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IN THE SUPREME COURT OF THE STATE OF NEVADA

GAMBINO GRANADA-RUIZ, Petitioner, vs. **EIGHTH JUDICIAL DISTRICT COURT JUDGE, THE HONORABLE KATHLEEN DELANEY,** Respondents, and **THE STATE OF NEVADA,** Real Party in Interest.	Supreme Court No. _____ District Court No. C-15-305044-1 Dept. No. XXV

APPENDIX TO PETITION FOR WRIT OF MANDAMUS OR, IN THE ALTERNATIVE, WRIT OF PROHIBITION

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CLERK OF THE COURT

IND
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GAMBINO GRANADA-RUIZ, aka,
Gambino Grandaruiz, #6005262

Defendant.

CASE NO: C-15-305044-1

DEPT NO: XXV

INDICTMENT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

The Defendant above named, GAMBINO GRANADA-RUIZ, aka, Gambino Grandaruiz, accused by the Clark County Grand Jury of the crime(s) of MURDER (Category A Felony - NRS 200.010, 200.030 - NOC 50000) and BATTERY WITH SUBSTANTIAL BODILY HARM (Category C Felony - NRS 200.481 - 50214), committed at and within the County of Clark, State of Nevada, on or about the 12th day of March, 2014, as follows:

COUNT 1 – MURDER

did wilfully, unlawfully, feloniously, with premeditation and deliberation, and with malice aforethought, kill DERAOLD DOLITTLE, a human being, by hitting and/or punching and/or kicking the said DERAOLD DOLITTLE.

COUNT 2 - BATTERY WITH SUBSTANTIAL BODILY HARM

did then and there wilfully, unlawfully, and feloniously use force or violence upon the person of another, to-wit: DERAOLD DOLITTLE, by striking the said DERAOLD

DOLITTLE about the head and body, resulting in substantial bodily harm to the said DERAOLD DOLITTLE.

DATED this 12th day of March, 2015.

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY
NICOLE CANNIZZARO
Deputy District Attorney
Nevada Bar #011930

ENDORSEMENT: A True Bill

Foreperson, Clark County Grand Jury

Names of Witnesses and testifying before the Grand Jury:

BLANDING, AUTUMN, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

EMBREY, BUDDY, LVMPD P#8644

GAVIN, DR. LISA, CCME, 1704 PINTO LN., LVN

HURNS, DARNELL, 3955 SWENSON ST., LVN

Additional Witnesses known to the District Attorney at time of filing the Indictment:

CABRALES, ALLEN, LVMPD P#2045

CALLEN, DAVID, LVMPD P#6717

CAMPOR, JOHN, LVMPD P#6438

CHAROEN, PATRICK, LVMPD P#3932

CUSTODIAN OF RECORDS – HAMPTON COURT, 3955 SWENSON ST., LVN

CUSTODIAN OF RECORDS – LVFD/#218

CUSTODIAN OF RECORDS – MEDIC WEST, 9 W. DELHI, NLV, NV

CUSTODIAN OF RECORDS – SUNRISE HOSPITAL

CUSTODIAN OF RECORDS, CCDC

CUSTODIAN OF RECORDS, LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS, LVMPD RECORDS

DEMASI, BARBARA, 3955 SWENSON ST., LVN

ERNESTO, VIRGIL, 3955 SWENSON ST., LVN

EWING, BRIAN, LVMPD P#8412

HARRINGTON, JONATHAN, LVMPD# 13829

KERMANI, BEHZAD, 3375 GOLDEN AVE., LVN

MCGHEE, EBONY, LVMPD P#5158

MILLER, TERRI, LVMPD P#5113

MOGG, CLIFFORD, LVMPD P#5096

NEIHOFF, FRED, 3955 SWENSON ST., LVN

PARKER, KEITH, LVMPD P#9865

PELAYO, IVAN, LVMPD P#9850

PEREZ, JESUS, 920 GOLDEN HAWK WY, LVN

PICERIO, TIM, 3955 SWENSON ST., LVN

RAYMOND, ANTHONY, LVMPD P#9339

SALTZ, CAROL, 3955 SWENSON ST., LVN

SANFORD, MATTHEW, LVMPD P#5293

SEARS, DR. WADE, SUNRISE HOSPITAL, 3186 MARYLAND PKWY, LVN

SIGERS, SOPHIA, 3955 SWENSON ST, LVN

SIGERS, SOPHIA, 3955 SWENSON ST., LVN

SIMMS, DR. LARY, CCME, 1704 PINTO LN., LVN

SMITH, SAMUEL, LVMPD P#6424

STOLL, THOMAS, LVMPD P#5265

TERRY, JUSTIN, LVMPD P#9668

WILDS, MELISSA, LVMPD P#4957

WILSON, ROBERT, LVMPD P#3836

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TRAN
CASE NO. C-15-305044-1
DEPT. NO. 25

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA, Plaintiff, vs. GAMBINO GRANADA-RUIZ, Defendant.	REPORTER'S TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE KATHLEEN DELANEY
DISTRICT COURT JUDGE

DATED: FRIDAY, SEPTEMBER 18, 2015

REPORTED BY: Sharon Howard, C.C.R. #745

closing remarks.

CLOSING STATEMENTS

BY MS. CANNIZZARO:

Deraold Dolittle never saw it coming. Ladies and gentlemen of the jury, this is a simple case. This is a simple case about the Defendant, attacked Deraold Dolittle in the parking lot of the Hampton Court Apartments and beat him so severely that it caused his death. The evidence that you have heard in this case boils down to this. Deraold Dolittle did not have any injuries from hitting this Defendant. The Defendant didn't have any injuries from being hit by Mr. Dolittle. But the Defendant sure had injuries to his hands from where he hit Mr. Dolittle.

In this case there are two things the State has to prove. We have to prove that a crime was committed. And we have to prove that the Defendant is the person who committed that crime. In every case those are the two things.

You have direct evidence and you have circumstantial evidence. What is important about this -- you have an instruction on this -- is that the law makes no difference between direct and circumstantial evidence. Direct evidence is something you see. Circumstantial evidence is evidence that leads you to a conclusion.

You have an instruction that says that if the evidence is susceptible to reasonable interpretations or conclusions your duty is to adopt that which points to the Defendant's innocence and to reject that which points to his guilt. But understand this instruction means that both interpretations have to be reasonable. If they are not both reasonable, then it is your duty to reject that which is not reasonable and you focus on al of the evidence and determine whether or not the reasonable conclusion is proven beyond a reasonable doubt.

So, there are a couple of things you are not to consider. In your deliberations you cannot consider punishment. That is not something that is the purpose of trial right now. And that is not something you can consider when determining whether or not the Defendant committed the crimes that are charged against him.

Your verdict may also not be influenced by sympathy, prejudice, or public opinion. It has to be the product of sincere judgement and sound discretion in accordance with the law the judge just instructed you.

I would submit to you, ladies and gentlemen, that in this case we are not talking about who did it. There is no dispute that the Defendant is the person who beat Deraold Dolittle. That is not disputed.

So, that brings us to the second thing the State

has to prove. And that is that a crime is committed. I'm going talk a little about those crimes.

In this case the Defendant is charged with murder. Murder is the unlawful killing of a human being with malice aforethought, either express or implied. And it can be effected by any of the various means by which death may be occasioned. Which means that in this case what you are focusing on is the fact that Deraold Dolittle is beaten to death. That's what that means.

It includes first degree murder, second degree murder, and also volume manslaughter. When you go to deliberate you are going to also deliberate as to which of these charges the Defendant is guilty of, if any.

Let's talk about each one of these items. Malice aforethought is the intentional doing of the wrong act. No legal cause or excuse or adequate provocation. So malice, as I mentioned, can be express or implied. It's also defined here as anger, hatred, revenge, ill-will, spite, grudge, unjustifiable or unlawful motive or purpose to injure another, which proceeds from a heart fatally bent on mischief with reckless disregard of consequences and social duty.

It doesn't mean deliberation or lapse of time. It does not mean an unlawful purpose. It's not accident. It's not mischance.

Express malice is that. It's exactly how it sounds. It's deliberate intention to unlawfully take the life of a human being. And it is proven by external circumstances. So in this case, for example, the fact that the Defendant had multiple issues with Deraold Dolittle. And expressing those complaints can be evidence of express malice capable of harm.

Implied malice, no considerable provocation appears or circumstances show an abandoned and malignant heart. So when the Defendant is punching Deraold Dolittle over, and over, and over again those are circumstances that can show an abandoned and malignant heart. So when we are talking about malice, there are two types. And all of the evidence can lead you to one or the other.

First degree murder, willfulness, deliberation, premeditation. Those are the 3 things that differentiate first degree murder from second degree murder. These 3 things Mr. Polau and myself have to prove beyond a reasonable doubt in order for you to find the Defendant guilty of first degree murder.

So what is willfulness. It's and intent to kill. Does not require time between formation of that intent and the actual act. That is not what this means. Just that it is an intent to kill.

Deliberate, process of determining upon a course of

action to kill as a result of thought. Something that someone thinks about. It doesn't require a specific length of time. It doesn't have to be minutes. It doesn't have to be hours. It doesn't have to be days. But what it is not is a heat of passion.

Premeditation -- determination to kill distinctly formed in the mind at the time of the killing. Again, it's not a lengthy period of time. It can be instantaneous as successive thoughts of the mind. It doesn't mean for a minute somebody is thinking about that. It can be something that occurs just like that. If you find that the evidence shows that, that's sufficient for premeditation. It's different in different situations.

Now, let's talk about second degree murder. As I mentioned 3 things you have to prove for first degree murder.

Second degree murder is the unlawful killing of a human being with malice aforethought, but is not willful, deliberate, and premeditated. You still have to have the existence of malice, either express or implied. No premeditation. No deliberation.

If you have a reasonable doubt as to any of those elements of first degree murder, but you still find there was an unlawful killing of a human being with malice aforethought, it's second degree murder.

Manslaughter is also included in this. So manslaughter is where the Defendant is responsible for the killing, but it's not done with malice aforethought. So that ill-will, intention to act with reckless disregard, that is not present. That is what manslaughter is. Still responsible for the killing, just no malice.

So voluntary manslaughter is what we commonly refer to as sudden heat of passion, adequate provocation, something which provokes. But it's not anything. It has to be serious and highly provoking injury inflicted upon the person killing sufficient to excite considerable passion in a reasonable person. Which means that an ordinary reasonable person would act in the sudden heat of passion if faced with those circumstances, or an attempt by a person killed to commit a serious personal injury on the person killing -- adequate provocation That is what voluntary manslaughter is.

If it's slight provocation or a trivial assault and is not serious, and if it's not adequate, then it is not voluntary manslaughter. It's murder.

Must be no interval between the adequate provocation and the killing. If there is time for a voice of reason, then it's deliberate. It's murder. If there is a time to stop and for those passions to subside, then it's not a sudden heat of passion killing. It's murder.

So irresistible passion, these are things to keep in mind. Ordinary person same circumstances. The Defendant is not permitted to set up his own sort of code of conduct to excuse or justify it. Must be to the extent that an ordinary reasonable person of average disposition would act rashly and without deliberation. An ordinary person wouldn't stop and think about it. That's sudden heat of passion.

The Defendant is also charged with battery resulting in substantial bodily harm. Battery is the unlawful -- willful and unlawful use of force or violence upon the person of another. Substantial bodily harm is exactly that, substantial risk of death, serious permanent disfigurement, protracted loss or impairment of an organ or limb, or prolonged physical pain. I would submit to you that the beating to Deraold Dolittle was absolutely a battery. When the Defendant is hitting him with his fist, that is use of force or violence.

The substantial bodily harm that results is Deraold Dolittle being unconscious, suffering a broken nose, suffering a broken jaw, broken teeth, placed in the hospital, placed on a ventilator. That is all substantial bodily harm. It fits all of these.

So let's talk about self-defense. Self-defense is a person who kills and actually and reasonably believes

eminent danger that the assailant will either kill him or cause him great bodily injury. Eminent danger, it has to be reasonable. It has to be reasonable for the person asserting self-defense to feel they are in eminent danger. Eminent danger means right now. Not tomorrow. Not next week. Not 2 or 3 weeks, or whenever, right now, in this very moment. That is what eminent danger is.

And it has to be absolutely necessary to use force or means that might cause the death of the other person. Because it's done for the only purpose of avoiding that same great bodily injury or death. That's it.

So self-defense has to be exactly that. Absolutely necessary. If it's not absolutely necessary, it's not self-defense.

Self-defense is also apparent danger. If confronted by the appearance of eminent danger that creates an honest belief and fear they're about to be killed or suffer great bodily injury, and they act solely upon those fears and those appearances. And a reasonable person in that situation, a reasonable ordinary person in that situation, would feel the same way, then self-defense applies. Even if they are mistaken.

This does not mean that if you think it, but it is unreasonable, that self-defense applies. It must be reasonable. And a person, a reasonable ordinary person,

standing in that same situation would feel the same way.

So as an example, apparent danger. If I have a water gun that looks like a real gun, it's a water gun, and I point it at Mr. Polau and he shoots me because he believes that's a real gun, self-defense. Even though it's a water gun.

Now, if Mr. Polau knows it's a water gun, he knows I have that and has seen it, and I point it at him and he shoots me, that is not self-defense. Because he does not honestly believe he is in eminent danger of great bodily injury or death.

So fear of death or injury is insufficient. Insufficient. It must be fear for life. It can't be revenge. So if somebody is acting out of anything other then fear of their own life, it's not self-defense.

Words of abuse are not sufficient. Insults, name calling, words of abuse is not sufficient to create the necessity of self-defense. Honest and reasonable belief of self-defense does not negate malice.

Malice and the right of self-defense is not available to initial aggressor. Someone starts a fight they can't claim self-defense. Someone who seeks a quarrel with another does not have the right to self-defense. And it doesn't apply if the person acting in self-defense does so by means of fraud, contraband, fault, or by making the

assault. So they have to actually be in that danger. The other person has to be the actual original aggressor.

What you cannot consider in this case in terms of what you hear from us -- as nice as my argument might be right now -- it's not evidence. The evidence is the photographs, the testimony, the documents, the CDs, everything that's been admitted, everything everybody has testified to. Anything I say or Mr. Polau says or Ms. Allen or Ms. McNeill says is not evidence and you can't consider that.

You also can't speculate any insinuations suggested by a question asked. If we're trying to suggest something by asking a question, which happens, you cannot consider that as evidence. The evidence is the testimony. And any evidence to which an objection was sustained must also be disregarded. So if we objected and the Judge sustained it, you can't consider it in your deliberations.

Let's talk about credibility of witnesses. Ultimately that is your determination. Whether are not you think the witnesses in this case are truthful or not, credible or not, is up to you.

So you have a couple of instructions on this. Credibility or believability of a witness should be determined by his manner upon the stand, relationships to the parties, fears, motives, interests, beliefs. The

opportunities to have observed the matter to which he testified and reasonableness of his statements. All of those are things you can consider when you consider whether or not the witnesses that have taken this stand are telling you the truth.

So when you are thinking about what's motivating people to come in here and testify that is something you can consider.

If you believe a witness has lied about any material fact in the case, you may disregard their entire testimony. You can disregard that information if you think they lied about something material. But if you think they have, you can feel free to disregard their entire testimony. You don't have to consider it.

You have another instruction that points to you several items that you can think about when thinking about credibility of witnesses. I'll let you know this is not an exhaustive list. These are not the only things you can consider. You can consider anything else that not included in this list if you feel it's appropriate.

So opportunity to see or hear, memory, manner while testify, interest in the outcome of the case, bias or prejudice, reasonableness of the testimony, any other factors you think speak to their believability.

In this case the Defendant committed murder. Not in

self-defense. The evidence in this case does not support that. So let's talk about that.

