

1 MS. LEMCKE: I do not, Your Honor.

2 THE COURT: Thank you.

3 All right. Mr. Pimentel, by virtue of the jury's verdict in this case after
4 trial I hereby adjudge you guilty of first degree murder with use of a deadly weapon.

5 You know, obviously, I heard all of the facts of this case. It seemed
6 clear to me, it was undisputed as you've said, Ms. Lemcke that he suffers, did suffer
7 at the time, may still suffer from Posttraumatic Stress Disorder related to his combat
8 service, which was – you know he served admirably. He saved many lives during
9 his service in a terrible war that has scarred many of our veterans and that that's
10 probably what in fact, as you've said, sent him off the rails so that he was in a in a
11 lifestyle that was bound to lead to something not – something bad and it led to the
12 worst thing that could happen.

13 That's true of the victim as well. He may also have been good a good
14 person, beloved by his family, as Mr. Pimentel you are beloved by your family. I've
15 received letters from them.

16 And both put themselves in a lifestyle of very risky behavior that causes
17 irrational behavior, victim you know showed irrational behavior during the time. But
18 his behavior did not warrant what was a death sentence for him.

19 In this case you know Mr. Pimentel is 37 years old. A 50 year sentence
20 on the end is a life sentence. I mean if he lives the life expectancy of a male in this
21 country at this time is less than that. And so the question is, you know, what is the
22 appropriate sentence in this case, even knowing that the term of years, which is the
23 least sentence that I can pronounce in this matter still amounts to a life sentence?

24 The time for parole, as you know of course is the same. I don't think
25 that life without parole is an appropriate sentence in this case. Because, you know,

1 it's just not. And, as you say Ms. Lemcke, we have seen some pretty terrible things
2 in our years coming through this courthouse. And I suppose, you know, if you got
3 into the: Let's -- which is worse, you know, is this one worse? I mean it just seems
4 like some days I think it just -- every time I sit down at the bench I see something
5 worse. And I supposed you can't get into that game.

6 But what I look at is, I have to look at what kind of life, what mitigation
7 am I looking at and what kind of life did he have before this happened? And he had
8 an upstanding life. He was not a gang member. He was not committing crimes and
9 victimizing people that I see every day filled -- you know, the box filled with people
10 like that who don't care about anyone but themselves.

11 This man volunteered to serve our country, to risk his life every day for
12 years. Saved many lives and paid a very heavy price mentally for that experience.
13 And we heard that from witnesses on the stand at trial. So I do believe that the --
14 and I believe, even though of course we no longer have the benefit of P and P telling
15 us why they come to these decisions, they used to.

16 But even if I did not have this recommendation from them, this would be
17 the sentence that I would have pronounced in this case. I think it is appropriate. As
18 I say it certainly gives the Department of Corrections the ability if he does not
19 behave in prison of keeping him longer than the earliest parole date. And even at
20 that point in time, obviously, he's going to be -- he's going to have served a very long
21 time in prison.

22 I feel terribly for your loss ma'am, losing your son. I mean this is a
23 terrible -- for both mothers, you know. I mean it's a horrible thing to happen.

24 And so that's what I'm left and so in accordance with the laws of the
25 State of Nevada, in addition to the \$25 administrative assessment fee, the \$150

1 DNA testing fee, \$3 DNA collection fee, I hereby sentence you, sir, to a term of
2 years, a minimum term of 20 and a maximum term of 50 years in the Nevada
3 Department of Corrections. And for the enhancement, I sentence you to a minimum
4 of 32, a maximum of 144 months as well. And credit for time served, let's see if it's
5 accurate? Yes, it's through today. Do you believe this to be accurate, Ms. Lemcke,
6 the 573 days?

7 MS. LEMCKE: I do, Your Honor.

8 THE COURT: Five hundred and seventy-three days credit for time served.

9 MR. BATEMAN: Thank you.

10 THE COURT: Thank you.

11 MS. LEMCKE: Thank you, Your Honor.

12 THE COURT CLERK: Judge did you want to put on the aggregate?

13 THE COURT: Oh, okay.

14 And I'll pronounce the aggregate sentence and put it in the judgment of
15 conviction, I got to do the math. They want it in months.

16 THE COURT CLERK: Okay. Well, I have to put it on the markup.


17 THE COURT: I'm going to do it right now.

18 THE COURT CLERK: Okay.

19 [Proceedings concluded, 9:24 a.m.]

20 * * * * *

21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
22 acknowledge that this is a rough draft transcript, expeditiously prepared, not
23 proofread, corrected, or certified to be an accurate transcript.

24 
25 DEBRA WINN, Court Transcriber

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BY

Employee, Clark County Public Defender's Office