The Defendant certainly has motive for murder. He testified there were issues from the start. As soon as he came back and moved into that apartment he had issues with Autumn and Deraold, right. Issues over the parking spot. Whether they were parking too close to the line of his parking spot. Whether they were allowing him to still use his spot. That was an issue.

Issues about the children playing in the courtyard. He made several complaints about that. And this frustrated him and bothered him.

Complaining about playing too loudly. Complaining they were playing with their ball near his car. They were parking too close. They parked over the white line. He wanted things his way. He wanted to have his parking space. He wanted the kids to play in the tennis court. Mr. Granada-Ruiz has a motive for killing Deraold Dolittle.

Nobody was listening to him. His own testimony. He complained to the police. He complained to management. He complained by writing letters. He recorded his interactions with them. He made complaints to police about Autumn screaming at Deraold. Nobody did anything. His way of life was altered by there moving into the

apartment complex, and nobody, in his opinion, was doing anything about it.

So let's talk about some of these instances. February 22, 2014 -- he complained about the noise from the kids. It's not just Deraold's kids, right. It's the other kids from apartment 184. They are making a lot of noise too. And the Defendant, even in the letter that he made Carone write on February 24th, he says Deraold apologized. He apologized. Hey, I'm sorry kids are making too much noise. They're kids. They're playing. You'll have these letters. You'll be able to take a look at them.

March 7th, he calls 911 to report an argument. What is important about this is that he never sees any violence, but he testified and he says on the 911 call -- you'll have that so listen to it -- I didn't see him hit her. I didn't see any violence. I saw her throw clothes. He picked them up. He puts them in a shopping cart and he walks away. This is important because this incident does not demonstrate that Deraold Dolittle was threatening or violent. But the Defendant is complaining about him anyway and why. Because these people are ruining his way of life.

Later on that same day he calls to report damage to his car. You heard him testify. I came out and I saw

children's hand prints on the car. Hand prints. He doesn't know which kid. Could have been any of them. But I knew based upon that hand print the things that would come. It's just a hand print. No damage. No damage to the car.

The officer comes out and doesn't see damage to the car. He notices there is pollen, right. What is Officer Terry supposed to do. There is pollen on your car. I'll write a report. There is no photos of that. There is no photos of any damage to the car. I submit to you if you look at the photos that were taken on the day of March 12th, there is no damage to the car in those photos either. Kids' hand print, is what motivates him to call the police.

Mr. Granada-Ruiz doesn't like Deraold Dolittle, or Autumn, or the kids, or them living in his portion of the apartment complex.

March 9th, approaches Deraold to complain about the kid. He walks over, your kid were playing with a ball, my car alarm goes off. He tells Autumn and Deraold, she can't talk to me. Don't tell her to talk to me. Autumn told you that. He told me not to talk to him. He wants to have a conversation an argument with Deraold Dolittle.

He doesn't want to look at Autumn's receipt from the store. Hey, listen. I don't know what you are talking

about. Lots of kids here. We were at the store. Here is my grocery receipt. I don't want to see that.

Leaves. He doesn't call the police, but later on he says my life was threatened. Deraold Dolittle threatened my life. There is no call to police. The idea because they didn't want to take photos of the pollen on his car if he's not going to call the police if he is actually afraid for his life. Did that make any sense.

He informed management the next day, right. Goes in. He has Corone write down every word that he is saying. He got up here to testify. Well, actually Deraold started to take a few steps after me. He took off his shirt. I felt threatened. Those are some things that are not in the letter. He says he was threatened. You'll see that on the video.

Interestingly enough he doesn't mention feeling very threatened by the person in 184. The person who actually tried to get him. The person who actually tried to swing at him. Mr. Granada-Ruiz, by his actions, is showing one thing. He does not like Deraold Dolittle. He doesn't like his kids messing up his life. I would submit to you that is a motive for a murder.

March 12th, the Defendant parks his car away from the house. Now, according to him that is because he's trying to avoid confrontation, right. Now, he's outside. The

hoodie on, shirt, zip up hoodie and sunglasses, freshly shaven. Leaves his apartment unattended, door open, music playing, highly unusual. Autumn and Deraold have been living there a couple months, at least a few weeks, and have never see the door open and music playing. Very weird.

Deraold takes the kids to school. He returns. He goes to the apartment. She gets ready for work. She tells you it's about 9:00 a.m. She leaves.

Now, Autumn testified that they actually had been parking a ways away from Mr. Granada-Ruizes' spot. Now I submit to you that if Deraold Dolittle was looking to get into a fight with the Defendant, maybe he just keeps parking right next to him. So they park there. And when she comes around the corner he's standing almost touching her car. Standing there. He watches her. She gets in her car. She leaves. He follows her to the corner. This concerned her so much so that she calls Deraold. Hey, the neighbor is outside. I don'ts know what's going on. He's acting stranger. He's watching me. What does Deraold say. Don't worry abut it. Go to work. She leaves and she testified the Defendant actually walked out to that corner and watched her leave.

What else do we know. Well, we know that Deraold goes to his mom's apartment. He's going to end up with

his brother. He's going to pick up some things, some shoes. His mom's apartment is in this portion of the apartment complex.

We also know that Darnell Herns, who prior to this incident did not know Deraold. Did not know the Defendant. Is going the store. He leaves his apartment about 10:00 a.m about an hour later he goes to his car to pick up a few things.

But what happens on his way to the store is that he sees -- this is his apartment. He walks to his car. He observes someone kind of ducking between the cars in the parking lot with a hoodie up, which he thinks is the Defendant. The Defendant is over in this area.

He actually walks down the parking lot and Darnell sees him. And Darnell Herns, instead of going to the store, he sees somebody go what's up with his head. How is it going. I don't know this person. Why is he doing that to me. This is all very strange.

You know what, instead of going to the store where he needed to go, I'm just going to take a little bit of a detour. We know that he drives and as comes around the corner he sees the Defendant on top of Deraold Dolittle. And Deraold Dolittle is going like this. And the Defendant is hitting Deraold over, and over, and over again.

You look at the evidence in this case, Deraold Dolittle wasn't punched once or twice. He was punched multiple times and hard. When Darnell stops his car he yells out to the Defendant. And he told you that the Defendant stops and looks, stops and looks, then turns back to Deraold and continues to hit him.

Darnell gets in his car. He drives up to where they are. Deraold is found at the scene. We know that this blood spot on the parking lot matches his blood. We know that he had a bag of shoes that he was carrying from his mother's apartment from the night he had an argument with his fiancee. And that's in the parking lot also. He's carrying his shoes. He's going home from his mom's apartment.

You'll have all the photos and evidence. Many other things that are found at the scene. A spot of blood. A hoodie or a jacket. It belonged to Deraold. You'll see it has blood on it.

The DNA analyst testified that that is, in fact, Deraold's blood. You'll see the bag of shoes that he carted in his shopping cart over to his mom's house. He was bringing them home.

A cell phone. And you'll also see some other evidence, right. The Defendant was described as wearing all black. You'll have the photos to see that he is in

fact wearing black -- pants, black hoodie. Sun glasses are found at the scene. There's the black hoodie.

We also know that as soon as medical arrives Deraold Dolittle is unconscious. Darnell doesn't see breathing. He's seeing him make a breath, but does not see that he is conscious. He's not up walking around. He is rushed immediately to the hospital. When he gets there, he is intubated immediately and sent to emergency surgery and homicide detectives or called to Sunrise Hospital. As Dr. McIntire testified Deraold Dolittle was not expected to make it. He had a poor prognosis.

This is not somebody who arrived at the hospital and was able to tell the hospital staff what happened. His injuries were very severe. The Defendant broke his jaw, broke his teeth, broke his nose and caused multiple brain injuries to the front of his head. And he suffered a very severe subdural hemotoma. These are life threatening injuries.

This is important, because this is not a situation where Deraold Dolittle was punched once or even twice. His injuries and Dr. McIntire's testimony supports that this was a very severe beating. That is important. You'll have the photos. You'll be able to take a good look at him. Deraold Dolittle is not conscious in the hospital. He is not conscious when EMTs arrives. All of

these injuries to his face and body are substantial. This is battery with substantial bodily harm, and more so this is murder.

This is an ill-will towards another. This is malice. You'll see there aren't injuries to his hands. There aren't injuries to his legs or fingernails.

Interestingly when the Defendant shows up at hospital he has no visible injuries. Dr. Sears testified that he didn't see any injury, so he had to physically go grab the Defendant to figure out what was wrong with him.

There are no life threatening injuries. The EMTs testified they came and checked him out and didn't see any stab wounds. They originally thought it might have been a stabbing. No stab wounds. He's taken to the hospital. Refuses to tell Dr. Sears where it hurt.

Nothing on the x-ray. No visible injury to his abdomen. The evidence in this case supports he had multiple injuries to his hands, his knuckles, his fingers.

Now you heard testimony about a red spot to his forehead that was observed. It's not an abrasion. Not a laceration. There is -- this scratch here. Aside from that there is no visible injuries to the Defendant except for these -- his hands.

Now I would submit to you these are not scratches from the parking lot. Because these are pretty

substantial. So the other thing is on December 20, 2014 Deraold passes away in hospice care. He's on a ventilator for 9 months. Cause of death, Dr. Simms testified that cause of death was blunt force trauma. He did die of pneumonia, but that was because of the ventilator.

Ladies and gentlemen, Id submit to you there's no dispute that Deraold Dolittle was beaten so severely he had to be on a ventilator. And there is no dispute that the ventilator caused him to develop pneumonia, which eventually caused him to die. In this case, that is sufficient to show that the Defendant caused the death of another human being.

If you recall from Dr. Simms' testimony there was a whole bunch of injuries to Mr. Dolittle's brain, right. There was an injury that showed a vector of force from the front to the back. There were injuries to the sides and the front of his brain. And of course he wasn't able to breath on his own sufficiently without a ventilator.

The culmination of those injuries demonstrates without a doubt that the beating caused Deraold Dolittle's death. You can look to the testimony of Dr. Simms and Dr. McIntire about the severe injuries and whether that was the cause of the death.

In this case, ladies and gentlemen, the State would submit to you that beyond a reasonable doubt the Defendant

committed murder. The intentional and unlawful killing of Deraold Dolittle with malice aforethought. He was angry and he was frustrated. And that is demonstrated in his video, his letters, his testimony.

The testimony of Corone Saltz and Barbara De Masi. He's calling the police. He's making multiple complaints. He had a reason to kill Deraold He took that opportunity.

I would submit to you the evidence in this case does not demonstrate that Deraold Dolittle attacked the Defendant. Rather the Defendant was waiting in the parking lot for the opportune moment for Deraold to come back from his mother's apartment. Darnell Herns saw the Defendant in the parking lot and if Mr. Granada-Ruiz was not walking through the parking lot, why did Darnell Herns turn around and not go to the store.

The Defendant was not in the parking lot simply retrieving books. He was standing in front of Autumn Blanding's car after they got home dropping the kids off. He watched her as he left. She called Deraold and said, by the way, this guy is out there. Just be careful.

When the Defendant attacks Deraold he does not relent. And the evidence in this case demonstrates that. The injuries to Deraold are extremely severe. And this is not a case where the evidence shows that the Defendant was attacked in some brutal manner and responded. This is a

murder. It's premeditated and it's deliberate.

When he stops to look at Darnell -- when the Defendant stops hitting Deraold long enough to look at Darnell and noticed he's in the parking lot, that's sufficient time for him to think about this. What does he do. He turns back to beating the victim. That is murder.

The number of punches that were inflicted on Deraold demonstrates all of this. So, yes, Deraold is not here to testify, but the evidence supports that he was murdered.

There is no adequate provocation here. The fact that Deraold said, hey, next time I'll see you, it will be physical. Or if you believe Autumn, what, you want to go right now, is not adequate provocation. And there is no evidence to show that the Defendant was attacked first.

Self-defense -- this is self-defense. The right of self-defense ends when that danger ceases to exist. Self-defense is absolute necessity to confront eminent danger. So when the danger is gone, the right of self-defense does not exist. When Deraold Dolittle hits the parking lot ground and is unconscious from the multiple hits he sustained, that threat is gone, and the continual beating of him is not justified.

The law does not justify the use of force greater then is reasonably necessary. Reasonably necessary to prevent great bodily injury or death. Not injury. Not

some threat. Not any of that. Great bodily injury or death, that's it. It has to be reasonable and necessary.

In this case the evidence does not support self-defense. The photographs specifically. Deraold Dolittle received a very severe beating. That is not self-defense. These injuries to his face and head and the lack of injuries on his hand don't show self-defense. They don't show Deraold and the Defendant were struggling on the ground. They don't show he was trying to punch him. And the Defendant's injuries don't show that either. What his injuries show is that he used these two hands when he was beating Deraold.

Let's talk about reasonable doubt. That is the standard the State has to prove. Reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as will govern or control a person in the more weighty affairs of life. If in the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt.

Doubt to be reasonable must be actual. Not mere possibility or speculation, actual.

There is another instruction I want to direct your attention to -- common sense instruction. And what this

means is that when you come in here and sit as jurors you bring with you your everyday common sense as reasonable men and women. That is the reason why we take a couple of days to select you We want reasonable men and women to consider all of the evidence. What that means is that when you come in here and you look at all of this evidence, you don't check your common sense at the door. You bring that with you. When you are considering the evidence, it's about whether it makes sense. So does it make sense.

Does the Defendant's story that he tells on the stand make sense. Going back to that credibility instruction, credibility of witnesses, that is for you all to decide. So when he takes the stand and tells the story that he tells, does he have a reason to tell it the way he does. Is he motivated by anything. What are his bias, his interests, all of that applies to him just like every other witness.

So does it make sense that Deraold is able to grab him from behind the neck and he cannot break that grasp, that grasp around his neck. He cannot break it with both hands. But he is able to grab Derold's leg and hold it between his arm and his body. Does that make any sense.

When he reaches around Deraold as he's pinned down and his head is down and he makes one punch, does it makes

sense that he's able to punch Deraold in the face so hard that he is able to get a handle on the situation. Does that make any sense.

As he's trying to get up, Deraold is punching toward him. He can't make contact. He has his hands on the ground. He's not on top of Deraold. He's not pinning him down, according to the Defendant. He's just -- Deraold is just between his legs and he's putting his hand on the ground and Deraold is kind of punching him but he can't, just can't. Does that make any sense.

Deraold never punched him. Deraold never punches the Defendant. He relentlessly punches him. I'm not saying the Defendant was keeping count, right. But he can't even tell you if it was more than 3. Well, I don't know. More than 3, I don't know. Was it more than 3. I don't know.

Broke his nose, his jaw, broke his teeth, then caused damage to both sides of his brain. Two bruises on his clavicle. More than 3. I don't know.

Then all of a sudden after all of this beating occurred, Deraold is on the ground bleeding, broken facial bones, all of a sudden the Defendant has a sudden onset of pain and he collapses off of him. Does any of that story make any sense. Ladies and gentlemen, I would submit to you that the injuries to Deraold and the injuries to the

Defendant do not support this story at all.

It doesn't make any sense. Remember Dr. McIntire said it takes a lot of force to break a bone. The Defendant broke Deraold's jaw. But he couldn't get his hand off of him. Deraold is skinnier and shorter and smaller. Everyone describes the Defendant as being larger than Deraold. So does his story make sense that he was in a hold that's so bad he couldn't use his arms to get Deraold's hands from around the back of his neck.

Ladies and gentlemen of the jury, I would submit that that doesn't make any sense and it's not supported by the evidence.

When you go back there and consider everything that you have heard, the State is confident you'll return with a verdict of guilty of murder in the first degree.

And Count (2), battery with substantial bodily harm, guilty.

Thank you.

THE COURT: Thank you, Ms. Cannizzaro.

I'm going to ask by a show of hands if any juror need to use the restroom before we move to the next closing statement. Seeing no hands at this time I'll invite Ms. Allen to make her closing remarks.

MS. ALLEN: Thank you, your Honor.

CLOSING STATEMENT

BY MS. ALLEN:

Your Honor, Counsel for the State, good afternoon. I'm not going to beat around the bush. This is not a murder. No way, no how. The State hasn't proved it by any means necessary. This was self-defense. You have every bit of evidence to deliberate and come to the conclusion that it was self-defense.

Ms. Cannizzaro said the motive in this case was noisy children, noise children. We have all been disturbed by noisy children. So I do understand everybody here can understand that. But did anybody stop to consider that he lived on a ship in the navy with hundreds of men. Did anybody stop to consider that maybe he had endured periods of living with people who are in fact noisy.

So this idea that Mr. Ruiz, that Gambino -- by the way the State refers to him as the Defendant -- that he is a human being and has a name. His name is Gambino. Gambino lived on a ship and dealt with that. So that idea for a motive may be the most ridiculous motive every brought before a jury. But let my explain to you why this would be the dumbest thing that this man can do. The man who is a senior in college, who is going to study abroad, who is taking psychology classes, who clearly is an intelligent man.

Let's see how he plans a murder. First, I'm going to

complain to the person who is bothering me. I'm going to complain to the apartment staff. Then I'm going call the police. Not once, but twice. Now my name is on a recording with Las Vegas Police Department. I'm going to tell my friends that I'm having problems with them. I'm going tell everybody I know that I am having issues and I don't know how to avoid them or what should I do about it.

Then on top of all that with my two knee braces on with a final -- two finals that day, I'm going to wait in the parking lot in broad daylight and I'm going to attack someone who I don't know what skills he has as a human being, and I'm going beat him to death in front of God and everybody. That may be the stupidest crime ever committed in the history of crimes.

I can't imagine a dumber plan. I can't imagine a less brilliant version of first degree murder. This may be the dumbest version of first degree murder ever deposited to a jury in the history of juries.

Why would you stick your name on every single piece of paper, Las Vegas Metropolitan Police Department, friends, family, neighbors, relatives, then when you are in a position where you can't really protect parts of your body, you are going to lay in wait next to your car, which is registered to you, all in order to kill someone because

the kids are noisy.

Okay. So now let's talk about reality. Now let's talk about things that do make sense. Mr. Dolittle was aggressive. He was the one making threats against Mr. Granada-Ruiz. He was the one who displays behavior which was inappropriate, right. He threatened him. And whether he said do you want to go or next time I see you it's going to be physical, whatever the case may be, he threatened Gambino. He threatened his life. However Gambino took it it was definitely a threat.

Do you remember what Gambino's reaction to that was. I'm not talking about what he testified to. Let's talk about what Autumn testified to. He was calm. He walked away. He didn't say anything back.

So Ms. Cannizzaro, this is provocation. He was calling him a faggot or referring to his mom. This is the provocation. He didn't do anything. What did he do. He talked to his friends to try to figure out how to get away from the situation, right.

How many ways did Gambino try to get away from Mr. Dolittle. He tried to break his lease. The apartment said no. He called the VA and asked the VA to intercede on his behalf. Get me out of here. He started parking his car away from the handicapped spot the complex had given him, even though he clearly has issues with his knees.

He's had 5 knee surgeries. He's wearing braces on the day of this incident. He doesn't have adequate movement in his knee. He tried everything he could to avoid Mr. Dolittle. Mr. Dolittle specifically said to him the next time I see you this is going to be physical.

Ms. Cannizzaro says we have no proof that Mr. Dolittle was the initial aggressor. We do. Gambino told you he was.

There is a jury instruction that the court's given you that talks about reasonable interpretations. It's Jury Instruction 11. The State has their version of events. The defense has theirs. It talks about this reasonable interpretation of facts that are presented to the jury. So let's take one fact that Gambino is out in the parking lot doing something, right. Darnell Herns says he's popping up and down between two car. He just looks weird. All right.

I guess that seems odd. Until you find out that his books are in his car. That his books are -- his book are in his car. He's popping up and down next to his car. And he said I think Mr. Herns was specific in between the two cars. What did he tell you. I keep my books in the passenger side of my car. How ludicrous is it that a man is next to his car or getting into his car or spent the morning getting into his car multiple times, because

that's what he's doing. He has a final at 12:30 or 2:30. I don't recall what time. But he has a final that day.

That the other part of the brilliance of this murder is you want to make sure you take care of it before your final. You got to make sure you kill the guy before you take your test.

So that's just one of facts the State has presented to you that really can go either way. He's going out to his car. Ms. Blanding says I see him that morning and he looks odd. Well, he looks suspicious. He keeps looking at me. There had already been arguments back and forth. They had issues back and forth and she has threatened his car. He feels put off by these people. So of course he is going to look back at her. He didn't follow her.

Ms. Cannizzaro says he followed her to the corner. That is not what she said on the stand. She said he was looking over his shoulder at her. So he wasn't following her. He was looking back.

The idea that he left his door open and music is on. That points to the fact that he was up to something. Why draw more attention to yourself.

He sees Mr. Dolittle's girlfriend that morning. That's another check in the box of this may be the dumbest murder ever committed. Come on.

Ms. Cannizzaro talked about common sense and don't

check your common sense at the doors and all of these reasonable things. Absolutely. If you are a reasonable person and wanted to commit a first degree murder, premeditated, willful, are these things you would do as reasonable intelligent people, or do you lure him away in an alley with a gun. Because you don't know what he is going to do to you.

You heard -- let's talk a little, I guess, about the self-defense instructions. I think one of the instructions Ms. Cannizzaro can didn't talk to you about, the interesting one, is that when there is evidence of self-defense presented -- and we did -- Mr. Granada-Ruiz told you that Mr. Dolittle attacked him in the parking lot and he feared for his life -- self-defense. The State has to prove beyond a reasonable doubt that he didn't act in self-defense. They have to proof, again, beyond a reasonable doubt -- the same burden they have to prove he did something wrong -- that he didn't act in self-defense.

So some of you in jury selection, we talked about getting into a fight. And how quickly things happen hen you do get into a fight. He said maybe 30 seconds, this all goes down quickly. Do you think he knows how many punches are thrown or what is really going on. He is telling you -- he told you he gets this knee in his rib,

and he feels pain. He lands and he's trying to get this guy off of him, he lands on the guy's leg, and he says he is suffocating. Is it reasonable to defend yourself when you feel like you are going to suffocate.

He flat out said if he didn't do what he did, he doesn't know if he would be here today. That's self-defense. That is the quintessential argument for self-defense. The other instruction that wasn't talked about is he has the right to stand his ground. Once he's attacked -- and you have no evidence to the contrary. They presented you no evidence to the contrary that Mr. Dolittle didn't attack my client first.

Once he is attacked he has no duty to retreat, and he absolutely had the right to stand his ground. He has the right to defend himself. And he haas the right to get whoever is doing this off of him in any means necessary.

It all happened so fast. There is no way he could possibly judge what was going on, other then what he said to you. No idea of this guy. I thought he could come at me again. Even after I stopped, I thought he could come at me again. He had no duty to retreat.

Let's talk about what Mr. Dolittle's motive may have been to attack Mr. Granada-Ruiz. You heard Autumn say they had moved from Budget Suites to Deraold's mom's then into their own. They had been served with an eviction

notice. They were on the outs with the apartment complex. They had two children they were taking care of. It wasn't just my client complaining, there was a bunch of people complaining. Carone said that. So did Barbara.

Barbara referred to them as unruly tenants or they didn't have a good track record. There was domestic violence. Things like that.

And they had -- if you listen to the recording that Gambino did with Carone you can hear her say, oh, those kids. So clearly the management staff knew there was a problem.

What do you think Mr. Dolittle's motive was to attack my client. He didn't want to get evicted. Those ladies admitted they had gone to Autumn Blanding and Mr. Dolittle and said we told them that you were complaining. He didn't know that. Those ladies in the office were telling Autumn and Deraold that Gambino was the one complaining. He was vocal to them too.

So who has a motive here to do -- to commit an attack or an assault. It's Mr. Dolittle. He was on the verge of getting evicted and losing his home. What is he going to do. He couldn't move back to his mom's. There was too many people in the apartment. Where are they going to go.

Mr. Dolittle figured he sees him one day. He says

the next time I see you it's going to be physical. And he made good on his promise. He was a man of his word.

I doubt he expected this would be the outcome. Nonetheless, he is the one who attacked my client. He is the one who committed -- threw the first blow. Grabbed him around his neck and couldn't -- and didn't let go.

If you recall Detective Embery, this was important. If you recall Detective Embery, he seemed like a good and honest man. I said as you sit here today do know who the original aggressor is. He doesn't. I said -- and he said something about the wounds on his hands, those indicated to me he was probably the one at fault. I said to him if I came up to you and I grabbed you around your neck and I squeezed would that be threatening to you. I would assume anybody here who is grabbed around the neck would perceive that as a threat. You wouldn't end up with marks on your hands from that, would you. Probably not.

What you would end up with -- well, the State made a big production about the injuries on Gambino's hands. Look where the injury is. Everybody know what knuckle that is. The one that sticks up the most, right. If you were pushing off the ground trying to get up, road rash I think is what Dr. Sears said. What kind of injury would you get on that knuckle that stuck up the highest, road rash. Called these abrasions.

The State says it has to be from hitting Deraold Dolittle. We are not denying he didn't hit him. There are clearly injuries consistent with him trying to push himself up off the ground.

There are two things that injuries in this case that the State can't overcome. One of them is the injury to my client's head because that is completely consistent with the story where he hit the ground. He fell face first on top of Deraold and banged his head. The other one that is absolutely important and was I believe according to Dr. Simms probably one of the more significant ones. Let me get this right. I apologize.

It was the vector force back front injury. Remember what he said. He said if you fall backwards you end up -- and you hit something hard, it causes -- the wounds -- sort of the crack is back here. But it carries forward to the front. He talks about the one back to front. He said you wouldn't normally get such a bad injury as Mr. Dolittle had, unless you came -- like falling from a 2-story building. It was obviously significant.

But if you remember Ms. McNeill got up and said what if you fell and you didn't brace your fall and you weren't able to stop that fall. He said that would make a difference. What if you had additional weight on you, another 168 pounds and his words were, very significant

difference.

That is something they can't get beyond. There is nothing they can -- there is nothing the State can say that can get beyond that particular injury. This is a weird injury, right. When you talk about it. Then you talk about the exacerbation of it. Him falling backwards. He wasn't braced for the fall, and he had additional weight on top of him. You can't make that one up. You can't.

If you remember Mr. Granada testifying he was consistent. It didn't matter how many times Ms. Cannizzaro asked him the question over and over again, and I'll submit to you during her closing she got those facts wrong. He wasn't standing up and swing around. His story was consistent. When I asked it. When she asked it. When anybody asked it, it's always been the same. He grabbed him around the neck. Kneed him. Grabbed the knee. They both end up falling forward. He lands on Mr. Dolittle. As he is trying to get himself up he's hitting him to get away from him. When he stopped hitting him, he didn't know if Mr. Dolittle would come after him again.

State wants to argue during a lot of questions they were asking questions about the rib injury, sort of implying he is faking his injuries or faking how he was behaving. Every person who dealt with him medically said

he was in pain. They gave him morphine at the hospital. He flinched when he was touched. He was dry heaving, which is sort of why they put that mask on him. How do you fake that.

Dr. Sears said a cracked rib is exceptionally hard to find. He discharged him with pain medication. He says has no injuries to his torso. Of course he doesn't. First of all if he had any they're probably not going to show up for 2 or 3 days, if he's got any bruises. They didn't take pictures of it. No one thought to take pictures of Gambino after the event occurred.

This isn't voluntary manslaughter. There is no part of this that equates to first or second degree murder. This isn't voluntary manslaughter. There was no heat of passion here. There was no anger or something that aroused Gambino so much so that when he saw him he thought he had to kill him. There is no evidence of that.

And when it comes back down to what happened here Gambino was studying for an exam. This is a guy who had his whole life ahead of him. He was a senior in college. He was graduating in May. He was going to Brazil. He had everything in the world open to him. He served in the military. No history of violence in this guy. He had everything waiting for him.

And you seriously want to believe that he sat in his

apartment one day and planned to kill someone this sloppily. The only evidence you have with regard to the actual start of the fight came from Gambino. That is it. The State has absolutely nothing to rebut that. Nothing. The injuries to his hands don't rebut it. The injury to his rib doesn't rebut it. The injuries to Mr. Dolittle don't rebut it. The injuries to Mr. Dolittle were taken in the course of Gambino defending himself.

The State said that he was aggressive and he was angry. I would like the jury to briefly remember all of the descriptions of Mr. Granada throughout the course of the trial. He was picky. He liked things the way he liked them. Fair enough. He'd go to Starbucks and ask for a caramel machiato and they give you a tea, do you complain about it. Probably. If your home life is being disrupted, do you say anything. I think you'd probably do. And he did what he was taught to do. He went through the chain of command. You heard him when he talked to Corone, he said, I'm going through the chain of command. I'm trying to do what's right here. He's a rule follower. You can see it in his testimony and in the way he talks to you.

They said they never had problems with him. He never was a disruption. He paid his rent. He was in school. He was proud of the fact he was in school. He was never

described as violent. And just take a minute to remember Barbara De Masi. She sat over here and smiled at him the whole time. Every time I asked her anything about him she would smile and look at him. Were you ever afraid of him, no. There was no reason to be. He was just trying to live his life, go to school, go to Brazil. And if you read his application for the USAC, on the application for this program in Brazil, he wanted to come back and help his fellow disabled veterans who are suffering from post-traumatic stress disorder. That's all he wanted to do.

Mr. Dolittle was irritated by the complaints. Feared the eviction and thought he would teach my client a lesson. That's all this is. That's what it boils down to. Unfortunately, Mr. Dolittle didn't win the fight. It doesn't change anything. It doesn't change the State's case.

At the end of the day Mr. Gambino is not guilty. He didn't commit murder. He didn't commit voluntary manslaughter. He didn't commit battery with substantial bodily harm. He didn't commit battery. He didn't commit anything. He stood his ground. He defended himself. Just like any other reasonable American is allowed to do. There is a law in the State of Nevada, maybe you don't like it for this case. Maybe you are concerned because

someone did lose their life. That's absolutely a valid concern. But he had the right to defend himself. That's the right he fought for in the Middle East, for everybody in this room, and he did it. And he had the right to do it. And he is not guilty.

Thank you.

THE COURT: Thank you, Ms. Allen.

Can I see by a show of hands if the jurors need a restroom break before the State makes its final argument.

I'll ask the marshal to take you back to the deliberation room, and we'll have a brief recess.

JURY ADMONITION

During the recess, ladies and gentlemen, you are admonished not to converse among yourselves or with anyone else, including, without limitation, the lawyers, parties and witnesses, on any subject connected with this trial, or any other case referred to during it, or read, watch, or listen to any report of or commentary on the trial, or any person connected with this trial, or any such other case by any medium of information including, without limitation, newspapers, television, internet or radio.

You are further admonished not to form or express any opinion on any subject connected with this trial until the case is finally submitted to you.

See you in 5 to 10 minutes.

MR. POLAU: I'd like to bring to the court's attention manslaughter and voluntary/involuntary that line should be stricken.

THE COURT: Which page.

MR. POLAU: Jury Instruction 21.

THE COURT: The verdict form indicates voluntary is the option. We have other instructions that indicate voluntary is the only one. Is it the whole last sentence.

MR. POLAU: The whole last sentence should be stricken.

THE COURT: All right. I can address that with a curative instruction.

(Brief recess taken.)

THE COURT: Mr. Polau, I'll invite you to proceed with State's final closing remarks.

MR. POLAU: Thank you, your Honor.

CLOSING STATEMENT

BY MR. POLAU:

Folks have been patient. I'm not going to take more of your time. You have heard a lot about this case.

It's the State's opportunity to respond to defense's argument. As I understand defense's argument it's 3 things. One, the motive is stupid. That is what you heard. The motive is stupid. One instruction is the

State doesn't have to prove motive. Motive is not an element of the crime. The State can discuss motive and offer you motive, but motive is not an element of any crime charged here. There is a specific instruction that says the State does not have to prove motive. So whether the motive is smart, or stupid, or absurd, or make sense, doesn't matter because we don't have to prove it.

The other portion of the defense closing that I heard was Deraold was the aggressor. Well, sure there is an issue with regard to who is the initial aggressor. But as I'll go through the inquiry doesn't stop at who was the initial aggressor. You are allowed to use self-defense if you are not the initial aggressor, but that doesn't mean you can use ny force necessary after that. That's not what the law is. So while Ms. Allen stops with the analysis of, well, Gambino wasn't the initial aggressor. He can't be guilty. That's incorrect. It's an incorrect statement of the law.

The third thing that you heard was, well, Defendant got up here on the stand and told you it was self-defense; therefore, you are obligated to find him not guilty because you have to believe him. And that is also not true. You are not obligated to believe the Defendant because he testifies. He is no different then any other witness in the sense that you are to evaluate his

credibility in the same manner as any other witness.

And that includes the motive and the interest in the case. I'll submit to you, that there is not a single person in this courtroom that you have heard testify that has a stronger motive or interest in the outcome of this case.

Gambino is charged with murder. He had the opportunity to listen to all the evidence and decide to tell you what the version, his version of events were. But folks and you also have a instruction that if there are two reasonable conclusions you can draw, and you should draw the one that goes towards the Defendant's innocence. But only if there are two reasonable conclusions. Are there simultaneously two reasonable conclusion that can be drawn.

In this case only one can be true. And that's the great fortune of this case. You had the Defendant get on the stand and tell you I never was sitting on him. He was never passed out. I wasn't sitting on him raining blows. Never saw Darnell. Never paused to look at Darnell. I never saw that person until he testified.

Both cannot be true. We either -- you can either believe the Defendant's self-serving testimony, motivated by his own interest, or you can believe Mr. Herns' testimony, motivated by what exactly, by what. He doesn't

know anybody. He doesn't have an interest in this case.

Now during his cross-examination Ms. Allen brought up, your testimony might be altered over the course of a year-and-a-half. This is what we do. We do what you can do, listen to the 911 call. There is no dispute that Darnell is talking to anybody before he calls 911. He's not saying I'll talk to my mom. I'm going to talk to this person, what do you think. He calls 911. You hear what he observes. This uninterested party observes.

The only truly in interested party in this whole case. What does he say. He says -- 39 seconds of audio tape -- I just saw this guy beating the pulp out of this little small Mexican dude. One guy is beat the fuck up this. Excuse my language -- one guy is beat the fuck up. He was just beating him and hitting him and hitting him and hitting him. At 140 seconds -- one guy knocked unconscious, bleeding really bad.

Darnell Herns' testimony cannot exist in a world where Gambino Granada-Ruiz is telling the truth. Both cannot be true. At 240 -- he's beat the fuck up. I was watching him beat his face. He was beating his face and beating his face. This dude was laying limb and he was still beating him. Both cannot be true.

The guy in black was beating this guy down. Dude was already knocked unconscious and still beating on him.

Folks Darnell Herns has no reason and frankly no ability to fabricate this 911 call.

(911 call played to the jury, not reported.)

MR. POLAU: Beating on him, beating on him, beating on him. He was already unconscious and he was beating on him, beating on him, beating on him.

Mr. Granada-Ruizes' story he told you yesterday cannot be true if Darnell Herns is telling the truth. Conversely if Darnell Herns is telling the truth Gambino's story can't be true. It just cannot be true.

Instruction 31, self-defense what does that allow. It is not generally available to the person who sought the quarrel. That is what Ms. Allen was talking about. You can stand your ground. You are allowed to use self-defense if you are not the person who started the quarrel.

Now the State would submit though that there is some indication that the Defendant is the person that initiates this. After all in every instance of their conflict it's the Defendant who approaches Deraold. There is never been an instance of all of these issues they had Deraold is not the one that approaches the Defendant. Not once. When Deraold is playing catch in the courtyard with his kid, it's the Defendant that approaches him. When Deraold is returns from his laundry it's the Defendant that initiates

that conversation. Never been an instance you heard about from the Defendant previous to this date where the Defendant isn't the one initiating the argument, seeking the quarrel.

Let's talk about the video briefly. That video, there are key points in that video. I promise you this is the last time I do this complaint. This is the last one. I give you my word. I'm doing this to cover myself. Interestingly at 33:50 he is too chicken to do it himself. Don't take my word for it listen to it yourself. I think if you heard that last 5 minutes of that video, knowing everything you know now, it will be haunting, haunting. He knows he's decided that this is fair warning. This paper is fair warning, but it is not legal self defense. This fair warning, this letter does not enable him to repeatedly beat Deraold.

Let's talk about the incident, the crime scene. So Ms. Allen mentioned to you this is a ridiculous plan to stalk Deraold to try to commit murder. Maybe. But the Defendant's story is that Deraold who is coming home carrying a bag of shoes -- where did the bag of shoes comes from bag. It is when his girlfriend throws out his clothes and he took his shoes and goes to his mom's house.

I'm going to take my big bag of shoes and come attack you. Drop it behind you and let you know, by the way, I'm

coming to attack you. Doesn't make any sense.

So the Defendant simply not a reliable witness. Not just because of his interest and motivations. Look at the medical reports. The Defendant's exhibits. April 14, 2006, referred to psych about six weeks ago for anger issues. Big shock that 8 years prior to this he has anger issues. Those will be in the medical records you have back there if you want to look at them specifically, look for April 14, 2006 Also has short-term memory problems, June 6th short-term memory loss and depression.

Dr. Chambers said I can't diagnose him with PTSD. He doesn't offer a diagnosis that is not supported by evidence.

MS. ALLEN: I'm going to object. I didn't talk about Dr. Chambers one time. This is rebuttal.

THE COURT: Overruled. You may proceed.

MR. POLAU: And what Dr. Chambers said though is how does he get to the PTSD conclusion. Well, the Defendant has symptoms of someone who has PTSD but I can't establish the criteria, the actual trauma that caused PTSD. What are these symptoms. He says he sees more danger then the average person. A situation may appear life threatening to him that's the not life threatening to others. Then he said he interviewed the Defendant to establish these symptoms, and he said he was seeing that a

conspiracy and threat to be much greater than a normal person would regarding these circumstances.

When Ms. Allen tells that you should rely on Gambino's testimony not only is this self interest, but Dr. Chambers says he's an unreliable narrator.

You have to meet 3 prongs to use self-defense. So again even if you believe Darrell or the State can't prove beyond a reasonable doubt that Mr. Granada is not the original aggressor we still can prove that he did not use self-defense appropriately. That is the second part. Self-defense may by available to him, but does he use it appropriately. Does he use the appropriate amount of force. You have to have an honest belief of fear based solely on fear that a reasonable person in that situation would feel the need to use that force.

Now, I'm not go to pretend to tell you about what Mr. Granada was thinking. I'm not going to try to delve in somebody else's head, but what I can tell you is that a reasonable person in a similar situation can never believe no reasonable person can believe that punching somebody who is limp, who is limp is necessary to protect from your own death.

Even an honest reasonable belief for self-defense does not reduce a defense from murder to manslaughter. Because an unreasonable belief is not self-defense. So

even if Mr. Granada believes in his head that punching an unconscious person over and over and over, that is not self-defense.

So if this is not self-defense and if you believe Darnell, it cannot be What it is. There are still choices you have to make. Voluntary manslaughter, sudden heat of passion, the passion has to be irresistible. Maybe, but there can't be an interval in between the provocation of killing sufficient for the voice of reason and humanity to be heard. This is an atypical case. Normally we talk about the voice of reason and humanity. We are talking metaphorically. But you heard from Darnell. And in this case Darnell was the physical embodiment, was a literal voice of reason and humanity.

When he yells, hey, and why is he yelling, hey. Gambino is beating on an unconscious man. And what does Gambino do. He looks at Darnell, pauses, then continues to beat Deraold as he is laying there limp. The voice of reason and humanity was heard. It was just ignored. It was just ignored.

To be voluntary manslaughter it has to be the mind of an ordinary reasonable person in the circumstance. I don't want to keep repeating myself. It's just that is just not this.

So this is murder. To determine if this is murder

you determine if this is malice aforethought, which means intentional doing of a wrongful act that may arise from anger, hatred, ill-will, grudge or any unjustifiable reason. Doesn't apply to deliberation or lapse of time. It's just a decision. It's just the anger. It's just the hatred. The ill-will, spite or grudge. And the distinguishing feature between first and second degree murder is the presence of absence of premeditation and deliberation. Folks this is where the real work begins, because while the Defendant is punching Deraold's limp body, pauses, and looks over, you have to decide whether or not premeditation and deliberation occurred there.

What the law tells you is that premeditation and deliberation there's no amount of time. An example often given in this court house is it's as if someone is approaching a traffic light and a person sees the light go yellow and at that point a person decides whether or not to speed or stop. The person makes that decision. It can happen that quickly where there is premeditation and deliberation. Here Deraold was a traffic stop and Mr. Gambino Granada-Ruiz decided, no, I'm running through that. I am going to continue to ensure Mr. Dolittle passes.

There is another instruction, direct and circumstantial evidence. Basically the law makes no

distinction. The metaphor used for that is rain. You leave the courtroom, see dark clouds, you hear it might rain. You go to bed. You hear some rain drops outside. You go outside and everything is wet. That is circumstantial evidence that it rained. You didn't see it rain. That is circumstantial evidence. That's different then direct evidence. Direct evidence is you saw it rain. That is the difference between the two. Putting circumstances, putting pieces of evidence together to draw reasonable inference, draw a conclusion, the law makes no distinction between the two.

The State will submit to you this case has direct and circumstantial evidence. And this courtroom is drenched with that evidence.

After all, this is Deraold's face. You know, unfortunately part of this is we have to show you photos like this especially in a case where there is an issue of self defense. Ms. Cannizzaro talked about multiple facial fractures. You can see in these pictures bruises there. You don't get a sense of who Deraold is or was. Maybe he has a big face, huge guy, but what have with the evidence this is what he looked like that morning. The skinny face, a little guy. In the 911 call regarding the domestic violence where no violence occurred, he's referred to as really skinny. This was transformed by the

Defendant to that.

Look at the hands. Ms. Allen said the one piece of evidence you can't overcome is the bruise, the goose egg on the Defendant's face. This is a photo of him taken hours after he's released from the hospital. Where is the goose egg, the big goose egg. Nothing there. Even if that were, even if the Defendant had a huge bump on his head, it stops being self-defense when Deraold was limp under him.

Ladies and gentlemen, there is only one conclusion in this case, and it comes from the words of the only uninterested party here, Darnell Herns. It comes from his 911 call. And his 911 call tells you exactly what happened. Whether or not the Defendant was an initial aggressor is of no import. He used force beyond what the law permits. He used force beyond what is absolutely necessary. He used that force to brutally beat Deraold Dolittle to death. And when the call of humanity came to tell him to stop to reconsider --

MS. CANNIZZARO: I'm going to object to calling it the voice of humanity.

THE COURT: Sustained.

MR. POLAU: When Darnell Herns looked to him, yelled out to him. The Defendant looked, considered, and continued to punch a limp Deraold Dolittle to the point

all that is left is that. He died 9 months later. No dispute that he decide as a result of these injuries.

Ladies and gentlemen, come back here, find the Defendant guilty of murder.

Thank you.

THE COURT: Thank you, Mr. Polau.

I do have one instruction I need to give to the jurors. I will do my best to insure it is reflected in your copy sets.

Instruction 21, there is a reference to the two kinds of manslaughter -- voluntarily and involuntary. That was -- that final sentence of that instructions was included in the error as the other instructions made clear and the verdict form makes clear, involuntary manslaughter is not available for your consideration, only voluntarily manslaughter for your consideration. That was provided to you in error.

Otherwise we are at the conclusion of the trial. I am waiting for the additional court officer to come and be present to be sworn along with the court officer who is already present to take control of the jurors.

At this time, can I ask the officers of the court to take control of the jurors.

(Clerk swears the officers to take charge of the jury.)

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
SEP 21 2015
BY, DANA BATISTE, DEPUTY
6:20 pm

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GAMBINO GRANADA-RUIZ,

Defendant.

CASE NO: C-15-305044-1

DEPT NO: XXV

JURY INSTRUCTIONS

INSTRUCTION NO. 1

LADIES AND GENTLEMEN OF THE JURY:

It is my duty as Judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

INSTRUCTION NO. 3

An Indictment is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Indictment that on or about the 12th day of March, 2014, the Defendant committed the offenses of MURDER and BATTERY WITH SUBSTANTIAL BODILY HARM, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 - MURDER

did then and there willfully, unlawfully, feloniously, with premeditation and deliberation, and with malice aforethought, kill DERAOLD DOLITTLE, a human being, by hitting and/or punching and/or kicking the said DERAOLD DOLITTLE.

COUNT 2 - BATTERY WITH SUBSTANTIAL BODILY HARM

did then and there willfully, unlawfully, feloniously use force or violence upon the person of another, to wit: DEROALD DOLITTLE by striking the said DEROALD DOLITTLE about the head and body, resulting in substantial bodily harm to the said DEROALD DOLITTLE.

It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the Defendant is guilty of the offense charged.

INSTRUCTION NO. 4

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

INSTRUCTION NO. 5

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the State has proven the charge beyond a reasonable doubt.

INSTRUCTION NO. 6

You are here to determine whether the Defendant is guilty or not guilty from the evidence in the case. You are not called upon to return a verdict of guilty or not guilty as to any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty.

INSTRUCTION NO. 7

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict. Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

INSTRUCTION NO. 8

In deciding the facts in this case, you may have to decide the credibility of witness testimony. You may believe everything a witness says, or part of it, or none of it. In considering the testimony of any witness, you may – in no particular order - take into account:

(1) the witness' opportunity and ability to see or hear or know the things testified to;

(2) the witness' memory;

(3) the witness' manner while testifying;

(4) the witnesses' interest in the outcome of the case, if any;

(5) the witness' bias or prejudice, if any;

(6) whether other evidence contradicted the witness' testimony;

(7) the reasonableness of the witness' testimony in light of all the evidence; and

(8) any other factors that you believe bear on believability.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his or her testimony which is not proved by other evidence.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is your judgment as to how much weight you think each witnesses' testimony deserves.

INSTRUCTION NO. 9

The fact that a witness had been convicted of a felony, if such be a fact, may be considered by you only for the purpose of determining the credibility of that witness. The fact of such a conviction does not necessarily destroy or impair the witness' credibility. It is one of the circumstances that you may take into consideration in weighing the testimony of such a witness.

INSTRUCTION NO. 10

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. 11

If the evidence in this case is susceptible of two constructions or interpretations, each of which appears to you to be reasonable, and one of which points to the guilt of the Defendant, and the other to his innocence, it is your duty, under the law, to adopt that interpretation which will admit of the Defendant's innocence, and reject that which points to his guilt. You will notice that this rule applies only when both of the two possible opposing conclusions appear to you to be reasonable. If, on the other hand, one of the possible conclusions should appear to you to be reasonable and the other to be unreasonable, it would be your duty to adhere to the reasonable deduction and to reject the unreasonable, bearing in mind, however, that even if the reasonable deduction points to the Defendant's guilt, the entire proof must carry the convincing force required by law to support a verdict of guilt.

INSTRUCTION NO. 12

In this case the defendant is accused in an Indictment alleging an open charge of murder. The charge of Open Murder includes and encompasses murder of the first degree, murder of the second degree, and voluntary manslaughter.

The jury must decide if the defendant is guilty of any offense and, if so, of which offense.

INSTRUCTION NO. 13

Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

INSTRUCTION NO. 14

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, not alone from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed but may result from any unjustifiable or unlawful motive or purpose to injure another, which proceeds from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

INSTRUCTION NO. 15

Express malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

INSTRUCTION NO. 16

Murder of the First Degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements -- willfulness, deliberation, and premeditation -- must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the actions.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the trier of fact believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold,

calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as Murder of the First Degree.

The intention to kill can be ascertained or deduced from the facts and circumstances of the killing.

INSTRUCTION NO. 17

All murder which is not Murder of the First Degree is Murder of the Second Degree. Murder of the Second Degree is Murder with malice aforethought, but without the admixture of premeditation and deliberation.

INSTRUCTION NO. 18

The distinguishing feature between first and second degree murder is the presence or absence of premeditation and deliberation. If the killing is done with malice, but without deliberation and premeditation, that is, without the willful, deliberate and premeditated intent to take life which is an essential element of First Degree Murder, then the offense is Murder of the Second Degree.

In practical application this means that the unlawful killing of a human being with malice aforethought, but without a deliberately formed and premeditated intent to kill, is Murder of the Second Degree.

INSTRUCTION NO. 19

If you find that the State has established that the Defendant has committed first degree murder you shall select first degree murder as your verdict. The crime of first degree murder includes the crime of second degree murder. You may find the Defendant guilty of second degree murder if:

1. You have not found, beyond a reasonable doubt, that the Defendant is guilty of murder of the first degree, and

2. You are convinced beyond a reasonable doubt the Defendant is guilty of the crime of second degree murder.

If you are convinced beyond a reasonable doubt that the crime of murder has been committed by the Defendant, but you have a reasonable doubt whether such murder was of the first or of the second degree, you must give the Defendant the benefit of that doubt and return a verdict of murder of the second degree.

INSTRUCTION NO. 20

Should you find that the defendant did not commit Second Degree Murder but believe beyond a reasonable doubt that he is responsible for the homicide, you must determine if that killing was manslaughter.

INSTRUCTION NO. 21

The crime of Manslaughter is the unlawful killing of a human being without malice aforethought. It is not divided into degrees but is of two kinds, namely, Voluntary Manslaughter and Involuntary Manslaughter.

INSTRUCTION NO. 22

Voluntary Manslaughter is a killing upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible.

The provocation required for Voluntary Manslaughter, must either consist of a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person or an attempt by the person killed to commit a serious personal injury on the person killing. The serious and highly provoking injury which causes sudden heat of passion can occur without direct physical contact. However, neither slight provocation, nor assault of a trivial nature will reduce a homicide from murder to manslaughter.

For the sudden, violent impulse of passion to be irresistible resulting in a killing, which is Voluntary Manslaughter, there must not have been an interval between the assault or provocation and the killing, sufficient for the voice of reason and humanity to be heard; for if there should appear to have been an interval between the assault or provocation given and the killing sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge and punished as murder. The law assigns no fixed period of time for such an interval but leaves its determination to the jury under the facts and circumstances of the case.

INSTRUCTION NO. 23

The heat of passion which will reduce a homicide to Voluntary Manslaughter must be such an irresistible passion as naturally would be aroused in the mind of an ordinarily reasonable person in the same circumstances. A defendant is not permitted to set up his own standard of conduct and to justify or excuse himself because his passions were aroused unless the circumstances in which he was placed and the facts that confronted him were such as also would have aroused the irresistible passion of the ordinarily reasonable man if likewise situated. The basic inquiry is whether or not, at the time of the killing, the reason of the accused was obscured or disturbed by passion to such an extent as would cause the ordinarily reasonable person of average disposition to act rashly and without deliberation and reflection and from such passion rather than from judgment.

In considering the charge of willful, deliberate, premeditated murder, the burden is on the State to prove beyond a reasonable doubt that the Defendant did not act in the heat of passion induced by the requisite legal provocation.

INSTRUCTION NO. 24

You are instructed that if you find that the State has established that the Defendant has committed murder you shall select the appropriate degree of murder as your verdict. The crime of murder may include the crime of voluntary manslaughter. You may find the Defendant guilty of voluntary manslaughter if:

1. You have not found, beyond a reasonable doubt, that the Defendant is guilty of murder of either the first or second degree, and

2. All twelve of you are convinced beyond a reasonable doubt the Defendant is guilty of the crime of voluntary manslaughter.

If you are convinced beyond a reasonable doubt that the killing was unlawful, but you have a reasonable doubt whether the crime is murder or voluntary manslaughter, you must give the Defendant the benefit of that doubt and return a verdict of voluntary manslaughter.

INSTRUCTION NO. 25

Battery means any willful and unlawful use of force or violence upon the person of another.

If substantial bodily harm results to the victim of a battery, the crime resulting is Battery with Substantial Bodily Harm.

INSTRUCTION NO. 26

Substantial bodily harm means:

1. Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or

2. Prolonged physical pain.

INSTRUCTION NO. 27

When a person is accused of committing a particular crime and at the same time and by the same conduct may have committed another offense of lesser grade or degree, the latter is with respect to the former, a lesser included offense.

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the offense charged, he may, however, be found guilty of any lesser included offense, if the evidence is sufficient to establish his guilt of such lesser offense beyond a reasonable doubt.

The offense of Battery Resulting in Substantial Bodily Harm necessarily includes the lesser offense of Battery, a misdemeanor.

INSTRUCTION NO. 28

The killing of another person in self-defense is justified and not unlawful when the person who kills actually and reasonably believes:

1. That there is imminent danger that the assailant will either kill him or cause him great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in self-defense force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to himself.

INSTRUCTION NO. 29

Actual danger is not necessary to justify a killing in self-defense. A person has a right to defend from apparent danger to the same extent as he would from actual danger. The person who kills is justified if:

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that he is about to be killed or suffer great bodily injury; and

2. He acts solely upon these appearances and his fear and actual beliefs; and

3. A reasonable person in a similar situation would believe himself to be in like danger.

A killing is justified even if it develops afterward that the person killing was mistaken about the extent of the danger.

INSTRUCTION NO. 30

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in self-defense, the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person who kills must act under the influence of those fears alone and not in revenge.

Words of abuse, insult or reproach addressed to a person, without any threat of injury or attempt to inflict injury, will not justify deadly force.

An honest but unreasonable belief in the necessity for self-defense does not negate malice and does not reduce the offense from murder to manslaughter.

INSTRUCTION NO. 31

The right of self-defense is not generally available to an original aggressor, that is a person who has sought a quarrel with the design to force a deadly issue and thus through his fraud, contrivance or fault, to create a real or apparent necessity for making a felonious assault.

However, where a person, without voluntarily seeking, provoking, inviting or willingly engaging in a difficulty of his own free will, is attacked by an assailant, he has the right to stand his ground and need not retreat when faced with the threat of force.

INSTRUCTION NO. 32

If evidence of self-defense is present, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. If you find that the State has failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, you must find the defendant not guilty.

INSTRUCTION NO. 33

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

INSTRUCTION NO. 34

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 35

When you retire to consider your verdict, you must select one of your number to act as foreperson that will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

INSTRUCTION NO. 36

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of, and after notice to, the District Attorney and the Defendant and his counsel.

Read backs of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a read back, you must carefully describe the testimony to be read back so that the court recorder can arrange her notes. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 37

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN: _____
DISTRICT JUDGE

DATE: SEPTEMBER 18, 2015

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff,	)	Case No. C-15-305044-1
vs.	)	Dept No. XXV
GAMBINO GRANADA-RUIZ, Defendant.	)	

BEFORE THE HONORABLE KATHLEEN DELANEY

SEPTEMBER 21, 2015, 4:30 P.M.

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

APPEARANCES:

See separate page

REPORTED BY: BRENDA SCHROEDER, CCR NO. 867

APPEARANCES:

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LAS VEGAS, CLARK COUNTY, NEVADA

TUESDAY, SEPTEMBER 8, 2015, 1:00 P.M.

PROCEEDINGS

* * *

THE COURT: So just to recap where we have been today -- and we are back on the record without jurors present, without Mr. Granada-Ruiz present, with the understanding that he is in route --

MS. ALLEN: Yes. He's on his way.

THE COURT: Okay. So let me bring counsel back up to speed on where we are at. At approximately 11:30, 11:45 this morning the Court received a note from the foreperson. I originally thought because of what was not signed and numbered that it was actually from the juror himself but it turns out that it was from the foreperson indicating that Juror No. 3 had indicated that he has high blood pressure issues and that he was not feeling well and that he would like to go home.

So I instructed the marshal to advise him that we were calling up medical and that if he could continue to deliberate safely to please do so, but that otherwise medical should be up in 10 or 15 minutes and that he would then be able to see them and make sure that he was medically okay and that we would go from there and determine as to whether he continued deliberating. And

of course we told the others not to deliberate without him.

Apparently when the marshal went back in to give that information he indicated that he also was having some vision problems that he had experienced over the weekend and that those were still bothering him today.

The good news was that the marshal had that information so when medical arrived they actually went over both his high blood pressure and his vision issues and just gave him a good once over.

The perhaps red flag at that point in time is is this juror going to continue to find reasons to have to get off this jury or not. So medical advised to the marshal who then advised to me that Juror No. 3's blood pressure was slightly evaluated, however, he indicated that he does take medication for high blood pressure and that he had medication he could take and that he would take it and that he understood the importance of what he needed to do and that he would go back in and continue deliberating.

No mention was made of any vision issues either by the medical staff apparently to the marshal or by the juror at that point in time. They went back in to deliberate and lunch was served shortly thereafter. They ate lunch and to our knowledge would have and should have

continued to deliberate.

We then got a note and I don't remember exactly what time I called you but somewhere in the three o'clock hour indicating from the foreperson that they were at 11 to 1 on the vote and it was not moving. What next.

At that point in time I was not aware of who the person was who was not with the group and I did not want to assume that it was Juror No. 3 because it could have been any other juror but then the marshal then indicated to me that his observance when they went in with the lunch and his observance when he went in to get the note from the foreperson was that Juror No. 3 was not participating in the deliberation; that he had physically removed himself from and was not otherwise participating in the deliberations.

So at that point when I called counsel to advise what was going on our thought process was -- I should back up. I called you then I found out the information I just shared with you.

So I called counsel. Our thought process was they are still deliberating and I mentioned to you that I had already told the marshal to go back in and tell them to continue deliberating upon receipt of this note and that they were not leaving and the assumption was they were still deliberating.

Then the marshal indicated to me that he was not sure that they were in fact deliberating based on what he had observed. He had not observed any actual lack of deliberation so to speak because he knocked on the door but he said from the way that he was positioned in the room it was his belief that they were not. He was not participating, Juror No. 3, was not participating in the deliberation.

At which point I became concerned that we were at a hung jury situation because if they are not actually deliberating and somebody has their strength of their conviction, so to speak, and the others are on their position that maybe we are hung even though they haven't been that long at it.

While I was sort of ruminating on that, I then got two more notes from the foreperson -- well, no. The foreperson delivered them but they are signed off on by Juror No. 3 and Juror No. 12 respectively, and these are the notes.

Juror No. 3 by his own admission fact checked a law brought in front of the Court on the Internet. Also Juror No. 3 refuses to not consider that law per judge's instruction. And that is signed by Juror No. 3.

Juror No. 12 then indicated that Juror No. 3 stated that he researched the law on the Internet over

the weekend. So these are the two notes that have just been brought to me and this is when I called counsel to come to the court.

It is not clear to me at this moment that Juror No. 3 has actually shared substantively in the deliberations whatever it is that he claimed to have researched over the weekend. And, again, he doesn't say when he did it in his note.

Juror No. 12 shared with us in his note that it was over the weekend. But it is not clear to me that he has shared it. It is not clear to me that this is not yet another excuse for the juror who simply does not want to continue participating, but I think we obviously need to find out if this trial and this juror are still salvageable, if Juror No. 3 has not shared other than the fact that he did this thing now in terms of now trying to again perhaps get out of service and we can bring in an alternate.

I highly suspect that he has in some fashion or another shared this information that he has and then I do not have any choice but to consider this a mistrial and to end this case.

So as I said, this is what I look like when I cannot be more mad or more angry and contemplating what to do about this with regard to the jury question that we

now have to still figure out what we're going to do.

My thought process is that we need to canvass the jurors to determine what the circumstances are. There is a couple of different ways we could do this. I have had other situations where information came up during the course of a trial that required a mistrial and we basically canvassed the jurors one by one in the order in which they were seated.

My thought process is we could start with the foreperson and find out from the foreperson his opinion on this. If he tells us out of the gate, Yeah, this guy has been talking about what he found and what he researched, you know, anything revealed to us through this foreperson's questioning that they have been tainted then I think we are done.

But if he indicates that it has not been shared, again, it's hard to know. Juror No. 12 indicated he shared something with him. It's hard to know and we should canvass them one by one.

At this point obviously I want to bring it up for discussion for counsel.

MR. PALAL: You are spot on, Your Honor. I think it is a two part inquiry, Your Honor. I think it's first did the juror -- the rogue jurors -- share the information; and number two, can the other jurors

disregard that information.

It sounds like they are on the opposite side of this particular juror and we obviously don't know which way it is, but is sounds like these other jurors are on the opposite side of this particular juror so it doesn't sound like to me that what this juror has shared has affected the jury because all 11 are on one side and he is on the other side.

But was this improper information shared; two, did it affect or can you ignore it and just follow the instructions as given.

THE COURT: Ms. Allen.

MS. ALLEN: Your Honor, I just -- I would disagree with Mr. Palal that if it was shared that's a huge problem and I think that probably creates a bad record regardless of whether or not they are on one side of the issue or the other. He went outside of what he was supposed to do and he shared that with the jury.

I was not prepared for this issue. I was prepared for something else entirely, but I think that there is actually case law on sort of infecting the jury and that it can't stand.

THE COURT: I obviously was not prepared for this outcome either. I had not undertaken at this point to attempt to research the case law either. I will tell

you that my strong belief and opinion is although I have never faced this particular circumstance before I have had it come up during voir dire; I've had issues come to light to the jury during the course of trial but this is the first occasion that we've had where they have actually been deliberating and the possibility of the taint has occurred.

I am of the fairly strong opinion that if it does come to light that this juror has shared this information that we in fact do have a mistrial and that we must declare such and that we will lose this jury and all of our hard works because I cannot be sure that the information could or would be disregard regardless of where we might speculate their process may be.

And I don't even know if that has anything to do with the reason for the holdout and the truth.

Also, too, is we have no idea where the holdout is. We don't know if it's between acquittal and conviction or if it's between degrees of, you know, crime. I just don't know at this point.

MR. PALAL: Your Honor, the one thing I will add is I had this exact situation come up in the last murder trial I did in front of Judge Thompson. What happened was we had a juror say I looked up the punishment for murder and I disagree with it. And what we did there is

we brought the juror back in, as this Court is doing, brought the juror back in and did a two part evaluation, which is what was the information shared and can you disregard it to follow how the Court has instructed.

But that would be an attempt to save the last two weeks that everybody has put in. Obviously it's the Court's pleasure.

THE COURT: I would need to see some case law to support the ability to do that because I would be very concerned about the record that we would have in that circumstance regardless.

You have this example so let me just flush it out. So that juror was excused and an alternate was brought in at that point?

MR. PALAL: No, Your Honor. Actually, Judge Thompson had canvassed that particular juror -- instructed that person, can you disregard your disagreement with the law and just focus on the instructions that you have been given by the Court and that juror said yes. And then they went back and deliberated.

MS. ALLEN: That's frightening.

THE COURT: It is frightening but we already know we are beyond that point with this case because Juror No. 3's note, which he signed indicates that he

refuses to not consider that law per the judge's instruction and so to me it just simply boils down to whether or not he has tainted everybody else or anybody else on the jury with this information.

So does anybody have any better idea of the follow up then to start with the foreperson?

MS. ALLEN: No. I think that's the best way to start it.

THE COURT: Do we need to or should we wait for Mr. Granada-Ruiz?

MS. ALLEN: I think he should be here any time now.

THE COURT: Do you want to step out and call him and bring him up to speed on these conversations. At this point if we are going to proceed -- at this point it is ultimately going to be this Court's decision but I would feel more comfortable if Mr. Granada-Ruiz was up to speed.

MS. ALLEN: Okay, Your Honor.

THE COURT: Let's take a brief recess.

(Whereupon, a recess was taken.)

THE COURT: Back on record in the State of Nevada versus Gambino Granada-Ruiz. I will note for the record that we still have counsel present. Mr. Granada-Ruiz has now joined the courtroom and jurors are

still not present.

Mr. Granada-Ruiz, just to quickly bring you up to speed, I know that counsel has already advised you of the conversation that we had while you were in transit, but we had a request from a juror this morning who indicated that he was feeling unwell, has high blood pressure and a potential medical reason to not continue.

We called medical to come check that situation out and it turned out that he was able to continue deliberating, so he was directed to continue deliberating. Since that time we have been advised that the jurors were at an impasse.

Typically, on the first time you would get a note the jurors are in an impasse and we would direct them to continue doing their job, to continue deliberating. They had not indicated through that note that they could no longer deliberate, that they were at a point where they had reached the inability to continue to deliberate, so they were directed to continue deliberating.

Shortly after that we received communication from the foreperson that the same juror who had indicated that he was not feeling well earlier in the day had undertaken to do independent research over the weekend and that he was unable to not consider that research even

though the judge's instructions obviously would indicate otherwise, that he had independently researched, in his words, a law, and that he refused to not consider that law per the judge's instruction.

So at this point the Court had no alternative once it received that information but to talk to counsel and have them return and call you to return so that we could find out from the jurors where we stand.

Here's where we stand. If this juror did this independent research and has not shared that information or any specifics of that information with any of the other jurors during deliberation it is possible that he could be excused and an alternate juror brought in to deliberate in his place at which point the jurors would be instructed to restart their deliberation with the alternate present.

If he has in fact shared this information with the other jurors then the Court has determined, although counsel has been doing some efforts to research this because obviously this all just came up, that we had determined that it is likely that we will have to declare a mistrial and lose the benefit of the time and effort that we have all put into this trial because we cannot ensure that we would have a verdict that was fair and impartial and not influenced by outside influences.

We will not know the answer to that until we bring the jurors in and question them. My intention is to start by questioning the foreperson first and find out from the foreperson if in fact this information has been shared amongst the other jurors and what the deliberations have been.

If we find out from that juror that the others have been exposed to this independent research and information then we are likely to conclude at that point. If we find out from the foreperson that the fact of the research having been done was revealed but not the research itself then I probably out of an abundance of caution will want to before making the final decision canvass each of the jurors to make sure that this information is accurate.

But I do not know at this point what the outcome of this discussion with the jurors will be or whether we will be able to continue or whether we will have to have a mistrial.

Do you have any questions for the Court about the information that I just shared with you?

THE DEFENDANT: (No audible response.)

MS. ALLEN: That's a lot of information.

THE COURT: I understand that the processing of the information takes place in a certain way and whatever

questions you have you just need to ask them so we can clarify. The Court will ultimately make the decision. You and/or counsel will not make the decision as to whether or not we proceed or whether or not we declare a mistrial. That is the Court's decision to make.

I am simply trying to make sure that you understand what is happening before we proceed.

THE DEFENDANT: I understand what happened.

THE COURT: Do you have any questions at all?

THE DEFENDANT: I might have a few questions about the mistrial and stuff but other than that I understand.

THE COURT: Well, you understand whatever questions you have about the mistrial I would likely be unable to answer and your counsel frankly will be unable to answer because it would all be speculation because we don't know at this point.

The only thing we can deal with here is what happens with this trial.

Anything else before we bring in the --

Did you find something, Ms. Cannizzaro, for the record, and then I will invite Ms. Allen to do the same.

MS. CANNIZZARO: Yes, Your Honor. The State did find some research, specifically the case of *Meyer versus State*. It's 119 Nev. 554.

In this case, Your Honor, the supreme court dealt with an issue of whether or not to grant a new trial on the basis of juror misconduct. And in discussing whether or not it was proper to grant a new trial the Court did go through an analysis of different types of juror misconduct and what the standard is.

The Court specifically talked about different types of extrinsic material finding its way to the jury and notes that jurors exposure to exchange information via independent research or improper experiment is likewise unlikely to raise a presumption of prejudice.

In these cases the extrinsic information must be analyzed in the context to determine if there is a reasonable probability that the information affected the verdict.

And so the Court is noting that just because there might be some extrinsic influence does not necessarily automatically lead to juror misconduct or that it would impermissibly prejudice the jury.

The Court goes on to say that each case turns on its own facts and on the degree and pervasiveness of the prejudicial influence resulting from any extrinsic or other juror misconduct.

The State's position is that this case law supports the idea that if the juror did share this

extrinsic research with the remaining jurors that it still would require for the Court to inquire as to whether those jurors could ignore that and continue with deliberations and rely upon the law as instructed by the Court rather than an automatic mistrial as a result of this extrinsic information.

I think we still have to ask the question of whether or not they would be prejudiced by this. So even if he had shared some of this information including the substance of any law he researched, the question is still whether or not the jury can continue with deliberations even hearing that and ignoring that.

THE COURT: What was the citation again?

MS. CANNIZZARO: It is 119 Nev. 554.

THE COURT: Thank you.

Ms. Allen or Ms. McNeill.

MS. MCNEILL: Your Honor, we have *Zanna (phonetic) versus State,* 216 P.3rd 244. That was also a case where the supreme court agreed that what the juror looked up did not affect the verdict, however, they did note that in that case what the juror had looked up was sort of vague information that really was not material and the supreme court noted several factors guide the prejudice inquiry; how long the material was discussed, when it occurred relative to the verdict and the

specificity or ambiguity of the information and whether the issue involved was material, obviously, a law that they may have been instructed on contrary would be material information.

But I don't think that asking if they could set it aside cured the problem of what might have been discussed.

MR. PALAL: Your Honor, I will be very brief. The reading in *Zanna* they effected whether or not it prejudiced the jury but if a juror is fully not listening to what that juror is saying it is hard for me to understand how it would prejudice them if they are ignoring what that juror has to say.

THE COURT: Thank you.

Tom, at this time can you bring in the foreperson. Bring him around the side here and he can sit in his seat.

(Foreperson enters courtroom.)

THE COURT: Juror No. 10, I do understand that you are the foreperson who has been selected in the trial; is that correct?

JUROR NO. 10: Correct.

THE COURT: This is a little tricky because if there is a chance for this trial to continue we don't want to do anything in here that might impact that, okay?

But I do need to gather some information from the jurors and we would start noting for the record that Juror No. 10, the foreperson is present, counsel for the State, counsel for the defendant and the defendant are present.

We do need to have some understanding with regard to the last set of notes that you provided to the Court. And I guess the only thing I would suggest is don't assume that you understand or know why I'm asking the particular questions that I'm asking. We will just do our best to get information, okay?

JUROR NO. 10: Okay.

THE COURT: Two notes were provided. One note from the juror in question who has indicated now by his own admission that he did research on a law that he believes is impactful to this case and that he refuses to not consider that law per the judge's instructions.

But we had another note from another juror, not yourself, who indicated that he had had some discussion with this juror, so I am trying to understand where this came from.

And what I am trying to understand is because you could have obviously written a note like this if it was something that occurred that was observed by all the jurors. Is it your understanding that this juror, Juror No. 12, had an independent separate discussion with Juror

No. 3 or why would this note have come to light.

JUROR NO. 10: Well --

THE COURT: And I am not asking of you right now what was said. I'm just trying to understand the dynamics of how this was happening.

JUROR NO. 10: Okay. From the beginning of when it originally happened, what happened was -- I guess I need to start from the beginning to answer your question.

THE COURT: Well, I don't want you to do that just yet.

JUROR NO. 10: Okay. Okay. The way that came about to where Juror No. 12 found out about is Juror No. 3 had mentioned it that he --

THE COURT: When? Where? How? In front of the group?

JUROR NO. 10: Yeah, in front of the whole group back there in deliberation.

THE COURT: About what time today did this get mentioned if you can recall? Was it before lunch or after lunch?

JUROR NO. 10: I'm going to say before lunch.

THE COURT: It was not that long before lunch when Juror No. 3 indicated that he was not feeling well; was it before that or after that, if you recall?

JUROR NO. 10: It was before that.

THE COURT: Okay. So prior to Juror No. 3 bringing to our attention that he wasn't feeling well he mentioned to the group that he had done some --

JUROR NO. 3: Research on the Internet.

THE COURT: Okay. So now flash forward, this was not brought to my attention when the issue of him not feeling well was brought to my attention. This was only brought to my attention this afternoon.

And, again, there is a method to my madness for asking it this way, but how did Juror No. 12 get involved and why again this note from Juror No. 12?

JUROR NO. 10: The way Juror No. 12 got involved when we were back there doing our deliberation it was mentioned at that time. I said Juror No. 3 had researched some information on the Internet and we were pretty much going back and forth during deliberation and then Juror No. 3 indicated he was not feeling well about the blood pressure, and the way he got involved, Juror No. 12, it was just going back and forth and Juror No. 12 mentioned to Juror No. 3 that part of our instructions basically was not to research, not to talk about it and just discuss --

THE COURT: Now when did Juror No. 12 bring that up?

JUROR NO. 10: I would say maybe after we came

back from lunch.

THE COURT: So just kind of out of the blue?

JUROR NO. 10: Yeah, because they were going back and forth so that was brought to my attention.

THE COURT: It did not occur to anyone else at the time when Juror No. 3 indicated he had done some independent research that that was problematic?

JUROR NO. 10: Yeah, that was majorly (sic) discussed in there and we were not sure about the proper steps, I guess, because it was just kind of out of the blue as far as the situation.

THE COURT: Understood. So after lunch Juror No. 12 brought up to the group in the deliberations that that was not okay in some fashion --

JUROR NO. 10: Right.

THE COURT: -- or reminded you all of an instruction or something is what it sounds like.

JUROR NO. 10: Right. He reminded us -- I guess we kind of all -- it was weird because when he first brought it up we kind of --

THE COURT: He meaning Juror No. 3?

JUROR NO. 10: Yes. When he brought up that he researched information we all kind of were discussing it and we were all following that, hey, you were not supposed to do that, you know, no outside influence, no

outside information.

So we all kind of discussed it but then we just kept going forward with deliberations. And then we had lunch of course and then we came back from lunch and --

THE COURT: You had lunch in there. Did you continue to talk through lunch?

JUROR NO. 10: Yes, during too. But basically we were discussing it after lunch and it was brought up a few more times because the tension was really high.

THE COURT: I have other questions I want to ask you. I am trying to wrap up -- I did not get these two notes until the three o'clock hour.

JUROR NO. 10: Right.

THE COURT: You all got your lunch before 1:00.

JUROR NO. 10: Correct.

THE COURT: So I am trying to understand why, but that's okay. So did Juror No. 12 volunteer to write this note or did you solicit this note from him? How did this note from Juror No. 12 come about and why?

JUROR NO. 10: He volunteered to write it. He said we need to write a note about him, about Juror No. 3, to let the judge know that he researched out information. Juror No. 3 was already volunteering he was in the process of writing the note and Juror No. 12 just kind of reiterated that.

THE COURT: Okay. I just wanted to wrap up that so it wasn't left hanging.

So coming back now to Juror No. 3's action. You said now a couple of times in our discussion now that there was a lot of discussion about it. But what I am not clear on is what were we discussing? Were we discussing the fact that Juror No. 3 had done something he should not have done or were you actually discussing what he found in his research and those circumstances.

Again, I am not asking you to tell me what anybody said. I am just trying to understand generally what the discussions were.

JUROR NO. 10: The discussion was the research of what he found. He brought what he researched on the Internet and said --

THE COURT: So he actually revealed to the jurors what he found?

JUROR NO. 10: What he researched.

THE COURT: And the deliberations included discussions on that; is that correct?

JUROR NO. 10: Correct. The discussion was you were not supposed to do it because now you are influenced by an outside source one way or the other, but that is something that we were not supposed to do. It was discussed over and over.

I guess we should have probably brought it to your attention a lot earlier but due to the fact that we were kind of, you know -- and me being the foreman I guess I should have brought it to your attention earlier.

THE COURT: Mr. Washington, what this is about is in order for the Court to make a determination about how to continue or if to continue I have to know the extent of what occurred, so really that is what it's about. None of it is hindsight going back and saying would have, could have, should have.

At this point for me it is just important for me to know what actually happened.

So now let's go back. Sometime prior to him indicating that he did not feel well, Juror No. 3, which, again, we pinpointed sometime between the 11:30 to 12:00 time frame. So was it at the beginning of deliberations that he revealed this information?

JUROR NO. 10: It was I am going to say not that long after we started; maybe 45 minutes to an hour. Not that long after we started. I would say between 10:00 and 11:00.

THE COURT: And did the discussion -- and I am going to in a minute go into what the discussion was, but did the discussion then from that point until he indicated that he didn't feel well was that all about

what he found and that impact on the case?

JUROR NO. 10: We discussed it for some time, yes. It was not what we mainly discussed but it was discussed in between that time up until lunch and even basically after lunch.

THE COURT: So you continued to discuss it throughout the day until at whatever point you determined you needed to bring it to the Court's attention.

JUROR NO. 10: Correct.

THE COURT: All right. I do then need to ask you at this time to tell the Court and counsel and Mr. Granada-Ruiz what it was because one of the analyses that the Court has to do is to understand if it's a situation where that information could be potentially prejudicial to the decision-making and ultimately whether or not that information, you know, the length of the discussion, the circumstances of the discussion and whether or not that is something that can now be -- you heard the saying, You can't un-ring the bell?

JUROR NO. 10: Right.

THE COURT: Whether we are the point where we can't un-ring the bell and whether or not that can be set aside. It doesn't really matter, just so you understand, who is on what side of the research in terms of their decision and holding their decision and that is one of

the reasons why I am trying to stay away as much as possible from what was said and those circumstances. But I am must trying to find out, again, what this impact will be.

So as succinctly as you can, what is it that he researched.

JUROR NO. 3: What he researched is something that was said during the closing argument by the prosecution. And what he specifically researched was -- and part of the closing argument there was stipulation and one of the laws about premeditation, what determines premeditation in a murder. And he had researched the law and came back and told us according to what was said in the closing argument about premeditation and whether it doesn't have to be a minute, two minutes, three minutes, four minutes, basically, that doesn't play a circumstance in determining if it's premeditation, meaning, there doesn't have to be a big elapse of time for it to be determined --

THE COURT: I'm just going to interrupt you here because I just want to make sure that I am understanding what you are telling me. So certainly there was an instruction that spoke to this issue as well; it wasn't just what was said in closing argument.

So did the jurors at any point in time in this

discussion recognize that there was a specific instruction on this point?

JUROR NO. 10: Well, I don't know. I don't believe they knew there was a specific instruction at that point. I think they were more determining about when we were reading in the information that you gave to the juror, and I think everyone was focused on this about not taking pretty much what was said in the closing argument and putting that in as evidence and I think that's what everyone was going off of.

THE COURT: Right. Certainly there was an instruction that indicated closing arguments are just that, they are not evidence, they are just helping you to remember the evidence.

So understanding that there was an instruction but the focus did not appear to be on the instruction as much as what was perceived to have been said in closings and whatnot.

JUROR NO. 10: Right.

THE COURT: So as I understand Juror No. 3 then came up with -- I want to make sure I understand this correctly -- did it appear that Juror No. 3 researched something that was different than or not consistent with the law that was stated here in court either in the closings or what the Court read or the instructions

themselves.

His note to the Court of course is he refuses to consider that law per judge's instruction. So I am trying to understand did he come up with something that he believes is contrary to the law that was instructed?

JUROR NO. 3: Yes, I believe so. I guess he was trying to get a better understanding of premeditation so he went and researched it even further, so that was my belief of what he was researching.

And just so I'm clear what else he was researching is something about alcohol content and to find out -- I know during the trial there was discussed about .66 alcohol level and so he went and looked up the alcohol level as far as what amount of alcohol this and that in your system.

THE COURT: That discussion was in reference to the victim in the case.

JUROR NO. 3: Right.

THE COURT: Did that discussion ensue with all of the folks deliberating as well in terms of that information and whatever it was that he found related to that information?

JUROR NO. 10: Yes. He brought that up and told us what he found.

THE COURT: And there was deliberation then

amongst the jurors on that point as well?

JUROR NO. 3: Not as much as on the premeditation part. It was mainly focused on that and I think everyone was just not in full understanding about the closing argument. I think they took that -- they were basically saying that you can't use the closing argument as evidence and I think they were just mainly focused on that.

It really was not about the alcohol content that came up. It was mainly on just researching information about the law on premeditation and that was the main focus.

THE COURT: So I guess I just want to make sure I am understanding this. Even though there were jury instruction that the Court read and jury instructions that were in writing that each person had a copy set of, your deliberations did not focus on what was in the instructions about the premeditation, they focused on what Juror No. 3 researched about premeditation?

JUROR NO. 10: I think it was the conversation really got bent more on what Juror No. 3 was saying about premeditation.

And then I had mentioned -- we all mentioned, let's look through this and get a better understanding of what the understanding of premeditation is.

THE COURT: So did you at some point then turn to the jury instructions themselves for that discussion or did you just go back to deliberating on the facts on the evidence?

JUROR NO. 10: We looked at it -- it was so heated in there at one point in time. I think it was -- I don't think anyone really went back and focused on the instructions right there in front of them as much as listening to what Juror No. 3 was saying about how he researched it and at some point kind of saying that you weren't supposed to do any outside research.

THE COURT: All right. Juror No. 10, I will ask you to go back and rejoin the panel. Please do not discuss what occurred in here now because it is possible that we might bring you back or we might bring the others back one by one or otherwise. But at this point I am going to have you step out for a minute and rejoin the group and then we may bring you back.

JUROR NO. 10: Okay.

THE COURT: Thank you.

(Juror No. 10 exits the courtroom.)

THE COURT: I toyed with the idea of inviting counsel to inquire of the juror but I honestly at this point did not feel the necessity to do that, but I am not opposed to considering it if that is a request from

counsel.

I think what we have here and I did try to be careful, although, once some of the information became revealed we probably could have gone further, and again, I am open to it either way. Either to fully flush out the record or to see what else you may believe is of interest.

But to me what I have revealed here is significant deliberations on two points of law researched by Juror No. 3, one of which appears to have gotten some miner attention, which was the alcohol consumption of the victim in this case.

But the more concerning part and the part that appears to have been significantly deliberated with no apparent reference to what the instructions on the law were was Juror No. 3's research with regard to what premeditation is or isn't and the other jurors' discussions with regard to that.

I don't see how the Court could find anything than this is material to the case, that there was lengthy discussion. Even if I had individuals who indicated they could set it aside my concern obviously would be that they now know, and that's why I tried to stay away from that part of the discussion where they fall on either side of this debate, if you will, and that they may say,

Well, I can set it aside because they are now looking for a particular outcome and we absolutely cannot run that risk.

So I am of the mindset at this point in time subject to hearing further argument from counsel that we have no alternative but to declare a mistrial in this trial.

I am open now to hear from the State, and then, of course, I will hear from the defense.

MR. PALAL: Your Honor, the State's position is the same. If they are rejecting the information -- it sounds to me as though the other 11 jurors told the rogue, Juror No. 3, that you are not supposed to do that and they appear to be on the opposite side of whatever this one juror is.

The last prong is whether or not it affected their deliberation, whether or not it prejudices the jury and the State's position is we have not heard that this affects our decision in any way, affects our stance in any way on whether or not they can ignore it.

THE COURT: Well, I never intend to when I ask counsel to make a record to turn into a quibble with the record, but what I heard that foreperson say is they deliberated on what Juror No. 3 presented. They did not immediately say you shouldn't have done that.

Had I heard this juror, this foreperson indicate to me that they had said, Hey, that's not cool, we can't talk about that and they had in any way turned to a legitimate discussion of the law and the instructions as given to them, you know, I might have a different inclination. But what I heard was that they had a significant period of time that they deliberated on what Juror No. 3 proposed.

Even when I asked at the end, Well, okay, at some point did you put that aside and come back to the instructions and he still said, no, that what they did was talked about what Juror No. 3 provided.

So whatever they may be debating and whichever side of the debate they may be on it doesn't appear to be in any way, shape or form informed by anything or than Juror No. 3's research. That's really where the heart of my concern is.

But I'm only sharing that, again, not to quibble with but to sort of give you more insight as to my thought process, but I understand your position.

Let me hear from Ms. Allen and Ms. McNeill.

MS. ALLEN: I don't even know what to say. We both are just kind of flummoxed at this point.

MS. MCNEILL: I understand the Court's position and I do not know if it's just for our own personal

edification at this point but I think we would like to hear from Juror No. 3.

THE COURT: I was not going to let Juror No. 3 slide by. I did not necessarily want to do the one by one and that is why I had the foreperson leave to figure it out. No. No. We have to bring in Juror No. 3 in and be more specific. I did not want Juror No. 10 to speak for Juror No. 3, so to speak, I just wanted his take as the foreperson on the overall and to kind of get nailed down how much did this permeate the deliberations and generally what it was and that kind of thing, but I want to hear from Juror No. 3.

MS. ALLEN: That is our only request. At this point, sadly, I think I somewhat agree with the Court on the permeated; it was not a little bit. And premeditation, whatever he researched is pretty huge in this case. That is a huge issue. It is like the issue.

THE COURT: Honestly, where I thought this was going to go, and I'm just going to reveal it for the record is I really thought it would have something to do with self-defense.

MS. MCNEILL: That's what I thought.

THE COURT: And that that would be the discussions and to find out that it is not that and that it is this other issue is actually quite surprising to

the Court and that much more exponentially more concerning. Not that it would not have been a major material issue regardless of any component of the instructions.

All right. Tom, I need you now to bring in Juror No. 3, Mr. Longo.

(Juror No. 3 enters the courtroom.)

THE COURT: Mr. Longo, sit anywhere you want.

Let the record reflect now the presence of Juror No. 3, counsel for the State, counsel for the defendant and the defendant.

Obviously, Juror No. 3, we appreciate that you indicated earlier today that you had some medical concerns and that you were not feeling well. We had medical check out those circumstances and the feedback I got from the marshal was that although your blood pressure was slightly elevated that you had medication that you would take and that you were prepared to continue deliberating.

It was somewhat of a shock, frankly, to the Court to then get the communication that most recently came from the jurors and that is what we are talking about now.

The reason I brought up the prior issue is I wanted to ensure medically that we can have this

conversation; that we are not -- that you feel comfortable that you can answer our questions and not be concerned health-wise.

JUROR NO. 3: I'm okay.

THE COURT: I appreciate that. So I do have your note here that indicated that -- is this your handwriting?

JUROR NO. 3: I wrote it, yes.

THE COURT: I thought so. I am going to read it now for the record and then I'm going to ask you to give us the details behind this note.

It says: Juror No. 3, by his own admission fact-checked a law brought in front of the Court on the Internet. Also Juror No. 3 refused to not consider that law per judge's instruction.

I am going to ask you if you can walk a bit of a fine line here for now. I want you to tell us what you did, when you did it and I am not necessarily at this point asking you to reveal what the conversations with the jurors have been about, we may get into that in a moment, but we want to know specifically what you did and when you did it.

JUROR NO. 3: Can I mention what the law is or just --

THE COURT: No. This is the part to tell us

what you did and what you found and why you did it. What I am trying to avoid is us talking about your deliberations. I am trying to find out what you did to those specifics would be necessary, yes.

JUROR NO. 3: Friday was kind the most stressful day because everything was kind of out of control.

THE COURT: Are you talking specifically about deliberations now?

JUROR NO. 3: Yes.

THE COURT: So once the jurors had retired to deliberate.

JUROR NO. 3: Yes. So trying to review the evidence and the instructions I guess is what got hectic but everybody has an opinion on certain things and there was one law that the District Attorney quoted -- am I allowed to say that -- anyway, I had a question as to I wanted to reference that and they said I couldn't and it really wasn't the law.

THE COURT: Let me back up because I am having a little struggle in all honesty following your discussion.

Obviously, the Court gave the jurors instructions. And obviously those instructions had the law in them, but you are indicating to me now that something that the DA rather than the instructions and what the Court gave to the jurors that something the DA

said prompted you to do your research; is that what I am understanding?

JUROR NO. 3: See, here's the whole thing. I don't know if I understand this all right. According to everybody I don't and it was impossible for me to get clarification on it and I cannot talk to anybody. There was once or twice where I mentioned maybe can the judge or the District Attorney clarify so that I understand it better.

THE COURT: You had the instructions on the law. You had what the law was. What clarification did you believe you needed?

JUROR NO. 3: I believe that I had the clarification, that I knew what it meant. But what the issue was, was first that it wasn't, that it wasn't even a law.

THE COURT: I need you to be specific at this point; what are we talking about?

JUROR NO. 3: So I can --

THE COURT: What is it that you are talking about that you researched?

JUROR NO. 3: At the end of the whole thing, closing argument, the DA referenced a law that says self-defense only goes so far within reason, that if you are self-defending yourself that you can self-defend

yourself up to a point but when it's not self-defense anymore, like in this case the guy goes unconscious and it still happens then from that point it's not self-defense anymore so it is more first degree because I guess then he had a reference like a traffic light kind of reference or something and that short of span can determine first degree, so it does not have to be planned for days later.

THE COURT: So what I hear you saying, based on the closing arguments and the DA which was to guide you in how the State believes the law should be applied to the facts and of course the defense had how they thought the law should be applied to the facts but you had the law for yourself to actually apply to the facts is that what is not sufficient?

JUROR NO. 3: So I am not allowed to bring that up? I am not allowed to use that law? Or am I? See, this was the issue with that is that --

THE COURT: I'm just trying to find out what role, if any, the instructions played in this process because, again, you have the District Attorney, you have the defense, you have closing arguments. There were numerous instructions prior to that time frame, during the course of trial and at the end of trial that indicated anything that counsel were to say either in

opening or closing or in questions is just that, it's not evidence.

But, ultimately, you were instructed as jurors to take the facts as you find them and apply the law as I gave it to, which is what I read to you which is what was in those instruction set that each of you have a copy of.

JUROR NO. 3. Yes.

THE COURT: So your job as jurors were to take those laws and apply the facts to them. So are you telling me that you were unable to do that and that is why you went out and independently researched?

JUROR NO. 3: Well, I realize now I should not have researched, but like I said, it was a stressful day and stress works in both ways, you know. A person can be stressed out and then physical confrontation and then someone else can be stressed out from the constant -- from the way that the trial works.

THE COURT: I just want to share this with you. There is nothing about this inquiry right now that is intended in any way to be a criticism. I am just trying to factually determine what happened and I am struggling to follow what happened.

JUROR NO. 3: Well, that's the reason why I researched it. I didn't think not to go on the Internet. I didn't think -- I was contradicted that it did not

exist and I knew that it did --

THE COURT: What didn't exist?

JUROR NO. 3: The law.

THE COURT: What law? You were given the law with the instructions so what did you think?

JUROR NO. 3: The law that the DA referred to at the end there, that that's not a law, it didn't exist.

THE COURT: Let me make sure I understand. I'm really only trying to understand what you are trying to tell us. The laws that apply to this case -- these are the instructions (indicating). This is the law that applies to the case. All of the laws that apply to the case are in there and the DA did not cite to anything that isn't in here.

So what I am trying to understand is did you just not look at what was in here and feel that you had to go independently and find something else?

JUROR NO. 3: I couldn't find it. If it was in there -- it was in there.

THE COURT: The DA is not at liberty to close argument with the jurors and cite to anything that's not here. He may have argued how he believed the facts in this case should be applied here or how the law should be applied to the facts in this case more accurately, but there is nothing that wasn't in here.

Again, what I'm trying to find out is what you did. What did you find? What did you do?

JUROR NO. 3: I went on the Internet and looked for that.

THE COURT: Looked for what?

JUROR NO. 3: A law that says if you have self-defense it's only self-defense until such and such and then I found if you go to like the Nevada site then it's hard to understand. It is easier to understand in layman's terms on a legal website, like if you understand, okay.

Again, I still don't know -- if I did something wrong, I'm sorry. I will pay for it in whatever way I'm supposed to. And like I said, I did not even think about it until we were talking about it today and they said that it's not a law and I said it is, I seen it. And then they said --

THE COURT: What is the law that you believe you saw?

JUROR NO. 3: The law about self-defense only being self-defense up to a point.

THE COURT: That's what you are saying to me you questioned. What did you find?

JUROR NO. 3: That law, that's what I found what the DA said was correct.

THE COURT: Okay. That's what you found, okay.

JUROR NO. 3: Well, at least close in proximity, not word for word but even if it used examples it did say that, that up to a point once the person is -- now I cannot remember how they said it but up to a point once the person cannot fight back and is unconscious then it stops being self-defense.

THE COURT: So help me understand then -- did you research anything else related to the law as to apply in this case?

JUROR NO. 3: One more thing but not the law. There was a part about toxology (sic) on there, on your guys' stuff that said .60, the blood level of alcohol. And the gal asked a question about it and I did not bring this up in there. I am telling you but nobody knows about this.

The gal asked the foreman, Well, I got a question about the blood level. And he said, Okay, let me find it and then he's reading it. And he says, Okay, the blood level was .60 and he says --

THE COURT: What was the foreperson reading from? His notes?

JUROR NO. 3: From the facts -- from the trial. Not his notes. Evidence from the proceedings.

THE COURT: Am I misremembering that there was

anything in here with regard to blood alcohol?

MS. ALLEN: Nothing in here about blood alcohol.

THE COURT: There's nothing in there about blood alcohol.

JUROR NO. 3: Then I don't know where he had it from but it was right there in front of me.

THE COURT: Was it his notes?

JUROR NO. 3: No. No. It was typed out. It wasn't notes. Somebody typed it out. It was -- to me it looked like the same --

THE COURT: Could it have been an exhibit from the trial?

JUROR NO. 3: Maybe.

THE COURT: You have the exhibits from the trial.

JUROR NO. 3: Okay. Is that what you call it, exhibits from the trial. I mean he's reading it from a paper right in front of him. It was typed print and he is figuring it must be because when he read .60 he said you would be dead, wouldn't you?

THE COURT: It sounds like it's an exhibit from the trial. Did anybody else bring anything in from outside?

JUROR NO. 3: No.

THE COURT: Okay. It sounds like he was looking

at the evidence.

JUROR NO. 3: Yeah, okay.

THE COURT: And there was a question. Somebody asked him a question.

JUROR NO. 3: Yes. So he said .60 as he's reading it and he said .60 you would be dead, wouldn't you? I said I don't know. And the gentleman next to me said, No, no, no, you can go .10 and you are still okay if your body is adjusted to the alcohol. It depends on how much you drink all the time and stuff like that.

He was a toxologist (sic) in Canada and he knows for a fact that you can be 1.0 and you're still okay. But the foreman was saying that you would be dead at .60.

THE COURT: So that was the conversation from Friday and you looked this up over the weekend?

JUROR NO. 3: It shouldn't have been .60 so we were assuming --

THE COURT: But you did not reveal today that you had done that research?

JUROR NO. 3: No nobody asked about it today, whereas the other thing was brought up again today.

THE COURT: You did not bring it up today, somebody else brought it up today?

JUROR NO. 3: I brought it up when I was asked to explain my choice of verdict, when they took a vote

and raised your hand, okay, well, I voted my way and then I was asked to explain it.

THE COURT: So here is where I am struggling to follow. My understanding, the research that you did, did you do that over the weekend?

JUROR NO. 3: Saturday.

THE COURT: Okay. So I am trying to understand how somebody else brought it up this morning. The way you are discussing it makes me think you talked about it on Friday.

JUROR NO. 3: We did.

THE COURT: But you had not done your research.

JUROR NO. 3: No. I had not done it yet. That was one of the things we brought up. We were all trying to make our points about what we think and what might have happened and there's so much that --

THE COURT: So the points you were making on Friday were independent of any research you had done, right, because then you're telling me you researched on Saturday.

JUROR NO. 3: Yes.

THE COURT: Then how did it come up today?

JUROR NO. 3: Because again they wanted to know why I came up with my vote and I explained because I believe this law and I believe that what happened is what

this says. And that is what I want to go by unless somebody can tell me that it isn't true.

And then they told me that you had instructed us to ignore that, that we are not supposed to even look at that.

THE COURT: Look at what?

JUROR NO. 3: That law. We are not even allowed to look at it or bring it up. It is taboo. It's your instructions and this is something I do not remember.

THE COURT: Are you now talking about because the DA had mentioned it in closing argument, that's why the Court said don't consider it; is that what you are talking about?

JUROR NO. 3: I don't know. The other jurors told me I can't consider it because you said I can't.

THE COURT: Can't consider what?

JUROR NO. 3: That law. That I am not allowed to use that as evidence or grounds for me to base an opinion on. That it's stricken from the record. And this is what I am so confused about. I don't know what I am doing. I don't know what is going on to be honest with you.

THE COURT: I am just trying to understand what you are telling me because obviously the Court did not order any of the laws stricken. The Court instructed on

the law, that's what this is and we are trying to understand what it is that is --

JUROR NO. 3: We just went round and round and round. I tried to understand it. I don't remember the judge saying that and they were trying to show me in the paper and it kept going around saying the same thing. But what is on the paper that they were showing me was vague. It did not reference any particular --

THE COURT: So that is Friday that that happened or today?

JUROR NO. 3: That's today.

THE COURT: But you had already done your research at this point?

JUROR NO. 3: Yeah, because I wanted to understand what I was looking at or doing before I said anything. I wanted to be sure. I knew I heard right or at least I think I heard right and so I went and looked. I'm sorry. I didn't realize it was a problem.

But like I said, I was not even thinking. My mind was totally somewhere else trying to figure out what is going on and what you can and can't do, so this why I researched. I shouldn't have. I should have waited and came in and found a way to have them clarify it. I do not know how to do that.

And there was times, like I said, we asked the

question if this is really a law. Do you understand what I'm saying or no?

THE COURT: I am just receiving the information that you are providing me, Mr. Longo.

JUROR NO. 3: Okay.

THE COURT: Please return to the deliberation room and please do not discuss what occurred here in court just now with your fellow jurors. Thank you.

(Juror No. 3 exits the courtroom.)

THE COURT: One thing I am not sure how to reconcile is clearly the foreperson knew that he had done the research on the blood alcohol content and he just said he didn't bring it up today.

MS. MCNEILL: Nothing was admitted -- he said he was looking at something they had.

MS. ALLEN: We did not admit those medical records.

THE COURT: Oh, that is not in evidence?

MS. ALLEN: No.

THE COURT: I cannot even think straight at this point. And he said nobody else brought anything else in.

MS. MCNEILL: Right.

THE COURT: Should we bring the foreperson in to find out what that was?

MR. PALAL: At this point, Your Honor, the State

is going to concede the point that --

THE COURT: Well, I don't know that anybody is conceding the point to anything. I think we are all coming to the incredibly difficult, incredibly sad realization that we have a juror who was probably unable to serve, frankly, from the discussion here today.

MS. ALLEN: Is sure sounds like it.

THE COURT: That did not reveal itself through our voir dire, who then because he misunderstood what he was to do, frankly, is not even able to answer the questions now in a coherent way to make sense to me of how and what occurred or to what matched up to what we have from the foreperson.

And in his own admission he does not know what he's doing and one of those things is what prompted him to do independent research.

And then the fact that he did that research and the fact that there was then discussion that ensued with regard to that. And honestly I am so confused at this point that I am not even sure I'm sitting here knowing where they are sitting in their deliberation, which I am glad. I did not want to go there and didn't want to ask those questions.

But in light of how he said what he was looking for and what he now believed to be the law, or believed

then to be the law and doing independent research to confirm, I am beyond concerned, obviously, about where we are.

Ms. Allen, I just want to note now that the juror has left and that we are here that you several times had to instruct your client to -- you had given him information to stop whatever his concerns were.

I obviously want to understand if you have anything to express, or Mr. Granada-Ruiz has anything to express about the circumstances where we are now.

MS. ALLEN: Well, I mean, understandably so, he is upset. I don't blame him for that. He has been -- I don't think he is anymore -- well, he may be more, he's just as upset as we are. I mean two weeks and everything that we put into this and he's on an anklet and he hates being on house arrest.

He's obviously angry. I don't blame him for his anger. I don't even understand this. This is -- I have never had this happen. I have done 50 some jury trials.

THE COURT: Thank you for saying that because honestly I am thinking I am in the twilight zone.

MS. ALLEN: Like I said, 50 some odd jury trials, Your Honor, and I have never in my life experienced --

THE COURT: I have never heard of or seen

anything like this in 25 years of practice. Granted, I did not do criminal practice extensively prior to coming to the bench but I have never seen or heard of anything like this.

MR. PALAL: Nor has the State. I understand Mr. Granada-Ruiz' frustration but we are going to have to call the family and say, by the way, this thing that you have been hoping to get out of your life, we're going to have to do it again.

MS. ALLEN: So it's my understanding that the Court is going to declare a mistrial. I don't know if we are going to try to go down that road of trying to discuss it. I think Ms. McNeill and I would ask the Court to find out what the 11 to 1 was.

MS. MCNEILL: I think based on that we have our opinion.

MS. ALLEN: We would just like to know.

THE COURT: Any objection from the State? I think the State would benefit. Can we do this through the foreperson?

MS. MCNEILL: Yes.

MS. ALLEN: Of course.

MR. PALAL: So the record is clear, at this point, before we inquire of the foreperson --

THE COURT: The Court has found that there is

clear basis for mistrial, that there is no way that the Court can be ensured that any product of deliberation of this juror can be fair and impartial and based on what is appropriate, if you will, to reach a verdict and I will make a final statement for the record.

(Juror No. 10 enters the courtroom.)

THE COURT: Thank you, Juror No. 10 for coming back. I just need a couple of clarifications.

You indicated that you were aware that Juror No. 3 had done research with regard to the blood alcohol content.

JUROR NO. 10: Correct.

THE COURT: How did you become aware of that?

JUROR NO. 10: I met with Juror No. 3 this morning. I didn't meet with him -- we just happened to meet each other on the street as we were coming into the building. And he explained to me two things; that he had researched some information --

THE COURT: Was that this morning?

JUROR NO. 10: That was first thing this morning when we were coming into the building. He told me he researched some information, what I talked about earlier and something about blood alcohol levels and the differences. And I guess he also had a discussion with his wife. He told me all this morning as I was walking

into the building.

And I said, Well, I don't think everything you did -- I explained you are not supposed to do any of that. I am not an expert but according to the judge's instructions you were not supposed to do any of that. And he explained to me --

THE COURT: So it did not come up in the discussion amongst the other jurors, that part.

JUROR NO. 10: That part, no. Everything I am telling you right now was when our paths crossed in the morning, he brought all that up then.

THE COURT: So he indicated to you, Juror No. 3, indicated to us that at some point in the deliberations, and it's not clear whether it was Friday afternoon, evening, or whether it was this morning that there was some discussion of the blood alcohol content and some reference to what the blood alcohol content was and that there was some discussion about that at some point and that somebody was referring to records or some document that was a typed out document in which the blood alcohol content was contained.

Did that occur and what specifically were you looking at because I asked him specifically were you or anyone referring to their notes and he said, No, it was something that was typed out.

JUROR NO. 10: I think one of them -- I think somewhere in one of the reports I think someone -- they were looking for it. I cannot remember whether they found it or not but they were looking for it when it was mentioned.

THE COURT: But you did not actually have something typed up that you were referring to and looking at the alcohol content on?

JUROR NO. 3: No. No. Just the information that was given to us, we were looking through that. No one brought anything in. It was just the information that was given to us through the evidence. They were looking and following through that. Nobody had any outside document that they looked at.

THE COURT: Do you remember a discussion specifically about something being .60 or .10 or 1.0 or anything like that?

JUROR NO. 10: Yes. We started talking and one of the jurors, I do not remember which one, brought up something about the alcohol content and Mr. Dolittle and I remember someone -- the doctor saying .66 and we got on the discussion about blood alcohol level and .66 didn't sound right. That does not sound correct.

THE COURT: Nowhere in that discussion did anyone refer to anything type written that contained that

information?

JUROR NO. 10: No. Just they were looking through the evidence. No one brought anything out. I didn't see anything that anyone brought out special.

THE COURT: At this time the other inquiry that we need to make of you is and I will reveal this to you now, Juror No. 10, because when we bring in the remaining jurors together and we will follow through with this, but the Court has made a determination that the circumstances here constitute manifest necessity, which is our term of art legally, that we have to declare a mistrial. That you will not be able to continue to deliberate. That the particular facts and circumstances that have been found to have occurred here in these deliberations are such that a fair and impartial trial has become impossible from the Court's review and that we have no choice but to conclude these proceedings.

It is certainly devastating to all concerned. But we will have that conversation with all the jurors present momentarily.

Before we do that, though, we are wanting to inquire of you rather than having to do the entire group, what is the 11 to 1 vote that you indicated in your notes that you were at 11 to 1 vote and not moving. What is the circumstances of where we are?

JUROR NO. 10: What was the actual vote? How we voted?

THE COURT: Yes.

JUROR NO. 10: It was 11 to 1 not guilty. One guilty, that is where we stood.

THE COURT: Okay. That was the information that we needed.

Was there anything further that we needed?

MS. MCNEILL: No, Your Honor.

THE COURT: Again, please do not discuss the discussion in here. I am going to ask you to return and once you return to the group I am going to ask the marshal to bring everyone in to take their seats.

Just to be clear for the record, I do not think anyone has requested the mistrial. The Court has determined from the information that the mistrial is required. But at this point I will make my record asking or conceding, but at the end of the day it is the Court's determination that is being made.

(Jury enters the courtroom.)

THE COURT: Thank you. Everybody please have a seat. Ladies and gentlemen of the jury, the Court has made the determination based on information that has been brought to light through the course of the day with questions and there were specific questions towards the

end of the day with regard to circumstances that have taken place in the deliberations, circumstances of independently researching information with regard to the law as instructed by the Court and given by the Court in the set of instructions. Information with regard to deliberations which took place related to that information. And without going into the specific details, the Court has already made the record with regard to that.

The Court must make a determination upon the information whether or not, and the term of art legally is manifest necessity to declare a mistrial. Whether manifest necessity is present depends on particular facts of the case.

The circumstances that could be found to constitute manifest necessity include any number of things, but where there has been interference with, and this is from our case law, the administration of honest, fair, even-handed justice to either, both or any of the parties in the proceeding has occurred then the circumstances are such that there is a manifest necessity to declare a mistrial.

The Court has found in these circumstances that that that manifest necessity exists. The Court has found that it is impossible to believe at this time based on

all of the facts and circumstances that a fair and impartial trial is still possible to have in these circumstances and the Court is going to now discharge you from your duties and before I do so I need you all to take with you this information.

We are all literally sitting completely flabbergasted with the collective experience in this courtroom of trial work, which I am not even going to say the number of years, we have never seen anything like what we have seen here.

And before you believe that it is simply on the burden of one juror, think again. This is 12 people who had a discussion with regard to information that was brought to light by another juror who independently researched. The minute that that information came to light everybody should have ceased deliberations and that should have been brought to this Court's attention immediately and you are all equally responsible for the fact that this trial is now a mistrial, that the family of Mr. Dolittle will have to be informed by these attorneys that this case is not concluded and will have to make a determination of whether or not to be tried again.

Mr. Granada-Ruiz is sitting there knowing that there is no outcome for him in this case. And I don't

mention those things in any order of importance. They are all equally important.

The taxpayers' dollars that have been spent over the two weeks of this trial, the time and effort of these incredible attorneys who put everything that they had into this trial. This staff. This is my job. I have never in all of my time of service experienced anything like this.

And to say I am dismayed is an understatement, but I am on behalf of the citizens of the state of Nevada, on behalf of everybody present here, on behalf of Mr. Granada-Ruiz, on behalf of the Dolittle family, on behalf of everyone involved in this case, I am appalled, disgusted and really have nothing further to add than really ultimately what I want you to be aware of is this is not any one person's fault. This is a collective situation that occurred with all 12 and I don't know what is going to occur from here. Nobody does. But I would hope that if any of you have occasion to serve as jurors again that you remember what occurred here and you will think of the counsel and the parties and individuals involved and you will handle the circumstances very, very differently the next time.

My marshal will escort you. I think what is going to occur is the final payment for today will be

mailed to you. My marshal will ensure that you are able to get out of the parking lot because we know at this later hour that you may have some difficulty.

At this time you are excused.

(Jurors exit the courtroom.)

THE COURT: Thank you for indulging me for a couple minutes.

Again, I trust that Mr. Granada-Ruiz is going to have questions. I am not entertaining any motions or any discussions at this time. I trust that he will have questions that you will be able to answer, counsel.

MS. ALLEN: Yes.

THE COURT: To the extent that you can and whatever other speculation as to where we go from here. What I do though, at my clerk's request for housekeeping purposes, we need to give all the exhibits back to counsel. We have everything here. I do not know how you want to do this. You may not want to do it now because of the late hour but we do need to do some of that housekeeping.

I am considering probably the best thing to do is to set a status check --

MS. ALLEN: On Monday?

THE COURT: Monday.

MS. ALLEN: That would be fine.

THE COURT: So a status check on Monday to see how and when we will proceed.

MS. ALLEN: Thank you, Your Honor.

MS. MCNEILL: Thank you, Your Honor.

THE CLERK: September 28th at 9:00 a.m.

(Proceedings were concluded.)

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, BRENDA SCHROEDER, a certified court reporter in and for the State of Nevada, do hereby certify that the foregoing and attached pages 1-73, inclusive, comprise a true, and accurate transcript of the proceedings reported by me in the matter of THE STATE OF NEVADA, Plaintiff, versus GAMBINO GRANADA-RUIZ, Defendant, Case No. C305044, on September 21, 2015.

/s/ Brenda Schroeder
BRENDA SCHROEDER, CCR NO. 867

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